

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 141

(Senator A. Washington)

Judicial Proceedings

Multifamily Dwellings - Smoking Policies

This bill requires the governing body of a condominium or cooperative housing corporation to develop a smoking policy if the property is a “multifamily dwelling.”

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Definitions

A “multifamily dwelling” means a residential building that is part of a common ownership community (as defined in the bill, a condominium or a cooperative housing corporation) with multiple dwelling units, a common entrance, and common areas (including hallways, elevators, and stairs).

“Smoke” or “smoking” means (1) the inhaling, exhaling, burning, or carrying of any lighted matter or lighted substance or (2) the use of a device to deliver aerosolized or

vaporized vaping liquid, as defined in § 16.7-101 of the Business Regulation Article, to an individual inhaling from the device.

The governing body of a cooperative housing corporation or condominium must develop a smoking policy that is at least as stringent as the applicable State and local laws regarding smoking if the property subject to the control of the governing body is a multifamily dwelling, as specified. The required smoking policy must state:

- the locations where smoking is authorized on the property;
- the locations where smoking is prohibited on the property;
- any conditions on the ability to smoke in areas of the property where smoking is authorized;
- the process to file a complaint against an individual who violates the policy; and
- any penalties or fines for violating the policy.

The bill may not be construed to (1) limit the rights of a governing body of a common ownership community, tenant, or residential owner to initiate or defend against a civil action or (2) preempt a county or municipal government from enacting and enforcing measures regarding smoking policies in multifamily dwellings that are more stringent than a policy adopted under the bill.

The bill's requirements only apply to multifamily dwellings with four or more dwelling units that are (1) used for the benefit of a residential owner in a common ownership community or (2) rented by the residential owner of the dwelling unit to a tenant under a lease.

Current Law:

Clean Indoor Air Act

Pursuant to the Clean Indoor Air Act, except as otherwise specified, a person may not smoke in (1) an indoor area open to the public; (2) an indoor place in which meetings are open to the public; (3) a government-owned or -operated means of mass transportation; (4) an indoor place of employment; (5) a private home used by a licensed/registered child care provider; or (6) a private vehicle used for public transportation of children or as part of health care or child care transportation. The prohibition includes bars, clubs, restaurants, pubs, taverns, retail establishments, theaters, concert halls, athletic facilities, financial service institutions, government buildings, educational institutions, museums, and libraries.

However, the prohibition *does not* apply to (1) private homes or residences, except as specified above; (2) private vehicles, except as specified above; (3) a hotel or motel room as long as the total percent of rooms so used does not exceed 25%; (4) specified tobacco facilities and retail businesses; or (5) a laboratory for the purpose of conducting scientific research into the health effects of tobacco smoke.

Electronic Smoking Device

Section 16.7-101 of the Business Regulation Article defines an “electronic smoking device” (ESD) as a device that can be used to deliver aerosolized or vaporized nicotine to an individual inhaling from the device. ESD includes (1) an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, and vaping liquid and (2) any component, part, or accessory of such a device regardless of whether or not it is sold separately, including any substance intended to be aerosolized or vaporized during use of the device. However, ESD excludes (1) a drug, device, or combination product authorized for sale by the U.S. Food and Drug Administration under specified federal law or (2) a battery or battery charger when sold separately.

Cannabis

Section 5-601 of the Criminal Law Article prohibits the smoking of cannabis in a public place. A violation is a civil offense that may be penalized by a maximum fine of \$50 for a first offense; subsequent violations are punishable by a maximum fine of \$150.

Common Ownership Communities

For more information on condominiums and cooperatives (commonly known as common ownership communities, along with homeowners associations), see the **Appendix – Common Ownership Communities**.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 817 and HB 315 of 2023 and HB 1295 of 2022.

Designated Cross File: HB 199 (Delegate Wu, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Association of County Health Officers; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Legislative Services

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km/jkb

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Appendix – Common Ownership Communities

When a person purchases a single-family home, 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 a COC. Because registration of the various COCs is not required statewide, the exact number of COCs in Maryland is unknown. However, the Foundation for Community Association Research estimated that there were 7,100 community associations with an estimated 1 million residents in these associations in the State in 2023.

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; instead, 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 outstanding fees are generally pursued by way of a landlord-tenant action.

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 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.

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.