

Introduced by: Mr. Tackett
Ms. Kilpatrick
Date of introduction: January 22, 2019

**SUBSTITUTE NO. 1
TO
ORDINANCE NO. 19-005**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR “UDC”)
ARTICLE 5 (“SITE CAPACITY AND CONCURRENCY CALCULATIONS”),
ARTICLE 11 (“TRANSPORTATION IMPACT”), ARTICLE 31 (“PROCEDURES AND
ADMINISTRATION”), ARTICLE 33 (“DEFINITIONS”)**

WHEREAS, New Castle County (“County”) has engaged in a comprehensive review of the Unified Development Code (“UDC”) to identify standards that need revision for technical compliance, internal consistency, or consistency with current development practices; and

WHEREAS, the *Delaware Code* requires the County to adopt regulations for the purpose of promoting the general health, safety and welfare of the present and future residents of the State, including, among other things, the lessening of congestion on the streets and roads (9 *Del. C.* § 2603); and

WHEREAS, the New Castle County zoning code is intended to, among other things, ensure safe and convenient traffic control and movement (*New Castle County Code* § 40.01.015.D.2); and

WHEREAS, the *Delaware Code* requires that County regulations be in accordance with the New Castle County Comprehensive Development Plan (9 *Del. C.* § 2603); and

WHEREAS, Article 11 of the UDC establishes a concurrency system that ties new development to a level of service (“LOS”) standard for transportation facilities, and

WHEREAS, while concurrency is an effective and constitutional method to manage growth, it also may have unintended consequences such as discouraging or stopping some projects that create economic development and high-paying jobs, encouraging sprawl by promoting development in uncongested locations that may lack a full range of urban services, increasing trip lengths through a decentralized pattern of development, hindering smart growth by discouraging higher densities or mixed use development in urban locations, and creating inequities for current applicants where a failing level of service is attributable to prior growth, development decisions and regional traffic patterns; and

WHEREAS, the New Castle County Comprehensive Development Plan directs the County to continue working to improve transportation system performance, including through the incorporation of new technologies (2012 Plan, pps. 4-9); and

WHEREAS, New Castle County and the Delaware Department of Transportation (“DelDOT”) have adopted a joint agreement to evaluate rezoning, subdivision and land development proposals as they affect transportation facilities (Sub. No. 4 to Resolution 90-212 and Memorandum of Agreement Between the Delaware Department of Transportation and the Government of New Castle County, Delaware (March 31, 2008) (the “2008 MOA”)); and

WHEREAS, the County has undertaken a robust public review of transportation level of service issues, including holding three (3) public workshops conducted on October 18, 2017, March 1, 2018, and October 1, 2018; and

WHEREAS, the County also retained a national urban planning consultant, White & Smith, LLC, which prepared a “Level of Service White Paper” (November 3, 2017) that analyzed transportation LOS issues and how communities similar to New Castle County have addressed transportation LOS issues; and

WHEREAS, based on the 2008 MOA and the County’s year-long study and public outreach process, DelDOT and New Castle County agree that creating Transportation Improvement Districts (“TIDs”) within New Castle County is consistent with a sub-regional approach to planning, programming, and coordinating land use policies, regulations and transportation improvements, which approach will help coordinate the timing and type of transportation improvements necessary to accompany development activity at the sub-regional level; and

WHEREAS, based on a comprehensive review of the UDC by the professional staff in the County’s Department of Land Use, a professional planning consultant, and input from stakeholders, applicants and local experts in land use issues, the County has developed updated standards and processes for transportation LOS; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests, including, but not limited to, the protection and preservation of the public health, safety, prosperity, general welfare, and quality of life.

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

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 5 (“Site Capacity and Concurrency Regulations”), Division 40.05.100 (“Transportation capacity”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Division 40.05.100. Transportation capacity.

Prior to receiving a rezoning or major record subdivision or land development final plan approval from the Department, the transportation capacity allocated to a proposed development shall be ~~[based upon the most limiting intersection(s), as]~~ determined by ~~[a traffic impact study]~~ Article 11.

Section 2. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 11 (“Transportation Impact”), Division 40.11.000 (“Purpose”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Division 40.11.000. Purpose.

The purpose of this Article is to:

- A. ~~[e]~~ Ensure that development occurs only where there are adequate transportation facilities in place, or programmed for construction; [Transportation capacity is allocated to proposed land developments on a first come first serve basis. The highway capacity shall be determined by a traffic impact study. No major land development or any rezoning shall be permitted if the proposed development exceeds the level of service standards set forth in this Article unless the traffic mitigation or the waiver provisions of this Article can be satisfied.]
- B. Ensure that development regulation: 1) is based on sound and equitable planning principles that avoid unnecessary congestion of transportation facilities, and 2) is coordinated with local, regional and state transportation planning and funding decisions; and
- C. Insure coordination with the Delaware Department of Transportation ("DelDOT"), which funds and manages the State's transportation improvements.

Section 3. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 11 (“Transportation Impact”), Division 40.11.100 (“Transportation capacity”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.11.100. Transportation capacity.

Sec. 40.11.105. Applicability.

No major land development or rezoning shall be permitted if the proposed development exceeds the level of service ("LOS") standards set forth in this Article or a Transportation Improvement District ("TID") or a Complete Community Enterprise District ("CCED") transportation master plan.

Sec. 40.11.110. Transportation capacity calculation.

A. The transportation capacity for a proposed development shall be based upon the available capacity as determined by a traffic impact study ("TIS").

B. The applicant shall follow the methodology set forth in this Article to determine the [~~highway capacity~~] transportation impacts of the site.

C. The TIS shall involve:

1. A TIS prepared by the applicant, reviewed by DelDOT and approved by the County; or
2. A TIS prepared by DelDOT on behalf of the applicant; or
3. A transportation master plan prepared to support a TID or a CCED, as provided in Division 40.11.300.

Sec. 40.11.120. Need for traffic analysis.

A. Except as exempted elsewhere in this Chapter, an applicant shall submit the following traffic information for all major plans and rezonings.

1. Approximate vehicle trips per day during the week and the weekend, and the a.m. and p.m. peak hour trips generated by the proposed development;
2. Road conditions and access geometry including roadway surface, horizontal, and vertical alignment conditions associated with the access [~~and egress~~] location(s) to the adjoining roadway;
3. Accident [~~data within the area of influence for the last three (3) years for the roadway in which the development is proposed to have access and egress~~] and roadway safety summary from DelDOT;
4. Existing peak hour level of service at intersections in the area of influence of the proposed development, if available[~~;~~];
5. Names and dates of previous traffic studies of intersections and road segments in the area of influence of the proposed development, if available;
6. Existing travel time information for roadway segments within the area of influence, where available.

B. In order to expedite the review of the above information, the applicant may, at its option, provide it to the Department and DelDOT in advance of the scheduled preapplication conference.

C. If the Department and DelDOT find, based upon the information supplied by the applicant pursuant to Subsection A ~~above~~ and the standards set forth in this Section, that a proposed rezoning, subdivision, or land development could generate significant traffic impacts, the

Department shall require the applicant to prepare and submit a traffic impact study to the Department and DelDOT. ~~[Significant] Traffic impacts are [shall be] considered significant [to exist and a traffic impact study required for a rezoning change or a major subdivision or land development]~~ if any of the following conditions exist.

1. The proposal exceeds 2,000 ~~[the]~~ projected average daily trips ~~[traffic]~~ ("ADT") ~~[warrants provided in Table 1, Section 15 of DelDOT's Rules and Regulations for Subdivision Streets, as may be amended from time to time.]~~
2. The proposal is projected to generate more than fifty (50) peak hour trips, including trips that are diverted from existing traffic.
3. The subject property is located near roadway[s] segments and intersections, which are operating below the level of service specified in Section 40.11.210.
4. The proposed development causes the total development within the area traffic analysis zone and the adjacent zones to exceed the totals in the WILMAPCO ~~[Metropolitan]~~ Regional Transportation Plan or a Land Use and Transportation Plan or master development plan prepared in accordance with Division 40.11.300.
5. The proposed development will impact roadways that are not capable of providing adequate and safe circulation, or adequate stopping sight distances, or that contain other geometric deficiencies that would result in safety problems if the development were built.

Sec. 40.11.121. Traffic impact study waiver.

~~[If a traffic impact study was completed for a proposed change in zoning of the subject parcel or, if, in the opinion of the Department and DelDOT, sufficient prior traffic studies of the area of influence have previously been conducted, t]~~The requirement for a ~~[new]~~ traffic study and the ~~[further]~~ evaluation of the level of service will be waived provided the Department finds:

- A. That ~~[the ordinance changing the zoning was adopted]~~ a traffic impact study was completed for a similar subdivision or land development on the parcel no more than three (3) years before the submission of the current subdivision or land development application, that there has been no significant change in circumstances, and that the subdivision and land development activity within the area of influence are consistent with the size and type of development evaluated in the traffic impact study; or,
- B. The parcel is subject to deed restrictions requiring that the proposed subdivision or land development be phased to coincide with improvements to the transportation system, or phased by a reduced rate of build out, so long as the time frame set forth in ~~[the]~~any deed restriction[s] for completion of the development has not expired; or,
- C. The proposed development ~~[project]~~ is located within and has trip generation consistent with a TID or a CCED ~~[transportation improvement district or similarly identified area, as identified by DelDOT, and trip generation numbers provided for the proposed subdivision~~

~~or land development, as approved by DeIDOT, do not significantly change the traffic assumptions upon which roadway improvements designed by or approved by DeIDOT for the district or area have been based. The applicant shall contribute to transportation improvement costs within the district or area based upon a formula to be developed by DeIDOT.] and meets the criteria established in Division 40.11.300.~~

Sec. 40.11.122. Scoping meeting.

Within thirty (30) ~~[fifteen (15)]~~ days after the Department or DeIDOT determine that a traffic impact study is necessary, the Department and DeIDOT shall meet with the applicant to establish the [study] area of influence and all parameters used in the study. ~~[The area of influence will be based upon the anticipated site traffic as a percentage of traffic at an intersection. An area of influence shall be established by the Department and DeIDOT.]~~ Once established, no substantial modification to the [study] area of influence and study parameters shall be made by the applicant without the approval of the Department and DeIDOT. Such approval shall be given only if the applicant can demonstrate to the satisfaction of DeIDOT and the Department that the data relied upon to determine the [study] area of influence and study parameters was flawed or otherwise inaccurate.

Sec. 40.11.130. Traffic impact study requirements.

A. A traffic impact study shall be prepared by individuals or firms that perform traffic engineering ~~[which]~~ and the study shall be reviewed and sealed by a professional engineer. The content and format of the study shall be as prescribed by Chapter 2 of DeIDOT's Development Coordination Manual ~~["Standards and Regulations for Subdivision Streets and State Highway Access"]~~, or any amendments thereto, and include all of the following additional requirements:

1. The anticipated trip . . .
2. New traffic counts . . .
3. Currently planned traffic mitigation programs and transportation improvements, including, without limitation, projects awarded or under construction, projects in DeIDOT's ~~[CIP]~~ Capital Transportation Program (CTP) and their completion dates, and projects and corridor needs in the adopted WILMAPCO ~~[Metropolitan]~~ Regional Transportation Plan.
4. The existing and projected peak hour level of service after the proposed development is completed, with and without specified traffic mitigation measures.
5. A geometric assessment of any roadways or plan features identified as having deficiencies likely to result in potential safety or design problems; e.g., turning radii, access location.

6. Multi-modal transportation information for the area of influence including [If the proposed rezoning, subdivision, or land development is in an area currently served by transit, or in a corridor where transit service is planned, the traffic analysis shall also identify]:
 - a. The location of existing and planned sidewalks, shared-use pathways, bicycle lanes, transit routes, transit stations or bus stops, park and ride lots, and layover stations;
 - b. Significant pedestrian and bicycle [passenger] safety issues, such as crosswalks, highway lanes to be crossed, [etc.,] and roadway hazards to bicycles (such as storm grates or railroad rails in pavements); and
 - c. Needed [passenger] pedestrian and bicycle amenities, such as sidewalks, lighting, or bus shelters.

7. Future traffic shall be projected by including [the inclusion of] trip generation from committed developments and [projects with recorded plans, major plans and plans with rezonings not initiated by the County that have, exploratory plan approval, projects having had a zoning change approved within a three (3) year prior period, and projects containing deed restrictions requiring phasing to coincide with improvements to the transportation system. Future traffic shall also be projected by the inclusion of trip generation based upon] a growth factor for background traffic. [The Department shall provide DeIDOT a list of all plans, projects, and rezonings described above.]
 - a. "Committed developments" are the following developments that are approved by the County but which have not yet been constructed:
 - i. developments with recorded plans, major plans and plans with rezonings not initiated by the County that have exploratory plan approval; and
 - ii. developments having had a zoning change approved within a three (3)-year prior period; and
 - iii. developments containing deed restrictions requiring phasing to coincide with improvements to the transportation system.
 - b. Future traffic also shall be projected by the inclusion of trip generation based upon a growth factor for background traffic.
 - c. The [Department shall provide DeIDOT a list of] traffic impact study shall include all committed development [plans, projects, and rezonings described above] in unincorporated New Castle County within a two-mile radius of the exterior boundaries of the project and any additional committed developments that the Department, at the scoping meeting determines will substantially affect traffic conditions in the area of influence.

8. A statement indicating whether the peak hour level of service calculated for each road segment and intersection will exceed the acceptable level of service for the type of roadway segment and intersection pursuant to Section 40.11.210.
9. Recommendations regarding what, if any, transportation improvements or trip reduction/transportation demand management (TDM) measures would be necessary to attain an acceptable level of service. If the report indicates that level of service will be exceeded, a Traffic Mitigation (TM) Agreement shall be submitted detailing the infrastructure improvements to be made.
10. A statement signed by the applicant and referenced on the plan certifying that:
 - a. The project information in the study is true and correct;
 - b. The traffic analysis was conducted in accordance with the requirements of this Chapter[;].

Sec. 40.11.140. DeIDOT report required.

A. Upon receipt of a final traffic impact study, DeIDOT shall have ~~[sixty]ninety~~ ([60]90) days to review the traffic impact study pursuant to this Article and submit written comments to the Department. ~~DeIDOT, the applicant, and the Department may [request a thirty (30) day extension from the Department when the traffic impact study involves roadway segments or intersection within a hamlet or village]~~extend these time frames by mutual agreement. The review of the traffic impact study shall include the following:

1. A statement indicating whether a traffic impact study was previously submitted and evaluated for the same or a substantially similar rezoning, subdivision, or land development application, and if so, the results of that evaluation, including any recommended mitigation measures. The statement also may contain an evaluation and findings of any other concurrent TIS for applications in the immediate area;
2. A statement assessing the ability of the existing and planned transportation system to support the proposed rezoning, subdivision, or land development;
3. A statement describing the extent to which the proposed rezoning, subdivision, or land development is consistent with the adopted WILMAPCO [~~Metropolitan~~] Regional Transportation Plan;
4. A statement describing the extent to which any proposed transportation improvements, trip reduction/TDM measures are consistent with the adopted WILMAPCO Regional Transportation Plan and the State Capital Transportation Program ("CTP") and transportation capital budget;
5. A statement describing the extent to which the proposed rezoning, subdivision, or land development complies with applicable DeIDOT standards or regulations for access and subdivision design, and with the standards in Section 40.11.210; and

[5]6. A statement certifying the adequacy of the recommended traffic mitigation measures to bring the network back to the desired level of service in Section 40.11.210.

B. If DelDOT does not complete its review of the traffic impact study within the above provided time frame, the applicant shall have the option to request that the traffic impact study be reviewed by individuals or firms that perform traffic engineering that are approved by the Department. Such reviews shall be examined and sealed by a professional engineer also approved by the Department. The applicant shall pay the cost of this review to the Department prior to submission of the final traffic impact study to the individual or firm by the Department. ~~[DelDOT shall accept the results of the review if the review is approved by the Department.]~~

Section 4. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 11 (“Transportation Impact”), Division 40.11.200 (“Adequate level of service”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Division 40.11.200 Adequate level of service.

Sec. 40.11.210. Level of service standards.

A. The minimum acceptable peak hour level of service to be achieved and maintained on all roadway segments and intersections within the area of influence of the proposal shall be as follows:[.]

1. *Sewer service areas.*

- a. Level of service D within any ~~[identified]~~ sewer service area identified in Section 40.12.110~~[or publicly sewerred area]~~;
- b. ~~[except that for]~~ For roadway segments and intersections located within a sewerred area or an existing developed area or designated infill area operating at an existing level of service D or E, the minimum acceptable peak hour level of service shall be E, provided that level of service D will be attained through transportation ~~[and/or transit]~~ projects ~~[currently under construction or for which contracts for construction have been awarded by DelDOT to ensure completion; or]~~ that add capacity to the transportation system, and
 - (i) are currently under construction, or
 - (ii) for which contracts for construction have been executed by the applicant or third parties and approved in writing by DelDOT to ensure completion within three (3) years after issuance of the first building permit for the project that requires the capacity provided by those improvements to meet the required level of service, or

(iii) for which contracts for construction have been awarded by DelDOT to ensure completion within three (3) years after issuance of the first building permit for the project that requires the capacity provided by those improvements to meet the required level of service.

2. *Outside sewer service areas.* The existing level of service with no roadway segments and intersections exceeding level of service C.

B. Building permits and certificates of occupancy may not be issued except as provided below.

1. For non-residential construction shown on a plan, the required level of service standard must be attained at the time the Department issues the certificate of occupancy.

2. For residential construction shown on a plan, the required level of service standard must be attained at the time the Department issues a building permit.

3. If Subsection A.1.b., above applies, the level of service standard required will be attained by the construction of transportation improvements within three (3) years from the first building permit.

Sec. 40.11.220. Traffic mitigation measures.

A. Traffic mitigation measures shall be required if the applicant proposes to develop at a density that would exceed the current levels of service as set forth in Section 40.11.210. To be considered, traffic mitigation measures must result in an acceptable level of service and may include any one or all of the following:

1. A reduction in the proposed density or intensity of development;
2. The phasing of construction to coincide with the completion of programmed transportation construction projects which are identified in DelDOT's six (6)-year capital improvements program;
3. The construction or implementation of off-site ~~[highway]~~ transportation or transit improvements, or trip reduction/TDM measures by the applicant[;].

B. The specific mitigation measures shall be chosen based on their ability to achieve and maintain acceptable levels of service for roadway segments and intersections within the area of influence of the project. ~~[All proposed traffic mitigation measures approved by the Department shall be recorded in the form of a declaration of restrictions which must be submitted to the Department with all necessary recording fees. All deed restrictions shall be prepared by the applicant and approved by the Department and the Department of Law prior to final approval of a plan by the Department or the granting of a rezoning by County Council. The declaration of deed restrictions may contain a clause indicating that the restrictions do not become effective unless the proposed development is approved by County Council. No development for which mitigation is required shall be permitted until the approved mitigation is under construction or is under contract~~

awarded by DeIDOT. Zoning changes may only be approved if the needed mitigation project is part of that current year's capital budget.] All proposed traffic mitigation measures approved by the Department shall be listed on the record plan.

C. Traffic mitigation (TM) Agreements . . .

Sec. 40.11.230. Level of Service (LOS) waivers and Traffic Mitigation (TM) Agreements.

A. *Level of Service (LOS) Waiver.* If the proposed development . . .

B. *Traffic Mitigation (TM) Agreement.* Every applicant who requests an LOS Waiver from County Council shall be required to enter into a TM Agreement with DeIDOT. In connection with the application to obtain an LOS Waiver, DeIDOT will coordinate its negotiations with the applicant in the preparation of a TM Agreement with the Department. Every TM Agreement shall be executed by the applicant and DeIDOT. Each TM Agreement typically will contain the following:

1. Primary trip reduction measures that the applicant must implement in order to achieve quantitative trip reduction goals, which shall include at a minimum no more than eighty-five (85) employee vehicles per one hundred (100) employees arriving during the morning peak traffic period or departing during the evening peak traffic period on any given day. ~~[A Trip Reduction Measures Selection Form, from which t]~~The [applicant may select, on a case-by-case basis, the] specific measures [to] shall be incorporated into the TM Agreement. ~~[This form shall not be considered to be an exhaustive list of potential measures.]~~
2. Contingent trip reduction measures . . .
3. A requirement that the applicant will pay . . .
4. A requirement that the applicant will develop . . .
5. A requirement that the applicant will secure . . .
6. In connection with an LOS Waiver. . .
7. Any other transportation mitigation conditions or measures required by DeIDOT as a condition of an LOS Waiver. The waiver will be conditioned on compliance with any condition required by DeIDOT.

C. *LOS Waivers and TM Agreement Approval.*

1. After DeIDOT . . .
2. The Department will review the LOS waiver, TM agreement and DeIDOT's comments and recommendations and shall submit its written recommendation within twenty (20) days to

the Clerk of County Council, the sponsor, the sponsor's legislative aide, and the applicant. If the Department recommends changes to be made to the applicant's draft resolution, a substitute draft resolution shall accompany the Department's recommendation and shall be provided in electronic form to the sponsor's legislative aide.

a. The Department shall consider the following when developing a recommendation:

[a]i. The locations of the roadway segments . . .

[b]ii. The number and types . . .

[c]iii. The types of traffic mitigation measures . . .

[d]iv. The extent to which the proposed development . . .

b. The Department will not recommend approval of an LOS Waiver unless, at a minimum, the Department finds:

i. The proposed development is an economic development project that is significant with respect to the number and character of jobs provided, or the potential revenue to the County; or

ii. The applicant demonstrates, based on documentation, that the application of this Article creates unique, significant, undue hardship; or

iii. The proposed development accomplishes another unique, significant, and demonstrated public purpose that could not be accomplished by applying other provisions of this Article.

3. Upon receipt of the Department's recommendation . . .

4. If County Council grants . . .

5. Upon approval by County Council . . .

6. As an additional condition . . .

D. *Employer Reports, Compliance Audits and Enforcement of trip reduction/transportation demand management (TDM) measures . . .*

Section 5. *New Castle County Code Chapter 40 (Unified Development Code or "UDC"), Article 11 ("Transportation Impact"), is hereby amended by adding the material that is underscored as set forth below:*

Division 40.11.300 Transportation planning.

Sec. 40.11.310. Transportation Improvement Districts.

A. Applicability.

1. This section provides for the development of a Transportation Improvement District ("TID"), which provides a more effective and flexible way to implement the purposes of this Article and to encourage economic development consistent with Article 40.01.015.C. A "TID" means a geographic area defined to secure required improvements to transportation facilities in that area and approved as provided in this section and the DelDOT Development Coordination Manual ("DCM"), Section 2.4, as amended.
2. This section does not apply to any area zoned exclusively for any combination of the following zoning districts: Suburban Transition (ST), Suburban (S), Suburban Estate (SE), Suburban Reserve (SR), Neighborhood Conservation (NC), or Manufactured Home (MM).
3. This section does not apply to any area zoned exclusively for commercial uses.

B. Agreement. The Department will enter into an agreement with DelDOT that addresses the initial boundaries and the target horizon year for a TID, and includes any other provision agreed to by the County and DelDOT to implement the TID.

C. Land Use and Transportation Plan.

1. The County shall adopt a Land Use and Transportation Plan for the TID. When the County adopts a Land Use and Transportation Plan as part of an approved TID with all of the elements provided in Subsection C.2. below, the traffic study requirements established in Sections 40.11.110, 40.11.120 and 40.11.121 do not apply.
2. The Land Use and Transportation Plan shall include the following elements:
 - a. A map identifying the TID boundaries, in accordance with Section 2.4.2.3 of the DCM.
 - b. A target horizon year for the land use forecast and provision of all transportation improvements identified in Subsection C.2.e, below, that are needed to accomplish the applicable LOS. The target horizon year shall not exceed twenty (20) years.
 - c. A quantitative, parcel-specific forecast of land use in the TID, in accordance with Section 2.4.2.5 of the DCM.
 - d. A level of service (LOS) standard in accordance with Section 2.4.2.6 of the DCM for all collector and arterial streets in the TID, and any other transportation improvements that the County elects to subject to the LOS analysis.
 - e. The transportation improvements needed to bring all roads and other transportation facilities in the TID up to applicable State or local standards, including the LOS

standards identified in the Land Use and Transportation Plan, over the life of such plan.

- f. A technique for measuring LOS or travel time on transportation facilities, which may include travel time on segments and not intersections. This may include any technique described in the Development Coordination Manual, or other techniques that reflect then-existing best practices or innovative approaches to measuring transportation or network capacity.
 - g. A system for developer contributions in accordance with Section 2.4.2.8 of the DCM, which:
 - i. Are sufficient to recover transportation capital improvement costs attributable to new development in the TID, and
 - ii. Are earmarked for the transportation improvements identified in Subsection C.2.e, above, which are located in the TID.
 - h. All sources of financing for the improvements identified in Subsection C.2.e, above, including anticipated developer contributions identified in Subsection C.2.g, above, and any additional and committed sources of County, state or federal funding that are not contingent upon voter approval.
3. The Land Use and Transportation Plan shall be adopted as part of the Comprehensive Plan. The Land Use and Transportation Plan shall include the following public outreach process prior to initiation of the Comprehensive Plan amendment:
- a. Community meeting.
 - i. The Department shall notify all property owners within the proposed TID boundaries informing them of the application and the review and approval process.
 - ii. The Department shall arrange an area-wide meeting to inform the community about the TID and the program requirements. This will occur prior to the Planning Board public hearing.
 - b. Written notices shall be sent to all property owners of record within the proposed TID boundaries.
 - c. After the community information meeting occurs, the Department shall document the comments received at the meeting and provide a summary of the comments for the Planning Board and County Council public hearings. The Planning Board and County Council shall conduct public hearings as required for adoption or amendment of the Comprehensive Plan.

D. *Limitation on Number of TIDs.* County Council shall not adopt more than two (2) TIDs in a calendar year.

E. *TID Report.* The Department shall provide County Council with a report every two (2) years on the use and effectiveness of the TID provisions.

Sec. 40.11.320. Complete Community Enterprise Districts (CCEDs).

A. *Applicability.* This section provides for the development of a Complete Community Enterprise District(s) ("CCED(s)"), which may provide a more effective and flexible way to implement the purposes of this Article in the County's more urban areas that are served by, and have development patterns that support, multiple travel modes including transit. For purposes of this Article, a "CCED" means a geographic area that meets the criteria established in 2 Del. Code Sections 2103 and 2104. For purposes of this section, the terms "District," "Farebox recovery ratio," "Isoperimetric quotient," "Level of service," "Parcel of land," and "Project" have the meanings assigned in in 2 Del. C. § 2102.

B. *Agreement.* The Department will enter into an agreement with DelDOT that addresses the initial boundaries and the target horizon year for a CCED, creates the master development plan described in Subsection C below, and includes any other provisions agreed to by the County and DelDOT to implement the CCED.

C. *Master Development Plan and Transportation Planning Study.*

1. The County shall adopt a master development plan for the CCED. When the County adopts a CCED with all of the elements provided in Subsection C.2 below, the traffic study requirements established in Sections 40.11.110, 40.11.120 and 40.11.121 do not apply.
2. The master development plan shall include the following elements:
 - a. Mass transit routes,
 - b. A mix of parcels of land zoned for residential, commercial, light industrial, or institutional uses,
 - c. A guide for the specific design of the physical form, public spaces, and amenities of the District so that transit, walking, and cycling are safe and comfortable modes of travel for all the residents of the District,
 - d. Level of service requirements specific to the District, and
3. The master development plan shall be adopted as part of the Comprehensive Plan.
4. Once a master development plan has been created, DelDOT will conduct a transportation planning study pursuant to 2 Del. C. § 2103.

Section 6. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.300 (“General Definitions”), is hereby amended by adding the material that is underscored as set forth below.

This Division contains the definition of words used in this Chapter . . .

Capital Transportation Program (CTP). The statewide program for transportation programs and projects prepared in accordance with 29 *Del. Code* Section 8419, as may be amended from time to time. . . .

Development Coordination Manual. The DelDOT regulations for the planning, design, construction, and acceptance of subdivision streets and access to State-maintained roadways, codified at 2 DE Admin. Code 2309, as amended. . . .

Multi-modal Transportation. The availability or use of more than one form of transportation, such as automobiles, walking, cycling, transit, ride share, car-pool, or commuter rail. . . .

Section 7. 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 8. 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 9. 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 10. This Ordinance shall become effective immediately upon passage by New Castle County Council and signature of the County Executive or as otherwise provided in 9 *Del. C.* § 1156 and shall only apply to Land Use applications submitted after such date unless the applicant by written request agrees to submit to the provisions of this Ordinance.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: The following is a summary of the revisions contained in this ordinance broken down by New Castle County Code Division or Section number.

Div 40.05.100. This amendment clarifies the applicability of concurrency requirements in Article 11 by eliminating unnecessary and redundant language.

Div 40.11.000. This amendment clarifies the purpose of Article 11 by eliminating unnecessary and redundant language.

Sec. 40.11.105. This amendment provides a statement of applicability for Article 11.

Sec. 40.11.110. This amendment provides that transportation impacts are not limited to highways, and that those impacts are determined either by a site-specific transportation impact study (TIS) or a transportation master plan that supports a Transportation Improvement District (“TID”) or Complete Community Enterprise District (“CCED”).

Sec. 40.11.120. This amendment updates the traffic information provided and thresholds to determine whether a TIS is required.

Sec. 40.11.121. This amendment modifies when a TIS is waived. The section now provides that TIS is waived if a similar TIS was completed within three (3) years of the application, or trip generation is consistent with a TID or CCED.

Sec. 40.11.122. This amendment adjusts the timing of a scoping meeting and revises the wording for clarity and internal consistency.

Sec. 40.11.130. This amendment updates the terminology relating to a TIS, clarifies that the TIS must address existing as well as projected peak hour level of service (LOS) and with specified traffic mitigation measures, and include multi-modal transportation information. Committed (i.e., approved but unbuilt) development is defined and, for rezonings, limited to those approved within three (3) years of the application. Committed development studied in a TIS is limited to a two-mile radius of the proposed development. The amendment also provides that a growth factor must be included for background traffic.

Sec. 40.11.140. This amendment allows DelDOT, the County and the applicant to agree to an extended time period for reviewing a TIS, rather than limiting the extension to 30 days. DelDOT’s report should include a statement as to whether planned improvements are consistent with the Regional Transportation Plan and DelDOT’s capital budget.

Sec. 40.11.210. This amendment prohibits the issuance of building permits or certificates of occupancy unless the LOS is attained at the time of issuance, or (within sewer service areas only) guaranteed through the construction of programmed improvements to be completed within 3 years of building permit issuance. The language provides that programmed improvements are counted as capacity and are not limited to those where contracts are issued by DelDOT.

Sec. 40.11.220. This amendment removes the requirement that traffic mitigation measures must be recorded as a declaration of restrictions, and that mitigation projects for rezonings must be part of that current year's capital budget. Mitigation measures shall be listed on the record plan. The amendment makes several additional changes for internal consistency.

Sec. 40.11.230. This amendment removes references to a Trip Reduction Measures Selection Form and leaves the measures to the Traffic Mitigation (TM) Agreement. DelDOT may require additional mitigation measures that do not necessarily lead to achieving the LOS standard. The Department must make certain findings in association with a recommendation of approval of a LOS Waiver.

Sec. 40.11.310. This amendment establishes procedures and requirements to create Transportation Improvement Districts.

Sec. 40.11.320. This amendment establishes procedures and requirements to develop Complete Community Enterprise Districts.

Sec. 40.33.130. This amendment adds definitions for the terms “Capital Transportation Program,” “Development Coordination Manual” and “Multi-modal Transportation.”

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

Sec. 40.11.130 – this change allows the Department the ability to include any additional committed developments that will substantially affect traffic conditions in the area of influence.

Sec. 40.11.140 – this change provides additional review time for DelDOT.

Sec. 40.11.310 – these changes encourage economic development within TIDs, and restricts certain exclusive zoning districts and uses, limits the number of TIDs permitted in a calendar year and require the Department to provide a report to County Council every two (2) years

FISCAL NOTE: No discernable fiscal impact.