

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 05-0073

Introduced by: Councilmembers Curran, Harris
Introduced and read first time: March 21, 2005
Assigned to: Judiciary and Legislative Investigations Committee

Committee Report: Favorable with amendments
Council action: Adopted
Read second time: February 12, 2007

AN ORDINANCE CONCERNING

Health – Indoor Smoking

- 1
- 2 FOR the purpose of prohibiting smoking in certain enclosed areas; defining certain terms;
3 providing for certain exceptions and waivers; imposing certain penalties; providing for a
4 special effective date; and generally relating to smoking in enclosed areas.
- 5 BY repealing
6 Article - Health
7 Section(s) 12-101 through 12-111, inclusive, and the subtitle designation
8 “Subtitle 1. Smoking in City Buildings and Vehicles”
9 Baltimore City Revised Code
10 (Edition 2000)
- 11 BY repealing
12 Article 19 - Police Ordinances
13 Section(s) 29-2
14 Baltimore City Code
15 (Edition 2000)
- 16 BY adding
17 Article - Health
18 Section(s) 12-101 through 12-112, inclusive, to be under the new subtitle designation
19 “Subtitle 1. Indoor Smoking”
20 Baltimore City Revised Code
21 (Edition 2000)
- 22 BY repealing and reordaining, with amendments
23 Article 1 - Mayor, City Council, and Municipal Agencies
24 Section(s) 40-14(e)(7)(Title 12) and 41-14(6)(Title 12)
25 Baltimore City Code
26 (Edition 2000)

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by
amendment or deleted from existing law by amendment.

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1 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
2 following provisions of the City Code are repealed:

3 Article - Health

4 Section(s) 12-101 through 12-111, inclusive, and the subtitle designation

5 “Smoking in City Buildings and Vehicles”

6 Baltimore City Revised Code

7 (Edition 2000)

8 Article 19 - Police Ordinances

9 Section(s) 29-2

10 Baltimore City Code

11 (Edition 2000)

12 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the Laws of Baltimore City read as
13 follows:

14 **Baltimore City Revised Code**

15 **Article – Health**

16 **Title 12. Tobacco Products**

17 **SUBTITLE 1. INDOOR SMOKING**

18 **§ 12-101. DEFINITIONS.**

19 (A) *IN GENERAL.*

20 IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

21 (B) *ENCLOSED AREA.*

22 (1) “ENCLOSED AREA” MEANS AN AREA THAT IS BOUNDED ON ALL SIDES BY WALLS THAT
23 EXTEND, WITH OR WITHOUT DOORS, WINDOWS, VENTS, OR LIKE OPENINGS, FROM
24 FLOOR TO CEILING.

25 (2) “ENCLOSED AREA” INCLUDES THE INTERIOR OF A VEHICLE.

26 (C) *PERSON IN CHARGE.*

27 “PERSON IN CHARGE” MEANS THE PERSON WHO OWNS, OPERATES, OR MANAGES A PLACE
28 SUBJECT TO THIS SUBTITLE.

29 (D) *SMOKE.*

30 “SMOKE” MEANS TO INHALE, BURN, OR CARRY ANY LIGHTED CIGARETTE, CIGAR, PIPE
31 TOBACCO, OR OTHER TOBACCO, WEED, OR PLANT PRODUCT OF ANY KIND.

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1 **§ 12-102. SCOPE.**

2 NOTHING IN THIS SUBTITLE PRECLUDES AN EMPLOYER OR OTHER PERSON IN CHARGE FROM
3 PROHIBITING SMOKING IN OPEN OR ENCLOSED AREAS NOT COVERED BY THIS SUBTITLE.

4 **§§ 12-103 TO 12-104. {RESERVED}**

5 **§ 12-105. WHERE SMOKING PROHIBITED.**

6 ~~(A) IN GENERAL.~~

7 EXCEPT AS OTHERWISE SPECIFIED IN THIS SUBTITLE, SMOKING IS PROHIBITED IN:

- 8 (1) ANY ENCLOSED AREA TO OR IN WHICH THE PUBLIC IS INVITED OR PERMITTED; OR
9 (2) ANY ENCLOSED AREA THAT IS PART OF A PLACE OF EMPLOYMENT.

10 ~~(B) ILLUSTRATIONS.~~

11 ~~PLACES TO WHICH THIS SECTION APPLIES INCLUDE, FOR EXAMPLE, ANY OF THE~~
12 ~~FOLLOWING:~~

- 13 ~~(1) AQUARIUM, GALLERY, LIBRARY, OR MUSEUM.~~
- 14 ~~(2) BANK, SAVINGS AND LOAN COMPANY, CREDIT UNION, OR OTHER FINANCIAL~~
15 ~~INSTITUTION.~~
- 16 ~~(3) BAR OR TAVERN.~~
- 17 ~~(4) BOWLING ALLEY OR POOL HALL.~~
- 18 ~~(5) CHILD OR ADULT CARE FACILITY.~~
- 19 ~~(6) CITY BUILDING, INCLUDING ANY BUILDING OR PART OF A BUILDING THAT IS~~
20 ~~OWNED OR LEASED BY THE CITY OR A CITY AGENCY OR THAT IS OCCUPIED BY A~~
21 ~~CITY AGENCY.~~
- 22 ~~(7) COMMON AREA OF AN APARTMENT BUILDING, CONDOMINIUM, RETIREMENT~~
23 ~~FACILITY, OR OTHER MULTI-UNIT RESIDENTIAL FACILITY, INCLUDING LOBBIES,~~
24 ~~HALLWAYS, LAUNDRY FACILITIES, STORAGE FACILITIES, AND GARAGES.~~
- 25 ~~(8) CONVENTION OR CONFERENCE FACILITY.~~
- 26 ~~(9) EDUCATIONAL FACILITY, PUBLIC OR PRIVATE.~~
- 27 ~~(10) GAMING FACILITY.~~
- 28 ~~(11) HOMELESS SHELTER.~~
- 29 ~~(12) HOSPITAL, CLINIC, NURSING HOME, OR OTHER HEALTH CARE FACILITY.~~

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- 1 ~~(13) HOTEL OR MOTEL.~~
- 2 ~~(14) PRIVATE OFFICES.~~
- 3 ~~(15) RESTAURANT, CAFETERIA, CARRY-OUT SHOP, CATERING ESTABLISHMENT, OR~~
4 ~~OTHER FOOD SERVICE FACILITY.~~
- 5 ~~(16) RETAIL STORE OR SERVICE CENTER.~~
- 6 ~~(17) SHOPPING MALL.~~
- 7 ~~(18) SPORTS ARENA.~~
- 8 ~~(19) TAXICAB, BUS, VAN, OR OTHER VEHICLE USED FOR PUBLIC TRANSPORTATION OR~~
9 ~~TRANSPORTATION FOR HIRE.~~
- 10 ~~(20) THEATER, MUSIC HALL, OR LECTURE HALL.~~
- 11 ~~(21) VEHICLE OWNED OR OPERATED BY THE CITY.~~
- 12 ~~(22) VEHICLE OWNED OR OPERATED BY AN EMPLOYER FOR THE USE OF ITS EMPLOYEES.~~
- 13 ~~(23) AREA OR FACILITY SERVING OR ACCESSORY TO ANY OF THE PLACES TO WHICH~~
14 ~~THIS SECTION APPLIES, INCLUDING ANY OF THE FOLLOWING:~~
- 15 ~~(i) RESTROOM.~~
- 16 ~~(ii) LOBBY.~~
- 17 ~~(iii) ELEVATOR.~~
- 18 ~~(iv) HALLWAY.~~
- 19 ~~(v) RECEPTION AREA.~~
- 20 ~~(vi) GARAGE OR LOADING DOCK, EVEN IF ENTRY DOOR IS OPEN.~~

21 **§ 12-106. EXCEPTIONS – GENERAL.**

22 THIS SUBTITLE DOES NOT APPLY TO THE FOLLOWING:

- 23 ~~(1) A PRIVATE RESIDENCE, EXCEPT IN OR IMMEDIATELY ADJACENT TO AN AREA THAT IS~~
24 ~~BEING USED AS A CHILD OR ADULT CARE FACILITY OR THAT IS OPEN TO THE PUBLIC~~
25 ~~FOR BUSINESS PURPOSES.~~
- 26 (1) ANY PART OF A PRIVATE RESIDENCE THAT IS NOT OPEN TO THE PUBLIC FOR BUSINESS
27 PURPOSES, EXCEPT AS REQUIRED BY COMAR 13A.14.01.
- 28 (2) A PRIVATE VEHICLE.

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1 (3) A SLEEPING ROOM IN A HOTEL OR MOTEL, AS LONG AS THAT HOTEL OR MOTEL
2 MAINTAINS AT LEAST 75% OF ALL ITS SLEEPING ROOMS AS SMOKE-FREE.

3 (4) SMOKING AS AN INTEGRAL PART OF A THEATRICAL PERFORMANCE HELD IN A FACILITY
4 PRIMARILY USED FOR THEATRICAL PERFORMANCES.

5 (5) SMOKING AS AN INTEGRAL PART OF A RELIGIOUS CEREMONY.

6 (6) SMOKING AT AN ANALYTICAL OR EDUCATIONAL LABORATORY AS AN INTEGRAL PART
7 OF SCIENTIFIC RESEARCH INTO THE HEALTH EFFECTS OF SMOKE.

8 (7) SMOKING THAT IS PERMITTED IN A HOSPITAL, NURSING HOME, OR OTHER HEALTH CARE
9 FACILITY UNDER STATE HEALTH-GENERAL ARTICLE, § 24-205.

10 **§ 12-107. EXCEPTIONS – PRIVATE CLUBS, SMOKING BARS, TOBACCONISTS.**

11 (A) *IN GENERAL.*

12 THIS SUBTITLE DOES NOT APPLY TO A PRIVATE CLUB OR LODGE, A SMOKING BAR, OR A
13 RETAIL TOBACCO ESTABLISHMENT THAT QUALIFIES ~~AND REGISTERS~~ FOR AN EXEMPTION
14 UNDER THIS SECTION.

15 (B) *QUALIFICATIONS.*

16 (1) A PRIVATE CLUB OR LODGE QUALIFIES ~~TO REGISTER~~ UNDER THIS SECTION ONLY IF IT:

17 (I) HAS A LIMITED MEMBERSHIP ELECTED PURSUANT TO ITS CHARTER OR BYLAWS;

18 (II) EXCLUDES THE GENERAL PUBLIC FROM ITS PREMISES OR PLACE OF MEETING;

19 (III) IS ORGANIZED WITH OFFICERS AND DIRECTORS;

20 (IV) HOLDS ALL PROPERTY FOR THE COMMON BENEFIT OF ITS MEMBERS; AND

21 (V) DOES NOT PERMIT NONMEMBERS TO PAY A TEMPORARY FEE TO USE ITS
22 PREMISES OR ATTEND ITS MEETINGS.

23 (2) A SMOKING BAR QUALIFIES ~~TO REGISTER~~ UNDER THIS SECTION ONLY IF IT:

24 (I) IS LICENSED UNDER STATE CODE ARTICLE 2B TO SERVE ALCOHOLIC
25 BEVERAGES;

26 (II) DERIVES AT LEAST 50% OF ITS REVENUES, MEASURED BY AVERAGE DAILY
27 RECEIPTS, FROM THE SALE OF NON-CIGARETTE TOBACCO PRODUCTS;

28 (III) HAS A VENTILATION SYSTEM THAT PREVENTS SMOKE FROM INFILTRATING INTO
29 ANY AREA WHERE SMOKING IS PROHIBITED UNDER THIS SUBTITLE; AND

30 (IV) PROHIBITS THE ENTRY OF MINORS AT ALL TIMES.

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1 (3) A RETAIL TOBACCO ESTABLISHMENT QUALIFIES ~~TO REGISTER~~ UNDER THIS SECTION
2 ONLY IF IT:

3 (I) DERIVES AT LEAST 75% OF ITS REVENUES, MEASURED BY AVERAGE DAILY
4 RECEIPTS, FROM THE SALE OF NON-CIGARETTE TOBACCO PRODUCTS;

5 (II) HAS A VENTILATION SYSTEM THAT PREVENTS SMOKE FROM INFILTRATING INTO
6 ANY AREA WHERE SMOKING IS PROHIBITED UNDER THIS SUBTITLE; AND

7 (III) PROHIBITS THE ENTRY OF MINORS AT ALL TIMES.

8 ~~(C) ANNUAL REGISTRATION.~~

9 ~~(1) FOR EXEMPTION UNDER THIS SECTION, A PRIVATE CLUB OR LODGE, SMOKING BAR, OR~~
10 ~~RETAIL TOBACCO ESTABLISHMENT MUST FIRST:~~

11 ~~(i) FILE A REGISTRATION STATEMENT WITH THE HEALTH COMMISSIONER; AND~~

12 ~~(ii) PAY AN INITIAL REGISTRATION FEE OF \$1,000.~~

13 ~~(2) THE REGISTRATION STATEMENT MUST BE IN THE FORM AND CONTAIN THE~~
14 ~~INFORMATION, INCLUDING EVIDENCE OF THE ENTITY'S QUALIFICATIONS, THAT THE~~
15 ~~COMMISSIONER REQUIRES.~~

16 ~~(3) EACH EXEMPTION EXPIRES 1 YEAR FROM THE DATE THE REGISTRATION STATEMENT~~
17 ~~WAS FILED.~~

18 ~~(4) AN EXEMPTION MAY BE RENEWED ANNUALLY BY SUBMITTING, AT LEAST 10 DAYS BUT~~
19 ~~NO MORE THAN 60 DAYS BEFORE EXPIRATION:~~

20 ~~(i) A NEW REGISTRATION STATEMENT; AND~~

21 ~~(ii) A RENEWAL REGISTRATION FEE OF \$500.~~

22 **§ 12-108. WAIVERS.**

23 (A) *AUTHORITY TO GRANT.*

24 ~~ON WRITTEN APPLICATION, THE COMMISSIONER MAY GRANT A WAIVER FROM ALL OR~~
25 ~~PART OF THIS SUBTITLE IF THE COMMISSIONER DETERMINES THAT:~~

26 ~~(1) COMPELLING REASONS EXIST FOR THE WAIVER; AND~~

27 ~~(2) THE WAIVER WILL NOT SIGNIFICANTLY AFFECT THE HEALTH OR COMFORT OF~~
28 ~~NONSMOKERS.~~

29 ON WRITTEN APPLICATION, THE COMMISSIONER MAY GRANT A WAIVER FROM THE
30 APPLICATION OF A SPECIFIC PROVISION OF THIS SUBTITLE, IF THE APPLICANT FOR THE
31 WAIVER ESTABLISHES THAT:

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1 (1) COMPLIANCE WITH THAT PROVISION WOULD CAUSE UNDUE FINANCIAL HARDSHIP;
2 OR

3 (2) OTHER FACTORS EXIST THAT WOULD RENDER COMPLIANCE UNREASONABLE.

4 (B) *CONDITIONS AND ~~LIMITATIONS~~ RESTRICTIONS.*

5 ~~THE COMMISSIONER MAY IMPOSE CONDITIONS ON THE WAIVER, INCLUDING LIMITATIONS~~
6 ~~ON TIME, PLACE, OR MANNER OF ITS EXERCISE, AS THE CIRCUMSTANCES WARRANT.~~

7 THE COMMISSIONER MAY IMPOSE CONDITIONS OR RESTRICTIONS ON THE WAIVER AS
8 NECESSARY OR APPROPRIATE TO:

9 (1) MINIMIZE THE ADVERSE EFFECTS OF THE WAIVER ON INDIVIDUALS INVOLUNTARILY
10 EXPOSED TO SECOND-HAND SMOKE; AND

11 (2) ENSURE THAT THE WAIVER IS CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE.

12 **§§ 12-109 TO 12-110. {RESERVED}**

13 **§ 12-111. ENFORCEMENT BY CITATION.**

14 (A) *IN GENERAL.*

15 IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT PROCEDURE,
16 THIS SUBTITLE MAY BE ENFORCED BY ISSUANCE OF:

17 (1) AN ENVIRONMENTAL CITATION AS AUTHORIZED BY CITY CODE ARTICLE 1,
18 SUBTITLE 40 {"ENVIRONMENTAL CONTROL BOARD"}; OR

19 (2) A CIVIL CITATION AS AUTHORIZED BY CITY CODE ARTICLE 1, SUBTITLE 41 {"CIVIL
20 CITATIONS"}

21 (B) *PROCESS NOT EXCLUSIVE.*

22 THE ISSUANCE OF A CITATION TO ENFORCE THIS SUBTITLE DOES NOT PRECLUDE PURSUING
23 ANY OTHER CIVIL OR CRIMINAL REMEDY OR ENFORCEMENT ACTION AUTHORIZED BY LAW.

24 **§ 12-112. PENALTIES**

25 (A) *SMOKER.*

26 ANY PERSON WHO SMOKES IN VIOLATION OF THIS SUBTITLE IS ~~GUILTY OF A MISDEMEANOR~~
27 ~~AND, ON CONVICTION, IS~~ SUBJECT TO A CIVIL FINE OF NOT MORE THAN ~~\$500~~ \$250 FOR
28 EACH OFFENSE.

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1 (B) EMPLOYER OR PERSON IN CHARGE.

2 ~~(1) AN EMPLOYER OR OTHER PERSON IN CHARGE WHO FAILS TO PREVENT A VIOLATION OF~~
3 ~~THIS SUBTITLE IS GUILTY OF A MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A~~
4 ~~FINE OF NOT MORE THAN \$1,000.~~

5 ~~(2) IT IS AN AFFIRMATIVE DEFENSE THAT THE EMPLOYER, OTHER PERSON IN CHARGE, OR~~
6 ~~AN AGENT OF THE EMPLOYER OR OTHER PERSON IN CHARGE:~~

7 ~~(i) ASKED THE SMOKER TO EXTINGUISH THE LIGHTED ITEM OR LEAVE THE~~
8 ~~PREMISES; AND~~

9 ~~(ii) ON THE SMOKER'S FAILURE TO COMPLY WITH THAT REQUEST, SUMMONED A~~
10 ~~LAW ENFORCEMENT OR OTHER OFFICER TO COMPEL COMPLIANCE.~~

11 (1) ANY EMPLOYER OR OTHER PERSON IN CHARGE WHO VIOLATES A PROVISION OF THIS
12 SUBTITLE OR WHO KNOWINGLY ALLOWS A VIOLATION IS SUBJECT TO A CIVIL FINE OF
13 NOT MORE THAN \$500 FOR EACH OFFENSE.

14 (2) IT IS AN AFFIRMATIVE DEFENSE THAT THE EMPLOYER, OTHER PERSON IN CHARGE, OR
15 AN AGENT OF THE EMPLOYER OR OTHER PERSON IN CHARGE:

16 (i) POSTED A "NO SMOKING" SIGN AT EACH ENTRANCE USED BY THE PUBLIC; AND

17 (ii) REMOVED ALL ASHTRAYS AND OTHER SMOKING PARAPHERNALIA FROM ALL
18 AREAS WHERE SMOKING IS PROHIBITED; AND

19 (iii) IN A BAR OR RESTAURANT:

20 (A) REFUSED TO SEAT OR SERVE ANY PERSON WHO SMOKED WHERE
21 SMOKING IS PROHIBITED; AND

22 (B) IF THE PERSON CONTINUED TO SMOKE AFTER AN INITIAL WARNING,
23 ASKED THE PERSON TO LEAVE THE ESTABLISHMENT.

24 (3) EACH DAY THAT A VIOLATION CONTINUES IS A SEPARATE OFFENSE.

25 **Baltimore City Code**

26 **Article 1. Mayor, City Council, and Municipal Agencies**

27 **Subtitle 40. Environmental Control Board**

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§ 40-14. Violations to which subtitle applies.

(e) *Provisions and penalties enumerated.*

(7) Health Code

Title 12: Tobacco Products

[Subtitle 1: Smoking in City Buildings and Vehicles \$ 25]

SUBTITLE 1: INDOOR SMOKING

PERSON SMOKING \$250

EMPLOYER, OTHER PERSON IN CHARGE \$500

Subtitle 2: Sale of Unpackaged Cigarettes \$150

Subtitle 4: Placement of Tobacco Products \$500

Subtitle 5: Distribution to Minors \$500

Subtitle 41. Civil Citations

§ 41-14. Offenses to which subtitle applies – Listing.

(6) Health Code

Title 12: Tobacco Products

SUBTITLE 1: INDOOR SMOKING

PERSON SMOKING \$250

EMPLOYER, OTHER PERSON IN CHARGE \$500

Subtitle 2: Sale of Unpackaged Cigarettes \$150

Subtitle 4: Placement of Tobacco Products \$500

Subtitle 5: Distribution to Minors \$500

SECTION 3. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 4. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on ~~July 1,~~
2006 January 1, 2008.

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Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to His Honor, the Mayor,
this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City