

No. 07-17-OR

AN ORDINANCE

An Ordinance of the Council of the County of Allegheny to adopt an Allegheny County Health Department Rule and Regulation and to ratify amendments to Allegheny County Health Department Rules and Regulations pursuant to Section 12011 of the Local Health Administration Law, 16 P.S. § 12001 et seq.

Whereas, Allegheny County, pursuant to the Local Health Administration Law, 16 P.S. § 12001 et seq., created the Allegheny County Health Department, and the Allegheny County Board of Health; and

Whereas, the Local Health Administration Law at Section 12011 provides for the Board of Health to adopt regulations and submit such regulations to Allegheny County for approval or rejection; and

Whereas, on November 2, 2016, the Allegheny County Board of Health adopted the attached Allegheny County Health Department Rule and Regulation, Article XXII (“Use of Electronic Cigarette Devices in Public Places”), and amendments to the Allegheny County Health Department Rules and Regulations, Article III (“Food Safety”) and Article XVI (“Environmental Health Civil Penalties”); and

Whereas, it is the desire of Council to ratify the Allegheny County Health Department regulation and amendments to regulations as approved by the Board of Health.

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1. Incorporation of Preamble.

The provisions set forth in the preamble to this Ordinance are incorporated by reference as set forth in their entirety herein.

SECTION 2. Ratification of Regulations.

Acting pursuant to the Local Health Administration Law and the Allegheny County Home Rule Charter, County Council hereby ratifies the following Allegheny County Health Department Rules and Regulations:

Article XXII (“Use of Electronic Cigarette Devices in Public Places”) – attached hereto as Exhibit “A”;

Amendment to Article III (“Food Safety”) – attached hereto as Exhibit “B”; and

Amendment to Article XVI (“Environmental Health Civil Penalties”) – attached hereto as Exhibit “C.”

SECTION 3. Severability. 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.

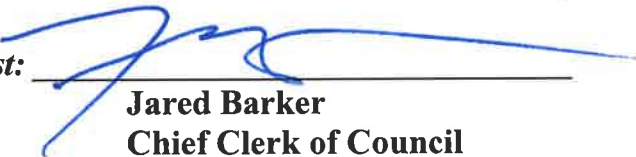
SECTION 4. Repealer. Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.

Enacted in Council, this 7th day of March, 2017

Council Agenda No. 10061-17



John DeFazio
President of Council

Attest: 

Jared Barker
Chief Clerk of Council

Chief Executive Office March 8, 2017

Approved: 

Rich Fitzgerald
Chief Executive

Attest: 

Sonya Dietz
Executive’s Secretary

EXECUTIVE SUMMARY

On May 4, 2016, the Allegheny County Board of Health requested that the Allegheny County Health Department (ACHD) draft the following regulations pertaining to e-cigarettes:

- Amend the “Food Safety” regulations (“Article III”) to prohibit e-cigarette use by food service workers.
- Draft a regulation banning e-cigarette use in public indoor places and work places in Allegheny County. The regulation would permit e-cigarette use in the same indoor places that qualify for an exception under the Pennsylvania Clean Indoor Air Act.
- Draft a regulation banning the sale of e-cigarettes to minors.

On July 13, 2016, the ACHD presented to the Board of Health the following draft regulations¹:

- Article XXII (“Use of Electronic Cigarette Devices in Public Places”): The proposed regulation would prohibit the use of e-cigarettes in indoor public places and work places. The proposed regulation would not apply to any public place or work place that qualifies for an exception under Section 3 of the Clean Indoor Air Act and for specialty e-cigarette establishments that satisfy certain requirements. A specialty e-cigarette establishment is defined as a business establishment whose sales of e-cigarettes and e-cigarette related products comprise at least 50% of the gross annual sales.
- Amendment to Article III (“Food Safety”), § 307: The proposed amendment would require that food service workers thoroughly wash their hands after using e-cigarettes and prohibits workers from using e-cigarettes while engaged in food preparation or service or while in certain areas used for food preparation and washing. Article III, § 338, would also be amended to include a definition of “e-cigarette.”
- Amendment to Article XVI (“Environmental Health Civil Penalties”), § 1604: The proposed amendment would update the titles of the ACHD articles in which the civil penalty provisions in Article XVI are applicable and adds Article XXII (“Use of Electronic Cigarette Devices in Public Places”) as an article under Section 1604.

The Board of Health approved the draft regulations for solicitation of public comments. The draft regulations were published on July 22, 2016 for public comment. The Board of Health conducted a public hearing on the draft regulations on August 15, 2016. The public comment period closed on August 22, 2016.

Based on the public comments received by the ACHD, and internal discussions at the ACHD, several minor revisions were made to the draft regulations. On November 2, 2016, the Board of Health approved the revised draft regulations.

¹ On May 5, 2016, the Food and Drug Administration announced a new regulation which included a provision banning the sale of e-cigarettes to minors. As a result of this regulation, the ACHD did not prepare a regulation pertaining to the sale of e-cigarettes to minors.

**Proposed Allegheny County Health Department
Rules and Regulations,
Article XXII,
“USE OF ELECTRONIC CIGARETTE
DEVICES IN PUBLIC PLACES”**



“Exhibit “A”

Article XXII. USE OF ELECTRONIC CIGARETTE DEVICES IN PUBLIC PLACES

SECTION 2201. DEFINITIONS.

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

DEPARTMENT - The Allegheny County Health Department.

DIRECTOR - The Director of the Allegheny County Health Department or the Director's authorized representative.

E-CIGARETTE - Any electronic oral device, such as one composed of a heating element, battery or electronic circuit, which provides a vapor of nicotine or any other substances and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar or e-pipe or under any other product name or descriptor.

ENCLOSED AREA - All space between a floor and a ceiling that is bounded on at least two sides by walls, doorways or windows, either open or closed. A wall includes any retractable divider, garage door or other physical barrier, whether temporary or permanent and whether or not containing openings of any kinds.

PUBLIC PLACE - An enclosed area which serves as a workplace, commercial establishment or an area where the public is invited or permitted. The term includes:

- (1) A facility which provides education, food or health care-related services.**
- (2) A vehicle used for mass transportation. This paragraph includes a train, subway, bus, including a chartered bus, plane, taxicab and limousine.**
- (3) A train station, subway station or bus station.**
- (4) A public facility. This paragraph includes a facility to which the public is invited or in which the public is permitted and a private home which provides child-care or adult day-care services.**
- (5) A sports or recreational facility, theater or performance establishment.**

SPECIALTY E-CIGARETTE ESTABLISHMENT - A business establishment whose sales of e-cigarettes and e-cigarette related products comprise at least 50% of the gross annual sales. E-cigarette related products include atomizers, cartomizers,

clearomizers, vaporizers, batteries, replacement cartridges, coils, e-liquids, tank systems, flavors, and programmable software.

The terms “Cigar bar,” “Drinking establishment,” “Full-service truck stop,” “Gaming floor,” “Night club,” “Private Club,” “Public meeting,” “Tobacco shop,” “Volunteer ambulance service,” “Volunteer fire company,” “Volunteer rescue company,” and “Workplace” shall be as defined in section 2 of the Act of June 13, 2008 (P.L. 182, No. 27), known as the Clean Indoor Air Act.

SECTION 2202. PROHIBITION.

2202.1. General rule.

Except as set forth under subsection 2202.2, no person shall use an e-cigarette in a public place. The use of an e-cigarette includes consuming, inhaling or exhaling an e-cigarette. Nothing in this Article shall preclude the owner of a public or private property from prohibiting the use of e-cigarettes on the property.

2202.2 Exceptions.

Subsection 2202.1 shall not apply to any of the following:

(1) Any public place that qualifies for an exception under Section 3 of the Act of June 13, 2008 (P.L. 182, No. 27), known as the Clean Indoor Air Act.

(2) A specialty e-cigarette establishment that satisfies all of the following requirements:

(a) Vapors from the specialty e-cigarette establishment do not migrate into an enclosed area where e-cigarette use is prohibited under this Article.

(b) The specialty e-cigarette establishment does not sell or serve food for consumption on the premises by customers.

(c) The specialty e-cigarette establishment does not allow individuals under 18 years of age to enter the premises.

SECTION 2203. VIOLATIONS, AFFIRMATIVE DEFENSES AND PENALTIES.

2203.1. Enforcement.

A. This Article shall be enforced by the Department or any other person authorized by the Director to enforce this Article. Citizen complaints regarding unlawful use of e-cigarettes in regulated areas shall be received

through either the Department's complaint system telephone line or the Department's website.

B. Any city, borough, or township in Allegheny County may enforce the provisions of this Article and the standards adopted by the Department so far as such enforcement does not interfere with enforcement and administration by the Department.

2203.2. Violations.

It is a violation of this Article to do any of the following:

- (1) Permit e-cigarette use in a public place where e-cigarette use is prohibited.
- (2) Use e-cigarettes in a public place where e-cigarette use is prohibited.
- (3) Permit individuals under 18 years of age to enter a specialty e-cigarette establishment that allows e-cigarette use under subsection 2202.2(2).

2203.3. Affirmative Defense.

A. The owner, operator, or manager of a public place where e-cigarette use is regulated by this Article shall not be cited for violations of subsections 2203.2(1) or 2203.2(2) if the following actions are taken:

- (1) When the violation occurred, the actual control of the public place was not exercised by the owner, operator or manager but by a lessee.
- (2) The owner, operator or manager made a good faith effort to prohibit e-cigarette use.
- (3) The owner, operator or manager asserting the affirmative defense shall do so in the form of a sworn affidavit setting forth the relevant information mentioned under paragraphs (1) and (2).

B. The owner, operator, or manager of a specialty e-cigarette establishment shall not be cited for a violation of subsection 2203.2(3) if the following actions are taken:

- (1) The specialty e-cigarette establishment prominently posts signs prohibiting individuals under 18 years of age from entering; and

(2) Upon learning that an individual under 18 years of age has entered the premises, the specialty e-cigarette establishment requests that the individual(s) immediately leave the premises.

2203.4. Penalties.

A. Criminal penalties.

(1) A person who violates subsection 2203.2 commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$250.

(2) A person who violates subsection 2203.2 within one year of being sentenced under subparagraph (1) commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$500.

(3) A person who violates subsection 2203.2 within one year of being sentenced under subparagraph (2) commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not more than \$1,000.

B. Civil Penalties – Any person who violates subsection 2203.2 may be assessed a civil penalty imposed by the Director pursuant to Article XVI “Environmental Health Civil Penalties.”

C. Separate Offenses – For the purpose of this Section, violations on separate days shall be considered separate offenses. Each violation of any separate subsection or section of this Article shall constitute a separate offense.

D. A specialty e-cigarette establishment that violates any provision of this Article shall produce, at the request of the Department, verifiable documentation to support its qualification as a specialty e-cigarette establishment. The supporting documentation may include the establishment’s books, accounts, revenues or receipts, including those reported to the Department of Revenue for sales tax purposes.

2203.5. Hearings and Appeals.

Article XI, Hearings and Appeals, provides for the right to a hearing if aggrieved by any order issued by the Department. A request for hearing

must be made in writing and filed with the Department within ten (10) days upon receipt of an order.

**Proposed Revisions to
Allegheny County Health Department
Rules and Regulations,
Article III,
“FOOD SAFETY”**



Exhibit “B”

Proposed revisions:

[Additions are shown in **larger font, bolded, and underlined**. Deletions are shown with strikethroughs.]

Section 307. Personal Cleanliness and Employee Practices

Section 307.1 General

Employees engaged in food preparation and warewashing operations and service shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work; after tobacco **or e-cigarette** use; handling garbage or soiled tableware or kitchenware; coughing, sneezing, touching the mouth, nose or hair; eating; using the toilet; before and after handling raw meat, raw poultry or raw seafood, or any other potentially hazardous food; and as often as is necessary during work to keep them clean. The use of clean disposable gloves and hand sanitizers shall not be a substitute for hand washing. Single use disposable gloves shall be changed as often as necessary in accordance with the requirements listed above for hand washing.

Section 307.2 Tobacco **and E-Cigarette** Use

Employees shall not use tobacco **or e-cigarettes** in any form while engaged in food preparation or service, while in areas used for food preparation, or equipment and utensil washing areas. ~~Employees shall use tobacco only in designated areas, which will not result in contamination of food, equipment, utensils or other items needing protection.~~

Section 338. Definitions

* * * *

E-cigarette - any electronic oral device, such as one composed of a heating element, battery or electronic circuit, which provides a vapor of nicotine or any other substances and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar or e-pipe or under any other product name or descriptor.

**Proposed Revisions to
Allegheny County Health Department
Rules and Regulations,
Article XVI,
“Environmental Health Civil Penalties”**



Exhibit “C”

Proposed revisions:

[Additions are shown in **larger font, bolded, and underlined**. Deletions are shown with strikethroughs.]

1604: This article shall apply to all civil penalties initiated by ACHD under ~~Article II, “Health Department Permit”; Article III, “Restaurants and Eating Establishments”~~ **“Food Safety”**; ~~Article IV, “General Food”; Article VI, “Houses and Rooming Houses~~ **Community Environment**; ~~Article VIII, “Solid Waste~~ **and Recycling** Management”; ~~Article IX, “Lifeguards,~~ **Bathing Places, Bathing Beaches, Hot Tubs and Spas**; ~~Article XII, “Prevention of Sale, Installation, and Use of Unventable Gas Room Heaters and Unapproved Gas Appliances”~~ **“Carbon Monoxide Hazards”**; ~~Article XIV, “Sewage Disposal~~ **Management**; ~~and Article XV, “Plumbing~~ **Code of the Allegheny County Health Department**; **and Article XXII, “Use of Electronic Cigarette Devices in Public Places”**.

A) This article may be utilized to assess and utilize civil penalties initiated and obtained via ACHD enforcement and administration under state environmental statutes and minimum program standards, 28 PA Code, Chapter 17.

MEMORANDUM

OFFICE OF THE COUNTY MANAGER

TO: Jared E. Barker
Allegheny County Council

FROM: William D. McKain CPA
County Manager

DATE: March 2, 2017

RE: Proposed Ordinance

Attached is an Ordinance of the Council of the County of Allegheny to adopt an Allegheny County Health Department Rule and Regulation and to ratify amendments to Allegheny County Health Department Rules and Regulations pursuant to Section 12011 of the Local Health Administration Law, 16 P.S. § 12001 et seq.

The Allegheny County Law Department has reviewed this legislation prior to submitting it to Council.

I am requesting that this item be placed on the agenda at the next Regular Meeting of Council.

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ALLEGHENY COUNTY COUNCIL