

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council Of Howard County, Maryland

2015 Legislative Session

Legislative Day No. 7

Bill No. 28 - 2015

Introduced by:
Jon Weinstein, Councilperson

Co-sponsored by:
Calvin Ball, Councilperson
Jennifer Terrasa, Councilperson

AN ACT prohibiting the use of Electronic Smoking Devices in certain public places and in certain places of employment; defining certain terms; and generally relating to smoking in Howard County.

Introduced and read first time _____, 2015. Ordered posted and hearing scheduled.

By order _____
Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2015.

By order _____
Jessica Feldmark, Administrator

This Bill was read the third time on _____, 2015 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ___ day of _____, 2015 at ___ a.m./p.m.

By order _____
Jessica Feldmark, Administrator

Approved by the County Executive _____, 2015

Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **WHEREAS**, according to the National Institute of Health’s National Institute on
2 Drug Abuse, electronic cigarettes or Electronic Smoking Devices (ESDs) were first
3 introduced in China in 2003, have been available in the United States since 2007, and
4 there are currently over 250 electronic cigarette brands in the United States; and

5
6 **WHEREAS**, the National Institute on Drug Abuse reports that electronic
7 cigarette use has doubled every year since 2010 resulting in a more than \$1.5 billion
8 industry; and

9
10 **WHEREAS**, electronic cigarettes are mostly unregulated under federal law and
11 the Food and Drug Administration is currently seeking to regulate the sale, manufacture,
12 and distribution of these products without a known completion date; and

13
14 **WHEREAS**, currently there are no official standards for ESD design or contents
15 and no requirement to provide public information on the devise’s contents; and

16
17 **WHEREAS**, the National Institute on Drug Abuse has raised concerns are that
18 ESD use may renormalize smoking, could potentially be used with controlled substances,
19 and are being marketed to youth; and

20
21 **WHEREAS**, Howard County took leadership on a critical public health issue in
22 2006 by passing Council Bill 38, which essentially banned smoking in public places
23 before the Statewide ban was enacted; and

24
25 **WHEREAS**, the Council strongly believes that ESD use poses many of the same
26 public health concerns which led the County to ban smoking in public places in 2006,
27 particularly unwanted exposure to second hand smoke.

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland, that the
2 Howard County Code is amended as follows:

3

4 *By amending:*

5 *Title 12. Health and Social Services*

6 *Subtitle 6. Smoking in Public Places*

7

8 **Title 12 – Health and Social Services**

9 **SUBTITLE 6 – SMOKING IN PUBLIC PLACES**

10

11 **Sec. 12.600. - Findings and purpose.**

12

13 (a) The Howard County Council finds that secondhand tobacco smoke is a hazard to the
14 health of the public.

15 (b) The purpose of this subtitle is:

16 (1) To protect the public health, safety, and welfare by prohibiting the smoking of
17 tobacco products in public places, at public meetings, in certain government
18 vehicles, in places of employment, and within certain distances from entrances
19 to public places; and

20 (2) To protect the public from involuntary exposure to smoke from tobacco
21 products.

22 **Sec. 12.601. - Definitions.**

23 Terms in this subtitle have the meanings indicated.

24 (a) *Bar* means an establishment, portion of an establishment, or area of a restaurant
25 licensed under the State Code Article 2B to serve alcoholic beverages for
26 consumption by individuals on the premises and where serving food is only
27 incidental to the consumption of alcoholic beverages. *Bar* includes a cocktail lounge.

1 ~~(B) *ELECTRONIC SMOKING DEVICE* MEANS AN ELECTRONIC DEVICE THAT CAN BE USED TO~~
2 ~~DELIVER NICOTINE OR OTHER SUBSTANCES TO THE INDIVIDUAL INHALING FROM THE~~
3 ~~DEVICE.~~

4 (B) *ELECTRONIC SMOKING DEVICE* MEANS ANY PRODUCT CONTAINING OR DELIVERING
5 NICOTINE OR ANY OTHER SUBSTANCE THAT CAN BE USED BY A PERSON TO SIMULATE
6 SMOKING THROUGH INHALATION OF VAPOR OR AEROSOL FROM THE PRODUCT. THE
7 TERM INCLUDES ANY SUCH DEVICE, WHETHER MANUFACTURED, DISTRIBUTED,
8 MARKETED, OR SOLD AS AN E-CIGARETTE, E-CIGAR, E-PIPE, OR VAPE PEN, OR SIMILAR
9 PRODUCT NAME OR DESCRIPTOR FOR SUCH A DEVICE.

10 ([[b]]C)*Employee* means an individual who:

- 11 (1) Works for an employer in consideration for direct or indirect monetary wages or
12 profit; or
13 (2) Volunteers services for a nonprofit entity or business entity.

14 ([[c]]D)*Employer* means a person, partnership, corporation, nonprofit entity, or other
15 business entity that employs the services of one or more individuals.

16 ([[d]]E)*Enclosed area* means an area that is bounded on all sides by walls that extend
17 from the floor to the ceiling regardless of whether the walls contain doors, windows,
18 or vents.

19 ([[e]]F)*Government vehicle* means each car, bus, truck, or van owned or leased by
20 Howard County.

21 ([[f]]G)*Health care facility* means an office or institution where individual care or
22 treatment of a physical, mental, emotional, physiological, or psychological illness or
23 condition is provided including, but not limited to, a hospital, clinic, nursing home,
24 assisted living facility, ambulatory health care facility, limited care facility, adult day
25 care center, home for the aging or chronically ill, medical laboratory, and the Office
26 of a physician, dentist, psychologist, psychiatrist, physiologist, podiatrist,
27 optometrist, chiropractor, or optician.

28 ([[g]]H)*International "No Smoking" symbol* means a pictorial representation of a burning
29 cigarette enclosed in a red circle with a red bar across it.

1 ([[h]]I) *Outdoor seating area* means any patio, courtyard, sidewalk cafe, backyard or
2 other outdoor area of a restaurant or bar where food and/or beverages are served
3 and/or consumed.

4 ([[i]]J) *Partially enclosed* means an outdoor seating area where the circulation of outdoor
5 air is obstructed by a temporary or permanent wall, tarp, shield, blind, or other kind
6 of covering, exclusive of a temporary or permanent roof, ceiling, overhang, or
7 overhead structure and the perimeter of the adjoining enclosed restaurant or business.

8 ([[j]]K) *Person* means an individual, corporation, partnership, business trust, limited
9 liability company, or any other type of business entity.

10 ([[k]]L) *Place of employment* means an area within a building that employees normally
11 frequent during the course of employment that is under the control of their employer,
12 including, but not limited to, a work area, employee lounge, restroom, conference
13 and meeting rooms, class room, cafeteria, photocopy room, private offices, elevator,
14 auditorium, medical facility, stairs and hallway.

15 ([[l]]M) *Public meeting* means a meeting, wherever held, open to the public and having no
16 membership restraints.

17 ([[m]]N) *Public place* means:

18 (1) An enclosed area to or in which members of the public are invited or permitted,
19 including, but not limited to:

20 (i) An auditorium;

21 (ii) A bar;

22 (iii) A beauty or barber shop;

23 (iv) A bowling alley;

24 (v) A building owned or leased by Howard County including, but not limited
25 to, any part of a building that is owned, leased, or occupied by the County
26 or a County agency;

- 1 (vi) A building used for or designed for the primary purpose of exhibiting a
2 motion picture, stage, drama, lecture, musical recital, concert or other
3 similar performance;
- 4 (vii) A business organization open to the public, including a retail store, bank,
5 credit union, and other financial institution, office, factory, or any other
6 private business, office, or organization;
- 7 (viii) A common area of an apartment building, condominium, retirement
8 facility, or other multiunit residential facility including, but not limited to, a
9 lobby, hallway, laundry facility, storage facility, exercise facility, restroom,
10 or garage;
- 11 (ix) A convention hall;
- 12 (x) An elevator, regardless of capacity, except an elevator in a single-family
13 dwelling;
- 14 (xi) A facility meeting the definition of an assembly occupancy as defined in the
15 Howard County Fire Code;
- 16 (xii) A facility offering private, community or school based camp, or recreational
17 programs to minors;
- 18 (xiii) A health care facility, including, but not limited to, waiting rooms,
19 hallways, wards, and private and semiprivate sleeping rooms;
- 20 (xiv) A library, museum, and gallery;
- 21 (xv) A pool hall;
- 22 (xvi) A public or private educational facility;
- 23 (xvii) A public transportation facility, including, but not limited to, a ticket,
24 boarding, and waiting area;
- 25 (xviii) A public transportation vehicle, including, but not limited to, a bus or
26 taxicab;
- 27 (xix) A restaurant;

- 1 (xx) A restroom;
 - 2 (xxi) A room, chamber, or place used for a public meeting;
 - 3 (xxii) A service line;
 - 4 (xxiii) A shopping mall including, but not limited to, the common areas,
5 hallways, restrooms and storage facilities;
 - 6 (xxiv) A sleeping room, common area, or banquet hall of a hotel or motel
7 including, but not limited to, a lobby, hallway, laundry facility, exercise
8 facility, storage facility, restroom, or garage; and
 - 9 (xxv) A sports arena; and
- 10 (2) An outdoor seating or viewing area that is used by the public:
- 11 (i) To observe a concert, motion picture, stage drama, lecture, musical recital,
12 or other similar performance; or
 - 13 (ii) To observe or participate in an athletic event including the bleacher area of
14 a ball field or sports arena.

15 ([[n]]O)*Restaurant* means:

- 16 (1) A place that offers for sale or sells food and drink to the public, guests, patrons,
17 or employees including, but not limited to, a coffee shop, fast-food
18 establishment, cafeteria, sandwich stand, private or public school cafeteria; and
- 19 (2) A kitchen where food is prepared on the premises for serving elsewhere, such as
20 a catering facility.

21 ([[o]]P)*Retail store* means:

- 22 (1) An establishment whose primary purpose is to sell or offer for sale to consumers
23 goods, wares, merchandise, food for consumption off the premises, or other
24 tangible items; and
- 25 (2) All related and incidental activities, operations, and services.

1 (([p])Q) *Retail tobacco store* means a retail store that primarily sells or offers for sale
2 tobacco products, ~~ELECTRONIC SMOKING DEVICES~~, and accessories, and where the
3 sale of other products is incidental.

4 (([q])R) *Service line* means an indoor line where one or more individuals wait for or
5 receive service of any kind, whether or not the service involves the exchange of
6 money.

7 [(r) *Separately enclosed and ventilated bar area* means an enclosed area that was in
8 existence prior to April 1, 2005 as defined below:

9 (1) In a restaurant, the cocktail lounge or bar area which is separated from the
10 restaurant dining area by a permanent floor to ceiling partition and is accessed
11 by a door for ingress and egress and has a separate ventilation system; or

12 (2) Within a bar, a smaller cocktail lounge or bar area which is separated from the
13 main bar area by a permanent floor to ceiling partition and is accessed by a door
14 for ingress and egress and has a separate ventilation system.]]

15 (s) *Shared government vehicle* means any vehicle used expressly for Howard County
16 Government purposes that is not assigned to any one employee for exclusive use.

17 ~~(t) *Smoking or to smoke* means the act of smoking, inhaling smoke OR VAPOR from [[a]]
18 AN ELECTRONIC SMOKING DEVICE, hookah, or water pipe, or carrying a lighted cigar,
19 cigarette, pipe, bidi of any kind, or any lighted tobacco or lighting a cigar, cigarette,
20 pipe, bidi, of any kind, or tobacco OR NICOTINE of any kind, EXCLUDING PATCHES.~~

21 (T) *SMOKING* MEANS INHALING, EXHALING, BURNING, OR CARRYING ANY LIGHTED OR
22 HEATED CIGAR, CIGARETTE, OR PIPE, OR ANY OTHER LIGHTED OR HEATED TOBACCO OR
23 PLANT PRODUCT INTENDED FOR INHALATION, IN ANY MANNER OR IN ANY FORM.
24 “SMOKING” ALSO INCLUDES THE USE OF AN ELECTRONIC SMOKING DEVICE WHICH
25 CREATES AN AEROSOL OR VAPOR, IN ANY MANNER OR IN ANY FORM, OR THE USE OF
26 ANY ORAL SMOKING DEVICE FOR THE PURPOSE OF CIRCUMVENTING THE PROHIBITION
27 OF SMOKING IN THIS ARTICLE.

28 (u) *Sports arena* means a sports pavilion, gymnasium, health spa, boxing arena,
29 swimming pool, roller rink, ice rink, baseball field, football field, soccer field and

1 other similar places where members of the public assemble to engage in physical
2 exercise, participate in athletic competition, or to witness sports events.

3 ~~(v) Tobacco product means any substance containing tobacco OR NICOTINE including,~~
4 ~~but not limited to, bidis, cigars, cigarettes, ELECTRONIC SMOKING DEVICES, snuff,~~
5 ~~chew, dip, and smokeless tobacco, EXCLUDING PATCHES.~~

6 (v)(1) TOBACCO PRODUCT MEANS ANY PRODUCT CONTAINING, MADE, OR DERIVED FROM
7 TOBACCO OR NICOTINE THAT IS INTENDED FOR HUMAN CONSUMPTION, WHETHER
8 SMOKED, HEATED, CHEWED, ABSORBED, DISSOLVED, INHALED, SNORTED, SNIFFED, OR
9 INGESTED BY ANY OTHER MEANS, INCLUDING, BUT NOT LIMITED TO CIGARETTES,
10 CIGARS, LITTLE CIGARS, CHEWING TOBACCO, PIPE TOBACCO, SNUFF.

11 (2) "TOBACCO PRODUCT" INCLUDES ELECTRONIC SMOKING DEVICES.

12 (3) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION TO THE CONTRARY:

13 (a) "TOBACCO PRODUCT" INCLUDES ANY COMPONENT, PART, OR
14 ACCESSORY OF A TOBACCO PRODUCT, WHETHER OR NOT SOLD
15 SEPARATELY; AND

16 (b) "TOBACCO PRODUCT" DOES NOT INCLUDE PATCHES INTENDED FOR
17 SMOKING CESSATION.

18 (W) *VAPING OR TO VAPE* MEANS THE ACT OF USING AN ELECTRONIC SMOKING DEVICE TO
19 DELIVER NICOTINE OR OTHER SUBSTANCES.

20

21 **Sec. 12.602. - Prohibition.**

22

23 Except as otherwise provided in this subtitle, a person shall not smoke:

- 24 (a) In a public place;
- 25 (b) At a public meeting;
- 26 (c) In a shared government vehicle or in any government vehicle when occupied by
27 more than one person; or
- 28 (d) In a place of employment.

29

1 **Sec. 12.603. - Distance from a public place or place of employment.**

2
3 Smoking is prohibited within a distance of 15 feet outside public entrances and exits
4 of an enclosed public place or place of employment where smoking is prohibited, except
5 this does not apply in the Ellicott City Historic District or to restaurants and bars with
6 outdoor seating areas that comply with section 12.604.

7
8 **Sec. 12.604. - Exceptions to prohibition.**

9
10 (a) The prohibitions in section 12.602 do not apply to:

11 (1) A private club or lodge owned and operated by a membership association
12 licensed under article 2B of the State Code if:

13 (i) The association's duties are performed by its members, including, but not
14 limited to, food preparation and security; and

15 (ii) The members do not receive compensation for the performance of the
16 association's duties;

17 (2) A sleeping room of a hotel or motel, as long as that hotel or motel maintains at
18 least 75 percent of all of its sleeping rooms as smoke-free;

19 (3) Outdoor seating areas. Smoking may be allowed in an outdoor seating area,
20 provided that such area shall:

21 (i) Adjoin an enclosed restaurant or bar; and

22 (ii) Has seating that constitutes no more than 40 percent of the total enclosed
23 seating capacity of the establishment; and

24 (iii) Is not enclosed or partially enclosed; and

25 (iv) Is located in such a way to minimize the likelihood that smoke from the
26 outdoor seating area will infiltrate enclosed areas where smoking is
27 prohibited as provided by the provisions of this subtitle.

1 (4) Smoking as an integral part of a theatrical performance held in a facility
2 primarily used for theatrical performances;

3 (5) A retail tobacco store provided, however, that smoke from the retail tobacco
4 store does not infiltrate areas where smoking is prohibited under the provisions
5 of this subtitle;

6 (b) Notwithstanding any other provision of this section, an owner, operator, manager, or
7 other person who controls an establishment subject to this section may declare the
8 establishment as a nonsmoking establishment.

9

10 **Sec. 12.605. - Notification of smoking prohibition in places of employment.**

11

12 The prohibition on smoking in places of employment shall be communicated to all
13 existing employees by the effective date of this subtitle and to all prospective employees
14 upon their application for employment.

15

16 **Sec. 12.606. - Posting signs.**

17

18 (a) An owner, operator, manager, or person in control of a building or area regulated by
19 this subtitle shall post a sign at each entrance used by the public that shall:

20 (1) State "Smoking, ~~for~~ Carrying Lighted Tobacco Products, ~~OR VAPING~~
21 Prohibited by Law. Violators are subject to a penalty not to exceed \$250.00";
22 and

23 (2) Display the international "No Smoking" symbol.

24 (b) Each sign shall be conspicuously displayed and have letters of not less than one inch
25 in height.

26 (c) An establishment that sells tobacco products shall clearly display signs stating that
27 the sale of tobacco products to minors is forbidden by law.

28 (d) The owner, manager, or operator of a theatre or auditorium shall post signs in the
29 lobby stating that smoking is prohibited within the theatre or auditorium.

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Sec. 12.607. - Responsibilities of owner, operator, etc.

- (a) An owner, operator, manager, or person in control of a public place or place of employment shall remove from any area where smoking is prohibited by this subtitle, all ashtrays and other smoking paraphernalia.
- (b) An owner, operator, manager, or person in control of a restaurant or bar where smoking is prohibited must refuse to serve or seat any person who smokes where smoking is prohibited and must ask the person to leave the establishment if the person continues to smoke after an initial warning.

Sec. 12.608. - Enforcement.

- (a) A person who observes a violation of this subtitle may file a complaint with the Police Department.
- (b) If, during an inspection of a building or area regulated by this subtitle, an inspector from the State Fire Marshal's Office, the Department of Fire and Rescue Services, the Health Department, or the Department of Inspections, Licenses and Permits, observes a violation of this subtitle, the inspector may issue a citation under this subtitle.

Sec. 12.609. - Nonretaliation.

A person or employer shall not discharge, refuse to hire, or in any manner retaliate against an employee or Applicant for employment because the employee or Applicant exercises the right to a smoke-free environment afforded by this subtitle.

Sec. 12.610. - Penalties.

1 (a) (1) If an individual smokes in violation of section 12.602 of this subtitle, a Police
2 Officer may issue a civil citation to the individual pursuant to title 24, "Civil
3 Penalties," of this Code.

4 (2) A violation of section 12.602 of this subtitle is a Class C offense.

5 (3) Each day that a violation continues is a separate offense.

6 (b) (1) If an owner, manager, operator, or person in control of a public place or place of
7 employment violates section 12.605, section 12.606, or section 12.607 of this
8 subtitle, a Police Officer may issue a civil citation pursuant to the title 24, "Civil
9 Penalties," of this Code.

10 (2) A violation of section 12.605, section 12.606, or section 12.607 of this subtitle is
11 a Class B offense.

12 (3) Each day that a violation continues is a separate offense.

13

14 **Sec. 12.611. - Public education.**

15

16 The Public Information Office and the Health Department shall engage in a program
17 to explain and clarify the purposes and requirements of this subtitle to persons affected by
18 it and to guide owners, operators, and managers in their compliance with it. The program
19 may include publication of a brochure for affected businesses and individuals explaining
20 the provisions of this subtitle.

21

22 **Sec. 12.612. - Provisions cumulative to other laws and regulations.**

23

24 The provisions of this subtitle are in addition to the provisions of any other Federal,
25 State, or County law, ordinance, rule, or regulation.

26

27 **Sec. 12.613. - Severability.**

28

1 If any provision of this subtitle or the application thereof to any person or
2 circumstance is held invalid for any reason in a court of competent jurisdiction, the
3 invalidity shall not affect other provisions or any other application of this subtitle which
4 can be given effect without the invalid provision or application, and for this purpose the
5 provisions of this subtitle are severable.

6
7
8 ***Section 2. And Be It Further Enacted by the County Council of Howard County,***
9 ***Maryland, that Section 1 of this Act shall become effective 61 days after its enactment.***

10
11 ***Section 3. And Be It Further Enacted by the County Council of Howard County, Maryland, that***
12 ***the Howard County Code is amended as follows:***

13
14 ***By amending:***

15 ***Title 12. Health and Social Services***

16 ***Subtitle 6. Smoking in Public Places***

17 ***Sec. 12.606. - Posting signs***

18 ***Subsection (a)***

19
20 ***Sec. 12.606. - Posting signs***

21 ***(a) An owner, operator, manager, or person in control of a building or area regulated by***
22 ***this subtitle shall post a sign at each entrance used by the public that shall:***

23 ***(1) State "Smoking, [[or]] Carrying Lighted Tobacco Products, OR VAPING***
24 ***Prohibited by Law. Violators are subject to a penalty not to exceed \$250.00";***
25 ***and***

26 ***(2) Display the international "No Smoking" symbol AND A "NO VAPING" SYMBOL.***

27
28 ***Section 4. And Be It Further Enacted by the County Council of Howard County, Maryland, that***
29 ***Section 3 of this Act shall become effective January 1, 2016.***