



Fuquay-Varina Board of Commissioners

December 5, 2022

*AN ORDINANCE BY THE GOVERNING BOARD
OF THE TOWN OF FUQUAY-VARINA, NORTH CAROLINA
TO ENACT PART 8 - OFFENSES
CHAPTER 12 - SMOKING AND VAPING ON TOWN FACILITIES AND GROUNDS*

- 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) current use of vapor products among North Carolina high school students jumped by 888 percent from 1.7% in 2011 to 16.8% in 2015; (ii) that 27% of high school students said they are considering using vapor products in the next year; and (iii) that from 2011 to 2015, overall tobacco use among NC high school students increased from 25.8% to 27.5%; 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, and vape-free public areas; 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

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 N.C.G.S. § 160A-174(a) "a city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances; and

WHEREAS, pursuant to North Carolina General Statute § 160A-4, it is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State."; 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 the Town of Fuquay-Varina Government, and

WHEREAS, the Town of Fuquay-Varina Board of Commissioners hereby finds and determines that it is in the best interest of the citizens and residents of Fuquay-Varina to enact this Ordinance.

NOW, THEREFORE BE IT ORDAINED, by the Board of Commissioners of the Town of Fuquay-Varina, North Carolina, the following:

Part 8 - Chapter 12 - Smoking and Vaping on Town Facilities and Grounds

Section 8-12001 - Purpose and Authority

Pursuant to the provisions of North Carolina General Statute § 130A-498(a) and 160A-174(a), the Town is authorized and intends to restrict and prohibit smoking and vaping inside Town facilities, on Town property, and in Town vehicles in order to limit conditions detrimental to the health, safety, and welfare of Town citizens and employees, and to promote the safe and peaceable enjoyment of public spaces in the Town.

Section 8-12002 - Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Smoking means 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 means 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).

Town facility means any building owned by the Town of Fuquay-Varina, leased as lessor by the Town of Fuquay-Varina, or the area leased as lessee by the Town of Fuquay-Varina and/or occupied by the Town of Fuquay-Varina, within the meaning of "local government building" as defined by G.S. § 130A-492(8).

Town vehicle means a passenger-carrying vehicle owned, leased, or otherwise controlled by the Town of Fuquay-Varina and assigned permanently or temporarily by the Town of Fuquay-Varina to Town employees, agencies, institutions, or facilities for official Town business, within the meaning of "local vehicle" as defined by G.S. § 130A-492(9).

Town Grounds means an unenclosed area owned, leased, or occupied by the Town of Fuquay-Varina within the meaning of "grounds" as defined by G.S. § 130A-492(6). This includes Town parking areas, parks, playgrounds and athletic fields, greenways, trails, and open space lands owned, leased, or occupied by the Town of Fuquay-Varina.

Town Manager means the individual exercising the powers and duties of manager for the Town of Fuquay-Varina pursuant to G.S. § 160A-148.

Section 8-12003 - Areas where smoking and use of vapor products are prohibited

- a) Smoking and use of vapor products are prohibited in any Town building, any Town vehicle, and on any Town grounds with the exception of smoking or using vapor products within designated smoking areas on Town grounds. The prohibition on smoking and use of vapor products in these places includes those times when they are being used for private events.
- b) The Town Manager shall direct conspicuous and clear signage to be posted at reasonable intervals in all Town buildings and grounds where smoking and use of vapor products are prohibited by this subchapter.
- c) This subchapter does not prohibit smoking and use of vapor products on public streets or sidewalks.

Section 8-12004 - Severability; Conflict of Laws

If any section, phrase, sentence, or portion of this ordinance is held void, invalid, unconstitutional, or unenforceable for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision; and such holding shall not affect the validity of the remaining portions thereof.

This Ordinance of the Town of Fuquay-Varina Board of Commissioners is hereby adopted this 5th day of December in the year 2022 in Fuquay-Varina, North Carolina.


FUQUAY-VARINA, NORTH CAROLINA



J. Blake Massengill, Mayor

ATTEST

(TOWN SEAL)



Rose H. Rich, Town Clerk



CERTIFICATION BY RECORDING OFFICER

The undersigned duly qualified and acting Town Clerk of the Town of Fuquay-Varina does hereby certify:
That the above/attached ordinance is a true and correct copy of the ordinance authorizing an amendment to the Town Code of Ordinances, Part 8, Chapter 12 - Smoking and Vaping on Town Facilities and Grounds, as regularly adopted at a legally convened meeting of the Town Board of Commissioners duly held on the 5th day of December, 2022; and, further, that such ordinance has been fully recorded in the journal of proceedings and records in my office. IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of December, 2022.

Rose W. Rich

(Signature of Recording Officer)

Town Clerk

(Title of Recording Officer)

