



DIVISION 40.07.500 Traditional Neighborhood Housing Program

Sections 40.07.510 (Eligibility) and 40.07.520 (Village employment bonus) were also deleted by Ordinance 09-037.

(Amended October 13, 2009 by Ordinance 09-037; amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.501. PURPOSE AND INTENT

The intent of this Division is to promote moderately priced housing that is designed to be available to working families throughout the County, by requiring all major residential subdivisions with a rezoning application or variance application proposing an increase in density to include moderately priced dwelling units and to offer a density bonus for major residential subdivisions not requiring a rezoning if a portion of the dwelling units are designated as moderately priced. Any project that provides moderately priced dwelling units shall also make a designated contribution to the Housing Trust Fund to assist with the provision of affordable housing throughout the County. The primary purposes of this Division include:

- A. Implementing the housing strategies for providing Traditional Neighborhood Housing as defined in Section 8.7 of the 2012 New Castle County Comprehensive Development Plan Update and furthering the strategies identified in the five (5) year consolidated housing plan for New Castle County
- B. Ensuring that diverse housing options exist throughout the County to accommodate a wide range of incomes; and
- C. Allowing working families to live in communities with better access to employment and educational opportunities and a range of housing types.

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.510. MANDATORY APPLICABILITY

Required Moderately Priced Dwelling Units ("MPDUs"). MPDUs shall be required subject to the following conditions.

- A. On all rezoning applications proposing twenty-five (25) or more dwelling units.
 1. If the number of dwelling units proposed with the rezoning are increased by one hundred (100) percent or more over the number of dwelling units under the base density of the existing zoning, the required MPDU set-aside shall be based upon the number of housing types shown on the proposed plan.
 - a. On plans proposing five (5) or more housing types, fifteen (15) percent of all dwelling units shall be set aside as MPDUs.
 - b. On plans proposing less than five (5) housing types, twenty (20) percent of all dwelling units shall be set aside as MPDUs.
 2. If the number of dwelling units proposed with the rezoning are increased by seventy (70) percent or more but less than one hundred (100) percent over the number of dwelling units under the base density of the existing zoning, fifteen (15) percent of all dwelling units shown on the proposed plan shall be set aside as MPDUs.
 3. If the number of dwelling units proposed with the rezoning are increased less than seventy (70) percent over the number of dwelling units under the base density of the existing zoning, ten (10) percent of all dwelling units shown on the proposed plan shall be set aside as MPDUs.

4. Base density prior to the rezoning shall be determined by completing a site capacity calculation pursuant to Articles 4 and 5 of this Chapter. The site capacity calculations shall be based upon a by-right development type for the existing zoning district and minimum site area pursuant to Table 40.04.110. The calculations shall be based on the same or equivalent development type proposed by the rezoning.
 - a. If no equivalent development type exists under the existing zoning district, the calculation may be based upon the by-right development type that yields the greatest number of dwelling units.
 - b. If the rezoning application proposes a change from a non-residential zoning district to a residential zoning district, the number of dwelling units under the base density prior to the rezoning shall be calculated utilizing the Suburban (S) zoning district.

- B. Any variance application proposing an increase in density over the density permitted by-right shall be required to provide MPDUs subject to the percentages provided in subsection A if the land development application proposes a total of twenty-five (25) or more dwelling units.

- C. *Payment-in-lieu of MPDU construction.* Where a developer can provide evidence that the inclusion of MPDUs within the rezoning plan poses a significant hardship or would not further the purpose or intent of this division, the Department may allow the payment of a fee-in-lieu of constructing MPDUs, as set forth below.
 1. The Department may consider payment-in-lieu only if the developer can demonstrate that the mandatory community maintenance, membership and recreation fees will create a severe cost burden to a qualified household if the MPDUs were constructed as part of the rezoning application. For purposes of determining severe cost burden, the meanings and definitions promulgated by the United States Department of Housing and Urban Development (“HUD”) shall control.
 2. The payment-in-lieu amount shall be the difference between the listed sales price of a market rate dwelling unit and the maximum sales price of an MPDU of the equivalent type.
 - a. The maximum sales price of an MPDU shall be based upon the County’s Maximum Allowable Sales Price Calculation Chart at the time of payment of the in-lieu fee.
 - b. If the sales price of a market rate dwelling unit exceeds \$500,000, the in-lieu fee amount shall be calculated using \$500,000 as the listed sales price. This amount shall be increased by three (3) percent, compounded annually, beginning January 1, 2016.
 3. The in-lieu fee shall be paid for each required MPDU that will not be provided.
 4. All payments-in-lieu shall be deposited in the Housing Trust Fund.

- B. D. This section shall not apply to rezoning applications where dwelling units are required to meet the residential requirements of a mixed use development.

(Amended October 13, 2009 by Ordinance 09-037; amended December 16, 2014 by Ord. 14-109; amended March 27, 2018)

SECTION 40.07.0520. VOLUNTARY APPLICABILITY

MPDUs may be provided on a voluntary basis subject to the following provisions.

- A. *Density bonus. Any major subdivision proposing dwelling units may receive a density bonus if such plan provides MPDUs.*
 1. *The residential density incentive shall be up to twenty (20) percent of the base density.*
 - a. *Base density shall be determined by completing a site capacity calculation pursuant to Articles 4 and 5 of this Chapter. The site capacity calculations shall be based upon a by-right development type for the existing zoning district and minimum site area pursuant to Table 40.04.110.*

b. *The density bonuses shall be added to the yield produced by the site capacity calculations set forth in Article 5.*

- B. *Set-aside. The number of MPDUs that shall be set-aside shall be based upon a percentage equaling fifty (50) percent of the density bonus. If the density bonus is twenty (20) percent, ten (10) percent of all dwelling units shall be designated as MPDUs.*

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.530. CONTRIBUTION TO HOUSING TRUST FUND

A contribution shall be made for all dwelling units that are not designated as MPDUs on all Traditional Neighborhood Housing Program plans. The contribution shall be twelve (\$12.00) dollars per one thousand (\$1,000) dollars of permit construction valuation and shall be payable at the time of issuance of a Certificate of Occupancy. All monies shall be deposited in the Housing Trust Fund.

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.540. LOCATION AND APPEARANCE OF ON-SITE MPDU'S

- A. *Alternative dwelling unit types may be used to accommodate MPDUs.*
- B. *MPDUs shall be dispersed and located throughout the development according to dwelling unit type and should not appear as noticeably segregated from the market rate dwelling units of the same type.*
- C. *The exterior appearance of the MPDUs should be similar to market rate dwelling units of the same type, by providing similar architectural style and similar exterior building materials, finishes, and quality of construction. Prior to exploratory plan approval, the applicant shall submit architectural renderings or design guidelines for the project that are in compliance with the standards of Article 25.*

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.541. PRE-APPLICATION REVIEW AND STAGING PLAN REQUIREMENTS

- A. *All Traditional Neighborhood Housing Program plans shall undergo a pre-application sketch plan review/conference and the submission of a concept plan showing the number, type, and location of all dwelling units and the general layout of site improvements.*
- B. *Prior to record plan submittal, the developer shall submit a staging plan that identifies the locations of the MPDUs. The location of off-site units also must be identified on the staging plan. The staging plan may be modified administratively and shall be considered a construction document for the purpose of record keeping.*

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.542. OFF-SITE MPDU'S

It is the intent of this Division that MPDUs be located within Traditional Neighborhood Housing plans. However, MPDUs may be located off-site where the developer provides evidence that inclusion of MPDUs within the major subdivision plan would pose a significant hardship; or, locating the off-site unit serves a better public purpose than if the unit were to be located in the market rate development. The Department may approve off-site MPDUs subject to the following limitations.

- A. No more than fifty (50) percent of the total required MPDUs are located off-site.
- B. The MPDU is offered for ownership and not as a rental unit.
- C. The off-site MPDU is located:
 - 1. Within a Market Value Analysis (“MVA”) market cluster equal or greater to the record plan site but no more than one letter less. Thus, if the record plan is located in MVA Cluster B, the offsite MPDUs shall be located in MVA A, B, or C. The MVA market clusters are identified in the Delaware Housing Needs Assessment 2015-2012, as may be amended and updated, issued by the Delaware State Housing Authority; or,
 - 2. On a property that is residentially zoned and designated as a problem property or is otherwise abandoned or distressed.
 - a. A property is abandoned if: (a) property tax payments are at least 90 days delinquent; (b) a code enforcement inspection has determined that the property is not habitable and the owner has taken no corrective actions within 90 days of a violation notice; or, (c) the property is subject to court ordered nuisance abatement related to property maintenance violations.
 - b. A property can be deemed distressed upon approval of the Department pursuant to its policies and procedures.
 - c. A property is considered a problem property if it is listed on the Department’s problem property list.
- D. Any off-site unit that is not newly constructed pursuant to the standards and requirements of the current County building code, Chapter 6 of the New Castle County Code, must be improved to comply with the rehabilitation standards applicable to the New Castle County Neighborhood Stabilization Program.
- E. A private, public, for-profit or non-profit organization that has been building, rehabilitating and providing affordable housing units within the County or some other similar jurisdiction for at least five (5) years may agree to develop the off-site MPDUs in partnership with the developer pursuant to a memorandum of agreement with the developer and for the benefit of New Castle County. Such agreement shall be approved by the Department and the Office of Law prior to record plan approval.

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.543. TIMING OF MPDU CONSTRUCTION AND PAYMENT OF IN-LIEU FEES

- A. MPDUs shall be made available for sale concurrently with the market rate dwelling units for the project. The issuance of building permits for market rate dwelling units shall be stopped at the levels indicated below:
 - 1. Twenty-five (25) percent pending the issuance of twenty-five (25) percent of building permits for MPDUs;
 - 2. Fifty (50) percent pending the issuance of certificates of occupancy for twenty-five (25) percent of the MPDUs;
 - 3. Seventy-five (75) percent pending the issuance of certificates of occupancy for fifty (50) percent of the MPDUs; and,
 - 4. Ninety (90) percent pending the issuance of one hundred (100) percent of building permits for MPDUs.
- B. Payment-in-lieu fees shall be payable at the same percentage and at the same time MPDUs would have been made available. Issuance of building permits shall be stopped at the percentages designated in subsection A until it is confirmed that payment is made.
- C. The Department may allow a variation to the stop levels listed above at the request of the applicant and based good cause shown and unforeseen circumstances.

- D. *If a private, public, for-profit or non-profit organization is providing the MPDUs subject to a memorandum of agreement with the developer, the timing of construction of the MPDUs shall be controlled by the memorandum of agreement.*

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.550. INCOME ELIGIBILITY AND PRICING

Income eligibility and pricing standards shall be based upon the current annual Area Median Income (“AMI”) determined by income information and adjusted by household size published by HUD for Metropolitan Statistical Areas (MSA). New Castle County is within the Philadelphia-Camden-Wilmington Metropolitan Statistical Area as defined by the federal Office of Management and Budget.

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.551. HOMEOWNERSHIP MPDU'S.

- A. *Maximum Sales Price (MSP). The MSP shall be established for unit size based on presumed household size and the qualifying level for the applicable AMI target. The MSP shall be reflected on Allowable Sales Price Calculation Charts maintained by the Department of Community Services.*
- B. *AMI targets. MPDUs designated for homeownership shall be made available to homeowners at two income levels calculated as AMI.*
1. *Ninety (90) percent AMI target. Fifty (50) percent of the MPDUs shall be affordable to qualified households with household income up to ninety (90) percent of AMI.*
 2. *Seventy-five (75) percent AMI target. Fifty (50) percent of the MPDUs shall be affordable to qualified households with household income[s] up to ninety (90) percent of AMI.*

(Amended December 16, 2014 by Ord. 14-109; amended March 27, 2018)

SECTION 40.07.552. RENTAL MPDU'S.

- A. *Rental MPDUs shall be permitted as follows:*
1. *In land developments designed as rental communities such as apartment complexes or rental townhouse communities, one hundred (100) percent of the MPDUs may be rental.*
 2. *In land developments not designed as rental communities, up to fifty (50) percent of the MPDUs may be rental.*
- B. *MPDUs designated for homeownership may be designated for rental only when all reasonable efforts are made to sell the MPDU to an eligible income qualified household for no less than 365 days and such efforts have failed to result in an offer by an eligible income qualified household for MSP.*
- C. *Maximum Allowable Rent (MAR). MAR shall be determined by the Department of Community Services upon the submission of the request for affordable rent determination form. MAR shall be established at rates affordable to qualified households with incomes equal to seventy-five (75) percent of AMI.*
- D. *Household Eligibility. Rental MPDUs shall be made available only to qualified households with incomes up to seventy-five (75) percent of AMI.*

(Amended December 16, 2014 by Ord. 14-109; amended March 27, 2018)

SECTION 40.07.553. QUALIFICATION.

Qualified household. To determine whether a household is eligible to purchase or rent a MPDU, the household must complete a certification or developer process that has been approved by the Department of Community Services. At the time of purchase, the household must submit an owner-occupancy declaration to the Department of Community Services, declaring that it is income eligible and that the unit is its primary residence. The Department of Community Services will issue a Certificate of Qualification to a qualified household. All applicants must complete no less than eight (8) hours of HUD approved housing counseling prior to receiving a Certificate of Qualification.

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.560. AFFORDABILITY PERIOD AND CONTROLS

MPDUs shall remain subject to the restrictions contained in this division for a ten (10) year affordability period calculated from the date of first sale. All resales during the affordability period shall be subject to the following restrictions.

A. Resale Maximum Sales Price (RMSP). The RMSP of the MPDU shall be calculated as the sum of the original purchase price multiplied by the Consumer Price Index plus the cost of: (1) documented improvements at the time of sale, (2) customary closing costs, and (3) costs of real estate commissions paid by the seller if a licensed real estate salesperson is employed.

B. All reasonable efforts shall be made to resell the MPDU to an eligible income qualified household for no less than 180 days. If the MPDU is marketed for resale by a qualified household either through a licensed real estate salesperson or through documented and continuous advertisement through a media generally accepted for the marketing of real estate, and the qualified household fails to receive an offer for maximum price as calculated pursuant to subsection A above, the MPDU can be sold to any bona fide purchaser at an arms-length transaction. If the seller receives consideration for such transfer in excess of the RMSP, such amount shall be considered the Resale Profit. The seller and purchaser are jointly and severally liable for and agree to pay the Resale Profit, multiplied by one (1) minus a fraction, the numerator of which is the number of complete calendar months since the date that the initial purchaser purchased the MPDU, and the denominator of which is one hundred twenty (120) to New Castle County ("NCC's Resale Profit"). The NCC Resale Profit shall be reflected on HUD-1 Settlement Statement. In the event that the seller or purchaser fail to pay the NCC Resale Profit to the County on the date of transfer of title to the MPDU, the County shall have a lien against the MPDU for NCC's Resale Profit, plus interest thereon at the rate of ten (10) percent per annum. Any and all Resale Profit paid to the County shall be deposited into the New Castle County Housing Trust Fund. In the event that a seller or purchaser defaults on any term of the deed restrictions, the County may pursue default remedies in accordance with the terms of the deed restrictions deed rider.

C. A private, public, for-profit or non-profit organization that has been building, rehabilitating and providing affordable housing units within the County or some other similar jurisdiction for at least five (5) years shall be exempt from following the controls if their own affordability controls that meet or exceed the requirements herein and obtain the approval of the Department of Community Services.

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.561. MASTER DEVELOPMENT AGREEMENT

Prior to record plan approval, the developer shall execute a Master Development Agreement in favor of the County, which shall be recorded upon approval of the County's Office of Law.

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.562. BUYER AGREEMENT.

Prior to the conveyance of an MPDU, the buyer shall execute a Buyers Agreement with New Castle County, acknowledging the buyer's acceptance and understanding of the terms and conditions of ownership subject to the Traditional Neighborhood Housing Program.

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.563. DEED RESTRICTIONS.

Restrictions to ensure continued affordability of MPDU's during the affordability period shall be contained in legally binding covenants and restrictions running with the MPDU property. The covenants and restrictions shall be recorded upon approval of New Castle County prior to the conveyance or rental of the MPDUs. The covenants and restrictions shall be recorded against the MPDU only.

(Amended December 9, 2104 by Ordinance 14-109)

SECTION 40.07.564. SALES AND RENTAL AGREEMENTS

A written agreement delineating the terms and conditions of the sale or rental shall be required for every sale or rental of a MPDU.

- A. Unless approved in writing by New Castle County, each sales or rental agreement shall reference that the dwelling unit is an MPDU and subject to the affordability controls contained in this Division.*
- B. All sales and rental agreements shall be forwarded to the Department of Community Services with thirty (30) days of execution for as long as the affordability period applies to the MPDU.*

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.570. RESERVED.

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.580. ANNUAL REPORTING AND ON-GOING EVALUATION

The Department of Community Services shall provide County Council with an annual report on the use and effectiveness of this program which shall be discussed at a Council Committee Meeting open to the public. The annual report may recommend amendments to this Division and this Chapter. The report shall include details about how well the program is providing diverse housing options, how well MPDUs are being distributed throughout the County and what factors are contributing to the success or failure of the program. The recommendation report may include suggestions such as increasing or decreasing incentives, modifying restrictions, changing fees, imposing additional requirements or any other recommendation that would further the purpose of the Traditional Neighborhood Housing Program.

(Amended December 9, 2014 by Ordinance 14-109)

SECTION 40.07.590. ENFORCEMENT.

In addition to the County's remedies outlined in Article 31 and elsewhere in the New Castle County Code, the County may take any legal action at law or equity to void property transfers for MPDUs not sold to qualified income-eligible households during the designated affordability period.

(Amended December 9, 2014 by Ordinance 14-109)