

ECONOMIC HARDSHIP WAIVER GUIDANCE

The Department of Health Functions Clarification Amendment Act of 2006, effective April 4, 2006, D.C. Law 16-90, mandates nearly every workplace and public place in the District of Columbia to be smoke-free. The purpose of the Act is to preserve and improve the health, comfort, and safety of the people in the District of Columbia by limiting exposure to secondhand smoke.

The law does authorize economic hardship waiver from the requirements of the law if a public place or place of employment can demonstrate that compliance with the law has caused or will cause undue financial hardship. 20 DCMR § 2106 authorizes the Director of the Department of Health to issue waivers after May 1, 2007. The Director may also impose additional conditions or restrictions on the grant of a waiver to minimize the adverse effects of smoking consistent with the law.

ELIGIBILITY

- The owner or operator of any public place or place of employment that is subject to the requirements of the law may apply for an economic hardship waiver under 20 DCMR § 2106.1
- Pursuant to 20 DCMR 2106.1 an applicant must demonstrate that his or her public place or place of employment experienced a precipitous, temporally related, and sustained economic hardship that is supported by the following documentation:
 1. The place of employment or public place was in existence on or before January 1, 2007;
 2. The place of employment or public place has not admitted to or been found liable for two (2) more notices of violation for violations of the Acts or this chapter during the previous one (1) year;
 3. By showing a reduction in sales tax for food and beverages of fifteen percent (15%) or more for three (3) consecutive months after January 1, 2007, as compared to the same three (3) month period during the previous two (2) years before January 1, 2007; and
 4. The place of employment or public place demonstrates one or more of the following:
 - (a) Sales revenues that fail to reach reasonably expected or anticipated levels for three (3) consecutive months after January 1, 2007 as compared to the same three (3) month period during the previous two (2) years before January 1, 2007;
 - (b) Significantly reduced staffing levels for three (3) consecutive months after January 1, 2007, as compared to the same three (3) month period during the previous two (2) years before January 1, 2007;

- (c) Significantly reduced food and materials purchases for three (3) consecutive months after January 1, 2007, as compared to the same three (3) month period during the previous two (2) years before January 1, 2007; **or**
- (d) Significantly reduced alcohol sales for three (3) consecutive months after January 1, 2007, as compared to the same three (3) month period during the previous two (2) years before January 1, 2007;

If a place of employment or public place has not operated for a period of two (2) years before January 1, 2007, it shall demonstrate the requirement for item three (3) by comparing a period of three (3) consecutive months during which the place of employment or public place has operated smoke-free to the three (3) month period immediately preceding January 1, 2007.

APPLICATION GUIDELINES

- The merits of each waiver application will be considered individually.
- The claimed economic hardship must be clearly demonstrated to have been caused solely by the requirements of the law. In order to demonstrate that the economic hardship that an establishment experienced is the direct result of the smoking ban and not because of peripheral factors, the applicant must document that her or his establishment:
 1. Operated during the same number of hours;
 2. Was open the same number of days;
 3. Was open on the same high business days;
 4. Sold food and beverages from a menu similar in selection and cost;
 5. Maintained the same management and staffing strategy;
 6. Did not fail to respond to new competitors who entered the market; and
 7. Maintained a similar or enhanced marketing strategy.
- Applicants must provide a description of all efforts made to operate the facility profitably as a smoke-free environment.
- Applicants must submit exact copies of monthly District of Columbia sales tax statements that were submitted to the District and Federal Form 941 for the period of January 2005 through the end of the month prior to the date of this application. If the establishment has not been in existence since January 2005, the establishment must submit exact copies of monthly District of Columbia sales tax statements FR - 800 and Federal Form 941 since the commencement of operations.

- It is imperative that applicants submit a plan consistent with all requirements and conditions included in Section D and E of this waiver application, and that clearly demonstrates how employees, patrons, and employees of other businesses (e.g., vendors, contractors) will continue to be protected from exposure to second-hand smoke if a waiver is granted.
- Applicants must show in Section C and D of this waiver application how the applicant will modify its business operations or implement new marketing strategies to comply with the law after the waiver expires. (The maximum waiver period is 3 years.)
- Name of establishment and application section letter and question number must be included on all supporting documentation.

APPLICATION REVIEW PROCESS

- The Director reviews applications in the order that they were received.
- In not more than ten (10) business days, the Director shall return an incomplete application and inform the applicant of the information necessary to complete the application.
- The Director shall issue a final decision regarding the application, in writing, not later than sixty (60) days after receipt of a complete application. The written decision shall state the reasons for granting or denying the application.

In order for the Director to consider your waiver application, you must accurately and reliably demonstrate and provide the information below. Intentionally submitting false or misleading information may result in civil or criminal penalties.

Enclosed you will find the Department of Health Functions Clarification Amendment Act of 2006 economic hardship waiver application. The applicant is responsible for ensuring that the application is complete. Incomplete applications will be returned without further review. An applicant whose application is deemed incomplete may resubmit a completed application; however, the application will be reviewed based on the date the Director receives the completed package rather than the date of the original submission.

SUBMITTING THE APPLICATION:

Submit the completed application and supporting documents to the following:

Economic Hardship Waiver Application
Department of Health – Tobacco Control Program
825 N. Capitol Street, NE, 3rd Floor
Washington, DC 20002

For additional information, please contact the Department of Health (202) 671-5000.

ECONOMIC HARDSHIP WAIVER APPLICATION

Instructions

- ✓ All information provided as part of the application package must be either typed or printed clearly in black or blue ink.
- ✓ The name of the establishment must appear and be the same on all supporting documentation submitted.
- ✓ The waiver application must be signed and notarized where indicated by all operators, owners, partners, corporation officers, and principals.

NOTE: A waiver may be granted for a period not to exceed three (3) years. Waivers will not be granted to establishments that began operation on or after January 1, 2007. All waivers are nontransferable: waivers are for a specific owner or operator at a specific and individual location. Waivers will not be granted to establishments found in violation of the Act while this application is pending. Any waiver granted may be subject to conditions and restrictions. Violation of a condition or restriction will result in automatic termination of the waiver. **Information provided as part of this application package may be disclosed under the District of Columbia Freedom of Information Law.**

By completing this application, you authorize access to any and all financial records filed with the Government of the District of Columbia on behalf of the establishment for which you seek a waiver.

SECTION A - Complete Items 1 – 7 below:

1. **Name of Contact Person:** Contact person's phone number:

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2. **Name of Operator:**

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Choose one: Corporation LLC Partnership Individual or Other _____

3. **Name of establishment:**

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4. **Street Address**

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5. **City:** **State:** **Zip Code** **Telephone:**

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6. Current hours of operation:

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open							
Closed							

7. Hours of operation one year prior to the date of this application:

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Open							
Closed							

Section B - Complete Items 1 - 3 for all owners, partners, corporation officers, principals, and the like. Attach additional sheets if necessary. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION B.

1. **Name of Contact Person: (Last Name, First Name) Title:**

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2. **Street Address**

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3. **City: State: Zip Code Telephone:**

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1. **Name of Contact Person: (Last Name, First Name) Title:**

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2. **Street Address**

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3. **City: State: Zip Code Telephone:**

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1. **Name of Contact Person: (Last Name, First Name) Title:**

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2. **Street Address**

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3. **City: State: Zip Code Telephone:**

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1. **Name of Contact Person: (Last Name, First Name) Title:**

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2. **Street Address**

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3. **City: State: Zip Code Telephone:**

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SECTION C - Financial Factors

1. (A) Attach exact copies of monthly sales receipt information submitted to the Office of Tax and Revenue from January 2005 through the end of the month prior to the date of this application. If the establishment has not been in existence since January 2005, submit exact copies of monthly District of Columbia sales tax statements for the total period of operation. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION C (1).

(B) Complete the following chart using the information provided in your monthly State sales tax statements. (Summary of 1 (A) above)

TOTAL SALES	2005	2006	2007	
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				
TOTAL				

2. (A) If applicable, provide complete documentation regarding all food and materials purchases. Documentation should include all invoices and proof of payment for purchases. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION C (2).

(B) Complete the following chart using the total monthly food and materials purchase information provided. (Summary of 2 (A) above)

FOOD & MATERIAL PURCHASES	2005	2006	2007	
January				
February				
March				
April				
May				
June				
July				

August				
September				
October				
November				
December				
TOTAL				

3. (A) If applicable, provide complete documentation regarding all beer, wine, liquor, and other alcohol purchases. Documentation should include all invoices and proof of payment for purchases. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION C (3).

(B) Complete the following chart using the total monthly alcohol purchase information provided. (Summary of 3 (A) above)

ALCOHOL PURCHASES	2005	2006	2007	
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				
TOTAL				

4. (A) Provide monthly gross salaries as reported on Federal Form 941 for the period of January 2005 to the date of this application. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION C (4).

(B) Complete the following chart using the information provided in your monthly gross salary statements. (Summary of 4 (A) above)

GROSS SALARIES	2005	2006	2007	
January				
February				
March				
April				

May				
June				
July				
August				
September				
October				
November				
December				
TOTAL				

5. Since January 1, 2005 through the date of this application: (Check Yes or No)

- Has your establishment changed hours of operation? Yes No
- Have you had any changes in operation including, but not limited to your chef, manager, wait or other staff? Yes No
- Have you changed your prices? Yes No
- Have you changed your menu? Yes No
- Have you changed your target audience? Yes No
- Have you changed your marketing strategy? Yes No
- Have you remodeled or otherwise changed your facility? Yes No
- Has there been an unfavorable public review of your facility? Yes No
- Have adverse weather conditions ever affected your business? Yes No
- Has there been construction in the vicinity of your establishment? Yes No
- Has any like business opened or changed operations in the general vicinity? Yes No

If you answered yes to any of the above, please explain. You may offer additional explanation for any of the above questions if doing so would offer the reviewers more information that could be relevant to making a decision. Identify any attached sheets with name of establishment. Label all attachments as ATTACHMENT SECTION C (5).

- 6. Please explain why your financial hardship is directly related to the Department of Health Functions Clarification Amendment Act of 2006 and not other factors. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION C (6).
- 7. Describe all efforts made to operate your business profitably as a smoke-free environment. Attach additional pages if necessary. Identify attached sheets with name of establishment and label as ATTACHMENT SECTION C (7).

SECTION D - Plan Smoking Area Requirements and Conditions

Under the Department of Health Functions Clarification Amendment Act of 2006, a waiver granted may be subject to conditions or restrictions necessary to minimize the adverse effects of smoking and consistent with the general purpose of the law. Each applicant must provide a clear and detailed plan that is consistent with all requirements and conditions as outlined below that includes a reasonable strategy to comply with the law after the waiver expires.

- ✓ A dedicated indoor area that is totally isolated from all non-smoking areas by walls from floor to ceiling.
- ✓ Area must be intended only for smoking and clearly marked as separate smoking area.
- ✓ Area can be no larger than 25% of total indoor public floor space of the establishment.
- ✓ Area must be located so no employee or other person needs to enter the room to access any item or other area, such as the toilets, kitchens, entrances, or dining rooms.
- ✓ No air from room can be re-circulated to non-smoking areas.
- ✓ Installation or modification of air handling system for the room must not adversely affect non- smoking areas or any other building structure.
- ✓ Room must comply with all applicable codes, laws, and regulations.
- ✓ The smoking room must be approved by the local fire inspector, the local building code inspector or enforcement officer, and the business' underwriters insurance.

For all indoor smoking areas:

Applicant must indicate how it will modify the business operation and employ new marketing strategies to comply with the law after the waiver expires.

Submit a prepared drawing and plan that meets the design specifications and other requirements described above.

Identify attached sheets with name of establishment and label as ATTACHMENT SECTION D

Checklist of all required attachments:

- ___ Established businesses - Provide copies of D.C. Sales Tax Return FR-800 showing monthly sales receipts and Federal Form 941 from January 1, 2005, through the end of the month prior to the date of this application or similar monthly data certified by your CPA for the same time period.

- ___ Businesses not in operation since January 1, 2005 - the same documentation as described above must be submitted for the total number of months in operation.

- ___ Copy of the current District of Columbia Liquor Authority License (if applicable)
 - a. The license address must match the address of the establishment site. The license must be in the name of the individual owner, company, corporation, or principal partner.

- ___ Copy of a District of Columbia Certificate of Authority to Collect Sales Tax and proof of Federal EIN:
 - a. The address on the District of Columbia Certificate of Authority must match the address of the establishment site.

- ___ Copy of:
 - a. If Individual Owner -
 - i. Business Certificate of Ownership
 - b. If Corporation -
 - ii. Proof of Incorporation
 - c. If Partnership –
 - iii. Business Certificate of Partnership
 - iv. Current partnership agreement

- ___ A design for the separate smoking room that complies with the requirements in Sections D and E.

- ___ Applicants must show in Sections D and E of this waiver application how it will modify the business operation and employ new marketing strategies to comply with the law after the waiver expires. (The maximum waiver period is 3 years.)

NOTE: The Director reserves the right to request additional information necessary to make a final decision.

SECTION E - Acknowledgement and Certification

All owners, partners, corporation officers and principals identified in Sections A and B of this application must complete and submit this section. Please make additional copies as needed.

I, _____ (Insert Name) _____, state that I am the Owner/Operator/Other (specify) of _____ (Insert Name of Establishment) _____, and have reviewed the above application and that the statements made therein and the documents submitted are truthful to the best of my knowledge. I further acknowledge that I am fully aware of the consequences, including the forfeitures and civil and criminal penalties, which may result if any statement and document provided is determined to be false.

Dated: _____ Signature: _____

Sworn to before me this _____ day of _____, 200__.

Notary Public

SUBMITTING THE APPLICATION:

Submit the completed application and supporting documents to:

Economic Hardship Waiver Application
Department of Health – Tobacco Control Program
825 N. Capitol Street, NE, 3rd Floor
Washington, DC 20002

The application will be reviewed to ensure that all forms have been correctly completed and that all required documentation is submitted. If all required documentation is not provided, the entire application will be returned and the waiver will be considered denied. **THIS APPLICATION IS NOT A WAIVER.**

BY COMPLETING THIS APPLICATION, YOU AUTHORIZE ACCESS TO ANY AND ALL FINANCIAL RECORDS FILED WITH THE GOVERNMENT OF THE DISTRICT OF COLUMBIA ON BEHALF OF THE ESTABLISHMENT FOR WHICH YOU SEEK A WAIVER.