



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM

December 12, 2016

TO: Mayor and Board of Commissioners

FROM: Debora P. Díaz, Town Manager

REF: New Business

2. Recommended Amendment to Town Code to Replace Chapter 110. *Business Licensing* (Attached NB-2)

The N.C. General Assembly repealed the authority for municipalities to collect privilege license taxes effective May 29, 2014 except for beer and wine taxes authorized by G.S. 105-113.77 and G.S. 105-113.78. After July 1, 2015, however, a municipality may “regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience.” (G.S. 160A-194) Further, a local unit may charge a reasonable regulatory fee to obtain the license.

To reflect these changes, an ordinance amendment is attached that completely repeals Chapter 110. *Business Licensing* to be replaced with Chapter 110. *Business Registration*.

A motion to approve the amendment to Chapter 110 would be in order.

AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF KILL DEVIL HILLS, NORTH CAROLINA

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Kill Devil Hills, North Carolina, that the Town Code shall be amended by:

1. Deleting Chapter 110 Business Licensing in its entirety; and,
2. Adopting a new Chapter 110, Business Registration, as follows:

CHAPTER 110, BUSINESS REGISTRATION
ARTICLE I. - IN GENERAL

§ 110-01. DEFINITIONS.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

BUSINESS means each trade, occupation, profession, business and franchise taxed or assessed a registration fee under this chapter. The authority to require a privilege license and tax upon an individual business is bestowed upon the Town of Kill Devil Hills by the North Carolina General Assembly, which authority is amended from time to time. "Person" as used in this chapter means any individual, company, corporation, firm or other entity.

BUSINESS WITHIN THE TOWN means that a person maintains a business location in the town, or if, either personally or through agents, he solicits or transacts business within the town; or picks up or delivers goods, or delivers services within the town.

CONDUCTS BUSINESS means that a person, firm, corporation or other entity engages in one act of any business within the town as defined in this chapter.

§ 110-02. CONSTRUCTION.

This chapter is enacted for revenue and regulatory purposes. Therefore, it should be construed to require payment of the maximum tax or fee permitted under its terms. In addition, issuance of a license pursuant to this chapter does not excuse a licensee from compliance with any other applicable ordinance or statute. This chapter does not prevent the town from imposing license taxes or fees on additional businesses, from increasing or decreasing the amount of any license tax or fee, or from regulating any business paying such license tax or fee.

§ 110-03. APPLICABILITY OF CHAPTER PROVISIONS.

Each person who conducts a business within the town is subject to this chapter, except as exempted herein.

§ 110-04. LEVY OF TAX.

(A) Privilege license: An annual privilege license tax as listed in the consolidated fee schedule is hereby levied on all such businesses conducted within the town. Those businesses subject to an annual privilege tax imposed by the State of North Carolina or otherwise exempted from local privilege license taxes by State law are exempt from the town's privilege license tax.

(B) Business registration fee: An annual registration fee as listed in the consolidated fee schedule is hereby imposed on all such businesses conducted within the town.

§ 110-05. PERIOD OF LICENSE; DUE DATE; ANNUAL LICENSE.

Unless the section of this chapter levying the privilege license tax applicable to a particular business provides otherwise, a license issued pursuant to this chapter is good for the 12-month period beginning July 1 and ending June 30. The privilege license fee and business registration fee are due September 1 of each year. However, if a person begins a business after July 1 of a year, the registration fee and, if applicable, tax for that year, are each due before the business is begun.

§ 110-06. PRORATION OF TAX.

If a business is begun after January 1 and before July 1, the amount of tax or fee due shall be prorated according to the start date of business operations.

§ 110-07. REFUNDS.

If for any reason a person discontinues his business during the year for which a registration fee or privilege license tax are imposed, he is not entitled to a refund of any fees paid.

§ 110-08. LICENSE REQUIRED FOR EVERY SEPARATE BUSINESS.

Each person doing business within the town is required to register with the town on an annual basis. A separate registration fee is required and a separate registration fee must be paid for each place of business unless two or more places of business subject to the same fee under this chapter are contiguous to each other and are operated as a unit. Those businesses subject to privilege license tax imposed under this chapter that pay multiple registration fees shall likewise pay multiple privilege license taxes.

§ 110-09. EXEMPTIONS.

(A) *Generally.* Except as otherwise provided in this section or by state law, no person is exempt from the payment of a privilege license tax or registration fee levied by this chapter.

(B) *Charitable organizations.* A person who operates a business for a religious, educational, civic, patriotic, charitable or fraternal purpose, when the entire gross income of the business is used for such a purpose, is exempt from paying any privilege license tax levied by this chapter.

(C) *Blind persons and members of the armed forces and merchant marine.* Blind persons and persons who serve in the United States armed forces or the merchant marine are exempt from paying any privilege license tax levied by this chapter to the extent provided by the General Statutes.

(D) Those businesses subject to an annual privilege tax imposed by the State of North Carolina or otherwise exempted from local privilege license taxes by State law are exempt from the town's privilege license tax and registration fee.

(E) *Tax-free license.* A person exempt from paying a privilege license tax or registration fee levied by this chapter shall nevertheless register his business and obtain any necessary license from the tax collector. The license shall state that the licensee is exempt from paying the privilege license tax or registration fee.

§ 110-10. REGISTRATION PROCESS.

A person who conducts business within the town shall register his business before beginning the conducting of the business. A business shall be registered by submitting a form provided by the tax collector which shall provide the following information:

(A) The name of the applicant and whether he or it is an individual, a partnership, a corporation or some other entity;

(B) The nature of the business;

(C) Where the business is conducted;

(D) An address to which may be mailed notices and statements required by this chapter;

(E) Whether the business is one regulated by a state occupational licensing board subject to G.S. ch. 93B and, if so, the serial number of the state license the applicant currently holds; and

(F) For any corporation or other entity registered with the North Carolina Secretary of State, the name and address of their registered agent.

§ 110-11. APPLICATION FOR PRIVILEGE LICENSE.

A person required to apply for a privilege license shall apply to the tax collector for each license required by this chapter no less than 30 days before the date the tax is due. The application, which shall be submitted on forms provided by the tax collector, shall contain:

(A) The name of the applicant and whether he or it is an individual, a partnership, a corporation or some other entity;

(B) The nature of the business;

(C) Where the business is conducted;

(D) An address to which may be mailed notices and statements required by this chapter;

(E) Whether the business is one regulated by a state occupational licensing board subject to G.S. ch. 93B and, if so, the serial number of the state license the applicant currently holds; and

(F) Any other information the tax collector determines to be necessary.

§ 110-12. REASONS FOR REFUSAL OR REVOCATION OF LICENSE.

The tax collector shall refuse to issue a license or shall revoke a license for either of the following reasons:

(A) The applicant misrepresents a fact relevant to the amount of tax/fee due or his qualifications for a license; or

(B) The applicant refuses to provide information necessary to complete the amount of tax/fee due.

§ 110-13. UNQUALIFIED APPLICANTS; RIGHT TO CONFERENCE.

(A) After receipt of the completed application, if the tax collector believes that a reason exists for refusing a license under section 110-12, he shall refuse to accept payment of the tax/fee and shall not issue the license. At the applicant's request, the tax collector shall, pursuant to section 110-22, give him a written statement of the reason for refusing the license. The applicant may, within ten days after the day he receives this statement, request a conference to

discuss the refusal. In his request he shall specify why his application for a license should not be refused. The tax collector shall arrange the conference within a reasonable time.

(B) If the tax collector refuses to issue a license, the applicant may reapply for a license at any time thereafter. If the reason for which the application was refused no longer exists and if no other reason exists for refusing to issue a license, the tax collector shall issue the license pursuant to section 110-14.

§ 110-14. TAX COLLECTOR TO ISSUE LICENSE; PAYMENT OF TAX A PREREQUISITE.

After receipt of the completed application, if the tax collector believes that no reason exists for refusal of a license under section 110-12, he shall determine the amount of tax/fee due and notify the applicant of that amount. The tax collector shall not issue a license until the tax/fee is paid.

§ 110-15. PROCEDURE WHEN AMOUNT OF TAX DISPUTED.

If the applicant disputes that he is subject to the business registration fee or the amount the tax collector determines to be due, he may either refuse to pay and request a conference with the tax collector to discuss the determination, or pay the amount and request a conference to discuss his right for a refund. If a conference is requested, the tax collector shall arrange it in a reasonable time. The procedures and provisions of sections 110-28 shall apply in the event of a dispute under this section.

§ 110-16. REVOCATION; CONFERENCE.

(A) The tax collector shall revoke a license if a reason exists to revoke it as set forth in section 110-12. Before the tax collector may revoke a license, he shall give the licensee written notice of the grounds for revocation, pursuant to section 110-22. The licensee may, within ten days after the day on which notice is served, request in writing a conference with the tax collector. The request shall specify the reasons why the license should not be revoked. The tax collector shall arrange the conference within a reasonable time.

(B) If the licensee fails to request a conference within ten days after the day on which notice is served, the tax collector shall revoke the license. If the licensee requests a conference, the tax collector may not revoke the license until after the conference.

(C) If the tax collector revokes a license, the former licensee may apply for a new license at any time thereafter. If the reason for which the license was revoked no longer exists and if no other reason exists for refusing to issue a license, the tax collector shall issue the license pursuant to section 110-14.

§ 110-17. RECORD OF CONFERENCES.

The tax collector shall maintain for three years a record of each conference held pursuant to this chapter. The record shall contain the applicant's or licensee's name, the date of the conference and a brief statement of the issues discussed and the result reached. After three years, the tax collector shall dispose of the record pursuant to G.S. 121-5.

§ 110-18. FORM AND CONTENTS OF LICENSE.

- (A) A license issued pursuant to this chapter shall show:
 - (1) The name of the person licensed;
 - (2) The place where the business is conducted (if it is to be conducted at one place);
 - (3) The nature of business licensed;
 - (4) The period for which the license is issued; and
 - (5) The amount of tax paid.

(B) In addition, if a machine is licensed, the license shall show the serial number of the machine. The tax collector shall keep a copy of each license issued.

§ 110-19. ASSIGNMENTS.

- (A) A license issued pursuant to this chapter may be assigned if:
 - (1) A business licensed under this chapter and carried on at a fixed place is sold as a unit to any person; and
 - (2) The purchaser is to carry on the same business at the same place.

(B) Such a change shall be reported to the tax collector within ten days. Otherwise, each license issued under this chapter is a personal privilege and is not assignable.

§ 110-20. CHANGES IN BUSINESS CONDUCTED BY LICENSEE DURING TAX YEAR.

A person conducting business within the town shall report a change in their registration information to the tax collector within ten days after the change occurs. A licensee or his assignee shall report any change in the information contained in the license application within ten days after the change occurs. If information shown on a license issued under this Chapter is affected thereby, the licensee or his assignee shall surrender the license to the tax collector when reporting the change.

(A) *Changes affecting amount of tax due.* If there are no reasons for revoking the license under section 110-12 and the change results in the imposition of a separate or additional

tax, the tax collector shall reissue a license reflecting the change upon payment of the separate or additional tax.

(B) *Changes not affecting amount of tax due.* If there are no reasons for revoking the license under section 110-12 and the change does not result in an imposition of a separate or additional tax, the tax collector shall reissue a license reflecting the change at no charge.

(C) Change requiring refusal of license. If there is reason for revoking the license under section 110-12, the tax collector shall refuse to reissue a license and shall instead begin proceedings to revoke the license pursuant to section 110-16.

§ 110-21. TAX COLLECTOR TO FURNISH DUPLICATES.

Upon satisfactory proof that a license has been lost or destroyed, the tax collector shall furnish a duplicate for the fee as listed on the consolidated fee schedule.

§ 110-22. PROVIDING NOTICE TO APPLICANT OR LICENSEE.

Whenever this chapter requires the tax collector to give a written statement or notice to a business registered in the Town, or to an applicant or a licensee, he may do so in any one of three ways:

(A) By personally delivering the statement or notice to the applicant or licensee;

(B) By mailing the statement or notice by registered or certified mail, return receipt requested, to the address specified for that purpose in the license application; or

(C) By causing the statement or notice to be served on the applicant or licensee in accordance with the procedures for service of process under Rule 4, North Carolina Rules of Civil Procedure.

§ 110-23. RESPONSIBILITY OF BUSINESS OWNER TO DETERMINE WHETHER TAX/FEE DUE.

Each person has the duty to determine whether the business he conducts is subject to tax/fee under this chapter, and if so, whether that tax/fee has been paid for the current tax year.

§ 110-24. TAX COLLECTOR TO INVESTIGATE.

If the tax collector has reason to believe that a person is conducting a business in the town in violation of this chapter, he shall conduct an investigation to determine whether the person is subject to the registration requirement of this Chapter. For any person required to obtain a license under this Chapter, the tax collector shall also determine the person's liability.

§ 110-25. KEEPING RECORDS.

Each person who conducts a business required to have a license under this chapter shall keep all records and books necessary to compute his tax liability. If a person fails to keep books and records as required, the tax collector shall make his own determination of that person's tax liability from the information available to him.

§ 110-26. DUTY TO PERMIT INSPECTION.

Each person who conducts business in the town shall permit the tax collector to inspect his business premises during normal business hours to determine the nature of the business conducted there and to examine his books and records to determine the nature and amount of business transacted.

§ 110-27. DISPLAYING LICENSE.

A licensee shall post his license conspicuously in the place of business licensed. If he has no regular place of business, the license must be kept where it may be inspected at all times by the proper town officials. If a machine is licensed, the license shall be affixed to the machine.

§ 110-28. NOTICE OF DEFICIENCY.

If the tax collector determines that a person has not paid the full amount of tax/fee due under this article, either for the current license year or for a prior license year, he shall give the person written notice of the deficiency, pursuant to section 110-22. The notice of deficiency shall specify the total amount of tax due, the section upon which the tax is based, the amount of tax paid, any interest due, the balance owed, the manner and time period in which the person may respond to the notice of the deficiency and the consequences to the person if he fails to respond as specified. A similar process shall be followed for the nonpayment of the business registration fee for any person subject to paying the business registration fee imposed by this chapter.

§ 110-29. REQUEST FOR CONFERENCE.

The person may, within ten days after the day on which notice of delivery under this chapter is served, request in writing a conference. The request shall specify the person's objections to the notice of deficiency. By way of illustration, but not limitation, a person who receives notice of a deficiency may object on the grounds that:

- (A) The tax/fee due has already been paid;
- (B) The tax collector miscalculated the amount of tax/fee due;
- (C) The tax collector based his calculation on incorrect or insufficient information concerning either the nature or amount of business conducted;

(D) The tax collector based his determination on an erroneous interpretation of a section of this chapter, which established a category of business subject to a particular tax/fee.

§ 110-30. DEFICIENCY TO BECOME FINAL IF CONFERENCE NOT REQUESTED.

If the taxpayer fails to request a conference under section 110-29, the deficiency becomes final and the tax collector shall proceed to collect the deficiency.

§ 110-31. PROCEDURES WHEN CONFERENCE HELD.

If the taxpayer requests a conference, the tax collector shall not proceed to collect the deficiency until he hears the taxpayer's objections and determines that the deficiency should become final. The tax collector shall maintain for three years a record of each conference held pursuant to section 110-29. The record shall contain the name of the taxpayer, the date of the conference and a brief statement of the issues discussed and the results of the discussion. After three years, the tax collector shall dispose of the record pursuant to G.S. 121-5.

§ 110-32. COLLECTION OF DEFICIENCY OR DELINQUENT TAXES.

(A) The tax collector may use any of the following methods to collect a deficiency or delinquent taxes:

(1) A civil penalty with section 10-18;

(2) *Equitable remedies.* In addition to the remedies set forth in this section and Section 10-19 of the Town Code, and in compliance with G.S. § 160A-175(d), the town may seek an injunction against any person who conducts a business in violation of this chapter.

(3) The remedies of levy and sale and attachment and garnishment, in accordance with G.S. 160A-207;

(4) The remedies of levy and sale of real and personal property of the taxpayer within the town in accordance with the provisions of G.S. 105-109.

(B) Any person who commences or continues to conduct a business taxed under this chapter without payment of the tax is liable for the additional tax of five percent each 30 days, imposed by G.S. 105-109.

(C) Any business/privilege license invoice older than three years, regarding a business that the town no longer regards as active, may be removed from the list of receivable accounts in the town's financial statement. At least annually, the tax collector will present the Board of Commissioners with a list of uncollectible accounts, requesting the Board's approval for a formal write-off of such accounts. The town will use all available means to collect these accounts to

include but not be limited to: bank attachment and payroll garnishment where applicable, debt set-off, etc.

§ 110-33. RELEASES.

If it is determined that upon the issuance date of a renewal license the licensee has discontinued his business, the finance director may release the tax/fee.

This amendment to Town of Kill Devil Hills Town Code, Chapter 110, shall be in full force and effect from and after the _____ day of _____, 2016. Adopted and approved by the Board of Commissioners of the Town of Kill Devil Hills at a regular meeting held on the _____ day of _____, 2016, 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 110 of the Town of Kill Devil Hills Town Code, was placed in the Kill Devil Hills Town Code Book on the _____ day of _____, 2016 at _____ p.m.

Mary E. Quidley, Town Clerk