

**ORDINANCE NO. 25-094**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40 (“UNIFIED DEVELOPMENT CODE”), SECTION 40.27.540 (“CHANGES TO OPEN SPACE OR COMMON FACILITIES”) REGARDING PROPOSED PLAN CHANGES**

1       **WHEREAS**, *New Castle County Code* Chapter 40, Article 27 establishes particular  
2 requirements and obligations relating to private open space and common facilities set  
3 aside as part of a subdivision or land development plan; and  
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5       **WHEREAS**, among these, Article 27 identifies the responsibilities and obligations  
6 of the developer and the maintenance corporation, both before and subsequent to  
7 conveyance by the developer of the open space; and  
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9       **WHEREAS**, Article 27 further provides that any plan submission that proposes  
10 changes to private open spaces or common facilities delineated on an existing plan must  
11 be accompanied by a petition that has been signed by the homeowners of at least two-  
12 thirds of the lots of the existing plan who have an interest in the private open space or  
13 common facilities; and  
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15       **WHEREAS**, Article 27 would benefit from clarification that the above-mentioned  
16 petition must be signed by the homeowners of at least two-thirds of the ***occupied*** lots of  
17 the existing plan who have an interest in the private open space or common facilities;  
18 and  
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20       **WHEREAS**, the *County Code* and, thus, the citizens of the County would benefit  
21 from the proposed clarifications to further enhance the Unified Development Code  
22 standards and procedures; and  
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24       **WHEREAS**, County Council has determined that the provisions of this Ordinance  
25 substantially advance, and are reasonably and rationally related to, legitimate  
26 government interests (*i.e.*, promoting the health, safety, morals, convenience, order,  
27 prosperity and/or welfare of the present and future inhabitants of this State).  
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29       **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**  
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31       Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code”),  
32 Section 40.27.540 (“Changes to Open Space or Common Facilities”) is hereby amended  
33 by adding the material that is underscored and deleting the material that is stricken, as  
34 set forth below.  
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36       **Sec. 40.27.540. - Changes to open space or common facilities.**

37       A. Developer. If a plan proposes changes to private open spaces or common facilities  
38 delineated on an existing plan, a petition supporting the record plan changes shall be  
39 included with the submission. The petition shall be executed by the homeowners,  
1

40 which shall not include a developer, of at least two-thirds (~~2/3~~) of the occupied lots of  
41 the existing plan having an interest in the private open space or common facilities. In  
42 DPUD's or phased developments, if the private open space or common facility is  
43 predominately designed for use by lot or homeowners of a delineated section or  
44 phase, consent of two-thirds (~~2/3~~) of the lot or homeowners of the occupied lots in the  
45 section or phase containing the private open space or community facility shall be  
46 required. The Department may allow substitutions of plant material on the landscape  
47 plan without a petition if the plant substitutions conform to the plant list in Appendix  
48 3.

49 ...

50 **Section 2. Effective Date.** This Ordinance shall become effective upon its  
51 adoption by County Council and approval by the County Executive, or as otherwise  
52 provided in 9 *Del. C.* § 1156.

Adopted by County Council of  
New Castle County on:

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Monique Williams-Johns  
President of County Council  
of New Castle County

Approved on:

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Marcus A. Henry  
County Executive  
of New Castle County

**SYNOPSIS:** This Ordinance, if enacted, would bring clarity to *New Castle County Code* Section 40.27.540 by making clear that, if a plan proposes changes to private open space or common facilities delineated on an existing plan, a petition supporting the record plan changes shall be included with the plan submission, and the petition must be executed by the individual homeowners, which shall not include the developer, of at least two-thirds of the occupied lots of the existing plan who have an interest in the private open space or common facilities.

**FISCAL NOTE:** There is no discernible fiscal impact.

Acknowledged by the Chief Financial Officer June 30, 2025.