

**RESOLUTION TO ADOPT AN ORDINANCE PROHIBITING SMOKING AND THE
USE OF E-CIGARETTES AND TOBACCO PRODUCTS ON CERTAIN TOWN
PROPERTY**

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, according to NCGS § 160A-174(a), a city may by ordinance prohibit acts or conditions detrimental to the health, safety, or welfare of its citizens; 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

WHEREAS, the CDC reports that smoking and smokeless tobacco use are frequently initiated and established during adolescence, that most people who begin smoking during adolescence are

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>.

addicted by the age of 20, and that adolescent smokeless tobacco users are more likely than nonusers to become adult cigarette smokers; 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-free and tobacco-free public areas; and

WHEREAS, small children playing in town athletic fields and playgrounds are more likely to ingest cigarette butts if they are discarded and accessible; and in 2008, American Poison Control Centers received over 7,000 reports of children under the age of 6 being poisoned by contact with tobacco products; and

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

WHEREAS, the Town of Waynesville 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 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;

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen of the Town of Waynesville, North Carolina, that it is in the best interests of the citizens of the Town of Waynesville to adopt an ordinance prohibiting smoking and the use of e-cigarettes and tobacco products in Town buildings, vehicles, grounds, and the town park system and prohibiting smoking and the use of e-cigarettes on sidewalks in the Town business districts.

Adopted this day of _____, 20____.

TOWN OF WAYNESVILLE

Gavin A. Brown, Mayor

ATTEST:

Amanda W. Owens, Town Clerk

Marcia D. Onieal, Town Manager

Prohibition of Smoking and E-Cigarette and Tobacco Use in Town Buildings, Town Vehicles, Town Grounds, and the Town Park System and Prohibition of Smoking and the Use of E-Cigarettes on Sidewalks in Town Business Districts.

Section 42.5. Authority.

This section is enacted pursuant to authority conveyed by N.C.G.S. §130A-498 and 160A-174(a).

Section 42.6. Definition of Terms.

The following definitions are applicable to this Section:

- a. *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.
- b. *Employee* – A person who is employed by the Town of Waynesville, or who contracts with the Town or a third person to perform services for the Town, or who otherwise performs services for the Town with or without compensation.
- c. *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 presences of openings for ingress and egress, on all sides or on all sides but one.
- d. *Sidewalk* – A sidewalk that is owned, leased, or occupied by the Town of Waynesville, including those that are controlled and maintained by the Town of Waynesville.
- e. *Smoking* – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.
- f. *Temporary Special Event or Activity* - Any indoor or outdoor public gathering or celebration sponsored by the Town of Waynesville, including dance, music, and dramatic productions, entertainment, amusements, festivals, carnivals, parades, bicycle rides, walks, and runs and any event that will not comply with usual traffic regulations or controls, requiring temporary closure of streets, sidewalks or alleyways and for which permission is granted by the Town of Waynesville Board of Aldermen.
- g. *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, chewing tobacco, snus, and snuff. 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.

- h. *Town building* – A building owned, leased as lessor, or the area leased as lessee and occupied by the Town and includes, but is not limited to, offices, restrooms, indoor walkways, stairwells, entrances, passageways, break rooms, lobbies, and work areas.
- i. *Town grounds* —An unenclosed area owned, leased, or occupied by the Town of Waynesville.
- j. *Town park system* – Any tract of land or body of water comprising part of the Town of Waynesville’s parks, playgrounds, recreational areas, trails, and greenways, including but not limited to the thirty-nine acres of parks identified as: Waynesville Recreation Center, Waynesville State Park, Waynesville Disc Golf Course, Old Armory Recreation Center, East Street Park, Recreation Park, Vance Street Park, Sulphur Springs Park, Hazelwood Park, Pepsi Dog Park and any areas designated as parks or greenways in the future.
- k. *Town vehicle* – A passenger-carrying vehicle owned, leased, or otherwise controlled by the Town of Waynesville and assigned permanently or temporarily by the Town of Waynesville to Town employees, agencies, institutions, or facilities for official Town business.
- l. *Universal ‘No Smoking’ Symbol* – Symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.
- m. *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 42.7 Areas where smoking and the use of tobacco products and e-cigarettes are prohibited.

A. Smoking and the use of tobacco products and e-cigarettes are prohibited in the following locations:

- (1) Town buildings;
- (2) Town grounds;
- (3) Town vehicles;
- (4) The Town park system;
- (5) Town buildings and grounds and privately owned buildings and grounds while Temporary Special Events or Activities, as defined above, are taking place.

B. Smoking and the use of tobacco products and e-cigarettes are not prohibited within the confines of private vehicles while parked on Town grounds, in the Town park system, or anywhere where smoking and the use of tobacco products and e-cigarettes are otherwise prohibited by this section.

Section 42.8 Areas where smoking and the use of e-cigarettes are prohibited.

- (a) Smoking and the use of e-cigarettes are prohibited on sidewalks in all districts classified as business districts, including, but not limited to, the Municipal Service District (downtown), the Central Business District (CBD), Hazelwood Business District (H-BD), South Main Street Business District (SM-BD), Regional Center (RC),

Dellwood/Junaluska Regional Center (DJ-RC), Hyatt Creek Regional Center (HC-RC), and Russ Avenue Regional Center (RA-RC), as outlined by the Town of Waynesville Code of Ordinances, Appendix A – Land Development Standards, Chapter 2 – District Provisions, Sections 2.2, 2.3.6 and 2.3.7.

Section 42.9 Litter from tobacco products and e-cigarette devices

- (a) It shall be unlawful for anyone to deposit any portion of a cigarette, cigar, smoking or e-cigarette device, or any refuse related to smoking on property, sidewalks, streets, alleys, and rights-of-way owned, leased, or occupied by the Town, except in a receptacle designated for that purpose. Littering or failure to use indicated receptacles is subject to civil penalty.
- (b) It shall be unlawful for anyone to spit smokeless tobacco anywhere on Town grounds or in the Town park system. Spitting of smokeless tobacco on Town grounds is subject to civil penalty.

Section 42.10 Implementation Requirements

- (a) The Town shall post signs that meet all the requirements in Section 42.11 of this ordinance.
- (b) The Town shall remove all ashtrays and other smoking receptacles from Town buildings and grounds.
- (c) Town employees shall make every effort to ensure compliance with this policy, including contacting law enforcement personnel if necessary.

Section 42.11 Signage

The signs required by Section 42.10 must:

- (a) State that smoking is prohibited and include the universal “No smoking” symbol or state that smoking and the use of tobacco products are prohibited and include the universal “No Smoking and Use of Tobacco Products Prohibited” symbol, as applicable. In lieu of or in addition to stand-alone signage, smoking, e-cigarette and tobacco use restrictions can be incorporated into comprehensive rules signage in text form where feasible.
- (b) Be of sufficient size to be clearly legible to a person of normal vision and be conspicuously posted.
- (c) Be posted at entrances to Town buildings and in other locations within the buildings reasonably calculated to inform employees and the public of the prohibition.

(d) Be posted on Town grounds in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.

(e) It shall be unlawful for any person to remove or deface any placard or sign erected by or under the authority of this section.

Section 42.12 Enforcement and Penalties

(a) *Penalty for Violation.* Violation of Sections 42.7, 42.8, and 42.9 shall be punishable by a civil penalty of not more than fifty dollars (\$50.00).

(b) A citation may be issued by any Town employee acting in an enforcement capacity and within their responsibilities related to the issuing of citations. A citation issued under this section has no consequence other than as set forth in (a) above, and no court costs may be assessed.

(c) *Additional sanctions for employees.* In addition to any penalty under this section, employees of the Town who violate this ordinance shall be subject to disciplinary action consistent with the Town’s human resources policies.

Section 42.13 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 the Town of Waynesville, this ordinance shall govern.

Section 42.14 Effective Date

This ordinance shall be effective six months after the date adopted.

Adopted this day of _____, 20__.

TOWN OF WAYNESVILLE

Gavin A. Brown, Mayor

ATTEST