

CITY OF DOVER ORDINANCE #2011-15

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DOVER, IN COUNCIL MET:

That Appendix A - Subdivisions, Article VII - Special Provisions, be amended by re-lettering Section B - Severability, as Section C and inserting a new Section B - Homeowners' associations, to read as follows:

B. Homeowners' associations.

1. *Creation of homeowners' association.* The owner and/or developer shall create a homeowners' association for the proposed development where private open space and stormwater management facility ownership and maintenance responsibility exist. The homeowners' association shall be organized and established as a legal entity prior to or as a part of the final plat approval and recording process and all documents related to the homeowners' association shall be submitted in draft form at the time of application for the subdivision plan review (whether minor or major). Such documents shall be acceptable to the city as a condition of subdivision plan approval. Communities where the land area is under single ownership, individual lots are leased by the homeowners, and there are no common areas or facilities owned by the homeowners association shall be exempt from the requirements of this section.
2. *Legal documents recorded.* The owner and/or developer should pay for the preparation of the legal document necessary to create the association, have same approved by the city solicitor and council and record same in the recorder of deeds office for Kent County.
3. *Maintenance of property of the homeowners' association.* The legal documents prepared will give the city the authority to require the homeowner's association to perform routine maintenance and minor/major repairs as necessary to keep the property in good condition, and eliminate any health or safety issues.

If the homeowners' association does not respond to a notice of violation from the city regarding maintenance within 14 calendar days of the date of such notice, the city shall have the right to perform the work itself or hire a contractor to perform the work and assess each property owner of the homeowners' association and/or each owner of property within the final plat for the subdivision a fee to recover its cost. Such fee shall include an administrative charge equal to 15% of the cost of the work performed. This fee will be added to the real estate tax bill as a special assessment to these lot owners.

4. *Homeowners' association requirements.* If the applicant is required to establish a homeowners' association for purposes of ownership and maintenance of common areas, common facilities and/or open spaces, such association documents shall require, at minimum:
 - (a) *Mandatory membership.* All owners of property within the subdivision must be members of the homeowners' association. The members of the homeowners' association shall share equitably in the costs of maintaining all open space, common areas and facilities, recreation areas and facilities, and stormwater management areas and facilities which are not accepted by the city in writing in accordance with the provisions of all deed restrictions and maintenance agreements, all applicable property maintenance codes, all record plan notes, and in accordance with procedures established by the homeowners' association. The deed

restrictions shall require, at minimum, that the costs of such maintenance shall be collectable from the owner of the lot(s) to which such costs are assessed; and that such costs shall be and constitute a lien upon such lot(s).

- (b) *Responsibilities.* The homeowners' association shall be responsible for all maintenance, insurance, taxes, fees, and other burdens customary to the ownership of real property and all improvements and construction thereon, including, but not limited to all recreation amenities, walkways, storm water facilities, ponds, landscaping, and other facilities not owned or accepted by the City of Dover.
- (c) *Deed restrictions.* Restrictive covenants shall provide that in the event the association fails to maintain the common areas, common facilities, and open areas according to the adopted codes of the City of Dover, in accordance with the recorded plan, and in accordance with the requirements of recorded restrictions, the city may:
- (1) Demand that the deficiency of maintenance be corrected. If the homeowners' association shall fail to correct the deficiency, after reasonable notice, the city may enter the common area to inspect and correct the deficiency. The cost of such maintenance shall be charged to the association in accordance with the provisions of subsection (B)(3) - Maintenance of property of the homeowners' association.
5. *Homeowners' association reporting responsibilities.* Each homeowners' association established pursuant to Appendix A, Subdivisions shall, not later than December 31 of each year, provide to the City Clerk of the City of Dover a listing of the officers of such homeowners' association, including their addresses and telephone numbers, and the date of the annual meeting. The homeowners' association shall list the terms of office of each officer and the date of the annual election. The homeowners' association shall provide the name, address, phone number and contact information for any firm providing services on behalf of or acting as agent for the homeowners' association in carrying out its responsibilities.

BE IT FURTHER ORDAINED:

That the provisions of this ordinance shall be in effect upon its adoption and shall apply to all existing subdivisions where the homeowners' association has maintenance responsibilities for open space and stormwater management areas. The city manager shall send a letter to all property owners within the City of Dover who have homeowners' association maintenance responsibilities under this ordinance informing them of these responsibilities and the City's right to bill property owners within the homeowners' association for any maintenance performed by the City of Dover due to lack of maintenance on the part of the homeowners' association.

BE IT FURTHER ORDAINED:

That all homeowners' associations with maintenance responsibilities for open space and stormwater management areas that existed prior to the adoption of this ordinance shall report to the city manager by December 31, 2011 those items required in subsection (B)(5) - Homeowners' Association Reporting Responsibilities.

SYNOPSIS

The proposed amendment would clarify the requirement that developers of subdivisions with common open space, including active recreation areas, woodlands, and stormwater management areas, form homeowners' associations where membership is mandatory. It would allow the City to perform work that is the responsibility of the homeowners' association if such work is not performed in accordance with code requirements. Such work would be billed to the property owners on their tax bill, including an administrative charge. The proposed amendment would require that homeowners' associations with management responsibility for common open space submit annually a listing of officers of the association. The proposed amendment also clarifies that these requirements are retroactive to all subdivisions with common open space in existence prior to adoption of the ordinance.

ADOPTED: DECEMBER 12, 2011

Actions History

December 12, 2011 - Final Reading Before Council (with SA#1)
November 14, 2011 - Tabled by Council
September 26, 2011 - First Reading by Council
September 12, 2011 - Considered by the Legislative, Finance, and Administration Committee
June 13, 2011 - Tabled by the Legislative, Finance, and Administration Committee