

Application for Waiver

Maryland Clean Indoor Air Act



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1. Authorities

The Clean Indoor Air Act of 2007 (“CIAA”)(Md. Code Ann., Health-General §§24-501—24-511), authorizes the Health Officer of a County to waive provisions of the CIAA under certain conditions. Section 24-509 of the CIAA as set forth below allows an applicant to request a waiver for reasons of undue financial hardship and/or if conditions exist which make compliance with the law unreasonable.

§24-509.

(a) Within 90 days from the receipt of an application for a waiver and the date that all conditions for the application for a waiver required in the regulations adopted by the Secretary have been satisfied, the health officer of a county may grant a waiver from the application of a specific provision of this [CIAA] subtitle, if prior to the granting of the waiver, the applicant for a waiver establishes in writing:

- (1) Compliance with a specific provision of this [CIAA] subtitle would cause undue financial hardship; or**
- (2) The existence of other factors that would render compliance unreasonable.**

(b) The Secretary [of Health and Mental Hygiene] may impose conditions or restrictions on a waiver granted under subsection (a) of this section to:

- (1) Minimize the adverse effects of the waiver on individuals involuntarily exposed to secondhand smoke; and**
- (2) Ensure that the waiver is consistent with the purposes of this [CIAA] subtitle.**

(c) The Secretary [of Health and Mental Hygiene] shall adopt regulations necessary to implement this section.

(d) (1) A waiver may not be granted under subsection (a) of this section on or after January 31, 2011.

(2) A waiver granted under subsection (a) of this section terminates on January 31, 2011.

Pursuant to Md. Code Ann., Health-General §24-509(c), the Department of Health and Mental Hygiene (“DHMH”) has promulgated a regulation concerning waivers. This regulation is codified at COMAR 10.19.04.12:

.12 Waivers.

A. A person may apply to the health officer for a waiver from the application of a specific provision of this chapter.

B. The Department shall provide a waiver application on the Department's website.

C. An applicant for a waiver shall establish that:

(1) Compliance with a specific provision of this regulation would cause undue financial hardship, as defined in §§D and E of this regulation; or

(2) The existence of other factors would render compliance with this chapter unreasonable.

D. Except as provided in §E of this regulation, an undue financial hardship may be found to exist, based on:

(1) An establishment's demonstration that:

(a) A reduction occurred of at least 15 percent in gross sales from the sale of food and beverages for a period of 2 consecutive months during which the establishment has operated smoke-free compared to the combined average of gross sales from the sale of food and beverages during the same 2 consecutive month period in the 2 years immediately before smoke-free operation; and

(b) The establishment's purported reduction in gross sales from the sale of food and beverages has occurred under similar operational conditions, other than the presence of a smoke-free environment, and is not due to other factors; or

(2) An establishment's demonstration that the owner is unable to recover the costs associated with a capital improvement project that was initiated before May 17, 2007, that was designed to provide a partial smoke-free environment at the facility.

E. If an establishment has not operated for a period of 2 years before February 1, 2008, the establishment shall demonstrate the requirement for undue financial hardship as set forth in §D(1) of this regulation by comparing a period of 3 consecutive months during which the establishment has operated smoke-free to the same 3 month period of the previous year or if the establishment was not operating at that time, to the 3 month period immediately preceding February 1, 2008.

F. The applicant for a waiver shall demonstrate how, if a waiver would be granted, the applicant will achieve full compliance with the provisions of the Act and this chapter by January 31, 2011.

G. Within 90 days from the receipt of a completed waiver application, the health officer may grant or deny a waiver to one or more specific provisions of this chapter, based on the criteria set forth in this regulation.

H. In granting a waiver, the health officer shall specify:

(1) The actions the applicant shall take that will result in the applicant's achievement of full compliance with the provisions of this chapter by January 31, 2011; and

(2) Any additional requirements to minimize the adverse effects of the waiver on individuals involuntarily exposed to secondhand smoke.

I. A person may not apply for a waiver after January 31, 2011.

J. A health officer may not grant a waiver after January 31, 2011.

K. A person may appeal a health officer's waiver denial in the same manner and subject to the same provisions provided for a violation and a penalty in Regulation .11 of this chapter.

2. Instructions for Completing and Submitting the Application

A. Determine if you are eligible to apply for a waiver

1) To be eligible for a waiver, your establishment must:

(a) Be legally in business (meaning the establishment currently has all required licenses, permits and/or registrations required by the State of Maryland and the County in which the business operates; AND

(b) Be eligible for a waiver under under COMAR 10.19.04.12, as printed above.

B. Complete the Application

- ✓ Type or print clearly in BLUE or BLACK INK all information that you provide as part of the application package.
- ✓ The name of the applicant or entity must be the same on all supporting documentation submitted.
- ✓ The application must be completed, signed, and notarized where indicated by all operators, owners, partners, corporation officers, and principals.
- ✓ If the applicant is not applying in person, the person applying on the applicant's behalf must present a valid power of attorney.
- ✓ The applicant or person holding power of attorney must present one acceptable form of his/her photo identification as detailed below (in the absence of the applicant's photo identification). A copy of **one** of the following is required:
 - Driver's license with photo or DMV Non-Driver ID card
 - Alien Registration Card or Naturalization Certificate with photo ID
 - U.S. or foreign passport with photo ID
 - U.S. government agency-issued photo ID
- ✓ Except where noted, provide original documentation; no copies or faxes accepted.

C. Submit the Application

Submit the signed original and two (2) copies of the completed application and required supporting documentation to your local health department.

Your application for waiver will be reviewed to ensure that all forms have been correctly completed and that all required documentation is present and accurate. If you have not submitted all required documentation, you will be notified and your application will not be processed until it is complete. Once the application is judged to be complete, the Health Officer will make a decision within 90 days and respond in writing to the applicant. The Maryland Department of Health and Mental Hygiene and the local health officer reserve [or his designee] the right to request additional information necessary to make a final decision.

By submitting this application, you authorize access to any and all financial or business records filed with the State of Maryland or any political subdivision on behalf of the establishment for which you seek a waiver.

D. Termination of Waivers

All waivers granted under this Act expire on January 31, 2011. No waiver applications will be accepted or granted after January 31, 2011.

E. Public Notice and Change in Conditions

The applicant is advised that the business must comply with all applicable provisions of the CIAA until notification that a waiver application has been accepted. DHMH recommends that the owner of an establishment seeking a waiver post a sign indicating that a waiver has been requested (see example in this packet, attachment 3), and if the waiver is granted, a sign indicating that a waiver has been granted (see example in this packet, attachment 4). In addition, DHMH requests waiver recipients notify the local health department if there are changes in the business that would affect the conditions of the waiver. A waiver may be suspended if the owner fails to comply with the conditions or restrictions placed on a waiver approval.

3. *Attachment 1: Checklist of Required Documentation*

Item No.	Documentation Required	Attached (Check if Yes)	If Not Attached, Explanation
	Part 1. Applicant Information (All applicants must complete)		
	Part 2, Section A. Reason for Waiver Application (All applicants must complete)		
	Part 2, Section B. Description of Waiver Requested (All applicants must complete)		
	Part 2, Section C or D or E (at least one section)		
	Part 3. Acknowledgment and Certification (All applicants must complete)		
All Applicants			
15. 18.	Copy of certificate of incorporation and filing receipt OR organization charter		
29.	Additional information for businesses in Part 1: documentation of incorporation, identification of officers, Federal EIN, liquor license		
44.	Drawing and floor plan showing how establishment will meet full requirements of Clean Indoor Air Act when waiver expires (Attachment A)		
Applicants for Economic Hardship Due to a Decrease of At Least 15% in Gross Sales of Food and Beverage			
C1.	Photocopies of monthly sales and purchase journals from January 2006 through the end of the month prior to the date of this application. (Attachment B)		
C3.	Notarized photocopies of your Federal income tax returns for the two years prior to this application (Attachment C)		
C4.	Notarized photocopies of your State sales tax returns for the two years prior to this application (Attachment D)		
C5.	Letters from each vendor from whom purchases were made during the two months of smoke-free operation that you are submitting, certifying that these purchases were actually made (Attachment E)		
Applicants Claiming Undue Financial Hardship Because Of A Failure To Recover Capital Costs Associated With A Project Started Before May 17, 2007, That Was Designed To Provide A Partial Smoke-Free Environment At The Facility			
D4.	Photocopy of the project contract, and invoices and receipts associated with the project (Attachment F)		
D5.	Photocopies of tax returns showing how depreciation was taken on project (Attachment G)		

4. Attachment 2: Waiver Application



Clean Indoor Air Act Waiver Application

(TYPE OR PRINT LEGIBLY)

Part 1. Applicant Information (All applicants must complete.)

1. Federal EIN [] 2. State Liquor License No.: []

3. Name of Corporation, LLC, Partnership, LLP, Individual Owner or Organization:

[]

4. Trade Name/DBA:

5. Street Address:

6. City: 7. State: 8. Zip Code:

9. Telephone: 10. Fax:

11. Email: 12. Web URL:

13. Local Store Name/Address (if different than corporate name/address above):

[]

14. Type of Ownership (Check one):

[] Corporation [] LLC [] Partnership [] LLP [] Individual

15. Name of Incorporated Entity: Attach a copy of the certificate of incorporation and the receipt for filing with the Maryland State Secretary of State

16. Date Incorporated:

17. State(s) where incorporated:

18. Unincorporated Organizations. Date organization established in Maryland. Provide copies of documents, e.g., charters, indicating status, and date organization founded in Maryland. Indicate whether organization is a chapter or post of a national membership organization.

19. Date Founded:

20. Document(s) Submitted:

List full names and titles of all officers, directors, senior or governing members, or members in charge. For each name provide the information below. Use additional sheets of paper, if necessary.

21. Last Name: _____ **22. First Name:** _____

23. Title: _____

24. Street Address: _____

25. City: _____ **26. State:** _____ **27. Zip Code:** _____

28. Telephone: _____

29. Information to be provided by Type of Business

COMMERCIAL CORPORATIONS OR LIMITED LIABILITY COMPANIES (LLC):

- 1) Proof of federal EIN.
- 2) Proof of Incorporation. Either (a) Corporate resolution or (b) minutes of most recent annual meeting, listing the current principal officers of the corporation and dated no earlier than one year preceding the date of application.
- 3) Photo identification; **one** of the following is required for one of the corporation's officers, directors, or members (LLC); or the representative submitting the application:
 - (a) Driver's license with photo or DMV Non-Driver ID Card
 - (b) Alien Registration or Naturalization Certificate with photo ID
 - (c) U.S. or foreign passport with photo ID
 - (d) U.S. government agency issued photo ID
- 4) A copy of the current Maryland Liquor License, if alcoholic beverages are sold. The license must match the site address of the establishment and be in the name of the Corporation or company.

PARTNERSHIPS AND LIMITED LIABILITY PARTNERSHIPS (LLP):

- 1) Business Certificate of Partnership.
- 2) Proof of federal EIN.
- 3) Photo identification for a managing partner or the representative submitting the application.

A copy of **one** of the following is required:

- (a) Driver's license with photo or DMV Non-Driver ID Card
- (b) Alien Registration or Naturalization Certificate with photo ID

- (c) U.S. or foreign passport with photo ID
- (d) U.S. government agency issued photo ID
- 5) A copy of the current Maryland Liquor License (if alcoholic beverages are sold). The license must match the site address of the establishment and be in the name of either the company or a principal partner.
- 6) Current partnership agreement.

INDIVIDUAL OWNERS:

- 1) Business Certificate of Ownership
- 2) Photo identification of the individual applicant or any representative with power of attorney. A copy of **one** of the following is required:
 - (a) Driver's license with photo or DMV Non-Driver ID card
 - (b) Alien Registration Card or Naturalization Certificate with photo ID
 - (c) U.S. or foreign passport with photo ID
 - (d) U.S. government agency-issued photo ID
- 3) Proof of federal EIN.
- 4) A copy of the current Maryland Liquor License, if alcoholic beverages are sold. The license must match the site address of the establishment and be in the name of the individual owner.

NOT-FOR-PROFIT ORGANIZATIONS:

- 1) Documentation required for corporations, LLC, partnership, LLP or individual owner, as applicable.
- 2) Photo identification of the individual applicant or any representative with power of attorney. A copy of **one** of the following is required:
 - (a) Driver's license with photo or DMV Non-Driver ID card
 - (b) Alien Registration Card or Naturalization Certificate with photo ID
 - (c) U.S. or foreign passport with photo ID
 - (d) U.S. government agency-issued photo ID
- 3) Proof of federal EIN.
- 4) Proof of federal tax exemption (copy of IRS letter granting exemption containing section pursuant to which it was granted)
- 5) A copy of the current Maryland Liquor License, if alcoholic beverages are sold. The license must match the address of the establishment site and be in the name of the individual owner.
- 6) A copy of the organization's certificate of incorporation.
- 7) A copy of the organization's bylaws and governing rules and/or policies. If no bylaws, then any other document describing the organization's main purpose and governing structure.

Part 2. Waiver Data

**Section A. Reason for Waiver Application
(All applicants must complete.)**

Name of Corporation, LLC, Partnership, LLP or Individual Owner(s):

Building Number: Street:

City: State: Zip Code:

30. Hours of Operation One Year Prior to Date of Application:

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open							
Close							

31. Current Hours of Operation:

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open							
Close							

	Yes	No	Eligibility:
32.			Has your business been operating since January 1, 2006?
33.			Does your business require a permit or license from the State and/or local Health Department or other local governmental entity (list on additional pages)?
34.			If your business requires a permit or license, does it have a current valid permit or license?

Answer all questions.

	Yes	No	Reason for Waiver Request:
35.			Are you requesting a waiver for undue financial hardship because of a decrease of at least 15% in gross sales of food and beverage while operating smoke-free? (If yes, complete section B and C)
36.			Are you requesting a waiver for undue financial hardship because you can not recover capital costs associated with a project started before May 17, 2007, that was designed to provide a partial smoke-free environment at the facility? (If yes, complete sections B and D)
37.			Are you requesting a waiver because conditions exist other than financial that make compliance unreasonable? (If yes, complete sections B and E)
38.			Have you explored any alternatives to comply with the CIAA? (If "Yes", describe on a separate sheet and attach with your application)

**Section B. Description of Waiver Requested
and Actions to be Taken to Minimize or Mitigate the
Effects of Smoke (All applicants must complete.)**

39. Indicate the specific section(s) of the Clean Indoor Air Act and regulations for which a waiver is being requested:

40. Describe the actions, conditions, and/or restrictions that will be used by the facility to minimize the harmful effects of the waiver on the public and employees who may be exposed to second-hand smoke involuntarily, and provide assurances that the waiver is consistent with the general goals of the Clean Indoor Air Act. Use a separate sheet labeled “Question 40.”

41. Explain what actions, conditions or restrictions achieve the following requirements and conditions: (1) Smoking areas are located away from the general traffic patterns of travel to and from the establishment, food preparation areas, and the restrooms; (2) Smoking/non-smoking areas are physically separated and/or utilize special mechanical ventilation systems and are located in such a manner to avoid second-hand smoke exposure to non-smokers; (3) The area where smoking is permitted represents no more than 40% of the total indoor public floor space of the establishment; (4) Smoking/non-smoking area signs are conspicuously posted; and (5) Specific actions that will be taken to eliminate second-hand smoke in areas where smoking is prohibited. Use a separate sheet labeled “Question 41.”

42. Describe how current and future employees will be notified in writing that the organization is applying for a waiver and of the possibility that they may be exposed to second-hand smoke. Use a separate sheet labeled “Question 42.”

43. Indicate how the business expects to achieve full compliance with the CIAA when the waiver expires if a waiver is granted. Use a separate sheet labeled “Question 43.”

44. Attach a drawing and floor plan showing how the establishment intends to meet the requirements of the waiver if granted, and how it will meet the full requirements of the CIAA when the waiver expires. Attach as ATTACHMENT A.

45. Describe how current and future employees will be provided with a smoking policy that includes an “employee clause” requiring that any employee who is subjected to working in an area(s) where smoking may be allowed, due to the granting of this waiver, will be excluded from working in said area(s) without reprisal or other negative consequence in relation to his/her employment, upon the employee’s written request. Use a separate sheet labeled “Question 45.”

**Section C. Applicants Claiming Undue Financial Hardship Due To A
Decrease Of At Least 15% In Gross Sales Of Food And Beverage
(For all applicants seeking a waiver related to decreased sales.)**

Q. How do I claim undue financial hardship?

A. You must submit the following financial documentation indicating an undue financial hardship:

- (1) Sales and purchase journals for a period of no fewer than two (2) consecutive months during which the facility has operated smoke-free as compared to the combined average of such receipts during the same two (2) month period in the two (2) years immediately prior to smoke-free operation;
- (2) Exact copies of the signed Federal tax returns and State sales tax returns that were submitted by the operator to the Internal Revenue Service and to the Comptroller of Maryland to support the operator's contention that the facility has experienced an uncharacteristic and dramatic reduction in gross sales from the sale of food and beverages as described in item (1) above;
- (3) A certification from all vendors from which purchases of food and alcohol are made detailing the amount of purchases made during the smoke-free periods;
- (4) A statement that purchase invoices from food and alcohol vendors are complete and available for review for smoke-free and non-smoke-free periods.
- (5) If your establishment has not operated for a period of 2 years before February 1, 2008, you can demonstrate the requirement for undue financial hardship by comparing a period of 3 consecutive months during which the establishment has operated smoke-free to the same 3 month period of the previous year, or if the establishment was not operating at that time, to the 3 month period immediately preceding February 1, 2008.

C1. Attach exact copies of sales and purchase journals from January 2006 through the end of the month prior to the date of this application. If the establishment has not been in existence since January 2006, submit exact copies of monthly Maryland sales tax returns for the total period of operation. Identify attached sheets with name of establishment and label as ATTACHMENT B. *[Note: Under COMAR 10.19.04.12(D)(1)(a), a finding of financial hardship is based on a decrease of at least 15% in gross sales over a two month period compared with the same two month period in the previous two years. The request for additional months of sales and purchase journals is to help ensure that the decrease noted was due to the implementation of the Clean Indoor Air Act, and not due to other factors.]*

C2. Complete the following chart using the information provided in your monthly State sales tax statements. (Summary of item C1, above)

TOTAL SALES	2006	2007	2008
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
TOTAL			

C3. Attach copies of your Federal income tax returns for the two years prior to this application as ATTACHMENT C. If the business has not been in existence for this period, indicate this in your application.

C4. Attach copies of your State sales tax returns for the two years prior to this application as ATTACHMENT D. If the business has not been in existence for this period, indicate this in your application.

C5. Attach letters from each vendor from whom purchases were made during the two months of smoke-free operation that you are submitting, certifying that these purchases were actually made. Include these letters as ATTACHMENT E.

	Yes	No	Other Contributing Factors:
			In the previous two years has there been:
C6.			A significant change in operation:
C7.			Menu (including prices)
C8.			Theme
C9.			Intended audience
C10.			Personnel
C11.			Management
C12.			Number of hours per day the business operated
C13.			Number of days the business operated
C14.			Number of hours and number of high business days the business operated, i.e. holidays.
C15.			Construction on the premises costing more than \$5,000?
C16.			Significant construction projects near the premises?
C17.			A major change in facility maintenance?
C18.			A change in neighboring competing businesses within a half-mile radius of the business (for unincorporated areas, use a one-mile radius)?
C19.			A change in neighboring supporting businesses (employers) within a 3-block radius to the business (for unincorporated areas, use a half-mile radius)?

Section D. Applicants Claiming Undue Financial Hardship Because Of A Failure To Recover Capital Costs Associated With A Project Started Before May 17, 2007, That Was Designed To Provide A Partial Smoke-Free Environment At The Facility

D1. Describe the project: _____

D2. When was the project initiated? _____

D3. When was the project completed? _____

D4. Provide a copy of the project contract, and invoices and receipts associated with the project as ATTACHMENT F.

D5. How did you take depreciation on the project for tax purposes. Provide appropriate tax returns showing where this was done as ATTACHMENT G.

D6. When did you stop taking depreciation, or are you still taking depreciation?

Section E. Applications For A Waiver Due To Conditions Other Than Financial That Make Compliance Unreasonable

E1. Describe the factors that would make compliance with the Clean Indoor Air Act unreasonable. Attach additional sheets labeled "Question E1" if necessary.

E2. If you are claiming that security is an issue, provide specific documentation that compliance with the CIAA will jeopardize the safety and/or security of facility staff, patrons or others. Describe all efforts made to operate the facility safely or securely as a smoke free environment. Attach additional sheets labeled "Question E2" if necessary.

E3. If you are claiming that security is an issue, describe how the specific provision of the CIAA for which a waiver is requested caused or contributed to, or will cause or contribute to, safety or security concerns. Attach additional sheets labeled "Question E3" if necessary.

E4. If you are claiming that there are factors other than safety, security, or financial hardship that would make compliance with the CIAA unreasonable, provide specific documentation that these factors would make compliance with a specific provision of the CIAA unreasonable. Attach additional sheets labeled "Question E4" if necessary.

E5. Describe all the efforts that have been or will be made to operate the establishment as a smoke-free environment. Attach additional sheets labeled "Question E5" if necessary.

E6. Describe all the steps that will be taken to prevent the employees' and the public's exposure to secondhand smoke if a waiver is granted. Attach additional sheets labeled "Question E6" if necessary.

Part 3. Acknowledgment and Certification (All applicants must complete.)

PLEASE NOTE:

All information submitted is subject to requests for documentation and/or verification, and the Department may request further information and/or documentation based on answers and submissions requested herein.

By submitting this application, you authorize access to any and all financial or business records filed with the State of Maryland or any political subdivision on behalf of the establishment for which you seek a waiver.

If renovation of your facility is proposed, the waiver, if approved, will not be granted until the renovation is completed and approved by the Health Department. On-site visits will be necessary for verification of details listed in your plan. Also, the Health Department strongly recommends that you contact your local building inspector to ensure any renovation you have planned is consistent with all applicable building codes.

I, _____, state that I am the _____
(Printed Name) (Title)

of _____, that I have completed the above application for
(Name of Applicant Entity)

waiver from the requirements of the Maryland Clean Indoor Air Act and regulations promulgated thereto for such entity and that the statements made therein and the documents submitted are truthful and accurate to the best of my knowledge.

I certify that purchase invoices from food and alcohol vendors are complete and available for review for smoke-free and non-smoke-free periods.

I authorize access to any and all financial or business information and records filed with the State of Maryland or any political subdivision concerning the applicant entity.

Dated: _____ Signature: _____

Attachment 3. Sample Public Notice for Waiver Application

This facility is applying for a waiver from the Maryland Clean Indoor Air Act.

For information or to comment contact the ____ Health Department at XXX-XXX-XXXX.

Attachment 4. Sample Public Notice for Waiver Recipient

This facility has received a waiver from certain requirements of the Maryland Clean Indoor Air Act.

**For information contact the _____
Health Department at XXX-XXX-
XXXX.**