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**Economic Development Authority - City Hall Council Chambers**  
**Special Meeting, Monday, December 2, 2019**  
**3:30 PM (starting after the City Council meeting)**

**Meeting Announcement and Agenda -**

*Audience members should follow the agenda which is found on the table outside of Chambers.*

1. Call to Order

2. Approval of Agenda (p. 1)

3. New Business

A. Potential Tenant Policy Changes at Bridge Park Apartments (p. 3)

4. Adjourn

Notice to the hearing impaired: Upon request to City staff, assisted hearing devices are available for public use. Accommodations for wheelchair access, Braille, large print, etc. can be made by calling City Hall at 763-689-3211 at least three days prior to the meeting.

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Prepared by: Caroline Moe

**Background:**

We have received notice from a resident that they will be getting a prescription for medical cannabis use. Our current policy does not provide specific guidance on medical cannabis use. We asked the US Department of Housing and Urban Development (HUD) for their guidance on the matter and received the enclosed HUD memorandum regarding medical marijuana.

We then asked the City Attorney to review the HUD memorandum and to provide us guidance regarding medical cannabis from a policy development standpoint. Attached is the memorandum from the City Attorney.

**Recommendation**

- **Consider amendment to policy to make it clear that users of medical cannabis are prohibited from being admitted as new residents to Bridge Park;**
- **As per the City Attorney guidance, discuss medical cannabis use for existing Bridge Park residents**

**Attachments:**

1. **Email Response from City Attorney regarding medical cannabis**
2. **HUD Memorandum regarding medical marijuana use in Public Housing**
3. **Excerpts from current housing policy related to drug use**

## Caroline Moe

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**To:** CouncilMembers  
**Subject:** Medical Cannabis

**From:** Jacob J. Kimmes [mailto:Jacob.Kimmes@raswlaw.com]  
**Sent:** Tuesday, November 12, 2019 2:13 PM  
**To:** Caroline Moe <CMoe@ci.cambridge.mn.us>  
**Cc:** Jay T. Squires <Jay.Squires@raswlaw.com>  
**Subject:** RE: Medical Cannabis

Caroline,

We have looked into your questions regarding use of medical cannabis (i.e., medical marijuana) in public housing. We agree with Mr. Wunderlich's comments that medical cannabis users are prohibited from being admitted to Bridge Park Apartments or any federally assisted housing, but current residents (i.e., people already admitted) could use medical marijuana and not be evicted if the lease terms and the local public housing agency's ("PHA") drug-use policies don't require eviction and, instead, make it a discretionary decision of the PHA. We explain this in more detail below in our responses to your specific questions.

**A. Is Bridge Park Apartments required to allow use of medical cannabis on its premises if residents have a prescription and follow all applicable state laws in regards to form of cannabis used and source of medical cannabis?**

No, it is not. It is our understanding that the Bridge Park Apartments are federally assisted housing, meaning they are subsidized by the U.S. Department of Housing and Urban Development ("HUD"). The federal Quality Housing and Work Responsibility Act ("QHWRA") applies to federally assisted housing. As explained in the HUD memo, the QHWRA states the following with respect to the screening of applicants for federally assisted housing:

Notwithstanding any other provision of law, a [PHA] or an owner of federally assisted housing . . . shall establish standards that **prohibit** admission to the program or admission to federally assisted housing for any household with a member: (A) who the [PHA] or owner determines is illegally using a controlled substance; or (B) with respect to whom the [PHA] or owner determines that it has reasonable cause to believe that such household member's illegal use (or pattern of illegal use) of a controlled substance, or abuse (or pattern of abuse) of alcohol, may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

42 U.S.C.A. § 13661(b). The QHWRA further states the following with respect to the termination of tenancy or assistance for current residents of federally assisted housing:

Notwithstanding any other provision of law, a [PHA] or an owner of federally assisted housing (as applicable), shall **establish standards or lease provisions for continued assistance or occupancy in federally assisted housing that **allow** the [PHA] or owner (as applicable) to terminate the tenancy or assistance** for any household with a member: (1) who the public housing agency or owner determines is illegally using a controlled substance; or (2) whose illegal use (or pattern of illegal use) of a controlled substance, or whose abuse (or pattern of abuse) of alcohol, is determined by the public housing agency or owner to interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

42 U.S.C.A. § 13662(a). HUD federal regulations also require that any lease for federally assisted housing allow for termination of the tenancy for drug-related criminal activity, but does not require it. 24 C.F.R. § 966.4(l)(5)(i)(B).

As you can see by the underlined language, the admission rule is stricter than the continued occupancy rule. PHAs and owners of federally assisted housing are required to deny admission to an applicant who the PHA or owner determines is, at the time of application for admission, illegally using a controlled substance. However, PHAs and owners are allowed, but not required, to terminate the tenancy or assistance of current residents. This means PHAs and owners have discretion to determine, on a case-by-case basis, when it is appropriate to terminate the tenancy or assistance because of medical cannabis or other drug use. Note that any policy or lease standard must not affirmatively permit continued occupancy by medical cannabis users because doing so would divest the PHA or owner of the discretion they must have to evict under the QHWRA. Rather, the policy or lease must either require or at least allow termination of any occupant who is using illegal drugs, including medical cannabis.

Under the Controlled Substances Act (“CSA”), 21 U.S.C. § 801 *et seq.*, cannabis remains a Schedule I controlled substance, making possession and use of it illegal under federal law. This includes possession and use of medical cannabis that may be permissible under any state law. Consequently, even though Minnesota’s Medical Cannabis Act (Minn. Stat. §§ 152.21-.37) authorizes registered persons to possess and use certain forms of medical cannabis received from registered sources for qualifying medical conditions, those persons cannot be admitted into any federally assisted housing. This is because federal law generally preempts state law, meaning that when state and federal law conflict on an issue, federal law controls unless it expressly provides that state law can establish different or conflicting rules. Here, the QHWRA preempts the Minnesota Cannabis Act and does not provide an exception for state laws authorizing medical cannabis use.

Moreover, HUD has opined that PHAs and owners of federally assisted housing are prohibited from granting reasonable accommodations for medical cannabis under federal nondiscrimination laws, such as Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, because persons using controlled substances, including medical cannabis, are categorically disqualified from protection under the nondiscrimination laws, and such accommodations are not reasonable under the Fair Housing Act because they would constitute a fundamental alteration in the nature of the PHA’s or owner’s operations. However, the PHAs and owners maintain their discretion to evict or refrain from evicting current residents who engage in medical cannabis use, as discussed above. If a PHA or owner allows a resident currently using medical cannabis to remain an occupant, the PHA or owner does so as an exercise of that discretion but not as a reasonable accommodation. And again, any state law that arguably requires a reasonable accommodation to use medical cannabis would be preempted by federal law for federally assisted housing.

Thus, the answer to your question is no, Bridge Park is not required to allow medical cannabis use on its premises, even if the person is properly registered, prescribed, and authorized under state law to use medical cannabis. In fact, federal law requires that new applicants be denied admission if it is known that they are using medical cannabis or illegal drugs at the time of application. For current residents, the law gives local PHAs discretion to evict or not evict, as long as the local PHAs have policy standards and/or lease provisions that, at a minimum, allow eviction for any controlled substance use that is illegal under federal law. Therefore, the standard can either flat out prohibit medical cannabis use and mandate evictions for violations, or it could make it a case-by-case discretionary decision, but the standard cannot explicitly allow medical cannabis use.

**B. If not required, which the HUD position suggests, do you think we should allow medical cannabis use? If yes, should we make sure to inform residents that the need to be aware of State laws on this matter. Or do you have any other recommendations on this matter?**

As mentioned above, the City’s PHA should not have any written policy or lease provision that affirmatively allows all medical cannabis use. The City’s PHA can have policy or lease standards that either require evictions for medical cannabis use or that make it a case-by-case decision. The HUD memo also states that the PHA can determine whether to deny assistance to or terminate individual medical cannabis users, rather than entire households, for both applicant and existing residents, when appropriate.

Whether the City's PHA wishes to allow current residents to use medical cannabis is a local policy decision. The City's PHA has discretion to determine its own continued occupancy policies that are most appropriate for the community and City. As noted in the HUD memo, there should be standards regarding evictions of residents who are found to be using medical cannabis or other drugs. The standard can require eviction or can make it a case-by-case decision. If the City's PHA does not want to evict current residents solely because of medical cannabis use, the PHA should have standards that allow it to evict but do not require eviction, and then it can determine case-by-case not to evict for medical cannabis use. If, for example, the user is not complying with the Minnesota Cannabis Act or is otherwise using the medical cannabis illegally, such as by selling it, that could be an instance where eviction is appropriate, but that is a decision the PHA must make.


If the PHA wishes to make eviction for medical cannabis use a case-by-case decision, HUD federal regulations state that all circumstances should be considered, and provide the following factors that can be used in determining whether to terminate a lease for medical cannabis use or other illegal drug or criminal activity:

1. The seriousness of the offense;
2. The extent of participation by or awareness of the leaseholder;
3. The effects that the eviction would have on family members not involved in the offending activity and on the family's neighbors;
4. The extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action; and
5. Rehabilitation, such as participation in a drug or alcohol rehabilitation program for drug- or alcohol-related offenses.

See 29 C.F.R. § 966.4(l)(5)(vii). These factors are nonexclusive, so the PHA is allowed to consider or establish its own or other factors for making eviction determinations.

Please let us know if you have any additional questions or concerns or need clarification on any of the information provided above.

Thank you,  
Jay  
Jake

 **Rupp, Anderson, Squires  
& Waldspurger, P.A.**

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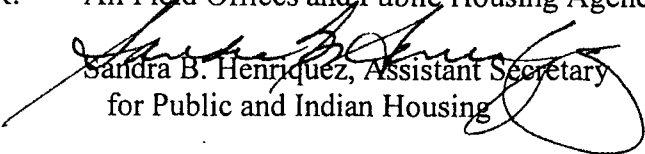


U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-5000

ASSISTANT SECRETARY FOR  
PUBLIC AND INDIAN HOUSING

February 10, 2011

MEMORANDUM FOR: All Field Offices and Public Housing Agencies (PHAs)

FROM:   
Sandra B. Henriquez, Assistant Secretary  
for Public and Indian Housing

SUBJECT: Medical Marijuana Use In Public Housing  
and Housing Choice Voucher Programs

### Overview

The Department has recently received numerous inquiries regarding the use of medical marijuana<sup>1</sup> in the Public Housing (PH) and Housing Choice Voucher (HCV) programs<sup>2</sup>. This memorandum intends to serve as guidance for field offices and PHAs on admissions, continued occupancy, and termination policies in states that have enacted laws that allow the use of medical marijuana. Currently fourteen states (Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington) and the District of Columbia have laws that legalize medical marijuana use.

### New Admissions

Based on federal law, new admissions of medical marijuana users are prohibited into the PH and HCV programs. The Controlled Substances Act (CSA) lists marijuana as a Schedule I drug, a substance with a very high potential for abuse and no accepted medical use in the United States. The Quality Housing and Work Responsibility Act (QHWRA) of 1998 (42 U.S.C. §13661) requires that PHAs administering the Department's rental assistance programs establish standards and lease provisions that prohibit admission into the PH and HCV programs based on the illegal use of controlled substances, including state legalized medical marijuana. State laws that legalize medical marijuana directly conflict with the admission requirements set forth in QHWRA and are thus subject to federal preemption.

### Current Residents

For existing residents, QHWRA requires PHAs to establish occupancy standards and lease provisions that will allow the PHA to terminate assistance for use of a controlled substance. However, the law does not compel such action and PHAs have discretion to determine continued occupancy policies that are most appropriate for their local communities. PHAs can also determine whether to deny assistance to or terminate individual medical marijuana users, rather than entire households, for both applicant and existing residents when appropriate. PHAs have discretion to determine, on a case-by-case basis, the appropriateness of program termination of existing residents for the use of medical marijuana.

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<sup>1</sup> The Department defines medical marijuana as marijuana which, when prescribed by a physician to treat a serious illness such as AIDS, cancer, or glaucoma, is legal under State law.

<sup>2</sup> Housing Choice Voucher programs include tenant-based vouchers and project-based vouchers.

PHAs in states that have enacted laws legalizing the use of medical marijuana must therefore establish a standard and adopt written policy regarding whether or not to allow continued occupancy or assistance for residents who are medical marijuana users. The decision of whether or not to allow continued occupancy or assistance to medical marijuana users is the responsibility of PHAs, not of the Department.

Food and Drug Administration Approved Drugs

PHAs should also be aware that the Food and Drug Administration (FDA) has approved drugs for medical uses which are comprised of marijuana synthetics, such as Marinol and Cesamet. These drugs are not medical marijuana and are legal under federal laws. These products have been through the FDA's rigorous approval process and have been determined to be safe and effective for their indications. They are therefore allowed in the public housing and voucher programs.

Thank you for your partnership and participation in the Department's programs, and for your attention to this important issue in providing quality housing and communities for all residents of public housing and voucher programs. Questions regarding this memorandum may be directed to Ms. Diane Yentel at 202-402-6051 or [Diane.E.Yentel@hud.gov](mailto:Diane.E.Yentel@hud.gov).



Current Policy Excerpt

13-III.B. MANDATORY LEASE PROVISIONS [24 CFR 966.4(1)(5)]

This section addresses provisions for lease termination that must be included in the lease agreement according to HUD regulations. Although the provisions are required, HUD does not require PHAs to terminate for such violations in all cases, therefore PHA policies are needed.

**Definitions [24 CFR 5.100]**

The following definitions will be used for this and other parts of this chapter:

*Affiliated individual* is defined in section 16-VII.B.

*Covered person* means a tenant, any member of the tenant's household, a guest, or another person under the tenant's control.

*Dating violence* is defined in section 16-VII.B.

*Domestic violence* is defined in section 16-VII.B.

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

✶

*Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug.

*Guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

*Household* means the family and PHA-approved live-in aide. The term household also includes foster children and/or foster adults that have been approved to reside in the unit [HUD-50058, Instruction Booklet, p. 65].

*Other person under the tenant's control* means that the person, although not staying as a guest in the unit, is, or was at the time of the activity in question, on the premises because of an invitation from the tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant. Absent evidence to the contrary, a person temporarily and infrequently on the premises solely for legitimate commercial purposes is not *under the tenant's control*.

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*Premises* means the building or complex or development in which the public or assisted housing dwelling unit is located, including common areas and grounds.

*Sexual assault* is defined in section 16-VII.B.

*Stalking* is defined in section 16-VII.B.

*Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

*Current  
policy  
excerpt*

**Drug Crime On or Off the Premises [24 CFR 966.4(l)(5)(i)(B)]**

The lease must provide that drug-related criminal activity engaged in on or off the premises by the tenant, member of the tenant's household or guest, or any such activity engaged in on the premises by any other person under the tenant's control is grounds for termination.

PHA Policy

The PHA will terminate the lease for drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of covered persons related to the drug-related criminal activity.

A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.

**Illegal Use of a Drug [24 CFR 966.4(l)(5)(i)(B)]**

The lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

PHA Policy

The PHA will terminate the lease when the PHA determines that a household member is illegally using a drug or the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

A pattern of illegal drug use means more than one incident of any use of illegal drugs during the previous six months.

The PHA will consider all credible evidence, including but not limited to, any record of arrests or convictions of household members related to the use of illegal drugs.

A record of arrest(s) will not be used as the basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate the lease, the PHA will consider alternatives as described in Section 13-III.D and other factors as described in Sections 13-III.E and 13-III.F. Upon consideration of such alternatives and factors, the PHA may, on a case-by-case basis, choose not to terminate the lease.