

Introduced by: Mr. Carter, Mr. Cartier,
Ms. Durham, Mr. Hollins,
Mr. Street, Ms. Hartley-Nagle
Date of Introduction: September 8, 2020

ORDINANCE NO. 20-101

AMENDING NEW CASTLE COUNTY CODE CHAPTER 28 (“PLANNING”), SECTION 28.01.003 (“COMPREHENSIVE DEVELOPMENT PLAN”) TO REQUIRE A SOCIAL JUSTICE ELEMENT, AN ENVIRONMENTAL JUSTICE ELEMENT, AND A HAZARDS MITIGATION ELEMENT BE EXPLICITLY INCLUDED IN THE 2022 COMPREHENSIVE DEVELOPMENT PLAN AND ALL FUTURE COMPREHENSIVE DEVELOPMENT PLANS AND PLAN UPDATES

WHEREAS, New Castle County Department of Land Use, in consultation with State and local agencies, is in the early process of developing the 2022 Comprehensive Development Plan; and

WHEREAS, recent events, including the COVID-19 pandemic, have highlighted social inequities and the disproportional impacts on low-resource communities that have long been impacted by social and environmental inequities; and

WHEREAS, the recommendations set forth in a Comprehensive Development Plan capture how New Castle County envisions its future and uses it as a guide to modify zoning and *New Castle County Code* to achieve that future; and

WHEREAS, New Castle County is dedicated to ensuring that our future fairly and justly considers the needs of all citizens, regardless of race or socioeconomic status; and

WHEREAS, Land Use Code and zoning can serve to hinder or to further goals of social justice, environmental justice, and adequate planning for human and natural hazards; and

WHEREAS, Land Use Code and zoning can be the gatekeeper of the “status quo” for communities in need or the mechanism for needed change; and

WHEREAS, thoughtful and deliberate attention to land use issues that may influence the quality of life in at risk communities is needed to more deeply understand the issue, identify past practices that may contribute to injustice, recognize the problems of implicit racial and social biases that may have influenced past actions, and to identify the best practices to achieve fair and equitable land use decisions; and

WHEREAS, requiring the addition of explicit elements of areas of concern, including a social justice element, an environmental justice element, and a hazard mitigation element will highlight and help ensure a thoughtful and deliberate consideration of the issues for planning and land use policy decision making; and

WHEREAS, the American Institute of Certified Planners Code of Ethics and Professional Conduct explicitly states as a principle to which certified planners aspire includes that they "...shall seek social justice by working to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of the disadvantaged and to promote racial and economic integration. We shall urge the alteration of policies, institutions, and decisions that oppose such needs..."; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests.

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

Section 1. *New Castle County Code* Chapter 28 ("Planning"), Section 28.01.003 ("Comprehensive development plan") is hereby amended by adding the material that is underscored and by deleting the material that is stricken as set forth below.

Sec. 28.01.003. - Comprehensive development plan.

- A. The comprehensive development planning process for the County has been and shall continue to be an ongoing and evolving process conducted by the Department of Land Use with the participation of the County Council, the County Executive, the Planning Board and citizen committees. The components of such process include the following:
 - 1. Annual profiles.
 - 2. Comprehensive development plan background reports.
 - 3. Issues papers.
 - 4. Working drafts.
 - 5. Testing of infrastructure capacities.
 - 6. Analysis of appropriate implementation regulations and performance standards.
 - 7. Enactment of implementing ordinances.
- B. The comprehensive development plan for the County, as prepared by the Department of Land Use, approved by the Planning Board, presented by the County Executive to the County Council, and revised by the County Council is hereby adopted in accordance with 9 *Del. C.* ch. 26, subject to this Section. The components of the plan are as follows:
 - 1. Comprehensive Development Plan, November 29, 1988, including the land use concept map attached thereto.
 - 2. 1997 Comprehensive Development Plan update, adopted by Ordinance 96-139 in April 1997.
 - 3. 2002 Comprehensive Development Plan update, adopted by Ordinance 01-092 in March 2002.
 - 4. 2007 Comprehensive Development Plan update, adopted by Ordinance 06-140 on July 24, 2007.
 - 5. 2012 Comprehensive Development Plan Update, adopted by Ordinance 11-109 on April 24, 2012.

- C. The adoption of the comprehensive development plan shall have the force and effect set forth in 9 *Del. C.* § 101 et seq. (Counties); provided that, in accordance with 9 *Del. C.* § 2659 (Legal status of comprehensive plan), the land use concept map which forms a part of the comprehensive development plan shall have the force of law as to all future rezoning and shall not be regarded as changing any existing zoning district or classification or the zoning and other land development regulations applicable thereto, unless and until the County Council shall adopt a specific ordinance accomplishing such change. If uncertainty shall reasonably arise as to which proposed land use category shown on the land use concept map governs any specific parcel or portion of land, no rezoning application for such specific parcel or portion of land shall be regarded as conflicting with the land use concept map if that rezoning application is consistent with one (1) of the proposed land use categories that can reasonably be regarded as governing the land under consideration. The land use concept map is neither a substitute for nor affects the validity or effect of the County zoning map. The proposed land use part of the land use concept map is intended to serve only as a general guide as to how future growth can be accommodated in the County.
- D. The content of the plan shall include all elements required under 9 *Del. C.* § 2656(g) (Required and optional elements of comprehensive plan; studies and surveys) and other elements of peculiar need for New Castle County that at a minimum include an element to address social justice concerns, an element for environmental justice concerns, and an element for hazard mitigation plans to be integrated into the New Castle County comprehensive development plan. The three elements are described below:
1. Social Justice Element: A social equity element is study, planning, policy development, and zoning recommendations that utilizes an equity lens in all planning practices, including work on climate change and resilience, economic development, education, energy and resource consumption, public health, heritage preservation, housing, mobility and transportation, and public spaces. While applied throughout the Plan, these efforts shall also be summarized in a separate chapter or detailed appendix to the comprehensive development plan.
 2. Environmental Justice Element: An environmental justice element is the study, planning, policy development, and zoning recommendations that seeks to minimize and equalize the effect of environmental hazards among all people regardless of race, ethnicity, or income level. It shall review the appropriateness and location of all existing Industrial lands and their proximity to adjacent communities, and whether zoning adjustments or zoning amortization are needed to correct for injustices over time. While applied throughout the Plan, these efforts shall also be summarized in a separate chapter or detailed appendix to the comprehensive development plan.
 3. Hazard Mitigation Element: A Hazard Mitigation Element integrates risk reduction into the comprehensive development plan to provide an overarching policy framework for other planning and land use decision making. The mitigation measures should include considerations to all infrastructure, community level communication, preparedness planning and other nonstructural measures. Particular attention is also given to the safety of vulnerable communities related to natural and man-made hazards. While applied throughout the Plan, these efforts shall also be summarized in a separate chapter or detailed appendix to the comprehensive development plan.

~~D.~~ E. The plan is not a decision of specific land use proposals or a zoning map and ordinance. Rather the plan sets the stage and direction for changing the development codes and making land use and development decisions. Pending implementation of the comprehensive development plan by ordinances to be adopted by the County Council, the Department of Land Use shall inform the County Council whenever, in the Department's opinion, a proposed rezoning may materially conflict with the policies and goals set forth in the comprehensive development plan. The Department of Land Use, however, shall not delay or withhold its approval of any requested subdivision or land development plan that otherwise meets all lawful standards and requirements in force at the time when such application was made.

E.E. The annual profiles, issue papers, working drafts, studies, surveys, programs, policies, reports, plans, maps, map series and other materials to which reference is made in the comprehensive development plan shall be regarded as part of the comprehensive development process and as relevant background material, but shall not be or become part of the comprehensive development plan adopted hereby, unless or until such annual profile, issue paper, working draft, study, survey, program, policy, report, plan, map, map series and other material has been or will be separately adopted or approved by ordinance as being part of the comprehensive development plan.

Section 2. This Ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive, or as otherwise provided by 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
of New Castle County

SYNOPSIS: The Ordinance, if passed, will add required planning elements for study and inclusion in the Comprehensive Development Plan for Social Justice, Environmental Justice, and Hazard Mitigation Planning.

FISCAL IMPACT: There is no discernible fiscal impact.