

Introduced by: President Young, *Young, Stokes*

Prepared by: Department of Legislative Reference

Date: January 17, 2018

Referred to: **JUDICIARY AND LEGISLATIVE INVESTIGATIONS** Committee

Also referred for recommendation and report to municipal agencies listed on reverse.

CITY COUNCIL *18-0178*

A BILL ENTITLED

AN ORDINANCE concerning

Indoor Smoking – Hookah Lounges

FOR the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges.

BY repealing and reordaining, with amendments

Article - Health
Section 12-107
Baltimore City Revised Code
(Edition 2000)

Robert Young
Robert Stokes

NO. _____

****The introduction of an Ordinance or Resolution by Councilmembers at the request of any person, firm or organization is a courtesy extended by the Councilmembers and not an indication of their position.**

Agencies

<input type="checkbox"/> Department of Public Works	<input checked="" type="checkbox"/> Baltimore City Public School System
<input type="checkbox"/> Department of Real Estate	<input checked="" type="checkbox"/> Baltimore Development Corporation
<input type="checkbox"/> Department of Recreation and Parks	<input checked="" type="checkbox"/> City Solicitor
<input type="checkbox"/> Department of Transportation	<input type="checkbox"/> Comptroller's Office
<input checked="" type="checkbox"/> Fire Department	<input type="checkbox"/> Department of Audits
<input checked="" type="checkbox"/> Health Department	<input checked="" type="checkbox"/> Department of Finance
<input type="checkbox"/> Mayor's Office of Employment Development	<input type="checkbox"/> Department of General Services
<input type="checkbox"/> Mayor's Office of Human Services	<input checked="" type="checkbox"/> Department of Housing and Community Development
<input type="checkbox"/> Mayor's Office of Information Technology	<input type="checkbox"/> Department of Human Resources
<input type="checkbox"/> Office of the Mayor	<input checked="" type="checkbox"/> Department of Planning
<input checked="" type="checkbox"/> Police Department	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Environmental Control Board	<input type="checkbox"/> Board of Estimates
<input type="checkbox"/> Fire & Police Employees' Retirement System	<input type="checkbox"/> Board of Ethics
<input type="checkbox"/> Labor Commissioner	<input checked="" type="checkbox"/> Board of Municipal and Zoning Appeals
<input type="checkbox"/> Parking Authority Board	<input type="checkbox"/> Comm. for Historical and Architectural Preservation
<input type="checkbox"/> Planning Commission	<input type="checkbox"/> Commission on Sustainability
<input type="checkbox"/> Wage Commission	<input type="checkbox"/> Employees' Retirement System
<input type="checkbox"/> Other: _____	<input checked="" type="checkbox"/> Other: <i>Board of Licenses</i>
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: <i>Comm. SS. orders</i>
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____

Boards and Commissions

<input type="checkbox"/> Board of Estimates	<input type="checkbox"/> Board of Ethics
<input checked="" type="checkbox"/> Board of Municipal and Zoning Appeals	<input type="checkbox"/> Comm. for Historical and Architectural Preservation
<input type="checkbox"/> Commission on Sustainability	<input type="checkbox"/> Employees' Retirement System
<input type="checkbox"/> Other: <i>Board of Licenses</i>	<input checked="" type="checkbox"/> Other: <i>Board of Licenses</i>
<input type="checkbox"/> Other: <i>Comm. SS. orders</i>	<input type="checkbox"/> Other: _____
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CITY OF BALTIMORE
ORDINANCE **18-124**
Council Bill 18-0178

Introduced by: President Young, Councilmember Stokes
Introduced and read first time: January 22, 2018
Assigned to: Judiciary and Legislative Investigations Committee

Committee Report: Favorable with amendments
Council action: Adopted
Read second time: February 5, 2018

AN ORDINANCE CONCERNING

1 **Indoor Smoking – Hookah Lounges**

2 FOR the purpose of excepting hookah lounges from the City's indoor-smoking restrictions,
3 subject to certain conditions; repealing two obsolete exceptions that have been preempted by
4 more stringent State law and, as such, are invalid; and generally relating to the operation of
5 hookah lounges.

6 BY repealing and reordaining, with amendments

7 Article - Health
8 Section 12-107
9 Baltimore City Revised Code
10 (Edition 2000)

11 SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the
12 Laws of Baltimore City read as follows:

13 **Baltimore City Revised Code**

14 **Article – Health**

15 **Title 12. Tobacco Products and Smoking Devices**

16 ***Subtitle 1. Indoor Smoking***

17 **§ 12-107. Exceptions – [Private clubs, smoking bars, tobacconists] RETAIL TOBACCO**
18 **ESTABLISHMENTS; HOOKAH LOUNGES.**

19 (a) *In general.*

20 This subtitle does not apply to [a private club or lodge, a smoking bar, or] a retail tobacco
21 establishment OR A HOOKAH LOUNGE that qualifies [for an exemption] under this section.

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.

Council Bill 18-0178

1 **[(b) *Qualifications.*]**

2 **[(1) A private club or lodge qualifies under this section only if it:**

- 3 **(i) has a limited membership elected pursuant to its charter or bylaws;**
- 4 **(ii) excludes the general public from its premises or place of meeting;**
- 5 **(iii) is organized with officers and directors;**
- 6 **(iv) holds all property for the common benefit of its members; and**
- 7 **(v) does not permit nonmembers to pay a temporary fee to use its premises or attend**
8 **its meetings.]**

9 **[(2) A smoking bar qualifies under this section only if it:**

- 10 **(i) is licensed under State Code Article 2B to serve alcoholic beverages;**
- 11 **(ii) derives at least 50% of its revenues, measured by average daily receipts, from the**
12 **sale of non-cigarette tobacco products;**
- 13 **(iii) has a ventilation system that prevents smoke from infiltrating into any area where**
14 **smoking is prohibited under this subtitle; and**
- 15 **(iv) prohibits the entry of minors at all times.]**

16 **(B) *RETAIL TOBACCO ESTABLISHMENTS.***

17 **[(3)] A retail tobacco establishment qualifies under this section only if it:**

- 18 **(1) [(i)] derives at least 75% of its revenues, measured by average daily receipts, from**
19 **the sale of non-cigarette tobacco products;**
- 20 **(2) [(ii)] has a ventilation system that prevents smoke from infiltrating into any area**
21 **where smoking is prohibited under this subtitle; and**
- 22 **(3) [(iii)] prohibits the entry of minors at all times.**

23 **(C) *HOOKAH LOUNGES.***

24 **(1) "*HOOKAH LOUNGE*" *DEFINED.***

25 **IN THIS SUBSECTION, "HOOKAH LOUNGE" MEANS AN ESTABLISHMENT THAT IS**
26 **PRIMARILY DEVOTED TO THE ON-PREMISES USE OF 1 OR MORE HOOKAHS (ALSO KNOWN**
27 **AS A HOOKAH PIPE, WATER PIPE, SHISHA, OR NARGHILE) FOR SMOKING TOBACCO OR**
28 **OTHER SUBSTANCES.**

Council Bill 18-0178

1 (2) QUALIFICATIONS.

2 A HOOKAH LOUNGE QUALIFIES UNDER THIS SECTION ONLY IF IT:

3 (I) MEETS THE CRITERIA LISTED IN STATE LAW;

4 (II) ~~(H)~~ DERIVES AT LEAST 75% OF ITS REVENUES, MEASURED BY AVERAGE DAILY
5 RECEIPTS, FROM THE SALE OR USE OF NON-CIGARETTE SMOKING PRODUCTS
6 AND ACCESSORIES;

7 (III) ~~(H)~~ HAS A VENTILATION SYSTEM THAT PREVENTS SMOKE FROM INFILTRATING
8 INTO ANY AREA WHERE SMOKING IS PROHIBITED UNDER THIS SUBTITLE;
9 AND

10 (IV) ~~(H)~~ PROHIBITS THE PRESENCE OF MINORS AT ALL TIMES.

11 SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance
12 are not law and may not be considered to have been enacted as a part of this or any prior
13 Ordinance.

14 SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th day
15 after the date it is enacted.

Certified as duly passed this _____ day of FEB 26 2018



President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,

this _____ day of FEB 26 2018

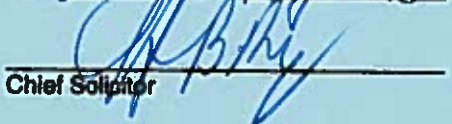


Chief Clerk

Approved this _____ day of _____, 20__

Approved For Form and Legal Sufficiency

This 28th Day of Feb 2018.



Chief Solicitor

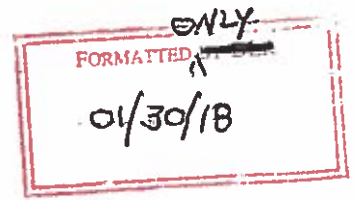
Mayor, Baltimore City
Pursuant to City Charter, Article IV, Section
5(c), this bill became law on April 16, 2018,
without the Mayor's signature.



Approved for Full and Final Settlement
This _____ Day of _____

Chief Solicitor

[Faint handwritten signature]



AMENDMENTS TO COUNCIL BILL 18-178
(1st Reader Copy)

By: Judiciary and Legislative Investigations Committee
{To be offered on the Council Floor}

Amendment No. 1

On page 3, after line 2, insert:

"(I) MEETS THE CRITERIA LISTED IN STATE LAW:";

and, in line 3, line 6, and line 8, strike "(I)", "(II)", and "(III)", respectively, and substitute "(II)", "(III)", and "(IV)", respectively.

ADOPTED

BALTIMORE CITY COUNCIL
JUDICIARY AND LEGISLATIVE INVESTIGATIONS COMMITTEE
VOTING RECORD

BILL#: CC-18-0178 DATE: 1-30-18

BILL TITLE: Indoor Smoking - Hookah Lounges

MOTION BY: SCOTT SECONDED BY: STOKES

- FAVORABLE FAVORABLE WITH AMENDMENTS
 UNFAVORABLE WITHOUT RECOMMENDATION

NAME	YEAS	NAYS	ABSENT	ABSTAIN
Costello, E., Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Clarke, M., Vice Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bullock, J.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pinkett, L.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reisinger, E.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott, B.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stokes, R.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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TOTALS	5	2	0	0

CHAIRPERSON: C. T. Long
 COMMITTEE STAFF: D'Paul S. Nibber, Initials: DN

The Baltimore City Department of
HOUSING & COMMUNITY
DEVELOPMENT

MEMORANDUM

To: The Honorable President and Members of the Baltimore City Council
c/o Natawna Austin, Executive Secretary

From: Michael Braverman, Housing Commissioner *MBR*

Date: January 29, 2018

Re: City Council Bill 18-0178 -- Indoor Smoking -- Hookah Lounges

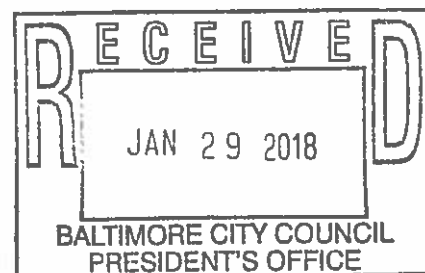
The Department of Housing and Community Development (HCD) has reviewed City Council Bill 18-0178, for the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges

If enacted, this bill modifies the Health Code: Title 12 (Tobacco Products and Smoking Devices), Subtitle 1 (Indoor Smoking), §12-107 (Exceptions – Private clubs, smoking bars, tobacconists.) to remove private clubs or lodges and smoking bars and add retail tobacco establishments and hookah lounges, with definitions, to the list of exceptions for indoor smoking.

HCD has concerns with this bill as written because it has the potential to create confusion between requirements in the health code specific to hookah lounges and the permit requirements for lounges in the Building, Fire and Related Codes (BFRC). A lounge in the zoning code is a business establishment that is open to the general public; designed or operated primarily to accommodate social gatherings; and does not serve or permit the on-site consumption of alcohol. A lounge could be an establishment that is used as a place to gather and smoke hookah. A lounge would require a use permit to insure that the location, construction, maintenance, and operation of the facility is not detrimental to or endanger public health, safety or welfare. This bill defines a hookah lounge, but only requires a ventilation system that prevents smoke from infiltrating into any area where smoking is prohibited. Any establishment that would allow the smoking of hookah would also be required to apply for a use permit to determine that the inside activity meets the minimum requirements under the BFRC.

The Department of Housing and Community Development does not support the passage of this bill and defers to the Fire Department and the Health Department on the passage of City Council Bill 18-0178.

*Does not
support, defers
to Fire & Health*



CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



BOARD OF MUNICIPAL AND
ZONING APPEALS

DAVID C. TANNER, Executive Director
417 E. Fayette Street, Room 1432
Baltimore, Maryland 21202

January 29, 2018

The Honorable President and
Members of the City Council
City Hall
100 N. Holliday Street
Baltimore, MD 21202

RE: CC Bill. #18-0178: Indoor Smoking – Hookah Lounges

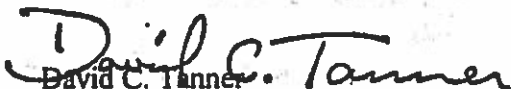
Ladies and Gentlemen:

City Council Bill No. 18-0178 has been referred by your Honorable Body to the Board of Municipal and Zoning Appeals for study and report.

The purpose of City Council Bill No. 18-0178 is to except hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; to repeal two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relates to the operation of hookah lounges within Baltimore City.

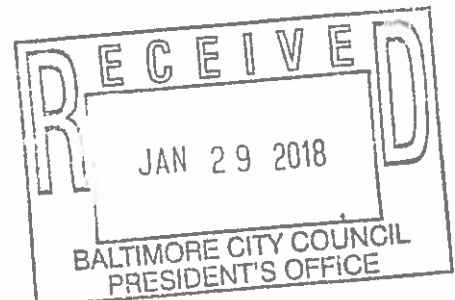
The BMZA has reviewed the legislation and as the subject bill does not pertain to land use, zoning, municipal, or other areas within its purview, BMZA respectfully defers to the report and recommendation of the Health Department on this matter.

Sincerely,


David C. Tanner
Executive Director


DCT/djb

CC: Mayors Office of Council Relations
Legislative Reference



*Defers to
Health*

TJA

FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #18-0178/ INDOOR SMOKING - HOOKAH LOUNGES		

TO

DATE:

The Honorable President and
Members of the City Council
City Hall, Room 400
100 North Holliday Street

January 26, 2018

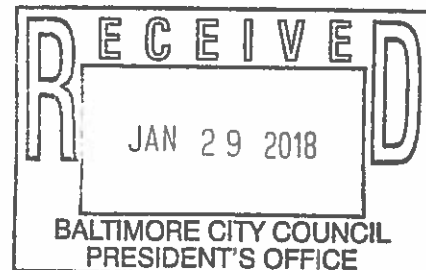
The Department of Planning is in receipt of City Council Bill #18-0178, which is for the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges.

The Department of Planning defers to the Department of Health's recommendation for disapproval of City Council Bill #18-0178, due to the negative health impacts associated with smoking of any kind indoors.

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

TJS/ewt

- cc: Mr. Pete Hammen, Chief Operating Officer
Mr. Jim Smith, Chief of Strategic Alliances
Ms. Karen Stokes, Mayor's Office
Mr. Colin Tarbert, Mayor's Office
Mr. Kyron Banks, Mayor's Office
The Honorable Edward Reisinger, Council Rep. to Planning Commission
Mr. William H. Cole IV, BDC
Mr. David Tanner, BMZA
Mr. Geoffrey Veale, Zoning Administration
Ms. Sharon Daboin, DHCD
Ms. Elena DiPietro, Law Dept.
Mr. Francis Burnszynski, PABC
Ms. Valorie LaCour, DOT
Ms. Natawna Austin, Council Services



Defers to Health, unfavorable

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor

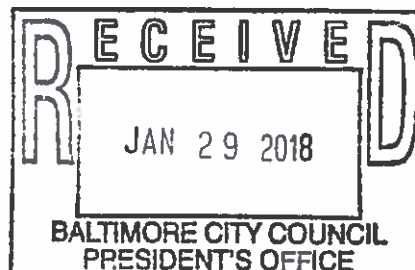


DEPARTMENT OF LAW

ANDRE M. DAVIS, CITY SOLICITOR
100 N. Holliday Street
Suite 101, City Hall
Baltimore, Maryland 21202

January 29, 2018

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 18-0178 – Indoor Smoking – Hookah Lounges

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0178 for form and legal sufficiency. The bill would amend the Health Code to remove private clubs, lodges and smoking bars from the exception to the City's prohibition on indoor smoking. It would add hookah lounges to places where indoor smoking can occur if those lounges meet three criteria: 1) 75% of its revenue comes from non-cigarette smoking products; 2) a ventilation system prevents smoke from going anywhere it is otherwise prohibited and 3) no minors are allowed. If adopted, the only places patrons could smoke indoors would be these designated hookah lounges and retail tobacco establishments.

Maryland's Indoor Clean Air Act provides that after February 1, 2008 a person may not smoke in either an indoor area open to the public or an indoor place of employment. Md. Code, Health-Gen., §24-504. An indoor area open to the public is defined as an "indoor area or a portion of an indoor area accessible to the public by either invitation or permission" or a place that is licensed or permitted to sell or possess alcoholic beverages. Md. Code, Health-Gen., §24-501(e). Smoking is defined as burning any substance containing tobacco. Md. Code, Health-Gen., §24-501(g). The only applicable exemption under state law is for a "retail tobacco business that is a sole proprietorship, limited liability company, corporation, partnership or other enterprise, in which: (i) The primary activity is the retail sale of tobacco products and accessories; and (ii) The sale of other products is incidental." Md. Code, Health-Gen., §24-505.

Although this State Clean Indoor Air Act explicitly provides that a local government may enact and enforce more stringent measures, as written this bill would appear to allow smoking in Hookah lounges so long as they meet the three criteria that the City lists in Section (c)(2) of its bill. Md. Code, Health – Gen., §24-510. To be clear, **if enacted, the Hookah lounge would have to satisfy the criteria listed in the bill and the criteria in state law.** This means that those lounges would also have to be "a sole proprietorship, limited liability company, corporation, partnership or other enterprise, in which: (i) The primary activity is the retail sale of tobacco products and accessories; and (ii) The sale of other products is incidental." Md. Code, Health-Gen., §24-505. **The Council should consider clarifying this bill to make it clear that**

Fw/comments



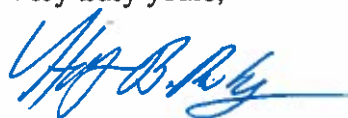
both the state and local criteria need to be met. This could be done by adding “meets the criteria listed in state law and” before the colon in line 2 on page 3.

The addition of hookah lounges as places where indoor smoking is allowed under certain conditions and the removal of private clubs, lodges and smoking bars as a place where one can smoke inside is consistent with the City’s general power “to prescribe, within the limits of the federal and state constitutions, reasonable regulations necessary to preserve the public order, health, safety, or morals.” *Tighe v. Osborne*, 149 Md. 349, 356 (1925); City Charter, Art. II, §§ (11), (47). Opponents may argue that the Commerce Clause in the federal Constitution limits the City’s power to enact this type of law. To withstand such a challenge, the City Council must show that the law is aimed at legitimate local health and welfare concerns, so as not to violate the Commerce Clause of the United States Constitution. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 143 (1970)(cited with approval in *Medical Waste Associates Ltd. Partnership v. Mayor and City Council of Baltimore*, 966 F.2d 148, 150 (4th Cir. 1992)) (“Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.”)(citations omitted); accord *BlueHippo Funding, LLC v. McGraw*, 609 F. Supp. 2d 576, 586 (S.D. W. Va. 2009)(recognizing that the Fourth Circuit has consistently used this two part test). It would behoove the Council to elicit testimony that any burdens on interstate commerce are incidental and do not outweigh the significant local environmental benefits produced by the legislation.

Additionally, this bill is not preempted by the holding in the recent decision in *Altadis USA, Inc. v. Prince George’s County*, 431 Md. 307, 316 (2013) because that decision concerned only the packaging, sale and distribution of certain kinds of tobacco, not where those products can be used.

Therefore, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor’s Office of Government Relations
Kyron Banks, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Jennifer Landis, Assistant Solicitor

ALBERT J. MATRICCIANI, JR.
CHAIRMAN

COMMISSIONERS
AARON J. GREENFIELD, ESQ.

ALTERNATE COMMISSIONER
HARVEY E. JONES



DOUGLAS K. PAIGE
EXECUTIVE SECRETARY

THOMAS R. AKRAS, ESQ.
DEPUTY EXECUTIVE SECRETARY

STACI L. RUSSELL
ASSISTANT EXECUTIVE
SECRETARY

STATE OF MARYLAND
BOARD OF LIQUOR LICENSE COMMISSIONERS
FOR BALTIMORE CITY
231 E. BALTIMORE STREET, 6TH FLOOR
BALTIMORE, MARYLAND, 21202-3258
PHONE: (410) 396-4377
FAX: (410) 396-4382

To: Honorable Council President Bernard "Jack" Young and Members of the City Council
Attention: Natawna B. Austin, Executive Secretary

From: Albert J. Matricciani, Jr., Chairman, Board of Liquor License Commissioners of Baltimore City

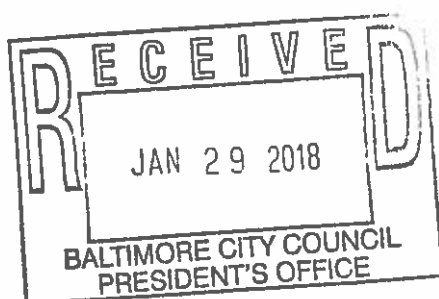
Date: January 29, 2018

Re: City Council Bill No. 18-0178
Indoor Smoking – Hookah Lounges

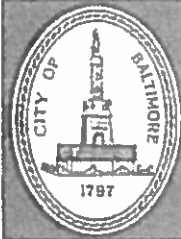
The Board of Liquor License Commissioners for Baltimore City has been asked to comment on City Council Bill No. 18-0178 for the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and; as such, are invalid; and generally relating to the operation of hookah lounges.

While the BLLC neither supports or opposes the passage of this legislation, the intent of this bill is to create an exception to Baltimore City's indoor smoking prohibition for hookah lounges. This exception may have serious public health and safety implications, and thus the BLLC respectfully defers to the Baltimore City Health Department, the Baltimore City Fire Department, and the Department of Housing and Community Development.

Cc: Kyron Banks, Mayor's Office of Baltimore City



Defers to Health, Fire & H&D

FROM	NAME & TITLE	Niles R. Ford, PhD, Chief of Fire Department <i>MF</i>	CITY OF BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Baltimore City Fire Department 401 East Fayette St. _21202		
	SUBJECT	City Council Bill #18-0178 Response to		

DATE: **January 29, 2018**

TO **The Honorable Bernard C. Young, President
And All Members of the Baltimore City Council
City Hall, Room 408**

For the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges.

The proposed legislation would provide for- excepting hookah lounges from the City's indoor smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such are invalid; and generally relating to the operation of hookah lounges.

The Fire Department does not support City Council Bill 18-0178. We ask that consideration be given to the adoption of the following conditions as they are written:

A hookah pipe bowl should be considered open burning

Interconnected smoke detectors shall be installed in every room, with an approved notification system.

A minimum 2A-20 BC extinguisher shall be installed in the area of the hookah pipes and the coal lighting area.

Carbon Monoxide detectors shall be installed in every room.

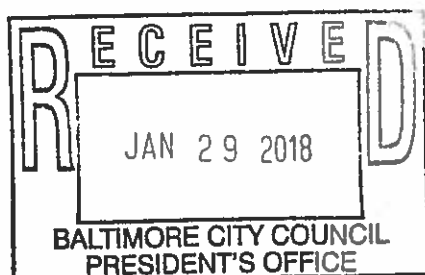
Coals shall be lit by an electric burner and not by an open flame.

Coals that are being transported from the lighting area to the smoking area shall be contained in an approved noncombustible container.

Hookah pipes shall be located and positioned in such a manner as to prevent overturning.

Wind covers shall be used over the coals when placed on the hookah pipe.

Hookah pipes shall be placed on a noncombustible surface, with a 36 inch clearance around the pipe.



UF w/ comments

Disposal, use, or handling of ashes and coals shall comply with sections 305.1 and 305.2 of the International Fire Code.

All Hookah establishments shall be equipped with fire sprinklers, be constructed of noncombustible materials, and utilize only Class A interior finishes.

Furniture shall be constructed of a fire retardant material.

The occupancy shall be limited to "B" use only (not assembly, or over 49 people).

The occupancy shall have an approved ventilation system that:
does not recirculate room air.

Has 100% exhaust

All make up air is to be brought in from outside of the structure.

The occupancy shall conform to all existing fire codes as defined in the 2015 edition of the International Fire Code.



Catherine Pugh
Mayor

BALTIMORE POLICE DEPARTMENT



Darryl De Sousa
Police Commissioner Designee

January 25, 2018

Honorable President and Members of the Baltimore City Council
Room 400, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Attention: Natawna B. Austin, Executive Secretary

**Re: City Council Bill No. 18- 0178
Indoor Smoking- Hookah Lounges**

Dear Council President Young and Members of the City Council:

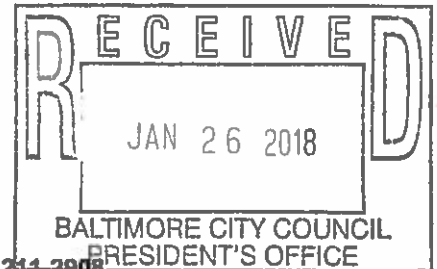
The Baltimore Police Department (BPD) has reviewed Council Bill No. 18-0178. This bill is for the purpose of excepting hookah lounges from the City's indoor-smoking restrictions under certain conditions and repealing two obsolete exceptions that have been preempted by more stringent State laws.

Hookah lounges do not currently adhere to the required exceptions and Baltimore City's indoor smoking laws prohibit the smoking of tobacco and other substances indoors. As City Council Bill No. 18- 0178 aims to exempt hookah lounges indoor smoking restrictions, BPD respectfully defers to the Baltimore City Health Department and the Baltimore City Fire Department. Thank you for the opportunity to comment. BPD looks forward to working with the City Council on this matter.


Sincerely,


James A. Gillis
Chief of Staff

*Defers
to Health's
Fire*



c/o 242 West 29th Street • Baltimore, Maryland 21211-2908

FROM	NAME & TITLE	Robert Cenname, Chief <i>RC</i>	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Bureau of the Budget and Management Research 100 Holliday Street, Room 432 – 410-396-4941		
	SUBJECT	City Council Bill #18-0178 – Indoor Smoking – Hookah Lounge		

DATE:

TO

The Honorable President and
Members of the City Council
Room 400, City Hall

January 25, 2018

Attention: Ms. Natawna Austin

We are herein reporting on City Council Bill 18-0178, the purpose of which is to grant Hookah Lounges, as defined in the proposed legislation, to be except from the City's indoor smoking restrictions if the following conditions are met:

- Derives at least 75% of its revenues from the sale or use of non-cigarette smoking products and accessories,
- Has a ventilation system preventing infiltration of smoke into smoking prohibited areas, and
- Prohibits the presence of minors at all time.

The bill also repeals certain sections of the City Code redundant to be in line with existing State Law.

Analysis

This bill would expressly incorporate a section for hookah lounges in the City Code and defines the specific qualifications for these establishments to be except from the City's indoor smoking restrictions.

Fiscal Impact

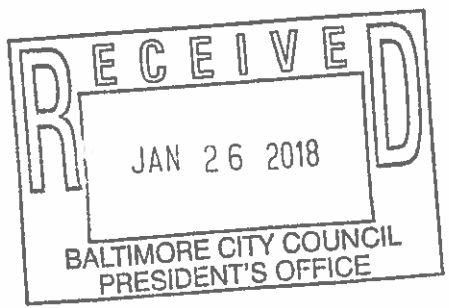
The Finance Department considers that the amendments proposed by this legislation would not have any additional fiscal or financial impact to the City; however, the public health and safety aspects related to the business nature of this type of establishments continues to be a concern.


Recommendation

The Department of Finance does not oppose CCB 18-0178.

cc: Henry Raymond
Kyron Banks

not opposed



F R © M	Name & Title	Dr. Leana Wen, Commissioner	Health Department	
	Agency Name & Address	Health Department 1001 E. Fayette Street Baltimore, Maryland 21201		
	Subject	18-0178 – Indoor Smoking – Hookah Lounges		

To: President and Members
of the City Council
c/o 409 City Hall

January 25, 2018

The Baltimore City Health Department (BCHD) is pleased to have the opportunity to review 18-0178 – Indoor Smoking – Hookah Lounges. The purpose of this legislation is to expand the exception for hookah under the City’s indoor-smoking restrictions to allow for charcoal-based hookah. Under the current exception, only electronic hookah is permitted. **BCHD strongly opposes this legislation.**

A hookah is a water pipe used to smoke specially made tobacco that comes in different flavors. Hookah is also called shisha, narghile, argileh, hubble-bubble, andgoza.¹ Tobacco use is unsafe in any form. 90% of lifelong tobacco user’s start before age 18 and hookah use among high schoolers nationwide nearly doubled in just one year from 5% in 2013 to almost 10% in 2014.²

While hookah popularity has risen among teenagers nationally, youth consumption of tobacco remains an area of significant concern in Baltimore. According to the FY17 Annual Cigarette Restitution Fund report, 14% of Baltimore City youth under the age of 18 reported using tobacco products of any kind, compared to 10.7% youth statewide. While rates across the City and state fell from 2000 to 2014 overall, the City’s rate of usage fell slower than statewide, and the percentage of youth reporting usage of both cigars and smokeless tobacco increased. The Centers for Disease Control and Prevention (CDC) reported in a 2015 survey that nearly three out of 10 high school youth consuming tobacco at least once in the prior 30 days.³

Public perception of hookah often views it as less harmful than other forms of tobacco consumption, including cigarette smoking. However, evidence shows hookah poses many of the same health risks as cigarettes.⁴ In fact, one hour of smoking has been found to be the equivalent

¹ CDC Fact Sheet – Hookahs- Smoking and Tobacco Use

http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/

² Tobacco Use Among Middle and High School Students — United States, 2011–2014, CDC Morbidity and Mortality Weekly Report, April 17, 2015. Available at:

<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6414a3.htm>

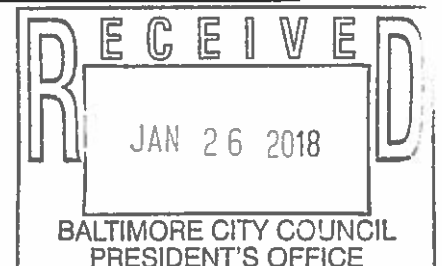
³ CDC High School Youth Risk Behavior Survey.

[https://nccd.cdc.gov/youthonline/App/Results.aspx?TT=C&SID=HS&OID=H77&LID=BA&LID2=SL&YID=2013&YID2=SY&SYID=&EYID=&HT=OO&LCT=LL&COL=S&ROW1=N&ROW2=N&TST=false&C1=&C2=&SC=DEFAULT&SO=ASC&VA=CI&CS=Y&DP=1&OP=G&FG=GI&FR=RI&FS=\\$1](https://nccd.cdc.gov/youthonline/App/Results.aspx?TT=C&SID=HS&OID=H77&LID=BA&LID2=SL&YID=2013&YID2=SY&SYID=&EYID=&HT=OO&LCT=LL&COL=S&ROW1=N&ROW2=N&TST=false&C1=&C2=&SC=DEFAULT&SO=ASC&VA=CI&CS=Y&DP=1&OP=G&FG=GI&FR=RI&FS=$1)

⁴ CDC Fact Sheet – Hookahs – Smoking and Tobacco Use

http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/

UF



of smoking 100 cigarettes.⁵ According to a meta-analysis conducted by the University of Pittsburgh School of Medicine, a single hookah session similarly delivers 25 times more tar than that found in a single cigarette, 2.5 times the nicotine, and 10 times the carbon monoxide.⁶ Smoking hookah has been associated with lung cancer, periodontal disease, low birth rates, and other types of cancer and cardiovascular diseases.⁷

The legislation in question would expand access to hookah lounges in Baltimore City by expanding access to charcoal-based hookah, as opposed to the electronic-based hookah allowed under the exception in current law. By expanding the exception, Baltimore would weaken its regulations on hookah, despite evidence from the City itself that hookah remains a danger to residents and workers. A study of Baltimore (electronic) hookah lounges published in 2014 showed carbon monoxide levels in lounges exceeded occupational exposure guidelines.⁸ Charcoal-heated hookah would further increase health risks by producing high levels of carbon monoxide, metals, and cancer-causing chemicals.⁹

The usage of charcoal-based hookah creates the additional attendant increased risk of second- and thirdhand smoke exposure. These dangers are magnified by the increased toxicity and levels of tar and nicotine present in hookah smoke.¹⁰ Given the density of Baltimore's built environment and close proximity of residences to commercial establishment, surrounding properties will likely be affected by exposure to charcoal-based hookah, as smells and toxins produced by smoking hookah can pass through ventilation systems and walls, and can adhere to nearly any material.

BCHD is proud to have worked with the Council in years past to create Baltimore City's clean indoor air law, the first jurisdiction in Maryland to create such a law. The rationale for creating the law then remains today – to ensure our residents and youth are adequately protected from the dangers of tobacco consumption and secondhand smoke. **For these reasons, BCHD strongly opposes this legislation, and requests this committee issue an unfavorable report.** We will be present at the hearing to answer any questions the Council may have on this matter.

⁵ Waterpipe tobacco smoking: health effects, research needs and recommended actions for regulators, 2nd Edition, WHO Study Group on Tobacco Product Regulation.

⁶ University of Pittsburgh School of Medicine. <http://www.upmc.com/media/NewsReleases/2016/Pages/primack-hookah-meta.aspx>.

⁷ Ibid.

⁸ Waterpipe cafes in Baltimore, Maryland: Carbon monoxide, particulate matter, and nicotine exposure, *Journal of Exposure Science and Environmental Epidemiology* (2015) 25, 405–410; doi:10.1038/jes.2014.19, retrieved Jan. 25 2018: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4333110/>

⁹ CDC Fact Sheet – Hookahs- Smoking and Tobacco Use http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/

¹⁰ University of Pittsburgh School of Medicine. <http://www.upmc.com/media/NewsReleases/2016/Pages/primack-hookah-meta.aspx>.



MEMORANDUM

TO: Honorable President and Members of the City Council
Attention: Natawna B. Austin, Executive Secretary

FROM: William H. Cole, President & CEO *W. Cole*

DATE: January 25, 2018

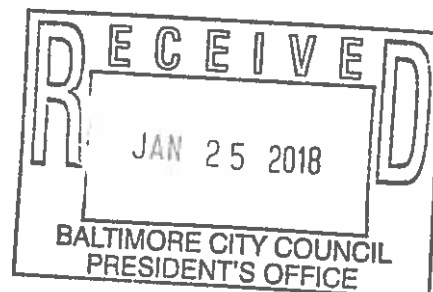
SUBJECT: City Council Bill No. 18-0178
Indoor Smoking – Hookah Lounges

The Baltimore Development Corporation (BDC) has been asked to comment on City Council Bill No. 18-0178 for the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges.

Baltimore City's indoor smoking law prohibits the smoking of tobacco and other substances indoors and the intent of this ordinance is to make exception for hookah lounges within Baltimore City. Such exception may have serious public health and public safety implications, therefore, BDC respectfully defers to the Baltimore City Health Department and the Baltimore City Fire Department.

CC: Kyron Banks

*Defers to
Health's, Fire*



City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland
21202

Meeting Minutes - Final

Judiciary and Legislative Investigations

Tuesday, January 30, 2018

9:55 AM

Du Burns Council Chamber, 4th floor, City Hall

18-0178

CALL TO ORDER

INTRODUCTIONS

ATTENDANCE

Present 7 - Member Eric T. Costello, Member Mary Pat Clarke, Member Leon F. Pinkett III, Member John T. Bullock, Member Edward Reisinger, Member Brandon M. Scott, and Member Robert Stokes Sr.

ITEMS SCHEDULED FOR PUBLIC HEARING

18-0178

Indoor Smoking - Hookah Lounges

For the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges.

Sponsors: President Young, Robert Stokes, Sr.

A motion was made by Member Scott, seconded by Member Stokes, Sr., that Council Bill #18-0178 be Recommended Favorably with Amendment. The motion carried by the following vote:

Yes: 5 - Member Costello, Member Bullock, Member Reisinger, Member Scott, and Member Stokes Sr.

No: 2 - Member Clarke, and Member Pinkett III

ADJOURNMENT

THIS MEETING IS OPEN TO THE PUBLIC



HEARING NOTES

Bill: 18-0178

Indoor Smoking - Hookah Lounges

Committee: Judiciary and Legislative Investigations

Chaired By: Councilmember Eric Costello

Hearing Date: January 30, 2018
Time (Beginning): 10:05 a.m.
Time (Ending): 10:30 a.m.
Location: Clarence "Du" Burns Chamber
Total Attendance: ~60
Committee Members in Attendance:
Eric Costello Mary Pat Clarke Brandon Scott
Leon Pinkett Robert Stokes John Bullock Edward Reisinger

Bill Synopsis in the file?	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> n/a
Attendance sheet in the file?	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> n/a
Agency reports read?	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> n/a
Hearing televised or audio-digitally recorded?	<input type="checkbox"/> yes	<input checked="" type="checkbox"/> no	<input type="checkbox"/> n/a
Certification of advertising/posting notices in the file?	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input checked="" type="checkbox"/> n/a
Evidence of notification to property owners?	<input type="checkbox"/> yes	<input type="checkbox"/> no	<input checked="" type="checkbox"/> n/a
Final vote taken at this hearing?	<input checked="" type="checkbox"/> yes	<input type="checkbox"/> no	<input type="checkbox"/> n/a
Motioned by:	Councilman Scott		
Seconded by:	Councilman Stokes		
Final Vote:	Favorable w/ Am, 5-2		

Major Speakers

(This is not an attendance record.)

- Jeffrey Amoros, Health Department
- Casey Thomasson, Health Department
- Kathleen Byrne, Department of Housing and Community Development

Major Issues Discussed

1. Chairman Costello introduced the proceedings, and discussed the reports of various City agencies. Each agency stood by its report, with the Law Department proposing an amendment to clarify 18-0178 to comply with relevant State guidelines, which was adopted by the Committee.
 2. Mr. Casey Thomasson discussed the Health Department's opposition to 18-0178. He explained that tobacco, specifically hookahs, are marketed toward the youth as a healthy alternative to cigarettes. He noted that smoking a hookah for an hour is the equivalent of smoking 100 cigarettes, and a hookah has more cancer causing chemicals than most other forms of tobacco.
 3. Mr. Ray O'Brochi testified in favor of more lax standards for hookah lounges. He stated that he has worked as the Chief Building Inspector for Prince George's County and has extensive experience evaluating the fire-related hazards associated with hookahs. Mr. O'Brochi noted that there are no flames associated with hookahs, and therefore they should not be subjected to the many regulations being proposed by the Fire Department.
 4. Ms. Kathleen Byrne discussed the Department of Housing and Community Development's stance on 18-0178. She stated that a "use" permit would have to be issued for any hookah lounge, and that plans for said lounge would have to meet Fire Department and Department of Planning requirements. Ms. Byrne emphasized that hookah lounges will likely not be stand alone structures, and will affect neighboring businesses and residents.
 5. Councilman Burnett asked that the Committee take into account previous work done by the Council to minimize tobacco use and oppose this Bill.
 6. Vice Chair Clarke discussed the distinction between a hookah lounge and a hookah restaurant. She stated that the use referenced in 18-0178 is not in the Zoning Code, which could lead to some regulatory confusion. The Vice Chair introduced an amendment that would have hookah lounges subject to the lounge regulations listed in the Zoning Code, and it failed for lack of a second motioner.
-

Further Study

Was further study requested?

Yes No

If yes, describe. N/A

Committee Vote:

E. Costello: Yea
M. Clarke: Nay
J. Bullock: Yea
L. Pinkett: Nay
E. Reisinger: Yea
B. Scott: Yea
R. Stokes: Yea

D'Paul Nibber

D'Paul Nibber, Committee Staff

Date: January 30, 2018

cc: Bill File
OCS Chrono File



CITY OF BALTIMORE CITY COUNCIL HEARING ATTENDANCE RECORD

Committee: Judiciary and Legislative Investigations Chairperson: Eric Costello
 Date: January 30, 2018 Time: 9:55AM Place: Clarence "Du" Burns Chambers
 Subject: Ordinance - Indoor Smoking - Hookah Lounges CC Bill Number: 18-0178

PLEASE PRINT							WHAT IS YOUR POSITION ON THIS BILL?		(*) LOBBYIST: ARE YOU REGISTERED IN THE CITY	
FIRST NAME	LAST NAME	ST. #	ADDRESS/ORGANIZATION NAME	ZIP	EMAIL ADDRESS		FOR	AGAINST	YES	NO
John	Doe	100	North Charles Street	21202	Johndoenbmore@yahoo.com	TESTIFY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Jeff	Amoros		BCHD		Jeffrey.amoros@baltimorecity.gov	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Casey	Thomason		BCHD		Casey.Thomason@baltimorecity.gov	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Eric	TESO		PLANNING		ERIC.TESO@BALTIMORECITY.GOV	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Ray	O'Brachi				RAY.OBRACHI@VENTURA.NET	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Darren	COOPER		TSDC		dcooper@baltimoredevelopment.com					
Sharon	Howling		Howling							
Kathy	Howling		Howling							

IF YOU WANT TO TESTIFY PLEASE CHECK HERE



(*) NOTE: IF YOU ARE COMPENSATED OR INCUR EXPENSES IN CONNECTION WITH THIS BILL, YOU MAY BE REQUIRED BY LAW TO REGISTER WITH THE CITY ETHICS BOARD. REGISTRATION IS A SIMPLE PROCESS. FOR INFORMATION AND FORMS, CALL OR WRITE: BALTIMORE CITY BOARD OF ETHICS, C/O DEPARTMENT OF LEGISLATIVE REFERENCE, 626 CITY HALL, BALTIMORE, MD 21202. TEL: 410-396-4730; FAX: 410-396-8483.

Clarke, Mary Pat

From: Clarke, Mary Pat
Sent: Monday, January 29, 2018 6:05 PM
To: Costello, Eric
Cc: 'd'paul.nibber@baltimorecity.gov'; Banks, Kyron; Murdock, Stephanie
Subject: FW: 18-0178 Amendment and References in Art. 32
Attachments: 18-0178~1st Reader.pdf; 18-0178 Amendment and References in Art. 32.pdf

received
1-30-18

Dear Chairman Costello and Fellow Judiciary Committee Members,
Attached is an amendment I am introducing to Bill 18-0178 Indoor Smoking– Hookah Lounges. In context, the interlineated amendment to page 2, ll. 24-28 (amendment in red) would read as follows:

(1) “HOOKAH LOUNGE” DEFINED.
IN THIS SUBSECTION, “HOOKAH LOUNGE” MEANS [AN ESTABLISHMENT] **A LOUNGE AS DEFINED IN CITY CODE ARTICLE 32, Subtitle 1-302 (H-1)** THAT IS PRIMARILY DEVOTED TO THE ON-PREMISES USE OF 1 OR MORE HOOKAHS (ALSO KNOWN AS A HOOKAH PIPE, WATER PIPE, SHISHA, OR NARGHILE) FOR SMOKING TOBACCO OR OTHER SUBSTANCES.

The scroll-down page following this amendment features the section of the Zoning Code (ARTICLE 32, Subtitle 1-302 (H-1))in which *Lounge* is defined and its *Exclusions* are listed, that is, the uses in (H-1)(2) which are NOT INCLUDED in the definition of *Lounge*. The final excluded use on that list is (vii) restaurant.

The purpose of this amendment is to make clear to Health and Housing inspectors and Code Enforcement in general that a Hookah facility operating on a restaurant permit would not be permitted the smoking privileges provided by City Council Bill 18-0178, should that bill be voted into law. The fourth scroll-down panel excerpts the Zoning Code’s Commercial Use chart and demonstrates that Hookah Restaurants are permitted (as restaurants) in neighborhood and community Commercial districts, while Hookah Lounges are relegated to Entertainment and the three most “commercialized” Zoning Code districts. As time goes by and distinctions grow vague, this amendment is a “one-stop” effort to reference this distinction in the Health Code upon which Health inspectors may rely and to prevent Hookah Restaurants from morphing into smoking establishments.

I ask your support for this amendment, but (full disclosure), I do not plan to vote for the bill itself amended or not. With that understanding, thanks for your consideration. Mary Pat

DLR DRAFT I 29JAN18

DLR DRAFT I 29JAN18

**AMENDMENTS TO COUNCIL BILL 18-178
(1st Reader Copy)**

**By: Councilmember Clarke
{To be offered to the Judiciary and Legislative Investigations Committee}**

Amendment No. 1

On page 2, in line 25, strike "AN ESTABLISHMENT" and substitute "A LOUNGE, AS DEFINED IN CITY CODE ARTICLE 32, § 1-302(H-1)".

(2) Inclusions.

“Lot line: Side” includes an interior-side lot line and a corner-side lot line.

(g) Lot: Through.

“Lot: Through” means a lot that extends between 2 streets (but not alleys) with vehicular access on both streets.

(h) Lot width.

“Lot width” means the horizontal distance between side lot lines, as measured along the front lot line.

(h-1) Lounge.**(1) In general.**

“Lounge” means a business establishment that:

- (i) is open to the general public;
- (ii) is designed or operated primarily to accommodate social gatherings; and
- (iii) does not serve or permit the on-site consumption of alcohol.

(2) Exclusions.

“Lounge” does not include any of the following uses:

- (i) adult use;
- (ii) banquet hall;
- (iii) carry-out food shop;
- (iv) entertainment: indoor;
- (v) entertainment: live;
- (vi) lodge or social club; or
- (vii) restaurant.

(i) Luminaire.

“Luminaire” means a complete lighting unit that extends from a support structure, parallel to the ground, and consists of a light source and all necessary mechanical, electrical, and decorative parts.

ZONING

ART. 32, TBL 10-301

Commercial (cont'd)	C-1	C-1-VC	C-1-E	C-2	C-3	C-4	C-5	
Funeral Home				CB	P	P		
Gas Station				CB	CB	P		Per § 14-314
Greenhouse or Nursery	P	P	P	P	P	P	CB	Per § 14-339
Health-Care Clinic	CB	CB	CB	P	P	P	P	
Health Center	P	P	P	P	P	P	P	
Heavy Sales, Rental, or Service					CB	P		
Hotel or Motel	CB	CB	CB	P	P	P	P	
Kennel					CB	P	CB	Per § 14-317
Lodge or Social Club	CB	CB	CB	CB	P	P	P	Per § 14-320
Lounge			P		P	P	P	Per § 14-321
Motor Vehicle Dealership (Fully Enclosed Structure)				P	P	P	P	Per § 14-325
Motor Vehicle Dealership (Outdoor Vehicle Display)					CB	P		Per § 14-325
Motor Vehicle Rental Establishment (Fully Enclosed Structure)	P			P	P	P	P	Per § 14-325
Motor Vehicle Rental Establishment (Outdoor Vehicle Display)					CB	P		Per § 14-325
Motor Vehicle Service and Repair: Major						P		Per § 14-326
Motor Vehicle Service and Repair: Minor (Fully Enclosed Structure)				P	P	P	P	Per § 14-326
Motor Vehicle Service and Repair: Minor (Outdoor Vehicle Storage)				CB	P	P		Per § 14-326
Nursery (See "Greenhouse or Nursery")	-	-	-	-	-	-	-	-
Office	P	P	P	P	P	P	P	Per § 14-329
Outdoor Dining	P	P	P	P	P	P	P	
Pawn Shop				CB	CB	CB	CB	
Personal Services Establishment	P	P	P	P	P	P	P	
Racetrack						CB		
Recreation: Indoor				P	P	P	P	Per § 14-312
Recreation: Outdoor				CB	CB	CB	CB	Per § 14-312
Recreational Vehicle Dealership					CB	P		
Restaurant	P	CB	P	P	P	P	P	



**BALTIMORE CITY COUNCIL
JUDICIARY AND LEGISLATIVE INVESTIGATIONS
COMMITTEE**

Mission Statement

On behalf of the Citizens of Baltimore City, the mission of the Judiciary and Legislative Investigations Committee is to investigate and study the continuing operations, efficiency, and functions of Baltimore City government in accordance with the laws of Baltimore City, the State of Maryland, and the United States.

As a result of its investigations and studies, the Committee will recommend and oversee reforms to improve the operations of Baltimore City's government through legislative, administrative, and/or budgetary processes.

**The Honorable Eric T. Costello
Chairman**

PUBLIC HEARING

Tuesday, January 30, 2018

9:55 AM

CLARENCE "DU" BURNS COUNCIL CHAMBERS

Council Bill 18-0178

Indoor Smoking - Hookah Lounges

CITY COUNCIL COMMITTEES

BUDGET AND APPROPRIATIONS

Eric Costello – Chair
Leon Pinkett – Vice Chair
Bill Henry
Sharon Green Middleton
Brandon M. Scott
Isaac "Yitzy" Schleifer
Shannon Sneed
Staff: Marguerite Currin

EDUCATION AND YOUTH

Zeke Cohen – Chair
Mary Pat Clarke – Vice Chair
John Bullock
Kristerfer Burnett
Ryan Dorsey
Staff: D'Paul Nibber

EXECUTIVE APPOINTMENTS

Robert Stokes – Chair
Kristerfer Burnett – Vice Chair
Mary Pat Clarke
Zeke Cohen
Isaac "Yitzy" Schleifer
Staff: Marguerite Currin

HOUSING AND URBAN AFFAIRS

John Bullock – Chair
Isaac "Yitzy" Schleifer – Vice Chair
Kristerfer Burnett
Bill Henry
Shannon Sneed
Zeke Cohen
Ryan Dorsey
Staff: Richard Krummerich

JUDICIARY AND LEGISLATIVE INVESTIGATIONS

Eric Costello – Chair
Mary Pat Clarke – Vice Chair
John Bullock
Leon Pinkett
Edward Reisinger
Brandon Scott
Robert Stokes
Staff: D'Paul Nibber

LABOR

Shannon Sneed – Chair
Robert Stokes – Vice Chair
Eric Costello
Bill Henry
Mary Pat Clarke
Staff: Marguerite Currin

LAND USE AND TRANSPORTATION

Edward Reisinger - Chair
Sharon Green Middleton – Vice Chair
Mary Pat Clarke
Eric Costello
Ryan Dorsey
Leon Pinkett
Robert Stokes
Staff: Jennifer Coates

PUBLIC SAFETY

Brandon Scott – Chair
Ryan Dorsey – Vice Chair
Kristerfer Burnett
Shannon Sneed
Zeke Cohen
Leon Pinkett
Isaac "Yitzy" Schleifer
Staff: Richard Krummerich

TAXATION, FINANCE AND ECONOMIC DEVELOPMENT

Sharon Green Middleton – Chair
Leon Pinkett – Vice Chair
Eric Costello
Edward Reisinger
Robert Stokes
Staff: Jennifer Coates
- Larry Greene (pension only)



BILL SYNOPSIS

Committee: Judiciary and Legislative Investigations

Bill 18-0178

Indoor Smoking - Hookah Lounges

Sponsor: President Young, et al

Introduced: January 22, 2018

Purpose:

For the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges.

Effective: Upon the 30th day after the date it is enacted.

Hearing Date/Time/Location: January 30, 2018/9:55 a.m./Clarence "Du" Burns Chamber

Agency Reports

✓ Law Department	Favorable
✓ Board of Municipal and Zoning Appeals	Comments
✓ Department of Housing and Community Development	Unfavorable
✓ Department of Health	Unfavorable
✓ Department of Planning	Comments
✓ Baltimore Development Corporation	Comments
✓ Department of Finance	Not Opposed
✓ Fire Department	Unfavorable
✓ Police Department	Comments
✓ Board of Liquor Licenses Commissioners	Comments

ANALYSIS

Current Law

The Health article of the Baltimore City Code, specifically §12-107, governs in-door smoking facilities within the City. It creates exceptions for "private clubs, smoking bars," and "tobacconists," describing the requirements of each facility to qualify.

Background

Council Bill 18-0178 removes two exceptions to the City's in-door smoking ban and excepts "hookah lounges" from said restriction. The Bill removes exceptions for private clubs, smoking bars, and tobacconists, while replacing these exceptions with an over-arching exception for "retail tobacco establishments." This exception applies when an establishment "derives at least 75% of its revenues... from the sale of non-cigarette tobacco products," and includes a ventilation system while barring the "entry of minors."

An exception for "hookah lounges" is created wherein an establishment "is primarily devoted to the on-premises use of 1 or more hookahs..." Similar to "retail tobacco establishments," a "hookah lounge" qualifies for an exception when "at least 75% of its revenues" derive from the "sale or use of non-cigarette smoking products and accessories." Moreover, a "hookah lounge" must have a ventilation system and bar minors from entry.

The Law Department approved 18-0178 for form and legal sufficiency, but added that the "Council should consider clarifying this bill to make it clear that both the state and local criteria need to be met." It suggested adding the following language, "meets the criteria listed in state law and" before the colon in line 2 on page 3. The Board of Municipal and Zoning Appeals provided comments and "defers to the report and recommendation of the Health Department." The Department of Housing and Community Development provided an unfavorable report, but also deferred to the Health and Fire Departments.

The Department of Health submitted an unfavorable report, noting the many poor health outcomes due to hookah use. It stated that "one hour of smoking has been found to be the equivalent of smoking 100 cigarettes." The Department of Finance has no objections to 18-0178, stating it "would not have any additional fiscal or financial impact to the City." The Planning Department also deferred to the Health Department on this matter.

The Baltimore Development Corporation offered comments, stating that a hookah lounge "exception may have serious public health and public safety implications, therefore, [it] respectfully defers to the Baltimore City Health Department and the Baltimore City Fire Department." The Police Department provided comments, stating that hookah lounges are

not compliant with current law, but that it will defer to the Health Department and Fire Department regarding the Bill's passage.

The Fire Department provided an unfavorable report, citing many requirements that must be met in order for a hookah lounge to operate safely. The Board of Liquor Licenses Commissioners deferred to the Health Department, Fire Department, and Department of Housing and Community Development.

Additional Information

Fiscal Note: Not Available

Information Source(s): Law Department; Board of Municipal and Zoning Appeals; Department of Housing and Community Development; Department of Health; Department of Planning; Baltimore Development Corporation; Department of Finance; Fire Department; Police Department; Board of Liquor Licenses Commissioners

D'Paul & Nibber
Analysis by: D'Paul S. Nibber
Analysis Date: January 26, 2018

Direct Inquiries to: (410) 396-1268

**CITY OF BALTIMORE
COUNCIL BILL 18-0178
(First Reader)**

Introduced by: President Young, Councilmember Stokes

Introduced and read first time: January 22, 2018

Assigned to: Judiciary and Legislative Investigations Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Board of Municipal and Zoning Appeals, Planning Commission, Department of Housing and Community Development, Health Department, Baltimore Development Corporation, Department of Finance, Fire Department, Police Department, Board of Liquor License Commissioners

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Indoor Smoking – Hookah Lounges**

3 FOR the purpose of excepting hookah lounges from the City’s indoor-smoking restrictions,
4 subject to certain conditions; repealing two obsolete exceptions that have been preempted by
5 more stringent State law and, as such, are invalid; and generally relating to the operation of
6 hookah lounges.

7 BY repealing and reordaining, with amendments

8 Article - Health

9 Section 12-107

10 Baltimore City Revised Code

11 (Edition 2000)

12 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
13 Laws of Baltimore City read as follows:

14 **Baltimore City Revised Code**

15 **Article – Health**

16 **Title 12. Tobacco Products and Smoking Devices**

17 ***Subtitle 1. Indoor Smoking***

18 **§ 12-107. Exceptions – [Private clubs, smoking bars, tobacconists] RETAIL TOBACCO**
19 **ESTABLISHMENTS; HOOKAH LOUNGES.**

20 (a) *In general.*

21 This subtitle does not apply to [a private club or lodge, a smoking bar, or] a retail tobacco
22 establishment OR A HOOKAH LOUNGE that qualifies [for an exemption] under this section.

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

Council Bill 18-0178

1 [(b) *Qualifications.*]

2 [(1) A private club or lodge qualifies under this section only if it:

- 3 (i) has a limited membership elected pursuant to its charter or bylaws;
- 4 (ii) excludes the general public from its premises or place of meeting;
- 5 (iii) is organized with officers and directors;
- 6 (iv) holds all property for the common benefit of its members; and
- 7 (v) does not permit nonmembers to pay a temporary fee to use its premises or attend
8 its meetings.]

9 [(2) A smoking bar qualifies under this section only if it:

- 10 (i) is licensed under State Code Article 2B to serve alcoholic beverages;
- 11 (ii) derives at least 50% of its revenues, measured by average daily receipts, from the
12 sale of non-cigarette tobacco products;
- 13 (iii) has a ventilation system that prevents smoke from infiltrating into any area where
14 smoking is prohibited under this subtitle; and
- 15 (iv) prohibits the entry of minors at all times.]

16 (B) *RETAIL TOBACCO ESTABLISHMENTS.*

17 [(3)] A retail tobacco establishment qualifies under this section only if it:

- 18 (1) [(i)] derives at least 75% of its revenues, measured by average daily receipts, from
19 the sale of non-cigarette tobacco products;
- 20 (2) [(ii)] has a ventilation system that prevents smoke from infiltrating into any area
21 where smoking is prohibited under this subtitle; and
- 22 (3) [(iii)] prohibits the entry of minors at all times.

23 (C) *HOOCAH LOUNGES.*

24 (1) *"HOOCAH LOUNGE" DEFINED.*

25 IN THIS SUBSECTION, "HOOCAH LOUNGE" MEANS AN ESTABLISHMENT THAT IS
26 PRIMARILY DEVOTED TO THE ON-PREMISES USE OF 1 OR MORE HOOCAHS (ALSO KNOWN
27 AS A HOOCAH PIPE, WATER PIPE, SHISHA, OR NARGHILE) FOR SMOKING TOBACCO OR
28 OTHER SUBSTANCES.

Council Bill 18-0178

1 (2) *QUALIFICATIONS.*

2 A HOOKAH LOUNGE QUALIFIES UNDER THIS SECTION ONLY IF IT:

3 (I) DERIVES AT LEAST 75% OF ITS REVENUES, MEASURED BY AVERAGE DAILY
4 RECEIPTS, FROM THE SALE OR USE OF NON-CIGARETTE SMOKING PRODUCTS
5 AND ACCESSORIES;

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

8 (III) PROHIBITS THE PRESENCE OF MINORS AT ALL TIMES.

9 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
10 are not law and may not be considered to have been enacted as a part of this or any prior
11 Ordinance.

12 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
13 after the date it is enacted.

JUDICIARY AND LEGISLATIVE INVESTIGATIONS COMMITTEE

Council Bill 18-0178

Hearing Date: January 30, 2018

Agency Reports:

- **Law Department**
 - Favorable
- **Board of Municipal and Zoning Appeals**
 - Comments
- **Department of Housing and Community Development**
 - Unfavorable
- **Department of Health**
 - Unfavorable
- **Department of Planning**
 - Comments
- **Baltimore Development Corporation**
 - Comments
- **Department of Finance**
 - Not Opposed
- **Fire Department**
 - Unfavorable
- **Police Department**
 - Comments
- **Board of Liquor Licenses Commissioners**
 - Comments

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

ANDRE M. DAVIS, CITY SOLICITOR
100 N. Holliday Street
Suite 101, City Hall
Baltimore, Maryland 21202

January 29, 2018

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 18-0178 – Indoor Smoking – Hookah Lounges

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0178 for form and legal sufficiency. The bill would amend the Health Code to remove private clubs, lodges and smoking bars from the exception to the City's prohibition on indoor smoking. It would add hookah lounges to places where indoor smoking can occur if those lounges meet three criteria: 1) 75% of its revenue comes from non-cigarette smoking products; 2) a ventilation system prevents smoke from going anywhere it is otherwise prohibited and 3) no minors are allowed. If adopted, the only places patrons could smoke indoors would be these designated hookah lounges and retail tobacco establishments.

Maryland's Indoor Clean Air Act provides that after February 1, 2008 a person may not smoke in either an indoor area open to the public or an indoor place of employment. Md. Code, Health-Gen., §24-504. An indoor area open to the public is defined as an "indoor area or a portion of an indoor area accessible to the public by either invitation or permission" or a place that is licensed or permitted to sell or possess alcoholic beverages. Md. Code, Health-Gen., §24-501(e). Smoking is defined as burning any substance containing tobacco. Md. Code, Health-Gen., §24-501(g). The only applicable exemption under state law is for a "retail tobacco business that is a sole proprietorship, limited liability company, corporation, partnership or other enterprise, in which: (i) The primary activity is the retail sale of tobacco products and accessories; and (ii) The sale of other products is incidental." Md. Code, Health-Gen., §24-505.

Although this State Clean Indoor Air Act explicitly provides that a local government may enact and enforce more stringent measures, as written this bill would appear to allow smoking in Hookah lounges so long as they meet the three criteria that the City lists in Section (c)(2) of its bill. Md. Code, Health – Gen., §24-510. To be clear, if enacted, the Hookah lounge would have to satisfy the criteria listed in the bill and the criteria in state law. This means that those lounges would also have to be "a sole proprietorship, limited liability company, corporation, partnership or other enterprise, in which: (i) The primary activity is the retail sale of tobacco products and accessories; and (ii) The sale of other products is incidental." Md. Code, Health-Gen., §24-505. The Council should consider clarifying this bill to make it clear that



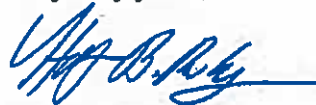
both the state and local criteria need to be met. This could be done by adding “meets the criteria listed in state law and” before the colon in line 2 on page 3.

The addition of hookah lounges as places where indoor smoking is allowed under certain conditions and the removal of private clubs, lodges and smoking bars as a place where one can smoke inside is consistent with the City’s general power “to prescribe, within the limits of the federal and state constitutions, reasonable regulations necessary to preserve the public order, health, safety, or morals.” *Tighe v. Osborne*, 149 Md. 349, 356 (1925); City Charter, Art. II, §§ (11), (47). Opponents may argue that the Commerce Clause in the federal Constitution limits the City’s power to enact this type of law. To withstand such a challenge, the City Council must show that the law is aimed at legitimate local health and welfare concerns, so as not to violate the Commerce Clause of the United States Constitution. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 143 (1970)(cited with approval in *Medical Waste Associates Ltd. Partnership v. Mayor and City Council of Baltimore*, 966 F.2d 148, 150 (4th Cir. 1992)) (“Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.”)(citations omitted); accord *BlueHippo Funding, LLC v. McGraw*, 609 F. Supp. 2d 576, 586 (S.D. W. Va. 2009)(recognizing that the Fourth Circuit has consistently used this two part test). It would behoove the Council to elicit testimony that any burdens on interstate commerce are incidental and do not outweigh the significant local environmental benefits produced by the legislation.

Additionally, this bill is not preempted by the holding in the recent decision in *Altadis USA, Inc. v. Prince George’s County*, 431 Md. 307, 316 (2013) because that decision concerned only the packaging, sale and distribution of certain kinds of tobacco, not where those products can be used.

Therefore, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor’s Office of Government Relations
Kyron Banks, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Jennifer Landis, Assistant Solicitor

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



**BOARD OF MUNICIPAL AND
ZONING APPEALS**

DAVID C. TANNER, Executive Director
417 E. Fayette Street, Room 1432
Baltimore, Maryland 21202

January 29, 2018

The Honorable President and
Members of the City Council
City Hall
100 N. Holliday Street
Baltimore, MD 21202

RE: CC Bill. #18-0178: Indoor Smoking – Hookah Lounges

Ladies and Gentlemen:

City Council Bill No. 18-0178 has been referred by your Honorable Body to the Board of Municipal and Zoning Appeals for study and report.

The purpose of City Council Bill No. 18-0178 is to except hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; to repeal two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relates to the operation of hookah lounges within Baltimore City.

The BMZA has reviewed the legislation and as the subject bill does not pertain to land use, zoning, municipal, or other areas within its purview, BMZA respectfully defers to the report and recommendation of the Health Department on this matter.

Sincerely,


David C. Tanner
Executive Director

DCT/djb

CC: Mayors Office of Council Relations
Legislative Reference

The Baltimore City Department of
**HOUSING & COMMUNITY
DEVELOPMENT**

MEMORANDUM

**To: The Honorable President and Members of the Baltimore City Council
c/o Natawna Austin, Executive Secretary**

From: Michael Braverman, Housing Commissioner 

Date: January 29, 2018


Re: City Council Bill 18-0178 – Indoor Smoking – Hookah Lounges

The Department of Housing and Community Development (HCD) has reviewed City Council Bill 18-0178, for the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges

If enacted, this bill modifies the Health Code: Title 12 (Tobacco Products and Smoking Devices), Subtitle 1 (Indoor Smoking), §12-107 (Exceptions – Private clubs, smoking bars, tobacconists.) to remove private clubs or lodges and smoking bars and add retail tobacco establishments and hookah lounges, with definitions, to the list of exceptions for indoor smoking.

HCD has concerns with this bill as written because it has the potential to create confusion between requirements in the health code specific to hookah lounges and the permit requirements for lounges in the Building, Fire and Related Codes (BFRC). A lounge in the zoning code is a business establishment that is open to the general public; designed or operated primarily to accommodate social gatherings; and does not serve or permit the on-site consumption of alcohol. A lounge could be an establishment that is used as a place to gather and smoke hookah. A lounge would require a use permit to insure that the location, construction, maintenance, and operation of the facility is not detrimental to or endanger public health, safety or welfare. This bill defines a hookah lounge, but only requires a ventilation system that prevents smoke from infiltrating into any area where smoking is prohibited. Any establishment that would allow the smoking of hookah would also be required to apply for a use permit to determine that the inside activity meets the minimum requirements under the BFRC.

The Department of Housing and Community Development does not support the passage of this bill and defers to the Fire Department and the Health Department on the passage of City Council Bill 18-0178.

F R O M	Name & Title	Dr. Leana Wen, Commissioner	Health Department AGENCY REPORT	
	Agency Name & Address	Health Department 1001 E. Fayette Street Baltimore, Maryland 21201		
	Subject	18-0178 – Indoor Smoking – Hookah Lounges		

To: President and Members
of the City Council
c/o 409 City Hall

January 25, 2018

The Baltimore City Health Department (BCHD) is pleased to have the opportunity to review 18-0178 – Indoor Smoking – Hookah Lounges. The purpose of this legislation is to expand the exception for hookah under the City’s indoor-smoking restrictions to allow for charcoal-based hookah. Under the current exception, only electronic hookah is permitted. **BCHD strongly opposes this legislation.**

A hookah is a water pipe used to smoke specially made tobacco that comes in different flavors. Hookah is also called shisha, narghile, argileh, hubble-bubble, andgoza.¹ Tobacco use is unsafe in any form. 90% of lifelong tobacco user’s start before age 18 and hookah use among high schoolers nationwide nearly doubled in just one year from 5% in 2013 to almost 10% in 2014.²

While hookah popularity has risen among teenagers nationally, youth consumption of tobacco remains an area of significant concern in Baltimore. According to the FY17 Annual Cigarette Restitution Fund report, 14% of Baltimore City youth under the age of 18 reported using tobacco products of any kind, compared to 10.7% youth statewide. While rates across the City and state fell from 2000 to 2014 overall, the City’s rate of usage fell slower than statewide, and the percentage of youth reporting usage of both cigars and smokeless tobacco increased. The Centers for Disease Control and Prevention (CDC) reported in a 2015 survey that nearly three out of 10 high school youth consuming tobacco at least once in the prior 30 days.³

Public perception of hookah often views it as less harmful than other forms of tobacco consumption, including cigarette smoking. However, evidence shows hookah poses many of the same health risks as cigarettes.⁴ In fact, one hour of smoking has been found to be the equivalent

¹ CDC Fact Sheet – Hookahs- Smoking and Tobacco Use
http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/

² Tobacco Use Among Middle and High School Students — United States, 2011–2014, CDC Morbidity and Mortality Weekly Report, April 17, 2015. Available at:
<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6414a3.htm>

³ CDC High School Youth Risk Behavior Survey.
<https://nccd.cdc.gov/youthonline/App/Results.aspx?TT=C&SID=HS&QID=H77&LID=BA&LID2=SL&YID=2013&YID2=SY&SYID=&FYID=&HT=OO&LCT=LL&COL=S&ROW1=N&ROW2=N&TST=false&C1=&C2=&SC=DEFAULT&SO=ASC&VA=CI&CS=Y&DP=1&OP=G&FG=G1&FR=R1&FS=S1>

⁴ CDC Fact Sheet – Hookahs – Smoking and Tobacco Use
http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/

of smoking 100 cigarettes.⁵ According to a meta-analysis conducted by the University of Pittsburgh School of Medicine, a single hookah session similarly delivers 25 times more tar than that found in a single cigarette, 2.5 times the nicotine, and 10 times the carbon monoxide.⁶ Smoking hookah has been associated with lung cancer, periodontal disease, low birth rates, and other types of cancer and cardiovascular diseases.⁷

The legislation in question would expand access to hookah lounges in Baltimore City by expanding access to charcoal-based hookah, as opposed to the electronic-based hookah allowed under the exception in current law. By expanding the exception, Baltimore would weaken its regulations on hookah, despite evidence from the City itself that hookah remains a danger to residents and workers. A study of Baltimore (electronic) hookah lounges published in 2014 showed carbon monoxide levels in lounges exceeded occupational exposure guidelines.⁸ Charcoal-heated hookah would further increase health risks by producing high levels of carbon monoxide, metals, and cancer-causing chemicals.⁹

The usage of charcoal-based hookah creates the additional attendant increased risk of second- and thirdhand smoke exposure. These dangers are magnified by the increased toxicity and levels of tar and nicotine present in hookah smoke.¹⁰ Given the density of Baltimore's built environment and close proximity of residences to commercial establishment, surrounding properties will likely be affected by exposure to charcoal-based hookah, as smells and toxins produced by smoking hookah can pass through ventilation systems and walls, and can adhere to nearly any material.

BCHD is proud to have worked with the Council in years past to create Baltimore City's clean indoor air law, the first jurisdiction in Maryland to create such a law. The rationale for creating the law then remains today – to ensure our residents and youth are adequately protected from the dangers of tobacco consumption and secondhand smoke. **For these reasons, BCHD strongly opposes this legislation, and requests this committee issue an unfavorable report.** We will be present at the hearing to answer any questions the Council may have on this matter.

⁵ Waterpipe tobacco smoking: health effects, research needs and recommended actions for regulators, 2nd Edition, WHO Study Group on Tobacco Product Regulation.

⁶ University of Pittsburgh School of Medicine. <http://www.upmc.com/media/NewsReleases/2016/Pages/primack-hookah-meta.aspx>.

⁷ Ibid.

⁸ Waterpipe cafes in Baltimore, Maryland: Carbon monoxide, particulate matter, and nicotine exposure, Journal of Exposure Science and Environmental Epidemiology (2015) 25, 405–410; doi:10.1038/jes.2014.19, retrieved Jan. 25 2018: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4333110/>

⁹ CDC Fact Sheet – Hookahs- Smoking and Tobacco Use
http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/

¹⁰ University of Pittsburgh School of Medicine. <http://www.upmc.com/media/NewsReleases/2016/Pages/primack-hookah-meta.aspx>.

FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #18-0178/ INDOOR SMOKING - HOOKAH LOUNGES		

DATE:

TO

The Honorable President and
Members of the City Council
City Hall, Room 400
100 North Holliday Street

January 26, 2018

The Department of Planning is in receipt of City Council Bill #18-0178, which is for the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges.

The Department of Planning defers to the Department of Health's recommendation for disapproval of City Council Bill #18-0178, due to the negative health impacts associated with smoking of any kind indoors.

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

TJS/ewt

cc: Mr. Pete Hammen, Chief Operating Officer
Mr. Jim Smith, Chief of Strategic Alliances
Ms. Karen Stokes, Mayor's Office
Mr. Colin Tarbert, Mayor's Office
Mr. Kyron Banks, Mayor's Office
The Honorable Edward Reisinger, Council Rep. to Planning Commission
Mr. William H. Cole IV, BDC
Mr. David Tanner, BMZA
Mr. Geoffrey Veale, Zoning Administration
Ms. Sharon Daboin, DHCD
Ms. Elena DiPietro, Law Dept.
Mr. Francis Burnszynski, PABC
Ms. Valorie LaCour, DOT
Ms. Natawna Austin, Council Services



MEMORANDUM

TO: Honorable President and Members of the City Council
Attention: Natawna B. Austin, Executive Secretary

FROM: William H. Cole, President & CEO

A handwritten signature in blue ink, appearing to read "W. Cole", is written over the printed name of the sender.


DATE: January 25, 2018

SUBJECT: City Council Bill No. 18-0178
Indoor Smoking – Hookah Lounges

The Baltimore Development Corporation (BDC) has been asked to comment on City Council Bill No. 18-0178 for the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges.

Baltimore City's indoor smoking law prohibits the smoking of tobacco and other substances indoors and the intent of this ordinance is to make exception for hookah lounges within Baltimore City. Such exception may have serious public health and public safety implications, therefore, BDC respectfully defers to the Baltimore City Health Department and the Baltimore City Fire Department.

CC: Kyron Banks

FROM	NAME & TITLE	Robert Cename, Chief <i>RC for</i>	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Bureau of the Budget and Management Research 100 Holliday Street, Room 432 – 410-396-4941		
	SUBJECT	City Council Bill #18-0178 – Indoor Smoking – Hookah Lounge		

DATE:

TO

The Honorable President and
Members of the City Council
Room 400, City Hall

January 25, 2018

Attention: Ms. Natawna Austin

We are herein reporting on City Council Bill 18-0178, the purpose of which is to grant Hookah Lounges, as defined in the proposed legislation, to be except from the City's indoor smoking restrictions if the following conditions are met:

- Derives at least 75% of its revenues from the sale or use of non-cigarette smoking products and accessories,
- Has a ventilation system preventing infiltration of smoke into smoking prohibited areas, and
- Prohibits the presence of minors at all time.

The bill also repeals certain sections of the City Code redundant to be in line with existing State Law.

Analysis

This bill would expressly incorporate a section for hookah lounges in the City Code and defines the specific qualifications for these establishments to be except from the City's indoor smoking restrictions.

Fiscal Impact

The Finance Department considers that the amendments proposed by this legislation would not have any additional fiscal or financial impact to the City; however, the public health and safety aspects related to the business nature of this type of establishments continues to be a concern.

Recommendation

The Department of Finance does not oppose CCB 18-0178.

cc: Henry Raymond
Kyrn Banks

FROM

NAME & TITLE	Niles R. Ford, PhD, Chief of Fire Department <i>AFH</i>
AGENCY NAME & ADDRESS	Baltimore City Fire Department 401 East Fayette St. _21202
SUBJECT	City Council Bill #18-0178 Response to

CITY OF
BALTIMORE
MEMO



TO **The Honorable Bernard C. Young, President
And All Members of the Baltimore City Council
City Hall, Room 408**

DATE **January 29, 2018**

For the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges.

The proposed legislation would provide for- excepting hookah lounges from the City's indoor smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such are invalid; and generally relating to the operation of hookah lounges.

The Fire Department does not support City Council Bill 18-0178. We ask that consideration be given to the adoption of the following conditions as they are written:

A hookah pipe bowl should be considered open burning

Interconnected smoke detectors shall be installed in every room, with an approved notification system.

A minimum 2A-20 BC extinguisher shall be installed in the area of the hookah pipes and the coal lighting area.

Carbon Monoxide detectors shall be installed in every room.

Coals shall be lit by an electric burner and not by an open flame.

Coals that are being transported from the lighting area to the smoking area shall be contained in an approved noncombustible container.

Hookah pipes shall be located and positioned in such a manner as to prevent overturning.

Wind covers shall be used over the coals when placed on the hookah pipe.

Hookah pipes shall be placed on a noncombustible surface, with a 36 inch clearance around the pipe.

Disposal, use, or handling of ashes and coals shall comply with sections 305.1 and 305.2 of the International Fire Code.

All Hookah establishments shall be equipped with fire sprinklers, be constructed of noncombustible materials, and utilize only Class A interior finishes.

Furniture shall be constructed of a fire retardant material.

The occupancy shall be limited to "B" use only (not assembly, or over 49 people).

The occupancy shall have an approved ventilation system that:
does not recirculate room air.

Has 100% exhaust

All make up air is to be brought in from outside of the structure.

The occupancy shall conform to all existing fire codes as defined in the 2015 edition of the International Fire Code.



**Catherine Pugh
Mayor**

BALTIMORE POLICE DEPARTMENT



**Darryl De Sousa
Police Commissioner Designee**

January 25, 2018

Honorable President and Members of the Baltimore City Council
Room 400, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Attention: Natawna B. Austin, Executive Secretary

**Re: City Council Bill No. 18- 0178
Indoor Smoking- Hookah Lounges**

Dear Council President Young and Members of the City Council:

The Baltimore Police Department (BPD) has reviewed Council Bill No. 18-0178. This bill is for the purpose of excepting hookah lounges from the City's indoor-smoking restrictions under certain conditions and repealing two obsolete exceptions that have been preempted by more stringent State laws.

Hookah lounges do not currently adhere to the required exceptions and Baltimore City's indoor smoking laws prohibit the smoking of tobacco and other substances indoors. As City Council Bill No. 18- 0178 aims to exempt hookah lounges indoor smoking restrictions, BPD respectfully defers to the Baltimore City Health Department and the Baltimore City Fire Department. Thank you for the opportunity to comment. BPD looks forward to working with the City Council on this matter.

Sincerely,

**James A. Gillis
Chief of Staff**

ALBERT J. MATRICCIANI, JR.
CHAIRMAN

COMMISSIONERS
AARON J. GREENFIELD, ESQ.

ALTERNATE COMMISSIONER
HARVEY E. JONES



DOUGLAS K. PAIGE
EXECUTIVE SECRETARY

THOMAS R. AKRAS, ESQ.
DEPUTY EXECUTIVE SECRETARY

STACI L. RUSSELL
ASSISTANT EXECUTIVE
SECRETARY

STATE OF MARYLAND
BOARD OF LIQUOR LICENSE COMMISSIONERS
FOR BALTIMORE CITY
231 E. BALTIMORE STREET, 6TH FLOOR
BALTIMORE, MARYLAND, 21202-3258
PHONE: (410) 396-4377
FAX: (410) 396-4382

To: Honorable Council President Bernard "Jack" Young and Members of the City Council
Attention: Natawna B. Austin, Executive Secretary

From: Albert J. Matricciani, Jr., Chairman, Board of Liquor License Commissioners of Baltimore City

Date: January 29, 2018

Re: City Council Bill No. 18-0178
Indoor Smoking – Hookah Lounges

The Board of Liquor License Commissioners for Baltimore City has been asked to comment on City Council Bill No. 18-0178 for the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and; as such, are invalid; and generally relating to the operation of hookah lounges.

While the BLLC neither supports or opposes the passage of this legislation, the intent of this bill is to create an exception to Baltimore City's indoor smoking prohibition for hookah lounges. This exception may have serious public health and safety implications, and thus the BLLC respectfully defers to the Baltimore City Health Department, the Baltimore City Fire Department, and the Department of Housing and Community Development.

Cc: Kyron Banks, Mayor's Office of Baltimore City

City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland
21202

Meeting Agenda - Final

Judiciary and Legislative Investigations

Tuesday, January 30, 2018

9:55 AM

Du Burns Council Chamber, 4th floor, City Hall

18-0178

CALL TO ORDER

INTRODUCTIONS

ATTENDANCE

ITEMS SCHEDULED FOR PUBLIC HEARING

18-0178

Indoor Smoking - Hookah Lounges

For the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges.

Sponsors:

President Young, Robert Stokes, Sr.

ADJOURNMENT

THIS MEETING IS OPEN TO THE PUBLIC

**CITY OF BALTIMORE
COUNCIL BILL 18-0178
(First Reader)**

Introduced by: President Young, Councilmember Stokes
Introduced and read first time: January 22, 2018
Assigned to: Judiciary and Legislative Investigations Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Board of Municipal and Zoning Appeals, Planning Commission, Department of Housing and Community Development, Health Department, Baltimore Development Corporation, Department of Finance, Fire Department, Police Department, Board of Liquor License Commissioners

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Indoor Smoking – Hookah Lounges**

3 FOR the purpose of excepting hookah lounges from the City’s indoor-smoking restrictions,
4 subject to certain conditions; repealing two obsolete exceptions that have been preempted by
5 more stringent State law and, as such, are invalid; and generally relating to the operation of
6 hookah lounges.

7 BY repealing and reordaining, with amendments

8 Article - Health
9 Section 12-107
10 Baltimore City Revised Code
11 (Edition 2000)

12 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
13 Laws of Baltimore City read as follows:

14 **Baltimore City Revised Code**

15 **Article – Health**

16 **Title 12. Tobacco Products and Smoking Devices**

17 ***Subtitle 1. Indoor Smoking***

18 **§ 12-107. Exceptions – [Private clubs, smoking bars, tobacconists] RETAIL TOBACCO**
19 **ESTABLISHMENTS; HOOKAH LOUNGES.**

20 (a) *In general.*

21 This subtitle does not apply to [a private club or lodge, a smoking bar, or] a retail tobacco
22 establishment OR A HOOKAH LOUNGE that qualifies [for an exemption] under this section.

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

Council Bill 18-0178

1 **[(b) *Qualifications.*]**

2 **[(1) A private club or lodge qualifies under this section only if it:**

- 3 (i) has a limited membership elected pursuant to its charter or bylaws;
- 4 (ii) excludes the general public from its premises or place of meeting;
- 5 (iii) is organized with officers and directors;
- 6 (iv) holds all property for the common benefit of its members; and
- 7 (v) does not permit nonmembers to pay a temporary fee to use its premises or attend
- 8 its meetings.]

9 **[(2) A smoking bar qualifies under this section only if it:**

- 10 (i) is licensed under State Code Article 2B to serve alcoholic beverages;
- 11 (ii) derives at least 50% of its revenues, measured by average daily receipts, from the
- 12 sale of non-cigarette tobacco products;
- 13 (iii) has a ventilation system that prevents smoke from infiltrating into any area where
- 14 smoking is prohibited under this subtitle; and
- 15 (iv) prohibits the entry of minors at all times.]

16 **(B) *RETAIL TOBACCO ESTABLISHMENTS.***

17 **[(3)] A retail tobacco establishment qualifies under this section only if it:**

- 18 (1) [(i)] derives at least 75% of its revenues, measured by average daily receipts, from
- 19 the sale of non-cigarette tobacco products;
- 20 (2) [(ii)] has a ventilation system that prevents smoke from infiltrating into any area
- 21 where smoking is prohibited under this subtitle; and
- 22 (3) [(iii)] prohibits the entry of minors at all times.

23 **(C) *HOOCAH LOUNGES.***

24 **(1) "*HOOCAH LOUNGE*" DEFINED.**

25 IN THIS SUBSECTION, "HOOCAH LOUNGE" MEANS AN ESTABLISHMENT THAT IS

26 PRIMARILY DEVOTED TO THE ON-PREMISES USE OF 1 OR MORE HOOCAHS (ALSO KNOWN

27 AS A HOOCAH PIPE, WATER PIPE, SHISHA, OR NARGHILE) FOR SMOKING TOBACCO OR

28 OTHER SUBSTANCES.

Council Bill 18-0178

1 (2) *QUALIFICATIONS.*

2 A HOOKAH LOUNGE QUALIFIES UNDER THIS SECTION ONLY IF IT:

3 (I) DERIVES AT LEAST 75% OF ITS REVENUES, MEASURED BY AVERAGE DAILY
4 RECEIPTS, FROM THE SALE OR USE OF NON-CIGARETTE SMOKING PRODUCTS
5 AND ACCESSORIES;

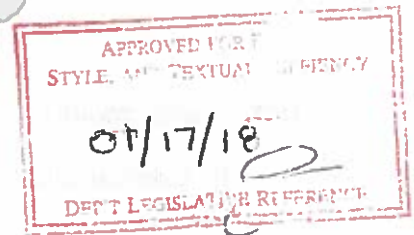
6 (II) HAS A VENTILATION SYSTEM THAT PREVENTS SMOKE FROM INFILTRATING
7 INTO ANY AREA WHERE SMOKING IS PROHIBITED UNDER THIS SUBTITLE; AND

8 (III) PROHIBITS THE PRESENCE OF MINORS AT ALL TIMES.

9 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
10 are not law and may not be considered to have been enacted as a part of this or any prior
11 Ordinance.

12 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
13 after the date it is enacted.

INTRODUCTORY*
CITY OF BALTIMORE
COUNCIL BILL _____



Introduced by: President Young

A BILL ENTITLED

AN ORDINANCE concerning

Indoor Smoking – Hookah Lounges

FOR the purpose of excepting hookah lounges from the City's indoor-smoking restrictions, subject to certain conditions; repealing two obsolete exceptions that have been preempted by more stringent State law and, as such, are invalid; and generally relating to the operation of hookah lounges.

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Subtitle 1. Indoor Smoking

§ 12-107. Exceptions – [Private clubs, smoking bars, tobacconists] RETAIL TOBACCO ESTABLISHMENTS; HOOKAH LOUNGES.

(a) *In general.*

This subtitle does not apply to [a private club or lodge, a smoking bar, or] a retail tobacco establishment OR A HOOKAH LOUNGE that qualifies [for an exemption] under this section.

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

* WARNING: THIS IS AN UNOFFICIAL, INTRODUCTORY COPY OF THE BILL.
THE OFFICIAL COPY CONSIDERED BY THE CITY COUNCIL IS THE FIRST READER COPY.

[(b) *Qualifications.*]

[(1) A private club or lodge qualifies under this section only if it:

- (i) has a limited membership elected pursuant to its charter or bylaws;
- (ii) excludes the general public from its premises or place of meeting;
- (iii) is organized with officers and directors;
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- (v) does not permit nonmembers to pay a temporary fee to use its premises or attend its meetings.]

[(2) A smoking bar qualifies under this section only if it:

- (i) is licensed under State Code Article 2B to serve alcoholic beverages;
- (ii) derives at least 50% of its revenues, measured by average daily receipts, from the sale of non-cigarette tobacco products;
- (iii) has a ventilation system that prevents smoke from infiltrating into any area where smoking is prohibited under this subtitle; and
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(B) *RETAIL TOBACCO ESTABLISHMENTS.*

[(3)] A retail tobacco establishment qualifies under this section only if it:

- (1) [(i)] derives at least 75% of its revenues, measured by average daily receipts, from the sale of non-cigarette tobacco products;
- (2) [(ii)] has a ventilation system that prevents smoke from infiltrating into any area where smoking is prohibited under this subtitle; and
- (3) [(iii)] prohibits the entry of minors at all times.

(C) *HOOCAH LOUNGES.*

(1) *"HOOCAH LOUNGE" DEFINED.*

IN THIS SUBSECTION, "HOOCAH LOUNGE" MEANS AN ESTABLISHMENT THAT IS PRIMARILY DEVOTED TO THE ON-PREMISES USE OF 1 OR MORE HOOCAHS (ALSO KNOWN AS A HOOCAH PIPE, WATER PIPE, SHISHA, OR NARGHILE) FOR SMOKING TOBACCO OR OTHER SUBSTANCES.

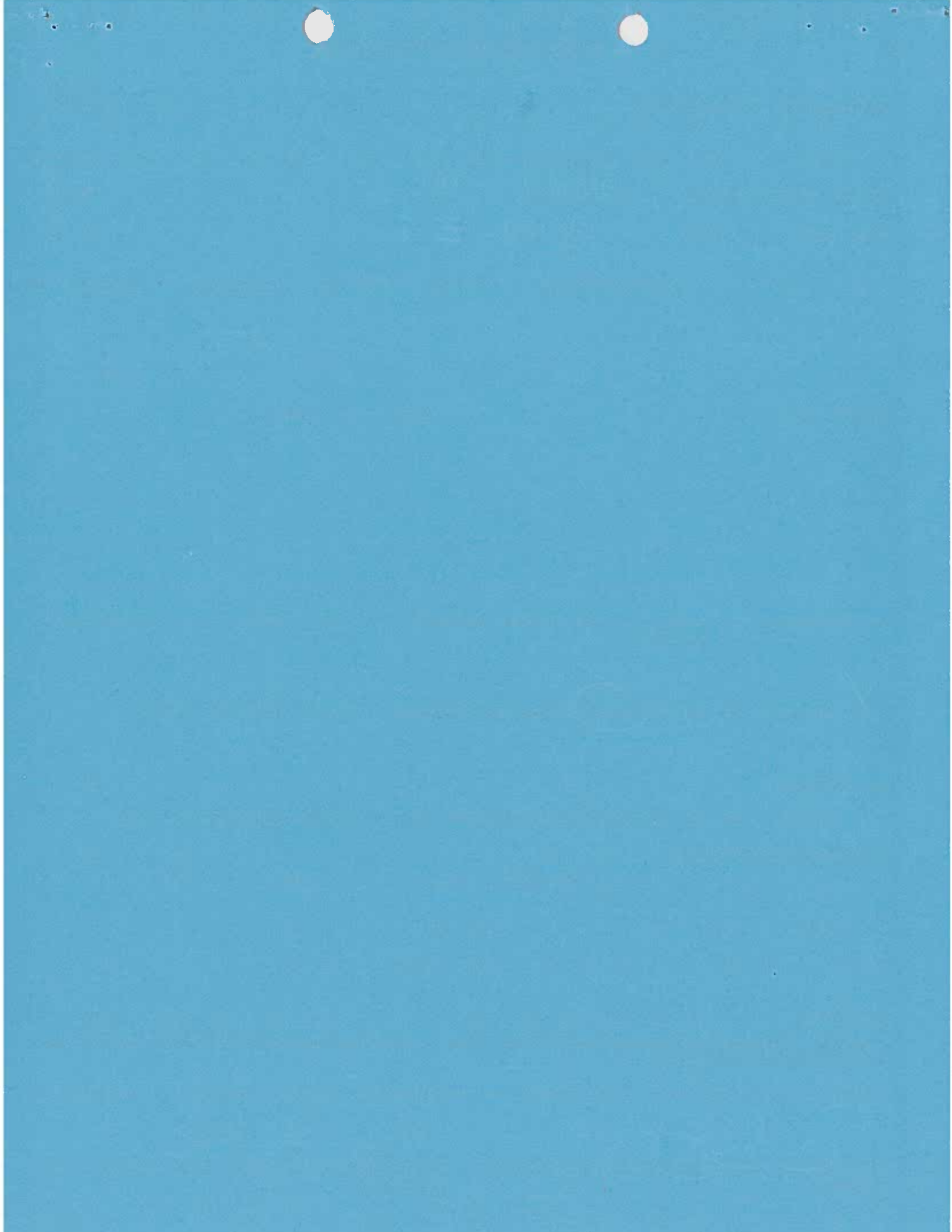
(2) *QUALIFICATIONS.*

A HOOCAH LOUNGE QUALIFIES UNDER THIS SECTION ONLY IF IT:

- (I) DERIVES AT LEAST 75% OF ITS REVENUES, MEASURED BY AVERAGE DAILY RECEIPTS, FROM THE SALE OR USE OF NON-CIGARETTE SMOKING PRODUCTS AND ACCESSORIES;
- (II) HAS A VENTILATION SYSTEM THAT PREVENTS SMOKE FROM INFILTRATING INTO ANY AREA WHERE SMOKING IS PROHIBITED UNDER THIS SUBTITLE; AND
- (III) PROHIBITS THE PRESENCE OF MINORS AT ALL TIMES.

SECTION 2. 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 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th day after the date it is enacted.



ACTION BY THE CITY COUNCIL

JAN 22 2018
20

FIRST READING (INTRODUCTION) _____

PUBLIC HEARING HELD ON JANUARY 30 20 18

COMMITTEE REPORT AS OF FEBRUARY 5 20 18

_____ FAVORABLE _____ UNFAVORABLE FAVORABLE AS AMENDED _____ WITHOUT RECOMMENDATION

[Signature]
Chair

COMMITTEE MEMBERS:

COMMITTEE MEMBERS:

SECOND READING: The Council's action being favorable (unfavorable), this City Council bill was (was not) ordered printed for Third Reading on:

FEB 05 2018
20

Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING _____ FEB 26 2018
20

_____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (ENROLLED) _____ 20

_____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (RE-ENROLLED) _____ 20

WITHDRAWAL _____ 20

There being no objections to the request for withdrawal, it was so ordered that this City Council Ordinance be withdrawn from the files of the City Council.

[Signature]
President

[Signature]
Chief Clerk