

SMOKE-FREE MULTI-UNIT HOUSING

Equitable Enforcement Strategies



There is no safe level of secondhand smoke exposure, whether that exposure happens at work, in public spaces, or within the home.¹ The health problems associated with secondhand smoke exposure in multi-unit housing have been well documented for decades.²

Nonetheless, it is only recently that comprehensive public policy measures to address secondhand smoke exposure in multi-unit housing have been adopted through government policies. These policies include the smoke-free rule³ for public housing adopted by the U.S. Department of Housing and Urban Development (HUD) and a growing number of local jurisdictions that have adopted similar protections for residents of multi-unit housing.⁴



The private housing sector continues to move in this direction, with individuals declaring their own homes smoke-free⁵ and owners of multi-unit housing prohibiting smoking in units, common areas, outdoor areas, or property-wide.⁶

Housing stability is a key indicator in the social determinants of health.⁷ In the context of smoke-free housing, housing stability cuts two ways: on the one hand, residents who are not protected from secondhand smoke exposure in multi-unit housing experience harmful health impacts that force them to choose whether to remain in housing that jeopardizes their health or leave that housing. These residents deserve the opportunity to live in housing that does not threaten their health or force them to leave their homes.⁸ On the other hand, people who smoke often face housing instability themselves due to lower incomes and poor health. These two complicated dynamics converge at the place of smoke-free housing policy enforcement: smoke-free policies that are in place to protect residents and improve their housing stability are the same policies that, when enforced, may put another resident's housing stability in jeopardy because of possible penalties or eviction.

This fact sheet provides several examples of graduated enforcement for smoke-free multi-unit housing that attempt to achieve the dual goals of protecting residents from secondhand smoke and protecting housing stability for all residents.

Graduated Enforcement: Protecting the Health of Residents and Promoting Housing Stability of All Residents

A graduated enforcement structure helps ensure better compliance with a smoke-free policy by providing multiple steps for enforcement and providing the opportunity for residents to change their behavior before infractions rise to the level of lease termination.⁹ If eviction is used to enforce the policy, it should be used only as a last resort. Concerns have been expressed that smoke-free policies could serve as a pretext to remove tenants for other reasons. A graduated enforcement structure helps guard against this by creating a multi-step enforcement process that includes efforts to work with tenants who are facing the challenge of overcoming nicotine dependence or addiction.

It is possible to support tenants suffering from nicotine dependence or addiction while at the same time ensuring that residents, guests, property management, and staff are safe from the harms of secondhand smoke exposure. Under a smoke-free housing policy, residents are not required to quit smoking to reside at the location, but they are prohibited from smoking wherever the policy designates. A graduated enforcement structure allows for tenant education and the provision of cessation resources throughout the enforcement process.



Cessation Resources

In supplying information and resources on tobacco cessation during the enforcement process, property management, boards, and owners should rely on evidence-based cessation programs, such as the following resources:

- All states have quitlines with counselors who are trained specifically to help smokers quit. Call this number to connect directly to your state's quitline (hours of operation and services vary from state to state): 800-QUIT-NOW (784-8669).
- The [North American Quitline Consortium website](#) includes a clickable map to identify Quitline resources in your state.
- The [National Cancer Institute cessation website](#) contains tools and tips to quit, including smoke-free texting programs, information on nicotine replacement therapy, smoke-free apps, and building your own quit plan. The National Cancer Institute's trained counselors provide information and support for quitting in English and Spanish. Call Monday through Friday 8 a.m. to 8 p.m. CST at 877-44U-QUIT (877-448-7848).
- The [Centers for Disease Control and Prevention website](#) provides information on quitlines, apps, texting support, developing a quit plan, and much more.

Along with a graduated enforcement approach, there are many things that property owners and managers can do to encourage the successful implementation of a smoke-free policy, including engaging residents early on in the process of adoption of the smoke-free policy through announcements and providing a clear timeline for policy adoption, providing educational material or presentations for residents, staff training, cessation materials and support, and signage.¹⁰

The primary aim should be to set residents up for success by providing them with all the information they will need to comply with the policy, including clear advance notice of the smoke-free policy and clear parameters for the policy. For example, if the policy allows a designated smoking area, residents could be provided a map of the location before the policy is adopted. Property managers should also establish a clear enforcement process and apply it uniformly to all residents, guests, and staff.

Smoke-Free Multi-Unit Rental Housing Graduated Enforcement Examples

The examples below can be adapted to the needs of different property types, according to state or local legal requirements. Please contact the Public Health Law Center for technical assistance on smoke-free housing policies and to review or provide other sample language for graduated enforcement.



Public Health Law Center Model Smoke-Free Lease Addendum for Minnesota (2020)

The Public Health Law Center has created the following sample graduated enforcement language that can be included in a comprehensive smoke-free lease or lease addendum. It provides two verbal warnings, a written warning, and a notice to vacate with an opportunity to remedy, along with the provision of smoking cessation resources before the final consequence of lease termination.

“Violation Enforcement

- (a) The first violation shall result in a verbal warning and reminder of the smoke-free policy.
- (b) The second violation shall result in a verbal warning and provision of smoking cessation resources and materials.
- (c) The third violation shall result in a written warning and provision of smoking cessation resources and materials.

- (d) The fourth violation shall result in a notice to vacate with an option to remedy/cure, and provision of smoking cessation resources and materials.
- (e) The fifth violation may result in a 10-day notice to vacate without the option to remedy or cure.”¹¹



Private Property Management Example

“Enforcement. Any deviation from the smoke-free policy by any tenant, a member of their household, or their guest will be considered a lease violation. Violations of the smoke-free policy will be enforced as follows:

First violation: For the first violation, a Notice of Infraction warning letter will be given to the tenant indicating that a violation of the smoke-free policy has occurred, and the date of the infraction.

Second violation: For the second violation, the tenant will be asked to meet with the property manager to review the smoke-free policy and a second Notice of Infraction letter will be given. (Note: Due to the COVID-19 pandemic and measures in place to reduce the spread of the virus, an alternative to an in-person meeting could include requiring a virtual meeting and/or a signed acknowledgement that the tenant has reviewed the policy.)

Third violation: The third violation will be considered a material breach of the lease and the tenant will be subject to immediate termination of the lease.”



Boston Housing Authority, Boston, Massachusetts

“After the first violation, we gave the person in violation another copy of the nonsmoking policy; the policy is in their lease. After the second violation, we held a private meeting. If there was a third violation, we would have the smoker sign an agreement not to smoke within the nonsmoking area. Only after the fourth violation would we talk to our legal department about penalties or eviction. However, we got a lot of feedback from residents and staff about how this process was taking too long and how it was different from the enforcement of our other policies. In response, we compressed the first three steps into one step.”¹²



Dakota County Community Development Agency (CDA), Minnesota

Enforcement

The CDA must enforce smoke-free policies when a resident is in violation of the policy. When enforcing the lease, the CDA will provide Public Housing residents due process and allow them to exercise their right to an informal and formal hearing. The CDA will not evict a resident for a single violation of this policy. As such, the CDA will implement a graduated enforcement action plan. Prior to pursuing eviction for violation of the smoke-free policy, the CDA will follow the enforcement action plan (see below). Resident termination and eviction will be pursued only as a last resort.

Enforcement Action Plan

The CDA shall give a resident two (2) opportunities to remedy non-compliance with the smoke-free policy. The following is an outline of the enforcement procedure:

1st Infraction: Management will have an informal meeting with the resident and issue a written Notice of Non-Compliance to the resident that will remind the resident of the smoke-free policy and their obligation to comply with the policy in accordance with their lease agreement. The informal meeting may include a telephone conversation and/or an in-person conversation at the building office or other designated location. Management will also provide cessation material to inform residents of the resources available to them.

2nd Infraction: Management will issue a Second Notice of Non-Compliance in writing and have a formal meeting with the resident to review this policy, citing potential consequences for future violations of their lease agreement. Management will require the resident to sign a Stipulation Agreement. In addition, cessation material will be given as a resource to the resident.

3rd Infraction: Once a resident has incurred a third violation, the matter will be treated as a breach of the lease agreement and management will issue a 30-day notice to vacate. Legal action may be taken for violation of the smoke-free policy.

At each stage in the enforcement procedure, CDA staff will seek to remind non-compliant residents about the opportunity to participate in a smoking cessation program, although this reminder shall not be a prerequisite to enforcement.¹³



Bayonne Housing Authority, New Jersey

- “First violation = verbal warning and cessation materials
- Second violation = verbal warning and cessation materials
- Third violation = written warning and cessation materials
- Fourth violation = legal Notice to Cease subject to BHA’s grievance procedure
- Fifth violation = the BHA has the discretion to terminate the Lease Agreement

We investigate all complaints of smoking violations and track actions on an Excel spreadsheet. We provide adequate warnings prior to legal action to ensure the complaint is valid and not merely neighbors fighting with each other. When investigating smoking complaints, we send an inspector who speaks with the head of household and has them sign another lease addendum. So far, no legal action has been necessary.”¹⁴



Duluth HRA, Minnesota

“The City of Duluth’s Housing and Redevelopment Authority’s smoke-free housing enforcement plan includes multiple steps to provide written notice and in-person meeting with the resident before, upon a third infraction, the eviction process may be pursued:

- If smoking is observed, a letter is sent to the tenant. The letter includes the smoke-free policy lease language and notice of the infraction. The tenant may contest the infraction. The same notice is sent for first and second observed violations.
- If the PHA receives a written complaint and staff members do not observe a violation, an appointment is scheduled to discuss the complaint so that the tenant has an opportunity to tell his or her side of the story.
- If the PHA receives more than three validated infractions, eviction proceedings may begin.
 - The eviction process includes an informal meeting, formal hearing, and court. When the PHA holds the informal meeting, the tenant and PHA can often resolve the eviction with a settlement. Settlements can include a plan to go outside to smoke or, if the tenant is interested, referrals for cessation services.

- The PHA prefers to work out a settlement. Eviction often does not always go through on the third infraction, but it could occur on the sixth or seventh infraction.”¹⁵



HUD's Graduated Enforcement Parameters

HUD does not offer specific graduated enforcement language in its smoke-free public housing rule and emphasizes that local public housing authorities typically set their own lease enforcement provisions to allow for local flexibility. However, HUD makes clear in its guidance on its smoke-free rule that eviction is not allowed on a first infraction and should be a last resort.¹⁶ HUD provides the following suggested graduated enforcement steps:

“Implement a graduated enforcement approach including some or all of these steps:

- Referral to smoking cessation services.
- Verbal warning.
- Written warning.
- Final notice.
- Eviction proceedings.”¹⁷

To Fine or Not to Fine?

While some graduated enforcement provisions include purely punitive fines, the Center does not include such a measure because frequently residents with low or fixed incomes are unable to afford the fines. Punitive fines may not be legal in some jurisdictions or some housing types (public housing). Furthermore, punitive fines may create housing instability if residents cannot afford to pay their rent or meet other living costs as a result of being fined. Some graduated enforcement models allow the property owner to recover the costs of cleaning or repairing a unit if it has been damaged as a result of smoking. Any fees to recover the costs of damage should be limited to no more than the actual costs incurred. (For more information on fines in the context of public housing, see National Housing Law Project, *A Guide to Equitable Smoke-Free Public Housing* (2020) pp. 27-28.)]



For further information, visit the [Public Health Law Center's smoke free housing web page](#). Our resources include:

- [Model Smoke-Free Lease Addendum \(2020\)](#)
- [Model Smoke-Free Condo Policy \(2020\)](#)
- [Smoke-Free Tribal Housing Policies \(2020\)](#)
- [Marijuana in Multi-Unit Residential Settings \(2019\)](#)

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Endnotes

- 1 U.S. DEP'T OF HEALTH AND HUM. SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL 65 (2006).
- 2 See American Nonsmokers' Rights Foundation, *Housing and Secondhand Smoke: Bibliography* (2020), <https://no-smoke.org/wp-content/uploads/pdf/Housing-Bibliography.pdf>.
- 3 Instituting Smoke-Free Public Housing, 81 Fed. Reg. 87,430, 87,430-44 (Dec. 5, 2016) (to be codified at 24 C.F.R. pts. 965, 966).
- 4 See American Nonsmokers' Rights Foundation, *U.S. Laws for 100% Smokefree Multi-Unit Housing* (2020), <https://no-smoke.org/wp-content/uploads/pdf/smokefreemuh.pdf>.
- 5 See Brian A. King et al., *Prevalence of Smokefree Home Rules — United States, 1992-1993 and 2010-2011*, 63 MORBIDITY AND MORTALITY WKLY. REP. 765 (2014), <https://www.cdc.gov/mmwr/pdf/wk/mm6335.pdf>.
- 6 See Michelle C. Kegler et al., *A Qualitative Study of the Process of Adoption, Implementation and Enforcement of Smoke-Free Policies in Privately-Owned Affordable Housing*, 19 BMC PUB. HEALTH 1071 (2019), <https://bmcpubhealth.biomedcentral.com/track/pdf/10.1186/s12889-019-7404-y>; Brian A. King et al., *Prevalence and Predictors of Smoke-Free Policy Implementation and Support Among Owners and Managers of Multiunit Housing*, 12 NICOTINE AND TOBACCO RSCH. 159 (2009); Andrea S. Licht et al., *Attitudes, Experiences, and Acceptance of Smoke-Free Policies Among US Multiunit Housing Residents*, 102 AM. J. OF PUB. HEALTH 1868 (2012).
- 7 U.S. Off. of Disease Prevention and Health Promotion, *Healthy People 2020 Social Determinants of Health Interventions and Resources: Quality of Housing*, HEALTHY PEOPLE, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/quality-of-housing>.
- 8 See generally Amy Y. Hafez et al., *Uneven Access to Smoke-Free Laws and Policies and Its Effect on Health Equity in the United States: 2000-2019*, 109 AM. J. OF PUB. HEALTH 1568 (2019).
- 9 See Michelle C. Kegler et al., *Implementation and Enforcement of Smoke-Free Policies in Public Housing*, 34 HEALTH EDUC. RSCH. 234 (2019).
- 10 See Association for Nonsmokers' Rights Minnesota, *Resources for Property Managers*, LIVE SMOKE FREE, <https://mn-smokefreehousing.org/resources/property-managers/#steps-smoke-free>.
- 11 Public Health Law Center, *Model Smoke-Free Lease Addendum 4* (2020), <https://www.publichealthlawcenter.org/sites/default/files/resources/PHLC-Model-Smoke-Free-Lease-Addendum.pdf>.
- 12 U.S. DEP'T OF HOUS. AND URB. DEV., IMPLEMENTING HUD'S SMOKE-FREE POLICY IN PUBLIC HOUSING 27 (2017), https://www.hud.gov/sites/documents/SMOKEFREE_GUIDEBK.PDF.
- 13 Email from Dakota County Community Development Agency.
- 14 Email from Patricia Madison, Assistant Exec. Dir., Hous. Auth. of the City of Bayonne.
- 15 U.S. DEP'T OF HOUS. AND URB. DEV., *supra* note 12, at 11.
- 16 *Id.* at 16.
- 17 U.S. Dep't of Hous. and Urb. Dev., *Smoke-Free Policy Recommended Checklist*, https://www.hud.gov/sites/documents/2_SMOKEF_POLICYCHECKLIST.PDF.