

HHS ITEM #1
May 5, 2011

Public Hearing

MEMORANDUM

May 3, 2011

TO: Health and Human Services Committee

FROM: Amanda Mihill, Legislative Analyst *A. Mihill*

SUBJECT: **Public Hearing:** Resolution to adopt Board of Health Regulation prohibiting smoking in certain common areas of multiple-family residential dwellings and certain playground areas

A resolution to adopt Board of Health Regulation prohibiting smoking in certain common areas of multiple-family residential dwellings and certain playground areas, sponsored by Councilmembers Leventhal and Berliner, was introduced on March 29, 2011. A Health and Human Services Committee worksession is tentatively scheduled for June 23.

The proposed regulation would define a common area as “any indoor area of a multiple-family residential dwelling which is accessible to the occupants of more than one dwelling, including a hall, lobby, or laundry room” (page 2, lines 2-6). The regulation would also prohibit smoking within 25 feet of a playground area. Playground area would be defined as any outdoor area of a multiple-family residential dwelling with playground equipment which is intended to be used by minors, such as a swing set, sandbox, slide, seesaw, or playhouse (page 2, lines 9-15).

The proposed regulation would require the owner or person in control of a common area to post a sign prohibiting smoking in each common area and playground area and also notify each unit in the multiple-family residential dwelling in writing that smoking is prohibited in each common area and playground area (pages 2-3, lines 22-29). A violation would be a Class C violation (page 3, lines 31-32). The Board of Health regulation would take effect 30 days after it is adopted.

Resolution No.: _____
Introduced: March 29, 2011
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE MONTGOMERY COUNTY BOARD OF HEALTH

By: Councilmembers Leventhal and Berliner

Subject: **Board of Health Regulation prohibiting smoking in certain common areas of multiple-family residential dwellings and certain playground areas.**

Background

1. County Code §2-65 provides that the County Council is, and may act as, the County Board of Health, and in that capacity may adopt any regulation which a local Board of Health is authorized to adopt under state law.
2. Maryland Code Health-General Article §3-202(d) authorizes the County Board of Health to adopt rules and regulations regarding any nuisance or cause of disease in the County.
3. On *[Date]*, the Health and Human Services Committee held a public hearing on this regulation. As required by law, each municipality in the County and the public were properly notified of this hearing.
4. The County Council, sitting as the Board of Health, finds after hearing the testimony and other evidence in the record of the public hearing that prohibiting smoking in multiple-family residential common areas and playground areas is necessary to protect the health of residents in the County.

Action

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, approves the following regulation:

**Prohibition of Smoking in Common Areas of Certain
Multiple-Family Residential Dwellings and Certain Playground Areas**

1 (a) **Definitions.**

2 “*Common area*” means any indoor area of a multiple-family residential dwelling which is
3 accessible to the occupants of more than one dwelling, including a:

- 4 (1) hall;
- 5 (2) lobby; or
- 6 (3) laundry room.

7 “*Multiple-family residential dwelling*” means a dwelling containing 3 or more multiple-
8 family dwelling units, which may or may not share a common entrance.

9 “*Playground area*” means any outdoor area of a multiple-family residential dwelling with
10 playground equipment which is intended to be used by minors, such as a:

- 11 (1) swing set;
- 12 (2) sandbox;
- 13 (3) slide;
- 14 (4) seesaw; or
- 15 (5) playhouse.

16 “*Smoking*” means the act of lighting, smoking, or carrying a lighted or smoldering cigar,
17 cigarette, or pipe of any kind.

18 (b) **Smoking prohibited.** A person must not smoke:

- 19 (1) in any common area in a multiple-family residential dwelling; or
- 20 (2) within 25 feet of a playground area.

21 (c) **Signs and notice required.**

22 (1) The owner or person in control of a common area, including any condominium or
23 homeowner’s association, must conspicuously post at least 1 sign prohibiting
24 smoking in each common area and playground area. Any sign need not be
25 permanently attached to a structure.

26 (2) No later than [30 days after adoption], the owner or person in control of a
27 common area, including a condominium or homeowner’s association, must notify

28 each unit in the multiple-family residential dwelling in writing that smoking is
29 prohibited in each common area and playground area.

30 (d) **Enforcement.**

31 (1) Any violation of this regulation is a Class C civil violation. Each day a violation
32 exists is a separate offense.

33 (2) The County Attorney or any affected party may file an action in a court with
34 jurisdiction to enjoin repeated violations of this regulation.

35 (3) The Department of Health and Human Services may issue a citation for violating
36 this Section if a Department employee:

37 (a) witnesses the violation; or

38 (b) receives complaints from at least 2 individuals who have personal
39 knowledge of the smoking violation.

40 (e) **Applicability.** This regulation applies Countywide.

41 (f) **Severability.** If the application of this regulation or any part of it to any facts or
42 circumstances is held invalid, the rest of the regulation and its application to all other facts and
43 circumstances is intended to remain in effect.

44 (g) **Effective Date.** This regulation takes effect 30 days after it is adopted.

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46 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

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