

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

Delaware Office of State Planning Coordination
 122 Martin Luther King Jr. Blvd. South • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-5661

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

Application Type: Comprehensive Plan Amendment: Not Applicable

Ordinance: Ord. 17-044 Regarding Solar Energy Systems and Utilities. A text amendment to Chapter 40 (“UDC”), Article 3, (“Use Regulations”), Article 31 (“Procedures And Administration”), and Article 33 (“Definitions”) of the *New Castle County Code*

Other: _____

Comprehensive Plan Amendment or Municipal Ordinance prepared by:	
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Maps Prepared by:	
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Please describe the submission:

This amendment recognizes that the use of renewable energy sources such as solar should be encouraged. The amendment provides provisions regarding the use of solar energy systems. Definitions, special use standards, and individual use standards are necessary to identify use restrictions for different types and sizes of solar energy systems. Additionally, the amendment provides clarification of the definitions of minor and major utilities and outlines limited uses standards that pertain to the classification of the utility.

See attached Ordinance 17-044

Introduced by: Ms. Kilpatrick,
Mr. Tackett
Date of introduction: May 9, 2017

ORDINANCE NO. 17-044

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR “UDC”),
ARTICLE 3 (“USE REGULATIONS”), ARTICLE 31 (“PROCEDURES AND
ADMINISTRATION”), AND ARTICLE 33 (“DEFINITIONS”),
REGARDING SOLAR ENERGY SYSTEMS AND UTILITIES**

WHEREAS, New Castle County Council recognizes that the use of renewable energy sources such as solar should be encouraged and further recognizes the need to modernize the *New Castle County Code* to address the evolution and demand of renewable energy sources; and

WHEREAS, no specific provisions exist in the *New Castle County Code* regarding the use of solar energy systems and existing provisions pertaining to minor utilities, major utilities, and electric power-generating facilities do not adequately address solar energy; and

WHEREAS, definitions, special use standards, and individual use standards are necessary to identify use restrictions for different types and sizes of solar energy systems; for example, accessory solar energy systems, such as those mounted on a rooftop, have minimal impact on surrounding communities and require little regulation while large-scale solar energy systems may impose a greater impact and therefore warrant increased land use regulation and protection; and

WHEREAS, similarly, clarification of the definitions of minor utilities and major utilities and delineation of the applicable limited use standards that pertain to the classification of the utility is necessary to address the varying impacts of different types and sizes of utilities; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests (*i.e.*, promoting the health, safety, morals, convenience, order, prosperity and/or welfare of the present and future inhabitants of this State).

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

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.100 (“Use regulations.”), Section 40.03.110 (“Use table.”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.03.110. Use table. . . .

Table 40.03.110A. General Use Table									Table 40.03.110B. General Use Table						Table 40.03.110C. General Use Table		
Zoning District (Urban and Suburban-Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory,									Zoning District (Suburban and Special Character)						Additional Standards (all districts)		
Land Use	* TN	ST	MM	ON	OR	CR	BP	I	CN	*** S	SE	** NC	HI	EX	SR	Parking	Limited & Special Use Standards
Industrial Uses									Industrial Uses						Industrial Uses		
Compost operations	N	N	N	N	N	N	N	L	N	N	N	N	L	L	S	Table 40.03.522	Section 40.03.336
Extraction	N	N	N	N	N	N	N	N	N	N	N	N	N	L	N	Table 40.03.522	Section 40.03.324 and Table 40.03.210
Heavy industry	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	N	Table 40.03.522	---
Light industry	N	N	N	N	L	N	Y	Y	N	N	N	N	Y	Y	N	Table 40.03.522	Section 40.03.333
Recycling or storage	N	N	N	N	L	N	L	L	N	N	N	N	L	N	N	Table 40.03.522	Table 40.03.210
Utilities, maintenance facilities	N	N	N	N	Y	L	Y	Y	N	N	N	N	Y	N	N	Table 40.03.522	Section 40.03.312
Utility[ies], minor	L	L	L	L	L	L	L	L	L	L	L	L	Y	Y	L	Table 40.03.522	Section 40.03.334
Utility[ies], major	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	L	<u>L</u>	<u>L</u>	Table 40.03.522	Section 40.03.312
Solar energy system, large-scale	<u>N</u>	<u>N</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>N</u>	<u>S</u>	<u>N</u>	<u>N</u>	<u>S</u>	<u>N</u>	<u>S</u>	na.	Section 40.03.337
Other Uses									Other Uses						Other Uses		
Airports	N	N	N	N	L	N	L	L	N	S	N	N	L	N	S	Special study, Section 40.03.524	Table 40.03.210, Section 40.03.325 and 40.03.432
Commercial communications towers	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	2 per tower	Section 40.03.326
Community recycling bins	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	---	Section 40.03.430
Exterior lighting for outdoor recreational uses	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	Table 40.03.522	Table 40.03.210 and Division 40.22.700...

Section 2. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards.”), Section 40.03.312 (“Utilities.”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.03.312. Utility[ies], major.

A. A three-tenths (0.3) increase in bufferyard opacity shall be required adjacent to any outside equipment or material storage.

B. Electric power generating facilities shall be permitted only in the Industrial (I) zoning district and the Heavy Industrial (HI) zoning district. Any barrier or fence constructed to prevent unauthorized access of any electric power generating facility or component thereof may be constructed to meet any applicable federal rules or standards addressing physical security of power system facilities.

C. In any zoning district where a new [~~electric power generating facility~~] major utility is proposed to be constructed, the following shall apply:

1. In addition to filing a major land development plan, the landowner and operator of the proposed facility shall make application to the Department for review. The Department shall review the application and shall respond in writing to the [~~owner~~]applicant with comments and recommendations, when appropriate.
2. Unless waived by the Department, [F]the application shall include the following:
 - a. A detailed account of the capacity . . .

Section 3. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards.”), is hereby amended by adding the material that is underscored as set forth below.

Sec. 40.03.337. Large-scale solar energy system.

A. The following requirements apply to any large-scale SES:

1. Acreage dedicated to the SES shall not exceed fifteen percent (15%) of the total site acreage for residentially zoned parcels, measured by the outside perimeter of the SES structures, including aisles contained therein. Non-residentially zoned parcels shall comply with the minimum LSR for other permitted uses for the appropriate zoning district, as outlined in Table 40.04.110A.
2. The SES shall be located no closer than one-hundred and fifty feet (150’) from any property line.

3. The SES shall be enclosed by a barrier, such as a fence, suitable to prevent unauthorized access. The barrier may be constructed to meet any applicable federal rules or standards addressing physical security of power system facilities.
4. Landscaping of no less than six (6) plant units per one hundred (100) linear feet shall be required as a buffer along the perimeter of the site or the barrier. The buffer shall not exceed twenty feet (20') in width and shall provide four (4) season visual screening.
5. Signage, not to exceed four (4) square feet, identifying the SES operator, its contact phone numbers and emergency contact information shall be posted at each entrance or exit of the property.
6. Warning signs shall be posted on all exterior barriers indicating "DANGER – HIGH VOLTAGE – KEEP OUT". Signs shall be spaced no less than every two hundred (200) linear feet and shall be posted to be visible from each direction that is accessible to the public.
7. The barriers shall not be used to display any signage except as required by this section.

B. Abandonment.

1. The operator or property owner shall provide written notice to the Department whenever the SES is out of active production for more than six (6) months. Any SES that ceases to produce electricity continuously for one (1) year is considered abandoned.
2. The operator or property owner shall either recommence production of electricity and schedule a site inspection with the Department to verify that all special use requirements are still intact or shall remove all equipment and systems and restore the site as near as practicable to its original condition within three (3) months of being considered abandoned.
3. Abandoned SES sites shall be restored to their predevelopment condition and inspected by the Department. Failure to comply with the requirements of this section shall authorize, but not require, the County to remove the SES and restore the site in accordance with the approved decommissioning plan.

C. Financial assurance. Prior to issuance of a building permit, the operator or property owner shall provide a bond, surety, letter of credit, or other financial assurance in a form and amount acceptable to the Department to secure payment of one hundred and twenty-five percent (125%) of the anticipated cost of removal of all associated site improvements and restoration of the site. The financial assurance shall remain in full force and effect while the SES remains in place and shall be renewed or replaced as necessary.

D. Development rights. The acreage utilized for the SES shall be subtracted from the base site area of the property prior to conducting the Site Capacity and Concurrency Analysis for any other proposed development of the property.

Section 4. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 3 (“Use Regulations”), Division 40.03.400 (“Individual use standards.”), Section 40.03.410 (“Accessory uses, residential.”), is hereby amended by adding the material that is underscored as set forth below.

Sec. 40.03.410 Accessory uses, residential.

Residential uses may have . . .

A. *General standards.* . . .

L. *Solar energy system, accessory.*

1. A ground-mounted accessory SES shall be considered a free-standing accessory structure. A ground mounted accessory SES shall be located behind the principle structure and a minimum of six feet (6’) from any side or rear property line and shall not exceed sixteen feet (16’) in height.
2. A rooftop SES shall not extend more than five feet (5’) above the surface of the roof and shall be considered when evaluating maximum building height. Any component of a rooftop SES located on the ground shall located behind the principle structure and a minimum of six feet (6’) from any side or rear property line.

Section 5. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 3 (“Use Regulations”), Division 40.03.400 (“Individual use standards.”), Section 40.03.430 (“Accessory uses, nonresidential.”), is hereby amended by adding the material that is underscored, as set forth below.

Sec. 40.03.430. Accessory uses, nonresidential.

Nonresidential uses (not including agricultural uses) may . . .

A. *Uses.* All uses . . .

M. *Solar energy system, accessory.*

1. A ground mounted SES shall be located behind the principle structure and shall not exceed sixteen feet (16’) in height.
2. A rooftop SES shall be considered when evaluating maximum building height. Any component of a rooftop SES located on the ground shall be located behind the principle structure.

Section 6. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.700 (“Reviews and types of plans.”), Section 40.31.712 (“Utility plan.”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.712. Utility plan.

~~[All utility companies or public service agencies acquiring any new easement or right of way intended to be used for the extension of any major public sewer, water line, storm drainage facility, electric power or gas line, or of any such major public utility facility shall be required to submit plans to t]~~The Department ~~[for]~~ shall review ~~[and approval]~~ a utility plan in accordance with the procedures for a minor subdivision and any other applicable provisions. ~~The following do not qualify as a new right of way and are not required to submit utility plans:~~

- ~~A. An existing franchise right of way.~~
- ~~B. A State right of way with the approval of DeIDOT.~~
- ~~C. A new right of way or easement that is part of a new subdivision or land development plan.]~~

Section 7. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 33 (“Definitions”), Division 40.33.100 (“Word usage.”), Section 40.33.130 (“Abbreviations.”), is hereby amended by adding the material that is underscored, as set forth below.

Sec. 40.33.130. Abbreviations.

The following abbreviations . . .

- AASHTO . . .
- RPATAC Resource Protection Area Technical Advisory Committee
- SES Solar energy system
- s.f. or sq. ft. . . .

Section 8. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 33 (“Definitions”), Division 40.33.100 (“Word usage.”), Section 40.33.270 (“Industrial uses.”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.33.270. Industrial uses.

- A. *Compost operations* . . .
- E. *Recycling or storage* . . .

F. Solar energy system, large scale. Any SES that is engineered and designed to have a generating capacity of two hundred kilowatts (200kW) or more, including all components thereof such as collectors, panels, controls, energy storage devices, heat pumps, heat exchangers, and other materials and hardware for dissipation and distribution.

G[F]. Utility[ies], major. Any facility or structure for the regional generation, transmission, distribution, treatment, disposal, or storage of [power,] water, sanitary sewer or waste management. Any underground, surface or overhead facility or structure or an area of land used to generate, store, transmit, distribute or regulate electricity in excess of 115 kilovolts (kV). Any accessory such as poles, wires, mains, drains, vaults, culverts, sewers, pipes, signals or pumps associated with a major utility facility or structure. This use shall exclude disposal of hazardous or radioactive waste materials (NAICS 562211), which shall be prohibited, and any type of SES regardless of size.

H[G]. Utility[ies], minor. Any facility or structure for the local generation, transmission, distribution, treatment, disposal, or storage of water, sanitary sewer or waste management that provides service solely within the boundaries of New Castle County. Any underground, surface or overhead structure or facility or an area of land used to generate, store, transmit, distribute or regulate electricity of no more than 115 kilovolts (kV). Any accessory such as poles, wires, mains, drains, vaults, culverts, sewers, pipes, signals or pumps not associated with a major utility facility or structure. This use shall exclude any type of SES regardless of size.

~~[Utility substations, gas regulators, public water supply well or intake, transmission or local distribution facilities including water storage tank, reservoir and treatment at the wellhead or spray irrigation facility.]~~

I[H]. Utilities, maintenance facilities. . .

Section 9. *New Castle County Code* Chapter 40 (“Unified Development Code” or “UDC”), Article 33 (“Definitions”), Division 40.33.100 (“Word usage.”), Section 40.33.300 (“General definitions.”), is hereby amended by adding the material that is underscored, as set forth below.

Sec. 40.33.300. General definitions.

This Division . . .

Abandonment . . .

Soil stabilizing function . . .

Solar energy system (SES). Any structure for the conversion of sunlight into electricity either directly using photovoltaics or indirectly using concentrated solar thermal power.

Solar energy system, accessory. Any SES that: (1) is a rooftop SES regardless of generating capacity or size; or, (2) any system, including all components thereof such as collectors, panels, controls, energy storage devices, heat pumps, heat exchangers, and other materials and hardware

for dissipation and distribution, that has a maximum generating capacity of less than two hundred kilowatts (200kW) and utilizes less than one (1) acre of land.

Solar energy system, rooftop. Any SES that has its electricity-generating solar panels mounted or resting on the rooftop of a building or structure, including all components thereof such as photovoltaic modules, mounting systems, cables, solar inverters, and other electrical accessories whether or not such components thereof are mounted or resting on the rooftop.

Special Flood Hazard Area . . .

Section 10. 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 11. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by a 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 12. This Ordinance shall become effective immediately upon its adoption by County Council and approval of the County Executive, or as otherwise provided in *9 Del. C. § 1156*.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: The purpose of this Ordinance is to revise Chapter 40 of the *New Castle County Code* to create provisions relating to any solar energy system ("SES") and to amend provisions

relating to major and minor utilities. This Ordinance defines *accessory SES*, including rooftop SES, and creates individual use standards for these small-scale systems. This Ordinance recognizes that a large-scale SES has the potential to negatively impact the public and surrounding communities and therefore requires additional regulatory review for the protection, health, safety, and welfare of the public.

This Ordinance creates special use standards applicable to a SES engineered and designed to have a maximum generating capacity of two-hundred kilowatts (200kW) or more, unless the system is a rooftop SES. The definition of *major utility* is amended to include facilities and structures of all non-SES sources of energy that generate, transmit or distribute in excess of 115 kilovolts (kV).

In addition, the Ordinance amends the limited use tables to reflect additional zoning districts for the location of a *utility, major* and to provide that these uses will be subject to the limited use standards currently existing in *New Castle County Code* § 40.03.312. Further, the Ordinance provides a definition of *utility, minor* to include all non-SES sources of energy that generate, transmit or distribute no more than 115 kilovolts (kV). Finally, the provisions relating to utility plans are amended by this Ordinance.

FISCAL NOTE: This Ordinance has no discernable fiscal impact.