



## MODEL SMOKE-FREE POLICY

### **1. Purpose of Policy**

The Department of Housing and Urban Development requires every Public Housing Authority (PHA) administering public housing to implement a smoke-free policy in accordance with 24 C.F.R. § 965.653. The purpose of which is to mitigate the irritation and known health effects of secondhand smoke. Additionally, the smoke-free policy is intended to reduce the cost of maintenance and cleaning resulting from smoking and to decrease the risk of fire. The smoke-free policy does not require Residents to stop smoking, but prohibits the use of tobacco products in areas designated smoke-free. A list of Housing Authority's public housing properties can be found on Housing Authority's website.

### **2. Definitions**

“Designated Smoking Area (DSA)” are areas on the grounds of the public housing property or administrative office that is at least twenty-five (25) feet from the building where individuals can smoke and/or use tobacco products without violating the smoke-free policy. The location of all DSAs will be furnished upon request, and will be marked with signage.

“Electronic Nicotine Delivery System (ENDS),” also known as e-cigarettes or vapes, are devices that deliver nicotine or other substances for human consumption through the inhalation of vapor or aerosol created by the device. Also known as vape pen, e-hookah, e-pipe, and e-cigar.

“Minor Household Member” is an individual on the lease of the unit who is under the age of 18.

“Notice of Violation,” is a written notice to the Resident regarding a violation of the smoke-free policy. The Notice will be delivered to the dwelling unit or sent by prepaid first-class mail, properly addressed to the resident. The Notice will include the nature of the violation, how to respond to the Notice, and how the Resident can file a grievance under Housing Authority's grievance policy in effect at the time. The written notice shall be placed in the Resident's file, unless the violation is expunged from the Resident's file.

“Prohibited Items” are tobacco products such as cigarettes, cigars, and pipes, including water pipes, also known as water hookahs.

“Smoking” is the inhaling, exhaling, burning, or carrying of any lit cigar, cigarette, or pipe, or any other tobacco or similarly lighted smoking material in any manner or in any form. “Smoking” does not include the use of electronic smoking devices, also known as vapes or e-cigarettes.

“Water Pipes,” also known as hookahs, are smoking devices that use coal or charcoal to heat tobacco, and then draws the smoke through water and a hose to the user. Both the heating source and burning of tobacco are sources of contaminant emissions.

“Written Warning” is a written reminder of the smoke-free policy in place. The warning will be delivered to the dwelling unit of the Resident. The warning will include the nature of the violation. The written warning will be placed in the Resident's file, unless the violation is expunged from the Resident's file.

### **3. Designated Smoke-free Areas**

Smoking and/or the use of tobacco products is prohibited in all public housing buildings and administrative offices owned by Housing Authority, as well as twenty-five (25) feet from all windows and doors of such buildings. Smoking is prohibited in all living units, including balconies, decks, or patios, and all interior areas, including, but not limited to, community rooms, community bathrooms, lobbies, reception areas, hallways, laundry rooms, stairways, offices, and elevators.

### **4. Where Smoking on Grounds of Buildings is Permitted**

On the grounds of the property, smoking is permitted at the designated smoking areas. The management in cooperation with resident councils and interested tenants will determine the location of Designated Smoking Areas (DSAs), in accordance with section 504 of the Rehabilitation Act of 1973 and 24 C.F.R. part 8, Title II of the Americans with Disabilities Act, and the Fair Housing Act. The designation will be accessible to all residents and will include appropriate seating, lighting and shade. Housing Authority and management staff will place signs in the areas on the property where smoking is permitted.

### **5. Applicability of Policy**

The smoke-free policy is applicable to all Residents, Housing Authority employees, management staff, visitors, contractors, volunteers, and vendors on all public housing properties owned by Housing Authority. A list of Housing Authority's public housing properties can be found on Housing Authority's website. Residents and household members shall be responsible for ensuring their guests, invitees, and visitors to their Residential units are in compliance with the smoke-free policy.

### **6. Promotion of the Smoke-free Policy**

Housing Authority shall post no-smoking signs throughout the property in common areas, hallways, and in conspicuous places on the grounds of all Residential and administrative office buildings. Housing Authority will use various communication methods, including letters, flyers, and Resident meetings. Additionally, Housing Authority shall provide copies of the smoke-free policy to all Residents and prospective Residents. Information provided will be in a format accessible to all Residents and prospective Residents, including those persons with different primary languages and disabilities. All Residents are expected to comply with the policy as they would any section of their lease with Housing Authority.

### **7. Reasonable Accommodation Requests**

When a Resident makes a reasonable accommodation request concerning the smoke-free policy, due to a disability, Housing Authority will make the accommodation in accordance with the Housing Authority's reasonable accommodation procedures.

Reasonable accommodation requests will be evaluated on a case-by-case basis in order to make a determination. Smokers with certain health conditions, such as cognitive impairment, may require special attention to ensure they understand the smoke-free policy, what community resources are available, and the procedure to request a reasonable accommodation. However, Housing Authority will not permit smoking in a restricted area as a reasonable accommodation for a disability.

Examples of reasonable accommodations that may be granted to people with disabilities include:

- Allowing (1) a tenant with a mobility impairment who smokes to move to a vacant unit closer to the exit with easier access to a designated smoking area or (2) a tenant who is vulnerable to second-hand smoke to move to an available unit farther away from a designated smoking area.
- Granting a tenant who experiences a mental health disability more time to work with a social worker on a plan to comply with smoke-free rules.
- Providing an individual who is homebound due to physical disabilities more time to purchase nicotine products that will not violate a smoke-free policy such as nicotine replacement therapy.

## 8. Violations of Policy

Smoking in areas designated smoke-free will be considered a violation of the smoke-free policy. Residents will be issued warnings pursuant to the enforcement provisions below. Smoking and/or use of prohibited items by household members, guests, or others under the Resident's control will also be cause for a warning. The repetitive violation of the smoke-free policy will be grounds for enforcement actions, including eviction, by Housing Authority.

## 9. Enforcement of the Smoke-Free Policy

Housing Authority must have actual knowledge of a violation of the smoke-free policy before enforcement action can be taken. Housing Authority will implement a graduated enforcement procedure that includes escalating warnings and documentation in the Resident's file, up to and including lease termination, as follows:

1. **First Violation**—Residents in violation of the smoke-free policy will receive a written warning upon the first violation. The warning will inform the Resident of the nature of the violation and will remind the Resident of the requirements of the smoke-free policy. The written warning will also include information about an opportunity to have the first violation removed, as a one-time option, if: (a) the Resident completes a cessation program within sixty (60) days of the written warning without the occurrence of another violation, or; (b) if the violation was due to smoking by a minor household member, a guest or other person under the Resident's control. The written warning shall be placed in the Resident's file. The written warning will also include information about community resources available to assist the Resident to comply with the smoke-free policy.
2. **Second Violation**—Residents in violation of the smoke-free policy will receive a written notice of violation upon the second violation. The notice will inform the Resident of the nature of the violation and will request a conference with a management staff designee. The written notice will also include information about an opportunity to have the second violation removed, as a one-time option, if: (a) the option was not already used in response to the first violation and; (i) the Resident completes a cessation program within sixty (60) days of the second written notice without the occurrence of another violation, or; (ii) if the violation was due to smoking by a minor household member, a guest or other person under the Resident's control. The written notice shall include information on how to reply to the notice and the Resident's right to file a grievance pursuant to the grievance policy in effect at the time of such violation. The written notice will also inform the Resident of the consequences of further violation and include information about cessation and other community resources available to residents. The written notice shall be placed in the Resident's file.  
  
All of the above information will be relayed during the conference with management staff. During the conference with the management staff, staff shall share community resources available to assist the Resident to be in compliance with the smoke-free policy.
3. **Third Violation**—Staff will repeat the procedure for the third violation.
4. **Fourth Violation**— Staff will repeat the procedure for the fourth violation.
5. **Fifth Violation**—Upon the fifth violation, Housing Authority may begin eviction proceedings. In which case it will send written notice of a repeated lease violation, with an offer of an informal conference to the Resident. The notice will include the nature of the fourth violation, information on how to reply to the notice and the Resident's right to file a grievance pursuant to the grievance policy in effect at the time of such violation.
6. **Resetting of the Enforcement Action**—If a Resident does not have another violation of the smoke-free policy within six (6) months of any violation, the enforcement procedure will reset to reflect no violations of the smoke-free policy.
7. **Reporting Violations**—Residents shall promptly give Housing Authority a written statement of any incident where smoke is migrating into the Resident's apartment unit from sources outside the Resident's unit. Upon receiving a

written notice about smoke migration, Housing Authority will conduct its own investigation into the source of the smoke.

8. **Grievances**—When a Resident receives a notice of violation or a notice of lease termination, the Resident may file a grievance in accordance with Housing Authority’s grievance policy, a copy of which can be obtained from the Management Office of the development.

## **10. Community Partners**

To increase compliance with the smoke-free policy, Housing Authority will partner with community organizations to provide services and resources to Residents. Medicaid and Medicare recipients may be eligible to receive financial assistance for cessation services and prescription cessation medication depending on State’s Medicaid and Medicare programs. There are other services provided by community-based organizations, including counseling, cessation resources, and support groups. A list of community partners will be provided to Residents and will also be made available upon request.

## **11. Housing Authority Not Guarantor of Smoke-free Environment**

Housing Authority’s adoption of this smoke-free policy does not make Housing Authority or any of its officers, employees, or agents, the guarantor of the health of any Resident or of the smoke-free condition of areas designated smoke-free. However, Housing Authority will take reasonable steps to enforce the smoke-free policy and to make the smoke-free areas as smoke-free as is reasonably possible.

## **12. Smoke-Free Policy in Resident’s Leases**

All Residents residing in public housing shall be subject to the smoke-free policy as incorporated by their lease and/or lease addendum. In the lease and/or lease addendum, the Resident acknowledges that:

1. Housing Authority’s adoption of this policy for a smoke-free living environment does not in any way change the standard of care that Housing Authority or its agents would have to a Resident household to render buildings and premises designated smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental property;
2. Housing Authority specifically disclaims any implied or express warranties that the building, common areas, or Resident’s dwelling unit and premises will have any higher or improved air quality standards than any other rental property;
3. Housing Authority cannot and does not warrant or promise that the rental premises or common areas will be free from secondhand smoke;
4. Housing Authority’s ability to police, monitor or enforce the terms of the smoke-free policy and the lease and/or lease addendum will be dependent in significant part on voluntary compliance by the Resident, members of the household and guests, as well as by other Residents and guests in other parts of the smoke-free area; and thus cooperation of Residents is expected, and;
5. Residents with respiratory ailments, allergies or other physical or mental conditions relating to smoke are informed that Housing Authority does not assume any higher duty of care to enforce the smoke-free policy or the lease and/or lease addendum than any other Housing Authority obligation under the lease.