"A Historic Past"

"A Bright Future"

CITY OF DELAWARE CITY
407 Clinton Street - P.O. Box 4159
Delaware City, Delaware 19706
302-834-4573

CITY OF DELAWARE CITY
DELAWARE CITY, DELAWARE
Ordinance No. 14 – 1215-05

ORDINANCE TO ADOPT NEW CHAPTER OF THE CITY OF DELAWARE CITY CODE IMPLEMENTING A SUBDIVISION CODE TO PROVIDE FOR, AMONG OTHER THINGS, THE REQUIREMENTS AND PROCEDURES FOR THE SUBDIVISION OF LAND

The City of Delaware City

WHEREAS, pursuant to Article V, Section 5-02(A) of The City of Delaware City Charter ("Charter"), and pursuant to the "Powers of the City," outlined in Article II, § 2-1 of the Charter, the Mayor and the Council of The City of Delaware City ("City Council") possess the authority to adopt, amend, modify, or repeal The City of Delaware City Code ("Code");

WHEREAS, the Mayor and City Council desire to create a new process for the review and approval of the subdivision of land within the City and desire to amend the Code by adopting a new chapter entitled "Subdivision of Land" through this Ordinance;

WHERAS, the Mayor and City Council believe that the proposed subdivision code, attached hereto as Exhibit A, enhances the health, safety, and welfare of the City of Delaware City;

WHEREAS, the City Council has held a public hearing regarding the proposed subdivision code attached hereto as Exhibit A;

WHEREAS, in addition to the notice provided above, under Article V, Section 5-02(B) of the Charter, the new subdivision code was introduced at a regular meeting, duly read in full or in abstract, and prominently posted for seven (7) days in The City of Delaware City.

NOW, THEREFORE, the Mayor and the City Council of The City of Delaware City hereby ordain:

Section 1. Chapter 54 entitled "Subdivision of Lands" attached to this Ordinance as Exhibit A is hereby adopted.

Section 2. Inconsistent Ordinances and Resolutions Repealed. All Ordinances or parts of Ordinances and all resolutions or parts of resolutions that are in direct conflict herewith are hereby repealed.

Section 3. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are 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 City Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with City Council' s intent.

Section 4. Effective Date. This Ordinance shall become effective immediately upon its adoption by a majority vote of the City Council.

ADOPTED BY THE MAYOR AND COUNCIL, this _____ day of _____, 2014.

ATTEST:

_____
City Secretary

_____
Mayor

APPROVED AS TO FORM:

_____
Council Member

_____
City Solicitor

_____
Council Member

_____
Council Member

_____
Council Member

_____
Council Member

First Reading on: December 15, 2014

Date of Publication: November 26 & December 3, 2014

Second Reading, Public Hearing, and Final Passage on: _____.

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Article I. General Provisions

Section 54-1 Title

This chapter shall be known and may be cited as the "City of Delaware City Subdivision Ordinance."

Section 54-2 Purpose.

The purpose of this chapter is to assure that sites are suitable for all development purposes, including residential, commercial, industrial, institutional and recreational, to assure that these sites are properly prepared for human habitation and to provide for the harmonious development of the City, for the coordination of existing streets with proposed streets, parks or other features of the City plan of streets and alleys, for adequate open spaces for traffic, recreation, light and air and for proper distribution of population, thereby creating conditions favorable to the health, safety and general welfare of the City of Delaware City.

Section 54-3 Interpretation.

In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the protection of the public health, safety and welfare. To protect the public, among other purposes set forth above, these provisions are intended to provide for a permanently wholesome community environment, adequate municipal services and safe streets.

Section 54-4 Scope.

This chapter shall apply to any lot or lots, tract or parcel of land created before or after the effective date of this chapter. Where existing provisions or other laws or ordinances are inconsistent or in conflict with the provisions of this chapter, all provisions shall be read in harmony whenever possible. It is not intended by this chapter to impair or interfere with private restrictions placed upon property by deed or covenants running with the land. Where this chapter imposes a greater restriction upon land than is imposed or required by such existing provisions or law, ordinances, contract or deed, the stricter provisions shall control.

Section 54-5 Applicability.

Any tract, parcel or lot of land which is intended to be or is or has been subject to any of the actions described herein shall be considered to be a subdivision within the meaning of this chapter.

Section 54-6 Compliance required.

Application of Regulations and Enforcement

A. Conformity. Except as provided in this chapter, no person shall subdivide any tract of land which is located within the City or which is located in part within the City except in conformity with the provisions of this chapter.

B. Recording of plat. No plat of any subdivision shall be entitled to be recorded in the office of the New Castle County Recorder of Deeds, or be effective hereunder, until it shall have been approved in the manner prescribed herein. In the event that any such unapproved plat is recorded, it shall be considered invalid and the City Council or the City Manager may institute proceedings on behalf of the city to have the plat stricken from the records of New Castle County.

C. Sale of land in subdivision. No owner or agent of the owner of any land located within a subdivision shall transfer, sell, agree to sell or negotiate to sell any land by reference to, exhibition of or by the use of a plan or plat of a subdivision before such plan or plat has been approved and recorded in the manner prescribed herein. Any sale or transfer contrary to the provisions of this chapter is voidable at the option of the buyer. The description of such lot or parcel by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of this chapter.

D. Permits. The Building Code Inspector shall not issue building or repair permits for any structure on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed herein and until the developer, subdivider or owner shall have obtained all necessary approvals and permits as required by the City Code. No work, grading, excavation, construction, erection or building shall be commenced or done within any subdivision except in strict accordance with the provisions in this chapter and regulations adopted hereunder and pursuant to any approved subdivision plan and any required agreement, provided that this section shall not prevent the making of test borings or engineering surveys.

E. Public improvements. The city hereby defines its policy to be that the city will withhold all public improvements of whatsoever nature, including the maintenance of streets and the furnishing of sewerage facilities and water service, from all subdivisions which have not been approved, and from all areas dedicated to the public which have not been accepted in the manner prescribed herein.

F. Fees and filing. City Council shall establish a schedule of fees, charges and expenses to be paid by each subdivider. No approval or permit shall be issued unless or until such fees, charges and expenses have been paid in full, nor shall any action be taken on proceedings before the Board of Adjustment or any other body or official unless or until the charges and fees have been paid in full.

Section 54-7 Violations and penalties.

Any person, firm or corporation violating any of the provisions of this chapter shall, upon conviction, be subject to a fine of not less than $25 nor more than $200 and imprisonment for a term of not less than 10 days nor more than 30 days for the first such conviction. For a second or subsequent conviction, any person, firm or corporation shall, upon conviction, be subject to a fine of not less than $50 nor more than $500 and imprisonment for a term of not less than 20 days nor more than 60 days for each such conviction. Each day that a violation of any of the provisions of this chapter continues shall be deemed and taken to be a separate and distinct violation.

Article II. Definitions and Word Usage

Section 54-8 Word usage; terms defined.

A. General. Words used in the singular include the plural, and words in the plural include the singular; the word "building" includes the word "structure"; "street" includes "roads" and "lanes"; and the word "watercourse" includes "drain," "ditch" and "stream."

B. Definitions. Unless otherwise expressly stated, the following words shall, for the purpose of this chapter only, have the meanings herein indicated:

ACCESSWAY: A right-of-way which provides common vehicular and pedestrian access to a property or properties extending not more than 400 feet from a street to a dead end.

ALLEY: A strip of land on which there is right-of-way, municipally or privately owned, on which no dwelling or stores front, serving as the rear entrance to two or more properties.

APPLICATION FEE: A nonrefundable fee to be paid by an applicant for review of a land subdivision plot at the time of submission of a plot plan.

APPLICATION, SUBDIVISION: An application to be submitted by any person or corporation desirous of obtaining approval of a land subdivision plot located wholly or partly within the City of Delaware City.

APPLICATION, SUPPLEMENTAL: An application required as each deferred section of a subdivision is proposed for recording, applicable only in respect to a subdivision which is proposed for recording in sections.

APPROVAL, PRELIMINARY: That of the preliminary subdivision plan, after the applicable requirements of this Chapter are met. Preliminary approval is a prerequisite as authorization to proceed with development of the final subdivision plan and improvement construction plans for any section to be recorded.

CERTIFICATE OF OCCUPANCY: Certification by the City Manager and/or his/her designee or City representative of the City of Delaware City that there has been full compliance by the developer with the subdivision regulations and all other applicable ordinances of the City of Delaware City, and dwelling houses or buildings located upon a lot may be conveyed by the developer and/or occupied by the grantee.

CITY COUNCIL: The City Council of the City of Delaware City.

COMPLETION GUARANTY: A bond or deposit of funds or securities in escrow, payable to the City of Delaware City in an amount of 150% of required improvements, as estimated by the City and

conditioned by their satisfactory completion within the time specified in the construction permit or an approved extension thereof.

CROSSWALK: A right-of-way, municipally or privately owned, 10 feet or more in width, which cuts across a block in order to improve pedestrian access to adjacent streets or properties.

CUL-DE-SAC: A residential street having one end open for public vehicular or pedestrian access and the other end terminated by a circular vehicular turnaround.

DEVELOPER: An individual, group of individuals or corporation having intent to subdivide a lot, piece or parcel of land for the purpose of transfer of ownership or leasehold or building development. In the case of lots, pieces of parcels of land not located within the corporate limits of the City of Delaware City, and when such are to become a part of the corporate limits of City of Delaware City, as provided in the statutes of the State of Delaware, the developer shall be the individual, group of individuals or corporation designated by the majority of the owners of the lots, pieces or parcels of land, as recorded in the office of the Recorder of Deeds in and for New Castle County.

EASEMENT: A grant by a property owner to the City, the public, a corporation or a person or persons of a right to the use of a strip of land.

HIGHWAY SPECIFICATION: Specifications for highway improvements of the City of Delaware City or standard specifications of the Delaware State Department of Transportation.

IMPROVEMENT: Grading, paving, curbing, drainage, streetlights, street signs, fire hydrants, water infrastructure, sanitary sewer infrastructure and other street improvements, including, where specified by the City Council, sidewalks, crosswalks and off-street parking paving.

IMPROVEMENT CONSTRUCTION PERMIT: A permit authorizing improvements to be constructed in accordance with the terms and conditions of approved construction plans and specifications.

LOT: A portion of a subdivision or other parcel of land intended for transfer of ownership or leasehold or for building development and being a parcel of land occupied by one building devoted to a principal use and the accessory buildings or uses customarily incidental to the principal use, including such open spaces as are arranged and designed to be used in connection with such buildings and in compliance with Chapter 46, Zoning.

PLAN, IMPROVEMENT CONSTRUCTION: A plan prepared by a registered engineer showing the construction details of a proposed improvement in accordance with an approved subdivision plan.

PLANNING COMMISSION: The Planning Commission of the City of Delaware City.

PLAN, PRELIMINARY SUBDIVISION: A subdivision plot plan (drawn to scale) in the course of development from a tentative sketch, showing topography, layout of lots, streets, open spaces and other pertinent features, submitted with all requirements of this chapter.

PLAN, SUBDIVISION: A properly certified plan showing lot lines and areas, deed restrictions, easements, right-of-way lines and other information pertaining to the lots and the street on which the lots abut in a proposed subdivision which meets all requirements of the City Code suitable for recording in the office of the Recorder of Deeds in and for New Castle County.

PLAN, SUBDIVISION PLOT: Same as "subdivision plan" (drawn to scale).

RESUBDIVISION. The changing of a lot line, note, or comment on a previously recorded subdivision plan which will create no more than one additional lot.

RIGHT-OF-WAY: The dedicated width of a street, alley, accessway or crosswalk.

SANITARY SEWER SPECIFICATIONS: Sanitary sewer specifications of New Castle County, as required.

STREET: A general term used to describe a right-of-way, municipally or privately owned, serving as a means of vehicular and pedestrian travel and furnishing access to abutting properties and space for sewers and public utilities.

STREET, RESIDENTIAL: A street used primarily as the principal means of access to adjacent residential properties.

SUBDIVIDER: Any individuals, firm, association, syndicate, copartnership, corporation, trust or any other legal entity commencing proceedings under this chapter to effect a subdivision of land hereunder for himself or herself or for another.

SUBDIVISION: The division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or building development, or, if a new street is involved, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

SUBDIVISION, MINOR: A lot, parcel or piece of land to be divided as provided for in the subdivision regulations that does not disturb land greater than 10,000 square feet, does not create more than three total lots, and does not create a street.

WATER MAIN SPECIFICATION: Water main specifications of the City of Delaware City.

Article III. Street Specifications

Section 54-9 Design and construction.

The design and construction of streets, sidewalks, curbs and gutters shall be governed by the Delaware Department of Transportation Standards and Regulations for Subdivision Streets and State Highway Access, as may be amended from time to time and all other rules, laws and requirements of the Delaware Department of Transportation. A completion guarantee is required for all improvements.

Section 54-10 Reserved

Section 54-11 Reserved

Section 54-12 Reserved

Section 54-13 Costs of construction and inspection.

A. The cost of design and constructing all grading, curbs, gutters, subbase, base, traveling surfaces and sidewalks shall be borne by the developer.

B. All work must be performed under City and/or Delaware Department of Transportation inspection. Costs of inspection and required testing, including the hiring of an independent engineer to perform said services, at the discretion of the City, shall be borne by the developer.

Section 54-14 Street Names

All street names shall be approved by New Castle County.

Section 54-15 Maintenance.

The developer will be responsible for streets and sidewalks until final acceptance and official release of the completion guaranty, including repairs, if necessary, and other reasonable provisions for the convenience and safety of traffic. Until final acceptance and official release of the completion guaranty, the developer will be responsible, also, for the removal of snow from streets when necessary for the convenience or safety of traffic.

Section 54-16 Streetlights.

Streetlights shall be of a design approved by the City and shall be placed at locations approved by the City. The cost of installation of streetlights shall be borne by the developer. All electric lines shall be located underground. The cost of electricity for streetlights shall be paid by the developer.

Article IV. Water Service

Section 54-17 Connection with public water main required.

No subdivision will be approved unless connection with a public water main is assured for each lot. The design, construction and installation of water infrastructure shall be governed by the following.

Section 54-18 Costs of installation and inspection.

A. The costs of design and installing all water infrastructure, such as mains, appurtenances, valves, service lines, meters, etc., within the subdivision shall be borne by the developer. Developer shall also be responsible for any required impact fees. A completion guarantee is required for all improvements.

B. If the proposed subdivision is beyond the nearest City water main, the developer will be required to pay for all of the off-site extensions.

C. All work must be performed under City inspection. The cost of inspection and required testing, including the hiring of an independent engineer to perform said services, at the discretion of the City, shall be borne by the developer.

Section 54-19 Construction specifications.

A. All construction work shall be done in conformance with the improvement construction plan previously approved by the City Manager or his designee.

B. All work shall conform to standard specifications and details and other regulations established by the City of Delaware City.

Section 54-20 Maintenance.

The developer will be responsible for water infrastructure until final acceptance and official release of the completion performance guaranty, including repairs, if necessary, and other reasonable provisions for the convenience and safety of the public.

Article V. Utilities

Section 54-21 Utilities.

A. All major subdivision utilities shall be below ground.

B. No subdivision will be approved unless electric service is assured for each lot.

C. All minor subdivision utilities shall conform to the type of such utilities in the immediate neighborhood or vicinity of the subdivision.

D. All utilities shall be installed according to the approval granted and shall be installed prior to completion of the paved area. The full intent of this subsection is to avoid installation of utilities after streets have been completed and accepted for maintenance by the city.

E. All subdivisions shall require utility and drainage easements. Such easements must be a minimum width of 15 feet along rear lot lines and 15 feet along side lot lines and should be adjacent to, or centered on, the respective lot lines. Electric, telephone and cable lines should be along rear lot lines wherever possible.

F. All trenches, storm, utility, etc., under roadway within the public dedicated right-of-way shall be backfilled with approved materials and properly compacted in accordance with the city specifications.

G. The subdivider shall obtain all necessary approvals and permits from each utility prior to the installation of that utility within any right-of-way which is intended to become part of the Delaware City street system. These permits or approvals shall be drawn up in the form as established by the city and shall ensure that the utilities will be installed according to the standards, plans, specifications, rules and regulations of the city and that the installation of utilities will not interfere with necessary construction, operation or maintenance of the roadway after it has been accepted as part of the Delaware City roads system.

H. No part of the cost of construction of utilities shall be borne by the City. A completion guarantee is required for all improvements.

Article VI. Sanitary Sewers

Section 54-22 Connection with sanitary sewer mains required.

No subdivision will be approved unless connection with a public sanitary sewer main is assured each lot. The design, construction and installation of sanitary sewer lines shall be governed by the following.

Section 54-23 Costs of installation and inspection.

The cost of design and installing all sanitary sewer infrastructure, such as sewer mains, pumping stations, manholes, cleanouts, laterals, etc., within the subdivision shall be borne by the developer in accordance with rules, regulations, and procedures established by New Castle County.

Section 54-24 Construction specifications.

A. All construction work shall be done in conformance with the improvement construction plan previously approved by New Castle County.

B. All work shall conform to standard specifications and details and other regulations established by the City of Delaware City and New Castle County.

C. As a condition of approval of improvement construction plans, the applicant shall post a completion guaranty for any improvements required by the application of this chapter, in a form acceptable to the City Solicitor. Where a public agency other than the City Council has the authority to require completion guaranties, but in the determination of the City Council those guaranties are not adequate to ensure completion of improvements, the City Council may require additional guaranties in accordance with this subsection.

Section 54-25 Maintenance.

The developer will be responsible for sanitary sewer infrastructure, such as sewer mains, pumping stations, manholes, cleanouts, laterals, etc., until final acceptance and official release of the completion performance guaranty, including repairs, if necessary, and other reasonable provisions for the convenience and safety of the public.

Article VII. Storm Drainage System

Section 54-26 Design and construction.

The design, construction and installation of a storm drainage system shall be governed by the Delaware Department of Natural Resource's Erosion and Sediment Control Handbook, other applicable requirements of the Delaware Department of Natural Resources, and/or any other applicable provisions of the Delaware City Code. A completion guarantee is required for all improvements.

Article VIII. Floodplain

Section 54-27 Design and construction.

All design and construction shall be governed by Section 48, applicable federal or state law, and any other applicable provisions of the Delaware City Code.

Article IX. Application and Approval Procedure

Section 54-28 Submission Requirements and Procedures

A. The City Manager and/or his/her designee or City representative may establish appropriate procedures, checklists and application forms to ensure the timely and proper review and processing of subdivision plans. The City Manager and/or his/her designee or City representative may establish the number and acceptable format for the various types of plans submitted for review under this article.

B. **Voluntary Concept Plan Review.** The purpose of the concept stage is to provide the City Manager the opportunity to informally review a development proposal prior to the substantial commitment of time and expense on the part of the applicant in preparing a site plan. The concept plan is voluntary and is not a precondition to the submission of a preliminary subdivision plan application.

1. The applicant shall submit to the City Manager and/or his/her designee or City representative a concept plan and an application for review.

2. Within ten (10) days of receiving the concept plan submittal, the City Manager and/or his/her designee or City representative shall review it for completeness.

(a) If additional information is required, the City Manager and/or his/her designee or City representative shall notify the applicant within ten (10) days, in writing, indicating the deficiencies.

(b) If the submission is complete, the City Manager and/or his/her designee or City representative shall accept the application and concept plan submittal for review.

3. The applicant may attend a meeting with the City Manager and/or his/her designee or City representative. The purpose of the meeting shall be to provide the City with an opportunity to address issues or concerns with the concept plan, identify any impact studies that may be required and provide direction to the applicant on the scope of such studies.

C. **Submission of Major or Minor preliminary Subdivision Plan.** After completing the concept stage, if any, the applicant shall submit an application for preliminary subdivision plan for review.

1. **Purpose.** The purpose of the preliminary subdivision review stage is to provide a basis for the City to grant conditional approval of a proposed subdivision in order to minimize changes and revisions which might otherwise be necessary on the final subdivision plan.

2. **Submittal requirements.** The applicant shall submit a preliminary subdivision plan application to show the nature and extent of all contemplated improvements and lot subdivisions as provided for in Section 54-28(C)(4) of this chapter. The applicant is responsible for preparing the preliminary subdivision plan application. The plan shall be submitted as a multiple-sheet document with drawings on sheets no larger than 24 inches by 36 inches and at a scale no less detailed than one inch equals 100 feet. They shall be submitted to City Manager and/or his/her designee or City representative with applicable fees. The City Manager and/or his/her designee or City representative shall check the plans for compliance with Section 54-28(C)(4) of this chapter.

(a) If the submission is incomplete or contains deficiencies, the City Manager and/or his/her designee or City representative shall notify the applicant, in writing, indicating the deficiencies within thirty (30) days of receiving the application.

(b) If the submission is complete, the City Manager and/or his/her designee or City representative shall accept the preliminary subdivision plan and application for review and submittal to the Planning Commission.

3. It is required that the order of plan sheets of the preliminary site plan be as follows below. The City Manager and/or his/her designee or City representative may waive certain sheets that are clearly not applicable to the project under review. The City Manager and/or his/her designee or City representative may authorize variations in the order of plan sheets if all of the required information has been provided.

(a) Title sheet.

(b) G-1 general sheet (general notes, site data notes, etc.).

(c) Key plan and overview plan (for large projects with multiple sheets).

(d) Site and grading plans horizontal (conforming to requirements of Delaware City Code).

(e) Utility plans horizontal conforming to requirements for construction improvements plans. (For scale of one inch equals 20 feet, grading and utilities may be combined on same drawing. For scale of one inch equals 30 feet or one inch equals 40 feet or greater, provide separate drawings for grading and utilities where needed for clarity.)

(f) Sediment and stormwater management plans, to include horizontal location, contours, inflow pipes, outfall, amenities, paths, buffers and forestation areas, if applicable.

(g) Pump station details, if applicable (may be left blank for preliminary subdivision plan submittal).

(h) Sewer and water details using City of Delaware City and/or New Castle County standards where applicable and available (may be left blank for preliminary subdivision plan submittal).

(i) Landscape and lighting plan, including location and type of signage, if known during the preliminary subdivision plan review as this item is required during the final submittal.

(j) Architectural elevations (all sides), 24 inches by 36 inches, by registered architect.

(k) Electrical/Mechanical, where applicable (may be left blank for preliminary subdivision plan submittal).

(l) Improvement construction plans.

4. Preliminary major or minor subdivision plan application contents.

The preliminary subdivision plan shall show the North point, scale, date, and the following:

(a) The seal and signature of a registered Delaware land surveyor and/or licensed engineer, as appropriate.

(b) Revision block on each sheet to accurately disclose any drawing revisions made after the first submittal for preliminary subdivision plan review.

(c) A key and overview plan for multistage projects.

(d) Geographical location, showing existing zoning district boundaries.

(e) Existing and proposed changes in zoning classification on the site and adjacent sites.

(f) Existing topographic contours at a minimum of one-half-foot intervals unless waived by the City Manager and/or his/her designee or City representative as clearly unnecessary to review the project or proposal.

(g) The location and nature of all proposed construction, excavation or grading, including but not limited to buildings, streets and utilities.

(h) If applicable, a parking plan, showing all off-street parking, related driveways, loading spaces and walkways, indicating type of surfacing, size, angle of stalls, width of aisles and a specific schedule showing the number of parking spaces provided and the number required by Chapter 46 Zoning.

(i) Cross-sections for streets and curbing; all existing and proposed streets and easements, including widths.

(j) Approximate location of point of ingress and egress to existing public highways (if ingress or egress is onto a state-maintained roadway, an accompanying letter of no objection and entrance permit from the Department of Transportation) will be required with the final application.

(k) All existing easements of any kind; if easements are to be granted, a separate easement plat. (May be included in record plat.)

(l) The number of construction phases proposed, if any, with the site plan showing the approximate boundaries of each phase, and the anticipated completion date of each phase.

(m) A tabulation of total number of acres in the project, gross or net, as required in the district regulations, and the percentage thereof proposed to be devoted to the several dwelling types, commercial uses, other nonresidential uses, off-street parking, streets, parks, schools and other reservations.

(n) Number of dwelling units to be included by type of housing: apartments of three stories and under; apartments over three stories; single-family dwellings; townhouses; and two-family dwellings; the overall project density in dwelling units per acre, gross or net, as required by district regulations.

(o) Approximate location and size of recreational areas and other open spaces.

(p) Existing vegetation, proposed removal of vegetation and proposed replacement of vegetation.

(q) If applicable, location, type, size and height of fencing, retaining walls and screen planting.

(r) A Flood Elevation Certificate.

(s) Report of applicant's engineer. The submittal shall also include a report from the applicant's engineer. It shall include:

1. Suitability of land for subdivision development.
2. Base flood elevation.
3. Total area within boundaries.
4. Total area in lots, number of lots, average lot size.
5. Total area in streets, roads, etc.
6. Total area in open spaces provided for public use, parks, playgrounds and recreational areas.
7. Total number of lots and their approximate dimensions, clearly indicating on the plot that part which it is desired to record and showing in a distinctive manner, such as light dotted lines, the ultimate future plans as proposed.

8. Latest City assessment of property and an estimate thereof after the development is divided. The estimated assessments comparative to similar projects may be obtained at the New Castle County Assessment Division and calculated using the City's current tax rate for land and buildings.

9. Approximate location of any proposed off-site extensions or upgrades to water mains, sewers and paved streets for the part to be recorded and for the ultimate future plan.

(t) Any other documentation or plans required by the City Manager or his or her designee to assure that the requirements of the Delaware City Code are satisfied for the particular subdivision requested,

D. **Approval of a preliminary subdivision plan is not final approval.** Approval of the preliminary subdivision plan shall constitute conditional approval as to character and intensity, but shall not constitute approval of the final plan or authorize sale of lots or construction of buildings.

E. Procedure Following Submission of a Major Preliminary Subdivision Plan Application.

1. Within 30 work days of the receipt of the preliminary subdivision plan applications, the City Manager and/or his or her designee shall prepare and forward a written report to the applicant indicating suggestions, concerns, or problems relating to the preliminary subdivision plan application. The applicant may then revise or amend the subdivision plan as per the written report.

2. If no concerns are raised, or if concerns are eliminated through applicant revisions in the subdivision plan, the City Manager and/or his or her designee shall prepare a written report within 30 working days of the receipt of the preliminary subdivision plan application containing the recommendations concerning the subdivision plan to the Planning Commission and, if applicable, the Historic Preservation Commission and/or the Preliminary Land Use Service ("PLUS") outlined in Chapter 92 of Title 29 of the Delaware Code for state agency review.

3. If a subdivision plan involves the creation of less than fifty (50) lots, the City Manager and/or his designee shall submit the preliminary subdivision plan application along with the written report of recommendations to the Planning Commission for review and comment. If a historic property is involved, the City Manager and/or his designee shall also submit the preliminary subdivision plan application along with the written report of recommendations to the Historic Preservation Commission for review and comment prior to Planning Commission review.

4. If a subdivision plan involves the creation of fifty (50) lots or more, the applicant shall submit the preliminary subdivision plan application to PLUS for state agency review. The applicant shall provide the City Manager and/or his/her designee with the written comments from PLUS following

PLUS review. Following PLUS review, the application shall be forwarded to the Planning Commission, with PLUS comments, pursuant to section 5 below.

5. Where a quorum is present, the Planning Commission shall take action within three regularly scheduled meetings following acceptance of the preliminary subdivision plan application from the City Manager. The Planning Commission shall furnish a written statement to the applicant and City Council indicating the action taken with any and all recommendations. The Planning Commission shall approve the plan, reject the plan for non-compliance with applicable laws or regulations, or approve the plan with conditions. If the plan is rejected for non-compliance with applicable laws and regulations, the applicant may resubmit the plan to the Planning Commission for further review.

6. After approval of a preliminary subdivision plan by the City Manager and/or his designee and the Planning Commission (and to the extent applicable, PLUS and/or the Historic Preservation Commission), the applicant shall prepare and the City shall review a final subdivision plan meeting the submittal requirements of the City of Delaware City Code and satisfying the applicable requirements of the Planning Commission, the Historic Preservation Commission, PLUS or other applicable reviewing authority.

7. Zoning district changes. If an application involves a request for a change in zoning district classification, the applicant's request for rezoning should be presented to City Council for consideration after Planning Commission consideration of the preliminary subdivision plan application. The City Council will consider only the rezoning request and not the subdivision plan itself. If the Planning Commission recommends against rezoning during its consideration of the preliminary subdivision plan application, a 4/5ths vote of City Council shall be required to approve the rezoning. If the Planning Commission recommends rezoning during its consideration of the preliminary subdivision plan application, a majority vote of City Council shall be required to approve the rezoning.

F. **Submission of a final subdivision plan and application.**

1. The purpose of final approval is to confirm and certify that all conditions of preliminary approval have been met, to prepare and/or execute all necessary agreements and to otherwise finalize the subdivision plan and related engineering drawings for official recordation and development. Final subdivision approval is an administrative action, with the exception that the City Council shall confirm the certification of the City Manager and/or his/her designee or City representative and approve a major subdivision plan and/or any applicable agreements.

2. A final subdivision plan application shall be submitted within three months after approval of the preliminary plan; otherwise such approval shall become null and void unless an extension is timely applied for and granted by the City Manager and/or her/her designee, provided that good cause is shown.

3. The final subdivision plan application shall conform substantially to the preliminary subdivision application, but shall be amended as required to incorporate Planning Commission or other agency comments. In addition to meeting the technical requirements of the Delaware City Code, the contents the final subdivision submittal, in addition to the requirements necessary for the preliminary plan, shall include:

(a) A drawing intended for recording, incorporating those changes or additions required by the approval of the preliminary subdivision plan.

(b) If ingress or egress is onto a state-maintained roadway, an accompanying letter of no objection and entrance permit from the Department of Transportation.

(c) A construction improvement agreement to be recorded against the subject land which shall include, but not be limited to, construction improvement plans in a form and format acceptable to the City, requirements for posting and release of a completion guaranty bond or other type of surety, requirement for the submission of "as-built" construction plans.

(d) Sufficient documentation that all requirements of the Delaware City Code applicable to subdivisions are satisfied.

(e) Documentation that all necessary variances and agency approvals have been received.

G. **Procedure Following Submission of Final Subdivision Plan Application.**

1. The City Manager and/or his/her designee or City representative shall certify that the complete final subdivision application and related plans comply with all requirements of the subdivision regulations and the Delaware City Code. Deviations, if any, from subdivision regulations or any provision of the Delaware City Code shall be noted and qualified. If specified conditions or stipulations of the preliminary approval are not met in revised plans, the City Manager and/or his/her designee or City representative shall return the subdivision plan application to the applicant.

2. For a major subdivision, the City Manager and/or his/her designee or City representative shall submit the completed final subdivision plan application to the City Council upon certifying that each of following steps is completed:

(a) All review and approvals have been completed and documentation of such approvals provided and all necessary agency approvals have been received.

(b) A construction improvement plan and construction improvement agreement for recording against the subject land have been submitted to the City and approved.

(c) Appropriate fees have been paid pursuant to the City of Delaware City ordinances.

3. The City Council shall approve the final major subdivision plan or, upon a finding that the final subdivision plan does not meet the requirements of the Delaware City Code, return the application for further review by the City Manager and/or his/her designee.

4. The City Manager and/or his/her designee or a City representative shall promptly notify, in writing, the applicant of the action taken by the City Council on a major subdivision plan.

5. Upon remand, the City Manager and/or his/her designee or a City representative shall review the final major subdivision for compliance with applicable law. If violations are found, the City Manager shall require the applicant to correct the violations and resubmit. If the City Manager and/or his/her designee or a City representative finds that the proposed major plan satisfies all requirements of the law, the City Manager shall resubmit the plan to the City Council, who shall approve the plan at its next scheduled meeting.

6. Minor subdivision plans do not require submission to City Council for approval. For minor subdivisions, the City Manager and/or his/her designee or a City representative may certify that the minor subdivision plan meets all requirements of the Code and may execute the final minor subdivision plan for recordation.

H. Recording of Final Approved Subdivision Plan

The City Manager and/or his/her designee or City representative shall certify final approval on the final subdivision plan (minor or major), which shows distinctively the part to be recorded. Two copies of the signed and approved plan shall be transmitted to the City Manager and/or his/her designee or City representative for incorporation into any applicable agreement with the developer; the other signed and approved copy shall be retained by the City for its records. The City Manager and/or his/her designee or City representative shall sign the required certification or certifications, as the case may be; certification to be according to the following:

1. For a subdivision plan to be recorded and developed in its entirety:

"It is hereby certified that this subdivision plan was granted final approval on _____, and accordingly is eligible for recording in the Office of the Recorder of Deeds in and for New Castle County.

City Manager or City representative"

2. For a subdivision plan approved to be recorded and developed in sections, certification on separate plans as follows:

"It is hereby certified that this subdivision plan was granted preliminary approval on _____.

City Manager or City Representative"

All performance guarantees required for development of any subdivision, including but not limited to applicable bonds for improvements, shall be funded, paid, and/or satisfied prior to any building permit being issued for construction.

Article X. Resubdivision Plans

Section 54-29 Resubdivision plan

A. A resubdivision may be submitted to the City Manager and/or his/her designee for review and approval, if the following conditions are met:

1. The lots to be adjusted are recorded lots in the Office of the Recorder of Deeds for the New Castle County.

2. No new streets are created.

3. All lots involved will comply with the zoning ordinances and the Delaware City Code after adjustment of lot lines.

4. Adjustment of lot lines insure existing utilities are contained within the easement.

5. A six-foot easement shall be recorded on all sides and rear property lines, which do not currently have recorded easements.

B. Submission to the City Manager shall include the following:

1. Completed application form.

2. Three sets of prints of the resubdivision or minor subdivision plan.

3. Plan review fees the schedule of fees in Chapter 46 Zoning.

4. Such other information and documentation as the City Manager and/or his/her designee may deem necessary.

C. The City Manager and/or his/her designee shall review the proposed plan changes for compliance with the subdivision and zoning ordinances and issue a written approval or disapproval of the plan. The City Manager may, in his or her discretion, require the developer to submit any and all items required for a subdivision pursuant to this chapter when reviewing a resubdivision application.

D. Upon receipt of the City Manager and/or his/her designee's approval, the owner and/or developer within 60 calendar days shall furnish three sets of reproducible tracings and three sets of prints of the plan for his approval signature.

E. The City shall retain one set of copies and two sets of prints of the approved plans. All others will be returned to the owner and/or developer for recordation of the resubdivision or minor subdivision plan within fourteen (14) calendar days of the approval signatures date in the office of the recorder of deeds for the county. All costs associated with recordation of the plan will be at the expense of the owner and/or developer.

F. If the owner and/or developer fails to record the approved plan within this time period, the City Manager's approval of said plan will be null and void, unless an extension of time is granted in writing by the City Manager after receipt of a written request from the owner and/or developer to do so.

Article XI. Appeals

Section 54-30 Appeals to the Board of Adjustment

A. Appeals to the Board of Adjustment concerning interpretation or administration of this chapter may be taken by any person aggrieved by the action of the City Manager or his or her designee under this chapter. Such appeals shall be taken within a reasonable time, not to exceed 20 days following the action giving rise to the appeal. Such appeal shall be taken by filing with the City for transmittal to the Board of Adjustment a notice of appeal specifying the grounds thereof. The City shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.

B. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal; give public notice as required by Chapter 46, Zoning, and hold a public hearing within 45 days from the date of the filing of the notice of appeal. At the hearing, any party may appear in person or by agent or attorney; the Board shall then decide the appeal within 45 days from the time of the hearing. An appeal stays all proceedings in furtherance of the action appealed from.

C. Appeals from the Board of Adjustment. Any person or persons or any board, taxpayer, department or bureau of the city aggrieved by any decision of the Board of Adjustment may seek review by the Superior Court of such decision in the manner provided by the laws of Delaware, and particularly by 22 Del. C. § 328.

Article XII. Sunsetting

Section 54-31 Sunsetting of Approved Plans

Construction permitted pursuant to any final approved subdivision plan after the adoption of this ordinance shall commence within five years after the date of final approval; provided however, that any owner/developer may, prior to the expiration of the fifth year following the final subdivision approval, apply in writing for an extension of one year to begin construction. Such application shall be granted by the City manager for good cause shown. "Good cause" for purposes of this section shall mean facts which reasonably demonstrate that the owner/developer has been delayed from starting construction by events or causes largely beyond his reasonable control, coupled with a showing that the owner/developer has made substantial efforts and expenditures in a good faith attempt to begin construction. Commencement of construction shall mean completion of at least five percent of the site improvements pursuant to any and all required permits. The following costs will not be considered in determining the five-percent threshold: land purchase and financing costs; engineering and legal expenses/fees paid; review, filing and recordation fees; and building construction costs including permit fees.