

AN ORDINANCE TO PROHIBIT SMOKING AND THE USE OF OTHER TOBACCO PRODUCTS ON GROUNDS OF THE MECKLENBURG COUNTY'S PARK SYSTEM AND IN BUILDINGS LOCATED IN THE COUNTY'S PARK 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)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, 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 antifreeze⁷; and it has been found that the emitted aerosol is not just water vapor, but contains nicotine and can contain additional toxins, making it less safe than clean air to the nearby non-user.

WHEREAS, Experimentation and use of E-cigarettes have risen sharply among young people according to a recently released CDC study: E-cigarette experimentation and recent use doubled among U.S. middle and high school students during 2011–2012, resulting in an estimated 1.78 million students having ever used e-cigarettes as of 2012. Moreover, in 2012, an estimated 160,000 students who reported ever using e-cigarettes had never used conventional cigarettes⁸; 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 smokers⁹; 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 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>.

⁸ Centers for Disease Control and Prevention, Tobacco Product Use Among Middle and High School Students — United States, 2011 and 2012. *MMWR* 2013;62:893-897.

⁹ 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).

¹⁰ *ID.* (Stating that one factor associated with youth tobacco use is smoking by parents or guardians).

¹¹ 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.ncbigssweep.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).

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 areas¹⁰; and

WHEREAS, environmental organizations, including Keep America Beautiful, the Ocean Conservancy, and NC Big Sweep, consistently report cigarette butts as a leading cause of litter¹¹; and

WHEREAS, children playing on the grounds of the County's Park System and in buildings located in the County's Park System are more likely to ingest cigarette butts if they are discarded and accessible¹²; 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 products¹³; 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 (codified as N.C.G.S. 130A-498), 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, Mecklenburg County is committed to protecting the health of individuals on the Grounds of the County's Park System and in buildings located in the County's Park System by eliminating exposure to secondhand smoke; and

WHEREAS, Mecklenburg County is committed to protecting the health of children on and the environment of the Grounds of the County's Park System and in buildings located in the County's Park System by eliminating the amount of litter caused by discarded cigarette butts; and

WHEREAS, Mecklenburg County is committed to protecting the health of children by providing an environment on the Grounds of the County's Park System and in the buildings located in the County's Park System that promotes healthy messages about refraining from smoking and using other tobacco products; and

WHEREAS Mecklenburg County 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, Mecklenburg County wishes to minimize the harmful effects of tobacco use among County employees and eliminate secondhand smoke exposure for employees and the public on Grounds of the County's Park System and in the buildings located in the County's Park System; and

WHEREAS, this Board of Commissioners finds and declares that, in order to protect the public health and welfare, it is in the best interest of the citizens of the County to adopt an ordinance prohibiting smoking and the use of tobacco products on Grounds of the County's Park System and in buildings located in the County's Park System.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Mecklenburg County, North Carolina, that:

Section 1. Authority.

This ordinance is enacted pursuant to G.S. 130A-498 and 153A-121(a).

Section 2. Definitions

The following definitions are applicable to this ordinance.

1. "County building". A building owned, leased as lessor, or the area leased as lessee and occupied by the County except as exempted by Section 4.
2. "Employee". A person who is employed by Mecklenburg County, or who contracts with the County or a third person to perform services for the County, or who otherwise performs services for the County with or without compensation.
3. "Grounds". An unenclosed area owned, leased to, or otherwise occupied by the County except as exempted by Section 4.
4. "Mecklenburg County Health Department". The County health department, the jurisdiction of which includes all of Mecklenburg County.
5. "Park System". Any tract of land or body of water comprising part of the County's parks, playgrounds, natural areas, recreation areas, trails and greenways, and streams or other bodies of water except as exempted by Section 4.
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. "Special Events". Events held in either Freedom Park, Reedy Creek Park or Matthews Sportsplex, such as (i) festivals, (ii) concerts, or (iii) tournaments or other athletic events involving multiple athletic fields, when large number of people are expected to attend such events.

9. "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; e-cigarettes; 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 Tobacco Products are Prohibited

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

- (1) On Grounds of the County's Park System.
- (2) In County buildings located in the County's Park System.
- (3) During "Special Events" in those areas of Freedom Park, Reedy Creek Park and Matthews Sportsplex designated by the Director of the Park and Recreation Department as Areas in Which Smoking and Tobacco Products are Prohibited during the Special Events, and which during the Special Events are posted with Universal 'No Smoking and Use of Tobacco Products Prohibited' Symbol signs as required by Sections 5 and 6.

(b) Smoking and the use of tobacco products are prohibited on Grounds of the County's Park System and in buildings located in the County's Park System even while being used for private events.

Section 4. Exceptions: Where Smoking and Tobacco Products are not Prohibited

(a) This Ordinance does not apply to any golf course or other golf facility located on property owned by the County or leased to the County, or to any building located on any golf course or other golf facility on property owned by the County or leased to the County. As of the date of adoption of this Rule, the following golf courses and golf facility fit within this exemption and therefore are not covered by this Ordinance: Cadillac Golf Ranch, Charles T. Myers Golf Course, Dr. Charles L.

Sifford Golf Course, Renaissance Golf Course, Sunset Hills Golf Course, and the Tradition Golf Course.

(b) This Ordinance does not apply to the grounds of any parks classified by the County as Regional Parks except as otherwise provided in Section 3.(a)(3) during Special Events held in Freedom Park, Reedy Creek Park and Matthews Sportsplex, but it does apply to buildings located in all of the Regional Parks. A current list of Regional Parks is attached as Exhibit A.

Section 5. Implementation Requirements

(a) County staff shall post signs that meet all the requirements in Section 6 of this Ordinance.

(b) County staff shall remove all ashtrays and other smoking receptacles from the Grounds of the County's Park System and buildings located in the County's Park System.

(c) The Director of the Park and Recreation Department, 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 police department having jurisdiction in the area where the violation occurred.

Section 6. Signage

The signs required by Section 5 must:

(a) State in English and Spanish 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 County's Park 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 County's Park System in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.

Section 7. 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 twenty-five dollars (\$25.00). 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.

No person can be convicted under both this Ordinance and the “Mecklenburg County Health Rule to Prohibit Smoking in Indoor Public Places in Mecklenburg County, City of Charlotte, and Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville and to Prohibit Smoking in County, City, and Town Buildings, Vehicles and Grounds” for the same violation.

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

Section 8. Public Education

Mecklenburg County 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 County may rely upon materials and information provided by the Mecklenburg County Health Department.

Section 9. Abrogation

This Ordinance supersedes any previous County ordinance regulating smoking or tobacco that is less restrictive in County owned or leased properties.

This Ordinance is not intended to repeal any greater restriction imposed by any State law or other local government ordinance. Wherever the provisions of any other law, ordinance, regulation or restriction impose higher standards than are required by the provisions of this Ordinance, this Ordinance does not prohibit enforcement of any such law, ordinance, regulation or restriction.

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 Mecklenburg County, this ordinance shall govern.

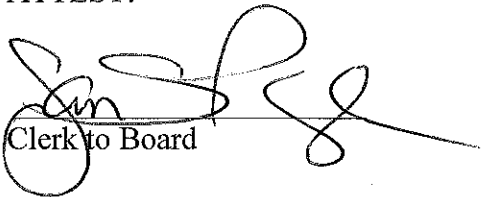
Section 11. Effective Date.

This ordinance shall be effective on March 18, 2015.

Adopted this 21st day of October, 2014.


Chairman, Mecklenburg County Board of Commissioners

ATTEST:


Clerk to Board

Approved as to Form:


County Attorney

EXHIBIT A

Regional Parks as of October 1, 2014

Bradford Park	17005 DAVIDSON-CONCORD RD	Developed	264.00	Regional Park
Berewick Park	5910 Dixie River Road	Under Construction	209.9	Regional Park
Colonel Francis J. Beatty Park	4330 WEDDINGTON RD	Developed	264.70	Regional Park
David B. Waymer Flying Field	15401 HOLBROOKS RD	Developed	154.51	Regional Park
Freedom Park	2435 CUMBERLAND AVE	Developed	104.89	Regional Park
Harrisburg Road Park	8045 HARRISBURG RD	Developed	106.01	Regional Park
Hornet's Nest Park	6331 BEATTIES FORD RD	Developed	140.36	Regional Park
Idlewild Road Park	10512 IDLEWILD RD	Developed	127.90	Regional Park
Jetton Park On Lake Norman	19000 JETTON RD	Developed	104.00	Regional Park
Mallard Creek Park	3001 JOHNSTON OEHLER RD	Developed	310.32	Regional Park
Nevin Park	6000 STATESVILLE RD	Developed	196.42	Regional Park
Reedy Creek Park	2900 ROCKY RIVER RD	Developed	179.28	Regional Park
Renaissance Park	1200 W TYVOLA RD	Developed	144.68	Regional Park
Robert L. Smith Park	1604 LITTLE ROCK RD	Developed	209.15	Regional Park
US National Whitewater Center	5000 WHITEWATER CENTER PKY	Developed	400.00	Regional Park
William R. Davie Park	4635 PINEVILLE-MATTHEWS RD	Developed	106.65	Regional Park
Elon Park	11401 ARDREY KELL RD	Developed	118.47	Regional Park
McAlpine Creek Park	8711 MONROE RD	Developed	109.39	Regional Park
Matthews Sportsplex	1601 TANK TOWN ROAD	Phase I	196.41	Regional Park/Sportsplex