

SUBTITLE 1
INDOOR SMOKING

Editor's Note: This subtitle was enacted by Ordinance 07-392 (approved February 28, 2007). Section 4 of Ord. 07-392, as subsequently amended by Ord. 07-497, provides that the new law takes effect February 1, 2008.

Chapters 501 and 502, Laws of Maryland 2007 (approved May 17, 2007) enacted a statewide "Clean Indoor Air Act", codified at State Health Article, Title 24, Subtitle 5. The prohibitions become effective February 1, 2008 {He § 24-504}. The State law expressly states that it does not "preempt a county ... from enacting and enforcing more stringent measures" {He § 24-510}.

§ 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.

(Ord. 07-392.)

§ 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.

(Ord. 07-392.)

§§ 12-103 to 12-104. {Reserved}

§ 12-105. Where smoking prohibited.

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.
(*Ord. 07-392.*)

§ 12-106. Exceptions – General.

This subtitle does not apply to the following:

- (1) any part of a private residence that is not open to the public for business purposes, except as required by COMAR 13A.14.01.
- (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.
- (7) smoking that is permitted in a hospital, nursing home, or other health care facility under State Health-General Article, § 24-205.
(*Ord. 07-392.*)

§ 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 for an exemption under this section.

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

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

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

(Ord. 07-392.)

§ 12-108. Waivers.

(a) *Authority to grant.*

On written application, the Commissioner may grant a waiver from the application of a specific provision of this subtitle, if the applicant for the waiver establishes that:

- (1) compliance with that provision would cause undue financial hardship; or
- (2) other factors exist that would render compliance unreasonable.

(b) *Conditions and restrictions.*

The Commissioner may impose conditions or restrictions on the waiver as necessary or appropriate to:

- (1) minimize the adverse effects of the waiver on individuals involuntarily exposed to second-hand smoke; and
- (2) ensure that the waiver is consistent with the purposes of this subtitle.

(Ord. 07-392.)

§§ 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.

(Ord. 07-392.)

§ 12-112. Penalties(a) *Smoker.*

Any person who smokes in violation of this subtitle is subject to a civil fine of not more than \$250 for each offense.

(b) *Employer or person in charge.*

- (1) Any employer or other person in charge who violates a provision of this subtitle or who knowingly allows a violation is subject to a civil fine of not more than \$500 for each offense.
- (2) It is an affirmative defense that the employer, other person in charge, or an agent of the employer or other person in charge:
 - (i) posted a "No Smoking" sign at each entrance used by the public; and
 - (ii) removed all ashtrays and other smoking paraphernalia from all areas where smoking is prohibited; and
 - (iii) in a bar or restaurant:
 - (A) refused to seat or serve any person who smoked where smoking is prohibited; and
 - (B) if the person continued to smoke after an initial warning, asked the person to leave the establishment.

- (3) Each day that a violation continues is a separate offense.

(Ord. 07-392.)