

Introduced by: Mr. Hollins
Date of introduction: October 10, 2017

**SUBSTITUTE NO. 1 TO
ORDINANCE NO. 17-094**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR “UDC”),
ARTICLE 7 (“TRANSFER OF DEVELOPMENT RIGHTS AND OTHER
INCENTIVES AND BONUSES”) REGARDING THE TRADITIONAL
NEIGHBORHOOD HOUSING PROGRAM**

WHEREAS, in December of 2014, County Council adopted Substitute No. 2 to Ordinance No. 14-109 creating the Traditional Neighborhood Housing Program (“Program”) to facilitate the supply of housing available to households with moderate incomes; and

WHEREAS, in the first two years since adoption of the Program, only two rezoning applications were submitted that triggered the application of the Program requirements; and

WHEREAS, the applicants have expressed concerns that compliance with the Program will create a financial hardship under current market conditions; and

WHEREAS, the *Delaware Housing Needs Assessment 2015-2022*, issued by the Delaware State Housing Authority, indicates an existing need for affordable rental units in New Castle County; and

WHEREAS, County Council has determined that the provisions of this Ordinance will substantially advance, and are reasonably and rationally related to, legitimate government interests by promoting the health, safety, morals, convenience, order, prosperity and welfare of the citizens of New Castle County.

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

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 7 (“Transfer of Development Rights and Other Incentives and Bonuses”), Division 40.07.500 (“Traditional Neighborhood Housing Program”), Section 40.07.510 (“Mandatory applicability”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.07.510. Mandatory applicability.

Required Moderately Priced Dwelling Units (“MPDUs”). . . .

- A. On all rezoning applications proposing twenty-five (25) or more dwelling units.
1. If the number of dwelling units proposed with the rezoning are increased by one hundred (100) percent or more over the number of dwelling units under the base density of the existing zoning, ~~[twenty (20) percent of all dwelling units shown on the proposed plan shall be set aside as MPDUs]~~ the required MPDU set-aside shall be based upon the number of housing types shown on the proposed plan.
 - a. On plans proposing five (5) or more housing types, fifteen (15) percent of all dwelling units shall be set aside as MPDUs.
 - b. On plans proposing less than five (5) housing types, twenty (20) percent of all dwelling units shall be set aside as MPDUs.
 2. If the number

Section 2. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 7 (“Transfer of Development Rights and Other Incentives and Bonuses”), Division 40.07.500 (“Traditional Neighborhood Housing Program”), Section 40.07.551 (“Homeownership MPDUs”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.07.551. Homeownership MPDUs.

A. **Maximum Sales Price (MSP).** The MSP shall ~~[will]~~ be established for unit size based on presumed household size and the qualifying level for the applicable AMI target. The MSP shall be reflected on ~~[the] Maximum~~ Allowable Sales Price Calculation Charts maintained by the Department of Community Services.

B. **AMI targets.** MPDUs designated for homeownership shall be made available to ~~[serve]~~ homeowners at two income levels calculated as AMI.

1. *Ninety (90) percent AMI target.* ~~[a-]~~Fifty (50) percent of the MPDUs shall be affordable to qualified households ~~[buyers]~~ with household income[s] up to ninety (90) percent of [the] AMI.

~~[b.—The MSP for MPDUs designated for the ninety (90) percent target shall be priced at no more than the qualifying level for a buyer at or below eighty (80) percent AMI.]~~

2. *Seventy-five (75) percent AMI target.* ~~[a-]~~Fifty (50) percent of the MPDUs shall be affordable to qualified households ~~[buyers]~~ with ~~[in]~~ household income[s] up to seventy-five (75) percent of [the] AMI.

~~[b. The MSP for MPDUs designated for the seventy-five (75) percent target shall be priced at no more than the qualifying level for a buyer at or below sixty-five (65) percent AMI.]~~

Section 3. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 7 (“Transfer of Development Rights and Other Incentives and Bonuses”), Division 40.07.500 (“Traditional Neighborhood Housing Program”), Section 40.07.552 (“Rental MPDUs”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.07.552. Rental MPDUs.

- A. Rental MPDUs shall be permitted as follows:
 - 1. In land developments designed as rental communities such as apartment complexes or rental townhouse communities, one hundred (100) percent of the MPDUs may be rental.
 - 2. In land developments not designed as rental communities, up to fifty (50) percent of the MPDUs may be rental.
- B. MPDUs designated for homeownership
- C. Maximum Allowable Rent (MAR). MAR shall be determined by the Department of Community Services upon the submission of the request for affordable rent determination form. MAR shall be established at rates affordable to qualified households with incomes equal to seventy-five (75) percent of AMI.
 - ~~1. All MPDUs offered for rental must serve households with qualifying incomes up to seventy-five (75) percent of AMI.~~
 - ~~2. MAR for MPDUs shall be established at rates affordable to households at sixty-five (65) percent of AMI.]~~
- D. Household Eligibility. Rental MPDUs shall be made available only to qualified households with incomes up to seventy-five (75) percent of AMI.

Section 4. 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 5. 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 6. 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 7. 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.* § 1156.

Section 8. This Ordinance shall apply to land development applications submitted after its effective date and, upon the written request of an applicant, also shall apply to any land development application that was submitted to the Department of Land Use after December 19, 2014 that has not yet received final approval by the effective date of this Ordinance.

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: This Ordinance amends the Traditional Neighborhood Housing Program. This Ordinance will allow the reduction of the number of moderately priced dwelling units ("MPDUs") required on certain subdivision plans that provide at least five (5) housing types. Accordingly, in situations where a twenty (20) percent MPDU set-aside is required, if five (5) housing types are offered, the MPDU set-aside requirement will be

reduced to fifteen (15) percent. The Ordinance also eliminates the eligibility window for homeownership and rental MPDUs, thus raising the allowable maximum sales price and rental price by ten (10) percent. The Ordinance also eliminates the prohibition of rental MPDUs in non-rental communities and allows up to fifty (50) percent of the MPDU set-aside requirement to be rental MPDUs.

Substitute No. 1 eliminates the provisions that would have increased the contribution to the housing trust fund from \$12.00 to \$24.00 per \$1,000 of permit construction valuation for certain market rate units. The sections were renumbered to account for the removal of Section 2.

FISCAL IMPACT: This Ordinance has no discernable fiscal impact.