

ORANGE COUNTY BOARD OF HEALTH RULE

A RULE TO PROHIBIT SMOKING IN COUNTY AND TOWN BUILDINGS, VEHICLES AND GROUNDS AND IN PUBLIC PLACES IN THE COUNTY OF ORANGE, THE TOWNS OF CARRBORO, CHAPEL HILL, HILLSBOROUGH AND THOSE PARTS OF MEBANE IN ORANGE COUNTY

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 (such as those sitting beside someone on a park bench or children accompanying a smoking parent or guardian)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 smoke-free homes, smokers' homes, smoke-filled bars, and outdoor air- even with a vehicle's windows open and its fan set on high⁵; 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. DEPT 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).

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_CarStudy.pdf; see also Ontario Medical Ass'n, Background - Tobacco Smoke Concentration in Cars, <https://www.oma.org/Resources/Documents/fTobaccoSmokeConcentrationsInCars.pdf> (last visited March 30,

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 Orange County Board of Health 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 the visiting public; and

WHEREAS, the Orange County Board of Health finds and declares that, in order to protect the public health and welfare, it is in the best interests of the citizens of Orange County to adopt a Rule prohibiting smoking in County and Town buildings, vehicles and grounds and all public places in Orange County; and

WHEREAS, the Orange County Board of Health provides support to employees and residents who want to quit smoking 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 Orange County Board of Health wishes to minimize the harmful effects of smoking among Orange County and Town employees and eliminate secondhand smoke exposure for employees and the public in public places and in those buildings, vehicles, and grounds controlled by Orange County and the Towns of Carrboro, Chapel Hill, Hillsborough and those parts of Mebane in Orange County; and

WHEREAS, the Orange County Board of Health finds and declares that, in order to protect the public health and welfare, it is in the best interests of the citizens of Orange County to adopt a Rule prohibiting smoking in public places and in County and Town buildings, grounds, and vehicles.

NOW, THEREFORE, THE ORANGE COUNTY BOARD OF HEALTH 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

2011).

The following definitions are applicable to this Rule.

- 1) "Town" or "Towns". The Towns of Carrboro, Chapel Hill, Hillsborough and those parts of Mebane that are within Orange County.
- 2) "Town Building". A building owned, leased as lessor, or the area leased as lessee and occupied by the Towns of Carrboro, Chapel Hill, Hillsborough and those parts of Mebane in Orange County
- 3) "Town Grounds". An unenclosed area owned, leased or occupied by the Towns of Carrboro, Chapel Hill, Hillsborough and those parts of Mebane in Orange County.
- 4) "Town Vehicle". A passenger-carrying vehicle owned, leased, or otherwise controlled by the Towns of Carrboro, Chapel Hill, Hillsborough and those parts of Mebane in Orange County and assigned permanently or temporarily to their employees, agencies, institutions, or facilities for official Town business.
- 5) "Bus Stop". A designated area, whether enclosed or unenclosed, 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 Orange County.
- 7) "County Grounds". An unenclosed area owned, leased or occupied by Orange County.
- 8) "County Vehicle". A passenger-carrying vehicle owned, leased, or otherwise controlled by Orange County and assigned permanently or temporarily to its employees, agencies, institutions, or facilities for official County business.
- 9) "Employee". A person who is employed by the County of Orange or by the Towns of Carrboro, Chapel Hill, Hillsborough and those parts of Mebane in Orange County; or who contracts with the County or Towns; a third person who performs services for the County or Towns; or who otherwise performs services for the County or Towns with or without compensation.
- 10) "Local Health Department". The Orange County Health Department, the jurisdiction of which includes Orange County and the Towns of Carrboro, Chapel Hill, Hillsborough and those parts of Mebane in Orange County.

- 11) "Local health director". Administrative head of the Orange 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 or Towns, including those maintained or controlled by the County and Towns and those that abut the County, Town and public school grounds.
- 13) "Smoking". The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.
- 13) "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.
- 14) "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 tobacco sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies the definition of cigar bar.
- 15) "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.
- 16) "Lodging establishment". An establishment that provides lodging for pay to the public.
- 17) "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.

- 18) "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).
- 19) "Private vehicle". A privately owned vehicle that is not used for commercial or employment purposes.
- 20) "Public place". An enclosed area to which the public is invited or in which the public is permitted.
- 21) "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. Areas in Which Smoking is Prohibited

- 1) Smoking is prohibited in all of the following:
 - a. In any County building and Town building.
 - b. In any County vehicle and Town vehicle.
 - c. On any County grounds and Town grounds.
 - d. All other County and Town property including, but not limited to:
 - i. County and Town Parks Systems including playgrounds and athletic fields;
 - ii. County and Town Bus Stops;
 - iii. Sidewalks;
 - iv. Public Transportation;
 - v. County and Town Trails and Parks; and
 - vi. Polling Places
- 2) Smoking is prohibited in County buildings and Town buildings and grounds being used for private events.
- 3) Except as provided in Section 4 of this Rule, smoking shall be prohibited in all public places within the County and Towns, including but not limited to:

- a. Child Care Facilities;
- b. Shopping Malls;
- c. Elevators;
- d. Polling Places;
- e. Public Restrooms;
- f. Restaurants;
- g. Bars;
- h. Retail Stores;
- i. Galleries, Libraries and Museums;
- j. Entertainment and Sports Arenas;
- k. Gaming facilities including, but not limited to, Internet Sweepstakes and Video Poker;
- l. Lobbies, Hallways and other Common Areas in Apartment Buildings, Condominiums, Retirement Facilities, Nursing Homes and other Multi-Unit Residential Facilities; and
- m. Office and Other Commercial Establishments Where the Public is invited, or permitted.

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

- 1) In accordance with N.C. Gen. Stat. 130A-498(b1), smoking is not prohibited by this Rule in the following places:
 - a. A private residence.
 - b. A private vehicle.
 - c. A tobacco shop if smoke from the business does not migrate into an enclosed area where smoking is prohibited pursuant 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.

- d. 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.
 - e. 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.
 - f. 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.
 - 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 tobacco 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 January 1, 2013 to June 30, 2013.
- (2) During the Implementation period the County and the Towns where smoking 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 tobacco product in a prohibited area to extinguish the lighted tobacco 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 department or the police department in the Towns 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 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.
 - d. If a person in violation refuses to leave the premises, contact the County sheriff department or the police department in the Town in which the violation occurred. An oral or written notice shall be provided to the person.

Section 6. Signage

- (1) The County and the Towns where smoking is prohibited by the Rule 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 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 and Town grounds in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.

- (2) The County 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 or Town vehicles 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 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 is prohibited and include the International "No Smoking" symbol.
 - 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

- (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.
- (2) Sanctions for employees. In addition to any penalty under subsection (1), employees of Orange County and employees of the Towns 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 Orange 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.

Section 8. Public Education

The County and the Towns 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 and Towns may rely upon materials and information provided by the local health department. The County 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 and Town employees at covered facilities, about the Rule and how they can assist with compliance with the Rule.
- (3) Provide County 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 or Town 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 January 1, 2013 following adoption by the Orange County Board of Health and approval of these Rules by an Ordinance adopted by the Orange County Board of Commissioners pursuant to N.C. Gen. Stat. 153A-121(a). There shall be an implementation period from January 1 through June 30, 2013 where enforcement shall be limited to Section 5 of the Rule. On July 1, 2013 and thereafter the Ordinance shall be enforced as provided in Section 7 of this Rule.

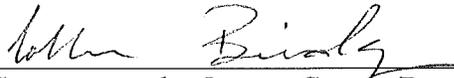
Section 11. *Abrogation*

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.

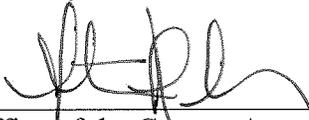
Adopted this the 24 day of October, 2012.


_____, Chair
Orange County Board of Health

ATTEST:



Secretary to the Orange County Board of Health

Approved as to form: 

Office of the County Attorney