

CITY OF RYE

NOTICE

There will be a regular meeting of the City Council of the City of Rye on Wednesday, February 1, 2017, at 7:30 p.m. in Council Chambers at City Hall. *The meeting will be preceded by a Workshop on Capital Projects beginning at 6:30 p.m.*

AGENDA

1. Pledge of Allegiance.
2. Roll Call.
3. General Announcements.
4. Issues Update/Old Business.
5. Public Hearing to amend the Rye City Code: (a) local law Chapter 133, "Noise", by amending Section §133-4, "Points and method for measuring intensity of sound" to regulate placement and noise of telecommunication devices; (b) local law Chapter 167, "Streets and Sidewalks", to add a new Article IV "Placement of Permanent Facilities in the Rights of Way", Sections §167-66 through §167-71, to regulate placement of devices in the right of way; and (c) local law Chapter 196, "Wireless Telecommunications Facilities", by amending Sections §196-3 through §196-8, §196-14, §196-17, §196-18, and §196-22 to regulate wireless facilities and structures regarding size, visual impact and permit process.
6. Consideration to set a Public Hearing for February 15, 2017 to amend local law Chapter 144, "Peddling and Soliciting", of the Rye City Code by amending Section §144-8, "Restrictions", Subsections (D) and (G) to give the City Council authorization to waive the authorized time restrictions and location of peddlers/solicitors in a public place.
7. Residents may be heard on matters for Council consideration that do not appear on the agenda.
8. Resolution to amend the Administrative Pay Plan.
Roll Call.
9. Authorize payment of the balance of the 2016/2017 Rye Neck Union Free School District taxes collected by the City to the School District.
Roll Call.
10. Consideration of a request by the Midland Elementary School PTO to approve a parade to precede the Midland Elementary School Fair on Saturday, May 13, 2017 from 9:00 a.m. to 10:15 a.m.
11. One appointment to the Traffic and Pedestrian Safety Committee for a three-year term, by the Mayor with Council approval.
12. Miscellaneous communications and reports.

13. New Business.

14. Adjournment.

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The next regular meeting of the City Council will be held on Wednesday, February 15, 2017 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.: City Council

DATE: February 1, 2017

CONTACT: Mayor Joseph A. Sack

AGENDA ITEM: Issues Update/Old Business

FOR THE MEETING OF:

February 1, 2017

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. 5

DEPT.: City Manager's Office

DATE: February 1, 2017

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Public Hearing to amend the Rye City Code: (a) local law Chapter 133, "Noise", by amending Section §133-4, "Points and method for measuring intensity of sound" to regulate placement and noise of telecommunication devices; (b) local law Chapter 167, "Streets and Sidewalks", to add a new Article IV "Placement of Permanent Facilities in the Rights of Way", Sections §167-66 through §167-71, to regulate placement of devices in the right of way; and (c) local law Chapter 196, "Wireless Telecommunications Facilities", by amending Sections §196-3 through §196-8, §196-14, §196-17, §196-18, and §196-22 to regulate wireless facilities and structures regarding size, visual impact and permit process.

FOR THE MEETING OF:

February 1, 2017

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: That the City Council set a Public Hearing to approve the changes in the City Code regarding telecommunications devices.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Local law Chapter 196, "Wireless Telecommunications Facilities" was adopted in 1997 with modifications in 2003. Due to the continuing evolution of telecommunications technology and demands, the recommendation is to make changes to Chapters 133, 167 and 196 of the Rye City Code to address telecommunications devices regarding size, visual impact, placement and permit process.

See attached Draft Local Laws.

SUMMARY OF MODIFICATIONS TO CODE OF ORDINANCES

Chapter 133: Noise

§ 133-1 Unnecessary noise prohibited.

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

§ 133-2 Prohibited acts. ***

§ 133-3 Permissible intensity of noise.

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

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

A. Maximum sound pressure [db(A)] shall be as follows:

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

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

A. Except for noise emanating from the operation of motor vehicles, the point at which the intensity of sound is to be measured shall be at a distance of 50 feet, except that noise from

(1) -air-conditioning units and pool filters at a distance of 10 feet.

(2) -stationary utility or communications facilities located on public property shall be measured at a distance of 50 feet, or, if less, the distance from the facility or its supporting structure to a sidewalk or the nearest private residential property line, but no less than 10 feet. For any such facilities, the measurements should include noise from that facility and all other stationary facilities located on or within 10 feet of the stationary facility or its supporting structure.

B. Measurement shall be made using a meter capable of measuring decibels and of a type meeting ANSI S1.4-1971, Type 2 standard. The measurement is to be made using a free-field microphone directed at the noise source.

PURPOSE: CURRENT LAW REQUIRES MEASUREMENT OF NOISE AT A SHORTER DISTANCE WHERE THE DEVICES IS LIKELY TO BE LOCATED IN A WAY THAT NOISE LEVELS WILL REACH PASSERBYS OR NEIGHBORS, AS OPPOSED TO THE RESIDENTS OR OCCUPANTS OF A BUILDING. THIS PROVISION RECOGNIZES THAT SOME UTILITY FACILITIES ARE LIKELY TO LOCATED IN A WAY THAT RAISES THE

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CONCERNS THAT LED TO THE “10 FOOT” STANDARD UNDER CURRENT LAW, AND SOME WILL NOT. THE AMENDMENTS WOULD ADOPT A SHORTER DISTANCE WHERE THE FACILITY IS NEAR RESIDENTIAL PROPERTIES OR PUBLIC WALKWAYS, AND USES THE LONGER DISTANCE FOR MORE REMOTE FACILITIES.

Chapter 167 – Street and Sidewalks

ADD A NEW ARTICLE VI - PLACEMENT OF PERMANENT FACILITIES IN THE RIGHTS OF WAY

167-66. Consent required for placement of permanent facilities. Except as specifically provided in this Code, or where a consent has been granted by the State, and no consent may be required by the City, any person that wishes to place permanent facilities in the rights of way must have a consent from the City, which consent, if issued after the date of the ordinance, must take the form of a franchise or license. Persons who own or control facilities in the rights of way used to provide cable services to end users must obtain a video franchise from the City as provided in Section 185, but a video franchise under Chapter 185 is not in lieu of the franchise or license described herein if facilities are placed in the rights of way to provide other services.

167.67. No waiver of police powers. No franchise or license may waive or restrict the City's exercise of its police powers. The grant of a right to use or occupy rights of way is not a waiver of the City's authority to control the time, place or manner of placement of the facilities or equipment of a licensee or franchisee, or the right to prohibit the placement of certain types of equipment that present a hazard to persons or property, or that may incommode the public or unduly interfere with use of the rights of way. Placement of wireless facilities in the rights of way will be subject to Chapter 196.

167.68. Effect of loss of utility status. A person that claims the right to use the rights of way as a utility pursuant to New York law loses its franchise if the status of the company changes, or the particular facility installed is not covered by the relevant provision of New York law.

167.69. Consent indivisible. No person may subdivide, sublease or grant any other person the right to install facilities in the rights of way, including, without limitation, where the other person's facilities are enclosed entirely within the facilities of a person authorized to occupy the rights of way

167.70. Exceptions to requirement for franchise or license. Notwithstanding the foregoing, City may permit a person holding a license or franchise issued by the City under this Section to allow another person to place facilities in the rights of way within a base station (as defined in Chapter 196) after the effective date of this provision where:

(1) The base station is as approved by the City as part of the initial authorization under Chapter 196, and the placement does not involve an increase in the size or total volume of the base station;

(2) The base station is wholly under the control and management of person holding the license or franchise, and that person is liable for all acts or omissions, and all harms associated with the base stations and all its components whether the same are its acts or omissions, or the acts or omissions of an owner of any component of the base station;

(3) The person holding the franchise or license must warrant and agree that it will not permit the other person to take any action in the rights of way with respect to the base station or

its components, including but not limited to, installing, physically modifying, maintaining the facilities such person owns; all such activities shall be the sole responsibility of the person holding the franchise or license.

(4) The person for on whose behalf equipment has been installed must acknowledge and agree, in a form acceptable to the City Attorney

(i) that the City has not granted it a franchise or consent to be in the Rights of Way for any purpose;

(ii) that it understand and is bound by Franchisee's representations in the Sections (1)-(3);

(iii) that it shall have no rights or claims against the City of any sort related to its facilities, but shall be jointly and severally liable for any acts or omission of the holder of the license or franchise, or its own acts and omissions that result in any harms to the City or to the public;

(iii) that City may treat any equipment owned by such entity as if it were owned by the person holding the franchise or license for all purposes (including but not limited to removal and relocation).

(iv). that as long as its equipment is in the rights of way, in lieu of a franchise or consent fee, it will pay the fee required by Section 167.71, or cause the person holding the franchise or license to pay on its behalf.

167.71. Compensation for use of the rights of way. Unless a franchise or license provides otherwise:

(1) For an person that has facilities in the rights of way and does not itself hold a franchise or license authorizing placement of facilities in the rights of way to provide those services: 5% of gross revenues derived from the operation of its facilities within the City.

(2) For an entity that operates as a provider of service to end users or entities other than end users and which holds a franchise or license authorizing the use of the rights of way to provide that service, the amount specified in the franchise or license, or if no amount is specified, and a fee may be imposed, the amount specified in Section 3.6.1

(3) An applicant may be required to bear costs associated with negotiating and issuing a franchise or license.

(4) City may waive the fee or impose a different fee where the fee provided under subsection (1) cannot reasonably be applied or is not reasonable in light of the right of way use.

Chapter 196

WIRELESS TELECOMMUNICATIONS FACILITIES

GENERAL REFERENCES

§ 196-1. Purpose and legislative intent.

The Telecommunications Act of 1996 affirmed the City of Rye's authority concerning the placement, construction and modification of wireless telecommunications facilities. The City Council finds that wireless telecommunications facilities and related equipment may pose a unique hazard to the health, safety, public welfare and environment of the City and its inhabitants, and may also have an adverse visual impact on the community, its character and thus the quality of life in the City. The intent of this chapter is to ensure that the placement, construction or modification of wireless telecommunications facilities and related equipment is consistent with the City's land use policies and Zoning Code¹; to minimize the negative and adverse visual impact of wireless telecommunications facilities; to assure a comprehensive review of environmental impacts of such facilities; to protect the health, safety and welfare of the City of Rye; and to encourage shared use of wireless telecommunication facilities.

§ 196-2. Title.

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

§ 196-3. Definitions; word usage.

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

OVERALL GOAL FOR AMENDMENTS: CONFORM TO FEDERAL DEFINITIONS SO THAT WHEN YOU USE A TERM, YOU ARE USING IT IN THE SAME WAY AS IT IS

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

COMMONLY USED – THE GOAL IS TO ENSURE THAT AS FAR AS POSSIBLE, YOU ARE USING TERMINOLOGY CONSISTENT WITH FEDERAL REQUIREMENTS

ACCESSORY FACILITY OR STRUCTURE — An accessory facility or structure serving or being used in conjunction with a telecommunications facility and located on the same property or lot as the telecommunications tower, including but not limited to utility or transmission equipment storage sheds or cabinets.

APPLICANT — Includes any individual, corporation, estate, trust partnership, joint-stock company, association of two or more persons, limited liability company or entity submitting an application to the City of Rye for a special use permit for a telecommunications facility.

APPLICATION — The form approved by the Council, together with all necessary and appropriate documentation that an applicant submits in order to receive a special use permit for a telecommunications facility.

ANTENNA — A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals. Such waves shall include, but not be limited, to radio, television, cellular, paging, personal telecommunications services (PCS) and microwave telecommunications.

[REDEFINE TO FOLLOW FED DEFINITIONS: ADD FED DEFINITIONS FOR TOWER (A SUPPORTING STRUCTURE PRIMARILY DESIGNED FOR WIRELESS FACILITIES) and BASE STATION (ALL THE OTHER EQUIPMENT ASSOCIATED WITH A WIRELESS FACILITY, AND THE STRUCTURE TO WHICH EQUIPMENT IS ATTACHED)]

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

CITY — The City of Rye, New York.

COLLOCATION — The use of the same telecommunications tower or structure to carry two or more antennas for the provision of wireless services by two or more persons or entities.

[REDEFINE TO FOLLOW FEDERAL DEFINITIONS]

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

COMPLETED APPLICATION — An application that contains all information and/or data necessary to enable the Council to evaluate the merits of the application and to make an informed decision with respect to the effect and impact of the telecommunications tower on the City in the context of the permitted land use for the particular location requested. [REDEFINE TO FOLLOW FEDERAL RULES – IT IS AN APPLICATION THAT INCLUDES ALL INFORMATION THAT IS REQUIRED BY THE CITY ON AN APPLICATION FORM OR BY ORDINANCE]

COUNCIL — The City Council of the City of Rye, which is the officially designated agency or body of the community to whom applications for a special use permit for a telecommunications facility must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or revoking special use permits for telecommunications facilities. The Council may, at its discretion, delegate or designate other official agencies of the City to accept, review, analyze, evaluate and make recommendations to the Council with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for telecommunications facilities.

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

[ADD DEFINITION OF ELIGIBLE FACILITIES REQUEST, TO INCORPORATE CHANGES THAT YOU MUST APPROVE UNDER FEDERAL LAW]

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

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

FREESTANDING TOWER — A tower that is not supported by guy wires and ground anchors or other means of attached or external support. [REPLACE THIS WITH THE FEDERAL DEFINITION OF TOWER; ADD A DEFINITION OF UTILITY POLE. YOU MAY WISH TO ALLOW PLACEMENT OF FACILITIES ON EXISTING UTILITY POLES; YOU MAY NOT WANT TO ALLOW TOWERS IN THE ROW. A TOWER IS DESIGNED TO SUPPORT WIRELESS FACILITIES. A UTILITY POLE IS DESIGNED FOR MULTIPLE USES AND IS AVAILABLE TO ANY UTILITY AT STATE REGULATED RATES]

HEIGHT — When referring to a tower or structure, the distance measured from the preexisting grade level to the highest point on the tower or structure, even if said highest point is an antenna.

NIER — Nonionizing electromagnetic radiation.

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

PERSONAL WIRELESS FACILITY — See definition for “telecommunications tower.” [STRIKE]

PERSONAL WIRELESS SERVICES or PWS or PERSONAL TELECOMMUNICATIONS SERVICE or PCS (or any functionally equivalent service or technology that may be developed in the future) — Shall have the same meaning as defined and used in the 1996 Federal Telecommunications Act. [WE WOULD PROPOSE REGULATING ALL WIRELESS FACILITIES ABOVE A CERTAIN SIZE INCLUDING ALL PERSONAL WIRELESS FACILITIES]

SITE — See definition for “telecommunications tower.”

SPECIAL USE PERMIT — The official document or permit by which an applicant is allowed to construct and use a telecommunications tower as granted or issued by the City.

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

WIRELESS TELECOMMUNICATIONS FACILITY or TOWER or SITE or PERSONAL WIRELESS FACILITY (or any functionally equivalent service or technology that may be developed in the future) — A structure or location designed or intended to be used or used to support antennas. It includes without limit antennas applied to the facade of a building or roof-mounted antennas, freestanding towers, guyed towers, monopoles and similar structures that employ camouflage technology, and including, but not limited to, structures such as a church steeple, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It is a facility or structure intended for transmitting and/or receiving radio, television, cellular, paging, personal telecommunications services or microwave telecommunications, but excluding those used exclusively for fire, police and other dispatch telecommunications, or exclusively for private radio and television reception and private citizens' bands, amateur radio and other similar telecommunications. [THIS SHOULD BE ALTERED SO THAT IT IS CONSISTENT WITH FEDERAL DEFINITIONS. IT IS MEANT TO BE A COLLECTIVE WAY OF REFERRING TO ALL THE COMPONENTS THAT MAKE UP A WIRELESS FACILITY: THE BASE STATION, THE ASSOCIATED POWER SUPPLIES AND CABINETS AS WELL AS A SUPPORTING STRUCTURE DESIGNED OT APPROVED FOR PLACEMENT OF WIRELESS]

TELECOMMUNICATIONS STRUCTURE — Any structure used in, associated with or necessary for the provision of wireless services and as described in the definition of wireless telecommunications facility. [THIS WILL NOT BE NEEDED]

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

ADD A DEFINITION FOR CARRIERS ON WHEELS [these are temporary wireless facilities that are brought in on trucks to provide additional coverage that may be required for major events. They are removed immediately after the event, by definition, and are subject to special treatment under federal law.]

§ 196-4. Policy and goals for special use permits. [NOTE: TERMS WILL NEED TO BE ALTERED TO CONFORM TO DEFINITIONS]

In order to ensure that the placement, construction and modification of wireless telecommunications facilities conforms to the City's purpose and intent of this chapter, the Council creates a special use permit for ~~a telecommunications facility. As such, the Council adopts a policy with respect to a special use permit for a~~ wireless telecommunications facility~~s~~ for the purpose of achieving the following goals:

- A. Implementing an application process for person(s) seeking a special use permit for a wireless telecommunications facility.

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B. Establishing a policy for examining an application for and issuing a special use permit for a wireless telecommunications facility that is both fair and consistent.

C. Establishing reasonable time frames for granting or not granting a special use permit for a wireless telecommunications facility, or recertifying or revoking the special use permit granted under this chapter.

D. Promoting and encouraging, wherever possible, and where it will result in the least overall visual impact for residential dwelling units, the sharing and/or collocation of a wireless telecommunications facility among service providers.

E. Promoting and encouraging, wherever possible, the placement of a wireless telecommunications facility in such a manner as to cause minimal disruption to the land, property, buildings and other facilities adjacent to, surrounding and in generally the same area as the requested location of such a wireless telecommunications facility and to minimize adverse aesthetic impacts to the community.

§ 196-5. Special use permit application and other requirements. [OLD PROVISIONS MOVED DOWN SO THAT THIS SECTION ADDRESSES THE STANDARDS AND SHOWINGS FOR PLACEMENT – AND WHEN A PERMIT IS OR IS NOT REQUIRED]

A. A person who installs facilities pursuant to this section must comply with all safety codes; comply with requirements for RF emissions; and must paint and maintain facilities to minimize visibility of the wireless facilities.

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B. The following do not require zoning approvals, except where the same are on or affect a historic property, or an environmentally sensitive area. Requirements that may apply to the underlying structure to which a facility is to be attached continue to apply.

1. Ham radio/television/wireless Internet antennas installed by end users that meet federal size standards.

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2. Wireless facilities that are less than 1 cu ft. in size, placed on existing structures without increasing the physical dimensions of the existing structures. The "cubic footage" takes into account all the elements of the wireless facility (including meters and power supplies required, if any).

Commented [1]: Note: wireless facilities installed by Cablevision are about 1/2 cu. ft in size

3. Wireless facilities placed on existing, approved towers on private property, or public property off the right of way where the installation does not result in a substantial change in the physical dimensions of the tower.

Commented [2]: This exemption goes beyond what is required by federal law. It only applied to towers and not to other property.

4. Wireless facilities placed on the rooftop of non-residential structures; that are at least 25 feet from any residential unit; and that are not visible from the street.

5. Wireless facilities within existing structures (other than historical properties) that are not visible from outside the structure and do not change the physical dimensions or appearance of the structure within which they are placed.

6. Wireless facilities placed on property owned or controlled by the City, other than Rights of Way.

7. Carriers on wheels.

8. Routine maintenance, or replacement of elements of a facility that do not change the dimensions or visibility of a facility.

C. For eligible facilities requests subject to 47 USC 1455, a conditional special use permit will be issued.

(1) A conditional special use permit may be issued administratively by the Zoning Administrator. The conditional use permit shall specifically provide that it is not being issued at the direction of the federal government and without the consent of the City, and shall be of no further force and effect when the permit for the underlying facility expires, or the federal law changes so that the permit as issued is no longer required.

(2) An application must be submitted containing such information as the Zoning Administrator may require. The application must contain at least the information required to permit the Zoning Administrator to determine whether the application is an eligible facilities request, including the underlying approval for the existing tower and base station and any approved modifications to the same where the modifications were approved prior to February 22, 2012, and detailed information about the tower and base station as the same exist on the date of the application.

(3) The application shall be denied if it is not an eligible facilities request. If an application is denied because it is determined that it is not eligible for a permit under Section 6409, the applicant may request that the application be treated as a request for special permit by submitting all the information required for a special permit within ten (10) days of the denial of application submitted under Section 6409.

D. All other wireless facility installations (including modifications) require a special use permit.

(1) Special use permits may be granted where applicant shows:

a. The facility proposed is not being built speculatively (that is, there is a customer for the facility)

b. The applicant and any entity whose facilities would be included in the installations has all the authorizations required to place the facilities from the state, or the City, or the owner of the property.

c. The facility is designed and placed to minimize the visual impact on the community.

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d. if Applicant claims the status of a utility under New York law, it must show that the facility is necessary for the provision of services, which showing must include a showing that it is the least intrusive alternative for providing service. If applicant claims a right as a provider of wireless services or facilities under Section 332, it must show that absent approval, there will be a prohibition in the provision of wireless services within the meaning of federal law.

(2) City may approve a special use permit without the showing required by Section D.1 where the facility is not located in or does not affect historic properties or environmentally sensitive areas and the facility is:

a. A concealed facility whose size, proportions and dimensions are such that it would not be apparent to a casual observer that the facility is a wireless facility; or the facility is

b. Placed or shielded in such a way that the facility is not visible to surrounding properties

c. Notwithstanding the foregoing, City may require the showing under Section D.1.d if the proposal for the wireless facility requires a change in an existing building that the City determines substantially changes the size, proportions and dimensions of the building within which it is located

E. Demonstration of least intrusive alternative.

(1) As part of showing that it has proposed the least intrusive alternative for placement, an applicant is required to show that

a. It is installing concealed facilities to the extent possible; and

b. It is otherwise installing facilities in the highest priority locations that are available and necessary to the provision of service or to avoid a prohibition.

(2) The highest priority locations are:

a. Existing towers serving Rye.

b. Structures off the rights of way that have existing wireless facilities on rooftops or on building exteriors, including municipally-owned structures. (not including structures listed in Section 196-5.B(1)-(2)).

(3) Other municipally-owned property (other than the rights of way) where service can be provided using an existing structure or a replacement structure of similar height and design; or a new structure whose height does not exceed 40 feet.

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Commented [3]: Note: this may allow those facilities to become more visible.

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Commented [4]: Note that this height limitation is significant, and limits the utility of this requirement.

(4) An applicant is further required to show, that, as to other facilities that are necessary to the provision of service, or that are necessary to avoid a prohibition, to the extent feasible:

a. It has devised a solution that will minimize visibility of the facilities particularly from residential units, and under any modification that could be made to that installation as of right if granted; and

b. It has proposed facilities that are designed to be consistent with the overall characteristics of the area where the facilities are located; and

c. It has minimized the new structures proposed.

d. In considering the visibility of facilities, City may consider the mass and size of the facilities, the scale of the facilities (or the effect of the placement on the mass, size and scale of structures to which or within which the facilities may be attached or concealed) , and any other factor that may affect the impact on the community. It may consider the elements of a wireless facility separately, or collectively, and may require a showing the visibility of each element of the wireless facility has been minimized.

(5) The City may approve or require placement in a location that is not the highest priority where the record shows a proposed installation at a different location will result in less impact on the community.

(6) In considering whether a proposal represents the least restrictive alternative, the City will consider the impact of a planned project as a whole, and may consider the impact if it is likely that others providers of wireless facilities or services may require similar facilities.

§ 196-6. Special use permit, and Special Conditional Use Permit Application Requirements

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- A. All applicants for a special use permit for a wireless telecommunications facility or any modification of such facility shall comply with the requirements set forth in this section. In addition to the information required by Section 196-5.C., an applicant for a special conditional use permit must comply with the requirements of subsections 196-6.B-D; E (2)-(6),(10), (14)-(18) and (22); G; H; and where the facilities that are being modified are subject to concealment elements, the visual impact analysis required by subsections I-J so that the City may determine whether the concealment elements are defeated.
- B. An application for a special use permit for a wireless telecommunications facility shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Council, any false or misleading statement in the

application may subject the applicant to denial of the application without further consideration or opportunity for correction.

C. Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the Council.

D. The applicant shall include a statement in writing that:

(1) The applicant's proposed wireless telecommunications facility will be maintained in a safe manner and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the Council in writing, as well as all applicable and permissible local codes, ordinances and regulations, including any and all applicable county, state and federal laws, rules and regulations.

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(2) The construction of the wireless telecommunications facility is legally permissible, including but not limited to the fact that the applicant is authorized to do business in New York State.

E. No wireless telecommunications facility ~~or tower or other tall structure~~ shall be installed or constructed ~~for the purpose of providing wireless telecommunications service~~ until a plan of the site is reviewed and approved by the Council and, in situations involving towers, until the site plan is reviewed and approved by the Planning Commission. All applications for the construction or installation of a new wireless telecommunications facility shall be accompanied by a report containing the information hereinafter set forth. The report shall be signed by a licensed professional engineer registered in the state and shall contain the following information. Where this section calls for certification, such certification shall be by a qualified New York State licensed professional engineer acceptable to the City, unless otherwise noted. The application shall include, in addition to the other requirements for the special use permit, the following information:

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(1) Documentation that shows applicant satisfies the requirements of Section 196-5.D-E. ~~demonstrates the need for the wireless telecommunications facility to provide service primarily within the City.~~

(2) Name and address of the person preparing the report.

(3) Name and address of the property owner, operator and applicant, to include the legal form of the applicant. Name and address of any person who will own equipment associated with the wireless facility.

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(4) Postal address and Tax Map parcel number of the property.

(5) Zoning district or designation in which the property is situated.

(6) Size of the property stated both in square feet and lot line dimensions and a diagram showing the location of all lot lines where the facility is proposed to be located outside of the right of way, and within the rights of way, the location of the proposed facility in relation to the right of way, pedestrian and non-motorized vehicle pathways and cross-

walks, and the location in relation to driveways and residential structures on the same right of way and within 750 feet.

- (7) Location of all residential structures within 750 feet.
- (8) Location of all habitable structures within 750 feet.
- (9) Location of all structures on the property which is the subject of the application, or for the right of way, within 250 feet of the proposed facility.
- (10) Location, size and height of all proposed and existing ~~antennas~~ wireless facilities and all appurtenant structures.
- (11) Type, size and location of all proposed and existing landscaping.
- (12) The number, type and design of the wireless telecommunications facility(s) antenna(s) proposed and the basis for the calculations of the wireless telecommunications facility's capacity to accommodate multiple users.
- (13) The make, model and manufacturer of the wireless facility and antenna(s).
- (14) A description of the proposed wireless facility and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting. For a modification to a facility, applicant must describe precisely any change in physical dimensions to any portion of the facility and describe in detail any additional equipment installed as part of the modification (including, but not limited to, meters, powers supplies, cabling and other structures).
- (15) The frequency, modulation and class of service of radio or other transmitting equipment.
- (16) Transmission and maximum effective radiated power of the antenna(s).
- (17) Direction of maximum lobes and associated radiation of the antenna(s).
- ~~(18) —The applicant's proposed wireless facility maintenance and inspection procedures and related system of records.~~
- (18) Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC. The certifying engineer need not be approved by the City.
- ~~(20) —Certification that the proposed antenna(s) will not cause interference with existing telecommunications devices. The certifying engineer need not be approved by the City.~~
- (21) A copy of the FCC license applicable for the use of the wireless telecommunications facility, if any, and a copy of any certificate issued by the State of New York for the facility; and proof that applicant and any person who will own facilities

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associated with the proposed wireless facility are authorized to place the facilities at the location proposed.

(22) Certification that a topographic and geomorphologic study and analysis has been conducted and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed wireless telecommunications tower on the proposed site. The certifying engineer need not be approved by the City.

(23) Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites.

(24) The applicant shall disclose, in writing, any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new wireless telecommunications facility that it constructs.

(25) The applicant shall provide a notarized affidavit that either the proposed installation meets all laws, codes and ordinances or that it meets the same except as specifically listed on said affidavit.

- F. In the case of a new wireless telecommunications facility, the applicant shall be required to submit a report demonstrating its efforts to secure shared use of existing wireless telecommunications facility(s). Copies of written requests and responses for shared use shall be provided to the Council.
- G. Certification that the wireless telecommunications facility and attachments both are designed and constructed (“as built”) to meet all county, state and federal structural requirements for loads, including wind and ice loads.
- H. After construction and prior to receiving a certificate of compliance, certification that the wireless telecommunications facility and related facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- I. The applicant shall submit a completed long form EAF and a completed Visual EAF addendum. The Council may require submission of a more detailed visual analysis based on the results of the Visual EAF addendum. Applicants are encouraged to seek preapplication meetings with the City Council to address the scope of the required visual assessment.
- J. A visual impact assessment shall be provided with each application which shall include:
 - (1) A Zone of Visibility Map, which shall be provided in order to determine locations where the facility may be seen.
 - (2) Pictorial representations of before and after views from key viewpoints to be determined by Council or the City’s Board of Architectural Review, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any

other location where the site is visible to a large number of visitors or travelers. The City will provide guidance concerning the appropriate key sites at a preapplication meeting.

(3) An assessment of the visual impact of the facility base, guy wires and accessory buildings from abutting and adjacent properties and streets.

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- K. The applicant shall identify any concealment elements proposed for the wireless facility, in a manner approved by the Council, ~~demonstrate and provide, in writing and/or by drawing, how it shall effectively screen from view its proposed wireless telecommunications facility base and all related facilities and structures, subject to Council approval.~~
- L. ~~All utilities serving any wireless telecommunications facility shall be installed underground, embedded in existing construction or otherwise shielded from view and in compliance with all laws, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate. The Council may waive or vary the requirements of undergrounding installation of utilities whenever, in the opinion of the Council, such variance or waiver shall not be detrimental to the health, safety, general welfare or environment, including the visual and scenic characteristics of the area.~~
- M. ~~All wireless telecommunications facilities and accessory facilities applications shall contain a demonstration that the facility shall be sited so as to have the least adverse visual impact on the environment and its character, and the residences in the area of the wireless telecommunications facility site. The application shall also include appropriate information addressing the cumulative visual impact of future collocations by the applicant or other telecommunication service providers.~~
- N. Where possible, for wireless facilities located outside of the rights of way wiring and other components shall be located within buildings. Wireless telecommunications facilities installed on the exterior of existing buildings/structures shall be integrated into the design of such buildings/structures. The intent of this provision is to make the installation invisible or indistinguishable from other existing architectural features. Both the wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and with the natural surroundings. Where possible, for facilities in the rights of way, when existing utility poles are replaced, the wireless facility will be placed within a pole approved by the City and the utility.
- O. An access road and parking to assure adequate emergency and service access shall be provided, should such be deemed necessary by the Council. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

P. ~~Every wireless~~ ~~A person who holds a special use permit for a wireless telecommunications facility shall be constructed, operated, maintained, repaired, modify-modified or restored the permitted wireless telecommunications facility~~ in strict compliance with ~~the then-current version of~~ all ~~current~~ technical, safety and safety-related codes adopted by the City, county, state or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

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Q. ~~Every person constructing or owning a wireless facility~~ ~~A holder of a special use permit granted under this chapter~~ shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or law and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.

R. The Council intends to be the lead agency, pursuant to SEQRA. The Council shall conduct a review of the proposed project in combination with its review of the application under this chapter.

S. An applicant shall submit to the Building Inspector the number of completed applications determined to be needed at the preapplication meeting. A copy of the notification of application shall be provided to the legislative body of all adjacent municipalities and to the Westchester County Planning Board.

T. If the applicant is proposing the construction of a tower or installation on an ~~existing~~ building/structure, the applicant shall examine the feasibility of designing the installation to accommodate future demand for at least two additional commercial applications, e.g., future collocations. The scope of this examination shall be determined by the Council. The wireless telecommunications facility shall be structurally designed to accommodate at least two additional antenna arrays equal to those of the applicant and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the wireless telecommunications facility is not technologically feasible, or is commercially impracticable and creates an unnecessary and unreasonable burden, based upon:

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- (1) The number of FCC licenses foreseeably available for the area.
- (2) The kind of wireless telecommunications facility site and structure proposed.
- (3) The number of existing and potential licenses without wireless telecommunications facility spaces/sites.
- (4) Available space on existing and approved telecommunications towers.

U. Unless waived by the Council, there shall be a preapplication meeting required for every special use permit. The purpose of the preapplication meeting will be to address issues which will help to expedite the review and permitting process. Where the application is for the shared use of an existing ~~telecommunications tower(s) or other high structure~~support structure, the applicant can seek to waive any application requirements that may not be applicable. At the preapplication meeting, the waiver requests, if appropriate, will be decided by the City. Costs of the City's consultants to prepare for and attend the preapplication meeting will be borne by the applicant.

~~V. The holder of a special use permit shall notify the City of any intended modification of a wireless telecommunications facility and shall apply to the City to modify, relocate or rebuild a wireless telecommunications facility.~~

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

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1. No towers are permitted except as part of a concealed facility. .

2. No wireless facilities are permitted within underground areas except concealed facilities.

3. A new or replacement supporting structure, other than a concealed facility, street lighting or traffic control structure may not be approved that is greater in height from ground level than the average height of existing distribution utility poles in the same area. No extension of an existing structure (other than street lighting or traffic control structures) to permit installation of a wireless facility may be approved that unless the addition complies with subsection 5 and increases the height of the supporting structure by the lesser of 20% or six feet.

4. All structures associated with a wireless facility (including meters) must be placed on a pole with the lowest edge at 8 feet.

5. All structures mounted to the side of a structure in the right of way, other than in the communications space, must be flush-mounted, sized and painted so that the facility to the extent possible the facility is concealed;

6. All facilities mounted to the top of a pole must be designed so that the facilities form a continuous line with the pole, and for concealment purposes, are no more than 10% greater in diameter than the pole itself.

7. In placing facilities, following rules apply:

a. Facilities should be at least 25 feet from any residential structure, and located so that the facilities are not directly in front of any front window or door of a residential structure.

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b. Locations that are less visible from a residential structure are preferred over locations that are more visible.

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§ 196-6. Location of wireless telecommunications facilities.

~~(1) — Priority of location. Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities, including towers or other tall structures, in accordance with the following priorities, Subsection being the highest priority and Subsection A(1)(c) being the lowest priority:~~

~~(a) — On existing tall structures or telecommunications towers.~~

~~(b) — Collocation on a site with existing telecommunications towers or structures.~~

~~(c) — In commercially zoned areas along Interstate 95, Interstate 287 or railroad tracks.~~

~~(d) — In nonresidential areas.~~

~~(e) — On other property in the City.~~

~~1. — (2) If the proposed property site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site. (3) — An applicant may not bypass sites of higher priority by stating the site presented is the only site leased or selected. An application shall address collocation as an option, and, if such option is not proposed, the applicant must explain why collocation is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting collocation shall not be a valid basis for any claim of commercial impracticability or hardship. (4) — Notwithstanding the above, the Council may approve any site located within an area in the above list of priorities, provided that the Council finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants.~~

~~2. —~~

~~B. — The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.~~

~~C. — The applicant shall, in writing, identify and disclose the number and locations of any additional sites that the applicant has, is or will be considering, reviewing or planning for wireless telecommunications facilities in the City, and all municipalities adjoining the City, for a two-year period following the date of the application.~~

~~D.—Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Council may disapprove an application for any of the following reasons:~~

- ~~(1)—Conflict with safety and safety-related codes and requirements.~~
- ~~(2)—Conflict with traffic needs or traffic laws or definitive plans for changes in traffic flow or traffic laws.~~
- ~~(3)—Conflict with the historic nature of a neighborhood or historical district.~~
- ~~(4)—The use or construction of a wireless telecommunications facility which is contrary to an already stated purpose of a specific zoning or land use designation.~~
- ~~(5)—The placement and location of a wireless telecommunications facility which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the City or employees of the service provider or other service providers.~~

§ 196-7. Shared use of towers.

- ~~A.—Location of antennas on preexisting structures shall be considered and preferred. Shared use of existing telecommunications towers or other existing structures shall be preferred by the City, as opposed to the proposed construction of new telecommunications towers. Where such shared use is unavailable, the applicant shall submit a comprehensive report inventorying existing towers and other appropriate structures within four miles of any proposed new tower site, unless the applicant can show that some other distance is more reasonable, and outlining opportunities for shared use of existing facilities and the use of other preexisting structures as a preferred alternative to new construction.~~
- ~~B.—An applicant intending to share use of an existing telecommunications tower or other tall structure shall be required to document the intent of the existing owner to share use.~~
- ~~C.—In the event that an application to share the use of an existing telecommunications tower does not increase the height of the telecommunications tower, the Council shall waive such requirements of the application required by this chapter as may be for good cause shown.~~
- ~~D.—Such shared use shall consist only of the minimum antenna array technologically required to provide service within the City unless good cause is shown.~~

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§ 196-8. Height of wireless telecommunications facilities.

- A.** The applicant must submit documentation justifying to the Council the total height of any wireless telecommunications facility and/or antenna and the basis therefor. Such justification shall be to provide service within the City, to the extent practicable, unless good cause is shown.
- B.** Wireless telecommunications facilities shall be no higher than the minimum height necessary. Unless waived by the Council upon good cause shown, the maximum height of facilities located outside the rights of way shall be 100-90 feet, based on three collocated antenna arrays and ambient tree height of 70 feet.

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C. The maximum height of any wireless telecommunications facility and attached antennas constructed after the effective date of this chapter shall not exceed that which shall permit operation without artificial lighting of any kind in accordance with municipal, county, state and/or any federal law and/or regulation.

§ 196-9. Visibility of facilities.

A. Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.

B. ~~Telecommunications towers and facilities~~ Except where inconsistent with concealment elements, wireless facilities shall be of a galvanized finish, or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Council and the Board of Architectural Review, and shall be maintained in accordance with the requirements of this chapter.

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C. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within 1,500 feet of all property lines of the parcel on which the wireless telecommunications facility is located.

§ 196-10. Security of facilities.

All wireless telecommunications facilities ~~and antennas~~ shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. Specifically:

A. Where possible, all wireless facilities antennas, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; and

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B. To the extent possible, wireless facilities shall be installed so that powered elements ~~Transmitters and telecommunications control points must be installed such that they~~ are readily accessible only to persons authorized to operate or service them.

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§ 196-11. Signage.

Unless the City determines that the signage required under this section would be inconsistent with minimizing visual impact, ~~W~~ wireless telecommunications facilities shall contain a sign no larger than four square feet to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point of the site. No other signage, including advertising, shall be permitted on any wireless telecommunications facilities, antennas, antenna supporting structures or antenna towers, unless required by law, or unless the signage is part of a concealment element. Signs shall be approved by the Board of Architectural Review.

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

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A. All proposed ~~telecommunications towers and associated equipment towers~~ shall be set back from abutting parcels, recorded rights-of-way and road and street lines a distance sufficient to substantially contain on site all ice-fall or debris from a tower or tower failure and to preserve the privacy and sanctity of any adjoining properties.

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B. ~~Freestanding wireless telecommunications towers~~, other than towers placed on an existing structure shall be setback from any property line at least a distance equal to the height of the facility plus 10 feet, or the existing setback requirement of the underlying zoning district, whichever is greater. Further, any accessory structure shall be located so as to comply with the minimum zoning setback requirements for the principal building on the property on which it is situated.

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C. Where a wireless facility ~~the facility~~ involves an ~~collocation or attachment~~ to an existing building or structure other than a structure in the rights of way, the facility, including but not limited to antennas, accessory structures, and/or other appurtenances, shall be setback from any property line the distance of the setback requirement of the underlying zoning district plus 10 feet.

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

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A. The Council may hire any consultant and/or expert necessary to assist the Council in reviewing and evaluating the application and any requests for recertification.

B. An applicant shall deposit with the City funds sufficient to reimburse the City for all reasonable costs of consultant and expert evaluation and consultation to the Council in connection with the review of any application. The initial deposit shall be \$7,500 for a facility application and \$5,000 in the case of collocation. These funds shall accompany the filing of an application, and the City will maintain a separate escrow account for all such funds. The City's consultants/experts shall bill or invoice the City no less frequently than monthly for its services in reviewing the application and performing its duties. If at any time during the review process the balance of this account falls below \$2,500, additional funds must be submitted to the City to bring the balance of the account to \$5,000, or in the case of collocation, \$5,000, or upon request from the applicant, a lesser amount to be set by the City Council, before any further action or consideration is taken on the application. In the event that the amount held in escrow by the City is more than the amount of the actual billing or invoicing, the difference shall be promptly refunded to the applicant.

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

§ 196-14. Existing Facilities ~~ceptions from special use permit.~~

- ~~A. No person shall be permitted to site, place, build, construct or modify or prepare any site for the placement or use of a wireless telecommunications facility as of the effective date of this chapter without having first obtained a special use permit for a wireless telecommunications facility. Notwithstanding anything to the contrary in this section, no special use permit shall be required for those exceptions noted in the definition of wireless telecommunications facility, such as those used exclusively for fire, police and other dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.~~
- ~~B. New construction, including routine maintenance on an existing wireless telecommunications facility, shall comply with the requirements of this chapter.~~
- ~~C.A. All wireless telecommunications facilities existing on or before the effective date of this chapter shall be allowed to continue as they presently exist; provided, however, that any modification to existing facilities must comply with this chapter.~~

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§ 196-15. Public hearing required for special use permit.

A. Public hearing and public notification by applicant. Before the City Council acts on any application for a special use permit, it shall hold a public hearing thereon in accordance with the General City Law. To facilitate notification of the public, a public notification list shall be prepared by the applicant, using the most current City of Rye Tax Maps and Tax Assessment Roll, showing the Tax Map sheet, block and lot number, the owners name and owner's mailing address for each property located wholly or partially within 750 feet of the perimeter of the property that is the subject of the application. If a property on the public notification list is also listed as a cooperative or an apartment on a list entitled "Apartment List City of Rye," maintained by the City Assessor's office, the notice shall only be mailed to the property owner of record. When the public hearing is required by the City Council, the applicant shall deliver a copy of the public notice provided by the City Planner to all of the property owners contained on the public notification list by certified mail with certificate of mailing.

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

1. The delivery of mailing shall be limited solely to the public notice provided by the City Planner.
2. The public notice shall be mailed to all property owners by certified mail with certificate of mailing (no return receipt necessary) at a post office or official depository of the Postal Service, at least 10 days prior to the date of the public hearing.
3. At least five business days prior to the public hearing, the applicant shall provide to the City Planner all certificates of mailing.
4. At least one week preceding the date of the public hearing, at least one sign, a minimum of two feet by three feet in size and carrying a legend prescribed by the City Council announcing the public hearing, shall be posted on the property. The height of the

lettering on the sign shall be no less than two inches, except that the words “PUBLIC NOTICE” appearing at the top of the sign shall have no less than five-inch-high lettering. The sign shall be in full public view from the street and not more than 30 feet therefrom. The sign shall be removed from the property within two days after the public hearing.

B. In cases of review by the Board of Architectural Review or the Planning Commission, the notice rules for these bodies shall apply for the properties within the seven-hundred-fifty-foot perimeter as previously set forth.

C. The Council shall schedule the public hearing referred to in Subsection A of this section once it finds the application is complete. The Council, at any stage prior to issuing a special use permit, may require such additional information as it deems necessary.

D. Council may waive any requirement hereof and of Section 196-16 as required to comply with state or federal law.

§ 196-16. Action on application for special use permit.

A. The Council will undertake a review of an application pursuant to this chapter in a timely fashion and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public’s interest and need to be involved, and the applicant’s desire for a timely resolution.

B. The Council shall refer any application or part thereof to the Board of Architectural Review (BAR) and may refer any application or part thereof to the Planning Commission for their advisory review and comment prior to the public hearing. This referral shall not preclude any final approvals of these or other City boards or departments required by this chapter or other law.

C. After the public hearing and after formally considering the application, the Council may approve and issue or deny a special use permit. Its decision shall be in writing and shall be based on substantial evidence in the record. The burden of proof for the grant of the permit shall always be upon the applicant.

D. If the Council approves the special use permit for a wireless telecommunications facility, then the applicant shall be notified of such approval, in writing, within 10 calendar days of the Council’s action, and the special use permit shall be issued within 30 days after such approval.

E. If the Council denies the special use permit for a wireless telecommunications facility, then the applicant shall be notified of such denial, in writing, within 10 calendar days of the Council’s action.

F. The City’s decision on an application for a special use permit for a wireless telecommunications facility shall be supported by substantial evidence contained in a written record.

§ 196-17. Recertification of special use permit.

A. At any time between 12 months and six months prior to the five-year anniversary date after the effective date of the permit and all subsequent fifth anniversaries of the original special use permit for a wireless telecommunications facility, the holder of a special use permit for such tower shall submit a written request for recertification. In the written request for recertification, the holder of such special use permit shall note the following:

1. The name of the holder of the special use permit for the wireless telecommunications facility.
2. If applicable, the number or title of the special use permit.
3. The date of the original granting of the special use permit.
4. Whether the wireless telecommunications facility has been moved, relocated, rebuilt, repaired or otherwise modified since the issuance of the special use permit.
5. If the wireless telecommunications facility has been moved, relocated, rebuilt, repaired or otherwise modified, then whether the Council approved such action, and under what terms and conditions, and whether those terms and conditions were complied with and abided by.
6. Any requests for waivers or relief of any kind whatsoever from the requirements of this chapter and any requirements for a special use permit.
7. That the wireless telecommunications facility is in compliance with the special use permit and compliance with all applicable codes, laws, rules and regulations.
- ~~8. Whether the facility is still being used; and whether it can be reduced in sized, combined with or replaced by other facilities or otherwise altered to make it less visible.~~
- ~~9. Whether it complies with then applicable requirements of the City Code for placement of wireless facilities.~~
- ~~8-10. Whether there have been any changes in the legal status of the applicant or any entity whose facilities are part of the wireless facility; and whether all required authorizations and consents are still in full force and effect.~~

B. If, after such review, the Council determines that the permitted wireless telecommunications facility is in compliance with the special use permit and all applicable codes, laws and rules; that it continues to be used in the provision of wireless services; that all relevant entities continue to have all necessary authorizations; and that the facility cannot be modified or replaced so that it is less visible, then the Council shall issue a recertification special use permit for the wireless telecommunications facility, which may include any new provisions or conditions that are mutually agreed upon, or required by codes, law or regulation. .

C. If the Council does not complete its review, as noted in Subsection B of this section, prior to the five-year anniversary date of the special use permit, or subsequent fifth anniversaries, then the applicant for the permitted wireless telecommunications facility shall receive an extension of the special use permit for up to six months, in order for the Council to complete its review.

D. If the holder of a special use permit for a wireless telecommunications facility does not submit a request for recertification of such special use permit within the time frame noted in Subsection A of this section, or if the Council finds that the wireless telecommunications facility has been moved, relocated, rebuilt, or otherwise modified without approval of such having been granted by the Council under this chapter, or that the conditions for recertification have not been met, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent fifth anniversaries, unless the holder of the special use permit adequately demonstrates to the Council that extenuating circumstances prevented a timely recertification request. If the Council agrees that there were legitimately extenuating circumstances, then the holder of the special use permit may submit a late recertification request. Council may also recertify subject to conditions that it establishes, and contingent on satisfaction of those conditions.

§ 196-18. Extent and parameters of special use permit. [ALL REMAINING PROVISIONS SHOULD APPLY TO SPECIAL USE PERMITS AND CONDITIONAL SPECIAL USE PERMITS]

The extent and parameters of a special use permit for a wireless telecommunications facility shall be as follows:

- A. Such special use permit shall be nonexclusive.
- B. Such special use permit shall not be assignable or transferable without the express written consent of the Council.
- C. Such special use permit may be revoked, canceled or terminated for a violation of the conditions and provisions of the special use permit for a wireless telecommunications facility, or for a material violation of this chapter or applicable law.

§ 196-19. Application fee.

- A. At the time that a person submits an application for a special use permit for a new wireless telecommunications facility, such person shall pay an application fee to the City of Rye of \$5,000. If the application is for a special use permit for collocating on an existing wireless telecommunications facility, the fee shall be \$3,000.
- B. No application fee is required in order to recertify a special use permit for a wireless telecommunications facility, unless there has been a modification of the wireless telecommunications facility since the date of the issuance of the existing special use permit for which the conditions of the special use permit have not previously been modified. In the case of any modification, the fees provided in Subsection A shall apply.

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§ 196-20. Performance security.

The applicant and the owner of record of any proposed wireless telecommunications facility property site shall be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount and with such sureties as are deemed sufficient by the Council to assure the faithful performance of the terms and conditions of this chapter and conditions of any special use permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until the removal of the wireless telecommunications facility and any necessary site restoration is completed. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the special use permit and shall entitle the Council to revoke the special use permit after prior written notice to the applicant and holder of the permit.

§ 196-21. Reservation of authority to inspect wireless telecommunications facilities.

A. In order to verify that the holder of a special use permit for a wireless telecommunications facility and any and all lessees, renters and/or licensees of a wireless telecommunications facility place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including but not limited to towers, antennas and buildings or other structures constructed or located on the permitted site.

B. The City shall pay for costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including towers, antennas and appurtenant or associated facilities, or refusal to otherwise cooperate with the City with respect to an inspection, or if violations of this chapter are found to exist, in which case the holder, lessee or licensee shall reimburse the City for the cost of the inspection.

C. Payment of such costs shall be made to the City within 30 days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is (are) appealed in accordance with the procedures set forth in this chapter, said reimbursement payment must still be paid to the City, and the reimbursement shall be placed in an escrow account established by the City specifically for this purpose, pending the final decision on appeal.

§ 196-22. ~~Annual~~ NIER certification.

Every wireless facility must meet FCC RF emission standards as the same may be amended from time to time.

A. In addition to the certifications and information required as part of an application, the City shall require any person installing wireless facilities to provide: field test measurements sufficient to show compliance with FCC RF standards at full operational power. Measurements should be cumulative, and not just based on facilities that a particular person may own or install at a location.
~~The holder of the special use permit shall, annually, certify to the City that NIER levels at the site~~

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~~are within the threshold levels adopted by the FCC. The certifying engineer need not be approved by the City.~~

§ 196-23. Liability insurance.

A. A holder of a special use permit for a wireless telecommunications facility shall secure and at all times maintain public liability insurance, property damage insurance and umbrella insurance coverage for the duration of the special use permit in amounts as set forth below:

- (1) Commercial general liability: \$1,000,000 per occurrence, \$2,000,000 aggregate.
- (2) Automobile coverage: \$1,000,000 per occurrence, \$2,000,000 aggregate.

B. The commercial general liability insurance policy shall specifically include the City and its officials, employees and agents as additional insureds.

C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state.

D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least 30 days' written notice in advance of the cancellation of the insurance.

E. Renewal or replacement policies or certificates shall be delivered to the City at least 15 days before the expiration of the insurance which such policies are to renew or replace.

F. Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than 15 days after the grant of the special use permit, the holder of the special use permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.

§ 196-24. Indemnification.

Any special use permit issued pursuant to this chapter shall contain a provision with respect to indemnification. Such provision shall require the holder of the special use permit, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless and exempt the City, officials of the City, its officers, agents, servants, and employees from any and all penalties, damage or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of a wireless telecommunications facility within the City. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.

§ 196-25. Penalties for offenses.

A. Civil sanctions. Any person who violates any of the provisions of this chapter shall be liable for a civil penalty of not more than \$3,000 for every such violation. Each consecutive day

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of violation will be considered a separate offense. Such civil penalty may be released or compromised by the City Council. In addition, the City Council shall have power, following a hearing, to direct the violator to comply with the provisions of this chapter.

B. Criminal sanctions. Any person, firm or corporation who or which willfully violates any of the provisions of this chapter or permits promulgated thereunder, excluding provisions set forth in the rules and regulations promulgated thereunder, upon conviction thereof of the first offense, shall be guilty of a violation punishable by a fine of not less than \$500 and not more than \$1,000 and, for a second offense and each subsequent offense, shall be guilty of a violation punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment of not more than 15 days, or both. Each consecutive day of violation will be considered a separate offense.

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C. Notwithstanding anything in this chapter, the holder of the special use permit for a wireless telecommunications facility may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit. The City may also seek injunctive relief to prevent the continued violation of this chapter.

§ 196-26. Default and/or revocation.

A. If a wireless telecommunications facility is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or of the special use permit, then the Council shall notify the holder of the special use permit, in writing, of such violation. Such notice shall specify the nature of the violation or noncompliance and that the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this chapter, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Council may, at its sole discretion, order the violation remedied within 24 hours.

B. If within the period set forth in Subsection A above the wireless telecommunications facility is not brought into compliance with the provisions of this chapter, or of the special use permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facility into compliance, then the Council may revoke such special use permit for a wireless telecommunications facility and shall notify the holder of the special use permit within 48 hours of such action.

§ 196-27. Removal of wireless telecommunications facilities.

A. Under the following circumstances, the Council may determine that the health, safety and welfare interests of the City warrant and require the removal of a wireless telecommunications facility:

1. A wireless telecommunications facility with a permit has been abandoned (i.e., not used as a wireless telecommunications facility) for a period exceeding 90 days or a total of 180 days in any three-hundred-sixty-five-day period, except for periods caused by force majeure or acts of God.
2. A permitted wireless telecommunications facility falls into such a state of disrepair that it creates a health or safety hazard.
3. A wireless telecommunications facility has been located, constructed or modified without first obtaining the required special use permit, or any other necessary authorization.

B. If the Council makes such a determination as noted in Subsection A of this section, then the Council shall notify the holder of the special use permit for the wireless telecommunications facility within 48 hours that said wireless telecommunications facility is to be removed. The Council may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facility.

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C. The holder of the special use permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facility, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Council. However, if the owner of the property upon which the wireless telecommunications facility is located wishes to retain any access roadway to the wireless telecommunications facility, the owner may do so with the approval of the Council.

D. If a wireless telecommunications facility is not removed or substantial progress has not been made to remove the wireless telecommunications facility within 90 days after the permit holder has received notice, then the Council may order officials or representatives of the City to remove the wireless telecommunications facility at the sole expense of the owner or permit holder.

E. If the City removes, or causes to be removed, a wireless telecommunications facility, and the owner of the wireless telecommunications facility does not claim the property and remove the facility from the site to a lawful location within 10 days, then the City may take steps to declare the facility abandoned and sell it and its components.

F. Notwithstanding anything in this section to the contrary, the Council may approve a temporary use agreement/permit for the wireless telecommunications facility, for no more 90 days, during which time a suitable plan for removal, conversion or relocation of the affected wireless telecommunications facility shall be developed by the holder of the permit, subject to the approval of the Council, and an agreement to such plan shall be executed by the holder of the permit and the City. If such a plan is not developed, approved and executed within the ninety-day time period, then the City may take possession of and dispose of the affected wireless telecommunications facility in the manner provided in this section.

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

A. Any applicant can request the waiver of application requirements that are inapplicable to their permit application. Such request shall be in writing. Requests should be discussed at the preapplication meeting. The applicant shall have the burden of supporting such requests. Determinations as to applicability of application requirements shall be made by the City.

B. In determining permit conditions, the City Council can waive inapplicable permit requirements, consistent with the policy goals and priorities of this chapter. The applicant shall have the burden of supporting such requests. Determinations as to applicability of permit condition requirements shall be made by the City Council.

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

A. To the extent that the holder of a special use permit for a wireless telecommunications facility has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a special use permit shall adhere to and comply with all applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

B. To the extent that applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting and security, are changed and/or are modified during the duration of a special use permit for a wireless telecommunications facility, then the holder of such a special use permit shall conform the permitted wireless telecommunications facility to the applicable changed and/or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard or provision, or sooner as may be required by the issuing entity.

§ 196-30. Conflict with other laws.

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

§ 196-31. Severability.

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

§ 196-32. Enforcement.

This chapter shall be enforced by the Building Inspector in the same manner as provided in Chapter 197, Zoning, and subject to the same penalties as set forth therein.

§ 196-33. Authority.

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

167.72. In addition to complying with generally applicable safety codes 4. RF [this may be part of Chapter 196 or a separate section of the Code]

4.1. Every wireless facility must meet FCC RF emission standards as the same may be amended from time to time.

4.2. City shall require any person installing wireless facilities to provide:

4.2.1. At the time of an application for installation, information sufficient to show that the facility will comply with FCC RF standards and;

4.2.2. After installation, field test measurements sufficient to show compliance with FCC RF standards at full operational power; and

4.2.3. Measurements should be cumulative, and not just based on facilities that a particular person may own or install at a location.



CITY COUNCIL AGENDA

NO. 6

DEPT.: City Manager's Office

DATE: February 1, 2017

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Consideration to set a Public Hearing for February 15, 2017 to amend local law Chapter 144, "Peddling and Soliciting", of the Rye City Code by amending Section §144-8, "Restrictions", Subsections (D) and (G) to give the City Council authorization to waive the authorized time restrictions and location of peddlers/solicitors in a public place.

FOR THE MEETING OF:

February 1, 2017

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: That the City Council set a Public Hearing to approve the changes in the City Code regarding peddlers and solicitors.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Local law Chapter 144, "Peddling and Soliciting" details the license application procedures for peddlers and solicitors in the City of Rye including times of operation and locations for vendors. Under the current law restrictions, solicitors may not "stand in one place in any public place or street for more than 10 minutes" nor "maintain a booth or stand upon any street or public place". A request has been made to update the Local Law to allow the City Council to waive these provisions upon request from an applicant. Rye Recreation is asking for a waiver to hold the 2nd Annual Food Truck Festival on Saturday, June 24, 2017.

See attached Draft Local Law and request from Rye Recreation.

CITY OF RYE
LOCAL LAW NO. 2017

A local law to amend Chapter 144 “Peddling and Soliciting” of the Code of the City of Rye by amending Section 144-8 “Restrictions”, Subsections (D) and (G) to provide the City Council authorization to waive the time restrictions and location in a public place for requesting solicitors from the requirements as follows:

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

Section 1: Chapter 144-8 “Restrictions”

A licensed hawker, peddler or solicitor shall:

A.

Not falsely or fraudulently misrepresent the quantity, character or quality of any article offered for sale; or offer for sale any unwholesome, tainted or diseased provisions or merchandise.

B.

Keep the vehicle and receptacles used by him in a clean and sanitary condition and the foodstuffs and edibles offered for sale well covered and protected from dirt, dust and insects.

C.

Not blow a horn, ring a bell or use any other noisy device to attract public attention to his or her wares, or shout or cry out his or her wares.

D.

Not stand nor permit the vehicle used by him or her to stand in one place in any public place or street for more than 10 minutes or in front of any premises for any time if the owner or lessee of the ground floor thereof objects. **A solicitor who has properly applied for and received a permit and has otherwise complied with the provisions of this law may apply to the City Council for a waiver of the time restrictions set forth in this subsection, subject to all other restrictions contained herein. If the waiver is granted, the City Council shall set the time restrictions and any other appropriate conditions.**

E.

Not sell any confectionery or ice cream within 250 feet of any school property between the hours of 8:00 a.m. and 4:00 p.m. on school days.

F.

Not permit any vehicle used by him or her to stop or remain on any crosswalk.

G.

Not create or maintain any booth or stand, or place any barrels, boxes, crates or other obstructions, upon any street or public place for the purpose of selling or exposing for sale any goods, wares or merchandise. **A solicitor who has properly applied for and received a permit and has otherwise complied with the provisions of this law may apply to the City Council for a waiver to allow for the use of a public place, subject to all other restrictions contained herein. If the waiver is granted, the City Council shall condition such waiver on any appropriate conditions.**

Section 2: Severability.

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

Section 3: Effective date.

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

INTEROFFICE MEMORANDUM

TO: MARCUS SERRANO, CITY MANAGER
FROM: SALLY ROGOL, SUPERINTENDENT
SUBJECT: RECREATION FOOD TRUCK FESTIVAL 2017
DATE: JANUARY 27, 2017
CC: ELEANOR MILITANA, ASSISTANT CITY MANAGER

Rye Recreation would like to request permission for the 2nd Annual Food Truck Festival on Saturday, June 24.

We understand that the local code § 144-8 Restrictions states that licensed hawker, peddler or solicitor shall:

D. Not stand nor permit the vehicle used by him or her to stand in one place in any public place or street for more than 10 minutes or in front of any premises for any time if the owner or lessee of the ground floor thereof objects.

G. Not create or maintain any booth or stand, or place any barrels, boxes, crates or other obstructions, upon any street or public place for the purpose of selling or exposing for sale any goods, wares or merchandise.

Both of these restrictions would need to be overridden for us to host our event.

Please let me know if you need any additional information.



CITY COUNCIL AGENDA

NO. 8

DEPT.: City Manager's Office

DATE: February 1, 2017

CONTACT: Marcus Serrano, City Manager

ACTION: Resolution to amend the Administrative Pay Plan.

FOR THE MEETING OF:

February 1, 2017

RYE CITY CODE,

CHAPTER
SECTION

RECOMMENDATION: That the Mayor and City Council approve the proposed resolution to amend the Administrative Pay Plan.

IMPACT: Environmental Fiscal Neighborhood Other

BACKGROUND: The administrative pay plan encompasses all full time employees of the City of Rye who are not represented by one of the four collective bargaining units with the exception of the City Manager and the Corporation Counsel. Administrative employees receive merit increases determined by the City Manager based on performance and accomplishment of identified objectives during the previous year. The proposed changes include:

- Administrative Pay Group members be permitted to submit up to ten (10) unused vacation days for payment upon their anniversary date at their daily rate of pay. Currently they may turn in five (5) unused vacation days. (page 2)
- Modify the Administrative Pay Grade chart to reflect the addition of the positions of Public Safety Commissioner, Assistant Planner, and Assistant Greenskeeper; the removal of the positions of Police Commissioner, City Naturalist, and Assistant Naturalist (Curator). (page 1)

See attached Administrative Pay Group Generalized Benefits.

**ADMINISTRATIVE PAY GROUP
(APG)**

Generalized Benefits

**ADMINISTRATIVE PAY GROUP (APG)
Generalized Benefits**

SALARIES AND WAGES:

Pay Plan: The following pay plan for all employees in the Administrative Pay Group (APG) was amended by the City Council effective June 1, 2014. Individual salaries are determined by the City Manager within the following pay grades:

Administrative Pay Grades

Grade A1 \$96,459 to 195,000	Grade A \$72,054 to 132,485	Grade B \$60,432 to 113,891	Grade C \$47,647 to 102,269	Grade D \$31,378 to 83,674
Assistant City Manager	Building Inspector	Accountant	Assistant City Engineer	Administrative Assistant
City Comptroller	City Assessor	Assistant Building Inspector	Assistant to the City Manager	Assistant Community Access Facilitator
City Engineer	City Clerk	Assistant Superintendent of Recreation	Assistant Assessor	Assistant Groundskeeper
City Planner	General Foreman	Assistant Planner	Assistant Greenskeeper	Junior Accountant
Deputy Comptroller	Golf Club Manager	Boat Basin Supervisor	Engineering Technician	Coordinator of Member Services
Public Safety Commissioner	Coordinator Computer Services	Community Access Facilitator	Jr. Network Specialist	Secretary to Corporation Counsel
Superintendent of Recreation	Superintendent of Public Works	Fire Lt./Inspector	Recreation Supervisor	Student Intern
		Garage Foreman	Secretary to City Manager	
		Greens Superintendent	Business Administrator	
		Labor Foreman	Personnel Manager	
		Parks Foreman		
		Road Maintenance Foreman		
		Sanitation Foreman		
		Tree Foreman		

Overtime:

The following eligible employees may receive overtime (paid or compensatory) for time worked in excess of forty (40) hours per week under the same terms and conditions for overtime as the respective agreements between either the City and the CSEA Public Works Unit (Lead Maintenance Mechanics/Foremen) or the Paid Fire Fighters Association (Fire Inspector):

- | | |
|--------------------------|--------------------|
| General Foreman | Sanitation Foreman |
| Labor Foreman | Tree Foreman |
| Park Foreman | Fire Inspector |
| Road Maintenance Foreman | |

ADMINISTRATIVE PAY GROUP (APG)
Generalized Benefits

ANNUAL LEAVE:

Annual leave may not be taken without prior approval of either the appropriate department head or the City Manager. Employees shall request annual leave at least 48 hours in advance, unless waived by the department head or City Manager. The City reserves the right to limit the number of persons on leave at any given time by department and job title, and the right to deny all annual leave during various seasonal periods by department and job assignment.

Annual leave must be taken during the twelve month period following the twelve month period during which it is earned; except that, with the approval of the City Manager, annual leave may be accumulated to a total of thirty-six days.

The minimum period of annual leave which may be allowed is one day, except that up to two days vacation per year may be taken in one-half day periods.

An employee separating from City service with annual leave to his credit is to be paid the value of said leave in a lump sum payment.

Employees are entitled to:

1. Ten (10) working days after employment for one year.
However, employees who have completed six months probationary period shall be allowed to request up to five days vacation, the total amount of which will be deducted from the ten day allowance of one year's employment.
2. Fifteen (15) working days after employment for five years.
3. Twenty (20) working days after employment for ten years.
4. Twenty-five (25) working days after employment for twenty years.

All members of the Administrative Pay Group are permitted to submit up to ten (10) unused vacation days for payment upon their anniversary date at their daily rate of pay.

SICK LEAVE:

All permanent, full-time employees are entitled to sick leave when incapacitated for duty by sickness, injury, pregnancy and confinement, medical, dental or optical treatment.

For Administrative Pay Group employees hired prior to January 1, 1977, sick leave is earned at the rate of 1¼ days per month of employment, up to a max. accumulation of 365 days.

For Administrative Pay Group employees hired on or after January 1, 1977, sick leave is earned at the rate of 1¼ days per month of employment, up to a maximum accumulation of 250 days.

ADMINISTRATIVE PAY GROUP (APG)
Generalized Benefits

Members of the Administrative Pay Group shall, upon retirement, receive credit of up to 165 days of additional service retirement credit for unused sick leave, pursuant to the provisions of Section 41-j of the Retirement and Social Security Law.

Upon retirement, employees covered by the Administrative Pay Group shall receive payment for any unused sick leave accumulated in excess of 165 days, up to 200 days (maximum 35 days) at their daily rate of pay, if such employee utilizes no more than 10 days of sick leave during his/her last 12 months of employment. The City Manager may waive the ten-day limit if it is determined that extenuating circumstances exist and based upon a review of sick leave usage over the employees career.

Employees who request sick leave shall notify the department head or the City Manager within one hour of starting time. Such notification must be given on the first day of absence. Failure to give sick notice may result in the absence being charged to annual leave or a forfeiture of pay, as the circumstances justify or as determined by the department head or City Manager. Sick leave for medical, dental or optical treatment must be approved in advance by the department head unless an emergency situation is involved.

Sick leave in excess of two days shall be supported by a medical certificate, or medical proof, and the department head or City Manager may require a medical certificate for sick leave of two days or less. When a medical certificate can not reasonably be obtained for sick leave of two days or less, an affidavit by the employee relating the facts that required the absence may be substituted for a medical certificate at the discretion of the department head.

The minimum period of sick leave which may be allowed is $\frac{1}{4}$ day.

A doctor's certificate or other medical proof satisfactory to the City may, at the option of the City, be required of any employee returning from sick leave as proof of such employee's fitness for work.

An employee returning from sick leave may, at the option and expense of the City, be required to undergo a physical or mental examination, by a physician chosen by the City, to determine such employee's fitness to return to work. If any dispute should arise between the employee's physician and the City's physician, such dispute shall be subject to a determination by a third physician, chosen mutually by the first two physicians, and the cost of said medical examination shall be borne equally by both parties. Such decision shall be final and binding on both parties.

In cases of serious disability or ailment and when the exigency of the situation so requires, sick leave may be extended for a period not to exceed thirty days, upon prior approval of the City Manager, and such extended period shall be deducted from such sick leave as may accrue after the employee returns to work. An application for an extension of sick leave must be supported by a medical certificate.

ADMINISTRATIVE PAY GROUP (APG)
Generalized Benefits

PERSONAL LEAVE:

Each member is entitled to five (5) days personal leave annually. Such personal leave may be granted upon one day's prior notice to the appropriate department head or City Manager, except in cases of emergency, and the employee must have the prior approval of the department head or City Manager, which shall not be unreasonably withheld. Personal leave which is unused at the end of each calendar year shall be added to the employee's sick leave accruals, subject to the maximum permitted accumulations. Personal leave may be taken in one quarter (1/4) day increments. New employees shall not be entitled to use personal leave during the first six months of employment.

Each member is entitled to up to four hours of paid leave for the purpose of obtaining breast cancer screening or prostate cancer screening.

HOLIDAYS:

All permanent, full-time employees are entitled to the following holidays:

- | | | | |
|----|-------------------------------|-----|--------------------------------|
| 1. | New Year's Day | 8. | Election Day |
| 2. | Martin Luther King's Birthday | 9. | Veterans' Day |
| 3. | Presidents' Day | 10. | Thanksgiving Day |
| 4. | Memorial Day | 11. | Day following Thanksgiving Day |
| 5. | Independence Day | 12. | Christmas Day |
| 6. | Labor Day | 13. | Floating Holiday |
| 7. | Columbus Day | | |

Holidays that occur on Saturdays will be observed the preceding Friday. Holidays that occur on Sundays will be observed the following Monday.

TUITION REIMBURSEMENT:

The City shall budget \$6,000.00 annually for job related course work. The \$6,000 annual allocation shall be available jointly to members of the Administrative Pay Group. Funds will be available for reimbursement or partial reimbursement of employees' expenses for tuition, registration and course materials up to a maximum of \$1,000.00 per employee per year, to a total of \$6,000.00 per year. Advance notice of intent to register for each course must be given to the City Manager, along with an estimate of cost, and it must successfully be completed (C or better for college courses) by the employee to be eligible to the extent not covered by other reimbursement programs for which the employee would be eligible and of which the employee has knowledge. If reimbursement claims for a calendar year should exceed \$6,000.00, fund will be pro-rated among eligible employees.

ADMINISTRATIVE PAY GROUP (APG)
Generalized Benefits

Employees may request that the City pay the expenses before the course work begins upon demonstration of an economic hardship.

It is understood that if the employee fails the course or fails to complete the course while employed by the City, he/she must reimburse the City. The City reserves its right to recoup any tuition which was not reimbursed.

It is further understood that any employee who is absent from work because of disability, workers' compensation leave, or any unpaid leave of absence shall be ineligible for tuition reimbursement.

For the purpose of this article, job-related course work shall include in-service staff training, degree programs to accredited institutions of higher learning, programs presented through BOCES or school district continuing education programs, or any other recognized educational institutions.

BEREAVEMENT LEAVE:

Bereavement leave shall be granted for attendance at funerals and for bereavement to all employees within the Administrative Pay Group in the event of a death of a member of the family, as hereinafter defined.

A "member of the family" shall mean the employee's spouse, children, grandchildren, brothers, sisters, parents, grandparents, brothers-in-law, sisters-in-law, parents-in-law, grandparents-in-law, step-children, step-grandchildren, step-brothers, step-sisters, step-parents, step-grandparents, step-brothers-in-law, step-sisters-in-law, step-parents-in-law, and step-grandparents-in-law.

No prior approval is required for bereavement leave, but the department head shall be notified as soon as conveniently possible.

Employees exercising bereavement leave will receive their regular rate of pay for the scheduled working hours missed during the first five scheduled work days following the occasion of death for each member of the family as defined above.

Additional bereavement time may be granted by and at the sole discretion of the department head. Such additional time shall be taken as authorized leave without pay, or, at the option of the employee, charged against any other accrued and available time, including but not limited to compensatory time, vacation leave, personal leave and/or sick leave. Sick leave used as bereavement leave shall not be charged against the employee for the purpose of calculating cash payments for unused sick leave.

ADMINISTRATIVE PAY GROUP (APG)
Generalized Benefits

COURT LEAVE:

All permanent, full-time employees are entitled to court leave which shall be granted for attendance in court for jury duty. Employees are not required to remit to the City the per diem compensation or transportation allowances received for jury duty.

Employees requiring court leave must notify their supervisors in advance and, following the leave, must submit evidence of the court attendance, including the time involved.

Employees called for jury duty shall participate in any on-call procedure instituted by the Courts.

WORKERS' COMPENSATION LEAVE:

All full-time, permanent employees of the City of Rye within the Administrative Pay Group who are disabled as a result of an injury arising out of and in the course of their employment (except when such injury is occasioned solely by intoxication or failure to use safety equipment provided by the City and issued as needed to the injured employee, or by willful intention of the injured employee to bring about injury to himself or another) shall be paid the full amount of their regular salary, or wages, until their disability therefrom has ceased, but for a period not to exceed 75 working days. In the event that the injured employee receives compensation for his loss during his disability, he must reimburse the City of Rye for the salary or wages paid during his disability.

An employee with a Workers' Compensation claim who is required to visit a doctor for further examination need not take one-half day sick leave but will be given actual time off as needed to attend the appointment.

Employees who have made claims for Workers' Compensation benefits and who seek to return to their job after being absent from work for any period of time shall be required to produce a written doctor's certificate, indicating that the employee is able to return to work and stating whether there are any restrictions as to the work that can be performed and whether the employee can return to his or her normal work load. The employee shall be allowed to return to work only after receiving approval to return from the department head.

In no case shall any combination of disability or compensation payments exceed the regular daily compensation of an employee.

Sick leave pay shall be pro-rated based on the compensation payments received by the City, in accordance with the provisions of Section 237 of the Workers' Compensation Law.

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GENERAL LEAVE REGULATIONS:

The following provisions shall be applicable to all types of leave provided for in this Agreement:

- A. Leave shall accrue while employees are in a leave-with-pay status.
- B. Leave shall not accrue during periods of disciplinary suspension in excess of three days.

DISABILITY INSURANCE:

The City shall provide the disability benefit under the New York State Disability Insurance Program for all Administrative Pay Group employees. The City shall be reimbursed for any advance payment of wages and benefits to such employee, in accordance with the provisions of Section 237 of the Workers' Compensation Law.

In no case shall any combination of disability payments and the employee's salary exceed the regular daily compensation of such employee.

After the exhaustion of all sick leave accruals and extensions under this contract, all payments of disability insurance shall go directly to the employee.

Sick leave pay shall be prorated, based on the disability payments received by the City, in accordance with the provisions of Section 237 of the Workers' Compensation Law.

RETIREMENT PLAN:

The Employer will continue contributions to the pension accumulation fund of the New York State Retirement System, pursuant to the provisions of Section 75i (Section 384 & Section 384-d for the Fire Inspector) of the Retirement and Social Security Law.

HEALTH PLAN:

The Employer will participate in the Aetna Open Access Managed Choice Plan and shall pay 75% of the cost of such health insurance premiums for employee and dependent coverage. The contribution will not exceed 5% of the employee's base annual salary. The Employer shall continue to provide full premium payments for retired City employees of the Administrative Pay Group and their dependents during the lifetime of the retired employee. Effective August 1, 2011, in the case of a line of duty death, the Employer shall continue to provide full premium benefits for the deceased member's spouse until the spouse is eligible for continuing coverage under Medicare. Dependents are also eligible for continued participation

ADMINISTRATIVE PAY GROUP (APG)
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at employer expense for premium payments in the health insurance plan until emancipation, or the attainment of the maximum age for dependent eligibility.

Employees hired after December 17, 2014 and assigned to the Administrative Pay Group shall pay 25% of the cost of health insurance premiums for employee and dependent coverage. The contribution will not exceed 9.5% of the employee's base annual salary. The Employer shall continue to provide 50% of premium payments for retired City employees of the Administrative Pay Group and their dependents during the lifetime of the retired employee.

The City shall have the option to make changes in the health insurance plan.

If an employee is eligible for individual or family coverage under the health plan the Employer participates in and elects not to receive such coverage (i.e., no coverage or individual only coverage while eligible for family coverage), the Employer will reimburse twenty-five percent (25%) of the Employer's net savings to the employee, pro-rated on a bi-weekly basis. The employee is responsible for providing the Employer with any required certification of eligibility and release documents that the Employer may require.

DENTAL PLAN:

The City shall pay up the same amount per participating employee as permitted in either the CSEA Public Works or the Clerical Unit Agreements, whichever is the more advantageous, prorated from the employee's effective date of coverage, for the purpose of purchasing a dental insurance program covering the employees and/or their dependents. Effective January 1, 2001, that amount is 70% for family plans and 100% for individual plans per year per participating employee.

VISION CARE PLAN:

The Employer will provide the CSEA Employee Benefit Fund Family Vision Plan to all members of the Administrative Pay Group as provided for in the CSEA Public Works or the Clerical Unit Agreements, whichever is the more advantageous.

LIFE INSURANCE:

The employer will provide a term life insurance policy in the amount of 1X salary for all employees in the Administrative Pay Group.

FEDERAL, NYS, WESTCHESTER COUNTY & LOCAL LAWS:

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Generalized Benefits

It is the City's intent to comply with any and all applicable Federal, New York State, Westchester County, and Local laws and regulations. If there are any inconsistencies between this statement of the City's generalized benefits and applicable laws, the laws apply and supersede this statement of the generalized benefits.

EXCEPTIONS/PARTIAL INVALIDITY:

This document is intended to be a guideline of the generalized benefits of members of the Administrative Pay Group. Any individual deviations from the benefits mentioned shall be with written consent of the City Manager. The City Council and City Manager reserve the right to make any changes to these generalized benefits as necessary. These generalized benefits are not intended to replace, modify, or amend any existing programs, policies, practices or agreements between the City and the employees in the Administrative Pay Group. Where a conflict exists between any existing programs, policies, practices or agreements and this document, they shall supersede this document insofar as it is inconsistent with them.



CITY COUNCIL AGENDA

NO. 9

DEPT.: Finance

DATE: February 1, 2017

CONTACT: Joseph Fazzino, Deputy City Comptroller

AGENDA ITEM: Authorize payment of the balance of the 2016/2017 Rye Neck Union Free School District taxes collected by the City to the School District.

FOR THE MEETING OF:

February 1, 2017

RYE CITY CODE,

CHAPTER 22.9

SECTION

RECOMMENDATION: That the Mayor and the City Council authorize payment of the 12/31/16 balance of \$217,325.71 on 2/1/2017.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The balance of unpaid Rye Neck U.F.S.D. taxes on property within the City of Rye is \$217,325.71 at 12/31/16. This balance represents 1.86% of the total tax levied, \$11,703,000, on September 1, 2016. Arrears notices will be mailed in conjunction with the 2017 City tax bills, and again during March 2017, May 2017 and June 2017 to try to collect these balances prior to the filing of the list of delinquent taxes with the County scheduled for July 1, 2017.

In accordance with Section 22.9 of the City Charter, it is requested that the City Council authorize the City Comptroller to pay the Treasurer of the Rye Neck UFSD the amount due at December 31, 2016.



CITY COUNCIL AGENDA

NO. 10

DEPT.: City Manager

DATE: February 1, 2017

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Consideration of a request by the Midland Elementary School PTO to approve a parade to precede the Midland Elementary School Fair on Saturday, May 13, 2017 from 9:00 a.m. to 10:15 a.m.

FOR THE MEETING OF:

February 1, 2017

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council consider granting the request.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The Midland Elementary School PTO is requesting the Council approve a parade to precede the Midland Elementary School Fair on Saturday, May 13, 2017 from 9:00 a.m. to 10:15 a.m.

See attached request from Kelly Ibrahim, Co-Chair, Midland Fair 2017

Diane Moore
Deputy City Clerk
City of Rye
City Hall
Rye, NY 10580

Hello Diane -

I am respectfully requesting the use of the streets of Rye for the Midland Elementary School Parade from 9:00am to 10:15am on Saturday, May 13, 2017. This event will be hosted by the Midland School PTO.

Normally, the parade vehicles assemble at the train station, proceed along Purchase Street to Midland School via Palisade Avenue and Midland Avenue. Please send any paperwork to me at:

Kelly Ibrahim
27 Cedar Place
Rye, NY 10580

Thanks!
Kelly Ibrahim
Co-Chair
Midland Fair 2017



CITY COUNCIL AGENDA

NO. 11

DEPT.: City Council

DATE: February 1, 2017

CONTACT: Mayor Joseph A. Sack

AGENDA ITEM: One appointment to the Traffic and Pedestrian Safety Committee for a three-year term expiring on January 1, 2020, by the Mayor with Council approval.

FOR THE MEETING OF:

February 1, 2017

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council approve the reappointment of Suki van Dijk.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: