

Introduced by: Ms. Kilpatrick, Mr. Sheldon  
Date of introduction: December 14, 2021

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 21-144**

**TO AMEND *NEW CASTLE COUNTY CODE* TO CREATE A NEW CHAPTER 13  
RELATING TO STORMWATER MAINTENANCE DISTRICTS**

**WHEREAS**, stormwater is an important water resource which supports, among other things, groundwater recharge for drinking water supplies and base-flow of streams; and

**WHEREAS**, the requirements of the United States Environmental Protection Agency and the Delaware Department of Natural Resources and Environmental Control demand a comprehensive approach to stormwater management by New Castle County; and

**WHEREAS**, the federal regulations and Delaware state regulations require the County to implement and fund a program of stormwater controls that address discharges from the County's regulated stormwater flows to local water bodies; and

**WHEREAS**, inadequate management of stormwater runoff throughout a watershed can increase flood depths and velocities, contribute to erosion and sediment, overtax the carrying capacity of existing streams and storm sewers, greatly increase the cost of public facilities to convey and manage stormwater, undermine floodplain management and flood reduction efforts in upstream and downstream communities, reduce groundwater recharge, and impact other related water resource needs and threaten public health and safety; and

**WHEREAS**, in order to establish, operate, enhance, and maintain an effective and efficient stormwater management, ensure the continued effective operation of the system through installation and best management practices, and to provide other services such as appropriate inspections, asset management, and regulatory oversight associated with stormwater and watershed management, sufficient and stable funding is required to fund these public services; and

**WHEREAS**, it is in the best interests of New Castle County and its residents to create stormwater maintenance districts to accomplish the above and, thereby, promote more attractive, safer, and healthier neighborhoods; and

**WHEREAS**, like Kent County as a model, New Castle County intends to establish a fair and equitable fee structure to assure that each applicable parcel within a district will pay its proportionate share of the costs of operation, maintenance, repair, regulatory compliance, administration, replacement, and improvement related to stormwater management and stormwater services provided or paid for by the County; 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, promoting the public health, safety, prosperity, general welfare, and quality of life of the present and future inhabitants of the County.

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

Section 1. *New Castle County Code* is hereby amended to insert a new Chapter 13 relating to Stormwater Maintenance Districts by adding the underscored language as follows.

Chapter 13 – STORMWATER MAINTENANCE DISTRICTS

ARTICLE 1. – IN GENERAL

Sec. 13.01.001. - Purpose.

The purpose of this Chapter is to provide an alternative to property owners responsible for performing maintenance of stormwater management facilities within residential and mixed use subdivisions, and to relieve property owners of the burden of performing said maintenance. This Chapter establishes the process for creating and extending a stormwater maintenance district within and among residential and mixed use subdivisions in which the stormwater management facility will be maintained by New Castle County government or its designee for a fee.

Sec. 13.01.002. - Definitions.

When used in this Chapter, the following terms shall have the meanings indicated below. To the extent there is a conflict with another section, the terms and associated definitions herein shall prevail in this Chapter.

Department. This term shall mean the New Castle County Department of Public Works.

Maintenance organization. An organization approved by the County that is legally responsible for owning, maintaining, or managing open space. A maintenance organization may be a condominium association, a third-party conservancy or a maintenance corporation.

Operation and maintenance plan. Identifies the required maintenance and associated schedule for stormwater management, including but not limited to: erosion, check dams, grass cutting, minor sediment removal, mulch, soil amendments, algae, vegetation, debris removal, inlet pipe sediment, riser obstructions, as appropriate.

Stormwater maintenance district. Residential and mixed use subdivisions where the owners of the individual lots or units are members of a maintenance organization, and are responsible for owning and maintaining the stormwater management facility as identified on a record plan.

Stormwater maintenance fee. The fee assessed on each applicable parcel in a stormwater maintenance district within residential and mixed use subdivisions related to maintenance of the stormwater management facility by New Castle County government or its designee.

Stormwater management

1. For water quantity control, a system of vegetative, structural, and other measures that controls the volume and rate of stormwater runoff that may be caused by land disturbing activities or activities upon the land; and
2. For water quality control, a system of vegetative, structural and other measures that controls the adverse effects on water quality that may be caused by land disturbing activities or activities upon the land.

Stormwater management facility. Stormwater management facility means a vegetative system, man-made, and any other measure designed or utilized for the purpose of controlling the volume and rate of stormwater runoff, controlling the adverse effects on water quality and/or augmenting groundwater recharge, including but not limited to, stormwater management ponds, groundwater recharge facilities and green technology stormwater best management practices, and the associated maintenance and access easements.

Sec. 13.01.003. - Applicability.

A. Stormwater maintenance districts established in new residential and mixed use subdivisions approved after enactment of this Chapter.

Inclusion within a stormwater maintenance district shall be automatic for any new residential or mixed use subdivision in any unincorporated area in New Castle County upon approval of the record plan after the enactment of this Chapter.

B. Stormwater maintenance districts established in residential or mixed use subdivisions existing prior to enactment of this Chapter.

A maintenance organization responsible for at least one (1) stormwater management facility within a residential or mixed use subdivision established prior to enactment of this Chapter may petition to establish a stormwater maintenance district, using forms established by the Department. The Department shall have discretion to determine whether a stormwater maintenance district should be established based on a maintenance organization's compliance with New Castle County Code Chapter 12, Article 6, Stormwater Management Facility and Watercourse Maintenance.

All residential and mixed use subdivisions are subject to the following:

1. The Department shall establish a written policy that identifies the process to petition for creation of a stormwater management district. The policy shall include the option for a petitioner found to be ineligible for the New Castle County Stormwater Management Maintenance Program to pay a one-time fee assessment to return the stormwater management facility to good working condition.
2. The maintenance organization shall submit to the Department a petition to create a stormwater maintenance district. The petition shall include the results of the official vote for inclusion in the program by the members of the maintenance organization. No less than 51% or the percentage mandated in the maintenance organization's bylaws, whichever is higher, of the members of the maintenance organization may petition to establish a district pursuant to forms established by the Department. Unless otherwise established in the maintenance organization's bylaws, voting shall be one vote per individual dwelling unit.
3. The petition shall include a description of the area to be included in the district with an initial on each individual lot depicting a yes, no, or no reply.
4. Establishment of a stormwater maintenance district within a residential or mixed use subdivision will be by County ordinance with a reflection of the change filed with the New Castle County Recorder of Deeds. The petition shall include the list of the property owners within the residential or mixed use subdivision, with their mailing addresses.

5. Residential or mixed use subdivisions sharing maintenance responsibilities for a stormwater management facility shall be treated as one (1) district.
6. Petitions for establishment of a stormwater maintenance district are to be submitted between July 1 and September 30 of each year. The Department will make determinations regarding all petitions by the end of the calendar year in which a petition is submitted. When approved, stormwater maintenance will begin the following calendar year.
- C. The Department may revise existing stormwater maintenance districts, with County Council prior approval.
- D. Subject to the discretion of the Department, the following stormwater management facilities are excluded from this Chapter and will not be maintained by New Castle County:
  1. Stormwater management facilities maintained by the Delaware Department of Transportation.
  2. All stormwater management facilities constructed without New Castle County approval.
  3. Pipes constructed solely to convey drainage without treatment.
  4. Stormwater management facilities associated solely with nonresidential uses and commercial apartments.
- E. This Chapter shall apply to stormwater management facilities under New Castle County's jurisdiction as defined by the National Pollutant Discharge Elimination System Permit and Department of Natural Resources and Environmental Control Delegation of the Sediment and Stormwater Program, and that are in the opinion of New Castle County government necessary for efficient and economical stormwater management.

Sec. 13.01.004. Public notice.

- A. Notice to the public of the County Council hearing required for creation of a stormwater maintenance district under Section 13.01.003.B. shall be provided as required under 9 Del. C. §§ 3401 et seq., including by publishing the date, time, place, and nature of the hearing in a newspaper of general circulation in New Castle County.
- B. The notice shall also be published in accordance with the Procedural Rules of New Castle County Council and shall contain a description of the boundaries of the proposed stormwater maintenance district.

Sec. 13.01.005. Stormwater maintenance fee assessment.

- A. The stormwater maintenance fee for stormwater maintenance districts under Section 13.01.003.A. shall be initially determined using the maintenance escrow calculation, as defined in *New Castle County Code* Section 40.27.220. The maintenance organization shall transfer the estimated amount of maintenance costs for the stormwater management facility from the maintenance escrow to the County to cover the first two (2) years of stormwater maintenance fees for the stormwater maintenance district. The individual property owners will be billed starting in year three (3) after the developer has turned over control of the maintenance organization.
- B. The Department shall create a written policy to determine the stormwater maintenance fee for stormwater maintenance districts under Section 13.01.003.B. based upon the cost of maintaining the stormwater management facility within the stormwater maintenance district for a year.

C. The Department shall have the discretion to increase the stormwater maintenance fee for all stormwater districts pursuant to the Department's written policy.

D. No parcel of real estate shall be exempt from paying its stormwater maintenance fee.

E. Following the initial fee determination within each stormwater maintenance district, the Department shall deliver a fee collection warrant to the New Castle County Chief Financial Officer ("CFO") commanding the CFO to collect the stormwater maintenance fees for each stormwater maintenance district.

F. On or before June 1 of each tax year, the Department shall deliver to the Office of Finance an electronic file containing stormwater maintenance fee and parcel information as specified by the Office of Finance. The annual stormwater maintenance fee shall be levied and collected at the same time and in the same manner as County taxes and other fees and shall be a lien on real property the same as County taxes and other fees and shall be subject to monition as set forth in 9 Del. C. §§ 8741 et seq.

G. The fee shall be included on the County tax bills under the heading "stormw. maint."

H. The County may establish a separate fund for each stormwater maintenance district. Revenue shall be accounted for separately and shall not be available for non-district related expenditures but may be used throughout the established stormwater maintenance districts.

Sec. 13.01.006. Maintenance and oversight.

A. The Department will perform maintenance of the stormwater management facility as defined in this Chapter, in all stormwater maintenance districts. New Castle County may enter into an agreement with a qualified private sector professional through any required bid process or with the Conservation District as the County determines appropriate for maintenance within a stormwater maintenance district.

B. The establishment of a stormwater maintenance district and the resulting maintenance responsibilities transferred to New Castle County take priority over the maintenance organization's or property owner's maintenance obligation, not financial obligation, for the stormwater management facility as established in declarations of restrictions or similar development agreements. Any common open space or facilities within a residential or mixed use subdivision not maintained as part of a stormwater management facility will remain the responsibility of the property owner or maintenance organization.

Sec. 13.01.007. No limitation upon obligations of a developer.

Nothing in this Ordinance is intended to or shall limit or reduce the obligations of a Developer provided for in the *New Castle County Code*.


Section 2. This Ordinance shall become effective upon its adoption by County Council and approval by the County Executive, or as otherwise provided in 9 Del. C. § 1156.



Adopted by County Council  
of New Castle County on: 1/11/22

  
President of County Council  
of New Castle County

Approved on: Jan. 13, 2022

  
County Executive  
of New Castle County

**SYNOPSIS:** This Ordinance, if enacted, will allow for the creation of Stormwater Maintenance Districts in residential and mixed use subdivisions in New Castle County, as already exist in Kent County.

*Summary of Substitute No. 1.* Substitute No. 1 makes the following changes:

- Clarifies that the stormwater maintenance district program does not apply to nonresidential uses or commercial apartments;
- Incorporates a definition for the term "maintenance organization;"
- Clarifies the Department of Public Works' discretionary authority to determine whether a petitioned stormwater maintenance district should be established based on a maintenance organization's compliance with *New Castle County Code* Chapter 12, Article 6;
- Makes certain clarifications to the process to petition for inclusion in the stormwater maintenance district program; and
- Clarifies that the maintenance organization is to transfer the estimated amount of maintenance costs for the stormwater management facility from the maintenance escrow to the County to cover the first 2 years of stormwater maintenance fees for the district. The individual property owners will be billed starting in the 3d year after the developer has turned over control to the maintenance organization.

**FISCAL NOTE:** There is no discernible fiscal impact as a result of adopting this ordinance.

