



Guidelines for Residents of Multiunit Housing Experiencing a Secondhand Smoke Issue

Are you experiencing secondhand smoke drifting into your home from another residence or outside area? Everyone has the right to breathe air free of toxins, and these Guidelines can help get an issue resolved. There are several steps that are recommended for tenants and owners living in multi-unit housing (e.g. apartments, condos, townhomes). The Guidelines will inform you about the health risks of secondhand smoke and help you resolve issues of drifting smoke in the simplest way possible.

Get Informed about Secondhand Smoke

Secondhand smoke comes in many forms, including cigarettes, electronic cigarettes (“vaping”), and marijuana. In fact, the smoking of marijuana is prohibited wherever tobacco smoking is prohibited (California Health and Safety Code Section 11362.79). Ventilation systems, air purifiers, and sealing up cracks cannot prevent all secondhand smoke from drifting throughout buildings. Up to 65% of the air in an apartment can circulate in from other units in the building. Experts have found there is no safe level of exposure to secondhand smoke, so the risks should be taken seriously. The American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE), the organization that develops engineering standards for building ventilation systems, expanded their definition of Environmental Tobacco Smoke (ETS) to include marijuana smoke and the emissions produced by electronic smoking devices. ASHRAE concluded that ventilation systems cannot eliminate ETS.

Know How Your Health is Being Impacted

There are significant health impacts of secondhand smoke exposure, including children can experience more frequent and severe asthma attacks, respiratory infections, ear infections, or sudden infant death syndrome (SIDS). Adults may experience coronary heart disease, stroke and lung cancer. Secondhand smoke causes 34,000 premature deaths from heart disease in the U.S. and increases the risk for stroke by 20-30%. An American Chemical Society study found that secondhand marijuana smoke contains many of the same chemicals and carcinogens, some in higher concentrations, as secondhand tobacco smoke.

Know Your Rights

First off, you have a right to breathe smoke-free air, and many jurisdictions have passed laws to protect those rights. For example, many cities and counties prohibit smoking in common areas of multi-unit housing. Since personal dwellings are not considered public spaces, they are not covered under California law or federal law regulating smoking in public places. However, many communities in Sonoma County have adopted ordinances that prohibit smoking in the private units of multi-unit housing, which is within their authority to do.

A note about marijuana use in multi-unit housing. With the use of marijuana (both medical and non-medical) now legal in California, it is important to understand the laws that apply in multiunit housing complexes. Some marijuana users believe they are a protected class if they have a disability and should be allowed to smoke as an “accommodation” for their disability.

However, this is not consistent with the law and there is no right to an accommodation for smoking marijuana. Under the federal Fair Housing Act, it is not considered “reasonable” to accommodate requests to use medical marijuana if it could potentially expose others to secondhand marijuana smoke. Furthermore, the Fair Housing Act explicitly excludes illegal use of or addiction to a controlled substance under federal law, including marijuana from the definition of “handicap.” Persons using medical marijuana are categorically disqualified from protection under the “disability” definition in the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA).

<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/MJAndTobaccoUseFac%20Sheet-CDPH-CTCP-5-2017.pdf>

Know the Rules for Where You Live

Read agreements that apply to your property such as rental or lease agreements, and Homeowners’ Association (HOA) Covenants, Conditions & Restriction (CC&Rs). Most agreements contain language about the enjoyment of quiet and safe premises, implied warranty of habitability, and definitions on what is considered a nuisance. The term “nuisance” is a legal word that allows for legal action. In Sonoma County, the cities of Cotati, Petaluma, Rohnert Park, Santa Rosa, Sebastopol, and Sonoma have included secondhand smoke as a nuisance in their laws.

Check the local ordinance laws that regulate or prohibit smoking in multi-unit housing. Even if there isn’t currently a law in your area, there may be efforts underway to **track complaints about drifting smoke in housing**, and to encourage landlords to make their buildings smoke-free. The cities in Sonoma County and the unincorporated areas of Sonoma County that have 100% smoke free multi-unit housing ordinances pertaining to both rented and owned properties are Petaluma, Santa Rosa, Sebastopol, Sonoma, Windsor, and Unincorporated Sonoma County.

When you’re ready, try to resolve the situation peacefully

Talk to the smoker. If you feel comfortable and safe speaking directly with the smoker, approach the situation positively. Most smokers want to do the right thing but may not realize the negative impact they are having on their neighbors. So, begin with the assumption that your neighbor and manager are interested in your health and well-being. Take a friendly, educational approach. If you can identify who is creating the smoke, let them know that it is drifting into your apartment, you are concerned about the health effects, and gently request that they take their smoking outdoors, away from the building in a place designated for smoking.

Talk to your landlord or owner. We recommend discussing the issue with your landlord, the owner of the property or the Homeowners’ Association Board. Don’t assume that your neighbors, landlord, or property owners know much about the health effects of secondhand smoke or the rules in your city. They don’t live in your apartment and will not know about the problem unless you make them aware. Ask them about any smoking policies for your building and request that they speak to your neighbor about the issue. Your landlord or owner of the property may not know if there is an anti-smoking ordinance that covers the property and if there are landlord responsibilities included in the ordinance, but they should know if there are lease/rental/CC&R language referencing secondhand smoke. If there is an ordinance, it will likely spell out landlord and owner responsibilities such as posting proper signage and requiring that a request is made of person who is smoking to refrain from smoking or leave the property. Some ordinances ensure further protection for residents who

report secondhand smoke problems by making it a crime for anyone, including owners/managers/landlords, to intimidate, harass, or retaliate against a person who makes a complaint about secondhand smoke.

To find out about local ordinances governing smoking, contact the Sonoma County Department of Health Services at 707-565-6680 or visit [BreatheEasy http://sonomacounty.ca.gov/Health/HPPE/Tobacco-Prevention/Compliance/State-County-and-Local-Regulations/](http://sonomacounty.ca.gov/Health/HPPE/Tobacco-Prevention/Compliance/State-County-and-Local-Regulations/) for more information.

Write a letter/email to your landlord, owner, HOA. It is crucial to document all actions you take to address this problem. The landlord/HOA Board may be able to use your letter to explain to the smoker why they need to change their behavior. You don't have to have obvious health symptoms to make a complaint or to have the smoke stopped, but if you are experiencing health issues, tell the landlord details about how the smoke is affecting you. Ask for a specific solution, such as having the smoker go outside to smoke, making modifications to the apartment (if those would assist with the problem), or, if in a rental situation, allowing you to change units to be away from the smoke. Keep a copy of all correspondence, even document verbal notifications.

Find allies. Although landlords/property managers/HOA Boards are obligated to enforce local ordinances that affect the property they manage, they may not address your complaint quickly or effectively. Remember, there is strength in numbers. You may not be the only one affected by secondhand smoke in your apartment, condominium, or townhome complex. Other tenants/owners may be willing and interested in joining you to find a solution. Find out if any other tenants/owners are experiencing exposure to smoke. See if fellow residents are willing to sign a petition, co-sign a letter, or even help host a meeting for all residents and management in support of enforcing the city ordinance or in making the building smoke-free if it's not already in a city that has an ordinance.

Other good allies may include voluntary health focused groups such as the [American Cancer Society](#), the [American Lung Association](#), and the American Heart Association, local tobacco control coalition or asthma coalition, local physician groups, and your local health department.

If you've seen a doctor, keep documentation. Although it is not necessary, it can be helpful to submit documentation that you are being negatively impacted by drifting secondhand smoke. If your first informal complaint to management is not addressed to your satisfaction, send a formal complaint, together with your documentation, both to the property owner/landlord and the offending neighbor. Again, indicate that you wish to resolve the situation amicably.

Document the situation. Write down what a typical day in your residence is like regarding the secondhand smoke exposure. Many people state "the smoking is happening around the clock" or something similar, but it's helpful to be more specific. How many times a day does your neighbor smoke? What does this specifically look, feel, and smell like? Where do you think the smoke is coming from? What time(s) of the day do you notice it? Which rooms are most affected? Who is being affected, for example children? What physical and emotional reactions do you or your family members have to the smoke? Take pictures of smoke plumes and cigarette butts left behind. It is also important to write down the steps you have taken to resolve the situation. For example, write down when you spoke to your landlord/owner/HOA, if a reminder letter was sent to residents regarding smoking, and if allowed, where it can occur. You can further document the situation through witnesses who may have been present and noticed the smoke, provided they are willing to come forward on your behalf.

Contact the County of Sonoma Department of Health Services (preventioninfo@sonoma-county.org or 707-565-6680). We are here to promote the health and well-being of the community. We can offer guidance and support to understand state laws as well as ordinances that are in effect for your area. Breathing clean air is a right, where there are no local ordinances protecting residents living in multi-unit housing, you may consider contacting your local elected officials to discuss your interest/concerns.

Penalties and Enforcement. Each city and county may have different enforcement procedures. Most require that the above steps be considered and/or followed in order to request that an enforcement department be involved. Enforcement may occur through county or city officials, code enforcement and/or law enforcement. Most will ask to see the documentation and any documents that have been gathered.

If there is a local ordinance in the area you live, it is important to read it carefully to understand enforcement procedures. Ordinances may discuss penalties and fines, as well as other remedies for violations, such as a “civil action” that can be brought by the municipality. Determine if the ordinance identifies a position within the city or county who is the designated authority who can bring a civil action or other remedies. If you’ve done everything else, such as contacting the owner/landlord directly, or you feel unsafe doing so, your next step is to contact the designated enforcement body for help. Check [local ordinances laws](#) to see what the enforcement steps are for your city.

The County of Sonoma Tobacco Prevention Unit can help direct you and provide information to towards getting your problems resolved, but we cannot provide enforcement for cities’ ordinances. We can be reached at: Sonoma County Department of Health Services at 707-565-6680 or visit [BreatheEasy](#) for more information.

For those considering legal action: in certain circumstances, individuals may choose to seek legal assistance. The County of Sonoma cannot provide legal advice or assistance. Local resources include:

Free/low-cost legal assistance for those meeting income eligibility requirements include:

- California Rural Legal Assistance, (707) 528-9941
- Sonoma County Fair Housing, (707) 765-8488
- Sonoma County Legal Aid, 144 S. E. Street #100 (bring proof of income) for eviction information

Other resources:

- Sonoma County Bar Association Lawyer Referral Service, (707) 546-5297
- Sonoma County Legal Services Foundation, (707) 546-2924
- Empire College School of law operates a legal clinic for individuals wishing to avail themselves of the process of small claims court. The clinic is located at 3035 Cleveland Avenue, Santa Rosa (first upstairs conference room on the left). Walk in hours (bilingual available) are Monday and Wednesday from 3:30 p.m. to 6:00 p.m. There is also assistance available by phone on Tuesdays and Thursdays from 3:30 p.m. to 6:00 p.m. (707-521-6534).

Content provided by the [Tobacco and Nicotine Prevention](#) program of the Sonoma County Department of Health Services. If you’d like more information, please complete our online [“Ask the Tobacco Education Coordinator”](#) form or contact our office at (707) 565-6680.