

1 **AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF LEWES,**
2 **CHAPTER 170 SUBDIVISION AND LAND DEVELOPMENT, 170-26 GENERAL**
3 **STANDARDS AND GUIDELINES, AS IT RELATES TO ARCHAEOLOGY.**
4

5 **WHEREAS**, the Mayor and City Council deem it appropriate to consider the question of
6 whether it is in the public interest to amend Chapter 197, Zoning, of the Municipal Code of the
7 City of Lewes, Delaware, as amended, by creating requirements for archaeology.
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9 **WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or
10 the purpose of promoting health, safety, morals or the general welfare of the community, the
11 legislative body of cities and incorporated towns may regulate and restrict the height, number of
12 stories and size of buildings and other structures, percentage of lot that may be occupied, the size
13 of yards, courts and other open spaces, the density of population, and the location and use of
14 buildings, structures and land for trade, industry, residence or other purposes”;
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16 **WHEREAS**, Section 38 of the City's Charter provides that “[f]or the purpose of protection
17 against fire, promoting health, safety, morals or the general welfare of the community, the City
18 Council is hereby empowered to adopt ordinances to regulate and restrict the height, number of
19 stores [sic], size of buildings and other structures, the density of population and the location and
20 use of buildings, structures, and lands for trade, industry, residence or other purposes”;
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22 **WHEREAS**, Article XV, Chapter 197, Section 104, Text and map amendments, of the
23 Municipal Code of the City of Lewes provides that any amendment to the Zoning Ordinance shall
24 be made after a public hearing following fifteen (15) days’ notice by publication in an official
25 paper or a paper of general circulation in the City;
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27 **WHEREAS**, a public hearing was conducted on September 25, 2023;
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29 **WHEREAS**, at least fifteen (15) days’ notice of such hearing was provided by publishing
30 notice of the time and place of such hearing in an official paper or newspaper of general circulation
31 in the City; and
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33 **WHEREAS**, the proposed amendment will promote the health, safety, and general welfare
34 of the Lewes community.
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36 **BE IT ORDAINED** by the Mayor and City Council, in session met, a quorum pertaining
37 at all times thereto, in the manner following to-wit:
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39 **Section 1.** Chapter 170 Subdivision and Land Development, 170-26 General Standards and
40 guidelines of the Municipal Code of the City of Lewes, Delaware, be the same and is hereby
41 amended by adding the underlined text.
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43 **F. Archaeological Review**
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45 **(1) Purpose: Identify, evaluate, excavate, and preserve archaeological resources located**
46 **within the City of Lewes.**

47 (2) Applicability: This applies to Major Subdivisions, Minor Subdivisions, and Site
48 Development Plans that have a high probability of containing archaeological
49 resources.

50 (3) Professional archaeologist- as defined by the Secretary of Interior Standards and
51 Guidelines for Archaeology and Historic Preservation (36 CRF Part 61).

52 (4) An Identification Level Survey report shall be required for any development that
53 requires a Major Subdivision review, Minor Subdivision Review, or Site Development
54 Plan as identified in applicability.

55 a. The Identification Level Survey report as identified in the “Archaeological
56 Survey in Delaware, February 2015”, or its successor document shall be
57 submitted with the submission of the preliminary plan.

58 b. The Identification Level Survey report shall be completed by a professional
59 archeologist and in accordance with the most recent “Archaeological Survey
60 in Delaware, February 2015”, or its successor document. The Planning
61 Commission and/or Mayor City Council may require additional review
62 regarding specific items as identified in the Identification Level Survey.

63 c. If the Identification Level Survey report determines that further research
64 should be performed on the site, an Evaluation Survey as identified in the
65 “Archaeological Survey in Delaware, February 2015”, or its successor
66 document shall be completed, and a copy of the final report shall be submitted
67 to the City of Lewes Planning Department prior to final plan approval for
68 review by the Mayor and City Council.

69 d. The applicant shall comply with all State and Federal requirements pertaining
70 to archaeological items identified in the Identification Level Survey.

71 (5) Incidental Discovery of Archaeological Sites

72 a. If archaeological resources or indicators are unearthed or exposed in the
73 course of the project, the following shall occur.

74 i. The applicant shall stop work immediately.

75 1. The Planning Department will determine when work will
76 resume based on consultation with a professional archaeologist
77 or state professional after consultation with the City Manager
78 or designee.

79 ii. The applicant shall contact the Planning Department immediately.

80 iii. The applicant shall contact the State Historic Preservation Office or
81 relevant entity to determine the significance of the unearthed or
82 exposed resource or indicator.

83 1. The applicant shall work with the professional archaeologist or
84 state professional to determine the disposition and or curation
85 of archaeological elements found.

86 (6) Violations

87 a. Violations shall follow section 170-8 and fines shall be adequate to deter non-
88 compliance.

89
90 **Section 2.** If any provision of this Ordinance shall be deemed or held to be invalid or
91 unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect
92 any other provision of this Ordinance which may be given effect without such invalid or

93 unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to
94 be severable.

95

96 **Section 3.** This Ordinance shall take effect immediately upon its adoption by the Mayor
97 and City Council of the City of Lewes.

98

99 Adopted by the Mayor and City Council
100 of the City of Lewes
101 November 13, 2023

102

103 I, Timothy Ritzert, Secretary of the City Council of the City of Lewes, do hereby certify that the
104 foregoing is a true and correct copy of the ordinance passed by the Mayor and City Council at its
105 regular meeting on November 13, 2023, at which a quorum was present and voting throughout
106 and the same is still in full force and effect.

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Secretary

SYNOPSIS: This Ordinance amends the regulations regarding archaeology.

