

AN ORDINANCE TO PROHIBIT SMOKING PRODUCTS ON GROUNDS OF
CLAY COUNTY'S PARKS SYSTEM AND IN BUILDINGS LOCATED IN
CLAY COUNTY'S PARKS SYSTEM

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 nation¹; and,

WHEREAS, a 2013 survey conducted by the Clay County Health Department showed that 94% of Citizens supported smoke free playgrounds, and 86% supported smoke free sports/ballfields; 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 nonsmokers²; 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 outcomes³; 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)⁴; and

WHEREAS, the CDC reports that smoking tobacco use is almost always 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 smokers⁵; and

¹ Centers for Disease Control and Prevention, Smoking and Tobacco Use Fast Facts, http://www.cdc.gov/tobacco/data_statistics/facts_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 (2006), <http://www.surgeongeneral.gov/library/secondhandsmoke/report/index.html>.

³ *Id.* at 12, 13, 15.

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 Centers for Disease Control and Prevention, Youth and Tobacco Use, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm (last visited Oct. 7, 2010).

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 smokers⁶; 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 and tobacco free public areas⁷; and

WHEREAS, in 2008, American Poison Control Centers received over 7,000 reports of children under the age of 6 being poisoned by contact with tobacco products⁸; and

WHEREAS, in 2009, the United States Food and Drug Administration (FDA) announced that an analysis of e-cigarette samples indicated that the e-cigarettes 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 anti-freeze⁹; and

WHEREAS, in 2015, the Centers for Disease Control and Prevention (CDC) stated that emitted e-cigarette aerosol is not just water vapor, but contains nicotine and can contain additional toxins, making it less safe than clean air and e-cigarette use has the potential to involuntarily expose children and adolescents, pregnant women, and non-users to aerosolized nicotine and, if the products are altered, to other psychoactive substances. Therefore, clean air—free of both smoke and e-cigarette aerosol—remains the standard to protect health¹⁰; and

WHEREAS, Experimentation and use of e-cigarettes have risen sharply among young people according to the 2013 Youth Tobacco Survey: current use of electronic cigarettes among North Carolina high school students jumped by 352 percent from 1.7 percent in 2011 to 7.7 percent in 2013. Ten percent of high school students said they are considering using electronic cigarettes in the next year. Overall tobacco use among NC high school students increased from 25.8 percent to 29.7 percent from 2011 to 2013¹¹; and

⁶ *Id.*

⁷ *Id.* (stating that one factor associated with youth tobacco use is smoking by parents or guardians).

⁸ Alvin C. Bronstein, M.D., Daniel A. Spyker, PH.D., M.D., Louis R. Cantilena, Jr., M.D., PH.D., Jody L. Green, PH.D., Barry H. Rumack, M.D., and Sandra L. Giffin, RN, BSN, MS, *2008 Annual Report of the American Association of Poison Control Centers' National Poison Data System (NPDS): 26th Annual Report*, 47 *CLINICAL TOXICOLOGY* 911, 1039 (2009), <http://www.aapcc.org/dnn/Portals/0/2008annualreport.pdf>.

⁹ Memorandum from B.J. Westenburg, Deputy Director, CDER/OPS/OTR, Division of Pharmaceutical Analysis to Michael Levy, Supervisor Regulatory Counsel, CDER, Office of Compliance Division of New Drugs and Labeling Compliance (May 4, 2009) available at

<http://www.fda.gov/downloads/Drugs/ScienceResearch/UCM173250.pdf>; see also Press Release, United States Food and Drug Administration, FDA & Public Health Experts Warn About Electronic Cigarettes (July 22, 2009) available at

<http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm>.

¹⁰ Letter of Scientific Evidence Regarding Electronic Nicotine Delivery Systems (ENDS; including e-cigarettes) from Tim McAfee, MD, MPH, Senior Medical Officer, Office on Smoking and Health, U.S. Centers for Disease Control and Prevention (April, 2015).

¹¹ Centers for Disease Control and Prevention, Youth and Tobacco Use, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm (last visited Oct. 7, 2010).

WHEREAS, the Clay County Board of Health adopted a resolution on August 11, 2015, to recommend that Clay County adopt an ordinance to prohibit smoking tobacco products on grounds of the County's parks system and in buildings located in the County's parks system;

WHEREAS, the County of Clay is committed to protecting the health of individuals on the grounds of the County's parks system and in buildings located in the County's parks system by eliminating exposure to secondhand smoke; and

WHEREAS, the County of Clay is committed to protecting the health of children on and the environment of the grounds of the County's parks system and in buildings located in the County's parks system by eliminating the amount of litter caused by discarded cigarette butts; and

WHEREAS, the County of Clay is committed to protecting the health of children by providing an environment on the grounds of the County's parks system and in the buildings located in the County's parks system that promotes healthy messages about refraining from smoking and using other tobacco products; and

WHEREAS, the County of Clay 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 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 County of Clay wishes to minimize the harmful effects of tobacco use among County employees and eliminate secondhand smoke exposure for employees and the public on grounds of the County's parks system and in the buildings located in the County's parks system; and

WHEREAS, 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 the County to adopt an ordinance prohibiting smoking tobacco products on grounds of the County's parks system and in buildings located in the County's parks system.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the County of Clay, North Carolina, that:

Section 1. Authority.

This ordinance is enacted pursuant to G.S. 130A-498 and 153A-121(a).

Section 2. Definitions

The following definitions are applicable to this ordinance.

1. "County building". – A building owned, leased as lessor, or the area leased as lessee and occupied by Clay County.
2. "Employee". – A person who is employed by Clay County, or who contracts with the County or a third person to perform services for Clay County, or who otherwise performs services for Clay County with or without compensation.
3. "Grounds". – An unenclosed area owned, leased, or occupied by Clay County, but which shall not include the actual campsites rented by Clay County at Gibson Cove Campground on Lake Chatuge or recreational vehicles located thereon and which shall not include the TVA Public Boat Ramp and parking lot adjacent thereto near the Gibson Cove Campground on Lake Chatuge.
4. "Local health department". – The Clay County Health Department, the jurisdiction of which includes Clay County.
5. "Parks System". – any tract of land or body of water comprising part of Clay County's parks, playgrounds, natural areas, recreation areas, trails and greenways, and streams or other bodies of water.
6. "Universal 'No Smoking 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.
7. "Smoking". – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product to include Electronic or E-cigarettes, and Vapor or Vape pens or any battery powered device used for the vaporization and inhalation of nicotine, and/or other chemicals.
8. "E-cigarettes". 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 substances, 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, e-hookah or under any other product name or descriptor.

Section 3. Areas in Which Smoking Tobacco Products are Prohibited

Smoking of tobacco products are prohibited:

- (a) On Clay County grounds of Clay County's parks system to include play grounds, walking trails/paths, ball fields, and campgrounds.
- (b) In Clay County buildings located in Clay County's parks system, including when being used for private events.

Section 4. Implementation Requirements

- (a) Clay County shall post signs that meet all the requirements in Section 5 of this ordinance.
- (b) Clay County shall remove all ashtrays and other smoking receptacles from the grounds of Clay County's parks system and buildings located in Clay County's parks system.
- (c) The person in charge of the grounds of Clay County's parks system or the buildings located in Clay County's parks system, or his or her designee, shall direct a person who is smoking tobacco product in a prohibited area to cease and, if the person does not comply, shall contact the County sheriff department.

Section 5. Signage

The signs required by Section 5 must:

- (a) State in English that smoking of tobacco products are prohibited and include the universal "No Smoking 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 each entrance of the buildings located in Clay County's parks system and in other locations within the buildings reasonably calculated to inform employees and the public of the prohibition.
- (d) Be posted on the grounds of Clay County's parks system in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.

Section 6. Enforcement and Penalties

Penalty for Violation. Following oral or written notice by the person in charge of an area described in Section 3, or his or her designee, failure to cease smoking 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.

Section 7. Public Education

Clay County 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 County may rely upon materials and information provided by the local health department.

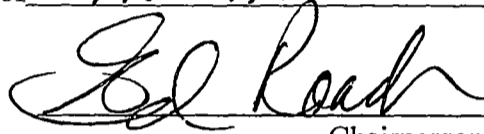
Section 8. Severability; Conflict of Laws.

If this ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, 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. Whenever the provisions of this ordinance conflict with other ordinances of Clay County, this ordinance shall govern.

Section 9. Effective Date.

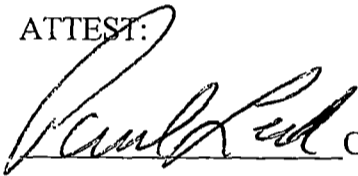
This ordinance shall be effective on January 1, 2016.

Adopted this 5th day of November, 2015.



_____, Chairperson
Clay County Board of Commissioners

ATTEST:



_____, Clerk to Board of Commissioners

Approved as to Form:

_____ County Attorney