

## **CITY OF RYE**

### **NOTICE**

There will be a regular meeting of the City Council of the City of Rye on Wednesday, February 15, 2017, at 7:30 p.m. in Council Chambers at City Hall. *The Council will convene at 6:30 p.m. and it is expected they will adjourn into Executive Session at 6:31 p.m. to discuss litigation.*

### **AGENDA**

1. Pledge of Allegiance.
2. Roll Call.
3. General Announcements.
4. Draft unapproved minutes of the regular meetings of the City Council held January 25, 2017 and February 1, 2017 and the Workshop on Capital Projects held February 1, 2017.
5. Issues Update/Old Business.
6. Presentation on Rye TV.
7. Continuation of the 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 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.
8. Public Hearing 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.
9. Continuation of the Public Hearing to amend local law Chapter 194, "Water", of the Rye City Code by amending Section §194-1, "Conservation in times of emergency", to give the City Manager the authority to declare conservation in times of water emergency.
10. Residents may be heard on matters for Council consideration that do not appear on the agenda.
11. Resolution to amend the 2017 Adopted Fees and Charges for the Rye Boat Basin Enterprise Fund.  
Roll Call.
12. Resolution to approve a Workplace Violence Policy and a Workplace Violence Prevention Program for the City of Rye.

13. Consideration of a request by the Rye Free Reading Room for use of the Village Green and City Hall Parking lot to host the Annual Vehicle Fair on Sunday, May 21, 2017 from 11:30 a.m. to 3:00 p.m.
14. Miscellaneous communications and reports.
15. New Business.
16. Adjournment.

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The next regular meeting of the City Council will be held on Wednesday, March 1, 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](http://www.ryeny.gov) under "RyeTV Live".

\* Office Hours of the Mayor by appointment by emailing [jsack@ryeny.gov](mailto:jsack@ryeny.gov) or contacting the City Manager's Office at (914) 967-7404.



# CITY COUNCIL AGENDA

NO. 4

DEPT.: City Clerk

DATE: February 15, 2017

CONTACT: Carolyn D'Andrea, City Clerk

**AGENDA ITEM:** Draft unapproved minutes of the regular meetings of the City Council held January 25, 2017 and February 1, 2017 and the Workshop on Capital Projects held February 1, 2017.

**FOR THE MEETING OF:**

February 15, 2017

**RYE CITY CODE,**

CHAPTER

SECTION

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

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** Approve the minutes of the regular meetings of the City Council held January 25, 2017 and February 1, 2017 and the Workshop on Capital Projects held February 1, 2017, as attached.

***DRAFT UNAPPROVED MINUTES*** of  
the Regular Meeting of the City Council of the  
City of Rye held in City Hall on January 25, 2017,  
at 7:30 P.M.

PRESENT:

JOSEPH A. SACK Mayor  
KIRSTIN BUCCI  
EMILY HURD  
JULIE KILLIAN  
TERRENCE McCARTNEY  
RICHARD MECCA  
DANIELLE TAGGER-EPSTEIN  
Councilmembers

ABSENT:

None

The Council convened at 6:30 P.M. Councilman Mecca made a motion, seconded by Councilwoman Bucci and unanimously carried to immediately adjourn into Executive Session to discuss litigation and personnel matters. Councilman Mecca made a motion, seconded by Councilwoman Bucci and unanimously carried, to adjourn the Executive Session at 7:30 P.M. The regular meeting convened at 7:45 P.M.

1. Pledge of Allegiance.

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

2. Roll Call.

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

3. Resolution for the Mayor and Council to approve the appointment of the Commissioner of Public Safety of the City of Rye.

Mayor Sack was proud to announce that pursuant to a referendum vote, the City amended the Charter to provide for a Public Safety Commissioner, who will oversee the Police and Fire Departments as a cohesive unit. Mayor Sack announced the appointment of Commissioner Michael Corcoran.

City Manager Serrano was happy to report that the Commissioner position in Rye was one of the few in the State of New York. He thanked the City Council, the Fire Department and the Police Department. He said he was happy that the community saw the benefit of this position through referendum. City Manager Serrano said that Commissioner

Corcoran has proven himself to be a man of integrity hard-working leader who exceeded all expectations, and gained a lot of respect from the departments and the community. City Manager Serrano said he was honored and privileged to recommend the Michael Corcoran for the position of Commissioner of Public Safety.

Councilwoman Killian stated she was grateful to Commissioner Corcoran for his work, specifically with the schools and Rye ACT and numerous other initiatives in the short time he has been here.

Councilman McCartney said that great leadership is a rare thing, but when you see it, you know it. He was very proud to see both the Police and Fire Departments at the meeting supporting Commissioner Corcoran and the City of Rye.

Councilman Mecca said that the process to implement the Commissioner of Public Safety position had taken more than a year, and he was glad to see that the public supported it through referendum. He agreed that Commissioner Corcoran was the right person for the job.

Councilwoman Hurd said that the idea of a Public Safety Commissioner was not something she jumped at eagerly, but knowing that the City was considering Mr. Corcoran made her change her mind about it and see it as a positive addition. She stated that Commissioner Corcoran has impressed her and has taken a strong leadership role. She thanked him for his service.

Councilwoman Tagger-Epstein said that being the newcomer is a challenge, and therefore she needed to follow the leadership of Councilmembers Bucci and Mecca on this item. At first she said that she was hesitant about the position, but spending time with Commissioner Corcoran and knowing his ethics and values and unbelievable commitment to the city, she said she knew it was the right thing and Rye will absolutely benefit from this.

Councilwoman Bucci said that she was so impressed that all of the officers and firefighters were present at the meeting to support Commissioner Corcoran. She said that it spoke volumes about his strong leadership. She told Commissioner Corcoran that he had the full support of the Council.

Mayor Sack said that it is great that the City has the right person and the right position and congratulated Commissioner Corcoran.

Councilman Mecca made a motion, seconded by Councilwoman Bucci, to approve the recommendation that Michael Corcoran be sworn in as the Commissioner of Public Safety.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, McCartney, Mecca and  
Tagger-Epstein  
NAYS: None

ABSENT: None

City Clerk D'Andrea administered the oath of office to Commissioner Corcoran to faithfully discharge the duties of Commissioner of Public Safety.

Commissioner Corcoran addressed the Council. He thanked the Council and City staff for trusting him with this important position in moving the City forward. He thanked Lt. Scott Craig for his support and hard work each and every day. He was proud to be appointed to the position in which he will lead both Police and Fire Departments as the Commissioner of Public Safety. He stated that he strongly valued the service of the firefighters and the fire chiefs. He was hopeful to reinvigorate recruitment efforts, in which coordination between departments will be instrumental. Commissioner Corcoran said that he was so humbled by the attendance of both departments at the meeting. He recounted that 30 years ago, he was trained as a firefighter in the Navy, and said that success is a journey, not a destination. He thanked the Mayor and Council, specifically Councilwoman Bucci and Councilman Mecca. He also thanked City Manager Serrano and Assistant City Manager Militana in spearheading the effort to create the position and bring the departments together. He said he was so excited to be working with the Fire and Police Departments and is so proud of what they do. He vowed to always will act in the best interests of the City. He felt that pride, integrity, respect, accountability and leadership were the most important attributes of having a successful department. He said that he and the departments were proud to fly the flag of public safety and proud to serve the citizens of Rye each and every day. Lastly, Commissioner Corcoran introduced and thanked his family for their support.

There was then a five minute recess.

4. General Announcements.

Councilwoman Tagger-Epstein announced that recently there was an event at the Jay Heritage Center, they hosted their second Hort Lunch event, which utilized what we may see as weeds and turned them into delicious food, in an effort to create awareness with sustainable food. She also announced that there will be an upcoming Sustainability meeting at the Rye Nature Center, discussing how to talk to landscapers about "going organic." She also stated that she and Councilman McCartney were working together on the City's Firearm Safety Committee, and that each week they would educate the community with facts to prevent firearm accidents. She reported on a study published in the Journal of Pediatrics that found that 1.69 million children are living in homes with loaded and unlocked firearms. She reported on other startling statistics among minors living in households with loaded guns, which has led to the finding that 89% of accidental shooting deaths occur with minors.

Councilman Mecca announced that the Planning Commission had a meeting on January 24, 2017, but is currently going through a quiet period. He will report if anything comes up in the future.

Councilman McCartney encouraged those interested in a Rye Golf Club membership to register online or in person for the 2017 season. On behalf of the Recreation Department,

he reported that a consultant has been hired to study and propose comments for the Disbrow Park Master Plan. There will be public hearings in the near future. He also asked the community to be safe in yielding within roundabouts.

Councilwoman Killian announced that the First Annual Winter Social will be held for the Rye Fund for Education on January 27, 2017 at 7:30 P.M. at Whitby Castle. She also announced that she recently attended an event on Teens, Tobaccos, E-Cigarettes and other related items, in which she learned that one person dies every six seconds from a tobacco-related death and 20% of all U.S deaths are from tobacco, and there is a misconception that e-cigarettes are deemed “OK” by teenagers and young adults. She also stated that nicotine delays absorption of alcohol in the system. Councilman McCartney commented that e-cigarette batteries are dangerous and poorly manufactured.

Councilwoman Hurd announced that there will be a public hearing held on the United Hospital proposed site on January 31, 2017 at 7:00 P.M. There will also be a traffic workshop on the issue held on February 6, 2017.

Mayor Sack noted the passing of Sharon Lawyer, longtime Rye resident. There was a moment of silence. He also announced that Frances Dyer also passed away, who was very involved at Resurrection Church in Rye. There was a moment of silence.

Mayor Sack reported that with regard to Save the Sound, the litigation has been ongoing for over one year. The legal bills have been significant in this matter. He stated there will be a court conference before Judge Seibel in Federal Court on February 10, 2017. He explained that there is a County law that allows only 150 gallons per person per day to go through the sewage treatment. Mayor Sack also briefly discussed “I & I” (Inflow and Infiltration). He stated that the City is hopeful for a conclusion this year.

5. Draft unapproved minutes of the regular meeting of the City Council held December 21, 2016 and January 11, 2017.

Councilman McCartney made a motion, seconded by Councilwoman Hurd and unanimously carried, to approve the draft minutes of the regular meeting of the City Council held December 21, 2016 and January 11, 2017.

6. Issues Update/Old Business.

Councilwoman Killian asked about the status of the website redesign. City Manager Serrano responded that an RFP would be drafted in one month.

Councilwoman Hurd asked for a future update on the New York Rising grant.

7. Consideration to set a Public Hearing for February 1, 2017 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.

Corporation Counsel Wilson stated that these amendments cover three aspects of City Code, considering, Noise, Rights of Way, and Telecommunications. She discussed aspects of the law as it stands currently, with the likelihood that the City would need language to contemplate a change in technology for the future to best protect the City. She explained that this agenda item would set the public hearing for February 1, 2017 which will be likely held open for public comment.

Mayor Sack stated that the goal was to strengthen Chapter 196 to meet today’s challenges and standards with evolving technology. He said this is part of the City’s effort to address the placement of wireless facilities in the City of Rye. He stated that the City is continuing discussions with Crown Castle, and ultimately is trying to make both the current right-of-way agreement and Code stronger.

Josh Cohn, 24 Green Avenue, addressed the Council. He took issue with the fact that the hearing is only one week away, and asked for more time. He also stated that the draft is difficult to find on the City website and asked for it to be placed in an easier location to find.

Councilman Mecca asked if the proposed amendments would apply to Crown Castle, and Corporation Counsel Wilson said it would.

Councilman Mecca made a motion, seconded by Councilwoman Killian and unanimously carried to set a Public Hearing for February 1, 2017 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.

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

There was nothing discussed under this agenda item.

9. Bid Award for the Theodore Fremd Infrastructure Project contract (Contract #2016-18).  
Roll Call.

City Manager Serrano explained that this project includes replacing the sewer line on Theodore Fremd. In accordance with the Affordable Housing agreement with the County, the County will be paying for this major improvement.

Councilman Mecca made a motion, seconded by Councilwoman Killian, to adopt the following resolution:

**RESOLVED**, that Contract #2016-18 be awarded to the low bidder, Bradhurst Site Construction Corp., in the amount of One Million, Thirty Nine Thousand, Nine Hundred and Thirty dollars (\$1,039,930) as recommended by the City Engineer and Anthony Zaino, Director of Design, Westchester County Department of Planning.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, McCartney, Mecca and  
Tagger-Epstein  
NAYS: None  
ABSENT: None

9. Bid Award for the Theodore Fremd Infrastructure Project contract (Contract #2016-18).  
Roll Call.

Councilman Mecca made a motion, seconded by Councilwoman Killian, to adopt the following resolution:

**RESOLVED**, that Contract #2016-18 be awarded to the low bidder, Bradhurst Site Construction Corp., in the amount of One Million, Thirty Nine Thousand, Nine Hundred and Thirty dollars (\$1,039,930) as recommended by the City Engineer and Anthony Zaino, Director of Design, Westchester County Department of Planning.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, McCartney, Mecca and  
Tagger-Epstein  
NAYS: None  
ABSENT: None

10. Resolution to transfer \$40,000 from the Contingent Account to the Dearborn Avenue Seawall Project for repair of the Dearborn Avenue seawall.  
Roll Call.

City Manager Serrano explained that the damage to the City's portion of the wall was more substantial, and that after being studied by the City's engineers, it would be in the best interests of the City to facilitate immediate repairs to the City's portion.

Mayor Sack explained that the City's position is that it would be prudent to fix the City's end of the wall, which is expected to help the wall last for a long time. The Town of Rye wants to tear down the wall and build a new one, but this could cost the City upwards of \$400,000.

Councilman McCartney made a motion, seconded by Councilman Mecca, to authorize the transfer of \$40,000 from the Contingent Account to the Dearborn Avenue Seawall Project for repair of the Dearborn Avenue seawall.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, McCartney, Mecca and Tagger-Epstein  
NAYS: None  
ABSENT: None

11. Consideration of a request by the Rye Little League to approve a parade to kickoff Opening Day of the 60<sup>th</sup> Little League Season on Saturday, April 22, 2017 beginning at 12:00 p.m.

All were in favor of granting a request by the Rye Little League to approve a parade to kickoff Opening Day of the 60<sup>th</sup> Little League Season on Saturday, April 22, 2017 beginning at 12:00 p.m.

12. Consideration of a request by the Rye YMCA for the use of City streets for the 29<sup>th</sup> Annual Rye Derby on Sunday, April 30, 2017 from 9:00 a.m. to 2:00 p.m.

All were in favor of granting a request by the Rye YMCA for the use of City streets for the 29<sup>th</sup> Annual Rye Derby on Sunday, April 30, 2017 from 9:00 a.m. to 2:00 p.m.

13. Consideration of a request by the American Legion Post 128 and the Ladies Auxiliary of Post 128 to approve a parade to commemorate Memorial Day to be held on Monday, May 29, 2017 from 9:45 a.m. to 10:15 a.m.

All were in favor of granting a request by the American Legion Post 128 and the Ladies Auxiliary of Post 128 to approve a parade to commemorate Memorial Day to be held on Monday, May 29, 2017 from 9:45 a.m. to 10:15 a.m.

14. Miscellaneous communications and reports.

Councilwoman Hurd asked about the process for starting a new parade for the 4<sup>th</sup> of July.

Councilwoman Tagger-Epstein stated that she met with the Senior Advocacy Committee, who are planning a Senior Summit and currently looking tentatively at a May 3, 2017 date at Whitby Castle. She asked residents to stay tuned for concrete details.

Councilwoman Hurd announced that she attended the Annual Meeting of the Rye Free Reading Room, featuring local author Sam Weinman, which was a wonderful event. She thanked Chris Shoemaker for moderating the event.

15. Old Business.

There was nothing discussed under this agenda item.

15A. Two Appointments to the Playland Advisory Committee for a Three-Year Term.

Mayor Sack made a motion, approved by the Council, to re-appoint Lloyd Emanuel and Bill Myers to the Playland Advisory Committee, with terms ending January 1, 2020.

16. New Business.

There was nothing discussed under this agenda item.

17. Adjournment.

There being no further business to discuss at the regular meeting, Councilman Mecca made a motion at 8:52, seconded by Councilwoman Tagger-Epstein, to adjourn the regular meeting of the City Council and recess into executive session to discuss personal matters.

Respectfully submitted,

Carolyn E. D'Andrea  
City Clerk

***DRAFT UNAPPROVED MINUTES*** of the  
Workshop on Capital Projects of the City Council of  
the City of Rye held in City Hall on February 1,  
2017 at 6:30 P.M.

PRESENT:

JOSEPH A. SACK Mayor  
KIRSTIN BUCCI  
EMILY HURD  
JULIE KILLIAN  
RICHARD MECCA  
DANIELLE TAGGER-EPSTEIN (arrived at 6:35 P.M.)  
Councilmembers

ABSENT:

TERRENCE McCARTNEY  
Councilmembers

1. Roll Call

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

2. Presentation and Discussion on proposed Capital Projects.

City Manager Serrano announced that the purpose of the meeting would be to discuss pressing items of priority for the City with regard to capital projects.

City Planner Miller addressed the Council. He provided a brief overview of City projects, debt, and revenue sources. He stated that the funding for capital projects comes from three sources: grants and aid, general revenue, and debt. He discussed estimates for fund balance, the general fund, building an vehicle fund, new RA-6 District capital fund (due to the impending improvement at 120 Old Post Road), and the Theall Road Corridor fund.

City Planner Miller then highlighted the following projects that required attention: the First Street parking lot, Dearborn pump station, and annual street resurfacing.

Councilwoman Hurd asked about the Building and Vehicle Fund. City Comptroller Fazzino explained that each year, the budget includes funds to be allocated toward building and vehicle maintenance. The balance builds up if expenses come in lower than budgeted. The General fund subsidizes the Building and Vehicle Fund.

City Planner Miller then discussed the use of debt and debt sources available to the City pursuant to City Charter. These debt sources included mandatory referendum, City Council vote for debt up to \$11.2 million, public safety debt, and debt for disaster rebuilding. He then

discussed various projects, including the sanitation vehicle needs, Police/Court building renovations, paving and resurfacing improvements, City Hall improvements, and fire truck replacement.

Judge Joseph Latwin addressed the Council. He explained that there were New York State parameters with regard to the maintenance and operations of the courthouse. He stated that there were multiple deficiencies that were recognized by the State with regard to Rye's current courthouse. There was general discussion over the condition of the courthouse as a capital priority.

Mack Cunningham, Rye resident, stated that the courthouse project has been on the City's radar since at least 2008. He explained some background about the history of the project. He confirmed with Judge Latwin that the State has not given funding for the improvements since around 2010.

Councilwoman Bucci stated that she felt uncomfortable paying for paving with debt. There was some discussion over this item.

City Planner Miller then discussed other remaining projects, such as Public Works/ Recreation projects, SSES engineering projects, pedestrian improvements, MTA Parking improvements, Boston Post Road roundabout/ Nature Center improvements, and the Purchase Street/ Theodore Fremd/ Purdy Intersection.

There was extensive discussion over the Forest Avenue Sidewalk improvements and possible grants.

Mayor Sack opened the floor to Council comment on the top priorities. Councilman Mecca asked about the sanitation vehicles. There was discussion over the needs concerning this item. There was then discussion over the City Hall building improvements, such as problems with heating and air conditioning, roof repairs, and LED lighting.

Councilwoman Bucci commented that the conditions of DPW were in dire need of funding, as the current conditions for workers are unacceptable.

There was general discussion over priorities and uncertainty over costs of work prior to going out to bid. Councilwoman Hurd asked if there could be a workshop solely on street paving and similar improvements.

### 3. Adjournment.

There being no further business to discuss at the Workshop, Mayor Sack made a motion at 7:27 to adjourn the Workshop and take a five minute recess before the beginning of the regular meeting of the City Council.

***DRAFT UNAPPROVED MINUTES*** of  
the Regular Meeting of the City Council of the  
City of Rye held in City Hall on February 1, 2017,  
at 7:30 P.M.

PRESENT:

JOSEPH A. SACK Mayor  
KIRSTIN BUCCI  
EMILY HURD  
JULIE KILLIAN  
RICHARD MECCA  
DANIELLE TAGGER-EPSTEIN  
Councilmembers

ABSENT:

TERRENCE McCARTNEY, Councilmember

The Council convened at 6:30 P.M. for a Workshop on Capital Projects, which ended promptly at 7:30. The regular meeting convened at 7:35 P.M.

1. Pledge of Allegiance.

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

2. Roll Call.

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

3. General Announcements.

Councilwoman Tagger-Epstein congratulated the Sustainability Committee for its recent event on “going organic” with local landscapers. She looks forward to many more Sustainability Committee events, including a showing of the documentary, “Minimalism” at Rye Country Day School on Friday, February 3, 2017 at 6:00 P.M. Information can be found on the Sustainability Committee’s website.

Councilwoman Killian stated that there will be a NARCAN training at St. Vincent’s Hospital on February 15, 2017 in Harrison from 10-12:00 A.M.

Councilwoman Buccì announced that the enrollment packages have been sent out to the Rye Golf Club members for the upcoming season. The early bird signups end on March 15, 2017.

Councilwoman Hurd thanked Councilwoman Killian for attending the Rye Chamber of Commerce earlier on February 1, 2017 and for presenting on Rye ACT. Councilwoman Hurd reminded parents to submit their kindergarten enrollment. Councilwoman Killian

added that she was impressed with the participation from the merchants at the Chamber of Commerce meeting. She said she was pleased to discuss the Rye ACT program. Councilwoman Hurd then stated that on the United Hospital site development, there will be a traffic workshop on Tuesday, February 6, 2017 in Port Chester at Village Hall.

4. Issues Update/Old Business.

Councilwoman Killian stated she and City Manager Serrano had visited the Dearborn Avenue Seawall. City Manager Serrano stated that City Engineer Coyne was finalizing the numbers and plans to repair the wall as soon as possible.

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.

Mayor Sack made a motion, seconded by Councilman Mecca and unanimously carried, to open the public hearing.

Corporation Counsel Wilson stated that the purpose of the proposed code amendments were to update the code to comply with federal standards concerning telecommunications and to best protect the City of Rye in the future. She said that the public hearing will likely remain open for several meetings.

Councilwoman Hurd stated that she felt that amendments were not needed to the current code. She said that she had reviewing previous minutes, she stated that a business called MetroCom was present at introduction to Chapter 196. She stated that she felt the current code would handle the application before the Council from Crown Castle.

Mr. Robert Zahm, 7 Ridgewood Drive, addressed the Council. He asked the Council to consider banning poles in the sidewalk area, consider height requirements, equipment restrictions, etc.

Charles Hyman, 95 Dogwood Lane, addressed the Council. He stated that he opposed the application and expressed concern over health effects.

Councilwoman Tagger-Epstein asked Corporation Council Wilson to clarify if the amendments would be necessary, regardless of what happens with Crown Castle. Corporation Counsel Wilson responded that it was important to recognize changes in

technology and prepare for the future. Councilwoman Tagger-Epstein explained that what is before the Council is merely a draft.

Trisha Agosta, 4 Ridgewood Drive, addressed the Council. She stated that she felt there were definitions missing from the law and worried about the future.

Callie Erickson, 190 Locust Avenue, addressed the Council. She referenced a letter from Greenwood Union Cemetery offering to host a slick stick.

Carolyn Cunningham, 18 Soundview Avenue, commented on the original language of Chapter 196, stating that she felt it protected the City as written.

Ben Stacks, 15 Sonn Drive, stated that he felt the proposed amendments did not adequately protect the City.

Lia Laurino, 34 Oakland Beach Avenue, addressed the Council. She stated that she felt concerned over the health implications.

Katherine Ernest, 5 Halls Lane, asked that the 25 foot limit be reduced.

Sam Burrzano, Rye resident, stated that residents did not want the law changed.

Michael Zarin, Zarin & Steinmetz, on behalf of the “residents group” addressed the Council. He thanked the Council for circulating the amendments. He was interested to find out what part of the current Chapter 196 was “illegal.” There was discussion about underground facilities. He also stated that he felt that there were certain definitions were missing. He discussed the language on least intrusive means in Chapter 196-5(d)(2). He then discussed locations of the nodes within the Code. He then talked about the height and distance requirements, and exempt activities from zoning approval. He also discussed prior poles to the regulations and felt that they should also be addressed. Mr. Zarin also talked about the Greenburgh litigation with Crown Castle, in which Crown Castle prevailed. He stated he felt that there were no similarities between that case and the current situation in Rye. He also generally discussed the right-of-way agreement with relation to Chapter 196 as currently written and as proposed. There was comment at length about policy and Mr. Van Eaton’s prior comments.

Councilman Mecca asked if there were DAS systems in Greenburgh after its litigation. Mr. Zarin responded that there was, because Greenburgh had applied the wrong methodology to DAS nodes.

Mayor Sack stated that the Council was doing its best to protect the residents and lessen unfortunate future impacts on the community by considering the code and the right-of-way agreement.

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.

City Manager Serrano explained that this amendment was meant to address Rye's annual Food Truck Festival. Mayor Sack recommended the law be limited in application to any Recreation or School sponsored events.

Mayor Sack made a motion, seconded by Councilman Mecca and unanimously carried, 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.

Ted L'Estrange, 6 Geoffrey Court, Otisville, New York, discussed forced organ harvesting in China.

8. Resolution to amend the Administrative Pay Plan.  
Roll Call.

City Manager Serrano explained that titles were adjusted within the pay grades. Secondly, he explained that this resolution would allow the Administrative Pay Group to be able to be compensated for up to ten unused vacation days per year.

Councilman Mecca made a motion, seconded by Councilwoman Bucci, to adopt the following resolution:

**RESOLVED**, that the City of Rye Administrative Pay Plan be amended to reflect an increase to ten (10) days' vacation payout compensation, and the creation of the Public Safety Commissioner position within the Administrative Pay Group Grade A1, inclusion of the title of Assistant Planner to Grade B, and inclusion of Assistant Greenskeeper to Grade C.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, Mecca and Tagger-Epstein  
NAYS: None  
ABSENT: Councilman McCartney

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.

Councilwoman Tagger-Epstein made a motion, seconded by Councilman Mecca, that the City pay the balance of the 2016/2017 Rye Neck Union Free School District taxes collected by the City to the School District, amounting to \$217,325.71.

ROLL CALL

AYES: Mayor Sack, Councilmembers Bucci, Hurd, Killian, Mecca and Tagger-Epstein  
NAYS: None  
ABSENT: Councilman McCartney

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.

Mayor Sack made a motion, seconded by Councilwoman Killian and unanimously carried, to approve the 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.

Mayor Sack made a motion, unanimously carried by the Council to appoint Susan van Dijk to the Traffic and Pedestrian Safety Committee for a three-year term ending January 1, 2020.

12. Miscellaneous communications and reports.

There was nothing discussed under this agenda item.

13. New Business.

There was nothing discussed under this agenda item.

14. Adjournment.

There being no further business to discuss, Councilman Mecca made a motion, seconded by Councilwoman Killian, to adjourn the regular meeting of the City Council at 9:50 P.M.

Respectfully submitted,

Carolyn E. D'Andrea  
City Clerk



# CITY COUNCIL AGENDA

NO. 5      DEPT.: City Council      DATE: February 15, 2017  
CONTACT: Mayor Joseph A. Sack

**AGENDA ITEM:** Issues Update/Old Business

**FOR THE MEETING OF:**

February 15, 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. 7

DEPT.: City Manager's Office

DATE: February 15, 2017

CONTACT: Marcus Serrano, City Manager

**AGENDA ITEM:** Continuation of the 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 15, 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 Code<sup>1</sup>; 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

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<sup>1</sup> 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:

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

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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. 8

DEPT.: City Manager's Office

DATE: February 15, 2017

CONTACT: Marcus Serrano, City Manager

**AGENDA ITEM:** Public Hearing 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 15, 2017

**RYE CITY CODE,  
CHAPTER  
SECTION**

**RECOMMENDATION:** That the City Council hold 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. A request has been made to update the Local Law to allow the City Council to waive certain provisions upon request from an applicant.

In lieu of amending the City Code, the City Council could approve such requests in the same fashion that street closures are currently handled for Parades and local event celebrations (i.e. Rye Little League Parade, Mistletoe Magic, Recreation Halloween Window Painting, etc.) Upon approval from the City Council, the City Clerk's office issues a permit and performs all necessary follow-up with the requestor including receipt of required insurance information and co-ordination with the Police Department as necessary.

Rye Recreation is asking for a waiver to hold the 2<sup>nd</sup> Annual Food Truck Festival on Saturday, June 24, 2017.

See attached request from Rye Recreation.

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INTEROFFICE MEMORANDUM

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**TO:** MARCUS SERRANO, CITY MANAGER  
**FROM:** SALLY ROGOL, SUPERINTENDENT  
**SUBJECT:** RECREATION FOOD TRUCK FESTIVAL 2017  
**DATE:** FEBRUARY 10, 2017  
**CC:** ELEANOR MILITANA, ASSISTANT CITY MANAGER

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Rye Recreation would like to request permission for the 2<sup>nd</sup> 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. 9

DEPT.: City Manager

DATE: February 15, 2017

CONTACT: Marcus Serrano, City Manager

**AGENDA ITEM:** Continuation of the Public Hearing to amend local law Chapter 194, "Water", of the Rye City Code by amending Section §194-1, "Conservation in times of emergency", to give the City Manager the authority to declare conservation in times of water emergency.

**FOR THE MEETING OF:**

February 15, 2017

**RYE CITY CODE,**

CHAPTER 194

SECTION 1

**RECOMMENDATION:** Continuation of the Public Hearing to amend local law Chapter 194, "Water", of the Rye City Code by amending Section §194-1, "Conservation in times of emergency", to give the City Manager the authority to declare conservation in times of water emergency.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

Chapter 194 of the City Code places limitations on the use of water in times of water emergencies. Currently the Code allows for the *City Council* to declare a water emergency based on advice from the officers or agents of the water company. This declaration would need to be made at a City Council meeting. The proposed change to Chapter 194 is to give the *City Manager* the authority to declare the water emergency, providing a more timely response during a water emergency as a City Council meeting would not need to be held.

See attached proposed Local Law.

**CITY OF RYE**  
**LOCAL LAW NO. 2017**

A local law to amend Chapter 194 “Water Conservation” by repealing §§ 194-1 “Conservation in times of emergency” and 194-2 “Penalties for offenses” in their entirety and to adopt a new Chapter 194 “Water Supply Emergencies” as follows:

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

**Section 1:**

**§ 194-1. Statement of purpose.**

**The City of Rye purchases water from the New York-American Water Company (hereinafter referred to as “Suez”) and from Westchester Joint Water Works (hereinafter “WJWW”) (Suez and WJWW are hereinafter referred to collectively as the “Water Companies”). From time to time, the levels of the reservoirs will require the declaration of a water supply emergency. When a water supply emergency is declared, there are certain water use restrictions that must be implemented. Accordingly, the purposes of this chapter are:**

- A. To codify and thereby enable the City of Rye to enforce water-use restrictions imposed during a water supply emergency by the Water Companies, acting in conjunction with the municipalities it services;**
- B. To restrict the wasteful, inefficient and/or nonessential use of water during periods of drought; and**
- C. To establish penalties for violations and to provide for enforcement of water conservation measures in the City of Rye for the protection of the health, safety and welfare of the City.**

**§ 194-2. Drought Response Plan.**

**The Drought Response Plan of the Connecticut-American and Suez Companies, which plan was established on July 13, 1995, and subsequent modifications and/or supplements thereto published by the Connecticut-American and Suez Companies (hereinafter collectively referred to as the “Drought Response Plan”) shall be incorporated by reference into this chapter and become a part thereof. Similarly, any plan developed by WJWW shall be incorporated by reference into this chapter and become a part hereof**

**§ 194-3. Applicability.**

**Any person, corporation or entity located within the territorial boundaries of the City of Rye that receives, purchases, and/or uses water supplied by the Water Companies shall be subject to the provisions of this chapter.**

**§ 194-4. Declaration of water supply emergency.**

- A. Based upon the levels of the reservoir(s) of the Water Companies, the time of year, and the precipitation levels in the territories serviced by the Water Companies, the Water Companies may request that the City Manager declare the existence of a water supply emergency in one of three possible phases in accordance with the Drought Response Plan.**
- B. Prior to any emergency, the Water Companies shall inform the City Manager as early as practicable that a shortage of water may occur so that the City and its residents are on notice.**
- C. If a Water Company determines that an emergency does exist, the Water Company shall inform the City Manager of the emergency and ask that a water emergency be declared. The Water Company shall provide notice of its emergency in the designated Official Newspaper of the City of Rye and by transmittal to the radio and television media in the territorial areas serviced by it.**
- D. When a water supply emergency is declared by the City Manager, the Water Company shall inform the City Manager at least once every month as to the extent and length of the emergency. When the Water Company determines that the precipitation are back to a safe level, the City Manager shall end the emergency and remove any water restrictions in place.**

**§ 194-5. Variances.**

- A. Upon written application of any person, corporation or entity, the City Manager may, in his or her discretion, grant an exemption and/or variance relieving such person, corporation or entity from compliance with the water use restrictions imposed on the basis of factors including but not limited to any of the following:**
  - 1. An undue hardship would otherwise result;**
  - 2. No possible alternatives exist;**
  - 3. The applicant has taken and will take all possible measures to conserve water, with a complete description of such measures and the water savings to be effected;**
  - 4. Such exemption and/or variance is not inconsistent with the purposes of this chapter; and/or**
  - 5. The source and nature of the applicant's water supply.**

- B. In connection with any exemption and/or variance which may be granted, the City Manager shall impose such terms and conditions as he or she deems appropriate. Any variance and/or exemption granted shall be fashioned to comport as strictly as possible with the intent of this chapter.**
- C. The determination by the City Manager to grant or to deny an exemption and/or variance from compliance with the water use restrictions imposed may be appealed to the City Council. Upon receipt of such an appeal, the City Council shall affirm, reverse or modify the determination of the City Manager and impose such terms and conditions as it deems appropriate.**

**§ 194-6. Enforcement.**

**The City Police Department and the City Building Inspector are hereby designated enforcement officers with respect to water use restrictions set forth above.**

**§ 194-7. Penalties for offenses.**

**Any person, corporation, or entity violating any water use restrictions imposed pursuant this Chapter may, upon conviction, be punished for the first offense by a fine of not more than \$250; and for the second offense, by a fine of not less than \$250 but not more than \$500, or by imprisonment for not more than 15 days, or both. The third or any subsequent offense within 12 months may be punishable by a fine of not less than \$500 nor more than \$750 or by imprisonment not exceeding six months, or by both such fine and imprisonment. Each day that a violation under this chapter continues may be considered a separate offense for which a fine or imprisonment may be imposed.**

**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.



# CITY COUNCIL AGENDA

NO. 11

DEPT.: City Manager

DATE: February 15, 2017

CONTACT: Marcus Serrano, City Manager

**AGENDA ITEM:** Resolution to amend the 2017 Adopted Fees and Charges for the Rye Boat Basin Enterprise Fund.

**FOR THE MEETING OF:**

February 15, 2017

**RYE CITY CODE:**

CHAPTER  
SECTION

**RECOMMENDATION:** That the Council amend the 2017 Adopted Fees and Charges for the Rye Boat Basin Enterprise Fund.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** The Boat Basin Commission is requesting that the City Council amend the 2017 Adopted Fees and Charges to clarify the wording for the new late fee for late registrations. This new fee, implemented in 2017, is for late registrations of current returning boat slip holders only. New applicants for a boat slip will not be charged a late fee. The Boat Basin Commission would like to update the wording to make this clear.

Currently the Fee schedule reads:

**Late fee for late registrations**

Updated Fee schedule will read:

**Late fee for late registrations of current returning boat slip holders**

The fee remains unchanged and is 5% of the registration fee.

See attached 2017 Boat Basin Fees and Charges (page 3)

CITY OF RYE, NEW YORK  
 BOAT BASIN ENTERPRISE FUND  
 ANNUAL BUDGET  
 FOR FISCAL YEAR ENDING DECEMBER 31, 2017

FEE SCHEDULE

Description	Last Changed	Adopted 2016	Budget 2017	New Price/Ft
Non-resident - Up to 8 Feet	2016	\$ 684.00	\$ 720.00	\$ 90.00
Non-resident - 8.1 Feet to 9 Feet	2016	768.00	810.00	90.00
Non-resident - 9.1 Feet to 10 Feet	2016	852.00	900.00	90.00
Non-resident - 10.1 Feet to 11 Feet	2016	936.00	990.00	90.00
Non-resident - 11.1 Feet to 12 Feet	2016	1,037.00	1,080.00	90.00
Non-resident - 12.1 Feet to 13 Feet	2016	1,180.00	1,170.00	90.00
Non-resident - 13.1 Feet to 14 Feet	2016	1,248.00	1,260.00	90.00
Non-resident - 14.1 Feet to 15 Feet	2016	1,329.00	1,350.00	90.00
Non-resident - 15.1 Feet to 16 Feet	2016	1,394.00	1,440.00	90.00
Non-resident - 16.1 Feet to 17 Feet	2016	1,464.00	1,530.00	90.00
Non-resident - 17.1 Feet to 18 Feet	2016	1,645.00	1,620.00	90.00
Non-resident - 18.1 Feet to 19 Feet	2016	1,739.00	1,710.00	90.00
Non-resident - 19.1 Feet to 20 Feet	2016	1,801.00	1,800.00	90.00
Non-resident - 20.1 Feet to 21 Feet	2016	1,893.00	2,625.00	125.00
Non-resident - 21.1 Feet to 22 Feet	2016	2,689.00	2,750.00	125.00
Non-resident - 22.1 Feet to 23 Feet	2016	2,799.00	2,875.00	125.00
Non-resident - 23.1 Feet to 24 Feet	2016	2,909.00	3,000.00	125.00
Non-resident - 24.1 Feet to 25 Feet	2016	3,057.00	3,125.00	125.00
Non-resident - 25.1 Feet to 26 Feet	2016	3,134.00	3,250.00	125.00
Non-resident - 26.1 Feet to 27 Feet	2016	3,247.00	3,645.00	135.00
Non-resident - 27.1 Feet to 28 Feet	2016	3,353.00	3,780.00	135.00
Non-resident - 28.1 Feet to 29 Feet	2016	3,473.00	3,915.00	135.00
Non-resident - 29.1 Feet to 30 Feet	2016	3,578.00	4,050.00	135.00
Non-resident - 30.1 Feet to 31 Feet	2016	3,690.00	4,185.00	135.00
Non-resident - 31.1 Feet to 32 Feet	2016	3,800.00	4,320.00	135.00
Non-resident - 32.1 Feet to 33 Feet	2016	4,900.00	4,950.00	150.00
Non-resident - 33.1 Feet to 34 Feet	2016	4,996.00	5,100.00	150.00
Non-resident - 34.1 Feet to 35 Feet	2016	5,135.00	5,250.00	150.00
Non-resident - 35.1 Feet to 36 Feet	2016	5,279.00	5,400.00	150.00
Non-resident - 36.1 Feet to 37 Feet	2016	5,414.00	5,550.00	150.00
Resident - Up to 8 Feet	2016	430.00	440.00	\$ 55.00
Resident - 8.1 Feet to 9 Feet	2016	492.00	495.00	55.00
Resident - 9.1 Feet to 10 Feet	2016	538.00	550.00	55.00
Resident - 10.1 Feet to 11 Feet	2016	591.00	605.00	55.00
Resident - 12 Feet or Less	2016	645.00	660.00	55.00
Resident - 12.1 Feet to 13 Feet	2016	729.00	715.00	55.00
Resident - 13.1 Feet to 14 Feet	2016	770.00	770.00	55.00
Resident - 14.1 Feet to 15 Feet	2016	837.00	825.00	55.00
Resident - 15.1 Feet to 16 Feet	2016	861.00	880.00	55.00
Resident - 16.1 Feet to 17 Feet	2016	906.00	935.00	55.00
Resident - 17.1 Feet to 18 Feet	2016	952.00	990.00	55.00

CITY OF RYE, NEW YORK  
 BOAT BASIN ENTERPRISE FUND  
 ANNUAL BUDGET  
 FOR FISCAL YEAR ENDING DECEMBER 31, 2017

FEE SCHEDULE

Description	Last Changed	Adopted 2016	Budget 2017	New Price/Ft
Resident - 18.1 Feet to 19 Feet	2016	\$ 956.00	\$1,045.00	\$ 55.00
Resident - 19.1 Feet to 20 Feet	2016	1,053.00	1,100.00	55.00
Resident - 20.1 Feet to 21 Feet	2016	1,094.00	1,512.00	72.00
Resident - 21.1 Feet to 22 Feet	2016	1,558.00	1,584.00	72.00
Resident - 22.1 Feet to 23 Feet	2016	1,620.00	1,656.00	72.00
Resident - 23.1 Feet to 24 Feet	2016	1,687.00	1,728.00	72.00
Resident - 24.1 Feet to 25 Feet	2016	1,753.00	1,800.00	72.00
Resident - 25.1 Feet to 26 Feet	2016	1,814.00	1,872.00	72.00
Resident - 26.1 Feet to 27 Feet	2016	1,878.00	2,160.00	80.00
Resident - 27.1 Feet to 28 Feet	2016	1,946.00	2,240.00	80.00
Resident - 28.1 Feet to 29 Feet	2016	2,016.00	2,320.00	80.00
Resident - 29.1 Feet to 30 Feet	2016	2,079.00	2,400.00	80.00
Resident - 30.1 Feet to 31 Feet	2016	2,145.00	2,480.00	80.00
Resident - 31.1 Feet to 32 Feet	2016	2,206.00	2,560.00	80.00
Resident - 32.1 Feet to 33 Feet	2016	2,818.00	2,970.00	90.00
Resident - 33.1 Feet to 34 Feet	2016	2,901.00	3,060.00	90.00
Resident - 34.1 Feet to 35 Feet	2016	2,977.00	3,150.00	90.00
Resident - 35.1 Feet to 36 Feet	2016	3,063.00	3,240.00	90.00
Resident - 36.1 Feet to 37 Feet	2016	3,205.00	3,330.00	90.00
Finger Slip - If Assigned	2016	200.00	200.00	
Non-Resident Slip Surcharge	2002	75.00	75.00	
Kayak Storage Wet/Dry - Per Season *	2016	325.00	300.00	
Late Fine For Overdue Storage/Docking Area (Per Day) *	2016	20.00	20.00	
Non - Resident fine for above	2016	25.00	25.00	
Launching Ramp - Per Trailer One Time Open Hours	2013	25.00	25.00	
Launching Ramp - Seasonal Permit	2016	200.00	200.00	
Car Top Launching (paddle boards and kayaks only)	2016	15.00	15.00	
Overnight Tie-Up (Per Foot - Per Day)	2016	2.00	3.00	
Parking Fee - Additional Parking Permit or Replacement	2005	50.00	50.00	
Parking Fee - One Day Permit	2008	10.00	10.00	
Summer Trailer Storage - Limited Availability *	2016	350.00	350.00	
Use of Work Space - Non-permit Holders (Per Day) *	2016	25.00	25.00	
Resident / Winter Storage - In Water - Per Foot *	2016	35.00	37.00	
Resident / Winter Storage - On Land - Per Foot *	2016	30.00	32.00	
Non-Resident / Winter Storage - In Water - Per Foot *	2016	50.00	51.00	
Non-Resident / Winter Storage - On Land - Per Foot *	2016	43.00	44.00	
Winter Wet Float Storage per foot	2016	12.00	12.00	
New York State/ Westchester County Tax Rate	2005	7.375%	7.375%	

\* Sales tax additional. Fees listed do not include sales tax.

CITY OF RYE, NEW YORK  
 BOAT BASIN ENTERPRISE FUND  
 ANNUAL BUDGET  
 FOR FISCAL YEAR ENDING DECEMBER 31, 2017

FEE SCHEDULE

Description	Last Changed	Adopted 2016	Budget 2017	New Price/Ft
Permit Fee for Contractors working on Boat Basin Property	2016	\$ 250.00	\$ 250.00	
Daily Permit Fee for Contractors working on Marina Property	2016	25.00	25.00	
Moored Floats	2016	500.00	500.00	
Mooring Fee*	2016	100.00	100.00	
*This fee is in addition to the \$150 that is currently charged The \$100 increase will go directly to the Boat Basin				
<u>New Fees: 2017</u>				
Weekly Transient fee (Per Foot)			\$ 12.00	
Kayak winter dry storage (Plus Sales Tax)			300.00	
Resident jet ski fee (Includes Dock)			700.00	
Non-Resident jet ski fee (Includes Dock)			1,050.00	
Late fee for late registrations			5% of fee	
Wait list application fee			25.00	
Wait list renewal fee			10.00	
Electric kilowatt charge			0.50	



# CITY COUNCIL AGENDA

NO. 12      DEPT.: City Manager      DATE: February 15, 2017  
CONTACT: Marcus Serrano, City Manager

**AGENDA ITEM:** Resolution to approve a Workplace Violence Policy and a Workplace Violence Prevention Program for the City of Rye.

**FOR THE MEETING OF:**

February 15, 2017

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** Approval of a Workplace Violence Policy and a Workplace Violence Prevention Program for the City of Rye.

**IMPACT:**    Environmental    Fiscal    Neighborhood    Other:

**BACKGROUND:** The Occupational Safety and Health Act (OSHA) requires employers to maintain reasonably safe and healthy workplaces. This duty extends to some incidents of workplace violence. The City Council is asked to approve a Workplace Violence Policy and a Workplace Violence Prevention Program which will be distributed to all City of Rye Employees.

See attached: Workplace Violence Policy  
Workplace Violence Prevention Program



## **WORKPLACE VIOLENCE POLICY & PROCEDURES**

The City of Rye has a long-standing commitment to promoting a safe and secure work environment that promotes the achievement of its mission of serving the public. All employees of the City of Rye are expected to maintain a working environment free from violence, threats of harassment, violence, intimidation or coercion. The City of Rye has developed this policy in accordance with the New York State Workplace Violence Protection Act.

The purpose of this policy is to address the issue of potential workplace violence in our City of Rye, prevent workplace violence from occurring to the fullest extent possible, and set forth procedures to be followed when such violence has occurred or is threatened.

### **Policy**

The City of Rye prohibits workplace violence. Violence, threats of violence, intimidation, harassment, coercion, or other threatening behavior towards people or property will not be tolerated. Complaints involving workplace violence will not be ignored and will be thoroughly and promptly investigated and given the serious attention they deserve. Individuals who violate this policy may be removed from City of Rye property and are subject to disciplinary and/or personnel action up to and including termination, consistent with law, City of Rye policies, rules and collective bargaining agreements, and/or referral to law enforcement authorities for criminal prosecution. Complaints of sexual harassment are covered under the City of Rye's Policy against Sexual Harassment.

The City of Rye, at the request of an employee, pursuant to court order or at its own discretion, may prohibit members of the public, including family members, from seeing an employee on City of Rye property unless necessary to transact City of Rye-related business. This policy particularly applies in cases where the employee suspects that an act of violence will result from an encounter with said individual(s).

### **Scope**

All employees, members of the public, vendors, contractors, consultants, and others who do business with the City of Rye, whether in a City of Rye facility or off-site location where City of Rye business is conducted, are covered by this policy. This policy also applies to other persons not affiliated with the City of Rye, such as former employees,

and visitors. When employees have complaints about other employees, they should contact their supervisor.

## **Definitions**

1. Workplace violence is any behavior that is violent, threatens violence, coerces, harasses or intimidates others, interferes with an individual's legal rights of movement or expression, or disrupts the workplace, the work environment, or the City of Rye's ability to provide services to the public. Examples of workplace violence include, but are not limited to:
2. Disruptive behavior intended to disturb, interfere with or prevent normal work activities (such as yelling, using profanity, verbally abusing others, or waving arms and fists).
3. Intentional physical contact for the purpose of causing harm (such as slapping, stabbing, punching, striking, shoving, or other physical attack).
4. Menacing or threatening behavior (such as throwing objects, pounding on a desk or door, damaging property, stalking, or otherwise acting aggressively; or making oral or written statements specifically intended to frighten, coerce, or threaten) where a reasonable person would interrupt such behavior as constituting evidence of intent to cause harm to individuals or property.
5. Possessing firearms, imitation firearms, knives or other dangerous weapons, instruments or materials. No one within the City of Rye, shall have in their possession a firearm or other dangerous weapon, instrument or material that can be used to inflict bodily harm on an individual or damage to City of Rye property without specific written authorization from the City Manager or Police Commissioner regardless of whether the individual possesses a valid permit to carry the firearm or weapon.

## **Reporting of Incidents**

### **1. General Reporting Responsibilities**

Incidents of workplace violence, threats of workplace violence, or observations of workplace violence are not to be ignored by any member of the City of Rye. Workplace violence should promptly be reported to the appropriate City of Rye official (see below). Additionally, employees are encouraged to report behavior that they reasonably believe poses a potential for workplace violence as defined above. It is important that all members of the City of Rye take this responsibility seriously to effectively maintain a safe working and learning environment.

### **2. Imminent or Actual Violence**

Any person experiencing or witnessing imminent danger or actual violence involving weapons, personal injury or property damage should call their supervisor immediately, or call 911.

### 3. Acts of Violence Not Involving Weapons or Injuries to Persons

Any person who is the subject of a suspected violation of this policy involving violence without weapons or personal injury, or is a witness to such suspected violation, should report the incident to his or her supervisor, or in lieu thereof, to their respective Police Commissioner. The Police Commissioner will work with the Office of Human Resources and the supervisor on an appropriate response.

### 4. Commission of a Crime

All individuals who believe a crime has been committed against them have the right, and are encouraged, to report the incident to the appropriate law enforcement agency.

### 5. False Reports

Members of the City of Rye who make false and malicious complaints of workplace violence, as opposed to complaints which, even if erroneous, are made in good faith, will be subject to disciplinary action and/or referral to civil authorities as appropriate.

### 6. Incident Reports

The City of Rye will report incidents of workplace violence consistent with the City of Rye Policies for Incident Reporting.

## **Responsibilities**

### 1. City Manager

The City Manager shall be responsible for the implementation of this policy. The responsibility includes dissemination of this policy to all City of Rye employees, ensuring appropriate investigation and follow-up of all alleged incidents of workplace violence, and ensuring that all administrators, managers, and supervisors are aware of their responsibilities under this policy through internal communications and training.

### 2. Police Commissioner

The Police Commissioner is responsible for responding to, intervening, and documenting all incidents of violence in the workplace. The Police Commissioner will immediately log all incidents of workplace violence and will notify the respective supervisor of an incident with his/her employee, or notify the appropriate City of Rye of an incident. All officers should be knowledgeable of

when law enforcement action may be appropriate. Human Resources will maintain an internal tracking system of all threats and incidents of violence.

Officers will be trained in workplace violence awareness and prevention, non-violent crises intervention, conflict management, and dispute resolution.

Officers will work closely with Human Resources when the possibility of workplace violence is heightened, as well as on the appropriate response to workplace violence incidents consistent with City of Rye policies, rules, procedures and applicable labor agreements, including appropriate disciplinary action up to and including termination.

When informed, Police Commissioner will maintain a record of any Orders of Protection for staff. Police Commissioner will provide escort service to employees within its geographical confines, when sufficient personnel are available. Such services are to be extended at the discretion of the Police Commissioner.

### 3. Supervisor/Department Head

Each, executive officer, administrator, Department Head or other person with supervisory responsibility (hereinafter "supervisor") is responsible within his/her area of jurisdiction for the implementation of this policy. Supervisors must report to Human Resources/Police Commissioner any complaint of workplace violence made to him/her and any other incidents of workplace violence of which he/she becomes aware or reasonably believes to exist. Supervisors are expected to inform their immediate supervisor promptly about any complaints, acts, or threats of violence even if the situation has been addressed and resolved. After having reported such complaint or incident to the Human Resources/Police Commissioner and immediate supervisor, the supervisor should keep it confidential and not disclose it further, except as necessary during the investigation process and/or subsequent proceedings.

Supervisors are required to contact the Human Resources/Police Commissioner Office immediately in the event of imminent or actual violence involving weapons or potential physical injuries.

### 4. Employees and Staff

Employees and staff must report workplace violence, as defined above, to their supervisor. Employees. Recurring or persistent workplace violence that an employee reasonably believes is not being addressed satisfactorily, or violence that is, or has been, engaged in by the employee's supervisor should be brought to the attention of the Human Resources/Police Commissioner Office.

Employees who have obtained Orders of Protection are expected to notify their supervisors and the Human Resources/Police Commissioner Office of any orders that list City of Rye locations as protected areas.

Victims of domestic violence who believe the violence may extend into the workplace, or employees who believe that domestic or other personal matters may result in their being subject to violence extending into the workplace, are encouraged to notify their supervisor, or the Human Resources/Police Commissioner Office. Confidentiality will be maintained to the extent possible.

Upon hiring, and annually thereafter, faculty and staff will receive copies of this policy. Additionally, the policy will be posted throughout the City of Rye and be placed on the City of Rye website, as appropriate.

#### 5. Office of Human Resources

The Office of Human Resources is responsible for assisting the Police Commissioner and supervisors in responding to workplace violence; facilitating appropriate responses to reported incidents of workplace violence; notifying the Police Commissioner of workplace violence incidents reported to that office; and consulting with, as necessary, counseling services to secure professional intervention.

The Office of Human Resources is responsible for providing new employees with a copy of the Workplace Violence Policy and Procedures and insuring that employees and staff receive appropriate training. The Office of Human Resources will also be responsible for annually disseminating this policy to all employees as well as posting the policy, as appropriate.

### **Education**

Supervisors are responsible for the dissemination and enforcement of this policy as described herein, as well as for providing opportunities for training in the prevention and awareness of workplace violence. Additionally, annual training will be provided to all employees.

### **Confidentiality**

The City of Rye shall maintain the confidentiality of investigations of workplace violence to the extent possible and legally permissible. The City of Rye will act on the basis of anonymous complaints where it has a reasonable basis to believe that there has been a violation of this policy and that the safety and well being of employees of the City of Rye would be served by such action.

### **Retaliation**

Retaliation against anyone acting in good faith who has made a complaint of workplace violence, who has reported witnessing workplace violence, or who has been involved in reporting, investigating, or responding to workplace violence is a violation of this policy. Those found responsible for retaliatory action will be subject to discipline up to and including termination.

## **Reservation of Rights**

The City of Rye reserves the right to change, amend, modify or discontinue the Policy, in whole or in part, at any time, in its sole and exclusive discretion.

Approved by: \_\_\_\_\_ on \_\_\_\_\_



# **City of Rye**

## **Workplace Violence Prevention Program**

**February 2017**

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## **APPENDIX 1: WORKPLACE VIOLENCE INCIDENT REPORT FORM**

# SECTION 1 – INTRODUCTION

## POLICY STATEMENT

The City of Rye is committed to providing its employees with a work environment that is safe, secure, and free from violence and intimidation. The City also considers the safety of its residents, vendors, contractors, and the general public (collectively referred to as “visitors” throughout the remainder of this program manual) to be of paramount importance and strives to provide them the same type of protections while on City property or conducting official City business.

In accordance with the New York State Workplace Violence Prevention Act, the City of Rye has developed a Workplace Violence Prevention Program. Authorized employee representatives were active participants in the development of this policy and program, and will be asked to participate in all reviews and updates of the policy and program. The City will conduct annual reviews of select sites to identify risk factors that may increase the likelihood of workplace violence, and will develop and implement appropriate measures to minimize or eliminate these hazards. “Spot audits” of potentially hazardous sites may occur, as may audits of particular locations made by request. Authorized representatives will participate in all reviews and audits.

The City will not tolerate any acts of violence or intimidation in the workplace, including but not limited to, physical assaults (e.g., hitting, pushing) or acts of aggression, whether verbal or physical, that would inflict physical injury or reasonable fear of physical injury upon an employee or elected official. In addition, employees are prohibited from possessing firearms or weapons (e.g., guns, non work related knives, explosives, and other items with the potential to inflict harm) in the workplace, even if the employee is licensed to carry the weapon. The only exceptions are law enforcement. An employee who has knowledge that a coworker or visitor possesses a weapon on City property must report this to a Department Head or supervisor immediately.

For the purpose of this program, the **workplace** is defined as any location away from an employee’s home, either permanent or temporary, where the employee performs any work-related duty in the course of employment. This includes, but is not limited to, City-owned buildings and surrounding perimeters, parking lots, worksites, clients’ homes, and traveling to and from work assignments. **Workplace violence** is defined as any physical assault or act of aggressive behavior occurring where a public employee performs any work-related duty in the course of his or her employment. **Imminent Danger** is defined as any condition or practice in any place of employment that could be expected to cause death or serious physical harm.

Any incident of workplace violence must be promptly reported to the Department Head and to the Human Resources Office in accordance with the procedures establish in the City’s Workplace Violence Prevention Program. An employee who witnesses any incident of imminent danger should call 911 immediately, and then alert the Supervisor’s office.

Violations of this policy and/or its corresponding procedures will result in appropriate remedial, disciplinary, and/or legal action, dependent upon the circumstances, as provided for by City policies, Federal, state, and local law, and/or the City's collective bargaining agreements, as applicable.

No employee will be subject to criticism, reprisal, retaliation, demotion, discrimination, disciplinary action, or other adverse employment action for making a truthful and good faith report of acts pursuant to this policy. However, knowingly making a false statement under this policy may be punishable under New York State Penal Law sections 210.45 and 175.35.

This Workplace Violence Prevention policy statement will be posted where notices to employees are normally displayed. In addition, a copy of the program manual will be made available to employees, the authorized employee representative(s), and the Commissioner of the New York State Department of Labor, and at each of the City's worksites during normal working hours.

City Council  
Adopted by Resolution  
\_\_\_\_\_, 2017

## **OVERVIEW OF THE NEW YORK STATE WORKPLACE VIOLENCE PREVENTION ACT**

The New York State Workplace Violence Prevention Act was passed in 2006 as a result of and in response to incidents of violence occurring in public sector workplaces. The Act amended NYS Labor Law by adding Section 27-b, which requires all state and local government employers to take steps to ensure their employees are provided adequate protection from potential incidents of violence in the workplace.

Among other stipulations, Section 27-b requires the City of Rye to:

1. Conduct a risk assessment of its worksites to identify and address any existing risk factors that may increase the possibility of workplace violence;
2. Provide training for all employees (upon initial assignment and annually thereafter) which informs them of the risk factors that may be present at their worksites, the measures they can take to protect themselves from such risks, and the steps the employer has implemented to protect employees, such as appropriate work practices, emergency procedures, and use of security alarms and other devices; and
3. Develop and implement a written workplace violence prevention program that lists the risk factors and the methods the employer is using to prevent violence and minimize or eliminate identified hazards (required if an employer has 20 or more full-time employees).

## **WHAT IS WORKPLACE VIOLENCE?**

The New York State Department of Labor defines workplace violence as any physical assault or acts of aggressive behavior occurring where a public employee performs any work-related duty in the course of his or her employment.

Workplace violence incidents are generally categorized into three levels:

Level I	Disruptive behavior such as verbal abuse
Level II	Aggressive or threatening behavior
Level III	Physical assault

A number of different actions in the work environment can trigger or cause workplace violence. It may even be the result of non-work-related situations, such as domestic violence or “road rage.”

Workplace violence can be inflicted by an employee, a supervisor, department head, resident, member of the public, contractor, vendor, family member, or even a stranger.

## WHAT IS A WORKPLACE VIOLENCE INCIDENT?

- A workplace violence incident is defined as any physical assault or act of aggressive behavior occurring where a public employee performs any work-related duty in the course of his or her employment, including but not limited to: an attempt or threat, whether verbal or physical, to inflict injury upon another person;
- Any intentional display of force which would give a person reason to fear or expect bodily harm;
- Intentional and wrongful physical contact with a person without his or her consent that entails some injury or offensive touching; or
- Stalking a person with the intent of causing fear when such stalking has arisen through or in the course of employment.

Physical contact is not a required element of a workplace violence incident. Under certain circumstances, a workplace violence incident may be committed without one person actually touching, striking, or doing bodily harm to another person.

## WORKPLACE VIOLENCE—IMMINENT DANGER

The Department of Labor defines an **imminent danger** as any condition or practice in any place of employment such that a danger exists that could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated.

## SAVINGS CLAUSE

The City of Rye has made every effort to ensure that this Workplace Violence Prevention Program complies with NYS Department of Labor regulations. In the event any of the provisions, portions or applications of this program are found to be invalid or inconsistent with any superseding legal requirements by any tribunal of competent jurisdiction, then the provisions, portions or applications specified in such decision shall be of no force and effect, but the remainder of this program shall continue to be in full force and effect.

## **SECTION 2 – EMPLOYEE AND SUPERVISOR ROLES AND RESPONSIBILITIES**

### **EMPLOYEE RESPONSIBILITIES**

Employee and authorized employee representative involvement in the City of Rye's Workplace Violence Prevention Program is essential to the program's success. Employees are expected to read, understand, and comply with the City's program and to attend ongoing education and training on workplace violence. Any questions should be directed to the employee's Department Head, supervisor or the Human Resources office.

**Employees must promptly report any workplace violence incident or imminent danger condition.**

If an employee encounters a situation that he<sup>1</sup> reasonably believes is one of imminent danger (and it is safe to do so), he should call 911 immediately and alert the Supervisor's office as soon as possible afterward.

If an employee has directly experienced or witnessed what he reasonably believes is a workplace violence incident, he should complete and submit a Workplace Violence Incident Report Form in accordance with the procedures outlined in Section 5 (Incident Recordkeeping, Reporting, and Investigation) of this program manual.

### **Protective and Restraining Orders**

A copy of any temporary or permanent protective or restraining order that lists specific City workplace locations as protected areas must be provided to the employee's Department head, the Human Resources office, the City Corporation Counsel's office and the City of Rye Police Department. The City will follow confidentiality procedures that recognize and respect the privacy of the reporting employee; however, information necessary to enable the City to comply with the order will be provided to specific employees as necessary.

### **DEPARTMENT HEAD/SUPERVISOR RESPONSIBILITIES**

Department Heads and supervisors are responsible for being fully familiar with the City's Workplace Violence Prevention Policy and Program. They must communicate with employees about the Workplace Violence Prevention Program and answer their questions, or refer them to the Human Resources office as necessary. Department heads and supervisors are expected to enforce the program in a fair and consistent manner and ensure all aspects of the program under their area of responsibility are properly met.

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<sup>1</sup> Use of male pronouns is for convenience only; all such references apply without distinction to female and male persons.

## **WORKPLACE VIOLENCE PREVENTION COMMITTEE**

The City of Rye has established a Workplace Violence Prevention Committee to administer the Workplace Violence Prevention Program. The committee, which includes authorized employee representatives mutually agreed upon by management and the unions, has the following responsibilities:

- Conducting and/or updating the comprehensive risk evaluation of the City's workplaces to identify any factors or situations that may place employees at risk of violence;
- Conducting and/or updating employee surveys and interviews as necessary to obtain feedback on the risk factors employees believe are present in the workplace, to determine if there have been previous workplace violence incidents, etc.;
- Developing and implementing risk reduction strategies and plans for responding to acts of violence;
- Coordinating employee training and education programs relating to workplace violence;
- Investigating workplace violence incidents and implementing any necessary measures to reduce or eliminate the likelihood of similar incidents occurring;
- Reviewing the Workplace Violence Prevention Program at least annually, including analyzing Workplace Violence Incident Reports to identify trends in the types of incidents that occurred during the year and to determine the effectiveness of the mitigating actions taken;
- Updating the Workplace Violence Prevention Program as needed; and
- Other duties as may be necessary and appropriate.

Following is a list of the current members of the Workplace Violence Prevention Committee:

Maryann Cianci, Personnel Manager (Committee Chair)

Eleanor Militana, Assistant City Manager

Michael Corcoran, Commissioner of Public Safety

Ryan Coyne, City Engineer Superintendent of DPW

Jim Buonaiuto, Golf Club Manager

Kristen K. Wilson, City Corporation Counsel

DPW Representative

Clerical Representative

Police Representative Lieutenant Scott Craig

Fire Representative Lieutenant Kurt Tietjen

## SECTION 3 – RESPONSE PROCEDURES

### RESPONSE PROCEDURES DURING AN INCIDENT

If a threatening situation arises:

- Try to remain calm;
- Remove yourself from the threat as soon as possible;
- Immediately call, or alert others to call, for assistance from the appropriate resource, e.g., immediate supervisor, Department Head, City Manager's office, police and/or ambulance (if necessary).
- **If you reasonably believe an imminent danger condition exists, assuming it is safe to do so, you should call 911 and then alert your Supervisor's office afterward,**
- Notify coworkers as soon as practical to enable them to also reach safety if danger is imminent and applicable to them.

### POST INCIDENT RESPONSE PROCEDURES

If a workplace violence incident or imminent danger condition occurs, or an employee submits a Workplace Violence Incident Report, a sub-committee of the Workplace Violence Prevention Committee will conduct a thorough investigation of the incident. The City will respect the privacy and confidentiality rights of employees during investigations to the greatest extent possible, although the City cannot guarantee complete confidentiality.

Based on the specific situation and the results of the investigation, appropriate measures will be taken, if needed, to eliminate or reduce the likelihood of similar workplace violence incidents occurring in the future. These measures may include disciplinary action taken against employees who are found to have violated the City's Workplace Violence Prevention Policy. Appropriate measures may also include modifications to the physical workplace to correct conditions that may have contributed to the reported incident. If the workplace violence incident was related to a threat, all employees who might be affected if the threat-maker were to carry out such threat will be given proper notification. Throughout the investigation, the City will work with all appropriate authorities, and maintain open lines of communication with employees, visitors, and the public to answer questions and alleviate concern.

The City of Rye will provide references to organizations that can assist persons who have been or fear they may become victims of workplace violence. These organizations can advise individuals about options that may be available to them, such as obtaining a restraining order against the threat maker, obtaining follow-up medical care, if applicable, etc. The City will also work with such persons to facilitate access to counseling services either through the City's benefits program or outside organizations.

## DEALING WITH CONFLICT

There is no sure way to tell whether someone will become violent. However, there are often warning signs before violence occurs. These warning signs do not mean that the individual will actually become violent, but in combination, they should be a cause for concern. Warning signs of potentially violent individuals include:

- Written, oral, or implied threats or intimidation
- Fascination with weaponry or acts of violence
- Theft or sabotage of projects or equipment
- Alcohol or drug abuse in the workplace
- Expressions of hopelessness or heightened anxiety
- Intention to hurt self or others
- Lack of concern for the safety of others
- Externalization of blame
- Irrational beliefs and ideas
- Romantic obsession
- Displays of excessive or unwarranted anger
- Feelings of victimization
- Inability to take criticism
- New or increased sources of stress at home or work
- Productivity and/or attendance problems

## **DEALING WITH POTENTIALLY VIOLENT INDIVIDUALS**

### **DO's**

- Project calmness. Move and speak slowly, quietly, and confidently.
- Listen attentively and encourage the person to talk.
- Let the person know that you are interested in what he or she is saying.
- Maintain a relaxed yet attentive posture.
- Acknowledge the person's feelings and indicate that you can see he or she is upset.
- Ask for small, specific favors such as asking the person to move to a quieter area.
- Establish ground rules. State the consequences of violent or threatening behavior.
- Employ delaying tactics to give the person time to calm down, e.g., offer a glass of water.
- Be reassuring and point out choices.
- Help the person break down big problems into smaller, more manageable problems.
- Accept criticism. When a complaint might be true, use statements such as, "You're probably right" or "It was my fault." If the criticism seems unwarranted, ask clarifying questions.
- Arrange yourself so that your exit is not blocked.
- Make sure there are three to six feet between you and the other person.
- If you feel threatened at anytime, call 911 immediately

### **DON'Ts**

- Don't make sudden movements that may seem threatening.
- Don't speak rapidly, raise your volume, or use an accusatory tone.
- Don't laugh (intentionally or unintentionally) at the person.
- Don't reject all demands.
- Don't make physical contact, point or jab your finger at the person, or use long periods of eye contact.
- Don't pose in challenging stances, such as directly opposite someone, with hands on hips, or with arms crossed.
- Don't challenge, threaten, or dare the person.
- Don't belittle the person.
- Don't criticize or act impatient.
- Don't attempt to bargain with a threatening person.
- Don't try to make the situation seem less serious than it is.
- Don't make false statements or promises you cannot keep.
- Don't try to impart a lot of technical or complicated information when emotions are high.
- Don't take sides or agree with distortions.
- Don't invade the person's personal space.

## SECTION 4 – TRAINING AND EDUCATION

All employees will receive training and education on the risks of workplace violence. Training will be provided at the time of hire and at least annually thereafter. Additional training may be required prior to starting a new job assignment, if new laws relating to workplace violence are enacted or there are changes in any current laws, or if the City makes significant changes in its Workplace Violence Prevention Program.

At a minimum, the City's employee training and education will address the following:

- ✓ Overview of the New York State Workplace Violence Prevention Act and NYS Labor Law Section 27-b
- ✓ Overview of the City's Workplace Violence Prevention Program
- ✓ Workplace location of the City's Workplace Violence Prevention Program and procedures for obtaining a copy
- ✓ Definition of workplace violence and the three levels of workplace violence
- ✓ Methods of recognizing and responding to the three levels of violence
- ✓ Standard response action plan for violent situations
- ✓ Procedures for reporting a workplace violence incident or imminent danger
- ✓ How and when incidents will be investigated by the City
- ✓ The risk factors identified in the Workplace Violence Prevention Committee risk evaluation and determination
- ✓ Measures employees can take to protect themselves from identified risks
- ✓ Procedures, policies, safety devices, and/or work environment accommodations that have been implemented to protect employees based on the results of the risk evaluation
- ✓ Post-incident procedures, including medical follow-up and the availability of counseling for affected individuals

Specialized training and education is provided to Department Heads and supervisors as well as to those employees who are at higher risk of workplace violence based on their job duties and/or worksite location.

Upon completion of the training, employees will be asked to complete a training evaluation form to obtain their feedback on the quality and content of the training. Employees will be required to sign a Training Acknowledgement Form, which will be retained in the Human Resources Office.

## SECTION 5 – INCIDENT RECORDKEEPING, REPORTING, AND INVESTIGATION

### INCIDENT RECORDKEEPING

The City of Rye will maintain records regarding all workplace violence incidents. The City will adhere to all of the requirements of 12 NYCRR Part 801, known as the Public Employer Recordkeeping Rule, which is implemented pursuant to Section 27-a of the Labor Law, for the recording of employee injuries or illnesses due to workplace violence incidents. All workplace violence incident forms will be kept according to the applicable retention and disposition schedules.

Any situation that meets the definition of a workplace violence incident as defined in Section 1 of this manual or any workplace violence injury that results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness will be documented on a Workplace Violence Incident Report. Any recordable workplace injury will also be documented on the SH 900 Log.

### INCIDENT REPORTING

The City will follow all federal, state and local laws and procedures in the reporting of workplace violence incidents.

#### Internal Reporting Procedures

Any employee or authorized employee representative who

- was involved in, or witnessed a workplace violence incident; or
- was involved in, or witnessed an imminent danger condition; or
- believes that there has been a violation of the City's Workplace Violence Prevention Policy or Program

**MUST** report the incident or violation to the employee's Department Head and the Human Resources Office by completing a Workplace Violence Incident Report form. If the Department Head is unavailable or is a party to the violation, the report should be made solely to the Human Resources Office. In the event neither the Department Head nor the Corporation Counsel for Human Resources is available, the incident may be reported to any member of the Workplace Violence Prevention Committee. See Section 2 for a list of current Workplace Violence Prevention Committee members.

All Level I workplace violence incidents shall be made in writing within 48 hours of the occurrence or as soon thereafter as is practicable. All Level II or III incidents should be reported immediately or as soon thereafter as practicable, preferably not later than 24 hours after the incident occurred. All reports must be made on the City's Workplace Violence Incident Report form.

The Workplace Violence Incident Report form can be accessed via the City's Employee Intranet site or from the Personnel Manager. The form can be completed and submitted via email by using the link on the form. The form may also be printed out and submitted via interoffice mail or in person.

**The person submitting the form must submit a copy to BOTH his or her Department Head AND to the Human Resources office, regardless of whether the form is submitted electronically or via a hard copy sent inter-office mail.** A copy of the completed form should also be kept by the submitter for his/her personal records.

**No employee will be subject to criticism, reprisal, retaliation, demotion, discrimination, disciplinary action, or other adverse employment action for making a truthful and good faith report of acts pursuant to this policy.**

**However, knowingly making a false statement under this policy may be punishable under New York State Penal Law sections 210.45 and 175.35.**

### **Law Enforcement Reporting Procedures**

The Human Resources Office is responsible for reporting any workplace violence incident that may be of a criminal nature to the appropriate law enforcement agency.

If a pattern of workplace violence incidents involving criminal conduct or serious injury develops, the Workplace Violence Prevention Committee will work with the City of Rye Police Department and/or the District Attorney to develop a protocol to ensure that any future violent crimes occurring in the workplace are promptly investigated and appropriately prosecuted.

Any employee who believes he or she has been the victim of a workplace violence incident may choose to file a criminal complaint with the City of Rye Police Department. The City will not infringe upon the right of an employee to pursue or file a criminal complaint.

In the event of an emergency situation, dial 911. Non-emergency contact information for local Police Departments within the City of Rye is provided below:

Lieutenant Scott Craig

914-967-1234

## **DOSH Reporting Requirements**

The City is required to report any workplace violence related fatalities and multiple hospitalizations to the DOSH District Office within eight hours of the incident. (Refer to NYCRR Part 801 for complete information pertaining to employee recordkeeping and PESH reporting requirements). DOSH will use the same criteria to review complaints as that utilized by the Public Employee Safety and Health (PESH) Program. Whenever there is a workplace violence incident resulting in an employee fatality or multiple employee hospitalizations, DOSH will conduct an on-site inspection. Other valid complaints that do not involve a fatality or multiple hospitalizations may result in an on-site inspection to determine if the City is in compliance with the Workplace Violence Prevention Act.

## **INCIDENT INVESTIGATION**

### **Risk Evaluation after an Incident is Reported/Recommendations for Action**

When a Workplace Violence Incident Report form is received by the Human Resources office, copies of the form will be forwarded to appropriate parties for review. In order to expedite the City's response to a reported incident of workplace violence, a sub-committee of the Workplace Violence Prevention committee shall be designated to perform the initial review and investigation of the incident, and to make recommendations regarding appropriate remedial action. The sub-committee shall be comprised of the following committee members:

- Corporation Counsel
- Assistant City Manager
- Personnel Manager/Human Resources
- Individual responsible for any equipment within the department (*when the incident is facility or equipment safety related*)
- Union representative (*when requested by employee member of bargaining unit*)

The Workplace Violence Prevention sub-committee will communicate with the Department Head where the incident took place, to secure that individual's assessment of the circumstances and recommendations for action, which shall be taken under advisement and given due weight but shall not be binding upon the sub-committee. The sub-committee shall remain responsible for conducting a risk evaluation and completing an investigation into the incident. The investigation may take various forms, depending upon the nature and severity of the incident. Upon conclusion of this process, a brief report will be prepared stating the sub-committee's findings and recommendations for remedial action, if any. A copy of the prepared report will be retained in a Workplace Violence Report file within the Human Resources office.

The process of implementing the sub-committee's recommendations will depend on the nature of the recommendations. Recommendations for disciplinary action against any employee shall be reviewed with the City's Human Resources office and the City's Labor counsel, where necessary, and shall be implemented according to City and Civil Service law and procedure. Recommendations for physical plant modifications shall be reviewed with the Department Head, City Manager, and the City Council as necessary, before implementation.

**It is the goal of the City and its Workplace Violence Prevention Committee to investigate and resolve workplace violence incidents as quickly as possible. Toward that end, every effort will be made to complete the process within two months of the date of receipt of the Workplace Violence Incident Report form; however, the nature and severity of the incident and/or procedural requirements may necessitate a greater time period to complete the investigation and disposition of any given incident.**

### **Reporting Workplace Violence Incidents to the Department of Labor**

If, after providing the City a reasonable opportunity to resolve the situation set forth in the Workplace Violence Incident Report, the employee believes that a violation of the City's program still exists or that there continues to be a workplace violence imminent danger, the employee may contact the Commissioner of Labor at the NYS Department of Labor to request an inspection. Such request must be in writing, be signed by the employee or the employee's authorized representative, and include specific information as to the alleged violation or imminent danger. The Commissioner of Labor will provide a copy of the employee's notice to the City of Rye no later than the time of inspection. The employee may request that his or her name, the names of individual employees, and/or the authorized employee representative's name be withheld from the City.

**No employee will be subject to criticism, reprisal, retaliation, demotion, discrimination, disciplinary action, or other adverse employment action for making a truthful and good faith report of acts pursuant to this program. However, knowingly making a false statement under this policy may be punishable under New York State Penal Law sections 210.45 and 175.35.**

### **Annual Review of Incident Reports**

The Workplace Violence Prevention Committee, along with the Authorized Employee Representative(s), has the responsibility of reviewing and updating the City's Workplace Violence Prevention Program as often as necessary, but in any case at least annually.

When a Workplace Violence Incident Report form is submitted, an incident file shall be created, which will include the incident report, risk evaluation and investigation notes, the sub-committee's recommendations and the actions taken. The contents of these files, with the exception of any information designated confidential for matters involving privacy concerns, shall be reviewed by the full Workplace Violence Prevention Committee at least annually, as part of the Committee's assessment of the City's program. The Committee will analyze these files, and the SH 900 Logs from the previous 12 months, for trends in the types of workplace violence incidents occurring in the City's workplaces, as well as for the effectiveness of mitigating actions taken by the City in preventing further incidents of similar violence.

As a result of its review, the Committee may make recommendations for revisions the Workplace Violence Prevention Program. Once adopted by the City Council, the revised program will be made available to employees. Additional employee training may be provided if significant changes to the program are made.

**THIS FORM MUST BE USED TO DOCUMENT ANY REPORTABLE WORKPLACE VIOLENCE INCIDENT.**

*No employee will be subject to criticism, reprisal, retaliation, demotion, discrimination, disciplinary action, or other adverse employment action for making a truthful and good faith report of any reportable workplace violence incident.*

For any **Level I incident**, an employee must submit this completed form to the Department Head and the Personnel Department within 48 hours of the reported incident or as soon as practicable thereafter.

For all **Level II or Level III incidents**, this completed form must be submitted to the Department Head and Department of Human Resources immediately or as soon as practicable thereafter (not later than 24 hours of incident).

1	Name of Person Making Report	
2	Job Title	
3	Department*	
4	Name of Immediate Supervisor	
5	Date/Time of Incident	
6	Location of Incident	
7	Name/Title of Person Completing Form (if same as in 1, write "same")	
8	Select one	<input type="checkbox"/> I was involved in this incident. <input type="checkbox"/> I was a witness to this incident <input type="checkbox"/> Other (explain) _____
9	Date Incident Report Completed	
10	I request a copy of this report be provide to my Union representative	<input type="checkbox"/> Yes <input type="checkbox"/> No

**List individuals who might have witnessed the incident (use additional sheet at end of form if necessary):**

Witness Name	Witness Category (choose from below):	Witness Contact Number (if employee, provide work #)

**A.** Member of Public    **B.** Co-worker    **C.** Former Employee    **D.** Employee Supervisor    **E.** Spouse/Significant Other    **F.** Other (specify)

**Check the type of Incident being reported (Check all that apply):**

**Level I**

- Intimidation/Threatening gestures
- Shouting
- Bullying
- Swearing
- Verbal Abuse
- Obscene Gestures
- Minimal Harassment
- Other (describe)

**Level II**

- Psychological Trauma
- Shouted at directly
- Sworn at directly
- Obscene Calls\*
- Being followed or stalked\*
- Threats of Assault\*
- Suicide Threat\*
- Other (describe)

**Level III\***

- Hitting/Punching
- Pushing
- Choking/Strangulation
- Grabbing
- Striking with an object
- Throwing objects
- Sexual Assault
- Stabbing
- Shooting
- Homicide
- Other (describe)

**\* Level II incidents marked by an asterisk (\*) and all Level III incidents will be referred to law enforcement.**

Provide a detailed description of the incident. Use additional sheet at end of form if necessary.  
Please be sure to include the following information:

- 1-Describe events that occurred immediately before the incident
- 2-Describe incident in detail
- 3-Describe how incident concluded

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**Persons Involved in Reported Incident (attach additional sheets if necessary)**

Name	Category (choose one from below):	Address, City, State

**A.** Member of Public    **B.** Co-worker    **C.** Former Employee    **D.** Employee Supervisor    **E.** Spouse/Significant Other    **F.** Other (specify)

Did Police respond to incident?       Yes       No

If yes, Name of Police Department \_\_\_\_\_

Was a police report filed?       Yes       No      Police Report # \_\_\_\_\_

Was victim injured?       Yes       No

If yes, please specify the injuries and the name and location of facility that provided care:

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**Certification (MUST be signed by person submitting form)**

I affirm that all statements made here are true. I understand that making a false statement on this form, or in any resulting investigation of the incident reported here, may result in disciplinary action up to and including dismissal. Knowingly making a false statement in this report form may be punishable under NYS Penal Code sections 210.45 and 175.35.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date





# CITY COUNCIL AGENDA

NO. 13

DEPT.: City Manager

DATE: February 15, 2017

CONTACT: Marcus Serrano, City Manager

**AGENDA ITEM:** Consideration of a request by the Rye Free Reading Room for use of the Village Green and City Hall Parking lot to host the Annual Vehicle Fair on Sunday, May 21, 2017 from 11:30 a.m. to 3:00 p.m.

**FOR THE MEETING OF:**

February 15, 2017

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the City Council approve the request for the Rye Free Reading Room to host the Annual Vehicle Fair.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** The Rye Free Reading Room has requested use of the Village Green and the City Hall parking lot to host the annual Vehicle Fair on Sunday, May 21, 2017 from 11:30 a.m. to 3:00 p.m. The Vehicle Fair features carnival style activities, family crafts, storytimes, and an up-close experience with the large vehicles. To allow for setup and cleanup activities, the RFRR requests permission to use the Village Green and parking lot from 8:00 a.m. to 5:00 p.m.

See attached.



RYE FREE READING ROOM

January 30, 2017

Honorable Joseph Sack, Mayor  
Rye City Council  
City Hall  
Rye, New York, 10580

Dear Mayor Sack:

The Rye Free Reading Room respectfully requests the use of the Village Green and City Hall parking lot on Sunday, May 21<sup>th</sup> from 11:30 am to 3 pm to host the annual Vehicle Fair. In order to allow time for setup and cleanup, we would like to request permission to use the Green, parking lot, and Haviland Lane from 8 am to 5 pm.

An interactive community event, the Vehicle Fair features carnival style activities, family crafts, storytimes, and an up close experience with the large machines that fascinate young children. The Rye Free Reading Room and the Auxiliary Board host this event as a fundraiser for the library.

The Rye Free Reading Room is committed to providing a wide range of programming that enhances the lives of Rye residents, and has collaborated with the City for approval of similar requests. We are excited to continue to support community focused programs, and appreciate your consideration of this request.

Sincerely,

Chris Shoemaker  
Library Director