

Introduced by: Mr. Smiley
Date of introduction: October 25, 2016

ORDINANCE NO. 16-118

TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 2 (“ADMINISTRATION”) TO RESTRICT THE 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, in order to insure the integrity of the Merit System as contemplated by State and County law and to safeguard public confidence, it is important to avoid any possibility or appearance that political appointees/ unclassified service employees are using the advantages of their current positions to gain County Merit System employment during a lame duck Administration; and

WHEREAS, this minimal time restriction on the pool of available applicants is short-term, temporary, not seriously intrusive on the County government, does not rest appointment or Merit System hiring power within the legislative branch, and serves to safeguard confidence in, and the integrity of, the County’s employment system; and

WHEREAS, Council believes that this 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 required by County taxpayers to defend such suits; and

WHEREAS, this ordinance supplements the safeguards and 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, 2.03.104) and Chapter 26 (Sections 26.01.018 and 26.01.019); and

WHEREAS, this ordinance is less comprehensive than Ordinance 04-138, passed in 2004, but mirrors Ordinance 12-105 (which was introduced but not passed since the appointed Executive’s term ended after the election). This ordinance is an alternative 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.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS

Section 1. *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 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 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.

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 by a majority of the Council Executive Committee.

Sec. 203.404. 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 2. This ordinance shall become effective immediately upon passage by New Castle County Council and approval by the County Executive, or as otherwise provided in 9 *Del. C.* Section 1156.

Adopted by County Council of
New Castle County on:

President of County Council

Approved by:

County Executive

SYNOPSIS: This ordinance prohibits the hiring, reclassification or other movement of political appointees/unclassified service employees into the Merit System during a lame duck Administration in order to maintain public and employee confidence and to continue to insure that the widest and most diverse pool of applicants is permitted to apply for protected positions.

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