

**AN ORDINANCE TO PROHIBIT SMOKING AND THE USE OF OTHER TOBACCO PRODUCTS ON GROUNDS OF THE TOWN OF CORNELIUS' PARKS SYSTEM AND IN BUILDINGS LOCATED IN THE TOWN OF CORNELIUS' 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 nation; 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 by parents causes respiratory symptoms and slows lung growth in their children; and that scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke; 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, 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 American Nonsmokers' Rights Foundation reports close to 500 municipalities have eliminated exposure to secondhand smoke with 100% Smoke Free Parks, and 100 municipalities have eliminated exposure to secondhand smoke with 100% Smoke Free Beaches; and

WHEREAS, the CDC reports that smoking and smokeless tobacco use are 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 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 and tobacco 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 on the grounds of the Town's parks system and in buildings located in the Town's parks system are more likely to ingest cigarette butts if they are discarded and accessible; 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 products; 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, the Town of Cornelius is committed to protecting the health of individuals on grounds of the Town's parks system and in buildings located in the Town's parks system by eliminating exposure to secondhand smoke; and

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

WHEREAS, the Town of Cornelius is committed to protecting the environment of the grounds of its parks system and the buildings located in its parks system by eliminating the amount of litter caused by discarded cigarette butts; and

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

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

WHEREAS, Cornelius Board of Commissioners finds and declares that, in order to protect the public health and welfare, it is in the best interest of the citizens of the Town to adopt an ordinance prohibiting smoking and the use of tobacco on grounds of the Town's parks system and in buildings located on the Town's parks system.

NOW, THEREFORE, BE IT HEREBY ORDAINED by the Board of Commissioners of the Town of Cornelius, North Carolina, that:

Section 1. Authority.

This ordinance is enacted pursuant to North Carolina General Statutes 130A-498 and 160A-174.

Section 2. Definitions

The following definitions are applicable to this ordinance.

1. "Town building". – A building owned, leased as lessor, or the area leased as lessee and occupied by the Town. [G.S. 130A-492]
2. "Employee". – A person who is employed by the Town of Cornelius, or who contracts with the Town or a third person to perform services for the Town, or who otherwise performs services for the Town with or without compensation. [G.S. 130A-492]
3. "Grounds". – An unenclosed area owned, leased, or occupied by the Town. [G.S. 130A-492]
4. "Local health department". – The district health department, public health authority, or county health department, the jurisdiction of which includes the Town.
5. "Parks System". – any tract of land or body of water comprising part of the Town's parks, playgrounds, natural areas, recreation areas, trails and greenways, and streams or other bodies of water.
6. "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.
7. "Smoking". – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product. [G.S. 130A-492]
8. "Tobacco product". – Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component part or accessory of a tobacco product, including but not limited to cigarettes; cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cutting and sweepings of tobacco; and other kinds and forms of 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 Tobacco Products are Prohibited

(a) Smoking and the use of tobacco products are prohibited:

- (1) On Town grounds of the Town's parks system.
- (2) In Town buildings located in the Town's parks system.

(b) Smoking and the use of tobacco products are also prohibited on grounds of the Town's parks system and in buildings located in the Town's parks system even when they are being used for private events.

#### Section 4. Actions to Implement Required

- (a) The Town shall post signs on the grounds and buildings of the Town's parks system that meet all the requirements in Section 5 of this ordinance.
- (b) The Town shall remove all ashtrays and other smoking receptacles from the grounds of the Town's parks system and the buildings located in the Town's parks system.
- (c) The person in charge of the grounds of the Town's parks system or the buildings located in the Town's parks system, 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 Town police department.

#### Section 5. Signage

The signs required by Section 4 must:

- (a) State in English (optional: Spanish) that smoking and the use of tobacco products are prohibited on the grounds and in the buildings of the Town's park system and include the universal "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 each entrance of the buildings located in the Town'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 the Town's parks system in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.

#### Section 6. Enforcement and Penalties

- (a) 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 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 Town who violate this ordinance shall be subject to disciplinary action consistent with the Town's personnel policy.

#### Section 7. Public Education

The Town of Cornelius shall engage in a continuing 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 Town of Cornelius 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, 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, provided nothing herein shall be construed to repeal Ordinance No. 93-0086, and this ordinance shall merely enhance and expand Ordinance No. 93-0086 within the Town's parks system.

Section 9. Effective Date

This ordinance shall be effective on March 1, 2012.

Adopted this 6th day of February, 2012.

SEAL

\_\_\_\_\_  
Jeffery P. Tarte, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lori A. Pearson, Town Clerk

\_\_\_\_\_  
William L. Brown, Town Attorney