

Legislation Text

File #: 140011, **Version:** 0

Amending Chapter 10-600 of The Philadelphia Code, entitled "Public Places - Prohibited Conduct," by prohibiting the use of electronic-cigarettes in public places and in the workplace, and providing for penalties, all under certain terms and conditions.

Whereas, Electronic cigarettes and electronic cigars ("e-cigarettes" and "e-cigars") are electronic nicotine delivery systems that resemble cigarettes and cigars; and

Whereas, The marketing, availability and use of electronic cigarettes and cigars is growing, due in large part to the lack of regulation around their sale and consumption; and

Whereas, All major national tobacco companies curenly produce e-cigarettes; and

Whereas, E-cigarettes and e-cigars are not regulated by the Food and Drug Administration (FDA), and therefore the level of nicotine in the cartridge is highly variable; and

Whereas, The sale of e-cigarettes and e-cigars to minors is not restricted, and e-cigarettes are produced in flavors (or "e-juices") such as vanilla, candy corn, and bubble gum; and

Whereas, The use of e-cigarettes and e-cigars (or "vaping") in regulated indoor spaces can lead to confusion about "The Clean Indoor Air Worker Protection Law;" now, therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 10-600 of The Philadelphia Code is hereby amended to read as follows:

§ 10-602. Smoking.

(1) Short Title. This Section shall be known and may be cited as, "The Clean Indoor Air Worker Protection Law".

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

- (a) "Drinking Establishment." Any Food or Beverage Establishment whose on-site sales of food for consumption on the premises comprises no more than 20% of gross sales of both food, non-alcoholic and alcoholic beverages on an annual basis, or on such other basis as the Department of Licenses and Inspections shall by regulation provide with respect to such establishments that have been open for less than one full year.
- (b) *"Electronic Cigarette."* Any type electronic nicotine device system (ENDS) that delivers vapor for inhalation. Electronic cigarettes include any refill, cartridge, and any other component of an electronic cigarette. Electronic-cigarette shall not include any product approved by the food and drug administration for sale as a drug or medical device.
- (c)[(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.
- (d)[(c)] "Food or Beverage Establishment." Any restaurant, bar, coffee shop, cafeteria, sandwich stand, diner, fast food establishment, cafeteria, banquet hall, catering facility, food court, or any other eating or drinking establishment which gives or offers for sale food or drink to the public, guests, or employees whether for consumption on or off the premises, and including any such eating or drinking establishment located in a Lodging Establishment, Sports or Recreational Facility, or Theater or Performance Establishment.
- (e)[(d)] "Lodging Establishment." Any hotel, motel, inn, resort, guest house, bed and breakfast establishment, 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 persons seeking temporary accommodation.
- (f)[(e)] "Private Club." Any reputable group of individuals associated together as an organization for legitimate purposes of mutual benefit, entertainment, fellowship or lawful convenience which regularly and exclusively occupies, as owner or lessee, a clubhouse or quarters for the use of its members; and, 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 elected members. The club shall either be incorporated or, if unincorporated, provide proof of its continuous existence for the past ten years in a manner deemed sufficient by the Department of Health.
- (g) *"Retail electronic cigarette store"* means a retail store devoted primarily to the sale of electronic cigarettes, and in which the sale of other products is merely incidental. The sale of such other products shall be considered incidental if such sales generate less than fifty percent of the total annual gross sales.
- (h)[(f)] "Smoking." Inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe or other such device which contains tobacco or other smoke producing products, *or inhaling or exhaling any electronic cigarette.*

(i)[(g)] "Specialty Tobacco Establishment." A Food or Beverage Establishment whose on-site sales or rentals of tobacco, tobacco-related products and accessories for consumption or use on the premises 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 such establishments that have been open for less than one full year. For purposes of computing gross sales data, sales from vending machines shall not be included.

* * *

(3) Smoking Prohibited.

(a) Beginning on January 8, 2007, no person shall smoke in any of the following places, except as provided in subsection [10-602(3)(b)] *10-602(3)(c)*:

* * *

(b) Beginning on (insert effective date), no person shall use an Electronic-Cigarette in any of the following places, except as provided in subsection [10-602(3)(b)] *10-602(3)(c)*:

* * *

(c) Exceptions. The provisions of subsection 10-602(3)(a) and *10-602(3)(b)* shall not apply:

(.1) In a Tobacco Products Distribution Business.

(.2) In a Specialty Tobacco Establishment, including any such establishment located within an establishment or facility as defined by subsection [10-602(2)(c) or (g)] *10-602(2)(d) or (i)*.

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

(.4) In a Private Club provided that all of the following conditions are satisfied:

(i) the Private Club is in legal operation and has a valid certificate of occupancy and commercial activity license at the time it applies for a waiver;

(ii) the Private Club adopts a resolution, by a minimum two-thirds vote of its board or membership (in accordance with its by-laws), approving the filing of a waiver to the Health Department to qualify for an exception from the provisions of subsection 10-602(3)(a) *and/or 10-602(3)(b)*, and a copy of such resolution is submitted as part of the waiver request; and, all employees of the Private Club are notified in writing at least one week in advance of such vote and the club secretary certifies in writing as part of the waiver request that such notice was

provided to all employees; and the Private Club submits with its waiver request a document signed by at least two-thirds of the employees of the Private Club indicating their approval of the waiver request;

- (iii) the Private Club applies for a waiver from the Health Department no later than June 30, 2010;
- (iv) *the Private Club applies for an Electronic Cigarette waiver from the Health Department no later than (Insert Date XXX)*
- (v) [(iv)] prior to receipt of a waiver, the Private Club is not delinquent on the payment of any City or School District taxes, charges, fees, rents or claims, unless such Club has entered into an agreement to pay any such delinquency and is abiding by the terms of such agreement; and prior to receipt of a waiver, the Private Club has no Philadelphia Code violations, and has all required zoning approvals, licenses and permits;
- (vi) [(v)] the Private Club agrees to notify the Health Department in writing immediately of any changes in the operation of the Private Club that would result in revocation of the waiver;
- (vii) [(vi)] any such waiver is automatically revoked and cannot be renewed if the Private Club's charter is terminated, if there is a change in the operation of the facility such that it no longer qualifies as a Private Club, or if any liquor license owned by the Private Club is transferred to a new location; and
- (viii) [(vii)] if a Private Club, or a portion of a Private Club, which has received a waiver is rented, leased or otherwise utilized for an event to which the general public or non-members are invited, no person shall smoke in the Private Club, or in the portion of the Private Club, for the duration of such event.

(.5) In a Drinking Establishment provided that all of the following conditions are satisfied:

- (i) the Drinking Establishment is in legal operation and has a valid certificate of occupancy and commercial activity license on the effective date of the Ordinance that added this subsection to The Philadelphia Code and also at the time the Drinking Establishment applies for a waiver hereunder;
- (ii) the Drinking Establishment;
 - a. applies for a waiver from the Health Department within ninety (90) days of the effective dates *provided in 10-602(3)(a) and/or 10-602(3)(b)* [of the Ordinance that added this subsection to The Philadelphia Code,] or,
 - b. in the case of a Drinking Establishment located in the same structure and directly above a tobacco products distribution business or where both establishments share more than fifty percent common beneficial ownership, such Drinking Establishment applies for a waiver from the Health Department

no later than January 1, 2012;

c. in the case of a Drinking Establishment located in the same structure and directly above a Retail Electronic Cigarette Store or where both establishments share more than fifty percent common beneficial ownership, such Drinking Establishment applies for a Electronic Cigarette waiver from the Health Department no later than (Insert Date XXX);

(d) Exceptions. The provisions of subsection 10-602(3)(b) shall not apply:

(.1) in a retail electronic cigarette store as defined by subsection 10-602(2)(g).

* * *

(4) Smoking Prohibitions in the Workplace.

(a) No later than the effective date of this Ordinance, all employers with a Workplace that is subject to the provisions of subsection 10-602(3)(a) and 10-602(3)(b) 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 and that is in effect when this Ordinance takes effect. Upon the expiration of any such collective bargaining agreement or similar binding agreement between labor and management however, the provisions of this subsection 10-602(4) which prohibits smoking in the Workplace shall apply.

* * *

(6) Duties of the Health Department on Waiver Requests.

(a) The Health Department shall review all requests for waivers for Private Clubs and Drinking Establishments pursuant to subsection [10-602(3)(b)] 10-602(3)(c) and shall coordinate with the Department of Licenses and Inspections, the Department of Revenue, and any other appropriate agencies in making determinations on the granting of waivers.

(b) No later than six (6) months after the effective date of the Ordinance that added this subsection to The Philadelphia Code, the Health Department shall have made final decisions on all requests for waivers and shall issue a report to the Mayor, the President of City Council and the Chief Clerk of Council including, but not limited to: the number of waiver applications by Private Club and by Drinking Establishment, the number and addresses of those establishments approved, and the number and addresses of those establishments denied and the reasons for denial.

(c) No later than six (6) months after the effective date listed in 10-602(3)(b) of The Philadelphia Code, the Health Department shall have made final decisions on all requests for electronic cigarette waivers and shall issue a report to the Mayor, the President of City Council and the Chief Clerk of Council including, but not limited to: the number of electronic cigarette waiver applications by Private Club and by Drinking Establishment, the number and addresses of those establishments approved, and the number and addresses of those establishments denied and the reasons for denial.

(d) [(c)] Compliance with subsection [10-602(3)(b)(.5)(v)] *10-602(3)(c)(.5)(v)* shall not be required as a condition of obtaining a waiver pursuant to subsection [10-602(3)(b)(.5)(ii)(.b)] *10-602(3)(c)(.5)(ii)(.b)* for any period of time prior to the time the owner applying for such waiver acquired ownership of the Drinking Establishment. Any application for a waiver pursuant to subsection [10-602(3)(b)(.5)(ii)(.b)] *10-602(3)(c)(.5)(ii)(.b)* shall include certification by the owner that the Drinking Establishment is expected to meet the food and alcohol ratio to qualify for such waiver, and of the basis for such expectation.

* * *

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.