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SMOKE-FREE ENVIRONMENT POLICY:

The Final Rule regarding a smoke-free environment in public housing was effective February 3, 2017. The Code of Federal Regulations at 24 CFR 965 and 966 and document citation 81 FR 87430, pages 87430-87444 institute smoke-free public housing. Each Public Housing Agency (PHA) is required to implement a smoke-free policy no later than 18 months from the effective date of the rule, or not later than July 30, 2018. HUD believes this policy will benefit many residents, especially vulnerable populations such as public housing residents, elderly persons, children and persons with disabilities. This Rule protects the health and well-being of public housing residents and the PHA staff and is an opportunity to lower overall maintenance costs and reduce the risk of catastrophic fires. Smoke-free public housing helps HUD realize its mission of providing safe, decent and sanitary housing for vulnerable populations nationwide. Smoke-free policies are increasingly being adopted in market-rate rental housing and condominiums. Any challenge to this policy would require a burden of proof that the regulation is not rationally related to a legitimate government interest. The **Housing Authority of the City of Hartwell** shall be referred to as the **PHA** in this policy.

The Final Rule does not prohibit the use of electronic nicotine delivery systems (ENDS). However, PHAs must establish a policy disallowing the use of prohibited tobacco products, including hookahs, waterpipes, cigarettes, cigars and pipes inside all indoor areas of public housing, including but not limited to living units, indoor common areas, outdoor common areas, playgrounds, stairways, patios, porches, electrical closets, storage units and PHA administrative buildings, and all outdoor areas within 25 feet of the housing and administrative buildings. These areas collectively are tagged "**restricted areas.**" The benefits of this policy promote improved indoor air quality and improved health for the residents, visitors and the PHA staff. The policy protects against catastrophic fires due to smoking and promotes lower maintenance costs.

In finalizing this Rule, HUD reiterates that this policy **does not** prohibit individuals from smoking. **PHAs will continue to lease to those persons who elect to smoke but agree to the Smoke-Free Environment Policy.** Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act provide the participant the right to seek a reasonable accommodation, including requests from residents with mobility impairments or mental disabilities. A request for reasonable accommodation from an eligible participant must be considered and granted unless there is a fundamental alteration to the program or an undue financial and administrative burden. This determination will be made on a case-by-case determination by the PHA. PHAs are encouraged to use the smoke-free environment as a marketing feature to attract residents. PHAs are concerned with this policy creating a vacancy problem. On the contrary, HUD alleges that PHAs who have implemented a smoke-free environment have experienced a greater demand for public housing units. Although smokers will face new requirements, other residents will generally benefit from an improved quality of life that minimizes the dangers of indoor smoking and secondhand smoke exposure.

After implementation of this policy, residents are financially responsible for repairing tobacco-related damage in the housing units created by themselves, co-signers, other family members and guests. The Smoke-free Environment Policy will be enforced through lease enforcement actions. This policy will be made a part of the lease and violation of the lease will result in termination of the resident. HUD recommends enforcing the Smoke-Free Environment Policy as other policies are enforced but this is somewhat out of the ordinary. However, PHA staff and residents are mandated to report a violation of the Smoke-Free Environment Policy. The person reporting the violation will be required to document the incident in writing in as much detail as possible. Every complaint must be acted upon by providing a written notification to the resident of the date, time and location of the incident, the date the resident signed the Smoke-Free Environment Addendum and Disclosure Form with reference to the Smoke Free Environment Policy. The notice should reference the number of times the resident has violated the Smoke-Free Environment Policy and future consequences of the violation. After the fifth violation, the resident's lease will be terminated. The primary smoke-free policy enforcement mechanisms are the Lease, Lease Addendum, Disclosure Form, Admissions and Continued Occupancy Policy and the Smoke-Free Environment Policy. All residents will be required to sign the Smoke-Free Environment Lease Addendum and the Disclosure Form.

When enforcing the Lease, the PHA must ensure due process for the residents. Residents have a right to file a grievance when terminated for violating this policy, or any other policy referenced in the Lease. Violations of the Smoke-free Environment Policy are considered a civil behavioral problem and not a criminal violation. Due to the nature of this policy, initially a graduated enforcement will be implemented. This policy is subject to change, however, until the residents become very familiar with the Smoke-free Environment Policy, a more tolerate approach will be used in the termination of the resident as a result of violating the Smoke-free Environment Policy.

Termination of assistance for a single incident of smoking, in violation of this policy, is not grounds for eviction. HUD encourages a graduated enforcement approach that includes escalating warnings with documentation to the resident file. HUD has not provided enforcement provisions because lease enforcement policies are typically at the discretion of the PHA that is responsible for ensuring fairness and consistency with the application of the policy. The Smoke-Free Environment Policy is difficult to administer. However, this policy will be administered as any other PHA policy. Violations may be reported by residents, guests of residents and/or staff. Violations must be reported in writing and signed by the person reporting the incident and by a PHA administrative staff member. The PHA is required to file and maintain of record each and every reported violation. The residents will be notified in writing of each violation and the PHA will maintain written records in the resident's file.

If five (5) violations are reported and verified on the head of household, any household member(s), and/or guests of the household, termination of the Lease will be initiated by the PHA.

Any PHA staff member in violation of the Smoke-Free Environment Policy will be disciplined according to the provisions established in the Personnel Policy.

The PHA will post adequate signage advising that the public housing units, Administrative Buildings, including Maintenance Buildings, Community Buildings and any other PHA-owned buildings will be a smoke-free zone and that **no smoking is allowed within 25 feet of the property lines**. The signage will be posted in English and other languages, as required.

The PHA has the right to designate areas on the properties that extend beyond 25 feet from any building or structure that can be occupied on the PHA grounds. The PHA will provide smoking shelters and cigarette and tobacco disposal units in strategic locations for the convenience of the residents. Residents who smoke must use these facilities when on the PHA properties.

Residents are reminded to use the disposal units for cigarette butts and tobacco disposal. Abuse of the shelters and neglect of the shelters may result in the shelters being removed. The residents are expected to maintain this space in an orderly and clean fashion.

The effective date of this policy is December 1, 2017.

Smoking is not a Protected Right

The Massachusetts Supreme Court reviewed the Constitution and every state constitution to determine that no constitutional protections exist for smokers.

Smoke-free Policies are not Discriminatory

Smokers are not provided legal protection under the Americans with Disabilities Act, the Federal Fair Housing Act, or other pieces of federal or state legislation. Addiction to nicotine is not considered a disability.

SMOKING IS NOT PERMITTED

Within the buildings including individual units, community buildings, stairwells, common areas, administrative buildings, maintenance buildings, playgrounds, porches and patios.

Anywhere within 25 feet of the buildings and designated areas.

RESIDENT SIGNATURE

DATE

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DATE

EXECUTIVE DIRECTOR SIGNATURE

DATE