

# MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS

## NON-RESIDENT BAR-OUT POLICY

### **Policy Statement**

The Municipal Housing Authority for the City Yonkers seeks to promote the safety, security and well-being of all MHACY residents, employees and other persons who have a legitimate purpose on MHACY property. Drug dealing, gang-related activities, disorderly and/or lewd conduct, and/or violent criminal activities all have a profoundly negative impact on public safety and the quality of life in MHACY housing. The enactment of this bar-out policy enables the MHACY to deny non-residents who have engaged in such serious criminal conduct access to MHACY property. This policy applies only to non-residents who are over the age of eighteen.

### **Criteria for Exclusion**

Non-residents who engage in criminal activity on MHACY property shall be barred from MHACY for two or more years.

Any non-resident of the MHACY who engages in following conduct while present on MHACY property will be precluded from entering MHACY property upon service of a Bar-Out Notice for two years:

- Trespassing on MHACY property, as defined under the New York Penal Law.
- Entering MHACY property in violation of the express terms of an Order of Protection entered in favor of an MHACY tenant.
- Engaging in conduct that constitutes the crime of criminal possession of a weapon under the New York Penal Law
- Engaging in disorderly and/or obscene conduct, and/or public lewdness as defined under the New York Penal Law.

Any non-resident of the MHACY who engages in one of the following violent criminal activities while present on MHACY property will be precluded from entering MHACY property upon service of a Bar-Out Notice for five years:

- Engaging in assault, gang assault, and/or other threatening behavior that constitutes a felony under the New York Penal Law.

- Engaging in gang activity, which includes but is not limited to:
  1. Displaying symbols of gang affiliation for the purpose of evidencing gang membership and/or intimidating rival gangs, residents and/or MHACY employees.
  2. Gesturing for the purpose of intimidating rival gangs, residents and/or MHACY employees and/or to provoke a violent response in another person.

Any non-resident of the MHACY who engages in following conduct while present on MHACY property will be precluded from entering MHACY property upon service of a Bar-Out Notice for ten years:

- Possession or sale of a controlled substance which constitutes a felony under the New York Penal Law (herein referred to as “drug dealing”).

Any non-resident of the MHACY who engages in following conduct while present on MHACY property will be precluded from entering MHACY property upon service of a Bar-Out Notice for life:

- Committing one of the following violent criminal activities: homicide, incest, sexual misconduct against a child, and/or rape, as defined under the New York Penal Law.

### **Procedure**

Upon notice to the MHACY from the Yonkers Police Department and/or any other law enforcement agency, that a non-resident has been arrested and/or convicted for drug dealing, gang-related activities, disorderly and/or lewd conduct, and/or other violent criminal activities on MHACY property, the MHACY shall issue a written Notice of Exclusion to the non-resident.

Content of the Notice of Exclusion: The Notice of Exclusion served upon the non-resident shall be dated and shall state (a) that he/she has been arrested and/or convicted of drug dealing, gang-related activities, disorderly and/or lewd conduct, and/or other violent criminal activities on MHACY property; (b) the date and approximate time of the illegal conduct; (c) that as a result of the illegal conduct, he/she is barred, effective immediately, from entering property owned by the MHACY, noting the time period in which the bar-out shall remain in effect; (d) that the non-resident’s appearance on MHACY property during the period of the bar-out shall result in the filing by the MHACY of a criminal complaint for trespass; (e) that the non-resident has a right to file an informal appeal of the MHACY’s determination to issue the Notice of Exclusion; and (f) that under the circumstances set forth in this policy, the non-resident may file an application for Special Access or Emergency Access. Additionally the Notice of Exclusion shall advise the non-resident that their name shall be published on the MHACY bar-out list that will be posted throughout MHACY property. The Notice of Exclusion may be issued by the MHACY’s

Informal Hearing Officer, the MHACY's Executive Director, and/or the Executive Director's designee.

Service of the Notice of Exclusion: The Notice of Exclusion shall be served upon the non-resident by personal service and/or by regular mail and certified mail, return receipt requested, addressed to the non-resident's last known address. In the event personal service is made, any employee and/or agent of the MHACY may effectuate the service. The MHACY shall maintain documentation evidencing the service of the Notice of Exclusion upon the non-resident. In the event the regular mail is not returned to the MHACY, then service upon the non-resident shall be presumed effectuated after 5 days have elapsed from the date of mailing. A non-resident's name may not be included on the MHACY Bar-Out List until such time as service is effectuated.

Publication of the Bar-Out List: The MHACY shall post in each building owned and operated by the Authority, and shall distribute to all residents, resident council members, and the Yonkers Police Department four (4) times per year,, an official list of names of all persons who have been served with a Notice of Exclusion and the Bar-Out List shall include the effective and expiration dates of the bar-out. Notwithstanding the foregoing, the Bar-Out List shall be updated by the MHACY from time-to-time, as the Authority deems appropriate.

Appeal of the Notice of Exclusion: A non-resident who has been served with a Notice of Exclusion may appeal the exclusion by serving a written request for an informal hearing at any time during the exclusion period, addressed as follows:

MHACY Informal Hearing Officer  
1511 Central Park Avenue  
Yonkers, New York 10710

The non-resident may review the MHACY file prior to the Informal Hearing, and may attend the hearing with a representative of his/her choice. During the hearing, the non-resident may present any evidence relevant to the Notice of Exclusion.

Upon conclusion of the informal hearing, the MHACY Informal Hearing Officer shall issue a written decision that shall uphold the Notice of Exclusion; withdraw the Notice of Exclusion upon sufficient proof that the criminal charges levied against the non-resident have been dismissed; or, the Informal Hearing Officer may, at his or her sole discretion, withdraw the Notice of Exclusion if he/she concludes that there is a reasonable probability that the non-resident's future conduct would not be likely to affect adversely the health, safety or welfare of MHACY Residents and Employees.

To determine whether there is a reasonable probability that the non-resident's future conduct would not be likely to affect adversely the health, safety or welfare of MHACY Residents and Employees, the Informal Hearing Officer may consider:

- The seriousness of the offense(s);

- The frequency of the offense(s);
- When the offense(s) occurred;
- Evidence about the conduct underlying the offense;
- Evidence regarding the non-residents rehabilitation since the offense, including but not limited to (a) proof that the non-resident has enrolled in and remained in school for at least six months, and has compiled a positive school record; (b) proof that the non-resident has enrolled in and remained in a job-training program for at least six months, and has compiled a positive work record; (c) a letter from the prosecutor or sentencing judge that the non-resident has been rehabilitated; (d) such other evidence that the Informal Hearing Officer deems relevant and probative of the issues.

Request for Special Access: A non-resident who has been served with a Notice of Exclusion may file a Request for Special Access at any time during the exclusion period, addressed as follows:

MHACY Informal Hearing Officer  
 1511 Central Park Avenue  
 Yonkers, New York 10710

Absent special circumstances, such as a Court Order of Visitation, an application for Special Access must be made jointly by the non-resident and a lawful Resident of the MHACY (hereinafter referred to as an “Interested Resident”). The Interested Resident’s signature must be notarized and the Interested Resident must list any members of his/her household who have ever been subject to a Notice of Exclusion.

Upon review of the Special Access application, the Informal Hearing Officer shall issue a written decision which shall either grant or deny the application. The application may be granted only upon one of the following circumstances:

- The non-resident is a caregiver for the Interested Resident (or other individual residing with the Interested Resident) who is infirm or disabled, and no reasonable alternative means of providing such care exists;
- The non-resident is a caregiver for his or her minor child or grandchild, who resides on MHACY property with an Interested Resident, and no reasonable alternative means of providing such care exists;
- The non-resident has parental visitation rights with respect to a child residing on MHACY property and it is necessary under the circumstances that such non-resident be allowed access to MHACY property in connection with such visitation; or
- Any other situation exists where it is necessary under the circumstances presented that such non-resident be allowed access to MHACY property and there is no reasonable alternative to allowing such access.

Where the non-resident's application for Special Access is granted, the Special Access shall be conditioned upon the following:

- The non-resident must proceed directly to and from the Interested Resident's apartment;
- The non-resident shall not enter any apartment other than the apartment of the Interested Resident;
- The non-resident shall not be permitted access to any common areas on MHACY property except for direct ingress and egress to the Interested Resident's apartment.

In the event that Special Access is granted to the non-resident, the MHACY shall immediately advise the Yonkers Police Department.

Where a non-resident violates the terms of a Special Access grant, the MHACY shall serve upon the non-resident a Notice of Revocation of Special Access in the same manner as a Notice of Exclusion is served under this policy. The Notice of Revocation of Special Access shall advise the non-resident (a) that the Special Access grant is revoked; (b) that he/she is barred, effective immediately, from entering property owned by the MHACY, and that the Notice of Exclusion previously served upon the him/her has been reinstated, noting the time period in which the bar-out shall remain in effect; and (c) that the non-resident's appearance on MHACY property during the period of the bar-out shall result in the filing by the MHACY of a criminal complaint for trespass.

Where the non-resident's application for Special Access is denied, the Notice of Exclusion shall remain in full force and effect, and the non-resident shall continue to be subject to arrest for trespass upon entering MHACY property. The Interested Resident may file a grievance under the MHACY Grievance Procedure in the event an application for Special Access is denied.

The non-resident and Interested Resident may file a new application for Special Access upon a denial of access, but only if there are materially changed circumstances that provide new grounds for an exemption.

Request for Emergency Access: In the event of an emergency requiring that the non-resident be allowed immediate access to MHACY property, the non-resident may make an oral application to the Informal Hearing Officer, the Executive Director and/or the Executive Director's designee, in person or by telephone during normal business hours. Upon consideration of the request, the non-resident may be granted temporary access to MHACY on such terms and conditions as deemed appropriate by the MHACY, or the application for emergency access may be denied, at the full and absolute discretion of the MHACY. In the event that Emergency Access is granted to the non-resident, the MHACY shall immediately advise the Yonkers Police Department.