

Ordinance 2005-03

THE COMMISSIONERS OF BELLEFONTE

An ordinance adopting New Castle County Property Maintenance Code and New Castle County enforcement of said code in the Town of Bellefonte repealing ordinances 62-5 (Accumulation of Weeds), 68-1 (Vacant Properties), 82-1 (Care of Premises), and 04-1 (Abandoned Vehicles).

BE IT ORDAINED by the Commissioners of the Town of Bellefonte, Delaware, a majority thereof concurring after careful review, and three public readings, that the following Ordinance is adopted:

Section 1: Adoption of New Castle County Property Maintenance Code

The Town of Bellefonte Commission hereby adopts the New Castle County Property Maintenance Code for enforcement within the municipal limits of the Town of Bellefonte, a copy of which is attached hereto and incorporated herewith.

Section 2: Amendments

All amendments, changes, additions and deletions to the New Castle County Property Maintenance Code, as they shall be amended from time to time, subsequent to the date of this Chapter, shall be automatically included in this ordinance as if fully set forth herein, without further enactment by the Town of Bellefonte.

Section 3: Transfer of Functions to New Castle County

The functions of regulation including inspection, enforcement, and correction relating to maintenance of property in the Town of Bellefonte are hereby transferred to New Castle County, a political subdivision of the State of Delaware, and to that end the property maintenance codes, regulation, including subsequent amendments, and enforcement provision and all rights and duties thereunder applicable to unincorporated portion of New Castle County, State of Delaware, shall be applicable within the corporate limits of the Town of Bellefonte.

Section 4: Effective Date

This ordinance becomes effective upon New Castle County Council approval of the transfer of property maintenance rights and duties from the Town of Bellefonte and upon adoption of an amendment removing the Town of Bellefonte as an exclusion of the New Castle County Property Maintenance Code, a copy of which is to be attached signifying the effective date of this ordinance.

FIRST READING 7-11-05

SECOND READING 7-11-05

THIRD READING 8-8-05

PASSED BY THE COMMISSIONERS 8-8-05

ATTEST: Scott MacKenzie Secretary, Bellefonte Town Commission

Dave Wishowsky President, Bellefonte Town Commission

- Original signed ordinance on file-

Property Maintenance Section of the New Castle County Code

ARTICLE VI. PROPERTY MAINTENANCE CODE

Sec. 6.06.001. (PM) Adoption of BOCA National Property Maintenance Code/1996.

Certain documents are on file in the office of the clerk of the County Council, being marked and designated as the BOCA Property Maintenance Code/1996, fifth edition, published by the Building Officials and Code Administrators International, Inc. and are hereby adopted as the property maintenance code of the county. All the sections, penalties, conditions and terms of the BOCA Property Maintenance Code/1996, fifth edition, and hereby referred to, adopted and made a part of this article as if fully set out in this section, with the additions, insertions, deletions, and changes prescribed in § 6.06.002.

(Amended December 4, 1998 by Ordinance 98-081)

Sec. 6.06.002. (PM) Amendments to BOCA National Property Maintenance Code/1996.

Certain sections and subsections of the property maintenance code adopted in § 6.06.001 are hereby added, deleted, amended, changed, and clarified as follows:

CHAPTER PM-1. ADMINISTRATION

Section PM-101.1, Title, is amended to insert the term "New Castle County" as name of jurisdiction.

Section PM-101.1.1, is added as a new subsection to read as follows:

Section PM-101.1.1 Jurisdiction. This Code shall regulate all housing and property maintenance on any property in New Castle County excepting the incorporated areas of Wilmington, Middletown, Newark, New Castle, Elsmere, Townsend, Newport, and Bellefonte.

Section 105.1.1 (PM), is added as a new subsection to read as follows:

Section PM-105.1.1 No Conflicts of interest. No county employee who has an official duty in connection with the administration and/or enforcement of this code shall be financially interested in the furnishing of labor, materials or appliances for the construction, alteration, or maintenance of a building, or in making plans or specifications therefor, unless he or she is the owner of the building. No such employee shall engage in activity which is inconsistent with the public interest and his or her official duties.

Section PM-106.2, Penalty, is deleted. For penalties, see Article VIII.

Section PM-107.1, Notice to owner or to persons responsible, is deleted. For notice provisions, see Article VIII.

Section 107.2.4. . (PM) Form, is deleted. For notice provisions, see Article VIII.

Section PM-107.3, Method of Service, is deleted. For service procedures, see Article VIII.

Section PM-109.2.1, is added as a new subsection to read as follows:

Section PM-109.2.1 Definition of unsafe condition. Unsafe condition includes, but is not limited to, the following: high weeds and grass, infestation of vermin or rodents, the accumulation of refuse, rubbish, trash, junk, debris, or waste, or abandoned vehicles.

Section PM-111.0, Means of Appeal, is deleted. For means of appeal, see Article VIII.

CHAPTER PM-2. DEFINITIONS

Section PM-202.0, General Definitions, Dwellings, One-family dwelling, is amended by deleting the period at the end of the section and substituting "and shall include mobile homes, manufactured housing, travel trailers and campers."

Section PM-202.0, General Definitions, Family, is deleted. The following is substituted:

Section PM-202.0, General Definitions, Family. Any number of individuals legally related through blood, marriage, adoption, or guardianship including individuals placed for foster care by an authorized agency, or up to four (4) unrelated individuals living and cooking together and functioning as a single housekeeping unit using certain room and housekeeping facilities in common.

CHAPTER PM-3. GENERAL REQUIREMENTS

Section PM-301.1, Scope, is amended by adding the following: "This article is not intended to supersede any requirements of any other statute, law, ordinance, rule or regulation with respect to historic structures or premises."

Section PM- 302.1, General, Rubbish, is amended by adding "and trash and debris," after "waste materials" in the first sentence.

Section PM- 303.2, Grading and drainage, exception, is deleted. The following provision is substituted:

Exception: Wetlands, water resource protection areas, or areas regulated by federal, state or local statutes, laws, ordinances, rules or regulations.

Section PM-303.4. Weeds, is deleted, with respect to provisions governing weeds, please refer to § 6-139 or its successor.

Section PM- 303.6, Exhaust vents, is deleted.

Section PM- 303.7, Accessory structures, is deleted. The following provision is substituted:

Section PM- 303.7, Accessory structures. All accessory structures, for example, but not by way of limitation, detached garages, fences, walls, storage sheds, driveways, exterior walkways, and other constructed appurtenances and facilities, shall be maintained structurally sound and in good repair.

Section PM-303.8, Motor Vehicles, is deleted, with respect to provisions governing motor vehicles, please refer to § 6.06.005 and § 6.06.021, or their successors.

Section PM-304.1.1. is added as a new subsection to read as follows:

Section PM-304.1.1 Graffiti. The exterior of all structures shall be maintained free from graffiti. Graffiti means, without limitation, any letter, word, name, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched on any structure. Structure shall include, but not be limited to, any rock, tree, wall, bridge, fence, gate, or building. This definition shall not include artistic stenciling or legal signage placed on a property with the permission of the owner of the property, or government sponsored murals.

Section PM- 304.5, Foundation walls, is amended by deleting "plumb" in the second line and substituting "structurally sound".

Section PM- 304.14.2, Openable windows, is deleted. The following provision is substituted:

Section PM- 304.14.2, Openable windows. Every window, other than a fixed window, shall be easily openable, capable of being held in a position by window hardware and shall be equipped with a locking device.

Section PM- 304.15, Insect screens, is amended in the second line by deleting "[DATE] to [DATE]," and substituting "April 15 to October 15".

Section PM- 305.1, General, is amended by adding the following exception:

Exception: Equipment in a vacant structure, if not in good repair, structurally sound and in a sanitary condition, must be secured in such a manner so as not to be hazardous to the health, safety, or welfare of any occupants or to the public.

Section PM- 305.4, Lead-based paint, is deleted.

Section PM- 307.1, Infestation, is amended by adding "and premises" following "structures" in the first and second lines.

Section PM- 307.2, Owner, is deleted. The following provision is substituted:

Section PM- 307.2, Owner. The owner of any structure or premises shall be responsible for extermination of the same prior to renting or leasing the structure or premises.

Section PM- 307.5 Occupant, is amended by adding the word "bat" before the words "rat-free" in the second and third lines.

CHAPTER PM-6. MECHANICAL AND ELECTRICAL REQUIREMENTS

Section PM- 602.2 Residential buildings, is amended by deleting "65 degrees Fahrenheit. (18 degrees Celsius)" in the third line and substituting "68 degrees Fahrenheit".

Section PM- 602.2.1, Heat supply, is deleted. The following provision is substituted:

Section PM- 602.2.1, Heat supply, Every owner and operator of any building who rents, leases, or lets one or more dwelling units, rooming units, dormitory or guestrooms on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat whenever necessary to maintain the room temperature specified in Section 602.2, during the hours between 6:00 a.m. and 11:00 p.m. of each day, and not less than 65 degrees Fahrenheit during other hours, for the period of time from October 15 and continuing until April 15. At all hours during the period of time from April 15 to October 15, the owner or operator shall maintain heating facilities or equipment capable of maintaining the room temperature at a minimum of 65 degrees Fahrenheit.

Section PM- 602.2.2, Room temperature, exception, is amended by adding the following: "In such event and upon the request of any tenant over sixty-five (65) years of age, or any tenant residing with a child younger than six (6) years of age, the owner or operator shall provide a supplemental source of heat capable of supplying adequate heat to maintain minimum room temperatures designated in § 602.2.1."

Section PM- 602.3, Nonresidential structures, is amended by deleting the phrase "[DATE] to [DATE]" and substituting the phrase "April 15 thru October 15".

CHAPTER PM-7. FIRE SAFETY REQUIREMENTS

Section PM- 705.5, Smoke detectors, is deleted. The following provision is substituted:

Section PM- 705.5, Smoke detectors. The provision of New Castle County Code § 16.02.001, or its successor, shall be applicable with respect to smoke detectors.

(Amended December 21, 1999 by Ordinance 99-135)

Sec. 6.06.003. (PM) Maintenance of swimming pools.

A. It shall be the duty of the owner or possessor of a property to maintain any swimming pool, whether aboveground or inground, in good order and condition, free from dirt, debris, algae, noxious odors and stagnant water.

B. It shall be the duty of the owner or possessor of property to maintain a cover on any pool that is not maintained in a suitable condition for swimming, including, by way of example and not by way of limitation, an empty pool or a winterized pool. Any pool that is not drained for winterization shall be covered. Compliance with this subsection shall not be in lieu of compliance with subsection (a) of this section.

C. Upon discovery of a violation of this section, the county may immediately institute legal proceedings. The county may remedy the violation and seek indemnification of expenses incurred by doing so from the violator. Corrective action may include, but shall not be limited to, draining and cleaning the pool, chemically treating the pool to control the growth of bacteria and algae, and/or covering the pool. Corrective action for any pool that is in violation of this section and that has been unused for a period of three years may include the filling of such pool with clean fill or the dismantling and removal of such pool, whichever is appropriate.

D. Any expense incurred by the county under this section shall be paid by the owner or possessor of the property within ten (10) days after notice thereof by registered certified mail. If such amount is not paid within such time, such amount, together with a penalty of ten percent of such expense and interest on such expense of ten percent per annum shall be assessed against the property and shall, until paid, constitute a lien against such property in favor of the county and shall be collected in the same manner as county real estate taxes. This section shall not be construed to limit any other actions or remedies at law.

(Amended December 4, 1998 by Ordinance 98-081)

Sec. 6.06.004. (PM) Property Maintenance – All Zoning Districts.

A. *Inoperable or unregistered vehicles:* The parking or storage of any inoperable or unregistered vehicle or off highway vehicle is prohibited unless fully enclosed in a building. Such vehicles parked or stored in the following situations shall be exempt from this section:

1. On farmland (as defined in 9 Del. C. § 8330, or its successor) when such vehicles are used for agricultural purposes.
2. On land appropriately zoned and used as a junk yard provided all such vehicles are fully enclosed by a solid fence or wall of sufficient height to screen such vehicles from public view.
3. On land appropriately zoned and used as a public garage for no more than 120 days.
4. On land appropriately zoned and used for vehicular sales, rentals, and service for no more than 120 days.
5. On lots greater than two (2) acres provided such vehicles are operative, are awaiting shipment to another location, and are on land appropriately zoned for such use.
6. Where such vehicles are being stored pursuant to a police investigation.

B. *Prohibited growths of weeds and grass:*

1. Weeds and grass on *undeveloped* parcels adjacent to developed parcels shall be no greater than (8) inches high within ten (10) feet of any property line or more than 24 inches high within 20 feet of any property line; provided however, with respect to undeveloped parcels that are shown on a recorded subdivision plan, weeds and grass shall be no more than eight (8) inches high.
2. Weeds and grass on *developed* parcels shall be no more than eight (8) inches high; provided, however, with respect to a parcel of land that is larger than one acre and has a building lot coverage of less than five percent (5%), weeds and grass shall be no more than eight (8) inches high within ten (10) feet of any property line or more than 24 inches high within 20 feet of any property line.
 - a. Exceptions: Weeds do not include: (a) ornamental shrubs and trees, provided that such ornamental shrubs and trees are maintained in good order and condition; (b) a

wildflower meadow maintained and located no less than 10 feet from any property line. A wildflower meadow contains wildflowers identified as such by the Department of Special Services and native grasses, which are grown in a meadow, field or garden, but shall not include environmentally invasive plants.

3. Application of section to multiple adjacent parcels. If an owner holds title to more than one parcel and such parcels are adjacent to each other, sharing a common property line, such parcels may be considered as one parcel for purposes of the application of this section.

4. Annual mowing required. Notwithstanding any other subsection of this section, an owner or possessor of a parcel shall be required to mow such parcel at least once a year, on or before September 30, if such parcel contains a population of environmentally invasive plants significant enough in volume, number or size to cause harm to neighboring properties.

5. Application to agricultural parcels. This section shall not apply to any parcel or portion thereof which is growing agricultural crops.

C. Accumulations of trash.

1. No person being the owner or possessor of a developed or undeveloped parcel of land shall permit refuse, rubbish, trash or other waste material to be placed or to accumulate upon such parcel or right of way abutting such parcel so as to create a nuisance detrimental to adjoining property or to the health or safety of other persons.

2. An outdoor trash compactor used for the collection of garbage, refuse, trash, rubbish and other waste shall be maintained in such a manner so as not to create a nuisance detrimental to adjoining property or to the health or safety of other persons. Trash compactors shall, if necessary, be equipped with facilities for deodorizing, sanitation, and disinfection. Trash compactors shall be maintained and shall be emptied with sufficiency to avoid accumulation of odors and the attraction of rats, mice, or other vermin.

3. All refuse, rubbish, trash, or other waste material deposited on land outside any commercial establishment must be placed in a metal or heavy duty plastic container having a lid. The bag or container shall be closed sufficiently to prevent the contents from escaping.

D. Maintenance of Unused or Unoccupied Property: All land or improved premises within the County shall be maintained as though such property were being used or occupied. This maintenance shall include, but not be limited to, the following:

1. Replacing or boarding up of any area having broken windows.

2. Replacing of deteriorated roofing or siding.

3. Trimming of shrubbery.

4. Repairing or removing of any accessory building and equipment, the level of which is less than would be expected if the property were in active use.

5. Providing reasonable security measures to prohibit the unauthorized or illegal use of the premises or any building or equipment.

6. Removing or correcting any condition detrimental to the safety of the general public.

E. Abandoned Structures.

1. Once vacant or abandoned, the exterior of any structure and surrounding premises must be maintained to the minimum standards as required by this Code. Any boarding of windows and doors to secure the structure shall be done in a professional manner and the materials used shall conform to the overall exterior appearance of the structure. All exterior surface materials including wood composition, cinder block, or metal shall be maintained in a weather-proof condition and surface coated to match the structure's exterior facade.

2. Any abandoned structure, except for historic structures as defined by § 6.02.008 of this Chapter, or its successor, whose exterior openings have been closed and sealed for greater than twelve (12) months, must either be made habitable or utilizable within six months, or the structure will be considered an unsafe condition and subject to the provisions of § 6.08.003 of this Chapter.

a. Exception: If the abandoned structure is the subject of pending litigation arising out of an insurance or ownership dispute, no enforcement actions will be taken until such litigation is resolved.

(Amended December 21, 1999 by Ordinance 99-135)

Sec. 6.06.005. Property Maintenance – Residential Zoning Districts.

A. *Truck parking.* The parking of any vehicle or off highway vehicle whose length is greater than 240 inches or whose width is over 84 inches or whose height is over 84 inches or whose weight exceeds 5,000 pounds is prohibited.

1. Such vehicles parked or stored in the following situations shall be exempt from this section:

a. When such vehicle is serving a permitted use.

b. When such vehicles are parked on a residential lot greater than two (2) acres and the vehicle is incidental to the use of the property.

B. *Recreational vehicle parking.* Subject to the following exception, the parking of any recreational vehicle whose length is greater than 240 inches or whose width is over 84 inches or whose height is over 84 inches or whose weight exceeds 5,000 pounds is prohibited on any street or roadway. The parking of boats or trailers on any street or roadway is prohibited.

1. Exception in cases where a Temporary Permit is granted: A person visiting a lot owner or occupant may park his or her recreational vehicle on the roadway adjacent to such lot temporarily, not to exceed fourteen (14) days, provided a temporary permit from the New Castle County Police Department is obtained. The temporary permit shall designate the individual to whom the permit was issued, the recreational vehicle to be parked, and the expiration date of the permit. The New Castle County Police Department shall charge a fee to defray the costs of administering this section. The temporary permit must be displayed on the rearview mirror of the recreational vehicle during the entire period of time it is parked on the roadway.

C. *Parking on lawns:* The parking of any vehicle or off highway vehicle other than on a surface treated and hardened to accommodate vehicles is prohibited, subject to the following exceptions:

1. When such vehicles are parked on land when the gross acreage of the lot exceeds five (5) acres, provided the vehicle is incidental to the use of the property as a residence.

2. Construction vehicles, provided they are on the lot where active construction is taking place or on a lot adjacent or part of the development site thereto.

D. *Outside Storage of household items:* The open storage of items designed and manufactured to be used and stored in an enclosed building is prohibited. Such items include, but are not limited to, the following: appliances or furniture, irrespective of age or condition.

E. *Outside Storage of debris:* Except during active construction, the open storage of debris, including, but not limited to, dead trees (standing or not), garbage, trash, rubbish, refuse, rock, rubble, broken concrete, is prohibited.

F. *Responsibility to keep shrubs trimmed:* It shall be the duty of the owner or occupant of a residentially zoned property to keep shrubbery trimmed so that it does not encroach upon or extend beyond the line of any sidewalk and to trim

trees so that no branch extends below a height of seven (7) feet above the width of any sidewalk.

(Amended December 21, 1999 by Ordinance 99-135)

Sec. 6.06.006 – 6.06.020. Reserved.

(Amended December 21, 1999 by Ordinance 99-135)

Sec. 6.06.021. Enforcement Provisions Unique to Property Maintenance Violations.

A. Jurisdiction. The New Castle County Police Department shall have the primary responsibility for enforcing this Article on the public roadways. The Office of Code Enforcement shall have the primary responsibility of enforcing this Article on private property. This delegation of primary responsibility shall have no effect on the authority of any other police station pursuant to 9 *Del. C.* § 1901 et. seq. or 11 *Del. C.* § 8301 et. seq.

B. Definition of specific vehicles: When a definition for a particular vehicle is not provided by this Chapter, the definitions provided in Chapter 1 of Title 21 (Motor Vehicles) of the Delaware Code shall be used.

C. Registered owner responsible for boat, vehicle or off highway vehicle. A rebuttable presumption is hereby created that the person in whose name such boat, vehicle or off highway vehicle is registered as the owner, shall be prima facie responsible for any violation of this Article if such boat, vehicle or off highway vehicle is unattended when the violation is discovered. A violation notice or summons may be attached to an unattended boat, vehicle or off highway vehicle found in violation of this Article.

D. Fines for excessive consumption of inspections.

1. Property owners who must repeatedly be ordered to abate violations as established by this Code consume an unacceptable and disproportionate share of limited county resources. Property owners who consume an excessive consumption of inspections shall be assessed a fee for those services.
2. An excessive consumption of inspections occurs when written notice of a violation is served as required in this Code and; (i) two (2) additional inspection cycles are performed at the same location within a consecutive twelve (12) month period after the initial written notice of a violation is served; and (ii) during each of the two (2) additional inspection cycles, the Code Enforcement Officer finds violations as established in this Code which are either new violations, or violations based upon failure to correct previous violations. The fee for the third and subsequent inspection cycles shall be five hundred dollars (\$500.00).
3. *Notice.* The initial notice of violation shall contain a notice of warning informing the property owner that two additional inspection cycles for the same property within the next twelve months may be deemed an excessive consumption of inspection services that may result in having to pay excessive consumption of services fee.
4. *Collection.* The Code Enforcement Officer shall notify the Chief Code Enforcement Officer in writing of the possible excessive consumption of inspection services fee. The Code Enforcement Officer shall provide the name and address of the owner, the dates of the inspections giving rise to the excessive consumption of inspection services fee, the violations of this Chapter observed, and the amount of the excessive consumption of inspection services fee. The Chief Code Enforcement Officer shall thereafter cause appropriate billings to be made. Payment shall be made within 30 days. Failure to make payment shall constitute a violation and the fee shall be collected pursuant to any of the available mechanisms in § 6.08.003.
5. *Transfer of ownership.* A new owner who has only recorded the instrument of conveyance for the subject property with the New Castle County the Recorder of Deeds

office shall not be liable for any excessive consumption fees arising from inspection services provided to the previous owner of the subject property.

(Amended December 21, 1999 by Ordinance 99-135)

Sec. 6.06.022 – 6.06.040. Reserved.