

Increasingly, Smoking Indoors Is Forbidden at Public Housing

By Katharine Q. Seelye | Published: December 17, 2011

AUBURN, Me. — Glenys Cushman was grabbing a quick cigarette here the other day outside her federally subsidized apartment. The rules say no smoking inside or within 25 feet of the entrance, and though she hates having to go outside, she has come to accept it.

“My neighbor is on oxygen,” said Ms. Cushman, 53, who is on disability herself. “And I can’t quit. I tried. I get too worked up without smoking. So I come out here.”

In 2004, the Auburn Housing Authority became the first authority in Maine and one of the first in the country to ban smoking in public housing, and it has served as a model. On Jan. 1, Maine will become the first state in the country in which all of its public housing authorities are smoke free, affecting about 12,000 tenants.

Similar policies are being adopted with increasing frequency across the country as cities move aggressively to restrict smoking in more public places, from bars and restaurants to parks, beaches and vehicles. Come September, Boston will become the biggest city to ban smoking in its public housing, which serves about 25,000 tenants. Detroit, San Antonio and Portland, Ore., already have similar restrictions in place.

The bans are largely a response to the risks posed to nonsmokers by secondhand smoke. In addition, property managers say smokeless apartments are cheaper to clean, especially if there is carpeting, and reduce the risk of fire.

Depending on who is asked, banning smoking in public housing is either an effective way to promote healthier living, as many officials and nonsmokers contend, or a violation of individual liberties, as some tenants argue. But after several years of such bans, the objections have gained no legal traction. Smokers are not perceived as a protected class, and civil liberties groups and legal aid societies say they tend not to defend such cases.

“On a personal level, you sympathize with people who want to do whatever they want in their own homes,” said Matt Dyer, a staff attorney in the Lewiston, Me., office of Pine Tree Legal Assistance, which provides free legal aid for people at or below the poverty level. “But legally, bans are O.K. There are so many legitimate issues that landlords can raise.”

Housing officials point out that they do not require tenants to quit, only to smoke outside, and they often provide shelters for smokers. They also offer smoking-cessation programs, although they say few people attend.

Many smokers just violate the ban and hope they avoid getting caught.

At Franklin Towers, a public housing high-rise in Portland, Me., Kevin Crocker, 55, said he was annoyed when a neighbor reported him for smoking in his apartment. “They told me not to do it again,” he said. “But I don’t like to go outside, especially at night, because I’m afraid of getting mugged and there are no security cameras.”

Officials recognize that a ban can be a burden for tenants, particularly because many are elderly or disabled. At Franklin Towers, where the elevators lumber slowly up 16 floors, Mark Adelson, the executive director of the Portland Housing Authority, half-joked that by the time smokers go outside and get back in, they need to go out again for another cigarette.

But secondhand smoke, Mr. Adelson said, is “an overwhelming public policy issue.” Officials at various housing authorities, including the federal Department of Housing and Urban Development, say they hear far more complaints from nonsmokers about their neighbors who smoke than from smokers claiming the right to light up.

Susan Morin, 59, a former smoker who lives in Franklin Towers, said she appreciated the ban. “Cigarettes will kill you,” she said.

In 2005, only 32 housing authorities had smoking bans in effect, according to Jim Bergman, director of the Smoke-Free Environments Law Project in Michigan; by the end of this year, he said, 285, or about 9 percent of the total, will have enacted bans, affecting hundreds of thousands of tenants.

The federal housing department says it is planning to gather information next year on how various cities have carried out their bans and will publish a report of best practices, in the hope of encouraging more housing authorities to enact their own.

In Los Angeles, a spokeswoman said the Housing Authority was conducting a review and might consider a ban. In New York City, a Housing Authority spokeswoman said it had “no position” on a ban, but Mayor Michael R. Bloomberg has been one of the most aggressive advocates of ridding smoke from public spaces and clamping down on other health-related menaces like trans fats. A spokeswoman at the city’s health department said officials were “reviewing the experiences of other municipalities.”

The rapid adoption of smoking bans in public housing was spurred by the federal department, which issued a memorandum in July 2009 saying it “strongly encourages” housing authorities to enact them.

The federal department cited reports that secondhand smoke caused the deaths of 50,000 nonsmokers nationwide each year. In 2006, it said, smoking was responsible for more than 18,000 apartment fires that resulted in the deaths of 700 people, excluding firefighters, and caused almost \$500 million in property damage.

It issued a second memorandum in September 2010 extending its recommendation to other types of public housing, including Section 8, which provides housing vouchers to low-income families. And last year, The New England Journal of Medicine called for a complete smoking ban in any housing complex receiving public money.

But HUD is not likely to require a ban nationwide anytime soon. Shauna Sorrells, director of public housing programs for the agency, said a mandate could result in evicting entire families, even if just one person smoked. Most housing authorities have long waiting lists, she said, and evictions would increase homelessness, especially in a sour economy.

The experience in Maine suggests that evictions solely for smoking violations are unusual.

“We’ve had a handful of cases where the person agreed to leave,” said David Chamberlain, a lawyer who represents the Portland Housing Authority and other landlords. “But we haven’t taken any to trial, because they settle in some fashion or other.”

Rick Whiting, the longtime executive director of the Auburn Housing Authority, said he had seen a cultural change here during the seven years the ban has been in place.

Initially, Mr. Whiting said, there had been concern about fairness to smokers who were already in public housing apartments, and they were grandfathered in. But over time, he said, concern shifted to fairness to nonsmokers, and the dispensation for smokers was revoked, prompting some to quit the habit and some to move out.

Still, questions of fairness persist because those below the poverty line tend to smoke more than those above it. Studies show that, on average, 30 percent of people in public housing are smokers, compared with 20 percent of the general population.

“It’s discrimination against the poor,” said Nikki McLean, 66, a smoker who lives in public housing in Portland, Me.

Mrs. McLean, who has diabetes, arthritis, bad knees and other chronic conditions, was sitting in a wheelchair the other day inside her tiny home. It took her 10 minutes to get outside, transfer to a walker and make her way down a ramp and across the lawn so she could stand 25 feet from her doorway and have a cigarette.

“I’ve heard them say, ‘We’re doing it for their own good,’ ” Mrs. McLean said. “Like we’re little idiots and we don’t know what we’re doing when we put a cigarette in our mouths.”

She said she had tried to quit but was addicted, and given the other challenges in her life, quitting smoking has not been a priority. But she is having knee surgery soon and said she hoped she would be in the hospital long enough to go through withdrawal and stop for good.