

San Francisco Apartment Association
“Clear the Air Before You Rent”
A Right to Know Policy in Multi-Unit Buildings
A Case Study



A considerable body of research has shown that even brief exposure to secondhand smoke – which contains over 7,000 chemicals, at least 70 of which are cancer-causing – is dangerous. Secondhand smoke kills tens of thousands of Americans every year and causes life-threatening illnesses in thousands more. The U.S. Surgeon General has stated there is no safe level of exposure to secondhand smoke, and in 2006 the California Air Resources Board classified secondhand smoke as a “toxic air contaminant” that can lead to serious illness and death. The health effects of exposure to secondhand smoke (SHS) on children include low birthweight and lung problems in newborns; acute lower respiratory tract infections; middle ear infections; and chronic respiratory symptoms or problems,¹ including asthma in children who previously had no symptoms.² Pregnant women, the elderly, and those with chronic illnesses are particularly vulnerable to the effects of SHS, which can cause lung cancer in nonsmokers and increases the risk for heart disease, stroke and chronic lung problems.³ For people living in multi-unit housing units or apartments, it is common for SHS to travel into and out of open doors and windows, shared ventilation systems and walls, ceiling crawl spaces, and gaps around light fixtures, plumbing, electrical wiring, baseboards, and ductwork.

Whereas SHS is the smoke that comes from being in close proximity to cigarettes, a third type of tobacco-related health hazard has recently been identified. Thirdhand smoke is the toxic residue from tobacco smoke that remains on a variety of indoor surfaces, such as drapes, walls, carpets, dust, furniture, as well as clothes, hair and skin long after smoking has stopped. That residue, which includes heavy metals, carcinogens and even radioactive materials, builds up over time and is resistant to normal cleaning methods such as airing out rooms, opening windows, using fans, or only smoking in certain parts of a home. Anyone that inhales, ingests, or touches

1 U.S. Environmental Protection Agency. (1993). Fact Sheet: “Respiratory Health Effects of Passive Smoking.”

2" State of California Air Resources Board. (2005). Proposed identification of environmental tobacco smoke as a toxic air contaminant. Executive Summary.

3" U.S. Department of Health and Human Services. (2010). How tobacco smoke causes disease: The biology and behavioral basis for smoking-attributable disease. A report of the Surgeon General.

surfaces containing thirdhand smoke, including young children crawling or playing on the floor, is at risk of developing serious tobacco-related health problems.

In San Francisco, many long-term residents are allowed to smoke in their apartments. When new tenants object to being exposed to secondhand smoke in their apartment, the most common consequences are complaints to the landlords, conflict between neighbors, and broken leases.

For nearly 100 years, the nonprofit **San Francisco Apartment Association (SFAA)** has provided a variety of informational and advocacy services to San Francisco housing owners ranging from relevant local and state legislation, rent control, earthquake preparedness, and assistance with tenant screening for property management. SFAA staff find themselves counseling many landlords with questions about drifting smoke and how to mediate SHS-related complaints between neighbors. SFAA wanted to be able to competently address these types of concerns and ultimately reduce the number of SHS-related complaints. SFAA believed that, in a city where two-thirds of residents are renters and where so there is so much concern about limiting the effects of secondhand smoke, potential renters should have the right to know the location of designated smoking units/areas.

Community Action Model

In implementing its action, SFAA advocates utilized the Community Action Model (CAM), a process that builds on the strengths or capacity of a community to create change from within and mobilizes community members and agencies to change environmental factors promoting economic and environmental inequalities. CAM steps include:

Train participants to develop skills, increase knowledge and build capacity.

Do a community diagnosis to find the root causes of a community concern or issue and discovering resources to overcome it.

Choose an action to address the issue of concern. The action should be achievable, have the potential for sustainability, and compel change for the wellbeing of all.

Develop/implement an action plan which may include an outreach plan, media advocacy, developing and advocating for a model policy, presentations, and evaluation.

Enforce/maintain the action after it is successfully completed to maintain it over the long term with enforcement by appropriate bodies.

Under contract to San Francisco's Tobacco Free Coalition and in collaboration with Dolores Street Community Services, a tenants' rights advocacy organization, and the Department of Public Health (DPH), SFAA proposed to develop a Tobacco Smoke Free Disclosure Policy for multi-unit housing in San Francisco requiring landlords to disclose the location of smoking and non-smoking areas of their building prior to signing a lease with a prospective tenant. The collaboration between SFAA and Dolores Street Community Services combined the unique perspectives of two organizations that historically have not worked together. The expectation of each group was that such a policy would benefit both constituencies by reducing SHS-related complaints between tenants and owners, resulting in broken leases, adversarial relationships between tenants and landlords, and conflicts resulting in lawsuits.

SFAA hired a group of eight advocates with experience in health advocacy or property management to work on passing a citywide secondhand smoke disclosure policy. This was a

diverse group of four women and two men, representing African American, Latino and white racial/ethnic groups.

The advocates began by researching model disclosure policies and the types of policies that had been passed by other local jurisdictions. They learned that due to concerns nationally of many tenants and owners of multi-unit housing, including apartments and condominiums, about tobacco smoke that infiltrates into homes from a neighboring unit, many cities, housing authorities, and apartment building owners have taken steps to prevent or eliminate SHS from units. By November 2011 smokefree housing policies had been adopted in 54 communities in California alone. Three general types of policies have been passed in California: 1) city/county ordinances that require a certain percentage of units to be nonsmoking units, require landlords to disclose information about smoking policies and the location of smoking and nonsmoking units, and/or that declare SHS exposure a nuisance; 2) housing authority policies that require the creation of nonsmoking units in low-income, senior or other types of affordable housing; and 3) city/county resolutions encouraging landlords to designate a certain percentage of units to be nonsmoking units.⁴

The advocates also researched best practices and lessons learned from those who had worked on similar policies. The advice included: 1) language should be included to protect landlords from liability if a tenant violates the no smoking policy; 2) language should be added to safeguard against evicting tenants; and 3) possibly exempting certain buildings depending on the number of apartments in the building.

In their goal to draft and present an attainable policy, the advocates also reviewed feedback that had been received from an earlier draft policy that had been “shopped around” to stakeholders. The suggestions and potential obstacles that were identified include:

- A requirement to affix “no smoking” signs to every non-smoking unit in San Francisco would not be achievable.
- A requirement to maintain an updated map on every floor of every building showing non-smoking and smoking optional apartments was too impractical. While master lists could be updated, creating new floor plans as units turn over would be a barrier.
- Include a “hold harmless” clause that specifies an owner needs to disclose the locations of smoking and non-smoking areas in a building, but if a tenant is smoking and the owner does not know about it, the owner would not be held liable.

Continuing their research, the advocates surveyed 380 landlords throughout San Francisco about their experiences with SHS issues in apartments to determine the nature and scope of the issue.

Key findings among landlords are:

- Over half of landlords surveyed reported never having received a complaint about secondhand smoke.
- Two-thirds of landlords surveyed would support a new law to tell prospective tenants the location of units where smoking cigarettes or other tobacco products is allowed and where it is not allowed, while one-third would not support such a law.

⁴ The Center for Tobacco Policy & Organizing. (2011). Matrix of local smokefree housing policies.

At about the same time, Dolores Street Community Services (SFAA's project collaborator) surveyed 208 tenants to get a renter's perspective and experience about SHS in multi-unit housing. Key findings are:

- When asked why, as prospective tenants, they didn't ask if smoking was allowed, 49.3% said they "didn't think to ask."
- Over half of tenant respondents who indicated that a neighbor smoked reported that secondhand smoke did drift into their apartment. Of those, over 70% had not reported this to the landlord.
- 59% of survey respondents reported that they or a visitor had gone outside to smoke.
- 72% of tenants reported that they would want to know if the room they were moving into was smoke free, while 16% said they would not want to know, and 12% said they "don't care."
- 87% of tenants indicated at least some level of support for a disclosure law, and half indicated a high level of support.

The advocates also interviewed Rent Board Commission staff and landlord attorneys for third-party opinions on a smoking disclosure policy. They learned that there was general confusion between statewide legislation (SB 332) passed in 2011 that codifies a landlord's ability to prohibit smoking on a residential rental property and what a new citywide disclosure policy would mean for landlords and tenants in San Francisco. A second issue was concern that the proposed policy be clear it is written to serve as a warning of areas where tobacco smoke could feasibly be emanating from, not where it necessarily will come from. As such, the disclosure policy was written to be merely a disclosure of areas where smoking is allowed (ie a list of apartments that do not expressly prohibit smoking, rather than a list of people who smoke in the building.)

Taking into account the input received from surveys, interviews, and feedback about an earlier draft described above, the advocates drafted a disclosure policy that they believed was both politically achievable and balanced tenant protection and property owner liability, while moving towards the goal of healthier housing. The proposed policy would require that property owners with less than 100% smokefree rental properties must:

- Designate all units as "smokefree" or "smoking optional."
- Include in vacancy listings the unit designation as smokefree or smoking optional.
- Disclose in writing to all applicants who would be offered the apartment *prior* to entering into a new lease or rental agreement whether the vacant unit is designated as smokefree or smoking optional.
- Provide a list to any rental applicant who will be offered the apartment showing the designation of all areas that are smoking optional.
- Develop and maintain a master listing that shows the location of all smoking optional units.

The advocates believed the policy was achievable because state law already requires landlords to make several disclosures about their buildings. In addition, the smoking disclosure should ease landlord/tenant tension, tenants breaking leases due to SHS, and conflicts between neighbors. By far, the strength in their political strategy, was the collaboration between SFAA and Dolores Street – organizations both very active in housing policy though they are often on opposing

sides. Together, the two groups built consensus among landlords and tenants and then worked together to generate broad-based support for a policy that would benefit everyone.

The list of supporters that endorsed the policy was impressive. It included the tenants' rights community, Housing Right Committee, Just Cause, Delores Street and Mission SRO, along with SFAA, a local property management company, the Rent Board, and industry attorneys that represent landlords.

With proposed policy and endorsements in hand, the advocates approached a member on the Board of Supervisors who agreed to sponsor the policy. The policy was on November 19, 2012 before the Land Use and Economic Development Committee where it was approved and sent to the Board of Supervisors. The policy was passed unanimously by the full Board on January 15 2013.

This rare coalition of renters, landlords and the health department more than demonstrates the power of collaboration and compromise among historical adversaries. Its success in modeling the art of traditionally opposing interests successfully working together is restorative and many important lessons can be learned from it.

- The key to having a smoother process is working with both sides right from the beginning and helping everyone to air their concerns and begin to come to agreements.
- Use common sense rather than being overly political. Rather than working from an old paradigm – landlords vs. tenants – the proposed policy was a common sense piece of legislation that attempted not to be overly political and demonstrated benefits for tenants. The right to know is a basic principle and not too controversial.
- Expect to spend considerable time negotiating with constituents, listening, finding common ground, trade-offs. Some political capital was used to convince owners about what is achievable.

Tools

Model policy

Informational packet with FAQs and model policy