



SPONSOR: Rep. Oberle & Sen. Sokola ;
Reps. Hudson, Ennis, Keeley, Lofink, VanSant

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 227

AN ACT TO AMEND TITLE 16 AND TITLE 9 OF THE DELAWARE CODE RELATING TO HEALTH AND SAFETY AND
NEW CASTLE COUNTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 7601 of Title 16 of the Delaware Code by deleting the phrase “as a basis for determining whether or
not building permits shall be issued”.

Section 2. Amend Title 16 of the Delaware Code by deleting Chapter 81 thereof in its entirety.

Section 3. Amend Title 16 of the Delaware Code by deleting Chapter 83 thereof in its entirety.

Section 4. Amend Title 9 of the Delaware Code by deleting § 3005 thereof in its entirety.

Section 5. Amend Title 9 of the Delaware Code by adding a new Chapter 25 to read as follows:

“Chapter 25. Building Code

§ 2501. Definitions.

As used in this Chapter unless a different meaning clearly appears from the context:

- (1) Building means a structure having a roof and intended to shelter persons, animals, property or a
business activity. The word building shall be construed to include parts thereof and all equipment
therein.
- (2) Building sewer system means equipment, appliances, pipes, fittings, fixtures and other
appurtenances that convey liquid and water-carried waste from the building or structure to a public
sewer, private sewer, individual sewage disposal system or other point of disposal.
- (3) Construction, construct or constructed means the building, installation, alteration, repair,
replacement, maintenance, removal or demolition of a building, structure, mechanical system, fuel
gas system, plumbing system, building sewer or similar system, or the components thereof.
- (4) Contractor means a person engaged in construction activity regulated by the New Castle County
Building Code.

- (5) County Council shall mean the County Council for New Castle County.
- (6) Department of Land Use shall mean the New Castle County Department of Land Use.
- (7) Fuel gas system shall mean natural or liquid gas appliances and related accessories, including gas piping extending from the point of delivery to the inlet connections of appliances.
- (8) Mechanical system shall mean a system permanently installed and utilized to provide for the control of environmental conditions and related processes within buildings and structures, including equipment, appliances, fixtures, fittings, and appurtenances, including ventilating, heating, cooling, air conditioning and refrigeration systems, incinerators and other energy related systems.
- (9) Permit includes any building permit, license, zoning permit, certificate of occupancy, certificate of use, certificate of completion, subdivision approval and any other official action of government having the effect of permitting construction, occupancy or use.
- (10) Plumbing system means the equipment, appliances, pipes, fittings, fixtures and other appurtenances in or about a building or structure for bringing in the water supply and removing liquid and water-carried waste.
- (11) Structure shall mean a man made object having an ascertainable stationary location on land or in water, whether or not affixed to the land.

§ 2502. Promulgation of building code.

The County Council, in order to provide for the health and safety of the citizens of New Castle County, shall promulgate rules and regulations, to be known as the New Castle County Building Code, controlling, regulating and supervising persons engaged in construction activities and providing for matters concerning, affecting or relating to the construction, use or occupancy, location and maintenance of buildings and structures located in New Castle County and the mechanical systems, fuel gas systems, plumbing systems, building sewer systems or similar systems, or components thereof, within or about such buildings and structures.

§ 2503. Existing building; application to.

No provision as adopted by the County Council shall be construed to require any change in, alteration of or addition to a legally existing building or structure or the premises connected therewith, unless specially stated to so apply.

§ 2504. Registration and testing of contractors.

The County Council may promulgate rules and regulations requiring persons engaged in construction activity regulated by the New Castle County Building code to register with the Department of Land Use and take such tests or

50 examinations necessary to demonstrate that such persons are competent to complete regulated work in a safe and sanitary
51 manner.

52 § 2505. Fees.

53 The County Council shall adopt rules and regulations providing for the charge of reasonable fees for the
54 administration and enforcement of the New Castle County Building Code including fees for the issuance of permits,
55 inspections and registration. The basis for establishing building permit costs shall be limited to the building or structure
56 and its functional parts including its mechanical system, fuel gas system, plumbing system, building sewer system or any
57 other similar system within or about such building or structure.

58 § 2506. Department of Land Use; administration and enforcement.

59 The Department of Land Use shall have the power and authority to administer and enforce all provisions of the
60 New Castle County Building Code as promulgated by the County Council except as otherwise provided for by this Chapter
61 or by rule and regulation adopted by County Council.

62 § 2507. Inspections and certifications of compliance.

63 Inspections required under the provisions, rules and regulations adopted by the County Council shall be made by
64 the Department of Land Use. In the case of the inspection of elevators, fuel oil equipment or electric wiring, the
65 Department of Land Use may accept reports of inspectors of casualty companies or of other recognized inspection services
66 after investigation of their qualifications and reliability. Certifications required under the provisions, rules and regulations
67 adopted by the County Council shall be in writing and certified over the signature of the person verifying that the
68 provisions of the New Castle County Building Code are complied with and that there are no unsafe conditions.

69 § 2508. Records.

- 70 (a) The Department of Land Use shall keep a careful and comprehensive record of applications, of permits
71 issued, of inspections made, of reports rendered and of notices or orders issued. The Department of Land
72 Use shall retain on file copies or electronic versions of all papers in connection with building work so long as
73 any part of the building or structure to which they relate may be in existence, except that construction plans
74 for buildings or structures of less than \$200,000 value need not be retained after work shown on such plans
75 has been completed and has been approved and accepted. The Department of Land Use shall keep a record
76 of all violations of any rules or regulations promulgated by the County Council, with the name of the owner
77 or builder and the location where such violations are found.

- (b) All records shall be open to public inspection at the discretion of the Department of Land Use and subject to the Delaware Freedom of Information Act but shall not be removed from the Department.

§ 2509. Construction of buildings, structures and equipment; use and occupancy.

- (a) No building or structure shall be constructed by a registered contractor or an individual holding a permit as provided for in this Chapter, nor shall the equipment and materials that are part of or related to the electrical system, mechanical system, fuel gas system, plumbing system, building sewer system or similar system in or about a building or structure, be constructed except in compliance with the provisions of the New Castle County Building Code as promulgated by the County Council.
- (b) No building or structure shall be constructed in any manner that would be in violation of the New Castle County Building Code as promulgated by the County Council or of any authorized order or rule of the Department of Land Use made and issued thereunder.
- (c) No building or structure shall be used or occupied, in whole or in part, and no change to the existing use or occupancy classification of a building or structure or portion thereof shall be made until the Department has issued an occupancy or use permit.
- (d) No equipment or material that is part of or related to the electrical system, mechanical system, fuel gas system, plumbing system, building sewer system or similar system, in or about a building or structure, and for which a permit is required for the construction of said equipment, material or system, may be put into use or operation until the Department has issued a permit or certificate allowing its use or operation.

§ 2510. Application for permits.

No person shall commence construction of a building or structure, or any electrical system, mechanical system, fuel gas system, plumbing system, building sewer system or similar system, or component thereof, within or about a building and structure, where such construction is regulated by the New Castle County Building Code, without first filing with the Department of Land Use an application in writing for such issuance of the building permit. The Department of Transportation, through the Office of Aeronautics, shall respond to the Department of Land Use regarding any objections to the issuance of a building permit, within thirty (30) days of the Department of Transportation's receipt of such permit for review.

§ 2511. Use and maintenance of building or structure erected in violation of code.

- (a) No person shall maintain, occupy or use a building or structure or part thereof that has been constructed in violation of this Chapter or of any of the provisions, rules or regulations delineated in the New Castle County

Building Code as adopted by the County Council of New Castle County pursuant to the purpose of this Chapter or constructed in violation of any permit, certificate, detailed statement or plan accepted or approved by the Department or in violation of any order of the Department.

- (b) A person who has constructed or is maintaining such a building or structure or constructed a mechanical system, fuel gas system, plumbing system, building sewer system or similar system, or component thereof, shall remove the building, structure or system or cause the same to be removed. If such person fails to do so, the Department of Land Use may remove such unlawful building, structure or system or cause the same to be removed or altered to comply with the law. Whatever expense shall be incurred in relation thereto shall be paid by the Office of Finance out of the moneys in the Treasury; and the owner or owners shall be jointly and severally liable to New Castle County for the full amount so expended. New Castle County may maintain an action at law against such owner or owners to recover the sums of moneys so expended, plus lawful interest and costs.

§ 2512. Violation of regulations or Chapter; notices and orders.

- (a) For the purpose of enforcing compliance with the provisions of the New Castle County Building Code, the requirements of any permit, certificate, detailed statement or plan accepted or approved by the Department of Land Use, or to remove illegal or unsafe conditions, to secure the necessary safeguards during construction or to require adequate exit facilities in existing buildings, the Department of Land Use shall issue such rules, notices or orders as may be necessary.
- (b) Whenever the Department of Land Use is satisfied that a building or structure, mechanical system, fuel gas system, plumbing system, building sewer system or similar system, or component thereof, or any work in connection therewith, the construction of which is regulated, permitted or forbidden by any of the rules or regulations as adopted by the County Council, is being constructed in violation or rules, regulations or requirements as promulgated by the County Council or in violation of a permit, certificate, detailed statement or plan accepted or approved by the Department of Land Use, or order of the Department of Land Use, the Department of Land Use may serve a written notice or order upon the person responsible therefore directing discontinuance of each illegal action and the remedying of the condition which is in violation of the provisions, regulations or requirements as adopted by the County Council or required by permit, certificate, detailed statement or plan accepted or approved by the Department of Land Use or by order of the Department of Land Use.

- (c) No person having been served with such a notice or order shall fail within five (5) days to comply with the requirements thereof unless the Department of Land Use determines that such violation cannot be cured within such time and clearly delineates additional time for compliance.
- (d) Whenever in the opinion of the Department, by reason of defective or illegal work in violation of a provision or requirement adopted by the County Council of New Castle County, or in violation of any permit, certificate, detailed statement or plan accepted or approved by the Department of Land Use or in violation of any order of the Department of Land Use or the continuance of a building operation is contrary to public welfare, the Department may order, in writing, that all further work be stopped immediately and may require suspensions of work until the condition in violation has been remedied.

§ 2513. Penalties.

The owner of a building, structure or premises in violation of this Chapter or the rules or requirements as promulgated by the County Council or in violation of any permit, certificate, detailed statement or plan accepted or approved by the Department of Land Use, or in violation of an order of the Department of Land Use, and any architect, builder, contractor, agent, person or corporation employed in connection therewith and who has participated or assisted in the commission of such violation shall each be fined not more than \$1,000 for each offense and each and every day such violation continues shall constitute a separate offense.

§ 2514. Abatement proceedings.

The imposition of the penalties in this Chapter shall not preclude the Attorney General, County Attorney or Code Enforcement Constable from instituting appropriate actions or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, or to restrain, correct or abate a violation, or to prevent the occupancy of a building, structure or premises, or to prevent an illegal act, conduct, business or use in or about any premises.

§ 2515. Exceptions.

This Chapter shall not apply to buildings or structures devoted to agricultural use as defined in Chapter 26 of this Title, nor to properties, buildings or structures located within any incorporated city or town in New Castle County unless the responsibility for the local service function has been duly transferred to New Castle County.”.

SYNOPSIS

Section 7601 grants to municipal and County governments by specific enumeration the power to adopt and enforce building codes, plumbing codes, electrical codes or similar codes. This Act clarifies that the specific grant of power does not limit the municipal and County governments to the issue of determining whether building permits should be issued. Rather, municipal

and County governments shall have all powers related to the adoption, administration and enforcement of building codes, plumbing codes, electrical codes or similar codes that are not denied by statute. Thus, this Act makes the provisions consistent with Article 11, Section 25 of the Delaware Constitution of 1897.

This Act deletes Chapter 81 and Chapter 83 of Title 16. These Chapters are specific to New Castle County and many of the provisions contained therein are outdated. To provide consistency with location of the building code provisions for Kent County and Sussex County, this Act creates a new Chapter 25 in Title 9 to contain the building code provisions for New Castle County.

This Act updates and consolidates various Delaware Code provisions relating to the New Castle County Building Code in Chapter 25 of Title 9. To provide consistency with the organization of the New Castle County government and Delaware Code provisions, the Department of Land Use is charged with enforcement and administration of the New Castle County Building Code.