

A RESOLUTION TO ENACT AN ORDINANCE PROHIBITING SMOKING AND THE USE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS IN COUNTY BUILDINGS, IN COUNTY VEHICLES, ON COUNTY GROUNDS, AND IN INDOOR PUBLIC PLACES

WHEREAS, according to the Centers for Disease Control and Prevention (the “CDC”), tobacco use and secondhand smoke exposure are the leading preventable causes of illness and premature death in North Carolina and the nation; and

WHEREAS, tobacco is a recognized carcinogen in humans, and health risks associated with the use of tobacco products include myocardial infarction (heart attack), stroke, adverse reproductive outcomes, lung cancer and diabetes; 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 around children causes respiratory symptoms and slows their lung growth; and that scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke; 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, and some hazard exists beyond 30 feet; and

WHEREAS, in 2009, the United States Food and Drug Administration (the “FDA”) announced that an analysis of vapor product samples indicated that the vapor products 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 antifreeze; and it has been found that the emitted aerosol from vapor products during active vaping 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 of vapor products; and

WHEREAS, experimentation with vaping and use of vapor products have risen sharply among young people according to the recently released Youth Tobacco Survey, which found that: (i) e-cigarette use among N.C. high school students has increased over a 1000 percent since 2011, from 1.7% in 2011 to 20.9% in 2019; and (ii) that among high school students, 25% of current e-cigarette users want to use a tobacco product within one hour of waking up; and (iii) that from 2011 to 2019, overall tobacco use among NC high school students increased from 25.8% to 27.3%; and

WHEREAS, the CDC reports that nearly 90% of smoking and smokeless tobacco use are initiated and established before age 18, 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; 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-free, vape-free, and tobacco-free public areas; and

WHEREAS, pursuant to North Carolina General Statute § 130A-498(a), “a local government may adopt and enforce ordinances . . . restricting or prohibiting smoking 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 North Carolina General Statute § 153A-121(a), “[a] county may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens”; and

WHEREAS, pursuant to North Carolina General Statute § 153A-4, “[i]t is the policy of the General Assembly that the counties of this State should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter . . . shall be broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of the power”; and

WHEREAS, the purpose and intent in enacting this Ordinance is to minimize the harmful effects of tobacco use among employees and the public and to eliminate secondhand smoke and vapor product aerosol exposure for employees and the public in and on those buildings, vehicles, and grounds controlled by Wake County Government and in indoor public places within unincorporated Wake County, and

WHEREAS, the Wake County Board of Commissioners hereby finds and determines that it is in the best interest of the citizens and residents of Wake County to enact this Ordinance.

NOW, THEREFORE, BE IT ORDAINED AND RESOLVED by the Board of Commissioners (the “Board”) for the County of Wake, North Carolina (the “County”) as follows:

Section 32.15 of Title III ADMINISTRATION of the Wake County Code of Ordinances, titled “Smoking, Tobacco and Vapor Product Use” is hereby REPEALED and replaced with the foregoing Ordinance:

**§ 32.15 AN ORDINANCE PROHIBITING SMOKING AND THE USE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS IN COUNTY BUILDINGS, IN COUNTY VEHICLES, ON COUNTY GROUNDS, AND IN INDOOR PUBLIC PLACES**

- (A) *Authority.* This subchapter is enacted pursuant to G.S. § 130A-498 and G.S. § 153A-121.
- (B) *Definitions.* For the purpose of this subchapter, the following definitions shall apply:

**SMOKING.** The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product as defined by G.S. § 130A-492(16).

**VAPOR PRODUCT.** Any non-combustible product 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 contained in a vapor cartridge as defined by G.S. § 14-313(5).

**TOBACCO PRODUCT.** Any product that contains tobacco or nicotine, irrespective of whether the nicotine is tobacco-derived or synthetic, and is intended for human consumption, as defined by G.S. § 14-313(4). As used in this subchapter, “tobacco product” includes but is not limited to: cigarettes, cigars, pipe tobacco, electronic cigarettes, hookah, smoked or vaped tobacco substitutes, chewing tobacco, snuff, snus, dissolvable tobacco products, and heated tobacco products. As used in this subchapter, “tobacco product” does not include nicotine replacement products approved by the USFDA for treatment of tobacco use and dependence.

**COUNTY BUILDING.** A building owned by Wake County, leased as lessor by Wake County, or the area leased as lessee by Wake County and/or occupied by Wake County, within the meaning of “local government building” as defined by G.S. § 130A-492(8).

**COUNTY VEHICLE.** A passenger-carrying vehicle owned, leased, or otherwise controlled by Wake County and assigned permanently or temporarily by Wake County to Wake County employees, agencies, institutions, or facilities for official Wake County business, within the meaning of “local vehicle” as defined by G.S. § 130A-492(9).

**COUNTY GROUNDS.** An unenclosed area owned, leased, or occupied by Wake County within the meaning of “grounds” as defined by G.S. § 130A-492(6). This includes Wake County parks, playgrounds and athletic fields, greenways, trails, and open space lands owned, leased, or occupied by Wake County.

**INDOOR PUBLIC PLACE.** Any enclosed area to which the public is invited or in which the public is permitted, within the meaning of “public place” as defined by G.S. § 130A-492(14). A private residence is not a public place.

**MANAGER.** The individual exercising the powers and duties of manager for Wake County pursuant to G.S. § 153A-82.

(C) *Areas where smoking, use of tobacco products, and use of vapor products are prohibited.*

(1) Smoking, use of tobacco products, and use of vapor products are prohibited in any county building, any county vehicle, and on any county grounds. The prohibition on smoking, use of tobacco products, and use of vapor products in these places includes those times when they are being used for private events.

(2) Smoking, use of tobacco products, and use of vapor products are prohibited in any indoor public place located within unincorporated Wake County. The prohibition on smoking, use of

tobacco products, and use of vapor products in indoor public places includes those times when they are being used for private events.

(3) The prohibition on smoking, use of tobacco products, and use of vapor products in indoor public places does not apply to those specific places identified in G.S. § 130A-498(b1) as being exempt from smoking restrictions, including certain tobacco shops, premises of tobacco products manufacturers and tobacco growers, designated smoking guest rooms in lodging establishments, certain cigar bars, private clubs, and live motion picture, television, or theater production sets.

(4) The Manager shall direct conspicuous and clear signage to be posted at reasonable intervals in all county buildings and grounds where smoking, use of tobacco products, and use of vapor products are prohibited by this subchapter.

(5) This subchapter does not prohibit smoking, use of tobacco products, and use of vapor products on public streets or sidewalks.

(D) *Public Education.*

Wake County shall engage in an ongoing program to explain and clarify the purposes and requirements of this Ordinance to residents and businesses affected by it, and guide operators and managers in their compliance with it. In doing so, Wake County may rely on materials and information provided by the Wake County Department of Health and Human Services.

(E) *Severability; Conflict of Laws.*

If this Ordinance or application thereof to any person or circumstance is held invalid, 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. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

This ordinance shall take effect on \_\_\_\_\_, 2022.

The County Clerk is hereby authorized to make any needed formatting revisions, so long as such revisions do not change the content of the Ordinance, and to file this Ordinance in an appropriately indexed ordinance book subject to public inspection in the Clerk's office.

The County Finance Director and County Attorney are hereby instructed to incorporate the provisions of this Ordinance into County contracts and procurement documents where applicable.

Upon motion of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, the foregoing resolution entitled A

RESOLUTION TO ENACT AN ORDINANCE PROHIBITING SMOKING AND THE USE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS IN COUNTY BUILDINGS, IN COUNTY VEHICLES, ON COUNTY GROUNDS, AND IN INDOOR PUBLIC PLACES was passed by the following vote:

Ayes: \_\_\_\_\_

Noes: \_\_\_\_\_

\* \* \* \* \*

I, \_\_\_\_\_, \_\_\_\_\_ Clerk to the Board of Commissioners for the County of Wake, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board for said County at a regular meeting held on \_\_\_\_\_ as it relates to the passage of a new ordinance for Wake County PROHIBITING SMOKING AND THE USE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS IN COUNTY BUILDINGS, IN COUNTY VEHICLES, ON COUNTY GROUNDS, AND IN INDOOR PUBLIC PLACES and that said proceedings are recorded in the minutes of said Board for said County.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and official seal of said County this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Clerk to the Board

[SEAL]