

**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:

June 11, 2012

Application Type:

Comprehensive Plan Amendment: Not applicable

Ordinance: Ord. 15-024 Regarding Changes to the Processing of Deed Restriction Change Applications. The amendments are proposed to Section 40.31.130 (Deed Restriction Changes) and Appendix 1 (Application and Plan Requirements) of the New Castle County Code.

Other: _____

Comprehensive Plan Amendment or Municipal Ordinance prepared by:	
Address: ---- same as above ----	Contact Person:
	Phone Number:
	Fax Number:
	E-mail Address:

Maps Prepared by: NA.	
Address:	Contact Person:
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	E-mail Address:

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Please describe the submission:

This amendment will codify that the Department of Land Use review and approve the applicants draft resolution to County Council to insure that it comports with the Departments recommendation report. The amendment also requires that the Department (rather than the applicant) forward the initial application and proposed changes to the resident County Council member, the Clerk of County Council and the Council President.

See attached Ordinance 15-024.

2015-0197-T

Introduced by: Mr. Tackett
Date of introduction: March 24, 2015

ORDINANCE NO. 15-024

TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED DEVELOPMENT CODE" OR "UDC") SECTION 40.31.130 ("DEED RESTRICTION CHANGES") AND APPENDIX 1 ("APPLICATION AND PLAN REQUIREMENTS") TO STREAMLINE AND IMPROVE THE DEED RESTRICTION CHANGE PROCESS

WHEREAS, *New Castle County Code* Section 40.31.130(B) currently requires that when an applicant for an amendment to a declaration of restrictions to which the County is a party or beneficiary submits certain documents to the Department of Land Use, the applicant must submit the same to the District Council Member, Clerk of Council and the Council President; these documents are sometimes submitted to those outside of the Land Use Department, and most frequently are not; and

WHEREAS, since the District Council Member, Clerk of Council and Council President otherwise would not know that such an application is filed, governmental efficiency and common sense dictate that upon receipt of the application and documents by the Department of Land Use, the Department should forward those documents to the District Council Member, Clerk of Council and the Council President; and

WHEREAS, *New Castle County Code* Section 40.31.130(E) provides that after consideration of the deed restriction change application, the Department and Planning Board shall forward their recommendations in one (1) report to the Clerk of Council, the sponsor's legislative aide, and the applicant; if the Department recommends conditional approval, the applicant must submit to Council revised declarations approved by the Department, signed by all parties subject to the restrictions other than the County; a substitute draft resolution (there is no requirement for the Department to substantiate that the substitute comports with the Department's recommendations) to the Clerk of Council, the sponsor, the sponsor's legislative aide and the President of Council; and Recorder of Deeds filing fees; and

WHEREAS, governmental efficiency and common sense dictate that Land Use Department-approved revised declarations be forwarded to Council by the Department, rather than by the applicant; governmental efficiency and common sense also dictate that the Department, rather than the applicant, after Department approval, forward substitute draft resolutions to insure that the substitute comports with the Department's recommendations; and

WHEREAS, *New Castle County Code* Section 40.31.130(G) provides that an amendment of restrictions established solely to provide for the maintenance of private open spaces and other common facilities shall be exempt from the hearing process and instead be recommended and approved by the Department and Office of Law; there is no requirement that the Department approve the actual resolution and declaration of restrictions as meeting the requirements of the Department of Land Use and Office of Law; and

WHEREAS, deed restriction amendment applications under either category sometimes are considered by the Department for more than a year, undergo changes during that timeframe, and are forwarded with a note of approval; the applicant then submits documents (that may or may not meet or have met Department approval) to the Council, usually at the last minute when there is insufficient time to coordinate back to the Department to ascertain whether the documents meet with Department approval;

WHEREAS, for the foregoing reasons, the deed restriction change process in the *New Castle County Code* should be amended for the benefit of the applicants, the constituents, and government efficiency.

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

Section 1. *New Castle County Code* Chapter 40 ("Unified Development Code or "UDC"), Article 31 ("Procedures and Administration"), Division 40.31.100 ("Application review procedures"), Section 40.31.130 ("Deed restriction changes"), is hereby amended by adding the material that is underscored and deleting the material that is stricken.

Sec. 40.31.130. Deed restriction changes...

B. *Submission requirements.* The applicant shall submit all deed restriction change materials to the Department and others pursuant to the provisions in Appendix 1 to this Chapter. Such materials shall include:

1. The application, consisting of a copy of the existing recorded deed restrictions, the proposed declarations and the reasons for the change. ~~The applicant shall also forward a copy of the application.~~ Upon receipt of the application, the Department of Land Use shall forward the same to the Clerk of County Council, the district Council member, and the President of County Council. With the exception of the County, the proposed declarations shall be signed by all parties to the subject restrictions.

2. A draft resolution for County Council's consideration, which is also to be provided in electronic form. After review and correction if necessary, the Department of Land Use will forward the same to the Clerk of County Council, the district Council member, and the President of County Council...

E. *Department report...*

2. If the Department recommends conditional approval of the application, declarations and resolution, or if the Department finds that the original declarations or resolution must otherwise be revised to meet the current recommendation, the applicant shall submit to the Department, which shall submit to County Council after review and correction if necessary:

a. Revised declarations approved by the Department as meeting such conditions or necessary revisions and signed by all parties subject to the restrictions with the exception of the County;

b. A substitute draft resolution in both written and electronic form ~~to the Clerk of County Council, the sponsor, the sponsor's legislative aide, and the President of County Council;~~ and...

G. *Exceptions.* An amendment of a declaration of restrictions established solely to provide for the maintenance of open spaces and other common facilities for subdivisions as prescribed by this Chapter shall be exempt from the public hearing process. County Council may adopt a resolution approving such amendment upon receipt of a favorable recommendation from the Department and the ~~Department Office~~ of Law. The submission requirements in Subsection B shall be followed for this Subsection; additionally, the resolution in the explanatory whereas clauses and the resolved clause shall cite this subsection, the reason for the exception, and note approval from the Department and Office of Law.

Section 2. *New Castle County Code* Chapter 40 ("Unified Development Code" or "UDC"), Appendix 1 ("Application and Plan Requirements"), Point 1 ("Land development application submission requirements"), Subsection G ("Deed restriction change application "(maintenance declaration)", is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

G. *Deed restriction change application (maintenance declaration).*

any party may seek to change a declaration of restrictions by directing a request to change such restrictions in writing to ~~the Clerk of County Council, the district Council member, the President of County Council, the Legal Department and the Department of Land Use~~ as set forth in New Castle County Code Section 40.31.130 or its successor.

3. This ordinance shall become effective upon adoption by New Castle County Council and approval by the County Executive or as otherwise provided by 9 Del. C. Section 1156.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: Same as title.

FISCAL NOTE: