

Model Public Housing Smokefree Policy

Introduction

The attached model policy language (beginning on page 3) was developed to assist Public Housing Agencies (PHAs) with the adoption of a strong smokefree policy for all public housing properties. PHAs are welcome to use the language in full or adapt portions to meet individual needs. The goal is to help make the policy adoption process easier by providing sample legally reviewed language. For many years, Americans for Nonsmokers' Rights (ANR) has provided model language for smokefree laws and policies that is legally vetted and in use in communities throughout the country.

This language complies with and complements the U.S. Department of Housing and Urban Development's (HUD) smokefree rule that went into effect on February 3, 2017. More than 670 PHAs in at least 44 states already have a smokefree policy in place. PHAs that do not yet have a policy that meets the minimum standards required by HUD now have 18 months to implement a new policy or amend an existing policy to meet those standards.

HUD's [Rule RIN 2577-AC97](#) requires each PHA to implement a smokefree policy that prohibits the use of "prohibited tobacco products" in all public housing living units, indoor common areas in public housing, and in PHA administrative office buildings. The policy must also extend to all outdoor areas within 25 feet of the public housing and administrative office buildings.

This model policy meets the requirements specified in the HUD rule and adds some stronger provisions, which are permitted by the HUD rule and are in line with policies being adopted by PHAs around the country. Below is an overview of differences between the HUD rule and the attached policy language.

Definitions:

HUD's rule uses the term "prohibited tobacco products" which includes cigarettes, cigars, pipes, and waterpipes (hookahs). The model language instead uses ANR's standard definition of "smoking," which includes all lighted or heated tobacco products including hookah and marijuana, as well as the use of an electronic smoking device, which is also specifically defined in the policy.

Electronic Smoking Devices/E-Cigarettes:

HUD's rule does not address the use of e-cigarettes and other electronic smoking devices. The ANR model policy includes the use of these products (vaping) because of the established body of scientific research around the health and safety concerns about breathing the aerosol emissions that these products release into the air. [Learn more](#) about the health concerns electronic smoking devices and secondhand aerosol.

Marijuana:

HUD's rule does not address the use of marijuana because it is already a federally prohibited substance and the use and possession of marijuana is prohibited in HUD-funded properties. ANR recommends explicitly including marijuana in the policy, via the definition of smoking, because numerous states are now legalizing medical and/or recreational use of marijuana, and clear language can help reduce lack of awareness or confusion among residents, management, and guests.

Outdoor Areas:

HUD's rule requires that smoking be prohibited within 25 feet of buildings, and specifies that PHAs may have stronger outdoor provisions if desired. The model policy provides PHAs with the option of prohibiting smoking anywhere on the grounds, or to allow outdoor smoking areas that are at least 25 feet from buildings. Additionally, the model policy specifies that smoking is not allowed on balconies, decks, and patios. These outdoor spaces are not mentioned in the HUD rule, but the majority would be covered by the 25 feet from buildings rule, so ANR recommends specifically mentioning these spaces for the sake of clarity.

Enforcement:

HUD's rule does not spell out enforcement requirements. The model policy states that PHAs should post signs and that violations are considered a material breach of the tenant's lease and grounds for enforcement actions, which may include eviction. PHAs are encouraged to enforce the smokefree policy using existing procedures in place for enforcing lease rules, and ANR emphasizes that while eviction is legally an available enforcement action, the goal is to have enforcement procedures that help achieve improved compliance with eviction only being the very last resort. PHAs are free to modify the language to include specific enforcement actions.

The ANR policy language is complemented by the ANR Model Smokefree Lease Addendum for residents to sign, which is available at <http://www.no-smoke.org/pdf/model-lease-addendum.pdf>.

Please contact ANR with any questions, comments, or concerns at 510-841-3032 or anr@no-smoke.org.

→Model Smokefree Public Housing Policy begins on page 3.

Model Smokefree Public Housing Policy

_____ [Name] Housing Authority

Smokefree Housing Policy

24 CFR Parts 965 and 966

Enacted: _____

Effective: _____

1. Department of Housing and Urban Development Rule.

On November 29, 2016, the Department of Housing and Urban Development (HUD) adopted [Rule RIN 2577-AC97](#), effective February 3, 2017, which requires every Public Housing Agency (PHA) administering public housing to implement a smokefree policy. Specifically, no later than 18 months from the effective date of the rule, each PHA must implement a “smokefree” policy banning the use of “prohibited tobacco products” in all public housing living units, indoor common areas in public housing, and in PHA administrative office buildings. The smokefree policy must also extend to all outdoor areas up to 25 feet from the public housing and administrative office buildings.

Under the Rule, a PHA’s smokefree policy must, at a minimum, ban the use of all prohibited tobacco products, which are defined as (1) items that involve the ignition and burning of tobacco leaves, such as (but not limited to) cigarettes, cigars, and pipes, and (2) to the extent not covered by (1), waterpipes (hookahs).

Pursuant to the Rule, PHAs may, but are not required to, further restrict smoking to outdoor dedicated smoking areas outside the restricted areas, create additional restricted areas in which smoking is prohibited (e.g., near a playground), or, alternatively, make their entire grounds smoke-free.

2. Purpose of Policy.

This smokefree policy is intended to benefit the Housing Authority and all of its public housing residents, visitors, and staff by mitigating (i) the irritation and known adverse health effects of secondhand smoke; (ii) the increased maintenance, cleaning, and redecorating costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the higher costs of fire insurance for a non-smokefree building.

3. Definitions.

“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

“Electronic Smoking Device” means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

4. All Buildings To Be Smokefree.

All public housing buildings and administrative offices shall be smokefree. Smoking is prohibited in all living units, including any associated balconies, decks, or patios, and in the common areas of the buildings, including, but not limited to, community rooms, community bathrooms, lobbies, reception areas, hallways, laundry rooms, stairways, offices, and elevators.

5. Smoking on Grounds of Buildings.

Smoking is prohibited _____ [anywhere on the grounds adjoining public housing and office buildings, including entryways, patios, and yards or on the grounds adjoining public housing and office buildings, except in designated smoking areas located at least 25 feet from such buildings].

6. Applicability of Policy.

This Policy is applicable to all residents, Housing Authority employees, visitors, contractors, volunteers, and vendors.

7. Responsibilities of Tenants. Tenants and household members shall be responsible to enforce this Policy as to their guests, invitees, and visitors to their residential units. Further, a Tenant shall promptly give the Housing Authority a written statement of any incident where tobacco or marijuana smoke, or vapor from an electronic cigarette, is migrating into the Tenant's apartment unit from sources outside the Tenant's unit.

8. Housing Authority to Promote Smokefree Policy. The Housing Authority shall post no-smoking signs at entrances and exits, common areas, and hallways, and in conspicuous places on the grounds of all residential and administrative office buildings. In addition, the Housing Authority shall provide copies of this Policy to all Tenants and prospective Tenants.

9. Right of Tenants To Sue Other Tenants Who Violate Policy. A Tenant may bring legal action against another Tenant related to this smokefree Policy, but a Tenant shall not have the right to evict another Tenant. Any legal action between Tenants related to this Policy shall not create a presumption that the Housing Authority failed to perform its responsibilities under the Policy.

10. Violations of Policy. A violation of this smokefree Policy shall be considered a material breach of the Tenant's Lease and grounds for enforcement actions, including eviction, by the Housing Authority. A Tenant who violates the Policy shall also be liable to the Housing Authority for the costs of repair to the Tenant's apartment unit due to damage from smoke odors or residue.

11. Housing Authority Not Guarantor of Smokefree Environment.

The Housing Authority's adoption of this smokefree Policy does not make the Housing Authority or any of its officers, employees, or agents, the guarantor of the health of any Tenant or of the smokefree condition of the portions of its properties in which smoking is prohibited under the Policy. However, the Housing Authority will take reasonable steps to enforce the Policy. The Housing Authority is not required to take steps in response to smoking in violation of this Policy unless the Housing Authority either has actual knowledge of the smoking and the identity of the responsible Tenant or has been given written notice of the smoking.

12. Housing Authority Disclaimer. The Housing Authority's adoption of this smokefree Policy does not in any way change the standard of care that the Housing Authority would have to render buildings and premises designated as smokefree any safer, more habitable, or improved in terms of air quality standards than any other rental premises. The Housing Authority specifically disclaims any implied or express warranties that the building, common areas, or Tenants' premises will have any higher or improved air quality standards than any other rental property. The Housing Authority cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke or vapor. The Housing Authority's ability to police, monitor, or enforce the provisions of this Policy is dependent in significant part on voluntary compliance by Tenants and their guests/visitors. Tenants with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that the Housing Authority does not assume any higher duty of care to enforce this Policy than any other Housing Authority obligation under the Tenants' Lease Agreement.

1702 [MP-11]