

## MAIN Points of Proposal

1. No outdoor smoking on Solano Avenue from San Pablo Avenue to the Berkeley border
2. No outdoor smoking on the block that contains Albany High School
3. No smoking in recreational areas such as parks and biking and walking trails or at city festivals such as Solano Stroll (already an alcohol-free event)
4. No smoking in indoor workplaces
5. A second proposal utilizes a market based approach to smokefree housing by requiring landlords to state their smoking policies on a central web site

I would like to ask the Albany city council to upgrade and modernize its smokefree ordinance. I believe that Albany last passed a smokefree ordinance in 1992. Since then the United States EPA, the California EPA, and the United States Surgeon General have all issued significant reports on the dangers of involuntary exposure to tobacco smoke. [http://www.cdc.gov/tobacco/data\\_statistics/Factsheets/SecondhandSmoke.htm](http://www.cdc.gov/tobacco/data_statistics/Factsheets/SecondhandSmoke.htm)

In 2006 the California Air Resources Board declared that ETS meets the definition of a toxic air contaminant and identified ETS as a toxic air contaminant without a threshold exposure level below which no significant adverse health effects are anticipated (no safe level). <http://www.arb.ca.gov/regact/ets2006/res0601.pdf>

California passed a strong law in the mid 1990s and in the last year or so many neighboring communities, including most recently Oakland, have passed upgraded ordinances. Please see the attached Excel spreadsheet which was provided to me by an employee of the American Lung Association. [http://www.insidebayarea.com/search/ci\\_6946531?IADID=Search-www.insidebayarea.com-www.insidebayarea.com](http://www.insidebayarea.com/search/ci_6946531?IADID=Search-www.insidebayarea.com-www.insidebayarea.com)

Berkeley is now considering a proposal put forth by Mayor Tom Bates which would prohibit smoking in the entire business district. <http://www.ci.berkeley.ca.us/citycouncil/2007citycouncil/packet/050807/2007-05-08%20Item%2044a%20Public%20Commons%20for%20Everyone%20Initiative%20%20-%20CM.pdf> Pages 2-3

Nothing in my first proposal is new. I am simply using the spreadsheet and a model ordinance which is provided by the Technical Assistance Legal Center (TALC). I have also attached a document which explains that there is no constitutional right to smoke. <http://www.phi.org/talc/>  
[http://talc.phlaw.org/pubs/publications.php?choice=new\\_browse&search=188](http://talc.phlaw.org/pubs/publications.php?choice=new_browse&search=188)  
[http://talc.phlaw.org/pdf\\_files/0051.pdf](http://talc.phlaw.org/pdf_files/0051.pdf)

## Proposal that smoking be prohibited in the following areas

- 1. Solano Avenue from San Pablo Avenue to the Berkeley border**
  - a. Recently a Solano Avenue shopkeeper told me that people stand at the bus stop and smoke and the smoke goes right into his establishment.
  - b. For part of Solano Avenue, the sidewalk is in Albany and the stores are in Berkeley, so right now Berkeley's 20 foot rule is not enforceable in that region.
- 2. No outdoor smoking on the block that contains Albany High School**
  - a. Most of the land is publicly owned and includes a children's playground area, tennis courts, basketball courts, a swimming pool, and a school. Similar areas should also be considered.
  - b. Portland/Key Route to Portland/Carmel to Carmel/Thousands Oaks to Key Route/Thousand Oaks
- 3. Outdoor areas**
  - a. No smoking in outdoor dining areas
  - b. No smoking within 20 feet of entranceways (10 feet for bars)
  - c. Outdoor areas of shopping malls
  - d. Parks and Public trails
  - e. Public gatherings such as Solano Stroll (already alcohol free) and "night out" which last took place this August
  - f. Areas near schools (500 feet at a minimum)
  - g. Children's playgrounds such as the Portland Avenue playground
  - h. Recreational areas such as the Portland Avenue tennis courts
  - i. Bus stops
  - j. Service lines, e.g., movie theaters, ATM machines, waiting for a cab
  - k. Parking lots
- 4. Workplaces**
  - a. All indoor workplaces that are not private residences. However daycare must be non-smoking at all times.
  - b. Reasonable distance outside workplaces (20-25 feet). Can walk past a workplace and smoke but cannot congregate (but on Solano Avenue this is superseded).
  - c. Nonsmoking hotel rooms percentage increased to 75%
  - d. No hookah bars
  - e. Vehicles
  - f. One person businesses and small businesses
  - g. Meeting and banquet rooms in hotels and motels
  - h. Employee break rooms
- 5. Other issues**
  - a. Definition of smoking to include all vegetables and weeds, etc.
  - b. Regulation of chewing tobacco in certain areas
  - c. Cigarette litter can get a ticket
  - d. Ban cigarette and tobacco vending machines
  - e. Zoning restrictions on smoke shops
  - f. Severability and non-relation clauses and signage requirement

### **Basis of smokefree housing proposal**

1. The right of nonsmokers to live safe, smokefree lives and to enjoy the quiet enjoyment of their own homes free of the intrusion of toxic tobacco smoke.
2. The desire of apartment owners and their organizations to utilize a market based approach to the fullest extent possible.

### **Each landlord would be required to do the following**

1. State his/her smoking policy on a central web site. This could work well for landlords as it can be an advertising tool.
2. Provide each tenant the property's smoking policy, including in which units smoking is allowed. Similar to Oakland.

#### **Additionally:**

1. Smoking in a nonsmoking unit or nonsmoking area (such as common indoor areas) is a lease violation
2. Smoking is a nuisance and there is a private right to action
3. Nonsmoking tenants cannot use another tenant's violation as an excuse for getting out of his/her lease.
4. A landlord cannot turn a nonsmoking unit into a smoking unit.

I also think it would be a great idea if those agencies that provide rental advertising would have a check box to indicate the smoking policy.

In my opinion if the rental public knew what the smoking policy was for available units, then market forces would lead to almost everyone being satisfied. Owners and managers of residential rental property would be free to set their smoking policies. I only suggest that the information be readily available to the public.

## Four categories of apartments

1. 100% smokefree
2. Transitioning to smokefree, but some units currently allow smoking. The smoking allowed units will go nonsmoking once the current tenants move out.
3. Smoking and nonsmoking floors or wings.
4. No restrictions on smoking

**NO ONE WOULD BE REQUIRED TO MOVE ON THE BASIS OF THE PROPOSED ORDINANCE.**

[http://talc.phlaw.org/pdf\\_files/0084.pdf](http://talc.phlaw.org/pdf_files/0084.pdf) TALC smokefree housing booklet

<http://smokefreeapartments.org/> useful web site

[http://www.smokefreeapartments.org/info\\_caa.html](http://www.smokefreeapartments.org/info_caa.html) CAA Smoke-Free Areas Rental Addendum, a valuable starting point for discussion

[http://www.smokefreeapartments.org/model\\_policy.html](http://www.smokefreeapartments.org/model_policy.html) similar addendum

<http://ccap.etr.org/index.cfm?fuseaction=resources.multiHousing>

### **Policy Statement 12: Smoke-Free Housing Choice California Apartment Association (CAA)**

CAA believes that owners and managers of residential rental property should be free to set smoking and non-smoking policies for their rental homes and communities. CAA believes that market forces are the best way to designate units and the common areas of the property for both smokers and non-smokers in residential rental housing so that all residents are able to use and enjoy their homes. CAA also believes that damage caused by tobacco smoking in the unit constitutes damage beyond reasonable normal wear and tear, and it justifies a deduction from the security deposit by the property owner to make repairs and to clean the unit.

**Smokefree proposal submitted by Ira Sharenow, Albany, California on September 21, 2007**

## **Smokefree rental landlord questionnaire and other details**

By Ira Sharenow

1. Location
2. Name of owner
3. Phone number
4. email address
5. Number of units
6. Number of floors
7. What is your smoking policy?
  - a. 100% smokefree
  - b. Planning on going smokefree but some current smoking units allow smoking until tenant moves out
  - c. Designated smoking and nonsmoking floors
  - d. No restrictions on smoking
8. Details
  - a. If you chose b in question 7, which units allow smoking?
  - b. If you chose c in question 7, which floors allow smoking?
9. What is your outdoor smoking policy?
  - a. No smoking on grounds
  - b. No smoking near windows
  - c. Smoking only in a designated area that is not near windows
  - d. No restrictions
  - e. Other. Specify.

This information would go on the city's web site. The information would also have to be provided to any prospective tenant.

The rental agreement must specify the smoking policy for the unit being rented and for the building as a whole.

A landlord who designates units as smokefree cannot go back and then allow smoking at some future date. Units can be made nonsmoking, but the first tenant in a newly nonsmoking unit, must be notified that s/he is the first.

A new owner cannot reverse the smokefree commitment of a previous owner.

Smoking is prohibited in indoor common areas such as hallways, Laundromats, underground parking, recreational rooms, and swimming pools..

Individuals would have a private right to action.

