

SANTA MONICA RENT CONTROL BOARD

STAFF REPORT

TO: Commissioners

FROM: Michaelyn Jones, General Counsel

RE: [Proposed Regulation 9010 entitled "No Evictions for Smoking in Multi-Unit Common Areas"](#)

FOR BOARD MEETING OF: April 23, 2009

Introduction

During the Santa Monica Rent Control Board public meeting of February 12, 2009, the Board discussed the City's new smoking regulation prohibiting smoking in common areas of multi-unit residential properties. The Board directed legal counsel to draft a proposed regulation prohibiting use of a violation of the smoking regulation as grounds for eviction. At the Board's March 12, 2009 meeting, the Board voted to hold a public hearing on proposed Regulation 9010.

Santa Monica Municipal Code ("SMMC") section 4.44.010 defines multi-unit common area as: "Any indoor or outdoor area at a multi-unit residential property (including rental properties and condominiums) that is accessible to and usable by the occupant of more than one unit, including but not limited to halls, walkways, lobbies, laundry rooms, common cooking areas, outdoor dining areas, patios, play areas, swimming pools, gardens, and parking lots."

Further, SMMC section 4.44.040(a) states as the sole remedy a private right of action. Hence, violators are not subject to criminal penalties. And SMMC section 4.44.040(c)(1) expressly states that "Nothing in this section may be used as grounds to terminate a tenancy. Nothing in this section shall render smoking in Multi-Unit Common Areas a violation of law pursuant to any rental housing agreement." By inclusion of the foregoing language, the City has expressly stated that the intent of the ordinance is to not use violations as a ground for eviction. But prudence dictates that the Board adopt its own regulation prohibiting use of a violation as a ground for eviction.

Article XVIII of the City's Charter, the Rent Control Charter Amendment, states that just cause is required for any eviction from a controlled unit. (Section 1800.) Section 1806 enumerates seven (7) grounds for just-cause evictions, summarized as follows: (1) failure to pay rent; (2) material breach of a lease term; (3) committing a nuisance; (4) tenant conviction for using the unit or

allowing the unit to be used for an illegal purpose; (5) refusal to execute a written lease renewal or extension; (6) refusal of reasonable landlord access for repairs; and (7) unlawful subtenancy.

Section 1803(g) authorizes the Board to enact regulations to further the purposes of the Rent Control Charter Amendment. Under this authority, attached proposed Regulation 9010, "No Evictions for Smoking in Multi-Unit Common Areas", is presented to the Board for consideration. Regulation 9010 simply states that a violation of the City's newly adopted ordinance prohibiting smoking in the common areas of multi-unit residential properties shall not be used as grounds for an eviction. The proposed regulation is simple, unambiguous, and concise, leaving no room for doubt of the scope of its application.

In conclusion, and by way of clarification, Proposed Regulation 9010 only prohibits evictions for a violation of SMMC 4.44.040. It does not impact the existing just-cause eviction grounds in Section 1806.

Recommendation

After the public hearing, staff recommends the Board adopt Regulation 9010.