

Chapter 20

SMOKE-FREE PUBLIC HOUSING POLICY

A. INTRODUCTION

A Final Rule issued by the Department of Housing and Urban Development (HUD), 81 FR 87430, requires the Stark Metropolitan Housing Authority, hereinafter referred to as “SMHA”, 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 SMHA staff; reduces the risk of catastrophic fires; and lowers overall maintenance costs. To comply with this Final Rule, SMHA has developed and hereby implements this Smoke-Free Public Housing Policy, hereinafter referred to as “Policy”.

B. DEFINITION OF PROHIBITED TOBACCO PRODUCTS AND SMOKING

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, Vaping, electronic nicotine delivery systems (ENDS), and pipes.
- (2) To the extent not covered by Section (C)(1) above, water pipes (hookahs), and
- (3) Other lighted smoking devices used for burning tobacco or any other plant.

Smoking means inhaling, exhaling, breathing, carrying, or possessing any lighted cigar, cigarette, pipe, other tobacco product, other plant products or similar lighted product in any manner or in any form.

C. RESTRICTED AREAS

The use of prohibited tobacco products and smoking is prohibited in all public housing living units, 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, any exterior areas, including, but not limited to, the grounds, site, and/or parking or paved areas (owned or operated by SMHA) adjacent to public housing units and administrative office buildings (collectively, “restricted areas”) in which public housing is located. SMHA is a smoke-free campus.

D. DESIGNATED SMOKING AREA

There are no designated smoking areas. The entire property that houses public housing units and/or administrative buildings are restricted areas. SMHA is considered a smoke free campus.

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 SMHA 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. SMHA shall affirmatively further fair housing in the administration of 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, SMHA 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. SMHA may charge Residents for damages to a unit beyond normal wear and tear caused by smoking.

F. HOUSING AUTHORITY RESPONSIBILITIES

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

SMHA is not required to take steps in response to violations of this Policy unless SMHA 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 (D) 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 (D) of this Policy.

H. **Lease Enforcement**

Enforcement of the Policy will begin on **April 1, 2018**. SMHA will be responsible for enforcement of the Policy as stated in Section (G) above. Annual Inspections is a tool available to SMHA 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 as soon as possible. Property managers receiving a report involving a violation of this Policy will take appropriate enforcement action.

(1) **1st Violation**

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

(2) **2nd Violation**

- (a) SMHA will send a written warning to the resident citing the section of the Lease that has been violated.
- (b) Resident may be assessed a charge of \$25 for SMHA maintenance to remediate the smoke or associated debris. Further, Resident may be charged the actual expense to repair property damage that beyond normal wear and tear in accordance with the Dwelling Lease.
- (c) SMHA will require the resident to sign an Acknowledgement of 2nd Warning and an agreement not to violate the Policy again or face eviction action.
- (d) SMHA will document the resident file.

(3) **3rd Violation**

- (a) SMHA will send a written warning to the resident citing the section of the Lease that has been violated.
- (b) Resident may be assessed a charge of \$50 for SMHA maintenance to remediate the smoke or associated debris. Further, Resident may be charged the actual expense to repair property damage that beyond normal wear and tear in accordance with the Dwelling Lease.

- (c) SMHA will require the resident to sign an Acknowledgement of Final Warning and an agreement not to violate the Policy again or face eviction action.
 - (d) SMHA will document the resident file that this is the final warning.
- (4) **4th Violation**
- (a) SMHA will take action to terminate the Lease with a 30 day notice of termination..

I. 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 SMHA.

J. Statement that SMHA is not a Guarantor of Smoke-Free Living Environment and Disclaimer

SMHA's adoption of a smoke-free living environment, and the efforts to designate its properties as smoke free, do not make SMHA 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 SMHA 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, SMHA 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.

SMHA 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. SMHA cannot and does not warrant or promise that the rental premises or common areas will be free from secondhand smoke. SMHA'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 SMHA does not assume any higher duty of care to enforce the Policy than any other SMHA obligation under the Lease.