

## **HOUSING AUTHORITY OF THE CITY OF LUMBERTON SMOKE-FREE POLICY**

On May 29, 2012, HUD issued a notice that strongly encouraged Public Housing Authorities to implement smoke-free policies in some or all public housing units. No later than 18 months of the effective date of HUD's Final Rule of February 3, 2017, each PHA must implement a "smoke-free" 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. Effective July 30, 2018 the Housing Authority of the City of Lumberton (HACL) will officially become a smoke-free environment. Smoking will not be allowed in common areas, resident units, offices and all HACL buildings and grounds.

### **Background**

The Housing Authority of the City of Lumberton is implementing this policy because we are concerned with secondhand smoke and the affect it has on the health of our residents and the community. By going smoke-free, we are improving the overall health of the community, reducing tenant complaints, and reducing maintenance cost. There is no safe level of secondhand smoke exposure because smoke drifts throughout a building. It can enter through ceiling crawl spaces, light fixtures and walls, and seeps under and around doors. Ventilation systems do not protect families from secondhand smoke. Most air filter systems are designed to remove odors, not the toxic particles from tobacco smoke. The Environmental Protection Agency (EPA) lists secondhand smoke as a Class A Carcinogen, the most toxic class of chemicals that are known to cause cancer in humans. Secondhand smoke is the leading trigger of asthma attacks and other respiratory problems and a known cause of Sudden Infant Death Syndrome (SIDS).

### **Existing Laws Allows For Smoke-Free Housing**

Even though smokers feel that it is their right to smoke in their units, there is no Federal or State law that prohibits a property owner from implementing a smoke-free policy for their buildings or grounds and there is no legal right to smoke in federally subsidized housing. Smoke-free policies do not infringe on the legal rights of individuals because smokers are not a protected class under any state or federal law. Smokers may feel that it is their constitutional "right to smoke," which is untrue since the U.S. Constitution does not extend special protection to smokers, because there is no fundamental right to smoke. Fair housing laws do not apply to smokers, but they may be applicable when secondhand smoke infiltrates non-smoking housing units.

### **Definition of Smoking**

Inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking devices for burning tobacco or any other plant.

### **Notice to Residents**

The first letter was sent to residents in February 2018 to inform them of the policy change. A second letter was sent in May 2018 reminding them that the policy will begin July 30, 2018. It also informed residents that all lease holders must sign a lease addendum.

### **Signage**

HACL shall post non-smoking signs at entrances and exits, in common areas, and in conspicuous places adjoining the grounds of the Non-Smoking Area. Signs will be prominently placed to let residents and guests know there is no smoking in the buildings or on the grounds.

### **Smoking-Free Area**

Resident agrees and acknowledges that the premises to be occupied by resident and members of resident's household, including guests, and any interior common areas, including but not limited to community rooms, community bathrooms, lobbies, reception areas, hallways, laundry rooms, stairways, offices and elevator, within all living units, including entry ways, porches, balconies and patios have been designated as a smoke-free living environment. The adjoining grounds of the residential and community buildings, to include playgrounds, basketball courts, picnic areas, and green space, shall be designated as Smoke-Free areas. Resident and members of Resident's household shall not smoke anywhere in said Smoke-Free Area, including in the unit rented by Resident, the building where Resident's dwelling is located, or in any of the common areas or adjoining grounds of such buildings, nor shall Resident permit any guests or visitors under the control of Resident to smoke in said Smoke-Free Area.

### **Enforcement**

The policy will be effective July 30, 2018. Smoking in an apartment is treated like any other lease violation. If the violation persists, a termination notice can be issued.

When staff witnesses a violation or a resident complaint is received, HACL staff will enforce the Smoke-Free policy according to the following procedures:

**First Offense:** Staff will send the resident a reminder of the Smoke-Free Policy to include a copy of the Smoke-Free Lease Addendum signed by the resident household and linkage to cessation services.

**Second Offense:** Staff will send the resident a written letter and second reminder of the Smoke-Free policy including a copy of the Smoke-Free Lease Addendum signed by the resident household and linkage to cessation services. Resident will be advised that further lease violations will result in further action, up to and including Termination of the Lease.

A violation of the Policy may be evidenced by any of the following:

1. Staff witnesses a resident, resident's guest, or family member, service provider, or other person smoking within the unit or on the premises. "Other person" is defined as "an invitee or guest of the tenant, the tenant's family or otherwise on the premises with the knowledge of the tenant or member of tenant's family."
2. Staff witnesses a lighted smoking product in an ashtray or other receptacle in the unit or on premises around unit.
3. Damages to the interior of HACL units that are the result of burns caused by smoking products including burns to resident's personal property.
4. Evidence of smoking in a unit such as cigarette or other smoking products smells, smoke clogged filters, smoke film including damage to walls.
5. Repeated reports to staff of violations of HACL's Smoke-Free policy by third parties.
6. Clogged plumbing caused by a smoking product(s).
7. Any other evidence of smoking in a HACL unit.

**Third Offense:** Staff will send the resident a letter to attend a mandatory conference to discuss the policy and repeated violations. When feasible the property manager will be present for the conference to assist the resident in developing strategies to help them comply with the policy in order to safeguard their housing. During this conference, the resident will be required to sign a last chance agreement. If the resident fails to attend the conference or sign the last chance agreement, the resident's file will be documented accordingly.

**Fourth Offense:** Staff will issue a 30-day notice of lease termination. The resident is still afforded their right to request a hearing according to the grievance procedure.

#### **Landlord Not a Guarantor of Smoke-Free Environment**

Resident acknowledges that HACL's adoption of a Smoke-Free living environment does not make the HACL or any of its managing agents the guarantor of Resident's health or of the smoke-free condition of the Resident's unit and the common areas. However, HACL shall take reasonable steps to enforce the non-smoking terms of its leases and to make the Smoke-Free Area as smoke-free as is reasonably possible. HACL is not required to take steps in response to smoking unless HACL knows of said smoking or has been given written notice of said smoking.

**Disclaimer.** HACL's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, does not in any way change the standard of care that the Landlord or managing agent would have to a Tenant household to render buildings and premises designated as smoke-free any safer, more habitable, or improved in terms of air quality standards than any other rental premises. Landlord specifically disclaims any implied or express warranties that the building, common areas, or Tenant's premises will have any higher or improved air quality standards than any other rental property. Landlord cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke. Tenant acknowledges that HACL's ability to police, monitor, or enforce this policy is dependent in significant part on voluntary compliance by Tenant and Tenant's guests. Tenants with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that Landlord does not assume any higher duty of care to enforce this policy than any other landlord obligation under the lease.

**Overall Impact of the Smoke-Free Policy**

The Smoke-Free policy will improve the condition of individual units and it will eventually reduce the turnover cost related to smoke related damages. It will provide staff with equal access to a smoke-free work environment and most importantly it will create healthier communities.