



SPECIAL EDITION NEWSLETTER

Smokefree Housing

SUCCESS IS SPREADING

Over the past couple of years, several cities and counties in California have begun to address the dangers posed by secondhand smoke in multi-unit housing by passing ordinances and resolutions to protect individuals in their own home from secondhand smoke. Many of these policies are the first of their kind in the nation and they are helping to build momentum for other smoke-free housing policies around the state.

One popular option to protect tenants from secondhand smoke is to prohibit smoking in all outdoor common areas of multi-unit housing. Several communities in California have passed such an ordinance including Temecula, Emeryville, Contra Costa County, San Mateo County, Calabasas, and Laguna Woods. These ordinances protect residents that live in multi-unit housing from secondhand smoke around swimming pools, outdoor eating areas, stairways and play areas located within multi-unit housing as well as the secondhand smoke that would typically drift from these areas into apartment units.

Some communities in California have declared secondhand smoke a nuisance. Declaring secondhand smoke a nuisance gives residents the chance to bring legal actions against individuals who expose them to secondhand smoke in their home, as well as anywhere else in the city.

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GUEST ARTICLE: TOBACCO SMOKE AND PERSONS WITH CHRONIC ILLNESSES

BY ESTHER SCHILLER

Julia Bennet (not her real name) lives in HUD-subsidized housing for seniors in Southern California. Unfortunately for Julia, a chain-smoking senior lives below her, and the resident across the hall is visited frequently by her son who smokes constantly when he is on the premises. The tobacco smoke generated by her neighbor's son and the smoke drifting up from her neighbor below are a constant presence in her apartment.

It is becoming increasingly difficult for Julia to manage her asthma, which normally does not require medication. Her blood pressure, for which she takes several medications, is also not under control. Her doctor has written a note that because of her medical conditions, she cannot be exposed to any amount of tobacco smoke.

Julia has complained about her situation to management, but they have advised her that they cannot ask residents to refrain from using tobacco products in their own units. So she has filed a complaint with the local fair housing organization which has begun to negotiate with management to provide a reasonable accommodation; that is, to move Julia to another unit in another part of the prop-

erty. However, she is concerned that even after her move, new tenants who smoke may move in beneath her or in units adjacent to her. Her health would again be in jeopardy.

A reasonable accommodation should include not only the move, but also the requirement that all new residents moving into units under, over and adjacent to Julia's be required to refrain from use of tobacco products in their units, and on balconies and patios.

It is important to remember that prohibiting smoking in units, balconies, patios, and common areas is not illegal:

HUD itself has no rules about the regulation of tobacco use. "Currently there is no HUD policy, by statute, regulation, handbook or otherwise that restricts landlords from adopting a prohibition of smoking in common areas or in individual units." (Letter from Sheila Y. Walker, Chief Counsel, HUD, Detroit, Michigan, July 18, 2003.)

"At this time, there are no statutory provisions or regulations addressing the question of smoking in HUD-assisted units." (Letter from Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, U.S. Department of Hous-

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ing & Urban Development, Washington, D.C., July 23, 2003.)

There is no 'right to smoke' and it is not a privacy right. According to Seth Merewitz, Special Counsel, Thousand Oaks Redevelopment Agency, "Smoking has not been identified as a fundamental liberty interest or as affording a 'right to privacy' by the Supreme Court. Smokers have not been considered a 'suspect class' under equal protection law, such that they would receive constitutional protection against discrimination. Smokers are also not identified as a protected class under any federal or California civil rights or anti-discrimination law. (February 5, 2004)

Addiction to tobacco is not a disability. According to the Legislative Counsel of California, "We have found no cases where the smoking addiction itself, has been found to be a 'disability' for purposes of any law. Illegal drug addiction and alcoholism are protected disabilities under the Americans with Disabilities Act." (Highlights from the Opinion of the Legislative Counsel of California on Smoking Bans: Residential Rental Property - #21547, September 23, 1999)

Recent surveys conducted by SAFE in HUD-subsidized senior buildings showed that over 50% of residents said they were breathing their neighbor's tobacco smoke in their own units, yet only 12% of those complained to management. More than half of the residents who were being exposed to tobacco smoke reported they had medical conditions which were being made worse by the smoke. In fact, 75% of respondents said they would prefer to live in a totally non-smoking building including the individual apartments.

Affordable housing providers and housing authorities throughout the nation are beginning to adopt no-smoking policies for their buildings. In Ventura County, California, the Board of the Cabrillo Economic Development Corporation voted in March 2005 to adopt no smoking policies for all new and existing housing with smoking permitted only in designated outdoor areas. Liveable Places, an affordable housing developer, is offering totally smokefree condominiums for sale in Long Beach.

Persons with chronic illnesses who live in all types of multi unit housing are entitled to reasonable accommodations so they can use and enjoy their units. That means protecting them from drifting tobacco smoke. The reasonable accommodation can be a move to another unit, but unless the new residents moving into units adjacent to the person receiving the accommodation are required not to smoke in their units, balconies and patios, the move is a worthless exercise.

(Esther Schiller is Executive Director of S.A.F.E. Smokefree Air For Everyone and director of the Smokefree Apartment House Registry, www.smokefreeapartments.org)



SUCCESS IS SPREADING

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The three cities that have declared secondhand smoke a nuisance are Calabasas (February 2006), Dublin (September 2006) and Emeryville (December 2006). It is important to note that these cities have other secondhand smoke provisions that offer additional protection to residents.

The policy approach that can provide the most protection to residents of multi-unit housing is to make apartment buildings smokefree or set aside a group of contiguous units as a non-smoking section. In May 2007, the city of Temecula became the first city that would prohibit smoking within a certain percentage of units in market rate multi-unit housing. This is an important first step that will hopefully build momentum for other cities around the state to prohibit smoking in multi-unit housing units. However, the Temecula policy is not a model policy, as it will only prohibit smoking in 25 percent of units and allows owners up to five years, and even up to eight years with possible extensions for non-senior housing, to comply with the ordinance.

The Center has developed a Matrix of Smokefree Housing Policies that contains detailed descriptions and analysis on these policies and all other smokefree housing policies that have been adopted in California.

Congratulations to all of these communities!

CALIFORNIANS SUPPORT SMOKEFREE HOUSING

The Center has commissioned three statewide surveys since 2004 to study public opinion regarding smoking in multi-unit housing. The surveys were conducted by Goodwin Simon Victoria Research and focused on attitudes about smokefree multi-unit housing among three different groups of Californians: apartment tenants statewide (May 2004), apartment owners and managers statewide (July 2005), and Latino renters statewide (August 2006).

Taken together, the results from these three polls demonstrate across the board willingness on the part of tenants, owners and managers to adopt regulations restricting smoking in apartment buildings. All three groups have a clear understanding of the dangers of breathing secondhand smoke and the two tenant surveys demonstrate that drifting secondhand smoke is a problem in apartments. It is particularly noteworthy that there was strong support in each survey for a law requiring smoke-free units in apartment buildings. The results from the three surveys are provided on this page to help you. These poll numbers are very positive and should be helpful in our continuing efforts to address the issue of secondhand smoke exposure in multi-unit housing in California.

Tenants have experienced secondhand smoke drifting into their apartment from a smoker in another unit or from a smoker outside:



Respondents agree that secondhand smoke is harmful to people who inhale it:



Survey respondents support limiting smoking in outdoor common areas of apartments, such as entryways, courtyards and around swimming pools:



All three surveys demonstrate support for a law requiring all apartment buildings in their city to offer non-smoking sections:



All three groups of respondents support the idea of evicting tenants who repeatedly violate no-smoking rules in their apartment buildings:



MAKING POLICY? TRYING TO ORGANIZE? WE CAN HELP.

Question: I have read about cities declaring secondhand smoke a nuisance, what are the benefits and drawbacks of working on a nuisance policy and is this something I should be working on in my community?

Answer: One policy option related to smokefree housing is declaring secondhand smoke a nuisance by adding drifting smoke to the definition of nuisance in existing code. Three communities in California have declared secondhand smoke a nuisance (Calabasas, Dublin and Emeryville). A nuisance is traditionally defined as unreasonable and substantial interference with use and enjoyment of property and common examples include extremely loud noise and foul odors. Declaring secondhand smoke a nuisance would allow an individual to take legal action in small claims court to protect themselves from secondhand smoke.

There are a couple of aspects to a nuisance ordinance that appeal to people. A nuisance law would allow individuals to protect themselves from secondhand smoke in all types of housing (such as condos) and to take action to protect themselves in communities where there are no stronger laws in place. Also, this policy may appeal to elected officials because it may not seem to be telling people what they can do in their home.

However, despite these benefits a nuisance policy is not the best way to protect residents of apartments from drifting secondhand smoke because it is such an unpopular idea and would likely not be used effectively. In polls commissioned by The Center and conducted by Goodwin Simon Victoria Research, the results show a majority of both apartment owners and tenants oppose this policy option. The polls found that 64% of tenants and 71% of owners oppose making secondhand smoke a nuisance. A second "paired" question in the tenant survey shows the reason for this opposition, as 61% of those surveyed chose the statement "This law is a bad idea because it would result in neighbors suing each other" to describe their viewpoint.

In order for the nuisance law to be effective, people must use it by taking legal action. Given that we know tenants already are unwilling to complain about smoke, this could mean that very few would pursue legal actions. A policy that is reliant on individuals suing each other is not as effective at protecting public health throughout a community as a policy that directly prohibits smoking in certain locations as a way to protect people from secondhand smoke exposure.

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Question: I am getting a lot of calls about secondhand smoke in apartments. But I know my city council is not yet ready. Should I work on voluntary policies or go for an ordinance?

Answer: It is unfortunate that residents of our communities are being exposed to secondhand smoke in their homes involuntarily, because they live in multi-unit housing.

Until recently, most of the work done to promote smoke-free units in housing in California has been aimed at getting property owners to voluntarily declare their units smokefree. Because of these efforts, many apartment buildings across the state voluntarily have gone partially or entirely smokefree. This work is hard, protracted, and often rewarded with victory and thousands of Californians have been protected by voluntary policies. Depending on your community, this may in fact be the right first step for you.

However, while, progress in securing voluntary policies is an important step in protecting renters, it can only make a minimal dent in the vastness of the problem. In addition, often the policies do not last if the building is sold or management changes. Many landlords, concerned about lawsuits and vacancies, are not persuaded that it is in their best interest to go smokefree voluntarily. Some, in fact, would rather not be the "bad guy" and are waiting for laws to be passed in their community.

And while voluntary policies can be very helpful in playing a role in the policy development continuum (allowing you and your coalition to grapple with the issues, develop educational resources, find allies, and work with all the stakeholders), voluntary policies do not institutionalize change in the manner in which a legislated policy can.

Therefore, at the appropriate time, the skills, understanding, contacts and resources that you and your coalition have developed in the voluntary phase can begin to be applied to passing local ordinances.

Our ultimate goal is to protect all non-smokers from secondhand smoke, therefore the ideal ordinance would make multi-unit buildings 100 percent non-smoking. After all, the U.S. Surgeon General in 2006 concluded that there is no risk-free level of exposure to secondhand smoke and ASHRAE concluded that at present, the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity.

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So should you work to pass a nuisance ordinance in your community? If your elected officials are pushing for a nuisance law, it is worth exploring this option. However, in this situation, encourage them to complement the nuisance law with other secondhand smoke provisions and not to pass it as a stand alone measure. This combination of policy options will offer protection to individuals from secondhand smoke without forcing them to sue their neighbor. Use their support and understanding of this issue to directly protect people. Alternately, if you are working in a community where you will need to fight for any smokefree housing ordinance we encourage you to use your time to work towards a secondhand smoke ordinance that will directly protect people, rather than one that will still require people to fight to protect themselves.



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However, because this issue is so emotional and complicated, it will be important for you to understand your community and judge the political will to determine whether or not completely smokefree units is possible. Ordinances can become real public fights. Those pursuing the ordinance option must be prepared to work with the opposition, and to be well organized to show strength. It is unlikely that passing a smokefree housing ordinance will be "easy" in any community.

Therefore it may be prudent for you to try to get a portion of the units in your community to be designated as non-smoking. Getting a policy on a percentage of units is not the ultimate goal, but it begins to overcome the huge resistance to allowing government to regulate smoking in homes.

After all on the way to becoming the state with the strongest restrictions on smoking, California's tobacco control activists made various short term compromises with our ultimate public health objectives to get our foot in the door. Securing separate smoking and non-smoking sections was a big compromise, but it was the best we could get in the late 1970s and early 80s. Later, 100 percent smokefree became the gold standard, and it spread from public places, to workplaces, restaurants and finally bars in 1998.

In some communities, we are still pursuing voluntary policies and in others, we are moving into the local ordinance phase. But it is important that you don't shy away from an ordinance fight. Taking on an ordinance to make even a small percentage of the units in your community smokefree is a critical step.

THE CENTER'S SMOKEFREE HOUSING MATERIALS

- **Matrix of Local Smokefree Housing Policies**
- **Smokefree Housing Policy Table**
- **Action Steps for Tenants and Landlords (available in Spanish and English)**
- **Smokefree Housing Resolution**
- **Smokefree Housing Radio Ad**
- **Smokefree Housing Poll Summaries and Reports**

These resources are available on the Center's web site: www.Center4TobaccoPolicy.org

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