

***APPROVED MINUTES*** of the Regular  
Meeting of the City Council of the City of Rye held in  
City Hall on October 2, 2019, at 7:30 P.M.

PRESENT:

JOSH COHN, Mayor  
SARA GODDARD  
EMILY HURD  
JULIE SOUZA  
BENJAMIN STACKS  
DANIELLE TAGGER-EPSTEIN  
Councilmembers

ABSENT:

RICHARD MECCA,  
Councilmember

The Council convened at 6:30 P.M. Councilman Mecca made a motion, seconded by Councilwoman Hurd, to enter into executive session to discuss litigation and personnel matters. At 7:34 P.M., Councilman Mecca made a motion, seconded by Councilwoman Hurd, to exit executive session and commence the regular meeting of the City Council. The meeting began at 7:39 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.

3. General Announcements.

Councilwoman Tagger-Epstein said that the Annual Halloween Window Painting will be held October 20, 2019. She was happy to announce that once again, there will be a sensory room at the Square House during the event, offering a safe space for families who have special needs. There will be games and activities, and parental supervision is needed. She said that the sensory room was very successful last year and that she looks forward to another great event.

Councilwoman Souza announced that pumpkin carving has been added as an activity at this year's Halloween Window Painting. She encouraged all interested to sign up.

Councilman Stacks announced that the Closing Day Scramble will be held at the Rye Golf Club on October 20, 2019.

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

Mauricio Vilches, 131 Purchase Street, addressed the Council. He was upset that he had been getting parking tickets for parking on Wappanocca Avenue for more than two hours at a time. He asked that the Council consider special on-street permit parking. Mayor Cohn and the Council acknowledged the issue and Mr. Vilches' concerns. City Clerk D'Andrea invited Mr. Vilches to contact the clerk's office to learn about the available parking permits.

Douglas Carey, 131 Purchase Street, addressed the Council. He thanked them for their courage to decide against the Verizon installation. He said that the progression of this type of growth and the number of antennas in the area had been overwhelming. He said that he was at the meeting to ask that the Council demonstrate that same courage going forward to be stewards of the environment. He felt concerned about flooding and other local environmental issues. Mr. Carey felt concerned specifically about the recent discussion about turfing Nursery Field. He was upset about the material used for the turf and that the potential for flooding.

5. Draft unapproved minutes of the Regular Meeting of the City Council held September 18, 2019

Councilwoman Souza made a motion, seconded by Councilwoman Hurd and unanimously carried, to approve the minutes of the regular meeting of the City Council held September 18, 2019.

6. Continuation of a public hearing for a Verizon Wireless application for a special permit to install a public utility wireless communication facility on the roof of the Verizon building located at 182 Purchase Street.

Judi Eisenberg, 216 Purchase Street, addressed the Council. She said that she was the representative for her building tenants. She said that the neighborhood was concerned about the project and the property values. She felt concerned about a number of other items. She said they would like a different location to be considered for this proposed installation.

Andrew Avalone, 240 Purchase Street, stated that the location proposed was a heavily residential area. He said that the proposed cell tower upgrades may not be good. He was concerned about traffic disruption, noise during the continued operation, potential negative impact on resident communications, and potential health concerns.

Mayor Cohn responded that as a matter of law, the City Council was prohibited from considering potential health concerns with regard to this application.

Raul Bello, 36 New Street, felt concerned about the new structure. He felt troubled about the health impacts on residents. He further said he was concerned about the noise and traffic as

well. He said that this was the first they were hearing about the application, and as such would appreciate more time to look at the plans.

Mayor Cohn reiterated the prohibition to consider health concerns by a matter of federal law.

Nicholas Szczerba, 54 New Street, said that at one time 150 Purchase Street was being considered for the same thing and the City Council rejected it. He felt concerned about the potential safety and health impacts.

Leslie Snyder, Snyder & Snyder LLP, addressed the Council and community on behalf of the applicant, Verizon Wireless. She said this facility has been strategically designed and located on the rooftop to fit in with the current façade so that the antennas are concealed. She said that the proposed plan complies fully with City Code Chapter 196, “Telecommunications.” She stated that the proposed facility would provide enhanced communications to the area. She said that the BAR reviewed the application and on September 9, 2019 unanimously voted in favor of the application and that the facility had been integrated to match the character of the building. Ms. Snyder said that in response to the resident comments tonight at the meeting, there will be no traffic created by this proposed installation, as this is an unmanned facility. With respect to health concerns, she reiterated that the Council could not consider those as a matter of law. However, she said that as a matter of fact, the proposed facility does comply with federal RF emission regulations. To address the concern about property values, she said it has been found throughout Westchester County that residential buyers are less likely to purchase a home if an area does not have adequate wireless coverage. She further stated that this cell phone facility will not interfere with current communications or technology. There will be no “fall zone,” as no tower is being built. She said that the application is attempting to install rooftop equipment that has been sealed from view. She asked the Council to close the public hearing and due to the shot clock and the requirements that you vote this evening, issue a negative declaration under SEQRA and issue the permit.

Councilwoman Hurd said that she disagreed with the findings of the BAR. She said that she did not think there were similar rooftops that were close by. She said this type of installation would only be appropriate on tall structures, identified in the City Code as four stories or more; she said that this building was only two stories and not a tall structure particularly relative to New Street where the homes are at the same elevation as the installation.

Ms. Snyder said that this was not a two-story structure and that the application complied with the City Code, as it prescribes the use of existing structures and not residential structures. She demonstrated the visual analysis that showed stone on the building. She said that all residents would see is the bulkheads that conceal the antennas.

Councilwoman Hurd added that enforcing setback rules is critical for maintaining our residential community.

Councilwoman Hurd made a motion, seconded by Councilwoman Souza and unanimously carried, to close the public hearing.

Corporation Counsel Wilson stated that what the applicant was asking of the Council to issue a special use permit under City Code Chapter 196 and that the Council waive certain requirements, such as setback for the installation.

Mayor Cohn read the following resolution:

**RESOLUTION OF THE RYE CITY COUNCIL DENYING THE APPLICATION  
SUBMITTED BY NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON  
WIRELESS TELECOMMUNICATIONS FACILITY**

**WHEREAS**, the BAR, as required, did review the Application and issued an advisory opinion finding that the type and color of material proposed to encase the three structures was three dimensional and was consistent with the façade of the existing building; and

**WHEREAS**, the Applicant is proposing three (3) different Facility locations on top of the existing building on the Site – one Facility on the northern side of the roof; one Facility on the southern side of the Facility; and a larger Facility in the middle of the roof; and

**WHEREAS**, the City Council scheduled a public hearing (“Public Hearing”) for September 18, 2019 in connection with the Special Use Permit Application and in accordance with Section 196-15 of the Code; and

**WHEREAS**, proper notice was published and the Applicant notified all affected property owners by certified mail regarding the Public Hearing on September 18, 2019 in accordance with the City’s Assessor’s Records, and filed an Affidavit of Service with the Planning Department that such property owners were so notified; and

**WHEREAS**, the Applicant posted a sign at the site on August 30, 2019 noticing the public of the City Council’s Public Hearing and filed an Affidavit of Posting with the Planning Department that such sign was posted; and

**WHEREAS**, the City Council conducted a Public Hearing on September 18, 2019; and

**WHEREAS**, the City Council continued the Public Hearing until October 2, 2019; and

**WHEREAS**, the City Council listened to comments from the public at the Public Hearing and considered written comments it had received; and

**WHEREAS**, the Public Hearing was closed on October 2, 2019; and

**WHEREAS**, the definition of “Tall Structure” set forth in Chapter 196 states, in relevant part, that a tall structure includes, but is not limited to, ...nonresidential rooftops at least four stories in height or greater....”; and

**WHEREAS**, a “Story” is defined under the Rye City Zoning Code as “[t]hat portion of a building included between the surface of any floor and the surface of the floor next above it, or, if there be no floor above it, then the space between the floor and the ceiling next above it. A mezzanine shall be deemed a full story where it covers more than 50% of the ground story area.”

**WHEREAS**, the existing building on the Site is two Stories; and

**WHEREAS**, the RF analysis is based on “street level” data and there is no information pertaining to any RF analysis at the adjacent building or on New Street; and

**WHEREAS**, at the Public Hearing it was established that the building at the Site was not a tall structure within the meaning of Chapter 196; and

**WHEREAS**, a “Stealth Facility” is defined, in relevant part as a wireless telecommunications facility that is either: (1) virtually imperceptible to the casual observer, such as an antennae 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; and

**WHEREAS**, in accordance with Sections 196-1 “Purpose and legislative intent” and 196-4 “Policy and goals for special use permits and special exception permits,” the City Council has taken into consideration the health, safety, public welfare and environment and the potential adverse visual and sonic impacts on the community and its character;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council hereby makes the following finding of fact in connection with the Special Use Permit with the understanding that the Applicant must show it meets the standards in Section 196-5(G) by clear and convincing evidence:

1. The Applicant has not established that the Facility is designed and placed to minimize the visual impact on the community as required under Section 196-5(G)(1)(c).
  - a. The Facility is proposed on a Site that has easily over 100 households within 750 feet. Although the Applicant states that it meets the criteria in Chapter 196 because the Site is used for non-residential purposes, the immediate neighborhood is a dense residential area.
  - b. The Applicant proposes to create three vertical architectural oddities on the rooftop along a busy road through the heart of downtown Rye. There are no similar rooftops in the vicinity and, due to the large number of apartment buildings and the topography of the area with higher residential streets immediately behind and above the Site, the rooftop is highly visible from other residential units.

- c. Two of the antennae are proposed to be located within the non-conforming front yard setback and side yard setbacks resulting in the Facility/ies being located closer to the street and to the adjoining residential units than permitted.
2. The Applicant has not demonstrated that the Facility will not significantly alter the Site. Indeed, the installation of the three Facilities will dramatically change the visual characterization from Purchase Street, the surrounding buildings and New Street.
3. The Applicant has not demonstrated that the Facility is necessary for the provision of services and that its Facility location is the least intrusive for providing service as required in Section 196-5(G)(1)(e).
  - a. The Site is in a residential zone and residential area.
  - b. The rooftop of the building is highly visible from residences behind the Site.
4. The Applicant has not proven that the Facility qualifies as a Stealth Facility. The three separate rectangular boxes sitting on top of a roof line in a residential neighborhood is not “virtually imperceptible”. Simply enclosing the antennae in box-like roof top structures does not qualify as being Stealth. Unintegrated material alterations in building profile do not qualify as stealth. Section 196-5(G)(2).
5. In addition, the Applicant has not shown that the Facility is using universal antennae as required under Section 196-5(I)(5)(e).
6. The Facility does not comply with the priority of locations listed under Section 196-5(I). As set forth above, the building does not meet the definition of a Tall Structure, the Applicant is not proposing collocation, the Site is not in a commercially zoned area, and the Site is in a residential area. In addition, due to the topographic conditions of the Site and its surrounding areas, those living in residences immediately behind the Site on New Street and those living in apartment buildings nearby are at similar elevations to the roof of the building.
7. With respect to the Alternative Analysis, the City Council disagrees with John Pepe’s conclusion that the Facility is proposed to be located on a tall structure. Mr. Pepe’s attempt to “solve” his alternative analysis by simply concluding that the existing two-story building is an existing tall structure is unavailing and contradicts the topography and the visibility of the building’s rooftop from adjacent residential units. There are dramatic elevation changes between the front of the existing building and the back. The front of the building is at approximately 35’ and the elevation near the back is between 55’ to 60’. Section 196-6(F). Furthermore, the Applicant did not provide any written correspondence supporting the statements that other locations were considered and were not feasible for a stated reason. There are other sites within the City of Rye that are topographically higher than the proposed building and there are other existing structures that are taller.

8. The Applicant has submitted a long form environmental assessment form and the visual addendum. However, the City Council finds that there will be an adverse visual impact and constructing three rectangular structures on top of a roof will be visible to nearby residential units and create a new roofline that is detrimental to the community. Furthermore, the three new vertical protrusions do not meet the definition of a Stealth Structure as mentioned above. Sections 196-6(I), (J) and (K).

**NOW, THEREFORE BE IT FURTHER RESOLVED**, the the City Council further finds that the building on the Site does not meet the definition of “Tall Structure”, the Site is the lowest priority area set forth in Section 196-5(I), and the Applicant fails to put forward any basis upon which the City Council should exercise its discretion and grant the following waivers:

- 1) 40’ minimum setback between the Facility and a residential unit. The waiver would result in a reduction from 40’ to 28’ – a 30% reduction in the required setback. Section 196-6(8)(a).
- 2) 25’ minimum front yard setback. Based on Applicant’s drawings, the Applicant would need an approximate 17’ variance to allow one of the antennae to be located 8’ back from where the front yard setback is measured – resulting in an approximate 68% variance. Section 196-12(C).
- 3) 40’ combined side yard setback. Applicant would need an approximate 27-foot variance for the combined yard setback requirement – resulting in an approximate 68% variance. Applicant would also need a 20-foot variance – resulting in 100% relief for one of the side yard setbacks and a 7-foot variance resulting in a 35% variance for the second side yard. Section 196-12(C).

As a result, the City Council hereby denies the requested waivers.

**NOW, THEREFORE BE IT FURTHER RESOLVED**, that pursuant to its authority under Section 196-5(I)(5), the City Council finds that the potential cumulative impacts of allowing these roof protrusions to exist in a residential neighborhood essentially creates an entirely new and unwelcomed aesthetic feature in the downtown and the Applicant has not minimized the visual impact to the nearby residential units. The City Council’s jurisdiction to review the visual and aesthetic impacts of the Facility and the impacts to the residential character of this area of Rye is much broader than the BAR’s;

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, that in light of the foregoing findings, the City Council does not feel it is necessary to review and address any remaining requirements set forth under Chapter 196 at this time and denies the requested waivers and, therefore, denies the Special Permit Application for the Facility.

Ms. Snyder objected to the resolution and stated that if the Council was going to base its decision on the waivers, the applicant needs to review them. She said that she was not told that any variance was needed. She said that only waiver that was discussed was for one antenna.

Corporation Counsel Wilson stated that on the contrary, the applicant's architect/engineer had noted on the plans submitted with the application that a waiver was needed for relief with the setbacks.

Ms. Snyder said that the City gave the applicant no suggestions for anything that could be done to improve its chance of being approved. She said that if the City had an objection, the applicant should have been made aware. She said that Rye had a history of not wanting any wireless facilities. She said the applicant spent a lot of time designing this proposal on a nonresidential existing structure. She said that building was tall relative to others in Rye. She asked that the Council not vote this evening and give the applicant a chance to improve the application.

Mayor Cohn stated that the applicant could always resubmit a different proposal.

Councilwoman Souza made a motion, seconded by Councilwoman Hurd, to adopt the resolution above.

#### ROLL CALL

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

#### 7. Discussion of Rye TV.

Councilwoman Hurd made the following statement:

“I am happy to have the opportunity tonight to move forward the dialogue towards recommendations from the RyeTV subcommittee. The subcommittee is composed of me, Councilwoman Goddard and Councilman Stacks. First I would like to review the work we have done over the past year and several months before moving on to more substantive discussion.

First, I would like to again underscore the City Council's appreciation for the role that RyeTV plays in our community. Public access to information is critical for the democratic functioning of our local government and RyeTV is one of our local vehicles for providing that access.

Second, a review of where we have been. In early 2018, the Mayor's revitalized Finance Committee conducted a review of RyeTV operations. Their very in-depth review determined that in a best case scenario, assuming a series of large, anticipated expenditures immediately, that within ten years, RyeTV's spending needs would likely exceed its Fund Balance. Other realities, including an increase in households “cutting the cord” and FCC changes to PEG rules, contribute to a bleaker financial outlook.

Given that RyeTV was on the verge of several large expenditures, namely a full time hire, a studio buildout at City Hall and an overhaul of equipment - totaling over \$1M - the Finance Committee recommended that RyeTV pause while the City Council take a closer look. The Mayor appointed a subcommittee to conduct an assessment of RyeTV in May 2018.

Over the past year, the Subcommittee has met with industry experts, neighboring municipalities as well as other cable facilities in the area and hired a local industry expert, Steve Micewicz the New Rochelle cable coordinator and a consultant to municipalities, to help us with our review. His report presents a comparison of the current operation of RyeTV with the usage of PEG Access in 30 plus communities in westchester county.

Tonight we consider the Micewicz report as well as the Buske report, a needs assessment conducted in connection with our cable franchise agreement negotiations. The Buske report is based on a statistically significant survey with 382 of the City's approximately 9,000 cable subscribers responding.

#### WHAT IS RYE TV AND WHAT DOES IT DO:

RyeTV is a Public, Education and Government (or PEG) television access facility, established in 1986, to serve the City of Rye and its residents.

Although the department is funded for 2 full time employees and 6 part times, in recent years the department has been staffed by 1 full time employee and 1-2 part time employees.

RyeTV is located at Rye High School in an approximately 1,000 square foot space with 4 editing bays and a 3 camera studio.

RyeTV is a City of Rye department. Rye TV is not a non-profit although a relatively inactive Friends of RyeTV 501(c)(3) exists. RyeTV works closely with the City Council appointed Cable and Communications Committee. The Committee, which is comprised of resident volunteers, serves an advisory role to the City Council on communications technology, including television, issues with the cable companies and budgetary matters for Rye TV. Today's Committee is also active in the creation of programming for RyeTV.

Rye TV's mission is to provide a voice for the community, civic engagement, government transparency and educational resources in media literacy. This translates to three main service areas:

1. RyeTV facilitates Public access to the PEG channels.
2. Rye organizations and individuals may use RyeTV equipment, request production help and then cablecast their programs. RyeTV provides the majority of its services to this smaller set of customers.
3. Rye TV also provides training, education and summer opportunities for children to learn about aspects of TV.

Our consultant's report is useful in its comparison of RyeTV to cable facilities in neighboring municipalities. Nearly half of municipalities have some degree of public access.

While the survey completed by the consultant indicates that some communities in Westchester County do not have government channels, transparency and public access to government meetings and workshops is a priority for the City Council. There has been discussion of more access to more meetings through broadcasting of Planning, Zoning and Rye Golf meetings.

Councilman Stacks will discuss funding and Councilwoman Goddard will discuss public access partnership.”

Councilman Stacks said there were some noteworthy observations regarding how other municipalities were allocating franchise fees. He said that the City allocates 100% of franchise fees to RyeTV which is unique to this municipality. He said that most other towns put this into their General Fund. One of the recommendations of our subcommittee is to divert these to Rye's General Fund and operating budget. There is currently a reserve of over \$1 million. The analysis showed prudent fiscal management of Rye TV. The subcommittee also recommends that this be moved into the capital project fund reserves for the City.

Councilwoman Hurd said that since 1988, the City has not reconsidered the decision to allocate franchise fees directly to Rye TV. She said that studio equipment is expensive. The City needs to weigh the cost of the service to the benefit to the community, as we do with all other departments. She said that the City is in a position where it has tremendous capital needs and everyone was working diligently with the Finance Committee to streamline expenses to pay for critical needs.

Councilwoman Goddard stated that one of the other ideas that has cropped up over the last year and a half is how do a work with Rye TV to enhance its programming to expand its reach to a broader audience. The subcommittee has been looking at a number of issues related to the organizational structure, asking what the best way would be to reach the greatest number of residents. She said that they had casual conversations with a few local entities. Some of the issues discussed are partnership structures, withstanding external macro pressures, how to leverage tech developments, and how to engage the entire Rye community. Currently, a working group was being created that would put together an RFP for a Rye TV partnership with the City. The working group would likely be made up of the Rye TV Commission Chair and relevant Councilmembers.

Councilwoman Souza asked for clarification on several issues. She first wanted to be clear that in moving the money to the other pockets, it meant that Rye TV would operate just as the other departments in Rye for budgeting purposes; that they would be treated similarly for accounting purposes. The second issue she brought up was the extensive renovations at the school, as Rye TV was located there. She suggested the group take a look at possible avenues for permanent studio space.

There was general discussion about location of a permanent studio space and possible partnership with an organization like the Rye Free Reading Room or Rye Arts Center.

Councilwoman Tagger-Epstein said that not everyone in Rye uses the Rye City School District. Moving to a more accessible permanent location would give other students the opportunity to take advantage of Rye TV. Other Councilmembers agreed.

Mayor Cohn said that in reading our consultant's report, there are frequent mentions of online access, etc. He felt it important as the working group goes forward to consider the changes in technology and effectively the changes the way everyone communicates.

Councilwoman Hurd said that in terms of a timeline, she would like to see a plan in place before she leaves the Council at the end of December.

Ken Knowles, 4 Fullerton Place, Rye TV Cable Committee, said that the Council had been discussing this for a year and a half. He asked that the Council realize two things: 1) Steve Fairchild is important to consult, as he has done this professionally for many years. Mr. Knolls said that this was not a static situation. This is going to keep moving in terms of technology. He said that the Committee has saved a lot of money over a ten year period. He asked the Council to not put a clock on it, but to please sit with the Committee and walk through it in a conscientious way.

Councilman Stacks agreed on working together.

There was discussion to put forth a formal resolution at an upcoming meeting to adopt the recommendations of the subcommittee.

8. Open a public hearing to create a new local law Chapter 176, "Energy Conservation", of the Rye City Code by authorizing the provision of financing through Open C-PACE to Qualified Properties within its geographical boundaries.

Councilman Stacks made a motion, seconded by Councilwoman Tagger-Epstein, to open the public hearing.

Sarah Smiley, Energize NY, addressed the Council. She discussed the Energize NY and PACE Finance Program, which provides an avenue for those wanting to invest in green capital updates. On September 18, 2019, Energize NY made a presentation proposing the creation of a new local law, authorizing the provision of financing through Open C-PACE to Qualified Properties within its geographical boundaries and has authorized Energy Improvement Corporation (EIC) to act on its behalf to effectuate Open C-PACE within the City of Rye. EIC has established the Program as a sustainable energy financing program pursuant to the Enabling Act through which the member municipalities, including the City of Rye, may levy charges against Qualified Properties within the City of Rye for the purpose of promoting, facilitating and financing clean energy improvements to Qualified Properties, thereby promoting the public good by reducing greenhouse gas emissions, mitigating the effect of global climate change and lessening the burdens of government.

Mayor Cohn clarified that the new local law would remove the City’s risk from the PACE program. The Council agreed that this would be beneficial.

There being no one else to speak, Councilwoman Souza made a motion, seconded by Councilman Stacks to close the public hearing.

Councilwoman Souza made a motion, seconded by Councilman Stacks and unanimously carried, to adopt a local Chapter 176, “Energy Conservation”, of the Rye City Code by authorizing the provision of financing through Open C-PACE to Qualified Properties within its geographical boundaries as follows:

**LOCAL LAW NO. 7 2019**

**A LOCAL LAW TO ESTABLISH A NEW SUSTAINABLE ENERGY LOAN PROGRAM  
(OPEN C-PACE) IN THE CITY OF RYE**

Be it enacted by the City of Rye (the “Municipality”) as follows:

**Section 1.** This local law shall be known as the “Energize NY Open C-PACE Financing Program” and shall read as follows:

**ARTICLE I**

**§1. Legislative findings, intent and purpose, authority.**

- A. It is the policy of both the Municipality and the State of New York (the “State”) to achieve energy efficiency and renewable energy improvements, reduce greenhouse gas emissions, mitigate the effect of global climate change, and advance a clean energy economy. The Municipality finds that it can fulfill this policy by providing property assessed clean energy financing to Qualified Property Owners (as defined below) for the installation of renewable energy systems and energy efficiency measures. This local law establishes a program that will allow the Energy Improvement Corporation (as defined below, “EIC”), a local development corporation, acting on behalf of the Municipality pursuant to the municipal agreement (the “Municipal Agreement”) to be entered into between the Municipality and EIC, to make funds available to Qualified Property Owners that will be repaid through charges on the real properties benefited by such funds, thereby fulfilling the purposes of this local law and accomplishing an important public purpose. This local law provides a method of implementing the public policies expressed by, and exercising the authority provided by, Article 5-L of the General Municipal Law (as defined below, the “Enabling Act”).
  
- B. The Municipality is authorized to execute, deliver and perform the Municipal Agreement and otherwise to implement this Energize NY Open C-PACE Financing Program pursuant to the Constitution and laws of New York, including particularly Article IX of the Constitution, Section 10 of the Municipal Home Rule Law, the Enabling Act and this local law.

- C. This local law, which is adopted pursuant to Section 10 of the Municipal Home Rule Law and the Enabling Act shall be known and may be cited as the “Energize NY Open C-PACE Local Law”.

**§2. Definitions**

- A. Capitalized terms used but not defined herein have the meanings assigned in the Enabling Act.
- B. For purposes of this local law, and unless otherwise expressly stated or unless the context requires, the following terms shall have the meanings indicated:

**Annual Installment Amount** – shall have the meaning assigned in Section 8, paragraph B.

**Annual Installment Lien** – shall have the meaning assigned in Section 8 paragraph B.

**Authority** – the New York State Energy Research and Development Authority.

**Benefit Assessment Lien** – shall have the meaning assigned in Section 3, paragraph A.

**Benefited Property** – Qualified Property for which the Qualified Property Owner has entered into a Finance Agreement for a Qualified Project.

**Benefited Property Owner** – the owner of record of a Benefited Property.

**EIC** – the Energy Improvement Corporation, a local development corporation, duly organized under section 1411 of the Not-For-Profit Corporation Law of the State, authorized hereby on behalf of the Municipality to implement the Program by providing funds to Qualified Property Owners and providing for repayment of such funds from money collected by or on behalf of the Municipality as a charge to be levied on the real property.

**Eligible Costs** – costs incurred by the Benefited Property Owner in connection with a Qualified Project and the related Finance Agreement, including application fees, EIC’s Program administration fee, closing costs and fees, title and appraisal fees, professionals’ fees, permits, fees for design and drawings and any other related fees, expenses and costs, in each case as approved by EIC and the Financing Party under the Finance Agreement

**Enabling Act** – Article 5-L of the General Municipal Law of the State, or a successor law, as in effect from time to time.

**Finance Agreement** – the finance agreement described in Section 6A of this local law.

**Financing Charges** – all charges, fees and expenses related to the loan under the Finance Agreement including accrued interest, capitalized interest, prepayment premiums, and penalties as a result of a default or late payment and costs and reasonable attorneys’ fees incurred by the Financing Party as a result of a foreclosure or other legal proceeding brought against the Benefited Property to enforce any delinquent Annual Installment Liens.

**Financing Parties** – Third party capital providers approved by EIC to provide financing to Qualified Property Owners or other financial support to the Program which have entered into separate agreements with EIC to administer the Program in the Municipality.

**Municipality** – the City of Rye, a municipality of the State constituting a tax district as defined in Section 1102 of the RPTL of the State.

**Municipal Lien** – a lien on Qualified Property which secures the obligation to pay real property taxes, municipal charges, or governmentally imposed assessments in respect of services or benefits to a Qualified Property.

**Non-Municipal Lien** – a lien on Qualified Property which secures any obligation other than the obligation to pay real property taxes, municipal charges, or governmentally-imposed assessments in respect of services or benefits to a Qualified Property Owner or Qualified Property.

**Program** – the Energize NY Open C-PACE Financing Program authorized hereby.

**Qualified Project** – the acquisition, construction, reconstruction or equipping of Energy Efficiency Improvements or Renewable Energy Systems or other projects authorized under the Enabling Act on a Qualified Property, together with a related Energy Audit, Renewable Energy System Feasibility Study and/or other requirements under or pursuant to the Enabling Act, with funds provided in whole or in part by Financing Parties under the Program to achieve the purposes of the Enabling Act.

**Qualified Property** – Any real property other than a residential building containing less than three dwelling units, which is within the boundaries of the Municipality that has been determined to be eligible to participate in the Program under the procedures for eligibility set forth under this local law and the Enabling Act and has become the site of a Qualified Project.

**Qualified Property Owner** – the owner of record of Qualified Property which has been determined by EIC to meet the requirements for participation in the Program as an owner, and any transferee owner of such Qualified Property.

**RPTL** – the Real Property Tax Law of the State, as amended from time to time.

**Secured Amount** – as of any date, the aggregate amount of principal loaned to the Qualified Property Owner for a Qualified Project, together with Eligible Costs and Financing Charges, as provided herein or in the Finance Agreement, as reduced pursuant to Section 8, paragraph C.

**State** – the State of New York.

**§3. Establishment of an Energize NY Open C-PACE Financing Program**

- A. An Energize NY Open C-PACE Financing Program is hereby established by

the Municipality, whereby EIC acting on its behalf pursuant to the Municipal Agreement, may arrange for the provision of funds by Financing Parties to Qualified Property Owners in accordance with the Enabling Act and the procedures set forth under this local law, to finance the acquisition, construction, reconstruction, and installation of Qualified Projects and Eligible Costs and Financing Charges approved by EIC and by the Financing Party under the Finance Agreement. EIC, on behalf of the Municipality, and with the consent of the Benefited Property Owner, will record a Benefit Assessment Lien on the Benefited Property in the Secured Amount (the “Benefit Assessment Lien”) on the land records for the Municipality. Such recording shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality.

- B. Before a Qualified Property Owner and a Financing Party enter into a Finance Agreement which results in a loan to finance a Qualified Project, repayment of which is secured by a Benefit Assessment Lien, a written consent from each existing mortgage holder of the Qualified Property shall be obtained, permitting the Benefit Assessment Lien and each Annual Installment Lien to take priority over all existing mortgages.

**§4. Procedures for eligibility**

- A. Any property owner in the Municipality may submit an application to EIC on such forms as have been prepared by EIC and made available to property owners on the website of EIC and at the Municipality’s offices.
- B. Every application submitted by a property owner shall be reviewed by EIC, acting on behalf of the Municipality, which shall make a positive or negative determination on such application based upon the criteria enumerated in the Enabling Act and § 5 of this local law. EIC may also request further information from the property owner where necessary to aid in its determination.
- C. If a positive determination on an application is made by EIC, acting on behalf of the Municipality, the property owner shall be deemed a Qualified Property Owner and shall be eligible to participate in the Program in accordance with § 6 of this local law.

**§5. Application criteria**

Upon the submission of an application, EIC, acting on behalf of the Municipality, shall make a positive or negative determination on such application based upon the following criteria for the making of a financing:

- A. The property owner may not be in bankruptcy and the property may not constitute property subject to any pending bankruptcy proceeding;
- B. The amount financed under the Program shall be repaid over a term not to exceed

the weighted average of the useful life of Renewable Energy Systems and Energy Efficiency Improvements to be installed on the property as determined by EIC;

- C. Sufficient funds are available from Financing Parties to provide financing to the property owner;
- D. The property owner is current in payments on any existing mortgage on the Qualified Property;
- E. The property owner is current in payments on any real property taxes on the Qualified Property; and
- F. Such additional criteria, not inconsistent with the criteria set forth above, as the State, the Municipality, or EIC acting on its behalf, or other Financing Parties may set from time to time.

**§6. Energize NY Finance Agreement**

- A. A Qualified Property Owner may participate in the Program through the execution of a finance agreement made by and between the Qualified Property Owner and a Financing Party, to which EIC, on behalf of the Municipality, shall be a third-party beneficiary (the “Finance Agreement”). Upon execution and delivery of the Finance Agreement, the property that is the subject of the Finance Agreement shall be deemed a “Benefited Property”).
- B. Upon execution and delivery of the Finance Agreement, the Benefited Property Owner shall be eligible to receive funds from the Financing Party for the acquisition, construction, and installation of a Qualified Project, together with Eligible Costs and Financing Charges approved by EIC and by the Financing Party, provided the requirements of the Enabling Act, the Municipal Agreement and this local law have been met.
- C. The Finance Agreement shall include the terms and conditions of repayment of the Secured Amount and the Annual Installment Amounts.
- D. EIC may charge fees to offset the costs of administering the Program and such fees, if not paid by the Financing Party, shall be added to the Secured Amount.

**§7. Terms and conditions of repayment**

The Finance Agreement shall set forth the terms and conditions of repayment in accordance with the following:

- A. The principal amount of the funds loaned to the Benefited Property Owner for the Qualified Project, together with Eligible Costs and Financing Charges approved by EIC and by the Financing Party, shall be specially assessed against the Benefited Property and will be evidenced by a Benefit Assessment Lien recorded against the Benefited Property on the land records on which liens are recorded

for properties within the Municipality. The special benefit assessment shall constitute a “charge” within the meaning of the Enabling Act and shall be collected in annual installments in the amounts certified by the Financing Party in a schedule provided at closing and made part of the Benefit Assessment Lien. Said amount shall be annually levied, billed and collected by EIC, on behalf of the Municipality, and shall be paid to the Financing Party as provided in the Finance Agreement.

- B. The term of such repayment shall be determined at the time the Finance Agreement is executed by the Benefited Property Owner and the Financing Party, not to exceed the weighted average of the useful life of the systems and improvements as determined by EIC, acting on behalf of the Municipality.
- C. The rate of interest for the Secured Amount shall be fixed by the Financing Party in conjunction with EIC, acting on behalf of the Municipality, as provided in the Finance Agreement.

**§8. Levy of Annual Installment Amount and Creation of Annual Installment Lien**

- A. Upon the making of the loan pursuant to the Finance Agreement, the Secured Amount shall become a special Benefit Assessment Lien on the Benefited Property in favor of the Municipality. The amount of the Benefit Assessment Lien shall be the Secured Amount. Evidence of the Benefit Assessment Lien shall be recorded by EIC, on behalf of the Municipality, in the land records for properties in the Municipality. Such recording shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality. The Benefit Assessment Lien shall not be foreclosed upon by or otherwise enforced by the Municipality.
- B. The Finance Agreement shall provide for the repayment of the Secured Amount in installments made at least annually, as provided in a schedule attached to the Benefit Assessment Lien (the “Annual Installment Amount”). The Annual Installment Amount shall be levied by EIC, on behalf of the Municipality, on the Benefited Property in the same manner as levies for municipal charges, shall become a lien on the Benefited Property as of the first day of January of the fiscal year for which levied (the “Annual Installment Lien”) and shall remain a lien until paid. The creation or any recording of the Annual Installment Lien shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality. Payment to the Financing Party shall be considered payment for this purpose. Such payment shall partly or wholly discharge the Annual Installment Lien. Delinquent Annual Installment Amounts may accrue Financing Charges as may be provided in the Finance Agreement. Any additional Financing Charges imposed by the Financing Party pursuant to the Finance Agreement shall increase the Annual Installment Amount and the Annual Installment Lien for the year in which such overdue payments were first due.

- C. The Benefit Assessment Lien shall be reduced annually by the amount of each Annual Installment Lien when each Annual Installment Lien becomes a lien. Each Annual Installment Lien shall be subordinate to all Municipal Liens, whether created by Section 902 of the RPTL or by any other State or local law. No portion of a Secured Amount shall be recovered by the Municipality, EIC, or an assignee upon foreclosure, sale or other disposition of the Benefited Property unless and until all Municipal Liens are fully discharged. Each Annual Installment Lien, however, shall have priority over all Non-Municipal Liens, irrespective of when created, except as otherwise required by law.
- D. Neither the Benefit Assessment Lien nor any Annual Installment Lien shall be extinguished or accelerated in the event of a default or bankruptcy of the Benefited Property Owner. Each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall be collected by EIC, on behalf of the Municipality, at the same time and in the same manner as real property taxes or municipal charges. Each Annual Installment Lien shall remain a lien until paid. Amounts collected in respect of an Annual Installment Lien shall be remitted to EIC, on behalf of the Municipality, or the Financing Party, as may be provided in the Finance Agreement.
- E. EIC shall act as the Municipality's agent in collection of the Annual Installment Amounts. If any Benefited Property Owner fails to pay an Annual Installment Amount, the Financing Party may redeem the Benefited Property by paying the amount of all unpaid Municipal Liens thereon, and thereafter shall have the right to collect any amounts in respect of an Annual Installment Lien by foreclosure or any other remedy available at law. Any foreclosure shall not affect any subsequent Annual Installment Liens.
- F. EIC, on behalf of the Municipality, may sell or assign for consideration any and all Benefit Assessment Liens and Annual Installment Liens to Financing Parties that provide financing to Qualified Properties pursuant to Finance Agreements. The Financing Parties may sell or assign for consideration any and all Benefit Assessment Liens and Annual Installment Liens received from EIC, on behalf of the Municipality, subject to certain conditions provided in the administration agreement between EIC and the Financing Party. The assignee or assignees of such Benefit Assessment Liens and Annual Installment Liens shall have and possess the same powers and rights at law or in equity as the Municipality would have had if the Benefit Assessment Lien and the Annual Installment Liens had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection.

**§9. Verification and report**

EIC, on behalf of the Municipality, shall verify and report on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by the Program in such form and manner as the Authority may establish.

**§10. Separability**

If any clause, sentence, paragraph, section, or part of this local law 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 involved in the controversy in which such judgment shall have been rendered.

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

ROLL CALL

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

9. Authorize the City Manager to sign the municipal agreement with the Energy Improvement Corporation and the City of Rye to conclude the C-PACE process.

Councilwoman Goddard made a motion, seconded by Councilwoman Hurd and unanimously carried, to authorize the City Manager to sign the municipal agreement with the Energy Improvement Corporation and the City of Rye to conclude the C-PACE process.

10. Consider setting a public hearing for October 16, 2019 for a T-Mobile waiver request and legal memorandum in support of the request for a determination that the proposed facility upgrade at 66 Milton Road is exempt from Planning Board or Zoning Board of Adjustment Jurisdiction.

Frank Ferraro, attorney for applicant T-Mobile, addressed the Council. He clarified that the applicant was looking to obtain an eligible facility permit pursuant to both Rye City Code and the FCC. T-Mobile currently has a facility at 66 Milton Road, which has gone through numerous upgrades over the last several years. In this proposal, the applicant is looking to remove two of the antennas and replace with 4 antennas with some additional ancillary equipment. T-Mobile's current facility on the roof is on a steel platform, which has been requested to be moved/ upgraded by the building. Mr. Ferraro explained that currently there is an abandoned shelter also located on the roof. The applicant is hoping to relocate into the existing Nextel shelter in an attempt to cure the tenants' complaints and trying to upgrade the facility. Mr. Ferraro stated that as this request falls into the eligible facility requests of the FCC, only administrative approval is required. He further stated that the new antennas that are going in will have no visibility.

Corporation Counsel Wilson explained that this was an existing facility meeting the definition under the FCC of an eligible facility. Approval would be purely administrative, but she felt it necessary to keep the Council apprised of the application.

Councilwoman Hurd commented on the stealth aspect, the current facility was an eyesore.

There was general discussion about the applicant applying to the building department.

Corporation Counsel Wilson stated that the applicant had the right as an eligible facility to go to the building department to start the process.

11. Resolution to appropriate \$11,105.92 of the Police Department's 1033 account and transfer to the Building and Vehicle Fund for the detailing of three police vehicles acquired through the NYS LESO 1033 program for use in the specialized and auxiliary enforcement units.

City Manager Serrano explained that the police vehicles in question were acquired through the surplus process. These funds would make them operational.

Councilman Stacks made a motion, seconded by Councilwoman Tagger-Epstein, to adopt the following resolution:

**WHEREAS**, the Rye Police Department has determined that the amounts required for the detailing of four police vehicles obtained through the NYS LESO program for specialized and auxiliary enforcement was not provided for in the adopted 2019 budget by \$11,105.92, and;

**WHEREAS**, the Police Department's 1033 account has enough funds to be appropriated for this purchase, now, therefore be it;

**RESOLVED**, that the City Comptroller is authorized to transfer \$11,105.92 from the Police Department's 1033 account to the Building and Vehicle Fund, for the detailing of four police vehicles obtained through the NYS LESO program for specialized and auxiliary enforcement.

ROLL CALL

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

12. Authorize Corporation Counsel to sign a settlement and release in the insurance matter of City of Rye vs. Travelers.

Corporation Counsel Wilson explained that this was a matter that the City commenced against Travelers Insurance as a result of roof damage at the Golf Club. The settlement of \$75,000 was reached. She said she was asking for authorization to sign the release. After expenses are paid, the remaining funds would go back to Rye Golf Club.

Councilman Souza made a motion, seconded by Councilwoman Tagger-Epstein, to authorize Corporation Counsel to sign a settlement and release in the insurance matter of City of Rye vs. Travelers.

**ROLL CALL**

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

13. Consideration of a request by the Rye YMCA for the use of City streets for the 32nd Annual Rye Derby on Sunday, April 26, 2020 from 9:00 a.m. to 2:00 p.m.

Councilman Souza made a motion, seconded by Councilwoman Tagger-Epstein and unanimously carried, to approve their use of City streets for the 32nd Annual Rye Derby on Sunday, April 26, 2020 from 9:00 a.m. to 2:00 p.m.

14. Consideration of a request by the Rye Little League to approve a parade to kickoff Opening Day of the 63rd Little League Season on Saturday, April 18, 2020 beginning at 12:00 p.m.

Councilwoman Souza made a motion, seconded by Councilwoman Hurd and unanimously carried, to approve a parade to kickoff Opening Day of the 63rd Little League Season on Saturday, April 18, 2020 beginning at 12:00 p.m.

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

There was nothing to report on this agenda item.

16. Old Business/New Business.

There was nothing to report on this agenda item.

17. Adjournment

There being no further business to discuss, Councilwoman Tagger-Epstein made a motion, seconded by Councilwoman Souza and unanimously carried, to adjourn the meeting at 9:34 P.M.

Respectfully submitted,

Carolyn D'Andrea  
City Clerk