Sec. 12.600. Findings and purpose.

(a) The Howard County Council finds that secondhand tobacco smoke is a hazard to the health of the public.

(b) The purpose of this subtitle is:

(1) To protect the public health, safety, and welfare by prohibiting the smoking of tobacco products in public places, at public meetings, in certain government vehicles, in places of employment, and within certain distances from entrances to public places; and

(2) To protect the public from involuntary exposure to smoke from tobacco products.

(C.B. 38, 2006, § 2)

Sec. 12.601. Definitions.

Terms in this subtitle have the meanings indicated.

(a) Bar means an establishment, portion of an establishment, or area of a restaurant licensed under the State Code Article 2B to serve alcoholic beverages for consumption by individuals on the premises and where serving food is only incidental to the consumption of alcoholic beverages. Bar includes a cocktail lounge.

(b) Employee means an individual who:

(1) Works for an employer in consideration for direct or indirect monetary wages or profit; or
(2) Volunteers services for a nonprofit entity or business entity.

(c) **Employer** means a person, partnership, corporation, nonprofit entity, or other business entity that employs the services of one or more individuals.

(d) **Enclosed Area** means an area that is bounded on all sides by walls that extend from the floor to the ceiling regardless of whether the walls contain doors, windows, or vents.

(e) **Government Vehicle** means each car, bus, truck, or van owned or leased by Howard County.

(f) **Health Care Facility** means an office or institution where individual care or treatment of a physical, mental, emotional, physiological, or psychological illness or condition is provided including, but not limited to, a hospital, clinic, nursing home, assisted living facility, ambulatory health care facility, limited care facility, adult day care center, home for the aging or chronically ill, medical laboratory, and the office of a physician, dentist, psychologist, psychiatrist, physiologist, podiatrist, optometrist, chiropractor, or optician.

(g) **International "No Smoking" Symbol** means a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

(h) **Outdoor Seating Area** means any patio, courtyard, sidewalk cafe, backyard or other outdoor area of a restaurant or bar where food and/or beverages are served and/or consumed.

(i) **Partially Enclosed** means an outdoor seating area where the circulation of outdoor air is obstructed by a temporary or permanent wall, tarp, shield, blind, or other kind of covering, exclusive of a temporary or permanent roof, ceiling, overhang, or overhead structure and the perimeter of the adjoining enclosed restaurant or business.

(j) **Person** means an individual, corporation, partnership, business trust, limited liability company, or any other type of business entity.

(k) **Place of Employment** means an area within a building that employees normally frequent during the course of employment that is under the control of their employer, including, but not limited to, a work area, employee lounge, restroom, conference and meeting rooms, class room, cafeteria, photocopy room, private offices, elevator, auditorium, medical facility, stairs and hallway.

(l) **Public Meeting** Means a meeting, wherever held, open to the public and having no membership restraints.

(m) **Public Place** means:

   (1) An enclosed area to or in which members of the public are invited or permitted, including, but not limited to:

   (i) An auditorium;
   (ii) A bar;
   (iii) A beauty or barber shop;
   (iv) A bowling alley;
A building owned or leased by Howard County including, but not limited to, any part of a building that is owned, leased, or occupied by the county or a county agency;

A building used for or designed for the primary purpose of exhibiting a motion picture, stage, drama, lecture, musical recital, concert or other similar performance;

A business organization open to the public, including a retail store, bank, credit union, and other financial institution, office, factory, or any other private business, office, or organization;

A common area of an apartment building, condominium, retirement facility, or other multi-unit residential facility including, but not limited to, a lobby, hallway, laundry facility, storage facility, exercise facility, restroom, or garage;

A convention hall;

An elevator, regardless of capacity, except an elevator in a single-family dwelling;

A facility meeting the definition of an assembly occupancy as defined in the Howard County Fire Code;

A facility offering private, community or school-based camp, or recreational programs to minors;

A health care facility, including, but not limited to, waiting rooms, hallways, wards, and private and semi-private sleeping rooms;

A library, museum, and gallery;

A pool hall;

A public or private educational facility;

A public transportation facility, including, but not limited to, a ticket, boarding, and waiting area;

A public transportation vehicle, including, but not limited to, a bus or taxicab;

A restaurant;

A restroom;

A room, chamber, or place used for a public meeting;

A service line;

A shopping mall including, but not limited to, the common areas, hallways, restrooms and storage facilities;

A sleeping room, common area, or banquet hall of a hotel or motel including, but not limited to, a lobby, hallway, laundry facility, exercise facility, storage facility, restroom, or garage; and

A sports arena; and

An outdoor seating or viewing area that is used by the public:

(i) To observe a concert, motion picture, stage drama, lecture, musical recital, or other similar performance; or

(ii) To observe or participate in an athletic event including the bleacher area of a ball field or sports arena.

Restaurant means:

A place that offers for sale or sells food and drink to the public, guests, patrons, or employees including, but not limited to, a coffee shop, fastfood establishment, cafeteria, sandwich stand, private or public school cafeteria; and
(2) A kitchen where food is prepared on the premises for serving elsewhere, such as a catering facility.

(o) *Retail Store* means:

(1) An establishment whose primary purpose is to sell or offer for sale to consumers goods, wares, merchandise, food for consumption off the premises, or other tangible items; and
(2) All related and incidental activities, operations, and services.

(p) *Retail Tobacco Store* means a retail store that primarily sells or offers for sale tobacco products and accessories, and where the sale of other products is incidental.

(q) *Service Line* means an indoor line where one or more individuals wait for or receive service of any kind, whether or not the service involves the exchange of money.

(r) *Separately enclosed and ventilated bar area* means an enclosed area that was in existence prior to April 1, 2005 as defined below:

(1) In a restaurant, the cocktail lounge or bar area which is separated from the restaurant dining area by a permanent floor to ceiling partition and is accessed by a door for ingress and egress and has a separate ventilation system; or
(2) Within a bar, a smaller cocktail lounge or bar area which is separated from the main bar area by a permanent floor to ceiling partition and is accessed by a door for ingress and egress and has a separate ventilation system.

(s) *Shared Government Vehicle* means any vehicle used expressly for Howard County government purposes that is not assigned to any one employee for exclusive use.

(t) *Smoking or to Smoke* means the act of smoking, inhaling smoke from a hookah or water pipe, or carrying a lighted cigar, cigarette, pipe, bidi of any kind, or any lighted tobacco or lighting a cigar, cigarette, pipe, bidi, of any kind, or tobacco of any kind.

(u) *Sports Arena* means a sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller rink, ice rink, baseball field, football field, soccer field and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or to witness sports events.

(v) *Tobacco Product* means any substance containing tobacco including, but not limited to, bidis, cigars, cigarettes, snuff, chew, dip, and smokeless tobacco.

(C.B. 38, 2006, § 2)

**Sec. 12.602. Prohibition.**

Except as otherwise provided in this subtitle, a person shall not smoke:

(a) In a public place;

(b) At a public meeting;
(c) In a shared government vehicle or in any government vehicle when occupied by more than one person; or

(d) In a place of employment

(C.B. 38, 2006, § 2)

Sec. 12.603. Distance from a public place or place of employment.

Smoking is prohibited within a distance of 15 feet outside public entrances and exits of an enclosed public place or place of employment where smoking is prohibited, except this does not apply in the Ellicott City Historic District or to restaurants and bars with outdoor seating areas that comply with section 12.604.

(C.B. 38, 2006, § 2)

Sec. 12.604. Exceptions to prohibition.

(a) The prohibitions in section 12.602 do not apply to:

(1) A private club or lodge owned and operated by a membership association licensed under Article 2B of the State Code if:

   (i) The association's duties are performed by its members, including, but not limited to, food preparation and security; and
   (ii) The members do not receive compensation for the performance of the association's duties;

(2) A sleeping room of a hotel or motel, as long as that hotel or motel maintains at least 75% of all of its sleeping rooms as smoke-free;

(3) Outdoor seating areas. Smoking may be allowed in an outdoor seating area, provided that such area shall:

   (i) Adjoin an enclosed restaurant or bar; and
   (ii) Has seating that constitutes no more than forty (40%) percent of the total enclosed seating capacity of the establishment; and
   (iii) Is not enclosed or partially enclosed; and
   (iv) Is located in such a way to minimize the likelihood that smoke from the outdoor seating area will infiltrate enclosed areas where smoking is prohibited as provided by the provisions of this subtitle.

(4) Smoking as an integral part of a theatrical performance held in a facility primarily used for theatrical performances;

(5) A retail tobacco store provided, however, that smoke from the retail tobacco store does not infiltrate areas where smoking is prohibited under the provisions of this subtitle;

(b) Notwithstanding any other provision of this section, an owner, operator, manager, or other person who controls an establishment subject to this section may declare the establishment as a nonsmoking establishment.

(C.B. 38, 2006, § 2)

Sec. 12.605. Notification of smoking prohibition in places of employment.
The prohibition on smoking in places of employment shall be communicated to all existing employees by the effective date of this subtitle and to all prospective employees upon their application for employment.
(C.B. 38, 2006, § 2)

Sec. 12.606. Posting signs.

(a) An owner, operator, manager, or person in control of a building or area regulated by this subtitle shall post a sign at each entrance used by the public that shall:

(1) State "Smoking or Carrying Lighted Tobacco Products Prohibited by Law. Violators are Subject to a Penalty not to Exceed $250.00"; and
(2) Display the international "No Smoking" symbol.

(b) Each sign shall be conspicuously displayed and have letters of not less than 1 inch in height.

(c) An establishment that sells tobacco products shall clearly display signs stating that the sale of tobacco products to minors is forbidden by law.

(d) The owner, manager, or operator of a theatre or auditorium shall post signs in the lobby stating that smoking is prohibited within the theatre or auditorium.
(C.B. 38, 2006, § 2)

Sec. 12.607. Responsibilities of owner, operator, etc.

(a) An owner, operator, manager, or person in control of a public place or place of employment shall remove from any area where smoking is prohibited by this subtitle, all ashtrays and other smoking paraphernalia.

(b) An owner, operator, manager, or person in control of a restaurant or bar where smoking is prohibited must refuse to serve or seat any person who smokes where smoking is prohibited and must ask the person to leave the establishment if the person continues to smoke after an initial warning.
(C.B. 38, 2006, § 2)

Sec. 12.608. Enforcement.

(a) A person who observes a violation of this subtitle may file a complaint with the Police Department.

(b) If, during an inspection of a building or area regulated by this subtitle, an inspector from the State Fire Marshal's Office, the Department of Fire and Rescue Services, the Health Department, or the Department of Inspections, Licenses and Permits, observes a violation of this subtitle, the inspector may issue a citation under this subtitle.
(C.B. 38, 2006, § 2)

Sec. 12.609. Nonretaliation.
A person or employer shall not discharge, refuse to hire, or in any manner retaliate against an employee or applicant for employment because the employee or applicant exercises the right to a smoke-free environment afforded by this subtitle.
(C.B. 38, 2006, § 2)

Sec. 12.610. Penalties.

(a) (1) If an individual smokes in violation of section 12.602 of this subtitle, a police officer may issue a civil citation to the individual pursuant to Title 24, "Civil Penalties," of this Code.
(2) A violation of section 12.602 of this subtitle is a Class C Offense.
(3) Each day that a violation continues is a separate offense.

(b) (1) If an owner, manager, operator, or person in control of a public place or place of employment violates section 12.605, section 12.606, or section 12.607 of this subtitle, a police officer may issue a civil citation pursuant to the Title 24, "Civil Penalties," of this Code.
(2) A violation of section 12.605, section 12.606, or section 12.607 of this subtitle is a Class B Offense.
(3) Each day that a violation continues is a separate offense.
(C.B. 38, 2006, § 2)

Sec. 12.611. Public education.

The Public Information Office and the Health Department shall engage in a program to explain and clarify the purposes and requirements of this subtitle to persons affected by it and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this subtitle.
(C.B. 38, 2006, § 2)

Sec. 12.612. Provisions cumulative to other laws and regulations.

The provisions of this subtitle are in addition to the provisions of any other federal, state, or county law, ordinance, rule, or regulation.
(C.B. 38, 2006, § 2)

Sec. 12.613. Severability.

If any provision of this subtitle or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity shall not affect other provisions or any other application of this subtitle which can be given effect without the invalid provision or application, and for this purpose the provisions of this subtitle are severable.
(C.B. 38, 2006, § 2)