

City of Philadelphia



(Bill No. 150090)

AN ORDINANCE

Amending Chapter 10-600 of The Philadelphia Code, entitled “Regulation of Individual Conduct and Activity,” to modify certain exceptions from Subsection 10-602(3), entitled “Smoking Prohibited,” and from Section 10-614, entitled “Electronic Smoking Devices,” all under certain terms and conditions.

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:

TITLE 10. REGULATION OF INDIVIDUAL CONDUCT AND ACTIVITY.

* * *

CHAPTER 10-600. PUBLIC PLACES – PROHIBITED CONDUCT.

* * *

§ 10-602. Smoking.

* * *

(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)] (a) "Enclosed Area." * * *

[(c)] (b) "Food or Beverage Establishment." * * *

[(d)] (c) "Lodging Establishment." * * *

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[(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.]

[(f)] (d) "*Smoking.*" * * *

[(g)] (e) "*Specialty Tobacco Establishment.*" * * *

[(h)] (f) "*Sports or Recreational Facility.*" * * *

[(i)] (g) "*Theater or Performance Establishment.*" * * *

[(j)] (h) "*Tobacco Products Distribution Business.*" * * *

[(k)] (i) "*Workplace.*" * * *

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* * *

(3) Smoking Prohibited.

* * *

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

* * *

[(.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-

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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; 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) (a) the Private Club applies for a waiver from the Health Department no later than June 30, 2010;

(b) the Private Club located at 1428 Girard Avenue, shall be allowed to apply for a waiver from the Health Department no later than 30 days after the effective date of the Ordinance adding this subsection (b), and qualifies for, and maintains, an exception under the state Clean Indoor Air Act, Act of June 13, 2008, P.L. 182, No. 27 (35 P.S. § 637.1 et seq.);

(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.

(.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

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Ordinance that added this subsection to The Philadelphia Code and also at the time the Drinking Establishment applies for a waiver hereunder;

(ii) (a) 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, or,

(b) in the case of a Drinking Establishment located in the same structure and directly above a tobacco products distribution business 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 at 3001 Castor Avenue, such Drinking Establishment applies for a waiver from the Health Department no later than 30 days after the effective date of the Ordinance adding this subsection (c), and qualifies for, and maintains, an exception under the state Clean Indoor Air Act, Act of June 13, 2008, P.L. 182, No. 27 (35 P.S. § 637.1 et seq.);

(d) in the case of a Drinking Establishment located at 5921 Tacony Street, such Drinking Establishment applies for a waiver from the Health Department no later than 30 days after the effective date of the Ordinance adding this subsection (d), and qualifies for, and maintains, an exception under the state Clean Indoor Air Act, Act of June 13, 2008, P.L. 182, No. 27 (35 P.S. § 637.1 et seq.);

(e) in the case of a Drinking Establishment located at 1525 South 9th Street, such Drinking Establishment applies for a waiver from the Health Department no later than 30 days after the effective date of the Ordinance adding this subsection (e), and qualifies for, and maintains, an exception under the state Clean Indoor Air Act, Act of June 13, 2008, P.L. 182, No. 27 (35 P.S. § 637.1 et seq.);

(f) in the case of a Drinking Establishment located at 6130 West Passyunk Avenue, such Drinking Establishment applies for a waiver from the Health Department no later than 30 days after the effective date of the Ordinance adding this subsection (f), and qualifies for, and maintains, an exception under the state Clean Indoor Air Act, Act of June 13, 2008, P.L. 182, No. 27 (35 P.S. § 637.1 et seq.).

(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

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claims, unless such establishment has entered into an agreement to 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;

(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.]

* * *

(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 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) Compliance with subsection 10-602(3) (b) (.5) (v) shall not be required as a condition of obtaining a waiver pursuant to subsection 10-602(3) (b) (.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) 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.

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(7)] Enforcement and Penalties.

* * *

§ 10-614. Electronic Smoking Devices.

(1) Definitions.

* * *

(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.

* * *

(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) (i) 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)] (ii) Any Specialty e-cigarette establishment; and

[(v)] (iii) Any Tobacco Products Distribution Business.

* * *

SECTION 2. This Ordinance shall be effective May 15, 2015. Any waiver authorized prior to, and still effective on, the effective date of this Ordinance shall continue subject to the same terms, conditions, and authority of the Department of Health or other City department as provided in Sections 10-602 and 10-614 of The Philadelphia Code prior to the effective date of this Ordinance.

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Explanation:

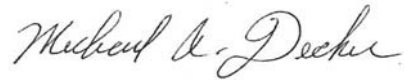
[Brackets] indicate matter deleted.
Italics indicate new matter added.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on March 26, 2015. The Bill was Signed by the Mayor on April 7, 2015.



Michael A. Decker
Chief Clerk of the City Council