

CITY OF RYE

NOTICE

There will be a regular meeting of the City Council of the City of Rye on Wednesday, November 5, 2014, at 7:30 p.m. in Council Chambers at City Hall.

AGENDA

1. Pledge of Allegiance.
2. Roll Call.
3. General Announcements.
4. Draft unapproved minutes of the regular meetings of the City Council held October 8, 2014 and October 22, 2014 and the informal minutes of the Joint Meeting of the City Council and Board of Education held October 8, 2014.
5. Issues Update/Old Business.
6. Presentation of the FY 2015 Budget by the City Manager.
7. Consideration to set a Public Hearing on the 2015 Budget for December 3, 2014.
8. Continuation of the Public Hearing to change the zoning designation of County-owned property located on Theodore Fremd Avenue and North Street to the RA-5 District to provide for the construction of affordable senior housing.
9. Consideration to set a Public Hearing to add a proposed Local Law to the Rye City Code to establish a Sustainable Energy Loan Program in the City of Rye in accordance with Article 5-L of the General Municipal Law.
10. Residents may be heard on matters for Council consideration that do not appear on the agenda.
11. Miscellaneous communications and reports.
12. New Business.
13. Adjournment.

The next regular meeting of the City Council will be held on Wednesday, November 19, 2014 at 7:30 p.m. including a Budget Workshop. The City Council will hold Budget Workshops on Wednesday, November 12, 2014 and Monday, November 17, 2014 beginning at 7:30 p.m.

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

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



CITY COUNCIL AGENDA

NO. 4

DEPT.: City Clerk

DATE: November 5, 2014

CONTACT: Dawn Nodarse

AGENDA ITEM Draft unapproved minutes of the regular meetings of the City Council held October 8, 2014 and October 22, 2014 and the informal minutes of the Joint Meeting of the City Council and Board of Education held October 8, 2014, as attached.

FOR THE MEETING OF:

October 22, 2014

RYE CITY CODE,

CHAPTER
SECTION

RECOMMENDATION: That the Council approve the draft minutes.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: Approve the minutes of the regular meetings of the City Council held October 8, 2014 and October 22, 2014 and the informal minutes of the Joint Meeting of the City Council and Board of Education held October 8, 2014, as attached.

DRAFT UNAPPROVED MINUTES of the
Regular Meeting of the City Council of the City of
Rye held in City Hall on October 8, 2014 at 8:00 P.M.

PRESENT:

JOSEPH A. SACK Mayor
LAURA BRETT
KIRSTIN BUCCI
JULIE KILLIAN
TERRENCE McCARTNEY
RICHARD MECCA
RICHARD SLACK
Councilmembers

ABSENT: None

The meeting was called to order at 8:20 p.m. Mayor Sack announced that the start of the meeting had been delayed because the City Council and School Board had been in executive session at the end of the Joint Meeting of the two boards that was held immediately preceding this meeting.

1. Pledge of Allegiance

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

2. Roll Call

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

3. General Announcements by the Council

Announcements were made regarding the Sustainability Committee, Rye Golf Club Elections, Breast Cancer Awareness month and other events and activities that may be of interest to the community.

4. Draft unapproved minutes of the regular meeting of the City Council held September 10, 2014

This agenda item was deferred to the October 22nd meeting.

5. Issues Update/Old Business

There was nothing discussed under this agenda item

6. Continuation of the Public Hearing to change the zoning designation of County-owned property located on Theodore Fremd Avenue and North Street to the RA-5 District to provide for the construction of affordable senior housing

Councilman Slack summarized activity that has occurred since the public hearing was opened in February. He said the Council has most of the information needed, but there are a couple of outstanding issues. A wetlands report has been received, which needs to be reviewed by a wetlands expert, and issues related to density on the site must be explored in order to determine the correct number of units that should be constructed on the site if the zoning change is approved. City Planner Miller reviewed the number of units that have been proposed for the site since it was first considered and said that the City can evaluate impacts from a review of the Environmental Assessment Form (EAF) submitted by the applicant plus the additional information provided as a result of Council questions and a review of the wetlands issues. He suggested the Council consider issuing a Negative Declaration in tandem with the zoning decision. Since the site plan would need to be reviewed by other boards, the Council could consider defining parameters in the SEQRA decision for future Boards to use when considering the application. Mayor Sack said that the County has indicated that they may make infrastructure improvements to the area including relocating a sewer line and traffic and safety improvements. He asked the Council subcommittee consisting of Councilmen Slack and McCartney and Councilwoman Bucci, to work with Corporation Counsel Wilson and City Planner Miller to draft a Resolution for the next Council meeting. There was a discussion regarding whether the SEQRA and zoning decision should be included in the same or separate Resolutions.

Public Comment:

Clark Neuringer, the architect for the project, said that the density issue should be part of the Planning Commission review process and that the Council should focus on the zoning proposal. *Walter Suarak* asked if the location of the site for affordable housing would be subject to attack in the housing settlement. Councilwoman Brett said that the concerns that have been raised have to do with all affordable housing being located in a single area.

Councilman Slack made a motion, seconded by Councilman McCartney and unanimously carried, to keep the public hearing open to the October 22nd meeting.

7. Continuation of Public Hearing to amend local law Article 6, "Council", Section § C6-2, "Powers and duties", Article 8 "City Manager", Section § C8-2, "Powers and duties of City Manager" and Article 12 "Department of Police", Section § C12-1, "Head of Department; subordinates" of the Charter of the City of Rye to provide the City Council with the authority to approve the appointment, suspension or removal of the Police Commissioner

Mayor Sack introduced this agenda item by saying a letter had been submitted by several former Councilmembers and Mayors in opposition to the proposed Charter Change. He referred to a statement in the letter that said that City Councils already have approval authority over the

selection of the Police Commissioner. He said this was not the case but if people already think the Council has this power, why not make the change. He said the Council is not looking to dismantle the City Manager form of government. The impetus is that the law, as written, is not working out. He did suggest that the portion of the draft law that deals with the suspension or removal of the Police Commissioner be removed.

Public Comment:

Former Councilman *John Alfano* spoke in favor of the proposed change saying that the City Manager has too many people reporting to him and the Council should have supervision over key department heads. *Joseph Murphy, Matt Fahey*, who read the entire letter that Mayor Sack had referred to earlier, *Shari Punyon, Thomas Lavan, Linda Lefkowitz, Harvey Geller, Leon Sculti, and Meg Cameron*, who also read a letter from former Mayor John Carey, spoke against the proposed local law. Their comments included the suggestion that any change to the Charter, especially one that would modify the City Manager form of government should be done by Charter Commission or public referendum; questioned why the Police Commissioner position was different from other positions; said making this change makes it look like there is something wrong in the Police Department; and said the Council has a specific function and should not take on too much. *Debbie Reisner*, who said she was representing the League of Women Voters, offered to hold an issue forum on the matter.

The members of the Council thanked the members of the public for their comment and each member, provided their own reasons for being in support of the proposed local law. Some of the reasons stated included: providing approval power for the hiring of the Police Commissioner will not damage the Council and Manager form of government; allowing the Council the power to consent to the City Manager's choice would improve that form of government; the job of Police Commissioner is different because the Police Department impacts residents on a daily basis; the public perception that the Council has the authority to approve the selection of a Police Commissioner needs to be formalized; the authority would be a check and balance, which would allow for minority voices to be heard; and, the Council relies on the advice of Corporation Counsel as to what decisions require a public referendum. Several members of the Council stated that they were now more comfortable with the proposed law with the deletion of the section that dealt with the disciplining or removal of the Police Commissioner.

Councilwoman Brett made a motion, seconded by Councilwoman Killian and unanimously carried, to close the public hearing.

Councilwoman Brett made a motion, seconded by Councilwoman Killian, to adopt the following local law:

**CITY OF RYE
LOCAL LAW NO. 6 2014**

A local law to amend the City Charter of the City of Rye Article 6 "Council", Article 8 "City Manager", and Article 12 "Department of Police" to provide

the City Council with the authority to approve the appointment of the Police Commissioner as follows:

Section 1: Chapter C. Charter.

Article 6. Council

§ C6-2. Powers and duties.

C. The Council shall appoint the City Manager as hereinafter provided and shall appoint a Corporation Counsel or hire an attorney as an independent contractor. Such Counsel or attorney shall be engaged in the practice of law in this state for at least five years immediately preceding his appointment or hiring. The Council shall also have approval authority over the appointment of the Police Commissioner.

Section 2.

Article 8. City Manager

§ C8-2. Powers and duties of City Manager.

B. **Subject to Article 12, Section C.12-1.A,** he shall appoint a City Comptroller, City Clerk, City Engineer, City Assessor, Building inspector, City Marshal, registrar of Vital Statistics and the heads of such other departments as may hereafter be created by the Council. All such officers shall in the performance of their duties be subject to the directions and supervision of the City Manager. Except for the Police Department, he may also appoint all subordinates in the departments headed by such officers, or he may authorize any administrative officer who is subject to his direction and supervision to exercise such power, subject to his approval, with respect to subordinates in that officer's department, office or agency.

C. **Subject to Article 12, Section C.12-1.A,** he shall, when he deems it necessary for the good of the service, suspend or remove any city officer or employee whom he may appoint or employ, except as otherwise provided by law.

I. He may, during the absence or disability of the City Comptroller, City Clerk, City Assessor or the head of any other office or department under his direction and supervision, assume all the powers of such office or department; and also, with the exception of the Police Commissioner, he may designate one of the employees in such office or department as a deputy who shall have the powers and duties of the City Comptroller, City Clerk, City Assessor or the head of such other office or department, as the case may be, during the absence or disability of such officer or during a vacancy in such office or department. With respect to the Police

Commissioner, the Manager shall obtain the consent of the Mayor and City Council.

Section 3.

Article 12. Department of Police

§ C12-1. Head of Department; subordinates.

- A. There shall be a Department of Police, the head of which shall be the Commissioner of Police, who shall be appointed by the City Manager, and he shall serve at the pleasure of the City Manager except that the City Manager shall obtain the consent of the Mayor and City Council when appointing, the Police Commissioner. The Commissioner of Police shall have at least the qualifications and experience specified by the Council.

Section 4: Severability clause

Section 5: This local law will take effect immediately on filing in the office of the Secretary of State.

ROLL CALL:

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney, Mecca and Slack
NAYS: None
ABSENT: None

The Local Law was adopted by a 7-0 vote.

8. Continuation of Public Hearing to amend local law Chapter 197, "Zoning", of the Rye City Code by adding Section 197-15, "Special Permit for Historic Preservation in the B-2 Central Business District" to permit banks on the first floor of a building when certain conditions are met upon approval of a Special Use Permit by the City Council

Councilwoman Brett made a motion, seconded by Councilman Sack and unanimously carried to adjourn the public hearing to the October 22nd meeting.

9. Continuation of Public Hearing to amend local law Chapter 76, "Dogs", Section §76-5, "Running at large prohibited" and Section §76-6, "When leash required" to establish regulations for the leashing of dogs at Rye Town Park

Councilwoman Brett made a motion, seconded by Councilman Sack and unanimously carried to adjourn the public hearing to the October 22nd meeting.

10. Petition of Old Post Road Associates, LLC to change the zoning designation and amend the Zoning Ordinance for the property located at 120 Old Post Road to a new zone RA-6: Active Senior Resident District to provide for the construction of apartments for active seniors in an age-restricted development

Jonathan Kraut, attorney for Alfred Weisman Real Estate the applicant and owner of the property, made the presentation on behalf of his client. The property is a vacant three-story office building that has plummeted in value over the last five years, receiving tax reductions of approximately 54%. A previous proposal to put a hotel on the property was unsuccessful due to community opposition. Mr. Kraut said that none of the current allowed uses which include public recreation, education, extension of welfare uses and railroad passenger stations, provide a functional use for the property. The applicant is proposing what they consider to be a credible possible use of the property - a 135 unit luxury residential facility for people 55-years and older, with no children allowed - a use which can be created legally through zoning laws. Mr. Kraut requested that the Council declare itself lead agency under SEQRA and refer the petition to the Planning Commission for their review. There was a discussion about whether the Council should declare itself lead agency prior to referring it to the Planning Commission and whether or not the proposal was relevant to the City's Master Plan. City Planner Miller said that just because a Master Plan is old doesn't mean it is not relevant. He said the request is only to change the zoning for one specific area and the process will require an extensive environmental review.

Councilwoman Brett made a motion, seconded by Councilman McCartney and unanimously carried, to adopt the following Resolution:

RESOLVED that the City Council of the City of Rye hereby declares its intention to declare themselves Lead Agency under SEQRA and refers the petition of Old Post Road Associates to change the zoning designation and amend the Zoning Ordinance for the property located at 120 Old Post Road to a new RA-6: Active Senior Resident District to provide for the construction of apartments for active seniors in an age restricted development to the Planning Commission for their review.

11. Summary of the 2015 Budget Process and Consideration of setting the 2015 Budget Workshop schedule

City Manager Culross said that the Budget schedule dates had previously been sent to the Council, but the order of presentations has been amended as follows:

Wednesday, November 5 th :	Presentation of the Budget
Wednesday, November 12 th :	Capital Projects Fund
	Building & Vehicle Fund
	Department of Public Works

Monday, November 17 th :	Public Safety: Police and Fire Recreation Golf Enterprise Fund Boat Basin Enterprise Fund Rye TV Special Review Fund
Wednesday, November 19 th :	Rye Free Reading Room Contract Service Agencies
Wednesday, December 3 rd :	Public Hearing on the Budget
Wednesday, December 17 th :	Adoption of the Budget

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

Jim Amico spoke about issues related to the Police Department including the present and former Police Commissioners; the role of the department in enforcement of the speed reduction adopted for “the loop”; and the lack of police presence in the schools. He also spoke about Brian Dempsey, Chair of the Traffic and Pedestrian Safety Committee, and the fact that his firm has received contracts from the City for traffic engineering work. Corporation Counsel Wilson said that the question of Mr. Dempsey’s job had been reviewed by the Ethics Committee prior to his being appointed to the Board. *Anne McCarthy* said there was an appearance of impropriety and maybe Mr. Dempsey should be dealt with as a consultant. A few members of the Council suggested that it may be time to reconsider policies regarding volunteer positions.

Ray Tartaglione spoke about Hen Island. Among other things, he thanked the Council for visiting Hen Island and said he wanted the solution for Hen Island to be the best for the residents of Rye, which are not always aligned with the interests of the County. Mayor Sack said that no final determination has been made yet regarding Hen Island.

13. Consideration of a request by the Leukemia and Lymphoma Society for use of city streets on Saturday, November 1, 2014 from 5:00 p.m. to 9:00 p.m. for their annual *Light the Night Walk* event

Councilwoman Killian made a motion, seconded by Councilwoman Brett and unanimously carried, to adopt the following Resolution:

RESOLVED, that the City Council of the City of Rye hereby approves the request of the Leukemia and Lymphoma Society for use of city streets on Saturday, November 1, 2014 from 5:00 p.m. to 9:00 p.m. for their annual *Light the Night Walk* event.

14. Consideration of a request by the Recreation Department to hold their 38th annual *Turkey Run* on Saturday, November 29, 2014 during Thanksgiving Weekend

Councilwoman Brett made a motion, seconded by Councilwoman Killian and unanimously carried, to adopt the following Resolution:

RESOLVED, that the City Council of the City of Rye hereby approves the request of the Recreation Department for the use of city streets to hold their 38th annual *Turkey Run* on Saturday, November 29, 2014 during Thanksgiving Weekend.

15. Consideration of a request by the Rye Merchants Association to close a portion of Purchase Street on Sunday, November 30, 2014 from 10:00 a.m. to 3:00 p.m. for the Mistletoe Magic event.

Councilwoman Killian made a motion, seconded by Councilwoman Brett and unanimously carried, to adopt the following Resolution:

RESOLVED, that the City Council of the City of Rye hereby approves the request of the Rye Chamber of Commerce to close a portion of Purchase Street on Sunday, November 30, 2014 from 10:00 a.m. to 3:00 p.m. for the *Mistletoe Magic* event.

16. Miscellaneous Communications and Reports

There was nothing reported under this agenda item.

17. New Business

There was nothing reported under this agenda item.

18. Adjournment

There being no further business to discuss Councilwoman Killian made a motion, seconded by Councilwoman Brett and unanimously carried, to adjourn into executive session to discuss personnel matters and not return to the regular meeting at 11:35 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk

DRAFT UNAPPROVED MINUTES of the
Regular of the City Council of the City of Rye held in
City Hall on October 22, 2014 at 7:30 P.M.

PRESENT:

JOSEPH A. SACK Mayor
LAURA BRETT
KIRSTIN BUCCI
JULIE KILLIAN
TERRENCE McCARTNEY
RICHARD MECCA
RICHARD SLACK
Councilmembers

ABSENT: None

The Council convened at 6:35 p.m. Councilman Mecca made a motion, seconded by Councilman McCartney and unanimously carried to immediately move into executive session to discuss personnel. Councilman McCartney made a motion, seconded by Councilman Mecca and unanimously carried, to adjourn the executive session at 7:30 p.m. The regular meeting began at 7:35 p.m.

1. Pledge of Allegiance

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

2. Roll Call

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

3. General Announcements by the Council

Announcements were made regarding various City departments and boards as well as events that may be of interest to the public. The Council offered congratulations to Eleanor Militana on her appointment as Assistant City Manager.

4. Draft unapproved minutes of the regular meetings of the City Council held September 10, 2014 and October 8, 2014 and the informal minutes of the Joint Meeting of the City Council and Board of Education held October 8, 2014

Councilwoman Brett made a motion, seconded by Councilman McCartney and unanimously carried, to approve the draft minutes of the regular meeting of the City Council held on September 10, 2014.

Approval of the minutes of the regular meeting of the City Council held on October 8, 2014 and the informal minutes of the Joint Meeting of the City Council and Board of Education was deferred.

5. Issues Update/Old Business

Deer Mayor Sack noted that this issue has been discussed by prior Councils but no one has come to a conclusion as to what to do. The District One Committee in Greenhaven met recently and would like the City Council to make this issue a priority. The Mayor said he reached out to representatives of the County including Deputy County Executive Kevin Plunkett, Chief of Staff George Oros and John Baker, the staff “deer control expert”, regarding a regional approach to the issue and asked them to consider convening a regional meeting. They said that if the City wants to engage in a deer control program – primarily culling by use of bow and arrow - the County will assist us. The Mayor suggested that the City could ask John Baker to come to another City Council meeting and suggested deferring further discussion until after a regional meeting is held or John Baker speaks at a Council meeting.

Rock Chipping Mayor Sack said that this issue has come up again recently in connection with a property on Highland Avenue that has become very disruptive to the neighborhood. City Manager Culross provided an overview of the requirements in the City to do rock chipping. He said that what is being done at the site is legal under the existing law and if the Council wanted to change it, they could make a legislative change. Mayor Sack suggested the Council may want to revisit the issue of imposing more restrictive measures to the current law. There was a lengthy discussion among the Council, impacted residents and the property developer about the issue. Residents speaking included: *Mel Durkee, Francis Ginsberg, Adele Centanni, Nancy Jane Carson, Doug Worman and Bob Zahm*. They raised issues regarding quality of life impacts to the community including health risks, social, economic and political costs; amending the Zoning Code; damage to trees; drainage issues; safety issues; and possibly changing the permitting process. *David Turiano*, the developer of the project under discussion, addressed issues related to his project and suggested changes that he would implement to deal with concerns raised by neighbors. Councilman Slack suggested that staff find out how other communities deal with the issue of rock chipping. Councilwoman Brett suggested that a subcommittee or task force should be set up to study the issue and undertake an exhaustive analysis. Mayor Sack suggested it should include a Council subcommittee and members of the public, and the Council would need to determine its charge.

6. Continuation of the Public Hearing to change the zoning designation of County-owned property located on Theodore Fremd Avenue and North Street to the RA-5 District to provide for the construction of affordable senior housing

Mayor Sack announced that there was nothing new to report and work was still being done so the public hearing would be continued to the next meeting.

Councilman Mecca made a motion, seconded by Councilman Slack and unanimously carried, to adjourn the public hearing to the November 5, 2014 City Council meeting.

7. Continuation of Public Hearing to amend local law Chapter 197, "Zoning", of the Rye City Code by adding Section 197-15, "Special Permit for Historic Preservation in the B-2 Central Business District" to permit banks on the first floor of a building when certain conditions are met upon approval of a Special Use Permit by the City Council

Mayor Sack said he wanted to add a sunset provision to the proposed local law which would deem the law expired at the end of three months if it is not renewed by the City Council. The appropriate language that should be used was discussed with Corporation Counsel Wilson.

Public Comment:

Irwin Lefkowitz, expressed concern about the building being in violation of the Americans with Disabilities Act (ADA) because it is not currently accessible and if modifying an historically protected building would violate ADA. *Lindsay Russell* urged the Council to do anything to save The Smoke Shop.

Councilman McCartney made a motion, seconded by Councilman Mecca and unanimously carried, to close the public hearing.

Councilwoman Killian said she was not comfortable with the local law because she did not believe it was the Council's role to get involved with particular landlords. Councilman McCartney said this was a "small town issue" and sometimes Council's need to do unorthodox things. Mayor Sack said adopting the law was only the first step in the process that would give the owner of the property an opportunity to apply for the Special Use Permit and a second Council vote would be needed for that.

Councilman McCartney made a motion, seconded by Councilman Mecca, to adopt the following local law:

**CITY OF RYE
LOCAL LAW NO. 7 2014**

A local law to amend the City Code of the City of Rye Chapter 197 "Zoning" by adding Section 197-15 "Special Use Permit for Historic Preservation in the B-2 Central Business District" to permit banks on the first floor of a building when certain conditions are met upon approval of a Special Use Permit by the City Council and amending Section 197-86 "Table of Regulations" as follows:

Section 1: Chapter 197 "Zoning"

§ 197-15. Findings; intent.

- A. The Council creates this incentive-based special use permit in order to maintain the historic elements of convenience retail storefront design and uses which contribute to the character of the City's Central Business District. As such, the Council adopts a policy to incentivize the preservation of the character of the Central Business District by allowing in the B-2 Central Business District banks to be located on the first floor of a building on the condition that the historic nature of the building, or its contributing elements, are preserved and maintained. The purpose of this law is to achieve the following goals:
 - 1. Promoting the preservation of buildings that have enhanced and defined the historic nature of Rye over the past decades.
 - 2. Preserving the existing small convenience and retail stores in the B-2 Central Business District and furthering the community needs to preserve a diverse economic base.
 - 3. Balancing the desire for historic preservation of certain buildings and uses with the need to allow for financially viable uses of buildings.
 - 4. Furthering the City's goal to provide incentive zoning techniques for development projects that meet a defined community need and desire such as historic preservation and maintaining community character.
- B. Procedures for Special Use Permits – permit applications.
 - 1. Applications for a permit shall be made to the City Planner on forms furnished by the City Planner's office.
 - 2. An application for a permit shall not be deemed complete if it does not include all of the following information:
 - a. The application fee of \$150.
 - b. Complete plans for the building(s), or portions thereof, which the applicant believes furthers the intent of this Section and for the bank or other uses of the building(s) on the property.
 - c. Full environmental assessment form in accordance with the State Environmental Quality Review Act, except that a short environmental assessment form may be submitted at the discretion of the City Council.
 - d. A narrative from the applicant setting forth the reasons why the proposed building(s) to be preserved would further the intent of this law and promote the community character that the City wishes to maintain.
 - e. The City Council may require additional information as it deems appropriate.
 - f. By filing an application, the applicant thereby consents to the entry onto his land by the City Council or other agents designated by the City Council for the purpose of undertaking any investigation, examination, survey or other activity necessary for the purposes of this chapter.
- C. Special Use Permit Requirements; determining historic significance of application.

1. The Council will undertake a review of an application pursuant to this Section in a timely fashion and shall act within a reasonable period of time given the complexity of the application and the circumstances.
2. The Council may, at its sole discretion, refer any application for this Special Use Permit for Historic Preservation to the Landmarks Committee for its review and comment.
3. If the application is referred to the Landmarks Advisory Committee, the Committee shall provide any comments to the Council within thirty (30) days of the referral.
4. The City Council shall also review the application to determine if it furthers the goals and intent of this Section. The Applicant shall bear the burden of proof by putting forth substantial evidence showing how the application meets the purposes and intent of this section and that its application should be considered for the special use permit.
5. If the Council finds that the application furthers the purposes and intent of this Section, it shall simultaneously consider the application for the Special Use Permit and Site Development Plan in accordance with Rye City Code § 197-7. The City Council shall hold a public hearing to consider the approval of both the Special Use Permit and Site Development Plan.
6. As part of any approval of the Special Use Permit and Site Development Plan, the City Council shall consider the following potential conditions, including, but not limited to:
 - a. A restrictive covenant that preserves the building(s), or portions thereof, in its current state and any modifications to such restrictive covenant shall be reviewed and approved by the City Council; and/or
 - b. A deed restriction that preserves the building(s), or portions thereof, in its current state and any modifications to such deed restriction can only be approved by the City Council; and/or
 - c. A façade easement or other restrictive easement that preserves the building(s), or portions thereof, in its current state and any modifications to such easement can only be approved by the City Council; and/or
 - d. All covenants, restrictions, and/or easements shall be recorded in the County Clerk's office; and/or
 - e. A maintenance plan that ensures the continued upkeep of the preserved building(s), or portions thereof; and/or
 - f. A community amenity such as landscaping or other improvement to further enhance the community character in the area near the proposed development; and/or
 - g. Any other condition that the City Council deems necessary to preserve the historical nature of the building(s) and to ensure that such preservation will continue into the future regardless of the owner.

- D. This law shall expire three months from the effective date of its filing. If an application is received within the three month period, it shall be considered timely and processed in accordance with this law.

Section 2.

Section 197-86, Table of Regulations: Table B, Business District – Use Regulations, Column 1, Permitted Main Uses, B-2 Central Business Districts, of the Code of the City of Rye, New York is hereby amended to amend subsection (1) to read as follows:

- (1) Nonresidence main uses permitted in B-1 Districts without restrictions as to location and conversions of existing buildings, except that offices for clerical, administrative, professional and agency uses shall not be located on the first floor of a building within the A Parking District, and banks shall not be permitted on the first floor of a building in the B-2 Central Business District, except where approved by the City Council pursuant to § 197-15.

Section 3.

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

Section 4: This local law will take effect immediately on filing in the office of the Secretary of State.

ROLL CALL:

AYES:	Mayor Sack, Councilmembers Bucci, Killian, McCartney, Mecca and Slack
NAYS:	Councilwoman Killian
ABSENT:	None
ABSTAIN:	Councilwoman Brett

The Resolution was adopted with 5 votes in favor, 1 vote against and 1 abstention.

8. Continuation of Public Hearing to amend local law Chapter 76, “Dogs”, Section §76-5, “Running at large prohibited” and Section §76-6, “When leash required” to establish regulations for the leashing of dogs at Rye Town Park

Councilwoman Brett said the goal of the proposed law was to reduce conflict between those who want to bring their dogs to the park and have them off leash and those who do not want to worry about dogs being off leash when they use the park. The proposal would allow dogs to be off lease between the hours of 6:00 a.m. and 9:00 am in a specified area west of the foot path and north of the duck pond. The Rye Town Park Commission (RTPC) has approved a policy change for a pilot project which would allow this, subject to a registration process being put into place that would include a Code of Conduct that the dog owners would be required to sign. The RTPC will reevaluate the policy in six months. The registration process will be administered through the City and a fee would be involved after the end of the pilot program. Mayor Sack said that the law may not solve all problems but would be a significant improvement but suggested that the City should also review how the law is working in six months.

Public Comment:

Irwin Lefkowitz asked if the law would be enforced because currently there are more dogs off leash in the park than on leash. He said parks are for people.

There was a discussion among the Council regarding enforcement. Councilwoman Brett said a goal was to get cooperation from the dog owners who must understand that if they want to have their dogs off leash in the park, they must be there during the specified hours. Mayor Sack said there can never be 100% enforcement of anything but the goal of the law is to increase the rate of enforcement by providing a time and place for people to have their dogs off leash in the park. Councilwoman Brett also said that the RTPC took issue with Rye Town Park being the only area where dogs would be allowed to be off leash and asked if there were other areas in Rye that might also be considered for this policy. Councilman McCartney said he would discuss this with the Recreation Commission.

Councilwoman Brett made a motion, seconded by Councilwoman Killian and unanimously carried, to close the public hearing.

Councilwoman Brett made a motion, seconded by Councilman Slack, to adopt the following local law:

**CITY OF RYE
LOCAL LAW NO. 8 2014**

**A local law to amend Chapter 76 “Dogs” of the
Code of the City of Rye to allow dogs to be at large during certain hours at Rye Town Park
as follows:**

Section 1: Chapter 76, Dogs

§ 76-5. Running at large prohibited; exceptions

- A.** Except as permitted in § 76-5(B), no person owning, harboring or having the custody and control of a dog shall permit such dog to be at large in the City of Rye, elsewhere than on the premises of the owner, except if it is on the premises of another person with the knowledge and assent of such other person.
- B.** During the hours of 6 a.m. to 9 a.m., the owner, harborer or person having the custody and control of a dog visiting the designated areas in § 76-5(F) shall control such dog at all times, but need not restrain such dog by a chain or leash. The maximum number of dogs off-leash that any one person shall have custody and control over is three. After 9 a.m., all dogs must be leashed or chained in accordance with this Chapter.
- C.** Any person wishing to allow his/her dog(s) to run at large without being restrained by a chain or leash shall register his/her dog(s) with the Rye City Clerk annually. Any

- dog at large must have a valid registration tag affixed to his/her collar at all times when the dog(s) are at large.
- D.** Any violation of this Chapter may result in a fine of up to \$250 per violation and/or suspension or termination of the off-leash registration.
 - E.** The registration fee will be set annually by the Rye City Council.
 - F.** The designated areas within the City where dogs are permitted to run at large from 6 a.m. to 9 a.m. are:
 - a.** Rye Town Park in the grass area bounded by the walking path, Forest Avenue, Rye Beach Avenue and the duck pond (see annexed map).

§ 76-6. When leash required.

Except as set forth in § 76-5(B) above, the owner, harborer or person having the custody and control of a dog in the City of Rye which is not on the premises of the owner or upon the premises of another person with the knowledge and consent of such person shall control and restrain such dog by a chain or leash not exceeding eight feet in length.

Section 2: This local law will take effect immediately on filing in the office of the Secretary of State.

ROLL CALL:

AYES:	Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney, Mecca and Slack
NAYS:	None
ABSENT:	None

The local law was adopted by a 7-0 vote.

9. Public Hearing to amend local law Chapter 165 , “Signs”, of the Rye City Code by adding Section §165-10, “Regulation of banners”, to establish regulations for banners on City owned ball field fences and utility poles on City property

Councilwoman Brett made a motion, seconded by Councilman McCartney and unanimously carried, to open the public hearing.

Mayor Sack said the Council was not ready to have a substantive discussion on the proposed local law at this meeting. The Council is looking at two specific areas where signs are not currently allowed: the telephone poles downtown and at ball fields and need to think through the process more. Councilman McCartney said that since Little League usually pays for improvements at the ball fields this could be a way for them to raise funds to raise funds.

Public Comment:

Sis D’Angelo said that Mayor Hunziker had instituted the use of the sign at Cross Street to prevent the proliferation of signs in town. She also said that people who put signs on poles for

yard sales should be required to take them down and also objected to the signs that are put up near the schools.

Councilman Mecca made a motion, seconded by Councilman McCartney and unanimously carried, to adjourn the public hearing to the November 19, 2014 City Council meeting.

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

Bob Zahm spoke about sidewalks and the location of utility poles. He said the City should look at the practice of placement and modification of utility poles in relationship to sidewalks and particularly mentioned a pole on Locust Avenue off Theodore Fremd Avenue. Councilman Mecca spoke about the requirement that utilities must place their poles in the public right-of-way.

Deirdre Curran spoke about a meeting regarding Playland that had recently been held at the Library. She said communication about the meeting was lacking and it was important for people to learn about new proposals being made. She said that two additional meetings will be held on November 3rd and 17th.

Mayor Sack asked the City Manager to prepare an update on the status of the Bond Referendum projects for the next meeting. Mr. Culross said it would be part of the budget presentation.

11. Consideration for the City of Rye to join Sustainable Westchester

Sara Goddard, the Co-Chair of the Sustainability Committee said that the City was a member of the Southern Westchester Energy Action Consortium (SWEAC) which has merged with the Northern Westchester Energy Action Consortium (NWEAC) to form Sustainable Westchester. SWEAC was free but Sustainable Westchester has an annual membership fee of \$1,000. She said she believed it would be a benefit to the City to continue its membership in the new group.

Councilwoman Killian made a motion, seconded by Councilman Mecca and unanimously carried, to adopt the following Resolution:

RESOLVED, that the City Council of the City of Rye directs the City Manager to take the actions necessary for the City to become a member of Sustainable Westchester.

ROLL CALL:

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney,
Mecca and Slack
NAYS: None
ABSENT: None

The Resolution was adopted by a 7-0 vote.

12. Authorization for Silverberg Zalantis LLP to represent the City of Rye in the Article 78 proceeding commenced by Douglas Liman
Roll Call.

Mayor Sack made a motion, seconded by Councilwoman Brett, to adopt the following Resolution:

RESOLVED that the City Council of the City of Rye hereby authorizes the firm of Silverberg Zalantis LLP to represent the City of Rye in connection with the Article 78 Proceeding *Douglas E. Liman v. Nick Everett, Martha Monserrate, Laura Brett, Barbara Cummings, Hugh Greechan, Peter Olsen, Alfred Vitiello, constituting the Planning Commission of the City of Rye, Pankaj Gupta and Emily Gupta, Pam McGuire and Eugene McGuire* for an amount not to exceed Ten Thousand (\$10,000) Dollars.

ROLL CALL:

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney,
Mecca and Slack
NAYS: None
ABSENT: None

The Resolution was adopted by a 7-0 vote.

13. Authorization for City Manager to execute an Inter-municipal Agreement with the County of Westchester authorizing the operation of a transfer station at Public Works for organic waste
Roll Call.

Councilwoman Brett made a motion, seconded by Councilman Mecca, to adopt the following Resolution:

RESOLVED, that the City Manager is hereby authorized to execute an Inter-municipal Agreement with the County of Westchester authorizing the operation of a transfer station at Public Works for organic waste and that it is, hereby, further,

RESOLVED, that the City declares that this action is a Type II action under the State Environmental Quality Review Act ("SEQRA") and no further environmental review is necessary.

ROLL CALL:

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney, Mecca and Slack
NAYS: None
ABSENT: None

The Resolution was adopted by a 7-0 vote.

14. Consideration of the Rye Chamber of Commerce request for amendment of the Farmers Market Agreement to extend the operating season by two additional weeks

Mayor Sack asked the City Manager to look into the reason why the Chamber of Commerce is allowed the use of a City parking lot for free.

Councilwoman Killian made a motion, seconded by Councilman Mecca and unanimously carried, to adopt the following Resolution:

RESOLVED that the City Council of the City of Rye hereby grants the request of the Rye Chamber of Commerce for an amendment to the Farmers Market Agreement to extend the operating season by two additional weeks.

15. Three appointments to the Rye Golf Club Commission for a three-year term expiring January 1, 2018, and the designation of one member to the Rye Golf Club Nominating Committee

Councilman McCartney made a motion, seconded by Mayor Sack and unanimously carried, to approve the appointments of Charlie Davies, Bob DiMaggio and Pat Geoghegan to the Rye Golf Club Commission for three year terms expiring on January 1, 2018 and designating Terrence Caffrey to the Rye Golf Club Nominating Committee for 2015.

16. Resolution to grant permission to the Rye Free Reading Room to hold a free community event on the Village Green on Sunday, May 3, 2015 from 10 a.m. to at 1 p.m.

Councilman Mecca made a motion, seconded by Councilwoman Killian and unanimously carried, to adopt the following Resolution:

RESOLVED that the City Council of the City of Rye hereby approves the request of the Rye Free Reading Room for use of the Village Green and City Hall parking lot on Sunday, May 3, 2015 from 8:00 a.m. to 5:00 p.m. for the Family Science Fun Fair event.

17. Miscellaneous Communications and Reports

There was nothing reported under this Agenda item.

18. New Business

Mayor Sack asked Corporation Counsel Wilson about an email he had received from Timothy Chittenden regarding FOIL appeals. Ms. Wilson said that the appeals were not ripe at this time. The City had asked for additional time to respond to the 15 requests that all went to the same department. The documents are being gathered by the department.

Councilwoman Brett said that the Town of Rye raised a legal liability concern about the passage of the dog law and asked Corporation Counsel Wilson to provide the case law on liability to the Town's attorney in order to persuade them that there is no increased liability. Ms. Brett also provided an update on the New York Rising, a community driven planning process to help communities affected by recent storms in order to be better prepared for future storms. Rye has been allocated to receive \$3 million in Round Two of the funding and there is a team of consultants helping the City who meet regularly to go through the process required to recommend projects. The Planning Committee has developed a Vision Statement, identified community assets and needs and opportunities to develop overall strategies and they are in the process of developing a list of potential projects. She thanked committee Co-Chairs Bernie Altoff and Holly Kennedy and committee members: Mack Cunningham, Frank Gadalata, Rex Gedney, Sara Goddard, Gregg Howells, Josh Nathan, Richard Runes, Tracey Stora and Birgitte Townley.

19. Adjournment

There being no further business to discuss Councilwoman Brett made a motion, seconded by Councilman McCartney and unanimously carried, to adjourn the meeting at 10:45 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk

DRAFT UNAPPROVED MINUTES of the
Joint Meeting of the City Council of the City of Rye
and the Rye City School District held in City Hall on
October 8, 2014 at 7:00 P.M.

PRESENT:

JOSEPH A. SACK Mayor
LAURA BRETT
KIRSTIN BUCCI
JULIE KILLIAN
TERRENCE McCARTNEY
RICHARD MECCA
RICHARD SLACK
Councilmembers

LAURA SLACK, President
KAREN BELANGER
KATY KEOHANE GLASSBERG
NANCY PASQUALE
CHRIS REPETTO
NICOLE WEBER
School Board Members

Dr. FRANK ALVAREZ, Superintendent of School District
FRANK CULROSS, City Manager
GABRIELLA O'CONNOR, Assistant Superintendent for Business
Dr. BETTY ANN WYKS, Assistant Superintendent for Curriculum, Instruction and
Assessment

ABSENT: BLAKE JINES-STOREY, Board Member

1. Pledge of Allegiance

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

2. Roll Call

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

3. Update on Rye City School District construction project and schedule

Board President Slack thanked the City for allowing the School District to do construction work outside of regularly allowed construction hours and for the use of the “snow fields” for staff parking. Superintendent Alvarez said that the District considered the new addition “opened on time” but there are a number of items on a “punch list” that are being worked on. The District hopes to have an official opening in a couple of weeks. Assistant Superintendent O’Connor said that students have full access to the building but that work will continue after school hours in the evenings and on weekends.

4. Discussion of School Safety: Drills and Coordination with the City

Assistant Superintendent O’Connor reported that some of the recommendations made by the school district’s security consultant, Stonegate, were implemented during the school year and others over the summer months. Some changes implemented include the installation of an emergency alert system for loud areas; new access cards for employees in order to monitor who is in the building and control access to the buildings; and, installation of security films on lower windows in the buildings. City Manager Culross said that meetings have been held with the City and School District and the City will assist in any way requested. Superintendent Alvarez said that the District has tried to shore up the facilities, hired a new security personnel firm; created a new Emergency Management Plan; implemented staff training; and is coordinating with police and first responders and allowing police to have access to the schools on days when school is off in order to conduct practice drills. Board President Slack suggested that the police should conduct an annual drill in all five school buildings.

4A. Update on Safe Routes Grants

City Manager Culross reported that all the projects that were on the Safe Routes list have either been designed or are in design with a goal of completing the projects during the off school months. Two projects on the list have not received State approval and, therefore the grant funds allocated for those projects will be repurposed. The State took issue with the project at the five corners intersection at Midland Avenue and Grace Church Street because one of the roads is a County road. However, the project is in design and City staff believes they have come up with a better solution. The project for “Rapid Beacons” at Forest Avenue and Eve Lane was not approved because there is no formalized and maintained Easement. Beacons for other areas of the City have been approved as well as pedestrian improvements around Theall Road and Grace Church Street and sidewalk improvements around Milton School

4B. Drugs in Schools and the Community

Mayor Sack said there was a desire in the community that the City and School District have plans in place for enforcement and education regarding drugs and asked the City Manager and School Superintendent to make sure that plans are in place.

Superintendent Alvarez provided a brief overview of school activities that address the issue of drug and alcohol abuse including the health curriculum; counselors in schools; security people in place; cosponsoring an event with the Rye Youth Counsel; and, participating in a statewide survey for children in grades 7 through 12. Councilwoman Killian and Board Member

Pasquale spoke about forming coalitions to deal with the issue. City Manager Culross read a statement regarding three drug related arrests that have been made in the City since September 14th, increased police presence in the schools and patrol division enforcement.

5. State of the School's Report on Enrollment

Board President Slack discussed issues the District is dealing with due to the continued increased enrollment in the schools. Enrollment has increased 18% and the district has gone from classes of 100, 18 years ago to classes of 280 now. She stated figures regarding the costs for the District to educate each child (approximately \$22,000 per year) in comparison to the average school tax payment from each home. For instance even with a large home, taxes could be approximately \$45,000 for the school district and if a family has three, four or five children in such a large home the school property does not provide enough tax revenue to compensate for the children living on the property. She said all the classrooms are full and there is no land to expand the facilities. Ms. Slack suggested that the City Council should look into amending zoning laws to help reduce the amount of homes that can be built as of right. Mayor Sack said the City needs to better understand the issue and determine if the increase in students is coming from developments and subdivisions or just normal home sales. He asked if the City could be provided with the addresses for new enrollment in the School District in order to determine if the increased enrollment is coming from new development.

6. Adjournment

There being no further business to discuss Councilman Mecca made a motion, seconded by Board Member Pasquale and unanimously carried, to adjourn into executive session to discuss litigation and not return to the joint meeting at 7:45 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk



CITY COUNCIL AGENDA

NO. 5

DEPT.: City Council

DATE: November 5, 2014

CONTACT: Mayor Joseph Sack

AGENDA ITEM: Issues Update/Old Business

FOR THE MEETING OF:

November 5, 2014

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That an update be provided on outstanding issues or Old Business.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND:



CITY COUNCIL AGENDA

NO. 6

DEPT.: City Manager

DATE: November 5, 2014

CONTACT: Frank J. Culross, City Manager

AGENDA ITEM: Presentation of the FY 2015 Budget by the City Manager.

FOR THE MEETING OF:

November 5, 2014

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: The City Manager's Budget for 2015 will be presented by Deputy Comptroller Joseph Fazzino.



CITY COUNCIL AGENDA

NO. 7

DEPT.: City Manager

DATE: November 5, 2014

CONTACT: Frank J. Culross, City Manager

AGENDA ITEM: Consideration to set a Public Hearing on the 2015 Budget for December 3, 2014.

FOR THE MEETING OF:

November 5, 2014

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Mayor and the Council schedule a public hearing on the proposed 2015 Rye City Budget on December 3, 2014 at City Hall.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: The Charter stipulates that a Public Hearing must be held on the proposed budget. The Public Hearing shall be held not later than the first Wednesday in December of the current year and upon at least 10 days' notice.



CITY COUNCIL AGENDA

NO. 8

DEPT.: Planning

DATE: November 5, 2014

CONTACT: Christian K. Miller, AICP, City Planner

AGENDA ITEM: Continuation of the Public Hearing to change the zoning designation of County-owned property located on Theodore Fremd Avenue and North street to the RA-5 District to provide for the construction of affordable senior housing.

FOR THE MEETING OF:

November 5, 2014

RYE CITY CODE,

CHAPTER 197
SECTION 3

RECOMMENDATION: That the City Council should continue its environmental review under SEQR, conduct and consider closing the public hearing and consider conditions to include in a potential negative declaration. Closing the hearing and adoption of a determination of significance is required before a super majority vote on the proposed zoning petition.

IMPACT: ☒ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND: The petitioner, Lazz Development/Pawling Holdings, seeks an amendment to the City Zoning Map to change the zoning district designation of an approximately 2.0-acre property located on Theodore Fremd Avenue and North Street. The request would change the zoning of the Westchester County-owned property from the B-6, *General Business*, District and the B-1, *Neighborhood Business*, District to the RA-5, *Senior Citizen's Apartment*, District. The petitioner is seeking to construct fifty-four (54) units of age-restricted housing located in two buildings. The proposal would be limited to those over age 55 and consist of 44 one-bedroom units and 10 two-bedroom units. The proposed units would also be affordable and 27 of these units would count towards Rye's contribution to the 750 units of fair and affordable housing Westchester County is obligated to provide as part of a stipulation of settlement with the U.S. Department of Housing and Urban Development (HUD). It is noted that the proposed zoning change is the same district as adopted by the City Council in the mid-1980s to accommodate the nearly 100 units of affordable senior housing at 300 Theall Road. The matter was referred to the City Planning Commission and a recommendation memo was provided to the City Council. Westchester County has provided its advisory comments on the matter.

(continued)

Additional information has been provided by the petitioner; these documents are available on the City website* and include the following:

- 1 – Proposed Conceptual Site Plan
 - 2 – Letter from Westchester County Department of Planning / Department of Health
 - 3 – Aerial photos of site: 1925 through 2013
 - 4 – Soil testing results: Ralph G. Mastromonaco, P.E., P.C.
 - 5 – Soil test Technical Report: York Analytical Laboratories, Inc.
 - 6 – Full Environmental Assessment Form
 - 7 – Traffic Analysis and Commentary: Ralph G. Mastromonaco, P.E., P.C.
 - 8 – City of Rye Police Department Incident Reports
 - 9 – Team Environmental Consultants, Inc.: Phase 1 Environmental Site Assessment Report
 - Theodore Fremd Property Taxes
- Documents obtained from Westchester County through a FOIL request

- 08/04/14 – memo from Matthew Carroll, P.E. / Tenen Environmental providing a Review of Environmental Conditions
- 08/04/14 – memo from Matthew Carroll, P.E. / Tenen Environmental providing a Review of the Environmental Assessment Form
- 08/28/14 – memo from Ralph G. Mastromonaco, P.E., P.C. providing a revised Environmental Assessment Form and responses to questions posed by City Planner Christian K. Miller, AICP and consultant Matthew Carroll, P.E.

Presentation at September 10, 2014 City Council meeting by Matthew Carroll, P.E.
DRAFT Remedial Investigation Report of Former Rye Gas Works Site by AECOM July 2013
DRAFT Remedial Investigation Report – Addendum by AECOM March 2014
Theodore Fremd Groundwater Sampling Results by Tenen Environmental
Theodore Fremd Monitoring Well Sampling Results by Tenen Environmental
Theodore Fremd Wetland Report by Tim Miller Associates, Inc.

** Documents are available at www.ryeny.gov under Digital Documents in folder
“Theodore Fremd Senior Housing Zoning District Change”



CITY COUNCIL AGENDA

NO. 9

DEPT.: City Council

DATE: November 5, 2014

CONTACT: Mayor Joseph A. Sack

AGENDA ITEM: Consideration to set a Public Hearing to add a proposed Local Law amending the Code of the City of Rye by creating a new chapter, Chapter 176, "Energy Conservation", to establish a Sustainable Energy Loan Program in the City of Rye in accordance with Article 5-L of the General Municipal Law.

FOR THE MEETING OF:

November 5, 2014

RYE CITY CODE,

CHARTER

SECTION 176

RECOMMENDATION: That the City Council set a Public Hearing to consider adding a new Chapter to the Rye City Code as outlined.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: The Sustainability Committee has made a request for the City to join the Energy Improvement Corporation (EIC) which provides financing for energy efficiency improvements under the Energize NY program. EIC is a local development corporation and a New York State non-profit which was established specifically to assist municipalities and property owners achieve long-term energy savings. In order to join the EIC the City must adopt a local law as specified, fill out the EIC agreement, and notify EIC of the City's intent by letter. Local non-profit organizations, such as the Wainwright House, have expressed interest in participating in the program.

Information on the Energy Improvement Corporation is attached; additional information is available at: www.energizeny.org/energy-improvement-corporation

See attached: Draft Local Law
EIC Agreement
Letter to EIC
Background information on EIC

(cont.)

Energy Improvement Corporation (EIC)

Why Join?

The EIC enables property owners within participating municipalities to access Energize NY financing, an alternative to traditional equity or unsecured loans. The Program uses a form of financing called Property Assessed Clean Energy (PACE) financing. Under the PACE mode, a property owner opts to pay for energy improvements by authorizing the municipality to add a special tax charge to the property (a "Financing Charge") for that purpose.

Who is Eligible?

Commercially-owned existing buildings (*) within a municipality that is a member of EIC within three categories:

- (1) non-residential commercial, industrial, institutional, and not-for-profit non-residential facilities
- (2) small multifamily (1 to 4 unit) buildings
- (3) large multifamily (5+ unit) buildings

Commercially-owned buildings include: offices, retail, multifamily buildings, industrial, schools, Hospitality, medical, healthcare facilities, houses of worship, nonprofit -owned buildings, commercially-owned single family (1-4 units)

* New construction is not eligible

What Types of Projects are Eligible?

Financing is available for energy efficiency and renewable energy projects that install permanent improvements to reduce energy costs, in existing buildings that participate in a NYSEERDA or utility upgrade program. Eligible measures include:

- High Efficiency lighting
- Heating, ventilation & air conditioning (HVAC) upgrades
- High efficiency chillers, boilers, furnaces, heat pumps, water heating systems and pumps
- Building enclosure/envelope improvements
- Building automation (energy management) systems/smart controls
- Renewable energy systems such as on-site solar PV, solar thermal or geothermal installations

What are the Project Requirements?

- The estimated annual energy savings/energy generation must be greater than the annual finance payments
- The improvements must have a savings-to-investment ratio (SIR) > 1

What are the Financial Requirements for Participants?

- The property's loan-to-value ratio must not exceed 80%-20%
- Financing is available for up to 10% of the appraised value of the building
- No history of bankruptcy within the last 7 years
- 3+ year history of timely property tax payments
- Existing lenders must complete a Lender Consent Form.
- There is a maximum term of 15-20 years
- The building must have a certified appraisal completed within the last year

(cont.)

What is the process are the Financial Requirements for Participants?

- The Building owners apply through EIC
- The scope of work eligible for that property is determined by NYSERDA through an energy audit
- Once the approvals are in place, the City collects the special assessment as part of the regular tax collection process and transfers payment to the EIC

Note: the City would have the final sign-off before a loan program is put into place

What Municipalities are current EIC Members?

- Bedford, Town
- Croton-on-Hudson, Village
- Cortlandt, Town
- Greenburgh, Town
- Lewisboro, Town
- New Rochelle, City
- North Salem, Town
- Orange County (excludes: cities of Middletown, Port Jervis & Newburgh)
- Ossining, Town
- Peekskill, City
- Pound Ridge, Town
- Somers, Town
- White Plains, City
- Yorktown, Town

Additional Funding under The Westchester Project

Buildings in Westchester County that meet affordable housing guidelines or are owned by a not for profit corporation may qualify for reduced cost financing under a Energize NY Finance program called *The Westchester Project*. Under this program, the County utilizes its federally allocated Qualified Energy Conservation Bond (QECB) authority to align with Energize NY's goal to promote energy efficiency and renewable energy projects. This program is only available until January 16, 2015.

**CITY OF RYE
LOCAL LAW NO. 2014**

**A local law to add a new Chapter 176 “Energy Conservation” of the
Code of the City of Rye to create a program to assist property owners in financing
clean energy systems as follows:**

Section 1: Chapter 176, Energy Conservation

§ 176-1. Legislative findings; intent and purpose; statutory authority.

- A. It is the policy of both the City of Rye and the State of New York to achieve energy efficiency and renewable energy goals, reduce greenhouse gas emissions, mitigate the effect of global climate change, and advance a clean energy economy. The City finds that it can fulfill this policy by providing property assessed clean energy financing to property owners for the installation of renewable energy systems and energy efficiency measures. This article establishes a program that will allow the Energy Improvement Corporation (EIC), a local development corporation, acting on behalf of the City, to make funds available to qualified property owners that will be repaid by such property owners through charges on the real properties benefited by such funds, thereby fulfilling the purposes of this article and fulfilling an important public purpose.
- B. The City of Rye is authorized to implement this Energize NY Benefit Financing Program pursuant to Article 5-L of the New York General Municipal Law.
- C. This article shall be known and may be cited as the "Energize NY Benefit Financing Program Law of the City of Rye."

§ 176-2. Definitions.

For purposes of this article, and unless otherwise expressly stated or unless the context requires, the following terms shall have the meanings indicated:

AUTHORITY

The New York State Energy Research and Development authority, as defined by Subdivision 2 of § 1851 of the Public Authorities Law, or its successor.

EIC

The Energy Improvement Corporation, a local development corporation, duly organized under § 1411 of the Not-for-Profit Corporation Law, authorized hereby on behalf of the City of Rye to implement the Energize NY Benefit Financing Program by providing funds to qualified property owners (as defined in this article) and providing for repayment of such funds from monies collected by the City Comptroller as a charge to be levied on the real property and collected in the

same manner and same form as the City taxes.

ENERGY AUDIT

A formal evaluation or "assessment" of the energy consumption of a permanent building or structural improvement to real property, conducted by a contractor certified by the authority, or certified by a certifying entity approved by the authority, for the purpose of identifying appropriate energy efficiency improvements that could be made to the property.

ENERGY EFFICIENCY IMPROVEMENT

Any renovation or retrofitting of a building to reduce energy consumption, such as window and door replacement, lighting, caulking, weatherstripping, air sealing, insulation, and heating and cooling system upgrades, and similar improvements, determined to be cost effective pursuant to criteria established by the authority, not including lighting measures or household appliances that are not permanently fixed to real property.

QUALIFIED PROPERTY OWNER

An owner of residential or commercial real property located within the boundaries of the City of Rye that is determined to be eligible to participate in the Energize NY Benefit Financing Program under the procedures for eligibility set forth under this article.

RENEWABLE ENERGY SYSTEM

An energy generating system for the generation of electric or thermal energy, to be used primarily at such property, by means of solar thermal, solar photovoltaic, wind, geothermal, anaerobic digester gas-to-electricity systems, fuel cell technologies, or other renewable energy technology approved by the authority, not including the combustion or pyrolysis of solid waste.

RENEWABLE ENERGY SYSTEM FEASIBILITY STUDY

A written study, conducted by a contractor certified by the authority, or certified by a certifying entity approved by the authority, for the purpose of determining the feasibility of installing a renewable energy system.

§ 176-3. Establishment of program.

- A. An Energize NY Benefit Financing Program is hereby established by the City of Rye, whereby EIC, acting on its behalf, may provide funds to qualified property owners in accordance with the procedures set forth under this article, to finance the acquisition, construction and installation of renewable energy systems and energy efficiency improvements and the verification of the installation of such systems and improvements.
- B. The funds provided shall not exceed the lesser of 10% of the appraised value of the real property where the renewable energy systems and/or energy efficiency improvements will be located, or the actual cost of installing the renewable

energy systems and/or energy efficiency improvements, including the costs of necessary equipment, materials, and labor and the cost of verification of such systems and improvements.

§ 176-4. Procedures for eligibility.

- A. Any property owner in the City may submit application to EIC on such forms as have been prepared by EIC and made available to property owners on the website of EIC and at the City Clerk's office.
- B. Every application submitted by a property owner shall be reviewed by EIC acting on behalf of the City, which shall make a positive or negative determination on such application based upon the criteria for making a financing enumerated in Subsection A of § 176-5 of this article. EIC may also request further information from the property owner where necessary to aid in its determination.
- C. If a positive determination on an application is made by EIC acting on behalf of the City, the property owner shall be deemed a qualified property owner and shall be eligible to participate in the Energize NY Benefit Financing Program in accordance with the procedure set forth under § 176-6 of this article, provided that in no case shall a property owner that has received funds from another municipal corporation for the acquisition, construction and installation of energy efficiency improvements and/or renewable energy systems be deemed a qualified property owner.
- D. At no one time shall the total of all payments being collected for this program by the City exceed \$50,000 per annum.

§ 176-5. Application criteria.

- A. Upon the submission of an application, EIC, acting on behalf of the City, shall make a positive or negative determination on such application based upon the following criteria for the making of a financing:
 - (1) The proposed energy efficiency improvements and/or renewable energy systems are determined to be cost effective by the authority;
 - (2) The proposed energy efficiency improvements and/or renewable energy systems will generate an estimated annual cost savings greater than the annual charge payments;
 - (3) Sufficient funds are available to provide to the property owner;
 - (4) The property owner is current in payments on any existing mortgage;

(5) The property owner is current in payments on any existing real property taxes and has been current on real property taxes for the previous three years; and

(6) Such additional criteria, not inconsistent with the criteria set forth above, as the City, or EIC acting on its behalf, may set from time to time.

§ 176-6. Energize finance agreement.

- A. A qualified property owner may participate in the Energize NY Benefit Financing Program through the execution of an energize finance agreement made by and between the qualified property owner and EIC, acting on the behalf of the City.
- B. Upon execution of the energize finance agreement, the qualified property owner shall be eligible to receive funds from EIC, acting on behalf of the City, for the acquisition, construction, and installation of qualifying renewable energy systems and energy efficiency improvements, provided that the requirements of § 176-7 of this article have been met.
- C. The energize finance agreement shall include the terms and conditions of repayment set forth under § 176-8 of this article.

§ 176-7. Energy audit; renewable energy system feasibility study.

- A. No funds shall be made available for energy efficiency improvements unless determined to be appropriate through an energy audit as defined in § 176-2.
- B. No funds shall be made available for a renewable energy system unless determined to be feasible through a renewable energy system feasibility study as defined in § 176-2.
- C. The cost of such energy audit and/or renewable energy system feasibility study shall be borne solely by the property owner but may be included in the financed amount if the work is approved.

§ 176-8. Terms and conditions of repayment.

The energize finance agreement between the qualified property owner and EIC, acting on behalf of the City, shall set forth the terms and conditions of repayment in accordance with the following:

- A. The principal amount of the funds paid to the qualified property owner hereunder, together with the interest thereon, shall be paid by the property owner as a charge on his or her property tax bill and shall be levied and collected at the same time and in the same manner as City property taxes, provided that such charge shall be separately listed on the tax bill. The City shall make payment to EIC or its

designee, in the amount of all such separately listed charges within 30 days of the City property tax due date.

- B. The term of such repayment shall be determined at the time the energize finance agreement is executed by the property owner and EIC, provided that in no case shall the term exceed the weighted average of the useful life of the systems and improvements as determined by EIC acting on behalf of the City.
- C. The rate of interest for the charge shall be fixed by EIC, acting on behalf of the City, at the time the energize finance agreement is executed by the property owner and EIC.
- D. The charge shall constitute a lien upon the real property benefited by the Energize NY Benefit Financing Program and shall run with the land. A transferee of title to the benefited real property shall be required to pay any future installments, including interest thereon.

§ 176-9. Verification and report.

- A. EIC shall be responsible for verifying and reporting to the City on the installation and performance of renewable energy systems and energy efficiency improvements financed by such program.
- B. The City shall verify and report on the installation and performance of renewable energy systems and energy efficiency improvements financed by the Energize NY Benefit Financing Program in such form and manner as the authority may establish.

Section 2: This local law will take effect immediately on filing in the office of the Secretary of State.

ENERGY IMPROVEMENT CORPORATION
MUNICIPAL AGREEMENT

This Agreement made as of this ___ day of _____, 20__ (the "Agreement"), by and between the _____ (the "Municipality") and the Energy Improvement Corporation ("EIC") (both the Municipality and EIC may hereinafter be referred to individually as a "Party" and collectively as the "Parties"), sets forth the duties and obligations of each Party in connection with the Municipality's participation in the Energize New York Benefit Finance Program (the "Program").

WHEREAS, EIC is a local development corporation duly formed under Section 1411 of the Not-For-Profit Corporation Law of the State of New York, for the purpose of promoting, facilitating and financing energy audits and renewable energy system feasibility studies, energy efficiency improvements and alternative or renewable energy generating systems (as such terms are defined in Section 119-ff of the General Municipal Law of the State of New York) (collectively, the "Energy Improvements") on properties within its Participating Municipalities (as defined below), thereby promoting the public good by reducing greenhouse gas emissions, mitigating the effect of global climate change and lessening the burdens of government; and

WHEREAS, Participating Municipalities are those municipalities within the State of New York that have established by local law, pursuant to Article 5-L of the General Municipal Law of the State of New York, a sustainable energy loan program for the issuance of financing to the owners of real property located within the Participating Municipality to finance Energy Improvements, and have authorized EIC to act on behalf of the Participating Municipality to carry out the Program through, among other things, the issuance of financing to property owners within such Participating Municipality, and have met the minimum criteria established by EIC to admit new Participating Municipalities; and

WHEREAS, the Municipality adopted Local Law _____ on _____, 20__, pursuant to Article 5-L of the General Municipal Law of the State of New York, which Local Law also authorized EIC to act on its behalf in carrying out its Program;

Now, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. Duties of EIC

It is understood by the Parties that EIC will be responsible for the performance of the following duties:

- a) Receive and review applications submitted by property owners within the Municipality for financing of Energy Improvements (“Property Owner(s)”), and approve or disapprove such applications in accordance with underwriting procedures and requirements established by EIC.
- b) Review the applications, energy assessments and scopes of work prepared for and by the Property Owners to establish the amount of financings to be approved pursuant to the requirements of the Program.
- c) Execute finance agreements (the “Finance Agreement”) by and between EIC (on behalf of the Municipality) and the Property Owners for financing of Energy Improvements, which shall set forth the terms and conditions for the disbursement and repayment of financing and the duties and obligations of each Property Owner and EIC with respect to the acquisition, construction and installation of Energy Improvements (upon execution of the Finance Agreement by the Property Owner and EIC, the property that is the subject of the Finance Agreement shall be deemed a “Benefited Property”). Copies of all executed Finance Agreements for all Benefited Properties within the Municipality shall be provided to the Municipality by EIC upon execution.
- d) Receive and review the certificates of completion submitted by the Property Owners of Benefited Properties (or the contractor hired by the owner of a Benefited Property) following installation or construction of Energy Improvements on such Benefited Property, and disburse funds to the Property Owner of the Benefited Property or his/her/its agent upon approval of such certificate in accordance with the terms of the Finance Agreement and the Program.
- e) Deliver to the Municipality an annual report (the “Annual Report”) three months prior to when Municipal Taxes are due which shall contain information related to each Benefited Property within the Municipality through the end of the immediately preceding calendar year, including:
 - i. A list of each newly approved Benefited Property for which the Property Owner or previous Property Owner of the Benefited Property executed a Finance Agreement within the annual time period covered by such report (for which a charge shall be added by the Municipality to its tax rolls in accordance with Paragraph 2b below). All Benefited Properties shall be identified in the Annual Report by address and Tax Map Identification (i.e. section, block and lot);
 - ii. A list of each existing Benefited Property for which the Property Owner or previous Property Owner of such Benefited Property executed a Finance Agreement. All Benefited Properties shall be

identified in the Annual Report by address and Tax Map Identification (i.e. section, block and lot);

- iii. A list of each Benefited Property within the Municipality where all obligations under the Finance Agreement have been satisfied or paid in full during the calendar year including the satisfaction date and a copy of the notice of satisfaction;
 - iv. For each non-satisfied Benefited Property (including each newly approved Benefited Property):
 - a. the date of the Financing Agreement,
 - b. the notional amount of the financing,
 - c. the total principal balance and accrued interest outstanding,
 - d. the annual payment due to EIC (which shall include principal and accrued interest) associated with such Benefited Property (including the amount of accrued interest on the initial payment, if different);
 - v. the total annual payment due to EIC from all Benefited Properties in the Participating Municipality (which shall include principal and accrued interest), which shall be paid by the Municipality within thirty (30) days of the date upon which payment is due to the Municipality as part of the municipal tax bill in accordance with Paragraph 2(c) and the balance of any delinquent charge payment reported by the Municipality during the term of the Financing Agreement pursuant to Paragraph 2(d) and;
 - vi. All other information EIC may deem to be relevant to each Benefited Property within the Municipality.
- f) Create an account (the “EIC Trust Account”) held by a trustee that will accept payments from the Municipality made in accordance with Paragraph 2(d) below, and create a separate account (the “EIC Administrative Fee Account”) to receive the transfer of those funds deposited within the EIC Trust Account that constitute payment of EIC administrative fees;
 - g) Provide customer service by telephone to the Municipality during the hours of 9:00 a.m. through 5:00 p.m. Monday through Friday, Eastern Standard Time, excluding state and federal holidays;
 - h) Upon EIC’s receipt of payment in full under a particular Finance Agreement, send a letter of satisfaction by email to the Municipality notifying it that such Property Owner or subsequent owner of the Benefited Property has satisfied his/her/its obligations under the terms of the Financing Agreement;

2. Duties of the Municipality

It is understood by the Parties that the Municipality will be responsible for the performance of the following duties:

- a) Maintain copies received from EIC of each Finance Agreement for a Benefited Property throughout the term of the Finance Agreement relating to such Benefited Property, which shall be maintained until all obligations of the owner of such Benefited Property that are set forth in the Finance Agreement have been satisfied.
- b) Within thirty (30) days of receipt of the Annual Report, add a charge to its tax rolls for each newly approved Benefited Property listed therein, and include such charge in the next ensuing tax levy so that such charge shall be included on and due in the same manner and at the same time and in the same installments as the municipal taxes on real property are due within the Municipality and shall become delinquent at the same times, shall bear the same penalties and interest after delinquency, and shall be subject to the same provisions for redemption and sale as the general municipal taxes on real property of the Municipality.
- c) Within thirty (30) days of the due date of the municipal taxes, including the charge pursuant to a Finance Agreement, remit payment to the EIC Trust Account in the amount equaling the total annual payments due to EIC from each Benefited Property within the Municipality, regardless of whether the Municipality actually has received such payments from the owner of the Benefited Property. Failure to deliver payments to EIC would be considered an event of default hereunder.
- d) Deliver to EIC an annual delinquency report (the "Delinquency Report") no later than (90) days after the due date for the municipal taxes, including the charge, which shall: (i) list each Benefited Property that is delinquent in charge payments owed for such Benefited Property, (ii) provide the amount owed to the Municipality by the owner of such Benefited Property (including penalties and interest on delinquent charge payments), and (iii) outline the steps taken or to be taken and progress made in recovering delinquent charge payments from the owner of such Benefited Property.
- e) Make all reasonable efforts to assist EIC in carrying out the Program within the Municipality.

3. Program Modification

The Municipality may modify the Program by limiting the types of properties which may receive financing for Energy Improvements and/or the amount of financing available within the Municipality. The Municipality shall provide written notice to

EIC of such proposed modification. The proposed modification shall only become effective upon written approval from EIC provided to the Municipality, which shall not be unreasonably withheld. Such approval shall have no effect on the duties and obligations owed by each Party hereto in connection with this Agreement and any Benefited Property for which a Finance Agreement was executed prior thereto.

4. Non – Payment

- a) Failure of a Participating Municipality to deliver payments to EIC within thirty (30) days of when due shall be considered an event of default and EIC shall be entitled to pursue any one or more of the remedies set forth below.
- b) No Participating Municipality shall be responsible for the deficient payment of another Participating Municipality.

5. Terms of Membership

The Municipality understands and agrees that membership in EIC is at the discretion of the Board of Directors of EIC and is conditional upon satisfying the membership criteria established by the EIC Board, as may be amended from time to time at the sole discretion of the Board, as well as compliance with the terms of the By-Laws of EIC. If a Participating Municipality's bond credit rating drops below "A" as rated by Standard and Poors and/or "A2" as rated by Moodys and/or "A" by Fitch Ratings Service, EIC will no longer provide financings to Properties within such Municipality.

6.

Reserve Funds and Permanent Loss

- (a) EIC shall maintain one or more reserve funds (each a "Reserve Fund", collectively, the "Reserve Funds") to protect and compensate EIC, Participating Municipalities, lenders of funds to EIC, and other third parties approved by EIC against potential losses, including without limitation losses suffered by a Participating Municipality resulting from defaulted charge payments only in the event of a Permanent Loss (defined below) with respect to a Benefited Property. Certain Reserve Funds may be restricted in that they may only be used in conjunction with financings made to properties located within one or more designated Participating Municipalities. All Reserve Funds will be held at a bank or trust company located and authorized to do business in NYS. Reserve Funds will be invested in accordance with the investment guidelines approved by EIC (the "Investment Guidelines") as may be amended from time to time.
- (b) EIC reserves the right to refuse to make a financing to a property located within a Member Municipality in the event EIC determines, in its sole discretion, that there are inadequate reserve funds.
- (c) A loss shall not be deemed a permanent loss until the Participating Municipality has exhausted all remedies at law in an effort to collect the defaulted charge payments, including but not limited to the redemption and sale of the Benefited

Property where the proceeds are not sufficient to recover all amounts paid by the Municipality to EIC after the proceeds of such sale have been proportionately applied to all amounts owed to the Municipality at the time of such sale as a result of the non-payment of taxes ("Permanent Loss") . In order to collect from the Reserve Fund in the event of a Permanent Loss, the Municipality must provide EIC with all documentation as may be reasonably requested by EIC to document such Permanent Loss and must not be in default to EIC, including having made all payments to EIC when due.

7. Remedies Upon Default

Should the Municipality default in any of its obligations hereunder, including but not limited to failure to make payments to EIC as required hereunder, EIC shall be entitled to any remedy it may have at law and as set forth below. EIC may utilize any one or all of these remedies at EIC's sole discretion.

- a) If the Municipality fails to make a required payment to EIC and the Municipality collects penalties or interest from the Property Owner for late payment, the Municipality shall pay to EIC all such penalties or interest attributable to the charge collected by the Municipality on behalf of EIC.
- b) EIC shall have the right to discontinue providing any new financings to Properties located within the Municipality.
- c) EIC may suspend the Municipality's membership in EIC.

8. Formation; Authority

Each Party represents and warrants to the other that it has complied with all laws and regulations concerning its organization, its existence and the transaction of its business and that all necessary steps have been taken to authorize it to execute, deliver and perform its respective obligations under this Agreement, and no consent or approval of any third party is required for either Party's execution of this Agreement or the performance of its obligations contained herein. The individual executing this Agreement on behalf of each Party has been and is duly authorized to bind his/her respective Party.

9 No Violation or Litigation

The performance by each Party of its respective obligations contained in this Agreement will not and do not conflict with or result in a breach of or a default under any of the terms or provisions of any other agreement, contract, covenant or security instrument or any law, regulation or ordinance by which the Party is bound. There is no litigation, action, proceeding, investigation or other dispute pending or threatened against either Party which may impair its ability to perform its respective

duties and obligations hereunder.

10. Notices

Any and all notices, demands, or other communications required or desired to be given hereunder by either Party shall be delivered electronically and in writing by certified mail, return receipt requested as follows:

EIC:
Thomas Bregman
Energy Improvement Corporation
321 Bedford Rd,
Bedford Hills, NY 10536

Joseph Del Sindaco
Energy Improvement Corporation
321 Bedford Rd,
Bedford Hills, NY 10536

Attention: Tom Bregman
Joseph Del Sindaco

E-mail: tom@energizeny.org
Treasurer@energizeny.org

With a copy to:

James Staudt, Esq.
McCullough, Goldberger & Staudt, LLP
1311 Mamaroneck Avenue, Suite 340
White Plains, N.Y. 10605
E-mail: jstaudt@mgslawyers.com

MUNICIPALITY: _____

With a copy to:

Either Party hereto may change its address for purposes of this paragraph by providing written notice to the other party in the manner provided above.

11. Governing Law.

This Agreement shall be construed and governed in accordance with the laws of the State of New York. Any legal action to be brought under this Agreement must be instituted in State or Federal Courts having jurisdiction located in Westchester County, New York.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above. The Parties hereto agree that facsimile signatures shall be as effective as if originals.

Date: _____, 20__

Energy Improvement Corporation

By: _____

PRINT NAME:

Date: _____, 20__

Municipality Name: _____

By: _____

PRINT NAME:



ENERGIZE NY FINANCE PROGRAM

Energize NY Finance is a program developed by The Energy Improvement Corporation (EIC), a New York State Not-for-Profit Local Development Corporation, to offer financing for energy improvements in commercially owned properties within Member Municipalities*.

Energize NY Finance brings many benefits to local communities

- Lower energy expenses for local businesses mean more dollars go into the local economy
- More projects with deeper upgrades improve economic competitiveness that attracts new employers
- Energy improvements create local skilled construction jobs
- Quality control requirements increase the integrity and value of the building stock
- Reduced greenhouse gas emissions improve air quality and create a healthier environment

Energize NY Finance features low interest rates, long repayment terms, and automatic transferability to succeeding property owners, enabling positive cash flow and extensive energy improvements.

Energize NY Finance is available to owners of the following types of existing buildings

- ◆ Commercial Office ◆ Retail ◆ Medical ◆ Industrial ◆ Multifamily ◆
- ◆ Non-Profit Owned Buildings ◆ Commercially Owned Residential ◆

Energize NY Finance advantages include

- Long repayment terms up to 15 years and low interest costs facilitate robust energy improvements
- Property Owners have access to financing for energy improvements that preserves existing credit lines
- Repayment is made through a charge on the real estate tax bill that remains with the property if sold

Energize NY Finance qualifications are based on property value, not credit. Lending criteria include

- ☑ Estimated energy cost savings from improvements must be greater than annual finance payments
- ☑ Improvements must have a Savings-to-Investment ratio >1
- ☑ Property's existing Loan-to-Value no greater than 80%
- ☑ Financing up to 10% of the value of the benefitted property
- ☑ No bankruptcy within last 7 years
- ☑ At least 3 year history of timely property tax payments
- ☑ Existing lender consent required
- ☑ Maximum 15 year financing terms

Energize NY Finance Program Handbooks outline the steps to securing financing for energy improvements

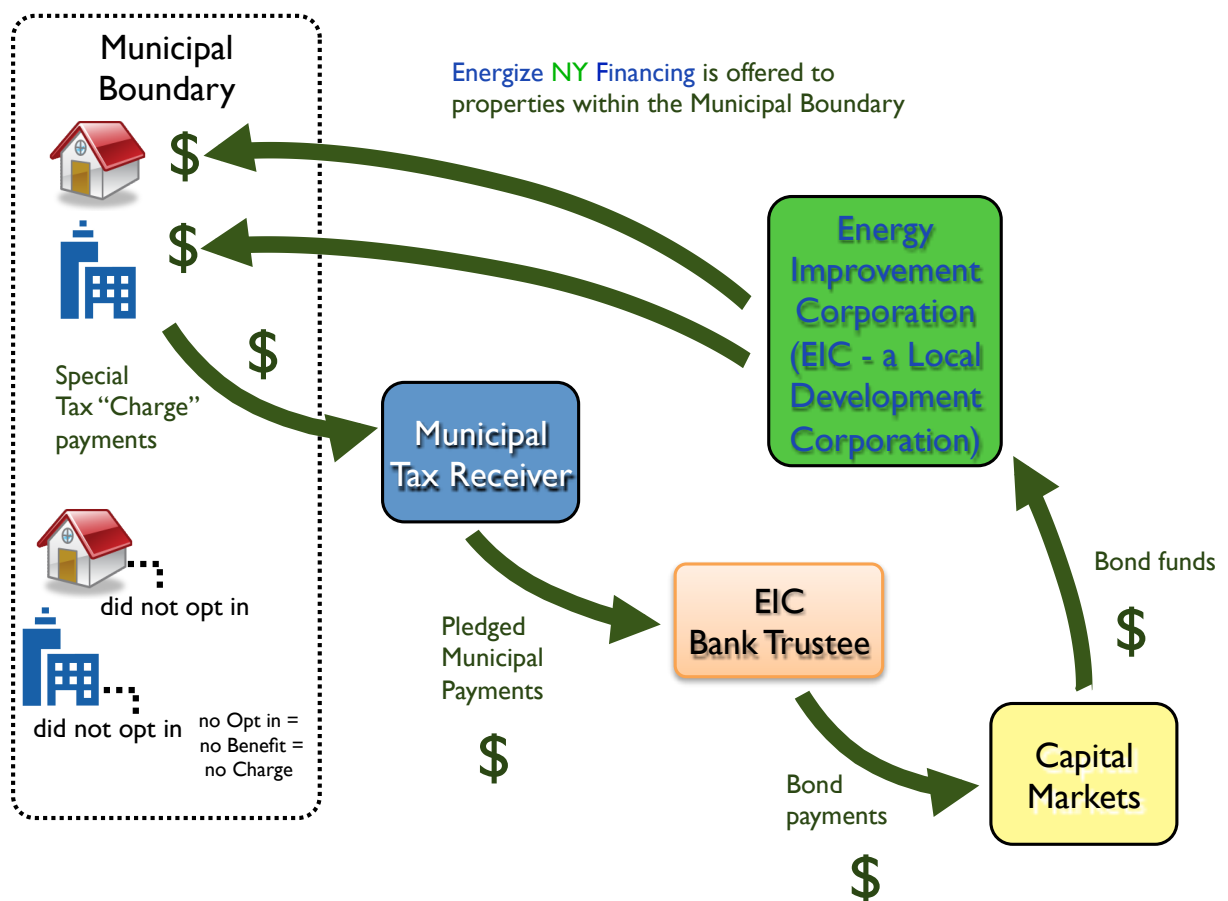
Visit www.energyimprovementcorp.org to access the **Energize NY Finance** Program Handbooks
or call (914) 302-7300 to speak with

Joe Del Sindaco, Managing Director of Energize NY Commercial Programs
Robert Fischman, Director of Energize NY Commercial Programs

ENERGIZE NY FINANCE PROGRAM



How does *Energize NY Finance* Work?



Visit www.energyimprovementcorp.org to access the **Energize NY Finance** Program Handbooks
or call (914) 302-7300 to speak with
Joe Del Sindaco, Managing Director of Energize NY Commercial Programs
Robert Fischman, Director of Energize NY Commercial Programs

**The Energy Improvement Corporation (EIC), a New York State Not for Profit Local Development Corporation, offers a range of services under the brand "Energize NY" including the promotion, facilitation and financing of qualifying energy efficiency improvements among property owners in participating Counties and Cities in the State of New York and Cities, Towns and Villages in Westchester County (the "Members"). EIC was formed to save money, energy and reduce greenhouse gas emissions by maximizing the number of buildings that undergo efficiency and renewable energy improvements as offered by NYSEERDA through innovative community based outreach and marketing efforts and alternative forms of financing.*