



SMOKE-FREE HOUSING GUIDANCE

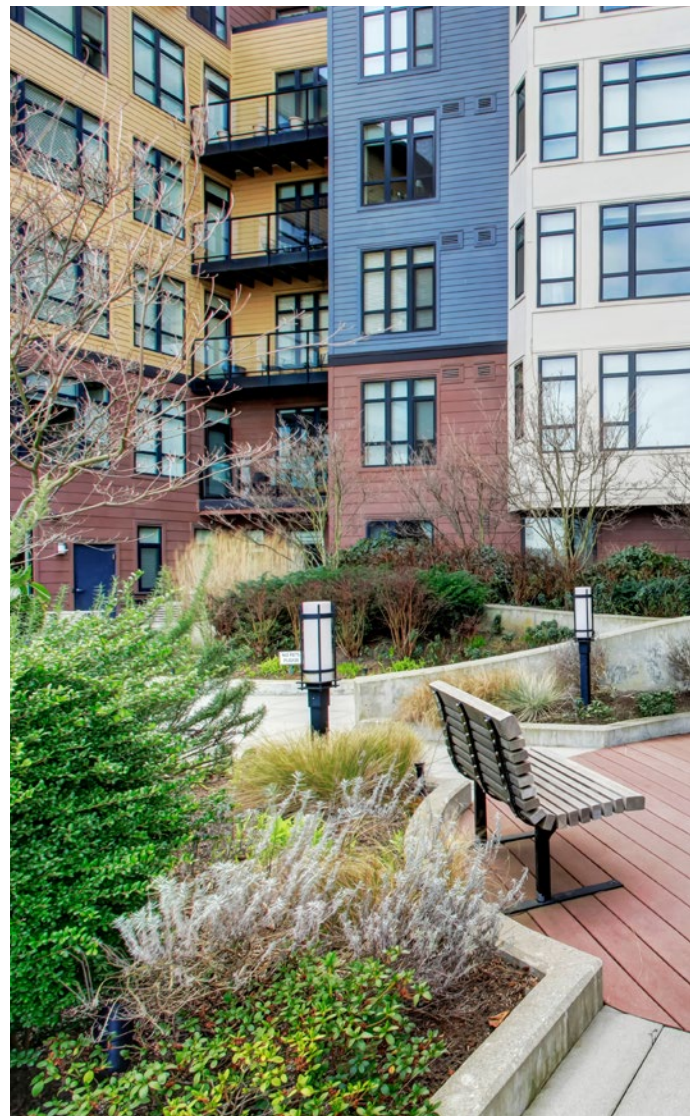
for Individuals in Multiunit Housing



Secondhand smoke infiltration into multiunit housing is a serious public health problem. Health concerns related to secondhand smoke are well documented, yet only one in three multiunit housing residents are covered by smoke-free laws or building policies.¹

Secondhand smoke also poses a serious risk of fire. Between 2012 and 2016, U.S. fire departments responded to an estimated 18,100 smoking-related structure fires, which resulted in an estimated 1,130 injuries, 590 deaths, and \$476 million in direct property damage.² Moreover, there is no constitutional right to smoke.³

Adopting a smoke-free policy can help mitigate the harms of secondhand smoke exposure in homes. Also, because of disparities in commercial tobacco use, secondhand smoke exposure, and related health problems exist based on where people live, providing residents protection from



secondhand smoke exposure is an issue of health equity as well.⁴ Though much progress has been made in strengthening clean indoor air and other smoke-free laws — including over one hundred municipal ordinances regulating multiunit housing settings in the state of California — the fact is, multiunit housing remains the least regulated area when it comes to smoke-free spaces. As a result, many multiunit properties are not covered by a smoke-free law or policy.

Unfortunately, finding relief from secondhand smoke exposure in multiunit housing may not be a straightforward proposition. Residents experiencing this issue must navigate several laws at the federal, state, and local level. While relief can be sought through litigation, that is neither a speedy nor an economical approach. Moreover, which law or legal principle is relevant can vary depending on a variety of factors, including —

Factor 1

The ownership of the property (e.g., public housing, a private landlord);

Factor 2

If the building has a voluntary smoke-free policy in place;

Factor 3

The resident's status with regard to public assistance (e.g., if the resident receives Section 8 vouchers, or if the apartment is rent stabilized);

Factor 4

The type of housing the resident occupies (e.g., apartment, condominium, cooperative);

Factor 5

The product being smoked (e.g., combustible products, e-cigarettes, cannabis);

Factor 6

The location of the smoking (e.g., private unit, common area, outdoors);

Factor 7

The disability status of either the resident or the person smoking or vaping.

This resource highlights relevant laws and policies for multiunit housing residents who are experiencing smoke infiltration into their homes. It identifies laws depending on the factors listed above, organized by different conditions for each factor. It includes smoke-free laws in place that may already apply in those settings, as well as potential legal theories that could be used should litigation become necessary.

Factor 1

Ownership of the Property

The ownership of the property can determine which smoke-free laws apply. Specifically, if the property is owned by the government, greater protections are in place than if a property is privately owned.

Condition A: The property is owned by the government (i.e., public housing).

In 2018, the U.S. Department of Housing and Urban Development (HUD) implemented a rule restricting smoking in public housing. This rule restricts smoking in living units, common areas, and in outdoor areas within 25 feet of areas where smoking is restricted. Unfortunately, the HUD rule is not comprehensive. It does not restrict the use of e-cigarettes, nor does it apply to subsidized housing that is privately owned, such as Section 8 housing. However, the rule does allow public housing authorities and property owners to adopt stronger restrictions. For more information on the HUD rule, see the Public Health Law Center publication [*HUD's Smoke-Free Public Housing Rule: An Overview*](#).

Although the HUD smoke-free rule does not address cannabis (marijuana) smoking, other authorities suggest it is prohibited in public housing. Because cannabis use remains illegal under federal law, HUD policy is to refuse to allow tenancy by anyone known to use cannabis.⁵ This suggests smoking cannabis in public housing is prohibited, even if cannabis use is allowed under state law.

If you live in public housing and smoking is occurring despite the smoke-free rule, you can notify HUD of the violation. HUD explains its Multifamily Housing Complaints process [here](#). The telephone number to call for making complaints is 1-800-MULTI-70 (1-800-685-8470).



**If the property is owned
by the government,
greater protections
are in place.**

Condition B: The property is owned by a private landlord.

Unless you reside in one of the more than one hundred municipalities in California, no other laws are in place that restrict smoking in privately owned, multiunit housing. Note that other U.S. municipalities have local laws that do not address smoking in private units, but do regulate smoking in multiunit housing to a lesser extent, such as prohibiting smoking in indoor common areas or on patios/balconies. Also, while some state clean indoor air laws do restrict smoking in places of employment, which can include common areas of multiunit housing — private residential units, including patios and balconies, remain unregulated. In the absence of any law in place prohibiting smoking, many multiunit housing property owners choose to implement voluntary smoke-free policies. These policies can range from restricting smoking in common areas, like laundry rooms and mail rooms, to more comprehensive policies that prohibit smoking on the entirety of the premises, including residential units. Such policies can and should include steps taken to enforce the policy to ensure residents are free from secondhand smoke exposure. However, because voluntary policies do not carry the force of law, they are only as good as a landlord or management company is willing to enforce that policy

Factor 2**Whether the Building Has a Smoke-Free Policy**

If no government policy protects your right to breathe clean air in your home, one solution can be a smoke-free policy adopted by your property manager (or condo or co-op board) that applies to your building.

Condition A: The building has a smoke-free policy in place.

If a policy is in place and smoking is still occurring, the violation can be reported, following the process spelled out in the policy. If the policy continues to be unenforced, it may be necessary to bring legal action to enforce your rights.

Condition B: The building has no smoke-free policy.

If there is no smoke-free policy in place in your building, you can advocate for the adoption of one. The process for adopting it will vary depending on whether you rent an apartment, or live in a common interest community, such as a condominium, townhome, or cooperative. See **Factor 4** for more information on how to adopt a policy given the building type.

Initiating a lawsuit over smoke infiltration where there is no smoke-free policy in place could pose significant challenge, as litigation is more likely to be successful when a building has a smoke-free policy that is not being followed compared to when no policy exists.

Factor 3**Tenant's or Unit's Public Assistance Status**

Whether or not a tenant receives public assistance can impact not only if a smoke-free law applies, but also the ability of a landlord to implement a smoke-free policy regarding a specific tenant.

Condition A: The resident receives Section 8 vouchers.

Unfortunately, the HUD smoke-free rule does not apply to properties subsidized under Section 8.⁶ However, owners of such properties can adopt smoke-free policies on their own. The following publications provide additional information about steps that can be taken to protect residents from secondhand smoke:

- *Making Affordable Housing Smoke-Free: First Steps*
- *Creating Smoke-Free Affordable Housing*

Condition B: The unit is rent-stabilized.

In certain jurisdictions, some allowances are made for tenants living in rent-stabilized units. This can sometimes require that a smoke-free policy exempt these units where the resident does not agree to the policy, such as in New York City.⁷ Residents living in multiunit housing properties containing rent-controlled or stabilized units should check their local laws regulating this type of housing to determine whether any exemptions apply to these residents.

Factor 4**Type of Housing**

Regardless of the type of housing you occupy, if you are experiencing smoke infiltration in multiunit housing, the Public Health Law Center publication *Regulating Smoking in Multi-Unit Housing* describes legal options you might want to consider. Other resources, such as the American Nonsmokers' Rights Foundation publication *Secondhand Smoke in Apartments and Condominiums: A Guide for Owners and Managers* might also be helpful. However, the process for creating a smoke-free policy varies depending on whether you live in an apartment, a condominium, or a cooperative. The differences are described below.

Condition A: The unit is an apartment.

Some areas within apartment buildings may be covered by clean indoor air laws, depending on which state you live in. If your apartment is not covered by a smoke-free law or voluntary policy that applies to other parts of the building, you can request that building management adopt such a policy. Apartments are typically made smoke-free through the adoption of lease addendums and changes to the House Rules. If the landlord is receptive to adopting a smoke-free policy, the Public Health Law Center's *Model Smoke-Free Lease Addendum* could provide a template. The American Nonsmokers' Rights Foundation also has a Model Smoke-Free Lease Addendum available [here](#).

Condition B: The unit is a condominium.

If a condominium is not covered by a state or local clean indoor air law or voluntary policy, residents experiencing secondhand smoke infiltration could advocate for a smoke-free policy within their building. Typically, the process for amending condominium rules and regulations — as opposed to the declaration or bylaws — rests with the association board. While this can be a straightforward process when working with a sympathetic board, the process can present barriers if the board is unsupportive. If the board does not support amending or creating a

rule, residents can work with fellow condo unit owners to incorporate a comprehensive smoke-free policy directly into the declaration and/or bylaws. The bylaws should outline the process for amending the declaration and bylaws. The language should specify what percentage of unit owners are required to modify or amend the bylaws. The Public Health Law Center's *Model Smoke-Free Common Interest Community Policy* was developed for buildings in Minnesota, but could be used as a starting point for a policy for other buildings wherever they are located.

If the level of smoke intrusion is extensive enough that legal action is realistic, the Public Health Law Center publication *Secondhand Smoke in Condominiums: Legal Options for Owners* explains potential legal theories upon which to base a claim.

Condition C: The unit is a cooperative.

Absent a state or local clean indoor air law or voluntary policy, cooperative residents experiencing secondhand smoke infiltration could advocate for a smoke-free policy in their building. The process for amending a cooperative's bylaws should be spelled out in the bylaws.

If the level of smoke intrusion is extensive enough that legal action seems reasonable, the Public Health Law Center publication *Secondhand Smoke in Condominiums: Legal Options for Owners* explains potential legal theories. While condominiums and cooperatives raise distinct legal issues, this document describes some theories under which residents exposed to secondhand smoke have obtained relief.

Factor 5

The Product Being Smoked

Smoke-free laws do not treat all tobacco or nicotine products equally. Some policies do not apply to e-cigarettes or cannabis products.

Condition A: Combustible cigarette, cigar, or pipe smoke is infiltrating another unit.

Most, if not all, smoke-free laws or policies covering multiunit housing will prohibit the smoking of conventional, combustible tobacco and nicotine products. This is because of the well-known risks and documented research that has repeatedly identified combustible tobacco and nicotine product smoke as a health hazard. Violations should be easier to enforce as these products will be covered under any applicable smoke-free law or policy.

Condition B: The aerosol/vapor from an e-cigarette is infiltrating another unit.

Depending on your state or local clean indoor air law, the aerosol or vape emitted from an e-cigarette product may or may not be treated the same as smoking combustible products. This is also true for any voluntary smoke-free housing policy. If there is a smoke-free policy in place for a multiunit housing property that does not include any prohibition on vaping, residents experiencing secondhand smoke infiltration from e-cigarette and vape products could advocate that these be included in the smoke-free policy within their building.

Condition C: Cannabis smoke is infiltrating another unit.

Likewise, state and local laws, as well as voluntary policies, may or may not prohibit the smoking or vaping of cannabis. Although smoking cannabis is generally treated the same as smoking conventional or electronic tobacco and nicotine products in clean indoor air laws, if a resident claims that smoking cannabis is needed for medical purposes, some caveats may apply. For example, in New York State, the Office of Cannabis Management has stated that “A landlord cannot refuse to rent to a tenant who consumes cannabis, but landlords, property owners, and rental companies can still ban the smoking or vaporizing of cannabis on their premises.” However, state law requires that no landlord’s smoke-free policy “may be construed to limit the certified medical use of cannabis.” Residents experiencing secondhand smoke exposure from cannabis should determine what laws or rules in their communities may regulate the use of cannabis in housing, if any, when advocating for smoke-free housing policies to prohibit the smoking of cannabis, alongside tobacco and nicotine products

Factor 6**The Location of the Smoking**

Not all areas are covered by smoke-free laws. For example, if the smoking is occurring outside, it might not be prohibited by a smoke-free law.

Condition A: Somebody is smoking in another unit.

Some cities and counties have adopted ordinances requiring all multiunit housing — including the living units — to be smoke-free. As of the date of this publication, however, none of these municipalities are located outside the state of California. A list of jurisdictions is available [here](#). If a city council or county commissioners are open to adopting such an ordinance, the Public Health Law Center developed a [national smoke-free multiunit housing ordinance](#) for communities that have the authority to enact local laws to protect residents from secondhand smoke exposure.

Condition B: Somebody is smoking in an indoor common area.

Depending on your state and local community, smoke-free laws may be in place prohibiting smoking in indoor common areas, including multiunit housing. Absent any such law, voluntary policies that have been adopted in multiunit housing will almost always prohibit smoking in indoor common areas, such as laundry and mail rooms or lounges. For areas not covered, residents can advocate for building policies that include all common areas, as well as private units.

Condition C: Somebody is smoking outdoors.

Although most localities lack comprehensive smoke-free regulations that apply to surrounding areas outside of multiunit housing, a few individual areas are covered. For instance, outdoor areas within 25 feet of indoor areas within public housing are required to be smoke-free under the HUD rule.⁸ State or local laws or voluntary policies may also prohibit smoking in common outdoor areas, such as playgrounds, and some multiunit properties might have playgrounds present. For areas not covered, residents can advocate for building policies that include outdoor areas.

Factor 7**Disability Status**

Additional protections may apply if a person involved has a disability.

Condition A: The person experiencing smoke infiltration has a disability exacerbated by secondhand smoke.

Tenants with disabilities have rights under various laws. In addition to the Fair Housing Act, this can also include local and state laws. These laws require a case-by-case analysis to determine the strength of individual rights and related claims. This analysis would include an exploration of whether the tenant meets the definition of a person with a disability according to relevant laws. It would also involve identifying and documenting the tenant's need for a reasonable accommodation to allow them to use and enjoy their apartment.

This resource offers general guidance regarding reasonable accommodations. Please note that while this resource focuses on public housing agencies (PHAs), the analysis also applies more generally to private housing, such as condominiums, cooperatives, and apartments. The resource is focused on tobacco smoke, but the general description of what constitutes a disability and reasonable accommodation would also apply to cannabis.



If you have a disease or disability caused by or exacerbated by secondhand smoke exposure, you could request a reasonable accommodation, such as being moved to a unit that isn't affected by the smoke intrusion. Having a health condition that is exacerbated by secondhand smoke could also classify a person as disabled under the Federal Fair Housing Act. Determining if an individual is "disabled" is made on a case-by-case basis. HUD allows people to submit complaints at this website. HUD typically follows up in a few weeks to get more information about the situation.

Condition B: The person smoking has a disability.

Neither HUD, the Department of Justice, nor any court has yet determined that smoking or nicotine addiction itself requires protection against discrimination. The Public Health Law Center's *Smoke-Free Public Housing: Reasonable Accommodations* offers some general guidance regarding reasonable accommodations.

This resource was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health and was made possible with funding from the Robert Wood Johnson Foundation. The Center does not provide legal representation or advice. The information in these materials should not be considered legal advice.

Endnotes

- 1 See Ctrs. for Disease Control and Prevention, *Trends and Disparities in Secondhand Smoke* (2024), <https://www.cdc.gov/tobacco/secondhand-smoke/disparities.html>.
- 2 Marty Ahrens, *Home Fires Started by Smoking*, Nat'l Fire Prot. Ass'n (2019), https://www.maine.gov/future/sites/maine.gov/dps.fmo/files/inline-files/nfpa_home_fires_started_by_smoking.pdf.
- 3 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>.
- 4 See Ctrs. for Disease Control and Prevention, *Health Disparities Related to Commercial Tobacco and Advancing Health Equity* (2024), https://www.cdc.gov/tobacco-health-equity/about/?CDC_AAref_Val=https://www.cdc.gov/tobacco/health-equity/index.htm.
- 5 U.S. Dept. Housing & Urban Dev., *Use of Marijuana in Multifamily Assisted Properties, Unnumbered Letter* (Dec. 29, 2014), <https://www.hud.gov/sites/documents/USEOFMARIJINMFASSISTPROPTY.PDF>.
- 6 Public Health Law Center, *HUD's Smoke-Free Public Housing Rule: An Overview* (2017), <https://www.publichealthlawcenter.org/sites/default/files/resources/HUD-Final-Rule-Smoke-Free-Public-Housing-2017.pdf>.
- 7 NYC Health, *Disclosure of Policies on Smoking in Residential Buildings: What You Need to Know*, <https://www.nyc.gov/assets/doh/downloads/pdf/smoke/smoking-sample-policy-residential.pdf>.
- 8 Public Health Law Center, *HUD's Smoke-Free Public Housing Rule: An Overview*, *supra* 6.