

Attachment B ACOP Changes

Smoke-Free Public Housing Policy

A. Introduction

A Final Rule issued by the Department of Housing and Urban Development (HUD), PIH-2017-03, requires the Housing Authority to implement a smoke-free policy. This Final Rule improves indoor air quality in the housing; benefits the health of public housing residents, visitors, and Housing Authority staff; reduces the risk of catastrophic fires; and lowers overall maintenance costs. To comply with this Final Rule, the Housing Authority has developed and hereby implements this Smoke-Free Public Housing Policy, hereinafter referred to as “Policy”.

B. Definition of Prohibited Tobacco Products

Prohibited tobacco products are defined as:

- (1) Items that involve the ignition and burning of tobacco leaves, such as (but not limited to) cigarettes, cigars, and pipes.
- (2) To the extent not covered by Section (C)(1) above, waterpipes (hookahs), and
- (3) Other tobacco products such as Electronic Nicotine Delivery Systems (ENDS) and other lighted smoking devices used for burning tobacco or any other plant.

C. Restricted Areas

The use of tobacco products as defined above is prohibited in all public housing living units and interior areas (including but not limited to hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures), as well as in outdoor areas within 25 feet from public housing and administrative office buildings (collectively, “restricted areas”) in which public housing is located.

D. Designated Smoking Area

The Housing Authority may designate and create smoking areas outside the restricted areas as funding permits. The Housing Authority will ensure that the area is accessible for persons with disabilities in accordance with the Housing Authority’s obligations under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Fair Housing Act.

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E. Application of Policy

If there is any conflict between this Policy and laws or regulations, the laws and regulations will prevail.

It is the policy of the Housing Authority to fully comply with all Federal, State and local nondiscrimination laws; the Americans with Disabilities Act; and the U. S. Department of Housing and Urban Development regulations governing Fair Housing and Equal Opportunity. The Housing Authority shall affirmatively further fair housing in the administration this Policy.

No person shall, on the grounds of race, color, sex, religion, national or ethnic origin, familial status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Policy.

Upon the Effective Date of the Policy, the Housing Authority will uniformly and promptly enforce the Policy. Violations will be addressed in a timely manner. Smoking violations will be treated like any other violation. Residents shall be liable for smoking-related damages to Public Housing units and all other restricted areas. The Housing Authority may charge Residents for damages to a unit beyond normal wear and tear caused by smoking but may not impose monetary fines for violation of the Policy.

F. PHA Responsibilities

The Housing Authority is responsible for enforcing the Policy in accordance with the provisions and requirements specified in the Policy, the Lease, and the Housing Authority's Admission and Continued Occupancy Policy.

The Housing Authority is not required to take steps in response to violations of this Policy unless the Housing Authority has knowledge of the violation.

G. Resident Responsibilities

- (1) To assure that no resident, member of the resident's household, or guest engages in:
 - (a) any smoking of prohibited tobacco products in restricted areas, as described in Section (C) of this Policy, and
- (2) To assure that no other person under the resident's control engages in:
 - (a) any smoking of prohibited tobacco products in restricted areas, as described in Section (C) of this Policy.

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H. Phase-in Period

Implementation of this Policy will be phased-in prior to full enforcement by the Housing Authority. The Phase-in Period will begin on **January 1, 2018** and end on **June 30, 2018**. Enforcement of the provisions and requirements of the Policy will be suspended until July 1, 2018, with the exception of Section (H). Through the Phase-in Period, the Housing Authority will execute Lease Addendums to incorporate the Smoke-Free Public Housing Policy into existing resident Leases and/or execute new Leases which will include the Smoke-Free Public Housing Policy. Additionally, the Housing Authority will distribute cessation assistance information to residents, answer questions residents may have regarding the Policy and encourage residents to begin exercising the provisions and requirements of the Policy.

All provisions and requirements of the Policy not enforced during the Phase-in Period will be enforced on **July 1, 2018**.

I. Lease Enforcement

Enforcement of the Policy will begin on **July 1, 2018** after the end of the Phase-in Period. The Housing Authority will be responsible for enforcement of the Policy as stated in Section (F) above. Annual Inspections is a tool available to the Housing Authority as a means of monitoring resident compliance with the Policy. It is the responsibility of all residents to notify guests of this Policy. If a resident witnesses someone smoking or smells tobacco smoke that is not in accordance with this Policy, the resident should report the violation or the odor to the property manager in writing as soon as possible. Property managers receiving a report involving a violation of this Policy will take appropriate enforcement action.

(1) 1st Violation

- (a) The Housing Authority will have an informal meeting with the resident and issue a verbal warning referencing the section of the Lease that has been violated.
- (b) The Housing Authority will provide the resident a copy of the Policy and cessation materials.
- (c) The Housing Authority will require the resident to sign an Acknowledgement of Verbal Warning and an agreement not to violate the Policy again or face further action.
- (d) The Housing Authority will document the resident file.

(2) 2nd Violation

- (a) The Housing Authority will send a written warning to the resident citing the section of the Lease that has been violated.
- (b) The Housing Authority will provide the resident a copy of the Policy and cessation materials.
- (c) The Housing Authority will require the resident to sign an Acknowledgement of Written Warning and an agreement not to violate the Policy again or face further action.
- (d) The Housing Authority will document the resident file.

(3) 3rd Violation

The Housing Authority will take action to terminate the Lease.

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J. Right to Request a Reasonable Accommodation

Allowing a resident to smoke in a restricted area is not an accommodation that can be granted under HUD's Final Rule.

However, requests for a reasonable accommodation will be further evaluated under section 504 of the Rehabilitation Act of 1973, Title II of the American with Disabilities Act, and the Fair Housing Act. Individualized determinations will be made on a case-by-case basis by the Housing Authority.

K. Statement that the Housing Authority is not a Guarantor of Smoke-Free Living Environment and Disclaimer

The Housing Authority's adoption of a smoke-free living environment, and the efforts to designate its properties as smoke free, do not make the Housing Authority the guarantor of Resident's health or of the smoke-free condition of the Resident's unit and the common areas nor does it in any way change the standard of care that the Housing Authority would have to a Resident household to render buildings and premises designated as smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental premises. However, the Housing Authority shall take reasonable steps to enforce the smoke-free terms of its Leases/House Rules and this Policy in order to make its properties smoke-free.

The Housing Authority specifically disclaims any implied or express warranties that the building, common areas, or Resident's premises will have any higher or improved air quality standards than any other rental property. The Housing Authority cannot and does not warrant or promise that the rental premises or common areas will be free from secondhand smoke. The Housing Authority's ability to police, monitor or enforce the Policy is dependent in significant part on mandatory compliance by Resident and Resident's guests. Residents with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that the Housing Authority does not assume any higher duty of care to enforce the Policy than any other Housing Authority obligation under the Lease.