

APPROVED FIRST READING: DECEMBER 6, 2024

**AN ORDINANCE
OF THE TOWN COUNCIL OF
THE TOWN OF FENWICK ISLAND, DELAWARE
ADOPTING A NEW CHAPTER 75 CIVIL OFFENSES
AND AMENDING CHAPTERS
48, 52, 56, 61, 65, 69, 73, 77, 81, 88, 95, 100, 102, 107, 112, 116, 127, 131, 135, 153 AND 160
OF THE FENWICK ISLAND TOWN CODE**

WHEREAS, the Town of Fenwick Island, Delaware (the “Town”), through its Town Council (the “Council”), has broad authority to enact such ordinances necessary for the protection of public health, safety, comfort or welfare, and the protection and preservation of public and private property, as well as to commence actions, suits and proceedings;

WHEREAS, the Council desires to create a new civil enforcement mechanism, in addition to existing enforcement mechanisms, in the Town Code (the “Code”), to foster and achieve greater, and more effective and efficient compliance with various provisions of the Code;

NOW THEREFORE, BE IT ORDAINED, by the Town Council of the Town of Fenwick Island, Delaware, in session met, a quorum at all times pertaining thereto, in the manner following, to wit:

Section 1. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new Chapter 75 Civil Offenses to read follows:

Chapter 75 Civil Offenses

§ 75-1 Applicability.

The provisions of this chapter shall apply to all violations of any provision of the Code of the Town of Fenwick Island that is, or may hereafter be declared, a civil offense provision by reference to this chapter. The remedies provided to the Town under this chapter are in addition to, and not in lieu of, any remedies otherwise provided to the Town for a violation of the Code

§ 75-2 Authority to issue citation and initiate civil fines.

Any Town police officer, the Town Manager, and/or the Building Official, or their designees, as appropriate, is authorized to issue a citation to any person violating any provision of the Code that is, or may be declared, a civil offense provision, upon a reasonable and articulable suspicion that a violation of such provision of the Code has occurred. Any citation issued pursuant to this chapter may be delivered in person, left at the person's last known address or place of business, or sent by overnight delivery or U.S. Mail to the person's last known address or place of business.

§ 75-3 Violations and penalties generally.

- A. Except as provided herein, the amount of the civil fine(s) to be assessed by the Town for a violation of a civil offense provision shall be as set forth in a chapter or section of the Code that declares a civil offense provision by reference to this chapter.
- B. In the event the amount of the civil fine(s) to be assessed by the Town for a violation of a civil offense provision is not set forth in a chapter or section of the Code that declares a civil offense provision by reference to this chapter, then the amount of such civil fine(s) shall be as set forth below:
 - a. \$250.00 for the first violation;
 - b. \$500.00 for each subsequent violation;
 - c. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.

§ 75-4 Opportunity to cure and pay by voluntary assessment, or appeal to the Town Council.

Any person cited for a violation of a civil offense provision pursuant to this chapter shall have the opportunity:

- A. Cure the violation, within 15 days of receiving a citation, to the reasonable satisfaction of the individual issuing the citation and pay to the Town, within 15 days of receiving a citation, a voluntary assessment in the amount set forth in the chapter or section of the Code that declares a civil offense provision by reference to this chapter, or \$250.00, whichever is greater; or
- B. Appeal the issuance of the citation to the Town Council by filing a written notification by certified mail to the Town Clerk requesting an appeal and a hearing at the next scheduled Town Council meeting. Said notice of appeal shall be mailed by certified mail to the Town Clerk within fifteen (15) calendar days of the date of the citation.

§ 75-5 Commencement of civil court proceedings.

- A. In the event a person cited for a for a violation of a civil offense provision fails to either (a) cure the violation, within 15 days of receiving a citation, to the reasonable satisfaction of the individual issuing the citation, (b) pay to the Town, within 15 days of receiving a citation, a voluntary assessment in the amount of \$250.00 or (c) successfully appeal the issuance of the citation to the Town Council, the Town may initiate civil enforcement proceedings in a court of competent jurisdiction to obtain a judgment for an amount that includes, but is not limited to, the amount(s) assessed by the Town and to enjoin the person from continuing the violation. In the event the Town obtains a judgment in such

civil enforcement proceedings, the Town shall be entitled to recover its costs and attorneys' fees incurred to obtain such a judgment.

- B. Pursuant to Title 25, Chapter 29, of the Delaware Code, any fines imposed by any court for violations of this chapter, or any civil fine imposed pursuant to this chapter, shall create a lien(s) upon that parcel of real property in respect of which such fines have been assessed or imposed. The unpaid amounts of such fines shall be collectible by the means provided for the collection of delinquent taxes in the Town Charter.

§ 75-6 Severability of offenses.

Separate civil and criminal proceedings may be instituted where both civil and criminal offenses occur in the same incident.

§ 75-7 Other remedies.

This chapter shall not be deemed to impair or limit the rights of the Town to seek full restitution or pursue any and all legal and equitable remedies against any person that may be available to the Town arising from or related to a violation of the Code.

Section 2. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of each of Section 48-9.1 (Violations and penalties) and Section 48-13 (Violations and penalties) of Chapter 48 (Animals) of the Code to read follows:

“Any violation or failure to comply with any requirement of this article shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply this article shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 3. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of each of Section 52-11.1 (Violations and penalties), Section 52-14 (Violations and penalties) and Section 52-16 (Violations and penalties) of Chapter 52 (Beaches) of the Code to read follows:

“Any violation or failure to comply with any requirement of this article shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this article shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent

violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 4. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph C at the end of Section 56-3 (Violations and penalties) of Chapter 56 (Boating) of the Code to read follows:

“C. Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 5. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of each of Section 61-12 (Violations and penalties) and 61-17 (Violations and penalties) of Chapter 61 (Building and Utility Construction) of the Code to read follows:

“Any violation or failure to comply with any requirement of this article shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this article shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 6. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph D at the end of Section 61-19 (Violations and penalties) of Chapter 61 (Building and Utility Construction) of the Code to read follows:

“D. Any violation or failure to comply with any requirement of this article shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this article shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 7. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of Section 65-5 (Violations and penalties) of Chapter 65 (Buildings, Numbering of) of the Code to read follows:

“Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 8. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of Section 69-5 (Violations and penalties) of Chapter 69 (Buildings, Unsafe) of the Code to read follows:

“Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each [day/week] that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 9. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of Section 73-4 (Violations and penalties) of Chapter 73 (Burning, Outdoor) of the Code to read follows:

“Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 10. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of each of Section 77-5 (Violations and penalties), Section 77-7 (Violations and penalties) and Section 77-11 (Violations and penalties) of Chapter 77 (Disorderly Conduct) of the Code to read follows:

“Any violation or failure to comply with any requirement of this article shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this article shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 11. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of Section 81-4 of Chapter 81 (Erosion Control) of the Code to read follows:

“Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 12. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of Section 88-34 (Violations and penalties) of Chapter 88 (Flood Damage Reduction) of the Code to read follows:

“Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 13. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting new language in lieu of the existing language contained in Section 95-5 (Violations and penalties) of Chapter 95 (Hazardous Materials) of the Code to read follows:

“Any violation or failure to comply with Section 95-3 of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with Section 95-3 of this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 14. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of Section 100-15 (Violations and penalties) of Chapter 100 (Licensing) of the Code to read follows:

“Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 15. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of Section 102-13 (Violations and penalties) of Chapter 102 (Lighting) of the Code to read follows:

“Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 16. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph E at the end of Section 107-7 of Chapter 107 (Noise) of the Code to read follows:

“E. Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 17. The Code of the Town of Fenwick Island be, and hereby is, amended by making insertions as shown by underlining and deletions as shown by strikethroughs to paragraph A of Section 112-8 (Violations and penalties) of Chapter 112 (Parking) of the Code to read follows:

“A. Any person who shall violate any provision of this chapter shall pay a fine of \$75.00 however the violation for parking on street ends without the proper permit shall be a fine of \$100.00. In addition, the Town Police may cause any vehicle parked in violation of this article to be towed away, the cost thereof to be paid by the owner thereof. If the identity of the operator of any vehicle parked in violation of this article cannot be readily determined, the owner of such vehicle shall be presumed to have parked it.”

Section 18. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of Section 116-8 (Violations and penalties) of Chapter 116 (Peace and Good Order) of the Code to read follows:

“Any violation or failure to comply with any requirement of this article shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this article shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 19. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of Section 127-8 (Violations and penalties) of Chapter 127 (Sanitation) of the Code to read follows:

“Any violation or failure to comply with any requirement of this article shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this article shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 20. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph C at the end of Section 127-11 (Violations and penalties) of Chapter 127 (Sanitation) of the Code to read follows:

“C. Any violation or failure to comply with any requirement of this article shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this article shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 21. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a paragraph D at the end of Section 131-4 (Violations and penalties) of Chapter 131 (Sewers) of the Code to read follows:

“Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 22. The Code of the Town of Fenwick Island be, and hereby is, amended by inserting a new paragraph at the end of Section 135-10 (Penalties) of Chapter 135 (Signs) of the Code to read follows:

“Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 23. The Code of the Town of Fenwick Island be, and hereby is, amended by deleting the existing language in Section 153-5 (Violations and penalties) of Chapter 153 (Vehicles and Traffic) of the Code and inserting in lieu thereof new language in Section 153-5 (Violations and penalties) of Chapter 153 (Vehicles and Traffic) of the Code to read follows:

“Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Section 24. The Code of the Town of Fenwick Island be, and hereby is, amended by (a) deleting the first sentence of paragraph B of Section 160-15 (Enforcement; violations and penalties) of Chapter 160 (Zoning) of the Code and (b) by inserting a new paragraph C at the end of Section 160-15 (Enforcement; violations and penalties) of Chapter 160 (Zoning) of the Code to read follows:

“C. Any violation or failure to comply with any requirement of this chapter shall constitute a civil offense pursuant to Chapter 75 of the Code of the Town of Fenwick Island. Any person who violates or fails to comply with this chapter shall pay a civil fine in the amount of \$250.00 for the first violation and \$500.00 for each subsequent violation. Each day that a violation is not cured shall automatically constitute a distinct and subsequent violation, regardless of whether the Town issues a subsequent citation for such a subsequent violation.”

Adopted by the Council
Of the Town of Fenwick Island, Delaware
_____, 2024

Secretary of the Town Council
Of the Town of Fenwick Island