

ORDINANCE NUMBER _____

AN ORDINANCE TO PROHIBIT SMOKING AND THE USE OF OTHER TOBACCO PRODUCTS ON GROUNDS OF THE CITY/TOWN/VILLAGE'S PARKS SYSTEM AND IN BUILDINGS LOCATED IN THE CITY/TOWN/VILLAGE'S PARKS SYSTEM

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, in 2006, the United States Surgeon General determined that secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; that children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more severe asthma; that smoking by parents causes respiratory symptoms and slows lung growth in their children; and that scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke²; 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 outcomes³; 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)⁴; and

WHEREAS, the Americans for Nonsmokers' Rights Foundation reports close to 500 municipalities have eliminated exposure to secondhand smoke with 100% smoke free parks, and 100 municipalities have eliminated exposure to secondhand smoke with 100% smoke free beaches⁵; 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 (2006), <http://www.surgeongeneral.gov/library/secondhandsmoke/report/index.html>.

³ *Id.* at 12, 13, 15.

⁴ 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).

⁵ Americans for Nonsmokers' Rights Foundation, Municipalities with Smokefree Parks Laws, <http://www.no-smoke.org/pdf/SmokefreeParks.pdf> (last visited Oct. 7, 2010); Americans for Nonsmokers' Rights Foundation, Municipalities with Smokefree Beach Laws, <http://www.no-smoke.org/pdf/SmokefreeBeaches.pdf> (last visited Oct. 7, 2010).

WHEREAS, the CDC reports that smoking and smokeless tobacco use are almost always initiated and established during adolescence, that most people who begin smoking during adolescence are addicted by the age of 20, and that adolescent smokeless tobacco users are more likely than nonusers to become adult cigarette smokers⁶; and

WHEREAS, everyday an estimated 3,900 young people between 12 and 17 years of age try their first cigarette and an estimated 1,000 youth become daily cigarette smokers⁷; and

WHEREAS, children model adult behavior and benefit from positive models of non-smoking behavior and positive reinforcement of healthy lifestyle messages through exposure to smoke and tobacco free public areas⁸; and

WHEREAS, environmental organizations, including Keep America Beautiful, the Ocean Conservancy, and NC Big Sweep, consistently report cigarette butts as a leading cause of litter⁹; and

WHEREAS, children playing on the grounds of the City/Town/Village's parks system and in buildings located in the City/Town/Village's parks system are more likely to ingest cigarette butts if they are discarded and accessible¹⁰; and

WHEREAS, in 2008, American Poison Control Centers received over 7,000 reports of children under the age of 6 being poisoned by contact with tobacco products¹¹; and

⁶ Centers for Disease Control and Prevention, Youth and Tobacco Use, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm (last visited Oct. 7, 2010).

⁷ *Id.*

⁸ *Id.* (stating that one factor associated with youth tobacco use is smoking by parents or guardians).

⁹ OCEAN CONSERVANCY, TRASH TRAVELS FROM OUR HANDS TO THE SEA, AROUND THE GLOBE, AND THROUGH TIME 2010 REPORT 11 (2010), http://www.oceanconservancy.org/images/2010ICCRReportRelease_pressPhotos/2010_ICC_Report.pdf; NC Big Sweep Keep North Carolina Clean, http://www.ncbigsweep.org/?page_id=17 (last visited Oct. 8, 2010); Litter in America – Results from the Nation's Largest Litter Study, http://www.kab.org/site/DocServer/LitterFactSheet_CIGARETTE.pdf?docID=5182 (last visited Oct. 8, 2010).

¹⁰ Centers for Disease Control and Prevention, *Ingestion of Cigarettes and Cigarette Butts by Children – Rhode Island, January 1994-July 1996*, MORBIDITY AND MORTALITY WEEKLY REPORT, Feb. 14, 1997, at 125-28, <http://www.cdc.gov/mmwr/preview/mmwrhtml/00046181.htm> (stating that “ingestion of cigarettes and cigarette butts by children aged less than or equal to 6 years resulted in minor toxic effects and occurred more frequently . . . where cigarettes and cigarette wastes were accessible to children”).

¹¹ Alvin C. Bronstein, M.D., Daniel A. Spyker, PH.D., M.D., Louis R. Cantilena, Jr., M.D., PH.D., Jody L. Green, PH.D., Barry H. Rumack, M.D., and Sandra L. Giffin, RN, BSN, MS, *2008 Annual Report of the American Association of Poison Control Centers' National Poison Data System (NPDS): 26th Annual Report*, 47 CLINICAL TOXICOLOGY 911, 1039 (2009), <http://www.aapcc.org/dnn/Portals/0/2008annualreport.pdf>.

WHEREAS, on January 2, 2010, “An Act To Prohibit Smoking In Certain Public Places And Certain Places Of Employment,” North Carolina 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, the City/Town/Village of _____ is committed to protecting the health of individuals on grounds of the City/Town/Village’s parks system and in buildings located in the City/Town/Village’s parks system by eliminating exposure to secondhand smoke; and

WHEREAS, the City/Town/Village of _____ is committed to protecting the health of children on and the environment of the grounds of the City/Town/Village’s parks system and in buildings located in the City/Town/Village’s parks system by eliminating the amount of litter caused by discarded cigarette butts; and

WHEREAS, the City/Town/Village of _____ is committed to protecting the health of children by providing an environment on the grounds of the City/Town/Village’s parks system and in the buildings located in the City/Town/Village’s parks system that promotes healthy messages about refraining from smoking and using other tobacco products; and

WHEREAS, the City/Town/Village 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 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 City/Town/Village of _____ wishes to minimize the harmful effects of tobacco use among City/Town/Village employees and eliminate secondhand smoke exposure for employees and the public on grounds of the City/Town/Village’s parks system and in the buildings located in the City/Town/Village’s parks system; and

WHEREAS, this Board/Council finds and declares that, in order to protect the public health and welfare, it is in the best interest of the citizens of the City/Town/Village to adopt an ordinance prohibiting smoking and the use of tobacco on grounds of the City/Town/Village’s parks system and in buildings located on the City/Town/Village’s parks system.

NOW, THEREFORE, BE IT ORDAINED by the (*governing body*) of the City/Town/Village of _____, North Carolina, that:

Section 1. Authority.

This ordinance is enacted pursuant to G.S. 130A-498 and 160A-174(a).¹²

Section 2. Definitions

The following definitions are applicable to this ordinance.

1. "City/Town/Village building". – A building owned, leased as lessor, or the area leased as lessee and occupied by the City/Town/Village.
2. "Employee". – A person who is employed by the City/Town/Village of _____, or who contracts with the City/Town/Village or a third person to perform services for the City/Town/Village, or who otherwise performs services for the City/Town/Village with or without compensation.
3. "Grounds". – An unenclosed area owned, leased, or occupied by the City/Town/Village.
4. "Local health department". – The district health department, public health authority, or county health department, the jurisdiction of which includes the City/Town/Village.¹³
5. "Parks System". – any tract of land or body of water comprising part of the City/Town/Village's parks, playgrounds, natural areas, recreation areas, trails and greenways, and streams or other bodies of water.
6. "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.
7. "Smoking". – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.
8. "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.

¹² G.S. 130A-498 grants a City the authority to adopt and enforce rules that restrict or prohibit *smoking*. However, the authority to regulate all tobacco products falls under the City's general police power granted under G.S. 160A-174(a). If the ordinance is going to regulate all tobacco products, it is necessary to include reference to G.S. 160A-174(a) as authority for this action.

¹³ This term may be changed to reflect the specific health department under whose jurisdiction the City/Town/Village falls.

Section 3. Areas in Which Smoking and Tobacco Products are Prohibited

(a) Smoking and the use of tobacco products are prohibited:

- (1) On City/Town/Village grounds of the City/Town/Village's parks system.
- (2) In City/Town/Village buildings located in the City/Town/Village's parks system.

(b) Smoking and the use of tobacco products are prohibited on grounds of the City/Town/Village's parks system and in buildings located in the City/Town/Village's parks system being used for private events.

Section 4. Implementation Requirements

- (a) The City/Town/Village shall post signs that meet all the requirements in Section 5 of this ordinance.
- (b) The City/Town/Village shall remove all ashtrays and other smoking receptacles from the grounds of City/Town/Village's parks system and the buildings located in the City/Town/Village's parks system.
- (c) The person in charge of the grounds of the City/Town/Village's parks system or the buildings located in the City/Town/Village's parks system, or his or her designee, shall direct a person who is smoking or using a tobacco product in a prohibited area to cease and, if the person does not comply, shall contact the City/Town/Village police department (*or specify another appropriate law enforcement agency*).

Section 5. Signage

The signs required by Section 4 must:

- (a) 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.
- (b) Be of sufficient size to be clearly legible to a person of normal vision, and be conspicuously posted.
- (c) Be posted at each entrance of the buildings located in the City/Town/Village's parks system and in other locations within the buildings reasonably calculated to inform employees and the public of the prohibition.
- (d) Be posted on the grounds of the City/Town/Village's parks system in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.

Section 6. Enforcement and Penalties

(a) *Penalty for Violation.* 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 using tobacco products 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.

(b) *Additional sanctions for employees.* In addition to any penalty under subsection (a), employees of the City/Town/Village who violate this ordinance shall be subject to disciplinary action consistent with the City/Town/Village's human resources policies.

Section 7. Public Education

The City/Town/Village of _____ shall engage in an ongoing program to explain and clarify the purposes and requirements of this ordinance to employees and citizens affected by it, and to guide operators and managers in their compliance with it. In doing so, the City/Town/Village of _____ may rely upon materials and information provided by the local health department.¹⁴

Section 8. Severability; Conflict of Laws.

If this ordinance or application thereof to any person or circumstance is held invalid, 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. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 9. 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____.

Mayor

ATTEST:

_____ City/Town/Village Clerk

Approved as to Form:

¹⁴ See footnote 13.

¹⁵ 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-fee 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.