

City of Philadelphia



(Bill No. 050063-A)

AN ORDINANCE

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

WHEREAS, Beginning in the 1940s, the City of Philadelphia has enacted prohibitions on smoking in various 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 in 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 measures have been enacted which seek to curb access to cigarettes and tobacco products by minors, including 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, 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 smoke is a major contributor to indoor air pollution and that exposure to secondhand smoke is a cause of many serious health diseases in adult non-smokers and children; and

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

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

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SECTION 1. Legislative Findings. The Council finds that:

(a) Tobacco smoke, also referred to as secondhand smoke, contains more than 4,000 known chemical compounds that are released into the air as particles and gases.

(b) According to a 2001 report issued by the National Cancer Institute, there are sixty-nine known or probable carcinogens in tobacco smoke.

(c) In 1986, the U.S. Surgeon General concluded that exposure to secondhand smoke can cause lung cancer in healthy nonsmokers.

(d) In 1992, the U.S. Environmental Protection Agency (EPA) concluded that exposure to secondhand smoke is responsible for approximately 3,000 lung cancer deaths annually in U.S. nonsmokers, and that secondhand smoke has a statistically significant effect on the respiratory health of non-smoking adults.

(e) For children, the 1992 EPA report concluded that exposure to secondhand smoke is causally associated with increased risk of lower respiratory tract infections, such as bronchitis and pneumonia; increased prevalence of fluid in the middle ear; and, increased symptoms of upper respiratory tract irritation. Moreover, the EPA found that exposure to tobacco smoke increases the number of episodes and the severity of symptoms in asthmatic children, and causes thousands of non-asthmatic children to develop this condition each year.

(f) A 2004 study appearing in the *Journal of Occupational and Environmental Medicine*, found that while three-fourths of white collar workers are covered by smoke-free workplace policies, fewer than 13% of bartenders and 28% of wait staff have the benefit of a smoke-free workplace. In 2002, food service workers accounted for the fourth highest number of employees in the workforce; and, 20% were teenagers; 55.8 % were female; approximately 12% were African-American; and, nearly 20% were Hispanic.

(g) Ventilation devices are very expensive to retrofit into existing buildings and there is no scientific evidence which demonstrates that ventilation technology can eliminate the health risks associated with exposure to secondhand smoke. The Occupational Safety and Health Administration has concluded that ventilation is not an acceptable engineering control measure for controlling occupational exposure to secondhand smoke.

(h) Based on 2002 health survey data, nearly 75% of Pennsylvanians do not smoke.

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(i) Many citizens of Philadelphia are exposed to tobacco smoke due to its widespread presence in public places and in the workplace. Exposure to secondhand smoke presents a substantial health risk to adult nonsmokers and children.

(j) In order to protect and promote the public's health, safety and welfare, further restrictions on smoking in public places and in the workplace should be enacted.

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) *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:

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(a) *"Drinking Establishment." Any Food or Beverage Establishment whose on-site sales of food for consumption on the premises comprises no more than 10% 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) *"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) *"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.*

(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.*

(e) *"Private Club." Any reputable group of individuals associated together as a not-for-profit 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.*

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

(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*

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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.

(h) *"Sports or Recreational Facility." Any enclosed or unenclosed stadium, pavilion, gymnasium, health club, spa, swimming pool, roller or ice rink, bowling alley, boxing arena, billiard parlor, pool hall or other similar place where members of the general public assemble either to engage in physical exercise, participate in recreational activities or athletic competition, or witness sports or other events.*

(i) *"Theater or Performance Establishment." Any enclosed or unenclosed facility primarily used for the exhibition of any motion picture, concert, stage drama, musical recital, dance, lecture or other similar performance.*

(j) *"Tobacco Products Distribution Business." An establishment whose primary business is the retail and/or wholesale sale of tobacco, tobacco-related products and accessories for consumption on or off the premises. For purposes of this definition the term "primary" shall mean that ninety percent (90%) or more of the 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, shall derive from tobacco, tobacco-related products and accessories. The business may also include areas for the import, export, storage and distribution of tobacco, tobacco-related products and accessories; areas for testing of such products and accessories by employees; and, accessory office space. Such business shall not include the selling or offering of any food or beverages to customers.*

(k) *"Workplace." Any Enclosed Area under the control of a public or private employer where one or more employees are routinely assigned and normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms, meeting rooms, 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.*

(3) *Smoking Prohibited.*

(a) *Beginning on January 9, 2006, no person shall smoke in any of the following places, except as provided in subsection 10-602(3)(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, restrooms, lobbies, reception areas, hallways and other common-use areas;*

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- (ii) *Retail or wholesale stores;*
 - (iii) *Service establishments, office buildings, banks or financial institutions;*
 - (iv) *Food or Beverage Establishments;*
 - (v) *Galleries, libraries and museums;*
 - (vi) *Any school or educational or vocational facility;*
 - (vii) *Any licensed gaming facility;*
 - (viii) *Any City-owned or leased building or facility;*
 - (ix) *Any enclosed place at which a public meeting is held by any public agency, during such time as a public meeting is in progress;*
 - (x) *Any health care facility, including, but not limited to, hospitals, clinics, physical therapy facilities, and doctors' offices, and including any private residence used as a health care facility during those hours it is used as such;*
 - (xi) *Any child care or adult day care facility, including any private residence used as a child care or adult day care facility during those hours it is used as such. In addition, no person shall smoke in a vehicle when such vehicle is being used for the public transportation of children or adults as part of day care transportation;*
 - (xii) *Lobbies, hallways, and other common areas in apartment buildings, in condominiums and other multiple-unit residential facilities, or in retirement facilities and nursing homes; and*
 - (xiii) *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 or Recreational Facility.*

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(.4) *In any Theater or Performance Establishment.*

(.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 twenty (20) feet of any entrance to any Enclosed Area in which smoking is prohibited under this Section.*

(b) *Exceptions. The provisions of subsection 10-602(3)(a) 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); provided that, such Specialty Tobacco Establishment was in legal operation and had a valid business privilege license on the effective date of this Ordinance.*

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

(.4) *At 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 Food or Beverage Establishment.*

(.5) *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 business privilege license on the effective date of the Ordinance that added this subsection to The Philadelphia Code;*

(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 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;*

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(iii) *the Private Club applies for a waiver from the Health Department within ninety (90) days of the effective date of the Ordinance that added this subsection to The Philadelphia Code;*

(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;*

(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;*

(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*

(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.*

(.6) *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 business privilege license on the effective date of the Ordinance that added this subsection to The Philadelphia Code;*

(ii) *the Drinking Establishment applies for a waiver from the Health Department within ninety (90) days of the effective date of the Ordinance that added this subsection to The Philadelphia Code;*

(iii) *all employees of the Drinking Establishment are notified in writing at least one week in advance of such application for a waiver and the owner certifies in writing as part of the waiver request that such notice was provided to all employees;*

(iv) *prior to receipt of a waiver, the Drinking Establishment is not delinquent on the payment of any City or School District taxes, charges, fees, rents or claims, unless such establishment has entered into an agreement to*

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pay any such delinquency and is abiding by the terms of such agreement; and prior to the receipt of a waiver, the Drinking Establishment has no Philadelphia Code violations, and has all required zoning approvals, licenses and permits;

(v) the owner must provide the previous tax year's receipts, expenses and revenue figures in such manner as prescribed by the Department of Revenue so as to verify the food and alcohol ratio to qualify for the waiver, and the owner must agree to be subject to an audit by the Department of Revenue for purposes of monitoring compliance with this waiver;

(vi) the Drinking Establishment agrees to notify the Health Department in writing immediately of any changes in the operation of the Drinking Establishment, or of any revocation or transfer of a liquor license owned by the Drinking Establishment that would result in revocation of the waiver;

(vii) any such waiver is automatically revoked and cannot be renewed if there is a change in the operation of the facility such that it no longer qualifies as a Drinking Establishment, or if any liquor license owned by the Drinking Establishment is revoked or transferred to a new location; and

(viii) any such waiver shall expire on January 7, 2008.

(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) 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.

(b) An employer's written smoke-free policy 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 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:

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(.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"), in which 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) *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.*

(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) 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*

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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.

(7) *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.*

* * *

§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) This Ordinance shall take effect immediately.

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 15, 2006. The Bill was Signed by the Mayor on September 14, 2006.



Patricia Rafferty
Chief Clerk of the City Council