

NEIL ABERCROMBIE
GOVERNOR



HAKIM OUANSAFI
EXECUTIVE DIRECTOR



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
HAWAII PUBLIC HOUSING AUTHORITY
1002 NORTH SCHOOL STREET
Honolulu, Hawaii 96817

BARBARA E. ARASHIRO
EXECUTIVE ASSISTANT

Statement of
Hakim Ouansafi
Hawaii Public Housing Authority
Before the

HOUSE COMMITTEE ON HOUSING

March 10, 2014 8:30 A.M.
Room 329, Hawaii State Capitol

In consideration of

Senate Bill 651, Senate Draft 2

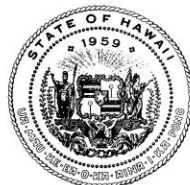
Relating to Health

Honorable Chair Hashem and Members of the House Committee on Housing, thank you for the opportunity to provide you with comments regarding Senate Bill (S.B.) 651, Senate Draft 2 (SD2), relating to health.

The Hawaii Public Housing Authority (HPHA) offers the following comments in regards to this measure, which will prohibit smoking in and around public housing projects and state low-income public housing projects.

For the past year and a half, the HPHA has been working with stakeholders on revising the relevant administrative rules, and a public hearing was held on February 28, 2014 to gather comments on the proposed administrative rule changes. This effort incorporated the input from tenants, the U.S. Department of Housing and Urban Development (HUD), the Hawaii State Department of Health, the Coalition for a Tobacco Free Hawaii, and the Attorney General's office to ensure compliance with all relevant regulations. Highlights of the proposed administrative rules allow the HPHA to designate smoking areas, evict tenants on the 4th violation (includes their guests), and provides for reasonable accommodations.

The HPHA appreciates the opportunity to provide the House Committee on Housing with the agency's comments regarding S.B. 651, SD2. We thank you very much for your dedicated support.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

HOUSE COMMITTEE ON HOUSING

SB651,SD2, RELATING TO HEALTH

**Testimony of Linda Rosen, M.D., M.P.H.
Director of Health**

**March 10, 2014
8:30am, Room 329**

1 **Department's Position:** The Department of Health (DOH) supports SB0651,SD2 which prohibits
2 smoking in and around public housing and state low-income projects under the jurisdiction of the
3 Hawaii Public Housing Authority (HPHA) and in and around elder or elderly households. The DOH
4 recommends inclusion of language to protect parking lots from becoming default smoking areas.

5 **Fiscal Implications:** None for DOH.

6 **Purpose and Justification:** SB0651,SD2 further amends Chapter 356D, Hawaii Revised Statutes
7 (HRS), to include sidewalks in the definition of "common areas." The DOH appreciates the inclusion of
8 sidewalks to protect pedestrians from involuntary exposure to secondhand smoke (SHS) and also
9 recommends language to prevent parking lots from becoming the default smoking area. The DOH
10 recognizes the scientific findings and recommendations of the United States Surgeon General regarding
11 the hazard of involuntary exposure to tobacco smoke by nonsmokers. Those findings disclose that: 1)
12 There is no safe level or amount of exposure to SHS, and breathing even a little amount can be
13 dangerous; 2) Children are more likely to have lung problems, ear infections, and severe asthma from
14 being around tobacco smoke; 3) Breathing SHS is a known cause of sudden infant death syndrome; 4)

1 SHS is a known human carcinogen (cancer-causing agent); and 5) Inhaling SHS causes lung cancer,
2 coronary heart disease, and strokes in nonsmoking adults.

3 Hawaii's current smoke-free workplace and public places law, Chapter 328J, HRS enacted in
4 2006, protects the public in enclosed and partially-enclosed areas, but does not cover and excludes
5 private residences. The federal Housing and Urban Development Authority actively supports and
6 encourages the creation of smoke-free residential public housing properties governed under that
7 authority.

8 To protect those who access their vehicles daily from exposure to SHS, the DOH recommends
9 including language to exempt parking lots from becoming designated smoking areas.

10 The DOH supports this measure to protect the residents of public housing by banning smoking
11 and supports SB0651,SD2 with amendments.

12 Thank you for the opportunity to testify.



To: The Honorable Mark J. Hashem, Chair, Committee on Housing
The Honorable Justin H. Woodson, Vice Chair, Committee on Housing
Members, House Committee on Housing
From: Tiffany Gourley, Policy & Advocacy Director
Date: March 7, 2014
Hrg: House Committee on Housing, Monday, March 10, 2014 at 8:30 a.m. in Room 329
Re: **Support and comments for SB 651 SD 2, Relating to Health**

Thank you for the opportunity to offer testimony in **support of the intent and offers comments** for SB 651 SD 2, which prohibits smoking in and around public housing under the jurisdiction of the Hawaii public housing authority (HPHA) and in and around elder or elderly households.

The Coalition for a Tobacco Free Hawaii (Coalition) is a program of the Hawaii Public Health Institute working to reduce tobacco use through education, policy and advocacy. The Coalition consists of over 100 member organizations and 2,000 advocates that work to create a healthy Hawaii through comprehensive tobacco prevention and control efforts. The Coalition also supports the public through its Smoke-Free Homes Initiative, designed to create smoke-free apartments and condos through voluntary policy adoption.

The Coalition recommends amending to prohibit designated smoking areas in parking lots.

For public health reasons, the Coalition recommends amending the proposed language in subsection (b) to prohibit designated smoking areas (DSAs) in parking lots. DSAs create a concentrated area of smoke. The majority of residents are required to walk through the parking lot to enter and exit the property. DSAs should be prohibited in parking lots to protect the majority of residents from being subjected to this high concentration of smoke. Consequently, this also protects persons smoking in DSAs from vehicular traffic.

The Coalition offers the following language:

(b) Notwithstanding subsection (a), the authority may designate one or more permissible smoking areas at least twenty feet away from any residential or other building, or any greater distance away as may ensure that the secondhand smoke does not infiltrate any dwelling unit, and not within a parking lot.

The U.S. Department of Housing and Urban Development encourages Public Housing Authorities to implement non-smoking policies.

Housing units can adopt their own rules to prohibit smoking. The U.S. Department of Housing and Urban Development (HUD) states that “PHAs are permitted and strongly encouraged to implement a non-smoking policy at their discretion, subject to state and local law.”¹ A 2007 letter from the Honolulu HUD office indicates that “[r]egulating smoking in public housing units

¹U.S. Department of Housing and Urban Development (2009). “Non-Smoking Policies in Public Housing” Notice. <http://www.hud.gov/offices/pih/publications/notices/09/pih2009-21.pdf>



or in common areas is a local decision. In addition, according to the Fair Housing and Equal Opportunity Civil Rights analyst, smokers are not a protected class under the Fair Housing Act.”

PHAs across the country have been implementing smoke-free policies and have developed enforcement processes whereby residents are given multiple notices prior to eviction. Just this month, the Houston Housing Authority, one of the largest housing authorities in the country, joined Seattle, Boston, San Antonio, Detroit, and 250 other PHAs to implement a smoke-free policy.²

During the 2012 session, a law was passed to prohibit smoking in public housing. The Governor vetoed the bill allowing the Hawaii Public Housing Authority (HPHA) a chance to implement an administrative policy. Since then, the Coalition and Department of Health have been working with the HPHA to develop a policy and assist with education and outreach to ensure a successful outcome, however more than eighteen months after the veto, we still do not have an official policy in place.

Secondhand smoke has killed 2.5 million Americans and should be eliminated.

Secondhand smoke is dangerous; the 50th Anniversary U.S. Surgeon General Report released on January 17, 2014 states that any level of exposure to secondhand smoke is dangerous and can be harmful and over 2.5 million people have died from secondhand smoke.³ The International Agency for Research on Cancer and the U.S. Environmental Protection Agency both note that environmental tobacco smoke (or secondhand smoke) is carcinogenic to humans. Secondhand smoke contains 7,000 identifiable chemicals, 69 of which are known or probable carcinogens.

The Coalition receives calls from residents who reside in public housing units and who have asthma and other health issues affected by secondhand smoke exposure. There is little assistance the Coalition can provide them. It is clear, however, that all residents—regardless if they have asthma, COPD or other health issues—are impacted by the hazards of secondhand smoke.

All families deserve to live free of second-hand smoke. The only way to ensure this is to prohibit smoking in units.

The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) adopted a position that states, “[a]t present, the only means of effectively eliminating health risks associated with indoor exposure is to ban smoking activity. . . No other engineering approaching, including current and advanced dilution ventilation or air cleaning technologies, have demonstrated or should be relied upon to control health risks from ETS [environmental tobacco smoke] exposure in spaces where smoking occurs.”

² <http://www.pr.com/press-release/539721>

³ U.S. Department of Health and Human Services. (2014). “The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General.” Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.



COALITION FOR A
TOBACCO-FREE HAWAII

Furthermore, although there have been eviction cases due to smoking violations, they have been rare. The goal is not to punish residents but to encourage residents to have a healthier home free from the dangers of secondhand smoke and to protect all residents.

Thank you for the opportunity to testify on this matter.

Tiffany L. Gourley, esq.
Policy and Advocacy Director

For Hearing Date: Monday, March 10, 2014, 8:30 a.m., House Conference Room 329

Testimony Submitted By: Daria A. Fand
Honolulu, Hawaii

To: House Committee on Housing
The Honorable Representative Mark Hashem, Chair
The Honorable Representative Justin Woodson, Vice Chair
Members of the House Committee on Housing

Subject: SB651 SD2, RELATING TO HEALTH

Position: Support, with Amendments

Honorable Committee Members:

Thank you for this opportunity to submit testimony for this very important measure, SB651 SD2.

Two basic facts need to be recognized upfront, to understand why a no-smoking law — and in particular, exacting language in this bill — are absolutely critical to the success, efficacy and sustainability of Hawaii Public Housing Authority's (HPHA's) no-smoking policy.

Fact #1: HPHA declared a smoking ban by edict in public housing in January of 2013. However, it is now over a year later and nothing has changed on properties, and de facto, there is absolutely zero protection or a system in place to deal with residents' exposures to secondhand smoke, violations, etc. No signage or Designated Smoking Areas (DSA's) exist. Nothing that was promised to residents and this Legislative body has been delivered.

Fact #2: During this time of supposed "implementation", HPHA amended their original rules to capitulate to a handful of angry, litigious smoking residents, as well as a vocal minority of smokers dominating the Resident Advisory Board (RAB) -- an INACTIVE resident body of community leaders too small to even have a quorum, and therefore not representative of the resident population at-large. Giving in to this minority opposition to the no-smoking policy, HPHA amended its draft Administrative Rules to fundamentally compromise their safety provisions and enforceability, providing major concessions to smokers at the expense of non-smokers. These rules — which include the allowance of "exceptions" for smokers to smoke in their units by doctor's note — undermine the basic premise of a no-smoking policy, as well as distort the intent of such types of accommodations under Fair Housing law. This is just one example of the corrupting amendments that were adopted, which HPHA did not even initially intend themselves. None of these fatal flaws made in the policy are endorsed by national smoke-free models or by policy educators/advocates — and **ALL OF THEM WILL BE PRECLUDED BY THE PASSAGE OF THIS BILL INTO LAW. WHAT THIS**

MEANS IS THAT HPHA'S CURRENT ADMIN RULES ARE INEVITABLY GOING TO REQUIRE FUNDAMENTAL REVISION, with NECESSARY CHANGES ON MAJOR ISSUES OF IMPORT, TO CORRECT THEIR MISSTEPS IN THE RULE-MAKING THEY'VE DONE SO FAR. HPHA itself is aware that these bill provisions will over-ride their own bad regulations. [Please see accompanying document of current HPHA Admin Rules with objections, as reference.]

How do these facts relate to the measure at hand? Answer: HPHA can't be trusted to put in place regulations that abide by recognized standards, if left to their own initiative. Therefore, anything indispensable to a sound, viable no-smoking policy should be spelled out in the letter of the law, to ensure incorruptible protections and accountability for all administrations to come.

And, since rules must be changed regardless — let's do this law right!

The amendments I'm strongly urging would provide such INDISPENSABLE, UNCOMPROMISING protections and accountability, as nationally-recommended. Please consult them in my submission of **MY ATTACHED REDLINED DRAFT BILL PROPOSAL FOR SB651 SD2 HD1**. Bear in mind that without these vital provisions, the no-smoking policy will easily degenerate in practice, HPHA will NOT initiate them, and thus these seeming "details" constitute the difference between success and failure. The points are summarized as follows:

SECTION 1 (b):

-- **Properly equip designated smoking areas where they exist: proposed subsections (1) and (2)**, respectively, mandate needed identifying signage for DSA's and litter-preventive receptacles at their locations. HPHA has resisted this language, even though they have agreed with the concept of DSA's, where necessary. If they're serious about establishing these areas on campuses where warranted, why would they try to evade such common-sense and responsible measures? This is standard operating practice for Mainland Public Housing Authorities who have gone smoke-free; these amenities can be modest and relatively economical. HPHA should be held by law to these basic requirements, where applicable. Doing otherwise would be unacceptable practice.

-- **General note about DSA's:** as DSA's are noted by experts to increase compliance, do not add restrictive language about where to locate such sites on a property (such as "not in a parking lot.") With all due respect to agencies concerned about the concentration of SHS in parking lots, there is nothing inherently better about one location or another, and in fact, parking lots may be ideal locations because they are the furthest away from buildings, which would minimize drifting smoke into dwellings (the priority!) In some cases, prohibiting DSA's in certain areas may preclude some properties from having them, and that would be detrimental to compliance, especially as a transitional option for smokers when the policy is new. It all depends on property layout, so DSA placement should be handled on a case-by-case project basis. **[Please see accompanying document of authoritative commentary supporting DSA's.]**

SECTION 1 (c):

-- THE IMPORTANCE OF "NO-SMOKING" SIGNAGE AS VISUAL REMINDERS TO RESIDENTS CAN'T BE OVERESTIMATED AS A TOOL FOR COMPLIANCE. As Serena Chen, Regional Advocacy Director with the American Lung Association in California states, "Signage is the first line of defense." There should be absolutely no compromising on this, as they are a tactic unanimously espoused by policy educators. **Also, public housing should enjoy an equivalent standard of existing "No-smoking" HRS language for smoke-free public places, as follows:**

§328J-9 Signs. Clearly legible signs that include the words "Smoking Prohibited by Law" with letters of not less than one inch in height or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted in and at the entrance to every place open to the public and place of employment where smoking is prohibited by this chapter by the owner, manager, or other person in control of that place.

My draft adapts this HRS language for purposes of this bill, achieving statutory, as well as "best practices" parity and consistency.

-- Strike superfluous language at the end of this subsection in the bill to just read "for the purpose of conspicuous notice", for improved emphasis.

I hope this Committee will adopt the amendments that I've recommended here, as a corrective device for all the deviant rule-making HPHA has conducted to date, and placing additional safeguards into law — none of which present defensible burdens to HPHA -- that would leave public housing residents vulnerable to HPHA negligence otherwise.

Thank you.

**COMMENTARY IN SUPPORT OF DESIGNATED SMOKING AREAS IN
PUBLIC HOUSING**

Excerpts from "Request for Information on Adopting Smoke-Free Policies in PHAs and
Multifamily Housing", HUD call for testimony, 2013

(from Providence Housing Authority, the National Center for Healthy Housing, and
ChangeLab Solutions).

Consensus:

**Establish AT LEAST a 25-foot smoke-free buffer around buildings (25 feet being
the minimally-effective distance)**

- **Custom approach designated areas: do not apply a one-size-fits-all policy**
(standards for office buildings should not apply, since they have more limited
entrances/windows)
- **Unilateral application of distance standard or expectation that residents go off-
premises in a campus-wide ban can increase the likelihood that residents will
smoke in their units**

*Matthew Moore, JD, MPH, Staff Attorney, ChangeLab Solutions; specializing in legal
issues involving tobacco product use, exposure to secondhand smoke, and in
particular, multi-unit housing (telephone consultation):*

-- As we know, there are PHAs that DO NOT have designated smoking areas;
HOWEVER these are usually in rural areas with very small properties/populations; for
instance, if you have a small property in a small town where there's a park across the
street, you don't need to make a smoking area on-campus; however, within urban areas
and greater density of smokers, the designated areas become more critical to compliance
with the policy

-- The more smokers on a property, the more important it is to have a designated area

-- Designated areas are especially important when a policy is first being implemented, to
help transition residents

*Anne Pearson, JD, MA, Vice President of Programs, managing ChangeLab Solutions'
tobacco control program (<http://www.regulations.gov#!documentDetail;D=HUD-2012-0103-0096>):*

From page 3, "i. *Where smoking Is prohibited*":

Research shows that levels of SHS exposure outdoors can reach levels attained indoors

depending on the direction and amount of wind, and the number and proximity of smokers. [footnote] To escape SHS exposure in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke — about the width of a two-lane road. [footnote] Therefore, outdoor smoke-free "buffer zones" should extend at least 25 feet from any doorway, window, or opening into an enclosed area where smoking is prohibited, *as well as* any unenclosed area primarily used by children or improved to facilitate physical activity (*e.g.*, playgrounds, tennis courts, swimming pools, school campuses). [footnote] Buffer zone perimeters should be clearly marked, with conspicuous signage, to help prevent confusion and ensure consistent enforcement.

From page 3-4, "iii. *Designated Smoking Areas and Additional Support*":

Recognizing that residents of subsidized housing have fewer housing choices due to limited income, we recommend providing a designated smoking area on the premises to facilitate compliance with the smoke-free policy and reduce housing instability. **In our work with communities throughout California, landlords and property managers have consistently noted that providing designated smoking areas is instrumental in their efforts to seek compliance with smoke-free policies from tenants who smoke. [emphasis mine]**

Any designated smoking area should be located beyond the buffer zone described above, far enough away from any windows or doors that individuals in nonsmoking areas will not be exposed to the drifting smoke. Outdoor designated smoking areas must also be accessible to persons with disabilities. [footnote]

Melissa Sanzaro, Special Projects Officer, Providence Housing Authority
(<http://www.regulations.gov/#!documentDetail;D=HUD-2012-0103-0012>)

Establishing Designated Smoking Areas was a key element in the implementation of the Smoke-Free policy. While we encouraged smokers to seek help quitting with our smoking cessation program, it was also important to understand that not all smokers would seek help. For this reason having Designated Smoking Areas (DSA) was imperative to fulfill the main goal of having a Smoke Free policy which was not to expose non-smokers to the danger of second hand smoke.

Jane Malone, Policy Director, National Center for Healthy Housing [in conjunction with Rebecca Morley, Executive Director, former policy analyst for HUD]
(<http://www.regulations.gov/#!documentDetail;D=HUD-2012-0103-0100>)

Smoke-free policies that prohibit smoking inside the rental units and common areas should factor in alternatives for smokers who may not quit immediately. Property-wide bans could exempt smoking in cars parked in a parking lot or other land owned by the

PHA. Policies can permit smoking outside in areas a reasonable number of feet away from a door, window or other opening. The layout of dwellings in the property may warrant a custom approach rather than applying one-size-fits-all formulae (e.g. 25 feet) that have been devised for office buildings with a very limited number of entrances. Unilateral application of a distance standard can result in increasing the likelihood that residents will smoke inside their rental units. For example, where a large PHA complex has multiple separate buildings and grass and trees around each building, the designation of areas somewhat near the buildings should be considered, as opposed to expecting a smoker to walk off-campus to smoke. A western US public housing authority (PHA) instituted a broad smoking ban on all property owned by the PHA, including all common areas, yards and parking lots. This broad ban may have had the unintended consequence of increasing exposure to secondhand smoke within the apartment. The following anecdote describes what happened to one family:

Jo had a small baby, and didn't want to hold the baby while she smoked, and didn't want to leave the baby alone in the apartment while she walked far away to have a cigarette. Before the enactment of a smoke-free policy, Jo would walk just outside her apartment door to smoke -- which kept the smoke away from her child and didn't affect any of the other neighbors. After the policy, Jo would sometimes smoke inside her apartment, since she knew she was not likely to be caught. A child-advocacy worker in her community became very concerned about children's health after the smoking ban was implemented, because many parent/residents were much more likely to smoke inside their units and the children were more exposed to smoke than they had been before the smoking ban.

**DRAFT PROPOSAL
SUBMITTED BY: DARIA FAND**

S.B. NO. 651
S.D. 2
H.D. 1

THE SENATE

TWENTY-SEVENTH LEGISLATURE,
2014
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 356D, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"§356D- Prohibition on smoking in and around public housing; designated smoking areas. (a) Smoking shall be prohibited in any public housing project, elder or elderly household, as defined in section 356D-1, or state low-income housing project, as defined in section 356D-51, within:

- (1) Each individual housing unit;
- (2) All common areas;
- (3) Community facilities; and
- (4) Twenty feet from each individual building of the public housing project, and from any entrance,

exit, window, and ventilation intake that serves an enclosed or partially enclosed area.

(b) Notwithstanding subsection (a), the authority may designate one or more permissible smoking areas at least twenty feet away from any residential or other building, or any greater distance away as may ensure that the secondhand smoke does not infiltrate any dwelling unit.

(1) The authority shall place and maintain clearly visible identifying signage at the locations of any designated smoking areas where they exist.

(2) The authority shall place and maintain receptacles for the disposal of cigarette litter at the locations of any designated smoking areas where they exist.

(c) The authority shall place and maintain "No smoking" signage at all entrances and exits of the property. Clearly legible signs that include the words "Smoking Prohibited by Law" with letters of not less than one inch in height or the international "Non Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be posted in or at any main entryway or face of each individual building on the property, and at

any other appropriate location. The authority may display additional "No smoking" signage at residential and community facilities at their entrances and exits, offices, and in or at enclosed, partially enclosed, or open common areas [~~where conspicuous notice is deemed necessary or appropriate by the authority.~~] for the purpose of conspicuous notice.

(d) For purposes of this section:

"Common areas" means roofs, halls, sidewalks, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits of the building or buildings, basements, yards, gardens, recreational facilities, parking areas, storage spaces, and other parts of the project or household normally in common use or other areas designated by the authority.

"Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated tobacco product or plant product intended for inhalation in any manner or in any form. ["]

SECTION 2. Section 356D-92, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided, the authority may terminate any lease, rental agreement, permit, or license covering the use and occupation of any dwelling unit or other premises located within a public housing project and

evict from any premises any tenant, licensee, or other occupant for any of the following reasons:

- (1) Failure to pay rent when due;
- (2) Violation of any of the provisions of a lease, rental agreement, permit, or license;
- (3) Violation of any of the rules of the authority;
- (4) Failure to maintain the dwelling unit in a clean, sanitary, and habitable condition; ~~[or]~~
- (5) Upon a third violation of section 356D- ;
provided that a violation of any of these terms
by a non-resident, a guest who is visiting a
resident, or by any member of the resident's
household, shall be deemed a violation by the
resident; or

~~[(5)]~~ (6) The existence of any other circumstances giving rise to an immediate right to possession by the authority."

SECTION 3. This Act does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Report Title:

Public Housing; State Low-income Housing; Elder or Elderly Households; Smoking Prohibited

Description:

Prohibits smoking in and around public housing projects and state low-income housing projects under the jurisdiction of the Hawaii public housing authority and in and around elder or elderly households. (SD2/SD2 HD1)

Testimony submitted by: Daria Fand, Kalakaua Homes

For: Administrative Rules Public Hearing, Friday, February 28, 2014

I object to the stipulations below in the proposed draft Administrative Rules, and propose amendments accordingly, as follows:

Objectionable portions excerpted from Hawaii Public Housing Authority's No-Smoking Policy (red is errant policy language, black enumerated items are objections):

§17-2028-59 Rental agreement termination.

(6) Violates the smoking prohibitions pursuant to section 17-2028-60 on more than three occasions and receives written notice of said violations; provided that if tenant, any member of the tenant's household, or any guest or other person under the tenant's control receives only one violation of section 17-2028-60 in one year, and participates in and completes a smoking cessation service program within the same year, the authority will clear the one violation and shall not deem the incident as a violation for the following year;

1. To minimize chronic violation, the number of violations allowed before eviction should be TWO (2), with the THIRD violation resulting in eviction notice. **This is a common standard for smoke-free multi-unit dwellings, known as the “3 strikes” policy.** HPHA language above allows for more violations before eviction (on the FOURTH violation.)
2. These rules allow any resident to clear their violations record if they (the resident, *which includes anyone they're responsible for*) only violate once in a given year and attend a cessation program; while this sounds reasonable on paper, the reality in public housing is that it's extremely hard to document violations in general, especially when they are happening after management operation hours, when few witnesses are present, etc., compounded by staff inefficiency. Smoking can be done so secretively, people could be violating chronically, literally hundreds of times, without ever being officially caught/cited and if they *are* cited once and go through a cessation program, they will be allowed to start on a *fresh slate* and indefinitely be able to go through a revolving door of undocumented violations, and smoking cessation programs; *tenants need to know that if they violate the policy or if their household members/guests do, these violations WILL be accumulative with no caveats.*

3. These rules hold residents liable for the behavior of members of their household and guests, which is appropriate, and accords with other Mainland public housing and multi-unit housing smoke-free policies; however, with the ill-conceived caveat that the resident is responsible for these folks to go through smoking cessation programs if they violate, there is no way to ensure that anyone who is not a resident will go through such a program, and if they do, that this ensures they have quit smoking; **NO ONE CAN FORCE AN UNWILLING/DEFIANT GUEST TO GO TO A SMOKING CESSATION PROGRAM, LET ALONE PROVE IT WILL STOP FUTURE VIOLATIONS OF THE POLICY**; but according to these rules, if they go to such a program, the violation will be stricken off the record, and the problem will just recur.
4. **GUESTS HAVE A LOT LESS MOTIVATION TO COMPLY, SINCE IT'S NOT THEIR PROPERTY, NOT THEIR LEASE** — therefore, they will be much less likely to be motivated to learn anything from a mandated cessation program.

§17-2028-60 Smoking prohibited. (a) Smoking is prohibited in all public housing projects, or portions of public housing projects, including inside dwelling units, unless specifically exempted by the authority in the ACOP

(c) Where smoking is not prohibited in a dwelling unit pursuant to subsection (a) and the household includes a person who smokes as disclosed pursuant to section 17-2028-22, the family shall pay a non-refundable monthly fee of \$5.00.

(d) The authority may discontinue the monthly fee required in subsection (c) when a family can demonstrate to the authority reasonable cause to believe that no member of the household continues to smoke. For the purposes of this subsection:

(1) "Reasonable cause to believe" means by a preponderance of the evidence; and

(2) In determining whether to discontinue charging the monthly fee, the authority may consider completion of a smoking cessation program.

5. Remove this language. **"EXEMPTIONS" TO BE ALLOWED TO SMOKE INDOORS CANNOT BE MADE**, because to do so requires a resident invoke the

REASONABLE ACCOMODATION REQUEST (RAR) PROCESS, PER THE FAIR HOUSING ACT. However, this RAR process can ONLY be used in the case of a disability, and under Fair Housing Law and the ADA, addiction to nicotine (smoking) IS NOT A DISABILITY; because a housing provider CANNOT grant an RAR EXCEPT FOR A DISABILITY, and because smoking is not classified as one, HPHA IS MISUSING THE USE OF FAIR HOUSING LAW

6. **ALLOWING ANY EXEMPTIONS FOR PEOPLE TO SMOKE INDOORS NEGATES THE PURPOSE OF THE NO-SMOKING POLICY, PER THE ENGINEERING SCIENCE THAT STATES SMOKING ANYWHERE IN A BUILDING WILL CAUSE OTHERS TO BE EXPOSED, AND "THERE IS NO SAFE LEVEL OF SECONDHAND SMOKE" (SURGEON GENERAL); SO ONE PERSON WHO IS "EXEMPTED" CAN CONTAMINATE AN ENTIRE BUILDING.**
7. The provision that HPHA would determine whether a smoker has quit in certain cases is **DISCRIMINATORY**: A HOUSING PROVIDER CANNOT AND SHOULD NOT ASK ANY RESIDENT TO PROVE THAT THEY ARE A NON-SMOKER; RATHER, THE RESIDENT MUST ONLY OBEY THE NO-SMOKING POLICY; a smoker's status is private, unless they violate the policy.

(b) Where smoking is not prohibited in a dwelling unit pursuant to section 17-2028-60(c) and the household includes a person who smokes as disclosed pursuant to section 17-2028-22, the family shall pay an initial refundable smoking deposit of \$75.00.

§17-2028-22 Eligibility for admission and participation.

(M) Disclose tobacco use of all family members within the household.

8. Remove this language. All of the above language is **DISCRIMINATORY**, because again, the status of a resident as smoking or non-smoking should not be inquired into, as long as the resident complies with the no-smoking policy. Furthermore:
 - The term, "tobacco use" is overly-broad: there are smokeless tobacco products (such as chewing tobacco, snuff, etc.) that a resident may use that are not relevant to and do not violate the no-smoking policy
 - Why would the initial \$75.00 "smoking deposit" be "refundable"?

General:

9. ALL THESE RULES PRESUME THAT A COMPULSORY CESSATION PROGRAM SIGNIFIES QUITTING SMOKING — this is erroneous and unprovable
10. ALL THESE RULES PRESUME THAT THERE IS ANY RELIABLE WAY TO DETERMINE A RESIDENT, INCLUDING THEIR HOUSEHOLD MEMBERS AND THEIR GUESTS (WHICH MAY EVEN INCLUDE NON-RESIDENTS), HAVE QUIT SMOKING, VIA CESSATION PROGRAM OR OTHERWISE -- again, erroneous and unprovable
11. The \$5 monthly fee to smoke indoors, as well as the initial refundable smoking deposit of \$75, trivialize and condone smoking behavior, providing little incentive or motivation to respect smoking hazards (and so, undermine educational efforts), and grossly misrepresent the financial cost to the public of allowing smoking in units (\$3,000+ for refurbishment, not including fire damage)

woodson1-Brina

From: HedrickHNECA@aol.com
Sent: Sunday, March 09, 2014 3:44 PM
To: HSGtestimony
Cc: hashem2 - Uyen
Subject: Re: SB651 SD2: Testimony IN SUPPORT with Amendments, March 8, 10:52 PM

Aloha, Representative Hashem and Committee Clerk Uyen,

I inadvertently sent testimony developed by Daria Fand under my name, Hannah L. Hedrick, PhD, at 10:09 March 8, after using the contact information she provided.

Please consider the testimony I submitted at 10:52, which emphasizes my own experiences during the past three years of working toward smoke-free public housing legislation.

I did not mention in my current testimony that I am a 50+-year tobacco free advocate, having worked closely with Surgeon General C. Everett Koop in this area, as well as in the area of advocacy for people with disabilities.

I am therefore appalled by what I understand to be the possibility under the HPHA policy and Administrative Rules that people with disabilities will be allowed to use the Fair Housing Act "Reasonable Accommodation Request" to get an exception allowing them to smoke in their unit. I cannot comprehend that the Attorney General would allow this perversion of a hard-won concept.

Thank you for correcting my mistake and considering my intended testimony.

Sincerely,

Hannah

808 968-7013

In a message dated 3/8/2014 10:52:45 P.M. Hawaiian Standard Time, HedrickHNECA@aol.com writes:

For Hearing Date: Monday, March 10, 2014, 8:30 a.m., House Conference Room 329

Testimony Submitted By: Hannah L. Hedrick, PhD

Fern Forest Subdivision
Mountain View, Hawaii

To: House Committee on Housing

The Honorable Representative Mark Hashem, Chair
The Honorable Representative Justin Woodson, Vice Chair
Members of the House Committee on Housing

Subject: SB651 SD2, RELATING TO HEALTH

Position: Support, with Amendments

Honorable Committee Members:

Thank you for your continuing efforts to reduce exposure to secondhand smoke for residents living in public housing via SB651 SD2.

As I stated in my written testimony for four hearings related to smoke-free public housing, I have been working with public housing resident Daria Fand for three years to promote legislation protecting the most vulnerable residents of Hawaii from exposure to secondhand smoke that causes or exacerbates life-threatening illnesses.

Having attended the February 28 public hearing at Lanakila Homes, which included the "No Smoking Policy," I am more opposed than ever to both the HPHA policy and the Administrative Rules. Residents attending the hearing were surprised to learn that the policy announced January 31, 2013, was considered to be in effect. They had never been asked to sign a new lease agreement indicating their understanding of the policy. Moreover, (1) no complaint process has been promulgated, (2) no designated smoking areas have been identified, and (3) no signs have been conspicuously posted indicating a smoke-free facility and the locations of designated smoking areas.

I feel that the Governor, the Legislature, public housing residents, and the general public have been misled by the promises the HPHA made when it got the Governor to veto the 2012 legislation and then persuaded legislators to defer the bills related to smoke-free public housing in the following year.

I therefore strongly urge you to pass detailed legislation requiring smoke-free public housing, such as that in the draft with amendments provided by Ms. Fand.

Hawaii has an opportunity to enact landmark statewide smoke-free public housing. Please do whatever is necessary to develop the best possible law and implementation process to serve as a model to other states.

I have read that some legislators are willing to pass a weak law in order to interfere as little as possible with the HPHA Administrative Rules process. Much of the verbiage in the ARs is related to the unacceptable "exception" of allowing certain individuals to smoke in their units by paying a \$5.00 monthly fee. This language could easily be replaced with clear directions related to the Bill, which should go through the review process in a very short period of time, since the intent of smoke-free public housing remains intact.

Please do not let these kinds of "red herring" arguments deter you from developing legislation that will reduce the exposure of public housing residents to secondhand smoke. I am not aware of any progress that has been made in the past three years, when education and support programs could have been provided even without any policy or law. HPHA testimony at the hearings related to smoke-free public housing thus far opposes the kinds of detail that HPHA inactivity necessitates.

As I've stated in testimony related to previous bills, I believe the following points are essential to ensure ongoing accountability by current and future HPHA administrations:

1. No exceptions for any reason should permit smoking in units.
2. Residents should be consulted about the creation of designated smoking areas (as indicated in the January 31, 2013, announcement), which should be clearly identified and properly equipped.
3. Signage throughout the facility should meet nationally recognized standards in content and placement.

Thank you again for your careful consideration of this issue, which has a greater impact on public housing residents than any other threat to their health and safety.

House Committee on Housing

March 9, 2014 4:00 P.M.
Room 329, Hawaii State Capital

In consideration of
Senate Bill 651
Relating to Health

Honorable Chair Members Hashem and Woodson, and Members of the House Committee on the Housing, thank you for the opportunity to provide you with comments regarding the Senate Bill (SB) 651 relating to Health and Public Housing.

I am in favor of this bill and fully **support** the passage of the project for numerous reasons. For one, this project has been implemented in numerous counties across the nation, including Harrisonburg (VA), Glendale (CA), Oakland (CA), Berkeley (CA), Walnut Creek (CA), Marin (CA), Omaha (NE), Chicago (IL), Houston (TX), El Paso (TX), Miami-Dade County (FL), and more.

Cancer is one of the leading causes of deaths in the United States. Second-hand smoke can cause more than just cancer. In children, it can cause lung problems (asthma), ear infections, and even sudden infant death syndrome. Although it is the choice of the individuals who smoke to do so, it is not the choice of those they affect with second-hand smoke. For this reason, and several of the medical and financial reasons, I support this bill.

Also, by implementing a standard of housing that guides people away from smoking and towards healthier living, Hawaii is able to assist preventative health care. With the Affordable Care Act in progress, this will help build the community and hopefully help financial burdens that are caused by chronic diseases from second-hand smoke.

Thank you for the opportunity to testify.

Kelly Soler

woodson1-Brina

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 09, 2014 5:06 PM
To: HSGtestimony
Cc: unmanib@maui.net
Subject: Submitted testimony for SB651 on Mar 10, 2014 08:30AM

SB651

Submitted on: 3/9/2014

Testimony for HSG on Mar 10, 2014 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Unmani Cynthia Groves	Individual	Support	No

Comments: In my estimation 20' is the minimum that should be allowed near residences given smoke can still enter interiorly at that distance. Support designated smoking areas further away if available on the same property. Pool areas should not allow smoking. Children swim there frequently and deserve the most protection. Thank you for the oppoportunity to testify.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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