

Introduced by: Ms. Kilpatrick
Ms. Diller
Date of introduction: September 27, 2016

SUBSTITUTE NO. 1 TO EMERGENCY ORDINANCE NO. 16-001

TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 2 (“ADMINISTRATION”) TO RESTRICT AND/OR FREEZE HIRING, RECLASSIFICATION, OR OTHER MOVEMENT OF NEW CASTLE COUNTY POLITICAL APPOINTEES/UNCLASSIFIED SERVICE EMPLOYEES INTO PROTECTED NEW CASTLE COUNTY MERIT SYSTEM POSITIONS DURING AN ADMINISTRATION’S LAME DUCK SESSION

WHEREAS, it is important to the public trust, to the public treasury/property and to good government that County personnel actions remain free of political influence or other improprieties, particularly as a lame duck administration winds down and political appointments reach an end; and

WHEREAS, a temporary freeze or moratorium on certain personnel actions concerning Executive branch political appointees/unclassified service appointees during a County Executive’s lame duck administration will insure that such actions are non-political and that the incoming Executive has the opportunity to approve Executive resource decisions that will affect the County during his or her tenure, thereby protecting the public property and advancing good government; and

WHEREAS, County Council believes that a temporary restriction on hiring, reclassification, or other movement of political appointees/unclassified service employees into the Merit System during a lame duck administration will strengthen employee and potential employee confidence in the Merit System and insure that all Merit jobs are open to as wide and diverse a pool of applicants as possible; and

WHEREAS, Council further believes that the removal of any potential appearance of pre-selection of political appointees/unclassified service employees for protected Merit positions will reduce the potential for lawsuits by unsuccessful Merit System job applicants and consequently reduce the expenses (public property/treasury) required by County taxpayers to defend such suits; and

WHEREAS, the proposed minimal time restriction on new hires, promotions, terminations, transfers and reclassifications of County employees likewise is not seriously intrusive on County government and permits the resumption of standard practices after a short duration; and

WHEREAS, this ordinance supplements the prohibitions regarding the use of County office to secure personal advantages/classified service positions/undermine public confidence in the impartiality of the government already contained in *New Castle County Code* Chapters 2 (Sections 2.03.103, .104) and Chapter 26 (Sections 26.01.018 and .019); and

WHEREAS, New Castle County Council believes that this legislation is an effective device by which the public trust may be enhanced and by which the public may be assured that public funds are used for their intended and highest and best purpose; and

WHEREAS, this ordinance is less comprehensive than Ordinance 04-138, passed in 2004, and mirrors Ordinance 12-105, which froze all hires, reclassifications and other personnel actions during a lame duck administration, thereby affecting only political appointees, that was introduced but not passed since the appointed Executive’s term concluded after the election, and complements Emergency Ordinances 04-01, 04-02 and 04-06, passed in 2004. These ordinances are alternatives to the U.S. Office of Personnel Management Policy requiring pre-appointment review of *all* competitive and non-political

excepted service appointment actions involving the appointment or conversion of a current or former political appointee and to its suspension of the processing of Qualification Review Board cases when an agency head leaves office or announces his or her intention to leave office so that the incoming agency head has the opportunity to make or approve executive resource decisions that will affect the agency during his or her tenure; and

WHEREAS, the Delaware General Assembly addressed the dangers inherent in lame duck sessions of County Council by enacting law providing that Council terms end the first Wednesday in November following the general election (9 *Del. C.* Section 1141); and

WHEREAS, this ordinance addresses the immediate emergency facing the County treasury and would permanently enact provisions governing employment practices during lame duck Administrations.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS (10/13ths of all members agreeing):

Section 1. An emergency risk to the public property and treasury exists in that the incumbent Executive is serving a lame duck session with dozens of political appointees who may or not be hired by the incoming Executive, raising the specter of the creation of the movement of political appointees into the non-political excepted service. Improper conversions, known as burrowing, can occur as an administration winds down and political appointments reach their end. The County currently has no policy or law prohibiting the political “burrowing” of appointed County appointees into the protected Merit system during lameduck sessions, subjecting the public treasury to the potential of suit from non-political appointees seeking Merit positions during that timeframe and to the potential of ethics complaints for the same reason. To protect the federal treasury and system, the federal Office of Personnel Management conducts a pre-appointment review of all competitive and non-political excepted service appointment actions involving the appointment or conversion of a current or former political appointee. This emergency ordinance seeks to effectuate the same goal of protecting the public property and treasury via temporary limitations on the creation of merit positions and the hiring of political appointees into those positions during lame duck sessions.

Section 2. *New Castle County Code* Chapter 2 (“Administration”), Article 3 (“Officers and Employees”), is hereby amended by adding the material that is underscored, as set forth below.

Division 2.03.400. Restrictions on hiring, reclassifying or otherwise moving political appointees/unclassified service employees into the Merit System during lame duck sessions.

Sec. 2.03.401. Purpose of Division.

The purpose of this Division is to temporarily restrict the hiring, reclassification or other movement of New Castle County political appointees/unclassified service employees into protected Merit System positions at the end of an administration (lame duck administration) to avoid any appearance or reality that they are using the unfair advantage of the power of their current positions and contacts to secure protected Merit System employment, in contravention of State and County law, and to the detriment of otherwise qualified applicants.

Sec. 2.03.402. Definitions.

A. Lame duck means the time that an elected County Executive remains in office after an election in which the Executive is defeated from holding the office and the inauguration of a successor

and the period between a primary and a general election when the Executive has chosen not to run or is ineligible to run for another term.

B. A political appointee/unclassified service employee means those unclassified service employees listed or referenced in *New Castle County Code* Section 26.01.002(C).

Sec. 2.03.403. Restrictions on hiring, reclassifying or otherwise moving political appointees/unclassified service employees into the Merit System.

Consistent as necessary with existing collective bargaining agreements, no New Castle County political appointee/unclassified service employee shall be hired, reclassified, promoted or moved into a New Castle County Merit System position during a lame duck Administration and no person shall use official authority or influence to effectuate such a hire, reclassification or other movement prohibited herein. Exceptions shall be for temporary/seasonal/part-time employees, crossing guards, New Castle County Council staff, and positions funded in full by outside grants. There also shall be exceptions for exigent circumstances to take personnel actions essential to the public welfare, which exceptions only shall be made upon recommendation and enunciation of the exigent circumstances by the Chief Human Resources Officer and department general manager and approval of a majority of the Council Executive Committee.

Sec. 2.03.404. Penalties.

Any person who by him or herself or with others violates this Division shall be guilty of a misdemeanor and upon conviction shall be penalized as provided in *New Castle County Code* Section 1.01.009. Any person convicted under this Division shall be ineligible, for a period of five years, to hold any New Castle County office or position and, if he or she currently is an officer or employee of the County, shall immediately forfeit his or her office or position.

Section 3. This ordinance shall become effective immediately upon passage by New Castle County Council and will automatically stand repealed on the 61st day following the date of passage.

Adopted by County Council of
New Castle County on:

President of County Council

Approved by:

County Executive

SYNOPSIS: This emergency ordinance protects the public treasury and the public trust by temporarily and through a code amendment preventing certain personnel actions concerning political appointees/unclassified service appointees during lame duck administrations. This mirrors and

complements prior emergency ordinances enacted during lame duck administrations. Further, it recognizes federal policies and practices to insure that personnel actions remain free of political influence and other improprieties. Also this embodies the safeguards enacted by the General Assembly to eliminate lame duck sessions in New Castle County Council.

Substitute 1 to Ordinance Emergency 16-001 deletes references to freezing any personnel actions other than hiring, reclassifying or otherwise moving political appointees/unclassified service employees into protected county merit positions during a lame duck administration. It adds no new material.

FISCAL NOTE: There will be no discernible fiscal impact upon the adoption of this legislation.