

**Preliminary Land Use Service (PLUS)
Comprehensive Plan Amendments and Municipal Ordinances**

Delaware State Planning Coordination
122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-6958

Name of Municipality: New Castle County Land Use Department	
Address: 87 Reads Way New Castle, DE 19720	Contact Person: Eileen Fogarty
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Date of Most Recently Certified Comprehensive Plan: June 11, 2012

Application Type:

Comprehensive Plan Amendment: Not applicable

Ordinance: Regarding a text amendment to Chapter 40 (“UDC”), of the New Castle County Code to Eliminate the Current Workforce Housing Regulations (App. 2014-0606-T).

Other: _____

Comprehensive Plan Amendment or Municipal Ordinance prepared by:	
Address: ---- same as above ----	Contact Person:
	Phone Number:
	Fax Number:
	E-mail Address:

Maps Prepared by: NA.	
Address:	Contact Person:
	Phone Number:
	Fax Number:
	E-mail Address:

**Preliminary Land Use Service (PLUS)
Comprehensive Plan Amendments and Municipal Ordinances**

Delaware State Planning Coordination

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Please describe the submission:

This amendment will eliminate the current workforce housing language and the various sections and sub-sections currently in the code.

See attached Ordinance 14-000 (App. 2014-0606-T).

Introduced by: Penrose Hollins
Introduced on: _____

ORDINANCE NO. 14 -

TO REVISE CHAPTER 40 OF THE *NEW CASTLE COUNTY CODE* (ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE – UDC), ARTICLE 7 (TRANSFER OF DEVELOPMENT RIGHTS AND OTHER INCENTIVES AND BONUSES) AND ARTICLE 33 (DEFINITIONS) REGARDING ELIMINATION OF THE WORKFORCE HOUSING PROVISIONS

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* to facilitate the creation of workforce housing; and

WHEREAS, after County Council initiated a stay of workforce housing plan submissions in December 2008 by Ord. 08-113; and

WHEREAS, a subsequent amendment designed to clarify and improve the workforce legislation was adopted in February 2009 by Ord. 08-121; and

WHEREAS, County Council initiated a second stay of workforce housing plan submissions by Ordinance 13-089 that was effective January 29, 2014 for 180 days; and

WHEREAS, The 180 day stay and the stay was extend an additional ninety (90) days by Ordinance 14-071; and

WHEREAS, Ord. 14-083 has been introduced to extend the stay on workforce housing plans to December 11, 2014 with an additional automatic extension until January 2015; and

WHEREAS, the purpose of the second series of stays has been to study the effectiveness of the workforce housing provisions and to create a new program to increase moderate income housing in New Castle County; and

WHEREAS, it has been determined that the current workforce housing provisions have not provided the intended result and are no longer necessary; and

WHEREAS, it is determined that the elimination of the current workforce regulations in advance of the adoption of the new regulations will make it easier to understand and review the new ordinance and text amendment with the comprehensive changes proposed.

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), Division 40.07.300 (Workforce housing incentives) and including all Division 40.07.300 Sections 40.07.301 through Section 40.07.353 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*~~] Reserved.

[~~* Note—Effective upon the date of adoption of Ordinance 13-089, a temporary stay will apply to land development applications incorporating workforce housing incentives identified within Division 40.07.300 (“Workforce housing incentives”) and including Sections 40.07.301 through 40.07.353 of the *New Castle County Code*. This temporary stay shall be effective for 180 days from adoption of this Ordinance. The stay may be extended for an additional 90 days upon approval of New Castle County Council in order to effectuate the desired result of revising the workforce housing provisions to meet stated goals as circumscribed by the practicalities of timing of governmental and stakeholder input and review, as well as passage of any new provisions.]~~

[~~*Note—The stay extension option provided for in the above note was approved by County Council by Ord. 14-071 on July 22, 2014 for an additional 90 days. The stay is now in force to October 25, 2014.]~~

[~~*Note—Effective upon the date of adoption of Ordinance No. 13-089, Ordinance 14-071, and Ordinance 14-083, a temporary stay will apply to land development applications incorporating workforce housing incentives identified within Division 40.07.300 (“Workforce housing incentives”) including Section 40.07.301 through 40.07.353 of the *New Castle County Code*. The stay shall continue until January 31, 2015 provided that an ordinance containing provisions replacing or supplementing the provisions subject to this moratorium is placed on County Council’s agenda for final action on or before December 11, 2014. If an ordinance containing provisions replacing or supplementing the provisions subject to this moratorium is not placed on County Council’s agenda for final action on or before December 11, 2014, the stay shall expire on December 12, 2014. This additional time is necessary for New Castle County to effectuate the desired result of revising the workforce housing provisions to meet stated goals as circumscribed by the practicalities of timing of governmental and stakeholder input and review, as well as passage of any new provisions.]~~

[~~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. Eligibility requirements.]~~

~~[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 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 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), 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 for the proposed additional units that there is capacity or that a voluntary assessment is agreed to, and County Council consent prior to recordation pursuant to Section 40.31.114 (C) of this Chapter.]~~

~~[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, 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. 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. 40.07.313. — 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. Cost offsets.]~~

~~[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 households.]~~

~~[2. — *Fifty (50) percent bonus.* Twenty (20) percent set-aside, where less than half of the units are priced affordable to 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 health care, 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. 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.]~~

~~[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. Reserved.]~~

[Sec. ~~40.07.324. Reserved.]~~

[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.~~]

~~[Proposed development is subject to DelDOT transportation impact standards, and the County may limit or restrict development to less GFA or number of dwelling units if that is recommended by DelDOT. DelDOT may also require transportation improvements as a condition of its letter of no objection.]~~

[Sec. ~~40.07.330. Integration and appearance of workforce dwelling units.~~]

[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 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 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 in compliance with the standards of Article 25.]~~

~~[Sec. 40.07.340. Affordability controls.]~~

~~[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. 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.]~~

~~[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.]~~

~~[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 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 (15th) anniversary of the date of acquisition of the workforce dwelling unit by the initial purchaser, and if the seller 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 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 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.]~~

~~[Sec. 40.07.344. Household eligibility.]~~

~~[Eligibility for 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 sell 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.]~~

Section 2. *New Castle County Code* Chapter 40, Article 33 (Definitions), Division 40.33.300 General definitions) is hereby amended with material that is underlined to be added and material to be deleted in brackets and with strikethroughs as follows:

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

Abandonment. That the use....

~~[*Affordability period.* This is a fifteen (15) year period during which the affordability restrictions for for sale workforce dwelling units provided by this article shall apply. The control period for each workforce dwelling unit begins at the time of settlement.]~~

....

~~[*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 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.]~~

....

~~[*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.]~~

....

~~[*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.]~~

....

~~[*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.]~~

....

~~[*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 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.]~~

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

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. 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, but shall not apply to existing land development plans currently in the review process.

Approved on:

Adopted by County Council of
New Castle County on:

County Executive

President of County Council
New Castle County

SYNOPSIS: This Ordinance will eliminate the workforce housing provisions contained in Chapter 40 of the *New Castle County Code*.

FISCAL IMPACT: No discernable fiscal impact.

**Preliminary Land Use Service (PLUS)
Comprehensive Plan Amendments and Municipal Ordinances**

Delaware State Planning Coordination
122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-6958

Name of Municipality: New Castle County Land Use Department	
Address: 87 Reads Way New Castle, DE 19720	Contact Person: Eileen Fogarty
	Phone Number: 302-395-5409
	Fax Number: 302-395-5443
	E-mail Address: vcartolano@nccde.org

Date of Most Recently Certified Comprehensive Plan: June 11, 2012

Application Type:
Comprehensive Plan Amendment: Not applicable

Ordinance: Regarding the Creation of a Traditional Neighborhood Housing Program. This is a text amendment to Chapter 40 (“UDC”), of the New Castle County Code. (App. 2014-0607-T).

Other: _____

Comprehensive Plan Amendment or Municipal Ordinance prepared by:	
Address: ---- same as above ----	Contact Person:
	Phone Number:
	Fax Number:
	E-mail Address:

Maps Prepared by: NA.	
Address:	Contact Person:
	Phone Number:
	Fax Number:
	E-mail Address:

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Please describe the submission:

This Ordinance creates the Traditional Neighborhood Housing Program (“TNHP” or “Program”). The Program is intended to increase the number of moderately priced dwelling units (“MPDUs”) dispersed throughout New Castle County. Any rezoning application for a Major Land Development Plan providing more than twenty-five (25) dwelling units shall be required to provide MPDUs. In limited situations under the mandatory program, a payment-in lieu of providing MPDUs may be approved by the Department of Land Use. A Major Land Development Plan that does not require a rezoning may receive a density bonus if it provides MPDUs. Both the mandatory and voluntary programs will limit off-site MPDUs to no more than 50% of the required MPDUs and only if certain conditions are satisfied and the request is approved by the Department of Land Use. A fee shall be charged on each market rate dwelling unit within TNHP Plan. All in lieu and market rate fees generated by the Program shall be deposited in the Housing Trust Fund. All MPDUs shall be priced below market rate. All applicants for rental or purchase of an MPDU shall be income qualified. All MPDUs shall remain in the Program for a compliance period of fifteen (15) years. The Department of Community Services shall be responsible for income qualifying applicants, determining the maximum sales or rental price of a MPDU, and tracking the occupancy and ownership of the MPDU during the compliance period.

See attached Ordinance 14-000. App. 2014-0607-T.

ORDINANCE NO. 14 -

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

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 revising Chapter 40 (“UDC”) of the *New Castle County Code* and creating a voluntary Workforce Housing Program; and

WHEREAS, County Council initiated a stay of workforce housing plan submissions in December 2008 by Ord. 08-113 to revisit the incentives contained in the Program; and

WHEREAS, a subsequent amendment designed to clarify and improve the workforce legislation was adopted in February 2009 by Ord. 08-121; and

WHEREAS, County Council initiated a second stay of workforce housing plan submissions from January 29, 2014 through July 27, 2014 by Ordinance 13-089 to revisit the provisions of the Program; and

WHEREAS, the stay was extended an additional 90 days pursuant to Ordinance 13-089; and

WHEREAS, County Council initiated a further stay of workforce housing plans to December 11, 2014 with an additional automatic extension until January 2015 if an ordinance containing provisions supplanting the Workforce Housing Program is introduced by December 11, 2014; and

WHEREAS, this Ordinance is based upon the New Castle County Workforce Housing Report prepared by Arundel Community Development Services, Inc. and Innovative Housing Institute that provides an analysis of the Workforce Housing Program and provides recommendations based upon similar programs throughout the Country and the specific needs of New Castle County; and

WHEREAS, by adoption of this Ordinance, it is the intent of County Council to create a Traditional Neighborhood Housing Program that will facilitate the supply of moderate income housing for occupations in key industries more effectively than the Workforce Housing Program; 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 new Castle 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), Division 40.07.500 (Reserved) is hereby amended with material that is underlined to be added and material to be deleted in brackets and with strikethroughs as follows:

Division 40.07.500. [~~Reserved~~] Traditional Neighborhood Housing Program.

Sec. 40.07.501. Purpose and intent.

The intent of this Division is to promote moderately priced housing that is designed to be affordable to working families throughout the County, by requiring all major residential subdivisions with a rezoning application to include moderately priced dwelling units and by offering a density bonus on major residential subdivision not requiring a rezoning if a portion of the dwelling units are designated as moderately priced. Any project that provides moderately priced dwelling units shall also make a designated contribution to the Housing Trust Fund to assist with the provision of affordable housing throughout the County. The primary purposes of this Division include:

- A. Implementing the housing strategies outlined in the 2012 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; and
- C. Allowing working families to live in communities with better access to employment and educational opportunities and a range of housing types.

Sec. 40.07.510. Mandatory applicability.

A. Required Moderately Priced Dwelling Units (“MPDUs”). Any rezoning application proposing twenty-five (25) or more dwelling units shall contain “MPDUs”.

1. Where the number of dwelling units proposed with the rezoning are increased by seventy (70) 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.

2. Where the number of dwelling units proposed with the rezoning are increased less than seventy (70) percent over the number dwelling units under the base density of the existing zoning, fifteen (15) percent of all dwelling units shown on the proposed plan shall be set aside as MPDUs.
3. Base density prior to the rezoning shall be determined by completing a site capacity calculation pursuant to Articles 4 and 5 of this Chapter. The site capacity calculations shall be based upon a by-right development type for the existing zoning district and minimum site area pursuant to Table 40.04.110. The calculations shall be based on the same or equivalent development type proposed by the rezoning. If no equivalent development type exists under the existing zoning district, the calculation may be based upon the by-right development type that yields the greatest number of dwelling units.

B. *Payment-in-lieu of MPDU construction.* Where a developer can provide evidence that the inclusion of MPDUs within the rezoning plan poses a significant hardship or would not further the purpose or intent of this division, the Department of Land Use may allow the payment of a fee-in-lieu of constructing MPDUs.

1. The Department may consider payment-in-lieu only if:
 - a. the annual average common expense liability as calculated pursuant to the Delaware Uniform Common Interest Ownership Act (“DUCIOA”) is such that the development would not qualify as a limited expense liability planned community under DUCIOA; or
 - b. site constraints inherent in the land would increase cost of the dwelling units and affect the affordability of the MPDUs.
2. The payment-in-lieu amount shall be the difference between the sales price of a market rate unit and an MPDU as determined New Castle County.
3. The in-lieu fee shall be paid for each required MPDU that will not be provided.
4. All payments-in-lieu shall be deposited in the Housing Trust Fund.

C. This section shall not apply to rezoning applications where dwelling units are required to meet the residential requirements of a mixed use development.

Sec. 40.07.520. Voluntary applicability.

A. *Density bonus.* Any major subdivision proposing dwelling units may receive a density bonus if such plan provides MPDUs.

1. The residential density incentive shall be up to twenty (20) percent of the base density.

- a. Base density shall be determined by completing a site capacity calculation pursuant to Articles 4 and 5 of this Chapter. The site capacity calculations shall be based upon a by-right development type for the existing zoning district and minimum site area pursuant to Table 40.04.110.
- b. The density bonuses shall be added to the yield produced by the site capacity calculations set forth in Article 5.

B. *Set-aside*. No less than ten (10) percent of all dwelling units shall be designated as MPDUs.

Sec. 40.07.530. Off-site MPDUs.

Where a developer can provide evidence that the inclusion of MPDUs within the major subdivision plan would not further the purpose or intent of this division and poses a significant hardship, the Department of Land Use may allow MPDUs to be located off-site if it determines that the off-site units will result in a better public purpose than if the units were to be in the market rate development. Off-site MPDUs may only be approved if:

- A. No more than fifty (50) percent of the total required MPDUs are off-site.
- B. All off-site MPDUs are offered for ownership and not as rental units.
- C. The off-site MPDU must be located in a MVA market cluster no more than one letter less than record plan site. Thus, if the record plan is located in MVA Cluster B, the offsite MPDUs shall be located in MVA A, B, or C. The MVA market clusters are identified in the Delaware Housing Needs Assessment 2015-2012 as may be amended an updated, issued by the Delaware State Housing Authority.
- D. Any off-site unit that is not newly constructed pursuant to the standards and requirements of the current County building code, Chapter 6 of the *New Castle County Code*, must be improved to comply with the rehabilitation standards applicable to the New Castle County Neighborhood Stabilization Program.

Sec. 40.07.540. Contribution to the housing trust fund.

A contribution shall be made for all dwelling units that are not designated as an MPDU. The contribution shall be twelve (\$12.00) dollars per one thousand (\$1,000) dollars of permit construction valuation and shall be payable at the time of issuance of a Certificate of Occupancy.

Sec. 40.07.550. Staging plan and construction requirements

The developer shall submit a staging plan the Department of Land Use that identifies the number, type, location and plan for construction of all dwelling units in the subdivision and other locations accommodating approved off-site MPDUs. The staging plan shall designate whether the dwelling units will be marketed for sale or rental. The staging plan shall be considered as part of the site construction plans.

Sec. 40.07.551. Integration and appearance of MPDUs.

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

B. The exterior appearance of the MPDUs 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. Prior to exploratory plan approval, the applicant shall submit architectural renderings or design guidelines for the project that are in compliance with the standards of Article 25.

Sec. 40.07.552. Timing of MPDU construction and payment of in-lieu fees.

A. MPDUs shall be made available for sale concurrently with the market rate dwelling units for the project. The issuance of building permits for market rate dwelling units shall be stopped at the levels indicated below:

1. Twenty-five (25) percent pending the issuance of an equal percentage of building permits for MPDUs;
2. Fifty (50) percent pending the issuance of an equal percentage of building permits for MPDUs and where certificates of occupancy have been issued for twenty-five (25) percent of the MPDUs;
3. Seventy-five (75) percent pending the issuance of an equal percentage of building permits for MPDUs and where certificates of occupancy have been issued for fifty (50) percent of the MPDUs; and
4. Ninety (90) percent pending the issuance of one hundred (100) percent of building permits for MPDUs and where certificates of occupancy have been issued for seventy-five (75) percent of the MPDUs.

B. In-lieu fees shall be payable at the same percentage and at the same time MPDUs would have been made available. Building permits shall be stopped pursuant at the percentages in subsection A until payment is made.

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

Sec. 40.07.560. Income Eligibility and Qualification

A. Income eligibility and pricing standards shall be based upon annual Area Median Income (“AMI”) that is determined by income information and adjusted by household size and published annually by the United States Department of Housing and Urban Development (HUD) for Metropolitan Statistical Areas (MSA). New Castle County is within the Philadelphia-Camden-Wilmington Metropolitan Statistical Area as defined by the federal Office of Management and Budget.

B. Applicant Qualification. To determine whether a household is eligible to purchase or rent a MPDU, the household must complete 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 primary residence. The Department of Community Services will issue a Certificate of Qualification to qualified households. All applicants must complete no less than eight (8) hours of HUD approved housing counseling prior to receiving a Certificate of Qualification.

Sec. 40.07.561 Homeownership projects.

A. *Maximum Sales Price (MSP)*. MSP shall be determined by calculating AMI; the average interest rate for a fixed rate 30-year mortgage full amortized mortgage an annual determination of real estate tax; the annual homeowners insurance estimate; the monthly condominium or maintenance fees and the monthly maintenance reserve for unexpected maintenance and repairs. The MSA will be established for unit size based on presumed household sale.

B. MPDUs designated for homeownership shall be 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 buyers with household incomes up to (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 buyers within household incomes 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.

Sec. 40.07.562 Apartment and Rental Units.

A. *Maximum Allowable Rent (MAR)*. MAR shall be determined by the Department of Community Services and upon the submission of the Request for Affordable Rent Determination Form.

1. All MPDUs offered for rental must serve households with qualifying incomes up to sixty (60) percent of AMI.
2. MAR for MPDUs shall be established at rates affordable to households at fifty-five (55) percent of AMI.

Sec. 40.07.570 Affordability period and controls.

A. MPDUs shall remain subject to the restrictions contained in this division for a fifteen (15) year period.

B. *Resale Maximum Sales Price*. If a MPDU sold originally to a qualified homebuyer is sold during the fifteen (15) year affordability period, all reasonable efforts must be made to resell the MPDU to an eligible qualified homebuyer at an affordable price to the new homebuyer. The Resale Maximum Sales Price (RMSP) of the MPDU shall be calculated as the sum of the original purchase price multiplied by the Consumer Price Index plus the cost of: (1) documented improvements at the time of sale, (2) customary closing costs, and (3) costs of real estate commissions paid by the seller if a licensed real estate salesperson is employed.

C. If the MPDU is marketed for resale by a qualified homebuyer either through licensed real estate salesperson or through continuous advertisement in a paper of general circulation for a period of 365 days and the seller has not received an offer for maximum price as calculated pursuant to subsection B above, the MDPDU can be sold to any bona fide purchaser at an arms-length transaction. If the seller receives consideration for such transfer in excess RMSP as calculated pursuant to subsection B above (“Resale Profit”), the seller and purchaser are jointly and severally liable for and agree 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 to pay the NCC Resale Profit to the County on the date of transfer of title to the workforce dwelling unit, the 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 the 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, the County may pursue default remedies in accordance with the terms of the deed restrictions deed rider.

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

Sec. 40.07.571. Master Development Agreement.

Prior to record plan approval, the developer shall execute a Master Development Agreement in favor of the County, which shall be recorded upon approval of the County's Office of Law.

Sec. 40.07.572. Buyer Agreement.

Prior to the conveyance of an MPDU, the buyer shall execute a Buyers Agreement with New Castle County, acknowledging the buyer's acceptance and understanding of the terms and conditions of ownership subject the Traditional Neighborhood Housing Program.

Sec. 40.07.573. Deed restrictions.

Restrictions to ensure continued affordability MPDU's during the affordability period shall be contained in legally binding covenants and restrictions running against the MPDU property. The covenants and restrictions shall be recorded upon approval of New Castle County prior the conveyance or rental of the MPDUs. The covenants and restrictions shall be recorded against the MPDU only.

Sec. 40.07.574. Sales and rental agreements.

A. A written agreement delineating the terms and conditions shall be required for every sale or rental of a MPDU.

B. Unless approved in writing by New Castle County prior to the sale or rental, each sales or rental agreement shall reference that the dwelling unit is an MPDU and subject to the affordability controls contained in this Division.

C. All sales and rental agreements shall be forwarded to the Department of Community Services with thirty (30) days of execution for as long as the affordability period applies to the MPDU.

Sec. 40.07.580. Annual reporting and on-going evaluation.

The Departments of Community Services 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 annual report may recommend amendments to this Division and this Chapter. The report shall include details about how well the program is providing diverse housing options, how well MPDUs are being distributed

throughout the County and what factors are contributing to the success or failure of the program. The recommendation report may include suggestions such as increasing the incentives, decreasing the incentives, reducing additional restrictions or imposing additional requirements.

Sec. 40.07.590. Enforcement.

In addition to the County's remedies outlined in Article 31 and elsewhere the *New Castle County Code*, the County may take any legal action at law or equity to void property transfers for MPDUs not sold to qualified income-eligible households during the designated affordability period.

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, but shall not apply to existing land development plans currently in the review process.

Approved on:

Adopted by County Council of
New Castle County on:

County Executive

President of County Council
New Castle County

SYNOPSIS: This ordinance creates the Traditional Neighborhood Housing Program. The Program contains a mandatory and a voluntary component. The production of moderately priced housing units (“MPDUs”) for all residential rezonings over twenty-five dwelling units shall be required except for mixed use developments. In limited circumstances and upon County approval, a developer may pay a fee-in-lieu rather than provide MPDUs. This option exists only for the mandatory component of the Program. A density bonus will be provided to a developer that voluntarily agrees to provide MPDUs. For any project that contains MPDUs, a contribution to the Housing Trust Fund shall be made for all market-rate units. In limited circumstance and only upon County approval The Ordinance allows up to 50% of the MPDUs to be locate offsite in limited circumstance and only upon County approval. MPDUs shall be subject to a fifteen (15) year affordability period where all conveyances and rentals will be subject to requirements of the Program.

FISCAL IMPACT: No discernable fiscal impact.