

Resolution No.: 17-210
Introduced: March 29, 2011
Adopted: July 12, 2011

**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 May 5, 2011, 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. On June 23, 2011, the Health and Human Services Committee held a worksession on this regulation.
5. 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**

(a) **Definitions.**

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

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

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

“*Playground area*” means any outdoor area with playground equipment which is intended to be used by minors, such as a:

- (1) swing set;
- (2) sandbox;
- (3) slide;
- (4) seesaw; or
- (5) playhouse.

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

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

- (1) in any common area in a multiple-family residential dwelling; or
- (2) within 25 feet of a playground area on privately owned property that has a primary purpose to serve the residents of more than 1 dwelling unit.


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

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

- (A) the words “no smoking”;
- (B) the international symbol for no smoking; or

- (C) both the words “no smoking” and the international symbol for no smoking.
- (2) No later than [30 days after adoption], the owner or person in control of a common area, including a condominium or homeowner’s association, must notify each unit in the multiple-family residential dwelling in writing that smoking is prohibited in each common area and playground area.
- (d) **Obligations of a common ownership community association.**
 - (1) A common ownership community association, including a condominium or homeowner association, must conspicuously post the signs required in Section (c)(1).
 - (2) A common ownership community association is not liable for the conduct of individuals and is not liable for an individual’s violation of this regulation.
- (e) **Enforcement.**
 - (1) The County Attorney or any affected party may file an action in a court with jurisdiction to enjoin repeated violations of this regulation.
 - (2) (a) The Department of Health and Human Services must enforce this regulation in accordance with the Maryland Clean Indoor Air Act and County Code §1-18.
 - (b) As part of its investigation into a complaint filed, the Department of Health and Human Services may require a complainant to provide an affidavit or other corroborating information that would support the issuance of a citation.
- (f) **Applicability.** This regulation applies Countywide.
- (g) **Severability.** If the application of this regulation or any part of it to any facts or circumstances is held invalid, the rest of the regulation and its application to all other facts and circumstances is intended to remain in effect.
- (h) **Effective Date.** This regulation takes effect 30 days after it is adopted.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council