

**SYNOPSIS OF AMENDING THE CODE OF SOUTH BETHANY,
CHAPTER 42, BUILDING CONSTRUCTION
ORDINANCE XXX-XX (FIRST READING)**
(Sponsored by Mayor Tim Saxton)

This ordinance amends Chapter 42, "Building Construction", to :

Require the application for and issuance of a building permit for any and all construction, repairs, and maintenance activity **regardless of how minor.**

Permit the use of fuel powered generators and air compressors that conform to the OSHA noise level safety limits and to clarify that home standby generators are excepted from associated equipment restrictions.

Make violations of the provisions of this chapter Civil penalties rather than **Criminal** offences.

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Commented [SJB2]: Per our prior discussion, this verbiage change is OK but does not change enforcement or burden of proof



ORDINANCE NO. XXX-XX

AN ORDINANCE TO AMEND the Code of the Town of South Bethany, Chapter 42, **Building Construction**, to require the issuance of a building permit for all construction, repair and maintenance activities. To permit the use of fuel powered generators and air compressors that meet OSHA noise limits and exempt home standby generators from associated equipment restrictions. And to make the violation of provisions of this chapter into Civil penalties.

BE IT HEREBY ENACTED by the Council of the Town of South Bethany, Sussex County, a majority thereof concurring in Council duly met, that Chapter 42 ("Building Construction") be amended as follows (additions are **highlighted-underlined** in red text and deletions are highlighted and **marked through**):

§ 42-1. Authority.

This chapter is authorized by § C-4B of the Town Charter.

§ 42-2. Purpose; definitions.

[Amended 2-8-2013 by Ord. No. 167-12]

- A. This chapter is established to prescribe minimum construction requirements and standards for new and replacement structures in the Town of South Bethany; to ensure compliance with appropriate federal, state and county statutes and ordinances; and to ensure a minimum degradation of citizens' property, peace and tranquility, Town facilities and the environment.
- B. Definitions. See Chapter **145**, Zoning, § **145-3** for definitions of:
- (1) "Building" ("principal" and "accessory").
 - (2) "Construction."
 - (3) "Renovation/remodeling/alteration."
 - (4) "Structure" (also "structure, accessory").
 - (5) "Repairs."
[Added 11-14-2014 by Ord. No. 174-14]
 - (6) "Repairs, emergency."
[Added 11-14-2014 by Ord. No. 174-14]

Commented [SJB3]: None of these other code references need to be in bold, and should not be because they are not bolded in current code, and are not being changed. Please fix all these to be normal type.

§ 42-3. Building Code.

[Amended 9-8-1995 by Ord. No. 50-95; 6-14-1996 by Ord. No. 55-96; 4-8-2005 by Ord. No. 132-05; 2-8-2013 by Ord. No. 167-12]

Insofar as practicable and applicable, the minimum acceptable standards for materials and construction shall be as specified by the Sussex County Building Code Department, International Building Code (IBC), International Residential Code (IRC), other sections of this chapter, Chapters **45**, **50**, **141** and **145** of the South Bethany Code, FEMA/NFIP requirements, and the State of Delaware Department of Natural Resources.

§ 42-4. Enforcing officer.

[Amended 2-8-2002 by Ord. No. 107-01]

The provisions of this chapter and Chapter **145**, Zoning, shall be administered by the South Bethany Code Enforcement Constable or Town Manager and enforced by him/her and other Town officials, including the police. The Code Enforcement Constable or Town Manager may be provided with the assistance of such other persons as the Town Council may direct. His/her duties shall include inspecting the premises.

§ 42-5. Building permit required.

[Amended 12-8-2000 by Ord. No. 94-00]

A. It shall be unlawful to begin the excavation or filling for construction on any lot for any construction of any building or structure, to begin construction of any building or structure or to begin the moving, demolition or alteration of any building or structure until a building permit for such work has been issued. "Structure" includes paved driveways and paved sidewalks. (See § 145-68 for permit requirements.)

[Amended 2-8-2013 by Ord. No. 167-12]

B. ~~Nothing contained in this chapter shall be construed as requiring a~~ **A building** permit **is required** in order to make repairs, **regardless of how minor,** to any existing building or structure, ~~provided that the words "repairs" and "repairs, emergency" shall not be construed to include any addition, enlargement, reconstruction or renovation/remodeling/alteration of any such existing building, structure, or paved driveway or paved sidewalk.~~

[Amended 2-8-2013 by Ord. No. 167-12; 11-14-2014 by Ord. No. 174-14]

C. A building permit is ~~not~~ required **if for any construction, regardless of** the value of the construction. ~~does not exceed \$500, unless otherwise required by other sections of this chapter and Chapter 145.~~

[Added 2-8-2002 by Ord. No. 107-01; amended 2-10-2012 by Ord. No. 158-11]

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§ 42-6. Issuance of building permit.

[Amended 2-8-2002 by Ord. No. 107-01; 11-9-2012 by Ord. No. 165-12; 2-8-2013 by Ord. No. 167-12]
Building permits shall be applied for and issued in accordance with the following provisions and shall include granting permission for the Code Enforcement Constable or Town Manager, or designee, to enter and inspect the premises or property:

A. The applicant shall submit a completed application form including a detailed description of all proposed construction, a copy of the required Sussex County building permit (if required), a copy of the permit from the Department of Natural Resources and Environmental Control (if required) and permit fee.

B. For all construction applicant shall submit:

[Amended 2-13-2015 by Ord. No. 178-14]

(1) One copy of detailed plans of the proposed construction or improvements drawn to scale and of sufficient clarity and detail to indicate the specific nature and extent of the proposed work and demonstrating that it conforms to this chapter and all other applicable codes and regulations;

(2) One copy of a survey or plot plan, prepared by a registered professional surveyor, showing the location of all easements, property and setback lines, drainage facilities, centerline of street and lot grades, building and flood elevation and proposed improvements; provided, however, that the Code Enforcement Constable or Town Manager may waive any of these requirements in the exercise of their reasonable judgment based upon the circumstances.

- C. Upon determining that the proposed construction complies with all requirements, the Code Enforcement Constable or Town Manager shall sign the application form and return one copy to the applicant with the original building permit. One copy of the application form, building permit and all supporting documents shall be retained by the Town.
- D. Any changes in plans made during construction shall be submitted to the Town in accordance with Subsections **A**, **B**, and **C** above prior to starting the changes in construction.
- E. Anything in this section notwithstanding, no building permit wrongfully issued in violation of this chapter through error or otherwise shall create any vested rights in the applicant; and such building permit shall be voidable by action of the Code Enforcement Constable or Town Manager.

§ 42-7. Refusal of building permit.

[Amended 2-8-2002 by Ord. No. 107-01]

If the application submitted proposes work which does not conform to the requirements of this chapter and other ordinances, a building permit shall not be issued. One copy of the sketch or plan shall be returned to the applicant along with a written refusal signed by the Code Enforcement Constable or Town Manager or other authorized official. Such refusal shall state the reasons therefor and shall cite the portions of the ordinance with which the submitted application does not comply.

§ 42-8. Time limitations.

[Amended 2-8-2002 by Ord. No. 107-01; 11-14-2014 by Ord. No. 174-14]

Any building permit issued shall be invalid unless the work authorized by it shall have been commenced within six months of its date of issue, and all exterior construction, as well as utilities, shall have been completed within 12 months of the issuance of the permit. The Code Enforcement Constable or Town Manager has the discretion to extend this term up to a maximum of 180 days one time only.

§ 42-9. Coastal Floodplain District.

[Amended 9-8-1995 by Ord. No. 50-95; 2-13-2015 by Ord. No. 178-14]

Within the Coastal Floodplain District, a building permit shall not be issued until the requirements of the Town of South Bethany Code, Chapter **145**, Zoning, Article **XIV**, Coastal Floodplain Regulations, Sussex County, and the State of Delaware have been met and all necessary federal and state permits have been issued.

§ 42-10. Certificate of Compliance/Occupancy.

[Amended 2-8-2002 by Ord. No. 107-01; 2-8-2013 by Ord. No. 167-12]

A Certificate of Compliance/Occupancy shall be issued in accordance with the following provisions:

- A. Upon completion of all construction, unless waived in the exercise of reasonable

judgment based upon the circumstances by the Code Enforcement Constable or Town Manager, a final placement survey and flood elevation certificate prepared by a registered surveyor shall be provided with any other information as may be essential for determining whether the provisions of this chapter and other applicable codes and regulations have been met. Following receipt thereof, the Code Enforcement Constable shall make a final inspection to determine that the construction or improvements have been made in accordance with the application, the approved plans, the building permit and the provisions of all applicable codes and regulations.

- B. Prior to occupancy or use and upon payment of all applicable fees owed to the Town, the Code Enforcement Constable or Town Manager shall sign and issue the Certificate of Compliance/Occupancy. If the Certificate is denied, the recipient shall be notified in writing that the denial may be appealed to the Board of Adjustment within a period of 30 days under § 145-58A.
- C. Upon issuance of the Certificate of Compliance/Occupancy, the building permit for which the Certificate applies shall become void. Any future additions, alterations or other modifications to the building or structure shall require a new building permit. One copy of the Certificate, along with all supporting documents, shall be retained by the Town.
- D. Revocation of Certificate. The Code Enforcement Constable or Town Manager may revoke any Certificate of Compliance/Occupancy if the building, structure or use violates any provisions of this chapter or any other applicable provision of the Town codes.

§ 42-11. Records maintenance.

[Amended 2-8-2002 by Ord. No. 107-01; 2-8-2013 by Ord. No. 167-12]

It shall be the duty of the Code Enforcement Constable or Town Manager, who is responsible for the issuance of building permits, to keep a record of all building permits and certificates of compliance/occupancy issued, with a notation of all special conditions involved, and file and safely keep copies of all applications, including sketches and plans submitted, and the same shall form a part of the records of the Town of South Bethany and shall be available in the Town Hall for review by Town officials and the public.

§ 42-12. Use of portable construction equipment, including fuel-powered electric generators and fuel-powered air compressors.

[Amended 8-8-2008 by Ord. No. 142-08]

- A. Fuel-powered **portable** generators and fuel-powered **portable** air compressors, **which produce a noise level of greater than 80 dBA, as measured at a distance of 1M (meter) from the operating equipment**, are prohibited within the corporate limits of the Town of South Bethany, except pile drivers and commercial welding equipment, for construction purposes. Exceptions to this prohibition may be approved by the Town for a limited period of time in the event of emergencies that affect the electric company. **Fuel-powered generators and air compressors may only be operated within the timeframes specified by any applicable building permit. This prohibition does not apply to standby emergency generators used to supply household power during**

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an electrical outage.

[Amended 12-12-2008 by Ord. No. 147-08]

- B. No vehicles or portable construction equipment may be parked on any public property or street within the corporate limits of the Town of South Bethany except during actual construction. Floating construction equipment may not be docked, anchored or left unattended in Town waterways, except as authorized below.
- (1) Such vehicles or portable equipment may be parked on private property or docked in Town waterways adjacent to such property only during such time as a valid permit for construction requiring such equipment is in effect for said property and for the minimal reasonable time for which such equipment is required. Such permit shall be prominently displayed on the property.
 - (2) Any person operating, driving or moving any such vehicle or portable equipment on any street, highway, waterway or private property within the corporate limits of the Town of South Bethany, in conformity with state law, shall be liable for all damage sustained thereto. Whenever such person is not the owner of such vehicle or equipment but is operating, driving or moving the same with the express or implied permission of said owner, the owner and/or the operator, driver or mover shall be jointly and severally liable for any such damage.

§ 42-13. Commercial trailers.

[Amended 2-8-2013 by Ord. No. 167-12]

Commercial trailers used for storage of tools, equipment, and materials, or used as a temporary office during and in connection with the construction may be parked on the property on which construction is in progress. Said trailer shall be removed prior to issuance of a certificate of compliance/occupancy.

§ 42-14. Construction signs.

[Amended 7-12-1996 by Ord. No. 57-96; 2-8-2002 by Ord. No. 107-01; 2-8-2013 by Ord. No. 167-12]

One sign may be permitted for all building contractors, one for all professional firms and one for all lending institutions involved in the construction, enlargement, reconstruction or repair of a structure. Each such sign shall not exceed six square feet in area. Only freestanding signs are permitted. The height of each sign shall not exceed three feet in height. Each sign shall be removed upon completion of the project and prior to issuance of the certificate of compliance/occupancy.

§ 42-14.1. Environmental protection.

[Added 6-8-2001 by Ord. No. 98-01; amended 2-8-2013 by Ord. No. 167-12]

- A. Prior to the start of construction, the permittee shall install a silt fence in accordance with Standard Detail 19 of the Sussex Conservation District. The silt fence shall extend along all side and rear property lines.
- B. Within three days of completion of the footing or piles, the permittee shall install a stabilized construction entrance in accordance with the standard detail maintained by

the Code Enforcement Constable.

- C. Any excess materials, mud, etc., or other debris that is tracked on the roads shall be removed daily.
- D. Both the stabilized entrance and the silt fence shall be maintained throughout the project, but shall be removed prior to issuance of the certificate of compliance/occupancy and only after all final grading and stabilizing ground cover is in place.
- E. The use of any property, other than the construction site itself, for construction or other related activities shall require the advance written approval of the affected property owner. Restoration and cleanup shall be in accordance with the applicable provisions of the Town codes and the owner's approval.
- F. The Code Enforcement Constable may waive any of the requirements of this section when, in his judgment, the project is of such a nature, that the ground remains stabilized so that the environmental protection required by this section is not necessary.

§ 42-14.2. Site sanitation.

[Added 6-8-2001 by Ord. No. 98-01; amended 2-8-2013 by Ord. No. 167-12]

- A. Within three days of completion of the footing or installation of the piles, the permittee shall place a transportable rubbish container on the construction site. This container shall be trailer- or truck- mounted or may be a commercial roll-off type. A trash enclosure is not permitted. The permittee must prevent any debris from blowing out of the rubbish container.
- B. For all construction when water or sewer is disconnected, or the plumbing fixtures removed, the permittee shall place a portable toilet on the site.
- C. Both the rubbish container and portable toilet shall be removed prior to the issuance of a certificate of compliance occupancy.

§ 42-14.3. Periods of prohibited construction.

[Added 2-8-2013 by Ord. No. 167-12; amended 11-14-2014 by Ord. No. 174-14]

No construction work shall be conducted between the hours of 6:00 p.m. and 8:00 a.m. by any contractor or between the hours of 8:00 p.m. and 8:00 a.m. by any property owner. With the exception of repairs and maintenance, no construction work shall be performed on any Saturday or national holiday from May 15 through September 15, or any Sunday throughout the year, other than by owners or their family members working on their own properties. Emergency repairs may be made at any time. For the purpose of this section, the definition of "construction" shall include:

- A. Construction as defined in Zoning Code, Article III, § **145-3B**.
- B. Delivery or pickup of materials, equipment, machinery, rubbish containers and portable toilets.

- C. Prework or post-work activities, including but not limited to running of equipment; operating machinery; mixing of concrete or mortar; assembling or disassembling of scaffolding; placing or removing ladders; loading, stacking or unloading of materials.
- D. It shall be the responsibility of the property owner or his agent to inform delivery companies of these restrictions. The property owner or his agent shall be subject to the penalties for violations by delivery companies.
- E. For purposes of this section, "owner" is defined as and is limited to the person(s) or entity owning the property.

§ 42-15. Fees.

[Amended 6-14-1996 by Ord. No. 56-96; 12-8-2000 by Ord. No. 94-00; 2-8-2002 by Ord. No. 107-01; 4-8-2005 by Ord. No. 132-05]

- A. No permit, certificate of special exception or variance shall be issued unless or until the required costs, charges, fees and expenses as required have been paid in full, nor shall any action be taken on proceedings before the Board of Adjustment unless or until the required costs, charges, fees and expenses have been paid in full. Such fees shall be as set by resolution of the Town Council and are available in the Town Office.
- B. Fees shall be doubled if a permit is not obtained prior to beginning of construction. In addition, penalties specified in § 42-16 are applicable.

§ 42-15.1. Contractor responsibility for damage to public right-of-way.

[Added 2-12-1999 by Ord. No. 82-98]

- A. General contractors, and/or the property owner, shall be liable for the cost of damage to the Town's right-of-way caused by the general contractor, subcontractors or by delivery vehicles of construction materials, equipment, trash collection containers and the like. Contractors, and/or the property owner, who are judged by the Code Enforcement Constable or Town Manager and/or the

Public Works Department to be causing or to have caused or allowed to be caused such damage (including paved streets and unpaved shoulders) shall be liable for the cost of repairing such damage.
[Amended 2-8-2002 by Ord. No. 107-01]

- B. Repair of damages to the paved street portion of a right-of-way shall be completed by the Town, according to Town specifications and policies, using a contractor from its established list of contractors and according to a timetable determined by the Public Works Department. Repair of damages to the unpaved portion of the right-of-way (including but not limited to shoulders, swales and drainage systems) shall be the responsibility of the general contractor who caused or allowed to be caused said damage and who shall restore the right-of-way to its original condition as specified by the Public Works Department.
- C. The fees charged to contractors for such repairs to the paved streets will be according to the most recent Town specifications and policies to be predetermined by the Public Works Department. Payment of such fees by contractors to the Town will be due immediately upon the issuance of a statement by the Town.
- D. Contractors shall acknowledge, by signature, as a condition for receiving their annual license from the Town, their acceptance of liability of the cost of repairing such damage and the Town's specifications and policies thereto.
- E. Contractors who are causing or have caused such damage or who fail to pay repair fees immediately or fail to do restoration work immediately will be subject to a stop-work order, revocation of license, court proceedings and/or penalties and fines.

§ 42-16. Penalties for offenses.

[Amended 9-8-1995 by Ord. No. 50-95; 2-8-2002 by Ord. No. 107-01]

Violation of the provisions of this chapter or failure to comply with any of its requirements shall ~~constitute a misdemeanor~~ be punishable by a **civil penalty not less than \$100 nor exceeding \$300 as defined in the Town's fee schedule** for each offense. Whenever a person shall have been notified in writing, certified mail, return receipt requested, by the Code Enforcement Constable or Town Manager or other **authorized Town** official ~~or by service of a summons~~ that he is violating a specific provision of this chapter, each day that he shall continue the violation shall constitute a separate offense punishable by like **penalty fine**. The owner or tenant of any building, structure, premises or part thereof and any architect, builder, contractor, agent or other person who commits, participates in, assists in or maintains such violations may ~~each be found guilty of a separate offense and also be subject to suffer~~ the **civil** penalties herein provided. ~~Doubling of permit fee per § 42-15B is in addition to the above penalties.~~

§ 42-17. Remedies.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used in violation of this chapter or of any ordinance or other regulation made under authority conferred thereby, the appropriate municipal authority, in addition to other remedies, may institute any appropriate action or proceeding to prevent or abate such violation. In this event, the Town shall be

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entitled to collect from the offending party or parties the Town's reasonable legal fees and court costs as part of any judgment or award in a civil action brought to restrain or enjoin a violation. ~~Civil remedies are in addition to and not in place of the criminal penalty provided herein.~~

Effective date: This ordinance shall become effective upon the date of adoption.

ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF SOUTH BETHANY, SUSSEX COUNTY, DELAWARE, ON THE ____ OF _____ 2021.

SEAL:

Tim Saxon, Mayor

Caron Stevenson, Council Secretary

ATTEST: _____

1st Reading:
2nd Reading:

Sponsored by Mayor Tim Saxton
TS:jp: Ordinance XXX-XX
First Reading