

Introduced by: Mr. Tackett  
Ms. Kilpatrick  
Date of Introduction: August 27, 2019

**SUBSTITUTE NO. 3 TO ORDINANCE NO. 19-078**

**TO AMEND *NEW CASTLE COUNTY CODE CHAPTER 40*  
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR “UDC”),  
ARTICLE 22 (“DRAINAGE, UTILITIES, SEPTIC SYSTEMS, PARKING,  
LOADING, AND LIGHTING”), REGARDING ON-SITE WASTEWATER  
TREATMENT (SEPTIC) SYSTEMS**

**WHEREAS**, Ordinance No. 13-097 eliminated all standards and conditions for the installation of individual on-site wastewater treatment (“septic”) systems including the minimum lot size requirements from Article 22 of the UDC; and

**WHEREAS**, by adopting Ordinance No. 13-097, County Council recognized that the Delaware Department of Natural Resources and Environmental Control (“DNREC”) regulates on-site wastewater treatment and disposal and administers the septic system approval process in New Castle County; and

**WHEREAS**, Ordinance No. 18-093 created a one-year stay on the acceptance of any major land development plan that proposed the use of septic and permitted one minor land development plan to be accepted and processed during the stay for any lot legally existing prior to the enactment of the temporary stay; and

**WHEREAS**, in adopting Ordinance No. 18-093, the Department of Land Use (the “Department”) and County Council recognized that the elimination of the UDC on-site wastewater treatment provisions resulted in the unintended consequence of stimulating the submission of new major land development plans proposing the development of large residential communities on septic systems; and

**WHEREAS**, the Department anticipates that the western wing of the Southern Sewer Service Area could be developed with approximately 3,200 lots on septic systems without a change in the regulations controlling on-site wastewater treatment; and

**WHEREAS**, the Department anticipates that the eastern wing of the Southern Sewer Service Area could be developed with approximately 1,870 lots on septic systems without a change in the regulations controlling on-site wastewater treatment; and

**WHEREAS**, the potential proliferation of septic systems, specifically in the areas of Southern New Castle County that are experiencing rapid development pressure, presents land use planning and environmental concerns; and

**WHEREAS**, while policies are developed concerning the expansion of County sewer to unsewered areas of the County, it is the intent of County Council to limit the use of septic systems to subdivisions of five lots or fewer in the Suburban district; and

**WHEREAS**, New Castle County Council has determined that the provisions of this ordinance will substantially advance, and are reasonably related to, legitimate governmental 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 or “UDC”), Article 22 (“Drainage, Utilities, Septic Systems, Parking, Loading, and Lighting”), Division 40.22.300 (“Sanitary sewer”), Section 40.22.320 (“Wastewater disposal connections”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below:

**Sec. 40.22.320. Wastewater disposal connections.**

A. All lots that discharge sanitary sewage shall be permanently connected to a wastewater disposal system designed and constructed to comply with all applicable County and Delaware Department of Natural Resources and Environmental Control (“DNREC”) regulations. No wastewater disposal system shall be installed upon any lot or parcel of land unless permitted by this Code. A connection fee, as determined by the Department of ~~Special Services~~Public Works, shall be charged to any lot owner who is required by this Article to connect to the County sewer system unless an impact fee was incurred pursuant to Article 14.

B. All current and future lots . . .

C. The Department of Public Works . . .

D. The Department of Land Use may not accept a plan to subdivide a Suburban (S) zoned lot into more than five (5) lots unless the subdivision is served by public sewer. Where not served by public sewer, a maximum of five (5) lots may be created within the boundaries of a Suburban (S) zoned lot that legally existed prior to the adoption of Ordinance 19-078. Lots not served by sewer may transfer development rights to development(s) served by sewer consistent with provisions of Article 7 of this Chapter.

Section 2. Subsection D to Section 40.22.320 expires on August 26, 2021, unless otherwise provided by a subsequent act of New Castle County Council.

Section 3. 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. 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. 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 immediately upon its adoption by County Council and approval by the County Executive, or as otherwise provided in 9 *Del. C. § 1156* and shall only apply to Land Use applications submitted after such date(s).

Adopted by County Council of  
New Castle County on:

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President of County Council  
of New Castle County

Approved on:

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County Executive  
New Castle County

**SYNOPSIS:** This amendment restricts subdivision applications for major land development plans or plans that allow more than five lots within the Suburban (S) zoning district to areas that are served by public sewer.

**Substitute No. 1** Provides that development rights may be transferred from non-sewered to sewered lots consistent with the procedure set forth in Article 7.

**Substitute No. 2** Removes the reference to Suburban Reserve (SR) zoning from the ordinance. Substitute No. 2 was tabled at County Council's December 10, 2019 meeting.

**Substitute No. 3** Edits proposed Section 40.22.320.D for readability and provides that the amendment to Section 40.22.320.D. will expire on August 26, 2021.

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