

Introduced by: _____
Date of introduction: _____

ORDINANCE NO. 08 –

**TO REVISE CHAPTER 40 OF THE NEW CASTLE COUNTY CODE
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE – UDC)
ARTICLE 7 (TRANSFER OF DEVELOPMENT RIGHTS
AND OTHER INCENTIVES AND BONUSES) REGARDING RESEARCH
AND TECHNOLOGY USE DEVELOPMENT BONUSES**

WHEREAS, New Castle County, in consultation with State and local agencies and private citizens representing varied civic association and business interests developed an update to the 1988 Comprehensive Plan and its subsequent updates, as amended; and

WHEREAS, the 2007 New Castle County Comprehensive Development Plan Update was adopted by New Castle County Council on July 24, 2007; and

WHEREAS, the 2007 New Castle County Comprehensive Development Plan Update has been reviewed by the Delaware Cabinet Committee on State Planning pursuant to 9 *Del. C.* § 2658(a) and comments from the Committee have been reviewed and addressed in the Plan; and

WHEREAS, the 2007 Comprehensive Development Plan Update was certified by the Office of the Governor in a letter dated September 7, 2007; and

WHEREAS, the adoption of the Comprehensive Development Plan Update by County Council authorized the development of ordinances necessary to effectuate the County's economic development goals and objectives consistent with the 2007 Update; and

WHEREAS, the 2007 New Castle County Comprehensive Development Plan Update recognizes that sustainable economic growth is of paramount importance to the provision of jobs, adequate housing and educational opportunities as well as community services and recreational and cultural amenities; and

WHEREAS, the county's economic development plan encourages business investment that advances productivity, innovation, research, technology and entrepreneurship in targeted infill and redevelopment areas, and also recognizes the value added to the local economy from enhancing regional industry clusters, and leveraging and linking research and technology innovators and local universities to the private sector which, in turn, creates the conditions for greater productivity, innovation, and job creation; and

WHEREAS, the County Council recognizes that the 2005 Base Realignment and Closure Commission (BRAC) process has resulted in the Aberdeen Proving Ground (APG) being a predominant gainer with missions relocating to the installation from Ft. Monmouth, NJ; Alexandria, Falls Church, and Langley, VA; Glen, OH; Redstone, AL, Fort Huachuca, AZ, and San Antonio, TX., and

WHEREAS, the installation and surrounding area expects to have an influx of approximately 30,000 new direct, indirect, and induced jobs by 2011 primarily in the fields of electronics engineering, computer engineering, contracting, and information technology management; and

WHEREAS, a recent survey of the Fort Monmouth, NJ base personnel who will be relocating to our area indicates that 11% will definitely relocate to Delaware, 43% are undecided about where they will relocate, and 33% will commute 31-45 minutes; and

WHEREAS, New Castle County is located approximately 30 miles from APG; and

WHEREAS, County Council recognizes that the creation of laws that support the APG BRAC initiative, and existing science, research and technology institutions and businesses will ensure a diversified economy and provide high-wage employment opportunities for New Castle County residents; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests (i.e., promoting the health, safety, morals, convenience, order, prosperity and/or welfare of the present and future inhabitants of this State).

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code - UDC”), Article 7 (“Transfer of Development Rights and Other Incentives and Bonuses”), Division 40.07.000 (“Purpose”), is hereby amended by adding the material that is underscored, as set forth below.

Division 40.07.000. Purpose.

- A. To meet certain land use objectives, positive incentives are needed to encourage developers to assist in broadening the selection of workforce housing. Two (2) types of incentives are contained in this Article: the allocation of development rights that can be transferred, and bonuses for certain types of development.
- B. The use of transferable development rights allows development permitted on several properties to be concentrated on a single parcel, thus permitting several parcels to remain exclusively agricultural without significantly impacting the development value of the land.
- C. The preservation and renovation of historic resources serves to preserve the character and heritage of the County for future generations. It is anticipated that clustering, bonuses, and on occasion, transferable development rights, will be needed to ensure that these objectives can be met during the development process.

D. *Research and Technology Development (RTD) use bonus.* The New Castle County Economic Development Plan encourages business investment that advances productivity, innovation, research, technology and entrepreneurship throughout the County to help ensure a diversified economy and to provide high wage employment opportunities to county residents. In addition, it is recognized that the creation of an economic development cluster of research and technology institutions and businesses may require bonuses in the form of higher density, accelerated plan reviews, rezonings which may occur outside the tri-annual process, and others as are provided for in Section 40.07.820.

Section 2. *New Castle County Code* Chapter 40 (“Unified Development Code - UDC”), Article 7 (“Transfer of Development Rights and Other Incentives and Bonuses”) is hereby amended by adding a new Division 40.07.800 (“Research and Technology Development Bonus”) and subsequent subsections, all of which is underlined as set forth below.

Division 40.07.800. Research and Technology Development (RTD) Use Bonus.

A. This Division recognizes the importance of remaining competitive with other locations (both in and out of Delaware) to promote and provide bonuses and incentives for new research and technology development uses that provide high wage employment opportunities for county residents. Research and technology development uses are defined as:

1. Those land uses that support scientific and technology research, including theoretical and applied research in all the sciences, as well as product development and testing;
2. Engineering, legal, manufacturing, and marketing uses which support such research and technology research;
3. Laboratories, education facilities, and clinical research hospitals; or
4. Office uses, limited support uses, and retail uses accessory to the scientific research and technology development use.

B. Uses not specifically defined herein may be considered research and technology development uses after a review and recommendation by the Department of Land Use and approval by the New Castle County County Executive or their designee. The County Executive or their designee shall issue a decision within twenty (20) days of an official request. Criteria used to determine if a use is to be considered an RTD use include:

1. Support business innovation;
2. Support regional economic development, or;
3. Support new business ventures.

Sec. 40.07.810. Research and Technology Development (RTD) Use Eligibility.

- A. The RTD use bonuses shall be available in the CR, OR, BP, I and HI zoning districts.
- B. The minimum site area for the RTD use shall be at least the minimum site area that is required within said zoning district in Table 40.04.110.
- C. The RTD use bonuses shall only be available where the RTD applicant demonstrates that the use will either: (1) create a minimum of twenty-five (25) new high wage jobs within two (2) years from the date of issuance of a certificate of occupancy for a building structure; or, (2) creates a minimum of ten (10) new high wage jobs within two (2) years from the date of issuance of a certificate of occupancy for a building structure not to exceed 20,000 square feet GFA. High wage jobs are defined as annual wages at least ten (10) percent greater than the current per capita income for New Castle County as determined by the Delaware Department of Labor.
- D. *Executive summary business plan.* The RTD use must pass the County's due diligence process to establish solvency and credibility prior to utilizing the RTD bonuses. The RTD applicant must submit an Executive Summary Business Plan which demonstrates that the selected minimum new high wage jobs standard as identified in Section C will be created within two (2) years of issuance of a Certificate of Occupancy for the RTD building structure at an annual wage of at least ten (10) percent greater than the current per capita income for New Castle County as determined by the Delaware Department of Labor. The Executive Summary Business Plan shall include a discussion of the following elements:
1. *Executive summary.* A concise overview of the Business Plan along with a history of the company.
 2. *Market analysis.* A description of the relevant industry and information on target market information and market outlook.
 3. *Company description.* Information about the nature of the business.
 4. *Organization and management.* Provides the company organizational structure, details about the ownership of the company, profiles of the management team, and the qualifications of the board of directors.
 5. *Service or product line.* Provides a description of the service or product, and the benefits to potential and current customers.
 6. *Employment and capital cost projections.* Provides forecasted employment and capital cost projections for the first three (3) years of operation.

E. Certification. The RTD Applicant shall submit a certification which states that they will make a good faith effort to fulfill the new job creation requirements identified in Section 40.07.810.D within two (2) years from the date of issuance of a certificate of occupancy for a building structure.

F. Surety. The RTD applicant, prior to plan recordation, shall post a performance guarantee or other financial surety acceptable to the Department to serve as collateral for fulfilling the new job creation requirements identified in Section 40.07.810.D within two (2) years from the date of issuance of a certificate of occupancy for a building structure. The performance guaranty or other financial surety shall be determined by multiplying the applicable job creation requirement identified in Section 40.07.810.D by ten (10) percent and by the high wage jobs standard as identified in Section 40.07.810.C.

1. The performance guarantee or other financial surety shall remain posted with the Department until two (2) years of issuance of a Certificate of Occupancy for the RTD building structure, or until the RTD applicant fulfills the new job creation requirement as identified in Section 40.07.810.D.
2. The performance guarantee or other financial surety shall be executed by the applicant and a corporate surety or financial institution licensed to do business in the State.
3. Forfeiture of financial surety. The performance guarantee or other financial surety required under this Article shall be forfeited upon the failure of the RTD applicant to fulfill the new job creation requirement identified in Section 40.07.810.D within two (2) years from the date of issuance of a certificate of occupancy for a building structure.
4. Notice. The Department shall notify the RTD applicant by registered mail of its intention to initiate forfeiture proceedings. If the RTD applicant cannot be located or will not accept the registered letter, notice shall be given by publication in a newspaper of general circulation at least once a week for three (3) consecutive weeks in the area where the RTD applicant was last known to reside, and the property shall be posted.
5. Hearing. The RTD applicant shall have sixty (60) days to meet with the Department to show cause why the financial surety should not be forfeited. On a showing of cause by the RTD applicant, the Department shall provide for a reasonable time, but not more than three (3) months, for the RTD applicant to fully comply with the performance of the conditions. Upon failure of the RTD applicant to show cause, the bond shall be forfeited.

G. Annual report. The RTD applicant shall submit to the New Castle County Department of Land Use and the Redevelopment Office an annual report on their progress toward meeting employment projections for the first three (3) years of operation.

- H. Dun and Bradstreet report. The RTD applicant may be required to submit a Dun and Bradstreet Business Information Report.
- I. Community outreach. The RTD applicant shall make a good faith effort within two (2) years from the date of issuance of a certificate of occupancy for a building structure to provide New Castle County residents with information on employment opportunities and educational requirements for filling these jobs.
- J. Business plan review. The Departments of Land Use and Finance shall review the Business Plan and the Dun and Bradstreet Business Information Report within twenty (20) days of receipt and prepare a recommendation to the New Castle County Executive or their designee. The County Executive or their designee shall issue a decision within twenty (20) days of receipt of the reports.
- K. Economic development fund. Funds collected from the forfeiture of the surety shall be deposited into an Economic Development Fund. The fund shall be used to support the growth and expansion of current and prospective businesses. The fund shall be administered by the Office of Redevelopment.

Sec. 40.07.820. RTD Bonuses.

- A. Parking. The parking requirement for a qualified RTD site shall be based upon either the parking rationale as found in Table 40.03.522 or upon a special study provided to the Department by the applicant as per Section 40.03.524.
- B. Traffic impact study (TIS). Instead of the standards set forth in Section 40.11.120, the Department and DelDOT shall require the applicant to prepare and submit a traffic impact study only if the conditions listed in Table 40.07.820 exist. The applicant may also request a traffic impact study waiver pursuant to Section 40.11.121.
 - 1. The proposal could result in a development exceeding the relevant ADT volume shown below.

<u>Table 40.07.820</u> <u>ADT Volume's Warranting a TIS</u>	
<u>Proposed Land Use</u>	<u>TIS Required if ADT exceeds</u>
<u>Retail Commercial</u>	<u>3,100</u>
<u>Office</u>	<u>2,500</u>
<u>Industrial</u>	<u>2,000</u>

; or

2. When in the opinion of DelDOT, it is in the public interest to obtain further traffic information on a proposed development additional traffic information may be requested.
- C. Accelerated review. Upon the acceptance of a complete plan submission, the Department shall conduct the review of the land development plan within ten (10) working days at no additional cost. If no TIS is required the plan shall be processed as a minor land development plan regardless of square footage.
- D. Buffer reductions. The bufferyard opacity standard along adjacent properties and streets for any qualified site may be reduced by one-tenth (0.1), except for bufferyards adjacent to residentially zoned properties which must meet the minimum buffering requirements. Along residentially zoned properties the entire bufferyard shall be provided. The open space landscaping requirement may be reduced by twenty-five (25) percent of the total required in Table 40.04.111.
- E. Density increases. The gross floor area may increase up to twenty-five (25) percent over the calculated site capacity from Table 40.05.422 and the minimum OSR/LSR as found in Table 40.04.110 may be reduced by twenty-five (25) percent for the district in which it is located. In addition, the building height may double the maximum building height as found in Table 40.04.110 as long as the setback of the building is an equal distance to the height of the building.
- F. Retail/service uses. Ten (10) percent of the permitted square footage in the OR, BP, I, and HI zoning districts may be utilized for ancillary retail and/or service uses. The retail use square footage counts toward the maximum allowable GFA.
- G. Rezoning. A request for rezoning to enlarge an existing CR, OR, BP, I, and HI zoning district to permit the establishment of the RTD use may be acted upon by the County Council at any time and is not subject to the tri-annual rezoning schedule.

Section 3. Consistent with Comprehensive Development Plan. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 4. Inconsistent Ordinances and Resolutions Repealed. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section 5. Severability. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void

one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 6. Effective Date. This Ordinance shall become effective upon its adoption by County Council and approval by the County Executive.

Approved on:

Adopted by County Council of
New Castle County on:

County Executive

President of County Council
New Castle County

SYNOPSIS: The purpose of this text amendment is to promote business investment that advances productivity, research, technology, entrepreneurship and high wage job creation throughout the County. This purpose is fulfilled by providing certain incentives in the review and approval of land development plans for research and technology developments and by permitting a density bonus in the CR, OR, BP, I and HI districts.

FISCAL NOTE: This legislation, if adopted, could result in an increase in New Castle County's property assessment base, resulting in additional tax revenue to be collected from these developed parcels.

