

Prime Sponsor(s): Mr. Carter
Co-sponsor(s): Mr. Caneco, Mr. Tackett,
Ms. Durham, Mr. Cartier
Date of Introduction: August 5, 2025

**SUBSTITUTE NO. 3 TO ORDINANCE NO. 25-101
AS AMENDED BY FLOOR AMENDMENT NO. 3**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40 (“UNIFIED
DEVELOPMENT CODE”), ARTICLE 3 (“USE REGULATIONS”) AND ARTICLE 33
 (“DEFINITIONS”) TO ESTABLISH STANDARDS FOR THE REVIEW, SITING,
AND OPERATIONS OF DATA CENTERS**

1 **WHEREAS**, New Castle County currently lacks comprehensive, specific zoning
2 and development regulations tailored to the unique infrastructure demands,
3 environmental impacts, and operational characteristics of data centers; and
4

5 **WHEREAS**, data centers are distinct from other industrial and commercial uses
6 due to their high energy consumption, large-scale backup power systems, significant
7 water usage, and potential impacts on surrounding communities through noise, heat, and
8 traffic; and
9

10 **WHEREAS**, technological advancements have precipitated the growth of data
11 centers nationwide, expediting the need for provisions to guide responsible development
12 and mitigate impacts; and
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14 **WHEREAS**, it is in the public interest to proactively regulate data center
15 development to ensure compatibility with surrounding land uses and to protect the health,
16 safety, and welfare of County residents; and
17

18 **WHEREAS**, data centers share many characteristics with heavy industry,
19 particularly in terms of energy consumption, building scale, and noise leading to zoning
20 and classification complexities best handled as a separate category of use; and
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22 **WHEREAS**, the County seeks to encourage economic development while also
23 preserving community character, promoting sustainability, safeguarding public
24 infrastructure capacity, and minimizing land use conflicts; and
25

26 **WHEREAS**, data centers are unique land uses that involve large-scale electrical
27 infrastructure, water-intensive cooling systems, and extensive impervious coverage; and
28

29 **WHEREAS**, data centers typically utilize backup diesel generators, aboveground
30 and underground fuel storage tanks, cooling towers, and large volumes of electronic and
31 battery equipment that may pose environmental, public health, and safety risks if left
32 abandoned or unmaintained; and
33

34 **WHEREAS**, advances in information technology, server design, and power
35 delivery may cause individual data center facilities to become obsolete within a relatively
36 short operating lifespan, resulting in the risk of abandonment of specialized facilities that

are not easily adapted to other uses; and

WHEREAS, the County has a responsibility to protect the public health, safety, and welfare of its citizens by ensuring that abandoned or obsolete facilities are properly removed and that sites are restored to a safe and stable condition; and

WHEREAS, financial assurance requirements for decommissioning are a well-established land use tool in other industries with significant environmental or infrastructure impacts, including telecommunications towers, wind and solar energy projects, and mining operations; and

WHEREAS, requiring a decommissioning plan and associated financial assurance for data centers will ensure that the County and its taxpayers are not burdened with the cost of restoring sites and remediating environmental impacts in the event of abandonment; 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 40 (“Unified Development Code”), Article 3 (“Use Regulations”), Division 40.03.110 (“Use Regulations”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 40.03.110. – Use table.

Table 40.03.110 lists the type of uses permitted in each district. Refer to Division 40.33.200 for definitions of the various use categories and their components. Should a use not be identified in Table 40.03.110, an interpretation pursuant to Section 40.31.520 can be requested. Table 40.03.522 lists the specific parking requirements for several general uses listed in Table 40.03.110. Limited and special use standards are contained in Table 40.03.210 and Division 40.03.300. See Article 4 for district, lot, bulk and other standards.

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	P	Parking	Limited & Special Use Standards
Agricultural									Agricultural								Agricultural ...	
Industrial Uses									Industrial Uses								Industrial Uses	
Compost operations	N	N	N	N	N	N	N	L	N	N	N	N	L	L	S	N	Table 40.03.522	Section 40.03.336
<u>Data Centers</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>S</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>S</u>	<u>S</u>	<u>N</u>	<u>N</u>	<u>Table 40.03.522</u>	<u>Table 40.03.210</u> <u>Section 40.03.343</u>
Extraction	N	N	N	N	N	N	N	N	N	N	N	N	N	L	N	N	Table 40.03.522	Section 40.03.324 and Table 40.03.210 ...

Section 2. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 3 (“Use Regulations”), Section 40.03.210 (“Buffering, location, bulk and scale standards”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 40.03.210. - Buffering, location, bulk and scale standards.

Table 40.03.210 provides standards that increase the degree of buffering, govern the location, and reduce the bulk or scale of limited or special uses. The meaning of the different categories contained in the Table is established as follows:

A. *Location.* ...

K. *Other.* ...

Table 40.03.210A. Limited and Special Use Standards						Table 40.03.210B. Limited and Special Use Standards						Table 40.03.210C. Limited and Special Use Standards
	Buffer Standards					Locational or Dimensional Standards						Additional Standards
	Bufferyards			Separation		Minimum				Maximum		
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	Other
Agricultural ...						Agricultural						Agricultural ...
Industrial Uses						Industrial Uses						Industrial Uses
Compost operations												Section 40.03.336
<u>Data Centers</u>	<u>Within 1,000 feet of a residentially zoned parcel or parcel with an established daycare center or school</u>	0.4	<u>Minimum 8 ft. berm</u>	<u>Residential and established daycare center and schools</u>	<u>1,000 ft.*</u>							<u>See Section 40.03.343</u> <u>* See Section 40.03.343.B</u>
Extraction	All	0.8 (150 ft.)	8 ft. berm	Residential	100 ft. *		25 ac.					Section 40.03.324 * 100 ft. for Recreation, High Intensity Uses ...

Section 3. *New Castle County Code* Chapter 40 (“Unified Development Code”), 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 stricken, as set forth below.

Sec. 40.03.333. - Light Industry uses in OR and CR zoning districts.

- A. Light Industry uses as defined in Subsection 40.33.270.~~E~~ ~~D~~ are considered Limited Uses in the OR zoning district, except that the following uses require a special use permit:

Sec. 40.03.340. - Multifamily conversion.

Multifamily conversions are intended to facilitate and encourage the redevelopment of existing office and commercial sites and increase the diversity in housing opportunities in the county where supporting infrastructure exists. The following requirements apply to all multifamily conversions:

- A. A multifamily conversion is not permitted on a parcel that is within one thousand (1,000) feet of a heavy industry zoned parcel or a parcel with a heavy industry use as defined in Subsection 40.33.270.~~G~~ ~~D~~.

Sec. 40.03.343. – Data Centers.

In addition to the requirements of Section 40.31.430, the following requirements apply to every data center development or the cumulative expansion of an existing data center in excess of 20,000 square feet:

- A. The site shall be designed to minimize noise impact on neighboring residential properties and shall not generate noise levels that exceed the predevelopment noise level. A noise study shall be submitted to evaluate this impact and to verify consistency with Chapter 22 of the *New Castle County Code*.
- B. No portion of the proposed data center building shall be located within 1,000 feet of a residential district. The Department may approve data center structures located less than 1,000 feet, but no closer than 500 feet from a residential district, provided that noise levels generated will not exceed the allowable noise levels permitted in this section. The Department will require submission of a site-specific noise study demonstrating that the combined effectiveness of the selected measures will ensure compliance with this section.
- C. Except for lot lines along an existing office or industrial park or adjacent to an existing industrial use, the bufferyards, street trees, berming and landscaping shall be upgraded, where appropriate to mask the development. The buildings shall meet the requirements for large industrial structures in Section 40.26.260.
- D. In addition to meeting all the requirements of Article 11, anticipated trip generation for a data center shall be based on the latest published ITE manual calculations. Data centers shall not be converted to any use that exceeds the

approved Transportation Improvement Study (TIS) or equivalent study, for the site unless another TIS or equivalent study is completed and approved in accordance with all other applicable provisions of this Chapter.

E. Open-loop or once-through cooling is prohibited unless reclaimed water is used.

F. All generators shall be Tier IV or other technologies that the applicant can demonstrate as being more efficient and have less impact on the environment.

G. Any energy storage system proposed as part of the data center should be based upon best practices for energy storage and efficiency and have less impact on the environment. Energy storage systems must employ fire-safe technologies as determined and approved by the State Fire Marshall's Office.

H. All new or expanded facilities shall submit documentation outlining the operation of the building as a LEED certified building.

I. All data centers must reserve an area for future integration with onsite or communal microgrid components that include various energy generation sources, energy storage systems, a distribution network, a control system, and metering/billing systems.

J. Abandonment.

1. The operator or property owner shall provide written notice to the Department whenever the data center is out of active operation for more than 6 months. Data centers that cease to operate for 1 year or longer will be considered abandoned.

2. The operator or property owner shall either recommence operations and schedule a site inspection with the Department to verify that all use requirements are still satisfied or shall remove all equipment and systems within 6 months of being considered abandoned.

3. Within 2 years of being considered abandoned, the data center site shall be either restored to its predevelopment condition and inspected by the Department, or the property owner shall submit a land use application consistent with this Chapter to establish a new use for the site. Failure to comply with the requirements of this section shall authorize, but not require, the County to remove the data center and, when abandoned, restore the site to its predevelopment condition and charge the property owner as set forth in Subsection K.

K. 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 100% of the anticipated cost of removal of all associated site improvements and restoration of the site to its predevelopment condition when the data center has been abandoned. Financial assurances for data centers are subject to the following:

190 1. The operator or property owner shall provide a decommissioning report that
191 includes the following:

- 192
- 193 a. An inventory of components installed on the site.
- 194
- 195 b. Expected lifetime of the facility.
- 196
- 197 c. Decommissioning sequence.
- 198
- 199 d. Decommissioning cost estimate based on RSMeans or other
200 software or methodology approved by the Department.
- 201

202 2. The financial assurance shall remain in full force and effect while the data c
203 enter remains in place and operating, and shall be renewed every 5 years
204 and revised as necessary to adjust for inflation and any change in the cost
205 for decommissioning.

206

207 L. Annual Report, Enforcement and Compliance. The operator or property owner of
208 the data center shall supply an annual report to the Department indicating
209 compliance with all applicable local, state and federal regulations.

210

211 **Section 4.** New Castle County Code Chapter 40 ("Unified Development Code"),
212 Article 33 ("Definitions"), Section 40.33.270 ("Industrial Uses") is hereby amended by
213 adding the material that is underscored and deleting the material that is stricken, as set
214 forth below.

215

216 A. ~~Compost operations~~ (NAICS 325314). ...

217

218 B. Data center. A facility composed of networked computers, servers, storage systems,
219 and telecommunications equipment used for data processing, storage, and
220 distribution (NAICS 518210).

221

222 ~~C B.~~ *Extraction.* ...

223

224 ~~D G.~~ *Heavy industry.* ...

225

226 ~~E D.~~ *Light industry.* ...

227

228 ~~F E.~~ *Recycling or .* ...

229

230 ~~G F.~~ *Solar energy system, large scale.* ...

231

232 ~~H G.~~ *Utility, major.* ...

233

234 ~~I H.~~ *Utility, minor.* ...

235

236 ~~J I.~~ *Utilities, maintenance facilities.* ...

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Section 5. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 33 (“Definitions”), Section 40.33.300 (“General Definitions”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Abandonment. ...

Closed-loop cooling system. A closed-loop cooling system is one where the cooling medium is contained within a piping circuit for reuse.

Open-loop cooling system or once-through cooling system. An open-loop cooling system is one with a cooling method in which water is withdrawn from a surface, groundwater, or public supply source, passed through heat-exchange equipment to absorb heat, and the effluent is then discharged to a surface water body, re-injected into the ground, or discharged into a wastewater treatment system. Open-loop systems typically rely on continuous withdrawals and discharges, frequently resulting in greater thermal or environmental impacts including higher consumptive use of water resources.

Reclaimed water. Water that has been treated to meet specific quality standards, making it safe for a beneficial reuse. This can include treated effluent from wastewater treatment facilities and remediation activities.

Section 6. Consistent with 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 7. 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 8. 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 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 the 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 9. Effective Date. 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

287 submitted after such date(s) unless the applicant, by written request, agrees to submit to
288 the provisions of the Ordinance.

Adopted by County Council of
New Castle County on: 3/10/26

Monique Williams-Johns
President of County Council
of New Castle County

Approved on:

Marcus A. Henry
County Executive
of New Castle County

SYNOPSIS: The following is a summary of the revisions that were proposed in the Ordinance, broken down by *New Castle County Code* Division or Section number.

Sec. 40.03.110. The amendment updates the use table to establish which zoning districts permit the data center as a Special Use.

Sec. 40.03.210. The amendment updates the Limited and Special Use Standards Table to include data center uses.

Sec. 40.03.333. The amendment updates references to the definition of Light Industrial uses based on changes proposed to Section 40.33.270.

Sec. 40.03.340. The amendment updates references to the definition of Heavy Industry uses based on changes proposed to Section 40.33.270.

Sec. 40.03.343. The amendment includes Special Use standards for data center uses.

Section 40.33.270. The amendment defined data center uses.

Substitute No. 1. The following changes were included in Substitute No. 1:

Sec. 40.03.110. The amendment further updated the use table to establish which zoning districts permit the data center as a Special Use.

Sec. 40.03.343. The amendment clarified that data centers must comply with State and Federal regulations and allows the Department to permit applicants to substitute other technologies that the applicant has demonstrated as being more efficient and have less impact on the environment. The amendment also included decommissioning, abandonment, and financial assurance provisions for data centers.

Section 40.33.300. The amendment defines closed-loop cooling systems, open-loop cooling systems, and reclaimed water.

Substitute No. 2. The following changes were included in Substitute No. 2:

Sec. 40.03.210. The amendment referenced Section 40.03.343.B regarding the distancing requirements between data center structures and protected uses.

Sec. 40.03.343. The amendment clarified that noise level restrictions are for those generated by the data center. The amendment also allowed the Department to approve data center structures located less than 1,000 ft. from a residential zoning district, provided that noise levels generated do not exceed the allowable noise levels permitted in Chapter 22 of the *New Castle County Code*. However, no portion of the proposed data center building or accessory uses are permitted within 500 ft. of a residential district.

The amendment changed the effective date of the ordinance to be the date that the ordinance is adopted by County Council and approved by the County Executive.

Substitute No. 3. The following changes are included in Substitute No.3:

Section 40.03.343 has been amended as follows:

1. Clarifies the noise level standards
2. Removes the suggested noise attenuation techniques
3. Removes the Lighting standards since they are found in other Sections
4. Removes the natural gas system requirement for generators
5. Removes the Battery Energy Storage System requirement
6. Requires new or expanded buildings to be LEEDS certified
7. Clarifies areas for onsite or communal microgrid components must be reserved, not designed
8. Removes Sections for State coordination, compliance with State and Federal laws
9. Makes formatting changes to correct subsection citations
10. Modifies the Annual Report requirement