

November 17, 2008

**In reply, refer to:**

New Castle County Ord. 08-121 (2008-0882-T)  
Text Amendment to Revise Workforce Housing Legislation

Constance Holland, Director  
Office of State Planning  
122 William Penn Street  
Haslett Armory, Ste 301  
Dover, DE 19901-3636

Dear Ms. Holland:

The New Castle County Department of Land Use is submitting a copy of the above referenced ordinance to you and requesting that a review of this ordinance go through the Office of State Planning for a Preliminary Land Use Service (PLUS) Review and comment.

Ordinance 08-121 will be on the December 2, 2008 New Castle County Planning Board Public Hearing agenda. New Castle County Council will have an opportunity to act on this amendment in January 2009.

Please submit the PLUS comments to the Department sometime before Tuesday, December 2, 2008.

If you have questions or concerns about this request, please do not hesitate to call me at 395-5434.

Sincerely,

Kenneth R. Bieri  
Acting Planning Manager

CC: Nicole Majeski  
David M. Culver  
George O. Haggerty

Introduced by: Penrose Hollins  
Date of introduction: November 25, 2008

**ORDINANCE NO. 08 - 121**

**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”) AND ARTICLE 33 (“DEFINITIONS”)  
REGARDING HOUSING OPPORTUNITIES**

**WHEREAS**, on December 31, 1997, New Castle County adopted Chapter 40 of the *New Castle County Code*, also known as the “UDC”; and

**WHEREAS**, the adoption of the UDC did not address the need to produce adequate and affordable housing to low and moderate income individuals and families which represent an ever increasing segment of the total population; and

**WHEREAS**, the county recognized that it had an obligation to provide adequate housing for all of its citizens and the development community had expressed a desire to attempt to address the need for workforce housing in New Castle County through a voluntary program that provided the resources, tools, and incentives in exchange for workforce housing; and

**WHEREAS**, New Castle County Council adopted Ordinance 07-150 by unanimous vote on February 26, 2008 which provided developer incentives to plan and build homes in a range more affordable to low and moderate income individuals and families; and

**WHEREAS**, a number of workforce housing plans have been submitted and are being reviewed by the Department of Land Use; and

**WHEREAS**, County Council, the Administration and the Department have determined after public comment that several of the provisions in Division 40.07.300 (Workforce Housing Incentives) require clarification; and

**WHEREAS**, New Castle 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 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, Article 7 (“Transfer of Development Rights and Other Incentives and Bonuses”) is hereby amended with material that is underlined to be added and material to be deleted in brackets and with strikethroughs as follows:

**Division 40.07.300. Workforce housing incentives.**

....

**Sec. 40.07.311. Voluntary applicability.**

- A. To secure a residential density bonus...
- B. Any plan submitted pursuant to this Division [~~only~~] shall be considered vested at the time of application.
- C. Existing record plans may be resubmitted to the Department as revised minor land development plans for consideration under this Division, provided any increases are based only on the number of recorded lots. If [~~a~~] the new plan proposes an increase of more than fifty (50) percent of the existing recorded units or more than one hundred (100) new units (whichever is less [~~greater~~]), then the plan will be classified as a major land development plan. Any recorded plan that was the subject of a rezoning or any modification or change to the recorded street right-of-way will disqualify the new plan as a minor land development plan. Regardless, if the former preliminary plan was approved pursuant to previous Code Section 40.03.319, no additional preliminary plan approval by County Council is required. The Department will work with the applicant in an effort to achieve plan approval for minor plans within twelve (12) months of application. All existing record plans revised pursuant to this section will require an exploratory plan hearing, certification from the Department of Education that there is capacity or that a voluntary assessment is agreed to, and County Council approval prior to recordation.
- D. Applications must be served by New Castle County public sewer, consistent with the 2007 New Castle County Comprehensive Development Plan.

**Sec. 40.07.312. Workforce dwelling unit set-aside requirement.**

At least twenty (20) percent of the new dwelling units...

A workforce development project may have one hundred (100) percent of the dwelling units priced for low-income and/or moderate-income households with only twenty (20) percent of the units required to meet the controls under Sections 40.07.340 through 40.07.345. All units priced for low-income or moderate-income households shall be owner occupied from the point of first sale, pursuant to the required deed restrictions.

....

**Sec. 40.07.321. Residential density bonuses.**

- A. Workforce development projects are entitled to a residential density incentive as follows:
  - 1. *One hundred (100) percent bonus.* Twenty (20) percent set-aside, with at least half of those units priced affordable to low-income [~~and/or very low income~~] households.
  - 2. *Fifty (50) percent bonus.* Twenty (20) percent set-aside, where less than half of the units are priced affordable to low-income [~~and/or very low income~~] households.
- B. The density bonuses...

**Sec. 40.07.322. Site development incentives.**

Proposed workforce development projects are entitled to the following by-right development incentives to accommodate the additional units resulting from the residential density bonus:

- A. Within Table 40.04.110 A....
- F. [~~Alternative dwelling unit types may be used~~] The use of semi-detached, attached residential dwelling units and/or multi-family dwelling units are not permitted except as part of an open space planned development option.

....

**Sec. 40.07.323. Reserved [~~Site development incentives flexibility~~].**

[~~Upon application of the workforce development project developer for a proposed workforce development project, the Department may adjust the level of site development incentives provided in Section 40.07.322, to the extent feasible in light of the uses, design and infrastructure needs of the workforce development project.~~]

**Sec. 40.07.324. [~~Expedited reviews~~] Reserved.**

[~~Development applications (including applications for rezoning, land development or subdivision plan approval, and variances) for workforce development projects shall be provided expedited and streamlined consideration by the Department of Land Use and all other applicable county agencies. For the purposes of this Division, whenever a response or decision is required by the Department, it shall be issued in writing within ten (10) days of receipt of a complete submission. This requirement may be waived by mutual consent of the Department and the applicant.~~]

....

**Sec. 40.07.326. Traffic analysis.**

~~[An operational analysis may be required for major plans. A traffic impact study shall only be required if requested by DeIDOT.]~~ Proposed development is subject to DeIDOT transportation impact standards, and the County may limit or restrict development to less GFA or number of dwelling units if that is recommended by DeIDOT. DeIDOT may also require transportation improvements as a condition of its letter of no objection. ~~[Up to fifty (50) workforce dwelling units may be excluded from the traffic impact study.]~~

....

**Sec. 40.07.331. Staging plan and timing of workforce dwelling unit construction.**

Prior to record plan approval, the workforce development project developer shall submit a staging plan to the county that identifies the general number, type, location and plan for construction of all dwelling units in the subdivision and other locations accommodating off-site workforce dwelling unit requirements. Required workforce dwelling units shall be made available for sale ~~or rent~~ concurrently with the market rate dwelling units for the project. Within each workforce development project, the issuance of building permits for market rate dwelling units shall be stopped at the levels indicated below:

- A. Twenty-five (25) percent....

**Sec. 40.07.332. Location of workforce dwelling units.**

Workforce dwelling units should be dispersed and located throughout the development according to type and should not appear as noticeably segregated from the market rate dwelling units.

**Sec. 40.07.333. Exterior appearance of workforce dwelling units.**

The exterior appearance of the workforce dwelling units should be similar to market rate dwelling units of the same unit type, by providing similar architectural style and similar exterior building materials, finishes, and quality of construction. At preliminary plan submission for a major or record plan submission for a minor the applicant shall submit architectural renderings or design guidelines for the project that are binding.

....

**Sec. 40.07.342. Deed restrictions.**

A private, public, for-profit, or non-profit organization that has been building, rehabilitating and providing affordable housing units within New Castle County or some other similar jurisdiction for at least five (5) years shall be exempted from the following controls if they have their own affordability controls and obtain the approval of the Department of Community Services. ~~[Provisions]~~ Further restrictions to ensure continued affordability of workforce dwelling units during the affordability term shall be embodied in legally binding agreements and/or deed

restrictions approved by the County Law Department. ~~[Said agreements and restrictions shall provide that the County has the right to enjoin or void any transfer of the workforce dwelling unit if it is not sold to an income eligible individual.]~~

**Sec. 40.07.343. Affordability period.**

A. A private, public, for-profit, or non-profit organization that has been building, rehabilitating and providing affordable housing units within New Castle County or some other similar jurisdiction for at least five (5) years shall be exempted from the following controls if they have their own affordability controls and obtain the approval of the Department of Community Services.

~~[A. For Sale Workforce Units.]~~

B. If a workforce dwelling unit sold originally to a qualified homebuyer is sold during the fifteen (15) year affordability period, it must be resold to an eligible qualified homebuyer at an ~~[price]~~ affordable price to the new homebuyer. In the event that title to a workforce dwelling unit is transferred by the initial purchaser or a subsequent purchaser to any person, in an arms-length transaction, prior to the fifteenth (15<sup>th</sup>) anniversary of the date of acquisition of the workforce dwelling unit by the initial purchaser, and if the seller ~~[purchaser]~~ receives consideration for such transfer in excess of the purchase price paid for the workforce dwelling unit, plus usual and customary closing costs, plus properly documented capital improvements to the workforce dwelling unit made by or on behalf of the purchaser (“Resale Profit”), the seller and purchaser are jointly and severally liable for and agree[s] to pay the Resale Profit, multiplied by one (1) minus a fraction, the numerator of which is the number of complete calendar months since the date that the initial purchaser purchased the workforce dwelling unit, and the denominator of which is one hundred eighty (180) to New Castle County (“NCC’s Resale Profit”). In the event that the seller or purchaser fail[s] to pay the NCC Resale Profit to New Castle County on the date of transfer of title to the workforce dwelling unit, New Castle County shall have a lien against the workforce dwelling unit for NCC’s Resale Profit, plus interest thereon at the rate of ten (10) percent per annum. Any and all Resale Profit paid to New Castle County shall be deposited into the New Castle County Housing Trust Fund. In the event that a seller or purchaser defaults on any term of the deed restrictions, New Castle County may pursue default remedies in accordance with the terms of the deed restrictions.

~~[B. Rental Workforce Units.]~~

~~[In workforce development projects that contain workforce rental units, those units shall remain affordable for very low income, low income or moderate income households for a period of no less than twenty five (25) years from the date of initial occupancy.]~~

**Sec. 40.07.344. Household eligibility.**

Eligibility for ~~[rental or]~~ purchase of workforce dwelling units shall be based on household size and income. To determine whether a household is eligible to purchase a workforce dwelling unit, the household must complete a lender certification process or a developer process that has

been approved by the Department of Community Services. At the time of purchase, the household must submit an owner-occupancy declaration to the Department of Community Services, declaring that it is income eligible and the unit is its only residence. The Department of Community Services will issue a "Certificate of Qualification" to qualified households.

....

**Sec. 40.07.352. Compliance.**

No person shall [~~purchase or lease~~] sell a workforce dwelling unit created pursuant to this Article except to income eligible households and in compliance with the provisions of this Article.

....

**Section 2.** *New Castle County Code* Chapter 40, Article 33 ("Definitions") is hereby amended with material that is underlined to be added and material to be deleted in brackets and with strikethroughs as follows:

*Affordability period.* This is a fifteen (15) year period during which the affordability restrictions for for-sale workforce dwelling units[~~, and a twenty five (25) year period during which the affordability restrictions for workforce rental units~~] provided by this article shall apply. The control period for each workforce dwelling unit begins [~~when that unit is first occupied~~] at the time of settlement.

*Affordable price.* A sales price that results in a monthly housing cost (principal, interest, and monthly real estate taxes, insurance and condominium or maintenance association assessments) that does not exceed thirty (30) percent (low or very low-income) or thirty-five (35) percent (moderate income) of annual income for a household of the applicable income as calculated pursuant to the policies and procedures promulgated by the Department of community Services.

....

*Certificate of qualification.* A certificate issued by the Department of Community Services attesting to a qualified household's eligibility to purchase [~~or rent~~] a workforce dwelling unit.

...

**Section 3. Consistent with 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 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 immediately upon its adoption by County Council and approval by the County Executive or as otherwise provided in 9 *Del. C.* Section 1156 and shall only apply to Land Use applications that have not obtained preliminary plan approval by such date unless the applicant voluntarily agrees to submit to the provisions of this Ordinance.

Approved on:

Adopted by County Council of  
New Castle County on:

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County Executive

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President of County Council

**SYNOPSIS:** This amendment will clarify and improve the workforce housing legislative initiatives intended when New Castle County Council unanimously adopted Ordinance 07-150 on February 26, 2008. At the time, it was noted that the legislation would be carefully monitored to determine its success in providing adequate housing for all of New Castle County's citizens. To date, the legislation has been a success as the Department of Land Use has 14 residential development plans that incorporate a workforce housing component into their plans with over 700 low and moderate income household dwelling unit lots proposed.

The success of the legislation and the concentration of many of the plans in the Appoquimink School District area, however, have raised concerns about the grand total of new homes now being proposed and the added density and their effects on school and roadway capacity. In addition, many residents also are wary of the potential that existing property values will suffer because of the number of units being proposed in such a difficult real estate economy.

As a result, this text amendment proposes several changes to workforce housing legislation that should allow for more public scrutiny of some of the larger plans and clarifies other provisions within the legislation that caused additional concern. Due to concerns with rental units, the amendment removes the ability to count rental apartments as part of the total number of low and moderate income housing and clearly notes that all controlled low and moderate income housing shall be owner-occupied.

The amendment also reverses the way in which existing record plans that are resubmitted as workforce housing projects are determined to be majors or minors. It is proposed that any existing record plan which proposes more than a 50% increase in lots or more than 100 lots (whichever is less) will be considered a major land development plan. The amendment also prohibits attached, semi-attached and multi-family dwelling units in plans that are not open space planned developments.

The amendment also removes the department's ability to permit some flexibility in the site incentives and removes the expedited review procedures. Architectural renderings and/or design guidelines will now be required for each workforce housing project. Several other minor technical clarifications have also been made to clarify the affordability period.

**FISCAL NOTE:** Since this legislation is a text amendment that proposes several changes to workforce housing legislation there is no discernable fiscal impact.

Introduced by: William J. Bell  
Co-Sponsor: Bill Powers  
Introduced on: October 14, 2008

**ORDINANCE 08- 113**

**TEMPORARILY STAYING THE SECTIONS IN DIVISION 40.07.300 (WORKFORCE HOUSING INCENTIVES) OF ARTICLE 7 (TRANSFER OF DEVELOPMENT RIGHTS AND BONUSES) OF CHAPTER 40 (UNIFIED DEVELOPMENT CODE OR "UDC") OF THE NEW CASTLE COUNTY CODE**

**TO ENABLE THE NEW CASTLE COUNTY COUNCIL AN OPPORTUNITY TO REVISIT THE WORKFORCE HOUSING INCENTIVES**

**WHEREAS**, in February of 2008, New Castle County Council adopted Substitute No. 1 to Ordinance No. 07-150 as Amended by Floor Amendment No. 1 ("the Ordinance") revising Chapter 40 ("UDC") of the *New Castle County Code* providing certain incentives such as density bonuses, flexible zoning standards, reduced or waived fees, and expedited reviews, to facilitate the creation of workforce housing; and

**WHEREAS**, several land use applications have been submitted utilizing the provisions providing such incentives raising concerns in the surrounding areas that perhaps the workforce housing incentives did not adequately address infrastructure and community character concerns; and,

**WHEREAS**, New Castle County Council finds it prudent to stay enforcement of the at-issue provisions until Council has had an opportunity to hear the complaints and revisit the provisions; and

**WHEREAS**, New Castle County Council finds that the provisions of this ordinance are rationally and reasonably related to legitimate government interests including, but not limited to, the protection and preservation of the public health, safety, prosperity, general welfare, and quality of life.

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

**Section 1.** *New Castle County Code* Chapter 40, Article 7 (Transfer of Development Rights and Bonuses) is hereby amended with material that is underlined to be added and material to be deleted in brackets and with strikethroughs as follows:

**Division 40.07.300. Workforce housing incentives \*.**

The County encourages the production of affordable housing that is fully integrated into the community. These bonuses are intended to permit the market to produce affordable units with only minimal assistance from government. The bonuses in this Division provide the mechanism to compensate developers who produce units that meet the standards of this Chapter.

\* Pursuant to Ordinance No. 08-\_\_\_\_\_ , effective \_\_\_\_\_ , 2008, a stay was placed upon the all of the Sections in Division 40.07.300 (Workforce housing incentives) in order for the New Castle County Council to review and possible revisit the workforce housing incentives. The stay is effective until legislation is adopted reinstating or revising the Sections of this Division.

**Section 2. Consistent with 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 upon passage by New Castle County Council and signature of the County Executive, or as otherwise provided in 9 *Del. C.* § 1156 and shall apply to any future submission of land development applications utilizing the workforce housing incentives until legislation is adopted reinstating or revising the same.

Approved on:

Adopted by County Council of  
New Castle County on:

\_\_\_\_\_  
County Executive

\_\_\_\_\_  
President of County Council  
New Castle County

**SYNOPSIS:** This Ordinance authorizes a stay on future submission of land development applications utilizing the workforce housing incentives until legislation is adopted reinstating or revising the same in order for Council to review, and possibly introduce remedial legislation.

**FISCAL IMPACT:** No discernable fiscal impact.

Introduced by: Penrose Hollins  
Date of introduction: 11/13/07

**SUBSTITUTE NO. 1  
WITH FLOOR AMENDMENT NO. 1  
TO ORDINANCE NO. 07 - 150**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40  
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR “UDC”),  
ARTICLE 7 (“TRANSFER OF DEVELOPMENT RIGHTS AND BONUSES”);  
ARTICLE 33 (“DEFINITIONS”) REGARDING HOUSING OPPORTUNITIES**

**WHEREAS**, on December 31, 1997, New Castle County adopted Chapter 40 of the *New Castle County Code*, also known as the “UDC”; and

**WHEREAS**, since the adoption of the UDC, there has been essentially no new construction of low or moderately priced housing in unincorporated New Castle County, despite the availability of code provisions intended to incentivize developers voluntarily to integrate this housing into new communities; and

**WHEREAS**, according to the 2007 New Castle County Comprehensive Plan, housing prices rose by 53% between 2000 and 2005, while income increased by only 6% during that same period; and

**WHEREAS**, according to the 2007 New Castle County Comprehensive Plan, the median sales price for existing homes is \$224,000 and the median price of new homes constructed in New Castle County in 2007 is \$400,000; and

**WHEREAS**, according to the New Castle County Consolidated Five Year Plan 2005 - 2010 for Housing and Community Development Programs, recent increases in home sale prices have contributed to an insufficient supply of rental housing and/or homes for purchase by low and moderate income households, county-wide; and

**WHEREAS**, a goal of the 2007 New Castle County Comprehensive Plan is for the county government to facilitate housing and community choices for people and families in all stages of life, all income ranges, and throughout the county; and

**WHEREAS**, the county recognizes the need to generate accessible housing for working families in the county, in order to maintain a diverse population and to provide housing for those who work in the county to be able to afford to live in the county; and

**WHEREAS**, the county has an obligation to provide adequate housing for all of its citizens and the development community has expressed a desire to attempt to address the need for workforce housing in New Castle County through a voluntary program that provides the resources, tools, and incentives in exchange for workforce housing; and

**WHEREAS**, through the use of cost offsets such as density bonuses, flexible zoning standards, reduced or waived fees, and expedited reviews, the county may facilitate the creation of workforce housing while conserving federal housing grants for more vulnerable populations (e.g. extremely low-income, disabled, homeless), and preserving more of the local tax base for other pressing public needs; and

**WHEREAS**, the provisions of this Ordinance will serve as a tool to help maintain a strong economic environment by creating accessible housing for entry-level occupations in key industries; and

**WHEREAS**, New Castle 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 this County.

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

**Section 1.** *New Castle County Code* Chapter 40, Article 7 (“Transfer of Development Rights and Bonuses”) is hereby amended with material that is underlined to be added and material to be deleted in brackets and with strikethroughs as follows:

**ARTICLE 7**  
**TRANSFER OF DEVELOPMENT RIGHTS**  
**AND OTHER INCENTIVES AND BONUSES**

**Division 40.07.000. Purpose.**

- A. To [~~obtain~~] meet certain land use objectives, positive incentives are needed to encourage developers to assist in [~~achieving these land use objectives~~] broadening the selection of workforce housing. Two (2) types of incentives are contained in this Article: the allocation of development rights that can be transferred, and bonuses for certain types of development.
- B. The use of transferrable development rights allows development permitted on several properties to be concentrated on a single parcel, thus permitting several parcels to remain exclusively agricultural without significantly impacting the development value of the land.
- C. The preservation and renovation of historic resources serves to preserve the character and heritage of the County for future generations. It is anticipated that clustering, bonuses, and on occasion, transferable development rights, will be needed to ensure that these objectives can be met during the development process.

~~[D.— Affordable housing. This Article provides regulations that encourage a wide range of housing types including small, less expensive, housing. Additional bonuses in the form of increased density are provided for affordable housing.]~~

**Division 40.07.200. Transferable development rights**

....

**Division 40.07.300. ~~[Affordable housing bonuses]~~ Workforce housing incentives.** ~~[The County encourages the production of affordable housing that is fully integrated into the community. These bonuses are intended to permit the market to produce affordable units with only minimal assistance from government. The bonuses in this Division provide the mechanism to compensate developers who produce units that meet the standards of this Chapter.]~~

**Sec. 40.07.301. Purpose and intent.**

The intent of this Division is to promote workforce housing throughout the county, by offering incentives to workforce development project developers who designate a portion of their projects as workforce, and who make a designated contribution to the Housing Trust Fund to assist with the provision of affordable housing.

The primary purposes of this Division include:

- A. Implementing the housing strategies outlined in the 2007 New Castle County Comprehensive Development Plan Update and the 5-year consolidated housing plan for New Castle County;
- B. Ensuring that diverse housing options exist throughout the county to accommodate a wide range of incomes, those with special needs and a significant proportion of those who wish to work and/or live in the county; and
- C. Allowing working families to live in communities with better access to employment and educational opportunities and a range of housing types.

**Sec. 40. 07.310. ~~[General standards]~~ Eligibility requirements.**

~~[All affordable housing shall adhere to the following standards:]~~

~~[A.— Design. The units shall be mixed into the overall development in such a way that they blend with the character of the community.]~~

~~[1.— The units shall be located in a random fashion throughout the development. Grouping or clustering of affordable units is prohibited. In multi family units, the designated units shall be mixed into the buildings.]~~

~~[2.— Exterior materials, details, style, landscaping, and other elements of the units that are visible shall be identical to those of the other units in the development.]~~

~~[B. *Control of Units.* The units shall be regulated to ensure that they remain available as affordable units. The following are acceptable methods of regulation:]~~

~~[1. *Sales units.* These units may be sold subject to agreements that limit appreciation and that require the units to be sold to or through the New Castle County Department of Community Services (DCS) to people eligible for such units. Appreciation shall be geared to the percentage increase in assessed value in the development.]~~

~~[2. Nothing in subsection 1, above, shall prohibit units to be sold to DCS or a recognized nonprofit affordable housing corporation. If transferred to a non profit housing corporation, there shall be a binding agreement providing a right of first refusal at an appreciated value as provided in subsection 1 above.]~~

~~[3. Rental Units may be owned by the developer, builder, a nonprofit agency, or DCS. All units shall be rented only to eligible tenants approved by DCS.]~~

~~[C. *Affordability.* The units shall be made affordable by the following measures as determined by the developer's pro-forma: ]~~

~~[1. The cost of the raw land, general site work, roads, and all utilities serving the development shall be zero (0).]~~

~~[2. For those units that qualify for persons having less than eighty (80) percent of the median County income, an agreement may be reached whereby a government, nonprofit housing corporation or grant pays all or part of the impact fees imposed by this Chapter.]~~

~~[3. The developer shall submit specifications for market rate and affordable interiors which would lower the cost per square foot of the units. This can include smaller room sizes. DCS shall approve any lower standards as being suitable for long-term maintenance; however DCS may not require higher standards than those used in market rate housing.]~~

**Sec. 40.07.311. Voluntary applicability.**

A. To secure a residential density bonus and other incentives outlined in Sections 40.07.320 through 40.07.326, a proposed workforce development project must comply with all of the provisions of this Division.

B. Any plan submitted pursuant to this Division only shall be considered vested at the time of application.

C. Existing record plans may be resubmitted to the Department as revised minor land development plans for consideration under this Division. If a new plan proposes an

increase of more than fifty (50) percent of the existing recorded units or more than one hundred (100) new units (whichever is greater), then the plan will be classified as a major land development plan. Regardless, if the former preliminary plan was approved pursuant to previous Code Section 40.03.319, no additional preliminary plan approval by County Council is required. The Department will work with the applicant in an effort to achieve plan approval for minor plans within twelve (12) months of application.

D. Applications must be served by public sewer, consistent with the 2007 New Castle County Comprehensive Development Plan.

**Sec. 40.07.312. Workforce dwelling unit set-aside requirement.**

At least twenty (20) percent of the new dwelling units, or, in the event of further subdivision of an existing record plan, twenty (20) percent of the additional units created, in a workforce development project shall be set aside and priced for low-income and/or moderate-income households.

A workforce development project may have one hundred (100) percent of the dwelling units priced for low-income and/or moderate-income households with only twenty (20) percent of the units required to meet the controls under Sections 40.07.340 through 40.07.345.

**Sec. 40.07.313. Contribution to the housing trust fund.**

Notwithstanding the requirement to construct on-site workforce dwelling units for low-income and/or moderate-income households, the workforce development project developer shall also make a financial contribution to the Housing Trust Fund to support the development and/or rehabilitation of housing that is affordable for low income and very low income households. The contribution, which is applicable to market rate dwelling units only, shall be twelve (\$12.00) dollars per one thousand (\$1,000) dollars of permit construction valuation of the dwelling and is payable at the time of issuance of a Certificate of Occupancy for each dwelling unit.

**Sec. 40.07.314. Off-site workforce dwelling unit construction.**

The workforce set-aside requirements of this Division may be met through off-site unit production or through the conversion and rehabilitation to current *County Code* requirements of existing market-rate dwelling units to workforce dwelling units, that meet the standards of this Division. The off-site construction shall be noted on the record plan with the market rate dwelling units. The number of workforce dwelling units permitted to occur off-site is limited to no more than fifty (50) percent of the total required workforce dwelling units. If the off-site parcel is zoned S, it may obtain the density and development incentives as provided in Sections 40.07.321 and 322.

**Sec. 40.07.320. [~~Open space subdivision bonuses~~] Cost offsets.**

[~~In open space subdivisions, the developer shall submit the site capacity calculations to establish the base density. The developer can propose up to a six (6) percent increase in density which shall be granted provided the requirements of this Section are met.~~]

~~[A. The site capacity calculation limits the development through the gross density calculation rather than the net density calculation. (Net density calculation takes effect only where on-site resources are limiting.)]~~

~~[B. Sixty (60) percent of the additional units shall meet the criteria of Section 40.07.310.]~~

~~[C. A site plan shows the additional units being accommodated by: ]~~

~~[1. A revised set of lot standards which reduces lot area for all lots or uses several lot sizes; and]~~

~~[2. A reduction of the amount of open space by multiplying the open space ratio (Section 40.04.110) by ninety five hundredths (0.95) to determine the new open space ratio, provided such open space shall not be less than the site protected land, Table 40.05.421.]~~

**Sec. 40.07.321. Residential density bonuses.**

A. Workforce development projects are entitled to a residential density incentive as follows:

1. One hundred (100) percent bonus. Twenty (20) percent set-aside, with at least half of those units priced affordable to low-income and/or very low income households.

2. Fifty (50) percent bonus. Twenty (20) percent set-aside, where less than half of the units are priced affordable to low-income and/or very low income households.

B. The density bonuses in subsection A above are added to the yield produced by the site capacity calculations set forth in Article 5.

C. Additional density bonuses are achievable through the use of transfer of development rights as provided for in Chapter 40, Article 7, Division 40.07.200 of the *New Castle County Code*. The density and incentives of Division 40.07.300 will be adjusted when a transfer of development rights ordinance is enacted by County Council.

**Sec. 40.07.322. Site development incentives.**

Proposed workforce development projects are entitled to the following by-right development incentives to accommodate the additional units resulting from the residential density bonus:

A. Within Table 40.04.110 A, a thirty (30) percent reduction in the required open space; a thirty (30) percent increase in floor area ratio (FAR); and an elimination of the minimum site area;

- B. A credit of acreage on a one-to-one basis for open space if acreage is dedicated to a community facility such as a school, library, park, public safety, public healthcare, or other community facilities, exclusive of sanitary sewer. However, in no case shall the open space be below twenty (20) percent.
- C. Within Table 40.04.110 B, a twenty-five (25) percent reduction in lot and building standards and a twenty-five (25) percent increase to height limits;
- D. Within Table 40.04.111, a twenty (20) percent reduction in landscaping, on lot plant units, street trees, and bufferyard opacity;
- E. The transfer of protection for water resource protection areas is permitted in accordance with Section 40.10.380 C
- F. Alternative dwelling unit types may be used.
- G. The site development incentives in this section are not to be applied to any off-site workforce dwelling units unless the off-site parcel is zoned S. Off-site workforce dwelling units shall comply with all of the use and dimensional building standards for the zoning district in which they are located unless the off-site parcel is zoned S.

**Sec. 40.07.323. Site development incentives flexibility.**

Upon application of the workforce development project developer for a proposed workforce development project, the Department may adjust the level of site development incentives provided in Section 40.07.322, to the extent feasible in light of the uses, design and infrastructure needs of the workforce development project.

**Sec. 40.07.324. Expedited reviews.**

Development applications (including applications for rezoning, land development or subdivision plan approval, and variances) for workforce development projects shall be provided expedited and streamlined consideration by the Department of Land Use and all other applicable county agencies. For the purposes of this Division, whenever a response or decision is required by the Department, it shall be issued in writing within ten (10) days of receipt of a complete submission. This requirement may be waived by mutual consent of the Department and the applicant.

**Sec. 40.07.325. Application fee waivers.**

- A. All land development fees as listed in Appendix 2 of Chapter 40 of the *New Castle County Code* are waived if the project is a one hundred (100) percent workforce development project.
- B. County building permit fees will be waived to the extent provided in Chapter 6 of the *New Castle County Code*.



**Sec. 40.07.326. Traffic Analysis.**

An operational analysis may be required for major plans. A traffic impact study shall only be required if requested by DeIDOT. Proposed development is subject to DeIDOT transportation impact standards, and the County may limit or restrict development to less GFA if that is recommended by DeIDOT. DeIDOT may also require transportation improvements as a condition of its letter of no objection. Up to fifty (50) workforce dwelling units may be excluded from the traffic impact study.

**Sec. 40.07.330. [Planned, hamlet or village bonus] Integration and appearance of workforce dwelling units.**

~~[The developer shall submit the site capacity calculations to establish the base density. The developer can propose up to a ten (10) percent increase in density which shall be granted provided the requirements of this Section are met:]~~

~~[A. The site capacity calculation limits the development through the gross density calculation rather than the net density calculation. (Net density calculation takes effect only where on-site resources are limiting.) ]~~

~~[B. Fifty (50) percent of the additional units shall meet the criteria of Section 40.07.310.]~~

~~[C. A site plan shows the additional units being accommodated by: ]~~

~~[1. A revised mix of dwelling unit types. The developer may introduce a unit type that uses less land to partially achieve the increase in density.]~~

~~[2. The affordable units shall be mixed into all unit types used on the plan.]~~

~~[3. Reducing the amount of open space by multiplying the open space ratio (Section 40.04.110) by ninety eight hundredths (0.98) to determine the new open space ratio, provided such open space shall not be less than the site protected land, Table 40.05.421.]~~

~~[Example: Site capacity in a planned development permits 100 dwelling units. The units would normally sell for \$180,000. The cost of raw land and improvements would be about 25% of the project cost, with impact fees being another 5% of the cost. The improvements and land would be \$45,000 per lot. The impact fees would be \$9,000 per lot. The building cost: \$126,000 for a 1,575 sf. house @ \$80 per sf. The six affordable units would be 1,400 sf. per unit @ \$78 per sf., thus costing \$107,200, a reduction of 40% which makes it very affordable. The developer would have 104 units to allocate the cost of improvements (\$4,680,000) among. The four unit bonus in market units reduces the per unit cost to \$43,270. If the site was a suburban planned development with a 1.3 density and 45% open space it would have the following land allocation: 77 acres, of which 45% (34.7) was open space leaving 42.3 acres of buildable land. With about 15% streets, the average lot size would have been 15,995 square feet. The affordable project would have 110 units for a density of 1.43. Open space would be reduced from 45 to 44.1% or 34 acres, thus providing 43 acres for development resulting in 110 lots of about 14,488 square feet each.]~~

**Sec. 40.07.331.            Staging plan and timing of workforce dwelling unit construction.**

Prior to record plan approval, the workforce development project developer shall submit a staging plan to the county that identifies the general number, type, location and plan for construction of all dwelling units in the subdivision and other locations accommodating off-site workforce dwelling unit requirements. Required workforce dwelling units shall be made available for sale or rent concurrently with the market rate dwelling units for the project. Within each workforce development project, the issuance of building permits for market rate dwelling units shall be stopped at the levels indicated below:

- A.     Twenty-five (25) percent pending the issuance of an equal percentage of building permits for workforce dwelling units;
- B.     Fifty (50) percent pending the issuance of an equal percentage of building permits for workforce dwelling units and where certificates of occupancy have been issued for twenty-five (25) percent of the workforce dwelling units;
- C.     Seventy-five (75) percent pending the issuance of an equal percentage of building permits for workforce dwelling units and where certificates of occupancy have been issued for fifty (50) percent of the workforce dwelling units; and
- D.     Ninety (90) percent pending the issuance of one hundred (100) percent of building permits for workforce dwelling units and where certificates of occupancy have been issued for seventy-five (75) percent of the workforce dwelling units;

The Department may allow a variation to the stop levels listed above at the request of the applicant and based upon unforeseen circumstances.

**Sec. 40.07.332.            Location of workforce dwelling units.**

Workforce dwelling units should be located throughout the development according to type and should not appear as noticeably segregated from the market rate dwelling units.

**Sec. 40.07.333.            Exterior appearance of workforce dwelling units.**

The exterior appearance of the workforce dwelling units should be similar to market rate dwelling units of the same unit type, by providing similar architectural style and similar exterior building materials, finishes, and quality of construction.

**Sec. 40.07.340            ~~[Small single-family housing]~~ Affordability controls.**

[There are three (3) types of housing provided for under this Section: single-family detached one (1) story, single-family detached two (2) story, and single-story attached. The small scale of these units permits them to fit into existing neighborhoods without changing the character of the

neighborhood. The standards for these lots are contained in Table 40.07.340. In addition the following requirements shall be met.]

[A. ~~The small single family units are to be predominantly one (1) bedroom units. No more than twenty (20) percent of the units may contain two (2) bedrooms]~~

[B. ~~The units shall be permitted in the Suburban, Suburban Transition, and Traditional Neighborhood Districts subject to standards 1 or 2 below. They are permitted in some Neighborhood Conservation Districts as indicated in C below. They are also permitted in the Commercial Neighborhood or Commercial Regional Districts under the standards in 2 below:]~~

[1. ~~Where the lot size is less than twelve thousand (12,000) square feet; or ]~~

[2. ~~Where the units are contiguous to a religious or nonprofit organization that owns the units. ]~~

[C. ~~A maximum number of lots shall be permitted as follows: ]~~

[1. ~~In the Suburban and NC10 Districts, no more than twenty (20) units on a lot or adjacent lots, provided that there are no more than forty eight (48) units within a one half (0.5) mile radius.]~~

[2. ~~In the Suburban Transition, Traditional Neighborhood, NC6.5, NC5 District, no more than thirty (30) units on a lot or adjacent lots, provided that there are no more than seventy two (72) units within a one half (0.5) mile radius.]~~

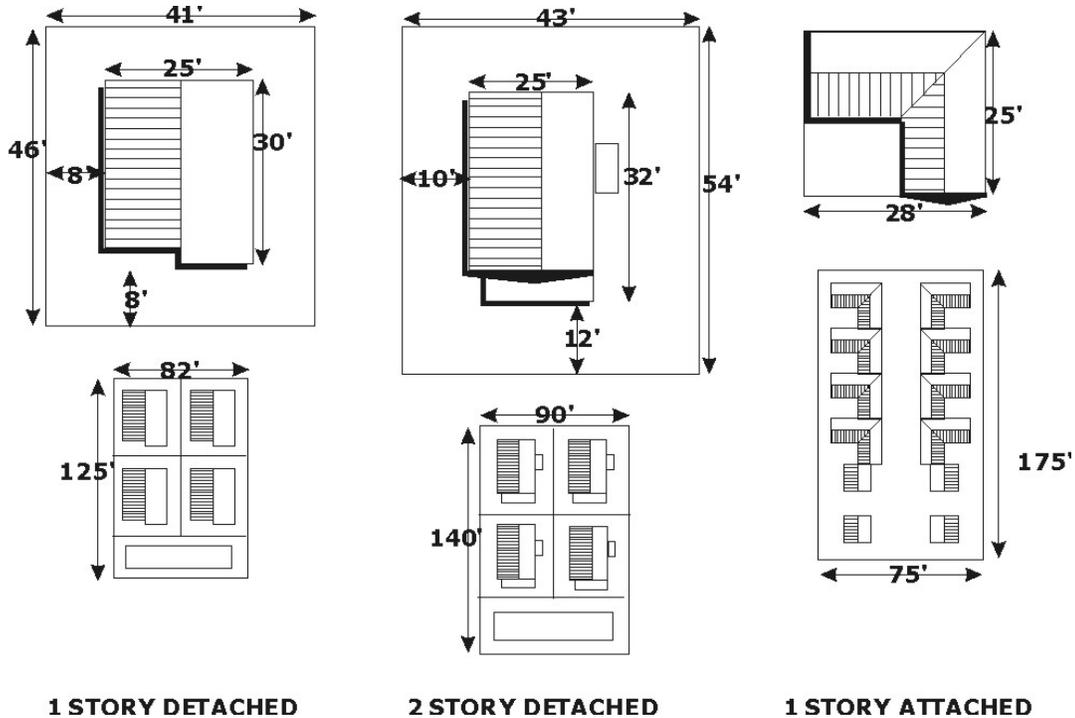
[3. ~~Any small single family units in a commercial district shall conform to the standards of the closest residential zoning.]~~

[Table 40.07.340  
Small Lot Single-Family Units

<i>Unit Type</i>	<i>Building Standards</i>				<i>Parcel Setback Standards</i>		
	<i>Minimum Lot Area per Unit (sq. ft.)</i>	<i>Maximum on-lot Floor Area Ratio</i>	<i>Spacing (ft.)</i>	<i>Height (ft.)</i>	<i>Street (ft.)</i>	<i>Side (ft.)</i>	<i>Rear (ft.)</i>
1-story detached	1,900	0.37	16	18	15	5	10
2-story detached	2,500	0.38	20	28	15	5	10
1-story attached	700	0.80	attached	15	10	8	None]

**[Figure 40.07.340  
SMALL LOT SINGLE-FAMILY UNITS**

(The bulk and area dimensions shown in this figure are for illustrative purposes only. The numbers in Table 40.07.340 govern.)



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All workforce development projects shall comply with the following provisions to ensure continued affordability of the workforce dwelling units required under this Division.

**Sec. 40.07.341. Development agreement and other documents.**

Prior to record plan approval, workforce development project developer shall execute a master workforce housing agreement with the County, which shall be recorded, along with restrictive covenants or other appropriate documents approved by the County Law Department in favor of New Castle County. The restrictive covenants shall only be written to apply to the workforce dwelling units.

**Sec. 40.07.342. Deed restrictions.**

A private, public, for-profit, or non-profit organization that has been building, rehabilitating and providing affordable housing units within New Castle County or some other similar jurisdiction for at least five (5) years shall be exempted from the following controls if they have their own affordability controls and obtain the approval of the Department of Community Services. Provisions to ensure continued affordability of workforce dwelling units shall be embodied in legally binding agreements and/or deed restrictions approved by the County Law Department.

Said agreements and restrictions shall provide that the County has the right to enjoin or void any transfer of the workforce dwelling unit if it is not sold to an income-eligible individual.

**Sec. 40.07.343.           Affordability period.**

A private, public, for-profit, or non-profit organization that has been building, rehabilitating and providing affordable housing units within New Castle County or some other similar jurisdiction for at least five (5) years shall be exempted from the following controls if they have their own affordability controls and obtain the approval of the Department of Community Services.

A.       *For Sale Workforce Units.*

If a workforce dwelling unit sold originally to a qualified homebuyer is sold during the fifteen (15) year affordability period, it must be resold to a qualified homebuyer at a price affordable to the new homebuyer. In the event that title to a workforce dwelling unit is transferred by the initial purchaser or a subsequent purchaser to any person, in an arms-length transaction, prior to the fifteenth (15<sup>th</sup>) anniversary of the date of acquisition of the workforce dwelling unit by the initial purchaser, and if the purchaser receives consideration for such transfer in excess of the purchase price paid for the workforce dwelling unit, plus usual and customary closing costs, plus properly documented capital improvements to the workforce dwelling unit made by or on behalf of the purchaser (“Resale Profit”), the purchaser agrees to pay the Resale Profit, multiplied by one (1) minus a fraction, the numerator of which is the number of complete calendar months since the date that the initial purchaser purchased the workforce dwelling unit, and the denominator of which is one hundred eighty (180) to New Castle County (“NCC’s Resale Profit”). In the event that the purchaser fails to pay the NCC Resale Profit to New Castle County on the date of transfer of title to the workforce dwelling unit, New Castle County shall have a lien against the workforce dwelling unit for NCC’s Resale Profit, plus interest thereon at the rate of ten (10) percent per annum. Any and all Resale Profit paid to New Castle County shall be deposited into the New Castle County Housing Trust Fund.

B.       *Rental Workforce Units.*

In workforce development projects that contain workforce rental units, those units shall remain affordable for very low-income, low-income or moderate-income households for a period of no less than twenty-five (25) years from the date of initial occupancy.

**Sec. 40.07.344.           Household eligibility.**

Eligibility for rental or purchase of workforce dwelling units shall be based on household size and income. To determine whether a household is eligible to purchase a workforce dwelling unit, the household must complete a lender certification process or a developer process that has been approved by the Department of Community Services. At the time of purchase, the household must submit an owner-occupancy declaration to the Department of Community

Services, declaring that it is income eligible and the unit is its only residence. The Department of Community Services will issue a "Certificate of Qualification" to qualified households.

**Sec. 40.07.345. Maintenance corporation fees.**

Non-uniform maintenance corporation fees may be assessed when factors including, but not limited to, impervious cover and community amenities are clearly differentiated within a community.

**Sec. 40.07.350. Enforcement and Compliance.**

**Sec. 40.07.351. Enforcement.**

In addition to the county's remedies outlined in Article 31 and elsewhere in this Article, the county may also take legal action to void property transfers for workforce dwelling units not sold to income-eligible households during the designated affordability period.

**Sec. 40.07.352. Compliance.**

No person shall purchase or lease a workforce dwelling unit created pursuant to this Article except to income eligible households and in compliance with the provisions of this Article.

**Sec. 40.07.353. Annual reporting.**

The Department shall provide County Council with an annual report on the use and effectiveness of this program which shall be discussed at a Council Committee Meeting open to the public. The first report shall be due twelve (12) months following the effective date of adoption of this Ordinance. The annual report will also recommend amendments to this Division and Chapter 40 of the *New Castle County Code* based upon a performance standard of twenty (20) percent of new housing units being produced as workforce. The report should include details about how well the ordinance is providing diverse housing options, how well the workforce dwelling units are being distributed throughout the County, and what factors are contributing to the success or failure of the ordinance. The recommendation report may include suggestions such as increasing the incentives, decreasing the incentives, reducing additional restrictions or imposing additional requirements. Subsequent reports shall be provided to Council every year thereafter.

**Division 40.03.400 Historic preservation bonus.**

....

**Section 2.** *New Castle County Code* Division 40.33.300 (“Definitions”) is amended by adding the material that is underlined as follows:

This Division contains the definitions of words used in this Code.....

*Abandonment*....

*Affordability period.* This is a fifteen (15) year period during which the affordability restrictions for for-sale workforce dwelling units, and a twenty-five (25) year period during which the affordability restrictions for workforce rental units provided by this article shall apply. The control period for each workforce dwelling unit begins when that unit is first occupied.

*Area median income (“AMI”).* The annual median family income for New Castle County, as established in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, and adjusted for household size.

*Certificate of qualification.* A certificate issued by the Department of Community Services attesting to a qualified household’s eligibility to purchase or rent a workforce dwelling unit.

*Density bonus.* A percentage increase in dwelling units that may be constructed by a workforce development project developer in addition to the yield prescribed by the Article 5 site capacity calculations for the property.

*Eligible household* is as defined by the provisions of Section 40.07.344.

*Forest, mature.* An area or stand of trees whose total combined contiguous canopy covers an area of one (1) acre or more composed of canopies of trees having a DBH of at least eighteen (18) inches or greater covering at least seventy-five (75) percent of that area. [~~Also, any stand or grove consisting of eight (8) or more individual trees having a DBH of at least eighteen (18) inches whose combined contiguous canopies cover at least fifty (50) percent of the area encompassed by the grove.]~~

*Housing trust fund.* A fund into which contributions collected pursuant to this Article shall be deposited, and from which monies shall be expended to construct, purchase and maintain permanently affordable units and to administer programs consistent with the purposes of this Article.

*Low income household.* A household earning fifty (50) percent or more, but not more than eighty (80) percent of the New Castle County area median income, as published and annually updated by the United States Department of Housing and Urban Development.

*Market-rate dwelling units.* All dwelling units within a workforce dwelling project that are not workforce dwelling units as defined herein.

Master workforce housing agreement. An agreement between a workforce development project developer and New Castle County that lists the developer's workforce housing obligations for a workforce development project, and is subsequently recorded against all properties that comprise the project as a whole.

Moderate-income household. A household earning more than eighty (80) percent, but not to exceed one hundred twenty (120) percent of the New Castle County area median income, as published and annually updated by the United States Department of Housing and Urban Development.

Qualified household. An eligible household that has received a certificate of qualification from the New Castle County Department of Community Services.

Residential development. New residential construction or new mixed-use construction with a residential component.

Riparian buffer area. An RBA consists of land which forms a transition zone between aquatic and terrestrial environments. RBA's include:

- One hundred (100) feet on either side of perennial and intermittent streams, lakes and tidal wetlands [~~as well as land adjacent to identifiable stream channels that drain greater than ten (10) acres~~];
- All of the floodplain, plus an additional fifty (50) feet of adjacent land;
- All of a nontidal wetland greater than twenty thousand (20,000) square feet in area, plus an additional fifty (50) feet of adjacent land;
- All of any size nontidal wetland classified as a Piedmont Stream Valley Wetland, as defined in the 1997 New Castle County Comprehensive Plan Update and designated by the Delaware Natural Heritage Program, a Division of DNREC, plus an additional fifty (50) feet of adjacent land.

The riparian buffer area shall consist of two (2) zones....

Set-aside. The percentage of units within a proposed workforce development project that a workforce development project developer is required to price as affordable to low-income and/or moderate-income households.

Substantial rehabilitation. The reconstruction, enlargement, installation, repair, alteration, improvement or renovation of a building, structure, or portion thereof.

Very low-income household. A household whose annual income does not exceed fifty (50) percent of the New Castle County area median income, as published and annually updated by the United States Department of Housing and Urban Development.

Workforce developer. Any person, firm, corporation, partnership, limited liability company, association, joint venture, or any entity or combination of entities that develops dwelling units, including any agency, authority, political subdivision of the State of Delaware, public housing development agency or nonprofit housing corporation, land trust or similar entity designated by the Department of Community Services.

Workforce development project. A residential or mixed-use project that creates new workforce dwelling units pursuant to Article 7.

Workforce dwelling unit. A residential unit within a workforce development project.

Workforce unit. Any unit of housing which is set aside and priced for low income and/or moderate income households.

Workforce housing. Decent, safe, and sanitary housing that is affordable to eligible households at a cost of no more than thirty (30) percent of gross household income of households at or below one hundred and twenty (120) percent of the median income for New Castle County as reported by the U.S. Department of Housing and Urban Development.

....

**Section 3. Consistent with 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 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 immediately upon its adoption by County Council and approval by the County Executive or as otherwise provided in 9 *Del. C.* Section 1156 and shall only apply to Land Use applications that have not obtained preliminary plan approval by such date unless the applicant voluntarily agrees to submit to the provisions of this Ordinance.

Approved on:

Adopted by County Council of  
New Castle County on:

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County Executive

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President of County Council

**SYNOPSIS:** This Ordinance adds provisions, procedures, and developer incentives to the UDC to add certainty to the development process and remove impediments that might have discouraged developers from constructing new workforce housing units in the past. Through this new workforce housing program, incentives will be used to entice developers to help create housing for low and moderate income households.

**FISCAL NOTE:** There will be no discernable fiscal impact during the fiscal years immediately following adoption of this Ordinance. This Ordinance is anticipated to result in an annual revenue dedicated to the Housing Trust Fund between \$500,000 and \$600,000 annually beginning in FY 2010 based on projections of the number of projects taking advantage of the density incentives in this Ordinance.