



## Formalize Your PHA's Policy: August 2017–October 2017

Drafting a policy that incorporates the requirements of the HUD rule and is tailored to the needs of your residents is an important step in the policy development process. After drafting your policy and associated language to include in the PHA's lease, you will present it to your board, allow for public comment, and present a final draft of the PHA's smoke-free policy and lease language to the board for final approval. By getting approval early, you will make the process of signing leases and lease amendments easier for you and your staff.

### Draft Your Policy

Using what you learned from HUD's rule, other smoke-free PHAs, sample policies, community partners, staff members, board, RAB, and surveys, it is now time to develop or adopt a policy that meets your PHA's needs. In addition to what you already have learned, the following information will help you as you draft your documents.

The HUD rule requires PHAs to implement a policy that prohibits use of all lit tobacco products and water pipes (hookahs) inside all dwelling units, interior areas, and PHA administrative office buildings. The smoke-free policy must also extend to 25 feet

from all housing and administrative buildings. Interior areas include but are not limited to hallways, rental and administrative offices, community centers, daycare centers, laundry centers, stairwells, elevators, and similar structures.

PHAs have the discretion to establish designated nonsmoking locations beyond the required 25-foot perimeter, such as a playground or sidewalk. They may also decide to allow smoking only in designated smoking areas (DSAs). The DSAs may have partially enclosed structures, benches, or lighting; but none of these are required by the rule. PHAs can also elect to make their entire grounds smoke-free, with no exceptions.

The rest of this section allows you to walk through the mandatory policy elements to help you develop your PHA's policy. You may use sample lease language in Appendix C or from resources listed in Appendix D, or start from scratch to draft the lease language and your policy. You will need to present this draft policy and the lease language to your Board of Directors and tenants for their comment.

See *Change is in the Air* pp. 63–65 for information on what you may experience during the first year as you implement your policy.

## Determine the Scope of the Policy

**PHAs must decide which areas will be smoke-free:**

Policy Requirements	Ways You Can Enhance the Policy
<ul style="list-style-type: none"> <li>■ All public housing units, except for mixed-finance project units.</li> <li>■ All interior areas included (e.g., hallways, rental and administrative offices, community centers, daycare centers, laundry centers, stairwells, elevators, and similar structures).</li> <li>■ Outdoor areas within 25 feet of dwelling units and administrative buildings.</li> </ul>	<ul style="list-style-type: none"> <li>■ Designate playgrounds, sidewalks, or other areas outside the 25-foot buffer smoke-free.</li> <li>■ Designate all PHA grounds and administrative grounds smoke-free, except for DSAs.</li> <li>■ Designate all grounds of public housing or administrative office buildings smoke-free, with no exceptions.</li> </ul>



### Smoke-free playgrounds.

**Advantages:** Extending your policy to places where children spend their time will further protect their health. Exposure to secondhand smoke, even outside, is bad for children. By providing a buffer around the playground, you can provide a healthy area for children to play. Additionally, you can prevent the playground from becoming the default place people go to smoke because of amenities such as benches.

**Disadvantages:** Some tenants may feel that it is unfair to extend the policy beyond what HUD requires. There may not be adequate space around the playground to accommodate a buffer. Caregivers and parents who smoke will hopefully be able to avoid smoking while the child is playing. Some may feel that it prevents them from watching their children while they play. You can mitigate this complaint by ensuring that parents can see and have easy access to the playground when they are beyond the established buffer.

### Designated outdoor smoking areas.

**Advantages:** Many smoke-free pioneers say an outdoor designated space for smoking is a helpful element of an effective policy. They suggest designating a smoking area on the property, if space and funds allow. They point out that it takes effort to get tenants to commit to using these spaces. DSAs are often appreciated and may reduce the incidence of smoking violations in the building. Outdoor DSAs cannot be in any restricted smoking area and should be far enough from the building not to violate the policy (at least 25 feet) and to prevent secondhand smoke from entering open windows or doors.

Consider asking residents for their input on the location and design of the DSA.

**Disadvantages:** Experience with smoking areas has been mixed. At some sites, the designated areas have created new maintenance concerns. Additionally, it may be difficult to find a location that works for everyone. If you plan to establish a designated outdoor smoking area, you will have to determine amenities and budget implications. Consider whether to provide shelter, receptacles, benches, and lighting and how to ensure accessibility for all tenants.

**Conclusion:** A DSA may make compliance easier if you can afford it and have a place to properly locate it. There are also plenty of examples of effective policies at properties that do not have a designated outdoor smoking space.

### Including other products.

**Advantages:** Electronic nicotine delivery systems (ENDS or e-cigarettes) contain nicotine. Including the use of e-cigarettes in your policy benefits health and simplifies enforcement. Explosions and battery problems have been reported with e-cigarettes, although they do not appear to be frequent. Often, e-cigarettes look like cigarettes and can make enforcement more difficult. E-cigarette products may be strongly scented, which can be a nuisance to neighbors in the same way that lit tobacco products are.

**Disadvantages:** Tenants may feel too restricted by a policy that includes e-cigarettes. Enforcement of an e-cigarette prohibition may be challenging because they are harder to detect than cigarettes or other lit tobacco products.

## PHAs must determine the details of their enforcement strategies:

Policy Requirements	Ways You Can Enhance the Policy (What You May Decide to Prohibit)
<ul style="list-style-type: none"> <li>■ Use of all lit tobacco products (e.g., cigarettes, pipes, and cigars).</li> <li>■ Water pipe tobacco smoking (i.e., hookahs).</li> </ul>	<ul style="list-style-type: none"> <li>■ Electronic nicotine delivery systems, such as e-cigarettes.</li> </ul>



**Enforcement policies.**

**Advantages:** Including an easy-to-understand enforcement policy with several steps will help tenants and staff members understand how the policy will be carried out daily. By providing this information, you are increasing transparency and helping staff members and tenants set realistic and systematic expectations. Work with tenants to make sure the policy is enforceable. The policy should be enforced consistently for all tenants.

**Disadvantages:** Remember, enforcement is a process. 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.

**Conclusion:** HUD recommends a clear and graduated enforcement strategy for violations of the smoke-free policy. No one should expect that on the first day of the policy all smoking will immediately stop in all restricted areas. HUD's regulations intentionally distinguish lease violations based on criminal behaviors from violations based on civil behaviors.

Smoke-free violations are categorized as civil to discourage overly aggressive enforcement approaches and to decrease the potential of eviction and homelessness. HUD recommends at least three, if not more, steps to an enforcement plan. Termination of assistance for a single incident of smoking is not grounds for eviction. In addition, requiring attendance at smoking cessation classes should not be a remedy for infractions or a punishment for lease violations. HUD encourages a graduated enforcement approach that includes escalating warnings with documentation to the tenant file.

**Disclaimer that the landlord is not acting as a guarantor of the policy.**

Property managers and maintenance staff will not be able to identify policy violators 100 percent of the time. Including a disclaimer in your policy with this acknowledgment sets realistic expectations for the board, staff, tenants, and—if necessary—a court. The policy should state that failure to enforce any part of a smoke-free policy does not negate the right to enforce it in the future.

**PHAs must determine the details of their enforcement strategies:**

Policy Regulations	Ways You Can Enhance the Policy
<ul style="list-style-type: none"> <li>■ Must conform to HUD regulations (use standard lease enforcement procedures).</li> </ul>	<ul style="list-style-type: none"> <li>■ Verbal warning(s).</li> <li>■ Written warning(s).</li> <li>■ Final notice.</li> <li>■ Lease termination and eviction proceedings.</li> </ul>



## An Effective Smoke-Free Housing Policy Typically Includes the Following Elements:<sup>21</sup>

- An introduction that explains the policy's purpose, which can include information about the dangers of exposure to secondhand smoke.
- Clear, consistent definitions of important terms, such as "lit tobacco products," "smoking," "premises," and "interior areas," to help ensure that the policy is interpreted, implemented, and enforced in ways that effectively protect the entire housing community.
- Information on which areas must be smoke-free, such as common areas, units, outdoor areas (including patios and balconies), perimeters of the building, where smoking in cars is prohibited, and so on.
- Description of who must comply, such as residents, guests, staff members, and business visitors.
- Disclaimer that the landlord is not acting as a guarantor of the policy. This provision helps protect landlords of smoke-free buildings from claims brought by residents injured because of policy violations unknown to the landlord.
- A provision allowing one resident to bring a claim directly against another resident based on secondhand smoke intrusion. The nonsmoking resident could get a court order requiring that the smoking resident stop the smoke infiltration or the resident could potentially recover monetary damages.
- Information on enforcement:
  - How the policy will be enforced (steps may include verbal warnings, warning letters, and eviction).
  - Responsibilities of the PHA (i.e., post warning signs, consistently enforce the policy).
  - Responsibilities of residents (i.e., notify guests and visitors, report violations).
  - Both parties (i.e., the tenant and the landlord) sign the smoke-free leases and agreements.

## Introduce the Policy and Set an Implementation Timeline

Choose the "start date" for your PHA properties. All PHA properties must implement their policy by July 30, 2018. You may choose to start implementing the policy earlier to help residents develop the habit of going outside to smoke when the weather is more pleasant. This could help improve the implementation of the policy.

The *Recommended 18-Month Timeline* section (p. 8) of this guidebook is a strong implementation plan that includes significant tenant engagement, which will reduce the number of violations once the policy is in place. If you cannot adhere to that plan, build in 6 to 12 months of time for public meetings, plan approval, continued tenant engagement, and lease signing.

## Present Your Smoke-Free Policy to the PHA Board of Directors

HUD has clarified that the adoption of a PHA smoke-free policy is likely to constitute a significant amendment or modification to the PHA Plan. Ultimately, this will be determined by the PHA's definition of a significant amendment. If it does constitute a significant amendment, PHAs are required to conduct public meetings according to standard amendment procedures. Therefore, PHAs are encouraged to obtain board approval when creating individual smoke-free policies. For the PHAs that already have a policy and may need to modify it slightly (e.g., increase the smoke-free perimeter from 15 feet to 25 feet), this may not be a significant change and may not need board approval. Regardless, this change must be included in the tenant lease.

Update your board on your process by sharing new information that you have gathered, such as tenant survey results or availability of smoking cessation assistance and the next steps you plan to take. Board approval and the comment period should happen in conjunction with the normal PHA Plan approval process. Your board must approve the smoke-free policy at least 2 months before implementation. If you are using the implementation date of July 30, 2018, you must obtain board approval by May 30, 2018, but ideally much earlier. We suggest presenting the policy to the board by May 2017.

<sup>21</sup> Public Health Law Center, Tobacco Control Legal Consortium. (n.d.). *Regulating smoking in multi-unit housing*. Retrieved from <http://publichealthlawcenter.org/sites/default/files/resources/Regulating%20Smoking%20in%20Multi-Unit%20Housing%202015.pdf>.



Gaining board approval earlier will make implementation and signing of tenant leases easier. By talking with your board early and often about the process, you will alleviate concerns about the policy. Regardless, be prepared for the following questions:

- How will the policy be consistently enforced?
- How will staff members handle tenants' raised expectations that the property should always be smoke-free?
- How will violations be identified and documented?
- What happens if tenants do not change their behavior and continue to smoke indoors?
- What happens when guests smoke indoors?
- What do we do about helping the elderly and mentally disabled population address their nicotine addiction?

Managers of PHAs with smoke-free policies say that these are challenging questions even after years of experience with a policy. Like other lease violations, not every instance of noncompliance is identifiable. Will there still be some smoking in the building? Yes, for a while there may be, but overall, there will be much less secondhand smoke.

You can present the board with the following new information:

- Proposed policy and multistep enforcement process.
- Date policy will go into effect.
- Tenant communication plan.
- Staff training plan.
- Estimated costs for implementation (e.g., signs, DSA).

### Notify Residents and Begin Comment Period

Tenant input is a mandatory step in developing your final policy. How well you communicate with tenants and staff members will largely determine the success of your smoke-free policy. Remember to talk about the policy from a positive vantage point. Talk about what residents have to gain by participating. Communication does not have to be complicated or overly time consuming, but it does require committing to it as a guiding principle.

- **Discuss the smoke-free policy in detail with the RAB during the PHA Plan process.** The HUD rule explicitly states that you must consult your RAB. Be sure to document its recommendations and the PHA response, per existing requirements.

- **Issue a formal written notice.** Send the notice to all tenants with information about the policy, including your organization's reasons for adopting it, the date it will go into effect, the lease addendum or House Rules, a calendar of public meetings, and other opportunities to provide comment. Written notices should be in the most common languages your tenants speak, in accordance with HUD's current guidance on limited English proficiency (see: [https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/promotingfh/whatislep](https://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/whatislep)). Written notices may not be sufficient for tenants who do not have a high reading level. Verbal communication may be necessary for those tenants.

- **Hold tenant meetings.** Approach these meetings with care and intention, remembering that early messages make a lasting impression. It is important to educate residents on the importance of the policy for the health and wellness of all residents and staff. Sometimes the most important message is nonverbal; for this reason, managers of PHAs with smoke-free policies recommend that senior leaders, not only property managers, participate in these meetings. This sends a clear message to tenants of the significance of the policy to the organization and the value the organization places in hearing tenants' concerns. Additionally, these meetings can be challenging, and it is appropriate for senior leaders to hear and respond when the conversation is difficult. It should be emphasized that enforcement is the responsibility of the PHA and to avoid confrontations between tenants. These meetings may be held in addition to or as part of the required meeting for a PHA's annual plan or significant amendment to an existing annual plan.

Resources such as PowerPoint presentations and fact sheets to support PHA managers and staff to present the information on the HUD rule and your exact PHA policy can be found at <https://hud.gov/smokefreepublichousing>.