

Introduced by: Mr. Carter
Date of Introduction: April 27, 2021

ORDINANCE NO. 21-050

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40
("UNIFIED DEVELOPMENT CODE"), ARTICLE 7 ("TRANSFER OF
DEVELOPMENT RIGHTS AND OTHER INCENTIVES AND BONUSES")
RELATING TO THE ESTABLISHMENT OF TRANSFER OF DEVELOPMENT
RIGHTS SENDING AND RECEIVING AREA MAPS**

WHEREAS, New Castle County's land resources are some of its most valued assets; and

WHEREAS, the County seeks to recognize and ensure enhanced conservation and preservation of these resources through a stronger role in land preservation; and

WHEREAS, these land resources support agriculture, provide habitat, offer space for recreation, and contain scenic and cultural resources; and

WHEREAS, land is a finite resource and is under development pressure, and there is a recognized need for a more intentional approach to identifying, protecting, and managing certain lands for the good of the County and its residents; and

WHEREAS, there is a need to preserve farmland and open space in the County to support a thriving agricultural economy, maintain local community character, protect associated natural resources, and help manage growth; and

WHEREAS, one of the many tools to preserve open space and manage growth is a practice known as the transfer of development rights; and

WHEREAS, transfer of development rights has been a tool included in the Unified Development Code since its original enactment, but has had limited success and is often misunderstood by landowners and residents; and

WHEREAS, the report recently completed by the Administration's Land Preservation Task Force has proposed revisions to the transfer of development rights rules/programs to allow transfer between planning districts; and

WHEREAS, public understanding and engagement in the development of a transfer of development rights program is a prerequisite to successful implementation; and

WHEREAS, a map clearly depicting parcels eligible to send development rights and parcels eligible to receive development rights would provide an important visual representation of the program's potential impact on conservation and growth management; and

WHEREAS, a map clearly depicting parcels eligible to send development rights and parcels eligible to receive development rights would provide all landowners increased awareness of their eligibility to participate in a fair and transparent manner; and

WHEREAS, a map clearly depicting parcels eligible to send development rights and parcels eligible to receive development rights would provide critical data needed to develop an accurate market analysis to estimate the supply and demand for development rights, guiding the equitable distribution of their use; and

WHEREAS, an understanding of the inequity in the supply and demand of development rights may be utilized to develop a public program to purchase rights for retirement, correcting for market failures; and

WHEREAS, developing such maps through a transparent public process would reduce the real or perceived perception of the picking of winners and losers in the implementation of this program; and

WHEREAS, a formal public process to map the areas that may send development rights and the areas that receive development rights would increase the public understanding through a transparent process; and

WHEREAS, New Castle County Council has determined that the provisions of this Ordinance will substantially advance and are reasonably related to legitimate government interests by promoting the health, safety, morals, convenience, order, prosperity, and welfare of the citizens of this County.

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

Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 7 (“Transfer of Development Rights and Other Incentives and Bonuses”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below:

Sec. 40.07.206. Establishment of Sending and Receiving Area Maps.

A.

1. Prior to any transfer of development rights between parcels, the Department shall develop eligibility maps for both sending and receiving areas through a public process. “Sending areas” are those parcels that will be protected by sending development rights to a receiving area. “Receiving areas” are those parcels deemed to have adequate infrastructure and are deemed to be suitable to receive the additional density from transferred development rights. The maps shall also be reviewed by the Planning Board and approved by County Council following public hearings.
2. The maps shall depict all undeveloped parcels that may be eligible to be sending areas in which the development rights are transferred to another area, and by deed covenant protected from development. The maps are to be developed in a format that would

allow any reasonable resident and applicable landowners of New Castle County to understand the potential for a parcel depicted on the map to be protected if a transfer development right option is exercised.

3. The maps also shall specifically depict all undeveloped parcels that may be eligible to receive additional density through transfer of development rights. The maps are to be developed in a format that would allow any reasonable resident and applicable landowners of New Castle County to understand the potential for parcels depicted on the map to be developed at higher density if a transfer development right option is exercised.
- B. The maps shall also be used as a basis for a market analysis of the supply, demand, and other relevant factors affecting the efficacy of a transfer of development rights prior to consideration at hearings by the Planning Board and County Council.
- C. Prior to the adoption of the maps, a direct mailing shall be made to all landowners with parcels included in the map with an option to voluntarily opt-out. The mailing shall also include all contiguous property owners to ensure the opportunity for engagement in the transfer development rights map approval process and as a good faith effort to inform all impacted landowners and residents of this program.
- D. The maps, once reviewed by the Planning Board and approved by County Council, shall be the only areas permitted for sending and receiving transfer development rights, but may be amended by County Council through subsequent legislative action.
- E. The maps, upon review by the Planning Board and approval by County Council, shall be included in all subsequent updates of the New Castle County Comprehensive Plan as part of the Conservation Element required under 9 Del. C. Sec. 2656. Subsequent updates of the maps depicting sending and receiving areas for transfer development rights shall be approved as part of any future Comprehensive Plan Approval Process.

Section 2. Consistency with the 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 immediately upon its adoption by New Castle County Council and approval by the County Executive, or as otherwise provided in 9 *Del. C. § 1156* and shall apply to Land Use applications submitted after such date only.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
of New Castle County

SYNOPSIS: This Ordinance provides for a public process for the development of transfer of development rights maps that are proposed to be developed and adopted as part of the New Castle County Comprehensive Plan.

FISCAL IMPACT: There is no discernible fiscal impact as these costs are built into the salaries and benefits in the Operating Budget. The estimated cost for work to be completed by existing full-time employees for implementation in FY2022 is \$23,270; and on-going work is estimated to cost \$3,322 in FY2023, \$3,404 in FY2024 and \$3,489 in FY2025. This reflects all work being done by five current New Castle County employees with no overtime. The fiscal impact assumes approximately 375 hours for implementation and on-going work annually of 10 hours by each staff person. There are no additional costs other than current employee staff time (salaries and benefits).