

**SYNOPSIS OF ORDINANCE AMENDING
THE CODE OF SOUTH BETHANY,
TO AMEND CHAPTERS 34, 37, 50, 69, 73, 84, 94, 104, 130, 141,
AND 145 ADDRESSING CLASSIFICATION OF CERTAIN
VIOLATIONS, FINES AND PENALTIES IN CODE OF
THE TOWN OF SOUTH BETHANY
ORDINANCE 209-22 (SECOND READING)
(Sponsored by Councilman Abbott)**



**ORDINANCE NO. 209-22
(SECOND READING)**

AN ORDINANCE TO AMEND the Code of the Town of South Bethany, Chapters 34, 37, 50, 69, 73, 84, 94, 104, 130, 141 and 145 addressing classification of certain violations, fines, and penalties in Code of the Town of South Bethany.

BE IT HEREBY ENACTED by the Council of the Town of South Bethany, Sussex County, Delaware, a majority thereof concurring in Council duly met, that the following ordinance be and hereby is amended as follows: (additions are **bold and highlighted in red text** and deletions are ~~**bold and marked through**~~)



**AMENDING THE CODE OF SOUTH BETHANY,
TO AMEND CHAPTERS 34, 37, 50, 69, 73, 84, 94, 104, 130, 141,
AND 145 ADDRESSING CLASSIFICATION OF CERTAIN
VIOLATIONS, FINES AND PENALTIES IN CODE OF
THE TOWN OF SOUTH BETHANY**

**ORDINANCE 209-22
(SECOND READING)**

Amend Chapter 34, Beaches, Section 34-10 as follows:

§ 34-10, Penalties for offenses.

Any person violating the provisions of this chapter shall be subject to a **civil** penalty of not less than \$25, nor more than \$100, plus court costs. Each day of continued violation shall be considered as a separate offense.

Amend Chapter 37, Boating, Section 37-3 as follows:

§ 37-3, Penalties for offenses.

Any person violating the provisions of this Chapter shall be subject to a **civil** penalty of not less than twenty-five dollars (\$25), nor more than one hundred dollars (\$100), plus court costs. Each day of continued violation shall be considered as a separate offense.

Amend Chapter 50, Bulkheads, Section 50-11 as follows:

§50-11. Penalties for offenses.

Any person violating the provisions of this chapter or the attached specifications¹⁴¹ shall be subject to a **civil** penalty of not less than \$100 nor more than \$250, plus court costs and attorney fees. Each day following the expiration of the day period for installation, maintenance, repair, removal or replacement shall constitute a separate violation.

Amend Chapter 69, Firearms and Hunting, Section 69-3 as follows:

§69-3. Penalties for offenses. [~~Firearms and Hunting~~]

Any person violating the provisions of this chapter shall be subject to a **civil** penalty

of not less than \$25, nor more than \$100, plus court costs. Each discharge shall be considered as a separate offense.

Amend Chapter 73, Fuel Tanks, Section 73-4 as follows:

§73-4. Penalties for offenses.

Any person violating the provisions of this chapter shall be subject to a **civil** penalty of not less than \$25, nor more than \$100, plus court costs. Each day of continued violation shall be considered as a separate offense.

Amend Chapter 84, Licenses and Permits, Sections 84-10 and 84-14, as follows:

§ 84-10 Penalties for offenses.

A. Any person found guilty of violating any section of this article shall, ~~upon conviction by any court of competent jurisdiction,~~ pay a **fine civil penalty** of ~~not less than \$500 plus court costs and Victim's Compensation Fund Assessment (if applicable)~~ for the first **offense violation**, and, for a second or subsequent **offense violation within five years**, pay a **fine civil penalty** of ~~not less than \$1,500. plus court costs and Victim's Compensation Fund Assessment (if applicable).~~ ~~Any offense committed more than five years after the most recent offense shall be deemed a "first offense."~~ Each day of a continuing violation shall constitute a separate **offense violation**, ~~punishable by a fine~~ **subject to a civil penalty** of \$100 per day, but:

(1) The total amount of all **penalties fines** (for the initial violation and each subsequent day of a continuing violation) shall not exceed the cumulative total of \$3,000; and

(2) Each day of a continuing violation shall not be considered a "second or subsequent **offense violation**" for purposes of enhanced penalty for a "second or subsequent offense."

B. Any person charged with a "first offense" violation of this article may cure the violation within 15 days by:

(1) Paying a voluntary assessment to the Town (in lieu of any **fine penalty**) in the amount of \$250; and

(2) Completing all necessary action to demonstrate compliance with all provisions of this article. ~~The payment of a voluntary assessment under this subsection shall constitute an admission of guilt to the violation and a "first offense" for purposes of establishing any "second or subsequent offense" under this section.~~

§ 84-14 Penalties for offenses.

A. Any property owner found guilty of violating **§ 84-13C** shall, upon **a finding of**

violation conviction by any court of competent jurisdiction, ~~be fined~~ **pay a civil penalty of** \$300 for each day of violation, plus court costs, **and** reasonable Town attorney's fees. ~~and Victim's Compensation Fund Assessment, if applicable.~~

- B. Whenever any property owner shall have been notified in writing, certified mail, return receipt requested, by the Code Enforcement Constable or Town Manager or other Town official **of violating and found guilty of violating §84-13D, such property owner** shall, upon **a finding of violation conviction** by any court of competent jurisdiction be ~~fined~~ **subject to a civil penalty of** \$300 for each continued day of violation from the notification date, plus court costs, **and** reasonable Town attorney's fees. ~~and Victim's Compensation Fund Assessment, if applicable.~~
- C. Any property owner charged with violating this article may cure the violation within 15 days by:
 - (1) Paying a voluntary assessment to the Town (in lieu of any **fine civil penalty** and going to court) in the amount of \$150 per day of violation; and
 - (2) Completing all necessary action to demonstrate compliance with all provisions of this article. The payment of a voluntary assessment under this subsection shall constitute an ~~admission~~ **administrative finding** of guilt to the violation.
- D. Use of the voluntary assessment may be ~~exercised~~ **utilized** only once by the property owner. Any repeat violations subsequent to that utilization shall be subject to **civil** penalties as stipulated ~~herein. in § 84-14A and B.~~
- E. Any property owner electing to use the voluntary assessment procedure shall, prior to using such procedure, be notified of owner's rights and the associated procedures as required under § ~~4.2.28 C-4B(28)~~ **4.2.28 C-4B** of the Town Charter.

Amend Chapter 94, Parking, Section 94-8 as follows:

§ 94-8. Penalties for offenses.

- A. Any person violating the provisions of this chapter shall be subject to a **fine penalty** of not less than \$50 nor more than \$1,000, except as specified in **§94-5G**, and the costs of towing away the violating vehicle.
- B. Fines imposed for violation of any provisions of this chapter must be paid within 14 days of the date of notice of the violation at the Town Office. Failure to pay such fine within 14 days shall result in the fine being doubled.

Amend Chapter 104, Property Maintenance, Sections 104-4, 104-8, and 104-19 as follows:

§ 104-4. Penalties for offenses.

Any person violating the provisions of this article shall be subject to a **civil** penalty of ~~not less than \$100, nor more than \$200~~, plus court costs.

§ 104-8 Notice; enforcement; appeals; penalties for offenses.

- A. The Town shall annually notify all property owners of the mow and trim requirements mandated in this article. Annual notifications may include, but not be limited to, the Town newsletter, or the Town News Update. The Town may remedy any violations of this article without further notice to the property owner(s).
- B. Where any premises are determined to be in violation of **§104-7**, the Town shall arrange for the mowing and trimming of such property and will bill the property owner for the cost thereof, plus the penalty specified below. Included with the bill shall be notice of the property owner's right to appeal the Code Enforcement Constable's decision and proof of the violation, consisting of a photograph of the violation and, when applicable, an approximate measurement of the grass and/or weeds in violation of this article. If not paid when due, the costs for mowing and trimming, plus penalty, will be added to the Town's annual tax bill and as such shall constitute a lien upon the property.
- C. Any property owner may appeal the decision of the Code Enforcement Officer that the owner's property was in violation of this article by submitting such appeal, in writing, to the Town Manager within 10 business days of the date of the bill for the mowing and trimming costs. The Town Manager shall review the appeal and take appropriate action within 10 business days of receipt of the appeal.
- D. In addition to any other fee or penalty imposed by this section, any person found **to be in violation of guilty of violating §104-7** shall, **upon conviction by any court of competent jurisdiction, pay a civil penalty of \$50 fine of not less than \$50 nor more than \$500**, plus court costs. ~~and Victims Compensation Fund Assessment (if applicable)~~. Pursuant to 25 Del.C. § 2901(a)(1)(i), such **penalties fine**, costs and assessment shall constitute a lien upon the property. Each day of a continuing violation shall constitute a separate **violation and penalty offense, punishable as such**. In addition to any penalty set forth above, no parking permit shall be issued pursuant to Chapter **94** of the Town Code so long as violation of this article remains uncorrected or so long as any mowing and trimming costs or penalty imposed hereunder remains unpaid.

§ 104-19 Enforcement procedures: notice, penalties, appeals.

- A. Notice of violation. Whenever the Code Enforcement Constable determines that there exists a violation of any section of this article, he/she shall provide notice thereof to the owner or his designated representative. Such notice shall identify the conditions constituting a violation, include reference to the applicable code section in violation, and state that the property owner has a reasonable time

limit, not to exceed 30 calendar days, to correct the violation or file a written appeal of the Code Enforcement Constable's decision with the Town Manager. Such notice shall state that if the violation is not resolved within the allotted time and an appeal is not filed, the Town may **fine assess a civil penalty of \$100 against** the property owner **\$100**, remedy the violation, and bill the property owner for the amount of the remediation costs.

B. Delivery.

- (1) The notice of violation shall be in writing and delivered to the owner by one of the following:
 - (a) Personal delivery to the owner or his designated representative.
 - (b) United States mail service addressed to the mailing address contained on the Town records.
 - (c) E-mail to the owner's e-mail address, if known to Town Hall.
- (2) In the event notice by the methods listed above is not possible, notice shall be completed by posting notice in a conspicuous location on the property.

C. Penalty and enforcement. Whenever the Code Enforcement Constable determines that there exists a violation of any section of this article, the property owner shall have a reasonable time limit, not to exceed 30 calendar days from date of the notice issued under Subsection A above, to bring the property into compliance with the Code. If the property has not been brought into compliance by the expiration of the 30 calendar days, and an appeal has not been filed, Town may **fine assess a civil penalty of \$100 against** the property owner **\$100**, (plus court costs, if applicable), take action necessary to remediate the violation, and bill the property owner for the remediation costs. Each week thereafter of a continuing violation shall constitute a separate offense. A property owner may pay an outstanding **penalty fine** pursuant to the Town's voluntary assessment procedures as follows: Any person found to have violated any section of this article may admit **the violation guilt** and voluntarily pay a **penalty fine** of \$100 (either in person or by mail) at the Town Hall as long as the citation provides notice of the penalties for such violation, that the violator has the right to a hearing before a court, and that any person electing to use the voluntary assessment procedures may revoke such election and proceed to a hearing if the violator notifies the Town Hall of this intention prior to the due date set forth on the citation.

D. Appeal. Any person who has been notified of a violation of any section of this article by the Code Enforcement Constable may appeal the determination of violation by filing a written appeal to the Town Manager within 30 calendar days

from the date of notice. The Town Manager shall review the appeal and issue a written decision within 10 business days of receipt of the appeal, which decision shall include notice of the property owner's right to appeal the decision of the Town Manager to the Town Hearing Board. If the property owner is not satisfied with the decision of the Town Manager, the property owner may file a written appeal to the Town Hearing Board within 10 business days of the decision of the Town Manager. The Town Hearing Board shall consist of three Town Council members appointed by the Mayor. The Town Hearing Board shall hear the appeal as soon as practicable but not later than 20 business days after the appeal is filed and issue a written decision. Within a reasonable time limit not to exceed 30 calendar days of the filing of the written decision of the Town Hearing Board, the property owner shall remediate the violation or the Code Enforcement Constable shall withdraw the notice of violation, whichever is appropriate pursuant to the decision of the Town Hearing Board.

- E. Enforcing remediation costs and penalties; legal remedies; parking permits. The Town shall enforce and collect penalties assessed to property owners and remediation costs incurred by the Town through any and all means legally available to the Town. Nothing in this article shall be construed to prohibit the Town's ability to enforce the Town Code by any means legally available, including seeking injunctive relief in the Court of Chancery. Any property owner with unpaid penalties or remediation costs shall not be issued parking permits pursuant to Chapter **94** until such unpaid amounts have been satisfied.
- F. Emergency action. Upon determination of a violation of any section of this article, and following due notice as provided for above, the Town may declare the violation to be a public nuisance and/or an unsafe condition requiring prompt and immediate action. In such case the Town will remedy the violation and bill the owner for the costs.

Amend Chapter 130, Vehicles, Abandoned, Section 130-6 as follows:

§ 130-6. Penalties for offenses.

Any person who owns an abandoned vehicle which is in violation of this chapter shall be subject to a **civil** penalty of not less than \$25, nor more than \$100, plus court costs.

Amend Chapter 141, Water Service, Section 141-8 as follows:

§ 141-8 Penalties for offenses.

Violation of the provisions of this chapter or failure to comply with any of its requirements shall **be subject to a civil penalty of \$100 constitute a misdemeanor punishable by a fine not less than \$25 nor exceeding \$100** for each **violation. offense**. Whenever a person shall have been notified, in writing, certified mail, return receipt requested, by the Building Official or other official or by service of a summons that he/she is violating a specific provision of this chapter,

each day that he/she shall continue the violation shall constitute a separate offense **subject to an additional penalty. punishable by like 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 suffer the penalties~~ **subject to the civil penalties** herein provided.

Amend Chapter 145, Zoning, Sections 145-72 and 145-73 as follows:

§145-72 Penalties for offenses.

Violation of the provisions of this chapter shall ~~constitute a misdemeanor, be subject to punishable by a fine~~ **civil penalty of \$100 not less than \$100, nor exceeding \$300** per **violation offense**, plus court costs. Whenever a person shall have been notified in writing, certified mail, return receipt requested, by the Code Enforcement Constable or Town Manager or other Town official or by service of a summons of a violation of this chapter, each day of continued violation shall be considered as a separate offense. The owner or his agent of any building or structure and any architect, builder, contractor, agent or other person who commits, participates in, assists in or maintains any such violation may each ~~be found guilty of a separate offense and suffer the penalties~~ **subject to the civil penalties** herein provided.

§ 145-73 Additional ~~civil~~ Civil 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 legal 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 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 lieu of the penalties provided herein. Any property owner who objects to any decision by the Code Enforcement Constable or Town Manager or other Town official that a building or other structure is in violation of this chapter may have recourse to the remedy provided in **§145-58A** of this chapter.

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 _____ 2022.**

SEAL:

Tim Saxton, Mayor

Dick Oliver, Council Secretary

ATTEST: _____

1st Reading: 8.12.22
2nd Reading: 10.14.22

Sponsored by Councilman Derek Abbott
DA:jp Ordinance 209-22
Second Reading