

\_\_\_\_\_ COUNTY BOARD OF HEALTH RULE<sup>1</sup>

A RULE TO PROHIBIT SMOKING AND THE USE OF OTHER TOBACCO PRODUCTS IN COUNTY BUILDINGS, IN CITY/TOWN/VILLAGE BUILDINGS, IN COUNTY VEHICLES, IN CITY/TOWN/VILLAGE VEHICLES, ON COUNTY GROUNDS, AND ON CITY/TOWN/VILLAGE GROUNDS.<sup>2</sup>

WHEREAS, according to the Centers for Disease Control and Prevention (CDC), tobacco use and secondhand smoke exposure are leading preventable causes of illness and premature death in North Carolina and the nation;<sup>3</sup> and

WHEREAS, in 2006, a report issued by the United States Surgeon General stated that the scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke and that secondhand smoke has been proven to cause cancer, heart disease, and asthma attacks in both smokers and nonsmokers;<sup>4</sup> and

WHEREAS, the CDC advises that all individuals with coronary heart disease or known risk factors for coronary heart disease should avoid all indoor environments that permit smoking;<sup>5</sup> and

WHEREAS, research indicates that, during active smoking, outdoor levels of secondhand smoke may be as high as indoor levels and may pose a health risk for people in close proximity (such as those sitting beside someone on a park bench or children accompanying a smoking parent or guardian)<sup>6</sup>; and

WHEREAS, in air quality tests, concentrations of secondhand smoke in vehicles have been found to be far greater than in any other micro-environments tested, including

---

<sup>1</sup> This Model Rule references the County Board of Health as an example. If a District Board of Health wishes to adopt such a rule, the term may be changed accordingly throughout the rule.

<sup>2</sup> It is the North Carolina Division of Public Health's position that once a Board of Health Rule is approved by the Board of County Commissioners for the County over which the Board of Health has jurisdiction, its provisions apply to both the unincorporated areas within the County as well as the municipalities within the County. Therefore, a Board of Health may include within its rule County buildings, grounds, and vehicles, as well as City/Town/Village buildings, grounds and vehicles. G.S. 130A-39(c).

<sup>3</sup> Centers for Disease Control and Prevention, Smoking and Tobacco Use Fast Facts, [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/fast\\_facts/#toll](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/#toll) (last visited Oct. 7, 2010).

<sup>4</sup> U.S. DEP'T OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL 11, 14-16 (2006), <http://www.surgeongeneral.gov/library/secondhandsmoke/report/index.html>.

<sup>5</sup> See *id.* at 15; Centers for Disease Control and Prevention, Smoking and Tobacco Use Health Effects of Secondhand Smoke, [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/health\\_effects/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/index.htm) (last visited March 25, 2011).

<sup>6</sup> Neil E. Klepeis, Wayne R. Ott, and Paul Switzer, *Real-time Measurement of Outdoor Tobacco Smoke Particles*, 57 J. AIR & WASTE MGMT. ASS'N 522, 522 (2007); Neil E. Klepeis, Etienne B. Gabel, Wayne R. Ott, and Paul Switzer, *Outdoor Air Pollution in Close Proximity to a Continuous Point Source*, 43 ATMOSPHERIC ENV'T 3155, 3165 (2009).

smoke-free homes, smokers' homes, smoke-filled bars, and outdoor air – even with a vehicle's windows open and its fan set on high<sup>7</sup>; and

WHEREAS, tobacco is a recognized carcinogen in humans, and health risks associated with the use of tobacco products include myocardial infarction, stroke, and adverse reproductive outcomes;<sup>8</sup> and

WHEREAS, on January 2, 2010, "An Act To Prohibit Smoking In Certain Public Places And Certain Places Of Employment," Session Law 2009-27, became effective, authorizing local governments to adopt and enforce ordinances "that are more restrictive than State law and that apply in local government buildings, on local government grounds, in local vehicles, or in public places;" and

WHEREAS, pursuant to G.S. 130A-39(a), local boards of health have the responsibility to protect and promote the public's health and to adopt rules necessary for that purpose; and

WHEREAS, the \_\_\_\_\_ County Board of Health is committed to providing a safe and healthy workplace in all County and City/Town/Village facilities for County and City/Town/Village employees and a safe and healthy environment for the visiting public; and

WHEREAS, the \_\_\_\_\_ County Board of Health provides support to employees and residents who want to quit the use of tobacco products. Employees and residents are also encouraged to talk to their health care provider about quitting, ask about appropriate pharmacotherapy available through their health insurance plan or employee's insurer, and to use the free quitting support services of the North Carolina Tobacco Use Quitline at 1-800-QUIT-NOW (1-800-784-8669); and

WHEREAS, the \_\_\_\_\_ County Board of Health wishes to minimize the harmful effects of tobacco use among County and City/Town/Village employees and eliminate secondhand smoke exposure for employees and the public in and on those buildings, vehicles, and grounds controlled by \_\_\_\_\_ County and the City[ies]/Town[s]/Village[s] of \_\_\_\_\_; and

WHEREAS, the \_\_\_\_\_ County Board of Health finds and declares that, in order to protect the public health and welfare, it is in the best interests of the citizens of \_\_\_\_\_ County to adopt a Rule prohibiting smoking and the use of tobacco products in County buildings,

---

<sup>7</sup> Wayne Ott, Neil Klepeis & Paul Switzer, *Air Change Rates of Motor Vehicles and In-Vehicle Pollutant Concentrations from Secondhand Smoke*, 18 J. EXPOSURE SCI. AND ENVTL. EPIDEMIOLOGY 312, 312 (2007), available at [http://tobaccosmoke.exposurescience.org/pub/reprints/Ott\\_CarStudy.pdf](http://tobaccosmoke.exposurescience.org/pub/reprints/Ott_CarStudy.pdf); see also Ontario Medical Ass'n, *Background - Tobacco Smoke Concentration in Cars*, <https://www.oma.org/Resources/Documents/fTobaccoSmokeConcentrationsInCars.pdf> (last visited March 30, 2011).

<sup>8</sup> U.S. DEP'T OF HEALTH & HUMAN SERVS., *THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL* 12, 13, 15 (2006), <http://www.surgeongeneral.gov/library/secondhandsmoke/report/index.html>.

City/Town/Village buildings, County grounds, City/Town/Village grounds, County vehicles, and City/Town/Village vehicles.

NOW, THEREFORE, THE \_\_\_\_\_ COUNTY BOARD OF HEALTH ADOPTS THE FOLLOWING RULES:

Section 1. Authority

This Rule is enacted pursuant to G.S. 130A-498 and 130A-39(a).<sup>9</sup>

Section 2. Definitions

The following definitions are applicable to this Rule.

- 1) “City/Town/Village Building”. – A building owned, leased as lessor, or the area leased as lessee and occupied by the City[ies]/Town[s]/Village[s] of \_\_\_\_\_.
- 2) “City/Town/Village Grounds”. – An unenclosed area owned, leased or occupied by the City[ies]/Town[s]/Village[s] of \_\_\_\_\_.
- 3) “City/Town/Village Vehicle”. – A passenger-carrying vehicle owned, leased, or otherwise controlled by the City[ies]/Town[s]/Village[s] of \_\_\_\_\_ and assigned permanently or temporarily to its[their] employees, agencies, institutions, or facilities for official City/Town/Village business.
- 4) “County Building”. – A building owned, leased as lessor, or the area leased as lessee and occupied by \_\_\_\_\_ County.
- 5) “County Grounds”. – An unenclosed area owned, leased or occupied by \_\_\_\_\_ County.
- 6) “County Vehicle”. – A passenger-carrying vehicle owned, leased, or otherwise controlled by \_\_\_\_\_ County and assigned permanently or temporarily to its employees, agencies, institutions, or facilities for official County business.
- 7) “Employee”. – A person who is employed by the County of \_\_\_\_\_ or by the City[ies]/Town[s]/Village[s] of \_\_\_\_\_ ; or who contracts with the County, City[ies]/Town[s]/Village[s] <sup>10</sup> or a third person to perform services for the County or City[ies]/Town[s]/Village[s]; or who otherwise performs services for the County or City[s]/Town[s]/Village[s] with or without compensation.
- 8) “Local Health Department”. – The district health department, public health authority, or county health department, the jurisdiction of which includes \_\_\_\_\_ County and the City[ies]/Town[s]/Village[s] of \_\_\_\_\_.<sup>11</sup>

---

<sup>9</sup> G.S. 130A-498 grants a County Board of Health the authority to adopt and enforce rules that restrict or prohibit *smoking*. However, the authority to regulate all tobacco products falls under the County Board of Health’s general power to create rules to protect the public health granted under G.S. 130A-39(a). If the rule will regulate all tobacco products, cite G.S. 130A-39(a) as authority for this action. Once the Board of County Commissioners adopts the rule, refer to G.S. 153A-121(a), as this is the source of the County Board of Commissioners’ authority to regulate other tobacco products.

<sup>10</sup> If cities, towns, **and** villages are within the county, include all the terms that apply in this definition.

<sup>11</sup> This term may be changed to reflect the specific health department under whose jurisdiction the County and City[ies]/Town[s]/Village[s] fall.

- 9) "Smoking". – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.
- 10) "Tobacco Product". – Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component part or accessory of a tobacco product, including but not limited to cigarettes; cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cutting and sweepings of tobacco; and other kinds and forms of tobacco. A tobacco product excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
- 11) "Universal 'No Smoking and Use of Tobacco Products Prohibited' Symbol" – Symbol consisting of a pictorial representation of a burning cigarette and a tobacco product enclosed in a red circle with a red bar across it.

### Section 3. Areas in Which Smoking and the Use of Tobacco Products are Prohibited

- (1) Smoking and the use of tobacco products are prohibited in all of the following:
  - (a) In any County building and City/Town/Village building.
  - (b) In any County vehicle and City/Town/Village vehicle.
  - (c) On any County grounds and City/Town/Village grounds.
- (2) Smoking and the use of tobacco products are prohibited in County buildings and City/Town/Village buildings and on County grounds and City/Town/Village grounds being used for private events.

### Section 4. Implementation Requirements

The County and the City[ies]/Town[s]/Village[s] shall:

- (1) Post signs that meet all the requirements in Section 5 of this Rule.
- (2) Remove all indoor ashtrays and other smoking receptacles from the area in which smoking is prohibited, except for ashtrays and receptacles for sale and not intended for use on the premises.
- (3) Direct a person who is smoking in a prohibited area to extinguish the lighted tobacco product and, if the person does not comply, ask the person to leave the premises.
- (4) Contact the County sheriff department or the City/Town/Village Police Department<sup>12</sup> (*or specify another appropriate law enforcement agency*) if a person in violation refuses to leave the premises.

---

<sup>12</sup> More than one police department can be specified.

## Section 5. Signage

The signs required by Section 4 must:

- (1) State in English (*optional: insert other languages here*) that smoking and the use of tobacco products are prohibited and include the universal “No Smoking and Use of Tobacco Products Prohibited” symbol.
- (2) Be of sufficient size to be clearly legible to a person of normal vision, and be conspicuously posted.
- (3) Be posted at each entrance to a County building and a City/Town/Village building and in other locations within the buildings reasonably calculated to inform employees and the public of the prohibition.
- (4) Be posted in each County vehicle and each City/Town/Village vehicle in areas visible to passengers, provided that their placement does not interfere with the safe operation of the vehicle. If the vehicle is used for undercover law enforcement operations, a sign is not required to be placed in the vehicle.
- (5) Be posted on County grounds and City/Town/Village grounds in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.

## Section 6. Enforcement and Penalties

(1) *Violations by persons smoking or using tobacco products in prohibited areas.* Following oral or written notice by the person in charge of an area described in Section 3 or his or her designee, failure to cease smoking or tobacco use constitutes an infraction punishable by a fine of not more than fifty dollars (\$50.00). A citation may be issued by a sworn law enforcement officer. Conviction of an infraction under this section has no consequence other than payment of a penalty, and no court costs may be assessed.

(2) *Additional sanctions for employees.* In addition to any penalty under subsection (a), employees of \_\_\_\_ County and employees of the City[ies]/Town[s]/Village[s] of \_\_\_\_\_ who violate this Rule shall be subject to disciplinary action consistent with their respective employer’s human resources policies.

## Section 9. Public Education

\_\_\_\_\_ County and the City[ies]/Town[s]/Village[s] of \_\_\_\_\_ shall engage in an ongoing program to explain and clarify the purposes and requirements of this Rule to citizens affected by it, and to guide operators and managers in their compliance with it. In doing so, the County and City[ies]/Town[s]/Village[s] may rely upon materials and information provided by the local health department.<sup>13</sup>

## Section 10. Effective Date

---

<sup>13</sup> See footnote 11.

These rules shall become effective \_\_\_\_\_ upon adoption by the \_\_\_\_\_ County Board of Health and approval of rules by an ordinance adopted by the \_\_\_\_\_ Board of County Commissioners. *[Note: To allow sufficient time for implementation, it is recommended that the effective date be set between 30 and 90 days after the ordinance is adopted].*

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Chairperson, \_\_\_\_\_ County Board of Health

ATTEST:

\_\_\_\_\_  
Clerk to the \_\_\_\_\_ County Board of Health

Approved as to form:

\_\_\_\_\_  
County Attorney<sup>14</sup>

<sup>14</sup> The Division of Public Health, Tobacco Prevention and Control Branch chose not to provide a provision in this model ordinance related to the use of e-cigarettes in local government buildings or on local government grounds. This is largely due to the lack of information about the effects of these products.

However, the FDA has recently taken action surrounding e-cigarettes. In an evaluation of samples of e-cigarettes, the FDA found that these products contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. Memorandum from B.J. Westenberg, Deputy Director, CDER/OPS/OTR, Division of Pharmaceutical Analysis to Michael Levy, Supervisor Regulatory Counsel, CDER, Office of Compliance Division of New Drugs and Labeling Compliance (May 4, 2009), *available at* <http://www.fda.gov/downloads/Drugs/ScienceResearch/UCM173250.pdf>; *see also* Press Release, United States Food and Drug Administration, FDA & Public Health Experts Warn About Electronic Cigarettes (July 22, 2009), *available at* <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm>. The FDA also noted that the quality control processes for the manufacture of these products are either inconsistent or non-existent. *Id.* Thus, the vapor omitted by e-cigarettes is potentially harmful to not only the users but quite possibly others around them. There is also concern surrounding the ability to effectively enforce smoke-free laws due to the similar appearance of these products to traditional cigarettes. Thus, the Branch will continue to monitor the FDA's action regarding these products and will update this model if necessary.

For your reference, the following is a definition of e-cigarettes: Any electronic oral device, such as one composed of a heating element, battery, and/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, e-pipe, or under any other product name or descriptor. An e-cigarette does not include any product that has been approved by

---

the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.