

Common Implementation Concerns

Does a smoke-free policy infringe on the personal right to smoke in the privacy of a home?

This is a common concern among providers of subsidized or market rate multifamily housing who are hesitant about implementing a smoke-free policy. The key point is to reflect on the idea that the rights of smokers and nonsmokers should be considered. There is clear evidence that smoke infiltration occurs in multifamily buildings. It is impossible to contain smoke within a unit, and smoke can stay for years on surfaces. This residue remains toxic and exposes the next person who moves in to an avoidable health hazard, referred to as third-hand smoke. Indoor smoking puts all residents at risk. While smoking is and should remain a personal choice among adults, the nonsmokers who live around them have the right not to be exposed to the hazards of tobacco smoke.

Owners/agents have the legal right to set limits on how a resident may use rental property, such as restricting guests, noise, and pets. A no-smoking rule is another way for a landlord to protect his or her property from damage and to minimize disruptions to other residents' enjoyment of the building. In apartment buildings where resources are shared, residents cannot expect freedom to conduct whatever behavior they please, such as playing loud music late into the night.

Do smoke-free policies discriminate against people with disabilities?

One type of disability discrimination prohibited by the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and state and local civil rights laws, is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.²⁸ Accommodations are considered reasonable when they do not fundamentally alter the nature of a policy, program or service, or present an undue financial and administrative burden for the housing provider.



Housing providers must consider all requests for reasonable accommodations, including requests from residents with, for example, mobility-impairments or mental disability, regarding compliance with smoke-free policies. Such smoking-related accommodation requests are expected to be rare, but must be evaluated on a case-by-case basis. For example, in implementing its smoke-free policy, one PHA accommodated requests from several residents with mobility issues who asked to be transferred to units closer to an elevator or door to facilitate their ability to go outside to smoke and comply with the smoke-free policy. In another example, a PHA helped a resident with a mental disability comply with its smoke-free policy by having a social worker place signs in the home reminding the resident about the policy's requirement to go outside to smoke. In considering reasonable accommodation requests, housing providers should keep in mind that a primary reason for adopting a smoke-free policy is to protect non-smokers from exposure to secondhand smoke.

Does a smoke-free policy lead to many evictions?

Housing providers do not report a rise in evictions due to a smoke-free policy. When it comes to a resident having received numerous violations, many will ultimately agree to comply with the policy or they move. In the cases of evictions that were identified for this publication, smoking was often one of many other types of lease violations that led to eviction.

We have implemented smoke-free in common areas only. Why should we change it?

Having a policy that restricts smoking within common areas of a building is a great first step in implementing a complete smoke-free policy further down the road. Because secondhand smoke cannot be contained within a unit, allowing smoking in apartments creates a health risk for all residents and staff. People who live in public or subsidized housing are less able to relocate to another residence, even if their health or the health of their children is compromised by secondhand smoke from another unit in the property.

By having only a partially smoke-free building, you miss out on the benefits of a completely smoke-free building, including reduced cost of unit turnovers, cleaner air for residents and staff, and decreased risk of fire caused by cigarettes.

I am worried that the amount of staff time needed to implement and monitor a smoke-free policy far outweighs the limited savings that would be realized.

Developing and implementing a smoke-free policy requires significant effort, but the benefits for staff, residents and your property assets are clear. According to PHAs and owners/agents of subsidized or market rate multifamily housing, the effort is worth the outcome. Smoking is the number one cause of residential fire deaths, and the cost of repairing a building after a fire can be enormous. Having a smoke-free policy can protect your properties from significant and costly damage and reduce ongoing maintenance costs.

Will a smoke-free policy have a negative effect on occupancy?

Nationwide, surveys of landlords show that many of their concerns about the negative effects of a smoke-free policy turn out to be unwarranted. This includes worries about the difficulties of renting, enforcement, resident complaints, concerns of legality of the policy, resistance from the board, and maintenance staff resistance. In a 2013 survey conducted by the North Carolina Tobacco Prevention and Control Branch of all of the affordable housing properties in North Carolina, there was no difference in occupancy rates between smoke-free and smoking-allowed properties.²⁹ This observation was also made by several of the individuals interviewed for this Action Guide.

What if many of our residents smoke and won't be able to quit smoking?

Implementing a smoke-free policy does not mean residents must quit smoking to live there. Residents may continue to smoke as long as it is in smoking-approved areas and the smoke-free policy is adhered to. Smoke-free policies should focus on eliminating smoke from inside the building and reducing staff and resident exposure to secondhand smoke. A smoke-free policy may motivate some smokers to quit, thus underscoring the value of helping residents obtain access to cessation resources.

We did a survey of our residents. Is there a suggested minimum percentage of support needed to implement a smoke-free policy?

There is no minimum percentage of support required on survey results to indicate that a policy will be effective. Give residents plenty of time to understand the policy and prepare themselves for its implementation (6-12 months is recommended). Regular and consistent communication between staff and residents about the policy can help to re-enforce your expectations.

If the majority of surveyed residents indicate they do not want a smoke-free policy, you can stay committed to your intent to go smoke-free, but be prepared to build in more time before implementing the policy. Allow up to 18 months to actively communicate about the health effects of secondhand smoke and the reasons to create smoke-free housing. During this time, promote cessation services and invite local speakers to meetings who can support the policy by sharing information about secondhand smoke and the health benefits for quitting or reducing smoking. (Note: National surveys show that smoking rates are highest among the lowest income segment of the population, with an average smoking prevalence of about 30% in 2012.³⁰ This means that about 70% of this group are nonsmokers, a fact which would be expected to translate into majority support for smoke-free policies.)

Should I invest in an air detector to know for certain if a resident has been smoking?

Nicotine or cigarette smoke detectors offer great appeal to owners/agents eager to find an easy way to prove a violation occurred. It is important to realize they often cost several thousand dollars and require specialized expertise to use properly, with results that may be unreliable unless continuous monitoring takes place in a unit.

Should e-cigarettes be included in our smoke-free policy?

What is known about e-cigarettes and their health impact is rapidly evolving. Currently, these products are not regulated, but the Food and Drug Administration (FDA) has announced its intent to regulate e-cigarettes. HUD does not have a position on e-cigarettes at this time. Each PHA and owner/agent should decide for themselves how they plan to handle e-cigarettes on their property.

The information below is pulled from a summary of the scientific evidence regarding e-cigarettes from the Centers for Disease Control and Prevention. The full letter may be found at <http://www.tobaccopreventionandcontrol.ncdhhs.gov/Documents/CDC-LetterOfEvidence-E-cigsMay15-2014.pdf>.

E-cigarettes are part of a class of products often referred to as electronic nicotine delivery systems (ENDS), which are battery-powered devices that provide doses of nicotine and other additives to the user in an aerosol (CDC 2013). Studies have demonstrated wide variability in design, operation, and contents and emissions of carcinogens, other toxicants, and nicotine from ENDS (DHHS 2014). ENDS aerosol is not “water vapor.” It contains nicotine and can contain additional toxins (Goniewicz, Kuma et al. 2013), and thus, it is not as safe as clean air. Although some ENDS have been shown to emit volatile organic compounds and dangerous toxins such as acetaldehydes, including acrolein, these are generally emitted at much lower levels than by cigarettes (Goniewicz, Knysak et al. 2014). However, because there are hundreds of manufacturers and no manufacturing standards, there is no way to ensure that all ENDS have acceptably low levels of toxicants. While FDA regulation may eventually establish product standards to limit dangerous chemicals currently found in some ENDS, all ENDS have the potential to involuntarily expose children and adolescents, pregnant women, and nonusers to aerosolized nicotine. ENDS use can also result in accidents and other potential health hazards. CDC recently reported that the number of calls to poison centers in the 50 states, the District of Columbia, and U.S. territories involving e-cigarettes rose from one per month in September 2010 to 215 per month in February 2014, and 51% of e-cigarette-related poisonings were among young children ages 0-5 (CDC 2014).

Some owners/agents will choose to eliminate indoor use of e-cigarettes and other electronic nicotine delivery systems as a means to provide clean indoor air and a safer environment. Some may also eliminate e-cigarette use in outdoor smoke-free areas to avoid confusion with cigarettes and make enforcement of smoke-free policies easier. Others may see e-cigarettes as less harmful than traditional cigarettes and allow their use inside units and/or in common areas. HUD does not have a position on e-cigarettes at this time. Each PHA and owner/agent should decide for themselves how to handle e-cigarettes at a property.

Common Enforcement Questions – with Answers from Real Stories

If you go to court, what kind of evidence is needed?

In the cases that went before a judge, we followed our policy and state eviction law showing the two notices, each providing 20 days to cure, and a third notice. Each “countable” violation occurred after the 20 days to cure period had passed. The cases were supported by written complaints from other residents and/or staff. During the proceedings, judges questioned me about the procedure we used for notifying residents, which they were satisfied with. In two situations, the defendants didn’t come to court, and we won those cases. In other cases, we entered into stipulations that the judges signed. For those, we won the eviction judgments but will not execute as long as there are no further violations. The judges prefer to see us reach some kind of stipulation. They prefer not to evict people, but we have been successful in court.

– Marcia Sullivan, Executive Director, East Greenwich Housing Authority, Rhode Island

How do we enforce this in buildings that are not high-rise?

We are a small housing authority with duplex, 8-plex, and standalone properties. I cannot say that no one’s ever smoked in their apartment in the last four-and-a-half years, but we don’t have the smoke police. Enforcement is not going to take up a lot of effort. You are in and out of the apartments. You are doing a work order. Someone’s doing an inspection. You see the ash tray. You can smell it in the apartment. We do have pest control, so we are in the apartments quarterly. We do housekeeping inspections. We now use a stark bright white interior paint, so we know if someone is smoking in that apartment because the walls will be stained with nicotine. You just have to be reasonable, and use some common sense.

– Faye Dodd, Executive Director, Murray Housing Authority, Murray, Kentucky



“We do not provide a ‘smoking area’ at our sites. I was concerned about how to make a smoking area accessible, how to maintain the area and what liability would attach to the area. Our policy states that you may not smoke within 50 feet of a window or door in the building. Where someone smokes is left to the individual as long as it is outside our property boundary.”

– Larry Sisson, President, TESCO Properties, Section-8 multifamily housing, Germantown, Tennessee

We don't have outdoor space on our property that is 25 feet from the building. Where can smokers go to smoke?

The only negative outcome thus far has been that smokers who choose to reside at Lincoln must walk over to the adjacent park or across the street to smoke in order to adhere to this policy. During the day this isn't an issue, but Lincoln Tower's residents are all senior citizens, and we are located in a city. Safety concerns have been expressed by those residents as well as by our local city council member. To address this, Lincoln Tower's management has put in a request for the city to put up additional lighting in the park, and it has offered safety tips that include encouraging smokers to pair up when they are going out to smoke during the evening.

– Sandy Cipollone, Senior Vice President, Interstate Realty Management Co., Team Member of The Michaels Organization, Marlton, New Jersey, market rate and subsidized property, owner/management firm

References

- American Academy of Pediatrics and the American Lung Association. January 7, 2013. Comment on U.S. Department of Housing and Urban Development. "FR-5597-N-01; Request for Information on Adopting Smoke-Free Policies in Public Housing Authorities and Multifamily Housing: Reopening of Public Comment Period," [Regulations.gov](http://www.regulations.gov/#!documentDetail;D=HUD-2012-0103-0063) (website), date of access March 12, 2014, <http://www.regulations.gov/#!documentDetail;D=HUD-2012-0103-0063>.
- American Lung Association. (2011). "Smokefree Multi-Unit Housing: Bringing Healthy Air Home." Smokefree Policies in Multi-Unit Housing. <http://www.lung.org/assets/documents/healthy-air/smoking-in-multi-unit-housing.pdf>
- American Nonsmokers' Rights Foundation. "Overview List – How many Smokefree Laws?" April 2014. Retrieved from: <http://www.no-smoke.org/pdf/mediaordlist.pdf>
- American Society of Home Inspectors, Enterprise Community Partners and the National Center for Healthy Housing. January 22, 2013. Comment on U.S. Department of Housing and Urban Development. "FR-5597-N-01; Request for Information on Adopting Smoke-Free Policies in Public Housing Authorities and Multifamily Housing: Reopening of Public Comment Period," [Regulations.gov](http://www.regulations.gov/#!documentDetail;D=HUD-2012-0103-0100) (website), date of access April 2, 2014, <http://www.regulations.gov/#!documentDetail;D=HUD-2012-0103-0100>
- Anania, T. (2013). Executive Director, Island County Housing Authority. The Case for Uniform, Effective Enforcement of a No Smoking Policy. Comprehensive Health Education Foundation and Pacific Northwest Regional Council of NAHRO.
- Austin, L. T. (2012, April 12). Tobacco Free Housing for Owners. Retrieved from Tobacco Free Austin: <http://www.livetobaccofreeaustin.org/docs/Smoke%20Free%20Housing%20Guide.pdf>
- Been, J., Nurmatov, U., Cox, B., Nawrot, T., von Schayck, C., Sheikh, A. (2014). Effect of smoke-free legislation on perinatal and child health: a systematic review and meta-analysis. *The Lancet*.
- Befus, B. F. (2008). No Smoking Policies in Apartments. National Multi-Housing Council: Property Management Update.
- ChangeLab Solutions. (2012). How Landlords Can Prohibit Smoking in Rental Housing. Retrieved from http://changelabsolutions.org/sites/default/files/CLS_LandlordsProhibitSmoking_FINAL_20130205.pdf
- Cramer, M., Roberts, S., Stevens, E. (2011). Landlords attitudes and behaviors regarding smoke-free policies: implications for policy change. *Public Health Nursing*, 28(1), 3-12.
- Dwyer-Lindgren, L., Mokdad, A., Srebotnjak, T., Flaxman, A., Hansen, G., Murray, C. (2014). Cigarette smoking prevalence in US counties: 1996-2012. *Population Health Metrics*, 12:5.

- Garcia, L. (2008, July 17). It's Legal to Enforce a Smoke-free Workplace. Retrieved from: The Washington Post: <http://www.washingtonpost.com/wp-dyn/content/article/2008/07/16/AR2008071602285.html>
- King, B., Peck, R., Babb, S. (2013). Cost Savings Associated with Prohibiting Smoking in U.S. Subsidized Housing. *American Journal of Preventive Medicine*, 44(6): 631-4.
- King, K. (2011, July 11). SAHA to ban smoking in public housing. Retrieved from MySA San Antonio's Home Page: http://www.mysanantonio.com/news/local_news/article/SAHA-to-ban-smoking-in-public-housing-1561214.php
- Moore, R. (2013). No Smoking Policy: Planning, Enforcement, and Outcomes. National Convention on Tobacco and Health (PPT). Kansas City: Home Forward.
- President's Task Force on Environmental Health Risks and Safety Risks to Children: Federal Asthma Disparities Workgroup. (2010). Coordinated Federal Action Plan to Reduce Racial and Ethnic Asthma Disparities. U.S. Environmental Protection Agency.
- President's Task Force on Environmental Health Risks and Safety Risks to Children: Federal Healthy Homes Workgroup. (2013). Advancing Healthy Housing: A Strategy for Action. U.S. Department of Housing and Urban Development.
- Ruel, E., Oakley, D. Wilson G., Elton & Maddox, R. (2010, September) Is Public Housing the Cause of Poor Health or a Safety Net for the Unhealthy Poor? *Journal of Urban Health*, 87(5): 827-838.
- Tobacco Control Legal Consortium. (2013, December). Regulating Smoking in Multi-unit Housing. Retrieved April 8, 2014, from Tobacco Control Legal Consortium: http://publichealthlawcenter.org/sites/default/files/resources/tclc-guide-regulating-smoking-multiunits-2011_0.pdf
- U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. 2006.
- U.S. Department of Homeland Security. "Smoking-Related Fires in Residential Buildings (2008-2012)." Topical Fire Report Series. 13, no. 6 (June 2012). Retrieved from: <http://www.usfa.fema.gov/downloads/pdf/statistics/v13i6.pdf>
- U.S. Department of Housing and Urban Development. "Smoke-Free Housing: A Toolkit for Public Housing Authorities and Owners/ Management Agents." 2012. Retrieved from: <http://portal.hud.gov/hudportal/documents/huddoc?id=pdfowners.pdf>
- U.S. National Institutes of Health, National Cancer Institute, Tobacco Control Research Branch. <http://www.smokefree.gov>

Endnotes

1. Centers for Disease Control and Prevention Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion. Retrieved May 30, 2014, from http://www.cdc.gov/tobacco/data_statistics/sgr/2010/consumer_booklet/chemicals_smoke/
2. U. S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. 2014. <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/>
3. U.S. Department of Health and Human Services. The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. Atlanta: Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.
4. U.S. Department of Health and Human Services. How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010. http://www.cdc.gov/tobacco/data_statistics/sgr/2010/index.htm
5. U.S. Department of Housing and Urban Development. “Smoke-Free Policies in Public Housing” NOTICE: PIH-2012-25, 2012.
6. U.S. Department of Housing and Urban Development. “Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies.” NOTICE: H 2012-22, 2012.
7. King, B., Babb, S., Tynan, M., & Gerzoff, R. (2012, December 17). National and State Estimates of Secondhand Smoke Infiltration Among U.S. Multiunit Housing Residents. *Nicotine & Tobacco Research*, 10.1093/ntr/ntr254.
8. Personal communication with Marty Nee, U.S. Department of Housing and Urban Development Office of Lead Hazard Control and Healthy Housing. Washington, D.C. 2014.
9. Pizacani, B., Maher, J., Rohde, K., & al, e. (2012). Implementation of a smoke-free policy in subsidized multiunit housing: Effects on smoking cessation and secondhand smoke exposure. *Nicotine & Tobacco Research*, doi: 10.1093/ntr/ntr334.
10. Digenis-Bury, E., Brooks, D., Chen, L., Ostrem, M., & Horsburgh, C. Use of a Population-Based Survey to Describe the Health of Boston Public Housing Residents. *American Journal of Public Health* 98, no.1(2008): 85-91.
11. Russo, E., Hulse, T., Adamkiewicz, G., Levy, D., Bethune, L., Kane, J., Reid, M., & Shah, S. Comparison of Indoor Air Quality in Smoke-Permitted and Smoke-Free Multiunit Housing: Findings From the Boston Housing Authority. *Nicotine & Tobacco Research* (2014): 1-7.

12. President's Task Force on Environmental Health Risks and Safety Risks to Children: Federal Healthy Homes Workgroup. (20 13). Advancing Healthy Housing: A Strategy for Action. U.S. Department of Housing and Urban Development.
13. Wilson, K., Klein, J., Blumkin, A., Gottlieb, M., Winicko□, J. (20 10). Tobacco Smoke Exposure in Children Who Live in Multiunit Housing. *Pediatrics*, 125(1):85-92.
14. U.S. Fire Administration. Smoking and Home Fire Safety: http://www.usfa.fema.gov/citizens/home_preprev/smoking.shtm
15. U.S. Fire Administration National Fire Data Center. (20 12). Smoking-Related Fires in Residential Buildings (2008-20 10).
16. King, B., Peck, R., Babb, S. (20 13). Cost-Savings Associated with Prohibiting Smoking in U.S. Subsidized Housing. *American Journal of Preventive Medicine*.
17. American Society of Heating, Refrigerating, and Air Conditioning Engineers Board of Directors. "ASHRAE Position Statement on Environmental Tobacco Smoke." 20 13.
18. Kraev, T., Adamkiewicz, G., Hammond, S., Spengler, J. (2009). Indoor concentrations of nicotine in low-income, multi-unit housing: associations with smoking behaviours and housing characteristics. *Tobacco Control*, 18(6):438-44.
19. Ruel, E., Oakley, D., Wilson G., Elton & Maddox, R., Is Public Housing the Cause of Poor Health or a Safety Net for the Unhealthy Poor? *Journal of Urban Health* (September 20 10): 87(5): 827-838.
20. U.S. Department of Housing and Urban Development. "Resident Characteristics Report." 20 14. http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/systems/pic/50058/rcr
21. Akinbami, L., Moorman, J., Bailey, C., Zahran, H., King, M., Johnson, C., & Liu, X . Trends in Asthma Prevalence, Health Care Use, and Mortality in the United States, 2001-20 10. *NCHS Data Brief* (20 12): 94. <http://www.cdc.gov/nchs/data/databriefs/db94.pdf>
22. King, B., Babb, S., Tynan, M., & Gerzo□, R. (20 12, December 17). National and State Estimates of Secondhand Smoke In□tration Among U.S. Multiunit Housing Residents. *Nicotine & Tobacco Research*, 10.1093/ntr/nts254.
23. Hood, N., Ferketich, A., Klein, E., Wewers, M., & Pirie, P. (20 13). Individual, social, and environmental factors associated with support for smoke-free housing policies among subsidized housing tenants. *Nicotine & Tobacco Research*, 15(6):1075-1083.
24. Campbell DeLong Resources, Inc. (2008). Smoking Practices, Policies and Preferences in Oregon Rental Housing. State of Oregon Department of Human Resources Public Health Division Oregon Tobacco Prevention & Education Program.