

**AN ORDINANCE TO PROHIBIT SMOKING AND THE USE OF OTHER TOBACCO
PRODUCTS IN THE CITY OF CHERRYVILLE BUILDINGS AND VEHICLES AND ON
ALL CITY OF CHERRYVILLE GROUNDS**

Chapter 20 20-5

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; and

WHEREAS, on January 2, 2010, "An Act to Prohibit Smoking In Certain Public Places And Certain Places of Employment", North Carolina 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, 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; 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; 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; 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); and

WHEREAS, tobacco is a recognized carcinogen in humans, and health risks associated with the use of tobacco products include myocardial infarction, stroke, and adverse reproductive outcomes; and

WHEREAS, the City of Cherryville is committed to providing a safe and healthy workplace in all City of Cherryville facilities for its employees and a safe and healthy environment for the visiting public; and

WHEREAS, the City of Cherryville wishes to minimize the harmful effects of tobacco use among municipal employees and eliminate secondhand smoke exposure for employees and the public in and on those buildings, vehicles, and grounds controlled by the City of Cherryville; and

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WHEREAS, this Council finds and declares that, in order to protect the public health and welfare, it is in the best interest of the citizens of the City of Cherryville to adopt an ordinance prohibiting smoking and the use of tobacco products in all municipal buildings, vehicles, grounds, parks and recreation areas.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Cherryville, that the Tobacco Free, Smoke Free Ordinance be regulated as follows:

Smoke Free Tobacco Free Ordinance

PROHIBITION OF SMOKING AND THE USE OF TOBACCO PRODUCTS IN CITY BUILDINGS, VEHICLES, GROUNDS AND PARKS AND PROHIBITION OF SMOKING AND THE USE OF E-CIGARETTES IN PUBLIC PLACES

Section 1. Authority.

This ordinance is enacted pursuant to North Carolina General Statute 130A-498 and 160A-174(a).

Section 2. Definitions.

The following definitions are applicable to this ordinance.

1. "City building". – A building owned, leased as lessor, or the area leased as lessee and occupied by the City of Cherryville.
2. "City vehicle". – A passenger-carrying vehicle owned, leased, or otherwise controlled by the City of Cherryville and assigned permanently or temporarily to its employees, agencies, institutions, or facilities for official City of Cherryville business.
3. "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.
4. "Employee". – A person who is employed by the City of Cherryville, or who contracts with the city or a third person to perform services for the city, or who otherwise performs services for the city with or without compensation.
5. "Grounds". – An unenclosed area owned, leased, or occupied by the City of Cherryville.
6. "Local Health Department". The district health department, public health authority, or county health department, the jurisdiction of which includes the City of Cherryville.
7. "City parks system". – Any tract of land or body of water comprising part of the City of Cherryville's parks, playgrounds, recreation areas, greenways, or trails.

8. "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.
9. "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.
10. "Public place". – An enclosed area to which the public is invited or permitted.
11. "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.
12. "Smoking". The use or possession of a lighted cigarette, lighted cigar, lighted pipe or any other lighted tobacco product.
13. "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.

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 buildings;
 - (2) In City vehicles;
 - (3) On City grounds;
 - (4) On the grounds of the City parks system; and
 - (5) In the City buildings located in the City 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, 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 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 and persons who manage, operate, or control a public place shall remove all ashtrays and other smoking receptacles from its buildings and grounds, except for ashtrays and receptacles for sale and not intended for use on the premises.
- (c) The person in charge of the City 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 of Cherryville police department.

Section 6. Signage.

The signs required by Section 5 must:

- (a) State in English the applicable prohibition for the area (e.g. smoking and the use of tobacco products are prohibited) and include the applicable universal symbol (e.g., the “No Smoking and Use of Tobacco Products Prohibited” symbol).
- (b) Be of sufficient size to be clearly legible to a person of normal vision, and be conspicuously posted.
- (c) Be posted at the entrance to each City 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 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 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 parks system;
- (g) Be posted on the grounds in the City parks system in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.
- (h) 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.* Following oral or written notice by the person in charge of an area described in Sections 3 or 4, or his or her designee, failure to cease smoking or using tobacco products 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. Conviction of an infraction under this section has no consequence other than payment of a penalty, and no court costs may be assessed.
- (b) *Additional Sanctions for Employees.* In addition to any penalty under subsection (a), employees of the City who violate this ordinance shall be subject to disciplinary action consistent with the city’s human resources policies.

(c) 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 ordinance.

- (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 of Cherryville 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 may rely upon materials and information provided by the local health department.

Section 9. 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.

Section 10. Effective Date.

This ordinance shall become effective on January 1, 2018.

Adopted this the 9 day of October 2017.



Paige Green, CMC, NCCMC, City Clerk



H. L. Beam, III, Mayor

