



Smokefree Housing Ordinance Summary

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By creating nonsmoking living environments in multi-unit residences such as apartments, condominiums, senior housing, and single resident occupancy hotels, communities can provide an opportunity for everyone to live smokefree – even people who can't afford to live in a single-family home. A number of cities and counties throughout California already have adopted local laws to protect people living in multi-unit residences from their neighbors' drifting tobacco smoke.¹

The Technical Assistance Legal Center (TALC) developed this [Model Ordinance](#) to help California communities limit secondhand smoke exposure in multi-unit residences. The Model Ordinance includes provisions to restrict smoking in common areas (indoors and outdoors), create smokefree buffer zones, and prohibit smoking in individual units. This Model Ordinance is very broad and can be used to limit smoking in *all* types of multi-unit dwellings – from hotels to long-term health care facilities – as well as apartments and condominiums.

Your community may choose to include some or all of the options offered in the Model Ordinance, depending on your jurisdiction's policy objectives. To help your community make policy choices, TALC created a [Smokefree Housing Ordinance Checklist](#) that highlights key policy options contained in the Model Ordinance.

If you have questions about this ordinance or would like assistance adapting it for your community, contact TALC at (510) 302-3380 or submit your question via our website at www.phlpnet.org/tobaccoquestions.

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PHLP is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

Findings

Findings document the problem a law was drafted to solve. This section contains an extensive list of statements, based on the latest scientific research, describing the health risks associated with tobacco use and secondhand smoke exposure. *(pages 4-8)*

Section 1: Definitions

This section contains specific definitions of key words and phrases used in the Model Ordinance. When these words appear later in the text of the Ordinance, they are capitalized to signal they have been specially defined. *(pages 8-13)*

Section 2: No Smoking in Common Areas, Except in Designated Smoking Areas

This section creates smokefree common areas (indoors and outdoors) for all types of multi-unit housing containing two or more units, including, for example, apartments, condominiums, long-term health care facilities, single room occupancy hotels (SROs), and motels. No Smoking signs must be posted in the common areas. A landlord or homeowners' association may designate an outdoor smoking area for the multi-unit housing complex as long as it meets specific criteria.

To allow smoking in some types of multi-unit housing common areas, the defined term "Multi-Unit Residences" can be modified to limit the types of multi-unit dwellings it includes, and thus exclude some common areas from the smoking restrictions. *(pages 13-14)*

Section 3: Smokefree Buffer Zones

Buffer zones are designed to protect tenants from smoke drifting into their units from adjacent areas – a common complaint of people living in multi-unit residences. This section creates smokefree zones around indoor areas (units and common areas) by prohibiting smoking within 25 feet of doorways, windows, and other openings into indoor nonsmoking areas. This section also prohibits smoking on balconies, patios, and decks within 25 feet of a nonsmoking unit.

Smokefree buffer zones can be expanded to include the entire area of balconies, decks, and patios, even when smoking would otherwise be allowed there. The smokefree buffer zones can also be enlarged to include neighboring property. *(pages 14-15)*

Section 4: No Smoking in New Units

This section recommends restricting smoking in 100% of new units of multi-unit housing. New units are those built nine months after the ordinance is adopted. This would include, for example, all new units or rooms in apartments, condominiums, long-term health care facilities, single room occupancy hotels (SROs), and motels constructed nine months after the ordinance is passed.

Because the percentage of nonsmoking units is a policy choice, optional language is provided to require a lesser percentage of nonsmoking units, for example 90%, and allow smoking in the remaining portion of units. In addition, to allow smoking in the new units of certain types of multi-unit housing, the defined term "Multi-Unit Residences" can be modified to limit the kinds of multi-unit dwellings included, and thus exclude some new units from the smoking restrictions. *(pages 15-16)*

Section 5: No Smoking in Existing Units (Condominiums)

This section recommends restricting smoking in *all* existing units of condominium complexes and other owner-occupied multi-unit housing developments (as defined in the ordinance by the term “Common Interest Complex”). This section also describes a process whereby homeowners’ associations may vote to allow smoking in some of the units of their condominium complexes.

If a community does not feel ready to restrict smoking in condominium units, then this section may be deleted. *(pages 16-17)*

Section 6: No Smoking in Existing Units (Apartments)

This section recommends restricting smoking in *all* existing units of apartment buildings and other renter-occupied multi-unit housing complexes (as defined in the ordinance by the term “Rental Complex”). It describes a step-by-step process landlords or property management firms can follow to designate a certain percentage of units as smoking-allowed.

This section also recommends a 12-month implementation timeline to allow tenants and landlords to become familiar with the new smoking restrictions over time. A reasonable phase-in period leading up to a date on which everyone is required to abide by the law is generally perceived to be the most fair and effective approach to implementing a smokefree housing law – balancing public health needs against the potential inconvenience the ordinance puts on tenants who smoke and landlords who are implementing the new policy. *(pages 17-20)*

Section 7: No-Smoking Lease Terms

This section requires landlords to include smoking restrictions in lease agreements – for example, a provision stating that it is a violation of the lease to smoke in a nonsmoking unit or smokefree common area. Landlords and property management firms must include these new no-smoking terms as soon as possible, given existing legal requirements in amending leases. This section also allows the landlord as well as other tenants living in the complex to enforce the no-smoking lease terms against a violating tenant. *(pages 20–23)*

Section 8: Disclosure

This section requires a landlord who has designated smoking-allowed units to disclose this to prospective renters by providing a map or diagram that describes where nonsmoking units and designated smoking-allowed units are located. If there are no smoking-allowed units in the complex, then the landlord has nothing to disclose and no obligation to comply with this section. *(page 23)*

Section 9: Smoking Prohibitions

This section states when each of the smoking prohibitions goes into effect. Specifically, smoking is not allowed in common areas or new units of multi-unit housing once the ordinance is adopted, and smoking is not allowed in designated nonsmoking units of existing condominiums and apartments one year after the ordinance is adopted. *(pages 23-24)*

Section 10: Reporting Requirement

This section requires that a diagram describing the locations of the smoking-allowed and nonsmoking units be submitted to a specified government department. If there are no designated smoking-allowed units, then there is no reporting requirement.

Because the number of multi-unit complexes in a community may vary greatly, and local government may have limited capacity to integrate this reporting requirement into its administrative systems, this section may be deleted if deemed overly burdensome. *(page 24)*

Section 11: Nuisance Designation and Medical Marijuana Exemption

This section designates drifting tobacco smoke as a nuisance *anywhere* in the city or county, not just in multi-unit residences. By declaring secondhand smoke a nuisance, the ordinance allows affected parties to more easily seek monetary damages or a court order to stop the nuisance activity. Optional language allows this declaration to be limited to drifting tobacco smoke in a residential context.

This section also includes an exemption that allows the smoking of medical marijuana in multi-unit housing. This is a policy choice, and depending on the community, this subsection may be deleted. *(page 25)*

Section 12: Penalties and Enforcement

This section provides several methods for local government to enforce the ordinance, including civil fines, citations by law enforcement, and injunctive relief (a court order to do or stop doing something). It also specifies the monetary fines that may be imposed for violations of the ordinance. *(pages 25-28)*

Section 13: Private Citizen Enforcement

This section allows a tenant or a landlord to enforce the ordinance through a lawsuit. It also gives a private citizen who does not live in the multi-unit housing complex the right to bring a lawsuit to enforce this ordinance solely on behalf of the general public. *(pages 28-30)*

¹ For a comprehensive list of smokefree housing policies, see The Center for Tobacco Policy and Organizing. *Matrix of Local Smokefree Housing Policies*. Available at: www.center4tobaccopolicy.org/localpolicies-smokefreehousing.