

# Housing Authority of the



City of Riverbank

*Burney Villa Homes ▪ Henrietta F. Rossi Apts. ▪ Fred W. Scheala Apts*

DATE: June 18, 2018  
TO: Board of Commissioners  
FROM: Barbara Kauss, Executive Director  
SUBJECT: **Action Item # 1** - Consideration of Resolution No. 723 – Resolution approving and authorizing the implementation of the Housing Authority of the City of Riverbank Public Housing Smoke Free Policy.  
PREPARED BY: Jim Kruse, Deputy Director/Clerk of the Board

Resolution No. 723

## **RECOMMENDATION**

Staff recommends the Commission approve and authorize the implementation of the Housing Authority of the City of Riverbank Public Housing Smoke Free Policy to maintain compliance with HUD Regulations and for the health and benefit of Public Housing residents and staff.

## **BACKGROUND/DISCUSSION**

In accordance with PIH Notice 2017-3 and HUD's Final Rule CFR 965.653 (Smoke-free public housing) 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.

The purpose of the rule is to require PHAs to establish, within 18 months of the effective date (February 3, 2017), but no later than July 30, 2018, a policy disallowing the use of prohibited tobacco products. A PHA's smoke-free policy must, at a minimum, ban the use of all prohibited tobacco products. Prohibited tobacco products are defined as: items that involve the ignition and burning of tobacco leaves, such as (but not limited to) cigarettes, cigars, and pipes, including waterpipes (hookahs).

## **FISCAL IMPACT**

No significant fiscal impact is expected.

## **Attachments**

Public Housing Smoke Free Policy

**THE HOUSING AUTHORITY OF THE CITY OF RIVERBANK**  
**SMOKE-FREE PUBLIC HOUSING POLICY**

**1. Department of Housing and Urban Development Rule.**

On November 29, 2016, the Department of Housing and Urban Development (HUD) adopted Rule RIN 2577-AC97, effective February 3, 2017, which requires every Public Housing Agency (PHA) administering public housing to implement a smoke-free policy. Specifically, no later than 18 months from the effective date of the rule, 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. The smoke-free policy must also extend to all outdoor areas up to 25 feet from the public housing and administrative office buildings.

Under the Rule, a PHA’s smoke-free policy must, at a minimum, ban the use of all prohibited tobacco products, which are defined as (1) items that involve the ignition and burning of tobacco (2) to the extent not covered by (1), water pipes (hookahs).

Pursuant to the Rule, PHAs may, but are not required to, further restrict smoking to outdoor dedicated smoking areas outside the restricted areas, create additional restricted areas in which smoking is prohibited (e.g., near a playground), or, alternatively, make their entire grounds smoke-free.

**2. Purpose of Policy.**

This smoke-free policy is intended to benefit the Housing Authority and all of its public housing residents, visitors, and staff by mitigating (i) the irritation and known adverse health effects of secondhand smoke; (ii) the increased maintenance, cleaning, and redecorating costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the higher costs of fire insurance for a non-smoke-free building.

**3. Definitions.**

“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco product intended for inhalation, including hookahs, whether natural or synthetic, in any manner or in any form. “Smoking” also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

“Electronic Smoking Device” means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

**4. All Buildings to Be Smoke-Free.**

All public housing buildings and administrative offices shall be smoke-free. Smoking is prohibited in all living units, including any associated balconies, decks, or patios, and in the common areas of the buildings, including, but not limited to, community rooms, community bathrooms, lobbies, reception areas, hallways, laundry rooms, stairways, offices, and elevators.

**5. Smoking on Grounds of Buildings.**

Smoking is prohibited anywhere on the grounds adjoining public housing and office buildings, including entryways, patios, and yards or on the grounds adjoining public housing and office buildings, except in designated smoking areas which are located at least 25 feet from such buildings.

**6. Applicability of Policy.**

This Policy is applicable to all tenants, residents, Housing Authority employees, visitors, contractors, volunteers, and vendors.

**7. Effective Date of Policy**

This policy shall be effective on **July 1, 2018**.

**8. Responsibilities of Tenants.**

Tenants and household members shall be responsible to enforce this Policy as to their guests, invitees, and visitors to their residential units. Tenants shall promptly give the Housing Authority written notice of any incident where tobacco or vapor from an electronic cigarette, is migrating into the Tenant's apartment unit from sources outside the Tenant's unit.

**9. Housing Authority to Promote Smoke-Free Policy.**

The Housing Authority may post no-smoking signs at entrances and exits, common areas, and hallways, and in conspicuous places on the ground of all residential and administrative office buildings. In addition, the Housing Authority shall provide copies of this Policy to all Tenants and prospective Tenants.

**10. Policy Leniency Period.**

The Housing Authority will institute a six (6) month leniency period for existing tenants during the policy implementation period.

**11. Violation of Policy.**

A violation of this smoke-free Policy shall be considered a material breach of the Tenant's Lease and grounds for enforcement actions, including eviction, by the Housing Authority.

The Housing Authority may utilize the following progressive enforcement process to address the violations of the No Smoking Policy:

1st Violation – Verbal Warning will be given.

2nd Violation – A written letter of warning will be given. Upon issuance of a written warning to tenant, the Housing Authority may increase the frequency of unit inspections for a suspected policy violator.

3rd Violation – A thirty (30) day lease termination notice will be served to the tenant but tenant will be given an option to remedy.

4th Violation – A thirty (30) day lease termination notice.

Notwithstanding the progressive enforcement process, the Housing Authority reserves the right to terminate the tenancy at any time including violations of this smoking policy and failure otherwise of tenants to fulfill their household obligations if tenant behaviors disturb other tenant's peaceful enjoyment of their accommodations and are not conducive to maintaining the property in a decent, safe and sanitary condition. Repeated violation of this Smoke Free Rule may also constitute other good cause for termination of the tenancy.

To the extent a violation has been confirmed, the Housing Authority may provide information and resources on smoking cessation at any stage of the progressive enforcement process. The Housing Authority also reserves the absolute discretion to clear or reset the record of a tenant who does not have any new policy violations for a specified period of time

When enforcing this no smoking policy, the Housing Authority will provide due process and allow tenants to exercise their rights to an informal settlement process and a formal hearing pursuant to 24 CFR §966, Subpart B.

A Tenant who violates the Policy shall also be liable to the Housing Authority for the costs of repair to the Tenant's apartment unit due to damage from smoke odors or residue.

## **12. Housing Authority Not Guarantor of Smoke-Free Environment.**

The Housing Authority's adoption of this smoke-free Policy does not make the Housing Authority or any of its officers, employees, or agents, the guarantor of the health of any Tenant or of the smoke-free condition of the portions of its properties in which smoking is prohibited under the Policy. However, the Housing Authority will take reasonable steps to enforce the Policy. The Housing Authority is not required to take steps in response to smoking in violation of this Policy unless the Housing Authority either has actual knowledge of the smoking and the identity of the responsible Tenant or has been given written notice of the smoking.

### **13. Housing Authority Disclaimer.**

The Housing Authority's adoption of this smoke-free Policy does not in any way change the standard of care that the Housing Authority would have 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. The Housing Authority specifically disclaims any implied or express warranties that the building, common areas, or Tenants' premises will have any higher or improved air quality standards than any other rental property. The Housing Authority cannot and does not warranty or promise that the rental premises or common areas will be free from secondhand smoke or vapor. The Housing Authority's ability to police, monitor, or enforce the provisions of this Policy is dependent in significant part on voluntary compliance by Tenants and their guests/visitors. 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 Housing Authority obligation under the Tenants' Lease Agreement.

**RESOLUTION NO. 723**

**RESOLUTION APPROVING AND AUTHORIZING THE IMPLEMENTATION OF THE HOUSING AUTHORITY OF THE CITY OF RIVERANK PUBLIC HOUSING SMOKE FREE POLICY**

**WHEREAS**, the Housing Authority of the City of Riverbank a public entity organized and existing pursuant to Title 24 of the Code of Federal Regulations, the Department of Housing and Urban Development ("HUD"), and the laws of the State of California, has determined that it is in need of adopting a Smoke Free Policy; and

**WHEREAS**, specifically, On November 29, 2016, the Department of Housing and Urban Development (HUD) adopted Rule RIN 2577-AC97, effective February 3, 2017, which requires every Public Housing Agency (PHA) administering public housing to implement a smoke-free policy by July 30, 2018, and

**WHEREAS**, the Board of Commissioners has reviewed and discussed the proposed Smoke Free Policy, and

**NOW, THEREFORE, BE IT RESOLVED**, by the Commissioners of the Housing Authority of the City of Riverbank, that

1. The proposed Public Housing Smoke Free Policy be hereby approved, and
2. The Executive Director is authorized to implement said policy, and
3. This resolution shall take effect immediately.

**DULY AND REGULARLY ADOPTED** by the Board of Commissioners of the Housing Authority of the City of Riverbank this 18<sup>th</sup> day of June, 2018

On motion of Commissioner \_\_\_\_\_, seconded by  
Commissioner \_\_\_\_\_, and on the following roll call vote:

AYES:

NAYS:

ABSENT:

Attest: \_\_\_\_\_  
Secretary

Approved: \_\_\_\_\_  
Chairman