



DISCLOSURE OF SMOKING POLICIES

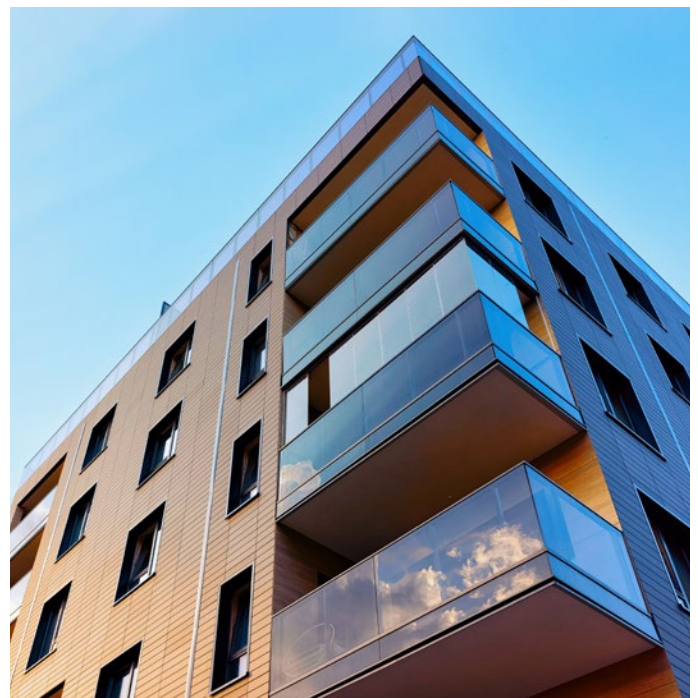
in Multi-Unit Housing



Individuals who live in multi-unit housing, including apartments and multi-unit owner-occupied buildings, are particularly susceptible to involuntary secondhand smoke exposure in the home. Secondhand smoke can travel into units from other units and common areas through doorways, cracks in walls, electrical lines, ventilation systems and plumbing.¹

There is no safe level of exposure to secondhand smoke.² As residents increasingly demand smoke-free environments, many landlords and homeowners' associations are choosing to adopt policies requiring their properties to be smoke-free. Additionally, many local governments require multi-unit housing to be smoke-free.³

While the most effective policy to protect residents from secondhand smoke is a



prohibition on smoking, an important component of smoke-free policies is requiring landlords or homeowners' associations to inform prospective tenants and buyers where smoking is prohibited. Some state and local governments have adopted laws to require owners to notify tenants about the building's smoking policy, whether smoking is allowed or prohibited. These smoking policy

“disclosure” laws are similar to laws requiring property owners to warn prospective renters or purchasers of buildings that contain lead-based paint or radon. This fact sheet explains the concept of a smoking policy disclosure law, and reviews benefits and concerns that authorities might want to keep in mind when considering such measures.

Legal Basis for Smoking Policy Disclosure

Currently, most jurisdictions do not require that landlords or homeowners’ associations disclose their smoking policies. However, some courts have found that if a dangerous condition exists on a property that a prospective resident may not be aware of or notice upon a casual inspection, then the property owner has a responsibility to warn the resident of the danger.⁴ Federal laws require disclosure notifying renters or purchasers of the potential presence of lead-based paint in pre-1978 properties.⁵ Some states require disclosures if a property was previously used as an illegal methamphetamine laboratory⁶ or if radon testing was conducted on the premises.⁷ Possible exposure to secondhand or thirdhand smoke could qualify as a dangerous condition that should be disclosed.

Disclosure Approaches

Two states and several municipalities have adopted disclosure laws requiring property owners to inform prospective residents of the smoking policy on the property. Laws in Oakland, California, and New York City require disclosure of smoking policies in both multi-unit rental properties (e.g., apartments) and multi-unit owner-occupied dwellings (e.g., condominiums).⁸ Laws in Maine and Oregon apply only to multi-unit rental properties, but also require identification of any designated smoking areas.⁹ The coverage and strength of the law or ordinance will depend on the profile of multi-unit properties in a jurisdiction and the political support from housing industry advocacy organizations.

Enforcement and Evaluation

Although little evaluation has been done on the impact of smoking policy disclosure laws, such laws are fairly easy to implement and have not been challenged legally. Additionally, research has been conducted showing the impact of smoke-free policies in reducing exposure to secondhand smoke.¹⁰

Benefits

Disclosure laws have the following benefits:

- **Property owner education.** Disclosure laws are an opportunity to educate property owners about the possibility of adopting a smoke-free policy. Based on anecdotal evidence, in some cities and counties that have adopted disclosure laws, calls increased to commercial tobacco control organizations from landlords asking about adopting smoke-free policies. Many owners state that they had been unaware that they could implement such a policy prior to the law's enactment.
- **Resident awareness/protection.** Providing information to prospective residents or purchasers prior to entering into a lease or purchase agreement may keep individuals from entering into an agreement that would make it difficult to avoid exposure to secondhand smoke. Residents may also become aware that smoke-free policies are an amenity that they can seek in their residential housing choice.
- **Adoption of smoke-free policies.** As prospective renters or purchasers decide not to rent or buy a property after learning that smoking is permitted, property owners may become more aware of the significant preference for smoke-free living. This could motivate more property owners to adopt smoke-free policies.

Concerns

Opinions on the strategy of adopting smoke-free disclosure policies are not uniform; some advocates speculate that this approach may have the following drawbacks:

- **May not result in adoption of more smoke-free policies.** State and local disclosure laws do not require that residential units be smoke-free; all they require is that smoking policy information be disseminated to residents and potential residents. Passage of the disclosure requirement may not result in more properties going smoke-free.
- **May result in stalling adoption of some policies.** A property manager who may have been considering a smoke-free policy, but had reservations about implementation and enforcement, may feel that disclosure is a sufficient step. Therefore, instead of promoting smoke-free policies, disclosure may replace the adoption of smoke-free policies for some multi-unit properties. However, requiring disclosure does ensure that prospective residents in a jurisdiction are aware of the potential for exposure.

- **May make it more difficult for residents exposed to secondhand smoke to get relief through legal channels.** If a resident signs a lease with the disclosure language and is subsequently exposed to excessive amounts of secondhand smoke intrusion, the resident may find it more difficult to get relief on the grounds of a nuisance claim. The courts may decide that the resident assumed the risk of exposure by signing the lease with the language acknowledging that the property permitted smoking.

Policy Examples (Excerpts)

Below are examples of smoking disclosure laws. If you consider adapting any language from these policies, take care to ensure the provision in question is practical and legal in your jurisdiction. Please note that the Center does not endorse or recommend any of the following policies. These examples are included simply to illustrate how various jurisdictions have approached similar issues.

State Law

Text

Maine

ME. REV. STAT.
ANN. § 6030-E(2)
(2020)

A landlord or other person who, on behalf of a landlord, enters into a lease or tenancy at will agreement for residential premises that are used by a tenant or will be used by a potential tenant as a primary residence shall provide to the tenant or potential tenant a smoking policy disclosure that notifies tenants or potential tenants of the landlord's policy regarding smoking on the premises.

Oregon

OR. REV. STAT. §
479.305 (2020)

Except as provided in subsection (2) of this section, the rental agreement for a dwelling unit regulated under ORS chapter 90 must include a disclosure of the smoking policy for the premises on which the dwelling unit is located. The disclosure must state whether smoking is prohibited on the premises, allowed on the entire premises or allowed in limited areas on the premises. If the smoking policy allows smoking in limited areas on the premises, the disclosure must identify the areas on the premises where smoking is allowed.

continued



County Law

Text

**Rockland County,
New York**

Administrative
Legislation § 349-
18 (2020)

- A. Owners of multiple-dwelling rental properties are required to:
1. Develop and implement a smoking policy that details where and when smoking is permitted in multiple dwellings, if at all;
 2. Distribute the smoking policy to all current tenants of multiple dwellings within 30 days of this article going into effect;
 3. Post a copy of the smoking policy in the following public areas of the multiple dwelling, if applicable: all entrances, walls adjacent to elevators and mailboxes, and laundry/common rooms;
 4. Attach a copy of the smoking policy to all leases for dwelling units in the multiple dwelling, to be provided to all prospective tenants or upon request; and
 5. Provide a copy of the smoking policy to all tenants who enter into oral leases or agreements to rent by the day, week, month or year, prior to the time tenants enter into such oral tenancy.
- B. Owners of multiple dwellings with five or more dwelling units are required to file a copy of their smoking policy with the Rockland County Department of Health within 30 days of this article going into effect.

City Law

Text

**New York City,
New York**

2017 N.Y.C. Local
Law No. 147

1. Upon adoption of a smoking policy, the owner of a class A multiple dwelling shall provide a copy of the building's smoking policy to all tenants or post, in a prominent location within such dwelling, a copy of the building's smoking policy.
2. Except as provided in paragraph 3 of this subdivision, the owner of a class A multiple dwelling shall incorporate the building's smoking policy into any agreement to rent or lease a dwelling unit in such building.
3. In a condominium or cooperative apartment corporation, the condominium unit owner or tenant- shareholder of a cooperative apartment corporation shall incorporate the building's smoking policy into any agreement to rent or purchase the dwelling unit or shares in the cooperative apartment corporation.
4. In a condominium, the board of managers shall incorporate the building's smoking policy into the condominium bylaws or rules.

continued

New York City, New York, continued

5. In a cooperative apartment corporation, the board of directors shall incorporate the building's smoking policy into the bylaws or rules of the cooperative apartment corporation.
6. A tenant who is renting or leasing a dwelling unit shall incorporate the building's smoking policy into any agreement to rent or lease the dwelling unit to a subtenant or sublessee.
7. Annual disclosure of the smoking policy. On an annual basis, the owner of a class A multiple dwelling shall provide a copy of the building's smoking policy to all tenants or post, in a prominent location within such dwelling, a copy of the building's smoking policy.

Duluth, Minnesota
*Duluth, Minn.,
Legislative Code §
29A-40(f) (2021)*

The licensee, prior to the commencement of the term of any rental agreement beginning on or after July 14, 2010, must include a smoking policy disclosure as part of the rental agreement.

Oakland, California

*Oakland, Cal.,
Mun. Code §
8.30.050(B)
(2021)*

Disclosure of Smoking Policy in New and Existing Multi-Housing:

All landlords in multi-housing complexes are required to disclose to prospective tenants whether smoking is permitted in the unit to be rented, which units are designated smoking units, and the smoking policy for the complex.

All sellers of condominium units are required to disclose to prospective buyers respectively whether smoking is permitted in the unit and the smoking policy for the complex.

San Francisco, California

*San Francisco, Cal.,
Health Code §
19M.2 (2020)*

An owner or manager ("landlord") of a Multi-Unit Housing Complex with less than one hundred percent (100%) smoke free residential rental units shall:

- a. Designate each residential unit as either smoke free or smoking optional, using the process and timeline provided in Section 19M.3 "Procedure for Designation of Residential Units as Smoke Free or Smoking Optional."
- b. Include in residential vacancy listings the unit designation as smoke free or smoking optional.
- c. Provide a residential rental applicant with a list showing the designation of units in the building that are smoking optional, before offering a unit to that applicant.
- d. Disclose in writing to any residential rental applicant whether the landlord has designated the unit for rent as a smoke-free unit or as a smoking optional unit, before entering into the new lease or rental agreement.
- e. Develop and maintain a master list for tenants that identifies the location of each smoking optional unit. Notify tenants that this master list is available upon request in the leasing office or from building management.



Other Resources

- Warren Ortland, *A Warning Label for Your Building: Disclosing Smoking Policies for Multi-Unit Buildings*, THE HENNEPIN LAWYER (Mar. 2009).
- Sample Disclosure Forms
 - [Maine sample disclosure form](#)
 - [Oregon sample disclosure form](#)
 - [New York City sample disclosure form](#)

For additional information on the regulation of secondhand smoke in multi-unit housing, please see the [Public Health Law Center's webpage on housing](#).

Contact Us

Please contact the Public Health Law Center at publichealthlawcenter@mitchellhamline.edu with any questions about the information included in this fact sheet or to discuss local concerns you may have about implementing these policies.

This publication was prepared by the Public Health Law Center at Mitchell Hamline School of Law, Saint Paul, Minnesota. The Center provides information and technical assistance on law and policy issues related to public health. The Center does not provide legal advice or enter into attorney-client relationships, and this document should not be considered legal advice. This publication was made possible by funding from Clean Air for All: The Smoke-Free Public Housing Project and the Robert Wood Johnson Foundation. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of Clean Air for All or the Foundation.

Endnotes

- 1 U.S. DEP'T OF HEALTH & HUM. SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL (2006), https://www.ncbi.nlm.nih.gov/books/NBK44324/pdf/Bookshelf_NBK44324.pdf.
- 2 CTRS. FOR DIS. CONTROL & PREV., *Health Effects of Cigarette Smoking* (2020), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.
- 3 AMERICAN NONSMOKERS' RIGHTS FOUNDATION, U.S. LAWS FOR 100% SMOKEFREE MULTI-UNIT HOUSING (2020), <https://no-smoke.org/wp-content/uploads/pdf/smokefreemuh.pdf>.
- 4 See *Johnson v. O'Brien*, 105 N.W.2d 244, 247 (1960) ("... where a landlord has information which would lead a reasonably prudent owner exercising due care to suspect that danger exists on the leased premises at the time the tenant takes possession, and that the tenant exercising due care would not discover it for himself, then he must at least disclose such information to the tenant.").
- 5 2 U.S.C.A. § 4852d (1992).
- 6 MINN. STAT. § 152.0275, subdiv. 2 (m) (2020).
- 7 420 ILL. COMP. STAT. 46/10 (2020).
- 8 Oakland, Cal., Mun. Code § 8.30.050(B) (2021); 2017 N.Y.C. Local Law No. 147.
- 9 Act to Improve Awareness of Smoking Policies in Maine Rental Housing, Pub. L. ch. 199, ME. REV. STAT. ANN. tit. 1.14, § 6030-E(3) (2020); OR. REV. STAT. § 479.305 (2020).
- 10 See, e.g., Pamela Kaufman, et al., *Impact of smoke-free housing policy lease exemptions on compliance, enforcement and smoking behavior; A qualitative study*, 10 PREV. MED. REPS. 29 (2018), <https://doi.org/10.1016/j.pmedr.2018.01.011>; John H. Kingsbury & Dawn Reckinger, *Clearing the Air: Smoke-Free Housing Policies, Smoking, and Secondhand Smoke Exposure Among Affordable Housing Residents in Minnesota, 2014–2015*, 13 PREV. CHRONIC DIS. E111 (2016), doi:10.5888/pcd13.160195; Lorraine S. Lathen et al., *The HUD smoke-free rule: Perceptions of residents post-implementation*, 19 PREV. MED. REPS., 101159 (2020), <https://doi.org/10.1016/j.pmedr.2020.101159>.