

**CITY OF BALTIMORE  
COUNCIL BILL 05-0073  
(First Reader)**

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

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REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Board of Municipal and Zoning Appeals, Planning Commission, Baltimore Development Corporation, Health Department, Environmental Control Board, Baltimore Area Convention and Visitors Association, Police Department, Downtown Partnership, Greater Baltimore Committee, Liquor Control Board

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A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Health – Indoor Smoking**

3 FOR the purpose of prohibiting smoking in certain enclosed areas; defining certain terms;  
4 providing for certain exceptions and waivers; imposing certain penalties; providing for a  
5 special effective date; and generally relating to smoking in enclosed areas.

6 BY repealing

7 Article - Health

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

9 “Subtitle 1. Smoking in City Buildings and Vehicles”

10 Baltimore City Revised Code

11 (Edition 2000)

12 BY repealing

13 Article 19 - Police Ordinances

14 Section(s) 29-2

15 Baltimore City Code

16 (Edition 2000)

17 BY adding

18 Article - Health

19 Section(s) 12-101 through 12-112, inclusive, to be under the new subtitle designation

20 “Subtitle 1. Indoor Smoking”

21 Baltimore City Revised Code

22 (Edition 2000)

EXPLANATION: CAPITALS indicate matter added to existing law.  
[Brackets] indicate matter deleted from existing law.

1 BY repealing and reordaining, with amendments  
 2 Article 1 - Mayor, City Council, and Municipal Agencies  
 3 Section(s) 40-14(e)(7)(Title 12) and 41-14(6)(Title 12)  
 4 Baltimore City Code  
 5 (Edition 2000)

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 7 following provisions of the City Code are repealed:

8 Article - Health  
 9 Section(s) 12-101 through 12-111, inclusive, and the subtitle designation  
 10 "Smoking in City Buildings and Vehicles"  
 11 Baltimore City Revised Code  
 12 (Edition 2000)

13 Article 19 - Police Ordinances  
 14 Section(s) 29-2  
 15 Baltimore City Code  
 16 (Edition 2000)

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

19 **Baltimore City Revised Code**

20 **Article – Health**

21 **Title 12. Tobacco Products**

22 **SUBTITLE 1. INDOOR SMOKING**

23 **§ 12-101. DEFINITIONS.**

24 (A) *IN GENERAL.*

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

26 (B) *ENCLOSED AREA.*

27 (1) "ENCLOSED AREA" MEANS AN AREA THAT IS BOUNDED ON ALL SIDES BY WALLS THAT  
 28 EXTEND, WITH OR WITHOUT DOORS, WINDOWS, VENTS, OR LIKE OPENINGS, FROM  
 29 FLOOR TO CEILING.

30 (2) "ENCLOSED AREA" INCLUDES THE INTERIOR OF A VEHICLE.

31 (C) *PERSON IN CHARGE.*

32 "PERSON IN CHARGE" MEANS THE PERSON WHO OWNS, OPERATES, OR MANAGES A PLACE  
 33 SUBJECT TO THIS SUBTITLE.

1 (D) *SMOKE*.

2 "SMOKE" MEANS TO INHALE, BURN, OR CARRY ANY LIGHTED CIGARETTE, CIGAR, PIPE  
3 TOBACCO, OR OTHER TOBACCO, WEED, OR PLANT PRODUCT OF ANY KIND.

4 **§ 12-102. SCOPE.**

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

7 **§§ 12-103 TO 12-104. {RESERVED}**

8 **§ 12-105. WHERE SMOKING PROHIBITED.**

9 (A) *IN GENERAL*.

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

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

13 (B) *ILLUSTRATIONS*.

14 PLACES TO WHICH THIS SECTION APPLIES INCLUDE, FOR EXAMPLE, ANY OF THE  
15 FOLLOWING:

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

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

**§ 12-106. EXCEPTIONS – GENERAL.**

THIS SUBTITLE DOES NOT APPLY TO THE FOLLOWING:

- (1) A PRIVATE RESIDENCE, EXCEPT IN OR IMMEDIATELY ADJACENT TO AN AREA THAT IS BEING USED AS A CHILD- OR ADULT-CARE FACILITY OR THAT IS OPEN TO THE PUBLIC FOR BUSINESS PURPOSES.

- 1 (2) A PRIVATE VEHICLE.
- 2 (3) A SLEEPING ROOM IN A HOTEL OR MOTEL, AS LONG AS THAT HOTEL OR MOTEL
- 3 MAINTAINS AT LEAST 75% OF ALL ITS SLEEPING ROOMS AS SMOKE-FREE.
- 4 (4) SMOKING AS AN INTEGRAL PART OF A THEATRICAL PERFORMANCE HELD IN A FACILITY
- 5 PRIMARILY USED FOR THEATRICAL PERFORMANCES.
- 6 (5) SMOKING AS AN INTEGRAL PART OF A RELIGIOUS CEREMONY.
- 7 (6) SMOKING AT AN ANALYTICAL OR EDUCATIONAL LABORATORY AS AN INTEGRAL PART
- 8 OF SCIENTIFIC RESEARCH INTO THE HEALTH EFFECTS OF SMOKE.

9 **§ 12-107. EXCEPTIONS – PRIVATE CLUBS, SMOKING BARS, TOBACCONISTS.**

10 (A) *IN GENERAL.*

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

14 (B) *QUALIFICATIONS.*

- 15 (1) A PRIVATE CLUB OR LODGE QUALIFIES TO REGISTER UNDER THIS SECTION ONLY IF IT:
  - 16 (I) HAS A LIMITED MEMBERSHIP ELECTED PURSUANT TO ITS CHARTER OR BYLAWS;
  - 17 (II) EXCLUDES THE GENERAL PUBLIC FROM ITS PREMISES OR PLACE OF MEETING;
  - 18 (III) IS ORGANIZED WITH OFFICERS AND DIRECTORS;
  - 19 (IV) HOLDS ALL PROPERTY FOR THE COMMON BENEFIT OF ITS MEMBERS; AND
  - 20 (V) DOES NOT PERMIT NONMEMBERS TO PAY A TEMPORARY FEE TO USE ITS
  - 21 PREMISES OR ATTEND ITS MEETINGS.
- 22 (2) A SMOKING BAR QUALIFIES TO REGISTER UNDER THIS SECTION ONLY IF IT:
  - 23 (I) IS LICENSED UNDER STATE CODE ARTICLE 2B TO SERVE ALCOHOLIC
  - 24 BEVERAGES;
  - 25 (II) DERIVES AT LEAST 50% OF ITS REVENUES, MEASURED BY AVERAGE DAILY
  - 26 RECEIPTS, FROM THE SALE OF NON-CIGARETTE TOBACCO PRODUCTS;
  - 27 (III) HAS A VENTILATION SYSTEM THAT PREVENTS SMOKE FROM INFILTRATING INTO
  - 28 ANY AREA WHERE SMOKING IS PROHIBITED UNDER THIS SUBTITLE; AND
  - 29 (IV) PROHIBITS THE ENTRY OF MINORS AT ALL TIMES.
- 30 (3) A RETAIL TOBACCO ESTABLISHMENT QUALIFIES TO REGISTER UNDER THIS SECTION
- 31 ONLY IF IT:

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

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

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

6 (C) *ANNUAL REGISTRATION.*

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

9 (I) FILE A REGISTRATION STATEMENT WITH THE HEALTH COMMISSIONER; AND

10 (II) PAY AN INITIAL REGISTRATION FEE OF \$1,000.

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

14 (3) EACH EXEMPTION EXPIRES 1 YEAR FROM THE DATE THE REGISTRATION STATEMENT  
15 WAS FILED.

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

18 (I) A NEW REGISTRATION STATEMENT; AND

19 (II) A RENEWAL REGISTRATION FEE OF \$500.

20 **§ 12-108. WAIVERS.**

21 (A) *AUTHORITY TO GRANT.*

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

24 (1) COMPELLING REASONS EXIST FOR THE WAIVER; AND

25 (2) THE WAIVER WILL NOT SIGNIFICANTLY AFFECT THE HEALTH OR COMFORT OF  
26 NONSMOKERS.

27 (B) *CONDITIONS AND LIMITATIONS.*

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

30 **§§ 12-109 TO 12-110. {RESERVED}**

1 **§ 12-111. ENFORCEMENT BY CITATION.**

2 (A) *IN GENERAL.*

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

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

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

9 (B) *PROCESS NOT EXCLUSIVE.*

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

12 **§ 12-112. PENALTIES**

13 (A) *SMOKER.*

14 ANY PERSON WHO SMOKES IN VIOLATION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR  
15 AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN \$500 FOR EACH OFFENSE.

16 (B) *EMPLOYER OR PERSON IN CHARGE.*

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

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

22 (I) ASKED THE SMOKER TO EXTINGUISH THE LIGHTED ITEM OR LEAVE THE  
23 PREMISES; AND

24 (II) ON THE SMOKER’S FAILURE TO COMPLY WITH THAT REQUEST, SUMMONED A  
25 LAW ENFORCEMENT OR OTHER OFFICER TO COMPEL COMPLIANCE.

26 **Baltimore City Code**

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

28 **Subtitle 40. Environmental Control Board**

1 **§ 40-14. Violations to which subtitle applies.**

2 (e) *Provisions and penalties enumerated.*

3 (7) **Health Code**

4 Title 12: Tobacco Products

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

6 SUBTITLE 1: INDOOR SMOKING

7 PERSON SMOKING \$250

8 EMPLOYER, OTHER PERSON IN CHARGE \$500

9 Subtitle 2: Sale of Unpackaged Cigarettes \$150

10 Subtitle 4: Placement of Tobacco Products \$500

11 Subtitle 5: Distribution to Minors \$500

12 **Subtitle 41. Civil Citations**

13 **§ 41-14. Offenses to which subtitle applies – Listing.**

14 (6) **Health Code**

15 Title 12: Tobacco Products

16 SUBTITLE 1: INDOOR SMOKING

17 PERSON SMOKING \$250

18 EMPLOYER, OTHER PERSON IN CHARGE \$500

19 Subtitle 2: Sale of Unpackaged Cigarettes \$150

20 Subtitle 4: Placement of Tobacco Products \$500

21 Subtitle 5: Distribution to Minors \$500

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

25 **SECTION 4. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on July 1,  
26 2006.