

3/21/2005	0	City Council	Introduced
3/21/2005	0	The City Council	Assigned

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

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INTRODUCTORY*

CITY OF BALTIMORE
COUNCIL BILL

Introduced by: Councilmember Curran

A BILL ENTITLED

AN ORDINANCE concerning
Health - Indoor Smoking

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

BY repealing

Article - Health

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

"Subtitle 1. Smoking in City Buildings and Vehicles"

Baltimore City Revised Code

(Edition 2000)

BY repealing

Article 19 - Police Ordinances

Section(s) 29-2

Baltimore City Code

(Edition 2000)

BY adding

Article - Health

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

"Subtitle 1. Indoor Smoking"

Baltimore City Revised Code

(Edition 2000)

BY repealing and reordaining, with amendments

Article 1 - Mayor, City Council, and Municipal Agencies

Section(s) 40-14(e)(7)(Title 12) and 41-14(6)(Title 12)

Baltimore City Code

(Edition 2000)

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 BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the following provisions of the City Code are repealed:

Article - Health

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

"Smoking in City Buildings and Vehicles"

Baltimore City Revised Code

(Edition 2000)

Article 19 - Police Ordinances

Section(s) 29-2

Baltimore City Code

(Edition 2000)

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

Baltimore City Revised Code

Article - Health

Title 12. Tobacco Products

SUBTITLE 1. INDOOR SMOKING

§ 12-101. DEFINITIONS.

(A) IN GENERAL.

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

(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.

(c) Person in charge.

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

(d) Smoke.

"Smoke" means to inhale, burn, or carry any lighted cigarette, cigar, pipe tobacco, or other tobacco, weed, or plant product of any kind.

§ 12-102. Scope.

Nothing in this subtitle precludes an employer or other person in charge from prohibiting smoking in open or enclosed areas not covered by this subtitle.

§§ 12-103 to 12-104. {Reserved}

§ 12-105. Where smoking prohibited.

(a) In general.

Except as otherwise specified in this subtitle, smoking is prohibited in:

(1) any enclosed area to or in which the public is invited or permitted; or

(2) any enclosed area that is part of a place of employment.

(b) Illustrations.

Places to which this section applies include, for example, any of the following:

(1) aquarium, gallery, library, or museum.

(2) bank, savings and loan company, credit union, or other financial institution.

(3) bar or tavern.

(4) bowling alley or pool hall.

(5) child- or adult-care facility.

(6) City building, including any building or part of a building that is owned or leased by the City or a City agency or that is occupied by a City agency.

(7) common area of an apartment building, condominium, retirement facility, or other multi-unit residential facility, including lobbies, hallways, laundry facilities, storage facilities, and garages.

(8) convention or conference facility.

(9) educational facility, public or private.

(10) gaming facility.

(11) homeless shelter.

(12) hospital, clinic, nursing home, or other health care facility.

(13) hotel or motel.

- (14) private offices.
- (15) restaurant, cafeteria, carry-out shop, catering establishment, or other food service facility.
- (16) retail store or service center.
- (17) shopping mall.
- (18) sports arena.
- (19) taxicab, bus, van, or other vehicle used for public transportation or transportation for hire.
- (20) theater, music hall, or lecture hall.
- (21) vehicle owned or operated by the City.
- (22) vehicle owned or operated by an employer for the use of its employees.
- (23) area or facility serving or accessory to any of the places to which this section applies, including any of the following:
 - (i) restroom.
 - (ii) lobby.
 - (iii) elevator.
 - (iv) hallway.
 - (v) reception area.
 - (vi) garage or loading dock, even if entry door is open.

§ 12-106. Exceptions - General.

This subtitle does not apply to the following:

- (1) a private residence, except in or immediately adjacent to an area that is being used as a child- or adult-care facility or that is open to the public for business purposes.
- (2) a private vehicle.
- (3) a sleeping room in a hotel or motel, as long as that hotel or motel maintains at least 75% of all its sleeping rooms as smoke-free.
- (4) smoking as an integral part of a theatrical performance held in a facility primarily used for theatrical performances.

(5) smoking as an integral part of a religious ceremony.

(6) smoking at an analytical or educational laboratory as an integral part of scientific research into the health effects of smoke.

§ 12-107. Exceptions - Private clubs, smoking bars, tobacconists.

(a) In general.

This subtitle does not apply to a private club or lodge, a smoking bar, or a retail tobacco establishment that qualifies and registers for an exemption under this section.

(b) Qualifications.

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

(1) has a limited membership elected pursuant to its charter or bylaws;

(2) excludes the general public from its premises or place of meeting;

(iii) is organized with officers and directors;

(iv) holds all property for the common benefit of its members; and

(v) does not permit nonmembers to pay a temporary fee to use its premises or attend its meetings.

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

(1) is licensed under State Code Article 2B to serve alcoholic beverages;

(2) 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

(iv) prohibits the entry of minors at all times.

(3) A retail tobacco establishment qualifies to register under this section only if it:

(1) derives at least 75% of its revenues, measured by average daily receipts, from the sale of non-cigarette tobacco products;

(2) has a ventilation system that prevents smoke from infiltrating into any area where smoking is prohibited under this subtitle; and

(iii) prohibits the entry of minors at all times.

(c) Annual registration.

(1) For exemption under this section, a private club or lodge, smoking bar, or retail tobacco establishment must first:

(1) file a registration statement with the Health Commissioner; and

(1)

(2) pay an initial registration fee of \$1,000.

(2) The registration statement must be in the form and contain the information, including evidence of the entity's qualifications, that the Commissioner requires.

(3) Each exemption expires 1 year from the date the registration statement was filed.

(4) An exemption may be renewed annually by submitting, at least 10 days but no more than 60 days before expiration:

(1) a new registration statement; and

(2) a renewal registration fee of \$500.

§ 12-108. Waivers.

(a) Authority to grant.

On written application, the Commissioner may grant a waiver from all or part of this subtitle if the Commissioner determines that:

(1) compelling reasons exist for the waiver; and

(2) the waiver will not significantly affect the health or comfort of nonsmokers.

(b) Conditions and limitations.

The Commissioner may impose conditions on the waiver, including limitations on time, place, or manner of its exercise, as the circumstances warrant.

§§ 12-109 to 12-110. {Reserved}

§ 12-111. Enforcement by citation.

(a) In general.

In addition to any other civil or criminal remedy or enforcement procedure, this subtitle may be enforced by issuance of:

(1) an environmental citation as authorized by City Code Article 1, Subtitle 40 {"Environmental Control Board"}; or

(2) a civil citation as authorized by City Code Article 1, Subtitle 41 {"Civil Citations"}

(b) Process not exclusive.

The issuance of a citation to enforce this subtitle does not preclude pursuing any other civil or criminal remedy or enforcement action authorized by law.

§ 12-112. PENALTIES

(A) SMOKER.

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

(B) EMPLOYER OR PERSON IN CHARGE.

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

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

(1) asked the smoker to extinguish the lighted item or leave the premises; and

(2) on the smoker's failure to comply with that request, summoned a law enforcement or other officer to compel compliance.

Baltimore City Code

Article 1. Mayor, City Council, and Municipal Agencies

Subtitle 40. Environmental Control Board

§ 40-14. Violations to which subtitle applies.

(e) Provisions and penalties enumerated.

(7) Health Code

Title 12: Tobacco Products

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

SUBTITLE 1: INDOOR SMOKING

PERSON SMOKING

\$250

EMPLOYER, OTHER PERSON IN CHARGE	\$500
Subtitle 2: Sale of Unpackaged Cigarettes	\$150
Subtitle 4: Placement of Tobacco Products	\$500
Subtitle 5: Distribution to Minors	\$500
Subtitle 41. Civil Citations	
§ 41-14. Offenses to which subtitle applies - Listing.	
(6) Health Code	
Title 12: Tobacco Products	
SUBTITLE 1: INDOOR SMOKING	
PERSON SMOKING	\$250
EMPLOYER, OTHER PERSON IN CHARGE	\$500
Subtitle 2: Sale of Unpackaged Cigarettes	\$150
Subtitle 4: Placement of Tobacco Products	\$500
Subtitle 5: Distribution to Minors	\$500

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

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

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