

MINUTES OF THE TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REGULAR MEETING
May 12, 2015

THE WAYNESVILLE BOARD OF ALDERMEN held its regular meeting on Tuesday, May 12, 2015 at 6:00 p.m. in the board room of Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

Mayor Brown called the meeting to order at 6:00 p.m. with the following members present:

Mayor Gavin Brown
Alderman Gary Caldwell
Alderman Julia Freeman
Alderman J. Wells Greeley
Alderman LeRoy Roberson

Manager Marcy Onieal was not present

The following staff members were present:

Woodrow Griffin, Town Attorney
Amie Owens, Town Clerk
David Foster, Public Services Director
Daryl Hannah, Streets and Sanitation Supervisor
Bill Hollingsed, Chief, Waynesville Police Department
Steve Noland, Facilities and Maintenance
Damon Swanger, Maintenance Worker II

The following media representatives were present:

Mary Ann Enloe, the Mountaineer
Becky Johnson, Smoky Mountain News

1. Welcome /Calendar/Announcements

Mayor Gavin Brown welcomed everyone to the meeting and noted the following calendar events and invitations:

- May 14 – Law Enforcement Memorial - Sheriff's Office - 10:30 a.m.
- May 16 – Quick Draw – Laurel Ridge Country Club – 5:00 p.m.
- May 16 – Casino Royale Event presented by Haywood Healthcare Foundation at the Maggie Valley Club – 6:00 p.m.
- May 19 - Southwestern Commission regular meeting – 6:30 p.m.
- May 28 – Detective Scott Muse Retirement Reception – 4:00 p.m. Town Hall Upstairs Lobby

Mayor Brown noted that budget preparation is in full swing and asked members to try and be flexible in the event there are special called meetings.

Mayor Brown explained that Manager Onieal was not present due to the fact she had been in Raleigh meeting with a Senate Committee regarding the Waynesville/Lake Junaluska Referendum. He added that the bill would now go to the Finance Committee which is scheduled to meet next week. Mayor Brown noted that he and/or Ms. Onieal may be in attendance for that meeting.

2. Adoption of Minutes

Alderman Caldwell made a motion, seconded by Alderman Freeman, to approve the minutes of the April 14, 2015 regular meeting as presented. The motion carried unanimously.

3. Proclamations

Mayor Brown read aloud a proclamation recognizing the week of May 17 – 23 as Public Works Week. David Foster, Public Services Director, explained that there were three individuals present representing the department and described their individual accomplishments. Damon Swanger, attended a youth leadership conference in Washington, D.C.; Steve Noland is a licensed plumber and allows the town to utilize his license; and Daryl Hannah, who recently completed the Municipal and County Administration Certification Course (MCACC) offered by the UNC School of Government.

Mr. Foster explained that Public Services are the unsung heroes of local government; they are the front line and front door service providers. Mr. Foster gave an example of if garbage is not picked up when citizens have become accustomed, they are on the phone calling to see why. Public Services encompasses multiple functions within the town and customer service is at the heart of their interactions with citizens and visitors.

Mayor Brown commended the individuals on their accomplishments and asked Mr. Hannah to tell about his experience in the MCACC. Mr. Hannah explained that MCACC is a 7-month undertaking to teach about various government functions such as employment law, planning/zoning, finance, elected officials responsibilities. Receiving training in all of these areas allows for broader understanding of local government and how to work cross-departmentally.

Mayor Brown concluded by noting that the Public Services staff is a shining example of the benefit to the community.

Alderman Caldwell added that he appreciated the work on the armory and sidewalks to get ready for the ARC of Haywood County event in late April. He noted that there were many good comments regarding the parking lot and the facility, mostly from out of town visitors.

Mr. Foster took the opportunity to introduce the new Town Engineer – Preston Gregg and noted that he would begin work on May 28.

Fire Chief Joey Webb introduced Catherine Hughes, an intern who will be with the town during the summer. Ms. Hughes is pursuing her Masters Degree in Public Administration from UNC-Chapel Hill with a concentration in Emergency Management. Her primary task while here will be to develop emergency action plans for all departments, and assisting with CAPRA risk management for Recreation. Chief Webb noted that she will also be developing NIMS compliance plans and assisting with other administrative functions with the Fire Department.

B. PRESENTATIONS

4. Historic Frog Level Merchants Association Update

Tom Sheppard, board member of the Historic Frog Level Merchant's Association (FLMA) provided a letter to the Board of Aldermen regarding the current state of Frog Level and some concerns about the area. Mr. Sheppard posed two questions to the board – are you happy with Frog Level as it is today and what is your vision of the future of Frog Level?

Mr. Sheppard noted that the Whole Bloomin' Thing festival was very successful due in part to the addition of a festival director, Joy Simmons. The FLMA is working to gain a social media presence with the addition of a website to promote Frog Level. The goal is to gain additional festivals and events in Frog Level and encourage continued growth. Mr. Sheppard added that other ideas include the addition of banners, planters, benches and garbage receptacles to provide a more inviting view of Frog Level, as well as a train themed museum dedicated to Frog Level.

Mr. Sheppard explained that the FLMA had some concerns and would require some assistance from the Town in addressing them. The first is assistance with promotion including additional signage announcing Frog Level; however, there are some limitations due to the current sign ordinance. Another concern is the unused buildings in Frog Level with dilapidated facades. The request is to have the town intervene to have owners improve the building's appearance.

Mr. Sheppard commented that the biggest concern is the homeless and the Open Door. He clarified that the majority of the patrons to the Open Door came and received their meals and left; however, several examples were provided of situations where individuals have acted inappropriately. The request was for the Town to pass an ordinance requiring the Open Door to pass enforceable internal policies to prevent future issues. Mr. Sheppard added that in the long term, a food bank in a shopping area will not work and that zoning should be reviewed and such services not allowed in a commercial district. He outlined a future vision to have Frog Level become a destination much like Main Street where people congregate to relax and enjoy sitting creekside with friends.

Mr. Sheppard concluded by asking the board, would you help us work on our vision? He noted that the FLMA was willing to work with the Town to see improvements made and would like to be informed of any meetings regarding Frog Level.

Mayor Brown thanked Mr. Sheppard for his comments and added that the issues presented could not be decided upon at this meeting. The issues presented cross all aspects of town operations and are not simple to address. He noted that an ordinance could not be passed to single out one business or organization. The Mayor commented, "It's wrong and would bring on discrimination lawsuits that we are not going to be a part of." Mayor Brown added that there could not be discussion unless the Open Door is part of the dialogue. He acknowledged that issues would not be solved overnight and asked if property owners or merchants would consider special tax such as that paid on Main Street. He requested that each of the board members weigh in on the issues presented.

Alderman Caldwell explained that as someone who works in that area, he agreed that something needs to be done and that it made sense to look at amending the sign ordinance for banners for beautification. He added that he was on the FLMA's side and expressed that if anyone needed to talk about these issues, he was their contact.

Alderman Greeley explained that he considered Waynesville to have a borough system; each area is unique but can co-exist together with a similar look, but with different draws and patrons. He is an advocate for growth and improvements in all areas.

Alderman Roberson echoed that singling out one business or organization is not feasible. The town cannot dictate for improvements to private land and expecting them to move or change their internal policies is not something that the Town would do.

Mayor Brown added that it may be possible to establish a task force to work together, FLMA, Town and Open Door, but he cautioned that nothing would be resolved overnight. He reiterated that there are multiple considerations involved in the concerns and the requests.

Alderman Freeman commented that the Open Door works with primarily Haywood County residents with only a small population of transients. As far as the issues with disobedience, she agreed that they needed to be addressed, but added that it is the job of this board to look at taking care of all of the citizens and there are hungry people in Waynesville.

Mayor Brown concluded the discussion by noting that an initial step may be to discuss the sign ordinance with the Development Services department. He thanked Mr. Sheppard for his time and presentation and assured him that this is not an issue that is being ignored. Mayor Brown added that the Town will continue to work together with all parties to find an amicable solution, if possible.

A copy of the letter read and provided to the board members by Mr. Sheppard and the Historic Frog Level Merchant's Association is herein incorporated into these minutes.

C. PUBLIC HEARING

5. Continuation of Public Hearing, opened on March 24, to consider adoption of an ordinance regulating the use of tobacco and related products in the Town of Waynesville

Town Attorney Woody Griffin opened the public hearing at 7:08 p.m. noting that this was a continuation of the public hearing from previous meetings. He asked if anyone wished to address the board.

Megan Hauser, 152 Walnut Street #7, Waynesville provided statistics from a community health survey to support putting this ordinance in place including the Haywood County ranking of 56th for health outcomes in North Carolina. She opined that an ordinance would help residents and visitors – from data obtained indicates 74% of individuals in Haywood County do not smoke, with 80% non-smoking in NC. Ms. Hauser explained, from CDC – 2013 data, 82.2% of adults do not smoke and ordinances such as this support people in who are interested in quitting. She noted that between January and March 2015, the NC Quit Line had received 40 calls from Haywood County residents. Ms. Hauser called attention to the Waynesville logo tagline of Progress with Vision; she explained that this ordinance not only supports those who want to quit but protects overall all health of citizens, children and visitors.

Attorney Griffin closed the public hearing at 7:11 p.m.

Mayor Brown asked the board for any comments.

Alderman Roberson noted that this ordinance may help Frog Level in their quest for improvements since smoking will not be allowed on public sidewalks and may encourage individuals to move to another area. He added that health concerns exist with smoking including lung cancer and macular degeneration, a problem that he frequently saw in his practice.

Alderman Greeley added that he supported the ordinance as written. He added that enforcement was a concern, but there will be time to begin the education process before the ordinance is in place.

Alderman Caldwell agreed with his support.

Alderman Freeman noted that her initial concern was to not infringe upon the rights of smokers, but the way that the ordinance has been written illustrates that the effort has been put forth to prevent this as much as possible.

Mayor Brown noted there was a Resolution of Adoption required for the Ordinance.

A copy of the Resolution and the Ordinance are herein incorporated into these minutes.

Alderman Roberson made a motion, seconded by Alderman Greeley to adopt an ordinance regulating the use of tobacco and related products in the Town of Waynesville which will be effective six (6) months from this date to allow for public education and proper signage. The motion carried unanimously.

D. NEW BUSINESS

6. Sarge's Animal Rescue Foundation – street closure request

Mayor Brown noted that a request had been received from Sarge's Animal Rescue Foundation to hold the 10th Annual Downtown Dog Walk on Saturday, August 1, 2015 beginning at 9:00 a.m. until 11:00 a.m. with the walk going through downtown and ending on the Historic Courthouse lawn. This event has been a long-standing success. Mayor Brown asked if there were any questions or comments from the board. There were none.

Alderman Freeman made a motion, seconded by Alderman Caldwell to approve the street closure for the 10th Annual Downtown Dog Walk on Saturday, August 1, 2015 from 9:00 a.m. until 11:00 a.m., as presented. The motion carried unanimously.

7. Memorandum of Understanding – New Generation Leaders for county-wide Greenway Branding

Martha Bradley, attorney from the Cannon Law Firm, representing New Generation Leaders, noted that the Memorandum of Understanding (MOU) referenced at the April 14 meeting had been developed and submitted to municipalities for review. Ms. Bradley has spoken with Manager Onieal regarding the document and noted that she was agreeable, if the board recommended signing. She added that the Town of Maggie Valley had unanimously approved execution of the MOU last week.

Mayor Brown thanked Ms. Bradley and the New Generation Leaders in the audience for their prompt follow up and added that he looked forward to seeing their continued progress.

Alderman Greeley made a motion, seconded by Alderman Roberson to authorize the Mayor and/or Town Manager to execute the Memorandum of Understanding between the Town of Waynesville and the New Generation Leaders for the county-wide greenway branding and way-finding signage, as presented. The motion carried unanimously.

F. COMMUNICATIONS FROM STAFF

9. Town Attorney

Town Attorney Griffin had no business to discuss.

G. COMMUNICATIONS FROM MAYOR AND BOARD OF ALDERMEN

H. CALL ON THE AUDIENCE

Jack Wadham requested to address the board. He offered a solution to take the FLMA proposal of internal process controls one step further and include breathalyzers for those individuals suspected of consuming alcohol. Mr. Wadham agreed that it was not the majority of the patrons who would be impacted, but those who consistently broke the rules and caused problems. He added that this solution could cut down on the number of police and emergency calls and prevent some of the other issues noted earlier such as litter. Mr. Wadham presented a petition from local shop owners who would like to see something done to incentivize the Open Door to stop serving those who are not abiding by the rules. His suggestion was for the town to consider withholding of funding for electricity if service to intoxicated individuals continued. Another suggestion was for the Open Door to have restroom facilities open in the afternoon prior to meals so that individuals could use them rather than the alley ways or on buildings.

Another individual Robin Rupe noted that she did laundry at the Open Door and that when the Executive Director, Perry Hines, was not present, when most of the issues occur. She added that there was limited security and she was afraid that someone would get hurt.

Mayor Brown again noted that the Open Door was not present to provide feedback regarding these issues and that they must be included in the discussion; the town would not unilaterally make decisions without all parties being involved. Mayor Brown reiterated that an acceptable solution was in everyone's best interest and that the board would work with all parties to try and come to resolution.

Board member agreed by consensus that continuing with potential task force meeting involving all parties was the best course of action.

I. ADJOURN

There being no further business to discuss, Alderman Caldwell made a motion, seconded by Alderman Greeley, to adjourn the meeting at 7:34 p.m. The motion carried unanimously.

ATTEST

Gavin A. Brown, Mayor

Marcia D. Onieal, Town Manager

Amanda W. Owens, Town Clerk

Historic Frog Level Merchant's Association

P O Box 1575; Waynesville, NC 28786

May 12, 2015

Good Evening Mayor and Town Aldermen,

My name is Tom Sheppard and I am a Board member for the Historic Frog Level Merchant's Association who I am representing here this evening. With me here are fellow board members, building owners and shop owners.

We are here to discuss with you our community "Frog Level", our hopes, our vision and our concerns. First we have a couple of questions for you to ponder. First, Are you happy with Frog Level as it is today? Second, What is your vision for the future of Frog Level?

First I would like to tell you about what is happening in Frog Level. A year ago we established a new Board with the hopes of improving Frog Level and moving it forward. One of our first decisions was to hire an outside person, Joy Simmons, to be our festival director. With her guidance and leadership we just completed our 13th annual Whole Bloomin' Thing Festival and it was a huge success with large crowds and over 100 vendors....our most yet. Now that Joy's first festival is complete she is bringing forth new ideas to help improve future festivals. We are proud to be the first Waynesville festival of the new season and to be able to kick off the festival season in grand fashion.

A couple of months ago I met Gary Caldwell and starting asking him questions to get a clearer picture of some of the issues facing Frog Level. One was our parking situation. I learned that the Town leased the parking lots on Commerce Street from Southern Railway and that Southern Railway had denied previous requests to allow paving of the parking lots. Knowing that there is new ownership of the railway, Blue Ridge Railway, I decided to try to reach out to them from a merchant's perspective to see if they would consider allowing the parking lots to be paved. After talking to the Asheville office I was put in contact with Brad Snow of the Watco Company, the parent company of Blue Ridge Railway. Mr. Snow is responsible for all real estate holdings for the Watco Company. I had a good talk with Mr. Snow expressing the merchants desire to pave the parking lots to improve the parking situation in Frog Level and to greatly cut down on the dirt and grime on the streets and to the shops in Frog Level. Mr. Snow said he fully understood as he had visited our area once before and had seen the conditions himself. Mr. Snow said that he needed to review legal documents, talk with his bosses and

then he would get back to me regarding paving the lots. Mr. Snow also asked about the loading dock that he saw down in Frog Level and if it was being used. I informed him that I had never seen it used but he may want to talk with Giles Chemical. I also informed Mr. Snow that Town Alderman Caldwell had advised me that the town would love to see the loading dock gone. We are still awaiting word from Mr. Snow. We realize that if Watco Company agrees to anything of this they would need to work directly with you, the Town, to reach a formal agreement.

Going forward the Association is working to get a website up and running to promote Frog Level and its merchants along with using social media. We hope to get detailed historical markers on all of the historical buildings in Frog Level. What if we procured thru a grant an old caboose and turned it into a museum depicting Frog Level in the late 1800's and early 1900's. We would like to hang banners from our street lights that would tell visitors that they have found us, that they are in Frog Level and that promote events that are upcoming in Frog Level. While I understand banners are not allowed on Main Street the need is not there as it is in Frog Level because everyone is fully aware and know when they have arrived on Main Street. We are open to adding more plants and flowers, benches and garbage receptacles. We are also looking to possibly join the quilt trail. We will be looking at grants and sponsorships funds from the community, state and federal government to help with these endeavors. We would also like to add additional festivals throughout the year. Some possible examples are a mud run, an antique show and a Christmas craft fair and Tree lighting.

Now to our concerns. We need help in promoting Frog Level. Why? Because we, the merchants, hear all of the time from visitors to our shops that they did not realize we are here and that we are "Frog Level". Many say I heard people talk about or say the name Frog Level but we had no idea where you were. We believe that a website and social media will help in this regard. But the real problem is that there are only two signs highlighting Frog Level. One is on Russ Avenue pointing to turn right. When a person turns right they can drive straight up to Main Street or Turn right on Commerce Street and end up in Hazelwood asking themselves or others in their vehicle "Did you see Frog Level? Did we pass it? The other sign is on Depot Street before the railroad tracks coming down from Main Street. The problem is it is on the left side of the road and we do not believe it catches drivers' eyes very well. How can the Town help? By reviewing and hopefully changing the Town's ordinance regarding signs and banners in Historic Districts. Right now signs and banners are not allowed. Due to lack of area for signage announcing Frog Level we have come up with the idea to hang banners from the street lights. We have been working with a sign company to determine the proper size banner for visibility but that will also safely hang from our street lights. We are looking to put a couple

up on Commerce Street and a couple on Depot Street. Not every streetlight will have a banner. We would plan to change them out every couple of months to keep them fresh by changing the "Welcome to Frog Level" look or to promote an upcoming festival or event. This is our suggestion. Maybe you have a better suggestion. We are open to working with you to help improve Frog Level's visibility.

We need help with some of the unused buildings in Frog Level. We have safety and appearance concerns. Our safety concerns are that siding and overhangs have fallen off buildings recently. This is a huge safety concern to our visitors, employees and ourselves and opens up liability and legal issues for us all. We also have some rodent issues with shops next to closed up buildings. Appearance is also very lacking on many buildings. While many of our buildings have historical stature that does not mean dilapidated, boarded up or falling down fits "historical". Many of these closed up buildings have been this way for years. Thus we need your help in getting those owners to improve their building's appearance and to hopefully be willing to help get their businesses reopened. This is our ultimate goal.

As we are sure you are aware the biggest concern facing all of us is the homeless and Open Door. It really boils down to two issues. The first is a short term issue. We all realize that there are many hungry people in our community who need help. The vast majority of those people who use the Open Door do so as they should. They come at the appropriate hour and then they leave. They are no trouble at all. Then there is that handful minority who leave litter (trash, beer can, alcohol bottles, cigarette butts, condoms and worse) around and in our trees, bushes, planters and our beautiful Chasing Tadpoles art display. Did you know that the Open Door has a policy that says something like this? If before or after the designated meal time you are found in, out front of or behind the Open Door you will not be served meals for the next two days. Our question is why don't they extend and enforce that policy to all of Frog Level? You are probably asking well have you asked them to do this. The answer is Yes!, many times. This has been an issue for many, many years, long before I was ever part of Frog Level. Previous Business owners and Boards have met not only with Perry at the Open Door but also with the fine folks at Longs Chapel. At times the situation has improved for a short time period but never for long. The Open Door needs a strong, enforceable internal policy to fix this problem. If they were to do so it would definitely improve the shopping/visitor experience to Historic Frog Level. It would also help to reduce the 911 calls to Frog Level. The bottom line for homeless people who will not follow the rules is that if their food source stops they will move on to another food source. It's their way of life. If this fix is not made to happen your beautiful Chasing Tadpoles art display will never be visited and eventually will be broken and destroyed and the quantity and quality of businesses in Frog Level will never improve. We are asking that

you pass an ordinance requiring the Open Door to pass enforceable, internal policies that will mandate that those problem few people move on after they are served their meals or they will not be fed in the future.

Now for the long term issue with Open Door. A food bank and a vibrant, go to shopping district will never work. From the homeless issue discussed above to parking issues for shoppers a food bank should not be in a commercial district. While we fully understand and appreciate the difficulty in moving a food bank a serious discussion is needed by you, the Town, to determine the real future of Frog Level. Here is a possible vision that we believe could happen one day in Frog Level. Have all of you been down to Panacea or Frog Level Brewing and gone out back to the area they have established for locals and visitors to sit out by the creek with family and friends enjoying a beautiful day in the mountains of Waynesville eating a sandwich and drinking a coffee or beer? It is truly beautiful and relaxing. I have friends who visit who insist on going down and sitting out by the creek. Well envision the Open Door becoming a restaurant with outside seating facing the creek. The area from Panacea and Frog Level Brewery is extended down to the Open Door area allowing for more people to visit and relax out by the creek. And then what if a pedestrian bridge is built across the creek at Panacea and another at the Open Door area to allow more benches on the other side of the creek? This would turn Frog Level not just into a destination for Locals but a real visitor designation like Main Street is now. What better way to lure visitors to our great Town and to keep them here for several days at a time. While I have no idea if this entire vision is even possible it gives all of us something to think about. Some of the most successful cities in our Country are those who have built an area up around water. If Frog Level becomes something along the lines of this vision the vitality and well being of Frog Level and thus the Town will be greatly enhanced

Is this something worth the Town of Waynesville considering? Would you be willing to help us work on our visions to improve Frog Level? The real long term future success of Frog Level is in your hands. Changes to ordinances need to be made. A determination must be made if Frog Level is going to be a real commercial district or not. We would love to work with the Town to make this happen. Our economy is improving. The time is now.

We certainly appreciate you allowing us the time to inform you of our works in progress and of our vision for Frog Level. We would love to be kept informed of any meetings regarding Frog Level and again we would like to be part of the process. We would appreciate hearing from you in regards as to whether you believe there is a chance some and/or all of the needed changes will be made and if we together can work on moving Frog Level forward for the benefit of our visitors, the Town and its citizens. THANK YOU!!

Historic Frog Level Merchant's Association

P O Box 1575; Waynesville, NC 28786

Contact List as of 5/12/15

President	Clark Williams	froglevelbrewing@gmail.com	828-400-8797
V-President	Mel Fergenbaum	mel@mcinsightsinc.com	828-944-0356
Secretary	Lynda Saffell	lsaffell@charter.net	828-629-1835
Treasurer	Tom Sheppard	smokeyffpm@aol.com	561-373-0396
Board	Jim Pierce	jpierce777@bellsouth.net	828-734-9777
Board	Teri Siewert	tsiewert@yahoo.com	828-246-0818
Board	Dewey Stoval	dstoval1926@gmail.com	828-456-3612

*Mr. Stoval's computer is currently not working

**RESOLUTION TO ADOPT AN ORDINANCE PROHIBITING SMOKING AND THE
USE OF E-CIGARETTES AND TOBACCO PRODUCTS ON CERTAIN TOWN
PROPERTY**

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, on January 2, 2010, “An Act To Prohibit Smoking In Certain Public Places And Certain Places Of Employment,” 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, according to NCGS § 160A-174(a), a city may by ordinance prohibit acts or conditions detrimental to the health, safety, or welfare of its citizens; 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, the CDC advises that all individuals with coronary heart disease or known risk factors for coronary heart disease should avoid all indoor environments that permit smoking³; 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 antifreeze⁴; and

WHEREAS, the CDC reports that smoking and smokeless tobacco use are frequently initiated and established during adolescence, that most people who begin smoking during adolescence are

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, 14-16 (2006), <http://www.surgeongeneral.gov/library/secondhandsmoke/report/index.html>.

³ See *id.* at 15; Centers for Disease Control and Prevention, Smoking and Tobacco Use Health Effects of Secondhand Smoke, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/index.htm (last visited March 25, 2011).

⁴ Memorandum from B.J. Westenberg, 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>.

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 tobacco-free public areas; and

WHEREAS, small children playing in town athletic fields and playgrounds are more likely to ingest cigarette butts if they are discarded and accessible; and 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

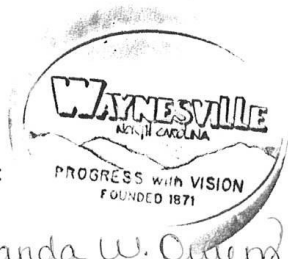
WHEREAS, the Town of Waynesville is committed to protecting the health of individuals in public places by eliminating exposure to secondhand smoke; and

WHEREAS, the Town of Waynesville 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 use of e-cigarettes in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and could lead to difficulties in enforcing the smoke-free laws;

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen of the Town of Waynesville, North Carolina, that it is in the best interests of the citizens of the Town of Waynesville to adopt an ordinance prohibiting smoking and the use of e-cigarettes and tobacco products in Town buildings, vehicles, grounds, and the town park system and prohibiting smoking and the use of e-cigarettes on sidewalks in the Town business districts.


Adopted this 11 day of May, 2015.



ATTEST:

Amanda W. Owens, Town Clerk

TOWN OF WAYNESVILLE


Gavin A. Brown, Mayor


Marcia D. Onieal, Town Manager

Prohibition of Smoking and E-Cigarette and Tobacco Use in Town Buildings, Town Vehicles, Town Grounds, and the Town Park System and Prohibition of Smoking and the Use of E-Cigarettes on Sidewalks in Town Business Districts.

Section 42.5. Authority.

This section is enacted pursuant to authority conveyed by N.C.G.S. §130A-498 and 160A-174(a).

Section 42.6. Definition of Terms.

The following definitions are applicable to this Section:

- a. *E-cigarette* – Any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine 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, or under any other product name or descriptor. An e-cigarette does not include 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.
- b. *Employee* – A person who is employed by the Town of Waynesville, 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.
- c. *Enclosed area* – An area with a roof or other overhead covering of any kind and walls or side coverings of any kind regardless of the presences of openings for ingress and egress, on all sides or on all sides but one.
- d. *Sidewalk* – A sidewalk that is owned, leased, or occupied by the Town of Waynesville, including those that are controlled and maintained by the Town of Waynesville.
- e. *Smoking* – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.
- f. *Temporary Special Event or Activity* - Any indoor or outdoor public gathering or celebration sponsored by the Town of Waynesville, including dance, music, and dramatic productions, entertainment, amusements, festivals, carnivals, parades, bicycle rides, walks, and runs and any event that will not comply with usual traffic regulations or controls, requiring temporary closure of streets, sidewalks or alleyways and for which permission is granted by the Town of Waynesville Board of Aldermen.
- g. *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, chewing tobacco, snus, and snuff. 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.

- h. *Town building* – A building owned, leased as lessor, or the area leased as lessee and occupied by the Town and includes, but is not limited to, offices, restrooms, indoor walkways, stairwells, entrances, passageways, break rooms, lobbies, and work areas.
- i. *Town grounds* – An unenclosed area owned, leased, or occupied by the Town of Waynesville.
- j. *Town park system* – Any tract of land or body of water comprising part of the Town of Waynesville's parks, playgrounds, recreational areas, trails, and greenways, including but not limited to the thirty-nine acres of parks identified as: Waynesville Recreation Center, Waynesville State Park, Waynesville Disc Golf Course, Old Armory Recreation Center, East Street Park, Recreation Park, Vance Street Park, Sulphur Springs Park, Hazelwood Park, Pepsi Dog Park and any areas designated as parks or greenways in the future.
- k. *Town vehicle* – A passenger-carrying vehicle owned, leased, or otherwise controlled by the Town of Waynesville and assigned permanently or temporarily by the Town of Waynesville to Town employees, agencies, institutions, or facilities for official Town business.
- l. *Universal 'No Smoking' Symbol* – Symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.
- m. *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.

Section 42.7 Areas where smoking and the use of tobacco products and e-cigarettes are prohibited.

- A. Smoking and the use of tobacco products and e-cigarettes are prohibited in the following locations:
 - (1) Town buildings;
 - (2) Town grounds;
 - (3) Town vehicles;
 - (4) The Town park system;
 - (5) Town buildings and grounds and privately owned buildings and grounds while Temporary Special Events or Activities, as defined above, are taking place.
- B. Smoking and the use of tobacco products and e-cigarettes are not prohibited within the confines of private vehicles while parked on Town grounds, in the Town park system, or anywhere where smoking and the use of tobacco products and e-cigarettes are otherwise prohibited by this section.

Section 42.8 Areas where smoking and the use of e-cigarettes are prohibited.

- (a) Smoking and the use of e-cigarettes are prohibited on sidewalks in all districts classified as business districts, including, but not limited to, the Municipal Service District (downtown), the Central Business District (CBD), Hazelwood Business District (H-BD), South Main Street Business District (SM-BD), Regional Center (RC),

Dellwood/Junaluska Regional Center (DJ-RC), Hyatt Creek Regional Center (HC-RC), and Russ Avenue Regional Center (RA-RC), as outlined by the Town of Waynesville Code of Ordinances, Appendix A – Land Development Standards, Chapter 2 – District Provisions, Sections 2.2, 2.3.6 and 2.3.7.

Section 42.9 Litter from tobacco products and e-cigarette devices

- (a) It shall be unlawful for anyone to deposit any portion of a cigarette, cigar, smoking or e-cigarette device, or any refuse related to smoking on property, sidewalks, streets, alleys, and rights-of-way owned, leased, or occupied by the Town, except in a receptacle designated for that purpose. Littering or failure to use indicated receptacles is subject to civil penalty.
- (b) It shall be unlawful for anyone to spit smokeless tobacco anywhere on Town grounds or in the Town park system. Spitting of smokeless tobacco on Town grounds is subject to civil penalty.

Section 42.10 Implementation Requirements

- (a) The Town shall post signs that meet all the requirements in Section 42.11 of this ordinance.
- (b) The Town shall remove all ashtrays and other smoking receptacles from Town buildings and grounds.
- (c) Town employees shall make every effort to ensure compliance with this policy, including contacting law enforcement personnel if necessary.

Section 42.11 Signage

The signs required by Section 42.10 must:

- (a) State that smoking is prohibited and include the universal “No smoking” symbol or state that smoking and the use of tobacco products are prohibited and include the universal “No Smoking and Use of Tobacco Products Prohibited” symbol, as applicable. In lieu of or in addition to stand-alone signage, smoking, e-cigarette and tobacco use restrictions can be incorporated into comprehensive rules signage in text form where feasible.
- (b) Be of sufficient size to be clearly legible to a person of normal vision and be conspicuously posted.
- (c) Be posted at entrances to Town buildings and in other locations within the buildings reasonably calculated to inform employees and the public of the prohibition.

- (d) Be posted on Town grounds in locations and at intervals reasonably calculated to inform employees and the public of the prohibition.
- (e) It shall be unlawful for any person to remove or deface any placard or sign erected by or under the authority of this section.

Section 42.12 Enforcement and Penalties

- (a) *Penalty for Violation.* Violation of Sections 42.7, 42.8, and 42.9 shall be punishable by a civil penalty of not more than fifty dollars (\$50.00).
- (b) A citation may be issued by any Town employee acting in an enforcement capacity and within their responsibilities related to the issuing of citations. A citation issued under this section has no consequence other than as set forth in (a) above, and no court costs may be assessed.
- (c) *Additional sanctions for employees.* In addition to any penalty under this section, employees of the Town who violate this ordinance shall be subject to disciplinary action consistent with the Town's human resources policies.

Section 42.13 Severability; Conflict of Laws

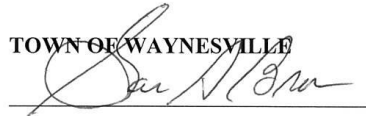
If this ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the ordinance that can be given separate effect and to that end the provisions of this ordinance are declared to be severable. Whenever the provisions of this ordinance conflict with other ordinances of the Town of Waynesville, this ordinance shall govern.

Section 42.14 Effective Date

This ordinance shall be effective six months after the date adopted.

Adopted this 12 day of May, 2015.

TOWN OF WAYNESVILLE



Gavin A. Brown, Mayor

ATTEST

Amanda W. Owen
Town Clerk



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