

SMOKE-FREE MULTI-UNIT HOUSING

and Minnesota's Medical Cannabis Program



For more than 40 years, smoke-free policies have provided Minnesotans protection from exposure to secondhand smoke at home, work and in the community.

In the late 1990s, multi-unit housing residents and public health professionals began advocating for greater protection from secondhand smoke exposure, especially for those who live in apartments and common interest communities. This effort to increase protection from secondhand smoke exposure led to research, community education, and a growing interest in healthy, smoke-free living opportunities for all. Since 2005 the availability of smoke-free buildings in Minnesota has grown dramatically, with currently over 5,000 multi-unit properties offering smoke-free air at home.



Since 2015, state law has allowed Minnesotans with qualifying medical conditions and certification from a participating health care practitioner to register for the state's Medical Cannabis Program, allowing enrolled patients to consume medical cannabis (i.e., marijuana) in pill, oil, or vapor form.¹

During the 2021 state legislative session, Minnesota's Medical Cannabis Program was expanded to allow enrolled patients to purchase the raw flower form of cannabis for consumption once appropriate regulations are put in place (i.e., legalizing smoking² as a form of medical cannabis consumption by enrolled patients).³

What does this mean for existing and new clean air policies, such as the Minnesota Clean Indoor Air Act and individual smoke-free housing policies? Below are answers to several commonly asked questions by property management and residents of multi-unit housing regarding cannabis and smoke-free policies in Minnesota.

Q: Is secondhand cannabis smoke harmful?

A: Smoke is smoke. Research has shown that cannabis smoke contains many toxic chemicals and high levels of fine particulate matter.^{4,5} Compared to breathing clean air, cannabis smoke and the combustion of hard physical matter, whether organic or synthetic, is a health hazard, particularly for those with serious lung conditions, infants, and children.⁶

Q: What is the difference between “marijuana” and “cannabis?”

A: According to the National Institutes of Health, the terms “marijuana” and “cannabis” are often used interchangeably but there are a few differences. “Cannabis” refers to all products derived from the plant *Cannabis sativa*.⁷ The word “marijuana” typically refers to parts of or products derived from the *Cannabis sativa* plant that contain tetrahydrocannabinol (THC), which is the substance that creates an intoxicating effect when consumed. Some cannabis plants contain very little THC.

When the legislature legalized the limited medical consumption of cannabis, it used the term “medical cannabis” and authorized the Minnesota Department of Health (MDH) to oversee the Medical Cannabis Program, including the creation of the Office of Medical Cannabis. Cannabis is the term used in state law, regulations, and guidance about the program, but it is possible that patients enrolled in the Program may use the term “cannabis” interchangeably with “marijuana.”

Q: How do I ensure my smoke-free housing policy addresses secondhand smoke from marijuana and cannabis products, as well as smoke from commercial tobacco or other products?

A: Smoking, including vaping, of any substance may create harmful secondhand and thirdhand exposure to particles and chemicals from the substances smoked, including marijuana.⁸ For the purposes of a smoke-free housing policy, prohibiting smoking (including the use of electronic delivery devices, also known as “vaping”) of marijuana or cannabis would be covered regardless of the term used so long as a comprehensive definition of “smoking” is included in the policy. This is the definition of “smoking” used in the Public Health Law Center’s model smoke-free multi-unit housing policies:

“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco, nicotine, or plant product intended for inhalation, including hookah and marijuana, whether natural or synthetic. “Smoking” also includes the use of an electronic smoking device.⁹

This definition covers any plant product (including all cannabis), explicitly references marijuana, and also addresses the smoking of what may be characterized as “synthetic” forms of substances, including those derived from cannabis, marijuana, or hemp. (See below for more information on the process for amending or adopting smokefree housing policies.)

Q: When will it be legal for patients to purchase and use combustible medical cannabis in Minnesota?

A: The 2021 legislative change expanded the methods of consuming medical cannabis to include the combustion/lighting and smoking of dried raw cannabis. According to the Minnesota Department of Health, dried raw cannabis will be allowed for registered patients who are 21 years or older beginning on March 1, 2022, when the testing labs and administrative rules are ready.¹⁰ It is important to note that prior to the 2021 session, Section 152.22, Subdivision 6 of Minnesota state statutes limited medical cannabis consumption to pill, liquid, oil, topical, tincture, powder, and lozenge forms. Medical cannabis oil was available for ingestion using a “vaporizer.”¹¹ This means that enrolled patients have been allowed to “vape” medical cannabis since 2015 through the use of electronic delivery devices (i.e., vaping).

Q: Is it legal for intoxicating cannabis/marijuana to be used for recreational purposes in Minnesota?

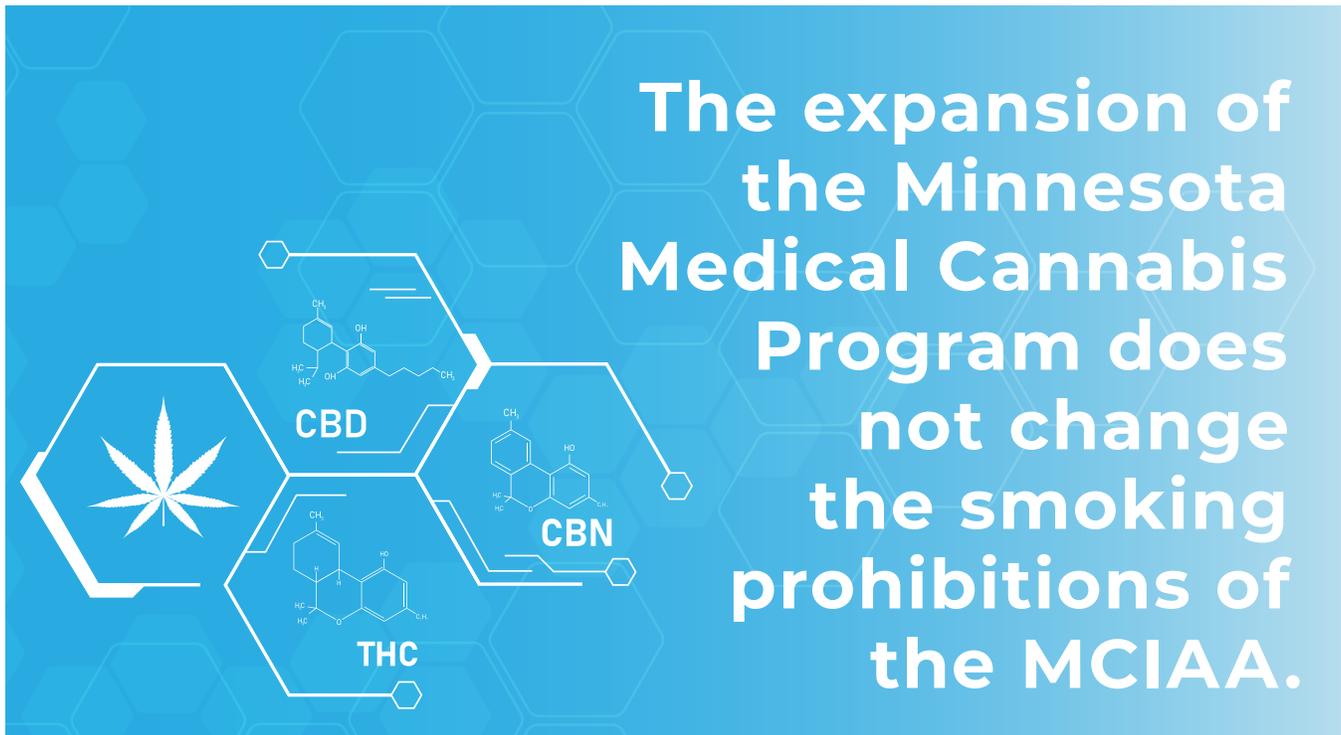
A: No. The possession and use of cannabis or marijuana by people who are not enrolled in the state Medical Cannabis Program is not legal under state law, regardless of the unenrolled person's reason for consumption. Additionally, "marihuana," THC, and other "cannabimimetic agents" remain categorized as a Schedule 1 drug under the federal Controlled Substances Act.¹² This means that cannabis/marijuana consumption for any purpose — medical or otherwise — is technically illegal at the federal level. However, the federal government has exercised its discretion to not enforce the Controlled Substances Act against participants of a state medical cannabis program and Congress has enacted funding restrictions that prohibit the Department of Justice from preventing the implementation of state and local medical marijuana programs.¹³

Q: Are there restrictions on where enrolled medical cannabis patients may smoke and how does the inclusion of smoking in the Minnesota Medical Cannabis Program impact the Minnesota Clean Indoor Air Act (MCIAA)?

A: The expansion of the Minnesota Medical Cannabis Program to allow smoking of combustible medical cannabis does not change the smoking prohibitions of the MCIAA.

The MCIAA definition of "smoking" includes carrying or smoking any lighted or heated product that may contain nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, and also includes carrying or using an activated electronic delivery device (i.e., e-cigarettes or "vapes").¹⁴ Under the MCIAA, smoking is prohibited in virtually all indoor public places, which are defined to include the common areas of rental apartment buildings.¹⁵ Condos and other common interest communities are not included in this definition, so the MCIAA protections of common areas do not extend to those forms of multi-unit housing.

In addition to the existing protections under the MCIAA, the amended 2021 medical cannabis law explicitly prohibits enrolled medical cannabis patients from smoking (including "vaporizing") medical cannabis in public places and places of employment.¹⁶ While "public place" is not defined in the medical cannabis statutes, it would be consistent to align this restriction, at a minimum, to the MCIAA definition of indoor "public place," including common areas of multi-unit rental housing and places of employment (e.g., multi-unit residential property offices). The term "public place," in the context of the medical cannabis law, may be broader and include more indoor and outdoor public places than the limited indoor public places regulated under the MCIAA.



Q: Will it be legal for a rental property or common interest communities (e.g., condominiums, townhomes, and cooperatives) to prohibit the smoking of medical cannabis in and around their multi-unit property?

A: Yes. Nothing in the MCI AA restricts property managers, owners, and homeowners associations from adopting more stringent no-smoking rules for their properties and nothing in the Medical Cannabis Program statute guarantees a patient the right to expose others to secondhand smoke or aerosol by smoking or vaping medical cannabis.

State law does prohibit a landlord from refusing to lease to or from penalizing a person solely for the person's status as a patient enrolled in the Medical Cannabis Program, unless failing to do so is a violation of federal law or the landlord would lose a monetary or licensing-related benefit under federal law.¹⁷ This does not require landlords to allow medical cannabis use or smoking on their property, but rather makes clear that the status of enrollment cannot be used as a reason to refuse to lease to or as a basis to penalize a resident.

Q: Can residents in multi-unit buildings who are enrolled patients of the Medical Cannabis Program claim they are justified in smoking or vaping medical marijuana in their units because they are disabled and are protected by the Americans with Disabilities Act? What about the claim that they are entitled to “reasonable accommodations” under the federal Fair Housing Act?

A: Enrollees of the Medical Cannabis Program may also have a qualifying disability that provides them protection under the Americans with Disabilities Act (ADA), but ADA protections do not require exceptions to allow smoking that would otherwise violate a smoke-free rule or law. In fact, the ADA could be used to *protect* residents from exposure to secondhand smoke if the exposure is exacerbating or causing a health problem for a resident that is protected by the ADA.¹⁸

The Federal Fair Housing Act (the Act) prohibits discrimination in housing based on a number of protected identities, including disability. The protections in the Act require housing providers, among other things, to make “reasonable accommodations”¹⁹ in rules, policies, practices, or services when necessary to give a disabled person an equal opportunity to use and enjoy a dwelling unit or common space.²⁰ Residents of multi-unit housing do not have the right to expose other residents to secondhand smoke, and housing providers are not compelled to allow smoking in violation of their smoke-free policy. Medical cannabis can be consumed in other ways that do not pose risks to residents.

Additionally, marijuana possession and use remains a violation of federal law, so it is unlikely that the Act would be interpreted by a court to require a property owner or manager to allow smoking marijuana or cannabis in prohibited areas, even if for medical purposes and even if the resident or guest has a disability that would qualify them for protection under the Act.²¹ Property owners and Homeowner Associations (HOAs) should be aware that different methods of medical cannabis consumption create different reactions and results in patients, but property owners and HOAs are not qualified to discuss appropriate medical treatment with their residents. Instead, property owners and HOAs can focus on policies that protect the clean air of residents, guests, staff, and other visitors as supported by Minnesota law.

Q: If there is already a tobacco smoke-free policy at my multi-unit property, will the smoking of medical cannabis automatically be prohibited?

A: It depends on how the property’s no-smoking policy is drafted. As noted above, if the policy has a comprehensive definition of smoking, then no change would be needed. If the policy

only addresses commercial tobacco smoke, then the property owner or manager could revise the policy to be comprehensive and cover any substances that may be smoked to help protect residents from all forms of secondhand smoke exposure.

Q: How can I expand my smoke-free policy to prohibit the smoking of cannabis/marijuana in and around my rental property or homeowner's association?

A: In a rental property:

If a smoke-free policy does not already prohibit the smoking of medical cannabis, the property owner or manager could follow these basic steps to expand the policy:

- 1 Add a comprehensive definition of smoking to the smoke-free policy. See the Public Health Law Center's [Model Smoke-Free Lease Addendum](#) and contact [Association for Nonsmokers-Minnesota](#) and Public Health Law Center for assistance with policy language.
- 2 Notify existing residents of the policy change 60 to 90 days before the implementation date (but no less than 30 days).
- 3 Depending on lease terms, the landlord may need to wait until lease renewal before implementing the policy with existing residents, unless the resident voluntarily signs a lease addendum. All *new* leases should include the smoke-free policy and should be implemented immediately for those new residents.

In a common interest community:

If a smoke-free policy does not already prohibit the smoking of medical cannabis, the Homeowners Association (HOA) should follow the process outlined in the HOA's bylaws to amend the property's rules or declaration to adopt a smoke-free policy that includes a comprehensive definition of smoking, including smoking medical cannabis and any other substances.

Both rental and common interest communities should follow the best practices for implementing a smoke-free policy, including:

- Explain the rationale of the policy. Make sure that residents, guests, employees, and others associated with a multi-unit property understand the health risks related to smoking, vaping, and exposure to secondhand smoke and aerosol.
- Apply the smoke-free policy uniformly to all residents, guests, and employees.

- Ensure that an effective enforcement plan is in place that describes the process for handling violations.
- Prepare tenants and staff for implementation of the policy by providing announcements, educational material or presentations, staff training, and signage.

Q: How can a property manager distinguish if cannabis smoke odor is from the legal medical cannabis program or from illicit recreational use?

A: If a property has adopted a comprehensive smoke-free policy, it does not matter whether the source of the cannabis smoke odor is from legal medical cannabis or another source, because all smoking of any such substance would be prohibited under the policy. It is important for management to clearly and regularly remind residents that all smoking is prohibited and, if a designated smoking area is allowed, the specific boundaries and rules for use.

It is not considered a public health best practice to exempt Medical Cannabis Program enrollees from a smoke-free policy that prohibits the smoking of marijuana or cannabis on the property. An exemption like this would likely create compliance and enforcement challenges, in addition to increasing liability for Equal Protection, Fair Housing, and Disability claims if other residents experience secondhand exposure.

Q: What should residents do if secondhand cannabis smoke is entering their unit?

A: Keep a log of their exposure to secondhand smoke. Include details about when and where staff or residents notice the smoke and any effects it has on their health. Residents should notify the property manager or HOA in writing of the problem as soon as possible and keep copies of the communication for their records. If possible, residents can attempt to minimize exposure by taking steps to seal cracks and crevices in their unit to reduce smoke infiltration. Visit the Live Smoke Free website for more tips and support: <https://mnsmokefreehousing.org/resources/renters>.

Additional Resources

Public Health Law Center

Please contact Public Health Law Center for legal technical assistance regarding smoke-free multi-unit housing at publichealthlawcenter@mitchellhamline.edu.

- [*Marijuana in Multi-Unit Residential Settings*](#)
- [*Minnesota Model Smoke-Free Lease Addendum*](#)
- [*Minnesota Model Smoke-Free Condominium Policy*](#)
- [*There Is No Constitutional Right To Smoke or Toke*](#)

American Nonsmokers' Rights Foundation

- [*Marijuana Smoke*](#)
- [*Secondhand Marijuana Smoke Fact Sheet*](#)

U.S. Centers for Disease Control and Prevention

- [*Secondhand Marijuana Smoke*](#)

This publication was prepared by the Association for Nonsmokers–Minnesota and the Public Health Law Center at Mitchell Hamline School of Law. The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. This document should not be considered legal advice.

Endnotes

- 1 See, e.g., Mn. STAT. §§152.22 – 152.2; Minn. R. Chap 4770; see also Mn. Dep't Health, Minnesota Cannabis Laws and Rules, <https://www.health.state.mn.us/people/cannabis/rulemaking/index.html>.
- 2 Throughout this document, the terms "smoking" and "smoke-free" include smoking of combustible substances and the use of electronic smoking devices or e-cigarettes, also known as "vaping."
- 3 Laws of Minnesota 2021, Chap. 30, Art. 3, §29. The Office of Medical Cannabis is charged with putting these regulation in place.
- 4 David Moir et al., *A Comparison of Mainstream and Sidestream Marijuana and Tobacco Cigarette Smoke Produced Under Two Machine Smoking Conditions*, 21 CHEMICAL RESEARCH IN TOXICOLOGY 494-02 (2008), <http://www.ncbi.nlm.nih.gov/pubmed/18062674>.

- 5 Wayne R. Ott et al., *Measuring Indoor Fine Particle Concentrations, Emission Rates, and Decay Rates from Cannabis Use in a Residence*, 10 *Atmospheric Environment: X*, Volume 10, 2021, 100106, ISSN 2590-1621, <https://doi.org/10.1016/j.aeaoa.2021.100106>.
- 6 Xiaoyin Wang et al., *One Minute of Marijuana Secondhand Smoke Exposure Substantially Impairs Vascular Endothelial Function*, 5 *J. AM. HEART ASSOC.* e03858 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5015303>.
- 7 Nat'l Inst. Health, *Cannabis (Marijuana) and Cannabinoids: What You Need to Know* (2019), <https://www.nccih.nih.gov/health/cannabis-marijuana-and-cannabinoids-what-you-need-to-know>.
- 8 Hannah Holitzki et al., *Health Effects of Exposure to Second- and Third-hand Cannabis Smoke: A Systematic Review*, 5 *CAN. MED. ASS'N J.*, E814-E822 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5741419>; Nat'l Inst. Drug Abuse, *What Are the Effects of Secondhand Exposure to Cannabis Smoke* (2020), <https://www.drugabuse.gov/publications/research-reports/cannabis/what-are-effects-secondhand-exposure-to-cannabis-smoke>; Americans for Nonsmokers Rights, *Secondhand Cannabis Smoke* (2021), <https://no-smoke.org/secondhand-marijuana-smoke-fact-sheet>.
- 9 Public Health Law Center, *Model Smoke-Free Lease Addendum* (2020), <https://www.publichealthlawcenter.org/sites/default/files/resources/PHLC-Model-Smoke-Free-Lease-Addendum.pdf>
- 10 Laws of Minnesota 2021, Chap. 30, Art. 3, §29 effective March 1, 2022; see also Minn. Dep't Health, *Dried Plant Available for Medical Cannabis Patients in March* (Feb. 1, 2022), <https://www.health.state.mn.us/news/pressrel/2022/cannabis020122.html>.
- 11 Minn. Dep't Health, *Minnesota Medical Cannabis Program Patients' Guide* (2020), <https://www.health.state.mn.us/people/cannabis/materials/docs/patientguide.pdf>.
- 12 U.S.C. Title 21 § 801, et seq. (1970), <http://www.law.cornell.edu/uscode/text/21/chapter-13>.
- 13 Robert Mikos, *The Evolving Federal Response to State Marijuana*, 26 *WIDENER LAW REVIEW* 1, 10-11 (2020), <https://scholarship.law.vanderbilt.edu/faculty-publications/1153>.
- 14 MINN. STAT. §§ 144.413 Subd.4 (2020):

“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking includes carrying or using an activated electronic delivery device, as defined in section 609.685.
- 15 *Id.*
- 16 Laws of Minnesota 2021, Chap. 30, Art. 3, §31, effective Aug. 1, 2021.
- 17 Minn. Stat. Sec. 152.32 Subd. 3(a).
- 18 Public Health Law Center, *Smoke-Free Public Housing: Reasonable Accommodations* (2021), <https://www.publichealthlawcenter.org/sites/default/files/resources/Smoke-Free-Public-Housing-Reasonable-Accommodations.pdf>
- 19 See generally U.S. Dep't of Housing and Urban Development, *People with Disabilities* web page (HUD.Gov), http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504faq#anchor257647; see also U.S. Dep't of Justice & U.S. Dep't of Housing and Urban Development, *Reasonable Accommodations under the Fair Housing Act* (May 5, 2008) (Joint Statement), <https://www.hud.gov/sites/dfiles/FHEO/documents/hud DOJstatement.pdf>.
- 20 42 U.S.C. § 3602 (h).
- 21 See generally Public Health Law Center, *Marijuana in Multi-unit Residential Settings* (2019). <https://www.publichealthlawcenter.org/sites/default/files/resources/Marijuana-in-Multi-Unit-Residential-Setting-2019-1.pdf>.