

ORDINANCE NUMBER _____

AN ORDINANCE TO PROHIBIT SMOKING IN PUBLIC PLACES IN THE COUNTY OF _____

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 nation¹; 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, 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 nonsmokers²; 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 smoking³; and

WHEREAS, in 2009, the United States Food and Drug Administration (FDA) announced that an analysis of e-cigarette samples indicated that the e-cigarettes 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 antifreeze⁴; and

¹ Centers for Disease Control and Prevention, Smoking and Tobacco Use Fast Facts, http://www.cdc.gov/tobacco/data_statistics/facts_sheets/fast_facts/#toll (last visited Oct. 7, 2010).

² 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>.

³ *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 (last visited March 25, 2011).

⁴ 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>.

WHEREAS, the use of e-cigarettes in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and could lead to difficulties in enforcing the smoke-free laws; and

WHEREAS, the _____ Board of Health adopted a resolution on _____ (date) recommending that the County adopt an ordinance to prohibit smoking in public places; and (*NOTE: utilize this WHEREAS statement only if Board of Health has adopted a resolution*).

WHEREAS, the County of _____ is committed to protecting the health of individuals in public places by eliminating exposure to secondhand smoke; and

WHEREAS, the County of _____ 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, this Board finds and declares that, in order to protect the public health and welfare, it is in the best interests of the citizens of the County to adopt an ordinance prohibiting smoking in public places.

NOW, THEREFORE, BE IT ORDAINED by the (*governing body*) of the County of _____, North Carolina, that:

Section 1. Authority.

This ordinance is enacted pursuant to G.S. 130A-498.

Section 2. Definitions

The following definitions are applicable to this ordinance.

(1) "Cigar bar". – An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001 that satisfies all of the following:

- a. Generates sixty percent (60%) or more of its quarterly gross revenue from the sale of alcoholic beverages and twenty-five percent (25%) or more of its quarterly gross revenue from the sale of cigars;
- b. Has a humidor on the premises; and
- c. Does not allow individuals under the age of 21 to enter the premises.

Revenue generated from other tobacco sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies the definition of cigar bar.

(2) "E-cigarette". – 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.

(3) "Enclosed area". – An area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.

(4) "International 'No Smoking' symbol". – Symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

(5) "Local health department". – The district department, public health authority, or county health department, the jurisdiction of which includes the County.⁵

(6) "Local health director". – Administrative head of the local health department appointed pursuant to G.S. Chapter 130A.⁶

(7) "Lodging establishment". – An establishment that provides lodging for pay to the public.

(8) "Private club". – A country club or an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1). For the purposes of this ordinance, private club includes country club.

(9) "Private residence". – A private dwelling that is not a child care facility, as defined in G.S. 110-86(3), and not a long-term care facility, as defined in G.S. 131E-114.3(a)(1).

(10) "Private vehicle". – A privately owned vehicle that is not used for commercial or employment purposes.

(11) "Public place". – An enclosed area to which the public is invited or in which the public is permitted.

(12) "Smoking". – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

(13) "Tobacco shop". – A business establishment, the main purpose of which is the sale of tobacco, tobacco products, and accessories for such products, that receives no less than seventy-five percent (75%) of its total annual revenues from the sale of tobacco, tobacco products, and accessories for such products, and does not serve food or alcohol on its premises.

Section 3. Smoking Prohibited in Enclosed Areas of Public Places.⁷

⁵ This term may be changed to reflect the specific health department under whose jurisdiction the County falls.

⁶ This term may be changed to reflect the specific health department at which the health director works.

⁷ Under the state law smoking is already prohibited in certain public places including restaurants, bars, and state buildings and vehicles. *See, e.g.*, G.S. 130A-493, 130A-496.

Except as provided in Section 4 of this Ordinance, smoking shall be prohibited in all enclosed areas of public places within the County.⁸

Section 4. Exceptions: Where Smoking is Not Regulated By This Ordinance

In accordance with G.S. 130A-498(b1), smoking is not prohibited by this ordinance in the following places.

- (1) A private residence.
- (2) A private vehicle.
- (3) A tobacco shop if smoke from the business does not migrate into an enclosed area where smoking is prohibited pursuant to Article 23 of the North Carolina General Statutes. A tobacco shop that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the tobacco shop and smoke from the shop does not migrate into an enclosed area where smoking is prohibited pursuant to Article 23 of the North Carolina General Statutes.
- (4) All of the premises, facilities, and vehicles owned, operated, or leased by any tobacco products processor or manufacturer, or any tobacco leaf grower, processor, or dealer.
- (5) A designated smoking guest room in a lodging establishment. No greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking guest rooms.
- (6) A cigar bar if smoke from the cigar bar does not migrate into an enclosed public place where smoking is prohibited pursuant to Article 23 of the North Carolina General Statutes. A cigar bar that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the cigar bar and smoke from the cigar bar does not migrate into an enclosed area where smoking is prohibited pursuant to Article 23 of the North Carolina General Statutes.
- (7) A private club.
- (8) A motion picture, television, theater, or other live production set. This exemption applies only to the actor or performer portraying the use of tobacco products during the production.

Section 5. Implementation Requirements.

A person who manages, operates, or controls a public place in which smoking is prohibited by this ordinance shall:

- (1) Post signs that meet all the requirements in Section 6 of this ordinance.
- (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.

⁸ Additional information about public places that local governments can regulate under G.S. 130A-498(a) is available on the North Carolina Division of Public Health website at <http://www.tobaccopreventionandcontrol.ncdhhs.gov/lgtoolkit/index.htm>.

(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 specify another appropriate law enforcement agency*) if a person in violation refuses to leave the premises.

Section 6. Signage

The signs required to be posted in enclosed areas of public places shall:

(1) Clearly state in English (*optional: insert other languages here*) that smoking is prohibited and include the international "No Smoking" symbol

(2) Be conspicuously posted at each public entrance to the enclosed area

(3) Be at least 24 square inches in size

(4) Be at least 16 point font size.

Section 7. Enforcement and Penalties

Violations by persons smoking 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 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.

Violations by persons who manage, operate, or control a public place. A local health director⁹ may take the following actions and may impose the following administrative penalty on a person who manages, operates, or controls a public place and fails to comply with the provisions of this ordinance:

(1) First violation – Written notice of the person’s first violation and notification of action to be taken in the event of subsequent violations.

(2) Second violation – Written notice of the person’s second violation and notification of administrative penalties to be imposed for subsequent violations.

(3) Third and subsequent violations – Impose an administrative penalty of not more than two hundred dollars (\$200.00).

Each day on which a violation of this ordinance occurs may be considered a separate and distinct violation.

⁹ See footnote 7.

Section 8. Declaration of Establishment as Nonsmoking and Prohibiting E-Cigarettes

Nothing in this ordinance shall be construed to prevent the owner, operator, manager, or other person in control of an establishment, facility, or outdoor area from declaring that the entire establishment, facility, or outdoor area shall be smoke free, or from declaring that the use of e-cigarettes is not permitted in the establishment, facility, or outdoor area.

Section 9. Public Education

_____ County shall engage in an ongoing program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide owners, operators, and managers of public places in their compliance with it. In doing so, the County may rely upon materials and information provided by the local health department.¹⁰

Section 10. Severability; Conflict of Laws.

If this ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the ordinance that can be given separate effect and to that end the provisions of this ordinance are declared to be severable. Whenever the provisions of this ordinance conflict with other ordinances of _____ County, this ordinance shall govern.

Section 11. Effective Date.

This ordinance shall be effective on *(date)* [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 Commissioners

ATTEST:

_____ Clerk to the Board of Commissioners

Approved as to Form:

¹⁰ See footnote 6.

_____ County Attorney