

ADVISORY INFORMATION	
Date:	October 10, 2007
Subject:	Smoking Ban Consideration in Family Affordable Housing Program Units
District(s), Member(s):	All
Staff Prepared/Presented:	Beth Reetz, Manager, Housing and Redevelopment Authority, (651) 602-1278 Terri Smith, Assistant Manager, Housing and Redevelopment Authority, (651) 602-1187
Division/Department:	Community Development/Housing & Livable Communities

Issue

Should the Metropolitan Council regulate smoking in all Family Affordable Housing Program rental units.

Overview

The Freedom to Breathe (FTB) provisions in the Minnesota Clean Indoor Air Act (MCIAA) were signed into law by Governor Pawlenty on May 16, 2007. These provisions were added to protect employees and the public from the health hazards of second hand smoke. The FTB provisions are an expansion of the current Minnesota Clean Indoor Air Act.

Effective October 1, 2007, smoking became prohibited in virtually all indoor public places and indoor places of employment. This includes bars, office or industrial workplaces, retail stores, common areas of rental apartments, hotels and motels, public transportation, work vehicles, homes offices with one or more on-site employees, educational facilities, auditoriums, arenas and meeting rooms, daycare premises and health care facilities.

Although smoking is prohibited in indoor common areas of rental apartment buildings, state law does not regulate smoking within individual rented dwelling units. The law specifically excludes private places such as private homes and residences, and does not prohibit smoking outdoors, regardless of distance from building openings such as doors and windows. Property owners have the option of establishing and enforcing a more restrictive policy for the property, including individual units.

Smoking generally is a legal activity for those of legal age. However, smoking has adverse health effects on smokers as well as non-smokers exposed to second-hand smoke. Smoking also has economic consequences that are reflected in increased health care costs and other residual costs (*e.g.*, loss of work time or productivity) that are borne by individuals, businesses, employers (both private and public) and frequently the taxpayers.

Discussion

The following information reflects research conducted by Council staff and is intended to help frame discussion about regulating smoking in the Council’s Family Affordable Housing Program (FAHP) rental units.

The Council owns and manages 150 housing units on a scattered-site basis in 11 suburban cities throughout Anoka, Hennepin and Ramsey Counties. The FAHP units are all single family homes and townhomes surrounded by owner-occupied housing. The units are rented to eligible families under federal public housing program requirements.

HUD does not have a policy, by statute, regulation, handbook, or otherwise, that restricts landlords of public rental units from prohibiting smoking in common areas or in individual units. HUD concludes that smoke-free policies can be adopted in HUD-assisted housing, so long as the policies adhere to state and local laws.

While it is clear that second-hand smoke can have adverse effects, especially for children and persons with respiratory issues who are living in smoke-filled environments, and the cost of cleaning a smoker-occupied rental unit can be higher than the cost of cleaning a unit occupied by a non-smoker, smoking is a legal activity that, in this case, is a choice made by particular household members that is conducted in the confines of their home. Under the existing FAHP lease, families living in FAHP homes who cause damage, including any damage resulting from smoking, are responsible for paying the costs of fixing or replacing damaged FAHP property.

Council staff contacted other housing agencies including the St. Paul Public Housing Authority, the Minneapolis Public Housing Authority (MPHA), the Dakota County Community Development Agency, the St. Louis Park Housing and Redevelopment Authority and the Washington County Housing and Redevelopment Authority. All have considered adopting a smoke-free policy for their apartment buildings. None has considered adopting a smoke-free policy for their scattered-site programs due to inability to monitor and enforce. The MPHA has one smoke-free senior high-rise but indicated the smoke-free policy is difficult to enforce in that apartment building. Residents sign a lease addendum saying they will not smoke. Due to the difficulty of enforcement, the MPHA has now started asking the question on the application. The MPHA started lease termination process on one resident. However, rather than terminating the tenancy, the MPHA transferred the occupant to a smoking permitted building. The FAHP would not have the option of transferring a family to a unit where smoking is permitted. The Washington County HRA also implemented a smoke-free section of 5 units in a 40-unit development. None of the other housing agencies has implemented non-smoking policies and none are considering a non-smoking policy for their scattered-site units at this time for several reasons:

- A housing agency cannot reasonably monitor and enforce a non-smoking policy, particularly in single-family scattered-site housing units. When and under what circumstances might families be evicted for violating a smoking ban? What might constitute a violation of the smoking ban or a serious violation of the lease? If one member of the household violates the smoking ban, should the entire family be subject to eviction? What if a guest smokes?
- Implementing a non-smoking policy raises waiting list issues. Can the housing agency reasonably select applicant families from the waiting list with this kind of policy? Implementing a non-smoking policy can be very difficult, *e.g.*, an applicant who has quit smoking may subsequently begin smoking again after occupying a unit.
- Implementation of a non-smoking policy may raise issues with respect to waiting list preferences.
- There is a potential for issues with neighboring homeowners if cigarette butts are littered in the yard, driveway, street and in neighboring yards. The only complaint regarding smoking from a FAHP unit occurred when a neighboring homeowner was disturbed by a FAHP resident smoking outdoors and littering cigarette butts around the grounds.

FAHP staff also have concerns that, both from an administrative and a resource perspective, it would be practically impossible to implement a non-smoking policy and monitor compliance, especially since the Council's FAHP properties are scattered-site housing units across 11 cities in three counties. FAHP family members smoking outside FAHP units likely would raise issues with neighbors living in close proximity to the FAHP homes.

Adopting a policy that is difficult to monitor and enforce may adversely affect other administrative aspects of the Council's program. If the policy cannot reasonably be enforced, FAHP residents may assume other lease provisions also will not be enforced *e.g. pet restrictions, additional non-approved household members, etc.* Non-enforcement of the smoking regulation could cause tension with neighboring homeowners who are assured that residents are held accountable for complying with their leases.

There would be financial implications of implementing such a policy. Administrative costs would rise due to attempted monitoring and enforcement, the additional legal expense incurred to initiate an eviction against a violator of the policy, the potentially increased number of showings required before a successful lease up occurs to a non-smoker vs. a smoker and lost rent resulting from increased turnover time required to find a non-smoking applicant.

The Council's insurer for the FAHP units has told staff that the insurance premiums for the Council's FAHP units would not decrease if the Council were to regulate smoking in its units because enforcement would be very difficult or impossible given the scattered-site nature of the Council's FAHP homes.

Implementing a smoking ban in FAHP units would require amendments to the Council's HUD-approved Admissions and Continued Occupancy Policies (ACOP) as well as modifications to the Council's HUD-approved lease document. Modifications to the Council's standard FAHP lease document would require a 30-day public input process for families currently living in the Council's FAHP units. The ACOP is an attachment to the Public Housing Agency Plan. Although the ACOP can be changed without a public hearing, there is a requirement for a public hearing with the PHA Plan. The next hearing for the PHA Plan will be in August 2008 when the public will have the opportunity to comment on changes in policy, including a smoking ban.

In August 2004, the Community Development Committee considered whether to regulate smoking in the Council's FAHP units, but the Committee took no action and did not pursue the issue further.