

PUBLIC HOUSING AGENCY OF THE CITY OF SAINT PAUL

REPORT TO COMMISSIONERS

FROM JON M. GUTZMANN
EXECUTIVE DIRECTOR

REGARDING Smoke-Free Public Housing Policy;
Amendments to Admission & Occupancy
Policies; Agency Plan Amendment

DATE April 25, 2018

Staff recommends Board approval of Resolution No. 18-4/25-03 to adopt the attached “Smoke-Free Public Housing Policy” as an amendment to the Public Housing Admission and Occupancy Policies (AOP), to comply with a HUD regulation that prohibits smoking in public housing. HUD published its final rule on “Instituting Smoke-Free Public Housing” on December 5, 2016, requiring all public housing agencies to implement a smoke-free housing policy by July 30, 2018. The PHA previously adopted a Public Housing Hi-Rise Smoking Policy as Appendix H to the AOP in 2000, and the proposed policy is a revision to that policy. The attached copy shows the new language double-underlined and deleted language interlined.

The proposed policy closely follows the language of the HUD rule. The operative language in HUD’s Smoke-Free Public Housing rule is as follows:

PHAs must design and implement a policy prohibiting the use of prohibited tobacco products in all public housing living units and interior areas (including but not limited to hallways, rental and administrative offices, community centers, day care centers, laundry centers, and similar structures), as well as in outdoor areas within 25 feet from public housing and administrative office buildings (collectively, “restricted areas”) in which public housing is located. 24 CFR Sec. 965.653

The recommended policy adds “balconies” to HUD’s list of places where smoking is prohibited.

The HUD regulation defines “prohibited tobacco products” as follows:

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 [the previous paragraph], waterpipes (hookahs).

This proposed policy does not include “Electronic Nicotine Delivery Systems” (ENDS) such as “e-cigarettes”, as explained below.

The PHA’s Legal Team will draft an addendum to the public housing lease, which residents will be required to sign at the time of their annual eligibility review (“Application for Continued Occupancy”/ACO) over the coming year. However, the proposed policy itself will be enforceable once it is approved, because the lease states that “[T]he Admissions and Occupancy Policies as approved and as amended by the PHA’s Board of Commissioners ... are made a part of this Lease by reference.” This is specifically recognized in HUD’s explanation accompanying the published rule, as follows:

[Public Housing] regulations permit PHAs to modify rules and regulations to be incorporated by reference into the lease form, as long as the PHAs provide at least 30 days’ notice to all affected residents (see 24 CFR 966.5), and allow resident feedback on the new lease language (see 24 CFR 966.3). *12/5/2017 Federal Register, p. 87439*

Staff have discussed the Smoke-Free final rule and the pending PHA policy with residents in a variety of settings, including the following:

- Resident Advisory Board (RAB) meetings in September 2017
- Public Hearing on Agency Plan on November 14, 2017
- Hi-Rise Presidents Council meetings
- City-Wide Residents Council meetings.

The Resident Initiatives (RI) staff has been especially active in this area, beginning several years ago with the first Statewide Health Improvement Partnership (SHIP) grants that included goals of reducing tobacco use by public housing residents. An extensive list of RI’s smoke-free initiatives with residents and partner agencies is attached. The partners include St. Paul-Ramsey County Department of Public Health, the American Lung Association, the Public Health Law Center and others.

“ENDS”: Staff is not proposing to include “Electronic Nicotine Delivery Systems” (ENDS) such as “e-cigarettes” in the smoke-free policy at this time. HUD leaves that decision up to local housing authorities, noting that,

Research to date on ENDS is still developing and lacks clear consensus, in contrast with research on the effects of cigarettes and other tobacco products.... PHAs may exercise their discretion to include a prohibition on ENDS in their individual smoke-free policies if they deem such a prohibition beneficial. In addition, if evidence in the future arises that banning ENDS will, for example, result in significant maintenance savings, HUD will reconsider including them in items that are prohibited inside public housing.

Enforcement: Responding to questions about enforcing the smoke-free rule, HUD offered the following explanation:

HUD believes that allowing a PHA to enforce its smoke-free policy through lease enforcement actions is the best way to ensure compliance with such policies. Upon successful implementation, smoke-free policies should be enforced similar to other policies under lease enforcement procedures. HUD does not expect the enforcement of smoke-free policies to be significantly easier or more difficult than other unit-focused policies PHAs have established. Based on experiences of the PHAs that have already implemented smoke-free policies, when there is resident engagement in developing the plan and an effective plan for implementation, policy enforcement is less likely to lead to evictions.

If a PHA pursues lease enforcement as a remedy, public housing residents retain their right to an informal and formal hearing before their tenancy is terminated. As currently written, the new regulations intentionally distinguish lease violations based on criminal behaviors from violations based on civil behaviors, and place smoke-free violations in the latter category to discourage overly aggressive enforcement approaches and decrease the potential of eviction and homelessness.

Termination of assistance for a single incident of smoking, in violation of a smoke-free policy, is not grounds for eviction. Instead, HUD encourages a graduated enforcement approach that includes escalating warnings with documentation to the tenant file.

Accordingly, staff will continue to work with residents and our Legal Team to establish procedures that are designed to maximize compliance with the new rule, without resorting to lease termination except in the most extreme cases.

As required for all policy changes, this PHA's Smoke-Free Public Housing Policy will be an amendment to the Agency Plan. Since staff and residents discussed the HUD smoke-free mandate at RAB meetings last fall and in the other activities listed above, no further RAB involvement is required at this time.

If the Board approves the proposed policy, staff will send notices to all public housing households, explaining the policy and giving them 30 days to submit written comments. Staff will report back to the Board if any significant comments are received.

As explained in HUD's announcement, "This rule improves indoor air quality in the housing; benefits the health of public housing residents, visitors, and PHA staff; reduces the risk of catastrophic fires; and lowers overall maintenance costs." Staff is cautiously optimistic that the long lead time and the extensive dialogue with residents and outside organizations will result in a smooth implementation of the policy. Staff will provide informational reports to the Board at future meetings.

LTS/FAH/ANH

Attachments: Resolution No. 18-4/25-03
Revised Admission & Occupancy Policies, Appendix H
Resident Initiatives Department Smoking Cessation & Rule Preparation Activities
Timeline of The American Lung Association's Outreach Activities to Support
St. Paul PHA Implementing the HUD Smoke-Free Rule
January 25, 2017 Informational Board Report on Smoke-Free Public Housing