

Smoke-sniffing tools spur concerns over privacy

By Stephanie Tavares, Californian staff writer

Bakersfield Californian, Saturday, December 4, 2004

Today is a no-burn day in most of Kern County, and local air pollution control inspectors are using high tech gadgets to seek out violators -- a method some say is against the law because it amounts to an illegal searches of people's homes. The San Joaquin Valley Air Pollution Control District is using six new infrared heat detectors, called non-contact infrared thermometers, to catch people burning wood in their fireplaces on designated no-burn days.

With the devices, pollution control inspectors can be outside a home, point the infrared scanner at a chimney, pull the trigger and get a temperature reading for the fireplace.

And that, said Kern County Public Defender Mark Arnold, is the problem.

"The law is very clear. The use of a thermo-imaging device to search into the interior of someone's house is illegal without a search warrant."

Six people in Kern County were ticketed with the help of the device on the last no-burn day, Nov. 20. They face fines ranging from \$50 to \$1,000.

Some of the offenders were caught after neighbors called the district's hot line to complain, but others were discovered while inspectors patrolled neighborhoods looking for violators.

Northwest Bakersfield resident Kenneth Gonder was one of them.

Gonder said he was ticketed after a local compliance inspector discovered his dwindling wood fire using the infrared sensor. He said he didn't know it was a no-burn day when he started the fire.

Gonder said the no-burn warning wasn't on the news the previous night and he assumed the fire would be OK.

He said the inspector who ticketed him, Mark Sproat, told him he was driving around scanning houses at random, looking for violators.

Sproat did not return calls Friday.

The inspector also took pictures of the inside of Gonder's house, Gonder said, because when Gonder returned from a walk that evening, he found the man standing in the street taking photos of his living room windows, where Gonder's wife was sitting alone reading. That's also when the inspector told him about the infrared sensor and the ticket.

The notice of violation Gonder received this week did not mention the pictures, but claims the inspector smelled smoke and that the infrared thermometer had measured the temperature of Gonder's fireplace as 150 degrees.

Gonder said there is no way Sproat could have smelled the fire, as it was almost completely burned out by the time he arrived.

"There was absolutely no smoke coming out of my chimney," Gonder said. "The inspector ... noted that there was no smoke and that it was a really clean-burning fire when he was talking to me."

Gonder also said the inspector admitted to driving around the neighborhood scanning the chimneys with the thermometer, looking for violators.

Anthony Presto, a public education representative for the pollution control district, denied that inspectors are doing sweeps of entire neighborhoods with the infrared scanners, but admitted that photos were occasionally taken to back up an inspector's claim of illegal burning.

"In order to get extra verification that there is a fire going on that is illegal, there's a possibility that pictures could be taken, but I don't know for sure what happened in that instance," Presto said.

Gonder said he feels taking the photos through his windows, even for purposes of evidence, was inappropriate.

Arnold, with the county's public defender's office, said the law might agree, especially in the case of the infrared thermometer.

"It's really no more than a high-tech assault on a man's castle," Arnold said. "It's an invasion of privacy. It's an invasion against one's reasonable expectation of privacy."

Arnold said that in some cases, taking photographs of people's homes in order to prove they were violating the no-burn rule would also be illegal.

"Peering into windows without a warrant is illegal," Arnold said. "Unless the observation is made in plain view in a place where any person would have a lawful right to stand, then they would need a search warrant."

While Sproat was standing on public property -- a public street -- when he took the photos, Arnold said it might still have been illegal because of the shrubberies the Gonders planted in front of their living room window to block the view from the street in an attempt to protect their privacy.

Meanwhile, the pollution control district maintains it is doing nothing wrong.

"It's definitely legal. We wouldn't have it if it wasn't," Presto said.

He said the infrared guns are only used to verify that someone has an illegal fire in his fireplace after some other indication of the violation, such as a phone call from a neighbor or smelling smoke on days when it's too dark or foggy to see the smoke.

The district created the rule enforcing no-burn days in 2003 on the advice of the Environmental Protection Agency. Prior to 2003, the no-burn policy was a voluntary measure.

In the two no-burn days the pollution control district enforced last season, 62 people were given warnings but no one was ticketed.

Presto said inspectors would not be giving any warnings this year.

"They considered them to be an education-type program," Presto said of last season's warnings.

"There will be no excuses this year. A great deal of promotion has been done to educate the public on this rule."

New Thinking Is Needed to Unclog Roads and Ports

by James Flanigan, Los Angeles Times

Sunday, December 5, 2004

When Arnold Schwarzenegger traveled to Tokyo last month to promote trade with California, Japanese businessmen had a no-nonsense message for the governor: Not so fast.

Literally, not so fast.

They told Schwarzenegger that efforts to expand trade "could be limited" by California's congested ports and slow-moving transportation systems, recalls Sunne Wright McPeak, state secretary of Business, Transportation and Housing.

Similarly, during a November trip to South Korea and China, a delegation from USC's Marshall School of Business and the Los Angeles County Economic Development Corp. heard loud complaints about delays at the ports of Los Angeles and Long Beach from government officials and company managers.

The visitors from L.A. not only agreed with their hosts, but also handed them studies showing that bottlenecks at the ports this year have saddled Chinese, Korean and Japanese companies with \$1.3 billion in added costs for inventory and shipping.

Their aim was to persuade Asian manufacturers to pressure the American retailers that order their goods - the largest four are Wal-Mart Stores Inc., Home Depot Inc., Target Corp. and Lowe's Cos. - to collaborate on improving California's infrastructure.

Meanwhile, with the governor set to visit China in February, the Schwarzenegger administration is pressing a new program to speed movements of cargo through the ports and freeways of Southern California.

Such determination on the part of state and even foreign officials indicates a new urgency that could benefit what has arguably become the most important engine driving Southern California's economy: international trade. But getting there won't be easy.

Upgrades will cost hundreds of billions of dollars. Even more daunting, perhaps, are the politics. To complete all the major construction projects that the area truly needs, the community will have to exhibit a newfound level of understanding of just what's at stake.

"Our region will continue to grow as our economy grows," says Rusty Hammer, president of the Los Angeles Area Chamber of Commerce, who decries all the NIMBYs (Not in My Backyard); BANANAs (Build Absolutely Nothing Anytime Near Anyone); and NOPEs (Not on Planet Earth). "It is our duty to make sure that we implement the best possible solutions . to deal with the inevitable growth, rather than to deny it."

The reasons for all the concern are clear: More than \$300 billion a year in imports and exports flow through the Los Angeles-Long Beach port complex, the airports at Los Angeles and Ontario and former military airfields in the Inland Empire. About 550,000 people in the region - more than in any other sector - work in the business of receiving, sorting, warehousing and shipping goods.

The pay for such logistics work is not bad, with a freight sorter pulling down \$40,000 to \$54,000 a year.

"These are new blue-collar jobs for the 68.8% of our workforce that has no college degree," says economist John Husing who produced an analysis of the logistics industry for the Southern California Assn. of Governments, a six-county planning agency known by the acronym SCAG.

The trick will be to allow such business to continue to flourish in spite of all the obstacles.

The number of freight containers coming through the region have doubled in the last five years to about 13 million. Super-cargo ships carrying more containers per vessel threaten to compound the congestion.

Yet the seaports themselves represent a relatively small problem in some ways.

"The ports are hiring more workers, and if they lengthen the hours they work, they can handle the increased trade," says Mark Pisano, SCAG's executive director.

Bigger troubles lie in the truck and rail systems that move freight away from the ports. Intermodal sorting facilities at rail yards in Vernon and Los Angeles are strained. Trucks carrying goods to San Bernardino and Colton for shipment to the Midwest and South are clogging freeways.

The special rail corridor along Alameda Street, built in the 1990s at a cost of \$2.5 billion and opened in 2002, is not working at capacity because "we did not predict the new patterns of goods movement," Pisano says. He's referring to demands of the big retailers to have freight sent as quickly as possible to their individual stores and distribution centers nationwide. That has required far more trucks on local roads than anticipated.

So SCAG, which handles planning for the counties of Los Angeles, Orange, San Bernardino, Riverside, Imperial and Ventura, is proposing that dedicated truck lanes be built from Victor Valley to Long Beach and San Pedro. SCAG also envisions an expansion of freight and passenger capacity at Ontario Airport and new rail freight facilities in the Inland Empire.

In all, it sees the need for \$200 billion in infrastructure work over the next two decades.

Fulfilling such visions in an era of strapped state and federal budgets will be difficult. So planners are looking to revenue-generating solutions such as toll roads. The trucking industry is amenable because vehicles on such thoroughfares could haul triple trailers, thereby gaining productivity in exchange for paying the fee.

There are other hurdles to overcome as well. Steaming ships, belching diesel exhaust, cause serious air pollution, a problem that if left unchecked could lead to severe operating restrictions. But business leaders and key lawmakers believe those challenges can be overcome by technological advances - substituting electric power for diesel for ships anchored in the harbor, for example - and cool-headed regulation.

Then there's the question of how to manage the whole thing - an issue that may well bring the subject of the new trade economy right to Schwarzenegger's desk.

Principal facilities, including the L.A.-Long Beach ports and the airports of Southern California, are owned by the municipalities. This makes no sense when the whole region is affected by their operations.

"The foreign trade economy affects Orange and San Bernardino and Riverside and is much larger than Los Angeles," notes Steven Erie, a UC San Diego professor and expert on the region's infrastructure. "Only the state can govern something so big and important."

If he's smart, that's what Schwarzenegger gleaned from his visit to Tokyo.

L.A. to Fund Upgrades Near LAX

The city will pay almost \$500 million to improve airport-area schools and homes.

Neighbors, in return, agree not to sue over plans to modernize.

By Jennifer Oldham, Los Angeles Times

Saturday, December 4, 2004

In a highly unusual bid to placate residents near Los Angeles International Airport, the city has agreed to pay \$499.5 million to ease noise, air pollution and traffic in their neighborhoods.

In exchange, a 22-member coalition of religious, environmental and labor groups and the Inglewood and Lennox school districts have promised not to sue Los Angeles over the \$11-billion

plan to modernize LAX.

The unprecedented pact will be announced next week and still requires the Federal Aviation Administration's approval. The money would be spent over the next 11 to 16 years to soundproof hundreds of homes and schools, set up job-training programs and conduct studies on noise, health and air quality.

In the Inglewood and Lennox schools, the money would allow officials to restore windows that for years have been covered to cut down on noise.

Airport officials estimate the accord would cost up to \$270 million for items provided to the coalition, \$118.5 million for the Inglewood Unified School District and \$111 million for the Lennox School District.

The city would pay for the improvements through a combination of bonds, airport reserves, passenger charges and higher landing fees and terminal rents for airlines.

Other airport agencies, including those in Boston and Denver, have negotiated deals with adjacent neighborhoods and municipalities to compensate for airport modernization plans, but none are as wide-ranging and expensive as the LAX agreement.

In Boston, for example, the agency that operates Logan International Airport has spent \$41.6 million on community projects.

"This agreement is really revolutionary," said Jerilyn Lopez Mendoza, policy director for Environmental Defense and one of the coalition's organizers. "There are so many of us with such different perspectives and constituencies, but we've managed to stay together through a long and difficult process."

The Los Angeles airport agreement, which took almost 10 months to negotiate, is one of several bids underway by city officials to sway opponents of Mayor James K. Hahn's controversial LAX plan.

To head off a possible lawsuit, Los Angeles officials are in talks with El Segundo to craft a deal that would limit growth at LAX to 78 million annual passengers. That effort may run afoul of federal law, which prohibits airports from constraining capacity.

Officials are also discussing extending an existing pact with the city of Inglewood to provide millions in additional funding for sound insulation and land acquisition.

City officials and the LAX Coalition for Economic, Environmental & Educational Justice hailed the airport agreement as a significant departure from the often confrontational and emotional relationship between low-income minority communities to the east of LAX and the 75-year-old airport.

"We feel very strongly that this is what we should be doing," said Kim Day, executive director of Los Angeles World Airports, the city agency that runs the airport. "We weren't railroaded into coming up with an agreement to keep people from suing us. We know we cause environmental problems, and we think we should be allowed by the FAA to spend money to make these people's lives better."

But even as the coalition and the city's airport agency prepared to announce the pact, it was far from clear if the plan would be blessed by federal officials.

The FAA must approve any deal that requires the airport agency to spend its revenue, which is separate from the city's general fund, on projects off airport grounds.

Federal law requires that airports that accept federal grants must prove to the FAA that airport revenues will be spent on projects that are directly tied to airport operations.

"We are going to look at this carefully and see if it just can't work for everyone involved," said Donn Walker, an FAA spokesman. "We want to do what's right for the airport. We want to do what's right for the community. And we want to do what's right by federal practice and law."

The groups met with FAA Administrator Marion C. Blakey in Washington, D.C., last week. Blakey is "particularly impressed with the level of collaboration between the airport and the communities," and thinks the pact "sends a strong signal to other communities that this is a healthy way to do business," said Greg Martin, an FAA spokesman.

Those who negotiated the deal say they believe the accord could become a model for other airports.

That is what the airlines are worried about. They would have to shoulder part of the cost through higher landing fees and terminal rents at a time when many airlines already are struggling financially.

Airline representatives said they could not comment on the deal because they haven't seen it.

"What may be problematic, and we just don't know at this point, is No. 1, where this \$500 million will come from, and whether the FAA will authorize it," said Doug Wills, a spokesman for the Air Transport Assn., an airline trade group.

The City Council, which signed off on the overall airport modernization plan in a 12-3 vote Oct. 20, is scheduled to take two more votes, on Tuesday and Dec. 14.

Airport officials hope to begin construction next year.

Negotiations on the side agreement with the coalition began in March. Airport officials and community representatives sat down with a 120-item list to begin what they said was an arduous and time-consuming, but cordial, process. They whittled the list to 70 items, doing away with such wishes as a skate park and a sheriff's station - projects the FAA was likely to reject because they cannot clearly be tied to airport operations.

The Los Angeles airport accord is based on the efforts of the nonprofit Los Angeles Alliance for a New Economy to negotiate "community benefits agreements" between private developers and residents. Such accords have been reached over Staples Center in downtown Los Angeles, the 22-acre NoHo Commons in North Hollywood and the Hollywood and Highland retail and entertainment complex.

The Staples agreement cost \$70 million - about one-seventh the cost of the airport agreement.

The airport pact, which comprises three separate agreements, includes a bevy of measures aimed at improving the quality of life for airport-area residents. Officials, who are still finalizing the contracts, hope to sign the final deal by Dec. 14.

Under the pact, the city's airport agency would provide a minimum of \$4.275 million a year to the city of Inglewood and a similar amount to Los Angeles County to soundproof homes that are most affected by airport noise. In some areas, the new program would include residences at the end of blocks that were excluded from previous noise-abatement efforts.

"We're right under the flight path, and in the previous agreement, they would do a house at 8901, but wouldn't soundproof the house that's right across the street from it at 8900," said James

Harris, a South Los Angeles resident and chairman of the Southwest Neighborhood Council.

The accord would provide additional funds to soundproof and to install air-conditioning and air-filtration systems in schools in Inglewood and Lennox. And it would provide job training and apprenticeship opportunities for airport-area residents, and require airport officials to ensure that contractors give priority to these residents when hiring.

The airport agency would also conduct a series of studies, according to the deal, to inventory air pollutants near the airport.

Construction companies doing work as part of the LAX modernization plan would also be required, under the agreement, to comply with a variety of restrictions, including keeping equipment away from residential streets.

"In Lennox, we wanted to keep trucks from going through their neighborhoods," said Danny Tabor, chairman of the Inglewood Coalition for Drug and Violence Prevention. "People already use their neighborhoods as a shortcut to the airport."

[Bakersfield Californian editorial, Monday, Dec. 5, 2004:](#)

Padre decision taking too long

The magnificently restored exterior of Bakersfield's downtown Padre Hotel tells only half the story. The other half is not good news.

The interior remains a shell of itself. The inside "extreme makeover" has been stalled thanks in part to a bureaucratic morass.

Work stopped months ago over charges that asbestos was removed illegally from the hotel. Deputy District Attorney John Mitchell filed a lawsuit last May that claimed hotel owner Pacifica Enterprises hired unskilled workers to remove asbestos from the 76-year-old hotel. Pacifica officials say they never knowingly violated asbestos rules.

Paul Holling, spokesman for Pacifica, said the project is in limbo because his company won't continue investing in a project that is clouded by uncertainty. "We don't want to be spending on something we don't have a clear vision for," he said.

Mitchell said the D.A.'s office, officials from the San Joaquin Valley Air Pollution Control District and attorneys for Pacifica are poring over boxes of documents and talking about facts of the case.

It may take a few more months before it can be determined whether a settlement is possible.

"We want to do everything we can to make sure the public is protected," Mitchell said.

That's fine. But the issue has been discussed since May and still there is no light at the end of the tunnel. We say speed up the process. The community deserves an expeditious final answer on the project.

[Fresno Bee editorial, Monday, December 6, 2004:](#)

Our views in brief

A denser future for Fresno

"Infill" is the in-word — or one of them — with local development these days. That's why a proposal to put nine new homes on 1.6 bare acres near downtown Fresno seemed so good. But some residents of the area complained because the the 1,400-square-foot homes, along Weber Avenue near Belmont Avenue, will have as many as six bedrooms. The city's Planning Commission adopted the proposal anyway, and that's good. Yes, those will be small bedrooms — but no smaller than many bedrooms in much larger homes in the northern areas of town. And yes, that's greater density — but we'd better get used to that. Greater density is essential in Fresno's new residential growth, to offer more affordable housing and to create demand for mass

transit alternatives that will help us clean the air. That's a hard truth for some among us, but a real one, and we'd better start getting used to it.

[Letters to the Fresno Bee, Sunday, December 5, 2004:](#)

Fresno's ban on smoking in parks draws praise, scorn

'Enlightened decision'

If ever there was a weapon of mass destruction, the common cigarette would qualify as one of the deadliest weapons ever created on earth. More Americans have died by inhaling cigarette smoke than all the wars we've ever fought in, combined.

Millions have died from using this product and surely, millions more will die. But whenever restrictions are imposed on the use of this deadly carcinogen the "save-my-rights" crowd yells, "Foul." They believe they have an inalienable right to smoke.

Maybe they do. But not where I jog. Not where my wife bikes. And certainly, not where children play.

I applaud the Fresno City Council's enlightened decision to make it difficult for smokers to smoke anywhere near any living, breathing life form.

Ron Kryngel, Fresno

'Goofy ordinances'

The recent smoking ban in Fresno city parks has reached a new level of absurdity. Our illustrious and dysfunctional City Council cites health concerns from secondhand smoke, and cigarette butts as the reason for the ban.

Any second-hand smoke produced by smokers pales in comparison to the noxious pollutants emitted by the hundreds of automobiles driving slowly through the parks every day. Are automobiles in the parks going to be banned? If not, the health issue falls flat.

Carelessly discarded cigarette butts are indeed unsightly, but this also pales in comparison to the mounds of trash discarded by careless picnickers that can be observed driving by Roeding Park on a Monday morning. Are paper and plastic bags and cups going to be banned? So much for the phony trash issue.

The City Council is simply jumping on the politically correct bandwagon of other cities that have passed similar goofy ordinances. I intend to violate the smoking ban at every opportunity, just to irritate the "health Nazis."

Jerry Hightower, Fresno