



December 6, 2021

The Honorable Members of the Neighborhood Services and Education Committee  
The San Jose City Council  
200 East Santa Clara Street  
San Jose, CA 95113

Re: Thursday, December 9, 2021, NSE Meeting – Agenda Item No. 3 CC-21-311  
Smoke Free Housing - Cannabis and Risk of Evictions.

Dear Honorable Committee Members and San Jose City Councilmembers:

Americans for Safe Access urges the City of San Jose to uncouple cannabis from its Smoke Free Housing Ordinance and pursue a more compassionate path. By considering cannabis as a separate issue, and one that is best addressed by the landlord and the tenant working together to resolve the problem, rather than a city-wide ban involving economic punishments and/or eviction, the City preserves a patient's legal right to a therapeutic use of cannabis, while allowing the patient and the landlord to work out a tailored, nuanced solution not possible with a "one size fits all" law.

State law does not allow the consumption of cannabis anywhere in public, even for medical relief<sup>1</sup>. Thus, if you enact an ordinance banning the medical use of cannabis in the home, **you have eliminated all locations where a patient can legally consume their medicine**, frustrating State Law which mandates patients have access to their medicine<sup>2</sup> as well as the will of the people, because State Laws allowing medical and adult cannabis use, both arose out of voter initiatives.<sup>3</sup> **Our organization does not believe that this was the City's intention when it began contemplating a Smoke Free Housing Ordinance.**

Those battling Stage IV Cancer, should not be facing eviction or economic sanctions for using a legal therapy recommended by their doctor. This does not mean that status as a medical cannabis patient serves as a justification for the olfactory discomfort of other tenants.

There are many ways property owners can collaborate with patients to resolve any issues which arise from the use of medical cannabis. Potential solutions include: moving the tenant to another apartment in the complex, air scrubbers, or the utilization of an inhalation apparatus which produces a largely odorless mist.

By eliminating cannabis from the Smoke Free Housing Ordinance you are following the will of the voters. You are not inflicting needless agony on the sick and dying, by enacting a “one size fits all” ordinance which eliminates the ability of the landlord and tenant to work towards a more compassionate solution.

The decision to uncouple cannabis from “clean air” ordinances has already been done in San Francisco<sup>4</sup> and West Hollywood<sup>5</sup>. Our organization is unaware of any problems relating to this decision. Should this not be the case in your jurisdiction you still have the absolute right to revisit the issue.

I have attached a letter written for the City of West Hollywood by Tamar Todd, an attorney who served as the lead drafter for Proposition 64. We urge your legal counsel to consider the matters she raises in the letter, as it fully explains the legal basis for excluding cannabis from a Smoke Free Housing Ordinance.

Our organization understands that it was never the intention of the City of San Jose to frustrate state law by eliminating safe access to medical cannabis by those who are ill. We hope the above information has been helpful in illuminating the issue. Please don't hesitate to contact me if you have any questions or would like more information. I can be reached at [REDACTED] or [industry@safeaccessnow.org](mailto:industry@safeaccessnow.org)

Thank you for your time and attention to this matter.

Sincerely,



Sarah Armstrong JD  
Americans for Safe Access  
Southern California

Cc: Angel Rios, Jr., City Manager's Office - [angel.rios@sanjoseca.gov](mailto:angel.rios@sanjoseca.gov)  
Karin Murabito, City Attorney's Office - [karin.murabito@sanjoseca.gov](mailto:karin.murabito@sanjoseca.gov)  
Paul Pereira, Mayor's Office - [paul.pereira@sanjoseca.gov](mailto:paul.pereira@sanjoseca.gov)  
Ruth Krantz, City Clerk's Office - [ruth.krantz@sanjoseca.gov](mailto:ruth.krantz@sanjoseca.gov)  
Dr. William Armaline - [REDACTED]  
Gina Espejo - [gina.espejo@sanjoseca.gov](mailto:gina.espejo@sanjoseca.gov)  
Sean Kali-Rai - [REDACTED]

Endnotes:

<sup>1</sup> Health & Safety Code § 11362.3 (a) “Nothing in Section 11362.1 shall be construed to permit any person to: ...” smoke marijuana in public or certain other locations or to “[s]moke marijuana or marijuana products in a location where smoking tobacco is prohibited.”

<sup>2</sup> Prop. 215, codified as Health & Safety Code § 11362.5, provides: “(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.”

(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows: (A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

<sup>3</sup> In 1996 the Compassionate Use Act was passed via a voter initiative. (Prop 215 codified at Health and Safety Code 11362.5) In 2016 Prop 64, which legalized cannabis, was passed by the voters after being placed on the ballot by a voter initiative.

<sup>4</sup> See: <https://thehill.com/homenews/news/528528-san-francisco-bans-indoor-tobacco-smoking-marijuana-permitted>

<sup>5</sup> See: <https://www.canorml.org/west-hollywood-to-consider-banning-marijuana-smoking-in-new-apartment-buildings/>

August 7, 2020

Dear Assistant City Attorney Langer, City Attorney Jenkins, Ms. Rocco, Mayor Horvath, Mayor Pro Tempore Heilman, and Councilmembers:

I understand the City Attorney has been asked to advise the West Hollywood City Council on whether California state law requires the city to prohibit cannabis smoking or vaping in apartment complexes and condominiums if the City Council decides to prohibit tobacco smoking and electronic cigarettes in those private homes. A provision of Prop. 64 (2016) was referenced during the City Council's August 3, 2020 discussion on the topic. As a co-author of Prop. 64 and the attorney who served as the lead drafter for that provision — Health & Safety Code § 11362 — I wanted to clarify the letter and intent of the voter-enacted law.

There are two core questions, which I will begin by providing a short answer to:

- 1) Under California state law, are cities *required* to ban cannabis smoking or vaping in any location where those cities decide to prohibit tobacco smoking or vaping, including private homes?

No. Prop. 64 does not require that any municipality ban cannabis smoking if it bans tobacco smoking.

- 2) Under California state law, are cities *allowed* to ban medical cannabis smoking and vaping in private homes?

No. Prop. 215 prevents cities from prohibiting individuals whose physicians have recommended cannabis — in writing or orally — from smoking and vaporizing cannabis at home. The city will be inviting litigation if it prohibits patients from smoking and/or vaporizing medical cannabis in their homes.

**1) Health & Safety Code § 11362.3 does not require cities to ban non-medical cannabis smoking or vaping in locations where cities prohibit tobacco smoking.**

The plain language and intent of Prop. 64 was to allow, *but not require*, localities to prohibit non-medical cannabis smoking and vaporization where they prohibit tobacco smoking and e-cigarettes.

Health & Safety Code § 11362.1 makes it “lawful under state and local law” for persons 21 years of age or older to engage in a number of activities involving cannabis, including to possess limited amounts of cannabis and to “[s]moke or ingest marijuana or marijuana products.”

Health & Safety Code § 11362.3 (a) provides a limitation: “Nothing in Section 11362.1 shall be construed to permit any person to: ... ” smoke marijuana in public or certain other locations or to “[s]moke marijuana or marijuana products in a location where smoking tobacco is

prohibited.” The section also defines “smoke” to include “the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in a place.”

Health & Safety Code § 11362.3 was crafted to allow state and local penalties for smoking to be imposed for cannabis smoking despite § 11362.1’s legalization of cannabis smoking by adults. For example, Labor Code § 6404.5 (c) prohibits, among other things, a person smoking “tobacco products at a place of employment or in an enclosed space of employment.” Subsection (i) imposes a \$100 fine for a first offense, with escalating fines for subsequent offenses. Due to § 11362.3, those penalties would also apply to smoking cannabis at a place of employment or in an enclosed space.

In short, Health & Safety Code § 11362.1 *removes* state and local penalties for adults who possess and use cannabis while § 11362.3 limits the instances where those penalties are *removed*. § 11362.3 does not explicitly or implicitly *require* cities to *impose* penalties on any conduct, including smoking cannabis where tobacco smoking is prohibited. Instead, both § 11362.3’s plain language and intent are to limit the instances in which § 11362.1 *removes* penalties.

There is no civil or criminal penalty under California law for smoking or vaporizing cannabis in a private residence. Therefore, if West Hollywood were to impose a ban on smoking tobacco in private residences that exempted cannabis, § 11362.1 simply would not remove any penalties — but there are not penalties needing to be removed.

There is nothing in the language of § 11362.3 that in any way requires West Hollywood or any city to *impose* penalties on cannabis smoking or vaping.

## **2) West Hollywood would be vulnerable to a legal challenge if it banned smoking or vaporizing medical cannabis in a private home.**

In 1996, California voters enacted Prop. 215, the first modern medical marijuana law. Unless it explicitly waives the protection, a voter-enacted law can only be amended by voters themselves.<sup>1</sup> Prop. 215 did not waive the protection.

Prop. 215, codified as Health & Safety Code § 11362.5, provides:

(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

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<sup>1</sup> California Constitution, Article II, Section 10 (c). (“The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors’ approval.”)

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

...

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes. ...

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

If West Hollywood were to prohibit the smoking and vaporizing of cannabis in private homes, I believe it would be violating patients' "right to obtain and use marijuana for medical purposes," and that it would be impermissibly subjecting them to a "sanction" for using marijuana for medical purposes.

Prop. 64 did not amend or repeal Prop. 215's protections. It provided, "Nothing in section 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict, or preempt: ... (i) Laws pertaining to the Compassionate Use Act of 1996." (§ 11362.45.)

### **3) Banning smoking or vaporizing cannabis by individuals in their homes violates the intent of Prop. 64.**

Prop. 64 was enacted with 57.13% of the vote on November 8, 2016. It passed in West Hollywood with 83.16% of the vote.<sup>2</sup> The *primary purpose* of Prop. 64 was to make it lawful for adults 21 years of age or older to consume cannabis, including smoking cannabis.

The drafters of Prop. 64 were also mindful of public health and the need to protect public spaces, so we included language allowing for restrictions on smoking in public, or in places where tobacco smoking is restricted, such as restaurants, bars, and workplaces. Prop. 64 did not intend to allow for the banning of smoking or vaporizing in a private home. Such a ban creates an overly broad barrier to smoking or vaporizing anywhere — if such activity is not

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allowed in public or in a private home — as to effectively ban it completely, which is directly contrary to Prop. 64.

The ban is not limited to instances where neighbors are harmed in any way by the vaporization or smoking of cannabis — or even to instances where they can smell the cannabis. It would apply even if a landlord walked in to perform maintenance and became aware a tenant was vaporizing cannabis. Likewise, it would apply if someone looked in a window and saw, but did not smell, a renter smoking a joint.

A city banning state-legal conduct, even when it does not harm or disrupt others, is deeply at odds with what the voters aimed to achieve. Additionally, a ban on private conduct that applies *only* to those who live in multi-family homes — who are disproportionately people of color and people with less wealth — is offensive to principles of equality. Such a ban will force people to consume in public spaces, subjecting themselves to an increased risk of fines and police interaction and subjecting the public to increased smoke exposure.

### **Conclusion**

I appreciate the city's long history of commitment to standing up for those who could benefit from medical cannabis and adults who consume cannabis. I hope you will reject the cannabis smoking and vaporization ban. State law does not require the city to enact such a dramatic assault on medical patient or adult-use cannabis consumers' rights in the privacy of their own homes. I suspect the law also does not allow such a ban.

Please don't hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tamar Todd', with a long horizontal flourish extending to the right.

Tamar Todd, Esq.  
Co-author, Prop. 64

December 7, 2021

San Jose City  
Neighborhood Services Education Committee

**Re: Council Policy Priority #18: Smoke-Free Housing – Agenda Item CC 21-311**

Dear Chair Arenas, Vice Chair Carrasco, Committee Members and Staff:

My name is Jackie Subeck. I'm a cannabis advocate, head of the California Cannabis Consumption Coalition and resident of West Hollywood. I'm also an owner of one of Weho's licensed cannabis consumption lounges as well as a regular cannabis smoker at home.

I am writing in opposition to Agenda item CC 21-311 regarding Smoke-Free Housing, specifically the portion that pertains to banning cannabis smoke inside households.

We went through this very same scenario in West Hollywood last year and the ultimate result was that City Council voted to bifurcate cannabis from tobacco as it relates to smoking in the privacy of one's own home and subsequently removing it from the proposed smoke-free ordinance. After reviewing each potential unintended consequence of an in-home ban on cannabis, ranging from existing landlords and tenants rights to future housing developments, from seniors who are ageing in place to HIPPA and other privacy concerns and of course to government overreach, the West Hollywood City Council overwhelmingly voted to remove cannabis completely from the equation. They successfully amended the ordinance as it relates to tobacco smoke, and then only on an "as needed basis," they added cannabis back in, specifically as it relates to prohibiting all types of smoke from indoor common areas inside multi-unit family dwellings.

Back in August 2020, Weho received an expert legal opinion (which I believe you have received several times prior) from Tamar Todd, one of the co-authors of Prop 64, who clearly outlined that the original intent of the law was to prohibit cannabis smoking in public, not in private. Tamar's letter was previously sent to each SJ council member prior to the previous council meeting on this topic, however I've attached it to this email for easy access. I strongly encourage all committee members to review her letter before making any formal decisions. There's just no reason for you to rush this through without all the facts.

Public consumption of cannabis is illegal in the State and the only place it's completely legal is in the privacy of ones own home which translates into yet another War on drugs disparity and inequity by disproportionately harming our minorities, people of color and low income communities who are not able to own their own home. Don't forget that over 57% of voters in San Jose voted YES on Prop 64 in favor of cannabis legalization.

I believe that the easiest way to solve this is to drop the cannabis piece entirely from the agenda and take time to come up with a better plan that addresses the real issue which is tobacco smoke. Maybe create a program and put out an RFP for affordable air filtration systems that could be



installed into vulnerable folks homes? It might take getting a little creative, but I think it's totally doable.

I encourage this committee to vote to completely remove cannabis from this agenda item, or at the very least, defer this discussion until significant data from both from experts and stakeholders can be collected and analyzed and a series of study sessions are conducted before taking your city back to an era of prohibition.

Thank you for your time.

Regards,

A handwritten signature in black ink, appearing to read "Jackie Subeck", with a long horizontal flourish extending to the right.

Jackie Subeck  
CEO, Hey Jackpot  
Founder, California Cannabis Consumption Coalition



August 7, 2020

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There are two core questions, which I will begin by providing a short answer to:

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Please don't hesitate to contact me with any questions.

Sincerely,

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Tamar Todd, Esq.  
Co-author, Prop. 64

November 14, 2020

1545 Divisadero, Room 508  
San Francisco, CA 94115

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San Francisco Board of Supervisors  
c/o Clerk Angela Calvillo



**RE: Please Amend Supe. Yee's Ordinance Prohibiting Smoking/Vaping in Multi-Unit Buildings to Exempt Cannabis Use (File No. 201265)**

Honorable Members of the Board of Supervisors:

As an oncologist and cannabis researcher, I am writing to ask that you amend proposed ordinance File No. 201265 (Yee)<sup>1</sup>, to exempt cannabis use, because secondhand cannabis smoke has not been proven to be harmful to humans.

I have practiced medicine for the past 37 years, having "retired" in July but recalled Emeritus status in August to continue my integrative oncology practice at the UCSF Osher Center for Integrative Medicine. I spent 37 years at Zuckerberg San Francisco General as the Assistant Director of the AIDS Program in its early days and more recently as the immediate past chief of the Hematology-Oncology Division. I chaired the Community Consortium of Bay Area HIV Care Providers conducting practice-based research in the offices of community colleagues treating AIDS patients. In the course of my research career, I have conducted numerous clinical trials of medical cannabis. I received funding from the National Institute on Drug Abuse for a placebo-controlled study of smoked cannabis versus oral THC or placebo in patients with HIV on protease inhibitors. With funding from the University of California Center for Medicinal Cannabis Research (CMCR), I demonstrated that cannabis was superior to placebo in treating patients with painful HIV-related peripheral neuropathy. CMCR also funded our trial evaluating the safety and effectiveness of vaporization as a smokeless cannabis delivery system. Subsequently I was funded by the National Institute on Drug Abuse to investigate the safety of adding vaporized cannabis to stable doses of sustained released opioids and most recently by the National Heart, Lung, and Blood Institute to study vaporized cannabis versus placebo in relieving pain in patients with sickle cell disease. I was also one of the 16 scientists who produced the National Academies of Sciences, Engineering and Medicine's January 2017

publication *The Health Effects of Cannabis and Cannabinoids*<sup>2</sup> after reviewing 10,000 recent articles published in the medical literature. Hence, I feel somewhat qualified to understand the risks and benefits of inhaled cannabis.

The proposed ordinance, insofar as it would ban cannabis smoking and cannabis vaporizing in private residences in multi-unit buildings in order to reduce the harms of secondhand smoke, lacks scientific basis and would do more harm than good. I appreciate that colleagues at UCSF have demonstrated possible changes in rodents exposed to secondhand smoke but the clinical relevance of these findings in humans is unclear. It is incorrect that cannabis smoke is equally dangerous as tobacco smoke; it is not. Cannabis smoke has never been linked to increased mortality, even in firsthand users.<sup>2</sup> Nor has firsthand cannabis smoke been shown to cause lung cancer, COPD, or other serious health effects.<sup>3</sup> Since no serious harms have been proven, even for the individual inhaling cannabis first-hand, evidence does not support the conclusion that it is a health risk for someone in an entirely different housing unit.

Supervisors, please amend File No. 201265 to exempt all cannabis use and cannabis users, because there is no scientific basis for the ordinance's premise that secondhand cannabis smoke is harmful in humans. On behalf of all of my patients living with and beyond cancer who benefit from cannabis use, I urge you to reconsider this measure.

If you have any questions, please feel free to contact me at



Thank you for your consideration.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Donald I. Abrams".

Donald I. Abrams, MD  
Professor Emeritus of Medicine  
University of California San Francisco  
Immediate Past Chief, Hematology-Oncology  
Zuckerberg San Francisco General  
Integrative Oncology  
UCSF Osher Center for Integrative Medicine

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<sup>2</sup> "The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research," The National Academies of Sciences, Engineering, and Medicine, Jan. 2017: "There is no or insufficient evidence to support or refute a statistical association between cannabis use and... All-cause mortality (self-reported cannabis use)."

<sup>3</sup> "The most common serious respiratory consequences from smoking tobacco are Chronic Obstructive Pulmonary Disease (COPD) and lung cancer. Epidemiological evidence that smoking cannabis causes either of these is scant," Kathryn Gracie and Robert Hancox, "Cannabis use disorder and the lungs," *Addiction*, 2020. <https://pubmed.ncbi.nlm.nih.gov/32285993/>.

# LEGAL CANNABIS FOR CONSUMER SAFETY



December 6, 2021

Neighborhood Services and Education Committee  
San José City Council  
200 E Santa Clara Street  
San José, CA 95113

Dear Members of the Neighborhood Services and Education Committee,

We are Legal Cannabis for Consumer Safety (LCCS), a coalition representing California's largest licensed cannabis growers, manufacturers, associations, retailers, testing labs, advocates, and marketplaces. LCCS is the regulated cannabis industry's unified voice on consumer safety issues and is committed to implementing fact-based solutions. **We write to respectfully urge you to amend the proposed ordinance prohibiting Smoking in Multi-Unit Housing Complexes to exclude cannabis.**



For over a decade, the City of San José has been an example of sensible and compassionate cannabis regulation and reform. Prop 64, which legalized cannabis statewide, was supported by 57% of San José voters. Because of the responsible actions of the City's sixteen legal cannabis retailers and strict oversight by the San José Police Department Division of Cannabis Control, the City has one of the safest and most respected cannabis programs in California. San José is Silicon Valley's leader in understanding the medicinal value of cannabis and recognizing the significant harms caused by prohibition.

**As such, it would be disheartening and dangerous if the City Council moved backward by:**

- Re-criminalizing a right that patients and consumers have fought so hard to obtain, after a decades-long war on drugs and people of color.
- Barring those suffering from chronic pain from being able to ingest cannabis for their ailments via safe and effective consumption mechanisms with a more rapid onset than cannabis edibles can provide, in the privacy of their homes.
- Instituting an ordinance that unfairly and disproportionately targets its less advantaged, multi-unit dwelling residents.

**We are in the midst of a global pandemic — one where governments have wisely designated cannabis as *essential*.**

- COVID-19 is a dangerous time to force struggling renters to relocate or find a place outside their home to consume a legal product.
- The State of California, including multiple cities and counties, have specifically identified cannabis as an *essential* service during the pandemic.
- Cannabis vapes and smoked flower are critical consumption mechanisms for medicine. Inhalation is a particularly effective way to administer cannabis for conditions requiring prompt treatment, such as chronic pain, seizures, spasms, migraine attacks and extreme nausea.
- Cannabis provides many therapeutic benefits and is widely used as a safe anxiety relief mechanism, especially at a time where consumers are faced with tremendous fear, uncertainty, job loss and unprecedented life transitions.

**Tobacco and cannabis are two very different products and should never be conflated.**

- Unlike tobacco, cannabis is widely used for medicinal purposes, providing relief for illnesses including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, and many others.
- Unlike tobacco smoke exposure, cannabis smoke exposure — even long-term — is not positively associated with cancers of the lung or upper aerodigestive tract.\*
- Human studies of chronic cannabis users failed to find any increased risk of smoking-related cancers, according to a comprehensive 2017 review by the National Academy of Science.\*

- While tobacco can legally be smoked outdoors, cannabis can't be consumed legally in any public place in the state – other than cannabis cafes, of which San José has none.

**Bans on second-hand cannabis smoke are unsubstantiated.**

- A review of the scientific evidence demonstrates that cannabis smoke and vaping are safer than tobacco.\*
- Unlike tobacco, cannabis smoking has been found in numerous studies to *not* cause lung cancer or cardiovascular disease.\*
- Studies assessing the effects of long-term cannabis smoke exposure on lung function have reported that subjects' cannabis use history is *not* positively associated with increased incidences of chronic obstructive pulmonary disease (COPD), lung cancer, or with other significant detrimental effects on pulmonary function.\*

**Bans on cannabis *vapor* are completely devoid of science.**

- Vaping has been shown to eliminate 95% - 99.99% of all smoke toxins, and it drastically reduces second-hand side stream smoke.\*
- A study found that the health hazards from vaped cannabis are less than 1/1000 that of smoking.\*
- To be clear, no harm has ever been detected from second-hand vaping.\*

**California law protects patients' cannabis use.**

- Prop. 215 prevents jurisdictions from prohibiting individuals whose medical professionals have recommended cannabis from being able to smoke or vaporize cannabis at home. This right may only be amended by the state's voters and attempts by cities to do so could invite costly litigation.
- State law does *not* require that any municipality ban cannabis if it bans tobacco smoking, and cities may legally address issues relating to tobacco use without including cannabis.
- Prop. 64, legalizing cannabis, was supported by 57% of San José voters.

**Restricting cannabis use will have an economic impact, during a recession no less.**

- Cannabis flower and vapes make up over 70% of cannabis market sales. It is implausible that prohibiting consumption of the dominant cannabis product categories won't impact local cannabis retailers, their employees, and the City's local tax receipts.
- In the midst of an extended pandemic, when the finances of individuals, businesses, and municipalities are stretched, is a terrible time to implement new restrictions on economic activity or costly fines for those who violate them.

This proposed ordinance goes against the City's values of equality, equity, and inclusion. San José was one of the first and strongest supporters of patients and others in need of medical cannabis. We implore you not to implement restrictions on your residents who rely on rapid relief from cannabis in ways that have been proven to be safe and effective.

Sincerely,

Legal Cannabis for Consumer Safety

www.calccs.org | [info@calccs.org](mailto:info@calccs.org)

**Advanced Vapor Devices**

**Biko**

**Blackbird Distribution**

**Blaqstar Farms**

**Bloom Farms**

**Brite Labs**

**Caliva**

**Cannabis Connect**

**CannaCraft**

**CannaSafe Labs**

**CCIA**

**CCMA**

**CDA (Cannabis  
Distributors Assoc)**

**Central Coast**

**Agriculture**

**Cresco Labs**

**Dompen**

**Dosist**

**Double Barrel**

**Dreamt**

**Eaze**

**Eden**

**Flow Kana**

**Fume**

**GAIACA Waste**

**Revitalization**

**Headstash**

**Honey**

**Humboldt's Finest**

**Infinite Cal**

**Island**

**Jetty Extracts**

**Kanha**

**KGB Reserve**

**Kiva**

**La Vida Verde**

**Law Office of Kimberly**

**R. Simms**

**Legion of Bloom**

**Level Blends**

**Lowell Herb Co.**

**Mammoth Distribution**

**Meadow**

**MPP**

**Nabis**

**NCIA**

**Norcal Cannabis  
Company**

**Old Pal**

**PAX**

**Pineapple Express**

**Pure**

**Rove**

**Se7enLeaf**

**Select**

**Spacestation**

**Sparc**

**Sunderstorm**

**SVCA**

**The Farmacy SB**

**The London Fund**

**The Werc Shop**

**Utopia**

**Venice Cookie Co.**

**Yvette McDowell**

**Consulting**

\*California NORML (<https://canorml.org>) maintains extensive research on cannabis smoking and vaping and its effects on human health, and its website contains summaries and direct links to the studies and references made in this letter.



*California Chapter of the National Organization for the Reform of Marijuana Laws  
2261 Market St. #278A, S.F., CA 94114 - [www.canorml.org](http://www.canorml.org) - (415) 563-5858 / (510) 540-1066  
LA Office: (310) 652-8654*

**Dec 7, 2021**

**Members of the Neighborhood Services and Education Committee  
San Jose City Council  
200 E. Santa Clara St.  
San Jose CA**

**Re: Dec 9<sup>th</sup> Meeting - Agenda Item #3 CC-21-311 -Smoke Free Housing Policy  
Unfairly discriminates against cannabis and low-income residents**

Dear Committee Members:

On behalf of the many San Jose residents who use cannabis for medicine or enjoyment, we urge that cannabis smoking and vaping not be prohibited in private apartments and multi-unit dwellings except when it actually invades other residents' space.

**The proposed smoke-free housing ordinance would constitute a de facto ban on cannabis use for low-income residents who can't afford their own homes.** Unlike tobacco, which can be legally smoked outside on public streets, cannabis consumption is unlawful in all public places under state law (CA HSC 11362.3 (a)1). The proposed ordinance would thus leave apartment dwellers with no legal place to use marijuana. This violates the intent of the California Compassionate Use Act of 1996 (Prop 215), to protect medical marijuana use from legal sanction.

**Cannabis does not present a secondhand smoke hazard like tobacco.** As explained in the attached letter from UCSF cannabis expert Dr. Donald Abrams, secondhand cannabis smoke has never been shown to be harmful to human health. Unlike tobacco, first-hand cannabis smoking has been shown not to cause lung cancer [1] or cardiovascular disease [2] in numerous human studies. Second-hand exposure is therefore all the less likely to be harmful. Anti-smoking alarmists, funded by the state's tobacco tax, are trying to scare the public with junk science studies alleging traces of toxins in marijuana smoke, without mentioning that the amounts are so minuscule as to have no adverse impact on human health [3]. In general, cannabis users tend to smoke much smaller quantities

than tobacco smokers. In addition, cannabis smoke does not leave behind prolonged, residual “third-hand” odors like nicotine.


**Including vapes in a secondhand smoking ban is even more unjustified.** Vaporization has been shown to eliminate 95%-99.99% of all smoke toxins, both in marijuana and tobacco [4]. In addition, vaporizers drastically reduce secondhand side-stream emissions and don't involve lighters, matches, fire, smoke and ashes. Not a single human study has demonstrated harm from vape exposure. Vaporizers are a valuable harm-reduction tool for users trying to quit smoking. There is no justification for banning vaporization in private dwellings.

**The proposed policy inordinately impacts lower-income and minority residents who can't afford their own homes.** Evicting tenants for smoking will scarcely improve the city's homelessness crisis. San Jose is large enough to provide 100% odor-free apartments for those who are smoke-sensitive, while allowing freedom for others to enjoy marijuana within different units.

**The cities of San Francisco and West Hollywood recently rejected proposed bans on cannabis smoking in multi-unit dwellings.** The San Francisco Health Department further warned that a retroactive ban on smoking in residences that have long tolerated it would be difficult to enforce.

In closing, we respectfully urge the city to delete cannabis from any proposed ban on smoking in residential apartments, and to respect the right of residents to smoke or vape as they please in their own homes so long as they don't bother others. Anti-smoking rules should rightly target second-hand emissions that penetrate others' spaces, not what goes on in residents' own private apartments.

Sincerely,



Dale Gieringer, Ph.D  
Director, California NORML – [www.canorml.org](http://www.canorml.org)  
Co-author, California Compassionate Use Act (Prop 215)  
2261 Market St. #278A  
San Francisco CA 94114

## REFERENCES:

[1] The National Academy of Sciences report on “The Health Effects of Cannabis and Cannabinoids” (2017) concluded there is no correlation between cannabis use and lung, head, or neck cancers.

[2] Regarding cardiovascular disease, the following recent studies were all negative:

Auer R et al, “Lifetime marijuana use and subclinical atherosclerosis,” *Addiction* 2018.

Reis JR et al, “Cumulative Lifetime Marijuana Use and Incident Cardiovascular Disease in Middle Age,” *Am J. Public Health* 2017 Apr 107(4):601-6.

San Luis C et al, “Association Between Recent Cannabinoid Use and Acute Ischemic Stroke,” *Neurology Clinical Practice* Jun 3, 2020.

Jakob J et al, “Association between marijuana use on electrocardiographic abnormalities by middle age,” *Addiction* 2020 Jul 10.

[3] Cal NORML Release: “CA DPH Misrepresents Cannabis Smoke and Vape Hazards Using Anti-Tobacco Funding” <https://www.canorml.org/is-ca-spending-anti-tobacco-tax-money-to-make-specious-claims-about-marijuana-and-second-hand-smoke/>

[4] *Demonstrating efficacy of cannabis vapes:*

Gieringer D et al: “Cannabis Vaporizer Combines Efficient Delivery of THC with Effective Suppression of Pyrolytic Compounds,” *Journal of Cannabis Therapeutics* 2004.

Meehan-Atrash J et al., “Aerosol Gas-Phase Components from Cannabis E-Cigarettes and Dabbing: Mechanistic Insight and Quantitative Risk Analysis,” *ACS Omega* Sept 16, 2019.

*Similar findings for nicotine vapes:*

Goniewicz et al, “Level of selected carcinogens and toxicants in vapour from electronic cigarettes,” *Tobacco Control* Mar 6, 2013.

Burstyn I, “Peering through the mist: systematic review of what the chemistry of contaminants in electronic cigarettes tells us about health risks,” *BMC Public Health* 2014, 14:18.

[Cal NORML analysis of specious claims about second-hand marijuana smoke.](#)

[Study: Marijuana Use History Not Independently Associated With Atherosclerosis](#)

[Study: Cannabis Use Not Associated With Increased Risk Of Cardiovascular Disease](#)



December 8, 2021

Re: Item d. 3 Smoke-Free Housing Ordinance — Cannabis Should be Excluded

Dear Councilmembers:

In November 2016, 57% of San José voters approved Prop. 64, legalizing marijuana for adult consumption.<sup>1</sup> This figure mirrored the statewide support, which has risen to 78% according to Civiqs polling.<sup>2</sup>

We urge the San José City Council not to thwart the will of voters by banning cannabis smoking and vaping in multi-unit homes. Due to the statewide ban on smoking and vaping cannabis in public, this would function as a near-total ban on renters and condo owners inhaling cannabis.

Smoking is the most common mode of cannabis administration — with 90% smoking cannabis, and 58% exclusively using smoked administration.<sup>3</sup>

### **I. A Ban on Third-Hand Cannabis Smoke and Vapor is Not Supported by Science**

The rationale for the ban on smoking in one's own apartment or condo is based on the harms of *tobacco* smoke — not cannabis. The second slide on the presentation says 1 in 8 deaths in the county are due to smoking-related diseases such as cancer, heart disease, and respiratory disease. However, only tobacco smoke — not cannabis — has been shown to cause those health risks.

Tobacco smoking's harms — both first-hand and second-hand — have been well-established. The Centers for Disease Control and Prevention reports that more than 480,000 Americans die from tobacco smoke each year, including 41,000 deaths from second-hand tobacco smoke.<sup>4</sup> While some may assume this means cannabis smoke is equally dangerous, they would be wrong.

It's easy to find government tallies on the annual death tolls from alcohol, opiates, tobacco, and air pollution from cars. There is no similar tally for cannabis. This is

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<sup>1</sup> <https://elections.cdn.sos.ca.gov/sov/2016-general/ssov/ballot-measures-by-political-districts.pdf>

<sup>2</sup> [https://civiqs.com/results/cannabis\\_legal?uncertainty=true&annotations=true&zoomIn=true&home\\_state=California](https://civiqs.com/results/cannabis_legal?uncertainty=true&annotations=true&zoomIn=true&home_state=California) (accessed Dec. 8, 2021)

<sup>3</sup> <https://pubmed.ncbi.nlm.nih.gov/32061947/>

<sup>4</sup> [cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/tobacco\\_related\\_mortality/index.htm](https://cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm)

because — unlike all those riskier behaviors — cannabis smoking has not been linked to increased mortality, even in in first-hand users.<sup>5</sup>

Even first-hand cannabis smoke has similarly not been shown to cause lung cancer, COPD, and other serious health effects.<sup>6</sup> Given that these serious harms haven't been proven even for the person actually inhaling cannabis, it is clear that assuming they would pose a major risk for someone in an entirely different unit is not supported by the evidence.

It makes no sense to lump cannabis in with tobacco, given their risk profiles.

The proposed ban does not include gas grills, wood stoves, charcoal grills, which all are on the Prop 65 warning list — and which pose more risk than third-hand cannabis smoke.<sup>7</sup>

## II. Inhaled Cannabis Is Medicine

Numerous studies, including many funded by the State of California, demonstrate the medical efficacy of *smoked* and *vaporized* whole-plant cannabis.<sup>8</sup> Additionally, millions of Americans find smoked or vaporized cannabis works best for them.

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<sup>5</sup> "The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research," *The National Academies of Sciences, Engineering, and Medicine*, January 2017. ("There is no or insufficient evidence to support or refute a statistical association between cannabis use and: All-cause mortality (self-reported cannabis use)")

<sup>6</sup> "[I]t has been pragmatic to assume that cannabis and tobacco would have similar respiratory effects. ... The research that has been done, however, offers a different story. The most common serious respiratory consequences from smoking tobacco are Chronic Obstructive Pulmonary Disease (COPD) and lung cancer. Epidemiological evidence that smoking cannabis causes either of these is scant." Kathryn Gracie and Robert Hancox, "Cannabis use disorder and the lungs," *Addiction*, 2020.

<sup>7</sup> <https://www.bbqsandfireplaces.com/prop65/>

<sup>8</sup> See, i.e., Mark Ware, et al., "Smoked cannabis for chronic neuropathic pain: a randomized controlled trial," *Canadian Medical Association Journal* (2010): 694- 701; B. Wilsey, et al., "A Randomized, Placebo-Controlled, Crossover Trial of Cannabis Cigarettes in Neuropathic Pain," *Journal of Pain*, no. 6 (2008): 506-21; Jody Corey-Bloom, et al., "Smoked cannabis for spasticity in multiple sclerosis: a randomized, placebo-controlled trial," *Canadian Medical Association Journal* 184, no. 10 (2012): 1143–1150; Torsten Passie, et al., "Mitigation of post-traumatic stress symptom by Cannabis resin: A review of the clinical and neurobiological evidence," *Drug Testing and Analysis* (2012): 649-659; Richard Musty and Rita Rossi, "Effects of Smoked Cannabis and Oral  $\Delta^9$ - Tetrahydrocannabinol on Nausea and Emesis After Cancer Chemotherapy: A Review of State Clinical Trials," *Journal of Cannabis Therapeutics* 1, no. 1 (2001): 43-56; Donald Abrams, et al., "Short-Term Effects of Cannabinoids on Patients With HIV-1 Infection: A Randomized, Placebo-Controlled Clinical Trial," *Annals of Internal Medicine* 139, no. 4 (2003): 258-266. Wilsey, Barth, et al., "Low Dose Vaporized Cannabis Significantly Improves Neuropathic Pain," *The Journal of Pain* 14.2 (2013): 136–148; Wilsey B, Marcotte TD, Deutsch R, Zhao H, Prasad H, Phan A. (2016). "An Exploratory Human Laboratory Experiment Evaluating Vaporized Cannabis in the Treatment of Neuropathic Pain from Spinal Cord Injury and Disease." *J The Journal of Pain* . 2016 Jun 7.



While a significant number of studies have proven smoked cannabis' benefits for certain symptoms and conditions — including double-blind placebo-controlled trials, the gold standard of research — we have only scratched the surface at exploring cannabis' medicinal benefits. This is due to the federal government obstructing research on cannabis' benefits, even while it provides vast amounts of funding on failed attempts to prove harm.<sup>9</sup>

### III. Edibles Are Not an Adequate Substitute

While some individuals' ailments respond best to edibles or oils, many others discovered smoked or vaporized cannabis works best for them, especially for emergency relief. Edibles and oils often lack many of the cannabinoids and terpenes found in flower cannabis, and are frequently limited to one or two of the more than 80 cannabinoids found in cannabis. In addition, many individuals need the near-immediate relief of inhaled cannabis when their symptoms begin. Others, such as those with cancer-related wasting or nausea, can't even eat or keep edibles down.

As a 2003 study in the *Lancet Neurology* explained, “oral administration [i.e. pills, oils, eating, and drinking] is probably the least satisfactory route for cannabis owing to sequestration of cannabinoids into fat from which there is slow and variable release into plasma. In addition, significant first-pass metabolism in the liver, which degrades THC, contributes to the variability of circulating concentrations of orally administered cannabinoids, which makes dose titration more difficult and therefore increases the potential for adverse psychoactive effects. Smoking has been the route of choice for many cannabis users because it delivers a more rapid ‘hit’ and allows more accurate dose-titration.”<sup>10</sup>

Over the past 18 years, I have worked with hundreds of individuals who benefit from medical cannabis, many of whom respond best to inhaled cannabis. Here are two examples that highlight the cruelty of such a ban:

- Patrick McClellan of Minnesota, who was immobilized by violent spasms caused by a rare form of muscular dystrophy. His emergency prescription medication does not always work and can be fatal.<sup>11</sup> His spasms have caused him to be mostly paralyzed on the bathroom floor for more than an hour. In contrast to the risky and less reliable prescriptions, he found that inhaled cannabis worked 100% of the time, without the serious risks.
- A young man from Illinois, who experienced auras before grand mal (also known as tonic-clonic) seizures. When he inhaled cannabis in time, he

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<sup>9</sup> For more details, see:

[www.mpp.org/issues/medical-marijuana/federal-obstruction-of-medical-marijuana-research/](http://www.mpp.org/issues/medical-marijuana/federal-obstruction-of-medical-marijuana-research/)

<sup>10</sup> David Baker, et al., “The Therapeutic Potential of Cannabis,” *The Lancet Neurology* 2, no. 5 (2003): 291-8.

<sup>11</sup> See: <https://www.mprnews.org/story/2015/07/01/medical-cannabis>

could prevent the seizures. In addition to the risk of injuries and trauma seizures cause, they can be fatal. One out of every 1,000 epilepsy patients dies of Sudden Unexpected Death In Epilepsy.

#### **IV. An Exception for Medical Use Would Not Be Enough**

Some may be tempted to merely exempt medical cannabis with a doctor's recommendation from the ban. However, we strongly urge that the City Council instead exempt cannabis *entirely*.

First, studies have shown most cannabis use *is* medical, but most medical use is essentially over-the-counter. Even in 2013, when no state had legal cannabis sales, Pew Research found 53% of cannabis smokers did so partly or entirely for medical purposes.<sup>12</sup> In post-legalization Denver, a survey of 1,000 adult-use (not officially medical) customers found 65% used cannabis for pain and 74% did so for sleep.<sup>13</sup>

Second, such an exception would merely exacerbate the racism and classism that has characterized cannabis prohibition throughout its ignoble history. Under California's broad medical cannabis law, anyone can get a recommendation. But it costs money. Health care is extremely unequal in this country and many people do not even have a primary care provider. In addition, many physicians are not knowledgeable about cannabis, since it is typically not taught about in medical schools. To avail oneself of such an exception, most people would have to go to — and pay — a cannabis specialist. Requiring a doctor's recommendation is not a reliable way to separate out medical use from non-medical use. It is instead a way to separate and spare individuals with deeper pockets.

Finally, all adults should be able to enjoy cannabis at home, even if it's for fun, not for medicine. Voters overwhelmingly chose to make marijuana legal in our state. Leaving behind those who live in multi-unit buildings, again who tend to have lower incomes and less wealth, is wrong. It is also wrong to force renters to only use edibles, which can result in unpleasant experiences, particularly novice users.

#### **V. Exempting Vaporized Cannabis Is Not Sufficient**

Only 20% of cannabis users have even tried a vaporizer — 90% administer cannabis by smoking, and 58% do so exclusively.<sup>14</sup> Many individuals cannot afford the hundreds of dollars vaporizers cost and others may have concerns about that mode of administration due to stories about vaporization related lung injuries and

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<sup>12</sup> [www.pewresearch.org/fact-tank/2013/04/17/marijuana-use-increased-over-the-last-decade/](http://www.pewresearch.org/fact-tank/2013/04/17/marijuana-use-increased-over-the-last-decade/)

<sup>13</sup> Dr. Marcus Bachhuber, et al, "Use of Cannabis to Relieve Pain and Promote Sleep by Customers at an Adult Use Dispensary," *Journal of Psychoactive Drugs*, Volume 51, 2019 - Issue 5.

<sup>14</sup> <https://pubmed.ncbi.nlm.nih.gov/32061947/>

deaths (“EVALI”). (EVALI illnesses were traced to dangerous additives included on the illicit market, but that is not common knowledge.<sup>15</sup>)

## **VI. State Law Does Not Require the City to Ban Inhaled Cannabis**

Some may be under the mistaken impression that state law requires the city to ban cannabis inhalation if it bans tobacco smoking and vaping. The City Council has been provided with a letter from the co-author of the most relevant provision of Prop. 64, attorney Tamar Todd, explaining that banning cannabis smoke would be counter to the intent and letter of state law. Indeed, doing so would also put the city at risk of litigation for violating Prop. 215 — the state’s voter-approved medical cannabis law.

The city I live in — West Hollywood —exempted cannabis from its smoking ban in 2022 after receiving Tamar Todd’s letter and hearing from constituents.

## **VII. This Cannabis Ban Would Exacerbate Inequality and Poverty**

The cannabis smoking and vaping ban would apply to apartments and condominiums, not single-family homes. Penalties have not yet been determined; the enforcement question is also under consideration at this meeting.

One option the city is considering making the smoking ban a material provision of all leases. If that option were pursued, smoking cannabis at one’s home could cause one to be evicted, including from rent-stabilized homes in the midst of a housing crisis. Most would be unable to afford to rent given skyrocketing rents.

Another option is imposing fines — possibly reducing the current fines which are \$250 for a first offense, \$500 for a second offense, and \$1,000 for a subsequent offense.

Many residents are already rent-burdened before the crisis. San José residents smoked cannabis long before Prop. 64 passed — both for fun and as a medical treatment. It is unrealistic to believe they will suddenly stop smoking and vaping cannabis because of this ordinance. Instead, many San José residents will be subjected to either eviction or fines that many cannot afford. Whether or not violations of the ordinance will *directly* result in an eviction, they will surely make it harder to make rent, and will make it harder to pay for food, medicine, utilities, and other needs. Indirectly, at a minimum, this can be expected to result in evictions.

## **Conclusion**


We urge you to omit cannabis from any ban on smoking in one’s own home.

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<sup>15</sup> See: [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html)

Banning San José residents who live in multi-unit housing from inhaling cannabis is a gross overreach. Banning third-hand cannabis smoke is not supported by scientific evidence. It is an unjust intrusion in personal liberty, would pit neighbors against neighbors, and it would interfere with medical treatment. Like cannabis prohibition, it will result in disparate, unequal enforcement. And the ban will remove longtime tenants from rent stabilized, more affordable housing.

Sincerely,

A handwritten signature in cursive script that reads "Karen O'Keefe".

Karen O'Keefe, Esq.  
Director of State Policies  
Marijuana Policy Project  
[REDACTED]  
kokeefe@mpp.org