



# Information Item

**Date: March 4, 2010**

To: Mayor and City Council

From: Marsha Jones Moutrie, City Attorney

Subject: Report On The Implementation And Enforcement Of The Ordinance Governing Residential Common Area Smoking And Update On Other Areas Of Second-Hand Smoke Regulation

## **Introduction**

On [January 19, 2010](#), Council directed staff to report back with an update on the implementation and effectiveness of the 2009 City ordinance that provided a remedy for smoking in common areas of multi-unit residential properties and to identify any enforcement or other issues that have arisen since the enactment of the ordinance.

## **Discussion**

The ordinance governing common area smoking at multi-unit residential properties became law in March 2009. At that time the City Attorney's Consumer Protection Unit conducted a public outreach campaign to increase awareness and compliance with the law. Staff issued a press release and helped publicize the law in the local news media. Staff met with affected local groups including the Apartment Association of Greater Los Angeles and Rent Control staff who helped publicize the law through the Board's citywide newsletter. The Consumer Protection Unit created a new web page with answers to common questions about the law and offered downloadable sample signs that owners are required to post in their common areas.

In the nearly one year since the common area ordinance was adopted, staff has received several dozen contacts from the public on the topic, mostly inquiries about the law's requirements, which staff has addressed. Staff has learned of some properties

where tenants have written letters to other tenants requesting compliance with the ordinance. To staff's knowledge a few local tenants have stated their intent to pursue Small Claims Court actions in response to violations of the ordinance, however staff is unable to determine how many such cases actually have been brought in Small Claims Court or the results of such cases. Bill Dawson, president of the Apartment Association of Greater Los Angeles, states that he is aware of a couple of problems that his members had in implementing the ordinance but that they were easily resolved. Dawson states that most owners and tenants seem to understand the law and want to comply. He knows of a few tenants who wrote demand letters to those smoking at their property but is unaware of any pursuing a case to Small Claims Court. Esther Schiller, a local anti-smoking activist, states that her group has received complaints of landlords failing to post required signs and she is concerned that some owners may not be aware of the law.

Rent Control Board staff has received approximately five to six inquiries per week during the past year about the issue of smoking in rental properties. Many of these callers want stronger anti-smoking laws. Some calls are from tenants who express frustration because they do not want to have to confront smoking tenants in order to lower their exposure to second-hand smoke. (The ordinance requires an informal attempt to resolve the situation before pursuing legal remedies.) Some tenants have complained to Rent Control staff that their landlords have not posted the required signs.

Rent Control staff plans to re-publicize the ordinance and its requirements in its April 2010 newsletter which will go out to all rental property owners in the City.

Given the relatively small number of complaints the City has received, and given the relatively comprehensive advance outreach that was done, staff believes that the ordinance has been well received and that overall compliance has been good. The upcoming newsletter from Rent Control will continue efforts to increase owners' awareness of their responsibilities under the law.

Federal Development In Residential Smoking Regulation: In July 2009 the U.S. Department of Housing and Urban Development issued a special Notice “strongly encourage[ing]” Public Housing Authorities to implement non-smoking policies “in some or all of their public housing units.” A copy of the HUD Notice is attached to this report as Attachment A.

Update On Santa Monica’s Outdoor Dining Area Smoking Ordinance: City Attorney staff recently conducted an investigation to assess compliance with the City’s 2007 ordinance that made business owners liable for allowing smoking in outdoor dining areas in certain situations and required the posting of no-smoking signs at all outdoor dining areas. The investigation included all known outdoor dining areas in the City that are located on City property (e.g., sidewalks). Staff observed that 24 of the 35 dining areas had the required signs; eleven did not. Staff will follow up with the latter group and will continue to investigate and work to increase compliance.

Implementation of Tobacco Retailer License Law: City Attorney staff is working with the Licensing Division and the Police Department to administer and enforce the City’s new Tobacco Retailer Licensing ordinance. That ordinance, adopted in 2009, is designed to help curb underage tobacco sales by funding local undercover sting operations at retail outlets that sell tobacco products. City Staff estimated that there are approximately 120 businesses in the City that sell tobacco products. After outreach efforts last year to educate local businesses about the law and its requirements, these businesses have now obtained the new local license. The Police Department will soon begin undercover inspections of these businesses. The City Attorney’s Office will prosecute underage-sales violators and will administer and enforce the other requirements of the licensing ordinance.

Potential Areas For Further Regulation Of Smoking In Multi-Unit Residential Properties in Santa Monica: Staff has identified several possible areas in which Council may

consider further restriction of second-hand smoke in rental properties in the City if it intends to increase the current level of protections. These areas would not impact the tenancy rights of existing tenants.

1. Designate and disclose law: As Staff discussed in its previous report in 2009, Council could consider adopting an ordinance like Oakland's recent enactment, requiring owners to survey, designate, and disclose the smoking status of each unit at a property. Such a rule would not impact the rights of any existing tenants. Owners would have to conduct a survey of the property and subsequently inform various people of the unit designations. A stronger measure would be to further require that units presently designated for smoking would lose that status when the current tenant moves out. This grandfathering provision would still protect the rights of existing tenants; but it would prevent smoking by future prospective tenants. If Council considers a designate-and-disclose law, other potential features are:

- a. Requiring owners to disclose to all potential renters or buyers the smoking status of the unit in question as well as the status for all units in the property;
- b. Requiring owners to inform all current occupants of the smoking status of all units in the property;
- c. Including condominiums as well as apartments (as the City has done with common areas); and
- d. Explicitly allowing owners – as permitted under current law – to change the designation of a unit from smoking to non-smoking when an occupant moves out.

2. Private balconies and patios: After the interiors of units, this area is likely the second most commonly requested area for restriction of smoking. It is seen as a way to reduce second-hand smoke entering the windows of non-smokers' units. If Council were to approach further restricting outdoor smoking at multi-unit properties, Council could consider the recommendation of the Technical Assistance Legal Center (TALC), the leading statewide agency in this

area, and require a smoke-free “buffer zone” within a certain distance (such as 25 feet) from the windows or doors of residential units. That approach might address the concerns of tenants who are getting second-hand smoke through their windows while excluding private outdoor areas that are far enough from other units so as to avoid exposure to smoke.

3. Declaration of existing rights of owners: Council could declare and publicize various existing rights of property owners to restrict smoking and to inform current and potential occupants of various information related to smoking at the property. By definition this would involve no change in tenants’ or owners’ rights; it might assuage the concerns of some owners who would like to curb second-hand smoke at their properties but are wary of violating local tenant protections.

4. Prohibition for future tenants: Council could consider restricting smoking inside rental units for future tenancies, leaving untouched the ability of current tenants to smoke inside their apartments. A similar idea is to prohibit smoking in all newly constructed residential units in the City, or some portion thereof.

**Attachment A:** HUD Notice Re Non-Smoking Policies In Public Housing

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**U.S. Department of Housing and Urban Development  
Office of Public and Indian Housing  
Office of Healthy Homes and Lead Hazard Control**

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**SPECIAL ATTENTION OF:**

Regional Directors; State and Area  
Coordinators; Public Housing Hub  
Directors; Program Center Coordinators;  
Troubled Agency Recovery Center Directors;  
Special Applications Center Director;  
Public Housing Agencies;  
Resident Management Corporations ;  
Healthy Homes Representatives

**NOTICE: PIH-2009- 21 (HA)**

Issued: July 17, 2009

Expires: July 31, 2010

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Cross Reference:  
24 CFR 903.7(b)(3)  
24 CFR 903.7(e)(1)

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Subject: Non-Smoking Policies in Public Housing

1. **Purpose.** This notice strongly encourages Public Housing Authorities (PHAs) to implement non-smoking policies in some or all of their public housing units. According to the American Lung Association, cigarette smoking is the number one cause of preventable disease in the United States. The elderly and young populations, as well as people with chronic illnesses, are especially vulnerable to the adverse effects of smoking. This concern was recently addressed by the Family Smoking Prevention and Tobacco Control Act, P.L. 111-31, signed by the President on June 22, 2009. Because Environmental Tobacco Smoke (ETS) can migrate between units in multifamily housing, causing respiratory illness, heart disease, cancer, and other adverse health effects in neighboring families, the Department is encouraging PHAs to adopt non-smoking policies. By reducing the public health risks associated with tobacco use, this notice will enhance the effectiveness of the Department's efforts to provide increased public health protection for residents of public housing. Smoking is also an important source of fires and fire-related deaths and injuries. Currently, there is no Departmental guidance on smoking in public housing.

2. **Applicability.** This notice applies to Public Housing.

3. **Background.** Secondhand smoke, which is also known as environmental tobacco smoke (ETS), is the smoke that comes from the burning end of a cigarette, pipe or cigar, and the smoke exhaled from the lungs of smokers. ETS is involuntarily inhaled by nonsmokers, and can cause or worsen adverse health effects, including cancer, respiratory infections and asthma. The 2006 Surgeon General's report on secondhand smoke identifies hundreds of chemicals in it that are known to be toxic. The report (*The Health Consequences of Involuntary Exposure to Secondhand Smoke*) is located at [www.cdc.gov/tobacco/data\\_statistics/sgr/index.htm](http://www.cdc.gov/tobacco/data_statistics/sgr/index.htm). Secondhand smoke causes almost 50,000 deaths in adult non-smokers in the United States each year, including approximately 3,400 from lung cancer and another 22,000 to 69,000 from heart disease.

Secondhand smoke exposure causes disease and premature death in children and adults who do not smoke according to the U.S. Environmental Protection Agency (EPA) [www.epa.gov/smokefree/healtheffects.html](http://www.epa.gov/smokefree/healtheffects.html).

There are over 1.2 million residents who reside in public housing. Residents between the ages of 0-17 represent 39 percent of public housing residents. Elderly residents over the age of 62 represent 15 percent of public housing residents. That accounts for at least 54 percent of public housing residents that could be at increased risk to the adverse effects of cigarette smoking. There are also a considerable number of residents with chronic diseases such as asthma and cardiovascular disease who are particularly vulnerable to the effects of ETS. Secondhand smoke lingers in the air hours after cigarettes have been extinguished and can migrate between units in multifamily buildings.

Based on data from the U.S. Fire Administration (USFA) of the Department of Homeland Security, there were an estimated 18,700 smoking-material fires in homes in 2006. These fires caused 700 civilian deaths (other than firefighters'), and 1,320 civilian injuries, and \$496 million in direct property damage [www.nfpa.org/assets/files/PDF/OS.Smoking.pdf](http://www.nfpa.org/assets/files/PDF/OS.Smoking.pdf). In multifamily buildings, smoking is the leading cause of fire deaths: 26 percent of fire deaths in 2005 [www.usfa.dhs.gov/downloads/pdf/publications/Residential\\_Structure\\_and\\_Building\\_Fires.pdf](http://www.usfa.dhs.gov/downloads/pdf/publications/Residential_Structure_and_Building_Fires.pdf).

4. **Policy Discretion**. PHAs are permitted and strongly encouraged to implement a non-smoking policy at their discretion, subject to state and local law. Some PHAs have established smoke-free buildings. Some PHAs have continued to allow current residents who smoke to continue to do so, but only in designated areas and only until lease renewal or a date established by the PHA. Some PHAs are prohibiting smoking for new residents. According to a state-funded anti-smoking group, the Smoke-Free Environment Law Project of the Center for Social Gerontology, there are over 112 PHAs and housing commissions across the country that have implemented non-smoking policies. PHAs should consult with their resident boards before adopting non-smoking policies at their projects.

5. **PHA Plans**. PHAs opting to implement a non-smoking policy should update their PHA plans. According to 24 CFR 903.7(e), their plan must include their statement of operation and management and the rules and standards that will apply to their projects when the PHA implements their non-smoking policy. PHAs are encouraged to revise their lease agreements to include the non-smoking provisions. If PHAs institute non-smoking policies, they should ensure that there is consistent application among all projects and buildings in their housing inventory in which non-smoking policies are being implemented.

6. **Indoor Air Quality (IAQ)**. According to the U.S. Green Building Council (USGBC), toxin-free building materials used in green buildings help combat indoor air pollution. Good IAQ includes minimizing indoor pollutants. As discussed above, ETS is known to be an indoor air pollutant; as a result it would be difficult for a PHA to achieve good IAQ in its buildings if residents are allowed to smoke, especially indoors. During construction or renovation of projects, PHAs should consider actions such as installing direct vent combustion equipment and fireplaces; providing for optimal, controlled, filtered ventilation and air sealing between living areas and garage or mechanical areas, and the use of paints and other materials that emit no or low levels of volatile chemicals (volatile organic compounds or VOCs). Since 65 percent of the public housing inventory was built prior to 1970, it would be hard for a PHA to implement retrofits that could improve IAQ significantly, unless renovation was scheduled. Also, if a PHA does conduct renovations to improve IAQ without also implementing a non-smoking policy, the IAQ benefits of the renovation would not be fully realized. A non-smoking policy is an excellent approach for those PHAs that are trying to achieve improved IAQ without the retrofit costs.

**7. Maintenance.** It is well known that turnover costs are increased when apartments are vacated by smokers. Additional paint to cover smoke stains, cleaning of the ducts, replacing stained window blinds, or replacing carpets that have been damaged by cigarettes can increase the cost to make a unit occupant ready. View the Sanford Maine Housing Authority case study at <http://www.smokefreeforme.org/landlord.php?page=Save+Money%2C%3Cbr%3ESave+Your+Building>.

**8. Smoking Cessation National Support.** Because tobacco smoking is an addictive behavior, PHAs that implement non-smoking policies should provide residents with information on local smoking cessation resources and programs. Local and state health departments are sources of information on smoking cessation; see the American Lung Association's (ALA's) Web page on State Tobacco Cessation Coverage [www.lungusa2.org/cessation2](http://www.lungusa2.org/cessation2) for information on cessation programs, both public and private, in all States and the District of Columbia. The National Cancer Institute's Smoking Quit Line can be called toll-free at 877-44U-QUIT (877-448-7848). Hearing- or speech-challenged individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339. PHAs that implement non-smoking policies should similarly be persistent in their efforts to support smoking cessation programs for residents, adapting their efforts as needed to local conditions.

**9. Further Information** For further information related to this notice, please contact Dina Elani, Director, Office of Public Housing Management and Occupancy Division at (202) 402-2071.

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