

Sec. 24-9. Smoking in public places.

(a) *Definitions.* In this Section, the following words and phrases have the meanings indicated:

Bus stop means a location that has been designated by a pole and appropriate signage as a place where passengers board or alight a bus.

Bus stop area means a rectangular area surrounding a bus stop pole which extends 25 feet along the curb on each side of the pole and 15 feet from the curb.

Eating and drinking establishment means an establishment regulated under Chapter 15.

Enclosed means separated by walls that extend from floor to ceiling and under a roof.

Health care facility means any office or institution where individual care or treatment of physical, mental, or emotional illness, or any other medical, physiological, or psychological condition is provided. *Health care facility* includes any hospital, clinic, nursing home for the aging or chronically ill, laboratory, or office of any physician, dentist, psychologist, psychiatrist, physiologist, podiatrist, optometrist or optician.

Person means any individual, firm, partnership, association, corporation, company, or organization of any kind.

Public place means an enclosed area in which members of the public are normally invited or permitted.

Public meeting means any meeting wherever held, open to the public with no membership requirement.

Rail transit station means an area that:

- (1) Includes the fare-paid and roofed areas;
- (2) is a regular stopping place for the pickup and discharge of passengers in regular route service, contract service, or special or community type service; and
- (3) Is owned, operated, or controlled by the Washington Metropolitan Area Transit Authority.

Retail store means any establishment whose primary purpose is to sell merchandise or food for consumption off the premises, directly to consumers.

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

Tobacco shop means any store that primarily sells tobacco, tobacco products and pipes or other implements used to smoke tobacco. "*Tobacco shop*" does not include an area of a larger store in which tobacco is sold.

Workplace means an enclosed area or any part of an enclosed area used in the performance of employment or related activities. *Workplace* includes a motor vehicle owned or leased by the employer, conference room, auditorium, library, office machine station, lunchroom, vending area, locker room, lounge, hallway, or stairwell.

(b) *Smoking prohibited in certain public places.* A person must not smoke in or on any:

- (1) Elevator, regardless of capacity, except elevators in single-family dwellings as provided by state law;
- (2) Health care facility, regardless of capacity, except:
 - (A) In the private, enclosed sleeping or living quarters of persons working in a health care facility where patients and members of the public are not normally present; and
 - (B) In patient sleeping quarters, if:
 1. All patients assigned to the room have agreed to have the room designated as a smoking area;

2. The administrator of the facility, or a designee, has designated the room as a smoking area; and

3. A reasonable effort is made to assign patients to sleeping rooms according to the patient's nonsmoking or smoking preference;

(3) School or other educational facility operated by the Montgomery County public schools or Montgomery College, except when expressly permitted under state law;

(4) Building or part of a building owned or leased by County government, and any private building or part of a building during a public meeting called by a government body;

(5) Theatre or movie theater;

(6) County government workplace, including any privately-owned workplace where County employees are regularly assigned;

(7) Rail transit station;

(8) Business or organization open to the public, including a retail store, bank, office, factory, eating and drinking establishment, or any other private business or organization;

(9) Restroom, except a restroom in a private residence;

(10) Enclosed auditorium, concert or lecture hall; or

(11) property that is owned or leased by the County, including a bus shelter or bus stop area, but excluding any other part of a County right-of-way.

(c) *Exceptions.* Smoking is not prohibited by this Section:

(1) In a tobacco shop;

(2) In a vehicle, when used in the course of employment and occupied by only one individual;

(3) When smoking is necessary to the conduct of scientific research into the health effects of tobacco smoke and is conducted at an analytical or educational laboratory;

(4) In any part of a private residence which is not open to the public for business purposes;

(5) In up to 40% of the sleeping rooms in a hotel or motel;

(6) In up to 40% of the premises of a fraternal, religious, patriotic, or charitable organization or corporation or fire company or rescue squad during an event that the organization or corporation holds on its own property and which is open to the public;

(7) In the bar and dining area of an eating and drinking establishment that:

(A) is a club as defined in the state alcoholic beverages law;

(B) has an alcoholic beverages license issued to private clubs under the state alcoholic beverages law; and

(C) allows consumption of alcoholic beverages on its premises;

(8) In any occupied residential unit owned or leased by the County for as long as the occupant on May 27, 2013 retains possession of the unit;

(9) On a golf course; and

(10) In an area designated by the Director of the Department of Health and Human Services under subsection (d).

(d) Notwithstanding paragraph (b)(11), the Director of the Department of Health and Human Services may designate an outside area on property that is owned or leased by the County where smoking is allowed if the Director finds that a complete prohibition on that property would impede a program's mission or effective delivery of services.

(e) *Posting signs.*

(1) Except as provided in paragraph (e)(4), signs prohibiting or permitting smoking, as the case may be, must be posted conspicuously at each entrance to a public place covered by this Section.

(2) Where smoking is prohibited by this Section, the sign either must read “No smoking by order of Montgomery County Code § [24-9](#). Enforced by (department designated by the County Executive)” or be a performance-oriented sign such as “No Smoking” or “This is a Smoke Free Establishment.” The international no-smoking symbol may replace the words “No smoking.”

(3) Signs need not be permanently attached to a structure. The owner and the person in control of the room or area are both responsible for posting the required signs.

(4) The Director of Health and Human Services may waive the requirement of paragraph (e)(1) on County property, or require a sign to be posted in another location, if the Director finds, after consulting with the Director of General Services, that posting a sign at an entrance is not feasible.

(f) *Duty to prevent smoking in certain areas.* The owner or person in control of a building or area covered by this Section must refuse to serve or seat any person who smokes where smoking is prohibited, and must ask the person to leave the building or area if the person continues to smoke after proper warning.

(g) *Optional smoking restrictions.* The owner or person in control of any property not covered in subsection (b) or exempted under subsection (c) may prohibit or restrict smoking as provided in this Section by notifying, in writing, the department designated to enforce this Section and by posting appropriate signs. The department must enforce the prohibition or restriction wherever signs are posted until the owner or person in control of the property notifies the department in writing that the owner or person in control has revoked the prohibition or restriction and removed all signs.

(h) *Limitations.* This Section does not:

(1) allow any person to smoke at any place where smoking is otherwise restricted; or
 (2) prevent an owner or person in charge from prohibiting smoking entirely at any business or workplace.

(i) *Other laws still apply.*

(1) This Section adds to, and does not replace or restrict, any other applicable federal, state, or County law or regulation.

(2) This Section does not allow smoking where smoking is restricted by any applicable fire prevention rule or regulation.

(j) *Regulations.* The County Executive may adopt reasonable regulations under method (2) to enforce this Section.

(k) *Enforcement and penalties.*

(1) Any violation of this Section is a class C civil violation. Each day a violation exists is a separate offense.

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

(3) The Director of the Department of Health and Human Services may suspend a license issued under [Chapter 15](#) for up to 3 days if the Director finds, under the procedures of Section [15-16](#), that the operator of an eating and drinking establishment has knowingly and repeatedly violated any provision of this Section. (1977 L.M.C., ch. 33, § 1; 1980 L.M.C., ch. 19, § 1; 1983 L.M.C., ch. 2, § 1; 1983 L.M.C., ch. 22, § 27; 1984 L.M.C., ch. 24, § 25; 1986 L.M.C., ch. 35, §

1; 1988 L.M.C., ch. 31, § 1; 1990 L.M.C., ch. 32, § 1; 1994 L.M.C., ch. 2, § 1; 1995 L.M.C., ch. 13, § 1; 1999 L.M.C., ch. 4, § 1; [2003 L.M.C., ch. 12](#), § 1; [2013 L.M.C., ch. 5](#), § 1.)

Editor’s note—[2003 L.M.C., ch. 12](#), §§ 2 and 3, state:

“Sec. 2. Severability; legislative intent. (a) The County Council intends that, if a court issues a final decision holding that any part of County Code Section [24-9](#), as amended by Section 1 of this Act, or the application of Section [24-9](#) to any person or circumstance, is unconstitutional or invalid, the remaining provisions of Section [24-9](#) and the application of that Section to all other persons and circumstances remain in full effect. (b) Without limiting the generality of subsection (a), if the exemption from the prohibitions of Section [24-9](#) that is contained in subsection [24-9\(c\)\(7\)](#), as inserted by Section 1 of this Act, is held to be unconstitutional or invalid on its face or as applied to any person or circumstance, then the Council intends that: (1) the exemption be severed from the remainder of Section [24-9](#); and (2) all provisions of Section [24-9](#), as otherwise amended by Section 1 of this Act, continue in effect and apply to all eating and drinking establishments, including those eating and drinking establishments that were exempted under subsection [24-9\(c\)\(7\)](#), as inserted by Section 1 of this Act.”

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

The effective date of 1999 L.M.C., ch. 4, is June 29, 1999. 1995 L.M.C., ch. 13, § 5, states: “Sec. 5. A regulation that implements a function assigned to the Department of Health and Human Services by 1995 L.M.C., ch. 13 continues in effect but is amended to the extent necessary to provide that the regulation is administered by the Director of the Department of Health and Human Services.”

County Council Resolution No. 14-70 adopted smoking restrictions in eating and drinking establishments as a Board of Health Regulation effective January 1, 2002.

Cross reference—Smoking in bus or rail transient cars, § [54A-2](#).