
SMOKEFREE LIVING

IN APARTMENTS AND CONDOMINIUMS

A Newsletter for Residents, Owners, and Managers



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Tobacco Smoke a Toxic Air Contaminant: What Does This Mean for Apartment Owners?

The California Air Resources Board (ARB) identified secondhand tobacco smoke as a Toxic Air Contaminant in January, 2006. According to the ARB news release, secondhand smoke "is now formally identified as an airborne toxic substance that may cause and/or contribute to death or serious illness."

The report states that secondhand smoke causes 400 additional lung cancer deaths each year in California's non-smokers, 3,600 deadly heart attacks and 31,000 asthma attacks in children. In addition, the report concludes that secondhand smoke can increase the risk of breast cancer in pre-menopausal women.

Is Secondhand Smoke Now a Nuisance?

"California law requires landlords to keep their tenants safe from foreseeable harms. Because of recent lawsuits, responsible owners must now take heightened measures to ensure that their properties are safe, clean, well lighted and free from known dangers."

"Should smoking be in the same league as gates, common area lighting and good locking devices?"

In light of current scientific findings-probably. A nuisance is 'an act injurious to health, indecent or offensive to the senses, or that which interferes with the comfortable enjoyment of property by others.'"

(Attorney David Wasserman, San Francisco Apartment Magazine, 2006)

What does this mean for apartment owners? Attorney David Wasserman's article in the *San Francisco Apartment Magazine* ("Secondhand Smoke Now a Nuisance," July, 2006) suggests that, "Given the weight of the evidence supporting the harmful effect of secondhand smoke, courts should have no problem accepting the notion that secondhand smoke is a nuisance, and therefore allow evictions of tenants who cause their tobacco smoke to travel."

Wasserman states that in rent-controlled jurisdictions, it may not be possible for a landlord to unilaterally require no smoking for an existing tenant, but landlords may at least want to prohibit smoking in all common areas and consider prohibiting in-unit smoking for all new tenants. Visit www.smokefreeapartments.org for the complete article.

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Letters are welcome and will be reprinted depending on space.

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Kate MacGregor of the California Air Resources Board (ARB) describes how toxic tobacco smoke is. Liam Garland of the Housing Rights Center and Dr. Emery Jakab are in the background.



Esther Schiller, Director of the Smokefree Apartment House Registry, listens intently as Luz Soto of Cabrillo Economic Development Corporation explains the no smoking policy adopted recently by her housing agency.

Santa Monica Group Sponsors Forum on Smoke-Free Housing

“Getting the Drift? Protecting Apartment Residents from their Neighbor’s Secondhand Smoke” was the title of a community forum held in Santa Monica on February 28, 2007.

The forum was hosted by Kitty Felde of National Public Radio and sponsored by a group of Santa Monica residents who call themselves A.P.S.A.C. (Alliance for Protection from Secondhand Smoke in Apartments and Condominiums).

Panelists included Kate MacGregor, Air Pollution Specialist with the California Air Resources Board; Dr. Emery Jakab with the Los Angeles County Department of Public Health; Terrance Evans, a General Contractor; and Liam Garland, Esquire, Litigation Director of the Los Angeles-based Housing Rights Center. Luz Soto, Property and Asset Management Director of Cabrillo Economic Development Corporation was also a panelist along with Jack Nicholl of the Center for Tobacco Policy and Organizing.

The event was held at the Santa Monica Public Library and was videotaped. For further information, contact the Smokefree Apartment House Registry at 818/363-4220.

Surveys Show Apartment Owners, Managers, and Tenants Agree Secondhand Smoke is Harmful

Eighty-five percent of apartment owners, managers and tenants agreed in recent statewide surveys that secondhand smoke is harmful. Other survey findings: Nearly 60% of renters and 69% of owners/managers believe that secondhand smoke can drift from one apartment to another. In addition, 82% of apartment residents would prefer to live in a non-smoking building, or at least in the non-smoking section. Visit <http://www.californialung.org/thecenter> for the complete results of both surveys. (Source: Goodwin Simon Strategic Research surveys of 602 apartment residents in 2004 and 300 apartment owners/managers in 2005.)

Subsidized Residents Prefer Smoke-Free Housing

The Board of Directors of Cabrillo Economic Development Corporation, the largest provider of affordable housing in Ventura County, adopted a no-smoking policy at most of its managed rental developments in June, 2005. The policy prohibits smoking in units and common areas and within 20 feet of entrances to units and buildings. Existing tenants who smoked were permitted to continue to smoke in their units. However, the no-smoking policy applied to their guests. New properties occupied after September 2005 were provided as entirely non-smoking.

A survey conducted in March, 2007, (and funded by the University of California Los Angeles School of Public Health, Division of Cancer Prevention and Control Research), showed that 81% of survey respondents were aware of the no-smoking policy before participating in the survey. Of those who knew of the policy, 63.5% said that it had either “a large positive effect” or a “moderate positive effect on their living situation.” Almost 85% of respondents said the policy was being enforced either “very effectively” or “somewhat effectively.” Respondents had the opportunity to make suggestions for improving the implementation of the policy and 40 residents from various properties said they were willing to volunteer on programs to improve health in their rental communities.

In another survey funded by the Ventura County Public Health Tobacco Education Program conducted in 2006 with residents and “wait-listed” applicants of Many Mansions, 91% of both current residents and those on the “wait-list” agreed that “secondhand smoke is harmful to people who inhale it.” Many Mansions is an affordable Housing Provider in the City of Thousand Oaks.

Eighty-seven percent of residents and 92% of those on the “wait-list” stated that they do not allow smoking in their own apartments. In answer to the question, “Would you prefer to live in a completely non-smoking building including the individual apartments?”, 71% of residents and 65% of those on the “wait-list” said yes. The survey was conducted by Jamshid Damooei, Ph.D., professor of economics at California Lutheran University with the assistance of Daniel Jordan, Ph.D, a research psychologist with Ventura County Public Health. A copy of the complete survey report is available from the Smokefree Apartment House Registry.

Sacramento Encourages Smoke-Free Sections in Apartment Buildings

The Sacramento City Council is encouraging landlords of both market-rate and affordable housing to set aside at least 25% of their units as non-smoking. They did this by means of a Resolution adopted in December, 2006. The Resolution, which was prepared by Sacramento City’s Code Enforcement staff, was praised by city council members as the first step in a vigorous program to be conducted by city and county staff in collaboration with tobacco control advocacy groups. The program will inform owners and managers of the legality of smoke-free units and will provide information about “best practices” to adopt and implement no smoking policies.

In addition, the program will recognize owners and developers that designate at least 25% of their units as non-smoking by means of free advertising provided by Sacramento County’s Health Department. The resolution received the support of the Sacramento Rental Housing Association. Information and support for the Resolution was provided by California’s Clean Air Project (CCAP), RESPECT, (a project of the American Lung Association) and the Sacramento County Tobacco Education Program.

The Board of Supervisors for Sacramento County approved a similar resolution encouraging owners of multi-unit housing to designate at least 50% of their existing units as non-smoking. For more information and/or for copies of the resolutions, contact ccap@etr.org or respect@jps.net

U.S. Surgeon General Looks at Multi-Unit Housing

The U.S. Surgeon General's comprehensive scientific report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, released in July, 2006 states "there is no risk-free level of exposure to secondhand smoke."

Chapter 10, "Control of Secondhand Smoke Exposure" includes a section on multi-unit housing and points out that "as evidence regarding the health effects of secondhand smoke has accumulated, there has been growing concern about the impact of secondhand smoke exposure in multi-unit housing settings." The report acknowledges that "Secondhand smoke from one unit in a multi-unit housing complex can seep into an adjoining unit through shared air spaces or shared ventilation systems."

According to the U.S. Surgeon General's report, "Nonsmokers exposed to secondhand smoke at home or work increase their risk of developing heart disease by 25 to 30 percent and lung cancer by 20 to 30 percent...Even brief exposure to secondhand smoke has immediate adverse effects on the cardiovascular system and increases risk for heart disease and lung cancer."

Organizations that are providing information to property owners and developers about the legality of smoke-free housing, and encouraging implementation of smoking restrictions in multi-unit housing are complimented in the report. We are pleased that the Smokefree Apartment House Registry's effort to publicize smoke-free rentals through Web site listings is included in the Surgeon General's Report. The entire Surgeon General's report is available at <http://www.surgeongeneral.gov/library/secondhandsmoke/report/>

Fair Housing Laws and Secondhand Smoke Exposure (An Editorial)

People with disabilities and chronic illnesses, such as those with breathing problems or heart disease, have special rights under state and federal fair housing laws. Both the California Fair Employment and Housing Act (FEHA) and the Federal Housing Act of 1988 require that "reasonable accommodations" be made in rules, policies, practices, or services to ensure equal access to and enjoyment of a dwelling unit. (FEHA, Cal.Gov. Code Section 12955; Fair Housing Act, 42 U.S.C. Section 3604)

Currently, an apartment owner or manager might offer the person who is suffering from tobacco smoke infiltrating their unit from another unit a release from their lease with no penalty. An opportunity to move to a unit in another section of the building might also be offered. Is being released from the lease really a reasonable accommodation? It is if that is what the tenant is requesting. Is being offered another unit in another section of the building or complex a reasonable accommodation? The answer to that is NO. Moving is expensive and time consuming. Utilities need to be cancelled and reconnected. But those are not the reasons the accommodation is unreasonable.

There needs to be some future protection for the person who is being accommodated. Unless the new residents moving into adjacent units are required by lease or month-to-month contract not to smoke in their units, balconies and patios, the move is a worthless exercise. (That would include units next to, across from, under and over the person being accommodated.)

There is no "right to smoke," and there is no "privacy right" which includes people who smoke. In addition, people who smoke are not considered "disabled" or a "protected class." The U.S. Department of Housing and Urban Development, (HUD), has no rules which forbid the regulation of tobacco use in multi-unit housing. Requiring no smoking in units saves money in maintenance. Surveys show that marketing no-smoking units is also advantageous since more than 82% of apartment renters would prefer to live in a non-smoking unit, or at least in the non-smoking section of the building.

More Affordable Housing Providers Planning Smoke-Free Units

The California Tax Credit Allocation Committee (TCAC) in 2006 offered an incentive to applicants for tax credits, that is, a point to be added to their applications if they would provide nonsmoking buildings or sections of buildings in their projects. The non-smoking sections must consist of at least half the units within the building and those units must be contiguous.

Out of the seventy-one funded projects, forty-three utilized that point and will be either totally or partially non-smoking. According to William J. Pavão, Executive Director of TCAC, the smoke-free point “was among the single most frequently used categories.”

Registry Lists Vacancies of Over 280 Smoke-Free Owners

The Smokefree Apartment House Registry currently lists the vacancies of over 280 apartment owners and property management companies that have adopted no-smoking policies for their buildings, including the units. The Registry accepts listings from owners/managers who have adopted no-smoking policies for at least 50% of adjacent units in a building of 16 units or more. However, most owners/managers listed with the Registry designate all of their units as non-smoking. This can be done even in buildings regulated by rent control with new tenancies. Registry staff recommends that in order to protect residents from tobacco smoke, common areas inside and outside, plus balconies and patios should also be non-smoking. A designated place for smoking outdoors should be at least 20 to 25 feet from non-smoking areas.

Apartment owners can also advertise their non-smoking units in other venues such as Craig’s List (www.craigslist.com) and the Westside Rental Connection www.westsiderentals.com or www.allofLA.com

Housing Authorities Adopting No-Smoking Policies

The Rancho Mirage City Council, which serves as the Board of the Rancho Mirage Housing Authority, adopted a no-smoking policy in December, 2006, for any future senior residential complexes. In addition, existing senior complexes will become non-smoking, but seniors who smoke will be permitted to continue to smoke in their units until they move.

The Housing Authority of the City of Santa Barbara adopted a policy in November, 2005, which prohibits smoking in all 36 units of the Vista La Cumbre senior housing complex. The prohibition applies to smoking inside the units as well as on balconies. Residents are permitted to smoke in a designated area outside the building.

According to Jim Bergman of the Smoke-Free Environments Law Project’s Center for Social Gerontology in Michigan, there are now more than twelve housing authorities in Michigan that have adopted no-smoking policies for their buildings including the units. Maine has more than ten housing authorities that have adopted no-smoking policies for their buildings, including the units. Other states with housing authorities that have adopted similar policies include Nebraska, Florida, Washington, Wisconsin, Minnesota, Oregon and New Jersey. For more information visit <http://www.tcsf.org/sfelp/home.htm>

California Cities and Counties Begin to Regulate Smoking in Apartments

The city of Calabasas banned smoking in indoor and outdoor common areas of apartment buildings as part of a comprehensive ordinance adopted in March, 2006 which banned smoking in most public places. In addition, the ordinance declares that exposing others to secondhand smoke is a public nuisance.

The city of Dublin, California also defined tobacco smoke as a nuisance in 2006, and the city of Burbank, in its "public places" ordinance in 2007, stated that "the ... odors of secondhand smoke pose a nuisance and annoyance to non-smokers when in close proximity to people who are smoking."

Both Contra Costa County and San Mateo County in Northern California adopted ordinances in 2006 which require no smoking in all multi-unit residence common areas, except that a landlord may set aside part of the outdoor common area for smoking. The "smoking permitted" area must be at least 20 feet in all directions from non-smoking areas, and must not include areas used primarily by children.

According to the Riverside County Press Enterprise, the Temecula City Council voted in April, 2007, to ban smoking in 25% of each apartment complex or building of ten units or more in the city. City Attorney Peter Thorson, quoted in the newspaper, said that the issue had been thoroughly researched and, although the city would be prepared for litigation, it is not expected. Landlords will have five years to comply with non-smoking units for senior housing and up to eight years for other types of housing. Any violation of the ordinance is defined as a public nuisance.

The Thousand Oaks City Council passed a Resolution in March, 2006 requiring developers of all future publicly-assisted rental residential projects to designate 66% of non-supportive housing units as non-smoking and 50% of supportive housing units as non-smoking. The policy will be re-visited in two years.

VISIT US ON THE INTERNET — [HTTP://WWW.SMOKEFREEAPARTMENTS.ORG](http://www.smokefreeapartments.org)

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