

# Becoming a Policy Wonk on Nonsmoking Housing Units Ordinances: Answers to Tough Questions from Opponents and Elected Officials

October 2008

In California, many cities and counties have addressed the issue of secondhand smoke exposure in multi-unit housing by passing ordinances which limit where people can smoke or by providing new tools to tenants so they can protect themselves from drifting tobacco smoke. These local ordinances have taken many forms, including declaring secondhand smoke a nuisance, requiring landlords to disclose the smoking policy for the apartments and creating smokefree common areas in apartments. However, the type of smokefree housing ordinance that best protects the health of tenants is an ordinance that requires landlords to set aside a certain percentage of nonsmoking units. This type of ordinance is also the most controversial and generates the most interest and opposition.

In the cities that have adopted ordinances to require landlords to designate nonsmoking units in multi-unit housing, advocates have faced significant opposition but have been able to demonstrate the need for this type of policy. Below are the major arguments and questions raised by opponents and elected officials about smokefree housing in general, as well as specific to policies that create nonsmoking units, and detailed responses to each concern.

## Are cities and counties allowed to regulate smoking in people's homes?

Yes, there is no constitutional right to smoke and there are no provisions in either state or federal law that prevents a city or county from restricting tenants from smoking in their apartment. Local governments already regulate other kinds of activities people can do in their homes and restricting smoking in apartments would be no different. As further evidence, the strong ordinances that prohibit smoking in units passed in Temecula, Calabasas, Belmont, Novato and Loma Linda have not been challenged in court.

## Aren't people opposed to local government telling tenants they can't smoke in their own apartment?

No, on the contrary, surveys show people strongly support a law requiring nonsmoking sections in apartments. Statewide scientific polls commissioned by the Center for Tobacco Policy & Organizing reveal that 69% of California renters (and 46% of renters who smoke) support a law requiring landlords to create nonsmoking units.<sup>1</sup> In addition, 66% of apartment owners and managers in California would support a law requiring the creation of nonsmoking units.<sup>2</sup> The polls also show that 82% of renters would prefer to live in an apartment complex where smoking is not allowed anywhere or where there are separate smoking and nonsmoking sections.<sup>3</sup> More recent data from the California Department of Public Health shows that 77% of California residents agree that apartment complexes should require half their rental units to be smokefree.<sup>4</sup>

## How will smokefree housing policies affect people who smoke who are low-income or have limited housing options, if they cannot smoke in the only place they can afford to live?

Smokefree housing policies do not prohibit people who smoke from living in a nonsmoking unit. The policies simply require that there be no smoking in that unit. Some housing advocates believe such policies discriminate against low income tenants who smoke, but the real discrimination is against low-income families who cannot escape exposure to deadly secondhand smoke and cannot find another place to live because of income, health, or other reasons.

## Is secondhand smoke exposure really harmful in multi-unit housing settings?

Yes, there is no doubt that secondhand smoke is harmful to people's health with the U.S. Surgeon General recently stating that there is no risk-free level of exposure to secondhand smoke.<sup>5</sup> Many other studies also show the harmful health effects of secondhand smoke. In a multi-unit housing setting, secondhand smoke does drift from neighboring units, neighboring patios and balconies and from outdoor common areas into nonsmokers apartment units through open windows, open doors and shared ventilation systems. Studies have shown that secondhand smoke can also enter neighboring apartments through openings for electrical wiring, light fixtures, plumbing, baseboards and ductwork.<sup>6</sup> A recent study conducted in a 4-story Santa Monica apartment building using an industry-standard device to measure small airborne particles that can penetrate deep into the lung showed that persons living in apartments near smokers can be exposed to potentially hazardous levels of secondhand smoke for 8-24 hours per day.<sup>7</sup>

## Shouldn't landlords just restrict smoking on their own with a voluntary policy instead of city and county governments getting involved in this issue?

It is legal for landlords to prohibit smoking in the apartments they manage and many landlords throughout the state have done so. However, these voluntary policies can only accomplish so much. These policies only impact a limited number of tenants and can be changed at any time, especially if ownership or management changes. City and county ordinances are effective for the entire multi-unit housing population and provide a more permanent protection. Moreover, these ordinances can offer new enforcement options to make the nonsmoking provisions easier to enforce than a voluntary policy. Finally, there are many tenants who are exposed to secondhand smoke and have talked to their landlords about creating nonsmoking units with no success. The next place for these people to turn to in order to find a way to protect their health is the local government. Cities and counties have a responsibility to protect the health of their residents and a smokefree housing ordinance falls under that responsibility.

## Why should condominiums be included in the ordinance? Shouldn't places that people actually own be exempted from the smoking restrictions?

The fact that you own your condominium does not protect you from drifting secondhand smoke. Many condominium owners have the same problems with drifting secondhand smoke that apartment tenants do. Cities and counties legally can prohibit smoking in condominiums in the same way that they can in apartments. Yet even though it is legal, some people believe that owning a condominium bestows more rights on the owner, than merely renting, and that owners should not be subject to smoking restrictions in their own home. However, condo owners who are exposed to secondhand smoke and are unable to live in their home without harming their health have a right to the enjoyment of their home. Condo owners can't move as easily as someone who rents, so the problem of escaping the continuing exposure to secondhand smoke can actually be more severe for a person who lives in a condo. If a city recognizes the importance of protecting people from drifting secondhand smoke in multi-unit housing, it is important that the protections apply to both people who rent and people who own.

## Isn't it unfair to tell people they can't smoke in their apartment if that wasn't the law when they moved in?

It is legal to prohibit tenants from smoking in the apartment in which they currently live; however, most of the cities that have passed an ordinance that require nonsmoking units include grandfathering for current tenants. This means that people who live in an apartment unit in the city before the law was passed would be able to continue smoking in their unit for as long as they currently live there, even if their unit has been declared nonsmoking. This provision may make it politically easier to get an ordinance adopted, but it can significantly reduce the protection from secondhand smoke exposure. If tenants who smoke are grandfathered in, then other tenants will continue to suffer the negative health effects of secondhand smoke exposure. It is perfectly fair to require that tenants stop smoking as soon as the law goes into effect if they live in a designated nonsmoking section of the apartment building or complex. Also, another option is to require them to stop smoking after a certain period of time such as six months. The goal of the law is to protect public health, not the ability for tenants to smoke in their apartment.

## If smoking is already prohibited in many public places and would now be prohibited in multi-unit housing, where are people who live in that housing going to go to smoke?

There is no question that the locations to smoke available in California are shrinking. This is a good thing from a public health perspective, but there are still plenty of places to smoke. Most local smokefree housing ordinances do not ban smoking in 100% of apartment units and these ordinances also either allow for or require the creation of a designated smoking area on the grounds of the housing complex. Creating a designated smoking area provides a place for people who live there and smoke to do so where the secondhand smoke does not drift into apartment units and encourages them to follow the law. In some cities with dense high rise housing there are no suitable outdoor areas for a designated smoking area. It is important for people in these cities to work together to determine a safe location where smokers would be able to smoke without that secondhand smoke harming others.

## How would this law be enforced?

There are many different ways for a smokefree housing law to be enforced and each city will likely have its own unique combination of enforcement options. Any smokefree housing law should include enforcement options for both the landlord, since they have responsibility for handling violations of the lease and disputes between tenants, and for tenants, because they need to have the ability to enforce the nonsmoking provisions if the landlord refuses to do so. Some options include requiring the nonsmoking language to be included in the lease, setting up a process whereby landlords may, but are not required, to evict a tenant who smokes in a nonsmoking unit, declaring secondhand smoke a nuisance and allowing for private enforcement of the law by the public. In addition, the police or other appropriate city staff can play a secondary, backup role in enforcement. They are not intended to be the primary enforcers, but they need to have the authority to enforce this law.

## What about the landlord, isn't a smokefree housing law going to be a burden?

Actually, a smokefree housing law will probably make their job easier. By requiring landlords to create nonsmoking units, it takes the burden off them of having to decide if they want to enact a voluntary nonsmoking policy. A smokefree housing ordinance would also give landlords tools to better resolve complaints about drifting secondhand smoke by providing new enforcement options.

Requiring nonsmoking units will also save apartment owners money. When a unit with a smoking tenant becomes vacant, it costs more and takes a longer time to clean and refurbish than it does a nonsmoking unit. When people smoke in apartment units, there is more damage to walls, carpets and draperies. Finally, creating nonsmoking units will also reduce the fire risk for landlords because cigarettes are the number one cause of residential fire deaths.<sup>8</sup>

## Shouldn't local communities wait for the California Legislature to take action on this issue?

No, local communities should take action now because they have the authority to protect tenants from secondhand smoke and state legislation can be a long process. In addition, the legislature could pass a law that would provide weak protections. In the 2008 legislative session, a smokefree housing bill, SB 1598, was introduced but later removed from consideration by the author, Senator Alex Padilla. As it was written, this bill would have permanently grandfathered all current tenants who smoke. This would have been worse than existing state law and demonstrates another reason why it is important for local communities to take action on this issue. If more cities and counties have strong smokefree housing laws, this can influence the legislature to write a stronger smokefree housing bill when the time comes for the legislature to act.

<sup>1</sup> The Center for Tobacco Policy & Organizing, American Lung Association of California, Survey of California Renters, August 2004, conducted by Goodwin Simon Victoria Research

<sup>2</sup> The Center for Tobacco Policy & Organizing, American Lung Association of California, Survey of California Apartment Owners and Managers, June 2005, conducted by Goodwin Simon Victoria Research

<sup>3</sup> The Center for Tobacco Policy & Organizing, American Lung Association of California, Survey of California Renters, August 2004, conducted by Goodwin Simon Victoria Research

<sup>4</sup> California Adult Tobacco Survey, 2007. Prepared by: California Department of Public Health, California Tobacco Control Program, March 2008.

<sup>5</sup> The health consequences of involuntary exposure to tobacco smoke: a report of the Surgeon General. – [Atlanta, GA]: U.S. Dept. of Health and Human Services, Centers for Disease Control and Prevention, Coordination Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, [2006]

<sup>6</sup> "Air Monitoring: Confirming the Risk" David Bohac, Center for Energy and Environment, presented at Smoke-Free California Conference, May 2006

<sup>7</sup> N. Klepeis (personal communication, September 29, 2008).

<sup>8</sup> U.S. Fire Administration, Behavioral Mitigation of Smoking Fires, February 2006