

# Save Money. Avoid Liability. Protect Tenant Health. Smoke-Free is a Win-Win.

(This section developed in collaboration with the UCLA Center for Health Policy Research.)

*“It wouldn’t be fair for one of my tenants to have to breathe a neighbor’s smoke. They didn’t sign up for that. And why would I want to allow smoking in a unit in the first place? It could cost me thousands to remove the smoke smell from the walls and replace the carpet. Then, if one of my tenants got asthma or lung cancer, I’d feel responsible. That’s why we all should go smoke-free.”*

- Melinda Nicols, Property Owner

## Why Take Action?

- Exposure to tobacco smoke can cause **serious health problems** including lung cancer, heart disease and stroke. It can also cause asthma and make asthma worse. Secondhand tobacco smoke is especially dangerous for children since it can cause permanent damage to their growing lungs and cause respiratory illnesses like bronchitis and pneumonia, ear infections, and even infant sudden death syndrome (SIDS).
- The average cost of turning over a smoking unit is **\$5,000 more** than turning over a non-smoking unit. In addition, rehabbing related to smoking in a unit can include painting, repairing walls, replacing ceilings and fixtures and installing new carpeting that can total as much as **\$15,000 in extra costs**.
- Smoke-free apartments **reduce the likelihood of legal claims against you** from a tenant who develops an illness or suffers harm because of exposure to secondhand or thirdhand smoke. That’s why for you, as a landlord, it makes perfect sense to make your apartments smoke-free.
- A smokefree policy also helps **reduce the risk of fires** and may qualify a building for **insurance discounts**.
- **It is legal for landlords nationwide to adopt no-smoking policies** for their buildings and premises. There is no law against such action.

The following are some steps apartment owners and property management companies can use to implement smokefree policies in their buildings. It’s important to know that smokefree policies are effective and within reach when done properly, and will benefit both apartment owners and tenants. For buildings in cities with rent control, check with

the city's housing department whether new, no-smoking policies can be applied to all tenants or whether they can only be applied for new tenants.

**When a building is not subject to rent control, landlords may prohibit smoking in the following areas:**

- Indoor and outdoor common spaces, which may include walkways, stairwells, parking lots, laundry rooms, playgrounds, swimming pools, and the like;
- Within a buffer zone (e.g., 25 feet) around any areas where smoking is prohibited, such as individual units, playgrounds, and windows and doorways in the buildings;
- In individual units, including outdoor spaces like private balconies and patios; or
- The entire premises.

**Step 1: Conduct a Tenant Survey**

To measure support for a no-smoking policy, you may want to conduct a tenant survey. Conduct an informal one-question survey of your tenants, and seek one response per unit. Ask if the tenants of that unit would prefer to live in a non-smoking environment. If there is a positive response from most of your tenants, notify all of them of the survey results.

**Step 2: Notify Tenants**

You may then notify your tenants that as of a certain date, a no-smoking policy will be adopted. Landlords must provide written notice in advance, and the amount of notice depends on the type of rental agreement involved. The notice should include all areas and units that will be required to be smokefree.

Explain what the policy will require. This may include a ban on smoking in common indoor areas (Laundry room, lobby, etc.) and/or in outdoor common areas (all of the outdoor areas of the property). The policy may also include no-smoking on balconies and patios (whether they are shared or private areas); and no-smoking in the actual units. Ask all of your tenants to sign a new rental agreement to comply with the new no-smoking policy.

**Step 3: Revise Leases**

For tenants with existing leases, the no-smoking policy you have adopted can only be applied once these leases have expired. For tenants that have lived on your property for less than a year that are on month-to-month rental agreements you need to provide a 30 day notice. For tenants that have lived there for more than a year, you need to provide a 60 day notice. A sample smokefree lease is available [here](#).

## **For Rent-Controlled Units:**

In some cities with rent control laws, existing tenants are protected from both changes in the terms of their tenancies and reductions in housing services. For some tenants, prohibiting smoking in an area where smoking was previously permitted will constitute a change in the terms of tenancy. In some cities with rent control laws, a landlord can ask existing tenants to adopt the smokefree policy voluntarily, but cannot force a tenant to agree to such a change. A landlord could give tenants an amount of time to decide if they agree to the provision (perhaps in line with the notice periods mentioned above). If the tenant has not replied to the landlord or agreed to sign the smokefree lease provision by the deadline, the landlord may designate that unit a “smoking-permitted” unit, and wait until the next opportunity to implement the policy.

This means that for some units occupied by longer-term tenants, landlords must implement the smokefree policy tenant by tenant, as they voluntarily change their minds or as the existing tenancies naturally end (for example, at the end of the current lease, or in rent-controlled units, when the tenant moves or dies). It is important to inform prospective tenants of the locations of units where smoking is still permitted. That may prevent tenants with existing medical problems from moving into a unit adjacent to a smoking-permitted unit. But it also prevents a potential liability problem, or a tenant from forced to move out because of harm from the smoke.

### **Step 4: Talk to Smoking Tenants**

Make an appointment to speak to your tenants who smoke. Explain the reasons for the policy and ask for their cooperation. If a unit smells of tobacco smoke, it may be difficult for that tenant to stop smoking in that unit because of the constant reminder of the smell of tobacco. Consider offering to “rehab” their unit if they will sign a lease or rental agreement to stop smoking in the unit.

### **Step 5: Educate Tenants**

Provide information to your tenants of the benefits of implementing a no-smoking policy. This may include information about how secondhand tobacco smoke will drift throughout a building; how secondhand smoke enters units when people are smoking outside on patios, in courtyards and in front of units; and how tobacco smoke can cause illnesses like cancer, heart disease, asthma, and may also cause people with existing medical conditions to get sicker. Also, there is a new danger called third-hand smoke. This happens when smoke attaches to walls, floors, furniture and clothing and then outgases back into the unit.

### **Step 6: Handling New Tenants**

As units become vacant, advertise the vacancy as a non-smoking vacancy.

Be careful how you approach prospective tenants about smoking. Do not ask if they smoke. Instead, inform them of plans to transition the building to being smokefree. Provide a no-smoking lease and explain that you will be enforcing the policy. Notify prospective tenants of smoking-permitted units so that people with existing medical conditions don't move into a unit adjacent to a unit where smoking is taking place.

### **Step 7: Celebrate and Support**

Host a festivity with your tenants to celebrate the week the no-smoking policy begins. Be sure to make available smoking cessation resources to your tenants who want to quit smoking. 1-800-No Butts is an excellent cessation resource.

#### **Remember:**

California Labor Code 6404.5 passed in 1995 has been interpreted to require no-smoking in enclosed common areas (e.g. lobbies, laundry rooms, enclosed hallways, elevators). It's a good idea to post no-smoking signs in laundry rooms and other enclosed common areas such as lobbies, enclosed halls and stairways.

California Civil Code 1947.5 adopted in January, 2012, says it's legal for landlords to adopt no-smoking policies for their units, and even entire premises. Leases or rental agreements for new tenants must specify the areas of the property where smoking is not permitted. For leases or rental agreements entered into before January 1, 2012, a no-smoking policy in any portion of the property where smoking was previously permitted is considered a change in the terms of tenancy, and will require adequate notice in writing.

**It is legal for landlords nationwide to adopt no-smoking policies for their buildings and premises. There is no law against such action.**

*This information should not be construed as legal advice. Please consult your attorney regarding legal issues related to secondhand smoke exposure.*

[Click here to learn more on implementing a smoke-free policy.](#)