Town of Cumberland
2018 – 28
Amending Smoking Policy

Whereas, Section 00-09-98 of the Town of Cumberland Code of Ordinances details the Town’s no smoking policy; and

Whereas, the Town Council is aware of the health consequences of smoking and vaping, as well as the consequences from involuntary exposure to second hand smoke; and

Whereas, the Town Council believes that implementing 100% smoke-free environments is the best way to protect the public health and welfare of the citizens and visitors of the Town; and

Whereas, the Town Council finds that it is in the best interest of the Town to prohibit smoking in outdoor places of employment and outdoor public places.

Therefore, it is ordained, that section 00-09-98 of the Town Code is hereby repealed in full and replaced as written in Exhibit A.

It is further ordained that this ordinance is effective upon adoption.

It is further ordained that any provision of the Town Code which is not specifically amended by this ordinance shall remain in full force and effect.

Adopted this 7th day November, 2018.

Cumberland Town Council:

Anna Pea, President
Joe Siefker, Vice President

Brian Gritter, Member

Nicole Bell, Member

Aaron Cutshaw, Member

Attest:

Erica Salmon, Clerk-Treasurer
CHAPTER 98: NO SMOKING OR VAPEING POLICY

Section

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§ 00-09-98-01. Definitions

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

(A) “Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(B) “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

(C) “Electronic Smoking Device” means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

(D) “Hookah” means a water pipe and any associated products and devices which are used to produce fumes, smoke and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.
Partially Enclosed” means an area closed in by a roof or overhang or by permanent or temporary walls or windows (exclusive of doorways), on at least two sides, including but not limited to, courtyards, patios, and covered walkways.

“Place of Employment” means an area under the control of a public or private employer, including, but not limited to, work areas, construction sites, temporary offices, restroom facilities, and vehicles.

“Playground” means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on Town grounds.

“Public Event” means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers’ markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

“Public Place” means an area to which the public is invited or in which the public is permitted, including but not limited to, parks, playgrounds, and trails.

“Recreational Area” means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, athletic fields, fairgrounds, gardens, golf courses, parks, plazas, swimming pools, and trails.

“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Chapter.

§ 00-09-98-02. Prohibition of Smoking on Town-Owned Outdoor Property

Smoking shall be prohibited on all outdoor property owned, leased, or operated by the Town of Cumberland including but not limited to parks, trails, recreation areas, playgrounds and other public places of the Town.

§ 00-09-98-03. Prohibition of Smoking in Outdoor Places of Employment

(A) Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, temporary offices such as trailers, restroom facilities, and vehicles.
(B) This prohibition on smoking shall be communicated to all existing employees, by the employer, and on the effective date of this Chapter and to all prospective employees upon their application for employment.

§ 00-09-98-04. Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor public places:

(A) Within a reasonable distance of 15 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent smoke or vapor from entering those areas.

(B) In, and within 15 feet of, outdoor seating or serving areas of restaurants and bars.

(C) In outdoor shopping malls, including parking structures.

(D) In outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 15 feet of, bleachers and grandstands for use by spectators at sporting and other public events.

(E) In outdoor recreational areas, including parking lots.

(F) In, and within 15 feet of, all outdoor playgrounds.

(G) In, and within 15 feet of, all outdoor public events.

(H) In partially enclosed areas.

§ 00-09-98-05. Prohibition of Smoking in Outdoor Residential Facilities

Smoking shall be prohibited in outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least 15 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

§ 00-09-98-06. Declaration of Outdoor Public Place as Nonsmoking

Notwithstanding any other provision of this Chapter, an owner, operator, manager, or other person in control of an outdoor public place or place of employment may declare that entire outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of § 00-09-98-07(A) is posted.
§ 00-98-07. Posting of Signs

The owner, operator, manager, or other person in control of an outdoor public place, place of employment, or residential facility where smoking is prohibited by this Chapter shall clearly and conspicuously post “No Smoking” signs 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) in appropriate locations as determined by the Town of Cumberland Town Manager or an authorized designee.

§ 00-98-08. Nonretaliation; Nonwaiver of Rights

(A) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Chapter or reports violations of this Chapter.

(B) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

§ 00-98-09. Enforcement

(A) This Chapter shall be enforced the Town of Cumberland Code Enforcement Authority or an authorized designee.

(B) Notice of the provisions of this Chapter shall be given to all applicants for a business license in the Town of Cumberland.

(C) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the Town of Cumberland Planning Department, Code Enforcement Authority.

(D) An owner, manager, operator, or employee of an area regulated by this Chapter shall direct a person who is smoking in violation of this Chapter to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee may ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee may contact a law enforcement agency.

§ 00-98-10. Violations and Penalties

(A) A person who smokes in an area where smoking is prohibited by the provisions of this Chapter shall be guilty of a code violation, punishable by a fine not exceeding fifty dollars ($50).

(B) Except as otherwise provided in 00-98-08(A), a person who owns, manages, operates, or otherwise controls a place of employment of public place...
and who fails to comply with the provisions of this Chapter shall be guilty of an infraction, punishable by:

(1) A fine not exceeding one hundred dollars ($100) for a first violation.

(2) A fine not exceeding two hundred dollars ($200) for a second violation within one (1) year.

(3) A fine not exceeding five hundred dollars ($500) for each additional violation within one (1) year.

(C) In addition to the fines established by this Section, violation of this Chapter by a person who owns, manages, operates, or otherwise controls a place of employment or public place may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(D) Violation of this Chapter is hereby declared to be a public nuisance, which may be abated by the Code Enforcement Authority by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Town may take action to recover the costs of the nuisance abatement.

(E) Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation.

(F) Payments for fines shall be made to the Town of Cumberland Clerk-Treasurer within ten days of citation.

§ 00-98-11. Other Applicable Laws

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.