

Bill No. 56-14  
Concerning: Health and Sanitation –  
Smoking – Electronic Cigarettes  
Revised: 1/29/2015 Draft No. 5  
Introduced: November 25, 2014  
Enacted: March 3, 2015  
Executive: March 13, 2015  
Effective: June 12, 2015  
Sunset Date: None  
Ch. 8, Laws of Mont. Co. 2015

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmember Floreen, Council Vice President Leventhal, and  
Councilmembers Branson, Navarro, Rice, Elrich, Riemer, Katz, Hucker and Berliner

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**AN ACT to:**

- (1) prohibit the use of electronic cigarettes in certain public places;
- (2) restrict the sale of certain liquid nicotine or liquid nicotine containers in retail outlets unless the nicotine is in a container considered child resistant packaging;
- (3) restrict the accessibility of certain tobacco products in retail settings, and require retail sellers of those products to take certain actions;
- (4) prohibit the use of electronic cigarettes by minors; and
- (5) generally amend County law regarding smoking, electronic cigarettes, and health and sanitation.

**By amending**

Montgomery County Code  
Chapter 24, Health and Sanitation  
Section 24-9

**By adding**

Chapter 24, Health and Sanitation  
Sections 24-13 and 24-14

**By renumbering**

Chapter 24, Health and Sanitation  
Sections 24-2, 24-3, 24-4, 24-5, 24-6, 24-7, 24-8, 24-9B, 24-9C, 24-9D, 24-10, 24-11,  
24-11A

**By repealing**

Chapter 24, Health and Sanitation  
Section 24-9A

**By renaming**

Chapter 24, Health and Sanitation  
Article II

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*



29 Electronic cigarette means [[an electronic device that delivers vapor  
 30 for inhalation, including any refill, cartridge, or any other component  
 31 of an electronic cigarette. Electronic cigarette does not include any  
 32 product approved by the Food and Drug Administration for sale as a  
 33 drug or medical device.]] any product containing or delivering  
 34 nicotine or any other substance intended for human consumption that  
 35 can be used by a person to simulate smoking through inhalation of  
 36 vapor or aerosol from the product. The term includes any such device,  
 37 whether manufactured, distributed, marketed, or sold as an e-cigarette,  
 38 e-cigar, e-pipe, e-hookah, or vape pen, or under any other product  
 39 name or descriptor.

40 \* \* \*

41 Smoking or smoke means the act of lighting, smoking, or carrying a  
 42 lighted or smoldering cigar, cigarette, or pipe, of any kind.

43 \* \* \*

44 Vape shop means any store that primarily sells electronic cigarettes.  
 45 Vape shop does not include an area of a larger store in which  
 46 electronic cigarettes are sold.

47 Vaping or vape means the act of using an electronic cigarette.

48 (b) Smoking and [[using an electronic cigarette]] vaping are prohibited in  
 49 certain public places. A person must not smoke or use any electronic  
 50 cigarette in or on any:

51 \* \* \*

52 (c) Exceptions. Smoking or [[using an electronic cigarette]] vaping is not  
 53 prohibited by this Section:

54 (1) In a tobacco shop or a vape shop;

55 \* \* \*

56 (3) When smoking or [[using an electronic cigarette]] vaping is  
 57 necessary to the conduct of scientific research into the health  
 58 effects of tobacco smoke and is conducted at an analytical or  
 59 educational laboratory;

60 \* \* \*

61 (d) Notwithstanding paragraph (b)(11), the Director of the Department of  
 62 Health and Human Services may designate an outside area on  
 63 property that is owned or leased by the County where smoking or  
 64 [[using an electronic cigarette]] vaping is allowed if the Director finds  
 65 that a complete prohibition on that property would impede a  
 66 program’s mission or effective delivery of services.

67 (e) *Posting signs.*

68 (1) Except as provided in paragraph (e)(4), signs prohibiting or  
 69 permitting smoking or [[using an electronic cigarette]] vaping,  
 70 as the case may be, must be posted conspicuously at each  
 71 entrance to a public place covered by this Section.

72 (2) Where smoking or [[using an electronic cigarette]] vaping is  
 73 prohibited by this Section, the sign either must read “No  
 74 smoking or [[using an electronic cigarette]] vaping by order of  
 75 Montgomery County Code § 24-9. Enforced by (department  
 76 designated by the County Executive)” or be a performance-  
 77 oriented sign such as “No Smoking or [[Using an Electronic  
 78 Cigarette]] Vaping” or “This is a Smoke Free Establishment.”  
 79 The international no-smoking symbol may replace the words  
 80 “No smoking.”

81 \* \* \*

82 (f) *Duty to prevent smoking in certain areas.* The owner or person in  
83 control of a building or area covered by this Section must refuse to  
84 serve or seat any person who smokes or vapes where smoking or  
85 [[using an electronic cigarette]] vaping is prohibited, and must ask the  
86 person to leave the building or area if the person continues to smoke  
87 or vape after proper warning.

88 \* \* \*

89 (k) *Enforcement and penalties.*

90 (1) Any violation of this [Section] Article is a class C civil  
91 violation. Each day a violation exists is a separate offense.

92 (2) The County Attorney or any affected party may file an action in  
93 a court with jurisdiction to enjoin repeated violations of the  
94 Section.

95 (3) The County Executive must designate by Executive order one  
96 or more County departments or agencies to enforce this Article.

97 (4) The Director of the Department of Health and Human Services  
98 may suspend a license issued under Chapter 15 for up to 3 days  
99 if the Director finds, under the procedures of Section 15-16,  
100 that the operator of an eating and drinking establishment has  
101 knowingly and repeatedly violated any provision of this  
102 Section.

103 **[24-9A. Reserved.]**

104 **24-[9B]10. Availability of tobacco products to minors.**

105 \* \* \*

106 **24-[9C]11. Distribution of tobacco products to minors.**

107 \* \* \*

108 **24-[9D]12. Tobacco and electronic cigarette [Products – Placement] products**  
 109 **= placement.**

110 (a) Placement. A retail seller of any tobacco or electronic cigarette  
 111 product must not display or store the product in any place that is  
 112 accessible to buyers of the product without the intervention of the  
 113 seller or an employee of the seller.

114 (b) Definitions. *Tobacco product* means any substance containing  
 115 tobacco, including cigarette, cigars, smoking tobacco, snuff, or  
 116 smokeless tobacco.

117 (c) Applicability. This Section does not apply to:

118 (1) the sale of any tobacco or electronic cigarette product from a  
 119 vending machine that complies with all requirements of state  
 120 law; and

121 (2) any store where only or primarily tobacco or electronic  
 122 cigarette products are sold.

123 [(d) Enforcement. The County Executive must designate by Executive  
 124 order one or more County departments or agencies to enforce this  
 125 Section.]

126 [24-12 – 24-21. Reserved.]

127 **24-13. Use of electronic cigarettes by minors prohibited.**

128 A person under 18 years old must not use an electronic cigarette.

129 **24-14. Child Resistant Packaging of Liquid Nicotine Container Required.**

130 (a) Definitions. In this Section, the following words have the meanings  
 131 indicated:

132 Child resistant packaging means packaging that is:

133 (1) designed or constructed to be significantly difficult for children  
 134 under 5 years of age to open or obtain a toxic or harmful

135 amount of the substance contained therein within a reasonable  
 136 time; [[and]]

137 (2) not difficult for normal adults to use properly; and

138 (3) tested in accordance with the method described in Code of  
 139 Federal Regulations, Title 16, Section 1700.20, as in effect on  
 140 March 3, 2015.

141 Child resistant packaging does not mean packaging which all such  
 142 children cannot open or obtain a toxic or harmful amount within a  
 143 reasonable time.

144 Liquid nicotine container means a container that is used to hold liquid  
 145 containing nicotine in any concentration.

146 (b) Child resistant packaging required. A retail seller of any liquid  
 147 nicotine or liquid nicotine container must not sell, resell, distribute,  
 148 dispense, or give away:

149 (1) any liquid or gel substance containing nicotine unless the  
 150 substance is in child resistant packaging; or

151 (2) any nicotine liquid container unless the container constitutes  
 152 child resistant packaging.

153 (c) Exceptions. This Section does not apply to a liquid nicotine container  
 154 that is sold, marketed, or intended for use in an electronic cigarette if  
 155 the container is prefilled and sealed by the manufacturer and not  
 156 intended to be opened by the consumer.

157 **24-15 – 24-21. Reserved.**

158

159 *Approved:*

160

161

*George Leventhal*

*3/6/2015*

162 George Leventhal, President, County Council

Date

163 *Approved:*

164

165

*Isiah Leggett*

*March 13, 2015*

166 Isiah Leggett, County Executive

Date

167 *This is a correct copy of Council action.*

168

169

*Linda M. Lauer*

*3/16/15*

170 Linda M. Lauer, Clerk of the Council

Date