

## **CITY OF RYE**

### **NOTICE**

There will be a regular meeting of the City Council of the City of Rye on Wednesday, November 2, 2011, at 8:00 p.m. in the Council Room of City Hall. *The Council will convene at 7:30 p.m. and it is expected they will adjourn into Executive Session at 7:31 p.m. to discuss personnel matters.*

### **AGENDA**

1. Pledge of Allegiance.
2. Roll Call.
3. General Announcements.
4. Draft unapproved minutes of the regular meeting of the City Council held October 19, 2011.
5. Mayor's Management Report
  - Finalize 2012 Budget Schedule and Topics
  - Update from the Government Policy and Research Committee on Prevailing Wage Standards
  - Legal Update
6. Discussion of amending the City of Rye Charter for the creation of a Public Safety Commissioner with the Fire Department reporting directly to the City Manager.
7. Discussion of the "Development and Planning Standards" Intermunicipal Agreement Compliance for the Flood Mitigation Project at the Blind Brook Dam.
8. Discussion of a draft Resolution regarding flooding including preventative measures and flood consequences.
9. Discussion of a draft Resolution to open Oakland Beach at Rye Town Park for public access during the off-season.
10. Residents may be heard on matters for Council consideration that do not appear on the agenda.
11. Resolution to re-allocate \$3,943.43 of the remaining 2002 Recreation Bond proceeds scheduled towards payment of 2012 Debt Service to use towards the 2011 final payment on the Rye Town Park roof project.
12. Authorization for the City Manager to enter into an Intermunicipal Agreement with Consolidated Edison Company of New York, Inc. to allow access for a DEC-approved remedial investigation and clean-up.
13. Consideration of authorizing the City Manager to endorse the implementation of an easement between the Apawamis Club and Henry F. Skelsey and the City of Rye.

14. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department.
15. Miscellaneous communications and reports.
16. Old Business.
17. New Business.
18. Adjournment.

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The next regular meeting of the City Council will be held on Wednesday, November 16, 2011. A special meeting of the City Council will be held on Wednesday, November 9, 2011 at 8:00 p.m. for the presentation of the 2012 Budget.

\*\* City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at [www.ryeny.gov](http://www.ryeny.gov) under "RyeTV Live".

\* Office Hours of the Mayor on 11/2/11 will be held from 7:00 pm to 7:30 pm in the Mayor's Conference Room.



# CITY COUNCIL AGENDA

NO. 4

DEPT.: City Clerk

DATE: November 2, 2011

CONTACT: Dawn F. Nodarse

**AGENDA ITEM** Draft unapproved minutes of the regular meeting of the City Council held October 19, 2011, as attached.

**FOR THE MEETING OF:**

November 2, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the Council approve the draft minutes.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

Approve the minutes of the regular meeting of the City Council held October 19, 2011, as attached.

***DRAFT UNAPPROVED MINUTES*** of the  
Regular Meeting of the City Council of the City of  
Rye held in City Hall on October 19, 2011 at 8:00  
P.M.

PRESENT:

DOUGLAS FRENCH Mayor  
RICHARD FILIPPI  
PAULA J. GAMACHE  
PETER JOVANOVICH  
SUZANNA KEITH  
CATHERINE F. PARKER  
JOSEPH A. SACK  
Councilmembers

ABSENT: None

The Council convened at 7:32 p.m. Councilwoman Gamache made a motion, seconded by Councilman Jovanovich and unanimously carried, to immediately adjourn into executive session to discuss real estate matters. Councilman Sack arrived at 7:50 p.m. Councilwoman Gamache made a motion, seconded by Councilwoman Parker and unanimously carried, to adjourn the executive session at 8:02 p.m. The regular meeting convened at 8:08 p.m.

1. Pledge of Allegiance

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

2. Roll Call

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

3. Moment of Silence and Remembrance for former Mayor Mary Ann Ilse

Mayor French said that the City had lost a special person on October 7<sup>th</sup> when former Mayor Mary Ann Ilse passed away. He asked everyone to rise and join in a moment of silence. The Mayor noted that Mrs. Ilse was the only woman to serve as Mayor in the City's history and noted several accomplishments of her term of office. Former Mayor Steve Otis, State Assemblyman, and former Councilman, George Latimer, former Councilwoman Beth Griffin Matthews and Councilman Joe Sack also shared memories recalling her sense of humor, practicality, political courage and integrity.

4. General Announcements

- The City does not object to the proposed School Bond project. The City and School Board have met to discuss concerns that the City has regarding stormwater runoff and traffic and pedestrian safety and the project will now go back to the School Board for a vote.
- The brook clean up was great, but the Central Avenue Bridge site needs to be cleaned up.
- An NYU Wagner Capstone project will study the issue of the Complete Streets Policy passed by New York State.

5. Draft unapproved minutes of the special meeting of the City Council held September 28, 2011 and the workshop/regular meeting of the City Council held October 5, 2011

Councilman Jovanovich made a motion, seconded by Councilwoman Gamache and unanimously carried, to approve the minutes of the special meeting of the City Council held on September 28, 2011.

Councilwoman Gamache made a motion, seconded by Councilman Jovanovich and unanimously carried, to approve the minutes of the workshop/regular meeting of the City Council held on October 5, 2011.

6. Mayor's Management Report

- Update on the Rye Historical Walking Tour

Laura Brett of the Rye Historical Society updated the Council on the Rye Historical Walking Tour project, which will be a permanent walking and driving tour through Rye. The signs have been sent to the graphic designer and they are beginning to schedule when they can be put up. The signs will be installed at 22 locations throughout the City and will be a combination of historic photos and text about each location. There will be pamphlets available at the Square House containing a master map. Ms. Brett thanked the Council, City staff, the Landmarks Committee and the Board of Architectural Review for their support and assistance.

- Financial Update on 3<sup>rd</sup> Quarter results

City Comptroller Jean Gribbins provided an update on City finances as of September 30<sup>th</sup>. 2011 revenues are in line with 2010 revenues. There is an increase in revenue for parking and building permits of about \$363,000. Interest income is about \$26,000 below last year. Sales and mortgage tax revenues are in line with the budget. However, since 2007 the City has seen a decrease in interest income of over \$800,000; in sale tax revenue of \$250,000; and in mortgage tax revenue of \$875,000 meaning that the City has absorbed revenue losses of almost \$2 Million over the past four years. Year to date expenses are in line with 2010 expenses, with some exceptions including the budgeted \$1.3 Million tax certiorari expense for the Osborn settlement which was paid during the year, and an increase in salaries and wages that reflects an additional pay period from the same time last year. The City has used \$210,000 of the \$300,000 budgeted for Contingency. The year-to-date financial statements reflect the costs incurred as a result of Hurricane Irene and Tropical Storm Lee. There should be some indication of the City's financial exposure for these storms in the fourth quarter. Ms. Gribbins said she was cautiously optimistic that 2011 results will be in line with the 2011 budget.

- Legal Update

Corporation Counsel Wilson reported on the following matters:

- 2 Central Avenue (Black Bass Grill property) – The contractor’s report came back indicating that there is asbestos in the building. The owner is contracting with an outfit to remove it. They must provide weekly updates regarding their progress. When the asbestos removal process is completed, a demolition permit can be issued by the City.
- Beaver Swamp Brook – The Department of Environmental Conservation (DEC) staff filed an opposition brief to the City’s appeal of the Negative Declaration issued by the DEC. The Town of Harrison has not submitted any opposition papers. The matter is now fully submitted.
- *Panetta v. The Planning Commission* – The City won in the lower court in this Article 78 proceeding. The Petitioner has appealed the decision to the Appellate Division, Second Department.

Agenda Items 11 and 8 was taken out of order.

7. Discussion of amending City of Rye Local Law Chapter 53, “Architectural Review” to reduce the number of applications subject to architectural review

City Manager Pickup said the City was looking at the issue of reducing the workload of the Board of Architectural Review (BAR) by exempting such things as windows and doors, so that the intent of the BAR is maintained but the number of applications that come before it decline. The consensus of the Council was to go forward. City Manager Pickup said he would work with Corporation Counsel Wilson on specific language that will be circulated to the BAR for comment prior to coming back to the Council to set a public hearing.

8. Follow-up discussion of Rye Town Park policy on dogs and the City of Rye Local Law Chapter 76, “Dogs”

Mayor French said that the policy, the practice and the law regarding dogs on leashes in Rye Town Park were not consistent. The Rye Town Park Commission (the Commission) has voted to reverse their previous policy of allowing dogs to be off leash prior to 9:00 a.m. Councilman Sack said that there may be an opportunity to go back to the Commission to get them to revisit the decision but, if this does not happen, he suggests that the City should amend its law to allow the former practice of letting dogs be off leash in the park prior to 9:00 a.m. Corporation Counsel Wilson said that the law requiring dogs to be on leash is consistent with laws throughout the State. The Commission was created by State legislation which gives the Commission the authority to maintain and run the park but not the authority to enforce the policies. The City is the enforcement arm of the Commission. If the City passed a law contrary to Commission Policy it would not work in conjunction with what the State intended, and the City cannot override state law. Ms. Wilson added that if the City Council wants a change in the

way the Commission is established, or operating currently, the options are to approach the Commission itself or the State to change the legislation. Mayor French suggested creating a User Group Registry for dog owners that would allow participants to come to the park at a certain time and be part of an activity that allows dogs to be off leash. He added that the Recreation Commission has been asked to look at potential sites for other options.

There was also a brief discussion among members of the Council regarding other issues of concern in connection with the operation of the park, such as the early closing of the beach. It was noted that the Commission will be meeting next week and that there will be community forum held in the future where people can express their concerns.

There was public comment, both for and against the idea of reinstating the no leash before 9:00 a.m. policy. *Suki VanDijk, John Linden, David Jenkins, Dawn Wilson, Nina McGinty, Howard Lagsler and Laura Brett* spoke in favor of the City amending its law, saying the previous policy worked well and that problems have been created by aggressive Park Security. The suggestion of creating a User Group for dog owners was endorsed. A petition urging the City Council to amend its law to permit dogs to be off leash in the park prior to 9:00 a.m. was presented. *David Rasmussen*, of the Friends of Rye Town Park, read a letter on behalf of the President of the organization urging the Council to uphold its current leash law.

9. Residents may be heard who have matters to discuss that do not appear on the agenda

*Holly Kennedy and Carolina Johnson* asked for an update on the Village of Rye Brook permitting process regarding the Sluice Gate project as well as an update on what is happening on amending the study on the upper pond soil sample. Mayor French said that the site plan for the Sluice Gate will go before the Rye Brook Planning Board on November 8<sup>th</sup> and back to the Village Board for approval on November 22<sup>nd</sup>. City Manager Pickup said that the Planning Board has asked for some minor adjustments to the site plan that the City is working on. Regarding the upper pond study, Mr. Pickup said that the City has been told by FEMA and SEMO personnel that December 2<sup>nd</sup> is the date when a decision may be made on the City's pending grant application for funds to do the study. If no decision is forthcoming on that date the City may have to look for additional sources of money to fund a study on a reduced scale. He added that unless the Council goes out for emergency bonding, there is no money in the budget to even do a limited scope study on the upper pond. Ms. Kennedy and Ms. Johnson urged the Council to ask the engineering company what information a re-scoped \$50,000 study would include. City Manager Pickup pointed out that the City is looking at three locations up stream as additional detention sites. Ms. Kennedy also suggested that a flood update should be included on Council agendas. Mayor French suggested that a volunteer Chief Information Officer would be helpful to get correct information out to the community and possibly a permanent Flood Board.

*Jordan Glass, Esq.*, representing HealtheHarbor.com, spoke about work that he said was done without permits on a property located at 13 Richard Place, which he said created safety hazards for the occupants and the community. *Ray Tartaglione*, a Hen Island shareholder, provided copies of a News Release from HealtheHarbor.com regarding a house owned by Mayor French at 13 Richard Place. He said the Mayor was issued a summons in July 2011 for building

without a permit. Corporation Counsel Wilson said a complaint was logged into the Building Department but a violation or summons was not issued by the Building Department. Mayor French said that the City Manager, not the Mayor, was the chief enforcement and administrative officer of the City. Mr. Tartaglione asked the Mayor to resign.

10. Consideration of referral to the Board of Architectural Review the Special Permit Application submitted by United Water Westchester, Inc. for the installation of towers and telecommunications equipment to collect billing information

City Manager Pickup said that as part of the agreement reached with United Water, the company was required to attempt to eliminate much of the unmetered water they were losing. This will require an enhanced and updated system for meter reading. The proposed structures are tall and the City wants them to be reviewed by the Board of Architectural Review prior to coming back to the Council for approval of a special use permit. Members of the Council expressed concern about additional equipment being located in the City's right-of-ways.

Councilwoman Gamache made a motion, seconded by Councilman Filippi and unanimously carried, to adopt the following Resolution:

**RESOLVED**, that the Special Permit Application submitted by United Water Westchester, Inc. for the installation of towers and telecommunications equipment to collect billing information, is hereby referred to the Board of Architectural Review.

11. Consideration to set a Public Hearing to add a proposed Local Law to prohibit the use of plastic bags by Rye Merchants

Mayor French said that the Sustainability Committee has talked to local merchants and to residents regarding the proposal to ban the use of plastic bags by merchants. Sara Goddard, representing the Committee, said that the list of merchants supporting the proposal is up to 71 signatures and asked if the FAQ sheet she submitted could be put on the City website.

Councilwoman Keith made a motion, seconded by Councilwoman Parker and unanimously carried, to adopt the following Resolution:

**WHEREAS**, the Council wishes to add Chapter 154, "Retail Checkout Bags" to the Code of the City of Rye; and

**WHEREAS**, it is now desired to call a public hearing on such proposed amendments to the law, now, therefore, be it

**RESOLVED**, by the Council of the City of Rye as follows:

Section 1. Pursuant to Section 20 of the Municipal Home Rule Law and the Charter of the City of Rye, New York, a public hearing will be held by the Council of said City on November 16, 2011 at 8:00 P.M. at City Hall, Boston Post Road, in said City, for the purpose of affording interested persons an opportunity to be heard concerning such proposed local law.

Section 2. Such notice of public hearing shall be in substantially the following form:

**PUBLIC NOTICE  
CITY OF RYE**

**Notice of Public Hearing on a proposed local law to add Chapter 154,  
“Retail Checkout Bags” to the Code of the City of Rye.**

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on the 16th day of November, 2011 at 8:00 P.M. at City Hall, Boston Post Road, in said City, at which interested persons will be afforded an opportunity to be heard concerning a proposal to add Chapter 154, “Retail Checkout Bags” to the Code of the City of Rye.

Copies of said local law may be obtained from the office of the City Clerk.

Dawn F. Nodarse  
City Clerk  
Dated: November 4, 2011

12. Authorization for the City Manager to enter into an Intermunicipal Agreement with the County of Westchester for the distribution of Homeland Security funded equipment

Councilwoman Gamache made a motion, seconded by Councilman Filippi, to adopt the following Resolution:

**RESOLVED**, that the City Manager is hereby authorized to enter into an Intermunicipal Agreement with the County of Westchester for the distribution of Homeland Security funded equipment.

ROLL CALL:

AYES: Mayor French, Councilmembers Filippi, Gamache, Jovanovich,  
Keith and Sack

NAYS: None  
ABSENT: Councilwoman Parker

The Resolution was adopted by 6-0 vote.

13. Three appointments to the Rye Golf Club Commission by the Council for three-year terms expiring January 1, 2015, one appointment for a one-year term expiring January 1, 2013, and the designation of one member to the Rye Golf Club Nominating Committee

Councilwoman Gamache made a motion, seconded by Councilman Filippi and unanimously carried, to approve the appointment of Charley Davies, Patricia Geoghegan and T.J. Hanson to the Rye Golf Club Commission for three-year terms expiring on January 1, 2015.

Councilwoman Gamache made a motion, seconded by Councilman Filippi and unanimously carried, to approve the appointment of Chris O'Brien to the Rye Golf Club Commission for a one-year term expiring on January 1, 2013.

Councilwoman Gamache made a motion, seconded by Councilman Filippi and unanimously carried to appoint Jim Codispoti to the 2012 Rye Golf Club Nominating Committee.

There was also a brief discussion among the Council regarding voting procedures for Golf Commission elections.

14. Miscellaneous Communications and Reports

Councilwoman Keith noted that the YMCA had been pivotal in obtaining the Capstone grant to study the Complete Streets Policy.

15. Old Business

Councilwoman Keith asked for an update on the stop sign pilot for Midland Avenue and Palisade Road. City Manager Pickup said the City was working with representatives of the County, who have expressed some concerns with the pilot program. Ms. Keith also asked how long the orange bollards around town would be up. City Manager Pickup said the ones on Theodore Fremd Avenue would be in place until the road is fixed.

16. New Business

Councilman Jovanovich said he had drafted a Resolution stating that flooding is a high priority for the City's departments, Commissions and public and private property owners that he forwarded to City Planner Christian Miller for review. He said he would now forward it to the Council for comment with the idea of possible adoption at a future Council meeting. Councilwoman Parker suggested the Council have a liaison position dedicated to flooding.

Mayor French said the Government Relations Committee wants to do a presentation on the topic of prevailing wages.

Mayor French referred to the allegations made by Ray Tartaglione earlier in the meeting and reiterated that no violation has been issued to him in connection with the property he owns at 13 Richard Place.

17. Adjournment

There being no further business to discuss Councilman Filippi made a motion, seconded by Councilwoman Keith and unanimously carried, to adjourn the meeting at 10:56 p.m.

Respectfully submitted,

Dawn F. Nodarse  
City Clerk



# CITY COUNCIL AGENDA

NO. 5

DEPT.: City Council

DATE: November 2, 2011

CONTACT: Mayor Douglas French

**AGENDA ITEM:** Mayor's Management Report

**FOR THE MEETING OF:**

November 2, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the City Manager provide a report on requested topics.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** The Mayor has requested an update from the City Manager on the following:

- Finalize 2012 Budget Schedule and Topics
- Update from the Government Policy and Research Committee on Prevailing Wage Standards
- Legal Update

## 2012 Budget Schedule

<u>Meeting Date</u>	<u>Budget Topic</u>
11/9/11	Presentation of Manager's Budget Tax Cap Analysis
11/14/11	EMS Library Budget review
11/16/11	Police Department Budget review
11/21/11	Budget Workshop (if necessary)
11/30/11	Discussion of Debt Discussion of Revenues Review Council Budget questions
12/7/11	Public Hearing on 2012 Budget
12/14/11	Budget Workshop (if necessary)
12/21/11	Budget Adoption

# November 2011

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2 Council Meeting	3	4	5
6	7	8	9 Budget Presentation Tax Cap Analysis	10	11	12
13	14 Budget Workshop EMS Library	15	16 Budget Workshop/ Council Meeting Police	17	18	19
20	21 Tentative Budget Workshop	22	23	24 	25	26
27	28	29	30 Budget Workshop Discussion of Debt and Revenues			

# December 2011

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7 Public Hearing on the Budget	8	9	10
11	12	13	14 Budget Workshop (if necessary)	15	16	17
18	19	20	21 Adoption of the Budget	22	23	24
25	26	27	28	29	30	31



# CITY COUNCIL AGENDA

NO. 6

DEPT.: City Manager's Office

DATE: November 2, 2011

CONTACT: Scott Pickup, City Manager

**ACTION:** Discussion of amending the City of Rye Charter for the creation of a Public Safety Commissioner with the Fire Department reporting directly to the City Manager.

**FOR THE MEETING OF:**

November 2, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:**

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** Due to 2012 Staff retirements, a recommendation has been made to create a Public Safety Commissioner which would include management of Police and Fire Services. These changes would incorporate updating the Rye City Charter so that the Fire Department would have a direct reporting relationship to the City Manager.

See attached applicable sections of the current City Charter.

## **Article 13. Fire Department**

### **§ C13-1. Head of Department; Board of Fire Wardens.**

The members of the several fire companies of the city shall constitute the Fire Department of the City of Rye, the head of which shall be the Board of Fire Wardens. The maximum number of members of each company shall be fixed by the Council. The Fire Chief, the First and Second Assistant Fire Chiefs and the Wardens of such companies shall constitute the Board of Fire Wardens.

### **§ C13-2. Election of officers.**

- A. The members of the Fire Department shall elect annually by ballot from their members a Fire Chief, a First Assistant Fire Chief and a Second Assistant Fire Chief and their election shall be subject to the approval of the Council.
- B. Each of the several fire companies shall elect annually by ballot from their own members a Warden for a term of two years.

### **§ C13-3. Powers and duties of the Board.**

- A. The Board of Fire Wardens shall have control and supervision of the Fire Department and of all equipment and apparatus thereof, subject to the authority and control of the Council.
- B. The Board shall make recommendations with respect to the employment of such persons as the Council may deem necessary and proper in the Department within budgetary limitations.
- C. The Board shall fill any vacancies in the offices of Fire Chief and First and Second Assistant Fire Chiefs, subject to the approval of the Council.
- D. The Board shall, subject to the approval of the Council, adopt and enforce rules and regulations, not inconsistent with the provisions of the Civil Service Law or any other law, for the control, disposition and discipline of the officers, members and employees of the Department, for their training and efficiency, and for the use and care of equipment and apparatus of the Department.
- E. The Board shall approve the by-laws adopted by the several fire companies for the government and discipline of their members.
- F. The Fire Department shall comply with city regulations, practices and procedures relating to administration, employees, purchasing and accountability of city property, except as otherwise provided by the Council.

**§ C13-4. Powers of Fire Chief.**

- A. The Fire Chief shall be Chairman of the Board of Fire Wardens and preside at meetings of the Board and Fire Department.
- B. He shall, under the direction and control of the Board, have supervision of the officers, members and employees, and the equipment and apparatus of the Fire Department and also, shall have exclusive control of the officers, members and employees of the Department at all fires, inspections and reviews.
- C. He may appoint from members of the Department "call men" on a part-time basis when necessary, subject to the approval by the Board of Fire Wardens, and their compensation shall be fixed by the Council.

**§ C13-5. City Manager.**

The City Manager shall act in an advisory capacity with respect to the Fire Department, except as otherwise provided herein.

## **Article 12. Department of Police**

### **§ C12-1. Head of Department; subordinates.**

- A. There shall be a Department of Police, the head of which shall be the Commissioner of Police, who shall be appointed by the City Manager, and he shall serve at the pleasure of the City Manager. The Commissioner of Police shall have at least the qualifications and experience specified by the Council.
- B. In addition to the Commissioner of Police, the Council shall determine the number of Lieutenants, Sergeants and patrolmen, all of whom shall be appointed by the Commissioner.
- C. The Commissioner of Police shall appoint, as vacancies in the Department occur, all officers and members thereof. He may also appoint bay constables and special officers for such purposes and upon such occasions as he may deem proper if not in conflict with law or this chapter.
- D. The Mayor and City Manager shall be ex-officio members of the police force of the city and shall have all the powers conferred upon policemen.
- E. The Police Commissioner shall, when he deems it necessary for the good of the Department, suspend or remove any officer or employee whom he may appoint or employ, except as otherwise provided by law.

### **§ C12-2. Powers and duties.**

- A. The Department of Police shall have all functions customarily performed by a police department, and shall exercise all powers and perform all duties pertaining to or necessarily incident thereto.
- B. Under the supervision of the City Manager, the Commissioner of Police shall promulgate and enforce rules and regulations governing police discipline, practices and procedures for the administration of the Department and for the discipline and efficiency of the police force. The rules and regulations shall be approved by the Council before becoming effective. He shall have authority to administer oaths and take evidence, affidavits and acknowledgements in all proceedings relating to the Department.
- C. In addition, the Commissioner of Police shall:
  - (1) Exercise the powers to request and grant public assistance as provided in § 209-m of the General Municipal Law.
  - (2) In coordination with the head of the Department of Public Works, supervise the application and maintenance of all pavement markings in the streets, sidewalks, parking areas and all other public places, and the installation and maintenance of all traffic signs and signals within the city.

- (3) Be responsible for the administration, supervision and training of the auxiliary police and shall coordinate the same with the Deputy Local Director of Disaster and Emergency Services.
- (4) Be responsible for the administration and supervision of policemen assigned to policing and enforcing all laws and ordinances applicable to the Rye Town Park and the maintenance of order therein.
- (5) Assist the City Manager in the administration of flood, disaster and other emergency plans.
- (6) Be responsible for the administration, in coordination with other municipalities, of an emergency ambulance service on behalf of the inhabitants of the city.
- (7) Institute and formulate, in coordination with the heads of other Departments of the city, safety programs to reduce accidents and avoid injury or damage to persons and property.
- (8) Perform such other duties as may be prescribed by law, the Council or the City Manager.



# CITY COUNCIL AGENDA

NO. 7

DEPT.: City Manager's Office

DATE: November 2, 2011

CONTACT: Scott Pickup, City Manager

**ACTION:** Discussion of the "Development and Planning Standards" Intermunicipal Agreement Compliance for the Flood Mitigation Project at the Blind Brook Dam.

**FOR THE MEETING OF:**

November 2, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:**

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** The City of Rye and the County of Westchester entered into a intermunicipal agreement for a flood mitigation project at the Blind Brook dam at Bowman Avenue: the installation of a sluice gate. A condition of the agreement is that the City must adopt the *Development and Planning Standards* of the Westchester County Flood Action Task Force. The payment of County funds under this agreement for the Sluice Gate project is contingent upon the adoption of these policies.

See attached Development and Planning Standards of the Westchester County Flood Action Task Force.



**Robert P. Astorino**  
County Executive

**Department of Planning**  
**Edward Buroughs, AICP**  
Acting Commissioner

July 1, 2010

**Frank Culross, Manager**  
City of Rye  
1051 Boston Post Road  
Rye, NY 10580

**Subject: "Development and Planning Standards" IMA Compliance -  
Blind Brook Dam at Bowman Avenue Flood Mitigation Project**

Dear Mr. Culross:

I am writing to remind you of a condition of the intermunicipal agreement (IMA) between the County of Westchester and City of Rye, dated February 16, 2010, concerning the flood mitigation project at the Blind Brook dam at Bowman Avenue. Section 2.3 of the IMA states:

*The Municipality represents that within one year of the date hereof that the "Development and Planning Standards" of the Flood Action Task Force will have been adopted in the Municipality's land use regulations, guidelines and policies or in stand-alone form, and documentation of the adoption of such policies must be provided and approved by the Westchester County Planning Department (Planning Commissioner). It is understood and agreed to by the Municipality that the payment of County funds under this Agreement for the Project is contingent upon the Municipality's adoption of the aforesaid policies.*

We encourage the City to begin work to document item by item compliance with the development and planning standards as the dispersal of County funds is dependent on submission of such documentation by the City to the County. We recognize that some of these best practices may have been adopted by the City prior to this IMA. To ensure that full compliance is documented, we suggest that the City include evidence of such prior adoption in its report.

Frank Culross  
Rye City Manager  
Development & Planning Standards IMA Compliance  
Blind Brook Dam at Bowman Avenue Flood Mitigation Project  
Page 2.

A copy of the "Development and Planning Standards" is enclosed. If you have any questions or need additional information, please contact Robert Doscher at [rrd1@westchestergov.com](mailto:rrd1@westchestergov.com) or 914.995.4423.

Sincerely,

  
Edward Burroughs, AICP  
Acting Commissioner

EEB/RRD

Enclosure: Development and Planning Standards of the Westchester County Flood Action Force

cc: Hon. Douglas French, Mayor, City of Rye  
Christine Sculti, Assistant to the County Executive  
John Hsu, Acting Commissioner of Public Works  
Robert Doscher, Principal Environmental Planner

## **DEVELOPMENT AND PLANNING STANDARDS OF THE WESTCHESTER COUNTY FLOOD ACTION TASK FORCE**

Flooding frequency and, in some cases, intensity, in Westchester County has increased over time, in part due to the conversion of permeable and water-absorbing land surfaces, like woodlands, meadows and wetlands, to impermeable surfaces, like parking lots, roads and buildings, and surfaces that shed water more readily than others, like lawns and agricultural fields. This conversion has often occurred without commensurate stormwater runoff management facilities. Similarly, the water quality and ecological health of the county's streams, lakes, reservoirs and estuaries has diminished as a result of polluted stormwater runoff (a.k.a., nonpoint source pollution).

Strengthening existing and implementing new municipal ordinances related to stormwater runoff and management, with similar efforts made to the policies, guidelines and orders of the County of Westchester, has the potential to lessen the damage and risk caused by flooding and to minimize the deterioration of water quality and the ecological integrity of the county's water resources. These changes would be applicable to existing and proposed land management, use and development practices throughout Westchester County.

The New York State Department of Environmental Conservation (NYSDEC) issued a revised "SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s) (GP-0-08-002)" in April 2008. This permit became effective on May 1, 2008. These revised stormwater management regulations, commonly called the Stormwater Phase II Program, requires that municipalities in Westchester County and the County of Westchester (County), all of which are classified as an MS4, develop and implement a plan for managing stormwater runoff.

However, the Flood Action Task Force (Task Force) notes that although water quality protection is emphasized in these state regulations, municipalities and the County should do more to address water quantity (i.e., flooding) considerations in their applicable ordinances, regulations, orders, policies and guidelines. Therefore, the Task Force recommends the following "Development and Planning Standards."

Note that while these standards are recommended for all Westchester County municipalities, the incorporation of the following standards will be required of every municipality prior to its receipt of funds from the County's capital program to mitigate flooding and flood damage. An informational sheet describing this program is available on the County website at [www.westchestergov.com/flood](http://www.westchestergov.com/flood).

1. All municipal and County ordinances, regulations, orders, policies and guidelines associated with land management, use and development should reference and require compliance with the:
  - New York State Stormwater Management Design Manual (2004) or any subsequent version(s) of this manual and addendums thereto, including those

concerning Alternative Stormwater Management Practices, Redevelopment Strategy and Proprietary Practices.

- New York State Standards and Specifications for Erosion and Sediment Control (2005) or any subsequent version(s) of this manual.
2. All municipalities should formally adopt, with modifications noted below, the NYSDEC's "Sample Local Law for Stormwater Management and Erosion and Sediment Control (2006)" or closely similar ordinance acceptable to the NYSDEC. A copy of this sample ordinance is available at: [www.dec.ny.gov/docs/water\\_pdf/localaw06.pdf](http://www.dec.ny.gov/docs/water_pdf/localaw06.pdf) or at [www.dec.ny.gov/chemical/9007.html](http://www.dec.ny.gov/chemical/9007.html), then click on "Sample Local Law for Stormwater Management and Erosion and Sediment Control."

The aforementioned sample ordinance, however, should be modified by the municipality as follows:

**Article 2, Section 1, Definitions:**

**REVISED:**

**Land Development Activity** – any construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than 5,000 square feet, or activities disturbing less than 5,000 square feet of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules, or activities that result in the creation of impervious (non-permeable) cover equal to or greater than 1,000 square feet, whether those activities occur in association with new development, a modification or expansion of existing development, or redevelopment of a previously developed site.

**Article 2, Section 2**

**REVISED:**

**Section 2.2.2**

Land development activities as defined in Section 1 of this Article and meeting Condition "A" or "B" below shall include *water quantity* and *water quality* controls (post-construction stormwater runoff controls), as set forth in Section 2.2.3 and described in the New York State Stormwater Management Design Manual, including those capable of mitigating the water quantity impacts resulting from the twenty-five (25)-year storm event in Westchester County, New York, as applicable:

Condition A - Stormwater runoff from land development and redevelopment activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a Total Maximum Daily Load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

Condition B - Stormwater runoff from land development activities disturbing five thousand (5,000) square feet or more of land or creating impervious (non-permeable) cover equal to or greater than one thousand (1,000) square feet during the course of the project.

### **Section 2.2.3**

#### **SWPPP Requirements for Condition A, B and C:**

1. All information in Section 2.2 .1 of this local law;
  2. Description of each post-construction stormwater management practice;
  3. Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice;
  4. Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
  5. Comparison of post-development stormwater runoff conditions with pre-development conditions;
  6. Dimensions, material specifications and installation details for each post-construction stormwater management practice;
  7. Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice;
  8. Maintenance easements, if applicable, to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
  9. Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management practices in accordance with Article 2, Section 4 of this local law.
  10. The SWPPP shall be prepared by a licensed landscape architect or professional engineer or other appropriately certified professional and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meet the requirements in this local law.
3. All municipalities should develop a Local Hazard Mitigation Plan with approval of the plan by the Federal Emergency Management Agency (FEMA). Grant funding is available from FEMA to assist municipalities with the development of Local Hazard Mitigation Plans. Guidance on Local Hazard Mitigation Plans is available at: [www.fema.gov/library/viewRecord.do?id=3336](http://www.fema.gov/library/viewRecord.do?id=3336).
  4. All municipalities and the County should reference and, where applicable, require compliance with the design principles and practices of sustainable development (a.k.a., low impact development, better site design, smart growth and green development, among other titles). This reference should be made in municipal and County ordinances, regulations, orders, policies and guidelines associated with land management, use and development. Guidance on sustainable development is available through several sources, including:
    - “Low Impact Development Design Strategies: An Integrated Design Approach” (1999), by the Prince George’s County (Maryland) Department of Environmental Resources, at: [www.epa.gov/owow/nps/lid/lidnatl.pdf](http://www.epa.gov/owow/nps/lid/lidnatl.pdf);
    - “Low Impact Development: Urban Design Tools” Website, by the Low Impact Development Center, at: [www.lid-stormwater.net](http://www.lid-stormwater.net);
    - “Polluted Runoff (Nonpoint Source Pollution): Low Impact Development (LID)” Website, by U.S. Environmental Protection Agency, at: [www.epa.gov/nps/lid](http://www.epa.gov/nps/lid).

5. The Task Force also recommends compliance with the following general principles in regard to flood mitigation projects (these principles are further defined in the manuals and other publications noted above):

- Increased in impervious surfaces from development and redevelopment should be discouraged, including through reduced parking areas, small building footprints, preservation of vegetation, and permeable surfaces.
- The protection and preservation of naturally vegetated land next to streams, lakes and other watercourses and water bodies should be mandated, where appropriate and applicable, to prohibit any construction or other development activities within one hundred (100) feet of these water resources. This should include the clearing of vegetation within these aquatic buffers. Communities should, through local rules, permitting and enforcement practices, follow the principle that aquatic buffer, flood plain and wetland impacts and losses shall be avoided to the maximum extent practicable or, if these impacts cannot be avoided, that they shall be minimized to the maximum extent practicable; any unavoidable impacts that have been fully minimized should be mitigated through restoration and/or creation of aquatic buffer, flood plain or wetland.
- Greater consideration should be given to projects that utilize a higher degree of infiltration, extended detention, and retention to manage stream flows and lessen the severity of flooding.
- Projects that rely simply on channel “improvements” to speed the downstream flow of surface waters are discouraged, unless it can be clearly shown that (1) other preferred methods are not practical; (2) channel capacity and flood mitigation potential downstream of the project will not be adversely affected; (3) channel improvements are a more cost-efficient or -effective method of reducing flood damage in the project area; and (4) aquatic habitats and organisms would not be substantially impacted by the “improvements.”
- Absent other counterbalancing elements, proposed projects should not result in a net decrease in the volume of stormwater storage in an existing flood plain.
- Greater consideration should be given to projects that include water quality and fish and wildlife habitat improvement elements in stormwater management plans and details.

WCDP 02/14/09



# CITY COUNCIL AGENDA

NO. 8

DEPT.: City Council

DATE: November 2, 2011

CONTACT: Councilman Peter Jovanovich

**ACTION:** Discussion of a draft Resolution regarding flooding including preventative measures and flood consequences.

**FOR THE MEETING OF:**

November 2, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:**

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

See attached Resolution.

## **RESOLUTION OF THE CITY OF RYE CITY COUNCIL ON FLOODING**

WHEREAS, the City of Rye has suffered from severe floods over the last decade that have seriously damaged public and private property; and

WHEREAS, flooding has caused homeowners, the City, and other property owners millions of dollars for the cost of emergency services, restoration, and mitigation; and

WHEREAS, it is forecast that Rye will continue to suffer from such destructive floods in the coming years; be it further

RESOLVED, that the City of Rye attaches the highest priority to prevent flood damage; and be it further

RESOLVED, that the City urges all property owners in Rye, both public and private, to consider the consequences of their decisions that may exacerbate flooding in the City; and be it further

RESOLVED, that the City urges all Departments, Boards, Committees, and Commissions to take additional scrutiny in reviewing land-use applications and variances with a greater sensitivity to stormwater impacts.



# CITY COUNCIL AGENDA

NO. 9

DEPT.: City Council

DATE: November 2, 2011

CONTACT: Scott Pickup, City Manager

**ACTION:** Discussion of a draft Resolution to open Oakland Beach at Rye Town Park for public access during the off-season.

**FOR THE MEETING OF:**

November 2, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:**

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** The in-season for Oakland Beach at Rye Town Park begins on the Friday before Memorial Day and runs through Labor Day. Currently staffing at Rye Town Park is funded through October 31<sup>st</sup>, at which time it operates as a passive park without staff or services and the beach gates remain closed. A proposal has been put forward to have Oakland Beach open for public access during the off-season.

The insurance underwriters for Rye Town Park have raised the following concerns:

- there must be signage posted stating that the beach is closed to swimmers, surfers, etc. and that there is no lifeguard on duty.
- the gates/entrance to the beach should be closed at sunset to prevent any unauthorized activities.

See attached Resolution.

**RESOLUTION OF THE CITY OF RYE CITY COUNCIL  
ON OAKLAND BEACH AT RYE TOWN PARK**

**WHEREAS**, the Rye Town Park Commission has indicated that they will take the lead from Rye City Council regarding winter public access to Oakland Beach and Rye Town Beach at Rye Town Park; and

**WHEREAS**, the Rye City Council finds that public beaches should be accessible for use by the public during the off-season; be it further

**RESOLVED**, that the Rye City Council hereby recommends to the Rye Town Park Commission the following policies for use for the 2011-2012 winter, early spring season,

1. Oakland Beach and Rye Town Beach at Rye Town Park will be open for the winter.
2. As was instituted in the winter of 2009-2010, the northern third of the beach at Rye Town Park will be open for off-leash dog use with appropriate signage describing rules and responsibilities of dog owners using that area.
3. As was instituted in the winter of 2009-2010, the southern two thirds of the beach at Rye Town Park will be open for non-dog use of the beach, with the two areas clearly marked.
4. The results of this compromise will be communicated to Westchester County in the hope that Playland Beach, which abuts the northern third of Rye Town Park beach, will continue their off-leash area in coordination with these policies.
5. These rules will remain in place until the close of the middle weekend in April each year.



# CITY COUNCIL AGENDA

NO. 11

DEPT.: Finance

DATE: November 2, 2011

CONTACT: Jean Gribbins, City Comptroller

**AGENDA ITEM:** Resolution to re-allocate \$3,943.43 of the remaining 2002 Recreation Bond proceeds scheduled towards payment of 2012 Debt Service to use towards the 2011 final payment on the Rye Town Park roof project.

**FOR THE MEETING OF:**

November 2, 2011

**RYE CITY CODE,**

CHAPTER  
SECTION

**RECOMMENDATION:**

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

At the December 2, 2009 regular Council Meeting, the Council approved the reallocation of \$414,000 of the unspent proceeds of the 2002 Recreation Bond to finance the City's share of the Rye Town Park Roof Project.

At the August 11, 2010 regular Council Meeting, the Council approved the reallocation of unspent proceeds of the 2012 Recreation Bond. Part of this reallocation directed funds towards payment of the 2012 outstanding debt on the 2002 Recreation Bond.

The City of Rye share of the Rye Town Park Roof Project is \$417,943.43

New York State Department of Transportation ("NYSDOT") pursuant to the State/Local Agreement; and it is hereby further,

RESOLVED, that the sum of \$695,000 is hereby appropriated from the City's General Fund and made available to cover the cost of participation to complete the Project including all phase(s) or portions thereof.

RESOLVED, that upon the completion of the construction of the Project, or a fully usable portion thereof, the Municipality/Sponsor agrees to maintain the Project, or fully usable portion thereof, at their sole cost and expense; and it is hereby further,

RESOLVED, that in the event the full federal and non-federal share of the Project exceeds the amount appropriated above, the Municipality/Sponsor's Council shall convene as soon as possible to appropriate said excess amount immediately; and it is hereby further,

RESOLVED, that the Mayor is hereby authorized to execute all necessary Agreements or certifications on behalf of the Municipality/Sponsor, (subject to the Municipality/Sponsor Attorney's approval as to form and content), with NYSDOT in connection with the advancement or approval of the Project identified in the State/Local Agreement; and providing for the administration of the Project and the Municipality/Sponsor's first instance funding of the non-federal share of project costs and permanent funding of the local share of federal-aid and state-aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible; and it is further,

RESOLVED, that in addition to the Mayor, the following municipal titles: City Manager, City Engineer, and City Comptroller are also hereby authorized to execute any necessary Agreements or certifications on behalf of the Municipality/Sponsor, with NYSDOT in connection with the advancement or approval of the project identified in the State/Local Agreement;

RESOLVED, that a certified copy of this Resolution be filed with the New York State Commissioner of the Department of Transportation by attaching it to any necessary Agreement in connection with the Project; and it is further,

RESOLVED, that this Resolution shall take effect immediately.

**ROLL CALL:**

**AYES:** Mayor Otis, Councilmembers Ball, Cunningham, Gamache, Parker,  
Pratt and Sack

**NAYES:** None

**ABSENT:** None

**6. Resolution authorizing the financing for the Rye Town Park Capital Improvement Project**

City Manager Culross said staff is suggesting that instead of issuing new bonds for the City's \$414,000 share of the capital improvement to the Rye Town Park Administration Building, authorization be given to utilize funds from the 2002 Recreation Bond that were designated for recreation buildings. The City's bond counsel has said that by adopting a

Resolution, \$414,000 can be redirected to pay for the roof at Rye Town Park and the City would not have to issue additional funding at this point and would also allow the City to utilize funding that must be spent. Councilman Cunningham said the original intent of the bonding approved by the taxpayers had been to pay for the renovations to the Damiano Center but the project was changed by action of a Council majority and the original project was not funded, which resulted in the funds not being spent in a timely manner. The voters who approved the original bonding are not getting what they wanted, which was to fund a recreation project in the City of Rye, and this Council must now vote to fund a recreation project that is not in the City of Rye in order for the funds to be spent.

Councilman Pratt made a motion, seconded by Councilwoman Gamache to adopt the following Resolution:

**WHEREAS**, the City issued \$2,900,000 principal amount general obligations to finance the cost of additions to and the reconstruction of various City-owned buildings for park and recreational purposes pursuant to a \$4,400,000 aggregate principal amount serial bond resolution adopted by the City Council on April 10, 2002; and

**WHEREAS**, after completion of such park and recreational building addition and reconstruction project, \$890,000 of the \$2,900,000 proceeds of obligations issued by the City for such object or purpose remain unspent; and

**WHEREAS**, the City Council has been advised by the Commissioners of Parks that the City's obligation to fund its portion of a capital project established in Chapter 848 of the Laws of 1953, together with the Town of Rye, is \$414,000 and said Commissioners have delivered to the City Council a certificate as to the City's funding obligation pursuant to section 2 of said Chapter 848; and

**WHEREAS**, the City Council expects that the Town of Rye will contribute, appropriate and fund its portion of said capital project as certified by said Commissioners; and

**WHEREAS**, the City Council has determined that efficient financial administration of the City's obligation pursuant to said Chapter 848 will be achieved by applying said unspent proceeds to fund the cost of said obligation rather than incur new indebtedness

**NOW, THEREFORE**, be it resolved by the City Council of the City of Rye, New York, anything in the Charter of the City to the contrary notwithstanding, as follows:

1. **RESOLVED**, that pursuant to section 165.00(a) of the Local Finance Law and section 11 of the General Municipal Law, a portion of the proceeds originally in the amount of \$2,900,000 constituting a part of obligations of the City issued pursuant to a \$4,400,000 aggregate principal amount serial bond resolution adopted by the City Council on April 10, 2002, now unspent and not needed for the object or purpose (the construction and reconstruction of City-owned buildings for park and recreational purposes), hereby shall be (i) deposited in a single special account of the City in a bank or trust company located and authorized to do business in New York, (ii) not at any time commingled with other funds of the City, and (iii) expended and applied only to the cost of an object or purpose similar to and of the same period

of probable usefulness as the object or purpose for which the such part of said obligations were issued, all in lieu of applying said unspent proceeds to annual debt service on said obligations. In connection with the issuance of said obligations, the City Council hereby ratifies, approves and confirms the powers delegated to the City Comptroller, as chief fiscal officer of the City, contained in said bond resolution.

2. **FURTHER RESOLVED**, that prior to the expenditure of said unspent proceeds, the City Council shall conduct applicable environmental compliance proceedings under the NYS Environmental Quality Review Act with respect to the environmental and climate change impact of said similar object or purpose.

3. This resolution shall take effect immediately.

**ROLL CALL:**

**AYES:** Mayor Otis, Councilmembers Ball, Gamache, Parker, and  
Pratt

**NAYES:** Councilmembers Cunningham and Sack

**ABSENT:** None

The Resolution was adopted by a vote of 5 to 2.

During the Old Business section of the meeting, Mayor-elect Doug French said that he had implored the Council to go ahead with the Damiano Center project when he spoke at the January 4, 2004 Special Workshop and February 4, 2004 Council meeting.

7. Authorization for the City Manager to enter into a contract with Aero Hardware & Parts Co, Inc. to extend the terms on the final payment of \$5 million due on 1037 Boston Post Road.

City Manager Culross said that the amendment to the contract of sale requires the City to do nothing but gives the City an opportunity to do something. In March 2006 the City purchased 1037 Boston Post Road for \$6.2 million payable over 48 monthly payments of \$25,000 each with a \$5 million balloon payment due May 1, 2010. This amendment gives the City the option to extend the due date for the \$5 million balloon payment for up to 24 months by making monthly interest payments at a rate of 5.75% or \$23,958.33. The balloon payment is subject to adjustment based on changes to the capital gains tax rates after May 1, 2010.

Mayor Otis made a motion, seconded by Councilman Cunningham to adopt the following Resolution:

**RESOLVED**, that the City Council of the City of Rye hereby authorizes the City Manager to enter into a contract with Aero Hardware & Parts Co., Inc. to extend the terms on the final payment of \$5 million due on the purchase of 1037 Boston Post Road.

other qualified independent special counsel in determining whether a filing should be made.

Section 10. This Resolution shall take effect immediately upon its adoption by a majority vote of the voting strength of the City Council of the City.

**ROLL CALL:**

**AYES:** Mayor French, Councilmembers Filippi, Gamache, Jovanovich, Keith, Parker and Sack

**NAYS:** None

**ABSENT:** None

The Resolution was adopted by a 7-0 vote.

10. Resolution authorizing the City Comptroller to reallocate the Recreation Bond to be used for debt service  
Roll Call.

City Manager Pickup said that City Comptroller Gribbins has been working hard to identify money to reduce the City's 2011 budget exposure. This is an additional strategy. The City looked at balancing out additional investment in the Recreation facility, including an additional \$125,000 of projects that are included in the current budget, while at the same time giving the Council flexibility in 2011 and 2012 to prioritize projects or look at other sources of revenues for capital projects.

Council questions and comments included:

- During the budget discussions last year the Council asked if the bond funds could be spent on anything other than recreation capital improvements and was told that they could not be. Why is there a change in direction? (When a project is finished you are allowed to use the left over money to pay back the debt. That is the point the City is at now.)
- Are we reallocating the money for debt service because we were advised that we could not last year and now know that it is acceptable? (The discussion of how the money could be used might have been held prior to the discussion of using it to pay back the debt.)
- Is bond counsel now saying it is alright to use the money for debt service? (Yes)
- This would be undoing a vote of a prior Council.
- This would be using a non-recurring source to pay an ongoing expense, which is not right.
- \$124,500 is almost the \$115,000 amount that the Building Department is up in building permits this year. That money could be used for debt service.
- If the Council had known last year that the money could be used to pay off debt, it would have done so.
- The voters wanted the money spent on Damiano. If it cannot be spent on Damiano, it should be used to pay back the debt.

Councilman Jovanovich made a motion, seconded by Councilwoman Keith, to adopt the following Resolution:

**RESOLVED**, that the City Council hereby authorizes City Comptroller Jean Gribbins to allocate the remaining proceeds from the 2002 Recreation Bond as follows:

<b>Unspent Balance before adoption of 12/16/09 Resolution:</b>	<b>\$476,000</b>
Less : 12/19/09 Resolution to Reallocate Funds for	
Damiano Bldg Improvements	(126,500)
Gagliardo Park Restrooms	(100,000)
Friends Meeting House	(125,000)
<b>Unspent Balance after adoption of 12/16/09 Resolution:</b>	<b>124,500</b>
Less:	
Attorney and Actuary Fees for Arbitrage Calculation and 12/09 Repurpose Resolution	(14,223)
Arbitrage Penalty	(10,814)
<b>Unspent Balance before adoption of 8/11/10 Resolution:</b>	<b>99,463</b>
Add: 8/11/10 Resolution to Cancel the following Capital Projects	
Gagliardo Park Restrooms	100,000
Friends Meeting House	125,000
<b>Unspent Balance after adoption of 8/11/10 Resolution to cancel projects</b>	<b>324,463</b>
Less:	
Unspent Proceeds Applied to Debt Service - 2011	(150,000)
Unspent Proceeds Applied to Debt Service - 2012	(174,463)
<b>Unspent Balance after adoption of 8/11/10 Repurpose Resolution:</b>	<b>0</b>

↓ (39,413) Prof Overage  
170,520 toward 2012 debt

**ROLL CALL:**

**AYES:** Mayor French, Councilmembers Filippi, Jovanovich, Keith, and Sack

**NAYS:** Councilmembers Gamache and Parker

**ABSENT:** None

The Resolution was adopted by a 5-2 vote.

11. Resolution authorizing the City Manager to sign the settlement agreement, Memorandum of Understanding, between 151 Purchase Street Associates, LLC and the City of Rye  
Roll Call.

This agenda item was deferred.

12. Authorization for City Manager to seek an RFP for the City of Rye Corporation Counsel position



# CITY COUNCIL AGENDA

NO. 12

DEPT.: City Manager

DATE: November 2, 2011

CONTACT: Scott Pickup, City Manager

**AGENDA ITEM:** Authorization for the City Manager to enter into an Intermunicipal Agreement with Consolidated Edison Company of New York, Inc. to allow access for a DEC-approved remedial investigation and clean-up.

**FOR THE MEETING OF:**

November 2, 2011

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the Mayor and Council authorize the City Manager to enter into the agreement.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** Con Edison has requested permission to enter onto City property located at 31 Hill Street, Gagliardo Park, for the purpose of performing an environmental investigation for the site. Con Edison is obligated under a Voluntary Cleanup Agreement with the DEC to ensure that all gas operations-related contamination on or around the site is identified and remediated. 31 Hill Street is located near the Rye Gas Works site, a former manufactured gas plant that is subject to the Voluntary Cleanup Agreement.

See attached Access Agreement.

# ACCESS AGREEMENT

ACCESS AGREEMENT (“**Agreement**”) made this \_\_\_\_ day of November, 2011, by and between **THE CITY OF RYE** (the “**City**”), a New York municipal corporation with its principal office at Rye City Hall, 1051 Boston Post Road, Rye, New York, and **CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.** (“**Con Edison**”), a New York corporation with an office located at 4 Irving Place, New York, New York. From time to time in this Agreement, the City and Con Edison are collectively referred to as the “**Parties.**”

## WITNESETH:

**WHEREAS**, City owns certain improved real property that is located at 31 Hill Street in the City of Rye, New York, and operated by the City as a public recreational facility known as Gargliardo Park (the “**Property**”); and

**WHEREAS**, Con Edison and the New York State Department of Environmental Conservation (“**DEC**”) have entered into Voluntary Cleanup Agreement Index No. D2-0003-02-08 (the “**VCA**”), a copy of which is annexed hereto as Exhibit A, under which Con Edison commits to investigate various sites that were previously used by it and/or its predecessor companies as the locations of manufactured gas plants or manufactured gas holder stations (the “**Gas Operations**”) and, if deemed necessary by the DEC to protect human health and/or the environment, to implement DEC-approved remediation programs for the Gas Operations-related contamination present on or around those sites; and

**WHEREAS**, the Property is located near the Rye Gas Works Site (the “**Site**”), a former manufactured gas plant location that is subject to the VCA; and

**WHEREAS**, Con Edison is obligated under the VCA to implement a DEC-approved remedial investigation (“**RI**”) for the Site to ensure that all Gas Operations-related contamination on and around the Site is adequately characterized and delineated; and

**WHEREAS**, Con Edison has requested permission from the City to enter onto the Property for the purpose of performing the environmental investigation activities specified for the Property as part of the DEC-approved RI for the Site, so that Con Edison may comply with the VCA; and

**WHEREAS**, the City is willing to grant Con Edison such permission on the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, in consideration of the premises and covenants and promises of this Agreement, and other good and valuable consideration, the parties agree as follows:

**1. License to Enter/Risk of Loss.** Subject to Con Edison’s compliance with the terms and conditions of this Agreement, the City hereby grants Con Edison a revocable license and non-exclusive (the “**License**”) authorizing Con Edison and the Con Edison Parties (as defined

below) to enter upon the Property for the limited purpose of performing the environmental investigation activities specified for the Property in the DEC-approved Site RI Work Plan annexed hereto as Exhibit B and such additional environmental investigation activities as the DEC may require Con Edison to conduct on the Property during the term of the License as part of the DEC-approved RI for the Site (collectively referred to hereinafter as the “**Work**”). Con Edison acknowledges and agrees that the right of entry authorized by the License extends only to those areas of the Property necessary for the performance of the Work (such areas are collectively referred to hereinafter as “**Designated Work Areas**”) and only during such times as specified in the implementation schedule(s) provided for in Section 4(a) of this Agreement. Con Edison further acknowledges and agrees that: (a) the License does not constitute the granting of an easement or any other interest in the Property; (b) the City has made no representations or warranties of any kind regarding the physical condition of the Property, including the presence or absence of any conditions that might pose a danger to persons entering onto the Property or conducting any Work thereon; and (c) Con Edison has knowingly and intentionally assumed for itself and for its employees, agents, contractors, subcontractors, and representatives involved in the performance of the Work (collectively the “**Con Edison Parties**”) all risk of loss or injury that might occur during the performance of the Work as a result of any such conditions on the Property.

**2. Oversight.** The City and its agents, designees, employees, and representatives (collectively the “**City Representatives**”) have the right to accompany and observe the Con Edison Parties during the performance of the Work; provided however, that while the City Representatives are present within any Designated Work Areas in which Work is being performed, the City Representatives shall comply with the applicable requirements of: (i) the health and safety plan provided for in Section 4(c) of this Agreement; and (ii) all health and safety laws, ordinances, and rules and regulations pertaining to the performance of the Work .

**3. Revocation/Termination.** In the event of a breach of this Agreement by Con Edison, the License granted hereunder may be revoked by the City upon the giving to Con Edison of written notice of revocation delivered in accordance with Section 8 of this Agreement hereof. In addition, and notwithstanding anything to the contrary contained herein, in the event the Work has not been completed within six (6) months after the effective date of this Agreement, the License granted hereunder shall terminate unless the term of the License is expressly extended in writing by the City. Upon revocation or termination of the License, Con Edison shall immediately discontinue the Work and shall fulfill its obligations under Section 4(g) of this Agreement to repair and restore any areas of the Property that have been disturbed or adversely affected by the Con Edison Parties’ performance of the Work. Con Edison acknowledges and agrees that the revocation or termination of the License does not relieve Con Edison of any of its obligations, covenants, undertakings, and duties under this Agreement unless otherwise provided herein.

**4. Additional Warranties, Covenants, and Agreements.**

(a) **Notice/Commencement/Completion of the Work.** Con Edison shall give the City not less than five (5) business days prior written notice of the commencement of the Work on the Property. Subject to the giving of such notice, the Work shall be conducted on such dates

and during such hours as may be mutually acceptable to the Parties and the DEC, which dates and hours of Work shall be set forth for each Designated Work Area on the Property in the implementation schedule that will be developed by Con Edison for the City's consideration and that will be annexed to this Agreement as Exhibit C after it has been agreed upon by the Parties and been deemed acceptable by the DEC. Con Edison shall promptly notify the City in the event the DEC requires Con Edison during the term of the License to perform additional environmental investigation activities on the Property as part of the Site RI. Con Edison shall conduct the required additional environmental investigation activities for the Property on such dates and during such hours as may be mutually agreeable to the Parties and acceptable to the DEC, which dates and hours of Work shall be specified for each affected Designated Work Area on the Property in the implementation schedule that will be developed by Con Edison for the City's consideration and that will be annexed hereto as Exhibit D after it has been agreed upon by the Parties and deemed acceptable by the DEC. While developing the implementation schedule(s) required hereunder, Con Edison shall confer with the Superintendent of the City's Department of Recreation ("**DOR**") for the purpose of coordinating the performance of the Work with the City's and DOR's operations on the Property and avoiding unnecessary disruption of those operations.

(b) Contractors/Liens. The Work shall be performed at Con Edison's cost and expense by competent contractors retained and supervised by Con Edison. Con Edison shall keep the Property free of judgments and liens by the individuals and entities retained to perform the Work and shall promptly bond any such judgments and liens or cause them to be discharged.

(c) Permits/Health and Safety/Manifests. Except as otherwise provided in this Section 4(c), Con Edison shall obtain all necessary government agency permits and approvals required for the Work and shall provide copies thereof to the City not less than three (3) business days before commencing any Work for which such permits or approvals are required. Con Edison agrees that: (i) the Work will be performed in full compliance with all applicable environmental, health, and safety laws, standards, and regulations; (ii) all persons performing the Work will be appropriately trained, licensed, and insured; (iii) Con Edison's contractors will develop and implement a site-specific health and safety plan with respect to the Work in compliance with the requirements of the United States Occupational Health Administration ("**OSHA**") standards set forth in 29 CFR §1910.120; (iv) while Work is being performed within a Designated Work Area, Con Edison shall be responsible for the safety and security of such area; (v) Con Edison shall be responsible for the appropriate handling and use of all equipment and materials brought onto the Property by the Con Edison Parties for the performance of the Work and for the appropriate handling, storage, transportation and disposal of all waste materials generated by the performance of the Work, including, but not limited to, soil borings, soil cuttings, groundwater samples, soil samples, and monitoring well development and purge water (collectively "**Investigation-Derived Waste**"), and it shall comply with all laws, ordinances, rules and regulations applicable to the handling, storage, transportation and disposal of such Investigation-Derived Waste; and (vi) to the extent permitted by law, Con Edison shall be listed as the waste "generator" on all manifests and filings required for the off-site shipment of such Investigation-Derived Waste. The City agrees that the License granted hereunder is the functional equivalent of all permits and approvals that the City or the City's administrative agencies or departments may require for the performance of the Work on the Property. Upon the City's execution of this Agreement, the City and its administrative agencies or departments shall

be deemed to have issued to Con Edison and its contractors all City and City administrative agency/department permits and approvals required for the performance of the Work on the Property; provided however, that Con Edison or its contractors shall file with the City or the City administrative agencies/departments with jurisdiction over any such required permits/approvals a complete application for each required permit/approval and comply with all requirements (other than those pertaining to liability insurance coverage) typically imposed by the City and/or such City administrative agencies/departments upon entities issued comparable permits/approvals, including the payment of any required permit fees.

(d) Work Practices/Hazard Notification. The Work shall be performed in a good, orderly, and workman-like manner in accordance with the requirements of the DEC-approved RI Work Plan annexed to this Agreement as Exhibit B. The Con Edison Parties shall follow the procedures specified in such DEC-approved work plan and the OSHA health and safety plan provided for above in Section 4(c)(iii) of this Agreement to limit noise, dust, debris, odors, and other adverse effects and disruptions associated with the Work. In addition to any making notifications required under such DEC-approved RI work plan and/or OSHA health and safety plan, Con Edison shall promptly notify the City of any condition caused by the Work that may impair the health or safety of any City employees working on the Property or the public. Such notification shall be made to the City by calling the Superintendent of the City's DOR at (914) 967-2535 or the Chief of the City's Fire Department at (914) 967-3457.

(e) Staging/Equipment. Con Edison shall: (i) stage equipment or materials needed for the Work only in Designated Work Areas in which Work is being performed; (ii) not allow its contractors or subcontractors to leave any of their equipment or materials unattended or unsecured on the Property; and (iii) not leave any Designated Work Area unsupervised while Work is being performed in it. The Con Edison Parties shall maintain adequate safety barricades around all Designated Work Areas while performing Work in them. All groundwater monitoring wells installed on the Property as part of the Work shall be equipped locking caps and flush-mounted traffic boxes. If requested by the City, the Con Edison Parties shall maintain safety barricades or bollards around all such groundwater monitoring wells until they have been closed and decommissioned in accordance with Section 4(g) of this Agreement. Notwithstanding the foregoing, any equipment or materials brought onto the Property by the Con Edison Parties and used and/or temporarily staged on the Property by them shall be at their sole risk, and the City shall not under any circumstances have any liability for any loss of or damage to any such equipment and materials or for any injury to persons or damage to property caused by the Con Edison's Parties' use and/or staging of any such equipment or materials on the Property.

(f) Communications. Con Edison shall promptly provide the City with a copy of the final DEC-approved investigation report that Con Edison is required to prepare for the Work under the terms of the VCA and all correspondence by the DEC or New York State Department of Health ("DOH") interpreting the results of the testing conducted on the Property pursuant to this Agreement or determining whether additional investigation or any remedial response measures are or may be necessary for the Property.

(g) Restoration. Unless otherwise directed by the City, the Con Edison Parties shall by the end of each day on which Work is performed on the Property: (i) seal with all bore holes

that were drilled; (ii) cap and lock all groundwater monitoring wells that were installed; (iii) remove all equipment and materials used in the performance of the Work; and (iv) leave all Designated Work Areas in which Work was performed in a safe, clean condition. Upon completion of the Work, the revocation or termination of the License granted under this Agreement, or Con Edison's withdrawal from the VCA, Con Edison shall, at its sole cost and expense: (v) promptly restore all areas of the Property disturbed or adversely affected by the Work to their pre-existing condition; (vi) promptly re-seal all bore holes, if necessary; (vii) promptly repair in a first-class manner reasonably acceptable to the City all sidewalks, pavement, and improvements damaged or impaired by the Work; and (viii) leave all Designated Work Areas in a safe, clean condition. Not later than sixty (60) days after being authorized to do so by the DEC, Con Edison shall decommission and close in accordance with all applicable local and DEC rules and regulations all groundwater monitoring wells installed on the Property as part of the Work.

(h) Data Sharing. Con Edison shall provide the City with all final validated environmental sample data, laboratory reports, and boring logs for the Work conducted on the Property pursuant to this Agreement on the same day that Con Edison submits such information to the DEC and/or DOH. Upon reasonable advance notice, Con Edison shall provide the City with split samples of all groundwater and soil samples collected on the Property as part of the Work.

(i) Potential Response Action. In the event that petroleum or hazardous materials, substances, or wastes attributable to or arising from the Gas Operations are discovered on the Property, Con Edison shall implement such remedial response measures as may lawfully be required by the DEC for such materials, substances, or wastes. Con Edison shall implement such remedial response measures pursuant to the terms of an agreement mutually acceptable to the City, Con Edison, and the DEC. Except as otherwise provided below in Section 4(j), with respect to causes of action, damages, claims, demands, judgments, liens, litigation, liability, penalties, orders, losses, costs, and expenses arising out of the performance of the Work or the offsite disposal of any Investigation-Derived Waste generated by the Work, the Parties reserve all rights, claims, privileges, causes of action, and defenses that they may have against third-parties or one another in connection with any Gas Operations-related contamination or other environmental contamination that may be present on the Property.

(j) Indemnity/Hold Harmless. Con Edison shall indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, and representatives (collectively the "**Indemnitees**") from and against any and all causes of action, damages, claims, demands, judgments, liens, litigation, liabilities, penalties, orders, losses, costs, or expenses which may at any time be asserted against or incurred by the Indemnitees or any one or more of them, due to: (i) any acts or omissions of the Con Edison Parties in their performance of the Work; (ii) any unauthorized or unreasonable interference by the Con Edison Parties with the City's use of the Property during the Con Edison Parties' performance of the Work; (iii) Con Edison's breach of any of its obligations under this Agreement; (iv) any personal injury or damage to property arising from the acts or omissions of the Con Edison Parties in connection with their performance of the Work or the access to the Property granted herein, including but not limited to, the use of any equipment and materials on the Property pursuant to Section 4(e) of this

Agreement; and (v) any liability associated with the Con Edison Parties' offsite disposal of any Investigation-Derived Waste generated by the Work. The Indemnitees shall provide Con Edison with prompt written notice of any claim, delivered in accordance with Section 8 hereof, and cooperate in the defense or settlement of any such claim.

(k) **Reporting.** Con Edison shall be solely responsible for all governmental reporting obligations relating to the Work and to any petroleum, hazardous materials, substances, or wastes attributable to the Gas Operations that may be found on the Property.

(l) **Withdrawal from VCA.** Con Edison acknowledges and agrees that its obligations under this Agreement are separate and distinct from the VCA. If Con Edison withdraws from the VCA or the VCA is otherwise terminated, it shall promptly notify the City of Rye and, unless otherwise provided herein, its obligations hereunder shall not be excused, impaired or diminished.

(m) **Insurance.** Con Edison shall maintain in effect, at its expense, during the Con Edison Parties' performance of the Work, an insurance program in excess of Con Edison's self insured retention (presently \$7.5 million) covering its operations under this Agreement, as well as any litigation, claims, demands, damages, liabilities, losses, costs and expenses arising out of or from the performance of the Work by the Con Edison Parties. Not later than five (5) business days before commencing the Work on the Property, Con Edison shall provide the City with a Certificate of Insurance evidencing that Con Edison has secured excess liability insurance providing coverage with the following limits above Con Edison's self-insured retention: (i) \$10 million per occurrence and annual aggregate for commercial general liability, including sudden and accidental pollution liability; (ii) \$10 million per accident for auto liability; (iii) \$10 million per occurrence and annual aggregate for employer's liability coverage; and (iv) \$10 million per occurrence and annual aggregate for excess workers' compensation. Con Edison shall cause the City to be included as Additional Insured with respect to the performance of the Work on all such insurance policies, except the excess employer's liability and workers' compensation policies specified in clauses (iii) and (iv) above.

**5. Exhibits/Recitals.** The exhibits and recitals to this Agreement are incorporated by reference and made a part hereof.

**6. Survival of Covenants.** The Parties acknowledge and agree that the warranties, covenants and agreements contained herein shall survive completion of the Work, revocation or termination of this License, or Con Edison's withdrawal from or the DEC's termination of the VCA.

**7. Integration.** This is an integrated Agreement that reflects the Parties' full and final understanding of their respective obligations, rights, and duties with respect to the subject matter hereof. Any and all previous written or verbal agreements or understandings are void and ineffective.

**8. Notice.** Except as otherwise specified in this Agreement, all notices required or contemplated under this Agreement shall be in writing and shall be delivered by electronic mail,

If to the City:

Scott D. Pickup  
City Manager  
Rye City Hall  
1051 Boston Post Road  
Rye, NY 10701  
manager@ryeny.gov

If to Con Edison:

Kenneth Kaiser  
Section Manager, MGP Remediation  
Consolidated Edison Company of New York, Inc.  
31-01 20<sup>th</sup> Avenue, Bldg 138  
Astoria, NY 11105  
[kaiserk@coned.com](mailto:kaiserk@coned.com)

Delivery of any notices, reports, and other documents by electronic mail, while permitted, shall not be deemed sufficient unless accompanied by delivery via United States Postal Service mail, overnight mail, or by hand delivery. Each party to this Agreement reserves the right to designate different addressees for communications upon written notice to the other party to this Agreement.

**9. Binding Effect/Amendment.** This Agreement shall be binding on and inure to the benefit of the City, Con Edison, and their respective successors and assigns. This Agreement may not be changed or modified in any manner or form unless memorialized by a written document signed by all Parties hereto.

**10. Execution.** This Agreement may be signed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of executed counterparts may be accomplished by facsimile or e-mail.

**11. Effective Date.** The effective date of this Agreement shall be the date on which it has been duly executed by all Parties hereto.

**12. Governing Law.** The Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without regard to its conflict of laws principles. All actions for the enforcement or interpretation of this Agreement shall be brought in a court of competent jurisdiction within the State of New York

**IN WITNESS WHEREOF**, the Parties intending to be legally bound by the terms and conditions of this Agreement have caused this Agreement to be executed on their behalf by their duly authorized representative.

**CITY OF RYE**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**VOLUNTARY CLEANUP AGREEMENT INDEX NO. D2-0003-02-08**

**EXHIBIT B**

**DEC-APPROVED REMEDIAL INVESTIGATION WORK PLAN**

## **EXHIBIT C**

### **IMPLEMENTATION SCHEDULE FOR ENVIRONMENTAL INVESTIGATION ACTIVITIES SPECIFIED FOR THE PROPERTY IN EXHIBIT B**

The DEC-approved RI Work Plan for the Rye Gas Works Site includes the installation and sampling of shallow and deep groundwater monitoring wells within the areas of the Gargliardo Park Property depicted as MW-113S/D and MW-116S/D on Figure 4-1 of that Work Plan. Con Edison will collaborate with the City's DOR to develop an implementation schedule for the installation/sampling of those wells that best meets the needs of the Parties and that minimizes to the extent feasible any impact the performance of the Work may have on the use of the Park by the public. Once agreed upon, the schedule for the Work will be attached to the Agreement as Exhibit C.

**EXHIBIT D**

**IMPLEMENTATION SCHEDULE FOR ADDITIONAL ENVIRONMENTAL  
INVESTIGATION ACTIVITIES REQUIRED BY THE DEC DURING THE TERM OF  
THE LICENSE AS PART OF THE SITE REMEDIAL INVESTIGATION**

If the DEC requires Con Edison to conduct additional environmental investigation activities at Gargliardo Park during the term of the License as part of the DEC-approved Site RI, Con Edison will collaborate with the City's DOR to develop an implementation schedule for such additional Work that best meets the needs of the Parties and that minimizes to the extent feasible any impact the performance of the Work may have the public's use of the Park. Once agreed upon, the schedule for such additional Work will be attached to the Agreement as Exhibit D.



# CITY COUNCIL AGENDA

NO. 13

DEPT.: Engineering

DATE: November 2, 2011

CONTACT: Christopher Tallarini, Assistant City Engineer

**AGENDA ITEM:** Consideration of authorizing the City Manager to endorse the implementation of an easement between the Apawamis Club and Henry F. Skelsey and the City of Rye.

**FOR THE MEETING OF:**

November 2, 2011

**RYE CITY CODE,**  
CHAPTER  
SECTION

**RECOMMENDATION:** That the City Council accept the attached sanitary sewer easement to extend and improve the sewer system within the easement area.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** A pre-existing low lying segment of Club Road is unable to drain properly after rain events. A drainage plan has been created for this area. The attached easement is needed to extend the proposed drain pipe to its discharge point.

The sanitary sewer easement shall be between the Apawamis Club and Henry F. Skelsey and the City of Rye. The sanitary sewer mains and related sewer appurtenances will be constructed privately; no funding is required from the City of Rye.

## SANITARY SEWER EASEMENT

THIS indenture, made this \_\_\_\_ day of November, 2011, between the Apawamis Club and Henry F. Skelsey the owner of property located at 11 Sunset Lane (Tax Lot Id 139-18-1-29), hereinafter referred to as *Grantors*, and the City of Rye, a municipal corporation organized under the laws of the State of New York, with offices at 1051 Boston Post Road, Rye, NY 10580 as *Grantee*,

### WITNESSETH:

*Grantors*, in consideration of One Dollar (\$1.00) and other good and valuable consideration, paid by the *Grantee*, does grant and release unto the *Grantee* a permanent easement over and across those certain lands described as follows:

See "SCHEDULE A" attached.

Subject to any easements or encumbrances of record.

THAT the above describes a certain permanent sanitary sewer easement. That said easement is hereby conveyed for the purpose of allowing the *Grantee* to use, maintain, replace, construct, repair, reconstruct, and improve the sanitary sewer system lying within, over, above, across, under and through the easement area.

THAT the *Grantee*, its employees, servants, agents and contractors shall have the right to enter upon all the easements described herein and to utilize the same, whenever necessary, for the exercise of the rights and privileges granted hereunder.

THAT this grant is made and accepted under the express conditions that, after any exercise of the rights and privileges granted hereunder, the *Grantee* shall leave the premises in as good condition as found.

THE *Grantors* shall covenant and agree that no building or structure shall be constructed within said easement area, and that no trees or shrubs shall be planted within said *easement* area, and that *Grantors* shall not allow such construction or plantings without consent of *Grantee*, except by *Grantee* as may be necessary for the purpose of said easement, which will in any way interfere with complete access by the *Grantee*, its successors, assigns, employees and agents, in order to construct, maintain, operate and repair said sewer line.

THAT there is also conveyed herein all of the *Grantors* right, title and interest in and to all of the equipment comprising the sanitary sewer mains and related sewer appurtenances, not including private laterals, constructed as part of this project and as shown on the project record drawings, and which are hereby accepted by the *Grantee*.

THAT the Grantor Apawamis Club did authorize and approve granting of this sanitary sewer easement pursuant to a Resolution of the Board of Directors dated \_\_\_\_\_.

THAT the parties of the first part hereby releases the party of the second part from all claims for damage, from whatsoever cause, as a result of exercising any rights herein granted.

This easement shall bind and inure to the benefit of the *Grantors* and *Grantee* hereunder and to their respective successors and assigns and the terms *Grantor* and *Grantee* shall refer to the parties hereto and to their respective successors and assigns as the case may be.

This easement may be extended to serve further properties along Sunset Lane in the future and the such extension shall be approved subject to the consent and approval of other property owner(s) along Sunset Lane already benefitted by this easement.

IN witness whereof, the party of the first part has hereunto set its hand and seal the day and year first above written.

IN presence of:

Grantors:

Apawamis Club

By: \_\_\_\_\_

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER) SS:

On the \_\_\_\_\_ day of \_\_\_\_\_ 2011, before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Grantors:

Mr. Henry F. Skelsey, property owner of 11 Sunset Lane

By: \_\_\_\_\_

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER) SS:

On the \_\_\_\_\_ day of \_\_\_\_\_ 2011, before me, the undersigned, personally appeared Henry F. Skelsey personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Grantee:  
City of Rye

By: \_\_\_\_\_  
Scott D. Pickup  
City Manager

STATE OF NEW YORK)  
COUNTY OF WESTCHESTER) SS:

On the \_\_\_\_ day of November, 2011, before me, the undersigned, personally appeared SCOTT D. PICKUP personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**SCHEDULE A**



# CITY COUNCIL AGENDA

NO. 14 DEPT.: Police DATE: November 2, 2011  
CONTACT: William R. Connors, Police Commissioner

**AGENDA ITEM:** Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: General Order #113.20.

**FOR THE MEETING OF:**

November 2, 2011

**RYE CITY CODE,**

CHAPTER  
SECTION

**RECOMMENDATION:** Approval of a new General Order #113.20, "Hate Crimes."

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:  
Enhancement of the operational effectiveness of the Department.

**BACKGROUND:** The proposed new General Order #113.20 codifies procedures for the Investigation of Hate Crimes in compliance with new Accreditation Standard #44.2, recently Enacted by the New York State Law Enforcement Accreditation Council, which requires that accredited agencies have a written directive outlining procedures for response to these incidents.

A copy of the proposed order is attached. It has been provided to the Rye Police Association for review pursuant to the provisions of the collective bargaining agreement.

**CITY OF RYE POLICE DEPARTMENT**

General Order #113.20		New [ x ] Supersedes:	Revised [ x ]
Subject: Hate Crimes			
Date Issued xx/xx/11	Date Effective xx/xx/11	Page 1 of 9	
Issuing Authority: William R. Connors, Police Commissioner			

**I. PURPOSE**

This policy is established to assist employees in identifying and investigating hate crimes and assisting victimized individuals and communities.

**II. POLICY**

Any acts or threats of violence, property damage, harassment, intimidation, or other crimes motivated by hate and bias and designed to infringe upon the rights of individuals are viewed very seriously by this agency and will be given high priority. This Department shall employ necessary resources and vigorous law enforcement action to identify and arrest hate crime perpetrators. Also, recognizing the particular fears and distress typically suffered by victims, the potential for reprisal and escalation of violence, and the far-reaching negative consequences of these crimes on the community, this Department shall be mindful of and responsive to the security concerns of victims and their families.

**III. DEFINITIONS**

**A. New York State Penal Law §485.05 Hate Crimes.**

1. A person commits a hate crime when he or she commits a specified offense and either:

- (a) intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct, or
- (b) intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is

correct.

2. Proof of race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of the defendant, the victim or of both the defendant and the victim does not, by itself, constitute legally sufficient evidence satisfying the people's burden under paragraph (a) or (b) of subdivision one of this section.

For purposes of this section:

- (a) the term "age" means sixty years old or more;
- (b) the term "disability" means a physical or mental impairment that substantially limits a major life activity.

A. Specified Crimes Pursuant To Penal Law §485.05, "Hate Crimes"

The crimes that can be charged under the Hate Crime statute are listed in Attachment A.

B. Penal Law § 240.31 Aggravated harassment in the first degree.

A person is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct, he or she:

1. Damages premises primarily used for religious purposes, or acquired pursuant to section six of the religious corporation law and maintained for purposes of religious instruction, and the damage to the premises exceeds fifty dollars; or
2. Commits the crime of aggravated harassment in the second degree in the manner proscribed by the provisions of subdivision three of section 240.30 of this article and has been previously convicted of the crime of aggravated harassment in the second degree for the commission of conduct proscribed by the provisions of subdivision three of section 240.30 or he or she has been previously convicted of the crime of aggravated harassment in the first degree within the preceding ten years; or
3. Etches, paints, draws upon or otherwise places a swastika, commonly exhibited as the emblem of Nazi Germany, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the owner or operator of such building or real property;
4. Sets on fire a cross in public view; or
5. Etches, paints, draws upon or otherwise places or displays a noose, commonly exhibited as a symbol of racism and intimidation, on any building or other real property, public or private, owned by any person, firm or corporation or any public agency or instrumentality, without express permission of the

owner or operator of such building or real property.

Aggravated harassment in the first degree is a class E felony.

C. Penal Law § 240.30(3) Aggravated harassment in the second degree.

A person is guilty of aggravated harassment in the first degree when with intent to harass, annoy, threaten or alarm another person, he or she:

(3) Strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct.

Aggravated harassment in the second degree is a class A misdemeanor.

The additional crimes that can be charged under the Hate Crime statute are listed in Attachment A.

#### **IV. PROCEDURES**

##### **A. Goals**

1. Responding personnel shall conduct a thorough and complete investigation in all suspected and/or confirmed hate crime incidents.

2. Officers should make every effort to become familiar with organized hate groups operating in the community and police contacts should be documented.

##### **B. Initial Response Procedures**

Initial responding officers at the scene of a suspected hate crime shall take preliminary actions deemed necessary, including, but not limited to, the following:

1. Secure the scene. Steps should be taken so that the initial situation does not escalate. This includes but is not limited to:

a. Stabilizing injured victims and requesting medical aid.

b. Providing protection to victims and witnesses by increased police presence.

c. Securing the crime scene and ensuring the collection and photographing of physical evidence such as hate literature, spray paint cans, and symbolic objects used by hate groups, such as swastikas and crosses.

2. Identify criminal evidence on the victim if applicable.

3. Request the assistance of a translator or counselor when necessary.

4. Request the assistance of an investigator and supervisor.

5. Conduct a preliminary investigation and record information on;

a. the identity of suspected perpetrators,

- b. the identity of witnesses, including those no longer at the scene,
  - c. prior bias-motivated occurrences in the immediate area or against the same victim. (confer with Detective Division, NYSIC (518) 786-2100 and/or the Westchester Intelligence Center #####),
  - d. statements made by suspects; exact language is critical.
6. Arrest suspected perpetrators if probable cause exists.
- a. Conduct interview and attempt to establish motive
  - b. Consult with prosecutor if there is a question as to proper criminal charges
7. Ensure that necessary preliminary actions have been taken and brief the responding supervisor as to those actions. During the investigation, responding personnel should look for possible signs that the incident may be a hate crime, such as:
- The motivation of the perpetrator or lack of motive.
  - Statements made by the perpetrator.
  - The presence of multiple perpetrators.
  - The display of offensive symbols, words or acts.
  - Was any hate literature found in the possession of the suspect?
  - Is the victim the only person of a particular group at a park or facility?
  - Is the victim from a different racial, ethnic, religious group than the perpetrator?
  - The absence of any motive. The brutal nature of a particular incident could denote a hate crime, particularly when the perpetrator and victim do not know each other.
  - The perpetrator's perception of the victim, whether accurate or not.
  - The date, time or circumstances of the occurrence, such as on a religious holiday, or an event occurring at a gathering of a group of people affiliated by ethnicity, religion, sexual orientation, etc.
  - Multiple incidents occurring in a short time period and all the victims were of the same identifiable group.
  - Were the real intentions of the perpetrator racial, color, religious or ethnic oriented, or were there other reasons such as pranks, unrelated vandalism, or a dispute arising out of a non-bias related disagreement?
  - Incident occurred in proximity to an establishment that could be associated with one of the protected classes.
  - The perpetrator targeted a particular portion of the victim's body; i.e. Sikh victim forcibly having his hair cut, or a victim targeted for his/her sexual orientation being attacked near or around his or her genitalia.
  - The victim's perception that he/she was selected because he/she was a member of an identifiable group.
8. Note that the mere mention of a bias remark does not make an incident bias motivated, just as the absence of a remark does not make an incident without bias.
9. Be cognizant of dual motivation by some suspects. Example: A suspect may be looking to commit robberies but specifically targets elderly victims.

### C. Supervisory Responsibilities

The Tour Supervisor shall confer with the initial responding officer(s), ensure that necessary preliminary actions have been taken, and make appropriate notifications. The supervisor shall request any additional personnel necessary to accomplish the following:

1. Provide immediate assistance to the crime victim.
  - a. Express the law enforcement agency's official position on the importance of these cases, and describe the measures that will be taken to apprehend the perpetrators.
  - b. Express the department's interest in protecting victims' anonymity whenever possible.
  - c. Allow the victim a period in which to express his or her immediate concerns and express his or her feelings.
  - d. Communicate with concerned community-based organizations, civic groups, and religious institutions regarding the suspected or confirmed bias incident.
  - e. Identify individuals or agencies that may provide support and assistance. These may include family members or close acquaintances, a family clergyman or departmental chaplain, as well as community service agencies that provide victim assistance, shelter, food, clothing, child care, or other related services. Provide information regarding New York State Crime Victims Board.
  - f. Tell the victim about the probable sequence of events in the investigation and prosecution.
  - g. Explain security measures and precautions to the victim.
2. Ensure that officers and investigator conduct a thorough preliminary investigation.
3. Ensure that all relevant facts are documented on an incident or arrest report or both and make an initial determination as to whether the incident should be classified as a hate crime.
4. Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
5. Implement measures to ensure the safety of the victim.

#### D. Investigators' Responsibilities

Investigators shall conduct a complete and thorough follow-up investigation and recommend to Commanding Officer whether the incident should be classified as a hate crime. They shall ensure that appropriate assistance is being provided to hate crime victims, to include the following measures when appropriate:

- a. Contact the victim periodically to determine whether he or she is receiving adequate and appropriate assistance.
- b. Provide ongoing information to the victim about the status of the criminal investigation.
- c. Attempt, whenever possible, to conduct all interviews with victims at their

convenience and minimize, to the degree possible, interactions in which victims have to relate the incident.

#### **E. Incident Report Preparation**

Incident reports should clearly indicate the following information:

- Offense – Hate Crime designated Penal Law
- Victim age, gender, race, and ethnicity (when victim(s) is an individual(s))
- Offender age, gender, race, and ethnicity (when available)

The narrative portion of the Incident report should document that the victim(s) was intentionally selected or that the act was intentionally committed because of a belief or perception regarding such victim's race, color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation. The specific bias motivation of the perpetrator should be documented (Ex: selected victim because he was Hispanic, Jewish, Muslim, etc...)

#### **Arrest Processing**

The Hate Crimes law is a sentencing enhancement statute. Thus, when the specified crime is a misdemeanor or a class C, D, or E, felony, the hate crime shall be deemed to be one category higher. For example, if a defendant is alleged to have committed an Assault in the second degree, which is a "D" felony and it is alleged that the assault was a hate crime, then upon a conviction the assault is deemed to be a "C" felony and the sentence imposed will be based upon the sentencing range for a "C" felony. "A" and "B" felonies charged as hate crimes stay the same but are subject to higher penalties.

It is important to realize that a class A misdemeanor charged as a hate crime is deemed a class E felony. This may affect the manner in which the case is handled (e.g., arraignment, bail, grand jury).

Reporting of hate crime arrests is statutorily required. It is essential that if an individual is being charged with a hate crime, the arrest is properly coded.

When an arrest is being processed for a hate crime, the Arresting Officer is required to use the Penal Law code with the letter "H" to highlight and make the distinction. The letter "H" is applied to the subdivision of the PL section. In those cases where no subdivision exists, a double zero is used with the letter "H". Use caution when using the automated booking system to ensure that the correct offense is selected.

#### **Examples:**

PL section 120.00, subdivision 1 – Assault 3rd

- 120.00(01H), when it is a Hate Crime

PL Section 140.15 – Criminal Trespass 2nd

- 140.15 (00H), when it is a Hate Crime

Note: Do not use the letter H when not charging a hate crime or the arrest will be reported as a hate crime arrest by DCJS.

### **Accusatory Instrument**

1. As the Legislature made clear in the language of Penal Law section 485.00, the victim of a hate crime is society as a whole. It is apparently for that reason that the hate crime statute does not require specification of any particular person, only "a person." It is the attribute of the protected class (i.e., sex, race, sexual orientation, etc.), not the name of any particular individual member or members of that class which is of importance. Accordingly, the manner in which to allege a hate crime is to set forth the particular attribute of the protected class which is claimed to have motivated the defendant, and not name any particular person or persons. The indictment can simply allege that the defendant committed the underlying crime in whole or in substantial part because of a belief or perception of the race, or sex, or sexual orientation, etc, of "a person." Likewise, when alleging aggravated harassment in the first degree, the accusatory instrument need only allege prohibited conduct directed toward a class of individuals.

2. The accusatory paperwork filed with the court should also list the "H" designator. The narrative portion of the accusatory incident must include the elements and facts of the crime that demonstrate that the victim was intentionally selected or the act was intentionally committed because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation.

### **Records Management Section**

1. Assist department in complying with state hate crime reporting requirements.
  - a. Submit all incidents of reported hate crimes to DCJS each month using the State form 3294. Forms must be submitted each month. If no hate crimes were reported, departments must complete the form by checking the "Nothing to Report (NTR)" box.
  - b. Report monthly, by submitting a duplicate copy of form 3294, to the Regional or County Crime Analysis Center in accordance with any county or local laws.

### **G. Community Relations and Crime Prevention**

Hate crimes are viewed in the community not only as a crime against the targeted victim(s), but also as a crime against the victim's identification group as a whole. Working constructively with segments of this larger community after such crimes is essential to help reduce fears, stem possible retaliation, prevent additional hate crimes, and encourage any other previously victimized individuals to step forward and report those crimes. This is particularly important if an upward trend has been identified in these crimes. Towards this end, this agency's community relations function, or officers so assigned, shall perform the following:

1. Provide victim(s) with a point of contact in the department to whom they can direct questions or concerns, and keep them informed of the case progress including the end result of the investigation or prosecution.

2. Protect the privacy of the victim and their families as much as possible.
3. Provide any direct assistance reasonably possible and referral assistance to the victim and the family of the victim.
4. Meet with neighborhood groups, residents in target communities and other identified groups, to allay fears, emphasize the agency's concern over this and related incidents, reduce the potential for counter-violence and reprisals, and provide safety, security, and crime prevention information.
5. Engage the media as partners in restoring victimized communities through sensitive and accurate reporting. Information regarding hate crimes should be prepared for the media in an accurate and timely manner.
6. Conduct public meetings or forums designed to address the community-wide impact of hate crime and violence in general.
7. Establish liaisons with formal community-based organizations and leaders to mobilize resources that can be used to assist victims and prevent future hate incidents and crimes.
8. Expand, where appropriate, preventive programs such as hate, bias, and crime reduction seminars for school children.

Sources: International Association of Chiefs of Police (IACP) Model Policy  
New York State Police Policy  
Clinton County Sheriff's Department General Order  
State of New York Attorney General's Hate Crime: Manual for Prosecutors  
Nassau County Police Department Procedure  
New York City Police Department Hate Crimes Task Force  
Westchester County Department of Public Safety Crime Analysis Unit Section  
273.01 (3) of the Laws of Westchester County  
New York City Anti-Violence Project  
Westchester District Attorney's Office

**ATTACHMENT "A"****SPECIFIED CRIMES PURSUANT TO PENAL LAW §485.05, "HATE CRIMES"**

A "specified offense" is an offense defined by any of the following provisions of this chapter: section 120.00 (assault in the third degree); section 120.05 (assault in the second degree); section 120.10 (assault in the first degree); section 120.12 (aggravated assault upon a person less than eleven years old); section 120.13 (menacing in the first degree); section 120.14 (menacing in the second degree); section 120.15 (menacing in the third degree); section 120.20 (reckless endangerment in the second degree); section 120.25 (reckless endangerment in the first degree); section 121.12 (strangulation in the second degree); section 121.13 (strangulation in the first degree); subdivision one of section 125.15 (manslaughter in the second degree); subdivision one, two or four of section 125.20 (manslaughter in the first degree); section 125.25 (murder in the second degree); section 120.45 (stalking in the fourth degree); section 120.50 (stalking in the third degree); section 120.55 (stalking in the second degree); section 120.60 (stalking in the first degree); subdivision one of section 130.35 (rape in the first degree); subdivision one of section 130.50 (criminal sexual act in the first degree); subdivision one of section 130.65 (sexual abuse in the first degree); paragraph (a) of subdivision one of section 130.67 (aggravated sexual abuse in the second degree); paragraph (a) of subdivision one of section 130.70 (aggravated sexual abuse in the first degree); section 135.05 (unlawful imprisonment in the second degree); section 135.10 (unlawful imprisonment in the first degree); section 135.20 (kidnapping in the second degree); section 135.25 (kidnapping in the first degree); section 135.60 (coercion in the second degree); section 135.65 (coercion in the first degree); section 140.10 (criminal trespass in the third degree); section 140.15 (criminal trespass in the second degree); section 140.17 (criminal trespass in the first degree); section 140.20 (burglary in the third degree); section 140.25 (burglary in the second degree); section 140.30 (burglary in the first degree); section 145.00 (criminal mischief in the fourth degree); section 145.05 (criminal mischief in the third degree); section 145.10 (criminal mischief in the second degree); section 145.12 (criminal mischief in the first degree); section 150.05 (arson in the fourth degree); section 150.10 (arson in the third degree); section 150.15 (arson in the second degree); section 150.20 (arson in the first degree); section 155.25 (petit larceny); section 155.30 (grand larceny in the fourth degree); section 155.35 (grand larceny in the third degree); section 155.40 (grand larceny in the second degree); section 155.42 (grand larceny in the first degree); section 160.05 (robbery in the third degree); section 160.10 (robbery in the second degree); section 160.15 (robbery in the first degree); section 240.25 (harassment in the first degree); subdivision one, two or four of section 240.30 (aggravated harassment in the second degree); or any attempt or conspiracy to commit any of the foregoing offenses.

4. For purposes of this section:

- (a) the term "age" means sixty years old or more;
- (b) the term "disability" means a physical or mental impairment that substantially limits a major life activity.