

ENROLLED

**CITY OF BALTIMORE
ORDINANCE _____
Council Bill 14-0371**

Introduced by: Councilmembers Kraft, Scott, Curran, Henry, Middleton, Clarke, Reisinger
Introduced and read first time: April 28, 2014
Assigned to: Judiciary and Legislative Investigations Committee

Committee Report: Favorable with amendments
Council action: Adopted
Read second time: November 10, 2014

AN ORDINANCE CONCERNING

1 **Electronic Smoking Devices**

2 FOR the purpose of extending the laws that prohibit smoking in certain places, prohibit the
3 distribution of tobacco products to minors, and regulate the display, storage, and placement
4 of tobacco products to apply to electronic smoking devices; excepting from the prohibition
5 established by this Ordinance certain businesses the primary activity of which is the retail
6 sale of electronic smoking devices and related products, and certain restaurants and taverns,
7 and certain video lottery facilities; defining certain terms; conforming certain language; and
8 generally relating to the sale, distribution, and use of electronic smoking devices.

9 BY renaming

10 Article - Health
11 Title 12. Tobacco Products
12 to be
13 Title 12. Tobacco Products and Smoking Devices
14 Baltimore City Revised Code
15 (Edition 2000)

16 BY renaming

17 Article - Health
18 Title 12, Subtitle 4. Placement of Tobacco Products
19 to be
20 Title 12, Subtitle 4. Placement of Tobacco Products and Smoking Devices
21 Baltimore City Revised Code
22 (Edition 2000)

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by
amendment or deleted from existing law by amendment.
Underlined italics indicate matter added to the bill
by amendment after printing for third reading.

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1 By repealing and reordaining, with amendments
2 Article - Health
3 Section(s) 6-603.1(b)(1)(Health Code),12-101, 12-401, 12-402, 12-403, 12-501, 12-502
4 Baltimore City Revised Code
5 (Edition 2000)

6 BY adding
7 Article - Health
8 Section(s) 12-107.1 and 12-107.2 through 12-107.3
9 Baltimore City Revised Code
10 (Edition 2000)

11 By repealing and reordaining, with amendments
12 Article 1. Mayor, City Council, and Municipal Agencies
13 Section(s) 40-14(e)(7)(Title 12) and 41-14(6)(Title 12)
14 Baltimore City Revised Code
15 (Edition 2000)

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

18 **Baltimore City Revised Code**

19 **Article – Health**

20 **Title 6. Food Service Facilities**

21 ***Subtitle 6. Suspensions and Revocations***

22 **§ 6-603.1. Suspension or nonrenewal for multiple or unpaid citations.**

23 (b) *Covered offenses.*

24 (1) For purposes of this section, citations issued for violations of the following provisions
25 of the City Code are presumed to be issued for reasons related to public health or to
26 the prevention of disease, epidemics, or nuisances affecting public health:

27 . . .

28 Health Code

29 . . .

30 Title 12: Tobacco Products AND SMOKING DEVICES

31 . . .

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Title 12. Tobacco Products AND SMOKING DEVICES

Subtitle 1. Indoor Smoking

§ 12-101. Definitions.

(a) *In general.*

In this subtitle, the following terms have the meanings indicated.

(B) *ELECTRONIC SMOKING DEVICE.*

(1) *IN GENERAL.*

“ELECTRONIC SMOKING DEVICE” MEANS AN ELECTRONIC OR BATTERY-OPERATED DEVICE THAT DELIVERS VAPORS FOR INHALATION, WHETHER MANUFACTURED, DISTRIBUTED, MARKETED, OR SOLD:

(I) AS AN ELECTRONIC CIGARETTE, ELECTRONIC CIGAR, OR ELECTRONIC PIPE; OR

(II) BY ANY OTHER PRODUCT NAME OR DESCRIPTOR.

(2) *EXCLUSIONS.*

“ELECTRONIC SMOKING DEVICE” DOES NOT INCLUDE AN ASTHMA INHALER OR SIMILAR PRODUCT THAT:

(I) CONTAINS NO TOBACCO NOR ANY NICOTINE; AND

(II) HAS BEEN SPECIFICALLY APPROVED BY THE U.S. FOOD AND DRUG ADMINISTRATION FOR USE IN MITIGATING, TREATING, OR PREVENTING DISEASE.

(C) [(b)] *Enclosed area.*

(1) “Enclosed area” means an area that is bounded on all sides by walls that extend, with or without doors, windows, vents, or like openings, from floor to ceiling.

(2) “Enclosed area” includes the interior of a vehicle.

(D) [(c)] *Person in charge.*

“Person in charge” means the person who owns, operates, or manages a place subject to this subtitle.

(E) [(d)] *Smoke.*

“Smoke” means to:

(1) inhale, burn, or carry any lighted cigarette, cigar, OR pipe tobacco, or ANY other tobacco, weed, or plant product of any kind; or

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(2) TO INHALE VAPORS FROM OR OTHERWISE ALLOW VAPORS TO BE EMITTED FROM AN ELECTRONIC SMOKING DEVICE.

§ 12-107.1. EXCEPTIONS – RETAIL SELLERS OF ELECTRONIC SMOKING DEVICES.

THIS SUBTITLE DOES NOT APPLY TO THE USE OF ELECTRONIC SMOKING DEVICES IN A BUSINESS ESTABLISHMENT IN WHICH:

(1) THE PRIMARY ACTIVITY IS THE RETAIL SALE OF ELECTRONIC SMOKING DEVICES, ACCESSORIES, AND RELATED PRODUCTS;

(2) THE SALE OF OTHER PRODUCTS IS INCIDENTAL; AND

(3) THE ENTRY OF MINORS IS PROHIBITED AT ALL TIMES.

§ 12-107.2. EXCEPTIONS – ELECTRONIC SMOKING DEVICES IN CERTAIN RESTAURANTS AND TAVERNS.

(A) DEFINITIONS.

(1) IN GENERAL.

IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

(2) RESTAURANT.

“RESTAURANT” MEANS A BUSINESS ESTABLISHMENT THAT:

(I) IS DEVOTED PRIMARILY TO SERVING FOOD AND DRINKS TO THE PUBLIC FOR ON-PREMISES CONSUMPTION BY SEATED PATRONS; AND

(II) MIGHT OR MIGHT NOT ALSO SERVE ALCOHOLIC BEVERAGES.

(3) TAVERN.

“TAVERN” MEANS A BUSINESS ESTABLISHMENT THAT:

(I) IS DEVOTED PRIMARILY TO SERVING ALCOHOLIC BEVERAGES TO THE PUBLIC FOR ON-PREMISES CONSUMPTION; AND

(II) MIGHT OR MIGHT NOT ALSO SERVE FOOD.

(B) IN GENERAL.

THIS SUBTITLE DOES NOT APPLY TO THE USE OF ELECTRONIC SMOKING DEVICES IN A RESTAURANT OR TAVERN OR IN 1 OR MORE DESIGNATED AREAS OF A RESTAURANT OR TAVERN, AS THE CASE MAY BE, IF THE ESTABLISHMENT NOTIFIES ITS PATRONS AND POTENTIAL PATRONS THAT THE USE OF ELECTRONIC SMOKING DEVICES IS ALLOWED ON OR IN DESIGNATED AREAS OF THE PREMISES, AS THE CASE MAY BE.

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1 (C) METHOD AND TENOR OF NOTIFICATION.

2 (1) THE NOTIFICATION REQUIRED BY THIS SECTION MUST BE PROVIDED BOTH:

3 (I) BY A PROMINENTLY POSTED NOTICE, AT LEAST 17" X 22", THAT IS CLEARLY
4 READABLE BY ALL PATRONS ON ENTRY TO THE ESTABLISHMENT; AND

5 (II) BY A CONSPICUOUS NOTICE, IN AT LEAST 20-PT. FONT SIZE, PRINTED ON EACH
6 MENU PROVIDED TO PATRONS.

7 (2) THE TENOR OF THE NOTICES MUST BE SUBSTANTIALLY AS FOLLOWS:

8 “THIS {RESTAURANT / TAVERN} ALLOWS THE USE OF *ELECTRONIC*
9 SMOKING DEVICES {IN DESIGNATED AREAS / THROUGHOUT THE
10 PREMISES}.

11 **§ 12-107.3. EXCEPTIONS – ELECTRONIC SMOKING DEVICES IN VIDEO LOTTERY FACILITY.**

12 THIS SUBTITLE DOES NOT APPLY TO THE USE OF ELECTRONIC SMOKING DEVICES IN A FACILITY
13 THAT HAS BEEN AWARDED A VIDEO LOTTERY OPERATION LICENSE BY THE MARYLAND VIDEO
14 LOTTERY LOCATION COMMISSION UNDER STATE GOVERNMENT ARTICLE, TITLE 9, SUBTITLE 1A.

15 ***Subtitle 4. Placement of Tobacco Products AND SMOKING DEVICES***

16 **§ 12-401. Definitions.**

17 (a) *In general.*

18 In this subtitle, the following terms have the meanings indicated.

19 (B) *ELECTRONIC SMOKING DEVICE.*

20 “ELECTRONIC SMOKING DEVICE” HAS THE MEANING STATED IN § 12-101 {“DEFINITIONS”}
21 OF THIS TITLE.

22 (C) [(b)] *Tobacco product.*

23 (1) *In general.*

24 “Tobacco product” means any substance that contains tobacco.

25 (2) *Inclusions.*

26 “Tobacco product” includes any:

27 (i) cigarette;

28 (ii) cigar;

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1 (iii) bidi;

2 (iv) pipe or other smoking tobacco; or

3 (v) chewing tobacco, spit tobacco, snuff, or other smokeless tobacco.

4 **§ 12-402. Placement requirements — In general.**

5 (a) *Prohibited placement.*

6 Except as otherwise specified in this subtitle, no establishment that sells tobacco products
7 OR ELECTRONIC SMOKING DEVICES at retail may display, store, or place any tobacco
8 product OR ELECTRONIC SMOKING DEVICE anywhere that is accessible to customers
9 without the intervention of the seller or an employee of the seller.

10 (b) *Examples of complying placement.*

11 The display, storage, or placement of tobacco products OR ELECTRONIC SMOKING
12 DEVICES in accord with one of the following methods does not violate subsection (a)
13 of this section:

14 (1) behind a sales counter in a place that, absent extraordinary efforts, is beyond
15 the physical reach of customers;

16 (2) in a locked display case for which seller assistance is needed to gain access to
17 products in the case; or

18 (3) in an overhead merchandise rack that:

19 (i) at its lowest point, is at least 6 feet above the floor; and

20 (ii) permits access to products in the rack only from the side facing away
21 from customers.

22 **§ 12-403. Placement requirements — Exceptions.**

23 This subtitle does not apply to:

24 (1) the sale of tobacco products OR ELECTRONIC SMOKING DEVICES from a vending
25 machine that complies with all requirements of State Business Regulation Article,
26 Title 16, Subtitle 3A; or

27 (2) an establishment that:

28 (i) sells tobacco products OR ELECTRONIC SMOKING DEVICES exclusively or
29 primarily; and

30 (ii) makes bona fide efforts to prevent minors from entering the establishment.

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Subtitle 5. Distribution to Minors

§ 12-501. Definitions.

(a) *In general.*

In this subtitle, the following terms have the meanings indicated.

(B) *ELECTRONIC SMOKING DEVICE.*

“ELECTRONIC SMOKING DEVICE” HAS THE MEANING STATED IN § 12-101 {“DEFINITIONS”}
OF THIS TITLE.

(C) [(b)] *Distribute.*

“Distribute” means to:

- (1) give away, sell, deliver, dispense, or issue;
- (2) offer to give away, sell, deliver, dispense, or issue; or
- (3) cause or hire any person to:
 - (i) give away, sell, deliver, dispense, or issue; or
 - (ii) offer to give away, sell, deliver, dispense, or issue.

(D) [(c)] *Tobacco product.*

(1) *In general.*

“Tobacco product” means any substance that contains tobacco.

(2) *Inclusions.*

“Tobacco product” includes any:

- (i) cigarette;
- (ii) cigar;
- (iii) bidi;
- (iv) pipe or other smoking tobacco; or
- (v) chewing tobacco, spit tobacco, snuff, or other smokeless tobacco.

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1 **§ 12-502. Unlawful distribution.**

2 (a) *Persons in business.*

3 A person engaged in the business of selling or otherwise distributing tobacco products OR
4 ELECTRONIC SMOKING DEVICES for commercial purposes may not:

5 (1) distribute any tobacco product OR ELECTRONIC SMOKING DEVICES to a minor,
6 unless the minor is acting solely as the agent of an employer engaged in the
7 business of distributing [tobacco] THOSE products OR DEVICES;

8 (2) distribute any cigarette rolling paper to a minor; or

9 (3) distribute to a minor any coupon redeemable for any tobacco product OR
10 ELECTRONIC SMOKING DEVICE.

11 (b) *Others.*

12 A person not described in subsection (a) of this section may not:

13 (1) buy for or sell to a minor any tobacco product OR ELECTRONIC SMOKING DEVICE;
14 or

15 (2) buy for or sell or deliver to a minor any cigarette rolling paper.

16 ***Subtitle 8. Smoking Near Playgrounds***

17 **§ 12-801. Definitions.**

18 (f) *Smoke.*

19 “Smoke” has the meaning stated in § 12-101 {“Definitions”} of this [Title] TITLE.

20 **Baltimore City Code**

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

22 **Subtitle 40. Environmental Control Board**

23 **§ 40-14. Violations to which subtitle applies.**

24 (e) *Provisions and penalties enumerated.*

25 (7) ***Health Code***

26 . . .
27 Title 12: Tobacco Products AND SMOKING DEVICES

28 . . .
29 Subtitle 1: Indoor Smoking
30 Person smoking \$500
31 Employer, other person in charge \$750

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1	Subtitle 2: Sale of Unpackaged Cigarettes	\$500
2	Subtitle 4: Placement of Tobacco Products AND SMOKING DEVICES	\$500
3	Subtitle 5: Distribution to Minors	\$500
4	Subtitle 6: Flavored Tobacco Wrappings	\$500
5	Subtitle 8: Smoking Near Playgrounds	\$500
6	...	
7	...	

Subtitle 41. Civil Citations

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

(6) Health Code

11	Title 12: Tobacco Products AND SMOKING DEVICES	
12	...	
13	Subtitle 1: Indoor Smoking	
14	Person smoking	\$500
15	Employer, other person in charge	\$750
16	Subtitle 2: Sale of Unpackaged Cigarettes	\$500
17	Subtitle 4: Placement of Tobacco Products AND SMOKING DEVICES	\$500
18	Subtitle 5: Distribution to Minors	\$500
19	Subtitle 6: Flavored Tobacco Wrappings	\$500
20	Subtitle 8: Smoking Near Playgrounds	\$500
21	...	
22	...	

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.

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

President, Baltimore City Council

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

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City