

Implementing No-Smoking Policies in Multi-Unit Housing: How to Do It and Why

by Phyllis A. Roestenberg

This article outlines the reasons behind and the process by which housing providers may successfully implement and enforce no smoking policies in multi-unit housing.

In 2006, the Colorado Clean Indoor Air Act (Act) went into effect for the purpose of preserving and improving the health, comfort, and environment of Coloradans by limiting their exposure to tobacco smoke.¹ The legislature amended the statute to add protection against involuntary exposure to medical marijuana smoke in 2010 and recreational marijuana smoke in 2013.² As a result, smoking is now prohibited in most indoor public places, including public buildings, restaurants, bars, gaming facilities, theaters, museums, educational facilities, indoor sports arenas, the common areas of hotels and motels, and any place of employment not exempted.³ The Act exempts private homes, residences, and cars, unless they are used for child or day care.⁴ Apartment complexes, condominiums, and other multi-unit residential facilities are subject to smoking prohibitions with regard to indoor common areas, such as restrooms, lobbies, hallways, elevators, and within fifteen feet of the main entrance of an apartment building.⁵ Beyond that, whether smoke-free housing is available in multi-unit communities is left to the discretion of the owners and operators.⁶ As a result, many residents of multi-unit housing have little recourse if their neighbors smoke. As the saying goes, “[i]f your neighbor smokes, you do too.” This article is intended to assist those planning or considering the implementation of smoking restrictions in multi-unit residential communities.

Secondhand Smoke as a Legal Issue in Multi-Unit Housing

While the evidence proving the danger of cigarette smoke is now irrefutable,⁷ smoking persists, as it has for decades, as the number one cause of preventable death and disease in the United States.⁸ According to the Surgeon General, cigarette smoking and

secondhand smoke exposure together cause one out of five—or 480,000—deaths each year.⁹ Lung cancer is still the number one cause of cancer deaths for both women and men in the United States.¹⁰ In Colorado, tobacco use kills more than 5,100 residents each year and costs tax payers nearly \$2 billion in healthcare and more than \$1 billion in lost productivity.¹¹

More than 20 million Americans have died from smoking since the Surgeon General’s first report on smoking and health was issued in 1964.¹² Approximately 2.5 million of them were not smokers.¹³ They died as a result of breathing secondhand smoke, air contaminated by other people’s smoke.¹⁴ Secondhand smoke, involuntarily inhaled by nonsmokers, can cause or exacerbate existing health issues, including cancer, respiratory infections, and asthma.¹⁵ Nonsmokers who are exposed to secondhand smoke at home increase their risk of developing lung cancer by 20% to 30%.¹⁶

Just as there is no such thing as a safe cigarette, there is no risk-free level of exposure to secondhand smoke.¹⁷ Ventilation and other air filtration technologies cannot fully eliminate the health risks caused by secondhand smoke exposure.¹⁸ Smoke migrates through shared ductwork, baseboards, light fixtures, electrical sockets, cracks, and crevices. As a result, there is simply no way to contain smoke between units.¹⁹ According to the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), which sets the standards for indoor air quality, there is no approach,

including current and advanced dilution ventilation, “air curtains” or air cleaning technologies, [that has] been demonstrated or should be relied upon to control health risks from ETS [environmental tobacco smoke] exposure in spaces where smoking occurs. . . .²⁰

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In fact, “the operation of a heating, ventilating, and air conditioning system can distribute secondhand smoke throughout a building.”²¹

Smoke-Free Housing

Cigarette smoking by adults is at its lowest rate since 1965, dropping to 17.8% in 2013.²² Many people recognize that secondhand smoke is not merely unpleasant—it is dangerous. They have grown accustomed to smoke-free restaurants, movie theatres, planes, and workplaces. Consequently, it is no surprise that demand for smoke-free multi-unit housing is strong and growing.

The U.S. Department of Housing and Urban Development (HUD) has encouraged the adoption of smoke-free housing policies for years.²³ As of September 2014, more than 500 housing authorities have instituted smoking prohibitions.²⁴ In Colorado, at least thirty-three housing authorities have adopted or are phasing in no-smoking policies for at least some of their properties, including Aurora, Boulder, Delta, Denver, Englewood, Estes Park, Fort Collins, Grand Junction, Holyoke, Longmont, Loveland, Montrose, Salida, and Sterling.²⁵ Given that the vast majority of people do not smoke, it is highly likely that it is only a matter of time before smoke-free multi-unit housing becomes the norm.

Going Smoke-Free Can Be Good for Business

Implementing smoke-free policies makes good business sense for several reasons. These are discussed below.

Market Advantage

Twenty-five percent of U.S. residents, approximately 79 million people, live in multi-family housing.²⁶ According to the National Multi-Unit Housing Council (NMHC), a majority of them prefer to rent in smoke-free communities.²⁷ About half report they have moved or would move as a result of secondhand smoke intrusion.²⁸

Reduction of Turnover and Maintenance Costs

Readying a unit that is free from smoke and the damage it causes to walls, cabinets, window coverings, carpeting, and pads is less expensive, easier, and faster. According to HUD’s Office of Lead Hazard Control and Healthy Homes, the cost of turning over a smoking unit between tenancies can cost two to seven times more than turning over a smoke-free unit.²⁹ The potential savings are significant. One study concluded that if smoke-free policies were implemented in subsidized housing across the country, taxpayers would save approximately \$133 million in renovation expenses alone.³⁰

Mitigation of Fire Risk and Possible Reduction in Insurance Costs

Smoking is a leading cause of civilian home fire deaths.³¹ Smoking-related fires cause \$326 million of property damage each year.³² Housing providers who adopt smoke-free policies reduce the risk of fire on their properties and may be eligible for lower insurance premiums as a result.

Simplifying the Residential Property Owner’s Management of Marijuana

The legalization of medicinal and recreational marijuana in Colorado has complicated the work of both private and public

housing providers. Amendment 64 permits persons 21 years of age or older to consume, home-grow, and possess limited amounts of marijuana.³³ Though state law legalizes marijuana use within one’s home, it is still a crime under federal law to manufacture, distribute, or possess marijuana,³⁴ a Schedule 1 substance pursuant to the Controlled Substances Act (CSA).³⁵ The state law is also in direct conflict with federally subsidized housing admission requirements established by the Quality of Housing and Work Responsibility Act (QHWRA) of 1998,³⁶ which affords public housing authorities the discretion to deny housing admission to or terminate an individual marijuana user from their housing programs.³⁷

Like their federally subsidized counterparts, Colorado’s private housing providers also retain the right to prohibit the smoking of marijuana on the premises of their residential rental properties. Section 6(d) of Amendment 64 expressly recognizes the property owner’s right to prohibit or regulate the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in their property.³⁸ And contrary to popular belief, state and federal fair housing laws do not grant residents the right to smoke marijuana in their rental property as a reasonable accommodation for disability.³⁹ The act of smoking tobacco or marijuana is not a protected right.⁴⁰ Smokers do not constitute a protected class.⁴¹ No-smoking policies are not discriminatory under state or federal fair housing laws. Across-the-board no-smoking policies simplify the burden of enforcement for housing providers who wish to ban the use of smoked drugs from their residential premises.

Mitigation of Liability as it Applies to Fair Housing and Other Resident Claims

The Fair Housing Act prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.⁴² The law affords qualified persons a private right of action for which they may seek compensatory and punitive damages, as well as attorney fees.⁴³ The Fair Housing Act requires most housing providers to grant requests for reasonable accommodation when made by qualified residents or applicants. A reasonable accommodation is defined as:

a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.⁴⁴

To qualify for a reasonable accommodation, the requester must be disabled within the meaning of the law. Qualified individuals are those (1) with a physical or mental impairment that substantially limits one or more major life activities; (2) regarded as having an impairment; and/or (3) with a record of an impairment.⁴⁵

While people who smoke do not constitute a protected class for purposes of fair housing protection, state and federal fair housing laws protect the rights of persons with affected disabilities to be free from secondhand smoke exposure if they are adversely affected by such exposure.⁴⁶ In the context of secondhand smoke exposure, disabilities such as asthma, chronic obstructive pulmonary disorder (COPD), multiple chemical sensitivity disorder, environmental illness, and other respiratory or heart conditions may constitute grounds for reasonable accommodation on the part of a housing provider.⁴⁷ Reasonable accommodation of a disability could include the adoption and implementation of no-smoking multi-unit housing policies.

Reducing resident exposure to secondhand smoke by way of no-smoking multi-unit housing policies can make an enormous difference to people living with chronic health conditions. At the same time, such policies can work to mitigate a housing provider's risk of liability under state and federal fair housing laws and other, seemingly inevitable, claims for those not necessarily protected under fair housing theories. For example, no-smoking policies will also protect housing providers and homeowners associations from claims of nuisance, breach of quiet enjoyment, and the warranty of habitability as a result of secondhand smoke intrusion in multi-unit housing communities.

Three-Phase Approach to Implementing Smoke-Free Housing Policies

Multi-unit housing providers who wish to implement smoke-free policies need not reinvent the wheel. Free resources designed to make the transition as easy as possible are readily available. In October 2014, HUD, through the Office of Lead and Hazard Control and Healthy Homes, published *Change is in the Air*, a free comprehensive guide for the benefit of multi-unit housing providers.⁴⁸ HUD has also compiled toolkits, which include information about secondhand smoke exposure, talking points, forms, model lease language, and enforcement tips. The CDC Office on Smoking and Health also funds tobacco control programs throughout the country, including Colorado.⁴⁹

Colorado's own Amendment 35,⁵⁰ a voter-approved tax increase on cigarettes and other tobacco products, makes it possible for some local public health agencies to provide a wide variety of resources, including sample forms, resident surveys, model policy language and notices, property signage, technical assistance, and even on-site cessation support. Outlined below is a three-phase process for implementing smoke-free housing policies.

Phase One: Planning

Review notice requirements for lease modification. Before adoption, it is critical to review the property's notice requirements, including any applicable federal regulations, as they apply to the modification of house rules or the adoption of new lease terms or addenda. Failing to provide residents sufficient notice of a policy change will, at best, greatly increase the likelihood of enforcement difficulties and most likely render the no-smoking policies unenforceable. Ideally, housing providers will give staff and residents at least six months' notice of the anticipated policy change. Sample implementation timetables are available through HUD's Smoke-Free Housing website.⁵¹ Once notice requirements are established, housing providers are in the best position to work backward from the effective date and devise an implementation plan that best serves the given housing community.

Seek approval from boards and other decision makers. When considering the implementation of no-smoking policies, perhaps nothing will prove more important than the support and cooperation of decision makers, staff, and residents. Presenting compelling evidence of the health risks associated with secondhand smoke exposure or promised cost savings may not be enough to secure buy-in. For people not intimately familiar with the costs and risks of secondhand smoke, the advantages of imposing smoking restrictions in a housing community may not be obvious. As a result, initial efforts to introduce smoke-free policies may be met with

understandable reluctance. Proponents should anticipate questions about the legality of such policies, residents' rights, post-implementation retention rates, and market demand. Perhaps more than anything else, however, questions about the housing provider's ability to successfully enforce smoking restrictions may dominate the discussion. Advocates should prepare a strong case. The evidence that such policies make good business sense is there.

Consult other housing providers who have gone through the process. Housing providers contemplating the adoption of smoke-free housing policies will likely benefit from discussion with someone who has already made the transition. In addition, HUD's action guide "Change is in the Air" provides numerous testimonials from housing providers who elected to go smoke-free.⁵² The guide, especially when read in conjunction with HUD's toolkits, addresses almost everything a housing provider will need to know about planning, implementing, and enforcing smoke-free housing policies.

Engage staff. As with almost everything, effective communication is critical. Engage staff early and often. Ideally, staff should be involved in the earliest stages of planning. Successful adoption and enforcement of any new housing policy necessarily depends on their understanding and cooperation. Time spent educating staff about the benefits of smoke-free policies will likely be time well spent. Initial training that addresses the purpose of the policy, as well as enforcement protocol, will prepare staff to answer questions, address concerns, and otherwise support and enforce the policy. Ideally, such training should be repeated with new employees and offered at least annually for all other staff.

Consider conducting a resident survey. Board members, owners, and other decision makers may want resident feedback before they implement a significant community-wide change in policy. Consider gathering such information through a language-appropriate resident survey. It can be short and will likely be worthwhile.⁵³

The purpose of a resident survey is four-fold. It will serve to alert residents and staff that smoke-free housing policies are being considered. It will lend credibility to the process by letting residents know that their opinions matter. It will give the housing provider valuable insight with regard to the residents' desire for or receptivity to smoke-free housing. Finally, it will likely yield data, surprising to some, demonstrating that a majority of residents support smoking restrictions for a variety of reasons. Free sample surveys, some in Spanish, are readily available online.⁵⁴

Decide what to prohibit. For purposes of enforcement, it is advisable to ban all forms of smoke and emission on the property. A policy could prohibit the use of tobacco, marijuana, and electronic smoking devices. Such a policy would define "smoking" in the broadest of terms. For example:

The term "smoking" means inhaling, exhaling, breathing, burning, vaping, carrying, or possessing any lighted, ignited, or electronically operated cigar, cigarette, pipe, or other product or similarly lighted product in any manner or any form.⁵⁵

Housing providers who adopt a partial, rather than complete, ban should anticipate that smoke drift will make gathering proof of noncompliance more difficult for staff, who will be expected to distinguish between smoke that is banned from the property and smoke that is not. In cases where electronic smoking devices are permitted but marijuana and other smoked drugs are not, for example, the use of the prohibited substances can be undetectable if used in a vaporizing device.

Decide whether to allow a designated smoking area. The housing provider contemplating smoking restrictions must decide whether to carve out one or more designated outdoor smoking areas on the premises. Not surprisingly, the arguments for such an allowance go both ways. Some consider the allowance of a designated smoking area to be a less drastic alternative to wholly banning smoking on the premises. This is especially true where the layout of a particular property lends itself to a more customized approach to smoking restrictions. Confining smoking to a particular area rather than banning it altogether, proponents contend, may reduce residents' resistance and increase the likelihood of compliance. Others believe a designated smoking area sends a mixed message about smoking on the premises and makes enforcement more, not less, difficult while creating different, albeit potentially more contained, maintenance responsibilities.

For housing providers inclined to allow a designated smoking area on the premises, if only as an interim step toward a full-property ban, there are a few practical considerations to bear in mind. Expect disagreement among residents as to where the area should be located. Pursuant to statute, designated smoking areas must be at least fifteen feet from an entryway.⁵⁶ Local ordinances may impose stricter standards. Regardless, smoking areas should be located outside the proximity of children's play areas, main pedestrian pathways, entrances, and windows.

To increase the likelihood they will be used, designated smoking areas should be clearly identified. Adequate and language-appropriate signage should be posted. From a practical standpoint,

inconvenient or otherwise undesirable smoking areas are less likely to be used. Sufficient trash receptacles and adequate lighting will be necessary. An inclement weather shelter that is accessible to persons with disabilities is strongly recommended.

Decide whether to allow grandfather clauses or mutual rescissions. In this context, a grandfather clause would allow a current resident to smoke beyond the date the new no-smoking policy goes into effect. As is true of designated smoking areas, opinions vary about the use of grandfather clauses as a means by which to ease the implementation of no-smoking policies. Opponents contend grandfather clauses do little more than prolong the inevitable, make enforcement more difficult, foster confusion and frustration within the community, and create conflict among residents.⁵⁷ For residents wholly in favor of the smoking ban, selective enforcement of the rule may undermine confidence in staff and their willingness to enforce housing policies. For new residents who only reluctantly accept it, exceptions to the rule may be met with resentment against those granting and receiving the allowance. Like partial smoking bans, the blurred line a grandfather clause may create can prove burdensome to staff responsible for tracking down the source of smoke-drift and enforcing violations.

An alternative to the grandfather clause is the mutual rescission. In this context, a mutual rescission would allow a current resident to voluntarily vacate his or her unit before the expiration of the lease term and before the new rule goes into effect, without penalty. For housing providers who recognize the advantages of releasing residents who do not wish to live in a smoke-free community in favor of those who do, mutual rescission may be an option worth considering.

Draft the no-smoking policy. Once these decisions are made, a housing provider must draft the no-smoking policy that best suits the community's needs. The availability of sample policies and lease language make the process easy. HUD offers an abundance of resources tailored to the needs of housing providers throughout the country.⁵⁸ In Colorado, toolkits designed to address the needs of housing providers, residents, and attorneys are available online at no cost through Jefferson County Public Health.⁵⁹

Ultimately, the best policies—be they addenda or provisions added to a lease agreement—are clear and language-appropriate. They provide written notice to current and prospective residents that they, along with their household members, guests, and other persons under their control, are prohibited from smoking anywhere on the premises. They explain the purpose behind the no-smoking policy, what constitutes a violation, how violations will be investigated, and when the policy will take effect. They provide notice with regard to how the policy will be enforced and warn about the costs of remediation and other consequences of noncompliance. They outline the process by which residents may report suspected violations. If the property restricts smoking to a designated area, they clearly identify its location and advise residents as to the proper disposal of smoking paraphernalia.

Finally, because it will not always be possible for even the most committed staff to identify the source of smoke in violation of the policy, housing providers may want to include a disclaimer in their smoke-free housing policy that puts current and future residents on notice that the housing provider cannot offer a fool-proof guarantee to eliminate all secondhand smoke exposure. A statement that the community's smoke-free policy necessarily depends on the cooperation of residents will help manage residents' expectations

and encourage self-governance. Ideally, any disclaimer should include a statement that the failure or inability to enforce any part of the smoke-free policy does not thereafter serve as a waiver of the right to enforce the policy.

Phase Two: Preparing the Community for the Change

Provide proper notice to residents. Provide language-appropriate notice to all residents about the new no-smoking policy. Include a copy of the lease addendum or rule they will be expected to sign, along with an explanation as to why the policy is being implemented. Clearly advise residents of the date the no-smoking policy will go into effect. To best foster community cooperation and support, consider hosting a residents' meeting to outline the policy, answer questions, and address concerns. Take time to explain the rationale for adoption: the mitigation of fire risk, the added health benefits for staff and residents, the reduction of maintenance and turnover costs, and the growing market demand for smoke-free housing. Consider enlisting a representative from the local public health department to participate, lend support, answer questions, and provide resources. If resident surveys were collected and indicate that a significant percentage of residents do not favor the implementation of smoke-free policies, it may prove worthwhile to enlist a meeting facilitator—a mediator or other third-party neutral—to moderate discussion between staff and residents before the policy goes into effect.

Have cessation resources available. Cigarettes are designed to be highly addictive.⁶⁰ Bronchodilators are added to make it easier to take in smoke.⁶¹ Salt is added to make smoke inhalation smoother and less irritating.⁶² Sugar is added to enhance nicotine's addictive effects.⁶³ Ammonia is added to increase the speed with which the nicotine hits the brain.⁶⁴ As a result, quitting is difficult for almost everyone. Successful efforts to implement smoking restrictions will acknowledge the realities of nicotine addiction and avoid setting a tone that inadvertently pits people who smoke against those who do not.

Implementing no-smoking restrictions without making smoking-cessation resources available could impose a particularly significant burden on low-income residents who are less likely to have the means by which to leave the property if that would be their preference. That can and should be avoided. Providing residents with smoking cessation resources can help set an optimal tone and reinforce the message that the new policies are designed to serve the entire community—those who smoke and those who do not.

Ideally, the process of adopting and implementing no-smoking policies includes the availability of appropriate, culturally competent resources and referrals. Some local and state health departments are funded to provide resources to people who want to quit smoking. The toll-free number of the National Network of Tobacco Cessation Quit-line, 1-800-QUIT-NOW, connects callers to their state quit-line. And at least some of Colorado's local public health agencies offer cessation information or even free on-site services. Letting residents know about such resources can help create a more receptive climate.

Phase Three: Promoting and Enforcing No-Smoking Policies

Promoting the policy. Consider hosting a roll-out event that includes a tobacco educator from the American Lung Association or the local public health department on the date the policy goes into effect. Providing information about the dangers of second-hand smoke exposure and the benefits of smoke-free housing and otherwise making resources available in the community's recreational center or common space will help publicize the new rule and reinforce the belief that staff intends to enforce it.

Post sufficient language-appropriate signage. Once the policy goes into effect, housing providers should effectively communicate and publicize it to staff, residents, prospective residents, and visitors throughout the property. Adequate, language-appropriate signage is available at little or no cost from funded local public health departments or GASP of Colorado.⁶⁵ Updating the property's

advertising, website, and promotional materials to publicize the availability of smoke-free housing to prospective renters will be important. Once the property is smoke-free, housing providers can take advantage of free advertising on GASP of Colorado's website.⁶⁶

Enforcing the policy. Ultimately, smoke-free housing policy implementation is intended to make people's lives better, not worse. To ensure successful implementation and enforcement, staff must be adequately trained and mindful about unintended consequences. Although smoke-free policies establish rules with regard to prohibited activities, they should not be used as a pretext to eviction or to prohibit anyone from renting a unit simply because he or she smokes. This is especially important in the context of low-income housing, where both residents who smoke and those who do not have fewer housing options. Like everyone else, renters who smoke will be required to abide by the terms of the community's rental contract. Current residents should not be asked to vacate the property because it has gone smoke-free.⁶⁷ Staff may not ask current or prospective residents if they or members of their household smoke,⁶⁸ nor should they maintain nonsmoking waiting lists.⁶⁹ Most important, no-smoking policies must not be enforced in a way that discriminates against people on account of race, religion, color, national origin, disability, or other protected status.⁷⁰

No-smoking policies should be enforced like any other housing policies. Written protocol should include a clear and consistent multi-step approach to enforcement that encourages an interactive, rather than punitive, process. Staff should be adequately trained to document and promptly investigate complaints about noncompliance. Residents should be afforded a safe and anonymous mechanism by which to report suspected violations.

Conclusion

Smoke-free housing should be available to those who want or need it, regardless of socioeconomic status. Implementing smoke-free policies is a winning proposition for owners, staff, and residents. Those who represent housing providers would be well advised to encourage their clients to adopt smoke-free housing policies.

Notes

1. CRS §§ 25-14-201 *et seq.*; *Coal. for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195 (10th Cir. 2008); *Curious Theatre Co. v. Colo. Dept. of Pub. Health and Env't*, 220 P.3d 544 (Colo. 2009).

2. CRS § 25-14-202. Protection from exposure to medical marijuana smoke was added in 2010 through HB 10-1284. Protection from exposure to recreational marijuana smoke was added in 2013 through SB 13-283.

3. CRS § 25-14-204(1).

4. CRS § 25-14-205(1)(a).

5. CRS § 25-14-204(1)(cc).

6. CRS § 25-14-206(1).

7. In 2014, the Surgeon General declared that "the epidemic of smoking-caused disease in the twentieth century ranks among the great public health catastrophes of the century. . . ." Office of the Surgeon General, U.S. Department of Health and Human Services, "The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General" 33 (2014), www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf.

8. *Id.* at iii.

9. *Id.* at 659; Centers for Disease Control and Prevention (CDC), "Tobacco-Related Mortality" (Nov. 2014), www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality.

10. Office of the Surgeon General, *supra* note 7 at 66.

11. CDC, "Best Practices for Comprehensive Tobacco Control Programs" 83 (2014), www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf; Legacy for Longer Healthier Lives, "Tobacco Fact Sheet: Colorado" (April 2014), legacyforhealth.org/index.php/content/download/984/9687/version/3/file/LEG-FactSheet-State-Colorado.pdf.

12. Office of the Surgeon General, *supra* note 7 at 7.

13. *Id.* at 677.

14. *Id.*

15. Office of Healthy Homes and Lead Hazard Control, U.S. Department of Housing and Urban Development (HUD), "Smoke-Free Policies in Public Housing," Notice PIH-2012-25 at 1 (May 29, 2012), portal.hud.gov/hudportal/documents/huddoc?id=12-25pihn.pdf.

16. Office of the Surgeon General, U.S. Department of Health and Human Services, "The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General" 443 (2006), www.surgeongeneral.gov/library/reports/secondhandsmoke/fullreport.pdf.

17. The National Cancer Institute has found that smokers who used "light" cigarettes did not reduce their risk for developing smoking-related cancers and other diseases. National Cancer Institute, "Light' Cigarettes and Cancer Risk" (Oct. 28, 2010), www.cancer.gov/cancertopics/factsheet/Tobacco/light-cigarettes. The Family Smoking Prevention and Tobacco Control Act, codified primarily at 21 USC §§ 387 *et seq.*, restricts tobacco companies from advertising products as "light," "low," or "mild" due to the erroneous belief that such products cause fewer health problems than other cigarettes. 21 USC §§ 387 note, 387k. See also www.fda.gov; Offermann, "The Hazards of E-Cigarettes," *ASHRAE J.* 44 (June 2014), www.nxtbook.com/nxtbooks/ashrae/ashraejournal_201406/#/0 ("[E]-cigarettes emit harmful chemicals into the air and need to be regulated in the same manner as tobacco smoking." Emissions from electronic smoking devices are not water vapor and can contain nicotine and other toxins known to cause cancer. Goniewicz *et al.*, "Levels of Selected Carcinogens and Toxicants in Vapour from Electronic Cigarettes," 23 *Tobacco Control* 133, 133-37 (2014).

18. See American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), "ASHRAE Position Document on Environmental Tobacco Smoke" 11-12 (2010) (position reaffirmed by ASHRAE Technology Council in June 2013).

19. Schoenmarklin, "Secondhand Smoke Seepage into Multi-Unit Affordable Housing" 4 (Tobacco Control Legal Consortium, April 2010).

20. ASHRAE, *supra* note 18 at 12.

21. Office of the Surgeon General, *supra* note 16 at 12.

22. CDC, “2013 Attitudes and Behaviors Survey.” The National Health Interview Survey first began tallying such records in 1964.

23. In 2009 and again in 2012, HUD’s Office of Public and Indian Housing issued Notices PIH 2009-21 and PIH 2012-25, which “strongly encouraged Public Housing Authorities (PHAs) to implement nonsmoking policies in some or all of their public housing units.” In September 2010, HUD’s Office of Housing directed owners/agents of federally subsidized private housing, encouraging them to adopt smoke-free policies in some or all of their properties.

24. Office of Lead Hazard Control and Healthy Homes, HUD, “Change is in the Air: An Actions Guide for Establishing Smoke-Free Public Housing and Multifamily Properties” 10 (Oct. 2014), portal.hud.gov/hudportal/documents/huddoc?id=smokefreeactionguide.pdf.

25. *Id.*

26. *Id.* at 6.

27. Schoenmarklin, *supra* note 19 at 4.

28. *Id.*

29. HUD, “Smoke-Free Housing Toolkit for Public Housing Authorities and Owners/Management Agents” 1 (2012), <https://portal.hud.gov/hudportal/documents/huddoc?id=pdfowners.pdf>.

30. King *et al.*, “National and State Cost-Savings Associated with Prohibiting Smoking in Subsidized and Public Housing in the United States,” 11 *Preventing Chronic Disease* E170 (Oct. 2014).

31. Ahrens, National Fire Protection Association (NFPA), “Home Structure Fires” 10 (April 2013). *See also* www.nfpa.org/safety-information/fire-prevention-week/fast-facts-about-fire.

32. U.S. Fire Administration, U.S. Department of Homeland Security, “Smoking-related Fires in Residential Buildings (2008-2010),” *Topical Fire Report Series 1* (June 2012), www.usfa.fema.gov/downloads/pdf/statistics/v13i6.pdf.

33. Colo. Const. art. XVIII, § 16. *See also* State of Colorado, “Task Force Report on Implementation of Amendment 64: Regulation of Marijuana in Colorado” (March 2013), www.colorado.gov/cms/forms/dor-tax/A64TaskForceFinalReport.pdf.

34. 21 USC § 841(a).

35. 21 USC § 812(c).

36. 42 USC § 13661.

37. Henriquez, “Medical Marijuana Use in Public Housing and Housing Choice Voucher Programs” (Feb. 2011), portal.hud.gov/hudportal/documents/huddoc?id=med-marijuana.pdf.

38. Colo. Const. art. XVIII, § 16(6).

39. *See* Public Health Law and Policy, “There is No Constitutional Right to Smoke” 1 (April 2005).

40. *See id.* at 2.

41. *See id.*

42. The Fair Housing Act is codified at 42 USC §§ 3601 *et seq.*

43. 42 USC § 3613.

44. HUD, “Reasonable Accommodations under the Fair Housing Act” 6 (2004), www.hud.gov/offices/ftheo/library/huddojstatement.pdf.

45. *Id.* at 3.

46. *See* Schoenmarklin, *supra* note 19 at 7.

47. Public Health Law Center, William Mitchell College of Law, “Housing,” www.publichealthlawcenter.org/topics/tobacco-control/smoke-free-tobacco-free-places/housing.

48. Office of Lead Hazard Control and Healthy Homes, *supra* note 24.

49. Contact information for each state’s program is available at www.ttac.org/TCN/members/state_reps-toc.html.

50. Colo. Const. art. X, § 21; CRS § 24-22-117.

51. HUD, “Smoke-Free Multifamily Housing,” portal.hud.gov/hudportal/HUD?src=/smokefreetoolkits1.

52. Office of Lead Hazard Control and Healthy Homes, *supra* note 24.

53. If possible, housing providers may want to incentivize resident cooperation in completing and returning the survey with the offer of a gift card or something similar.

54. HUD, *supra* note 51; Tobacco-Free Jeffco, “Jeffco: Smoke-Free Housing,” tobaccofreejeffco.com/secondhand-smoke/smoke-free-housing.

55. Language adapted from Jefferson County Public Health’s Attorney Toolkit, “Colorado Housing Law” (June 2014), www.jeffcosmokefreehousing.com.

56. CRS § 25-14-203(7).

57. There is an exception: Housing providers governed by project-based Section 8 federal regulation are required to phase-in no-smoking policies, with the policy going into effect upon renewal of prospective lease agreements.

58. HUD, *supra* note 29 (HUD notices for guidance, local smoking laws and sample policies. *See also* HUD, “Smoke Free Housing: A Toolkit for Residents of Federally Assisted and Public and Multi-family Housing,” portal.hud.gov/hudportal/documents/huddoc?id=pdfresidents.pdf; www.cohealthresources.org).

59. Tobacco-Free Jeffco, *supra* note 54.

60. Campaign for Tobacco-Free Kids, “Designed for Addiction: How the Tobacco Industry Has Made Cigarettes More Addictive, More Attractive to Kids and Even More Deadly” 4 (June 2014), www.tobaccofreekids.org/content/what_we_do/industry_watch/product_manipulation/2014_06_19_DesignedforAddiction_web.pdf. *See also* *United States v. Philip Morris*, 449 F.Supp.2d 1 (D.D.C. 2006) (Judge Kessler issued a 1,683-page opinion holding the tobacco companies liable for violating RICO by fraudulently covering up the health risks associated with smoking and engaging in a massive fifty-year scheme to defraud the public and consumers of cigarettes.).

61. Campaign for Tobacco-Free Kids, *supra* note 60 at 7.

62. *Id.* at 23.

63. *Id.* at 6.

64. *Id.*

65. www.gaspforair.org/gasp.

66. www.mysmokefreehousing.com.

67. *Id.* at 4.

68. *See* HUD, “Optional Smoke-Free Housing Policy Implementation,” Notice H 2010-21 at 3 (Sept. 15, 2010), portal.hud.gov/hudportal/documents/huddoc?id=pdfowners.pdf.

69. HUD, “Further Encouragement for O/As to Adopt Smoke-Free Housing Policies,” Notice H 2012-22 at 4 (Oct. 26, 2012), portal.hud.gov/hudportal/documents/huddoc?id=12-22hsgn.pdf.

70. *See id.* at 3. ■