

Introduced by: Mr. Carter
Date of introduction: November 12, 2019

ORDINANCE NO. 19-108

**TO AMEND *NEW CASTLE COUNTY CODE CHAPTER 40*
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR “UDC”),
ARTICLE 22 (“DRAINAGE, UTILITIES, SEPTIC SYSTEMS,
PARKING, LOADING, AND LIGHTING”), REGARDING ON-SITE WASTEWATER
TREATMENT (SEPTIC) SYSTEMS**

WHEREAS, Ordinance No. 13-097 eliminated all standards and conditions for the installation of individual on-site wastewater treatment (“septic”) systems including the minimum lot size requirements from Article 22 of the UDC; and

WHEREAS, by adopting Ordinance No. 13-097, County Council recognized that the Delaware Department of Natural Resources and Environmental Control (“DNREC”) regulates on-site wastewater treatment and disposal and administers the septic system approval process in New Castle County; and

WHEREAS, while it was believed that DNREC Septic Regulations alone would suffice, the County Council now recognizes that an unintended consequence of the elimination of the UDC on-site wastewater treatment and disposal provisions is the increased submission of major land development plans proposing the development of large residential communities on septic systems and concerns regarding the safety and protection of water resources; and

WHEREAS, Ordinance No. 18-093 created a one-year stay on the acceptance of any major land development plan that proposed the use of septic and it permitted one minor land development plan to be accepted and processed during the stay for any lot legally existing prior to the enactment of the temporary stay for the purpose of allowing adequate time to “research and consider septic use throughout New Castle County;” and

WHEREAS, New Castle County Department of Land Use contracted with the University of Delaware Water Resource Agency and with Duffield Associates to develop reports on septic systems to guide County policy based on readily available, but older, data and reports; and

WHEREAS, additional research and discussions with technical experts have added to the County’s understanding of policy for septic systems which has led to the development of a precautionary policy for use of septic systems that is based on information in the two contracted reports completed in response to Ordinance No. 18-093, peer-review scientific literature, and guidance from technical experts outside of County government including Delaware Geological Survey, DNREC Division of Water Resources, academic experts, and private engineering professionals; and

WHEREAS, the May 2019 White Paper for the Southern New Castle County Wastewater Plan by the University of Delaware Water Resources Center (the “WRC”) provides strong arguments for the conversion of existing residential development with on-lot septic systems to sewer where infrastructure is available; and

WHEREAS, the existing impact to water resources from agricultural use should be considered in evaluating the proposed redevelopment of such land for residential use with on-lot septic systems where sewer infrastructure is not currently available; and

WHEREAS, the 2010 Chesapeake Bay Watershed Implementation Plan (US EPA, 2010) nitrogen loading allocations to the Chesapeake Bay Watershed from septic systems in New Castle County are 1.2% of the total from Delaware agricultural sources and 0.9% of the total from Delaware; and

WHEREAS, estimated Nitrogen loading allocations per unit area from septic systems is around 1/3 that under agricultural use; and

WHEREAS, allowing some redevelopment of existing agricultural land to residential uses with on-lot septic provides near-term improvement to water resource conditions, pending long-term future development of sewer infrastructure; and

WHEREAS, watershed-specific protections intended for the environmentally sensitive Chesapeake Bay should not be misapplied to the Delaware River Watershed; and

WHEREAS, the WATBUG nitrogen load model (1992) cited in both studies completed under contract by the NCC Department of Land Use in response to the temporary moratorium on septic systems provided by Ordinance No. 18-093 estimated a 2 to 3-acre minimum lot size for septic systems would be protective of water quality assuming a 1 in 20-year failure rate (5%) and an allowable nitrogen concentration in groundwater of 10 mg/l. This is a much larger lot size than indicated by more recent peer-review scientific literature of studies in Delaware that suggested smaller lots might be adequate (Kasper, Denver, York; 2015), notwithstanding this, the 2-acre average lot size is an established precautionary guideline to ensure the protection of water quality; and

WHEREAS, it is stated in both reports completed in response to Ordinance No. 19-093 and it is widely acknowledged in credible scientific studies that, as a general matter, regular inspections and maintenance, including tank pump-outs, are major contributors to the functionality and longevity of septic systems and septic tank pump-outs do significantly reduce pollutant loads from septic systems; and

WHEREAS, these additional studies and expert guidance indicated that restoring some of the requirements for septic systems removed by Ordinance No. 13-097, additional considerations for minimum lot sizes to be abundantly cautious about protection of water quality, and the addition of septic inspection and maintenance requirements are needed to ensure water quality protection and improvement in New Castle County; and

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

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

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 22 (“Drainage, Utilities, Septic Systems, Parking, Loading, and Lighting”), Division 40.22.330 (“Use of on-site wastewater disposal (septic) systems”), Sec. 40.22.340 (“Reserved”), Sec. 40.22.350 (“Reserved”) and Sec. 40.22.360 (“Reserved”) are hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below:

~~Sec. 40.22.330. Use of on-site wastewater disposal (septic) systems.~~ Wastewater disposal connections.

Where discharge to a sanitary sewer system is not required in accordance with section 40.22.320, septic systems may be utilized subject to the applicable regulations of DNREC and this Article. All septic systems used in the County shall be systems that have been approved by DNREC and the Department. The Department may grant an exception to the on-lot septic system standards in section 40.22.340 when an alternative system is approved by DNREC. When the Department does not approve an alternative on lot septic disposal system, which has been approved by DNREC, the applicant may appeal the Department decision to the Planning Board.

Sec. 40.22.340. Standards Reserved.

A. Standards for all septic systems permitted by this Article.

1. Site evaluations. Site evaluations shall be conducted on the native soil within each lot on which the disposal fields are proposed to be located to determine the type of septic system that may be permitted.
2. Disposal fields. All septic systems shall be installed with dual alternating disposal fields. Sufficient ground area must be reserved for the later installation of a single field replacement system. Should there not be adequate ground available to accommodate the dual field primary system, then an area shall be reserved for a single field replacement system, and the primary system shall consist of a single disposal field that has been expanded to the greatest possible extent to permit the various laterals to be alternated.
3. Protection from soil compaction. Prior to the commencement of any construction on the lot, the area of the lot approved for the placement of the disposal fields shall be fenced in or otherwise sectioned off from the construction site in order to prevent the compaction of the soil by construction equipment during the construction of the principal building.
4. Timing of installation. The applicant shall either install such a septic system or shall require, by deed restriction or otherwise, as a condition of the sale of each lot within

the subdivision, that such septic system shall be installed by the purchaser of a lot at the time that a principal building is constructed thereon.

5. Size and shape of lots. Each lot served shall be of a size and shape to accommodate the necessary length of the fields at a safe distance from the proposed buildings.

B. Standards for all replacement septic systems on lots not subject to the mandatory connection requirement of this Article.

1. Replacement system site evaluations. Site evaluations shall be conducted on the native soil in the area of each lot in which the disposal fields are proposed to be located to determine the type of septic system that may be permitted.

Sec. 40.22.350. Maintenance, Inspection, and Notification. ~~Reserved.~~

A. Maintenance and notification requirements for all existing, future, and replacement septic systems.

1. Maintenance. All septic systems shall be inspected and maintained at least once every three years and done in accordance with DNREC's onsite wastewater treatment and disposal regulations.
2. Documentation of maintenance must be provided to New Castle County within 3 months of completion of maintenance activity.
3. Failure to provide documentation of septic system maintenance is a violation of Code with a penalty of \$100 per year.
4. It shall be the responsibility of the homeowner to have periodic maintenance of the system completed and to submit documentation of such maintenance to the Department.
5. It shall be the responsibility of the homeowner to rotate the disposal fields of a dual field system on a monthly basis.
6. Failed systems. DNREC and NCC Department of Public Works shall be notified within 72 hours by any property owner of the failure of a septic system.

Sec. 40.22.360. Lot size and density requirements for all unsewered lots. ~~Reserved.~~

A. On any subdivision lot where a septic system is allowed by this Article, the minimum lot areas shall be scaled in a cumulative manner to provide variable lot sizes with increasing average lot sizes for larger developments, as reflected in the following table.

Table 40.33.360. Minimum lot sizes for size of subdivision.*

<u>Subdivision Size (# of lots)</u>	<u>Cumulative # of lots</u>	<u>Incremental Increase in # of Lots</u>	<u>Acres per Lot</u>	<u>Min. Avg. Lot Size in Subdivision</u>	<u>Max. Avg. Lot Size in Subdivision</u>
<u>10 lots or less</u>	<u>10</u>	<u>10</u>	<u>1</u>	<u>1.00</u>	<u>1.00</u>
<u>Additional 11-25 lots</u>	<u>25</u>	<u>15</u>	<u>2</u>	<u>1.09</u>	<u>1.55</u>
<u>Additional 26-99 lots</u>	<u>99</u>	<u>84</u>	<u>3</u>	<u>1.85</u>	<u>2.95</u>
<u>> 99 lots</u>	<u>Not Allowed</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>	<u>n/a</u>

*Subdivision of a parcel must be done in strict conformity in all respects with the limitations established by Table 40.33.360. Moreover, subdivision of a parcel in a manner that may circumvent Table 40.33.360 or otherwise does not strictly conform with the limitations set forth in Table 40.33.360 is prohibited. By way of example and not limitation, if a parcel has previously been subdivided and approved for septic systems in accordance with this Code, any subsequent subdivision of that parcel will be limited by and strictly subject to the maximum lot limitation established by Table 40.33.360, which shall represent the cumulative maximum number of lots with septic systems for the original undivided parcel.

The Department may grant an exception to the minimum lot size scaling for a subdivision in the Delaware River sub-watershed or a portion of a sub-watershed when a credible pollutant load study as determined by industry standards that considers all pollutant sources has been conducted and documents that the septic system standards in Section 40.22.340 and minimum lot sizes will either not violate Delaware Water Quality Standards or will lead to a net improvement in water quality due to land conversion, provided that no lots are less than 1 acre in size, and the total number of lots does not exceed 99.

Section 2. Consistency with the 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 3. 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 4. 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 5. 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 and shall only apply to Land Use applications submitted after such date(s).

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 provides standards and restrictions on major and minor land development plans or plans that propose the use of on-site wastewater treatment.

FISCAL IMPACT: No discernable fiscal impact.