

Legislation Text

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Amending Chapter 10-600 of The Philadelphia Code, entitled “Public Places -- Prohibited Conduct,” by prohibiting smoking in certain public places and in the workplace, with certain exceptions, and by repealing current provisions set forth in Section 10-602 regulating smoking; all under certain terms and conditions.

WHEREAS, Beginning in the 1940s, the City of Philadelphia has enacted various prohibitions on smoking at numerous public facilities in order to protect the public health and welfare; and

WHEREAS, Smoking on public transit vehicles has been prohibited in the City since 1943 and was declared at that time to be a “nuisance prejudicial to the welfare and safety” of the riding public; and

WHEREAS, Smoking in certain retail stores has been prohibited since 1947, and smoking in places of public assembly with a capacity of more than 100 persons has been prohibited since 1948; and

WHEREAS, Pursuant to the City’s Fire Code, smoking is prohibited at various facilities such as warehouses, stores, industrial plants, institutions and schools; and

WHEREAS, Since 1993, an Executive Order has prohibited smoking in all City-owned and City-occupied space to which the public has access; and

WHEREAS, Several recent measures have been enacted which seek to curb access to cigarettes and tobacco products by minors, including a 1995 ordinance (Bill No. 732, approved December 28, 1995) which required purchasers of tobacco products to present a photo I.D. and required warning signs about sales to minors on vending machines; and a 1998 ordinance (Bill No. 960367-A, approved June 23, 1998) which required “lock-out devices” on cigarette vending machines; and

WHEREAS, Many studies have found that tobacco is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of various diseases in non-smokers; and

WHEREAS, The U.S. Surgeon General found that separating smokers from non-smokers within the same air space does not eliminate the exposure of non-smokers to secondhand tobacco smoke; and

WHEREAS, Indoor air pollution caused by smoking is an offensive annoyance and irritant, and results in serious and significant physical discomfort of non-smokers in public places and in the workplace; and

WHEREAS, This Ordinance is enacted to further protect the public health and welfare from the dangerous, unnecessary and involuntary health risks associated with secondhand smoke; now, therefore,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Declaration of Legislative Findings and Intent.

Council finds, based upon testimony provided to Council by the United States Environmental Protection Agency (the "EPA"), the Office of the United States Surgeon General (the "U.S. Surgeon General") and nine medical professionals, that the health risks attributable to exposure to environmental tobacco smoke ("ETS") (also known as secondhand smoke, passive smoke or involuntary smoke) are well established. The EPA and U.S. Surgeon General have concluded that exposure to ETS is a cause of lung cancer. Further, the EPA has found that ETS is responsible for the lung cancer deaths of approximately 3,000 nonsmokers in the United States each year, and is a deadly carcinogen which belongs in the category of Group A (known human) carcinogens. Studies conducted by the EPA and the U.S. Surgeon General have also concluded that exposure to ETS causes other significant health problems in adults, including reduced lung function, coughing, excessive phlegm production and chest discomfort. In addition, the EPA testified that ETS has been linked to heart disease and the onset of chest pain.

The EPA has also concluded that exposure to ETS is a substantial health risk to children, as it is casually linked with, among other things, an increase in the prevalence of childhood respiratory illnesses, an increase in the prevalence of fluid in the middle ear of children (the most common cause of hospitalization of

children in need of an operation), and a significant reduction in the lung function of children. Moreover, the EPA has found that exposure to ETS increases the number of episodes and increases the severity of symptoms in asthmatic children, and causes thousands of non-asthmatic children to develop this condition each year.

The EPA also reports that twenty-five percent of the population of the United States are smokers.

In order to protect against the dangers associated with ETS, over eight-hundred jurisdictions in the United States, including cities such as Boston, MA, and New York, NY, have enacted local laws which restrict smoking in public places.

The Council of the City of Philadelphia finds that many Americans, including the citizens of Philadelphia, are likely exposed to ETS due to its current widespread presence in public places and in the workplace. The Council further finds that exposure to ETS presents a substantial health risk to nonsmokers. It is, therefore, Council's intention to strengthen existing local laws which limit the areas in which smoking is permissible.

To assist Council with the development of additional smoke-free restrictions, Council directed the Health Commissioner to form a Study Group consisting of the members of City Council's Committee on Public Health and Human Services, representatives of any other City departments, boards, commissions or other agencies of the City government the Commissioner deemed appropriate, and representatives of the restaurant and hospitality industry in Philadelphia. The Health Commissioner convened the Study Group and a written report was submitted to Council on November 1, 2000 containing the results of their study and recommendations.

In order to protect and promote the public's health, safety and welfare, Council is enacting further restrictions on smoking in public places and in the workplace to protect children and nonsmoking adults from the health hazards presented by exposure to ETS.

SECTION 2. Chapter 10-600 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 10-600. PUBLIC PLACES - PROHIBITED CONDUCT

* * *

§10-602. Smoking.

[(1) No person shall smoke or carry a lighted cigar, cigarette, or pipe or use any match, flame, or fire-producing device in any:

(a) vehicle of public transportation or in any fare-paid areas and any indoor areas of commuter rail or other transit stations or terminals owned, operated or controlled by the Southeastern Pennsylvania Transportation Authority, except in an indoor area within such stations or terminals where such conduct may be specifically designated by the Authority to be permitted.

(b) indoor place of public assemblage having a capacity in excess of 100 persons;

(c) retail store designed to accommodate more than 30 persons or in which more than 25 persons are employed.

(d) other places where “No Smoking” signs are posted by order of the Fire Department pursuant to Title 4.

(2) The prohibition of §10-602(1) shall not apply in any restaurant, beauty parlor, executive office, rest room, or any room particularly designated and prepared for smoking, or at any banquet, dinner, or function at which the public is seated at tables.]

(1) *Definitions. The following definitions apply to this Section:*

(a) *“Bar.” An establishment the principal business of which is the sale of alcoholic beverages for consumption on the premises. For purposes of this definition, if the sale of alcoholic beverages comprises sixty percent (60%) or more of an establishment’s gross sales on an annual basis (or on such other factors or criteria as the Department of Licenses and Inspections shall by regulation provide with respect to*

new or existing establishments that have been licensed to sell alcoholic beverages for less than one full year), then the sale of alcoholic beverages shall be considered the establishment's principal business. The bar area of a restaurant shall be considered as part of the same establishment as the restaurant, unless the bar is in a room separate from the restaurant in accordance with the provisions of Section 10-602(2)(b)(.6), so that the total gross sales of both the restaurant and the bar area of the restaurant shall be considered together for purposes of this definition. The total gross sales of a smoking area or lounge shall only include sales for such items consumed by patrons in the smoking area or lounge and shall be calculated and accounted for separately from any other bar or restaurant on the premises.

(b) *"Enclosed Area." All space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of doors or passageways) which extend from the floor to the ceiling.*

(c) *"Lodging Establishment." A hotel, motel, inn, resort, guest house, bed and breakfast establishment, regardless of size, or other building which holds itself out by any means, including advertising, license, registration with an innkeepers' group convention listing association, travel publication or similar association or with a government agency, as being available to provide overnight lodging or use of facility space, such as space for food and beverage service or meeting rooms, for consideration to person seeking temporary accommodation.*

(d) *"Private Club." A facility used by a not-for-profit group or organization of individuals associated together for legitimate purposes of mutual benefit, entertainment, fellowship or lawful convenience, which holds regular meetings, conducts its business through officers regularly elected, admits members by written application, investigation and ballot, and charges and collects dues from members.*

(e) *"Restaurant." Any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, food court, and any other eating establishment (other than a Bar) which gives or offers for sale food to the public, guests, or employees.*

(f) *"Restaurant Bar." A contiguous area in a restaurant, containing a counter, and which is primarily devoted to the selling and serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food, if served at all, is only incidental to the sale or consumption of alcoholic beverages in such restaurant bar.*

(g) *“Smoking.” Inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe or other such device which contains tobacco or other smoke producing products.*

(h) *“Specialty Tobacco Store.” A retail store the primary business of which is the sale of tobacco or tobacco-related products and accessories, including a restaurant or bar area accessory to such retail store, or a restaurant whose sales of tobacco or tobacco-related products and accessories comprises fifteen percent (15%) or more of gross sales on an annual basis, or on such other basis as the Department of Licenses and Inspections shall by regulation provide with respect to Restaurants that have been open for less than one full year.*

(i) *“Sports Arena.” Any enclosed or unenclosed sports pavilion, gymnasium, health spa, swimming pool, roller or ice rink, bowling alley and other similar place where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.*

(j) *“Theater.” Any facility primarily used for the exhibition of any motion picture, stage drama, musical recital, dance, lecture or other similar performance.*

(k) *“Workplace.” Any Enclosed Area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a Workplace unless it is used as a child care, adult day care or health care facility.*

(2) *Smoking Prohibited.*

(a) *No person shall smoke in any of the following places, except as provided in subsection 10-602(2)(b):*

(.1) *In any Enclosed Area to which the general public is invited or in which the general public is routinely permitted, including, but not limited to:*

(i) *Elevators.*

(ii) *Restrooms, lobbies, reception areas, hallways and other common-use*

areas.

(iii) *Retail stores.*

(iv) *Restaurants.*

(v) *Galleries, libraries and museums.*

(vi) *Theaters.*

(vii) *Any place at which a public meeting is held by any public agency, during such time as a public meeting is in progress.*

(viii) *Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, and doctors' offices.*

(ix) *Lobbies, hallways, and other common areas in apartment buildings, condominiums and other multiple-unit residential facilities with more than three (3) stories or with more than eight (8) units, or in retirement facilities and nursing homes, but this prohibition shall otherwise not include a private residence unless it is used as a child care, adult day care or health care facility. No person shall smoke in a private residence used as a child care, adult day care or health care facility during those hours it is used as such.*

(x) *Lobbies, hallways, and other common areas in Lodging Establishments, and in no less than seventy-five percent (75%) of the sleeping quarters within a Lodging Establishment that are available for rent to guests.*

(.2) *In any vehicle of public transportation or in any fare-paid area of commuter rail or other transit stations or terminals owned, operated or controlled by the Southeastern Pennsylvania Transportation Authority, except in an indoor area within such stations or terminals where such conduct may be specifically designated by the Authority to be permitted.*

(.3) *In any Sports Arena.*

(.4) *In any outdoor amphitheater or similar outdoor facility at which a concert, play, recital, dance, lecture or other performance is held, but the prohibition against smoking in such facility applies only during those times a performance is being held at such facility.*

(.5) *In any Workplace.*

(.6) *In any place where "No Smoking" signs are posted by order of the Fire Department pursuant to Title 4.*

(.7) *Outdoors within ten (10) feet of any entrance to any Enclosed Area in which*

smoking is prohibited under this Section, except for any sidewalk cafe licensed under Section 9-208 or otherwise permitted by special ordinance, or any outdoor deck, patio or similar outdoor service area which is part of a restaurant establishment.

(b) Exceptions. The provisions of subsection 10-602(2)(a) shall not apply:

(.1) In a Bar.

(.2) In a Specialty Tobacco Store.

(.3) Within up to twenty-five percent (25%) of the sleeping quarters within a Lodging Establishment that are available for rent to guests.

(.4) Within a restaurant or Lodging Establishment conference or meeting room, or within any other public or private assembly room, but only while such conference room, meeting room, or other assembly room is being used for a private function to which the general public is not invited or routinely permitted. Before any agreement is entered into for the use or rental of such a room, written notice shall be provided by the person in control of the premises to the person agreeing to the use or rental of the room as to whether such room is a smoke-free room at all times, and whether any rooms that adjoin such room are smoke-free rooms at all times.

(.5) Within any Private Club or assembly room for union members to which the general public is not invited or routinely permitted.

(.6) Within a room in a restaurant or Lodging Establishment which is designated by the person in control of the premises as a smoking area or lounge, provided that there is at least one other room available to the general public in the restaurant or Lodging Establishment of equal or greater seating area and accommodations (such as the serving of food and beverages) and in which no smoking is permitted, and further provided that all of the following conditions are met:

(i) The smoking area or lounge shall be specially designed in a manner or shall provide features which prevent smoke from escaping to other areas of the building and which increase the amount of air circulation within the smoking area or lounge;

(ii) Air from the smoking area or lounge shall not be re-circulated to the other parts of the building;

(iii) *The air exhausted from the smoking area or lounge shall be in excess of the air supply to the smoking area or lounge and the ventilation system shall provide the smoking area or lounge with continuing negative pressure;*

(iv) *The smoking area or lounge shall be fully enclosed from floor to ceiling and separated from other rooms and areas in the restaurant or Lodging Establishment by a door or separate entrance and the general public shall not be required to walk through the smoking area or lounge to access other areas within the restaurant or Lodging Establishment; and*

(v) *The designated smoking area or lounge shall have signage which clearly details health warnings regarding smoking and secondhand smoke and also indicates that the room is specifically designated for smoking.*

(vi) *In lieu of meeting the conditions set forth in (i) through (iii), a restaurant or Lodging Establishment may instead comply with regulations that provide alternative means of fulfilling the purposes served by those provisions. Such regulations shall be promulgated by the Health Department within one hundred eighty days after this subsection becomes law, after consultation with a group consisting of representatives of the Department of Licenses and Inspections, the Fire Department, the Clean Air Council, and the American Society of Heating, Refrigerating and Air-Conditioning Engineers, which group shall meet at the direction of the Managing Director prior to giving its recommendations to the Health Department. Until such regulations are promulgated (and even if such regulations are not promulgated by the required time), a restaurant or Lodging Establishment must abide by the conditions set forth in (i) through (iii).*

(.7) *In any sidewalk cafe licensed under Section 9-208 or otherwise permitted by special ordinance, or any outdoor deck, patio or similar outdoor service area which is part of the same restaurant establishment.*

(.8) *Within a Restaurant Bar as long as the following conditions are met:*

(i) *The Restaurant Bar is separated by a solid floor-to-ceiling partition from any indoor dining area (other than the seating area within the Restaurant Bar) of the restaurant;*

(ii) *The Restaurant Bar is not the sole indoor patron waiting area of the restaurant;*

(iii) The Restaurant Bar shall be specially designed in a manner or shall provide features which prevent smoke from escaping to other areas of the building and which increase the amount of air circulation within the Restaurant Bar;

(iv) Air from the Restaurant Bar shall not be re-circulated to the other parts of the building;

(v) The air exhausted from the Restaurant Bar shall be in excess of the air supply to the Restaurant Bar and the ventilation system shall provide the Restaurant Bar with continuing negative pressure;

(vi) The general public shall not be required to walk through the Restaurant Bar to access other areas within the restaurant; and

(vii) The Restaurant Bar shall have signage which clearly details health warnings regarding smoking and secondhand smoke and also indicates that the room is specifically designated for smoking.

(viii) In lieu of meeting the conditions set forth in (iii) through (v), a Restaurant Bar may instead comply with the regulations to be promulgated by the Health Department pursuant to subsection 10-602(2)(b)(.6)(vi). Until such regulations are promulgated (and even if such regulations are not promulgated by the required time), a Restaurant Bar must abide by the conditions set forth in (iii) through (v).

(c) Notwithstanding subsection 10-602(2)(b) or any other provision of this Section, any owner, operator, manager, or other person who controls any establishment or facility may declare the entire establishment or facility to be a non-smoking establishment or facility.

(3) Smoking Prohibitions in the Workplace.

(a) Within ninety (90) days after this subsection 10-602(3) takes effect, all employers with a Workplace within the City shall adopt, implement, make known and maintain a written policy that prohibits smoking within any Workplace. This requirement shall not apply to any Workplace covered by a collective bargaining agreement or similar binding agreement between labor and management that includes provisions regarding smoking in the Workplace.

(b) An employer's written smoking policy shall be communicated to all employees within

three (3) weeks after its adoption, and an employer shall provide a copy of the written policy upon request to any employee or prospective employee.

(c) If an employer permits smoking in any Workplace under any of the exceptions set forth in subsection 10-602(2)(b), the employer shall:

(.1) Post signs in all areas in which smoking is permitted that clearly detail the health risks to which employees are exposed by working in an environment in which smoking is permitted;

(.2) Within ninety (90) days after this subsection 10-602(3) takes effect:

(.a) notify all full time and part time employees of the areas of the Workplace in which smoking is permitted and of the health risks to which employees are exposed by working in an environment in which smoking is permitted;

(.b) provide the Health Department with a certification that each full time and part time employee has been so notified, and the date and manner of notification; and

(.c) provide to each such employee a “City of Philadelphia Indoor Air Quality Health Warning Card” to be developed by the Health Department that summarizes the health risks of working in an environment in which smoking is permitted.

(.3) Before hiring any new full time or part time employee after this subsection 10-602(3) takes effect, an employer shall notify the prospective employee of the areas of the Workplace in which smoking is permitted and of the health risks to which employees are exposed by working in an environment in which smoking is permitted, and shall provide the prospective employee with a copy of the City of Philadelphia Indoor Air Quality Health Warning Card. Within thirty (30) days of hiring any such employee, the employer shall provide the Health Department with a certification that the new employee has been so notified, and the date and manner of notification.

(4) Duties of Persons in Control of Premises.

(a) The owner, operator, manager, employer or other person in control in every place where smoking is regulated by this Section shall take the following actions, and shall not be cited for any violations of this Section if all such actions are taken:

(.1) Post “No Smoking” signs and other signs relating to smoking on the premises in

compliance with regulations to be promulgated by the Health Department.

(.2) *Take reasonable measures to see to it that no person smokes in such place in violation of this Section. The following measures shall be deemed sufficient to comply with this requirement:*

(i) *Informing any person who smokes in such place that smoking is prohibited by law, and requesting such person to immediately refrain from smoking or leave the area in which smoking is prohibited; and*

(ii) *Reporting immediately to the Health Department or to any other person authorized to enforce this Section if a person does not comply with a request to immediately refrain from smoking or leave the area in which smoking is prohibited.*

(b) *The owner or manager of a building, with respect to any portion of the building leased to others (“Leased Premises”), at which smoking is regulated by this Section, shall take the following actions, and shall not be cited for any violations of this Section if these actions are taken:*

(.1) *Post “No Smoking” signs and other signs relating to smoking on the premises in compliance with regulations to be promulgated by the Health Department;*

(.2) *Advise the tenant that smoking is prohibited in the Leased Premises, and include “No Smoking” provisions in any lease entered into after the date this Section becomes law; and*

(.3) *Refer any complaints which the owner or manager receives about smoking in the Leased Premises immediately to the tenant in writing.*

(5) *Enforcement and Penalties.*

(a) *This Section shall be enforced by the Health Department, its duly authorized employees, or any other person authorized to enforce this Section. Notices of violation issued pursuant to this Section shall be issued in accordance with the procedure set forth in Section 1-112. As part of its enforcement efforts, the Health Department shall maintain a registry showing the smoking/non-smoking status of eating and drinking establishments, Bars, Restaurants, Lodging Establishments and similar facilities, and shall make such registry available to the public as a dining guide both in printed form and on the Internet.*

(b) *Any person who violates this Section shall be subject to a fine of \$100 if no other violations were committed during the previous twelve months, \$200 if one prior violation was committed during*

the previous twelve months, and \$300 if two or more prior violations were committed during the previous twelve months.

(6) Hardship Exemption for Restaurants. A Restaurant shall be entitled to an exemption from the provisions of subsection 10-602(2)(a) under the following terms and conditions:

(a) Definitions.

(.1) "Completely smoke-free environment." For purposes of this subsection, a Restaurant provides a "completely smoke-free environment" if it prohibits smoking in all areas, including in those areas in which smoking would otherwise be permitted under subsection 10-602(2)(b), except that a Restaurant need not prohibit smoking in a sidewalk cafe, outdoor deck, patio or similar outdoor service area as authorized under subsection 10-602(2)(b)(.7).

(.2) "Current Tax Year." The tax year for which a taxpayer claims to have sustained the losses in net income and gross receipts that would qualify the taxpayer for the exemption provided under this subsection.

(.3) "Base Tax Year." The tax year that began two years before the Current Tax Year began, provided that the tax year in which this ordinance becomes law shall be the earliest Base Tax Year.

(b) To be eligible for an exemption, a Restaurant must establish, in the manner required by the Revenue Department by regulation, that it has sustained at least a fifteen percent (15%) decrease in net income and a fifteen percent (15%) decrease in gross receipts over a two year period beginning after the tax year in which this ordinance becomes law, provided such decreases in net income and in gross receipts are directly attributable to the establishment being smoke-free. The percentage decreases in net income and gross receipts shall be determined by comparing net income and gross receipts for the Current Tax Year to net income and gross receipts for the Base Tax Year. A decrease in net income and gross receipts for one tax year compared to the previous tax year, regardless of the amount of such decrease, shall not entitle a Restaurant to an exemption.

(c) To be eligible for this exemption, a taxpayer must file with the City, no later than the last day of the Base Tax Year, a written certification that it is providing a completely smoke-free environment.

(d) If a taxpayer owns more than one Restaurant, then, for purposes of this subsection, each

such Restaurant shall be treated as if it were owned by a separate taxpayer, so that changes in net income and gross receipts shall be determined with respect to each separate Restaurant owned by a taxpayer. The Revenue Department shall by regulation specify the information a taxpayer must submit to establish net income and gross receipts for each Restaurant owned by the taxpayer.

(e) The exemption shall remain in effect for a period of five consecutive tax years beginning with the tax year following the Current Tax Year.

(f) The Revenue Department shall require any Restaurant granted an exemption under this subsection to submit such information as is necessary to determine the net income and gross receipts of such Restaurant for each tax year the Restaurant is exempt.

(g) Appeals. A taxpayer may appeal to the Tax Review Board any final decision or determination of the Revenue Department concerning the taxpayer's eligibility for the hardship exemption provided under this subsection. Appeals to the Tax Review Board shall follow the procedures set forth in Chapter 19-1700 relating to petitions for review.

(7) Evaluation and Report Requirements.

(a) No later than three months after this subsection becomes law, the Commerce Director, Finance Director and Revenue Commissioner shall begin evaluating the effect on the restaurant, hotel and hospitality industries of all of the various City and state taxes paid by those industries, and as part of that effort they shall select and consult with representatives of the Greater Philadelphia Chamber of Commerce and representatives of the restaurant, hotel and hospitality industries. Within one year after this subsection becomes law, the Commerce Director, Finance Director and Revenue Commissioner shall submit a written report to the Governor, the General Assembly, the Mayor and the Council President containing their findings and any recommendations to reduce, eliminate or consolidate any taxes paid by the restaurant, hotel and hospitality industries in order to help improve the business climate and promotion of these industries in Philadelphia.

(b) By April 1 of each year, the Commerce Director, Finance Director and Revenue Commissioner shall submit a written report to the Mayor and to the Council President detailing the City's experience with the tax credits or exemption provided under this Section. The report shall include the number

of taxpayers claiming or applying for each such tax credit or exemption for the previous tax year, the number of taxpayers granted each such tax credit or exemption, and the total dollar value to all taxpayers of each such tax credit.

(c) No later than five years after this subsection becomes law, the Commerce Director, Finance Director, Health Commissioner and Revenue Commissioner shall begin to evaluate the effects of the tax credits and hardship exemption provided under this Section. They shall select and consult with representatives of the Greater Philadelphia Chamber of Commerce and representatives of the restaurant, hotel and hospitality industries as part of their evaluation. Within one year after beginning such evaluation, the Commerce Director, Finance Director, Health Commissioner and Revenue Commissioner shall submit a written report to the Mayor and to the Council President containing findings as to the City's experience with the hardship exemption provided under this Section, and any recommendations they may have.

(8) Severability. The provisions of this Section are severable, and if any provision, sentence, clause, subsection or part thereof shall be held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, subsections or parts of this Section or their application to such person or to other persons and circumstances. It is hereby declared to be the legislative intent of Council that this Section would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, subsection or part had not been included therein, and if the person or circumstances to which the Section or any part thereof is inapplicable had specifically been exempted therefrom.

* * *

§10-606. Penalties.

(1) Except as otherwise specifically provided, the [The] penalty for violation of any provision of this Chapter is a fine not exceeding \$25.00, with the exception of any violation committed under the provision of [Section 10-602 Smoking or] Section 10-604 Alcoholic Beverages, in which case the fine shall not exceed \$300.00, together with imprisonment not exceeding 10 days if the fine, together with costs, is not paid within 10 days.

SECTION 3. Effective Dates.

(a) Except as set forth in subsections (b), (c) and (d) below, this ordinance shall take effect ninety (90) days after it becomes law, provided that any City agency is authorized to promulgate any regulations and take any other actions needed to prepare for implementation of this ordinance immediately after this ordinance becomes law.

(b) The provisions of subsection 10-602(3) of The Philadelphia Code, as added by Section 1, shall take effect immediately.

(c) The provisions of subsection 10-602(2)(a) of The Philadelphia Code shall take effect with respect to existing restaurants two hundred and ten (210) days after this ordinance becomes law (the "Initial Restaurant Effective Date"). The owner of any restaurant who in good faith considers the construction of a separate smoking area or lounge or Restaurant Bar at which smoking will be permitted under subsection 10-602(2)(b)(.6) or subsection 10-602(2)(b)(.8) shall have until one hundred fifty-five (155) days after the Initial Restaurant Effective Date to apply for any permits necessary to perform such construction, and until such time, the prohibitions of subsection 10-602(2)(a) of The Philadelphia Code shall continue not to apply within such restaurant. If such owner has applied for such permits during such one hundred fifty-five (155) day period, then the provisions of subsection 10-602(2)(a) shall first apply to such restaurant at the earlier of (i) the date of completion of any physical alteration of premises necessary to provide the separate smoking area or lounge or Restaurant Bar; or (ii) one hundred eighty (180) days after the issuance of the final permits necessary to perform construction, provided that upon petition of a restaurant owner, the Department of Licenses and Inspections may extend such one hundred eighty (180) day period for an additional one hundred eighty-five (185) days if it finds that the owner is proceeding to complete the alterations with all due diligence, but the scope and complexity of the project require additional time for the alterations to be completed. The provisions of subsection 10-602(2)(a) of The Philadelphia Code shall take effect immediately with respect to any restaurant for which a building permit is obtained six months or more after this ordinance become law.

(d) Notwithstanding any other provision of this Section, all restaurants shall be subject to the provisions of subsection 10-602(2)(a) of The Philadelphia Code on and after two years from the date this ordinance becomes law.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.