

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

Name of Municipality: New Castle County	
Address:	Contact Person: Richard Hall
	Phone Number: 395-5463
	Fax Number: 395-5443
	E-mail Address: REHall@nccde.org

Date of Most Recently Certified Comprehensive Plan: 2012

Application Type:
 Comprehensive Plan Amendment: _____
 Ordinance: No. 17-108
 Other: _____

Comprehensive Plan Amendment or Municipal Ordinance prepared by:	
Address:	Contact Person: Janet Vinc
	Phone Number: 395-5437
	Fax Number: 395-5443
	E-mail Address: JLVinc@nccde.org

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

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Please describe the submission: This ordinance provides specific regulations for the micro-alcohol production industry. See attached

Introduced by: Mr. Cartier
Date of introduction: October xx, 2017

ORDINANCE NO. 17-

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR “UDC”),
ARTICLE 3 (“USE REGULATIONS”), AND ARTICLE 33 (“DEFINITIONS”)**

WHEREAS, the micro-alcohol production industry is expanding rapidly throughout the United States and Delaware; and

WHEREAS, the Unified Development Code (“UDC”) allows breweries, wineries, and distilleries only in the Heavy Industry (HI) zoning district and does not distinguish between large-scale brewery or distilling operations and micro-alcohol production; and

WHEREAS, the Office of Alcoholic Beverage Control Commissioner for the State of Delaware regulates the licensure of craft alcohol production establishments such as farm wineries, microbreweries and craft distilleries; and

WHEREAS, recognizing this economic development trend and the potential for local community investment in the micro-alcohol production industry, and in order for New Castle County to be competitive in this rapidly-expanding market, the UDC must be amended to allow licensed craft alcohol production establishments in appropriate locations; and

WHEREAS, New Castle County has recognized that microbreweries and craft distilleries are an appropriate use for mixed-use and commercial developments, subject to certain limited use standards; and

WHEREAS, New Castle County has recognized that a farm winery is an appropriate use in several zoning districts, subject to certain limited use standards; and

WHEREAS, this initiative is an effort to enhance opportunities for economic development within New Castle County and to provide a source of additional business, investment and employment opportunities; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally 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 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.100 (“Use regulations”), Table 40.03.110 (“General Use Table”), is hereby amended by adding the material that is underscored, as set forth below:

Table 40.03.110 A GENERAL USE TABLE										Table 40.03.110 B GENERAL USE TABLE							Table 40.03.110 C 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	M M	ON	OR	CR	BP	I	CN	*** S	SE	** NC	HI	EX	SR	Parking	Limited & Special Use Standards	
... Commercial										Commercial							Commercial	
... Corporate guest house	N	L	N	N	Y	Y	Y	Y	N	L	L	L	N	N	L	Table 40.03.522	Table 40.03.210	
<u>Craft alcohol production establishment</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L*</u>	<u>L*</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>L*</u>	Table 40.03.522	Table 40.03.210, Section 40.03.318, Section 40.03.338 *farm winery only	
Drive-in facility	L	N	N	L	L	L	L	L	L	N	N	N	L	N	N	Table 40.03.522	Table 40.03.210, Section 40.03.316	

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”), Table 40.03.210 (“Limited and Special Use Standards”), is hereby amended by adding the material that is underscored, as set forth below:

Table 40.03.210 A. Limited and Special Use Standards						Table 40.03.210 B. Limited and Special Use Standards						Table 40.03.210 C. Limited and Special Use Standards		
Buffer Standards						Locational or Dimensional Standards						Additional Standards		
Buffer Standards						Minimum						Maximum		Other
Land Use	Location	Increase Opacity or Width	Fence or Berm	Use Protected	Distance from Use to Protected Parcel	Spacing	Site Area	Road Access	Open Space	Lot Area	Height			
... Commercial						Commercial						Commercial		
... Corporate guest house							5 ac.							
<u>Craft Alcohol Production Establishment</u>													Section 40.03.318, Section 40.03.338	
Drive-in facility	Residential	0.4											Section 40.03.316	

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 and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.03.318. Mixed use. ...

B. In addition to the residential requirements above, mixed use development shall include a minimum of three (3) different uses from at least two (2) of the following land use categories: Commercial retail and service, Section 40.33.240 (E); Office, Section 40.33.240 (L); Restaurant, Section 40.33.240 (K); Craft alcohol production establishment (CAPE), Section 40.33.240 (M); Institutional neighborhood, Section 40.33.230 (E); Public Service, Section 40.33.230 (H). Gas stations, single use (e.g. stand-alone or pad site) restaurants, and restaurants with drive through service shall not be permitted in a mixed use development. . . .

E. A CAPE shall include a tasting room that is a minimum 500 sq. ft. GFA.

F. Loading areas shall not be oriented toward a public street or be located on any side of a building facing a residential use. If residential uses abut all sides of the use requiring a loading area, the loading area shall be screened by a solid wall or opaque fence with a minimum height of six (6) feet, in addition to the required landscape buffering. ...

Sec. 40.03.338. Craft Alcohol Production Establishment (CAPE).

A. The following use standards apply to all zoning districts.

1. All aspects of the brewing, fermenting or distilling process shall be completely confined within a building.
2. Outside storage of materials and finished products is prohibited.
3. By-products or waste from the production of the alcoholic beverage shall be properly disposed of off property.
4. The CAPE may offer to the public, on a regular and continuing basis, various activities ancillary to its alcoholic beverage production process, including, but not limited to: tours of the premises, educational classes, and demonstrations. Unless otherwise prohibited, the CAPE may sell, on the licensed premises, packaged food items, souvenirs, alcoholic beverage supplies and other materials relating to the CAPE.
5. All licenses required pursuant to Title 4 of the *Delaware Code* shall be obtained prior to the issuance of a certificate of occupancy or use for the CAPE. The CAPE shall be operated pursuant to all applicable licenses at all times. A copy of all applicable licenses shall be provided to the Department prior to the issuance of a certificate of occupancy or use. Failure of the owner or operator to maintain any valid license required by Title 4 shall result in the revocation of the certificate of occupancy or use.

6. A tasting room shall be operated only pursuant to a license issued by the Office of Alcoholic Beverage Control Commissioner for the State of Delaware. A tasting room shall remain at all times an ancillary use to the CAPE.

B. The following use standards apply in the CR zoning district.

1. A tasting room shall be provided that is a minimum 500 sq. ft. GFA.

2. Loading areas shall not be oriented toward a public street or be located on any side of a building facing a residential zoning district or a residential use. Where a residential zoning district or a residential use abuts all sides of the property, the loading area shall be screened by a solid wall or opaque fence with a minimum height of six (6) feet, in addition to required landscape buffering.

C. The following use standards apply in the CN zoning district.

1. The CAPE shall not exceed 10,000 sq. ft. GFA.

2. A tasting room shall be provided that is a minimum 500 sq. ft. GFA.

3. Loading areas shall not be oriented toward a public street or be located on any side of a building facing a residential zoning district or residential use. Where a residential zoning district or residential use abuts all sides of the property, the loading area shall be screened by a solid wall or opaque fence with a minimum height of six (6) feet, in addition to required landscape buffering.

D. The following use standards apply in BP and I zoning districts.

1. Any tasting room shall not exceed 2,000 sq. ft. GFA.

2. Mobile food trucks may operate in conjunction with a CAPE provided that:

a. the food truck is located on the same parcel as the CAPE;

b. required parking spaces shall not be used for food truck vending;

c. the food truck is located within the off-street parking area in a location that does not block or interfere with drive aisles, ingress or egress areas, or emergency access or fire lanes;

d. the hours of operation shall not extend beyond the CAPE's hours of operation; and

e. no signage shall be allowed other than signs permanently affixed to the food truck and one (1) portable menu sign no more than six (6) square feet in display area situated on the ground in the customer waiting area.

E. Only farm wineries may be located in the S, SE and SR zoning districts.

Section 4. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.500 (“Loading and parking standards”), Table 40.03.522 (“Off-street Parking for Specific Uses”), is hereby amended by adding the material that is underscored, as set forth below:

<i>Table 40.03.522. OFF-STREET PARKING FOR SPECIFIC USES</i>		
<i>Uses</i>	<i>Parking Spaces Required</i>	
	<i>Per 1,000 sf of Gross Floor Area</i>	<i>Other Standard</i>
... Commercial Uses: Commercial Retail		
General	4.0	---
Shopping center	4.5	---
Furniture & carpet stores	---	5.0 space minimum, plus 1 per 1000 sf. of GFA
Commercial temporary outdoor sales	---	1 off-street parking space per 250 sf. of sales and display area (exclusive of production area), minimum 4 spaces.
Roadside stand (permanent or temporary)	---	1 per 250 sf. of sales and display area (exclusive of production area)
Hardware, paint & home improvement	4.0	---
<u>Craft alcohol production establishment</u>	---	<u>9 spaces per 1,000 sf. of tasting room, retail areas, and 25% of the GFA of all outdoor seating areas; plus 5 spaces minimum plus 0.5 spaces per 1,000 sf. of GFA for manufacturing, warehouse, and storage.</u>
Commercial Uses: Services		

Section 5. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.200 (“Use definitions”), Section 40.33.240 (“Commercial uses”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

ARTICLE 33. DEFINITIONS

Division 40.33.000. Purpose...

Division 40.33.200. Use definitions...

Sec. 40.33.240. Commercial uses.

A. *Adult Uses*. This includes

M. [~~Reserved.~~] Craft alcohol production establishment (“CAPE”). A farm winery, craft distillery or microbrewery, as defined by Title 4 of the Delaware Code, and licensed and regulated by the Office of Alcoholic Beverage Control Commissioner for the State of Delaware.

N. [~~Reserved.~~] Brewery-pub. A restaurant in which beer is manufactured on the premises, as defined by Title 4 of the Delaware Code, and licensed and regulated by the Office of Alcoholic Beverage Control Commissioner for the State of Delaware.

Section 6. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.200 (“Use definitions”), Section 40.33.270 (“Industrial uses”), is hereby amended by adding the material that is underscored, as set forth below:

Sec. 40.33.270. Industrial uses.

A. *Compost operations*

C. *Heavy Industry.* This category includes construction, mining, manufacturing, transportation, and public utilities due to the land use intensity impacts typically associated with large industrial uses, their accessory outdoor storage uses, and large building areas. The following uses are permitted:

Animal food, meat product, seafood, product manufacturing (NAICS 3111, 3116, 3117)

Tobacco manufacturing (NAICS 3122)

Breweries, wineries, distilleries other than brewery-pubs and craft alcohol production establishments (NAICS 31212, 31213, 31214)

Sawmills (NAICS 3211)

Section 7. 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 8. 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 9. 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 10. This Ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive, or as otherwise provided in 9 *Del. C.* § 1156.

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: A craft alcohol production establishment or "CAPE" may include a farm winery, a microbrewery, or a craft distillery as those terms are defined in Title 4 of the *Delaware Code*. The purpose of this Ordinance is to encourage economic development by allowing the establishment of CAPEs in appropriate locations and subject to limited use standards. This Ordinance establishes limited use standards applicable to a CAPE depending upon the zoning district in which it is located. This Ordinance also clarifies that a brewery-pub is considered a restaurant for zoning purposes.

FISCAL NOTE: This Ordinance will have no discernable fiscal impact.