

**PUBLIC HOUSING and COMMUNITY
DEVELOPMENT**

SMOKE-FREE POLICY

APPENDIX V

OF THE

**ADMISSION AND CONTINUED OCCUPANCY
POLICY (ACOP)**

Effective Date: 7/30/2018

I. BACKGROUND

In February 2015, the Centers for Disease Control published its *Vital Signs* report on secondhand smoke, which includes but is not limited to the following findings: (1) one in four nonsmokers (58 million people) in the United States are exposed to secondhand smoke; (2) two in five children (including seven in ten black children) are exposed to secondhand smoke; (3) one in three nonsmokers who live in rental housing are exposed to secondhand smoke; (4) secondhand smoke exposure is more common among children ages three to eleven, Blacks, people living below the poverty level, and those who rent housing; (5) about 80 million Americans live in multi-unit housing and can be exposed to unwanted secondhand smoke in their home; and (6) people who live in public housing are especially affected by secondhand smoke, including children, the elderly, and people with disabilities. The United States Surgeon General has stated that there is no risk-free level of exposure to secondhand smoke and the best way to keep children and adults safe from secondhand smoke is to ban all smoking indoors. Further, nationwide there are more than 1.2 million families who reside in public housing of which there are approximately 39 percent of the public housing residents who are between the ages of zero to 17 and approximately 15 percent who are 62 or older. It has been proven that exposure to smoke, whether direct or secondhand, causes adverse health outcomes such as asthma and other respiratory illnesses, cardiovascular disease, and cancer.

The U.S. Department of Housing and Urban Development's (HUD) published the final rule (24 Code of Federal Regulation Parts 965 and 966) on December 5, 2016, that requires each public housing agency administering public housing programs to implement a Smoke-Free Policy. This final rule was followed by the issuance of HUD Notice PIH-2017-03 that provides guidance on instituting and enforcing smoke-free public housing policies. On November 3, 2015 and prior to the issuance of the Notice PIH-2017-03, the Miami-Dade Board of County Commissioners adopted Resolution No. R-1003-15, as amended by Resolution No. R-582-16, directing the County's administration to develop a Smoke-Free Policy in consultation with the residents and resident councils, to incorporate a Smoke-Free Policy within 18 months of the effective date of the final rule being adopted by HUD. According to surveys conducted by the Florida Department of Health in Miami-Dade County of public housing residents, 71% of the residents are in agreement with the implementation of a Smoke-Free Policy.

II. APPLICABILITY

The County's Public Housing and Community Development Department (Department) is incorporating the Smoke-Free Policy as follows:

Public Housing Program: HUD regulations, 24 CFR Parts 965 and 966, require that public housing agencies implement a policy prohibiting tobacco products in all living units, interior areas, and administrative office buildings. The Smoke-Free Policy prohibits tobacco products, marijuana and electronic cigarettes and must also extend to all outdoor areas up to 25 feet from the housing or administrative office buildings or to the property boundaries in situations where the boundary is less than 25 feet. The Smoke-Free Policy is included in the Admissions and Continued Occupancy Policy (ACOP) as Appendix V and incorporated as part of the Public Housing Dwelling Lease between the "Landlord" (the County) and the "Resident", as a Lease Addendum.

Exemption: This policy shall not apply to mixed-finance developments.

III. PURPOSE OF SMOKE-FREE POLICY

The County and HUD desire to mitigate (i) the irritation and known health effects of secondhand smoke; (ii) increased maintenance, cleaning and redecorating costs from smoking; (iii) increased risk of fire from smoking; and (iv) the higher costs of fire insurance for non-smoke-free buildings.

IV. DEFINITIONS

- A. **Smoking:** The term “smoking” means inhaling, exhaling, breathing, or carrying or possessing any lighted cigarette, cigar, pipe, water pipes (also known as hookahs), electronic cigarettes, marijuana or other tobacco product or similar lighted products in any manner or in any form.
- B. **Interior Area:** Areas within the building interior that are open to the public, including but not limited to entryways, community patios or balconies, roof terraces, lobbies, hallways, elevators, management offices, public restrooms, community rooms, community kitchens, laundry rooms, stairwells, playgrounds, parking garages and carports, and any other area of the building that is accessible to Resident(s), guests and employees.
- C. **No Smoking Area:** The dwelling unit occupied by Resident(s) and members of Resident’s household, any interior area, including but not limited to community rooms, community bathrooms, daycare facility, lobbies, reception areas, hallways, laundry rooms, stairways, offices and elevator, within all living units, and areas outside the building that are within 25 feet from County-owned public housing buildings including the community center, office buildings or interior areas including entryways, porches, balconies and patios.
- D. **Designated Smoking Area:** An area designated by the Landlord that is outside of the required 25 feet perimeter.

IV. IMPLEMENTATION AND ENFORCEMENT OF SMOKE-FREE POLICY

A. Resident’s Responsibilities

- 1. Resident(s) and members of the Resident’s Household shall not smoke in the No Smoking Area, as defined above in Section III.
- 2. Resident(s) shall inform Resident’s guests of the Smoke-Free Policy and shall not permit any guests or visitors under the control of Resident to smoke in the No Smoking Area, as defined above in Section III.
- 3. All smoking Resident(s) and guests are required to dispose of their smoking material in the appropriate collection receptacles provided by Landlord prior to entering any zone designated as a No Smoking Area, as defined in Section II. Failure to properly dispose of smoking material may result in infractions as described in Section V. Penalties for Violation of Smoke-Free Policy.
- 4. Resident(s) shall promptly notify Landlord of any incident where smoke from tobacco, electronic cigarette, marijuana or similar products, is migrating into the Resident’s unit.

B. Landlord’s Responsibilities

- 1. Landlord shall take reasonable steps to enforce the non-smoking terms of its leases and maintain the No Smoking Area as smoke-free as reasonably possible. Such reasonable steps include but are not limited to providing residents with orientation, progressive warnings, housekeeping inspections, and appropriate notices of lease violations.
- 2. Landlord shall post non-smoking signs at entrances and exits, in interior areas, and in noticeable places adjoining the grounds of the No Smoking Area.
- 3. Landlord shall provide collection receptacles at least 25 feet from entrances, exits, interior areas and noticeable places adjoining the No Smoking Areas, for disposal of smoking material.
- 4. Landlord may designate specific smoking areas outside of the No Smoking Areas, depending on the type of development and as permitted by availability of space.

5. Landlord may refer Resident(s) violating the Smoke-Free Policy to smoke cessation programs and counseling services. For more information, please contact at (305) 278-0442. For cessation counseling services, please contact Area Health Education Center (AHEC) at (305) 243-2847.
6. Landlord will adopt a progressive enforcement approach for violations of the Smoke-Free policy.
7. Landlord will consider all relevant circumstances and mitigating factors before terminating a tenancy under the Smoke-Free Policy. Lease termination and eviction will only be pursued as a last resort.

C. Landlord Is Not a Guarantor of Smoke-Free Environment

1. Landlord's adoption of smoke-free living environment does not make the Landlord or any of Landlord's managing agents the guarantor of Resident's health or of the non-smoking condition of the Resident's unit and the interior areas.
2. Landlord is not required to take steps in response to smoking unless Landlord is notified.

V. PENALTIES FOR VIOLATION OF SMOKE-FREE POLICY

- A. Resident(s) will be issued a penalty by the Landlord for each reported or detected smoking incident, to be documented in the Resident's records.
1. **Written Warnings** (up to two (2) written warnings)
1st Written Warning: Resident(s) will be scheduled for a conference to review the Smoke-Free Policy and receive a written warning.

2nd Written Warning: Resident will be issued a written warning and a referral to the State of Florida Department of Health Tobacco Free Florida smoking cessation program. Resident(s) will be notified that a subsequent violation of the Smoke-Free Policy may result in assessment of fines, and ultimately in termination of housing assistance.
 2. **Fines** (after issuance of two (2) written warnings)
Landlord will impose a fine of \$10.00 with subsequent incremental increases of \$10.00 per infraction up to \$50.00 for each smoking incident reported to or detected by Landlord, upon verification. All infractions thereafter will result in a fee of \$50 per infraction.

VI. DISCLAIMER BY LANDLORD

- A. Landlord specifically disclaims any implied or express warranties that the building, interior areas, or Resident's premises will have any higher or improved air quality standards than any other rental property.
- B. Landlord cannot and does not warrant or promise that the rental premises or interior areas will be free from secondhand smoke.
- C. Landlord's adoption of a smoke-free living environment does not in any way change the standard of care that the Landlord or the Landlord's managing agent would have to a resident household to render buildings and premises designated as non-smoking any safer, more habitable, or improved in terms of air quality standards than any other rental premises.