

AN ORDINANCE AMENDING THE KILL DEVIL HILLS TOWN CODE,
CHAPTER 10, GENERAL PROVISIONS

BE IT HEREBY ORDAINED BY the Kill Devil Hills Board of Commissioners that Chapter 10, General Provisions, 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:

CHAPTER 10: GENERAL PROVISIONS

Section

- 10.01 Title of code
- 10.02 Interpretation
- 10.03 Application to future ordinances
- 10.04 Captions
- 10.05 Definitions
- 10.06 Rules of interpretation
- 10.07 Severability
- 10.08 Reference to other sections
- 10.09 Reference to offices
- 10.10 Errors and omissions
- 10.11 Official time
- 10.12 Reasonable time
- 10.13 Ordinances repealed
- 10.14 Ordinances unaffected
- 10.15 Effective date of ordinances
- 10.16 Repeal or modification of ordinance

10.17 Section histories; statutory references

10.18 Authorization to issue civil citations

10.19 Appeal of civil citations

10.99 General penalty

§ 10.01 TITLE OF CODE.

This codification of ordinances by and for the Town of Kill Devil Hills shall be designated as the Code of Kill Devil Hills and may be so cited.

§ 10.02 INTERPRETATION.

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this code as those governing the interpretation of state law.

§ 10.03 APPLICATION TO FUTURE ORDINANCES.

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

§ 10.04 CAPTIONS.

Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

§ 10.05 DEFINITIONS.

(A) *General rule.* Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

(B) *Definitions.* For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOARD OF COMMISSIONERS or **BOARD.** The legislative body of the town.

CODE, THIS CODE, TOWN CODE or **THIS CODE OF ORDINANCES.** This municipal code as modified by amendment, revision, and adoption of new titles, chapters, or sections.

COUNTY. Dare County, North Carolina.

MAY. The act referred to is permissive.

MAYOR. The Mayor of the Town of Kill Devil Hills, North Carolina.

MONTH. A calendar month.

NORTH CAROLINA GENERAL STATUTES, GENERAL STATUTES, STATUTES. The general statutes of the State of North Carolina.

OATH. An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases, the words ***SWEAR*** and ***SWORN*** shall be equivalent to the words ***AFFIRM*** and ***AFFIRMED***.

OFFICER, OFFICE, EMPLOYEE, COMMISSION, or DEPARTMENT. An officer, office, employee, commission, or department of this town unless the context clearly requires otherwise.

PERSON. Extends to and includes person, persons, firm, corporation, copartnership, trustee, lessee, or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms ***PERSON*** or ***WHOEVER*** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

POLICE CHIEF. The Town of Kill Devil Hills Police Chief or designee.

POLICE DEPARTMENT. The Town Police Department.

PRECEDING or FOLLOWING. Next before or next after, respectively.

SHALL. The act referred to is mandatory.

SIGNATURE or SUBSCRIPTION. Includes a mark when the person cannot write.

STATE. The State of North Carolina.

SUBCHAPTER. A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have subchapters.

TOWN ATTORNEY. The Town Attorney of the Town of Kill Devil Hills, North Carolina.

TOWN CLERK. The Town Clerk of the Town of Kill Devil Hills, North Carolina.

TOWN MANAGER. The chief administrative officer of the Town of Kill Devil Hills. Any reference to ***ADMINISTRATOR*** or ***TOWN ADMINISTRATOR*** shall be deemed to refer to the ***TOWN MANAGER***.

TOWN, MUNICIPALITY, or MUNICIPAL CORPORATION. The Town of Kill Devil Hills, North Carolina.

WRITTEN. Any representation of words, letters, or figures, whether by printing or otherwise.

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YEAR. A calendar year, unless otherwise expressed.

(Am. Ord. 05-02, passed 2-16-05)

§ 10.06 RULES OF INTERPRETATION.

The construction of all ordinances of this town shall be by the following rules, unless such construction is plainly repugnant to the intent of the Board of Commissioners or of the context of the same ordinance:

(A) *AND* or *OR*. Either conjunction shall include the other as if written "and/or," if the sense requires it.

(B) *Acts by assistants*. When a statute or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, such requisition shall be satisfied by the performance of such act by an authorized agent or deputy.

(C) *Gender; singular and plural; tenses*. Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(D) *General term*. A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

§ 10.07 SEVERABILITY.

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

§ 10.08 REFERENCE TO OTHER SECTIONS.

Whenever in one section reference is made to another section hereof, the reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

§ 10.09 REFERENCE TO OFFICES.

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of this town exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

§ 10.10 ERRORS AND OMISSIONS.

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express such intent, such spelling shall be corrected and such word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of such error.

§ 10.11 OFFICIAL TIME.

The official time, as established by applicable state/federal laws, shall be the official time within this town for the transaction of all town business.

§ 10.12 REASONABLE TIME.

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of such act or the giving of such notice.

(B) The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

§ 10.13 ORDINANCES REPEALED.

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

§ 10.14 ORDINANCES UNAFFECTED.

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

§ 10.15 EFFECTIVE DATE OF ORDINANCES.

All ordinances passed by the Board of Commissioners requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided. Ordinances not requiring publication shall take effect from their passage, unless otherwise expressly provided.

§ 10.16 REPEAL OR MODIFICATION OF ORDINANCE.

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the due publication of the ordinance repealing or modifying it when publication is required to give effect thereto, unless otherwise expressly provided.

(B) No suit, proceedings, right, fine, forfeiture, or penalty instituted, created, given, secured, or accrued under any ordinance previous to its repeal shall in any way be affected, released, or discharged, but may be prosecuted, enjoyed, and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(C) When any ordinance repealing a former ordinance, clause, or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause, or provision, unless it is expressly provided.

§ 10.17 SECTION HISTORIES; STATUTORY REFERENCES.

(A) As histories for the code sections, the specific number and passage date of the original ordinance and the most recent three amending ordinances, if any, are listed following the text of

the code section. Example: (Ord. 10, passed 5-13-60; Am. Ord. 15, passed 1-1-70; Am. Ord. 20, passed 1-1-80; Am. Ord. 25, passed 1-1-85)

(B) (1) If a statutory cite is included in the history, this indicates that the text of the section reads substantially the same as the statute. Example: (G.S. § 160A-69) (Ord. 10, passed 1-17-80; Am. Ord. 20, passed 1-1-85).

(2) If a statutory cite is set forth as a "statutory reference" following the text of the section, this indicates that the reader should refer to that statute for further information.

Example:

§ 31.10 MAYOR.

The Mayor shall preside at all meetings of the Board of Commissioners.

(Ord. 10, passed 1-1-80)

Statutory reference:

For the powers and duties of the Mayor, see G.S. § 160A-67

§ 10.18 AUTHORIZATION TO ISSUE CIVIL CITATIONS.

The following staff positions within the town are hereby authorized to issue civil citations on behalf of the Board of Commissioners:

(A) Police Department - all sworn officers and animal control personnel;

(B) Planning and Inspections Department - Code Enforcement Officer; Building Codes Inspector; Chief Building Inspector; Zoning Administrator; Senior Planner; Assistant Planning Director; Planning Director;

(C) Fire Department - Fire Marshal;

(D) Public Services Department - Solid Waste Management Superintendent; Sanitation Crew Leader; Street Maintenance Supervisor; Water Plant Supervisor; Water Systems Supervisor; Assistant Public Services Director.

(Ord. 05-17, passed 9-12-05; Am. Ord. 17-7, passed 8-12-19)

§ 10.19 APPEAL OF CIVIL CITATIONS.

Civil citation issued pursuant to § 10.99, except civil citation issued in violation of Chapter 150 Building Regulations, 151 Flood Damage Prevention, 152 Subdivisions and 153 Zoning, may be appealed first to the head of the issuing department, or their designees, and, then, to the Town Manager, or their designee, if the appealing party finds the department head's decision unacceptable in accordance with this section. Those issued under Title XV - Land Usage Section of the code shall follow procedures outlined in 153.322. An appeal of a civil citation shall adhere to the following procedure:

(A) To be considered, an appeal of a civil citation shall be submitted in writing to the Town Clerk within 14 days from the date the civil citation is issued.

(B) Upon receipt, the Town Clerk shall forward the appeal to the department head for review and action to either reverse or affirm the issuance of the civil citation. In their consideration of the appeal request, the department head shall include written and/or oral comment from the appealing party and the staff member who issued the civil citation. The department head shall review and act on the appeal as soon as possible or within 30 days of the date of receipt to complete this process.

(C) In the event the appealing party is dissatisfied with the department head's action to either reverse or affirm the issuance of the civil citation, a second appeal request may be submitted in writing to the Town Manager by the appealing party not later than five days from the date the first appeal is held, and this second appeal shall be held as soon as possible or within 30 days of the department head's decision.

(D) After deliberation, the Town Manager may reverse or affirm the decision of the department head on the issuance of the civil citation.

(E) In the event the appellant has exhausted all administrative remedies with the town, then they may file a civil action in the Superior Court for Dare County, North Carolina.

(Ord. 05-17, passed 9-12-05)

§ 10.99 GENERAL PENALTY.

(A) In accordance with G.S. § 160A-175, and unless this code of ordinances provides otherwise, violation of any provision hereof shall be a Class 3 misdemeanor as provided in G.S. § 14-4, punishable upon conviction by a fine not exceeding \$50 or by imprisonment not exceeding 30 days. An ordinance may provide by express statement that the maximum fine or term of imprisonment to imposed for its violation shall be some figure or number of days less than the maximum penalties prescribed by G.S. § 14-4.

(B) Penalties.

(1) As authorized by G.S. § 160A-175, the violation of any of the provisions of this code shall subject the person or entity violating such provisions to a civil penalty of \$50 per day for each of the first 15 days such violation continues after notice of the violation from the town, \$100 per day for the sixteenth through the thirtieth day such violation continues after the initial notice from the town, and \$500 or the maximum amount authorized under the provisions of the North Carolina General Statutes, whichever is greater, for each day after 30 days that such violation continues after the initial notice from the town.

(2) The imposition and collection of the foregoing civil penalties shall be in addition to all other remedies available to the town at law or in equity, authorized under the provisions of the North Carolina General Statutes, including but not limited to the suspensions of licenses and permits and actions to abate, enjoin or otherwise remedy violations of this code and all such remedies shall be cumulative. The imposition of civil penalties or the use of any other civil remedy available to the town shall be in addition to and not exclusive of any criminal proceeding and/or penalties available and/or imposed for the violation of this code.

(C) An ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense.

(D) Notice of Violation Procedure

(1) For any and all violations of this Code of Ordinances, the authorized staff shall give written notice to the landowner of the subject property and tenant, if applicable. The written notice shall be delivered by personal delivery, electronic mail or by first-class mail. The notice shall be provide to the last address listed for the owner on the Dare County tax records and / or to the physical property address. For the purposes of this notice, delivery by first-class mail shall be deemed received on the third (3rd) business day following deposit of the notice in the mail with the United States Postal Service and delivery by electronic mail shall be deemed received on the date sent.

(2) Posted Notice: Notice of violations may also be posted on the property at the discretion of the authorized staff.

(Am. Ord. 05-02, passed 2-16-05)

This amendment to Chapter 10, General Provisions, shall be in full force and effect from and after the ____ day of _____, 2021. Adopted and approved by the Board of Commissioners of the Town of Kill Devil Hills at a regular meeting held on the ____ day of _____, 2021, by a vote of ____ in favor and ____ opposed.

SEAL

Ben Sproul
Mayor

ATTEST:

James Michael O'Dell
Deputy 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 10, General Provisions, was placed in the Kill Devil Hills Town Code Book on the _____ day of _____, 2021 at _____ .m.

James Michael O'Dell
Deputy Town Clerk