

Creating Smokefree Policies for Affordable Housing in California

November 2009 (Updated June 2011)

Do you want to help create policies limiting smoking in housing geared toward low-income residents? This fact sheet explains briefly what “affordable housing” is and how you can work with key players to establish smokefree policies for this type of housing in your community.



Illustrations by Janet Cleland
© California Department of Public Health

What is Affordable Housing?

The days when *affordable housing* was synonymous with public housing (“the projects”) are behind us. Today, public housing is only one part of the equation.

Affordable housing refers to housing that, through government subsidies, is made affordable to those unable to pay for housing priced at market rates. (This fact sheet will focus on affordable rental housing, though subsidies are available for buying a home as well.) To be eligible to receive a housing subsidy from the government, a household must make less than a certain amount per year.¹

In addition to the income threshold, some affordable housing requires certain characteristics of at least one member of the household. For example, some affordable housing is built for low-income seniors. Other affordable housing is built for people with disabilities (some is even more specific—requiring, for example,

that at least one household member be living with HIV/AIDS). Some affordable housing is for the formerly homeless. For more information about affordable housing in California, see www.phlpnet.org/sites/phlpnet.org/files/CCAP_Affordable_housing_fact_sheet.pdf.

The most common types of affordable housing fall into three categories:

Nonprofit housing is owned and managed by private nonprofit groups often known as *community development corporations*, which may be community based, regional, or national in scope. They may be faith-based or have been formed to serve a specific ethnic population or a special-needs population, such as the elderly or formerly homeless. Affordable housing owned and managed by nonprofit entities varies widely, including single room occupancy buildings (SROs), family housing, and housing that is accessible to people with disabilities.

Housing Vocabulary

To have a meaningful discussion with the key players working on affordable housing issues, you must be able to “speak their language.”

- One great resource for learning the terminology is the glossary in *General Plans and Zoning*, a toolkit from Public Health Law & Policy (see www.phlpnet.org/sites/phlpnet.org/files/editor/Appendix1_Glossary.pdf).
- The U.S. Department of Housing and Urban Development (HUD) also offers a number of glossaries: see especially www.hud.gov/local/nv/library/archives/features/2006-04-06glos.cfm (terms common to affordable housing) and www.hud.gov/offices/cpd/library/glossary (community planning and development terms).

For-profit affordable housing is managed by private developers. This housing is rarely population-specific, only income-restricted. Broadly speaking, for-profit affordable housing is usually funded by (and thus subject to the rules of) the federal Section 8, HOPE VI, and/or Low-Income Housing Tax Credit programs. Though common in other states where land costs are lower, for-profit affordable housing is relatively uncommon in California.

Public housing is owned and managed by local government. The local agencies offering this type of housing are called *housing authorities*, and they are funded by the U.S. Department of Housing and Urban Development (HUD).

There are two other common types of affordable housing: (1) direct subsidies to renters, in which governmental subsidy programs issue “portable vouchers/certificates” (for example, a Section 8 certificate) to individual low-income tenants to help pay their rent, whether it’s in market-rate or below-market-rate housing, and (2) inclusionary housing, which is housing (developed and managed by private, for-profit entities, alone or in partnership with a non-profit) that includes a mix of market-rate and below-market-rate housing. These two types of affordable housing will not be addressed in this fact sheet because the approaches outlined here would not apply. To work on implementing smokefree policies in these or market-rate housing, see PHLP’s fact sheet “How Landlords Can Prohibit Smoking in Rental Housing,” available at www.phlpnet.org/tobacco-control.

Three Different Approaches

This fact sheet addresses three possible approaches to creating more smokefree affordable housing in your community:

1. Working with the **agencies or organizations that provide the funding** for affordable housing by encouraging them to make smokefree policies a requirement for all housing they fund.
2. Working with **existing affordable housing** (properties that have already been built or are currently under construction) to encourage the managers to create new house rules or leases that prohibit smoking in the buildings. (To do this, you must work with the *project sponsor*, which, depending on the type of housing and its stage of development, may be a developer, housing authority, or nonprofit agency.)
3. Creating a **new law** in your community that requires affordable housing developments (or all multi-unit housing!) to be smokefree.

The Technical Assistance Legal Center is a project of Public Health Law & Policy (PHLP). PHLP is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

This material was made possible by funds received from the California Department of Public Health under contract #09-11182.

© 2011 Public Health Law & Policy

Links and Resources

“How to Get Started on that Smokefree Housing Objective”

www.phlpnet.org/additional-smokefree-housing-resources

Provides a nice overview of all types of housing, affordable and market rate, and some of the important “talking points” to raise.

“Comparison of Smokefree Policy Factors”

www.phlpnet.org/additional-smokefree-housing-resources

Outlines the various types of affordable housing and compares implementation, enforcement, and other considerations for each.

The American Lung Association of Oregon

www.smokefreehousingnw.com

(Click on “Landlords” and then “Affordable & Public Housing” in the left-hand column)

Has several helpful documents including a toolkit for working with housing authorities and a case study describing how a smokefree policy was successfully implemented in a housing authority in Oregon.

First Approach: Policies At The Funding Source

Creating smokefree requirements at the funding source potentially has great impact, because a funder that adopts such a requirement will apply it to every future project the agency funds through any funding sources to which the requirement has been applied.

To figure out whom to approach, you first need to know what kinds of funding are being distributed in your community for affordable housing. Some kinds of funding originate locally, some come from the state, and others are federal dollars that originate through HUD but are distributed by your city or county.² Larger cities and counties allocate funds directly from HUD to developers, while for smaller communities, the state of California typically administers HUD funding. It may take some research to determine whether your city or county receives funds directly from HUD or through the state, and how the allocation process works.

1. *Learn who provides funding for affordable housing in your community.*

Government agencies involved in financing and developing affordable housing are typically redevelopment agencies and housing or community development agencies. The scope of their jurisdiction may be local (city/county) or statewide. To determine who is supplying funding for new projects in your area, look to www.hcd.ca.gov/fa for state resources and to your local community development, redevelopment, housing authority, and/or housing office for information about locally distributed resources.

2. *Talk to the funders about smokefree policies.*

Once you have identified the funding sources in your area, work with the appropriate individuals to create policies that would provide smokefree housing. For example, if your city is subsidizing any new affordable housing complexes through direct allocations or other incentives, you can speak to the local government officials involved to ask that all new affordable housing complexes be required to be entirely nonsmoking.

One example of a successful advocacy effort to create a statewide policy promoting the development of smokefree affordable housing is an incentive available through the Low-Income Housing Tax Credit program. The financing system is quite complex, but in very simple terms, developers applying for tax credits through this program are awarded various numbers of “points” for different aspects of the proposed development—the higher the point total, the greater chance the development will receive tax credits. Low-income housing proposals in California may gain a point on their applications if they pledge that at least 50 percent of the housing built with the proceeds from those tax credits, if awarded, will be smokefree.³ This approach is appealing to many developers because a smokefree policy adds a valuable point to the application without costing the developer any money. The point for smokefree housing was included after tobacco control advocates in California successfully campaigned for it to be added to the list of points available for low-income housing proposals.

Similarly, advocates can work with funders to create other incentives for new affordable housing proposals (for instance, lowering interest rates or reducing certain costs for developers who make the housing smokefree), or they can push for requiring that *all* new affordable housing using that funding be smokefree. If the funder you are working with is not comfortable incorporating smokefree policies into all of its funding sources, it may be willing to test a policy on a specific funding source or funding round. It could be included in the criteria for funding a few specific new developments, for example.



Second Approach: Policies For Existing Housing

Changing the smoking policies for existing housing has less impact than working at the funding level, because changes to properties that already exist will be implemented one development or housing authority at a time. Also, it is a little tougher to implement smokefree policies into housing that has already been built, since the tenants there have existing leases. These leases are nearly always annual, so the new policy couldn't be fully implemented until all of the leases have come up for renewal and include a no-smoking provision. Nonetheless, it can be very beneficial to existing tenants who are suffering from the effects of drifting secondhand smoke to implement such smokefree policies.

In affordable rental housing where people currently live, new smokefree provisions can be included in leases or house rules, whether the housing is owned and operated by a public housing authority or by a nonprofit developer. Once again, it makes sense to work directly with the project sponsor to create a new smokefree policy for specific housing developments.

For many types of affordable housing, leases must include specific boilerplate language that can be difficult to modify. But most affordable housing developments include an addendum to the lease, known as the *house rules*, which can be tailored to individual projects or developments.⁴ Developers and property managers use house rules to contractually communicate tenancy

requirements that are not included in the lease—for example, a requirement that all guests sign in when visiting the building.

HUD specifically identifies prohibitions on smoking as a reasonable house rule, stating that while there are no statutory or regulatory provisions governing smoking in assisted housing, HUD-assisted properties

Working With HUD-Subsidized Housing

HUD has released two important memos expressing its support for smokefree policies. If you are working with public housing authority staff who are uncertain whether HUD officials approve of smokefree policies, share this memo, *Notice PIH-2009-21 (HA)*, with them. If you are working with Section 8 or other private housing, share this memo, *Notice H 2010-21*, with them.

Some Initial Steps (for both approaches):

Whether you choose to focus your efforts on existing housing, housing under construction, or housing that is not yet funded, creating smokefree affordable housing is a process that will take a little time. You will need to build relationships with those who are working in the field, so you can introduce them to the idea of having smokefree housing and explain why it is so important. Some strategies to get you on your way:

1. Identify those who are working on developing or providing affordable housing in your community.
2. Contact these agencies and ask to be put on their mailing lists.
3. Find out from local agencies if any of the following is currently happening:
 - A policy related to affordable housing is under consideration, such as requirements for funding (including federally or state-required documents like a housing element of the general plan or an HUD consolidated plan)
 - Funding is being/about to be distributed
 - Housing has been approved for funding but is not yet under way
 - Housing is being constructed
4. Identify existing affordable housing developments in your area.
5. Based on what you have learned about affordable housing in your community, identify potential points of intervention, such as the funding source or existing housing, where you can work to establish smokefree policies.
6. Put together information about smokefree housing that will be helpful to the affordable housing community, such as health benefits to tenants and monetary benefits for owners.
7. Schedule a meeting with members of the affordable housing community to start to build relationships and to discuss your ideas for smokefree policies.

To learn about housing issues and meet people in the field, you might also want to attend affordable housing conferences and workshops. Several organizations host major annual conferences, including Housing California (held in Sacramento in the spring), Non-Profit Housing Association of Northern California (held in San Francisco in the fall), and the Southern California Association of Non-Profit Housing (held in Los Angeles in the fall).

“are required to comply with applicable state and local laws, which would include any laws governing smoking in residential units. Owners are free to adopt reasonable rules that must be related to the safety and habitability of the building and comfort of the tenants. Owners should make their own informed judgment as to the enforceability of house rules.”⁵

1. **Learn who provides affordable housing in your community.**

Identifying the specific providers of affordable housing that already exist locally can be done in several ways. One way is to review the lists of affordable housing providers that are available on the internet. These lists are rarely complete, however, so it is also a good idea to contact local organizations to find out who is offering affordable housing in your community. Since such organizations vary widely among communities, first identifying the *types* of organizations active in your area will help you pinpoint the groups you may want to contact. On pages 6 and 7 of this fact sheet are two lists that should help you identify whom to contact to discuss making existing affordable housing smokefree.

2. **Talk to the project sponsors about smokefree policies.**

Once you have identified whom to approach about creating new smokefree policies, you should set up a meeting to discuss your ideas. You and the project sponsor should decide together where smoking should be prohibited, whether any designated smoking areas should be established, when the new rules should take effect, and what kind of enforcement provisions you'd like to set up. TALC's fact sheet “How Landlords Can Prohibit Smoking in Rental Housing” (available at www.phlpnet.org/tobacco-control) may help answer some questions project sponsors may have.⁶

Many affordable housing complexes have already become smokefree. This can be helpful information to share with housing providers to let them know they aren't the first to adopt such a policy and, in fact, are actually part of a national trend. For a list of the known public housing authorities/commissions in the U.S. that have adopted smokefree policies, see www.tcsg.org/sfelp/SFHousingAuthorities.pdf.

Third Approach: A Local Law Making Affordable Housing Smokefree

There is a third approach that would apply to both existing and future housing: working with your city or county to help pass a local law (also called an *ordinance*) banning smoking in common areas and/or units of multi-unit housing. Some cities and counties have passed laws that apply only to affordable housing, while others have passed laws that apply to *all* multi-unit housing in the community.⁷ Before pursuing this option, contact PHLP or the Center for Tobacco Policy & Organizing (www.center4tobaccopolicy.org) to find out who in your area is working on this issue.

Additional materials for creating smokefree housing are available from PHLP's website at www.phlpnet.org/tobacco-control, including a Model California Ordinance Regulating Smoking in Multi-Unit Housing.

¹ The specific amount depends on the average (median) income in the community and is adjusted annually.

² Some funding sources for housing for those with special characteristics, such as seniors and those with special needs, are allocated directly from HUD to developers, so a national advocacy effort would be required to introduce incentives for smokefree housing through those programs.

³ For more details about this tax credit, see California Clean Air Project. *Tax Credit Factsheet*. Available at: www.phlpnet.org/sites/phlpnet.org/files/CCAP_TAX_CREDIT_Fact_Sheet.pdf.

⁴ U.S. Department of Housing and Urban Development. *Occupancy Requirements of Subsidized Multifamily Housing Programs* (4350.3). 2007, p. 6-7 (Section 6-5(A)(4)(d)). Available at: www.hud.gov/offices/adm/hudclips/handbooks/hsg/4350.3/43503c6H5GH.pdf.

⁵ *Id.* at 6-18 and 6-19 (Figure 6-5 & Note).

⁶ This fact sheet is intended for private landlords renting market-rate housing. Landlords who are governed by HUD regulations may need to modify the strategies suggested in this fact sheet in accordance with HUD requirements.

⁷ Cities that have created laws requiring a certain percentage of smokefree units for *all* types of housing, both affordable and market-rate, include Belmont, Calabasas, Dublin, Loma Linda, Novato, Pleasant Hill, Richmond, Rohnert Park, Sebastopol, South Pasadena, and Temecula. Cities and counties that have passed laws requiring some or all affordable housing developments to be smokefree include Madera, Oxnard, Plumas County, Port Huaneme, and Rancho Mirage. For details about these policies, see www.center4tobaccopolicy.org/localpolicies-smokefreehousing.

Finding Affordable Housing Providers Through Local Organizations

One way to find out whom to approach about smokefree policies is to identify the *types* of affordable housing in your community and then pinpoint the specific providers of those types of housing. Below is a list of the kinds of organizations that are active in the affordable housing community. Using this list, you can identify specific local people and organizations and then contact them to discuss how your ideas about implementing smokefree policies will benefit their constituents.

Advocacy organizations may be tenant-based, they may work to obtain more funding and better housing policy (often on behalf of nonprofit affordable housing developers), or they may work in the interests of a specific population such as the homeless or mentally ill.

Elected and appointed officials are key to making change. Be thorough in determining which officials might be important stakeholders in the jurisdiction.* City or county websites often include lists with these officials' names and titles.

Neighborhood organizations can be important stakeholders, depending upon the neighborhood and the degree of political leverage the groups have. Some are especially sensitized to affordable housing issues; in fact, neighborhood organizations are commonly formed specifically to oppose proposed affordable housing developments.

Nonprofits may be community-based groups, or they may be regional or national in scope. They may be faith-based or serve a specific ethnic or special needs population, such as the elderly or formerly homeless.

Property managers may be for-profit corporations, arms of nonprofit developers, or divisions of local government agencies such as housing authorities.

Public agencies include housing authorities, redevelopment agencies, and housing/community development agencies. Their jurisdiction may be local (city/county), state, or federal in scope.

Social service agencies often have strong ties with or stakes in affordable housing. They sometimes partner with affordable housing developers to create "service-enriched" housing where social services are available; many of these providers also see housing as a service for their clients, and they advocate for housing that will meet these clients' needs.

Tenant organizations are often important stakeholders. These organizations may be specific to a given housing development, they may advocate for the rights of a specific group of tenants (such as seniors), or they may advocate on behalf of the tenant population for an entire jurisdiction, such as a city or county. Not all of them focus much attention on affordable housing, preferring instead to spend their time on issues related to market-rate housing.

* As you get started, you may want to develop a list of any official who might be important to your process (such as city council members, county supervisors, city attorneys, heads of local housing agencies, and planning commissioners). After that, you may want to focus your search more narrowly. For example, if most of the affordable housing goes into one neighborhood in a jurisdiction with district elections, then the representative from that neighborhood is probably the key person to talk to. If the affordable housing is decentralized but you have someone who is the go-to person to champion affordable housing, then that is your key person. However, a planning commission may not be sensitized to the issue at all, and you may need to talk to all the members.

Finding Affordable Housing Providers On The Web

There is no one central location for complete lists of affordable housing providers. But you can contact your local government's community development or housing office, or the developers active in your community, for information about the affordable housing in your area. For two of the more comprehensive lists, see www.hud.gov/renting/index.cfm (developments with federal funding) and www.hcd.ca.gov/fa/affordable-housing.html (developments with state funding).^{*} Cities and counties also often have lists of affordable housing providers posted on their websites. Try looking up key words such as *housing*, *community development*, or *redevelopment* on the your jurisdiction's website. Social service agencies, which frequently try to place clients in safe, secure housing, may have lists as well. Here are a few good websites to start your search:

California Housing Law Project

www.housingadvocates.org/402.html

This is a fairly comprehensive, but not complete, list of nonprofit housing organizations in California.

The Non-Profit Housing Association of Northern California

<http://nonprofithousing.org>

NPH members include most of the groups involved in affordable housing work in Northern California, with an emphasis on the Bay Area. Their member list is only available to members, so you must join to access it.

Southern California Association of Non-Profit Housing

www.scanph.org

SCANPH is the Southern California umbrella group for entities involved in affordable housing. You must be a member to obtain member contact information.

National Low Income Housing Coalition

www.nlihc.org/template/index.cfm

NLIHC, the national umbrella organization for affordable housing entities, holds an annual conference and coordinates advocacy, policy, and lobbying efforts at the federal level.

Housing California

www.housingca.org

Housing California is an excellent source for state-level policy information, and each spring this advocacy organization sponsors the nation's largest affordable housing conference. Members are listed on its website.

Affordable Housing Finance Magazine

www.housingfinance.com/ahf/articleDirectory.html

This industry magazine publishes an annual list each spring of the "top 50 developers and owners" of affordable housing in the nation. Check the article archives for the lists.

As you look for whom to approach, look for someone high in the chain of command who has authority over multiple buildings, instead of just one, so that any policy you develop together will apply to as many buildings as possible.

^{*} Although these two lists are an excellent place to start, spot-checks found them to be incomplete. Your local community development, redevelopment, housing authority, and/or housing office may have more complete lists.