

Bill No. 15-03
Concerning: Smoking - Eating and
Drinking Establishments
Revised: 7-1-03 Draft No. 4
Introduced: May 13, 2003
Enacted: July 1, 2003
Executive: July 10, 2003
Effective: October 9, 2003
Sunset Date: None
Ch. 12, Laws of Mont. Co. 2003

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Andrews, Floreen, Leventhal, Perez, and Knapp

AN ACT to:

- (1) prohibit smoking in certain eating and drinking establishments;
- (2) repeal provisions of County law which require certain restaurants to designate non-smoking areas;
- (3) provide certain penalties for and procedures to enforce smoking restrictions; and
- (4) generally regulate smoking at eating and drinking establishments.

By amending

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

By repealing

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

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

- 27 (2) Where smoking is prohibited by this Section, the sign either must
.8 read "No smoking by order of Montgomery County Code § 24-9.
29 Enforced by (department designated by the County Executive)"
30 or be a performance-oriented sign such as "No Smoking" or "This
31 is a Smoke Free Establishment." The international no-smoking
32 symbol may replace the words "No smoking."
- 33 (3) Signs need not be permanently attached to a structure. The owner
34 and the person in control of the room or area are both responsible
35 for posting the required signs.
- 36 (e) *Duty to prevent smoking in certain areas.* The owner or person in
37 control of a building or area covered by this Section must refuse to serve
38 or seat any person who smokes where smoking is prohibited, and must
39 ask the person to leave the building or area if the person continues to
40 smoke after proper warning.
- 41 (f) *Optional smoking restrictions.* The owner or person in control of any
42 property not covered in subsection (b) or exempted under subsection (c)
43 may prohibit or restrict smoking as provided in this Section by
44 notifying, in writing, the department designated to enforce this Section
45 and by posting appropriate signs. The Department must enforce the
46 prohibition or restriction wherever signs are posted until the owner or
47 person in control of the property notifies the department in writing that
48 the owner or person in control has revoked the prohibition or restriction
49 and removed all signs.
- 50 (g) *Limitations.* This Section does not:
51 (1) allow any person to smoke at any place where smoking is
52 otherwise restricted; or

- 53 (2) prevent an owner or person in charge from prohibiting smoking
 54 entirely at any business or workplace.
- 55 (h) *Other laws still apply.*
- 56 (1) This Section adds to, and does not replace or restrict, any other
 57 applicable federal, state, or County law or regulation.
- 58 (2) This Section does not allow smoking where smoking is restricted
 59 by any applicable fire prevention rule or regulation.
- 60 (i) *Regulations.* The County Executive may adopt reasonable regulations
 61 under method (2) to enforce this Section.
- 62 (j) *Enforcement and penalties.*
- 63 (1) Any violation of this Section is a class C civil violation. Each
 64 day a violation exists is a separate offense.
- 65 (2) The County Attorney or any affected party may file an action in a
 66 court with jurisdiction to enjoin repeated violations of this
 67 Section.
- 68 (3) The Director of the Department of Health and Human Services
 69 may suspend a license issued under Chapter 15 for up to 3 days if
 70 the Director finds, under the procedures of Section 15-16, that the
 71 operator of an eating and drinking establishment has knowingly
 72 and repeatedly violated any provision of this Section.
- 73 **[24-9A. Smoking in eating and drinking establishments.]**
- 74 [(a) Definitions. In this Section, the following words have the meanings
 75 indicated:
- 76 (1) Bar means an indoor, enclosed area where the primary activity is
 77 the service of alcoholic beverages and where the service of food
 78 is only incidental to the service of alcoholic beverages.

- 79 (2) Eating and drinking establishment means an establishment
80 regulated under Chapter 15.
- 81 (3) Enclosed means separated by walls or partitions.
- 82 (4) Indoor means covered by a roof and enclosed.
- 83 (5) Private function means an event in an enclosed area to which
84 entry is not available to the general public but only to those
85 whom the sponsor of the event invites. "Private function" does
86 not mean an event held by a private club or association to which
87 members of the general public are invited.]

88 **[(b) Applicability.**

- 89 (1) This Section applies to an eating and drinking establishment if
90 the total seating capacity of all non-bar areas is 50 or more.
- 91 (2) This Section does not apply to any area of an eating and drinking
92 establishment that is:
- 93 a. A bar; or
- 94 b. Being used exclusively for a private function.]

95 **[(c) Nonsmoking area required. A person who operates an eating and
96 drinking establishment must designate a contiguous, nonsmoking area
97 that is at least 50 percent of the total seating area of that part of the
98 establishment that is not:**

- 99 (1) A bar; or
- 100 (2) Being used exclusively for a private function.]

101 **[(d) Notice. Any person who operates an eating and drinking establishment
102 subject to this Section must:**

- 103 (1) Post conspicuously at each entrance a sign stating that a
104 nonsmoking area is available;

- 105 (2) Ask whether each patron wants to be seated in the smoking or
106 nonsmoking area;
- 107 (3) Refuse to seat or serve a person who smokes in a nonsmoking
108 area; and
- 109 (4) Ask a person who smokes in a nonsmoking area to leave the
110 establishment if the person continues to smoke after proper
111 warning.]

112 [(e) Prohibition. A person must not smoke in:

- 113 (1) An area that is designated for nonsmoking under this Section; or
- 114 (2) Any restroom that is open to customers.]

115 [(f) Enforcement and penalty.

- 116 (1) A person who operates an eating and drinking establishment in
117 violation of any provision of this Section may be punished for a
118 class C violation under Section 1-19.
- 119 (2) A person who smokes in a nonsmoking area in violation of this
120 Section may be punished for a class C violation under Section 1-
121 19.
- 122 (3) The Director of the Department of Health and Human Services
123 may suspend a license issued under Chapter 15 for up to 3 days if
124 the Director finds, under the procedures of Section 15-16, that the
125 operator of an eating and drinking establishment has knowingly
126 and repeatedly violated any provision of this Section.
- 127 (4) The County Attorney or any affected person may file an action in
128 any competent court to enjoin violation of this Section.]

129 **Sec. 2. Severability: legislative intent.**

130 **(a) The County Council intends that if a court issues a final decision**
1 holding that any part of County Code Section 24-9, as amended by


132 Section 1 of this Act or the application of Section 24-9 to any person or
 133 circumstance, is unconstitutional or invalid, the remaining provisions of
 134 Section 24-9 and the application of that Section to all other persons and
 135 circumstances remain in full effect.

136 (b) Without limiting the generality of subsection (a), if the exemption from
 137 the prohibitions of Section 24-9 that is contained in subsection 24-
 138 9(c)(7), as inserted by Section 1 of this Act, is held to be
 139 unconstitutional or invalid on its face or as applied to any person or
 140 circumstance, then the Council intends that:

- 141 (1) the exemption be severed from the remainder of Section 24-9:
- 142 and
- 143 (2) all provisions of Section 24-9, as otherwise amended by Section
- 144 1 of this Act, continue in effect and apply to all eating and
- 145 drinking establishments, including those eating and drinking
- 146 establishments that were exempted under subsection 24-9(c)(7),
- 147 as inserted by Section 1 of this Act.


148 **Sec. 3. Marketing Assistance.** The Department of Economic Development
 149 must establish and administer a fund, subject to appropriation, to provide marketing
 150 assistance to County restaurants affected by the provisions of this law. The
 151 Department must develop criteria for use of these funds and report to the Council
 152 quarterly on expenditures from the fund.

153 *Approved:*

154 
 Michael L. Subin, President, County Council


7/3/03
 Date

155 *Approved:*

156 
Douglas M. Duncan, County Executive

July 10 2003
Date

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

158 
Mary A. Edgar, CMC, Clerk of the Council

July 11 2003
Date