Durham County Board of Health Rule

Regulation of Smoking in Prescribed Public Areas.

Section I. Findings and Purpose

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, Healthy North Carolina 2020 Tobacco Use Objectives are 1) decrease the percentage of adults who are current smokers, 2) decrease the percentage of high school students reporting current use of any tobacco product, and 3) decrease the percentage of people exposed to secondhand smoke in the workplace in the past seven days; 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, 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, 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 2006 Surgeon General's Report also determined 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; and that smoking by parents causes respiratory symptoms and slows lung growth in their children; 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 sitting next to someone on a park bench, or children accompanying a smoking parent or guardian); and

WHEREAS, the CDC reports that smoking and smokeless tobacco use are frequently initiated and established during adolescence, 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, everyday an estimated 3,900 young people between 12 and 17 years of age try their first cigarette and an estimated 1,000 youth become daily 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 public areas; and

WHEREAS, environmental organizations, including Keep America Beautiful, the Ocean Conservancy, and NC Big Sweep, consistently report cigarette butts as a leading cause of litter; and

WHEREAS, small children playing in city athletic fields and playgrounds are more likely to ingest cigarette butts if they are discarded and accessible; and in 2008, American Poison Control Centers received over 7,000 reports of children under the age of 6 being poisoned by contact with tobacco products; and

WHEREAS, the Durham County Health Department provides support to employees and residents who want to quit the use of tobacco products. Employees and residents are also encouraged 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, 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, pursuant to 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, the Durham County Board of Health wishes to minimize the harmful effects of tobacco use among Durham County and the City of Durham employees and eliminate secondhand smoke exposure for employees and the public in certain buildings and grounds controlled by the county and city; and

WHEREAS, the Durham County Board of Health is committed to protecting the health of children and adults on city athletic fields and playgrounds by eliminating exposure to secondhand smoke and providing an environment that decreases the likelihood of children ingesting cigarette butts; and

WHEREAS, Durham County and the City of Durham government buildings, health care facilities and health care facility grounds in Durham County, hospitals and hospital grounds in Durham County, and Durham County Schools are currently operating under smoke-free or tobacco-free policies; and this Board finds and declares that, in order to protect the public health and welfare, it is in the best interest of the citizens of Durham County to expand these smoke-free policies by adopting a rule prohibiting smoking on Durham County grounds; on the City of Durham grounds; on the City of Durham's Park System; in City or County bus stops; in the Durham Station Transportation Center and grounds; at the Durham Train Station and on all sidewalks abutting Durham County grounds, the City of Durham grounds; any Public School; and Hospital grounds;

NOW, THEREFORE, THE DURHAM COUNTY BOARD OF HEALTH ADOPTS THE FOLLOWING RULES:

Section II. Definitions

The following definitions are applicable to this rule.

1. "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 bus 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 might fall within the one hundred (100) foot radius of the bus stop sign.

2. "City of Durham Grounds" – An unenclosed area owned, leased, or occupied by the City of Durham. .

3. "City of Durham Park System– An enclosed or unenclosed area owned, leased, maintained or occupied by the City of Durham that is part of the City of Durham Parks System including all city greenways and trails.

4. "City or County Bus Stops" - Any bus stop that is owned, leased, maintained or occupied by the City or County of Durham.

5. "Durham County Grounds" – An unenclosed area owned, leased, or occupied by Durham County.

6. "Durham Station Transportation Center" – The buildings and unenclosed areas owned, leased or occupied by the City of Durham that are used as the hub and home of local, regional, and intercity bus service.

7. "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.

8. "Hospital grounds" - Any unenclosed area, which is owned, leased, or occupied by an institution that is licensed to administer medical treatment or the primary function of which is to provide medical treatment in this State and which provides inpatient, outpatient, and emergency medical treatment.

9. "Sidewalk" - Any sidewalk that is owned, leased, maintained or occupied by the City or County of Durham and abuts Durham County grounds, the City of Durham Grounds, any public school or hospital grounds.

10. "Smoking". – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

11. "Tobacco Use" – The use of any product containing tobacco.

12. "No Smoking Symbol" – Symbol consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it.

13. "Human Services Facility and Campus" - The Durham County Human Services Building located at 414 E. Main Street, Durham North Carolina 27701 and all adjacent and affiliated buildings.

14. "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 G.S. 105-130.2(1).

15. "Tobacco Shop" - A business establishment, the main purpose of which is the sale of tobacco, tobacco products, and accessories for such products, that receive no less than seventy-five (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.

16. "Cigar Bar" - An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1),(3),(5) or (10) of G.S. 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.

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.

Section III Smoking Prohibited.

Smoking is prohibited in/on all of the following:

(a) City of Durham Grounds;
(b) City of Durham Parks System including playgrounds and athletic fields;
(c) City or County Bus Stops;
(d) Durham County Grounds;
(e) Durham Station Transportation Center (except as specifically designated);
(f) Sidewalks as defined above;
(g) Hospital Grounds;
(h) Child Care Facilities;
(i) Enclosed Shopping Malls;
(j) Elevators;
(k) Polling Places;
(l) Public Restrooms;
(m) Public Areas of Retail Stores;
(n) Service Lines;
(o) Public Transportation;
(p) Public Areas of Galleries, Libraries and Museums;

(q) Lobbies, Hallways and other Common Areas in Apartment Buildings, Condominiums, Retirement Facilities, Nursing Homes and Other Multi-Unit Residential Facilities;
(r) Durham Train Station (except as specifically designated);
(s) Durham County Trails and Parks.

Section IV All Tobacco Use Prohibited.

All tobacco use is Prohibited on County of Durham Human Services Facilities and Campus.

Section V: Actions to Implement Required

The City or County 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 the employees of city and county facilities covered under this rule about this rule, the reasons for this rule, and how employees can assist with compliance prior to its implementation date. The city and county shall also provide the city and county employees with 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)).

(3) Post Signs that meet all the requirements of Section VI in the Durham Station Transportation Center; on the City of Durham Grounds; on Durham County Grounds; on City of Durham Parks System Grounds; on City or County bus stops; and on sidewalks.

(4) Remove all ashtrays and other smoking receptacles from the Durham Station Transportation Center; the City of Durham Grounds; Durham County grounds; the City of Durham Parks System Grounds; City or County bus stops; and sidewalks.

(5) Have the person in charge of Durham County grounds; the City of Durham grounds; the City of Durham Parks System; City or County bus stops; the Durham Station Transportation Center; or sidewalks direct a person who is smoking in a prohibited area to cease and, if the person does not comply, contact the designated enforcement officer for the City and/or County of Durham.

Section VI. Signage

The signs required in Section V must:

(a) State in English that smoking is prohibited and include the "No Smoking" symbol.

(b) Be of sufficient size to be clearly legible to a person of normal vision.

(c) Be posted on Durham County and the City of Durham grounds including the City of Durham Parks System in locations and at intervals reasonably calculated to inform the employees and the public of the prohibition.

(d) Be posted on sidewalks at intervals so as to reasonably inform the public of the prohibition.

(f) Be posted in the Durham Station Transportation Center and Train Station in locations and at intervals reasonably calculated to inform the public and employees of the prohibition.

(g) Be posted on city or county bus stops in areas visible to the public.

Section VII Compliance and Penalties

Violations by persons smoking in prohibited areas. Following oral or written notice by any duly appointed enforcement official, 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 person duly authorized by the Board of County Commissioners or the City Council, shall be authorized to send a civil penalty citation to the violator by certified mail or personally deliver such citation to the violator stating the nature of the violation, the amount of the penalty, and directing that the violator pay the penalty to the County or City tax collectors office within 14 days of receipt of the citation. Conviction of an infraction under this section has no consequence other than payment of a penalty, and no court costs may be assessed.

Section VIII Public Education

Durham County and the City of Durham shall engage in a continuing program to explain and clarify the purposes and requirements of these rules to citizens affected by it and to city or county employees in their compliance with it. In doing so, the County and City may rely upon materials and information provided by the Durham County Health Department.

Section IX Exceptions

The following areas shall not be subject to the restrictions of this article.

(1) Private residences.

(2) Private vehicles

(3) A tobacco shop if smoke from the business does not migrate into an enclosed area where smoking is prohibited pursuant to State law.

(4) 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.

(5) 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.

(6) A cigar bar if smoke from the cigar does not migrate into an enclosed area where smoking is prohibited pursuant to State law.

(7) A private club as defined by State law.

(8) 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.

(9) State and Federal facilities.

Section X Effective Date

These rules shall become effective upon adoption by the Durham County Board of Health and upon adoption of this as an ordinance of the Durham Board of County Commissioners.

ADOPTED by the Durham County Board of Health this 12th day of January 2012

EFFECTIVE DATE: August 1st 2012

SIGNED: Sue Evelyn McLaurin

Adopted by the Durham County Board of Commissioners as an Ordinance this 13th day of February, 2012.

SIGNED: Michael D. Page

Michael D. Page, Chairman
Durham County Board of Commissioners