

To: Environment and Transportation Committee

From: Brooke Torton, Managing Director of the Legal Resource Center for Public Health Policy at University of Maryland Carey School of Law, 500 W. Baltimore Street, Baltimore, Maryland 21201

Date: February 18, 2025

Re: Testimony in support of HB804 with Amendments

My name is Brooke Torton and I am the Managing Director of the Legal Resource Center for Public Health Policy at the University of Maryland Carey School of Law and this testimony is submitted in support of HB804 with amendments.

The bill seeks to address concerns about exposure to secondhand smoke in common ownership multiunit housing properties by requiring governing bodies in these communities to implement smoking policies of their choosing in common areas and provide notice to owners and tenants. I propose the following amendments:

1. Expand the policy to include the entire property:

The bill requires governing bodies of common ownership communities to implement a smoking policy **only in common areas**. (Page 3, lines 1-3) The [Maryland Clean Indoor Air Act](#) already applies to **common indoor areas** because smoking is prohibited in indoor places of employment and condominiums are considered indoor places of employment (i.e. community managers, sales reps, maintenance staff, etc.). Under current law, if a person observes someone smoking in an indoor common area, they can file a report with the Maryland Department of Health (MDH) or their local health department and the matter may be investigated and/or the employer may be cited. As a result, at most the smoking policy called for in this bill will apply only to outdoor common areas, not a significant issue for common ownership properties. If the goal of this bill is to provide notice to tenants and owners, implementing and announcing a policy that already exists, adds little value.

2. Remove the prohibition on policy impacting current tenants and owners:

The bill prohibits a governing body's smoking policy from limiting the "rights" of a person living there as owner or renter or a guest of that person who smokes inside of an individual unit. (Page 3, lines 16-19) This provision may be construed as eliminating existing power of governing bodies to prohibit smoking within individual units or on individual patios or balconies. This significantly curtails the existing power of governing bodies under the

Maryland Condominium Act to implement rules that protect the health and wellness of residents and that may provide economic value to the property.

At the Legal Resource Center, we field dozens of questions and requests for technical legal assistance each year from residents and owners in common ownership communities experiencing smoke drift in their homes. These complaints do not relate to smoking in common areas; rather, these complaints relate to smoking within an individual unit or on an individual's private patio or balcony. Residents are harmed by smoke that drifts into their private space from others' private spaces. Because this bill does not relate to smoking in individuals' private indoor and outdoor spaces, it does not address the concern of Maryland residents. This provision only considers the perspective of the person who smokes, and not the person who is experiencing the smoke drift.

Additionally, the term "rights" in this context is misleading. There is no fundamental right to smoke, and smokers are not a protected class of people under the Equal Protection Clause. Smoking is also not owed special protection under the Due Process Clause. Indeed, governing boards in Maryland have acted to prohibit smoking within individual units or on individuals' outdoor patios and balconies because there is no right to engage in that activity. However, a property owner who is experiencing smoke drift in their home does have the legal right to use and enjoy their property. Language in proposed in section (e) speaks to a right that does not exist and that may be construed as creating one.

The broad definition of smoking in this bill (*page 2, lines 10-12*) includes smoke from cannabis, not just tobacco. This means that a governing body may not adopt a policy to prohibit smoking cannabis in individual units. I do not believe this was intended. Moreover, many of the complaints we received about smoke drift in multiunit housing relates to cannabis smoke.

3. Broaden the language to make clear that current tenants and owners retain rights to pursue legal action.

The language in the bill notes that it is not intended to preempt legal action against a tenant or owner for violating the smoking policy. (*Page 3, lines 28-30*) This language is not sufficient to protect lawsuits against tenants or owners for other civil causes of action based on smoke drift, such as nuisance. Although litigation is not the preferred method for resolution of a smoke drift problem in common ownership properties, people should still be afforded the opportunity to sue under private nuisance and other similar causes of action if other measures are unsuccessful.

For the reasons stated herein, we urge this body to adopt the proposed amendments and issue a favorable report.

HB804

BY:

AMENDMENTS TO HOUSE BILL 804

(To be offered in the Environment and Transportation Committee)

AMENDMENT NO. 1

On page 3, line 1, strike “**COMMON**”; in line 2, after “**AREAS**” strike “**IN THE MULTIFAMILY DWELLING**” and substitute “**SUBJECT TO THE CONTROL OF THE GOVERNING BODY**”

AMENDMENT NO. 2

On page 3, lines 16-19, strike in their entirety, lines 16-19, inclusive.

AMENDMENT NO. 3

On page 3, line 23, strike “**FOR A VIOLATION OF A SMOKING POLICY ADOPTED UNDER THIS SECTION**”; On page 3, lines 28-30, strike “**FOR A VIOLATION OF A SMOKING POLICY ADOPTED UNDER THIS SECTION**”