

SPONSOR: Rep. ____ & Sen. ____

HOUSE OF REPRESENTATIVES/DELAWARE STATE SENATE
151ST GENERAL ASSEMBLY

HOUSE/SENATE BILL NO.

AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO NEW CASTLE COUNTY NEIGHBORHOOD IMPROVEMENT DISTRICTS.

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

Section 1. Amend Title 9 of the Delaware Code by inserting a new Chapter 34 as shown by underline as follows:

CHAPTER 34. New Castle County Neighborhood Improvement Districts

§ 3401. Short title.

This Act shall be known as the “New Castle County Neighborhood Improvement District Act.”

§ 3402. Legislative findings.

The General Assembly finds and declares that:

- (a) Marshalling New Castle County resources together under “one roof” to focus on neighborhood problems, as contemplated by this Act, promotes the chances of successfully resolving systemic neighborhood issues.
- (b) Preserving and improving our neighborhoods is critical to the long-term well-being of the State of Delaware and New Castle County.
- (c) The availability of enhanced services, including district-wide sanitation and snow removal, and enhanced public safety, within New Castle County’s neighborhoods would result in greater neighborhood stability and improved quality of life.
- (d) Numerous jurisdictions around the world and the United States, including Philadelphia, Baltimore, Buffalo, and Allentown, among many others, have successfully implemented and witnessed the benefit of such enhanced services through the creation of neighborhood improvement districts.
- (e) The enhanced services and related programs provided within a neighborhood improvement district, generally speaking, are funded by property owners and the residents within each district, who are the primary beneficiaries thereof, which also lessens further demands on the strained public treasury.
- (f) It is in the best interests of the County and its residents to create, where feasible and desired by the property owners and residents in each district, assessment-based neighborhood improvement districts to promote more attractive and safer neighborhoods.
- (g) The County should be given broad discretion in establishing by County ordinance the type of assessment-based services and programs most consistent with neighborhood needs, goals, and objectives as determined and expressed by property owners and residents in the district.

§ 3403. Definitions.

The following words and phrases when used in this Chapter shall have the meanings provided herein unless the context clearly indicates otherwise:

“Benefited property” means a property located within a neighborhood improvement district that

benefits from enhanced district services and related programs based on a rational nexus test. Properties need not benefit equally to be considered to have benefited.

“Cost of services” means consulting fees, professional fees, preliminary planning expenditures, feasibility study expenditures, financing costs, administrative costs, and any other expenditures necessary and incidental to the development or provision of the enhanced services and related programs.

“County” or “New Castle County” means the governing body of New Castle County, Delaware, as more fully described in Title 9 of the *Delaware Code*. In other circumstances, as the context indicates, “County” or “New Castle County” means the geographic boundaries of New Castle County, Delaware.

“District advisory council” means an optional advisory committee comprised of property owners and residents from the neighborhood improvement district that may be established under 9 *Del. C.* § 3407 for the purpose of providing guidance and advice to the neighborhood improvement district management association regarding needed enhanced services within the district.

“Neighborhood” means a limited geographic area situated within an unincorporated area of New Castle County that includes a residential district, the limits of which form the neighborhood improvement district boundary, as identified in the filed record plan.

“Neighborhood improvement district” means a limited geographic area within an unincorporated area of the County, as identified in the filed record plan, in which a special assessment is levied on all designated property, other than exempt property, for the purpose of promoting the general welfare of the district, hereinafter referred to as a “NID.”

“Neighborhood improvement district management association” means the corporate body that oversees the management of each neighborhood improvement district established pursuant to 9 *Del. C.* § 3406, which hereinafter shall be referred to as a “NIDMA.” Such body shall be incorporated as a nonprofit corporation in the State of Delaware. As described at 9 *Del. C.* § 3406, a civic association, a maintenance corporation, among other legal entities may be designated as the NIDMA so long as the requirements of this Act are fully complied with, including that the entity is a nonprofit corporation.

“Neighborhood improvement district plan” means the strategic plan for enhanced neighborhood services required under 9 *Del. C.* § 3405, hereinafter referred to as a “NIDP,” which includes all enhanced services and related programs to be provided within the district to implement the plan by the NIDMA.

“Neighborhood improvement district services” may include, but is not limited to, those enhanced services that improve the ability of property owners and residents to enjoy a safer and more attractive neighborhood due to the provision of expanded services, which may include, without limitation, district-wide street cleaning, district-wide snow removal, district-wide trash removal, maintenance of open space, additional Code enforcement services, and security services.

“Nonprofit corporation” means a legal entity that is incorporated under the laws of the State of Delaware, is organized not for profit, and no part of the net earnings inures to the benefit of any member or individual holding an interest in such entity.

“Private security officer” means any professional person, firm, or entity employed by the NIDMA for the purpose of providing increased security or protective patrol services within the NID. The term may include off-duty police officers provided that the use of such officers for this purpose is approved by the governing body of the County.

“Rational nexus” means the legal principle which requires that there is a rational, definable benefit that accrues to any property owner assessed a fee for said benefit in a NID created under this Chapter. All property owners within a designated NID paying a special assessment fee must benefit directly or indirectly from the additional services or programs provided within the NID, provided, however, that property owners need not benefit equally.

“Residential district” means, for purposes of this Chapter, a limited geographical area comprised of real property consisting predominantly of buildings and structures for housing individuals and families, including, but not limited to, single-family detached homes, single-family semi-detached homes, townhouses, condominiums, apartments, manufactured homes, modular homes, or any combination of same.

“Service area” means the area within the boundaries of the NID in which the NIDMA provides enhanced services.

“Special assessment fee” means the fee assessed on property owners within a NID levied by the County for purposes of providing enhanced services in a district under 9 Del. C. § 3407.

“Sunset provision” means a provision in the NIDP which, under 9 Del. C. § 3405, provides for the automatic termination of the NID on a date specified in the adopted NIDP and in the County ordinance establishing each NID. The NID may be continued beyond such date, provided the County ordinance creating the original NID is re-enacted, following a review by County Council of the NID and the enhanced services provided therein.

§ 3404. Powers of New Castle County.

New Castle County shall have the power to:

- (a) Establish within the County areas designated as a NID.
- (b) Designate a nonprofit corporation, either existing or subsequently created, as the NIDMA with the certain powers established under this Chapter.
- (c) Through the County Office of Finance, administer on behalf of the NIDMA, and in accordance with any specific provisions contained in the County ordinance establishing the NID, all appropriations and expenditures as determined by the NIDMA, which may include Federal, State, and/or County funds received by the NID, as may be required to:
 - (1) Prepare or have prepared preliminary research, planning, and feasibility studies to determine needed enhanced services and related programs in the NID, including, but not limited to, graffiti removal, district-wide sanitation needs, and security; the provision of enhanced services and related programs is to supplement, not replace, existing County services provided within the NID.
- (d) Review all proposed appropriations and expenditures of funds within the NID by the NIDMA, and provide recommendations related thereto.
- (e) Advance funds to a NIDMA as may be necessary to carry out the purposes of this Act.
- (f) Levy a special assessment fee on property owners located within the NID necessary to fund enhanced services within the NID.
- (g) Collect special assessment fees on behalf of the NIDMA levied on designated property owners within the NID and to employ all legal methods to ensure collection of the special assessment.
- (h) Include a sunset provision of up to five (5) years in the County ordinance creating the NID and in the contract between the County and the NIDMA.
- (i) Impose and file liens on property for the nonpayment of the special assessment.

§ 3405. Creation of neighborhood improvement district.

(a) Establishment.

- (1) Property owners or residents in a proposed NID, or the County may petition to establish a NID, consistent with all requirements under this Chapter.
- (2) Where property owners and/or residents desire to establish a NID, which shall occur through an ordinance initiated by the District Council Member, they shall submit a petition to the County to establish a NID under the procedures provided for in this Chapter. The ordinance shall identify criteria established by County Council that supports creation of a NID.
- (3) Where the County petitions to establish a NID, which shall occur through an ordinance initiated by the District Council Member, the ordinance shall identify criteria that supports creation of the NID and shall be subject to the procedures under this Chapter.
- (4) In no case where a petition to establish a NID is submitted shall the County be obligated to do so.

(b) Specific procedures.

- (1) The County shall provide to all property owners and residents located in the proposed NID a copy of all information, including the Preliminary NIDP and the location, date, and time of the public hearing, required by this Chapter at least thirty (30) calendar days prior to the first public hearing by the County as required by this Section.
- (2) The public hearing is for the purpose of receiving public comment on the preliminary plan ("Preliminary NIDP") from affected property owners and residents within the proposed NID. Notice of the public hearing shall be advertised at least ten (10) business days prior thereto in a newspaper of general circulation in the County.
- (3) Any objection by a property owner within the proposed NID to the Preliminary NIDP must be made in writing. Each objection must be signed by the property owner, notarized, and lodged with the Clerk of County Council, as set forth in subsection (c)(1)c.7.

(c) Contents of the Preliminary NIDP.

(1) The Preliminary NIDP must include:

- a. A map indicating the boundaries of the proposed NID, as identified on the filed record plan; a designated property may not be included in more than one NID unless expressly authorized by ordinance of County Council.
- b. A written report from the County containing:
 1. The name of the proposed NID.
 2. A detailed description of the service area of the proposed NID.
 3. A list of all properties to be assessed.
 4. A list of proposed enhanced services and related programs within the NID and the estimated annual cost of services.
 5. A proposed budget for the first fiscal year, including, but not limited to, proposed expenditures for enhanced services and related programs, including costs of service such as costs related to personnel and administration, and maintenance and operational costs.
 6. The proposed revenue sources for funding the proposed enhanced services and programs.
 7. The estimated time for implementation of proposed services and related programs.
 8. A statement identifying the NIDMA.

9. Any other information, including the authority or a general description of the powers and duties of and the method for decision making by the NIDMA.
10. The method of determining the special assessment fee to be levied on property owners within the NID under 9 Del. C. § 3407.

c. In addition, the Preliminary NIDP shall:

1. Identify the respective duties and responsibilities of the NIDMA and the County in relation to the NID.
2. Require that a written agreement be entered into between the County and the NIDMA.
3. Require in the agreement between the County and the NIDMA and in the ordinance creating the NID that the County must maintain the same level of County services provided within the NID before NID-creation as after creation thereof.
4. Provide in the agreement between the County and the NIDMA and in the ordinance creating the NID a sunset provision of up to five (5) years, subject to extension following review of the NID and related services by County Council.
5. Require in the agreement between the County and the NIDMA and in the ordinance creating the NID that the County shall be responsible for collection of special assessment fees levied within the NID.
6. Allow for and encourage any exempt property owners in the NID to provide in-kind services or a financial contribution to the NIDMA in lieu of a special assessment fee.
7. Require a vote of at least 51%, in number, of the assessed property owners in the NID is necessary to defeat establishment of the proposed NID by each lodging a written, notarized objection with the Clerk of County Council within forty-five (45) calendar days after the hearing in which County Council considered the Proposed Final NIDP.

(d) The proposed final plan.

Prior to establishment of a NID, the County shall provide a proposed final plan (the “Proposed Final NIDP”) to all property owners and residents located within the proposed NID that incorporates any changes to the Preliminary NIDP based on comments from assessed property owners and residents within the NID submitted at the public hearing(s). Changes to the Preliminary NIDP reflected in the Proposed Final NIDP are to be identified in an easily discernible manner such as changes being in boldfaced or italicized type.

(e) Public hearing - proposed Final NIDP.

At least one public hearing for the purpose of receiving public comment on any revision to the Preliminary NIDP following comments by assessed property owners or residents within the proposed NID and reflected in the Proposed Final NIDP shall be held by the County before enacting an ordinance establishing a NID. Notice of the hearing shall be advertised at least ten (10) business days prior thereto in a newspaper of general circulation in the County.

(f) Veto of the Proposed Final NIDP.

- (1) Following the last public hearing required under subsection (e), assessed property owners located within a proposed NID shall have forty-five (45) calendar days from the date of the hearing to object to and disapprove of the Proposed Final NIDP.
- (2) If at least 51%, in number, of the assessed property owners within a proposed NID fail to register their objection to the Proposed Final NIDP, the County Council may, following the forty-five (45) day period, enact an ordinance establishing a NID or, in the case of an amendment to a Final NIDP, adopt the amendment(s) thereto. All objections must be in writing and notarized, and must be submitted to the Clerk of County Council by hand

delivery or electronic mail by the 45th day following the last public hearing under subsection (e) or via first class U.S. Mail, postmarked no later than the 45th day following the hearing.

- (3) Unless the requisite number of objections have been timely submitted, the County Council may within thirty (30) calendar days following the deadline for objections to be submitted and at its sole discretion proceed to approve or disapprove of the proposed Final NIDP.

(g) Subsequent amendments to an approved Final NIDP.

- (1) An approved Final NIDP, upon the recommendation of the NIDMA board, may be subsequently amended at any time after establishment of the NID, provided there is approval by at least 51% of the assessed property owners, in number, within the NID. Each property owner must indicate its approval in writing and clearly indicate approval of the proposed amendment(s), which must be submitted to the Clerk of Council by hand delivery or by electronic mail within 45 calendar days of the last public hearing or via first class U.S. Mail, postmarked no later than the 45th day. Subsequent amendments to an approved Final NIDP such as those identified in subsection (2) require the approval of County Council.
- (2) Subsequent amendments to an approved Final NIDP include, without limitation, the following:
 - a. Substantially changed enhanced services or programs to be provided in the NID.
 - b. Increase in expenditures of at least 25% of the total NIDMA budget for the fiscal year.
 - c. Changing the special assessment fee levied on property owners in the NID.
 - d. Changing the legal entity that administers enhanced services within the NID.
 - e. Changing the NID service area boundary.
 - f. Other substantial changes to the approved final plan as determined by County Council.
- (3) Subsequent amendments to a Final NIDP are subject to the same procedural requirements in the Chapter as required to adopt a proposed Final NIDP.
- (4) The County shall provide public notice of the hearing on proposed subsequent amendments to an approved Final NIDP by publication of a notice in at least one newspaper having a general circulation in the County, specifying the date, time and place of such hearing and the amendments to be considered. The notice shall be published once at least ten (10) business days prior to the date of the hearing.
- (5) Unless the requisite number of objections have been timely submitted, the County Council may within thirty (30) calendar days following the deadline for objections to be submitted and at its sole discretion proceed to approve or disapprove of any amendments to the Final NIDP.
- (6) Prior to adoption of an amendment to a boundary that increases the size of a NID, each owner of property proposed to be added to a NID shall be notified of the date, time, and location of the public hearing on the proposed amendment to the Final NIDP and shall be provided all information as required under subsections (c) and (d).

§ 3406. Creation of the neighborhood improvement district management association.

(a) Association designated.

When the County approves a NID under this Chapter, a NIDMA shall be designated by the County to administer the enhanced services within the NID.

(b) Administration.

- (1) Each NID shall be administered by a NIDMA, which may be an existing nonprofit corporation, or a subsequently established nonprofit corporation, and must exist within the proposed boundaries of the NID.
- (2) If an active nonprofit corporation already exists that formally indicates in writing to the County its interest in becoming the designated NIDMA, which shall contemporaneously be made known in writing to all property owners, the County shall grant the request unless at least 51%, in number, of assessed property owners within the proposed NID lodge their disapproval thereof, in a notarized writing, with the Clerk of County Council within forty-five (45) calendar days following the formal written request for designation by the nonprofit corporation to become the NIDMA.

(c) Powers.

A NIDMA created under this Chapter shall have all powers provided for in § 3407 upon the effective date of the County ordinance creating the NID.

(d) Board.

Each NIDMA shall have an administrative board.

- (1) Where an existing nonprofit corporation is to serve as the NIDMA, the board shall be appointed consistent with the bylaws of the existing entity.
- (2) Where a nonprofit corporation is established to serve as the NIDMA, the board shall be comprised of an odd number of members, between three (3) and five (5), with a minimum of three (3) voting members and at least one (1) non-voting member representing the County.

In all cases, so long as not inconsistent with existing bylaws thereof, each NIDMA board shall include a representative of the assessed property owners located in the NID, who shall be a voting member of the board. Board members need not be residents of the NID.

§ 3407. Powers of the neighborhood improvement district management association.

(a) General Powers. Subject to available funding, and as provided for in this Chapter and an agreement between the County and the NIDMA, a NIDMA shall have, in addition to any other powers provided pursuant to the charter establishing the nonprofit corporation, the power to:

- (1) Sue or be sued, implead or be impleaded, complain and defend in all courts.
- (2) Employ necessary staff or contract for the provision of same.
- (3) Prepare planning or feasibility studies or contract for the preparation of same to determine needed enhanced services within the NID.
- (4) Provide for enhanced services and related programs, as needed, within the NID.
- (5) Contract for the provision of enhanced services within the NID.
- (6) Determine the appropriation and expenditure of NID funds, which includes any Federal, State, or County funds received by the County Office of Finance on behalf of the NIDMA; provided, however, that the funds shall be administered by the County Office of Finance on behalf of and as directed by the NIDMA and in accordance with any specific provisions contained in this Chapter and the agreement between the County and the NIDMA. Such funds are to be used to provide for enhanced services within the NID for the benefit of the NID, including, but not limited to, district-wide snow removal, district-wide trash removal, maintenance of open space, and enhanced Code enforcement and safety services.
- (7) Solicit in-kind services or financial contributions from any exempt owners of property located within the NID in lieu of special assessment fees. This may include entering into

voluntary agreements between the NIDMA and any exempt property owners for the provision of same.

- (8) Hire additional off-duty police officers or private security officers, upon approval of the Chief of Police, whose patrol area responsibilities would be limited to the geographical area incorporated within the designated NID service area and whose responsibility would be to support existing County efforts aimed at reducing crime and improving security in the NID.
- (9) Designate an optional district advisory committee, to be referred to as the District Advisory Council or “DAC”, for each NID. Each DAC shall consist of an odd number of members, between five and nine, who shall be representative of the neighborhood’s character, including, but not limited to, age, gender, and cultural diversity, and shall include at least two assessed property owners.

(b) Special Assessments.

- (1) The total cost of enhanced services and related programs provided within a NID shall be assessed to all designated properties located therein under a method that equitably apportions costs among benefiting properties, as determined by the Chief Financial Officer for the County.
- (2) All special assessment fees shall be based on the estimated cost of the enhanced services and programs to be provided in the NID as identified in the Final NIDP approved by County Council.
- (3) Revenues from the special assessment fee contemplated in subsection (1) shall be accounted for by the County Office of Finance and utilized by the NIDMA to provide enhanced services and related programs within the NID as authorized under this Chapter. In no case shall the aggregate amount of all special assessment fees during any year exceed the estimated cost of proposed enhanced services for the year.
- (4) All special assessments authorized under this Chapter shall be calculated using July 1 as the first day of the fiscal year.

(c) Payment. County Council, in consultation with the Chief Financial Officer for the County, may by ordinance authorize the payment of a special assessment, including in equal annual or more frequent installments over such time and bearing interest at a rate specified under the method identified in subsection (b).

(d) Liens.

- (1) Notwithstanding the filing of any claims, all special assessments, including those which are made payable in installments, shall constitute a lien and encumbrance upon the respective benefitted properties at the beginning of each fiscal year, starting July 1, only in an amount equal to the sum of:
 - a. The annual special assessment, or outstanding installment payments, becoming payable in the current year, with penalty, if any, thereon; and
 - b. The total of all amounts, including outstanding installment payments, with penalty thereon, which became due during prior years and which remain due and unpaid at the beginning of the current year.
- (2) In the case of default in the payment of any special assessment, including any installment amount, and penalty for a period of ninety (90) days after the payment becomes due, a County special assessment ordinance may provide either for the entire special assessment, with accrued penalty, to become due and become a lien from the due date of the special assessment, including any installment, or may provide solely for the enforcement of a claim as to the overdue amounts, with penalty, in which case the

ordinance shall further provide that if any amount remains due and unpaid for six (6) months after it has become due and payable, then the entire special assessment with accrued penalty shall become due and become a lien from the due date thereof.

- (3) No action taken to enforce a claim for any special assessment, including any installment, shall affect the status of any subsequent special assessment or installment of the same special assessment, each of which shall continue to become a lien upon the property annually pursuant to this section.
- (4) The ordinance may contain any provision relating to special assessments, including installment payments, which is not inconsistent with applicable law.
- (5) Any owner of property against whom a special assessment has been made may pay the special assessment in full at any time, with accrued costs thereon, and such payment shall discharge the lien of the special assessment or installments then constituting a lien and shall also release the claim to any later installments.
- (6) A claim to secure a special assessment shall be filed in New Castle County in any court of competent jurisdiction.

§ 3408. Annual audit, report, and meeting; additional audits.

- (a) The County Auditor or designee thereof, or an entity identified by County Council shall annually audit all funds received and expended by or on behalf of the NIDMA; the audit results shall be made electronically available to each owner of property and resident located in the NID, all County departments as determined by County Council, and the County Council within 120 calendar days after the end of each fiscal year.
- (b) The NIDMA shall annually provide a report, in electronic format, including financial and programmatic information and a summary of the annual audit findings as required in subsection (a) to the County and to all owners of property and residents located in the NID, by no later than the annual meeting of the NIDMA, which shall be held each year by no later than December 31.
- (c) In addition to the annual audit required under subsection (a), the County may require additional audits as the County Council, in consultation with the County Auditor or designee thereof, deems appropriate.

§ 3409. Dissolution of neighborhood improvement district management association and neighborhood improvement district.

- (a) *Request for termination.*
 - (1) A request for termination of a NID or NIDMA may be initiated by a property owner or the County, must be approved by at least 51% of assessed property owners, in number, within the NID, and shall be in writing, notarized, and lodged with the Clerk of County Council. The County Council shall hold a hearing to consider the merits of the request, consistent with the hearing procedures set forth in this Chapter.
 - (2) Upon termination of a NID or NIDMA, subject to the final audit under subsection (b), the property of the NIDMA shall pass as set forth in the County ordinance, with all unencumbered funds to be equally divided among the assessed property owners consistent with any agreement between the NIDMA and the County, and the NID or NIDMA shall cease to exist.
 - (3) If a request is approved by the County Council, then a resolution to that effect shall be filed with the Secretary of the State, and the Secretary shall note the termination on the record of incorporation and return the resolution with his or her approval shown to the County Council.

(4) Upon termination of a NID or NIDMA, subject to the final audit pursuant to subsection (b), the property of the NIDMA shall pass as set forth in the County ordinance, with all unencumbered funds to be divided pro rata among the assessed property owners consistent with the agreement between the NIDMA and the County, and the NIDMA or NID shall cease to exist.

(b) Final audit.

(1) Upon termination of a NID or NIDMA, the County Auditor or designee thereof shall perform a final audit, and the audit results shall be provided to all property owners and residents in the NID, and to County Council within 90 days after termination of the NID.

Section 2. This Act is effective immediately and implemented as follows:

(1) The Clerk of New Castle County Council shall provide notice, published in the Register of Regulations, that the ordinance required under *Delaware Code* Chapter 34 of Title 9 has been adopted by County government and the date this ordinance was adopted.

(2) The implementation date is the date the ordinance necessary under Chapter 34 of Title 9 was adopted, as provided under paragraph (1).

SYNOPSIS

This Act shall be known as the “New Castle County Neighborhood Improvement District Act.” The Act assembles County resources under “one roof” to focus comprehensively on neighborhood problems, which promotes the chances of successfully resolving systemic neighborhood issues.

Summary of the legislation:

- The Act provides for creation of a Neighborhood Improvement District (“NID”).
- The purpose of creating a NID is to, among other things, provide a source of funding to allow for enhanced services in neighborhoods that are in need of such services, such as district-wide snow removal, extra duty police patrols, extra duty Code enforcement, district-wide trash collection, and maintenance of open space.
- The principal source of funding to provide for the enhanced services is a special assessment on any non-exempt property in the NID.
- The NID may be initiated by submission of a voluntary petition by property owners or residents in the district (or by the County), subject to objection by 51%, in number, of the assessed property owners in the district.