

Introduction

MEMORANDUM

January 10, 2014

TO: County Council

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

SUBJECT: **Introduction:** Bill 1-14, Health and Sanitation – Smoking – Outdoor Dining Areas and Board of Health Regulation prohibiting smoking in certain outdoor dining areas

Bill 1-14, Health and Sanitation – Smoking – Outdoor Dining Areas, and a Board of Health Regulation prohibiting smoking in certain outdoor dining areas, sponsored by Councilmember Floreen, is scheduled to be introduced on January 14, 2014. A public hearing is tentatively scheduled for March 4, 2014 at 1:30 p.m.

Bill 1-14 and the Board of Health regulation would prohibit smoking in certain outdoor dining areas, except while actively passing on the way to another destination. An outdoor dining area would be defined as “an enclosed or unenclosed outdoor area of an eating or drinking establishment dedicated as a place for the consumption of food or drink that is regularly sold by that establishment.”

This packet contains:

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Bill 1-14	1
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Bill No. 1-14
Concerning: Health and Sanitation –
Smoking – Outdoor Dining Areas
Revised: 11/12/2013 Draft No. 2
Introduced: January 14, 2014
Expires: July 14, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Floreen

AN ACT to:

- (1) prohibit smoking in certain outdoor dining areas; and
- (2) generally amend County law on smoking.

By amending

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

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

LEGISLATIVE REQUEST REPORT

Bill 1-14

Health and Sanitation – Smoking – Outdoor Dining Areas

DESCRIPTION: Bill 1-14 would prohibit smoking in certain outdoor dining areas, except while actively passing on the way to another destination

PROBLEM: Smoking is known to cause cancer and other illnesses. The Centers for Disease Control state that there is no risk-free level of exposure to secondhand smoke.

GOALS AND OBJECTIVES: To reduce residents' and visitors' exposure to secondhand smoke.

COORDINATION: Health and Human Services

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Amanda Mihill, 240-777-7815

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: Class C

Resolution No.: _____
Introduced: _____
Adopted: _____

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

By: Councilmember Floreen

Subject: **Board of Health Regulation prohibiting smoking in certain outdoor dining 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 County Council 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 outdoor dining 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 Certain Outdoor Dining Areas

- 1 (a) **Definitions.**
2 “*Outdoor dining area*” means an enclosed or unenclosed outdoor area of an eating or
3 drinking establishment dedicated as a place for the consumption of food or drink that is
4 regularly sold by that establishment.
5 “*Smoking*” means the act of lighting, smoking, or carrying a lighted or smoldering cigar,
6 cigarette, or pipe of any kind.
- 7 (b) **Smoking prohibited.** A person must not smoke in any outdoor dining area, except while
8 actively passing on the way to another destination.
- 9 (c) **Signs required.** The owner or person in control of an outdoor dining area must
10 conspicuously post at least 1 sign prohibiting smoking in the outdoor dining area. Any
11 sign need not be permanently attached to a structure. The sign must include:
12 (1) the words “no smoking”;
13 (2) the international symbol for no smoking; or
14 (3) both the words “no smoking” and the international symbol for no smoking.
- 15 (d) **Enforcement.**
16 (1) Any violation of this regulation is a Class C civil violation. Each day a violation
17 exists is a separate offense.
18 (2) The County Attorney or any affected party may file an action in a court with
19 jurisdiction to enjoin repeated violations of this regulation.
20 (3) (a) The Department of Health and Human Services must enforce this
21 regulation in accordance with County Code §1-18.
22 (b) As part of its investigation into a complaint filed, the Department of
23 Health and Human Services may require a complainant to provide an
24 affidavit or other corroborating information that would support the
25 issuance of a citation.
- 26 (e) **Applicability.** This regulation applies Countywide.
- 27 (f) **Severability.** If the application of this regulation or any part of it to any facts or
28 circumstances is held invalid, the rest of the regulation and its application to all other
29 facts and circumstances is intended to remain in effect.
- 30 (g) **Effective Date.** This regulation takes effect 30 days after it is adopted.