

Introduced by: McClellan and Tackett
Date of introduction: September 11, 2007

**SUBSTITUTE NO. 1 TO
ORDINANCE NO. 07 - 124**

**TO REVISE CHAPTER 40 OF THE *NEW CASTLE COUNTY CODE*
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE – UDC) REGARDING
ARTICLE 3 (“USE REGULATIONS”) AND ARTICLE 33 (“DEFINITIONS”)
REGARDING MULCH AND COMPOST OPERATIONS IN NEW CASTLE COUNTY**

WHEREAS, the State of Delaware has banned the disposal of all yard trimmings and yard waste at the Cherry Island Landfill; and

WHEREAS, New Castle County residents and businesses need to find alternative disposal methods in the County at a reasonable cost; and

WHEREAS, it is desirable to create additional opportunities for compost or mulching operations to locate within the County; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonable and rationally related to, legitimate government interests (i.e., promoting the health, safety, morals, convenience, order, prosperity and/or welfare of the present and future inhabitants of this State).

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

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.100 (“Use regulations”), Section 40.03.110 (“General Use Table”), is hereby amended by the addition of the underlined text and the deletion of text that is bracketed with strikethroughs as set forth below:

Table 40.03.110 A, General Use Table										Table 40.03.110 B, General Use Table							Table 40.03.110 C, General Use Table	
Zoning District (Urban and Suburban-Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory, LV=hamlet/village only										Zoning District (Suburban and Special Character)							Additional Standards (all districts)	
Land Use	* TN	ST	M M	ON	OR	CR	BP	I	CN	*** S	SE	** NC	HI	EX	SR	Parking	Limited & Special Use Standards	
Agricultural										Agricultural							Agricultural	
....										
Commercial										Commercial							Commercial	
....										
Agricultural support and other rural services	N	N	N	N	N	Y	N	Y	[N] Y	S	S	S	Y	[N] Y	S	Table 40.03.522	Section 40.03.314 and Section 40.03.336	
....										
Industrial Uses										Industrial Uses							Industrial Uses	
Compost operations	N	N	N	N	N	N	N	L	N	N	N	N	L	L	S	Table 40.03.522	Section 40.03.336	
Extraction	
....										
Recycling or storage	N	N	N	N	[N] L	N	[N] L	L	N	N	N	N	L	N	N	Table 40.03.522	Table 40.03.210	
....										

Section 2. *New Castle County Code Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.200 (“Limited and special uses”), Section 40.03.210 (“Buffering, location, bulk, and scale standards”), Table 40.03.210 (“Limited and Special Use Standards”) is hereby amended by the addition of the underlined text as follows:*

Table 40.03.210 A. Limited and Special Use Standards						Table 40.03.210 B. Limited and Special Use Standards						Table 40.03.210 C. Limited and Special Use Standards						
						Buffer Standards						Locational or Dimensional Standards						Additional Standards
						Bufferyards			Separation			Minimum			Maximum			Other
Land Use	Location	Increase Opacity or Width	Fence or Berm	Use Protected	Distance from Use to Protected Parcel	Spacing	Site Area	Road Access	Open Space	Lot Area	Height							
Agricultural						Agricultural						Agricultural						
....											
Industrial Uses						Industrial Uses						Industrial Uses						
Compost operations												Section 40.03.336						
Extraction						
....											
Recycling or storage	All exterior storage	0.3	8 ft. fence or 4 ft. berm									The use is a limited use in the OR and BP zoning districts only where there is no exterior storage, and all material is stored inside buildings with impervious floors.						
....											
....											

Section 3. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards”), is hereby amended by the addition of the underlined text as follows:

Sec. 40.03.336. Compost or mulch operations.

A commercial compost or commercial mulch operation must conform to the following applicable standards:

- A. *Frontage.* The site shall have at least two hundred (200) feet of frontage on a public road, or other adequate means of access compatible with sound land use principles.
- B. *Setbacks.* No area of compost or mulch shall be permitted within two hundred (200) feet of any residential use, office, and DPUD district; or, within fifty (50) feet of any commercial, BP, I and HI Districts, except along public or private road frontage, where the setback plus right-of-way must total at least two hundred (200) feet, with a minimum setback of fifty (50) feet.
- C. *Screening.* No grading, removal or disturbance of plant material shall be permitted within thirty (30) feet of any lot line or road frontage provided, however, that existing vegetation and/or grading shall be supplemented as required with additional plant material and/or berming so as to provide a one (1.0) opacity, except at the approved point of access. All of the requirements of this subsection must be in place prior to commencement of compost or mulch operations.
- D. *Access, fencing and safety measures.* The compost or mulch operation shall have in place artificial barriers (fences, walls, guardrails, buildings, etc.) or natural barriers (rocks, berms, trees, streams, etc.) at least twenty-five (25) feet outside the operation that will effectively control access to the site.

Section 4. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.400 (“Individual use standards”), Section 40.03.410 (Accessory uses, residential) is hereby amended by the addition of the underlined text as set forth below:

Sec. 40.03.410. Accessory uses, residential.

Residential uses may have accessory buildings and accessory uses provided they conform to the following standards:

- A. *General standards....*
- B. *Private stables....*
- C. *Yard ornaments, play structures....*

- D. *Fences*. Fences may be permitted....
- E. *Satellite dish or antenna*. Satellite dishes....
- F. *Ball courts*. Ball courts shall....
- G. *Private swimming pool*. A private swimming pool....
- H. *Guest house*. On any lot greater....
- I. *Temporary roadside stand*. A roadside stand....
- J. *Garage/yard sales*. Garage/yard sales....

K. *Mulching and composting*. Mulching or composting conducted by the resident using material (both yard waste and kitchen waste) found and generated on-site and not to include material from other property.

Section 5. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.200 (“Use definitions”), Section 40.33.240 (“Commercial uses”) is hereby amended by adding the material that is underscored as set forth below.

Sec. 40.33.240. Commercial uses.

- A. *Adult uses*....
- B. *Agricultural support and other rural services*. This use includes farm supply services, equipment dealers, grain storage, farm product warehousing and storage, fishing, hunting and trapping industries, veterinary services, kennels, taxidermist, commercial greenhouse, nursery and garden center, mulch operations, and cemeteries (NAICS 114, 115, 49313, 4245, 444220, 54194, 81291, 81222).
- C. *Bed and breakfast*....

....

Section 6. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.200 (“Use Definitions”), Section 40.33.270 (“Industrial uses”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

Sec. 40.33.270. Industrial uses.

- A. [~~Reserved.~~] *Compost operations (NAICS 325314)*. A process that results from the controlled biological decomposition and stabilization of organic substrates, under conditions that allow development of thermophilic temperatures as a result of

biologically produced heat, to produce a final product that is stable, free of pathogens and plant seeds, and can be beneficially applied to land.

B. *Extraction....*

C. *Heavy industry.* This category includes....

Animal food, meat product....

....

Chemical manufacturing, including compost operations (NAICS 325)

....

D. *Light industry....*

....

Section 7. *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 definitions of words used in this Code.

Abandonment....

Mulch operations. A process that results in a product from the physical breakdown of yard trimmings and other approved materials into smaller pieces. Mulch is a protective cover placed over surface soil to modify the effects of the local climate. Mulch material may include the following: grass, leaves, bush and tree prunings, brush, shrubs, Christmas trees, tree limbs, hay, sawdust, and wood chips.

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Section 8. Consistent with Comprehensive Development Plan. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 9. Inconsistent Ordinances and Resolutions Repealed. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section 10. Severability. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that 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 11. Effective Date. This ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive.

Approved on:

Adopted by County Council of
New Castle County on: 12/11/07

County Executive

President of County Council

SYNOPSIS: This amendment will clarify the difference between compost and mulch operations and will specify the locations and requirements of each. Compost and mulch operations are divided into two (2) separate use categories. The simplest is an on-site private property mulch or compost operation by a landowner as an accessory use to the principal use of the site as a private residence. The second level is a commercial run mulch or compost operation that is run for profit and accepts mulch and compost from a variety of sources.

The commercial compost operation is defined by NAICS 325314 and permitted as a limited use in the I, HI, and EX districts, and as a special use in the SR district. A commercial mulching operation is defined as part of the "agricultural support and rural services" use and is permitted by right in the CN, CR, I, HI, and EX districts, and as a special use in the S, SE, SR, and NC districts.

FISCAL NOTE: This Ordinance will have no discernable fiscal impact.