

ORDINANCE NUMBER _____

AN ORDINANCE TO PROHIBIT SMOKING AND THE USE OF OTHER TOBACCO PRODUCTS IN CITY/TOWN/VILLAGE BUILDINGS AND VEHICLES AND ON ALL CITY/TOWN/VILLAGE GROUNDS

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, 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, 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 air quality tests, concentrations of secondhand smoke in vehicles have been found to be far greater than in any other micro-environments tested, including smoke-free homes, smokers’ homes, smoke-filled bars, and outdoor air – even with a vehicle’s windows open and its fan set on high⁴; 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

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/facts_sheets/secondhand_smoke/health_effects/index.htm (last visited March 25, 2011).

⁴ 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; *see also* Ontario Medical Ass’n, Backgrounder -Tobacco Smoke Concentration in Cars, <https://www.oma.org/Resources/Documents/fTobaccoSmokeConcentrationsInCars.pdf> (last visited March 30, 2011).

proximity (such as those sitting beside someone on a park bench or children accompanying a smoking parent or guardian)⁵; 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 outcomes⁶; and

WHEREAS, the City/Town/Village of _____ is committed to providing a safe and healthy workplace in all City/Town/Village facilities for its employees and a safe and healthy environment for the visiting public; 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 municipal employees and eliminate secondhand smoke exposure for employees and the public in and on those buildings, vehicles and grounds controlled by the City/Town/Village; 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 products in all municipal buildings and vehicles and on municipal grounds.

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).⁷

⁵ 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).

⁶ 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>.

⁷ G.S. 130A-498 grants a City/Town/Village the authority to adopt and enforce rules that restrict or prohibit *smoking*. However, the authority to regulate all tobacco products falls under the City/Town/Village'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.

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. "City/Town/Village vehicle". – A passenger-carrying vehicle owned, leased, or otherwise controlled by the City/Town/Village and assigned permanently or temporarily to its employees, agencies, institutions, or facilities for official City/Town/Village business.
3. "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.
4. "Grounds". – An unenclosed area owned, leased, or occupied by the City/Town/Village.
5. "Local health department". – The district health department, public health authority, or county health department, the jurisdiction of which includes the City/Town/Village.⁸
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.

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

- (a) Smoking and the use of tobacco products are prohibited:
- (1) In any building owned, leased, or occupied, as herein defined, by the City/Town/Village.
 - (2) In any City/Town/Village vehicle owned, leased, or controlled by the City/Town/Village.
 - (3) On any grounds that are owned, leased, or occupied by the City/Town/Village.

⁸ This term may be changed to reflect the specific health department under whose jurisdiction the City/Town/Village falls.

(b) Smoking and the use of tobacco products are prohibited in City/Town/Village buildings and on City/Town/Village grounds 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 its buildings and grounds, except for ashtrays and receptacles for sale and not intended for use on the premises.
- (c) The person in charge of the City/Town/Village building, vehicle, or grounds, 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 3 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 to a City/Town/Village building and in other locations within the building reasonably calculated to inform employees and the public of the prohibition.
- (d) Be posted in 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.
- (e) Be posted on 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

- (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 may rely upon materials and information provided by the local health department.⁹

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:

City/Town/Village Attorney¹⁰

⁹ See footnote 8.

¹⁰ 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.