

To: Tobacco Control Advocates
From: The Center
Date: September 2007
Subject: Matrix of Local Smokefree Housing Policies



Smokefree housing is the next frontier in California's ongoing effort to protect its citizens from secondhand smoke. Although California has made great progress in getting secondhand smoke out of workplaces, restaurants and bars, for many Californians living in multi-unit housing breathing secondhand smoke drifting from neighboring units, balconies and outdoor areas has become a real health problem.

Local advocates are leading the way on this issue by directing efforts to get smokefree housing policies adopted by cities and counties around the state. As you and your coalition prepare to work on a campaign to pass strong policies to address the problem of secondhand smoke in multi-unit housing, this Housing Matrix is intended to help you understand the current state of this complex policy issue. The Matrix highlights ordinances, resolutions and housing authority policies passed in California communities that prohibit smoking in multi-unit residence units, encourage property owners to designate non-smoking units, or declare secondhand smoke a nuisance. Many of these policies include a ban on smoking in outdoor common areas and a description of those provisions is included. However, policies that only have a prohibition on smoking in outdoor common areas and no other housing provisions are not included. Some of these policies are not model policies and inclusion on the Matrix is not intended as an endorsement of a particular community's smokefree housing policy. Rather, all of the policies that have passed in California are included to give local advocates a comprehensive resource for smokefree housing policies in the state.

Local ordinances, resolutions and housing authority policies addressing smokefree housing have been adopted in eleven California communities –El Cajon, Temecula, Sacramento County, Thousand Oaks, City of Sacramento, Emeryville, Rancho Mirage, Dublin, Calabasas, City of Santa Barbara, and Madera. In addition to these policies, more than 70 communities in California already prohibit smoking in all indoor common areas of multi-unit housing buildings (beyond those that are already workplaces) and nearly 10 communities prohibit smoking in outdoor common areas. These ordinances are not listed in the Matrix below, however a list can be provided upon request.

The eleven cities and counties listed have led the way on this emerging issue. While these policies are not all model policies, they are building momentum for other legislative action around the state. For sample ordinance language on smokefree housing, please visit the Technical Assistance Legal Center's (TALC) website at <http://talc.phi.org>. To further assist you and your coalition with passing a policy in your community, The Center has also developed a Smokefree Housing Policy Table in collaboration with TALC that contains more details on all of the types of policy options, advantages and disadvantages of each, and details of the types of enforcement provisions that can be placed in ordinances.

Pages 2 and on are designed so they can be distributed to your coalition, elected officials, or city/county staff. If your campaign or coalition has its own logo, you may substitute it for the Center's banner on the top. Please call The Center at (916) 442-4299 for more information about any of these policies or for campaign assistance in passing a smokefree housing policy in your community and visit our website, www.californialung.org/thecenter, for copies of our housing documents. We look forward to working with all of you on this new and exciting emerging issue in tobacco control.

MATRIX OF LOCAL SMOKEFREE HOUSING POLICIES

September 2007

Smokefree housing is the next frontier in California's ongoing effort to protect its citizens from secondhand smoke. Although California has made great progress in getting secondhand smoke out of workplaces, restaurants and bars, for many Californians living in multi-unit housing breathing secondhand smoke drifting from neighboring units, balconies and from smokers outdoors has become a real health problem.

The Matrix below provides detailed information about eleven local ordinances, resolutions and housing authority policies related to drifting secondhand smoke in multi-unit housing that have been adopted in California communities. The policies are listed in reverse chronological order from the most recently passed. The Matrix includes major provisions, enforcement provisions, and a discussion of strengths and weaknesses for each policy.

Community/Date Passed	Major Provisions	Enforcement Provisions	Discussion
<p>City of El Cajon August 2007</p>	<p>As part of a broader secondhand smoke ordinance, the city prohibits smoking in all indoor and outdoor common areas in multi-unit housing (lobbies, hallways, swimming pools, outdoor eating areas, play areas, etc).</p> <p>The ordinance declares that exposing others to secondhand smoke is a public nuisance.</p>	<p>Violators of the ordinance are guilty of a misdemeanor or infraction. However, no fines or private damages are allowed during the first six months the ordinance is in effect.</p> <p>The city manager is responsible for enforcing this ordinance if city property is involved. The city attorney or city prosecutor can bring a civil action to enforce this ordinance.</p> <p>The ordinance also allows any member of the public to sue another person to enforce these provisions.</p>	<p>This ordinance combines a nuisance policy with a prohibition on smoking in outdoor common areas. This combination of policies provides some protection from secondhand smoke to all multi-unit housing residents and offers a way for individual residents to further protect themselves.</p> <p>A nuisance policy can provide protection to residents from secondhand smoke on an individual basis, but only if a tenant uses the declaration to bring a lawsuit against his/her neighbor. A broader policy that prohibits smoking in multi-unit housing units is more effective in providing protection for all multi-unit housing residents.</p>

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<p>City of Temecula May 2007</p>	<p>This city passed an ordinance that requires landlords to designate 25 percent of their units as non-smoking in all new and existing multi-unit residences with 10 or more units (it does not apply to condominiums). These non-smoking units must be grouped together horizontally and vertically and in a separate building to the maximum extent possible.</p> <p>For new multi-unit housing, landlords must submit a floor plan to the city that identifies the smoking and non-smoking units within six months of enactment of this ordinance.</p> <p>Landlords of existing multi-unit residences must submit a floor plan to the city that identifies the smoking and non-smoking units within one year. Landlords have up to five years to actually designate these units as non-smoking and may apply for up to three, one-year extensions to comply, with the exception of senior housing.</p> <p>This ordinance also prohibits smoking in all indoor and outdoor common areas for all multi-unit residences (any residence with two or more units).</p>	<p>Violations of this ordinance are enforceable by the city and subject to penalties outlined in the Temecula municipal code.</p>	<p>This ordinance is the first in California to require a certain amount of units to be set aside as non-smoking for market rate housing within a city. By requiring these units to be separate from smoking units, it will provide important protection from secondhand smoke to the residents of Temecula.</p> <p>However, the five-year compliance period (and up to eight-year period with extensions), is too long for implementation. Hopefully landlords will comply sooner, but this could mean that residents that move into a non-smoking unit could still be surrounded by a smoking unit for many years.</p>
<p>County of Sacramento April 2007</p>	<p>This resolution encourages property owners of multi-unit rental housing to designate at least 50 percent of their units as non-smoking or to make whole buildings within a multi-unit housing complex smokefree. Property owners that do so will be publicly recognized by the Board of Supervisors.</p>		<p>This is a nonbinding resolution meaning that property owners are not required to make any units smokefree and the resolution contains no language that the units must be contiguous.</p>
<p>City of Thousand Oaks March 2007/ September 2004</p>	<p>The City of Thousand Oaks adopted a policy requiring developers of new publicly-assisted rental housing to set aside one-third of the new units as non-</p>		<p>Thousand Oaks is one of the first local governments to designate non-smoking units in publicly-assisted housing under its</p>

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	<p>smoking units.</p> <p>In March 2007, the city updated this policy to require that two-thirds of newly constructed publicly assisted rental housing and one-half of new supportive housing be smokefree.</p>		<p>jurisdiction. However, the policies are only for new housing and do not specify that the smokefree units be contiguous. Currently, non-smoking units are being placed next to smoking units, meaning that tenants are still not protected from secondhand smoke.</p>
<p>City of Sacramento December 2006</p>	<p>This resolution encourages property owners of multi-unit rental housing to designate at least 25 percent of their units as non-smoking or to make entire buildings within a multi-unit housing complex smokefree. Property owners that do so will be publicly recognized by the City Council.</p>		<p>This is a nonbinding resolution meaning that property owners are not required to make any units smokefree and the resolution contains no language that the units must be contiguous.</p>
<p>City of Emeryville December 2006</p>	<p>The ordinance bans smoking in indoor and outdoor common areas of multi-unit housing.</p> <p>The ordinance also declares secondhand smoke a nuisance, which allows a citizen to take private legal action. However, the ordinance states that the city cannot be a party in that legal action or have legal action brought against it for non-enforcement of the smoking ordinance. Further, it states that no owners, managers, or employers who operates premises controlled by the smoking restrictions can be found guilty or held liable for the nuisance provisions.</p>	<p>Enforcement will be handled by the City Manager. Citizens can register a complaint with the City Manager to initiate enforcement.</p>	<p>The nuisance provision is substantially weaker than the nuisance provisions in El Cajon, Dublin and Calabasas. While it declares secondhand smoke a nuisance, the ordinance renders that declaration almost useless by exempting the individuals and situations where a nuisance law would be most useful.</p>
<p>City of Rancho Mirage December 2006</p>	<p>The City Council adopted a smoking policy for the Rancho Mirage Housing Authority. This policy prohibits smoking in outdoor common areas in the Housing Authority's three senior affordable housing residential complexes.</p> <p>The policy would also prohibit smoking</p>	<p>Residents can make complaints to the Housing Authority.</p>	<p>This policy provides good protection for senior residents since one entire residential complex and all future residential complexes will be smokefree. The other two residential complexes should gradually become smokefree as</p>

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	<p>within apartment units for the Santa Rosa Villas and any future senior residential complexes. All new residents of the other two existing senior residential complexes will be prohibited from smoking in their units, but people that already live in those two complexes will be allowed to smoke in their units until they move.</p>		<p>current residents who smoke move out.</p>
<p>City of Dublin September 2006</p>	<p>This ordinance declares secondhand smoke a nuisance.</p>	<p>The city passed a separate ordinance to state that the city will not spend any money or staff resources for the enforcement of this ordinance.</p>	<p>While the city has not dedicated any funds for enforcement, this law makes it easier for residents to take legal action against another resident who exposes them to secondhand smoke.</p> <p>A nuisance policy can provide protection to residents from secondhand smoke on an individual basis, but only if a tenant uses the declaration to bring a lawsuit against his/her neighbor. A broader policy that limits where people can smoke in multi-unit housing is more effective in providing protection for all multi-unit housing residents.</p>
<p>City of Calabasas February 2006</p>	<p>As part of a broader secondhand smoke ordinance, the city prohibits smoking in all indoor and outdoor common areas in multi-unit housing (lobbies, hallways, swimming pools, outdoor eating areas, play areas, etc).</p> <p>The ordinance declares that exposing others to secondhand smoke is a public nuisance.</p>	<p>The city prosecutor, city attorney, peace officer, or city code enforcement officer may enforce the provisions in this ordinance. The ordinance requires business owners to enforce these provisions in their establishments. Citizens of Calabasas can also report any violations of the law to the code enforcement unit.</p> <p>The ordinance also allows any member of the public to sue another person to enforce these provisions.</p>	<p>This is the first ordinance in California to declare secondhand smoke a public nuisance. The Calabasas ordinance combines a nuisance policy with a prohibition on smoking in outdoor common areas. This combination of policies provides some protection from secondhand smoke to all multi-unit housing residents and offers a way for individual residents to further protect themselves.</p>

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			<p>A nuisance policy can provide protection to residents from secondhand smoke on an individual basis, but only if a tenant uses the declaration to bring a lawsuit against his/her neighbor. A broader policy that prohibits smoking in multi-unit housing units is more effective in providing protection for all multi-unit housing residents.</p>
<p>City of Santa Barbara November 2005</p>	<p>The Housing Authority of the City of Santa Barbara adopted a policy that prohibits smoking in all 36 units of the Vista La Cumbre senior housing complex. This prohibition applies to smoking inside the units as well as on balconies. Residents are allowed to smoke in a designated area outside the building and residents who formerly smoked in their units were not grandfathered in, meaning they had to stop smoking in their units as soon as the policy became effective.</p>	<p>Residents can make complaints to the Housing Authority.</p>	<p>This policy was approved by the Housing Authority Board of Commissioners and did not have to be approved by the city council. Housing authority policies related to smokefree units in other cities had to be approved by the city councils because the city councils acted as the board for the housing authority.</p> <p>This is a good example of a policy that resulted from complaints from residents about secondhand smoke exposure.</p>
<p>City of Madera August 2002</p>	<p>The City Council approved a smoke-free policy of the Madera Housing Authority. The Madera Housing Authority adopted a policy to transition two of three senior housing buildings to be smokefree. New residents moving into buildings A and C at Yosemite Manor will not be allowed to smoke in their units or on their patios. Smokers that already reside in buildings A and C would be allowed to continue to smoke in their units but must keep their door to the hallway closed when smoking. Current and future residents of building B would still be allowed to smoke in their unit.</p>	<p>Residents may make complaints to the site manager.</p>	<p>Smokers were grandfathered in and there is still an entire building that allows smoking. But making two buildings smokefree will provide valuable health benefits to seniors who are some of the most susceptible to the effects of secondhand smoke. As of April 2007, in the two smokefree buildings there was only one person left who smoked in his unit and he has agreed to move into the smoking building.</p>