

# **LORAIN METROPOLITAN HOUSING AUTHORITY**

## **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 May 1, 2018, the Lorain Metropolitan Housing Authority (LMHA) will officially become a smoke-free environment. Smoking will not be allowed in common areas, resident units, offices and within twenty-five (25) feet of all doors and windows. Smoking will only be allowed in designated areas.

### **Background**

The Lorain Metropolitan Housing Authority 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. On November 15, 2016, we began the "We Care Healthy Homes Initiative" campaign to have a smoke-free environment. 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 December 2016 to inform them of the policy change. A second letter will be sent in January 2017 reminding them that the policy will begin May 1, 2018. It will also inform residents that all lease holders must sign a lease addendum.

### **Potential Residents**

We Care Healthy Homes Initiative information should be provided to all applicants.

### **Signage**

LMHA 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 are prominently placed to let residents and guests know there is no smoking in the buildings. "This is a smoke-free building" signs are placed by the door outside the building "No smoking" signs are in the lobby, community room, office and any other common area.

### **Designated Smoking areas**

If, in LMHA's sole discretion, the property size and configuration allow, LMHA may designate and clearly identify a specific outdoor area where smoking is permitted. If a designated area has not been identified at the property, then smoking shall be permitted at least 25 feet away from any window or door of the LMHA structure. If a designated smoking area is established, smoking on the premises must be confined to and occur only within that designated smoking area.

### **Enforcement**

The policy will be effective May 1, 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, LMHA staff will enforce the non-smoking policy according to the following procedures:

**First Offense:** Staff will send the resident a reminder of the non-smoking policy to include a copy of the Non-Smoking Lease Addendum signed by the resident household, linkage to cessation services and their resident services representative. A referral should also be completed to refer the resident to their resident services representative for assistance in complying with the non-smoking policy.

**Second Offense:** Staff will visit the household. Evidence will be gathered by looking for signs of smoking, including stains on the walls, ash trays inside the unit and burn marks. Staff will document where tobacco and other plant smoke odors are present inside the building and take pictures where appropriate. All unit inspections due to witnessed or reported smoking violations will be documented in writing even if evidence is not collected or found.

A resident's household will be determined to be in violation of the policies if:

1. Staff witnesses a resident, resident's guest, or family member, service provider, or other person smoking within the unit or within 25 feet of the building. "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 within 25 feet of the building
3. Damages to the interior of LMHA owned subsidized units that are the result of burns caused by smoking products including burns to resident owned 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 LMHA's non-smoking policy by third parties.
6. Clogged plumbing caused by a smoking product or products
7. Evidence of ashes on any surface in a LMHA owned subsidized unit

Staff will send the resident a written letter of the findings of their inspection and second reminder of the non-smoking policy including a copy of the Non-Smoking Lease Addendum signed by the resident household, linkage to cessation services and their resident services representative. Resident will be advised that further lease violations will result in further action, up to and including Termination of the Lease.

**Third Offense:** Staff will send the resident a letter to attend a mandatory conference to discuss the policy and repeated violations. When feasible both the property manager and resident services representative 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. At this time the resident will not be given an option to cure. In the event a 30 day notice is issued for violation of the non-smoking policy, the resident is still afforded their right to request a hearing according to the grievance procedure.

### **Resident Service Engagement**

Resident Service Coordinators will provide residents with training to assist residents to stop smoking. We understand how difficult it is to quit smoking so they will work with the Lorain County General Health District to offer smoking cessation programs. They will coordinate special meetings where residents will receive information on the risk of secondhand smoke.

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

LMHA's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, do not make LMHA or any of its managing agents the guarantor of Tenant's health or of the smoke-free condition of the Tenant's unit and the common areas. However, LMHA shall take reasonable steps to enforce the smoke-free terms of its leases and to

make the complex smoke-free. Landlord is not required to take steps in response to smoking unless Landlord knows of said smoking or has been given written notice of said smoking.

**Disclaimer.** LMHA'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 LMHA'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 site staff with equal access to a non-smoking work environment and most importantly it will create healthier communities.