

## **AN RESOLUTION TO ADOPT AN ORDINANCE PROHIBITING SMOKING IN CERTAIN PUBLIC PLACES IN THE TOWN OF WAYNESVILLE**

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>1</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, 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>2</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>3</sup>; 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 antifreeze<sup>4</sup>; 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; and

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<sup>1</sup> Centers for Disease Control and Prevention, Smoking and Tobacco Use Fast Facts, [http://www.cdc.gov/tobacco/data\\_statistics/facts\\_sheets/fast\\_facts/#toll](http://www.cdc.gov/tobacco/data_statistics/facts_sheets/fast_facts/#toll) (last visited Oct. 7, 2010).

<sup>2</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>3</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>4</sup> 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 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, this Board/Council finds and declares that, in order to protect the public health and welfare, it is in the best interests of the citizens of the Town of Waynesville to adopt an ordinance prohibiting smoking in public places.

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen of the Town of Waynesville, 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 health department, public health authority, or county health department, the jurisdiction of which includes the Town.<sup>5</sup>
- (6) "Local health director". – Administrative head of the local health department appointed pursuant to G.S. Chapter 130A.<sup>6</sup>
- (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<sup>7</sup>

Except as provided in Section 4 of this Ordinance, smoking shall be prohibited in all enclosed areas of public places within the Town of Waynesville.<sup>8</sup>

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

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<sup>5</sup> This term may be changed to reflect the specific health department under whose jurisdiction the City/Town/Village falls.

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

<sup>7</sup> 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, 496.

<sup>8</sup> 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>.

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

## Section 6. Signage

(a) 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 civil penalty of not more than fifty dollars (\$50.00). 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 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 director<sup>9</sup> 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.

## 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

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<sup>9</sup> See footnote 6.

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

The Town of Waynesville 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 Town of Waynesville may rely upon materials and information provided by the local health department.<sup>10</sup>

Section 10. 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 11. Effective Date.

This ordinance shall be effective on July 1, 2015.

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

**TOWN OF WAYNESVILLE**

\_\_\_\_\_  
Gavin A. Brown, Mayor

ATTEST:

\_\_\_\_\_  
Amanda W. Owens, Town Clerk

Approved as to Form:

\_\_\_\_\_  
Woodrow Griffin, Town Attorney

<sup>10</sup> See footnote 5.

## **Prohibition of Tobacco Use in Town Buildings, Town Vehicles, on Town Grounds and in Specific Public Areas**

### **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) *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.
- (b) *Grounds* —An unenclosed area owned, leased, or occupied by the Town of Waynesville.
- (c) *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.
- (d) *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.
- (e) *Local Health Department* – The public health authority, or Haywood County Health Department, the jurisdiction of which includes the Town of Waynesville.
- (f) *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.
- (g) *Smoking* – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.
- (h) *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.

- (i) *E-cigarettes/vapor product* — any electronic oral device, such as one composed of heating elements, battery, and/or electronic circuit, which provides a vapor or 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.

## **Section 42.7            Areas where use of tobacco products is prohibited**

A. Tobacco products are prohibited in the following locations:

- (1) Inside all buildings or structures owned or leased by the town.
- (2) In any vehicle owned or leased by the town.
  - a. No person shall smoke or use any tobacco product or e-cigarette/vapor product as defined in section 42.6 (h) and (i) in any Town of Waynesville vehicle.
- (3) On the following grounds and locations owned or leased by the town\*:
  - a. On all sidewalks in front of any building or structure owned or leased by the town.
  - b. Within a fifty (50) foot radius of any public entrance to any building or structure owned or leased by the town.
  - c. Within a thirty (30) foot radius of any non-public entrance to any building or structure owned or leased by the town.
  - d. Within any park or greenway owned or leased by the town, including but not limited to the thirty-nine (39) acres of parks identified as: Waynesville Recreation Center, Waynesville Skate 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 future areas designated as parks or greenways.

\*Individuals may use tobacco products within the confines of their personal vehicles.

- (4) Smoking is prohibited in the following public areas:
  - a. Within a fifty (50) foot radius of any public entrance to any building or structure within the Municipal Service District and including but not limited to 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, Section 2.2 and 2.3.6 and 2.3.7, as applicable.

**Section 42.8 Litter from tobacco products**

- (a) It shall be unlawful for anyone to deposit any portion of a cigarette, cigar, smoking device, or any refuse related to smoking on property, sidewalks, streets, alleys and rights-of-way owned, leased or maintained 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 including parks and recreational areas is prohibited and is subject to civil penalty.

**Section 42.9 Authority of Town Manager to designate smoking areas**

- (a) The Town Manager shall have the authority to designate smoking areas for all Town grounds.

**Section 42.10 Notice Required**

- (a) Clear and conspicuous signs shall be posted in every building and facility and/or grounds wherein tobacco use is regulated by this article as follows:
  - 1. Stand alone No Smoking, No Smokeless Tobacco, or other signs stating the tobacco use policy shall have letters of not less than one inch in height, the international No Smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it), or the No Smokeless Tobacco symbol.
  - 2. In lieu of or in addition to stand alone signage, tobacco use restrictions can be incorporated into comprehensive rules signage in text form where feasible.
- (b) Signs shall be conspicuously posted in a position clearly visible on main entry points into Town buildings.
- (c) Signs shall be conspicuously posted outside, within, or near recreational public places where tobacco use is prohibited, but not at every conceivable entry point whereby doing so would overburden the park or area with signage.
- (d) It shall be unlawful for any person to remove to deface any placard or sign erected by or under the authority of this section.

**Section 42.11            Implementation Requirements**

- (a) The Town shall post signs that meet all the requirements in Section 42.11 of this ordinance.
- (b) The Town may locate ash urns or other smoking receptacles in designated smoking areas. Absence of smoking receptacles does not relieve tobacco users from legally disposing of tobacco waste nor does it nullify a designated smoking area.
- (c) Town staff shall make every effort to ensure compliance with this policy, including contacting law enforcement personnel if necessary.

**Section 42.12            Enforcement and Penalties**

- (a) *Penalty for Violation.* Violation of Sections 42.7 or 42.8 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.