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# SMOKEFREE LIVING

## IN APARTMENTS AND CONDOMINIUMS

A Newsletter for Residents, Owners, and Managers

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### Newest Survey on Secondhand Smoke in Apartments

A survey of 600 California voters in November, 2008 by Goodwin Simon Victoria Research showed that Californians support many types of policies to protect people from exposure to secondhand smoke, including exposures in multi-unit housing. The survey found:

69% support a law to restrict smoking in outdoor common areas of apartments.

78% support a law requiring apartment buildings to offer non-smoking sections.

74% support requiring 50 percent of apartments to be non-smoking.

58% support requiring 75 percent of apartments to be non-smoking.

56% feel that a law requiring apartment buildings to offer non-smoking sections should apply to condominiums as well.

70% think that a person moving into an apartment should be told if the tenant next door smokes.

With regard to public housing, 64 percent of California voters agree that it is more important to protect low-income children and families who cannot move away from secondhand smoke exposure. Only 17 percent of voters agree that it is more important to protect tenants who smoke and cannot afford to move and who might be evicted if they smoke in their apartment should it be designated as non-smoking.

The survey was commissioned by the Center for Tobacco Policy and Organizing, a project of the American Lung Association of California. [www.Center4TobaccoPolicy.org](http://www.Center4TobaccoPolicy.org)

### Court Rules Secondhand Smoke a Public Nuisance in Outdoor Common Areas

California's Second District Court of Appeal has become the first court in the United States to rule an apartment tenant can sue her landlord for failing to restrict cigarette smoking in outdoor common areas such as the swimming pool, playground or outdoor eating areas. In 2006, when she was 5 years old, Melinda Birke sued the owners of the Oakwood Garden Apartments in Woodland Hills, where she lives, for creating a public nuisance in violation of California law by allowing smoking in those areas. The panel's groundbreaking decision unanimously reversed a trial court ruling that had dismissed Melinda's claim. The full text of the decision can be found at the following link: <http://www.courtinfo.ca.gov/opinions/documents/B203093.PDF>

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### Secondhand Smoke in a Rent Controlled Building

*A true story of survival*

Alicia (not her real name), has lived on the second floor of an 18 unit rent-controlled apartment building in West Los Angeles for 12 years. When people moved in next door, she couldn't help noticing that they used cigarettes frequently, both inside their unit, in spite of their 8-year-old child, and immediately outside her door. She also noticed that the stairs leading to the first floor were made of wood and that the cigarette butts discarded by her neighbors were not always totally extinguished.

On Alicia's first visit to her landlord to complain about the problem of drifting tobacco smoke, (lucky lady, she knew her landlord and how to reach him), his response was, "If I evict them, will you pay the rent that I will be losing?"

...cont'd on page 3

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## Glendale and Santa Monica Pass Housing Ordinances

In October, 2008, the city of Glendale, one of the largest cities in Los Angeles County, adopted an ordinance to regulate smoking in outdoor public areas, but included some regulations for apartments as well.

The Housing section of the ordinance requires: no smoking in common areas inside and outside of apartments. A portion of the outdoor area can be designated for smoking if it meets certain distance and size requirements. Also, landlords must inform prospective tenants where smoking and non-smoking units are located.

The ordinance also specifies that landlords have the right to make all units non-smoking including balconies and patios. Glendale has restrictions about evictions, but changed their eviction law to allow evictions for smoking in non-smoking areas.

On January 27, 2009, the city of Santa Monica, a city with a strict rent control law, adopted an ordinance which will require no smoking in indoor and outdoor common areas of apartments and condominiums. Landlords must post signs in these non-smoking areas, but will not be permitted to evict for non-compliance. However, any individual will be able to take legal action against a tenant or condo resident who does not comply with the ordinance. The legal action can be undertaken in Small Claims Court and can result in fines against the person who is smoking in a non-smoking area. In addition, the city council has asked staff to research "disclosure." This would be a requirement that the landlord notify prospective tenants where the smoking-permitted and non-smoking units are located.

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### NATIONAL APARTMENT ASSOCIATION FOCUSES ON SMOKE-FREE HOUSING

UNITS, the magazine of the National Apartment Association, featured a series of articles on the growing demand for smoke-free housing in their December, 2007 issue. Although the magazine was quickly sold out, a reprint of the articles is available at no charge from the Smokefree Apartment House Registry. Call or send an email to [smokefreeapartments@pacificnet.net](mailto:smokefreeapartments@pacificnet.net) and request "Clearing the Air: Industry Discusses Trend Toward Smoke-Free Housing."

## More About the Calabasas Ordinance

The Calabasas ordinance, which was passed in January, 2008, requires 80% of units to become non-smoking by 2012. The non-smoking units must be located adjacent to each other, and the no smoking requirement includes balconies and patios. For buildings in a complex, units which are smoking-permitted must be contained in as few buildings as possible. However, a landlord can establish a no smoking policy for entire buildings or an entire complex. The ordinance also requires a designated smoking-permitted area outside which meets certain conditions of size and distance. That requirement can be waived by the city manager if no appropriate space is available.

Residents who smoke must notify management if they wish to continue to smoke in their Calabasas apartment. Landlords are required to inform prospective tenants where the non-smoking and smoking-permitted units are located by means of a map or chart. That would include notification of those units where residents have given notice of their intention to continue to smoke.

Landlords also must provide leases to new tenants that include a clause stating whether smoking is prohibited or allowed in their units. The lease must state that it is a material breach of the lease to violate any law or rule regulating smoking while on the premises. It must also contain a clause stating that all lawful occupants of units are "third-party beneficiaries" of the no smoking rules. The landlord can evict for non-compliance with the no smoking rules, but is not required to do that. However, tenants who are smoking in a non-smoking unit or in a non-smoking area could be sued by other tenants who are affected by the smoke.

The Calabasas ordinance was supported by the California Apartment Association and has been used as a model for other California cities.

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10722 White Oak Avenue, #5, Granada Hills, CA 91344  
Phone: 818-363-4220 • FAX: 818-363-2260  
Editor: Esther Schiller; Associates: Marlene Gomez and Tamika Miles; Graphics: Nightwatch Graphics

*Letters are welcome and will be reprinted depending on space.*

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## Secondhand Smoke in a Rent Controlled Building *(...cont'd from page 1)*

Armed with a video camera, she filmed the still smoldering butts and visited all the other units to talk with the other tenants. Alicia has a chronic illness which was being made worse by the smoke and she found one other tenant with a chronic illness, also living next door to people who smoked.

On Alicia's second visit to her landlord, she showed him the video and the letter from her doctor which stated that because of her illness, she could not be exposed to any amount of tobacco smoke. The video also included pictures of the new neighbors smoking and flicking their ashes and their cigarettes onto the wooden stairs. The landlord agreed to require no smoking in any of the units or common areas or anywhere on the property. Alicia agreed that if the landlord needed to go to court for an eviction, she would accompany him and testify.

The new policy has been well enforced in spite of the fact that the on-site manager is a person who smokes. He knows what kind of cigarettes every tenant smokes so when butts are discovered in the building or on the premises, he can easily identify the offender. Best news of all, as soon as the no smoking signs went up in the building, all four vacant units were quickly rented. One more bit of information: The Los Angeles County Department of Environmental Health inspected Alicia's unit and required replacement of the rug because it had been saturated with third-hand smoke. Visit our website, [www.smokefreeapartments.org](http://www.smokefreeapartments.org) for more information about how to adopt a policy to make your building non-smoking.

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## Advertise No Smoking Units with Signs

A colorful sign, available from the Tobacco Education Clearinghouse of California, says: "FOR RENT NON-SMOKING APARTMENTS" on one side and "SE RENTAN APARTAMENTOS DONDE SE PROHIBE FUMAR" on the other. There is room to write in a phone number on the sign, and it is made of weather-resistant material with a metal stake for in-ground use. The cost is \$7.75. To order call 831/438-4822 x 103 or x 230 or 800/258-9090 x 103 or x 230 or visit [www.TobaccoFreeCatalog.org](http://www.TobaccoFreeCatalog.org) to download an order form. The catalogue number for the sign is J786.

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## Third-Hand Smoke: A New Concern

This is the smoke that remains in an area like a room or the inside of an automobile, after the cigarette has been extinguished. Secondhand smoke drifting into an apartment or condominium unit will settle on surfaces like walls, floors and furniture and can later outgas back into the room. It is especially dangerous for babies and children who are closer to surfaces like floors. According to Dr. Jonathan Winickoff, a pediatrician at the Dana-Farber/Harvard Cancer Center in Boston and author of a recent study on third-hand smoke published in the January, 2009 issue of PEDIATRICS, children are especially vulnerable to third hand smoke.

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## What is a Non-Smoking Apartment Building? We suggest the following....

**Gold Standard:** Smoking is not allowed anywhere on the property including the units, balconies and patios and indoor and outdoor common areas.

**Silver Standard:** Smoking is not allowed in units, balconies and patios and in indoor and outdoor common areas. However, there is a designated area for smoking outside which meets certain conditions such as: Must be located the greatest distance possible but at least 20 feet away from: (a.) A non-smoking unit including balconies and patios; (b.) Any outdoor area which is used by children or is used for recreation. (c.) Must be 40 square feet or less in total area; (d.) Must have a clearly marked perimeter; (e.) Must be identified by one or more conspicuously posted signs; and (f.) Must have at least one ash urn.

**Bronze Standard:** In a building of 16 units or more, smoking is allowed in 50% or fewer of units, including balconies and patios of non-smoking units. Also, non-smoking units are in a separate section of the building or complex. Smoking is not permitted outside except in a designated area. (See above.)

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## CA Cities Regulate Tobacco Smoke in Apartments

Ten California cities have now passed ordinances which require regulation of smoking in apartments. Six of those cities, (Calabasas, Loma Linda, and Temecula in Southern California and Belmont, Novato, and Dublin in Northern California) require no smoking within a certain percentage of rental units. The other cities that have passed housing ordinances are Glendale, Santa Monica, Albany and Oakland.

Oakland, a city with rent control, requires landlords and condominium owners to notify or disclose to incoming tenants or possible purchasers where smoking and non-smoking units are located. The landlord or owner must also provide information as to how complaints about smoking are regulated within a building or a complex.

Most of the ordinances grandfather existing tenants who smoke. The Belmont ordinance, the most comprehensive to date, requires no smoking in apartments and condominiums which share a floor or a ceiling with another unit. However, the Belmont ordinance is only enforced in response to complaints, so if a tenant's smoke is not bothering anyone, there would not be any enforcement action.

Most of the ordinances require no smoking in outdoor areas of apartments while Novato, Belmont, Albany and Santa Monica include condominiums as well as apartments. However, most of the ordinances allow a landlord or management to establish a smoking-permitted area outside when certain conditions are met. In addition, most of the ordinances identify tobacco smoke as a nuisance.

For specific information about the requirements of each city's ordinance, call the Smokefree Apartment House Registry at 818/363-4220, or visit each city's website. (More information about ordinances inside.)

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*If you own or manage a non-smoking apartment building, or if your condominium has adopted a no smoking policy (see page 3), please call or fax to list your vacancies at no charge with the Smokefree Apartment House Registry. Phone: 818/363-4220 or FAX: 818/363-2260.*

**Visit us on the Internet — <http://www.smokefreeapartments.org>**

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