



Ordinance 10000-2019-001G

**AN ORDINANCE TO PROHIBIT THE USE OF TOBACCO PRODUCTS  
AND ALL TYPES OF ELECTRONIC NICOTINE DELIVERY SYSTEMS  
ON GROUNDS AND BUILDING OF SWAIN 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 nation<sup>1</sup>; 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, a 2013 survey conducted by the Swain County Health Department showed that 90% of Citizens supported tobacco free playgrounds, public walking trails, bike trails and sports/ball fields; 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 health<sup>2</sup>; and

WHEREAS, in 2018 the Swain County Parks & Recreation Comprehensive Facilities Master Plan 2018, stated of the 1,140 persons who answered the survey, 89.96% were in favor of a Tobacco Free Parks and Rec in Swain County; and

WHEREAS, the County of Swain 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 Swain 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 limiting exposure to secondhand smoke; and

WHEREAS, the County of Swain 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, 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 tobacco products and electronic nicotine delivery systems on grounds and buildings of the County's parks system.

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

Section 1. Authority.

This ordinance is enacted pursuant to G.S. 130A-498, 153A-121(a) and 153A-122.

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 Swain County.
2. "Grounds". – An unenclosed area owned, leased, or occupied by Swain County
3. "Local health department". – The Swain County Health Department, the jurisdiction of which includes Swain County.
4. "Parks System". – any tract of land or body of water comprising part of Swain County's parks, playgrounds, natural areas, recreation areas, trails and greenways, and streams or other bodies of water.
5. "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.
6. "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.
7. "Tobacco product". – Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, vaped, 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; e-cigarettes; snuff; chewing tobacco; and other kinds and forms of tobacco. A tobacco product excludes any product that has been approved by the U.S. FDA for sale as a tobacco cessation product, such as nicotine replacement therapies (i.e. nicotine gum, patch, lozenge or inhaler).
8. "Electronic Nicotine Delivery System". 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 and Tobacco Products are Prohibited

Tobacco Products and Electronic Nicotine Delivery Systems are prohibited:

- (a) On Swain County grounds of Swain County's parks system to include but not limited to: play grounds, walking trails/paths, skate park, tennis courts, ball fields, swimming pool, parking lots and surrounding areas.
- (b) On Swain County buildings in Swain County's parks system, including when being used for private events.

### Section 4. Implementation Requirements

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

### Section 5. Signage

The signs required by Section 5 must:

- (a) State in English that tobacco products and electronic nicotine delivery systems are prohibited and include the universal "No 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 Swain County's parks system and in other locations within the buildings reasonably calculated to inform employees and the public of the prohibition.

### Section 6. Public Education

Swain County shall engage in an ongoing program to explain and clarify the purposes and requirements of this ordinance, and to guide operators and managers in their compliance with the ordinance. 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 Swain County, this ordinance shall govern.

Section 9. Effective Date.

This ordinance shall be effective on April 1, 2019.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By a vote of \_\_\_\_\_ to \_\_\_\_\_

Commissioners

Present: \_\_\_\_\_  
\_\_\_\_\_

Absent \_\_\_\_\_  
\_\_\_\_\_

DRAFT

\_\_\_\_\_  
Chairperson, Swain County Board of Commissioners

ATTEST:

\_\_\_\_\_  
Clerk to Board of Commissioners

Approved as to Form:

\_\_\_\_\_  
County Attorney