

**CITY OF RYE
1051 BOSTON POST ROAD
RYE, NY 10580
AGENDA**

**SPECIAL MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS, CITY HALL
Monday, February 6, 2023
6:30 p.m.**

1. Pledge of Allegiance.
2. Roll Call.
3. Consider setting a public hearing to adopt a three-month moratorium in the City of Rye temporarily prohibiting the clear-cutting of trees on any lot without a permit for the duration of this moratorium.

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The next regular meeting of the City Council will be held on Wednesday, February 15, 2023, at 6:30 p.m.

** Due to technical difficulties, this meeting will be available for viewing the following day on the City's website.

CITY OF RYE

LOCAL LAW NO. __ OF 2023

A Local Law adopting a three-month moratorium in the City of Rye temporarily prohibiting the clear-cutting of trees on any lot without a permit for the duration of this moratorium.

WHEREAS, in recent years, the City of Rye’s remaining undeveloped lots have been clear-cut of trees prior to any building permit or other discretionary approval being applied for and/or granted; and

WHEREAS, the City Council would like to address substantive changes to the City of Rye’s Chapter 187 “Trees”, including, but not limited to requiring a permit or other approval prior to the removal of trees on property regardless of whether other discretionary or non-discretionary approvals are needed; and

WHEREAS, the City Council finds that clear cutting properties dramatically changes the character of a neighborhood, raises privacy issues, negatively impacts the surrounding properties’ values and alters drainage patterns; and

WHEREAS, the City Council further finds that conservation of native specimen trees is a priority as the benefits for our environment include, but are not limited to, protecting some of the fauna; and

WHEREAS, the City Council has determined that it is appropriate to review the City’s existing Chapter 187 and other land use regulations regulating trees and has been working on redrafting the provisions but is desirous of preserving trees that are in danger of being removed immediately without this new legislation in place; and

WHEREAS, the City expects that it may require up to three months to consider the aforementioned issues and prepare any necessary legislative amendments.

NOW, THEREFORE, Be It Enacted by the City Council of the City of Rye as follows:

Section 1. Findings and Purpose.

The City Council wishes to review the existing land use regulations, and the lack thereof, permitting the clear-cutting of trees without any review by the City’s land use boards and professionals. The goals of the City Council include, but are not limited to, the overall preservation of existing mature trees in the City, protecting sensitive environmental features of property, impeding soil erosion, aiding water absorption, reducing storm water runoff, ensuring that the appropriate landscaping plans can be incorporated with new

development, and maintaining the health, welfare and safety of its residents while allowing for reasonable and appropriate development.

Section 2. Enactment of Moratorium. Prohibited Actions.

For purposes of this moratorium, the following actions are prohibited in the City:

- A. Cutting down more than three (3) trees of over 10-inch caliper as measured at a point 48 inches above ground level at the base of the tree on any parcel.
- B. Any building permits for new construction or structures that require a foundation shall include a tree inventory of the property including specimens and measurements. Such tree inventory shall be submitted to the building department or any other land use board or committee that has jurisdiction over the proposed action and such department, board or committee shall review such inventory and take into consideration what trees, if any, shall be preserved as it relates to its authority and jurisdiction over the project.
- C. This moratorium excludes the need to remove unhealthy and diseased trees. In these circumstances, if there are more than three (3) trees of over 10-inch caliper as measured at a point 48 inches above ground level at the base of the tree on any parcel, the property owner or his/her agent shall submit a report by a New York State certified arborist to the City's building department for review and approval. Based on this report and any other supporting evidence, the building department shall permit, shall permit with conditions, or deny permission to remove the identified unhealthy and diseased trees.
- D. If a utility company proposes to remove any tree, permission must be obtained from the building department, except in the event of an emergency situation. Trimming of branches for routine utility work shall be permitted.
- E. If work is performed during this moratorium period that results in the removal of trees in violation of these regulations, there is the rebuttable presumption that the work was intended to circumvent the moratorium and no building permit for any structure (or expansion thereof) shall be granted for one year from the date of the violation. In addition, a fine of \$2,500 may be assessed for each tree removed in violation of this moratorium.
- F. After an extreme weather event, as declared by the Mayor or City Manager, removal of damaged trees may be removed without a permit.
- G. If a tree(s) were authorized to be removed as part of an approval granted by the Board of Architectural Review, Planning Commission or Board of Appeals

prior to the effective date of this moratorium, such tree(s) are permitted to be removed.

Section 3. Appeals/waiver.

A. An aggrieved property owner may petition the City Council for a waiver and the City Council shall have the discretion to grant such waiver, or as much relief as said City Council may determine to be necessary and appropriate. In determining the suitability of a waiver under this section, the City Council shall consider the following factors:

1. Unnecessary hardship to the petitioner, which hardship is substantially greater than any harm to the general public welfare that would result from the granting of the waiver. The property owner shall have the burden of demonstrating to the City Council that a waiver is warranted due to substantial hardship and that such substantial hardship was not the result of an act or omission by the applicant or property owner. In considering this factor, the City Council may request information regarding alternatives to the proposed tree removal and/or whether there are additional long-term plans; and
2. The project's harmony (or lack thereof) with the existing character of the community as a whole and the area of the community in which the property is located; and
3. Whether the application for which the relief is requested is consistent with any recommendations, or conclusions which may be drawn at the time of the public hearing from the aforementioned City Council review and study; and
4. Whether the applicant is in compliance with all other City Code requirements with respect to the City's land use regulations; and
5. Whether the application for which the relief is requested is consistent with any proposed regulations, if and as such may exist at the time of the public hearing.

B. Waiver procedure. Such petition shall be the subject of a public hearing before the City Council. Upon submittal of a written petition to the Building Department by the property owner or applicant seeking a waiver of this moratorium and supported by such documentation as the applicant deems relevant, the City Council shall, within thirty (30) days of receipt of such petition, conduct a public hearing on said petition upon five (5) days public notification in the official newspaper of the City. The City Council shall, within ten

(10) days of the close of the hearing, render its decision in writing, either granting or denying the petition.

C. It shall be within the discretion of the City Council to grant, in whole or in part, grant with conditions, or deny, the petition for relief from the terms of this moratorium. In granting a waiver, in whole or in part, the City Council must find that the waiver will not adversely affect the purpose of this Local Law.

Section 4. Length of Time. Early Termination or Extension of this Local Law

This moratorium shall be in effect for three (3) months from the effective date. In the event any new Local Law which addresses the substantive issues set forth herein, should be enacted and adopted by the City Council prior to the date that the moratorium imposed by this Local Law expires, then in that event, the moratorium imposed by this Local Law shall expire on the date such new Local Law takes effect in accordance with § 27 of the Municipal Home Rule Law.

In like manner, if more than three (3) months have passed since the implementation of this Local Law, and it shall be determined by a finding of the City Council that an extension of this moratorium is required, then the City Council by resolution, may extend this moratorium for such a period of time as it deems necessary in order to further the purposes of this law up to and including an additional 270 days from the date of the original expiration of this Local Law.

Section 5. Conflicts with State Statutes and Authority to Supersede

A. The City Council adopts this local law pursuant to authority in the New York State Constitution, Article IX, Section 2; Section 10 of the New York State Municipal Home Rule Law; Section 10 of the Statute of Local Governments; the relevant provisions of the General City Law of the State of New York; and the general police power vested with the City of Rye to promote the health, safety and welfare of all residents and property owners in the City.

B. During the time that this law is in effect, it shall take precedence over and shall be considered controlling over contrary laws, ordinances and provisions. It is the intent of the City Council, pursuant to its authority under section 10, subdivision 1(ii)(d)(3), and section 22 of the Municipal Home Rule Law, to supersede inconsistent provision of the New York State General City Law and the City of Rye City Code.

- a. In particular, it is the intent of the City Council, pursuant to authority under Sections 10 and 22 of the Municipal Home Rule Law, to supersede inconsistent provisions of the New York State General City Law and the

City of Rye City Code relating to the time limits in connection with zoning and planning determinations and with respect to the jurisdiction and authority of the City Council with respect to hearing variances or waivers related to this local law.

Section 6. Severability

If any part of this Local Law is deemed by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Local Law.

Section 7. Effective Date

This Local Law shall take effect immediately upon filing with the New York Secretary of State.