



# Fitchburg Housing Authority Smoke-Free Policy

## PREAMBLE

This policy amends the existing Smoke-Free policy passed by the Fitchburg Housing Authority in 2015. The original Smoke Free policy only impacted the housing authority's senior housing developments. This updated Smoke Free policy now encompasses the FHA's family developments and single-family homes.

Smoking within dwelling units is costly to the FHA and to the tenants who live near those units. There is evidence that second-hand smoke causes adverse health conditions including but not limited to respiratory illness, cardiovascular disease, cancer, and asthma. Lit tobacco and other smoking products also pose a potential fire hazard and vacated units of smokers cost more to rehabilitate as there are additional costs incurred due to stains, residues, and odors caused by cigarette smoke.

1. **General No Smoking Policy:** Since 2015 it is the policy of the Fitchburg Housing Authority to promote and enforce a smoke free living environment. To that end of the Fitchburg Housing Authority has enforced a non-smoking Lease Addendum for the protection of all the residents of all of its State-Elderly aided public housing units. Effective January 1<sup>st</sup>, 2020 this policy will be extended to the FHA's family dwelling units including its single-family home dwelling units. This policy modifies the existing smoke free policy in existence for the FHA's senior properties consisting of Wallace Towers, C.J. Durkin Building and Daniels Heights apartment complexes. With passage of this policy Green Acres, Canton Valley and the FHA's scattered site single-family housing will be smoke free.

2. **Smoking Not a Basis for Disqualification of Housing:** It is understood and acknowledged by that this policy shall not be used to disqualify anyone applying for housing with the Fitchburg Housing Authority.
3. **Applicability:** This policy shall apply to all Tenants, members of Tenant's family or household, to all guests of Tenant and to any parties having business on the premises.
4. **Purpose of No-Smoking Policy.** The parties desire to: (a) reduce the irritation and known health effects of secondhand smoke or electronic vapor; (b) decrease maintenance, cleaning and redecorating costs that result from smoking or electronic vapor; (c) decrease the risk of fire from smoking; and (d) lower the costs of fire insurance.
5. **Definition of Smoking.** (a) The term 'smoking' means inhaling, exhaling, breathing, or carrying any lighted cigar, cigarette, incense, or other tobacco and/or marijuana product or similar lighted product – including non-tobacco products- in any manner or in any form. This shall include any form of electronic cigars, cigarettes or other vapor producing tobacco product or similar vapor producing product. Furthermore, it includes the use of any device that creates a flame or ignition.  
  
(b) The term "smoke" refers to lingering smoke resulting from smoking. The term "electronic cigarette" means any electronic device that provides a vapor of 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, or under any product name.
6. **Smoke-Free Complex.** Tenant agrees and acknowledges that the premises to be occupied by Tenant and members of Tenant's household have been designated as a smoke-free living environment. Tenant, members of Tenant's household and Tenant's guests shall not smoke anywhere in the unit rented by Tenant. Smoking will be permitted only in the designated areas or more than 50 feet away from the entrances.
7. **Outdoor Smoking Area.** If smoking is allowed on housing authority property it shall be in a designated "Smoking Area."



8. **Tenant to promote No-Smoking Policy and to Alert Landlord of Violations.** Tenant shall inform Tenant's guest of the non-smoking policy. Further, the tenant shall promptly give Landlord a written statement of any incident where tobacco smoke is migrating into the Tanat's unit from sources outside of the Tenant's apartment unit.
  
9. **Landlord Not a Guarantor of Tenant's Safety During Tenant's Use of Designated Smoking Areas.** Tenants are permitted to smoke in designated areas on housing authority property. In accordance with the Massachusetts General Law Chapter 220 Section 22, designated smoking areas involving a structure require that such structure cannot be enclosed. The state definition of an enclosed structure includes a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one or more doors. If the outdoor space has a nature of the walls or covers, the space will be considered enclosed when the walls or covers are in place, and as such, are prohibited as designated smoking areas.
  
10. **Landlord to Promote No-Smoking Policy.** Landlord shall inform each Tenant at the time of the Lease signing and any time thereafter as may be deemed appropriate. Landlord will make smoking cessation materials available to Tenant.
  
11. **Landlord Not a Guarantor of Smoke-Free or Environment.** Tenant acknowledges that Landlord's adoption of a smoke-free living environment, and the efforts to designate the rental complex as smoke-free, does not make the Landlord or any of it's managing agents the guarantor of Tenant's health or of the smoke-free conditions of the Tenant's unit and the common areas. However, Landlord shall take reasonable steps to enforce the smoke free terms of it's 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. Landlord may also discover violations of this lease policy as part of the annual or routine unit inspection by Landlord.



12. **Other Tenants are Third-Party Beneficiaries of Tenant's Agreement.** Tenant agrees that the other Tenants at the complex are the third-party beneficiaries of Tenant's smoke-free addendum agreements with landlord. (In layman's terms, this means that the Tenant's commitments in the Addendum are made to the other tenants as well as to Landlord.) A Tenant may sue another a Tenant for an injunction to prohibit smoking or for damages but does not have the right to evict another Tenant. Any suit between Tenants herein shall not create a presumption that the Landlord breached this policy.
13. **Effect of Breach and Right to Terminate Lease.** A breach of this Lease shall give each party all the rights contained herein, as well as the rights in this Lease. A material breach of this Policy shall be a material breach of the lease and may be grounds for immediate termination of the Lease by the Landlord pursuant to sections IX, X, XIX and XX.
- 14 **Fees and Charges from Smoking in Unit.** If the FHA determines that the tenant's smoking in the unit has caused material and physical damage to the unit the tenant shall be charged for such damages per the FHA's list of Tenant's Fees and Charges.
15. **Disclaimer by Landlord.** (a) Tenant acknowledges that Landlords 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. (b) Landlord specifically disclaims any implied or express warranties that the building, common areas, or Tenant's premises will have any higher or improve air quality standards than any other rental property. (c) Landlord cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke. (d) Tenant acknowledges that Landlord's ability to police, monitor, or enforce the agreements of this Addendum is dependent in significant part on voluntary compliance by Tenant and Tenant's guests. (e) 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 Addendum than any other landlord obligation under the Lease.



16. **Written Notice to All Applicants and Current Tenants:** Each applicant during the beginning of the application process will be provided with a one-page notice outlining the FHA's Smoking Policy. Each tenant upon their annual recertification shall be required to sign the Smoking Policy Lease Addendum. The FHA will provide information on smoking cessation classes and other resources to help encourage tenants to quit smoking.
17. **Designated Smoking Areas:** The following are the designated smoking areas for each of the FHA's properties:
- A. **Wallace Towers:** At least thirty (30) feet from the building or in the designated smoking shed located in the parking lot.
  - B. **C.J. Durkin:** At least thirty (30) feet from the building or in the designated smoking shed located in the rear loading dock area.
  - C. **Daniel Heights:** At least thirty (30) feet from any building or in the designated smoking shed located behind Building #2, #6 and #8.
  - D. **Scattered Site Housing Units:** Anywhere outside of the home that is at least five (5) feet away from the building.
  - E. **Green Acres:** At least eight (8) feet behind the backdoor of the tenant's unit. Tenant's cannot smoke in the front of their units.
  - F. **Canton Valley:** At least ten (10) feet away from either the front or back doors.

FHA management has the discretion modifying the actual locations that permit smoking or in fact if needed eliminating the smoking areas. Please note that smokers must clean up any debris caused when smoking.

18. **Withdrawal of Smoking Privilege:** (a) We encourage neighbors respect each other's peaceful enjoyment of their homes and property. It is not the job of the Fitchburg Housing Authority to police each and every one of its tenants each time they smoke. The success of this policy will rest on many factors but respect for each other's is critical. (b) Besides the risk of fees and fines and possible eviction the FHA has the power to withdraw a tenant's smoking privilege if management determines they have been violating the policy.

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This amended no smoking policy was approved by the FHA Board of Commissioners on October 23<sup>rd</sup>, 2019. FHA Chairman Linda E. Byrne: 