



# California Healthy Housing Coalition

## Principles for Equitable Smoke-Free Multifamily Housing

### Preface

While there is wide agreement that exposure to secondhand smoke in multifamily housing is a serious problem, how to protect residents of multifamily housing from drifting secondhand smoke has been challenging and divisive. Public health and tobacco/nicotine-free networks have largely focused on the adoption of smoke-free housing policies that prohibit or limit smoking at multifamily properties. These policies have often been challenged by tenants' rights organizations concerned about the consequences of including eviction as an enforcement tool of these policies, especially in communities already facing significant housing instability. This conflict has often limited the ability to adequately address the problem of secondhand smoke exposure in multifamily housing.

#### Purpose

Leveraging over a decade of collaboration between public health and tenants' rights members, the [California Healthy Housing Coalition](#) (CHHC) brought a small group of partners together to have a facilitated discussion that explored the impacts of a range of approaches to addressing secondhand smoke exposure in multi-family housing. The goal was to develop a set of principles that balance health protections with housing stability to aid future efforts to create equitable approaches to addressing this challenging issue. While not intended as a model policy or formal policy recommendations, our hope is that this document can serve as a guide for communities interested in crafting a solution that is fair to all parties and does not have disparate impacts on low-income and other marginalized communities.

#### Process

Through a series of facilitated meetings, stakeholders shared their experiences working on the issue, identified challenges they've encountered, learned from experts about key topics and best practices, and developed consensus-based principles for an equitable approach to smoke-free housing. Final revisions were made based on a broader peer review process that included members of the California Healthy Housing Coalition and other key public health and tenants' rights stakeholders.

#### Remaining Challenge

This document contains a series of consensus-based principles that can help guide a community's exploration of an equitable approach to smoke-free housing. There was, however, one critical area where the group was unable to reach consensus: whether an equitable approach to smoke-free housing could include eviction in the enforcement process. While covered in more detail in the document, the group felt that the role of eviction, if any, needs to be determined by the impacted community based on local priorities and resources.

## Principles Equitable for Smoke-Free Housing

Principle #1: Start from a place of empathy and respect for all stakeholders.

- Strive for solutions where all parties are unharmed.
- Recognize and consider the impacts of second-hand smoke exposure as well as the impacts of enforcement that could lead to displacement or becoming unhoused, including “constructive eviction” where impacted residents move to prevent continued exposure as a result of a lack of enforcement.
- Use language that promotes collaborative action and provides a platform for solution generation. For example, focus on smoking behavior rather than language that stigmatizes one party, such as smoker and non-smoker, that can limit potential solutions.
- Focus on how to eliminate exposure to second-hand smoke and limit smoking behavior.

Principle #2: Equitable approaches to smoke-free housing should be developed and implemented with broad and meaningful community engagement.

- Meaningful community engagement includes getting input from community members about the need for the policy, policy options, and decision-making as well as creating an oversight role for community members during implementation to evaluate and adjust the policy if needed.
  - Meaningful community engagement must be designed to accommodate participation across cultures and languages.
- Include a multi-stakeholder committee representative of key interests (tenants, housing providers, including affordable housing providers, government agencies, community-based organizations, and experts in the fields of public health, restorative justice, and harm reduction) to inform the development of the approach.
  - In addition to identifying the parameters of the approach, the committee should also focus on the values they want to see in the smoke free housing policy or practices and what challenges they anticipate based on dynamics in their community, especially in relation to the role of eviction.
  - Note: It is important that these perspectives be balanced so that the “voice of experts” does not drown out the interests of local community members. Experts from outside of the impacted community should play an advisory role rather than decision-making.

Principle #3: Provide accessible and culturally and linguistically appropriate supports, resources, or other accommodations that can help residents comply with the new rules.

- While approaches to smoke-free housing do not require people to stop smoking altogether, approaches should include access to smoking cessation resources for those motivated to quit smoking.
- Include an implementation period that allows for adequate time to inform stakeholders of the new rules and for stakeholders to identify safe alternatives to smoking at their property.
- Where possible, allow properties to provide outdoor smoking areas that are safe, accessible, and sheltered while preventing exposure to second-hand smoke by other residents and nearby properties.

Principle #4: Any public policies should apply across all multi-family buildings and include all types of second-hand smoke.

- Policies should apply to all residents – new and existing – in all multi-family buildings whether rented or owned in accordance with local rent control protections.
- Policies should address all smoke, including tobacco, vaping, and marijuana/cannabis.
  - Additional consideration may be needed to address the use of marijuana for medical purposes in the context of applicable local, state, Tribal and federal laws.

Principle #5: Enforcement must be carefully crafted based on local priorities and available resources.

- The enforcement system should balance opportunity for the resident who smokes to modify their smoking behaviors with the immediate relief needed to protect the health of residents impacted by secondhand smoke exposure.
- Include a graduated enforcement process that provides multiple steps for enforcement that incorporates opportunities for residents to change their behaviors. Steps can include, but are not limited to:
  - Sufficient fact finding to verify violations of the policy.
  - Educational notices, including access to cessation resources, followed by time to comply.
  - An opportunity to enter a facilitated restorative justice process (see text box) or other formal mediation to identify solutions all stakeholders can agree to.
  - A time period where the enforcement process resets if there are no further violations.
- Select an enforcement entity that can effectively implement the education, support, and other requirements of the program.
  - Enforcement should not be led by law enforcement staff to avoid individuals entering the criminal legal system due to potential violations of the policy.
  - Public Health Departments may be well situated for this role.
- Using nuisance laws that allow code enforcement to cite for monetary penalties (fines) is not recommended due to their disproportionate impact on low-income individuals.
- Enforcement (or lack thereof) should not result in individuals becoming unhoused.
- Explore non-punitive approaches that could incentivize compliance rather than using punishment to motivate behavior change. While we didn't find models for this approach to share, we recommend exploring this idea for potential innovations.

#### **Restorative Justice**

*Restorative Justice is a communal approach to prevent or respond to harm, with an emphasis on healing, social support, and active accountability. RJ includes a variety of practices, with many rooted in indigenous and religious traditions.*

*Some restorative practices help prevent harm by empowering people build relationships and strengthen communities. Other practices respond to harm by helping to clearly identify harms, needs, solutions, and accountability through an inclusive and collaborative decision-making process.*

[-University of San Diego, Center for Restorative Justice](#)

### **Role of evictions**

We did not reach consensus about the role of eviction in the enforcement process. To some, the significant health risks of continued exposure to second-hand smoke justifies the use of eviction as a last resort should all other steps in the enforcement process fail to change smoking behaviors. To others, the long-lasting impact of eviction on housing instability, the risk of becoming unhoused, and on health eliminates eviction as an equitable enforcement option.

Ultimately, the group felt that any decision about the role of eviction should be made by impacted stakeholders based on available local resources (cessation services, restorative justice facilitators or other mediation services, other affordable housing options, etc.) and laws. Where eviction is being considered the group agreed that it should only be pursued as a last resort, after all steps in the enforcement process have been completed and documented, including providing an option for a voluntary move-out agreement or a “non-renewal of lease” that allows the lease to be terminated without a formal eviction being placed on the tenant’s record.

#### **Principle #6: Accountability**

- Establish ongoing monitoring and evaluation of the impacts of the approach and make any needed adjustments at least annually.
  - Include systems to collect data to determine if the approach is having the desired impact and to identify any unintended consequences.
- Provide a role for continued community engagement in the evaluation process.

#### **Principle #7: An equitable policy is not free.**

- Jurisdictions must be willing to invest time and resources into providing opportunities for broad and meaningful community participation (Principle #2), offering supports, such as cessation resources (Principle #3), implementing a graduated, public-health focused enforcement process, including resources for third-party providers of restorative justice facilitation or mediation (Principle #5), and evaluating policy implementation (Principle #6).

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## Additional Resources

- Smoke-free Multiunit Housing Model Ordinance
  - <https://www.publichealthlawcenter.org/sites/default/files/resources/CA-Smoke-free-MUH-Model-Ordinance.pdf>
- California-specific Smoke-free Housing Policy Enforcement Guide from Public Health Law Center
  - <https://www.publichealthlawcenter.org/sites/default/files/resources/SF-MUH-Cal-Enforcement-Guide.pdf>
- Housing and Urban Development Smoke-free Multifamily Housing Policy and Toolkits
  - <https://www.hud.gov/sites/documents/PDFOWNERS.PDF>
  - <https://www.hud.gov/sites/documents/PDFRESIDENTS.PDF>
  - [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph/phecc/smokefree](https://www.hud.gov/program_offices/public_indian_housing/programs/ph/phecc/smokefree)
- National Association of Community and Restorative Justice – Map and Directory
  - <https://members.nacri.org/rj-map>