

CITY OF RYE

NOTICE

There will be a regular meeting of the City Council of the City of Rye on Wednesday, April 23, 2014, at 7:30 p.m. in Council Chambers at City Hall. *The Council will convene at 6:45 p.m. and it is expected they will adjourn into Executive Session at 6:46 p.m. to discuss personnel matters and litigation.*

AMENDED AGENDA

1. Pledge of Allegiance.
2. Roll Call.
3. General Announcements.
4. Approval of the election of the Chiefs of the Rye Fire Department.
5. Draft unapproved informal minutes of the Joint Meeting of the City Council and Board of Education held April 5, 2014 and the minutes of the regular meeting of the City Council held April 9, 2014.
6. Issues Update/Old Business.
- 6A. Authorization for the City Manager to enter into an exclusive agreement with Lessing's Inc. for catering services at Whitby Castle at the Rye Golf Club.
Roll Call.
7. Resolution authorizing the City Comptroller to amend the 2013 Budgeted revenues to cover fiscal year-end expenditures.
Roll Call.
8. Residents may be heard on matters for Council consideration that do not appear on the agenda.
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".
10. 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".
11. Approval of the recommendation by the Traffic and Pedestrian Safety Committee that a Pilot Study be conducted to test the effect of reducing the speed limit to 25 miles per hour on Stuyvesant Avenue.
12. Consideration of a request by the Lions Club to hold a Community Event on the Village Green on Sunday, May 18, 2014 from 10:30 a.m. to at 2:00 p.m.

13. Consideration of a request by Jim Amico for the use of City streets for a Car Show Fundraiser on Saturday, May 17, 2014 from 10:00 a.m. to 4:00 p.m.
14. Consideration of a request by Colin Leslie for the use of City streets for the 8th Annual Colin Leslie Walk for Celiac Disease on Sunday, September 28, 2014 from 9:00 a.m. to 2:00 p.m.
- 14A. Two appointments to the Sustainability Committee by the Mayor with Council approval.
15. Miscellaneous communications and reports.
16. New Business.
17. Adjournment.

* * * * *

The next regular meeting of the City Council will be held on Wednesday, May 7, 2014 at the **Square House** 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. 4

DEPT.: Fire Department

DATE: April 23, 2014

CONTACT: Chief Peter Cotter

AGENDA ITEM: Approval of the election of the Chiefs of the Rye Fire Department.

FOR THE MEETING OF:

April 23, 2014

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: Approve the election of Peter Cotter as Chief of the Department, Michael Billington as 1st Assistant Chief, and Dick Barber as 2nd Assistant Chief.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: At the April 3, 2014 Rye Fire Department Annual Meeting the following Chiefs were elected: Peter Cotter was elected Chief, Michael Billington 1st Assistant Chief, and Dick Barber 2nd Assistant Chief, subject to the approval of the City Council in accordance with Article 13, Section 2 of the Rye City Charter.



CITY COUNCIL AGENDA

NO. 5

DEPT.: City Clerk

DATE: April 23, 2014

CONTACT: Dawn Nodarse

AGENDA ITEM Draft unapproved informal minutes of the Joint Meeting of the City Council and Board of Education held April 5, 2014 and the minutes of the regular meeting of the City Council held April 9, 2014, as attached.

FOR THE MEETING OF:

April 23, 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 Joint Meeting of the City Council and Board of Education held April 5, 2014, and the regular meeting of the City Council held April 9, 2014, as attached.

DRAFT UNAPPROVED MINUTES of the
Joint Meeting of the City Council of the City of Rye
and the Rye City School Board held in City Hall on
April 5, 2014 at 9:00 A.M.

PRESENT:

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

LAURA SLACK, President
KAREN BELANGER
KATY KEOHANE GLASSBERG
NANCY PASQUALE
CHRIS REPETTO
NICOLE WEBBER
School Board Members

SCOTT PICKUP, City Manager
GABRIELLA O'CONNOR, Assistant Superintendent for Business
BETTY ANN WYKS, Assistant Superintendent for Curriculum

ABSENT: JULIE KILLIAN, Councilmember
EDWARD FOX, Board Member

The meeting convened at 9:00 a.m. Councilman Mecca made a motion, seconded by Councilwoman Brett 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 9:55 a.m. The joint meeting convened at 10:00 a.m.

1. Pledge of Allegiance

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

2. Roll Call

Mayor Sack asked the City Clerk to call the roll; a quorum of both boards was present to conduct business.

3. Progress of 2013 Joint Meeting

Board President Slack said the School Board was grateful to the City for the additional crossing guards and Mayor Sack said there has been a suggestion to have bi-annual meetings of the two boards.

4. State of the City of Rye Report

Mayor Sack said there are many issues that demand the attention of the City but noted several that are currently top priorities:

- Playland – The SPI Plan has been presented to the County Board of Legislators for approval. The City believes that the project should come before the City's Land Use Boards for approval in order to make sure that all issues of concern to Rye residents are vetted and dealt with.
- Police Commissioner Search – The Council must determine if they want a Police Commissioner or a Public Safety Commissioner prior to going forward with the search.
- Labor Contracts – The Police Arbitration Award only covered through 2010. The Council is formulating a bargaining strategy for the current open contracts and hopes to have positive discussions within the next few weeks.
- Affordable Housing – The City wants to make sure the parcel in question is an environmentally safe place for people to live and they also want to consider the points of view of the neighbors. In order to go forward there must be both a zoning change and site plan approval.
- Whitby Castle - A committee made up of members of the Golf Commission, City Council and other interested citizens has been reviewing RFP submissions and is getting closer to making a decision on what will be done with Whitby Castle. In the interim an agreement has been entered into for operation of the snack bar. A new General Manager has been hired.

5. State of the School's Report

Assistant Superintendent for Curriculum Betty Ann Wykes spoke about the strategic priorities the School District is dealing with including:

- Student Achievement – The District is implementing the Common Core (the current fourth grade class will be the first class held to the Common Core standards); implementing curriculum revisions; implementing their approach to secondary remediation intervention; offering 23 different AP exams to students; expanding elective offerings at the high school and middle school; focusing on teacher effectiveness and training; and implementing behavior reinforcement initiatives.
- Fiscal responsibility – The District has implemented programs to track staff attendance; is looking for staffing efficiencies; put forth a budget with a 1.64% increase; is trying to maintain technology initiatives; and, created a Tax Cap Task Force.

- Facility needs - The District is allocating money for building needs; looking to hire additional staff when the construction is completed; and providing for custodial services. The construction project is on track to be completed by the opening of school in September.
- Community Engagement – The District is concerned with student data privacy; and implementing additional technology to improve communication with the community.
- Staffing – Several upcoming retirements have or will be announced.

6. Security Discussion with regard to the Rye City School District

Board President Slack said that the School District has been implementing recommendations suggested by a Security Consultant that was hired last year. Additional security was hired for the high school/middle school and elementary schools and another person will be hired for the high school/middle school after the construction is completed. She said the additional crossing guards hired by the City are making a big difference and reiterated a previous request for an additional police presence to drive by the schools at dismissal time. A request was also made that when a new Police Commissioner is appointed, a meeting should be set up with representatives of the schools.

7. Discussion of Pedestrian Safety initiatives: Safe Routes to School projects

City Manager Pickup provided the boards with two renditions of the high school/middle school property, one showing the current entrance/exits on Milton Road and the second showing a proposed change. He said there are opportunities with the current construction to address issues at the busy intersections near the high school/middle school that could free up some of the traffic congestion. Meetings have been held with representatives of the City, the School Administration and the Traffic and Pedestrian Safety Committee. There is money in the City budget for these improvements and final plans are being worked on so the project could go out to bid and the improvements be completed in time for the opening of school in September.

8. Discussion of Revaluation and the scheduling of a September meeting between the City Council and the Board of Education

Mayor Sack said that the City Council is ready to reconsider the subject of revaluation and presented pros and cons of the issue. A positive is that a revaluation could bring more equality and might reduce tax certs. The negatives are: the cost of a revaluation would be about \$1 million; and it would not generate additional revenue but would just redistribute the revenue with 1/3 of properties decreasing, 1/3 remaining flat, and 1/3 increasing in valuation.

The boards will look at finding a date early in October for a second meeting.

9. Discussion of the Civility Initiative

Kristin Jaust and Shari Belaish, representing The Rye Youth Counsel, provided an overview of what led up to the creation of the Civility Statement, which has now been endorsed by 68 organizations in the City of Rye. They then explained that the Rye Civility Initiative has been created as the next step in the movement to empower people to live by principles of civility and create a public forum for them. The co-leaders of this initiative are the Rye Youth Council, the Rye YMCA and the Rye Arts Center. The website is www.civilityinitiative.org.

10. Adjournment

There being no further business to discuss Councilman Mecca made a motion, seconded by Councilwoman Brett and unanimously carried, to adjourn the joint meeting and for the City Council to adjourn into executive session to discuss personnel and not return at 10:55 a.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk

DRAFT UNAPPROVED MINUTES of the
Regular Meeting of the City Council of the City of
Rye held in City Hall on April 9, 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 7:00 p.m. Councilman Mecca made a motion, seconded by Councilwoman Brett and unanimously carried to immediately adjourn into executive session to discuss collective bargaining. Councilwoman Killian made a motion, seconded by Councilman Slack and unanimously carried, to adjourn the executive session at 7:30 p.m. The regular meeting convened at 7:35 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. Recognition of the Rye Recreation Girls All Star Basketball Team and the Resurrection CYO 8th Grade Boys A Basketball Team

Mayor Sack announced that this year the Rye Recreation 5th and 6th Grade Girls All Star Basketball Team and Resurrection CYO 8th Grade Boys Basketball Team had both won their respective championships.

Mayor Sack and Councilwoman Bucci presented Proclamations for the members of the Girls All Star Team: Leah Atkins, Mara Ball, Teaghan Flaherty, Ava Greto, Leah Kenny, Audrey Labovitz and Ella Rivera as well as their coaches Kelsey Hanley and Ryan Tracy and their Recreation Department Supervisor Jennifer Giusti.

Mayor Sack and Councilwoman Killian presented Proclamations for the members of the Resurrection CYO 8th Grade Boys Team: Jack Cacase, Harrison Caponiti, Joseph Colaio-Coppola, Matt Cooper, Jack Doty, Jake Heffernan, Gavin Kenny, Van Schwarz, Will Tepedino and A.J. Thompson and their coaches Martin Durkin and Mike Tepedino.

4. General Announcements

Announcements were made in connection with various recent or upcoming events that may be of interest to the community.

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

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 26, 2014, as amended.

6. Issues Update/Old Business

Central Avenue Parkette – Mayor Sack asked City Manager Pickup to remove the gravel from the site and put the grass back. He said that if the Council makes other decisions regarding the site in the future, it can be changed. Councilwoman Brett said that the City is in the process of receiving an IMA from Port Chester for removal of a mile marker and the Landmarks Committee will look at whether this is an appropriate place to relocate the marker.

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

Mayor Sack announced that the hearing would be put over for a month. More testing is being done on the property and the County and the developer have asked for additional time to provide the information requested by the City.

John Shoemaker 250 North Street said that he has received information from the County that he wants to provide to the City. *Dawn Wilson, Hammond Road*, said that the project as proposed does not meet the HUD definition for Senior Housing.

Mayor Sack made a motion, seconded by Councilman Mecca and unanimously carried, to keep the public hearing open until the May 7, 2014 meeting.

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

Mack Cunningham, 502 Forest Avenue, spoke about comments made by former Mayor Doug French in the Rye Record regarding the Sustainable Playland initiative.

Jack Zahringer and Maurio Sax of the Landmarks Advisory Committee spoke about the Village of Port Chester Board of Trustees allowing Mile Marker #26 to be brought back to Rye. Councilwoman Brett asked the Landmarks Committee to make a recommendation to the City Council regarding where the marker should be placed.

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

City Manager Pickup said the last Hazard Mitigation Plan the City adopted has now expired. A new requirement for participation in Hazard Mitigation Grant Funding requires municipalities to work with a higher level of government, which in this instance is the County. This is an effort to position the City to be eligible for future rounds of grant funding.

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

RESOLVED, that the City Council of the City of Rye hereby authorizes the City to participate in the Westchester County Hazard Mitigation Plan 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"

This agenda item was deferred.

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"

This agenda item was deferred.

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.

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

RESOLVED, that the City Council of the City of Rye hereby authorizes the City Manager to

accept a Grant Award from the Westchester County District Attorney's Office in the amount of \$3,130.00 to purchase equipment for the video recording of statements.

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.

13. Adoption of the 2014 County property tax rates

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

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:

<u>Westchester County</u>	
Levy	\$25,907,788
Taxable Assessed Value	137,863,523
Taxable Rate per \$1,000 Assessed Value	187.923
<u>Blind Brook Sewer District</u>	
Levy	\$4,167,580
Taxable Assessed Value	140,390,701
Taxable Rate per \$1,000 Assessed Value	29.686
<u>Mamaroneck Valley Sewer District</u>	
Levy	\$569,795
Taxable Assessed Value	19,114,965
Taxable Rate per \$1,000 Assessed Value	29.809
<u>Refuse Disposal District No. 1</u>	
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.

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.

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

Mayor Sack designated Councilman Mecca to serve as the City Council Liaison to the Rye Chamber of Commerce.

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

City Manager Pickup said the City had worked with the Golf Commission on an expedited basis when it had expected to have a contract vendor on site in May. There were concerns about a couple of items within one of the submissions as well as the overall costs when the bid came back. The bid will be put out again so the work can be done after the golf season and before the winter. The bid specs will also be revised to include additional damage that has been found.

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

RESOLVED that all bids received in connection with Contract #2013-01 (Whitby Castle Door and Window Replacement Project Phase I) are hereby rejected.

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.

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

Councilwoman Brett made a motion, seconded by Councilman Mecca, to 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.

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.

List of Surplus Equipment:

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	X216JYHZZB868

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	A11631	6506412Y
Sharp	A1 1661CS	55006164
VIEW SONIC	VCDTS21470-1M	DL00400322
VIEW SONIC	VA2226W	QTS080100386
Xerox	M20i	RYU422921

17. Miscellaneous Communications and Reports

City Manager Pickup announced that the new General Manager for the Rye Golf Club, Jim Buonaiuto, started work this week.

Mayor Sack noted that an Article 78 proceeding has been filed against the Zoning Board of Appeals regarding variances granted to a property on Kirby Lane. The matter will be defended by the Corporation Counsel under the Retainer Agreement.

17A. Designation of Chairs of New York Rising Program Committee

Councilwoman Brett reported that New York Rising is a program set up by the state to distribute flood mitigation funding to local communities who received significant damage in recent floods. Rye has been designated to receive \$3 million but in order to claim the money the City must comply with the New York State process set up by New York Rising. This process requires the City to designate a committee made up of community leaders. There will be a meeting on April 23rd in Albany and committee chairs must be designated in order to participate in the meeting.

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

RESOLVED, that the City Council of the City of Rye hereby designates Bernie Altoff and Holly Kennedy to serve as City of Rye Committee Chairs for New York Rising.

18. New Business

There was nothing discussed under this Agenda item.

19. Adjournment

There being no further business to discuss Councilman Mecca made a motion, seconded by Councilwoman Brett and unanimously carried, to adjourn into executive session to discuss labor negotiations, personnel and litigation and not return into regular session at 8:45 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk



CITY COUNCIL AGENDA

NO. 6

DEPT.: City Council

DATE: April 23, 2014

CONTACT: Mayor Joseph Sack

AGENDA ITEM: Issues Update/Old Business

FOR THE MEETING OF:

April 23, 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. 6A

DEPT.: City Manager

DATE: April 23, 2014

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Authorization for the City Manager to enter into an exclusive agreement with Lessing's Inc. for catering services at Whitby Castle at the Rye Golf Club.

FOR THE MEETING OF:

April 23, 2014

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Mayor and Council authorize the City Manager to enter into the agreement with Lessings, Inc. for catering services at Whitby Castle at the Rye Golf Club.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Lessings, Inc. submitted a proposal to operate the catering food and beverage at Whitby Castle at the Rye Golf Club as part of the City's RFP process. The RGC Commission voted unanimously at their meeting on April 22, 2014 to support the hiring of Lessings, Inc. under the terms outlined in the attached agreement. The Council is asked to authorize the City Manager to enter into this agreement with Lessings, Inc. for catering services at Whitby Castle at the Rye Golf Club.

See attached agreement.

EXCLUSIVE CATERING AGREEMENT

This Exclusive Catering Agreement (this “*Agreement*”) is made and entered as of April ___, 2014 (the “*Effective Date*”), by and between the City of Rye, a municipal Corporation with offices at 1051 Boston Post Road, Rye, NY 10580 (“*City of Rye*”), and Lessing’s, Inc., a New York corporation with offices at 3500 Sunrise Highway, Building 100, Great River, New York 11739 (“*Lessing’s*”). City of Rye and Lessing’s are on occasion referred to individually as a “*Party*” and collectively as the “*Parties*”.

WHEREAS, City of Rye owns the WHITBY CASTLE (the “*Castle*”) located at 330 Boston Post Road, Rye, NY 10580;

WHEREAS, Rye Golf Club is a membership club owned and operated by City of Rye, with the Castle located on the premises of the Golf Club;

WHEREAS, Lessing’s provides catering and other food and beverage services for various individuals, associations and corporations;

WHEREAS, City of Rye wishes to engage Lessing’s as the sole and exclusive caterer for all events at the Castle;

WHEREAS, Lessing’s wishes to have the sole and exclusive right to cater all events at the Castle and to utilize the Castle to service catered events off-premises; and

WHEREAS, it is expected that Lessing’s shall begin providing Services (as hereinafter defined) on or about May 1, 2014 (the “*Commencement Date*”).

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Lessing’s Rights and Obligations. Subject to the terms of this Agreement, throughout the Term (as defined in Section III.A. below), City of Rye hereby grants to Lessing’s the rights, and Lessing’s hereby accepts the obligations and duties, set forth below:

- A. Grant of Rights. Lessing’s shall have the sole and exclusive right beginning on the Commencement Date:
1. to provide catering services for all catered events, including golf outings with non-members, at the Castle (each, an “*On-Premises Catered Event*”) (such services, the “*Catering Services*”);
 2. to provide catering services for members-only events and members-only golf tournaments and, as requested by City of Rye, local community events, including at least those events and tournaments listed on Schedule A (each, a “*Discounted Event*”) (such services, the “*Discounted Event Services*”);
 3. to use the Castle’s kitchen and other facilities to service off-premises events (each, an “*Off-Premises Catered Event*”)(such services, the “*Off-Premises Services*”, with an Off Premises Catered Event and an On-Premises Catered Event each also being referred to as an “*Event*”); and

4. to provide *à la carte* food and beverage services on the existing restaurant patio space, as delineated on the schematic plan attached as Annex 1, and at the bar in the interior of the Castle, when available (the “**Patio and Bar Service**”).
5. to provide *à la carte* food and beverage services to the general public within the interior of the Castle (“**Restaurant Services**,” and, together with the Catering Services, the Discounted Event Services, the Off-Premises Services and the Patio and Bar Services, the “**Services**”).

Lessing’s shall use its reasonable best efforts, at its cost and expense, to promote, market and utilize the Castle as Lessing’s catering event space for all On-Premises Catered Events and for the provision of all Services.

Lessing’s represents and warrants that it has examined and inspected the Castle and the premises being made available to it hereunder to its satisfaction, and agrees that it accepts and will use and occupy such premises on a “where-is,” “as-is” basis. Notwithstanding the foregoing, Lessing’s agrees that no portion of such premises shall be used if and so long as it is in an unsafe condition.

The right to provide food and beverages at the snack bar located by the swimming pool and to provide beverages and snacks via a beverage cart to players on the golf course at the Golf Club (such services, the “**Snack Bar Services**”) has been granted to another party for the year ended December 31, 2014. If Lessing’s is granted the right to provide Snack Bar Services in any future year, the term “Services” shall include “Snack Bar Services” for each such year.

B. Obligations.

1. *Continuous Operation.* Beginning on the Commencement Date and throughout the Term, Lessing’s shall provide the Patio and Bar Services from April 1st to November 1st during the hours of operation set forth below, and shall provide the Catering Services and Off-Premises Services throughout the year, subject in all cases to force majeure and damage by casualty. Throughout the Term, Lessing’s shall have the right, but not the obligation, to access the Castle to provide the Services and to service Off-Premises Catered Events. Notwithstanding anything herein to the contrary, Lessing’s may temporarily cease, and if requested by City of Rye shall temporarily cease, any of the Services for purposes of making repairs or renovations, to be mutually scheduled to not impact events or revenues.
2. *Hours of Operation; Restroom Access; Member Charges.*

Lessing’s may provide Catering Services and Off-Premises Services at such times as it shall see fit, subject to compliance with all municipal ordinances and other Legal Requirements (as defined in Section I.B.18.c.).

Lessing’s shall provide the Patio and Bar Service on the following days and times:

Monday – Closed
Tuesday-Thursday – Noon-8:00pm
Friday-Sunday and Holidays – Noon-10:00pm

Lessing's shall provide the Restaurant Services on the following days and times:

Monday – Closed

Tuesday-Thursday – Noon-5:00pm

Friday-Sunday and Holidays – Noon-10:00pm

The foregoing hours may be adjusted by mutual agreement to take account of traffic, weather and actual usage throughout the Patio and Bar Services season.

Access to restrooms must be available for patrons provided Restaurant Services and Patio and Bar Service.

Lessing's will accommodate and accept Golf Club member charges.

3. *Menu Selection; Event Scheduling.* Lessing's shall collaborate with the Rye Golf Commission (the "***Golf Commission***") (i) to meet its reasonable specified menu parameters and budgetary constraints for any Discounted Event, any On-Premises Catered Event for non-member golf outings, and the Patio and Bar Service, and (ii) with respect to the scheduling of On-Premises Catered Events to avoid conflicts and disruption to the Golf Club and special and community events.
4. *Year One Expenditures.* During the first year of the term of this Agreement, Lessing's shall expend at least One Hundred Twenty-Five Thousand Dollars (\$125,000.00) in the aggregate on capital improvements, as set forth and detailed on the annexed Schedule B ("***Year One Expenditures***"), which Schedule shall be updated to reflect any material changes mutually agreed by the Parties. All such improvements shall be made in a professional manner, be of first class quality and conform with standards established by City of Rye as to finishes and look.
5. *Cleaning, Maintenance, Repairs and Replacements.*
 - a. Lessing's shall maintain all parts of the Castle and the Facilities (as defined in Section II.B.), including all areas used for the handling, preparation, storage and service of food, disposal of waste and refuse, the Patio Bar, restrooms, and entrances and exits, in an inviting, attractive, safe, operable, clean and sanitary condition at all times, so as to pass all health inspections. Grease traps shall be kept clean. Lessing's shall maintain a suitable program for pest control. Lessing's shall be responsible for all interior decoration, and routine interior maintenance, repair and replacement, all of which shall be done in a professional manner, be of first class quality and conform with standards established by City of Rye as to finishes and look. Interior maintenance shall cover all furniture, fixtures and equipment, including, without limitation, Servicewares and Small Expendable Equipment (each as defined in Section II.D. below).
 - b. Within fifteen (15) days after the end of each month of the Term, Lessing's shall contribute two percent (2%) of Gross Revenues (as hereinafter defined) generated in such month into a repair and maintenance capital reserve fund controlled by City of Rye (the "***Capital Reserve Fund***"), which amounts shall be used by the City of Rye for repairing and maintaining the Castle and repairing and maintaining or, as necessary, replacing parts of, the Facilities; *provided, however,* if 2% of Gross Revenues in the year ended December 31, 2014 does not equal at least Twenty-Five Thousand Dollars (\$25,000.00),

then Lessing's shall contribute at least such amount into the Capital Reserve Fund in respect of such year. The Capital Reserve Fund shall not be used for routine repair, maintenance and replacement expenses that are the responsibility of Lessing's, including pursuant to the preceding paragraph 5.a.

- c. The Parties shall meet on an annual basis to plan strategic repairs, maintenance or replacements to the operative areas of the Castle to preserve the Facilities in good condition. If non-routine repairs, maintenance or replacements relate to front-of-house or customer facings ("**Front of House Repairs**"), Lessing's, as the operator of the Facilities and stager of Events, after good faith consultations with City of Rye, shall make the final determination. City of Rye, as the owner of the Castle and the Facilities, after good faith consultations with Lessing's, shall make the final determination as to all other repairs, maintenance or replacements, including non-routine repairs, maintenance and replacement of all aspects of the Facilities other than non-routine Front of House Repairs. Upon completion of the project, the party shall be reimbursed for the reasonable cost thereof out of the Capital Reserve Fund within fifteen (15) days after it has provided the other party with invoices and documentation demonstrating the work completed. Reimbursement from the Capital Reserve Fund shall only be made for new projects started after the Commencement Date and excluding the Year One Expenditures reflected on Schedule B. If there are conflicting claims on the Capital Reserve Fund for non-routine Front of House Repairs and other repairs, maintenance and replacements covered by this Section I.B.5.c., City of Rye Shall make the final determination as to the priority and order of such claims.
 - d. Any amounts remaining in the Capital Reserve Fund that have not been expended or committed at the expiration or termination of the Term shall be retained by City of Rye.
 - e. "**Gross Revenues**" means all revenue received by or on behalf of Lessing's or its affiliates, whether by a client, third party or Rye Golf Club employee, as applicable, from the provision of services or the sale of food and beverages in connection with an On-Premises Catered Event, an Off-Premises Catered Event, Patio and Bar Service, Restaurant Service and, to the extent provided by Lessing's, Snack Bar Services, as the case may be, but shall not include (i) any retail sales taxes, excise taxes and similar government charges on services provided or goods sold by Lessing's hereunder, whether collected from customers for payment to the taxing authority or payable directly to the taxing authority, and (ii) tips and gratuities paid to Lessing's employees.
 - f. For the avoidance of doubt, nothing herein is intended to prevent or restrict Lessing's from purchasing, at its own expense, such additional equipment as it shall see fit, subject to Section II.B.
6. *Servicewares; Small Expendable Equipment.* As set forth in Section II.D below, City of Rye, at its sole cost and expense, is furnishing to Lessing's, on a "where-is," "as-is" basis, an inventory of Servicewares and Small Expendable Equipment as listed and described on Schedule C. Lessing's shall, pursuant to paragraph 5.a. and at its sole cost and expense, ensure that such Servicewares and Small Expendable Equipment are maintained at the level appropriate for the efficient performance of the Services, and shall return to City of Rye at the conclusion of the Term Servicewares and Small Expendable Equipment in quantities at least equal to the quantities set forth on Schedule C, all of which shall be in good and usable condition, ordinary wear and tear excepted.

7. *Off-Premises Use of Facilities.* Lessing's acknowledges that it shall not use any City of Rye-owned dishes, glassware, smallwares, buffets, chairs or tables for Off-Premises Catered Events.
8. *Utilities.* As of the Commencement Date, Lessing's shall be responsible and shall pay or reimburse the City of Rye, as provided in Section IV.D., for all utilities, including without limitation, electricity, gas, sewer and water, associated with the use of the Castle, including the Patio Bar (the "*Utilities*"). If Lessing's is granted the right to provide Snack Bar Services in any future year, a fair share allocation of Utility expenses of the Golf Club shall be paid by Lessing's for each such year with respect to the Snack Bar Services.
9. *Cable/Telephone Services and Security Monitoring.* As of the Effective Date, Lessing's shall obtain its own cable/satellite/ISP, telephone services and security monitoring at the Castle at its sole cost and expense.
10. *Refuse and Rubbish Removal.* As of the Effective Date, Lessing's shall be responsible for removal of all trash associated with its delivery of the Services. Lessing's shall use the Castle's trash dumpsters for the disposal of refuse and rubbish removal. Lessing's shall be extended City of Rye negotiated contract rates for trash removal on the regularly scheduled pick-up days of Tuesday and Friday, but shall be free to make alternate arrangements and contract with private providers for this service. The parties shall meet and agree to a good faith allocation of the shared dumpster and trash removal costs.
11. *Snow Removal.* As of the Effective Date, Lessing's shall be responsible for the cost of plowing all snow at the Castle. City of Rye will provide plowing, including salting and de-icing, at a negotiated commercially-competitive rate.
12. *Landscaping.* Lessing's will pay for all landscaping maintenance and grounds upkeep within one hundred fifty (150) feet of the Castle, including the entry drive center square. Both parties shall ensure that their respective maintenance and upkeep obligations shall be done in a professional manner, be of first class quality and conform with standards established by City of Rye as to finishes and look.
13. *Marketing Spend.* To ensure the most successful of operations at the Castle, Lessing's agrees to spend a minimum of \$50,000 each Year during the Term promoting and marketing the Castle and Events (the "*Marketing Spend*"). The purposes for which the Marketing Spend will be used will include, but not be limited to, advertising, application towards website development and maintenance, print media, photography and videography expenses and promotional events. All written advertising and marketing materials, and the script for any audio advertising and marketing materials must, for intellectual property protection reasons, be submitted to and approved by City of Rye prior to first use. Lessing's shall provide City of Rye with a marketing plan for the remainder of 2014 prior to the Commencement Date, and for each Year thereafter prior to January 1st of each such year. Lessing's also shall provide invoices, tear sheets or other documentary proof, in form reasonably satisfactory to City of Rye, that it has satisfied the Marketing Spend each Year. If Lessing's has not satisfied the Marketing Spend for any Year, the shortfall shall be added to the Marketing Spend for the ensuing Year. Any Marketing Spend shortfall for the final Year of the Term shall be paid to the City of Rye by January 31st of the ensuing Year.

“*Year*,” for all purposes of this Agreement, shall mean a period consisting of four 4/4/5 accounting quarters, except that the first Year shall consist of the period from the Commencement Date to and including December 29, 2014.

14. *Taxes.* Lessing’s shall be responsible for the payment of all gross receipts, estimated, sales, use, ad valorem, transfer, franchise, license, withholding, payroll, employment, excise, severance, occupation, real estate and/or property (if any) and other taxes, fees, assessments and charges of any kind, including interest and penalties, imposed by any governmental, regulatory or administrative entity, department, commission, board, agency, instrumentality, or other quasi-governmental entity authorized to impose or levy taxes in connection with Lessing’s operations and use of the Castle, including, without limitation, those imposed on or based upon sales, property, net income, gross income, earnings or profits of Lessings’s; *provided, however*, that Lessing’s responsibility for real estate and/or property taxes, if any, shall be limited to and shall not exceed \$25,000 for any Year, with City of Rye being responsible for any excess.
15. *Liquor Inventory.* Lessing’s will purchase all usable unopened items in the City of Rye’s existing wine and liquor inventory at the Castle at the reasonable wholesale cost thereof. If requested, Lessing’s will assist City of Rye in liquidating any inventory not purchased by Lessing’s.
16. *Booked Events.* As promptly as practicable following the Effective Date, City of Rye shall transfer and assign to Lessing’s all contracts for the Events booked to occur after the Commencement Date, including the deposits therefor in accordance with Section II (f) *infra*, all of which are listed on Schedule D (the “*Booked Events*”), subject to obtaining any necessary consents from the client for each Booked Event. Lessing’s covenants and agrees to provide Services for all Booked Events at the prices, on the dates, at the times and otherwise as contracted.
17. *Personnel.* Lessing’s shall provide sufficient qualified, professional and competent personnel to perform any and all Services as required herein. All persons engaged by or on behalf of Lessing’s shall be employees of Lessing’s and not of the City of Rye. Lessing’s will be responsible for screening all such personnel, including running sex offender status and criminal background checks. Subject to Legal Requirements, Lessing’s will not employ any person who is not, in the reasonable opinion of the City of Rye or the Golf Commission, fit to work with or in close proximity to children and the general public.
18. *Additional Covenants.* During the Term, Lessing’s covenants and agrees:
 - a. It in all respects will cooperate with the Golf Commission and the resident golf professional staff. Lessing’s will not do anything or allow anything to be done that materially hinders or interferes with the use and enjoyment of, and free access and passage to, the Rye Golf Club by its members, including, without limitation, due to excessive garbage accumulation or odors, excessive noise, excessive parking or labor or other disputes involving pickets, whether on or near the Rye Golf Club property.
 - b. It will not do anything or allow anything to be done that could invalidate or permit the suspension or cancellation of any insurance policy required under this Agreement or any liquor license or permit relating to the Castle or Rye Golf Club or any portion thereof, or that results in the increase of the premiums payable for any insurance

required under this Agreement; and it will not fail to do or cause to be done any commercially reasonable thing necessary to maintain any such insurance policy and any such liquor license or permit in full force and effect.

- c. It will maintain all necessary licenses and permits, and comply in all material respects with all Federal, state, local and municipal laws, rules, ordinances, regulations, statues, licenses and permits (“**Legal Requirements**”), applicable to its provision of Services and performance of this Agreement, including, without limitation, with respect to health and food safety and the storage of consumables and the storage, serving and sale of alcohol, and concerning maintenance of the Facilities.
- d. It will not use or store any hazardous or toxic substances, wastes, pollutants or contaminants or any other substance that may pose a hazard to human health or safety or the environment (including air, water, soil and natural resources); *provided*, that Lessing’s may store and use at the Castle any materials and supplies that are appropriately and customarily used in providing Services or maintaining premises for Events so long as the same are stored and used in compliance with all Legal Requirements.
- e. It will not use or permit the use of the Castle in violation of any Legal Requirement or, in the opinion of City of Rye, for improper or immoral purposes, including, without limitation, as a night club or for inappropriate private parties.

II. City of Rye’s Rights and Obligations.

- A. Right to Use and Occupy Castle. Throughout the Term, City of Rye hereby grants to Lessing’s, and Lessing’s accepts from City of Rye, the exclusive right to use and occupy the Castle to perform the Services. Lessing’s shall have access to the Castle at all times, twenty-four (24) hours per day, every day of the year.
- B. Facilities. Throughout the Term, City of Rye, shall make available to Lessing’s, on a “where-is,” “as-is” basis, the Facilities for the purpose of food preparation, storage, and dining together with heat, gas and refrigeration systems, to facilitate Lessing’s delivery of the Services as contemplated by this Agreement. “**Facilities**” shall mean the Patio Bar, and the entire interior of the Castle, including, without limitation, foyer and reception, ballroom and pre-function areas, kitchen, preparation and serving areas, improvements, personal property, furniture, kitchen equipment, machinery, fixtures and bathroom facilities at the Castle. Lessing’s shall be permitted to erect temporary tents, which will promptly be removed following their use, on the center island for ceremonies and outdoor patio areas for inclement weather.

City of Rye shall have all right, title and interest to the Facilities; *provided, however*, that Lessing’s shall own any equipment constituted within the Facilities if such equipment (i) is paid for by Lessing’s (other than as part of the Year One Expenditures or from the Capital Reserve Fund), (ii) is not affixed to the Castle as a fixture and (ii) is not a replacement for Servicewares and Small Expendable Equipment (as defined below).

- C. Maintenance, Repairs and Replacements. Subject to Lessing’s obligations pursuant to paragraph I.B.5.a., City of Rye throughout the Term shall be responsible for non-routine repairs, maintenance and, as necessary, replacement of components of the Facilities out of the Capital Reserve Fund and as provided in Section I.B.5.b. above. In addition, throughout the Term, City

of Rye shall be responsible, except as provided in the proviso to the following sentence, for maintaining and repairing the structural portions of the Castle, the roof of the Castle, the exterior walls of the Castle, the HVAC system of the Castle (including, but not limited to, plumbing, electric, gas, etc.), and the windows of the Castle (“**Structural Repairs**”). All repairs, maintenance and replacements made by City of Rye as contemplated by this Section shall be in conformity with the standards that are customary for the Castle as it currently is maintained; *provided, however*, that Lessing’s shall be responsible to pay (in whole or in part) for repairs, maintenance and replacements to the Castle and the Facilities, that result from Lessing’s negligence or negligent uses or intentional misuse of the Facilities or any other portion of the Castle.

- D. Servicewares; Small Expendable Equipment. Prior to the Commencement Date, City of Rye, at its sole cost and expense, is furnishing to Lessing’s, on a “where- is,” “as-is” basis, an inventory of items used in the serving of food and beverages, such as chinaware, glassware, silverware and hollow ware (“**Servicewares**”) and items used in the preparation of food, including pots, pans and kitchen utensils (“**Small Expendable Equipment**”) as listed and described on Schedule C for Lessing’s efficient performance of the Services. As set forth above in Section I.B.6, throughout the Term, Lessings, at its sole cost and expense, shall ensure that such Servicewares and Small Expendable Equipment are maintained at the level appropriate to allow it to efficiently perform the Services, and shall return to City of Rye at the conclusion of the Term Servicewares and Small Expendable Equipment in quantities at least equal to the quantities set forth on Schedule C, all of which shall be in good and usable condition, ordinary wear and tear excepted.
- E. Point of Sale System. If Lessing’s requests, City of Rye shall provide Lessing’s with the Northstar electronic point-of-sale system or similar point of sale system (“**POS**”) being used at the Golf Club from time to time to facilitate Lessing’s accommodating and accepting Golf Club member charges. POS training by Northstar for the current system can be arranged by City of Rye, at Lessing’s cost and expense (estimated to be \$2,500 for two days of training).
- F. Transfer of Booked Event Deposits. Subject to obtaining any necessary consents from the client for each Booked Event, City of Rye shall transfer to Lessing’s all deposits collected for Booked Events, with the balance of all payments for Booked Events to be transferred to Lessing’s upon City of Rye’s receipt from the client. Lessing’s covenants and agrees to provide Services for all Booked Events as contracted as set forth in Section I.B.16, and not to use such deposits or other payments for Booked Events for any purpose, including the Year One Expenditures, other than for and in connection with providing Services.
- G. Access to Facilities. City of Rye and its authorized representatives may enter the Facilities at all reasonable times with prior notice to Lessing’s (which notice may be given orally to the person employed by Lessing’s with whom City of Rye’s representatives ordinarily discuss matters relating to the Castle); *provided*, that no notice need be given in the event of an emergency. City of Rye may use the Castle as a voting location for primaries and elections upon no less than thirty (30) days prior notice to Lessing’s, and may use the Castle as an emergency shelter during State-declared emergencies.
- H. Security. Throughout the Term, City of Rye shall not provide security for the Castle other than standard police patrol. If Lessing’s determines that it requires additional security, such security shall be at Lessing’s sole cost and expense.

- I. Delivery Times. The Parties will mutually agree on delivery times for any food or equipment to be delivered to the Castle for or on behalf of Lessing's.
- J. Parking. Parking at the Castle will be shared. During the golf/pool season (to be coordinated with and determined by the Golf Club Manager, but generally the entire Memorial Day weekend and the period from and including the last day of school to and including the Sunday following Labor Day), the available spaces shall be limited to 130 spots allocated to Lessing's. Valet parking will be provided by Lessing's in connection with Events that are scheduled during such shared period.
- K. Gift Cards. Prior to the Commencement Date, City of Rye will provide Lessing's with a list of all gift cards redeemable at the Restaurant and Patio Bar that are outstanding, including the amounts thereof. Lessing's will honor all gift cards, and City of Rye agrees to credit or reimburse Lessing's for the amount of all such gift cards accepted by Lessing's for payment as part of its monthly reporting/reconciliation.

III. Term; Termination.

- A. Term. This Agreement shall commence on the Effective Date and shall continue until December 31, 2023 (the "**Initial Term**"). Upon expiration of the Initial Term, this Agreement may be extended for up to two additional renewal terms of five years each upon mutual agreement of the Parties. The period during which this Agreement remains in effect, as the same may be extended, is referred to as the "**Term**".
- B. Termination.
 - 1. *Mutual*. Each Party shall have the right to terminate this Agreement by written notice to the other Party as follows:
 - a. Upon default by a Party in the due performance of obligations stipulated by this Agreement, which default is not remedied within a period of fifteen (15) days after receipt of notice from the non-defaulting Party, specifying the default in reasonable detail; *provided*, that if a matter is susceptible of cure but cannot reasonably be cured within such fifteen (15) day period, and if the defaulting Party promptly commences and diligently is pursuing a course of conduct that in the other Party's reasonable opinion is capable of curing such default, the period for curing the default shall be extended to forty five (45) days after the notice of default was received; *provided, further, however*, that there shall be no extension of the fifteen (15) day period to cure a default if the default relates to the payment or expenditure of money.
 - b. Upon the Parties mutually agreeing in writing to terminate this Agreement.
 - 2. *By City of Rye*. City of Rye may terminate this Agreement immediately on written notice:
 - a. if Lessing's engages in any conduct that constitutes willful misconduct, including intentional misappropriation or conversion to its own use of funds belonging to City of Rye, or any conduct that jeopardizes the privileges of and licenses held by City of Rye or Lessing's relating to the Castle or the Facilities or the use thereof.

- b. if Lessing’s breaches the same provision of this Agreement three or more times within any consecutive twelve (12) month period, notwithstanding that the previous such breaches were cured within any applicable cure or grace period.
- 3. *Automatically.* This Agreement automatically shall terminate, without the requirement of notice or the taking of any other action, in the event that either Party voluntarily files a petition, or if an involuntary petition is filed against a Party that is not dismissed within forty-five (45) days, under any Chapter of the Bankruptcy Code or if a Party takes any action seeking relief under any federal or state law relating to bankruptcy or insolvency, or makes an assignment of all or any material part of its assets for the benefit of creditors, or a trustee, receiver or custodian is appointed to take charge of the assets of a Party.

C. Consequences of Termination.

- 1. The Parties’ rights to terminate this Agreement shall be without prejudice to their rights to any claims under this Agreement, injunctive relief(s) and other remedies available at equity or under applicable law.
- 2. No termination of this Agreement by one Party shall in any way affect that Party’s right to honor any existing bookings and receive compensation from such existing bookings that are scheduled to and that do occur prior to such termination, nor shall such termination, unless it was pursuant to Section III.B.2.a., in any way affect the other Party’s right to receive any compensation to which it may be entitled through the effective date of termination. Lessing’s shall assign to City of Rye all contracts for On-Premises Catered Events booked prior to but scheduled to occur following the date of termination of this Agreement, and promptly shall transfer to City of Rye all deposits collected for such Events.
- 3. In all cases of expiration of the Term or termination of this Agreement, other than termination by Lessing’s pursuant to Section III.B.1.a, Lessing’s shall use its commercially reasonable best efforts to assist City of Rye in transitioning to a new Service provider for On-Premises Catering Events, but not Restaurant Services, by continuing, at the option of City of Rye, to discharge such of its obligations hereunder as may be requested by City of Rye for up to one hundred thirty-five (135) days following the effective date of such termination.

IV. Financial Arrangements

- A. Base Commission. Beginning January 1, 2015, and continuing throughout the Term, Lessing’s shall pay to City of Rye a fee equal to a percentage of Gross Revenues (other than Gross Revenues derived from Off-Premises Catered Events) generated during a Year (the “*Base Commission*”) as follows:

<u>Base Commission</u>	<u>Gross Revenues</u>
7%	\$0-\$1.5 million
10%	\$1.5-\$2.5 million
13%	>\$2.5 million

- B. Off-Premises Catering Services Commission. Beginning January 1, 2015, and continuing throughout the Term, Lessing’s shall pay to City of Rye a fee equal to seven percent (7%) of Gross Revenues generated during a Year from Off-Premises Catered Events catered or sponsored by Lessing’s or its affiliates within a twenty (20) mile radius of the Castle, as shown on the map

attached as Annex II (excluding events prepared at Lessing's at Mercy College in Dobbs Ferry), or from other Events serviced from the Castle (the "*Off-Premises Catering Services Commission*," and together with the Base Commission, the "*Commissions*").

For the avoidance of doubt, the Base Commission and the Off-Premises Catering Services Commission shall not be affected by the inclusion or exclusion of Snack Bar Services.

- C. Minimum Annual Commission. Notwithstanding the foregoing, Lessing's shall pay City of Rye a Minimum Annual Commission (inclusive of the Base Commission and the Off-Premises Catering Commission), payable in equal monthly installments, for the Year ended December, (i) 2014 of \$25,000, (ii) 2015 of \$150,000, and (iii) 2016 and each Year thereafter of \$200,000. For any Year, commencing with the year ended December 31, 2015, that Lessing's is not granted the right to provide Snack Bar Services, the foregoing minimum annual Commission shall be reduced by \$25,000. Examples of the Base Commission calculations are annexed at Schedule E. Lessing's shall establish a monthly payment plan based on the Minimum Annual Commission and, when applicable, shall increase the monthly payments to reflect any Base Commission due in excess of the Minimum Annual Commission. Lessing's will complete a monthly commission calculation and will reconcile earned commissions with paid commissions. If the earned commissions exceed the Minimum Annual Commission, Lessing's will remit the excess in the month following the month the additional commission is earned. For examples, and for the avoidance of doubt:
- i. Year 2014: Lessings shall pay \$3,125 per month from May through December.
 - ii. Year 2015: Lessing's shall pay a fixed commission of \$12,500 per month. Lessing's shall submit monthly sales reporting including a calculation of Base Commission due. Lessing's will remit any excess commission above \$150,000 in the month that it is earned, along with the fixed monthly payment.
 - iii. Year 2016 and beyond: Lessing's shall pay a fixed commission of \$16,667 per month. Lessing's shall submit monthly sales reporting including a calculation of commission due. Lessing's will remit any excess commission above \$200,000 in the month that it is earned, along with the fixed monthly payment.

For all purposes of this Agreement, "*affiliate*" of a Party means a person or entity controlling, controlled by or under common control with the Party to whose affiliates reference is being made.

D. Payment of Commissions and Utilities Charges.

1. *Commission to City of Rye*. Commissions shall be paid by Lessing's to City of Rye within twenty (20) days following the end of each calendar month.
2. *Utilities and Other Charges*: Lessing's shall submit or pay to City of Rye or the applicable utility, as the case may be, utilities and other charges for which Lessing's is responsible hereunder (including a fair allocation of Utilities for Snack Bar Services, if applicable) within the time period set forth in each respective invoice provided such invoice is provided within five (5) business days of receipt of same by the City of Rye.

- E. Reimbursement of Additional Sums. If either Party has paid any sums or has incurred any expense for which the other Party has agreed to pay or reimburse such paying Party, or if the paying Party is required to pay any sums or incurs any expense arising from this Agreement or arising from the failure or neglect of the other Party to perform or fulfill any of the terms or conditions of this Agreement, such amounts shall be deemed additional payments due hereunder;

and such other Party shall reimburse the paying Party for the amount(s) thereof within fifteen (15) business days following receipt of demand(s) for such amount(s).

- F. Late Fee. There shall be a late fee of one percent (1%) per month or part thereof for any overdue amount until paid in full.
- G. Security Deposit. Prior to the Commencement Date, Lessing's shall provide a \$100,000 cash security deposit or performance bond or letter of credit ("**Security Deposit**") to City of Rye as security for the faithful performance of this Agreement and for the payment of all Commissions and other amounts due hereunder. If Lessing's spends less than \$125,000 on Year One Expenditures by July 31, 2014, the amount of the Security Deposit shall be increased at that time by an amount equal to such shortfall. The amount of the Security Deposit shall be reduced by the amounts thereafter spent by Lessing's on approved Year One Expenditures, but never to less than \$100,000. In the event of any default by Lessing's hereunder, City of Rye may, but shall not be required to, apply the Security Deposit toward curing such default. Upon the application of all or any part of the Security Deposit, Lessing's shall, upon demand, increase the Security Deposit by the amount so applied within thirty (30) days, so that the entire amount of the Security Deposit, as adjusted pursuant to the second and third sentences of this paragraph, shall remain with City of Rye throughout the Term. Nothing hereunder shall be construed to limit any other right or remedy City of Rye may have in the event of a default by Lessing's. If Lessing's shall fully and faithfully comply with all of the terms and conditions of this Agreement, the balance of the Security Deposit shall be returned to Lessing's after the Term following the removal of Lessing's' property from the Castle.

V. Accounting Records and Reporting; Audit Rights

- A. Maintenance of Books and Records. During the Term, and for a period of at least five (5) years thereafter, Lessing's shall maintain and preserve at its principal office full and accurate accounting and original business books and records relating to Events, Services and Lessing's operations at the Castle and the calculation of Gross Revenues and the Commissions paid so as to enable City of Rye to verify that Lessing's has satisfactorily discharged its obligations under this Agreement, including the calculation and payment of Commissions (the "**Financial Records**").
- B. Right to Audit. Throughout the Term and for a period of five (5) years thereafter, City of Rye and its agents and representatives shall have the right at reasonable times and upon reasonable notice, up to two (2) times per Year, to inspect, examine, audit and make copies of, or cause to be inspected, examined, audited and made copies of, the Financial Records. Lessing's shall fully cooperate with City of Rye and/or its agents and representatives, to conduct any such inspection or audit. City of Rye shall pay for the cost of any such audit; *provided*, that in the event an audit uncovers an underpayment by Lessing's of five percent (5%) or more, Lessing's shall pay or reimburse City of Rye for the cost and expense of such audit, and there shall be no limitation on the number of audits City of Rye may conduct in the twelve (12) months following any such audit.

VI. Intellectual Property

Each Party acknowledges that it has no right, title or interest in or to any of the trademarks, trade names, service marks, logos, slogans or copyrights (collectively, "**Marks**") of the other Party and that any use of the other Party's Marks may be made only in accordance with the provisions of this Agreement, and further agrees that all Marks of the other Party are and will remain such other Party's sole property.

Nothing in this Agreement serves to assign, convey or transfer any right in or title to any Marks of one party hereunder to the other. In connection with the use of the other Party's Marks in the performance of any obligations under this Agreement, each Party agrees to include legal and proper ownership and/or registration notices in connection with any and all such uses, as reasonably requested by the other Party, and in accordance with applicable laws. Upon the expiration or early termination of this Agreement, each Party immediately will cease all otherwise permitted use of the other's Marks.

VII. Confidentiality

Each Party covenants to the other Party that it shall not disclose to any third party (other than its employees and directors, in their capacity as such, and the employees and directors of any affiliate on a need to know basis so long as they are bound by the terms of this Agreement) any information regarding the terms and provisions of this Agreement or any confidential or proprietary information which has been identified as such by the other Party hereto or which is or reasonably should be understood to be confidential or proprietary, except (i) to the extent necessary to comply with any Legal Requirements or valid order of a court of competent jurisdiction (or any regulatory or administrative tribunal), in which event the party so complying shall so notify the other as promptly as practicable (and, if possible, prior to making any disclosure) and shall seek confidential treatment of such information, if available; (ii) as part of its normal reporting or review procedure to its auditors or its attorneys, as the case may be, so long as they are notified of the provisions of this Agreement; (iii) in order to enforce its rights pursuant to this Agreement; or (iv) in connection with any filing with any governmental body or as otherwise required by Legal Requirements, including the federal securities laws and any applicable rules and regulations of any stock exchange or quotation system, and including in connection with responses to Freedom of Information Laws.

Confidential information includes, but is not limited to, information about either Party's sales, costs and other unpublished financial information, product and business plans, projections, marketing data, and sponsors but shall not include information (a) already lawfully known to or independently developed by a Party, (b) disclosed in published materials other than through a breach of these confidentiality provisions, (c) generally known to a Party other than through a breach of these confidentiality provisions, (d) lawfully obtained from any third party, or (e) required to be disclosed by Legal Requirements.

Without limiting the generality of the foregoing, Lessing's covenants and agrees that it will not, without the Golf Commission's prior written approval, use Rye Golf Club membership lists or directories or any member information for marketing of solicitation, or for any purpose other than performance of its obligations hereunder.

Notwithstanding the foregoing and for the avoidance of doubt, the Parties acknowledge and agree that this Agreement may be required to be publically disclosed or made publically available in connection with the City of Rye approval process of the execution and exchange of this Agreement, and information related to this Agreement may be disclosed during the course of City of Rye City Council or Rye Golf Club Committee public hearings.

VIII. Permits; Licenses

Lessing's shall be responsible for obtaining and maintaining in good stead, at its own cost and expense, any and all permits and licenses required for conducting all Events, including all necessary liquor licenses, and the City of Rye shall fully cooperate in obtaining and maintaining such permits and licenses required to operate as required under this Agreement.

IX. Insurance

Each of LESSING'S and City of Rye shall maintain insurance underwritten by insurance companies licensed or authorized to do business in the State of New York, which insurance shall be of the following types:

- (i) Statutory Workers' Compensation Insurance and New York State Disability Benefits Insurance in statutorily required amounts.
- (ii) Employer's Liability Insurance with a limit of liability of no less than Five Hundred Thousand Dollars (\$500,000) per accident or disease and Five Hundred Thousand Dollars (\$500,000) aggregate by disease.
- (iii) Broad Form Commercial General Liability Insurance (including contractual liability, product liability, liquor law/dram shop liability, personal/advertising injury and independent contractor protection) on the latest version of ISO form CG 00 01 or its equivalent, in an amount of at least Two Million Dollars (\$2,000,000). The policy shall be written on an occurrence basis.
- (iv) Automobile Liability Insurance on a form equal to the latest version of ISO form CA 00 03 covering all owned, non-owned and hired motor vehicles, with limits of not less than One Million Dollars (\$1,000,000) per occurrence for injuries to or death of all persons and property damage in any accident.
- (v) Business Interruption Insurance with a limit of liability of no less than Two Hundred Thousand (\$200,000).
- (vi) Personal Property Insurance with a limit of liability of no less than One Hundred Thousand Dollars (\$100,000).

All required insurance shall be reviewed by City of Rye insurance brokers, be placed with carriers licensed and admitted or authorized to do business in the State of New York, have a rating in the most current edition of A.M. Best's Property Casualty Key Rating Guide of at least A-minus (policyholders rating) and VII (financial rating), and provide thirty (30) days written notice of cancellation or non-renewal, which notice shall be forwarded to City of Rye or Lessing's, as the case may be.

All policies shall be endorsed to require at least thirty (30) days' advance notice, certified mail to, City of Rye or Lessing's, as the case may be. Certificates of insurance of each such policy shall be delivered to City of Rye or Lessing's, as the case may be, prior to the Effective Date. Each certificate shall specifically refer to the inclusion of all Additional Insureds as required below.

Additional insured status shall be granted by Lessing's of the latest version of ISO endorsement CG 20 15 07 04 or similar. The endorsement of Lessing's shall name "THE CITY OF RYE, its officers, elected officials, employees, agents and volunteers" as Additional Insureds, and the endorsement of City of Rye shall name "LESSINGS, INC." as Additional Insured. The coverage afforded to the "Additional Insureds" must be at least equal to \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, and \$2,000,000.00 products liability aggregate. The coverage afforded to the "Additional Insureds" shall be written on a primary basis, and shall not require or contemplate contribution by any other policy or policies obtained by, or available to, any Additional Insured; any other such coverage shall be excess over the coverage to be provided by City of Rye or Lessing's, as the case may be.

X. Indemnification

- A. By Lessing's. Lessing's agrees to indemnify, defend and/or hold harmless City of Rye and its affiliates, and their elected officials (including without limitation the Mayor, the City Manager

and the members of the City Council), directors, officers, stockholders, members, employees, agents (including without limitation members of the Golf Commission and the RFP and Strategic Committees of the Castle and Rye Golf Club), affiliates, subsidiaries and assigns (each, a “*City of Rye Indemnitee*”) from and against any expenses, losses, claims, costs, damages and liabilities, including, without limitation, judgments, fines, amounts paid in settlement and expenses (including, without limitation, attorneys’ fees and expenses, court costs, investigation costs and litigation costs) (“*Damages*”) incurred by any City of Rye Indemnitee that arise from a claim brought against a City of Rye Indemnitee by a third party in connection with:

1. A wrongful act or wrongful omission by Lessing’s or its agents, employees, licensees or contractors during the Term (including claims that derive from Lessing’s operations at the Castle or the provision of Services);
2. The breach of any covenant to be performed by Lessing’s hereunder;
3. A material misrepresentation made by Lessing’s hereunder; or
4. Any injury to or death of any person or persons, or any damage to property in any way arising out of or in connection with Lessing’s use of the Castle, excepting, however, liability caused by or resulting from the gross negligence or willful misconduct of City of Rye or its agents, employees, licensees or contractors.

B. By City of Rye. City of Rye agrees to indemnify, defend and/or hold harmless Lessing’s and its affiliates, and their directors, officers, stockholders, members, employees, agents, affiliates, subsidiaries and assigns (each, a “*Lessing’s Indemnitee*”) from and against any Damages incurred by any Lessing’s Indemnitee that arise from a claim brought against a Lessing’s Indemnitee by a third party in connection with:

1. A wrongful act or wrongful omission by City of Rye or its agents, employees, licensees or contractors during the Term;
2. The breach of any covenant to be performed by City of Rye hereunder;
3. A material misrepresentation made by City of Rye hereunder; or
4. Any injury to or death of any person or persons, or any damage to property in any way arising out of or in connection with the Castle, but unrelated to Lessing’s use of the Castle or provision of Services.

C. In all such matters covered hereby, each indemnified Party shall have the right to select counsel of its choice to represent both parties, unless there is a conflict of interest between the Parties. In matters where there is a conflict of interest between the Parties, the indemnified Party shall have the right to select its own counsel at the indemnifying Party’s expense. The indemnifying Party shall control the defense of all such matters including the right to settle such matters, subject to the indemnified Party’s prior approval of any such settlement, which shall not be unreasonably withheld, conditioned or delayed so long as such settlement includes a full release of the indemnified Party and does not require the payment of any sum or the making of any adverse admission by such indemnified Party. Each Party’s rights and obligations pursuant to this paragraph will survive the termination of this Agreement. The above rights shall be subject to any rights granted in any relevant insurance policies.

XI. Miscellaneous

- A. No Waiver. This Agreement shall not be waived, modified, assigned or transferred except by a written consent to that effect signed by the Parties.
- B. Notices. All notices required or permitted to be given hereunder shall be in writing and delivered as follows:

If to City of Rye:
City Manager, City of Rye
1051 Boston Post Road
Rye, NY 10580

With a copy to:

Kent, Beatty & Gordon, LLP
ATTN.: Jack A. Gordon, Esq.
425 Park Avenue, 31st Floor
New York, New York 10022

If to Lessing's:

Lessing's, Inc.
ATTN: Michael Lessing, COO
3500 Sunrise Highway, Building 100
Great River, New York 11739

With a copy to:

Egan & Golden, LLP
ATTN: Brian T. Egan, Esq.
96 South Ocean Avenue
Patchogue, New York 11772

Notices may be sent by (a) overnight courier, (b) electronic transmission (so long as a receipt of such electronic transmission is requested and received) or (c) registered or certified mail, postage prepaid, return receipt requested; and shall be deemed to have been given (i) in the case of overnight courier, the next business day after the date sent, (ii) in the case of electronic transmission, on the date of confirming of such electronic transmission, and (iii) in the case of mailing, three business days after being mailed.

- C. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.
- D. Force Majeure. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond

the reasonable control of the affected party, including but not limited to fire, flood, failure of communications systems or networks, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotion, acts of God or acts, omissions or delays in acting by any governmental authority or the other party; *provided, however*, that the Party so affected shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Each Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure. The Parties shall mutually seek a resolution of the delay or the failure to perform as noted above.

- E. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed wholly therein, without regard to principles of conflicts of laws.
- F. Jurisdiction. The Parties agree that all disputes arising, directly or indirectly, out of or relating to this Agreement, and all actions to enforce this Agreement, shall be dealt with and adjudicated in the state courts of the State of New York or the federal courts for the Southern District of New York; and for that purpose each of Lessing's and City of Rye expressly and irrevocably submits itself to the jurisdiction of such courts. Each Party further agrees that, so far as is permitted under applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service of process as permitted by law, shall be necessary in order to confer jurisdiction upon it in any such court. Lessing's and City of Rye each agree that judgment against it in any such action or proceeding shall be conclusive and, to the extent permitted by applicable law, may be enforced in any other jurisdiction within or outside the United States of America by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of its indebtedness.
- G. Independent Contractors. The Parties are independent contractors and not partners or joint venturers. Except to the extent otherwise expressly set forth herein or otherwise agreed to by the Parties in writing, neither Party will represent that it has the authority to bind or represent the other as agent, employee or in any other capacity. Neither Lessing's nor its employees shall become a City of Rye employee, nor shall Lessing's or its employees be entitled to payment or compensation from the City of Rye or to any fringe benefits to which other City of Rye employees are entitled. As an independent contractor, Lessing's further acknowledges that it is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes or deductions due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, Lessing's further agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out nor claim to be an officer or employee of the City of Rye by reason thereof, and that it will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the City of Rye, including, but not limited to, workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement benefits.
- H. Headings; Defined Terms; Construction. Headings in this Agreement have been inserted, and the words and phrases used to denote defined terms have been chosen, for convenience of reference only and are not intended to affect, limit or modify the interpretation or scope of this Agreement or constitute part of the terms or provisions hereof. Each of the Parties represents that it has been represented by competent counsel in connection with the negotiation and drafting of this Agreement and that this Agreement shall not be subject to the principle of construing the meaning against the Party that drafted the same.

- I. No Third Party Rights. This Agreement is intended solely for the benefit of the Parties and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon, or creating any rights or remedies in favor of, any person or entity other than the Parties.
- J. Entire Agreement. This Agreement, taken together with the Annexes and Schedules attached hereto, constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes all prior representations, commitments, understandings and agreements made by or on behalf of the Parties with respect thereto.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Exclusive Catering Agreement as of the date first above written.

CITY OF RYE

LESSING'S INC.

By: _____
Name:
Title:

By: _____
Name: Michael S. Lessing
Title: Chief Operating Officer

Schedule A – Discounted Events

RGC Member Golf events with F&B service	Date (future years TBD)
Ladies WMGA	4/29/2014
Opening Day Scramble	5/4/2014
Ladies WMGA	5/6/2014
Member Member	5/18/2014
RGC Swim Team Cocktail Party	6/26/2014
Men's Member Guest	6/30/2014
Ladie's Member Guest	7/14/2014
RGC Swim Team Cocktail Party	8/1/2014
Significant Other Golf Outing	8/25/2014
World Cup	9/14/2014
Member Guest	9/19/2014
Member Guest	9/20/2014
Closing Scramble	10/12/2014

RGC Food & Beverage Events

1. Mother's Day Brunch
2. Easter Sunday Brunch
3. Brunch With Santa

4. Dragon Coasters (Saturday Night after Rye/Harrison Football game)

City of Rye Community Events

At least six (6) weekday events per year as determined by Rye City Council.

Schedule B – Year One Expenditures

Wood flooring in Ballroom and Pre-function area:	\$ 75,000
Relocate Bridal Suite upstairs with new carpet, furnishings and wall and window treatments:	\$ 25,000
Redesign outdoor bar with granite top:	\$ 20,000
<u>Resurface outdoor terrace:</u>	<u>\$ 5,000</u>
TOTAL:	\$125,000

**Schedule C – Furniture, Fixtures, Equipment, Servicewares and Small Expendable
Equipment**

Schedule D – Booked Events

Event	Date	Time	Room	Guests	Spp	Net	Tax	Total	P&L Approx.
Shower	2/1/2014	Noon-3:00pm	Small Ballroom	25	\$75.00	\$1,875.00	\$138.28	\$2,013.28	\$ 509.78
Band Night	3/28/2014	7:30pm-11:00pm	Full Space	100					
Wedd. Annlv.	4/5/2014	4:00pm-8:00pm	Large Ballroom	40	\$57.50	\$2,300.00	\$169.63	\$2,469.63	\$ 533.06
Tradeshov	4/7/2014	11:00am-3:00pm	Full Space	50	\$95.00	\$4,750.00	\$350.31	\$5,100.31	\$ 2,470.00
Family Reunion	4/26/2014	1:00pm-5:00pm	Large Ballroom	75	\$90.00	\$6,750.00	\$497.81	\$7,247.81	\$ 2,922.99
Rehearsal Dinner	5/9/2014	6:00pm-10:00pm	Small Ballroom	35	\$105.00	\$3,675.00	\$271.03	\$3,946.03	\$ 1,225.96
Communion	5/10/2014	4:00pm-7:00pm	Small Ballroom	50	\$65.00	\$3,250.00	\$239.69	\$3,489.69	\$ 775.08
Rehearsal Dinner	6/6/2014	6:00pm-10:00pm	Large Ballroom	150	\$75.00	\$11,250.00	\$829.69	\$12,079.69	\$ 2,192.00
Bridal Shower	6/8/2014	2:00pm-5:00pm	Small Ballroom	50	\$65.00	\$3,250.00	\$239.69	\$3,489.69	\$ 775.08
Wedding	6/12/2014	6:30PM-11:30PM	Full Space	80	\$148.00	\$11,840.00	\$873.20	\$12,713.20	\$ 5,365.00
Wedding	6/14/2014	6:30pm-11:00pm	Full Space	150	\$159.00	\$23,850.00	\$1,758.94	\$25,608.94	\$ 11,666.00
Bar Mitzvah	6/21/2014	6:00pm-11:00pm	Full Space	100	\$150.00	\$10,350.00	\$763.32	\$11,113.31	\$ 4,672.30
Sweet 16	6/28/2014	6:00pm-11:00pm	Full Space	75	\$150.00	\$9,150.00	\$674.81	\$9,824.81	\$ 4,635.78
Wedding	7/4/2014	7:00pm-Midnight	Full Space	100	\$125.00	\$12,500.00	\$921.88	\$13,421.88	\$ 5,010.00
Wedding	7/5/2014	6:00pm-11:00pm	Full Space	100	\$125.00	\$12,500.00	\$921.88	\$13,421.88	\$ 5,010.00
Wedding	7/26/2014	5:00pm-10:00pm	Full Space	175	\$125.00	\$21,875.00	\$1,613.28	\$23,488.28	\$ 9,654.00
Wedding	8/16/2014	6:00pm-11:00pm	Full Space	130	\$130.00	\$16,900.00	\$1,246.38	\$18,146.38	\$ 5,396.00
Wedding	8/31/2014	5:30pm-11:00pm	Full Space	75	\$166.00	\$13,100.00	\$966.13	\$14,066.13	\$ 5,544.00
Wedding	9/6/2014	6:00pm-11:00pm	Full Space	100	\$125.00	\$12,500.00	\$921.88	\$13,421.88	\$ 5,010.00
Wedding	9/20/2014	6:00pm-11:00pm	Full Space	125	\$96.00	\$12,000.00	\$1,548.75	\$22,548.75	
Wedding	9/27/2014	3:30PM-9:00PM	Full Space	100	\$142.50	\$14,250.00	\$1,050.94	\$15,300.94	\$ 6,914.00
Wedding	10/4/2014	3:30pm-8:30pm	Full Space	100	\$158.00	\$15,800.00	\$1,165.25	\$16,965.25	
Wedding	10/11/2014	6:00pm-11:00pm	Full Space	70	\$159.03	\$11,132.00	\$820.98	\$11,952.98	\$ 3,530.00
Wedding	10/17/2014	6:00pm-11:00pm	Full Space	100	\$169.00	\$16,900.00	\$1,246.38	\$18,146.38	\$ 5,810.00
Wedding	10/18/2014	4:00PM-10:00PM	Full Space	130	\$180.69	\$23,490.00	\$1,732.39	\$25,222.39	\$ 10,512.00
Wedding	10/25/2014	6:30pm-10:30pm	Full Space	150	\$170.00	\$25,500.00	\$1,880.63	\$27,380.63	\$ 12,716.00
Wedding	10/31/2014	4:00PM-9:30PM	Full Space	90	\$158.33	\$14,250.00	\$1,050.94	\$15,300.94	\$ 7,360.00
Wedding	10/24/2015	6:00PM-11:30PM	Full Space	75	\$178.00	\$13,350.00	\$984.56	\$14,334.56	\$ 6,293.00

TOTAL 2475 \$ 132.66 \$ 328,337.00 \$ 24,878.65 \$ 362,224.70 \$ 126,502.03

Contract Out/Unsigned

Schedule E

Lessing's at Whitby Castle

Annual Commissions Calculation

2016		Scenarios		
Gross Revenues	\$ 2,000,000	\$ 2,500,000	\$ 3,000,000	

2016 Minimum Annual Commission	\$ 200,000	\$ 200,000	\$ 200,000	
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Base Commission Schedule

Incremental Sales Range	%			
\$ - \$ 1,500,000	7%	\$ 105,000	\$ 105,000	\$ 105,000
\$ 1,500,000 \$ 2,500,000	10%	\$ 50,000	\$ 100,000	\$ 100,000
\$ 2,500,000 +	13%	\$ -	\$ -	\$ 65,000
Total Base Commission		\$ 155,000	\$ 205,000	\$ 270,000

TOTAL ANNUAL COMMISSIONS PAYABLE	\$ 200,000	\$ 205,000	\$ 270,000	
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Annex I – Patio Bar Schematic Plan

Annex II – Off-Premises Catered Events Gross Revenue Area Map





CITY COUNCIL AGENDA

NO. 7 DEPT.: FINANCE

DATE: April 23, 2014

CONTACT: JOSEPH S. FAZZINO, Deputy City Comptroller

AGENDA ITEM: Resolution authorizing the City Comptroller to amend the 2013 Budgeted revenues to cover fiscal year-end expenditures.

FOR THE MEETING OF:

April 23, 2014

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the City Council approve the Budget amendment.

IMPACT: Environmental Fiscal Neighborhood Other

BACKGROUND:

During the course of the 2013 fiscal year, the City received additional mortgage revenue that positively affects the 2013 adopted Budget while general fund expenditures exceeded budgeted expenditures. Due to these factors, the budgeted revenues in the 2013 Budget must be amended to cover fiscal year-end expenditures. The Council is asked to authorize the City Comptroller to process these amendments.

See attached Resolution.

CITY OF RYE, NEW YORK

Extracts from Minutes of Meeting of the City Council

ROLL CALL:

AYES:

NAYS:

ABSENT:

Councilperson _____ made a motion, seconded by Councilperson _____ to adopt the following resolution to appropriate unspent proceeds of general obligations of the City of Rye, New York (the "City") for the cost of an object or purpose similar to and of the same period of probably usefulness as the object or purpose for which such obligations were originally issued.

RESOLUTION

WHEREAS, the 2013 Annual Budget has been adopted; and

WHEREAS, during the course of the 2013 fiscal year, general fund expenditures exceeded budgeted expenditures by \$751,774; and

WHEREAS, during the course of the 2013 fiscal year, the City has received income that positively affects the 2013 budget. 2013 actual mortgage tax revenues exceeded 2013 budgeted mortgage tax revenues by \$982,921.

NOW, THEREFORE, be it resolved by the City Council of the City of Rye, New York, that 2013 budget be amended as outlined below to accept \$982,921 in additional mortgage revenue to cover various expenditures exceeding budget , as follows:

Increase:

State Aid Mortgage Tax \$982,921

Increase:

Contingent Account \$982,921

3. This resolution shall take effect as of 12/31/2013

DATED: April 23,2014

BY ORDER OF THE CITY COUNCIL

By _____
Dawn F. Nodarse
City Clerk



CITY COUNCIL AGENDA

NO. 9

DEPT.: Police

DATE: April 23, 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 23, 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

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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.

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- 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,

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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.

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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, without 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

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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.

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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.

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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.

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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

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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

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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.~~

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- ~~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 OFFICER 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 forty-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	949-1200212-647-1680
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		747-0707747-0828
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		949-67416227
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.	968-43451-800-298-7233 969-5800
Westchester County Information & Referral Family Court		285-2170824-5500
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		969-5800
2 Manor House Square, Yonkers, NY	24 hours	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	**Court: _____
**Order No: 199 - _____	**County: _____
**Docket/Index NO _____	**Expiration Date: _____
Law Enforcement Agency at which Copy of Order is Filed:	
**Name: _____	**Police ORI: NY _____

**ACTION TO BE TAKEN:		**SERVICE OF ORDER:	
<input type="checkbox"/> New Order		<input type="checkbox"/> Police to Serve Order	<input type="checkbox"/> Other
<input type="checkbox"/> Order Modified/Finalized		<input type="checkbox"/> Order served in Court (Date: _____)	
<input type="checkbox"/> Corrected Information		<input type="checkbox"/> Notification by Mail (Date: _____)	
		<input type="checkbox"/> Order Previously served (Date: _____)	
(Circle ALL corrected information on ALL documents)		(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. <input type="checkbox"/> yes <input type="checkbox"/> no
(Zip)	(County)		**Protected Party <input type="checkbox"/> yes <input type="checkbox"/> no
Phone (Home):	(Work)		
**Date of Birth:	**Sex: male female	SS No.:	
**Race: <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Native American	height:	Eye Color:	
<input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> Unknown			

**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? <input type="checkbox"/> yes <input type="checkbox"/> no
	(Zip)	(County)	
Employers Name:			
Employers Address:		Hrs. of Employment	
Phone (Home):		Phone (work):	
**Date of Birth:	**Sex: <input type="checkbox"/> male <input type="checkbox"/> female	SS No.	
**Race: <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Native American	Height	Eye Color	
<input type="checkbox"/> Asian/Pacific Island <input type="checkbox"/> Unknown			
**Ethnicity (select one): <input type="checkbox"/> Hispani <input type="checkbox"/> 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.

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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.

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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.

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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.

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- 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, without 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:

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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.

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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.
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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)).

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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.

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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.

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- 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:

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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 Family Protection Registry
 where data is not obtainable Information Sheet

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

**Court ORI No: NYO _____ J	**Court: _____
**Order No: 199 - _____	**County: _____
**Docket/Index NO _____	**Expiration Date: _____
Law Enforcement Agency at which Copy of Order is Filed:	
**Name: _____	**Police ORI: NY _____

**ACTION TO BE TAKEN:	**SERVICE OF ORDER:
<input type="checkbox"/> New Order	<input type="checkbox"/> Police to Serve Order <input type="checkbox"/> Other
<input type="checkbox"/> Order Modified/Finalized	<input type="checkbox"/> Order served in Court (Date: _____)
<input type="checkbox"/> Corrected Information	<input type="checkbox"/> Notification by Mail (Date: _____)
	<input type="checkbox"/> Order Previously served (Date: _____)
(Circle ALL corrected information on ALL documents)	(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. <input type="checkbox"/> yes <input type="checkbox"/> no
	(Zip)	(County)	**Protected Party <input type="checkbox"/> yes <input type="checkbox"/> no
Phone (Home):	(Work)		
**Date of Birth:	**Sex: male female	SS No.:	
**Race: <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Native American	height:	Eye Color:	
<input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> Unknown			
**Ethnicity (select one): <input type="checkbox"/> Hispani <input type="checkbox"/> 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? <input type="checkbox"/> yes <input type="checkbox"/> no
	(Zip)		(County)	
Employers Name:				
Employers Address:			Hrs. of Employment	
Phone (Home):		Phone (work):		
**Date of Birth:	**Sex: <input type="checkbox"/> male <input type="checkbox"/> female		SS No.	
**Race:	<input type="checkbox"/> White	<input type="checkbox"/> Black	<input type="checkbox"/> Native American	Height
	<input type="checkbox"/> Asian/Pacific Island		<input type="checkbox"/> Unknown	
**Ethnicity (select one):	<input type="checkbox"/> Hispanic	<input type="checkbox"/> 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. 10 DEPT.: Police DATE: April 23, 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 23, 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 an 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 recommences 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 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. 11

DEPT.: City Manager's Office

DATE: April 23, 2014

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Approval of the recommendation by the Traffic and Pedestrian Safety Committee that a Pilot Study be conducted to test the effect of reducing the speed limit to 25 miles per hour on Stuyvesant Avenue.

FOR THE MEETING OF:

April 23, 2014

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: That the Council consider the Speed Limit Modification Pilot Study for Stuyvesant Avenue proposed by the Traffic and Pedestrian Safety Committee.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The Traffic and Pedestrian Safety Committee has been reviewing the speed limits on Stuyvesant Avenue at the request of residents. The recommendation is to conduct a Speed Limit Modification Pilot Study whereby the speed limit would be reduced to 25 mph for the length of Stuyvesant Avenue. The Pilot Period would be for a one year period with speed measurements performed during the club season and during the off-season. The Council is asked to authorize the Speed Limit Modification Pilot Study.

See attached from the Traffic and Pedestrian Safety Committee.

**CITY OF RYE
MEMORANDUM**

TO: Mayor Sack and City Council
ALSO TO: S. Pickup, C. Miller, R. Coyne, RPD
FROM: Traffic and Pedestrian Safety Committee
SUBJECT: Speed Limit Modification Pilot Study – Stuyvesant Avenue
DATE: February 10, 2014

The Traffic and Pedestrian Safety Committee (TPS) has been reviewing the speed limits on Stuyvesant Avenue at the request of some residents who live on or near Stuyvesant Avenue.

Background

Over the years, the TPS has received requests from various residents to adjust speed limits on certain streets from the City's speed limit of 30 mph to 25 mph. In 2003, the TPS along with the City Council reviewed the lowering of speed limits and were not in favor of it due to the opinion that it would be difficult to enforce and would have limited impact.

The change was also reviewed at times by the TPS and the Assistant City Manager as well as the City Attorney and based upon an interpretation of State Law from the City Attorney at those times, it did not appear that the roadways in the City could be reduced to 25 mph. The latest version of the State Law is provided below. The requests have come for various locations such as the entire Greenhaven area, Kirby Lane, and others, with the latest coming from initially one resident who live on a side street of Stuyvesant Avenue. There is a safety benefit if vehicles actually drive slower.

As Rye is a City, the New York State Vehicle and Traffic Law (V&T) states that the City-wide Speed Limit has to be 30 mph. If Rye was a Town, then the Town-wide Speed Limit could be 25 mph. The (V&T) states,

Effective: August 17, 2012

McKinney's Consolidated Laws of New York Annotated Currentness

Vehicle and Traffic Law (Refs & Annos)

Chapter Seventy-One. Of the Consolidated Laws (Refs & Annos)

 Title VIII. Respective Powers of State and Local Authorities

 Article 39. Regulation of Traffic by Cities and Villages (Refs & Annos)

→→ § 1643. Speed limits on highways in cities and villages

The legislative body of any city or village with respect to highways (which term for the purposes of this section shall include private roads open to public motor vehicle traffic) in such city or village, other than state highways maintained by the state on which the department of transportation shall have established higher or lower speed limits than the statutory fifty-five miles per hour speed limit as provided in section sixteen hundred twenty of this title, or on which the department of transportation shall have designated that such city or village shall not establish any maximum speed limit as provided in section sixteen hundred twenty-four of this title, subject to the limitations imposed by section sixteen hundred eighty-four of this title may by local law, ordinance, order, rule or regulation

establish maximum speed limits at which vehicles may proceed within such city or village, within designated areas of such city or village or on or along designated highways within such city or village higher or lower than the fifty-five miles per hour maximum statutory limit. No such speed limit applicable throughout such city or village or within designated areas of such city or village shall be established at less than thirty miles per hour; except that in the city of Long Beach, in the county of Nassau, speed limits may be established at not less than fifteen miles per hour on any portion of the following highways in such city: Cleveland avenue, Harding avenue, Mitchell avenue, Belmont avenue, Atlantic avenue, Coolidge avenue, Wilson avenue and Taft avenue. No such speed limit applicable on or along designated highways within such city or village shall be established at less than twenty-five miles per hour, except that school speed limits may be established at not less than fifteen miles per hour, for a distance not to exceed one thousand three hundred twenty feet, on a highway passing a school building, entrance or exit of a school abutting on the highway and except that within the cities of Buffalo and Rochester speed limits may be established at not less than fifteen miles per hour for any portion of a highway within a city park.

Over the years, TPS has obtained various interpretations on the full meaning of the above (or earlier versions of the law as the wording was confusing) as the request to change speed limits to 25 mph has been brought up before. The latest interpretation indicates that selective roadways can be changed to a 25 mph.

While some TPS members are strongly in favor of this change in speed limit, there are also those on the TPS who feel that changing the speed limit on Stuyvesant Avenue will not have any significant effect as people drive at the speed that they are comfortable at and thus will not have the desired impact. Another concern is if one street is made 25 mph, then others may request the same, such as Forest Avenue. Logically, why would a collector street like Stuyvesant Avenue have a lower speed limit than a smaller purely residential street like Halls Lane?

The United States Department of Transportation – Federal Highway Administration in its Study entitled “Effects of Raising and Lowering Speed Limits on Selected Roadway Sections” states that “neither raising nor lowering the speed limit had much effect on vehicle speeds. The mean speeds and the 85th percentile speeds did not change more than 1 or 2 mph”. It further states that the percent compliance decreased when the speed limits were lower.

Thus, the TPS has decided that Stuyvesant Avenue be utilized as a Pilot Study to see if changing the speed limit has any true impact.

Aside from the requests from residents, Stuyvesant Avenue was determined to be an appropriate road for the test due to its unique nature of different factors including:

- No sidewalks (sidewalks would be difficult to install)
- Narrow lanes
- Horizontal and vertical curvature
- Side streets and residential driveways
- Old growth trees
- Significant number of pedestrians and joggers
- Significant number of bicyclists
- Number of children in area
- Limited areas for enforcement
- Sight distance around curves and vegetation
- Proximity to Milton School and ability to walk to
- Mix of uses – residential and the clubs
- Seasonal fluctuation in traffic

- Serves as an emergency and evacuation route
- General support of residents in area based upon informal poll

Speed Studies

The City Engineering Department has performed speed studies on Stuyvesant Avenue during the past year to measure the existing speeds. The speeds were measured both when the clubs were fully operating and during the off-season for the clubs. The speed measurements taken during the summer actually showed lower speeds than during the off-season measurements. This could be the result of two factors, (1) the speed measurements were taken at two different locations and (2), during the summer, there are more people walking and bicycling which slows up the traffic somewhat. During this time (August), the 85th percentile speed, the speed that speed limits are generally to be set at, was approximately 31 mph (Average speed 25-26 mph) and thus the speed limit of 30 mph appears appropriate. The speed studies taken during the off-season (November) indicated an 85th percentile speed of 34-35 mph (Average speed 27 mph). Thus, a higher percentage of vehicles were exceeding the 30 mph speed limit. It should also be noted that during the summer, the speed counts showed that there is about twice the amount of traffic than during the other parts of the year (approximately 3,000 vehicles per day versus 1,500).

Other Measures

The TPS and City Engineer have reviewed other measures in regards to speeds along Stuyvesant Avenue and received input from some of the residents. Preliminary discussions were held with the City's Emergency Service Departments. The City has installed measures at the intersection of Stuyvesant Avenue and Milton Road/Old Milton Road including a median. This was previously attempted with bollards but they did not last. Consideration was also given to stop signs (not desired), raised crosswalks/speed humps (these would violate the City Speed Hump Policy as Stuyvesant is classified as an Emergency Road), standard crosswalks (not recommended due to no sidewalks).

Before the Pilot Study is enacted, this policy should be reviewed by the City Council as well as the Police Department.

Pilot Study Methodology

The first portion of the Pilot Study would consist of, upon approval of City Council, Corporate Council and the Police Department, to lower the speed limit on Stuyvesant Avenue to 25 mph for a one year period. Speed Measurements would be performed at the two previous locations during the club season and during the off-season.

After the one year period, speed radar signs would then be installed in each direction alerting drivers of their speed. Speed measurements would again be taken and compared to the previous measurements to study the changes and whether this should be pursued further.

This Pilot Study could be used as the basis for other locations in the future.



CITY COUNCIL AGENDA

NO. 12

DEPT.: City Manager

DATE: April 23, 2014

CONTACT: Scott D. Pickup, City Manager

AGENDA ITEM: Consideration of a request by the Lions Club to hold a community event on the Village Green on Sunday, May 18, 2014 from 10:30 a.m. to at 2:00 p.m.

FOR THE MEETING OF:

April 23, 2014

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the City Council approve the request for the Lions Club to hold a Community Event on the Village Green.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The City of Rye Lions Club has requested use of the Village Green for a “fun-filled” family Scavenger Hunt to be held on Sunday, May 18, 2014 from 10:30 a.m. to 3:00 p.m. The Lion’s Club is the oldest service organization in Rye: they support and donate to many Rye local organizations, participate in Rye community events, and work to support the blind and visually impaired. To allow for setup and cleanup activities, the Lion’s Club requests permission to use the Village Green from 8:30 a.m. to 2:00 p.m.



CITY COUNCIL AGENDA

NO. 13 DEPT.: City Manager's Office DATE: April 23, 2014
CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Consideration of a request by Jim Amico for the use of City streets for a Car Show Fundraiser on Saturday, May 17, 2014 from 10:00 a.m. to 4:00 p.m.

FOR THE MEETING OF:
April 23, 2014
RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Council consider granting the request.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:
Jim Amico is requesting permission to close a portion of Wappanocca Avenue and utilize the Highland municipal lot on Saturday, May 17, 2014 from 10:00 p.m. to 4:00 p.m. as a fundraiser for the Jarrid L. Amico Memorial Scholarship. The event would be a kid friendly "Car Show" with a DJ, music and food. The rain date for the event would be Sunday, May 18, 2014.



CITY COUNCIL AGENDA

NO. 14

DEPT.: City Manager

DATE: April 23, 2014

CONTACT: Scott D. Pickup

AGENDA ITEM: Consideration of a request by Colin Leslie for the use of City streets for the 8th Annual Colin Leslie Walk for Celiac Disease on Sunday, September 28, 2014 from 9:00 a.m. to 2:00 p.m.

FOR THE MEETING OF:

April 23, 2014

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council consider granting the request.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

Colin Leslie is requesting the Council approve the use of City streets for the 8th Annual Colin Leslie Walk for Celiac Disease on Sunday, September 28, 2014 from 9:00 a.m. to 2:00 p.m.

See attached letter from Colin Leslie and Cheryl Leslie, Co-Chairs of the Colin Leslie Walk.

COLIN LESLIE WALK for CELIAC DISEASE 2014

Taking A Step Toward Awareness

15 Hix Avenue
Rye, NY 10580

March 27, 2014

Mr. Scott Pickup
Rye City Manager
1051 Boston Post Rd. 3rd Fl.
Rye, NY 10580

Dear Mr. Pickup,

This is a request for the City of Rye to host the 8th annual Colin Leslie Walk for Celiac Disease on September 28, 2014. The purpose of this event is raise funds for celiac disease research while providing a fun day for celiac patients and their families that consists of a fundraising walk and a gluten free food vendor fair.

This event has been held at Rye High School in the past. However, since the Rye City School District is uncertain if the school construction will be completed by September 28th, we are proceeding with alternative plans to hold the event at Milton School. If Rye High School is finished by our proposed date, the School District has given us verbal approval to relocate back to the Rye High campus.

Enclosed you will find maps of our proposed walk route assuming that the event is held at Milton School. We have also enclosed proposed walk routes if the event moves back to Rye High School that are the same as those used in the past. Besides our fundraising walk, lunch and a gluten free food vendor fair would take place on school grounds.

Participants will arrive at the event by shuttle buses from an off-site parking lot. We hope to again use the lot at 411 Theodore Fremd Avenue.

This year's event will once again be sponsored by a 501(c)(3) non-profit organization, The Westchester Celiac Sprue Support Group. All proceeds will be donated to the Celiac Disease Center at Columbia University in New York City, also a 501(c)(3) non-profit organization. This Center provides state-of-the-art medical and nutritional services to patients with celiac disease.

We hope the plans for the 2014 Colin Leslie Walk for Celiac Disease are found acceptable by the City of Rye. We have also sent the plans to the Rye Police Department for their approval. If you have any questions or comments please contact us at 967-3592.

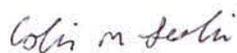
We look forward to hearing from you.

Thank you.

Sincerely,



Cheryl Leslie
Co-Chair



Colin Leslie
Co-Chair



Colin Leslie Walk for Celiac Disease

Starting Location: Milton School

Option 1 - Preferred Route

Leave Milton School heading toward Milton Road.

Take a left on Milton Road, continue and bear left onto Stuyvesant Avenue.

Walk down Stuyvesant Avenue to stop sign and take a left on Van Wagenen Avenue. Continue to stop sign and take a left on Forest Avenue.

Continue on Forest Avenue to Hewlett Avenue. Take a left to return to Milton School.

Total Distance: 1.8 miles



Colin Leslie Walk for Celiac Disease
Starting Location: Milton School
Option 2 – Second Choice

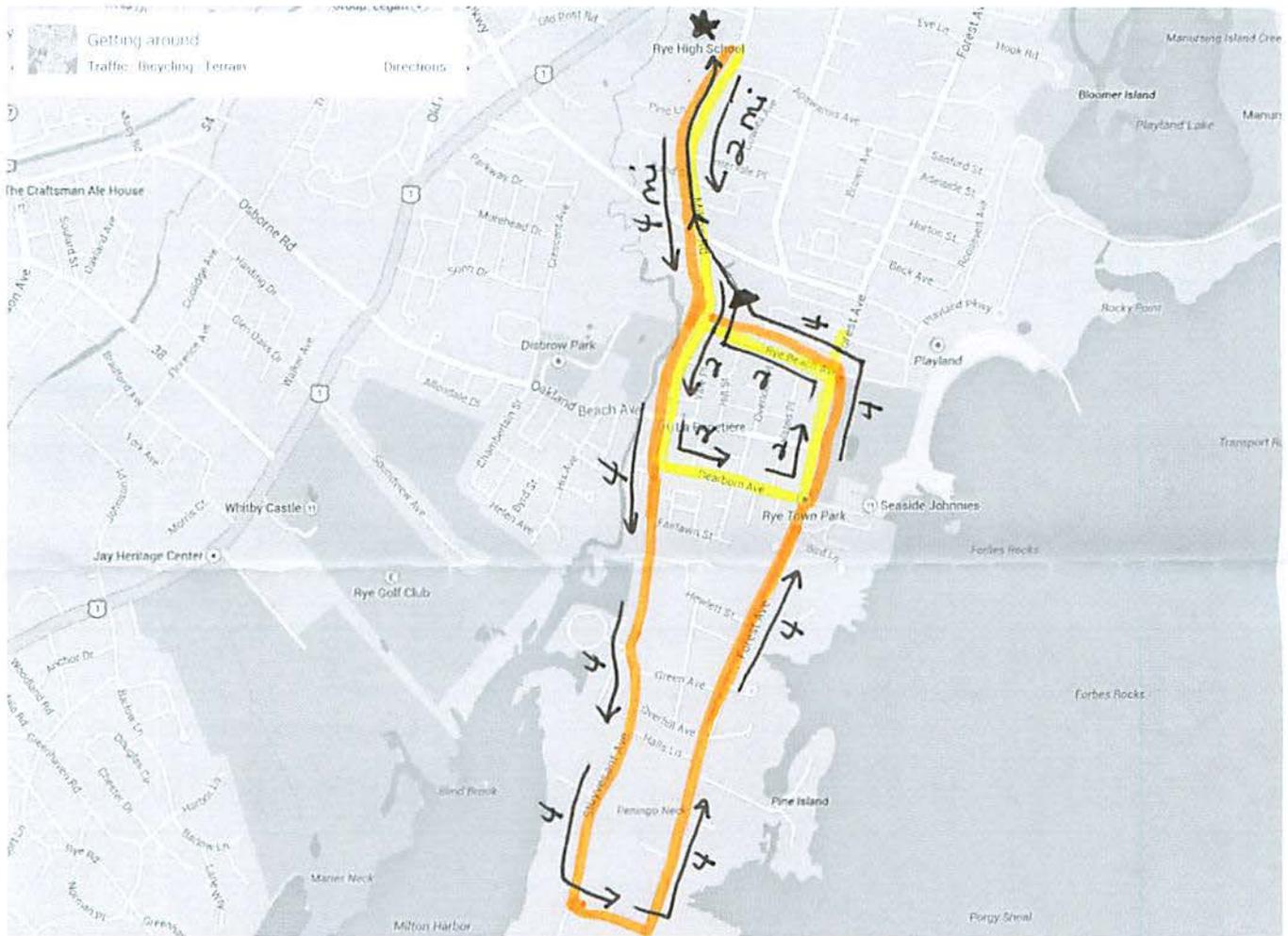
Leave Milton School heading toward Forest Avenue.

Take a left on Forest Avenue. Continue walking past Playland Parkway to Apawamis Avenue.

Take a left on Apawamis Avenue. Continue past traffic light to Milton Road. Take a left on Milton Road.

Continue walking past Playland Parkway to Hewlett Avenue. Take a left on Hewlett Avenue to return to Milton School.

Total Distance: 2.7 miles



Colin Leslie Walk for Celiac Disease

Starting Location: Rye High School Campus

If the Walk returns to the Rye High School campus, we are requesting permission to offer the walkers the choice of the same two walk routes used in past years.

Two Mile Walk:

Leave Rye High School heading down Milton Road towards Playland Parkway. Continue to Dearborn Avenue and take a left. Continue on Dearborn Avenue to Forest Avenue. Take a left. Continue to Rye Beach Avenue and take a left. At the end of Rye Beach Avenue take a right and continue back to Rye High School.

Four Mile Walk:

Leave Rye High School heading down Milton Road towards Playland Parkway. Continue and take a left onto Stuyvesant Avenue. Continue to Forest Avenue. Take a left. Continue to Rye Beach Avenue and take a left. At the end of Rye Beach Avenue take a right and continue back to Rye High School.



CITY COUNCIL AGENDA

NO. 14A

DEPT.: City Mayor

DATE: April 23, 2014

CONTACT: Mayor Joseph Sack

ACTION: Two appointments to the Sustainability Committee by the Mayor with Council approval.

FOR THE MEETING OF:

April 23, 2014

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council approve the appointments of Colleen Margiloff and Elizabeth Mirisola-Desmond to the Sustainability Committee.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: