

PUBLIC HEARING

November 18, 2020

At 9:21 p.m. Supervisor Schiliro stated that a Public Hearing would be held in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN THAT the North Castle Town Board will hold a Public Hearing on November 18, 2020, at 7:30 PM, or as soon thereafter as practical, at Town Hall, 15 Bedford Road, Armonk, NY 10504, to consider a Local Law to amend Chapter 122 of the Town Code from Blasting and Explosives to Blasting, Explosives and Chipping.

The proposed local law is available in the Town Clerk's office during regular business hours and on the Town website. ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO ATTEND AND BE HEARD.

By Order of the Town Board
Alison Simon, Town Clerk

Dated: November 7, 2020
Armonk, NY

The Public Notice was marked Exhibit "A" for the record.

The Affidavit of Posting calling the Public Hearing were marked Exhibit "B" for the record.

The Affidavit of Publication from The Journal News calling the Public Hearing were marked Exhibit "C" for the record.

Short Environmental Assessment Form (EAF), Parts 1, 2, and 3 was marked Exhibit "D" for the record

The Town Clerk noted there was a Negative Declaration for consideration.

The Town Clerk noted there was a proposed Local Law for consideration.

The Town Clerk noted there was a Revised Master Fee Schedule, to include fees for both blasting and chipping, for consideration.

Councilman Reiter moved, seconded by Councilman DiGiacinto, receipt of the Short Environmental Form.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Reiter, Berra, Hussain, Supervisor Schiliro

Noes: None

Director of Planning Adam Kaufman provided background regarding the genesis of the proposed local law. Complaints were reported to the Building Department and the Planning Board regarding dust as well as noise for exceptionally long periods associated with chipping. The proposed local law was prepared to address this issue, using the existing Chapter in the Code regarding Blasting as a model, and modifying the language as appropriate to add an Article II in the same Chapter regarding Chipping. The proposed law states that a permit would be needed from the Building Department for chipping, would be issued for 90 day intervals, and would require that dust be controlled on the property and limit vibrations to adjoining structures.

Building Inspector Rob Melillo added that the matter was driven by the number of complaints received, and needed to be addressed.

Mr. Kaufman said that two corrections to the proposed local law were needed, as noted by Councilman Berra. Minor language changes recommended by Councilman Berra were agreed to following discussion among the Board, Town Attorney Roland Baroni, Mr. Kaufman, and Mr. Melillo.

Mr. Kaufman indicated the proposed changes to the Master Fee Schedule regarding blasting and chipping fees.

After all persons were heard who desired to be heard, Councilman Reiter moved, seconded by Councilman DiGiacinto that the Public Hearing be closed at 10:02 p.m.

The roll call was as follows:

Ayes: Councilmen, DiGiacinto, Reiter, Berra, Hussain, Supervisor Schiliro.

Noes: None.

Councilman Reiter moved, seconded by Councilman DiGiacinto, that based upon review of the Environmental Assessment Form and all other materials, it has been determined that there will be no significant adverse environmental impacts and the Town Board hereby adopts a Negative Declaration.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Reiter, Berra, Hussain, Supervisor Schiliro

Noes: None

Councilman Reiter moved, seconded by Councilman Berra, the adoption of Local Law 6 of 2020, as amended, to amend Chapter 122 of the Town Code from Blasting and Explosives to Blasting, Explosives and Chipping. The Local Law follows at the end of these minutes.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Reiter, Berra, Hussain, Supervisor Schiliro

Noes: None

Councilman Berra moved, seconded by Councilman Hussain, the adoption of the Revised Master Fee Schedule.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Reiter, Berra, Hussain, Supervisor Schiliro

Noes: None

Alison Simon, Town Clerk

Dated: December 3, 2020

TOWN OF NORTH CASTLE

**Local Law No. 6 for the Year 2020
Adopted November 18, 2020**

A local law entitled "Chipping Regulations"

Section 1. The title of Chapter 122 of the Town Code shall be revised from **Blasting and Explosives to Blasting, Explosives and Chipping.**

Section 2. Section 122-1 shall be revised as follows:

This chapter shall be known as the "Blasting, Explosives and Chipping Law of the Town of North Castle."

Section 3. Sections 122-3 to 122-17 shall be placed in a new Article I. **Blasting and Explosives.**

Section 4. Add the following new definitions to Section 122-4 in proper alphabetical order.

CHIPPING PERMIT - A permit issued for chipping on a subject property.

CHIPPING – Mechanical rock removal with the use of a mechanical hammer or similar device, but excluding drilling or boring of holes, and excluding the removal of man-made structures such as concrete steps or driveways.

UNEXPECTED CIRCUMSTANCES - Circumstances unforeseen by the property owner including mechanical failure of a machine, unexpected conditions or inclement weather.

Section 5. Create the following new Article II in Chapter 122 as follows:

Article II. Chipping

122-18. Regulated acts.

No person shall chip any rock in the Town of North Castle without having first obtained a permit, upon written application, from the Building Inspector covering the specific chipping operation,

122-19. Chipping Permit procedures.

The application for a chipping permit shall be made to the Building Inspector and contain such information as is required by the Building Inspector. At a minimum, the following information shall be submitted:

- (1) Application. Application for a chipping permit on a form approved by the Town Building Inspector.
- (2) Planning Board. Where the Planning Board is conducting a review of a project, the Planning Board shall also review any proposed chipping activity and shall file a written report and its recommendation concerning the chipping activity with the Building Inspector. Such report shall evaluate the proposed activity in terms of the findings, intent and standards of this Chapter.
- (3) Application fee. An application fee as set forth in the Master Fee Schedule shall be paid by the applicant at the time of application to the Town.
- (4) Adjacent structures. A description of all structures and utilities, including residential dwellings, garages, swimming pools, tennis courts, etc., located within 50 feet of the chipping site, and a list of the names and addresses of the owner or owners of any parcel within 50 feet of the property on which the chipping is to take place, as shown on the most recent tax rolls of the Town of North Castle.
- (5) Insurance. A certificate of insurance shall be submitted which is issued by an insurance company authorized to do business in the State of New York, providing that, prior to commencement of any work and until completion and/or final acceptance of the work, the chipper shall, at his sole expense, maintain insurance on his own behalf and furnish to the Town of North Castle certificates of insurance in accordance with the Town's minimum insurance requirements, together with an indemnification and hold harmless agreement. Should it be determined that

the extent of the operation in any particular case requires insurance coverage in greater amounts than the Town's minimum insurance requirements, the chipper shall provide certificates of insurance in the requested amounts.

- (6) Pre-chipping inspection. When chipping will occur within 50 feet of an existing home, structure, roadway, pool, utility or other facility, the Building Inspector may request that a pre-chipping inspection be performed by the applicant. The pre-chipping inspection shall provide reports, photographs and other documentation delineating the existing conditions of such buildings, structures, utilities or facilities.
- (7) No chipping permit shall be issued unless the Applicant has a dust mitigation plan approved by the Building Inspector. Such dust mitigation plan shall incorporate the best dust control practices including, but not limited to, a water spray system (air suppression or surface wetting). All dust mitigation plans shall include measures to control water runoff as a result of any water spray program.
 - (i) Trucks and other vehicles used to transport particulate matter shall be covered and any particulate matter kept on site shall be sufficiently wetted or stored to prevent particulate matter from becoming airborne.
 - (ii) Portable hand water sprinklers or hose sprinklers are acceptable means of wetting for dust control. The water sprays or jets shall be designed to break the water stream into small droplets or otherwise to provide effective wetting.
 - (iii) Suitable drainage means shall be provided for the removal of water and sludge which drains from the operation.
 - (iv) Soil or debris piles shall be moistened if dust is being emitted from the piles due to prevailing winds and not from a momentary gust. Adequately secured tarps, plastic or other material may be required by the Building Inspector to further reduce dust emissions.
- (8) The requirements of this section may be waived in certain circumstances as may be deemed appropriate by the Building Inspector.

122-20. Issuance of permit.

- A. Such permit, when approved, shall be issued and signed by the Building Inspector, who shall keep a record thereof. Each permit shall specify the name of the permittee, the date of expiration (which shall be no later than 90 days from the date of issue) and the particular place where the chipping is to be done. The Building Inspector may add to any permit issued under this chapter those conditions deemed reasonably necessary, by the Building Inspector, to protect the general public's health, safety and welfare.
- B. No new chipping permit shall be issued for the same property for 12 months from the date any previously issued permit expires.

122-21. Stop-work orders.

- A. In the event that chipping is carried on contrary to the conditions contained in this chapter, the Building Inspector shall issue a stop-work order.
- B. No chipping shall be conducted in the Town of North Castle which shall cause excessive or damaging vibrations in any neighboring properties. The appearance of cracks in floors, walls or ceilings or the lengthening of the same or the cracking of windows or the implosion or explosion of windows shall be prima facie evidence of excessive vibration, and the Building Inspector must issue a stop-work order upon observation of the same. No appeal to the Zoning Board of Appeals shall act as a lifting of a stop-work order, notwithstanding any other provision of law.
- C. The Building Inspector shall have the authority to lift the stop-work order upon proof that future chipping shall not only be within the limits set forth in this chapter but shall also contain fewer vibrations than the prior chipping so that neighboring properties are protected. Such proof shall be provided in the form of documentation prepared by a professional engineer licensed in the State of New York.

122-22. Expiration, transferability, extension and suspension or revocation of permit.

- A. All permits, unless otherwise indicated, shall expire on completion of the acts specified and, unless otherwise indicated, shall be valid for a period of 90 days. Said period shall begin running at the date upon which the permit is issued.
- B. The Building Inspector shall have the authority to issue up to 90 day extensions to a permit for justifiable reasons as determined by the Building Inspector. If the Building Inspector declines to issue an extension, the Applicant may seek an extension from the Planning Board where the property owner shall have the burden of demonstrating to the Planning Board that an extension is warranted due to unexpected circumstances. The Planning Board, at their sole discretion, can require documentation supporting unexpected circumstances including, without limitation, a certification that the unexpected circumstances prevented the completion of chipping during this period.
- C. Permits shall be issued to licensed contractors only. Legal, and beneficial, owners of the affected property shall be recorded with the Building Inspector. Notice of any transfer of permit must be filed with the Building Inspector within 5 days of the transfer.
- D. The Building Inspector may suspend or revoke a permit if he finds that the applicant has failed to comply with any of the terms, conditions or limitations set forth in the application and/or permit.

122-23. Other permits.

Conformance with this chapter does not eliminate the necessity of any applicant to obtain the approval or permits required by any other agencies, boards or committees prior to chipping in accordance with the permit. Obtaining such approval or permits is the responsibility of the applicant. No operations shall be initiated until such approvals or permits have been issued.

122-24. Hours of operation.

Chipping shall be limited to the hours of 8:30 AM to 4:00 PM, Monday through Friday. Rock chipping is prohibited on Saturdays, Sundays and all legal holidays.

122-25. Notice of intent to chip.

Notice of chipping shall be sent by first class mail to all property owners within a distance of 500 feet of all property lines of the property on which the chipping is to take place. Notice of chipping shall be mailed by the applicant at least 10 days before chipping shall begin. Proof of mailing to all required property owners shall be demonstrated by providing the Town with a certificate of mailing (PS Form 3817 or 3877). Delivery of the notice of intent to blast, as required by this section, shall be the sole responsibility of the applicant for the chipping permit. The Building Inspector, at his sole discretion, may waive this requirement for projects of limited duration and impact.

122-26. Property inspections and monitoring by contractor.

- A. Before issuance of any chipping permit, when required by the Building Inspector, the contractor shall cause to be made an in-depth inspection of all homes, structures, utilities or facilities adjacent to the chipping site and within a minimum distance of 50 feet of the chipping location to note the interior and exterior condition, including foundation walls, sidewalks, pools and the like. The inspection and written report shall be conducted by an independent firm experienced in this type of work.
- B. Should it be determined by the Building Inspector that a pre-chipping inspection report is necessary for any area not listed above but within the proximity of the chipping, the Building Inspector shall advise the contractor of this requirement, and a report shall be prepared as requested.
- C. A copy of the inspection report, when it is completed, covering each house, structure or facility inspected, shall be delivered to the Building Inspector. This report must be delivered prior to issuance of a permit.
- D. The contractor shall provide continuous monitoring during chipping.
- E. Chipping vibration levels must be limited to minimize impact and potential damage to nearby structures. When structures are within 50 feet of the chipping site and, if required by the Building Inspector, the Applicant shall demonstrate a plan to limit vibration to no more than 1 inch/second at the adjacent structures.

- F. The Town of North Castle shall assume no responsibility whatsoever for any costs or damages incurred in connection with any work required under this section.
- G. The requirements of this section (other than Section 122-26.F) may be waived in certain circumstances as may be deemed appropriate by the Building Inspector.

122-27. Liability of contractor.

The chipping contractor is liable for any damages he causes, with or without trespass. Chipping in an area in which it is likely to cause harm to neighboring persons or property shall make the contractor and the person who engages him liable for the consequences of his act.

122-28. Enforcement; penalties for offenses.

- A. The Town Building Inspector or his representative shall be the official of the Town of North Castle responsible for enforcing this chapter. The North Castle police shall have the concurrent responsibility of assisting the Town Building Inspector in enforcing this chapter.
- B. Any person found violating any provision of this chapter or the terms and conditions of any permit granted hereunder shall be served with written notice at the direction of the Town Building Inspector, stating the nature of the violation.
- C. Any person violating any of the provisions of this chapter, upon conviction thereof, shall be punishable by a fine up to \$1,000 per day per violation or by imprisonment of not more than 15 days, or both. Each day's continued violation shall constitute a separate additional violation.

Section 6. Conflicting Standards.

Where the requirements of this Local Law impose a different restriction or requirement than imposed by other sections of the Code of the Town of North Castle, the Town Law of the State of New York or other applicable rules or regulations, the requirements of this Local Law shall prevail.

Section 7. Severability.

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law that can be given effect without such invalid part or parts.

Section 8. Effective Date.

This Local Law shall take effect immediately upon its adoption and filing with the Secretary of State.