

APPROVED MINUTES of the Regular
Meeting of the City Council of the City of Rye held in
City Hall on January 9, 2019, at 7:30 P.M.

PRESENT:

JOSH COHN, Mayor
SARA GODDARD
EMILY HURD
RICHARD MECCA
JULIE SOUZA
BENJAMIN STACKS (arrived 7:45 P.M.)
Councilmembers

ABSENT:

DANIELLE TAGGER-EPSTEIN
Councilmember

The Council convened at 6:30 P.M. Councilman Mecca made a motion, seconded by Councilwoman Souza, enter into executive session to discuss litigation and personnel matters. At 7:32 P.M., Councilman Mecca made a motion, seconded by Councilwoman Souza, to exit executive session and commence the regular meeting of the City Council. The meeting began at 7:40 P.M.

1. Pledge of Allegiance.

Mayor Cohn called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call.

Mayor Cohn asked the City Clerk to call the roll; a quorum was present to conduct official City business.

There was a moment of silence for the late Rye High School Track Coach, Jim Yedowitz. Mayor Cohn said that Mr. Yedowitz's 43 years of dedication and exceptional service should be recognized.

4. Approve two new Fire Chiefs (Dan Bochicchio, Fire Assistant Chief, and Anthony Alba, Second Assistant Fire Chief) as previously approved by the Commissioner of Public Safety.

This item was taken out of order.

At the April 2018 Rye Fire Department Annual Meeting, the following Chiefs were elected: Dan Bochicchio as First Assistant Fire Chief, and Anthony Alba as Second Assistant Fire Chief, subject to the approval of the City Council in accordance with Article 13, Section 2 of the Rye City Charter.

Mayor Cohn thanked each of the Chiefs and said that Rye was grateful for their service.

Councilman Mecca made a motion, seconded by Councilwoman Souza and unanimously carried, to approve the election of Dan Bochicchio as First Assistant Fire Chief, and Anthony Alba as Second Assistant Fire Chief.

Mr. Alba thanked the Council.

Councilman Stacks arrived at 7:45 P.M.

3. Presentation of the Mayor John Carey Merit Award to Carolyn Cunningham.

Mayor Cohn announced that the 2018 Mayor John Carey Merit Award for meaningful contributions to public life in the City of Rye, was being presented to Carolyn Cunningham. Ms. Cunningham served in many capacities for the City since 1975. The award comes after Ms. Cunningham steps down from her position as Chair of the CCAC. Mayor Cohn read a statement about Carolyn's achievements and contributions to the City, including her long years of service to the CCAC, City Council and Planning Commission. The Council expressed their gratitude for all that Ms. Cunningham had done for Rye.

Mayor Cohn presented a proclamation on behalf of Assemblyman and former Mayor Otis to Ms. Cunningham for her many years of service and dedication to the City.

Ms. Cunningham addressed the Council and the public to make a statement of thanks. She stated the following:

“Thank you so much for this award. I am very honored that you would think of me. It has been a satisfaction and pleasure to be involved in this wonderful Rye community over all our years, since 1969. Rye has so many public-spirited people in it, stepping forward in all our volunteer positions, and it is such a pleasure to work for the betterment of this beautiful City. Rye has much open, still natural space, including many old trees. I felt that my calling early on in this community to work to preserve them and keep it green and beautiful. It has been an involvement of love and we, my whole family, are so glad that we came to Rye and stayed.”

Councilwoman Goddard read a statement of thanks from County Legislator, Catherine Parker.

5. General Announcements.

Councilwoman Hurd announced that the next Boat Basin meeting will be Tuesday, January 22, 2019 at 7:00 p.m. at Rye Recreation. The dredging consultant will be present at the meeting.

6. Draft unapproved minutes of the Regular Meetings of the City Council held December 5 and 19, 2018 as well as the Special Meeting held December 27, 2018.

Councilwoman Mecca made a motion, seconded by Councilman Stacks and unanimously carried, to adopt the minutes of the Regular Meetings of the City Council held December 5 and 19, 2018, and the Special Meeting held December 27, 2018.

7. Residents may be heard on matters for Council consideration that do not appear on the Agenda.

There was nothing discussed under this agenda item.

8. Consideration of a petition from 1037 Boston Post Road, LLC to amend the text of the City of Rye Zoning Code to permit physical fitness facilities in the B-1 (Neighborhood Business) and B-2 (Central Business) Zoning Districts within the "A" and "B" Parking Districts.

By way of background, the Petitioner here is the owner of an approximately 30,000 square foot retail building at 1037 Boston Post Road, which has remained vacant for approximately two years since the closure of Mrs. Green's grocery. The Petitioner's prospective tenant for its property is the YMCA. As written, the Rye City Zoning Code does not include physical fitness facilities as a permitted use. This is a notable omission given, in the petitioner's observation, "the increased attention in the modern era to physical fitness being a key component of personal health and wellbeing." the Petitioner requests a text amendment of the City Zoning Code to include physical fitness facilities as a permitted use within the B-1 and B-2 Zoning Districts within the "A" or "B" parking districts. The Petitioner's request would allow physical fitness facilities as a permitted use not just at the Petitioner's property, but also for other potential properties in the downtown business district. This change would accommodate a growing community need not currently reflected in the City's Zoning Code. Commonly, zoning is not changed for the benefit of one relatively small parcel, particularly when the growing demand for a use exceeds the capacity of one parcel in the City.

Jonathan Kraut, Harfenist Kraut, Perlstein LLP, attorney for 1037 Boston Post Road and YMCA, presented to the Council. He said that the applicant seeks a zoning amendment that would permit physical fitness facilities B-2 (Central Business) Zoning Districts within the "A" and "B" Parking Districts. Mr. Kraut said that they were asking the Council to permit the use. Ultimately, he said they were there to present this in a way to give good reason as to want to consider it, and as the first step, they were seeking for the Council to refer this to the Planning Commission. Mr. Kraut discussed the site's history, starting out as a grocery store, then a hardware store, then later as CVS. The City bought the property in September 2006. Circa 2008, Lester's went in under a lease with the City. Mr. Kraut said that at one time, the City had considered rezoning the site. Eventually, the City sold the property. Several years later, it became Mrs. Green's market, which went out of business several years ago. The owners of the site searched for new tenants for two years, using two brokerage firms. All prospects that came through were non-permitted uses in the zone. Mr. Kraut explained that physical fitness facilities are not permitted in Rye, more than a one-to-one ratio. He further explained that sound municipal planning processes would be within the zone, and not site specific. All of Rye's competing communities allow for this type of use. The YMCA is central to Rye and is in a

competitive environment. Mr. Kraut suggested that it might be good to bring forth a known entity to the City.

Councilman Stacks asked about other prospective tenants.

Mr. Kraut responded that several were fitness-based. They walked away because the use was not permitted in the zone. A preschool was another proposed tenant, but the use was not permitted. At one point, the owner considered carved up retail space, but found that there was not a lot of interest in that. At another time, a Tesla show room was considered, but there was not a lot of interest in that either.

Councilwoman Hurd asked if the YMCA was a contract vendee.

Mr. Kraut responded that the YMCA was not required to sign a lease if zoning is not approved.

Councilwoman Souza asked that if the zoning was changed, could any gym could go in that space. Mr. Kraut responded that it could be possible.

Councilwoman Hurd asked how the amendment would change the zone.

Mr. Kraut responded that looking through the district, it was hard to see this affecting much because of the space available.

Mayor Cohn asked if the Planning Commission would consider the issue of parking.

Mr. Kraut responded that this Planning Commission will look at all details, such as parking, trips generated, use of square footage, noise, etc.

Mayor Cohn asked Mr. Kraut if he and the applicant had considered the issue of parking.

Mr. Kraut said that he believed it was doable, and offered to give the Council numbers. Our proposal would yield a minimum parking requirement of one space per 200 square feet. The range that Mr. Kraut has seen goes from one parking space per 150 to 1500 square feet, and therefore the number that they are proposing is conservative. Mr. Kraut stated that they would consult their traffic professional's information as well as the Planning Commission's review and any experts consulted by the City. He said that they felt that under the parking and trip generation statistical manuals, they would fit in there and do well.

Councilman Stacks said that because it's the YMCA, people could potentially park in the Y's nearby lot and walk to the new proposed site.

Mr. Kraut responded that it could be encouraged.

There was general discussion about the more conservative end of parking requirements.

Councilman Stacks asked about the entire zone change relating to the other B parking zones.

Rex Gedney, architect for the applicant, presented about parking districts. There was general discussion about hypothetical scenarios with regard to the applicant, site and parking.

Councilwoman Souza stated support for referring the item to the Planning Commission for review and comment.

Councilwoman Souza made a motion, seconded by Councilman Mecca and unanimously carried, to refer the matter to the Planning Commission for review and comment.

9. Consideration of a resolution adopting a SEQRA negative declaration in connection with amendments to Chapters 133 “Noise” of the City Code.
Roll Call.

Councilwoman Hurd made a motion, seconded by Councilman Stacks, to adopt a SEQRA negative declaration in connection with amendments to Chapters 133 “Noise” of the City Code.

ROLL CALL

AYES: Mayor Cohn, Councilmembers Goddard, Hurd, Mecca, Souza, Stacks
NAYS: None
ABSENT: Councilwoman Tagger-Epstein

10. Consideration of a resolution adopting a SEQRA negative declaration in connection with amendments to Chapters 196 “Wireless Telecommunications Facilities”, the City’s wireless code.
Roll Call.

Councilwoman Hurd made a motion, seconded by Councilman Stacks, to adopt a SEQRA negative declaration in connection with amendments to Chapters 196 “Wireless Telecommunications Facilities”, the City’s wireless code.

ROLL CALL

AYES: Mayor Cohn, Councilmembers Goddard, Hurd, Mecca, Souza, Stacks
NAYS: None
ABSENT: Councilwoman Tagger-Epstein

11. Adopt amended Chapter 133 “Noise” of the City Code with respect to installations in the public right of way.
Roll Call.

Mayor Cohn stated that both Chapter 133 and Chapter 196 have been the subject of two public hearings. The Council is ready to vote on the amendments.

Councilman Stacks made a motion, seconded by Councilwoman Hurd, to adopt the amended Chapter 133, “Noise,” of the City Code as follows:

CITY OF RYE
LOCAL LAW NO. 1 2019

A local law to amend Chapter 133 “Noise” Section 3 “Permissible Intensity of Noise” and Section 4 “Points and method for measuring intensity of sound” to reflect changes in technology related to the deployment of wireless services and other supporting equipment as follows:

Section 1:

Chapter 133: Noise

§133-1 Unnecessary noise prohibited.

Subject to the provisions of this chapter, the creation of any unreasonably loud, disturbing and unnecessary noise is prohibited. Noise of such character, intensity and duration as to be detrimental to the life or health of any individual is prohibited.

§133-2 Prohibited acts. ***

§133-3 Permissible intensity of noise.

[Amended 8-21-1991 by L.L. No. 19-1991]

Except for noise emanating from the operation of motor vehicles, the permissible intensity of noise from any of the foregoing acts, whether such noise is intermittent, impulsive, sporadic or continuous, shall be limited as follows:

- A. Maximum sound pressure [db(A)] shall be as follows:
- (1) Fifty-five db(A) for stationary sources and 70 db(A) for outdoor power tools.
 - (2) Portable air compressors and their related equipment are limited to 76 db(A).
 - (3) Lawn mowers, leaf blowers, and outdoor vacuum cleaners shall have a permitted intensity of 85 db(A); use of this equipment is prohibited between the hours of 8:00 p.m. and 8:00 a.m. on weekdays and between the hours of 6:00 p.m. and 10:00 a.m. on weekends and holidays. The permitted intensity and hours described in this subsection will apply to leaf blowers during months when the use of leaf blowers is permitted.
 - (4) Air-conditioning units and pool filters are limited to 60 db(A).

- (5) Except for Micro-Wireless Facilities, aboveground and belowground stationary utilities or communication facilities are limited to 45 db(A).
- (6) Micro-Wireless Facilities, as defined in Chapter 196, are limited to 10 db(A).

§133-4 Points and method for measuring intensity of sound.

- A. Except for noise emanating from the operation of motor vehicles, the point at which the intensity of sound is to be measured shall be at a distance of 50 feet, except that noise from:
 - (1) Air-conditioning units and pool filters at a distance of 10 feet.
 - (2) Stationary utility or communications facilities located underground shall be measured three feet from the source of the noise. Stationary utility or communications facilities located on a utility pole or within a pole or other stealth facility shall be measured twelve feet from the sources of the noise or the nearest property line, whichever is closer. For any non right-of-way stationary utility or communications facility shall be measured at the point that meets vertically from the nearest property line and horizontally from the equipment. For any such facilities, the measurements should include noise from that facility and all other stationary utility or communications facilities proximately associated with the stationary utility or communications facility or its Supporting Structure as defined in Chapter 196. Micro-Wireless Facilities located shall be measured at the source.
- B. Measurement shall be made using a meter capable of measuring decibels and of a type meeting ANSI S1.4-1971, Type 2 standard. The measurement is to be made using a free-field microphone directed at the noise source.

Section 2: Severability.

If any clause, sentence, paragraph, section or part of any section of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

Section 3: Effective date.

This local law will take effect immediately on filing in the office of the Secretary of State.

ROLL CALL

AYES: Mayor Cohn, Councilmembers Goddard, Hurd, Mecca, Souza, Stacks
NAYS: None
ABSENT: Councilwoman Tagger-Epstein

12. Adopt amended Chapter 196 “Wireless Telecommunications Facilities”, the City’s wireless code.
Roll Call.

Councilwoman Hurd made a motion, seconded by Councilwoman Souza, to adopt the amended Chapter 196, “Wireless Telecommunications Facilities,” of the City Code as follows:

CITY OF RYE
LOCAL LAW NO. 2 2019

A local law to amend in its entirety Chapter 196 “Wireless Telecommunications Facilities” to reflect changes in technology related to the deployment of wireless services, to update the permitting process regarding new technology, and to update the City’s regulations governing the time, place and manner of these facilities as follows:

Section 1

Chapter 196 - “Wireless Telecommunications Facilities”

§ 196-1. Purpose and legislative intent.

- A. The Telecommunications Act of 1996 affirmed the City of Rye’s authority concerning the placement, construction and modification of wireless telecommunications facilities. The City Council finds that wireless telecommunications facilities and related equipment may pose a unique hazard to the health, safety, public welfare and environment of the City and its inhabitants, and may also have adverse visual and sonic impacts on the community, its character and thus the quality of life in the City.
- B. By enacting this Chapter, the City intends to:
- (1) Ensure that the placement, construction or modification of wireless telecommunications facilities and related equipment is consistent with the City’s land use policies and Zoning Code¹;
 - (2) Minimize the negative and adverse visual and aesthetic impacts of wireless telecommunications facilities to the maximum extent practicable through careful design, siting, landscaping, screening and innovative camouflaging techniques;
 - (3) Assure a comprehensive review of environmental impacts of such facilities;
 - (4) Protect the health, safety and welfare of the City of Rye;
 - (5) Account for when shared use of wireless telecommunication facilities is the more aesthetically sensitive alternative.

¹ 1. Editor’s Note: See Ch. 197, Zoning.

- (6) Establish fair and efficient processes for review and approval of applications;
 - (7) Protect City residents and businesses from potential adverse impacts of wireless telecommunication facilities, to the extent permitted under law, and to attempt to preserve the visual character of established communities and the natural beauty of the landscape;
 - (8) Protect property values;
 - (9) Minimize the impact of wireless telecommunications facilities on residential properties;
 - (10) Encourage the siting of wireless telecommunications facilities on properties and areas which are not used exclusively for residential purposes.
- C. The City finds that minimization of clutter and structures in the rights-of-way is important to the welfare of the community, and that placement near residential structures and in historical areas should be restricted where not critical to the provision of services.

§ 196-2. Title.

This chapter may be known and cited as the “Wireless Telecommunications Facilities Siting and Special Use Permit Law for the City of Rye,” or may otherwise be known as the “Wireless Facilities Law.”

§ 196-3. Definitions; word usage.

For purposes of this chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations and their derivations shall have the meanings given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

ACCESSORY FACILITY OR STRUCTURE — An accessory facility or structure serving or being used in conjunction with a Base Station and located in proximity to the Base Station, whether or not owned by the person who owns or controls the Base Station, including but not limited to utility or transmission equipment storage sheds or cabinets; electric meters; and fencing or shielding.

APPLICANT — Includes any individual, corporation, estate, trust partnership, joint-stock company, association of two or more persons, limited liability company or entity submitting an application to the City of Rye for a Special Use Permit for a Wireless Telecommunications Facility.

APPLICATION — The form as may be amended from time to time, together with all necessary and appropriate documentation that an applicant must submit in order to receive a Special Use Permit for a Wireless Telecommunications Facility.

ANTENNA — A device, dish, array, or similar device used for sending and/or receiving electromagnetic waves for any wireless telecommunications.

BASE STATION - A facility or equipment at a fixed location that enables any wireless telecommunications between user equipment and a telecommunications network. The term does not encompass a Tower as defined herein or Accessory Facility or Structure associated with a Tower. The term Base Station includes, without limitation:

- (1) Equipment associated with wireless telecommunications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

- (2) Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks or micro-wireless facilities); provided that, wireline connections in the rights of way linking Antennas to other elements of a small cell, DAS or similar network will not be treated as part of the Wireless Telecommunications Facility and instead their placement shall be subject to review consistent with applicable provisions of the Rye City Code, the applicable franchise; and New York law.
- (3) Any Supporting Structure, other than a Tower, that at the time the relevant application is filed with the City under this section, supports or houses equipment described in paragraphs (1)-(2) that has been reviewed and approved for placement of such equipment under this Chapter, or under another State or local regulatory review process, even if the Supporting Structure was not built for the sole or primary purpose of providing that support. For Supporting Structures that support equipment described in paragraphs (1)-(2), including but not limited to the sides of buildings, water Towers, or utility poles, the term includes only that portion of a Supporting Structure specifically approved to support the wireless equipment described in paragraphs (1)-(2), and only relates to activities necessary to permit the installation, maintenance, replacement or collocation of wireless equipment described in the preceding paragraph. The exemption of a Supporting Structure from review is not an approval.

BREAK POINT — The location on a Tower which, in the event of a failure of the Tower, would result in the Tower falling or collapsing within the boundaries of the property on which the Tower is placed.

CARRIER ON WHEELS or CELL ON WHEELS (“COW”) - A portable self-contained temporary facility that can be moved to a location and set up to provide Personal Wireless Services. A COW is normally vehicle-mounted and contains a telescoping boom to support the Antenna. A COW shall only be in place in connection with an emergency or event, but no longer than required for the emergency or event, provided the installation does not involve excavation, movement or removal of existing facilities.

CITY — The City of Rye, New York.

CITY MANAGER – The chief administrative officer of the City of Rye, or its designee.

COLLOCATION — The use of an Existing Tower or Base Station to install additional transmission equipment or Antennas for the provision of wireless telecommunications services.

COMMERCIAL IMPRACTICABILITY or COMMERCIALLY IMPRACTICABLE — The meaning in this chapter and any Special Use Permit granted hereunder as is defined and applied under the United States Uniform Commercial Code (UCC).

COMPLETED APPLICATION — An application that contains all information and/or data required by the City on application forms, by ordinance or by written practice and such additional information as the City may reasonably require specific to any application.

CONCEALMENT ELEMENT - Any design feature, including but not limited to painting, landscaping, shielding requirements and restrictions on location, proportions, or physical dimensions in relation to the surrounding area or Supporting Structures that are intended to and do make a Wireless Telecommunications Facility or any Supporting Structure supporting it substantially less visible to the casual observer.

COUNCIL — The City Council of the City of Rye, which is the officially designated

agency or body of the community to whom applications for a Special Use Permit for a Wireless Telecommunications Facility must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or revoking Special Use Permits for Wireless Telecommunications Facilities. The Council may, at its discretion, delegate or designate other official agencies of the City to accept, review, analyze, evaluate and make recommendations to the Council with respect to the granting or not granting, recertifying or not recertifying or revoking Special Use Permits for Wireless Telecommunications Facilities.

DISTRIBUTED ANTENNAE SYSTEM (DAS) – Network of spatially separated antenna sites connected to a common source that provides wireless telecommunications service within a geographic area or structure.

EAF — The Environmental Assessment Form approved by the New York Department of Environmental Conservation.

ELIGIBLE FACILITY PERMIT – The official document or permit by which an applicant meets the criteria for administrative review of a Wireless Telecommunications Facility as granted by the City Engineer and Corporation Counsel.

ENVIRONMENTALLY SENSITIVE AREA (“ESA”) – An area that is a Residential Zone or an area that has an exceptional or unique character with respect to one or more of the following: a) a benefit (or threat) to human health or quality of life; b) a benefit (or threat) to wildlife; c) a natural setting (e.g. fish/wildlife habitat open space, area of important aesthetics of scenic quality); d) agricultural, social cultural, archeological, recreational or educational values. The City Council shall determine what areas qualify as an ESA.

EXISTING - In place as of the date an application is received for installation or modification of a Wireless Telecommunications Facility.

FAA — The Federal Aviation Administration or its duly designated and authorized successor agency.

FCC — The Federal Communications Commission or its duly designated and authorized successor agency.

HEIGHT — When referring to a Tower or Supporting Structure, the distance measured from the preexisting grade level to the highest point on the Tower or Supporting Structure, even if said highest point is an Antenna.

HISTORIC STRUCTURE

Any structure in the City of Rye that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in New York; or
- D. Individually listed on a local inventory of historic places in Rye with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior; or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

- E. Designated as a Protected Site or Structure under the City of Rye City Code Chapter 117 “Landmarks Preservation”.
- F. Is located in a National Historic District or within a City of Rye designated Preservation District and/or Historic District.

MICRO-WIRELESS FACILITY – A small wireless facility strung between two utility poles having dimensions no larger than 24 inches in length, 15 inches in width and 12 inches in height and an exterior antenna, if any, no longer than 11 inches, and which antenna may be enclosed in an imaginary cylinder no larger than one inch in diameter. The reference to height in this definition is not intended to permit any person to install a facility that violates, or causes the strand to which it is attached to violate, clearance or other requirements under the applicable safety codes. A Micro-Wireless Facility does not create any noise greater than 10 db(A) as measured at the source.

NIER — Nonionizing electromagnetic radiation.

PERSON — Any individual, corporation, estate, trust, partnership, joint-stock company, association of two or more persons having a joint common interest or governmental entity.

PERSONAL WIRELESS SERVICES — Shall have the same meaning as defined and used in the 1996 Federal Telecommunications Act and associated regulations.

RESIDENTIAL RIGHT-OF-WAY – the right-of-way in a Residential Zone.

RESIDENTIAL STRUCTURE – a structure located in a residential zone with its principal use being residential.

RESIDENTIAL UNIT – a dwelling unit - One or more rooms with provision for living, cooking, sanitary and sleeping facilities arranged for the use of one family, as defined in Rye City Code Chapter 197 “Zoning”.

RESIDENTIAL ZONE – those zones designated as “Residence Districts” under the City of Rye City Code Chapter 197 “Zoning”.

RIGHT-OF-WAY - The strip of land over which facilities such as roads are built as identified on the official City Map.

SPECIAL USE PERMIT — The official document or permit by which an applicant is allowed to construct and use a Wireless Telecommunications Facility, as granted by the City.

STEALTH FACILITY - Any Wireless Telecommunications Facility that is integrated as an architectural feature of a an Existing Supporting Structure or any new Wireless Telecommunications Facility that is camouflaged or concealed so that the presence of the Wireless Telecommunications Facility is either: (1) virtually imperceptible to the casual observer, such as an Antenna behind louvers on a building, or inside a steeple or similar structure; or (2) camouflaged, through stealth design, so as to blend in with its surroundings to such an extent that it is indistinguishable by the casual observer from the structure on which it is placed or the surrounding in which it is located. Examples of Stealth Facilities include Wireless Telecommunications Facilities which are disguised as flagpoles, as indigenous trees, as rocks, or as architectural elements such as dormers, steeples and chimneys. To qualify as “stealth” design, the item in question must match the character of its surroundings and the type of item that it is mimicking in size, scale, shape, dimensions, color, materials, function, and other attributes as

closely as possible. The elements that make a facility a Stealth Facility are Concealment Elements.

SUPPORTING STRUCTURE – Any building, mast, pole, Utility Pole or other facility capable of supporting or housing a Base Station. Except as used in the definition of the term “Tower,” the term “Supporting Structure” does not include and is not used to refer to a Tower.

SUBSTANTIAL CHANGE - Substantial change has the same meaning as the term “Substantial Change” as defined by Federal Communications Commission regulations, 47 C.F.R. §1.40001(b)(7).

TALL STRUCTURE – A tall structure includes, but is not limited to, existing Towers, non-residential building rooftops at least 4 stories in height or greater, and domes, belfry’s, lanterns, spires, steeples or other architectural features on top of the roof of a building that is at least 45 feet high.

TELECOMMUNICATIONS — The transmission and reception of audio, video, data and other information by wire, radio frequency, light and other electronic or electromagnetic systems.

TEMPORARY — In relation to all aspects and components of this chapter fewer than 90 days.

TOWER – Any supporting structure built for the sole or primary purpose of supporting any Antennas (and related Base Station and Accessory Facilities or Structures), including supporting structures that are constructed for wireless telecommunications including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include Utility Poles.

UNDERGROUND AREAS – Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right-of-way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled, at the time of determination to be converted from overhead to underground. If any area that currently has electrical facilities above-ground is later converted to an area with all such facilities under-ground, then such an area will be considered an “Underground Areas” and the responsible party for above-ground Wireless Telecommunications Facilities and Accessory Facilities must comply with all regulations for Underground Areas within one year of such conversion. For the purposes of this Chapter, any Residential Area outside the FEMA designated 50-year floodplain as depicted on the most recently approved FEMA flood maps is considered an Underground Area. An “electrical facility” is a distribution facility owned by an electric utility and does not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

UTILITY POLE - A Supporting Structure owned and/or operated by a public utility, and regulated by the New York State Department of Public Service, which is primarily built to support lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

WIRELESS TELECOMMUNICATIONS FACILITY — All elements of a facility or proximate to a common location used in connection with the provision of any wireless telecommunications, including the Antenna, Base Station (but excluding any Existing Supporting Structure to which the Base Station is attached or within which it is enclosed), Tower, if any, and Accessory Facilities or Structures serving that Base Station.

WIRELESS TELECOMMUNICATIONS PROVIDER – A wireless telecommunications infrastructure provider or a wireless telecommunications services provider under 47 U.S.C. § 332(c)(7).

WIRELESS REGULATIONS – Those regulations, adopted by majority vote of City Council pursuant to this Chapter and implementing the provisions set forth herein.

§ 196-4. Policy and goals for Special Use Permits and Special Exception Permits.

In order to ensure that the placement, construction and modification of Wireless Telecommunications Facilities conforms to the City’s purpose and intent of this chapter, the Council creates a Special Use Permit for Wireless Telecommunications Facilities for the purpose of achieving the following goals:

- A. Implementing an application process for person(s) seeking a Special Use Permit or Special Exception Permit for a Wireless Telecommunications Facility.
- B. Establishing a policy for examining an application for and issuing Special Use Permits and Special Exception Permits for Wireless Telecommunications Facilities that is both fair and consistent.
- C. Establishing timeframes for granting or not granting a Special Use Permits and Special Exception Permits for Wireless Telecommunications Facilities, or recertifying or revoking the Special Use Permit or Special Exception Permit granted under this chapter.
- D. Promoting and encouraging, wherever possible, but only where it will result in the least overall visual and sonic impact for residential dwelling units, the collocation of Wireless Telecommunications Facilities.
- E. Promoting and encouraging, wherever possible, the placement of a Wireless Telecommunications Facility in such a manner as to cause minimal disruption to the land, property, buildings and other facilities adjacent to, surrounding and in generally the same area as the requested location of such a Wireless Telecommunications Facility and to minimize adverse visual, sonic, and aesthetic impacts to the community and risk of adverse impacts to community character and property value.

§ 196-5. Special Use Permit, Special Exception Permits and Eligible Facility Permits.

- A. All Wireless Telecommunications Facilities within the City must comply with this Chapter and all other applicable law and regulations. A person who installs Wireless Telecommunications Facilities pursuant to this section must comply with all safety codes; comply with requirements for RF emissions; and must utilize Concealment Elements and maintain facilities to minimize visibility of the Wireless Telecommunications Facilities. All Wireless Telecommunications Facilities are subject to the registration requirements of Section 167.72, if applicable, regardless of their status under, or the applicability of, this Chapter.
- B. This Chapter does not apply to any device designed for end-user over-the-air reception, not transmission, of television broadcast signals, multi-channel multi-point distribution service, or direct broadcast satellite service; or for end user reception of signals from an Internet service provider and end user transmission of signals to an Internet service provider.
- C. All Wireless Telecommunications Facilities (including modifications), or construction, modification or replacement of Support Structures in connection with the installation of Wireless Telecommunications Facilities must be permitted by a Special Use Permit, Special Exception Permit or Eligible Facility Permit. Notwithstanding the foregoing, the following Wireless Telecommunications Facilities do not require a Special Use Permit,

except where the same are on, substantially contiguous to, or affect a Historic Structure, or an Environmentally Sensitive Area. Requirements that may apply to the underlying Supporting Structure to which a Base Station is to be attached, as well as all other applicable laws and regulations continue to apply. Such Wireless Telecommunications Facilities that do not require a Special Use Permit shall require a Special Exception Permit and pay the associated fee to the City Manager or his/her designee. Such Wireless Telecommunications Facilities shall be authorized to be installed on condition that any and all other required permits or approvals have been received.

- (1) Wireless Telecommunications Facilities that are less than 1 cu ft. in size create no measurable sound and are placed on Existing Supporting Structures without increasing the physical dimensions of the Existing Supporting Structures. The “cubic footage” takes into account all the elements of the Wireless Telecommunications Facility (including Accessory Facilities or Structures).
- (2) Wireless Telecommunications Facilities placed on the rooftop of non-residential structures; that make no measurable sound beyond the rooftop; that are at least 40 feet from any residential unit; and that include some Concealment Elements so that the Wireless Telecommunications Facilities are not visible from the street.
- (3) Wireless Telecommunications Facilities within Existing Supporting Structures (other than Historical Structures) that are not visible from and that do not create any sound greater than 10 db(A) measured at the source from outside the Supporting Structure and do not change the physical dimensions or appearance of the Supporting Structure within which they are placed.
- (4) Carriers on Wheels where the placement is permitted, and complies with, applicable FCC regulations for temporary placement of Wireless Telecommunications Facilities.
- (5) Routine maintenance, or replacement of elements of a Wireless Telecommunications Facility or Supporting Structure that do not change the dimensions, visibility, or audibility of a Wireless Telecommunications Facility or Supporting Structure.
- (6) Micro-Wireless Facilities.

D. The City Manager or his/her designee shall prepare application forms that must be used by persons seeking to place Wireless Telecommunications Facilities in the City and which shall require additional submission of at least the information required by the City Code, and may require information that the City may consider in acting upon an application

(1) Franchise Required. In addition to the Special Use Permit, Special Exception Permit and Eligible Facilities Permit required herein, the placement of a wireless telecommunications facility in the public rights-of-way requires the persons who will own or control those facilities to obtain a franchise or permit to be located within the City’s right-of-way, unless that person holds a franchise from the State which authorizes it to use the right-of-way for that purpose, without further permission of the City. Pursuant to Chapter 167 “Streets and Sidewalks”, such franchise or permit may be approved by the City.

E. As part of the administration of this Article, the City Council may adopt by simple majority vote regulations governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this Article, including

regulations governing collocation and resolution of conflicting applications for placement of wireless telecommunications facilities, and guidelines for placement of wireless telecommunications facilities on City-owned or controlled structures in the rights-of-way.

- (1) Develop acceptable designs for wireless telecommunications facilities in particular corridors, taking into account the zoning districts bounding the rights-of-way;
- (2) The City Manager shall issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued. If the City Manager issues a notice of incompleteness, any applicable timeframes to review the application shall be re-initiated upon the delivery of the missing material as if the application was received anew as described in 196-6(C).
- (3) The City Manager shall develop forms and procedures for submission of applications for placement or modification of wireless telecommunication facilities, and proposed changes to any support structure consistent with this Article.

F. For eligible facilities requests, as defined in the Federal Communications regulation 47 C.F.R. §1.40001(b)(3), implementing federal law, 47 U.S.C. §1455, an Eligible Facility Permit is required prior to installation (including modifications) of Wireless Telecommunications Facilities or modification of Existing Support Structures in connection with the installation of Wireless Telecommunications Facilities.

- (1) An Eligible Facility Permit may be issued administratively by the City Engineer and Corporation Counsel jointly after all applicable safety and fire code regulations have been complied with. The Eligible Facility Permit shall specifically provide that it is being issued at the direction of the federal government and without the consent of the City and shall be of no further force and effect when the permit for the underlying facility expires, or the federal law changes so that the permit as issued is no longer required.
- (2) The application for any Eligible Facility Permit must contain at least the information required to permit the City Manager and Corporation Counsel to determine that the application is an eligible facilities request, including (i) the underlying approval for the existing Tower and Base Station; (ii) any approved modifications to the same where the modifications were approved prior to February 22, 2012; and (iii) detailed information about the physical dimensions of Tower and Base Station as the same exist on the date of the application, and as proposed to be modified.
- (3) The application shall be denied if it is not an eligible facilities request or if all the information required under Section 196-6(V) is not submitted. If an application is denied because it is determined that it is not an eligible facilities request, the applicant may request that the application be treated as a request for special permit by submitting all the information required for a special permit within ten (10) days of the denial of application. The applicant has the burden of proof in all aspects of its permit request by providing clear and convincing evidence.

G. All other Wireless Telecommunications Facility installations (including modifications), or construction, modification or replacement of Support Structures in connection with the installation of Wireless Telecommunications Facilities require a Special Use Permit or

Special Exception Permit.

- (1) Special Use Permits and Special Exception Permits may be granted where applicant shows by clear and convincing evidence:
 - (a) The Wireless Telecommunications Facility proposed is not being built speculatively (that is, there is a customer for the Wireless Telecommunications Facility), and it will be built and used promptly upon approval.
 - (b) The applicant is a utility under New York law or a provider described in (e) below or a governmental entity. The applicant and any entity whose equipment would be included in the installations has all the authorizations required to place the Wireless Telecommunications Facilities from the state, or the City (other than the Special Use Permit requested), or the owner of the property, and to modify, replace or attach to a Supporting Structure, and the placement, construction and operation of the Wireless Telecommunications Facilities (including Supporting Structures) will be in compliance with all applicable laws.
 - (c) The Wireless Telecommunications Facility is designed and placed to minimize the visual and sonic impact on the community.
 - (d) The Wireless Telecommunications Facility does not significantly impact the site upon which it will be located or the properties that will be disturbed as a result of its installation.
 - (e) If Applicant is confirmed to be a utility under New York law or is confirmed to be a provider, as described below, it must demonstrate that the Wireless Telecommunications Facility is necessary for the provision of services. All Applicants must show that the proposed installation is the least intrusive alternative for providing service. If the applicant is a provider of wireless services or facilities under 47 U.S.C. § 332(c)(7), it must show that absent approval, there will be a prohibition in the provision of wireless services within the meaning of federal law.
- (2) City may approve a Special Use Permit or Special Exception Permit without the showing required by Section G(1)(e) where the facility is not located in or does not affect Historic Structures or Environmentally Sensitive Areas and the Wireless Telecommunications Facility:
 - (a) Is a Stealth Facility that otherwise satisfies the provisions of this ordinance.
 - (b) Contains Concealment Elements, and is to be placed or shielded on an Existing Supporting Structure in such a way such that the Wireless Telecommunications Facility produces no measureable sound greater than 10 db(A) and is not readily visible to, surrounding properties, and is not subject to modification except at the discretion of the City.
- (3) Notwithstanding the foregoing, City may require the showing under Section G(1)(e) where the City determines installation or modification of the Wireless Telecommunications Facility substantially alters the size, proportions or dimensions of an Existing Supporting Structure.
- (4) Notwithstanding any other provisions of this Chapter, the City Council may for

reasonable cause and based on substantial evidence exempt any applicant from any requirement of this Chapter or require the location or character of a Wireless Telecommunications Facility to be other than that which this Chapter might otherwise mandate.

- (5) Prohibited on certain structures. No Wireless Telecommunications Facility shall be located on single-family detached residences, single-family attached residences, two-family residences, or any residential accessory structure.

H. General Standards for Wireless Telecommunications Facilities in the Rights-of-Way

(1) Generally. All Wireless telecommunications facilities in the rights-of-way shall: first, be located in accordance with the location priorities in subsection I below; and second, be the most aesthetically pleasing alternative for the type of location. In addition, such facilities must meet the minimum requirements set forth in this ordinance, the Wireless Regulations, and the requirements of any other applicable law. An Applicant must establish that it is installing Stealth Facilities to the extent possible and must:

- (a) Show that it is installing facilities in the highest priority locations that are available and necessary to the provision of service or to avoid a prohibition. As part of its application, an applicant must describe in detail its efforts to place a Wireless Telecommunications Facility at each higher priority location, including what properties were contacted, and the reasons why applicant claims the Wireless Telecommunications Facility cannot be placed at a higher priority location.
- (b) Submit RF engineering data signed by an engineer for the relevant wireless provider, including propagation maps and supporting information identifying areas where a Wireless Telecommunications Facility could be placed that would serve the areas where applicant believes that service is required, and describing the Wireless Telecommunications Facility required to provide such services;
- (c) Submit a written explanation as to why it claims its proposed Wireless Telecommunications Facility is the least intrusive alternative, considered individually, and as part of any project of which it is a part that involves installation of more than one Wireless Telecommunications Facility; and taking into account all potential alternatives, whether or not raised by the City or its citizens, including all those that a diligent applicant acting in good faith would raise.

(2) Waiver of Requirements. Subject to Section 196-5(G)(4), the Wireless Regulations and decisions on applications for placement of wireless telecommunications facilities in the rights-of-way shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless, in the case only of an applicant who has the requisite status protected by federal laws, it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, under circumstances such that deployment of the facilities must be authorized. If that determination is made, the requirements of this ordinance, including any regulations and forms to implement this ordinance, may be waived, but only to the minimum extent required to avoid conflict with federal law.

(3) Standards. Wireless telecommunications facilities in the rights-of-way shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, complies in the rights-of-way with the City's prioritization list in subsection I(2) below and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights-of-way and compliance with health and safety codes; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon or vacate the rights-of-way or any portion thereof, or the ability of the City or other government agencies to cause the improvement, modification, relocation, vacation or abandonment of facilities in the rights-of-way.

(4) Concealment. The Special Use Permits for Wireless Telecommunications Facilities in the rights-of-way shall incorporate specific concealment elements to minimize visual impacts consistent with the Wireless Regulations, and shall incorporate design requirements ensuring compliance with all standards for noise emissions and in accordance with Chapter 133 of the Rye City Code. In general, all equipment shall be the smallest and least visibly and sonically intrusive equipment feasible. Unless it is determined that another design is less intrusive or placement is required under applicable law:

- a. Antennas located at the top of support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure;
- b. Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.
- c. Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on the utility pole, placed to avoid interfering or creating any hazard to any other use of the public rights-of-way, and located on one side of the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that visibility is limited to the fewest number of people, the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed. In Underground Areas, the equipment cabinets shall be located underground with any above ground intrusion minimized. If an equipment cabinet must be located aboveground, then the cabinet shall be a Stealth Facility and shall substantially incorporate all other concealment elements. If an equipment box must be placed on a pole, the box shall be placed on the pole in such a fashion as to have it front facing the closing boundary of the right-of-way.

- d. Wiring and cabling shall be neat and concealed within, or or within conduit, flush to the support structure, ensuring concealment of these components to the greatest extent possible.
 - e. Ground-mounted or pole mounted (other than antennas) equipment associated with a wireless telecommunications facility is prohibited in Underground Areas and shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be undergrounded, located in alleys or otherwise shielded. Ground-mounted equipment shall not interfere with pedestrian or vehicular traffic.
 - f. Wireless telecommunications facilities shall comply with FCC regulations governing radio frequency (“RF”) emissions. At all times, every Wireless Telecommunications Facility shall comply with applicable FCC regulations governing RF emissions, and failure to comply shall be a treated as a material violation of the terms of any permit or lease. No special use permit shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with those regulations; any areas where occupational or general public exposures will exceed FCC limits are identified, and there is a clear plan addressing safety for any areas where exposures may exceed those limits.
 - g. No Towers greater than 80 feet shall be permitted in the public rights-of-way, and no Wireless Telecommunications Facilities shall be permitted above-ground in Underground Areas; towers less than or equal to 80 feet may be placed in the public rights-of-way only on major roads in the Membership Club zoning district or on golf courses provided that the City Council determines that such towers in the public right-of-way or on the golf course would be the most aesthetically pleasing means to serve an area with low residential density. Any Tower design must be as consistent as possible with the corridor in which the facility is placed, and minimize the obtrusiveness of the facility considered individually and as part of a network of wireless telecommunications facilities. For Towers proposed to be located in the right-of-way, all other restrictions including, but not limited to equipment type and placement, setback requirements, safety concerns and aesthetics shall still apply.
5. No electric meters shall be placed on a Utility Pole or any other Supporting Structure.
6. Underground installations will have no protrusions above pre-existing grade.
7. Any graffiti on any Wireless Telecommunications Facility support structure or any accessory equipment shall be removed within thirty (30) days upon notification of the owner.

I. Demonstration of compliance with Wireless Regulations.

As part of showing that the proposed location and structure meets the criteria in this law and the Wireless Regulations, an applicant is required to show how it has complied with the priority lists below unless the applicant can show that compliance is prohibitory:

- (1) The highest priority locations for all installations are:
 - (a) On existing tall structures or telecommunications towers.
 - (b) Collocation on a site with existing telecommunications towers or tall structures.
 - (c) In commercially zoned areas along Interstate 95, Interstate 287 or railroad tracks.
 - (d) In nonresidential areas or on a golf course.
 - (e) On other property in the City.

- (2) The priority of locations for installations in the residential right-of-way are (assuming, first, compliance with subsection (1) above), in order of priority:
 - (a) Located on a major road, at least 60 feet or more from the nearest residential unit;
 - (b) Located on other roads but only when required to be non-prohibitory, and at least 60 feet or more from the nearest residential unit;
 - (c) Located on a major road, at least 40 feet from the nearest residential unit;

- (3) Municipal property in category (1) and (2) above shall be a higher priority than other locations in the same category.

- (4) Installations in the Residential Right-of-Way shall be Micro-Wireless Facilities only unless this requirement would be prohibitory.

- (5) An applicant is further required to show that its proposed installation or modification:
 - (a) Minimizes the visual impact of the Wireless Telecommunications Facilities and associated Supporting Structures upon the community, and in particular upon residential units, as proposed and under any modification that could be made to that installation as of right; and
 - (b) Is designed to be consistent with the overall characteristics of the area where the facilities are located; and
 - (c) Has minimized the new Supporting Structures proposed, and the impact of those Supporting Structures.
 - (d) In considering the visibility of Wireless Telecommunications Facilities, City may consider separately and in conjunction with any nearby or similar facilities, or any other facilities then proposed, the mass and size of the facilities, the scale of the facilities (or the effect of the placement on the mass, size and scale of Supporting Structures to which or within which the Wireless Telecommunications Facilities may be attached or concealed), and any other factor that may affect the impact on the community. It may consider the elements of a Wireless

Telecommunications Facility separately and collectively, and may require a showing the visibility of each element of the Wireless Telecommunications Facility, and the effect on any Supporting Structure to which the Wireless Telecommunications Facility will be attached, has been minimized.

- (e) It has proposed facilities using universal antennae, each having and utilizing multi-carrier capacity to the fullest extent technologically possible.
- (6) The City may approve or require placement in a location that is not the highest priority where the record shows a proposed installation at a different location will result in less impact on the community, considering the specific installation that is proposed and any project of which it is a part that involves installation of more than one Wireless Telecommunications Facility.
- (7) In considering whether a proposal meets the general requirements of this law and the Wireless Regulations, the City will consider the impact of a planned project as a whole, taking into account the factors specified above.

§ 196-6. Special Use Permit, Special Exception Permit, and Eligible Facility Permit Application Requirements.

- A. All applicants for a Special Use Permit or a Special Exception Permit (in the case of a Special Exception Permit only to the extent set forth in subsection (U) and in the case of an Eligible Facility Permit only to the extent set forth in subsection (V))) for a Wireless Telecommunications Facility or any modification of such facility shall comply with the requirements set forth in this section. In addition to the information required by Section 196-5(E), an applicant for a Special Use permit must comply with the requirements of this section, as applicable.
- B. An application shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Council, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction, or to revocation of the permit if the permit is issued. No application shall be accepted and no Special Use Permit, Special Exception Permit or Eligible Facility Permit application shall be issued for a property where the Building Inspector has found, or there exists, a violation of the City Code and where such violation has not been corrected.
- C. Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the Council. Upon notice of incompleteness by the City, the applicable shot clock will reset to zero and the City shall have the original applicable time period permitted by law to act on the completed application. The shot clock shall remain tolled until the applicant submits the required supplemental information. If the application for a wireless telecommunications permit is incomplete, all other permits requested by the same applicant that must be acted upon by the same date as that

application will also be deemed incomplete or denied. If any other permit that must be acted upon by the same date as the wireless telecommunications application is incomplete, both it and the wireless telecommunications application shall be declared incomplete or denied.

- D.** The applicant shall include a statement in writing that:
- (1) The applicant's proposed Wireless Telecommunications Facility will be maintained in a safe manner and in compliance with all conditions of the Special Use Permit, Special Exception Permit or an Eligible Facility Permit, without exception, unless specifically granted relief by the Council in writing, as well as all applicable and permissible local codes, ordinances and regulations, including any and all applicable county, state and federal laws, rules and regulations.
 - (2) The construction of the Wireless Telecommunications Facility is legally permissible, including but not limited to the fact that the applicant is authorized to do business in New York State.
- E.** Each application for a Special Use Permit or Special Exception Permit shall include a complete plan for the site proposed, and if the application is submitted as part of a larger project that will include multiple sites, a description of that project, and the number and type of installations required, and complete application materials for each site proposed, so that the Council has the ability to and shall review and make a determination with respect to each individually and as part of any larger project. For Special Use Permits or Special Exception Permits, the site plan shall be reviewed and approved by the Council prior to issuance of the Special Use Permit or Special Exception Permit by the City Council. Where a certification is required, the certification shall be in the form of a report containing the information hereinafter set forth, signed by a licensed professional engineer registered in the state and acceptable to the City, unless otherwise noted. The application shall include, to the extent applicable, the following information:
- (1) Documentation that shows applicant satisfies the requirements of Section 196-5(E)-(H), as applicable.
 - (2) Name and address of the engineer or engineers submitting any certifications, and to whom questions regarding the certification should be submitted.
 - (3) Name and address of the property owner, operator and applicant, to include the legal form of the applicant. Name and address of any person who will own equipment associated with the Wireless Telecommunications Facility.
 - (4) Postal address and Tax Map parcel number of the property.
 - (5) Zoning district or designation in which the property is situated.
 - (6) Size of the property stated both in square feet and lot line dimensions and a diagram showing the location of all lot lines where the facility is proposed to be located outside of the right of way, and within the rights-of-way, the location of the proposed facility in relation to the right of way, pedestrian and non-motorized vehicle pathways and cross-walks, and the location in relation to driveways on the same right-of-way and within 750 feet.
 - (7) Location of all residential structures within 750 feet.
 - (8) Location of all habitable structures within 750 feet.
 - (9) Location of all structures on the property which is the subject of the application, or for the right of way, within 250 feet of the proposed facility.
 - (10) Location, size and height of all proposed and Existing Wireless

Telecommunications Facilities and Supporting Structures at the proposed site.

- (11) Type, size and location of all proposed and existing landscaping.
- (12) The number, type and design of the Wireless Telecommunications Facility(s) proposed and the basis, if any, for the calculations of the Wireless Telecommunications Facility's capacity to accommodate multiple users.
- (13) The make, model and manufacturer of each of the elements of the Wireless Telecommunications Facility.
- (14) A detailed description of each element of the proposed Wireless Telecommunications Facility and any Existing Support Structure which will be utilized, which description shall include, but not be limited to, a description of the Supporting Structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting. For a modification to a facility, applicant must describe precisely any change in physical dimensions to any portion of the Wireless Telecommunications Facility or and describe in detail any additional equipment installed as part of the modification and any modifications required to the Supporting Structure (including, but not limited to, modifications to meters, powers supplies, cabling, and guys).
- (15) The frequency, modulation and class of service of radio or other transmitting equipment.
 - (16) Transmission and maximum effective radiated power of the Antenna(s).
 - (17) Direction of maximum lobes and associated radiation of the Antenna(s).
- (18) Certification by a qualified RF engineer that NIER levels at the proposed site are within the threshold levels adopted by the FCC.
- (19) The applicant's proposed Wireless Telecommunications Facility maintenance and inspection procedures and related system of records.
- (20) A copy of the FCC license applicable for the use of the Wireless Telecommunications Facility, if any, and a copy of any certificate issued by the State of New York for the facility; and proof that applicant and any person who will own facilities associated with the proposed Wireless Telecommunications Facility are authorized to place the facilities at the location proposed.
- (21) For a Tower, certification that a topographic and geomorphologic study and analysis has been conducted and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed s Tower on the proposed site. The certifying engineer need not be approved by the City.
- (22) Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites signed by a suitable engineer and the provider(s) that will utilize the proposed installation.
- (23) The applicant shall disclose, in writing, any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new Wireless Telecommunications Facility that it constructs.
- (24) The applicant shall provide a notarized affidavit that either the proposed installation meets all laws, codes and ordinances or that it meets the same except as specifically listed on said affidavit.
- (25) Information relating to the expected useful life of the proposed Wireless

Telecommunications Facility.

- F.** In the case of a new Wireless Telecommunications Facility, the applicant shall be required to submit a report demonstrating its efforts to secure shared use of existing Wireless Telecommunications Facility(s). Copies of written requests and responses for shared use shall be provided to the Council.
- G.** Certification that the Wireless Telecommunications Facility and, if applicable, the Existing Supporting Structure both are designed and constructed (“as built”) to meet all county, state and federal structural requirements for loads, including wind and ice loads.
- H.** After construction and prior to receiving a certificate of compliance, certification that the Wireless Telecommunications Facility and related facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- I.** The applicant shall submit a completed long form EAF and a completed Visual EAF addendum. The Council may require submission of a more detailed visual analysis based on the results of the Visual EAF addendum. Applicants are encouraged to seek pre-application meetings with the City Council to address the scope of the required visual assessment.
- J.** A visual impact assessment shall be provided with each application which shall include:
 - (1) A Zone of Visibility Map, which shall be provided in order to determine locations where the facility may be seen.
 - (2) Pictorial representations of before and after views from key viewpoints, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; environmentally sensitive areas; preserves and Historic Structures normally open to the public; and from any other location where the site is visible to a large number of visitors or travelers. The City will provide guidance concerning the appropriate key sites at a pre-application meeting.
 - (3) An assessment of the visual impact of the facility base, guy wires and accessory buildings from abutting and adjacent properties and streets.
 - (4) Scaled and dimensioned photo simulations of the before and after images of the project and project site from at least three different angles and showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the Wireless Telecommunications Facility.
- K.** The applicant shall identify any Concealment Elements proposed for the Wireless Telecommunications Facility, and for a Stealth Facility, shall specifically show that the proposed Wireless Telecommunications Facility qualifies as a Stealth Facility and effectively screen from view its proposed wireless telecommunications facilities and structures, subject to Council approval.
- L.** All utilities serving any wireless telecommunications facility shall be installed underground, embedded in existing construction or otherwise shielded from view and in compliance with all laws, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate. The Council may waive or vary the requirements of undergrounding installation of utilities whenever, in the opinion of the Council, such variance or waiver shall not be detrimental to the health, safety, general welfare or environment, including the visual and scenic characteristics of the area. Where possible, for Wireless Telecommunications Facilities located outside of the rights of way wiring and other

components shall be located within buildings. Wireless Telecommunications Facilities installed on the exterior of Existing buildings/Supporting Structures shall be integrated into the design of such buildings/Supporting Structures. The intent of this provision is to make the installation invisible or indistinguishable from other existing architectural features. Both the Wireless Telecommunications Facility and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the Existing Supporting Structure to which it may be affixed and with the natural surroundings. Where possible, for facilities in the rights of way, when existing Utility Poles are replaced, the Wireless Telecommunications Facility will be placed within a pole approved by the City and the utility.

- M.** An access road and parking to assure adequate emergency and service access shall be provided, should such be deemed necessary by the Council. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- N.** Every Wireless Telecommunications Facility, and the Existing Support Structures to which Wireless Telecommunications Facilities are attached shall be constructed, operated, maintained, repaired, modified or restored in strict compliance with the then-current version of all technical, safety and safety-related codes adopted by the City, county, state or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. The applicant is responsible for ensuring compliance with the foregoing for the Wireless Telecommunications Facility and any portion of an Existing Supporting Structure affected by the Wireless Telecommunications Facility. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- O.** Every person constructing or owning a Wireless Telecommunications Facility shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or law and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- P.** The Council intends to be the lead agency, pursuant to SEQRA. The Council shall conduct a review of the proposed project in combination with its review of the application under this chapter.
- Q.** An applicant shall submit to the City Engineer the number of completed applications determined to be needed at the pre-application meeting. A copy of the notification of application shall be provided to the legislative body of all adjacent municipalities and to the Westchester County Planning Board.
- R.** If the applicant is proposing the construction of a Tower or installation on an Existing Tower or building, the applicant shall examine the feasibility of designing a multi-carrier use to extent practicable and consistent with other requirements of this Chapter. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the Wireless Telecommunications Facility is not

technologically feasible, or is commercially impracticable and creates an unnecessary and unreasonable burden, based upon:

- (1) The number of FCC licenses foreseeably available for the area.
- (2) The kind of Wireless Telecommunications Facility proposed, or Existing Supporting Structure that would be utilized.
- (3) Available space on existing and approved Towers.

S. Unless waived by the Council, there shall be a pre-application meeting required for every Special Use Permit. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. Where the application is for the shared use of an Existing Tower or Supporting Structure, the applicant can seek to waive any application requirements that may not be applicable. At the pre-application meeting, the waiver requests, if appropriate, will be decided by the City. Costs of the City's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

T. Without limiting the foregoing, except where it is demonstrated that denial would result in a prohibition of the provision of wireless services within the meaning of federal law:

- (1) In the rights-of-way, no Towers are permitted except as permitted in Section 196-5(H)(4)(g).
- (2) No Wireless Telecommunications Facilities are permitted within Underground Areas except those that are located underground.
- (3) A new or replacement Supporting Structure, other than a Stealth Facility or one permitted in Section 196-5(H)(4)(g), street lighting or traffic control structure may not be approved that is greater in height from ground level than the average height of existing distribution utility poles in the same area. No extension of an existing Supporting Structure (other than street lighting or traffic control structures) to permit installation of a Wireless Telecommunications Facility may be approved that unless the addition complies with subsection 5 and increases the height of the supporting structure by no more than the lesser of 20% or six feet.
- (4) Except for cabling within a conduit, the lowest edge of any component of the Wireless Telecommunications Facility on a Utility Pole must be at least 12 feet above the ground unless concealed within the pole.
- (5) All Wireless Telecommunications Facilities mounted to the side of a Supporting Structure in the right of way, other than in the communications space, must be flush-mounted, sized and painted so that the facility to the extent possible the facility is concealed;
- (6) All Wireless Telecommunications Facilities mounted to the top of a Utility Pole must be designed so that the facilities form a continuous and uninterrupted line with the pole, and as a Concealment Element, are no more than 10% greater in diameter than the pole itself; provided that dipole antennas comprised of a single metal rod not more than 40 inches as measured from the top of the pole long fastened straight upright on, and flush to, the top of the pole, are also acceptable.
- (7) Any indicator lights should be recessed or otherwise designed so that they present no hazard to traffic or interfere with enjoyment of properties from which the lights may be visible.
- (8) In addition to any more restrictive provisions of this Chapter, in placing Wireless Telecommunications Facilities, the following rules apply:

- (a) Wireless Telecommunications Facilities should be at least 40 feet from any residential unit, and located so that the facilities are not directly in front of any front window or door of a residential structure.
 - (b) Locations that are less visible from a residential structure are preferred over locations that are more visible.
 - (c) With the exception of those facilities that qualify for a Special Exception Permit, locations of Wireless Telecommunications Facilities in the rights-of-way shall be located no closer than 1000 feet measured in all directions to another Wireless Telecommunications Facility of the same carrier. Wireless Telecommunications Facilities in the rights-of-way for different carriers shall be located no closer than 600 feet measured in all directions from each other.
 - (i) For Wireless Telecommunications Facilities that qualify for a Special Exception Permit in the right-of-way, such facilities shall be located no closer than 400 feet measured in all directions to another Wireless Telecommunications Facility of the same carrier and shall be located no closer than 200 feet measured in all directions to another Wireless Telecommunications Facility for different carriers.
 - (d) All Wireless Telecommunications Facilities shall make maximum use of universal antennae capable of serving multiple carriers.
 - (e) Stealth and concealment shall have priority over collocation.
 - (f) Subject to (d) and (e) above, towers shall have provisions to allow for multiple carriers.
- U. To the extent applicable, every applicant for a Special Exception Permit shall comply with Sections 196-6 (A-D), (E 1-8, 10, 12-20, 22, 24), (F-H), (K), (N), (O), (Q), (S), and (T).
- V. To the extent applicable, every applicant for an Eligible Facility Permit shall comply with Sections 196-6 (A-D), E (1-8, 10, 11-14, 18-21, and 24-25), G, H, I, J, N, O, Q and R.

§ 196-7. Failure to pursue an application.

Applicants shall respond to all requests or notices from the City with respect to an application promptly, so that City may meet any applicable deadlines for action on an application. Where an applicant fails to promptly respond, the Corporation Counsel is authorized to notify an applicant that its application is denied for failure to pursue that application, without prejudice to resubmittal of an application. Without limiting the foregoing, if an applicant is notified that its application is incomplete, and there is fails to complete the application within sixty (60) days of the date of the notice, the Corporation Counsel is authorized to notify an applicant that its application is denied for failure to pursue that application, without prejudice to resubmittal of an application even if there is no deadline applicable to action on the application.

§ 196-8. Height of Wireless Telecommunications Facilities.

- A. Wireless Telecommunications Facilities shall be no higher than the minimum height necessary. Unless an area variance for height is granted by the Board of Appeals, the

maximum height of Wireless Telecommunications Facilities approved pursuant to Section 196-5(H)(4)(g) shall be 80 feet and the maximum height of Wireless Telecommunications Facilities located outside the rights of way shall be 90 feet, based on three collocated Antenna arrays and ambient tree height of 70 feet. Height shall be measured from ground level, to the highest point on the Wireless Telecommunications Facility, or if higher, the highest point on any extension to an Existing Supporting Structure required to support the Wireless Telecommunications Facility. In Towers, universal antennas allowing multicarrier use will be utilized to the extent technologically possible and maximum height shall be reduced accordingly.

- B.** The maximum height of any Wireless Telecommunications Facility constructed after the effective date of this chapter shall not exceed that which shall permit operation without artificial lighting of any kind in accordance with municipal, county, state and/or any federal law and/or regulation.

§ 196-9. Visibility of facilities.

- A.** Excluding indicator lights satisfying the requirements of Section 196-6, Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by law.
- B.** Except where inconsistent with concealment elements, Towers shall be of a galvanized finish, or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Council and the Board of Architectural Review, and shall be maintained in accordance with the requirements of this chapter.
- C.** Excluding indicator lights satisfying the requirements of Section 196-6, if lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within 1,500 feet of all property lines of the parcel on which the Wireless Telecommunications Facility is located.

§ 196-10. Security of facilities.

All Wireless Telecommunications Facilities shall be secured in a manner which prevents unauthorized access to hazardous components. Specifically:

- A.** Where possible, Wireless Telecommunications Facilities and modifications to Existing Supporting Structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; Towers will be fenced and shielded to prevent unauthorized access to the structure unless the Tower is a Stealth Facility or the fencing or shielding is inconsistent with required Concealment elements; and

- B. To the extent possible, Wireless Telecommunications Facilities shall be installed so that powered elements are readily accessible only to persons authorized to operate or service them.

§ 196-11. Signage

For Towers, unless the City determines that the signage required under this section would be inconsistent with minimizing visual impact, Wireless Telecommunications Facilities shall contain a sign no larger than four square feet to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point of the site. No other signage, including advertising, shall be permitted on any Wireless Telecommunications Facilities, unless required by law, or unless the signage is part of a concealment element. Signs shall be approved by the Board of Architectural Review. Nothing in this section affects rules with respect to signage that may apply to Existing Support Structures.

§ 196-12. Lot size and setbacks. [Amended 10-1-2003 by L.L. No. 7-2003]

With the exception for Towers approved pursuant to Section 196-5(H)(4)(g):

- A. All proposed Towers shall be set back from abutting parcels, recorded rights-of-way and road and street lines a distance sufficient to substantially contain on site all ice-fall or debris from a Tower or Tower failure and to preserve the privacy and sanctity of any adjoining properties.
- B. Towers, other than Towers placed on an existing Supporting Structure shall be setback from any property line at least a distance equal to the height of the facility plus 10 feet, or the existing setback requirement of the underlying zoning district, whichever is greater. Further, any Accessory Facility or Structure shall be located so as to comply with the minimum zoning setback requirements for the principal building on the property on which it is situated.
- C. Where a Wireless Telecommunications Facility involves an attachment to an existing building or Supporting Structure other than a Supporting Structure in the rights of way, the facility, including but not limited to Antennas, accessory Supporting Structures, and/or other appurtenances, shall be setback from any property line the distance of the setback requirement of the underlying zoning district and shall comply with the setbacks set forth in Section 196-5(I)

§ 196-13. Retention of expert assistance and reimbursement by applicant.

- A. The Council may hire any consultant and/or expert necessary to assist the Council in reviewing and evaluating the application and any requests for recertification.
- B. An applicant shall deposit with the City funds sufficient to reimburse the City for all reasonable costs of consultant and expert evaluation and consultation to the Council in connection with the review of any application. The necessary application fee(s) shall be

set annually by the City Council and the consultant and expert deposit shall be established on an application by application basis.

- C. The total amount of the funds set forth in Subsection B of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed by the Council or its consultant/expert to complete the necessary review and analysis. Additional funds, as required, shall be paid by the applicant. The initial amount of the escrow deposit shall be established at a pre-application meeting with the City. Notice of the hiring of a consultant/expert shall be given to the applicant at or before this meeting.

§ 196-14. Existing Facilities.

All Wireless Telecommunications Facilities existing on or before the original effective date of this chapter shall be allowed to continue as they presently exist; provided, however, any owner of such existing facility must submit the Inventory Report Form and provide the City information set forth in Section 196-17 to the extent it applies and any modification to existing facilities must comply with this chapter. All other wireless telecommunications facilities existing prior to January 14, 2019 must apply for a Special Use Permit, Special Exception Permit or Eligible Facility Permit and otherwise come into compliance with this Chapter.

§ 196-15. Public hearing required for Special Use Permit and Special Exception Permit.

- A. Public hearing and public notification by applicant. Before the City Council acts on any application for a Special Use Permit or Special Exception Permit, it shall hold a public hearing thereon in accordance with the General City Law. To facilitate notification of the public, a public notification list shall be prepared by the applicant, using the most current City of Rye Tax Maps and Tax Assessment Roll, showing the Tax Map sheet, black and lot number, the owners name and owner's mailing address for each property located wholly or partially within 300 feet of the perimeter of the property in any direction. If a property on the public notification list is also listed as a cooperative or an apartment on a list entitled "Apartment List City of Rye," maintained by the City Assessor's office, the notice shall only be mailed to the property owner of record. When the public hearing is required by the City Council, the applicant shall deliver a copy of the public notice provided by the City Planner to all of the property owners contained on the public notification list by certified mail with certificate of mailing.

The above mailing and posting notice requirements must be performed in accordance with the following requirements:

- (1) The delivery of mailing shall be limited solely to the public notice provided by the City Planner.
- (2) The public notice shall be mailed to all property owners with a certificate of mailing (no return receipt necessary) at a post office or official depository of the Postal Service, at least 14 calendar days prior to the date of the public hearing.

- (3) At least five business days prior to the public hearing, the applicant shall provide to the City Planner all certificates of mailing.
 - (4) For all application for a Special Use Permit and Special Exception Permit, at least one week preceding the date of the public hearing, at least one sign, a minimum of two feet by three feet in size and carrying a legend prescribed by the City Council announcing the public hearing, shall be posted on the property. The height of the lettering on the sign shall be no less than two inches, except that the words “PUBLIC NOTICE” appearing at the top of the sign shall have no less than five-inch-high lettering. The sign shall be in full public view from the street and not more than 30 feet therefrom. The sign shall be removed from the property within two days after the public hearing.
- B.** The Council shall schedule the public hearing referred to in Subsection A of this section once it finds the application is complete. The Council, at any stage prior to issuing a Special Use Permit or Special Exception Permit, may require such additional information as it deems necessary.
- C.** Council may waive any requirement hereof and of Section 196-16 as required to comply with state or federal law.

§ 196-16. Action on application for Special Use Permits and Special Exception Permits.

- A.** Subject to the requirements of any effective state and federal law or FCC order, the Council will undertake a review of an application pursuant to this chapter in a timely fashion and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public’s interest and need to be involved, and the applicant’s desire for a timely resolution.
- B.** The Council shall refer any application or part thereof to the Board of Architectural Review (BAR) and may refer any application or part thereof to the Planning Commission for their advisory review and comment prior to the public hearing. This referral shall not preclude any final approvals of these or other City boards or departments required by this chapter or other law.
- C.** After the public hearing and after formally considering the application, the Council may approve and issue or deny a Special Use Permit or Special Exception Permit. Its decision shall be in writing and shall be based on substantial evidence in the record. The burden of proof for the grant of the permit shall always be upon the applicant.
- D.** If the Council approves the Special Use Permit or Special Exception Permit for a Wireless Telecommunications Facility, then the applicant shall be notified of such approval, in writing, within 10 calendar days of the Council’s action, and the Special Use Permit shall be issued within 30 days after such approval.

- E. If the Council denies the Special Use Permit or Special Exception Permit for a Wireless Telecommunications Facility, then the applicant shall be notified of such denial, in writing, within 10 calendar days of the Council's action.
- F. The City's decision on an application for a Special Use Permit or Special Exception Permit for a Wireless Telecommunications Facility shall be supported by substantial evidence contained in a written record.

§ 196-17. Recertification of Special Use Permits, Special Exception Permits, and Eligible Facility Permit

- A. At any time between 12 months and six months prior to the five-year anniversary date after the effective date of the permit and all subsequent fifth anniversaries of the original Special Use Permit Special Exception Permit or Eligible Facility Permit for a Wireless Telecommunications Facility, the holder of such permit shall submit a written request for recertification. In the written request for recertification, the holder of such Special Use Permit or Special Exception Permit shall note the following:
 - (1) The name of the holder of the Special Use Permit, Special Exception Permit or Eligible Facility Permit for the Wireless Telecommunications Facility.
 - (2) If applicable, the number or title of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit.
 - (3) The date of the original granting of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit.
 - (4) Whether the Wireless Telecommunications Facility has been moved, relocated, rebuilt, repaired or otherwise modified since the issuance of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit
 - (5) If the Wireless Telecommunications Facility has been moved, relocated, rebuilt, repaired or otherwise modified, then whether the Council approved such action, and under what terms and conditions, and whether those terms and conditions were complied with and abided by.
 - (6) Any requests for waivers or relief of any kind whatsoever from the requirements of this chapter and any requirements for a Special Use Permit, Special Exception Permit, or Eligible Facility Permit.
 - (7) That the Wireless Telecommunications Facility is in compliance with the Special Use Permit, Special Exception Permit, or Eligible Facility Permit and compliance with all applicable codes, laws, rules and regulations.
 - (8) Whether the facility is still being used; and whether it is the least intrusive means of providing service, including whether it can be reduced in size, combined with

or replaced by other facilities or otherwise altered to make it less visible or less audible.

- (9) Whether it complies with then applicable requirements of the City Code for placement of Wireless Telecommunications Facilities.
 - (10) Whether there have been any changes in the legal status of the applicant or any entity whose facilities are part of the Wireless Telecommunications Facility; and whether all required authorizations and consents are still in full force and effect.
- B.** If, after such review, the Council determines that the permitted Wireless Telecommunications Facility is in compliance with the Special Use Permit, Special Exception Permit, or Eligible Facility Permit and all applicable codes, laws and rules; that it continues to be used in the provision of wireless services; that all relevant entities continue to have all necessary authorizations; and that the facility cannot be modified or replaced so that it is less visible or less audible, or has a lesser adverse impact on aesthetics, community character or property values, then the Council shall issue a recertification Special Use Permit, Special Exception Permit, or Eligible Facility Permit for the Wireless Telecommunications Facility, which may include any new provisions or conditions that may be lawfully imposed, or that are required by codes, law or regulation.
- C.** If the Council does not complete its review, as noted in Subsection B of this section, prior to the five-year anniversary date of the original permit, or subsequent fifth anniversaries, then the applicant for the permitted Wireless Telecommunications Facility shall receive an extension of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit for up to six months, in order for the Council to complete its review.
- D.** If the holder of a Special Use Permit, Special Exception Permit. Or Eligible Facility Permit for a Wireless Telecommunications Facility does not submit a request for recertification of such permit within the time frame noted in Subsection A of this section, or if the Council finds that the Wireless Telecommunications Facility has been moved, relocated, rebuilt, or otherwise modified without approval of such having been granted by the Council under this chapter, or that the conditions for recertification have not been met, then such Special Use Permit, Special Exception Permit, or Eligible Facility Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit or subsequent fifth anniversaries, unless the holder of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit adequately demonstrates to the Council that extenuating circumstances prevented a timely recertification request. If the Council agrees that there were legitimately extenuating circumstances, then the holder of the permit may submit a late recertification request. Council may also recertify subject to additional conditions that it establishes, and contingent on satisfaction of those conditions.

§ 196-18. Extent and parameters of Special Use Permit, Special Exception Permit and Eligible Facility Permit.

The extent and parameters of a Special Use Permit, Special Exception Permit or an Eligible Facility Permit for a Wireless Telecommunications Facility shall be as follows:

- A. Such permit shall be nonexclusive.
- B. Such permit shall not be assignable or transferable without the express written consent of the Council.
- C. Such permit may be revoked, canceled or terminated for a violation of the conditions and provisions of the Special Use Permit or Special Exception Permit for a Wireless Telecommunications Facility, or for a material violation of this chapter or applicable law.
- D. Such permit shall be valid for a period of five (5) years, or such longer period as is required by state law, but the permit may be recertified upon application, which application must demonstrate:
 - (1) The Wireless Telecommunications Facility is still in use; and for facilities where a demonstration of need or effective prohibition was required, that the facility remains necessary or that recertification is required to avoid an effective prohibition; and
 - (2) The impact of the Wireless Telecommunications Facility cannot reasonably be further minimized.

§ 196-19. Application fee.

- A. At the time that a person submits an application for a Special Use Permit or Special Exception Permit for a new Wireless Telecommunications Facility, such person shall pay an application fee to the City of Rye as set annually by the City Council set forth in the fee schedule. If the application is for a Special Use Permit for collocating on an Existing Wireless Telecommunications Facility, the applicant shall also pay a fee as set forth in the fee schedule.
- B. Applicants for recertification of a Special Use Permit or Special Exception Permit for a Wireless Telecommunications Facility shall also pay a fee as set forth in the fee schedule.

§ 196-20. Performance security.

The applicant and the owner of record of any portion of a Wireless Telecommunications Facility, and the owner of real property on which the Wireless Telecommunications Facility is located (unless the property is publicly owned) shall be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount and with such sureties as are deemed sufficient by the Council to assure the faithful performance of the terms and conditions of this chapter and conditions of any Special Use Permit or Special Exception Permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit or Special Exception Permit and/or until the removal of the Wireless Telecommunications Facility and any necessary site restoration is completed. The

failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the Special Use Permit or Special Exception Permit and shall entitle the Council to revoke the Special Use Permit or Special Exception Permit after prior written notice to the applicant and holder of the permit.

§ 196-21. Reservation of authority to inspect Wireless Telecommunications Facilities.

- A. In order to verify that the holder of a Special Use Permit, Special Exception Permit, or Eligible Facility Permit for a Wireless Telecommunications Facility and any and all lessees, renters and/or licensees of a Wireless Telecommunications Facility place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including but not limited to Towers, Antennas and buildings or other Supporting Structures constructed or located on the permitted site. The Applicant shall pay for costs associated with such an inspection
- B. Payment of such costs shall be made to the City within 30 days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is (are) appealed in accordance with the procedures set forth in this chapter, said reimbursement payment must still be paid to the City, and the reimbursement shall be placed in an escrow account established by the City specifically for this purpose, pending the final decision on appeal.

§ 196-22. NIER certification.

- A. Every Wireless Telecommunications Facility must meet FCC RF emission standards as the same may be amended from time to time.
- B. Except as prohibited by law, City may require any person controlling a Wireless Telecommunications Facility to provide proof that the Wireless Telecommunications Facility satisfies FCC RF emission standards.
- C. An applicant for a Special Use Permit, Special Exception Permit, or Eligible Facility Permit, shall:
 - (1) At the time of an application provide information sufficient to show that the facility will comply with FCC RF standards; and
 - (2) Immediately after installation, submit field test measurements sufficient to show compliance with FCC RF standards at full operational power. Measurements should be cumulative, and not just based on facilities that a particular person may own or install at a location.
- D. All Special Use Permit, Special Exception Permit, and Eligible Facility permit holders shall submit an annual recertification showing that the Wireless Telecommunications Facility satisfies FCC RF emission standards.

§ 196-23. Liability insurance.

- A. A holder of a Special Use Permit or Special Exception Permit for a Wireless Telecommunications Facility shall secure and at all times maintain public liability insurance, property damage insurance and umbrella insurance coverage for the duration of the Special Use Permit in amounts as set forth below:
 - (1) Special Use Permits - Commercial general liability: \$5,000,000 per occurrence, \$10,000,000 aggregate
 - (2) Automobile coverage: \$1,000,000 per occurrence, \$2,000,000 aggregate.
- B. The commercial general liability insurance policy shall specifically include the City and its officials, employees and agents as additional insureds.
- C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least 30 days' written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the City at least 15 days before the expiration of the insurance which such policies are to renew or replace.
- F. Before construction of a permitted Wireless Telecommunications Facility is initiated, but in no case later than 15 days after the grant of the Special Use Permit or Special Exception Permit, the holder of the Special Use Permit or Special Exception Permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts. All insurance carriers must have an A.M. Best rating of at least A and be authorized to do business in New York.

§ 196-24. Indemnification.

Any Special Use Permit or Special Exception Permit issued pursuant to this chapter shall contain a provision with respect to indemnification. Such provision shall require the holder of the Special Use Permit, Special Exception Permit, or Eligible Facilities Permit, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless and exempt the City, officials of the City, its officers, agents, servants, and employees from any and all penalties, damage or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of a Wireless Telecommunications Facility within the City (including, by way of example and not limitation, the same resulting from modification to an Existing Supporting Structure). With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.

§ 196-25. Penalties for offenses.

- A. Civil sanctions. Any person who violates any of the provisions of this chapter shall be liable for a civil penalty of not more than \$5,000 for every such violation. Each consecutive day of violation will be considered a separate offense. Such civil penalty may be released or compromised by the City Council. In addition, the City Council shall have power, following a hearing, to direct the violator to comply with the provisions of this chapter.
- B. Criminal sanctions. Any person, firm or corporation who or which willfully violates any of the provisions of this chapter or permits promulgated thereunder, excluding provisions set forth in the rules and regulations promulgated thereunder, upon conviction thereof of the first offense, shall be guilty of a violation punishable by a fine of not less than \$5,000 and not more than \$10,000 and, for a second offense and each subsequent offense, shall be guilty of a violation punishable by a fine of not less than \$10,000 nor more than \$20,000 or a term of imprisonment of not more than 15 days, or both. Each consecutive day of violation will be considered a separate offense.
- C. Notwithstanding anything in this chapter, the holder of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit for a Wireless Telecommunications Facility may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the holder of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit to termination and revocation of such permit. The City may also seek injunctive relief to prevent the continued violation of this chapter.

§ 196-26. Default and/or revocation.

- A. If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit, then the Council shall notify the holder of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit, in writing, of such violation. Such notice shall specify the nature of the violation or noncompliance and that the violations must be corrected within seven (7) days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this chapter, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Council may, at its sole discretion, order the violation remedied within 24 hours.
- B. If within the period set forth in Subsection A above the Wireless Telecommunications Facility is not brought into compliance with the provisions of this chapter, or of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit or substantial steps are not taken in order to bring the affected Wireless Telecommunications Facility into compliance, then the Council may revoke such Special Use Permit or Special

Exception Permit for a Wireless Telecommunications Facility and shall notify the holder of the Special Use Permit or Special Exception Permit within 48 hours of such action.

- C. Without limiting the foregoing, if a Supporting Structure, Accessory Facility or Structure, or Tower no longer complies with applicable codes, and may no longer be safely used to support other elements of a Wireless Telecommunications Facility, the City may require removal of those elements, in addition to taking any action against the owner of the Supporting Structure or Tower.

§ 196-27. Removal of Wireless Telecommunications Facilities.

- A. Under the following circumstances, the Council may determine that the health, safety and welfare interests of the City warrant and require the removal of a Wireless Telecommunications Facility:

- (1) A Wireless Telecommunications Facility with a permit has been abandoned (i.e., not used as a Wireless Telecommunications Facility) for a period exceeding 90 days or a total of 180 days in any three-hundred-sixty-five-day period, except for periods caused by force majeure or acts of God.
- (2) A permitted Wireless Telecommunications Facility falls into such a state of disrepair that it creates a health or safety hazard.
- (3) A Wireless Telecommunications Facility has been located, constructed or modified without first obtaining the required Special Use Permit, or any other necessary authorization.
- (4) A Wireless Telecommunications Facility that has allowed its Special Use Permit or Special Exception Permit to lapse or has otherwise failed to timely comply with providing the City with the required inspection reports, NIER certifications or other information in order to confirm such facility's compliance with this Chapter.

- B. If the Council makes such a determination as noted in Subsection A of this section, then the Council shall notify the holder of the Special Use Permit or Special Exception Permit for the Wireless Telecommunications Facility within 48 hours that said Wireless Telecommunications Facility is to be removed. The Council may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facility.

- C. The holder of the Special Use Permit or Special Exception Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facility, and all associated Supporting Structures or portions of Supporting Structures and Accessory Facilities and Structures used solely by it, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Council. However, if the owner of the property upon which the Wireless Telecommunications

Facility is located wishes to retain any access roadway to the Wireless Telecommunications Facility, the owner may do so with the approval of the Council.

- D. If removal, or substantial progress to complete removal has not occurred within 90 days after the permit holder has received notice, then the Council may order officials or representatives of the City to remove the Wireless Telecommunications Facility and associated structures at the sole expense of the owner or permit holder.
- E. If the owner of property that is removed does not claim the property and remove the property from the site to a lawful location within 10 days, then the City may take steps to declare the property abandoned and sell it and its components.
- F. Notwithstanding anything in this section to the contrary, the Council may approve a temporary use agreement/permit for the Wireless Telecommunications Facility, for no more 90 days, during which time a suitable plan for removal, conversion or relocation of the affected Wireless Telecommunications Facility shall be developed by the holder of the permit, subject to the approval of the Council, and an agreement to such plan shall be executed by the holder of the permit and the City. If such a plan is not developed, approved and executed within the ninety-day time period, then the City may take possession of and dispose of the affected Wireless Telecommunications Facility in the manner provided in this section.

§ 196-28. Applicability of application requirements and permit conditions.

- A. Any applicant can request the waiver of application requirements that are inapplicable to their permit application. Such request shall be in writing. Requests should be discussed at the pre-application meeting. The applicant shall have the burden of supporting such requests. Determinations as to applicability of application requirements shall be made by the City.
- B. In determining permit conditions, the City Council can waive inapplicable permit requirements, consistent with the policy goals and priorities of this chapter. The applicant shall have the burden of supporting such requests. Determinations as to applicability of permit condition requirements shall be made by the City Council.

§ 196-29. Adherence to state and/or federal rules and regulations.

- A. To the extent that the holder of a Special Use Permit, Special Exception Permit, or Eligible Facility Permit for a Wireless Telecommunications Facility has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a Special Use Permit, Special Exception Permit, or Eligible Facility Permit shall adhere to and comply with all applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

- B.** To the extent that applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting and security, are changed and/or are modified during the duration of a Special Use Permit, Special Exception Permit, or Eligible Facility Permit for a Wireless Telecommunications Facility, then the holder of such permit shall conform the permitted Wireless Telecommunications Facility to the applicable changed and/or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard or provision, or earlier as may be required by the issuing entity.

§ 196-30. Conflict with other laws.

Where this chapter differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the county, state or federal government, the more restrictive or protective of the City and the public shall apply.

§ 196-31. Severability.

If any phrase, sentence, part, section, subsection or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

§ 196-32. Enforcement.

This chapter shall be enforced by the Building Inspector or the City Engineer in the same manner as provided in Chapter 197, Zoning.

§ 196-33. Authority.

This chapter is enacted pursuant to the Municipal Home Rule Law. This chapter shall supersede the provisions of City law to the extent it is inconsistent with the same, and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other applicable statute.

Section 2: Effective date.

This local law will take effect immediately on filing in the office of the Secretary of State.

ROLL CALL

AYES: Mayor Cohn, Councilmembers Goddard, Hurd, Mecca, Souza, Stacks
NAYS: None
ABSENT: Councilwoman Tagger-Epstein

13. Approve a license agreement with Rye Town Park Commission to grant them permission to install footings underneath City owned property as part of the rebuilding of the

Dearborn Avenue seawall.
Roll Call.

City Manager Serrano said that the Rye Town Park section of the Dearborn Avenue Seawall collapsed after Hurricane sandy. The Town has been looking to replace the wall. To replace the wall, the Town would need to tear up City of Rye sidewalks and replace then order to fix the wall. This agreement would allow them to do that.

Corporation Counsel Wilson explained that the term of the license is temporary, allowing for the length of the construction period. There would also be a permanent license agreement that allows the footings to be placed in perpetuity under the sidewalks.

City Manager Serrano assured the Council that the Town would be providing the required insurances to the City. There was general discussion about the project.

Councilwoman Hurd made a motion, seconded by Councilman Stacks, to authorize the City Manager to enter into a license agreement with Rye Town Park Commission to grant them permission to install footings underneath City owned property as part of the rebuilding of the Dearborn Avenue seawall.

ROLL CALL

AYES: Mayor Cohn, Councilmembers Goddard, Hurd, Mecca, Souza, Stacks
NAYS: None
ABSENT: Councilwoman Tagger-Epstein

14. Appointment of the 2019 Deputy Mayor by the Mayor.

Mayor Cohn appointed Councilwoman Hurd as Deputy Mayor for the 2019 calendar year.

15. Appointment of a Council Member as Trustee of the Police Pension Fund, by the Mayor with Council approval, for a one-year term.

Mayor Cohn explained that the Council did not need to pursue this, as the last beneficiary of the police pension fund which was established in 1942 has passed away. There can be no future beneficiaries. He said that the Council would take steps to remove this.

16. Designation of the City Council’s Audit Committee by the Mayor.

Mayor Cohn with unanimous Council approval, voted to adopt the following resolution:

RESOLVED, that Councilmembers Souza and Stacks be appointed to the City Council’s Audit Committee for a one-year term commencing January 1, 2019.

17. Designation of the City Council Liaisons by the Mayor.

This item was moved to the next meeting of the City Council.

18. Designation of the official City newspaper.

Mayor Cohn made a motion, unanimously carried, to designate the Journal News as the official City newspaper for the purpose of publishing legal notices.

19. Designation of the amounts of faithful performance bonds:

By way of background, Section § C23-3, “Surety bonds” of the City Charter stipulates that “The City Comptroller, City Clerk, City Judge, Acting City Judge, City Marshal and such other officers and employees as may be specified by the Council shall give bond for the faithful performance of their duties. The bond shall be in such sum and with such corporate sureties as may be approved by the Council. The premium of all such surety bonds shall be paid by the city.”

Councilwoman Mecca made a motion, seconded by Councilman Stacks and unanimously carried, to designate faithful performance bonds for the City Comptroller, City Clerk and City Marshal in the following amounts:

A. City Comptroller	\$ 1,000,000
B. City Clerk	\$ 500,000
C. City Marshall	\$ 100,000

ROLL CALL

AYES: Mayor Cohn, Councilmembers Goddard, Hurd, Mecca, Souza, Stacks

NAYS: None

ABSENT: Councilwoman Tagger-Epstein

20. Appointments to Boards and Commissions, by the Mayor with Council approval.

Mayor Cohn reappointed Anthony Piscionere and Scott Beechert to the Board of Appeals for a three-year term, to expire on January 1, 2022. Mayor Cohn designated Alan Weil as the chairperson of the Board of Appeals for the 2019 calendar year.

Councilwoman Hurd made a motion, seconded by Councilman Mecca and unanimously carried, to approve the Mayor’s appointments.

Mayor Cohn announced that as Carolyn Cunningham was stepping down from the Conservation Commission/ Advisory Council (CCAC), he would be appointing Tracy Stora as the chairperson.

Mayor Cohn also stated that Russell Gold has stepped down from the Rye Town Park Advisory Committee. He thanked Mr. Gold for his service and appointed Elinore White as chairperson.

21. Miscellaneous communications and reports.

Councilwoman Souza announced that there was a recent Chamber of Commerce meeting. The Rye Youth Council was there promoting their employment service, RYCES.org. The site caters to residents ages 14-25 who are looking for work. Anyone with work is encouraged to post on that site.

Councilwoman Hurd thanked the Council's previous spring intern Caroline Mullooly, who returned to Rye for a recent visit.

22. Old Business/New Business.

There was nothing discussed under this agenda item.

23. 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 8:40 P.M.

Respectfully submitted,

Carolyn D'Andrea
City Clerk