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SMOKE-FREE
HOUSING

Smoke-free Multi-unit Housing 101
DATE: March 19, 2024, 10AM
AUDIENCE/ORGANIZATION: Austin Apartment Association



What we will cover

- [Smoke-Free Housing Video](#) –American Lung Association
- Travis County Smoking Data
- The Need for Smoke-Free Rental Housing
- It Costs to You
- Keeping the Air Clean
- Fire Damage (AFD fire report)
- Legal Questions
- Implementing a Policy

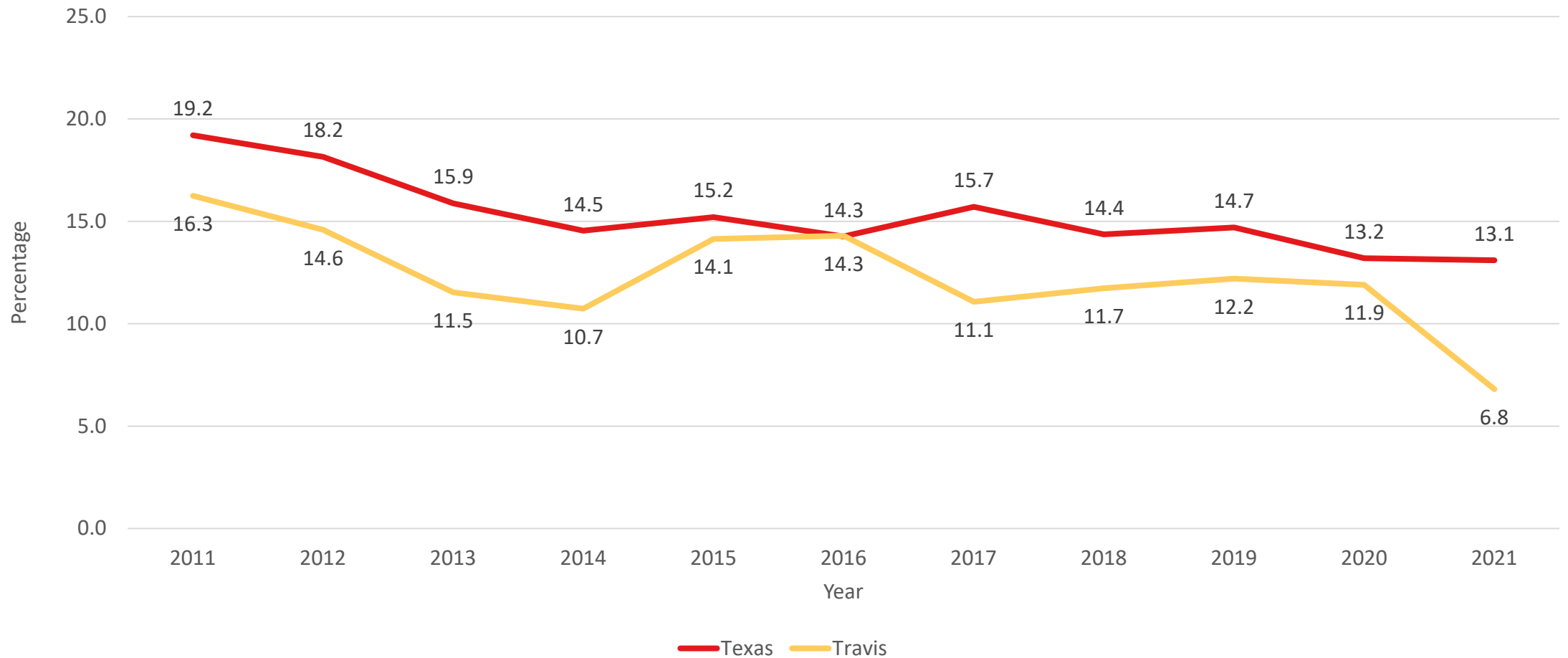


By the Numbers:

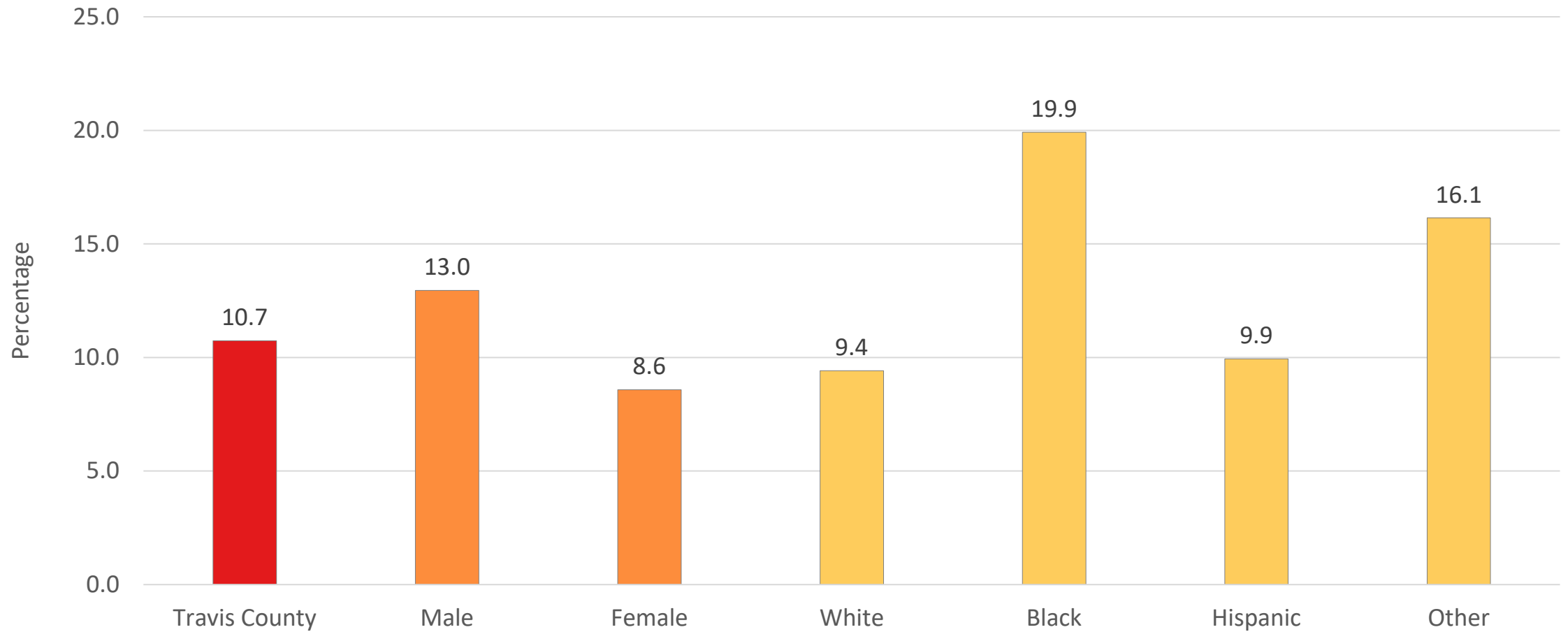
- **1 in 7** Travis County residents use tobacco
- **6.8%** of Travis County residents are current smokers = 88,750 people
- **5.9 %** of adults in Texas report currently using e-cigarettes in 2021 (US FDA, 2022).



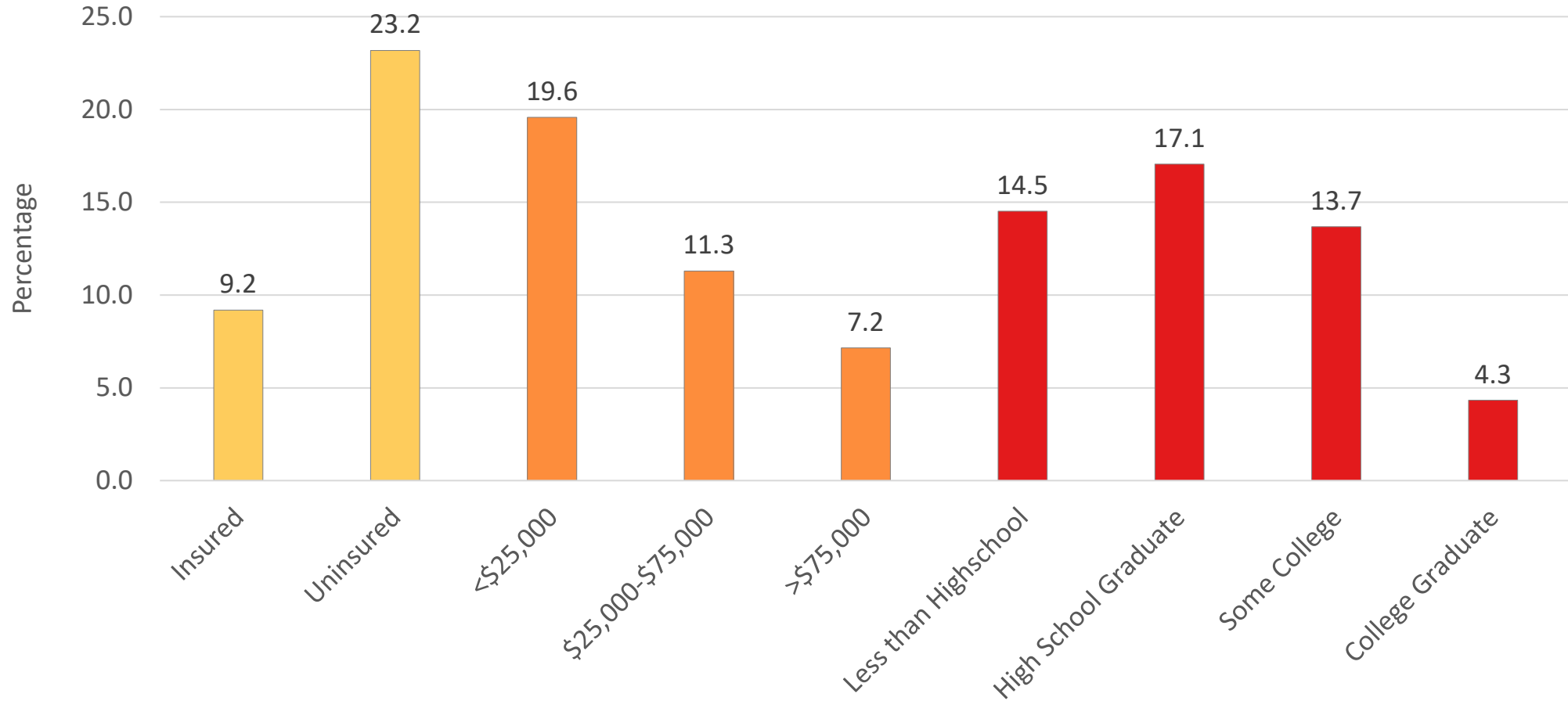
Current Smoker Status Among Adults in Texas & Travis County, BRFSS, 2011-2021



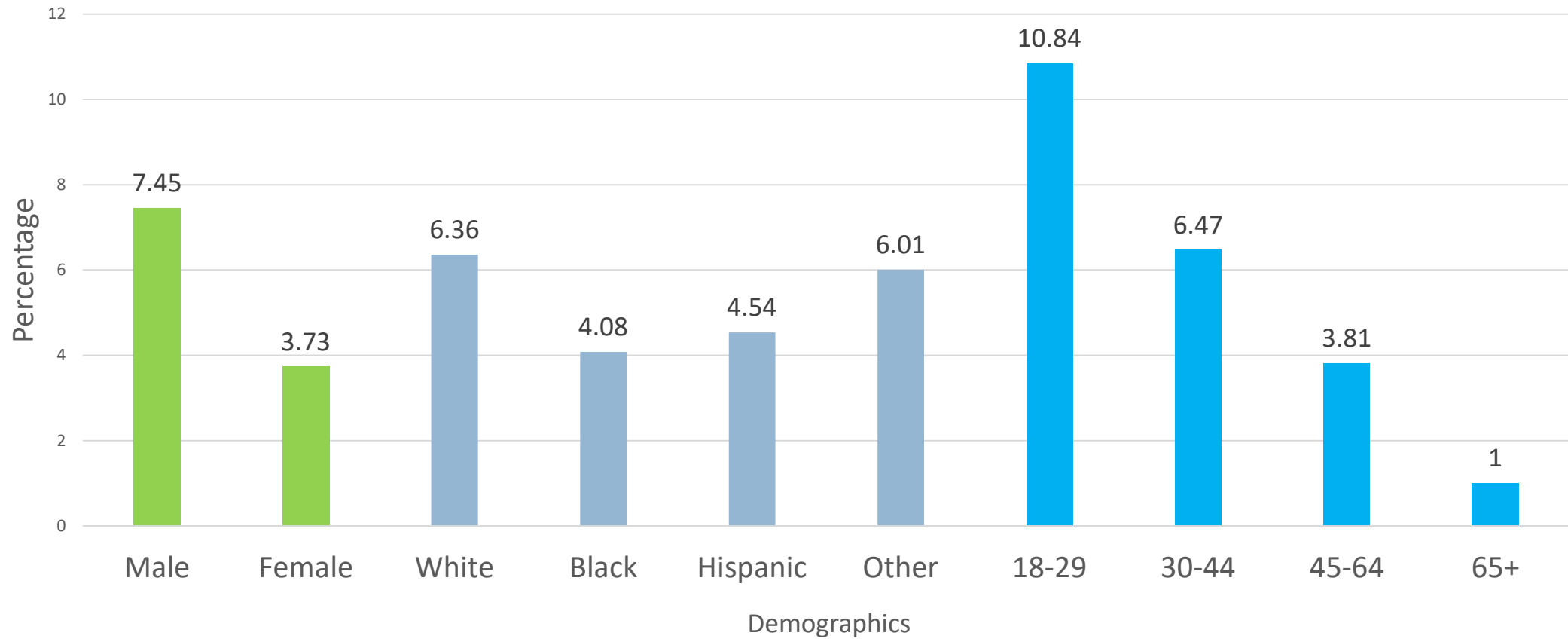
Smoking Prevalence in Travis County, BRFSS, 2017-2021



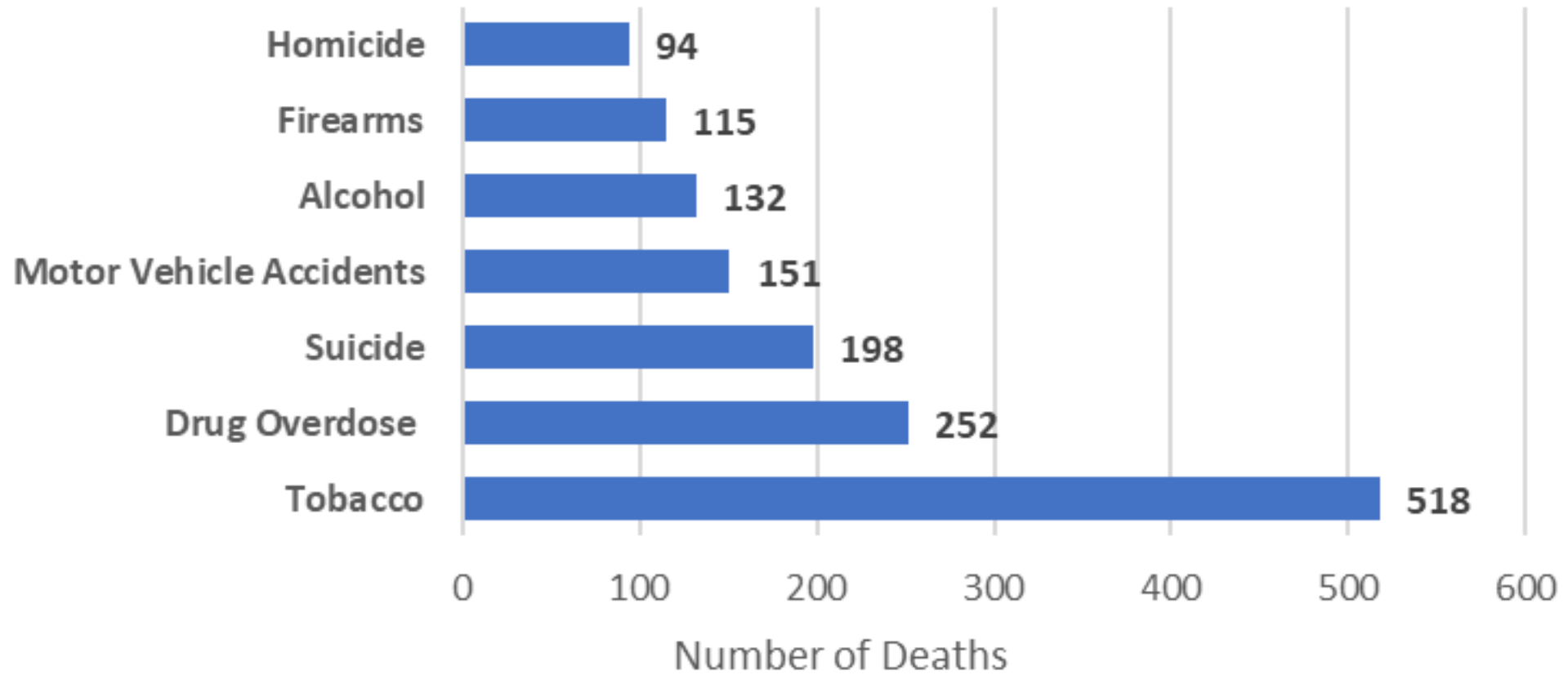
Smoking Prevalence in Travis County, BRFSS, 2017-2021

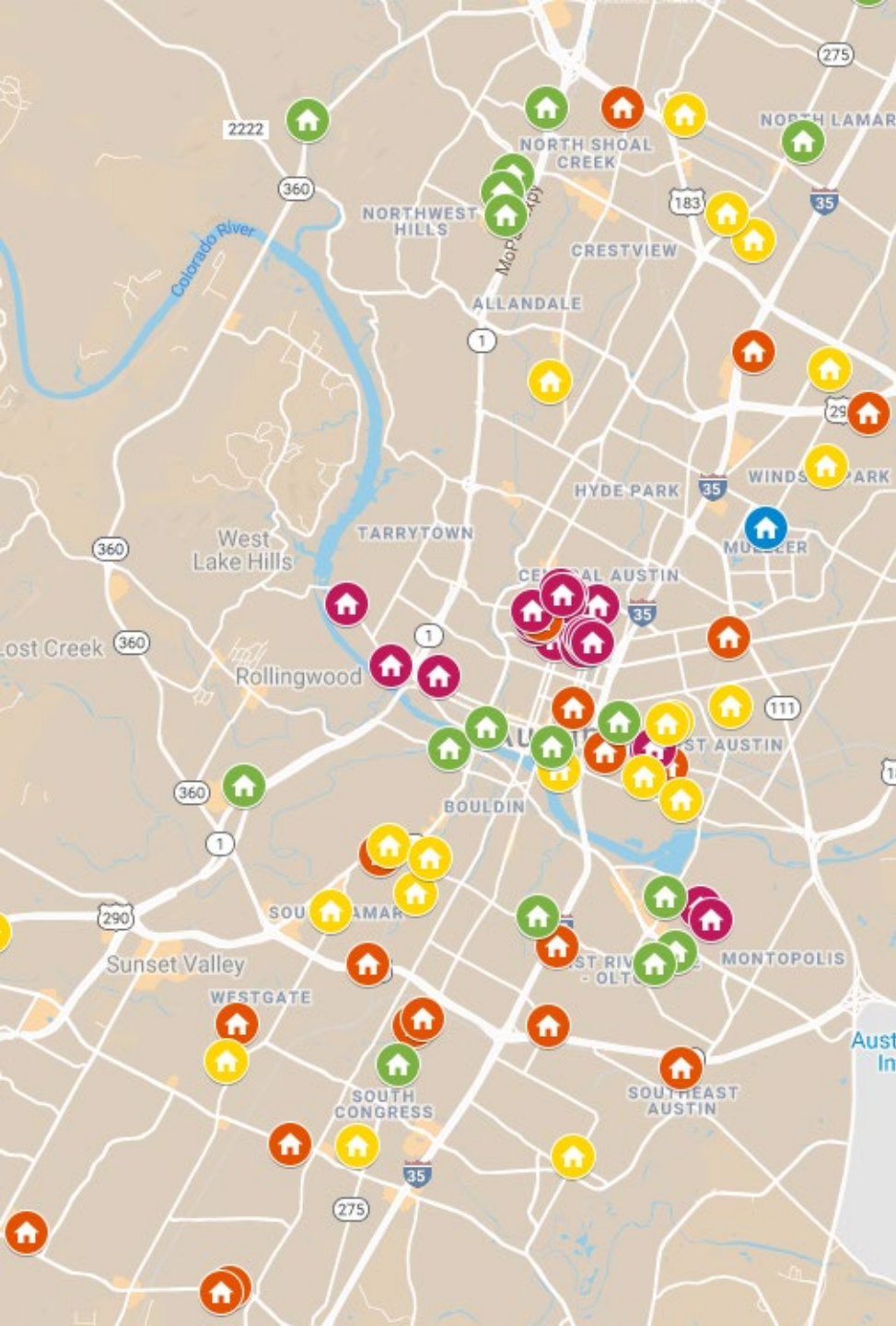


Prevalence of Current E-Cigarette Usage in Travis County, BRFSS 2017-2021



Preventable Causes of Death, Travis County 2021 (CDC Wonder)





In Our Community

- Over 100 communities
 - Includes
 - University of Texas student housing
 - Private Student Housing
 - Foundation Communities (Affordable)
 - Housing Authority of Austin (Public)
 - Housing Authority of Travis County (Public)
 - Market Rate



The Costs to You

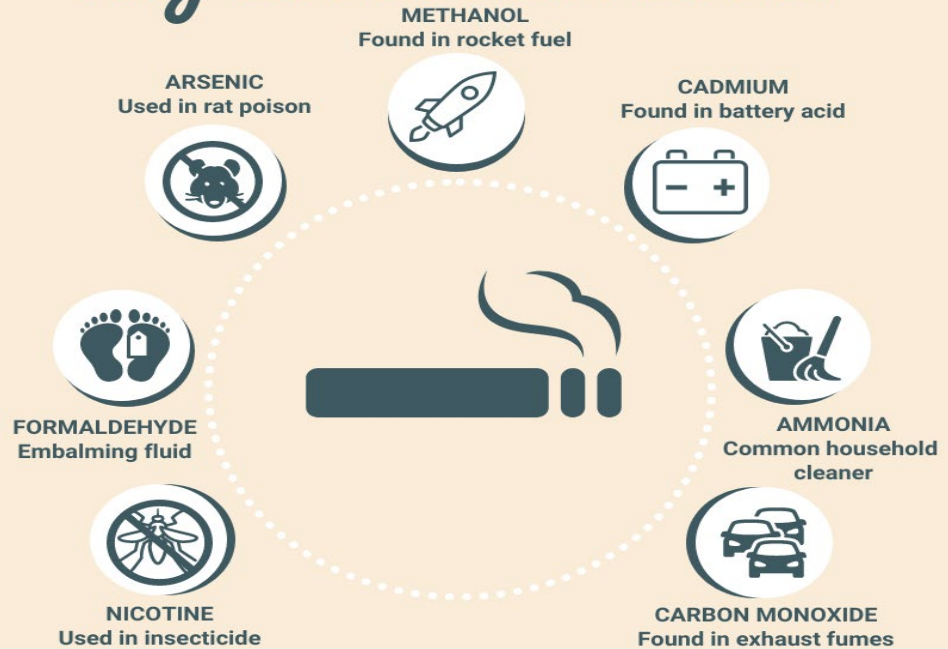
Turnover, Health Risks, Litter, Fire Risks

Three Types of Smoke

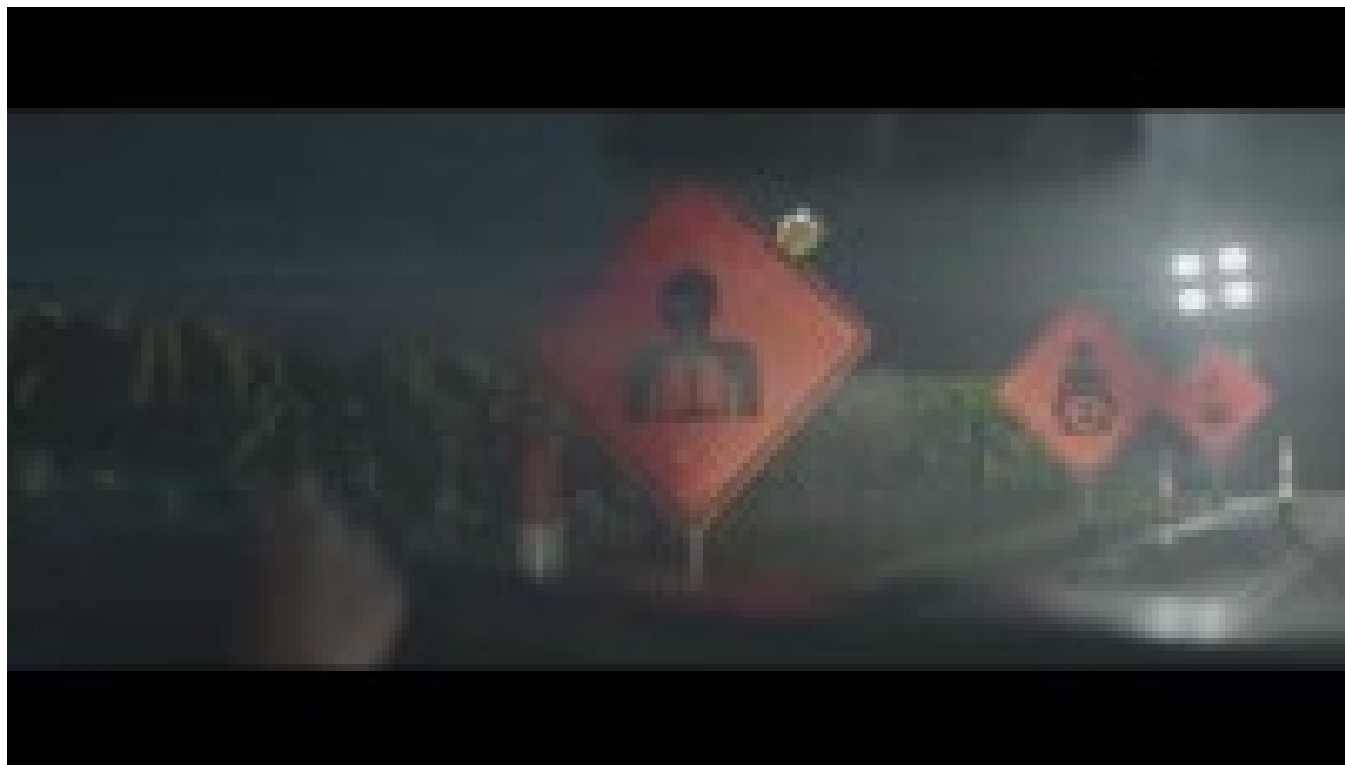
- **Firsthand**- stream of smoke inhaled directly by the person using tobacco product. Source: Tobacco Stops With Me, 2022
- **Secondhand**- smoke from burning tobacco products. Source: CDC, 2022
- **Thirdhand**- toxic residue which builds up on clothes, furniture, walls, carpets, dust, and other surfaces. Source: Mayo Clinic, 2022



What's In Cigarette Smoke?



MORE THAN 7,000 CHEMICALS IN TOBACCO SMOKE.
HUNDREDS ARE TOXIC AND AT LEAST 70 CAUSE CANCER.



-U.S. FDA 2022



Local Affordable Housing Example

| Charge for Turnover of a Smoking Unit | Cost per Unit Low | Cost per Unit High |
|---|------------------------------|-----------------------------------|
| Duct cleaning | \$375 | \$375 |
| Paint - Kilz Premium (walls, ceilings, woodwork, cabinetry) | \$350 | \$700 |
| Replace blinds | \$25 | \$150 |
| Replace ceiling fans | \$75 | \$150 |
| Replace miscellaneous (light fixtures, switch places, a/c vents, vent hood) | \$250 | \$750 |
| Replace flooring (carpet, vinyl) | \$200 | \$1,000 |
| Resurface kitchen and bath counters | | \$275 |
| Replace appliances | | \$500 |
| Cleaning (Labor @ \$12/hr * 8hr/day * 1-2 days) | \$96 | \$192 |
| Maintenance (Labor @ \$18/hr * 8hr/day * 3-6 days) | \$432 | \$864 |
| Cleaning & Maintenance Subtotal | \$1,803 | \$4,956 |
| Lost Rental Income (3 days – 6 weeks) | \$3,000 | \$36,000 |
| Total Cost (Cleaning, Maintenance & Lost Rental Income) | \$4,803 | \$40,956 |

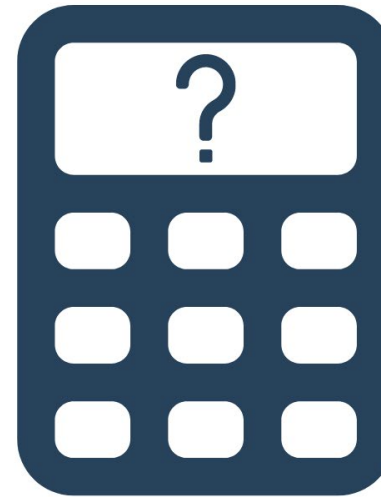
For market rate, it would be even higher

Data source: Local Austin affordable housing apartment complex estimates compiled by Austin Public Health (2017)

Scan for Smoke-Free
Multi Unit Housing
Calculator



What will switching to
smoke-free save you?



Loss of rental
income

Cleaning

Painting

Odor Removal

<https://www.tecc.org/smoke-free-multi-unit-housing-calculator>





Keeping Indoor Air Quality Clean

- Up to **65%** of air within a unit can be lost through leakage to another unit, hallway, or exterior.

-The Center for Energy and the Environment

- “[A]t present, the only means of effectively eliminating health risks associated with indoor exposure [to tobacco smoke] is to prohibit all smoking activity.”

-American Society of Heating, Refrigeration, and Air-Conditioning Engineers

- The adoption of smoke-free policies in multi-unit housing is the **only** way to protect residents against involuntary exposure to tobacco smoke.

-2006 U.S. Surgeon General’s Report

Outdoor Environmental Quality



- Cigarette butts:
 - More than half are discarded improperly.
 - “Cigarette butts are the most prominently littered item on roadways, storm drains, loading docks, and recreational areas.”
–Truth Initiative
- E-Cigarettes:
 - Over two-thirds of disposal e-cigarette users disposed of the hazardous waste in the trash. This can start fires in bins.
–Truth Initiative
- Benefits of a Policy:
 - Improved appearance
 - Reduced maintenance cleaning



Travis County Smoking Material related fires in MUH

- 27 Smoking Material related fires in MUH in Travis County from 2019-2023
 - According to US Fire Administration definition of smoking fires.

Recent fires due to Smoking Material



- August 3, 2018—Longspur Crossing Apartments
 - \$300,000 in damages
- August 19, 2018—Argosy at Crestview Apartments
 - 6 displaced
 - \$200,000 in structural and \$100,000 in contents
- August 19, 2018—Polo Club Apartments
 - Displaced
 - \$300,000 in structural damage and \$75,000 in content damages
- April 1, 2019—Avesta Solano Apartments
 - 10 displaced
 - \$125,000 in damages
- June 20, 2019—Trails of Walnut Creek Apartments
 - 8 displaced
- August 3, 2019—Creek's Edge Apartments
 - \$30,000 in structural damage and \$3,000 for content damage
- April 28, 2020—Remington Park Apartments
 - 15 displaced
 - \$200,000 in structural damage and \$50,000 in content damage
- February 01, 2024- Cannon South Apartments
 - **22 people displaced**
 - **\$2 million in structural and \$500,000 in content damage**

The background is a light blue, textured surface with a grid of white lines. It features various line-art icons: a city skyline with tall buildings, a row of houses, a bridge over water, a car, a bicycle, and trees. The text is centered in a white box.

Legal Questions about Smoke-Free Apartments

Source: Tobacco Control Legal Consortium

Common Concerns

- **Tenants**

- “My home is my castle”
- “I have a right to smoke in my unit”
- “Just one more way to evict tenants”

- **Landlords/Property Managers**

- “It will reduce my market for renters/buyers”
- “It will be a nightmare to enforce”
- “It will open me up for additional liability”



Is a Smoking Restriction Legal?

- No federal or state law prohibits smoke free buildings
 - *There is no more fundamental right to smoke cigarettes than to shoot up or snort heroin or cocaine or run a red light.*
Fagan v. Axelrod, 550 N.Y.S. 2d 552, 560 (1990)





Discrimination

It is **NOT** discriminatory.

- Smoking is **not a protected activity or right**
 - Several federal and state court opinions have held that smoking is not a fundamental privacy right
- Smokers are **not a protected category** of people
- An individual's addiction to nicotine is **not a disability**

Accommodations

Would mobility-limited individuals be granted an accommodation allowing him or her to smoke inside?

- Not likely
- “To show that a requisition accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individuals disability”

-HUD Occupancy Handbook, Civil Rights and Nondiscrimination Requirements

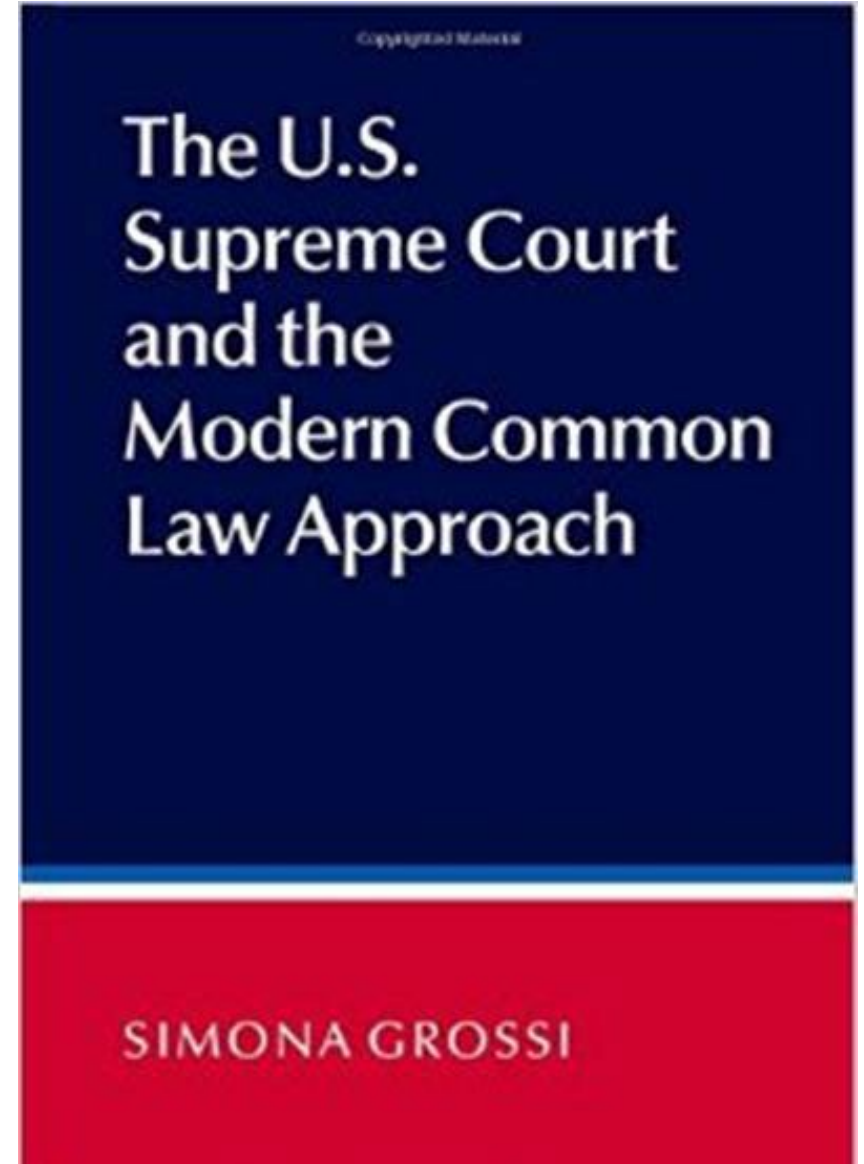
What would be the outcome in a situation with a mental health accommodation request?

- Ruling would likely favor the smoke-free policy
- “Nothing... requires that a dwelling be made available to an individual whose tendency would constitute a direct threat to the health or safety of individuals.”

-Fair Housing Act, 42 U.S.C. 3604(f)(9)

Am I Vulnerable to Legal Action Without a policy?

- Some legal success against landlords by tenants affected by secondhand smoke.
- Common Law Remedies
 - Breach of warrant of habitability
 - Breach of covenant of quiet enjoyment
 - Trespass
 - Constructive Eviction
 - Nuisance
 - Harassment
 - Negligence





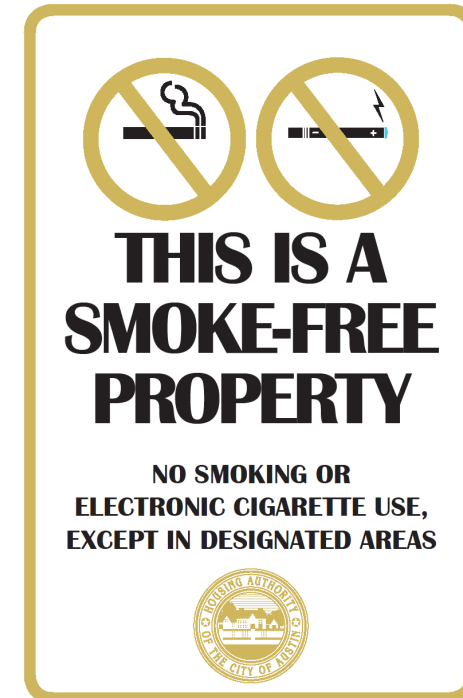
What About the Liabilities of Going Smoke-Free?

What if someone falls ill from another tenant being in violation of the smoke-free policy?

- No cases have found the landlord liable for not ensuring a smoke-free environment when the building has been designated as smoke-free
- Smoke-free lease addendum language should state that the landlord will use best efforts to provide a smoke-free environment, but cannot guarantee better quality of air
- Addendum should state that landlord needs tenants' assistance in enforcing the policy

Affordable housing Vs. Market Rate

- July 2018, HUD required all 3,100 public housing authorities to be 100% smoke-free indoors and within 25 feet of housing and offices.
- Market-rate and luxury apartments should be easier to implement
 - More expensive turnover
 - More demands on property owners by tenants

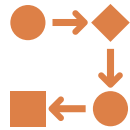




Implementation Steps



Implementing a Policy



Step One:

Develop a Policy



Step Two:

Set the Date



Step Three

Communicate the Policy



Step Four

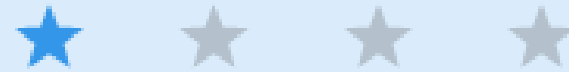
Enforce the Policy

Develop a policy

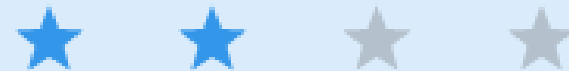
- Decide on a policy.
- Who will it apply to?
- Where will it apply?

Sample Policy Rankings

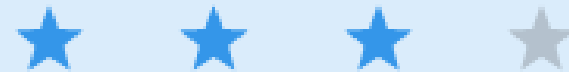
100% of building's interior



100% of the building's interior +
some exterior areas



100% of the building's interior +
all exterior areas



100% tobacco-free policy for all
interior and all exterior areas



Setting a Date

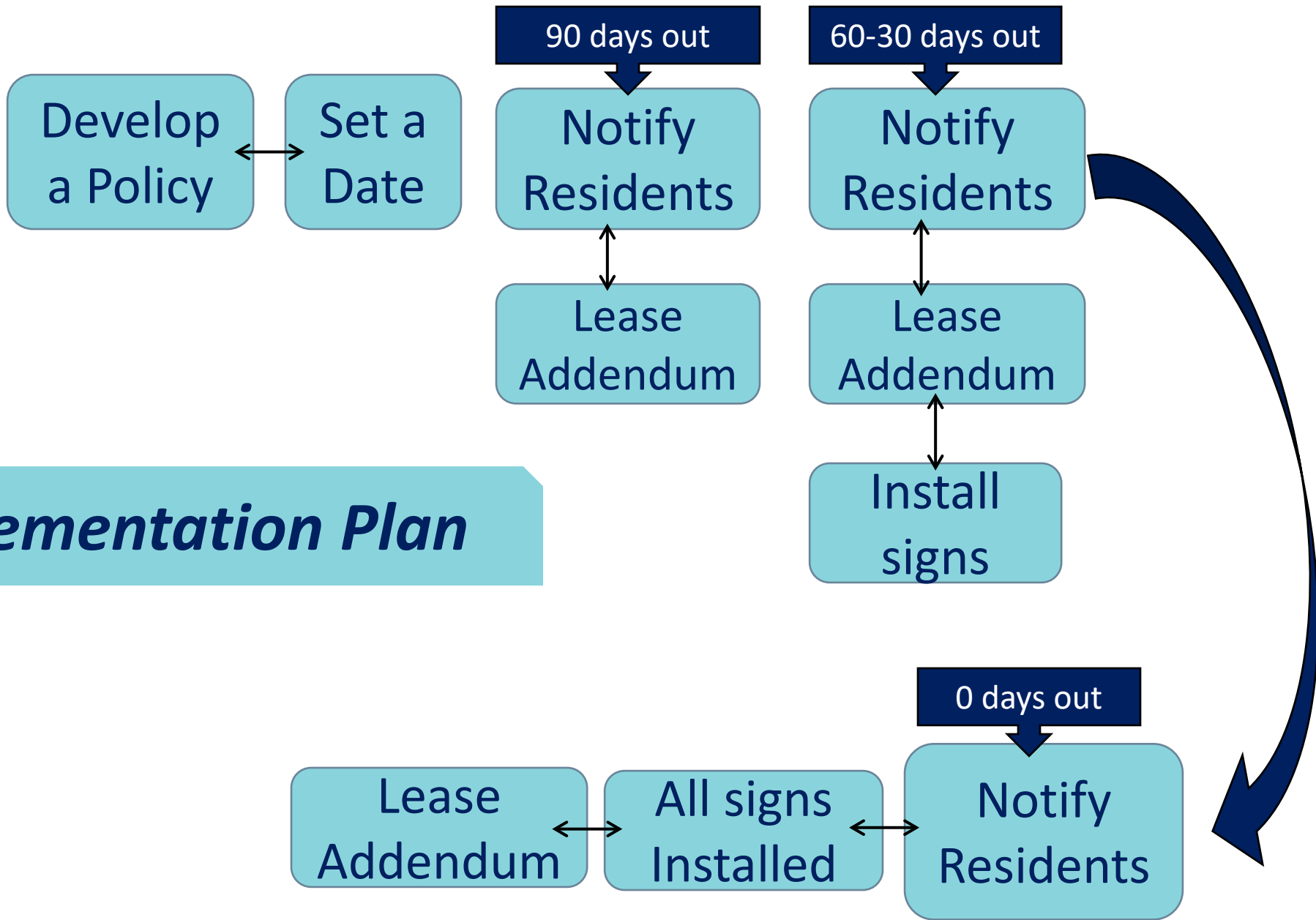
- Evaluate current leases to determine appropriate implementation date





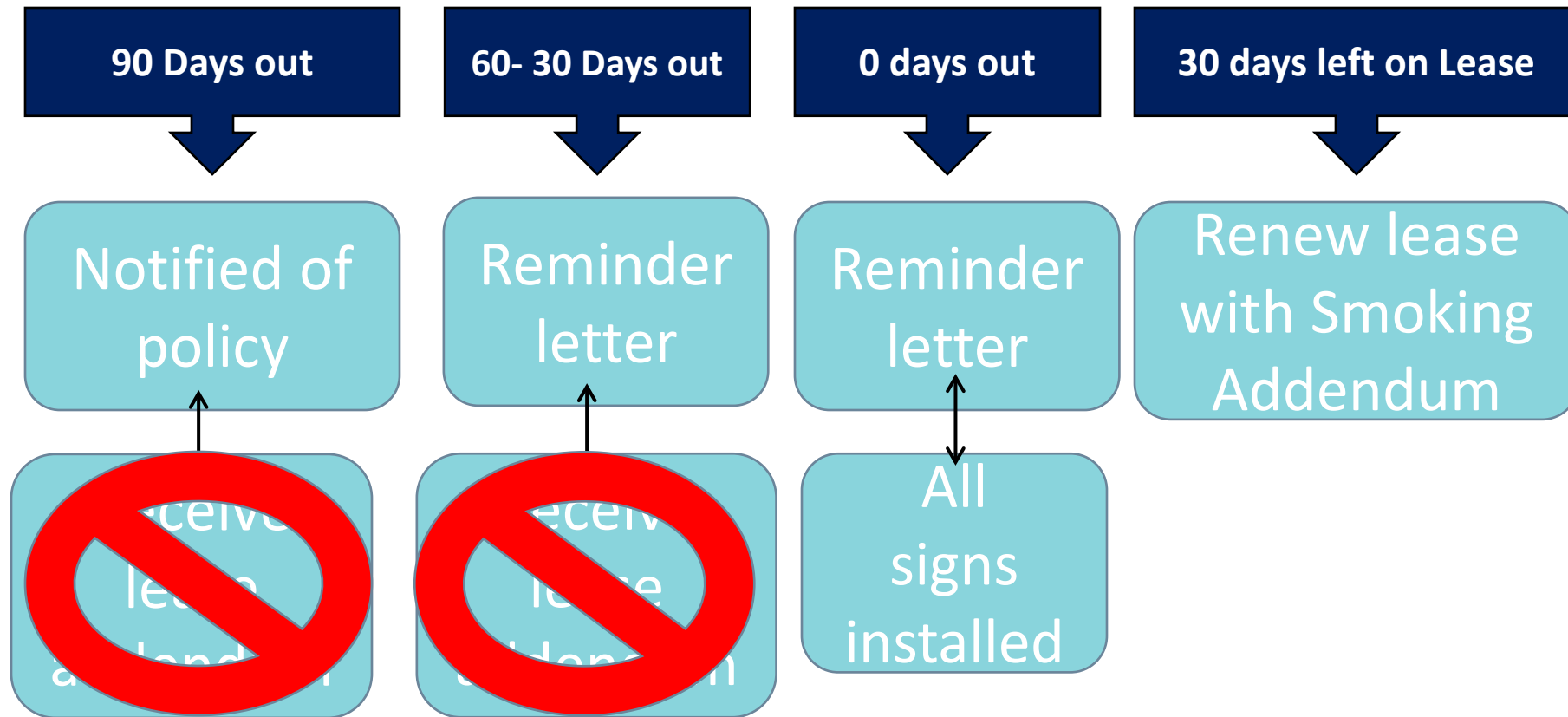
Communicate the policy

- Notify Residents
 - 60-90 days notice recommended
 - Current tenants sign lease addendums
- Educate
 - Signage
 - Newsletters
 - Staff meeting
 - Tenant info session
 - Cessation Resources:
<https://www.livetobaccofreeaustin.org/how-to-quit/>



Implementation Plan

Example: Lease Ends in 150 Days



Enforcing a Policy

- Prevent Problems
 - Market as non-smoking
 - Post signs around property
- Enforce like other policies
 - Uniformly
 - Consistently
 - Promptly
 - Document violations and steps taken

Violations should be handled like any other tenant violation.

Market the Policy



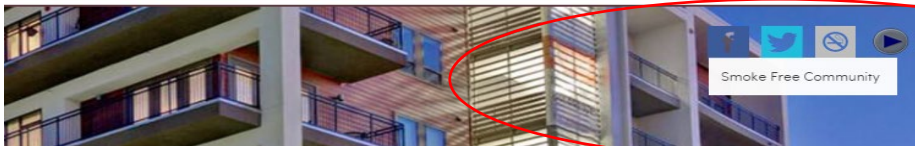
DESIGNED FOR YOUR ACTIVE OUTDOOR LIFESTYLE

Coldwater's quiet park side location; thoughtfully designed one and two bedroom interiors and vast outdoor amenities offer all you require to live well and fit. Our Negative Edge Pool, welcoming Great Room, Precor equipped Fitness Center and dazzling rooftop Star Deck make Coldwater your place to call home.



APARTMENT FEATURES

- Smoke Free Community
- Condo Quality Construction
- One and Two Bedroom Designs
- Ten Foot Exposed Concrete Ceilings
- Oversized Windows
- Wood Style Floors with Sound Dampening
- Tiled Bath Floors
- Granite Kitchen & Bath Counters
- Glass Tile Backsplashes
- Whirlpool® Stainless Appliances
- Island Kitchen*
- Oval Soaking Garden Tubs
- Walk-in Showers*
- Washer & Dryer Provided
- Private Balconies
- Furnished Option Available



Home > Tobacco-Free Housing

Everyone has the right to breathe tobacco-free air, including in their homes. Use this map to find tobacco-free and smoke-free properties in the community.



OWNERS/OPERATORS RESIDENTS

Owners / Operators

Did you know the cost to clean and turn over a rental unit is up to 7 times more if the last tenant was a smoker?

Contact us! For FREE technical assistance to make your property smoke- or tobacco-free, [contact us](#)

Download the *Manager's Guide to Smoke-Free Housing Policies* to learn about the benefits of smoke-free policies for multi-unit housing, and get helpful tips on how to implement policies that are legal and enforceable.

The toolkit includes templates, such as a sample lease addendum and policy disclosure form.





- There is a market demand
 - 77% of tenants in Travis Co. want to live in a smoke-free environment!
- Reduce turnover cost
- Residents are protected from health harms of smoke exposure
- Property is protected from costly damage and fires caused by smoking
- It is NOT discriminatory
 - It's the smoke, not the smoker!
- We're here to help!

Free Technical Assistance

- Consultations
 - Policy Drafting & Recommendations
- Fact sheets, booklets, and toolkits
- Sample lease addendum and letters
- Cessation Resources
- Funds for Signage (while funds last)



Scan QR Code for copy of
Manager's Guide to
Smoke-Free Housing



Questions?

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