

A Guide to **EQUITABLE SMOKE-FREE PUBLIC HOUSING**



Acknowledgements

The National Housing Law Project (NHLP) is pleased to publish *A Guide to Equitable Smoke-Free Public Housing*. While the guide applies specifically to public housing, the philosophy of equitable implementation and enforcement can be applied to all types of rental housing.

NHLP's work in this area has been informed by a range of stakeholders including tenant advocates, resident leaders, public housing authority representatives, public health advocates, government officials, and other stakeholders, all of which provided a great deal of feedback during the drafting of this manual. We offer particular gratitude to Thomas Carr of the American Lung Association, Kara Skahen of Clean Air for All: The Smoke-Free Public Housing Project, Becky Slemmons of the American Cancer Society and Rachel Callanan and Andrew Twinamatsiko of the Tobacco Control Legal Consortium at the Public Health Law Center.

Support for this guide was provided by the Robert Wood Johnson Foundation. The views expressed here do not necessarily reflect the views of the Foundation.



Table of Contents

1.0 Executive Summary	1
2.0 Public Housing Tenants and Tobacco Dependence	3
3.0 Developing and Implementing an Equitable Local Policy	7
4.0 Resident Engagement as a Key Implementation Tool	15
5.0 The Power of Community Partnerships	20
6.0 Effective and Equitable Enforcement	25
7.0 Alternative Enforcement Mechanisms for Equitable Smoke-Free Housing: Lessons for the Future	30
8.0 Additional Resources	32
9.0 Appendices	34
9.1 NHLP Smoke-free Policy	35
9.2 Smoke-free Policy Lease Addendum of the Cambridge Housing Authority	40
9.3 Smoke-free Policy of the Cambridge Housing Authority	44
9.4 Smoke-free Policy of the Housing Authority of Baltimore City	47
9.5 American Cancer Society Fact Sheet	54
9.6 Clean Air for All:Smoke-free Sign Template	57

1.0 Executive Summary

Background

On December 5, 2016, HUD published its final rule, *Instituting Smoke-Free Public Housing*.¹ The rule required all housing authorities to establish local smoke-free policies before July 31, 2018. The policy is intended to improve public health and indoor air quality, reduce the risk of fires, and lower maintenance costs. HUD's rule uses the public housing lease as the enforcement mechanism to ensure that public housing residents comply with the smoke-free rule. Housing authorities were required to amend public housing leases to prohibit smoking by the implementation deadline (July 31, 2018). By law, housing authorities have the discretion to evict tenants who violate the smoke-free lease provision.

The harmful effects of smoking on the user and nonuser are well documented. In their effort to mitigate the harmful effects of smoking, HUD and housing providers must consider how intervention to provide clean air may negatively impact the ability to house marginalized populations. HUD recognizes that homelessness and housing instability are major public health crises that the agency has a duty to address by providing safe and habitable housing to the nation's poorest families.² The purpose of this manual is to assist housing providers, advocates, and tenants to find the proper balance between two important public health issues—promoting smoke-free environments and ensuring access to affordable, stable housing.

Methods

Through its field network of over 1,500 local housing and tenants' rights advocates, NHLP has been closely

monitoring smoke-free public housing. Even before HUD's smoke-free rule was proposed, NHLP provided extensive technical assistance to legal services attorneys and others working with tenants facing smoking-related evictions as well as families enforcing their right to a smoke-free home. This guide incorporates feedback from advocates and resident leaders from across the country who are grappling with issues around smoke-free housing. The best practices identified are those that have also surfaced when working with our public health partners during the roll-out of the rule.

This guide is written for tenant advocates, residents, PHAs, public health professionals, and other groups involved in the development of smoke-free housing. The year since implementation has allowed stakeholders to identify the main hurdles to successful smoke-free policies. While the guide applies specifically to public housing, the philosophy of equitable implementation and enforcement can be applied to all types of housing.

Key Recommendations

NHLP developed the following recommendations for advocates, PHA staff, residents, and other stakeholders to ensure equitable and effective implementation and enforcement of smoke-free public housing:

- PHA Collaboration: PHA and property management staff should collaborate on smoke-free public housing policies with tenants, advocates, public health and social service organizations, and health centers. Once in place, PHAs should revisit their smoke-free policies

1. *Instituting Smoke-Free Public Housing*, 81 Fed. Reg. 87, 430 (Dec. 5, 2016) (final rule).

2. U.S. DEP'T OF HOUS. AND URBAN DEV., HUD STRATEGIC PLAN 2014-2018 22 (2014). HUD has indicated it will use a Housing First approach, along with leveraging other federal programs and local resources, to provide life sustaining health and social services through stable housing.

with their partners at least annually to evaluate the policy's outcomes and revise problematic provisions.

- Resident Support: Resident support is a key determinant of the success of smoke-free housing and can include ongoing education about the rule's requirements and free/low-cost cessation services.
- E-cigarettes: When determining whether to include e-cigarettes in its list of banned tobacco products, PHAs, with the help of other stakeholders, should carefully weigh several factors including the health risks of e-cigarettes particularly to youth and young adults and the use of e-cigarettes by some smokers as an alternative to conventional tobacco products.
- Designated Smoking Areas: A safe and accessible smoking area on public housing property grounds, where possible, will encourage compliance with the smoke-free rule. Clear communication between PHA staff and residents about designated smoking areas is essential for effective implementation.
- Reasonable Accommodations: A clear reasonable accommodation policy specifically related to smoking will help tenants who experience disabilities understand their rights with respect to enforcement of smoke-free rules.
- Graduated Enforcement: Graduated enforcement is the most equitable way to enforce HUD's smoke-free rule. A graduated enforcement plan should include at least three verbal and written warnings prior to a

termination notice. At each warning, PHA staff should provide culturally appropriate information about how to comply with the smoke-free policy and information about resident support services.

- Evictions: Eviction should always be the last resort to enforce smoke-free rules. No tenant should ever be evicted for the smoking of a guest.
- Fees and Fines: Fees and fines for violations of smoke-free rules create a significant barrier to equitable enforcement and should not be used.
- Resetting the Clock: PHAs should consider a policy that allows residents to reset the clock when there has not been a violation recorded during a set period of time (6 months, for example).
- Smoking Monitors: PHAs should use caution if installing smoking monitors and detection kits as part of their enforcement plan. Advocates and residents should challenge the use of these devices if not used properly by property management staff.

National Housing Law Project is committed to continuing to monitor the impacts of smoke-free housing on residents and provide technical assistance to the parties that play a role in effective and equitable implementation and enforcement. Our philosophy is that smoke-free housing can improve public health outcomes without posing a risk to housing stability and security.

2.0 Public Housing Tenants and Tobacco Dependence

How many public housing residents smoke?

Smoking prevalence is higher among public housing residents than the general population. A 2017 study assessed the prevalence of smoking and adverse health outcomes associated with smoking and second-hand smoke exposure among residents living in HUD-assisted housing.³ The study found that approximately 33.6% of public housing adult residents smoked cigarettes during 2006-2012⁴ compared

to an overall adult smoking prevalence of 16.8% of all adults in 2014.⁵ Of public housing residents who smoked, 82.1% smoked daily.⁶ Of the daily smokers in public housing, 35.8% smoked twenty or more cigarettes per day.⁷ Just over half (50.4%) of public housing residents who smoked indicated they had attempted to quit smoking in the past year.⁸

Of the 33.6% of public housing adult residents who smoked cigarettes during 2006-2012:



smoked daily



smoked 20(+) cigarettes daily



attempted to quit in the past year

3. Veronica E. Helms et al., *Cigarette Smoking and Adverse Health Outcomes Among Adults Receiving Federal Housing Assistance*, 99 PREVENTIVE MEDICINE 171 (2017). The study used the household characteristics of residents during the National Health Interview Survey years of 2006-2012. *Id.* at 172, 176. To learn more about the study's limitations, see *id.* at 176. See also, Teresa W. Wang et al., *Characteristics and Correlates of Cigarette Smoking Status Among US Adults Receiving Federal Housing Assistance*, 15 PREVENTING CHRONIC DISEASE 170,395 (2018), <http://dx.doi.org/10.5888/pcd15.170395>.

4. Helms et al., *supra* note 3, at 173.

5. *Id.*

6. *Id.* at 175.

7. *Id.*

8. *Id.*

To be eligible for public housing, a family must be “low-income” as defined by HUD (the family’s income must fall below 80% of the Area Median Income (AMI)).⁹ Housing authorities that administer the public housing program are required to rent a minimum of 40% of new and turnover units to applicants who are “extremely low-income” (at or below 30% of AMI or the poverty level).¹⁰ Still, a vast majority of public housing residents are “very low-income” (at or below 50% of the AMI),¹¹ and extremely low-income. In fact, 62% of public housing families are extremely low-income,¹² 22% are very low-income, and 10% are low-income.¹³ The average annual income of a public housing family is \$15,183.¹⁴

Is there a link between poverty and smoking?

Tobacco companies have historically targeted their advertising campaigns toward low-income neighborhoods and communities of color.¹⁵ It is not surprising then that cigarette smoking and second-hand smoke exposure is higher among persons living below the poverty level than those living at or above the poverty level.¹⁶ In 2016, of those living below the poverty level, 25.3% smoked, whereas 14.3% of those who live at or above the poverty level smoked.¹⁷ In

public housing, 75.6% of those who smoked lived below the poverty level.¹⁸

Of all adults who smoke, most do not have private insurance,¹⁹ but have either Medicaid,²⁰ Medicare,²¹ other public insurance,²² or were uninsured.²³ Indeed, among public housing residents, 64.5% of smokers have public insurance,²⁴ 28.2% of smokers do not have health insurance,²⁵ and 7.27% of smokers have private health insurance.²⁶

Research also shows that cigarette smoking is higher among persons with a disability or physical or mental limitation. Among people with a disability or limitation, 20.7%, are smokers compared with 13.3% of people without a disability or limitation who smoke.²⁷ About 35.2% of adults who have experienced serious psychological distress smoke.²⁸ People with disabilities and seniors are disproportionately represented in public housing. Twenty percent of public housing households include a family member with a disability.²⁹ Thirty-two percent of public housing residents are 62 years or older.³⁰

In order to successfully implement and enforce HUD’s smoke-free rule, PHAs must look beyond the numbers to the people who smoke and the people who are impacted

9. 24 C.F.R. §§ 960.201 and 960.202 (2018).

10. 42 U.S.C. § 1437n(a) (2018); 24 C.F.R. § 960.202 (2018).

11. *Id.* A family is very-low income if their income is at or below 50% of the AMI.

12. *National Resident Characteristics for Public Housing*, RESIDENT CHARACTERISTICS REPORT, <https://hudapps.hud.gov/public/picj2ee/Mtcsrcl> (last visited Feb. 19, 2019). A family is extremely low-income if their income is at or below 30% of the AMI.

13. *Id.* A family is low-income if their income is at or below 80% of the AMI.

14. *National Resident Characteristics for Public Housing*, RESIDENT CHARACTERISTICS REPORT, <https://hudapps.hud.gov/public/picj2ee/Mtcsrcl> (last visited Feb. 19, 2019). A family is extremely low-income if their income is at or below 30% of the AMI.

15. CTRS. FOR DISEASE CONTROL AND PREVENTION, THE HEALTH CONSEQUENCES OF SMOKING — 50 YEAR OF PROGRESS: A REPORT OF THE SURGEON GENERAL (2014), https://www.cdc.gov/tobacco/data_statistics/sgr/50th-anniversary/index.htm. Low-income communities have a higher density of tobacco retailers. Danlin Yu et al., *Tobacco Outlet Density and Demographics: Analysing the Relationships with a Spatial Regression Approach*, 124 PUB. HEALTH 412, 415 (2010).

16. Ahmed Jamal et al., *Current Cigarette Smoking Among Adults — United States 2016*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Jan. 18, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/mm6702a1.htm>; Helms et al., *supra* note 3, at 171.

17. *Id.*

18. Helms et al., *supra* note 3, at 171, 174.

19. Approximately 10.5% of adults who smoked had private health insurance. *Current Cigarette Smoking Among Adults in the United States*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Feb. 4, 2019), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm.

20. Approximately 24.5% of adults who smoke had Medicaid for health coverage. *Id.*

21. Approximately 8.7% of adults who smoke has Medicare only for health coverage. *Id.*

22. Approximately 20.4% of adults who smoke had other public insurance for health coverage. *Id.*

23. Approximately 24.7% of adults who smoke were uninsured. *Id.*

24. Helms et al., *supra* note 3, at 174.

25. Helms et al., *supra* note 3, at 174.

26. Helms et al., *supra* note 3, at 174.

27. *Current Cigarette Smoking Among Adults in the United States*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Feb. 4, 2019), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm.

28. *Id.*

29. *Public Housing*, NAT’L HOUSING L. PROJECT, <https://www.nhlp.org/resource-center/public-housing/> (last visited Aug. 20, 2019).

30. *Policy Basics: Public Housing*, CENTERS ON BUDGET AND POL’Y PRIORITIES (Nov. 15, 2017), <https://www.cbpp.org/research/policy-basics-public-housing>.

by second-hand smoke. Staff must be mindful of the complexity surrounding tobacco dependence. For example, many people with psychiatric disabilities are heavily dependent on tobacco and standard cessation treatments may require more intensive treatment (such as additional counseling sessions and longer courses of medication) than is necessary for an individual without a psychiatric disability.³¹ PHAs should make a point of understanding the hurdles faced by residents and staff who smoke and facilitate ongoing communication that addresses individual needs. Indeed, in its final rule, the Department of Housing and Urban Development (HUD) emphasizes a people-first approach to smoke-free housing.³²

What are the benefits of smoke-free housing?

There are many reasons to implement a smoke-free policy in public housing. First, research demonstrates the harmful health effects of smoking and second-hand smoke.³³

Secondhand smoke is particularly dangerous to children, pregnant women, and people with chronic illnesses. In multifamily residential buildings, there is no method to fully prevent smoke from traveling between units. As with cigarette smoking, there is no risk-free level of exposure to secondhand smoke.³⁴ Annually, approximately, 41,000 adult deaths and 400 infant deaths can be attributed to

secondhand smoke exposure.³⁵ Second-hand smoke exacerbates respiratory and chronic illnesses, interfering with neighboring residents' ability to comfortably reside in their units. Children with asthma who are around secondhand smoke have more severe and frequent asthma attacks.³⁶ A severe asthma attack can place a child's life in danger.³⁷ While secondhand smoke exposure appears to be declining in the U.S. overall, it remains disproportionately high among children and especially African American children.³⁸ In 2013-2014, secondhand smoke exposure was found in two of every three African American children between the ages of 3 and 11 years.³⁹

Smoking in residential buildings also increases the chances of property damage from fire or smoke.⁴⁰ Even in the case of moderate smoking, PHAs must spend more per unit at turnover, increasing maintenance costs.⁴¹ Prohibiting smoking in public housing should yield estimated annual cost savings of about \$153 million, including \$94 million in secondhand smoke-related health care, \$43 million in renovation of smoking-permitted units, and \$16 million in smoking attributable fire losses.⁴² Part of the savings also includes reduced insurance costs.⁴³

31. Francesca Manzella et al., *Smoking in Schizophrenic Patients: A Critique of the Self-Medication Hypothesis*, 5 WORLD J. OF PSYCHIATRY 35 (Mar. 22, 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4369547/>; see also *Vital Signs: Current Cigarette Smoking Among Adults Aged Greater than or Equal to 18 Years with Mental Illness – United States 2009-2011*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Feb. 8, 2013), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6205a2.htm>.

32. Instituting Smoke-Free Public Housing, 81 Fed. Reg. 87,430 (Dec. 5, 2016).

33. See e.g. *Cigarettes and Death*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Jan. 17, 2018), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/ (Cigarette smoking is the leading cause of preventable disease and death in the United States); *Health Effects*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Feb. 8, 2018), https://www.cdc.gov/tobacco/basic_information/health_effects/index.htm (More than 16 million Americans live with a disease caused by cigarette smoking).

34. *Health Effects of Secondhand Smoke*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Jan. 17, 2018), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/index.htm.

35. *Health Effects*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Feb. 8, 2018), https://www.cdc.gov/tobacco/basic_information/health_effects/index.htm. The U.S. Environmental Protection Agency has classified secondhand smoke as a Class A carcinogen. U.S. DEP'T OF HOUS. AND URBAN DEV., IMPLEMENTING HUD'S SMOKE-FREE POLICY IN PUBLIC HOUSING 4 (2017).

36. *Health Effects of Secondhand Smoke*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Jan. 17, 2018), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/index.htm.

37. *Id.*

38. James Tsai, MD et al., *Exposure to Secondhand Smoke Among Nonsmokers – United States, 1988-2014*, 67 MORBIDITY AND MORTALITY WKLY. REP. 1342 (Dec. 14, 2018).

39. *Id.*

40. In 2016, 2.1% of fires were caused by smoking. *U.S. Fire Statistics*, U.S. FIRE ADMIN. (Aug. 2, 2019), <https://www.usfa.fema.gov/data/statistics/#causesR>.

41. HUD estimates it cost two to seven times more to turn over a smoking unit than it does to turn over a smoke-free unit. U. S. DEP'T OF HOUS. AND URBAN DEV., IMPLEMENTING HUD'S SMOKE-FREE POLICY IN PUBLIC HOUSING 3 (2017).

42. Brian A. King et al., *National and State Cost Savings Associated with Prohibiting Smoking in Subsidized and Public Housing in the United States*, 11 PREVENTING CHRONIC DISEASE 140,222, 140,232 (2014).

43. U. S. DEP'T OF HOUS. AND URBAN DEV., IMPLEMENTING HUD'S SMOKE-FREE POLICY IN PUBLIC HOUSING 3 (2017).

Why is it important to minimize public housing evictions for violations of smoke-free rules?

Smoke-free policies will undoubtedly have a positive health impact on many public housing residents, especially children, by reducing exposure to second-hand smoke. Numerous studies link second-hand smoke exposure to a range of health problems. It is equally important, however, to recognize that homelessness and housing instability are major public health concerns that HUD has a duty to address by providing safe and habitable housing to the nation's poorest families.⁴⁴ Indeed, the "[smoke-free public housing] rule is not intended to contradict HUD's goals to end homelessness and to help all Americans secure quality housing."⁴⁵ However, smoke-free policies that do not put in place procedural safeguards against evictions will result in the termination of low-income families from HUD housing programs.

For many poor families, being evicted from public housing means becoming homeless due to the severe shortage of affordable rental housing in communities across the country. In the past decade, the demand for rental housing has

increased by over 10 million households.⁴⁶ While a majority of these households experience lower incomes, new rental construction has focused on the high end of the rental market.⁴⁷ The lack of meaningful government investment in affordable housing has exacerbated the problem. Congress has not appropriated federal funds to build additional public housing units since the mid-1990s, and over 10,000 public housing units are lost each year due to severe unaddressed capital needs. With no affordable housing options, families often turn to living on the streets. Preserving public housing tenancies should be of utmost concern to local housing authorities and city governments.⁴⁸

PHA staff must therefore be mindful of competing public health risks when implementing and enforcing the smoke-free rule. Without procedural safeguards, the policy could exacerbate homelessness and housing instability in the surrounding community. Meaningful tenant engagement, graduated enforcement, and other best practices outlined below can help communities avoid such harmful consequences.

44. Ending Homelessness is one of HUD's strategic objectives. HUD seeks to "end homelessness for veterans, people experiencing chronic homelessness, families, youth, and children." U.S. DEP'T OF HOUS. AND URBAN DEV., HUD STRATEGIC PLAN 2014-2018 22 (2014).

45. Instituting Smoke-Free Public Housing, 81 Fed. Reg. 87,430, 87,436 (Dec. 5, 2016).

46. NAT'L LOW-INCOME HOUS. COAL., OUT OF REACH 3 (2018).

47. *Id.* at 5. "According to the Joint Center for Housing Studies (2017), the number of homes renting for \$2,000 or more per month increased by 97% between 2001 and 2015... During the same time, the number of homes renting for less than \$800 declined by 2%."

48. A homeless individual can cost taxpayers as much as \$30,000-\$50,000 per year. U.S. Interagency Council on Homelessness, ENDING CHRONIC HOMELESSNESS IN 2017, available at https://www.usich.gov/resources/uploads/asset_library/Ending_Chronic_Homelessness_in_2017.pdf.



3.0 Developing and Implementing an Equitable Local Policy

What is the history of HUD's smoke-free rule?

On December 5, 2016, HUD published its final rule, *Instituting Smoke-Free Public Housing*.⁴⁹ The rule requires housing authorities administering public housing programs to design and implement a local policy barring the use of prohibited tobacco products in all public housing units, interior common areas, and outdoor areas within 25 feet from residential and office buildings. The rule is intended to improve public housing resident health and indoor air quality, reduce the risk of fires, and lower maintenance costs. Housing Authorities were required to establish local smoke-free policies before July 31, 2018.

HUD's policy resulted from years of research on the harms and costs associated with smoking in residential buildings.⁵⁰ After determining that there was a great advantage to smoke-free housing policies, HUD issued several notices, starting in 2009, to both PHAs and private HUD multifamily owners strongly encouraging them to adopt smoke-free rules.⁵¹ HUD also published guidance on best practices for implementation and enforcement of smoke-free rules.⁵² As a result, by 2017, over 600 PHAs around the country had adopted smoke-free policies.

To further promote the public health benefits of smoke-free policies and in an effort to uniformly administer the public housing program across the nation, in 2015, HUD proposed to prohibit smoking in all public housing projects. HUD received many comments on the rule from public health professionals, resident groups, and other stakeholders.

After considering the public comments, HUD issued its final rule, which prohibits smoking in all public housing buildings by making it a lease violation for a public housing resident to smoke indoors or within twenty-five feet of the building. The nuts and bolts of the final policy are discussed in more detail below. While HUD's rule outlines the basic legal requirements of a smoke-free policy, HUD left much of the implementation and enforcement to the discretion of individual PHAs. As a result, PHAs' policies vary greatly. HUD has committed some resources to research on policies and programs related to smoke-free public housing⁵³ although to date, there is very little data on the impacts of the rule.⁵⁴

49. *Instituting Smoke-Free Public Housing*, 81 Fed. Reg. 87,430 (Dec. 5, 2016) (final rule).

50. *Instituting Smoke-Free Public Housing*, 80 Fed. Reg. 71,762 (Nov. 17, 2015) (proposed rule).

51. U.S. DEP'T OF HOUS. AND URBAN DEV., NON-SMOKING POLICIES IN PUBLIC HOUSING, PIH NOTICE 2009-21 1 (Jul. 17, 2009); U.S. DEP'T OF HOUS. AND URBAN DEV., POLICY FOR AMENDED AND RESTATED USE AGREEMENT FOR MULTIFAMILY PROJECTS SUBJECT TO THE LOW-INCOME HOUSING PRESERVATION AND RESIDENT HOMEOWNERSHIP ACT OF 1990, PIH NOTICE 2012-25 1 (Nov. 21, 2012).

52. U.S. DEP'T OF HOUS. AND URBAN DEV., *CHANGE IS IN THE AIR* (2014).

53. 30-Day Notice of Proposed Information Collection: Assessment of Additional Resource Needs for Smoke-Free Policy, 83 Fed. Reg. 45,957 (Sept. 11, 2018).

54. Harvard University's Building Success Initiative performed one study related to smoke-free public housing. The "Early Adopter Study" surveyed executive directors at 155 public housing authorities that had voluntarily adopted a smoke-free policy and asked about implementation, training, resident engagement, enforcement, and other aspects of smoke-free housing. For more information about the study, see *Early Adopter Study*, BUILDING SUCCESS, <http://buildingsuccesssmokefree.org/about/early-adopter-study/> (last visited Aug. 20, 2019).



Dakota County CDA and South St. Paul HRA partnered with Live Smoke Free, a program of the Association for Nonsmokers Minnesota, to draft and implement their smoke-free housing policies. The effort was funded by the Dakota County Public Health Department with the Statewide Health Improvement Partnership grant from the Minnesota Department of Health. Prior to drafting, Dakota County CDA and South St. Paul HRA hosted multiple meetings to speak with residents about the benefits of having a smoke-free rule and receive residents' feedback on the proposed policies. Social service providers also attended the resident meetings as a demonstration of the community's commitment to support residents as the buildings transitioned to smoke-free. A critical step to implementation was that HealthPartners, a Minnesota-based health care organization, agreed to offer on-site cessation coaching for residents.

Dakota County CDA and South St. Paul HRA are continuously working with their partners to engage and support residents. To illustrate the benefits of smoke-free housing, residents plan to share their stories of living in a smoke-free building as part of a storytelling campaign that includes a video and posters. The campaign will utilize peer-to-peer connection as a way to encourage and support residents. Also, the PHAs will host an anniversary event to celebrate one year of implementation.

What products are prohibited?

HUD's final rule bans the use of prohibited tobacco products, which are defined as "items that involve the ignition and burning of leaves, such as (but not limited to) cigarettes, cigars, and pipes."⁵⁵ The definition of prohibited tobacco product explicitly includes water pipes, also known as hookahs.⁵⁶ Electronic Nicotine Delivery Systems (ENDS or e-cigarettes) are not prohibited, but a housing authority may choose to adopt a policy that bans ENDS.

Should PHAs prohibit the use of e-cigarettes?

PHAs should carefully weigh several factors when determining whether to include e-cigarettes in their lists of banned tobacco products. First, the use of e-cigarettes poses health risks particularly to youth, young adults, pregnant women, and adults who do not currently use tobacco products.⁵⁷ Most e-cigarettes contain nicotine, which is highly addictive, can harm adolescent brain development (which continues into the early to mid-20s) and is toxic to developing fetuses.⁵⁸ E-cigarette aerosol (what a user of e-cigarettes breathes and exhales from the device) can contain other harmful substances such as cancer-causing chemicals. There is also no clear consensus on the second-hand and third-hand effects of e-cigarettes.⁵⁹

Second, there is limited to no evidence that the use of electronic cigarettes leads to smoking cessation. Importantly, e-cigarettes are not currently approved by the FDA as an aid to quit smoking and therefore should not be offered by PHAs as a cessation product.⁶⁰

Third, E-cigarettes can be used as a reduced-harm alternative to smoking traditional tobacco products. E-cigarettes may in fact help residents comply with a smoke-free rule.

Last, e-cigarettes do not present the same risk of causing catastrophic fires compared to lit tobacco products because e-cigarettes do not require the use of a flame.⁶¹ However, e-cigarettes still pose a significant risk of explosion and fire. As outlined in the 2016 Surgeon General's Report, there are several instances where e-cigarettes have caused fires through explosions.⁶² Although no deaths have been reported, most of the reported fires resulted in the ignition of clothing, carpets, drapes, bedding and other nearby material.

PHAs should weigh all of these factors when determining whether to include e-cigarettes as a prohibited product in their smoke-free rules.

55. 24 C.F.R. Sec. 965.651(c)(1) (2018).

56. *Id.* at (c)(2).

57. See U.S. DEP'T OF HEALTH AND HUMAN SERVICES, 2016 SURGEON GENERAL'S REPORT: E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS 97-123 (2016); Nat'l Acad. of Sci., Engineering, Med., PUBLIC HEALTH CONSEQUENCES OF E-CIGARETTES (2018), <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>; *About Electronic Cigarettes*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Nov. 15, 2018), https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html. See, e.g., Wolfgang Schober et al., *Use of E-cigarettes Impairs Indoor Air Quality and Increases FeNO Levels of E-cigarette Consumers*, 217 INT. J. OF HYGIENE AND ENVTL. HEALTH 628 (2014); Thomas Petry et al., *Human Health Risk Evaluation of Selected VOC, SVOC and Particulate Emissions from Scented Candles*, 69 REG. TOXICOLOGY AND PHARMACOLOGY 55 (2014); Stéphane Colard, et al., *Electronic Cigarettes and Indoor Air Quality: A Simple Approach to Modeling Potential Bystander Exposures to Nicotine*, 12 INT'L J. ENVTL. RES. PUB. HEALTH 282 (2015); Timothy R. McAuley et al., *Comparison of the Effects of E-Cigarette Vapor and Cigarette Smoke on Indoor Air Quality*, 24 INHALATION TOXICOLOGY 850 (2012).

58. *About Electronic Cigarettes*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Nov. 15, 2018), https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html.

59. Instituting Smoke-Free Public Housing, 81 Fed. Reg. 87,430, 87,436 (Dec. 5, 2016).

60. The U.S. Preventive Services Task Force has found there is insufficient evidence to recommend e-cigarettes for cessation in adults. *About Electronic Cigarettes*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Nov. 15, 2018), https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html. Of adult e-cigarette users in 2015, 58.8% also smoked cigarettes regularly, 29.8% were former smokers, and 11.4% had never smoked cigarettes. *Id.* See also Jamie Hartmann-Boyce et al., *Can Electronic Cigarettes Help People Stop Smoking, and are They Safe to Use for this Purpose?*, COCHRANE (Sep. 13, 2016), <https://www.cochrane.org/CD010216/TOBACCO-can-electronic-cigarettes-help-people-stop-smoking-and-are-they-safe-use-purpose>; Ralph S. Caraballo et al., *Quit Methods Used by US Adult Cigarette Smokers, 2014-2016*, 14 PREVENTING CHRONIC DISEASE 160,600 (2017), https://www.cdc.gov/pod/issues/2017/16_0600.htm. But see also NAT'L ACAD. OF SCI., ENG'G, MED., PUBLIC HEALTH CONSEQUENCES OF E-CIGARETTES (2018), <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>.

61. Although rare, e-cigarettes can explode, causing injury. *About Electronic Cigarettes*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Nov. 15, 2018), https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html.

62. U.S. DEP'T OF HEALTH AND HUMAN SERVICES, 2016 SURGEON GENERAL'S REPORT: E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS 121-123 (2016), https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf.

Does smoking marijuana fall under the smoke-free rule?

HUD's smoke-free rule only applies to the use of tobacco products in public housing, not marijuana. However, tenants are barred from using marijuana in public housing on other legal grounds. Marijuana is considered an illegal drug under federal law. Because public housing is funded by the federal government, HUD has been clear that smoking or ingesting marijuana is not allowed in public housing.

As more states legalize the use of marijuana for medical and recreational purposes, tenants and housing providers have questioned these state laws' impact on continued occupancy in public housing. Under federal law, the use of medical marijuana remains a crime.⁶³ The Supreme Court has confirmed that Congress has the authority to regulate purely local uses of marijuana and that, under federal law, marijuana has no accepted medical applications.⁶⁴ HUD's position is that because there is no exemption for even medical marijuana under federal law, state or local laws that legalize marijuana contravene federal law and are thus preempted.⁶⁵ As a result, individuals who use marijuana for any purpose may be evicted from public housing. It is important to note, however, that PHAs (and HUD-subsidized property owners) are authorized, but not required, to evict tenants who use marijuana.⁶⁶ The decision to evict is within the PHA's discretion.

63. Marijuana is classified as a Schedule 1 substance under the Controlled Substances Act (CSA). 21 U.S.C.A. § 801 *et seq.* (West 2012).

64. *Gonzales v. Raich*, 545 U.S. 1 (2005) (Congress has Commerce Clause authority to regulate local use of medical marijuana); *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 491 (2001) (holding that the medical necessity defense is unavailable under the Controlled Substances Act).

65. Memorandum from Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing to All Field Offices and Public Housing Agencies (Feb. 10, 2011).

66. *Id.*



Where is smoking prohibited?

The final rule prohibits smoking in “all public housing living units and interior areas... as well as outdoor areas within 25 feet from public housing and administrative office buildings.”⁶⁷ Interior common areas include, but are not limited to, hallways, rental and administrative offices, community centers, day care centers, laundry centers and similar structures.⁶⁸ PHAs have the discretion to designate smoking areas outside of the restricted areas to accommodate residents who smoke⁶⁹ or to allow smoking in any area of the property outside the restricted areas.

Should PHAs designate smoking areas on public housing property?

PHAs should strongly consider creating a safe and accessible smoking area on the property's grounds. The smoking area should be protected and inviting, to encourage residents to make use of the space. In designating areas, PHAs should first consider the safety of residents who smoke. Designating a smoking area in a location that is well lit at night or close to the building (although still outside of the 25 feet boundary) will help people comply with the smoke-free policy while also alleviating safety concerns involved in having to leave the property to smoke. PHAs should also think about local weather when deciding whether or not to create a designated smoking area. In some climates, walking a few blocks in winter can be dangerous due to icy conditions or frigid temperatures. A covered or heated smoking area may be appropriate. PHAs should also consider the specific needs of the resident population. Accessing a safe place to smoke may be a particular challenge for seniors and people with disabilities. Failing to provide a smoking area may lead to increased enforcement actions due to tenants' unwillingness or inability to leave the property to smoke.

In designating smoking areas, PHAs must balance the safety of smokers with the risk of exposure of secondhand smoke to other members of the community. For example,

PHAs should not place a designated smoking area close to a playground or other public facility.

As a practical matter, smaller PHAs may be unable to designate smoking areas on their properties due to the 25-foot rule. In such cases, PHAs should work with residents who smoke to come up with a compliance plan. For example, if the resident must leave the property to smoke, where is a safe place to go? Is it covered or heated during the winter months? Will the resident have to cross a busy street to get there? Helping residents locate safe places to smoke will go a long way toward ensuring successful compliance. Meeting with residents to discuss a compliance plan also presents an additional opportunity for the housing authority to offer cessation support, if available.

Also note that PHAs are subject to state and local law. Before constructing a designated smoking area, PHAs should consult state and local clean indoor air laws that may dictate how a smoking area is constructed.⁷⁰

What are housing authorities required to do under the rule?

Prior to implementing their smoke-free policies, PHAs were required to amend all resident leases to incorporate the smoke-free requirements. PHAs had to provide at least 60 days' notice of the lease revisions to tenants and allow tenants a reasonable amount of time to review and accept the new provisions.⁷¹ PHAs could alter the existing lease or ask residents to sign a lease addendum explaining the property's new smoke-free policy.

Notices concerning these lease revisions are subject to a number of fair housing and civil rights requirements to ensure effective notice to all residents. PHAs must consider, for example, the language access needs of residents with Limited English Proficiency⁷² and effective communication methods for people with a range of disabilities including visual and hearing impairments.⁷³

67. 24 CFR § 965.653(a) (2018).

68. *Id.*

69. *Id.* at § 965.653(b).

70. See *State Legislated Actions on Tobacco Issues (SLATI) State Pages*, AM. LUNG ASS'N, <http://www.lungusa2.org/slati/states.php> (last visited Aug. 20, 2019).

71. U.S. DEP'T OF HOUS. AND URBAN DEV., HUD GUIDANCE ON INSTITUTING AND ENFORCING SMOKE-FREE PUBLIC HOUSING POLICIES, PIH 2017-03 2 (Feb. 15, 2017).

72. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2018); *Lau v. Nichols*, 414 U.S. 563, 566 (1974).

73. The Rehabilitation Act of 1973, 29 U.S.C. § 794 (2018); The Fair Housing Amendments Act, 42 U.S.C. § 3604 (2018); Americans with Disabilities Act of 1990, tit. II, 42 U.S.C. §§ 12131-34 (2018). These civil rights laws protect people with disabilities from discrimination in housing including the right to reasonable accommodations. HUD and DOJ have interpreted these laws to require federal housing programs to communicate with blind and deaf applicants and residents in an “effective” format including furnishing auxiliary aids and services.



Prior to taking any enforcement action, a PHA must also obtain board approval of its smoke-free policy and then amend its PHA plan.⁷⁴ If the new smoke-free policy constitutes a significant amendment to the PHA Plan, the PHA must go through the public notice and comment process prior to

amending the PHA plan. Resident input is key to successful implementation and enforcement of a smoke-free rule and PHAs should encourage tenants to engage in a meaningful public participation process. [See Chapter 4.0](#) for more information on the importance of resident engagement.

What is a PHA Plan?

Federal law requires PHAs to develop a PHA plan that must be approved by HUD.⁷⁵ The PHA Plan includes information and local policies for each PHA's public housing program, including the Admission and Continued Occupancy Plan (ACOP), management and operation policies, and grievance procedures.

Residents, program participants, advocates and the public may engage in the PHA's planning process to better understand the PHA's policies and plans, to make comments that will guide the PHA towards the most beneficial change, or to object to proposed policies when necessary. Housing advocates should work with PHA staff and governing boards, program participants, tenant councils and Resident Advisory Board members to establish policies and housing programs that benefit low-income program participants and applicants.

The PHA Plan process presents a great opportunity for residents and advocates to comment on the PHA's smoke-free policy on an annual basis.

74. U.S. DEP'T OF HOUS. AND URBAN DEV., HUD GUIDANCE ON INSTITUTING AND ENFORCING SMOKE-FREE PUBLIC HOUSING POLICIES, PIH 2017-03 2 (Feb. 15, 2017).

75. 42 U.S.C.A. § 1437c-1 (West 2018).

What are tenants required to do under the rule?

The residents, once properly noticed, must sign lease amendments as a condition of continued occupancy in their public housing units. Residents then have an obligation to ensure that all members of their households, residents' guests and other persons under the resident's control do not smoke in restricted areas or in outdoor areas designated smoke-free.

What is a reasonable accommodation?

Over the past several decades, disability rights groups have fought to protect the rights of persons with disabilities to fully access employment, education, and housing. In 1998, Congress amended the Fair Housing Act to add disability as a protected class.⁷⁶ In doing so, Congress ensured that the Fair Housing Amendments Act (FHAA) would stand as a "clear pronouncement of a national commitment to end the unnecessary exclusion of persons with disabilities from the American mainstream."⁷⁷ In addition to adding disability as a protected class,⁷⁸ Congress added an affirmative obligation for housing providers to make reasonable accommodations in housing rules and policies. Reasonable accommodations have become a powerful tool for ensuring that people with disabilities can fully access housing.

Along with the FHAA,⁷⁹ the Americans with Disabilities Act (ADA)⁸⁰ and the Rehabilitation Act of 1973⁸¹ require reasonable accommodation for individuals with disabilities. Federally assisted housing is subject to all three laws.

In the housing context, a reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. A housing authority must grant a requested accommodation if it is necessary to accommodate the disability and does not create an undue financial or administrative burden. In some cases, PHAs may

bear the costs of providing a reasonable accommodation. Failure to provide a reasonable accommodation may be construed as discrimination.⁸² Practically, a reasonable accommodation helps eliminate barriers to full use and enjoyment of housing for individuals with disabilities.

Are PHAs required to grant reasonable accommodations for smoking?

Smoking is not a disability as defined by fair housing and civil rights laws, however some residents may experience covered disabilities that make compliance with a smoke-free policy particularly difficult. A tenant who requests assistance in complying with the policy is not asking for an accommodation to a smoking addiction, but for the underlying disability that frustrates the tenant's ability to comply with the smoke-free rules.

HUD has been clear that PHAs must comply with federal law and consider requests for reasonable accommodations related to smoking and grant requests in appropriate circumstances.⁸³ Different disabilities will raise unique compliance challenges. Each request for an accommodation must be considered on a case-by-case basis, taking into account individual needs. Smoke-free policies will affect people with a range of disabilities including:

- Those with mobility impairments who face challenges walking to a designated smoking area;
- Those with mental health, cognitive, or learning disabilities who have difficulty either remembering that a smoke-free policy exists or understanding and complying with traditional cessation services; and
- Those who are homebound due to a variety of disability-related issues and cannot leave the property to smoke.

PHAs are required to have a local reasonable accommodation policy. HUD encourages PHAs to include reasonable accommodation language in their lease

76. 42 U.S.C.A. § 3601, *et seq.* (West 2018).

77. H.R. REP. NO. 100-711, at 18 (1988), as reprinted in 1988 U.S.C.C.A.N. 2173, 2179.

78. The FHAA also added families with children as a protected class and further increased enforcement provisions.

79. 42 U.S.C.A. §§3601, *et seq.*

80. 42 U.S.C.A. §§ 12131, *et seq.* (West 2018).

81. 29 U.S.C.A. §794 (West 2018).

82. 42 U.S.C.A. §3604(f).

83. U.S. DEP'T OF HOUS. AND URBAN DEV., HUD GUIDANCE ON INSTITUTING AND ENFORCING SMOKE-FREE PUBLIC HOUSING POLICIES, PIH 2017-03 5-6 (Feb. 15, 2017).

amendments with respect to smoke-free housing.⁸⁴ PHAs should also consider revising their reasonable accommodation policies to include specific examples of reasonable accommodations for people with disabilities who smoke (*See* the Appendix for a sample reasonable accommodation policy). Examples of such accommodations may include:

- Allowing a tenant with a mobility impairment to use e-cigarettes or move to a different room, closer to the exit and outdoor designated smoking area;
- Granting a tenant with mental health disabilities more time to work with a social worker on a plan to comply with the smoke-free policy; and
- Providing a homebound individual a reasonable opportunity to purchase nicotine products that will not violate the rules such as nicotine replacement therapy (e.g., the nicotine patch, gum, or lozenge).

Whether to grant a reasonable accommodation is a fact-specific decision. Before a housing provider refuses a requested accommodation, HUD and DOJ guidelines encourage PHAs to engage in an “interactive process” with the tenant to discuss alternative accommodations that can satisfy the tenant’s needs without imposing an undue burden or fundamental alteration of the program.⁸⁵

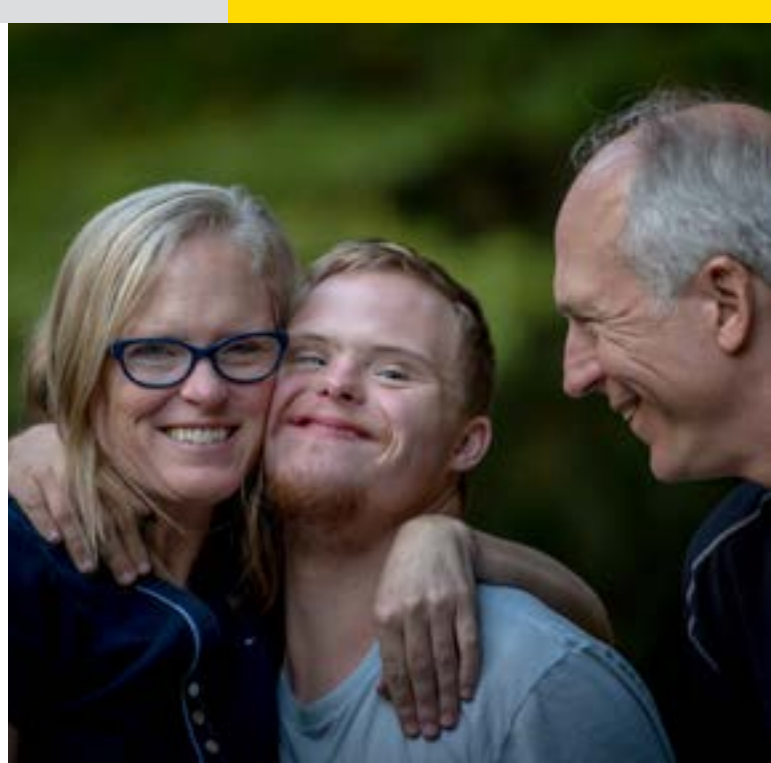
Are PHAs required to grant reasonable accommodations to avoid exposure to secondhand smoke?

Public housing residents that experience disabilities related to secondhand smoke exposure similarly have the right to a reasonable accommodation in housing. A family with a member with asthma, for example, may request to move units to be farther away from a designated smoking area. PHAs are required to engage in the process outlined above when accommodating tenants who are negatively impacted by secondhand smoke.

⁸⁴. *Id.* at 6.

⁸⁵. U.S. DEP’T OF JUSTICE & U.S. DEP’T OF HOUS. AND URBAN DEV., JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE REASONABLE ACCOMMODATION UNDER THE FAIR HOUSING ACT 7-9 (2004).

⁸⁶. Hous. Auth. of the City of Bangor v. Jacobsen, Bangor District Court, No. BAN-SA-09-279 (July 27, 2009).



Case Study: In 2009, prior to HUD’s smoke-free housing rule, one court found that a PHA was obligated to accommodate a tenant by not proceeding with an eviction and allowing a tenant more time to comply with the smoke-free policy because it was both necessary and reasonable.⁸⁶ In that case, the tenant experienced schizophrenia, which presented barriers to her compliance with the smoke-free policy. After the PHA sent a termination notice due to the noncompliance, the tenant requested that she be allowed more time to modify her behavior with the help of a mental health counselor, in order to comply with the policy. The PHA denied the request and moved forward with the eviction. The court found that the tenant was entitled to a reasonable accommodation under fair housing laws and ordered that the PHA (1) allow the tenant to maintain possession of the unit and (2) grant her more time to comply with the smoke-free policy.

4.0 Resident Engagement as a Key Implementation Tool

PHA staff were under a legal obligation to consult with residents as they developed their local smoke-free policies. As discussed above, PHAs are required to (1) provide residents with at least 60-days-notice of any lease revisions and (2) allow for public comment if the smoke-free policy constitutes a significant amendment to the PHA Plan. However, a PHA should look beyond these minimum legal requirements and engage residents during all phases of development, implementation and amendment of its smoke-free policy.

HUD strongly encourages PHAs to collaborate meaningfully with tenants and the surrounding community regarding their smoke-free policy on an ongoing basis.⁸⁷

Why is it important for PHAs to collaborate with residents?

Resident participation in the development of a smoke-free policy is important because it increases resident compliance and helps in developing more equitable policies. When residents have an opportunity to be heard and to meaningfully contribute to the drafting process, they will have a vested

interest in the policy's success. Resident consultation is also a great way for the PHA to ensure that the policy directly responds to the needs of tenants. As PHAs review their smoke-free policies, residents can supply solutions to issues not previously considered. In addition, consultation empowers residents to be engaged and involved with other events or services offered on the property and can foster a sense of community between neighbors.

Ongoing resident engagement also offers a chance for PHAs to hear about how their policies are being implemented in practice and helps identify resident advocates who can help support the policy. For example, when the Philadelphia Housing Authority adopted its mandatory smoke-free rule,⁸⁸ staff engaged residents at multiple in-person meetings. Senior residents surfaced as champions of the policy due to concerns about fire safety. Prior to having the smoke-free policy, there had been a number of fires linked to smoking at Philadelphia Housing Authority properties including one in which a child died.⁸⁹

87. DEP' T OF HOUS. AND URBAN DEV., IMPLEMENTING HUD'S SMOKE-FREE POLICY IN PUBLIC HOUSING GUIDEBOOK 6, 12-14, 18-20, 43 (2017) [hereinafter "Implementing HUD's Smoke-Free Policy"]; DEP' T OF HOUS. AND URBAN DEV., CHANGE IS IN THE AIR: AN ACTION GUIDE FOR ESTABLISHING SMOKE-FREE HOUSING 47-50, 62-63 (2014) [hereinafter "Change is in the Air"]; DEP' T OF HOUS. AND URBAN DEV., HUD GUIDANCE ON INSTITUTING AND ENFORCING SMOKE-FREE PUBLIC HOUSING POLICIES, PIH 2017-03 6 (Feb. 15, 2017) [hereinafter "PIH 2017-03"].

88. Philadelphia Housing Authority first adopted a voluntary smoke-free rule in 2015 and then a mandatory rule in 2018 in response to the HUD requirement.

89. *Philadelphia Bans All Smoking in Public Housing Units*, CBS PHILLY (April 2, 2018), <https://philadelphia.cbslocal.com/2018/04/02/philadelphia-bans-all-smoking-in-public-housing-units/>.



The Philadelphia Housing Authority (PHA) smoke-free policy was a result of a citywide “Get Healthy Philly” initiative. PHA partnered with the Philadelphia Department of Public Health and other community health organizations to develop its policy. PHA was motivated to put a smoke-free policy in place after having several fires linked to smoking at its properties. From the beginning, PHA tried to assure residents that the policy’s goal was to improve air quality and not to penalize smokers.

When the policy was proposed, residents submitted over 1,500 letters to voice their concern. The Resident Advisory Board (RAB) maintained a blog to provide updates to residents throughout the policy’s development process. The RAB met with PHA and other stakeholders to negotiate a policy that addressed the concerns of residents. Through the initiative, the PHA developed partnerships with three health clinics that provide affordable healthcare to residents.

What types of resources should the PHA provide to residents?

A key determinant of the success of smoke-free policies is the support given to public housing residents. Support includes education about the requirements of the rule, cessation services, and other resources.

Education is central to successful implementation. Handouts, including infographics or one-page summaries of the rule, present information to residents in a clear and concise manner. Residents must clearly understand what the policy requires of them in order to comply. PHAs should communicate that the policy does not prevent them from smoking, rather it prohibits indoor smoking. If there are designated smoking areas on the property, for example, the PHA should clearly delineate the boundaries of the area by distributing flyers and also marking the physical boundaries on the property. In addition, PHAs should consider emphasizing (1) that smoke-free housing is a

federal requirement and (2) the public health reasons related to the rule including that second-hand smoke exacerbates respiratory and chronic illnesses and interferes with many residents’ ability to comfortably reside in their units. PHAs must provide tenants with the resources and tools to be well-informed about the rule.

Other important resources for residents include cessation support and health-related services and referrals. For those residents looking to quit smoking, PHAs should provide materials about free options and consider offering the materials to tenants at move-in and at annual recertification. PHAs should also reach out to community members to understand what services may be made available on-site to improve compliance with smoke-free rules. In some cases, local health clinics can provide on-site counseling, medication⁹⁰ and/or host support groups⁹¹ and Medicare and Medicaid will pay for the services.⁹²

90. The US Food and Drug Administration has approved several types of medication to assist smokers quit. *Individuals* can use over-the-counter nicotine replacement therapies, such as patches, lozenges and gum. *Nicotine Replacement Therapy for Quitting Tobacco*, AM. CANCER SOC’Y (Jan. 12, 2017), <https://www.cancer.org/healthy/stay-away-from-tobacco/guide-quit-smoking/nicotine-replacement-therapy.html>. Doctors can also write a prescription for nicotine inhalers, nicotine nasal sprays, or “quit pills,” such as Chantix or Zyban. *Quit Smoking Questions and Answers*, AM. LUNG ASS’N (Mar. 4, 2019), <https://www.lung.org/stop-smoking/i-want-to-quit/quit-smoking-qa.html>.

91. The Freedom from Smoking Group Clinic provides smokers support and tools for overcoming tobacco addiction. Freedom from Smoking Clinics, AM. LUNG ASS’N, <https://www.lung.org/stop-smoking/join-freedom-from-smoking/freedom-from-smoking-clinics.html> (last visited Aug. 20, 2019).

92. *Counseling to Prevent Tobacco Use & Tobacco-Caused Disease*, MEDICARE.GOV, <https://www.medicare.gov/coverage/counseling-to-prevent-tobacco-use-tobacco-caused-disease> (last visited Aug. 21, 2019); *State Medicaid Coverage for Tobacco Cessation Treatments and barriers to Accessing Treatments—U.S., 2015-2017*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Apr. 6, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/mm6713a3.htm>; *New Opportunities: Smokefree Multi-Unit Housing and Tobacco Cessation*, AM. LUNG ASS’N, <https://www.lung.org/our-initiatives/tobacco/smokefree-environments/multi-unit-housing/new-opportunities-smokefree.html> (last visited Aug. 20, 2019); *Tobacco Cessation Treatment: What Is Covered?*, AM. LUNG ASS’N (May 17, 2018), <https://www.lung.org/our-initiatives/tobacco/cessation-and-prevention/tobacco-cessation-treatment-what-is-covered.html>.

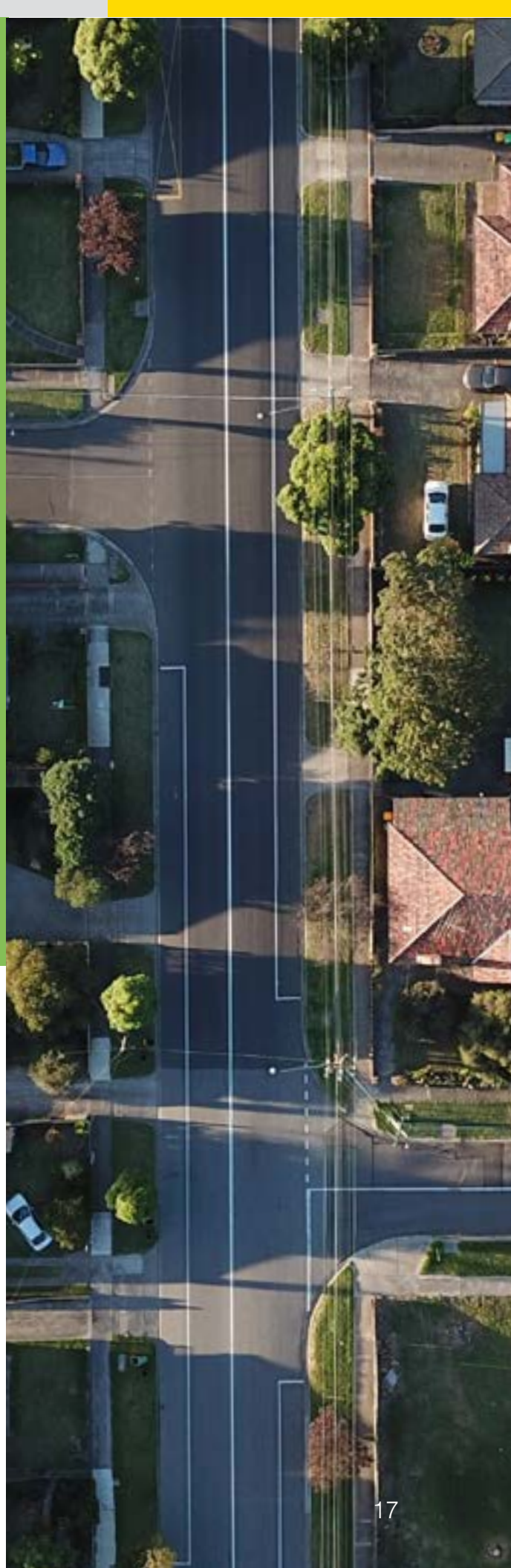
The Housing Authority of Covington (HAC) worked closely with the Northern Kentucky Health Department (NKHD) to develop and implement its smoke-free-policy. The partnership used tenant engagement as the starting point for the development of the smoke-free policy. Residents and staff submitted a survey about their interest and concerns in having a smoke-free policy. HAC also hosted several forums for residents and staff.

Educational programs provided residents information about the dangers of smoking. Cessation resources were available to residents seeking to quit. Before the implementation of the policy, HAC conducted a pre-policy air nicotine test to use to document the change in air quality. The process to develop and implement the smoke-free policy took almost four years.⁹³

93. For more information about the partnership between the Housing Authority of Covington and the Northern Kentucky Health Department, see *Taking the Covington Smoke-Free Public Housing Model Statewide*, Insider Louisville (Aug. 6, 2017), <https://insiderlouisville.com/government/taking-the-covington-smoke-free-public-housing-model-statewide/>.

The implementation of a smoke-free policy can be used as an initial step in promoting resident health. In addition to providing cessation services or addiction treatment, for example, PHAs could partner with community groups to provide education about healthy eating habits or mental health support. PHAs should determine what services and resources residents will need and what is available in the community at low or no cost. [See Chapter 5.0](#) for a discussion of the importance of community partnerships.

Resident engagement and education must be ongoing. Smoking is an addiction that affects some public housing residents for a lifetime.



Do organized resident groups have a role in development and implementation?

PHAs should strongly consider partnering with local resident councils or other resident organizations where they exist. PHAs should seek partnership with resident organizations as a resource for inviting residents to participate in creating a smoke-free policy, disseminating information, organizing meetings and facilitating conversations between the PHA and residents. While PHA staff alone could develop and implement a smoke-free policy, resident organizations must be included because they will likely have a more intimate understanding and connection with tenants than PHA

staff. Enlisting resident organizations will also frame the implementation of the smoke-free policy as a collaborative effort rather than a policy forced on residents, creating a sense of community and demonstrating the PHA's respect for tenant voices.

Additionally, having resident-led organizations spearhead engagement with residents will signify a PHA's awareness of the power dynamics between the staff and residents. Resident to resident outreach will generate more authentic and fruitful feedback. Engaging resident groups will set the smoke-free policy up for success.

Resident Councils and Other Resident Organizations

Tenant organizations have long been instrumental in protecting residents' rights, preserving affordable housing, and advancing national and local policy. There are different types of tenant organizations, such as local resident groups representing individual buildings in a PHA's public housing portfolio, citywide groups that focus on federal housing issues, and statewide and nationwide groups. Resident participation can ensure that tenants play an integral role in the management process and promote services benefiting all residents.

Resident Councils

HUD regulations provide for proactive tenant participation by public housing residents. The regulation governing tenant participation provides that HUD public housing tenants have a right to organize and that PHAs must recognize any duly elected resident councils, so long as proper procedure is followed (24 C.F.R. § 964.11). Resident councils engage tenants on a range of issues including concerns about property management policies and procedures.

To serve on the resident council, members must be elected by their peers through an established election process. In some areas, there is a jurisdiction-wide residential council, and in others, there is a resident council at each public housing development.

PHAs are required to give, at a minimum, \$25 per occupied unit each year for resident participation activities. In some instances, the partnership between the PHA and the resident council must be formalized. PHAs are required to meet and communicate frequently with resident organizations, as well as fully train resident councils and tenants so that they can be involved in developing and implementing housing policies and programs, including smoke-free rules.

Other Resident Organizations

Some resident organizations have not been formally established under HUD's policies and procedures. The residents may not know there is a required process to establish a resident council or they may have recently organized. PHA staff should still engage these resident organizations when drafting and implementing local smoke-free policies.



How can residents play a role in monitoring the effectiveness of the policy?

PHAs should plan to revisit their smoke-free policies with the help of residents at least once per year. There will inevitably be a need to adjust implementation and enforcement strategies as new issues arise. The enforcement procedures initially put into place may become logistically inefficient or unsustainable. Some PHAs may find there are newly available resources that can be leveraged. Finally, an annual review of the smoke-free policy will allow community members to become more familiar with the policy, creating a continuously engaged community.

The review of the smoke-free policy can be separate from or coupled with the review of the PHA plan. If this review is conducted separately from the formal PHA plan process, PHAs will need to develop methods for addressing comments and concerns. For any review, PHAs should consider thinking through how to measure success and track the impact of the policy on residents.

How can PHAs ensure inclusive engagement and partnerships?

PHAs must make meetings accessible to residents and the public. When providing information to residents, PHA staff and property management must be aware of the language needs of residents. Some residents will not be native English speakers, so information provided to these residents should meet Limited English Proficiency (LEP) requirements and be culturally appropriate.⁹⁴ All meetings should be accessible for people with a range of disabilities.⁹⁵

94. PIH 2017-03, *supra* note 87, at 3; IMPLEMENTING HUD'S SMOKE-FREE POLICY, *supra* note 87, at 21; Language Access, NAT'L HOUSING L. PROJECT, <https://www.nhlp.org/initiatives/fair-housing-housing-for-people-with-disabilities/language-access/> (last visited Aug. 20, 2019).

95. Reasonable Accommodation, NAT'L HOUSING L. PROJECT, <https://www.nhlp.org/initiatives/fair-housing-housing-for-people-with-disabilities/reasonable-accommodations/> (last visited Aug. 20, 2019).

5.0 The Power of Community Partnerships

Why is it important for PHAs to collaborate with community-based organizations?

Community partners are essential to successful smoke-free housing because they will have resources and programs that will alleviate some of the administrative and fiscal burdens of implementing a new smoke-free policy. For example, some tenants will want to comply with a smoke-free policy, but, due to the addictive nature of nicotine, will need assistance and support that a PHA is unable to offer. To assist tenants with quitting or curbing smoking, PHAs should consult public health organizations that provide cessation services and resources to the community such as local public health agencies, tobacco prevention groups, and national quitlines. Such partnerships will be mutually beneficial for the PHAs and the community partners. Many community partners will be able to provide services to residents for free or low cost, and the PHAs will be helping to further the objectives of the community partners while advancing their own smoke-free housing goals.

Community groups that work with specific populations will be able to highlight potential hurdles for that population and can aid in designing solutions. Bringing residents and community members into the process early will help build institutional knowledge about the smoke-free policy within the community. Having institutional knowledge of what the smoke-free policy requires and of why particular strategies were utilized is vital.

It is also important to include community members in the ongoing review of the smoke-free policy as part of the annual plan or other process. Social service and public health organizations may provide new and different services

from year-to-year, which can be integrated into an updated graduated enforcement plan. For example, a non-profit health care agency may start offering free smoking cessation classes which could be included as a resource when a tenant receives a violation notice.

Who are the key community stakeholders?

A community is much more than buildings and infrastructure. Community includes everyone who lives, works, and socializes in the geographic area. Changes to a PHA's rules and procedures are likely to affect a range of community members. PHAs should therefore engage community stakeholders when developing and implementing the smoke-free rule.

A number of community members may want to get involved when a PHA implements its smoke-free policy. For example, the rule allows PHAs to designate a smoking area outside of the twenty-five-foot radius of the building. This designation may have an impact on neighbors. A smoke-free policy may also increase the demand for services provided by public health organizations, health clinics, and counselors.

Community partners are a great resource for developing creative solutions to increase compliance, facilitate resident support groups, develop smoke-free advertisement campaigns, and conduct resident outreach and engagement. Throughout the year, it is important for PHAs to maintain their relationship with community partners, especially service providers. To facilitate effective communication with community partners, a PHA staff member could be designated as the point of contact.



Quitline Services

1-800-QUIT-NOW
(for English Speakers)

1-855-DEJELO-YA
(for Spanish Speakers)

1-800-838-8917
(for Mandarin and Cantonese Speakers)

1-800-556-5564
(for Korean Speakers)

1-800-778-8440
(for Vietnamese Speakers)

Key community groups who commonly collaborate on smoke-free public housing include:

- Property management and PHA staff
- Legal services organizations
- Public health organizations and health care centers including Federally Qualified Health Centers
- Social service organizations
- Each has an important role in the development, implementation, and review of a PHA's smoke-free policy. This chapter describes how to leverage resources and expertise among these key organizations when implementing and enforcing smoke-free public housing.

Other stakeholders that can play a role include:

- Residential Neighbors
- Neighboring businesses
- Resident service providers
- Local government agencies such as health departments
- Youth Groups
- Neighborhood Associations
- Community-based Cultural Organizations
- Police and Fire Departments

Note that this list is not exhaustive. Depending on the needs of your community, it may be necessary to involve other stakeholders in smoke-free housing implementation and enforcement.

Several state health departments have begun to develop resources for PHAs and other property owners to assist in implementing smoke-free policies. Some state health departments have funding to provide resources and services to support the implementation of smoke-free policies.

Industry organizations, such as the National Association of Housing and Redevelopment Officials (NAHRO), have compiled educational materials and trainings for PHAs to use when implementing smoke-free policies.

Clean Air for All created a training manual for people who work in public housing and are tasked with enforcement of smoke-free policies. *Foundations for a Successful Smoke-Free Policy* is a tool for PHA staff, property managers, maintenance workers, and resident services providers. The training module recognizes that PHA staff are a key component of successful enforcement of a smoke-free policy. It requires participants to review the local policy that applies at the PHA and think through issues around implementation and enforcement.



PHA and Property Management Staff

PHA and property management staff play a key role in implementation and enforcement of smoke-free policies. PHAs are encouraged to develop educational programs for their staff members. Through engaging staff about the logistics of their policies, PHAs can learn what services and resources staff need in order to help make the program successful. It is also important to provide training to new staff in order to consistently enforce the rules.

Legal Services Organizations

Legal services organizations are nonprofit organizations that provide free or low-cost legal advice or representation. Many legal services organizations represent tenants in a range of housing-related issues. A working relationship between a PHA and local legal services lawyers benefits both the PHA and residents.⁹⁶ PHAs should consider reaching out to legal services organization when developing and implementing smoke-free policies. Legal services attorneys can help design solutions responsive to tenant concerns. PHAs should also consider contacting local legal services organizations to assist residents who receive notices for noncompliance or to help tenants request reasonable accommodations (either because they smoke and wish to remain housed or they are a nonsmoker whose disability-related symptoms are exacerbated by secondhand smoke).⁹⁷ A legal aid lawyer can help the resident navigate the legal process, saving the PHA time and resources.

Public Health Organizations and Health Care Centers

Public health organizations (PHOs) typically focus on public health advocacy and provide educational materials on public health issues. Sometimes PHOs receive funding to research and develop creative solutions to public health problems. Examples of PHOs include local and state health departments, state tobacco control programs, public health associations, professional organizations, environmental justice advocates, and social and medical service non-profits.

⁹⁶. CHANGE IS IN THE AIR, *supra* note 87, at 49.

⁹⁷. Some public housing residents who have severe health impacts due to non-compliance with or non-enforcement of the smoke-free policy also seek assistance from a legal services organization.

Health care centers provide free or low-cost health services to low-income families at health care centers. Many states have a number of Federally Qualified Health Centers (FQHCs) that provide preventative medical care and other services, regardless of an individual's ability to pay. These centers receive reimbursements from the federal government under Medicare and Medicaid. It is easy to find the FQHCs in your area on the U.S. Health Resources and Services Administration website.⁹⁸

PHAs should inquire whether local PHOs and health care centers have resources available to support compliance with a smoke-free policy, such as cessation counseling and medications. In some instances, like the services offered by FQHCs, Medicare and Medicaid will pay for counseling and cessation medications.⁹⁹ Clinics and PHOs can also provide support for requested accommodations or modifications to assist tenants to comply with the smoke-free policy.

PHAs should proactively engage PHOs and health centers during the development and implementation of a smoke-free policy. PHOs and health centers may, for example, have the capacity to offer on-site office hours with residents. This type of consideration demonstrates PHAs' commitment to creating a healthy home for all public housing families.

98. *Find a Health Center*, U.S. DEPARTMENT OF HEALTH RESOURCES AND SERVICES ADMIN., <https://findahealthcenter.hrsa.gov/> (last visited Aug. 20, 2019).

99. See *supra* note 92.



A *warm hand-off* is when a health professional personally “hands off” a client to another health professional and is used in lieu of simply giving the client a medical referral or a business card. The method uses face-to-face communication to prevent medical errors, allows patients to ask questions and seek clarification, and builds a rapport with patients. The warm handoff can be adapted by PHAs. If possible, PHAs should work with PHOs to host office hours at the property during which PHA staff can personally introduce tenants to health professionals who can help develop a compliance strategy.

When Providence Housing Authority first launched its smoke-free policy in April 2011, all uninsured adults residing in Providence Housing Authority properties were offered free nicotine-replacement therapy as well as individual and group support classes. The PHA’s partnership with local health services supported a number of residents to comply with the smoke-free policy.



Social Service Organizations

Social service organizations provide a range of services to the public—from childcare to education to food assistance. For low-income families, the services provided by social service organizations are a vital lifeline. A PHA is likely to find several social service organizations within its jurisdiction that serve the needs of public housing families. It is especially important for PHAs to team up with organizations that can support seniors and people with disabilities. Case managers, for example, can help tenants with disabilities design and comply with an accommodation plan.

6.0 Effective and Equitable Enforcement

Overview

Successful implementation of HUD's smoke-free rule relies on effective and equitable enforcement. **Effective** enforcement is the PHA's ability to ensure that there is no smoking on its properties. **Equitable** enforcement is the PHA's ability to work with individual residents to support compliance with smoke-free policies. Equitable enforcement is sensitive to both the rights of nonsmokers to live free from secondhand smoke and the fact that housing instability and homelessness are major public health concerns.

Does HUD require a particular enforcement mechanism?

HUD required that PHAs amend tenant leases to incorporate the smoke-free requirements.¹⁰⁰ The lease requirement states that tenants, members of the tenants' households, guests,¹⁰¹ or persons under the tenant's control¹⁰² cannot engage in the smoking of prohibited tobacco products in restricted areas or in outdoor areas that the PHA has designated as smoke-free. As with all lease provisions, a serious or repeated violation of the smoking rules may be grounds for eviction.¹⁰³ Note however, that all public housing residents are entitled to a formal grievance procedure prior to eviction.¹⁰⁴

While PHAs are required by federal regulation to include a smoking prohibition in their leases, HUD encourages PHAs to implement policies with multiple steps prior to an eviction (graduated enforcement).

¹⁰⁰. 24 C.F.R. § 965.655 (2018).

¹⁰¹. 24 C.F.R. § 966.4(f)(12)(i)(B).

¹⁰². 24 C.F.R. § 966.4(f)(12)(ii)(B).

¹⁰³. 24 C.F.R. § 966.4(l)(2)(i).

¹⁰⁴. 24 C.F.R. § 966.52.



Public Housing Grievance Procedures

The public housing grievance procedure is designed to improve management-tenant relationships, promote an improved housing environment and avoid costly and divisive litigation by channeling disputes into an informal and relatively non-adversarial administrative process that provides aggrieved tenants with most of the essential elements of due process. The grievance process can assure that management actions respect the important rights of program beneficiaries and further the statutory goal of providing tenants with affordable, stable, decent, safe, and sanitary housing.

A tenant can use the grievance process when he/she has an individual dispute concerning a PHA action or non-action involving either the tenant's lease or any PHA regulation that adversely affects the tenants' rights, duties, welfare, or status.¹⁰⁵ The right to a grievance procedure would be triggered when a tenant receives a notice from a PHA for violating a smoking restriction. A resident whose health has been negatively impacted due to an unenforced smoke-free policy may also access the PHA's grievance procedure.

What is graduated enforcement and why is it a best practice?

A graduated enforcement plan is a critical part of equitable implementation because it recognizes that many tenants struggle with a nicotine addiction and that eviction should be a last resort. In a graduated enforcement plan the PHA will take several intervention steps prior to beginning the eviction process. These steps can and should include verbal and written warnings, and additional opportunities to comply with the smoke-free policy.

HUD recommends a transparent and graduated enforcement process. In its implementation guide HUD states: "Strict enforcement structures may not provide room for flexibility or behavior change by the tenant. The goal is to provide safe and stable housing for all, not to evict tenants."¹⁰⁶

HUD urges PHAs to implement a graduated enforcement plan with at least three, *if not more*, steps. Each step should include a warning to the tenant in writing and, ideally, an opportunity to meet with PHA or management staff in person. At each meeting, staff should provide culturally appropriate information about how to comply with the smoke-free policy and about where support is available, including:

- Local cessation resources
- Sources of affordable nicotine replacement therapies
- Clear instructions on the designated smoking areas or alternative plan.

At these meetings, staff should emphasize that the smoke-free policy is intended to improve public health and that smoke-free rules are not intended to be an eviction tool. Residents may be reminded that they are not required to quit, but that they must only smoke in certain locations and that persistent refusal to comply with the smoke-free policy could result in an eviction.

¹⁰⁵ 24 C.F.R. § 966.50. Although note that some PHA actions are excluded from the grievance procedure. 24 C.F.R. § 966.51.

¹⁰⁶ U.S. DEP'T OF HOUS. AND URBAN DEV., IMPLEMENTING HUD'S SMOKE-FREE POLICY IN PUBLIC HOUSING 16 (2017).

Practice tip: Public housing residents who are evicted from federally-assisted housing for a serious violation of the lease may be barred from the Section 8 Housing Choice Voucher program. PHAs should therefore avoid characterizing a violation of a smoke-free rule as a serious violation of the lease. Instead of immediately filing a lease termination notice, a better practice is to give the tenant several chances to comply under a graduated enforcement process. If the PHA later decides to issue an eviction 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.

What are other aspects of an equitable enforcement policy?

Resetting the clock: In addition to graduated enforcement, PHAs should implement a policy that allows residents to reset the clock when there has not been a violation recorded during a specified period of time. For example, if a tenant receives one warning but then does not receive another for six months, the initial warning would be erased from the record and the resident would be able to “start over” in the graduated enforcement process. Such a policy will not only help prevent evictions for smokers who “slip,” but will also create a strong incentive for residents to take reasonable steps to comply with the smoke-free policy.

No evictions for smoking guests: While the terms of residents' leases make them liable if their guests or other people “under their control” smoke, absent repeated, willful violations, PHAs should generally not evict residents because a guest is smoking for several reasons. First, tenants often have no control over their guests. Second, evicting residents due to a smoking guest will not further HUD's goal of positive health outcomes for public housing residents because isolated incidences of smoking in a unit will do little to permanently impact the air quality of a building. Evicting a tenant because a guest is smoking is aggressive enforcement, which is discouraged by HUD.¹⁰⁷

Provide reasonable accommodations: PHAs must consider requests for reasonable accommodations if a resident's failure to comply with the smoke-free policy is related to a disability. [See Chapter 3.0](#) for additional information on reasonable accommodations in the smoke-free housing context.

Is a PHA allowed to apply fees or fines to enforce its smoke-free policy?

Only in limited cases can PHAs collect charges in addition to rent from tenants. HUD regulations limit such charges exclusively to tenant-caused damages, excess utility usage, late fees, and security deposits.¹⁰⁸ In addition, tenant leases must set forth the basis for determining excess repair and utility charges.¹⁰⁹ The final smoke-free rule does not expressly authorize or prohibit the use of fines to enforce the smoke-free policy. However, HUD has stated that a violation of the smoke-free policy should be enforced in a manner similar to other civil lease violations.¹¹⁰

NHLP's position is that except in limited circumstances, as explained below, a violation of the smoke-free policy does not fall within one of the narrow instances in which a PHA can assess a fine or fee on a public housing tenant. Property management or PHA staff may argue that levying fines is within its enforcement discretion because the fine is directly related to the damage caused by smoking in the unit. However, charges for repairs must be a result of

¹⁰⁷. Instituting Smoke-Free Public Housing, 81 Fed. Reg. 87,430, 87,437 (Dec. 5, 2016).

¹⁰⁸. 24 C.F.R. § 966.4(b) (2018).

¹⁰⁹. 24 C.F.R. § 966.4(b)(2).

¹¹⁰. See Instituting Smoke-Free Public Housing, 81 Fed. Reg. 87,430, 87,431, 87,437 (Feb. 3, 2017); U.S. DEP'T OF HOUS. AND URBAN DEV., IMPLEMENTING HUD'S SMOKE-FREE POLICY IN PUBLIC HOUSING GUIDEBOOK 10 (2017).

misuse by the tenant, a member of the tenant's household, or a guest of the tenant,¹¹¹ and the damage must be beyond normal wear and tear.¹¹² In many cases, damage caused by smoking occurred prior to the implementation of the smoke-free policy when smoking was allowed in the unit. Also, unit turnover can make it difficult to assess who caused smoking damage, especially when the unit has undergone few renovations. Last, smoking damage that occurred prior to a smoke-free rule such as stained wall paint is best characterized as ordinary wear and tear.

If a PHA chooses to use fines or fees, the PHA is only permitted to impose fines for damage directly related to a specific violation of a smoke-free policy.¹¹³ Smoking damage in residential housing can take time to develop, thus making it difficult to assess who caused the damage. If a PHA has renovated a unit after the implementation of a smoke-free policy (with at least a thorough cleaning and repainting) and can identify the resident that caused a smoking stain or other damage, there may be grounds to charge a fine or fee.

It is important to note that in its guidance, HUD allows for fines and fees for smoking-related lease violations. If a PHA decides to use fines in its enforcement plan, it is important to remember that the PHA can only evict a resident for good cause. Failure to pay an extra charge is not good cause and **does not justify** an eviction for nonpayment of rent.¹¹⁴ Also, should the PHA use fines or fees, any excess charges do not become due and collectible until two weeks after the PHA has given the tenant written notice of the charges.¹¹⁵

Any fine or fee puts public housing residents at a greater risk of eviction. Of those who live in public housing, 62%

are extremely low-income,¹¹⁶ 22% are very low-income,¹¹⁷ and 10% are low-income.¹¹⁸ Residents can legally challenge fines and fees for smoking; PHAs should consult a lawyer before imposing them for violating smoke-free rules.

Can PHAs use smoking monitors and detection kits to prove a tenant was using tobacco?

PHAs should use caution if installing smoking monitors and detection kits as part of their enforcement plans. The evidence obtained by a monitor or kit may be challenged as unreliable when used in court to prove that a resident violated a smoke-free policy.¹¹⁹ Monitors react to changes in the air quality, whereas testing kits require collecting a sample. Nicotine monitors and kits vary in function and require specialized expertise for use.¹²⁰ For example, some detect nicotine or specific particles.¹²¹ Some monitors provide immediate alerts, while others require a lab to analyze the collected sample. Other smoke-producing sources, such as cooking, burning candles, incense, or outdoor air pollution, may affect particulate matter detection.¹²²

If a PHA elects to use monitors, staff should be well-versed on how the monitors function because it is easy to contaminate a sample collection or to misinterpret the results.¹²³ It is especially important to know if the device can distinguish cigarette smoke from other sources of smoke, as this will affect the validity of the test results.¹²⁴ It is also essential to understand that monitors and kits measure the concentration of a substance, not the location of the source. A monitor that detects secondhand smoke, for example, may not distinguish secondhand smoke originating in the tenant's

111. 24 C.F.R. § 966.4(f)(10),(h)(2).

112. Instituting Smoke-Free Public Housing, 81 Fed. Reg. at 87,440. See also 24 C.F.R. 966.4(b)(2).

113. IMPLEMENTING HUD'S SMOKE-FREE POLICY, *supra* note 87, at 21 (2017).

114. On the other hand, the failure of the tenant to pay legally imposed excess charges could constitute a material violation of the lease.

115. 24 C.F.R. 966.4(b)(4) (2018).

116. *National Resident Characteristics for Public Housing*, RESIDENT CHARACTERISTICS REP., <https://hudapps.hud.gov/public/picj2ee/Mtcsrcl> (last viewed Feb. 19, 2019). A family is extremely low-income if their income is at or below 30% of the AMI.

117. *Id.* family is very-low income if their income is at or below 50% of the AMI.

118. *Id.* A family is low-income if their income is at or below 80% of the AMI.

119. See IMPLEMENTING HUD'S SMOKE-FREE POLICY, *supra* note 87, at 38; Laura Rosen et al., *Feasibility of Measuring Tobacco Smoke Air Pollution in Homes: Report from Pilot Study*, 12 INT'L J. OF ENVTL. RES. AND PUB. HEALTH 15,129, 15,138-15,140 (Nov. 30, 2015).

120. See IMPLEMENTING HUD'S SMOKE-FREE POLICY, *supra* note 87, at 38.

121. Benjamin J. Apelberg et al., *Environmental Monitoring of Secondhand Smoke Exposure*, 22 TOBACCO CONTROL 147, 147-149 (Jul. 29, 2012).

122. Yuan Liu et al., *Detection of Secondhand Cigarette Smoke via Nicotine Using Conductive Polymer Films*, 15 NICOTINE AND TOBACCO RES. 1511 (2013); Laura Rosen et al., *supra* note 119, at 15,138-15,140.

123. See IMPLEMENTING HUD'S SMOKE-FREE POLICY, *supra* note 87, at 38.

124. Yuan Liu et al., *supra* note 122, at 1511; Laura Rosen et al., *supra* note 119, at 15,138-15,140.

unit from secondhand smoke drifting into the tenant's unit. PHAs should always couple test results with other observable evidence as a means to establish a violation. Additionally, the placement of monitors and detection kits throughout the property must be done in a manner consistent with fair housing requirements.¹²⁵ PHA staff may not choose to place monitors in tenants' rooms based on their status in a protected class or other characteristic.

Finally, monitors and kits can be expensive.¹²⁶ In addition to purchasing the monitor or kit, the PHA may incur additional costs to have samples analyzed. A PHA should consult an attorney before finalizing the incorporation of monitors and detection kits into its enforcement plan.

Note that monitors can be used as an effective educational tool to help educate tenants about second- and third-hand smoke.

How can PHAs enforce designated smoking areas?

If a PHA designates smoking areas on-site, the PHA should provide clear and accessible information to residents about the location of the smoking area. For example, the PHA can distribute maps that specifically show the boundary of the smoking area, along with clear signage around the smoking area perimeter. PHAs should also be clear about who can enforce the designated smoking areas. If management staff or security cameras will be monitoring the area, residents should be notified in advance.

What role should neighbors play in enforcement of the rule?

NHLP strongly discourages PHA policies that allow neighbors to bring lawsuits directly against each other. Allowing tenants to sue each other will create distrust and hostility among residents. It will also increase housing instability.

Instead, PHAs should implement policies that urge neighbors to inform property management and PHA staff when they believe (1) a resident is smoking in a restricted area or outside of designated smoking areas or (2) second-hand smoke is coming into their unit. A neighbor's complaint can serve as good cause to inspect the tenant's unit for evidence of smoking. PHAs should create an easy way for residents to lodge complaints about possible violations of the smoke-free policy, such as a mailbox for them to leave phone messages on (anonymously if desired).

However, the PHA should always substantiate a neighbor's complaint with additional evidence. PHA and property management staff should be solely responsible for enforcing the smoke-free policy. Neighbors in public housing have often lived in the same community for years. Conflicts between residents can arise, and often reflect a complex history. PHA and management staff should therefore take neighbor complaints seriously but always perform their own investigation.

¹²⁵. 42 U.S.C. §§ 3604(b), (f)(2) (2019).

¹²⁶. IMPLEMENTING HUD'S SMOKE-FREE POLICY, *supra* note 87, at 38.

7.0 Alternative Enforcement Mechanisms for Equitable Smoke-Free Housing: Lessons for the Future

Are there alternative ways to enforce smoke-free rules?

To implement smoke-free housing, HUD revised the federal public housing regulations to include smoking in restricted areas as grounds for eviction.¹²⁷ PHAs were therefore required to amend public housing leases to prohibit smoking. Graduated enforcement and other equitable policies are encouraged, but not required, by HUD. Consequently, and despite sub-regulatory guidance, we know anecdotally that some PHAs strictly interpret the smoking rule as a “one-strike” policy, placing tenants at risk of housing instability because one incident alone of a smoking violation is considered sufficient cause to evict a resident.

There are alternative ways to enforce a smoke-free rule in housing that won’t cause housing insecurity. Other private and HUD-assisted housing providers who choose to adopt smoke-free policies can learn from HUD and take a more equitable approach. Below we offer several other enforcement options.

First, instead of a lease amendment that simply adds smoking as a cause for eviction, housing providers could amend their leases to also include graduated enforcement, notice requirements and an explicit provision stating that violation of smoke-free rules will not be considered a serious or material violation of the lease; unless and until the tenant

has received the required warnings. For example, a lease provision could read:

Smoking of lit tobacco products in restricted areas designated smoke-free is prohibited. A violation under this section will only be considered a lease violation after tenant has been provided with three (3) notices, in writing, of the alleged violation. Each notice will contain (1) an opportunity to cure the alleged violation, (2) information and resources about free cessation services offered in a language appropriate for the tenant, and (3) the right to request a reasonable accommodation. Under no circumstances will a violation of this section be considered a material or serious violation of the lease unless and until the tenant has received the required warnings.

This approach makes clear that an eviction is the last resort. It also requires the housing owner or manager to provide the appropriate resources to tenants, prior to eviction. If the housing provider does not do so, the tenant would have a defense to the eviction, which acts as an additional procedural safeguard.

Another approach available to housing providers is a policy that the owner or manager will not renew the lease if a family does not comply with the smoke-free requirements, but only after notice and an opportunity to cure the violation of smoke-free rules. The policy could state:

¹²⁷ 24 C.F.R. part 966 (2018).

The lease shall be renewed automatically unless the family fails to comply with the smoke-free housing rules/lease provision. Violation of the smoke-free rules is grounds for nonrenewal of the lease at the end of the lease term, but not for termination of tenancy during the course of the lease term. The tenant must be given notice of the violation and a reasonable opportunity to comply (such as 3-6 months) before the manager or owner decides not to renew the lease.

By not renewing the lease (as opposed to filing an eviction) the family avoids a

potentially negative mark on their credit report and/or landlord reference as well as fees and fines associated with an eviction. In addition, under this model, the family has an opportunity to cure the violation prior to any adverse landlord action. The housing provider may also give the family the option to stay but exclude the non-compliant household member if he/she refuses to comply with the smoke-free rules.

There are a number of ways that housing providers can equitably enforce smoke-free housing rules. Adopting the alternative enforcement mechanisms described in this chapter plus the recommendations throughout the manual will improve public health while protecting tenants from evictions and housing insecurity.

8.0 Additional Resources

Developing a Smoke-Free Policy

HUD—Change is in the Air

HUD—Implementing HUD’s Smoke-Free Policy in Public Housing

NHLP—Implementing a Smoke-Free Policy in Public Housing

CDC—Campaign Resources

American Lung Association— Online Course for Successful Implementation

American Lung Association— Effective Enforcement of Smoke-free Policies in Multi-Unit Housing One-Pager

American Lung Association— Implementation and Enforcement Success Stories

Clean Air for All— No smoking Sign

Clean Air for All— Resource Bank

Clean Air for All—Webinars for PHA Staff and Resident Service Providers

Live Smoke Free— Global Directory of Smoke-Free Multi-Housing Programs

North American Quitline Consortium—Public-Private Partnership Initiative

Tobacco Control Legal Consortium— Housing and Smoke-Free Policies

Tobacco Control Legal Consortium at the Public Health Law Center

Educational Resources

CDC— ELECTRONIC CIGARETTES WHAT’S THE BOTTOM LINE?

CDC—Partners

CDC—Resources for Public Housing Residents

CDC— STATE SYSTEM E-CIGARETTES FACT SHEET

CDC—Tips from Former Smokers

CDC—Tips for Specific GroupsClean Air for All—The Smoke-Free Public Housing Project

Harvard TH Chan School of Public Health

Minnesota Smoke-Free Public Housing Web Portal

Public Health Resources

CDC—Data and Statistics

CDC—Smoking & Tobacco Use Multimedia and Tools

CDC—State Fact Sheets

CDC—How to Quit Smoking

CDC- Electronic Cigarettes

1-855-DEJÉLO-YA

American Lung Association—Funding for State Tobacco Control Programs

American Lung Association-Cessation Coverage Information

HHS—SmokeFree.gov

American Cancer Society

American Heart Association

Americans for Nonsmokers' Rights

American Lung Association— Multi-Unit Housing Tenants
being Exposed to Secondhand Smoke

American Lung Association— Cessation for Low-Income
Housing Residents Initiative

American Lung Association— Smoke-Free Public Housing
Initiative

American Lung Association— Tobacco Cessation
Coverage: Exchange Plans

American Lung Association— Tobacco Cessation
Coverage: Standard Medicaid

American Lung Association— Tobacco Cessation
Coverage: Medicaid Expansion

American Lung Association—Tobacco Cessation
Coverage: Medicare

American Lung Association— Tobacco Cessation
Coverage for the Uninsured

9.0 Appendices

9.1 NHLP Model Smoke-free Policy

The following is the NHLP Model Smoke-Free Policy. Prior to implementation of the smoke-free policy, PHAs are required to amend their PHA Plan to include the smoke-free policy. If the new smoke-free policy constitutes a significant amendment to the PHA Plan, the PHA must go through the public notice and comment process prior to amending the PHA plan.

To learn more about the requirements of the smoke-free rule, [See Chapter 3.0](#).

MODEL SMOKE-FREE POLICY

1. Purpose of Policy

The Department of Housing and Urban Development requires every Public Housing Authority (PHA) administering public housing to implement a smoke-free policy in accordance with 24 C.F.R. § 965.653. The purpose of which is to mitigate the irritation and known health effects of secondhand smoke. Additionally, the smoke-free policy is intended to reduce the cost of maintenance and cleaning resulting from smoking and to decrease the risk of fire. The smoke-free policy does not require Residents to stop smoking, but prohibits the use of tobacco products in areas designated smoke-free. A list of Housing Authority's public housing properties can be found on Housing Authority's website.

2. Definitions

"Designated Smoking Area (DSA)" are areas on the grounds of the public housing property or administrative office that is at least twenty-five (25) feet from the building where individuals can smoke and/or use tobacco products without violating the smoke-free policy. The location of all DSAs will be furnished upon request, and will be marked with signage.

"Electronic Nicotine Delivery System (ENDS)," also known as e-cigarettes or vapes, are devices that deliver nicotine or other substances for human consumption through the inhalation of vapor or aerosol created by the device. Also known as vape pen, e-hookah, e-pipe, and e-cigar.

"Minor Household Member" is an individual on the lease of the unit who is under the age of 18.

"Notice of Violation," is a written notice to the Resident regarding a violation of the smoke-free policy. The Notice will be delivered to the dwelling unit or sent by prepaid first-class mail, properly addressed to the resident. The Notice will include the nature of the violation, how to respond to the Notice, and how the Resident can file a grievance under Housing Authority's grievance policy in effect at the time. The written notice shall be placed in the Resident's file, unless the violation is expunged from the Resident's file.

"Prohibited Items" are tobacco products such as cigarettes, cigars, and pipes, including water pipes, also known as water hookahs.

"Smoking" is the inhaling, exhaling, burning, or carrying of any lit cigar, cigarette, or pipe, or any other tobacco or similarly lighted smoking material in any manner or in any form. "Smoking" does not include the use of electronic smoking devices, also known as vapes or e-cigarettes.

"Water Pipes," also known as hookahs, are smoking devices that use coal or charcoal to heat tobacco, and then draws the smoke through water and a hose to the user. Both the heating source and burning of tobacco are sources of contaminant emissions.

"Written Warning" is a written reminder of the smoke-free policy in place. The warning will be delivered to the dwelling unit of the Resident. The warning will include the nature of the violation. The written warning will be placed in the Resident's file, unless the violation is expunged from the Resident's file.

3. Designated Smoke-free Areas

Smoking and/or the use of tobacco products is prohibited in all public housing buildings and administrative offices owned by Housing Authority, as well as twenty-five (25) feet from all windows and doors of such buildings. Smoking is prohibited in all living units, including balconies, decks, or patios, and all interior areas, including, but not limited to, community rooms, community bathrooms, lobbies, reception areas, hallways, laundry rooms, stairways, offices, and elevators.

4. Where Smoking on Grounds of Buildings is Permitted

On the grounds of the property, smoking is permitted at the designated smoking areas. The management in cooperation with resident councils and interested tenants will determine the location of Designated Smoking Areas (DSAs), in accordance with section 504 of the Rehabilitation Act of 1973 and 24 C.F.R. part 8, Title II of the Americans with Disabilities Act, and the Fair Housing Act. The designation will be accessible to all residents and will include appropriate seating, lighting and shade. Housing Authority and management staff will place signs in the areas on the property where smoking is permitted.

5. Applicability of Policy

The smoke-free policy is applicable to all Residents, Housing Authority employees, management staff, visitors, contractors, volunteers, and vendors on all public housing properties owned by Housing Authority. A list of Housing Authority's public housing properties can be found on Housing Authority's website. Residents and household members shall be responsible for ensuring their guests, invitees, and visitors to their Residential units are in compliance with the smoke-free policy.

6. Promotion of the Smoke-free Policy

Housing Authority shall post no-smoking signs throughout the property in common areas, hallways, and in conspicuous places on the grounds of all Residential and administrative office buildings. Housing Authority will use various communication methods, including letters, flyers, and Resident meetings. Additionally, Housing Authority shall provide copies of the smoke-free policy to all Residents and prospective Residents. Information provided will be in a format accessible to all Residents and prospective Residents, including those persons with different primary languages and disabilities. All Residents are expected to comply with the policy as they would any section of their lease with Housing Authority.

7. Reasonable Accommodation Requests

When a Resident makes a reasonable accommodation request concerning the smoke-free policy, due to a disability, Housing Authority will make the accommodation in accordance with the Housing Authority's reasonable accommodation procedures.

Reasonable accommodation requests will be evaluated on a case-by-case basis in order to make a determination. Smokers with certain health conditions, such as cognitive impairment, may require special attention to ensure they understand the smoke-free policy, what community resources are available, and the procedure to request a reasonable accommodation. However, Housing Authority will not permit smoking in a restricted area as a reasonable accommodation for a disability.

Examples of reasonable accommodations that may be granted to people with disabilities include:

- Allowing (1) a tenant with a mobility impairment who smokes to move to a vacant unit closer to the exit with easier access to a designated smoking area or (2) a tenant who is vulnerable to second-hand smoke to move to an available unit farther away from a designated smoking area.
- Granting a tenant who experiences a mental health disability more time to work with a social worker on a plan to comply with smoke-free rules.
- Providing an individual who is homebound due to physical disabilities more time to purchase nicotine products that will not violate a smoke-free policy such as nicotine replacement therapy.

8. Violations of Policy

Smoking in areas designated smoke-free will be considered a violation of the smoke-free policy. Residents will be issued warnings pursuant to the enforcement provisions below. Smoking and/or use of prohibited items by household members, guests, or others under the Resident's control will also be cause for a warning. The repetitive violation of the smoke-free policy will be grounds for enforcement actions, including eviction, by Housing Authority.

9. Enforcement of the Smoke-Free Policy

Housing Authority must have actual knowledge of a violation of the smoke-free policy before enforcement action can be taken. Housing Authority will implement a graduated enforcement procedure that includes escalating warnings and documentation in the Resident's file, up to and including lease termination, as follows:

1. **First Violation**—Residents in violation of the smoke-free policy will receive a written warning upon the first violation. The warning will inform the Resident of the nature of the violation and will remind the Resident of the requirements of the smoke-free policy. The written warning will also include information about an opportunity to have the first violation removed, as a one-time option, if: (a) the Resident completes a cessation program within sixty (60) days of the written warning without the occurrence of another violation, or; (b) if the violation was due to smoking by a minor household member, a guest or other person under the Resident's control. The written warning shall be placed in the Resident's file. The written warning will also include information about community resources available to assist the Resident to comply with the smoke-free policy.
2. **Second Violation**—Residents in violation of the smoke-free policy will receive a written notice of violation upon the second violation. The notice will inform the Resident of the nature of the violation and will request a conference with a management staff designee. The written notice will also include information about an opportunity to have the second violation removed, as a one-time option, if: (a) the option was not already used in response to the first violation and; (i) the Resident completes a cessation program within sixty (60) days of the second written notice without the occurrence of another violation, or; (ii) if the violation was due to smoking by a minor household member, a guest or other person under the Resident's control. The written notice shall include information on how to reply to the notice and the Resident's right to file a grievance pursuant to the grievance policy in effect at the time of such violation. The written notice will also inform the Resident of the consequences of further violation and include information about cessation and other community resources available to residents. The written notice shall be placed in the Resident's file.

All of the above information will be relayed during the conference with management staff. During the conference with the management staff, staff shall share community resources available to assist the Resident to be in compliance with the smoke-free policy.
3. **Third Violation**—Staff will repeat the procedure for the third violation.
4. **Fourth Violation**—Staff will repeat the procedure for the fourth violation.
5. **Fifth Violation**—Upon the fifth violation, Housing Authority may begin eviction proceedings. In which case it will send written notice of a repeated lease violation, with an offer of an informal conference to the Resident. The notice will include the nature of the fourth violation, information on how to reply to the notice and the Resident's right to file a grievance pursuant to the grievance policy in effect at the time of such violation.
6. **Resetting of the Enforcement Action**—If a Resident does not have another violation of the smoke-free policy within six (6) months of any violation, the enforcement procedure will reset to reflect no violations of the smoke-free policy.
7. **Reporting Violations**—Residents shall promptly give Housing Authority a written statement of any incident where smoke is migrating into the Resident's apartment unit from sources outside the Resident's unit. Upon receiving a

written notice about smoke migration, Housing Authority will conduct its own investigation into the source of the smoke.

8. **Grievances**—When a Resident receives a notice of violation or a notice of lease termination, the Resident may file a grievance in accordance with Housing Authority’s grievance policy, a copy of which can be obtained from the Management Office of the development.

10. Community Partners

To increase compliance with the smoke-free policy, Housing Authority will partner with community organizations to provide services and resources to Residents. Medicaid and Medicare recipients may be eligible to receive financial assistance for cessation services and prescription cessation medication depending on State’s Medicaid and Medicare programs. There are other services provided by community-based organizations, including counseling, cessation resources, and support groups. A list of community partners will be provided to Residents and will also be made available upon request.

11. Housing Authority Not Guarantor of Smoke-free Environment

Housing Authority’s adoption of this smoke-free policy does not make Housing Authority or any of its officers, employees, or agents, the guarantor of the health of any Resident or of the smoke-free condition of areas designated smoke-free. However, Housing Authority will take reasonable steps to enforce the smoke-free policy and to make the smoke-free areas as smoke-free as is reasonably possible.

12. Smoke-Free Policy in Resident’s Leases

All Residents residing in public housing shall be subject to the smoke-free policy as incorporated by their lease and/or lease addendum. In the lease and/or lease addendum, the Resident acknowledges that:

1. Housing Authority’s adoption of this policy for a smoke-free living environment does not in any way change the standard of care that Housing Authority or its agents would have to a Resident household to render buildings and premises designated smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental property;
2. Housing Authority specifically disclaims any implied or express warranties that the building, common areas, or Resident’s dwelling unit and premises will have any higher or improved air quality standards than any other rental property;
3. Housing Authority cannot and does not warrant or promise that the rental premises or common areas will be free from secondhand smoke;
4. Housing Authority’s ability to police, monitor or enforce the terms of the smoke-free policy and the lease and/or lease addendum will be dependent in significant part on voluntary compliance by the Resident, members of the household and guests, as well as by other Residents and guests in other parts of the smoke-free area; and thus cooperation of Residents is expected, and;
5. Residents with respiratory ailments, allergies or other physical or mental conditions relating to smoke are informed that Housing Authority does not assume any higher duty of care to enforce the smoke-free policy or the lease and/or lease addendum than any other Housing Authority obligation under the lease.

9.2 Smoke-free Policy Lease Addendum of the Cambridge Housing Authority

The following is the smoke-free policy lease addendum of the [Cambridge Housing Authority](#). HUD's final rule prohibits smoking in all public housing buildings by making it a lease violation for a public housing resident to smoke indoors or within twenty-five feet of the building. PHAs were required to amend all resident leases to incorporate the smoke-free requirements.

To learn more about amending leases, [See Chapter 3.0](#).

LEASE ADDENDUM SMOKE FREE POLICY

This Lease Addendum adds the following paragraphs to the lease between the above referenced Tenant and Cambridge Housing Authority.

PURPOSE OF THE ADDENDUM

The lease for the above-referenced unit is being amended to include Cambridge Housing Authority's policy regarding prohibition of smoking in designated 'no-smoking areas, as defined below.

CONFLICTS WITH OTHER PROVISIONS OF THE LEASE

In case of any conflict with the provisions of this Addendum and other sections of the Lease, the provisions of this Addendum shall prevail.

TERM OF THE LEASE ADDENDUM

The effective date of this lease addendum is _____. This lease addendum shall continue to be in effect until the lease is terminated.

SMOKE FREE POLICY

1. **Purpose:** The purpose of The Smoke-Free Policy is to mitigate irritation and known health effects of secondhand smoke. In addition, the smoke-free policy is intended to reduce the cost of maintenance and cleaning resulting from smoking and decrease the risk of fire in CHA units.
2. **Definition of Smoking:** Smoking is defined as inhaling, exhaling, breathing or carrying any lit cigar, cigarette, pipe, other tobacco product or similarly lighted smoking material in any manner or in any form. E-cigarettes are not considered smoking under this policy.
3. **Definition of a smoke-free area:** Smoking is prohibited in all living units and interior areas, including but not limited to bathrooms, lobbies, hallways, stairways, elevators, management offices, community rooms and balconies. Smoking is prohibited on the grounds of all CHA properties including lawns, parks, courtyards, walkways and parking lots except in designated areas. Designated areas may be determined by the management in cooperation with tenant councils and interested tenants and must be at least 25 feet from all doors and windows.

4. **Promotion of smoke free policy:** Landlord shall post no-smoking signs, promote the policy as appropriate in meetings and discussions with residents, and enforce compliance with the policy. Residents are expected to comply with the policy as they would any section of the lease.
5. **Landlord not a guarantor of smoke-free environment:** Resident acknowledges that Landlord's adoption of a smoke-free environment does not make the Landlord or any of its managing agents the guarantor of Resident's health or of the smoke-free condition of the Resident's unit and the common areas. However, Landlord shall take reasonable steps to enforce the smoke-free terms of its leases and to make the non-smoking area as smoke-free as is reasonably possible. Landlord will address violations of this policy upon Landlord's actual knowledge of said smoking or has been given notice of said smoking.
6. **Lease Enforcement of the Smoke-Free Policy:** A breach of this Lease Addendum constitutes grounds for initiation of the enforcement remedies of the smoke-free policy. Breach of the provisions of the policy by a household member or guest of the resident constitutes a breach of the lease. Residents in breach of this addendum will receive a verbal warning upon the first violation, a written warning on the second, and a request for a conference with the management on the third. Through all enforcement steps, the management will share cessation resources and tips with residents. Upon the fourth violation, the CHA may bring eviction proceedings, in which case it will send written notice of a possible lease violation, with an offer of an informal conference. Residents have a right to file a grievance under the CHA grievance policy.
7. **Disclaimer by Landlord:** Resident acknowledges that Landlord's adoption of a smoke-free living environment does not in any way change the standard of care that the Landlord or managing agent would have to a resident household to render buildings and premises designated smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental property. Landlord 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. Landlord cannot and does not warrant or promise that the rental premises or common areas will be free from secondhand smoke. Resident acknowledges that the Landlord's ability to police, monitor or enforce the agreements of Addendum is dependent in significant part on voluntary compliance by Resident and Resident's guests, as well as by other residents and guests in other parts of the smoke-free area. Residents with respiratory ailments, allergies or other physical or mental condition relating to smoke are put on notice that Landlord does not assume any higher duty of care to enforce this addendum than any other landlord obligation under the Lease.

Executed on this ____ day of _____, 20____

HEAD OF HOUSEHOLD (SIGNATURE)	DATE
CO-HEAD OF HOUSEHOLD (SIGNATURE)	DATE
CAMBRIDGE HOUSING AUTHORITY STAFF (SIGNATURE)	DATE



9.3 Smoke-free Policy of the Cambridge Housing Authority

The following is the smoke-free policy of the [Cambridge Housing Authority](#). Prior to implementation of the smoke-free policy, PHAs are required to amend their PHA Plan to include the smoke-free policy. If the new smoke-free policy constitutes a significant amendment to the PHA Plan, the PHA must go through the public notice and comment process prior to amending the PHA plan.

To learn more about the requirements of the smoke-free rule, [See Chapter 3.0](#).

Chapter 15 SMOKE FREE POLICY

A. Purpose

The purpose of The Smoke-Free Policy is to mitigate irritation and known health effects of secondhand smoke. In addition, the smoke-free policy is intended to reduce the cost of maintenance and cleaning resulting from smoking and decrease the risk of fire in CHA-managed units.

B. Definition of Smoking

Smoking is defined as inhaling, exhaling, breathing or carrying any lit cigar, cigarette, pipe, other tobacco product or similarly lighted smoking material in any manner or in any form. E-cigarettes are not considered smoking under this policy.

C. Definition of a Smoke Free area

Smoking is prohibited in all living units and interior areas, including but not limited to bathrooms, lobbies, hallways, stairways, elevators, management offices, community rooms and balconies. Smoking is prohibited on the grounds of all CHA managed properties including lawns, parks, courtyards, walkways and parking lots except in designated areas. Designated areas may be determined by the management in cooperation with tenant councils and interested tenants and must be at least 25 feet from all doors and windows.

D. Promotion of Smoke Free policy

CHA shall post no-smoking signs, promote the policy as appropriate in meetings and discussions with residents, and enforce compliance with the policy. Residents are expected to comply with the policy as they would any section of the CHA lease.

E. Not a guarantor of Smoke Free environment

Resident acknowledges that CHA's adoption of a smoke-free environment does not make CHA or any of its managing agents the guarantor of Resident's health or of the smoke-free condition of the Resident's unit and the common areas. However, CHA shall take reasonable steps to enforce the smoke-free terms of its leases and to make the non-smoking area as smoke-free as is reasonably possible. CHA will address violations of this policy upon CHA's actual knowledge of said smoking.

F. Enforcement of the Smoke Free Policy

A breach of this policy constitutes grounds for initiation of the enforcement remedies of the smoke-free policy. Breach of the provisions of the policy by a household member or guest of the resident constitutes a breach of the CHA lease. Residents in breach of this policy will receive a verbal warning upon the first violation, a written warning on the second, and a request for a conference with the management on the third. Through all enforcement steps, the management will share cessation resources and tips with residents. Upon the fourth violation, the CHA may bring eviction proceedings, in which case it will send written notice of a possible lease violation, with an offer of an informal conference. Residents have a right to file a grievance under the CHA grievance policy.

G. Disclaimer by CHA

Resident acknowledges that Landlord's adoption of a smoke-free living environment does not in any way change the standard of care that the Landlord or managing agent would have to a resident household to render buildings and premises designated smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental property. Landlord 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. Landlord cannot and does not warrant or promise that the rental premises or common areas will be free from secondhand smoke. Resident acknowledges that the Landlord's ability to police, monitor or enforce the agreements of Addendum is dependent in significant part on voluntary compliance by Resident and Resident's guests, as well as by other residents and guests in other parts of the smoke-free area. Residents with respiratory ailments, allergies or other physical or mental condition relating to smoke are put on notice that Landlord does not assume any higher duty of care to enforce this addendum than any other landlord obligation under the Lease.

9.4 Smoke-free Policy of the Housing Authority of Baltimore City

The following is the smoke-free policy of the [Housing Authority of Baltimore City](#). Prior to implementation of the smoke-free policy, PHAs are required to amend their PHA Plan to include the smoke-free policy. If the new smoke-free policy constitutes a significant amendment to the PHA Plan, the PHA must go through the public notice and comment process prior to amending the PHA plan.

To learn more about the requirements of the smoke-free rule, [See Chapter 3.0](#).

Appendix C: SMOKE-FREE POLICY

I. PURPOSE OF THE POLICY

The Housing Authority of Baltimore City (HABC) adopts this Smoke-Free Policy (the “Policy” or “Smoke-Free Policy”) in accordance with 24 C.F.R. § 965.653, which requires public housing authorities to develop and implement a policy prohibiting the use of prohibited tobacco products in their public housing living units and interior areas and other restricted areas as defined below. The Smoke-Free Policy is intended to improve indoor air quality, benefit the health of public housing residents and HABC staff, reduce the risk of fires, and lower overall maintenance costs. The Policy bars the use of prohibited tobacco products in all HABC public housing living units, and other restricted areas. The Smoke-Free Policy also extends to all outdoor areas up to twenty-five (25) feet from any HABC public housing unit and HABC administrative office buildings. A list of the properties affected by this policy can be found on HABC’s website or provided upon request.

This Policy does not prohibit smoking outside of the smoke-free areas nor does it make HABC a guarantor of resident health or of the smoke-free condition of the resident’s unit or common areas.

II. DEFINITIONS

Designated Smoking Area (DSA) - “Designated smoking area” or “DSA” means areas on the grounds near HABC public housing or administrative office buildings, at least twenty five (25) feet from all doors and windows, in order to accommodate residents who smoke. These areas shall be outside of any restricted areas (as defined below), and may, if HABC deems appropriate, include partially enclosed structures. The location of all DSAs will be furnished upon request.

ENDS - “ENDS” means Electronic Nicotine Delivery System or e-cigarettes, also known as “vaping”.

Interior Common Areas - “Interior common areas” include but are not limited to: hallways, rental and administrative offices, community centers, day care centers, laundry centers, electrical closets, storage units and similar structures.

Notice of Violation – A Notice of Violation or “Notice” - means notice to the resident in writing and delivered to the Dwelling Unit or sent by prepaid first-class mail, properly addressed to the resident. Such Notice will include the specific violation of the Smoke Free Policy and also state the outcome(s) for failure to correct such violation(s).

Prohibited Tobacco Products - “Prohibited tobacco products” are items that involve the ignition and burning of tobacco leaves, such as: cigarettes, cigars, and pipes, including water pipes (“hookahs”).

Public Housing - Public housing is defined as low-income housing, and all necessary

appurtenances (e.g., community facilities, public housing offices, day care centers, and laundry rooms) thereto, assisted under the U.S. Housing Act of 1937 (the 1937 Act), other than assistance under section 8 of the 1937. Public Housing includes Scattered Sites units.

Restricted Area – Restricted area means all public housing living units, interior common areas and outdoor areas within 25 feet from public housing and administrative office buildings.

Smoke-Free Areas - Smoke-Free Areas are areas where smoking is prohibited such as living units and interior common areas, including but not limited to bathrooms, lobbies, hallways, stairways, elevators, management offices, community rooms balconies and on the grounds of all HABC properties including playgrounds, basketball courts, lawns, parks, courtyards, walkways and parking lots except in Designated Smoking Areas (DSAs).

Smoking - Smoking is defined as inhaling, exhaling, breathing or carrying any lit cigar, cigarette, pipe, other tobacco product or similarly lighted smoking material in any manner or in any form. E-cigarettes are not considered smoking under this policy.

Water Pipes (hookahs) - Water pipes (also known as “hookahs”) are smoking devices that use coal or charcoal to heat tobacco, and then draw the smoke through water and a hose to the user. Both the heating source and burning of tobacco are sources of contaminant emissions.

III. PROMOTION OF SMOKE-FREE POLICY

HABC will post signs in the management offices and in conspicuous locations throughout the developments and HABC offices that reference the Smoke-Free Policy. The signs will be in a format accessible to all residents and visitors (including persons with disabilities). HABC will also use various communication letters, flyers, and resident meetings to share information on the Smoke-Free Policy.

IV. PUBLIC HOUSING PROPERTIES COVERED UNDER THE POLICY

Smoking is prohibited in the locations outlined below:

1. All public housing residential units (including HABC’s Scattered Sites inventory);
2. Common areas such as stairwells, community centers, lobbies, laundry rooms and hallways;
3. Areas within 25’ of all residential, management and administrative offices
4. Playgrounds and Basketball courts on HABC properties
5. Balconies and porches on HABC properties

V. PROPERTIES NOT SUBJECT TO THE POLICY

This Policy applies to all public housing properties owned by HABC. The Policy does not apply to properties that are not owned by HABC such as mixed-finance developments and properties assisted under the Housing Choice Voucher Program (HCVP). A list of mixed-finance developments that are not subject to this policy is available upon request.

VI. TYPES OF TOBACCO PRODUCTS PROHIBITED UNDER THE POLICY

The smoking of ignited tobacco products such as cigarettes, cigars, and pipes, including water pipes (hookahs) is prohibited under this Policy. The use ENDS within a dwelling unit is not prohibited by this Policy but the use of such electronic cigarettes is prohibited in all other Smoke-Free Areas.

VII. SMOKING CESSATION PARTNERS

HABC will partner with appropriate organizations to provide smoking cessation information to residents. Medicaid recipients may be eligible to receive financial assistance for cessation services and prescription cessation medications depending on Maryland's Medicaid program. Cessation resources are currently available at http://www.cdc.gov/tobacco/quit_smoking/index.htm. Residents may also contact national telephone-based tobacco cessation services ("quit lines") such as 1-800-QUIT-NOW, and community health centers to obtain information about services that are available through them. A list of HABC's cessation support partners will be provided to residents and will also be made available upon request.

VIII. DESIGNATED SMOKING AREAS (DSA)

HABC may, in its sole discretion, provide Designated Smoking Areas to accommodate residents that smoke. All Designated Smoking Areas will be outside of restricted areas. Designated Smoking Areas will include suitable wellness and safety features, such as appropriate seating, lighting and shade and will be accessible for persons with disabilities, in accordance with section 504 of the Rehabilitation Act of 1973 (and the U.S. Department of Housing and Urban Development's (HUD) implementing regulations at 24 CFR part 8), Title II of the Americans with Disabilities Act, and the Fair Housing Act. This may include a flat or paved pathway, ramp, and adequate lighting. Designated Smoking Areas are not required under HUD regulations, and HABC may, at any time restructure, remove in part or in whole, or otherwise eliminate a Designated Smoking Area as HABC deems appropriate, after giving notice to public housing residents of the affected site.

IX. HABC IS NOT A GUARANTOR OF A SMOKE-FREE ENVIRONMENT

HABC's adoption of this Smoke-Free Policy does not make HABC or any of its employees, official, contractors and agents the guarantor of: (1) the health of any resident, household member or guest, or HABC employee; or (2) the smoke-free condition of any resident's unit and the common areas. HABC will take reasonable steps to enforce the Smoke-Free Policy in accordance with the Lease Addendum that incorporates the Policy in the HABC lease.

X. ENFORCEMENT

A violation of this Policy constitutes grounds for initiation of the enforcement remedies of the Smoke-Free Policy. Violation of the provisions of the Policy by a household member, guest or any other person under the resident's (leaseholder) control constitutes a breach of the HABC lease. HABC will implement a graduated enforcement process that includes escalated warnings and documentation in the resident's file, up to and including lease termination, as follows:

1. **1st Violation** – When evidence of a violation of this Policy is received by HABC, such as smoking in a restricted area by a resident, household member, guest or any other person under the resident's control, the resident will receive a written Notice of

Violation. The Notice of Violation will inform the resident of the nature of the violation, and will request that the resident appear at the management office for a conference with the Asset Manager or other designee to receive support and informational materials, with a one-time option of having the 1st Violation expunged if: (a) the resident enters a cessation program within thirty (30) days of the date of the Notice of Violation; or (b) if the violation occurred due to smoking by a household member, guest or other person under the resident's control. The Notice of Violation will include information on how to reply to the Notice and the resident's right to file a grievance pursuant to the HABC Grievance Policy and Procedure (the "Grievance Policy") in effect at the time of such violation of this Policy.

2. **Second Violation** – When evidence of a violation by the same resident is received a second time by HABC, the resident will receive a second written Notice of Violation, which will describe the nature of the violation, and request a conference with the Asset Manager or other designee, to receive support and informational materials. The Notice of Violation will inform resident of the opportunity for a one-time option of having the second Violation expunged only if *the option was not already used in response to the first Violation*, and (a) the resident enters a cessation program within thirty (30) days of the date of the Notice of Violation; or (b) if the violation occurred due to smoking by a household member, guest or other person under the resident's control. The Notice of Violation shall include information on how to reply to the Notice and the resident's right to file a grievance pursuant to the Grievance Policy in effect at the time of such violation. The Notice of Violation will also inform resident of the consequences of a further violation.
3. **Third Violation** – If evidence of a violation by the same resident is received a third time by HABC, the resident will receive a written Notice of Lease Termination. Notices of Lease Termination shall include information on how to reply to the Notice of Termination and the resident's right to file a grievance pursuant to the HABC Grievance Policy in effect at the time of such termination. Provided, however, that if the termination notice includes other basis for such lease termination that are not subject to a grievance under the Grievance Policy, such as certain criminal activity, the resident shall have no right to file a grievance on the violation of this Policy.
4. **Grievances** – Upon receipt of a Notice of Lease Termination, residents may file a grievance in accordance with HABC's Grievance Policy, a copy of which can be obtained from the Management Office of any HABC development, subject to subsection 3 of this section above.
5. **Eviction** – HABC may pursue resident eviction upon a third violation, subject to grievance procedures subsection 3 of this section above, and subsection 6 of this section below.
6. **Inapplicability of Graduated Process When Fire Results From A Violation:** The graduated enforcement process described above does not apply to any first or subsequent violation of this Policy that results in a fire in the resident's unit, or on the resident's development or on any other property owned or assisted by HABC. In such

event, the provisions of the HABC lease that govern fires caused by the resident will control and resident will not receive any Notice of Violation as described above prior to a lease termination as provided in the lease.

XI. REASONABLE ACCOMMODATION REQUESTS

When a resident makes a reasonable accommodation request concerning this Policy, to address a disability, HABC will make the accommodation in accordance with HABC's policies and procedures, unless doing so would result in a fundamental alteration in the nature of the Smoke-Free Policy or cause an undue financial and administrative burden on HABC. For example, an individual with a mobility disability may request a reasonable accommodation in order to move to a section that provides easier access to a Designated Smoking Area. Such requests will be evaluated on a case-by-case basis in order to make a determination. However, HABC will not permit smoking in a restricted area as a reasonable accommodation for a disability.

Smokers with certain health conditions (e.g., cognitive impairment) may require special attention to ensure they understand the Policy and available cessation resources, as well as reasonable accommodation request procedures; however, such residents must comply with the Policy.

XII. TRANSFERS

Transfers to an alternate site with greater access to a non-restricted area or a Designated Smoking Area will not be available to HABC residents except as a reasonable accommodation to address a disability.

XIII. MARIJUANA

This Policy does not change any requirements regarding the possession and use of marijuana in federally-subsidized housing. The possession and use of medical and non-medical marijuana is prohibited in public and federally assisted housing. Accommodations allowing the use of medical marijuana in public and federally assisted housing are not reasonable under the Fair Housing Act.

XIV. LEASE ADDENDUM

Residents will be required to sign a lease addendum that incorporates the Smoke-free Policy in the lease. In the lease addendum, residents acknowledge that: (1) HABC's adoption of this policy for a smoke-free living environment does not in any way change the standard of care that HABC or its Asset Managers would have to a resident household to render buildings and premises designated smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental property; (2) HABC specifically disclaims any implied or express warranties that the building, common areas, or resident's dwelling unit and premises will have any higher or improved air quality standards than any other rental property; (3) HABC cannot and does not warrant or promise that the rental premises or common areas will be free from secondhand smoke; (4) HABC's ability to police, monitor or enforce the terms of the Policy and the lease addendum will be dependent in significant part on voluntary compliance by the resident, members of the household and guests, as well as by other residents and guests in other parts of the smoke-free area; and thus cooperation of residents is expected; And (5) Residents with respiratory ailments, allergies or other physical or mental conditions

relating to smoke are informed that HABC does not assume any higher duty of care to enforce the Policy or the lease addendum than any other HABC obligation under the lease.

9.5 American Cancer Society Fact Sheet

The following is a fact sheet for legal services clients and come courtesy of the [American Cancer Society](#). Housing providers are encouraged to provide educational resources about the dangers of smoking. Helping tenants understand the underlining public health reasonings for the smoke-free rule helps to increase compliance with the smoke-free rule.

To learn more about engaging tenants, [See Chapter 4.0](#).



Smoke-free Public Housing: HELPING SMOKERS QUIT

Help your clients access smoking cessation services

Your client doesn't have to go cold turkey and quit on their own. It's not easy, but quitting smoking doesn't have to be a miserable experience.

Many residents of public housing aren't aware of the local and national services available to help them quit smoking. Here's some information that can help:

- **Their local community health center can offer medical assistance and support, regardless of ability to pay.** Clinicians can prescribe nicotine replacement therapy (NRT), available as gum, lozenges, a skin patch, nasal spray, or an inhaler and/or bupropion or varenicline, medicines that are safe for most people and can increase their chances of quitting and staying quit. They can also help them access local cessation resources, including counseling. [Find a health center here.](#)
- **1-800-QUIT-NOW** connects callers with their state quitline, a **FREE tobacco cessation service.** Quitlines deliver support and referrals to tobacco users to help them quit smoking—regardless of their geographic location, race/ethnicity, or economic status—in all U.S. states. Callers get access to many different types of cessation information and services, including free support and advice from a cessation counselor, a personalized quit plan and self-help materials, social support and coping strategies to help deal with cravings, and the latest information about cessation medications. **Callers may get free NRT, and many quitlines offer texting programs** so your client may not have to use cell phone minutes. See what to expect [when your client calls a quitline in new videos](#) from the Centers for Disease Control. [See what each quitline offers](#) callers on the North American Quitline Consortium site.
- Contact the [American Cancer Society](#) at 1-800-227-2345 for referrals to local cessation resources and materials, or visit the [American Lung Association](#)
- Access the [Association of State and Territorial Health Officials tobacco-related disparities infographic](#), with links to priority population health networks' tobacco control materials
- Put up posters and flyers from Centers for Disease Control and Prevention's [Tips from Former Smokers campaign](#) around the office to encourage your clients' quit attempts
- Call your [state or county health department](#) for **local resources, services, materials, and help**, including NRT
- Looking for free smoke-free policy training and implementation guidance for PHA staff? [Live Smoke Free](#) can help, including individual PHA consultation nationwide.
- Use the **flyer on the next page** to help your clients see the true cost of smoking and secondhand smoke. It is **customizable by state**; you can find your state's average cigarette cost at [Campaign for Tobacco-Free Kids](#).

Contact [Becky Slemons](#) for more information about tobacco cessation in public housing.

For your clients: myths about quitting smoking

Myth 1 It's just a matter of willpower.

Wrong. The nicotine in cigarettes is highly addictive, and it isn't easy to break that addiction. But it can be done; more than half of the people who once smoked have now quit.

Myth 2 If you fail to quit the first time you try, you'll never be able to quit.

Wrong. The average person tries to quit many times before they actually succeed in breaking the habit. You learn something each time you try, and each time you try, you are more likely to succeed.

Myth 3 It's too late; the damage is already done.

Wrong. It's never too late to quit smoking! Your body can start healing within weeks and continues to recover for years when you stop filling it with smoke.

Source: American Cancer Society



TOBACCO: What is it costing you?

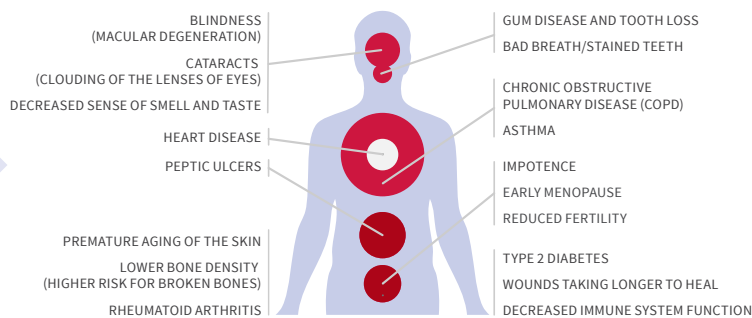
Smoking might cost you more than money.



Each year, using tobacco causes about 1 out of 5 deaths in the United States. In fact, smoking cigarettes kills more Americans than alcohol, car accidents, HIV, guns, and illegal drugs combined.

IT'S NOT JUST DEATHS. SMOKING AFFECTS A PERSON'S HEALTH IN MANY WAYS.

Tobacco smoke contains more than 7,000 chemicals and compounds. Hundreds are toxic, and at least 69 cause cancer. Other health problems may include:



INCREASED RISK FOR MANY CANCERS

WHAT ABOUT SECONDHAND SMOKE?

People who do not smoke are exposed to secondhand smoke (SHS) by breathing in air with cigarette smoke. This can happen at home, work, school, in the car, or in public places. Harmful effects of SHS can even remain on fabrics and household surfaces for months (and sometimes years) after someone smokes a cigarette indoors.

There is no safe level of exposure to SHS. It is linked to several types of cancer in children and adults. SHS also affects the heart and blood vessels, increasing

the risk of heart attack and stroke in non-smokers. Some studies have linked SHS to mental and emotional changes, too, like depression.

Making your home smoke-free may be one of the most important things you can do for the health of your family. The growing bodies of young children are especially sensitive to the toxins in SHS. And think about it: we spend more time at home than anywhere else. A smoke-free home protects your family, your guests, and even your pets.

HOW MUCH DOES SMOKING COST IN DOLLARS AND CENTS?



Let's say someone smokes a pack a day (20 cigarettes)

In [State], the average cost of a pack of cigarettes is \$X.XX.

- In one month, that's about \$XXX.
- In one year, that's about \$XXX.
- In 10 years, that's about \$XXX.

Source: Campaign for Tobacco-Free Kids, 1/2018

QUITTING TOBACCO ISN'T EASY, BUT IT CAN BE DONE.

Quitting smoking is not easy, but help is available to get you on the right track. To have the best chance of quitting and helping reduce your cancer risk, you need to have a plan and know what you're up against, what your options are, and where to go for help.

To take the first step, talk to your doctor or nurse. And you can call the quitline anytime for resources and help at 1-800-QUIT-NOW (784-8669).



[cancer.org](https://www.cancer.org) | 1.800.227.2345

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9.6 Clean Air for All Smoke-free Sign Template

The following is a template for a smoke-free sign to be used inside and outside of the building. Public Housing properties are encouraged to post signage to remind residents of the smoke-free policy. This template comes courtesy of [Clean Air for All: The Smoke Free Public Housing Project](#).

To learn more about the use of signage in the implementation of a smoke-free rule, [See Chapter 3.0](#).

**100% SMOKE-FREE
BUILDING**



**Thank you for not
smoking indoors or within
25 feet of our building.**

(Your logo here)

A GUIDE TO EQUITABLE SMOKE-FREE HOUSING

2019

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