

**TUPELO HOUSING AUTHORITY**  
**SMOKE-FREE POLICY**  
**24 CFR Parts 965 and 966**

The Department of Housing and Urban Development (HUD) has issued a final Rule that requires ALL Public Housing Authorities to implement a smoke-free policy banning the use of prohibited tobacco products in all public housing dwelling units, indoor common areas, and buildings and must extend to all outdoor areas up to 25 feet from all buildings. This policy applies to all tenants, tenant's families, tenant's guests, visitors, contractors, service personnel, and employees.

Due to the health effects of secondhand smoke, the increased risk of fire, and the increased maintenance costs, the Housing Authority has adopted a Smoke-Free Policy that prohibits the smoking of specified prohibited tobacco products including any Electronic Nicotine Delivery Systems (ENDS) within twenty five (25) feet of the exterior of any building, the interior of any: common area, dwelling unit, non-dwelling building and vehicle owned and/or operated by the Tupelo Housing Authority.

**Definitions:**

- 1) **Visitor** – Includes any person driving/walking/or otherwise present with any resident.
- 2) **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 Act.
- 3) **Development/Property** – All Housing Authority developments and properties are included in this policy and all related administrative offices and maintenance facilities.
- 4) **Smoking** - The term “smoking” means igniting, inhaling, exhaling, breathing or carrying or possessing any lit cigar, cigarette, pipe, water pipe (referred to as hookahs) or other tobacco product (including any ENDS) or similar lighted product in any manner or in any form or any other device containing tobacco, marijuana or other legal or illegal substance that burns.
- 5) **Prohibited tobacco products** – Items that involve the ignition and burning of tobacco leaves, such as (but not limited to) cigarettes, cigars, and pipes, including waterpipes (hookahs).
- 6) **Indoor Areas** – Indoor Areas are defined as dwelling units/apartments. Indoor common areas, electrical rooms and closets, storage units or closets, community bathrooms, lobbies, hallways, laundry rooms, stairways, offices, elevators and all public housing administrative offices or buildings, Maintenance Facilities and vehicles.
- 7) **Individual Dwelling Units** - Individual apartment/unit are defined as the interior and exterior spaces tied to a particular apartment/unit. This includes, but is not limited to, bedrooms, hallways, kitchens, bathroom, patios, balconies, porches and apartment entryway areas.
- 8) **Common areas** - Common areas are Housing Authority properties that are open to tenants, tenant's families, visitors, contractors, service personnel, employees and members of the public. Common areas include:

- (a) Any inside space
- (b) Entryways/Entrances

- (c) Patios, porches and balconies
- (d) Lobbies

- (e) Hallways and stairwells
- (f) Management offices
- (g) Maintenance areas
- (h) Public restrooms
- (i) Community rooms
- (j) Community kitchens

- (k) Lawns/property Sites
- (l) Sidewalks and walkways within the development
- (m) Parking lots and spaces
- (n) Playgrounds

Common areas also include any other area of the buildings or developments where tenants, tenant's families, tenant's guests, visitors, contractors, service personnel, employees, and members of the public may go.

### **Tenants Responsibilities and Lease Violations:**

- 1) Tenant shall inform Tenant's guests of the smoke-free policy.
- 2) Tenant agrees that the other Tenants in the building are third-party beneficiaries of Tenant's smoke-free Lease Addendum and a Tenant may bring legal action against another Tenant related to this smoke-free policy.
- 3) Tenants are responsible for the actions of their household, their guests, and their visitors. Any tenant, including the members of their household, guests, or visitors and the tenant will be considered in violation of their lease if a violation of the smoke-free policy occurs. Visual observation is not necessary to substantiate a violation of this Smoke Free Housing Policy. For example, the presence of smoke, tobacco smoke odor, or smoke stains within a dwelling unit in combination with butts, ash trays, or other smoking paraphernalia will be considered significant evidence of a policy violation. In addition, the tenant will be responsible for all costs to remove smoke odor or residue upon any violation of this policy.
- 4) Tenants are encouraged to promptly give Property Management staff a written statement of any incident where smoke is migrating into the Tenant's dwelling from sources outside of the Tenant's dwelling.
- 5) A breach of this Lease Addendum shall give each party all the rights contained herein, as well as the rights in the Lease. A material breach of this Lease Addendum shall be considered a material breach of the Lease and grounds for enforcement actions, including eviction. Tenant acknowledges that a breach of this Lease Addendum shall also render Tenant liable for the costs of repair to Tenant's apartment unit due to damage from smoke odors or residue.
- 6) HUD has determined that there is no "right" to smoke in a rental home, and smokers are not a protected sub-class under anti-discrimination laws. In Constitutional jurisprudence, courts have found that smoke-free policies do not violate the Equal Protection Clause because there is no fundamental right to smoke. Additionally, the act of smoking itself is not a disability under the ADA.

## **ENFORCEMENT/FINES/ASSESSMENTS**

Any violation where the tenant, tenant's families, tenant's guests or tenant's visitor violates the lease by utilizing any defined smoking product shall be subject to the following:

**1<sup>st</sup> offense** – Referral to smoking cessation services

**2<sup>nd</sup> offense** – Verbal warning (documented in tenant the file)

**3<sup>rd</sup> offense** – Written warning

**4<sup>th</sup> offense** – Final Written warning

**5<sup>th</sup> offense** - Five (5) violations will be considered to be a serious violation of the material terms of the lease and will be cause for **non-curable** eviction. Additionally: (if interior, this will result in charges to the tenant to cover the cost of fumigating, painting or otherwise correcting damage due to smoking as defined)

## **Health and Safety of Employees and Contractors:**

For the health and safety of Housing Authority employees and housing authority representatives, no employee or representative of the Housing Authority is allowed to enter any dwelling unit if the presence of smoke or tobacco smoke odor is observed within a dwelling unit. If the tenant, tenant's families, tenant's guests or tenant's visitor utilizes any defined smoking product while an employee or representative is in their dwelling unit, the employee or representative shall vacate the apartment. This will result in a delay of services to the unit and can result in eviction of the tenant.

## **Adoption of Policy by Tenant:**

All current and new tenants will be given a copy of this policy. After review both current and new tenants are required to sign the Smoke-Free Lease Addendum. A copy will be retained in the tenant file. All tenants will be required to sign the new smoke-free agreement prior to the Effective Date. Failure to sign and/or return the Smoke-Free Policy Lease Addendum to the Property Management office in a timely manner will result in a written warning, and if still not received after the two warnings, eviction.

## **Disclaimers and Representations:**

- 1) The Smoke-Free Policy does not mean that tenants and/or employees will have to quit smoking in order to live and/or work at the Housing Authority developments and offices or drive its vehicles.
- 2) The Housing Authority is Not a Guarantor of a Smoke Free Environment – Housing Authorities adoption of the Smoke-Free Policy, and the efforts to designate portions of developments as non-smoking does not make the Housing Authority or any of its Board of Commissioners, officers, employees or agents the guarantor of Tenant's health or of the smoke free condition of the non-smoking portions of developments. However, the Housing Authority will take reasonable steps to enforce the Smoke-Free Policy. The Housing Authority is not required to take steps in response to smoking unless the Housing Authority has actual knowledge of the smoking and the identity of the responsible tenant.
- 3) Housing Authority Disclaimer – The Housing Authorities adoption of a non-smoking living environment, and the efforts to designate portions of it's developments as non-smoking does not in any way change the standard of care that the Housing Authority has under applicable law to render it's developments 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 air quality in the apartment or the building containing the apartment will improve or be any better than any other rental property. The Housing Authority cannot and does not warranty or promise that its developments will be free from secondhand smoke. The Housing Authorities adoption of the Smoke-Free Policy does not in any way change the standard of care that it has to the Tenant's apartments and the common spaces.

- 4) The Housing Authorities ability to police, monitor or enforce the Smoke-Free Policy is dependent in significant part on voluntary compliance tenants, tenant's household, tenant's families, tenant's guests and visitors.
- 5) 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 Landlord obligation under the Lease. The Housing Authority is not responsible for smoke exposure even if the tenant, a member of the tenant's household, tenant's families, tenant's guests or visitors have respiratory ailments, allergies, or any other physical or mental condition relating to smoke.
- 6) Even though the Housing Authority has adopted a Smoke-Free Policy it cannot guarantee that smoking will never happen.
- 7) In dwelling units that previously allowed smoking, the effects of that smoking may still linger.