

# El Cajon's Smoking and Secondhand Smoke Ordinance

## Frequently Asked Questions for Multiunit Housing Owners/ Managers

### 1.) In which areas of my apartment or multiunit housing complex is smoking prohibited?

Under the provisions of the City of El Cajon ordinance, **smoking is prohibited in all common areas** of multi-unit residences in the City. "Multi-unit residence common area" means any common area of a multi-unit residence used by the occupants of more than one dwelling, **including but not limited to halls, lobbies, laundry rooms, outdoor eating areas, play areas and swimming pools.** "Multi-unit residence" means a building or portion thereof that contains more than one dwelling space, each of which consists of independent living facilities for one or more persons.

### 2.) Isn't restricting smoking a violation of tenants' rights?

No.

Smoking is a habit that can be stopped. It is not a disability. It is not a permanent condition. No one is born a smoker. The act of smoking is not a right, and is not protected by the Constitution of the United States of America.

Secondhand smoke is harmful to persons with certain respiratory conditions, and has been determined to cause cancer in nonsmokers exposed to secondhand smoke. Therefore, in the interest of protecting public health, it is perfectly legal for the City to restrict or prohibit the smoking of tobacco or any other weed or plant in certain areas that are used by or open to the public, including common areas of multi-unit residences.

In addition, **it is perfectly legal for owners or managers to restrict smoking in additional areas** on their property, just as it is legal to impose restrictions on noise, quiet hours, pool use, pets, and guests. These are all house rules that protect an owner's property and residents' right to quiet enjoyment.

Owners and managers throughout California and the United States are creating policies that create non-smoking areas of their property, both in common areas and inside units where the most extensive property damage from secondhand smoke occurs.

### 3.) What steps should I take to comply with this ordinance?

Informational materials about the City ordinance and the property's no-smoking policy should be distributed to all existing and future tenants and included in lease agreement addendum.

Owners and managers are allowed to designate a smoking area, also called a "smokers' outpost", provided it meets certain criteria and is clearly marked with the proper signs.

Non-smoking signs should be posted on the property in areas where smoking is prohibited.

Proper noticing is required for expanding the non-smoking policy to additional areas like units or balconies. Thirty days notice should be given if the tenant is month-to-month, or at the time of renewal if the tenant is on a lease agreement. Both should be in the form of a rental/lease agreement addendum.

If a tenant is caught smoking in a non-smoking area, managers should issue written warnings to document that proper action was taken for the violation. Repeat violators may have to be given a three-day notice to perform covenant or quit (or a 30/60 day notice if month to month).

#### **4.) How do I establish a “smokers’ outpost” for my apartment or multiunit housing complex?**

A smokers’ outpost is an unenclosed area designated for smoking. An owner or manager or the board of directors of a homeowners association may designate a smokers’ outpost so long as:

1. The area is prominently marked with signs.
2. The area is located the greatest distance practicable, and at least 20 feet from any enclosed area of the multi-unit residential property and at least 20 feet from any playgrounds, swimming pools, or any other areas where smoking is prohibited.
3. The area is no more than 25 percent of the total outdoor area (excluding parking lots, sidewalks, stairways, non-exclusive balconies, patios and breezeways) of the premises where it is located, to a maximum of 40 square feet.

If the requirements cannot be met due to the unique physical structure of the outdoor common area, then no smokers’ outpost will be permitted.

#### **5.) Some of my tenants continue to smoke in non-smoking areas. What do I do?**

No owner or manager in the City of El Cajon may knowingly permit smoking in an area under his or her control in which smoking is prohibited by the City ordinance.

If a manager can show through written documentation that, upon receipt of a complaint about a tenant or guest of tenant smoking in a prohibited area, reasonable steps were taken in response to the complaint, the landlord shall **not** be deemed to have knowingly allowed, aided or abetted illegal smoking.

“Reasonable Steps” as defined by this ordinance shall include, but are not limited to:

- Up to three verbal warnings, memorialized in writing, indicating that the offending tenant and his or her guest have been given notice of such violations
- If three verbal warnings are ineffective, one written warning issued to the offending tenant and his or her guests, and/or formal legal notices served on the offending tenant.
- In the event a manager elects to commence eviction proceedings based on a violation of this chapter, following these steps shall be evidence that a landlord has not allowed, aided or abetted illegal smoking, even in the event a court refuses to order such eviction.