



MEMORANDUM

DATE: January 24, 2014

TO: Barbara Matthews, City Manager

FROM: Louise Atkins, Council Support Specialist

SUBJECT: Outdoor Smoking in Town Square

I. Introduction

This memo was prepared in response to a request from a Rockville resident to designate Rockville Town Square as a smoke-free area. For the purposes of this memo, Town Square is defined as the area within the boundaries of North Washington Street, Middle Lane, Hungerford Drive and Beall Avenue.

While the dangers of exposure to indoor smoke have been well documented, the health impacts of exposure to smoke in outdoor areas is ongoing. Rockville addressed outdoor smoking at City playgrounds in 2009 by prohibiting smoking within 40 feet of playground equipment in City parks. Other municipalities have instituted similar or more far reaching policies to prohibit outdoor smoking. This memo provides examples from communities in this region. We have also compiled some research about outdoor secondhand smoke that can be provided to you upon request.

II. Prohibitions on Smoking in Maryland

In response to increasing concerns regarding the health impacts of cigarette smoke many jurisdictions have enacted laws to limit smoking over the past few years.

A. Montgomery County

- 1) Montgomery County Code, Section 24-9, entitled, Smoking in Public Places (“County No Smoking Ordinance”), prohibits smoking in certain indoor places (such as schools,

county buildings, theaters, businesses open to the public, eating and drinking establishments), and on property owned or leased by the County (including bus shelters and bus stop areas, but excluding any other part of a County right-of-way). The ordinance includes several exceptions where smoking is allowed, including golf courses, and outside areas on County-owned or leased property where the Montgomery County Health and Human Services Director (“HHS”) finds that a complete prohibition on that property would impede a program’s mission or the effective delivery of services. This law is enforced by the County and citations may be issued as a Class C violation, which provides a fine of \$50 for the first offense. This law applies in the City, and is enforced by Montgomery County. However, Section 24-9(b)(11), which prohibits smoking on property owned or leased by the County does not prohibit smoking on property owned or leased by the City.

- 2) Montgomery County Code, Section 24-9(g), entitled, Optional Smoking Restrictions (“County Opt-In Law”), provides that the owner or person in control of any property not protected by the ordinance may prohibit or restrict smoking by notifying the County, in writing, and by posting appropriate signs. The County must enforce the prohibition or restriction where ever signs are posted until the owner or person in control of the property notifies the County in writing that the owner or person in control has revoked the prohibition or restriction and removed all signs.
- 3) Montgomery County Board of Health Regulation 17-210 (“County Board of Health Regulation”) prohibits smoking within (1) any common area (defined as an indoor area such as a lobby or laundry room) in a multiple-family residential dwelling, or (2) within 25 feet of a playground area with playground equipment intended to be used by minors, on privately owned property that has a primary purpose to service the residents of more than 1 dwelling unit. No smoking signs must be posted by the owner or person in control of the regulated areas. HHS may issue a citation pursuant to Montgomery County Code, Section 1-18. A complainant who witnesses a person violating this regulation may provide an affidavit to HHS to support the issuance of a citation. This regulation applies to the City pursuant to City Code Section 1-8(c), and is enforced by Montgomery County.
- 4) It is our understanding that the Montgomery County Council will entertain the introduction of (1) Bill 1-14 regarding smoking in outdoor dining areas (“Bill”); and (2) a resolution to adopt Board of Health Regulation prohibiting smoking in certain outdoor dining areas (“Outdoor Dining Regulation”) at an unknown date in the future. The Bill and the Outdoor Dining Regulation were placed on the January 14, 2014 County Council agenda, but the item was delayed. If adopted, both the Bill and the Outdoor Dining Regulation would prohibit smoking in certain outdoor dining areas, except while actively passing on the way to another destination, and would be enforced by the County, pursuant to County Code, Section 1-18.

B. City of Rockville

- 1) As provided above, the County No Smoking Ordinance is applicable within the City pursuant to City Code Section 1-8(b)(12), where the City chose to have the County

smoking laws apply to the City. The County Board of Health Regulation is applicable to the City as well, pursuant to City Code Section 1-8(c) which provides that County legislation shall apply in the City when such legislation is enacted by the County sitting as a Board of Health for the County. Accordingly, the provisions of the County Board of Health Regulation, and the County No Smoking Ordinance currently apply in the City.

- 2) In September of 2009, the Rockville Mayor and Council approved a policy to ban smoking within 40 feet of playgrounds in City owned parks. The policy does not ban smoking in other areas of City parks. The policy requires that signs are posted at each City playground. The policy is enforced based on cooperation and self-enforcement. The policy was never adopted as a City law, and therefore the ban is not enforced by issuance of a citation.
- 3) Smoking is also banned at several outdoor locations on City properties, such as the outdoor swim complex at the Swim and Fitness Center, the entrances to the City's Community Centers (within 50 feet), the dog park at Stepanek Park and near playing fields at youth and adult sports games and practices. These bans are communicated to the public through facility rules of conduct, and/or no smoking signs are posted. They are enforced by City staff at the park or facility by a request to an individual to stop smoking or a request to leave the premises. The City cannot issue a citation or impose a fine for noncompliance. In 2009 the City's Recreation and Parks Advisory Board discussed a complete ban on smoking in City parks; however no decision was made at that time.

C. Howard County

Howard County was the first county in Maryland to issue a complete no smoking ban in all Howard County park property. The ban was effective July 2011. Park property includes without limitation, a County park, County pathway, open space property purchased by or dedicated to the County, vegetation, soil, water, wildlife, a building or structure and its contents, a sign, improvement, fixture, equipment, monument, historic artifact, statue, vehicle, or a boundary survey marker or monument. There are no fines associated with this ban. If a smoker does not cease smoking when requested, they will be reminded of the policy and asked to leave the premises immediately.

D. City of Bowie

Effective May 2011, the City of Bowie banned smoking in or on any City property, except that a person may smoke inside a vehicle parked in a parking lot on City property, provided that the doors and windows of the vehicle are completely closed. The penalty is a \$50 fine and/or ejection from the area.

E. City of Gaithersburg

Like the City of Rockville, the County No Smoking Ordinance is applicable within the City of Gaithersburg, so the City of Gaithersburg follows Montgomery County Code as it relates to health matters such as no smoking.

The City of Gaithersburg Mayor and Council received a presentation regarding options to further restrict no smoking in the City in October 2013. Proposed options included a total ban on outdoor smoking, which would prohibit smoking on all property owned or leased by the City, except public rights of way; or a partial ban which would prohibit smoking within 50 feet from any entrance, all recreational amenities and facilities, parks, swimming pools/playgrounds and athletic fields, common areas (bleachers, restrooms and concession stands) and open spaces during City organized events. There was discussion about excluding the Wells-Robertson House, where community services is based. Next steps include a possible work session to discuss this matter further and/or creating a non-smoking policy for City staff only.

F. City of Frederick

In March 2012, the City of Frederick enacted a partial non-smoking ban prohibiting smoking within 10 feet of all city playgrounds, the fixed seating area adjacent Baker Park Bandshell and the fixed seating area adjacent to McCurdy Field. These targeted locations were selected rather than a total non-smoking ban in City parks. The penalty is a \$25 fine and/or ejection from the park.

G. Area Colleges

In addition to Counties and local jurisdictions, many area colleges have enacted no smoking bans over the past several years. Montgomery College's campuses including Rockville, Germantown, Silver Spring and Takoma Park banned smoking campus-wide in August 2008, which includes no smoking in vehicles located in campus parking lots and garages. The Towson campus became smoke free in August 2010 and the Frostburg campus in August 2011. The College Park campus became smoke free in the summer of 2013, however there are four designated locations on campus that permit smoking. No formal enforcement is planned.

H. Local Federal Buildings

On October 1, 2008, NIH prohibited smoking in the Bethesda campus. Employees who do not adhere to the ban may be subject to administrative action.

III. Rockville Town Square

Town Square consists of (i) a public plaza owned by the City (which does not include the sidewalks surrounding the plaza), (ii) a public library, adjacent restaurant with outdoor dining space,¹ and associated sidewalk areas owned by Montgomery County, and (iii) commercial and residential buildings, parking lots and garages, and associated outdoor dining areas and sidewalks owned by the Condominiums (defined below). There are five separate condominium entities in Town Square which are named for the blocks where they are located; (1) Block 1/2; (2) Block 3A; (3) Block 3B; (4) Block 4; and, (5) Block 5 (each, a "Condominium", and collectively referred to herein as the "Condominiums"). The City owns the parking garages and

¹ Montgomery County owns the restaurant space next to the library, which it leases to Federal Realty. Federal Realty subleases the space to Thai Pavilion.

lots in Town Square as a unit of ownership of the condominium entities in Blocks 1/2, 4, and 5, and the space leased to VisArts as a unit of ownership of the condominium entity in Block 3A. The streets in Town Square are City rights-of-way.

Pursuant to the County No Smoking Ordinance, smoking is already prohibited in the public indoor portions of Town Square (e.g. restaurants, County library, shops, offices, VisArts galleries). The County No Smoking Ordinance also prohibits smoking on the sidewalks outside the front entrance of the library, in front of Thai Pavilion, and around the side of the library on Maryland Avenue, as well as in the outdoor dining area for Thai Pavilion. At this time, smoking is still allowed in the plaza, the Condominium owned outdoor dining areas and sidewalks, and on the streets. Staff's research indicates that local governments typically exclude streets from smoking bans. Monitoring and controlling smoking in the streets is difficult because the majority of users are inside vehicles.