



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Smoking, Tobacco, and Nicotine Prohibitions and Restrictions	Number 14-14
Originating Department Department of Health and Human Services	Effective Date

Montgomery County Regulation On:

SMOKING PROHIBITIONS AND RESTRICTIONS

Department of Health and Human Services

Issued by: County Executive
Regulation No. 14-14
COMCOR No. 24-9

Authority: Montgomery County Code (2014) Section 24-9

Supersedes: Executive Regulation 60-91

Council Review: Method (2) under Code Section 2A-15

Register Vol. 33 No. 2

Effective Date:

Comment Deadline: March 1, 2016

SUMMARY:

This regulation is established to coincide with changes to COMCOR No. 24-9 as a result of Montgomery County Bill 33-12 prohibiting smoking on all County owned and leased property and bus stops or stands, Council Resolution 17-210 prohibiting smoking in indoor common spaces of multi-family residential property and within 25 feet of playgrounds on such property, and Montgomery County Bill 56-14 which places certain restrictions and controls on the use and sale of e-cigarettes and other electronic nicotine delivery devices.

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**BACKGROUND
INFORMATION:**

Executive Regulation 60-91, Smoking Regulations and Restrictions, has not been updated since the last quadrennial review in 1992. Public perception and acceptance of smoking in public places have evolved considerably over the past two decades, resulting in the enactment of several State and Local laws to restrict and prohibit smoking in certain places. Executive Regulation 60-91 was outdated and partially preempted by laws enacted since 1992. Executive



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Regulation 14-14, Smoking, Tobacco and Nicotine Prohibitions and Restrictions, will replace Executive Regulation 60-91. The Department of Transportation and Department of General Services participated in the development of this regulation.

24.09.01.01 Definitions

In these regulations, terms defined in Section 24-9 of the County Code are applicable and not redefined; the following words and phrases have the following meanings:

Director - The Director of the Department of Health and Human Services or the Director's designee

[Bar - An indoor, enclosed area where the primary activity is the service of alcoholic beverages and where the service of food is only incidental to the service of alcoholic beverages.

CAO - Chief Administrative Officer or designee.

Code - Montgomery County Code, 1984, as amended.

Department Head - The head of each department, principal office, commission, agency and board of the Montgomery County Government.

Eating and Drinking Establishment - Any food service facility.]

Employee - Any person who regularly provides services to a business for compensation. Employee includes a temporary or part-time employee, contractor or consultant.

[Enclosed - Separated by walls that extend from floor to ceiling and under a roof.

Food Service Facility - Any enterprise that prepares or sells food or drink for human consumption on or off the premises. Food service facility includes: 1) any restaurant, coffee shop, retail market, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, soda fountain; and 2) any food service facility in an industry, institution, hospital, club, school, church, catering kitchen, or camp.

Health Care Facility - 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, office of any physician, dentist, psychologist, psychiatrist, physiologist, podiatrist, optometrist, or optician.

Health Officer - The Director of the Department of Health.

Large, Open Indoor Space - A public area of at least 3000 square feet in a hotel, theatre, shopping mall, office, transportation facility, or other private business where 150 or more persons can gather together for deliberation, entertainment, amusement, attendance at other functions within the building, or awaiting transportation.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Smoking, Tobacco, and Nicotine Prohibitions and Restrictions	Number 14-14
Originating Department Department of Health and Human Services	Effective Date

No Smoking Area in Eating and Drinking Establishments - That contiguous portion of an Eating and Drinking Establishment (excluding the bar area) with a total seating capacity of 50 or more, designated by the operator of the establishment as a non-smoking area.

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

Private Function - An event open only to those persons specifically invited, not to the general public, and in which the entire public area is under the control of the sponsor of the event.

Public Area - An enclosed area in which members of the public are normally invited or permitted.

Public Meeting - Any meeting, wherever held, open to the public with no membership requirement.

Rail Transit Stations - An area that:

1. includes the fare-paid areas and roofed areas;
2. is a regular stopping place for the pick up 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 - Any establishment in which the primary purpose is to sell merchandise or food for consumption off the premises, directly to consumers.

Shared Workplace - A workplace or part of a workplace that is regularly used by more than one employee.

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

Smoking Area - Designated area in which smoking is permitted.

Tobacco Shop - 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 - 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.]

24.09.01.02 [Policy;]Exceptions[; Designation of Smoking Areas]

The exception stated in Section 24-9(c)(2) applies only to an individual's personal vehicle.

[A. Policy

Under Sections 24-9 and 24-9A of the Montgomery County Code, 1984, as amended, smoking is unlawful in certain public areas, shared workspaces of private businesses, County government workplaces, rail transit stations and Eating and Drinking Establishments with



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Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

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Originating Department Department of Health and Human Services	Effective Date

a seating capacity of 50 or more. This prohibition does not apply to the exceptions listed in Sections 24-9 (b) and (c) and Section 24-9A(b) of Chapter 24, County Code.

B. Prohibitions

Smoking is prohibited in:

1. A public area of a retail store, bank, office, factory, or any other private business with exceptions.
2. Elevators.
3. Health care facilities except staff sleeping and living quarters and patient rooms under certain circumstances.
4. Schools or other educational facilities operated by Montgomery County Public Schools and Montgomery College except when expressly permitted under State law.
5. A building or part of a building owned or leased by County government normally used by the public for public purposes, or any private building or part of a building during a public meeting called by a government body.
6. Theatres (except dinner theatres) or movie theatres, enclosed auditoriums, concert or lecture halls when open to the public.
7. Rail transit stations.
8. A restroom, except a restroom in a private residence.
9. County government workplaces with exceptions.
10. Property not covered by Section 24-9(b) or exempted by Section 24-9(c) by notification in writing by the owner, lessee or person in charge to the Health Department requesting that the law be applied to the premises and the posting of signs. The owner or person in charge can revoke the prohibition by notifying the Health Department in writing and removing the signs.
11. A shared workplace in a retail store, bank, office, factory or any other private business, except:
 - (a) a business in which not more than 2 persons work at any time;
 - (b) a shared workplace in a private residence where members of the public are not regularly invited; or
 - (c) a shared workplace in a public area of an eating and drinking establishment.

C. Exceptions

Smoking is permitted in:

1. any public area in which smoking is prohibited when closed to the public, unless the public area is also a shared workplace;
2. any public area which is being used exclusively for a private function although smoking is normally prohibited.
3. that part of a large, open indoor space that is designated as a smoking area under Section 24-9(c)(2);
4. an enclosed room within a private business which is not a large, open



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

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Originating Department Department of Health and Human Services	Effective Date

door space and which is used exclusively as a smoking lounge;

5. a retail store, barbershop or beauty salon in which not more than 2 persons work at any time;

6. tobacco shops;

7. private, enclosed offices where members of the public are not normally present when the door leading to another workplace is closed. If a private, enclosed office is a shared workplace, smoking is allowed only with the consent of all employees sharing the workplace. If the public are normally present smoking is prohibited.

8. motor vehicles owned or leased by an employer if all employees sharing the motor vehicle consent.

9. county government workplaces that the Chief Administrative Officer determines are so large that smoking by one person would not affect another person;

10. those areas in buildings used by County government that the Chief Administrative Officer designates as areas for smoking;

11. a public reception area of a professional office operated by a sole practitioner, unless the reception area is also a shared workplace;

12. staff sleeping and living quarters and patient rooms in a health care facility in accordance with Section 24-9(b)(2);

13. schools and other educational facilities operated by the Montgomery County Public Schools and Montgomery College when expressly permitted under State law;

14. bars;

15. those areas in Eating and Drinking Establishments that have not been designated as "No Smoking Areas";

16. a restroom which is accessible only from a private office.

D. Designation of Smoking Areas

1. The person in charge of any area in which smoking is prohibited may designate areas in which smoking is permitted, if a sign is posted and the designated smoking areas are consistent with the requirements of Section 24-9(d). Designation of a smoking area is optional with the person in charge and such designation must fulfill the requirements of this regulation and Sections 24-9(c) and (d) of the Code.

2. For County government workplaces, the Chief Administrative Officer may designate smoking areas and may establish an Administrative Procedure to provide a process for making such designations. In those instances where employees are covered by a collective bargaining law, opportunity must be given to the representative of the employees to bargain over the location of the designated smoking area.

3. A person who operates an Eating and Drinking Establishment may designate a Smoking Area, but a contiguous No-Smoking Area of at least 50% of the total seating area that is not a bar must be designated as "No Smoking" if the total seating capacity of the non-bar area is 50 or more.

4. A smoking area may be designated in a large, open indoor space. The



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Smoking, Tobacco, and Nicotine Prohibitions and Restrictions	Number 14-14
Originating Department Department of Health and Human Services	Effective Date

smoking area must:

(a) consist of less than 20 percent (in a bowling alley, less than 40 percent) of the large open indoor space in which it is located. With respect to bowling alleys, the settee area occupied by bowlers for score keeping and actual bowling, and the concourse area, including spectator, video game, customer service, and eating and refreshment areas may be considered in computing the area where smoking is permitted. The area comprising the ball conveying alleys beyond the ball release line, must not be considered in computing the allowable smoking area.

(b) not be located in the center of the large, open indoor space or in an area that the public must pass through to gain access to an office, store, restroom, or other essential part of the building;

(c) use barriers and ventilation systems, where practical, to minimize the effects of smoke in adjacent areas;

(d) not include any service line or reception line. The front desk, information desk, concierge, or other service desk of a hotel or motel must remain in the no smoking area.

(e) contain space at least 4 feet wide which separates the smoking and no smoking areas. This space may be unoccupied or may be a section of a seating area acting as a buffer in which smoking is not permitted but which itself is not part of the no smoking area. Clustering furniture (sofas, chairs, tables, end tables, etc.) may be used to create all or part of the four foot space.

(f) have a ventilation system which meets the requirements of the BOCA code (Building Officials and Code Administrators International, Inc.) sections governing natural ventilation, mechanical ventilation, and recirculation that were in effect when the facility was approved for construction.

5. Any person who designates a large, open indoor space must make available a written record that the ventilation system meets the requirements of the applicable BOCA code and include information on the occupant load of the large, open indoor space; cubic feet per minute (cfm) per person of mechanical ventilation and the percentage of recirculated air.

E. Responsibilities of Private Employers in Shared Workplaces not Normally Open to the Public

1. Each Employer must:

(a) Provide a smoke-free work environment for non-smoking employees to the maximum extent practical;

(b) Post a summary of the law in a prominent place or provide each employee a written summary annually. The County Health Department will furnish each employer, on request, a summary of the law in plain language.

(c) Establish and post a workplace smoking policy written in plain language. The policy must include:

(1) a procedure to resolve complaints by employees about the



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Smoking, Tobacco, and Nicotine Prohibitions and Restrictions	Number 14-14
Originating Department Department of Health and Human Services	Effective Date

application of the law to the workplace;

- (2) the position title or name of the person designated by the employer to receive complaints;
- (3) a record, kept for at least two years, of each complaint and how it is resolved; and
- (4) the identification of the areas where smoking is not prohibited (if any).

(d) Solicit voluntary compliance and cooperation to protect the right of non-smokers to a smoke-free environment.

2. The Health Department will make available a list of agencies that conduct smoking cessation programs.

3. Each employer's policy must protect its employees against any retaliation if employees exercise their right to take any action under Section 24-9 at a workplace. An employer is not liable for any action of an employee that does not occur at the workplace and is outside the scope of the employee's employment.

4. This regulation does not affect employer personnel policies for hiring, discharge, or any other personnel action.]

24.09.01.03 [Posting Signs] Inspections and Enforcement

A. Authority to Investigate

1. The Director may inspect or cause to be inspected during reasonable hours, any part of a public or private facility subject to the restrictions set forth by Section 24-9 in order to determine compliance with the designation and posting provisions of the law and regulations.
2. The Director may investigate, or cause to be investigated, any complaint against an individual violating these regulations or Section 24-9.
3. Except for rail transit stations, the Director may investigate, or cause to be investigated, any complaint involving any of the above facilities alleging that the owner or operator of the facility permits any individual to smoke or vape in areas posted as no smoking.
4. The Health Department will forward smoking complaints involving bus, pedestrian, and/or train facilities at rail transit stations to the agency responsible for facility operation. Complaints concerning facilities operated by the Washington Metropolitan Area Transit Authority (WMATA) will be forwarded to the Director General Manager of WMATA. Complaints concerning facilities operated by the Maryland Transit Administration (MTA) will be forwarded to the MTA Administrator.

B. Enforcement

1. County employees should report violations of Section 24-9 and this regulation in County government workplaces and public areas directly to their immediate supervisors. Employees should report continued violations to the Director. The Director will then forward these complaints, and any documented evidence, to the director of the department where the alleged



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Smoking, Tobacco, and Nicotine Prohibitions and Restrictions	Number 14-14
Originating Department Department of Health and Human Services	Effective Date

violation occurred, with a copy to the Chief Administrative Officer. The director of the department must investigate the alleged violation and take necessary corrective action.

2. Private sector employees should report violations of Section 24-9 and this regulation to their employer or the person designated in the employer's written workplace policy in order to resolve the complaint. Employers must attempt to resolve complaints at the workplace. In response to complaints, the Health Department will inspect the workplace for compliance with this section including examination of signage and the content, clarity, dissemination, and implementation of the smoking policy.

[A. General

The owner or person having control of the room or area are jointly and severally responsible for complying with these sign requirements. Signs prohibiting or permitting smoking, as the case may be, must be displayed conspicuously in all areas covered by these regulations. In a workplace, signs must be posted in at least one prominent place on each floor of the building. The signs must be visible to each employee. Specific wording for signs for areas and rooms, County government workplaces, private business workplaces, public areas, and Eating and Drinking Establishments are included in subsections B, C, D, and E of this section. The signs and the written workplace smoking policy must complement each other in that it must be clear that smoking is prohibited on that floor except in designated areas: e.g., a shared enclosed workplace that is an office with the consent of all employees who occupy the office workplace, an enclosed smoking lounge or enclosed lunchroom, a vending room, a locker room, etc. if a similar conveniently located facility is available to non-smokers.

B. Rooms and Areas

In all rooms and areas where smoking is prohibited, the following sign must be posted: "No Smoking by Order of Montgomery County Code Section 24-9. Enforced by the Department of Health". The words "No Smoking" may be replaced by the international no-smoking symbol. The words "By Order of Montgomery County Code, Section 24-9. Enforced by the Department of Health" are necessary. Additional no-smoking signs may use the international symbol without the words. If the person in charge of areas where smoking is prohibited, designates a smoking area, that area must be posted with a sign or signs stating, "Smoking permitted" in sufficient numbers to identify and delineate the area or room. A sign, "Smoking Lounge" must be posted on each door to a smoking lounge. Signs need not be posted in private, enclosed offices or smoking lounges..

C. County Government Workplaces and Public Areas

A "No Smoking in This Building Except in Designated Smoking Areas by Order of Montgomery County Code, Section 24-9. Enforced by Department of Health" sign must be posted at all entrances to County government workplaces. Public areas in County government facilities must be posted with signs reading "No Smoking By Order of Montgomery County Code, Section 24-9. Enforced By The Department of Health". The words "No Smoking" may be replaced by the international no-smoking symbol. The words "By Order of Montgomery County Code, Section 24-9. Enforced by the Department of Health" are necessary. Additional no-



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

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Originating Department Department of Health and Human Services	Effective Date

smoking signs may use the international symbol without the words. Smoking areas designated by the Chief Administrative Officer in County government workplaces and in large, open indoor spaces in County facilities must be posted, "Smoking Permitted".

D. Private Business Workplaces

1. The following sign must be posted at each entrance and near the elevator or the main staircase on each floor of the building: "No Smoking by Order of Montgomery County Code, Section 24-9. Enforced by the Department of Health". If there are multiple banks of elevators, a sign must be posted at each bank. These signs must meet the specifications for door signs under Section F of these regulations. The words "No Smoking" may be replaced by the International no-smoking symbol. The words "By order of Montgomery County Code, Section 24-9. Enforced by the Department of Health" are necessary. In addition to signs at entrances, each floor of a private business must have at least one sign as specified in 24.09.01.03A of these regulations with the required wording.

2. Additional no-smoking signs may use the international symbol without the words. The international no-smoking symbol signs posted at entrances and near elevator banks and staircases must be a minimum of six and one-half inches in diameter exclusive of the wording. In other locations the symbols may be three inches in diameter.

E. Eating and Drinking Establishments

1. Subject to Section 24-9A, a sign indicating the availability of a No Smoking Area ("A No Smoking Area is Available, Enforced by the Department of Health") must be prominently posted at the entrance of any eating and drinking establishment.

2. "No Smoking Area" signs, either fixed or free-standing, must be posted conspicuously and in sufficient numbers to designate the contiguous no smoking area.

F. Construction of Signs

1. Dimensions of Signs

(a) Door Signs

The overall dimensions must not be less than 6 1/2 inches (length) by 11 inches (width) for door signs at entrances.

(b) Wall Signs

(1) In bathrooms, changing rooms, and rooms smaller than 200 square feet, the overall sign dimensions must not be less than 6 inches by 8 inches.

(2) In rooms greater than 200 square feet, the overall sign dimensions must not be less than 14 inches by 11 inches.

(c) Free-standing Signs

The overall sign dimensions must not be less than 14 inches by 11 inches.

(d) International symbols

(1) The sign on each floor and at entrances, staircases, and elevator banks must not be less than 6 1/2 inches in diameter.

(2) Signs in other locations must not be less than three inches in diameter.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Smoking, Tobacco, and Nicotine Prohibitions and Restrictions	Number 14-14
Originating Department Department of Health and Human Services	Effective Date

2. Letter Sizing

(a) Door Signs

Lettering cannot be less than 3/4 of an inch for the words "No Smoking", "No Smoking Area", "A No Smoking Area is Available", "Smoking Permitted", or "Smoking Lounge" and not less than 3/8 of an inch for the words "By Order of Montgomery County Code Section 24-9. Enforced by The Department of Health".

(b) Wall Signs

(1) In bathrooms, changing rooms, and rooms smaller than 200 square feet, the lettering of wall signs cannot be less than 1/2 inch for the words "No Smoking", "No Smoking Area", "A No Smoking Area is Available", or "Smoking Permitted" nor less than 1/4 inch for the words "By Order of Montgomery County Code, Section 24-9. Enforced By The Department of Health."

(2) In rooms larger than 200 square feet, the height of the lettering of wall signs must not be less than 1 1/4 inches for the words "No Smoking", "No Smoking Area", "A No Smoking Area is Available", or "Smoking Permitted" nor less than 5/8 inch for the words "By Order of Montgomery County Code, Section 24-9. Enforced By the Department of Health."

(c) Free-standing Signs

Lettering of free-standing signs cannot be less than 1 1/4 inches for the words "No Smoking", "No Smoking Area", "A No Smoking Area is Available", or "Smoking Permitted", nor less than 5/8 inch for the words "By Order of Montgomery County Code 24-9. Enforced By the Department of Health".

(d) International Symbols

When the international symbol (6 1/2 inches in diameter) is used as the floor sign in a prominent location or at entrances or elevator banks, the letters for the words "By Order of Montgomery County Code, Section 24-9. Enforced by the Department of Health" must be not less than 5/8 inches.

3. Contrast

The printing on all signs must markedly contrast in color with the background color of the sign so as to ensure the prominence of the no smoking prohibition.

4. Approval

If any sign is not sized or printed in accordance with this subsection, the Health Officer must approve a sample or facsimile of, the sign before it is used.

5. Display

Signs must be conspicuously displayed by the owner or person having control of the building, structure, place, or premises, at least 7 feet above floor level in rooms larger than 200 square feet.

24.09.01.04 Inspections and Enforcement

A. Authority to Investigate

1. The Health Officer may inspect or cause to be inspected during reasonable hours, any part of a facility owned or leased by the County government and normally used by the



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Smoking, Tobacco, and Nicotine Prohibitions and Restrictions	Number 14-14
Originating Department Department of Health and Human Services	Effective Date

public for public purposes, any school or other educational facility operated by the Montgomery County Public Schools or Montgomery College, health care facility, retail store, theatre, movie theatre, County government workplace, eating and drinking establishment, and any private business within Montgomery County in order to determine compliance with the designation and posting provisions of the law and regulations.

2. The Health Officer and the Montgomery County Police may investigate, or cause to be investigated, any complaint against an individual violating these regulations or Sections 24-9 and 24-9A.

3. Except for rail transit stations, the Health Officer may investigate, or cause to be investigated, any complaint involving any of the above facilities alleging that the owner or operator of the facility permits any individual to smoke in areas posted as no smoking.

4. The Health Department will forward smoking complaints involving rail transit stations to the Director of the Washington Metropolitan Area Transit Authority.

B. Enforcement

1. The Health Officer and the Montgomery County Police, jointly or separately, may enforce Sections 24-9 and 24-9A of the County Code and these regulations. If necessary, citations may be issued under Sections 1-18 and 1-19 of the County Code.

2. County employees should report violations of Section 24-9 and this regulation in County government workplaces and public areas directly to their immediate supervisors. Employees should report continued violations to the Health Officer.

The Health Officer will then forward these complaints, and any documented evidence, to the director of the department where the alleged violation occurred, with a copy to the Chief Administrative Officer. The director of the department must investigate the alleged violation and take necessary corrective action.

3. Private sector employees should report violations of Section 24-9 and this regulation to their employer or the person designated in the employer's written workplace policy in order to resolve the complaint. Employers must attempt to resolve complaints at the workplace. The Health Department, in responding to complaints, will inspect for signs and the contents, clarity, dissemination, and implementation of the smoking policy at the workplace.

4. The Health Officer may suspend an Eating and Drinking Establishment license issued under Chapter 15, Montgomery County Code, 1984, as amended, for up to 3 days if the Health Officer finds that the operator of the Eating and Drinking Establishment has knowingly and repeatedly violated Section 24-9A.

5. The owner or person in control of a building or area covered by this regulation must refuse to serve or seat any person who smokes where smoking is prohibited. The person must be asked to leave the building or area if the person continues to smoke after proper warning.]

[24.09.01.05] 24.09.01.04 Severability

If a court holds that a portion of this regulation is invalid, the other portions



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Smoking, Tobacco, and Nicotine Prohibitions and Restrictions	Number 14-14
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remain in effect.

[24.09.01.06] 24.09.01.05 Effective Date

This regulation takes effect 30 days after approval by the County Council.

Isiah Leggett

County Executive

Approved as to Form and Legality

A handwritten signature in cursive script, appearing to read "Justin Kalin", written over a horizontal line.

Office of the County Attorney