

Understanding Local Government Authority to Regulate Smoking and Tobacco Use

A Presentation for Local Governments

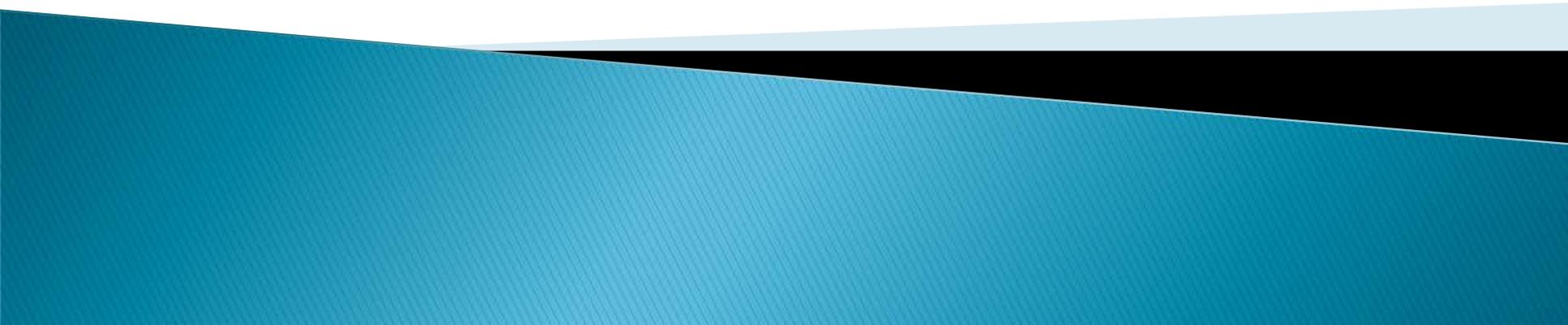
March 2015



Presentation topics

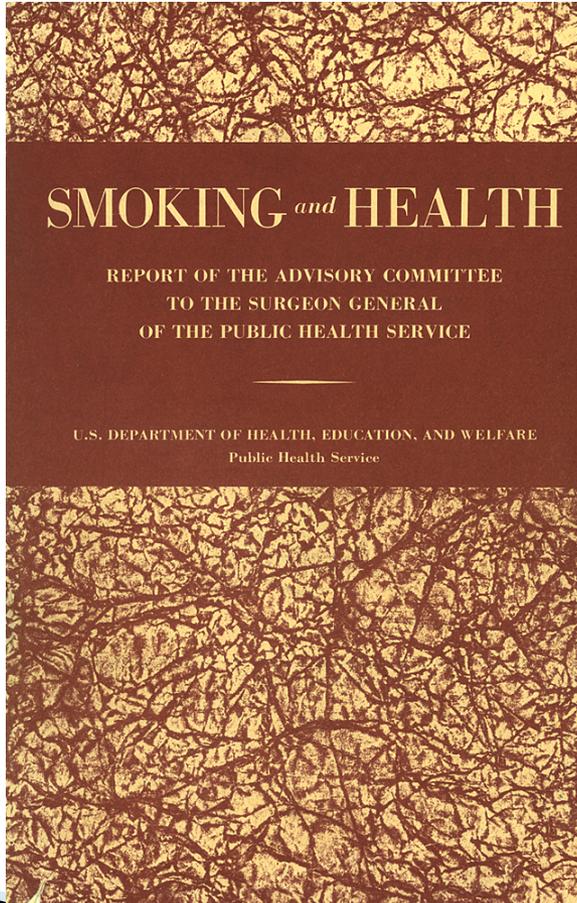
- ▶ Significance of the Problem
 - ▶ Evidence-Based Solutions
 - ▶ Brief N.C. History
 - ▶ Local Government Authority to Regulate Smoking and Tobacco Use
 - ▶ E-cigarettes
 - ▶ Policy trends
 - ▶ Resources and Tips for Implementation
- 

Significance of the Problem

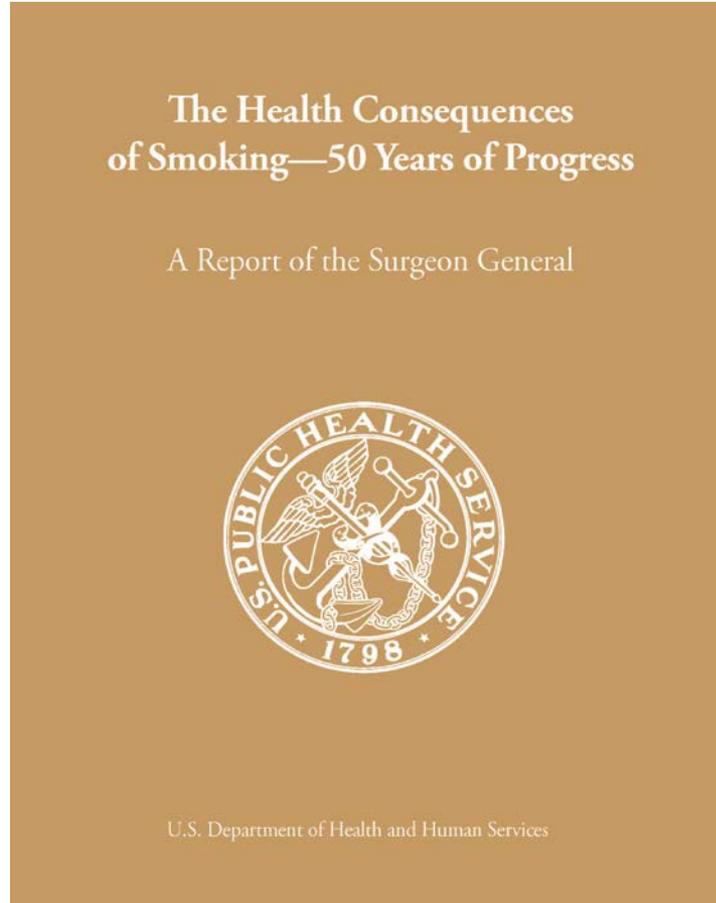


The Health Consequences of Smoking: 50 Years of Progress

A Report of the Surgeon General

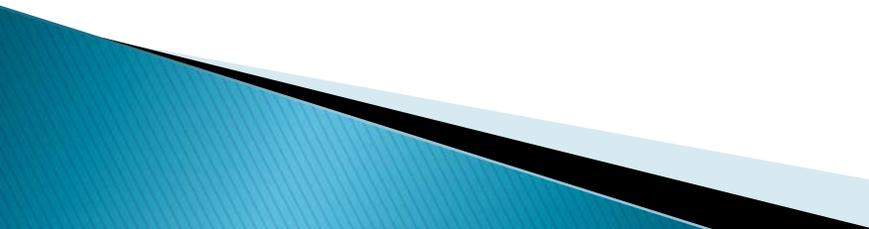


1964

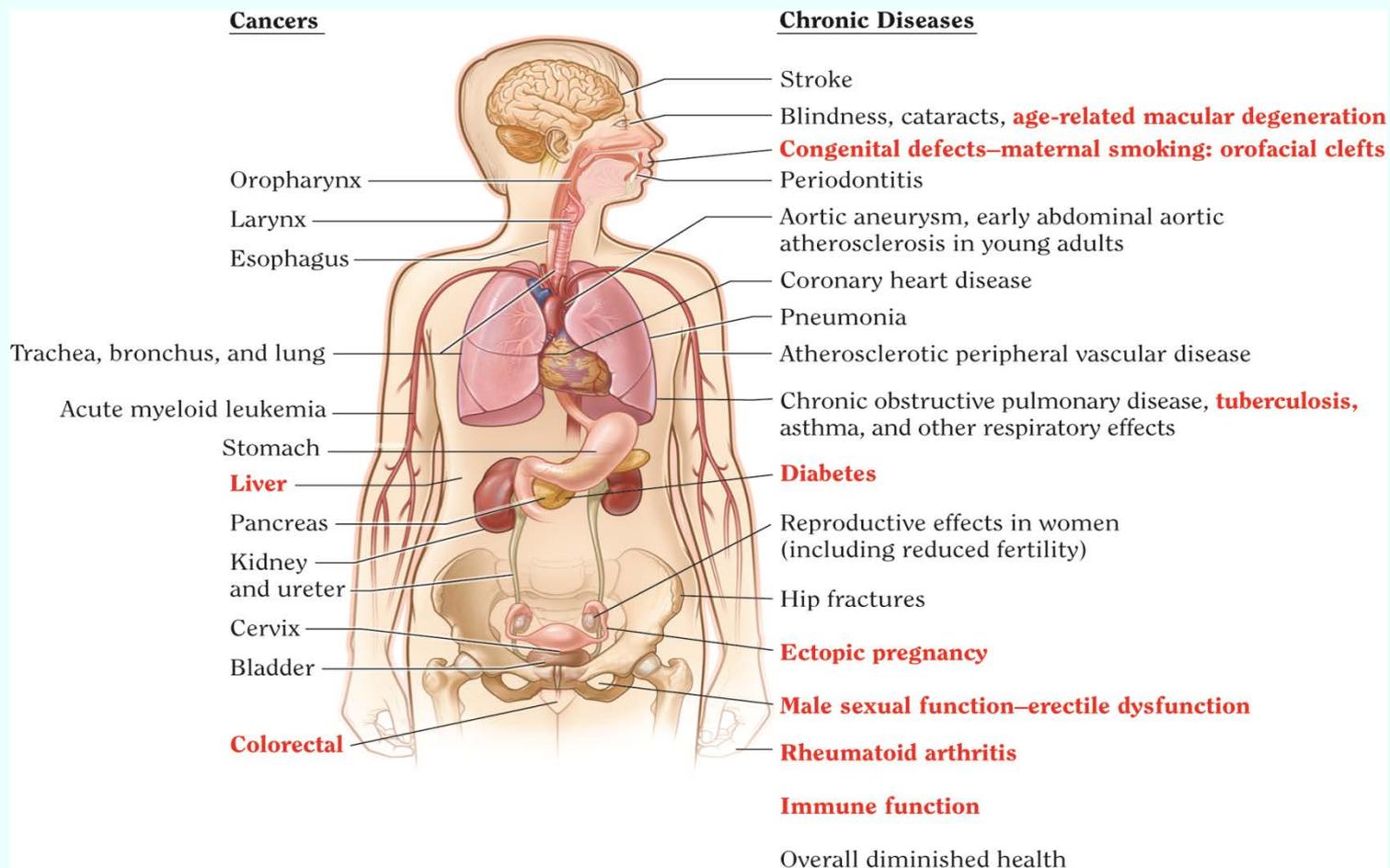


2014

Key Findings from the Surgeon General's Report

- ▶ Tobacco use is the number one preventable cause of premature death and disability.
 - ▶ Smoking causes heart disease, stroke, cancer and lung diseases (including asthma, emphysema, bronchitis and chronic airway obstruction) and diabetes.
 - ▶ For every person who dies from a smoking-related disease, 30 more people suffer with at least one serious illness from smoking.
- 

Smoking Damages Nearly Every Part of the Body





Key Findings from the 2014 Surgeon General's Report

Between 2010 and 2014 smoking caused

- **Nearly half a million** premature deaths each year
 - More than **87%** of all lung cancer deaths
 - **61%** of all pulmonary deaths
 - **32%** of all heart disease and stroke deaths
- 



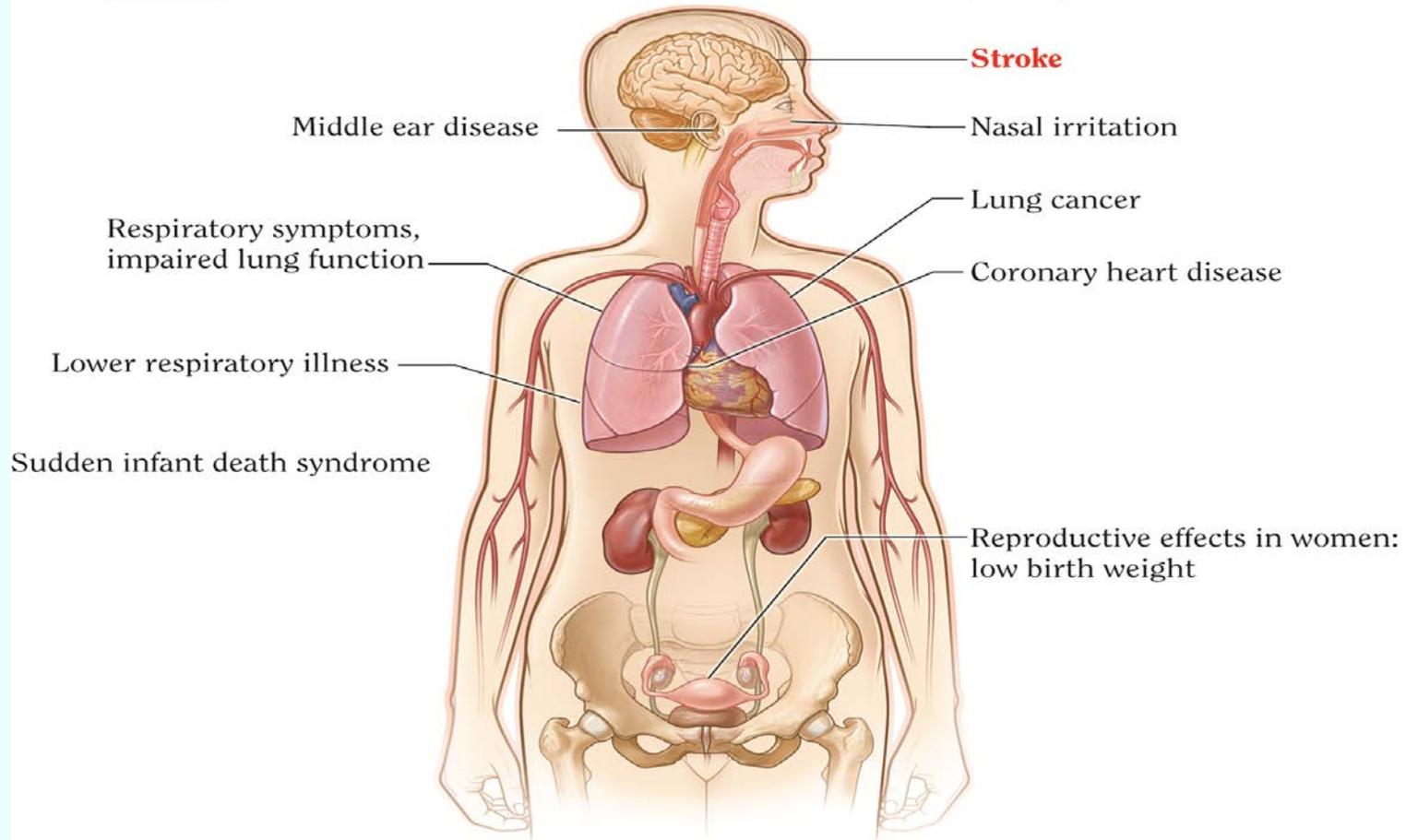
Key Findings from the U.S. Surgeon General Reports

- ▶ **Secondhand smoke (SHS) causes premature death and disease in non-smokers.**
- ▶ **Exposure of adults to SHS causes immediate adverse effects on the cardiovascular system and causes coronary heart disease, lung cancer and stroke.**
- ▶ **Children exposed to SHS are at an increased risk for acute respiratory infection, ear problems and asthma.**

There is No Safe Level of Secondhand Smoke Exposure

Children

Adults



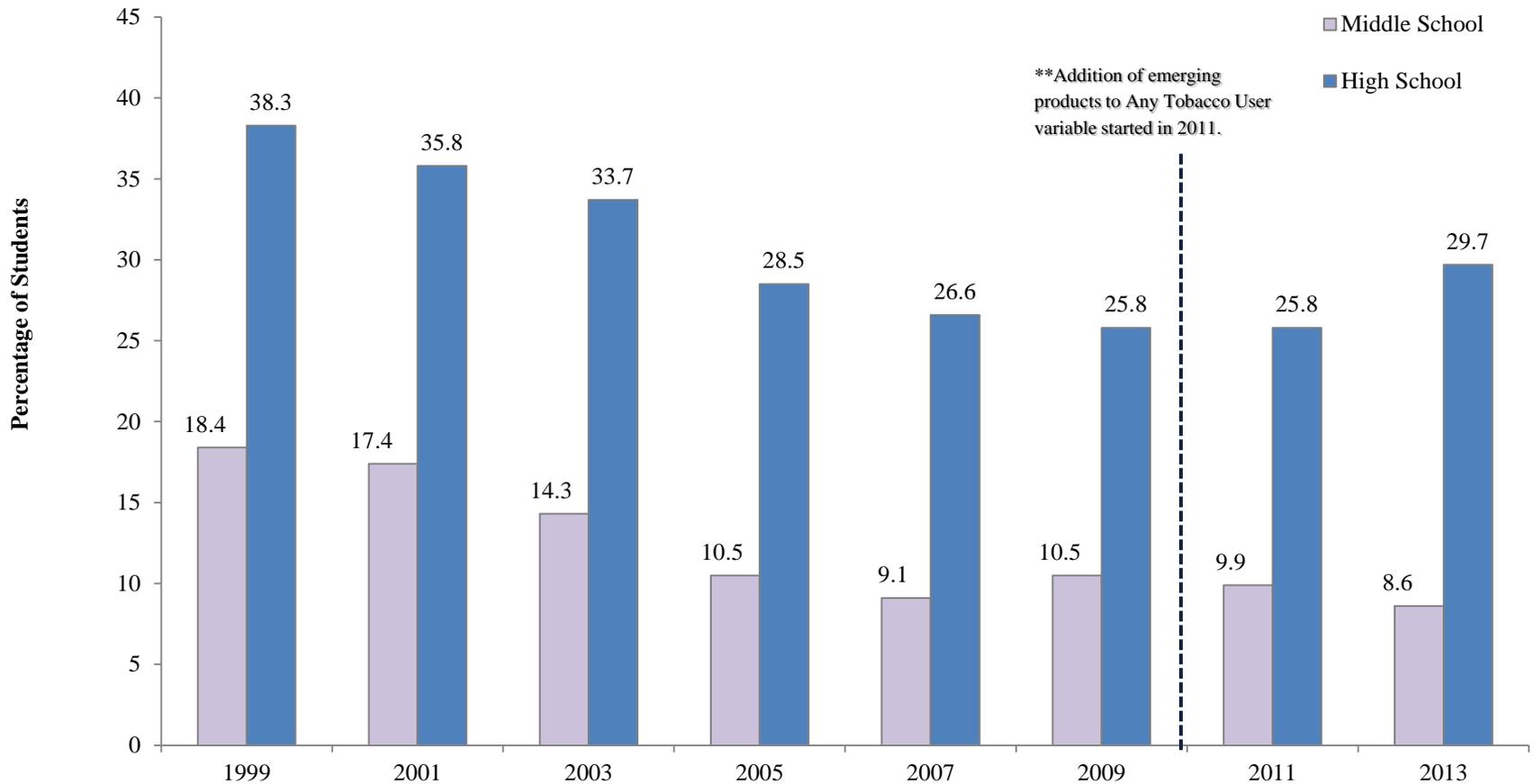
Tobacco's Toll in North Carolina

Adults who smoke (BRFSS 2013)	20.2%
High school students who smoke (YTS, 2013)	13.5%
High school students who use any tobacco products (YTS, 2013)	29.7%
Deaths caused by smoking each year (CDC Best Practices, 2014)	12,500
Annual health care costs directly caused by smoking (CDC Best Practices, 2014)	\$3.81 billion
Annual health care costs from secondhand smoke (<i>NC Medical Journal</i> , 2010)	\$288.8 million

NC Middle & High School Current* Smoking Prevalence: NC YTS, 1999–2013



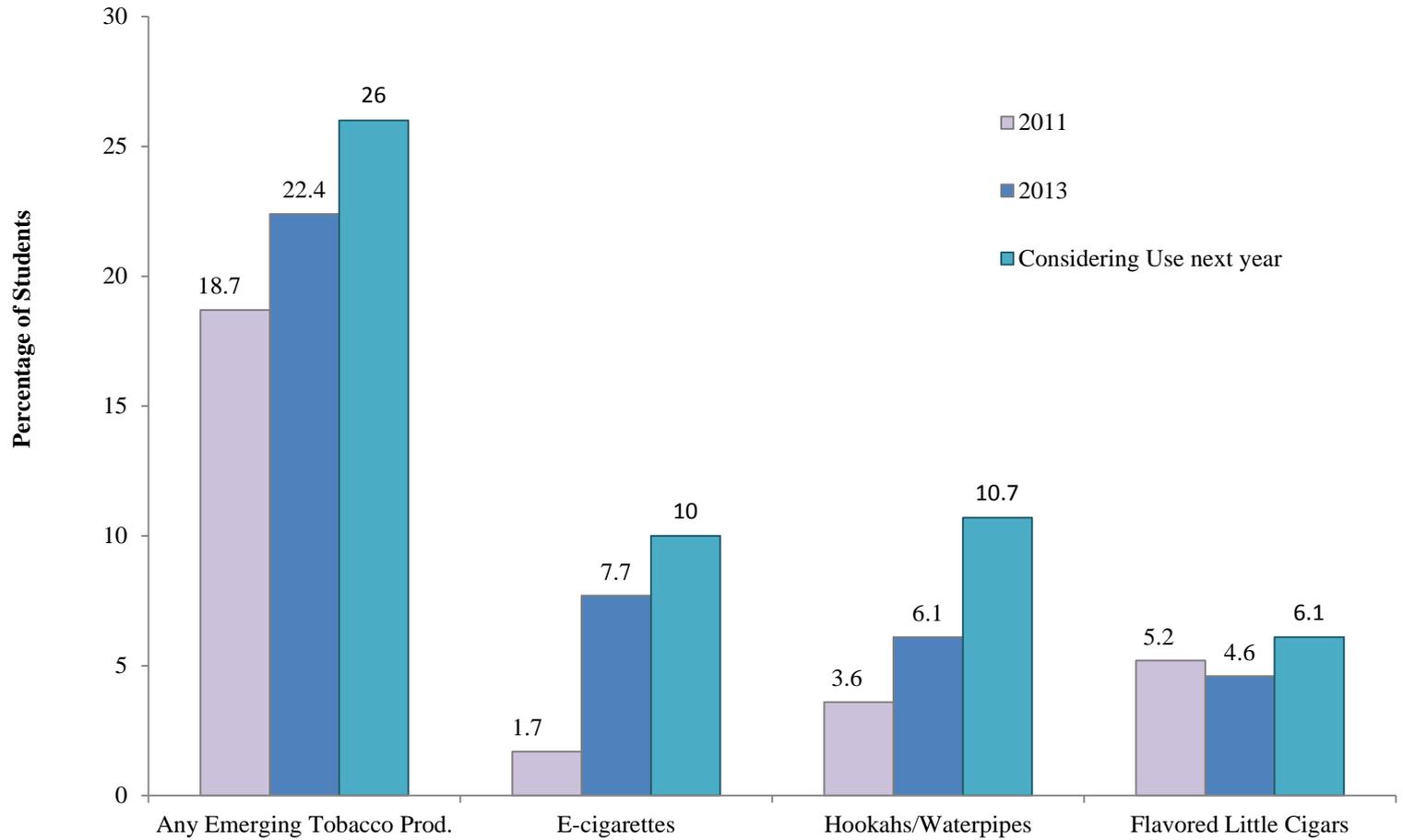
NC Middle & High School Current* Users of Any Tobacco Product**: NC YTS, 1999-2013



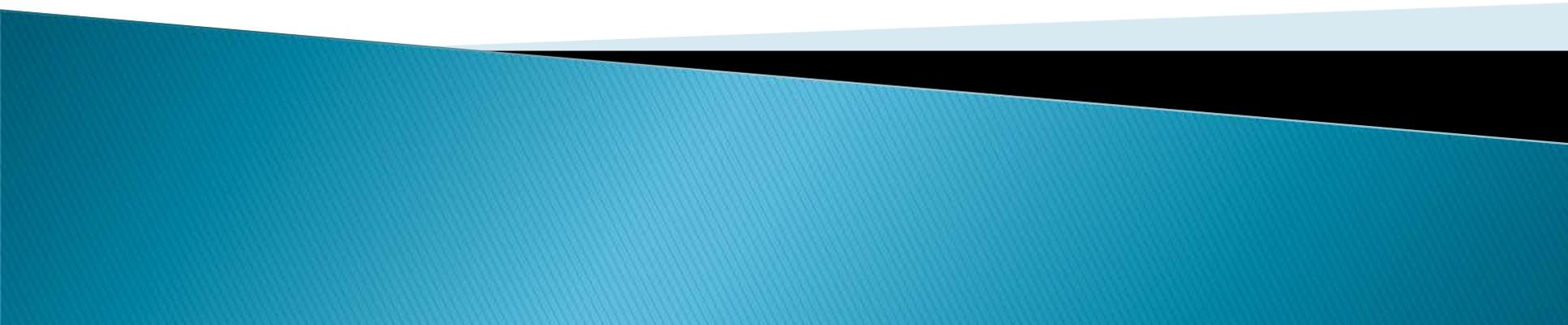
*Current use is defined as using on one or more of the past 30 days. **Beginning in 2011, NC YTS began including an item for use of emerging tobacco products. Emerging tobacco products include electronic cigarettes, clove cigars, dissolvable tobacco products, flavored cigarettes, flavored little cigars, hookahs or waterpipes, roll-your-own cigarettes, and snus. Data on emerging tobacco product use prior to 2011 is not available.



NC High School Students Current Users of Emerging Tobacco Products***: NC YTS, 2011-2013



Evidence-Based Solutions



Tobacco Use Prevention Program Goals

1. Prevent the initiation of smoking and tobacco use
 2. Eliminate exposure to secondhand smoke
 3. Help tobacco users who want to quit
 4. Identify and eliminate tobacco-related health disparities
- 

The **Community Preventive Services Task Force** recommends smoke-free policies to

- ▶ Reduce exposure to secondhand smoke
- ▶ Reduce the prevalence of tobacco use
- ▶ Increase the number of tobacco users who quit
- ▶ Reduce the initiation of tobacco use among young people
- ▶ Reduce tobacco-related morbidity and mortality, including acute cardiovascular events
- ▶ Reduce healthcare costs substantially
 - Evidence shows smoke-free policies do not have an adverse economic impact on businesses, including bars and restaurants.

<http://www.thecommunityguide.org/Tobacco/smokefreepolicies.html>

Brief N.C. History

Brief History of Smoke-free Regulations in N.C.

- ▶ Floor of House of Representatives, 2003
- ▶ Floor of Senate, 2005
- ▶ Entire General Assembly, 2006
- ▶ State Government Buildings and Vehicles; local government authority expanded to government buildings and vehicles, 2007
- ▶ Smoke-Free Restaurants and Bars Law, 2009
 - local government authority under G.S.130A-498 further expanded to government grounds and enclosed public places

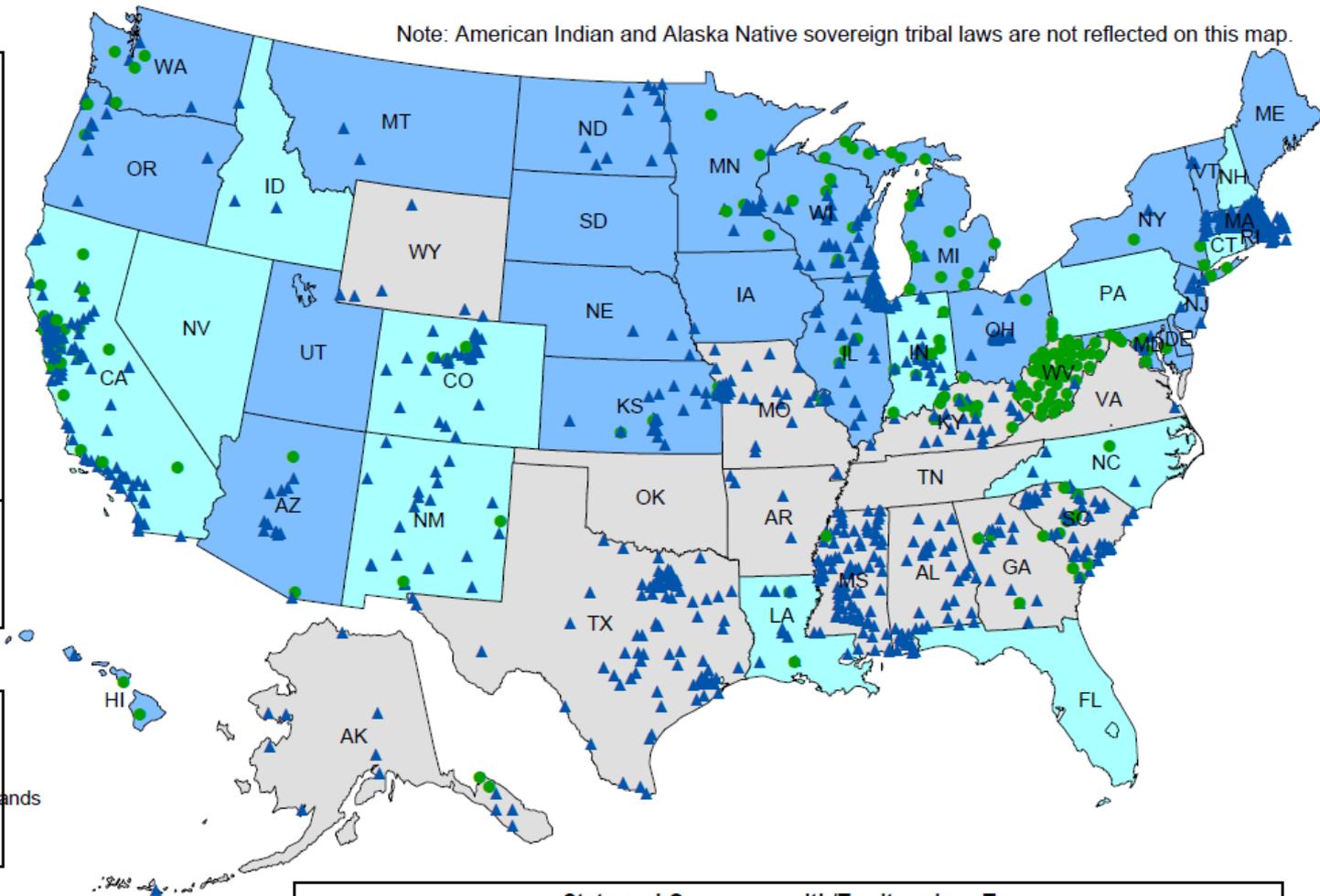
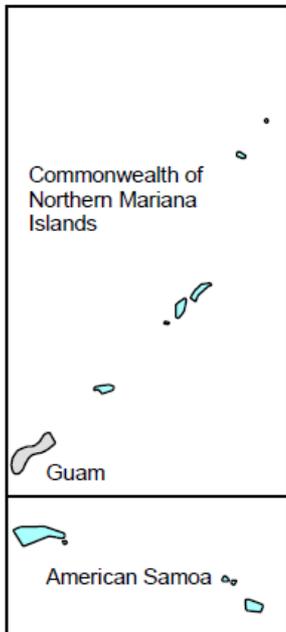
United States 100% Smokefree Air Laws

American Nonsmokers' Rights Foundation

As of October 1, 2014

Note: American Indian and Alaska Native sovereign tribal laws are not reflected on this map.

Territories and Commonwealths



Locality Type with a 100% Smokefree Law

- ▲ City
- County

State and Commonwealth/Territory Law Type

- Dark Blue: 100% Smokefree in Non-Hospitality Workplaces, Restaurants, and Bars
- Light Blue: 100% Smokefree in one or two of the above
- Grey: No 100% Smokefree State Law



ON ITS FIFTH ANNIVERSARY

THE T.O.P F.I.V.E.

THINGS THE SMOKE-FREE LAW
has done for N.C.



CLEARED THE AIR

Air quality in restaurants and bars improved

89%



IMPROVED HEALTH

REDUCED average weekly E.R. visits for heart attack by **21%**

REDUCED risk of asthma E.R. visits by **7%**

HELPED REDUCE SMOKING

Contributed to **LARGE INCREASE** in calls to



1-800-QUITNOW



Contributed to **CONTINUED DECREASE** in high school and middle school **STUDENT SMOKING.**



CHANGED US

Growing support for the law, encouraged other businesses to go smoke-free voluntarily.

Now people can't imagine allowing smoking in restaurants/bars.



AND DID ALL THIS WITHOUT HURTING BUSINESS

Studies show no negative impact on restaurant/bar income or employment



© 2010 North Carolina Department of Health and Human Services. All rights reserved. This document is for informational purposes only. It does not constitute an offer of insurance or any other financial product. For more information, please contact your insurance agent or the North Carolina Department of Health and Human Services. 10000

Progress in Tobacco-free Environments in North Carolina

Hospitals

All 127 acute care hospitals in North Carolina have 100% tobacco-free campus wide policies.

Tobacco-Free community hospital behavioral health units means more consumers treated in tobacco-free environments



State Operated Healthcare Facilities

All 14 State Operated Mental Health, Developmental, Alcohol and Drug Abuse Treatment Centers are 100% tobacco-free campus-wide

Prisons

State law prohibits any person from using tobacco products inside or on the grounds of a state correctional facility. There may be an exception for authorized religious purposes.



Progress in Tobacco-free Environments in North Carolina II

Community Colleges

Community Colleges may prohibit smoking and all tobacco product use in their buildings and on their grounds. (Currently, 36 of 58 community colleges have tobacco-free campus policies)



Public Schools K-12

State law requires local boards of education to adopt policies prohibiting the use of tobacco at all times:

- In school buildings,
- In school facilities,
- On school campuses,
- In or on any other property owned by the local school administrative unit, and
- At school-sponsored events at other locations when in the presence of students or school personnel.



Local Government Authority to Regulate Smoking and Tobacco Use



Local Government Authority to Regulate Smoking

A local government may adopt and enforce ordinances, board of health rules, and policies restricting or prohibiting smoking that are more restrictive than state law and that apply to:

- Local Government Buildings
 - Local Government Grounds
 - Local Government Vehicles
 - Enclosed Public Places
- 

Areas A Local Rule of Ordinance may Cover

Local Government Buildings

- ▶ **Defined as:** A building owned, leased or occupied by a local government G.S. §130A-492(8)
- ▶ **Can include:**
 - Health Department Buildings
 - Courthouses
 - Police Departments
 - County Libraries
 - Other government facilities



AREAS A LOCAL RULE OR ORDINANCE MAY COVER

Local Vehicles

- ▶ **Defined as:** A passenger-carrying vehicle owned, leased, or otherwise controlled by local government
G.S. §130A-492(9)
- ▶ **Can include:**
 - County and municipal vehicles,
 - buses, etc.



Areas A Local Rule or Ordinance May Cover

Local Government Grounds

- ▶ **Defined as:** An unenclosed area owned, leased or occupied by local government G.S. § 130A-492(6)
- ▶ **Can include:**
 - Grounds and parking lots next to city or county government buildings
 - Parks
 - Sidewalks maintained/controlled by the city or county
 - Bus stops
 - Other outdoor facilities

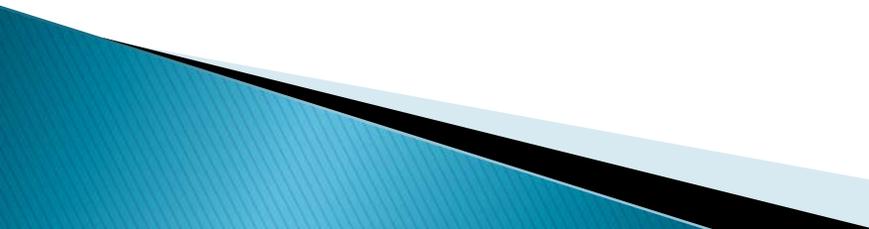
Areas a Local Rule or Ordinance May Cover

Public Places

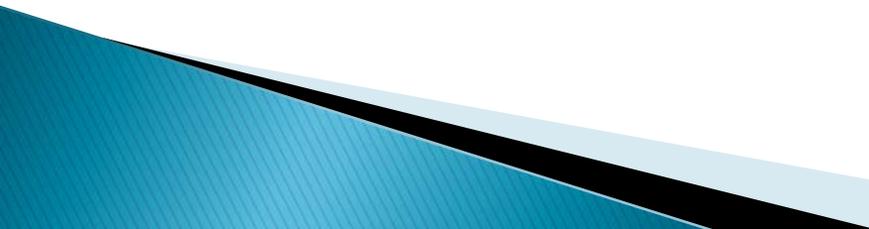
- ▶ **Defined as:** An enclosed area to which the public is invited or in which the public is permitted G.S. §130A-492(14)

- ▶ **Can include:**
 - Grocery stores
 - Shopping centers
 - Banks
 - Gaming facilities
 - Bowling centers
 - Movie theaters
 - Other places where the public is permitted

What areas may NOT be covered by a local regulation?

- ▶ Private residence
 - ▶ Private vehicle
 - ▶ Tobacco shop (*as defined by State Law*)
 - ▶ All premises, facilities and vehicles owned, operated or leased by any tobacco products processor or manufacturer, or any tobacco leaf grower, processor, or dealer
- 

What other areas may NOT be covered by a local regulation?

- ▶ Cigar bar, (*as exempted and approved under State law*)
 - ▶ Private club, (*non-profit, as defined by State Law*)
 - ▶ Designated smoking guest room in a lodging establishment
 - ▶ Motion picture, television, theater, or other live production set
- 

Who May Regulate?

Board of County Commissioners

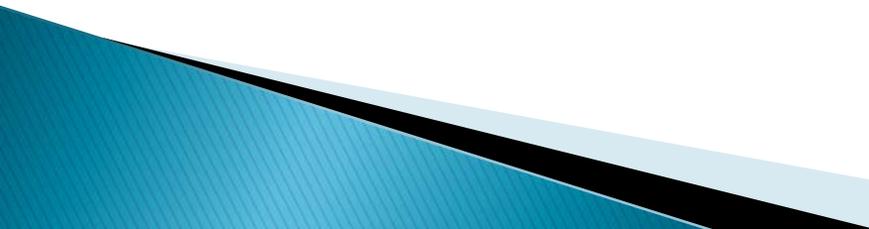
- May adopt an ordinance that applies to unincorporated areas
- If city agrees, ordinance may apply within incorporated areas

Municipal Governing Board

- May adopt an ordinance that applies within the city limits
 - May pass a resolution agreeing to have county ordinance apply within the city
- 

Who May Regulate?

Local Board of Health / District Board of Health

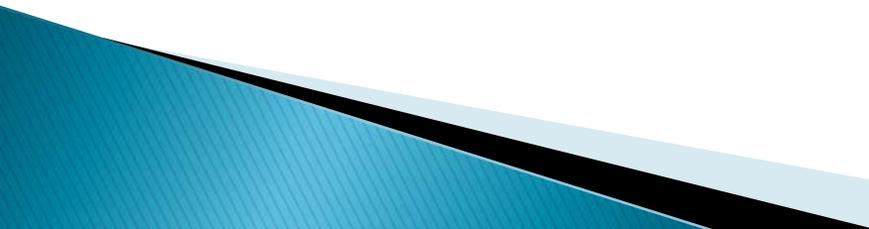
- ▶ Rules apply throughout the county or district
 - ▶ Rule must be approved by an ordinance adopted by the Board of County Commissioners (BOCC)
 - ▶ After BOCC approves the rule by ordinance, it applies throughout the county
 - ▶ No additional action or approval of city or town councils is required
- 

Once a Board of Health rule banning smoking is approved by an ordinance of the BOCC, is the rule converted into a county ordinance and thus only applies to unincorporated areas of the county?

- ▶ It is the opinion of the NC Attorney General's Office and of lawyers from the NC School of Government that the BOCC is merely "approving" the rule of the Board of Health.
- ▶ The Board of Health rule remains a rule after it is approved by the BOCC and applies to the county and the municipalities.

What About OTHER Tobacco Products?

Background

- ▶ Prior law preempted local governments' authority to regulate *smoking*
 - ▶ There was no pre-emption related to local authority to regulate the use of other tobacco products
 - ▶ 2010 changes removed the preemption related to smoking; still no preemption for other tobacco products
- 

E-cigarettes



Image courtesy of Wake Forest Baptist Medical Center

What about E-Cigarettes?

- Allowing use:
 - Creates potential enforcement confusion and sends mixed health message
 - Implies acceptance of addiction to unregulated nicotine delivery products, conflicting with health department's mission
 - Encourages dual use (cigarettes and e-cigs) in lieu of cessation in some individuals who might otherwise quit
- 

Can local governments ban the use of e-cigarettes?

- ▶ The legislature has never passed legislation preempting local governments from regulating the use of e-cigarettes (or smokeless forms of tobacco), which are not lighted.
- ▶ Therefore, local governments can pass such regulations under their basic authority to pass regulations to protect the health and welfare of the community.
- ▶ If a regulation for government buildings and/or grounds covers all “**tobacco products**”, then our interpretation is that e-cigarettes are included within that definition.
 - ▶ Guidance from the UNC School of Government, <http://canons.sog.unc.edu/?p=7788>



Nicotine Delivery

- ▶ Potential to deliver nicotine directly to pulmonary system for rapid absorption
 - ▶ Less nicotine is delivered than conventional cigarettes (Bullen et al., 2010)
 - ▶ Nicotine delivery varies
 - By sub-type and across products
 - Experience with the product
 - Learn to take longer puffs to increase nicotine delivery
- 

What's in the vapor?

- ▶ Perception of harmlessness “water vapor”
- ▶ Some harmful toxins have been found, but at lower levels than conventional cigarettes (Goniewicz et al., 2013)
- ▶ Exhaled air contains (Schripp et al., 2012)
 - Nicotine
 - Volatile organic compounds (VOCs)
 - Ultrafine particles





Public Health Issues

- ▶ Appeal to youth
 - Flavorings
 - Using “Brand Managers” for social media promotion
- ▶ Introduction of nicotine
 - Potential for addiction and graduation
- ▶ Dangers of the secondhand aerosol
- ▶ Delay quitting among smokers

Long Term Effects

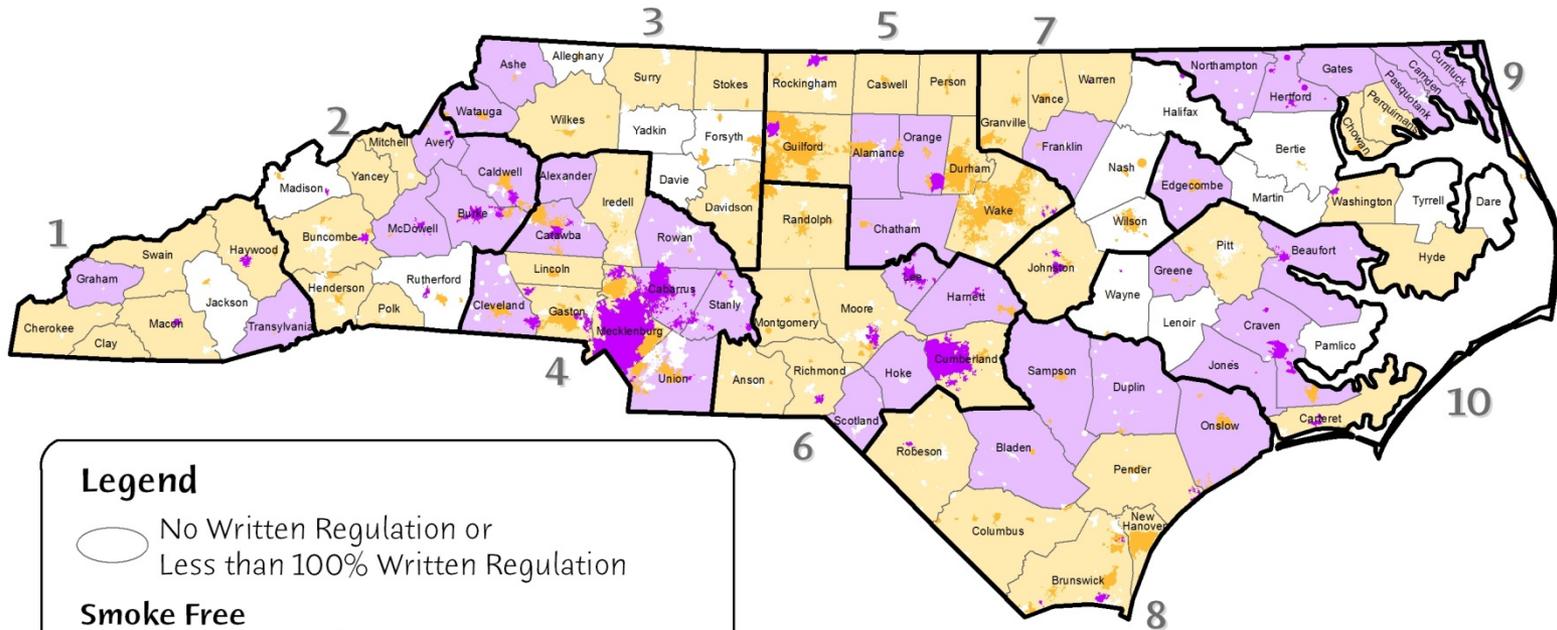




Policy Trends

North Carolina

Counties and Municipalities Reporting 100% Smoke-Free or Tobacco-Free Written Regulations in Government Buildings

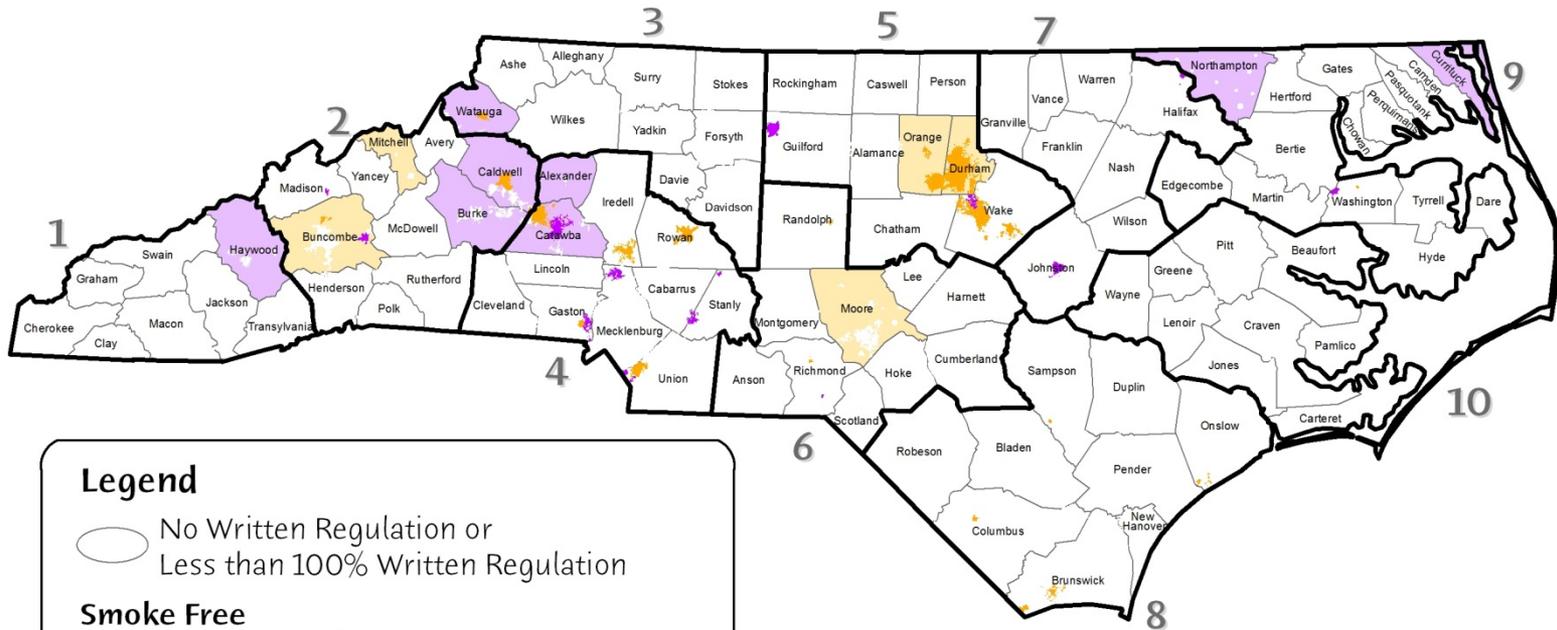


Legend

- No Written Regulation or Less than 100% Written Regulation
- Smoke Free**
 - Yellow: Counties
 - Orange: Municipalities
- Tobacco Free**
 - Purple: Counties
 - Magenta: Municipalities
- ~ CTG Regions ~ County Boundaries

North Carolina

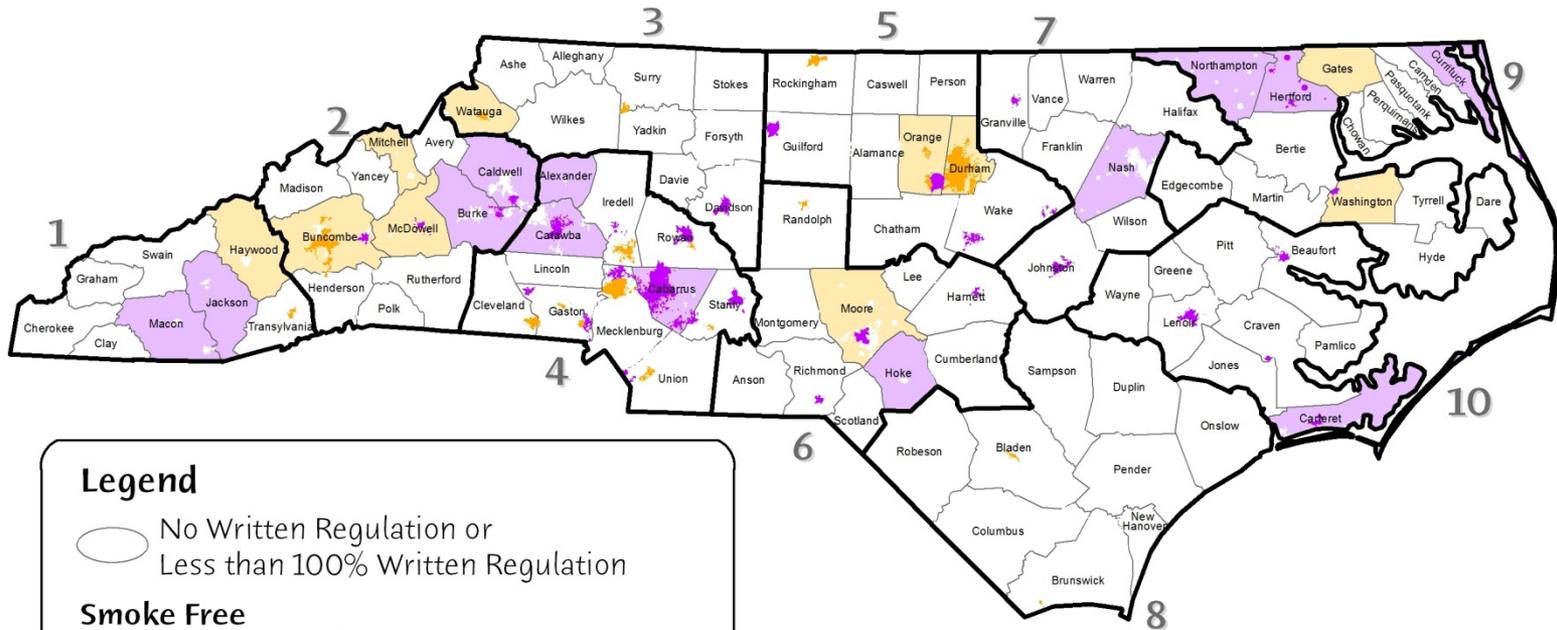
Counties and Municipalities Reporting 100% Written Regulations Smoke-Free or Tobacco-Free Written Regulations on Government Grounds



Legend

- No Written Regulation or Less than 100% Written Regulation
- Smoke Free**
 - Counties
 - Municipalities
- Tobacco Free**
 - Counties
 - Municipalities
- ~ CTG Regions ~ County Boundaries

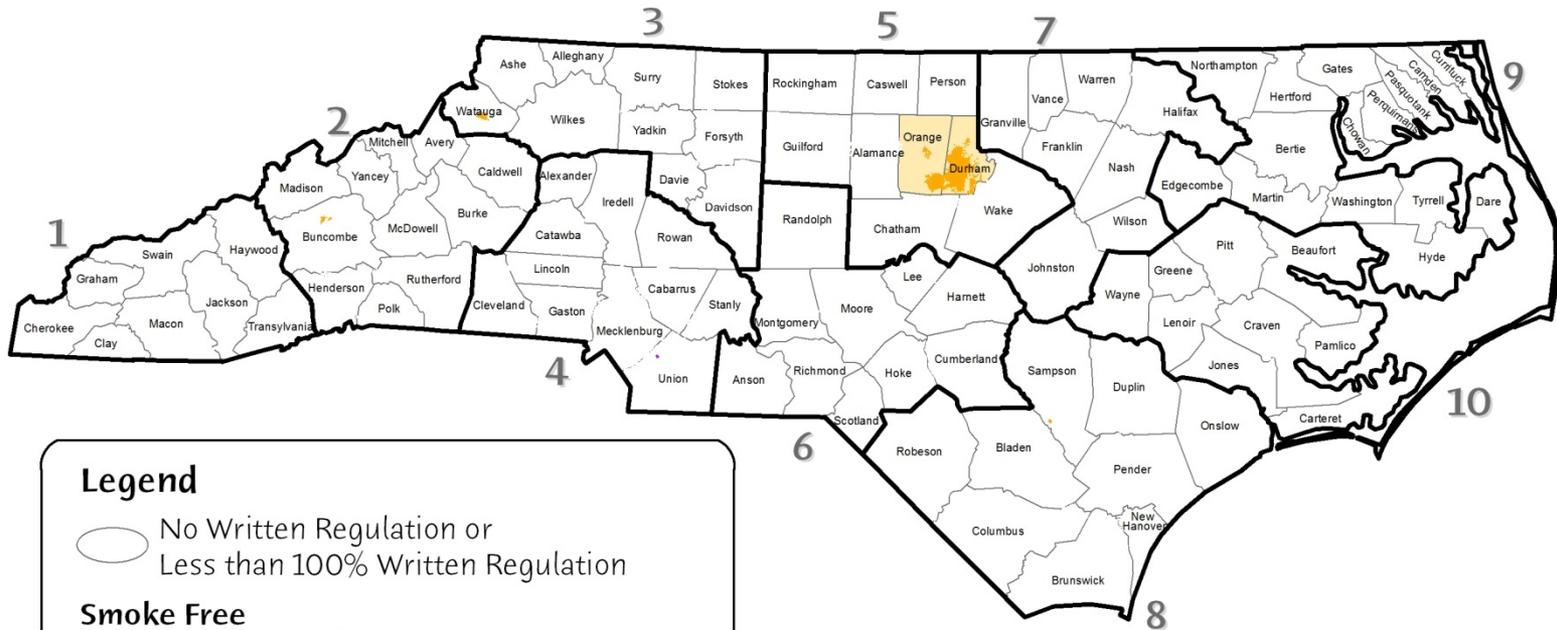
North Carolina Counties and Municipalities Reporting 100% Smoke-Free or Tobacco-Free Written Regulations in Parks



Legend

- No Written Regulation or Less than 100% Written Regulation
- Smoke Free**
 - Counties
 - Municipalities
- Tobacco Free**
 - Counties
 - Municipalities
- ~ CTG Regions ~ County Boundaries

North Carolina Counties and Municipalities Reporting 100% Smoke-Free or Tobacco-Free Written Regulations in Public Places



Legend

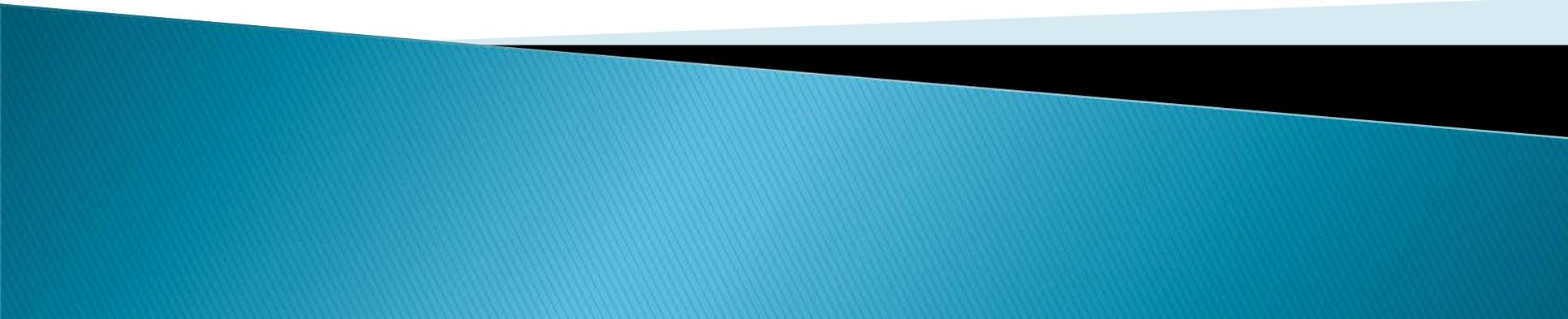
- No Written Regulation or Less than 100% Written Regulation
- Smoke Free**
- Counties Municipalities
- Tobacco Free**
- Counties Municipalities
- CTG Regions County Boundaries



Source: Information compiled from statewide surveys conducted in 2008, 2010, 2011, and ongoing reporting. Updated February 2014. Please contact NC TPCB at 919-707-5400 with questions, or to provide updated information.



Resources and Tips for Implementation



Education and Implementation

- ▶ Education about the local law will facilitate compliance
- ▶ Educate about cessation resources, including QuitlineNC
- ▶ QuitlineNC 1-800-QUIT-NOW
(1-800-784-8669)

Spanish: 1-800-Dejelo-Ya (1-800-335-3569)

www.quitlinenc.com



1-800-QUIT-NOW
1-800-784-8669

How Do We Enforce?

- “*Enforcement*” is really a misnomer – What you want is compliance
- Most people comply with policies, **provided** they are informed
- Public awareness and clear communication are key elements
- If violations occur—provide further education, warnings, and if needed, impose penalties



Local Government Smoke-Free Implementation Toolkit

<http://www.tobaccopreventionandcontrol.ncdhhs.gov/lgtoolkit/index.htm>

DHHS Home | [A-Z Site Map](#) | [Divisions](#) | [About Us](#) | [Contacts](#) | [En Español](#)

Search Term(s):



Chronic Disease and Injury Section



[TPCB Home](#)

[About TPCB](#)

[Publications](#)

[Quitting Tobacco](#)

[Data](#)

[Resources](#)

[Secondhand Smoke](#)

[Smokefree.NC.gov](#)

[Youth Tobacco Prevention](#)

[Contact Us](#)

[Sitemap](#)

[DHHS](#) > [Public Health](#) > [Chronic Disease and Injury](#) > [TPCB](#) > [Data](#) > [Local Government Smoke-Free Implementation Toolkit](#)

Tobacco Prevention and Control Branch

Local Government Smoke-Free Implementation Toolkit

The 2009 House Bill 2 was signed into law (see [Session Law 2009-27](#), commonly known as North Carolina's [Smoke-Free Restaurants and Bars Law](#)) on May 19, 2009. The law went into effect January 2, 2010, giving local government agencies clear authority to further regulate smoking on local government grounds and in enclosed public places.

A local government may adopt a local law restricting or prohibiting smoking that is more restrictive than the state law. In other words, the local law can place more restrictions on smoking or prohibit smoking in more places than is currently provided for in the state law. The local law may not reduce or take away restrictions and prohibitions provided for in the state law. This local authority extends to the following locations:

- Local government buildings,
- Unenclosed areas owned, leased, or occupied by the local government,
- In passenger-carrying vehicles owned, leased, or otherwise controlled by local government and assigned permanently or temporarily by local government to local government employees, agencies, institutions, or

Guidance from the UNC School of Government

[Regulating Electronic Cigarettes in North Carolina, Part 2: Local Regulation](#)

Further Information or Assistance

- Jim D. Martin, MS, Director of Policy and Programs; (919) 707-5404; [email](#)
- Pamela S. Diggs, MPH, Director of Local Program Development

Further Information or Assistance from the TPCB and the Local Health Department

Sally Herndon, MPH

Branch Head

(919) 707-5401

sally.herndon@dhhs.nc.gov

Jim Martin, MS

Director of Policy

(919)707-5404

jim.martin@dhhs.nc.gov

Pam Diggs, MPH

Director of Local Program Development &
Regulations

(919) 707-5407

pamela.diggs@dhhs.nc.gov

Anna Stein, JD, MPH

Legal Specialist

(919) 707-5406

anna.stein@dhhs.nc.gov

Joyce Swetlick, MPH

Director of Tobacco Cessation

(919) 707-5402

joyce.swetlick@dhhs.nc.gov

Ann Houston Staples, MCHES

Director of Public Education & Communications

(704) 543-2347

ann.staples@dhhs.nc.gov