

# Did You Know HOA's Can Ban Smoking in Condos?

## Smoking and Secondhand Smoke

### What Does the Law Say?

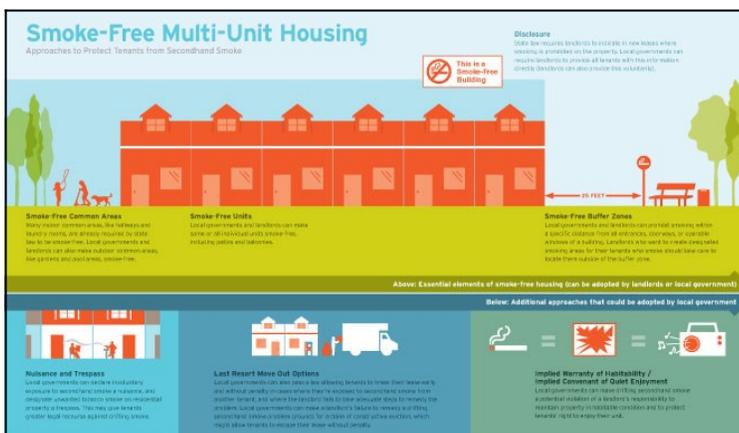
- ◆ **California Civil Code 1947.5** says Homeowners Associations (HOAs) have the legal right to limit or prohibit smoking anywhere on the property including:
  - ◇ Outdoor Common Areas
  - ◇ Pool and Playground Areas
  - ◇ Indoor Common Areas and Hallways
  - ◇ Inside Residential Units

### What Actions Must We Take?

- ◆ The HOA board or the full membership may vote to enforce or enact regulations to prohibit smoking (see options on reverse side).
  - ◇ CC&Rs are legally binding restrictions that apply to buyers and can be amended to prohibit smoking, or to declare secondhand smoke a nuisance.
  - ◇ HOA Boards may adopt rules to restrict smoking.

### Where Can We Find More Information?

- ◆ For guidance enacting smoking bans, go to [www.changelabsolutions.org](http://www.changelabsolutions.org)
- ◆ See the City website at: [www.cityofsignalhill.org](http://www.cityofsignalhill.org), *Community Development, Smokefree Condos*
- ◆ Call Colleen Doan, Associate Planner, at (562) 989-7344



## Comparing Three Ways to Make a Condo Complex Smokefree

	Amend CC&Rs to prohibit smoking in units or common areas	Amend nuisance provision of CC&Rs to state that secondhand smoke is a nuisance	Adopt a Rule prohibiting smoking in units or common areas
<b>Voting</b>	Requires vote of condo owners, using formal voting procedures.	Requires vote of condo owners, using formal voting procedures.	Voted on only by the board, not all HOA members.
<b>Drafting</b>	The new provision should be written by a lawyer.	The new provision should be written by a lawyer but isn't overly complicated.	Doesn't need to be written by a lawyer.
<b>Expense</b>	Can be expensive due to lawyer fees for drafting and cost to HOA for printing and distributing ballots.	Can be expensive, due to cost of printing and distributing ballots, though lawyer fees should be less than amending the CC&Rs to prohibit smoking because drafting is less complicated.	Very inexpensive because it doesn't incur lawyer fees or ballot costs.
<b>Enforcement</b>	The board has a duty to enforce CC&Rs by fining, restricting the rights of, or suing the noncompliant owner. Individual owners can also enforce CC&Rs by suing the noncompliant owner (and possibly by suing the board if it failed to act to enforce the provision).	The board has a duty to enforce CC&Rs by fining, restricting the rights of, or suing the noncompliant owner. Individual owners can also enforce CC&Rs by suing the noncompliant owner (and possibly by suing the board if it failed to act to enforce the provision).	Only the board can enforce a Rule, usually by fining the noncompliant owner.
<b>Important considerations</b>	Requires votes from enough owners to get passed. Because the owners vote to change the CC&Rs, their participation in the decision may make them more likely to comply with the new no-smoking policy. If there is a violation, CC&Rs may be enforced in more ways than a Rule.	Adding smoking to the nuisance provision would not eliminate smoking in the condo—it would just allow homeowners to more easily use the nuisance provision if secondhand smoke were entering their units. This approach may be useful if a ban on smoking in units isn't feasible.	Because a Rule is only voted on by the board, this approach may work best for making the common areas nonsmoking—a less controversial restriction than smokefree units (although there is nothing preventing a Rule from prohibiting smoking in all parts of the complex). Adopting a smokefree Rule may work better for complexes where the board actively enforces Rules.