

Introduced by: Mr. Reda, Mr. Tackett
Date of introduction: November 22, 2011

**SUBSTITUTE NO. 2 TO
ORDINANCE NO. 11 - 109**

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 28 ("PLANNING") AND
CHAPTER 40 ("UNIFIED DEVELOPMENT CODE OR UDC")
REGARDING COMPREHENSIVE PLANNING**

WHEREAS, a Comprehensive Development Plan was adopted by New Castle County on November 9, 1988, and Comprehensive Development Plan Updates were subsequently adopted on January 2, 1997, March 25, 2002, and July 24, 2007; and

WHEREAS, 9 *Del. C.* § 2660 requires New Castle County to update its Comprehensive Development Plan every five (5) years; and

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

WHEREAS, a new Comprehensive Development Plan has been created building upon the 1988 Comprehensive Development Plan and the 1997, 2002 and 2007 Comprehensive Development Plan Updates, as well as incorporating the elements and policy recommendations required by 9 *Del. C.* § 2656; and

WHEREAS, the new Comprehensive Development Plan will need to be certified by the State of Delaware pursuant to 9 *Del. C.* § 2658; and

WHEREAS, the new Comprehensive Development Plan was reviewed with Governor's Cabinet Committee on State Planning Issues on October 27, 2011 and PLUS on November 23, 2011 with written comments on December 22, 2011; 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 28 ("Planning"), Section 28.01.003 ("Comprehensive development plan") is hereby amended by adding the material that is underscored and deleting the material stricken, as set forth below:

Sec. 28.02.003. Comprehensive development plan.

A. The comprehensive development planning process....

B. The comprehensive development plan for the County, as prepared by the Department of Land Use, approved by the Planning Board, presented by the County Executive to the County Council, and revised by the County Council is hereby adopted in accordance with 9 *Del. C.* ch. 26, subject to this Section. The components of the plan are as follows:

1. Comprehensive Development Plan, November 29, 1988, including land use concept map attached thereto.
2. 1997 Comprehensive Development Plan Update, adopted by Ordinance 96-139 in April 1997.
3. 2002 Comprehensive Development Plan Update, adopted by Ordinance 01-102 in March 2002.
4. 2007 Comprehensive Development Plan Update, adopted by Ordinance 06-140 on July 24, 2007.
5. 2012 Comprehensive Development Plan Update, adopted by Ordinance 11-109 on April 24, 2012.

C. The adoption of the comprehensive development plan shall....

D. The plan is not a decision of specific land use proposals....

E. The annual profiles, issue papers, working drafts....

Section 2. *New Castle County Code Chapter 40* ("Unified Development Code or UDC"), Division 40.33.100 ("Word usage"), Section 40.33.110 ("County terms") is hereby amended by adding the material that is underscored and deleting the material stricken, as set forth below:

Sec. 40.33.110. County terms.

A. The word "Council" shall mean....

....

G. The words "Comprehensive Development Plan" shall mean the Comprehensive Plan of New Castle County. It means all maps, charts and exploratory materials adopted by Ordinance [~~06-140 on July 24, 2007~~] 11-109 on April 24, 2012, and any subsequent amendments thereto.

....

Section 3. 2012 Comprehensive Development Plan Update. The adoption of this Ordinance will approve the New Castle County 2012 Comprehensive Development Plan Update consisting of the October 24, 2011 Draft; amendments recommended by the Department of Land Use and Planning Board in their report dated, February 21, 2012; and, amendments approved by County Council at the County Council Hearing on April 24, 2012 and to become effective July 1, 2012.

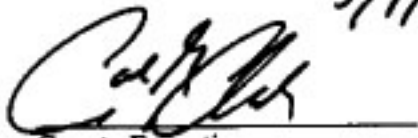
Section 4. Inconsistent Ordinances and Resolutions Repealed. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as 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 passage by New Castle County Council and signature of the County Executive, or as otherwise provided in 9 *Del.C.* § 1156.

Approved on:

Adopted by County Council of
New Castle County on: 4/24/12


County Executive


President of County Council

SYNOPSIS: The purpose of this amendment is to update New Castle County's Comprehensive Development Plan as required by the State of Delaware's Quality of Life Act.

FISCAL NOTE: There is no discernable fiscal impact with the adoption of this ordinance.

