

SPOKANE INDIAN HOUSING AUTHORITY

DRUG AND ALCOHOL POLICIES AND PROCEDURES

Adopted: March 22, 2018

Amended: June 5, 2019; Feb. 24, 2021

DRUG AND ALCOHOL POLICIES AND PROCEDURES

Policy Statement

The Board of Commissioners of the Spokane Indian Housing Authority (SIHA) recognizes the need to set forth the approach for assuring a healthy, safe and peaceful environment for all persons residing in SIHA units. This policy is intended to provide for the eviction or termination of any and all tenants and homebuyers who engage in drug-related activity, whether on or off SIHA premises, are publicly intoxicated on SIHA premises, or sell or distribute alcohol to a minor. This policy is incorporated by reference into all SIHA leases and homebuyer agreements.

This policy applies to all SIHA programs, all premises owned, leased, or managed by SIHA, whether rental units or homebuyer units. The procedures are intended to be fair and equitable to all applicants and residents participating in SIHA programs.

A. DEFINITIONS

As used in this policy, the following definitions shall apply:

1. **SIHA** means Spokane Indian Housing Authority.
2. **Drug-related activity** means the illegal manufacture, sale, distribution, possession, or use, of a controlled substance (as such term is defined in section 102 of the federal Controlled Substances Act and enforced by the United States Department of Justice). This prohibition also applies to a visitor or guest while visiting the premises.
3. **Guest** means any person, other than the tenant, in or around a unit or on the premises with the permission and consent of the tenant.
4. **Visitor** means a person temporarily visiting in a dwelling unit with a family for a period of not more than fourteen (**14**) days during any 6-month period. Persons residing longer than fourteen (**14**) days, without the prior permission of SIHA, shall be determined to be an unauthorized, non-family resident. The repeated presence of additional persons in the unit and/or their use of the unit for purposes such as receiving mail may be cause for the family's dwelling lease to be terminated.
5. **Controlled Substance** has the same meaning as defined and enforced by federal drug enforcement laws, currently found in Title 21 U.S.C. section 802. These controlled substances currently include but are not limited to non-medical marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), or methamphetamine. The term does not include distilled spirits, wine, malt beverages, or tobacco.
6. **Minor** means any person under the age of 18 years.
7. **NAHASDA** means the Native American Housing Assistance and Self-Determination Act passed by the U.S. Congress in October 1996.
8. **SIHA Premises** includes all housing units, whether rental or homebuyer, all common areas, all administrative areas and all lands and buildings included in any lease of property of SIHA.

9. **Tenant** is any occupants of a unit.
10. **Homebuyer** is a person who has entered into a homebuyer agreement with SIHA.
11. **Composite Sampling** means the process(es) used to check for the presence of drug residue in a unit.
12. **Decontamination** means the process of reducing levels of known methamphetamine contaminants to the lowest practical level, below the threshold limit of .5 micro grams per 100 square centimeters (0.50ug/100cm²), using current available methods.

B. INELIGIBILITY FOR ADMISSION

1. Prior Alcohol or Drug-Related Incidents

- a. Persons evicted by any Tribally Designated Housing Entity, any Indian Housing Authority, public housing, Section 23, or any Section 8 program or whose homebuyer agreement with any Tribally Designated Housing Entity or any Indian Housing Authority has been terminated because of drug-related activity involving use or possession of a controlled substance, are ineligible for admission to any SIHA program for a three-year period beginning on the date of such eviction or termination.
- b. Persons evicted by SIHA or whose homebuyer agreement with the Housing Authority has been terminated because of alcohol inebriation or the selling or distribution of alcohol to a minor are ineligible for admission to any SIHA program for a 1-year period beginning on the date of such eviction or termination.
- c. Persons who were found to have engaged in drug-related activity involving the use or possession of a controlled substance (but not involving the manufacture, sale or distribution of a controlled substance) are ineligible for admission to any SIHA housing unit for a three-year period from the date of the activity.
- d. Persons who were found to have engaged in drug-related activity involving the manufacture, sale or distribution of a controlled substance are ineligible for admission to any SIHA housing unit.

C. WAIVER OF INELIGIBILITY

1. The SIHA Board of Commissioners may waive the ineligibility of any family/person that is ineligible for admission to a SIHA program on a case by case basis if:
 - a. The family demonstrates successful completion of a supervised drug or alcohol rehabilitation program approved by SIHA, including successful completion of any required follow-up treatment plan; or
 - b. The circumstances leading to the ineligibility no longer exist. For example, the individual involved in drugs or alcohol use is no longer an occupant of the unit or a member of the household.
 - c. The family can provide documentation indicating that they have otherwise been rehabilitated successfully and agrees to random drug testing at the family's expense.

- d. It has been over three years since the last conviction of drug related activity not involving the manufacture, sale or distribution of a controlled substance.
2. Any person desiring to have his or her ineligibility waived shall have the burden of showing that the requirements for waiver have been met.
3. Nothing in this section shall require waiver of ineligibility under any circumstances.
4. The Board of Commissioners may seek counsel from any individuals or agencies to make a determination, and may delegate the authority to review the application for a waiver to the Executive Director provided such waiver includes appropriate legal review.

D. EVICTION OR TERMINATION

1. **Eviction – Tenants.** Tenants may be evicted if any one of the following circumstances occurs during the term of tenancy:
 - a. The tenant, or any member of the tenant’s household, has engaged in drug-related activity, whether on or off SIHA premises.
 - b. Any visitor or guest of the tenant engages in drug-related activity on SIHA premises.
 - c. The tenant or a member of tenant’s household failed or refused to take any test or tests required under this policy.
2. **Termination – Homebuyer.** A homebuyer agreement shall be terminated immediately if any one of the following circumstances occurs during the term of the agreement:
 - a. The homebuyer, or any member of the homebuyer’s household, has engaged in drug-related activity, whether on or off SIHA premises.
 - b. Any visitor or guest of the homebuyer engages in drug-related activity on SIHA premises.
 - c. The homebuyer or a member of homebuyer’s household failed or refused to take any test or tests required under this policy.

3. Procedure upon Violation

In the event of a violation hereof, the tenant or homebuyer shall receive a written notice from the Executive Director of SIHA to immediately vacate the premises. The notice will contain the provision that should the tenant or homebuyer fail to vacate the premises, or provide acceptable documentation of applicable rehabilitation, SIHA will seek a forcible eviction.

4. Removal of Resident, Visitor or Guest

No tenant shall be evicted and no homebuyer agreement shall be terminated if the tenant or homebuyer has promptly secured the removal of the offending resident, visitor or guest from the premises. SIHA may randomly inspect the unit to ensure program and policy compliance.

E. DUE PROCESS

1. There shall be no right to a grievance hearing before the Board of Commissioners concerning a termination of tenancy or eviction that involves drug-related activity.
2. The opportunity to be heard by the Tribal Courts shall be afforded to all tenants/homebuyers involved in eviction matters.

F. METHAMPHETAMINE UNIT INSPECTIONS

Units will be tested using a composite sampling using the threshold limit of 0.50ug/100cm². The inspection and composite sampling process will apply to all rental and homebuyer homes managed by SIHA. There are three types of potential inspections:

1. Regularly scheduled testing
 2. Random testing, and
 3. Reasonable suspicion/probable cause testing.
1. **COMPOSITE SAMPLING.** SIHA will test for the presence of methamphetamine using composite sampling. Wipe samples shall be collected from non-porous surfaces. Samples will only be collected by qualified technicians or staff and sent to a certified laboratory for analysis.
 - a. Each unit will have a composite sampling performed prior to occupancy. Applicants/new tenants will receive documentation stating composite sampling has previously been performed and samples were negative. A copy of such documentation will be made available during orientation and a copy placed in their program file.
 - b. Wipe samples will be collected by a qualified SIHA staff member and sent to a certified laboratory for analysis.
 - c. SIHA staff will not perform composite sampling of any unit being tested due to reasonable suspicion/probable cause to uphold the integrity of the sampling and avoid any conflict of interest or biases. In these cases, a qualified third party contractor will complete the sampling to send to certified laboratory.

2. REGULARLY SCHEDULED TESTING

After the first year of occupancy, SIHA will complete a composite sample of the unit.

3. RANDOM TESTING

A total of five units the first year of this policy will be randomly selected and 10 units every year thereafter to have composite sampling. Units will be selected using a random number generator and a copy of the list results will be printed and kept for verification by both tenants and management. This information can be requested by the tenant.

4. REASONABLE SUSPICION/PROBABLE CAUSE

A composite sampling will be completed by a third party contractor under reasonable suspicion/probable cause under the following circumstances:

1. The SIHA staff has physically observed the use and/or presence of a controlled substance and/or drug paraphernalia in the unit while performing their job function(s).
2. Notification and/or documentation from mandated reporters from various Tribal entities, while serving in their official capacity, who have physically observed the use/or presence of a controlled substance and/or drug paraphernalia in the unit.
3. Notification and/or documentation from Law Enforcement/Legal Officials who have observed the use and/or presence of a controlled substance and/or drug paraphernalia while in the unit or on the premises.
4. Documentation of a warrant or criminal charges being placed on a tenant that involves drug-related activity.

5. PROCEDURE AFTER A POSITIVE TEST

1. All occupants over the age of 18 shall submit a follicle test within 24 hours of notification. Notification will be delivered to the tenant's house. If nobody is home to accept the notification, it will be posted on the door and SIHA will call the tenants phone number on file. Failure to report for a drug test will be considered a positive drug test.
2. The tenant(s) will be given a Notice of Termination.

6. LIABILITY FOR A POSITIVE TEST

1. The **tenant** will be liable for all costs associated with restoring the unit back to safe, healthy and drug-free standards when one of the following apply:
 - a. The unit previously tested negative for methamphetamine prior to move-in and the current sampling results are positive for methamphetamine.
 - b. The unit was not previously tested for methamphetamine prior to move-in, but the positive sampling results are consistent with evidence that the tenant has engaged in drug-related criminal activity during their tenancy. Acceptable evidence includes, but is not limited to:
 - i. police reports,
 - ii. convictions related to drug-related activity,
 - iii. documentation from other tribal departments (social services, courts, etc.),
 - iv. positive drug test of tenant, and/or
 - v. SIHA inspections where drug paraphernalia is found in the unit.
 - c. The unit was not previously tested for methamphetamine prior to move-in, but SIHA has a positive composite sample of a surface that was replaced after the previous tenant's move-out date. Such surfaces may include, but are not limited to: appliances, flooring, cabinets, doors, blinds, windows, etc.

2. SIHA will be liable for costs associated with restoring the unit back to safe, healthy and drug-free standards when one of the following apply:
 - a. The unit was not previously tested for methamphetamine prior to move-in and there were no surfaces replaced after the previous tenant's move-out date that were adequate for composite sampling.
 - b. The unit was not previously tested for methamphetamine prior to move-in date and SIHA has a negative composite sample of a surface that was replaced after the previous tenant's move-out date.
3. Costs of restoration will include costs for:
 - a. both initial and post composite sampling of the unit,
 - b. decontamination, and
 - c. the rehabilitation of any damages to the unit.

7. LIABILITY FOR A NEGATIVE TEST

When a composite sample is negative, SIHA will be responsible for testing costs.

8. DECONTAMINATION

SIHA and any hired person, company or entity performing the decontamination of a unit will be required to adhere to the standards comparable to Washington's decontamination process and clean-up standards set forth in Washington Administrative Code Chapter 246-205, except that the acceptable level of decontamination shall be below the threshold limit of .5 micro grams per 100 square centimeters (0.50ug/100cm²).

G. RECORD MANAGEMENT

Any applicant for SIHA housing shall be required to sign release forms to allow SIHA to complete a background check to assure compliance with this policy.

1. Criminal History

Any criminal record received in order to administer this policy must be maintained confidentially and in compliance with requirements set forth in NAHASDA.

2. Use of Criminal Background Information

SIHA shall use criminal background information only for applicant screening, lease enforcement and eviction actions. The information may be disclosed only to any person who has a job related need for the information and who is an authorized officer, employee, or representative of SIHA, or as required for eviction proceedings.

3. Copy of Criminal Conviction or Civil Penalty Record

A certified copy of a criminal conviction record or of a civil penalty record shall be conclusive proof of the drug-related activity identified in the record or of the alcohol-related offense specified in the record; provided, that before any adverse action based on such a record can be taken, the person must be provided with a copy of the record and an opportunity to dispute the

accuracy or relevancy of the record. In the case of an eviction or termination for which no opportunity for a hearing is required prior to the court hearing, a copy of the record shall be filed with the court and served on tenant or homebuyer with the Summons and Complaint.

4. Maintenance of Criminal Conviction Records

1. SIHA will keep all the criminal conviction record information it receives from official law enforcement agencies in files separate from all other housing records.
2. These criminal conviction records will be kept under lock and key and be under the custody and control of the SIHA Executive Director and/or his designee for such records.
3. These criminal conviction records may only be accessed with the written permission of the Executive Director and/or his designee and are only to be used for the purposes stated in section 208 of NAHASDA and these regulations.

5. No Requirement for Criminal Conviction or Civil Penalty

In no instance shall a criminal conviction be required to have been entered or a civil penalty required to have been assessed in order for a person to be ineligible for admission to SIHA programs or be subject to eviction or termination from a SIHA rental or homebuyer unit.

H. SOVEREIGN IMMUNITY

The Spokane Tribe's sovereign immunity from suit extends to the Spokane Indian Housing Authority and also extends to Tribal officers, employees and/or authorized agents acting on behalf of the Tribe and within the scope and authority of such officer, employee and/or authorized agent.

Amended by Board of Commissioners on February 24, 2021.



Loren Bair, Acting Executive Director