

**Local Law No. - 2020**

This local law shall be known as the "2020 Revision of the Mechanical Rock Removal" Law.

BE IT ENACTED by the Town Board of the Town of Mamaroneck

**Section 1 – Purpose:**

The Town Board continues to monitor the impact of mechanical rock removal upon the health, safety and welfare of the Town's residents with a goal of balancing people's right to develop their properties with a neighborhood's right to tranquility, to the extent possible. Among the concerns that have arisen are the need to mitigate the spread of dust and other particulates during both the hammering of rock and its removal from the site, and the need to decrease the number of hours per day when mechanical rock removal may take place. Another concern is that on those occasions when the rock to be removed is more difficult to break than could have been reasonably anticipated or when there are mechanical difficulties in the operation, the developer must redouble its efforts since the 15-day life span of a rock removal permit continues unabated. This additional effort has created situations where disturbance to peace and quiet is exacerbated. The disruption in everyday life should be decreased if a developer is permitted to suspend the rock removal permit in order to replace broken equipment, adjust to weather conditions, or to utilize different modes for removing rock, such as drilling before hammering, while still allowing only 15 working days of mechanical rock removal. This revision in the law furthers the goal.

**Section 2 – Amendment of a current section of the Mamaroneck Code:**

Section 106-58.1 of the Code of the Town of Mamaroneck hereby is repealed and the following substituted in its place:

**§106-58.1 Duration and hours for mechanical rock removal.**

As used in this section, the following terms shall have the meanings indicated:

A. MECHANICAL MEANS

The use of any tools that are not operated solely by human muscular power. Explosives and the tools used in connection therewith shall not be considered mechanical means.

ORIGINAL INFRASTRUCTURE

Streets and curbs, and the lines, pipes, culverts and conduits used for transporting potable water, storm water, sewage and utilities, such as gas, telephone, electricity, cable television and Internet service, that are built on land subdivided after February 1, 2004, if the subdivision plat creating the lots in that subdivision also created one or more new private or public streets or created extensions to any existing private or public street.

#### PERMITTED HOURS

The seven hours between 9:00 a.m. (prevailing time) and 4:00 p.m. (prevailing time), except in those situations where section 106-58.1 L governs the time allowed for rock removal.

#### ROCK

Naturally occurring stone. "Rock" does not include impervious concretions created by humans such as macadam, concrete and bricks.

#### ROCK REMOVAL

The reduction in size of rocks by mechanical means and the removal of such rock from the subject property in any residence district or in the Recreation District of the Town of Mamaroneck.

#### ROCK REMOVAL PERMIT

A permit issued for rock removal on a subject property.

#### SUBJECT PROPERTY

A lot for which a rock removal permit is required, or land where the construction of original infrastructure is to occur if such land lies outside a lot.

- B. A rock removal permit is required for the removal of rock of any quantity. No rock removal permit shall be issued until the Building Inspector or the Director of Building Code Enforcement and Land Use Administration approves the dust mitigation plan submitted by the applicant. Such plan must incorporate the best dust control practices, including but not limited to, a water spray system (air suppression or surface wetting) or other practices that are considered best dust practices at the time the application for a rock removal permit is made. The dust mitigation plan also must present the measures the applicant intends to use to control water runoff as a result of water spraying. In the

sole discretion of the Building Inspector or the Director of Building Code Enforcement and Land Use Administration, air quality sampling may be required during the course of rock removal.

- C. Rock removal, other than for the construction of original infrastructure, shall be allowed only during permitted hours and only on 15 days (not including Saturdays, Sundays and public holidays listed in § 24 of the New York General Construction Law) between the date specified for the commencement of rock removal contained in the notice to neighbors described in §106-58.1 G and the forty-fifth (45th) calendar day after that date. The rock removal permit shall contain the date after which rock removal no longer will be allowed to be done pursuant to that permit. Upon a showing of undue hardship, the Building Inspector or the Director of Building Code Enforcement and Land Use Administration may extend the last day on which rock may be removed pursuant to a rock removal permit by up to five days. If the number of additional days would include a day or days on which rock removal is prohibited by this section, the extension period will bypass such days and resume on the first day thereafter when rock removal is permitted by this section.
- D. The holder of a rock removal permit may have its permit suspended by notifying the Building Department that rock removal has stopped and requesting that the permit be suspended. The Building Inspector or the Director of Building Code Enforcement and Land Use Administration shall suspend the permit, record the date of notification and record the number of days between the date that rock removal was scheduled to begin and the date that the rock removal permit is suspended. Before resuming rock removal, the holder of a rock removal permit shall notify the Building Department of the date that it intends to resume whereupon the Building Inspector or the Director of Building Code Enforcement and Land Use Administration shall lift the suspension and record the date when the rock removal is to resume. After a suspension is lifted, rock removal may occur on the number of days that equals the difference between 15 and the number of days recorded in accordance with the immediately preceding sentence, however, rock removal may not occur beyond the forty-fifth (45th) calendar day after the date specified for the commencement of rock removal contained in the notice to neighbors described in §106-58.1 G, unless the Building Inspector or the Director of Building Code Enforcement and Land Use Administration grants permission to remove rock after the permit's expiration date pursuant to §106-58.C.
- E. For the construction of original infrastructure, rock removal shall be allowed only during permitted hours and only for the 180 days (not including Saturdays, Sundays and public holidays listed in § 24 of the New York General Construction Law) starting

on the date specified for the commencement of rock removal contained in the notice to neighbors described in §106-58.1 G. The rock removal permit shall contain the date after which rock removal no longer will be allowed to be done pursuant to that permit. Under no circumstances may rock removal for the construction of original infrastructure extend beyond the one hundred-eightieth day (180th) day after the date specified for the commencement of rock removal contained in the notice to neighbors described in §106-58.1 G, unless the Building Inspector or the Director of Building Code Enforcement and Land Use Administration grants permission to remove rock after the permit's expiration date pursuant to §106-58.C.

F. Before rock removal can begin, the applicant shall have a third-party conduct a survey of the condition of all improvements existing on each lot (including lots lying outside the unincorporated area of the Town of Mamaroneck) that either shares all or a section of a lot line with the subject property or touches the subject property at a corner. If the occupant of a lot to be surveyed refuses to allow a survey to be done, the applicant shall submit an affidavit stating that he/she had attempted to gain access but was denied. Submission of such an affidavit will obviate the requirement for a survey of that lot. Notwithstanding the foregoing, a survey shall not be required if all of the rock removal will be done using mechanical means that are designed to be handheld while operating.

G. Notice to neighbors; affidavit of mailing.

(1) No later than 10 days before rock removal commences, the following notice shall be mailed to the owners of each lot that has a lot line lying within 150 feet of any lot line of the subject property:

(a) For rock removal that is not the construction of original infrastructure:

"Dear Neighbor,

Rock removal from the property known as [INSERT THE STREET ADDRESS OR THE LOCATION OF THE SUBJECT PROPERTY IF IT HAS NO STREET ADDRESS] by mechanical means, such as drills, jackhammers and other types of gas, diesel or electric powered equipment is scheduled to begin on [INSERT DATE ROCK REMOVAL IS SCHEDULED TO BEGIN]. The last day on which rock can be removed from this site by mechanical means is [INSERT THE LAST DATE ON WHICH ROCK REMOVAL BY MECHANICAL MEANS CAN OCCUR].

Although this period is forty five (45) days, rock removal may occur only on fifteen (15) days within that period. The permit holder may have its permit suspended by the Building

Department after rock removal is scheduled to begin. You can contact the Building Department at 381-7830 to learn whether the rock removal permit has been suspended. If the permit is suspended, the permit holder may resume rock removal after notifying the Building Department of the date on which rock removal will resume. The days prior to the date of the suspension shall count toward calculating the fifteen (15) days when rock removal may occur so that rock removal will not be allowed to occur for more than a total of fifteen (15) days unless the permit is extended upon a showing of undue hardship by the permit holder. Any such extension can add no more than five (5) days for rock removal.

If your property abuts the subject property, you should have been contacted by now about having a survey done of the physical condition of the structures on your property. The purpose of the survey is to be able to determine whether and to what extent, rock removal may damage your property. If you were not contacted about having a survey done, please contact the Town Building Department at 914-381-7830 immediately.

The law does not permit rock removal by mechanical means to occur on Saturdays, Sundays or public holidays. It also prohibits such removal before 9:00 a.m. (prevailing time) and after 4:00 p.m. (prevailing time) on those days when rock removal by mechanical means is permitted.

For further information, please contact [INSERT THE NAME OF THE OWNER OR THE PERSON IN CHARGE OF THE PROJECT] at the following telephone number: [INSERT CURRENT TELEPHONE NUMBER OF THE PERSON WHOSE NAME APPEARS ABOVE].

Very truly yours,

[SIGNATURE OF THE OWNER OF THE SUBJECT PROPERTY]

[PRINT OR TYPE THE NAME OF THE OWNER OF THE SUBJECT PROPERTY]"

(b) For the construction of original infrastructure:

"Dear Neighbor,

Rock removal from the property known as [INSERT THE STREET ADDRESS OR THE LOCATION OF THE SUBJECT PROPERTY IF IT HAS NO STREET ADDRESS] by mechanical means, such as drills, jackhammers and other types of gas, diesel or electric powered equipment is scheduled to begin on [INSERT DATE ROCK REMOVAL IS SCHEDULED TO BEGIN]. The last day on which rock can be removed from this site by mechanical means is [INSERT THE LAST DATE ON WHICH ROCK REMOVAL BY MECHANICAL MEANS CAN OCCUR] unless the permit is extended upon a showing of undue hardship by the permit holder. Any such extension can add no more than five (5) days for rock removal.

If your property abuts the subject property, you should have been contacted by now about

having a survey done of the physical condition of the structures on your property. The purpose of the survey is to be able to determine whether and to what extent, rock removal may damage your property. If you were not contacted about having a survey done, please contact the Town Building Department at 914-381-7830 immediately.

The law does not permit rock removal by mechanical means to occur on Saturdays, Sundays or public holidays. It also prohibits such removal before 9:00 a.m. (prevailing time) and after 4:00 p.m. (prevailing time) on those days when rock removal by mechanical means is permitted.

For further information, please contact [INSERT THE NAME OF THE OWNER OR THE PERSON IN CHARGE OF THE PROJECT] at the following telephone number: [INSERT CURRENT TELEPHONE NUMBER OF THE PERSON WHOSE NAME APPEARS ABOVE].

Very truly yours,

[SIGNATURE OF THE OWNER OF THE SUBJECT PROPERTY]

[PRINT OR TYPE THE NAME OF THE OWNER OF THE SUBJECT PROPERTY]"

(2) An affidavit attesting to that mailing must be filed with the Building Department before a rock removal permit can be issued for the subject property. The owner of the subject property shall attest to that affidavit.

- H. Rock crushing on the subject property is not permitted at any time.
- I. There shall be no more than two machines and two hammers operating on the subject property at the same time.
- J. Motor vehicles used to transport particulate matter must be covered.
- K. While on the subject property, any particulate matter must be sufficiently soaked or stored to prevent the particulate matter from becoming airborne. The Building Inspector or the Director of Building Code Enforcement and Land Use Administration may require secured tarps or coverings made of plastic or other material to further reduce dust emissions.
- L. Rock removal shall not be permitted before 9:00 a.m. (prevailing time) or after 4:00 p.m. (prevailing time) on days when rock removal is permitted. Notwithstanding the prohibition on rock removal on Saturdays, an individual, acting alone, may remove rock pursuant to a rock removal permit on the subject property where he/she resides on a Saturday between the hours of 10:00 a.m. (prevailing time) and 3:00 p.m. (prevailing time).
- M. No more than one rock removal permit shall be issued for a subject property within any twelve-month period.
- N. Any person who violates this section shall be guilty of a violation which shall be punishable by a fine of not more than \$1,000, and also shall be liable for the civil penalty

imposed by § 106-55C of the Code. Each use of mechanical means to remove rock on a day or at an hour when rock removal is prohibited by this section shall constitute a separate offense.

- O.. If there is a violation of this section by someone other than the owner of the subject property, the owner of the subject property also shall be guilty of a violation which shall be punishable by a fine of not more than \$1,000, and also shall be liable for the civil penalty imposed by § 106-55C of the Code.
- P. This section shall not apply to the removal of rock that is excavated without first being reduced in size.
- Q. This section shall not apply to public utility companies, the United States of America, the State of New York, the County of Westchester, the Town of Mamaroneck, the Mamaroneck Union Free School District, the Villages of Larchmont, Mamaroneck or Scarsdale or any independent contractors engaged by any of them.

Section 3 – Severability:

Should any provision of this Local Law be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration of unconstitutionality or invalidity shall not affect any other provisions of this Local Law, which may be implemented without the invalid or unconstitutional provisions.

Section 4 – Effective Date:

This Local Law shall become effective upon the later of its filing with the Secretary of State or the end of the state of emergency declared by the Supervisor in response to the COVID-10 pandemic.

June 19, 2020