

Ordinance 25-10-01

Introduced: October 6, 2025

Adopted:

AN ACT TO AMEND CHAPTER 145 IN THE TOWN OF MIDDLETOWN CODE OF ORDINANCES TO CREATE ARTICLE II SEDIMENT AND STORMWATER MANAGEMENT AND ARTICLE III STORMWATER MANAGEMENT FACILITY, WATERCOURSE AND DRAINAGE SYSTEM MAINTENANCE

**BE IT ENACTED BY THE MAYOR AND COUNCIL OF THE TOWN OF
MIDDLETOWN** (a majority of the members elected thereto concurring therein):

Section 1. That the Town of Middletown, Delaware, Code of ordinances Chapter 145 is hereby amended by creating Article II and placing therein the following:

“Article II – SEDIMENT AND STORMWATER MANAGEMENT

145-15 ADOPTION OF STATE SEDIMENT AND STORMWATER REGULATIONS

Certain documents on file with the Town of Middletown, being marked and designated as the Delaware Sediment and Stormwater Regulations, as amended, promulgated by the DNREC, are hereby adopted as the sediment and stormwater regulations of the Town of Middletown. All the sections, penalties, conditions, and terms of the Delaware Sediment and Stormwater Regulations are hereby referred to, adopted, and made part of this Chapter as if fully set out in this Section.

145-16 SEDIMENT AND STORMWATER PERMIT FEES

The Town of Middletown shall collect, at the time a sediment and stormwater management application is submitted, a fee calculated in accordance with the Town of Middletown Subdivision Regulations as adopted.

145-17 PROHIBITED LAND DISTURBING ACTIVITIES

Except as provided in the Delaware Sediment and Stormwater Regulations, no person or entity may engage in any land disturbing activity until such person or entity has obtained an approved sediment and stormwater management plan. Lines and grades plans will not be approved for a parcel of land before approval of a sediment and stormwater management plan, except as exempted by the Delaware Sediment and Stormwater Regulations. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

145-18 APPROVED LAND DISTURBING ACTIVITIES

The Town of Middletown shall approve a sediment and stormwater management plan if it determines that the plan meets the applicable standards and if the person responsible for carrying out the plan certifies that the sediment and stormwater control measures included in the plan will

be implemented and that the provisions of the Delaware Sediment and Stormwater Regulations and Town Codes will be followed.

145-19 REGULATIONS GOVERNING THE USE OF APPROVED SEDIMENT AND STORMWATER MANAGEMENT PLANS

- A. Implementation of the approved plan may only be altered through a revised plan approved by the Town of Middletown. Such changes may be directed where:
 - 1. Inspection has revealed an inadequacy of field controls to accomplish the sediment and stormwater management objectives; or
 - 2. The person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out; or
 - 3. The sequence of construction does not adequately address construction and completion of the project; or
 - 4. Material standards or construction techniques have changed that would result in a more economical design for construction and maintenance.
- B. No building, grading or other permits for a site shall be issued by the Town of Middletown, where:
 - 1. DNREC considers the applicant to be in violation of 7 *Del. C.* § 4001 et seq.; or
 - 2. The applicant has failed to comply with any directives arising out of a Town of Middletown referral to DNREC; or
 - 3. The applicant has failed to comply with the provisions of the Town of Middletown Code; or
 - 4. The applicant has not obtained a DelDOT entrance permit, when required.
- C. Approval of a sediment and stormwater management plan by the Town of Middletown does not relieve the applicant of the responsibility to abate sediment pollution, or comply with any and all other applicable local, state and federal laws.
- D. The Town of Middletown may, in its discretion under appropriate circumstances, restrict or prohibit the use of standard plans as defined in the Delaware Sediment and Stormwater Regulations. Such a decision shall result in the applicant being obligated to submit a detailed sediment and stormwater management plan in accordance with this Chapter.
- E. Standard plans are valid for one (1) year from their approval date.

145-20 SEDIMENT AND STORMWATER REGULATIONS AND DESIGN STANDARDS

- A. The following references apply to sediment and stormwater management design, implementation, inspection and review:
 - 1. Delaware Sediment and Stormwater Regulations, as amended;
 - 2. Delaware Sediment and Erosion Control Handbook;
 - 3. Delaware Post Construction Stormwater BMP Standards & Specifications;

- B. The sediment and stormwater submission shall conform to the latest version of the sediment and stormwater checklist.

145-21 CONSTRUCTION REVIEW, ENFORCEMENT AND PENALTIES

- A. In accordance with the provisions of the Delaware Sediment and Stormwater Regulations, the Town of Middletown, as a delegated agency, will periodically inspect the sites of land disturbing activities for which permits have been issued to determine if the activities are being conducted in accordance with the plan and if the measures required in the plan are effectively controlling erosion and sedimentation.
- B. The Town of Middletown may require a certified construction reviewer to provide on-site construction review according to the Delaware Sediment and Stormwater Regulations.
- C. Prior to the issuance of a nonresidential Certificate of Occupancy or the turnover of community open space, a qualified design professional must provide a certification verifying the stormwater management facility(s) have been constructed and are functioning as designed.

145-22 NOTICE OF VIOLATION

- A. At the discretion of the Town Official, whenever the Town Official determines that there has been a violation of this Code or has grounds to believe that a violation has occurred, notice shall be given to the owner or the person(s) responsible for the structure, facility or premises.
 - 1. *Form.* Such notice shall:
 - a. Be in writing;
 - b. Include the address or tax parcel identification number or a description of the property sufficient for identification;
 - c. Include a statement of the violation or violations and why the notice is being issued; and
 - d. Include a directive indicating a reasonable time to bring the structure, facility, or premises in compliance with the provisions of this Chapter.
 - 2. *Method of service.* Such notice shall be deemed to be properly served if a copy is:
 - a. Delivered personally to the owner; or
 - b. Mailed by regular United States mail and addressed to the owner at their last known address as reflected by the Town's records; or
 - c. Posted in a conspicuous place on the property affected by such notice; or
 - 3. *Method of service exception.* In no case shall the Town Official be required to provide a violation notice to any owner or person responsible who was previously provided notice of the same violation during the course of an application.

145-23 INSPECTION

Right of entry. When any Town Official has reasonable cause to believe that a code violation exists or when entry is required for periodic inspections and monitoring to determine compliance, then they are authorized to enter the structure or premises at reasonable times to

inspect. Prior to inspection, the Town Official must make reasonable efforts to locate the owner or other person having charge or control of the structure or premises to request entry. If entry is refused or not obtained, the Town Official is authorized to pursue recourse as provided by law.

145-24 ABATEMENT OF VIOLATION

- A. *Stop work orders.* Upon notice from the Town Official that work on any premises is being done contrary to the provisions of this Code or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or the owner's agent, or to the person doing the work, and shall state the conditions under which work will be permitted to resume.
 - 1. *Unlawful continuance.* Any person who continues any work after having been served with a stop work order, except such work as that person has been directed to perform to remove a violation or unsafe condition, shall be considered to be in violation of this Chapter.
 - 2. *Removal of placard.* Any person who defaces or removes a violation notice or stop work order notice or placard shall be considered to be in violation of this Chapter.
- B. *Emergency measures.* When, in the opinion of the Town Official, there is imminent danger of failure or collapse of a structure, facility, or premises, or any part thereof, which endangers life, the Town Official is empowered to order the occupants to vacate the same immediately.
 - 1. *Temporary safeguards.* When, in the opinion of the Town Official, there is imminent danger due to an unsafe condition, the Town Official shall cause the necessary work to be done to render such structure temporarily safe, whether or not the legal proceedings herein described have been instituted.
 - 2. *Closing streets.* When necessary for the public safety, the Town Official shall temporarily close structures and close, or request the authority having jurisdiction to close, sidewalks, streets, public ways, and places adjacent to unsafe structures, and prohibit the same from being used.
- C. *Costs of emergency repairs.* The Town of Middletown may maintain any action at law or equity against such person to recover the sums of money expended for any remedial work or emergency repairs plus lawful interest and costs. In addition to such remedies, a lien shall be placed on the person's property for monies expended by the Town of Middletown under this Section. This Section shall not be construed to limit any other actions or remedies in law or equity.

145-25 ENFORCEMENT

- A. *Administrative enforcement.* Any person in violation of this Chapter may be subject to any or all of the enforcement mechanisms listed below:
 - 1. *Public hearing; imposition of fines.* The Town Official may require the person in violation to attend a Mayor and Council Meeting to present their case. The Council will determine if punitive measures are to be instituted against the person(s) found to be violating this Chapter. Any person who intentionally commits any of the acts prohibited by this Chapter shall be subject to a civil penalty in an amount not less than five

hundred dollars (\$500.00) and not to exceed five thousand dollars (\$5,000.00) for each day that a violation continues. These fines shall be in addition to any investigation fees.

2. *Refusal to issue permits to a violator.* If the Town Official finds any person or permit, license or certificate holder in violation of any of the provisions of this Code, or to have multiple expired permits outstanding, the Town Official may refuse to grant any further building permits to such holder and all other legal entities with which said holder is associated until all violations have been corrected.
3. *Refusal to issue certificates to a violator.* If the Town Official finds any person or permit, license or certificate holder in violation of any of the provisions of this Code, or to have multiple expired permits outstanding, the Town Official may refuse to grant any further certificates of occupancy or completion to such holder and all other legal entities with which said holder is associated until all violations have been corrected.
4. *Stop work orders.* Whenever the Town Official determines that work is being done contrary to this Chapter, or in an unsafe or dangerous manner, jeopardizes the health, safety, or welfare of the public, or is being done in the absence of a necessary approval, inspection, plan, or permit, such work shall be immediately stopped.
5. *Institution of remedial action.* The Town of Middletown may initiate action to remedy the violation. Upon completion of such remedial work, the person shall be provided the opportunity to reimburse the Town of Middletown for the cost incurred. If the violator fails to reimburse the Town within the time period specified, the Town may:
 - a. Call or collect on any bond or insurance established for this purpose;
 - b. Place a lien on any property within the Town of Middletown held by the person; or
 - c. Institute a civil action for the recovery of such expense, together and with any penalty and/or interest, against the person, and the Town of Middletown shall be awarded reasonable attorney fees.”

Section 2. That the Town of Middletown, Delaware, Code of ordinances Chapter 145 is hereby amended by creating Article III and placing therein the following:

“Article III – STORMWATER MANAGEMENT FACILITY, WATERCOURSE AND DRAINAGE SYSTEM MAINTENANCE

145-26 RESPONSIBILITY

- A. Except where responsibility is legally transferred, the owner(s) of the property on which a stormwater management facility is located shall keep such facility in good order and repair so that it performs and functions in accordance with its intended purpose, approved design, applicable provisions of the Town of Middletown Code and the Delaware Sediment and Stormwater Regulations.
- B. Stormwater management facilities shall be inspected and maintained by the property owner(s) on a routine basis and in accordance with the natural resource area open space management plan, open space management plan, landscape plan, sediment and stormwater management plan, and post construction verification documents. Stormwater management facilities shall be maintained pursuant to the general maintenance requirements provided

herein to the extent that they do not contradict any other specific plan requirement. If there is any contradiction between the general maintenance requirements and the specific plan requirements, the plan requirements shall govern.

1. *General maintenance requirements for stormwater management facilities.* Stormwater management facilities shall be maintained in accordance with the Delaware Sediment and Stormwater Program Regulatory Guidance Documents, Post Construction Stormwater BMP Standards and Specifications as well as Standard Guidelines for Operation and Maintenance of Stormwater BMPs. In addition, the following conditions must be met:
 - a. *Grass mowing and trimming.* All grass within the limits of the stormwater management facility that is not under water must be mowed to a minimum height of four (4) inches and a maximum height of ten (10) inches, unless otherwise provided by a specific plan requirement. Clippings shall be either reduced to a fine mulch and distributed over the grassed area or disposed of in an appropriate location, but never within the vicinity of the stormwater management facility.
 - b. *Debris removal.* Debris consisting of leaves, paper, trash, branches, dead vegetation and other material must be removed from the limits of the stormwater management facility and its structural components. The debris shall be disposed of in an appropriate location, but never within the vicinity of the stormwater management facility.
 - c. *Sediment removal.* The outlet structure, low flow channels, headwall aprons, and facility outlet energy dissipator features must be kept clear of sediment. Where a forebay is provided, sediment must be removed when forebay capacity has been reduced to fifty (50) percent. All sediment collected from the stormwater management facility area shall be disposed of in an appropriate location, usually designated on the record plan, but never within the vicinity of the stormwater management facility.
 - d. *Erosion, animal burrows and woody vegetation.* All eroded areas and animal burrows must be filled, compacted and stabilized with reinforcing erosion control products or turf reinforcing mats and reseeded and replanted. Woody vegetation should be removed from all slopes and embankments.
 - e. *Plant materials.* Where other plant/landscaping materials are an integral part of the stormwater facility, such as rain gardens or bioretention facilities, the stalks of the plant materials shall be trimmed to no lower than twelve (12) inches in mid-March before new growth emerges. Appropriate herbicides shall be applied when needed. Any bare areas must be re-seeded or replanted as required based upon inspection findings.
 - f. *Dams.* Where check dams are used, materials that collect on the upstream face must be removed quarterly every year and after each rainfall event greater than one (1) inch. All vegetation with roots that extend within the check dam shall be removed and herbicides shall be applied as necessary.

- g. *Mulch.* Bioretention facilities with mulch as a topdressing, must be maintained to a depth of three (3) inches every spring. Mulch must be triple shredded, non-dyed and aged for a minimum of six (6) months.

2. *Inspections.*

- a. All stormwater management facilities shall be inspected by the property owner(s) in the spring and fall of every year and after each rainfall event greater than one (1) inch.
- b. Underground stormwater management facilities must also be inspected annually by a qualified third-party inspector. The third-party inspection must document the condition of the facility, any necessary maintenance, and any repairs made.

3. *Maintenance log.* For underground stormwater management facilities, a stormwater management facility inspection and maintenance log ("maintenance log") shall be maintained by the property owner(s) on a form obtainable from the Town of Middletown.

- a. The property owner(s) must submit the maintenance log and any underground stormwater management facility third-party inspection to the Town of Middletown on an annual basis, no later than January 31 of the following year. The property owner(s) must certify that required maintenance has been performed.
- b. Maintenance logs and third-party inspections shall be maintained by the property owner(s) for a period of ten (10) years.

C. It is the responsibility of the Town of Middletown to keep all non-tidal streams in the corporate limits of the Town, which are not under the jurisdiction of the U.S. Army Corps of Engineers, State of Delaware, DelDOT, a tax ditch organization, New Castle County, or any maintenance organization, open and free flowing. Unless necessary to maintain an open and free flowing condition, the Town is not obligated to perform the following:

- 1. Removal of any object or material for aesthetic purposes.
- 2. Removal of vegetation, rock, tree debris, sediment or other similar natural source.
- 3. Alteration, reduction or enhancement of the rate of flow or water levels.

D. The Town will assume the responsibility for maintaining an open and free flowing condition in watercourses and conveyance systems which are not already maintained by another public agency, tax ditch association, or maintenance organization if an adequate easement exists or can be acquired. The Town will undertake this responsibility provided that such watercourses and drainage systems, newly constructed or approved, meet Town design criteria and are affirmatively accepted by the Town.

E. Maintenance of drainage systems or stormwater management facilities for publicly dedicated or owned streets and roads to the point of open discharge is the responsibility of the Town once inspected and accepted by the Town. Maintenance of drainage systems or stormwater management facilities for privately-owned streets and roads to the point of open discharge is the responsibility of the owner or maintenance organization. The Town of Middletown is not responsible for drainage systems or stormwater management facilities in private roadways.

- F. Maintenance of drainage systems or watercourses are the responsibility of the property owner(s) to their point of discharge at the property line, unless otherwise designated by a record plan or recorded agreement. Maintenance of private or public property adjacent to watercourses is the responsibility of the property owner.
- G. Resolution of drainage concerns created by a change in grade or through the placement of a blockage or an encumbrance that impacts drainage by a property owner to the detriment of an adjacent property owner is not the responsibility of the Town of Middletown.

145-27 PERMITTING OF MAINTENANCE ACTIVITIES

It is the responsibility of any person, corporation, or other entity planning any act on or across a stream, watercourse or right-of-way thereof to acquire the necessary federal, state and local permits.

Section 3. That this Ordinance takes effect immediately upon approval.

ADOPTED THIS _____ DAY OF _____, 2025.

(SEAL)

Kenneth L. Branner, Jr., MAYOR

ATTESTED TO BY:

WITNESS, TOWN OF MIDDLETOWN

