

APPROVED MINUTES of the Regular
Meeting of the City Council of the City of Rye held in
City Hall on June 16, 2004 at 8:00 P.M.

PRESENT:

STEVEN OTIS, Mayor
FRANKLIN J. CHU (absent at the Executive Meeting)
ROBERT S. CYPHER
MATTHEW FAHEY
DUNCAN HENNES
ROSAMOND LARR
Councilmen

ABSENT:

HOWARD G. SEITZ

Councilman Hennes made a motion, seconded by Councilwoman Larr and unanimously approved, to adjourn to Executive Session, commencing at 7:51 P.M., to discuss a litigation matter. Councilman Hennes made a motion, seconded by Councilman Cypher and unanimously approved to close the Executive Session at 8:00 P.M.

1. Pledge of Allegiance

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

2. Roll Call

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

3. Centennial Celebration Performance by Osborn School Classes 4F and 4S of "Toast for Rye", the lead song from their musical on the history of Rye

Mayor Otis introduced the Osborn School Classes 4F and 4S who performed a "centennial" song from the musical written by 4th Grade teacher Debra Fishman and musical director Marshall Toppo in honor of Rye's Centennial. The words of the song are as follows:

Let's Toast to Rye

Chorus

Let's Toast to Rye/ It's brand new
Make of the most of Rye/The proud and the few
Get ready we're on our way/More settlers each and every day
Catch us we're on the coast/ Here's the Rye Toast

Verse

Bought some land/Here on the Sound/From the Siwanoy
Life is grand/And we've been found/Living here is a joy

Verse

Got some dough/Gonna make some bread/Trading and farming
Did you know/We're out of the red/This place is quite charming

Bridge

Rye is why/We settled here
Rye is why/They come from far and near
It's the reason why we boast
Everybody
Let's have a Rye Toast

The Mayor welcomed Susan Klosek, outstanding principal of Osborn School who is retiring this year. He wished her luck, saying she has been a real asset to the City and will be greatly missed. Dr. Klosek said it had been a pleasure and joy to work at Osborn with its fine children, supportive parents and great staff. Councilman Cypher said he had been enjoying Mr. Toppo's fine musicals for years and urged him to keep up the good work.

Announcements

Mayor Otis announced a meeting at Crawford Park on June 17th to discuss the reconstruction of the last mile of the NY Thruway and urged all interested to attend. He said the Rye Historical Society Annual Benefit will be held on June 18th, and the dedication of the new playing fields will take place on June 26, 2004.

He announced the receipt of \$100,000 grant from the Environmental Protection Fund (EFC) to be used to provide a detailed analysis of the potential of creating a regional stormwater district for the lower Long Island Sound drainage basin as proposed by the Long Island Sound Watershed Intermunicipal Council (LISWIC).

He said there has been a tragic fire on Mayfield Street in the early hours of June 15; there had been strong support by both volunteer (32) and professional fire fighters, but sadly the elderly couple (Mr. and Mrs. Pizzolante) perished in their home. He recognized the department for working well together, for their quick response, and for containing the damage from the fire to a single property. He thanked Harrison and Port Chester for responding and welcomed Chief Cotter back from the hospital.

Councilman Chu announced that the Office of Real Property Services had ruled that the school tax rate increase for those living in the Rye Neck School District had been lowered from 25% to 17%.

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

“Charles Worden” (member of the Grand Army of the Republic who would become the oldest Civil War Veteran from Rye), residing at 11 Elm Place after growing up in Clamtown [Milton Point], urged everyone to come to the opening of the new ball fields. He said the Billington Blacksmiths and the Monopolie Maulers would be taking on the Limerick Laddies and the Dublin Dodgers in a game of baseball, played barehanded (rather than with gloves people use today) at Disbrow Park. He invited everyone to then come to the new Milton field where a spirited game of croquet would be held prior to the opening of that new field. He also urged everyone to come to a 1904 Field Day which will be held on Sept 4, offering agreeable pursuits for all ages. [Mr. Worden, who may make additional appearances as the year goes on, was deftly portrayed by Doug Carey.]

5. Approval of election of former Explorer Member of Rye Fire Department to Full Membership in Rye Fire Department

Joseph Banahan, creator of the Explorer’s Club at the High School which introduces students to the possibilities of a firefighting career, announced that Jeff Loddó, a graduate of the program, had been elected to membership by the Milton Point Hose Company and approved by the Board of Fire Wardens at their May 9, 2004 meeting. He is the first 17 year old admitted under the new restricted member guidelines for Explorer members and, as such, will be eligible for training prior to becoming a full-fledged firefighter. His role during fires will be on a strictly auxiliary basis, outside any fire line. Chief Peter Cotter (just released from the hospital after suffering smoke inhalation at the Mayfield Street fire – see above) said the Explorers was a great program and it is hoped it will give the Fire Department a chance to introduce the possibility of a fire fighting career early and keep high school graduates in Rye. Mr. Loddó is the third generation of Loddós to become a member of the Rye Fire Department. The other members of the Rye Explorers were introduced to the Council.

Mayor Otis made a motion, seconded by Councilman Cypher and unanimously carried, to approve the election of Jeff Loddó to the Milton Point Hose Company, as voted by the Board of Fire Wardens at their May 9, 2004 meeting.

6. Approval of the election of a new member to the Rye Fire Department

Chief Peter Cotter said he was pleased to announce the election of David G. Mayo to the Poningo Engine & Hose Company. The Council requested a brief biography of newly elected members be submitted with the request for approval so they could be more familiar with who was joining the department.

Councilman Cypher made a motion, seconded by Councilman Chu and unanimously carried, to approve the election of David G. Mayo to the Poningo Engine & Hose Company, as voted by the Board of Fire Wardens at their May 10, 2004 meeting.

7. Consideration of setting a Public Hearing on an application of Omnipoint Communications, Inc. (TC008) for a special permit to co-locate a wireless telecommunications facility at 350 Theodore Fremd Avenue, Rye, New York

Robert Gaudioso from Snyder and Snyder, legal counsel for Omnipoint Communications Inc. presented an application for a special permit to co-locate a wireless telecommunications facility at 350 Theodore Fremd Avenue, Rye, New York. He said the application had been reviewed by the City Planner and by the City's consultant, Compcomm, and he requested the Council set a date for a public hearing. The Mayor said he was generally in favor of the application, but asked that the questions raised by the consultants be reviewed and answered by staff. He urged Council members to review the information and formulate their own questions. The request is for a co-location on a preferred site, one installation with three sections covering 180 degrees. The actual boxes used by Omnipoint (6'H x 3'W) are somewhat smaller than other installations.

Councilman Chu made a motion, seconded by Councilwoman Larr and unanimously carried, to adopt the following resolution:

WHEREAS, a special use permit application (TC008) for permission to co-locate a wireless telecommunications facility at 350 Theodore Fremd Avenue has heretofore been introduced at this meeting and placed before the Mayor and each Councilman; and

WHEREAS, it is now desired to call a public hearing on such proposed application, now, therefore, be it

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

Section 1. Pursuant to Section 20 of the Municipal Home Rule Law and the Charter of the City of Rye, New York, a public hearing will be held by the Council of said City, on July 21, 2004 at 8:00 P.M. at City Hall, Boston Post Road, in said City, for the purpose of affording interested persons an opportunity to be heard concerning such application.

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

CITY OF RYE
Notice of Public Hearing on a special use permit application by Omnipoint Communications, Inc. to co-locate a wireless telecommunications facility at 350 Theodore Fremd Avenue

PLEASE TAKE NOTICE that, pursuant to Chapter 196 of the Code of the City of Rye (Wireless Telecommunications), the Rye City Council has scheduled a public hearing for Wednesday evening 8:00 P.M., July 21, 2004 in the Council Room of the Rye City Hall on the following matter:

Omnipoint Communications, Inc. has applied for special permit approval for the purpose of installing a wireless telecommunications facility on a property located at 350 Theodore Fremd Avenue. The property is known on the Rye City Tax Map as Sheet 146.10, Block 1, Lot 62.2, and is located in the B-1 Neighborhood Business District. All information pertaining to this matter is available at the City Clerk's Office in Rye City Hall. Contact Christian K. Miller, (967-7167) if you require assistance in reviewing this matter. Any person interested or affected will be given an opportunity to be heard.

June 18, 2004

Rye City Planner

8. Consideration of adoption of City of Rye Hazard Mitigation Plan

City Planner Christian Miller presented a draft of the City of Rye Hazard Mitigation Plan that focuses on mitigation and seeks to identify action strategies to reduce the city's exposure and vulnerability to hazards. He gave a brief overview of the planning process saying it began in Fall 2002 when the Rye City Council formally accepted a Pre-Disaster Mitigation Planning Grant from the New York State Emergency Management Office (NYSEMO) and designated a Hazard Mitigation Committee to develop the plan which is not an emergency response plan, but seeks to reduce the dangers and risks from natural disaster and look at better ways of doing things. Mr. Miller said the plan had been reviewed by NYSEMO and FEMA and acceptance of the plan by the Council will place Rye in a favorable position should FEMA funds be needed. Mr. Miller said clearly Rye's greatest potential disaster issue is flooding (Kensico Dam would not affect us, but any problem with the Bowman Dam would). He said it is not appropriate for the Council to approve the plan at this point; rather it is a time to review the material and ask questions.

Mayor Otis thanked Mr. Miller for the good report, commenting that not many communities had yet created a plan, so this puts Rye in the forefront of this kind of planning. He urged the Council to submit their questions to Mr. Miller. Councilman Hennes suggested a workshop of the subject so that they could all become more informed.

9. Resolution declaring certain Police Department computer equipment as surplus

City Manager Shew announced that the City occasionally declares certain equipment as surplus if it is no longer of use to one department and cannot be used by another. General procedure is to auction the items and, should they not be sold, to dispose of them. Councilwoman Larr suggested an organization which can rehabilitate items like computers and donate them to organizations in need.

Councilwoman Larr made a motion, seconded by Councilman Cypher and unanimously carried, to adopt the following resolution:

WHEREAS, the City has been provided with a list of computer equipment that the Police commissioner has identified as obsolete or non-function; and

WHEREAS, the Police Commissioner has recommended that said computer equipment be declared surplus; now, therefore, be it

RESOLVED, that said computer equipment is declared surplus; and be it further

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

10. Resolution to transfer funds from Contingency to Snow Removal Sale Supplies

Councilman Hennes made a motion, seconded by Councilwoman Larr, to adopt the following resolution:

WHEREAS, snow and ice removal in the months of January and February 2004 depleted the City's supply of salt for such purposed; and

WHEREAS, the City Engineer has advised that \$20,000 in additional funding in the snow removal budget is required to bring the City's salt supply to acceptable levels; and

WHEREAS, the contingent account has \$220,000 in available balance; now, therefore, be it

RESOLVED, that the City Comptroller is authorized to transfer \$20,000 from General Fund Contingent Account to General Fund Snow Removal budget.

ROLL CALL:

AYES: Mayor Otis, Councilmen Chu, Cypher, Fahey, Hennes and Larr

NAYS: None

ABSENT: Councilman Seitz

11. Resolution to transfer funds from Contingency to Fuel Management System Project

Councilwoman Larr made a motion, seconded by Councilman Hennes, to adopt the following resolution:

WHEREAS, the fiscal 2004 budget provided \$22,000 to the Building and Vehicle Fund Fuel Management System Project for the purchase and installation of a fuel management system in compliance with New York State laws; and

WHEREAS, the City Engineer has advised that in the excavation and testing of surrounding soil associated with the project the soil was found to be contaminated by leaking fuel; and

WHEREAS, the City Engineer has advised that the additional testing and remediation needed to comply with various environmental laws and regulations will require \$25,000 in additional funding for the project; and

WHEREAS, the Contingent account has \$200,000 in available balance; now, therefore, be it

RESOLVED, that the City Comptroller is authorized to transfer \$25,000 from General Fund Contingent Account to the Building and Vehicle Fund Fuel Management Project budget.

ROLL CALL:

AYES: Mayor Otis, Councilmen Chu, Cypher, Fahey, Hennes and Larr

NAYS: None

ABSENT: Councilman Seitz

12. Resolution to amend 2004 General Fund budget – 2003 Fire Department Study

Councilman Hennes made a motion, seconded by Councilman Cypher, to adopt the following resolution:

WHEREAS, the City Council of Rye approved the transfer of \$32,400 from Contingency on April 30, 2003 to the Fire Department consultants to prepare the Strategic Plan, Service Delivery Plan and Management Study; and

WHEREAS, \$21,600 was paid to the consultant in 2003, and as of year-end, the balance of \$10,800 required for the study closed out to the 2003 General Fund balance; now, therefore, be it

RESOLVED, that the City comptroller is authorized to amend the fiscal 2004 General Fund to re-appropriate the balance of funds for the study as follows:

Increase Appropriations – Fire Department Consultants	\$10,800
Decrease Fund Balance	\$10,800

ROLL CALL:

AYES: Mayor Otis, Councilmen Chu, Cypher, Fahey, Hennes and Larr

NAYS: None

ABSENT: Councilman Seitz

13. Resolution authorizing Joel Dichter of Klein, Zelman, Rothermel and Dichter, L.L.P. to submit a request for intervention with the Connecticut Department of Public Utilities to recover increases in costs of water

Corporation Counsel Kevin Plunkett said that the Aquarion Water Company had agreed not to file for a general rate increase until 2005, but has now filed a request to impose a surcharge. Joel Dichter of Klein, Zelman, Rothermel and Dichter, L.L.P. has submitted a request for intervention with the Connecticut Department of Public Utilities to recover increases in costs of water. He said Rye Brook has already approved the request, and while there is an hourly fee, he recommends this as a good way of protecting our interests, saying such an approach has worked in the past and will likely do so this time. Councilwoman Larr inquired if there were a fund set aside for such situations. Joe Murphy, 57 Franklin Avenue, asked how the distribution of water was working (i.e. does everyone have good pressure).

Mayor Otis made a motion, seconded by Councilman Fahey and unanimously carried, to adopt the following resolution:

WHEREAS, as a term of the settlement agreement whereby the City of Rye consented to the acquisition of New York American by Aquarion Water Company, Aquarion agreed not to file for a general rate increase until 2005; however, Aquarion is permitted to request the imposition of a surcharge to recover increases in costs of water purchased from Westchester Joint Water Works; and

WHEREAS, Aquarion Water Company filed with the Connecticut Department of Public Utilities for a rate increase and under the formula agreed upon between New York and Connecticut for allocation common costs, the Connecticut Commission determines the investment in plant and reservoirs utilized to serve both states; and

WHEREAS, the decision of the Connecticut Commission has an impact on the rates Aquarion charges to the City of Rye and the Village of Rye Brook residents; now, therefore, be it

RESOLVED, that the City Council of the City of Rye hereby authorizes Joel Dichter of Klein, Zelman, Rothermel and Dichter, L.L.P. to intervene with the proceeding commenced by the Connecticut Department of Public Utilities to determine if the investments in common facilities were prudently incurred and are being properly allocated and applied pursuant to the formula.

14. Designation of Nominating Committee for the Boat Basin elections and appointment of the Chairman of the Nominating Committee

Councilman Cypher made a motion, seconded by Councilwoman Larr and unanimously carried, to adopt the following resolution:

RESOLVED, that the City Council of the City of Rye hereby designates Jeffrey Garcia (elected to Nominating in August 2003); Robert Rispoli (Commission Member not running for re-election); and Robert Friedel (permit holder appointed by the Commission) as the Rye Boat Basin Nominating Committee for the 2004 Rye Boat Basin Commission elections, and further designates Jeffrey Garcia as Chair of the Nominating Committee.

15. Designation of Nominating Committee for the Rye Golf Club elections and appointment of the Chairman of the Nominating Committee

Councilwoman Larr made a motion, seconded by Councilman Hennes and unanimously carried, to adopt the following resolution:

RESOLVED, that the City Council of the City of Rye hereby designates Bruce Boehmcke (Commission Member not running for re-election, William Harris (appointed by the Commission) and Bill Meyers, and Adrienne Belluscio (elected to Nominating in August 2003) as the Rye Golf Club Nominating Committee for the 2004 Rye Golf Club Commission elections, and further designates Bruce Boehmcke as Chair of the Nominating Committee.

16. Bids for Street Sweeper

City Manager Shew said there had been only one bid for the Street Sweeper, but after due diligence and because the bid is within budget, the City Engineer is recommending approval of this bid. He said it is not unusual to have only one bid and there are only three companies in the business. He said the net cost to the City reflects the application of a trade-in allowance for a 1984 Tymco street sweeper. The City will keep its 1995 street sweeper as having two allows different types of clean-up operations to happen simultaneously, should it be necessary.

The bid tab is as follows:

BID #3-04

ONE (1) THREE WHEEL BROOM STREET SWEEPER

NAME OF BIDDER	SECURITY	BID
		ALTERNATE BID
Empire Equipment Sales Company, Inc.	Certified Check	\$125,857.00
		\$123,857.00

Councilwoman Larr made a motion, seconded by Councilman Cypher to adopt the following resolution:

RESOLVED: That Bid #03-04 for One (1) Three Wheel Broom Street Sweeper be and is hereby awarded to Empire Equipment Sales Company, Inc., being the sole bidder meeting specifications, in the amount of \$123,857.

ROLL CALL:

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

17. Bids for Annual Street Resurfacing

City Manager Shew reported that the annual Street Resurfacing program is designed to keep all roads in good condition, based on a budgeted amount and driven by the CHIPS program that refunds a percentage of the costs. The actual streets to be repaved this year depend upon the needs of Con Edison to make repairs so a complete list is not necessary at this time. The goal is to pave primary streets every 14 years and secondary streets every 17, but the real number of years is significantly larger. Street opening revenues are about \$35,000 per year. There was a discussion about the possibility of additional remedial action on Theall Road. The Mayor said there are some unanticipated revenues this year (such as the Mortgage Recording Tax and the extra County Sales Tax) which might be used as building blocks for the Theall Road Project.

The bid tab for the annual street resurfacing is on the following page.

ANNUAL STREET RESURFACING
Contract No. 2004-03
Bids Opened June 8, 2004

Name of Bidder		ELQ Industries Inc.			Columbus Construction Corp.		Bilotta Construction Corp.	
#	Items	Quantity	Unit	Total	Unit	Total	Unit	Total
45L	Remove & Replace Base Course	500 S.Y.	\$65.00	\$32,500.00	\$70.00	\$35,000.00	\$55.00	\$27,500.00
403.17	Asphalt Concrete Top Type 6F	2,000 Ton	\$62.00	\$124,000.00	\$66.00	\$132,000.00	\$64.95	\$129,900.00
5 SX	Binder Course	500 Ton	\$62.00	\$31,000.00	\$66.00	\$33,000.00	\$66.00	\$33,000.00
W604.07	Adjust Manhole Frame	34 Each	\$350.00	\$11,900.00	\$360.00	\$12,240.00	\$450.00	\$15,300.00
98	Remove & Replace Asphalt Curb	500 L.F.	\$8.25	\$4,125.00	\$12.00	\$6,000.00	\$8.00	\$4,000.00
77	Maint. & Prot. Traffic	1 L.S.	\$5,000.00	\$5,000.00	\$21,000.00	\$21,000.00	\$22,000.00	\$22,000.00
Contractor's Total			\$208,525.00		\$239,240.00		\$231,700.00	
Engineer's Total			\$208,525.00		\$239,240.00		\$231,700.00	
Position			1		2		3	
% Above Low Bidder			0.00%		14.73%		11.11%	

Councilwoman Larr made a motion, seconded by Councilman Cypher, to adopt the following resolution:

RESOLVED, that Contract No. 2004-03, Annual Street Resurfacing, be and is hereby awarded to ELQ Industries Inc., being the lowest bidder meeting specifications in the amount of \$231,240.

ROLL CALL:

AYES: Mayor Otis, Councilmen Chu, Cypher, Fahey, Hennes and Larr

NAYS: None

ABSENT: Councilman Seitz

17. Bids for Solid Waste Container Service Contract

City Manager Shew said this was a routine contract and urged it be approved. The bid tab appears on the following page.

Councilman Hennes made a motion, seconded by Councilwoman Larr, to adopt the following resolution:

RESOLVED, that Contract #2004-01, Service Contract for Solid Waster Containers, be and is hereby awarded to Karta Corporation, the lowest bidder meeting specifications, in the amount of \$16,250.

ROLL CALL:

AYES: Mayor Otis, Councilmen Chu, Cypher, Fahey, Hennes and Larr

NAYS: None

ABSENT: Councilman Seitz

**Service Contract
Contract No. 2004-01
Bids Opened June 8, 2004**

Name of Bidder		Karta Corp.		City Carting of Westchester Inc.		Suburban Carting Corp.		AJI Industries Inc.			
#	Items	Quantity	Unit	Total	Unit	Total	Unit	Total	Unit	Total	
1	20 cubic yard container for street sweeping & catch basin cleaning	20	Pulls per year	\$100.00	\$2,000.00	\$180.00	\$3,600.00	\$182.00	\$3,640.00	\$300.00	\$6,000.00
2	Price per ton disposal of materials contained in containers for Item 1	200	Tons	\$49.50	\$9,900.00	\$69.00	\$13,800.00	\$76.50	\$15,300.00	\$100.00	\$20,000.00
3	30 cubic yard container for garbage	30	Pulls per year	\$145.00	\$4,350.00	\$125.00	\$3,750.00	\$145.00	\$4,350.00	\$225.00	\$6,750.00
Engineer's Total				\$16,250.00		\$21,150.00		\$23,290.00		\$32,750.00	
Position				1		2		3		4	
% Above Low Bidder				0.00%		30.15%		43.32%		54.85%	

19. Consideration of Home Rule Message for S7377-A, to amend the tax law, in relation to the imposition of an occupancy tax in the City of Rye

Mayor Otis said there had been an error in the text for Senate Bill S7377, indicating a 4% occupancy tax instead of a 3% tax as voted by the Council so the Home Rule Message needed to be adopted again, both for amended Senate Bill S7377-A and for amended Assembly Bill A11418-A. The following Home Rule Messages supercede the Messages adopted at a special meeting of the City Council held on June 11, 2004.

Mayor Otis made a motion, seconded by Councilman Hennes and unanimously approved by a vote of 6-0, to approve the Home Rule Message for Senate Bill S7377-A that adds the following text to the tax law, in relation to the imposition of an occupancy tax in the City of Rye.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1202-v. Occupancy tax in the City of Rye. (1) Notwithstanding any other provision of law to the contrary, the city of Rye, in the county of Westchester, is hereby authorized and empowered to adopt and amend local laws imposing in such city a tax, in addition to any other tax authorized and imposed pursuant to this article, such as the legislature has or would have the power and authority to impose upon persons occupying any room for hire in any tourist home, inn, club, hotel, motel or similar place of public accommodation in such city. The rates of such tax shall not exceed three percent of the per diem rental rate for each room provided, however, that such tax shall not be applicable to a permanent resident of such tourist home, inn, hotel or motel or to rooms in such lodging facilities having less than four rentable units.

(2) Such taxes may be collected and administered by the chief fiscal officer of the city of Rye by such means and in such manner as other taxes which are now collected and administered by such officer or as otherwise may be provided by such local law.

(3) Such local laws may provide that any taxes imposed shall be paid by the person liable therefor to the owner of the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied or to the person entitled to be paid the rent or charge for the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation occupied for and on account of the city of Rye imposing the tax and that such owner or person entitled to be paid the rent or charge shall be liable for the collection and payment of the tax; and that such owner or person entitled to be paid the rent or charge shall have the same right in respect to collecting the tax from the person occupying the room for hire in the tourist home, inn, club, hotel, motel or other similar place of public accommodation, or in respect to nonpayment of the tax by the person occupying the room for hire in the tourist home, inn, club, hotel, motel or similar place of public accommodation, as if the taxes were a part of the rent or charge and payable at the same time as the rent or charge; provided, however, that the chief fiscal officer of the city, specified in

such local laws, shall be joined as a party in any action or proceeding brought to collect the tax by the owner or by the person entitled to be paid the rent or charge.

(4) Such local laws may provide for the filing of returns and the payment of the taxes on a monthly basis or on the basis of any longer or shorter period of time.

(5) This section shall not authorize the imposition of such tax upon any of the following:

A. The state of New York, or any public corporation (including a public corporation created pursuant to agreement or compact with another state of the dominion of Canada), improvement district or other political subdivision of the state;

B. The United States of America, insofar as it is immune from taxation;

C. Any corporation or association, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

(6) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within thirty days after the giving of notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless:

A. The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local laws or regulations shall be first deposited and there shall be filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of insurance of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

B. At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interests and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

(7) Where any taxes imposed hereunder shall have been erroneously, illegally or unconstitutionally collected and application for the refund therefor duly made to the proper fiscal officer or officers, and such officer or officers shall have made a determination denying such refund, such determination shall be

reviewable by a proceeding under article seventy-eight of the civil practice law and rules, provided, however, that such proceeding is instituted within thirty days after the giving of the notice of such denial, that a final determination of tax due was not previously made, and that an undertaking is filed with the proper fiscal officer or officers in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the taxes confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

(8) Except in the case of a willfully false or fraudulent return with intent to evade the tax, no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return, provided, however, that where no return has been filed as provided by law the tax may be assessed at any time.

(9) All revenues resulting from the imposition of the tax under the local laws shall be paid into the treasury of the city of Rye and shall be credited to and deposited in the general fund of the city. Such revenues may be used for any lawful purpose.

(10) If any provision of this section or the application thereof to any person or circumstance shall be held invalid, the remainder of this section and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 2. This act shall take effect immediately.

ROLL CALL:

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

20. Consideration of Home Rule Message for A11418-A, to amend the tax law, in relation to the imposition of an occupancy tax in the City of Rye

Mayor Otis made a motion, seconded by Councilman Cypher and unanimously carried by a vote of 6-0 to approve the Home Rule Message for Assembly Bill A11418-A that adds text to the tax law, in relation to the imposition of an occupancy tax. The text is exactly the same as Senate Bill S7377-A as listed in agenda item 19.

21. Miscellaneous communications and reports

Mayor Otis reported he, along with City Naturalist Chantal Detlefs and Conservation Commission/Advisory Committee Chair Joe Murphy had attended the Mamaroneck Harbor Festival. He said it was very successful and informative, providing good feedback and information, such as the fact that Rye Neck High School is doing a study on Beaver Swamp Brook.

Councilwoman Larr said the Farmer's Market successfully opened and was well attended, but the major sale items are flowers and fruit. Produce will arrive later.

Councilwoman Larr wondered if there was anything in our local code which provided for maintaining grounds at construction worksites? Were there laws in other communities to legislate cleanliness if work is interrupted? The Corporation Counsel will investigate.

Councilman Hennes thanked the Rye Garden Club for its generous gift to the City in redoing the landscaping at the front and side of City Hall. He said it looks great and urged a formal thank you from the City.

Joe Murphy, member of the Rye Senior Advocacy Committee, cited the fact that the committee had done some intervention with the couple living in the house on Mayfield Street destroyed by fire as an example of the committee's service to the community.

Councilman Cypher said in addition to all their sports titles, the class of 2004 has broken all records for community service.

22. Old Business

Councilman Hennes said he had heard nothing but positive things about the idea of installing parking meters, but urged more citizen input. The Mayor said he had heard both positive and negative comments.

Councilwoman Larr pointed out Sis D'Angelo was celebrating her 50th Wedding Anniversary rather than following up on the garage at the corner of Wappanocca and Purchase. Corporation Counsel Plunkett said he regretted there was no progress.

Councilwoman Larr suggested the Council meet at a special workshop to discuss several matters of unresolved business, including parking, the use of Roberts Rules of Order, a proposed change to the schedule for budget preparation and hazard mitigation. In terms of the budget, Councilman Hennes concurred the earlier the Council can have input the better.

23. New Business

Councilman Chu commented on a memo from Councilman Hennes questioning some of the finances at Rye Town Park (RTP) and suggested that the Council be briefed regularly on the affairs of the park. The Mayor reminded the Council the City is in the minority on the RTP Commission (our request for adding two more representatives was turned down), but some improvements (such as requiring 3 written bids for any job, having a weekly payroll report) have been put in place. He said special expenses are fully discussed by the Rye City Council and there is an emphasis on obtaining private funds and grants where possible. Councilman Hennes said it was important that all expenses be accounted for on the Duck Pond project so we have no surprises.

Councilman Hennes inquired about the garbage pickup survey. City Manager Shew said the results were almost all negative about making any changes, especially as the savings came

down to about \$35 per household. In response to a question from Councilman Fahey, the cost of the mailing was \$1800 (exclusive of staff time).

24. Draft unapproved minutes of the joint discussion with Recreation Commission on May 12, 2004, the regular meeting of the City Council held May 19, 2004 and the special meeting held on June 11, 2004

Councilman Chu made a motion, seconded by Councilman Hennes and unanimously carried, to adopt the minutes of the joint discussion with the Recreation Commission on May 12, 2004 as submitted.

Councilman Hennes made a motion, seconded by Councilwoman Larr and unanimously carried, to adopt the minutes of the regular meeting of the City Council held May 19, 2004 as amended.

Councilman Hennes made a motion, seconded by Councilwoman Larr and unanimously carried, to adopt the minutes of the special meeting of the City Council held June 11, 2004 as submitted.

25. Adjournment

There being no further business to discuss, Councilman Hennes made a motion, seconded by Councilwoman Larr and unanimously carried, to adjourn the meeting at 10:12 P.M.

Respectfully submitted,

Susan A. Morison
City Clerk