

1 **AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III & IV,**
2 **SECTIONS 99-5 “DEFINITIONS”, 99-21, “PUBLIC SITES AND OPEN**
3 **SPACES”, §99-23 “PRELIMINARY PLAT REQUIREMENTS” AND**
4 **CHAPTER 115, ARTICLES I & XXVIII, SECTION 115-4 “DEFINITIONS**
5 **AND WORD USAGE” AND §115-220 “PRELIMINARY SITE PLAN**
6 **REQUIREMENTS” OF THE CODE OF SUSSEX COUNTY REGARDING**
7 **OPEN SPACE.**

8 WHEREAS, Pursuant to the provisions of Title 9, Chapters 68 and 69 of the
9 Delaware Code, the Sussex County Government has the power and authority to
10 regulate the use of land; and

11 WHEREAS, Pursuant to Chapters 99 and 115 of the Code of Sussex County, the
12 Sussex County Government has undertaken to regulate the use of land; and

13 WHEREAS, there are currently inconsistencies and ambiguities within the
14 definition of “Open Space” in Chapters 99 and 115 of the Code of Sussex County
15 including the inclusion of recreational facilities in open space calculations while
16 excluding building footprints from the calculation; and

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18 WHEREAS, the 2019 Sussex County Comprehensive Plan and its Future Land Use
19 Element contemplates the revision of the Subdivision Code through amendments
20 such as this, including Objective 4.3.2 (“Promote new development that incorporates
21 usable open space and mitigates for the protection or replacement of environmental
22 resources in subdivision design”), Strategy 4.3.2.3 (“Strengthen County
23 development regulations to ensure that open space dedicated by developers contains
24 contiguous open space”) and Strategy 4.3.2.4 (“Revisit County Code to determine if
25 modifications are needed to open space requirements to promote less fragmentation
26 of open space”); and

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28 WHEREAS, this ordinance has been drafted to address the current ambiguities in
29 the Code of Sussex County as well as the directives of the 2019 Sussex County
30 Comprehensive Plan; and

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32 WHEREAS, it has been determined that this Ordinance promotes and protects the
33 health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex
34 County.

35 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

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Section 1. The Code of Sussex County, Chapter 99, Article I, §99-5 “Definitions” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 99-5 Definitions.

For the purpose of this chapter, certain terms and words are hereby defined:

...

OPEN SPACE

Those land areas within all major residential subdivisions, residential planned communities or developments which have a purpose to provide active and/or passive recreational opportunities, maintain land in a predominantly undeveloped or natural state, including lands used for agricultural purposes, promote conservation, protect wildlife or serve as a buffer between residential and nonresidential areas and/or commercial and noncommercial areas.

(1) The following uses are permitted and the land area devoted to said uses will be included in the calculation of open space:

(a) *[Recreational facilities, including swimming pools, game courts, p]Play areas not including playgrounds, tot lots or other structures, walking paths, bike paths and multimodal paths that are not located on state road rights-of-way[, **provided that impervious cover does not exceed 15% of calculated open space area**].*

(b) Ponds [**which have a demonstrated recreational value**].

(c) *Resource [B]buffers, perimeter buffers and perimeter buffer protection areas and forested areas.*

(d) Areas protected by perpetual conservation easements.

(e) Areas providing scenic vistas, areas providing wildlife corridors.

[f) Sidewalks not located within street rights-of-way.]

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([g]f) Areas designated as "safe zones" under the Source Water Protection Ordinance contained in Chapter 89.

[(h) Spray irrigation areas, not including areas occupied by rapid infiltration basins.]

([i]g) [Tidal and nontidal wetlands]Resources.

([j]h) Stormwater management facility area.

(2) The following uses are not permitted and the land area devoted to said uses will not be included in the calculation of open space:

(a) Land area included within designated lot lines.

(b) Building footprints.

(c) Predominantly impervious surfaces such as street rights-of-way, sidewalks within street rights-of-way, parking and/or loading areas.

(d) Utility facilities, including but not limited to, any building, plant, equipment for treatment or pumping, lagoons and rapid infiltration basins, for sewer, water, gas, and/or electric utilities.

(f) Clubhouses, community buildings, recreational facilities, including swimming pools, game courts, tot lots and playgrounds, pavilions, community patios, sidewalks and other impervious recreational or community facilities.

(g) Medians, boulevards, parking islands or areas between the pavement or curb and sidewalk within a right of way.

(3) Any reference in this chapter to "open space" shall be subject to and governed by this definition.

112 **Section 2. The Code of Sussex County, Chapter 99, Article III, §99-21 “Public**
113 **Sites and Open Spaces” is hereby amended by deleting the language in brackets**
114 **and by inserting the italicized and underlined language as follows:**

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117 **§ 99-21 Public sites and open spaces.**

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119 A. Where the proposed subdivision includes lands proposed for use as parks,
120 playgrounds, playfields, public landings or school sites in the Comprehensive Plan,
121 the subdivider shall indicate the location of such lands on the subdivision plat and
122 shall reserve the right of purchase of such lands by the appropriate jurisdiction for
123 the time period specified herein. If the reserved lands are not purchased by the
124 appropriate jurisdiction within the specified time limit, the subdivider shall be free
125 to market such lands for an alternate purpose as specified on the approved
126 subdivision plat.

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128 B. Park, playground and playfield areas may be required to be reserved for a period
129 of two years from the date of recording the subdivision, and school sites shall be
130 reserved for four years from such date.

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132 C. Where deemed essential by the Commission upon consideration of the type of
133 development proposed in the subdivision, the subdivider may be required to dedicate
134 other areas or sites of a character, extent or location suitable to meet the needs of
135 such development. In lieu of dedication, such additional areas may be reserved for
136 the common use of all property owners in the proposed subdivision through deed
137 restrictions or agreements approved by the Commission, which restrictions or
138 agreements may include a right of enforcement by the County Council.

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140 D. For residential subdivisions and other residential land development, the following
141 table shall [serve as a guide for determining] *establish* the minimum percentage of
142 the total site which shall be set aside for park and open space uses; *in achieving the*
143 *minimum percentage of open space, isolated areas of open space that are not*
144 *directly connected to contiguous open space and that are smaller than 21,780 square*
145 *feet in size shall not be counted:*

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Gross Density (dwelling units per acre)	Minimum Percentage of Open Space
2 to 5	10

Gross Density (dwelling units per acre)	Minimum Percentage of Open Space
6 to 10	15
Over 10	25 or more

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149 **Section 3. The Code of Sussex County, Chapter 99, Article IV, §99-23**
 150 **“Preliminary Plat Requirements” is hereby amended by deleting the language**
 151 **in brackets and by inserting the italicized and underlined language as follows:**

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153 **§ 99-23 Information to be shown.**

154 The preliminary plat shall be drawn in a clear and legible manner and shall show the
 155 following information:

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157 S. *[The designation of all areas proposed as open space.] The locations,*
 158 *dimensions and purposes of all open space areas. The legend or plot notes must*
 159 *show a breakdown of acreages, both gross and net, of open space, the percentage of*
 160 *impervious cover area, the percentage of open space to total gross acreage and the*
 161 *total acreage of proposed streets, roads, parking lots, alleys and ways used for*
 162 *vehicle access and multimodal paths located within state rights-of-way.*

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164 **Section 4. The Code of Sussex County, Chapter 155, Article I, §115-4**
 165 **“Definitions and Word usage” is hereby amended by deleting the language in**
 166 **brackets and by inserting the italicized and underlined language as follows:**

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168 **§ 115-4 Definitions and word usage.**

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171 B.
 172 General definitions. For the purpose of this chapter, certain terms and words are
 173 hereby defined as follows:

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OPEN SPACE

Those land areas within all major residential subdivisions, residential planned communities or developments which have a purpose to provide active and/or passive recreational opportunities, maintain land in a predominantly undeveloped or natural state, including lands used for agricultural purposes, promote conservation, protect wildlife or serve as a buffer between residential and nonresidential areas and/or commercial and noncommercial areas.

(1) The following uses are permitted and the land area devoted to said uses will be included in the calculation of open space:

- (a) *[Recreational facilities, including swimming pools, game courts, p]Play areas not including playgrounds, tot lots or other structures, walking paths, bike paths and multimodal paths that are not located on state road rights-of-way[, provided that impervious cover does not exceed 15% of calculated open space area].*
- (b) Ponds *[which have a demonstrated recreational value]*.
- (c) *Resource [B]buffers, perimeter buffers and perimeter buffer protection areas and forested areas.*
- (d) Areas protected by perpetual conservation easements.
- (e) Areas providing scenic vistas, areas providing wildlife corridors.
- [(f) Sidewalks not located within street rights-of-way.]*
- [(g)] Areas designated as "safe zones" under the Source Water Protection Ordinance contained in Chapter 89.*
- [(h) Spray irrigation areas, not including areas occupied by rapid infiltration basins.]*
- [(i)g] [Tidal and nontidal wetlands]Resources.*
- [(j)h] Stormwater management facility area.*

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215 (2) The following uses are not permitted and the land area devoted to said uses will
216 not be included in the calculation of open space:

217
218 (a) Land area included within designated lot lines.

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220 (b) Land area included within an area within 40 feet from the front, 10 feet
221 from the side and 10 feet from the rear of any multifamily or townhouse
222 dwelling.

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224 ([b]c) Building footprints.

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226 ([c]d) Predominantly impervious surfaces such as street rights-of-way,
227 sidewalks within street rights-of-way, parking and/or loading areas.

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229 ([d]e) Utility facilities, including but not limited to, any building, plant,
230 equipment for treatment or pumping, lagoons and rapid infiltration basins, for
231 sewer, water, gas, and/or electric utilities.

232
233 (f) Clubhouses, community buildings, recreational facilities, including
234 swimming pools, game courts, tot lots and playgrounds, pavilions, community
235 patio, sidewalks and other impervious recreational or community facilities.

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237 (g) Medians, boulevards, parking islands or areas between the pavement or
238 curb and sidewalk within a right of way.

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240 (3) For residential subdivisions and other residential land development, the
241 following table shall establish the minimum percentage of the total site which shall
242 be set aside for park and open space uses; in achieving the minimum percentage of
243 open space, isolated areas of open space that are not directly connected to
244 contiguous open space and that are smaller than 21,780 square feet in size shall not
245 be counted:

246

<u>Gross Density</u> <u>(dwelling units per acre)</u>	<u>Minimum Percentage of Open Space</u>
<u>2 to 5</u>	<u>10</u>
<u>6 to 10</u>	<u>15</u>
<u>Over 10</u>	<u>25 or more</u>

247 ([3]4) Any reference in this chapter to "open space" shall be subject to and governed
248 by this definition.

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250 **Section 5. The Code of Sussex County, Chapter 115, Article XXVIII, §115-220**
251 **“Preliminary Site Plan Requirements” is hereby amended by deleting the**
252 **language in brackets and by inserting the italicized and underlined language**
253 **as follows:**

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255 **§ 115-220 Preliminary site plan requirements.**

256 A. The preliminary site plan shall show the North point, scale and date.

257 B. The preliminary site plan shall show the following:

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260 (15) [~~The designation of all areas proposed as open space.~~] *The locations,*
261 *dimensions and purposes of all open space areas. The legend or plot notes must*
262 *show a breakdown of acreages, both gross and net, of open space, the percentage of*
263 *impervious cover area, the percentage of open space to total gross acreage and the*
264 *total acreage of proposed streets, roads, parking lots, alleys and ways used for*
265 *vehicle access and multimodal paths located within state rights-of-way.*

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267 **Section 6. Effective Date.**

268 This ordinance shall become effective _____.

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