

Bill No. 2705-06

No. 23-06-OR

## AN ORDINANCE

An Ordinance to prohibit smoking in certain public places and workplaces, and providing for penalties for violations.

**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**, A significant portion of structure fires are caused by cigarettes; 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 County of Allegheny hereby enacts as follows:***

**SECTION 1. Legislative Findings.** The Council finds that:

- (a) Tobacco smoke, whether inhaled through smoking or indirectly through exposure to smoky environments 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 1999, the U.S. Environmental Protection Agency (EPA) published results of an environmental tobacco smoke study, whose rates applied to Allegheny County population data for 2005 suggest that each year 227 non-smoking residents die from lung cancer as a result of environmental tobacco smoke exposure.
- (d) For children, the 1999 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, is responsible for 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. Based on 2005 census data and EPA estimates, approximately 2,500

Allegheny County children experience exacerbation of their asthma, and 945 toddlers under 18 months of age suffer lower respiratory tract infections due to environmental tobacco smoke.

- (e) A 2004 study appearing in the Journal of Occupational and Environmental Medicine found that levels of cancer-causing particulates were up to 50 times higher in a smoky bar than on a busy highway. There is also credible evidence that non-smoking bar and restaurant workers' blood cotinine levels are similar to those of smokers due to heavy environmental tobacco smoke in some establishments. This type of exposure results in the same risks for neoplasms, lung, heart and vascular diseases among non-smoking hospitality workers as in workers who choose to smoke.
- (f) The aforementioned study also 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; 56 % 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 to demonstrate that ventilation technology can effectively rid an indoor environment of 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 2005 survey data, 77% of Pennsylvanians believe that people should not be exposed to secondhand smoke in public places, and only 16% of Allegheny County adults smoke on a daily basis.
- (i) Many citizens of Allegheny County are exposed to the harmful effects of tobacco smoke due to its widespread presence in public places and in the workplace, and that, in the absence of a state statute treating smoking in public places, local restrictions are necessary to protect the public's health, safety and welfare.

## **SECTION 2.**

The Allegheny County Code of Ordinances, Division 8, entitled "Health Department Regulations," is hereby amended by the addition of a new Chapter 880, entitled "Smoking in Public Places," and comprised of the following new sections:

### **§880-1. Definitions**

For the purposes of this Chapter, the following definitions shall apply:

- (a) "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.
- (b) "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.
- (c) "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.
- (d) "Smoking" Inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe or other such device which contains tobacco or other smoke producing products.
- (e) "Specialty Tobacco Establishment" An Establishment whose on-site sales or rentals of tobacco, tobacco-related products and accessories for consumption or use on or off the premises comprises eighty five percent (85%) or more of gross sales on an annual basis, or on such other basis as the Health Department shall provide with respect to such establishments that have been open for less than one full year, and including any tobacco cigar bar operated in conjunction with such establishment. If the establishment is adjoined to or shares a common access that is a regulated area under this Chapter with any business that is not a specialty tobacco establishment, a Health Department approved negative air pressure ventilation system that is entirely separate from any ventilation system used in relation to any other regulated area shall be required for classification as a specialty tobacco establishment. For purposes of computing gross sales data, sales from vending machines shall not be included. For the purposes of this section, a ventilation system shall only be deemed to be approved by the Health Department upon written approval of the system by the Health Department to the owner of the establishment, the holder of the establishment's business license, or the individual in control of the premises.
- (f) "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.

- (g) "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.
- (h) "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.
- (i) "Common Use Area" An area in any building intended for the common use of residents, the public or invited guests.
- (j) "Food Facility" Any enclosed area, stationary or mobile, permanent or temporary, where food is prepared, handled, served, sold or provided to any consumer, whether for consumption on or off of the premises, including lodging establishments, sports or recreational facilities, or theater or performance establishments. Any individual who owns, operates, manages or otherwise controls any of the businesses described in this subsection shall be cited as a Food Facility for the purposes of this Chapter.
- (k) "Passageway" An enclosed means of ingress and egress to any regulated area, used by employees, residents, guests, contractors or the public, up to and including fifteen (15) feet in any direction from the outermost point of public contact with such area.
- (l) "Regulated Area" Any area where smoking is prohibited under this Chapter.
- (m) "Tobacco Smoke Producing Instrument" Any device or configuration designed to facilitate the inhalation of tobacco or other plant material smoke, including factory or hand-rolled cigarettes or cigars, hookahs, and pipes.

#### **§880-2. Smoking Prohibited.**

- (a) No person shall smoke or possess a lit tobacco smoke producing instrument in any of the following locations, except as provided in Section 880-02(b) of this Chapter:
  - (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, passageways and other common-use areas;
  - (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 County-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, and patient transport vehicles owned or leased by the facility;
  - (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 Sports or Recreational Facility.
  - (3) In any Theater or Performance Establishment.

- (4) In any Workplace.
  - (5) In any place where "No Smoking" signs are posted by order of any individual or agency authorized by law to do so.
  - (6) Outdoors within fifteen (15) feet of any entrance to any Enclosed Area in which smoking is prohibited under this Section.
  - (7) In any vehicle of public transportation or any fare-paid area of a Port Authority of Allegheny County facility;
  - (8) In any Food Facility, as defined in this Chapter;
  - (9) On any property adjacent to a health care facility as defined in §880-2(a)(1)(x) that is owned in whole or in part by that health care facility or other entity owning or operating that health care facility.
- (b) **Exceptions.** The provisions §880-2(a) shall not apply:
- (1) In a Specialty Tobacco Establishment, as defined by this Chapter; provided that, such Specialty Tobacco Establishment is in legal operation and has a valid business privilege license.
  - (2) In designated sleeping quarters within a Lodging Establishment that are available for rent to guests accounting for no more than 25% of the total number of lodging units within any single lodging establishment, as defined by this Chapter.
  - (3) In private residences, except when used as a childcare, adult daycare, or health care facility, or when operated as a business or other entity which would otherwise fall within the restrictions of this Chapter.

**§880-2.1. Waivers for Certain Fundraising Activities.**

- (a) The provisions of §880-2 shall not be applicable in any facility, room, hall, or other regulated area while fundraising activities in which volunteers participate are conducted, provided that:
  - (1) The entity conducting the fundraiser and the entity for which the funds being raised are nonprofit or charitable organizations;
  - (2) The fundraising event does not share or have in common space with a regulated area that is not subject to an exemption from the terms of §880-2(a);
  - (3) Written permission from the owner, lessor, or operator of the facility, room, hall or other area to permit smoking during the fundraiser is obtained and is displayed at the event; and.

- (4) The charitable or nonprofit entity submits a written waiver application to the Allegheny County Health Department and forwards a copy of the application to the municipal police department(s) with jurisdiction over the location in which the fundraising event will be held. Such application shall be delivered to the Department by mail or other means at least 21 days before the scheduled start of the fundraising activity and, at a minimum, shall include:
  - (i) The name of the charitable or nonprofit organization(s) involved;
  - (ii) An address and telephone number for the charitable or nonprofit organization(s) involved;
  - (iii) The location, date(s) and time(s) at which the fundraiser will be held;
  - (iv) A general description of the fundraising activities to be conducted;
- (5) The entity receives a written waiver from the Health Department, as follows:
  - (i) The Department may require that applications include any information deemed pertinent to the identification of the entity applying for a waiver under the terms of this section. The Department may also designate the form of the application and establish written application guidelines. The Department shall issue a written approval or denial of all applications no later than seven days before the scheduled state date for the event to which the application applies, and shall develop a system, policies and procedures for tracking the issuance of all approvals or denials.
  - (ii) The Department may disapprove an application only if it finds that an applicant does not meet one or more of the requirements of this section. The Department shall provide written notices of all denials that include the specific reason(s) for which any application was not approved.
  - (iii) In the event that the Department does not issue either an approval or denial of any application within the deadlines prescribed by this section, the application shall be deemed approved.
- (6) The entity displays the relevant waiver at the event to which it applies, and provides a copy to the municipal police department(s)

with jurisdiction over the location in which the fundraising event will be held.

(7) The entity has received no more than 12 waivers in any calendar year.

(8) Minors are not permitted to attend the event.

(b) For the purposes of this section, "fundraising activities" shall be construed broadly to include any and all activities intended to raise funds or other tangible benefits, including but not limited to in-kind services, for nonprofit or charitable entities.

#### **§880-3. 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 Section 3(a) within the County shall adopt, implement, make known and maintain a written policy that prohibits smoking within any area of the workplace subject to the provisions of this Chapter. 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, so long as such agreement is executed and in force on the effective date of this Chapter.

(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.

#### **§880-4. Duties of Persons in Control and Lessors of Premises.**

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

(1) Post "No Smoking" signs and other signs relating to smoking on the premises, including all entranceways, as follows:

(i) Such signs shall be no less than six inches (6") high, with lettering no less than four inches (4") high. A symbol consisting of a circle with a lit cigarette and a line diagonally through its center will be deemed to satisfy this requirement, so long as the sign is at least six inches (6") in height and the symbol is at least four inches (4") in height.

(ii) Signs posted at entry and exit doors shall include the language "No Smoking within 15 feet of this sign."



- (2) Take reasonable measures to see to it that no person smokes in such place in violation of this Ordinance, which, at a minimum, must include all of the following which apply in the regulated area at issue:
- (i) Removing all ashtrays from regulated areas;
  - (ii) Informing any individual smoking in a regulated area that smoking is prohibited by law in that area and requesting that the individual(s) immediately stop smoking or leave the regulated area; and
  - (iii) Providing written notice to lessees of the asserted violation of this Article and the potential penalties for such violation in every instance in which complaints are received about smoking in regulated areas within two (2) business days of receipt of the complaint.

**§880-5. Enforcement and Penalties.**

- (a) This Chapter shall be enforced by the Allegheny County Health Department and by any municipality's law enforcement agency, once such agency is designated for enforcement of this Chapter by the Health Department. Citizen complaints regarding unlawful smoking in regulated areas shall be received on the Allegheny County Health Department's complaint system telephone line. The Department shall record and retain complaint information, and local law enforcement agencies shall transmit reports of all enforcement actions to the Department for the purpose of identifying repeat offenders and calculating fines or imposing other penalties under the terms of this Chapter.
- (b) For the first 180 days in which this Section is effective, all individuals and owners, individuals in control of, or business license holders for businesses or other establishments subject to the provisions of this Chapter shall receive a warning for their first violation of the terms of this Chapter and a \$250 fine for subsequent violations. After the first 180 days in which this Chapter is effective, all individuals and owners, individuals in control of, or business license holders for businesses or other establishments subject to the provisions of this Chapter shall be fined the sum of \$250 for each violation of the terms of this Chapter, subject to the limitations contained within §880-4.
- (c) Upon a third violation by a business or other establishment, the Health Department may also suspend any licenses or other permits that the business or other establishment has been granted by the Department for a period not to exceed one hundred and eighty (180) days, pending a review of the procedures implemented by the business, the creation of a corrective action plan by the business, and approval of the corrective action plan by the Department. For the purposes of this subsection, each lighted

cigarette, cigar, pipe or other such device which contains tobacco or other smoke producing products ignited or carried shall constitute a single violation.

- (d) Nothing in this Chapter 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 the terms of this Section.

**§880-6. Nonretaliation; No Waiver of Employee Rights.**

- (a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant or customer exercises any rights afforded by this Chapter or reports or attempts to otherwise prosecute a violation of this Chapter.
- (b) No person, employer or other entity shall in any manner retaliate against any individual who performs work on a voluntary basis because that individual exercises a right afforded by this Chapter or reports or attempts to otherwise prosecute a violation of this Chapter.
- (c) Any employee or volunteer who performs work in a setting where an employer allows smoking does not, in so doing, waive or otherwise surrender any legal rights the employee may have against the employer or any other party.
- (d) Any violation of the provisions of subsection (a) or (b) of this section shall be punished as a violation of this chapter under the terms of §880-5.
- (e) Nothing contained within this section shall be construed to reduce, enlarge, or in any other fashion alter the limitation contained within §880-5(d).

**SECTION 3. Effective Date.**

This Ordinance shall take effect ninety (90) days after passage.

**SECTION 4 .**


*If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.*

**PRIMARY SPONSOR: PRESIDENT FITZGERALD**

**CO-SPONSORS: COUNCIL MEMBERS FINNERTY, ROBINSON, CALDWELL, MARTONI, BURN, MACEY, CLEARY, FRAZIER, AND DEFAZIO**

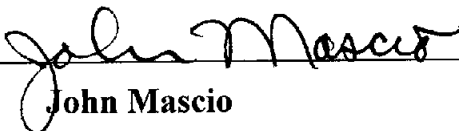
Enacted in Council, this 26<sup>th</sup> day of September, 2006

Council Agenda No. 2705-06



Rich Fitzgerald

President of Council

Attest: 

John Mascio

Chief Clerk of Council

Chief Executive Office OCTOBER 4, 2006

Approved: 

Dan Onorato

Chief Executive

Attest: 

Donna Beltz

Executive's Secretary