

NEW HANOVER COUNTY HEALTH AND HUMAN SERVICES BOARD RULE

A RULE TO PROHIBIT THE USE OF SMOKING AND E-CIGARETTES IN COUNTY, TOWN AND CITY BUILDINGS, VEHICLES AND GROUNDS AND IN PUBLIC PLACES IN THE COUNTY OF NEW HANOVER

WHEREAS, according to the Centers for Disease Control and Prevention (CDC), Smoking and E-Cigarette use and secondhand smoke exposure are leading preventable causes of illness and premature death in North Carolina and the nation;¹ and

WHEREAS, the CDC reports that nearly 90% of smoking and E-Cigarette use are initiated and established before age 18, that most people who begin smoking during adolescence; 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 smokers;¹ 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;² 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 smoking and E-Cigarette free public areas³;

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;⁴ 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);⁵ 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 high;⁶ and

WHEREAS, in 2016, the U.S. Surgeon General's Report on E-cigarette Use Among Youth and Young Adults stated that emitted e-cigarette aerosol is not just water vapor, but contains nicotine and can contain additional toxins, making it less safe than clean air. Furthermore, e-cigarette use has the potential to involuntarily expose children and adolescents, pregnant women, and nonusers to aerosolized nicotine and, if the products are altered, to other psychoactive substances. Therefore, clean air—free of both smoke and e-cigarette aerosol—remains the standard to protect health;⁷

- ¹ Centers for Disease Control and Prevention, Smoking and Smoking and E-Cigarette Use Fast Facts, <http://www.cdc.gov/smoking and E-Cigarette/data statistics/fact sheets/fast facts/#toll> (updated Oct. 7, 2010).
- ² U.S. DEPT OF HEALTH & HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO SMOKING AND E-CIGARETTE SMOKE: A REPORT OF THE SURGEON GENERAL 11, 14-16 (2006), <http://www.surgeon-general.gov/LibraLy/secondhandsmoke/report/index.html>.
- ³ See Above Reference Note 1.
- ⁴ See *id* at 15; Centers for Disease Control and Prevention, Smoking and Smoking and E-Cigarette Use Health Effects of Secondhand Smoke, <http://www.cdc.gov/smoking and E-Cigarette/data statistics/fact sheets/secondhand smoke/health effects/index.htm> (last visited March 25, 2011).
- ⁵ Neil E. Klepeis, Wayne R. Ott, and Paul Switzer, *Real-time Measurement of Outdoor Smoking and E-Cigarette 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, 165 (2009).
- ⁶ 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://smoking and E-Cigarettesmoke.exposurescience.org/pub/reprints/Ott_CarStudy.pdf; see also Ontario Medical Ass'n, *Background - Smoking and E-Cigarette Smoke Concentration in Cars*, <https://www.oma.org/Resources/Documents/fSmoking and E-CigaretteSmokeConcentrationsInCars.pdf>
- ⁷ U.S. DEPT OF HEALTH & HUMAN SERVS., *E-cigarette Use Among Youth and Young Adults: A Report of the Surgeon General*, 2016, <https://www.surgeongeneral.gov/library/2016ecigarettes/index.html>

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, pursuant to N.C. Gen. Stat. 130A-39(a), local boards of health have the responsibility to protect and promote the public's health and to adopt rules necessary for that purpose; and

WHEREAS, the New Hanover County Health and Human Services Board is committed to providing a safe and healthy workplace in all County and Town facilities for County and Town employees and a safe and healthy environment for New Hanover County citizens and the visiting public; and

WHEREAS, the New Hanover County Health and Human Services Board provides support to employees and residents who want to quit the use of smoking and E-Cigarette and also encourages them to talk to their health care provider about quitting, ask about appropriate pharmacotherapy available through their health insurance plan or employee's insurer, and to use the free quitting support services of the North Carolina Smoking and E-Cigarette Use Quitline at 1-800-QUIT-NOW (1-800-784-8669); and

WHEREAS, the New Hanover County Health and Human Services Board wishes to minimize the harmful effects of smoking and E-Cigarette use among New Hanover County and City employees and eliminate secondhand smoke exposure for employees, county citizens and the visiting public in public places and in those buildings, vehicles, and grounds controlled by New Hanover County and the Towns of Wrightsville Beach, Kure Beach, Carolina Beach and, the City of Wilmington in New Hanover County; and

WHEREAS, the New Hanover County Health and Human Services Board finds and declares that, in order to protect the public health and safety, it is in the best interests of the citizens of New Hanover County to adopt a Rule prohibiting the use of smoking and E-Cigarette products in public places and in County, City, and Town buildings, grounds, and vehicles.

WHEREAS, while use of tobacco in any form poses adverse health consequences and is to be strongly discouraged, this Rule specifically addresses smoking and e-cigarette use given ensuing secondary health impacts.

NOW, THEREFORE, THE NEW HANOVER COUNTY HEALTH AND HUMAN SERVICES BOARD ADOPTS THE FOLLOWING RULES:

Section 1. Authority

This Rule is enacted pursuant to N.C. Gen. Stat. 130A-498 and 130A-39(a).

Section 2. Definitions

The following definitions are applicable to this Rule.

- 1) "Town" or "Towns" and "City". The Towns of Carolina Beach, Wrightsville Beach, Kure Beach and, the City of Wilmington within New Hanover County.
- 2) "Town/City Building". A building owned, leased as lessor, or the area leased as lessee and occupied by the Towns of Carolina Beach, Wrightsville Beach, Kure Beach and, the City of Wilmington.
- 3) "Town/City Streets and Grounds". An unenclosed area owned, leased or occupied by the Towns of Carolina Beach, Wrightsville Beach, Kure Beach and the City of Wilmington, excepting where Smoking and E-Cigarette Use is expressly permitted by Town/City within designated areas.
- 4) "Town/City Vehicle". A passenger carrying vehicle owned, leased, or otherwise controlled by the Towns of Carolina Beach, Wrightsville Beach, Kure Beach and, the City of Wilmington in New Hanover County and assigned permanently or temporarily to their employees, agencies, institutions, or facilities for official Town/City business and public conveyances available to the general public.
- 5) "Bus Stop". A designated area, whether enclosed or unenclosed, on County/Town/City Streets and Grounds where buses stop for passengers to board or exit a bus. This term shall include areas at bus stops and shelters, beginning at the bus stop sign and extending for a radius of one hundred (100) feet around the bus stop sign. This area expressly excludes any private property that may fall within the one-hundred-foot radius of the bus stop sign or any area exempt by this Rule.
- 6) "County Building". A building owned, leased as lessor, or the area leased as lessee

and occupied by New Hanover County.

- 7) "County Grounds". An unenclosed area owned, leased or occupied by New Hanover County, excepting where Smoking and E-Cigarette Use is expressly permitted by County within designated areas.
- 8) "County Vehicle". A passenger-carrying vehicle owned, leased, or otherwise controlled by New Hanover County and assigned permanently or temporarily to its employees, agencies, institutions, or facilities for official County business and public conveyances available to the general public.
- 9) "Employee". A person who is employed by the County of New Hanover or by the Towns of Carolina Beach, Wrightsville Beach, Kure Beach and, the City of Wilmington in New Hanover County; or who contracts with the County, Towns and City; a third person who performs services for the County, Towns and City; or who otherwise performs services for the County or Towns/City with or without compensation.
- 10) "Local Health Department". The New Hanover County Health Department, the jurisdiction of which includes New Hanover County and the Towns of Carolina Beach, Wrightsville Beach, Kure Beach and, the City of Wilmington.
- 11) "Local Health Director". Administrative head of the New Hanover County Health Department appointed pursuant to N.C. Gen. Stat. Chapter 130A.
- 12) "Sidewalk". Any sidewalk that is owned, leased, or occupied by the County, Towns or City, including but not limited to, those maintained or controlled by the County, Towns and City and Towns/City and those that abut the County, Towns and City and public school grounds.
- 13) "Smoking". The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted smoking and E-Cigarette product.
- 14) "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.
- 15) "Cigar bar". An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of N.C. Gen. Stat. 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.
 - d. Revenue generated from other smoking and E-Cigarette sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies the definition of cigar bar.
- 16) "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.
- 17) "Lodging establishment". An establishment that provides lodging for pay to the public.
- 18) "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 N.C. Gen. Stat. 105-130.2(1). For the purposes of this Rule, private club includes country club.
- 19) "Private residence". A private dwelling that is not a child care facility, as defined in N.C. Gen. Stat. 110-86(3), and not a long-term care facility, as defined in N.C. Gen. Stat. 131E-114.3(a)(1).
- 20) "Private vehicle". A privately owned vehicle that is not used for commercial or employment purposes.
- 21) "Public place". An enclosed area to which the public is invited or in which the public is permitted.
- 22) "Smoking and E-Cigarette shop". A business establishment, the main purpose of which is the sale of smoking and E-Cigarette, smoking and E-Cigarette products, and accessories for such products, that receives no less than seventy-five percent (75%) of its total annual revenues from the sale of smoking and E-Cigarette, smoking and E-Cigarette products, and accessories for such products, and does not serve food or alcohol on its premises.
- 23) "Smoking and E-Cigarette Use". Included but not limited to vaping, smokeless smoking and E-Cigarette products.
- 24) "E-Cigarette or Electronic cigarette". Any electronic oral device that employs a mechanical heating element, battery or electronic circuit regardless of shape or size, that can be used to heat a liquid nicotine solution or any other substance, and the use of 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 3. Areas in Which Smoking and E-cigarette use is Prohibited

- 1) Smoking and E-cigarette use is prohibited in all of the following:
 - a. In any County, Town and City buildings.
 - b. In any County, Town and City vehicles.
 - c. On any County, Town and City streets and grounds, except where expressly permitted by County/Town or City within designated areas.
 - d. All other County, Town and City property including, but not limited to:
 - i. County, Town and City Parks Systems including playgrounds and
 - ii. Athletic fields and trails;
 - iii. Bus Stops on County/Town or City grounds;
 - iv. Sidewalks;
 - v. Public Transportation;
 - e. Smoking and E-Cigarette use is prohibited in County buildings and Towns and City buildings and grounds being used for private events.
 - f. Except as provided in Section 4 of this Rule, smoking and E-Cigarette use shall be prohibited in all public places within the County and Towns and City, including but not limited to:
 - i. Child Care Facilities;
 - ii. Shopping Malls;
 - iii. Elevators;
 - iv. Polling Places;
 - v. Public Restrooms;
 - vi. Restaurants;
 - vii. Bars;
 - viii. Retail Stores;
 - ix. Galleries, Libraries and Museums;
 - x. Theaters, Entertainment and Sports Arenas;
 - xi. Gaming facilities including, but not limited to, Internet Sweepstakes

and Video Poker;

- xii. Lobbies, Hallways and other Common Areas in Apartment Buildings, Condominiums, Retirement Facilities, Nursing Homes and other Multi-Unit Residential Facilities; and
- xiii. Office and Other Commercial Establishments Where the Public is invited, or permitted.

Section 4. Exceptions: Where Smoking and E-Cigarette use is Not Regulated By This Rule

- 1) In accordance with N.C. Gen. Stat. 130A-498(bl) and hereinunder, smoking or E-Cigarette use is not prohibited by this Rule in the following places:
 - a. A private residence.
 - b. A private vehicle.
 - c. A smoking and E-Cigarette shop if smoke or vapor from the business does not migrate into an enclosed area where smoking or E-cigarette use is prohibited pursuant Article 23 of the North Carolina General Statutes or hereinunder. A smoking and E-Cigarette shop that begins operation after July 1, 2009, may only allow smoking if it is located in a freestanding structure occupied solely by the smoking and E-Cigarette shop and smoke or vapor from the shop does not migrate into an enclosed area where smoking or E-cigarette use is prohibited pursuant to Article 23 of the North Carolina General Statutes or hereinunder
 - d. All of the premises, facilities, and vehicles owned, operated, or leased by any smoking and E-Cigarette products processor or manufacturer, or any smoking and E-Cigarette leaf grower, processor, or dealer.
 - e. A designated smoking or E-Cigarette guest room in a lodging establishment. No greater than twenty percent (20%) of a lodging establishment's guest rooms may be designated smoking or E-Cigarette guest rooms.
 - f. A cigar bar if smoke or vapor from the cigar bar does not migrate into an enclosed public place where smoking or E-Cigarette use is prohibited pursuant to Article 23 of the North Carolina General Statutes or hereinunder. A cigar bar that begins operation after July 1, 2009, may only allow smoking or E-Cigarette use if it is located in a freestanding structure occupied solely by the cigar bar and smoke or vapor from the cigar bar does not migrate into an enclosed area where smoking or E-Cigarette use is prohibited pursuant to Article 23 of the North Carolina General Statutes or hereinunder.

- g. A private club.
 - h. A motion picture, television, theater, or other live production set. This exemption applies only to the actor or performer portraying the use of smoking and E-Cigarette products during the production.
- (2) This Rule does not apply to any property owned, leased, or maintained by the State of North Carolina.

Section 5. Implementation Requirements

- (1) The Implementation period shall be XXXX to XXXXX.
- (2) During the Implementation period the County, Town and City where smoking and E-Cigarette use is prohibited by the Rule shall:
- a. Post signs that meet all the requirements in Section 6 of this Rule.
 - b. 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.
 - c. Direct a person who is smoking or using a smoking or E-Cigarette product in a prohibited area to extinguish or discard the smoking and E-Cigarette product and, if the person does not comply, ask the person to leave the premises.
 - d. If a person in violation refuses to leave the premises, contact the County Sheriff's Office or the police department in the Town or City in which the violation occurred. An oral or written notice shall be provided to the person.
 - e. Engage in public education as provided in Section 8 below.
- (3) During the implementation period a person who manages, operates, or controls a public place in which smoking is prohibited by this Rule shall:
- a. Post signs that meet all the requirements in Section 6 of this Rule.
 - b. 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.
 - c. Direct a person who is using smoking and E-Cigarette products in a prohibited area to extinguish or discard the smoking and E-Cigarette product and, if the person does not comply, ask the person to leave the premises.

- d. If a person in violation refuses to leave the premises, contact the County Sheriff's Office or the police department in the Town or City in which the violation occurred. An oral or written notice shall be provided to the person.

Section 6. Signage

- (1) The County, Towns and City where smoking and E-Cigarette use is prohibited by the Rule shall post signs as required by Section 5 that must:
 - a. State in English and in Spanish that smoking and E-Cigarette use is prohibited utilizing "No Smoking and E-Cigarette" symbols.
 - 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 County, Town and City building and in other locations within the buildings reasonably calculated to inform employees and the public of the prohibition.
 - d. Be posted on County, Town and City grounds locations and at intervals reasonably calculated to inform employees and the public of the prohibition.
- (2) The County, Towns or City where smoking and E-Cigarette use is prohibited by the Rule may in their discretion post a sign stating "No Smoking and E-Cigarette" in vehicles located in an area 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.
- (3) A person who manages, operates, or controls a public place in which smoking and E-Cigarette use is prohibited by this Rule shall post signs required to be posted in enclosed areas of public places that must:
 - a. Clearly state in English and Spanish that smoking and E-Cigarette use is prohibited.
 - b. Be conspicuously posted at each entrance to the public place.
 - c. Be at least 24 square inches in size.
 - d. Be at least 16-point font size.

Section 7. Enforcement and Penalties

A) For smoking violations:

- (1) Violations by persons smoking and using e-cigarettes in prohibited areas. Failure to comply in a prohibited area constitutes an infraction punishable by a fine of 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 other costs may be assessed.
- (2) Sanctions for employees. In addition to any penalty under subsection (1), employees of New Hanover County and employees of the Towns and City who violate this Rule shall be subject to disciplinary action consistent with their respective employer's personnel ordinances or policies.
- (3) Violations by persons who manage, operate, or control a public place. The New Hanover County health director 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 Rule:
 - a. First violation- Written notice of the person's first violation and notification of action to be taken in the event of subsequent violations.
 - b. Second violation- Written notice of the person's second violation and notification of administrative penalties to be imposed for subsequent violations.
 - c. 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 Rule occurs may be considered a separate and distinct violation.

B) For E-cigarette violations:

- a. The Local Health Director may seek injunctive relief pursuant to N.C. Gen. Stat. 130A-18 to redress violations of this rule.
- b. Violations shall constitute a misdemeanor as set forth in Gen. Stat. 130A-25.

Section 8. Public Education

The County, Towns and City shall engage in an ongoing program to explain and clarify the purposes and requirements of this Rule to citizens affected by it, and to guide operators and managers in their compliance with it. In doing so, the County, Towns and City may rely upon materials and information provided by the New Hanover County Health Department. The

County, Towns, and City shall:

- (1) Educate the public about the rule and the reasons for the new rule prior to its implementation date through the news media, website and educational media. This education shall include information on resources for quitting smoking or smoking and E-Cigarette use including information about the free quitting support services of the North Carolina Smoking and E-Cigarette use Quitline 1-800 QUIT NOW (1- 800-784-8669).
- (2) Educate County, Town and City employees at covered facilities, about the Rule and how they can assist with compliance with the Rule.
- (3) Provide County, Town, and City employees with information on cessation of smoking, including information about the free quitting support services of the North Carolina Smoking and E-Cigarette use Quitline 1-800 QUIT NOW (1-800-784- 8669).
- (4) Post notices at each entrance to a County, Town or City building and in other locations within the buildings reasonably calculated to inform employees and the public of the prohibition.

Section 10. Effective Date

These Rules become effective XXXX following adoption by the New Hanover County Health and Human Services Board and approval of these Rules by an Ordinance adopted by the New Hanover County Board of Commissioners pursuant to N.C. Gen. Stat. 153A-121(a). There shall be an implementation period from XXXX through XXXXXX where enforcement shall be limited to Section 5 of the Rule. On XXXXX and thereafter the Ordinance shall be enforced as provided in Section 7 of this Rule.

Section 11. Abrogation

This Rule is not intended to repeal, abrogate or impair any greater restriction imposed by any other state law or 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 Rule, this Rule does not prohibit enforcement of any such law, ordinance, regulation or restriction.

Section 12. Severability

Should any section of this Rule be decided by the Courts to be unconstitutional or invalid, such decision shall not affect the validity of the Rule as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.