

ORANGE COUNTY BOARD OF HEALTH RULE

A RULE TO PROHIBIT USE OF ANY FORM OF ELECTRONIC CIGARETTES IN RESTAURANTS AND BARS IN THE COUNTY OF ORANGE, THE TOWNS OF CARRBORO, CHAPEL HILL, HILLSBOROUGH AND THOSE PARTS OF MEBANE IN ORANGE COUNTY

WHEREAS, in 2015, the Centers for Disease Control and Prevention (CDC) stated that emitted electronic cigarette aerosol is not just water vapor, but contains nicotine and can contain additional toxins, making it less safe than clean air, and electronic 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 electronic cigarette aerosol—remains the standard to protect health, and;ⁱ

WHEREAS, aerosolized chemicals commonly used as carrier solutions in electronic cigarettes, such as propylene glycol, have led to acute ocular and upper respiratory irritation, cough, reduced lung function, and chronic work-related wheezing and chest tightness, and;^{ii,iii,iv}

WHEREAS, studies of flavored electronic cigarettes have found that some of the products tested contained chemicals that were cytotoxic (toxic to cells) and that many emitted aerosols containing potentially harmful chemicals or chemicals known to cause respiratory disease, and;^{v,vi,vii,viii,ix,x}

WHEREAS, a non-user may be exposed to secondhand aerosol particles in an indoor setting, and;^{xi,xii}

WHEREAS, secondhand exposure to electronic cigarette aerosol, if not regulated, can reasonably be expected to follow similar patterns as secondhand smoke. Research shows that restaurants were once significant sites of secondhand exposure for children and adults, even the principal point of exposure for children from nonsmoking homes.^{xiii,xiv} In addition, servers and bartenders in places where smoking was permitted were exposed to high levels of secondhand smoke, and among the highest concentrations of nicotine measured in public places were those found in bars and lounges; and^{xv,xvi}

WHEREAS, the National Institute for Occupational Safety and Health recommends that workplaces prohibit the use e-cigarettes to protect workers from the effects of secondhand exposure to emissions from e-cigarettes; and,^{xvii}

WHEREAS, the use of electronic cigarettes in places where smoking combustible tobacco products is prohibited could lead to difficulties in enforcing smoke-free policies and renormalize tobacco use, and;

WHEREAS, experimentation and use of electronic cigarettes have risen sharply among young people according to the preliminary data from the 2015 NC Youth Tobacco Survey, which shows that e-cigarette use among high school students jumped by 888%, from 1.7% (2011) to 16.8% (2015). A similar trend is emerging in Orange County, with preliminary data from the Chapel Hill-Carrboro City Schools 2015 Youth Risk Behavior Survey showing that 37% of high school students have ever used an electronic cigarette, and 18% used one in the last 30 days, which is driving an increase in overall tobacco use among high school students, and;^{xviii, xix}

WHEREAS, the Orange County of Board of Health provides support to employees and residents who want to quit using any type of tobacco product and also encourages them 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, the Orange County Board of Health is committed to providing a safe and healthy environment for the public; and

WHEREAS, pursuant to N.C. Gen. Stat. 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 Orange County Board of Health finds and declares that, in order to protect public health and welfare, it is in the best interests of the residents of Orange County to adopt a Rule prohibiting use of electronic cigarettes in restaurants and bars;

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

Section 1. Authority

This Rule is enacted pursuant to N.C. Gen. Stat. 130A-39(a).

Section 2. Definitions

The following definitions are applicable to this Rule.

- 1) "Bar". An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of N.C. Gen. Stat. 18B-1001.
- 2) "Electronic cigarette". 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 substance, 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, or under any other product name or descriptor.
- 3) "Enclosed area". An area with (1) a roof or other overhead covering and (2) permanent or temporary walls or side coverings on three or more sides that make up 55 percent or more of the total combined perimeter surface area.
- 4) "Local Health Department". The Orange County Health Department, the jurisdiction of which includes Orange County and the Towns of Carrboro, Chapel Hill, Hillsborough, and those parts of Mebane in Orange County.
- 5) "Local Health Director". Administrative head of the Orange County Health Department appointed pursuant to N.C. Gen. Stat. 130A.
- 6) "Restaurant". A food and lodging establishment that prepares and serves drink or food as regulated by the Commission pursuant to N.C. Gen. Stat. 130A, Article 8,

Part 6.

- 7) "Town" or "Towns". The Towns of Carrboro, Chapel Hill, Hillsborough, and those parts of Mebane that are within Orange County.
- 1) "No Smoking or Use of Electronic Cigarettes Symbol". Symbol consisting of a pictorial representation of a burning cigarette and an electronic cigarette enclosed in a red circle with a red bar across it.
- 2) "No Use of Electronic Cigarettes Symbol". Symbol consisting of a pictorial representation of an electronic cigarette enclosed in a red circle with a red bar across it.

Section 3. Areas in Which Use of Electronic Cigarettes is Prohibited

- (1) Use of electronic cigarettes is prohibited in all enclosed areas of restaurants and bars.
- (2) The prohibition on use of electronic cigarettes in the places listed in section (1) above includes those times when they are being used for private events.

Section 4. Implementation Requirements

- (1) A person who manages, operates, or controls a restaurant or bar in which use of electronic cigarettes is prohibited shall conspicuously post signs that meet all the requirements in Section 5 of this Rule and that clearly state that use of electronic cigarettes is prohibited.
- (2) The person in charge of the restaurant or bar, or his or her designee, shall direct a person who is using an electronic cigarette in a prohibited area to cease using it.

Section 5. Signage

- (1) Signs required by Section 4 must:
 - a. State that use of electronic cigarettes is prohibited and include the "No Use of Electronic Cigarettes" symbol. A "No Smoking or Use of Electronic Cigarettes" symbol may also be used, if applicable.
 - b. Be posted at each public entrance to a bar or restaurant at a height and location easily seen.
 - c. Be at least 24 square inches in size.
 - d. Be at least 16 point font size and in legible font type.

Section 6. Enforcement

- (1) The Local Health Director may seek injunctive relief pursuant to N.C. Gen. Stat. 130A-18 to redress violations of this rule.
- (2) Notwithstanding N.C. Gen. Stat. 130A-25, a violation of this rule shall not be punishable as a misdemeanor.

Section 7. Public Education

The Local Health Department shall engage in a program to explain and clarify the purposes and requirements of this Rule to residents affected by it and to guide operators and managers in their compliance with it.

Section 8. Severability; Conflict of Laws.

If this rule or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the rule that can be given separate effect and to that end the provisions of this rule are declared to be severable. All rules or parts of rules in conflict with this rule are hereby repealed.

Section 9. Effective Date

These Rules become effective August 1, 2016 following adoption by the Orange County Board of Health.

Section 10. Abrogation

This Rule is not intended to repeal, abrogate or impair any greater restriction imposed by any other state law or local government ordinance. Wherever the provisions of any other law, ordinance, regulation or restriction impose higher standards than are required by the provisions of this Rule, this Rule does not prohibit enforcement of any such law, ordinance, regulation or restriction.

Adopted this the ___ day of _____, 20__.

_____, Chair

Orange County Board of Health

ATTEST:

Secretary to the Orange County Board of Health and Orange County Health Director

Approved as to form: _____

Office of the County Attorney

- ⁱ Letter of Scientific Evidence Regarding Electronic Nicotine Delivery Systems (ENDS; including electronic cigarettes) from Tim McAfee, MD, MPH, Senior Medical Officer, Office on Smoking and Health, U.S. Centers for Disease Control and Prevention (April, 2015), available at <http://www.tobacconpreventionandcontrol.ncdhhs.gov/Documents/CDC-LetterofEvidenceonElectronicNicotineDeliverySystemsNorthCarolina-April2015.pdf>.
- ⁱⁱ Varughese, S., Teschke, K., Brauer, M., Chow, Y., van Netten, C., & Kennedy, S. M. (2005). Effects of theatrical smokes and fogs on respiratory health in the entertainment industry. *American Journal of Industrial Medicine*, 47, 411–418.
- ⁱⁱⁱ Product Safety Assessment: DOW™ Propylene Glycol. The DOW Chemical Company. October 3, 2013. Available at: http://msdssearch.dow.com/PublishedLiteratureDOWCOM/dh_08ea/0901b803808eabba.pdf?filepath=productsafety/pdfs/noreg/233-00248&fromPage=GetDoc. Accessed February 19, 2016.
- ^{iv} Wieslander G, Norback D, Lindgren T. (2001). Experimental exposure to propylene glycol mist in aviation emergency training: acute ocular and respiratory effects. *Occup Environ Med* 58: 649–655.
- ^v Rowell, T. R., Lee, S., and Tarran, R. (2015). Select E-Cigarette Flavors Alter Calcium Signaling Cell Viability And Proliferation in Lung Epithelia. *American Thoracic Society International Conference Abstracts*. Available online at: http://www.atsjournals.org/doi/abs/10.1164/ajrccm-conference.2015.191.1_MeetingAbstracts.A2896. Accessed February 19, 2016.
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- ^{vii} Behar RZ, Davis B, Wang Y, Bahl V, Lin S, Talbot P. (2014). Identification of toxicants in cinnamon-flavored electronic cigarette refill fluids. *Toxicol In Vitro* 28: 198–208.
- ^{viii} Farsalinos, K. E., Kistler, K. A., Gillman, G., & Voudris, V. (2014). Evaluation of Electronic Cigarette Liquids and Aerosol for the Presence of Selected Inhalation Toxins. *Nicotine & Tobacco Research*, 17(2), 168-174.
- ^{ix} Lerner CA, Sundar IK, Yao H, Gerloff J, Ossip DJ, McIntosh S, Robinson R, Rahman I. (2015). Vapors produced by electronic cigarettes and e-juices with flavorings induce toxicity, oxidative stress, and inflammatory response in lung epithelial cells and in mouse lung. *PLoS One* 10:e0116732.
- ^x Tierney, P. A., Karpinski, C. D., Brown, J. E., Luo, W., & Pankow, J. F. (2015). Flavour chemicals in electronic cigarette fluids. *Tobacco Control*. TC Online First. 10.1136/tobaccocontrol-2014-052175.
- ^{xi} Thornburg, Jonathan. (2016). E-Cigarettes and Vapor Products: State of the Science. Presentation to Orange County Board of Health on January 27, 2016. Available at: <http://www.orangecountync.gov/departments/health>
- ^{xii} Thornburg, J., Malloy, Q., Cho, S-H, Studabaker, W., and Lee, Y. O. (2014). Exhaled Electronic Cigarette Emissions: What's Your Secondhand Exposure? RTI Press. Available at: https://www.rti.org/pubs/secondhand_exposure_to_electronic_cigarette_emissions.pdf. Accessed March 28, 2016.
- ^{xiii} Klepeis NE. An introduction to the indirect exposure assessment approach: modeling human exposure using microenvironmental measurements and the recent National Human Activity Pattern Survey. *Environmental Health Perspectives*. 1999;107(Suppl 2):365–74.
- ^{xiv} U.S. DHHS. (2006). The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General. U.S. DHHS, CDC, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.
- ^{xv} Jarvis MJ, Foulds J, Feyerabend C. Exposure to passive smoking among bar staff. *British Journal of Addiction*. 1992;87(1):111-3.
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- ^{xviii} J. Martin, North Carolina Division of Public Health, Tobacco Prevention and Control Branch (personal communication, March 31, 2016).
- ^{xix} S. Steinert, Chapel-Hill Carrboro City Schools (personal communication, February 23, 2016)