



## **Article XXII**

# **USE OF ELECTRONIC CIGARETTE DEVICES IN PUBLIC PLACES**

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**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.