CITY OF RYE

NOTICE

There will be a regular meeting of the City Council of the City of Rye on Wednesday, April 9, 2014, at 7:30 p.m. in Council Chambers at City Hall. *The Council will convene at 7:00 p.m. and it is expected they will adjourn into Executive Session at 7:01 p.m. to discuss collective bargaining.*

AGENDA

1. Pledge of Allegiance.

2. Roll Call.

3. Recognition of the Rye Recreation Girls All Star Basketball Team and the Resurrection CYO 8th Grade Boys A Basketball Team.

4. General Announcements.

5. Draft unapproved minutes of the regular meeting of the City Council held March 26, 2014.

6. Issues Update/Old Business.

7. Continuation of the Public Hearing to change the zoning designation of County-owned property located on Theodore Avenue and North Street to the RA-5 District to provide for the construction of affordable senior housing.

8. Residents may be heard on matters for Council consideration that do not appear on the agenda.

9. Resolution for the City of Rye to participate in the Westchester County Hazard Mitigation Plan (HMP) Update project.

10. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: Amendment of General Order #113.7, "Domestic Violence".

11. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: Approval of new General Order #113.21, "Guidelines for Recording Custodial Interrogations of Suspects".

12. Acceptance of Grant Award from the Westchester County District Attorney's Office in the amount of $3,130 to purchase equipment for the video recording of statements.
    Roll Call.

13. Adoption of the 2014 County property tax rates.

14. Designation of the City Council Liaison to the Rye Chamber of Commerce by the Mayor.

15. Consideration of Bid for Whitby Castle Door & Window Replacement Project Phase I (Contract #2014-01).
Roll Call.

16. Resolution to declare certain equipment as surplus.
Roll Call.

17. Miscellaneous communications and reports.

18. New Business.

19. Adjournment.

* *

The next regular meeting of the City Council will be held on Wednesday, April 23, 2014 at 7:30 p.m.

** 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 under “RyeTV Live”.

* Office Hours of the Mayor by appointment by emailing jsack@ryeny.gov or contacting the City Manager’s Office at (914) 967-7404.

CITY COUNCIL AGENDA

NO. 3 DEPT.: City Manager DATE: April 9, 2014

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Recognition of the Rye Recreation Girls All Star Basketball Team and the Resurrection CYO 8th Grade Boys A Basketball Team.

FOR THE MEETING OF:
April 9, 2014

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Council recognize the achievements of the Rye Recreation Girls All Star Basketball Team and the Resurrection CYO 8th Grade Boys A Basketball Team.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND:

The City Council congratulates two local basketball teams on their success:

Rye Recreation's Girls Basketball All-star team, comprised of 5 Rye Middle School students and two Osborn School Students, were victorious in the Westchester County Basketball Tournament Cubs Division (Ages 12 & Under). It was the first time in over 15 years that Rye Recreation came home with the trophy.

Resurrection's CYO 8th Grade Boys A Basketball Team edged out St. Gregory's in an exciting finale to win the 2013-2014 Archdiocese of New York Championship. In the post-season, the team won all three tournaments: Westchester County, the downstate semifinal (Manhattan, Bronx and Staten Island), and the final Upstate Championship Game. Resurrection finished first out of 212 Varsity Boys teams in the 10 Counties of the Archdiocese of New York; quite a phenomenal accomplishment.

2014 Westchester County Girls Basketball Champions: Rye Recreation All Star Team

Leah Atkins
Mara Ball
Teaghan Flaherty
Ava Greto
Leah Kenny
Audrey Labovitz
Ella Rivera

Coaches: Kelsey Hanley & Ryan Tracy

Top - left to right:
Coach Ryan Tracey, Audrey Labovitz, Mara Ball, Ava Greto and Coach Kelsey Hanley

Bottom - left to right:
Leah Atkins, Leah Kenny, Teaghan Flaherty and Ella Rivera

Resurrection CYO 8th Grade Boys A Basketball Team
2013-2014 Archdiocese of New York Champions

Jack Cacase
Harrison Caponiti
Joseph Colaio-Coppola
Matt Cooper
Jack Doty
Jake Heffernan
Gavin Kenny
Van Schwarz
Will Tepedino
A.J. Thompson

Coaches: Martin Durkin & Mike Tepedino

Left to right:

Van Schwarz, Gavin Kenny, Jake Heffernan, AJ Thompson, Will Tepedino, Jack Doty, Jack Cacase, Coach Martin Durkin, Matt Cooper, Harrison Caponiti, Joseph Colaio-Copola, and Coach Mike Tepedino.

CITY COUNCIL AGENDA

NO. 5 DEPT.: City Clerk DATE: April 9, 2014

CONTACT: Dawn Nodarse

AGENDA ITEM Draft unapproved minutes of the Regular Meeting of the City Council held March 26, 2014, as attached.

FOR THE MEETING OF:
April 9, 2014

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 March 26, 2014, as attached.

DRAFT UNAPPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on March 26, 2014 at 7:30 P.M.

PRESENT:

JOSEPH A. SACK Mayor
LAURA BRETT
KIRSTIN BUCCI
JULIE KILLIAN
TERRENCE McCARTNEY
RICHARD MECCA
RICHARD SLACK
Councilmembers

ABSENT: None

The Council convened at 6:32 p.m. Councilwoman Brett made a motion, seconded by Councilwoman Killian and unanimously carried to immediately adjourn into executive session to discuss attorney/client matters. Councilwoman Brett made a motion, seconded by Councilman Mecca and unanimously carried, to adjourn the executive session at 7:46 p.m. The regular meeting convened at 7:52 p.m.

1. Pledge of Allegiance

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

2. Roll Call

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

3. General Announcements by the Council

Councilmember Slack read the following statement on behalf of the Council:

"Last year, the City Council considered bids for awarding a contract for police uniforms. One bid was submitted by John Holmes, on behalf of his company, New England Sportswear. Part of the bid required that the bidder provide a warranty for the uniforms being sold. In connection with the bid, Mr. Holmes submitted a letter from Blauer Manufacturing Inc. purporting to be a signed letter of warranty. The bid was awarded to Mr. Holmes and his company. It later became known that this letter was fraudulent and the award was withdrawn. Mr.

Holmes was charged with two felonies by the Westchester County District Attorney.

"At the time of the charges, Mr. Holmes was a member of the auxiliary police force in Rye and he was removed from that position by the then Police Commissioner.

"The members of the City Council learned late last week that Mr. Holmes had sought reinstatement to the auxiliary police force in Rye after his criminal case was disposed of, apparently with the felony charges being reduced. The case is under seal so we do not know the precise outcome. We understand that the reinstatement was granted. This action was made before the City Council even knew about the request for reinstatement.

"While the selection and reinstatement of auxiliary police officers is not the province of the city council, the council believes that the reinstatement of a person to the auxiliary police force who submitted a false statement to the city council in order to obtain a contract with the city is a mistake.

"We wish the story ended there, but it does not. After the award to Mr. Holmes' company was withdrawn last year, the City instituted a policy for police officers to obtain uniforms individually -- as opposed to being required to use a provider chosen by bid -- and were then reimbursed for doing so. What we understand is that individual police officers went to Mr. Holmes' company for their uniforms leading to the ironic and totally inappropriate result that the person who had submitted an improper bid and falsified a document to the City Council ended up getting a good portion of the business anyway.

"This is not right. So we have requested that the City Manager and corporation council draft and present to the City Council appropriate policies and procedures to (1) stop immediately the procuring of items or services, including uniforms, from someone who has submitted a false document to the city in a bid process and (2) prevent this from occurring in the future. We look forward to voting to enact those policies and procedures."

Mayor Sack reported that the City's special land use counsel sent a letter to the County of Westchester regarding the City's position on the Playland Improvement Plan (PIP) that is currently being considered by the Board of Legislators. The City maintains it has approval authority with regard to the proposal and wants to make sure the views of all Rye residents are represented and addressed in connection with the proposed changes at Playland.

Additionally, announcements were made regarding upcoming events that may be of interest to residents.

4. <u>Draft unapproved minutes of the regular meeting of the City Council held March 12, 2014</u>

Councilman Mecca made a motion, seconded by Councilman Slack and unanimously carried, to approve the minutes of the regular meeting of the City Council held on March 12, 2014, as amended.

5. Issues Update/Old Business

Filming in Rye: Mayor Sack noted the recent filming in the downtown and said that although it can be disruptive to the downtown, it did bring revenue into the City and various businesses in the area. A portion of the proceeds will be used to purchase additional "Big Belly" garbage compacting machines for the Central Business District. City Manager Pickup said that every request for filming in the City is evaluated individually.

Utility Tax: Mayor Sack said he has been told that the City only receives 1% of the 3% utility tax currently in effect and could receive the entire 3%. City Manager Pickup said it was his understanding that the City currently gets 1% and is permitted to ask for up to 3% but does not believe that the other 2% is being collected. He will look into it.

Banners at Ball Fields: Mayor Sack asked why the City could not hang the banners of the sponsors of the Little League teams in the outfield of City ball fields in order to raise extra money. Corporation Counsel Wilson said there is an interplay of both City and State laws. The City can amend its local law that prohibits this, but there are state law issues regarding using municipal property for private advertising purposes. She will circulate the law and proposed solutions.

"Parkette" at Central Avenue and Boston Post Road: There was a discussion of the site which was graveled over last year and a request to have it turned back to "green space". The Traffic and Pedestrian Safety Committee (TPS) issued a report suggesting that the area remain the way it is for the purpose of creating off-street parking to create safer conditions. There is a suggestion to wait until the construction at 2 Central Avenue is completed to better evaluate traffic conditions. A question has also been raised regarding the legality of graveling over the lot without alienating the parkland through the State Legislature. Corporation Counsel Wilson will look into the situation and report back on issues such as whether the site is officially parkland. *Anne McCarthy, 24 Central Avenue*, said that she has researched the issue and that New York State considers implied dedication of land sufficient for inclusion as alienated land and, therefore, the City broke the law when it alienated the parkland without going through the State process. Ms. McCarthy was asked to provide the City with the results of her research. *Jim Amico, 350 Midland Avenue*, said he disagreed with the TPS memo and feels that the site would be safer as a park.

6. Public Hearing to revise the Mission Statement for the Rye Senior Advocacy Committee

Councilman McCartney made a motion, seconded by Councilman Slack and unanimously carried, to open the public hearing.

Joseph Murphy, Chair of the Rye Senior Advocacy Committee, said that the original Mission Statement of the Committee focused on assistance and information giving to seniors and the revised Mission Statement focuses on advocacy on behalf of seniors. He also provided a brief summary of the makeup of the Committee and the services they provide. Arthur Stampleman said the Committee is proposing to change the notion of services to individuals. Revisions to the local law were made after a brief discussion with the Council on the proposed language of the Mission Statement.

Councilwoman Brett made a motion, seconded by Councilman Mecca and unanimously carried, to close the public hearing.

Councilman Mecca made a motion, seconded by Councilwoman Brett and unanimously carried, to adopt the following local law:

CITY OF RYE
LOCAL LAW NO. 1 2014

A Local Law to amend Chapter 10, Committees, Article II,
Rye Senior Advocacy Committee, of the Code of the City of Rye
by amending § 10-4 Legislative Intent

Be it enacted by the City Council of the City of Rye as follows:

Section 1: Chapter 10, Article II, Rye Senior Advocacy Committee

§ 10-4 Legislative Intent.

The mission of the City of Rye Senior Advocacy Committee is to support the concerns of Rye's elder adults, to advocate for their needs, and seek new models and opportunities to better accommodate Rye's older population in order to develop and maintain a healthy, diverse populace in which citizens of all ages have the opportunity to contribute to the strength of the Rye community.

Section 2. This local law will take effect immediately upon filing in the Office of the Secretary of State.

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

Jim Amico, 350 Midland Avenue, asked that his request for use of City property for his car show be put on an agenda. He also said he was against the reinstatement of John Holmes as an Auxiliary Police Officer.

George Szczerba, 16 Adelaide Street, submitted statements about environmental and public safety concerns regarding the proposed Field House at Playland. He said that Police, Fire and EMS should have been included in the process so their concerns could be addressed.

Leon Sculti said that the changes he had suggested to correct inaccuracies in the Rye Golf Club theft report on the City website have not been made. He also asked if there have been further discussions with the City's insurance carrier. Mayor Sack said the Corporation Counsel has been asked to set up meetings or conference calls with the Insurance Carrier, the Insurance Broker and the City Council. The Mayor added that a determination has not been made at this time regarding amending the theft report.

Bob Zahm, Ridgewood Drive, offered thanks to the Police Department for pulling over Gimble bicycle riders, who violate traffic laws.

8. Authorization for the City Manager to enter into a management agreement with Powell Catering Services Inc. to operate the Café/Snackbar and Halfway House Operation at the Rye Golf Club
Roll Call.

Mayor Sack said that responses to the RFP to operate the food and beverage operation at Whitby Castle are being reviewed by members of the Council, Golf Club Commission and RFP Committee, and a final decision has not been reached yet. In order to make sure that snack bar operations will be taken care of when the season begins, a decision was made to split the operations at Whitby from the operation of the snack bar for the present. A one-year contract has been negotiated with Powell Catering to cover those services.

Councilman Mecca made a motion, seconded by Councilman McCartney, to adopt the following Resolution:

> **RESOLVED**, that the City Council of the City of Rye hereby authorizes the City Manager to enter into a management agreement with Powell Catering Services Inc. to operate the Café/Snack bar and Vendor Cart at the Rye Golf Club.

ROLL CALL:
AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney, Mecca and Slack
NAYS: None
ABSENT: None

The Resolution was adopted by a 7-0 vote.

9. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: Amendment of General Order #113.7, "Domestic Violence"

Corporation Counsel Wilson reported that the proposed revision had been reviewed by ADA Livingston, who suggested changes to the policy. There was a discussion among the

Council regarding differences between the last draft presented to the Council for review and the current version and questions as to why certain changes were made. A suggestion was made that Acting Police Commissioner Falk attend the next Council meeting in order to discuss the policy and answer any Council questions regarding the reasons that changes were made and that the Council be provided with a copy of the model that was used in drafting the regulation. Ms. Wilson will pass along Council questions to ADA Livingston.

10. Acceptance of donation to the City of Rye of a bike rack from the Rye Chamber of Commerce and the Farmers Market to be installed in the Central Business District
Roll Call.

Councilman Mecca made a motion, seconded by Councilwoman Brett, to adopt the following Resolution:

> **WHEREAS**, the Rye Chamber of Commerce and the Farmers' Market desires to donate a bike rack to the City of Rye; and
>
> **WHEREAS**, the bike rack will be placed in the Central Business District parking lot for use by bicyclists; and
>
> **WHEREAS**, the donation will enhance the Central Business District; now, therefore, be it
>
> **RESOLVED**, that the City Council of the City of Rye accepts the aforementioned donation.

ROLL CALL:

AYES:	Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney, Mecca and Slack
NAYS:	None
ABSENT:	None

The Resolution was adopted by a 7-0 vote.

11. Miscellaneous Communications and Reports

There was nothing discussed under this Agenda item.

12. New Business

There was nothing discussed under this Agenda item.

13. The Council will convene into Executive Session to discuss personnel

See Agenda item 14 below.

14. Adjournment

There being no further business to discuss Councilman Mecca made a motion, seconded by Councilman Sack and unanimously carried, to adjourn into executive session to discuss personnel and not return to the regular session at 9:40 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk

CITY COUNCIL AGENDA

NO. 6 DEPT.: City Council DATE: April 9, 2014

CONTACT: Mayor Joseph Sack

AGENDA ITEM: Issues Update/Old Business

FOR THE MEETING OF:
April 9, 2014

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That an update be provided on outstanding issues or Old Business.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND:

CITY COUNCIL AGENDA

NO. 7 DEPT.: Planning DATE: April 9, 2014

CONTACT: Christian K. Miller, AICP, City Planner

AGENDA ITEM: Continuation of the Public Hearing to change the zoning designation of County-owned property located on Theodore Fremd Avenue and North street to the RA-5 District to provide for the construction of affordable senior housing.

FOR THE MEETING OF:
April 9, 2014

RYE CITY CODE,
CHAPTER 197
SECTION 3

RECOMMENDATION: That the City Council continue the Public Hearing to amend the zoning designation of the County-owned property on Theodore Fremd Avenue.

IMPACT: ☒ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND:

The petitioner, Lazz Development/Pawling Holdings, seeks an amendment to the City Zoning Map to change the zoning district designation of an approximately 2.0-acre property located on Theodore Fremd Avenue and North Street. The request would change the zoning of the Westchester County-owned property from the B-6, *General Business*, District and the B-1, *Neighborhood Business*, District to the RA-5, *Senior Citizen's Apartment*, District. The petitioner is seeking to construct fifty-four (54) units of age-restricted housing located in two buildings. The proposal would be limited to those over age 55 and consist of 44 one-bedroom units and 10 two-bedroom units. The proposed units would also be affordable and 27 of these units would count towards Rye's contribution to the 750 units of fair and affordable housing Westchester County is obligated to provide as part of a stipulation of settlement with the U.S. Department of Housing and Urban Development (HUD). It is noted that the proposed zoning change is the same district as adopted by the City Council in the mid-1980s to accommodate the nearly 100 units of affordable senior housing at 300 Theall Road. The matter was referred to the City Planning Commission and a recommendation memo was provided to the City Council. Westchester County has provided its advisory comments on the matter.

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http://www.ryeny.gov

CITY OF RYE
Department of Planning

Memorandum

To: Scott Pickup, City Manager

From: Christian K. Miller, AICP, City Planner

cc: Kristen K. Wilson, Esq., Corporation Counsel

Date: March 7, 2014

Subject: **Additional Analysis Related to the Request of Lazz Development/Pawling Holdings to Change the Zoning Designation of County-Owned Property Located on Theodore Fremd Avenue and North Street to the RA-5, *Senior Citizens Apartment*, District to Provide for the Construction of Affordable Senior Housing.**

The Rye City Council as Lead Agency is responsible for the assessment and evaluation of potentially significant adverse impacts pursuant to the requirements of the State Environmental Quality Review (SEQR). During the public hearing there were questions and concerns raised by the public and City Council. To assist the City Council in assessing potential impacts it is recommended that the petitioner provide the following additional information and analysis:

- **Full Environmental Assessment Form**. The petitioner has provided a short Environmental Assessment Form (EAF) with its zoning petition, which is the minimum required by SEQR. Given the nature of the public comment it is recommended that a full EAF be submitted for the Council's review. This will provide a more complete environmental assessment of the proposed zoning change and future senior housing development proposal.

- **Sub-Surface Conditions**. Concerns remain with the status of the sub-surface environmental conditions on the site. It is recommended that the petitioner prepare a Phase II environmental study that includes current testing for potential sub-surface contaminants on the site. Recent clean-up activities in the area and adjacent to the site should also be addressed and their potential impact on the site. The status of the sub-surface environmental conditions is a threshold

question for the City Council as it considers a change in zoning to allow for senior housing on a property that is currently restricted to light-industrial, commercial and other non-residential uses. The City has allowed the redevelopment of properties with prior sub-surface contamination for housing including many former gas station properties. It is anticipated that such redevelopment could be allowed in this case, provided that petitioner gives the Council current and complete information and clearance from the appropriate State and County agencies as to the specific redevelopment proposed by the petitioner.

- **Fiscal Impact Analysis**. Currently, since the County-owned property generates no property tax revenue, but also requires few municipal services. The petitioner should provide a fiscal impact analysis quantifying the anticipated total tax revenue (based on the total rent revenue of the project) and the anticipated municipal service demands. Using the existing senior housing development at 300 Theall Road will provide good comparables for potential service demands. The analysis should also try to quantify anticipated cost/revenue if the site were developed based on the uses permitted by existing zoning.

- **Traffic**. The petitioner should prepare a traffic study quantifying the anticipated trip generation of the full development of the site under the proposed RA-5 District standards and the impact on level of service at area intersections. This analysis should be compared to the anticipated traffic impact associated with development permitted by existing zoning on the property.

Upon receipt of this information the City Council will be in a better position to assess potential impacts and determine the appropriateness of the petitioner's request and whether additional mitigation measures may be necessary.

Nick Everett, Chairman
Martha Monserrate, Vice Chair
Laura Brett
Barbara Cummings
Hugh Greechan
Peter Olsen
Alfred Vitiello

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CITY OF RYE
Planning Commission

Memorandum

To: Rye City Council

From: Rye City Planning Commission
Christian K. Miller, City Planner

cc: Scott Pickup, City Manager
Kristen K. Wilson, Esq., Corporation Counsel

Date: February 5, 2014

Subject: **Recommendation to the Rye City Council Regarding the Petition of Lazz Development/Pawling Holdings to Change the Zoning Designation of County-Owned Property Located on Theodore Fremd Avenue and North Street to the RA-5, *Senior Citizens Apartment*, District to Provide for the Construction of Affordable Senior Housing.**

As requested, this memorandum provides the Planning Commission's recommendation to the Rye City Council regarding the petition of Lazz Development/Pawling Holdings to change the zoning designation of Westchester County-owned property located on Theodore Fremd Avenue and North Street to the RA-5, *Senior Citizens Apartment*, District to provide for the construction of affordable senior housing. This memorandum was prepared by the City Planner and reviewed and unanimously approved by the Planning Commission at its February 4, 2014 meeting.

Background

On or about December 10, 2013, the City Council received a petition from Lazz Development/Pawling Holdings to change the zoning of a property located at 150 North Street. The approximately 2.080-acre property has frontage on North Street, but is commonly referred to by its accessible frontage on Theodore Fremd Avenue rather than its legal address of 150 North Street. The request would change the zoning of the Westchester County-owned property from the B-6, *General Business*, District and the B-1, *Neighborhood Business*, District to the RA-5, *Senior Citizen's Apartment*, District (see Exhibit 1).

The existing zoning districts applicable to the property do not permit multi-family housing. The proposed zoning change to the RA-5 District would permit (and limit) future construction on the property to affordable senior housing. The petitioner has represented that if the zoning change is granted, he would seek subsequent approvals from the Rye City Planning Commission to construct approximately fifty-four (54) units of affordable age-restricted housing located in two buildings. The proposal would be limited to those over age 55 and consist of approximately 44 one-bedroom units and 10 two-bedroom units.

The proposed RA-5 District for the property is the same district adopted by the City Council in the mid-1980s to accommodate the nearly 100 units of affordable senior housing on an approximately 2-acre site at 300 Theall Road, also known as Rye Manor. The proposed units would be affordable and a minimum of 27 of the units would count towards the 750 units of fair and affordable housing that Westchester County is obligated to provide within 31 eligible municipalities as part of a stipulation of settlement with the U.S. Department of Housing and Urban Development (HUD). Rye has been identified in the housing settlement as one of the 31 eligible Westchester County communities.

The subject property has long been considered for affordable housing by the City of Rye. In the early 1990s a local not-for-profit in partnership with the City of Rye sought to change the zoning of the property to construct 12 two-family units (i.e. 24 total units). That proposal and the required zoning change were never advanced due to the identification of sub-surface contamination on the property in 1993. Since that time the property has been subject to an environmental clean-up, but the City continued to periodically advocate for its use as an affordable housing site (see Exhibit 2).

Unlike the affordable housing proposal twenty years ago the City of Rye is not a partner in the construction, property ownership or administration of the affordable housing units. Westchester County is the property owner and the petitioner is the County's preferred developer for the property. The City of Rye's role is typical of any other land use application, which is to review and consider the land use policy implications of the request.

Westchester County's interest is to advance its obligation under the housing settlement. The property in Rye is unique because there are few (if any) undeveloped County-owned properties within one of the 31 eligible housing settlement communities. It's also unique because the City has a 20-year history of advocating for the development of affordable housing. Rye's historic advocacy for affordable housing does not constitute a commitment or obligation to approve the petitioner's request, but is relevant in terms of the planning context and the City's affordable housing policy.

The petitioner's interest is to develop affordable housing. The petitioner has constructed a number of affordable housing communities in the Sound Shore area,

including 27 units in two separate projects on Cottage Street in Rye. Both of those projects required the City's Council's legislative authority to either amend the City Zoning Code or de-map an unused road right-of-way. In an August 9, 2013 letter the Petitioner received authorization from Westchester County "to seek all necessary approvals from the City of Rye…" (see Exhibit 3). This letter was provided to the City and forwarded to the City Council on August 16, 2013. This letter was expected based on a meeting City Council members and staff attended at Westchester County in June 2013. A summary of that meeting was provided to the City Council (see Exhibit 4).

The City's interest is to potentially advance identified affordable housing needs in the area consistent with its land use planning and other policies. The County has only a limited allocation of housing that it can designate as age-restricted towards the 750-unit obligation under the settlement. If that age-restricted allocation is lost to another community, there will continue to be pressure to develop the County-owned property in Rye for affordable housing without the age restriction. Age-restricted housing eliminates the potential for the generation of school-age children and the potential for a land use outcome in which potential municipal and school district service costs from the proposed development exceed anticipated property tax revenue.

Zoning Petition Review Process

Any change to the City Zoning Code or Map is a discretionary action of the City Council. As is typical in most communities, legislative actions involving land use matters are referred to the City Planning Commission for its review and comment. The specific action under consideration is a local law to amend the City Zoning Map to change the zoning district designation of the subject property to the RA-5 District. The minimum legal requirements to implement the local law are as follows:

1. *Local Law and Petition Referral*. The draft local law and petition must be referred to the Westchester County Planning Board pursuant to Section 239-m of the GML and Section 451 of the Westchester County Administrative Code. This information was forwarded to the County on December 24, 2013. The City Council cannot take an action on the petition until it receives a response from the County or until 30 calendar days has passed from the date of such referral. That response was provided on January 30, 2014 (see Exhibit 5).

2. *Public Hearing.* As with any law change a public hearing is required and notification of such hearing must be published in the City's official newspaper. Unlike New York State Town or Village Law, Section 83 of the General City Law does not require any additional notification (e.g. signage on the property, mailing of hearing notice, etc.) to property owners affected by or within the vicinity of the proposed zoning change.

3. *SEQR.* Before making a decision on the local law, the City Council must comply with the requirements of State Environmental Quality Review (SEQR) and conduct an environmental assessment of the proposed action. The City Council has already taken the first step in this process by declaring at its December 18, 2013 meeting its intent to be Lead Agency for the environmental review. On December 24, 2013, staff circulated the Council's intent to be Lead Agency to other involved agencies. There has been no objection to the City Council being Lead Agency within the minimum required 30-day objection period. The City Council is therefore the Lead Agency at this time. As Lead Agency, the City Council must review the environmental assessment form (EAF) submitted by the applicant and conduct its own assessment of potentially adverse environmental impacts. If the Council finds that the proposed action does not have any significant adverse environmental impacts and issues a "Negative Declaration" a decision on the local law can be made. If the Council finds that there are potentially significant adverse impacts associated with the proposed action a "Positive Declaration" must be issued requiring a more involved environmental review. This review involves a number of procedural requirements and typically takes a least a year to complete.

4. *Decision.* After conducting and closing the public hearing and completing the SEQR process the City Council can make a decision. A simple majority vote is required for the adoption of the local law. A super majority vote of the Council (i.e. a minimum of three-fours of the members) is required if twenty percent or more of property owners subject to the zoning change or within 100 feet therefrom submit a written protest to the request. Based on a preliminary review it appears that a written objection by just three property owners within 100 feet of the site would trigger a super majority vote (or 6 of the 7 City Council members) to approve the zoning request.

Westchester County HUD Settlement and Its Implications for Rye

In 2009 Westchester County entered into an agreement with the U.S. Department of Housing and Urban Development (HUD) to settle a lawsuit. The civil lawsuit was initiated by the Anti-Discrimination Center of Metro New York, Inc. The lawsuit alleged that the County failed to affirmatively further fair housing (AFFH) in its administration of federal funds including the Community Development Block Grant (CDBG) program and other federal programs. Specially, the lawsuit alleged that the County did not conduct a meaningful Analysis of Impediments (AI) to fair housing choice and did not take appropriate actions to overcome the effects of any impediments identified through that analysis. The County's failure to comply with that obligation as a recipient of federal funds was alleged to be a violation of the False Claims Act.

There are many requirements of the stipulation of settlement. One requirement is that the County fund 750 affordable housing units within five years within eligible U.S Census Tracts of 31 municipalities in Westchester County. Eligible census tracts were identified as those having low percentages of minority populations. To date, the County has funded the construction of 27 affordable housing units in the City of Rye that count towards the 750-unit requirement. The City is not bound by the terms of the Settlement and is not required to approve any fair and affordable housing units, but has advanced affordable housing proposals when they were consistent with the land use, planning and housing objectives of the City.

A second significant requirement of the settlement is that the County is responsible for promoting and advancing a model affordable housing ordinance in each of the 31 eligible municipalities. The model ordinance, which was approved by the Monitor in October 2010, includes provisions to promote affordable housing including inclusionary zoning requirements, recommendations to increase multi-family housing zoning and other provisions. Westchester County is aggressively promoting the model ordinance, but no community is required to adopt it. In fact, most communities have not adopted it in full and many communities (including Rye) continue to review the model ordinance for its appropriateness given the existing land use planning and legal context.

A final significant requirement of the settlement relevant to Rye is that the City cannot receive CDBG and other federal funds administered by the County unless it advances fair and affordable housing. The City currently receives no such funding and therefore has no obligation.

The County and the monitor retained by HUD to oversee the implementation of the settlement have identified the County-owned property at 150 North Street as an opportunity to provide additional affordable housing in Rye. There have been conversations with the County and the City over the years both before and after the Settlement to discuss the potential for affordable housing at this location, but there has been no commitment by either party as to a specific development program. It has always been understood that any final action would require City Council approval because the property is not currently zoned for multi-family use.

In March 2013, Rye along with the other the 31 eligible communities identified in the Settlement were surprised to receive a “report card” directly from the Federal Monitor. Westchester County was not aware that report cards were being sent to communities, none of which are not party to the Settlement. The report card included an assessment of each community’s existing zoning code.

In many, if not all, cases the report cards were critical of the lack of multi-family zoning in each community and repeatedly stated that more land use changes would be needed to accommodate affordable housing needs. The need was not for the implementation of the 750 units under the Stipulation, but rather the need identified in the 2005 Affordable

Housing Allocation Plan prepared by the Westchester County Housing Opportunities Commission. This allocation plan was not adopted by the Westchester County Board of Legislators and is considered an advisory document. That document recommends the need for over 10,000 affordable housing units in Westchester County, which is significantly higher than the 750 units under the stipulation.

In the case of Rye the unadopted report allocates 167 affordable housing units in the City. The monitor's report card uses that number as the basis for his analysis of affordable housing deficiency. He notes that of the 167 units the City has already provided 27 under the Settlement leaving 140 affordable units of "required" allocation for the City. Accommodating this number of units in the City, particularly under the preferred 90/10 inclusionary development scenario recommended by the monitor will require very aggressive land use changes by the City Council.

As the City Council considers the petitioner's request it should be mindful of these non-binding affordable housing allocations. Development of additional affordable housing at this location could significantly advance the City's contribution to meeting affordable housing needs both under the settlement and the advisory housing allocation plan. At this time Westchester County has stated that a minimum of 27 of the proposed affordable housing units at the petitioner's site could be "counted" towards the housing settlement. Providing affordable housing units may help address some of the criticism of the City's land use and affordable housing policies.

Planning Analysis

The City Planning Commission supports the zoning petition and finds that the proposed use is consistent with the City's historic and future planning policies and housing objectives. In reaching this finding the Planning Commission considered the full development potential of the property under existing, planned and proposed zoning, the precedent established by the application of the RA-5 District and the compatibility of the requested change with surrounding land uses.

The petitioner has proposed a specific use and site plan for the property. As with all zone changes, however, the proper planning analysis requires an assessment not of the petitioner's specific proposal, but rather of the full development potential of the site after the zoning request is granted. Plans can and likely will change.

The petitioner's site plan accompanying his request proposes two four-story buildings, where the lowest story is unenclosed parking. The plan submitted shows approximately 75,600 square feet of total development, 90 parking spaces for an estimated 54 units and compliant with all other bulk and dimensional restrictions of the RA-5 District. This plan represents about 83% of the maximum development potential permitted under the proposed zoning. The proposed FAR of 1.0 is slightly higher than the 0.75 FAR permitted in the B-6 District located on the rear portion of the site and the 0.50 FAR

permitted in the B-1 District located on the front of the site. The RA-5 District allows four stories within a maximum building height of 40 feet. The B-6 District allows just two stories, but the same building height of 40 feet. The B-1 District limits maximum building height to 2½ stories and 35 feet. The front yard setback for the proposed RA-5 District is 25 feet, which is greater than the 10-foot requirement for the B-1 and B-6 District. Side yard setback dimensions are also greater for the RA-5 District than the existing districts applicable to the site and the rear yard requirement is generally the same.

The RA-5 District is limited to just one use, which reads as follows:

> *Apartments for Senior Citizens and Handicapped. A detached residence for three or more families or housekeeping units or a group of buildings housing three or more families on one lot, undertaken by private nonprofit sponsors with public financial assistance, subject to the requirements of § 197-7.*

In the event the conditions were to change after the zoning were established for the property the future use would continue to be limited to senior multi-family housing including an element of "public financial assistance" (i.e. affordable housing). On the other hand, the existing B-6 District allows a boarder range of uses including automotive uses, storage establishments, public transportation and utilities, service/contractor businesses, bus storage and repair, kennels and veterinary hospitals and limited manufacturing. The B-1 District allows offices, retail and personal service businesses, garages, apartments over stores, lodging houses, service/contractor businesses and social clubs and lodges.

The City Development Plan (1986) does not cite a specific written recommendation for the property or area, but generally encourages creating additional affordable housing opportunities in the City (see Plan, Chapter 1, *Residential Development*). The future land use plan designates this area for office (see Plan, p. 8-9). Since that time only the property at 350 Theodore Fremd Avenue has been developed as an office building under the B-1 District designation. Since the early 1990s the plan for the subject property has been for the development of the site for affordable housing. The Planning Commission believes that office as recommended in the Development Plan is not an economically viable use as evidenced by the long-standing high vacancy rate of office in the City and County and that a change in use is required. In the last few years the City has seen the conversion of a large office building to medical office and a request to amend the B-4 Office Building District to allow a hotel at 120 Old Post Road.

Residential at this location would be more compatible with the residential properties located opposite the site on Theodore Fremd Avenue than many of the uses permitted under the existing B-6 and B-1 District. The site is in close proximity to other non-residential uses including gas stations, a contractor's yard for a landscape business, the ConEdison property and the Metro-North Railroad and Interstate 95. The Commission

notes other multi-family communities (both affordable and market-rate) and other residential neighborhoods located adjacent to transportation corridors that bisect the City.

The use of an existing zoning district classification in the City also is in keeping with the City's land use planning objectives. The RA-5 District specifically provides for the affordable housing needs for seniors. Expanding that district to other appropriate locations in the City is considered a desirable planning objective.

SEQRA Considerations

The Planning Commission has reviewed the environmental assessment form submitted with the zoning petition. As Lead Agency the City Council should consider the following potential impacts and mitigation measures associated with the project prior to making a determination of environmental significance.

- *Sub-surface Conditions*. As the City Council considers the petitioner's request it is recommended that it secure written confirmation from Westchester County Health Department regarding the status of the sub-surface contamination on the site and the status of the environmental clean-up. The Planning Commission understands based on the petitioner's representations that the County Health Department will require that future development at the site require elevating the first habitable story above grade. The Health Department should conduct a review of the proposed plan including all proposed surface and sub-surface improvements such as utilities, stormwater drainage measures and sewer connections.

- *Sanitary Sewer Service*. There is an existing sanitary sewer line that extends from Nursery Lane under I-95 and MNRR tracks through the site to an existing connection in Theodore Fremd Avenue. The existing line is compromised and is difficult to service and maintain due to the high volume, high speed vehicular and rail traffic on a major regional transportation corridor. The City does not want to continue to maintain this existing sewer line through the site and accommodate the additional sewage flow from the petitioner's development. The Commission recommends that the existing public sewer line be abandoned and that the future development on the property be required to provide a new sewer connection from Nursery Lane to an existing sewer connection in North Street. This project has been identified in the City's Capital Improvement Program (CIP) for some time at a preliminary project cost of $150,000. This is a substantial off-site improvement and may challenge the fiscal feasibility of the project depending on the availability of funding to the petitioner. The sewer modification and extension may also require securing easements from Nursery Lane property owners and Westchester County approval of the sewer design.

- *Drainage/Wetland Impacts*. On its site inspection of the property, the Planning Commission noted a drainage pipe that extends from Theodore Fremd Avenue and discharges stormwater runoff from this roadway onto the site. It appears that this runoff has created what may be considered a wetland under the City's Wetlands and Watercourses Law[1]. The proposed development appears that it will result in the wetland loss of a relatively low-functioning wetland and require a drainage plan to replace the stormwater quantity and quality functions of this on-site wetland. If the area is considered a wetland a wetland permit from the Planning Commission will be required as part of a future site plan review process.

- *Municipal Services*. The existing property is County-owned and therefore generates no property tax revenue. The proposed zoning change to allow senior development will generate tax revenue based on the income approach (as opposed to the value of construction approach used for single-family residences). The income approach would be based on the total value of the below market rents after project completion. Since the project is age-restricted there will be no school-age children costs. There would be City expenditures for some municipal services including for sanitation, emergency medical, police, fire and recreation services.

- *Community Character and Aesthetics*. The proposed RA-5 District with a floor area ratio (FAR) of 1.0 would result in development at a greater intensity than the existing B-6 (FAR 0.75) District and B-1 (FAR 0.5) District currently on the property. Existing zoning permits buildings at or close to the same overall 40-foot building height as the proposed RA-5 District. Existing zoning is limited to commercial/general business, which is consistent with existing commercial and transportation uses abutting the site, but potentially inconsistent with the single-family residential character across the street. Overall, the bulk and scale of development under the proposed RA-5 District would likely be greater than development under existing zoning for the site, but not necessarily inconsistent with the character of the surrounding area. Reducing the scale of the building is complicated by the restriction that there can be no units located on the ground level due to the sub-surface contamination on the site. The lowest floor will be used for parking, which counts as a story under the City's Zoning Code but not towards the maximum permitted floor area since the parking is not enclosed.

- *Traffic*. The proposed RA-5 District would generate additional traffic associated with a future senior housing project. The relatively low anticipated trip generation would not adversely impact the relatively high intersection levels of service (LOS). The ITE Trip Generation Manual (ninth edition) provides trip generation

[1] Question 13 of the petitioner's EAF indicates that there are no wetlands on the property. This petitioner should provide additional information supporting this conclusion.

rates for two different types of senior housing units. The following was calculated by Brian Dempsey (Traffic and Pedestrian Safety Chair and NYS licensed traffic engineer) assuming a 60-unit senior housing development:

Senior Adult Housing Detached: Land Use 251

- Peak AM Hour of Adjacent Street: ranges from 5 in and 8 out to 14 in and 26 out
- Peak PM Hour of Adjacent Street: ranges from 10 in and 6 out to 19 in and 12 out
- Peak AM Hour of Generator: ranges from 7 in and 10 out to 15 in and 20 out
- Peak PM Hour of Generator: ranges from 11 in and 9 out to 31 in and 24 out
- Saturday Peak Hour of Generator: 7 in and 7 out (limited studies)

Senior Adult Housing Attached: Land Use 252

- Peak AM Hour of Adjacent Street: ranges from 4 in and 8 out to 4 in and 8 out
- Peak PM Hour of Adjacent Street: ranges from 8 in and 7 out to 9 in and 7 out
- Peak AM Hour of Generator: ranges from 11 in and 12 out to 11 in and 13 out
- Peak PM Hour of Generator: ranges from 10 in and 9 out to 12 in and 9 out
- Saturday Peak Hour of Generator: 11 in and 8 out (limited studies)

A recent traffic study conducted in connection with the sustainable Playland proposal shows that the Theodore Fremd Avenue/North Street intersection operates at the highest levels of service (i.e. “A” or “B”). This level of service is maintained in a 2016 future “build” scenario in the event the sustainable Playland project moves forward. It is also noted that the property is located along an existing bus route, which could potentially reduce trip generation. Given the relatively low trip generation rates associated with senior housing and existing intersection level of service adverse traffic impacts are not anticipated with the proposed change to the RA-5 District.

- *Reduction in Impacts*. As with any project potential impacts can be reduced or minimized by either the implementation of mitigation measures or the reduction in project scope. In considering impacts, the City Council should be mindful of the fact that the proposed RA-5 District requires that future development be affordable senior housing so project and off-site improvement costs and density are a significant consideration to make such projects economically viable, particularly given the incomes proposed to be served. The RA-5 District provides for a reasonable future development intensity that can create the opportunity to advance the City’s affordable housing objectives.

City of Rye, New York

Zoning Districts - Theodore Fremd Area

At a regular meeting of the City Council held March 30, 2005, Councilwoman Larr made a motion, seconded by Mayor Otis and Councilman Chu, to adopt the following resolution:

WHEREAS, The Rye Commission on Human Rights commissioned a survey in 2003 to ascertain existing and projected affordable housing needs for residents and those who serve the community; and

WHEREAS, the survey was conducted during the summer of 2004 and the results presented to the Council at it's regular meeting held March 9, 2005; and

WHEREAS, the Chairman of the Rye Commission on Human Rights made a request to the Council that it take action on several specific recommendations; now, therefore, be it

RESOLVED, that the Council strongly and unequivocally restates its interest in using the Theodore Fremd and North Street site, currently owned by the County, but in a state of contamination, to create 24 affordable housing units; and be it further

RESOLVED, that the Council urges the County to develop a complete and quick remediation plan for the Theodore Fremd and North Street site, and be it further

RESOLVED, that the City Manager urge the State Department of Environmental Conservation (DEC) to move meaningfully and expediently to develop a plan to decontaminate the Theodore Fremd and North Street site, and be it further

RESOLVED, that the Planning Commission specifically address the need for affordable housing among City employees, volunteer fire fighters and public and private school employees, as made clear from the response to the survey.

ROLL CALL:
AYES: Mayor Otis, Councilmen Chu, Cypher, Fahey, Larr and Seitz
NAYS: None
ABSENT: Councilman Hennes

STATE OF NEW YORK)
COUNTY OF WESTCHESTER)
CITY OF RYE)

THIS IS TO CERTIFY that I have compared the foregoing resolution with the original thereof, duly passed and adopted at a regular meeting of the Council of the City of Rye held on the 30th of March, 2005 by the affirmative vote of at least a majority of all members of said Council then in office, present and voting thereon, the vote upon passage thereof having been taken by recording the ayes and nays and duly entered in the minutes of said meeting of said Council and on file in this office, and **I DO HEREBY CERTIFY** said resolution to be a correct transcript thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the official seal of the City of Rye this 16th day of January 2016.

Dawn F. Nodarse

SEAL

DAWN F. NODARSE
CITY CLERK

Westchester gov.com

Robert P. Astorino
County Executive

August 9, 2013

Mr. Louis Larizza
211 South Ridge Street
Rye Brook, New York 10573

Subject: **Proposed Theodore Fremd Senior Housing Development**
150 North Street, Rye New York

Dear Mr. Larizza:

Please allow this correspondence to serve as formal authorization from the County of Westchester (the "County") for you to seek all necessary approvals from the City of Rye, New York (the "City") for the development of approximately twenty-five (25) to fifty (50) affordable affirmatively furthering fair housing units (the "AFFH Units") on the County-owned property located at 150 North Street in Rye, New York (the "Proposed Development").

At this time, it is anticipated that the AFFH Units will be available for seniors earning at or below 50% and 60% of the Westchester County Area Median Income for fifty (50) years. These AFFH Units are expected to further the County's efforts to create new fair and affordable housing units under the 2009 lawsuit titled *United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York.*

Please note, that upon receipt of all approvals from the City, the Development and any related County funding shall be subject to all necessary County approvals, including but not limited to, approvals from the County Board of Legislators, and from the County's Board of Acquisition and Contract. Further be advised that the County makes no commitment for funding at this time, and all costs incurred in connection with the Proposed Development and any required local approvals shall be your sole responsibility, whether or not said approvals are ultimately granted by the City, whether or not the County grants or denies any necessary or related approvals, or if the County, in its sole discretion, determines not to proceed with or fund the Proposed Development. This letter shall not bind the County in any respect.

Please also be aware that, although formal plans have not yet been reviewed by the County that the Proposed Development must be consistent with Westchester County affordable housing policies and guiding principles:

REDUCE REUSE RECYCLE

Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601 Telephone: (914) 995-2900 Website: www.westchestergov.com

- It will be compliant with the Westchester County Consolidated Plan submitted to HUD for the Westchester Urban County Consortium, of which the City of Rye is a member.

- It will be consistent with and reinforce *Westchester 2025 – Policies to Guide County Planning*, the County Planning Board's adopted long-range land use and development policies, by contributing to the development of "a range of housing types" affordable to all income levels and by channeling development to centers where infrastructure can support growth and where public transportation can be provided.

- As noted above, it will consistent with the housing settlement reached in the case of *United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York* and will contribute toward the County's requirement to ensure the development of seven hundred fifty (750) new affordable affirmatively furthering fair housing units in communities that meet certain demographic criteria.

We are available to discuss any questions you may have regarding this authorization and look forward to reviewing your proposal.

Sincerely,

Kevin J. Plunkett
Deputy County Executive

cc: Mary Mahon, Esq., Special Assistant to the County Executive
Robert F. Meehan, Esq., County Attorney
Edward Buroughs, AICP, Commissioner of Planning

Christian K. Miller, AICP
City Planner
1051 Boston Post Road
Rye, New York 10580

Tel: (914) 967-7167
Fax: (914) 967-7185
E-mail: cmiller@ryeny.gov
http://www ryeny.gov

CITY OF RYE
Department of Planning

CONFIDENTIAL – Memorandum

To: Scott Pickup, City Manager

From: Christian K. Miller, AICP, City Planner

cc: Kristen K. Wilson, Esq., Corporation Counsel

Date: June 14, 2013

Subject: **Summary of Meeting with Westchester County to discuss the Potential Development of Affordable Housing at County-owned Property located on Theodore Fremd Avenue near the Intersection of North Street.**

As requested, this memorandum provides a summary of our meeting today with Westchester County officials regarding the potential development of affordable housing at the approximately 2.07-acre County-owned property located on Theodore Fremd Avenue near the intersection of North Street. The meeting was requested by Westchester County and was held at the County Executive's Office. For approximately 20 years the City has advocated for the development of affordable housing at this location and has periodically had meetings with the County to discuss development possibilities.

Today's meeting was attended by the Mayor, Laura Brett, you and I as representatives from the City. From the County were representatives from the County Executive's office (Kevin Plunkett and Mary Mahon), Planning Department (Commissioner Ed Burroughs and Norma Drummond) and a representative from the County Attorneys office. Also in attendance was Lou Larriza who may be the County's preferred developer for the potential development of the site.

Summary

- *Sub-surface Environmental Conditions*. NYSDEC continues to monitor the site for the status of the environmental contaminants on the site. The last test was conducted in 2011 showed elevated levels from previous tests, but that additional tests are at the discretion of NYSDEC. The City requested that additional tests

be conducted and that it preferred that the site be clean before development occurs. Ms. Drummond stated that the County Health Department is not concerned with potential future housing development on the property provided that there is no enclosed habitable space below grade or on the first floor. The City was advised that there is currently no on-going remediation on the property.

- *Development and Land Use Review Process.* The County stated that it would select a preferred developer for the development of housing on the property. The County stated that the City would not need to be in the chain of title for the property and would not need to select a developer or eligible not-for-profit to develop the property. The City would act as it does for all land use applications, including former affordable housing applications on Cottage Street, by requiring approvals from all relevant City land use boards. As with the applications on Cottage Street, the City noted that the property is not currently zoned for the proposed development and that changes in the zoning code or variances would be required. The County understands that the City has local land use authority.

- *Development Scenario.* Mr. Larriza discussed his development concept for the site. He stated that he is seeking 48 units of senior (i.e. age 55 and over) housing on the property. The number of units is dictated by the desire to use tax credit financing for the property, which limits household income to 50% and 60% of Area Median Income (AMI). He stated that the unit mix would be one- and two-bedroom units. The project would total approximately 50,000 square feet within two 4- or 5-story buildings on the rear half of the 2.07-acre property. Parking would be located at grade level under the building to comply with the Health Department requirement that there be no habitable space below grade or on the first floor.

  The County stated that County infrastructure bond money would also be used to assist with the project funding. The County confirmed that the proposed senior tax credit units would count towards the 750-unit obligation under the Housing Settlement. The County stated that only 187 out of the 750 units can be senior and that Rye would be using the last of that limited allocation.

- *Next Steps.* The County will complete its process to select a preferred developer and the City can expect an application for affordable housing development potentially in the fall. At that point, or sooner if it desires, the City will need to under take a zoning analysis and determine what, if any, land use modifications it would like to implement to accommodate affordable development on this or potentially other properties in the City.

Westchestergov.com

Robert P. Astorino
County Executive

County Planning Board

Referral Review
Pursuant to Section 239 L, M and N of the General Municipal Law and Section 277.61 of the County Administrative Code

January 30, 2014

Christian K. Miller, City Planner
Rye City Planning Department
1051 Boston Post Road
Rye, NY 10580

Subject: **Referral File No. RYC 14 - 001 – The Courtyard at Theodore Fremd**
Zoning Map Amendment and Site Plan
Lead Agency

Dear Mr. Miller:

The Westchester County Planning Board has received a notice of intent to serve as Lead Agency pursuant to the NYS Environmental Quality Review Act (SEQR), as well as a one-sheet preliminary site plan (dated December 9, 2013) and related materials for the above referenced application. The applicants are petitioning the City to rezone a 2.08-acre site, currently owned by Westchester County with frontage on Theodore Fremd Avenue (County Road 54) and North Street (County Road 73), from B-6 General Business and B-1 Neighborhood Business to RA-5 Senior Citizens Apartment District. The zone change would permit the development of up to 58 units of housing on the site. If successfully rezoned, the applicant intends to apply for a site plan approval to construct a 54-unit apartment building with 95 parking spaces. All of the proposed units would be age-restricted to seniors over the age of 55 and would be affordable affirmatively furthering fair housing (AFFH) units. The unit mix would consist of 44 one-bedroom units and 10 two-bedroom units.

We have no objection to the Rye City Council assuming Lead Agency status for this review. Since this proposal involves the disposition of County-owned land as well as potential funding administered by Westchester County, we recommend that the County Board of Legislators be included as an Involved Agency with respect to SEQR.

Because we have not received full site plans, we will reserve full comment on this matter under the provisions of Section 239 L, M and N of the General Municipal Law and Section 277.61 of the County Administrative Code for a later date. At this time we offer the following preliminary comment:

Fair and affordable housing – development of affordable AFFH units. We support the concept of this proposal as it will add to the supply of affordable AFFH units in Westchester County. We look forward to working with both the City and the applicant as this application moves forward. We recommend that the applicant consider adding an apartment within the proposed building for a building superintendant, which is typical for a development of this size.

432 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601 Telephone: (914) 995-4400 Fax: (914) 995-9098 Website: westchestergov.com

Thank you for calling this matter to our attention.

Respectfully,
WESTCHESTER COUNTY PLANNING BOARD

FOR: By:

Edward Buroughs, AICP
Commissioner

EEB/LH

622 STILES AVENUE MAMARONECK, NEW YORK 10543 TEL 914-698-8207 FAX 914-698-8208
chnarch@yahoo.com

Clark Neuringer Architect

CONNECTICUT
DELAWARE
FLORIDA
MARYLAND
NEW YORK

December 10, 2013

The Honorable Mayor Douglas French
Members of the City Council
Rye City Hall
1051 Boston Post Road
Rye, New York 10580

Re: Proposed Zoning Amendment;
The Courtyard at Theodore Fremd

Dear Mayor French and Members of the City Council,

On behalf of our client, Lazz Development / Pawling Holdings, we are pleased to submit this request for an amendment to the Zoning Code of the City of Rye with respect to a proposed fifty four (54) unit rental development located at the corner of Theodore Fremd Avenue and North Street, adjacent to the existing Con Edison operations and equipment facility. The proposed development will advance a long-term planning objective of the City to provide affordable housing on this Westchester County-owned property. The proposed development would consist of 44 one-bedroom units and 10 two-bedroom units all of which will be restricted to those over age 55.

The approximately 2.1-acre property is currently within both the B-6 General Business District and B-1 Neighborhood Business District. Our proposal is to re-zone the entire property to the RA-5 Senior Citizen's Apartment District, which is the same district adopted by the City Council in the 1980s to provide for the construction of the approximately 100 units of senior affordable housing at 300 Theall Road. Current uses permitted within the B-6 District are limited to light manufacturing; garages, parking lots, and filling stations; small boat facilities; and kennels and veterinary hospitals. The portion of the property located in the B-1 District allows for business, professional office, retail, single-family dwellings and two-family residences.

Multi-family is not currently permitted in either district. We respectfully request that the City Council amend the Zoning Map to change the zoning district classification of this property to the RA-5 Senior Citizens Apartment District.

Our proposed senior citizen residential development meets or exceeds the requirements of the RA-5 District and would be a beneficial addition to the City in general and to the particular neighborhood. Our proposal represents a lower intensity of use of the property compared to what could be developed under the current limited zoning. Even under the RA-5 District requirements, our proposed residential development has several distinct positive attributes as follows:

Area of the lot is more than double the size of minimum required.
Total amount of buildable floor area proposed to be constructed is 17% less than permitted.
Total amount of parking proposed is almost seven times more than minimum required.
Total amount of open space proposed is more than double amount required.

As a result, the requested amendment would allow a residential development that would act as a transition between existing residential uses to the south and commercial uses otherwise surrounding the property. The design of our proposed site development results in a separation between the closest existing neighborhood residential building and one of our apartment buildings of a distance in excess of approximately 250 feet. As such, there would be no adverse impact on any of the existing residential areas to the south of the site. Compared to other uses that would be permitted on the site, we believe the proposed residential community would be a more attractive and beneficial use to the neighborhood.

We look forward to further reviews and discussions with you regarding the requested zoning amendment.

Sincerely,

Clark Neuringer, R.A.; NCARB

Cc: Louis Larizza, Lazz Development / Pawling Holdings

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D R A F T

LOCAL LAW
CITY OF RYE NO. _____ -2014

A Local Law to Amend the "Zoning Map of the City for Rye, New York" to Change the Zoning Designation of a Property Known on the City of Rye Tax Map as Section 146.10, Block 1, Lot 66 from B-6, *General Business*, District and B-1, *Neighborhood Business*, District to RA-5, *Senior Citizens Apartment*, District.

Be it enacted by the City Council of the City of Rye as follows:

Section 1. **The Zoning Map of the City of Rye, New York is hereby amended to change the zoning district designation of a property known on the City of Rye Tax Map as Section 146.10, Block 1, Lot 66 from B-6, *General Business*, District and B-1, *Neighborhood Business*, District to RA-5, *Senior Citizens Apartment*, District.**

Section 2. **Severability**

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

Section 3. **Effective Date**

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

DRAFT

617.20
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information
City of Rye Affordable Senior Housing

Name of Action or Project:
The Courtyard at Theodore Fremd

Project Location (describe, and attach a location map):
Theodore Fremd Avenue and North Street, Rye, NY

Brief Description of Proposed Action:

1. Construct 54 units of senior affordable housing units with parking areas for 95 cars on 2.08 acres in the City of Rye, NY.
2. Approval of a City of Rye zoning text amendment to permit certain residential types in the B6 (Business) zone.

Name of Applicant or Sponsor:	Telephone:
Pawling Holdings, LLC	E-Mail:

Address:
211 South Ridge Street, Suite 3R

City/PO:	State:	Zip Code:
Rye Brook	NY	10573

	NO	YES
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	☑	☐
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: City of Rye Planning Commission, City of Rye Coucil, the Home Fund, HIF, AHC agencies, County of Westchester DPW	☐	☑

3.a. Total acreage of the site of the proposed action? 2.08 acres
b. Total acreage to be physically disturbed? 2.08 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 2.08 acres

4. Check all land uses that occur on, adjoining and near the proposed action.
☑ Urban ☐ Rural (non-agriculture) ☐ Industrial ☑ Commercial ☑ Residential (suburban)
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): Railroad, Interstate Highway 95
☐ Parkland

	NO	YES	N/A
5. Is the proposed action,			
a. A permitted use under the zoning regulations?	✓		
b. Consistent with the adopted comprehensive plan?			✓

	NO	YES
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?		✓
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	✓	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	✓	
b. Are public transportation service(s) available at or near the site of the proposed action?		✓
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?		✓
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____		✓
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____		✓
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____		✓
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	✓	
b. Is the proposed action located in an archeological sensitive area?	✓	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	✓	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	✓	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:
☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional
☐ Wetland ☑ Urban ☑ Suburban

	NO	YES
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	✓	
16. Is the project site located in the 100 year flood plain?	✓	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? ☐ NO ☑ YES	✓	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: ☐ NO ☑ YES Existing Culvert beneath Metro North Rail Lines		

	NO	YES
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: Three suburface detention vaults to be constructed beneath the parking areas. Size is generally 1000 square feet per system. The purpose is to limit flows to current levels.	☐	☑
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	☑	☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: NYS DEC database has no record of remediation 1978 to present.	☐	☑

I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: Lou Larizza Date: 11/6/2013

Signature:

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	☑	☐
2. Will the proposed action result in a change in the use or intensity of use of land?	☐	☑
3. Will the proposed action impair the character or quality of the existing community?	☑	☐
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	☑	☐
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	☑	☐
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	☑	☐
7. Will the proposed action impact existing: a. public / private water supplies?	☐	☑
b. public / private wastewater treatment utilities?	☐	☑
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	☑	☐
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	☑	☐

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	☑	☐
11. Will the proposed action create a hazard to environmental resources or human health?	☑	☐

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

2. The project will increase the intensity of use since the development of 54 apartments for seniors will occur on vacant land. Mitigation is proposed by providing sufficient stormwater controls to prevent floding, and water quality treament to reduce impacts to water courses. Traffic mitigation is considered to be mitigated by limiting occupancy to an over-55 years age group. Excess on-site parking is provided to eliminate off-street parking impacts. The site is on the County Bus route which affords opportunity to mitigate traffic. New local street sidewalks to be constructed will also help to mitigate traffic. The proposed landscaping, consisting of landscaled buffers, new trees, shrubs and decorative fencing throughout, will mitigate visual impacts. An erosion control plan in conformance with the NYS Stormwater Design Manual will be used to offset temporary impacts of erosion.

7a. Water supply: The water demand for the project of 54 units with average of a two-person occupancy is about 10,800 gallons per day. United Water Westchester provides 7.6 million gallons per day and the increase is nominal due to this project and should not impact the facilities. Mitigation of water use is provided in limiting the occupancy to an over-55 age group.

7b. Wastewater Treament: The project is in the County's Blind Brook Sewer District and sewage flow will be treated at the Blind Brook Treatment Plant which has a capacity of 5 mgd and is currently operating at 3.3 mgd. City-owned sewers at the site are adequately sized to handle the increased flow from this project. Therefore, given the reduced water use and in turn sewage generation, the project should not adversely impact these facilities.

Long term impacts are the same as short term impacts described above.

Cumulative impacts of the development are limited due to the lack of other new projects of this type in the area.

☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency	Date
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

PRINT

CITY COUNCIL AGENDA

NO. 9 DEPT.: City Manager's Office DATE: April 9, 2014

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Resolution for the City of Rye to participate in the Westchester County Hazard Mitigation Plan (HMP) Update project.

FOR THE MEETING OF:
April 9, 2014

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION:

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: Westchester County has invited the City of Rye to participate in the update of the Westchester County Hazard Mitigation Plan. Per Federal regulation, all local governments must have a FEMA approved Hazard Mitigation Plan (HMP) in order to be eligible for Federal mitigation grant funding for public and private mitigation projects. These plans must be formally updated on a five-year cycle. The County has been awarded a grant to update the County plan as a full multi-jurisdictional HMP to include all municipalities. The Council is asked to authorize the City Manager to submit the attached letter acknowledging the City's intent to participate and agreeing to the plan requirements.

See Attached Letter and Plan requirement.

Westchestergov.com

Robert P. Astorino
County Executive

MEMO REGARDING COUNTY HAZARD MITIGATION PLAN AND FEMA FUNDS

Your municipality is invited to participate in the update of the Westchester County Hazard Mitigation Plan. Per Federal regulation, all local governments must have a FEMA approved Hazard Mitigation Plan (HMP) in order to be eligible for Federal mitigation grant funding for public and private mitigation projects. These plans must be formally updated on a five-year cycle. A number of the municipalities in Westchester County have local HMPs at various points in their 5-year life cycle. The County has been awarded a grant to update the County plan as a full multi-jurisdictional HMP to include all municipalities ("Project"). **Please be aware that New York State has indicated that it will no longer fund single jurisdiction plans or updates,** and is strongly encouraging all municipalities to become part of a countywide or multi-jurisdictional plan.

For those communities with existing HMPs, this process will serve as your regulatory plan update. For those communities without existing HMPs, this process will provide your community with a new HMP and, upon FEMA approval, meet the planning requirement for Federal mitigation grant funding.

Westchester County, through the Department of Emergency Services and the Department of Planning, is currently leading the effort to coordinate with municipalities about formally participating in this Project and thus continue to be eligible for federal pre-disaster mitigation funds.

The requirements and expectations for municipal participation in this project are outlined in the attached Letter of Intent to Participate (LOI). **In order to participate this <u>LOI needs to be drafted on your municipal letterhead</u>, <u>signed by a governing official</u>, <u>and returned</u> to Dennis Delborgo; Director, Westchester County Office of Emergency Management; 200 Bradhurst Avenue, Hawthorne, NY 10532, by <u>January 27, 2014</u>.**

All municipalities shall be notified of the date and location for the project "Kick Off" meeting at which time the process, benefits, expectations and timeline will be discussed. Participation is required if your municipality wishes to be included in the project.

The Project will be carried out in compliance with the criteria set forth in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, 42 U.S.C. § 5121, et seq., as amended by the Disaster Mitigation Act of 2000 (DMA), Public Law 106-390, and the requirements set forth under 44 C.F.R. Part 201, §201.6. The DMA mandates that local

governments have an approved hazard mitigation plan to be eligible for federal mitigation grant funding programs after November 1, 2004. The DMA encourages and rewards local and state pre-disaster planning, promotes sustainability, and seeks to integrate state and local planning with an overall goal of strengthening statewide hazard mitigation.

Formal participation by a municipality in this planning process shall include the following:

- Formally notifying the County of their jurisdiction's interest to participate.
- Assigning a planning point-of-contact for their jurisdiction, who shall:
    - Provide representation at regular planning group meetings and workshops.
    - Be responsible for providing data and information as requested.
    - Review and comment on data and information compiled by the contract consultant relevant to their jurisdiction.
    - Be responsible for completing plan documents specific to their jurisdiction, using provided templates with guidance and assistance by the contract consultant.
    - Assist with the identification of stakeholders within their community that should be informed and potentially involved with the planning process.
    - Facilitate public outreach efforts with citizens and local stakeholders within their community.
    - Assist with the identification of strengths, weaknesses, opportunities and obstacles to implementing natural hazard mitigation within their community.
    - Assist with the identification of past, ongoing and appropriate future mitigation strategies and activities.
    - Review and comment on plan documents, specifically the draft initial and final plans prior to submission to NYSOEM and FEMA.
- Formally adopting the plan once approved by FEMA.
- Track and report staff time committed to the project on the form provided by the County for the purpose of meeting the non-Federal grant match

Please note that the planning point-of-contact is not expected to do all of the work required of the jurisdiction. Rather, they are tasked with the responsibility to ensure work gets completed by the appropriate people within their jurisdiction and within specified periods of time.

You are encouraged to review the attached Letter of Intent to commence the planning process for your community and to continue the benefits that a hazard mitigation plan can provide.

Please contact Dennis Delborgo at (914) 864-5453 or drd2@westchestergov.com with any questions you might have regarding our plan update process.

MUNICIPALITY LETTERHEAD

Date: _____

Director Dennis Delborgo
Westchester County Office of Emergency Management
200 Bradhurst Avenue
Hawthorne, NY 10532

Subject: Westchester County Hazard Mitigation Plan Update
Authorization and Letter of Intent to Participate - [Municipality Name]

Dear Mr. Delborgo:

Per your letter, dated [_____], the [Municipality Name_____], is committed to participating in the Westchester County Hazard Mitigation Plan (HMP) Update project. By way of this letter, the *Municipality Name*:

1. Authorizes the Westchester County Hazard Mitigation Steering Committee ("Steering Committee"), to guide and direct this planning process, perform certain parts of the planning process, and prepare certain parts of the plan documents on our behalf.

2. Agrees to meet the minimum requirements of municipal participation (a.k.a. the Planning Partner Expectations), specifically:

- Execute and return this "Authorization and Acknowledgement" letter to the Westchester County Department of Emergency Services, attention: Mr. Dennis Delborgo.
- Identify municipal representatives to serve as the planning point of contacts (POC), below. These people will be responsible for representing their community and assuring that these participation expectations are met by their community.
- Support the Steering Committee selected to oversee the development of this plan.
- Provide representation at municipal Planning Committee meetings (~ 3 meetings over 6-8 months, including a Kick-Off Meeting and a Mitigation Strategy Workshop).
- Provide data and information about your community as requested by the Steering Committee or the contract consultant, including:
    - Structure and facility inventory data
    - Identification of new development and anticipated development
    - Identification of natural hazard risk areas
    - Identification of natural hazard events and losses that have impacted your community in the last five years
    - Identification of plans, studies, reports and ordinances addressing natural hazard risk
    - Identify mitigation activity in your community in the last five years, including progress on previously identified mitigation actions.

- Support public outreach efforts in your community which may include:
    - Providing notices of the planning project on your municipal website with links to a County project website
    - Providing notice of the planning project, the availability of Plan documents, and notice of public meetings via available local media (e.g. newsletters, flyers, email blasts, social media, etc.)
    - Advertising and supporting public meetings in your area
    - Supporting outreach to National Flood Insurance Program (NFIP) Repetitive Loss and Severe Repetitive Loss property owners in your community.

- Assist with the identification of stakeholders within your community that should be informed and potentially involved with the planning process.
- Completing data and information collection survey forms in a timely manner.
- Identify specific mitigation actions to address each of the natural hazards posing significant [or high or medium] risk to your community.
- Involve your local NFIP Floodplain Administrator in the planning process.
- Review draft Plan sections when requested and provide comment and input as appropriate.
- Adopt the Plan by resolution of their governing body after FEMA conditional approval.
- Periodically provide the Steering Committee with reports of municipal staff and volunteer labor spent on the planning process.

3. Assigns the following persons to be the Points of Contact for our jurisdiction. We understand that these POCs are responsible for assuring municipal representation at municipal Planning Committee meetings, and assuring that the other minimum requirements of jurisdictional participation, as detailed in the Planning Partner Expectations above, are met.

Primary POC:	Position/Department:
Phone Number:	Email Address:
Alternate/Secondary POC:	Position/Department:
Phone Number:	Email Address:

4. Our designated local Floodplain Administrator (FPA) under the NFIP is:

Name of NFIP FPA:	Position/Department:
Phone Number:	Email Address:

5. Recognizes that failure to meet the minimum participation expectations and deadlines, as determined by the Steering Committee will result in our municipality being excluded from the planning process.

Sincerely,

CITY COUNCIL AGENDA

NO. 10 DEPT.: Police DATE: April 9, 2014

CONTACT: Robert J. Falk, Interim Police Commissioner

AGENDA ITEM: Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: General Order #113.7 "Domestic Violence".

FOR THE MEETING OF:
April 9, 2014

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: Amendment of General Order #113.7, "Domestic Violence."

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

BACKGROUND: The proposed revision of General Order #113.7 updates the Department's procedures regarding domestic violence to reflect the current state of the law and procedure. It also revises the title of the procedure from "Domestic Violence" to the more comprehensive and descriptive "Domestic Incidents."

The revised directive establishes procedures for the handling of domestic incidents involving police officers from this Department as well as from other agencies.

A copy of the proposed revision noting the changes in "strike and replace" format is attached, as well as the current policy. The proposed revision was provided to the Rye Police Association for review pursuant to the provisions of the collective bargaining agreement.

CITY OF RYE POLICE DEPARTMENT

General Order #113.7	New [ ] Revised [x] Supersedes: G.O. 113.7 11/1/96
Subject: Domestic ~~Violence~~ Incidents	
Date Issued ~~11/01/96~~ Date Effective ~~11/01/96~~	Page 1 of 13
Issuing Authority: ~~William a. Pease,~~ Lt. Robert Falk, Interim Police Commissioner	

PURPOSE:

Crimes committed between family or household members are serious events. This is true regardless of the relationships or living arrangements of those involved. The purpose of this policy is to prescribe a course of action which members of this Department shall follow in response to domestic incidents that will enforce the law while also serving to intervene and prevent future incidents of violence.

POLICY:

It shall be the policy of this Department to respond to every report of a domestic ~~violence~~ incident and to consider domestic violence as conduct that shall be investigated as would any other offense. Dispute mediation will not be used as a substitute for appropriate criminal proceedings in domestic incident ~~violence~~ cases. Department members shall protect victims of domestic violence and provide them with support through a combination of law enforcement and community services. The Department will further promote officer safety by ensuring that officers are fully prepared to respond to and effectively deal with domestic violence calls for service.

DEFINITIONS:

1. Domestic Incident means any dispute, or report of an offense between individuals within a family or household where police intervention is requested. A domestic incident is not necessarily a violation of law.

2. Members of the same family or household are defined as such by the Family Court Act and the Criminal Procedure law in that they:

   a. Are legally married to one another.

   b. Were formerly married to one another.

   c. Are related by blood.

   d. Are related by marriage.

   e. have a child in common regardless of whether they were ever married or lived together at any time.

f. Are unrelated persons who are continually or at regular intervals living in the same household or who have in the past continuously or at regular intervals lived in the same household.

g. Are unrelated persons who have had intimate or continuous social contact with one another and who have access to one another's household.

h. Assert that they are intimate partners, in that they have or have had a dating relationship, including same sex couples.

Domestic incidents, as defined in Subsection A, incorporates assaultive and non-violent conduct that injures, attempts injury, or is coercive in its intent. Sub § B identifies the persons to be protected under this policy. The definition of "domestic relationship" recognizes that these relationships take many forms and that law enforcement officers must ensure equal protection under law for all victims of domestic offenses, not only victims of family offenses. The definition also recognizes that domestic incidents may continue after the formal or informal relationship has ended, and may include "stalking" behaviors such as harassment and menacing.

Sub § B.(2) follows the National Council of Juvenile and Family Court Judges Model Code on Domestic and Family Violence, § 102(2) (c) and (d): "c. Adults or minors who are dating or who have dated. d. Adults or minors who are engaged in or who have engaged in sexual relationship." Other states, such as California, define a dating relationship as "frequent intimate associations of affection or sexual involvements independent of financial consideration."

3. Domestic Violence occurs when a family or household member commits or attempts to commit:

a. Any of the following which are designated as Family Offenses:

1. Attempted assault
2. Assault in the second degree
3. Assault in the third degree
4. Reckless endangerment (1 & 2)
5. Menacing (2 & 3)
6. Disorderly conduct (including, for Family Court purposes only, disorderly conduct not in a public place)
7. Harassment (1 & 2)
8. Aggravated Harassment 2nd degree
9. Criminal Mischief 1st, 2nd, 3rd and 4th degree
10. Criminal Obstruction of Breathing or Blood Circulation
11. Forcible Touching
12. Sexual Abuse 2nd and 3rd degree
13. Sexual Misconduct
14. Stalking 1st, 2nd 3rd and 4th degree
15. Strangulation 1st and 2nd degree

b. Offenses such as attempted murder, kidnapping, rape, unlawful imprisonment, coercion, arson or criminal mischief against another household/family member. In addition, threats or acts of violence against the victim or others, or damaged property or harm to pets

may in some circumstances form the basis of the offenses of tampering with a witness or intimidating a victim or witness. The criminal courts have exclusive jurisdiction over these types of

offenses.

c. Coercive acts or conduct which, though non-criminal in nature, serve to instill fear of physical harm or property damage. Such a pattern may involve abuse language, physical or verbal threats of damage to jointly held marital property, or acts which violate the terms of an order of protection issued by the Family, Criminal or Supreme Courts.

This section enumerates the range of offensive acts employed by many perpetrators in domestic incidents, underscoring the range of violent acts and fear inducing or harmful conduct officers may identify in investigating these incidents, including but not limited to designated family offenses.

4. Concurrent Jurisdiction exists when different courts have jurisdiction over the same matter. A victim of a Family Offense may elect to proceed in either a civil or criminal court or in both. Criminal courts and the Family Court have concurrent jurisdiction when:

   a. A designated family offense (see 3.A.1-15 above) is alleged to have been committed, and

   b. A family/household relationship (see 2. above) exists, and

   c. The alleged offender is 16 years of age or older.

   (if either of the first two conditions is not met, a victim may only proceed in a criminal court for legal relief).

DISPATCH PROCEDURES

1. A domestic incident call will be given the same priority and prompt response as any other call for service. ~~Staff assigned to communication functions~~ The Desk Officer will, whenever practicable, dispatch at least two officers.

2. Upon ~~receipt~~ notification of a domestic incident ~~call staff officers assigned to communication functions~~ the Desk Officer will, along with information normally gathered, make every effort to determine and relay the following information to the responding officers:

   a. Whether the suspect is present and, if not, the suspect's description and possible whereabouts.

   b. Whether weapons or dangerous instruments are involved or known to be at the location or if any other threats exist (e.g., dogs).

   c. Whether medical assistance is needed at the scene.

   d. Whether the suspect or victim is under the influence of drugs or alcohol.

   e. Whether there are children present.

f. Whether the victim has a current protective or restraining order.

g. Complaint history at that location.

h. Identity of caller (i.e., victim, neighbor, child).

The computerized registry for orders of protection should be checked prior to the arrival of officers to inform them of any current order of protection and its terms and conditions.

The computerized registry of orders of protection can be checked for the presence of a current family offense order and its terms and conditions. It is not necessary to check the registry to confirm a victims physical copy of the order, unless the order is missing or appears altered. The Statewide Registry only carries information on Orders of Protection issued in family offense proceedings and warrants issued for violations of such orders. Departmental records should be checked in non-family offense cases and ~~NYSPIN~~ eJUSTICE should be checked in all cases for warrant information.

5. Responding Officer Procedures

a. A domestic incident call signifies people are in need of help, and shall be responded to as quickly and safely as circumstances permit. Domestic incident calls are one of the most dangerous calls to which officers are dispatched.

b. Upon arrival at the scene, officers should be alert to sounds coming from the location to identify what is transpiring, and wait for backup officers when appropriate.

c. The responding on-scene officer shall:

1. Restore order by gaining control of the situation and separating the involved parties.

2. Take control of all weapons used or threatened to be used in the incident.

3. Locate and visually check all occupants of the location to verify their safety and well being.

4. Assess the need for medical attention and request that any required assistance be dispatched.

5. Interview all available parties and witnesses, separately if practicable.

6. After all interviews have been conducted, determine whether an offense has been committed; whether an arrest should be made, and whether other action should be taken. If an arrest is made, advise the victim that release of the suspect can occur at any time so that the victim can take desired safety precautions.

7. Advise the victim of the availability of shelter and other victim services in the community, and provide the victim with a copy of the Victim Rights Notice. If necessary, read the Victim Rights Notice to the victim.

8. Collect and record potential evidence, including spontaneous utterances by parties or witnesses. Where appropriate,

canvass the area for witnesses, take photographs of injuries and/or property damage or, in accordance with Department policies, request the dispatch of appropriate crime scene investigators if needed.

9. Complete the Standard Domestic Incident Report Form and any other reports necessary to fully document the officer's response, whether or not an offense was committed or an arrest is made. Provide the victim with the victim's copy of the Standard Domestic Incident Report/Victim Rights Notice Form immediately upon its completion at the scene.

10. If the officer has probable cause to believe a crime has been committed, the officer will attempt to locate and arrest a suspect who has left the scene without unnecessary delay by:

    a. Conducting a search of the immediate area.

    b. Obtaining information from the victim and witnesses that will aid in apprehending the suspect.

    c. Continuing the investigation as necessary or referring the matter to the proper unit for follow up investigation and arrest or warrant application.

    d. If the search for the offender is unsuccessful and the victim has elected to remain at the scene, advise the victim to call the department if the offender returns.

    e. Prior to leaving the scene, officers should attempt to obtain a signed information, complaint or signed statement from the victim.

    d. Responding officers at the scene of a domestic incident shall provide the following assistance to victims and, where appropriate, the children or other family or household members:

        1. Advise all involved parties about the serious nature of domestic violence, its potential for escalation, and of legal and social assistance available.

        2. Assess the immediate safety and welfare of the children.

3. Remain at the scene until satisfied that the immediate threat of violence has passed or all appropriate options to protect and assist the victim have been exhausted.

4. Provide the victim with referral information regarding domestic violence shelters and services.

5. Assist in arranging for transportation or take the victim and family or household members to a place of safety.

6. Officer Arrest Procedures

A. All warrantless arrests shall be made in conformance with section 140.10 of the Criminal Procedure Law and applicable Department policy and procedure. It is the responsibility of all officers to be thoroughly familiar with and guide their actions in accordance with CPL 140.10 and Department Policy and Procedure.

B. In all domestic incidents ~~where~~ in which a law has been violated, in addition to enforcing the law, the objective is to protect the victim. The victim should not be informed about or requested to make a civilian arrest when the officer may make a lawful warrantless arrest. The purpose of this policy is to take the burden of an arrest decision away from the victim, who may be ill-prepared to undertake it due to social, economic, psychological or other pressures and constraints. Even if the victim actively intercedes and requests that no arrest be made, a lawful warrantless arrest based on probable cause shall be made in accordance with CPL 140.10.

C. In the following specific circumstances, without attempting to reconcile the parties or mediate, an arrest shall be made when the officer has probable cause to believe that the following violations have occurred:

1. Any felony against a member of the same family or household (except certain forms of grand larceny 4 - Penal Law §155.30 [3], [4]. [9] or [10]).

2. Any misdemeanor constituting a Family Offense unless, with out inquiry by officer, the victim requests otherwise. When such a request is spontaneously made, the officer may, nevertheless, make an arrest.

3. A violation of an order of protection committed through the failure of the person to whom it was directed to comply with a "stay away" provision of such order, or through the commission of a Family Offense. The order must be one issued pursuant to sections 240 or 252 of the Domestic Relations Law; Articles 4, 5, 6 or 8 of the Family Court Act; or section 530.12 of the Criminal Procedure Law, and it must have been duly served, or the person to whom it was directed has actual knowledge of it because he or she was present in

court when the order was issued.

NOTE: The foregoing listing of specific circumstances in which an arrest shall be made shall not be deemed to restrict or impair the authority of any municipality or political subdivision from promulgating rules, regulations and policies requiring the arrest of persons in additional circumstances where domestic violence has allegedly occurred.

D. Officers are reminded that there is no requirement that a crime (felony or misdemeanor) must occur in the officer's presence to

authorize an arrest. A lawful warrantless arrest may be, and often is, ~~founded~~ based upon factors other than the officer's direct observations. They include, but are not limited to, factors such as visible physical injury, property damage, signs of disruption at the scene, or statements made by the victim, children or other witnesses.

E. When an officer has probable cause and is required to effect an arrest under this policy, the following examples are not valid reasons for failing to adhere to such policy:

1. There may be financial consequences caused by an arrest.

2. The complainant has made prior frequent calls.

3. The involved parties appear to be impaired by alcohol or drugs.

4. The offender gives verbal assurance that he or she will not harm the victim.

F. Cross Complaints. Officers are not required to arrest both parties when physical force was used against each other, but shall attempt to learn ~~which~~ whether a party may have lawfully used physical force in accordance with Article 35 of the Penal Law, and to determine which party was the primary aggressor.

G. Civilian Arrests. When the officer lacks legal authority to make a warrantless arrest, the victim should be informed of the opportunity to make a civilian arrest. Such an arrest, however, shall not be used as a substitute for an authorized arrest by the officer as provided for in this policy.

H. In all arrests, other than civilian arrests, the officer shall emphasize to the victim and the alleged offender that the criminal action is being initiated by the State and not the victim.

Section 6 mandates the arrest of suspects in cases in which the officer determines that probable cause exists that an offense was committed in the context of a domestic relationship. Such a law enforcement response, encourage by Federal Law and currently in place in many departments across New York State, provides victims immediate protection and an opportunity to seek safety and to consider legal options. Law enforcement executives across the country have embraced mandatory arrest policies in the hope of establishing

consistent, effective practice which may protect departments from liability for inadequate response in these cases. The Family Protection and Domestic Violence Intervention Act amends C.P.L. §140.10 (4) (c) to read, "...no cause of action for damages shall arise in favor of any person by reason of any arrest made by a police officer pursuant to this subdivision." It should be noted that while the law provides immunity from liability in cases in which a good faith arrest is made, it does not protect officers who fail to make arrests when appropriate.

7. Family Offense Arrest Processing

~~Family Protection Registry Information Sheet and~~ A New York State Standardized DCJS 3221 Domestic Incident Report will be completed at time of arrest and ~~put~~ filed with arrest paper work.

A. Officers will provide victims of a Family Offense with the following information:

1. That there is concurrent jurisdiction with respect to family offenses in both Family Court and the Criminal Courts. Victims of family offenses may proceed in either or both the Family and Criminal Courts.

2. That a Family Court proceeding is a civil proceeding for purposes of attempting to stop the violence, end the family disruption, and obtain protection.

3. That a proceeding in the criminal courts is for the purpose of prosecuting the alleged offender and can result in criminal conviction of the offender.

4. That a proceeding subject to the provisions of section 812 of the Family Court Act is initiated at the time of the filing of a petition, not at the time of arrest or request for arrest (when Family Court is not in session a criminal court may issue a Family Court order of protection).

5. That an arrest may precede the initiation of a Family Court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding. The arrest of an alleged offender shall be made under circumstances described in subdivision four of section 140.10 of the Criminal Procedure Law.

B. When a victim wishes to proceed in a criminal court, ~~provide advice~~ advise him or her that the victim is not required to be present at arraignment. ~~If an order of protection is desired, the court should be advised of such request~~ All arrests for domestic violence should be arraigned in front of a judge so that a temporary order of protection can be issued at the time of arraignment.

C. Booking procedures, fingerprinting and photographing shall conform

to current department procedures and section 160.10 of the Criminal Procedure Law.

8. Non-Family Offenses Arrest Processing

A. Offenses that are not designated Family Offenses, but which occur in domestic incident situations cannot be handled in Family Court. Criminal Courts have exclusive jurisdiction over these acts (e.g., murder or attempted murder, criminal possession of a weapon, rape, unlawful imprisonment).

B. Booking procedures, fingerprinting and photographing shall conform to current Department procedures and section 160.10 of the Criminal Procedure law. In addition, ~~Family Protection Registry~~

~~Information Sheet and~~ a NYS DCJS 3221 Standardized Domestic Incident Report will be ~~done~~ completed in all Domestic arrest situations.

C. Although the violation of an order of protection is not a designated Family Offense, the Family Court has concurrent jurisdiction to enforce such an order when issued by it.

9. Orders of Protection

A. Temporary Orders of Protection

1. A Criminal Court Judge as well as a Family Court Judge can issue orders of protection and temporary orders for victims of any crime or violation as well as for members of the victim's family or any designated witnesses (CPL Sections 530.12(1); 530.13(1)).

2. Temporary orders can be issued as soon as the accusatory instrument or petition is filed. It is not necessary to wait until the defendant is arrested.

3. A temporary order may be issued as a condition of bail, ROR, or with an adjournment in contemplation of dismissal (ACD).

4. Temporary orders of protection may be in effect while the prosecution is pending or during the period of an ACD.

5. When Family Court is not in session, after 5 PM on weekdays and on weekends, City Court Judges must accept Family Court petitions and can issue Family Court Orders of Protection (CPL Section 530.11; Family Court Act Sections 155 and 161). If an adult is arrested for a "family offense" and the victim elects to have the case heard in the Family Court when it is not in session, the offender shall be taken to the most accessible magistrate and arraigned before him or her. The magistrate may then issue a temporary order of protection, hold the abuser, fix bail or release him or her for a hearing before the Family Court. Again, the victim should be told to respond to Family Court the next court day or the case will not be heard.

6. It is not necessary that any previous proceedings have occurred i.e., criminal charge, Family Court petition, or temporary order of protection, before the police make an arrest.

7. An order of protection is similar to a warrant of arrest. The presentation of such an order to any peace officer shall constitute authority for him to take into custody a person charged with violating the terms of the order and bring such person before the Court (CPL Section 530.12(8); Family Court Action Section 168(1)). This is especially so where the order contains a "stay away" provision which is violated or where the violation consists of a family offense. ~~Effective July 1, 1995,~~ Police officers **must** arrest in these latter two situations regardless of the victim's desire.

8. Copies of all temporary orders of protection must be given to the victim or witnesses protected by the order, to the defendant (either in court or delivered with a summons or an arrest warrant) and to the defense attorney (CPL Section 530.12(8); 530.13(6)).

9. Copies of every order must be filed by the local court with the appropriate police agencies having jurisdiction of the home, work, or school of the persons protected. Additional copies may be filed with police or sheriff's office by the complainant. ~~A statewide computerized registry of orders of protection has been established.~~

B. Orders of Protection

1. These are issued after a conviction and may be given in conjunction with a conditional discharge, a sentence of probation, or a sentence of imprisonment (CPL Section 530.12(5); 530.13(4); PL Section 65.10(2) (K)).

2. Orders of Protection may be effective for the entire period of a sentence of probation, or the duration of the conditional discharge, i.e., for a felony 5 years, a misdemeanor 3 years, conditional discharge 1 year. Family Court orders of protection can be effective for one year or, if aggravating circumstances exist, up to 3 years.

3. These orders may contain the same prohibitions as temporary orders of protection.

4. Arrest mandates are equally applicable to these orders.

C. Service

The Rye Police Department will serve any order of protection presented to it as long as the person to be served can be located within the City of Rye. The original order and the affidavit of service will be stored in the Detective Division under the care of the warrant officer. He/She will ~~be sure~~ ensure that a copy of

each is on file at the desk. Upon successful service of the Order of Protection, the serving officer will, without delay, enter the required information into ~~NYSPIN~~ eJUSTICE ~~using he on-line format "OSRV"~~.

D. Enforcement

The following policy shall be followed in the enforcement of an order of protection:

1. The on scene officer shall make an evaluation of the facts and circumstances surrounding the incident.

2. A lawful warrantless arrest may be made based on probable cause even though the protected person may be unable to present a valid copy of the order, but the officer shall attempt to verify the existence and terms of the order

through Department records or ~~NYSPIN~~ eJUSTICE. However, if the order is not produced or its existence cannot be verified, the officer should proceed as though an order of protection does not exist.

3. Where an officer receives a complaint from a protected person or has an independent basis to believe that an order of protection has been violated, and has probable cause to believe that the terms of such order have been violated, an arrest shall be made for the appropriate degree of criminal contempt regardless of whether the prohibited conduct occurred in the officer's presence. A copy of the order of protection shall be attached to the court accusatory instrument.

4. If an arrest is made for violating an order of protection and the protected person does not verify (sign) the accusatory instrument, the officer should attempt to obtain a deposition, or prepare his or her own accusatory instrument which shall include a statement that the terms of the order were violated and a description of the behavior constituting the alleged offense.

5. In instances where the conduct prohibited by the order of protection is also conduct constituting another offense, the offender shall be charged with violation of the order of protection (e.g., criminal contempt) and the independent offense.

~~6. In any case where an arrest has been made for violation of a criminal court order of protection, it is advisable for the protected person to be present at arraignment.~~

E. Out-of-State Orders

Orders of protection issued in another State shall be given full faith and credit in New York. When an officer is presented with an order of protection issued in a state other than New York or by a tribal court, the officer shall attempt to determine its

validity, similar to assessment of a New York order. Unless clearly invalid, an out-of-state order will be presumed to be valid, and shall be enforced in the criminal court with jurisdiction over the acts constituting the offense. If the validity of the out-of-state order is in question, the officer should arrest for a substantive charge if warranted, rather than for a violation of the order.

10. Firearms

A. Whenever an officer responds to a scene of domestic violence in which a weapon or firearm was used or threatened to be used the weapon or firearm will be confiscated as evidence of the offense. If there are any other firearms at the scene of a Domestic Incident in which a weapon or firearm was used or threatened to be used they will be confiscated for safekeeping.

B. Upon arresting an individual who is licensed to carry, possess, repair or dispose of firearms, the arresting officer should, whenever practicable, notify the arraignment court that the

alleged offender is so licensed and also advise the court of the licensing authority and county of issuance.

11. Appearance Tickets and Bail

A. Following an on scene arrest for a crime arising from a domestic incident, an appearance ticket shall not be issued. Instead, the officer shall remove the alleged offender from the scene and complete pre-arraignment booking procedures in accordance with department policy and section 160.10 of the Criminal Procedure Law.

C.P.L. 140.20.2 provides that, for certain offenses, pre-arraignment bail may be set or an appearance ticket issued to the arrested party. Given the extraordinarily high level of recidivism among domestic violence offenders, the high number of arrested persons under the influence of alcohol or other drugs and the propensity for reprisals in these cases, departments are advised to hold domestic offenders for arraignment. The exercise of departmental discretion in releasing these suspects prior to arraignment may create liability risks if any further harm is done to the victim by the suspect upon release. Such risk is best avoided by bringing all domestic offenders before the court of arraignment. The U.S. Supreme Court, in County of Riverside v. McLaughlin and the New York Court of Appeals in People ex. rel. Maxian v. Brown define constitutional time frames for processing arrests. Departments are advised to coordinate with the District Attorney and local judiciary to ensure that the period of pre-arraignment detention does not exceed 24 hours.

B. Any deviation from this procedure must be approved by the ~~officer in charge~~ Tour Supervisor, and the reasons for such deviation must be documented in the case file.

C. Officers shall not assure victims that an arrested individual will remain in custody overnight because of the provisions of this policy. Such assurances to the victim might influence decisions regarding safety precautions that the victim may take.

12. Additional Functions

A. The Department will maintain a current listing of agencies that provide aid to victims of domestic violence. Officers will refer victims to these agencies when appropriate. (see attachment #1)

B. Officers will ~~arrange~~ assist in arranging ~~for the~~ transport and accommodation ~~of~~ for victims of domestic violence and their children at available shelters or other places of safety~~, or will assist in making such arrangements~~.

C. Where victims of domestic violence are incapacitated by physical, mental or emotional impairments, officers will consult with Adult Protective Services and assist, where appropriate, in supportive interventions. (see G.O. 119.3) Child Protective Services should be contacted for children who may be present during domestic violence situations whether they were a victim or a witness to the event.

D. Officers and communications personnel should be trained on an ongoing basis in this policy, the problem of domestic violence, the applicable statutes concerning domestic violence ~~and the criminalization trend to reduce domestic violence~~.

~~E. The Department shall designate specific personnel to periodically review the adequacy of this policy, assess and enforce compliance with its provisions by department personnel, and make recommendations to the head of the Department of any indicated revisions deemed necessary to improve or enhance the implementation of this policy.~~

13. Responsibility

A. All officers shall follow the procedures set forth in this directive, except under extraordinary circumstances where they can clearly demonstrate that their use was unsuitable for a particular situation. Any such circumstances must be fully documented by the reporting officer on the incident report, and a copy thereof shall be forwarded to the Patrol Lieutenant via the chain of command for review purposes.

The ~~officer in charge~~ tour supervisor is ultimately responsible to see that officers ~~under their~~ his or her command comply with department policy and procedure when dealing with incidents of domestic violence.

B. The Police Commissioner will designate a command level officer to coordinate department domestic violence programs. Responsibilities will include:

1. Coordination of Department training in domestic violence.

2. Policy review, suggestions for revisions, and policy implementation.

3. Routine analysis of department data regarding reports of domestic violence, offense dispositions and arrest statistics as a measure for program success.

4. Department liaison with state and local domestic violence agencies, community service organizations and the public in matters relating to domestic violence.

5. The forwarding of all domestic incident reports to NYS Division of Criminal Justice Services.

14. DOMESTIC VIOLENCE - LAW ENFORCEMENT OFFCIER INVOLVED

In the event that a law enforcement officer from outside this jurisdiction is the subject of a domestic violence incident the Tour Supervisor shall notify the subject's Commanding Officer, or his or her designee. This notification will be conducted verbally as soon as possible and in writing within fourty-eight hours of the incident.

Note:

The above procedure is to be followed in addition to any other applicable procedure in this section or elsewhere within the Department General Orders including without limitation to those pertaining to arrest and the seizure of firearms.

Attachment #1

REFERRALS

Telephone numbers that may be of assistance to victims of violence.

Adult Protective Services	995-2259
Abused Spouse Assistance Service - 24 hour 29 Sterling Avenue, White Plains, NY	~~997-1010~~949-1212 ~~949-6741~~
Alcoholics Anonymous ~~39 No. Broadway, White Plains, NY~~	~~949-1200~~212-647-1680
Department of Social Services	~~285-5459~~995-5000
Domestic Violence Program (Night Emergency No)	592-3791
Domestic Violence Prosecution Unit District Attorney 111 Grove Street, White Plains, NY	~~285-3000~~995-3000
Legal Aid Society of Westchester 1 North Broadway, White Plains, NY	~~682-3400~~286-3400
National Organization of Women (N.O.W.)	~~428-7744~~202-6288669
New Rochelle Guidance Center	636-4440
New York State Child Abuse and Maltreatment Register Albany, NY	1-800-342-3720

Northern Westchester Shelter - 24 hrs. Individual, Family and Group Therapy		~~747-0707~~747-0828
Putnam-Northern Westchester Women's Center		628-9284
Emergency 2 Mahopac Plaza, Mahopac, NY		628-2166
Rap Group for Battered Women 515 North Street, White Plains, NY		949-~~6741~~6227
Samaritan House - Grace Church Shelter (Women, Men, Children) 33 Church Street, White Plains, NY (Shelter/Meals)		948-3075
The Shelter (Women and Children) Yonkers, NY	Hotline Admin.	~~968-4345~~1-800-298-7233 ~~969-5800~~
Westchester County ~~Information & Referral~~ Family Court		~~285-2170~~824-5500
Westchester County Office for Women 112 East Post Road, White Plains, NY		285-5972
Westchester Legal Services ~~171 East Post Road~~ 90 Maple Ave, White Plains, NY		~~949-6161~~949-1305
~~W.I.S.H. (Women in self help)~~	~~Hotline~~	~~946-5757~~

Attachment #1 continued

~~Women of Westchester (W.O.W.)~~		~~698-3112~~
~~Yonkers Women Task Force and My Sisters Place~~ ~~2 Manor House Square, Yonkers, NY - 24 hours~~		~~969-5800~~ ~~968-4345~~
My Sisters Place		683-1333
Westchester County Social Services 24- hr emergency		995-2099
Child Abuse Hotline		1 800-342-3720

Enter "UNK" in all Fields where data is not obtainable

Family Protection Registry
Information Sheet

******Asterisked Areas Are Required********

**Court ORI No: NYO _____J
**Order No: 199__-_____
**Docket/Index NO_____

**Court:_____
**County:_____
**Expiration Date:_____

Law Enforcement Agency at which Copy of Order is Filed:
**Name:_____ **Police ORI: NY_____

**ACTION TO BE TAKEN:
- [] New Order
- [] Order Modified/Finalized
- [] Corrected Information

(Circle ALL corrected information on ALL documents)

**SERVICE OF ORDER:
- [] Police to Serve Order [] Other
- [] Order served in Court (Date:_____)
- [] Notification by Mail (Date:_____)
- [] Order Previously served (Date:____) (no new service to be done)

APPLYING PARTY (Party Requesting Order)

**Name: (First) (MI) (LAST)

Alias or Nickname: (First) (Last)

** Address: (Street)
(City) (State) **Addr. Confid. []yes []no
(Zip) (County) **Protected Party []yes []no

Phone (Home): (Work)

**Date of Birth: **Sex: male female SS No.:

**Race: []White []Black []Native American []Asian/Pacific Islander []Unknown height: Eye Color:

**Ethnicity (select one): []Hispani []Non-Hispanic weight: Hair Color:

ENJOINED PARTY (Party Against Whom Order Runs)

**Name: (First) (MI) (Last)

Alias or Nickname: (First) (MI) (Last) NYSID:

**Address: (Street)
(City) (State) **Addr. Confid?[]yes[]no
(Zip) (County)

Employers Name:

Employers Address: Hrs. of Employment

Phone (Home): Phone (work):

**Date of Birth: **Sex: []male []female SS No.

**Race: []White []Black []Native American Height Eye Color
[]Asian/Pacific Island []Unknown

**Ethnicity (select one): []Hispanic [] Non-Hispanic Weight Hair Color

License Plate No.: State:

Drivers ID: State: Mothers Maiden Name

Is Police Caution Advised?IF yes, why:

Current Policy

CITY OF RYE POLICE DEPARTMENT

General Order #113.7		New [ ] Revised [x] Supersedes:
Subject: Domestic Violence		
Date Issued 11/01/96	Date Effective 11/01/96	Page 1 of 13
Issuing Authority: William A. Pease, Police Commissioner		

PURPOSE:

Crimes committed between family or household members are serious events. This is true regardless of the relationships or living arrangements of those involved. The purpose of this policy is to prescribe a course of action which members of this Department shall follow in response to domestic incidents that will enforce the law while also serving to intervene and prevent future incidents of violence.

POLICY:

It shall be the policy of this Department to respond to every report of domestic violence and to consider domestic violence as conduct that shall be investigated as would any other offense. Dispute mediation will not be used as a substitute for appropriate criminal proceedings in domestic violence cases. Department members shall protect victims of domestic violence and provide them with support through a combination of law enforcement and community services. The Department will further promote officer safety by ensuring that officers are fully prepared to respond to and effectively deal with domestic violence calls for service.

DEFINITIONS:

1. Domestic Incident means any dispute, or report of an offense between individuals within a family or household where police intervention is requested. A domestic incident is not necessarily a violation of law.

2. Members of the same family or household are defined as such by the Family Court Act and the Criminal Procedure law in that they:

   a. Are legally married to one another.

   b. Were formerly married to one another.

   c. Are related by blood.

   d. Are related by marriage.

   e. have a child in common regardless of whether they were ever married or lived together at any time.

f. Are unrelated persons who are continually or at regular intervals living in the same household or who have in the past continuously or at regular intervals lived in the same household.

g. Are unrelated persons who have had intimate or continuous social contact with one another and who have access to one another's household.

h. Assert that they are intimate partners, in that they have or have had a dating relationship, including same sex couples.

Domestic incidents, as defined in Subsection A, incorporates assaultive and non-violent conduct that injures, attempts injury, or is coercive in its intent. Sub § B identifies the persons to be protected under this policy. The definition of "domestic relationship" recognizes that these relationships take many forms and that law enforcement officers must ensure equal protection under law for all victims of domestic offenses, not only victims of family offenses. The definition also recognizes that domestic incidents may continue after the formal or informal relationship has ended, and may include "stalking" behaviors such as harassment and menacing.

Sub § B.(2) follows the National Council of Juvenile and Family Court Judges Model Code on Domestic and Family Violence, § 102(2) (c) and (d): "c. Adults or minors who are dating or who have dated. d. Adults or minors who are engaged in or who have engaged in sexual relationship." Other states, such as California, define a dating relationship as "frequent intimate associations of affection or sexual involvements independent of financial consideration."

3. Domestic Violence occurs when a family or household member commits or attempts to commit:

a. Any of the following which are designated as Family Offenses:

1. Attempted assault
2. Assault in the second degree
3. Assault in the third degree
4. Reckless endangerment (1 & 2)
5. Menacing (2 & 3)
6. Disorderly conduct (including, for Family Court purposes only, disorderly conduct not in a public place)
7. Harassment (1 & 2)

b. Offenses such as attempted murder, kidnapping, rape, unlawful imprisonment, coercion, arson or criminal mischief against another household/family member. In addition, threats or acts of violence against the victim or others, or damaged property or harm to pets may in some circumstances form the basis of the offenses of tampering with a witness or intimidating a victim or witness. The criminal courts have exclusive jurisdiction over these types of offenses.

c. Coercive acts or conduct which, though non-criminal in nature, serve to instill fear of physical harm or property damage. Such a pattern may involve abuse language, physical or verbal threats

of damage to jointly held marital property, or acts which violate the terms of an order of protection issued by the Family, Criminal or Supreme Courts.

This section enumerates the range of offensive acts employed by many perpetrators in domestic incidents, underscoring the range of violent acts and fear inducing or harmful conduct officers may identify in investigating these incidents, including but not limited to designated family offenses.

4. Concurrent Jurisdiction exists when different courts have jurisdiction over the same matter. A victim of a Family Offense may elect to proceed in either a civil or criminal court or in both. Criminal courts and the Family Court have concurrent jurisdiction when:

   a. A designated family offense (see 3.A.1-6 above) is alleged to have been committed, and

   b. A family/household relationship (see 2. above)exists, and

   c. The alleged offender is 16 years of age or older.

   (if either of the first two conditions is not met, a victim may only proceed in a criminal court for legal relief).

DISPATCH PROCEDURES

1. A domestic incident call will be given the same priority and prompt response as any other call for service. Staff assigned to communication functions will, whenever practicable, dispatch at least two officers.

2. Upon receipt of a domestic incident call staff assigned to communication functions will, along with information normally gathered, make every effort to determine and relay the following information to the responding officers:

   a. Whether the suspect is present and, if not, the suspect's description and possible whereabouts.

   b. Whether weapons or dangerous instruments are involved or known to be at the location or if any other threats exist (e.g., dogs).

   c. Whether medical assistance is needed at the scene.

   d. Whether the suspect or victim is under the influence of drugs or alcohol.

   e. Whether there are children present.

   f. Whether the victim has a current protective or restraining order.

   g. Complaint history at that location.

   h. Identity of caller (i.e., victim, neighbor, child).

   The computerized registry for orders of protection should be checked prior to the arrival of officers to inform them of any current order of

protection and its terms and conditions.

The computerized registry for orders of protection can be checked for the presence of a current family offense order and its terms and conditions. It is not necessary to check the registry to confirm a victims physical copy of the order, unless the order is missing or appears altered. The Statewide Registry only carries information on Orders of Protection issued in family offense proceedings and warrants issued for violations of such orders. Departmental records should be checked in non-family offense cases and NYSPIN should be checked in all cases for warrant information.

5. Responding Officer Procedures

a. A domestic incident call signifies people are in need of help, and shall be responded to as quickly and safely as circumstances permit.

b. Upon arrival at the scene, officers should be alert to sounds coming from the location to identify what is transpiring, and wait for backup officers when appropriate.

c. The responding on-scene officer shall:

1. Restore order by gaining control of the situation and separating the involved parties.

2. Take control of all weapons used or threatened to be used in the incident.

3. Locate and visually check all occupants of the location to verify their safety and well being.

4. Assess the need for medical attention and request that any required assistance be dispatched.

5. Interview all available parties and witnesses, separately if practicable.

6. After all interviews have been conducted, determine whether an offense has been committed; whether an arrest should be made, and whether other action should be taken. If an arrest is made, advise the victim that release of the suspect can occur at any time so that the victim can take desired safety precautions.

7. Advise the victim of the availability of shelter and other victim services in the community, and provide the victim with a copy of the Victim Rights Notice. If necessary, read the Victim Rights Notice to the victim.

8. Collect and record potential evidence, including spontaneous utterances by parties or witnesses. Where appropriate,

canvass the area for witnesses, take photographs of injuries and/or property damage or, in accordance with Department policies, request the dispatch of appropriate crime scene investigators if needed.

9. Complete the Standard Domestic Incident Report Form and any other reports necessary to fully document the officer's response, whether or not an offense was committed or an arrest is made. Provide the victim with the victim's copy of the Standard Domestic Incident Report/Victim Rights Notice Form immediately upon its completion at the scene.

10. If the officer has probable cause to believe a crime has been committed, the officer will attempt to locate and arrest a suspect who has left the scene without unnecessary delay by:

    a. Conducting a search of the immediate area.

    b. Obtaining information from the victim and witnesses that will aid in apprehending the suspect.

    c. Continuing the investigation as necessary or referring the matter to the proper unit for follow up investigation and arrest or warrant application.

    d. If the search for the offender is unsuccessful and the victim has elected to remain at the scene, advise the victim to call the department if the offender returns.

    e. Prior to leaving the scene, officers should attempt to obtain a signed information, complaint or signed statement from the victim.

d. Responding officers at the scene of a domestic incident shall provide the following assistance to victims and, where appropriate, the children or other family or household members:

    1. Advise all involved parties about the serious nature of domestic violence, its potential for escalation, and of legal and social assistance available.

    2. Assess the immediate safety and welfare of the children.

    3. Remain at the scene until satisfied that the immediate threat of violence has passed or all appropriate options to protect and assist the victim have been exhausted.

    4. Provide the victim with referral information regarding domestic violence shelters and services.

    5. Assist in arranging for transportation or take the victim and family or household members to a place of safety.

6. Officer Arrest Procedures

A. All warrantless arrests shall be made in conformance with section 140.10 of the Criminal Procedure Law and applicable Department policy and procedure. It is the responsibility of all officers to be thoroughly familiar with and guide their actions in accordance with CPL 140.10 and Department Policy and Procedure.

B. In all domestic incidents where a law has been violated, in addition to enforcing the law, the objective is to protect the victim. The victim should not be informed about or requested to make a civilian arrest when the officer may make a lawful warrantless arrest. The purpose of this policy is to take the burden of an arrest decision away from the victim, who may be ill-prepared to undertake it due to social, economic, psychological or other pressures and constraints. Even if the victim actively intercedes and requests that no arrest be made, a lawful warrantless arrest based on probable cause shall be made in accordance with CPL 140.10.

C. In the following specific circumstances, without attempting to reconcile the parties or mediate, an arrest shall be made when the officer has probable cause to believe that the following violations have occurred:

1. Any felony against a member of the same family or household (except certain forms of grand larceny 4 - Penal Law §155.30 [3], [4]. [9] or [10]).

2. Any misdemeanor constituting a Family Offense unless, with out inquiry by officer, the victim requests otherwise. When such a request is spontaneously made, the officer may, nevertheless, make an arrest.

3. A violation of an order of protection committed through the failure of the person to whom it was directed to comply with a "stay away" provision of such order, or through the commission of a Family Offense. The order must be one issued pursuant to sections 240 or 252 of the Domestic Relations Law; Articles 4, 5, 6 or 8 of the Family Court Act; or section 530.12 of the Criminal Procedure Law, and it must have been duly served, or the person to whom it was directed has actual knowledge of it because he or she was present in court when the order was issued.

NOTE: The foregoing listing of specific circumstances in which an arrest shall be made shall not be deemed to restrict or impair the authority of any municipality or political subdivision from promulgating rules, regulations and policies requiring the arrest of persons in additional circumstances where domestic violence has allegedly occurred.

D. Officers are reminded that there is no requirement that a crime (felony or misdemeanor) must occur in the officer's presence to authorize an arrest. A lawful warrantless arrest may, and often is, founded upon factors other than the officer's direct

observations. They include, but are not limited to, factors such as visible physical injury, property damage, signs of disruption at the scene, or statements made by the victim, children or other witnesses.

E. When an officer has probable cause and is required to effect an arrest under this policy, the following examples are not valid reasons for failing to adhere to such policy:

1. There may be financial consequences caused by an arrest.

2. The complainant has made prior frequent calls.

3. The involved parties appear to be impaired by alcohol or drugs.

4. The offender gives verbal assurance that he or she will not harm the victim.

F. Cross Complaints. Officers are not required to arrest both parties when physical force was used against each other, but shall attempt to learn which party may have lawfully used physical force in accordance with Article 35 of the Penal Law.

G. Civilian Arrests. When the officer lacks legal authority to make a warrantless arrest, the victim should be informed of the opportunity to make a civilian arrest. Such an arrest, however, shall not be used as a substitute for an authorized arrest by the officer as provided for in this policy.

H. In all arrests, other than civilian arrests, the officer shall emphasize to the victim and the alleged offender that the criminal action is being initiated by the State and not he victim.

Section 6 mandates the arrest of suspects in cases in which the officer determines that probable cause exists that an offense was committed in the context of a domestic relationship. Such a law enforcement response, encourage by Federal Law and currently in place in many departments across New York State, provides victims immediate protection and an opportunity to seek safety and to consider legal options. Law enforcement executives across the country have embraced mandatory arrest policies in the hope of establishing consistent, effective practice which may protect departments from liability for inadequate response in these cases. The Family Protection and Domestic Violence Intervention Act amends C.P.L. §140.10 (4) (c) to read, "...no cause of action for damages shall arise in favor of any person by reason of any arrest made by a police officer pursuant to this subdivision." It should be noted that while the law provides immunity from liability in cases in which a good faith arrest is made, it does not protect officers who fail to make arrests when appropriate.

7. Family Offense Arrest Processing

Family Protection Registry Information Sheet and DCJS 3221 Domestic Incident Report will be completed at time of arrest and put with arrest paper work.

A. Officers will provide victims of a Family Offense with the following information:

1. That there is concurrent jurisdiction with respect to family offenses in both Family Court and the Criminal Courts. Victims of family offenses may proceed in either or both the Family and Criminal Courts.

2. That a Family Court proceeding is a civil proceeding for purposes of attempting to stop the violence, end the family disruption, and obtain protection.

3. That a proceeding in the criminal courts is for the purpose of prosecuting the alleged offender and can result in criminal conviction of the offender.

4. That a proceeding subject to the provisions of section 812 of the Family Court Act is initiated at the time of the filing of a petition, not at the time of arrest or request for arrest (when Family Court is not in session a criminal court may issue a Family Court order of protection).

5. That an arrest may precede the initiation of a Family Court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding. The arrest of an alleged offender shall be made under circumstances described in subdivision four of section 140.10 of the Criminal Procedure Law.

B. When a victim wishes to proceed in a criminal court, provide advice that the victim is not required to be present at arraignment. If an order of protection is desired, the court should be advised of such request.

C. Booking procedures, fingerprinting and photographing shall conform to current department procedures and section 160.10 of the Criminal Procedure Law.

8. Non-Family Offenses Arrest Processing

A. Offenses that are not designated Family Offenses, but which occur in domestic incident situations cannot be handled in Family Court. Criminal Courts have exclusive jurisdiction over these acts (e.g., murder or attempted murder, criminal possession of a weapon, rape, unlawful imprisonment).

B. Booking procedures, fingerprinting and photographing shall conform to current Department procedures and section 160.10 of the Criminal Procedure law. In addition, Family Protection Registry Information Sheet and DCJS 3221 Standardized Domestic Incident Report will be done in all Domestic Arrest situations.

C. Although the violation of an order of protection is not a designated Family Offense, the Family Court has concurrent jurisdiction to enforce such an order when issued by it.

9. Orders of Protection

A. Temporary Orders of Protection

1. A Criminal Court Judge as well as a Family Court Judge can issue orders of protection and temporary orders for victims of any crime or violation as well as for members of the victim's family or any designated witnesses (CPL Sections 530.12(1); 530.13(1)).

2. Temporary orders can be issued as soon as the accusatory instrument or petition is filed. It is not necessary to wait until the defendant is arrested.

3. A temporary order may be issued as a condition of bail, ROR, or with an ACD.

4. Temporary orders of protection may be in effect while the prosecution is pending or during the period of an ACD.

5. When Family Court is not in session, after 5 PM on weekdays and on weekends, City Judges must accept Family Court petitions and can issue Family Court Orders of Protection (CPL Section 530.11; Family Court Act Sections 155 and 161). If an adult is arrested for a "family offense" and the victim elects to have the case heard in the Family Court when it is not in session, the offender shall be taken to the most accessible magistrate and arraigned before him. The magistrate may then issue a temporary order of protection, hold the abuser, fix bail or release him for a hearing before the Family Court. Again, the victim should be told to respond to Family Court the next court day or the case will not be heard.

6. It is not necessary that any previous proceeding have occurred i.e., criminal charge, Family Court petition or temporary order of protection, before the police make an arrest.

7. An order of protection is similar to a warrant of arrest. The presentation of such an order to any peace officer shall constitute authority for him to take into custody a person charged with violating the terms of the order and bring such person before the Court (CPL Section 530.12(8); Family Court Action Section 168(1)). This is especially so where the order contains a "stay away" provision which is violated or where the violation consists of a family offense. Effective July 1, 1995, police must arrest in these latter two situations regardless of the victim's desire.

8. Copies of all temporary orders of protection must be given to the victim or witnesses protected by the order, to the defendant (either in court or delivered with a summons or an arrest warrant) and to the defense attorney (CPL Section 530.12(8); 530.13(6)).

9. Copies of every order must be filed by the local court with the appropriate police agencies having jurisdiction of the

home, work, or school of the persons protected. Additional copies may be filed with police or sheriff's office by the complainant. A statewide computerized registry of orders of protection has been established.

B. Orders of Protection

1. These are issued after a conviction and may be given in conjunction with a conditional discharge, a sentence of probation, or a sentence of imprisonment (CPL Section 530.12(5); 530.13(4); PL Section 65.10(2) (K)).

2. Orders of Protection may be effective for the entire period of a sentence of probation, or the duration of the conditional discharge, i.e., for a felony 5 years, a misdemeanor 3 years, conditional discharge 1 year. Family Court orders of protection can be effective for one year or, if aggravating circumstances exist, up to 3 years.

3. These orders may contain the same prohibitions as temporary orders of protection.

4. Arrest mandates are equally applicable to these orders.

C. Service

The Rye Police Department will serve any order of protection presented to it as long as the person to be served can be located within the City of Rye. The original order and the affidavit of service will be stored in the detective division under the care of the warrant officer. He/She will be sure a copy of each is on file at the desk. Upon successful service of the Order of Protection, the serving officer will, without delay, enter the required information into NYSPIN using the on-line format "OSRV".

D. Enforcement

The following policy shall be followed in the enforcement of an order of protection:

1. The on scene officer shall make an evaluation of the facts and circumstances surrounding the incident.

2. A lawful warrantless arrest may be made based on probable cause even though the protected person may be unable to present a valid copy of the order, but the officer shall attempt to verify the existence and terms of the order through Department records or NYSPIN. However, if the order is not produced or its existence cannot be verified, the officer should proceed as though an order of protection does not exist.

3. Where an officer receives a complaint from a protected person or has an independent basis to believe that an order

of protection has been violated, and has probable cause to believe that the terms of such order have been violated, an arrest shall be made for the appropriate degree of criminal contempt regardless of whether the prohibited conduct occurred in the officer's presence. A copy of the order of protection shall be attached to the court accusatory instrument.

4. If an arrest is made for violating an order of protection and the protected person does not verify (sign) the accusatory instrument, the officer should attempt to obtain a deposition, or prepare his or her own accusatory instrument which shall include a statement that the terms of the order were violated and a description of the behavior constituting the alleged offense.

5. In instances where the conduct prohibited by the order of protection is also conduct constituting another offense, the offender shall be charged with violation of the order of protection (e.g., criminal contempt) and the independent offense.

6. In any case where an arrest has been made for violation of a criminal court order of protection, it is advisable for the protected person to be present at arraignment.

E. Out-of-State Orders

Orders of protection issued in another State shall be given full faith and credit in New York. When an officer is presented with an order of protection issued in a state other than New York or by a tribal court, the officer shall attempt to determine its validity, similar to assessment of a New York order. Unless clearly invalid, an out-of-state order will be presumed to be valid, and shall be enforced in the criminal court with jurisdiction over the acts constituting the offense. If the validity of the out-of-state order is in question, the officer should arrest for a substantive charge if warranted, rather than for a violation of the order.

10. Firearms

Upon arresting an individual who is licensed to carry, possess, repair or dispose of firearms, the arresting officer should, whenever practicable, notify the arraignment court that the alleged offender is so licensed and also advise the court of the licensing authority and county of issuance.

11. Appearance Tickets and Bail

A. Following an on scene arrest for a crime arising from a domestic incident, an appearance ticket shall not be issued. Instead, the officer shall remove the alleged offender from the scene and complete pre-arraignment booking procedures in accordance with department policy and section 160.10 of the Criminal Procedure Law.

C.P.L. 140.20.2 provides that, for certain offenses, pre-arraignment bail may be set or an appearance ticket issued to the arrested party. Given the extraordinarily high level of recidivism among domestic violence offenders, the high number of arrested persons under the influence of alcohol or other drugs and the propensity for reprisals in these cases, departments are advised to hold domestic offenders for arraignment. The exercise of departmental discretion in releasing these suspects prior to arraignment may create liability risks if any further harm is done to the victim by the suspect upon release. Such risk is best avoided by bringing all domestic offenders before the court of arraignment. The U.S. Supreme Court, in County of Riverside v. McLaughlin and the New York Court of Appeals in People ex. rel. Maxian v. Brown define constitutional time frames for processing arrests. Departments are advised to coordinate with the District Attorney and local judiciary to ensure that the period of pre-arraignment detention does not exceed 24 hours.

B. Any deviation from this procedure must be approved by the officer in charge, and the reasons for such deviation must be documented in the case file.

C. Officers shall not assure victims that an arrested individual will remain in custody overnight because of the provisions of this policy. Such assurances to the victim might influence decisions regarding safety precautions that the victim may take.

12. Additional Functions

A. The Department will maintain a current listing of agencies that provide aid to victims of domestic violence. Officers will refer victims to these agencies when appropriate. (see attachment #1)

B. Officers will arrange for the transport and accommodation of victims of domestic violence and their children at available shelters or other places of safety, or will assist in making such arrangements.

C. Where victims of domestic violence are incapacitated by physical, mental or emotional impairments, officers will consult with Adult Protective Services and assist, where appropriate, in supportive interventions. (see G.O. 119.3)

D. Officers and communications personnel should be trained on an on-going basis in this policy, the problem of domestic violence, the applicable statutes concerning domestic violence, and the criminalization trend to reduce domestic violence.

E. The Department shall designate specific personnel to periodically review the adequacy of this policy, assess and enforce compliance with its provisions by department personnel, and make recommendations to the head of the Department of any indicated revisions deemed necessary to improve or enhance the implementation of this policy.

13. Responsibility

A. All officers shall follow the procedures set forth in this directive, except under extraordinary circumstances where they can clearly demonstrate that their use was unsuitable for a particular situation. Any such circumstances must be fully documented by the reporting officer on the incident report, and a copy thereof shall be forwarded to the Patrol Lieutenant via the chain of command for review purposes.

The officer in charge (tour supervisor) is ultimately responsible to see that officers under their command comply with department policy and procedure when dealing with incidents of domestic violence.

B. The Police Commissioner will designate a command level officer to coordinate department domestic violence programs. Responsibilities will include:

1. Coordination of Department training in domestic violence.

2. Policy review, suggestions for revisions, and policy implementation.

3. Routine analysis of department data regarding reports of domestic violence, offense dispositions and arrest statistics as a measure for program success.

4. Department liaison with state and local domestic violence agencies, community service organizations and the public in matters relating to domestic violence.

Attachment #1

REFERRALS

Telephone numbers that may be of assistance to victims of violence.

Abused Spouse Assistance Service - 24 hour 29 Sterling Avenue, White Plains, NY	997-1010 949-6741
Alcoholics Anonymous 39 No. Broadway, White Plains, NY	949-1200
Department of Social Services	285-5459
Domestic Violence Program (Night Emergency No)	592-3791
Domestic Violence Prosecution Unit District Attorney 111 Grove Street, White Plains, NY	285-3000
Legal Aid Society of Westchester 1 North Broadway, White plains, NY	682-3400
National Organization of Women (N.O.W.)	428-7744
New Rochelle Guidance Center	636-4440
New York State Child Abuse and Maltreatment Register Albany, NY	1-800-342-3720
Northern Westchester Shelter - 24 hrs. Individual, Family and Group Therapy	747-0707
Putnam-Northern Westchester Women's Center	628-9284

Emergency 2 Mahopac Plaza, Mahopac, NY		628-2166
Rap Group for Battered Women 515 North Street, White Plains, NY		949-6741
Samaritan House - Grace Church Shelter (Women, Men, Children) 33 Church Street, White Plains, NY (Shelter/Meals)		948-3075
The Shelter (Women and Children) Yonkers, NY	Hotline Admin.	968-4345 969-5800
Westchester County Information & Referral		285-2170
Westchester County Office for Women 112 East Post Road, White Plains, NY		285-5972
Westchester Legal Services 171 East Post Road, White Plains, NY		949-6161
W.I.S.H. (Women in self help)	Hotline	946-5757

Attachment #1 continued

Women of Westchester (W.O.W.)		698-3112
Yonkers Women Task Force and My Sisters Place 2 Manor House Square, Yonkers, NY 24 hours		969-5800 968-4345

Enter "UNK" in all Fields where data is not obtainable

Family Protection Registry
Information Sheet

******Asterisked Areas Are Required********

**Court ORI No: NYO _____J
**Order No: 199__-_____
**Docket/Index NO_____

**Court:_____
**County:_____
**Expiration Date:_____

Law Enforcement Agency at which Copy of Order is Filed:
Name:_____ Police ORI: NY_____

**ACTION TO BE TAKEN:
- [] New Order
- [] Order Modified/Finalized
- [] Corrected Information

(Circle ALL corrected information on ALL documents)

**SERVICE OF ORDER:
- [] Police to Serve Order [] Other
- [] Order served in Court (Date:_____)
- [] Notification by Mail (Date:_____)
- [] Order Previously served (Date:____) (no new service to be done)

APPLYING PARTY (Party Requesting Order)

**Name:(First) (MI) (LAST)

Alias or Nickname: (First) (Last)

** Address: (Street)
(City) (State) **Addr. Confid. []yes []no
(Zip) (County) **Protected Party []yes []no

Phone (Home): (Work)

**Date of Birth: **Sex: male female SS No.:

**Race: []White []Black []Native American []Asian/Pacific Islander []Unknown height: Eye Color:

**Ethnicity (select one): []Hispani []Non-Hispanic weight: Hair Color:

ENJOINED PARTY (Party Against Whom Order Runs)

**Name: (First) (MI) (Last)

Alias or Nickname: (First) (MI) (Last) NYSID:

**Address: (Street)
(City) (State) **Addr. Confid?[]yes[]no
(Zip) (County)

Employers Name:

Employers Address: Hrs. of Employment

Phone (Home): Phone (work):

**Date of Birth: **Sex: []male []female SS No.

**Race: []White []Black []Native American Height Eye Color
[]Asian/Pacific Island []Unknown

**Ethnicity (select one): []Hispanic [] Non-Hispanic Weight Hair Color

License Plate No.: State:

Drivers ID: State: Mothers Maiden Name

Is Police Caution Advised?IF yes, why:

CITY COUNCIL AGENDA

NO. 11 DEPT.: Police DATE: April 9, 2014

CONTACT: Robert J. Falk, Interim Police Commissioner

AGENDA ITEM: Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: General Order #113.21 "Guidelines for Recording Custodial Interrogations of Suspects."

FOR THE MEETING OF:
April 9, 2014
RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: Approval of a new General Order #113.21 "Guidelines for Recording Custodial Interrogations of Suspects."

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

BACKGROUND: The Department is one of several Police departments in Westchester County to be awarded funding, pursuant to a grant obtained by the Westchester County District Attorney's Office, for the purchase of equipment for recording of custodial interrogations of suspects in criminal cases. The proposed General Order implements guidelines for the use of such equipment, and is a requirement of the grant. It is based on a model policy adopted by the New York State Division of Criminal Justice Services, which incorporates recommendations of the New York State Justice Task Force that was convened in 2009 by Chief Judge Jonathan Lippman of the New York Court of Appeals. Recording of statements in appropriate circumstances will enhance the prosecution of serious cases.

A copy of the proposed order is attached. The proposed revision was provided to the Rye Police Association for review pursuant to the provisions of the collective bargaining agreement.

CITY OF RYE POLICE DEPARTMENT

General Order #113.21	New [x] Supersedes:	Revised [x]
Subject: Guidelines for Recording Custodial Interrogations of Suspects		
Date Issued 01/xx/14	Date Effective 01/xx/14	Page 1 of 6
Issuing Authority: Robert R. Falk, Interim Police Commissioner		

Purpose: The purpose of this policy is to establish broad guidelines for the electronic recording of suspects' statements in custodial interrogations and the associated use, management, storage and retrieval of such recordings. While these guidelines endorse the practice of recording custodial interrogations, they also recognize the dynamics of police work, field operations and suspect encounters. These guidelines provide latitude for officers in conducting interrogations at times that may not lend themselves to the availability of recording equipment.

Intent: It is expected that electronically recording custodial suspect interrogations will enhance the investigative process and assist in the investigation and prosecution of criminal cases. Critical evidence can be captured through the recording of interrogations. The recording will also preserve information needed regarding a person's right to counsel and the right against self-incrimination and it can be used to resolve a person's claim of innocence. Similarly, the electronic recording of custodial interrogations will assist in defending against civil litigation and allegations of officer misconduct.

Definitions:

1. **Custodial Interrogation:**

   a. Custodial: The objective standard for determining a suspect's custodial status is whether a reasonable person, innocent of any wrongdoing, would have believed that he or she was not free to leave.

   b. **Interrogation:** Interrogation refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally associated with arrest and custody) that the police should know are reasonably likely to elicit an incriminating response.

   2. **Electronic Recording:** A digital, electronic video or other recording on electronic media.

   3. **Electronic Media:** Video signals recorded on any of several storage media, including analog tape (VHS, S-VHS, Hi 8), digital recording (DVD) or other portable digital storage media (CD, MP3 player, hard drive, etc.).

   4. **Subject:** The person being interrogated.

5. **Department:** The City of Rye Police Department.
6. **Members:** All sworn police officers of the City of Rye Police Department.
7. **Interview Room:** The room designated for the recording of interrogations. The equipment required in the room is specified in the "Equipment" section below.
8. **Qualifying Offense:** Interrogation of suspects relating to the following crimes will be recorded:
a. All Felonies
b. All other crimes as determined by the Commanding Officer, Detective Division or his/her designee.

General

1. **When to Record**: All members of the Department shall, whenever possible and practicable, utilize the electronic recording system located in the area designated as the Detective Division interview room when conducting an interrogation of someone suspected of committing a qualifying offense. Electronic recordings may be made regardless of whether the interrogation is of a custodial nature, or non custodial, as long as the suspect has been read his or her Miranda warnings.
2. **When Recording may not be Practicable**: It is understood that recording may not always be possible. The following are some, but not all, of the practical reasons that may prevent a qualifying offense from being recorded:
a. Electronic recording equipment malfunctions.
b. Electronic recording equipment is not available, e.g., it is already in use.
c. Statements are made in response to questions that are routinely asked during the process of arresting a person.
d. Spontaneous statements are made that are not in response to police questioning.
e. Statements are made by the suspect at the time of arrest.
f. Statements are given in response to an interrogation at a time when the interviewer is unaware that a qualifying offense occurred.
g. Statements are made during an interrogation that is conducted at another location not equipped with recording devices, and the reasons for using that location are not to subvert the intent of this policy.
h. Statements are made at a location other than the interview room identified in these procedures because the defendant cannot be in the interview room, e.g., the defendant is out of the state, in a hospital or is in a correctional facility.
i. Statements are made after a suspect has made a documented refusal to participate in the interrogation if it is recorded and the officer has consequently turned off the recording equipment.
j. Inadvertent error or oversight occurs that was not the result of intentional conduct of law enforcement personnel.
3. **Equipment in View vs. Hidden Equipment**: At the discretion of the Department, recorded interrogations can be done with the equipment in view or with the equipment hidden. The Department can decide whether or not to inform the suspect that the interrogation is being recorded. If the Department chooses to inform the suspect of the recording, it can be done in a number of ways, for example, by orally informing the suspect, by providing the suspect with written notice, or by posting signage in the interview room or in the police station. If the

equipment is hidden and the subject asks if the interrogation is being recorded, the interrogating officer should answer truthfully and continue the interrogation.

4. **Field Interviews:** These guidelines are not meant to discourage field interviews. Gathering "real time" information in the field can be critical for an investigation. For example, information is often immediately needed to locate a weapon, to find victims or accomplices, or to secure a crime scene. If information is gathered from the suspect in the field regarding a qualifying event, efforts should be made to memorialize the statements at the earliest practicable time.

5. **Interrogation Methods:** Depending on the circumstances of the case, an interrogation can be conducted in a variety of ways to enhance the investigation and to protect the rights of the suspect. The use of pointed interrogations, accusatory questions, deception and other similar tactics are recognized as appropriate law enforcement techniques in interrogation, provided the tactics are not "fundamentally unfair" as defined by New York courts (*People v Tarsia*, 50 N.Y.2d 1, 11-12 [1980]). Note: Members should receive training to ensure that officers know how to conduct an interrogation. The entire interrogation, including the use of pointed questions, accusatory questions, deception and other similar tactics, must be recorded according to the Department's video recording protocols.

6. **Juvenile Room:** So that juveniles (over seven and less than sixteen years old) and adults can be questioned in the interview room, the room may also be designated a juvenile room, where practical. To meet these criteria, the room must have been designated by the Chief Administrator of the Courts as a suitable place for the questioning of juveniles and it must comply with the requirements of the Uniform Rules for the Family Court, Part 205. Note: A juvenile room is not required for a person between thirteen and fifteen years of age who will be prosecuted as an adult in criminal court as a *juvenile offender.* CPL 1.20 (42) [defining "juvenile offender"].

7. **Search of the Suspect:** Prior to the interview, the interviewing officer should be certain that the suspect, who is in custody, was searched for weapons, contraband, evidence, electronic devices or telephones and that all relevant items were removed. It must be kept in mind that all searches must comport with the laws of the state and federal government.

8. **Illegal Eavesdropping**: Members must avoid any circumstance where conversations are recorded in which a party is either unaware of or has not consented to the recording. During the course of an interrogation if a defendant is left alone in the interview room and the defendant calls his attorney, or talks to his attorney or his parent or any third party, the recording of the conversations may constitute and illegal eavesdropping. Accordingly, if at all possible, the officer should avoid stopping the interrogation for the purpose of allowing a suspect to talk, or place a phone call to a third party. However, if an officer must leave the room to allow a conversation with an attorney or third party, the recording must be turned off for the duration of that conversation.

9. **Use of Translator:** If the subject requests a translator or if the officer deems that a translator is necessary, the officer will seek a translator, in conformance with the existing Department policy. Translators used during the interrogation will be identified on the recording by name and affiliation.

The Interrogation

Use of the Equipment

1. **Familiarity with the Equipment:** At least one officer conducting the interrogation shall be responsible for operating the recording device used during the interrogation and should know the Department's electronic recording protocols.
2. **Interview Room Setup**: Consideration should be given to pre-designating the locations within the room where the various parties should sit. In covert recordings, the suspect should, if possible, remain in a location that can be viewed by the camera. If the suspect moves around the room, the suspect could move out of camera range.
3. **Storage Media Capacity:** Before the interrogation begins, the officer should make sure that there is enough capacity to record the entirety of the interrogation, e.g., enough DVD, disc, or other storage media space.
4. **Date and Time Stamping**: Date and time stamping of the electronic recording is encouraged. A clock can also be on the wall of the interview room and in view of the recording device.
5. **Problem with the Equipment**: The time and nature of any irregularities that occur with the equipment should be documented by the officer in writing. Even if there is a problem with the electronic media, the electronic media must be preserved.

Recording the Interrogation

1. **Location of Recording**: The interrogation should take place in the designated interview room, which is equipped for recording.
2. **Identify Participants**: The names of all of the parties present in the interview room during the interrogation should be documented.
3. **When to Start and End the Recording:** The recording equipment should be turned on prior to the subject being placed within the interview room and should only be turned off after the subject has left the room after the interrogation is completed. All discussions in the interview room, including any pre-interrogation discussions, even if they occur before the reading of Miranda Warnings, must be included in the recording. Should the need arise for either the subject or the interrogating officer to leave the interview room, recording devices can continue to operate without interruption. If the recording is temporarily stopped, the reason for stopping the recording and the duration should be documented.
4. **Hidden Equipment:** If the Department chooses to make the electronic recording equipment covert, the officer shall not inform the subject that the interrogation is being recorded, nor discuss the topic of recording unless the subject asks whether the interrogation is being recorded. If the subject does ask about recording, the interrogating officer should answer truthfully and continue the interrogation.
   a. If the subject refuses to participate in the interview if it is being recorded, then the subject's refusal should be documented on the recording. If the subject insists that the recording be ended immediately, the subject's refusal should be documented in writing. The interview can then continue without the recording.
5. **Accommodations for Suspect**: Where possible, it should be made clear on the recording when a subject is or has previously been provided with food, drink, cigarettes, access to toilet facilities, etc.

6. **Written Statement**: After the subject of the interrogation has provided all of the pertinent information, a written statement may be obtained from the subject. If the officer opts to obtain a written statement, that procedure should also be recorded.

Reading Miranda Warnings and Right to Counsel (in Brief)

1. **Miranda Warnings**: Any custodial interrogation must be preceded by the reading of Miranda Warnings. This does not preclude pre-interrogation discussions with the subject before Miranda Warnings are read and the actual interrogation commences. In qualifying cases where the interrogation is to be recorded, all conversations that occur inside the interview room must be recorded, including pre-interrogation discussions and the administration of the Miranda Warnings.
2. **Invocation of the Right to Remain Silent:** A suspect has a Fifth Amendment right not to speak with the police; this right must be carefully honored. This right presents a choice which is the suspect's to make. However, for the invocation of this right to be effective, it must be unequivocally stated by the suspect, e.g., "I don't want to say anything." This means that if the subject definitely and unambiguously states that he or she does not want to speak with the police, the interrogation must end immediately.
3. **Invocation of the Right to Counsel:** A subject has a right to counsel and this right must be carefully honored. Whether or not to request the presence of counsel is the suspect's choice to make. However, for the invocation of this right to be effective, it must be unequivocally stated by the subject, e.g., "I want an attorney." This means that if the subject definitely and unambiguously states that he or she wishes to speak with an attorney, the interrogation must end immediately.
4. **Attorney Visit**: If the subject of a recorded interrogation has an attorney visit, the subject and attorney shall be offered a separate, private area in which to confer if one is available. The recording of the empty room can continue during their absence to memorialize the event until such time that the interrogation is either resumed or terminated. Alternatively, a record can be made of when the recording was discontinued for the attorney visit. If the interrogation re-commences after the attorney visit, then there should be documentation of the attorney's agreement to allow the questioning to continue and the time that the recording began again. In no event shall the visit between the attorney and the suspect be recorded.
5. **Questioning a Juvenile and Simplified Miranda Warnings:** When questioning a juvenile, who will be prosecuted as a juvenile delinquent under the Family Court Act (over seven and less than sixteen years old), the interview should take place in a designated juvenile room. The officer should be aware of other considerations, including the parental notification requirements of Family Court Act Section 305.2 (applicable to the questioning of juvenile delinquents), and Criminal Procedure Law Section 140.20(6) (applicable to the questioning of juvenile offenders, who will be prosecuted as adults in criminal court). The officer may also consider using simplified Miranda Warnings when questioning a juvenile.

Preservation of Evidence and Discovery

1. **Labeling the Electronic Storage Media**: After the interrogation, the officer(s) conducting the interrogation, or an employee designated by the Department, shall label all applicable documents, recorded media and notes according to Department protocols.
2. **Copies**: Copies of the recorded interrogation should be made according to Department protocols.
3. **Storage of Electronic Media**: The original of the electronic media should be appropriately invoiced in accordance with Departmental evidence procedures.
4. **Retention of Original**: The original should be retained according to the Department's retention policy.
5. **Defense Request for a Copy of the Interrogation**: Any defense request for a copy of the interrogation should be referred to the District Attorney's office.
6. **No Alteration of the Original**: No person shall, in any manner or for any purpose, alter the original "master" electronic recording of a custodial interrogation.
7. **Dissemination**: Any dissemination of any recording shall be carried out according to documented Department rules and procedures.
8. **Viewing of the Electronic Media**: Recordings of statements shall not be replayed for other than authorized Department personnel without the permission of the Commanding Officer, Detective Division. The Commanding Officer, Detective Division will be responsible for overseeing the maintenance of records regarding recordings, as well as processing requests for production thereof by the District Attorney or other authorized parties.

9. **Felony Interview Reporting Form** (*only for jurisdictions that use this form*): A Felony Interview Reporting Form must be completed indicating that a recording was made of a suspect's interrogation, even if the suspect only refused to speak on the recording. The form provides notice to the prosecutor about the existence of an audio/video recorded statement to ensure that the prosecution can provide adequate notice under Criminal Procedure Law Sections 710.30 and 240.20(1)(g). Failure to so notify the prosecution of the recorded interrogation could result in a court ruling prohibiting the use of the defendant's statements.

Training:

Officers must be trained be trained in the operation of recording equipment, as well as the procedures for conducting a recorded interrogation, prior to conducting recorded interviews. Officers should be familiar with how to conduct an interrogation, as well as the suspect's right to counsel and the suspect's right to remain silent.

CITY COUNCIL AGENDA

NO. 12 DEPT.: Police DATE: April 9, 2014

CONTACT: Robert J. Falk, Interim Police Commissioner

AGENDA ITEM: Acceptance of Grant Award from the Westchester County District Attorney's Office in the amount of $3,130 to purchase equipment for the video recording of statements.

FOR THE MEETING OF:
April 9, 2014

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the City Manger be authorized to accept the Grant Award from the Westchester County District Attorney's Office in the amount of $3,130.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: The City of Rye Police Department has been awarded a grant of $3,130 from the Westchester County District Attorney's Office to provide equipment for the video recording of statements. The Grant will be administered by the District Attorney's office; the DA's office will do the purchasing and provide the equipment to the Rye Police Department upon receipt.

See attached.

STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES
Alfred E. Smith Office Building
80 South Swan Street
Albany, New York 12210
http://criminaljustice.ny.gov

ANDREW M. CUOMO
GOVERNOR

MICHAEL C. GREEN
EXECUTIVE DEPUTY COMMISSIONER

November 15, 2013

The Honorable Janet DiFiore
District Attorney
Westchester County District Attorney's Office
111 Dr. Martin Luther King Jr. Boulevard
White Plains, NY 10601

Dear District Attorney DiFiore:

I am pleased to advise you that the Westchester County District Attorney's Office has been awarded $32,920 to support Westchester County with the purchase of equipment for the Video Recording of Statements. The following local law enforcement agencies have been approved to participate in the initiative:

- Ardsley Village Police Department ($3,130)
- Briarcliff Manor Village Police Department ($3,130)
- Buchanan Village Police Department ($3,280)
- Hastings-on-Hudson Village Police Department ($3,130)
- Irvington Village Police Department ($3,660)
- Larchmont Village Police Department ($3,960)
- Mamaroneck Town Police Department ($3,130)
- Pelham Manor Village Police Department ($2,960)
- Rye Brook Village Police Department ($3,410)
- Rye City Police Department ($3,130)

We also wanted to make you aware that a press release is scheduled to be issued about these awards, so it is possible you may get inquiries from local reporters on the award.

The goal of the Video Recording of Statements initiative is to enhance law enforcement efforts and prosecution outcomes through videotaping of interviews and interrogations *from beginning to end*. Participating law enforcement agencies will be expected to produce substantiated information, both statistical and programmatic, on the effectiveness of the initiatives implemented by the grant program. This information is essential to demonstrate the successful outcomes of the Video Recording of Statements initiative.

In the very near future, an Office of Program Development and Funding (OPDF) Criminal Justice Program Representative (CJPR) will contact your office to assist you in the development of the grant contract. In the event that an approved participant declines to participate in the initiative with your office the CJPR will guide you on how to proceed in submitting your budget.

Please note the following requirements are part of the final contract conditions:

- **Reports and Vouchers**: Grantees are required to submit quarterly progress reports and vouchers within 30 days of completion of each quarter.

- **M/WBE**: Effective April 1, 2013, all NYS grant recipients must demonstrate good faith efforts to promote opportunities for minority- and women-owned businesses and the employment of minority group members and women in the performance of DCJS contracts. Grantees receiving in excess of $25,000 must submit a M/WBE Equal Employment Opportunity Staffing Plan (DCJS-3300), a Local Assistance M/WBE Subcontractor/Supplier Utilization Proposal Form (DCJS-3301) and a Local Assistance M/WBE NPS Discretionary Budget Determination Worksheet (DCJS-3309). Your program representative will advise you if the forms submitted during the application process are acceptable, or will assist you if revisions are needed. M/WBE forms 3300, 3301 and 3309 may be found on the DCJS public website at http://www.criminaljustice.ny.gov/ofpa/mwbe/mwbe-forms.htm.

DCJS looks forward to working with you on this important initiative during the coming year. Should you have any questions, please have a member of your staff contact the CJPR indicated in the Grants Management System (GMS) assigned to this project.

On behalf of DCJS, congratulations on your Video Recording of Statements award! The Division looks forward to working with your office in developing and adopting methods that will enhance the integrity of the criminal justice system and improve public safety.

Very truly yours,

Michael C. Green
Executive Deputy Commissioner

MCG:ams:pr

cc: Susan Pollet, Grant Administrator
Westchester County District Attorney's Office

THIS AGREEMENT, made the _____ day of _____, 2014 by and between

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York having an office and place of business at 148 martine Avenue, White Plains, new York 10601 (hereinafter referred to as the "County"), acting by and through the Office of the District Attorney, having an office at 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601 (hereinafter referred to as the "District Attorney")

and

THE CITY OF RYE, a municipal corporation of the State of New York having an office and place of business at 21 McCullough Pl , Rye, NY 10580, (the "Municipality"), acting by and through its Police Department (hereinafter referred to as the "Department").

W I T N E S S E T H:

WHEREAS, the County, through its District Attorney's Office, has entered into an agreement (the "Grant Agreement") with the New York State Division of Criminal Justice Services ("DCJS") to accept a grant in the amount of $32,920 (the "Grant Funds") to be used to operate the Video Recording of Statements program (the "Program"); and

WHEREAS, the goal of the Program is to enhance law enforcement efforts and prosecution outcomes by providing video recording equipment to local law enforcement agencies so that such agencies may videotape interviews and interrogations from beginning to end; and

WHEREAS, in order to fulfill its obligations under the Grant Agreement, the County desires to furnish such video recording equipment to the Department; and

WHEREAS, the Department desires to accept such equipment and to provide all services required to be performed under the Grant Agreement.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

FIRST: The County, through the District Attorney's Office, shall use a portion of the Grant Funds to purchase the video recording equipment (the "Equipment") for use by the Department, as more fully described in Schedule "A", attached hereto and made a part hereof.

SECOND: The Department agrees to use the Equipment for capturing statements to police and/or prosecutors during criminal investigations, interrogations, and debriefings in order to improve prosecution outcomes and law enforcement efforts, as more particularly described in Schedule "A," attached hereto and made a part hereof, and in accordance with the requirements of the Grant Agreement. The Municipality acknowledges that it has received a copy of the Grant Agreement, has familiarized itself with all of its terms, conditions and protocols, and agrees to strictly adhere to all of such terms, conditions and protocols in discharging its obligations under this agreement.

THIRD: The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to the County's actual receipt of Grant Funds from DCJS to operate the Program, and that no liability shall be incurred by the County beyond the monies actually received by the County from DCJS for this Agreement. The Municipality agrees that the County shall not be liable for any of its obligations under this Agreement unless and until the County Commissioner of Finance has received said funds.

If, for any reason, the full amount of said funds is not paid over or made available to the County by DCJS, the County may terminate this Agreement immediately. The County shall give prompt notice of any such termination to the Municipality.

In addition, the parties recognize and acknowledge that the obligations of the County under this Agreement are subject to annual appropriations by its Board of Legislators pursuant to the Laws of Westchester County. Therefore this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County.

This Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement.

The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to terminate this Agreement.

FOURTH: All services rendered and work performed by the Municipality shall be under the direction and subject to the complete approval of the District Attorney.

The work to be performed pursuant to the terms of this Agreement shall commence on or about January 1st, 2014 and shall be completed no later than December 31st 2014 unless terminated sooner by the District Attorney in writing.

FIFTH: As a material element of this Agreement, the Municipality agrees to fully cooperate with the County in fulfilling the County's reporting requirements to DCJS under the Grant Agreement. Towards this end, the Municipality shall immediately, upon request by the County, produce substantiated information, both statistical and programmatic, on the effectiveness of the initiatives implemented by the Program. The Municipality understands and agrees that this information is essential to demonstrate the successful outcomes of the Program. The County may also request other documentation from the Municipality and may also make site visits to the location(s) where the work is being performed to both review the Municipality's records and observe the performance of the contract.

SIXTH: In the event the District Attorney determines that there has been a material breach by the Municipality of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Municipality of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the services provided for in this Agreement, or contract for their completion, and any additional expense or cost of such completion shall be charged to and paid by the Municipality. Notice shall be effective on the date of receipt. Without limiting the foregoing, upon written notice to the Municipality, repeated breaches by Municipality of any particular duty or obligation under this Agreement shall be

deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure. Notice shall be effective on the date of receipt.

SEVENTH: All records compiled by the Municipality in completing the work described in this Agreement, including but not limited to written reports, studies, drawings, blueprints, negatives of photographs, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. The Municipality may retain copies of such records for its own use.

EIGHTH: Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the County is void. The Municipality shall not subcontract any part of the work without the prior written consent of the County. All subcontracts shall provide that subcontractors are subject to all terms and conditions set forth in the contract documents. All work performed by a subcontractor shall be deemed work performed by the Municipality.

NINTH: The Municipality represents and warrants that it has not employed or retained any person, other than a bona fide full time salaried employee working solely for the Municipality to solicit or secure this agreement, and that it has not paid or agreed to pay any person (other than payments of fixed salary to a bona fide full time salaried employee working solely for the Municipality) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this agreement. For the breach or violation of this provision, without limiting any other rights or remedies to which the County may be entitled or any civil or criminal penalty to which any violator may be liable, the County shall have the right, in its discretion, to terminate this agreement without liability, and to deduct from the contract price, or otherwise to recover, the full amount of such fee, commission, percentage, gift or consideration.

TENTH: The Municipality shall comply, at its own expense, with the provisions of all applicable state and municipal requirements and with all state and federal laws applicable to the Municipality as an employer of labor or otherwise. The Municipality shall further comply with all rules, regulations and licensing requirements pertaining to its professional status and that of

its employees, partners, associates, subcontractors and others employed to render the services hereunder.

It is the intent and understanding of the County and the Municipality that each and every provision required by law, contract, or other proper authority to be included in this agreement shall, for all intents and purposes, be considered and deemed included herein. The Municipality understands and acknowledges that for each and every such provision that has, through mistake or otherwise, either not been inserted in writing or been inserted in writing in an incorrect form, the Municipality hereby consents to amending this agreement in writing, upon receipt of notice from the County, for the purpose of inserting or correcting the provision in question.

ELEVENTH: The Municipality expressly agrees that neither it nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Municipality acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

TWELFTH: The Municipality agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule "B", entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in Schedule "B", the Municipality agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligence of the County, the Municipality shall indemnify and hold harmless the County, its officers, employees, agents and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Municipality or third parties under the direction or control of the Municipality; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

THIRTEENTH: All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by overnight courier), to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the County:

Office of the District Attorney
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601

with a copy to:

County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To the Municipality:

_____
_____
_____
_____

FOURTEENTH: Attached hereto and forming a part hereof as Schedule "C" is a questionnaire entitled "Required Disclosure of Relationships to County." The Municipality agrees to complete said questionnaire as part of this Agreement. In the event that any information provided in the completed questionnaire changes during the term of this Agreement, the Municipality agrees to notify County in writing within ten (10) business days of such event.

FIFTEENTH: This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

SIXTEENTH: This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

SEVENEENTH: This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

EIGHTEENTH: In the event of any conflict between the terms of this Agreement and those of its attachments, the terms of the Agreement shall control.

IN WITNESS WHEREOF, The County of Westchester and the Municipality have caused this Agreement to be executed.

THE COUNTY OF WESTCHESTER

By _____
Janet DiFiore
Westchester County District Attorney

THE MUNICIPALITY

By _____
Name:
Title:

Authorized by the Westchester County Board of Acquisition and Contract on the ___ day of _____, 2014.

Approved as to form and

manner of execution:

_____

Assistant County Attorney
The County of Westchester

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the _____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: _____

_____

Notary Public

CERTIFICATE OF AUTHORITY
(Municipality)

I, _____,
(Officer other than officer signing contract)

certify that I am the _____ of the
(Title)

_____
(Name of Municipality)

(the "Municipality"), a corporation duly organized and in good standing under the

_____,
(Law under which organized, e.g., the New York Village Law, Town Law, General Municipal Law)

named in the foregoing agreement; that _____,
(Person executing agreement)

who signed said agreement on behalf of the Municipality was, at the time of execution

_____of the Municipality, and that said
(Title of such person),

agreement was duly signed for and on behalf of said Municipality by authority of its

_____, thereunto duly authorized and
(Town Board, Village Board, City Council)

that such authority is in full force and effect at the date hereof.

_____
(Signature)

STATE OF NEW YORK)
ss.:
COUNTY OF WESTCHESTER)

On this _____ day of _____20__, 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 above certificate and acknowledged to me that he/she executed the above certificate in his/her capacity as _____ of _____,
(Title) (Municipality)
the municipal corporation described in and which executed the within instrument.

_____
Notary Public County

SCHEDULE "A"

SCOPE OF WORK

1) The District Attorney's Office will purchase video recording equipment (the "Equipment"), as identified by the Rye Police Department (the "Department") and approved by New York State Division of Criminal Justice Services ("DCJS").

2) The Department will sign for and take possession of the Equipment at a centralized training session, date to be determined. The County shall forward to DCJS the paid receipts and the proof of County payment to the Equipment vendor. DCJS will send payment to the County.

3) The Equipment shall only be used for criminal investigations, interrogations and debriefings. Any other use of the Equipment shall violate the terms of this Agreement.

4) The Department shall, at its own expense, be responsible for the proper maintenance and use of the Equipment. The Department shall, at its own expense, also insure said equipment against damage and theft.

5) The Department shall designate one staff member who will maintain and coordinate the usage of the Equipment, maintain a usage log, and maintain an inventory of the Equipment purchased pursuant to this agreement. The Department shall be responsible for providing training to staff on the proper operation of the Equipment.

6) Following the expiration of this agreement, the Department may retain ownership of the Equipment or return same to the County.

7) The Department shall provide personnel to collaborate with the County in establishing a protocol regarding the video recording of statements, as required by DCJS. Once established, the Department and the District Attorney's Office shall send the protocol to DCJS. The Department shall also provide investigatory personnel with interview techniques training.

8) As required by DCJS, the Department shall designate personnel to make a record of the number of video recorded statements; the number of video recorded statements forwarded to the County; the number of Department staff who receive interview and interrogation training; and whether written protocols have been developed and implemented. The Department shall provide this information to the County prior to the end of each quarter so that the County may report it to DCJS.

SCHEDULE "B"

STANDARD INSURANCE PROVISIONS
(MUNICIPALITY)

1. Prior to commencing work, the Municipality shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester, as may be required and approved by the Director of Risk Management of the County. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester for approval and submit a certificate thereof. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated. Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification. All property losses shall be made payable to and adjusted with the County.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the County of Westchester.

2. The Municipality shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law.

State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

(Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits' Policy, or both, a temporary permit may be issued if the employer completes form C-105.2 in duplicate. A copy of form C-105.2 is sent to the Worker's Compensation Board, Information Unit for investigation and report.)

If the employer is self-insured for Worker's Compensation, he should present a certificate from the New York State Worker's Compensation Board evidencing that fact.

(b) Employer's Liability with minimum limit of $100,000.

(c) General Liability Insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and $100,000 for property damage or a combined single limit of $1,000,000 (c.s.1), naming the County of Westchester as an additional insured. This insurance shall indicate on the certificate of insurance the following coverages:

(i) Premises - Operations.
(ii) Broad Form Contractual.

All Contracts involving the use of explosives and demolition shall provide the above coverage with elimination of the XCU exclusion from the policy, or proof that XCU is covered.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and a minimum limit of $100,000 per occurrence for property damage or a combined single limit of $1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages:

(i) Owned automobiles.
(ii) Hired automobiles.
(iii) Non-owned automobiles.

3. All policies and certificates of insurance of the Municipality shall contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Westchester (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County of Westchester is named as an insured, shall not apply to the County of Westchester.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County of Westchester (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Municipality.

Name of Contractor: _____

SCHEDULE "C"

REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY

A potential County contractor must complete this form as part of the proposed County contract.

1.) Are any of the employees that the Contractor will use to carry out this contract also a County officer or employee, or the spouse, child, or dependent of a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

_____

2.) Are any of the owners of the Contractor or their spouses a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

_____

3.) Do any County officers or employees have an **interest**[1] in the Contractor or in any approved subcontractor that will be used for this contract?
Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary):

_____

_____

By signing below, I hereby certify that I am authorized to complete this form for the Contractor.

_____

[1] "Interest" means a direct or indirect pecuniary or material benefit accruing to a County officer or employee, his/her spouse, child or dependent, whether as the result of a contract with the County or otherwise. For the purpose of this form, a County officer or employee shall be deemed to have an "interest" in the contract of:

1.) His/her spouse, children and dependents, except a contract of employment with the County;
2.) A firm, partnership or association of which such officer or employee is a member or employee;
3.) A corporation of which such officer or employee is an officer, director or employee; and
4.) A corporation of which more than five (5) percent of the outstanding capital stock is owned by any of the aforesaid parties.

Name: _____

Title: _____

Date: _____

CITY COUNCIL AGENDA

NO. 13 DEPT.: FINANCE DATE: April 9, 2014

CONTACT: JOSEPH S. FAZZINO, Deputy City Comptroller

AGENDA ITEM: Adoption of the 2014 County property tax rates.

FOR THE MEETING OF:
April 9, 2014

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the City Council adopt the 2014 County tax rates.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other

BACKGROUND:

The City must by law collect the County taxes and remit the collected amount of the tax warrant to the County in two installments: 60% on May 25th and the balance of 40% on October 15th.
The County tax rates must be adopted by the City Council in order to provide sufficient lead time for the preparation and mailing of the County tax bills, and to allow sufficient time for property owners to remit their payment within the penalty-free period (the month of May).
Failure to adopt this resolution does not relieve the City of its legal responsibility to remit to the County the amount of the tax warrant due on the dates noted above, and, by State law, the City cannot waive penalties for late payment of property taxes, even if the property owner(s) did not receive a bill or received a bill after the penalty-free period.

RESOLVED, that the tax rates for the amounts of Westchester County, Blind Brook Sewer District, Mamaroneck Valley Sewer District and Refuse Disposal District charges for the fiscal year beginning January 1, 2014, shall be as follows:

Westchester County	
Levy	$25,907,788
Taxable Assessed Value	137,863,523
Taxable Rate per $1,000 Assessed Value	187.923
Blind Brook Sewer District	
Levy	$4,167,580
Taxable Assessed Value	140,390,701
Taxable Rate per $1,000 Assessed Value	29.686
Mamaroneck Valley Sewer District	
Levy	$569,795
Taxable Assessed Value	19,114,965
Taxable Rate per $1,000 Assessed Value	29.809
Refuse Disposal District No. 1	
Levy	$2,467,038
Taxable Assessed Value	140,101,716
Taxable Rate per $1,000 Assessed Value	17.609

And be it further

RESOLVED, that the Council does hereby certify to the City Comptroller the above stated levies and tax rates for Westchester County, Blind Brook Sewer District, Mamaroneck Valley Sewer District and Refuse Disposal District No. 1 charges, and the City Comptroller is hereby directed to apportion and extend against each taxable property listed upon the assessment roll of the City of Rye for 2014 at the rates specified, the amount of taxes required to produce the total sums certified and to render tax notices for, and receive and collect, the several sums computed and determined, and, it is further

RESOLVED, that the tax warrant of Westchester County be signed by the Mayor and directed to the City Comptroller to collect the amount of said taxes with interest as provided by law and any special assessment heretofore authorized and approved.

CITY COUNCIL AGENDA

NO. 14 DEPT.: City Council DATE: April 9, 2014

CONTACT: Mayor Joseph Sack

AGENDA ITEM: Designation of the City Council Liaison to the Rye Chamber of Commerce by the Mayor.

FOR THE MEETING OF:
April 9, 2014
RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Council approve the appointment of Councilman Richard Mecca as City Council Liaison to the Rye Chamber of Commerce as presented by the Mayor.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: Designation of the following City Council Liaison by the Mayor:

Councilmember Richard Mecca to the Rye Chamber of Commerce

CITY COUNCIL AGENDA

NO. 15 DEPT.: Public Works DATE: April 9, 2014

CONTACT: Ryan X. Coyne, City Engineer

ACTION: Consideration of Bid for Whitby Castle Door & Window Replacement Project Phase I (Contract #2014-01).

FOR THE MEETING OF:
April 9, 2014

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That Contract #2014-01 be rejected due to discrepancy in the bids received and the project be re-bid.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: Three bids were received and tabulated from Ahearn Holtzman, Caladri Development and DNA Contracting. Due to a discrepancy of the bids, Project Architect Lisa Easton recommends rejecting the bids, clarifying the bid documents, and re-bidding the project with revised drawings and timeframe. The initial bid called for the project to be completed in phases, with a Phase One completion date of Memorial Day. This timing factor raised the premium in cost of the project as reflected in the submitted bids. Her recommendation is to rebid the project as a whole in mid-May, with bids due in early June, in time for acceptance at the June City Council meeting. The revised project start date would be after Labor Day, eliminating any patio closures during the season, with an anticipated completion date of late fall.

See attached from Project Architect Lisa Easton.

EASTON ARCHITECTS, LLP
41 EAST 11TH STREET, 3RD FLOOR
NEW YORK, NEW YORK 10003

T. 212.779.9570
F. 212.779.9787

April 1, 2014

Mr. Scott Pickup
Rye City Manager
1051 Boston Post Road
Rye, NY 10580

Dear Scott
In reviewing the bids for the Whitby Castle Window Project submitted on March 18th 2014, there is a discrepancy with one of the three bidders who did not acknowledge Addendum 1 and did not submit the revised bid forms from that Addendum.

The bids received varied about 7% from each other and the window costs were in line with the preliminary cost estimates prepared. The bids do reflect two factors that carry a premium in cost added to the overall window scope. First, the bids reflect a premium cost for completion of Phase 1 by Memorial Day (this is no longer required) and added General Conditions, Mobilization, Protection, Shoring and Bracing for two phases, increasing the overall project totals; second, the bids reflect a significant amount of repair scope outside of the window work including stucco, masonry and wood repairs to the ballroom and porch extension due to the extensive deterioration of the materials to which the windows attach.

Since the timeframe for work no longer requires the project be phased into two separate construction cycles to achieve Phase 1 completion by the Memorial Day deadline, it is our recommendation to undertake the project all at one time.

Due to the discrepancy of the bids received, it would make sense to re-bid the project and in so doing take the time to revise the drawings to accurately reflect all scope of work elements in addition to the window work in order to obtain the most accurate pricing and schedule to complete the work at one time.

Our recommendation is to revise the drawings and put them out to bid by mid-May with bids due in early June. The window fabrication is estimated at 8-12 weeks and time is required for preparation and review of shop drawings prior to release for fabrication. The revised timeframe would allow for shop drawing review and fabrication over the summer and early fall with construction starting after Labor Day and completion of the project by late fall.

This approach provides one holistic project that includes all scope necessary to insure a watertight envelope for the building, spanning one construction cycle saving on costs for mobilizing and staging. Please let me know if you have any questions.

Sincerely,

Lisa A. Easton, AIA
Partner

EASTONARCHITECTS

Whitby Castle Door Window Replacement Phase I - Contract 2014-01
Bid Tabulation

Bid Comparison	1. Caladri Development*	2. DNA Contracting	3. Ahearn Holtzman
Option A Bid - Engineer's Total	$544,141.00*	$585,305.00	$631,086.00
Option B Bid - Engineer's Total	$464,433.40*	$977,574.00	$1,024,703.00
Addendum #1 Acknowledged	No*	Yes	Yes

* Contractor's bid does not reflect Addendum #1. Option A remains unchanged. Option B does not comply with Addendum. To be reviewed by Corporation Counsel.

Bid Opening:
March 18, 2014

Whitby Castle Door Window Replacement Phase I - Contract 2014-01
Bid Tabulation

	Option A - Phase I Only	1. Caladri Development*	2. DNA Contracting	3. Ahearn Holtzman**
Item Number	Item	Unit Price	Unit Price	Unit Price
I.	General Conditions	$20,000.00	$38,000.00	$43,025.00
II.	Mobilization	$10,000.00	$10,000.00	$11,135.00
III.	Temporary Protection (including temporary Window/Door enclosure)	$15,000.00	$16,510.00	$19,827.00
IV.	Shoring, Bracing, and Selective Demolition	$10,500.00	$11,700.00	$14,079.00
V.	Scaffolding	$3,550.00	$3,900.00	$5,775.00
VI.	Concrete Curb	$15,000.00	$11,125.00	$13,360.00
VII.	Flashing	$12,000.00	$9,900.00	$4,880.00
VIII.	Door Repair (D1, D2, D3, D4, D8, D9)	$30,000.00	$32,760.00	$32,365.00
IX.	Door Restoration (D6, D7)	$16,300.00	$17,180.00	$17,594.00
X.1	Window Replacement	$37,870.00	$41,730.00	$40,174.00
X.2A	Window Replacement	$150,215.00	$165,490.00	$159,322.00
X.2B	Window Replacement	$32,450.00	$35,750.00	$34,417.00
X.2C	Window Replacement	$140,656.00	$154,960.00	$176,945.00
XI.	Misc. Wood Repair	$4,250.00	$4,680.00	$4,500.00
XII.	Stucco Repairs	$20,000.00	$2,500.00	$5,810.00
XIII.	Caulking	$7,000.00	$7,800.00	$7,878.00
XIV.	Painting and Finishing	$19,350.00	$21,320.00	$40,000.00
	Engineer's Total	**$544,141.00**	**$585,305.00**	**$631,086.00**
	Contractor's Total	$544,141.00	$585,305.00	$643,508.00***

* Contractor's Bid does not reflect Addendum #1.

** Ahearn Holtzman included bond costs of $12,421 for Option A and $20,400 for Option B in addition to the above items.

*** Contractor's total differs from Engineer's total.

Whitby Castle Door Window Replacement Phase I - Contract 2014-01
Bid Tabulation

Option B - Phase I and Phase II Combined		1. DNA Contracting	2. Ahearn Holtzman	3. Caladri Development*
Item Number	Item	Unit Price	Unit Price	Unit Price
I.	General Conditions	$60,000.00	$53,000.00	$35,000.00
II.	Mobilization	$10,400.00	$11,135.00	$9,450.00
III.	Temporary Protection (including temporary Window/Door enclosure)	$28,080.00	$30,000.00	$25,480.00
IV.	Shoring, Bracing, and Selective Demolition	$15,600.00	$14,079.00	$14,160.00
V.	Scaffolding	$33,800.00	$36,620.00	$30,700.00
VI.	Concrete Curb	$11,125.00	$18,037.00	N/A
VII.	Flashing	$9,900.00	$4,880.00	$25,000.00
VIII.	Door Repair (D1, D2, D3, D4, D8, D9)	$32,760.00	$32,365.00	N/A
IX.	Door Restoration (D6, D7)	$17,810.00	$17,594.00	N/A
X.1	Window Replacement (Type 1)	$41,730.00	$40,174.00	N/A
X.2A	Window Replacement (Type 2A)	$165,490.00	$159,322.00	N/A
X.2B	Window Replacement (Type 2B)	$35,750.00	$34,417.00	N/A
X.2C	Window Replacement (Type 2C)	$154,960.00	$176,945.00	N/A
X.4	Window Replacement (Type 4)	$16,484.00	$16,285.00	$14,962.40
X.4A	Window Replacement (Type 4A)	$39,520.00	$39,000.00	$35,872.00
X.5	Window Replacement (Type 5)	$61,165.00	$60,425.00	$55,519.00
X.6	Window Replacement (Type 6)	$26,130.00	$25,800.00	$23,718.00
X.7	Window Replacement (Type 7)	$3,510.00	$3,467.00	$3,186.00
X.8	Window Replacement (Type 8)	$4,420.00	$4,366.00	$4,012.00
X.9	Window Replacement (Type 9)	$23,920.00	$23,630.00	$21,712.00
X.10	Window Replacement (Type 10)	$26,910.00	$26,584.00	$24,426.00
X.11	Window Replacement (Type 11)	$19,240.00	$19,000.00	$17,464.00
X.12	Window Replacement (Type 12)	$21,580.00	$21,319.00	$19,588.00
X.13	Window Replacement (Type 13)	$6,760.00	$6,679.00	$6,136.00
X.14	Window Replacement (Type 14)	$33,930.00	$33,520.00	$30,798.00
XI.	Misc. Wood Repair	$27,300.00	$26,000.00	$24,780.00
XII.	Stucco Repairs	$2,500.00	$5,810.00	N/A
XIII.	Caulking	$22,880.00	$24,250.00	$20,768.00
XIV.	Painting and Finishing	$23,920.00	$60,000.00	$21,712.00
	Engineer's Total	**$977,574.00**	**$1,024,703.00**	**$464,443.40**
	Contractor's Total	$977,574.00	$1,040,426.00**	$825,641.00***

* Contractor's Bid does not reflect Addendum #1.

** Ahearn Holtzman included bond costs of $12,421 for Option A and $20,400 for Option B in addition to the above items.

*** Contractor's total differs from Engineer's total.

Bid Opening:
March 18, 2014

CITY COUNCIL AGENDA

NO. 16 DEPT.: City Manager DATE: April 9, 2014

CONTACT: Scott D. Pickup, City Manager

AGENDA ITEM: Resolution to declare certain City of Rye equipment as surplus.

FOR THE MEETING OF:
April 9, 2014
RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the City Council adopt the following resolution:

WHEREAS, the City has been provided with a list of City equipment identified as being obsolete or will become obsolete during 2014, and,

WHEREAS, the Information Technology Department has recommended that said equipment be declared surplus, now, therefore, be it

RESOLVED, that said equipment are declared surplus, and, be it further

RESOLVED, that authorization is given to the City Comptroller to sell or dispose of said equipment in a manner that will serve in the best interests of the City.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other

BACKGROUND: The following Information Technology Department has provided a list of equipment that is either currently obsolete or will become obsolete during calendar year 2014:

See attached.

Kerry Donahue
Coordinator of Computer Services
1051 Boston Post Road
Rye , New York 10580

Telephone: 914-967-2250
FAX: 914-967-7107
Email: kdonahue@ryeny.gov
http://ryeny.gov

CITY OF RYE
INFORMATION TECHNOLOGY DEPARTMENT

TO: Scott Pickup, City Manager

FROM: Kerry Donahue, Coordinator of Computer Services

DATE: April 4, 2014

SUBJECT: Request to declare items surplus

The following equipment is either obsolete, nonfunctional or in disrepair and has been removed from service.

I request that these items be declared surplus.

Make	Model	Serial number
Brother	2820	U61325D5J723274
Brother	2820	U61325M6J397705
Brother	DCP-9040CN	U61831L7J194788
Brother	HL2040	U61229D6J500806
Canon	MF6530	SLX68538
Canon	PC745	ZTC89826
COMPAQ	W6000	6Y26KN72300J
COMPAQ	D5S	X201JYHZA648
COMPAQ	D5S	X218JYHZC645
COMPAQ	D5S	X216JYHZD550
COMPAQ	D5S	X216JYHZB868
COMPAQ	D5S	6X22JYHZ805F
COMPAQ	D5S	X216JYHZD539
COMPAQ	D5S	X221JYHZB745
COMPAQ	D51S	W246KN9ZA835
COMPAQ	D51S	W238KN9ZC158
COMPAQ	W6000	6Y23KN72W00D
COMPAQ	D510C	USW3230462
COMPAQ	PRESARIO	CND6252BR4
COMPAQ	N600C	6J23KBSZX03Y
COMPAQ	ARMADA 1750	7808984A
COMPAQ	TFT5030	148BL72UK131
COMPAQ	TFT5030	205BL72UP255
COMPAQ	TFT5030	214BL72UP056

COMPAQ	TFT5030	220BL72UXO22
COMPAQ	TFT5030	214BL72UP052
COMPAQ	TFT5030	205BL72UP252
COMPAQ	TFT5030	205BL72UP332
COMPAQ	TFT5030	212BL72UP012
COMPAQ	TFT5030	205BL72UP335
COMPAQ	TFT5030	212BL72UP045
Epson	Photo 1280	CZYK046231
HP	D530 SFF	USU3510F6P
HP	D530 SFF	USW3350B7C
HP	D530 SFF	USV4280455
HP	D530 SFF	USU4400FS4
HP	D530 SFF	USU40409WK
HP	D530 SFF	USW3490CCS
HP	DC5700 SFF	2UA82411GP
HP	D530 CMT	USU4390KX4
HP	700 SFF	MXL7130PW9
HP	D530 SFF	USU40409WM
HP	DX2300 MT	MXL71306CS
HP	DX2000 MT	MXD5330BBD
HP	D530 SFF	USU40409V9
HP	DC5000 MT	2UA52904NC
HP	d530	p/n 176137-F31
HP	DX5150 SFF	MXL61700Y6
HP	DC7700 SFF	MXL7040B2M
HP	D220 MT	MXD41301BX
HP	D220 MT	MXD41301CK
HP	1720	CN3130Y281
HP	1702	CNN4460H4H
HP	4000T	USEF051186
HP	1040 Fax	CN61NAJS6S
HP	4100N	USJNJ14205
HP	6L	JPHL051245
HP	J4580	CN99LD62NG
HP	P2015dn	CNBJP34510
HP	P2015	CNB2S36915
HP	1100	USHG016079
HP	3330	SGK2BCOK6T
HP	Scanner	C7710A
HP	Model 920	MY990E12FT
HP	2500	SG08E8305B
HP	1150	CNBB043561
HP	M2727nf	CND98CN1K6
HP	4000	USMC067485
HP	2200	JPGGC61116
Hp	1200	CNC3084118
HP	1200	CNBB276547
HP	1220Xi	MY213D6001
HP	3320	SGD1B103YS
HP	5/5M	JPHF140356

HP	2500	SG9BF13079
HP	L1506	CNC616PWRK
HP	2335	CNP423Z1G8
HP	L1706	CNC646QFJ8
HP	L1845W	3CQ9340D9W
KDS	780	E71Z380411U
NEC	multisync A700+	15200381
OPTI QUEST	VS11201	Q5W062708539
OPTIQUEST	Q9	Q5W062708537
Panasonic	KXFHD331	4HBWA603635
Privitizer	PS16300	204002
Privitizer	PS16300	226020
RICOH	SP3200 SF	KRE1JC9604701AADUBQAK1172
RICOH	SP C220S	S2788500182
Sharp	Al1631	6506412Y
Sharp	Al 1661CS	55006164
VIEW SONIC	VCDTS21470-1M	DL00400322
VIEW SONIC	VA2226W	QTS080100386
Xerox	M20i	RYU422921

Kerry Donahue
Coordinator of Computer Services