

## **Can Marijuana Be Regulated in Colorado's Multiunit Residential Buildings?**

*Note: Nothing in this paper shall constitute legal advice. Please consult an attorney before implementing any policies related to the use of marijuana in multiunit housing.*

### **Why should marijuana be prohibited in multiunit residential buildings?**

Secondhand smoke cannot be controlled using ventilation or air-cleaning systems, according to the US Surgeon General. According to the American Society of Heating, Refrigerating, and Air Conditioning Engineers "the only means of effectively eliminating health risk associated with indoor exposure is to ban smoking activity." Drifting smoke is known to seep into adjoining units through ventilation systems, pipes, fixtures, and cracks or openings in walls. Marijuana smoke emits some of the same toxic or cancer-causing chemicals as tobacco and may cause health problems for adults and children when it drifts into adjoining units. Allowing it may also increase maintenance and ventilation costs and may pose a fire hazard. The cost of cleaning up a residential unit where smoking has occurred is four to ten times the cost of one where smoking has not occurred.

### **Why should people be concerned about exposure to secondhand marijuana smoke?**

While the scientific research on the effects of secondhand marijuana smoke is not as extensive as the research about secondhand tobacco smoke, recent studies indicate that marijuana contains some of the same harmful chemicals in tobacco smoke that cause health problems for the public. Therefore, people should avoid exposure to secondhand marijuana smoke, and it should not be allowed in public places, workplaces, and multiunit residential buildings.

### **Some recent studies:**

A 2021 study found that marijuana joints produce 3.5 times the average fine-particle emission rate of Marlboro tobacco cigarettes, the most popular US cigarette brand. The average emission rate of the cannabis bong was 67% that of the joint; the glass pipe was 54% that of the joint, and the vaping pen was 44% that of the joint. Fine-particle matter of 2.5 or greater pose the greatest risk to people's health and can get deep into lungs, may even get into the bloodstream, and can affect a person's lungs and heart. A 2009 report by scientists for California's Proposition 65 indicated that marijuana smoke and tobacco smoke share many characteristics about chemical composition and toxicological activity. At least 33 individual constituents present in both marijuana smoke and tobacco smoke are Proposition 65 carcinogens. Click [here](#) for more facts about secondhand marijuana smoke.

### **How can marijuana be regulated?**

Section 6(d) of Amendment 64 states that "nothing in this section shall prohibit a person, employer, school, hospital, detention facility, corporation or any other entity who occupies, owns or controls a property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property." Section 3(d) in Amendment 64 states that "nothing in this section shall permit consumption that is conducted openly and publicly or in a manner that endangers others."

The Colorado Clean Indoor Air Act (CCIA) allows an "owner or operator of any place to regulate smoking," and Senate Bill 13-283 added marijuana to the definition of smoking in 2013. In Section 25-14-203 it states: "Smoking" means the burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco or marijuana. Marijuana smoking is prohibited in any place covered by the CCIA through section 25-14-204, "General smoking restrictions. (1) Except as provided in Section 25-14-205, and to reduce the levels of exposure to environmental tobacco and marijuana smoke, smoking shall not be permitted and no person shall smoke in any indoor area, including, but not limited to..." In addition, Section 25-14-206 states: "Optional prohibitions (1) The owner or manager of any place not specifically listed in Section 25-14-204, including a place

otherwise exempted under Section 25-14-205, may post signs prohibiting smoking or providing smoking and nonsmoking areas. Such posting shall have the effect of including such place, or the designated nonsmoking portion thereof, in the places where smoking is prohibited or restricted pursuant to this part 2." Section 25-14-204 (p) & (u) also prohibits smoking in all indoor common areas.

### **What are HUD's regulations?**

A September 1999 memo from HUD's General Counsel notes that "Section 576(b) (1) of the Public Housing Reform Act requires public housing agencies ("PHAs") and owners to establish standards that: prohibit admission to ... federally assisted housing for any household with a member, (A) who the public housing agency or owner determines is illegally using a controlled substance; or B) with respect to whom the public housing agency or owner determines that it has reasonable cause to believe that such a household member's illegal use (or pattern of illegal use) of a controlled substance ... may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents."

The memo concludes that, "PHAs and owners must establish standards that require denial of admission to households with a member whom the PHA or owner determines to be illegally using a controlled substance, or for whom it determines that reasonable cause exists to believe that a household member's pattern of illegal use of a controlled substance may interfere with other residents' health, safety, or right to peaceful enjoyment."

### **What about regulating medical marijuana?**

House Bill 10-1284, Section (5) states (a): A patient or primary caregiver shall not: (I) Engage in the medical use of marijuana in a way that endangers the health or well-being of any person; or (II) Engage in the medical use of marijuana in plain view of, or in a place open to, the general public; and b) Nothing in this section shall require any employer to accommodate the medical use of marijuana in any work place.

### **Medical marijuana HUD regulations (February 2011 memo)**

For new admissions: "The Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. § 13661) requires that PHAs administering the Department's rental assistance programs establish standards and lease provisions that prohibit admission into the PH and HCV programs based on the illegal use of controlled substances, including state-legalized medical marijuana. State laws that legalize medical marijuana directly conflict with the admission requirements set forth in QHWRA and are thus subject to federal preemption." For existing residents: "QHWRA requires PHAs to establish occupancy standards and lease provisions that will allow the PHA to terminate assistance for use of a controlled substance. However, the law does not compel such action, and PHAs have discretion to determine continued occupancy policies that are most appropriate for their local communities. PHAs can also determine whether to deny assistance to or terminate individual medical-marijuana users, rather than entire households, for both applicant and existing residents when appropriate. PHAs have discretion to determine, on a case-by-case basis, the appropriateness of program termination of existing residents for the use of medical marijuana." The memo also requires PHAs to establish a written policy on usage (except for new admissions) but leaves the responsibility up to the PHAs and not HUD.

### **Smoke-free housing policies should include all smoking.**

If a multiunit residential building has a policy prohibiting smoking in all units, common areas, and balconies, then the smoking of marijuana should also be prohibited. This should also include electronic cigarettes, which also emit many harmful chemicals ([click here](#) for more information). One way to accomplish this is to broaden the definition of "smoking" in the lease. Allowing smoking of any kind may generate resident complaints due to drifting smoke, harm the health of other residents, generate false-advertising complaints, and may lead to Fair Housing Act

complaints or lawsuits. All listings at [mysmokingfreehousing.com](http://mysmokingfreehousing.com) — which is managed by GASP of Colorado — must prohibit all smoking of tobacco, marijuana, and the use of electronic smoking devices.

### **What is GASP's Position?**

The Group to Alleviate Smoking Pollution (GASP of Colorado) is a 501-C-3 statewide nonprofit organization working to eliminate secondhand smoke from the air we breathe at work, in public places, and in multiunit housing. GASP's primary concerns with the public's exposure to marijuana smoking or vaping from the chemical and particulate emissions and their public health impact. **Nobody should have to breathe secondhand marijuana smoke or vapors against their will at work, in public, or where they live.** Visit [gaspforair.org](http://gaspforair.org) for more information about GASP.

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