

**Improperly Discarded Smoking Materials**

02/26/09 287 W - + 12 - 10

Yet another major fire caused by humans, by way of smoking material igniting outdoor areas. What's a community, resident, or property owner to do? Prevention. Well, we could legislate. Ban behaviors under certain circumstances. We know how that goes. Education might be better. Every property owner, or community property resident, is made aware of the risks of improperly discarded smoking materials on wooden decks. Heck, if I owned an apartment complex, I might just erect signs in the parking lot. Be careful with fire! Please extinguish cigarettes! Of course, that might drive away business, suggesting that your property is having a problem with fires. Wonder what the insurance companies would think? Maybe signage in the outdoor areas? Every wooden deck, say, equipped with a reflective sign advising "please do not leave cigarettes burning." You could throw in any reminders about cooking and open flames as well. How about fire pails, like the old days? Install on everyone's deck a bright red pail containing sand. Lettered for Smoking Materials Go Here. Would it work? Could it work? Then there's detection? Are improvements possible, say outdoor heat or fire detectors? Maybe those exist, and are used in structures. This blogger is not a [fire protection|fire prevention specialist], nor plays one on television. Finally, there are the burning materials themselves. Would/will fire-safe cigarettes better prevent these fires, if/when they're required in North Carolina? Here's an interesting site with information from the [North Carolina Coalition for Fire-Safe Cigarettes](#). What about more resistant building materials, for deck construction? And so it goes, etcetera, etcetera. We're certainly just scratching the surface here, with yet another (uneducated?) blog rant. People and fire, an age-old problem.

sticking the (partial) chemical composition of tobacco smoke on the back of every carton would be a start

carbon monoxide, formaldehyde, acrolein. acetaldehyde, benzene, toluene. acetic acid, formic acid, nitrogen oxides (NO, NO<sub>2</sub>), naphthalene, substituted naphthalenes, phenol, catechol, fluorene, phenanthrene, anthracene, fluoranthene, pyrene, benzo(a)anthracene, chrysene, benzofluoranthenes, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, dibenzo(a,h)pyrene, dibenz(a,h)anthracene, chromium, nickel, lead

5 of these are in the top 20 CERCLA priority hazardous substances list, 19+ of them on the CERCLA priority hazardous substances list

sources:

- US Surgeon General. 1989. Reducing the Health Consequences of Smoking. Tables 5-8, p.81-89.
- US Department of Health and Human Services. Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological Profiles.
- US Department of Health and Human Services. National Toxicology Program. Report on Carcinogens. Tenth. 2002.
- US Department of Health and Human Services. Agency for Toxic Substances and Disease Registry (ATSDR). Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). List of Priority Hazardous Substances, 2001

**cornerhydrant** - 02/26/09 - 10:41

As a condo owner, I'm glad the balconies in my community are all sprinklered. When will people get it????

**Silver** - 02/26/09 - 11:01

people just don't get it unless they've been in a fire or work in the fire service – sprinklers and all these recommendations should be code!!

a good link for the homeowner/remodeler is:

<http://www.thisoldhouse.com/toh/info/0,...>

**cornerhydrant** - 02/26/09 - 11:13

As long as we view these incidents as "accidents" and not "negligence", nothing will change. Criminal and civil penalties are in order. I think the perpetrator in this (and similar) instance(s) should serve some community service. There are miles of roadways here in Wake County that could benefit from community service/ trash and cigarette butt clean-up. Let's say 50 hours per \$1,000.00 loss caused by your NEGLIGENCE.

**DJ (Email)** - 02/26/09 - 17:02

great idea – fines for negligence are definitely in order! – i was also thinking...the way we have energy ratings for appliances, well, furniture, window treatments, mattresses, etc. should carry a fire-grade, A being the safest, and so on

**cornerhydrant** - 02/26/09 - 17:42

Fires caused by improperly discarded smoking materials are accidental since there is no intentional motive. However, you'll have to leave it up to a jury of your peers to determine if that accident was negligent. Either way, criminal charges would not apply. Typically, criminal charges relating to fires involve incendiary fire causes. The occupant who unintentionally started this fire will most likely receive many civil litigations from the apartment community and most of the neighbors who were smart enough to obtain renter's insurance. I'm sure that alone would make community service unnecessary.

**Johnny Cochrane** - 02/26/09 - 23:36

so, throwing a cigarette out of the car during a drought and starting a large brush fire is accidental?? causing an accident while talking on the cell phone while driving is not negligent??

**cornerhydrant** - 02/27/09 - 00:41

So Johnny what about littering ? throwing that butt out of your car window, dropping it to the ground while walking or tossing it from the balcony of there home or someone else's residence. There are laws in place regarding littering, so no they may not have intended to start the fire, but they did purposely discard there cigarette. Thus there lies the negligence.

**Jim** - 02/27/09 - 14:40

I thought we were talking about the person who improperly discarded the smoking material on the balcony of their own apartment?? That isn't littering, that is just being careless and messy. Who said anything about littering? Surely, that is a seperate issue. I think you have to keep in mind that laws have to be interpreted for each incident individually.

**Johnny Cochrane** - 02/27/09 - 14:56

Civil investigations do pursue these issues and seek recovery of \$ from associated parties. Certainly becomes a legal/jury issue at some pont.

**McGraw** - 02/27/09 - 16:35

definition of negligence

<http://dictionary.law.com/definition2.as..>=

<http://definitions.uslegal.com/n/neglige..>

"Every person is responsible for injury to the person or property of another, caused by his or her negligence. Negligence is the failure to use reasonable care. Negligence may consist of action or inaction. A person is negligent if he fails to act as an ordinarily prudent person would act under the circumstances."

<http://definitions.uslegal.com/c/crimina..>

"Criminal negligence is negligence which requires a greater degree of culpability than the civil standard of negligence. The civil standard of negligence is defined according to a failure to follow the standard of conduct of a reasonable person in the same situation as the defendant. To show criminal negligence, the state must prove beyond a reasonable doubt the mental state involved in criminal negligence. Proof of that mental state requires that the failure to perceive a substantial and unjustifiable risk that a result will occur must be a gross deviation from the standard of a reasonable person."

**cornerhydrant** - 02/27/09 - 20:01

"Standard of Conduct"- To place your discarded cigarette in a firesafe container, i.e. ashtray, pail of sand, etc.

"Failure to meet the Standard of Conduct"- Throw your cigarette off of a balcony/ deck without rendering it 'safe'

"Harm occurred"- My stuff burns up.

"Failure to meet the Standard of Conduct is the causation of Harm"- Your cigarette that was not properly disposed of, rather, it was thrown from the balcony/deck started the fire that burned my stuff up.

All four aspects of negligence is met.

As to criminal charges, they don't apply here in the United States, but they DO apply in foreign countries, most notably Asia and Europe. As such, they do not have the fire problem (and loss of life and property) that we have here in the States. I guess having your cities fire bombed and incinerated by hundreds of bombers every day and night will give you an appreication of the need to prevent fires.

I read somewhere, years ago, about a fire that broke out in Singapore. A couple of people died in the fire that was caused by a pot or something left on a stove. They executed the responsible party. I like the intent, but I would settle for community service.

**DJ** ([Email](#)) - 02/27/09 - 23:27

yet another potential negligence, trespass and nuisance violation, if there are tenants who have serious breathing disabilities, who have legal protection under the ADA and the FHA

see: <http://www.mismokefreeapartment.org/inde..>

**cornerhydrant** - 02/28/09 - 01:36

This falls into the same category as a drunk person "falling asleep" (passing out) with food on the stove or in the oven.

We had a 3 Alarm apt fire a couple of weeks ago that was the result of a (drunk) person leaving a cigarette in the trash on the wood deck. I asked the Investigator what charges the person could potentially face and his reply was, "None, in terms of criminal charges." I honestly don't understand the system, but that appears to be the way it works. I was told that if the person had renters insurance, their insurance company would pay the other renters' insurance companies back. IF the (fire apartment) renter did not have insurance, then they'd more than likely get taken to civil court and be forced to pay the other renters for the damages. I was told that it is generally "not pretty when it gets to civil court.."

I'm with DJ. We're way too understanding and tolerate of stupid people doing stupid things. At the very least they should be evicted and their name should be flagged in the system due to their history. That way, next time they go to rent an apartment the new apartment management can see that they have, in the past, burned up an entire apartment building while drunk. Then again, that would be discrimination and the apartment complex wouldn't evict them because then they'd be losing money!!

Everyone loses, but at least we still have a job!

**Luke** - 02/28/09 - 12:43

Flag 'em in the 'system'. The insurance companies charge bad drivers more \$\$\$\$. OK, charge the landlords more for insurance when these people rent.

**DJ** ([Email](#)) - 02/28/09 - 15:28

what

**john** - 02/28/09 - 16:55

Of course, there is no 'system' right now to flag people who cause these things. But, if Auto Zone can tell me how many spark plugs that fit my truck are in Amarillo, then the insurance companies can come up with a way.

**DJ** - 02/28/09 - 17:25

it would NOT be discrimination

"There is no more a fundamental right to smoke cigarettes than there is to shoot up or snort heroin or run a red light."

Fagan v. Alexrod, 146 Misc. 2d 286, (1990)

**cornerhydrant** - 02/28/09 - 17:34

There is no law against being stupid. Although I would support such legislation.

**Olson** - 02/28/09 - 23:37

Correct, there is no "system" per se, but can an insurance company not tell you how many accidents and/or tickets you've received in the past what... 3 years?

And the part about it being discrimination was a sarcastic comment.

Make all apartment buildings smoke free. No smoking within a certain number of feet from all buildings. The biggest issue would be enforcement. Yes you can smell it, but that doesn't always mean they smoked IN their unit. Unlike with grilling on decks, you'd be hard pressed to find evidence (other than the butts and/or ash trays). It took several apartment fires in Charlotte (caused by grilling on decks/close to the buildings) before the city enacted an ordinance banning grilling on decks or within 10ft of any apt building. Now, if I'm not mistaken, that is part of the NC Code. Of course, there are loop-holes that allow grilling on decks that have sprinklers as long as you use charcoal grills.

**Luke** - 03/01/09 - 03:59

health department could enforce under the nuisance law – fine particles stay airborne for days, often longer, and could be measured with a particulate monitor

**cornerhydrant** - 03/01/09 - 23:24

even measurable and a health risk outside – see Dakota County Public Health Department’s paper [http://www.co.dakota.mn.us/NR/rdonlyres/..](http://www.co.dakota.mn.us/NR/rdonlyres/)

**cornerhydrant** - 03/01/09 - 23:31

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