

Introduced by: Mr. Powers, Mr. Bell, Mr.  
Weiner  
Date of introduction: May 14, 2013

**ORDINANCE NO. 13-040**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 1 (“GENERAL PROVISIONS”),  
CHAPTER 2 (“ADMINISTRATION”) AND TO CREATE A NEW CHAPTER 29  
 (“AGRICULTURE”)**

**WHEREAS**, development pressures within New Castle County have resulted in the conversion of vast stretches of farmland into residential and commercial centers increasing congestion and the demand for government services and infrastructure; and,

**WHEREAS**, development pressures have driven up the value of property making it more profitable in many cases for local farmers to sell their land to developers rather than continue farming; and,

**WHEREAS**, New Castle County recognizes and acknowledges the value of farmland and a healthy and vibrant agricultural industry in New Castle County to promote the conservation of our natural resources and wildlife habitat, to provide for a local food supply, to lessen the demand for government services and infrastructure, to preserve property values, and to protect our quality of life; and,

**WHEREAS**, The State of Delaware and New Castle County have employed various methods to preserve farmland in New Castle County that have proved inadequate for farmland preservation purposes needed to advance the public health and welfare of current and future inhabitants; and,

**WHEREAS**, additional and comprehensive farmland preservation methods are needed to limit sprawl and to preserve and promote New Castle County’s agricultural industry, to enhance the future viability of local farming, and to ensure the continued existence of farmland in New Castle County; and,

**WHEREAS**, various provisions relating to agriculture are scattered throughout the *New Castle County Code* and this Ordinance will consolidate those provisions in the new Chapter 29; 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 1 (“General Provisions”), Section 1.05.013 (“Exemption from Regulation”) is hereby amended by the deletion of the stricken text and the addition of the underlined text as set forth below:

**Sec. 1.01.013. Reserved. Exemption from regulation.**

~~The provisions of this Code shall not apply to lands, buildings, and/or structures necessary to the operation of farm lands and property used exclusively for agricultural purposes as defined in the Delaware Code. Because the right to regulate land, buildings, and/or structures used for agricultural purposes is vested exclusively in the State, the County's role is limited to merely confirming that lands and buildings are being used for agricultural purposes, and are therefore not subject to regulation. In determining whether land, buildings, and/or structures are being used for agricultural purposes, it is not a prerequisite that the owner applied for, and was granted, property taxation pursuant to the State's Farmland Assessment Act. The County shall first determine whether or not it has jurisdiction over any lands before exercising any rights to regulate the same.~~

Section 2. *New Castle County Code* Chapter 2 (“Administration”), Article 5 (“Departments and Offices”), Section 2.05.101 (“Functions”) is hereby amended by the addition of the underlined text as set forth below:

**Sec. 2.05.101. Functions . . .**

R. The Department shall administer a farmland preservation program at the direction of the New Castle County Farmland Preservation Trust. The program shall operate as set forth in Chapter 29 of this Code.

Section 3. *New Castle County Code* Chapter 2 (“Administration”), Article 5 (“Departments and Offices”), Section 2.05.503 (“Office of Finance”) is hereby amended by the addition of the underlined text as set forth below:

**Sec. 2.05.503. Office of Finance . . .**

Q. Administer a farmland preservation fund at the direction of the New Castle County Farmland Preservation Trust.

Section 4. *New Castle County Code* Chapter 29 is hereby amended by the deletion of the stricken text and the addition of the underlined text as set forth below:

## **Chapter 29 ~~Reserved.~~ AGRICULTURE**

### **ARTICLE 1. GENERAL**

#### **Sec. 29.01.001. Exemption from regulation.**

Because the right to regulate land, buildings, and structures used for agricultural purposes is vested exclusively in the State, the provisions of this Code shall not apply to lands, buildings, or structures necessary to the operation of farmland and property used exclusively for agricultural purposes as defined in the Delaware Code.

A. In determining whether land, buildings, or structures are being used exclusively for agricultural purposes, it is not a prerequisite that the owner applied for, and was granted, property taxation pursuant to the State's Farmland Assessment Act.

B. The County shall first determine whether it has jurisdiction over any lands before exercising any rights to regulate the same. In making this determination, the County may require that a property owner who claims exemption under this section apply for a certificate of use and affirm the buildings or structures are necessary to the operation of farmland and land is being used exclusively for agricultural purposes.

C. Residential buildings and structures located on agricultural land shall be subject to the provisions of this Code.

### **ARTICLE 2. FARMLAND PRESERVATION PROGRAM**

#### **Division 29.02.000. General.**

#### **Section 29.02.001. Purpose and Policy.**

It is declared policy of New Castle County to protect and conserve farmland within New Castle County for the production of food, to conserve our natural resources, to foster and encourage the County's agricultural industry, to preserve property values, to ensure the continued existence of farming and farmland in areas subject to development pressures, and to protect our quality of life. There shall hereby be established a program known as the New Castle County Farmland Preservation Program to conserve and protect farmland located in New Castle County and to encourage, promote and protect farming as a valued occupation. The program shall provide an effective strategy for the retention and future viability of important farmland through the purchase of conservation easements, development rights and other mechanisms deemed advisable by the New Castle County Farmland Preservation Trust.

#### **Section 29.02.002. Definitions.**

The following words, terms, and phrases when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Department of Land Use means the New Castle County Department of Land Use.

Farmland means any land that is exclusively devoted to the production of food or other products useful to humans that are grown, harvested, or raised on such lands. This includes lands subject to all types of agricultural use including agriculture, horticulture, animal husbandry, or silviculture.

Office of Finance means the New Castle County Department of Administration, Office of Finance.

**Division 29.02.100. Board of Trustees of the New Castle County Farmland Preservation Trust.**

**Sec. 29.02.101. Established; members; terms.**

A. The Board of Trustees of the New Castle County Farmland Preservation Trust shall consist of eight (8) members. The County Executive shall appoint three (3) members, one (1) of which shall be a member of the New Castle County Farm Bureau. The New Castle County Council shall appoint four (4) members, one (1) of which shall be a member of the New Castle County Farm Bureau, and one (1) of which shall be a faculty member of one of the agricultural departments of one of the Delaware land grant colleges. The General Manager of the Department of Land Use, or his or her designee, shall serve ex-officio as a non-voting member. The Trustees shall be persons who are knowledgeable in the field of agriculture, land conservation or land use. The County Executive shall designate a Trustee as Chairperson. The Trustees shall be responsible for the operation of the Trust according to the requirements of this Chapter.

B. Each Trustee shall be appointed to a three year term. Initial appointments shall be staggered as one (1), two (2) and three (3) year appointments, with each subsequent appointment to be three (3) years. An individual may serve until replaced and may be reappointed any number of times. In the event of death, permanent disability, resignation or failure to perform duties of a Trustee, the County Executive shall appoint an interim Trustee to serve the unexpired term of the departing Trustee.

C. For the purposes of conducting business of the Trust, four (4) Trustees shall constitute a quorum. A majority vote of the voting members constituting the quorum shall be required for action on any matter before the Trust. All votes on matters before the Trust shall be conducted at meetings open to the public. Nothing shall prevent the Trustees from meeting at executive sessions, which are closed to the public for purposes of discussing confidential Trust matters.

D. The Trustees shall not be entitled to compensation for the services they provide to the Trust; however, each Trustee shall be entitled to reimbursement for actual and necessary expenses incurred to enable the performance of official duties.

E. No Trustee shall be entitled to vote on any matter before the Trust if such Trustee knowingly has a financial interest in the outcome of such matter. In the event a Trustee knowingly has a financial interest, such Trustee shall indicate to the Chairperson the nature of the interest and the Chairperson shall note for the record that the Trustee did not vote by reason of conflict of interest. In situations in which a Trustee does not vote by reason of conflict of interest, the matter pending before the Trust shall be decided on the basis of a majority vote of the remaining Trustees present who do not have a conflict of interest. A Trustee having a conflict of interest as set forth herein shall be counted for purposes of establishing a quorum provided such Trustee is present at the meeting. The fact that a Trustee has not voted by reason of conflict of interest shall in no way affect the validity of an act or actions taken regarding the matter before the Trust.

#### **Section 29.02.102. Authority of the Trust.**

A. The Farmland Preservation Trust may purchase development rights, obtain conservation easements, trade or sell development rights, option parcels, purchase land, or otherwise carry out the purposes of this Chapter by any feasible means that will preserve farmland in an efficient and economic manner. The Board shall work with data from the Department of Land Use to ensure that parcels acquired by the Trust are not those that would otherwise be fully protected by County ordinances, acquired or to be acquired as parkland, or preserved or designated for preservation as open space as part of a planned development. The Trust shall work with local, state, and national conservation organizations to ensure that the Trust does not acquire parcels such groups are planning to protect. Parcels of land shall not be purchased in fee simple unless the Trust can identify an organization that shall be responsible for its continued operation that has demonstrated the financial and technical ability to operate the farm to the satisfaction of the Trust.

B. The Trust may seek, obtain, and utilize federal and private funding; may accept gifts, grants or loans of funds, property or service from any source, private or public; and may receive funds from the sale of general bonds, revenue bonds or other obligations of the County or of the State or under the name of the Trust.

C. The Trust may utilize a bond issuance arrangement providing tax-free interest payments to a property owner for a period of years to maximize its available resources unless the owner of a high priority parcel, acquisition of which is critical to this program, refuses to sell development rights or an easement without full payment at the time of purchase. The Office of Finance shall assist the Trust in arrangements for the issuance of bonds. The approval for the issuance of bonds for this purpose shall be the highest priority when it appears on Council's Agenda.

D. The Trust shall have the authority to cause the preparation of maps, land studies, appraisals and any other information or data necessary to identify and select parcels of farmland that are the most likely to further the purposes of this Chapter. The Trust shall have the authority to pay for the costs of such data from the Farmland Preservation Trust Fund.

E. The Trust shall have the authority to direct the Department of Land Use and the Office of Finance in all Trust matters. This includes the power to request the preparation of documents, reports and data necessary for the efficient operation and management of the Trust.

F. The Trust shall have the authority to enter into agreements to effectuate the purposes and policy of this Chapter. Such agreements shall be executed by the Trustee designated as the Chairperson.

G. The Trust shall have those powers and necessary and incidental to effective operation and management of the Farmland Preservation Program and not otherwise prohibited by law.

### **Section 29.02.103. Duties of the Trust.**

A. The Trust shall make such rules and regulations as it deems necessary for the efficient and prudent operation and administration of the Trust and shall hold regular meetings. Such meetings shall be public except those portions that occur during executive sessions.

B. The Trust shall hold public hearings to recommend and establish criteria, and any other issue which the Trust deems would benefit from public comment. At least seven (7) days advanced notice of the hearing shall be published in a newspaper of general circulation throughout New Castle County. The notice shall also be posted in a public area in the Department of Land Use. The notice shall include a brief description of the proposed criteria, the time and place of the hearing, and a time and place where copies of the proposed criteria may be obtained or reviewed. After public hearing, the Trust shall be responsible for the adoption of, and any amendment to the criteria.

C. The Trust shall prepare, or cause to be prepared, an annual report due on April 1<sup>st</sup>, to County Council and the County Executive delineating for the reporting period: farmland preserved including acreage and the method of preservation; a financial accounting of the Farmland Preservation Fund including expenditures and income sources; and such other information deemed appropriate.

D. The Trust shall recommend criteria to County Council for the establishment of a farmland preservation district.

**Division 29.02.200. Acquisition of development rights and conservation easements.**

**Sec. 29.02.201. Priority for acquisition.**

Where the Trust can identify adjacent or nearly adjacent multiple parcels that may be acquired in furtherance of the goals of the Farmland Preservation Program, the Trust shall give the highest priority to the acquisition of those development rights or conservation easements.

**Sec. 29.02.202. Criteria for acquisition.**

A. Criteria for the purchase of development rights, conservation easements or any other type of acquisition shall be subject to the following order of priority:

1. From owner/operators of working cropland in New Castle County that is unprotected by any federal, state, or private land preservation program; and,
2. From owner/operators of working farmland in New Castle County who desire to continue farming, but economic conditions beyond the owner's control threaten the continued viability of the farm operation; and,
3. From owners of farmland that has been identified as essential for maintenance of a healthy ecosystem in New Castle County, but where the farmland is not protected by Chapter 40 of this Code, or by agreement with a conservation organization, and is not part of an application for development.

**Sec. 29.02.203. Maps and studies.**

The Trust may utilize the maps, land studies, and any other expert or technical advice in any form from County, state, and federal agencies, any accredited University or College, or conservation organizations to identify and select parcels of farmland that are the most likely to further the purposes of this Chapter.

**Sec. 29.02.204. Appraisals.**

Appraisals of the value of the parcels of farmland and their development rights shall be obtained by the Trust from contracts with independent certified appraisers. The independent certified appraisers shall be experienced in farmland appraisals and appear on the approved Delaware Department of Agriculture appraisers list. The independent certified appraisers selected may not have kinship ties, or financial or business associations with any landowner whose land he or she is selected to appraise.

**Sec. 29.02.205. Easements and restrictions; overlays.**

The Trust shall require that each acquisition be established by the execution of legally binding documents, such as a conservation easement or preservation agreement, that are recorded in the Office of the Recorder of Deeds in and for New Castle County. The Trust shall establish that each easement or agreement be consistent in terms, conditions and restrictions but may vary depending on the specific properties of the farmland. A copy of the easement or agreement shall be maintained in the Department of Land Use. The Trust may also instruct the Department of Land Use to document the existence of the conditions and restrictions burdening farmland subject to this Chapter by creating an overlay identifying the farmland preservation district on the official maps of New Castle County. The Trust may also instruct the Department of Land Use to correct the designation of the zoning of participating farmlands to reflect the existence of a farmland preservation district at such time such designation is available.

**Sec. 29.02.206. Duration of restrictions.**

It is the intent of the Chapter that all restrictions placed on farmland under this program shall be permanent.

**Sec. 29.02.207. Compliance.**

The owner of farmland that is subject to this Chapter must agree to abide by all applicable rules and regulations for the use of the farmland promulgated by state and federal agencies. All necessary state and federal permits must be current, and the owner or operator must be in compliance with applicable nutrient management regulations, nutrient management plans, technical standards and best management practices as required by the State of Delaware or the federal government.

**Division 29.02.300. New Castle County Farmland Preservation Fund.**

**Sec. 29.02.301. Establishment of Fund.**

There shall be established a New Castle County Farmland Preservation Fund which shall be referred to as the "Farmland Preservation Fund."

**Sec. 29.02.302. Management, administration.**

A. The Office of Finance shall be responsible for the administration of the fund upon the direction of the Board of Trustees.

B. The Office of Finance shall maintain books and records and make fund information available to the Trust upon request and shall provide an accounting of the fund to the Trust on a quarterly basis calculated on the County's fiscal year, or as otherwise required by the Trust.

C. The Office of Finance shall accept designated contributions for the operation of the Farmland Preservation Fund and shall issue payments to participating property owners upon the direction of the Trust.

**Sec. 29.02.303 Financing acquisitions.**

The Trust may utilize any source of funding to acquire development rights, conservation or preservation easements, or title to land including but not limited to: federal and private funding, gifts, grants or loans of funds, funds from the sale of general bonds, revenue bonds or other obligations of the County or of the State or under the name of the Trust. The Trust may also utilize a bond issuance arrangement providing tax-free interest payments to property owners.

**Division 29.02.400. Enforcement.**

**Sec. 29.02.401. Enforcement of Restrictions.**

A. The Trust shall be responsible for the monitoring and enforcement of the requirements and restrictions imposed by and under the provisions of this Chapter. The Trust may direct the Department of Land Use to maintain records to assist in the monitoring and enforcement of this Chapter or conduct periodic inspections to ascertain compliance with the Farmland Preservation Program.

B. The County, on behalf of the Trust, shall be entitled to take action in any court of competent jurisdiction to enforce any restrictions or requirements imposed under this Chapter, duly adopted ordinances, and binding legal instruments. In any such action, the County shall, if it prevails, be entitled to recover its reasonable costs and expenses, including reasonable attorney fees.

Section 5. The Trustees of the Farmland Preservation Trust may utilize an experienced consultant, on a temporary basis, for purposes of training and start-up of this program. The consultant may be paid from funds allocated to farmland preservation. In order to have the program operating as soon as possible to avoid the reversion of appropriated funds, advertising requirements for a Request For Proposal are hereby waived and the Trustees are authorized to explore, among other options, rapidly acquiring assistance from neighboring states through a purchase of personal services agreement.

Section 6. The Department of Land Use is hereby authorized to pay from funds designated for farmland preservation for the part-time services of an assistant with training in any of the biological and/or agricultural sciences and experience in field work in the State of Delaware to assist in the implementation of this program. The decision of whether to retain the services of this person either part-time or full-time in the future shall be made by the Department of Land Use in consultation with the Board of Trustees after the program has been operating for four months. In the alternative, the Department of Land Use may temporarily engage a suitable full-time person from a local college, business, foundation, or agency to assist in the rapid start-up of this program.

Section 7. 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 under previous *New Castle County Code* provisions.

Section 8. 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.

Section 9. This ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive, or as otherwise provided in 9 *Del. C.* § 1156.

Adopted by County Council of  
New Castle County on:

---

President of County Council  
of New Castle County

Approved on:

---

County Executive  
New Castle County

**SYNOPSIS:** The purpose of this ordinance is to create a Farmland Preservation Program for New Castle County. It also creates the New Castle County Farmland Preservation Trust that will administer the Program with the assistance of the Department of Land Use. The ordinance further

provides for the establishment of the New Castle County Farmland Preservation Fund that will be administered by the Office of Finance under the direction of the Trust. This ordinance also consolidates provisions relating to agriculture under the new Chapter 29 of the *New Castle County Code*.

**FISCAL NOTE:** This legislation, if adopted, would establish a Farmland Preservation Program for New Castle County. It also creates the New Castle County Farmland Preservation Trust that will administer the program. The Trust may utilize any source of funding to acquire development rights, conservation or preservation easements, or title to land including but not limited to: federal and private funding, gifts, grants or loans of funds, funds from the sale of general bonds, revenue bonds or other obligations of the County or of the State or under the name of the Trust. The Trust may also utilize a bond issuance arrangement providing tax-free interest payments to property owners.

The Office of Finance shall be responsible for the administration of the fund upon the direction of the Board of Trustees.