

ENFORCING A SMOKE-FREE POLICY IN PUBLIC HOUSING

This document is intended for public housing agencies that have adopted a smoke-free policy. Managers of market-rate apartment buildings should refer to the companion fact sheet, “Enforcing a Smoke-Free Policy in an Apartment Building”, available at www.mnsmokefreehousing.org.

Introduction

As of July 2018, public housing agencies (PHAs) in the United States are required to provide a smoke-free environment for their residents, according to a rule issued by the U.S. Department of Housing and Urban Development (HUD). The smoke-free provisions apply to all indoor areas including resident units and 25 feet from the building (including balconies). PHAs can go beyond the requirements of the HUD rule by prohibiting the use of e-cigarettes and/or prohibiting smoking in all outdoor areas of properties owned by the PHA.

According to a survey of the owners of multi-unit housing with smoke-free policies, the overwhelming majority of them did not experience an increase in staff time spent on managing the building after they put a smoke-free policy in place.¹

¹ Hewett, M., D. Bohac, and J. Novacheck. “Secondhand Smoke.” Environmental Tobacco Smoke. Center for Energy and Environment, 2001. Web. Jan. 2013. <https://www.mncee.org/getattachment/Resources/Projects/Secondhand-Smoke-Research/Survey-of-Multifamily-Building-Owners-and-Managers-in-Minnesota-Regarding-Movement-of-Secondhand-Smoke-in-Buildings-and-Designation-of-Smoke-Free-Buildings.pdf.aspx>

However, the smoke-free policy should be enforced if violations occur. This fact sheet outlines some steps a manager should take to promote compliance and address violations.



Preparing to enforce a smoke-free policy

- 01.** Make sure that the applicable PHA plan, lease and/or house rules contains a no-smoking provision.²
- 02.** Adopt a graduated enforcement approach for the smoke-free policy, where the PHA has the right to terminate the lease as a last resort. Consider including an opportunity for residents to rectify their violation by attending a cessation class. Sample approaches to graduated enforcement can be found in HUD's "Change is in the Air" implementation guide.³
- 03.** Provide your residents with proper notification of the smoke-free policy. Giving your residents enough time to prepare for the policy will help with compliance.
- 04.** Engage residents throughout the implementation process. Tips for resident engagement can be found at www.smokefreepublichousingproject.org.
- 05.** Invest in compliance tools like building signage and in-unit reminders. Signage provides a constant reminder of the smoke-free policy and will also inform guests that the building is smoke free. Many state and local departments of health provide free signage for buildings that adopt smoke-free policies.



² 25 C.F.R. § 965.655(a).

³ <https://www.hud.gov/sites/documents/SMOKEFREEACTIONGUIDE.PDF>, p. 46-47



If a violation occurs

- 01.** Review and follow the enforcement procedures in the lease addendum, and/or house rules.
- 02.** PHA staff should document the instances of violations of the smoke-free policy by sending a Notice of Infraction or a letter to the resident reminding the resident of the terms of the lease, providing the resident a description of the violation(s) and recording the date(s) of the violation(s).
- 03.** Educate all staff who work in and around the building of policy details. Maintenance staff, resident service providers, caretakers, etc. may be in units and have stronger relationships with residents than management. These staff can also document policy violations to management and may be able to work with the resident to resolve the problem. There are restrictions as to when staff can enter private units, but they can document signs of smoking if in the unit for another purpose. Tools to educate onsite staff can be found here: www.smokefreepublichousingproject.org.
- 04.** Evidence short of witnessing smoking can constitute acceptable proof of a violation. This evidence can include: staff observing a lighted tobacco product, burn damage caused by smoking, cigarette smells, smoke clogged filters, smoke damage to walls, repeated reports to staff by third parties, clogged plumbing caused by smoking products, and evidence of ashes. Staff sometimes ask whether it is advisable to purchase a monitor that can detect tobacco smoke. This may not be the best approach because of the cost of the monitors and questions about their effectiveness. However, if monitors are used, they should be placed in every unit to ensure



consistent treatment. A list of monitors can be found here: <http://mysmokefreehousing.org/word/DevicesandTeststoDetectSmoking.htm>

05. If multiple infractions occur and strategies for compliance are exhausted, PHA staff may wish to evict the resident. PHAs should confer with an attorney as to the proper procedure. Federal statutes spell out the procedures that must be followed.⁴ If the PHA decides to issue a termination notice, the violation should be characterized as a repeated violation of the lease, rather than a serious violation. This practice will preserve the family's opportunity to be admitted to the voucher program.
06. The PHA will have the burden of proving the lease violation allegations if an eviction action becomes necessary, so PHA staff should ensure evidence of violations is well-documented and talk with other residents to determine if they witnessed the lease violation and would be willing to testify in housing court.



⁴ 42 U.S.C. § 1437d(k), (l).



Additional resources

Clean Air for All and partners have many resources to assist buildings with enforcing a smoke-free policy including:

- Sample notices
- Sample lease addendum language
- Sample signage and in-unit reminders
- Compliance and enforcement fact sheets, tips, and FAQs
- Tools to facilitate staff training
- Resident Engagement Ideas for Smoke-Free Public Housing fact sheet

To find resources, visit these websites or contact Clean Air for All for assistance identifying and locating the right resources for you.

- www.smokefreepublichousingproject.org
- www.publichealthlawcenter.org/topics/tobacco-control/smoke-free-tobacco-free-places/housing/public-subsidized-housing
- www.mnsmokefreehousing.org
- www.sfpublichousingmn.org

Created by the Live Smoke Free program (www.mnsmokefreehousing.org)
and the Public Health Law Center (www.publichealthlawcenter.org)