



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM

June 10, 2019

TO: Mayor and Board of Commissioners

FROM: Debora P. Díaz, Town Manager

REF: New Business

1. Proposed Amendment to Chapter 130, General Offenses, Smoking In and On Municipal Facilities (Attached NB-1)

At its April 24, 2019, meeting, the Board of Commissioners directed Staff to update the Town's smoking ordinance under Chapter 130 General Offenses to address issues of e-cigarettes and vaping products. The attached draft ordinance includes changes to §130.40 – 130.47 to address those newer products, aligning them with the limitations currently in place for tobacco products in Town buildings and facilities. Staff recommends the draft ordinance as presented, which has been reviewed and approved by the Town Attorney.

A motion will be in order.

AN ORDINANCE AMENDING THE KILL DEVIL HILLS TOWN CODE,
CHAPTER 130, GENERAL OFFENSES

BE IT HEREBY ORDAINED BY THE Kill Devil Hills Board of Commissioners that Chapter 130, General Offenses, of the Kill Devil Hills Town Code, shall be amended by adding the underlined language and deleting the following stricken language to the sections identified below, as follows:

SMOKING IN MUNICIPAL BUILDINGS AND ON MUNICIPAL GROUNDS

§ 130.40 PURPOSE AND FINDINGS.

The Board of Commissioners finds as follows:

- (A) Numerous studies have found that tobacco smoke is major contributor to indoor air pollution;
- (B) Reliable studies have shown that breathing sidestream or secondhand smoke is a significant health hazard for certain population groups, including children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory functions, including asthmatics and those with obstructive airway disease;
- (C) Health hazards induced by breathing sidestream or secondhand smoke include lung cancer, respiratory function, bronchial-constriction and bronchial-spasm;
- (D) Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing sidestream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; ~~and~~

(E) The smoking of tobacco or any other weed or plant is a proven danger to health. Accordingly, it has been determined that the health, safety and general welfare of the residents of, persons employed in and persons who frequent this town would be benefitted by the elimination of smoking in designated enclosed places, including places of employment - ; and,

(F) Additional studies have found that electronic nicotine delivery systems, or generally “electronic cigarettes,” contain chemicals that are potentially toxic to humans, and that inhaled secondhand electronic cigarette emissions/vapor are harmful to non-users, as the mist contains heavy metals and other toxic pollutants. As a result, the Dare County Health and Human Services Board prohibited all such devices in all restaurants and bars in Dare County in 2015.

§ 130.41 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

EMPLOYEE. Any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

EMPLOYER. Any person, partnership, corporation or other entity, including a municipal corporation, who employs the service of more than two persons.

ENCLOSED. Closed in by a roof and four walls with appropriate openings for ingress and egress.

PLACE OF EMPLOYMENT. Any enclosed area which is occupied by two or more employees under the control of an employer, including but not limited to work areas, employee lounges, conference rooms, employee cafeterias, restrooms or any other rooms or areas utilized primarily for the benefit or use of the employees.

SMOKING. The carrying or holding of a lighted pipe, cigar or cigarette of any kind or other lighted smoking equipment or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind. This term also includes any non-combustible product 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 contained in a vapor cartridge, such as an electronic cigarette, cigar, cigarillo, or pipe.

§ 130.42 REGULATION OF SMOKING IN CITY-OWNED FACILITIES.

Any facility owned by the town and designated by the Board of Commissioners shall be subject to the provisions of this subchapter.

§ 130.43 PROHIBITION OF SMOKING IN CERTAIN PLACES.

(A) *In designated enclosed places.* Smoking shall be prohibited in the following places within the town:

(1) All enclosed areas available to and customarily used by the general public, elected or appointed town officials and employees, included but not limited to the following:

- (a) Hazardous material or operations areas;
- (b) Mechanical areas;
- (c) Computer and sensitive office equipment areas;
- (d) Conference rooms (during meetings of three or more persons);
- (e) Private offices;
- (f) Classrooms;
- (g) Restrooms;
- (h) Hallways;

- (i) Any assembly room;
- (j) Open enclosed work areas shared by two or more employees.

(2) There may be, subject to the approval of the Town Manager, separate areas designated as smoking rooms so long as the areas are separate and apart from the general areas patronized by the public and occupied by employees of the town.

(B) *In places of employment.*

(1) It shall be the responsibility of all department heads to submit to the Town Manager for final approval of any area believed suitable for designation as a "Smoking Area." It shall be incumbent on each department head to enforce the provisions of this section.

(2) Each department head in each building of the town shall adopt, implement and make known a written smoking policy, which shall contain at a minimum the following requirements:

(a) Prohibition of smoking in hazardous material or operations areas, mechanical areas, computer and sensitive office equipment areas, conference rooms (during meetings of three or more persons), private offices, classrooms, restrooms, hallways, any assembly rooms and open enclosed work areas shared by two or more employees;

(b) In any dispute arising under this smoking policy, the rights of the nonsmoker shall be given precedence;

(c) The smoking policy shall be communicated to all employees within 30 days after its adoption and at least annually thereafter;

(d) "No Smoking" signs shall be posted as prescribed by the Manager.

(C) Aviation Park, including the skate park, hockey rink, Frog Pond, Paws Dog Park, and any future improved areas connected to these facilities; Hayman Boulevard Park; Meekins Field; Copley Drive Park; the Disc Golf Course; Nags Head Woods Multi-Purpose Trail; and Ocean Bay Boulevard Bathhouse are hereby declared smoke-free areas in the Town of Kill Devil Hills and all use of tobacco or tobacco products is hereby prohibited.

§ 130.44 POSTING REQUIREMENTS.

~~"Smoking"~~ or "No Smoking" signs, ~~whichever are appropriate~~, with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this chapter by the department head and/or manager having jurisdiction of the building or other place.



§ 130.45 ENFORCEMENT.

- (A) Enforcement shall be implemented by the Town Manager or designee.
- (B) Any citizen who desires to register a complaint hereunder may initiate enforcement with the Town Manager or designee.
- (C) Notwithstanding anything in this subchapter, a private citizen may bring a legal action for nuisance to enforce this subchapter in the designated places.

§ 130.46 VIOLATIONS.

(A) It shall be unlawful for any person to smoke in any area restricted by the provisions of this subchapter.

(B) It shall be unlawful for any department head or supervisor to permit smoking in the area which may be designated as a no smoking area.

§ 130.47 NONRETALIATION.

No person, employer or supervisor shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because the employee or applicant exercises any rights afforded by this subchapter.

This amendment to Chapter 130, General Offenses, shall be in full force and effect from and after the ____ day of _____, 2019. Adopted and approved by the Board of Commissioners of the Town of Kill Devil Hills at a regular meeting held on the ____ day of _____, 2019, by a vote of ____ in favor and ____ opposed.

SEAL

Sheila F. Davies, Ph.D.
Mayor

ATTEST:

Mary E. Quidley
Town Clerk

APPROVED AS TO FORM:

Casey C. Varnell
Town Attorney

The undersigned hereby certifies that the foregoing official amendment, designated AN ORDINANCE AMENDING CHAPTER 130, GENERAL OFFENSES, was placed in the Kill Devil Hills Town Code Book on the _____ day of _____, 2019 at _____ .m.

Mary E. Quidley
Town Clerk