

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

**REGULAR MEETING OF THE CITY
COUNCIL VIA ZOOM CONFERENCE
Wednesday, May 27, 2020
6:45 p.m.**

PURSUANT TO GOVERNOR CUOMO'S EXECUTIVE ORDER No. 202.1, REQUIREMENTS UNDER THE OPEN MEETINGS LAW HAVE BEEN SUSPENDED AND PUBLIC BODIES MAY MEET WITHOUT ALLOWING THE PUBLIC TO BE PHYSICALLY PRESENT. FOR THE HEALTH AND SAFETY OF ALL, CITY HALL WILL REMAIN CLOSED. THE MEETING WILL BE HELD VIA ZOOM VIDEO-CONFERENCING WITH NO IN-PERSON LOCATION AND WILL BE BROADCAST ON THE CITY WEBSITE. A FULL TRANSCRIPT OF THE MEETING WILL BE MADE AVAILABLE AT A FUTURE DATE.

RESIDENTS MAY EMAIL COMMENTS REGARDING THE PUBLIC HEARING TO: PUBLICHEARINGCOMMENTS@RYENY.GOV. ALL COMMENTS MUST BE RECEIVED BY 3:00PM ON MAY 27, 2020. THE SUBJECT OF THE EMAIL NEEDS TO READ EITHER, "Chapter 133 Noise" OR "Moratorium." PLEASE INCLUDE YOUR NAME AND ADDRESS.

TO PARTICIPATE IN THE PUBLIC HEARING, PLEASE ATTEND THE MEETING VIA ZOOM VIA THIS LINK:

Please click the link below to join the webinar:

<https://zoom.us/j/92695532211?pwd=amIxWUdtMjJwYXV3RnZaTm43Ritldz09>

Password: 815298

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

US: (646) 558-8656 or (312) 626-6799 or (301) 715-8592 or (253) 215-8782 or
(346) 248-7799

Press *9 to raise your hand to speak during the public hearing

Webinar ID: 926 9553 2211

Password: 815298

[The Council will convene via ZOOM CONFERENCE at 5:15 p.m. and it is expected to discuss attorney-client privileged matters, personnel matters, legal matters and labor negotiations.]

1. Roll Call
2. Draft unapproved minutes of the Regular Meeting of the City Council held May 13, 2020.

3. Coronavirus Update.
4. Presentation of 2019 General Fund financial results.
5. Adjourn SEQRA discussion regarding a zoning petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code Association to create a new use and development standards for “Senior Living Facilities” in the R-2 Zoning District until June 10, 2020.
6. Adjourn the public hearing until June 10, 2020 for consideration of a petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code Association to create new use and development standards for “Senior Living Facilities” in the R-2 Zoning District. There will be no public comment taken and no Council discussion regarding this agenda item.
7. Open a public hearing to amend Chapter 133 Noise of the Code of the City of Rye, by amending § 133- 8(G) “Permit required; construction work, mechanical rock removal and blasting restrictions” to prohibit certain activities through June 30, 2020. Public hearing comments can be emailed to publichearingcomments@ryeny.gov with “Chapter 133” as the subject or mailed to Rye City Hall, Attn: City Clerk, 1051 Boston Post Road, Rye, New York 10580.
8. Open a public hearing to adopt a twelve-month moratorium in the City of Rye temporarily prohibiting the review, processing or approval of any application related to the storage and dissemination of compressed natural gas or other type of energy or fuel transfer or energy or fuel generating facility. Public hearing comments can be emailed to publichearingcomments@ryeny.gov with “Moratorium” as the subject or mailed to Rye City Hall, Attn: City Clerk, 1051 Boston Post Road, Rye, New York 10580.
9. Old Business/New Business
10. Adjournment

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The next regular meeting of the City Council will be held on Wednesday, June 10, 2020 at 5:30 p.m.

** City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at www.ryeny.gov under “RyeTV Live”.

DRAFT UNAPPROVED MINUTES of the
Regular Meeting of the City Council of the City of
Rye held on May 13, 2020, at 5:30 P.M.

PRESENT:

JOSH COHN, Mayor
SARA GODDARD
CAROLINA JOHNSON
RICHARD MECCA
JULIE SOUZA
BENJAMIN STACKS
PAMELA TARLOW
Councilmembers

ABSENT:

None

The Council convened at 5:15 P.M. by videoconference pursuant to Governor Cuomo's Executive Order 202.1 waiving requirements of the Open Meetings Law. Councilman Mecca made a motion, seconded by Councilwoman Souza, to adjourn briefly into executive session to discuss litigation and personnel matters. The Council reconvened in a public videoconference at 5:30 P.M. The meeting was streamed live at www.ryeny.gov for public viewing.

1. Roll Call.

City Clerk D'Andrea called the roll via teleconference; there was a quorum present to conduct the meeting.

2. Draft unapproved minutes of the Regular Meeting of the City Council held April 29, 2020.

Councilman Johnson made a motion, seconded by Councilwoman Souza, to adopt the draft minutes of the Regular Meeting of the City Council held April 29, 2020.

3. Presentation and consideration of a Road Paving Plan for 2020.

City Manager Usry stated that a needs survey was conducted which had resulted in a current paving plan. This plan has been bifurcated for one stage to be completed shortly, and the other planned for the coming fall. Both would be approximately \$1.8 million in total, with a proposed \$1 million allocated for Phase 1 and the remainder for Phase 2. The plan for the second phase in the fall is tentative to see how things progress financially.

City Engineer Coyne introduced Gordon Daring, consultant from Vanasse Hangen Brustlin, Inc., who addressed the Council on the proposed plan.

Mr. Daring addressed the Council and discussed the paving plan that had been executed the previous year and the process at which a new plan would be created. He explained that an index was created indicating the roads in the poorest condition.

Mr. Daring displayed a map indicating the spring paving plan. He said the streets were selected based on the condition of the roadway. He said that the plan represents a number of different areas in the City. He noted that Forest Avenue between Apawamis and Manursing is proposed for only a thin overlay to provide a good surface for the traveling public, while anticipating the planned capital improvements for the streetscape project.

Mayor Cohn asked if the other road would get the complete paving job.

Mr. Daring responded that all other areas would be fully paved. The streets would be milled down and filled back to their original grade. He stated that roads in the northern part of the City would be paved in the spring phase, with the roads in the southern portion of the City paved in the fall. He explained that one reason to focus on the northern section first is that with traffic being reduced right now, the slightly busier streets could be addressed first.

Councilwoman Souza said that when the Council was first looking at this, there was a color-coded map. She asked if the proposed map shown at the meeting indicated the same.

Mr. Daring indicated that they were the same in that both maps referenced the roads indicating the worst PCI scale. The roads proposed have a grade of 56 and below.

Mayor Cohn asked if there would be any price change since the price of oil is low, and that may be a factor in the price of asphalt.

City Engineer Coyne explained that there is a change in the price, but he does not anticipate anything significant.

Councilwoman Souza expressed concern, and there was some discussion over pedestrian ability to traverse to school during paving.

Mr. Daring commented that at this point, the ability to pave in the fall will be based on funding availability. He was not sure when that picture will be clear enough to send a contractor out.

There was further discussion about school times, traffic, and other impacts that paving could have.

Councilwoman Johnson asked about McCullough Place being paved. Mayor Cohn echoed that the road is in poor condition.

City Engineer Coyne said that the street would need to be paved, so it should be on the paving map.

Councilwoman Souza asked how the Council should answer resident complaints of why the City cannot pave all the roads at once.

Mayor Cohn responded that the City was doing the roads now that it feels it can do in a fiscally-prudent way.

Councilwoman Tarlow asked about the paving plan that was developed and the process behind it.

Mr. Daring explained that last year, the consultant and City developed a two-year plan. The process behind it was a combination of using some data that was a few years old. The consultant used a computer projection and then did a review to confirm that the roads that were projected were accurately depicted. He said that at this point this year the consultant used the more current information and revised that plan based on what is shown on the map. At this point, the map only displays the plan out for the year with the \$1.8 million budgeted. He said that it was possible to display all streets and their relative needs.

Mayor Cohn added that the City Council had allocated \$1 million per year for roads in prior councils. The thought was that it would catch up. The Council asked the City Engineer to test that proposition, and it was hard to see progress as many roads deteriorated. He explained that this Council increased the budget by \$800,000, which it thought it could prudently add, and also asked the City Engineer to take a “worst first” approach to our roads. The thought in adding the funding was that if it was added over a period of time (five to six years), the City would be restoring Ryes roads to not a pristine condition, but to a general condition. Last year, the City started out with its first two-year plan.

City Engineer Coyne said that was accurate.

Councilwoman Tarlow asked about the formula being used with regard to the process of paving (a two-inch mill from curb to curb). She asked if the estimates developed are consistent with the standards used by most jurisdictions.

City Engineer Coyne said that the City was using commonly-used standards, and that the City has contract pricing with the paving contractor.

Mr. Daring said that prior to last year, they had developed the estimates on standard bid prices. The pricing that the City received from the contractor was favorable to the estimate, allowing for more streets to be paved. He commented that this year, he had seen an 8% decrease in asphalt prices.

Councilwoman Tarlow asked if there were additional streets in mind if there are cost savings that could be added on as change orders.

Mr. Daring said that was a possibility.

There was general discussion about strategy if there were cost savings.

Councilwoman Tarlow asked what action was needed to move forward, and whether this had been included in the capital improvement plan.

City Manager Usry responded that this presentation was for information purposes and there was no vote needed, as the budget had already been accounted for in the capital improvements.

Councilwoman Tarlow asked if the information about paving could be put on the website.

City Manager Usry said that the City announced previously that it would be doing a regular update on streets for safety and convenience.

Mr. Daring added that the contractor provides the city with a schedule so that their operation is efficient, which can be shared with the public.

Councilwoman Tarlow talked about the importance to be thoughtful about hours and letting the neighborhood know.

Mayor Cohn thanked everyone.

4. Consideration of request by the Rye Golf Commission to temporarily remove/extend the early enrollment deadline for the pool for 2020.

City Manager Usry said that this was a recommendation from the Rye Golf Commission related to the fact that there is still uncertainty of when or if the pool will open this year, to extend the renewal at the same price until some time that the pool opening is determined.

Councilman Stacks added that this just allows for maximum flexibility.

Mayor Cohn asked if there had been people signing up now despite the deadline extension.

City Manager Usry said there have been people who paid already. If the pool is closed by a governmental body, there would be a refund.

Councilwoman Johnson asked if there was a deadline for this determination.

City Manager Usry responded that there was not.

Councilwoman Souza made a motion, seconded by Councilwoman Tarlow and unanimously carried, to approve a request by the Rye Golf Commission to remove/ extend the deadline for early enrollment to the pool due to the COVID-19 implications.

5. Authorization of the City Manager to approve refunds for all pool-only members who have already paid partially or in full for their 2020 Membership in the event that a

governing body declares the pool will not be permitted to open for the entirety of the 2020 pool season.

Councilwoman Souza asked if this would be flexible for possibly pro-rating in the event of a late opening.

City Manager Usry responded that it would be flexible in that way. He thanked General Manager Buonaiuto and the Golf Commission, who have been proactive in preparing for this endeavor.

Councilwoman Souza made a motion, seconded by Councilman Stacks, to adopt the following resolution:

RESOLVED, that the City Council hereby approves refunds for all pool-only members who have already paid partially or in full for their 2020 Membership in the event that a governing body declares the pool will not be permitted to open for the entirety of the 2020 pool season.

ROLL CALL

AYES: Mayor Cohn, Councilmembers Goddard, Johnson, Mecca, Souza, Stacks, Tarlow
NAYS: None
ABSENT: None

6. Authorization of the City Manager to enter into an Inter-Municipal Agreement with Westchester County to install new subscriber radios and equipment to the facilities and identified apparatus for first line emergency response which will replace outdated equipment. The new equipment will be provided by the County at no cost.

City Manager Usry explained that this item was related to the fire department. There was a county-wide system installed a few years ago. This involves various pieces of equipment that are tied into the department that need to be upgraded.

Mayor Cohn asked if there were any structural building renovations that have to take place, or just a simple switch-out.

City Manager Usry responded that this was a switch-out of current equipment.

Councilman Mecca asked if the County was providing the equipment

City Manager Usry responded that they were.

Councilman Mecca made a motion, seconded by Councilwoman Tarlow and unanimously carried, to approve that the City Manager enter into an Inter-Municipal Agreement with Westchester County to install new subscriber radios and equipment to the facilities and identified apparatus for first line emergency response which will replace outdated equipment. The new equipment will be provided by the County at no cost.

7. Continue SEQRA discussion regarding a zoning petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code Association to create a new use and development standards for “Senior Living Facilities” in the R-2 Zoning District.

Corporation Counsel Wilson stated that the Council now would consider the public comments that received and will receive on the environmental impacts.

Mayor Cohn commented that there are some in the community who are unaware of the process that has been ongoing. It is important that everyone be aware that the very first hearing on this was held before the City Council in December of 2018, publicly noticed on the agenda. Since then, there have been four Council meetings, publicly noticed, and six Planning Commission meetings, also noticed. This is a process that has been going on for quite some time. Understanding the importance of the process, the City has asked the Osborn to go beyond what is required by law to post three signs at the site, and 70 certified mailings were sent to those within 300 feet of the site. Mayor Cohn said the City was working with the process that the State of New York has given municipalities to conduct public hearings during the health emergency. The City Council and staff are going to try hard to make it work. It is very important to the Council and staff that the City succeed in keeping public business going. He asked for the public’s cooperation and good will as it does this. If the U.S. Supreme Court can start having teleconference oral argument, then the Rye City Council can also try.

City Planner Miller commented that it is conventional for the applicant to do its presentation, and then take comment from the public.

8. Open a public hearing for consideration of a petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code Association to create new use and development standards for “Senior Living Facilities” in the R-2 Zoning District. All public hearing comments should be emailed to publichearingcomments@ryeny.gov with “Osborn Zoning Change” as the subject.

Councilman Mecca made a motion, seconded by Councilwoman Johnson, to open the public hearing.

Steven Wrabel, McCullough Goldberger and Staudt, addressed the Council on behalf of the applicant, the Osborn. He said that would like to present for the Council and public’s benefit. He stated that the Osborn provides a variety of services. In reviewing the process here, Mr. Wrabel stated that the applicant first filed an application in 2018. He said they were there to present the application, but also to listen to the public and the Council.

Mayor Cohn said that comments submitted in writing would be on the City website. He said they were accepting written comments by email and regular mail. The written comments will not be read into the record, but will asked to be considered by the applicant.

Mr. Wrabel stated that the Osborn needs to prepare for its future. The last improvements were completed nearly 20 years ago, and there is a changing landscape in the industry that the Osborn needs to adapt to. He said that the applicant was doing this now to assure care but also ensure the continual success of the Osborn moving forward. He explained that there is a significant increase of competitors to the Osborn throughout Westchester County. Before they can develop any sort of hard plan to redevelop their campus, the Osborn needs to address the zoning issues at hand. Mr. Wrabel explained that the Osborn was built pre Rye zoning. It is located in the R-2 district but is governed by a declaration of covenantal restrictions that were signed in the 1990s. The Osborn would like the City to establish a zoning amendment that would include what the standards should be for this kind of use in Rye, specifically in that zone. The applicant is hopeful to develop to continue to thrive in Rye. It should be noted that the Osborn is not tax exempt, and is the second largest payer of taxes in the city. Mr. Wrabel stated that this is a zoning amendment proposal, not a site plan. Before a site plan can be generated with specific buildings or layouts or roadways, the applicant needs to understand what the zoning is going to be moving forward. The applicant has been studying the impacts, but it is not an application for specific development. Anything along those lines would need a new public process.

Andrew Tung, landscape architect for the applicant, showed an aerial view of the site and the zones associated. Currently the R-2 zoning text does not have the use of the Osborn specified. Rather, the zoning is laid out in restrictions from 1993. Mr. Tung displayed a map of the current buildings that exist on the site and their current setbacks and heights. He said that they have proposed to refine what would be permitted looking forward. Mr. Tung showed the Council and the public the proposed setbacks and height provisions.

Councilwoman Souza asked about height limitations for the 160 yard setback limitation today.

Mr. Tung responded that the height could be five stories as of right today.

Mayor Cohn asked about the maximum high that intrudes into the yellow shaded zone on the map.

Mr. Tung responded that it indicated four stories as a maximum height.

To clarify, Councilwoman Souza asked Mr. Tung to confirm that currently, the garden home area would permit a five-story structure, and the applicant was proposing a limit of four stories for the future. Mr. Tung confirmed that the premise was correct.

Mr. Tung talked about the plan for tree plantings on the property.

Councilwoman Goddard asked if the current trees would be protected and preserved or removed to make way for the new buildings.

Mr. Tung responded that some trees would be preserved and others would be taken down.

Councilwoman Johnson asked about potential plans to change or add entry access points to the site and about the stormwater basin. Mr. Tung responded that there were no plans proposed of that nature to change either feature.

Sue Drouin, 57 Morehead Drive, addressed the Council. She asked the council to wait to make a decision during this time. She expressed concern for the neighborhood character.

Daniela Arrendondo, Rye resident, addressed the Council. She expressed concern over traffic issues. She also expressed concern over the potential development. She said she had never received notice of the hearing.

Amanda Timchak, 61 Osborn Road, addressed the Council. She said she has four children that attend Osborn School. She expressed concern over the pedestrian safety.

Neal Middleton, 330 Theall Road, expressed concern over the traffic and pedestrian safety. He also expressed concern that the stormwater basin would remain intact.

Leslie Ebers, 138 Osborn Road, addressed the Council. She said that the presentation was much more comforting than she expected it to be. She said she has concerns about proposing a zoning change without a site plan, as the impacts are hard to understand. She said she would hope the Council would wait until the applicant has some sort of a plan.

Catherine Plummer, 111 Osborn Road, said that there is an elevation where the structures currently sit. It looks much taller from the road and that needs to be addressed further. The two story structures there right now actually look much bigger than two stories.

Sean Plummer, 111 Osborn Road, asked the applicant how the plan to put in mature plantings that get to the proper height for screening.

Don McHugh, Coolidge Avenue, expressed concern over development and keeping to prior commitments. He asked the Council to go slow with the process.

Councilman Johnson asked Mr. Anderson why the Osborn is different than the St. Regis, or if the applicant was trying to do something else.

Matt Anderson, Director of the Osborn, stated that as-of-right currently, they could build a five-story structure. He said he wanted to be clear again that the applicant was rationally increasing the setbacks. To decipher and answer Councilwoman Johnson's question, the St. Regis property consists of just condos. The Osborn is a continuing care retirement community, ranging from independent living, assisted living, and memory care. Mr. Anderson addressed some concerns about the site. He said that they were very sorry that this came up during the pandemic, as they have been working on it for two years. The applicant felt that it needed to get the ball rolling to be able to build amenity space for current residents and plan for new residents.

Councilwoman Goddard asked why during the pandemic should the Council continue on with the public hearing.

Mr. Anderson responded that there was a lot of planning that is going to need to be done. He said the applicant needs to try and move through the process that has been years in the making. He thanked the Council for giving the Osborn the opportunity to present virtually during this time.

Councilwoman Johnson asked when the City would be up and running again.

Mayor Cohn stated that with all the uncertainty, it is unknown.

Councilwoman Souza commented that the City had been thoughtful and mindful during this time.

Emily and John Powers, 23 Coolidge Avenue, expressed concern about the site and discussed the increase of FAR. They expressed concern over not having a plan with the proposed zoning changes.

Craig Haines, 2 Coolidge Avenue, said that he had sent a letter to the Council. He asked for a delay to allow for public discourse and said that traffic here is an immense problem. He said he was concerned about the FAR and the future of the neighborhood.

William Childs, Rye resident, said that there had been traffic and parking issues, along with other unknowns brought by the St. Regis. With those issues and the Osborn School construction, the development here is of great concern. Mr. Childs expressed concern about the impact on the neighborhood.

Rosalie Louw, 45 Osborn Road, said she fully supports the Osborn, but is very concerned about giving away something for nothing. She said more information needs to be given with more public engagement before a decision is made.

Mayor Cohn said that the Council would do its best to make sure everyone is heard.

Natalie Auerbach, Rye resident, expressed concern about traffic and pedestrian safety. She said she was also concerned about aesthetics and the property values.

Christine Cote, Coolidge Avenue, expressed concern over the impact to the neighborhood and pedestrian and traffic safety.

Fraser VanRensburg, Rye resident, echoed the comments of neighbors and emphasized support for due process to voice opinions. He said he was concerned for the neighborhood.

John Lovallo, 27 Hughes Avenue, expressed concern over traffic impacts and property values.

Sue Drouin, 57 Morehead, said she was concerned about impacts of density and impacts on the infrastructure. She said it was impossible for neighbors to try and understand without a

site plan. She said that there should be more conversation in the community, and asked why the applicant would be pushing for this zoning change now.

Don McHugh, Rye resident, thanked the City Council.

Ms. Arrendondo spoke again and stated concern over the zoning change during the pandemic.

Mayor Cohn asked the applicant to come to the next session prepared to address the comments that were heard this evening.

Councilwoman Goddard thanked the applicant and asked if there was some way to get a history for why it was created as a covenant in the first place.

Corporation Counsel Wilson recommend continuing the public hearing.

Councilwoman Souza made a motion, seconded by Councilman Stacks and unanimously carried, to continue the public hearing.

9. Consideration of setting a public hearing for May 27, 2020 to amend Chapter 133 Noise of the Code of the City of Rye, by amending § 133- 8(G) “Permit required; construction work, mechanical rock removal and blasting restrictions” to prohibit certain activities through June 30, 2020. All public hearing comments should be emailed to publichearingcomments@ryeny.gov with “Chapter 133” as the subject.

Mayor Cohn said that with the hopeful restart of construction work, it is important to prevent very noisy activity while home schooling is still going on in surrounding houses.

Councilman Mecca made a motion, seconded by Councilwoman Souza and unanimously carried, to set the public hearing for May 27, 2020 to amend Chapter 133 Noise of the Code of the City of Rye, by amending § 133- 8(G) “Permit required; construction work, mechanical rock removal and blasting restrictions” to prohibit certain activities through June 30, 2020.

10. Consideration to set a public hearing on May 27, 2020 to adopt a twelve-month moratorium in the City of Rye temporarily prohibiting the review, processing or approval of any application related to the storage and dissemination of compressed natural gas or other type of energy or fuel transfer or energy or fuel generating facility. All public hearing comments should be emailed to publichearingcomments@ryeny.gov with “Moratorium” as the subject.

Mayor Cohn explained that this was intended to give the Council the opportunity to renew the CNG Fuel facilities in Rye.

Councilman Mecca made a motion, seconded by Councilwoman Tarlow and unanimously carried, to set a public hearing on May 27, 2020 to adopt a twelve-month

moratorium in the City of Rye temporarily prohibiting the review, processing or approval of any application related to the storage and dissemination of compressed natural gas or other type of energy or fuel transfer or energy or fuel generating facility.

11. Authorization for the City of Rye School District to use the City streets on May 31, 2020 from 2:00 PM – 4:00 PM for a graduation vehicle parade to acknowledge and celebrate the Class of 2020.

Councilwoman Souza made a motion, seconded by Councilwoman Tarlow and unanimously carried, to approve a request for the City of Rye School District to use the City streets on May 31, 2020 from 2:00 PM – 4:00 PM for a graduation vehicle parade to acknowledge and celebrate the Class of 2020.

12. Appointments to Boards and Commissions.

Mayor Cohn reappointed Caroline Gadaleta to the Board of Assessment Review for a five-year term expiring September 30, 2024. The Council approved unanimously.

13. Old Business / New Business.

There was nothing discussed under this agenda item.

14. Adjournment.

There being no further business to discuss, Councilman Mecca made a motion, seconded by Councilwoman Souza and unanimously carried, to adjourn the meeting at 7:58 P.M.

Respectfully submitted,

Carolyn D'Andrea
City Clerk



CITY COUNCIL AGENDA

DEPT.: Building

DATE: May 27, 2020

CONTACT: Christian K. Miller, City Planner

AGENDA ITEM: Open a public hearing to amend Chapter 133 Noise of the Code of the City of Rye, by amending § 133- 8(G) to completely prohibit mechanical rock removal, including mechanical rock excavation and blasting from May 29, 2020 through June 30, 2020.

FOR THE MEETING OF:

May 27, 2020

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: That the City Council open the public hearing.

IMPACT: ☒ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: Due to the COVID-19 health emergency,, temporary noise reduction measures must be taken to accomodate stay-at-home restrictions.

All public hearing comments should be emailed to publichearingcomments@ryeny.gov with "Chapter 133" as the subject by 3:00 pm on May 27, 2020.

CITY OF RYE
LOCAL LAW NO. ____-2020

A local law to amend Chapter 133 Noise of the Code of the City of Rye, by amending § 133-8(G) “Permit required; construction work, mechanical rock removal and blasting restrictions” to prohibit certain activities through June 30, 2020.

Be it enacted by the City Council of the City of Rye as follows:

Section 1.

§ 133-8(G). Mechanical rock removal, including mechanical rock excavation, and blasting are prohibited at certain hours and on certain days.

Mechanical rock removal, including mechanical rock excavation, and blasting are prohibited at certain hours and on certain days. No person shall engage in mechanical rock removal, including mechanical rock excavation, as defined in Subsection A, or blasting operations using explosives as defined by § 98-40, within the City of Rye after the hour of 3:30 p.m. or before 9:00 a.m. on weekdays or at any time on Saturday or Sunday; or on any of the following holidays and time periods: New Year’s Day, Presidents’ Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Yom Kippur, Thanksgiving Day through Thanksgiving weekend and Christmas Day through New Year’s Day except under authority of a special permit issued by the City Manager. In addition, mechanical rock removal, including mechanical rock excavation, and blasting will be prohibited within 500 feet of a school on testing days. **For 2020 only, from May 29, 2020 through June 30, 2020, mechanical rock removal, including mechanical rock excavation, rock drilling, and blasting are prohibited.**

Section 2: This local law shall take effect immediately upon filing with the Secretary of State.



CITY COUNCIL AGENDA

DEPT.: Building

DATE: May 27, 2020

CONTACT: Christian K. Miller, City Planner

AGENDA ITEM: Open a public hearing to adopt a twelve-month moratorium in the City of Rye temporarily prohibiting the review, processing or approval of any application related to the storage and dissemination of compressed natural gas or other type of energy or fuel transfer or energy or fuel generating facility.

FOR THE MEETING OF:

May 27, 2020

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: That the City Council open the public hearing.

IMPACT: ☒ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND:

All public hearing comments should be emailed to publichearingcomments@ryeny.gov with "Moratorium" as the subject by 3:00 pm on May 27, 2020.

CITY OF RYE

LOCAL LAW NO. __ OF 2020

A Local Law adopting a twelve-month moratorium in the City of Rye temporarily prohibiting the review, processing or approval of any application related to the storage and dissemination of compressed natural gas or other type of energy or fuel transfer or energy or fuel generating facility.

WHEREAS, the Rye City Code currently lacks specific regulation of compressed natural gas (CNG) facilities; and

WHEREAS, in 2017, the Rye City Planning Commission approved an application for the temporary seasonal operation of a CNG facility for a property regulated as a utility use in the City's B-6, General Business, District for an initial term of one year ending on April 30, 2018; and

WHEREAS, the applicant told the City that there was an immediate need for additional supply for its firm gas customers in the winter season of 2017 to 2018 and that if it could not be installed, there would be an adverse impact to Rye residents; and

WHEREAS, the applicant assured the City that the CNG facility was only needed on a temporary basis to allow sufficient time for a more permanent pipeline solution; and

WHEREAS, in 2018, prior to the expiration of the original approval, the applicant returned to the Planning Commission and the Planning Commission granted a modification to the original site plan approval to allow the CNG Facility to remain and operate for two additional winter seasons until April 30, 2020; and

WHEREAS, the approval expired on April 30, 2020; and

WHEREAS, the City needs time to consider whether a CNG Facility or other similar type of facility is appropriate for use or operation in the City of Rye and if so, what, if any, amendments to the City's Code would be necessary to regulate a relatively new kind of facility that was never contemplated by existing laws and regulations; and

WHEREAS, the City Council has determined that it is appropriate to review the City's existing regulations relating to the storage and use of hazardous substances to ensure that such activity does not negatively impact the City, including without limitation, the public health and safety, and quality of life of its residents and businesses and to study whether there is a more environmentally sustainable alternative; and

WHEREAS, in reviewing its existing regulations, the City may have to retain engineering professionals or other consultants to better understand issues related to these uses, analyze the potential impacts to existing infrastructure, investigate the potential

demands placed on the City's emergency services and consider the short and long term cumulative impacts, among other things.

WHEREAS, as a result of the Governor's Executive Orders related to COVID-19, regulations in place regarding public gatherings and business closures, and to ensure the health and safety of the City's residents, the City expects that it may require up to twelve months to consider the aforementioned issues.

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

Section 1. Findings and Purpose.

The City of Rye Zoning Code's B-6 General Business District allows storage yards and the City Council wishes to review whether the CNG Facility or other similar large public utility distribution uses and infrastructure are appropriate in the B-6 zone. The goals of the City Council include, but are not limited to, the overall health, welfare and safety of its residents, whether this type of use is consistent with reducing the City's carbon footprint, whether such use disrupts aesthetic considerations of the land, property, buildings, and other facilities in the area, and whether the hazards and other safety concerns associated with this type of use can be properly mitigated.

Section 2. Enactment of Moratorium. Prohibited Actions.

For a period of twelve months from the effective date of this local law, the City Council hereby declares a moratorium prohibiting the following actions in the City, regardless of the submittal or receipt of any application prior to the effective date of this local law:

- A. Acceptance, consideration, preliminary approval or final approvals by the City Planning Commission of any application for site plan or special permit approval for new or modified public utility infrastructure including, without limitation, pipelines, storage containers (including storage of containers within vehicles), pipes, mains, and conduits that is associated with the public utility infrastructure.
- B. Acceptance, consideration, preliminary approval or final approval, or interpretation by the City of Rye Board of Appeals in connection with any activity prohibited herein.
- C. The issuance of any permits by the City of Rye Building Department, City of Rye Fire Department or City Engineer in connection with any activity prohibited hereunder.

Section 3. Appeals/waiver.

- A. An aggrieved property owner may apply to the City Council for a waiver and the City Council shall have the discretion to grant such waiver, or as much relief as said 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 that the Applicant has considered 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 interim data, recommendations, or conclusions which may be drawn at the time of the public hearing from the aforementioned review and study; and
 4. Whether the applicant is in compliance with all other City Code requirements with respect to its City's operations; 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 City Clerk 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 sixty (60) 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 thirty (30) 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. Early Termination or Extension of this Local Law

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 12 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 180 days from the date of the original expiration of this Local Law.

Section 5. Conflicts with State Statutes and Authority to Supersede

A. To the extent any provisions of this Local Law are in conflict with or are construed as inconsistent with the provisions of New York State Law, this Local Law shall control. 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 Zoning 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 Board of Appeals 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.