

Introduced by: Ms. Kilpatrick,
Mr. Sheldon
Date of Introduction: February 23, 2021

**SUBSTITUTE 1
TO
ORDINANCE NO. 21-018**

**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, 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 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; and

WHEREAS, after adopting Ordinance No. 18-093, the Department of Land Use (the “Department”) and County Council recognized that the elimination of the UDC on-site wastewater treatment provisions resulted in the unintended consequence of stimulating the creation of major land development plans for large residential communities on septic systems; and

WHEREAS, in 2018 the Department became aware of proposals for over nine hundred (900) residential units on septic systems in the Upper West Wing of Southern New Castle County; and

WHEREAS, the Department and County Council recognized that the proliferation of development on septic systems results in the degradation of water quality and encourages sprawl; and

WHEREAS, in adopting Ordinance No. 19-078, the Department and County Council recognized the need to immediately limit the use of septic systems to subdivisions of five (5) lots or fewer in the Suburban (S) district to prevent the proliferation of septic

systems while the sewer plan and the Southern New Castle County Master Plan were finalized; and

WHEREAS, the Department of Public Works has updated its sewer plan for southern New Castle County, which is integrated into the draft Southern New Castle County Master Plan (the “Plan”); and

WHEREAS, the Plan outlines the sewer service areas over the next ten years based upon existing population projections, infrastructure capacity and financial considerations; and

WHEREAS, New Castle County continuously tracks development and population projections and updates its sewer and land use plans to ensure that infrastructure is in place as needed to support development; and

WHEREAS, State law requires the County to review its Comprehensive Development Plan every five years and to officially update it every ten years; and

WHEREAS, the phased provision of additional central sewer infrastructure will be determined based upon the regular tracking of population projections and the regular review and updates of the Comprehensive Development Plan, and

WHEREAS, once properties are eligible to become connected to central sewer they are no longer affected by the provisions in this ordinance; and

WHEREAS, consistent with the draft Plan, the County is committed to establishing and funding a long-term preservation program, including the preservation of both open space and agricultural land; and

WHEREAS, to further its commitment to land preservation, the County created the Land Preservation Task Force and then established an Open Space Advisory Board and an Agricultural Land Preservation Advisory Committee to assist in the prioritizing and acquisition or preservation parcels; and

WHEREAS, over the past several years the County has resumed its participation in the State’s agricultural preservation program and has acquired agricultural easements covering over 600 acres, with an easement for a 247-acre farm currently moving forward in the most recent round; and

WHEREAS, this year the County acquired a conservation easement for the 200-acre Fortner Farm, protecting both critical wetlands and old growth forest in addition to agricultural land in the Port Penn area, and

WHEREAS, the County has protected over 1,300 acres of land in the past four years, most of which is located in southern New Castle County; and

WHEREAS, the County has committed 2.5 million dollars for agricultural and open space preservation in each of the current and next fiscal years; and

WHEREAS, the County is committed to developing a consistent revenue source to fund the preservation of agricultural land and open space; and

WHEREAS, the County intends to include the creation of an impact fee to fund preservation in its upcoming study and review of County impact fees and shall proceed with such a fee provided it meets all legal and financial guidelines; and

WHEREAS, the Department and County Council intended that Ord. 21-018, introduced on February 23, 2021, be adopted prior to the expiration of the stay on August 26, 2021, but public notice of the consideration of Ord 21-018 was inadvertently delayed such that it will be voted upon a short time after expiration; and

WHEREAS, New Castle County Code Section 40.22.320.D. should continue to have effect; and

WHEREAS, County Council intends that the pending ordinance doctrine apply to restrict the acceptance of subdivision applications that would otherwise be prohibited by Section 40.22.230.D during the interim; and

WHEREAS, New Castle County Council has determined that the provisions of this ordinance will substantially advance, and are reasonably related to, legitimate governmental 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 40.22.300 (“Sanitary sewer”), Section 40.22.320 (“Wastewater disposal connections”) is hereby amended by deleting the material that is stricken, as set forth below:

Sec. 40.22.320. Wastewater disposal connections.

C. The Department of Public Works . . .

D. The Department of Land Use may not accept a plan to subdivide a Suburban (S) zoned lot into more than five (5) lots unless the subdivision is served by public sewer. Where not served by public sewer, a maximum of five (5) lots may be created within the boundaries of a Suburban (S) zoned lot that legally existed prior to the adoption of Ordinance 19-078. Lots not served by sewer may transfer development rights to development(s) served by sewer consistent with provisions of Article 7 of this Chapter. As sewer service is expanded in New Castle County, Subsection D [expires on August 26, 2021, unless otherwise provided by a subsequent act of New Castle County Council] will

not apply to parcels within a recognized sewer service area, where sewer capacity is available, and where a suitable sanitary sewer line is accessible to the property as determined by the Department of Public Works.

Section 2. 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. 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. 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 amendment strikes the expiration date of August 26, 2021 from Section 40.22.320.D. Substitute No. 1 ratifies the continued effect of Section 40.22.320.D, but emphasizes the temporary nature of Subsection D as it applies to land that comes to be served by sewer. It is the intent of County Council that the pending ordinance doctrine shall apply to any land use application submitted after the introduction of this ordinance.

FISCAL IMPACT: No discernable fiscal impact.