

ORDINANCE NO. 2313

AN ORDINANCE TO DELETE THE CURRENT CHAPTER 80 OF THE CODE OF SUSSEX COUNTY RELATING TO LOT MAINTENANCE AND ADOPT A MORE COMPREHENSIVE NEW CHAPTER 80 PERTAINING TO PROHIBITED GROWTH OF GRASS AND WEEDS TOGETHER WITH ENFORCEMENT AND PENALTY PROVISIONS

WHEREAS, Sussex County Code, Chapter 80 currently establishes minimum standards for lot maintenance with respect to prohibited growth of grass and weeds with no method of enforcement or penalties, and

WHEREAS, Sussex County desires to delete the current Chapter 80 in its entirety and adopt a more comprehensive Lot Maintenance ordinance with enforcement and penalty provisions as hereinafter set forth; and

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. Amend the Sussex County Code by deleting §§ 80-1, 80-2 and 80-3 in their entirety as follows:

[§ 80-1 through § 80-2. (Reserved)]

§ 80-3. Prohibited growths and accumulations.

A. No person, being the owner or possessor of land or improved premises, shall permit grasses to grow more than 12 inches high.

B. No person, being the owner or possessor of land 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. (Reserved)

D. For purposes of this section:

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

Section 2. Amend Sussex County Code, Chapter 80, by inserting new §§ 80-1 through 80-5 which are underlined as follows:

“§ 80-1. Prohibited growths and accumulations

A. No person or entity, being the owner, occupant or party responsible for owner or possessor of improved or unimproved lands or premises that are not used for bona fide agricultural purposes, shall permit grasses or weeds to grow more than twelve (12) inches high upon such lands or premises.

B. No person or entity, being the owner, occupant or party responsible for improved or unimproved lands or premises that are not used for bona fide agricultural purposes, shall permit grasses or weeds to grow so as to create an unsightly condition and/or nuisance detrimental to the use or value of adjoining properties and/or to create a potential fire or safety hazard that could endanger the health, safety and welfare of the owner, possessor or other persons.

C. For purposes of this section, weeds shall not include ornamental grasses, shrubs and trees.

§ 80-2. Enforcement.

A. It shall be the duty of the Constable or his designee to enforce the provisions of this Chapter. When the Constable, or his 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 (5) calendar days. In the event the owner, occupant or party responsible for the subject property notifies the Constable, or his designee, in writing, within the five (5) day corrective period of an intent to correct the violation, the Constable or his designee may, at his/her discretion, extend the time for corrective action up to a total period of ten (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 (5) 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 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 designee shall be the financial responsibility of and paid by the owner, occupant or party responsible for the subject property within fifteen (15) days after notice thereof 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. 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 ten (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 thirty (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.

§ 80-5. Withholding of permits and approvals.

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 persons, entities and/or properties found to be in violation of these requirements until such time as the Constable 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 this Chapter have been paid in full to the County."

Section 7. Effective Date. This Ordinance shall become effective immediately upon its adoption.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2313 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 16TH DAY OF JULY 2013.



ROBIN A. GRIFFITH
CLERK OF THE COUNCIL