

ORDINANCE NO. 2738

AN ORDINANCE TO AMEND CHAPTER 80 (“LOT MAINTENANCE”) OF THE CODE OF SUSSEX COUNTY RELATING TO LOT MAINTENANCE, INCLUDING THE ADOPTION OF ENFORCEMENT AND PENALTY PROVISIONS PURSUANT TO TITLE 9, CHAPTER 72 OF THE DELAWARE CODE

WHEREAS, Sussex County is charged with protecting the health, safety and welfare of its citizens; and

WHEREAS, on July 16, 2013, Sussex County adopted Chapter 80, “Lot Maintenance”; and

WHEREAS, on February 10, 2020, the Delaware legislature passed and the Governor signed into law, Title 9, Chapter 72 of the Delaware Code, entitled, “Sussex County Property Maintenance”, which provides a mechanism by which the Sussex County Council is authorized to promulgate Sussex County Code provisions, including civil penalties for enforcement with due process protections;

WHEREAS, the Sussex County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests, including, but not limited to, the protection and preservation of the public health, safety, prosperity, general welfare and quality of life of its citizens.

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. Chapter 80 of the Sussex County Code is hereby amended by deleting the title of, “Lot Maintenance” and substituting the following underlined language in its place and stead:

Chapter 80 Property Maintenance Code

Section 2. Chapter 80, § 80-1 is hereby amended by inserting new subparagraphs -C and -D which is underlined as follows:

C. The definitions contained in 9 Del. C. § 71201 shall govern this chapter.

D. This chapter shall not apply to:

- (1) properties, buildings, or structures located within any incorporated city or town in Sussex County unless the responsibility for the local code enforcement has been duly transferred to Sussex County.
- (2) land deemed to be actively devoted to agricultural, horticultural, or forestry as defined in 9 Del. C. § 8333.
- (3) any structure that is not subject to regulation pursuant to 9 Del. C. § 6902(b).

(4) State Parks and Wildlife Areas.

Section 3. Chapter 80 of the Sussex County Code is hereby amended by deleting §§ 80-2, 80-3 and 80-4 in their entirety which is bracketed and italicized as follows:

[§ 80-2 Enforcement.

A. It shall be the duty of the Constable or his/her designee to enforce the provisions of this chapter. When the Constable, or his/her designee, determines that there has been a violation of this chapter, or has grounds to believe that a violation has occurred, notice shall be given to the owner, occupant or party responsible for the subject property. All notices shall:

(1) Be in writing.

(2) Include a tax parcel number for the property.

(3) Include a statement or description and/or photograph of the violation or violations and state why the violation notice is being issued.

(4) Include a statement of the required corrective action and the time period within which the corrective action must occur to bring the subject property into compliance, which time period shall be not less than five calendar days. In the event the owner, occupant or party responsible for the subject property notifies the Constable, or his/her designee, in writing, within the five-day corrective period of an intent to correct the violation, the Constable or his/her designee may, at his/her discretion, extend the time for corrective action up to a total period of 10 days from the date the violation notice is served. The notice of violation shall be deemed to be properly served if a copy thereof, together with a copy of this chapter, is:

(a) Delivered personally;

*(b) Sent by certified or first-class mail addressed to the last known address;
or*

(c) If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place on the property affected by such notice and the person posting the notice shall take a photograph of the posted notice.

§ 80-3 Removal by County; recovery of County expenses.

A. If, within five days after due notice by the Constable's office to the owner, occupant or party responsible for the subject property, the grasses or weeds in violation of this chapter are not removed, an administrative fee of \$50 per incident will be assessed to the owner, occupant or party responsible for the subject property and the Constable, or his/her

designee, may contract with a third-party subcontractor who will cause such grasses or weeds to be cut and/or removed and may incur any expense in the removal thereof.

B. Any expense of removal incurred by the Constable or his/her designee shall be the financial responsibility of and paid by the owner, occupant or party responsible for the subject property within 15 days after notice thereof has been given in compliance with the provisions of § 80-2. If such amount is not paid within such time period, such amount, together with the administrative fee set forth in § 80-3A, and interest on such expenses at 10% per annum, shall be assessed against the subject property and shall, until paid, constitute a lien against the subject property in favor of the County upon the filing in the office of the Recorder of Deeds by the appropriate County official of a certificate of lien setting forth the amount equal to the expenses assessed against the owner, occupant, or responsible party by the County for bringing the subject property into compliance of this chapter.

C. In addition to any other remedy, the County may file and maintain a civil action for the recovery of such expense of cutting and/or removal against the owner, occupant or party responsible for the subject property and shall be awarded reasonable attorney's fees and costs of the action by any court having proper jurisdiction over the subject matter.

D. No civil liability shall attach to any act of any contractor or County employee engaged in carrying out the provisions of this section or any of its subsections.

§ 80-4 Violations and penalties; jurisdiction.

A. Any person who shall violate a provision of this chapter or any of its subsections and/or fails to comply with any notice of violation served in accordance with § 80-2 above shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of \$250 for the first conviction; \$500 for the second conviction; \$1,000 for the third conviction; and for the fourth and any subsequent conviction of the same violation that has still not been corrected, the fine for such conviction shall be \$2,500. The fines specified herein for the second through fourth convictions shall not be suspended. Upon conviction of a first violation of this chapter, the court may order the defendant to correct the violation by a certain date, not to exceed 10 days from the date of the conviction. Proof of guilt of a violation hereof may be proven through the testimony of a witness who has observed the violation and/or one or more photographs which document and depict the violation. Jurisdiction over the enforcement of this provision shall be in the Justice of the Peace Courts of the State of Delaware.

B. In addition to prosecuting a violator in the Justice of the Peace Courts, the prosecuting County employee is authorized, but is not required, to institute appropriate proceedings at law or in equity to restrain, correct, abate or enjoin a violation or to require the removal of the offending condition at the expense of the person who is found to be in violation of these provisions. If the County prevails, the Court shall order the violator to pay the County's reasonable attorney's fees and costs of the action.

C. Pursuant to 25 Del. C. § 2901, civil penalties may be added to the County property tax billings for the property which was the subject of the violation. Additional civil penalties shall also double if not paid within 30 calendar days from the date of the respective violation.

D. The penalties set forth in this section shall not affect the County's right to also recover expenses incurred pursuant to § 80-3.]

Section 4. Chapter 80 of the Sussex County Code is hereby amended by inserting the following new §§ 80-2 through 80-5 underlined language as follows in its place and stead:

§ 80-2. Approval.

A. Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this Chapter, the Constable shall have the authority to grant modifications for individual cases, provided the Constable shall first find that special individual reason makes the strict letter of this Chapter impractical and the modification is in compliance with the intent and purpose of this Chapter and that such modification does not lessen health, life, and fire safety requirements. The details of action granting modifications shall be recorded and entered in the departmental files.

~~B.A. Fees. No fee shall be charged for the first modification request if the applicant is actively working toward correcting the violation. A fee as set forth in the Appendix to this Chapter shall be charged for each subsequent request for code modification.~~

§ 80-3 Violations.

Any person who shall violate any provision(s) of this Chapter or shall fail to comply with any of the requirements hereof, shall be subject to any of the enforcement mechanisms and penalties outlined in this Chapter.

§ 80-4 Enforcement.

A. Constable Authority. It shall be the duty of the Constable or his/her designee (collectively "Constable") to enforce the provisions of this chapter. When the Constable, or his/her designee, determines that there has been a violation of this chapter, or has grounds to believe that a violation has occurred, notice shall be given to the owner of the subject property, if known. Notice may also be given to the person responsible for the subject property as defined in 9 Del. C. § 71201(34).

B. Administrative enforcement. Any person violating the provisions of this Chapter may be subject to administrative proceedings instituted by the Constable.
~~Violations subject to administrative enforcement shall be commenced within three (3) years as provided in 10 Del. C. § 8106.~~

- (1) Notice to owner or person responsible. Whenever the Constable determines that there has been a violation of this Chapter or has reasonable ground to believe that a violation has occurred, notice shall be given to the owner, if known. Notice may also be given to person(s) responsible for the property as defined in 9 Del. C. § 7101(3). Any person(s) noticed shall be responsible for correcting such violation(s).
- (2) Form. The form of such notice prescribed in subsection (1) shall be in accordance with §80-5B.
- (3) ~~Method of service. The method of service of the notice prescribed in subsection (1) shall be in accordance with §80-5C. Notice required under this section shall be satisfied where a copy of the decision, or violation notice is: (a) delivered personally to the owner or person responsible for the property; or (b) mailed by regular United States mail and addressed to the owner or person responsible for the property at their last known address; or (c) posted in a conspicuous place on the property. Service of such notice in the foregoing manner upon an owner's agent or upon the person responsible for the structure shall constitute service of notice upon the owner.~~
- (4) Exceptions. In no case shall the Constable be required under this section to provide a subsequent violation notice to any owner or person responsible who has previously been provided notice pursuant to this section or under any former provision of this Chapter, where the same violation is alleged by the Constable to exist within a twelve (12) month period.

C. Ticketing. Pursuant to Title 9, Chapter 712 and Title 25, Chapter 29 of the Delaware Code, the Constable shall have the authority to issue ticket(s) to the owner of a property, regardless of whether the owner actually resides upon the property, including any vacant lots, for violations of § 80-1, Prohibited growth and accumulations; § 115-191, Parking, Storing and Maintaining of Vehicles and Trailers; and § 115-191.1, Prohibited Accumulations.

- (1) Procedure. Whenever the Constable's Office receives a complaint that there has been an alleged violation(s) of the above-referenced sections, the Constable's Office shall inspect the property to determine whether a violation(s) has occurred. If a violation(s) has occurred, a notice of violation(s) shall be given to the owner of the property. Notice may also be given to the person responsible for the subject property. The owner and/or noticed person responsible shall be responsible for correcting such violation(s) within ten (10) calendar days. If the Constable determines that the violation(s) remains after the tenth (10th) calendar day, the owner of the property on which such non-compliance exists shall be subject to, and liable for, a civil penalty in the amount of \$10050.00. This civil penalty shall double if not paid within thirty (30) calendar days from the date of the citation ticket. In no case shall the Constable be required by this Section to provide notice

within a twelve (12) month period to any owner previously provided notice pursuant to this Section where the same Code violation exists.

- (2) Citation. Any ~~citation-ticket~~ issued for failure to comply with any provision identified in § 80-4C. may be mailed or personally delivered to the person responsible for the property and shall be mailed or personally delivered to the owner of the property that is the subject of the ~~ticket~~~~citation~~. Pursuant to 9 Del. C. § 71207 and 25 Del. C. § 2901, civil penalties may be added to the County property tax billings for the property which was the subject of the ~~citation~~~~ticket~~. Additional civil penalties shall also double if not paid within thirty (30) calendar days from the date of the respective ~~citation~~~~ticket~~.
- (3) Continuing violations. After the recipient of a ticket(s) has an opportunity to appeal the ticket(s) as permitted by § 80-4C.(5), the violation shall constitute a continuing violation; a ticket for the same violation may be issued each day the violation continues and a separate penalty for each day may be imposed.
- (4) State of mind. It shall be unnecessary to prove the violator's state of mind with regard to the failure to comply with any provision of this Section, as the legislative purpose is to impose strict liability for such non-compliance.
- (5) Appeals. The owner of ~~ort~~ person responsible for a property aggrieved by any civil penalty imposed pursuant to § 80-4C, may appeal the ticket to the Board of Adjustments and Appeals in accordance with § 80-4F., ~~Administrative appeal~~.

D. Costs. The owner of or person responsible for the property shall be responsible for all costs associated with the enforcement of this ~~Code-Chapter~~ and the investigation, removal, remediation, or abatement of ~~Code~~ violations including the costs of the institution and maintenance of temporary safeguards and reasonable attorneys' fees associated with the above. The costs shall be liens on the property to the extent permitted by law.

E. Administrative penalty provisions. The following administrative penalties may be imposed by the Constable:

- (1) Administrative fines. Notwithstanding any other section of this Code, any person who is found to have violated any provision of this ~~Code-Chapter~~ or directive of the Constable, may be subject to the penalties specified in § 80-4G.(3) for each day that the violation continues in addition to any expense incurred by the County for the removal or abatement of the violation. Administrative fines imposed pursuant to this section shall be a lien on the parcel of real property that the expense is incurred upon or which is the subject of the violation. Upon certification of the lien by the Constable's Office, the amount of such lien shall be recorded and collected in the same manner as other county real estate taxes, and paid to Sussex County, when collected. ~~9 Del. C. § 71207 et seq. (Abatement; creation of tax lien)~~.

- (2) Institution of remedial action. The County may initiate action to remedy [the any](#) violation. Upon completion of such remedial work, the violator shall be provided the opportunity to reimburse the County for the cost incurred. If the violator fails to reimburse the County within the time period specified, the County may:
- (a) call or collect on any bond or insurance established for this purpose;
 - (b) place a lien on any property within the County held by the person as permitted by State law; or
 - (c) institute a civil action for the recovery of such expenses, together with any penalty, fine, fee and/or interest, against the person, and the County shall be awarded reasonable attorneys' fees and all expenses and costs the County has incurred including, without limitation, proceedings pursuant to a writ of monition, as permitted under 9 Del. C., Chapter 712. An administrative fee for processing vendor requests and providing vendor services shall be charged for each instance such service is provided as set forth in the [Appendix](#) to this Chapter. This Section shall not be construed to limit any other actions or remedies at law or equity.

~~(3) Voluntary assessment. The Constable may issue a summons to a person the officer has reasonable ground to believe has committed an offense against any County ordinance. Any summons issued by a Constable may provide that, in lieu of appearing in court, the offender may correct the offense(s) and remit a voluntary assessment of up to two hundred dollars (\$200.00) for each offense cited. The summons may provide that each day such violation continues shall constitute a separate offense.~~

F. Administrative appeal.

- (1) Appeal to the Board of Adjustments and Appeals. Any person aggrieved by any administrative enforcement action taken pursuant to this Chapter, or any person who in good faith claims that the true intent of this Chapter or the rules legally adopted there under have been incorrectly interpreted, the provisions of this Chapter do not fully apply, or an equally good or better form of construction is proposed shall have the right to appeal to the Board of Adjustments and Appeals. The Board shall not have the authority to waive any requirement of this Chapter.
- (2) Time. All appeals shall be filed with the Board of Adjustments and Appeals within [twenty ten \(2010\)](#) days of the date the [ticket/citation](#) issued by the Constable. A public hearing will then be afforded to the appellant within forty-five (45) days of the filing of the appeal, [or as soon as can practically be heard.](#)

- (3) Written decision. The Board of Adjustments and Appeals shall make findings of fact and shall render a decision in writing based upon the record created at the public hearing within twenty (20) days.
- (4) Actions that can be taken. The Board of Adjustments and Appeals may affirm, ~~modify, reverse, vacate, or revoke~~ deny the action appealed, provided that such action shall be affirmed by the Board if the action was not arbitrary or capricious, or was not taken pursuant to law.
- (5) Stay. If a stay of the action being appealed is desired, a written request must be submitted in writing to the Constable at the Constable's Office. The stay will be granted unless the Constable can demonstrate that the granting of the stay would jeopardize the health, safety or welfare of the public.
- (6) Fee. The fee for filing of an appeal under this Section is set forth in the Appendix to this Chapter. ~~Such fee shall be refunded to the applicant if it prevails on all issues presented to the Board after any right(s) to appeal have expired or have been exhausted.~~
- (7) Writ of certiorari. An aggrieved party may appeal the decision of the Board of Adjustments and Appeals by filing a petition for a writ of certiorari in the Delaware Superior Court.

G. Criminal enforcement. Any person violating the provisions of this ~~Chapter~~ Code may be subject to a criminal proceeding instituted by the Constable or the County Attorney, or his or her designee. It is unnecessary to prove the defendant's state of mind with regard to offenses which constitute violations as the legislative purpose is to impose strict liability for such offenses.

- (1) Dismissal of charges. Any person subject to criminal prosecution under this Chapter may avoid the same upon presenting sufficient evidence to establish that the alleged violation has been remedied. At the discretion of the ~~Constable or the~~ County Attorney, or his or her designee, and if sufficient evidence is presented prior to trial, the County may enter a nolle prosequi with or without prejudice.
- (2) Criminal proceedings. Justices of the Peace shall have jurisdiction throughout the State to hear, try and finally determine any violation or violations of any ordinance. Only upon conviction shall the defendant have the right to appeal to the Court of Common Pleas.
- (3) Penalties. Violations of this chapter shall be deemed misdemeanor offenses. The sentence for any person convicted of such a misdemeanor offense shall include ~~a fine of up to One Thousand Dollars (\$1,000.00) for each violation the following fines~~ and may include restitution or such other conditions as the court deems appropriate:

- ~~(a) For the first conviction, the penalty shall be a fine of not less than two hundred fifty dollars (\$250.00) nor more than one thousand dollars (\$1,000.00).~~
- ~~(b) For the second conviction for the same offense, the penalty shall be a fine of not less than five hundred dollars (\$500.00), nor more than two thousand five hundred dollars (\$2,500.00).~~
- (c) For all subsequent convictions for the same offense, the penalty shall be a fine of no less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5,000.00). The Any unpaid fine amounts may be considered a tax lien and collected in the same manner as other County real estate taxes. "Fines" as used in this section shall also include any civil judgment awarded to the County thereof entered pursuant to 11 Del. C. § 4101 (Payment of fines, costs and restitution upon conviction), 25 Del. C. § 2901 et seq. (Liens of the State and/or its political subdivisions) or 9 Del. C. § 71207 et seq. (Abatement; creation of tax lien).

(4) Continuing violations. Each day any violation of this Chapter shall continue shall constitute a continuing violation for which a separate conviction may be obtained and a separate penalty for each day shall be imposed, and shall be considered a single conviction for the purposes of § 80-4G-(3).

- H. Civil enforcement. Any person violating the provisions of this Chapter may be subject to a civil proceeding instituted by the County Attorney or his or her designee. The County may apply to the Court of Chancery for injunctive relief against the person, to prevent, restrain, correct, abate, remove, or enjoin any violation of the provisions of this Chapter.
- I. Abatement of violation. The imposition of the penalties and remedies herein prescribed shall not preclude the Constable or his or designee from instituting the appropriate action to restrain, correct or abate a violation when such person fails to correct the violation after due notice, either actual or constructive, ~~has been given to the person responsible,~~ and where such person has had the opportunity to be heard by the Board of Adjustments and Appeals ~~through a timely filed appeal~~ or court of competent jurisdiction ~~through a timely filed appeal~~ on the issue of the violation.
- J. Reimbursement. Upon completion of any action taken by the County to correct or abate a violation, the violator shall be provided the opportunity to reimburse the County for any costs incurred within thirty (30) days of ~~providing the person responsible issuance of~~ written notice ~~thereof served in accordance with §80-5C.~~ An administrative fee for processing vendor requests and providing vendor services shall be charged for each instance such service is provided as set forth in the Appendix to this Chapter.

K. Remedies. Upon failure to reimburse the County within the time period specified, the County may:

- (1) Call or collect on any bond or insurance established for this purpose;
- (2) Place a lien upon the parcel of real property which is the subject of the abatement or after a Notice of Lien is filed on any property within the County which is held by the responsible person. Upon certification of the lien by the Constable's Office, the amount of such lien shall be recorded and collected in the same manner as other county real estate taxes and paid to ~~New Castle~~ the County when collected. There shall be a right to appeal the abatement cost to the Board of Adjustments and Appeals; or
- (3) Institute a civil action for the recovery of such expense, together and with any penalty, fine, fee and/or interest, against the person, and the County shall be awarded reasonable attorneys' fees and all expenses and costs the County has incurred including, without limitation, proceedings pursuant to a writ of monition, as permitted under 9 Del. C., Chapter 712. This Section shall not be construed to limit any other actions or remedies at law or equity.

L. Extensions. Application for an extension of the time frame to correct the violations addressed in the violation notice may be made in writing to the Constable. The Constable is authorized to grant, in writing, one (1) or more extensions of time. The applicant must demonstrate justifiable cause and explain all pertinent surrounding circumstances including reasons for the delay, plans for completion, and what actions the applicant has taken to correct the problem. The Constable may set conditions regarding the time frame to rectify any violation as well as any other conditions such as, but not limited to, those prescribed by a court of law or the Board of Adjustments and Appeals. A fee as set forth in the Appendix to this Chapter shall be charged for each extension.

§ 80-5 Notices and Orders

A. Notice to owner or person responsible. Whenever the Constable determines that there has been a violation of this Chapter, or has reasonable grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in § 80-5B~~;~~ and § 80-5C~~;~~ to the owner or person responsible for the violation as specified in this Chapter.

B. Form. Such notice prescribed in § 80-5A. shall be in accordance with all of the following:

- (1) Be in writing;
- (2) Include a description of the real estate sufficient for identification;

- (3) Include a statement of the violation or violations and why the notice is being issued; and
- (5) (4) Include a directive indicating the time to make the repairs and improvements required to bring the premises into compliance with the provisions of this Chapter **within ten (10) days.**

C. Service.

- (1) Method of service. Such notice shall be deemed to be properly served if a copy thereof is:
 - (a) Delivered personally to the owner or person responsible for the property; or
 - (b) Sent by certified or first-class **United States** mail addressed to the last known address **of the owner or person responsible for the property;** or
 - (c) Posting a copy of the notice in a conspicuous place in or about the **property** ~~structure~~ affected by such notice.

Service of such notice in the foregoing manner upon an owner's agent or upon the person responsible for the property shall constitute service of notice upon the owner.

- (2) Method of service exception. In no case shall the Constable be required by this Section to provide a **subsequent** violation notice within a twelve (12) month period to any owner or person responsible **who has** previously **been** provided notice pursuant to this Section or under any former Code provision where the same Code violation is alleged by the Constable to exist.

APPENDIX

Fees

Extension for Compliance with Violation Notice-

- \$25 for initial approved request and
- \$25 for each subsequently approved requests.

Vendor Processing Fee-

A vendor processing fee of \$100, in addition to all other costs and fees permitted by this Chapter, shall be imposed for removal or abatement of a violation.

Appeal Fee to Board of Adjustment and Appeal-

An aggrieved party shall include a fee of \$100 with their application for appeal of a ticket to the Board of Adjustment and Appeal.

Section 5. Chapter 80 of the Sussex County Code is hereby amended by renumbering § 80-5, "Withholding of permits and approvals" to § 80-6, by deleting the bracketed number and inserting the underlined number in its place and stead as follows:

"§ 80-[5]6"

Section 6. Effective Date. This Ordinance shall become effective upon its adoption.

Synopsis

This Ordinance amends Chapter 80 ("Lot Maintenance") of the Sussex County Code by renaming it, "Property Maintenance Code" as well as including the adoption of comprehensive enforcement and penalty procedures with due process protections in accordance with Title 9, Chapter 72 (now Chapter 71) of the Delaware Code all of which substantially advance, and are reasonably and rationally related to, legitimate government interests, including, but not limited to, the protection and preservation of the public health, safety, prosperity, general welfare and quality of life of its citizens. This Ordinance creates enforcement procedures for the Constable's Office to administer Sussex County's Property Maintenance Code.

Deleted text is italicized and in brackets. All new text is underlined.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2738 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 22ND DAY OF SEPTEMBER 2020.

**ROBIN A. GRIFFITH
CLERK OF THE COUNCIL**