

SMOKE-FREE TRIBAL HOUSING POLICIES



Policies that restrict the smoking of commercial tobacco products in housing have many benefits. Such policies can improve the health of community members, encourage the preservation of culture, reduce the risk of fire, and lower maintenance costs.

In recognition of these benefits, many Tribal governments and Tribal housing authorities have adopted or are considering smoke-free housing policies.¹ When deciding whether to adopt a Tribal smoke-free housing policy, advocates and policy makers may wish to consider several issues, including the need to preserve sacred tobacco use, obtain Tribe-specific data, and provide culturally appropriate cessation materials.

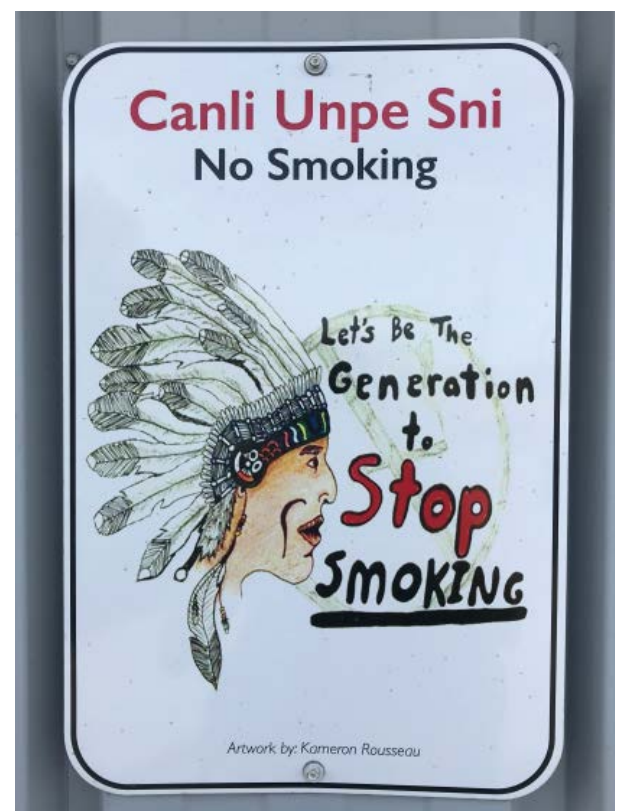


Photo: Rae O'Leary, Canli Coalition



This resource is intended as a guide for Tribal communities working on policies to restrict the smoking of commercial tobacco products in Tribal housing. The information contained in this guide is not intended to be used as or to replace legal advice. Readers are encouraged to consult with Tribal legal counsel before moving forward with policy initiatives.

Benefits of Smoke-Free Housing

Tribal epidemiology centers have noted that “[u]sing tribal sovereignty is key to ending commercial tobacco use in our communities,” and identified smoke-free housing policies as one way to further this goal.² When the Red Cliff Band of Lake Superior Chippewa Indians adopted a smoke-free housing policy in 2016, Jim Belanger of the Red Cliff Community Health Center noted that “[o]ur goal with this policy is to create a healthier environment for the seventh generation.”³

Indeed, smoke-free housing policies have been shown to have many benefits. In 2016, the U.S. Department of Housing and Urban Development (HUD) issued a regulation requiring public housing — whether single-family or multi-unit — to be smoke-free.⁴ Although the HUD smoke-free rule does not apply to Tribal housing, the agency identified several benefits to smoke-free housing policies. These benefits include cost savings, maintenance savings, insurance savings, reduced legal liability, and health protection for residents and staff.⁵ These same benefits would also apply to Tribal housing, much of which is single-family. Children will particularly benefit from smoke-free Tribal housing policies because they will be protected from secondhand smoke.⁶ These policies also can help preserve cultural practices in communities with a tradition of sacred tobacco use, which does not carry the same risks as commercial tobacco use.

Further, studies have shown that smoke-free housing policies decrease smoking by people who are addicted to commercial tobacco.⁷ Therefore, these policies can reduce disparities found in commercial tobacco use patterns. Indeed, the burden of commercial tobacco use is borne more heavily by American Indian and Alaska Native (AI/AN) communities than by other ethnic groups in the United States. In 2017, according to the Centers for Disease Control and Prevention’s National Health Interview Survey (NHIS), 24.0 percent of AI/AN adults were current cigarette smokers.⁸ In contrast, the rate was 15.2 percent for whites and 14.9 percent for African Americans. The disparity is more extreme compared to other groups: only 9.9 percent of Hispanics and 7.1 percent of Asian Americans smoked cigarettes in 2017. The prevalence of commercial tobacco use among AI/AN individuals varies by region, with use higher in the Northern Plains (49 percent among men, 51 percent among women) than in the Southwest (19 percent among men, 10 percent among women).⁹

Nationwide surveillance data such as NHIS have a proportionately low percentage of American Indians participating, so the data may not be precise. For this reason, Tribe-specific commercial tobacco use data that is culturally tailored and conducted by trusted community-based organizations is preferred. Tribe-specific commercial tobacco use data suggests commercial tobacco use could be as high at 63 percent among some American Indian Tribes.¹⁰

Commercial tobacco use is the leading cause of preventable death among AI/AN populations. The high rates of commercial tobacco use among certain AI/AN populations are directly related to the high rates of cardiovascular disease, lung cancer, and other cancers.¹¹ High rates of other diseases such as stroke¹² and diabetes¹³ among AI/AN populations are also associated with commercial tobacco use. There is no safe level of exposure to commercial tobacco smoke, and the damage from commercial tobacco smoke is immediate. Commercial tobacco abuse prevention and cessation are vital for AI/AN health and well-being. Smoke-free Tribal housing policies have the potential to increase these benefits.

Policy Landscape for Tribal Housing

HUD's smoke-free public housing rule does not apply to Tribal housing. HUD provides housing subsidies to American Indians and Alaska Natives and Tribes through the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA).¹⁴ In contrast, the smoke-free rule applies only to public housing authorized under the U.S. Housing Act of 1937, excluding assistance under section 8 of this Act. NAHASDA includes certain public health requirements — such as requirements to reduce harms associated with lead-based paint¹⁵ — but it does not include any requirements related to smoking.

An additional distinction between Tribal housing and non-Tribal housing relates to the type of housing. While HUD's smoke-free rule does apply to single-family public housing, most public housing in the U.S. is multi-unit. One study estimated that only 19 percent of U.S. public housing is single-family.¹⁶ In contrast, Tribal housing often consists of single-family homes. For example, the Sault Ste. Marie Tribe of Chippewa Indians Housing Authority manages five quad units, 59 duplex units, and 450 single family units.¹⁷ Advocates working on smoke-free Tribal housing policies should therefore take the type of housing into consideration during policy development.

Policy Preparation

With approximately 574 federally recognized Tribes,¹⁸ and many more that are seeking federal recognition or that are state-recognized,¹⁹ the specifics of the policy preparation process will vary greatly. However, the Sault Ste. Marie Tribe identified several important steps that can provide a helpful framework prior to adopting a smoke-free housing policy. These steps include developing and using coalitions and partnerships; conducting a needs assessment; identifying and engaging stakeholders; creating an action plan; and planning for evaluation and sustainability.²⁰



Photo: Rae O'Leary, Canli Coalition

Obtaining data specific to a community and maintaining ownership of that data can help build support for a policy. In the smoke-free housing context, data can include commercial tobacco use rates among Tribal members and often includes tenant surveys. The Sault Ste. Marie Tribe conducted a survey of Tribal housing residents that showed that 70 percent of residents who completed the survey would prefer to live in a smoke-free building.²¹

Many resources are available that can help advocates as part of a policy campaign. Some of these resources are listed at the end of this fact sheet. The Sault Ste. Marie Tribe Implementation Guide is a comprehensive and useful resource to support smoke-free Tribal housing work.²² Technical assistance providers such as tribal epidemiology centers or the Public Health Law Center can also help with questions related to advocacy, education, and policy development.

Policy Considerations

Smoke-free Tribal housing policies raise several important policy considerations that advocates will need to consider. One important consideration for many Tribes is making sure that the difference between *commercial* tobacco and *ceremonial* tobacco is clearly defined, and that

ceremonial or sacred uses of tobacco are exempted from the policy. Another example of a key consideration is whether to include electronic cigarettes. This section addresses these and other policy considerations.

Sacred Tobacco

Many Tribal communities have a rich history of traditional or ceremonial tobacco use, which does not carry the same risk of addiction, disease, and death as commercial tobacco use. Further, studies suggest when young people use traditional tobacco for spiritual purposes, there are lower rates of commercial tobacco initiation and use.²³

Because of this, policies intended to discourage the use of commercial tobacco — such as smoke-free housing policies — should be written to permit the use of traditional tobacco. Cultural advisors should be consulted to determine what constitutes traditional tobacco use in a manner consistent with Tribal practices and this should be spelled out in the policy.



Photo: Robert Slocum, courtesy of the Canli Coalition and CDC

The definition of traditional tobacco should be broad enough to encompass all sacred plants used for ceremonial purposes, but not so broad that it limits the effectiveness of the policy.

An example can be found in the smoke-free law of the Cheyenne River Sioux Tribe.²⁴ Prior to drafting the policy, the coalition working on the policy consulted with elders to create a comprehensive definition of “traditional tobacco use” that outlines all the ways this Lakota Tribe uses traditional tobacco:²⁵

“Traditional tobacco use” as defined by the [Cheyenne River Sioux Tribe] Cultural Preservation Office and the Great Plains Tribal Chairman’s Health Board means plants for healing the mind, body, and spirit. There are four plants that are used in Lakota ceremonies: tobacco, sage, sweet grass and cedar. Traditional Tobacco is called “cansasa,” another name is ‘kinikinik’. Cansasa translates to red willow. Tobacco is used: 1) in our sacred pipe in ceremonies and is not inhaled; 2) in its natural form to make tobacco ties for prayer or thanksgiving in times of need; 3) only for special purposes in prayer, offering or rituals; 4) as an offering to an elderly when we need his or her help, advice or prayer; 5) as an offering when we see the sacred eagle in the sky, as the eagle is the intercessor to Tunkasila, Great Spirit; 6) as an offering to the drum at pow-wows to give special blessing to the heartbeat of the nation and onto the singers at the drum; 7) as an offering when a person asks someone to do a ceremony such as naming — hunka-pipe ceremony, singing-sweat lodge or any of the Lakota ceremonies; 8) as an offering to a person as a way to ask for forgiveness to heal bad feeling when emotions are hurt; 9) as an offering or to an elderly to seek knowledge and to show appreciation to that person for sharing. Traditional tobacco is never abused because it is in its natural form without additives.”²⁶

If the Cheyenne River Sioux Tribe were to adopt a smoke-free Tribal housing policy, this definition could be used to describe ceremonial or sacred plants to which the policy does not apply.

Any Tribe with a tradition of ceremonial tobacco use considering a smoke-free housing policy should consult with elders and other knowledgeable parties to determine how sacred plants are used ceremonially in the community. Because of colonization, laws banning cultural practices, and tobacco industry marketing to American Indians, many Tribes now use commercial tobacco products in ceremonial settings. Extra thought must be given to policies in these communities. Tribal tobacco leaders like the National Native Network promote reclaiming the use of sacred plants for ceremonies and discourage the use of commercial tobacco products for ceremonial purposes, as evidenced by their slogan “Keep It Sacred.”²⁷

Because smoke-free housing policies are often adopted with fire prevention as a supporting rationale, advocates and policy makers should consider whether it is appropriate to limit locations and circumstances under which plant matter can be burned. Because of the

importance of sacred tobacco use to many Tribal communities, however, it should not simply be restricted in the same manner as commercial tobacco.

Electronic Cigarettes

Another consideration in any smoke-free housing policy is whether or not to include e-cigarettes (also called electronic nicotine delivery systems or ENDS) in the smoking restriction. The HUD rule does not include e-cigarettes, but the agency noted that public housing authorities (PHAs) “may exercise their discretion to include a prohibition on ENDS in their individual smoke-free policies if they deem such a prohibition beneficial.”²⁸ Emerging evidence suggests that it would be beneficial to include e-cigarettes in a smoke-free housing policy, and many PHAs have done so.

The U.S. Surgeon General has noted many risks associated with e-cigarettes that suggest they should be included in smoke-free housing policies:

*The aerosol from e-cigarettes is not harmless. It can contain harmful and potentially harmful chemicals, including nicotine; ultrafine particles that can be inhaled deep into the lungs; flavoring such as diacetyl, a chemical linked to a serious lung disease; volatile organic compounds such as benzene, which is found in car exhaust; and heavy metals, such as nickel, tin, and lead. .. Another risk to consider involves defective e-cigarette batteries that have been known to cause fires and explosions, some of which have resulted in serious injuries. Most of the explosions happened when the e-cigarette batteries were being charged.*²⁹

The public health risk of breathing in secondhand aerosol, the risk of product explosions, and the risk of fire argue strongly in favor of including e-cigarettes in a smoke-free housing policy. Further, some e-cigarettes physically resemble conventional cigarettes, which can complicate enforcement if residents think smoking is permitted. Finally, there is no history of traditional or ceremonial use of e-cigarettes, so restricting their use should not impact cultural practices.

Tribes considering smoke-free housing policies should consider including e-cigarettes in the smoking restrictions. Should they decide to include e-cigarettes, it is important to craft a comprehensive definition of “smoking” that includes the use of e-cigarettes and broadly defines that term. A definition is included below in the section on marijuana.

Marijuana

The national landscape for marijuana regulation is changing dramatically, with eleven states and the District of Columbia legalizing small amounts of marijuana for recreational use.³⁰ Some Tribes are also moving into this area.³¹ Regardless of the status of marijuana in a community,

there are compelling reasons to restrict the smoking and vaping of marijuana in housing. Similar to commercial tobacco smoke and aerosol, secondhand marijuana smoke and aerosol poses public health risks,³² a risk of fire, and increased maintenance costs. Enforcement of smoke-free policies may also be more challenging if smoking or vaping of marijuana is permitted.

Should a Tribe considering a smoke-free housing policy wish to restrict smoking or vaping of marijuana in the same manner as smoking or vaping of commercial tobacco, the policy should contain a comprehensive definition of “smoking” that includes marijuana. Here is a sample definition that would include e-cigarette use and marijuana, but would exclude sacred tobacco use:

“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco, nicotine, or plant product intended for inhalation, including hookah and marijuana, whether natural or synthetic. “Smoking” does not include traditional tobacco use but does include the use of an electronic smoking device. “Electronic smoking device” means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah.

Outdoor Areas

Recent studies have shown that secondhand smoke from commercial tobacco products poses a health risk in outdoor areas as well as indoors.³³ HUD’s smoke-free rule does not generally apply to outdoor areas, although it does apply to outdoor areas within 25 feet of indoor areas.³⁴ However, public housing authorities are given authority to declare other outdoor areas as smoke-free.³⁵ HUD also suggests that PHAs can consider creating outdoor designated smoking areas outside the 25-foot smoke-free zone, although they are not required to do so.³⁶

Tribal housing authorities considering smoke-free policies will face similar questions. Public health considerations would suggest that property managers should prohibit the smoking of commercial tobacco in all outdoor areas under a manager’s control. Such policies might raise objections, however. In such cases, it might be possible to prohibit smoking in certain areas. If a Tribal housing authority manages outdoor areas frequented by children such as playgrounds, for example, youth modeling and health considerations suggest those areas should be free of commercial tobacco smoke.

If a Tribal housing authority is considering limiting the burning of plant matter in indoor areas — for fire prevention reasons, for example — it should consider designating areas in which traditional or ceremonial tobacco or other sacred plants can be used. This must be considered with sensitivity to ensure that Tribal traditions are respected.



Cessation

An important part of any smoke-free housing policy is ensuring residents who smoke have access to cessation materials. This could be as simple as directing residents to free resources such as the [American Indian Commercial Tobacco Program](#)³⁷ or 1-800-QUIT-NOW. Also, if a Tribal health center provides free cessation products such as nicotine gum, lozenges, or patches, a housing authority could post signs directing residents who smoke to these resources.

In the context of Tribal housing, it is particularly important that cessation materials be culturally appropriate. For Tribes and Tribal members whose traditions may call for the use of tobacco for ceremonial purposes, this could include providing resources that encourage traditional or ceremonial tobacco use. Any policy related to cessation should be clearly spelled out so property managers know the proper procedures.

Implementation

In any smoke-free housing policy, advocates and policy makers must consider the implementation of the policy. Implementation can include several components, including educating residents, signage, and appropriate penalties.

Educating residents about the dangers of commercial tobacco smoke is not only important prior to policy consideration, but also before any policy goes into effect. This education can include individual or group meetings with residents, celebrations of the policy, and signage. Signage can be particularly important to ensure both initial notice and ongoing compliance with the policy. In the Tribal housing context, signage should be tailored to the community. For example, the signage can reference the harm of commercial tobacco and the importance of traditions like sacred tobacco, and can be written in Indigenous languages.

Policy makers and property managers must also ensure there are appropriate penalties for noncompliance. Generally speaking, property managers should create a structure of graduated penalties with eviction as a last resort and seek alternatives to eviction whenever possible. Some PHAs impose fines for noncompliance, but this is a controversial approach. Most residents in subsidized housing have a low income; fines might seem disproportionately punitive among this population. Consequently, a typical policy of graduated penalties may look something like this:

- **First Offense:** verbal warning, cessation referral
- **Second Offense:** verbal warning, cessation referral, resident services referral
- **Third Offense:** written warning, cessation referral, resident services referral
- **Fourth Violation:** notice to vacate with option to remedy, cessation referral, resident services referral
- **Fifth Violation:** 10-day notice to vacate without the option to remedy

Conclusion

Listed below is a sampling of free resources available to support Tribal policy development in the areas highlighted in this guide. Please feel free to contact the Great Lakes Inter-Tribal Epidemiology Center or Public Health Law Center with any questions about the information included in this guide or to discuss specific concerns you may have about smoke-free Tribal housing policies. The information contained in this document is not intended to constitute or replace legal advice.

Resources

Implementation Guides

- Sault Ste. Marie Tribe of Chippewa Indians, *Your Family Deserves a Smoke-Free Home: Facilitating Adoption of A Smoke-Free Housing Policy for A Tribal Housing Authority — An Implementation Guide*³⁸
- *Implementing HUD's Smoke-Free Policy in Public Housing: HUD Guidebook*³⁹
- HUD, *Change Is in the Air: An Action Guide for Establishing Smoke-Free Public Housing and Multifamily Properties*⁴⁰

Sacred Tobacco

- Great Lakes Inter-Tribal Epidemiology Center, *Walking Toward the Sacred: Our Great Lakes Tobacco Story*⁴¹
- National Native Network, "Traditional Tobacco"⁴²
- ClearWay Minnesota,SM "Keep Tobacco Sacred"⁴³

Public Health Law Center Resources

- Smoke-Free Housing web page⁴⁴
- Tribal Commercial Tobacco Control web page⁴⁵

Cessation

- American Indian Commercial Tobacco Program⁴⁶
- American Indian Cancer Foundation, Tobacco Cessation⁴⁷
- American Lung Association, "State Tobacco Cessation Coverage" interactive map⁴⁸
- Smoking Cessation Leadership Center, Commercial Tobacco Use and American Indian/Alaska Native People: Implementing Proven or Promising Interventions (webinar)⁴⁹

Miscellaneous

- Northwest Portland Area Indian Health Board, Tribal Policy Guide (Smoke-Free Tribal Housing Policy, pp. 77-78). This guide will be posted on the Northwest Portland Area Indian Health Board website, <http://www.npaihb.org>.
- Association of State and Territorial Health Officials webinar "Ask the Experts: Smoke-Free Housing Policies on Tribal Lands," recording⁵⁰ and slides⁵¹

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The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. This document should not be considered legal advice.



Endnotes

- 1 See, e.g., Sault Tribe Health Services, *Your Family Deserves a Smoke-free Home: Facilitating Adoption of a Smoke-free Housing Policy for a Tribal Housing Authority — An Implementation Guide*, Sault Ste. Marie Tribe of Chippewa Indians (2011).
- 2 Tribal Epidemiology Centers, *Smoke Free Tribal Housing Policies*, Oct. 19, 2016, <https://tribalepicenters.org/blog/2016/10/19/smoke-free-tribal-housing-policies>.
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- 4 Instituting Smoke-Free Public Housing, 81 Fed. Reg. 87,430 (Dec. 5, 2016) (codified at 24 C.F.R. pt. 965 and 966), <https://www.federalregister.gov/documents/2016/12/05/2016-28986/instituting-smoke-free-public-housing>.
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- 19 See, e.g., Nat'l Conference of State Legislatures, *List of State Recognized Tribes*, <http://www.ncsl.org/research/state-tribal-institute/list-of-federal-and-state-recognized-tribes.aspx#State>.
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- 32 See American Nonsmokers' Rights Foundation, *Secondhand Marijuana Smoke* (2019), <https://no-smoke.org/second-hand-marijuana-smoke-fact-sheet>.
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