

No. **29-07-OR**

## AN ORDINANCE

An Ordinance amending and supplementing the Allegheny County Code of Ordinances, Division 5, entitled "Health and Sanitation," through the creation of a new Chapter 580, entitled "Allegheny County Certified Smoke Free Program," in order to provide a means for the County's residents to identify nonsmoking food or beverage establishments, workplaces, and other facilities.

**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**, the Council of Allegheny County wishes to provide the County's residents with a means of identifying nonsmoking facilities;

***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.
- (j) According to the Surgeon General's 2006 report, "The Health Consequences of Involuntary Exposure to Tobacco Smoke," secondhand smoke exposure increases the risk of heart disease and lung cancer in adults and sudden infant death syndrome and respiratory problems in children.
- (k) The Surgeon General's report also found that there is no risk-free level of secondhand smoke exposure, with even brief exposure adversely affecting the cardiovascular and respiratory system, that only smoke-free environments effectively protect nonsmokers from secondhand smoke exposure in indoor spaces, and that millions of Americans continue to be exposed to secondhand smoke in their homes and workplaces.

- (l) The Surgeon General further concluded that secondhand smoke has been found to contain more than 50 carcinogens and at least 250 chemicals that are known to be toxic or carcinogenic.
- (m) Finally, the Surgeon General's 2006 report concludes that smoke-free environments are the only approach that effectively protects nonsmokers from the dangers of secondhand smoke; even sophisticated ventilation approaches cannot completely remove secondhand smoke from an indoor space. Because there is no risk-free level of secondhand smoke exposure, anything less cannot ensure that nonsmokers are fully protected from the dangers of exposure to secondhand smoke.

## ***SECTION 2.***

The Allegheny County Code of Ordinances, Division 5, entitled "Health and Sanitation," is hereby amended by the addition of a new Chapter 580, entitled "Allegheny County Certified Smoke Free Program," and comprised of the following new sections:

### **§580-1. Definitions**

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

- (A) "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. For the purposes of this Chapter, any establishment meeting this definition shall be deemed to be a food or beverage establishment, regardless of whether that establishment also meets one or more other definition(s) contained within this Section.
- (B) "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.
- (C) "Smoking." Inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe or other such device which contains tobacco or other smoke producing products.
- (D) "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.

- (E) "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.
- (F) "Workplace." Any area enclosed within four walls and having a ceiling that is 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.
- (G) "Common Use Area." An area in any building intended for the common use of residents, the public or invited guests.
- (H) "Smoke Free Establishment." Any food or beverage or other establishment in which the possession of lit tobacco smoke producing instruments is prohibited by the owner or person in control of the premises at all times and within all areas of the establishment.
- (I) "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.

#### **§580-2. Allegheny County Certified Smoke Free Program.**

The Allegheny County Health Department shall administer the Allegheny County Certified Smoke Free Program in accordance with the requirements of this Chapter.

#### **§580-3. Smoke Free Certifications for Food or Beverage Establishments.**

- (A) At each inspection of any food or beverage establishment conducted by the Allegheny County Health Department, the inspector shall also determine whether the establishment qualifies as a smoke free establishment.
  - (1) In the event that the food or beverage establishment does qualify as a smoke free establishment, the Allegheny County Health Department shall issue a Smoke Free Certificate to the establishment, as follows:
    - (a) The Smoke Free Certificate shall be no less than six inches (6") high, with lettering no less than two inches (2") high; and
    - (b) A symbol consisting of a circle with a lit cigarette and a line diagonally through its center measuring at least four inches (4") in height shall be included on the certificate; and

- (c) The words "Allegheny County Certified Smoke Free Establishment" and an appropriate citation to this Chapter shall be included on the certificate; and
  - (d) Information delineating how to reach the Department for the purpose of providing notice in the event that the smoke free establishment permits smoking shall be included on the certificate.
- (B) In evaluating whether the owner or person in control of a food or beverage establishment prohibits smoking at all times and in all locations within his or her establishment, the Health Department shall consider all relevant factors including, but not limited to:
  - (1) The presence, visibility, and prominence of "no smoking" signs within the establishment;
  - (2) The presence of ashtrays within the establishment;
  - (3) The availability of tobacco smoke producing instruments or related products such as matches to patrons within the establishment;
- (C) Subject to the limitation contained within Section 580-6, all Smoke Free Certificates shall be valid only during the time between regular inspections by the Health Department, shall reflect an expiration date on their faces, and shall be displayed by the food and beverage establishment in the same location as any inspection stickers issued by the Department.

#### **§580-4. Smoke Free Certifications for Workplaces.**

- (A) The owner of any Workplace may apply to the Allegheny County Health Department for Smoke Free Certification.
  - (1) The Health Department may, at its discretion, set an application period, so long as the period is at least thirty (30) days in length and is offered no less than once per calendar year.
  - (2) The Health Department shall develop a uniform application for smoke free certification.
  - (3) The application shall contain a signed statement by the applicant that smoking is prohibited at all times and in all locations within his or her Workplace.
  - (4) The Health Department may charge an application fee not to exceed fifty dollars (\$50.00) per application tendered under the terms of this Section.
- (B) The Department shall conduct an inspection of the applicant's Workplace within 60 days of receiving a timely-filed application under the terms of Section 880-4(A).

- (C) In the event that the Workplace for which an application was tendered does qualify as a smoke free establishment, the Allegheny County Health Department shall issue a Smoke Free Certificate to the establishment, as follows:
- (1) The Smoke Free Certificate shall be no less than six inches (6") high, with lettering no less than two inches (2") high; and
  - (2) A symbol consisting of a circle with a lit cigarette and a line diagonally through its center measuring at least four inches (4") in height shall be included on the certificate; and
  - (3) The words "Allegheny County Certified Smoke Free Establishment" and an appropriate citation to this Chapter shall be included on the certificate and
  - (4) Information delineating how to reach the Department for the purpose of providing notice in the event that the smoke free establishment permits smoking shall be included on the certificate.
- (D) In evaluating whether the owner or person in control of any establishment for which an application has been submitted prohibits smoking at all times and in all locations within his or her establishment, the Health Department shall consider all relevant factors including, but not limited to:
- (1) The presence, visibility, and prominence of "no smoking" signs within the Workplace;
  - (2) The presence of ashtrays within the Workplace;
  - (3) The availability of tobacco smoke producing instruments or related products such as matches to patrons within the Workplace;
  - (4) Whether the employer owning or operating the Workplace has adopted, implemented, made known and maintained a written policy that prohibits smoking within all areas of the Workplace.
- (E) Subject to the limitation contained within Section 580-6, all Smoke Free Certificates issued under the terms of this section shall be valid for two years, and shall reflect an expiration date on their faces.

**§580-5. Smoke Free Certifications for Other Establishments.**

- (A) The owner of any Lodging Establishment, Sports or Recreational Facility, Theater or Performance Establishment, or Common Use Area may apply to the Allegheny County Health Department for Smoke Free Certification.
- (1) The Health Department may, at its discretion, set an application period, so long as the period is at least thirty (30) days in length and is offered no less

than once per calendar year. This application period need not be identical to that created pursuant to the terms of Section 580-4(A) of this Chapter.

- (2) The Health Department shall develop a uniform application for smoke free certification.
  - (3) The application shall contain a signed statement by the applicant that smoking is prohibited at all times and in all locations within his or her establishment.
  - (4) The Health Department may charge an application fee not to exceed fifty dollars (\$50.00) per application tendered under the terms of this Section.
- (B) The Department shall conduct an inspection of the applicant's establishment within 60 days of receiving a timely-filed application under the terms of Section 880-5(A).
- (C) In the event that the establishment for which an application was tendered does qualify as a smoke free establishment, the Allegheny County Health Department shall issue a Smoke Free Certificate to the establishment, as follows:
- (1) The Smoke Free Certificate shall be no less than six inches (6") high, with lettering no less than two inches (2") high; and
  - (2) A symbol consisting of a circle with a lit cigarette and a line diagonally through its center measuring at least four inches (4") in height shall be included on the certificate; and
  - (3) The words "Allegheny County Certified Smoke Free Establishment" and an appropriate citation to this Chapter shall be included on the certificate and
  - (4) Information delineating how to reach the Department for the purpose of providing notice in the event that the smoke free establishment permits smoking shall be included on the certificate.
- (D) In evaluating whether the owner or person in control of any establishment for which an application has been submitted prohibits smoking at all times and in all locations within his or her establishment, the Health Department shall consider all relevant factors including, but not limited to:
- (1) The presence, visibility, and prominence of "no smoking" signs within the establishment;
  - (2) The presence of ashtrays within the establishment;
  - (3) The availability of tobacco smoke producing instruments or related products such as matches to patrons within the establishment.

- (E) Subject to the limitation contained within Section 580-6, all Smoke Free Certificates issued under the terms of this Section shall be valid for two years, and shall reflect an expiration date on their faces.

#### **§580-6. Revocation of Smoke Free Certificates.**

The Allegheny County Health Department may, at any time, revoke any smoke free certificate issued pursuant to the terms of this Chapter, provided that the Department:

- (A) Receives written or oral notice from multiple individuals within a thirty (30) day period indicating that smoking has been permitted within an establishment which has been given a smoke free certificate; and
- (B) Conducts an investigation of the premises that are the subject of the notices, and finds clear evidence that smoking has been or is being permitted therein; and
- (C) Provides written notice to the owner and/or person(s) in control of the premises that are the subject of the notices that the smoke free certificate is to be revoked, together with the factual bases for the revocation; and
- (D) Provides an opportunity to the owner and/or person(s) in control of the premises that are the subject of the notices to refute the notices themselves and/or findings of the Department's investigation;
- (E) Confiscates the establishment's smoke free certificate in the event that a final decision to revoke the certificate is reached.

#### **§580-7. Nonsmoking Establishment Website.**

The Allegheny County Health Department shall maintain a current listing of all establishments and workplaces certified as smoke free under the terms of this Chapter on its website, together with the address and telephone number of each certified entity. In the event that any certification is revoked under the terms of Section 580-6, the corresponding website listing shall be removed within 24 hours.

### ***SECTION 3. Effective Date.***

This Ordinance shall take effect upon final approval.



**SECTION 4.        *No Private Right of Action.***

*Allegheny County Pennsylvania shall have the sole right and authority to enforce the terms of this ordinance. This ordinance does not grant any individual group of individuals, organization, entity or any other person any right to bring any action in or before a court administrative agency or board or any similar body to enforce the provisions of this ordinance.*

**SECTION 5.        *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.*

**PRIMARY SPONSOR: PRESIDENT FITZGERALD**

**CO-SPONSORS: COUNCIL MEMBERS BURN, CALDWELL, CLEARY, DEFAZIO, DROZD, FINNERTY, FRAZIER, FAWCETT, GASTGEB, LESTITIAN, MACEY, MARTONI, REA, & ROBINSON**

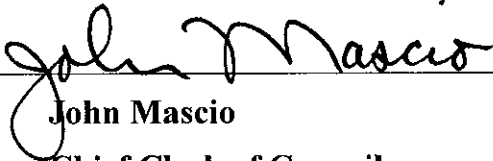
Enacted in Council, this 10<sup>th</sup> day of July, 2007,


Council Agenda No. 3279-07



**Rich Fitzgerald**

**President of Council**

Attest:   
**John Mascio**  
**Chief Clerk of Council**

Chief Executive Office July 16, 2007 

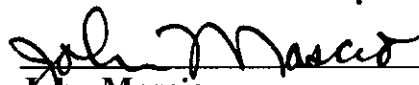
Approved: \_\_\_\_\_

**Dan Onorato**  
**Chief Executive**

Attest: \_\_\_\_\_

**Donna Beltz**  
**Executive's Secretary**

I do hereby certify that the foregoing Ordinance, duly engrossed and certified, was delivered by me to the Chief Executive for his approval or disapproval and that the Chief Executive failed to approve or disapprove the same, whereupon, it became law without his approval under the provisions of Section 311.07(E) of the Administrative Code of Allegheny County.

  
**John Mascio**  
**Chief Clerk of Council**