

**SYNOPSIS OF AMENDING THE CODE OF SOUTH BETHANY,  
CHAPTER 42, BUILDING CONSTRUCTION  
ORDINANCE 203-21 (SECOND READING)**  
(Sponsored by Councilmember Derek Abbott)

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

Permit the use of fuel powered generators and air compressors that conform to the OSHA noise level safety limits when electric service cannot be provided and to clarify that home standby generators are excepted from associated equipment restrictions as long as they also meet noise level limits.

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



**ORDINANCE NO. 203-21**

**AN ORDINANCE TO AMEND** the Code of the Town of South Bethany, Chapter 42, **Building Construction**, to permit the use of fuel powered generators, air compressors and home standby generators that meet OSHA noise limits.

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 underlined in red text and deletions are highlighted and ~~marked through~~):

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

- A. Fuel-powered **portable** generators and fuel-powered **and electric** air compressors, **that 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 used if electrical service cannot be provided by the electric utility. Such equipment may only be operated within the timeframes specified by the building permit. The 80 dBA noise limit also applies to standby emergency generators used to supply household power during an electrical outage.**
- 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.

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.

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.

- 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.

- 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.

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. Pework 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.

- 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.

- 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.
- 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.

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~~ the person is violating a specific provision of this Chapter, each day that ~~he~~ the person 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 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 10<sup>TH</sup> OF SEPTEMBER 2021.**

SEAL:

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Tim Saxon, Mayor

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Richard Oliver, Council Secretary

ATTEST: \_\_\_\_\_

1<sup>st</sup> Reading: 8/13/2021  
2<sup>nd</sup> Reading: 9/10/2021

Sponsored by Councilmember Derek Abbott  
DA:jp Ordinance 203-21  
Second Reading