

ORDINANCE NO. 1968

“AN ORDINANCE TO REPEAL PORTIONS OF CHAPTER 80, RELATING TO LOT MAINTENANCE AND TO AMEND CHAPTER 115, ZONING, ARTICLE XXV, SECTION 115-191 RELATING TO THE PARKING, STORING AND MAINTENANCE OF VEHICLES AND BOATS AND PROHIBITED ACCUMULATIONS ON NON-AGRICULTURAL LANDS, WASTE MATERIALS OUTSIDE COMMERCIAL PREMISES, ENFORCEMENT METHODS AND THE VIOLATIONS AND PENALTIES RESULTING THEREFROM”, as amended.

WHEREAS, pursuant to the provisions of Title 9, Chapter 69, of the Delaware Code, Sussex County was given the power and authority to regulate the use of land; and

WHEREAS, pursuant to the provisions of Title 9, Chapter 70 of the Delaware Code, Sussex County was given the power to enact ordinances related to the use of land and the conditions existing thereon; and

WHEREAS, pursuant to Chapter 115 of the Code of Sussex County, as amended, Sussex County has undertaken to regulate the use of land; and

WHEREAS, pursuant to Chapter 80 of this Code of Sussex County, authority for lot maintenance was granted to the transfer station division of Sussex County, which no longer exists and the responsibility for enforcing the proper maintenance of residential lots should be transferred to the Director of Planning and Zoning for enforcement under Chapter 115 of the Code of Sussex County.

WHEREAS, it has been determined that in order to better promote and protect the health, safety, convenience, orderly growth, welfare and property values of the inhabitants of Sussex County and to assist in the more effective enforcement of the Code, Chapter 80 should be repealed and the provisions thereof incorporated within Chapter 115, Section 115-191 and the expanded and incorporated provisions thereof should be amended to more clearly define the circumstances and conditions which shall give rise to enforcement of the matters addressed within this amendment and the consequences which may result from the violation of the expanded and amended provisions of Section 115-191;

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

The Code of Sussex County, Chapter 80, Lot Maintenance is hereby repealed in part, as follows:

[§ 80-1. Applicability.]

[This chapter shall apply to all land situate in Sussex County, except land used for agricultural purposes or located within the incorporated areas.]

[§ 80-2. Enforcement.]

[This chapter shall be enforced by the Transfer Station Division of Sussex County.]

§80-3. Prohibited accumulations.

- A. No person, being the owner or possessor of land or improved premises, shall permit grasses to grow more than twelve (12) inches high.
- B. No person, being the owner or possessor of lands or improved premises, shall permit grasses or weeds to grow so as to create a nuisance detrimental to adjoining property or to the health or safety of other persons.

[C. No person shall permit refuse, rubbish, trash or other waste materials to be placed or to accumulate upon or shall cause it to be placed or accumulate upon land or improved premises so as to create a nuisance detrimental to adjoining property or to the health or safety of other persons.]

D. For purposes of this section:

(1) Weeds do not include ornamental shrubs and trees.

[(2) Waste material does not include materials accumulated in an orderly fashion for useful purposes, such as firewood, compost piles and building materials in good condition, topsoil and earthfill, except that the accumulation of such material in a haphazard fashion close to adjacent property lines shall be prima facie evidence of waste and a nuisance to adjacent property or to the health or safety of other person.]

[§ 80-4. Removal by county; recovery of county expenses.]

[A. If, within ten (10) days after due notice by the Transfer Station Division to the owner or possessor of land or improved premises, weeds, grasses, refuse, rubbish, trash or other waste materials in violation of this chapter are not removed, the Transfer Station Division may cause such weeds, grasses, refuse, rubbish, trash or other waste materials to be removed and may incur any expense in the removal thereof.]

[B. Any expense of removal incurred by the Transfer Station Division under this section shall be paid by the owner or possessor of the land or improved premises within ten (10) days after notice thereof by registered mail. If said amount is not paid within such time, such amount, together with a penalty of ten percent (10%) of such expense and interest on such expense of six percent (6%) per annum, shall be assessed against the land or improved premises and shall, until paid, constitute a lien against such land or improved premises in favor of the county upon the filing, by the Director of Finance of Sussex County in the office of the Recorder of Deeds for the county, of a certificate of lien setting forth the amount of such expense, including penalty and interest.]

[C. In addition to any other remedy, the county may maintain a civil action for the recovery of such expense of removal and the penalty and interest against the owner or possessor and shall be awarded reasonable attorney's fees.]

[D. No civil liability shall attach to any act of any contractor or county employee engaged in carrying out the provisions of this section.]

[§ 80-5. Deposit of waste materials on premises outside of commercial establishments.]

[A. No refuse, rubbish, trash or other waste materials shall be deposited by any person on land or improved premises outside of any commercial establishment, except that such refuse, rubbish, trash or other waste material shall be placed in a metal or heavy-duty plastic container having a lid or a plastic bag, said bag to be securely tied sufficient to prevent the same from being scattered or carried away by nature upon adjoining land or improved premises. The owner or possessor of such land or improved premises or commercial establishment, any officer of a corporation being the owner or possessor of such land or improved premises or commercial establishment and any agent having the management thereof whose employee or agent violates the provisions of this section shall be deemed to be in violation of the provisions of this code.]

- [B. The county, in addition to other remedies provided by law, may apply to the Court of Chancery for injunctive relief against the owner or possessor of such land or improved premises to prevent, enjoin or abate any continuing violation of the provisions of this section.]

[§ 80-6. Violation and penalties.]

[Any person or corporation who shall violate any of the provisions of this chapter or who shall fail to comply therewith or with any of the requirements thereof shall be guilty of a misdemeanor and shall be liable to pay a fine of not more than one hundred dollars (\$100.), and each day such violation shall be permitted to exist shall constitute a separate offense.]

The Code of Sussex County, Chapter 115, Article XXV, Supplementary Regulations, §115-191 is hereby amended and, as amended, shall read as follows:

§115-191. Parking, [and] storing and maintaining of vehicles and trailers.

[No more than 2 automotive vehicles or trailers of any kind or type without current license plates shall be parked or stored on any residentially zoned property other than in completely enclosed buildings.] On lands which are zoned and used for owner occupied single family purposes, the following requirements shall exist with respect to the parking, storing or maintaining of automotive vehicles of any type, including, but not limited to, cars, trucks, vans, motor homes, recreational vehicles and trailers designed and/or built to be towed behind an automotive vehicle and which are all hereafter collectively referred to as “vehicles” and with respect to the storing or maintaining of boats and other watercraft on the ground, a cradle or on a trailer, and as to all of which, the following requirements shall apply and be complied with:

A. The purpose of this section is to eliminate the parking, storing or maintaining of those vehicles, boats and watercraft that are in violation of Subsections B and C, which tend to interfere with the enjoyment of, and/or reduce the value of private property, invite plundering, create visually unsightly conditions, create fire and/or pollution hazards and/or other safety and/or health hazards, to interfere with the well being of the public and/or to create, extend and/or aggravate blight.

B. No more than a total of 2 automotive vehicles, boats or other watercraft, which are either inoperable, dismantled, wrecked, or which display registration plates (as to vehicles for which they are required under State law) and/or registration stickers (as to boats or watercraft for which they are required under State law) which are at least 30 days expired or which do not display a required current registration plate or sticker, or display a plate or sticker not validly issued to that vehicle, boat or other watercraft, or from which major components have been removed, or which are in such a state of obvious disrepair as to be incapable, without repair, of being operated in the manner for which they are designed, shall be situated on any residentially zoned property other than in a completely enclosed garage or other permitted accessory structure located on the same lot or tax parcel the dwelling is located on.

C. No vehicle and/or boat or other watercraft, shall be situated on any residentially zoned property that is vacant and not improved with a dwelling for which a certificate of compliance has been issued pursuant to § 115-223.A.

§ 115-191A. Enforcement.

A. It shall be the duty of the director or his designee (which shall include the County Constables) to enforce the provisions of Section 115-191. When the director, or his designee determines that there has been a violation or has grounds to believe that a violation has occurred, notice shall be given to the owner or the person or persons responsible for the violation, in accordance with all of the following requirements:

- (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 property into compliance, which time period shall be not less than 30 calendar days. In the event the owner of the property or the person responsible for the violation notifies the director, or his designee, in writing, within the 30 day corrective period of an intent to correct the violation, the director or his designee may, at their discretion, extend the time for corrective action up to a total period of 60 days from the date the violation notice is served. Further, if the violator signs a written cleanup or remediation plan with the County within the 60 day period, the Director or his designee shall have the discretion to extend the cleanup or remediation period up to a maximum of 6 months 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 § 115-191 and 191A-H 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.
- (5) If a citizen domiciled in the County signs a written clean up or remediation plan and can provide bona fide proof that they are financially and/or physically incapable of fully complying with the terms and time limits of the plan proposed by the Director, they can file a letter of appeal to County Council within 30 days after executing the written clean up or remediation plan with the Director, asking Council to grant additional time to complete the clean up, to modify the terms of the plan or for assistance in completing it. There shall be no appeal fee and no public hearing required by Council. If the violation notice was sent in response to the complaint of another citizen, the citizen who made the complaint shall be given a minimum of 5 days written notice of the date when Council will consider the appeal and will be allowed to address Council concerning the substance of the appeal request. When Council considers the request, the burden shall be upon the requesting owner to satisfy Council that a financial and/or physical hardship or timing issue exists which prevents or limits their ability to comply with the clean up plan. If that burden is met, the options available to Council are:
 - (a) To modify the plan or to extend the time for clean up completion and/or to impose a phasing plan requiring the owner to achieve meaningful incremental progress and to specify the date or circumstances under which such a phasing plan would be revoked if the owner fails to make substantial progress toward completion.
 - (b) To advise the owner of any available sources of assistance that may be available to help them complete the clean up.
 - (c) To grant such other and further relief as Council may consider appropriate under the circumstances.

§ 115-191B. Penalties; Jurisdiction.

Any person who shall violate a provision of §115-191 or any of its subsections and/or fails to comply with any notice of correction served in accordance with Subsection A above shall be guilty of a misdemeanor and upon conviction shall be punished by a fine

of not less than \$250.00 nor more than \$500.00 for the first conviction; not less than \$500.00 nor more than \$750.00 for the second conviction; and not less than \$750.00 nor more than \$1,000.00 for the third conviction; and for the fourth and any subsequent conviction of the same violation that has still not been corrected, the minimum fine for such conviction shall be not less than \$2,500.00. The minimum 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 30 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 §115-191, 191A and 191B shall be in the Justice of the Peace Courts of the State of Delaware.

A. In addition to prosecuting a violator in the Justice of the Peace Courts, the prosecuting County employee is, 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.

§ 115-191C. Exemptions.

§ 115-191A-B shall not apply to:

A. An antique car, as defined by Title 21, Delaware Code, § 2196, or parts for an antique car, provided the antique car or parts thereof are housed in a building consisting of 4 sides and a roof, the construction of which was approved by the County and said car is not visible from any location on the street, road or highway that is closest to the property or from an adjoining property.

B. A dwelling which is part of and located on a tract of land of 5 acres or more that is primarily used for bona fide agricultural purposes.

C. Vehicles, boats or other watercraft which are not required to be licensed and registered pursuant to Delaware law.

§ 115-191D. Prohibited accumulations.

The purpose of this section is to prevent the accumulation of rubbish, trash or waste material so as to create an unsightly condition and/or a nuisance detrimental to the use or value of adjoining properties and/or to create a potential fire or safety hazard that could endanger the safety of the owner, possessor or other persons. In that regard:

A. No person, being the owner or possessor of improved or unimproved lands or premises that are not used for bona fide agricultural purposes shall permit refuse, rubbish, trash or other waste material to be placed or to accumulate upon such lands or premises.

B. For the purposes of this section:

(1) "Waste material" does not include materials accumulated in an orderly fashion for useful purposes, such as firewood, compost piles and building materials in good condition, topsoil and earthfill, except that the accumulation of such material in a haphazard, disorderly or unsightly fashion shall be prima facie evidence of waste and/or a nuisance and/or a detriment to the use and/or value of adjoining property and/or to the health and/or safety of other persons or themselves.

§ 115-191E. Removal by county; Recovery of county expenses.

A. If, within ten (10) days after due notice by the Director of Planning and Zoning or

his designee to the owner or possessor of land or improved premises, refuse, rubbish, trash or other waste materials in violation of this section are not removed, the Director or his designee may contract with a third party subcontractor who will cause such weeds, grasses, refuse, rubbish, trash or other waste materials to be removed and may incur any expense in the removal thereof.

- B. Any expense of removal incurred by the Director or his designee shall be paid by the owner or possessor of the land or improved premises within fifteen (15) days after notice thereof given in compliance with the provisions of Subsection 115-191A (1)–(3). If such amount is not paid within such time period, such amount together with a penalty of ten percent (10%) of such expense and interest on such expenses at ten percent (10%) per annum shall be assessed against the land or improved premises and shall, until paid, constitute a lien against such land or improved premises in favor of the County on the filing in the Office of the Recorder of Deeds by the Director of Finance of a certificate of lien setting forth the amount of such expense, including all penalties and interest accrued thereon and the per diem rate of increase in interest thereafter.
- C. In addition to any other remedy, the county may file and maintain a civil action for the recovery of such expense of removal and the penalty and interest accrued against the owner or possessor 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.

§ 115-191F. Deposit of waste materials on premises outside of commercial establishments.

- A. No refuse, rubbish, trash or other waste materials shall be deposited by any person on land or improved premises outside of any commercial establishment, except that such refuse, rubbish, trash or other waste material shall be placed in a metal or heavy-duty rigid plastic container having a secure lid that will prevent the spillage of the contents or the opening of the container and spreading of the contents by animals or rodents. The owner or possessor of such commercial establishment, any officer of a corporation or other entity being the owner or possessor of such land or improved premises or commercial establishment and any agent having the management thereof whose employee or agent violates the provisions of this section shall be deemed to be in violation of the provisions of this code.
- B. The county, in addition to other remedies provided by County law, may apply to the Court of Chancery for injunctive relief against the owner or possessor of such land or improved premises to prevent, enjoin or abate any continuing violation of the provisions of Section 191 or any of its subsections and shall be awarded reasonable attorney's fees and costs of the action.

§ 115-191G. Violations and penalties.

Violations and penalties of the above referenced sections dealing with prohibited accumulations and/or the deposit of waste materials shall be assessed in accordance with the penalties contained in Subsection 115-191B hereof.

§ 115-191H. Clean hands.

No County license, building permit, building code approval or the approval of a subdivision, rezoning, conditional use, variance, special exception or other form of County approval shall be issued by any County employee for properties found to be in violation of these requirements until such time as the Director determines that all violations have been corrected and that all penalties, fines, attorney's fees and costs imposed as a result of a violation of §191 or any of its subsections have been paid in full to the County.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 1968 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 6TH DAY OF MAY 2008 (as amended, on April 22, 2008).

A handwritten signature in black ink, appearing to read "Re Griffith", with a stylized flourish at the end.

ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

