

## **Model Board of Health Rule**

*[Underlined words indicate that a choice needs to be made regarding wording.]*

**PROHIBITION ON** *(list the activities being prohibited, e.g., smoking/smoking and the use of tobacco products/smoking and the use of e-cigarettes)* **IN** *(list the places where the activity is being prohibited, e.g., city and county buildings, grounds, vehicles, and/or public places)*

*["Whereas" statements may be included here to demonstrate the reasoning behind the passage of the rule. A list of potential "Whereas" statements is included on the Tobacco Prevention and Control Branch's website. Alternatively, the board may wish include "Whereas" statements in an accompanying Resolution to pass the rule, rather than in the rule itself.]*

### **Section 1. Authority.**

This rule is enacted pursuant to NCGS 130A-498 and 130A-39(a).

### **Section 2. Definitions** *(Only include definitions for terms that are used in subsequent sections of the ordinance/rule.)*

1. "City/Town building". – A building owned, leased as lessor, or the area leased as lessee and occupied by the City/Town.
2. "County building". – A building owned, leased as lessor, or the area leased as lessee and occupied by the County.
3. "City/Town vehicle". – A passenger-carrying vehicle owned, leased, or otherwise controlled by the City/Town and assigned permanently or temporarily to its employees, agencies, institutions, or facilities for official City/Town business.
4. "County vehicle". – A passenger-carrying vehicle owned, leased, or otherwise controlled by the County and assigned permanently or temporarily to its employees, agencies, institutions, or facilities for official County business.
5. "E-cigarette". – Any electronic oral device that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid nicotine solution or any other substance, 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.
6. "Employee". – A person who is employed by the City(ies)/Town(s) of \_\_\_\_\_ or the County of \_\_\_\_\_; who contracts with the City(ies)/Town(s)/County or a third person to perform services for the City(ies)/Town(s)/County; or who otherwise performs services for the City(ies)/Town(s)/County with or without compensation.
7. "City/Town Grounds". – An unenclosed area owned, leased, or occupied by the City/Town.

8. "County Grounds". – An unenclosed area owned, leased, or occupied by the County.
9. "Local health department". – The district health department, public health authority, or county health department, the jurisdiction of which includes the City(ies)/Town(s) of \_\_\_\_\_ and the County of \_\_\_\_\_.
10. "City/Town parks system". – Any tract of land or body of water comprising part of the City/Town's parks, playgrounds, recreation areas, greenways, or trails.
11. "County parks system". – Any tract of land or body of water comprising part of the County's parks, playgrounds, recreation areas, greenways, or trails.
12. "Public place". – An enclosed area to which the public is invited or permitted.
13. "Smoking". – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.
14. "Tobacco product". – Any product containing or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, or ingested by any other means, including but not limited to cigarettes; e-cigarettes; cigars; little cigars; snuff; and chewing 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.
15. "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.
16. "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.

*[In the following Section(s), the rule will list the activities that are banned and the places in which they are banned. If there are variations in what activities are banned in different places, use as many Sections as needed to express these variations. In Sections 3 and 4 below, we give examples of the activities and places you may wish to ban smoking/the use of tobacco products/the use of e-cigarettes. Please tailor this list to fit the needs of your jurisdiction.]*

### 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 City/Town buildings and County buildings;
- 2) In City/Town vehicles and County vehicles;
- 3) On City/Town grounds and County grounds;
- 4) On the grounds of the City/Town parks system(s) and the County parks system; and
- 5) In the City/Town buildings located in the City/Town park system(s) and in the County buildings located in the County park system.

- (b) The prohibition on smoking and the use of tobacco products in the places listed in section (a) above includes those times when they are being used for private events.

#### Section 4. Areas in Which Smoking and the Use of E-cigarettes are Prohibited

- (a) Smoking and the use of e-cigarettes are prohibited:

In all enclosed areas of public places within the City(ies)/Town(s) of \_\_\_\_\_ and the County of \_\_\_\_\_, excluding those places identified in NCGS 130A-498(b1) as being exempt from smoking restrictions, including certain tobacco shops, premises of tobacco manufacturers and growers, smoking guest rooms in lodging establishments, certain cigar bars, private clubs, and live production sets.

- (b) The prohibition on smoking and the use of e-cigarettes in the places listed in section (a) above includes those times when they are being used for private events.

#### Section 5. Implementation Requirements

- (a) The City(ies)/Town(s), County, and persons who manage, operate, or control a public place shall post signs that meet all the requirements in Section 6 of this ordinance.
- (b) The City(ies)/Town(s), County, and persons who manage, operate, or control a public place shall remove all ashtrays and other smoking receptacles from places where smoking and tobacco products are prohibited, except for ashtrays and receptacles for sale and not intended for use on the premises.
- (c) The person in charge of the City/Town/County building, vehicle, grounds, or parks system or public place 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 police department or County sheriff department, as applicable (*or specify another appropriate law enforcement agency*).

#### Section 6. Signage

The signs required by Section 5 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.
- (c) Be posted at the entrance to each City/Town building and County 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 vehicle and County 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 grounds and County grounds in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.
- (f) Be posted at the entrance to buildings in the City/Town and County parks systems;
- (g) Be posted on the grounds in the City/Town and County parks systems in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.
- (f) Be posted at the entrance to each enclosed public place and in other locations within the enclosed public place reasonably calculated to inform employees and the public of the prohibition.

## Section 7. Enforcement and Penalties

- (a) Penalty for Violation of Prohibition against Smoking.
  - (i) Following oral or written notice by the person in charge of an area described in Section(s) 3 and 4, or his or her designee, failure to cease smoking 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.
  - (ii) Conviction of an infraction under this section has no consequence other than payment of a penalty, and no court costs may be assessed.
- (b) Penalty for Violation of Prohibition against Use of Tobacco Products, Including Electronic Cigarettes
  - (i) The Local Health Director may seek injunctive relief pursuant to NCGS 130A-18 to redress violations of this rule.
  - (ii) Notwithstanding NCGS 130A-25, a violation of this rule shall not be punishable as a misdemeanor.

(c) Additional sanctions for employees. In addition to any penalty under subsection (a) and (b), employees of the City(ies)/Town(s) and County who violate this rule shall be subject to disciplinary action consistent with City/Town and County human resources policies.

(d) *(This subsection should be included only if the rule includes a prohibition in public places.)* Violations by persons who manage, operate, or control a public place. A local 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 the rule.

- (1) First violation –Written notice of the person’s first violation and notification 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). Each day on which a violation occurs may be considered a separate and distinct violation.

Section 8. Public Education

The City(ies)/Town(s) and 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 City(ies)/Town(s) and County may rely upon materials and information provided by the local health department.

Section 9. Severability; Conflict of Laws.

If this rule or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the rule that can be given separate effect and to that end the provisions of this rule are declared to be severable. All rules or parts of rules in conflict with this rule are hereby repealed.

Section 10. Effective Date.

This rule shall be effective on *(date)* [note: to allow sufficient time for implementation, it is recommended that the effective date be set 3 to 6 months after the rule is adopted].

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

\_\_\_\_\_  
Chairperson, \_\_\_\_\_ County Board of  
Health

ATTEST:

\_\_\_\_\_ Clerk to the Board of Health

Approved as to Form:

\_\_\_\_\_ County Attorney