

**DIVISION OF ENVIRONMENTAL HEALTH  
BALTIMORE CITY HEALTH DEPARTMENT**

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**Clean Indoor Air Act Enforcement Policy**

**January 17, 2008**

[www.mdcleanair.org](http://www.mdcleanair.org)

- I. Smoking Ban Overview
  - a. Indoor smoking will generally be prohibited from any public, enclosed area. If you own a bar or restaurant, you must:
    - i. Prohibit smoking from your facility in all enclosed areas (local and state requirement);
    - ii. Post “No Smoking” signs in your facility (state requirement);
    - iii. As a hotel/motel operator, have no more than 25% of the rooms designated for smoking (local and state requirement).
  - b. “No Smoking” signs must be posted at indoor areas open to the public and entrances to such areas.
  - c. Indoor smoking remains prohibited in indoor places of employment.
  
- II. The Laws
  - a. City Law:
    - i. § 12-105. Where smoking prohibited.
      - 1. Beginning on February 1, 2008, smoking is prohibited in:
        - a. Any enclosed area to or in which the public is invited or permitted.
  - b. State Law ([www.mdcleanair.org](http://www.mdcleanair.org)):
    - i. Maryland Annotated Code – Health General, § 24-504.
      - 1. Beginning on February 1, 2008, a person may not smoke in:
        - a. An indoor area open to the public;
        - b. An indoor place in which meetings are open to the public;
        - c. A government-owned or government operated means of mass transportation; or
        - d. An indoor place of employment.
  - c. State Regulations:
    - i. COMAR 10.19.04.05 Owner Requirements:
      - 1. An owner of a:
        - a. Bar;
        - b. Club;
        - c. Restaurant;
        - d. Pub;
        - e. Tavern;
        - f. Retail establishment;
        - g. Theater;
        - h. Concert hall;
        - i. Athletic facility;
        - j. Financial service institution;
        - k. Government building;

- l. Educational institution;
- m. Museum;
- n. Library;
- o. Hotel or motel
  - i. Shall post a sign indicating where smoking is prohibited.
- ii. COMAR 10.19.04.06 Posting of Signs:
  - 1. An indoor area open to the public and every public entrance to an indoor area open to the public where smoking is prohibited shall display a “NO SMOKING” sign.
  - 2. A hotel or motel room in which smoking is permitted shall display a sign containing the words “SMOKING PERMITTED IN THIS ROOM” – the signage requirements are:
    - a. The words “SMOKING PERMITTED IN THIS ROOM” are in capital letters;
    - b. The background and print are in contrasting colors; and
    - c. The letters “SMOKING PERMITTED IN THIS ROOM” are a minimum of 1 inch in height.
  - 3. A “NO SMOKING” sign:
    - a. Shall contain (but not limited to):
      - i. The words “NO SMOKING”;
      - ii. The international symbol for “No smoking,” consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across the circle; or
      - iii. A combination of the words “NO SMOKING” and the international symbol for “No Smoking”.
- iii. COMAR 10.19.04.09 Violations and Certification of Correction
  - 1. The sanitarian shall notify the owner of an establishment found in violation:
    - a. By certified mail, return receipt requested;
    - b. Of the specific finding and the penalty for the violation;
    - c. Of a specific date by which the owner shall correct the violation;
    - d. That if the owner fails to correct the violation by the date specified, or is in violation of another provision at another time, the Secretary may impose a subsequent penalty;
    - e. That the owner is entitled to request a hearing.
  - 2. The owner of an establishment shall submit to the Department a certification of correction within the specified timeframe that:
    - a. Lists a violation; and
    - b. A description of how the correction was accomplished.
- d. Beginning February 1, 2008, indoor smoking will generally be prohibited from any public, enclosed area. *Md He* §§ 24-501, *et seq.*; *Health Code* §12-101, *et seq.*

### III. Enforcement Responsibilities

- a. The Baltimore City Health Department shall enforce the City Indoor Smoking laws pursuant to Health Code §§ 12-101, *et. seq.* while conducting an inspection and/or investigating a complaint.
- b. Health officials may issue either an environmental citation or a civil citation for violations. *Health Code* § 12-111.

#### IV. Enforcement Responsibilities

- a. Enforcement by environmental sanitarian
  - i. As smoking is generally prohibited under current MOSH law, the primary focus of the enforcement of this new law will deal primarily with the restaurant and bar industry; therefore, BCHD Bureau of Food Control sanitarians shall bear the responsibility of enforcing this regulation.
- b. Routine food inspections
  - i. Upon the routine inspection of all food service facilities, the sanitarian will note whether:
    - 1. Evidence of smoking exists.
      - a. “Smoking” means to inhale, burn or carry any lighted cigarette, cigar, pipe tobacco or other tobacco, weed or plant product of any kind.
      - b. Evidence includes remnants of a tobacco product, an ashtray with ashes and lingering tobacco smoke.
    - 2. Actual smoking is observed during the inspection.
  - ii. Sanitarian action upon inspection:
    - 1. If evidence of smoking observed:
      - a. Sanitarian will advise operator of the law and write up a violation on the appropriate inspection report. The violation will note that evidence of smoking at the facility is present and detail the specific evidence, *e.g.*, “ashtray with ashes found on the bar.”
    - 2. If actual smoking is observed during the inspection:
      - a. A violation notice will be issued as per #1 with a notation of who was smoking and where the smoking was observed in the facility.
      - b. After the sanitarian returns to the office, the sanitarian will issue an ECB citation to the operator of the facility under Health Code, Title 12, Subtitle 1 for \$500.
- c. Inspections based on smoking complaints
  - i. When a complaint is received by BCHD via 311 or received from DHMH, the sanitarian will investigate based on current timelines for food facility complaints.
  - ii. If the complaint alleges smoking:
    - 1. The sanitarian will conduct an inspection based on the above protocol for routine inspections.
  - iii. If the complaint alleges failure of the operator to comply with signage or other provisions in the state Clean Indoor Air Act:
    - 1. The sanitarian will conduct an inspection and determine the extent of the violation. If a violation of state provisions is noted, the sanitarian will complete his/her inspection report and follow routine

procedures, which includes providing a copy of the report to the person-in-charge of the establishment. In addition, the sanitarian will follow state procedures found under COMAR 10.19.04.09 ([http://cha.state.md.us/oeH/ciaa/ciaa\\_geninfo.html#violation](http://cha.state.md.us/oeH/ciaa/ciaa_geninfo.html#violation)). The Department's template letter will be used to comply with the requirements of section .09.

- V. Exclusions from the Ban (under state law - COMAR 10.19.04.03 [http://cha.state.md.us/oeH/ciaa/ciaa\\_geninfo.html#exclusions](http://cha.state.md.us/oeH/ciaa/ciaa_geninfo.html#exclusions))
- a. Private homes;
  - b. Private vehicles;
  - c. Hotel or motel room if smoking rooms do not exceed 25% of all guest rooms;
  - d. Retail tobacco business where primary sales is tobacco and other sales are incidental;
  - e. Manufacturer of tobacco products;
  - f. Research laboratory.
- VI. Waivers under State Law
- a. In general:
    - i. Businesses may apply for a waiver by written application. The Baltimore City Health Commissioner has the authority to grant them. When doing so, the Health Commissioner will refer to the State regulations (COMAR 10.19.04.12, [http://cha.state.md.us/oeH/ciaa/ciaa\\_geninfo.html#wavers](http://cha.state.md.us/oeH/ciaa/ciaa_geninfo.html#wavers)).
    - ii. Sanitarians will be responsible for recognizing the businesses that are granted a waiver by the Health Commissioner.
    - iii. **All waivers terminate on January 31, 2011.** No waivers may be granted on or after January 31, 2011. *Md. He. § 24-509(D)*
  - b. Specifics (COMAR 10.19.04.12):
    - i. The waiver application is available on the Maryland Department of Health and Mental Hygiene website at [www.mdcleanair.org](http://www.mdcleanair.org).
    - ii. The Health Commissioner must consider the following factors when reviewing an application for a waiver:
      1. An applicant must establish financial hardship with a 15% decrease in gross sales while operating smoke free; or
      2. The facility is unable to recover the costs associated with a capital improvement project that was initiated before May 17, 2007, that was designed to provide a partial smoke-free environment at the facility.
      3. Existence of other factors would render compliance with the Act unreasonable.

**Note: Exclusions and waivers listed under the City law are generally inapplicable and are therefore not covered in this guidance document.**

For more information on the Clean Indoor Air Act go online to [www.mdcleanair.org](http://www.mdcleanair.org). There you will find information for businesses that includes:

- Signs for downloading
- Waiver applications
- General information guides and other resources