

**Preliminary Land Use Service (PLUS)
Comprehensive Plan Amendments and Municipal Ordinances**

Delaware State Planning Coordination
122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-6958

Name of Municipality: New Castle County Land Use Department	
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Date of Most Recently Certified Comprehensive Plan: July 31, 2007

Application Type:

Comprehensive Plan Amendment: Not applicable

Ordinance: Ord. 12-068, Open Space Turnover Process Text Amendment to Chapter 40 UDC

Other: _____

Comprehensive Plan Amendment or Municipal Ordinance prepared by:	
Address: ----- same as above -----	Contact Person:
	Phone Number:
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Maps Prepared by: NA.	
Address:	Contact Person:
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	Fax Number:
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Please describe the submission:

The purpose of this text amendment is to clarify the process for open space turnover; and, to insure that the process occurs in a timely fashion and without becoming a burden to the new homeowners.

See attached Ordinance 12-068.

2012-0401-T

Introduced by: Mr. Smiley
Date of introduction: June 12, 2012

ORDINANCE NO. 12 – 068

**TO REVISE CHAPTER 40 OF THE *NEW CASTLE COUNTY CODE*
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE – UDC)
REGARDING OPEN SPACE TURNOVER**

WHEREAS, on December 31, 1997, New Castle County Council adopted and the County Executive approved the Unified Development Code (UDC); and

WHEREAS, there is a need to clarify the process for open space turnover and to insure that the process occurs in a timely fashion and without becoming a burden to the new homeowners; and

WHEREAS, the construction of a development may be phased to ensure that the construction and completion of open space and common facilities coincide with the completion of the dwelling units that border said open space or common facilities, the developer is still solely responsible for maintenance of the open space in all phases until such maintenance is formally turned over to the maintenance corporation no earlier than issuance of 75% of the building permits and no later than issuance 90% of the building permits; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests, including, but not limited to, the protection and preservation of the public health, safety, prosperity, general welfare, and quality of life.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 20 (“Subdivision and Land Development Design Principals”), Division 40.20.200 (“Subdivision layout”), Section 40.20.225 (“Required open space”), is hereby amended by deleting the material that is stricken as set forth below:

Sec. 40.20.225. Required open space.

A. Open space shall be required in all major residential developments. Ownership of open space shall be transferred to a maintenance organization or governmental body pursuant to the provisions contained in Article 27. Open space shall....

B. All major residential subdivisions shall contain open space designated as community area open space. In designating community area open space or landscaped surfaces as part of a

subdivision or land development plan, the following criteria and standards shall be adhered to by the applicant:

1. Open space....

....

4. Open space designated for recreation may contain parking areas and access drives accessory to the open space and other such complementary structures and improvements that are necessary and appropriate for the benefit of the residents utilizing the land for recreation purposes. Such land shall be distributed through the development to best serve the residents. ~~Where the development is in phases, the Department may require each phase to have adequate open space.~~

5. In subdivisions of thirty (30) dwelling units or more....

Section 2. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 27 (“Maintenance Organizations, Open Space, and Common Facilities”), Division 40.27.300 (“Construction, Completion and Inspection Requirements”), Section 40.27.340 (“Inspection and approval process”), is hereby amended by deleting the material that is stricken and in brackets as set forth below:

Sec. 40.27.340. Inspection and approval process.

These procedures shall be followed for inspections of open space. ~~Inspections and approvals may be made in phases if the record plan indicates a phased development sequence, or alternately, if a phased open space sequence is indicated on the landscape plan, open space management plan or construction management plan.~~

- A. The developer shall contact the Department, in writing....

....

Section 3. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 27 (“Maintenance Organizations, Open Space, and Common Facilities”), Division 40.27.400 (“Transfer of Ownership”), Section 40.27.410 (“Legal transfer of title to open space”), is hereby amended by deleting the material that is stricken as set forth below:

Sec. 40.27.410. Legal transfer of title to open space.

A. Open space shall be conveyed no later than the issuance of building permits for ninety (90) percent of the dwellings within the subdivision. ~~For purposes of a phased or staged development, or developments having a phased open space plan, the County may apply this requirement on a section-by-section basis.~~

B. All costs associated with the transfer of open space and the recordation of the open space deed shall be borne by the developer.

Section 4. **Consistent with Comprehensive Development Plan.** New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 5. **Inconsistent Ordinances and Resolutions Repealed.** All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section 6. **Severability.** The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 7. **Effective Date.** This Ordinance shall become effective immediately upon passage by New Castle County and approval by the County Executive or as otherwise provided in 9 *Del. C.* § 1156.

Adopted by County Council of
New Castle County on:

President of County Council of
New Castle County

Approved on:

County Executive

SYNOPSIS: The purpose of this text amendment is to clarify the process for open space turnover; and, to insure that the process occurs in a timely fashion and without becoming a burden to the new homeowners.

FISCAL NOTE: This ordinance will have no discernable fiscal impact.