

South Bethany Charter and Code Committee Meeting
Friday, January 20, 2017 2:00 PM – South Bethany Police Station

Minutes

Agenda Item 1. Call Meeting to Order – John Fields called the meeting to order at 2:00 PM. Committee members were present; John Fields and George Junkin. Also present were Frank Weisgerber, the Council Member sponsoring the No Smoking ordinance, and Mayor Pat Voveris, The Council Member sponsoring the Controlled Street Entry ordinance.

Agenda Item 2. Public Comment – There was no public comment.

Agenda Item 3. Review the Town attorney’s changes to Ordinance 185-17, “Controlled Street Entry.”

Below is the attorney’s markup of the ordinance that was presented, as draft, at the December 9, 2016 Council Meeting. The attorney’s recommended changes are in blue.

Chapter 134

VEHICLES, OPERATION OF

§ 134-3. Penalties for offenses.

A. Any person violating this chapter will be fined as prescribed in 21 Del. C. § 4169.
[Amended 9-8-1995 by Ord. No. 50-95]

B. Whoever violates § 134-2B, C, D or E, shall, for the first offense, be fined \$25, and for each subsequent offense, the fine shall be \$50.
[Amended 5-13-2008 by Ord. No. 141-08; 2-13-2009 by Ord. No. 148-08]

C. *Any person violating § 134-4 shall be fined as prescribed in 21 Del. C. § 41074126.*

§ 134-4. Controlled street entry.

It shall be unlawful for any vehicle to enter Black Gum Drive from Kent Avenue from 10 a.m. to 1 p.m. May 15 to September 15 inclusive.

There was a significant discussion on penalties.

- We asked Chief Troy about § 134-3 C and he said the lawyer’s comment was not correct. The police use 21 Del. C. § 4107
- Mayor Voveris asked why § 134-3 A applies to the whole chapter, but then § 134-3 B says that it applies to 4 out of 5 of the paragraphs in the chapter. The committee agreed that this was confusing.
- It was then also confusing to have § 134-4 below § 134-3. The committee decided that it would be best to move § 134-4 to § 134-2 F and have the penalty be § 134-3 B, thus eliminating the need for § 134-3 C.

The following page has what the ordinance would be with the following agreed upon changes.

§ 134-2 Activities prohibited.

- A. It shall be unlawful for any person to operate an automobile, truck, self-propelled piece of equipment or any other type of motor vehicle on any street within the corporate limits of the Town at a speed greater than 20 miles per hour, except on Delaware Route 1 (Ocean Highway), which is posted by the State Department of Transportation. On Route 1, it shall be unlawful to exceed the speed limits as posted by the Department of Transportation.
- B. It shall be unlawful for any person other than state or Town officials to operate any automobile, jeep or other type of motor vehicle over any sand dune or stretch of sand immediately eastward of the easternmost building setback line along Ocean Drive within the corporate limits of the Town.
- C. It shall be unlawful to operate commercial trucks and buses over two axles and/or four wheels, except for pickup trucks, on Black Gum Drive, Cattail Road, Tamarack Drive, Russell Road or Evergreen Road, except for deliveries in South Bethany.
- D. The driver of any vehicle shall obey the instructions of any traffic-control device applicable thereto placed in accordance with this chapter, subject to the exceptions granted the driver of an authorized emergency vehicle as defined in 21 Del. C. § 4106.
- E. It shall be unlawful to operate any vehicle of any type on any street, driveway or parking area within the corporate limits of the Town for the purpose of selling or vending of any product, material or foodstuff, whether the vehicle is self-propelled or powered by human effort. This prohibition shall not apply to deliveries in response to a specific order made in advance by a customer for such delivery to a specific address within the Town, and further provided that the delivery vehicle departs that address immediately upon making or attempting the delivery.

F. It shall be unlawful for any vehicle to enter Black Gum Drive from Kent Avenue from 10 a.m. to 1 p.m. May 15 to September 15 inclusive.

§ 134-3 Penalties for offenses.

- A. ~~Any person violating this chapter will~~ **Whoever violates § 134-2 A shall** be fined as prescribed in 21 Del. C. § 4169.
- B. Whoever violates § 134-2B, C, D, ~~or E~~ **or F**, shall, for the first offense, be fined \$25, and for each subsequent offense, the fine shall be \$50.

Agenda Item 4. Review the Town attorney’s changes to Ordinance 186-17, “Smoking on the beach.”

On the next page is the attorney’s markup of the ordinance that was presented, as draft, at the December 9, 2016 Council Meeting. The attorney’s recommended changes are in blue.

Chapter 34

BEACHES

§ 34-8. Beach safety and sanitation.

- D. Beach closing. Any of the following may close the beach to ensure the public safety: the Mayor, ~~Beach Commissioner~~ **Town Manager**, lifeguards, town police officers or the acting Civil Defense Coordinator.

§ 34-13. Smoking.

- A. *Definitions – As used in this section, the following terms shall have the meanings indicated:*

- (1) **SMOKING** – ~~The smoking, burning, heating, inhaling, or exhaling of any substance including but not limited to (f.e., tobacco, herbs, weeds, marijuana, or vaporized liquid or other substances used with electronic smoking devices, etc.) using any pipe, by any type of delivery system (f.e., cigar, cigarette, hookah, electronic smoking device (as defined in 16 Del. C. § 2902(3)), or any other similar device, etc.) This includes electronic vapor generating devices known as “e-cigarettes.”~~
- (2) **BEACH** – ~~The area defined to the North and South by the Town of South Bethany North and South boundary lines, to the West by the Western edge of the dune where the dune abuts private property, and to the East by a line that is 100 yards to the East of the high water line of the Atlantic Ocean.~~

- B. *Smoking is prohibited in the following areas:*

- (1) ~~The beach.~~
- (2) ~~Beach access walkways from the Eastern edge of Ocean Drive to the beach, and from the Eastern edge of Sea Side Drive to the beach, and including all beach access walkways running alongside the beach and all handicapped walkways.~~

The committee had discussion of the word “any” when referring to “any substance” in § 34-13 A. (1). A discussion of this occurred after the Council meeting in December as these words would eliminate the use of an inhaler by asthma patients. The committee agreed that it could also include the air that we inhale. The committee agreed to change “any substance” to “substances”.

The committee also agreed to eliminate the lawyer’s blue words in § 34-13 B. (2) because the walkways alongside the beach are private property.

With the above comments the ordinance would be as follows:

Chapter 34

BEACHES

§ 34-8. Beach safety and sanitation.

- D. Beach closing. Any of the following may close the beach to ensure the public safety: the Mayor, ~~Beach Commissioner~~ **Town Manager**, lifeguards, town police officers or the acting Civil Defense Coordinator.

§ 34-13. *Smoking.*

- A. *Definitions – As used in this section, the following terms shall have the meanings indicated:*
- (1) *SMOKING – The smoking, burning, heating, inhaling, or exhaling of substances including but not limited to tobacco, herbs, weeds, marijuana, or vaporized liquid or other substances used with electronic smoking devices, using any pipe, cigar, cigarette, hookah, electronic smoking device (as defined in 16 Del. C. § 2902(3)), or any other similar device.*
 - (2) *BEACH – The area defined to the North and South by the Town of South Bethany North and South boundary lines, to the West by the Western edge of the dune where the dune abuts private property, and to the East by a line that is 100 yards to the East of the high water line of the Atlantic Ocean.*
- B. *Smoking is prohibited in the following areas:*
- (1) *The beach.*
 - (2) *Beach access walkways from the Eastern edge of Ocean Drive to the beach, and from the Eastern edge of Sea Side Drive to the beach, and all handicapped walkways.*

Agenda Item 5. Adjournment. At 2:55 PM George Junkin made a motion to adjourn. The motion was seconded and was passed unanimously.

Minutes submitted by George Junkin.