



CITY OF DALY CITY

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September 25, 2018

Sent via Email: grandjury@sanmateocourt.org

Honorable V. Raymond Swope
Judge of the Superior Court
c/o Charlene Kresevich
Hall of Justice
400 County Center, 2nd floor
Redwood City, CA 94063-1655

Re: Smoke-Free Multiunit Housing: No Ifs, Ands, Or Butts

Dear Judge Swope,

We are in receipt of the Grand Jury's final report entitled; "Smoke-Free Multiunit Housing: No Ifs, Ands, Or Butts."

Pursuant to your July 26, 2018 request for response, the Daly City, City Council held a public meeting on September 24, 2018 and approved this response. The City of Daly City responds to the Grand Jury's findings, conclusions and recommendations as follows:

Findings:

F1. Since 1967, exposure to secondhand smoke has killed approximately 2.5 million nonsmokers of all ages in the United States.

Response: The City **agrees** with this finding.

F2. Enforcement officers report that their primary focus when responding to MUH smoking violation complaints is to educate alleged smokers regarding the requirements of the smoking ordinances, and that most alleged smokers report being unfamiliar with the requirements of the ordinance.

Response: The City **agrees** with this finding.

- F3. The Belmont, Brisbane, Daly City, Redwood City, San Bruno, and the County of San Mateo MUH smoking ordinances expressly prohibit retaliation against individuals who report a violation; however, the MUH smoking ordinance for Burlingame, Foster City, the City of San Mateo, and South San Francisco do not.

Response: The City agrees with this finding as it pertains to the City of Daly City Smoking Ordinance.

- F4. Searches for "smoking" or "smoke" using the website search tool for Burlingame and Daly City do not yield any information regarding their MUH smoking ordinances, whereas the search tools for each of the other jurisdictions with MUH smoking ordinances do.

Response: The City agrees with this finding as it pertains to the City of Daly City Website.

- F5. The websites for Burlingame, Daly City, Redwood City, the County of San Mateo, and South San Francisco do not contain summaries of their MUH smoking ordinances. The website for each of the other jurisdictions with MUH smoking ordinances do.

Response: The City agrees with this finding as it pertains to the City of Daly City Website.

- F6. The websites for Belmont, Burlingame, Daly City, Redwood City, the City of San Mateo and South San Francisco do not provide specific information on how to make complaints regarding MUH smoking violations. The websites for each of the other jurisdictions with MUH smoking ordinances do.

Response: The City agrees with this finding as it pertains to the City of Daly City Website.

- F7. The websites for the cities of Belmont, Brisbane, Foster City, Redwood City, San Bruno, San Mateo and South San Francisco, as well as the County's Health System website (for unincorporated San Mateo County) have links on their home pages that lead to information on how to report specific nuisances such as barking dogs, loud parties, abandoned mattresses, and shopping carts. However, these links do not provide information on how to report MUH smoking violations. Burlingame's website links to Code Compliance from its homepage.

Response: The City neither agrees nor disagrees with this finding. The City of Daly is not familiar with the websites listed in the finding.

- F8. The websites for Brisbane, San Bruno, and the County of San Mateo (on the County Health System website) provide information about the TPP and TEC or how to contact them regarding an MUH smoking issue. The website for the other MUH jurisdictions do not.

Response: The City agrees with this finding as it pertains to the City of Daly City Website.

- F9. In all MUH jurisdictions, the issuance of citations for violations of MUH smoking ordinances is limited by the need to (1) observe the violation in progress, (2) see other compelling evidence that a violation had occurred, or (3) have the alleged violator admit to law or code enforcement that he or she had been smoking in violation of the MUH smoking ordinance.

Response: The City **partially agrees** with this finding. An officer or Code Enforcement Officer investigating a landlord in violation of the MUH Ordinance should comply with the three elements described in the finding. In terms of an individual violating the Smoking Ordinance, the City believes an officer observing a person violating the smoking ordinance is itself compelling evidence of a violation. Officers are also not required to obtain an admission of guilt to substantiate a detention or a citation for the infraction.

- F10. The towns/cities of Colma, East Palo Alto, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, and San Carlos do not have smoking ordinances that restrict smoking in the multiunit residences, except in some common areas. Atherton, Hillsborough, and Woodside have no multiunit housing.

Response: The City **neither agrees nor disagrees** with this finding. The City is not familiar with the smoking ordinances of the jurisdictions listed in the finding.

- F11. The MUH smoking ordinances for the cities of Brisbane, Burlingame, Daly City, and the County of San Mateo for its unincorporated areas do not prohibit smoking medical marijuana in multiunit housing.

Response: The City **agrees** with this finding as it pertains to the Daly City Smoking Ordinance.

- F12. The TPP web pages do not include the following information: (a) a summary of residents' rights and obligations under the MUH smoking ordinances in their jurisdictions, (b) links to each jurisdiction's MUH smoking ordinance, and (c) information on how residents of multiunit housing can report violations of MUH smoking ordinances in their specific jurisdiction.

Response: The City **neither agrees nor disagrees** with this finding. The City is not familiar with the TPP web pages.

- F13. TPP reported limited success in obtaining MUH smoking complaints data from jurisdictions, making it difficult to assess the efficacy of MUH ordinances and develop trend information.

Response: The City **partially agrees** with this finding. The Daly City Police Department has captured little data on MUH smoking violations and therefore does not have enough data to determine the success of the ordinance nor report it to the TPP.

- F14. The funding allocation from the California Department of Public Health's Tobacco Control Program for TPP increased from \$150,000 in FY 2016-2017 to \$784,000 in FY 2017-2018.

Response: The City **neither agrees nor disagrees** with this finding. The City is not familiar with the San Mateo County TPP Program.

Recommendations:

R1. Each jurisdiction with an MUH smoking ordinance (Belmont, Brisbane, Burlingame, Daly City, Foster City, Redwood City, San Bruno, City of San Mateo, South San Francisco and the County of San Mateo for its unincorporated areas) should improve their educational outreach to residents regarding such ordinances, including at a minimum each of the following, by no later than March 31, 2019:

- Publishing summaries of residents' rights and obligations under their MUH smoking ordinances, including on their websites
- Publishing information on how to report violations of MUH smoking ordinances, including on their websites
- Informing residents that they can report violations of MUH smoking ordinances anonymously
- Informing residents, including on their websites, that it is unlawful for any landlord or other person to take any retaliatory action against them for having reported a violation of an MUH smoking ordinance
- Ensuring that information about report MUH smoking ordinance violation is just as readily accessible on their websites as information about other forms of nuisance
- Ensuring that, upon typing the word smoking, or the like in the search features of their websites, users are directed to all information about the jurisdiction's MUH smoking ordinance and related complaints process

Response: The recommendation has not yet been implemented, but will be implemented in the future. The City will implement the recommendations by March 31, 2019. The implementation will include modifications to the City's website to include:

- A link to the City's Smoking Ordinance
- An informational page that will include information on how to report violations, including anonymous reporting
- Information on reporting and the Municipal Code section that prohibits retaliation by a landlord for reporting an MUH smoking violation
- A "button" or link that would lead users to the above referenced page
- The addition of these links and pages would be searchable under "smoke" or "smoking" on the City's webpage

R2. The cities of Burlingame, Foster City, San Mateo, and South San Francisco should amend their MUH smoking ordinances, by no later than December 31, 2018, to prohibit retaliation against individuals who report violations of the MUH smoking ordinances.

Response: The recommendation has already been implemented by the City of Daly City.

- R3. The cities of Brisbane, Burlingame, Daly City, and County of San Mateo for its unincorporated areas should amend their MUH smoking ordinances, by no later than December 31, 2018, to prohibit smoking medical marijuana in multiunit housing.

Response: The recommendation **has not been implemented, but will be implemented in the future.** The City will propose to the City Council to expand the current definition of smoke to include marijuana and removing the portion that allows smoking of medical marijuana. This change would prohibit the use of medical marijuana in MUH.

- R4. Each jurisdiction with an MUH smoking ordinance (Belmont, Brisbane, Burlingame, Daly City Foster City, Redwood City, San Bruno, City of San Mateo, South San Francisco, and the County of San Mateo for its unincorporated areas) should, by June 30, 2019, evaluate ways to improve its collection and retrieval of complaints of MUH smoking violations so that:

- Information regarding each complaint of an MUH smoking ordinance violation, and the response to it (complaints data) is recorded in a searchable electronic database
- The jurisdiction can evaluate trends in the complaints data and the efficacy of the MUH smoking ordinance

Response: The recommendation **has not been implemented but will be implemented by June 30, 2019.** Staff has contacted the San Mateo County Communications Center staff to request a call type be created for MUH smoking violations. This will allow City Staff to create a report that will outline calls for service and dispositions. This report will allow staff to review calls for service, dispositions and cases to determine effectiveness of the program.

- R5. Each jurisdiction with an MUH smoking ordinance should, by December 31, 2018, make the complaints data (with the alleged violators deleted) available to the TPP and TEC on at least an annual basis.

Response: The recommendation **has not been implemented but will be implemented.** City Staff will make current complaint data available to the TPP and TEC by December 31, 2018.

- R6: Each jurisdiction with an MUH smoking ordinance should, by December 31, 2018, conduct a review of current methods used by the public to report MUH smoking violations and possible improvements (including online reporting on their websites and use of mobile phone apps) to ensure ease of reporting.

Response: The recommendation **has not been implemented, but will be implemented December 31, 2018.**

R7: The towns/cities of Colma, East Palo Alto, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Portola Valley, and San Carlos should, By December 31, 2018, hold public hearings to evaluate issues and hear residents' views on restricting smoking in multiunit housing in their jurisdictions.

Response: This recommendation **does not apply to the City of Daly City.**

R8: TPP and TEC should update their web pages by March 31, 2019, to include the following:

- Links to MUH jurisdictions' smoking ordinances and their summaries/FAQ's
- Information on how to report violations of MUH smoking ordinances in each applicable jurisdiction

Response: The recommendation **does not apply to the City of Daly City.**

The City of Daly City appreciates the opportunity to provide written responses to the San Mateo County Civil Grand Jury Report, "Smoke-Free Multiunit Housing: No Ifs, Ands, Or Butts."

Should the Grand Jury require any additional information, please contact me directly at 650-991-8127.



Shawna Maltbie
Interim City Manager

cc: City Council
Annette Hipona, City Clerk
Rose Zimmerman, City Attorney