

**HOUSING AUTHORITY OF THE CITY OF HARLINGEN  
Harlingen, Texas**

**SMOKE-FREE PUBLIC HOUSING POLICY**

**Adopted by PHA Board of Commissioners**

**Resolution No.** \_\_\_\_\_

**Date of Adoption** \_\_\_\_\_

**Effective Date of Implementation** \_\_\_\_\_

Authorized Use by the Housing Authority of the City of Harlingen

## **SMOKE-FREE PUBLIC HOUSING POLICY**

### **PURPOSE**

The Housing Authority of the City of Harlingen (hereinafter referred as PHA) is dedicated to protect the health and safety of its residents. In recognition that direct exposure to smoke or involuntary exposure to secondhand smoke can cause respiratory illness, heart disease, asthma, cancer and/or other adverse health effects and to reduce the risk of fires and maintenance cost, the PHA has implemented and adopted the Smoke-Free in Public Housing Policy (hereinafter referred as Policy).

This Policy is in compliance with 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act (ADA), Fair Housing Act, the Department of Housing and Urban Development (HUD) registers and notices, Title 24 of the Code of Federal Regulations, the Admissions and Continued Occupancy Plan (ACOP), and State and local laws.

### **EFFECTIVE DATE**

Effective July 1, 2018, the Housing Authority of the City of Harlingen adopts this Smoke-Free Public Housing Policy.

### **SMOKE-FREE LIVING ENVIRONMENT**

This Policy prohibits smoking and the use of all prohibited tobacco products:

- In all public housing living units
- In all public housing interior areas, including but not limited to hallways, electrical closets, storage units, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures
- In all outdoor areas within 25 feet of PHA building(s) including entry ways, porches, balconies and patios, or to the PHA's property boundary in situations where the boundary is less than 25 feet from the PHA-owned building(s).
- In any PHA owned, leased or operated vehicle

The PHA is not prohibiting smoking by residents, rather the PHA is prohibiting smoking inside public housing living units and indoor common areas, public housing administrative office building, public housing community rooms or community facilities, public housing day care centers and laundry rooms, in outdoor areas within 25 feet of the housing and administrative office buildings and in other areas designated as restricted areas.

### **APPLICABILITY**

#### **New Admissions**

All new admissions signing a lease on, or after, the effective date of this Policy, are subject to all provisions herein.

**Existing Residents**

Residents and members of a resident's household under lease prior to the effective date of the Policy are exempt from the prohibition of the use of prohibited tobacco products within the confines of their personal living unit until the effective date of the lease revision. Tenants subject to this exemption are prohibited from using prohibited tobacco products in other smoke-free areas.

Existing tenants are required to sign the Smoke-Free Lease Revision within 60 days of notification of the effective date of this Policy. Upon lease signing, the household is subject to all provisions of this Smoke-Free Public Housing Policy. Tenants who are not willing to live in a smoke-free property should complete and submit a Notice to Vacate form prior to the expiration of the 60-day notification of lease revision.

Tenants who fail to sign the Smoke-Free Lease Revision after the 60-day notification will be subject to lease termination as allowed by Section I – Tenant Obligations of existing dwelling lease.

**Visitors and Guests**

This Policy applies to all resident's visitors, guest or other persons under the resident's control while on PHA-owned properties. Visitors, guest or other persons under the resident's control must not engage in any smoking of specified prohibited tobacco products (including Electronic Nicotine Delivery Systems (ENDS) products) in restricted areas or in other outdoor areas that the PHA has designated as smoke-free. Residents and members of the resident's household must not allow visitors, guests, and other persons under their control to violate this Policy.

**PHA Staff**

This Policy applies to all PHA staff and contactors while on PHA-owned properties.

**DEFINITIONS**

**Designated Smoking Areas:** Areas or structures outside of the required 25 feet perimeter designated by the PHA where prohibited tobacco products are allowed.

**Interior Common Areas:** Areas which include but are not limited to hallways, rental and administrative offices, community centers, day care centers, laundry centers and similar structures.

**Prohibited Tobacco Products:** "Prohibited tobacco products" are defined as items that involves the ignition and burning of tobacco leaves, such as (but not limited to) cigarettes, cigars, and pipes, including waterpipes (hookahs).

Other PHA Prohibited Tobacco Products:

- Electronic nicotine delivery systems (ENDS), also known as e-cigs
- Other lighted smoking devices used for burning tobacco or any other plant.

**Public Housing:** Low-income housing, such as, community facilities, public housing offices, day care centers, and laundry rooms assisted under the U.S. Housing Act of 1937 (the 1937 Act), other than assistance under section 8 of the 1937 Act.

**Smoke-Free Property:** Any property, including interior and exterior areas, designated by the PHA as a Smoke-Free Property is subject to the provisions of the Smoke-Free Living Environment provisions listed above.

## REASONABLE ACCOMMODATIONS

Tenants who are persons with disabilities may request a Reasonable Accommodation in relation to the Smoke-Free Public Housing Policy, in accordance with the PHA's Reasonable Accommodation Policy.

The PHA will consider the request for a reasonable accommodation on a case-by-case basis. Tenants must adhere to the Smoke-Free Public Housing Policy until such time a reasonable accommodation is granted.

**Note:** The act of smoking itself is not a disability under the ADA. Per the Smoke-Free Public Housing Final Rule, December 5, 2016, HUD is not aware of any medical conditions for which smoking is considered a legitimate, proven treatment; therefore, smoking will not be considered a reasonable accommodation for a disability. However, as an example as a reasonable accommodation, the PHA may consider moving a tenant to the first floor or closer to an exit door and provide DSAs with an accessible walkway, cover, lighting and/or seating.

## PHA RESPONSIBILITIES

The PHA shall post no-smoking signs at entrances to all buildings. The no-smoking signs will be accessible to all residents and visitors (including persons with disabilities), in multiple languages identified in the Agency's Language Assistance Plan (LAP) and as per Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency), and available in other forms of communication including braille.

The PHA will distribute a copy of this Policy and notice of the intent to implement the Policy to each household at least 30 days prior to the effective date of the Policy.

The PHA will distribute a copy of the Smoke-Free Lease Revision and notice of requirement that tenant must sign the Smoke-Free Lease Revision to each household at least 60 days prior to the effective date of the Smoke-Free Lease Revision. The notice shall contain the time frame within that period for acceptance of the Smoke-Free Lease Revision. The notice shall also state that failure to sign the Smoke-Free Lease Revision will result in lease termination and contain information regarding Grievance Procedure and the Notice of Rights Under Violence Against Women Act (VAWA).

The PHA is responsible for the enforcement of this policy; however, the PHA does not assume any higher duty of care to enforce this Policy than any other PHA obligation under the Dwelling Lease.

The PHA will ensure the Lease Revision and other occupancy policies are consistent with the provisions of this Policy.

## TENANT RESPONSIBILITIES

Tenants and members of the tenant's household shall abide by this Policy and shall inform their visitors, guests and other persons under the tenant's control of the Policy.

Tenants and members of the tenant's household must not allow visitors, guests, and other persons under the tenant's control to violate this Policy.

Tenants are responsible for the actions of their household, their visitors, guests and other persons under the tenant's control.

All smoking material, including matches, lighters, cigarette butts and packaging, must be disposed of in a neat and safe manner. No person may throw these items or other smoking material on the ground.

## LEASE ENFORCEMENT

The PHA will enforce the Smoke-Free Public Housing Policy. The PHA will provide due process when enforcing the lease and allow residents to exercise their right to an informal settlement and a formal hearing.

Failure to adhere to any of the conditions of the Policy will constitute a lease violation and may result in enforcement actions up to and including eviction. In addition, tenant will be responsible for all costs to remove smoke odor and/or residue upon any violation of this Policy as outline in the Schedule of Maintenance and Other Charges in the Admissions and Continued Occupancy Policy.

The PHA will not evict for a single incident of smoking in violation of the Policy. Lease violations of the Policy will be handled in a progressive manner as follows:

- ❖ 1<sup>st</sup> Violation:
  - A home visit will be conducted by the Property Manager. The Property Manager will issue a Verbal Warning referencing the section of the Dwelling Lease that has been violated.
  - Tenant will be provided a copy of the Smoke-Free Public Housing Policy and cessation materials.
  - Tenant will be required to sign an Acknowledgement of Verbal Warning form which will be documented in the tenant file.
  
- ❖ 2<sup>nd</sup> Violation
  - The Property Manager will issue a Written Warning referencing the section of the Dwelling Lease that has been violated.
  - Tenant will be provided a copy of the Smoke-Free Public Housing Policy and cessation materials.
  - Tenant will be required to sign an Acknowledgement of Written Warning form which will be documented in the tenant file.
  
- ❖ 3<sup>rd</sup> Violation
  - Tenant will be required to attend a private conference in the Management Office to review the terms of the Dwelling Lease and the Smoke-Free Public Housing Policy.

- The Property Manager will issue a Second Written Warning and require the tenant to sign an Acknowledgement of Second Written Warning form which will be documented in the tenant file.

## **PHA NOT A GUARANTOR OF SMOKE-FREE ENVIRONMENT**

The PHA's adoption of a Smoke-Free Policy and the efforts to designate portions of the Property as smoke-free do not make the PHA or any of its managing agents the guarantor of tenant's health or of the smoke-free condition of the smoke-free portions of the Property. The PHA will take reasonable steps to enforce the Smoke-Free Policy. The PHA is not required to take steps in response to the use of prohibited tobacco products unless the PHA has actual knowledge of the use of such products and the identity of the responsible tenant.

## **PHA DISCLAIMER**

The adoption of a non-smoking living environment and the efforts to designate portions of the Property as smoke-free does not in any way change the standard of care that the PHA has under applicable law to render the Property any safer, more habitable, or improved in terms of air quality standards than any other rental premises. The PHA specifically disclaims any implied or express warranties that the Property will have any higher or improved air quality standards than any other rental property. The PHA cannot and does not warranty or promise that the Property will be free from secondhand smoke. The PHA's ability to police, monitor or enforce this Policy and Lease Revision is dependent in significant part on voluntary compliance by tenants and tenants' guests.

Tenants with respiratory ailments, allergies or other condition relating to smoke are put on notice that PHA does not assume any higher duty of care to enforce this Policy than any other PHA obligation under the lease agreement.

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## **NOTICE**

**The Nelrod Company has made its best efforts to comply with regulations, laws, and Federal/local policies. The Nelrod Company does not offer advice on legal matters or render legal opinions. We recommend that this policy be reviewed by the Housing Authority's general counsel and/or attorney prior to approval by the Board of Commissioners.**

**The Nelrod Company is not responsible for any changes made to these policies by any party other than The Nelrod Company.**