



Information Item

Date: August 6, 2009

To: Mayor and City Council

From: Marsha Jones Moutrie, City Attorney

Subject: Potential Requirement That Residential Units Be Designated As Smoking Or Non-Smoking and Update On Related Measures In Other California Cities

Introduction

On January 13, 2009, following adoption of the Ordinance to ban smoking in the common areas of multi-unit residential properties, Council directed staff to gather information about how the City might develop an additional ordinance to require designation of smoking and non-smoking units in multi-unit residential properties.

Discussion

California cities have addressed second-hand smoke in residential properties by adopting various ordinances. These typically prohibit smoking in common areas, as the City has done. One of the other most common features of these laws is to require that owners of the property designate certain units as smoking or non-smoking and then disclose that fact to potential renters (or, in the case of condominiums, potential buyers). In general, condominiums and apartment buildings are treated equally for this purpose.

Attachment "A" is a recently updated matrix describing the residential smoking laws of California cities as of May 26, 2009. Also included in the Attachment are documents from the cities of Oakland and Belmont describing their laws and procedures. All ten cities listed in the matrix require designation and disclosure of units' smoking status by landlords; four require that of condominium sellers. Staff has spoken with local representatives of the three cities with the most potentially relevant laws:

Oakland: In December 2007 Oakland became the first City in California to require that landlords and condominium sellers designate and disclose to potential renters and buyers the smoking status of units. A city representative stated that there have been no problems with compliance or enforcement of this rule. The disclosure paperwork required when renting or buying a unit apparently helps to reduce the number of smokers that live in the units. She also stated that about 85 percent of the apartments in Oakland are now non-smoking and more owners are finding ways to make their units smoke-free.

Calabasas: Their ordinance requires at least 80% of the units in all apartment buildings and condominiums to be permanently designated as non-smoking. Landlords will be required to submit a report to the City detailing the number and location of all smoking and non-smoking units. The ordinance is not in full effect until 2012, nor are the interim requirements being enforced yet by the city. Hence there is little information about the law's efficacy so far. The code enforcement office oversees this ordinance for Calabasas; however, landlords are expected to be the primary means of enforcement.

Belmont: Their ordinance states that new and renewed leases must state that a unit is designated as non-smoking; and that it is a material breach of the lease if there is any violation of the smoking regulation on the property. The ordinance first went into effect in January 2009. So far there is not much information about enforcement.

Staff has spoken with many owners and tenants in Santa Monica. Some owners have already designated their properties as non-smoking; or have done so with individual units as smoking tenants move out. Other owners have stated a desire to curb smoking in units but have been unable to do so where rent-controlled units are occupied by smoking tenants. Staff is not aware of any local owners having surveyed their properties and designating individual units within properties as smoking or non-smoking; or disclosing those facts to prospective renters or buyers.

Staff continues to receive complaints and questions from tenants and owners about the problem of second-hand smoke from the interior of adjacent units. Another frequent complaint is about drifting smoke from adjacent balconies and patios.

Council could consider adopting an ordinance like Oakland's, 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; and it could preserve the ability of future tenants to smoke in units that are designated for smoking. The impact on owners would entail the effort to conduct a survey of the property and to subsequently inform various people of the various 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 rent-controlled tenants; but it would prevent smoking by future prospective tenants.

If Council considers a designate-and-disclose law, potential features are:

1. 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.
2. Requiring owners to inform all current occupants of the smoking status of all units in the property.
3. Including condominiums as well as apartments as the City has done with common areas.
4. Explicitly allowing owners (as already allowed under current law) to change the designation of a unit from smoking to non-smoking when an occupant moves out.

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California Cities with Smoke-Free Housing Provisions (Disclosure and/or Units)

As of May 26, 2009

	Pop. (2008 est)	When adopted	COMMON AREAS		DISCLOSURE		Non-Smoking Units Required			SHS Nuisance Designation
			Indoor Areas	Outdoor Areas	by Landlords	by Condo Sellers	Existing	New	Provisions	
Belmont (San Mateo)	26,078	10/2007	✓	✓	✓	✓	100%	100%	Multi-story, incl condos, 1/9/09	✓
Novato (Marin)	52,737	4/2008	✓	✓	✓		50%	75%	10+units, 7/22/08	✓
Calabasas (Los Angeles)	23,725	1/2008	✓	✓	✓		80%	80%	1/1/2012	✓
Loma Linda (San Bernadino)	20,136	6/2008	✓	✓	✓		70%	70%	2+ units, 1/1/2012	✓
Dublin (Alameda)	46,934	12/2008	✓	✓	✓		50%/70%	50%/70%	16 units - 2010/2012	✓ 9/06
Oakland (Alameda)	420,183	12/2007	✓	✓	✓				12/2007	
Albany (Alameda)	16,877	6/2008	✓	✓	✓				6/2008	
Glendale (Los Angeles)	207,157	10/2008	✓	✓	✓					✓
Rohnert Park (Sonoma)	43,062	4/28/2009	✓	✓	✓		50%	75%	6/2011	✓
Martinez (Contra Costa)	36,144	5/6/2009	✓	✓	✓				2010	✓

For detailed matrices, go to: www.center4tobaccopolicy.org

Secondhand Smoke Exposure COMPLAINT FLOW CHART - BELMONT

Smoke from Neighbor's Unit Entering Your Unit

Write down where smoking is entering your home, when it is happening, and how it is affecting you and other members of your household. Put dates if you can. Belmont prohibits smoking in all apartments, condominiums, and townhouses that share at least one common floor or ceiling with another such unit. Then decide when it would be the best time to approach the neighbor, or if not feasible, the manager or landlord. Also, check with other neighbors to see if the smoke bothers them as well. Try to be as calm as possible when you approach the neighbor and manager.

You speak with neighbor and explain to him how the smoke is affecting you and the law that prohibits smoking in housing.

Neighbor agrees to work with you to figure out where he can smoke without bothering you.
Problem Solved

Neighbor is non-receptive and hostile or agrees to stop but does not or stops for awhile and then starts up

You speak with manager. Inform him that you believe the Belmont ordinance banning smoking in all apartments and condominiums is being violated. Have your notes with you and take notes as to his/her response.

If he agrees to take care of the problem, ask when you can expect him to get back to you on the outcome. If not resolved within a week or so, then

He says that he doesn't think it is his responsibility to enforce the law and you're on your own.

Manager says he'd like to convert the building to *non-smoking* but doesn't know how.

Contact:
City of Belmont
Code Enforcement
650.637.2968
Kirk Buckman

Refer him to:
American Lung Association,
510-893-5474

RESOURCES

For fact sheets on options for tenants, the disabled, and landlords, go to the Technical Assistance Legal Center's website at:
www.talc.phil.org

Oakland's Landlord Disclosure of Smoking Units/House Rules: *How to Be in Compliance*

1. Survey each unit to determine whether any residents smoke and which ones do not.
2. Designate which units are non-smoking and which are smoking. To ensure that the non-smoking units remain non-smoking, we recommend that you add a smoke-free lease addendum to their master lease if the tenant is willing.
3. Another opportunity to convert units to non-smoking is whenever a unit is vacated.
4. Identify smoking and non-smoking units on a floor plan of each floor identifying each unit as either smoking or non-smoking. (Colored dots like red for smoking and green for non-smoking.)
5. Review your house or community rules. We recommend that you add a and b which are covered by the new Oakland law(OMC 8.30):
 - a. Smoking is not allowed in all common indoor areas, including hallways, lobbies, stairways, laundry room, elevators, etc.
 - b. Smoking is not allowed in all common outdoor areas, including 25 feet from any indoor or outdoor area where smoking is prohibited, walkways, children's play areas, recreational areas, etc.
 - c. Smoking in the units -- that are not designated non-smoking -- will be allowed as long as the smoke does not constitute a nuisance to other residents. The landlord or his agent will determine whether the smoke incursions are both "substantial" and "unreasonable," and thereby interfering with the comfortable enjoyment of life or property.
6. If all of the units in the building are currently non-smoking, you may want to change the house/community rules to require that the entire building is non-smoking. However, attaching a new smoke-free lease addendum may provide a more secure legal standing should it be challenged. (Attached is a sample smoke-free lease addendum.)
7. All prospective tenants must be provided a copy of the **Smoking/Nonsmoking Unit Designation Map** of your building as well as a copy of the **house rules** that pertain to smoking.

The Bay Area Smoke-Free Housing can help you with signs and materials. Call us at (510) 893-5474

Sample **HOUSE RULES No Smoking ADDENDUM**

As per the City of Oakland's Municipal Code (OMC 8.30 Smoking Pollution Control) for apartments and condominiums:

- a. Smoking is not allowed in all common indoor areas, including hallways, lobbies, stairways, laundry room, elevators, etc.
- b. Smoking is not allowed in all common outdoor areas, including 25 feet from any indoor or outdoor area where smoking is prohibited, walkways, children's play areas, recreational areas, etc.

If smoking is allowed in your unit, please keep exterior doors and windows closed when smoking to minimize the smoke from migrating into the common areas and neighboring units.

Complaints about tobacco smoke migrating/seeping into common areas and/or other tenants' units should be made to the manager/owner promptly. Complaints should be as specific as possible and include the date, approximate time, location, source, and how it is entering the unit.

Management will respond to drifting smoke complaints within 10 working dates.

**Bay Area Smoke-Free Housing Project is a regional project of the
American Lung Association in California**

*This material was made possible by funds received from the
Tobacco Tax Health Protection Act of 1988--Proposition 99,*

Under Grant Number 05-45858 with the California Department of Health Services. Tobacco Control Section.

To all Oakland Residential Property Owners and Managers:

Effective Dec. 4, 2007, Oakland landlords must **disclose to potential renters** – prior to signing lease agreements – the following:

1. Whether the unit they are offering is designated smoking or non-smoking
2. Which units in the building are designated smoking and which are designated non-smoking
3. The building's Policy on drifting smoke complaints

Common Indoor and Outdoor Areas Smoke-Free Requirement: All common indoor and outdoor areas of apartments and condominiums should be smoke-free.

Protections for Condominium Buyers: Sellers are required to disclose to prospective buyers whether smoking is permitted in the unit for sale and the smoking policy for the residents of the condominium.

As of Jan. 1, 2006, secondhand tobacco smoke has been designated to be a "Toxic Air Contaminant" by the California Environmental Protection Agency/Air Resources Board.

The US Surgeon General's 2006 report on secondhand tobacco smoke states very clearly that there is "no safe level of exposure," and that it can "cause lung and other cancers as well as fatal heart attacks in otherwise healthy adults."

The report also identifies children, older adults, and persons with chronic disease as being even most vulnerable to the health hazards of secondhand smoke.

Oakland Municipal Code

Selected provisions pertaining to multi-housing From Chapter 3.8, "Smoking Pollution Control"

8.30.010 Definitions.

"Multi-housing complex" means any housing complex with two or more separate units.

"Multi-housing common area" means any common area of a multi-housing complex accessible to and usable by more than one residence, including but not limited to halls and paths, lobbies, laundry rooms, common cooking areas, outdoor dining areas, play areas, swimming pools, and parking lots.

8.30.050 Prohibition of Smoking in enclosed places.

B. Disclosure of Smoking Policy in New and Existing Multi-Housing:

1. All landlords in multi-housing complexes are required to disclose to prospective tenants whether smoking is permitted in the unit to be rented and, which units are designated smoking units and the smoking policy for the complex.
2. All sellers of condominium units are required to disclose to prospective buyers respectively whether smoking is permitted in the unit and the smoking policy for the complex. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.05)

8.30.055 Prohibition of smoking in unenclosed places.

Smoking shall be prohibited in the following unenclosed places:

- A. Service areas;
- B. Dining areas;
- C. Recreational areas, except in parking areas used for parking vehicles of persons accessing the recreational area;
- D. Multi-housing common areas, except that the landlord may designate a portion of the outdoor area of the premises as a smoking area as provided in subsection 1 below.
 1. A designated smoking area:
 - a. Must be located at least twenty-five (25) feet from any indoor area where smoking is prohibited;
 - b. Must not include and must be at least twenty-five (25) feet from outdoor areas primarily used by children, including, but not limited to, areas improved or designated for play or swimming;
 - c. Must be no more than twenty-five percent (25%) of the total outdoor area of the premises of the multi-housing complex;
 - d. Must have a clearly marked perimeter;
 - e. Must be identified by conspicuous signs; and

For more information, contact Barbara Killey at (510) 238-2257. The full text of the ordinance is posted on City's website: www.oaklandnet.com Direct link: <http://bpc.iserver.net/codes/oakland/> -- Chapter 8.30.
For quit smoking and secondhand smoke info, call the American Lung Association, 1-800- LUNG-USA

- f. Must not overlap with any area in which smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law. (Ord. 12837 § 4 (part), 2007)

8.30.060 Smoking policy requirements.

- A. Smoking shall not be permitted in places of employment and employers shall post “No Smoking” or “Smoke Free” signs in accordance with Section 8.30.090. Employers should promote smoking cessation programs for smoking employees and contact local health organizations for assistance and materials in this effort.
- B. Smoking outside of any enclosed place where smoking is prohibited shall occur at a minimum distance of twenty-five (25) feet from any building entrance, exit, window and air intake vent of the building, except that bars are exempted from the outside smoking requirements of this section, provided the smoke does not enter adjacent areas in which smoking is prohibited by law or by the owner, lessee, or licensee of the adjacent property.
- C. This provision shall not apply to exempted governmental and educational agencies with facilities located in the city. (Ord. 12837 § 4 (part), 2007; Ord. 12708 § 1 (part), 2005: prior code § 4-10.06)

8.30.070 Power to adopt more restrictive smoking policies.

Notwithstanding any other provisions of this chapter, any owner, operator, manager or employer or other person who controls any establishment or place of employment or multi-housing complex regulated by this chapter, may adopt policies relating to smoking which are more restrictive than those provided herein. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.07)

8.30.110 Violations and penalties.

- A. It is unlawful for any persons to smoke in any area where smoking is prohibited by the provisions of this chapter.
- B. Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100.00) for a first violation;
 - 2. A fine not exceeding two hundred dollars (\$200.00) for a second violation of this chapter within one year;
 - 3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of this chapter within one year. (Prior code § 4-10.11)

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