

**CITY OF RYE  
1051 BOSTON POST ROAD  
RYE, NY 10580  
AGENDA**

**REGULAR MEETING OF THE CITY COUNCIL  
VIA ZOOM**

**Wednesday, November 17, 2021**

**7:00 p.m.**

*PURSUANT TO GOVERNOR HOCHUL'S BILL PASSED ON SEPTEMBER 1, 2021, REQUIREMENTS UNDER THE OPEN MEETINGS LAW HAVE BEEN SUSPENDED AND PUBLIC BODIES MAY MEET WITHOUT ALLOWING THE PUBLIC TO BE PHYSICALLY PRESENT. THE MEETING WILL BE HELD VIA ZOOM VIDEO-CONFERENCING WITH NO IN-PERSON LOCATION AND WILL BE BROADCAST ON THE CITY WEBSITE. A FULL TRANSCRIPT OF THE MEETING WILL BE MADE AVAILABLE AT A FUTURE DATE.*

*RESIDENTS MAY EMAIL COMMENTS REGARDING THE PUBLIC HEARING TO: PUBLICHEARINGCOMMENTS@RYENY.GOV. ALL COMMENTS MUST BE RECEIVED BY 4:15 PM ON THE DAY OF THE MEETING. THE SUBJECT OF THE EMAIL SHOULD REFERENCE THE HEARING TOPIC. PLEASE INCLUDE YOUR NAME AND ADDRESS.*

*TO PARTICIPATE IN THE PUBLIC HEARING, PLEASE ATTEND THE MEETING VIA ZOOM VIA THIS LINK:*

<https://zoom.us/j/99041023237?pwd=d3IKdzMrNXhrQ3BLR3ljdzNqVm9kdz09>

Password: 301918

Or Telephone:

US: (646) 558-8656 or (312) 626-6799 or (301) 715-8592 or (253) 215-8782

Press \*9 to raise your hand to speak during the public hearing

Webinar ID: 990 4102 3237

Password: 301918

*[The Council will convene via ZOOM CONFERENCE at 5:30 p.m. and it is expected they will adjourn into a teleconference Executive Session at 5:31 p.m. to discuss pending litigation, personnel matters and pending contracts.]*

1. Roll Call.
2. Draft unapproved minutes of the Regular Meeting of the City Council held November 3, 2021.
3. Post Ida Storm Update.

4. Stantac Presentation regarding replacement of Salt Shed and referral to the Planning Commission.
5. Update on Capital Expenditures Plan and fall road re-surfacing plan.
6. Continue the public hearing to create a new local law, Chapter 122, “Landscapers and Leaf Blower Regulations” requiring all landscapers to obtain an annual permit in order to operate as a landscaper and restrict the use of leaf blowers.
7. Residents may be heard on matters for Council consideration that do not appear on the agenda.
8. Resolution to waive parking restrictions and parking fees in all downtown parking lots and Purchase Street for the period between November 26 – 27, 2021 and December 20 - 24, 2021.
9. Authorization for the City Manager to enter into an exclusive agreement with Lessing’s Inc. for catering services at Whitby Castle at the Rye Golf Club.
10. Consideration of two appointments to the Golf Club Commission, by the membership, for three-year terms.
11. Resolution designating the days and time of regular meetings of the City Council for 2022 setting January 5, 2022 as the first regular meeting.
12. Adjourn until December 1, 2021 the public hearing for consideration of a petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code Association to create new use and development standards for “Senior Living Facilities” in the R-2 Zoning District.
13. Consideration of a request by the Rye Little League to approve a parade to kickoff Opening Day of the Little League Season on Saturday, April 23, 2022 beginning at 11:00 a.m.
14. Appointments to Boards and Commissions, by the Mayor with Council approval.
15. Old Business/New Business.
16. Adjournment

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The next regular meeting of the City Council will be held on Wednesday, December 1, 2021 at 6:00 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”.

***DRAFT UNAPPROVED MINUTES*** of the  
Regular Meeting of the City Council via Zoom Conference  
on November 3, 2021, at 7:00 P.M.

PRESENT:

JOSH COHN, Mayor  
SARA GODDARD  
CAROLINA JOHNSON  
JULIE SOUZA  
BENJAMIN STACKS  
Councilmembers

ABSENT:

RICHARD MECCA, Councilmember

The Council convened and the meeting began at 7:00 P.M.

1. Roll Call.

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

2. Draft unapproved minutes of the Regular Meeting of the City Council held October 20, 2021.

Councilwoman Souza made a motion, seconded by Councilwoman Johnson and unanimously carried, to adopt the minutes of October 20, 2021.

3. Post-Ida Storm update.

Mayor Cohn gave the community an update on flood mitigation efforts by the City. He discussed the meeting in 2019 with the Army Corps of Engineers and the NYS DEC, which resulted in the federal interest determination that the City now has. He reported that the City would be meeting with the DEC next week to get their thoughts on whether Corps related projects or other sorts of projects would be helpful for Rye's flood mitigation. The City has been working closely with the Governor's Office of Storm Recovery in trying to rely on the NY Rising Grant from some years ago. That \$3 million grant has been substantially depleted with soft costs and rising projects. He said the City was very concerned to preserve any remaining grant monies to monitor stream levels on Blind Brook and gauge the amount of vegetation clearing that may be needed in Upper Bowman Pond. Mayor Cohn announced that the Milton Road Drainage Project had begun.

City Manager Usry discussed the staff's efforts on the Milton Road Drainage Project. He explained there were two phases of the project. The first phase is the installation of a 400 foot drainage line that runs from the end of Milton Road through the Harbor House property. There would also be an installation of a tide valve. Currently, the staging has begun and construction should begin next week. City Manager Usry explained that the tide valve would separate the City's drainage of Milton Road from the drainage of the Harbor House property. Currently,

during a storm, the current drainage system becomes overwhelmed. The valve would serve to protect against the backwash that results from flooding.

City Manager Usry continued and stated that there were 12 areas of the City that have been identified as the most heavily impacted by flooding from Ida, some of which were not prior flooding locations. Staff is working hard to study the pipe lines to uncover any possible issues or breaks. The City Engineer is expected to have a comprehensive report of all 12 of these locations to start to discuss possible remediation. Costs are unknown at this point, and whether it is \$1 million or \$30 million, the City is studying these areas to understand the needs. City Manager Usry reported that as with every anticipated major storm, the City staff will continue to monitor the storm drains. City Manager Usry reminded the community that building permit fees for home remediation from the flooding had been temporarily waived, and that 12 to 14 homes have already started the process for house lifting.

Mayor Cohn asked about the Milton Road drainage project with respect to the area of Milton and Hewlett. There was discussion about the drainage valve to be installed that would be expected to help with this area. City Manager reiterated that the current situation without the valve can overwhelm the current drainage system in a major storm event.

4. Thanks to Lt. Anfuso.

Mayor Cohn stated he wanted to take a moment to thank Lt. Michael Anfuso for all of his work in seamlessly stepping into the role of Interim Public Safety Commissioner. He especially highlighted Lt. Anfuso's leadership during Hurricane Ida.

5. Presentation of the proposed FY 2022 Budget by the City Manager.

City Manager Usry addressed the Council and gave a brief summary of the following budget message for FY 2022:

Submitted here, for your review and consideration is the City Manager's recommended 2022 budget. The proposed operating budget is \$40,668,950 and will require an increase in the real property tax rate of 1.58%. The tentative increase is within the mandated tax cap of 2.91% (including a Levy Growth Factor of 2% and tax base growth factor of 0.91%). Next year's projected revenues, spending and capital reinvestment is consistent with the financial goals and policies of the City, as established by the Charter and City Council action.

As you recall, 2020 actual results and the 2021 proposed budget were largely driven by the dynamic events surrounding the pandemic. Our conservative budgeting, coupled with the ability of staff to radically alter spending and the Council's willingness to reposition short term priorities has left us in an excellent financial position leading into 2022.

Last year, I highlighted that the 2021 budget (and potentially the same for 2022) would be based upon imperfect information, and that our goal was to end the year financially sound, while delivering the multitude of services residents have come to expect. I am pleased to report that we were successful in that goal. With the proposed 2022 budget, we return to a more normalized budget. This budget is reflective of an expectation of regular growth in both revenues and expenses. With that said, the ongoing impact of COVID-19 remains a focus and we are financially and operationally prepared to alter or modify spending accordingly.

In addition to normal operations and the regular delivery of services and public safety, this Council has identified a number of areas for long term reinvestment in our infrastructure. Similar to recent years, careful thought has been given to maximizing our financial resources to meet this goal. I expect the City will need to borrow money in the first half of 2022 in order to fund the significant infrastructure reinvestment plan. This borrowing, accompanied by the self-funded capex reserve fund and confirmed grants, will be required to address the largest capital program in the City's history.

On a similar note, this proposed budget and my recommended use of fund balance, begins to address the long standing shortfall in planning and funding the City's vehicle fleet. With approximately 150 City vehicles ranging from parking enforcement cars to fire department apparatus and DPW trucks, the City is long overdue in creating a fleet management plan. This plan will require annual tax revenues, similar to the street resurfacing program undertaken in 2017. The 2022 proposed budget is the first step in that plan.

As I have noted each year since 2019, Rye is extraordinarily fortunate relative to many other communities in the County and throughout the region. That has been reinforced throughout the pandemic as we have been able to pivot and modify activities to preserve our financial strength, without a significant reduction in services. This could not have been accomplished without Council and community support.

Below, and on the following pages, you will find highlights for the proposed budget, as well as rationale for certain revenue assumptions and expenses.

## **Budget Highlights**

### *Staffing*

Representing 63% of the total operating budget, staffing efficiency is an ongoing focus. In 2021, we experienced a large number of retirements, particularly in the Police Department and Fire Department. As a result, we are expecting to incur some additional overtime expenses in 2022 as we hire new officers and they undergo the required training and attendance to the fire and police academy. The proposed budget includes this cost. We expect to fill all open public safety positions by February and should have all staff trained and working by late summer. It is important to note that we do expect to complete the Fire Department Command transition by early 2022.

The 2022 proposed budget assumes all positions are filled. A detailed summary of staffing by department may be found on page 12-3 of this document. Please note that the current unfilled positions in Public Works are expected to be filled by December. The difference between unfilled and budgeted positions simply reflects the timing of the budget.

With the hiring of the Public Safety Commissioner, there are no interim or acting positions at the City for the first time in five years. For senior staff, the only remaining hire is the Assistant City Manager. I expect this position will be filled by the end of the year. This expense is included in the 2022 proposed budget.

In this budget, I am including two new positions, that of an Assistant City Planner and an additional resource in the IT Department. With ever growing regulatory demands, coupled with the complexity of land use projects, our Planning Department must be staffed accordingly. This budget also includes additional monies for professional consultant support. Similarly, the City continues to grow and evolve with our technology needs and must invest in staffing accordingly.

*Salaries, Wages and Benefits*

Salaries, wages and benefits each year are impacted by a number of factors including overall staffing levels, union contract pay increases, State determined retiree benefits, medical insurance costs, and workers' compensation costs. For 2022, we are budgeting an increase of \$817,000 (2.95%).

*Sales and Use Taxes*

Sales and use taxes are a key component of the City's annual budget, representing approximately 26.6% of total, non-property tax revenues and 9.2% of total revenues. In August 2019, the County sales tax increased by 1% (Rye receives a proportionate share). In forecasting sales taxes for 2020 and 2021, this change, combined with the unknown impact of the pandemic, caused us to budget conservatively. For 2022, we are now more comfortable budgeting based upon a normalized year. The proposed 2022 budget assumes \$3.8 million in sales tax revenues, up from \$3.2 million in the 2021 budget and in line with the projected 2021 actual results.

*Recreation Department*

No single City department was more impacted by the pandemic than Recreation. This year has been a transitional one, as we were able to conduct a modified summer camp and return to many of the City's traditional programs. With that said, this year's financial results were impacted by the pandemic, and we project this to continue into next year. Next year's proposed budget for Recreation reflects some modified programming, including summer camp. To that end, the budget also reflects the significant increase in wages for seasonal staff. Like all businesses that rely on hourly workers, we have experienced a 50-80% increase in hourly wages in the last 12 months. Although we have sought to recover some of that expense in our fees, we are also sensitive to the cost of camp and to remaining cost-competitive for similar programs.

For 2022, we have a proposed budget of \$2.083 million (net of revenues). This is in line with our projected results for 2021. The estimated expense recovery for 2022 is projected to be 36.5%; slightly below the target of 40% but in line with 2021.

*Debt Service*

For the 2021 budget, we chose to reduce the assumed debt service expense by \$360,000 (from \$708,000). Because we did not expect to borrow in order to fund capex projects until late 2021 or early 2022, we chose to budget for only a portion of a year's debt service. For 2022, we expect to borrow in the first half of the year so this proposed budget includes \$600,000 for debt service.

*Fees and Permits (Non-Recreation and Enterprise Fund)*

Fees and permits across the City were heavily impacted in 2020 by the pandemic. For 2021, we saw the return to historical/expected levels for many of these fees and permits. For the proposed 2022 budget, we are projecting that fees and permits will fully recover. As a result, Fees and Permits are budgeted to be up \$390,000 versus the 2021 Budget.

### *Street Resurfacing*

The 2022 proposed budget calls for \$1.85 million for street resurfacing. Of this amount, \$600,000 is included in the property tax levy, with additional monies coming from street opening permits and State Aid, as well as a \$700,000 transfer from excess fund balance (explained in further detail below). Since 2019, the City has spent \$5.1 million on streets resurfacings or an average of \$1.7 million annually.

## **Budgets In Brief**

### *General Fund*

This is the principal fund of the City and includes all operations not required by law or policy to be recorded in other funds. The 2021 General Fund Budget is \$45,918,950. \$40,668,950 of this amount are operating expenditures, up \$1,458,648 (3.7%) over the 2021 adopted budget. The proposed property tax rate is \$190.85 per \$1,000 of assessed valuation. The property tax levy of \$27,192,174 equals 59.2% of General Fund appropriations.

With this proposed budget, I am recommending that a portion of the General Fund unassigned fund balance be utilized for certain long term capital and vehicle reinvestments (non-operating uses). We project the fund balance will be approximately \$8 million at the end of 2021. Based upon the City's General Fund policy of maintaining a reserve equal to 10% of projected expenses, there is approximately \$3.8 million of surplus, including \$800,000 that represents the first half of the City's \$1.6 million share of American Rescue Plan Act (ARPA) monies. For 2022, I am recommending the following transfer and use of surplus monies:

1. \$1.2 million to the Capital Projects Fund, including the \$800,000 ARPA Monies
2. \$1.7 million for Building and Vehicle Maintenance (City Fleet)-explained further below
3. \$700,000 for Street Resurfacing

### *Capital Projects Fund*

In recent years, the City's financial performance has allowed us to increase the Capital Projects Fund in anticipation of the significant capital needs. By Council action in 2019, the General Fund unassigned fund balance was set at 10% of total expenses. Furthermore, a Capital Projects Fund was established with excess General Fund reserve monies (over the 10% policy along with single, non-reoccurring revenues). As a result of these policies, the financial performance of the City over the last four years, and this proposed budget, the General Fund unassigned fund balance will be approximately \$4.2 million and the Capital Projects Funds will total \$7.15 million. The current capex fund balance is \$5.755 million, before the proposed \$1.4 million transfer noted above. This entire amount is expected to be utilized over the next 36 months.

*Building and Vehicle Maintenance Fund*

This fund is responsible for costs of maintaining and operating the City's buildings and vehicle fleet. Although there are annual transfers into the account each year from the budget, a large portion of the fund balance was a one-time event, with proceeds of the sale of 1037 Boston Post Road. Over the last 10 years, the Fund has been utilized annually to fund vehicle purchases, including approximately \$1.1 million for Fire Department apparatus over the last 18 months. As noted last year, the original source for the Fund is now largely depleted. In addition to the annual replacement of police cars and DPW equipment, the City will require larger purchases in the coming years (Fire Apparatus, DPW trucks, PD Marine Patrol boat etc.). These replacements are predictable based upon forecasted use/depreciation and should be proactively funded. As a result of all of these factors, the City needs to move toward a fleet management plan, with the resulting annual investment.

Beginning with this budget proposal, \$400,000 will be included in the tax rate for the City's fleet. This amount should be increased over time for the City to adequately fund future needs. Ultimately, the City will need to invest approximately \$1 million annually in its fleet. As noted above, and to that end, I am including a transfer of \$1.7 million from the General Fund unassigned fund balance to the BVM fund in this proposed budget. These monies, along with the annual amount included in the tax rate, will be sufficient to fund the fleet reinvestment over the next several years. I do anticipate including additional monies in future budgets.

*Sewer Fund*

In February of this year, the City settled its longstanding suit with Save the Sound (STS), agreeing to a set of sanitary sewer infrastructure improvements, and committing itself to ongoing maintenance and monitoring of the system. The terms of the settlement further required that this cost be included in the annual budget. As a result, this proposed budget includes \$150,000 of additional operating expense for the sewer system.

*Boat Basin Enterprise Fund*

This fund is responsible for the operation and maintenance of the DePauw Municipal Boat Basin. Revenues for 2022 are forecasted to be \$862,100 with budgeted expenses (less depreciation) of \$614,024. For year-end 2022, the Boat Basin has estimated unrestricted net assets of \$3.1 million.

*Rye Golf Club Enterprise Fund*

The RGC Enterprise Fund is responsible for the operation and maintenance of the Rye Golf Club. For 2022, revenues are forecasted to be \$5,239,025 with budgeted expenses (less depreciation) of \$5,078,082. For 2022, the Golf Club has estimated unrestricted net assets of \$2.8 million.

**Conclusion**

With this proposed budget, we return to a more normalized approach to revenues and expenses. There are clearly areas, such as recreation, where the impacts of the pandemic will continue to affect programming and adversely impact financial results. However, the thoughtful

budgeting and financial planning that began several years ago is now showing significant results as we have accumulated a fund balance that will help us address the long deferred capital reinvestment.

I am happy to report that we were able to stay within the tax cap while maintaining City services, investment in capital projects, beginning an ongoing fleet investment program, and creating a sewer maintenance account consistent with our settlement with Save the Sound. In order to accomplish this, Department Heads and the City Comptroller looked critically at every aspect of City operations and expenses. We do not take the financial responsibility entrusted in us lightly.

By the Charter, it is the obligation of the City Manager to submit the budget to the Council for your consideration. However, this budget, like all City operations, are the result of the collective work of each Department Head and senior staff. My thanks to each for this work, and for the conscientious work every day. As always, Joe Fazzino and his staff have done the heavy lifting to produce this financial plan.”

City Comptroller Fazzino introduced the specifics for the FY 2022 Budget and presented a slide show, which can be found on the City website. He said that the total general fund expenditures are \$45,918,950, which General Fund Revenues other than Property Taxes being \$14,274,326 dollars. The use of fund balance is \$4,452,450. The 2022 property tax levy is \$27,192,174 dollars, or a levy increase of \$636,060 dollars over the 2021 Budgeted tax levy. Mr. Fazzino stated that in line with prior budgets the property tax levy for 2022 makes up two-thirds of the City’s total revenues. This translates to a tax rate of \$190.85 per thousand dollars of assessed value or 1.58% tax rate increase. This is an annual increase of roughly \$92 to the average home in Rye. This figure is based on a home with a market value of \$1.865 million. Also importantly, the 2022 total levy (including special districts) amount is \$9,573 under the tax levy cap. Mr. Fazzino talked through the tax levy increase.

City Comptroller Fazzino then gave a summary of where the City will be at the end of 2021. Based on the City’s 2021 projections, staff expects a net income of about \$2.5 million. Given the City’s 2021 budget had planned to use fund balance of over \$1.2 million for non-operating expenditures, the 2021 projections show the City to be around \$3.7 million better than originally planned. This year, similar to years’ past is a result of the City’s expenditures performing better than budget while the City’s revenues, which were budgeted conservatively due to the uncertainty of the pandemic, returned to levels prior to the pandemic, while others, exceeded them. These results have again given the City the ability to apply fund balance to the 2021 Budget, as well as help balance its 2022 budget.

Mr. Fazzino spoke more about operating specifics. He stated that excluding fire overtime and recreation, salaries are expected to be down City-wide, about \$764,000. This is mostly due to vacancies across numerous departments throughout the course of the year as there were additional resignations/retirements, creating further positions that remained unfilled, resulting in savings. Most of these positions are expected to be filled by the end of the year. These positions were vacated much longer than first projected in prior updates, resulting in even more savings to the City. He reported that fire overtime expenses are \$225,000 over budget, due to additional retirements, workers compensation cases and storm emergency responses. Also of note, overtime compared to 2020 is down \$261,000.

Computers and Systems is up mostly attributed to the Police Department's New CAD system (Computer Aided Dispatch). Police Patrol Equipment, Tennis Court improvements and salt costs include funds encumbered from 2020. EMS expense is up \$50,000 as additional funds were required and approved by the City Council. He discussed consultants and miscellaneous service contracts show some increases across departments.

Mr. Fazzino stated that the 2021 budget included a conservative estimate of 10% for increased employee and retiree healthcare costs. 2021 premium rates for employees increased by 3% compared to 2020 rates and the 2021 premium rates for retirees were flat compared to 2020 rates, resulting in these savings.

The 2021 Budget conservatively called for a 10% increase in workers compensation over the 2020 premium. For the third straight year, the City's experience rating has gone down. The 2021 premium came in 14% less than the 2020 premium and has been paid in full. Given some small additional payments for the rest of the year, the 2021 workers compensation expense will come in around \$240,000 under budget. COVID 19 Still impacted recreation programs. Regarding camp activities, the City operated at 50% capacity, with certain camps not offered. This has translated into 50% of budgeted revenue, which also translated into fifty percent less expense. Due to other programs thriving, the net cost of recreation is projected to be about \$45,000 higher than budgeted, for a total of \$1,782,000.

Mr. Fazzino stated that there were expenses related to Covid and Ida, some of which will not be reimbursed. About \$70,000 are included in the projections. He was happy to report that all "at risk" revenues during the pandemic other than interest income are expected to meet or exceed budgeted levels. He stated that conservative budgeting allowed for sales tax to crush budgeted expectations, as it is expected to exceed budget by \$700,000. The impact of the 1% tax increase from 2019 is still unknown, with the pandemic and now a supply shortage. FY 2022 might be the first "normal" year to realize the full effect of this tax increase.

Mr. Fazzino reported that parking meter revenue is expected to be up \$100,000 or 34%, as activity has pretty much returned to normal and now includes revenue from parking hours being extended until 9:00pm. Building Department Revenues are up 96% from last year, and have exceeded the 2021 budget after only nine months of activity. Assuming the same level of activity as last year, for the remainder of the year, revenues would exceed the budget by \$400,000.

Mr. Fazzino continued to discuss revenues vs 2021 budget. Last year, State aid was cut by 20% and the City budgeted accordingly. As a result of the American Rescue Plan, State aid was restored for 2020, with the final 5% (\$60,401) received after the City closed its books, therefore being applied to 2021. The City has received the first payment of \$181,413 (15%), which is the same number it had received in all years prior to 2020. Since there has been no discussion of reduction or increase in aid for 2021, City staff assumes the same funding it has received for over a decade, resulting in \$302,000 in unbudgeted revenues. Concerning mortgage tax, the Federal Reserve recently reduced interest rates to almost zero. This, along with increased activity in the real estate market has led to a budget surplus of over \$806,000. The City received the first half of its revenue from the American Rescue Plan Act of roughly \$802,000, an unbudgeted revenue. The City can expect to receive the other \$800,000 next July. These funds will be transferred to the capital reserve as they are restricted for use on capital projects.

Mr. Fazzino showed a history of fund balance and tax trends. Over the past few years, the City has tried to remain close to 10% fund balance, while using any excess on Capital. The Capital Reserve fund was created in 2019 for this purpose. Regarding the tax levy, the overall tax levy has increased about \$7.0 million from 2011-2021 for an average tax levy increase of a little over three percent each year. He demonstrated the history of the tax rate increases 2011, with only 4 years above 3%. In 2017, the City added annual street resurfacing to the tax rate, after previously using fund balance, which added close to three percent to the tax rate. Prior to that, the tax rate increase had not been above 3.5% since 2010. Mr. Fazzino discussed the history of taxable assessed valuation.

Next, Mr. Fazzino discussed the proposed changes in expenditures. The 2022 City budget proposes expenditure increases of \$1,458,648 over the originally budgeted 2021 expenditures. This includes the following changes:

- Increase in salaries about \$842,000
- Increase of \$100,000 in firefighting equipment
- Increase in \$193,000 of consultant fees
- Increase in Misc Service Contracts \$142,364
- Increase in Employee Health Insurance \$151,437
- Increase in Retiree Health Insurance \$214,891
- Decrease in NYS Police and Fire Retirement \$56,604
- Decrease in Workers Comp \$143,437
- Decrease in Funding for Debt Service \$132,430
  - \$600,000 to be applied to capital reserve fund

Councilwoman Goddard asked whether the consultant fees were also for capital improvement projects. City Comptroller Fazzino responded that they were separate items for now. City Manager Usry stated that some projects had more complexity and may require additional engineering services and the like.

There was general discussion about going out to debt, the interest rates, and how the City is contemplating debt service. City Manager Usry discussed the plan for major capital projects in 2022 and the various ways they would be financed, including the capital reserve fund and debt.

Mr. Fazzino broke down the City's expenses by group, with salary and benefits being the highest at 62% combined. With the expenses broken down by program, public safety was at the highest function cost. He discussed healthcare costs, showing a dip in that due to the move to NYSHIP for the healthcare plan. He discussed the historical trend of retirement expenses.

Mr. Fazzino then discussed the major changes to revenues, other than property taxes. There is a projected increase of \$1,450,238 over 2021 revenues. They include:

- Increase in Sales & Use Tax \$600,000
- Increase in Penalties & Interest Property Tax \$50,000
- Increase in Sewer Lateral Certificates (New Fee) \$70,000
- Increase in Parking Meter Revenue \$75,000

- Increase in Building Permits \$400,000
- Increase in State Aid Revenue Sharing \$241,605
- Increase in Mortgage Tax \$150,000
- Decrease in Interest Income \$50,000

He then discussed the 2022 proposed capital spending program. This includes:

- \$1,850,000 – Street Resurfacing
- \$1,200,000 – Transfer to General Capital Projects
- \$600,000 – Transfer to General Capital Projects for Debt Service
- \$150,000 – Annual Sewer Maintenance
- \$2,000,000 – City Vehicle Replacement Program
  - \$1,600,000 – Fund balance
  - \$ 400,000 – Property Taxes

Councilwoman Johnson asked about budgeting for flood mitigation projects. City Manager Usry stated that with the incoming Council, they could make policy decisions to move forward with capital spending on those types of projects as a priority.

Mayor Cohn asked about the Vehicle Maintenance Fund. City Manager Usry explained that the vehicle's fleet to serve the City is extensive, as is the cost of replacing vehicles within the fleet. Creating the fund would save future Councils from needing to find unanticipated money and be a safer route.

Lastly, Mr. Fazzino discussed how the tax dollars are distributed. The school tax makes up 60%, the County at 23%, and the City at 17%. Overall, Mr. Fazzino stated that this was a tax compliant budget, with a 1.58% tax increase.

The Council thanked City Comptroller Fazzino and City Manager Usry.

6. Consideration to set a public hearing on the 2022 Budget for December 1, 2021.

Councilman Stacks made a motion, seconded by Councilwoman Souza and unanimously carried, to set a public hearing on the 2022 Budget for December 1, 2021.

7. Set a public hearing to adopt a Local Law to override the State enacted tax levy limitation for December 15, 2021, if necessary.

By way of background, New York State enacted a 2% tax cap on June 24, 2011. A provision in the law allows a municipality to override this tax cap under certain provisions including:

- Local governments may override the tax levy limit only by first passing a local law that allows for the tax levy limit to be exceeded.
- This override vote requires a 60 percent vote of the total voting power of the governing body to pass.
- In a case where a weighted vote is used to pass the budget, the override will require a 60 percent weighted vote of the local government's governing body.

- The override vote must precede the vote on adoption of the budget although both votes may occur on the same day.

City Comptroller Fazzino explained that a tax cap override is not anticipated, but setting the public hearing creates a safeguard for the City in case anything changes. City Manager Usry stated that setting this public hearing is routine and occurs every year, just in case.

Councilwoman Johnson made a motion, seconded by Councilman Stacks and unanimously carried, to set a public hearing to adopt a Local Law to override the State enacted tax levy limitation.

8. Continue the public hearing to create a new local law, Chapter 122, “Landscapers and Leaf Blower Regulations” requiring all landscapers to obtain an annual permit in order to operate as a landscaper and restrict the use of leaf blowers.

Mayor Cohn invited the public to speak on the public hearing.

Richard Runes, 3 Kirby Lane North, stated when he served as Rye City Court Judge, he encountered a small group who were the driving force of this local law and felt it was not the sentiment of the majority of the community. He proposed to remove the license forfeiture provisions as it would deeply impact the livelihood of the landscaping company and their employees.

Pam Haas, Rye Colony, spoke in support of the local law. She stated that gas powered leaf blowers negatively impact our health, quality of life and the environment, in addition to spew toxic emissions and particulate matter.

Brook Packard, 26 Oakwood Ave, spoke in support of the local law. She stated that leaf blower kick up particulate matter, which encompasses a radius of approximately five homes and lingers in the air for hours, which directly results in breathing toxic chemicals, such as glyphosate and mold, and is related to asthma and other lung issues such as pulmonary disease and cancer.

Lori Fontanes, 11 Hayward Place, spoke in support of the local law stating this legislation is long overdue. She suggested working with the existing municipal and local organizations to ramp up the educational outreach regarding how to improve landscaping design, so we can avoid so many leaf blowers. She also suggested giving landscaping companies a first warning as the law will be new information for most.

John Leonard, 1 Apawamis Ave., questioned the exemption for the city, the school district, clubs and other public institutions, stating the City should be setting an example and not exempt itself from the law. He also stated the homeowner should not be held liable if the homeowner can prove they properly notified their landscaper of the new law.

Ciara Smyth, 39 Palisade Road, spoke in support of the local law. She stated that the responsibility should fall on the homeowner. Additionally, she felt the start time should be pushed back from 8am, to 9:30am.

Leslie Winters, 87 Grace Church St, spoke in support of the local law. She provided statistics regarding particulate matter caused by leaf blowers, and added New York State Senate Bill 1113, is currently in committee to ban gas power blowers. Further, she supported the responsibility falling on the home owner.

Bob Zahm, 7 Ridgewood Drive, questioned if the law applied to unlicensed landscaper, contractor or home owner who wanted to use a leaf blower on their own. Corporation Council Wilson confirmed that the law is not applicable to their own property. Mr. Zahm felt that was something that needs further review in addition to the entities that are exempt from this law.

Erica Cordazzo, 8 Sharon Lane, questioned what the cost of the annual registration for landscapers is and stated she is concerned about the detrimental effect this can have on small businesses. She also felt that if this is a real concern, there should not be exemptions for the City, schools, religious entities or golf clubs.

Corporation Council Wilson stated the Council will consider the fee as part of the annual fee schedule.

Sue Drouin, 57 Morehead Drive, spoke in support of the local law. She felt this legislation would incrementally improve air quality, by eliminating the gasoline aspect and some of the higher decibel noise from gas blowers. She added that landscapers can easily convert to electric or mulch the leaf discharge.

Curtis Spacavento, Rye Landscaping Company owner, stated he has had several meetings with the previous Commissioner prior to COVID, with a mutually agreed upon compromise between the police and the contractors to preserve the quality of life and the City of Rye, while performing necessary services. He stated he and many of his colleagues, all consider the environment, a number one priority and do our best to preserve it. He added that what the legislation is asking us to do and find a way to do our job efficiently using inadequate equipment. He felt once the technology advances, the companies would be happy to comply with these types of regulations, but at this point it is still lacking.

Kate Briggs, 1 Walnut Street, stated there are great points to this law but asked why the law was not translated in Spanish. Additionally, she stated while she supports electric, the technology for electric is not perfected and the cost is still too high. She added that the cost of landscaping will increase because it will take much longer for the service to be completed.

Ms. Smyth stated she called the police this morning when 3 leaf blowers were going off who stated they would be right over. After 20 minutes she called back and by the time they dispatched an officer, the landscapers were done on the property. She added that 268 people called for help in 2019 and 2020 combines, but no violations were issued.

Ms. Packard stated that Mr. Spacavento lives in Armonk and the discussion should be based on feedback from Rye Residents.

Patti Capparelli, 18 Bulkley Manor, spoke in support of the local law and the use of electric leaf blowers over gas blowers.

Mr. Spacavento stated he does live in Armonk but also owns property in Rye and pays taxes to the City.

Ms. Briggs stated the important of education and landscaper outreach on the topic.

Mayor Cohn asked City Manager Usry if there were any thoughts from staff about the feasibility of electric blowers. City Manager Usry responded that of course, the City is aiming to move toward electric equipment in all aspects. For example, the City now uses a new electric mower, as the technology in that aspect has advanced. As technology evolves, the City is committed to the usage of electric mechanisms over gas powered technology. At this time, in a heavy leaf season, the electric blowers do not yet meet the needs to efficiently remove the leaves at the level that gas powered blowers do, but the staff does expect this to change. Mr. Usry talked about re-examining the technology in a constant and consistent basis so that the City can eventually move in that direction. There is expense associated in the conversion to electric equipment as well, which would affect the businesses that rely on the equipment.

There was discussion about California phasing in electric blower technology over a three-year period. Councilwoman Goddard offered to put staff in touch with Sustainable Westchester, which can be a valuable resource on the issue.

The public hearing was left open.

9. Consideration of a resolution authorizing the City Manager and City Staff to make necessary accommodations to allow for the continuation of outdoor dining facilities on sidewalks through the end of 2021.

Mayor Cohn introduced this item by noting that this is in reference to the tables on the sidewalks closest to the restaurants (against the storefronts).

City Manager Usry reiterated the Mayor's statement regarding the tables, and stated that this would authorize the Building Department to allow those tables for the remainder of 2021. The normal permit process will be reinstalled in 2022.

Councilwoman Souza asked if this was usually a more seasonable setup in the Central Business District. City Manager Usry stated that if a restaurant wanted to have the tables beside their storefronts, they would normally have to go in front of the Planning Commission for approval.

Corporation Council Kristin Wilson noted that the wording regarding cyclists was being removed from the resolution.

Councilwoman Johnson made a motion, seconded by Councilwoman Souza and unanimously carried, to make necessary accommodations to allow for the continuation of outdoor dining facilities on the sidewalks through the end of 2021, adopting the following resolution:

**WHEREAS**, as the authorization to use Purchase Street and other streets and sidewalks within the Central Business District ended on October 31, 2021, the City would like to provide

some flexibility for eating establishments to continue to provide outdoor dining facilities on sidewalks through the end of 2021; now therefore be it

**RESOLVED** that the City Council wishes to allow eating establishments to continue to use sidewalks through December 31, 2021; and be it further

**RESOLVED**, that the City Council authorizes the City Manager and City staff to take any necessary steps to allow for outdoor dining facilities to continue to use sidewalks while maintaining sufficient emergency access and providing for pedestrian/cyclist safety; and be it further

**RESOLVED**, that all outdoor seating shall be in compliance with the normal and ordinary conditions that the Planning Commission and/or City staff typically require; and be it further

**RESOLVED**, that the City Council hereby waives any outdoor dining permit fees or other similar fees for the remainder of 2021 only; and be it further

**RESOLVED**, that this discretion and extension of time for outdoor dining shall only be for the remainder of 2021 and future applications shall be submitted to the Planning Commission.

Where there is conflict between this Resolution and any other law, this Resolution shall control.

This Resolution shall take effect immediately and shall be in effect until December 31, 2021.

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

Brook Packard, 26 Oakwood Ave, spoke about the City's responsibility to take climate change into account and declare a climate emergency.

Lori Fontanes, 11 Hayward Place, asked the Council to declare a climate emergency.

Philip Bianchi, 8 Eldredge Place, spoke about his concern for the Rye Golf Club's redesign. He asked if there had been any reports of golfers being hurt at Rye Golf Club. He also asked if any neighbors had voiced their support for the redesign.

Bob Zahm, 7 Ridgewood Drive, thanked City Manager Usry for speaking with the utility company regarding a nearby utility pole. He asked about the timeline for repairing the brick sidewalk on Locust near the fire station. City Manager Usry stated that he would get back to Mr. Zahm with a timeline. Mr. Zahm asked what was causing the Osborn to continue postponing their public hearing to amend the zoning code. City Manager Usry stated that the applicant has the right to postpone.

Councilwoman Johnson asked if the City was waiting on FEMA money for sidewalk repairs. City Manager Usry stated that that is a very long process, so that is not a factor.

Kari B (last name not identified on the record), Rye resident and Golf Club neighbor, expressed her concern for the Rye Golf Club renovations.

Chris Donley, 78 Allendale Drive, expressed concern for the Rye Golf Club renovations and for the waitlist process.

EJ Scott, 3 Eldredge Court, asked that the neighbors be provided with a Council liaison to establish a dialogue between the golf club and the neighbors. Councilman Stacks noted that the golf club has not come to the Council to seek approval for the proposed renovations.

Sue Drouin, 57 Morehead Drive, asked the Council to declare a climate emergency.

Pamela Haas, 3 Peck Ave, asked the Council to declare a climate emergency.

Kate Briggs, 1 Walnut Court, asked the Council to install a law requiring trees to be replaced when they're cut down. Councilwoman Souza stated that those provisions are already there, but the Council is working to make them better.

Ciara Smyth, 39 Palisade Road, asked that the Council declare a climate emergency.

Lindsay Lorraine, 68 Allendale Drive, stated that all neighbors in close proximity to Rye Golf Club purchased their homes with the current golf course configuration in mind.

George Owens, 94 Allendale Drive, expressed his concerns for the proposed golf club renovation and for the waitlist length.

11. Resolution to declare certain City equipment as surplus.

City Manager Usry explained the Fire Department has provided the list of inventory that has become obsolete (included in the November 3, 2021 agenda back up). They are recommending the City Council declare the items as surplus so the items can be disposed of in accordance with City Policy.

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

**WHEREAS**, the City has been provided with a list of City equipment identified as being obsolete or has become obsolete during 2022, and,

**WHEREAS**, the Fire Department recommended that said inventory be declared surplus, now, therefore, be it

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

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

ROLL CALL

AYES: Councilwoman Goddard, Johnson, and Souza, Councilman Stacks  
NAYS: None  
ABSENT: Councilman Mecca, Mayor Cohn

12. Adjourn until November 17, 2021 the public hearing for consideration of a petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code Association to create new use and development standards for “Senior Living Facilities” in the R-2 Zoning District.

Councilwoman Souza stated this item will be adjourned until the November 17, 2021 meeting.

13. Old Business/New Business.

Councilwoman Souza reminded the Council that Mistletoe Magic will take place the Sunday after Thanksgiving from 12-3pm in downtown Rye.

14. Adjournment

There being no further business to discuss, Councilwoman Johnson made a motion, seconded by Councilwoman Goddard and unanimously carried, to adjourn the regular meeting of the City Council at 9:26 P.M.

Respectfully submitted,

Carolyn D’Andrea  
City Clerk



# CITY COUNCIL AGENDA

DEPT.: Engineering

DATE: November 17, 2021

CONTACT: Ryan Coyne, City Engineer

**AGENDA ITEM:** Presentation from Stantec regarding replacement of the DPW Salt Shed and referral to the Planning Commission.

**FOR THE MEETING OF:**  
November 17, 2021

**RECOMMENDATION:** That the Council hear the presentation and refer the design to the Planning Commission.

**IMPACT:** ☐ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

## BACKGROUND:

See attached resolution.

## **RESOLUTION**

### **Authorizing the referral of the Salt Shed to the Planning Commission for a Wetland Permit**

WHEREAS, the City's Capital Improvement Plan includes the replacement of the salt shed at Disbrow Park for use by the City of Rye Department of Public Works; and

WHEREAS, the anticipated cost, including construction inspection costs and oversight, is approximately \$\_\_\_\_\_ ( ); and

WHEREAS, the improvements include demolishing and removing the existing salt shed and building a new salt shed; and

WHEREAS, the City Council determines that the proposed action is considered an Unlisted Action under the the State Environmental Quality Review Act.

NOW, THEREFORE, BE IT RESOLVED, that the City Council directs City staff to take any necessary additional steps to comply with the State Environmental Quality Review Act; and

BE IT FURTHER RESOLVED, that the City Council refers this matter to the Planning Commission for a wetland permit and directs staff to take the necessary steps to obtain the necessary approvals.



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: November 17, 2021

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:**

Update on Capital Projects and fall street resurfacing.

**FOR THE MEETING OF:**

November 17, 2021

**RECOMMENDATION:** That the Council hear the update.

**IMPACT:** ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

**BACKGROUND:**



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: November 17, 2021

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:** Continue the public hearing to create a new local law, Chapter 122, "Landscapers and Leaf Blower Regulations" requiring all landscapers to obtain an annual permit in order to operate as a landscaper and restrict the use of leaf blowers.

**FOR THE MEETING OF:**  
November 17, 2021

**RECOMMENDATION:** That the Council continue the public hearing.

**IMPACT:** ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

**BACKGROUND:** See attached law and proposed changes.

## Summary of Differences: Leaf Blowers/Landscapers

	Previous Law	Proposed Changes
<b>Permit</b>	Landscaping permit not required	Landscapers must register ANNUALLY to operate within the City limits. <ul style="list-style-type: none"> <li>• Proof of a valid and current Westchester County Home Improvement License and insurance information required</li> <li>• Stated and signed agreement that leaf blower laws are understood and will be followed</li> <li>• Landscaper Registration Tag issued and must be visible in vehicle</li> </ul>
<b>Permissible Dates to Operate Leaf Blowers and Other Lawn Equipment</b>	October 1 and April 30 Weekdays 8 am – 8 pm Weekends 10 am – 6 pm	October 1 and April 30 Weekdays 8 am – 6 pm Weekends 10 am – 4 pm
<b>Storm Exemption</b>	Rye Department of Public Works may permit the use of leaf blowers from May 1 to September 30 for a period of time <b>not to exceed seven days</b> after significant storm events or during other emergency situations circumstances.	Rye Department of Public Works may permit the use of leaf blowers from May 1 to September 30 for a period of time <b>not to exceed fourteen days</b> after significant storm events or during other emergency situations circumstances.
<b>Leaf Blower Noise</b>	Gas and Electric leaf blower 85 db(A)	Gas and Electric leaf blowers 85 db(A)  Effective January 2023, electric leaf blowers <b>ONLY</b> with maximum permitted intensity of 65 db(A)
<b>Penalties</b>	Owner of the property <b>OR</b> the person performing such violation shall be notified to suspend all work and be subject to a fine of not more than \$250 or imprisonment for a term of not more than 15 days, or both.	The party operating the leaf blower <b>AND</b> the party who employed the person to operate the leaf blower at the time of violation <b>AND</b> the party who owns the property where the violation occurs will be subject to a fine of \$250 for the first offense, a fine not to exceed the sum of \$350 for the second offense and revocation of the Landscaper's permit for the next 6 (six) months upon the third offense. Any Landscaper found operating without a permit or after the permit has been revoked, or a property owner on the third offense, shall be punished by a fine of up to \$1,500.

**CITY OF RYE**

**LOCAL LAW NO. \_\_ 2021**

**A local law to add a new Chapter 122 “Landscapers and Leaf Blower Regulations” of the Code of the City of Rye to set forth permit requirements for Landscaping Companies and to regulate the use of gas and electric powered leaf blowers as follows:**

**Section 1: Chapter 122, Landscapers and Leaf Blower Regulations**

**§ 122-1 Purpose.**

The City Council finds that landscaping activities generate noise, disseminate dust particles and other airborne pollutants into the air and onto other nearby properties and that the use of leaf blowers specifically can increase environmental pollution. In addition, there are numerous landscaping companies providing services to properties in the City and the City Council finds that it is in the City’s interest to ensure that such companies are properly licensed and are aware of the applicable regulations in the City. It is the intent and purpose of this Chapter to preserve and improve air quality, decrease the high and low-frequency noise pollution and decrease carbon and non-carbon emissions and dust particulate. It is the policy of the City to regulate the use of all leaf blowers and minimize and mitigate the harmful impacts of their use.

**§ 122-2 Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**LANDSCAPER** – Any person, corporation, partnership or business entity of any form who tends, plants, installs, maintains, or repairs lawns, or performs general yard maintenance work or leaf collection of any kind on real property which such person or business entity does not own or at which s/he does not reside. A Landscaper shall not include landscape designers or landscape architects.

**LEAF BLOWER** – a portable, handheld or backpack-style device powered by fuel or electricity and used for the purpose of blowing, moving, removing, dispersing, vacuuming or redistributing leaves, dust, dirt, grass clippings, cuttings, and trimmings from trees and shrubs or any other type of litter or debris.

**§ 122-3 Registration required; requirements; fee; exemption**

- A. No Landscaper shall operate or provide services within the City of Rye unless the Landscaper is registered annually pursuant to this Chapter.
- B. Registration requirements.
  - 1. All Landscapers shall submit a completed registration form provided by the City Clerk and pay a nonrefundable fee in an amount to be determined by the City Council.
  - 2. The registration form, at a minimum, shall state that the landscaper has read, understands and agrees to comply with the City’s leaf blower regulations and other relevant City laws and policies.

3. In addition, the Landscaper shall submit proof of a valid and current Westchester County Home Improvement License and such other insurance information that the City deems relevant.
- C. When the City Clerk determines that all requirements have been met, s/he shall issue a Landscaper Registration Tag, which must be placed on the rear view mirror of each vehicle the landscaper uses in the City. The Tag is not transferable.
- D. The Landscaper Registration Tag shall be valid from January 1 through December 31 each year, unless revoked.

**§ 122-4 Use of Gas Powered Leaf Blowers Prohibited.**

Effective January 2023, during the time that leaf blower use is permitted, only electric blowers shall be permitted. Gas powered leaf blowers are prohibited at all times.

**§ 122-5 Maximum Sound Pressure [db(A)] and hours of operation of leaf blowers**

- A. Effective January 2023, leaf blowers (electric only) shall have a maximum permitted intensity of 65 db(A). Effective immediately, all other lawn equipment, including, but not limited to, outdoor vacuum cleaners shall have a maximum permitted intensity of 85 db(A).
- B. Use of lawn equipment, including, but not limited to, leaf blowers and outdoor vacuum cleaners is permitted only between 8:00 a.m. and 6:00 p.m. weekdays and 10:00 a.m. and 4:00 p.m. on weekends and holiday. The permitted intensity and hours described in this subsection will apply to leaf blowers during months when the use of leaf blowers is permitted.
- C. The use of leaf blowers shall be prohibited between May 1 and September 30 every year.
- D. The head of the Rye Department of Public Works may permit the use of leaf blowers from May 1 to September 30 for a period of time not to exceed fourteen (14) days after significant storm events or during other emergency situations.
- E. Additional rules for any person operating a leaf blower between the dates of October 1 and April 30 are as follows:
  1. No leaf blower shall be operated simultaneously on the same lot with any other type of machine-powered lawn equipment.
  2. Two or more leaf blowers shall not be operated simultaneously except in R-1 Residence Districts as indicated on the City of Rye Zoning Map.

- F. This section shall not apply to the following entities and activities: municipal, schools, religious institutions, membership clubs, golf courses, hospital and retirement communities, cemeteries, and driveway/road paving and sealing activities, except that any leaf blower use shall be minimized to the maximum extent practicable in proximity to residences.
- G. Moving leaves or yard debris to City streets, public property, storm drains or abutting lots is prohibited at all times.

#### **§ 122-6 Enforcement.**

The provisions of this chapter shall be enforced by the City of Rye Police Department or the City of Rye Building Department.

#### **§ 122-7 Penalties for offenses.**

- A. The following parties shall have committed a violation of this laws if it is not complied with:
  - (1) The party operating the leaf blower; and
  - (2) The party who employed the person to operate the leaf blower at the time of violation; and
  - (3) The party who owns the property where the violation occurs.
- B. Any party violating any of the provisions of this chapter shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed the sum of \$250 for the first offense. A second offense shall be punishable by a fine not to exceed the sum of \$350 and a third offense shall result in the revocation of the Landscaper's permit for the next 6 (six) months, or, if you are the property owner, a fine not to exceed the sum of \$1,500. Any Landscaper found operating without a permit or after the permit has been revoked shall be punished by a fine of up to \$1,500.

#### **Section 2. Severability.**

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

#### **Section 3: Effective Date.**

This local law will take effect on January 1, 2022.



# CITY COUNCIL AGENDA

DEPT.: City Council

DATE: November 17, 2021

CONTACT: Mayor Josh Cohn

**AGENDA ITEM:** Resolution to waive parking restrictions and parking fees in all downtown parking lots and Purchase Street for the period between November 26 - 27, 2021 and December 20 - 24, 2021.

**FOR THE MEETING OF:**  
November 17, 2021

**RECOMMENDATION:** That the City Council adopt the following resolution:

WHEREAS, the City Council seeks to support the Central Business District local businesses during the 2021 Holiday Season, and;

WHEREAS, the City Council encourages residents to shop and dine downtown during the holiday season as buying locally helps all of us while strengthening our local economy, and;

RESOLVED, the City Council will provide free parking for the period between November 26 - 27, 2021 and December 20 - 24, 2021 by waiving parking restrictions and parking fees in all downtown lots (Car Parks 1-5) and Purchase Street at the City's expense.

**IMPACT:** ☐ Environmental ☒ Fiscal ☐ Neighborhood ☒ Other:

**BACKGROUND:** In December of 2017, the City Council began waiving parking restrictions for approximately one week leading up to Christmas in an effort to support the Central Business District. The Council hopes to encourage residents to shop and dine downtown during the holiday season since buying locally helps the community and strengthens our local economy.

For 2021, the Council resolution reflects waiving fees for the shopping period which includes Hanukkah, Christmas and Kwanzaa. Based upon prior years' revenues the City projects these suspensions will cost \$18,000-23,000.



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: October 26, 2021

CONTACT: Greg Usry, City Manager

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

**FOR THE MEETING OF:**

November 17, 2021

**RYE CITY CODE,**  
CHAPTER  
SECTION

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

**IMPACT:** ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

**BACKGROUND:** On April 22, 2014, the City Council at the time agreed to hire Lessings, Inc. to operate the catering of food and beverage at Whitby Castle at Rye Golf Club. Today, the Council is asked to authorize the City Manager to enter into this revised agreement with Lessings, Inc. for catering services at Whitby Castle at the Rye Golf Club.

See attached.

**RESOLUTION AUTHORIZING CITY MANAGER AND CORPORATION COUNSEL  
TO FINALIZE AND ENTER INTO AN EXCLUSIVE CATERING AGREEMENT WITH  
LESSING'S INC.**

WHEREAS, together with the Rye Golf Commission, the City Council wishes to enter into a revised Exclusive Catering Agreement with Lessing's Inc. to continue its services at Whitby Castle; and

WHEREAS, the City and Lessing's have revised some of the terms in the original agreement relating to revenue sharing, hours of operation and other miscellaneous terms; and

WHEREAS, the City Council determines that the proposed action is considered a Type II Action under the the State Environmental Quality Review Act.

NOW, THEREFORE, BE IT RESOLVED, that the City Council authorizes the City Manager and the Corporation Counsel to finalize the terms of the Agreement with Lessing's consistent with the terms in the draft set forth before the Council this evening.

## Review of Current & Proposed Lessing's Agreement

Current Agreement		Proposed Revised Agreement	
Term: Expires December 31, 2023 w/ 2 optional 5 year extensions		Term: January 1, 2022 through December 31, 2028 w/ 2 optional 5 year extensions.	
Current Revenue Share		Proposed Revenue Share	
Revenue Tiers	\$Rev Share Percent	Revenue Tiers	\$Rev Share Percent
\$0 - \$1.5million	7%	\$0 - \$1.5million	7%
\$1.5m - \$2.5million	10%	\$1.5m - \$2.5million	11%
\$2.5million +	13%	\$2.5m - \$4million	15%
		\$4million +	18.50%
Current Operating Hours		Proposed Operating Hours	
April 1 - November 1: Tuesday - Thursday 12pm to 8pm. Friday - Sunday 12pm - 10:00pm.		April 1 - October 15: Tuesday - Sunday 12pm - 10pm (*garaunteed by a penalty clause)	
Other Miscellenous Current Provisions		Proposed Miscellenous Revisions	
<p>Currently the only option to address concerns over operational issues would be to terminate the contract between Lessing's and the COR.</p> <p>.....</p> <p>Lessing's utilities from 2020 and rent from 2020 are in arrears.</p>		<p>The COR will establish a penalty clause to which Lessing's has agreed to be held accountable. Such penalties will be issued for situations such as, but not limited to: closing the restaurant/bar early, not opening the restaruant/bar at all, or failing to uphold other aspects of the contract. After one warning, penalites will be issued and continue to escalate based upon a predetermined penalty schedule. Such penalties will be billed monthly along with monthly rent statements.</p> <p>.....</p> <p>Lessing's has made utilities from 2020 current, Lessing's will be forgiven minimum rent due from 2020 due to COVID impact, Lessing's is now current on 2021 utilities and rent.</p> <p>.....</p> <p>Lessing's will waive right to be exclusive food and beverage supplier at RGC so that RGC can provide its own members with complimentary bottled water.</p> <p>.....</p> <p>Lessing's shall also pay the Golf Club \$5,000 annually for waste removal services.</p>	

**EXCLUSIVE CATERING AGREEMENT**

This Revised Exclusive Catering Agreement (this “Revised *Agreement*”) is made and entered as of November \_\_, 2021 (the “*Effective Date*”), by and between the City of Rye, an entity with offices at 1051 Boston Post Road, Rye, NY 10580 (“*City of Rye*”), and Lessing’s, Inc., a New York corporation with offices at 3500 Sunrise Highway, Building 100, Great River, New York 11739 (“*Lessing’s*”). City of Rye and Lessing’s are on occasion referred to individually as a “*Party*” and collectively as the “*Parties*”.

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

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

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

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

**WHEREAS**, it is expected that Lessing’s shall continue to provide Services under this Revised Agreement (as hereinafter defined) on or about January 1, 2022 (the “*Commencement Date*”); and

**WHEREAS**, as part of the consideration for entering into this new Revised Agreement, Lessing’s Base Commission payments are forgiven for the fiscal year 2020 due to the impact from COVID-19; and

**WHEREAS**, Lessing’s remains obligated to pay its Base Commission and utility obligations for the fiscal year 2021.

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

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

A. Grant of Rights. With the exception of section 6 below, Lessing’s shall have the sole and exclusive right beginning on the Commencement Date:

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

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

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

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

#### B. Obligations.

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

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

Lessing’s shall provide the Patio and Bar Service on the following days and times from April 1 to October 15:

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

Lessing’s shall provide the Restaurant Services on the following days and times from April 1 to October 15:

Monday – Closed  
 Tuesday-Thursday – Noon-10:00pm

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

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

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

3. *Menu Selection; Event Scheduling.* Lessing's shall collaborate with the Rye Golf Commission (the "**Golf Commission**") (i) to meet its reasonable specified menu parameters and budgetary constraints for any Discounted Event, any On-Premises Catered Event for non-member golf outings, and the Patio and Bar Service, and (ii) with respect to the scheduling of On-Premises Catered Events to avoid conflicts and disruption to the Golf Club and special and community events.
4. *Cleaning, Maintenance, Repairs and Replacements.*
  - a. Lessing's shall maintain all parts of the Castle and the Facilities (as defined in Section II.B.), including all areas used for the handling, preparation, storage and service of food, disposal of waste and refuse, the Patio Bar, the Castle Deck, restrooms, and entrances and exits, in an inviting, attractive, safe, operable, clean and sanitary condition at all times, so as to pass all health inspections. Grease traps shall be kept clean. Lessing's shall maintain a suitable program for pest control. Lessing's shall be responsible for all interior decoration, and routine interior maintenance, repair and replacement, all of which shall be done in a professional manner, be of first-class quality and conform with standards established by City of Rye as to finishes and look. Interior maintenance shall cover all furniture, fixtures and equipment, including, without limitation, Servicewares and Small Expendable Equipment (each as defined in Section II.D. below).
  - b. As of the Effective Date, Lessing's has made approximately \$143,000 of capital improvements beyond its obligations set forth in the Agreement. However, once the term of the agreement catches up to the required level of capital improvements, within fifteen (15) days after the end of each month of the Term, Lessing's shall contribute two percent (2%) of Gross Revenues (as hereinafter defined) generated in such month into a repair and maintenance capital reserve fund controlled by City of Rye (the "**Capital Reserve Fund**"), which amounts shall be used by the City of Rye for repairing and maintaining the Castle and repairing and maintaining or, as necessary, replacing parts of, the Facilities. The R&M Fund shall not be used for routine repair, maintenance and replacement expenses that are the responsibility of Lessing's, including pursuant to the preceding paragraph 4.a.
  - c. The parties shall meet on an annual basis to plan strategic repairs, maintenance or replacements to the operative areas of the Castle to preserve the Facilities in good condition, it shall notify the other Party. If non-routine repairs, maintenance or replacements relate to front-of-house or customer facings ("**Front of House Repairs**"), Lessing's, as the operator of the Facilities and stager of Events, after good faith consultations with City of Rye, shall make the final determination. City of Rye, as the owner of the Castle and the Facilities, after good faith consultations with Lessing's, shall make the final determination as to all other repairs, maintenance or replacements, including non-routine repairs, maintenance and replacement of all aspects of the Facilities other than

non-routine Front of House Repairs. Upon completion of the project, the party shall be reimbursed for the reasonable cost thereof out of the Capital Reserve Fund within fifteen (15) days after it has provided the other party with invoices and documentation demonstrating the work completed. If there are conflicted claims on the Capital Reserve Fund for non-routine Front of House Repairs and other repairs, maintenance and replacements covered by this Section 1.B.4.c., the City of Rye shall make the final determination as to the priority and order of such claims.

- d. Any amounts remaining in the Capital Reserve Fund that have not been expended or committed at the expiration or termination of the Term shall be retained by City of Rye.
  - e. “**Gross Revenues**” means all revenue received by or on behalf of Lessing’s or its affiliates, whether by a client, third party or Rye Golf Club employee, as applicable, from the provision of services or the sale of food and beverages in connection with an On-Premises Catered Event, an Off-Premises Catered Event, Patio and Bar Service, Restaurant Service and, to the extent provided by Lessing’s, Snack Bar Services, as the case may be, but shall not include (i) any retail sales taxes, excise taxes and similar government charges on services provided or goods sold by Lessing’s hereunder, whether collected from customers for payment to the taxing authority or payable directly to the taxing authority, and (ii) tips and gratuities paid to Lessing’s employees.
  - f. For the avoidance of doubt, nothing herein is intended to prevent or restrict Lessing’s from purchasing, at its own expense, such additional equipment as it shall see fit, subject to Section II.B.
- 5. *Servicewares; Small Expendable Equipment.* As set forth in Section II.D below, City of Rye, at its sole cost and expense, is furnishing to Lessing’s, on a “where-is,” “as-is” basis, an inventory of Servicewares and Small Expendable Equipment as listed and described on Schedule C. Lessing’s shall, pursuant to paragraph 4.a. and at its sole cost and expense, ensure that such Servicewares and Small Expendable Equipment are maintained at the level appropriate for the efficient performance of the Services, and shall return to City of Rye at the conclusion of the Term Servicewares and Small Expendable Equipment in quantities at least equal to the quantities set forth on Schedule C, all of which shall be in good and usable condition, ordinary wear and tear excepted.
  - 6. *Off-Premises Use of Facilities.* Lessing’s acknowledges that it shall not use any City of Rye-owned front-of-house/guest-facing Facilities for Off-Premises Catered Events.
  - 7. *Utilities.* As of the Commencement Date, Lessing’s shall be responsible and shall pay or reimburse the City of Rye, as provided in Section IV.D., for all utilities, including without limitation, electricity, gas, sewer and water, associated with the use of the Castle, including the Patio Bar (the “**Utilities**”). If Lessing’s is granted the right to provide Snack Bar Services in any future year, a fair share allocation of Utility expenses of the Golf Club shall be paid by Lessing’s for each such year with respect to the Snack Bar Services.
  - 8. *Cable/Telephone Services and Security Monitoring.* As of the Effective Date, Lessing’s shall obtain its own cable/satellite/ISP, telephone services and security monitoring at the Castle at its sole cost and expense.
  - 9. *Refuse and Rubbish Removal.* As of the Commencement Date, Lessing’s shall reimburse the

City of Rye \$5,000 each year to cover the proportionate cost of its trash associated with its delivery of the Services. Lessing's shall use the Castle's trash dumpsters for the disposal of refuse and rubbish removal. The City of Rye shall include the \$5,000 payment on the final invoice of every year.

10. *Snow Removal.* As of the Effective Date, Lessing's shall be responsible for the cost of all snow and ice removal on the sidewalks and other designated walkways at the Castle. City of Rye will provide plowing, including salting and de-icing.
11. *Landscaping.* Lessing's will pay for all landscaping maintenance and grounds upkeep within one hundred fifty (150) feet of the Castle, including the entry drive center square. Both parties shall ensure that their respective maintenance and upkeep obligations shall be done in a professional manner, be of first-class quality and conform with standards established by City of Rye as to finishes and look.
12. *Marketing Spend.* To ensure the most successful of operations at the Castle, Lessing's agrees to spend a minimum of \$50,000 each Year during the Term promoting and marketing the Castle and Events (the "**Marketing Spend**"). The purposes for which the Marketing Spend will be used will include, but not be limited to, advertising, application towards website development and maintenance, print media, photography and videography expenses and promotional events. All written advertising and marketing materials, and the script for any audio advertising and marketing materials must, for intellectual property protection reasons, be submitted to and approved by City of Rye prior to first use. Lessing's also shall provide invoices, tear sheets or other documentary proof, in form reasonably satisfactory to City of Rye, that it has satisfied the Marketing Spend each Year. If Lessing's has not satisfied the Marketing Spend for any Year, the shortfall shall be added to the Marketing Spend for the ensuing Year. Any Marketing Spend shortfall for the final Year of the Term shall be paid to the City of Rye by January 31<sup>st</sup> of the ensuing Year.

"**Year,**" for all purposes of this Agreement, shall mean a 4/4/5 accounting year.

13. *Taxes.* Lessing's shall be responsible for the payment of all gross receipts, estimated, sales, use, ad valorem, transfer, franchise, license, withholding, payroll, employment, excise, severance, occupation, real estate (if any) and other taxes, fees, assessments and charges of any kind, including interest and penalties, imposed by any governmental, regulatory or administrative entity, department, commission, board, agency, instrumentality, or other quasi-governmental entity authorized to impose or levy taxes in connection with Lessing's operations and use of the Castle, including, without limitation, those imposed on or based upon sales, net income, gross income, earnings or profits of Lessing's; *provided, however*, that Lessing's responsibility for real estate taxes, if any, shall be limited to and shall not exceed \$25,000 for any Year, with City of Rye being responsible for any excess.
14. *Liquor Inventory.* Lessing's will purchase all usable unopened items in the City of Rye's existing wine and liquor inventory at the Castle at the reasonable wholesale cost thereof. If requested, Lessing's will assist City of Rye in liquidating any inventory not purchased by Lessing's.
15. *Personnel.* Lessing's shall provide sufficient qualified, professional and competent personnel to perform any and all Services as required herein. All persons engaged by or on behalf of

Lessing's shall be employees of Lessing's and not of the City of Rye. Lessing's will be responsible for screening all such personnel, including running sex offender status and criminal background checks. Subject to Legal Requirements, Lessing's will not employ any person who is not, in the reasonable opinion of the City of Rye or the Golf Commission, fit to work with or in close proximity to children and the general public.

16. *Additional Covenants.* During the Term, Lessing's covenants and agrees:

- a. It in all respects will cooperate with the Golf Commission and the resident golf professional staff. Lessing's will not do anything or allow anything to be done that materially hinders or interferes with the use and enjoyment of, and free access and passage to, the Rye Golf Club by its members, including, without limitation, due to excessive garbage accumulation or odors, excessive noise, excessive parking or labor or other disputes involving pickets, whether on or near the Rye Golf Club property.
- b. It will not do anything or allow anything to be done that could invalidate or permit the suspension or cancellation of any insurance policy required under this Agreement or any liquor license or permit relating to the Castle or Rye Golf Club or any portion thereof, or that results in the increase of the premiums payable for any insurance required under this Agreement; and it will not fail to do or cause to be done any commercially reasonable thing necessary to maintain any such insurance policy and any such liquor license or permit in full force and effect.
- c. It will maintain all necessary licenses and permits, and comply in all material respects with all Federal, state, local and municipal laws, rules, ordinances, regulations, statutes, licenses and permits ("***Legal Requirements***"), applicable to its provision of Services and performance of this Agreement, including, without limitation, with respect to health and food safety and the storage of consumables and the storage, serving and sale of alcohol, and concerning maintenance of the Facilities.
- d. It will not use or store any hazardous or toxic substances, wastes, pollutants or contaminants or any other substance that may pose a hazard to human health or safety or the environment (including air, water, soil and natural resources); *provided*, that Lessing's may store and use at the Castle any materials and supplies that are appropriately and customarily used in providing Services or maintaining premises for Events so long as the same are stored and used in compliance with all Legal Requirements.
- e. It will not use or permit the use of the Castle in violation of any Legal Requirement or, in the opinion of City of Rye, for improper or immoral purposes, including, without limitation, as a night club or for inappropriate private parties.

17. *Penalty for Breach.* During the Term of this Revised Agreement, if Lessing's fails to, among other non-curable obligations, maintain the agreed upon hours of operation for the Patio, Bar and Restaurant Services, the City shall provide a written warning to Lessing's for the first breach. Following the date of the breach notice, Lessing's shall have seven (7) days in which Lessing's can admit or dispute the breach allegation made by the City. If the allegation is disputed and the parties cannot resolve the dispute within seven (7) days, an independent arbitrator, paid for equally by the parties, will decide the issue within seven (7) days. After the first breach, Lessing's shall be subject to the penalties as set forth in Schedule B. Such penalties

shall be billed monthly along with the monthly rent statements.

18. *Club and Member Event Pricing.* Lessing's is prohibited from charging a service fee on Club events and shall limit the cost of Club Events to Goods and Services plus 15%. In addition, Lessing's shall offer to host a Member Event on Friday or Saturday nights, from May to October, when it is not catering an event (i.e., "open" or "unsold" dates).
19. *Halfway House Improvements.* Lessing's shall: 1) keep the Halfway House near 9 Green open from no later than one hour after the first tee time until one hour before sunset; 2) offer a healthy menu including vegetarian options; and 3) shall meet with the Commission regularly on pricing (at least yearly and before raising prices).
20. *Golf Car Use.* Lessing's employees, guests, agents and/or contractors shall not be permitted to use the City of Rye's golf cars.

## II. City of Rye's Rights and Obligations.

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

City of Rye shall have all right, title and interest to the Facilities; *provided, however*, that Lessing's shall own any equipment constituted within the Facilities if such equipment (i) is paid for by Lessing's, (ii) is not affixed to the Castle as a fixture and (ii) is not a replacement for Servicewares and Small Expendable Equipment (as defined below).

- C. Maintenance, Repairs and Replacements. Subject to Lessing's obligations pursuant to paragraph I.B.4.a., City of Rye throughout the Term shall be responsible for non-routine repairs, maintenance and, as necessary, replacement of components of the Facilities. By mutual agreement, the City of Rye may make such payment out of the Capital Reserve Fund and as provided in Section I.B.4.b. above. In addition, throughout the Term, City of Rye shall be responsible, except as provided in the proviso to the following sentence, for maintaining and repairing the structural portions of the Castle, the roof of the Castle, the exterior walls of the Castle, the HVAC system of the Castle (including, but not limited to, plumbing, electric, gas, etc.), and the windows of the Castle ("**Structural Repairs**"). All repairs, maintenance and replacements made by City of Rye as contemplated by this Section shall be in conformity with the standards that are customary for the Castle as it currently is maintained; *provided, however*, that Lessing's shall be responsible to pay (in whole or in part) for repairs, maintenance and replacements to the Castle and the Facilities,

including the Castle Deck, that result from Lessing's negligence or negligent uses or intentional misuse of the Facilities or any other portion of the Castle.

- D. Servicewares; Small Expendable Equipment. Prior to the Commencement Date, City of Rye, at its sole cost and expense, is furnishing to Lessing's, on a "where- is," "as-is" basis, an inventory of items used in the serving of food and beverages, such as chinaware, glassware, silverware and hollow ware ("**Servicewares**") and items used in the preparation of food, including pots, pans and kitchen utensils ("**Small Expendable Equipment**") as listed and described on Schedule C for Lessing's efficient performance of the Services. As set forth above in Section I.B.5, throughout the Term, Lessings, at its sole cost and expense, shall ensure that such Servicewares and Small Expendable Equipment are maintained at the level appropriate to allow it to efficiently perform the Services, and shall return to City of Rye at the conclusion of the Term Servicewares and Small Expendable Equipment in quantities at least equal to the quantities set forth on Schedule C, all of which shall be in good and usable condition, ordinary wear and tear excepted.
- E. Point of Sale System. If Lessing's requests, City of Rye shall provide Lessing's with the Northstar electronic point-of-sale system or similar point of sale system ("**POS**") being used at the Golf Club from time to time to facilitate Lessing's accommodating and accepting Golf Club member charges.
- F. Access to Facilities. City of Rye and its authorized representatives may enter the Facilities at all reasonable times with prior notice to Lessing's (which notice may be given orally to the person employed by Lessing's with whom City of Rye's representatives ordinarily discuss matters relating to the Castle); *provided*, that no notice need be given in the event of an emergency. City of Rye may use the Castle as a voting location for primaries and elections upon no less than thirty (30) days prior notice to Lessing's, and may use the Castle as an emergency shelter during Federal, State or local declared emergencies.
- G. Security. Throughout the Term, City of Rye shall not provide security for the Castle other than standard police patrol. If Lessing's determines that it requires additional security, such security shall be at Lessing's sole cost and expense.
- H. Delivery Times. The Parties will mutually agree on delivery times for any food or equipment to be delivered to the Castle for or on behalf of Lessing's.
- I. Parking. Parking at the Castle will be shared. During the golf/pool season (to be coordinated with and determined by the Golf Club Manager, but generally the entire Memorial Day weekend and the period from and including the last day of school to and including the Sunday following Labor Day), the available spaces shall be limited to 130 spots allocated to Lessing's. Valet parking will be provided by Lessing's in connection with Events that are scheduled during such shared period.

### **III. Term; Termination.**

- A. Term. This Agreement shall commence on the Effective Date and shall continue until December 31, 2028 (the "**Second Term**"). Upon expiration of the Second Term, this Agreement may be extended for up to two additional renewal terms of five years each upon the mutual agreement of the parties. Lessing's shall, no later than one year prior to the end of the term (December 31, 2027) either request a further extension or notify the City of its intention to vacate the premises. The period during which this Agreement remains in effect, as the same may be extended, is referred to as the "**Term**".

B. Termination.

1. *Mutual.* Each Party shall have the right to terminate this Agreement by written notice to the other Party as follows:
  - a. Upon default by a Party in the due performance of obligations stipulated by this Agreement, which default is not remedied within a period of fifteen (15) days after receipt of notice from the non-defaulting Party, specifying the default in reasonable detail; *provided*, that if a matter is susceptible of cure but cannot reasonably be cured within such fifteen (15) day period, and if the defaulting Party promptly commences and diligently is pursuing a course of conduct that in the other Party's reasonable opinion is capable of curing such default, the period for curing the default shall be extended to forty five (45) days after the notice of default was received; *provided, further, however*, that there shall be no extension of the fifteen (15) day period to cure a default if the default relates to the payment or expenditure of money.
  - b. Upon the Parties mutually agreeing in writing to terminate this Agreement.
2. *By City of Rye.* City of Rye may terminate this Agreement immediately on written notice:
  - a. if Lessing's engages in any conduct that constitutes willful misconduct, including intentional misappropriation or conversion to its own use of funds belonging to City of Rye, or any conduct that jeopardizes the privileges of and licenses held by City of Rye or Lessing's relating to the Castle or the Facilities or the use thereof.
  - b. if Lessing's breaches the same provision of this Agreement three or more times within any consecutive twelve (12) month period, notwithstanding that the previous such breaches were cured within any applicable cure or grace period.
3. *Automatically.* This Agreement automatically shall terminate, without the requirement of notice or the taking of any other action, in the event that either Party voluntarily files a petition, or if an involuntary petition is filed against a Party that is not dismissed within forty-five (45) days, under any Chapter of the Bankruptcy Code or if a Party takes any action seeking relief under any federal or state law relating to bankruptcy or insolvency, or makes an assignment of all or any material part of its assets for the benefit of creditors, or a trustee, receiver or custodian is appointed to take charge of the assets of a Party.

C. Consequences of Termination.

1. The Parties' rights to terminate this Agreement shall be without prejudice to their rights to any claims under this Agreement, injunctive relief(s) and other remedies available at equity or under applicable law.
2. No termination of this Agreement by one Party shall in any way affect that Party's right to honor any existing bookings and receive compensation from such existing bookings that are scheduled to and that do occur prior to such termination, nor shall such termination, unless it was pursuant to Section III.B.2.a., in any way affect the other Party's right to receive any compensation to which it may be entitled through the effective date of termination. Lessing's shall assign to City of Rye all contracts for On-Premises Catered Events booked prior to but

scheduled to occur following the date of termination of this Agreement, and promptly shall transfer to City of Rye all deposits collected for such Events.

3. In all cases of expiration of the Term or termination of this Agreement, other than termination by Lessing's pursuant to Section III.B.1.a, Lessing's shall use its commercially reasonable best efforts to assist City of Rye in transitioning to a new Service provider for On-Premises Catering Events, but not Restaurant Services, by continuing, at the option of City of Rye, to discharge such of its obligations hereunder as may be requested by City of Rye for up to one hundred thirty-five (135) days following the effective date of such termination.

#### IV. Financial Arrangements

- A. **Base Commission. Beginning January 1, 2022, and continuing** throughout the Term, Lessing's shall pay to City of Rye a fee equal to a percentage of Gross Revenues (other than Gross Revenues derived from Off-Premises Catered Events) generated during a Year (the "**Base Commission**") as follows:

<b><u>Base Commission</u></b>	<b><u>Gross Revenues</u></b>
7%	\$0-\$1.5 million
11%	\$1.5-\$2.5 million
15%	\$2.5 million - \$4.0 million
18.5%	\$4 million +

- B. **Off-Premises Catering Services Commission. Beginning January 1, 2022, and continuing** throughout the Term, Lessing's shall pay to City of Rye a fee equal to seven percent (7%) of Gross Revenues generated during a Year from Off-Premises Catered Events catered or sponsored by Lessing's or its affiliates within a twenty (20) mile radius of the Castle, as shown on the map attached as Annex II (excluding events managed through Lessing's at Mercy College in Dobbs Ferry), or from other Events serviced from the Castle (the "**Off-Premises Catering Services Commission**," and together with the Base Commission, the "**Commissions**").

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

- C. **Minimum Annual Commission.** Notwithstanding the foregoing, in 2022, Lessing's shall pay City of Rye a Minimum Annual Commission (inclusive of the Base Commission and the Off-Premises Catering Commission) of \$200,000, payable in equal monthly installments. Starting in 2023, the Minimum Annual Commission shall be increased each year by 5%.

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

- D. **Payment of Commissions and Utilities Charges.**

1. **Commission to City of Rye.** Commissions shall be paid by Lessing's to City of Rye within twenty (20) days following the end of each calendar month.
2. **Utilities and Other Charges:** Lessing's shall submit or pay to City of Rye or the applicable utility, as the case may be, utilities and other charges for which Lessing's is responsible

hereunder (including a fair allocation of Utilities for Snack Bar Services, if applicable) within the time period set forth in each respective invoice provided such invoice is provided within five (5) business days of receipt of same by the City of Rye.

- E. Reimbursement of Additional Sums. If either Party has paid any sums or has incurred any expense for which the other Party has agreed to pay or reimburse such paying Party, or if the paying Party is required to pay any sums or incurs any expense arising from this Agreement or arising from the failure or neglect of the other Party to perform or fulfill any of the terms or conditions of this Agreement, such amounts shall be deemed additional payments due hereunder; and such other Party shall reimburse the paying Party for the amount(s) thereof within fifteen (15) business days following receipt of demand(s) for such amount(s).
- F. Late Fee. There shall be a late fee of one percent (1%) per month or part thereof for any overdue amount until paid in full.
- G. Security Deposit. Prior to the Commencement Date, Lessing's shall provide a \$100,000 cash security deposit or performance bond or letter of credit ("***Security Deposit***") to City of Rye as security for the faithful performance of this Agreement and for the payment of all Commissions and other amounts due hereunder. In the event of any default by Lessing's hereunder, City of Rye may, but shall not be required to, apply the Security Deposit toward curing such default. Upon the application of all or any part of the Security Deposit, Lessing's shall, upon demand, increase the Security Deposit by the amount so applied within thirty (30) days, so that the entire amount of the Security Deposit, as adjusted pursuant to the second and third sentences of this paragraph, shall remain with City of Rye throughout the Term. Nothing hereunder shall be construed to limit any other right or remedy City of Rye may have in the event of a default by Lessing's. If Lessing's shall fully and faithfully comply with all of the terms and conditions of this Agreement, the balance of the Security Deposit shall be returned to Lessing's after the Term following the removal of Lessing's' property from the Castle.

## V. Accounting Records and Reporting; Audit Rights

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

## **VI. Intellectual Property**

Each Party acknowledges that it has no right, title or interest in or to any of the trademarks, trade names, service marks, logos, slogans or copyrights (collectively, “**Marks**”) of the other Party and that any use of the other Party’s Marks may be made only in accordance with the provisions of this Agreement, and further agrees that all Marks of the other Party are and will remain such other Party’s sole property. Nothing in this Agreement serves to assign, convey or transfer any right in or title to any Marks of one party hereunder to the other. In connection with the use of the other Party’s Marks in the performance of any obligations under this Agreement, each Party agrees to include legal and proper ownership and/or registration notices in connection with any and all such uses, as reasonably requested by the other Party, and in accordance with applicable laws. Upon the expiration or early termination of this Agreement, each Party immediately will cease all otherwise permitted use of the other’s Marks.

## **VII. Confidentiality**

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

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

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

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

## **VIII. Permits; Licenses**

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

## **IX. Insurance**

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

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

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

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

Additional insured status shall be granted by Lessing's of the latest version of ISO endorsement CG 20 15 07 04 or similar. The endorsement of Lessing's shall name "THE CITY OF RYE, its officers, elected officials, employees, agents and volunteers" as Additional Insureds, and the endorsement of City of Rye shall name "LESSINGS, INC." as Additional Insured. The coverage afforded to the "Additional Insureds" must be at least equal to \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, and \$2,000,000.00 products liability aggregate. The coverage afforded to the "Additional Insureds" shall be written on a

primary basis, and shall not require or contemplate contribution by any other policy or policies obtained by, or available to, any Additional Insured; any other such coverage shall be excess over the coverage to be provided by City of Rye or Lessing's, as the case may be.

## **X. Indemnification**

- A. By Lessing's. Lessing's agrees to indemnify, defend and/or hold harmless City of Rye and its affiliates, and their elected officials (including without limitation the Mayor, the City Manager and the members of the City Council), directors, officers, stockholders, members, employees, agents (including without limitation members of the Golf Commission and the RFP and Strategic Committees of the Castle and Rye Golf Club), affiliates, subsidiaries and assigns (each, a "**City of Rye Indemnitee**") from and against any expenses, losses, claims, costs, damages and liabilities, including, without limitation, judgments, fines, amounts paid in settlement and expenses (including, without limitation, attorneys' fees and expenses, court costs, investigation costs and litigation costs) ("**Damages**") incurred by any City of Rye Indemnitee that arise from a claim brought against a City of Rye Indemnitee by a third party in connection with:
1. A wrongful act or wrongful omission by Lessing's or its agents, employees, licensees or contractors during the Term (including claims that derive from Lessing's operations at the Castle or the provision of Services);
  2. The breach of any covenant to be performed by Lessing's hereunder;
  3. A material misrepresentation made by Lessing's hereunder; or
  4. Any injury to or death of any person or persons, or any damage to property in any way arising out of or in connection with Lessing's use of the Castle, excepting, however, liability caused by or resulting from the negligent or willful misconduct of City of Rye or its agents, employees, licensees or contractors.
- B. By City of Rye. City of Rye agrees to indemnify, defend and/or hold harmless Lessing's and its affiliates, and their directors, officers, stockholders, members, employees, agents, affiliates, subsidiaries and assigns (each, a "**Lessing's Indemnitee**") from and against any Damages incurred by any Lessing's Indemnitee that arise from a claim brought against a Lessing's Indemnitee by a third party in connection with:
1. A wrongful act or wrongful omission by City of Rye or its agents, employees, licensees or contractors during the Term;
  2. The breach of any covenant to be performed by City of Rye hereunder;
  3. A material misrepresentation made by City of Rye hereunder; or
  4. Any injury to or death of any person or persons, or any damage to property in any way arising out of or in connection with the Castle, but unrelated to Lessing's use of the Castle or provision of Services.
- C. In all such matters covered hereby, each indemnified Party shall have the right to select counsel of its choice to represent both parties, unless there is a conflict of interest between the Parties. In matters where there is a conflict of interest between the Parties, the indemnified Party shall have the right to select its own counsel at the indemnifying Party's expense. The indemnifying Party shall control the defense of all such matters including the right to settle such matters, subject to the indemnified Party's prior approval of any such settlement, which shall not be unreasonably

withheld, conditioned or delayed so long as such settlement includes a full release of the indemnified Party and does not require the payment of any sum or the making of any adverse admission by such indemnified Party. Each Party's rights and obligations pursuant to this paragraph will survive the termination of this Agreement. The above rights shall be subject to any rights granted in any relevant insurance policies.

## **XI. Miscellaneous**

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

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

With a copy to:

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

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

With a copy to:

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

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

- C. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data

file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

- D. Force Majeure. Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fire, flood, failure of communications systems or networks, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotion, acts of God or acts, omissions or delays in acting by any governmental authority or the other party; *provided, however*, that the Party so affected shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Each Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure. The Parties shall mutually seek a resolution of the delay or the failure to perform as noted above.
- E. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed wholly therein, without regard to principles of conflicts of laws.
- F. Jurisdiction. The Parties agree that all disputes arising, directly or indirectly, out of or relating to this Agreement, and all actions to enforce this Agreement, shall be dealt with and adjudicated in the state courts of the State of New York or the federal courts for the Southern District of New York; and for that purpose each of Lessing’s and City of Rye expressly and irrevocably submits itself to the jurisdiction of such courts. Each Party further agrees that, so far as is permitted under applicable law, this consent to personal jurisdiction shall be self-operative and no further instrument or action, other than service of process as permitted by law, shall be necessary in order to confer jurisdiction upon it in any such court. Lessing’s and City of Rye each agree that judgment against it in any such action or proceeding shall be conclusive and, to the extent permitted by applicable law, may be enforced in any other jurisdiction within or outside the United States of America by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of its indebtedness.
- G. Independent Contractors. The Parties are independent contractors and not partners or joint venturers. Except to the extent otherwise expressly set forth herein or otherwise agreed to by the Parties in writing, neither Party will represent that it has the authority to bind or represent the other as agent, employee or in any other capacity. Neither Lessing’s nor its employees shall become a City of Rye employee, nor shall Lessing’s or its employees be entitled to payment or compensation from the City of Rye or to any fringe benefits to which other City of Rye employees are entitled. As an independent contractor, Lessing’s further acknowledges that it is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes or deductions due and owing any governmental entity whatsoever as a result of this Agreement. As an independent contractor, Lessing’s further agrees that it will conduct itself in a manner consistent with such status, and that it will neither hold itself out nor claim to be an officer or employee of the City of Rye by reason thereof, and that it will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the City of Rye, including, but not limited to, workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement benefits.

- H. Headings; Defined Terms; Construction. Headings in this Agreement have been inserted, and the words and phrases used to denote defined terms have been chosen, for convenience of reference only and are not intended to affect, limit or modify the interpretation or scope of this Agreement or constitute part of the terms or provisions hereof. Each of the Parties represents that it has been represented by competent counsel in connection with the negotiation and drafting of this Agreement and that this Agreement shall not be subject to the principle of construing the meaning against the Party that drafted the same.
- I. No Third-Party Rights. This Agreement is intended solely for the benefit of the Parties and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon, or creating any rights or remedies in favor of, any person or entity other than the Parties.
- J. Entire Agreement. This Agreement, taken together with the Annexes and Schedules attached hereto, constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes all prior representations, commitments, understandings and agreements made by or on behalf of the Parties with respect thereto.

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

CITY OF RYE

LESSING'S INC.

By: \_\_\_\_\_  
Name: Greg Usry  
Title: City Manager

By: \_\_\_\_\_  
Name: Michael S. Lessing  
Title: Chief Operating Officer

### Schedule A – Discounted Events

<b>RGC Member Golf events with F&amp;B service</b>	<b>Date (future years TBD)</b>
Ladies WMGA	First Tuesday & Thursday of May
Opening Day Scramble	Last Sunday of April or First Sunday of May
Father's Day	Third Sunday in June
Member Member	2 <sup>nd</sup> weekend after July 4 <sup>th</sup>
RGC Swim Team Cocktail Party	First Thursday of August
Men's Member Guest	Varies (weekday event)
Ladies Member Guest	Varies (weekday event)
Mixed Member Tournament	2 <sup>nd</sup> or 3 <sup>rd</sup> Friday in August
2 Day Member Guest	3 <sup>rd</sup> or 4 <sup>th</sup> weekend of September
Closing Scramble	2 <sup>nd</sup> or 3 <sup>rd</sup> Sunday of October

### **RGC Food & Beverage Events**

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

### **City of Rye Community Events**

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

## **Schedule B – Penalty Schedule**

**First breach – written warning**

**Second breach - \$500 penalty**

**Any additional breach, an additional \$500 will be added per breach (e.g., third breach is \$1,000; 4<sup>th</sup> breach is \$1,500).**

**Schedule C – Inventory or Servicewares and Small Expendable Equipment**

## **Annex I – Patio Bar Schematic Plan**

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





# CITY COUNCIL AGENDA

DEPT.: Rye Golf Club

DATE: November 10, 2021

CONTACT: Jim Buonaiuto, General Manager RGC

**AGENDA ITEM:** Consideration of two appointments to the Golf Club Commission, by the membership, for three-year terms.

**FOR THE MEETING OF:**

November 17, 2021

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the Council approve the appointments.

**IMPACT:** ☐ Environmental ☐ Fiscal ☐ Neighborhood XX Other:

**BACKGROUND:** Elections were held November 9, 2021 and appointments are effective as of the first of each year (January 1, 2022 in this case). Angela Sposato (Non Resident) and Alfred Vitiello (City of Rye Resident) were elected to the Commission for three-year terms.

See attached memo and results.



**CITY OF RYE**  
Golf Club

**Interoffice Memorandum**

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To: The Rye City Council

From: Rye Golf Club Commission

Date: November 10, 2021

Subject: **Request to Appoint New Golf Club Commissioner Terms**

Recently the golf club hosted an election amongst club members to select candidates for two 3-year terms to serve as a Rye Golf Club Commissioner beginning January 1, 2022. The election results are attached. The Rye Golf Club Commission voted to accept these results and requests that Angela Sposato (Non Resident) and Alfred Vitiello (City of Rye Resident) are appointed to 3-year terms effective January 1, 2022.

Oct 29, 2021

Rye Golf Club  
330 Boston Post Road Rye,  
NY  
10580 United States

To Whom It May Concern:

The following election results are certified by Simply Voting to have been securely processed and accurately tabulated by our independently managed service.

Respectfully yours,



Brian Lack President  
Simply Voting Inc.

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## Results - 2022 RGC Commission Election

**Start:** 2021-10-11 09:00:00 America/New\_York

**End:** 2021-10-29 17:00:00 America/New\_York

**Turnout:** 291 (15.2%) of 1915 electors voted in this ballot.

### Rye Golf Club Commission

	Votes
Option	
Alfred Vitiello	140 (28.7%)
Angela Sposato	111 (22.8%)
Anthony Aquilato	102 (20.9%)
Scott Haugen	92 (18.9%)
Ben Sheer	42 (8.6%)

### VOTER SUMMARY

Total	291
Abstain	15 (5.2%)



# CITY COUNCIL AGENDA

DEPT.: City Manager's Office

DATE: November 17, 2021

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:** Resolution designating the days and time of regular meetings of the City Council for 2022 setting January 5, 2022 as the first regular meeting.

**FOR THE MEETING OF:**

November 17, 2021

**RECOMMENDATION:** That the Mayor and City Council schedule the first regular meeting date of the City Council for January 5, 2022.

**IMPACT:** ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

**BACKGROUND:** The Rye City Charter stipulates that the City Council meet within the first two weeks of January in each year and shall hold stated meetings at least twice a month, except for the months of June through September when only one stated meeting per month need be held.

See attached calendar

# 2022 City Council Meetings Calendar

January 2022						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

February 2022						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

March 2022						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

April 2022						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

May 2022						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

June 2022						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

July 2022						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

August 2022						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

September 2022						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

October 2022						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

November 2022						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

December 2022						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31



**Council Meeting Dates**



**Budget Workshops**



**Joint City Council/School Board Meeting**



**Council Inauguration**

February 21-25      School Mid-Winter Recess  
 April 11-15        School Spring Break  
 November 8        Election Day



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: November 17, 2021

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:** Adjourn until December 1, 2021 the public hearing for consideration of a petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code Association to create new use and development standards for "Senior Living Facilities" in the R-2 Zoning District.

**FOR THE MEETING OF**  
November 17, 2021

**RECOMMENDATION:** That the City Council adjourn the public hearing.

**IMPACT:** ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

## BACKGROUND:

The City Council has received a petition from Miriam Osborn Memorial Home Association ("The Osborn") to amend Chapter 197, *Zoning*, of the City Code to allow "Senior Living Facilities" ("SLF") in the City's R-2, *Single-Family Residence*, District. The petition submitted by The Osborn seeks to amend the text of the City Zoning Code to allow SLF in the City's R-2 District. The proposed amendment would allow SLF as a new permitted use in the R-2 Residence District on those properties with 50 or more contiguous acres. The proposed amendment also includes new restrictions and requirements regarding maximum floor area, building setbacks, lot coverage and other development standards.

As currently proposed, the amendment would only apply to property currently owned by The Osborn. This property is the only property currently located in the R-2 District that meets the proposed 50-acre minimum lot area requirement. Currently, The Osborn is regulated outside of the City Zoning Code by way of a Declaration of Covenants and Restrictions, dated October 15, 1993.

The proposed amendment would regulate land use at The Osborn to include new standards that would allow The Osborn to make improvements to its campus that the current Covenants and Restrictions do not allow.

The latest submission (February 19, 2021), which includes findings from a traffic and sewer evaluation is attached. For prior submissions and other related information, please visit: [Osborn Zoning](#) on our website.



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: November 17, 2021

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:** Consideration of a request by the Rye Little League to approve a parade to kickoff Opening Day of the Little League Season on Saturday, April 23, 2022 beginning at 11:00 a.m.

**FOR THE MEETING OF:**

November 17, 2021

**RECOMMENDATION:** That the Council consider granting the request.

**IMPACT:** ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

**BACKGROUND:**

The Rye Little League is requesting the Council approve a parade to kickoff Opening Day of the Little League Season on Saturday, April 23, 2022 beginning at 11:00 a.m. with a rain date of Sunday, April 24, 2022.



November 12, 2021

Dear Mr. Usry,

Rye Little League has designated Saturday, April 23, 2022, as Opening Day of its 65<sup>th</sup> Little League Season.

After missing out on these festivities in 2020 and 2021 due to COVID-19, we are planning to do what we did for each of the prior 62 years; host a parade beginning at 11am that originates at the Rye Train Station and ends at Grainger Field at Disbrow Park.

The parade will likely have upwards of 600 participants, including Rye Little League, Rye Girls Softball, marching bands, several vehicles, and a variety of emergency vehicles (ambulance and fire trucks).

We respectfully request that you issue the League a permit to hold the parade on Saturday the 23<sup>rd</sup> of April at 11am, and, in addition, permission to reschedule for Sunday the 24<sup>th</sup> of April at 11am in the event of rain on Saturday. We understand that the City's permission is conditioned upon the League furnishing a certificate evidencing \$1,000,000 liability insurance with the City of Rye named as additional insured and a hold harmless clause indemnifying the City against claims and judgments resulting from the use of City property. The certificate is forthcoming.

Upon the City's approval, the assistance and cooperation of the City of Rye Police will be requested directly through the Police Commissioner.

Sincerely,

Ben Bubeck  
President, Rye Little League

  
[president@ryelittleleague.com](mailto:president@ryelittleleague.com)