

Legislation Text

File #: 140095, **Version:** 1

Amending Chapter 10-600 of The Philadelphia Code, entitled “Public Places-Prohibited Conduct,” by adding a new Section to prohibit the use of Electronic Smoking Devices in public places and in the workplace, under certain terms and conditions.

WHEREAS, An e-cigarette is an electronic smoking device that simulates tobacco smoking; generally consists of a cartridge containing nicotine, a vaporizer or atomizer, a battery, and an indicator light; and may resemble a cigarette, cigar, pipe, pen or USB memory stick; and

WHEREAS, E-cigarettes can contain carcinogenic compounds, and their vapor can contain nicotine, heavy metals, and silicates; and

WHEREAS, E-cigarettes are not regulated by the Food and Drug Administration, and therefore the levels of their ingredients, including nicotine, are not readily known; and

WHEREAS, E-cigarette use has recently doubled among youth and adults in the United States; and

WHEREAS, E-cigarettes mimic the burning end of a conventional cigarette when being used and can cause confusion and difficulty in the enforcement of existing laws prohibiting smoking in indoor spaces; and

WHEREAS, The Clean Indoor Air Worker Protection Law has contributed to a 15% drop in smoking among adults and a 10% drop among youth in Philadelphia; and

WHEREAS, E-cigarettes are being marketed through mass media, social media, and celebrity endorsements and may re-normalize and glamorize smoking behaviors; and

WHEREAS, E-cigarettes are not a proven or approved treatment to help people quit smoking; 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:

CHAPTER 10-600. PUBLIC PLACES-PROHIBITED CONDUCT.

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§ 10-614. *Electronic Smoking Devices.*

(1) *Definitions.*

(a) *“Electronic smoking device” means an electronic device that delivers nicotine or other substances via vapor for inhalation. The term includes e-cigarettes, e-cigars, e-pipes and any other such*

products; and includes all component parts, such as e-cigarette batteries, atomizers, vaporizers, replacement cartridges and any solution manufactured for use with such a device. It does not include any product approved or certified for sale by the United States Food and Drug Administration as a tobacco use cessation product, or for other medical purposes. It may also be referred to in this §10-614 as “e-cigarette.”

(b) “Specialty e-cigarette establishment.” An establishment which derives 50% or more of its gross annual revenue from the sale of e-cigarettes and related products, including e-cigarette atomizers, vaporizers, batteries, replacement cartridges and any solution manufactured for use with such devices; or, with respect to such establishments that have been open for less than one full year, on such other basis as the Department of Licenses and Inspections shall by regulation provide.

(c) The terms “Drinking Establishment,” “Enclosed Area,” “Food or Beverage Establishment,” “Lodging Establishment,” “Private Club,” “Tobacco Products Distribution Business,” and “Workplace” shall be as defined in § 10-602(2).

(2) Prohibition on Use.

(a) No person shall use an electronic smoking device:

(i) In any Enclosed Area within a public place or other space that is listed in § 10-602(3)(a)(.1)-(.6) of this Code;

(ii) Outdoors within twenty (20) feet of any entrance to an Enclosed Area in which use of an e-cigarette is prohibited under this Section; or

(iii) At any sidewalk café, or any outdoor deck, patio or other outdoor service area which is part of a Food or Beverage Establishment.

(b) Exceptions. The provisions of subsection (a) hereof shall not apply to:

(i) Any Private Club which has previously obtained and still maintains a waiver from the smoking prohibition of § 10-602(3)(a), pursuant to § 10-602(3)(b)(.4) of this Code;

(ii) Any sleeping quarters within a Lodging Establishment in which smoking is permitted pursuant to § 10-602(3)(b)(.3) of this Code;

(iii) Any Drinking Establishment which has previously obtained and still maintains a waiver from the smoking prohibition of § 10-602(3)(a), pursuant to § 10-602(3)(b)(.5) of this Code;

(iv) Any Specialty e-cigarette establishment; and

(v) Any Tobacco Products Distribution Business.

(3) Prohibitions in the Workplace.

(a) Any employer with a Workplace that is subject to the provisions of subsection 10-602(3)(a) within the City shall promptly adopt, implement, and maintain a written policy that prohibits use of e-cigarettes within any workplace.

(b) An employer's written policy prohibiting use of e-cigarettes shall be communicated to all employees within thirty days after its adoption, and an employer shall provide a copy of the written policy upon request to any employee or prospective employee.

(5) Duties of Persons in Control of Premises.

(a) The owner, operator, manager, employer or other person in control in every place where e-cigarette use 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 signs prohibiting e-cigarette use, separately or together with signs prohibiting 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 uses e-cigarettes in such place in violation of this Section.

(6) Enforcement and Penalties.

(a) This Section shall be enforced by the Health Department, its duly authorized employees, or any other person authorized by the Managing Director to enforce this Section. Notices of violation issued pursuant to this Section shall be issued in accordance with Section 1-112.

(b) Any person who violates this Section shall be subject to a fine of \$300 for each violation.

(c) Nothing in this Section shall be construed to create any private right of action for enforcement of its provisions or to authorize any person to file suit to recover damages or seek equitable relief for any violation of this Section.

SECTION 2. This bill shall take effect on July 1, 2014.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate matter added.