

**MEMORANDUM**

March 1, 2019

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: Bill 35-18, Health and Sanitation – Smoking – Outdoor Serving Areas  
Resolution to adopt Bill 35-18, Health and Sanitation – Smoking – Outdoor Serving Areas as a Board of Health Regulation.<sup>1</sup>

PURPOSE: Action – Roll call voted required on Bill and Resolution to adopt Board of Health regulation

**Health and Human Services Committee recommendation (3-0):** enact Bill 35-18 with 2 amendments to:

- allow an eating and drinking establishment to designate a portion of an outdoor serving area that is on a rooftop or balcony where smoking or vaping is allowed; and
- allow smoking/vaping in outdoor seating areas associated with a golf course if employees of an eating and drinking establishment do not serve food in that outdoor seating area.

The Committee further recommended the Council adopt the accompanying Board of Health regulation.

Bill 35-18, Health and Sanitation – Smoking – Outdoor Serving Areas and the Board of Health regulation, sponsored by Lead Sponsor Councilmember Katz and Co-Sponsors then-Council President Riemer, and then-Councilmember Elrich, and Councilmembers Rice and Alborno, was introduced on October 2. A public hearing was held on October 23 and a Health and Human Services Committee worksession was held on February 4. Then-County Executive Leggett supported the Bill.

Bill 35-18 and the Board of Health regulation would prohibit smoking in certain outdoor serving areas.

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<sup>1</sup>#SmokeFreeDining4All

KeySearch terms: Smoking, Outdoor dining, Outdoor restaurants, Outdoor bars, Outdoor patios, Outdoor serving, areas, Vaping and Public health

## **Background**

***Health concerns of cigarettes and electronic cigarettes.*** The Council has discussed the health concerns surrounding cigarettes and electronic cigarettes at length – typically in conjunction with a legislative action. This includes Bill 33-12, Health and Sanitation – Smoking – County Property (enacted February 12, 2013), Bill 56-14, Health and Sanitation – Smoking – Electronic Cigarettes (enacted March 3, 2015), and a Board of Health Regulation prohibiting smoking in certain common areas of multiple-family residential dwellings and certain playground areas (adopted July 12, 2011). These health concerns are not repeated here, but the Council staff packets for those legislative items are available from Council staff if Councilmembers wish to review these concerns.

***Action in other jurisdictions.*** According to the American Nonsmokers' Rights Foundation, there are 4 states<sup>2</sup> and over 300 counties/municipalities that have smokefree outdoor dining and bar patio laws.

## **Public Hearing**

At the Council's public hearing, the Council heard from speakers both supportive of Bill 35-18 and those in opposition to it. The Council has also received correspondence from those supportive and in opposition. Those expressing support of the bill include the City of Rockville, the American Heart Association, the American Cancer Society Cancer Action Network (with amendment described below), the Institute for Public Health Innovation, Holy Cross Health, Maryland Group Against Smoker's Pollution (GASP), Americans for Nonsmokers' Rights (with amendment described below), and several residents. Those expressing opposition to Bill 35-18 include The Greater Bethesda Chamber of Commerce (proposed amendment described below), some businesses (including Tommy Joe's, whose owner recommends an amendment described below), and several residents.

## **Issues/ Committee recommendations**

***1. Should existing eating and drinking establishments be grandfathered?*** Bill 35-18 would prohibit smoking or vaping in all outdoor serving areas in the County. The Greater Bethesda Chamber of Commerce proposed a grandfathering amendment that would allow smoking in outdoor serving areas of eating and drinking establishments that have an alcoholic beverage license as of the date of enactment of Bill 35-18 (©27-29; 29a-29b). Similarly, the owner of Tommy Joe's requested an amendment to grandfather existing establishments or an "upper level open air exemption" (©30-31).

**Committee recommendation (3-0):** amend Bill 35-18 to allow an establishment to designate a portion of an outdoor serving area on a rooftop or balcony where smoking/vaping is allowed.

***2. Should smoking and vaping be allowed in outdoor serving areas if employees do not provide service in that area?*** Councilmember Katz was approached by the Chevy Chase Country Club, which requested an amendment to permit smoking in areas that meet the definition of outdoor

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<sup>2</sup> Hawaii, Maine, Michigan, and Washington.

serving areas even when employees do not provide food and/or beverage service in that area. In other words, when patrons order from an inside location (where smoking and vaping is prohibited) and then take their food and/or beverages to an eating area outside.

**Council staff comments:** When deliberating Bill 33-12, Health and Sanitation – Smoking – County Property, the Council made a policy decision to allow smoking on the only golf course implicated in that Bill (Falls Road Golf Course is a County-owned golf course). (Bill 33-12 did not address smoking on golf courses generally and County law does not prohibit smoking on any golf course – public or private.)

**Committee recommendation (3-0):** allow smoking/vaping in outdoor seating areas associated with a golf course if employees of an eating and drinking establishment do not serve food in that outdoor seating area.

### ***3. What other amendments were proposed?***

- Current law prohibits smoking and vaping in a variety of public places; county law includes specific definitions of smoking and vaping. The American Cancer Society Cancer Action Network recommended an amendment to folding the definition of vaping into the broader definition of smoking. **Council staff does not support** this amendment because in Staff's view, it is important that legislation be clear to the average reader what is intended to be allowed or disallowed. Council staff believes that merging the definitions makes it less clear to readers what is allowed or not allowed.
- Bill 35-18 would prohibit smoking or vaping in an outdoor serving area "except while actively passing on the way to another destination." Both the American Cancer Society Cancer Action Network and the Americans for Nonsmokers' Rights recommended removal of this language. **Council staff concurs**; this language was removed via the Committee recommendation.

This packet contains:	<u>Circle #</u>
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Bill No. 35-18  
Concerning: Health and Sanitation --  
Smoking – Outdoor Serving Areas  
Revised: 8/22/2018 Draft No. 2  
Introduced: October 2, 2018  
Expires: April 2, 2020  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Katz  
Co-Sponsors: Council President Riemer and Councilmembers Elrich, Rice, and Alborno

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**AN ACT** to:

- (1) prohibit smoking in certain outdoor serving areas; and
- (2) generally amend County law on smoking.

By amending

Montgomery County Code  
Chapter 24, Health and Sanitation  
Section 24-9

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<b>[Single boldface brackets]</b>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<b>[[Double boldface brackets]]</b>	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Section 24-9 is amended as follows**

**24-9. Smoking and using electronic cigarettes in public places.**

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

\* \* \*

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

\* \* \*

Outdoor serving area means a patio, deck, porch, or other outdoor seating or serving area, whether partially enclosed or open to the sky, that is permitted for outdoor eating or drinking under the control of an eating and drinking establishment.

\* \* \*

(b) *Smoking and vaping are prohibited in certain public places.* A person must not smoke or use any electronic cigarette in or on any:

\* \*

(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[.]; or

(12) outdoor serving area, except [[while actively passing on the way to another destination]] as provided in paragraph (c)(9) or (e).

\* \* \*

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

\* \* \*

(9) On a golf course or in an outdoor seating area associated with a golf course if employees of an eating and drinking establishment do not serve food or drink in the outdoor seating area; and

\* \* \*

(e) Outdoor serving areas.

(1) An eating and drinking establishment may designate a portion of an outdoor serving area that is on a rooftop or balcony where smoking or vaping is allowed.

(2) This paragraph does not apply in a municipality that prohibits smoking or vaping in an outdoor serving area.

(f) Posting signs.

\* \* \*

[[f)] (g) Duty to prevent smoking in certain areas.

\* \* \*

[[g)] (h) Optional smoking restrictions.

\* \* \*

[[h)] (i) Limitations.

\* \* \*

[[i)] (j) Other laws still apply.

\* \* \*

[[j)] (k) Regulations.

\* \* \*

[[k)] (l) Enforcement and penalties.

\* \* \*

## LEGISLATIVE REQUEST REPORT

Bill 35-18

*Health and Sanitation – Smoking – Outdoor Serving Areas*

**DESCRIPTION:** Bill 35-18 would prohibit smoking in certain outdoor serving areas.

**PROBLEM:** According to the Centers for Disease Control, there is no risk-free level of secondhand smoke exposure; even brief exposure can be harmful to health.

**GOALS AND OBJECTIVES:** To protect the health of residents.

**COORDINATION:** Health and Human Services

**FISCAL IMPACT:** To be requested

**ECONOMIC IMPACT:** To be requested

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Amanda Mihill, Legislative Attorney 240-777-7815

**APPLICATION WITHIN MUNICIPALITIES:** To be researched.

**PENALTIES:** A violation of Section 24-9 is a Class C violation.

Resolution No.: \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE MONTGOMERY COUNTY BOARD OF HEALTH**

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Lead Sponsor: Councilmember Katz  
Co-Sponsors: Council President Riemer and Councilmembers Elrich and Rice

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**SUBJECT:** Resolution to adopt Bill 35-18, Health and Sanitation – Smoking – Outdoor Serving Areas as a Board of Health Regulation.

**Background**

1. County Code §2-65, as amended, 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 authorizes the County Board of Health to adopt rules and regulations regarding any nuisance or cause of disease in the County.
3. On [Date], the County Council enacted Bill 35-18, Health and Sanitation – Smoking – Outdoor Serving Areas. Bill 35-18 prohibited smoking in certain outdoor serving areas.
5. On [Date], the Council 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.
6. The County Council, sitting as the Board of Health, finds after reviewing the evidence in the record that prohibiting smoking in outdoor serving areas required by this Regulation is necessary to protect the health of County residents.

**Action**

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, approves the following resolution:

1. The provisions of Section 24-9 of the Montgomery County Code, entitled “Smoking and using electronic cigarettes in public places.”, as amended by Bill 35-18, Health and



Sanitation – Smoking – Outdoor Serving Areas, are adopted as a Board of Health regulation. A copy of Bill 35-18 is attached to this resolution.

2. This resolution takes effect on [100 days after adoption].

This is a correct copy of Council action.

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Megan Davey Limarzi, Esq.  
Clerk of the Council

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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Jennifer A. Hughes  
Director

MEMORANDUM

October 23, 2018

TO: Hans Riemer, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget *JAH*  
Alexandre A. Espinosa, Director, Department of Finance *AE*

SUBJECT: FEIS for Bill 35-18 – Health and Sanitation – Smoking – Outdoor Serving Area

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:hpv

c: Bonnie Kirkland, Assistant Chief Administrative Officer  
Lisa Austin, Offices of the County Executive  
Joy Nurmi, Special Assistant to the County Executive  
Patrick Lacefield, Director, Public Information Office  
Clark Beil, Sr., Department Health and Human Services  
David Platt, Department of Finance  
Jacqueline Carter, Department of Finance  
Joshua Watters, Office of Management and Budget  
Helen P. Vallone, Office of Management and Budget

Office of the Director

101 Monroe Street, 14th Floor • Rockville, Maryland 20850 • 240-777-2800  
[www.montgomerycountymd.gov](http://www.montgomerycountymd.gov)



**Fiscal Impact Statement**  
**Bill 35-18 Health and Sanitation – Smoking – Outdoor Serving Areas**

**1. Legislative Summary**

Bill 35-18 prohibits smoking in outdoor serving areas of food service establishments.

**2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

No changes in County revenues are anticipated as a result of Bill 35-18.

The Department of Health and Human Services estimates that it will need up to an additional 0.5 FTE Environmental Health Specialist III at an annualized cost of \$55,082 because of additional inspection time and additional complaint investigations as a result of the bill.

This estimate assumes an increase of 750 hours of staff time related to routine inspection activities and 50 hours of staff time related to complaint investigation activities, for a total of 800 additional hours of staff time required to implement the bill.

**3. Revenue and expenditure estimates covering at least the next 6 fiscal years.**

No changes in County revenues are anticipated as a result of the bill.

Expenditures could increase by \$27,541 in FY19 (assuming a start date of January 1, 2019) for an Environmental Health Specialist III position. Annualized expenditures could increase by \$55,082 beginning in FY20.

**4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

**5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

Not applicable. No additional expenditures for IT or ERP systems would be necessary.

**6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Not applicable. The bill does not authorize future spending.

**7. An estimate of the staff time needed to implement the bill.**

Approximately 800 hours annually.

**8. An explanation of how the addition of new staff responsibilities would affect other duties.**

The bill could require up to 800 hours of enforcement and investigation activities in the field, annually. Without an additional part-time Environmental Health Specialist III, increased inspection requirements would need to be added to existing staff responsibilities, potentially reducing the ability of staff to complete mandated food safety inspections.

**9. An estimate of costs when an additional appropriation is needed.**

The FY19 cost to implement the bill could be up to \$27,541. The Department should be able to absorb this cost within its existing FY19 budget but might need additional resources in FY20.

**10. A description of any variable that could affect revenue and cost estimates.**

Fluctuations in economic conditions might change the number of food service facilities; however, historical trends have consistently shown an increase of 1% annually in the number of such facilities.

**11. Ranges of revenue or expenditures that are uncertain or difficult to project.**

Not applicable.

**12. If a bill is likely to have no fiscal impact, why that is the case.**

Not applicable.

**13. Other fiscal impacts or comments.**

Not applicable.

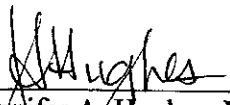
**14. The following contributed to and concurred with this analysis:**

Clark Beil, Sr. Administrator, Licensure and Regulatory Services, Department of Health and Human Services

Kenneth Welch, Environmental Health Manager, Licensure and Regulatory Services, Department of Health and Human Services

Ngozi Agugua, Management and Budget Specialist, Department of Health and Human Services

Joshua Watters, Lead Fiscal and Policy Analyst, Office of Management and Budget

  
\_\_\_\_\_  
Jennifer A. Hughes, Director  
Office of Management and Budget

10/23/18  
Date

**Economic Impact Statement**  
**Bill 35-18 Health and Sanitation – Smoking – Outdoor Servicing Areas**

**Background:**

Bill 35-18 would:

- 1.) prohibit smoking in certain outdoor servicing areas; and
- 2.) generally amend County law on smoking

**1. The sources of information, assumptions, and methodologies used.**

- Forbes, "The Economic Impact of Smoking Bans" Tomlin, Jonathan

**2. A description of any variable that could affect the economic impact estimates.**

As noted in the fiscal impact statement for the bill, the number of outdoor servicing areas and food service facilities have displayed historical annual growth rates of approximately 1%. While the number of these establishments have the potential to affect economic impact estimates, the fluctuations are expected to be minimal given their relative stable growth and general dependence on the health of prevailing economic conditions to multiply.

**3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**


Over one-hundred empirical studies over the past decade have attempted to examine the economic impact of smoking bans on the hospitality industry with a majority purporting to show that bans do not have adverse impacts on restaurants and bars.<sup>1</sup> While economic theory posits that a smoking ban can distort the natural action of markets by leading to a transfer of profitability from an establishment with a smoking ban to one without, the results are mixed with some studies claiming to demonstrate that smoking bans can improve profitability. Given a decade long prevalence of smoking bans in the County, the extension of these restrictions to outdoor servicing areas as defined by the legislation including patios, decks, porches, and other areas permitted for outdoor eating and drinking is not anticipated to measurably affect employment, spending, savings, investment, incomes, or property values in the County.

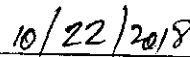
**4. If a Bill is likely to have no economic impact, why is that the case?**

Please see paragraph 3.

**5. The following contributed to or concurred with this analysis:**

David Platt, Dennis Hetman – Department of Finance.

  
\_\_\_\_\_  
Alexandre Espinosa, Director  
Department of Finance

  
\_\_\_\_\_  
Date

<sup>1</sup> <https://www.forbes.com/2009/06/04/economic-impact-bars-restaurants-opinions-contributors-smoking-ban.html#9c51c4453978>



**Testimony of the Rockville Mayor and Council**  
**Bill 35 -18 Health and Sanitation – Smoking – Outdoor Serving Areas**  
**Montgomery County Council Public Hearing**  
**October 23, 2018**

Good afternoon, President Reimer and members of the County Council. I'm Beryl L. Feinberg and I serve on the Rockville City Council. The Rockville Mayor and Council would like to convey the City's strong support for Bill 35-18, sponsored by Councilmember Katz.

We are thankful to Councilmember Katz for his leadership on this legislation, and to the County Council for implementing a County-wide smoking ban in public facilities. On October 5, 2015, the Mayor and Council voted unanimously to apply the County's smoking ban to all City-owned property. On May 15, 2017, the Mayor and Council voted unanimously to amend the City Code and add a new article entitled "Smoking and Vaping in Outdoor Service areas of Eating and Drinking Establishments." Rockville's Ordinance bans smoking in outdoor seating areas located at eating and drinking establishments within the City. This was the first ordinance of its kind in the County. The concept was brought to us by a resident who requested that the Town Square plaza be designated as a smoke-free area. On a national scale, the American Nonsmokers' Rights Foundation has identified 489 municipalities with Smoke-free Outdoor Dining Laws as of October 1, 2018, of which 318 also have Smoke-free Outdoor Bar Patio Laws.

Good afternoon, I'm Julie Palakovich Carr, and I serve on the Rockville City Council. In order to ensure the success of the new law, the City conducted extensive outreach and education to inform restaurant owners and consumers. We sent notification letters to all food and beverage establishments in Rockville that outlined the law's requirements, including posting signs to alert customers about the prohibition. The City reached out to the Rockville Chamber of Commerce, Rockville Economic Development Inc., and to local developers. We promoted the Ordinance to the public by using social media; print and electronic newsletters; cable channel content; and created a City webpage.

These efforts were successful, as zero fines have been issued by the Rockville City Police, since taking effect in November 2017. It's very positive to have broad cooperation and support from the establishment owners and patrons.

In closing, Rockville is fully committed to a smoke-free environment, and we urge the County Council to adopt Bill 35-18 so that all residents of Montgomery County can enjoy the health benefits.



American Cancer Society  
Cancer Action Network  
7500 Greenway Center Dr.  
Suite 300  
Greenbelt, MD 20770  
301-254-0072  
www.acscan.org

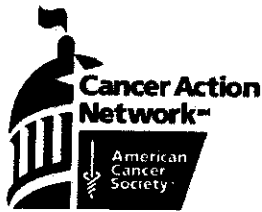
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**Testimony of Jocelyn Collins  
DC and MD Government Relations Director  
American Cancer Society Cancer Action Network  
(ACS CAN)  
October 23, 2018**

**Support w/Amendments of Bill 35-18 Health  
Sanitation—Smoking—Outdoor Service Areas**

**\*Note: Requested Amendments included \***

301-254-0072  
jocelyn.collins@cancer.org



American Cancer Society  
Cancer Action Network  
7500 Greenway Center Dr.  
Suite 300  
Greenbelt, MD 20770  
301-254-0072  
www.acscan.org

Good Afternoon Council President Riemer and Members of the Montgomery County Council:

My name is Jocelyn Collins and I am the DC and MD Government Relations Director at the American Cancer Society Cancer Action Network (ACS CAN). ACS CAN is the nonprofit, non-partisan advocacy affiliate of the American Cancer Society which advocates for public policies that reduce death and suffering from cancer including policies targeted at smoke-free air. On behalf of our organization, I would like to thank Councilmember Katz for his continued work during his tenure on the Montgomery County Council to help cancer patients and survivors, as well as, his support of cancer prevention through tobacco control.

We do however have some concerns with **Bill 35-18 Health Sanitation—Smoking—Outdoor Service Areas**. As drafted, ACS CAN will support the bill with amendments.

ACS CAN supports the intent of the legislation, however, we feel that the bill could be written more clearly for the purposes of enforcement. We see this legislation as an opportunity for Montgomery County to develop a comprehensive definition for “smoking”— that encompasses the use of electronic smoking devices as opposed to defining “vaping” separately. To ensure understanding of the products included in the law, we also recommend defining “electronic smoking devices,” and have it rolled into the definition of smoking.

Additionally, we recommend removing the exclusion of people smoking in certain public outdoor serving areas except while actively passing on the way to another destination. Since, the definition of outdoor smoking already states it only includes the space under the control of the eating or drinking establishment.

According to the U.S. Surgeon General, there is no safe level of exposure to secondhand smoke, which contains approximately 70 known or possible carcinogens.<sup>123</sup> Each year in the United States, secondhand smoke causes nearly 42,000 deaths among nonsmokers, including up to 7,300 lung cancer deaths.<sup>45</sup> According to the American Cancer Society, this year, 4,270 Maryland

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<sup>1</sup> North Dakota Department of Health, “Youth Risk Behavior Survey Results Detailed Summary Tables,” 2015, [https://www.nd.gov/dpi/uploads/1298/20\\_15NDHighSchoolSummaryTables.pdf](https://www.nd.gov/dpi/uploads/1298/20_15NDHighSchoolSummaryTables.pdf)

<sup>2</sup> Florida Department of Health. Florida Youth Tobacco Survey. Available at <http://www.floridahealth.gov/statistics-and-data/survey-data/flyouthtobaccosurvey/index.html>. Accessed March 28, 2017.

<sup>3</sup> Lightwood, J and Glantz SA, “The Effect of the California Tobacco Control Program on Smoking Prevalence, Cigarette Consumption, and Healthcare Costs: 1989-2008,” PLOS ONE 8(2), February 2013.

<sup>4</sup> Dilley, Julia A., et al., “Program, Policy and Price Interventions for Tobacco Control: Quantifying the Return on Investment of a State Tobacco Control Program,” American Journal of Public Health, Published online ahead of print December 15, 2011. See also, Washington State Department of Health, Tobacco Prevention and Control Program, Progress Report, March 2011. Washington State Department of Health, Tobacco Prevention and Control Program, News Release, “Thousands of lives saved due to tobacco prevention and control program,” November 17, 2010, [http://www.doh.wa.gov/Publicat/2010\\_news/10-183.htm](http://www.doh.wa.gov/Publicat/2010_news/10-183.htm).

<sup>5</sup> Dilley, et al.





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residents are projected to be diagnosed with lung cancer and it is estimated that over 2,560 will die of the disease.<sup>6</sup>

Again, we appreciate Councilmember Katz's efforts to reduce the effects of secondhand smoke and to make outdoor areas smoke-free and look forward to meeting with him on October 29<sup>th</sup> to discuss this matter further.

We ask that the committee **supports Bill 35-18 with amendments**. A copy of the requested amendments can be found attached to my oral testimony submitted.

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<sup>6</sup> [https://cancerstatisticscenter.cancer.org/?\\_ga=2.91524638.524508670.1539622716-613595385.1532463720#!/state/Maryland](https://cancerstatisticscenter.cancer.org/?_ga=2.91524638.524508670.1539622716-613595385.1532463720#!/state/Maryland)



American Cancer Society  
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www.acscan.org

**ACS CAN Requested Amendments to Bill 35-18 Health Sanitation—Smoking—Outdoor  
Service Areas**

- **Amend Montgomery County Code, Section 1, Chapter 24, Section 24-9 Smoking in public places, Section A:**

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

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

*Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. *Smoking* includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

*Electronic smoking devices* means any product that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the product. The term includes any such device whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, vape pen, e-hookah, or under any other product name or descriptor.

- **Amend Montgomery County Code, Section 1, Chapter 24, Section 24-9 Smoking in public places, Section B (12), by striking “, except while actively passing on the way to another destination” :**

~~(12) outdoor serving area; except while actively passing on the way to another destination.~~

- **Amend Montgomery County Code, Section 1, Chapter 24, Section 24-9 Smoking in public places, Section (f), by striking “or vapes,” “or vaping,” and “or vape” :**

*(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 ~~or vapes~~ where smoking ~~or vaping~~ is prohibited, and must ask the person to leave the building or area if the person continues to smoke ~~or vape~~ after proper warning.



14  
American  
Heart  
Association.

Testimony of the American Heart Association  
Stuart Berlow, State Government Relations Director  
Montgomery County Council  
35-18: Health and Sanitation – Smoking – Outdoor Serving Areas  
October 23, 2018

President Riemer and members of the Council, the American Heart Association appreciates this Council's longstanding commitment to creating a tobacco-free community for the million-plus residents, workers, and visitors of Montgomery County. As such, we support Bill 35-18 and recommend its swift approval and enactment.

Over 300 US communities have already strengthened their smoke-free laws by restricting smoking in outdoor serving areas of restaurants and bars.<sup>i</sup> This includes Rockville and Gaithersburg here in Montgomery County, along with LaPlata. Montgomery would become the first county in Maryland with such a law, once again placing our community at the national forefront of innovative, impactful public health policy. Four states (Hawaii, Maine, Michigan, and Washington) and large jurisdictions like Boston, Philadelphia, Puerto Rico, San Jose, and Westchester County already have enacted this common-sense public health protection.

Although only 6% of county adults and teens<sup>ii</sup> currently smoke cigarettes, secondhand smoke remains a lethal burden unfairly imposed on customers who choose to dine outdoors, and the hard-working staff employed at businesses who are subjected to such toxins during their shifts. 94% of residents are non-smokers and the county has successfully restricted smoking inside restaurants and bars since 2003.

In 2016, the American Heart Association urged a "zero tolerance" approach to secondhand smoke exposure.<sup>iii</sup> According to the AHA, "besides impacting heart function by causing damage to arteries, exposure to secondhand smoke has been associated with other cardiovascular risk factors including obesity, high cholesterol, and insulin resistance – which is linked to diabetes." Moreover, the American Heart Association reports that "secondhand smoke contains a host of chemicals that can impact health by causing changes to blood flow, blood vessels, blood pressure and heart rhythm."

According to the Truth Initiative, 41,000 adults and 400 infants die prematurely each year due to secondhand smoke exposure.<sup>iv</sup> Additionally, the CDC reports that:

- There is no safe level of secondhand smoke exposure
- 2.5 million nonsmokers have died from secondhand smoke exposure since 1964
- Heart Disease risk increases 25-30% through secondhand smoke exposure
- Stroke risk increases 20-30% through secondhand smoke exposure<sup>v</sup>

Given these alarming realities, the Council wisely restricted cigarette smoking in certain outdoor venues in 2013, including parks and bus stops, and added electronic cigarettes to the law in 2015.<sup>vi</sup> Extending this common-sense approach to outdoor serving areas is an important next step to ensure that customers, but more importantly employees, are not exposed to a danger known to elevate the risk for heart disease and cancer.

Moreover, there is no evidence to support the claim that smoke-free laws harm business. In fact, some smoke-free policies from around the country, including Montgomery County, have been correlated with *increased* revenue. According to the Campaign for Tobacco-Free Kids: "numerous careful scientific and economic analyses show that smoke-free laws do not hurt restaurant and bar patronage, employment, sales, or profits. At worst, the laws have no effect at all on business activity, and they sometimes even produce slightly positive trends."<sup>vii</sup>

Montgomery County's restaurant industry tax revenue increased by 7% and alcohol sales increased 4.5% in the 6 months following the smoke-free law's enactment in 2003, compared to the same 6-month period in the previous year.<sup>viii</sup>

This Council should celebrate that so few of our neighbors are now addicted to deadly tobacco products and that our businesses are thriving. The 94% of residents who are non-smokers, especially service industry employees, should not be needlessly subjected to the dangerous consequences of cigarette smoke. The American Heart Association supports the intent of this policy and recommends the Council adopt it.

Each of you on this Council have played important roles in establishing Montgomery County as one of the healthiest and most livable communities in America. Therefore, it is inconceivable that you would still permit employees, residents, and visitors to be exposed to toxic secondhand smoke. The American Heart Association urges support of Bill 35-18 and asks you to approve and enact it without delay.

---

<sup>i</sup> <https://no-smoke.org/wp-content/uploads/pdf/SmokefreeOutdoorDining.pdf>

<sup>ii</sup> <http://www.healthymontgomery.org/index.php?module=indicators&controller=index&action=view&indicatorId=8&localeId=1259>

<sup>iii</sup> <https://newsroom.heart.org/news/protect-kids-from-toxic-secondhand-smoke-experts-urge>

<sup>iv</sup> [https://truthinitiative.org/sites/default/files/Truth\\_Secondhand%20Smoke%20FactSheet\\_FINAL.pdf](https://truthinitiative.org/sites/default/files/Truth_Secondhand%20Smoke%20FactSheet_FINAL.pdf)

<sup>v</sup> [www.cdc.gov/tobacco](http://www.cdc.gov/tobacco)

<sup>vi</sup> <https://bethesdamagazine.com/bethesda-beat/news/county-council-passes-outdoor-smoking-ban/>

<sup>vii</sup> <https://www.tobaccofreekids.org/assets/factsheets/0144.pdf>

<sup>viii</sup> [https://www.tobaccofreekids.org/press-releases/id\\_0771](https://www.tobaccofreekids.org/press-releases/id_0771)

# **ANR** AMERICANS FOR NONSMOKERS' RIGHTS

Defending your right to breathe smokefree air since 1976

October 10, 2018

Montgomery County Council  
Council Office Building  
100 Maryland Avenue, 5th Floor  
Rockville, MD 20850

## **Re: Support for Bill 35-18**

Dear Members of the Montgomery County Council,

On behalf of our members in Maryland, Americans for Nonsmokers' Rights wishes to express our support for Bill 35-18 to expand smokefree air protections to outdoor serving areas of restaurants and bars.

We do suggest removing the language "except while actively passing on the way to another destination" from *Section 24-9 (b) (12)* because it could be misinterpreted as allowing people to smoke while walking on a restaurant or bar patio. If the intention of this language is to allow smoking by people who are walking past the outdoor serving area, then the language is unnecessary since these individuals are already outside the outdoor serving area and thus not subject to the parameters of the ordinance.

Smoking in outdoor areas is not just a nuisance; it's also a health hazard. Outdoor places where people gather can have significant levels of exposure to secondhand smoke, and nonsmokers deserve protection from breathing toxic smoke. The U.S. Surgeon General concluded that there is no safe level of exposure to secondhand smoke, and even small amounts of tobacco smoke in short periods of time can be harmful.

Communities are choosing to adopt smokefree laws for outdoor public places not only to reduce exposure to secondhand smoke for employees and patrons, but also to decrease costly and environmentally harmful cigarette butt waste, reduce fire risk, and create better social environments for youth by setting the example that tobacco use is not the norm.

Montgomery County would be in good company by adopting the proposed law. Numerous communities throughout the U.S. have already adopted similar laws, including 318 that have smokefree outdoor dining and bar patios and another 489 communities that have smokefree outdoor dining.

Americans for Nonsmokers' Rights encourages Montgomery County to adopt the law for smokefree outdoor serving areas to make these venues healthier and more enjoyable for all community members.

Thank you for your leadership and desire to make Montgomery County the best place to live, work, and visit. Please feel free to contact us at 510-841-3032 if you have any questions, comments, or feedback.

Sincerely,



Cynthia Hallett, MPH  
President and CEO

*Americans for Nonsmokers' Rights is a national, member-based, not-for-profit organization based in Berkeley, CA that is dedicated to helping nonsmokers breathe smokefree air since 1976.*

2530 San Pablo Avenue, Suite J • Berkeley, California 94702 • (510) 841-3032 / FAX (510) 841-3071  
[www.no-smoke.org](http://www.no-smoke.org) • [anr@no-smoke.org](mailto:anr@no-smoke.org)

October 23, 2018

The Honorable Hans Riemer, President  
Members, Montgomery County Council  
Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Bill 35-18, Health and Sanitation – Smoking – Outdoor Serving Areas

Dear President Riemer and Members of the Montgomery County Council:

On behalf of Holy Cross Health, I am writing in support of Bill 35-18, which would amend existing County law on smoking to prohibit smoking in certain outdoor serving areas. Holy Cross Health consists of two acute care hospitals, more than a dozen primary and specialty care sites, and numerous community health and wellness programs.

Tobacco use remains the leading cause of preventable disease and premature death in the United States, and one of the largest drivers of healthcare costs. Tobacco use is known to cause cancer, heart disease and respiratory diseases, among other health disorders. Moreover, there is no risk-free level of exposure to second-hand smoke.

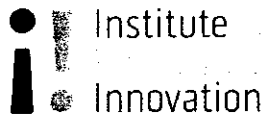
Thank you for your consideration.

Sincerely,



Eileen Cahill  
Chief Advocacy & Community Engagement Officer

c: Norvell V. Coots, MD  
President & CEO, Holy Cross Health



*Inform. Involve. Inspire.*

October 17, 2018

Council Office Building  
100 Maryland Avenue, 4th Floor  
Rockville, MD 20850

**Re: Bill 35-18: Health and Sanitation – Smoking – Outdoor Serving Areas**


Dear President Reimer and members of the County Council:

On behalf of the Institute for Public Health Innovation (IPHI), a 501(c)(3) non-profit public health organization, I would like to express our support for Bill 35-18 to make the county's outdoor dining areas smoke-free. IPHI is one of over 40 public health institutes across the country and the official public health institute serving Montgomery County, as well as all of Maryland, Virginia and the District of Columbia. As your public health institute, we have worked with Montgomery County by providing technical assistance to Healthy Montgomery, the County's community health improvement process, since its inception. We have also provided backbone support to the Healthy Montgomery Transforming Communities Initiative (TCI), a partnership between IPHI, Holy Cross Health, Montgomery County Department of Health and Human Services and numerous other government and community partners focused on preventing chronic disease by implementing strategies to reduce obesity and tobacco use.

Our environment shapes our behaviors by making healthy decisions easier. Studies have shown that the implementation of smoke-free laws and policies can increase cessation and reduce smoking prevalence among workers and the general population and may also reduce smoking initiation among youth. Moreover, the U.S. Surgeon General and many other public health authorities have declared that secondhand smoke causes disease and death in non-smokers, and that there is no safe level of exposure. All public facilities, including outdoor dining areas, should be places where we promote health and quality of life for all residents. IPHI supports changes that will incorporate smoking prohibition to outdoor dining areas and protect both customers and employees of restaurants and bars.

Through the proposed bill, Montgomery County has the opportunity to become the first county in Maryland with such a law and join other states and jurisdictions around the country that have already enacted this common-sense public health protection. Given that research indicate that smoke-free policies can increase cessation and reduce smoking prevalence among residents, the Institute for Public Health Innovation urges the County Council to approve Bill 35-18.

Sincerely,

  
Michael Rhein, President & CEO  
Institute for Public Health Innovation

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# *Maryland* GASP

October 23, 2018

Dear Montgomery County Council Members,

On behalf of the more than one thousand members of the Maryland Group Against Smoker's Pollution, many who reside in Montgomery County, I urge you to vote for passage of Montgomery County bill 35-18. This bill would essentially extend the current Montgomery County indoor smoking laws to outside dining areas of restaurants.

The US Surgeon General has stated that there is NO SAFE LEVEL of tobacco smoke exposure, therefore, this legislation would help protect the health of Montgomery County residents and visitors who dine in the County. A second benefit would be to show that tobacco smoking is 'not the norm' and would perhaps encourage some current smokers to quit, and encourage our youth to never start smoking.

Please note that the opposition to bills of this nature always preach gloom and doom if the bills are passed into law, however, these bills always have a positive impact from both a health and economic standpoint.

The MDGASP has experts on the harmful ingredients in tobacco smoke and the impact these ingredients can have on the human body. If the Council desires we will provide our services free of charge.

Respectfully,

John O' Hara: PhD

President

Maryland Group Against Smoker's Pollution

Box 863, Bowie, MD 20718

(P) 301-262-3434

(C) 301-351-8839

[MDGASP@aol.com](mailto:MDGASP@aol.com)



# Email Viewer

<b>Message</b>	<b>Details</b>	<b>Attachments</b>	<b>Headers</b>
<b>Source</b>			

[HTML](#)

Please restrict vaping of tobacco products in public spaces in this legislative session. And restrict minors from vaping. As a chemically sensitive constituent, vaping is TOXIC to my body. Vaping triggers neurological consequences, as does exposure to a vaping person's clothes or household furnishings. Montgomery County's enlightened policies on tobacco use was a prime reason for my choosing to retire here.

Thank you for consideration of this important matter.

Sincerely,

John A, Michael  
701 King Farm Blvd.  
Apt. 524  
Rockville MD 20850  
240-912-4841

**Close**

# Email Viewer

Message	Details	Attachments	Headers
Source			

[HTML](#)

Dear Council Members,

Please support and vote for the subject bill.

Spring and fall are ideal times of the year for using the outdoor tables at our favorite restaurants. Yet the experience can be ruined or at least made worse when people or smoking or vaping at another table. More importantly, smoking and vaping are harmful to the health of other diners and restaurant personnel.

Sincerely yours,

Richard Reis  
711 Copley Lane  
Silver Spring MD 20904-1312

Close

## Email Viewer

Message	Details	Attachments	Headers
Source			

[HTML](#)

Dear Council Members,

I am a long time resident of Bethesda who strongly urges you to support (Bill 35-18) banning smoking and vaping in outdoor and partially enclosed dining areas.

This legislation will create a safer and healthier environment for all restaurant workers and their customers in these respective areas. Please pass this bill.

Sincerely,  
Laura Galvin  
Bethesda, MD

Close

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Testimony of Adam Zimmerman  
Montgomery County Council  
**Re: Bill 35-18, Health and Sanitation – Smoking – Outdoor Serving Areas**  
October 23, 2018

President Riemer, Vice President Navarro, and Members of the Council:

My name is Adam Zimmerman. My family and I are proud Rockville residents. On their behalf, I thank you for the opportunity to testify.

Bill 35-18, introduced by Councilmember Katz, would make Montgomery County the first county in Maryland with a smoke-free outdoor dining law. This bill would protect the health of our residents and visitors; support the employees and economic vitality of our restaurants and bars; and cement the County's well-earned reputation as a national leader on smoke-free policies.

As a resident, an advocate, and most of all a husband and father, I strongly support this bill. Bill 35-18 has also been endorsed by the American Heart Association, the Campaign for Tobacco-Free Kids, Americans for Nonsmokers' Rights, the Institute for Public Health Innovation, and the Maryland Group Against Smoker's Pollution.

I join them, County Executive Ike Leggett, and many other residents in encouraging the Council to pass this bill.

It is fitting that this hearing takes place in October 2018. That's because it was in October 2003, nearly 15 years to the day, when Montgomery County's landmark clean indoor air took effect, under which we became the first county in Maryland—and one of the first on the entire East Coast—to enact a smoke-free indoor dining law, while also extending smoke-free protections to schools, healthcare facilities, and office buildings, among other places.

The positive impact of the 2003 law was immediate: six months after enactment, the County reported a seven percent increase in its restaurant tax revenue—let me repeat, a seven percent *increase* in its restaurant tax revenue—compared to the previous six-month period in the prior year. Over the ensuing years, the County extended smoke-free air protections to county parks, playgrounds, and public housing units. Today, thanks to these and other efforts, Montgomery County has the lowest adult smoking rate—7 percent—of any county in Maryland.

Bill 35-18 would build on this record of success and similarly benefit our children and families.

Here are four reasons why:

**First, smoke-free outdoor dining would improve health.** There is no safe level of exposure to secondhand smoke—even outdoors, and even for short periods of time. This bill will further protect patrons, especially children, and food service employees from the dangers of secondhand smoke.

**Second, smoke-free outdoor dining can have a positive economic impact for restaurants and bars.** Montgomery County's own experience is backed by an overwhelming body of research examining similar laws nationwide. For example, in an extensive joint literature review published in 2016, the National Cancer Institute and World Health Organization concluded the following:

"The evidence clearly demonstrates that smoke-free policies do not cause adverse economic outcomes for businesses, including restaurants and bars. In fact, smoke-free policies often have a positive economic impact on businesses."

**Third, smoke-free outdoor dining is good not only for non-smokers, but also for smokers.** CDC research shows that most smokers want to quit, and smoke-free air policies can help them do it.

**Finally, smoke-free outdoor dining sends a positive message.** As the parents of two young children, my wife and I appreciate leaders who care about our health. This bill is a perfect example of why we, and many other young families, have put roots down here.

To date, four states and more than 300 municipalities across the country—including Rockville and Gaithersburg—have passed smoke-free outdoor dining laws. We should be next.

Just like 2003, Montgomery County is once again considering a bill that would mean better health, a stronger economy, and a brighter future.

Fifteen years ago, we made the right choice. With Bill 35-18, we can do it again.



**THE GREATER BETHESDA**  
CHAMBER of COMMERCE

Smart Business, Bright Future

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**Testimony Presented by Ginanne Italiano**  
**The Greater Bethesda Chamber of Commerce**  
**Comments Regarding**  
**Bill #35-18, Health and Sanitation – Smoking Outdoor Serving Areas; Requested**  
**Amendments to Exempt Existing Eating and Drinking Establishments Operating**  
**Pursuant to an Alcoholic Beverage License**  
**Before the Montgomery County Council**  
**October 23, 2018**

Good afternoon. I am Ginanne Italiano, President and CEO of The Greater Bethesda Chamber of Commerce. Our Chamber represents more than 550 members, many of which include eating and drinking establishments that serve alcoholic beverages in accordance with a license issued by the Montgomery County Board of License Commissioners.

Attached to my testimony is a letter that was sent to you from the Chamber on October 10<sup>th</sup> which includes recommended amendments to the bill, including the grandfathering in those restaurants that are already allowing smoking on their rooftops or outside patios. Therefore, I will not go into the language but I do have a few comments to stress:

1. While the Chamber supports the Council's intent to promote and enhance the health of County residents with the introduction of Bill No. 35-18, we urge you to consider the economic impact of this legislation on existing establishments that already permit smoking in outdoor serving areas to meet a specific market demand, an opportunity which enhances the County's commercial tax base.
2. We believe that the market preferences of County residents and economic viability of existing establishments need to be considered. Under existing County Law, customers have the ability to make independent and informed decisions on the environment in which they wish to consume food and alcoholic beverages.
3. Absent our suggested amendments, Bill 35-18 would cause patrons of eating and drinking establishments to temporarily leave outdoor serving areas to smoke cigarettes on public sidewalks to the detriment of those people walking by to reach another restaurant that has voluntarily opted to prohibit smoking. Therefore, this bill would have the potential unintended consequence of increasing exposure to secondhand smoke within public sidewalks to County residents that do not wish to patronize eating and drinking establishments that allow smoking in outdoor serving areas.

Today you will hear from just two of these establishments that would be drastically affected if this bill is passed as is. Although we are not opposing the concept, we do ask that you consider those establishments already in operation and focused on this segment of our community.

Thank you for your consideration and we look forward to working with you to amend Bill No. 35-18 in order to meet its goals, and at the same time, continue to allow eating and drinking establishments to serve and meet their clientele's needs.



**THE GREATER BETHESDA**  
**CHAMBER of COMMERCE**

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**VIA EMAIL**

October 10, 2018

Mr. Hans Riemer, President  
and Members of the Montgomery County Council  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Bill No. 35-18, Health and Sanitation – Smoking Outdoor Serving Areas; Requested Amendments to Exempt Existing Eating and Drinking Establishments Operating Pursuant to an Alcoholic Beverage License

Dear Council President Riemer and Members of the Council:

The Greater Bethesda Chamber of Commerce (the "Chamber") represents more than 550 members, many of which include eating and drinking establishments that serve alcoholic beverages in accordance with a license issued by the Montgomery County Board of License Commissioners. Several of these eating and drinking establishments include outdoor serving areas that permit the consumption of alcoholic beverages under controlling State Law, as well as the ability to smoke cigarettes consistent with customer preferences. While the Chamber supports the Council's intent to promote and enhance the health of County residents with the introduction of Bill No. 35-18, we urge you to consider the economic impact of this legislation on existing establishments that permit smoking in outdoor serving areas to meet market demands, an opportunity which enhances the County's commercial tax base. The Chamber supports Bill No. 35-18 to the extent that it would apply prospectively to eating and drinking establishments with outdoor seating areas that do not presently operate pursuant to an alcoholic beverage license.

We urge the Council to balance the economic interests of existing eating and drinking establishments that opt to permit smoking in outdoor serving areas concurrent with the sale of alcoholic beverages with the goal of decreasing the risks associated with secondhand smoke exposure. We fully support the goal decreasing the risk levels associated with secondhand smoke exposure, but believe that the market preferences of County residents and economic viability of existing establishments need to be accounted for as well. Under existing County Law, customers have the ability to make independent and informed decisions on the environment in which they wish to consume food and alcoholic beverages. To this end, County residents "self-select" the eating and drinking environments that they wish to participate in such that market demands will regulate the limited appropriate settings for smoking in outdoor serving areas (based upon the grandfathering language identified below).

We also note that as currently drafted, Bill No. 35-18 would have the potential unintended consequence of increasing exposure to secondhand smoke within public sidewalks to County residents that do not wish to patronize eating and drinking that allow smoking in outdoor serving areas. More specifically, Bill No. 35-18, absent the suggested amendments below, would cause patrons of eating and drinking establishments to temporarily leave outdoor serving areas to smoke cigarettes on public sidewalks to the detriment of individuals circulating along such a sidewalk to reach another establishment that has voluntarily opted to prohibit smoking to satisfy customer demands. In fact, we need to recognize, despite health warnings to the contrary, some tax-paying residents still smoke. To this end, we are requesting that grandfathering language be added to Bill No. 35-18 that would exempt existing eating and drinking establishments with an alcoholic beverages license issued by the Montgomery County Board of License Commissioners as of the effective date of Bill No. 35-18, such that these establishments could continue to allow smoking in outdoor serving areas to meet market

October 10, 2018

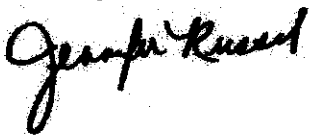
Page 2

demands. These requested changes to Bill No. 35-18 are consistent with the continued economic viability of these eating and drinking establishments, and also set a reasonable ceiling on the amount of establishments that will be allowed to permit smoking in outdoor serving areas in the coming years. Based upon the foregoing, we request that the following changes be made to Bill No. 35-18 (proposed additional language in **bold underline**):

- 14 (b) Smoking prohibited in certain public places. A person must not smoke  
15 in or any:  
16 \*\*\*\*\*  
17 (10) enclosed auditorium, concert or lecture hall; [or]  
18 (11) property that is owned or leased by the County, including a bus  
19 shelter or bus stop area, but excluding any other part of a County  
20 right-of-way[.]; or  
21 (12) outdoor seating area, except while actively passing on the way to  
22 another destination **or as excepted in subsection (c)(9) below.**  
23 \*\*\*\*\*  
24 (c) Exceptions. Smoking or vaping is not prohibited by this Section:  
25 \*\*\*\*\*  
26 (8) In any occupied residential unit owned or leased by the County for as  
27 long as the occupant on May 27, 2013 retains possession of the unit;  
28 (9) **In the outdoor serving area of an eating and drinking**  
29 **establishment that operates pursuant to an alcoholic beverage**  
30 **license as long as the holder of the license on [Effective Date of**  
31 **Bill No. 35-18] operates the eating and drinking establishment; or**  
32 (10) On a golf course; and  
\*\*\*\*\*

We intend to continue to be part of the conversation about Bill No. 35-18, with an aim at ensuring a decrease in exposure to secondhand smoke, as well as the continued viability of eating and drinking establishments that permit smoking in outdoor serving areas in accordance with a valid alcoholic beverage license. We believe that the Council can effectively accomplish its stated goal of Bill No. 35-18 to enhance the health of County residents, while also allowing for existing businesses to continue to function in a manner that is responsive to customer demands and enhances the County's commercial tax base. Thank you for your consideration of our remarks.

Sincerely,



Jennifer Russel  
VP, Economic Development/Government Affairs  
(Rodgers Consulting, Inc.)



Matthew M. Gordon, Esq.  
Co-Chair, Economic Development/Government Affairs  
(Linowes and Blocher, LLP)

cc: Amanda Mihill, Legislative Attorney





**THE GREATER BETHESDA**  
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**VIA EMAIL**

February 2, 2019

Councilmember Craig Rice  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

Re: Bill 35-18, Health and Sanitation – Smoking Outdoor Serving Areas (SUGGESTED ADDITIONAL AMENDMENTS)

Dear Councilmember Rice:

We are submitting these written comments as a follow-up to the discussion that took place with representatives of two Bethesda area eating and drinking establishments, Caddies and Tommy Joe's Bar and Grill, in October 2018. We have copied Ms. Moya-Geber from your office since she helped facilitate our meeting last October. We have also copied Alan Poho from Tommy Joe's Bar and Grill and Ronnie Heckman from Caddies. We met with Councilmember Alborno and Councilmember Glass on Thursday to discuss this Bill, but did not see your proposed amendment until after those meetings. Both of these eating and drinking establishments have operated in Downtown Bethesda for more than several decades and employ a significant number of employees and help to contribute to the economic vitality of the surrounding retail, office, and multi-family residential uses. While we greatly appreciate that you will be proposing an amendment to Bill 35-18 at the HHS Committee Worksession on Monday (February 4, 2019), we believe that limiting the hours where smoking or vaping is permitted in an outdoor serving area on a rooftop or balcony to after 9 pm will have significant negative economic impacts on these businesses as well as unintended consequences that are detrimental to the general public. In short, we are asking that this time limitation of after 9 pm be removed from your proposed amendment to better serve the public health interests and economic concerns at stake.

**We are respectfully asking that you (and the HHS Committee) consider a modification to your proposed amendment that would delete the "after 9 pm" portion of the proposed Section (e)(1) (Line 6 ©40 of the Worksession packet).** Both of these eating and drinking establishments identified above rely heavily on patrons and customers during their respective "happy hours" which begin as early as 4:30 pm on Weekdays (and even earlier on Weekends). Again, while we greatly appreciate your efforts to help assist these businesses, limiting the hours where smoking or vaping is permitted to after 9 pm takes away a substantial portion of the hours of operation for these businesses. It's vital for these businesses to be able to respond to customer preferences and market demands (which includes the desire to smoke or vape) throughout their hours of operation if they are to continue to be economically viable and contribute to the commercial tax base and employment opportunities in Montgomery County. There are already a number of Montgomery County specific regulatory constraints (including Department of Liquor Control challenges) that make it challenging for these eating and drinking establishments to compete for customers with local establishments in the District of Columbia (which allows each establishment the opportunity to determine whether allowing smoking in an outdoor serving area is appropriate). Absent additional amendments, Bill 35-18 would only serve to make it more challenging to attract customers to Montgomery County eating and drinking establishments, which is vital for these businesses to continue to contribute to the Montgomery County tax base and employ a number of individuals (as well as contribute to the revenues derived by the DLC).

**Exempting outdoor serving areas that are located on a rooftop or balcony at all times will also better balance public health concerns associated with secondhand smoke against the economic interests of existing eating and drinking establishments with outdoor seating areas.** We note that Tommy Joes Bar and Grill and Caddies are the only two establishments in the Bethesda CBD that even permit smoking on a rooftop or balcony; thus, the suggested exemption (with no limitation on hours) would have extremely limited impact on public health concerns (as discussed below, it will actually enhance the public health). On the other hand, limiting smoking or vaping on a rooftop or balcony to after 9 pm (or prohibiting it altogether) will have the unintended consequence of bringing more secondhand smoke to sidewalks in public rights-of-way. There will be an increased presence of customers smoking on sidewalks that will have an impact on pedestrians travelling to offices, other retail establishments and/or their residences. It is much more favorable for public health to confine smoking to a rooftop or balcony in designated areas such that citizens will be able to self-select whether they wish to be in an environment where secondhand smoke may exist. As drafted, Bill 35-18 would eliminate an individual's preference to avoid secondhand smoke since they will encounter increased smokers along sidewalks of public streets (on their way to other locations) that would otherwise not be present.

**Last, we would also encourage you to exempt designated areas, up to 250 square feet in size, of an outdoor patio that is located at the street level in the proposed amendment. For the reasons identified above, we believe that there will be limited impacts on the general public's exposure to secondhand smoke by exempting small designated portions of patios from the scope of Bill 35-18.** Within the Bethesda CBD, there are only 3 or 4 eating and drinking establishments that permit smoking in an outdoor seating area located at the street level. As a result, amending Bill 35-18 to allow these existing businesses to continue to operate in a manner that meets market demands would have very limited impact on the general public's exposure to secondhand smoke. As noted above, forcing these patrons who wish to smoke into the sidewalk will have far greater negative impacts on the public's exposure to secondhand smoke, and also serve as a disincentive for smoking customers to even patronize these Montgomery County establishments (thereby reducing employment opportunities in the County and revenues to the DLC).

We are available to discuss these issues in greater detail and will continue to participate in the legislative process with an aim at ensuring that the County Council strikes the appropriate balance between these important public health concerns and the economic viability of eating and drinking establishments that contribute to the employment and tax base in Montgomery County.

Thank you for your consideration of our remarks.

Sincerely,



Matthew M. Gordon, Esq.  
VP, Economic Development/Government Affairs  
(Linowes and Blocher, LLP)



Ginanne M. Italiano, IOM  
President & CEO  
The Greater Bethesda Chamber of Commerce

cc: Councilmember Gabe Albornoz  
Councilmember Evan Glass  
Councilmember Andrew Friedson  
Valeria E. Carranza, Chief of Staff, Office of Councilmember Evan Glass  
Beth Shuman, Legislative Senior Aide, Office of Councilmember Gabe Albornoz  
Amanda Mihill, Legislative Attorney, Montgomery County Council  
Ron Heckman, Owner, Caddies on Cordell  
Alan Pohoryles, Owner, Tommy Joe's Bar & Grille



16

**Testimony by Alan Pohoryles  
Tommy Joe's Bar + Grill, Bethesda, MD  
Before the Montgomery County Council Regarding  
Bill #35-18, Health and Sanitation – Smoking Outdoor Serving Areas  
October 23, 2018**

My name is Alan Pohoryles and I am the Owner of Tommy Joe's Bar + Grill in Bethesda, MD.

I am here to speak to you as a non-smoking resident and 20-year restaurant owner in Montgomery County, specifically in Bethesda, MD. It is our goal to keep a clean, sanitary and safe environment for our staff and guests at Tommy Joe's, many customers come to Tommy Joe's because it is an establishment that allows smoking in certain designated outdoor areas. My Investors and I spent almost \$500,000 to build a restaurant that would cater to smokers and non-smokers.

Had we known this Bill was a possibility, we most likely would not be operating anymore. When the smoking ban went into effect in Montgomery County on January 1, 2002, our business, as well as many similar businesses lost between 15% and 30% of gross sales the first year. Six years later, the State of Maryland banned smoking in all restaurants and bars which evened the playing field, but the damage had been done. Many non-corporate pub style restaurants in Bethesda, that did not have any outdoor patios, either moved locations or closed all together.

People have the right to work where they wish to work, dine where they wish to dine and gather where they wish to gather. If you want a certain type of food, you go to that restaurant, if you want a microbrew, you go to a brewery and if you want to smoke while you enjoy your beer, you go to a place that allows smoking. Yes, we cater to a smoking crowd, which used to be a majority of the people who went out to bars, and may not quite be a majority today, but there should be a place for them to go until smoking cigarettes, cigars and vapor cigarettes are illegal.

One thing this bill will accomplish is MORE people standing out in front of our businesses smoking and making everyone who walks by on the streets or sidewalks inhale second hand smoke rather than just the people who chose to go to an establishment that allows smoking on outdoor patios and rooftops.

I was member of the Nighttime Economy Task Force and the only restaurant owner represented on the Task Force. My committee was an integral part of the changing of the County's regulations having to do with liquor license ratios of food to alcohol, changing the times of last call to match surrounding areas and creating a social venue license to allow more relaxed food policies after 9:00 pm for certain types of venues. As Council President Reimer knows well from his participation on the committee, the nightlife in the areas focused on by the taskforce was drastically declining for many reasons. In my opinion, the main cause of the decline had to do with restrictions put on the local bars and restaurants by the county and a certain county agency that were not the same as surrounding counties, Washington DC or Northern Virginia. If continuing the efforts to improve the nightlife in Montgomery county is still a goal of the County Council, please allow people to have a choice whether they would like to go to an establishment that allows smoking on outdoor patios, balconies and rooftops.....or not.

I am very qualified to know what the effects of this ban will have on businesses like mine so please consider a grandfather clause or an upper level open air exemption.

Thank you for your time.

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7940 Norfolk Avenue  
Bethesda, MD 20814  
(301) 654-3801

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Below is a list of Pub Style Restaurants in Bethesda that closed down after the Smoking Ban: (This listing is of those venues that I know the owners of and specifically know why they closed.)

Hard Times Café – Bethesda  
Steamers – Bethesda  
Black Finn – Bethesda  
Willie and Reeds – Bethesda  
Union Jack's – Bethesda  
Ri-Ra Irish Pub – Bethesda  
Flannagan's – Bethesda 2005

7940 Norfolk Avenue  
Bethesda, MD 20814  
(301) 654-3801

AM

## BILL 35-18

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**From:** Riemer's Office, Councilmember  
**Sent:** Tuesday, October 30, 2018 2:48 PM  
**To:** Council President  
**Subject:** Fw: Smoking / Restaurants

----- Forwarded message -----

**From:** [tom@thelimerickpub.net](mailto:tom@thelimerickpub.net)  
**Date:** Mon Oct 29 2018 19:37:43 GMT-0400 (Eastern Daylight Time)  
**Subject:** Smoking / Restaurants  
**To:** [councilmember.riemer@montgomerycountymd.gov](mailto:councilmember.riemer@montgomerycountymd.gov)  
**Cc:** [thanson@thelimerickpub.net](mailto:thanson@thelimerickpub.net)

Hans,

This bill is yet another anti-business measure. Any council member who supports it will never again get my vote.

Tom Stanton  
Owner

**From:** Riemer's Office, Councilmember [Councilmember.Riemer@montgomerycountymd.gov]  
**Sent:** Thursday, October 25, 2018 9:37:05 AM  
**To:** Council President  
**Subject:** Fw: I do not support the proposed smoking ban

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----- Forwarded message -----

From: [ryanzalaskus@gmail.com](mailto:ryanzalaskus@gmail.com)  
Date: Tue Oct 23 2018 19:53:45 GMT-0400 (Eastern Daylight Time)  
Subject: I do not support the proposed smoking ban

Good evening,

I am not in support of the proposed smoking ban in outdoor dining areas.

I have lost family from smoking-related illnesses and I don't like being around smoke when I am eating, but that still won't make me support a bad law.

Is this law being introduced because a broad segment of the population is asking for it, or because Adam Zimmerman says its best for us?

How many complaints are actually coming into the county each year because of smoking in these areas? How do those complaint numbers compare to other issues? I'm going to take a guess that the county receives far more complaints each year on other issues that aren't getting the same level of legislative attention. If this law isn't being driven by a large number of complaints that indicate we need to find a new solution, it makes one ask why we really need this law.

I'm trying to figure out where all these smokers are in outdoor restaurant dining areas because I don't encounter them. It is so rare to find a restaurant that even allows outdoor smoking; it's been years since I've even seen someone light up at a table. I know a few bars (or bar-focused restaurants) allow smoking on their patios, but they are so few in number. The free market has already created an environment where the vast majority of establishments are smoke-free outside and a very tiny number of businesses elect to continue to offer a smoking-allowed option in an outdoor space. Is something really so bad about that arrangement that we now need the government to intervene?

This is a law in search of a problem. I understand that Adam Zimmerman thinks we have a problem, but do we really? We shouldn't be adding new laws because one person, or even a small contingency of people, want a new law. Is that not the ultimate tyranny of the minority?

If smoking isn't allowed on a bar patio but is allowed on an adjacent sidewalk or parking lot, the next thing you know Adam Zimmerman will be back saying we now need a smoking ban on the sidewalks because now his kids now need to walk past the smokers who used to smoke on the bar patios. When's it going to end? And I go back to my earlier question: what is so broken with the current law that it needs to change?

This law won't solve any problems, and frankly, the problem doesn't exist. The existing law works for businesses and residents and isn't causing problems. Let the current law stand.

Thank you,  
Ryan Zalaskus

No response is required. Thank you for your consideration.

29 October, 2018

To the Montgomery County Council, Montgomery County Executive, et. al

As a 66 year resident of Montgomery County, Maryland I place my trust in government to act in the best interests of ALL of it's citizens. This is by definition an impossible task.

Realizing that it is not possible to take action on an item that will be acceptable to ALL Montgomery County citizens, we then place our trust in you to act in a manner that is well thought through, targeted to doing the greater good for the most citizens while minimizing negative impact on those citizens not directly involved with the action considered, and honestly seeking out and accurately weighing all evidence in the matter when making final legislation.

Seeking out and weighing the evidence is the most difficult and time consuming part of this process, in my opinion. But it is also the MOST important part to get right. When you get it wrong in the eyes of those who know it to be wrong, you loose credibility as leaders.

In February 2018 the American Cancer Society revised it's official position with regard to e-cigarettes (ENDS, ENDDS, etc.)<sup>1</sup> and their relationship to combusted tobacco products. In that paper they noted that:

"Many adults believe, erroneously, that ENDS are as harmful as combustible tobacco products, and the level of public understanding has deteriorated over time."

And

"Although many ENDS deliver nicotine, flavor additives, and other chemicals, they do not burn tobacco, a process that yields an estimated 7000 chemicals, including at least 70 carcinogens. Thus, public misunderstanding underscores the urgent need for consumer education about the absolute and relative risks posed by different tobacco products and to reinvigorate smokers' understanding of the importance of quitting combustible tobacco."

(Take particular note to their use of the word "many" rather than using "all" or omitting a reference to quantity of any sort).

**I oppose Bill 35-18 as written primarily because there is no demonstrated or evidence based need for the purpose stated and the action proposed.**

- After having exhaustively reviewed all of the publicly available documents with regard to introduction and passage of the previous 2014 Bill 56-14, 2015 Bill 15-15, and the current Bill 35-18, I can find no evidence that has been presented which indicates that there is any level of bystander harm from e-cigarettes which rises to the level of required legislation.
- Among the 1300+ articles, collections of conference and meeting abstracts, including 380+ Journal articles, there is not one which equates second or third hand e-cigarette emissions with that of combusted tobacco products. On the contrary, several of the few which have attempted to measure e-cigarette emissions in realistic terms to bystanders indicate no or no likely harm<sup>2 3 4 5</sup> (more upon request).

Should the legislation be rewritten so as to refer only to combusted tobacco products then I would have no basis for opposition to 35-18, however the Council and all Montgomery County officials should endeavor to educate themselves on the harm they have already done to the 16% of it's citizens who still use combusted tobacco products, those of us who have improved our health by using e-cigarettes, and especially keeping in mind the harm done to those that may be reliant upon publicly funded housing and programs who are tacitly deprived of healthier options to combusted tobacco products.

If an unstated purpose of this and the previous legislation is to protect our children (which is also misinformation<sup>6 7 8</sup>), then more thoughtful and better crafted legislation would accomplish that goal without forsaking the health improvement of a large adult population that continues to smoke, and the documented associated Public Health costs of government continuing to misinform them by omission of facts, or failure to interpret the facts.

So far Montgomery County has clearly demonstrated to me that they “believe, erroneously, that ENDS are as harmful as combustible tobacco products”.

Only time will tell if my government’s position will continue to “deteriorate” or if it will rise up and become proactive in the “urgent need for consumer education about the absolute and relative risks posed by different tobacco products and to reinvigorate smokers’ understanding of the importance of quitting combustible tobacco.”

James Davis

White Oak, MD 20904

Pdf version available at: [https://drive.google.com/file/d/1a5\\_B3xFSUNoiyLK3y4q1vHv-2riGB1sa/view?usp=sharing](https://drive.google.com/file/d/1a5_B3xFSUNoiyLK3y4q1vHv-2riGB1sa/view?usp=sharing)

#### References:

<sup>1</sup> Douglas, C.E.; Henson, R.; Drope, J.; et al., The American Cancer Society public health statement on eliminating combustible tobacco use in the United States: Eliminating Combustible Tobacco Use. CA: A Cancer Journal for Clinicians; 2018. Doi: <https://doi.org/10.3322/caac.21455>.

<sup>2</sup> Kuga, K.; Ito, K.; Yoo, S.-J.; et al., First- and second-hand smoke dispersion analysis from e-cigarettes using a computer-simulated person with a respiratory tract model. Indoor and Built Environment 27(7):898–916; 2017. Doi: <https://doi.org/10.1177/1420326X17694476>.

<sup>3</sup> Tayyarah, R.; Long, G.A., Comparison of select analytes in aerosol from e-cigarettes with smoke from conventional cigarettes and with ambient air. Regulatory Toxicology and Pharmacology 70(3):704–10; 2014. Doi: <https://doi.org/10.1016/j.yrtph.2014.10.010>.

<sup>4</sup> Hajek, P.; Etter, J.-F.; Benowitz, N.; et al., Electronic cigarettes: review of use, content, safety, effects on smokers and potential for harm and benefit. Addiction 109(11):1801–10; 2014. Doi: <https://doi.org/10.1111/add.12659>.

<sup>5</sup> Bush, D.; Goniewicz, M.L., A pilot study on nicotine residues in houses of electronic cigarette (e-cigarette) users, tobacco smokers, and non-users of nicotine-containing products. International Journal of Drug Policy 0(0); 2015. Doi: <https://doi.org/10.1016/j.drugpo.2015.03.003>.

<sup>6</sup> Public Health England (PHE), PHE publishes independent expert e-cigarettes evidence review - GOV.UK. Available at: <https://www.gov.uk/government/news/phe-publishes-independent-expert-e-cigarettes-evidence-review>. Accessed March 8, 2018.

<sup>7</sup> McNeill, A.; Brose, L.S.; Calder, R.; et al., Evidence review of e-cigarettes and heated tobacco products 2018; Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/684963/Evidence\\_review\\_of\\_e-cigarettes\\_and\\_heated\\_tobacco\\_products\\_2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684963/Evidence_review_of_e-cigarettes_and_heated_tobacco_products_2018.pdf).

<sup>8</sup> Rishi Dasgupta, Inventor of nicotine patches questions FDA’s claims as the administration targets Juul. The Chronicle. Available at: <https://www.dukechronicle.com/article/2018/10/inventor-of-nicotine-patches-questions-fdas-juul-claims>. Accessed October 12, 2018.



**From:** Riemer's Office, Councilmember [Councilmember.Riemer@montgomerycountymd.gov]

**Sent:** Wednesday, October 31, 2018 1:40:56 PM

**To:** Council President

**Subject:** Fw: ZTA On Smoking Ban In Outdoor Eating/Drinking/Seating Areas

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----- Forwarded message -----

From: [jklobukowski@comcast.net](mailto:jklobukowski@comcast.net)

Date: Wed Oct 31 2018 12:18:56 GMT-0400 (Eastern Daylight Time)

Subject: ZTA On Smoking Ban In Outdoor Eating/Drinking/Seating Areas

To: [councilmember.berliner@montgomerycountymd.gov](mailto:councilmember.berliner@montgomerycountymd.gov), [councilmember.riemer@montgomerycountymd.gov](mailto:councilmember.riemer@montgomerycountymd.gov), [councilmember.elrich@montgomerycountymd.gov](mailto:councilmember.elrich@montgomerycountymd.gov), [councilmember.floreen@montgomerycountymd.gov](mailto:councilmember.floreen@montgomerycountymd.gov), [councilmember.levanthal@montgomerycountymd.gov](mailto:councilmember.levanthal@montgomerycountymd.gov), [councilmember.hucker@montgomerycountymd.gov](mailto:councilmember.hucker@montgomerycountymd.gov), [councilmember.navarro@montgomerycountymd.gov](mailto:councilmember.navarro@montgomerycountymd.gov), [councilmember.katz@montgomerycountymd.gov](mailto:councilmember.katz@montgomerycountymd.gov)

Dear Councilmembers,

Please modify the language in the proposed ordinance or ZTA and accompanying Health Regulation to allow each establishment to decide on their own whether or not they want to allow smoking in outdoor eating/drinking or seating areas.

People will not patronize an establishment if they do not like people smoking in an outdoor eating or drinking area, which will mean less revenue for the business.

Then they will make the decision on their own.

My mother and father would not have been very successful at running a restaurant/tavern for 25 years, if they did not pay attention to their customers.

Local eating and drinking establishments in Montgomery County Maryland can do the same, especially if what they do hurts their business.

Thank you,

Jerry Klobukowski

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Montgomery County Council Public Hearing: Bill 35-18, Health and Sanitation -  
Smoking - Outdoor Serving Areas  
Tuesday, October 23, 2018  
1:30 p.m.-2:30 p.m. EDT  
Third Floor Hearing Room  
100 Maryland Avenue  
Rockville, Maryland 20850  
Contact: Councilmember Sidney Katz  
(240) 777-7906  
[Councilmember.Katz@montgomerycountymd.gov](mailto:Councilmember.Katz@montgomerycountymd.gov)

My name is Kurt H. Panzer, Jr. I am a retired United States Probation Officer, cigar enthusiast, taxpayer, voter, and have been a resident of Montgomery County, Maryland, since 1999. In my experience, government action often produces unintended and unwanted consequences, and in this case, I am also concerned that due process has been sacrificed in a rush to regulate public health policy without regard to the welfare of business owners and the rights of smokers. After all, smoking is a legal activity, and tobacco is a legal drug, which is taxed and regulated. Why then is the criminal prohibition of smoking in public places legitimate?

There is a social aspect associated with smoking and a financial benefit to jurisdictions, in the form of increased "sin" taxes as well as increased alcohol sales. Additionally, throughout the years, I have cultivated personal and business relationships while smoking outside of restaurants that allow the activity, primarily in Bethesda (which as I understand has been designated as an Entertainment District), and also in Olney. Therefore, I contribute to the County and State economy via parking fees, cigar sales, and food consumption, and it is precisely due to these relationships that I choose to support brick and mortar establishments, especially when it concerns purchasing cigars. After all, I could save a substantial amount of money purchasing cigars on-line at six percent sales tax versus the State tax rate for Other Tobacco Products (OTP) of 30 percent of the wholesale price. As a consumer, I have made a conscious decision to support Montgomery County businesses. Citizens have choices, and if they decide a restaurant's outside smoking areas are offensive, they will find another one to frequent. Let the market decide.

As a cigar smoker, I cannot smoke indoors in a restaurant, while nonsmokers have both options and can simply chose to go elsewhere if they desire a smoke-free outside dining environment. Further, there are currently several restaurants in Montgomery County which allow outdoor patio smoking after a designated hour identified as the time most families with young children are not present; regardless, I have never had anyone complain about cigar smoke at one of these restaurants in almost 20 years of patronage. In my opinion, this Bill is a solution in search of a problem, and should it pass, I will most certainly purchase fewer cigars and dine out less frequently.

Why does it matter? According to the Fiscal Year 2017 Comptroller of Maryland Alcohol and Tobacco Tax Annual Report, "local jurisdictions are prohibited from imposing an alcohol tax. After paying refunds and the administrative costs of the Comptroller, alcohol beverage taxes are distributed to the General Fund of the State," while "tobacco tax revenues are used to pay for refunds, and the Comptroller's administration costs with the balance distributed to the General Fund of the State."

#### Conclusions of the Report

Total net receipts from alcoholic beverages and tobacco taxes license and permit fees, and miscellaneous income for fiscal year 2017 was **\$420,960,957**. Compared to fiscal year 2016, fiscal year 2017 tax revenues indicate the following changes: 2.2% increase in distilled spirits; an 8.6% increase in wine; and a 4.3% decrease in beer with an overall increase of 1.7 % in alcoholic beverages tax collections. **The net receipt from the sales of cigarette tax stamps in the amount of \$ 348,825,118 reflects a 3.2% decrease from fiscal year 2016. The net receipt from Other Tobacco Products tobacco tax is \$ 38,083,067, an increase of 9.4% from fiscal year 2016.** Other Tobacco Products include chewing tobacco, moist snuff, pipe tobacco, cigars, and roll-your-own tobacco. **Compared to alcoholic beverages tax revenues, tobacco taxes provided the largest percentage of net receipts at 82.9%. As a percentage of net tax revenue, distilled spirits accounted for 4.0%; wine: 1.6%; and beer: 2%. Other tobacco products tax accounted for 9.1% of the total tax revenues.**

Are citizens like Mr. Adam Zimmerman (a public policy advocate who has lobbied for this and similar bills in the County) and other non-smokers willing to absorb the inevitable increased cost of food and alcoholic beverages that businesses will have to pass on to them, as well as the loss of employment for servers all over the County? What about rent? Is the County Council prepared to pass an order requiring landlords to charge less for rent?

There is a symbiotic relationship that exists, and I can foresee restaurant owners purchasing less alcohol from the County if this Bill is passed. Contrast this with Mr. Zimmerman's assertion in a Bethesda Magazine article on October 1, 2018, in which he states, "Whether you're a smoker or nonsmoker, whether you're a restaurant owner or an out-of-town guest, this law is good for everyone." Is Mr. Zimmerman an economist or a scientist qualified to make such a declarative statement? How about the County Council focusing on the myriad of large sport utility vehicles in Bethesda that emit far more carcinogens than cigarettes or OTPs and damage the ozone layer.

As background, on May 22, 2017, the Rockville City Council passed the most recent ban on smoking or vaping in outdoor dining areas and bar patios. In a Washington Post article the next day, Montgomery County Council President Roger Berliner (D-Potomac-Bethesda) said that there has been no conversation among members so far about expanding the existing county ban on smoking inside bars and restaurants, and stated, "I am sure once we see whatever written communication there is, we will begin discussing it." He added that it was useful to have the city of Rockville move forward on the issue

"so that we can see exactly what the impact is." It's 17 months later and I ask: have there been any economic or scientific studies ordered to determine the impact/benefit prior to expanding the outdoor smoking ban to the entire County?

On May 23, 2017, Michael I. Krauss, a resident of Rockville, contributor for Forbes Magazine, Professor of Law at the Antonin Scalia Law School of George Mason University, and a nationally known scholar of Tort Law and Legal Ethics, wrote an article called, Should Smoking Be Banned At Restaurants? Should Smoking Be A Tort? In it, he asks "if tobacco sales and use are legal, why ban them from restaurants and bars (indoors or outdoors)?" Outlining three (3) rationales for a legal ban (the first of which is "Second-hand smoke could be dangerous to restaurant clients who don't smoke, and to wait staff that must be exposed to smoke,") he imbeds a link within the discussion (the "science" here is controversial), which guides the reader to a lengthy February 13, 2017, article in Slate Magazine, titled, We Used Terrible Science to Justify Smoking Bans.

In citing a 2003 Helena, Montana, study, "which became known for briefly achieving one of the most astounding public health triumphs ever recorded," the author outlines that in June 2002, "Helena had implemented a comprehensive smoking ban in its workplaces, bars, restaurants, and casinos. In the first six months of the ban, the rate of heart attacks in the city plummeted by nearly 60 percent. Just as remarkably, when a judge struck down the smoking ban in November of that year, the rate of heart attacks shot right back up to its previous level." "For three anti-smoking advocates—local physicians Richard Sargent and Robert Shepard, and activist and researcher Stanton Glantz from the University of California at San Francisco—this sudden drop in heart attacks was proof that smoking bans usher in extraordinary benefits for public health." According to Mr. Glantz, "This striking finding suggests that protecting people from the toxins in secondhand smoke not only makes life more pleasant; it immediately starts saving lives."

"A decade later, comprehensive smoking bans have proliferated globally. And now that the evidence has had time to accumulate, it's also become clear that the extravagant promises made by anti-smoking groups—that implementing bans would bring about extraordinary improvements in cardiac health—never materialized. Newer, better studies with much larger sample sizes have found little to no correlation between smoking bans and short-term incidence of heart attacks, and certainly nothing remotely close to the 60 percent reduction that was claimed in Helena. The updated science debunks the alarmist fantasies that were used to sell smoking bans to the public, allowing for a more sober analysis suggesting that current restrictions on smoking are extreme from a risk-reduction standpoint."

Respectfully submitted,



Kurt H. Panzer, Jr.