

MECKLENBURG COUNTY

AN ORDINANCE TO APPROVE THE RULE ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS WHILE ACTING AS A LOCAL BOARD OF HEALTH TO PROHIBIT SMOKING IN COUNTY, CITY AND TOWN BUILDINGS, VEHICLES AND GROUNDS

WHEREAS, the Mecklenburg County Board of Commissioners, while acting as and while exercising the powers of a local board of health, adopted a Rule on October 21, 2014 entitled:

A RULE TO PROHIBIT SMOKING IN COUNTY, CITY AND TOWN BUILDINGS, VEHICLES AND GROUNDS

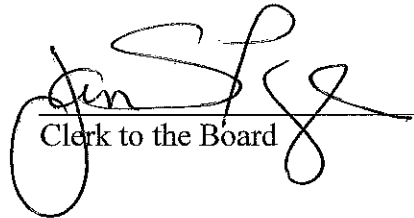
~~NOW THEREFORE, BE IT ORDAINED~~ by the Board of County Commissioners, while acting as a board of county commissioners, pursuant to N.C.G.S. 130A-498(a) approves the Rule entitled:

A RULE TO PROHIBIT SMOKING IN COUNTY, CITY AND TOWN BUILDINGS, VEHICLES AND GROUNDS

Adopted the 21st day of October, 2014.

Approved as to Form:


County Attorney


Clerk to the Board

MECKLENBURG COUNTY BOARD OF HEALTH RULE

A RULE TO PROHIBIT SMOKING IN COUNTY, CITY AND TOWN BUILDINGS, VEHICLES AND GROUNDS

Be it ordained by the Mecklenburg County Board of Commissioners (while exercising the powers of a local board of health, which powers it has assumed and conferred on itself by action pursuant to N.C.G.S. 153A-77), that the following regulations regarding smoking in Mecklenburg County for the protection of the public health and safety, are hereby adopted pursuant to N.C.G.S. 130A-498 and N.C.G.S.130A-39(a). These Regulations shall apply throughout Mecklenburg County, North Carolina, including, but not limited to all cities and towns, whether incorporated or unincorporated.

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;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, 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;³ 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 to the smoker, and also some hazard to people beyond 30 feet;⁴ 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 smokers' homes, smoke-filled bars, and outdoor air - even with a vehicle's windows open and its fan set on high;⁵ and

¹ Centers for Disease Control and Prevention, Smoking and Tobacco Use Fast Facts, http://www.cdc.gov/tobacco/data_statistics/fact_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 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); Jihee Hwang, Kiyoun Lee. *Determination of Outdoor Tobacco Smoke Exposure by Distance from a Smoking Source*, NICOTINE & TOBACCO RESEARCH, 1-7 (2013).

⁵ 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://tobaccosmoke.exposurescience.org/pub/reprints/Ott>

WHEREAS, on January 2, 2010, "An Act To Prohibit Smoking In Certain Public Places And Certain Places Of Employment," Session Law 2009-27 (codified as N.C.G.S. 130A-498), became effective in North Carolina, authorizing local governments, including boards of health or "an entity exercising the powers of a local board of health" (such as the Mecklenburg County Board of Commissioners) 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.G.S. 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, pursuant to N.C.G.S. 130A-498, local boards of health and "entities exercising the powers of a local board of health" have the specific authority to adopt rules to prohibit smoking that apply in local government buildings, on local government grounds, and in local government vehicles, to protect and promote the public's health; and

WHEREAS, the Mecklenburg County Board of Commissioners, while exercising the powers of a local board of health, is committed to providing a safe and healthy workplace in all County, City and Town facilities for County, City and Town employees and a safe and healthy environment for the visiting public; and

WHEREAS, the Mecklenburg County Board of Commissioners, while exercising the powers of a local board of health, finds and declares that, in order to protect the public health and welfare, it is in the best interests of the residents of Mecklenburg County to adopt a Rule prohibiting smoking in County, City and Town buildings, vehicles and grounds; and

WHEREAS, the Mecklenburg County of Board of Commissioners, while exercising the powers of a local board of health, provides support to employees and residents who want to quit smoking and use of tobacco products 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 Tobacco Use Quitline at 1-800-QUIT-NOW (1-800-784-8669); and

WHEREAS, the Mecklenburg County Board of Commissioners, while exercising the powers of a local board of health, wishes to minimize the harmful effects of smoking among Mecklenburg County, City and Town employees and eliminate secondhand smoke exposure for employees and the public in those buildings, vehicles, and grounds

controlled by Mecklenburg County, City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville; and

WHEREAS, the Mecklenburg County Board of Commissioners, while exercising the powers of a local board of health, finds and declares that, in order to protect the public health and welfare, it is in the best interests of the residents of Mecklenburg County to adopt a Rule prohibiting smoking in County, City and Town buildings, grounds, and vehicles.

NOW, THEREFORE, THE MECKLENBURG COUNTY BOARD OF COMMISSIONERS, WHILE EXERCISING THE POWERS OF A LOCAL BOARD OF HEALTH, ADOPTS THE FOLLOWING RULES:

Section 1. Authority

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

Section 2. Definitions

The following definitions are applicable to this Rule.

- 1) "City". The City of Charlotte.
- 2) "Town" or "Towns". The Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville.
- 3) "City or Town Building". A building owned, leased as lessor, or the area leased as lessee and occupied by the City of Charlotte or Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville. All "enclosed areas" are buildings for purposes of this Rule.
- 4) "City or Town Grounds". An unenclosed area owned, leased as lessor, or the area leased as lessee and occupied by the City of Charlotte or by the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville (except as exempted by Section 4), including parks, greenways and parklands.
- 5) "City or Town Vehicle". A passenger-carrying vehicle owned, leased, or otherwise controlled by the City of Charlotte or Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville in Mecklenburg County and assigned permanently or temporarily to their employees, agencies, institutions, or facilities for official City or Town business.

- 6) "County Building". A building owned, leased as lessor, or the area leased as lessee and occupied by Mecklenburg County, except as exempted by Section 4.
 - 7) "County Grounds". An unenclosed area owned, leased as lessor or the area leased as lessee and occupied by Mecklenburg County, including parks, greenways and parklands, except as exempted by Section 4.
 - 8) "County Vehicle". A passenger-carrying vehicle owned, leased, or otherwise controlled by Mecklenburg County and assigned permanently or temporarily to its employees, agencies, institutions, or facilities for official County business.
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- 9) "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.
 - 10) "Employee". A person who is employed by the County of Mecklenburg, the City of Charlotte, or by the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville or who contracts with the County, City or Towns; a third person who performs services for the County, City or Towns; or who otherwise performs services for the County, City or Towns with or without compensation.
 - 11) "Local Health Department". The Mecklenburg County Health Department, the jurisdiction of which includes all of Mecklenburg County including the City of Charlotte and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville.
 - 12) "Local Health Director". Administrative head of the Mecklenburg County Health Department appointed pursuant to N.C.G.S. Chapter 130A.
 - 13) "Smoking". The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco 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.

Section 3. Areas in Which Smoking is Prohibited

1) **County, City and Towns Properties.** Smoking is prohibited in all of the following:

- a. In any County building, City building and Town building.
- b. In any County vehicle, City vehicle and Town vehicle.
- c. On any County grounds, City grounds and Town grounds, including all parks, greenways and parklands.

Section 4. Exceptions: Where Smoking is not Prohibited by This Rule

1. This Rule does not apply to the grounds of Charlotte Douglas International Airport.
2. This Rule does not apply to City or Town public streets, including sidewalks or alleys located within City or Town property, or to rights-of-way used for public streets.
3. This Rule does not apply to any property owned, leased, or maintained by the State of North Carolina.
4. This Rule 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 Rule: 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.
5. This Rule does not apply to any parks classified by the County as Regional Parks. A current list of Regional Parks is attached as Exhibit A.

Section 5. Implementation Requirements

1. **County, City and Towns' Properties** where smoking is prohibited by the Rule:

- a. Shall designate employees to post signs that meet all the requirements in Section 6 of this Rule.
 - b. Shall designate employees to 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. Shall instruct employees to give a person who is smoking in a prohibited area an oral or written notice to cease.
 - d. Shall instruct employees to contact the police department having jurisdiction in the area in which the violation occurred, if the person in violation refuses to cease smoking.
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Section 6. Signage

1. **County, City and the Towns Building Signage**. Where smoking is prohibited by the Rule, the County, City and Towns **shall** post signs as required by Section 5 that must:
 - a. State in English and Spanish that smoking is prohibited and include the universal "No Smoking" 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 to a County, City and Town building and in other locations within the buildings reasonably calculated to inform employees and the public of the prohibition.
 - d. Be posted on County grounds, City grounds and Town grounds in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.
2. **County, City and Towns Vehicle Signage**. The County, City or Towns where smoking is prohibited by the Rule **may** in their discretion post a sign that either states "No Smoking " or contains the International "No Smoking " symbol in County, City or Town vehicles in an area visible to passengers, provided that their placement does not interfere with the safe operation of the vehicle.

Section 7. Enforcement and Penalties

1. **Violations by persons smoking in prohibited areas.** Failure to cease smoking in a prohibited area constitutes an infraction punishable by a fine of 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.

Each day on which Violation of this Rule occurs may be considered a separate and distinct violation.

2. **Sanctions for County, City and Town employees.** In addition to any penalty under subsection 2, employees of the County and employees of the City or Towns who violate this Rule may be subject to disciplinary action consistent with their respective employer's personnel ordinances or policies.

Section 8. Public Education

The County, City and the Towns shall engage in an ongoing program to explain and clarify the purposes and requirements of this Rule to residents affected by it, and to guide operators and managers in their compliance with it. In doing so, the County, City and Towns may rely upon materials and information provided by Mecklenburg Health Department. The County, City and Towns 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 tobacco use including information about the free quitting support services of the North Carolina Tobacco use Quitline 1-800 QUIT NOW (1- 800-784-8669).
2. Educate County, City and Town employees at covered facilities, about the Rule and how they can assist with compliance with the Rule.
3. Provide County, City and Town employees with information on cessation of smoking, including information about the free quitting support services of the North Carolina Tobacco use Quitline 1-800 QUIT NOW (1-800-784- 8669).
4. Post notices at each entrance to a County, City, or Town building and

in other locations within the buildings reasonably calculated to inform employees and the public of the prohibition.

Section 9. Abrogation

This Rule supersedes any previous County, City or Town ordinances regulating smoking or tobacco that are less restrictive in the County, the City or the Towns in Mecklenburg County.

This Rule is not intended to repeal 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.

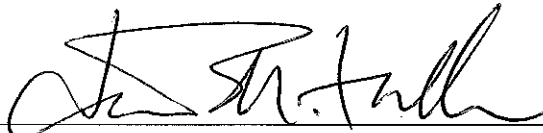
Section 10. Severability

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.

Section 11. Effective Date

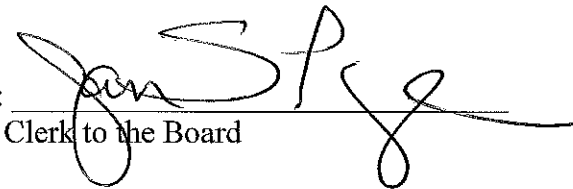
This Rule becomes effective March 18, 2015 following adoption by the Mecklenburg County Board of Commissioners and approval of these Rules by an Ordinance adopted by the Mecklenburg County Board of Commissioners pursuant to G.S. 130A-498(a).

Adopted this the 21st day of October, 2014.



Chairman, Mecklenburg County Board of Commissioners
(acting as a local board of health)

ATTEST:


Clerk to the 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