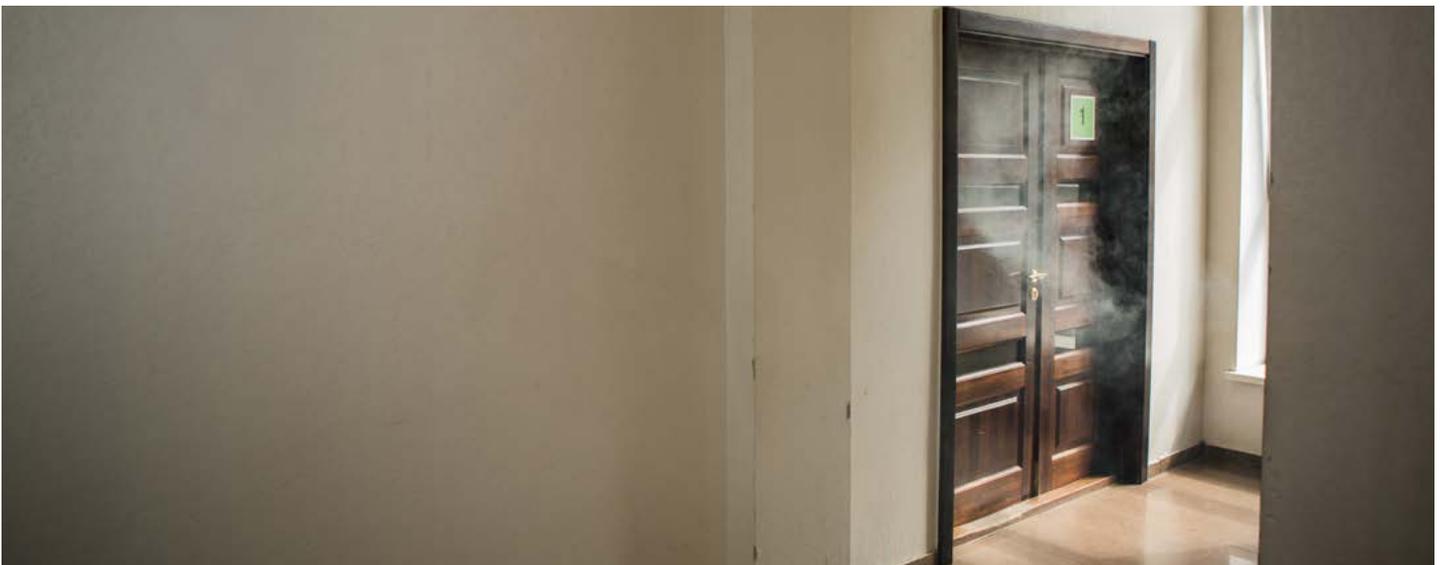


# REGULATING CANNABIS SMOKING

## in Multi-Unit Housing

Under California law, it is illegal to smoke cannabis in public places, including anywhere that smoking tobacco<sup>1</sup> is prohibited.<sup>2</sup> In many communities throughout the state, however, as in the growing number of states that legalize medical and recreational cannabis, questions continue to arise about the smoking of cannabis in multi-unit housing.

This fact sheet answers common questions for California property owners and tenants about the possible health risks of cannabis smoke, the “right” to smoke cannabis, various options for regulating the smoking and vaping of cannabis in multi-unit residences, and similarities between smoke-free tobacco and cannabis policies.



## Q: What are the health risks of secondhand cannabis smoke?

**A:** Limited research has been done on the risks of exposure to secondhand cannabis smoke, in contrast to the decades of scientific studies on secondhand tobacco smoke.<sup>3</sup> Recent studies, however, have shown that emissions from burning cannabis and tobacco cigarettes contain many of the same toxins, irritants, and carcinogens.<sup>4</sup> Among the thirty-three known carcinogens present in cannabis smoke are acetaldehyde, arsenic, benzene, chromium, formaldehyde, isoprene, lead, mercury, nickel, and quinoline.<sup>5</sup>

As most Californians have learned in recent years, smoke inhalation is a health risk, whether from a cigarette, a joint, a campfire, or a wildfire. Both tobacco and cannabis smoke contain inhalable airborne particles that can cause respiratory symptoms, such as coughing, phlegm, and wheezing and can exacerbate health problems, especially for people with respiratory conditions such as asthma, bronchitis, and chronic obstructive pulmonary disease.<sup>6</sup> Secondhand smoke exposure and particulate inhalation also increases the risk of coronary heart disease<sup>7</sup> and stroke.<sup>8</sup> Moreover, heavy exposure to cannabis smoke can result in measurable concentrations of THC (the ingredient that produces cannabis's psychoactive effect) in nonusers' blood serum and urine.<sup>9</sup> Exposure to cannabis smoke in an unventilated setting has caused participants to experience minor increases in heart rate and impaired cognitive performance.<sup>10</sup>

Also, a 2016 study in rats found that secondhand exposure to cannabis smoke affected a measure of blood vessel function as much as secondhand tobacco smoke and had longer lasting effects.<sup>11</sup> Although this research has not yet been conducted with humans, the toxins and other substances present in cannabis smoke raise troubling questions about the impact of secondhand smoke exposure on vulnerable individuals, such as infants, children, and anyone with a serious lung condition.<sup>12</sup>

The California Environmental Protection Agency includes cannabis smoke on the Proposition 65 list of chemicals known to cause cancer and reproductive/developmental toxicity.<sup>13</sup> Also, as an indication of concern about the health risks of exposure to cannabis smoke, the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) includes cannabis smoke (as well as emissions from electronic smoking devices) in its definition of "environmental tobacco smoke."<sup>14</sup> ASHRAE's national air standards have long been cited by tobacco control advocates, along with the Society's position that the only way to effectively eliminate the health risks posed by indoor exposure to secondhand smoke is to prohibit smoking.



**Q: Do California tenants have the right to smoke cannabis in multi-unit apartment buildings?**

**A:** Although California has legalized the adult use of recreational cannabis, there is no absolute right to smoke cannabis anywhere, just as there is no constitutional right to smoke tobacco, particularly when smoking impacts others.<sup>15</sup> Secondhand smoke, whether from combustible or aerosolized tobacco (e.g., e-cigarettes) or cannabis or cannabis products, can seep throughout multi-unit buildings from areas where smoking occurs, via ventilation systems, plumbing, or electrical lines.<sup>16</sup> Secondhand smoke can easily spread throughout a multi-unit building, compromising the health of all exposed to it. According to one U.S. study, 50 percent of residents in ostensibly smoke-free multi-unit buildings still experienced smoke entering into their units from adjacent units.<sup>17</sup>

**Q: Who has legal authority under California law to require that a multi-unit property be smoke-free?**

**A:** Under California law, landlords and multi-unit residential property owners have the legal authority to make their properties smoke-free.<sup>18</sup> This includes prohibiting the smoking or vaping of recreational or medical cannabis in individual units and common areas.<sup>19</sup> Also, if a complex includes a playground or tot lot sandbox area, the landlord is required by law to prohibit smoking within 25 feet of the area.<sup>20</sup>

Local governments also have legal authority to enact smoke-free legislation that includes the smoking or vaping of cannabis. As of April 2021, sixty-five California cities and counties have enacted laws that prohibit smoking in private units of multi-unit housing properties.<sup>21</sup> A growing number of these smoke-free laws include the smoking or vaping of cannabis.<sup>22</sup>

## Q: What are the benefits of a smoke-free multi-unit housing policy that prohibits the smoking or vaping of cannabis?

**A:** A multi-unit housing policy that *allows* the smoking and vaping of tobacco and cannabis products can result in high maintenance and turnover costs, due to the need to clean, renovate, and refurbish units where heavy smoking has occurred. At a time of housing scarcity in California, a smoke-free policy can help property managers prevent complexes from deteriorating and prolong the viability of as many units as possible. Smoking or vaping in residences also raises the risk of fires. Cigarettes have long been a leading cause of residential fire deaths, and fires caused by cigarette smoking result in over \$300 million in property loss each year.<sup>23</sup> For example, in California the July 2020 Clay Fire, which burned 730 acres and required the efforts of eight fire departments (and numerous agencies and power companies) to manage, was ignited by a cigarette butt.\* Limited research is available on the smoldering and burning properties of cannabis cigarettes.<sup>24</sup> Cannabis, however, is commonly vaped via a variety of electronic devices, which on occasion have exploded and caused injury and death, as well as fire.<sup>25</sup> Finally, allowing the smoking or vaping of cannabis on the premises could generate resident complaints due to drifting smoke or aerosol and even lead to Fair Housing Act complaints or lawsuits.<sup>26</sup>

In contrast, a smoke-free housing policy creates a healthier indoor environment, reduces turnover costs, lowers the risk of litigation, decreases the likelihood of fire, and helps meet the needs and preferences of most residents.<sup>27</sup> Also, some property insurance companies offer a discount for buildings that have a smoke-free policy.

## Q: What can California tenants do if a neighbor in their multi-unit complex smokes cannabis?

**A:** Tenants have the right to breathe clean air and not be exposed to secondhand smoke in their own home. The Law and Policy Partnership to End the Commercial Tobacco Epidemic has released a *Tenant Guide to Addressing Secondhand Smoke* (including cannabis smoking or vaping) for California cities and counties.<sup>28</sup> The guide is designed to help California tenants understand options available to them when they experience any type of secondhand smoke

\* Cal Fire, *Clay Fire* (July 30, 2020), <https://www.fire.ca.gov/incidents/2020/7/29/clay-fire>.



in multi-unit housing. The resource is organized roughly in the order that options should be considered, with litigation included only as a last resort.

**Q:** Can California tenants in apartment buildings who are registered users of medical cannabis claim they can smoke or vape medically prescribed cannabis in their units because they are disabled and entitled to rights as a protected class under the Americans with Disabilities Act? What about the claim that they are entitled to “reasonable accommodations” under the federal Fair Housing Act?<sup>29</sup>

**A:** This is an interesting question. The Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.<sup>30</sup> For example, the Act requires housing providers to make “reasonable accommodations”<sup>31</sup> in rules, policies, practices, or services when necessary to give a disabled person an equal opportunity to use and enjoy a dwelling unit or common space.<sup>32</sup> Under the Fair Housing Act, individuals are disabled if they have a physical or mental impairment that substantially limits one or more major life activities, have a record of such impairment, or are regarded as having an impairment.<sup>33</sup> Many individuals authorized to use medical cannabis would likely qualify as disabled under this definition.

The Fair Housing Act, however, states that a handicap “does not include current, illegal use of or addiction to a controlled substance”<sup>34</sup> as defined in the federal Controlled Substances Act.<sup>35</sup> Although several states have passed laws legalizing its sale and use, cannabis continues to be categorized as a Schedule 1 drug under federal law (that is, a drug with high potential for abuse with no currently accepted medical use in treatment in the U.S.).<sup>36</sup> Thus, it remains a *federal offense* to possess or use cannabis.<sup>37</sup> Because federal law supersedes state law, questions have naturally arisen about federal preemption of these state cannabis laws. In 2013, in an attempt to clarify the federal position on the enforcement of cannabis laws, the U.S. Department of Justice announced that the administration would not prosecute individuals or organizations engaged in cannabis activities that are conducted in clear compliance with state and local narcotics laws that permit and regulate these activities.<sup>38</sup> This continues to be the federal stance in the Biden administration. Thus, even though the Fair Housing Act requires housing providers to make reasonable accommodations for persons with disabilities, cannabis’s current status as a Schedule 1 drug makes it unclear whether such a case brought under this federal civil rights law would succeed.<sup>39</sup>

One note: As mentioned above, secondhand smoke poses health risks — especially to vulnerable individuals — and can exacerbate existing disabilities in other tenants. This, in turn, could defeat the purpose of the ADA when applied to medical cannabis use in multi-unit buildings.

 **Q: If a multi-unit property owner would like to adopt a policy that prohibits residents from smoking cannabis in their residences, what other grounds could be used as a basis for the policy?**

**A:** Depending on the jurisdiction, and whether a smoke-free law at the local level has declared secondhand smoke to be a “nuisance,” the housing association might be able to prohibit or otherwise restrict the smoking of cannabis on the property on the ground that it is a nuisance<sup>40</sup> or violates the rental property’s “warranty of habitability.”<sup>41</sup>

 **Q: What steps should landlords or multi-unit property owners take if they want to prohibit the smoking of cannabis in their residences?**

**A:** First, landlords and property owners should be aware of (or consult an attorney familiar with) laws regarding cannabis use in their jurisdiction. These laws vary in California cities and counties, particularly regarding cannabis use in multi-unit housing.<sup>42</sup>

Next, landlords and property owners should include language regarding the smoking of cannabis in their lease or rental agreements. These provisions should clearly and explicitly

specify the type of cannabis use prohibited on the property, premises covered by the policy (inside and outside), and the consequences of lease violations.

The Law and Policy Partnership to End the Commercial Tobacco Epidemic has released a *Smoke-Free Multi-Unit Housing Model Ordinance* for California cities and counties that can be easily adapted to include the smoking or vaping of cannabis.<sup>43</sup>

 **Q:** If a landlord or owner of a market rate property grants a tenant's request to use medical cannabis on the premises, does that mean that other residents run the risk of being exposed to cannabis smoke?

**A:** A "reasonable accommodation" should not result in the potential exposure of others to secondhand cannabis smoke.<sup>44</sup> Several methods for ingesting medical cannabis — such as extracts, tinctures, oils, edibles, pills, and cannabis inhalers — would not expose other residents to cannabis smoke.<sup>45</sup> Although each individual's medical situation is different and some methods of ingesting cannabis might not have the same effect as smoking cannabis, a middle ground might be reached for many cannabis users, in concert with advice from the referring physician. Note that these methods of consumption are also available for recreational cannabis.

 **Q:** Can public housing authorities prohibit the smoking of cannabis in federally subsidized housing?

**A:** Yes. Secondhand smoke, whether from tobacco or cannabis products, spreads throughout multi-unit dwellings. Public and other subsidized housing owners have the same rights as owners of non-public housing to adopt smoke-free policies.<sup>46</sup> These smoke-free policies may include a prohibition on smoking of medical, as well as recreational, cannabis. Moreover, the U.S. Department of Housing & Urban Development (HUD) explicitly states that if applicants for public or Section 8 housing are known users of cannabis (medical or otherwise), their applications must be denied.<sup>47</sup> Also, if current residents request a reasonable accommodation to allow them to use medical cannabis in their unit, the request must be denied, as that may set an expectation that all residents in similar situations could expect an accommodation.<sup>48</sup> In a memo released January 20, 2011, HUD clarified that the Public Housing Reform Act allows (but does not compel) public housing authorities to terminate assistance for existing residents if they use a controlled substance.<sup>49</sup> Public housing authorities have discretion to determine those policies deemed most appropriate for their local communities, including denying assistance or terminating individual medical cannabis users, rather than entire households, for

both applicants and existing residents. The U.S. Food and Drug Administration has approved for medicinal use drugs comprised of cannabis derivatives and synthetics (such as Epidiolex, Marinol, and Cesament), which are not medical cannabis or Schedule 1 drugs, and are thus allowed in public housing and voucher programs.<sup>50</sup>

### Q: Doesn't HUD's smoke-free rule prohibit the use of cannabis by residents in public housing?

**A:** No. HUD requires that public housing agencies prohibit the use of *tobacco products* in all indoor areas. This smoke-free requirement, which took effect July 31, 2018, applies to all public housing, but does not include all federally subsidized housing, such as dwelling units in mixed-finance buildings or privately owned dwellings financed under Section 8 of the Housing Act. The rule covers combustible tobacco products, such as cigarettes, cigars, and pipes, as well as hookahs, but does not include e-cigarettes or similar devices, or the smoking or vaping of cannabis. Property managers can opt to apply their facility smoke-free standards to e-cigarettes and other products not covered by the HUD standard.

Because cannabis is a federally prohibited substance, the use and possession of this drug is already prohibited on HUD-funded (and other federal) properties, regardless of HUD's smoke-free law. Federal law preempts state law, including in those states where the use of medical or recreational cannabis is now legal.

### Q: Can public housing agencies evict residents who use medical cannabis?

**A:** Yes, it is within their discretion to do this, but it should be considered only as a last resort after other alternatives have proved unsuccessful.<sup>51</sup> Ironically, the same smoke-free policies that are in place to protect residents and improve their housing stability are policies that, when enforced, may put another resident's housing stability in jeopardy because of possible penalties or eviction.<sup>52</sup> The impact of eviction upon an individual and family can be devastating and this measure should be avoided if at all possible. A structure of graduated penalties helps ensure better compliance with a smoke-free policy by providing multiple steps for enforcement and giving residents the opportunity to change their behavior before infractions rise to the level of lease termination.<sup>53</sup>

HUD's 2011 memo mentioned above stated that residents who revealed cannabis use on their public housing applications would be denied admission to Public Housing or Housing Choice Voucher programs, regardless of their circumstances, since cannabis is a controlled substance.<sup>54</sup> However, the memo also gave public housing authorities (and, most often,

individual landlords) the right to use their discretion on how to execute medical cannabis lease provisions. Housing authorities will need to conduct individual assessments of each individual request, focusing on the right of all tenants to have equal access to safe and clean air.

Also, as noted earlier, not only are several FDA-approved cannabis synthetics and derivatives available, but medical cannabis users can ingest the drug in a variety of ways that do not result in secondhand smoke exposure of fellow tenants.

### Q: What are some basic guidelines for multi-unit residential property owners and housing authorities who would like to prohibit or restrict the smoking or vaping of cannabis on their property?

**A:** Property owners and housing agencies need to clearly communicate their cannabis-related policies to all residents, housing applicants, and visitors. They can do this by updating their established occupancy standards and lease provisions, and providing handouts to tenants, prospective tenants, or visitors.

Below are a few basic considerations to keep in mind when implementing any smoke-free policy.

- Clearly define “smoking,” vaping, and related terms in any lease and rental agreements in buildings designated as No-Smoking or Non-Smoking. If a property’s smoke-free (or tobacco-free) policy covers the smoking and vaping of cannabis, be explicit about what that entails and what areas are included (for example, indoor common areas and residential units). Other areas covered under such a policy could include outside premises, such as walkways, parking lots, balconies, porches, patios or decks of individual units, and areas near doorways, windows, and air vents.
- Explain the policy’s rationale. Make sure that residents, guests, employees, and others associated with a multi-unit property understand the health risks related to smoking, vaping, and exposure to secondhand smoke and aerosol.
- Apply the smoke-free policy uniformly to all residents, guests, and employees.
- Ensure that an effective enforcement plan is in place that describes the process for handling violations. (The Partnership’s [model ordinance](#) does not include criminal sanctions for those who smoke, and focuses primary responsibility for enforcement on landlords by holding them accountable with appropriate civil penalties if they allow smoking or otherwise violate the local ordinance.)
- Prepare tenants and staff for implementation of the policy by providing, for example, announcements, educational material or presentations, staff training, and signage.

## Q: Where can I get additional information about issues related to smoking or vaping cannabis and parallels between cannabis regulation and tobacco control policies?

**A:** In addition to the Law and Policy Partnership to End the Commercial Tobacco Epidemic’s tobacco-free housing [resources](#), the Public Health Law Center’s [web page](#) contains several publications and resources on smoke-free housing, including resources that discuss concepts related to condominiums, apartments and other multi-unit dwellings, affordable housing, and smoke-free housing disclosure policies. Many of these materials may be relevant for those seeking to regulate the use of cannabis products. Cannabis-specific legal resources include the Center’s policy briefs, *Tokening, Smoking, & Public Health: Lessons from Tobacco Control for Marijuana Regulation* (2018) and *There is No Constitutional Right to Smoke or Toke* (2019), and several archived webinars. Also, the American Nonsmokers’ Rights Foundation’s [website](#) has several resources related to secondhand tobacco and cannabis smoke, including regularly updated maps of state and local laws prohibiting the smoking and vaping of cannabis.

For more information about California’s cannabis-related laws and policies, as well as a wealth of state-specific cannabis resources, check out the [California Cannabis Portal](#).

---

This publication was prepared by the American Lung Association in California and the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice. This case study was made possible by funds received from Grant Number 19-10229 with the California Department of Public Health, California Tobacco Control Program, and the American Lung Association in California.

## Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit: <http://www.keepitsacred.itcml.org>. When the word “tobacco” is used throughout this document, a commercial context is implied and intended.
- 2 Cal. Health Safety Code § 11362.3(a)(2), [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=11362.3.&lawCode=HSC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11362.3.&lawCode=HSC). Note that Section 11362.1 does permit the smoking or ingesting of cannabis or cannabis products in a public place if it is in accordance with Section 26200 of the Business and Professions Code. This would include, for example, smoking cannabis at temporary events or on the premises of a licensed retailer or microbusiness, if all specified requirements are met. [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=BP-C&division=10.&title=&part=&chapter=20.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=BP-C&division=10.&title=&part=&chapter=20.&article=)
- 3 See, e.g., Matthew Springer and Stanton Glantz, *Marijuana Use and Heart Disease: Potential Effects of Public Exposure to Smoke* (April 22, 2015), <https://tobacco.ucsf.edu/marijuana-use-and-heart-disease-potential-effects-public-exposure-smoke>.

- 4 See, e.g., UCLA, *Secondhand Marijuana Smoke: What are the Risks to Your Health?* (2020), <https://connect.uclahealth.org/2020/10/29/secondhand-marijuana-smoke-what-are-the-risks-to-your-health>.
- 5 Reproductive and Cancer Hazard Assessment Branch, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency, *Evidence on the Carcinogenicity of Cannabis Smoke* (2015), [http://oehha.ca.gov/prop65/hazard\\_ident/pdf\\_zip/FinalMJsmokeHID.pdf](http://oehha.ca.gov/prop65/hazard_ident/pdf_zip/FinalMJsmokeHID.pdf).
- 6 See, e.g., Hannah Holitzki et al., *Health Effects of Exposure to Second- and Third-hand Cannabis Smoke: A Systematic Review*, 5 CAN. MED. ASS'N J., E814-E822 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5741419>; Nat'l Inst. Drug Abuse, *What Are the Effects of Secondhand Exposure to Cannabis Smoke* (2020), <https://www.drugabuse.gov/publications/research-reports/cannabis/what-are-effects-secondhand-exposure-to-cannabis-smoke>; Americans for Nonsmokers Rights Foundation, *Secondhand Marijuana Smoke* (2021), <https://no-smoke.org/secondhand-marijuana-smoke-fact-sheet>.
- 7 See, e.g., Joaquin Barnoya & Stanton Glantz, *Cardiovascular Effects of Secondhand Smoke*, 111 CIRCULATION 2684-98 (2005), <https://www.ahajournals.org/doi/full/10.1161/CIRCULATIONAHA.104.492215>.
- 8 See, e.g., Angela Malek et al., *Secondhand Smoke Exposure and Stroke: The Reasons for Geographic and Racial Differences in Stroke (REGARDS) Study*, 49 AM J. PREV. MED. e89-e97 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4656115>.
- 9 Rosalie Liccardo Pacula et al., *Developing Public Health Regulations for Cannabis: Lessons from Alcohol and Tobacco*, 104 AM. J. PUB. HEALTH 1021, 1024 (2014).
- 10 Evan S. Herrmann et al., *Non-Smoker Exposure to Secondhand Cannabis Smoke II: Effect of Room Ventilation on the Physiological, Subjective, and Behavioral/Cognitive Effects*, 151 DRUG ALCOHOL DEPEND. 194-202 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4747424>.
- 11 Xiaoyin Wang et al., *One Minute of Marijuana Secondhand Smoke Exposure Substantially Impairs Vascular Endothelial Function*, 5 J. AM. HEART ASSOC. e03858 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5015303>.
- 12 See *id.*
- 13 Cal. Office of Env'l Health Hazard Assessment, *Cannabis (Marijuana) Smoke* (2009, 2020), <https://oehha.ca.gov/proposition-65/chemicals/cannabis-marijuana-smoke>.
- 14 American Society of Heating, Refrigerating, and Air Conditioning Engineers, *Standards for Ventilation and Indoor Air Quality — Standards 62.1-62.2* (2016).
- 15 Public Health Law Center, *There is No Constitutional Right to Smoke or Toke* (2019), <https://www.publichealthlawcenter.org/sites/default/files/resources/No-Constitutional-Right-Smoke-Toke-2019.pdf>. Note that although Alaska has a privacy right that covers the consumption of cannabis in the home, this does not mean Alaskans have a right to expose fellow tenants to secondhand smoke. *Id.* at 12-13.
- 16 Ctrs. for Disease Control and Prevention, *Going Smokefree Matters: Multiunit Housing* (2020), [https://www.cdc.gov/tobacco/basic\\_information/secondhand\\_smoke/going-smokefree-matters/multi-unit](https://www.cdc.gov/tobacco/basic_information/secondhand_smoke/going-smokefree-matters/multi-unit).
- 17 Andrea S. Gentzke et al., *Attitudes and Experiences with Secondhand Smoke and Smoke-Free Policies Among Subsidized and Market-Rate Multiunit Housing Residents Living in Six Diverse Communities in the USA*, 27 TOBACCO CONTROL 194, 194 (2018).
- 18 Cal. Civ. Code §1947.5, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CIV&sectionNum=1947.5](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=1947.5).
- 19 Clifford E. Douglas, Smoke-free Environments Law Project, *Restricting the Use of Medical Cannabis in Multi-Unit Residential Settings: Legal and Practical Considerations* (2010), <http://www.mismokefreeapartment.org/MMAanalysis.pdf>.
- 20 Cal. Health and Safety Code § 104495.
- 21 American Nonsmokers' Rights Foundation, *U.S. Laws for 100% Smokefree Multi-Unit Housing* (2021). <https://no-smoke.org/wp-content/uploads/pdf/smokefreemuh.pdf>. Most of these laws — 56 municipalities — apply to properties with two or more units.

- 22 See, e.g., Santa Clara Ordinance 2029 (2021), [Smokefree Santa Clara | City of Santa Clara \(santaclaraca.gov\)](https://www.santaclaraca.gov/santaclaraca/ordinances/2021-2022/2021-05-26-2029); Palo Alto Municipal Code 9.1 (2021), [https://codelibrary.amlegal.com/codes/paloalto/latest/paloalto\\_ca/0-0-0-6175](https://codelibrary.amlegal.com/codes/paloalto/latest/paloalto_ca/0-0-0-6175); Mountain View, Kevin Forestieri, *Mountain View Bans Smoking in Multifamily Residences, Including Common Areas and Inside Areas*, MOUNTAIN VIEW VOICE (May 26, 2021), <https://www.mv-voice.com/news/2021/05/26/mountain-view-bans-smoking-in-multi-family-residences-including-common-areas-and-inside-units>.
- 23 Brian King et al., *National and State Cost Savings Associated with Prohibiting Smoking in Subsidized and Public Housing in the United States*, 11 PREV CHRONIC DISEASE 40222 (2014), [https://www.cdc.gov/pcd/issues/2014/14\\_0222.htm](https://www.cdc.gov/pcd/issues/2014/14_0222.htm).
- 24 See, e.g., Marianne Fakeh Campbell et al., *E-cigarette Environmental and Fire/Life Safety Risks in Schools Reported by Secondary School Teachers*, 20 BMC PUBLIC HEALTH 1215 (2020), <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-020-09319-8>.
- 25 See Americans for Nonsmokers' Rights Foundation, *E-cigarette Explosions and Fires* (2021), <https://no-smoke.org/wp-content/uploads/pdf/E-Cigarette-Explosions-and-Fires.pdf>
- 26 See, e.g., 42 U.S.C. § 3601 *et seq.*
- 27 Michael Ong et al., *Estimates of Smoking Related Property Costs in California Multiunit Housing*, 102 AM. J PUBLIC HEALTH 90-93 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3487653>.
- 28 See Public Health Law Center, *Tenant Guide to Addressing Secondhand Smoke* (2020), <https://www.publichealthlawcenter.org/sites/default/files/resources/Tenants-Rights-Guide.pdf>.
- 29 See generally Public Health Law Center, *Smoke-free Public Housing: Reasonable Accommodations* (2021), <https://www.publichealthlawcenter.org/sites/default/files/resources/Smoke-Free-Public-Housing-Reasonable-Accommodations.pdf>.
- 30 *Id.* Note that Title II of the Americans with Disabilities Act also ensures that individuals with disabilities have equal access to fair housing. 42 U.S.C. §§ 3604; 12102.
- 31 See generally U.S. Dep't of Housing and Urban Development, People with Disabilities web page (HUD.Gov), [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504faq#anchor257647](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504faq#anchor257647); see also U.S. Dep't of Justice & U.S. Dep't of Housing and Urban Development, Reasonable Accommodations under the Fair Housing Act (May 5, 2008) (Joint Statement), <https://www.hud.gov/sites/dfiles/FHEO/documents/huddojstatement.pdf>.
- 32 42 U.S.C. § 3602 (h).
- 33 42 U.S.C. § 3602 (h); see also Douglas, *supra* note 18, at 4.
- 34 42 U.S.C. § 3602 (h).
- 35 21 U.S.C. § 802.
- 36 *Id.*
- 37 See 21 U.S.C. §§ 841(a)(1); 844(a); 812(b)(1)(A)-(C).
- 38 U.S. Dep't of Justice, *Guidance Regarding Cannabis Enforcement* (Aug. 29, 2013), <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>. The U.S. Department of Justice's priorities are: "Preventing the distribution of cannabis to minors; preventing revenue from the sale of cannabis from going to criminal enterprises, gangs, and cartels; preventing the diversion of cannabis from states where it is legal under state law in some form to other states; preventing state-authorized cannabis activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; preventing violence and the use of firearms in the cultivation and distribution of cannabis; preventing drugged driving and the exacerbation of other adverse public health consequences associated with cannabis use; preventing the growing of cannabis on public lands and the attendant public safety and environmental dangers posed by cannabis production on public lands; and preventing cannabis possession or use on federal property." *Id.* at 1-2.

39 See Douglas, *supra* note 19, at 4.

40 *Pot May be Legal in Some States — But the Neighbors Don't Have to Like It*, U.S. NEWS & WORLD REPORT (July 25, 2014), <http://www.usnews.com/news/us/articles/2014/07/25/pot-may-be-legal-but-homeowner-agreements-can-ban>.

41 See, e.g., Public Health Law Center, *Smoke-free Housing and Rent Abatement* (2019), <https://www.publichealthlawcenter.org/sites/default/files/resources/Smoke-Free-Housing-Rent-Abatement-MN-2019.pdf>.

42 These laws vary among states as well. In Massachusetts, for example, landlords can prohibit cannabis smoking via a lease agreement, but cannot prohibit the consumption of cannabis edibles or other non-smoking forms. Mass. Cannabis Control Commission, *Consumption of Cannabis for Adult Use* (last accessed June 5, 2021), <https://mass-cannabis-control.com/wp-content/uploads/2018/06/Fact-Sheet-Consumption.pdf>. They can, however, prohibit the use of non-smoked cannabis if failing to do so would cause the landlord to violate a federal law or regulation, or if the property is owned by the Commonwealth, a subdivision of the Commonwealth (e.g., a county, city, or town), or a state or local government agency. *Id.* In Rhode Island, no landlord may refuse to lease to, or otherwise penalize, a renter solely because of the renter's status as a medical cannabis cardholder. The landlord does have the discretion, however, not to lease, or continue to lease, to a cardholder who cultivates cannabis in the leased premises. R.I. STAT. Title 21, Sec. 21-28.6-4, <http://webserver.rilin.state.ri.us/Statutes/TITLE21/21-28.6/21-28.6-4.HTM>.

43 Public Health Law Center, *Smoke-free Multi-Unit Housing Model Ordinance* (2020), <https://www.publichealthlawcenter.org/sites/default/files/resources/CA-Smoke-free-MUH-Model-Ordinance.pdf>.

44 Douglas, *supra* note 19, at 7.

45 Rachel Ann Barry et al., *Waiting for the Opportune Moment: The Tobacco Industry and Cannabis Legalization*, 92 MILBANK QUARTERLY 207, 208-9 (2014), <http://bit.ly/1uUpJeb>.

46 HUD Notice PIH-2012-25, May 29, 2012 (“This notice strongly encourages Public Housing Authorities (PHAs) to implement non-smoking policies in some or all of their public housing units.... PHAs are permitted and strongly encouraged to implement a non-smoking policy at their discretion, subject to state and local law.”).

47 See Memorandum from Helen R. Kanovsky, Medical Use of Cannabis and Reasonable Accommodation in Federal Public and Assisted Housing 2, Jan. 20, 2011, <http://www.scribd.com/doc/47657807/HUD-policy-Memo-on-Medical-Cannabis-in-Public-Housing#download>.

48 *Id.*

49 *Id.* at 10-11.

50 U.S. Food & Drug Admin., FDA Regulation of Cannabis and Cannabis-Derived Products: Questions and Answers, <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm421168.htm>.

51 See, e.g., U.S. Dep't Housing and Urban Development, *Use of Cannabis in Multifamily Assisted Properties* (2014), <https://www.hud.gov/sites/documents/USEOFMARIJINMFASSISTPROPTY.PDF>.

52 See Public Health Law Center, *Smoke-free Multi-Unit Housing: Equitable Enforcement Strategies* (2020), <https://www.publichealthlawcenter.org/sites/default/files/resources/SF-MUH-Equitable-Enforcement-Strategies.pdf>,

53 *Id.*

54 U.S. Dep't Housing and Urban Development, Medical Cannabis Use in Public Housing and Housing Choice Voucher Programs (Feb. 10, 2011), <http://portal.hud.gov/huddoc/med-cannabis.pdf>.