

WORKSHOP MANUAL

PUBLIC HOUSING SMOKE-FREE POLICY & LEASE ADDENDUM

IMPLEMENTATION OF HUD'S RULE TO RESTRICT SMOKING IN PUBLIC HOUSING

Overview: HUD's final rule to restrict smoking in public housing was published in the Federal Register on December 5, 2016 and went into effect on February 3, 2017. This rule requires each PHA to implement a smoke-free policy, no later than July 30, 2018. The PHA must incorporate the smoke-free policy into the resident dwelling leases by way of a lease addendum. Such policy must ban the use of prohibited tobacco products in all public housing living units, indoor common areas in public housing, and in PHA administrative buildings. The policy must also extend to all outdoor areas up to 25 feet from the public housing and PHA administrative office buildings.

Implementation of Rule:

STEP 1- PHA consultation with its resident advisory board(s) to assist with and make recommendations for preparation of the PHA's smoke free policy.

STEP 2- PHA preparation of its smoke-free policy, and related lease addendum.

It is recommended that the policy and lease addendum contain statements pertaining to the following subjects:

- *Purpose of the Policy and Lease Addendum*
- *Designated Smoke-Free Restricted Areas*
- *Definition of Smoking*
- *Resident Responsibilities*
- *Landlord Responsibilities*
- *Landlord Not a Guarantor of Smoke-Free Environment*
- *Effect of Policy Violation/Breach of Lease*
- *Disclaimer by Landlord*
- *Notice to Residents With Respiratory ailments, Allergies, or Any Other Physical or Mental Condition Related to Smoke.*

Edison Housing Authority Smoke Free Policy and Lease Addendum

- **Purpose of Policy and Lease Addendum** - In an effort to reduce the increased risk of fire from smoking; the increased maintenance, cleaning and decorating costs from smoking; the irritation and known health effects of secondhand smoke; and to avoid the higher cost of fire insurance charged for non-smoke-free buildings, all of the housing developments managed by the Edison Housing Authority (hereinafter referred to as the "Housing Authority") have been designated Smoke-Free housing developments.
- **Designated Smoke-Free Restricted Areas** - Effective _____ smoking will not be permitted in the following designated Smoke-Free Restricted Areas of the housing developments managed by this Housing Authority: Dwelling units occupied or to be occupied by residents and members of their households and any common areas of the buildings in which such premises are located, including but not limited to community rooms, community bathrooms, laundry rooms, lobbies, foyers, reception areas, hallways, stairwells, day care centers, offices, elevators, mechanical spaces, waste disposal/recycling spaces, and all outdoors areas within 25 feet of said building(s), including building balconies, entry ways, patios, porches, yards and recreation areas, or to the PHA's property boundary in situations where the boundary is less than 25 feet.

Residents and members of their households shall not smoke anywhere within the aforesaid designated smoke-free restricted areas, nor shall residents or members of their households permit any guest or visitor under their control to smoke in said areas.
- **Definition of Smoking** - The term "smoking" means inhaling, breathing, or carrying or possessing any lighted cigarette, cigar, electronic nicotine delivery systems, pipe, including water pipes (hookahs) or other tobacco leaf product or similar lighted product in any manner or in any form.
- **Resident Responsibilities** - Residents and members of their household shall inform their guests and visitors of the terms and conditions of this smoke-free policy. Further, residents shall promptly give the Housing Authority a written statement of any incident where tobacco smoke is migrating into the resident's dwelling unit from sources outside the unit.
- **EHA's Responsibilities** - The Housing Authority shall post no-smoking signs at building entrances and exits, in common areas, and in conspicuous places adjoining the grounds of each of the designated smoke-free buildings.

- *Housing Authority- Not a Guarantor of Smoke-Free Environment* - It is not the intent of the Housing Authority smoke-free policy to make the Housing Authority or any of its management agents the guarantor of resident health or of the non-smoking condition of resident dwelling units and other designated smoke-free restricted areas.

Resident dwelling leases shall include a provision wherein residents acknowledges that Housing Authority's adoption of a smoke-free living environment does not make the Housing Authority or any of its management agents the guarantor of resident's health or of the non-smoking condition of the resident's dwelling unit and the other designated smoke-free restricted areas of the premises. However, the Housing Authority shall take reasonable steps to enforce the non-smoking terms of its lease and to make the designated smoke-free restricted areas, as smoke free as is reasonably possible.

The Housing Authority is not required to take steps in response to smoking unless landlord knows of said smoking or has been given written notice of said smoking.

- *Effect of Policy Violation/Breach of Lease* - Any resident, including the members of their household, guests, or visitors will be considered in violation of the Housing Authority's public housing smoke-free policy and the applicable provisions of their smoke-free lease addendum if found smoking in any Housing Authority designated smoke-free restricted area. Three (3) violations will be considered to be a material or continuing breach of the smoke-free lease addendum and grounds for termination of the lease by the Housing Authority.

After the first warning a cleaning/refurbishing charge of \$_____ will be added to the resident's account for each violation of this policy that occurs in any Housing Authority designated smoke-free restricted area. (Any lighted smoking matter not properly disposed of may also be cause for an additional cleaning/refurbishing charge.

Breach of the of the smoke-free lease addendum shall give each party to the lease all the rights contained in both the addendum and the dwelling lease.

- *Disclaimer by Housing Authority* - The Housing Authority's adoption and implementation of this policy, does not in any way change the standard of care that the Housing Authority or its management agents would have to a resident household to render buildings and premises designated as smoke-free restricted areas any safer, more habitable, or improved in terms of air quality standards than any other rental premises. The Housing Authority specifically disclaims any implied or express warranties that the buildings, common areas, resident premises, or other designated smoke-free restricted areas will have any higher or improved air quality standards than any other rental property. The

Housing Authority cannot and does not warrant or promise that the rental premises or the designated smoke-free restricted areas will be free from secondhand smoke. The Housing Authority's ability to police, monitor, or enforce this policy is dependent in significant part on voluntary compliance by the Authority's residents and their guests and visitors. Residents shall be required to acknowledge this disclaimer in the smoke free lease addendum.

- *Notice to Residents With Respiratory Ailments, Allergies, or Any Other Physical or Mental Condition Related to Smoke* - Residents with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that the Housing Authority does not assume any higher duty of care to enforce the Authority's smoke-free policy than any other Housing Authority's obligation under the dwelling lease.

STEP 3 – Tenant Review Notice.

HUD regulations require that the housing authority post or otherwise make available for a minimum 30 day calendar period, a notice to its public housing residents informing them that the Housing Authority has prepared and proposes to adopt, subject to receipt and consideration of their written comments, a Public Housing Smoke-Free Policy and a form of Smoke-Free Policy Dwelling Lease Addendum (copies attached); and specifying that all written comments should be submitted to the PHA's Management Office by _____ (insert a date which follows the end of the 30 day review and comment period).

STEP 4 – Prepare a Resolution For Adoption of the Housing Authority Smoke-Free Policy and its form of Related Lease Addendum.

The wording of such resolution should cover the adoption/approval of both the policy and lease addendum, the attachment of copies of such documents to the resolution, their incorporation therein, and their being made a part thereof by reference; the incorporation of the policy as an attachment to the ACOP and its being made a part thereof by reference; amendment of the PHA's form of public housing dwelling lease by making the smoke-free lease addendum a part thereof; and the effective date of the resolution.

STEP 5 Present Resolution to the Board of Commissioners for Adoption.

STEP 6 -Prepare and hand-deliver or mail a letter to all of the Public Housing residents informing them of the adoption of the public housing smoke-free policy and the related dwelling lease addendum, notifying them of the effective date of the policy, instructing them to

contact the Housing Authority management office for the purpose of scheduling an appointment for execution of the smoke-free lease addendum, and providing them with copies of both the smoke-free policy and the related lease addendum.

Notes:

Residents are required to sign the lease addendum in the presence of a Housing Authority management representative.

Failure to sign the lease addendum may result in legal action.

Copies of the signed and dated lease addendum must be retained in the resident's file.

The EHA must notify each resident of the content of the addendum to their existing lease at least 60 days before the lease addendum is to take effect and specify a reasonable time period for the resident to accept the offered addendum (see 24 CFR 966.4(1)(2)(iii)(E)). PIH REGULATIONS ALSO PROVIDE THAT LEASES ARE REQUIRED TO STIPULATE THAT THE RESIDENT HAS AN OPPORTUNITY FOR A HEARING ON A GRIEVANCE OF ANY PROPOSED ADVERSE ACTION AGAINST THE RESIDENT (see CFR966.52(b)).