

Introduced by: Ms. Durham, Mr. Carter
Date of introduction: October 27, 2020

ORDINANCE NO. 20-114

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 2 (“ADMINISTRATION”),
ARTICLE 5 (“DEPARTMENTS AND OFFICES”), DIVISION 2.05.100.
 (“DEPARTMENT OF LAND USE”) TO ESTABLISH A NEW CASTLE COUNTY
AGRICULTURAL LAND PRESERVATION COMMISSION AND
THE NEW CASTLE COUNTY FARMLAND PRESERVATION ADVISORY BOARD**

WHEREAS, New Castle County contains a unique combination of natural resources that comprise Delaware’s Piedmont and Coastal Plain regions, and this unique combination includes some of the most productive agricultural soils in the Mid-Atlantic region; and

WHEREAS, farming and agriculture are vitally important to New Castle County, both as an ongoing industry as well as a means of preserving the County’s history, culture, and defining sense of place; and

WHEREAS, cost of services studies show that preservation of farmland and open space has the lowest cost over time to taxpayers of other land use classifications, and is considered the highest and best use of our lands, especially since they protect air quality, water quality, and enhance quality of life; and

WHEREAS, the citizens of New Castle County place a high value on protecting scenic vistas, including agricultural lands which are steeped in Delaware’s history as an agrarian region; and

WHEREAS, New Castle County’s 2012 Comprehensive Plan reported, “Delaware contains the highest percentage of Class I and II soils of any state,” yet, unfortunately, Delaware also ranks very high nationally in the rate of farmland lost to development; and

WHEREAS, in 1987, New Castle County had 93,998 acres of farmland; only a decade later, the amount of acreage had decreased to 77,302 acres; by 2012, this number had fallen to 64,169 acres; and

WHEREAS, it is imperative that farmland in New Castle County be preserved to help support a thriving agricultural economy, maintain local community character, protect associated natural resources, and help to hold the line on sprawl; and

WHEREAS, to develop an open space preservation strategy for New Castle County, a Land Preservation Task Force was formed in August, 2019 with representatives appointed by the County Executive’s Office and County Council, and was composed of representation from all County Council Districts and diversity of interests relevant to land conservation, farmland preservation, recreation, and natural resources protection; and

WHEREAS, through the work of the New Castle County Land Preservation Task Force in 2019-2020, a renewed commitment and path forward was delineated in the Task Force's September, 2020 report to enhance New Castle County's commitment to farmland preservation measures; and

WHEREAS, the Task Force recommended, in part, that New Castle County develop and fund a farmland preservation program that both partners with the Delaware state program and enables the County to preserve properties outside of the state program, developing and advising on a methodology and criteria to prioritize County funding for ag land preservation based on best practices, guided by County Council Resolution No. 06-020; and

WHEREAS, *Delaware Code*, Title 3, Chapter 9, § 906 provides for the establishment of the New Castle County Farmland Preservation Advisory Board.

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

Section 1. *New Castle County Code* Chapter 2 ("Administration"), Article 5 ("Departments and Offices"), Division 2.05.100. ("Department of Land Use") is hereby amended by adding the underscored material set forth below.

Sec. 2.05.106. New Castle County Agricultural Land Preservation Commission; created; duties generally.

- A. There is hereby established the New Castle County Agricultural Land Preservation Commission.
- B. The New Castle County Agricultural Land Preservation Commission shall consist of nine (9) members with broad experience in agriculture, agribusiness, ecotourism, food industry, and/or land preservation, including at least four (4) active farmers or agribusiness persons residing within the County, and one (1) member of County Council, who shall serve as the Chairperson of the Board for an indefinite term. The Commission members shall be appointed by County Council and no more than three (3) members shall be represented from any one County Council District. The members, other than the Chair, shall serve for a term of (4) four years each, provided further, that Commission members registered in either major political party shall not exceed the other major political party by more than one (1). Any member of the Commission may be reappointed for a succeeding term without limitation as to the number of terms served. Members of the Commission shall continue to serve, if able and qualified, until their successors are appointed and qualified.
- C. Each Commission member shall be entitled to one (1) vote and a quorum of at least five (5) Commission members shall be necessary to render decisions at any regular or special meeting.
- D. The Commission shall meet as often as necessary to discharge its duties; provided, however, that the Commission shall meet at least quarterly.

E. The powers and duties of the Commission include:

1. Authority to employ or contract for the services of private and public consultants for research, technical, legal, or other services and facilities deemed necessary by the Commission for the performance of its functions, provided that the County has appropriated money to pay for the obligations to be incurred by the Commission;
2. Authority to adopt rules and regulations for the general administration of its duties;
3. Review proposals for farm properties under consideration by the County for permanent protection, and advise County Council and the Administration on prioritization of funds for such preservation following the guidelines and selection criteria established in the 2020 report of the Land Preservation Task Force using fee simple purchases, easement purchases, or other tools as available;
4. Preparation and publication of an annual report concerning the Commission's activities, to be submitted to County Council and the Administration;
5. Advise the General Manager of the Department of Land Use on issues relating to the functions of the Department as it pertains to the acquisition and preservation of agricultural lands in fee simple or through preservation easements; and
6. Be guided in its work by the 2020 New Castle County Land Preservation Task Force report and other reports cited therein.

F. Commission members shall be entitled to reimbursement for reasonable travel and other expenses incurred in attending meetings, shall be entitled to representation by the County Attorney or designee thereof in a legal action arising out of or related to the performance by such member within the scope of their duties under the conditions set forth in *New Castle County Code*, and may be indemnified for reasonable legal fees and expenses in a legal action arising out of or related to the performance by such member within the scope of their duties under the conditions set forth in *New Castle County Code*.

G. *The New Castle Agricultural Land Preservation Commission.*

As required by *Delaware Code*, Title 3, Chapter 9, § 906 there is hereby established the New Castle County Farmland Preservation Advisory Board, which shall function as a subcommittee of the New Castle Agricultural Land Preservation Commission.

1. The New Castle County Farmland Preservation Advisory Board shall consist of four (4) active farmers or agribusiness persons residing within the County and one (1) member of County Council, who shall serve as the Chairperson of the Board.
2. The Chairperson of the Board shall serve for an indefinite term, and the four (4) other members shall serve for terms of four (4) years each; provided further, that Board members registered in either major political party shall not exceed the other major

political party by more than 1. Any member of the Board may be reappointed for a succeeding term without limitations as to the number of terms served.

3. The Board shall advise the Delaware Agricultural Lands Preservation Foundation in relation to any regulations proposed for adoption by the Foundation. The Foundation shall provide a draft of proposed regulations to the Board at least 60 days in advance of the time that proposed regulations are released for public notice in order to allow for comment of the Board and possible amendment. The Board may request the Foundation to review any adopted regulation which the Board identifies as having an adverse effect on the furtherance of the purpose and intent of *Delaware Code*, Title 3, Chapter 9. Upon receipt of any such request, the Foundation shall submit in writing to the Board a response indicating the Foundation's position on the matter and the action, if any, which is contemplated in response to the request.
4. Whenever an application for establishment of an Agricultural Preservation District is received by the Delaware Agricultural Lands Preservation Foundation and the Foundation determines that the eligibility criteria have been satisfied, the Foundation shall submit the application to the Board for a recommendation. The Board shall act on an application by recommending in favor or against approval within 60 days of receipt of the application, and the Board may include reasons for its decisions. In the event that the Board fails to make its recommendation within the specified 60-day period, or if the Board is not duly established or constituted, the decision required of the Board under the Agricultural Preservation District application process as specified hereunder shall be deemed an approval.

Section 2. *New Castle County Code* Sec. 2.03.106. ("Financial disclosure: statements required") is hereby amended by adding the material that is underscored and deleting the material with strikethroughs, as set forth below.

- A. Each designated County official and County employee shall file a statement of financial interests for the preceding calendar year with the Commission no later than May 1st of each year that he or she holds such a position and of the year after he or she leaves such a position. The General Manager or individual of equivalent rank of the Office of Human Resources shall provide the Commission with the names of the individuals required to file statements of financial interest by January 31st each year such statements are required to be filed. For purposes of this Section, the phrase "designated County official and County employee" shall mean:

...

- C. Each nominee for County office who is subject to confirmation shall file a statement of financial interests for the preceding calendar year with the Commission and with the official or body that is vested with the power of confirmation at least ten (10) days before the official or body shall approve or reject the nomination. Each nominee to the New Castle County Agricultural Land Preservation Commission and the New Castle County Farmland

Preservation Advisory Board, established under the authority of 3 *Del. C.* § 906 or its successor, shall file a statement of financial interests for the preceding calendar year with the Commission and with New Castle County Council at least ten (10) days before County Council shall approve or reject the nomination.

Section 3. This Ordinance shall become effective immediately upon its adoption by New Castle County Council and approval of the County Executive, or as otherwise provided in 9 *Del. C.* Section 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: This Ordinance, if passed, would create a New Castle County Agricultural Land Preservation Commission and, as a subcommittee thereof, the New Castle County Farmland Preservation Advisory Board, which is created pursuant to *Delaware Code*, Title 3, Chapter 9, § 906. The function of the Commission and the Board is to advise the New Castle County Department of Land Use regarding activities and initiatives involving farmland protection, and to advise the Delaware Agricultural Lands Preservation Foundation on preservation initiatives being considered within New Castle County.

FISCAL NOTE: There is no discernible fiscal impact.