

**ORDINANCE NO. 23-168**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40 (“UNIFIED DEVELOPMENT CODE”), ARTICLE 31 (“PROCEDURES AND ADMINISTRATION”), SECTION 40.31.340 (“NOTICE OF PUBLIC HEARINGS”) REGARDING NOTICE RELATING TO APPLICATIONS, INCLUDING REZONINGS**

**WHEREAS**, a proposed rezoning of a property is an important legal process that can have weighty ramifications; and

**WHEREAS**, a rezoning of a property, of course, affects the property owner, but also can affect neighbors, in positive and, sometimes, negative ways; and

**WHEREAS**, it is important that notice of a potential rezoning of a property be provided to anyone who is interested so they may have an opportunity to speak in favor of or against a rezoning; and

**WHEREAS**, it goes without saying that in order for an interested person to be able to speak up, for or against a proposed rezoning, they must be given notice of proceedings involving a rezoning; and

**WHEREAS**, County Council believes that robust public notice is in everyone’s best interest; 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, welfare, and quality of life of present and future inhabitants of New Castle County.

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

Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 31 (“Procedures and Administration”), Section 40.31.340 (“Notice of Public Hearings”) is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

**Sec. 40.31.340. Notice of public hearings.**

Except as required below, the Department shall be responsible for ensuring notice of a public hearing through newspapers when required by ~~state~~ State law, online posting, posted notice in public buildings as determined by the Department, and mailed notice for meetings of the Board of Adjustment, Planning Board, Resource Protection Area Technical Advisory Committee, Historic Review Board and Design Review Advisory Committees.

42 A. Contents of Legal Notice.

43 1. Legal notice required under this Section, regardless of form, media, or platform,  
44 shall include, at minimum, the following information, which shall be referred to  
45 hereinafter as the "Notice Contents":

46 a. The type of application.

47 b. A short description of the proposed action.

48 c. A description of the parcel and the address or approximate street location.

49 d. The location, date, and time of the public hearing.

50 e. Information on where full details of the application may be obtained,  
51 including the hours of availability, where applicable, an email address, and  
52 a phone number.

53 2. All forms of notice required under this Section shall include the Notice  
54 Contents.

55 BA. Text amendments and rezonings. Notice requirements for hearings to consider  
56 proposed text amendments and proposed rezonings shall comply with the  
57 applicable provisions of State law, including notice in a newspaper of general  
58 circulation, as may be amended from time to time. In addition, hearings to  
59 consider proposed rezonings shall be subject to the additional notice  
60 requirements set forth in this Section, and, thus, notice of proposed rezonings  
61 shall be provided by each manner of notice identified in this Section (e.g., via  
62 newspaper publication, on the County website, on any social media platform of  
63 the New Castle County Department of Land Use, via signage, via certified mail  
64 with electronic return receipt, etc.).

65 CB. Additional Notice, and Other other applications.

66 1. Online notice. The Department shall post ~~applicant~~ notice of hearings to  
67 consider proposed rezonings and all other applications (e.g., deed restriction  
68 changes; subdivision, area, use and floodplain variance requests; beneficial  
69 use appeals; appeals of Departmental decisions; major land development  
70 plans; Historic Review Board applications; RPATAC applications (Resource  
71 Protection Area Technical Advisory Committee); Design Review Advisory  
72 Committee applications); and other Planning Board and Board of Adjustment  
73 applications on a web page established for legal notices on the County's  
74 website. Notice shall be posted on the website appear at least fourteen (14)  
75 calendar days prior to the public hearing date, and shall contain the following  
76 information:

77 a. ~~The type of application.~~

78 b. ~~A short description of the proposed action.~~

79 c. ~~A description of the parcel and the approximate street location or address.~~

80 d. ~~The location, date, and time of the public hearing.~~

81 e. ~~Information on where full details of the application may be obtained,~~  
82 ~~including the hours of availability and phone number.~~

83 2. Notice to owner/ and applicant. For applications not related to a rezoning, The  
84 the Department shall notify by First Class Mail mail the owner and/or the

85 applicant of the date, time, and place of the hearing at least 14 calendar days  
86 prior to the hearing. For proposed rezonings only, in addition to satisfying all  
87 other notice requirements in this Section, the legal notice shall be served on  
88 the applicant by certified mail with electronic return receipt.

- 89 3. *Mailed notice.* When a public hearing is required, not involving a proposed  
90 rezoning, the Department shall send a copy of the legal notice to the last known  
91 address of all property owners within a ~~three hundred (300)~~ foot radius of the  
92 property or ~~twelve (12)~~ different property owners in the closest proximity to the  
93 property, whichever is greater; no less than ~~ten (10)~~ 14 calendar days prior to  
94 the public hearing. A copy of the legal notice for public hearings for all  
95 applications shall also be sent to the respective civic organizations registered  
96 with the Department of Land Use immediately surrounding the applicant's  
97 property and to the area umbrella civic association.

98 Rezonings – public hearing required. In addition to satisfying other notice  
99 requirements set forth in this Section, including provision of the Notice  
100 Contents, the Department shall provide notice of the public hearing on the  
101 proposed rezoning by certified mail with electronic return receipt to the last  
102 known address of all property owners within a 1,000 foot radius of the property  
103 to be rezoned or 12 different property owners in the closest proximity to the  
104 property to be rezoned, whichever is greater, no less than 14 calendar days  
105 prior to the public hearing. The legal notice for the public hearing to consider  
106 the proposed rezoning shall also be sent to the respective civic organizations  
107 registered with the Department of Land Use immediately surrounding the  
108 relevant property and to the area umbrella civic association no less than 14  
109 calendar days prior to the public hearing.

- 110 4. *Posted notice.* The applicant shall erect a public hearing posted notice sign on  
111 all subject properties, including those proposed to be rezoned, at least ~~ten (10)~~  
112 14 calendar days in advance of a public hearing, except for residential Board  
113 of Adjustment applications and DRAC applications (not including minor and  
114 major land development plans) referred by the Department for  
115 recommendation. The Department shall post BOA residential variance  
116 applications and DRAC applications that are not land development plans.

117 a. *Location.* The posted sign shall be placed in a prominent conspicuous  
118 location, ~~(no greater than seven (7) feet from a residential or local road right-~~  
119 of-way, and no greater than ~~ten (10) feet from a collector or arterial right-of-~~  
120 way); one (1) along each adjacent right-of-way and shall be perpendicular  
121 to the street so as to be clearly visible to the public. The Department shall  
122 have the discretion to require the applicant to move the posted sign to a  
123 more acceptable location if the Department determines ~~it is determined by~~  
124 ~~the Department~~ that the location is inappropriate for public viewing. The  
125 Department shall ~~also~~ have the discretion to permit only one (1) posted sign  
126 on corner lots of less than one (1) acre.

127 b. *Size.* The posted sign shall be double-faced and each side shall consist of  
128 a ~~four (4) foot by four (4) foot~~ laminated sign with a yellow background with

129 ~~two (2)~~ inch black lettering in a sans serif typeface. It shall be impermissible  
130 for any of the sign or language thereon to be obscured. If a posted sign  
131 already exists at the site, the notice for the public hearing may be affixed to  
132 the existing sign so long as it is done in a manner that does not obscure any  
133 language or material on the sign.

134 c. *Plan information.* The sign shall depict the lot configuration of residential  
135 applications or building footprint with square footage, paving, and  
136 landscaping in the case of nonresidential applications. The ~~applicants~~  
137 applicant's name and phone number, the name of the plan, the application  
138 number, and the tax parcel number(s) shall be prominently displayed on the  
139 plan. In addition, the date, time, location and hearing board shall be clearly  
140 visible. The applicant shall be responsible to clean or replace any posted  
141 sign (no more than once) which has been defaced, to the extent that the  
142 information to be conveyed is no longer legible.

143 d. *Proof of posting.* The applicant shall provide the Department with  
144 photographic proof of posting and a signed affidavit at least 7 calendar days  
145 prior to the public hearing. Failure of ~~any~~ such posted notice to remain in  
146 place after the notice has been properly posted in an industry acceptable  
147 manner shall not be deemed a failure to comply with these standards or be  
148 grounds to challenge the validity of any decision made on the application  
149 unless the notice was not properly posted, which causes the sign to be  
150 displaced, or the notice was removed by the applicant or at his or her  
151 direction.

152 e. *Removal of posted notice.* ~~In addition, the~~ The applicant shall remove the  
153 posted notice sign no later than ~~ten (10)~~ 14 calendar days after the public  
154 hearing has been held ~~being advertised has been completed.~~ If the posted  
155 notice sign is serving more than one (1) purpose, that is, other public  
156 hearings are pending or the land development plan is yet to be recorded,  
157 the posted notice sign shall remain until after recordation, expiration, or  
158 withdrawal of the plan.

159 5. *Social Media.* The Department shall post notice of all public hearings to consider  
160 a proposed rezoning or other application on any social media platform used by  
161 the Department of Land Use no less than 14 calendar days prior to the public  
162 hearing, and such notice shall include at least the Notice Contents.

163 DG. County Council public hearings.

164 1. *Text amendments and County-initiated-comprehensive rezonings.* Notice  
165 requirements for the hearing to consider proposed text amendments and  
166 ~~County-initiated-comprehensive~~ proposed rezonings ~~need only~~ shall comply  
167 with the applicable provisions of State law, ~~as may be amended from time to~~  
168 time, as well as the notice requirements established in this Section.

169 2. *Other land use applications.* All public hearings held by County Council shall  
170 be advertised pursuant to County Council's rules of procedure except as  
171 provided in Subsection GD.1.

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Section 2. The provisions appearing in this proposed Ordinance are prospective in nature.

Section 3. 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:

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Karen Hartley-Nagle  
President of County Council  
of New Castle County

Approved on:

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Matthew Meyer  
County Executive  
of New Castle County

**SYNOPSIS:** By way of this Ordinance, New Castle County Council proposes to bolster and clarify the legal notice required for consideration of proposed rezonings and other applications. Related thereto, the Ordinance clarifies that legal notice of public hearings relating to proposed rezonings shall be provided by several means, including newspaper publication, on the new Castle County Government website, via certified mail with electronic return receipt, by signage, by inclusion on any social media platform used by the New Castle County Department of Land Use, etc. Finally, the Ordinance makes administrative and conforming changes.

**FISCAL NOTE:** There is no discernible fiscal impact with the adoption of this Ordinance.