

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 175
 Finance

(Senator Manno, *et al.*)

Public Health - Use of Medical Oxygen in Residential Dwellings - Smoking and Open Flame Restrictions

This bill prohibits an individual from lighting or smoking tobacco, or having an open flame, in a room of a residential dwelling or within 20 feet of a room of a residential dwelling in which medical oxygen is being used. The bill also requires specified individuals and entities to meet specified notice requirements. The Department of Health and Mental Hygiene (DHMH) is required to adopt regulations to implement the bill’s provisions. Finally, the bill establishes penalties for violating the bill’s prohibitions and requirements, and it authorizes the Secretary of Health and Mental Hygiene to waive a penalty under specified circumstances.

Fiscal Summary

State Effect: General fund expenditures increase by approximately \$43,400 in FY 2018 only for the Prevention and Health Promotion Administration (PHPA) to implement the bill’s requirements, as discussed below. Future year expenditures can likely be absorbed with existing resources. Potential minimal increase in general fund revenues due to the bill’s penalty provisions; any impact depends on the extent of enforcement.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	43,400	0	0	0	0
Net Effect	(\$43,400)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: To the extent that local health departments (LHDs) are called upon to enforce the bill’s requirements, local government expenditures may increase, as discussed below. Revenues are not affected.

Small Business Effect: Potential minimal to the extent that some small business are required to produce and post signs.

Analysis

Bill Summary: Under the bill, “residential dwelling” means a building or part of a building in which one or more individuals live or sleep. A residential dwelling includes an apartment, a condominium, a duplex, a townhouse, and a single-family home. A residential dwelling does not include a hotel or motel.

An individual who lives in a residential dwelling that is owned by another person, or a residential dwelling that is subject to the rules and regulations of a homeowners association (HOA) or similar entity, is required to notify the owner, the owner’s representative, or the HOA or similar entity that the individual uses or will begin to use medical oxygen. Notice is required (1) at least five days before the individual begins to reside in the residential dwelling or (2) if the individual already lives in the residential dwelling, at least five days before the individual begins using medical oxygen. Within five days of receiving notice from the individual, the owner of the residential dwelling, the owner’s representative, or the HOA or similar organization must prominently post signs stating that medical oxygen is being used in the individual’s residential dwelling and that specified distance restrictions are in effect.

An individual who does not live in a residential dwelling that is owned by another person, or a residential dwelling that is subject to the rules and regulations of an HOA or similar entity, is required to post signs stating that medical oxygen is being used in the individual’s residential dwelling and that specified distance restrictions are in effect.

If a person violates the bill’s prohibitions or notice requirements, or any prohibition or requirement included in regulations adopted by DHMH under the bill, the person must, for the first violation, be issued a written reprimand by the Secretary of Health and Mental Hygiene or the Secretary’s designee. For a second violations, the person is subject to a civil penalty of \$100. For each subsequent violation, the person is subject to a civil penalty of at least \$250. The Secretary may waive a penalty after considering (1) the seriousness of the violation and (2) any demonstrated good faith measures to comply with the bill’s prohibitions and notice requirements.

Current Law/Background: State law does not prohibit the lighting or smoking of tobacco, or the use of open flames, in or near residential dwellings where medical oxygen is used.

The National Fire Protection Association (NFPA) advises that, while oxygen itself is not flammable, it can contribute to starting and accelerating fires. When more oxygen is present in the air, any fire that starts burns hotter and faster than usual. More oxygen in the air means that things such as hair, plastic, skin oils, clothing, and furniture can catch fire at lower temperatures. Additionally, oxygen saturates fabric-covered furniture, clothing, hair, and bedding, making it easier for a fire to start and spread. NFPA advises that smoking materials are the leading heat source resulting in medical oxygen-related fires, injuries, and deaths. The organization recommends posting “no smoking” and “no open flames” signs inside and outside of the home to remind people not to smoke.

NFPA further advises:

- never smoke in the home when oxygen is in use;
- candles, matches, wood stoves, and even sparking toys can be ignition sources and should not be used in the home when oxygen is in use;
- oxygen cylinders should be stored at least five feet away from heat sources, open flames, or electrical devices;
- body oil, hand lotion, and items containing oil and grease can easily ignite, and they should be kept away from locations where oxygen is in use; and
- never use aerosol sprays containing combustible materials near oxygen.

In Maryland, a growing number of residences are located in some form of HOA or similar entity. HOAs, along with similar entities like condominiums and housing cooperatives, are broadly referred to as common ownership communities (COCs). For more information on COCs generally, see the **Appendix – Common Ownership Communities**.

State Expenditures: DHMH advises that PHPA would be responsible for implementing the bill’s requirements. General fund expenditures increase by \$43,449 in fiscal 2018 only for PHPA, which accounts for the bill’s October 1, 2017 effective date. This estimate reflects the cost of hiring a half-time contractual administrative officer to coordinate and conduct outreach and education efforts and to assist in the development and implementation of regulations and an enforcement strategy. It includes a half-time contractual salary, fringe benefits, one-time start-up costs, and other operating expenses, including travel. The estimate also includes contractual services for the production and distribution of the information packets and sample signage.

Contractual Position	0.5
Salary and Fringe Benefits	\$23,629
Operating Expenses and Start-up Costs	11,020
Other Contractual Services	<u>8,800</u>
Total FY 2018 State Expenditures	\$43,449

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

PHPA advises that a quarter-time contractual employee is necessary to support ongoing oversight of the bill’s requirements in the out-years. The Department of Legislative Services (DLS) disagrees. While PHPA may continue to receive inquiries about the bill’s requirements, total activity related to the bill in the out-years is not anticipated to be significant, and once initial outreach and education activities are complete, any inquiries or other activities can likely be handled with existing resources. However, DLS advises that, if efforts to fulfill the bill’s requirements are not completed by the end of fiscal 2018, general fund expenditures may increase in the out-years until implementation is complete.

Local Fiscal Effect: PHPA advises that costs to LHDs may increase, perhaps significantly, to enforce the regulations adopted by DHMH under the bill. This assumes that LHDs are designated by DHMH as responsible for the implementation of the bill and the corresponding regulations. DLS notes that the bill does not specify that LHDs are responsible for the implementation or enforcement of the bill’s requirements. However, should DHMH choose to delegate the implementation and enforcement of the bill’s requirements to LHDs, expenditures likely increase, perhaps significantly. Because the scope and nature of the activities, if any, that LHDs may be required to carry out under the regulations adopted by DHMH are unknown, a specific estimate is not available at this time.

Additional Information

Prior Introductions: None.

Cross File: HB 600 (Delegate Kramer, *et al.*) – Economic Matters.

Information Source(s): Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Secretary of State; National Fire Protection Association; Foundation for Community Association Research; Department of Legislative Services

Fiscal Note History: First Reader - January 31, 2017
mm/ljm

Analysis by: Nathan W. McCurdy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix – Common Ownership Communities

When a person purchases a single-family home, a condominium, or an interest in a cooperative housing corporation, he or she may also be required to join an association of owners, which is intended to act in the common interests of all the homeowners, condominium unit owners, or cooperative owners in the community. Collectively, these associations are often referred to as common ownership communities (COCs). In Maryland, a growing number of newly constructed or newly converted residences are located in some form of COC.

The affairs of a condominium are governed by a council of unit owners, which comprises all unit owners. Among other powers, the council of unit owners has the power to impose assessments on the unit owners to pay common expenses. A council of unit owners may delegate its powers to a board of directors, officers, or a managing agent. Condominiums are governed under Title 11 of the Real Property Article.

Many new housing developments are subject to a homeowners association (HOA) that is created by a governing document and has the authority to impose mandatory fees on lots in the development in connection with the provision of services or for the benefit of the lots, the lot owners, or the common areas. HOAs are governed under Title 11B of the Real Property Article.

A cooperative housing corporation or “cooperative” is a corporation that owns real property. A resident of a cooperative does not own his or her unit; rather, the person owns an interest in the corporation, which leases the unit to the person for residential use. Cooperatives are governed by the laws in Title 5, Subtitle 6B of the Corporations and Associations Article.

Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees. In a cooperative, the governing documents usually provide for the collection of delinquent fees, and evictions for unpaid fees are generally pursued by way of a landlord-tenant action.

Since registration of the various COCs is not required statewide, the exact number of COCs in Maryland is unknown. However, public offering statements for condominium regimes are required by law to be registered with the Secretary of State (SOS). Statewide for 2016, the SOS registration records show that there are 2,859 condominium regimes, and the State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 222,664 condominium units. The Foundation for Community Association Research estimated that there were 6,600 community associations in the State in 2015.

Task Force on Common Ownership Communities

With a growing number of Marylanders residing in COCs, and evidence that some COCs had issues with governance, dispute resolution, and financial stability, the General Assembly created the Task Force on Common Ownership Communities in 2005 (Chapter 469 of 2005). The issues addressed by the task force included the education and training needs of COC boards and prospective buyers, availability of alternative dispute resolution services, special considerations of aging COCs, collection of assessments, and resale of homes within COCs. The task force met 10 times, held five public hearings, and submitted its final report in December 2006. The report's findings and recommendations have served, in subsequent years, as the basis for numerous pieces of legislation intended to improve the operation of COCs. This legislation, enacted from 2007 through 2016, accomplished the following:

- authorized a group of three or more unit or lot owners in a condominium or HOA to petition a circuit court to appoint a receiver in specified situations frequently found in aging communities (Chapter 321 of 2007);
- gave the Consumer Protection Division within the Office of the Attorney General increased authority over violations of the Maryland Homeowners Association Act (Chapter 593 of 2007);
- eased restrictions on the ability of certain older HOAs to amend their governing documents by allowing an amendment at least once every five years by a specified percentage of votes (Chapters 144 and 145 of 2008);
- strengthened the transition process from developer to the governing body of a condominium or HOA by allowing the governing body to terminate specified contracts and requiring the developer to provide specified documents (Chapters 95 and 96 of 2009);
- required the governing body of a COC to purchase fidelity insurance or a fidelity bond covering various acts of malfeasance by COC officers, directors, and other specified employees and agents (Chapters 77 and 78 of 2009 and Chapter 615 of 2010);
- granted priority to a specified portion of a lien of a condominium or HOA over the claim of a holder of a first mortgage or first deed of trust in the event of a foreclosure on a unit or lot (Chapter 387 of 2011);

- limited the amount of damages for which the governing body of a condominium or HOA may foreclose on a lien against a unit owner or lot owner (Chapters 448 and 449 of 2013);
- expanded the purposes for which a condominium's board of directors may hold a closed meeting, similar to the law for an HOA, by allowing a meeting to be closed to consider terms or conditions of a business transaction in the negotiation stage if disclosure could adversely affect the economic interests of the council of unit owners (Chapter 110 of 2013);
- established meeting standards and standards for late charges for delinquent payments, eviction restrictions, an auditing process for books and records, and a dispute settlement mechanism for cooperatives under specified circumstances (Chapter 567 of 2014); and
- altered the contents of a required disclosure for the resale of a condominium unit, authorized the assessment of specified fees by a condominium council of unit owners or an HOA for providing specified information, set limits on those fees, and required the Department of Housing and Community Development to adjust the maximum authorized fees every two years (Chapter 735 of 2016).

The task force's report also featured findings and recommendations relating to the creation of an ombudsman in local governments. Since the report's release, Prince George's County created its Common Ownership Communities Program in 2007 with the stated purpose of assisting governing bodies as well as owners and residents of HOAs, residential condominiums, and cooperative housing corporations with education, training, and alternative dispute resolution. Charles and Montgomery counties have offices dedicated to COCs that predate the task force.

Finally, findings and recommendations of the report that have not been codified in statute include reserves of COCs, an insurance deductible cap for unit owners, and the uniformity of COC depository requirements.