

SPOKANE INDIAN HOUSING AUTHORITY

CRIMINAL POLICY

Adopted: Mar. 30, 2007
Amended: Sept. 17, 2009;
Jan. 24, 2013; June 5, 2019

CRIMINAL POLICY
FOR
THE SPOKANE INDIAN HOUSING AUTHORITY

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A. PURPOSE

1. The purpose of this policy is to assure a safe and healthy environment and to preserve the right of peaceful enjoyment for all persons residing in housing assisted by the Spokane Indian Housing Authority.
2. It is the intent of this policy to bar participation from all Spokane Indian Housing Authority programs and all persons who have engaged in sexually violent crimes, all other criminal activity which would constitute a Major Crime, drug-related criminal activity, and other criminal activity involving physical force or violence but not amounting to a Major Crime, whether on or off Spokane Indian Housing Authority premises.
3. This policy is incorporated by reference into all Spokane Indian Housing Authority leases and all Spokane Indian Housing Authority homebuyer agreements.

B. APPLICABILITY

This policy applies to all SIHA programs and to all SIHA premises, whether rental units or homebuyer units, wherever situated.

C. DEFINITIONS

1. "SIHA" means the Spokane Indian Housing Authority
2. "Sexually violent crime" means a felony under Title 18 of the U.S. Code, Chapter 109A (including aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, abusive sexual contact, sexual abuse resulting in death), or a "sexually violent offense" under Chapter 9A, Revised Code of Washington, or comparable crime under the laws of any other state or tribe, as now enacted or hereafter amended. It shall not be necessary that the individual who committed such an offense be an Indian or that the offense have been committed in Indian country in order for the offense to be a "sexually violent crime" under this policy. It shall also not be necessary that the "sexually violent crime" be punishable as a felony, that is, by imprisonment of one or more years.
3. "Major Crime", as used in this policy, means a felony under Title 18 of the U.S. Code, sec. 1153, or a comparable state or tribal law, as now enacted or hereafter amended, which currently includes: murder, manslaughter, kidnapping, maiming, felony sex abuse, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, and robbery. It shall not be necessary that the individual who committed such an offense be an Indian or that the offense have been committed in Indian country in order for the offense to be a "major crime" under this policy. It shall also not be necessary that the "major crime" be punishable as a felony, that is, by imprisonment of one or more years.
4. "Drug-related criminal activity" means the illegal manufacture, sale, distribution, use or possession of a controlled substance, whether on or off SIHA premises,

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and includes offenses for which only a civil penalty may be assessed. “Drug-related criminal activity” includes the illegal manufacture, sale, distribution, use or possession of a controlled substance by a homebuyer or tenant or by a resident other than a homebuyer or tenant, whether on or off SIHA premises. “Drug-related criminal activity” also includes the illegal manufacture, sale, distribution, use or possession of a controlled substance by a visitor or guest on Spokane Indian Housing Authority premises, or such an individual being under the influence of a controlled substance while on SIHA premises.

5. “Controlled substance” is a substance included in Schedules I, II, III, IV or V of the Controlled Substance Act, 21 U.S.C. sec. 801, et seq., as updated in 21 CFR 1308. These controlled substances include but are not limited to marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). Any modifications to such schedules shall be considered to be a modification of this policy.
6. “SIHA premises” includes all housing units, whether rental or homebuyer, all common areas, all administrative areas and all lands, buildings and grounds owned by or leased to the SIHA or any homebuyer under the SIHA housing program.
7. “Date of application for admission” shall mean the date application is made for an available rental unit or homebuyer unit, whether or not constructed, and shall not include any period in which a person is on a waiting list for housing.

D. INELIGIBILITY FOR ADMISSION

1. Eviction or Termination or Prior Conviction
 - a. Any person who has been convicted or who has committed a sexually violent crime in any jurisdiction is ineligible for admission to any SIHA program at any time. Any such person is also ineligible to reside in SIHA housing at any time.
 - b. Any person who has engaged in drug-related criminal activity involving the manufacture, sale or distribution of a controlled substance is ineligible for admission to any SIHA program at any time. Any such person is also ineligible to reside in SIHA housing at any time.
 - c. Any person who has been convicted or who has committed a Major Crime is ineligible for admission to any SIHA program for a seven-year period beginning with the date of the offense. Any such person is also ineligible to reside in SIHA housing for a seven-year period beginning with the date of the offense.
 - d. Any person who has engaged in drug-related criminal activity involving use or possession of a controlled substance (but not involving the manufacture, sale or distribution of a controlled substance) or who has committed any other offense involving physical force or violence, but not

amounting to a major crime, is ineligible for admission to any SIHA program for a three-year period beginning with the date of the offense.

- e. Any person with a history that shows a pattern of criminal conduct and/or whose abuse of alcohol or pattern of abuse of alcohol or controlled substances would interfere with the health, safety or right to peaceful enjoyment of the premises by other residents is ineligible for admission to any SIHA program at any time. Any such person is also ineligible to reside in SIHA housing at any time.
2. Positive Test Results or Failure or Refusal to Take Test.
 - a. Any person who is required to take the drug tests required under this policy and who fails or refuses to take any such test or tests shall be ineligible for admission to or participation in any SIHA program for a three-year period beginning on the date that any such test was to have been taken. Applicants have 24 hours to take the test following notice from SIHA. Any person with a verified positive test result for a controlled substance (other than as could have resulted from a legally prescribed medication as determined by a licensed physician) shall be ineligible for admission to or participation in any SIHA program for a three-year period beginning on the date that such test was taken.
 - b. Any homebuyer or tenant and any other person living with a SIHA program participant with a verified positive test result for a controlled substance (other than as could have resulted from a legally prescribed medication as determined by a licensed physician) shall be considered to have engaged in drug-related criminal activity, involving use or possession, during the term of the tenancy of the homebuyer or tenant.

E. MANDATORY DRUG TESTING

1. Drug testing shall be required of every applicant for SIHA housing and every individual who is eighteen years of age or older who will be living with the applicant. Drug testing shall also be required of every individual who is eighteen years of age or older and who joins an established household living in housing assisted by the SIHA. These testing requirements shall apply on any occasion when any one or more persons in an existing SIHA household applies for transfer to a SIHA program other than the program in which the household is currently participating.
2. Drug testing may also be required of any homebuyer or tenant, and any other person living with a SIHA program participant, where the SIHA has reasonable suspicion to believe that such individual has been in engaging in or is engaging in drug-related criminal activity during the term of the tenancy of the homebuyer, tenant or participant. No reasonable suspicion testing shall take place without the written concurrence of one of the following: (a) legal counsel for the SIHA, (b) legal counsel for the Tribe, (c) the Tribal prosecutor or a deputy or associate prosecutor for the Tribe, or (d) a judge of the Spokane Tribal Court.

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3. Both the timing of the testing and the specific tests to be required shall be at the sole discretion of the SIHA. Applicants have 24 hours to take the test following notice from SIHA.

F. WAIVER OF INELIGIBILITY

1. The Board of Commissioners of the SIHA may waive the ineligibility of any person who is ineligible for admission to or participation in a SIHA program if:
 - a. The person undergoes an appropriate assessment and demonstrates successful completion of a supervised drug rehabilitation program or other rehabilitation program approved by the SIHA, including successful completion of any required follow-up treatment plan or other follow-up requirements;
 - b. The circumstances leading to the ineligibility no longer exist. For example, the individual involved in drug use is no longer in the household.
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 by separate resolution or board action may delegate the authority to waive the ineligibility for admission to any one or more of its members, to the Executive Director of the SIHA, to any other suitable employee of the SIHA or to any combination of the foregoing, provided any such waiver includes appropriate legal review.

G. EVICTION OR TERMINATION

1. Eviction – Tenants

- a. Any tenant who has committed a sexually violent crime, a Major Crime, or any other criminal activity involving physical force or violence during the term of his or her tenancy, whether on or off SIHA premises, or who has a resident of his or her household who has engaged in such activity on or off SIHA premises, or who has had a visitor or guest who has engaged in such activity on the premises or who has been under the influence of a controlled substance on the premises shall be evicted.
- b. Any tenant who has failed or refused to take any test of tests required under this policy or who has a resident of his or her household who has failed or refused to take any such test or tests shall be evicted.

2. Termination – Homebuyers

- a. The homebuyer agreement of any person who has committed a sexually violent crime, a Major Crime, or any other criminal activity involving physical force or

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violence or drug-related criminal activity involving the manufacture, sale or distribution of a controlled substance during the term of the agreement, whether on or off SIHA premises, or who has a resident of his or her household who has engaged in such activity on or off SIHA premises, or who has had a visitor or guest who has engaged in such activity on the premises or who has been under the influence of a controlled substance while on the premises shall be terminated.

- b. The homebuyer agreement of any person who has failed or refused to take any test or tests required under this policy or who has a resident of his or her household who has failed or refused to take any such test or tests shall be evicted.

3 Removal of Resident, Visitor or Guest

- c. In the case of a household resident or 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; provided, that such resident, visitor or guest shall be ineligible to make application to or participate in any SIHA housing program for the period of time specified in this policy.

H. FORBEARANCE REGARDING EVICTION OR TERMINATION

1. The Board of Commissioners may forbear in the eviction of any person or the termination of any homebuyer agreement under this policy if:
 - a. The person undergoes an appropriate assessment and demonstrates successful completion of a supervised drug rehabilitation program approved by the SIHA or other rehabilitation program approved by the SIHA, including successful completion of any required follow-up treatment plan or other follow-up requirements;
 - b. The circumstances leading to the ineligibility no longer exist. For example, the individual involved in drug use is no longer in the household; or
 - c. The Board of Commissioners determines that there are extraordinary circumstances (such as the welfare of a minor child) which warrant forbearance;

And, the person completes or agrees to complete any other requirements the Board of Commissioners, at its sole discretion, may impose, including but not limited to periodic drug tests or other tests.

The Board of Commissioners may also forbear if the person is participating in a supervised drug rehabilitation program approved by the SIHA or other program approved by the SIHA and continues in full compliance with such program and any required follow-up treatment plan or other requirements, and the person completes or agrees to complete any other requirements imposed by the Board of Commissioners, including but not limited to periodic drug tests or other tests.

2. Any person desiring forbearance regarding eviction or termination shall have the burden of showing that the requirements for forbearance have been met.
3. Nothing in this section shall require forbearance regarding eviction or termination under the circumstances.
4. The Board of Commissioners by separate resolution or board action may delegate the authority to forebear regarding eviction or termination to any one or more of its members, to the Executive Director of the SIHA, to any other suitable employee of the SIHA or to any combination of foregoing.

I. GRIEVANCES

- 1 Except as specified in the following paragraphs 2. and 3., any grievance arising under this policy shall be resolved in accordance with the Grievance Policy procedure of the SIHA.
- 2 In any grievance arising under this policy, any period of notification or other period of time required under the policies of the SIHA, or any agreement entered into with the SIHA, may be shortened to three (3) working days.
3. There shall be no right to a hearing other than a court hearing in the case of an eviction or termination where there is an allegation regarding a sexually violent crime or the manufacture, sale or distribution of a controlled substance on SIHA premises; provided, that the Board of Commissioners, at its sole discretion may, but shall not be required to provide a hearing to any person so accused and requesting a hearing.

J. MISCELLANEOUS PROVISIONS

1. Criminal History

Any criminal record received in order to administer this policy must be maintained confidentially, must not be misused or improperly disseminated.

2. 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 sexually violent crime, Major Crime, or any other criminal activity involving physical force or violence identified 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 the tenant or homebuyer with the Summons and Complaint.

3. 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 be 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. Sufficient information deemed credible to SIHA, such as an arrest or citation plus other incriminating evidence including a past history of such conduct, may be relied upon for a final decision.

4. Other Requirements

Any applicant for SIHA housing (including applicants for transfer to another SIHA program) and any other prospective resident shall be required to sign such release forms and to provide such other information as may be necessary to assure full compliance with this section.

5. Period of Time

If an applicant, resident, visitor or guest is found to have engaged in any activity which is prohibited under this policy, then the period of ineligibility shall be the longest period of time specified under this policy. For example, if an individual has both used and sold controlled substances in violation of this policy, then the period of ineligibility shall be the longest period of time specified under this policy, that is, the applicable period of ineligibility shall be seven years.

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Timothy Horan
Executive Director