

GUAM HOUSING AND URBAN RENEWAL AUTHORITY
Aturidat Ginima' Yan Rinueban Siudad Guahan
Sinajana, Guam

SMOKE-FREE PUBLIC HOUSING POLICY

REVISION No. 1

Adopted by GHURA Board of Commissioners

Resolution No.: _____

Date of Adoption: _____

Effective Date of Implementation: _____

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INTRODUCTION

The Department of Housing and Urban Development (HUD) has implemented a ruling that requires all Public Housing Authorities administering a public housing program to implement a smoke-free policy. The rule specifically requires each Public Housing Authority to implement a policy on prohibited tobacco products and all smoking in any interior common areas including, but not limited to community rooms, community bathrooms, lobbies, reception areas, hallways, electrical rooms and closets, storage rooms, offices, and within all living units in public housing and PHA administration office buildings, maintenance shops and vehicles. (In brief, a smoke-free policy for ALL public housing interior areas.)

The Guam Housing and Urban Renewal Authority (hereinafter referred to as the PHA) is also prohibiting electronic nicotine delivery systems (ENDS), e-cigarettes, and vaping, and is including it in this Policy's definition of Smoking. This Policy extends to all outdoor areas up to twenty-five (25) feet from any type of housing (doors/entrances, windows and porches), and administrative office buildings and maintenance facilities.

This Policy further prohibits the smoking of marijuana, in any manner, form or derivative. The Controlled Substances Act (CSA), 21 U.S.C. Section 801 et.seq., categorizes marijuana as a Schedule 1 substance and, therefore, the manufacture, distribution, or possession of marijuana is illegal under federal law, even if it is permitted under state law. Marijuana is therefore not permitted anywhere in GHURA property.

HUD is requiring implementation of smoke-free public housing to improve interior air quality in housing, to benefit the health of public housing tenants and public housing staff, reduce the risk of catastrophic fires, and lower overall maintenance costs. This Policy applies to all tenants, tenant's families, tenant's guests, visitors, contractors, service personnel, and employees.

PURPOSE

The Guam Housing and Urban Renewal Authority (hereinafter referred to as the 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 costs, the PHA has implemented and adopted the Smoke-Free Public Housing Policy (hereinafter referred to as the 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 Policy (ACOP), and State and local laws.

EFFECTIVE DATE

Effective _____, the PHA adopts this Smoke-Free Public Housing Policy.

SMOKE-FREE LIVING ENVIRONMENT

This Policy prohibits smoking in the following areas:

- In all public housing living units,
- In all public housing interior areas including, but not limited to hallways, stairways, electrical closets, storage units, administrative offices, community 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),
- At playgrounds, picnic areas, and other exterior common areas (and within 25 feet of these locations),
- In administrative/office buildings and maintenance buildings, and
- 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 interior common areas, public housing administrative office buildings, public housing community rooms or community facilities, 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

Existing residents are required to sign the Smoke-Free Housing Lease Addendum within sixty (60) days of notification of the effective date of this Policy. Residents who are not willing to comply with the terms of this Policy shall complete and submit a Notice to Vacate form prior to the expiration of the sixty (60)-day notification period. Residents who refuse or fail to sign the Smoke-Free Lease Addendum after the sixty (60)-day notification period will be subject to termination of their lease pursuant to Sections IX, Tenant Obligations, and XVI, Termination of Lease. All current residents who smoke will be provided with information/resources about cessation programs upon their request.

Visitors and Guests

This Policy applies to all resident's visitors, guests or other persons under the resident's control while on PHA-owned properties. Visitors, guests or other persons under the resident's control must not engage in any smoking of specified prohibited tobacco products (including e-cigarettes, vaping and marijuana) 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 employees, contractors, and agents while on PHA-owned properties.

DEFINITIONS

Common Areas – All areas open to all residents, resident's families, guests, visitors, contractors, service personnel, employees and members of the public.

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

NOTE: The PHA has not designated any smoking areas on the PHA's property at this time. Residents may not discard smoking products on the property.

Development/Property: All Public Housing developments and properties are included in this Policy, and all related administrative offices and maintenance facilities.

Individual Units: the interior and exterior spaces tied to a particular unit. This includes, but is not limited to, bedrooms, hallways, kitchens, bathrooms, front and rear porches.

Interior Common Areas: Defined as living units. Interior common areas, electrical rooms, closets, storage rooms, community rooms/bathrooms, laundry rooms, lobbies, hallways, offices, and public housing administrative offices/buildings, maintenance facilities and vehicles.

Smoking – means igniting, inhaling, exhaling, breathing, carrying or possessing any lit cigar, cigarette, pipe, water pipe (referred to as hookahs), or other tobacco product or similar lighted product, in any manner or in any form, or any other device containing tobacco, marijuana, or other legal or illegal substances that burn. This definition also includes electronic nicotine delivery systems (ENDS), including electronic cigarettes (e-cigarettes).

- **Electronic Cigarette** – the term "Electronic Cigarette" means any electronic device that provides a vapor of liquid nicotine and/or other substances to the user, as she or he simulates smoking. The term shall include such devices whether they are manufactured or referred to as e-cigarettes, e-cigars, e-pipes, vaping, or under any product name.

Public Housing: Low-income housing, such as, community facilities, public housing offices, 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.

REASONABLE ACCOMMODATIONS

Residents 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. Residents 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.

PHA RESPONSIBILITIES

PHA shall inform each resident of the Smoke-Free Policy at the time of Lease signing, and any time thereafter, as may be deemed appropriate. PHA will install conspicuous no-smoking signs at entrances and exits, in common areas on building exteriors noting “No Smoking”, “This is a smoke-free environment”, “No-smoking within 25 feet of the building”, and the like.

The PHA shall post no-smoking signs at entrances to all buildings.

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 Housing Lease Addendum, and notice of requirement that residents must sign the Smoke-Free Housing Lease Addendum, to each household at least 60 days prior to the effective date of the Smoke-Free Housing Lease Addendum.

The notice shall contain the time frame within that period for acceptance of the Smoke-Free Housing Lease Addendum. The notice shall also state that failure to sign the Smoke-Free Housing Lease Addendum will result in lease termination, and contain information regarding grievance procedures.

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 Addendum and other occupancy policies are consistent with the provisions of this Policy.

The PHA shall promote this Policy, in meetings and discussions with residents, and enforce compliance with this Policy. The PHA will make information about smoking cessation resources available on-site to help interested residents learn more about quitting smoking. The PHA may continue to promote cessation resources for residents when the PHA, in its discretion, deems it helpful. The PHA understands the effort it will take for residents to comply with this Policy, but the health of all residents must be considered.

Smoke-free housing does not mean that smokers are prohibited from living in the PHA developments. It simply means that residents and visitors are not allowed to smoke anywhere inside or within 25 feet outside of any PHA housing or administrative office building.

TENANT RESPONSIBILITIES

1. Smoking is prohibited within twenty-five (25) feet of all buildings, door/entrances, windows, porches, administrative offices and maintenance facilities.
 - Residents and members of the resident’s household shall abide by this Policy and shall inform their visitors, guests and other persons under the resident’s control of the Policy.
 - Residents and members of the Resident’s household must not allow visitors, guests, and other persons under the resident’s control to violate this Policy.

2. Residents are responsible for the actions of their household, guests and visitors. Any residents, including the members of their household, guests, or visitors, will be considered in violation of the lease if found smoking within twenty-five (25) feet of any PHA-owned buildings, units, or in places that are designated as non-smoking area.
 - Residents are responsible for the actions of their household, their visitors, guests and other persons under the resident's control.

LEASE ENFORCEMENT

The PHA will enforce the Smoke-Free Public Housing Policy. The PHA will provide residents due process when enforcing this Policy and the lease agreement, and provide residents their right to an informal and formal hearing regarding any violations of this Policy or lease agreement.

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, residents will be responsible for all costs to remove smoke odor and/or residue upon any violation of this Policy, as outlined 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. Here are examples to determine resident violations of the no smoking policy that could include, but are not limited to:

- a. Staff witnesses a resident, resident's guest, family member, or service provider smoking in non-smoking areas under resident's control;
- b. Staff witnesses a lighted smoking product in an ashtray or other receptacle in non-smoking areas under the resident's control.
- c. Damages to the interior of the property (countertops, floors, etc.) that are the result of burns caused by smoking products.
- d. Evidence of smoking in a unit includes, but is not limited to, cigarette or other smoking product smells, smoke clogged filters, ashes, smoke film, including smoke damage to walls.
- e. Repeated reports to staff of violations of this Policy by third parties.

Lease violations of the Policy will be handled in a progressive manner as follows:

- 1st Violation:
 - ↳ A home visit will be conducted by the Property Site Manager or designated staff. The Property Site Manager or designated staff will issue a Verbal Warning referencing the section of the Dwelling Lease that has been violated.
 - ↳ Resident will be provided a copy of the Smoke-Free Public Housing Policy and cessation materials.
 - ↳ Resident will be required to sign an Acknowledgement of Verbal Warning form which will be documented in the resident's file.

- 2nd Violation:
 - ↳ The Property Site Manager will issue a Written Warning referencing the section of the Dwelling Lease that has been violated.
 - ↳ Resident will be provided a copy of the Smoke-Free Public Housing Policy and cessation materials.
 - ↳ Resident will be required to sign an Acknowledgement of Written Warning form which will be documented in the resident's file.
- 3rd Violation:
 - ↳ Resident 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 Site Manager will issue a Second Written Warning and require the resident to sign an Acknowledgement of Second Written Warning form which will be documented in the resident's file.
- 4th Violation:
 - ↳ A 30-day termination letter, with the right to appeal, and Grievance Hearing.
- Notice must contain information regarding Grievance Procedures.

EFFECT OF BREACH AND RIGHT TO TERMINATE LEASE

A breach of this Policy shall give each party all the rights contained herein, as well as the rights contained in the Lease. A material or continuing breach of this Policy shall be a material breach of the Lease, and grounds for termination of the Lease by the PHA, in accordance with the procedure set out in the Lease.

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, does not make the PHA the guarantor of resident'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 resident.

PHA DISCLAIMER

The adoption of a non-smoking living environment 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 residents and residents' guests.

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

Although the PHA has adopted a Smoke Free Housing Policy, it cannot guarantee that smoking will never happen.

SMOKE-FREE LEASE ADDENDUM

The Smoke-Free Lease Addendum No. 2 is attached, hereto, and made a part hereof. The Lease Addendum shall be controlling. If there is a conflict between this Policy and the Lease Addendum, the Lease Addendum shall control.

Upon adoption of the Policy, all new tenants will be given a copy of this Smoke-Free Policy and will sign the Smoke-Free Lease Addendum No. 2.

Upon adoption of the Policy, all current residents will be given a copy of this Smoke-Free Policy, Revision No. 1, and will sign the Smoke-Free Lease Addendum No. 2 at least 30 days before the effective date. Section XVII, Modification of the Lease, of the PHA Lease Agreement, allows changes to the Lease (including a Smoke-Free Lease Addendum) with written notice to the Residents.

The signed Smoke-Free Lease Addendum No. 2 will be kept in the Resident's file and a copy given to the Resident.