

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

**REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS, CITY HALL
Wednesday, January 4, 2023
6:30 p.m.**

Residents may email comments regarding the public hearing to:
publichearingcomments@ryeny.gov. All comments must be received by 4:00 pm on the day of the meeting. The subject of the email should reference the hearing topic. Please include your name and address.

1. Pledge of Allegiance.
2. Roll Call.
3. Draft unapproved minutes of the Regular Meeting of the City Council held December 21, 2022 and the Special Meeting held December 23, 2022.
4. Flooding Update.
5. Open the public hearing to amend Chapter 196 “Wireless Telecommunications Facilities” of the Code of the City of Rye to remove a mandatory referral to the Board of Architectural Review.
6. Residents may be heard on matters for Council consideration that do not appear on the agenda.
7. Resolution to amend the 2023 Adopted Fees and Charges for the Boat Basin to increase certain summer fees for residents and non-residents.
8. Consideration of two appointments to the Golf Club Commission, by the membership, for three-year terms.
9. Appointment of the 2023 Deputy Mayor by the Mayor.
10. Designation of the City Council’s Audit Committee by the Mayor.
11. Designation of the City Council Liaisons by the Mayor.
12. Designation of official City newspaper.
13. Appointments to Boards and Commissions by the Mayor with Council approval.
14. Old Business/New Business.

15. Adjournment

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The next regular meeting of the City Council will be held on Wednesday, January 18, 2023 at 6:30 p.m.

** City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at www.ryeny.gov under “RyeTV Live”.

DRAFT UNAPPROVED MINUTES of
the Regular Meeting of the City Council of the
City of Rye held in City Hall on December 21,
2022, at 6:30 P.M.

PRESENT:

JOSH COHN, Mayor
EMILY HURD
CAROLINA JOHNSON
JOSHUA NATHAN
JULIE SOUZA
BENJAMIN STACKS
Councilmembers

ABSENT:

BILL HENDERSON

The Council convened at 5:30 p.m. Councilman Stacks made a motion, seconded by Councilwoman Hurd, to enter into executive session to discuss litigation and personnel matters. At 6:29 P.M., Councilman Stacks made a motion, seconded by Councilwoman Hurd, to exit executive session and commence the regular meeting of the City Council. The meeting began at 6:32 P.M. The meeting was streamed live at www.ryeny.gov for public viewing.

1. Pledge of Allegiance.

Mayor Cohn led the Council in the Pledge of Allegiance.

2. Roll Call.

The City Clerk called the roll. There was a quorum to conduct City business.

3. Draft unapproved minutes of the Regular Meeting of the City Council held November 30 and December 7, 2022.

The City Clerk confirmed a ministerial update regarding the discussion on golf club fees. Councilwoman Hurd made a motion, seconded by Councilman Johnson, to draft the unapproved minutes of the Regular Meeting of the City Council held November 30 and December 7, 2022.

4. Swearing in of full-time City Court Judge Valerie A. Livingston by Judge Joseph Latwin.

Mayor Cohn introduced the new City Court Judge Valerie A. Livingston, who was sworn in by Judge Joseph Latwin.

5. Flooding Update.

Mayor Cohn informed the Council that the Blind Brook Resilient Stream Study will soon be finalized. The study report will outline projects from the top of the Blind Brook watershed down to the Oakland Beach Avenue Bridge. The DEC recommends the projects be done over time as infrastructure ages out. The City is due \$700,000 of federal money towards an Army Corps of Engineers study, but the study cannot happen without a state sponsor committing to an additional \$300,000. The Council will vote on hiring a lobbyist to help Rye's flood mitigation efforts in Washington and Albany.

City Manager Greg Usry reported that three applications were submitted to the State for the FEMA annual grant. A meeting in January with the DEC Office of Dam Safety will assess the Emergency Action Plan for the Bowman Avenue Dam. Also in January will be a round of grant funding through the State for overpasses and culverts, and Mr. Usry will have more information at the first Council meeting of 2023.

6. Resolution authorizing the City Manager to sign a retainer agreement with Envision Strategy for a cost not to exceed \$100,000 with authorization to transfer these funds from Undesignated Fund Balance.

Councilwoman Souza made the motion, seconded by Councilwoman Hurd and unanimously carried, to authorize the City Manager to sign a retainer with Envision Strategy for a cost not to exceed \$100,000 with authorization to transfer these funds from Undesignated Fund Balance.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Hurd, Johnson, Nathan, Souza, Stacks
Nays: None
Absent: Councilman Henderson

7. Resolution to accept a \$284,600 grant from the Long Island Sound Futures Fund for the design of the Blind Brook Riparian Buffer Restoration at the Rye Nature Center.

Mayor Cohn clarified that this was a grant for study and design. Todd Smith, board member at the Rye Nature Center (RNC), joined the meeting and presented the Council with RNC's plan for a \$286,000 grant from the Long Island Futures Fund to restore the riparian buffer running through RNC's property.

Mr. Smith explained that riparian buffers are strips of vegetation next to streams and other bodies of water. He showed pictures of the highly eroded riparian buffers in the area. Erosion of stream banks negatively affects the health of vegetation, habitat, water quality and increases sediment carried downstream. The grant would fund work to restore the natural habitat and stabilize stream banks. RNC hired Barton & Loguidice to survey the stream, and they came up with 14 points on the RNC property that critically need work. The

study also determined that 228 tons of valuable topsoil are sent downstream as sediment every year.

Mr. Smith outlined the grant-funded plan: slow down flood water, reduce the sediment output to 8 tons per year, protect bridge footings, and restore the biodiversity to improve the physical function of the buffers. RNC's project supports Ramboll's Blind Brook Maintenance Program that includes managing the vegetation along the banks, replacing trees outside the banks, and reducing the risk of root damage to banks. The Council viewed photos of stream bank transformation from unhealthy to fully restored with native vegetation.

Mr. Smith explained the timetable of the project, beginning with Council resolution to accept the grant funds, followed by a year-long permitting process. Additional grant funds will support planning efforts which ideally begin mid-2024. Restoration should begin in the spring of 2025. Mr. Smith maintained the project would be a model of habitat maintenance not just for Rye, but the surrounding region.

Mayor Cohn thanked Mr. Smith and the RNC for securing the grant. Councilwoman Hurd commended them for keeping with RNC's mission when planning the project. She thought it was a great starting point for similar work in Rye. Mr. Smith said the RNC will regularly bring matters for Council consideration during the process. Mr. Usry confirmed the RNC was aware of Rye and Ramboll's ongoing work and it will factor into future planning.

Councilwoman Souza made the motion, seconded by Councilwoman Hurd, to accept the \$284,600 grant from the Long Island Sound Futures Fund for the design of the riparian buffer restoration project.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Hurd, Johnson, Nathan, Souza, Stacks
Nays: None
Absent: Councilman Henderson

8. Continue the public hearing on the 2023 budget.

City Manager Usry invited members of the public to speak on the 2023 budget.

John Hobbins, 75 Oakland Beach Avenue, said he did not understand the significant difference between new and returning membership fees at Rye Golf Club. Mayor Cohn replied that the golf club determined it to be a fair way to get equal contribution from old and new members to fund massive and much-needed renovations. Councilwoman Hurd explained the fees were not policy and would be revisited on an annual basis. Councilwoman Souza said the Council gave the golf club the leeway to structure the fees as they saw fit based on their own research, and they would hear from the golf club if the strategy worked.

Mr. Hobbins felt the membership fee discrepancy was an attempt to protect current members and was inequitable and perhaps illegal, and it might be the only golf club in

America that operated in such a way. Councilwoman Souza replied that operating costs elevate over time, especially during this time of capital resetting at the club. Councilman Nathan was concerned about fee transparency and thought the Council needed better understanding; revisiting the issue in the new year was warranted.

There were no further public comments.

Councilwoman Souza made the motion, seconded by Mayor Cohn and unanimously carried, to close the public hearing on the 2023 budget.

9. Open the public hearing to adopt a Local Law to override the State-enacted tax levy limitation.

Councilwoman Souza made the motion, second by Councilman Stacks and unanimously carried, to open the public hearing to adopt Local Law to override the State-enacted tax levy limitation.

Hearing no members of the public wished to speak, Councilman Stacks made the motion, seconded by Councilwoman Souza and unanimously carried, to close the public hearing.

Councilwoman Hurd made the motion, seconded by Councilwoman Johnson, to adopt the following Local Law to legislation:

**LOCAL LAW
CITY OF RYE NO. 09 2022**

**A LOCAL LAW TO AUTHORIZING A PROPERTY TAX LEVY IN EXCESS OF
THE LIMIT ESTABLISHED IN GENERAL MUNICIPAL LAW §3-C**

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

Section 1. Legislative Intent

It is the intent of this local law to allow the City of Rye to adopt a budget for the fiscal year commencing January 1, 2023 that requires a real property tax levy in excess of the “tax levy limit” as defined by General Municipal Law § 3-c.

Section 2. Authority

This local law is adopted pursuant to subdivision 5 of General Municipal Law §3-c, which expressly authorizes a local government’s governing body to override the property tax cap for the coming fiscal year by the adoption of a local law approved by a vote of sixty percent (60%) of said governing body.

Section 3. Tax Levy Limit Override

The City Council of the City of Rye, County of Westchester, is hereby authorized to adopt a budget for the fiscal year commencing January 1, 2023 that requires a real property tax levy in excess of the amount otherwise prescribed in General Municipal Law §3-c.

Section 4. Severability

If a court determines that any clause, sentence, paragraph, subdivision, or part of this local law or the application thereof to any person, firm or corporation, or circumstance is invalid or unconstitutional, the court's order or judgment shall not affect, impair, or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 5. Effective date

This local law shall take effect immediately upon filing with the Secretary of State.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Hurd, Johnson, Nathan, Souza, Stacks
Nays: None
Absent: Councilman Henderson

10. Resolution to adopt the 2023 Budget and establish the 2023 tax levy and 2023 tax rate.

Councilwoman Hurd shared Councilman Henderson's comments in lieu of his absence. Councilman Henderson said he would vote in support of the budget and he thanked Joe Fazzino and Greg Usry for their endless hard work and great achievement of creating a budget with a tax increase of less than 4% in a year of over 8% inflation. Councilman Henderson thought the proposed golf club rates for new members were unfair and not in the best interest of the Rye community or the long-term viability of the club, so he supported Council review of the rates in the near future.

Councilwoman Hurd made the motion, seconded by Mayor Cohn, to adopt the following resolution:

WHEREAS, on November 9, 2022 the 2023 Tentative Budget was presented to the City Council, and;

WHEREAS, on November 30, 2022 Councilwoman Souza made a motion, seconded by Councilman Nathan, to adopt the following changes to the proposed 2023 budget:

- Increase Sales Tax revenue by \$100,000
- Increase Interest Income by \$50,000
- Increase Health Insurance Expenses by \$255,000
- Decrease Consultant costs by \$27,000
- Decrease Salaries and Benefits by \$48,000
- Decrease Building Improvements by \$50,000
- Decrease Material & Supplies expense by \$43,000
- Eliminate of \$250,000 for road resurfacing, and;

WHEREAS, on December 7, 2022 Councilwoman Souza made a motion, seconded by Councilwoman Johnson, to adopt the following changes to the proposed 2023 budget;

- Decrease Consultant expenditures by \$45,000.

NOW THEREFORE BE IT RESOLVED: that the City Council does hereby certify to the City Comptroller the 2023 City of Rye tax rate of \$198.43 per \$1,000 taxable assessed valuation and the 2023 City of Rye tax levy of \$29,342,818 and be it further;

RESOLVED, that the City Council does hereby direct the City Comptroller to apportion and extend against each taxable property listed upon the assessment roll at the tax rate certified in this resolution to produce the tax levy certified in this resolution, and to render tax notices for, and receive and collect, the several sums so computed and determined, with interest as provided by law, and any special assessments heretofore authorized and approved.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Hurd, Johnson, Nathan, Souza, Stacks
Nays: None
Absent: Councilman Henderson

11. **Resolution authorizing the City Comptroller to make the necessary year-end closing transfers.**

Councilwoman Hurd made the motion, seconded by Councilwoman Johnson, to authorize the City Comptroller to make the necessary year-end closing transfers.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Hurd, Johnson, Nathan, Souza, Stacks
Nays: None
Absent: Councilman Henderson

12. **Continue the public hearing to adopt a new local law, Chapter 88 “Explosives,**

Blasting and Mechanical Rock Excavation,” Repeal Chapter 98, Fire Prevention, Article VII, Explosives and Amend Sections 133-8, 133-9 and 133-10 of the Code of the City of Rye.

Mayor Cohn reported that the Rye citizens submitted questions about the new local law, and there seemed to be a lack of knowledge about the current blasting law. Blasting was permitted in Rye under the discretion of the Building Department following generally applicable principles. The drafted new local law was more restrictive than current law.

Mayor Cohn answered several frequently asked questions submitted by the public. He did not expect more blasting as a result of reducing the number of chipping days from 38 to 15; most rock removal projects were successfully scheduled and completed within 15 days. He stated combination blasting/chipping permits would not be an option, and work would be followed by a quiet period. Regarding the impacts of blasting/chipping on the environment, ground water, and flood risk, Mayor Cohn reported that Arcadis determined the proposed rock removal policies would not have negative impacts. The mayor confirmed dust management was addressed in the proposed law.

Mayor Cohn invited members of the public to comment.

Brook Packard, 26 Oakwood Avenue, asked that the Council wait to vote on the law until March 2023 due to the lack of community input and education on the issue, stating that home values and the Rye environment were at stake. She added that during the tear-down and construction of a new home on her street, the rock removal sounds were unbearable. Banning blasting on test days was not enough to protect school children. The citizens deserved a chance to be informed and discuss rock removal with the City and Arcadis before passing a new law.

Paul Fontana, 11 Robert Crisfield Place, 15 year Rye resident, contractor and occasional real estate developer, thought the 60-day waiting period between rock removal projects would hurt the people of Rye. The waiting period would create lengthy back-ups when more than one neighbor had a permit. Basements were critical areas of many homes, and removing rock to create them was the first task in building most homes in Rye. He thought it was impossible to prepare and execute additional work in the proposed three-day extension, and the professionals in the Building Department should decide how much time was needed.

Maria Tufvesson Shuck, 21 Brown Avenue, commended the Council for putting forth a law that addressed the unlimited work extensions for storm water drainage without notification to neighbors. The construction projects in her neighborhood have been loud and nonstop. She insisted blasting is detrimental, reporting that the walls of her 150-year-old home shake and crack when neighbors were blasting rock.

Kathy Grainger-Hobbins, 75 Oakland Beach Avenue, was not against development of Rye, but maintained no one supported over-development associated with blasting. She asked the Council to delay a vote on the new law. She thought blasting in Rye was mind-

boggling, reminding the Council of their visit to the shaking house. Blasting scared children and animals. She asked the Council to address continuous dust, cracks in homes, pre-blast survey shams, and neighbors needing attorneys to deal with damage. The confusing onus of reporting building violations should not be put on Rye citizens. Moving the blasting timeframe from 7:30 a.m. to 8:00 a.m. and 6:30 p.m. to 6:00 p.m. was not enough of a change to ensure people got to enjoy their homes.

Mayor Cohn asked Mr. Miller to comment on the quiet period, dust mitigation, and blast noise levels. Mr. Miller explained that current laws were too bare regarding blasting. Proposed quiet period restrictions were unique to Rye; when blasting or chipping work was finished, no properties within 750 feet could remove rock for 60 days. The moratorium since April was also in response to neighborhoods enduring constant rock removal. Dust mitigation was required under rock removal law and provided for in the blasting statute. Rye's Building Department enforced dust mitigation. Mr. Miller maintained the proposed new law attempted to relieve residents of extreme blasting to meet tight deadlines.

An engineer from Arcadis commented that acceptable vibration limits in adjacent homes were conservative in the proposed law. Monitors would be present at the properties adjacent to blasting and would alert if vibrations were exceeding set limits. The peak particle velocity limits had never been codified, though standard practice in Rye was 1.5 mm/s. The proposed law limited peak particle velocity in adjacent homes to 1.25 with a standard of 0.5.

Councilwoman Johnson asked about alternative rock removal methods, and the mayor confirmed that Arcadis did not find any methods suitable to standardize in Rye. If builders used alternative methods, they would be subject to the same restrictions as traditional blasting and chipping methods. Mr. Miller confirmed for Councilman Nathan that chipping should occur in the three-day period after blasting, and another three days were allotted for utility work. Stormwater extensions were not included in the blasting permits. The proposed limit on decibel levels would also protect windows from blast percussion. The Council briefly discussed implementing other noise-reduction measures. Mayor Cohn and Councilwoman Souza agreed the law was a good first step to manage blasting.

Corporation Counsel Kristen Wilson clarified that the proposal includes a 45-day limitation on blasting, rather than four to eight months. Mr. Miller maintained the reduction still provided ample time to blast and supported the goal of lower blasting velocities. The 45 calendar-day limit would not be extended due to extenuating circumstances like weather. He explained that residents will receive notice of blast permit applications within 750 feet of their property, and additional communication from the developer in the weeks leading up to the blast. The rock removal registry on the Rye website informs residents of blasting schedules, and every permit is posted seven days before blasting work begins.

The Council discussed utilizing an email distribution list for residents who wanted to opt in to email notifications from the developer about project start dates. The new law could stipulate that developers follow through with contacting all neighbors who signed up for email notifications.

Mayor Cohn allowed members of the public to speak again.

Ms. Shuck asked if rock removal after blasting was addressed in the new local law. In her experience, rock removal was nearly as noisy, dusty, and time consuming as rock blasting. The mayor replied that rock removal was not addressed in the law. Mr. Miller stated it was regulated as a construction activity and was subject to established restrictions on what days and at which times construction activity could occur.

Mr. Fontana maintained the shortened blasting timeframe could unreasonably extend home building projects. If a developer finds additional blasting is required, work that could be done in a few extra days could be postponed a year or more. The law should be more flexible and provide extensions. Councilwoman Souza replied that developers should use the two-day scoping period to avoid this situation. Mayor Cohn stated that significant work had gone into crafting a law that fairly compromised the noise burden on neighbors while still permitting developers to blast rock. Mr. Miller acknowledged it was a tight window for home building, and he expected issues would arise with developers not from Rye. He also anticipated problems if developers were required to utilize an email distribution list to notify residents because it was difficult to verify and enforce.

Councilwoman Souza made the motion, seconded by Councilman Stacks, to close the public hearing. Councilman Nathan opposed closing the public hearing.

Councilman Stacks commented that the issue of rock blasting noise had come a long way, and codifying the law did not mean it could not be fixed. Councilman Nathan hoped the issues of notice and looking at sound barriers would not fall by the wayside, and suggested they could be worked on and discussed in January.

Councilwoman Souza made the motion, seconded by Councilman Stacks, to issue a negative declaration and adopt the new local law Chapter 88 with the 45-day blasting stipulation as follows:

**LOCAL LAW
CITY OF RYE NO. 10 2022**

A local law to add a new Chapter 88 “Explosives, Blasting and Mechanical Rock Excavation”, Repeal Chapter 98, *Fire Prevention*, Article VII, *Explosives* and Amend Sections 133-8, 133-9 and 133-10 of the Code of the City of Rye, New York

Section 1. Chapter 98, *Fire Prevention*, Article VII, *Explosives* is hereby repealed

Section 2. The following new Chapter 88, titled “Explosives, Blasting and Mechanical Rock Excavation” is hereby added to the Rye City Code:

**CHAPTER 88
EXPLOSIVES, BLASTING AND MECHANICAL ROCK EXCAVATION**

Article I, *Explosives and Blasting*

§ 88-1. Purpose

The purpose of this chapter is to establish minimum safeguards to protect human health, safety and welfare, as well as property, by establishing reasonable regulations governing the possession and use of explosive materials and the removal of rock through chipping, drilling and other mechanical means. To ensure that the possession and use of explosive materials does not result in physical injury or property damage and to establish a balance between the noise and other quality of life issues and adverse impacts of mechanical rock excavation, the City Council hereby asserts its right to designate acceptable hours for blasting and mechanical rock excavation operations, set levels for the ignition and discharge of explosive materials, limit the number of mechanical rock hammers on a property, limit the number of blasting and mechanical rock excavation permits issued in a geographical area in a specific amount of time, and establish acceptable standards governing consequential vibrations resulting from all blasting conducted within the City.

§ 88-2. Applicability; technical standards

- A. This article shall apply to each and every person, corporation and business engaged in the manufacture, sale, transportation, storage, handling or use of explosives in the City. This chapter sets forth procedures for the issuance of permits, payment of fees, recordkeeping, reporting and monitoring compliance. In addition, this chapter establishes penalties for the failure to comply with these requirements.
- B. The technical standards set forth in this chapter are based upon generally recognized criteria and accepted industry standards. See New York State Labor Law, Article 16; 12 NYCRR Part 39; NFPA No. 495-1973; 27 CFR 55; 49 CFR 171 through 178; and 49 CFR 390 through 397; Fire Code of NYS, Chapter 56 Explosives and Fireworks for other additional standards that may be applicable.

§ 88-3. Exceptions; application for exemption; notification.

- A. The provisions of this chapter shall not apply to the following:

- (1) The military forces of the United States or its allies, the duly authorized militia of any State or any Police or Fire Department, provided that the same is acting in its official capacity and in the performance of its public duties.
 - (2) The transportation of explosives in interstate or intrastate commerce regulated by the United States Department of Transportation or the New York State Department of Labor.
 - (3) Model rocketry.
 - (4) Employee safety regulated under the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.
 - (5) Fireworks subject to regulation under any applicable local, state or federal rule, regulation or law.
 - (6) Small arms ammunition, including smokeless or black powder when possessed for noncommercial purposes in quantities of five pounds or less.
 - (7) An explosive in a form prescribed by the official United States Pharmacopeia.
- B. Where an individual makes a written application to the Approving Authority for an exemption, the Approving Authority may grant an exemption where it is evident that compliance would cause an undue hardship and that public safety would not be compromised by granting relief. Any exemption granted under this section must be as limited in scope and duration as possible, balancing the hardship caused by compliance versus the potential danger and threat to public safety and tranquility of granting relief. If the Approving Authority grants an exemption under this section, the Approving Authority shall immediately notify the Public Safety Commissioner of the Approving Authority's decision and within five business days notify the City Manager stating the facts, the nature of the exemption and the underlying rationale.

§ 88-4. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

AIR BLAST

The airborne shock wave or acoustic transient generated by an explosion.

APPROVED

Acceptable to the Approving Authority.

APPROVING AUTHORITY

Persons designated by the City Manager, including, the Public Safety Commissioner, Fire Inspector, Building Inspector or their designees or any representative thereof, which shall be responsible for the processing, administration, review, permitting and enforcement of Blasting Permits.

BLACK POWDER

A deflagrating or low explosive compound composed of an intimate mixture of sulfur, charcoal and an earth nitrate, usually potassium nitrate or sodium nitrate.

BLASTER

A person who holds a valid permit to perform blasting operations.

BLASTING

The fracture of any heavy mass by detonation of explosive materials.

BLASTING AGENT

Any material or mixture consisting of a fuel and oxidizer, intended for blasting, not otherwise classified as an explosive, provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined.

BLASTING CAP

A detonator.

BLASTING LICENSE

A license issued by the New York State Department of Labor pursuant to Article 16 of the Labor Law of New York State, as well as the Industrial Code Rules contained in Title 12, Part 39 of the New York Codes, Rules and Regulations.

BLASTING MACHINE

An electrical or electromechanical device capable of providing electrical energy for the purpose of energizing electric blasting caps.

BLASTING MAT

A mat of woven steel wire, tires or other suitable material or construction to cover blast holes for the purpose of preventing fly rock missiles.

BLASTING PERMIT

A permit issued by the Approving Authority for blasting activities at a single blasting site.

BLAST ZONE

The area surrounding a blast site subject to the influence of flying debris generated by the detonation of an explosive charge.

BUILDING

Includes, but is not limited to, any structure or assembly used for occupancy or storage and subject to the jurisdiction of the Building Department.

BURDEN

That dimension of a medium to be blasted measured from the borehole to the face at right angles to the spacing. It means also the total amount of material to be blasted by a given hole, usually measured in cubic yards or in tons.

CERTIFICATE OF COMPETENCY

Any authorization to keep, store, transport, manufacture or use explosives issued under New York State Labor Law, Article 16.

CFR

The Code of Federal Regulations in effect on the date this chapter was last amended.

CLASS A EXPLOSIVE

An explosive possessing detonating or maximum hazard and means an explosive which is described in 49 CFR 173.53.

CLASS B EXPLOSIVE

An explosive possessing flammable hazard such as propellant explosives and photographic flash powders and means an explosive described in 49 CFR 173.88.

CLASS C EXPLOSIVE

Certain types of manufactured articles which contain Class A or Class B explosives, or both, as components but in restricted quantities, and certain types of fireworks and means an explosive described in 49 CFR 173.100.

COMMERCIAL EXPLOSIVE

Any explosive except a propellant and nitrocarbonitrate, including but not limited to dynamite, black blasting powder, pellet powder, initiating explosive, blasting cap, electric blasting cap, safety fuse, fuse igniter, fuse lighter, squib, cordeau detonant fuse, instantaneous fuse, igniter cord and igniter.

COMPETENT PERSON

A person with the requisite experience, training and education necessary to perform the duty assigned or assumed.

DELAY INTERVAL

The time interval in milliseconds between successive detonations of the delay devices used.

DETONATOR

Any device containing a detonating charge that is used for initiating detonation in an explosive. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating-cord delay connectors and nonelectric instantaneous or delay blasting caps.

ELECTRIC BLASTING CAP

A blasting cap designed for, and capable of, initiation by means of an electric current.

EXPLOSIVE

- A. Any chemical compound or mixture that is commonly used or intended for the purpose of producing an explosion that contains any oxidizing and combustible materials or other ingredients, in such proportions, quantities or packing that an ignition by fire, by friction, by concussion or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressure is capable of producing destructive effects on contiguous objects.
- B. The term "explosive" includes, but is not limited to:
 - (1) A commercial explosive, propellant or nitrocarbonitrate.
 - (2) A high explosive or a low explosive.
 - (3) An explosive material, blasting agent, water gel or detonator.
- C. The term "explosive," except as specifically stated herein, does not include:
 - (1) Small arms ammunition, including smokeless or black powder when possessed for noncommercial purposes in quantities of five pounds or less.
 - (2) An explosive in a form prescribed by the United States Pharmacopeia.
 - (3) Fireworks subject to regulation under any applicable local, state or federal rule, regulation or law.

FIREWORKS

Any combustible or explosive composition or any substance or combination of substances or articles prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation.

FLY ROCK

Rock propelled from the blast area by the forces of an explosion.

FUEL

A substance that may react with the oxygen in the air or with the oxygen or other oxidizing material yielded by an oxidizer to produce combustion.

HERTZ

Cycles per second.

HIGH EXPLOSIVE

Any explosive material which can be caused to detonate by means of a blasting cap when unconfined, as, for example, dynamite.

HIGHWAY

Any public street, road, highway, alley or part of a navigable stream which is used as a highway of commerce.

INHABITED BUILDING

A building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store or other structure occupied in connection with the manufacture, transportation, storage or use of explosives.

INITIATING PRIMER

An explosive cartridge with a detonator or initiating agent inserted therein.

LOW EXPLOSIVE

An explosive material which can be caused to deflagrate when confined, as for example, black powder.

MAGAZINE

Any building, structure or other enclosure or container, other than an explosive manufacturing building, used for the storage of explosives.

MISFIRE

An explosive material charge that fails to detonate after an attempt at initiation.

MOTOR VEHICLE

Any self-propelled vehicle, truck, tractor, semitrailer or truck full trailer used for the transportation of explosives.

NFPA

National Fire Protection Association.

NITROCARBONITRATE

An explosive classified as a blasting agent.

NO. 8 TEST BLASTING CAP

A cap containing two grams of a mixture of 80% mercury fulminate and 20% potassium chlorate or a cap of equivalent strength.

OVERBURDEN

All soil and ancillary material above the bedrock horizon in a given area.

OXIDIZER

A substance such as a nitrate that yields oxygen or other oxidizing substance readily to stimulate the combustion of organic matter or other fuel.

OXIDIZING MATERIAL

An oxidizer.

PEAK PARTICLE VELOCITY

The peak particle velocity recorded on any one of the three mutually perpendicular components of blasting vibrations in the vertical and horizontal directions.

PERMIT

Written authorization issued by the City or other appropriate governmental agency to manufacture, sell, possess, store or use explosives.

PERSON

Any natural person, partnership, firm, association or corporation.

PROPELLANT

Any solid chemical or solid chemical mixture which functions by rapid combustion of successive layers and includes, but is not limited to, smokeless powder for small arms, smokeless powder for cannons, smokeless powder or solid propellant for rockets, jet thrust units or other devices.

ROCK CHIPPING

The mechanized hammering or cutting of bedrock or other similar hardened natural materials for a constant duration for the purposes of removal or reuse on a site.

SEISMOGRAPH

An instrument which records ground vibration by measuring and recording particle velocity, displacement or acceleration in three mutually perpendicular directions.

SEMICONDUCTIVE HOSE

A hose with an electrical resistance high enough to limit flow of stray electric currents to safe levels, yet not so high as to prevent drainage of static electric charges to ground such as those of not more than two megohms resistance over its entire length and not less than 5,000 ohms per foot.

SENSITIVITY

A physical characteristic of an explosive classifying its ability to detonate upon receiving an external impulse such as impact, shock, flame or other influence which can cause explosive decomposition.

SINGLE DELAY

A delay in time of nine milliseconds or more.

SMALL ARMS AMMUNITION

A cartridge for a shotgun, rifle, pistol or revolver and a cartridge for propellant-actuated power devices and industrial guns. Military-type ammunition containing

explosive bursting charges or any incendiary, tracer, spotting or pyrotechnic projectile is excluded from this definition.

SMOKELESS PROPELLANT

A solid propellant, commonly called "smokeless powder" in the trade, used in small arms ammunition, cannon, rockets or propellant-actuated power devices.

STEMMING

An inert material placed in a bore hole after the explosive for the purpose of confining explosive materials or to separate charges of explosive material in the same bore hole.

STRAY CURRENT

A flow of electricity outside the conductor which normally carries it.

TESTING DAYS

A day when a school is administering a state or federally mandated test or a day when the school is administering an advanced placement test, PSAT, SAT, ACT, final examinations or other similar tests, as long as the school or district posts on their web site at the beginning of each school year such dates and provides such information at the beginning of the school year to the Building Department.

U.S.C.

United States Code.

USDOT

United States Department of Transportation.

VIBRATION

The energy from a blast that manifests itself in earthborne vibrations which are transmitted through the earth away from the immediate blast area.

WATER GEL

Any of a wide variety of materials used for blasting that contain substantial proportions of water and high proportions of ammonium nitrate, some of which is in solution in the water. Two broad classes of water gels are those which are sensitized by a material classed as an explosive, such as TNT or smokeless powder, and those which contain no ingredient classified as an explosive; these are sensitized with metals such as aluminum or with other fuels. Water gels may be classified as Class A explosives, Class B explosives or blasting agents.

§ 88-5. Permit requirements

- A. No person shall manufacture, sell, possess, store, use or detonate explosives within the City unless a permit has been issued by the Approving Authority.
- B. Permit to manufacture, sell, possess or store. An application for a permit to manufacture, sell, possess or store explosives shall be issued by the Fire Inspector

and shall contain the following information, as well as any other information the Fire Inspector deems necessary to ensure public health and safety:

- (1) The applicant's full name, address and telephone number. If the applicant is a corporation, partnership or other business entity, the name of each officer shall be separately stated. If the applicant is an out-of-state corporation, partnership or other business entity, the applicant must submit proof of filing with the New York State Secretary of State to do business in New York. No permit may be issued unless the applicant is authorized to do business in New York.
 - (2) The location where applicant proposes to manufacture, sell, possess or store explosives.
 - (3) A statement as to the purpose and need to manufacture, sell, possess or store explosives.
 - (4) Where the manufacture, sale, possession or storage of explosives is subject to state or federal regulation and licensing, a copy of any state or federal license or permit shall be provided, together with the application for a local permit, unless the use is specifically exempted by §88-3.A, above.
 - (5) The quantity of explosives to be manufactured, sold, possessed or stored.
- C. The application for a permit shall be signed by the applicant. In addition, the applicant shall sign an acknowledgment, under the penalties of perjury, stating that all information provided in the application or in support of the application is true and accurate.
- D. Permit to use or detonate. An application for a permit to use or detonate explosives shall require the following information, as well as any other information the Approving Authority deems necessary to insure public health and safety:
- (1) The applicant's full name and address. If the applicant is a corporation, partnership or other business entity, the name of each officer shall be separately stated. If the applicant is an out-of-state corporation, partnership or other business entity, the applicant must submit proof of filing with the New

York State Secretary of State to do business in New York. No permit may be issued unless the applicant is authorized to do business in New York.

- (2) The name and contact information of a designated, on-site representative who will be present at the location during all blasting and authorized to act on behalf of the applicant for all administrative purposes.
- (3) The name, address and telephone number of the person who will be conducting the blasting, and a copy of the blaster's license to purchase, own, possess, transport and use explosives and a certificate of competence.
- (4) An estimate of how much blasting is anticipated and the type and amount of material to be ignited or discharged. Where more than one blast is anticipated, the applicant shall estimate how many separate blasts are expected and the approximate duration blasting activity will continue. The time, date and location blasting is scheduled to begin..
- (5) The applicant shall provide the City with a plan and location of seismographs. Such plan shall include a minimum of two (2) seismograph.
- (6) A list of all landowners, including name and address, within a seven hundred and fifty (750)-foot radius of the proposed blast site.
- (7) A pre-blast survey of the site, where one inch equals 30 feet in scale, showing all structures within a seven hundred and fifty (750)-foot radius of the proposed blast site, together with a description of each structure within such radius. The applicant shall offer the property owner a video showing each building and structure and any particular features. The Approving Authority may, in the Approving Authority's sole discretion, waive all or any portion of the pre-blast survey depending on the particular characteristics of the site, the surrounding area and the type of blasting proposed. The applicant shall make a copy of the pre-blast survey available to the property owner. Where a pre-blast survey indicates electric transmission lines within seven hundred and fifty (750) feet of a proposed blast site, the Approving Authority or the Approving Authority's representative may require testing to determine the presence and level of errant electrical current in the area. If testing indicates the presence of errant electrical current in the vicinity where explosives are to be detonated at a level sufficient to pose a potential threat to public safety, the

Approving Authority may require that any blasting be conducted solely by use of nonelectrical detonation.

- (8) A United States Geologic Survey (USGS) bedrock geology map of the site indicating the anticipated type of bedrock and depth to bedrock.
- E. Based on the application and the pre-blast survey, if any, the Approving Authority shall estimate the cost of monitoring compliance with this chapter and furnish such estimate, together with a basis for Approving Authority's calculation, to the applicant. Before any permit is issued, the estimated cost of inspection services shall be deposited with the City, held in escrow, and applied to reimburse the City for costs and expenses actually incurred in connection with administering compliance with this chapter. Where the estimated amount deposited is insufficient to cover the City's costs, the property owner shall be responsible for any balance due. Where the estimated amount deposited with the City exceeds the costs incurred, the balance shall be refunded.
- F. The application for a permit to use explosives shall be signed by both the applicant and the blaster. In addition, the applicant shall sign an acknowledgment stating, under the penalties of perjury, that all information provided in the application or in support of the application is true and accurate. The blaster shall also sign an acknowledgment stating that the blaster has read the entire application, that in the blaster's opinion blasting at the particular location can be conducted safely, without unreasonable risk, and that, under the penalties of perjury, the blaster's state license is valid, that the blaster is fully authorized to conduct the type of activity set forth in the application and that the blaster agrees to abide by all state and federal safety standards.
- G. A permit to conduct and complete blasting activities shall be restricted to forty-five (45) calendar days. .
- H. Expiration, revocation or cancellation of the blaster's state license shall automatically void any permit issued under this chapter.
- I. No blast shall be initiated at any location within the City unless a written permit to conduct blasting has first been obtained and signed by the City Engineer and Approving Authority authorizing blasting at the specific location.

- J. The Approving Authority may add to any permit issued under this chapter whatever terms and conditions deemed necessary to protect public health, safety and welfare.
- K. No permit holder shall transfer or assign a permit issued under this chapter.
- L. The failure of an applicant to provide any information requested by the Approving Authority in support of an application for a permit shall be grounds to deny an application or revoke a permit.
- M. Each applicant must furnish proof of insurance as set forth in §88-6 herein.
- N. Fees. Notwithstanding any of the provisions of the Fire Code of New York State and the Building Code of New York State, the fee for permits issued under this chapter shall be set by the Approving Authority, subject to approval by City Council resolution. All fees shall be paid at the time of filing an application and prior to any permit being issued.
- O. The Approving Authority may also request the applicant to supply any additional information that may be deemed necessary to protect the health and safety of the public or to prevent damage to property.

§ 88-6. Insurance; statement of indemnification; issuance.

- A. Before any permit is issued pursuant to this chapter, the applicant shall submit proof of insurance by supplying a certificate of insurance, issued by an insurance company authorized to do business in the State of New York, stating that the applicant has insurance coverage in effect for workers' compensation, liability and property damage occurring onsite or to nearby properties, and a specific endorsement stating that coverage includes liability arising from handling or using explosive materials and conducting blasting activity. Insurance coverage shall be not less than \$3,000,000 for general liability, including bodily injury to any one person and, subject to the same limit for each person, not less than \$10,000,000 for any occurrence, plus insurance for property damage occurring onsite or to nearby properties of not less than \$2,000,000. The insurance certificate shall name the City and any of its Agents, Designees and/or Representatives as an additional insured. In addition, the certificate shall contain a statement that the policy or policies covering the insured will not be canceled, terminated or modified by the insurance company unless 30 calendar days' notice is given to the City and such change or modification is mutually agreed to.

- B. The applicant shall also furnish a notarized statement agreeing to indemnify and hold the City and any of its Agents, Designees and/or Representatives harmless from any and all claims, actions and proceedings brought by any person, firm or corporation for any injury to any persons or property resulting, directly or indirectly, from the applicant using, storing, handling, transporting or manufacturing explosive material or conducting blasting activity and, moreover, stating the applicant will defend and indemnify the City against any action brought by any third parties as a result of operating under a City permit issued under this chapter.
- C. No permit shall be issued unless and until the applicant has complied with these insurance requirements and provided an agreement indemnifying and holding the City harmless for any and all damage and injury.

§ 88-7. Inspection and revocation

- A. Inspection. Because of the compelling and overriding public safety issues involved in the handling and use of explosives, the Approving Authority may inspect any vehicle, structure, dwelling, construction site, workplace or other area where explosives are manufactured, sold, possessed, stored or used within the City for the limited purpose of ascertaining and verifying compliance with this chapter.
- B. Permit revocation. The Approving Authority may, at his sole discretion, revoke or modify a permit issued pursuant to this chapter where it appears the permit holder has violated any local, state or federal rule or regulation, including but not limited to a false statement or representation on the application for a Blasting Permit or violation of any applicable safety standard or where the Approving Authority determines that public safety has been compromised. The Approving Authority may modify or revoke a permit by notifying the permit holder or the Approving Authority's representative, orally or in writing, that the permit has been modified or revoked. Where a permit has been revoked, the Approving Authority shall send a written notice of revocation to the permit holder by first class mail without unnecessary delay, but not later than five business days after revocation, setting forth the reasons the permit was revoked. Where a permit is modified, the Approving Authority shall give the permit holder written notice of the modifications.

§ 88-8. Blasting operations.

- A. No blast shall be initiated at any location within the City limits unless a written permit has first been obtained from the Approving Authority authorizing blasting at the specific location.
- B. Blasting conducted within the City must comply with the terms of the permit and, in addition, all applicable state and federal health and safety standards.
- C. At least five business days prior to the scheduled start of blasting, the permit holder shall request a pre-blast meeting with the Approving Authority to review and finalize the proposed blasting plan. No blasting shall be conducted unless a pre-blast meeting has been held with the Approving Authority and the Approving Authority has approved the proposed blasting plan.
- D. Each Blasting Permit holder shall establish and delineate a blast zone prior to detonating a blast. The blast zone must be clearly marked and adequate precautions implemented to prevent unauthorized entry into the area.
- E. Prior to each blast, the blaster or the blaster's designee shall be responsible for notifying all persons in the general area that blasting operations are scheduled to begin within a specified period of time. In addition, the blaster shall sound a recognized whistle, siren or horn loud enough to be heard throughout the designated blast zone approximately three minutes prior to blasting and again 30 seconds prior to blasting, warning all persons that blasting is imminent.
- F. The Approving Authority shall be permitted access to observe all aspects of the blasting operation, including but not limited to observation of all pre-blast preparatory site work, the explosion/detonation and access to the post-blast site. The property owner shall reimburse the City for the cost of all inspection services, including the cost of retaining an on-site inspector to monitor all aspects of blasting, where the Approving Authority deems such services necessary, by depositing the estimated cost of inspection services in a designated account to be held in escrow by the City and applied to reimburse the City for costs incurred in administering compliance with this chapter. The permit holder and the blaster shall, upon request, make available to the Approving Authority a copy of all seismic readings and any and all other documentation and data collected regarding any blast.

- G. The Blasting Permit holder shall notify the Approving Authority and the Police and Fire Departments of an impending blast at least two hours, but not more than 12 hours, prior to the time each blast is scheduled.
- H. The applicant shall be responsible for any costs incurred by the City in providing police, emergency services or any other personnel deemed necessary to ensure public safety.
- I. Notwithstanding any other regulations, no blasting shall be performed in such manner or under such circumstances as to eject debris into the air so as to constitute a hazard or danger or cause harm to persons or property. Before firing any blast which could cause injury to persons or damage property from fly rock, the material to be blasted shall be properly covered or screened by a buffer of sufficient mass and strength to prevent, with a margin of safety, the ejection of any material capable of causing any injury or damage.
- J. No person shall use a quantity of explosives greater than necessary to break or move the target material or use an amount of explosives that poses a risk of injury to persons or property.
- K. Unless otherwise permitted by the Approving Authority, all holes drilled or otherwise excavated for holding an explosive charge shall be at least six feet deep. If, however, the permit holder/blaster can demonstrate a need to use a hole less than six feet deep and that such a cavity will not endanger public safety, the Approving Authority or the Approving Authority's designated representative may, in the Approving Authority's discretion, authorize the use of blast holes less than six feet deep.
- L. The blaster shall plan each blast and take every precaution in loading, delaying, initiation, confinement and stemming to control the throw of rock fragments and debris and limit ground vibrations and the effect of air concussions to the greatest extent possible. When blasting is to be conducted within 50 feet or less of a property line and the adjacent property owner is not a party to the blasting operation, the blaster shall take all precautions practicable, utilizing any combination of recognized methods, to control blasting effects to the greatest degree possible.
- M. A record of each blast shall be kept by the blaster on a form approved by the Approving Authority. All such records shall be retained by the permit holder and

blaster as prescribed by state law and made available for inspection as a matter of public record.

(1) The permit holder shall record the following information for each blast and provide the Approving Authority with a duplicate copy at the end of each day:

- (a) The name and license number of the blaster.
- (b) The location of the blast.
- (c) The date and time of each blast.
- (d) The number of blasts.
- (e) The number, diameter and depth of each hole and distance between holes.
- (f) The burden depth.
- (g) The stemming length.
- (h) The make and type of explosives.
- (i) The delay make, number and period.
- (j) The weather conditions, including temperature, wind direction and speed.

(2) In addition, the following seismograph information must be recorded for each blast with a duplicate copy provided to the Approving Authority:

- (a) The seismograph serial number.
- (b) The range/gain setting.
- (c) The date of last shake table calibration and microphone calibration.
- (d) The air channel low frequency limit.
- (e) The exact seismograph location and location in relation to the blast.
- (f) The peak over pressure readout.
- (g) The peak particle velocity readout.
- (h) The name of the operator.

N. Where an accident involves personal injury resulting from a blast, the permit holder shall immediately notify the Approving Authority that an accident has occurred, and no further blasting shall be conducted until the Approving Authority has had an opportunity to review the accident report and the permit. Any injury, accident or misfire involving explosives shall be recorded, and a full written report shall be attached to the blast report filed with the Approving Authority, including the names

of all participants and witnesses and remedial actions taken. The Approving Authority may require such additional, specific information from the blaster as the Approving Authority deems necessary and appropriate to assure the public health and safety. Following an accident involving personal injury, the Approving Authority may amend the permit by adding whatever additional restrictions are deemed necessary to assure public health and safety is maintained and another similar accident does not reoccur.

- O. At no time shall a single blast greater than 2,500 pounds of total explosives or a charge exceeding 50 pounds per delay period or interval be detonated within the City of Rye.

§ 88-9. Vibration and concussion standards

- A. The maximum allowable concussion or air blast resulting from blast operations shall not exceed 130 decibels peak, measured at a flat frequency response (PMS two decibels) over the range of at least six to 200 hertz.
- B. When blasting is of a continuing nature, 124 to 130 decibels shall be the acceptable range.
- C. The US Bureau of Mines Safe Vibration Criteria, with an upper allowable limit of 1.25PPV will be the governing standard. Charts plotting both the Peak Particle Velocity (in/s) and Peak Frequency (Hz) must be provided after each and every blast. The Approving Authority shall have the authority to set an upper allowable limit less than the governing standard if it is determined that nearby structures or natural features could be compromised at the governing standard. An upper allowable limit of 0.5PPV could be expected within residential areas.
- D. The permit holder shall report each blast exceeding acceptable parameters to the Approving Authority within 24 hours. Following a blast exceeding acceptable parameters, the Approving Authority shall have the authority to order blasting operations to be suspended, altered or stopped.

88-10. Hours blasting is allowed and Permit Conditions.

- A. No person shall engage in blasting operations within the City of Rye after the hour of 3:30 p.m. or before 9:00 a.m. on weekdays or at any time on Saturday and Sunday;

or on any of the following holidays and time periods: New Year's Day, Presidents' Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Yom Kippur, Thanksgiving Day through Thanksgiving weekend and Christmas Day through New Year's Day except under authority of a special permit issued by the City Manager. In addition, blasting will be prohibited within seven hundred and fifty (750) feet of a school on testing days.

- B. Except as provided by §88-18, no new/additional Rock Excavation Permit or Blasting Permit shall be issued for the same subject property for eighteen (18) months as measured from the permit expiration date any previously issued Rock Excavation or Blasting Permit.
- C. Except as provided by §88-18, no Rock Excavation Permit or Blasting Permit shall be issued for a property that is located within a seven hundred and fifty (750)-foot radius of another property that has received a permit for such activities for at least sixty (60) days as measured from the expiration date of the other property's permitted Blasting or Rock Excavation Permit.

§ 88-11. Notice of intent to blast; posting.

- A. Any individual who intends to engage in blasting on any property in the City of Rye shall submit its application for a Blasting Permit to the Approving Authority at least twenty-one (21) calendar days prior to the commencement of such blasting. Upon approval of the Blasting Permit the Approving Authority shall post the following information on the City's website at least seven (7) calendar days prior to the commencement of any blasting: 1) the property address; 2) earliest commencement date; and 3) the four (4) month expiration date of the Blasting Permit.
 - (1) In addition to notifying the City as required above, the individual must also notify the neighbors in writing of the intent to blast. The applicant shall prepare a notification list, using the most current City of Rye Tax Maps and Tax Assessment Roll, showing the Tax Map sheet, block and lot number, the owner's name and owner's mailing address for each property located wholly or partially within seven-hundred and fifty (750) feet of the subject property. If a property on the public notification list is also listed as a cooperative or an apartment, the notice shall only be mailed to the property owner of record. These mailing requirements must be performed in accordance with the following requirements:

- (a) The notice shall be mailed to all property owners by regular United States mail at a post office or official depository of the Postal Service at least twenty-eight (28) calendar days prior to the commencement of mechanical rock excavation.
 - (b) The individual must provide a copy of the certificate of mailing to the Approving Authority prior to the commencement of any mechanical rock excavation.
- B. The Approving Authority may also require that the notice of intent to blast be posted on each building or dwelling in a conspicuous place where it is reasonable to believe that persons entering or leaving the premises will see such notification.
- C. In the case of multi-occupancy structures, residential and commercial, located within seven hundred and fifty (750) feet of the blast site, the notice of intent to blast shall be conspicuously and continuously posted at all commonly used entrances to the structure at least twenty-eight (28) calendar days prior to blasting. It shall be the blaster's responsibility to ensure that notice is unobstructed and remains posted at the structure.

§ 88-12. Application responsible for costs

Any person applying to use explosives to demolish any structure must agree to assume the cost of any engineering analysis, public safety survey, environmental review or other technical study deemed necessary by the Approving Authority to determine if and how blasting or rock chipping can be conducted safely.

§ 88-13. Rules and regulations.

The Approving Authority may supplement this chapter by promulgating whatever additional rules and regulations are deemed necessary or desirable to protect the public health, safety and welfare. A copy of all supplemental rules and regulations promulgated under this section are to be provided with each application for a permit and posted on the City's Web site.

§ 88-14. Penalties for offenses; enforcement.

- A. Any person, including any owner or agent or corporation, who shall violate any of the provisions of this chapter or fail to comply with any provision shall, following conviction, be guilty of a misdemeanor.

- B. The first violation shall be punishable by a fine not to exceed \$5,000 and subject to a period of incarceration not to exceed 20 days.
- C. A second and each subsequent offense shall be punishable by a fine not to exceed \$10,000 and subject to a period of incarceration not to exceed 40 days.
- D. Any person, including any owner or agent or corporation, who supplies false information to the Approving Authority in support of a Blasting Permit shall, upon conviction, be guilty of a misdemeanor and subject to a fine not to exceed \$5,000 and subject to a period of incarceration not to exceed 20 days.
- E. The provisions of this chapter may be enforced by either the Approving Authority or the City Police.

Article II, *Mechanical Rock Excavation*

§ 88-15. Definitions for Mechanical Rock Excavation

Whenever used in this Article, the following terms shall have the meanings indicated:

BLASTING PERMIT

A permit issued by the Approving Authority for blasting activities at a single blasting site.

MECHANICAL ROCK EXCAVATION

The removal of rock with the use of a mechanical hammer or other mechanical device, including but not limited to such activities as rock chipping, drilling or boring holes in rock, the use of expansive grout to break up rock, hydraulic rock splitting or similar activity utilizing machinery for the purposes of extracting rock from land.

ROCK EXCAVATION PERMIT

A permit issued for rock excavation on a subject property by the Building Department.

SUBJECT PROPERTY

The lot for which a mechanical rock excavation permit is issued.

TESTING DAYS

A day when a school is administering a state or federally mandated test or a day when the school is administering an advanced placement test, PSAT, SAT, ACT, final examinations or other similar tests, as long as the school or district posts on their web site at the beginning of each school year such dates and provides such information at the beginning of the school year to the Building Department.

UNEXPECTED CIRCUMSTANCES

Circumstances unforeseen by the property owner including significant and documented mechanical failure of a machine, severe inclement weather, such as a hurricane or earthquake, global pandemic (except for pre-existing governmental regulations and restrictions relating to a pre-existing pandemic), act of God, act of war, terrorism, riot or other civil disorders.

§ 88-16. Mechanical Rock Excavation Permit

- A. No mechanical rock excavation may take place unless a Rock Excavation Permit is obtained. All permits shall identify the purpose for which the rock excavation permit is being issued, the owner of the subject property, including any partners of any limited liability company, and the permitted duration of the rock excavation. The application for a rock excavation permit shall include a certification by the property owner that the property owner has determined that any mechanical rock excavation can be completed within the period in Subsection A(1) below.

- (1) Mechanical rock excavation shall be restricted to fifteen (15) consecutive calendar days.
 - (2) Except as provided by §88-18, no new/additional Rock Excavation Permit or Blasting Permit shall be issued for the same subject property for eighteen (18) months as measured from the expiration date any previously issued Rock Excavation or Blasting Permit.
 - (3) Except as provided by §88-18, no Rock Excavation Permit or Blasting Permit shall be issued for a property that is located within a seven hundred and fifty (750)-foot radius of another property that has received a permit for such activities for at least sixty (60) days as measured from the expiration date of the other property's permitted Rock Excavation Permit.
- B. No Rock Excavation Permit shall be issued unless the applicant has a dust mitigation plan approved by the Building Department. Such dust mitigation plan shall incorporate the best dust control practices including, but not limited to, a water spray system (air suppression or surface wetting). All dust mitigation plans shall include measures to control water runoff as a result of any water spray or wetting program.
- (1) Trucks and other vehicles used to transport particulate matter shall be covered and any particulate matter kept on site shall be sufficiently wetted or stored to prevent particulate matter from becoming airborne.
 - (2) Portable hand water sprinklers or hose sprinklers are acceptable means of wetting for dust control. The water sprays or jets shall be designed to break the water stream into small droplets or otherwise to provide effective wetting.
 - (3) Suitable drainage means shall be provided for the removal of water and sludge which drains from the operation.
 - (4) Soil or debris piles shall be moistened if dust is being emitted from the piles due to prevailing winds and not from a momentary gust. Adequately secured tarps, plastic or other material may be required by the Building Department to further reduce dust emissions.
- C. Any individual who intends to engage in mechanical rock excavation on any property in the City of Rye shall submit its application for a Rock Excavation Permit to the City Building Department at least twenty-one (21) calendar days prior to the commencement of mechanical rock excavation. Upon approval of the Rock Excavation Permit the City Building Department shall post the following information on the City's website at least seven (7) calendar days prior to the commencement of any mechanical rock removal: 1) the property address; 2) earliest commencement date; and 3) when the fifteen (15) consecutive day period ceases.

- (1) In addition to notifying the City as required above, the individual must also notify the neighbors by sending out a public notification prepared by the Building Department. The applicant shall prepare a notification list, using the most current City of Rye Tax Maps and Tax Assessment Roll, showing the Tax Map sheet, block and lot number, the owner's name and owner's mailing address for each property located wholly or partially within seven-hundred and fifty (750) feet of the subject property. If a property on the public notification list is also listed as a cooperative or an apartment, the notice shall only be mailed to the property owner of record. These mailing requirements must be performed in accordance with the following requirements:
 - (a) The mailing shall be limited solely to the public notice provided by the City Building Department.
 - (b) The notice shall be mailed to all property owners by regular United States mail at a post office or official depository of the Postal Service at least twenty-eight (28) calendar days prior to the commencement of mechanical rock excavation.
 - (c) The individual must provide a copy of the certificate of mailing to the City Building Department prior to the commencement of any mechanical rock excavation.
- D. No person shall engage in mechanical rock excavation, as defined in §88-15 within the City of Rye before the hour of 9:00 a.m. or after 3:30 p.m. on weekdays or at any time on Saturday and Sunday; or on any of the following holidays and time periods: New Year's Day, Presidents' Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Yom Kippur, Thanksgiving Day through Thanksgiving weekend and Christmas Day through New Year's Day except under authority of a special permit issued by the City Manager. In addition, mechanical rock removal, including mechanical rock excavation will be prohibited within seven hundred and fifty (750) feet of a school on testing days.
- E. No person performing mechanical rock excavation shall have more than two (2) mechanical hammers operating on the subject property at the same time. Rock crushing shall not be permitted on the subject property.
- F. A property owner who has properly applied for and received a Rock Excavation Permit and has otherwise complied with the provisions of this chapter, may apply to the City Manager for an additional, one-time three (3)-consecutive-calendar-day waiver in addition to the fifteen (15) days above, subject to all the other restrictions contained herein. The property owner shall have the burden of demonstrating to the City Manager that a waiver is warranted due to Unexpected Circumstances as defined in §88-15. The City Manager, at his/her sole discretion, may grant or deny the waiver. In making his/her determination, the City Manager may request documentation supporting Unexpected Circumstances, including a certification that the Unexpected

Circumstances prevented the completion of mechanical rock excavation during this period. If the waiver is granted the period will be listed on the City website. No waiver shall be granted if the property owner has been found in violation of any provision of this Chapter.

§ 88-17 Penalties for offenses.

In the event an activity is not being performed in accordance with this article, the owner of the property or the owner's agent or the person performing such violation shall be notified to suspend all work, and any such persons shall forthwith stop such work and suspend all activities. Any person who violates any provision of this article shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than \$1,000, an order to suspend mechanical rock excavation on the site for a period of not more than 72 hours, or by imprisonment not exceeding 15 days, or any combination of such fine, suspension, and imprisonment, and each day that such violation shall continue shall be construed as a separate offense. Upon any subsequent conviction for the same offense such person shall be subject to a fine of not more than \$2,000, or an order to suspend mechanical rock excavation on the site for a period of not more than 72 hours, or by imprisonment not exceeding 15 days, or any combination of such fine, suspension and imprisonment. The imposition of one penalty for any violation shall not excuse or remedy such violations.

§ 88-18 Exempted Acts.

The actions of, or at the direction of, utility providers and State, County or City governmental agencies, including the Rye City School District and the Rye Neck Union Free School District, shall be specifically exempt from the requirements of this chapter. The following activities shall be exempt from § 88-16(A) and C above:

- A. Removal of rock for the sole purpose of the installation of gas or electrical service, and the installation of water or sewer service, Any property owner seeking to utilize this exemption must certify in writing that the rock removal is solely for this purpose, and must provide at least 24 hours' notice to the City of same. Removal of rock for these purposes must be accomplished in no more than two (2) – three (3) consecutive calendar day periods (a total of 6 days). Upon such notice(s), the activity will be listed on the City website.
- B. Removal of rock for the sole purpose of stormwater drainage provided that the subject property has not received a rock excavation permit or Blasting Permit within the last 18 months. Any property owner seeking to utilize this exemption for stormwater drainage must certify in writing that the rock removal is solely for this purpose and that the subject property has not received a Rock Excavation Permit within the last 18 months and must provide at least 24 hours' notice to the City of same.- Removal of rock for the purpose of stormwater drainage shall be accomplished in no more than two (2) – three (3) consecutive calendar day periods (a total of 6 days). Upon such notice(s), the activity will be listed on the City website.

- C. Blasting and drilling activities related to permitted blasting activities. Those activities shall be regulated by Article I of this Chapter.
- D. Drilling activities in connection with the installation of geothermal systems.
- E. Drilling or boring for no more than two (2) consecutive calendar days for the purposes of conducting geotechnical investigations or other similar exploratory sub-surface testing in connection with a potential application for a Rock Excavation Permit.
- F. Hammering or drilling activities solely to accomplish removal of man-made structures such as concrete structures, roadways, driveways, or buildings.
- G. Hammering, rock chipping or drilling activities within eighteen (18) months of a previously issued Blasting Permit shall be permitted for not more than three (3) consecutive calendar days. Any property owner seeking to utilize this exemption must notify the City in advance so that at least 24 hours of notice of the activity can be listed on the City website.

Section 3. Section 133-8, “Permit required; construction work, mechanical rock removal and blasting restrictions”, shall be repealed and replaced with the following section:

§ 133-8. Construction work prohibited at certain hours and on certain days.

- A. No person shall engage in construction work earlier than 8:00 a.m. or later than 6:00 p.m. on weekdays; earlier than 10:00 a.m. or later than 5:00 p.m., prevailing time, on Saturdays; or at any hour on Sundays or any of the following holidays: New Year's Day, Presidents' Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Yom Kippur, Thanksgiving Day, Christmas Day and New Year's Day.
- B. Notwithstanding any provision of § 133-8.A to the contrary, an individual may perform construction work him/herself on property on which such individual then resides as follows:
 - (1) Weekdays, between 7:30 a.m. and 8:00 p.m.
 - (2) Saturdays and Sundays (including holidays), between the hours of 10:00 a.m. and 8:00 p.m.
- C. Blasting and rock chipping activities shall be restricted pursuant to Chapter 88, *Explosives, Blasting and Mechanical Rock Excavation* and shall not be subject to the provisions of Chapter 133, *Noise*.

Section 4. Section 133-9, Penalties for offenses, shall be amended as follows:

§ 133-9. Penalties for offenses.

In the event an activity is not being performed in accordance with this chapter, the owner of the property or the owner's agent or the person performing such violation shall be notified to suspend all work, and any such persons shall forthwith stop such work and suspend all

activities. Any person who violates any provision of this chapter shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than \$250 or imprisonment for a term of not more than 15 days, or both, except that violations under § 133-8, Construction work prohibited at certain hours and on certain days, shall be treated as individual violations and for each and every such violation and noncompliance, respectively, thereof, shall be punished upon such first conviction by a fine of not more than \$1,000, an order to suspend mechanical rock excavation on the site for a period of not more than 72 hours, or by imprisonment not exceeding 15 days, or any combination of such fine, suspension, and imprisonment, and each day that such violation shall continue shall be construed as a separate offense. Upon any subsequent conviction for the same offense such person shall be subject to a fine of not more than \$2,000, or an order to suspend mechanical rock excavation on the site for a period of not more than 72 hours, or by imprisonment not exceeding 15 days, or any combination of such fine, suspension and imprisonment. The imposition of one penalty for any violation shall not excuse or remedy such violations.

Section 5. **Section 133-10, Exempt acts, paragraph B is hereby repealed in its entirety.**

Section 6. **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 7. **Effective Date**

This Local Law shall take effect immediately upon its adoption and filing with the Secretary of State.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Hurd, Johnson, Nathan, Souza, Stacks
Nays: None
Absent: Councilman Henderson

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

No residents wished to be heard on matters that did not appear on the agenda.

14. Resolution to set a public hearing for January 4, 2023, to amend Chapter 196 “Wireless Telecommunications Facilities” of the Code of the City of Rye to remove a mandatory referral to the Board of Architectural Review.

Councilwoman Hurd explained that the BAR reviewed the telecommunications equipment screenings for building façades, and commented that the Council needed to standardize the screenings. Mayor Cohn thought each building should be able to declare

their standard. Councilman Nathan asked why it was necessary to remove a mandatory BAR review. Corporation Counsel Wilson responded that the mandatory BAR review often results in an unavoidable violation of the Telecommunications Act shot clock. If an applicant was not flexible and the allotted time for review was exceeded it could result in automatic approval of projects without any input or review by the BAR or City Council.

Councilwoman Johnson made a motion, seconded by Mayor Cohn and unanimously carried, to set the public hearing for January 4, 2023, to amend Chapter 196 “Wireless Telecommunications Facilities” of the Code of the City of Rye to remove a mandatory referral to the Board of Architectural Review.

15. Resolution authorizing the Mayor to enter into an agreement with the Rye Free Reading Room to furnish library services for 2023.

Councilwoman Souza made the motion, seconded by Councilwoman Johnson, to authorize the mayor to enter into an agreement with the Rye Free Reading Room to furnish library services for 2023.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Hurd, Johnson, Nathan, Souza, Stacks
Nays: None
Absent: Councilman Henderson

16. Resolution to participate in the 2022 Tree City program.

Councilwoman Hurd made the motion, seconded by Councilwoman Souza and unanimously carried, to participate in the 2022 Tree City program.

17. Resolution authorizing the Mayor to sign a retainer agreement with McDermott Will and Emery for a fixed cost of \$40,000 with authorization to transfer these funds from Undesignated Fund Balance.

Councilwoman Hurd made the motion, seconded by Councilman Stacks, to authorize the mayor to sign a retainer agreement with McDermott Will and Emery for a fixed cost of \$40,000 with authorization to transfer these funds from Undesignated Fund Balance.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Hurd, Johnson, Nathan, Souza, Stacks
Nays: None
Absent: Henderson

18. Appointments to Boards and Commissions by the Mayor with Council approval.

Mayor Cohn made the following appointment and reappointments to the Boards, Commissions and Committees, which the Council approved:

Board of Ethics

- Reappointed Beth Griffin Matthews for three-year terms to expire December 31, 2025
- Reappointed Edward Stein for three-year terms to expire December 31, 2025

Board of Assessment Review

- Re-appointed Howard Husock to a five-year term, expiring September 30, 2027

Planning Commission

- Re-appointed Rick Schaupp to a three-year term to expire December 31, 2025
- Re-appointed Steven Secon to a three-year term to expire December 31, 2025

Finance Committee

- Re-appointed James Jenkins to a three-year term, expiring December 31, 2025
- Re-appointed John Hunt to a three-year term to expire December 31, 2025
- Re-appointed Jono Peters to a three-year term to expire December 31, 2025
- Re-appointed Jim Sandling to a three-year term to expire December 31, 2025

Human Rights Commission

- Appointed Ben Fritsche, RCSD student representative

Recreation Commission

- Re-appointed Louis Rollano to a three-year term, expiring December 31, 2025

19. Farewell to Councilwoman Hurd.

To bid farewell to Councilwoman Hurd, Mayor Cohn read a note from Councilman Henderson. He wrote: "Emily has been an exemplary councilmember. Emily knows Rye and has been a very strong and positive force for Rye taxpayers. Emily has a great compass and always tries to do the right thing. Since I've been on the Council, I've never observed her act in a political or partisan manner. She never takes herself too seriously and knows how to disagree without being disagreeable. Emily is very hardworking, giving of her time, and always supportive of her colleagues here on the Council and the City staff. Emily has been a mentor, friend, and confidante to us. She is not going anywhere but we'll very much miss her advice and support. Congratulations, Emily, for a job well done."

Councilwoman Hurd said she loved being on the Rye City Council and working with Council colleagues and City staff. She felt honored by the opportunity to step into Richard Mecca's shoes.

20. Old Business/New Business.

Councilwoman Souza made the motion, seconded by Councilwoman Hurd, to allocate \$3.25 million from the Undesignated Fund Balance for the settlement of John Doe v. City of Rye, and \$35,000 from the same fund for attorney fees.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Hurd, Johnson, Nathan, Souza, Stacks
Nays: None
Absent: Councilman Henderson

21. Adjournment

Councilwoman Souza made a motion, seconded by Councilman Nathan and unanimously carried, to adjourn the City Council meeting at 9:01 P.M.

Respectfully submitted,

Carolyn D'Andrea
City Clerk

UNAPPROVED MINUTES of the Special
Meeting of the City Council of the City of Rye held in
City Hall on December 23, 2022, at 1:00 P.M.

PRESENT:

JOSH COHN, Mayor
BILL HENDERSON
CAROLINA JOHNSON
JOSHUA NATHAN
JULIE SOUZA
BENJAMIN STACKS
Councilmembers

ABSENT:

EMILY HURD

The Council convened for the public meeting at 1:00 P.M.

1. Pledge of Allegiance.

Mayor Cohn led the Council in the Pledge of Allegiance.

2. Roll Call.

The Deputy City Clerk called the roll. There was a quorum to conduct City business.

3. Approve appointment of part-time City Judge.

Mayor Cohn appointed Taylor Piscionere as the Rye City Court Part Time Judge for a six-year term commencing on January 1, 2023 and expiring on December 31, 2028.

Judge Piscionere thanked the Mayor and Council and stated it is an honor to serve this great city and community.

4. Adjournment.

Councilwoman Souza made a motion to adjourn, seconded by Councilman Nathan and unanimously carried, to adjourn the City Council meeting at 1:05 P.M.

Respectfully submitted,

Carolyn D'Andrea
City Clerk



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: December 30, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Flooding Update.

FOR THE MEETING OF:

January 4, 2023

RECOMMENDATION: That the City Council hear the update.

IMPACT: ☒ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND:



CITY COUNCIL AGENDA

DEPT.: City Manager's Office

DATE: January 4, 2023

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Open a public hearing to amend Chapter 196 "Wireless Telecommunications Facilities" of the Code of the City of Rye to remove a mandatory referral to the Board of Architectural Review.

FOR THE MEETING OF:
January 4, 2023

RECOMMENDATION: That the Council open the public hearing.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND: See attached proposed amendments to the law.

CITY OF RYE

LOCAL LAW NO. 2022

A local law to amend Chapter 196 “Wireless Telecommunications Facilities” of the Code of the City of Rye to remove a mandatory referral to the Board of Architectural Review as follows:

Section 1.

§ 196-1 Purpose and legislative intent.

- A. The Telecommunications Act of 1996 affirmed the City of Rye's authority concerning the placement, construction and modification of wireless telecommunications facilities. The City Council finds that wireless telecommunications facilities and related equipment may pose a unique hazard to the health, safety, public welfare and environment of the City and its inhabitants, and may also have adverse visual and sonic impacts on the community, its character and thus the quality of life in the City.
- B. By enacting this chapter, the City intends to:
- (1) Ensure that the placement, construction or modification of wireless telecommunications facilities and related equipment is consistent with the City's land use policies and Zoning Code;
 - (2) Minimize the negative and adverse visual and aesthetic impacts of wireless telecommunications facilities to the maximum extent practicable through careful design, siting, landscaping, screening and innovative camouflaging techniques;
 - (3) Assure a comprehensive review of environmental impacts of such facilities;
 - (4) Protect the health, safety and welfare of the City of Rye;
 - (5) Account for when shared use of wireless telecommunication facilities is the more aesthetically sensitive alternative;
 - (6) Establish fair and efficient processes for review and approval of applications;
 - (7) Protect City residents and businesses from potential adverse impacts of wireless telecommunication facilities, to the extent permitted under law, and to attempt to preserve the visual character of established communities and the natural beauty of the landscape;
 - (8) Protect property values;
 - (9) Minimize the impact of wireless telecommunications facilities on residential properties;
 - (10) Encourage the siting of wireless telecommunications facilities on properties and areas which are not used exclusively for residential purposes.
- C. The City finds that minimization of clutter and structures in the rights-of-way is important to the welfare of the community, and that placement near residential structures and in historical areas should be restricted where not critical to the provision of services.

§ 196-2 Title.

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

Deleted: Chapter 196 -
Wireless Telecommunications Facilities ¶
[HISTORY: Adopted by the Council of the City of Rye 9-9-1998 by L.L. No. 9-1998; amended in its entirety 1-9-2019 by L.L. No. 2-2019. Subsequent amendments noted where applicable.]

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§ 196-3 Definitions; word usage.

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

ACCESSORY FACILITY OR STRUCTURE

An accessory facility or structure serving or being used in conjunction with a base station and located in proximity to the base station, whether or not owned by the person who owns or controls the base station, including but not limited to utility or transmission equipment storage sheds or cabinets; electric meters; and fencing or shielding.

ANTENNA

A device, dish, array, or similar device used for sending and/or receiving electromagnetic waves for any wireless telecommunications.

APPLICANT

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

APPLICATION

The form as may be amended from time to time, together with all necessary and appropriate documentation that an applicant must submit in order to receive a special use permit for a wireless telecommunications facility.

BASE STATION

A facility or equipment at a fixed location that enables any wireless telecommunications between user equipment and a telecommunications network. The term does not encompass a tower as defined herein or accessory facility or structure associated with a tower. The term base station includes, without limitation:

- A. Equipment associated with wireless telecommunications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- B. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems ("DAS") and small-cell networks or micro-wireless facilities); provided that, wireline connections in the rights-of-way linking antennas to other elements of a small cell, DAS or similar network will not be treated as part of the wireless telecommunications facility and instead their placement shall be subject to review consistent with applicable provisions of the Rye City Code, the applicable franchise; and New York law.
- C. Any supporting structure, other than a tower, that at the time the relevant application is filed with the City under this section, supports or houses equipment described in Subsections **A** and **B** that has been reviewed and approved for placement of such equipment under this chapter, or under another state or local regulatory review process, even if the supporting structure was not built for the sole or primary purpose of providing that support. For supporting structures that support equipment described in Subsections **A** and **B**, including but not limited to the sides of buildings, water towers, or utility poles, the term includes only that portion of a supporting structure specifically approved to support the wireless equipment described in Subsections **A** and **B**, and only relates to activities necessary to permit

the installation, maintenance, replacement or collocation of wireless equipment described in the preceding paragraph. The exemption of a supporting structure from review is not an approval.

BREAK POINT

The location on a tower which, in the event of a failure of the tower, would result in the tower falling or collapsing within the boundaries of the property on which the tower is placed.

CARRIER ON WHEELS or CELL ON WHEELS ("COW")

A portable self-contained temporary facility that can be moved to a location and set up to provide personal wireless services. A COW is normally vehicle-mounted and contains a telescoping boom to support the antenna. A COW shall only be in place in connection with an emergency or event, but no longer than required for the emergency or event, provided the installation does not involve excavation, movement or removal of existing facilities.

CITY

The City of Rye, New York.

CITY MANAGER

The chief administrative officer of the City of Rye, or its designee.

COLLOCATION

The use of an existing tower or base station to install additional transmission equipment or antennas for the provision of wireless telecommunications services.

COMMERCIAL IMPRACTICABILITY or COMMERCIALLY IMPRACTICABLE

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

COMPLETED APPLICATION

An application that contains all information and/or data required by the City on application forms, by ordinance or by written practice and such additional information as the City may reasonably require specific to any application.

CONCEALMENT ELEMENT

Any design feature, including but not limited to painting, landscaping, shielding requirements and restrictions on location, proportions, or physical dimensions in relation to the surrounding area or supporting structures that are intended to and do make a wireless telecommunications facility or any supporting structure supporting it substantially less visible to the casual observer.

COUNCIL

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

DISTRIBUTED ANTENNAE SYSTEM (DAS)

Network of spatially separated antenna sites connected to a common source that provides wireless telecommunications service within a geographic area or structure.

EAF

The environmental assessment form approved by the New York Department of Environmental Conservation.

ELIGIBLE FACILITY PERMIT

The official document or permit by which an applicant meets the criteria for administrative review of a wireless telecommunications facility as granted by the City Engineer and Corporation Counsel.

ENVIRONMENTALLY SENSITIVE AREA ("ESA")

An area that is a residential zone or an area that has an exceptional or unique character with respect to one or more of the following: a) a benefit (or threat) to human health or quality of life; b) a benefit (or threat) to wildlife; c) a natural setting (e.g., fish/wildlife habitat open space, area of important aesthetics of scenic quality); d) agricultural, social cultural, archeological, recreational or educational values. The City Council shall determine what areas qualify as an ESA.

EXISTING

In place as of the date an application is received for installation or modification of a wireless telecommunications facility.

FAA

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

FCC

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

HEIGHT

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

HISTORIC STRUCTURE

Any structure in the City of Rye that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in New York; or
- D. Individually listed on a local inventory of historic places in Rye with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior; or
 - (2) Directly by the Secretary of the Interior in states without approved programs.
- E. Designated as a protected site or structure under the City of Rye City Code, Chapter **117** "Landmarks Preservation."
- F. Is located in a National Historic District or within a City of Rye designated Preservation District and/or

Historic District.

MICRO-WIRELESS FACILITY

A small wireless facility strung between two utility poles having dimensions no larger than 24 inches in length, 15 inches in width and 12 inches in height and an exterior antenna, if any, no longer than 11 inches, and which antenna may be enclosed in an imaginary cylinder no larger than one inch in diameter. The reference to height in this definition is not intended to permit any person to install a facility that violates, or causes the strand to which it is attached to violate, clearance or other requirements under the applicable safety codes. A micro-wireless facility does not create any noise greater than 10 db(A) as measured at the source.

NIER

Nonionizing electromagnetic radiation.

PERSON

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

PERSONAL WIRELESS SERVICES

Shall have the same meaning as defined and used in the 1996 Federal Telecommunications Act and associated regulations.

RESIDENTIAL RIGHT-OF-WAY

The right-of-way in a residential zone.

RESIDENTIAL STRUCTURE

A structure located in a residential zone with its principal use being residential.

RESIDENTIAL UNIT or A DWELLING UNIT

One or more rooms with provision for living, cooking, sanitary and sleeping facilities arranged for the use of one family, as defined in Rye City Code, Chapter **197**, "Zoning."

RESIDENTIAL ZONE

Those zones designated as "Residence Districts" under the City of Rye City Code, Chapter **197**, "Zoning."

RIGHT-OF-WAY

The strip of land over which facilities such as roads are built as identified on the official City Map.

SPECIAL USE PERMIT

The official document or permit by which an applicant is allowed to construct and use a wireless telecommunications facility, as granted by the City.

STEALTH FACILITY

Any wireless telecommunications facility that is integrated as an architectural feature of an existing supporting structure or any new wireless telecommunications facility that is camouflaged or concealed so that the presence of the wireless telecommunications facility is either: (1) virtually imperceptible to the casual observer, such as an antenna behind louvers on a building, or inside a steeple or similar structure; or (2) camouflaged, through stealth design, so as to blend in with its surroundings to such an extent that it is indistinguishable by the casual observer from the structure on which it is placed or the surrounding in which it is located. Examples of stealth facilities include wireless telecommunications facilities which are disguised as flagpoles, as indigenous trees, as rocks, or as architectural elements such as dormers, steeples and chimneys. To qualify as "stealth" design, the item in question must match

the character of its surroundings and the type of item that it is mimicking in size, scale, shape, dimensions, color, materials, function, and other attributes as closely as possible. The elements that make a facility a stealth facility are concealment elements.

SUBSTANTIAL CHANGE

Substantial change has the same meaning as the term "substantial change" as defined by Federal Communications Commission regulations, 47 C.F.R. § 1.40001(b)(7).

SUPPORTING STRUCTURE

Any building, mast, pole, utility pole or other facility capable of supporting or housing a base station. Except as used in the definition of the term "tower," the term "supporting structure" does not include and is not used to refer to a tower.

TALL STRUCTURE

A tall structure includes, but is not limited to, existing towers, nonresidential building rooftops at least four stories in height or greater, and domes, belfries, lanterns, spires, steeples or other architectural features on top of the roof of a building that is at least 45 feet high.

TELECOMMUNICATIONS

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

TEMPORARY

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

TOWER

Any supporting structure built for the sole or primary purpose of supporting any antennas (and related base station and accessory facilities or structures), including supporting structures that are constructed for wireless telecommunications including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

UNDERGROUND AREAS

Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right-of-way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled, at the time of determination to be converted from overhead to underground. If any area that currently has electrical facilities aboveground is later converted to an area with all such facilities underground, then such an area will be considered an "underground areas" and the responsible party for aboveground wireless telecommunications facilities and accessory facilities must comply with all regulations for underground areas within one year of such conversion. For the purposes of this chapter, any residential area outside the FEMA-designated fifty-year floodplain as depicted on the most recently approved FEMA flood maps is considered an underground area. An "electrical facility" is a distribution facility owned by an electric utility and does not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

UTILITY POLE

A supporting structure owned and/or operated by a public utility, and regulated by the New York State Department of Public Service, which is primarily built to support lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

WIRELESS REGULATIONS

Those regulations, adopted by majority vote of City Council pursuant to this chapter and implementing

the provisions set forth herein.

WIRELESS TELECOMMUNICATIONS FACILITY

All elements of a facility or proximate to a common location used in connection with the provision of any wireless telecommunications, including the antenna, base station (but excluding any existing supporting structure to which the base station is attached or within which it is enclosed), tower, if any, and accessory facilities or structures serving that base station.

WIRELESS TELECOMMUNICATIONS PROVIDER

A wireless telecommunications infrastructure provider or a wireless telecommunications services provider under 47 U.S.C. § 332(c)(7).

§ 196-4 Policy and goals for special use permits and special exception permits.

In order to ensure that the placement, construction and modification of wireless telecommunications facilities conforms to the City's purpose and intent of this chapter, the Council creates a special use permit for wireless telecommunications facilities for the purpose of achieving the following goals:

- A. Implementing an application process for person(s) seeking a special use permit or special exception permit for a wireless telecommunications facility.
- B. Establishing a policy for examining an application for and issuing special use permits and special exception permits for wireless telecommunications facilities that is both fair and consistent.
- C. Establishing timeframes for granting or not granting a special use permits and special exception permits for wireless telecommunications facilities, or recertifying or revoking the special use permit or special exception permit granted under this chapter.
- D. Promoting and encouraging, wherever possible, but only where it will result in the least overall visual and sonic impact for residential dwelling units, the collocation of wireless telecommunications facilities.
- E. Promoting and encouraging, wherever possible, the placement of a wireless telecommunications facility in such a manner as to cause minimal disruption to the land, property, buildings and other facilities adjacent to, surrounding and in generally the same area as the requested location of such a wireless telecommunications facility and to minimize adverse visual, sonic, and aesthetic impacts to the community and risk of adverse impacts to community character and property value.

§ 196-5 Special use permit, special exception permits and eligible facility permits.

- A. All wireless telecommunications facilities within the City must comply with this chapter and all other applicable law and regulations. A person who installs wireless telecommunications facilities pursuant to this section must comply with all safety codes; comply with requirements for RF emissions; and must utilize concealment elements and maintain facilities to minimize visibility of the wireless telecommunications facilities. All wireless telecommunications facilities are subject to the registration requirements of Section 167.72, if applicable, regardless of their status under, or the applicability of, this chapter.
- B. This chapter does not apply to any device designed for end-user over-the-air reception, not transmission, of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite service; or for end user reception of signals from an Internet service provider and end user transmission of signals to an Internet service provider.
- C. All wireless telecommunications facilities (including modifications), or construction, modification or replacement of support structures in connection with the installation of wireless telecommunications facilities must be permitted by a special use permit, special exception permit or eligible facility permit.

Notwithstanding the foregoing, the following wireless telecommunications facilities do not require a special use permit, except where the same are on, substantially contiguous to, or affect a historic structure, or an environmentally sensitive area. Requirements that may apply to the underlying supporting structure to which a base station is to be attached, as well as all other applicable laws and regulations continue to apply. Such wireless telecommunications facilities that do not require a special use permit shall require a special exception permit and pay the associated fee to the City Manager or his/her designee. Such wireless telecommunications facilities shall be authorized to be installed on condition that any and all other required permits or approvals have been received.

- (1) Wireless telecommunications facilities that are less than one cubic feet in size create no measurable sound and are placed on existing supporting structures without increasing the physical dimensions of the existing supporting structures. The "cubic footage" takes into account all the elements of the wireless telecommunications facility (including accessory facilities or structures).
 - (2) Wireless telecommunications facilities placed on the rooftop of nonresidential structures; that make no measurable sound beyond the rooftop; that are at least 40 feet from any residential unit; and that include some concealment elements so that the wireless telecommunications facilities are not visible from the street.
 - (3) Wireless telecommunications facilities within existing supporting structures (other than historical structures) that are not visible from and that do not create any sound greater than 10 db(A) measured at the source from outside the supporting structure and do not change the physical dimensions or appearance of the supporting structure within which they are placed.
 - (4) Carriers on wheels where the placement is permitted, and complies with, applicable FCC regulations for temporary placement of wireless telecommunications facilities.
 - (5) Routine maintenance, or replacement of elements of a wireless telecommunications facility or supporting structure that do not change the dimensions, visibility, or audibility of a wireless telecommunications facility or supporting structure.
 - (6) Micro wireless facilities.
- D. The City Manager or his/her designee shall prepare application forms that must be used by persons seeking to place wireless telecommunications facilities in the City and which shall require additional submission of at least the information required by the City Code, and may require information that the City may consider in acting upon an application.
- (1) Franchise required. In addition to the special use permit, special exception permit and eligible facilities permit required herein, the placement of a wireless telecommunications facility in the public rights-of-way requires the persons who will own or control those facilities to obtain a franchise or permit to be located within the City's right-of-way, unless that person holds a franchise from the state which authorizes it to use the right-of-way for that purpose, without further permission of the City. Pursuant to Chapter 167, "Streets and Sidewalks," such franchise or permit may be approved by the City.
- E. As part of the administration of this article, the City Council may adopt by simple majority vote regulations governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this article, including regulations governing collocation and resolution of conflicting applications for placement of wireless telecommunications facilities, and guidelines for placement of wireless telecommunications facilities on City-owned or controlled structures in the rights-of-way.
- (1) Develop acceptable designs for wireless telecommunications facilities in particular corridors, taking into account the zoning districts bounding the rights-of-way;

- (2) The City Manager shall issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued. If the City Manager issues a notice of incompleteness, any applicable timeframes to review the application shall be reinitiated upon the delivery of the missing material as if the application was received anew as described in § **196-6C**.
 - (3) The City Manager shall develop forms and procedures for submission of applications for placement or modification of wireless telecommunication facilities, and proposed changes to any support structure consistent with this article.
- F. For eligible facilities requests, as defined in the Federal Communications regulation 47 C.F.R. § 1.40001(b)(3), implementing federal law, 47 U.S.C. § 1455, an eligible facility permit is required prior to installation (including modifications) of wireless telecommunications facilities or modification of existing support structures in connection with the installation of wireless telecommunications facilities.
- (1) An eligible facility permit may be issued administratively by the City Engineer and Corporation Counsel jointly after all applicable safety and fire code regulations have been complied with. The eligible facility permit shall specifically provide that it is being issued at the direction of the federal government and without the consent of the City and shall be of no further force and effect when the permit for the underlying facility expires, or the federal law changes so that the permit as issued is no longer required.
 - (2) The application for any eligible facility permit must contain at least the information required to permit the City Manager and Corporation Counsel to determine that the application is an eligible facilities request, including (i) the underlying approval for the existing tower and base station; (ii) any approved modifications to the same where the modifications were approved prior to February 22, 2012; and (iii) detailed information about the physical dimensions of tower and base station as the same exist on the date of the application, and as proposed to be modified.
 - (3) The application shall be denied if it is not an eligible facilities request or if all the information required under § **196-6V** is not submitted. If an application is denied because it is determined that it is not an eligible facilities request, the applicant may request that the application be treated as a request for special permit by submitting all the information required for a special permit within 10 days of the denial of application. The applicant has the burden of proof in all aspects of its permit request by providing clear and convincing evidence.
- G. All other wireless telecommunications facility installations (including modifications), or construction, modification or replacement of support structures in connection with the installation of wireless telecommunications facilities require a special use permit or special exception permit.
- (1) Special use permits and special exception permits may be granted where applicant shows by clear and convincing evidence:
 - (a) The wireless telecommunications facility proposed is not being built speculatively (that is, there is a customer for the wireless telecommunications facility), and it will be built and used promptly upon approval.
 - (b) The applicant is a utility under New York law or a provider described in Subsection **G(1)(e)** below or a governmental entity. The applicant and any entity whose equipment would be included in the installations has all the authorizations required to place the wireless telecommunications facilities from the state, or the City (other than the special use permit requested), or the owner of the property, and to modify, replace or attach to a supporting structure, and the placement, construction and operation of the wireless telecommunications facilities (including supporting structures) will be in compliance with all applicable laws.

- (c) The wireless telecommunications facility is designed and placed to minimize the visual and sonic impact on the community.
 - (d) The wireless telecommunications facility does not significantly impact the site upon which it will be located or the properties that will be disturbed as a result of its installation.
 - (e) If applicant is confirmed to be a utility under New York law or is confirmed to be a provider, as described below, it must demonstrate that the wireless telecommunications facility is necessary for the provision of services. All applicants must show that the proposed installation is the least intrusive alternative for providing service. If the applicant is a provider of wireless services or facilities under 47 U.S.C. § 332(c)(7), it must show that absent approval, there will be a prohibition in the provision of wireless services within the meaning of federal law.
- (2) City may approve a special use permit or special exception permit without the showing required by Subsection **G(1)(e)** where the facility is not located in or does not affect historic structures or environmentally sensitive areas and the wireless telecommunications facility:
- (a) Is a stealth facility that otherwise satisfies the provisions of this chapter.
 - (b) Contains concealment elements, and is to be placed or shielded on an existing supporting structure in such a way such that the wireless telecommunications facility produces no measureable sound greater than 10 db(A) and is not readily visible to, surrounding properties, and is not subject to modification except at the discretion of the City.
 - (3) Notwithstanding the foregoing, City may require the showing under Subsection **G(1)(e)** where the City determines installation or modification of the wireless telecommunications facility substantially alters the size, proportions or dimensions of an existing supporting structure.
 - (4) Notwithstanding any other provisions of this chapter, the City Council may for reasonable cause and based on substantial evidence exempt any applicant from any requirement of this chapter or require the location or character of a wireless telecommunications facility to be other than that which this chapter might otherwise mandate.
 - (5) Prohibited on certain structures. No wireless telecommunications facility shall be located on single-family detached residences, single-family attached residences, two-family residences, or any residential accessory structure.
- H. General standards for wireless telecommunications facilities in the rights-of-way.
- (1) Generally. All wireless telecommunications facilities in the rights-of-way shall: first, be located in accordance with the location priorities in Subsection **I** below; and second, be the most aesthetically pleasing alternative for the type of location. In addition, such facilities must meet the minimum requirements set forth in this chapter, the wireless regulations, and the requirements of any other applicable law. An applicant must establish that it is installing stealth facilities to the extent possible and must:
 - (a) Show that it is installing facilities in the highest priority locations that are available and necessary to the provision of service or to avoid a prohibition. As part of its application, an applicant must describe in detail its efforts to place a wireless telecommunications facility at each higher priority location, including what properties were contacted, and the reasons why applicant claims the wireless telecommunications facility cannot be placed at a higher priority location.
 - (b) Submit RF engineering data signed by an engineer for the relevant wireless provider, including propagation maps and supporting information identifying areas where a wireless telecommunications

facility could be placed that would serve the areas where applicant believes that service is required, and describing the wireless telecommunications facility required to provide such services;

- (c) Submit a written explanation as to why it claims its proposed wireless telecommunications facility is the least intrusive alternative, considered individually, and as part of any project of which it is a part that involves installation of more than one wireless telecommunications facility; and taking into account all potential alternatives, whether or not raised by the City or its citizens, including all those that a diligent applicant acting in good faith would raise.
- (2) Waiver of requirements. Subject to § **196-5G(4)**, the wireless regulations and decisions on applications for placement of wireless telecommunications facilities in the rights-of-way shall, at a minimum, ensure that the requirements of this chapter are satisfied, unless, in the case only of an applicant who has the requisite status protected by federal laws, it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, under circumstances such that deployment of the facilities must be authorized. If that determination is made, the requirements of this chapter, including any regulations and forms to implement this chapter, may be waived, but only to the minimum extent required to avoid conflict with federal law.
- (3) Standards. Wireless telecommunications facilities in the rights-of-way shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, complies in the rights-of-way with the City's prioritization list in Subsection **I(2)** below and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights-of-way and compliance with health and safety codes; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon or vacate the rights-of-way or any portion thereof, or the ability of the City or other government agencies to cause the improvement, modification, relocation, vacation or abandonment of facilities in the rights-of-way.
- (4) Concealment. The special use permits for wireless telecommunications facilities in the rights-of-way shall incorporate specific concealment elements to minimize visual impacts consistent with the wireless regulations, and shall incorporate design requirements ensuring compliance with all standards for noise emissions and in accordance with Chapter **133** of the Rye City Code. In general, all equipment shall be the smallest and least visibly and sonically intrusive equipment feasible. Unless it is determined that another design is less intrusive or placement is required under applicable law:
 - (a) Antennas located at the top of support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure;
 - (b) Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.
 - (c) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on the utility pole, placed to avoid interfering or creating any hazard to any other use of the public rights-of-way, and located on one side of the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that visibility is limited to the fewest number of people, the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed. In underground areas, the equipment cabinets shall be located underground with any above ground intrusion minimized. If an equipment cabinet must be located aboveground, then the cabinet

shall be a stealth facility and shall substantially incorporate all other concealment elements. If an equipment box must be placed on a pole, the box shall be placed on the pole in such a fashion as to have it front facing the closing boundary of the right-of-way.

- (d) Wiring and cabling shall be neat and concealed within, or within conduit, flush to the support structure, ensuring concealment of these components to the greatest extent possible.
- (e) Ground-mounted or pole-mounted (other than antennas) equipment associated with a wireless telecommunications facility is prohibited in underground areas and shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be undergrounded, located in alleys or otherwise shielded. Ground-mounted equipment shall not interfere with pedestrian or vehicular traffic.
- (f) Wireless telecommunications facilities shall comply with FCC regulations governing radio frequency ("RF") emissions. At all times, every wireless telecommunications facility shall comply with applicable FCC regulations governing RF emissions, and failure to comply shall be treated as a material violation of the terms of any permit or lease. No special use permit shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with those regulations; any areas where occupational or general public exposures will exceed FCC limits are identified, and there is a clear plan addressing safety for any areas where exposures may exceed those limits.
- (g) No towers greater than 80 feet shall be permitted in the public rights-of-way, and no wireless telecommunications facilities shall be permitted aboveground in underground areas; towers less than or equal to 80 feet may be placed in the public rights-of-way only on major roads in the Membership Club zoning district or on golf courses provided that the City Council determines that such towers in the public right-of-way or on the golf course would be the most aesthetically pleasing means to serve an area with low residential density. Any tower design must be as consistent as possible with the corridor in which the facility is placed, and minimize the obtrusiveness of the facility considered individually and as part of a network of wireless telecommunications facilities. For towers proposed to be located in the right-of-way, all other restrictions including, but not limited to equipment type and placement, setback requirements, safety concerns and aesthetics shall still apply.
- (5) No electric meters shall be placed on a utility pole or any other supporting structure.
- (6) Underground installations will have no protrusions above pre-existing grade.
- (7) Any graffiti on any wireless telecommunications facility support structure or any accessory equipment shall be removed within 30 days upon notification of the owner.
- I. Demonstration of compliance with wireless regulations. As part of showing that the proposed location and structure meets the criteria in this law and the wireless regulations, an applicant is required to show how it has complied with the priority lists below unless the applicant can show that compliance is prohibitory:
 - (1) The highest priority locations for all installations are:
 - (a) On existing tall structures or telecommunications towers.
 - (b) Collocation on a site with existing telecommunications towers or tall structures.
 - (c) In commercially zoned areas along Interstate 95, Interstate 287 or railroad tracks.
 - (d) In nonresidential areas or on a golf course.
 - (e) On other property in the City.

- (2) The priority of locations for installations in the residential right-of-way are (assuming, first, compliance with Subsection **I(1)** above), in order of priority:
 - (a) Located on a major road, at least 60 feet or more from the nearest residential unit;
 - (b) Located on other roads but only when required to be nonprohibitory, and at least 60 feet or more from the nearest residential unit;
 - (c) Located on a major road, at least 40 feet from the nearest residential unit;
- (3) Municipal property in Subsection **I(1)** and **(2)** above shall be a higher priority than other locations in the same category.
- (4) Installations in the residential right-of-way shall be micro-wireless facilities only unless this requirement would be prohibitory.
- (5) An applicant is further required to show that its proposed installation or modification:
 - (a) Minimizes the visual impact of the wireless telecommunications facilities and associated supporting structures upon the community, and in particular upon residential units, as proposed and under any modification that could be made to that installation as of right; and
 - (b) Is designed to be consistent with the overall characteristics of the area where the facilities are located; and
 - (c) Has minimized the new supporting structures proposed, and the impact of those supporting structures.
- (d) In considering the visibility of wireless telecommunications facilities, City may consider separately and in conjunction with any nearby or similar facilities, or any other facilities then proposed, the mass and size of the facilities, the scale of the facilities (or the effect of the placement on the mass, size and scale of supporting structures to which or within which the wireless telecommunications facilities may be attached or concealed), and any other factor that may affect the impact on the community. It may consider the elements of a wireless telecommunications facility separately and collectively, and may require a showing the visibility of each element of the wireless telecommunications facility, and the effect on any supporting structure to which the wireless telecommunications facility will be attached, has been minimized.
- (e) It has proposed facilities using universal antennae, each having and utilizing multicarrier capacity to the fullest extent technologically possible.
- (6) The City may approve or require placement in a location that is not the highest priority where the record shows a proposed installation at a different location will result in less impact on the community, considering the specific installation that is proposed and any project of which it is a part that involves installation of more than one wireless telecommunications facility.
- (7) In considering whether a proposal meets the general requirements of this law and the wireless regulations, the City will consider the impact of a planned project as a whole, taking into account the factors specified above.

§ 196-6 Special use permit, special exception permit, and eligible facility permit application requirements.

- A. All applicants for a special use permit or a special exception permit (in the case of a special exception permit only to the extent set forth in Subsection **U** and in the case of an eligible facility permit only to the extent set forth in Subsection **V** for a wireless telecommunications facility or any modification of

such facility shall comply with the requirements set forth in this section. In addition to the information required by § **196-5E**, an applicant for a special use permit must comply with the requirements of this section, as applicable.

- B. An application shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Council, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction, or to revocation of the permit if the permit is issued. No application shall be accepted and no special use permit, special exception permit or eligible facility permit application shall be issued for a property where the building inspector has found, or there exists, a violation of the City Code and where such violation has not been corrected.
- C. Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the Council. Upon notice of incompleteness by the City, the applicable shot clock will reset to zero and the City shall have the original applicable time period permitted by law to act on the completed application. The shot clock shall remain tolled until the applicant submits the required supplemental information. If the application for a wireless telecommunications permit is incomplete, all other permits requested by the same applicant that must be acted upon by the same date as that application will also be deemed incomplete or denied. If any other permit that must be acted upon by the same date as the wireless telecommunications application is incomplete, both it and the wireless telecommunications application shall be declared incomplete or denied.
- D. The applicant shall include a statement in writing that:
 - (1) The applicant's proposed wireless telecommunications facility will be maintained in a safe manner and in compliance with all conditions of the special use permit, special exception permit or an eligible facility permit, without exception, unless specifically granted relief by the Council in writing, as well as all applicable and permissible local codes, ordinances and regulations, including any and all applicable county, state and federal laws, rules and regulations.
 - (2) The construction of the wireless telecommunications facility is legally permissible, including but not limited to the fact that the applicant is authorized to do business in New York state.
- E. Each application for a special use permit or special exception permit shall include a complete plan for the site proposed, and if the application is submitted as part of a larger project that will include multiple sites, a description of that project, and the number and type of installations required, and complete application materials for each site proposed, so that the Council has the ability to and shall review and make a determination with respect to each individually and as part of any larger project. For special use permits or special exception permits, the site plan shall be reviewed and approved by the Council prior to issuance of the special use permit or special exception permit by the City Council. Where a certification is required, the certification shall be in the form of a report containing the information hereinafter set forth, signed by a licensed professional engineer registered in the state and acceptable to the City, unless otherwise noted. The application shall include, to the extent applicable, the following information:
 - (1) Documentation that shows applicant satisfies the requirements of § **196-5E** through **H**, as applicable.
 - (2) Name and address of the engineer or engineers submitting any certifications, and to whom questions regarding the certification should be submitted.
 - (3) Name and address of the property owner, operator and applicant, to include the legal form of the applicant. Name and address of any person who will own equipment associated with the wireless

telecommunications facility.

- (4) Postal address and tax map parcel number of the property.
- (5) Zoning district or designation in which the property is situated.
- (6) Size of the property stated both in square feet and lot line dimensions and a diagram showing the location of all lot lines where the facility is proposed to be located outside of the right-of-way, and within the rights-of-way, the location of the proposed facility in relation to the right-of-way, pedestrian and nonmotorized vehicle pathways and crosswalks, and the location in relation to driveways on the same right-of-way and within 750 feet.
- (7) Location of all residential structures within 750 feet.
- (8) Location of all habitable structures within 750 feet.
- (9) Location of all structures on the property which is the subject of the application, or for the right-of-way, within 250 feet of the proposed facility.
- (10) Location, size and height of all proposed and existing wireless telecommunications facilities and supporting structures at the proposed site.
- (11) Type, size and location of all proposed and existing landscaping.
- (12) The number, type and design of the wireless telecommunications facility(s) proposed and the basis, if any, for the calculations of the wireless telecommunications facility's capacity to accommodate multiple users.
- (13) The make, model and manufacturer of each of the elements of the wireless telecommunications facility.
- (14) A detailed description of each element of the proposed wireless telecommunications facility and any existing support structure which will be utilized, which description shall include, but not be limited to, a description of the supporting structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting. For a modification to a facility, applicant must describe precisely any change in physical dimensions to any portion of the wireless telecommunications facility or and describe in detail any additional equipment installed as part of the modification and any modifications required to the supporting structure (including, but not limited to, modifications to meters, powers supplies, cabling, and guys).
- (15) The frequency, modulation and class of service of radio or other transmitting equipment.
- (16) Transmission and maximum effective radiated power of the antenna(s).
- (17) Direction of maximum lobes and associated radiation of the antenna(s).
- (18) Certification by a qualified RF engineer that NIER levels at the proposed site are within the threshold levels adopted by the FCC.
- (19) The applicant's proposed wireless telecommunications facility maintenance and inspection procedures and related system of records.
- (20) A copy of the FCC license applicable for the use of the wireless telecommunications facility, if any, and a copy of any certificate issued by the State of New York for the facility; and proof that applicant and any person who will own facilities associated with the proposed wireless telecommunications facility are authorized to place the facilities at the location proposed.

- (21) For a tower, certification that a topographic and geomorphologic study and analysis has been conducted and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed tower on the proposed site. The certifying engineer need not be approved by the City.
- (22) Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites signed by a suitable engineer and the provider(s) that will utilize the proposed installation.
- (23) The applicant shall disclose, in writing, any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new wireless telecommunications facility that it constructs.
- (24) The applicant shall provide a notarized affidavit that either the proposed installation meets all laws, codes and ordinances or that it meets the same except as specifically listed on said affidavit.
- (25) Information relating to the expected useful life of the proposed wireless telecommunications facility.
- F. In the case of a new wireless telecommunications facility, the applicant shall be required to submit a report demonstrating its efforts to secure shared use of existing wireless telecommunications facility(s). Copies of written requests and responses for shared use shall be provided to the Council.
- G. Certification that the wireless telecommunications facility and, if applicable, the existing supporting structure both are designed and constructed ("as built") to meet all county, state and federal structural requirements for loads, including wind and ice loads.
- H. After construction and prior to receiving a certificate of compliance, certification that the wireless telecommunications facility and related facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- I. The applicant shall submit a completed long form EAF and a completed visual EAF addendum. The Council may require submission of a more detailed visual analysis based on the results of the visual EAF addendum. Applicants are encouraged to seek preapplication meetings with the City Council to address the scope of the required visual assessment.
- J. A visual impact assessment shall be provided with each application which shall include:
 - (1) A zone of visibility map, which shall be provided in order to determine locations where the facility may be seen.
 - (2) Pictorial representations of before and after views from key viewpoints, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; environmentally sensitive areas; preserves and historic structures normally open to the public; and from any other location where the site is visible to a large number of visitors or travelers. The City will provide guidance concerning the appropriate key sites at a preapplication meeting.
 - (3) An assessment of the visual impact of the facility base, guy wires and accessory buildings from abutting and adjacent properties and streets.
 - (4) Scaled and dimensioned photo simulations of the before and after images of the project and project site from at least three different angles and showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the wireless telecommunications facility.
- K. The applicant shall identify any concealment elements proposed for the wireless telecommunications facility, and for a stealth facility, shall specifically show that the proposed wireless telecommunications facility qualifies as a stealth facility and effectively screen from view its proposed wireless

telecommunications facilities and structures, subject to Council approval.

- L. All utilities serving any wireless telecommunications facility shall be installed underground, embedded in existing construction or otherwise shielded from view and in compliance with all laws, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate. The Council may waive or vary the requirements of undergrounding installation of utilities whenever, in the opinion of the Council, such variance or waiver shall not be detrimental to the health, safety, general welfare or environment, including the visual and scenic characteristics of the area. Where possible, for wireless telecommunications facilities located outside of the rights-of-way wiring and other components shall be located within buildings. Wireless telecommunications facilities installed on the exterior of existing buildings/supporting structures shall be integrated into the design of such buildings/supporting structures. The intent of this provision is to make the installation invisible or indistinguishable from other existing architectural features. Both the wireless telecommunications facility and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the existing supporting structure to which it may be affixed and with the natural surroundings. Where possible, for facilities in the rights-of-way, when existing utility poles are replaced, the wireless telecommunications facility will be placed within a pole approved by the City and the utility.
- M. An access road and parking to assure adequate emergency and service access shall be provided, should such be deemed necessary by the Council. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- N. Every wireless telecommunications facility, and the existing support structures to which wireless telecommunications facilities are attached shall be constructed, operated, maintained, repaired, modified or restored in strict compliance with the then-current version of all technical, safety and safety-related codes adopted by the City, county, state or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. The applicant is responsible for ensuring compliance with the foregoing for the wireless telecommunications facility and any portion of an existing supporting structure affected by the wireless telecommunications facility. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- O. Every person constructing or owning a wireless telecommunications facility shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or law and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- P. The Council intends to be the lead agency, pursuant to SEQRA. The Council shall conduct a review of the proposed project in combination with its review of the application under this chapter.
- Q. An applicant shall submit to the City Engineer the number of completed applications determined to be needed at the preapplication meeting. A copy of the notification of application shall be provided to the legislative body of all adjacent municipalities and to the Westchester County Planning Board.
- R. If the applicant is proposing the construction of a tower or installation on an existing tower or building, the applicant shall examine the feasibility of designing a multicarrier use to extent practicable and consistent with other requirements of this chapter. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the wireless telecommunications facility is not technologically feasible, or is commercially impracticable and creates

an unnecessary and unreasonable burden, based upon:

- (1) The number of FCC licenses foreseeably available for the area.
 - (2) The kind of wireless telecommunications facility proposed, or existing supporting structure that would be utilized.
 - (3) Available space on existing and approved towers.
- S. Unless waived by the Council, there shall be a preapplication meeting required for every special use permit. The purpose of the preapplication meeting will be to address issues which will help to expedite the review and permitting process. Where the application is for the shared use of an existing tower or supporting structure, the applicant can seek to waive any application requirements that may not be applicable. At the preapplication meeting, the waiver requests, if appropriate, will be decided by the City. Costs of the City's consultants to prepare for and attend the preapplication meeting will be borne by the applicant.
- T. Without limiting the foregoing, except where it is demonstrated that denial would result in a prohibition of the provision of wireless services within the meaning of federal law:
- (1) In the rights-of-way, no Towers are permitted except as permitted in § **196-5H(4)(g)**.
 - (2) No wireless telecommunications facilities are permitted within underground areas except those that are located underground.
 - (3) A new or replacement supporting structure, other than a stealth facility or one permitted in § **196-5H(4)(g)**, street lighting or traffic control structure may not be approved that is greater in height from ground level than the average height of existing distribution utility poles in the same area. No extension of an existing supporting structure (other than street lighting or traffic control structures) to permit installation of a wireless telecommunications facility may be approved that unless the addition complies with Subsection **T(5)** and increases the height of the supporting structure by no more than the lesser of 20% or six feet.
 - (4) Except for cabling within a conduit, the lowest edge of any component of the wireless telecommunications facility on a utility pole must be at least 12 feet above the ground unless concealed within the pole.
 - (5) All wireless telecommunications facilities mounted to the side of a supporting structure in the right-of-way, other than in the communications space, must be flush-mounted, sized and painted so that the facility to the extent possible the facility is concealed;
 - (6) All wireless telecommunications facilities mounted to the top of a utility pole must be designed so that the facilities form a continuous and uninterrupted line with the pole, and as a concealment element, are no more than 10% greater in diameter than the pole itself; provided that dipole antennas comprised of a single metal rod not more than 40 inches as measured from the top of the pole long fastened straight upright on, and flush to, the top of the pole, are also acceptable.
 - (7) Any indicator lights should be recessed or otherwise designed so that they present no hazard to traffic or interfere with enjoyment of properties from which the lights may be visible.
 - (8) In addition to any more restrictive provisions of this chapter, in placing wireless telecommunications facilities, the following rules apply:
 - (a) Wireless telecommunications facilities should be at least 40 feet from any residential unit, and located so that the facilities are not directly in front of any front window or door of a residential structure.

- (b) Locations that are less visible from a residential structure are preferred over locations that are more visible.
- (c) With the exception of those facilities that qualify for a special exception permit, locations of wireless telecommunications facilities in the rights-of-way shall be located no closer than 1,000 feet measured in all directions to another wireless telecommunications facility of the same carrier. Wireless telecommunications facilities in the rights-of-way for different carriers shall be located no closer than 600 feet measured in all directions from each other.
- [1] For wireless telecommunications facilities that qualify for a special exception permit in the right-of-way, such facilities shall be located no closer than 400 feet measured in all directions to another wireless telecommunications facility of the same carrier and shall be located no closer than 200 feet measured in all directions to another wireless telecommunications facility for different carriers.
- (d) All wireless telecommunications facilities shall make maximum use of universal antennas capable of serving multiple carriers.
- (e) Stealth and concealment shall have priority over collocation.
- (f) Subject to Subsection T(d) and (e), towers shall have provisions to allow for multiple carriers.
- U. To the extent applicable, every applicant for a special exception permit shall comply with § 196A through D, E(1) through (8), (10), (12) through (20), (22), (24), F through H, K, N, O, Q, S, and T.
- V. To the extent applicable, every applicant for an eligible facility permit shall comply with § 196A through D, E(1) through (8), (10), (11) through (14), (18) through (21), (24), (25), G through J, N, O, Q, and R.

§ 196-7 Failure to pursue an application.

Applicants shall respond to all requests or notices from the City with respect to an application promptly, so that City may meet any applicable deadlines for action on an application. Where an applicant fails to promptly respond, the Corporation Counsel is authorized to notify an applicant that its application is denied for failure to pursue that application, without prejudice to resubmittal of an application. Without limiting the foregoing, if an applicant is notified that its application is incomplete, and there is fails to complete the application within 60 days of the date of the notice, the Corporation Counsel is authorized to notify an applicant that its application is denied for failure to pursue that application, without prejudice to resubmittal of an application even if there is no deadline applicable to action on the application.

§ 196-8 Height of wireless telecommunications facilities.

- A. Wireless telecommunications facilities shall be no higher than the minimum height necessary. Unless an area variance for height is granted by the Board of Appeals, the maximum height of wireless telecommunications facilities approved pursuant to § **196-5H(4)(g)** shall be 80 feet and the maximum height of wireless telecommunications facilities located outside the rights-of-way shall be 90 feet, based on three collocated antenna arrays and ambient tree height of 70 feet. Height shall be measured from ground level, to the highest point on the wireless telecommunications facility, or if higher, the highest point on any extension to an existing supporting structure required to support the wireless telecommunications facility. In towers, universal antennas allowing multicarrier use will be utilized to the extent technologically possible and maximum height shall be reduced accordingly.
- B. The maximum height of any wireless telecommunications facility constructed after the effective date of this chapter shall not exceed that which shall permit operation without artificial lighting of any kind in accordance with municipal, county, state and/or any federal law and/or regulation.

§ 196-9 Visibility of facilities.

- A. Excluding indicator lights satisfying the requirements of § 196-6, wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
- B. Except where inconsistent with concealment elements, towers shall be of a galvanized finish, or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Council, and shall be maintained in accordance with the requirements of this chapter.
- C. Excluding indicator lights satisfying the requirements of § 196-6, if lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within 1,500 feet of all property lines of the parcel on which the wireless telecommunications facility is located.

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§ 196-10 Security of facilities.

All wireless telecommunications facilities shall be secured in a manner which prevents unauthorized access to hazardous components. Specifically:

- A. Where possible, wireless telecommunications facilities and modifications to existing supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; towers will be fenced and shielded to prevent unauthorized access to the structure unless the tower is a stealth facility or the fencing or shielding is inconsistent with required concealment elements; and
- B. To the extent possible, wireless telecommunications facilities shall be installed so that powered elements are readily accessible only to persons authorized to operate or service them.

§ 196-11 Signage.

For towers, unless the City determines that the signage required under this section would be inconsistent with minimizing visual impact, wireless telecommunications facilities shall contain a sign no larger than four square feet to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point of the site. No other signage, including advertising, shall be permitted on any wireless telecommunications facilities, unless required by law, or unless the signage is part of a concealment element. Signs shall be approved by the Board of Architectural Review. Nothing in this section affects rules with respect to signage that may apply to existing support structures.

§ 196-12 Lot size and setbacks.

With the exception for towers approved pursuant to § 196-5H(4)(g):

- A. All proposed towers shall be set back from abutting parcels, recorded rights-of-way and road and street lines a distance sufficient to substantially contain on site all ice-fall or debris from a tower or tower failure and to preserve the privacy and sanctity of any adjoining properties.
- B. Towers, other than towers placed on an existing supporting structure, shall be set back from any property line at least a distance equal to the height of the facility plus 10 feet, or the existing setback requirement of the underlying zoning district, whichever is greater. Further, any accessory facility or structure shall be located so as to comply with the minimum zoning setback requirements for the principal building on the property on which it is situated.
- C. Where a wireless telecommunications facility involves an attachment to an existing building or supporting structure other than a supporting structure in the rights-of-way, the facility, including but not

limited to antennas, accessory supporting structures, and/or other appurtenances, shall be set back from any property line the distance of the setback requirement of the underlying zoning district and shall comply with the setbacks set forth in § **196-51**.

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

- A. The Council may hire any consultant and/or expert necessary to assist the Council in reviewing and evaluating the application and any requests for recertification.
- B. An applicant shall deposit with the City funds sufficient to reimburse the City for all reasonable costs of consultant and expert evaluation and consultation to the Council in connection with the review of any application. The necessary application fee(s) shall be set annually by the City Council and the consultant and expert deposit shall be established on an application by application basis.
- C. The total amount of the funds set forth in Subsection **B** of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed by the Council or its consultant/expert to complete the necessary review and analysis. Additional funds, as required, shall be paid by the applicant. The initial amount of the escrow deposit shall be established at a preapplication meeting with the City. Notice of the hiring of a consultant/expert shall be given to the applicant at or before this meeting.

§ 196-14 Existing facilities.

All wireless telecommunications facilities existing on or before the original effective date of this chapter shall be allowed to continue as they presently exist; provided, however, any owner of such existing facility must submit the inventory report form and provide the City information set forth in § **196-17** to the extent it applies and any modification to existing facilities must comply with this chapter. All other wireless telecommunications facilities existing prior to January 14, 2019 must apply for a special use permit, special exception permit or eligible facility permit and otherwise come into compliance with this chapter.

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

- A. Public hearing and public notification by applicant. Before the City Council acts on any application for a special use permit or special exception permit, it shall hold a public hearing thereon in accordance with the General City Law. To facilitate notification of the public, a public notification list shall be prepared by the applicant, using the most current City of Rye tax maps and tax assessment roll, showing the tax map sheet, block and lot number, the owner's name and owner's mailing address for each property located wholly or partially within 300 feet of the perimeter of the property in any direction. If a property on the public notification list is also listed as a cooperative or an apartment on a list entitled "Apartment List City of Rye," maintained by the City Assessor's office, the notice shall only be mailed to the property owner of record. When the public hearing is required by the City Council, the applicant shall deliver a copy of the public notice provided by the City Planner to all of the property owners contained on the public notification list by certified mail with certificate of mailing. The above mailing and posting notice requirements must be performed in accordance with the following requirements:
 - (1) The delivery of mailing shall be limited solely to the public notice provided by the City Planner.
 - (2) The public notice shall be mailed to all property owners with a certificate of mailing (no return receipt necessary) at a post office or official depository of the Postal Service, at least 14 calendar days prior to the date of the public hearing.
 - (3) At least five business days prior to the public hearing, the applicant shall provide to the City Planner all certificates of mailing.
 - (4) For all application for a special use permit and special exception permit, at least one week preceding the date of the public hearing, at least one sign, a minimum of two feet by three feet in size and carrying a legend prescribed by the City Council announcing the public hearing, shall be posted on the property.

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

- B. The Council shall schedule the public hearing referred to in Subsection A of this section once it finds the application is complete. The Council, at any stage prior to issuing a special use permit or special exception permit, may require such additional information as it deems necessary.
- C. Council may waive any requirement hereof and of § 196-16 as required to comply with state or federal law.

§ 196-16 Action on application for special use permits and special exception permits.

- A. Subject to the requirements of any effective state and federal law or FCC order, the Council will undertake a review of an application pursuant to this chapter in a timely fashion and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.
- B. The Council may refer any application or part thereof to the Board of Architectural Review (BAR) and may refer any application or part thereof to the Planning Commission for their advisory review and comment prior to the public hearing. This referral shall not preclude any final approvals of these or other City boards or departments required by this chapter or other law.
- C. After the public hearing and after formally considering the application, the Council may approve and issue or deny a special use permit or special exception permit. Its decision shall be in writing and shall be based on substantial evidence in the record. The burden of proof for the grant of the permit shall always be upon the applicant.
- D. If the Council approves the special use permit or special exception permit for a wireless telecommunications facility, then the applicant shall be notified of such approval, in writing, within 10 calendar days of the Council's action, and the special use permit shall be issued within 30 days after such approval.
- E. If the Council denies the special use permit or special exception permit for a wireless telecommunications facility, then the applicant shall be notified of such denial, in writing, within 10 calendar days of the Council's action.
- F. The City's decision on an application for a special use permit or special exception permit for a wireless telecommunications facility shall be supported by substantial evidence contained in a written record.

§ 196-17 Recertification of special use permits, special exception permits, and eligible facility permit.

- A. At any time between 12 months and six months prior to the five-year anniversary date after the effective date of the permit and all subsequent fifth anniversaries of the original special use permit, special exception permit, or eligible facility permit for a wireless telecommunications facility, the holder of such permit shall submit a written request for recertification. In the written request for recertification, the holder of such special use permit or special exception permit shall note the following:
 - (1) The name of the holder of the special use permit, special exception permit or eligible facility permit for the wireless telecommunications facility.
 - (2) If applicable, the number or title of the special use permit, special exception permit, or eligible facility permit.

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- (3) The date of the original granting of the special use permit, special exception permit, or eligible facility permit.
 - (4) Whether the wireless telecommunications facility has been moved, relocated, rebuilt, repaired or otherwise modified since the issuance of the special use permit, special exception permit, or eligible facility permit.
 - (5) If the wireless telecommunications facility has been moved, relocated, rebuilt, repaired or otherwise modified, then whether the Council approved such action, and under what terms and conditions, and whether those terms and conditions were complied with and abided by.
 - (6) Any requests for waivers or relief of any kind whatsoever from the requirements of this chapter and any requirements for a special use permit, special exception permit, or eligible facility permit.
 - (7) That the wireless telecommunications facility is in compliance with the special use permit, special exception permit, or eligible facility permit and compliance with all applicable codes, laws, rules and regulations.
 - (8) Whether the facility is still being used; and whether it is the least intrusive means of providing service, including whether it can be reduced in size, combined with or replaced by other facilities or otherwise altered to make it less visible or less audible.
 - (9) Whether it complies with then applicable requirements of the City Code for placement of wireless telecommunications facilities.
 - (10) Whether there have been any changes in the legal status of the applicant or any entity whose facilities are part of the wireless telecommunications facility; and whether all required authorizations and consents are still in full force and effect.
- B. If, after such review, the Council determines that the permitted wireless telecommunications facility is in compliance with the special use permit, special exception permit, or eligible facility permit and all applicable codes, laws and rules; that it continues to be used in the provision of wireless services; that all relevant entities continue to have all necessary authorizations; and that the facility cannot be modified or replaced so that it is less visible or less audible, or has a lesser adverse impact on aesthetics, community character or property values, then the Council shall issue a recertification special use permit, special exception permit, or eligible facility permit for the wireless telecommunications facility, which may include any new provisions or conditions that may be lawfully imposed, or that are required by codes, law or regulation.
- C. If the Council does not complete its review, as noted in Subsection **B** of this section, prior to the five-year anniversary date of the original permit, or subsequent fifth anniversaries, then the applicant for the permitted wireless telecommunications facility shall receive an extension of the special use permit, special exception permit, or eligible facility permit for up to six months, in order for the Council to complete its review.
- D. If the holder of a special use permit, special exception permit or eligible facility permit for a wireless telecommunications facility does not submit a request for recertification of such permit within the time frame noted in Subsection **A** of this section, or if the Council finds that the wireless telecommunications facility has been moved, relocated, rebuilt, or otherwise modified without approval of such having been granted by the Council under this chapter, or that the conditions for recertification have not been met, then such special use permit, special exception permit, or eligible facility permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, special exception permit, or eligible facility permit or subsequent fifth anniversaries, unless the holder of the special use permit, special exception permit, or eligible facility permit

adequately demonstrates to the Council that extenuating circumstances prevented a timely recertification request. If the Council agrees that there were legitimately extenuating circumstances, then the holder of the permit may submit a late recertification request. Council may also recertify subject to additional conditions that it establishes, and contingent on satisfaction of those conditions.

§ 196-18 Extent and parameters of special use permit, special exception permit and eligible facility permit.

The extent and parameters of a special use permit, special exception permit or an eligible facility permit for a wireless telecommunications facility shall be as follows:

- A. Such permit shall be nonexclusive.
- B. Such permit shall not be assignable or transferable without the express written consent of the Council.
- C. Such permit may be revoked, canceled or terminated for a violation of the conditions and provisions of the special use permit or special exception permit for a wireless telecommunications facility, or for a material violation of this chapter or applicable law.
- D. Such permit shall be valid for a period of five years, or such longer period as is required by state law, but the permit may be recertified upon application, which application must demonstrate:
 - (1) The wireless telecommunications facility is still in use; and for facilities where a demonstration of need or effective prohibition was required, that the facility remains necessary or that recertification is required to avoid an effective prohibition; and
 - (2) The impact of the wireless telecommunications facility cannot reasonably be further minimized.

§ 196-19 Application fee.

- A. At the time that a person submits an application for a special use permit or special exception permit for a new wireless telecommunications facility, such person shall pay an application fee to the City of Rye as set annually by the City Council set forth in the fee schedule. If the application is for a special use permit for collocating on an existing wireless telecommunications facility, the applicant shall also pay a fee as set forth in the fee schedule.
- B. Applicants for recertification of a special use permit or special exception permit for a wireless telecommunications facility shall also pay a fee as set forth in the fee schedule.

§ 196-20 Performance security.

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

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

- A. In order to verify that the holder of a special use permit, special exception permit, or eligible facility permit for a wireless telecommunications facility and any and all lessees, renters and/or licensees of a

wireless telecommunications facility place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including but not limited to towers, antennas and buildings or other supporting structures constructed or located on the permitted site. The applicant shall pay for costs associated with such an inspection.

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

§ 196-22 NIER certification.

- A. Every wireless telecommunications facility must meet FCC RF emission standards as the same may be amended from time to time.
- B. Except as prohibited by law, City may require any person controlling a wireless telecommunications facility to provide proof that the wireless telecommunications facility satisfies FCC RF emission standards.
- C. An applicant for a special use permit, special exception permit, or eligible facility permit, shall:
 - (1) At the time of an application provide information sufficient to show that the facility will comply with FCC RF standards; and
 - (2) Immediately after installation, submit field test measurements sufficient to show compliance with FCC RF standards at full operational power. Measurements should be cumulative, and not just based on facilities that a particular person may own or install at a location.
- D. All special use permit, special exception permit, and eligible facility permit holders shall submit an annual recertification showing that the wireless telecommunications facility satisfies FCC RF emission standards.

§ 196-23 Liability insurance.

- A. A holder of a special use permit or special exception permit for a wireless telecommunications facility shall secure and at all times maintain public liability insurance, property damage insurance and umbrella insurance coverage for the duration of the special use permit in amounts as set forth below:
 - (1) Special use permits: commercial general liability: \$5,000,000 per occurrence, \$10,000,000 aggregate.
 - (2) Automobile coverage: \$1,000,000 per occurrence, \$2,000,000 aggregate.
- B. The commercial general liability insurance policy shall specifically include the City and its officials, employees and agents as additional insureds.
- C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least 30 days' written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the City at least 15 days before the expiration of the insurance which such policies are to renew or replace.

- F. Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than 15 days after the grant of the special use permit or special exception permit, the holder of the special use permit or special exception permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts. All insurance carriers must have an A.M. Best rating of at least A and be authorized to do business in New York.

§ 196-24 Indemnification.

Any special use permit or special exception permit issued pursuant to this chapter shall contain a provision with respect to indemnification. Such provision shall require the holder of the special use permit, special exception permit, or eligible facilities permit, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless and exempt the City, officials of the City, its officers, agents, servants, and employees from any and all penalties, damage or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of a wireless telecommunications facility within the City (including, by way of example and not limitation, the same resulting from modification to an existing supporting structure). With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.

§ 196-25 Penalties for offenses.

- A. Civil sanctions. Any person who violates any of the provisions of this chapter shall be liable for a civil penalty of not more than \$5,000 for every such violation. Each consecutive day of violation will be considered a separate offense. Such civil penalty may be released or compromised by the City Council. In addition, the City Council shall have power, following a hearing, to direct the violator to comply with the provisions of this chapter.
- B. Criminal sanctions. Any person, firm or corporation who or which willfully violates any of the provisions of this chapter or permits promulgated thereunder, excluding provisions set forth in the rules and regulations promulgated thereunder, upon conviction thereof of the first offense, shall be guilty of a violation punishable by a fine of not less than \$5,000 and not more than \$10,000 and, for a second offense and each subsequent offense, shall be guilty of a violation punishable by a fine of not less than \$10,000 nor more than \$20,000 or a term of imprisonment of not more than 15 days, or both. Each consecutive day of violation will be considered a separate offense.
- C. Notwithstanding anything in this chapter, the holder of the special use permit, special exception permit, or eligible facility permit for a wireless telecommunications facility may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the holder of the special use permit, special exception permit, or eligible facility permit to termination and revocation of such permit. The City may also seek injunctive relief to prevent the continued violation of this chapter.

§ 196-26 Default and/or revocation.

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

- B. If within the period set forth in Subsection **A** above the wireless telecommunications facility is not brought into compliance with the provisions of this chapter, or of the special use permit, special exception permit, or eligible facility permit or substantial steps are not taken in order to bring the affected wireless telecommunications facility into compliance, then the Council may revoke such special use permit or special exception permit for a wireless telecommunications facility and shall notify the holder of the special use permit or special exception permit within 48 hours of such action.
- C. Without limiting the foregoing, if a supporting structure, accessory facility or structure, or tower no longer complies with applicable codes, and may no longer be safely used to support other elements of a wireless telecommunications facility, the City may require removal of those elements, in addition to taking any action against the owner of the supporting structure or tower.

§ 196-27 Removal of wireless telecommunications facilities.

- A. Under the following circumstances, the Council may determine that the health, safety and welfare interests of the City warrant and require the removal of a wireless telecommunications facility:
 - (1) A wireless telecommunications facility with a permit has been abandoned (i.e., not used as a wireless telecommunications facility) for a period exceeding 90 days or a total of 180 days in any 365-day period, except for periods caused by force majeure or acts of God.
 - (2) A permitted wireless telecommunications facility falls into such a state of disrepair that it creates a health or safety hazard.
 - (3) A wireless telecommunications facility has been located, constructed or modified without first obtaining the required special use permit, or any other necessary authorization.
 - (4) A wireless telecommunications facility that has allowed its special use permit or special exception permit to lapse or has otherwise failed to timely comply with providing the City with the required inspection reports, NIER certifications or other information in order to confirm such facility's compliance with this chapter.
- B. If the Council makes such a determination as noted in Subsection **A** of this section, then the Council shall notify the holder of the special use permit or special exception permit for the wireless telecommunications facility within 48 hours that said wireless telecommunications facility is to be removed. The Council may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facility.
- C. The holder of the special use permit or special exception permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facility, and all associated supporting structures or portions of supporting structures and accessory facilities and structures used solely by it, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Council. However, if the owner of the property upon which the wireless telecommunications facility is located wishes to retain any access roadway to the wireless telecommunications facility, the owner may do so with the approval of the Council.
- D. If removal, or substantial progress to complete removal has not occurred within 90 days after the permit holder has received notice, then the Council may order officials or representatives of the City to remove the wireless telecommunications facility and associated structures at the sole expense of the owner or permit holder.
- E. If the owner of property that is removed does not claim the property and remove the property from the site to a lawful location within 10 days, then the City may take steps to declare the property abandoned and sell it and its components.

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

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

- A. Any applicant can request the waiver of application requirements that are inapplicable to their permit application. Such request shall be in writing. Requests should be discussed at the pre-application meeting. The applicant shall have the burden of supporting such requests. Determinations as to applicability of application requirements shall be made by the City.
- B. In determining permit conditions, the City Council can waive inapplicable permit requirements, consistent with the policy goals and priorities of this chapter. The applicant shall have the burden of supporting such requests. Determinations as to applicability of permit condition requirements shall be made by the City Council.

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

- A. To the extent that the holder of a special use permit, special exception permit, or eligible facility permit for a wireless telecommunications facility has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a special use permit, special exception permit, or eligible facility permit shall adhere to and comply with all applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting and security, are changed and/or are modified during the duration of a special use permit, special exception permit, or eligible facility permit for a wireless telecommunications facility, then the holder of such permit shall conform the permitted wireless telecommunications facility to the applicable changed and/or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard or provision, or earlier as may be required by the issuing entity.

§ 196-30 Conflict with other laws.

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

§ 196-31 Severability.

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

§ 196-32 Enforcement.

This chapter shall be enforced by the Building Inspector or the City Engineer in the same manner as provided in Chapter 197, Zoning.

§ 196-33 **Authority.**

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

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 shall take effect immediately upon filing with the Secretary of State.



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: December 30, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Resolution to amend the 2023 Adopted Fees and Charges for the Boat Basin to increase certain summer fees for residents and non-residents.

FOR THE MEETING OF:

January 4, 2023

RECOMMENDATION: That the Council amend the 2023 Adopted Fees and Charges for the Boat Basin Enterprise Fund.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: See attached memo.

Rodrigo Paulino
Boat Basin Supervisor
650 Milton Rd
Rye, New York 10580



Tel: (914) 967-2011
E-mail: Rpaulino@ryeny.gov
<http://www.ryeny.gov>

Boat Basin

Memorandum

To: Greg Usry, City Manager
From: Rodrigo Paulino, Boat Basin Supervisor
Date: 12/21/2022
Re: 2023 Summer Fees

The Boat Basin Commission is requesting that the City Council amend the following 2023 Adopted Fees and Charges for the Boat Basin Enterprise Fund:

- Additional Parking pass – Currently \$50 - New Fee \$60
- Metered electric on docks – Currently \$.50 per KW – New Fee \$1.00 per KW
- Floats – Currently \$500 – New fee \$600
- Late Fee – Currently 5 % - New fee that the Commission recommends is the normal 5% late fee for the first 2 months. 1% late fee monthly after the 2 initial months.
- Mooring Permit – Currently \$250 – New Fee \$300
- Ramp Launch Fee – Currently \$35 – New Fee \$40
- Storage Container for contractors (4) - Currently \$700 yearly – New fee \$1,000 per container.



CITY COUNCIL AGENDA

DEPT.: Rye Golf Club

DATE: January 4, 2023

CONTACT: Chris Correale, General Manager

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

FOR THE MEETING OF:

January 4, 2023

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council approve the appointments.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood XX Other:

BACKGROUND: Elections concluded December 6, 2022 and appointments are effective as of the first of each year (January 1, 2023 in this case). Akhil Kumar and Terrance McCartney were elected to the Commission for three-year terms.

See attached memo.



CITY OF RYE
Golf Club

Interoffice Memorandum

To: The Rye City Council

From: Rye Golf Club Commission

Date: December 28, 2022

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, 2023. The Rye Golf Club Commission voted to accept these results and requests that Terrance McCartney (City Of Rye Resident) and Akhil Kumar (City of Rye Resident) are appointed to 3 year terms effective Janaury 1, 2023.

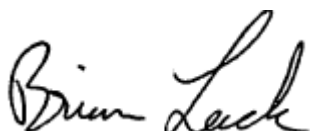
Dec 6, 2022

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.

Results - 2023 Commission Election

Start: 2022-11-22 09:23:15 America/New_York

End: 2022-12-06 09:00:00 America/New_York

Turnout: 207 (10.2%) of 2032 electors voted in this ballot.

Rye Golf Club Commission

Option	Votes
Akhil Kumar	180 (50.3%)
Terrence McCartney	178 (49.7%)

VOTER SUMMARY

Total	207
Abstain	10 (4.8%)





CITY COUNCIL AGENDA

DEPT.: City Council

DATE: January 4, 2023

CONTACT: Mayor Josh Cohn

AGENDA ITEM: Appointment of the 2023 Deputy Mayor by the Mayor.

FOR THE MEETING OF:

January 4, 2023

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: that the following resolution be adopted:

RESOLVED, that _____ be appointed the Deputy Mayor for a one-year term commencing January 1, 2023, to serve as Acting Mayor in the Mayor's absence.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: Section § C7-2, "Deputy Mayor" of the City Charter stipulates that "On or before the tenth day of January following his election, and within ten (10) days after any vacancy in the office of Deputy Mayor shall occur, the Mayor shall appoint a member of the Council as Deputy Mayor, to hold office as long as he remains such member and at the pleasure of the Mayor."



CITY COUNCIL AGENDA

DEPT.: City Council

DATE: January 4, 2023

CONTACT: Mayor Josh Cohn

AGENDA ITEM: Designation of the City Council's Audit Committee by the Mayor.

FOR THE MEETING OF:

January 4, 2023

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: that the following resolution be adopted:

RESOLVED, that two Council members be appointed to the City Council's Audit Committee for a one-year term commencing January 1, 2023.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: The Audit Committee was established at the January 19, 1977 City Council Meeting to facilitate Council participation in the City audits. The resolution stipulated that the Audit Committee consist of the Mayor and two Council members, appointed by the Mayor, to meet at least once yearly after completion of the independent audit.



CITY COUNCIL AGENDA

DEPT.: City Council

DATE: January 4, 2023

CONTACT: Mayor Josh Cohn

AGENDA ITEM: Designation of the City Council Liaisons by the Mayor.

FOR THE MEETING OF:

January 4, 2023

RECOMMENDATION: That the Council approve the appointments as presented by the Mayor.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: Designation of the City Council Liaisons by the Mayor for the following Boards and Committees:

Board of Appeals
Board of Architectural Review
Boat Basin Commission
Chamber of Commerce
Conservation Commission/Advisory Council
Emergency Medical Services
Finance Committee
Flood Advisory Committee
Human Rights Commission
Landmarks Advisory Committee
Planning Commission

Police Advisory Committee
Recreation Commission Rye
Rye City School District
Rye Free Reading Room
Rye Golf Commission
Rye Playland Advisory Committee
Rye Senior Advocacy Committee
Rye Sustainability Committee
Rye Town Park Commission
Traffic & Pedestrian Safety Committee



CITY COUNCIL AGENDA

DEPT.: City Manager's Office

DATE: January 4, 2023

CONTACT: Greg Usry, City Manager

ACTION: Designation of the official City newspaper.

FOR THE MEETING OF:

January 4, 2023

RYE CITY CODE,

CHAPTER
SECTION

RECOMMENDATION: That the Mayor and City Council designate the Journal News as the official City newspaper for purposes of publishing legal notices.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: The Rye City Charter requires that the Council designate a newspaper circulated regularly at least once a week in the city as the official newspaper of the city. A daily newspaper provides the City staff with the most flexibility in meeting notice deadlines. Each of the newspapers covering the City provides different types of coverage but working with a weekly paper is much more difficult in meeting notice deadlines and a monthly paper cannot meet the notice needs of the City.