

ORDINANCE NO. 2739

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXV, "SUPPLEMENTARY REGULATIONS", §§ 115-191 THROUGH 115-191.8 OF THE CODE OF SUSSEX COUNTY RELATING TO "PARKING, STORING AND MAINTAINING VEHICLES AND TRAILERS" AND "PROHIBITED ACCUMULATIONS", 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 May 6, 2008, Sussex County adopted Chapter 115, Article XXV, "Supplementary Regulations" §§ 115-191 through 115-191.8, pertaining to "Parking, storing and maintaining of vehicles and trailers", "Prohibited accumulations" and the enforcement procedures and penalties for violations thereof; 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; and

WHEREAS, this amendment adopts the violation, enforcement, penalties and appeals procedures set forth in Chapter 80 of the Sussex County Code; and

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 115 of the Sussex County Code is hereby amended by deleting § 115.191.1, "Enforcement" and § 115-191.2, "Penalties; jurisdiction" in their entirety which is bracketed and italicized as follows:

*[§ 115-191.1 Enforcement.*

*[Added 5-6-2008 by Ord. No. 1968]*

*A. It shall be the duty of the Director or his designee (which shall include the County Constables) to enforce the provisions of § 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 thirty-day corrective period of an intent to correct the violation, the Director or his designee may, at his/her 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 sixty-day period, the Director or his designee shall have the discretion to extend the cleanup or remediation period up to a maximum of six 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 115-191.1 through 115-191.8 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 cleanup or remediation plan and can provide bona fide proof that he/she is financially and/or physically incapable of fully complying with the terms and time limits of the plan proposed by the Director, he/she can file a letter of appeal to County Council within 30 days after executing the written cleanup 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 five 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 his/her ability to comply with the cleanup 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 him/her complete the clean-up.*

*(c) To grant such other and further relief as Council may consider appropriate under the circumstances.*

*§ 115-191.2 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 § 115-191.1 above shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$250 nor more than \$500 for the first conviction; not less than \$500 nor more than \$750 for the second conviction; and not less than \$750 nor more than \$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 minimum fine for such conviction shall be not less than \$2,500. 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, 115-191.1 and 191.2 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.]*

Section 2. Chapter 115 of the Sussex County Code is hereby amended by renumbering § 115.191.4, "Prohibited accumulations" to 115-191.1, by deleting the bracketed number and inserting the underlined number in its place and stead and further amended by inserting the underlined language in subparagraph A as follows:

§ 115-191.[4]1 Prohibited accumulations.

The purpose of this section is to prevent the accumulation of refuse, rubbish, trash, inoperable appliances, tires 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. To the extent the accumulation of tires is not within the exclusive jurisdiction of the State of Delaware and the Delaware Department of Natural Resources and Environmental Control, the accumulation of tires shall be governed hereunder. 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 as hereinafter defined in § 115-191.4 shall permit refuse, rubbish, trash, inoperable appliances, tires or other waste material to be placed or to accumulate upon such lands or premises. Tire accumulations in excess of 20 tires shall be considered a violation.

Section 3. Chapter 115 of the Sussex County Code is hereby amended by renumbering § 115.191.6, "Deposit of waste materials on premises outside of commercial establishments" to 115-191.2, by deleting the bracketed number and inserting the underlined number in its place and stead, and further amended by inserting the underlined language in subparagraph A as follows:

§ 115-191.~~6~~2

A. No refuse, rubbish, trash, inoperable appliances, tires 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, inoperable appliances, tires 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.

Section 4. Chapter 115 of the Sussex County Code is hereby amended by renumbering § 115.191.3, "Exemptions" to § 115.191.4, by deleting the bracketed number and inserting the underlined number in its place and stead, and is further amended by deleting the bracketed language and inserting the underlined language as follows:

§ 115-191.~~3~~4 Exemptions.

Section 115-191.3 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 four 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 five acres or more that is primarily used for bona fide agricultural purposes.]

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

C. 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.

D. Land deemed to be actively devoted to agricultural, horticultural, or forestry as defined in 9 Del. C. § 8333.

E. Any structure that is not subject to regulation pursuant to 9 Del. C. § 6902(b).

F. State Parks and Wildlife Areas.

Section 5. Chapter 115 of the Sussex County Code is hereby amended by inserting a new § 115.191.3, "Violations, enforcement procedure, penalties and appeals" which is underlined as follows:

§ 115.191.3 Violations, enforcement procedure, penalties and appeals.

Sussex County Code §§ 80-2 through 80-5 of the Property Maintenance Code shall govern the procedure for violations, enforcement, penalties and appeals of §191 and each subsection thereunder.

Section 6. Chapter 115 of the Sussex County Code is hereby amended by deleting § 115.191.5, "Removal by County; recovery of County expenses" in its entirety which is bracketed and italicized as follows:

*[§ 115-191.5 Removal by County; recovery of County expenses.*

*[Added 5-6-2008 by Ord. No. 1968]*

*A. If, within 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 15 days after notice thereof given in compliance with the provisions of § 115-191.1A(1) through (3). If such amount is not paid within such time period, such amount, together with a penalty of 10% of such expense and interest on such expenses at 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.]*

Section 7. Chapter 115 of the Sussex County Code is hereby amended by deleting § 115.191.7, "Violations and penalties" in its entirety which is bracketed and italicized as follows:

*[§ 115-191.7 Violations and penalties.*

*[Added 5-6-2008 by Ord. No. 1968]*

*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 § 115-191.2 hereof.]*

Section 8. Chapter 115 of the Sussex County Code is hereby amended by renumbering § 115.191.8, "Withholding of permits and approvals" to 115-191.5, by deleting the bracketed number and inserting the underlined number in its place and stead as follows:

§ 115-191.~~[8]~~5

Section 9. Effective Date. This Ordinance shall become effective upon its adoption.

### Synopsis

This Ordinance amends Chapter 115, Article XXV, §§ 115-191 through 115-191.8 ("Supplementary Regulations") of the Sussex County Code by adopting the comprehensive enforcement and penalty procedures with due process protections in accordance with Title 9, Chapter 72 (now Chapter 71) of the Delaware Code and Chapter 80 of the Sussex County 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.

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. 2739 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 22ND DAY OF SEPTEMBER 2020.

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ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL