(II)   BE ESTABLISHED WITHOUT ANY REQUIREMENTS TO MODIFY THE STRUCTURAL OR ATMOSPHERIC CONDITIONS OF THE AREAS OF THE ESTABLISHMENT.

(1)   (I)   *NOTWITHSTANDING ANY REGULATIONS ADOPTED BY THE* SECRETARY MAY NOT PROPOSE OR ADOPT ANY REGULATION THAT RESTRICTS *UNDER THIS SECTION,* THE SMOKING OF TOBACCO PRODUCTS *IS PERMITTED* IN ANY OF THE FOLLOWING *LOCATIONS UNLESS RESTRICTED AS AUTHORIZED UNDER PARAGRAPH (3) OF THIS SUBSECTION:*

1.   ANY PORTION OF A PRIVATE RESIDENCE WHICH IS NOT OPEN TO THE PUBLIC FOR BUSINESS PURPOSES;

2.   ANY ESTABLISHMENT THAT:

A.   IS NOT A RESTAURANT OR HOTEL AS DEFINED IN ARTICLE 2B, § 1–102 OF THE CODE AND THAT;

B.   POSSESSES AN ALCOHOLIC BEVERAGES LICENSE ISSUED UNDER ARTICLE 2B OF THE CODE THAT ALLOWS CONSUMPTION OF ALCOHOLIC BEVERAGES ON THE PREMISES OF THE ESTABLISHMENT; *AND*

C.   *IS GENERALLY RECOGNIZED AS A BAR OR TAVERN;* OR

3.   3.   A BAR IN A HOTEL OR MOTEL; OR

4.   A CLUB AS DEFINED IN ARTICLE 2B, § 1–102 OF THE CODE AND THAT POSSESSES AN ALCOHOLIC BEVERAGES LICENSE ISSUED UNDER ARTICLE 2B OF THE CODE *AND* THAT ALLOWS CONSUMPTION OF ALCOHOLIC BEVERAGES ON THE PREMISES OF THE CLUB;

5.   *IN THE CASE OF A RESTAURANT AS DEFINED IN ARTICLE 2B, § 1–102 OF THE CODE:*

A.   *IF THE RESTAURANT DOES NOT POSSESS AN ALCOHOLIC BEVERAGES LICENSE ISSUED UNDER ARTICLE 2B OF THE CODE, A SEPARATE ENCLOSED ROOM NOT TO EXCEED 40% OF THE TOTAL AREA OF THE RESTAURANT; OR*

B.   *IF THE RESTAURANT POSSESSES AN ALCOHOLIC BEVERAGES LICENSE ISSUED UNDER ARTICLE 2B OF THE CODE, A BAR OR BAR AREA, A SEPARATE ENCLOSED ROOM NOT EXCEEDING 40% OF THE RESTAURANT, OR A COMBINATION OF A BAR OR BAR AREA AND A SEPARATE ENCLOSED ROOM NOT EXCEEDING 40% OF THE TOTAL AREA OF THE RESTAURANT INCLUDING THE BAR OR BAR AREA;*

6.   *UP TO 40% OF THE SLEEPING ROOMS IN A HOTEL OR MOTEL;*

7.   *A SEPARATE ENCLOSED ROOM OF AN ESTABLISHMENT OTHER THAN AN ESTABLISHMENT SPECIFIED IN ITEMS 1 THROUGH 6 OF THIS SUBPARAGRAPH THAT POSSESSES AN ALCOHOLIC BEVERAGES LICENSE ISSUED UNDER ARTICLE 2B OF THE CODE THAT ALLOWS CONSUMPTION OF ALCOHOLIC BEVERAGES ON THE PREMISES OF THE ESTABLISHMENT; OR*