

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

**REGULAR MEETING OF THE CITY COUNCIL
Wednesday, January 9, 2019
7:30 p.m.**

Please Note: The Council will convene at 6:30 p.m. and it is expected they will adjourn into Executive Session at 6:31 p.m. to discuss attorney-client privileged matters, personnel matters and labor negotiations.

1. Pledge of Allegiance.
2. Roll Call
3. Presentation of the Mayor John Carey Merit Award to Carolyn Cunningham.
4. Approve two new Fire Chiefs (Dan Bochicchio, First Assistant Fire Chief, and Anthony Alba, Second Assistant Fire Chief) as previously approved by the Commissioner of Public Safety.
5. General Announcements.
6. Draft unapproved minutes of the Regular Meetings of the City Council held December 5 and 19, 2018 as well as the Special Meeting held December 27, 2018.
7. Residents may be heard on matters for Council consideration that do not appear on the Agenda.
8. Consideration of a petition from 1037 Boston Post Road, LLC to amend the text of the City of Rye Zoning Code to permit physical fitness facilities in the B-1 (Neighborhood Business) and B-2 (Central Business) Zoning Districts within the "A" and "B" Parking Districts.
9. Consideration of a resolution adopting a SEQRA negative declaration in connection with amendments to Chapters 133 "Noise" of the City Code.
Roll Call
10. Consideration of a resolution adopting a SEQRA negative declaration in connection with amendments to Chapters 196 "Wireless Telecommunications Facilities", the City's wireless code.
Roll Call
11. Adopt amended Chapter 133 "Noise" of the City Code with respect to installations in the public right of way.
Roll Call
12. Adopt amended Chapter 196 "Wireless Telecommunications Facilities", the City's wireless code.
Roll Call

13. Approve a license agreement with Rye Town Park Commission to grant them permission to install footings underneath City owned property as part of the rebuilding of the Dearborn Avenue seawall.
Roll Call
14. Appointment of the 2019 Deputy Mayor by the Mayor.
15. Appointment of a Council Member as Trustee of the Police Pension Fund, by the Mayor with Council approval, for a one-year term.
16. Designation of the City Council's Audit Committee by the Mayor.
17. Designation of the City Council Liaisons by the Mayor.
18. Designation of the official City newspaper.
19. Designation of the amounts of faithful performance bonds:

A. City Comptroller	\$ 1,000,000
B. City Clerk	\$ 500,000
C. City Marshall	\$ 100,000
20. Appointments to Boards and Commissions, by the Mayor with Council approval.
21. Miscellaneous communications and reports.
22. Old Business/New Business.
23. Adjournment

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The next regular meeting of the City Council will be held on Wednesday, January 23, 2019 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".

The Mayor and City Council have office hours in the Mayor's Conference Room Annex at Rye City Hall, 1051 Boston Post Road. Attendance by the Mayor and Council Members will vary. The Mayor's Conference Room Annex is located on the 1st floor of City Hall adjacent to the Council Chambers. Hours are as follows:

**Mondays 9:30 a.m. to 11:00 a.m.
Wednesdays 9:30 a.m. to 11:00 a.m.**



CITY COUNCIL AGENDA

NO. 4

DEPT.: Fire Department

DATE: January 9, 2019

CONTACT: Fire Department

AGENDA ITEM: Approve two new Fire Chiefs (Dan Bochicchio, Fire Assistant Fire Chief, and Anthony Alba, Second Assistant Fire Chief) as previously approved by the Commissioner of Public Safety.

FOR THE MEETING OF:
January 9, 2019

RECOMMENDATION: Approve the elections of Dan Bochicchio as First Assistant Fire Chief and Anthony Alba as Second Assistant Fire Chief.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: At the April 2018 Rye Fire Department Annual Meeting the following Chiefs were elected: Dan Bochicchio as First Assistant Fire Chief and Anthony Alba as Second Assistant Fire Chief subject to the approval of the City Council in accordance with Article 13, Section 2 of the Rye City Charter.

To: Honorable Mayor Cohn and Members of Rye City Council

From: Robert J. Falk, Public Safety Commissioner

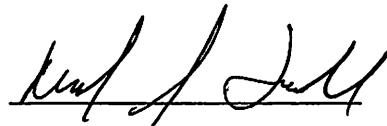
Re: Volunteer Fire Chiefs and Incident Commander Status

Date: January 7, 2019

In April, volunteer fire fighters Dan Bochicchio and Anthony Alba were elected as First Assistant Fire Chief and Second Assistant Fire Chief. Both officers have completed all the required training for the positions. I have approved these elections and I am recommending to the City Council to approve these elections as well.

Please let me know if you have any questions.

Respectively,

A handwritten signature in black ink, appearing to read "Robert J. Falk", written over a horizontal line.

Robert Falk

Public Safety Commissioner

DRAFT UNAPPROVED MINUTES of the
Regular Meeting of the City Council of the City of
Rye held in City Hall on December 05, 2018, at 7:30
P.M.

PRESENT:

JOSH COHN, Mayor
SARA GODDARD
EMILY HURD
RICHARD MECCA
JULIE SOUZA
BENJAMIN STACKS
DANIELLE TAGGER-EPSTEIN
Councilmembers

ABSENT:

NONE

The Council convened at 6:30 P.M. Councilman Mecca made a motion, seconded by Councilwoman Hurd, to adjourn immediately into executive session at 6:30 P.M. to discuss personnel and litigation matters. At 7:29 P.M., Councilman Mecca made a motion, seconded by Councilwoman Hurd, to adjourn the executive session and commence the regular meeting of the City Council. The meeting began at 7:38 P.M.

1. Pledge of Allegiance.

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

There was a moment of silence to honor the memory of President George H. W. Bush.

Councilwoman Hurd told a story about the late President Bush.

2. Roll Call.

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

3. General Announcements.

Councilwoman Tagger-Epstein read a quote from George H. W. Bush. She acknowledged his efforts as President when he signed national disability legislation. She

announced that there was a RAISE survey distributed for parents of children with disabilities. She encouraged all to participate.

Councilman Stacks announced that the winter golf program at Rye Golf Club has started. There are some restrictions for winter golf, such as a prohibition on golf carts for the season. There are also improvements happening at the club, which has rerouted the course.

Councilwoman Hurd announced that Rye Town Park will host a Christmas tree lighting to be held December 15, 2018 from 5:00 to 6:30 p.m.

Councilwoman Goddard announced that Colleen Margiloff of Rye Sustainability would be stepping down at the end of 2018. Councilwoman Goddard thanked Ms. Margiloff for her many years of service to the committee and community.

Mayor Cohn stated that the City had started a conversation with Crown Castle regarding telecommunications installations in Rye, but it is uncertain where that will lead. At the same time, the City is trying to put together an amendment of the City code, for wireless communications. The FCC will limit future municipal rights, with an effort underway to have the FCC reconsider its position.

Councilwoman Hurd added that there was a recent article in LoHud that raised some concern about a potential wedding venue at Rye Town Park. It is by no means being moved forward, but rather, something in the very early stages of consideration. The City has heard much objection from residents regarding that proposal. She also added that Con Ed would repave the roadways where work has been completed recently.

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

There was nothing discussed under this agenda item.

5. Public Hearing on the proposed 2019 Budget.

Councilman Stacks made a motion, seconded by Councilman Mecca, to open the public hearing for the proposed 2019 Budget.

Bertrand de Frondeville, Rye resident, thanked the Council. He referred a letter, previously sent to the Council, outlining his comments regarding the budget. He asked for clarification about Police and Fire and the Library.

Mayor Cohn explained that with regard to unassigned fund balance, the City intends on remaining around 10%, which would hopefully keep the City safely in the AAA ballpark. He said the City had created a capital projects fund to which funds have been transferred. The City has deteriorating infrastructure that needs to be fixed. Mr. de Frondeville thanked the Council for staying below the tax cap.

Councilwoman Hurd commented on the budget allocations with regard to the library, who will receive a \$10,000 increase in funding for 2019. She stated that she thought the library was taking an aggressive approach to proactively address the changing times, keeping the library as an ongoing information depository.

Ryan Prime of Milton Road, and President of the Disbrow Park Conservancy, addressed the Council. He acknowledged the planning process at Disbrow Park and thanked the Council for exploring options to plan for the park's future. He felt that the planning Disbrow would not be possible without a partnership between the City and the Conservancy. Mr. Prime said it was great to see kids in the park using it as a park. He commented that there was a list of capital improvements in the proposed budget, but that he was concerned that these improvements are being made without any vision for the future of the park. He asked that the City Council set up a task force and schedule periodic workshops to have public engagement.

Councilwoman Goddard recalled that the City had held several workshops on the proposed projects. Mayor Cohn added that the City had already committed to these projects. He welcomed Mr. Prime to discuss the issues in detail at the Council's available office hours and to review the workshops, which are available online.

Mr. Prime reiterated his concern that the park is missing an overall vision.

Councilwoman Hurd added that these projects are urgent in that Building 5 is literally falling down. This was similar to the immediate need for new garbage trucks.

Councilwoman Tagger-Epstein stated that the Council learned over the last several years that the cost of anything major in Disbrow is major. The City likely could not afford that grand vision without DPW there. She explained that the DPW footprints are not changing and everything that can be done with the park will happen around that operation.

Mr. Prime said that he understood the urgent need of these repairs, but that the community and conservancy could not get an idea of what they could do since the master plan stopped regarding Disbrow.

Councilwoman Goddard encouraged Mr. Prime to watch the workshops, available on the City's website.

Mayor Cohn said that the Council was very appreciative of the Conservancy's efforts.

Mr. Prime stated that it was the Conservancy's want to partner going forward, smart and collectively.

Councilwoman Hurd echoed that it was everyone's benefit to have a beautiful Disbrow.

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

6. Consideration of a request by the Rye Free Reading Room for use of the Village Green and City Hall Parking lot to host the Annual Vehicle Fair on Sunday, May 19, 2019 from 8:00 a.m. to 5:00 p.m.

Chris Shoemaker, Rye Free Reading Room, approached the Council about the annual Vehicle Fair, to be held on May 19, 2019.

Corporation Counsel Wilson explained that for this event, the Council must waive the City Code requirements on the food truck law to permit food trucks at the event.

Councilman Mecca made a motion, seconded by Councilwoman Tagger-Epstein and unanimously carried, to Motion to approve a request by the Rye Free Reading Room for use of the Village Green and City Hall Parking lot to host the Annual Vehicle Fair on Sunday, May 19, 2019 from 8:00 a.m. to 5:00 p.m.

Councilman Mecca made a motion, seconded by Councilwoman Tagger-Epstein, to waive City Code Chapter 144 (8)(d) and (g) regarding food trucks, to permit them on site at the Annual Vehicle Fair, to be held May 19, 2019 on the Village Green and City Hall.

ROLL CALL:

AYES: Mayor Cohn, Councilwoman Goddard, Hurd, Mecca, Stacks, Tagger-Epstein
NAYS: None
ABSENT: Councilwoman Souza

7. Authorization for City Manager to enter into a Memorandum of Understanding with the County of Westchester to provide access to Westchester Records Online: the County Clerk's land records and legal files.

City Manager Serrano explained through a Memorandum of Understanding with Westchester County, the City is provided access to Westchester Records Online, the County Clerk's land records and legal files. Municipalities are given exclusive access to essential abstracts of real estate transactions to assist tax assessors. There is no charge to the City for access to the records.

Councilwoman Tagger-Epstein made a motion, seconded by Councilwoman Hurd, to authorize the City Manager to enter into a Memorandum of Understanding with the County of Westchester to provide access to Westchester Records Online: the County Clerk's land records and legal files.

8. Resolution to select the Standard or Green Supply as the default for the Community Choice Aggregation Program.

Mayor Cohn explained that the choice made this evening would become the default source of energy and if a resident did not choose otherwise. Dan Welsh, Westchester Power Program Director, addressed the Council. He explained that the difference between the sustainable, green energy and the traditional energy source was a quarter of a cent per kilowatt hour.

Councilwoman Tagger-Epstein confirmed that the green supply is now sourced from within New York State.

Councilman Stacks asked about the difference between the energy sources, and whether that has remained steady. Mr. Welsh responded that it has, and that it will remain the same throughout the contract.

Councilman Mecca stated that Rye had approximately 5800 households. He asked if Westchester Power had a percentage as to how many have not opted into an ESCO at this point. Mr. Welsh responded that more than 4,000 households were eligible for the program, having not opted into an ESCO.

Mr. Welsh discussed the timeline with the Council of the program. He explained that the program should be up and running by March 1, 2019.

Councilwoman Tagger-Epstein stated that she has had numerous residents reach out who currently have ESCOs. She asked if those residents should call and opt out of their ESCO plans; there was discussion about the program being available only to those who are opted out of an ESCO.

Councilman Mecca asked Mr. Welsh to keep the Council apprised of the number of people who have chosen to opt out of the Community Choice Aggregation program.

Councilwoman Goddard reminded the Council that Rye residents are already defaulted into a supplier, Con Edison.

Councilwoman Tagger-Epstein stated support for the green energy source.

Councilwoman Goddard inquired as to how many municipalities had chosen the standard energy option. Mr. Welsh said that only two of the 20 municipalities in the program have opted for the standard energy option.

Councilwoman Goddard made a motion, seconded by Councilman Mecca and unanimously carried, to elect to have the green energy option as the default option for the City of Rye in the Community Choice Aggregation program.

9. Authorization for City Manager to enter into a Westchester County E-911 Inter-municipal Agreement (IMA) to provide critical E-911 Public Safety Answering Point (PSAP) support and maintenance services in all Westchester municipalities

City Manager Serrano explained the previous IMA has expired and Westchester County was authorized by the Board of Legislators (Act No. 183 – 2017) to enter into this agreement and into similar agreements with 44 other local municipalities for a five (5) year term commencing on October 1, 2017 and continuing through September 30, 2022. This is at no cost to the City.

The primary purpose of this IMA is to define the role of Westchester County and local municipalities regarding the provision of E911 service and the operation of Public Safety Answering Points (PSAPs) located throughout the county. It also provides a necessary legal framework for the County to continue to provide critical hardware and software maintenance for the E911 system/PSAP infrastructure.

Councilwoman Hurd made a motion, seconded by Councilwoman Tagger-Epstein and unanimously carried, to authorize the City Manager to enter into a Westchester County E-911 Inter-municipal Agreement (IMA) to provide critical E-911 Public Safety Answering Point (PSAP) support and maintenance services in all Westchester municipalities.

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

This item was deferred to the next meeting of the City Council.

11. Miscellaneous communications and reports.

Councilman Mecca shared that the Planning Commission meeting would meet before the next Council meeting.

12. Old Business

City Clerk D'Andrea presented the new City website to the Council, to be launched the following weekend. The website was the product of two years of work, in which the City had originally received 19 RFP responses for the professional service of design and content management. City staff worked for hundreds of hours to organize content and design with the City's vendor, Vision Internet.

13. New Business

There was nothing discussed under this agenda item.

14. Adjournment.

There being no further business to discuss, Councilman Mecca made a motion, seconded by Councilwoman Hurd and unanimously carried, to adjourn the meeting at 8:53 pm.

Respectfully submitted,

Carolyn D'Andrea
City Clerk

APPROVED MINUTES of the Regular
Meeting of the City Council of the City of Rye held in
City Hall on December 19, 2018, at 7:30 P.M.

PRESENT:

JOSH COHN, Mayor
SARA GODDARD
EMILY HURD
RICHARD MECCA
JULIE SOUZA
BENJAMIN STACKS
DANIELLE TAGGER-EPSTEIN
Councilmembers

ABSENT:

None

The Council convened at 6:30 P.M. Councilman Mecca made a motion, seconded by Councilwoman Souza, to adjourn immediately into executive session at 6:30 P.M. to discuss personnel and litigation matters.

At 7:31 P.M., Councilman Mecca made a motion, seconded by Councilwoman Souza, to adjourn the executive session. The regular meeting of the City Council began at 7:31 P.M.

1. Pledge of Allegiance.

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

2. Roll Call.

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

3. General Announcements.

Councilwoman Hurd announced that there would be free parking in the downtown central business district during the holidays.

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

There was nothing discussed under this agenda item.

5. Draft unapproved minutes of the Budget Workshop on November 26, 2018, and the Regular Meeting of the City Council held November 28, 2018.

Councilwoman Hurd made a motion, seconded by Councilman Mecca and unanimously carried, to adopt the minutes of the Budget Workshop on November 26, 2018, and the Regular Meeting of the City Council held November 28, 2018.

16. 2019 Participation in the Tree City program.

This item was taken out of order. Melissa Grieco, Rye Sustainability Committee, announced that the City had become a member retroactively of Tree City USA for 2018. There is a growing concern for preserving trees in Rye. She reported that in Rye in 2018, 173 trees were removed and 20 were planted. She said that native trees are valuable, providing a habitat for wildlife. She was hopeful for an upward trend for 2019.

Mayor Cohn signed the City's participation document for the 2019 Tree City USA program.

6. Consideration of a petition by The Miriam Osborn Memorial Home Association to amend the text of the City of Rye Zoning Code to create a new use and development standards for "Senior Living Facilities" in the R-2 Zoning District.

Frank McCullough, McCullough Goldberger and Staudt, spoke on behalf of the Osborn Memorial Home. The Osborn is a senior living development, providing important services. It resides in the R-2 Zoning District. In the early 1990s, the Osborn board of trustees recognized a need to expand and modernize its facilities for Osborn to be able to survive in the future. That action resulted in an application for development, approved by the City in 1993 without a zoning amendment. The City made a determination that it wanted to restrict development based on the plan that the Osborn filed by a series of covenants and restrictions. Mr. McCullough said that one has to ask why it was done that way when the normal process would be to amend the zoning ordinance. In terms of the property, there was no facility in the northeast as comprehensive and as large a development. Further, Mr. McCullough reported that this was the largest development within the City of Rye. The covenants and restrictions have been complied with. However, at this time, Mr. McCullough explained that the applicant was requesting an amendment to the R-2 zoning. The plan would be to maintain the same setbacks and height restrictions. He asked the Council to refer this matter, a zoning amendment, to the Planning Commission for review and comment. He stated that the applicant was not asking the Council to give up any of its jurisdiction, but rather asking to send it to the Planning Commission to have the benefit of the City Planner and the Commission to review, question the applicant, and make a recommendation. This was the first step in a process that will take many months. Mr. McCullough clarified that the application for a zoning amendment does not contain a site plan. Some of the buildings need some rehabilitation. He stated that the applicant cannot propose a site plan until the zoning is set.

Matthew Anderson, CEO of the Osborn Memorial Home, thanked the Council. He spoke about the population of the Osborn and the various programs provided. He reported that the

Osborn was one of the top nursing homes in the state. He explained that the Osborn was looking to the future. There are 850 people employed, with 1600 people that are served. Further, Mr. Anderson said that the Osborn is one of the largest tax payers in Rye. It allows residents to age in place within their units. He described the Osborn as a skilled nursing facility and assisted living facility. Mr. Anderson said that the Osborn as the applicant could not go ahead and plan a future for this campus within the current zoning requirements. It has a need to add more amenity space on the campus, with necessary updates, new fitness facilities, expanded dining areas, among others. He said that Rye Recreation and the Nature Center both utilize the Osborn campus. It is a community place of engagement.

Mr. McCullough said that the relief they were asking for at the meeting was to refer a proposed zoning amendment to the Planning Commission to review and comment. This would start a process. It was not a site plan or proposal, which would require the zoning text to know what the limits are.

Councilman Mecca asked the applicant to help walk the Council through the FAR and other outstanding issues.

Mr. McCullough responded that the Osborn has 160 foot setback around the campus. That number that was taken because of the concern of the Old Post Road and the houses there. As the Osborn developed a plan, there were natural reasons to have large setbacks.

Councilman Mecca asked the applicant to explain the meaning of a 0.5 proposed FAR. Mr. McCullough stated that it was the intent to keep a feeling of open space.

Councilwoman Goddard said that if there was not site plan to look, it was difficult to envision the reason for the change.

Mr. McCullough said that the applicant could show the Council its existing site plan and areas of potential impact.

Mayor Cohn asked if the applicant was suggesting that we go through with the zoning change or that the zoning change be discussed with a Planning Commission.

Councilwoman Tagger-Epstein suggested a possible site walk with the City Council.

Councilwoman Hurd said that the Osborn had special needs, and these changes would require an amendment to the zoning. This is the start of a conceptual future plan for the Osborn.

Councilwoman Souza asked about the primary rationale behind this change. She said it sounded like the applicant was prosing to update the facilities, but was to know if part of the goal was to increase capacity as well, and if so, by how much.

Mr. Anderson said that currently, any thoughts about development are all hypothetical. He said that the Osborn site is blessed with space. He ensured that the space would be kept.

Councilwoman Goddard confirmed that the applicant would come back to the Council with a site plan after the matter is referred back from the Planning Commission.

Mr. McCullough said that they could show possible alternatives of coverage and bulk.

Mayor Cohn referred to an earlier conversation in which the applicant showed the Council an option at one point. He asked if that plan had changed. Mr. McCullough replied and clarified that the earlier discussion was primarily a setback conversation.

Mr. McCullough said that he felt they could present on a hypothetical basis with alternatives.

Councilwoman Souza said that doing so would give the Council a visual concept of what the applicant was considering.

Mr. McCullough agreed with Councilwoman Tagger-Epstein's suggestion of a site walk.

Councilwoman Hurd asked in terms of process whether the City had done this before.

City Planner Miller explained that in terms of process, this is the first of a few land use applications involving zoning over the next few months. The concept here is to amend the zoning. Zoning sets forth the zoning and development standards. The Osborn is burdened by a covenant and restriction that was agreed to with the Planning Commission. It was deemed that the uses were consistent with zoning. Now, the applicant would like to accommodate future needs. The Planning commission could shape the answer to the question that asks what a site can be. There are things that the applicant does not yet know. If you allow the zoning to do something, you have to anticipate that an applicant will take advantage of that zoning allowance to the fullest extent. The consideration of a zoning amendment will not dial into a heavy level of detail of what could be.

Councilman Stacks said that based on this zone change, what is actually built could be different several different scenarios. He asked if somebody in the process going to explain the worst case scenario to the Council. City Planner Miller responded that the process would include considering what the full development potential could be.

Councilwoman Goddard stated that there was a desire for more specificity. She said that asking for a zoning change right now implies a plan.

City Planner Miller said that once zoning is enacted, a site plan will need to be adopted by the Planning Commission.

Councilwoman Hurd stated that the current zoning was within a single family residential neighborhood. They are asking for more than what they have now.

Mayor Cohn said that the Council was simply being asked whether Osborn can work with the Planning Commission to flesh it out the zoning change that the applicant was suggesting.

Mr. McCullough stated that the applicant would take the Council through the campus.

Councilwoman Souza asked if other properties would be affected within the zone.

Mr. McCullough clarified that the Osborn would be the only site affected.

Councilwoman Hurd asked if it was not a good idea to be changing the zoning code all the time. She asked if zoning would need to include a health-related institution.

Mayor Cohn asked if the uses would be constrained by zoning.

City Planner Miller responded that they would.

Mayor Cohn suggested that the Council go on the site walk tour.

Councilwoman Tagger-Epstein brought up the issue of traffic and the process for considering any implications.

Mr. McCullough confirmed that the applicant would be happy to do a site walk.

7. Resolution to adopt the 2019 Budget and establish the 2019 tax levy and 2019 tax rate.

Mayor Cohn said that there have been questions about whether specific capital improvements need to be listed in the budget. The capital fund budget allows the Council some discretion. Those items do not need to be listed within the budget.

Councilwoman Hurd made a motion, seconded by Councilwoman Tagger-Epstein, and unanimously carried, to adopt the following resolution:

WHEREAS, on November 7, 2018 the 2019 Tentative Budget was presented to the City Council, and;

RESOLVED, that the tentative budgets and fee schedules as approved by the City Council, are hereby adopted for the fiscal year ending December 31, 2019, and be it further;

RESOLVED, that the City Council does hereby certify to the City Comptroller the 2019 City of Rye tax rate of \$176.76 per \$1,000 taxable assessed valuation and the 2019 City of Rye tax levy of \$24,864,094 and be it further;

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

ROLL CALL

AYES: Councilmembers Goddard, Hurd, Mecca, Souza, Stacks, Tagger-Epstein, Mayor Cohn
NAYS: None
ABSENT: None

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

Councilwoman Hurd made a motion, seconded by Councilwoman Tagger-Epstein, and unanimously carried, to adopt the following resolution:

RESOLVED, that the City Comptroller is hereby authorized to make the necessary 2018 fiscal year-end budget transfers in City accounts, provided a list of such transfers over \$10,000 is furnished to the City Council after completion of such transfers.

ROLL CALL

AYES: Councilmembers Goddard, Hurd, Mecca, Souza, Stacks, Tagger-Epstein, Mayor Cohn
NAYS: None
ABSENT: None

9. Consideration Resolution authorizing the Mayor to execute an agreement with the Rye Free Reading Room to furnish library services for 2019.
Roll Call

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

RESOLVED, that the Mayor execute an agreement with the Rye Free Reading Room to furnish library services for 2019.

ROLL CALL

AYES: Councilmembers Goddard, Hurd, Mecca, Souza, Stacks, Tagger-Epstein, Mayor Cohn
NAYS: None
ABSENT: None

10. Consideration Resolution authorizing the City Manager to enter into a 5-year Agreement for Emergency Medical Transport with the Village of Port Chester, the Village of Rye Brook and Port Chester-Rye-Rye Brook Volunteer Ambulance Corps. Inc.
Roll Call

City Manager Serrano stated that the ambulance corps had been doing a great job. Councilwoman Tagger-Epstein added that there was an increase that had been talked about for many years and that the ambulance was doing a wonderful job.

There was general discussion regarding the allocation of funding among the various municipalities.

This item was deferred to next regular meeting of the City Council.

11. Public Hearing to amend Chapter 133 “Noise” of the City Code with respect to installations in the public right of way.

Mayor Cohn explained the proposed amendments address how the intensity of noise is measured for installations in the right of way. They are limited to 45 decibels measured at a distance of 3 feet.

Councilwoman Souza made a motion to open the public hearing, seconded by Councilman Stacks.

Dr. Jeff Dorfman, Rye Resident, thanked and addressed the Council. He said that he wanted to speak about Chapter 133. He said that section 133-1 of the Rye City Code does prohibit unnecessary noise. He said he would like to see that that Mayor and City Council support the Rye Police Department in enforcing the law against unnecessary noise.

The public hearing considering Chapter 133, “Noise,” was continued to the next meeting.

12. Public Hearing to amend Chapter 196 “Wireless Telecommunications Facilities”, the City’s wireless code.

Mayor Cohn announced that there would be a special meeting of the City Council on December 27, 2018 on the issue. The City is trying to be responsive to an FCC regulation that limits municipal power with regard to telecommunications. The order would be effective January 14, 2019, and so the City needs a resolution with regard to telecommunications by then. He said that the City needs to take whatever steps it deems appropriate to protect the City’s jurisdiction. The City is focused in particular on small cells. One guiding principle that the FCC has underscored for us is that we cannot be prohibitory. The goal is to protect Rye generally, concerning aesthetics, community character and property value. The City is focused on protecting the residential right-of-way, which has been the target of Crown Castle.

Councilwoman Hurd made a motion, seconded by Councilwoman Tagger-Epstein, to open the public hearing.

Dr. Dorfman, Rye resident, said that nodes can be related with cell phone transmissions and emergency radios.

Paul Benowitz, 29 Ellsworth Street, asked the Council if they were planning on voting tonight. Mayor Cohn said that the public hearing would at least remain open to the December 27 meeting. Mr. Benowitz said that in Scarsdale, the municipality told Crown Castle where to put the nodes. He said he was supportive of the law.

Sam Burruano, Rye resident, said that the right-of-way is a franchise controlled by the City of Rye. He asked if that was true across the country with regard to the FCC. Mayor Cohn responded that he believed that the right-of-way is City property but the City grants franchises within the right-of-way. He confirmed that it was a national issue.

Trish Agosta, Rye resident, asked about the National League of Cities that was hoping to stay or overturn the FCC ruling. She asked about timing. Mayor Cohn responded that it was unclear about exact timing, but that the request for a stay would need to be decided prior to January 14, 2019.

The public hearing continued to the next meeting.

13. Resolution authorizing the City Engineer to submit a request to the Westchester County Board of Legislature to transfer select properties along Locust Avenue, Graham Court, Clinton Avenue, Central Avenue, Woodcrest Road, Club Road, and Sunset Lane from the Blind Brook Sewer District to the Mamaroneck Valley Sewer District in connection with the installation of a new sewer pump station at the corner of Clinton Avenue and Central Avenue.

Mayor Cohn explained that this would allow the City to put in a new sewer line with reasonable efficiency.

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

RESOLUTION

Requesting that Select Properties along Locust Avenue, Graham Court, Clinton Avenue, Central Avenue, Woodcrest Road, Club Road, and Sunset Lane be Transferred From the Blind Brook Sewer District to the Mamaroneck Valley Sewer District In Connection With the Construction of New Pump Station at Clinton Avenue and Central Avenue.

WHEREAS, on May 23, 2018, the Rye City Council adopted a resolution authorizing the design, and construction of a new pump station located at Clinton Avenue and Central Avenue; and

WHEREAS, the sewer project requires the transfer of properties from the Blind Brook Sewer District to the Mamaroneck Valley Sewer District; now therefore be it

RESOLVED, that the Rye City Council authorizes the City Engineering Department to provide a letter requesting Westchester County Board of Legislature approval to

DRAFT UNAPPROVED MINUTES – Regular Meeting - City Council
December 19, 2018 - Page 9

transfer the following 60 properties from the Blind Brook Sewer District to the Mamaroneck Valley Sewer District:

Parcel ID (S/B/L)	Address
146-6-2-19-2	3 GRAHAM CT
146-6-2-47-1	47 CLINTON AVE
146-6-2-47-2	49 CLINTON AVE
146-6-2-19-3	5 GRAHAM CT
146-6-2-19-4	7 GRAHAM CT
146-6-2-19-5	9 GRAHAM CT
146-6-2-19-6	10 GRAHAM CT
146-6-2-19-7	8 GRAHAM CT
146-6-2-19-8	6 GRAHAM CT
146-6-2-19-9	4 GRAHAM CT
146-6-2-19-10	2 GRAHAM CT
146-6-2-19-11	169 LOCUST AVE
146-6-2-18	195 LOCUST AVE
146-6-2-5	221 LOCUST AVE
146-6-2-4	227 LOCUST AVE
146-6-2-19-1	1 GRAHAM CT
146-6-2-20	165 LOCUST AVE
146-6-2-21	161 LOCUST AVE
146-6-2-45	57 CLINTON AVE
146-6-2-22	155 LOCUST AVE
146-6-2-23	151 LOCUST AVE
146-6-2-42	153 LOCUST AVE
146-6-2-41	58 CLINTON AVE
146-6-2-43	60 CLINTON AVE
146-6-2-44	59 CLINTON AVE
146-6-2-46	55 CLINTON AVE
146-6-2-47-4	53 CLINTON AVE
146-6-2-47-3	51 CLINTON AVE
146-6-2-40	56 CLINTON AVE
146-6-2-39	54 CLINTON AVE
146-6-2-38	52 CLINTON AVE
146-6-2-37	50 CLINTON AVE
146-6-2-36	48 CLINTON AVE
146-6-2-35	CLINTON & CENTRAL
146-6-2-48	45 CLINTON AVE
146-6-2-49	190 CENTRAL AVE
146-6-2-50	182 CENTRAL AVE
146-6-2-51	192 CENTRAL AVE
146-6-2-65	201 CENTRAL AVE
146-6-2-66	199 CENTRAL AVE
146-6-2-67	197 CENTRAL AVE

Parcel ID (S/B/L)	Address
146-6-1-30	10 CLUB RD
146-6-1-29	30 CLUB RD
146-6-1-12-1	3 CLUB RD
146-6-1-12-2	1 CLUB RD
146-6-1-11	6 CLUB RD
146-6-1-10	2 SUNSET LN
146-6-1-9	4 SUNSET LN
146-6-1-33	25 CLUB RD
146-6-1-32	21 CLUB RD
146-6-1-31	180 LOCUST AVE
146-6-1-35	190 LOCUST AVE
146-6-1-36	2 WINDCREST RD
146-6-1-40	1 WINDCREST RD
146-6-1-37	4 WINDCREST RD
146-6-1-39	3 WINDCREST RD
146-6-1-38	5 WINDCREST RD
146-6-1-6	7 WINDCREST RD
146-6-1-34	6 WINDCREST RD
146-6-1-7	8 WINDCREST RD

ROLL CALL

AYES: Councilmembers Goddard, Hurd, Mecca, Souza, Stacks, Tagger-Epstein, Mayor Cohn
NAYS: None
ABSENT: None

14. **Resolution to authorize participation in Westchester County contracts.**
Roll Call

City Manager Serrano explained that some time ago, the City entered into an agreement to piggyback on county contracts.

Councilwoman Souza made a motion, seconded by Councilwoman Tagger-Epstein, to adopt the following resolution:

WHEREAS, by Act No. 8-1983, The County Board of Legislators authorized the County Purchasing Agent to act as Purchasing Agent for any city, town, village, school district or other unit of local government within the County of Westchester County, provided that said unit of local government by act, ordinance or resolution authorizes the County Purchasing Agent to act as its Purchasing Agent for items purchased by the County, and empowering designated officers and employees to sign requisitions, and further directing the proper official of local government to audit and pay County bills for the cost of County services within thirty (30) days after the receipt of said bill by the local government, and to provide the

County with such insurance coverage as may be required by the County's Director of Risk Management, NOW, THEREFORE, be it

RESOLVED, that the County Purchasing Agent is hereby authorized to act as Purchasing Agent for the City of Rye, New York on a continuing basis, and be it further

RESOLVED, that the City Manager, the City Comptroller, and/or the City Engineer are hereby authorized to sign appropriate requisitions, and be it further

RESOLVED, that the City Comptroller is hereby authorized and directed to audit and pay County bills for the cost of County services within thirty (30) days after receipt of said bills, and be it Further

RESOLVED, that the City Comptroller is hereby authorized to secure and provide to the County of Westchester any and all insurance required by the County's Director of Risk Management, in Accordance with County Act No. 8-1983.

ROLL CALL

AYES: Councilmembers Goddard, Hurd, Mecca, Souza, Stacks, Tagger-Epstein, Mayor Cohn
NAYS: None
ABSENT: None

15. Resolution designating the days and time of regular meetings of the City Council for 2019 setting January 9, 2019 as the first regular meeting.

Councilwoman Souza made a motion, seconded by Councilwoman Goddard and unanimously carried, to adopt the following meeting schedule for the 2019 calendar year:

- January 9, 23
- February 6, 27
- March 13, 27
- April 6 (annual School Board/ City Council meeting); 10, 24
- May 8, 22
- June 5
- July 17
- August 7
- September 18
- October 2, 16
- November 6, 20
- December 4, 18

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

Mayor Cohn, with unanimous Council approval, appointed the following members to the Senior Advocacy Committee: Joni Ehrlich, Vivian Linder, Pat Hammer, Nancy Haneman, Hal Schwartz, Linda Ritocco, and Michelle Thomas. The terms are staggered as follows:

Joni Ehrlich – 1 year, expiring January 1, 2020
Vivian Linder – 1 year, expiring January 1, 2020
Pat Hammer – 2 years, expiring January 1, 2021
Nancy Haneman – 2 years, expiring January 1, 2021
Linda Ritocco – 3 years, expiring January 1, 2022
Hal Schwartz – 3 years, expiring January 1, 2022
Michele Thomas -1 year, expiring January 1, 2020

17. New Miscellaneous communications and reports.

Councilman Stacks asked that the public notice be amended to reflect the upcoming special meeting to be held December 27, 2018.

Councilman Souza thanked Rye Recreation and the Fire Department for a great holiday bonfire.

Councilwoman Hurd announced there was free parking in the downtown through Christmas. On behalf of the Flood Advisory Committee, she announced an upcoming storm with flooding possible Thursday into Friday of that week. With regard to Rye Town Park, there is a parking subcommittee that is making recommendations for automatic parking meters. They are also looking for a new executive director. She reported that Rye Town Park also recently received a grant for a handicap ramp. She also said that the Commission had a presentation by the Barley House owners at the last meeting.

Councilman Mecca reported on behalf of the Planning Commission that there had been a proposal for a three tennis court bubbles at Apawamis. The Commission looks at it from two perspectives: site usage and wetlands issues/ watercourse. Councilman Mecca also reported that the Locust Avenue property has come back to the Commission for the fourth or fifth round. The Commission is doing its due diligence to massage the use of the property with the fact that it is 100% in a floodplain. No decisions have been made on Locust Avenue.

Councilwoman Goddard announced that CCAC Chair Carolyn Cunningham was stepping down after many years of service. She thanked Carolyn for her dedication to Rye and wished her well. The Council also thanked Carolyn.

18. Old Business.

Councilwoman Tagger-Epstein announced that the temporary road closures are open again on Grandview. She inquired about the Rye Country Day School traffic study and any next steps.

Mayor Cohn responded that he foresaw this going back to Traffic and Pedestrian Safety Committee. The City knows that the neighborhood is doing a poll.

Councilwoman Tagger-Epstein reminded everyone that the TPS meetings are public, and invited anyone who might be interested to weigh in.

19. New Business.

There was nothing discussed under this agenda item

20. Adjournment

There being no further business to discuss, Councilman Mecca made a motion, seconded by Councilwoman Souza and unanimously carried, to adjourn the meeting into executive session for litigation and personnel matters at 9:44 p.m.

Respectfully submitted,

Carolyn D'Andrea
City Clerk

DRAFT UNAPPROVED MINUTES of the
Special Meeting of the City Council of the City of
Rye held in City Hall on December 27, 2018, at 7:30
P.M.

PRESENT:

JOSH COHN, Mayor
RICHARD MECCA
JULIE SOUZA
BENJAMIN STACKS
Councilmembers

ABSENT:

SARA GODDARD
EMILY HURD
DANIELLE TAGGER-EPSTEIN
Councilmembers

The Council convened at 6:30 P.M. Councilman Mecca made a motion, seconded by Councilwoman Souza, to adjourn immediately into executive session at 6:30 P.M. to discuss personnel and litigation matters. At 7:31 P.M., Councilman Mecca made a motion, seconded by Councilwoman Souza, to adjourn the executive session and commence the regular meeting of the City Council. The meeting began at 7:31 P.M.

1. Pledge of Allegiance.

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

2. Roll Call.

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

3. Continue the Public Hearing to amend Chapter 133 “Noise” of the City Code with respect to installations in the public right of way.

Mayor Cohn invited the public to speak.

Patricia Agosta, 4 Ridgewood Drive, questioned the timetable for the proposed amendments to take into effect. She also asked for an update on the possible FCC ruling. Mayor Cohn confirmed that the draft language will be completed by January 2, 2019, it will be voted on at the regular meeting of the City Council scheduled for January 9, 2019, and will be received by the Secretary of State on January 11, 2019, which will take into effect upon receipt. He added that he would obtain more information regarding the FCC ruling and would get the information to her.

Councilwoman Souza made a motion, seconded by Councilman Stacks and unanimously carried, to close the public hearing.

4. Continue the Public Hearing to amend Chapter 196 “Wireless Telecommunications Facilities”, the City’s wireless code.

Mayor Cohn invited the public to speak but no one wished to speak on this item agenda item.

There were no members of the public to speak on the issue.

Councilman Stacks made a motion, seconded by Councilwoman Souza and unanimously carried, to close the public hearing.

5. Adjournment

There being no further business to discuss, Councilman Mecca made a motion, seconded by Councilwoman Souza and unanimously carried, to adjourn the meeting at 7:38 p.m.

Respectfully submitted,

Carolyn D’Andrea
City Clerk



CITY COUNCIL AGENDA

NO. 8 DEPT.: Planning DATE: January 9, 2019
CONTACT: Christian K. Miller, City Planner

AGENDA ITEM: Consideration of a petition from 1037 Boston Post Road, LLC to amend the text of the City of Rye Zoning Code to permit physical fitness facilities in the B-1 (Neighborhood Business) and B-2 (Central Business) Zoning Districts within the "A" and "B" Parking Districts.

FOR THE MEETING OF:

January 9, 2019

RYE CITY CODE,

CHAPTER 197
SECTION 3

RECOMMENDATION: That the City Council refer the petition to the City Planning Commission for its advisory review and comment.

IMPACT: ☒ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND:

The Rye City Zoning Code does not include physical fitness facilities as a permitted use. This is a notable omission given, in the petitioner's observation, "the increased attention in the modern era to physical fitness being a key component of personal health and well-being." The Petitioner is the owner of an approximately 30,000 s.f. retail building at 1037 Boston Post Road, which has remained vacant for approximately two years since the closure of Mrs. Green's grocery. The Petitioner's prospective tenant for its property is the YMCA. The Petitioner requests a text amendment of the City Zoning Code to include physical fitness facilities as a permitted use within the B-1 and B-2 Zoning Districts within the "A" or "B" parking districts. The Petitioner's request would allow physical fitness facilities as a permitted use not just at the Petitioner's property, but also for other potential properties in the downtown business district. This change would accommodate a growing community need not currently reflected in the City's Zoning Code. Commonly, zoning is not changed for the benefit of one relatively small parcel, particularly when the growing demand for a use exceeds the capacity of one parcel in the City.

2018 NOV 20 PM 2:49

JONATHAN D. KRAUT

DIRECT TEL.: 914-701-0800
MAIN FAX: 914-701-0808
JKRAUT@HKPLAW.COM

November 20, 2018
VIA HAND DELIVERY

Mayor Josh Cohn & City Council
City of Rye
1051 Boston Post Road
Rye, New York 10580

Re: ***Proposed Zoning Text Amendment***
Physical Fitness Facility

Dear Mayor Cohn and Members of the City Council:

We represent 1037 Boston Post Road, LLC (the "Petitioner"), in connection with the property commonly known as 1037 Boston Post Road (the "Subject Property"). The Petitioner actively searched for a tenant to occupy the Subject Property since the closure of Mrs. Greens approximately two years ago. The Rye YMCA expressed keen interest in occupying the Subject Property as part of their Rye operations. Unfortunately, the existing Zoning Ordinance of the City of Rye does not currently include physical fitness facilities as a permitted use in any zoning district. Accordingly, we respectfully submit herewith a petition to amend the Zoning Ordinance of the City of Rye to include physical fitness facilities as permitted uses within the B-1 and B-2 zoning districts located within the "A" and "B" parking districts (essentially the downtown business district).

Submitted herewith please find ten (10) copies of a Verified Petition for an amendment to the Zoning Ordinance. The original petition is simultaneously being filed with the city clerk. We respectfully request this matter be placed on the Rye City Council agenda for November 28, 2018.

As noted in the Petition, with the increased attention on physical fitness as being a key component of personal health and well-being there has been a corresponding increase in the demand for physical fitness facilities and various programs. Currently, the Zoning Ordinance does not permit this type of use anywhere within the City of Rye, although personal training

HKP

facilities (1-on-1) have been interpreted to be a permitted personal service business within the B-1 and B-2 zoning districts. In filing the instant Petition, the Petitioner is seeking to address this seemingly unintended void in the existing Zoning Ordinance.

While the Petitioner and the YMCA are interested solely in the proposed use of the Subject Property, in granting the proposed zoning text amendment the City Council would be modernizing the Zoning Ordinance to permit what has become a commonplace use in many other municipalities and is typically grouped in with other standard commercial uses in business districts such as retail, personal services, restaurants, banks and professional offices.

Although this action requires review under the State Environmental Quality Review Act (SEQRA) and is an unlisted action, there will be no environmental impact whatsoever in permitting a physical fitness facility as a permitted use in the greater downtown business district. As noted above, the use is a standard commercial use in business districts elsewhere and would allow commercial property owners in the downtown business district greater flexibility in prospective occupants of underutilized space. The environmental impacts for a proposed change in use of a specific site to a physical fitness facility would be addressed on a case-by-case basis by the Planning Commission during the site plan approval / modification process.

We look forward to presenting this Petition to the Rye City Council on November 28, 2018, and can provide any additional information at that time.

Very Truly Yours,

HARFENIST KRAUT & PERLSTEIN LLP

By 

Jonathan D. Kraut

Cc: Marcus Serrano, City Manager
Christian Miller, City Planner
Kristen Wilson, Corporation Counsel

CITY OF RYE: RYE CITY COUNCIL
COUNTY OF WESTCHESTER: STATE OF NEW YORK
-----X

In the Matter of the Application of
1037 Boston Post Road, LLC

**PETITION FOR
FOR AMENDMENT TO
CITY OF RYE ZONING
ORDINANCE**

PROPERTY LOCATION:
1037 Boston Post Road, Rye, New York
Sheet 146.11, Block 1, Lot 4
-----X

Petitioner, 1037 Boston Post Road, LLC, by its attorneys, Harfenist Kraut & Perlstein, LLP, hereby petitions the City Council of the City of Rye for an amendment to the City of Rye Zoning Ordinance as follows:

1. 1037 Boston Post Road, LLC, (hereinafter "Petitioner"), with an address c/o Bill Wolf Petroleum Corp., 100 Jericho Quadrangle, Suite 209, Jericho, New York 11753, is Limited Liability Company duly formed and existing under the laws of the State of New York.
2. The Petitioner is the owner of the real property commonly known as 1037 Boston Post Road, as further set forth in the caption of this Petition (hereinafter the "Property").
3. The Property lies wholly within the B-1 (Neighborhood Business) Zoning District and the "A" Parking District.
4. The Petitioner has entered into a lease agreement with the Rye YMCA (the "YMCA") for use of the Property as a physical fitness facility.

5. The current Zoning Ordinance of the City of Rye does not include physical fitness facilities as permitted uses in any zoning district within the City of Rye.
6. With the increased attention in the modern era to physical fitness being a key component of personal health and well-being, the Petitioner and the YMCA wish to rectify this apparent overlooked issue within the Zoning Ordinance.

AMENDMENT TO ZONING ORDINANCE

7. The Petitioner requests a text amendment of the Zoning Ordinance of the City of Rye to include physical fitness facilities as a permitted use within the B-1 and B-2 Zoning Districts within the "A" or "B" parking districts. This would allow physical fitness facilities as a permitted use within the downtown business district as generally depicted on the map attached hereto as Exhibit 1.
8. The Petitioner specifically requests that the Zoning Code of the City of Rye, Chapter 197: Zoning, Section 197-86: Table of Regulations: Table B, Business Districts-Use Regulations, Column 1, Permitted Main Uses be amended to include as a permitted main use in the B-1 district, and thus also within the B-2 district which already incorporates by reference all permitted main uses in the B-1 district, the following:

(10) Physical Fitness Facility: an establishment or use where physical exercise or training is conducted on an individual or group basis, using exercise equipment or open floor space with or without instruction with a personal trainer and/or in a group class, to include, but not be limited to, the following: weight training, yoga, gymnastics, spin, aerobics, martial arts, wrestling, boxing, etc. Support functions accessory to the principal use include a child care area, spas, lockers, showers, health food bar, game or party room, counter and sales desk for sports health or fitness items associated with the facility. This use shall be limited to properties located within the "A" or "B" Parking Districts.

9. The Petitioner also specifically requests that the Zoning Code of the City of Rye, Chapter 197: Zoning, Section 197-28: Schedule of Off-Street Parking Requirements,

Subsection A: Schedule of Parking Requirements, last amended 7-15-1987 by Local Law No. 7-1987, be amended to include the following:

Use	A	B	C	Unit of Measurement
Physical Fitness Facility	1	1	N/A	200 square feet of gross floor area

5. The requested amendments to the Zoning Ordinance would not have any adverse impacts on the City of Rye, rather it would modify the Zoning Ordinance to the reality of modern demands for the repurposing of underutilized commercial space in and around the downtown business district.

SEQRA REVIEW

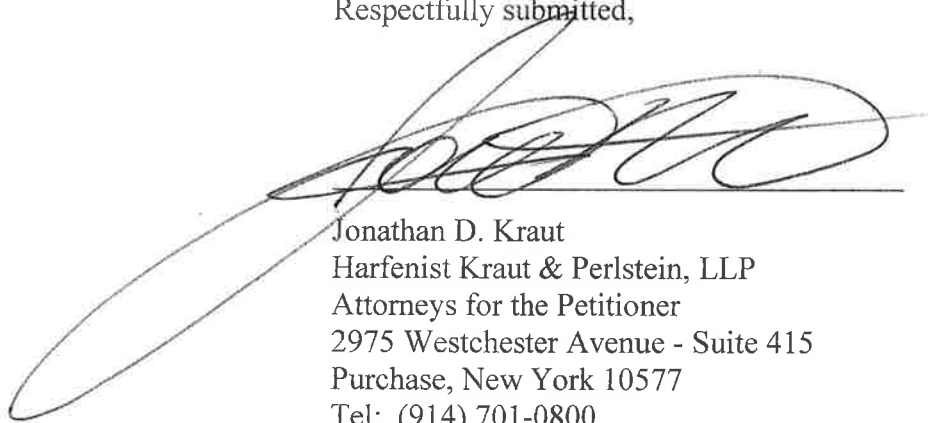
6. With respect to the environmental procedure and review of this Petition pursuant to Article 8 of the Environmental Conservation Law of the State of New York and Part 617 of the New York Codes, Rules and Regulations promulgated pursuant to the New York State Environmental Quality Review Act, the requested zoning amendments are a Type I action as the subject area of the zoning amendment is in excess of 25 acres; however, we respectfully submit the zoning amendment will have no environmental impact whatsoever.
7. The zoning amendments simply permit an additional standard commercial use that carries with it the same impacts as the existing permitted uses in the downtown business district. It is not anticipated that the inclusion of a physical fitness facility use will result in a noticeable increase of construction activities, impervious surfaces, traffic, noise or any other potential environmental impacts over other already permitted uses (i.e. retail, restaurants and personal services). Rather, as most of the downtown business district is already fully developed we expect physical fitness facilities would occupy vacant existing space within the downtown business district such as the Subject Property.

8. Petitioner has reviewed all pertinent environmental issues relating to the proposed zone change and has prepared a short form Environmental Assessment Form (EAF) in connection with this application, submitted herewith as Exhibit 2, so as to enable the City Council to take steps necessary to consider, and to issue, a negative declaration pursuant to the New York State Environmental Quality Review Act.

WHEREFORE, it is respectfully requested that this matter be placed on the calendar of the City Council for November 28, 2018 for a hearing and that the relief sought herein be in all respects granted.

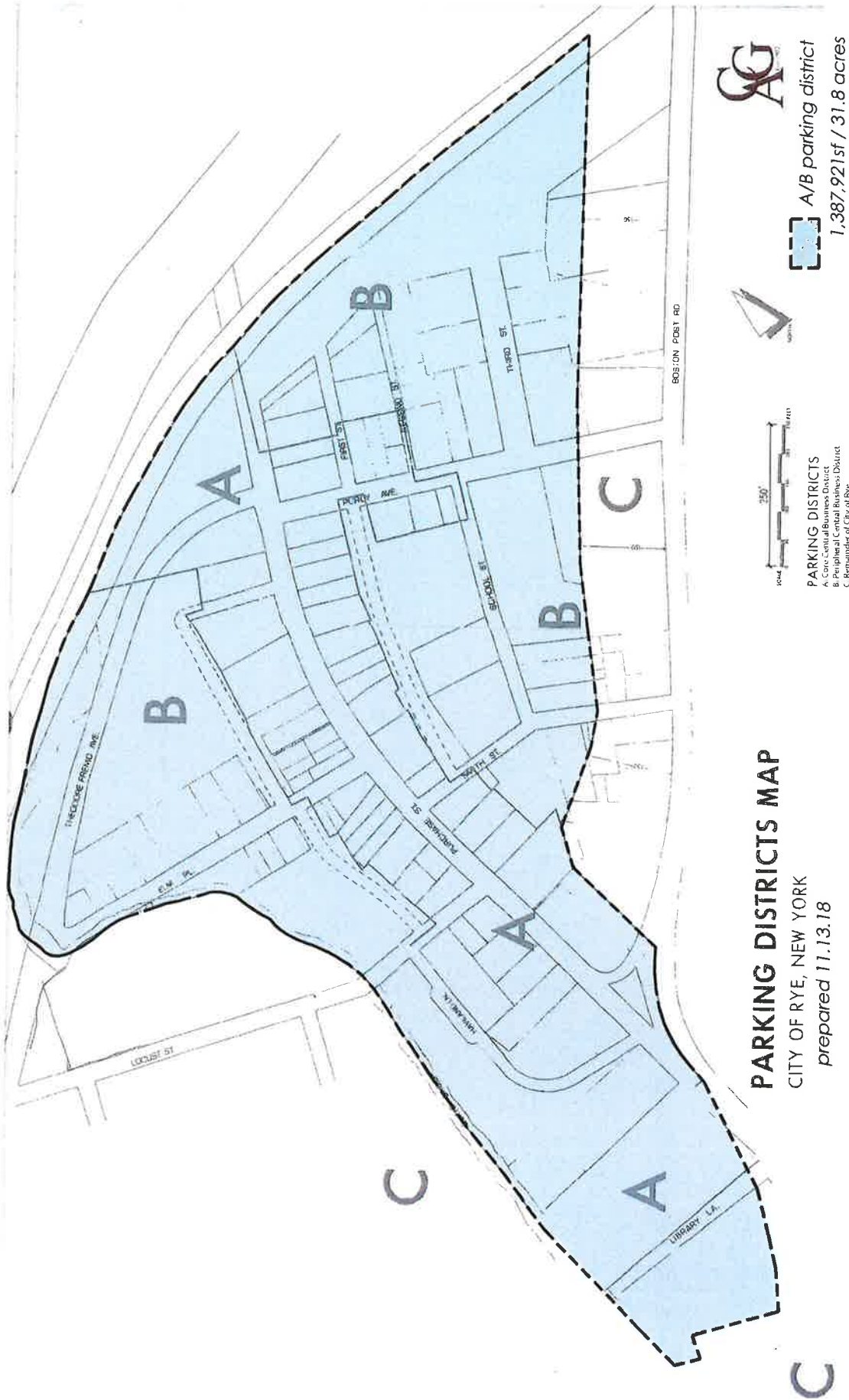
Dated: Purchase, New York
November 20, 2018

Respectfully submitted,

A large, stylized handwritten signature in black ink, likely belonging to Jonathan D. Kraut, is written over the signature line and extends into the contact information area.

Jonathan D. Kraut
Harfenist Kraut & Perlstein, LLP
Attorneys for the Petitioner
2975 Westchester Avenue - Suite 415
Purchase, New York 10577
Tel: (914) 701-0800

EXHIBIT 1



PARKING DISTRICTS MAP
 CITY OF RYE, NEW YORK
 prepared 11.13.18

AG
 A/B parking district
 1,387,921sf / 31.8 acres

PARKING DISTRICTS
 A Core Central Business District
 B Peripheral Central Business District
 C Remainder of City of Rye

EXHIBIT 2

Short Environmental Assessment Form

Part 1 - Project Information

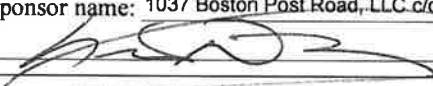
Instructions for Completing

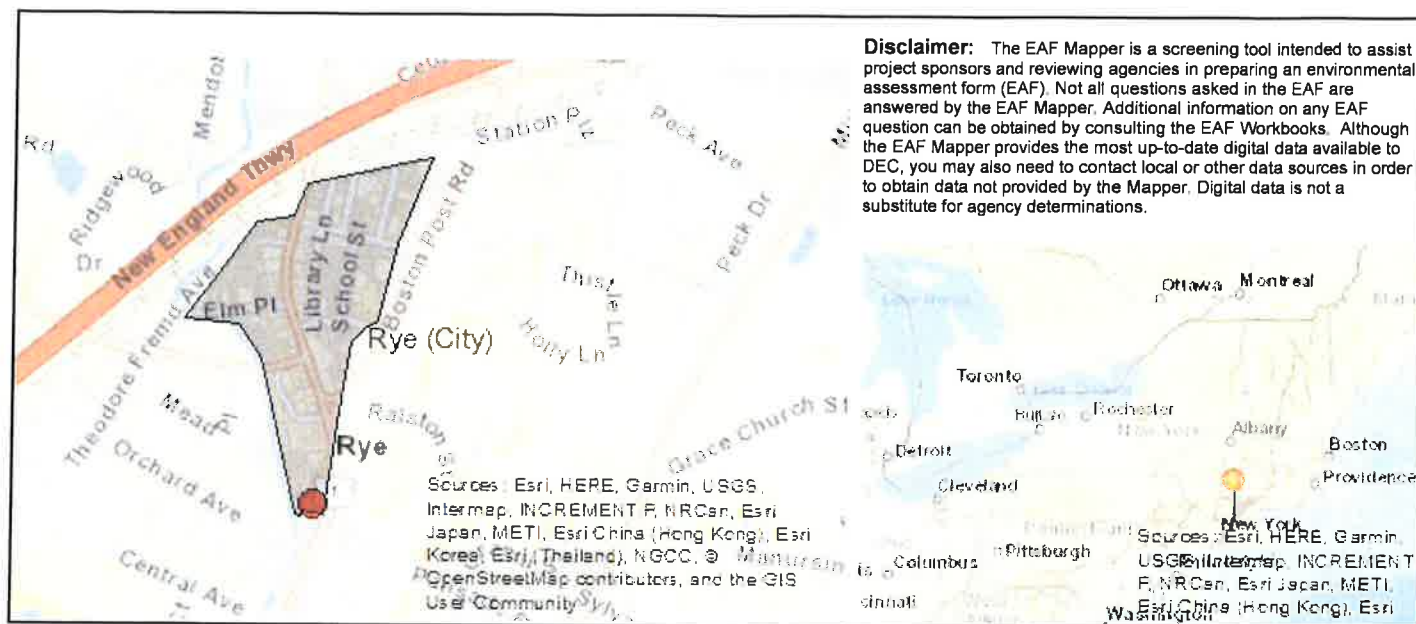
Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information							
Name of Action or Project: City of Rye Zoning Text Amendment re: Physical Fitness Facility							
Project Location (describe, and attach a location map): City of Rye Downtown Business District							
Brief Description of Proposed Action: Zoning text amendment to permit physical fitness facilities in the greater downtown business district area in the City of Rye							
Name of Applicant or Sponsor: 1037 Boston Post Road, LLC c/o Harfenist Kraut & Perstein		Telephone: 914-701-0800 E-Mail: Inapior@hkplaw.com					
Address: 2975 Westchester Avenue, Suite 415							
City/PO: Purchase		State: NY	Zip Code: 10577				
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">NO</td> <td style="width: 50%; padding: 2px;">YES</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: center; padding: 5px;"><input checked="" type="checkbox"/></td> </tr> </table>	NO	YES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
NO	YES						
<input type="checkbox"/>	<input checked="" type="checkbox"/>						
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">NO</td> <td style="width: 50%; padding: 2px;">YES</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> </tr> </table>	NO	YES	<input type="checkbox"/>	<input type="checkbox"/>
NO	YES						
<input type="checkbox"/>	<input type="checkbox"/>						
3.a. Total acreage of the site of the proposed action? _____ acres b. Total acreage to be physically disturbed? _____ acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres							
4. Check all land uses that occur on, adjoining and near the proposed action. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Parkland							

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO <input type="checkbox"/>	YES <input type="checkbox"/>	N/A <input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?		NO <input type="checkbox"/>	YES <input type="checkbox"/>
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____		NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
8. a. Will the proposed action result in a substantial increase in traffic above present levels?		NO <input type="checkbox"/>	YES <input type="checkbox"/>
b. Are public transportation service(s) available at or near the site of the proposed action?		<input type="checkbox"/>	<input type="checkbox"/>
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?		<input type="checkbox"/>	<input type="checkbox"/>
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____		NO <input type="checkbox"/>	YES <input type="checkbox"/>
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____		NO <input type="checkbox"/>	YES <input type="checkbox"/>
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____		NO <input type="checkbox"/>	YES <input type="checkbox"/>
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
b. Is the proposed action located in an archeological sensitive area?		<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____		<input type="checkbox"/>	<input type="checkbox"/>
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?		NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
16. Is the project site located in the 100 year flood plain?		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES		NO <input type="checkbox"/>	YES <input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____ _____		<input type="checkbox"/> NO <input type="checkbox"/> YES	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____	NO	YES
_____	<input type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____	NO	YES
_____	<input type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____	NO	YES
_____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: 1037 Boston Post Road, LLC c/o Harfenist Kraut & Perlstein		Date: 11/20/18
Signature: 		



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National Register of Historic Places]	Yes
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	Yes
Part 1 / Question 20 [Remediation Site]	Yes



CITY COUNCIL AGENDA

NO. 9

DEPT.: Legal

DATE: January 9, 2019

CONTACT: Kristen Wilson, Corporation Council

AGENDA ITEM: Consideration of a resolution adopting a SEQR Negative Declaration in connection with amendments to Chapter 133 "Noise" of the City Code.

FOR THE MEETING OF:

January 9, 2019

RECOMMENDATION: That the Rye City Council, as Lead Agency, adopt the SEQR Negative Declaration in connection with amendments to Chapter 133 "Noise".

IMPACT: ☒ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND: The City Council opened a Public Hearing on December 19, 2018 to amend Chapter 133 "Noise" of the City Code to reflect changes in technology related to the deployment of wireless telecommunications facilities and other supporting equipment. The Public Hearing continued on December 27, 2019.



CITY COUNCIL AGENDA

NO. 10

DEPT.: Legal

DATE: January 9, 2019

CONTACT: Kristen Wilson, Corporation Council

AGENDA ITEM: Consideration of a resolution adopting a SEQR Negative Declaration in connection with amendments to Chapter 196 "Wireless Telecommunications Facilities", the City's wireless code.

FOR THE MEETING OF:

January 9, 2019

RECOMMENDATION: That the Rye City Council, as Lead Agency, adopt the SEQR Negative Declaration in connection with amendments to Chapter 196.

IMPACT: ☒ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND: The City Council opened a Public Hearing on December 19, 2018 to amend Chapter 196 "Wireless Telecommunications Facilities" of the City Code. The Public Hearing was continued to and closed on December 27, 2019.



CITY COUNCIL AGENDA

NO. 11

DEPT.: Legal

DATE: January 9, 2019

CONTACT: Kristen Wilson, Corporation Counsel

AGENDA ITEM: Adopt amended Chapter 133 "Noise" of the City Code with respect to installations in the public right of way.

FOR THE MEETING OF:
January 9, 2019

RYE CITY CODE:
CHAPTER
SECTION

RECOMMENDATION: Adopt Chapter 133 "Noise" of the City Code with respect to installations in the public right of way.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND:

The proposed amendments address how the intensity of noise is measured for installations in the right of way.

See attached.

CITY OF RYE
LOCAL LAW NO. ____ 2019

A local law to amend Chapter 133 “Noise” Section 3 “Permissible Intensity of Noise” and Section 4 “Points and method for measuring intensity of sound” to reflect changes in technology related to the deployment of wireless services and other supporting equipment as follows:

Section 1:

Chapter 133: Noise

§133-1 Unnecessary noise prohibited.

Subject to the provisions of this chapter, the creation of any unreasonably loud, disturbing and unnecessary noise is prohibited. Noise of such character, intensity and duration as to be detrimental to the life or health of any individual is prohibited.

§133-2 Prohibited acts. ***

§133-3 Permissible intensity of noise.

[Amended 8-21-1991 by L.L. No. 19-1991]

Except for noise emanating from the operation of motor vehicles, the permissible intensity of noise from any of the foregoing acts, whether such noise is intermittent, impulsive, sporadic or continuous, shall be limited as follows:

A. Maximum sound pressure [db(A)] shall be as follows:

- (1) Fifty-five db(A) for stationary sources and 70 db(A) for outdoor power tools.
- (2) Portable air compressors and their related equipment are limited to 76 db(A).
- (3) Lawn mowers, leaf blowers, and outdoor vacuum cleaners shall have a permitted intensity of 85 db(A); use of this equipment is prohibited between the hours of 8:00 p.m. and 8:00 a.m. on weekdays and between the hours of 6:00 p.m. and 10:00 a.m. on weekends and holidays. The permitted intensity and hours described in this subsection will apply to leaf blowers during months when the use of leaf blowers is permitted.
- (4) Air-conditioning units and pool filters are limited to 60 db(A).

(5) Except for Micro-Wireless Facilities, aboveground and belowground stationary utilities or communication facilities are limited to 45 db(A).

(6) Micro-Wireless Facilities, as defined in Chapter 196, are limited to 10 db(A).

§133-4 Points and method for measuring intensity of sound.

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- A. Except for noise emanating from the operation of motor vehicles, the point at which the intensity of sound is to be measured shall be at a distance of 50 feet, except that noise from:
- (1) Air-conditioning units and pool filters at a distance of 10 feet.
 - (2) Stationary utility or communications facilities located **underground shall be measured three feet from the source of the noise.** Stationary utility or communications facilities located on a utility pole or within a pole or other stealth facility shall be measured twelve feet from the sources of the noise or the nearest property line, whichever is closer. For any non right-of-way stationary utility or communications facility shall be measured at the point that meets vertically from the nearest property line and horizontally from the equipment. For any such facilities, the measurements should include noise from that facility and all other stationary utility or communications facilities proximately associated with the stationary utility or communications facility or its Supporting Structure **as defined in Chapter 196.** [Micro-Wireless Facilities located shall be measured at the source.](#)
- B. Measurement shall be made using a meter capable of measuring decibels and of a type meeting ANSI S1.4-1971, Type 2 standard. The measurement is to be made using a free-field microphone directed at the noise source.

Section 2: **Severability.**

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

Section 3: **Effective date.**

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



CITY COUNCIL AGENDA

NO. 12 DEPT.: Legal

DATE: January 9, 2019

CONTACT: Kristen Wilson, Corporation Counsel

AGENDA ITEM: Adopt amended Chapter 196, "Wireless Telecommunications Facilities", the City's wireless code.

FOR THE MEETING OF:
January 9, 2019

RYE CITY CODE:
CHAPTER
SECTION

RECOMMENDATION: That the City Council adopts the amended Chapter 196, "Wireless Telecommunications Facilities", the City's wireless code.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND:

Amendments to Chapter 196 concern the aesthetics and use of the best available technology of certain types of telecommunication infrastructure in the City's right of way.

See attached.

CITY OF RYE
LOCAL LAW NO. ____ 2019

A local law to amend in its entirety Chapter 196 “Wireless Telecommunications Facilities” to reflect changes in technology related to the deployment of wireless services, to update the permitting process regarding new technology, and to update the City’s regulations governing the time, place and manner of these facilities as follows:

Section 1

Chapter 196 - “Wireless Telecommunications Facilities”

§ 196-1. Purpose and legislative intent.

A. The Telecommunications Act of 1996 affirmed the City of Rye’s authority concerning the placement, construction and modification of wireless telecommunications facilities. The City Council finds that wireless telecommunications facilities and related equipment may pose a unique hazard to the health, safety, public welfare and environment of the City and its inhabitants, and may also have adverse visual and sonic impacts on the community, its character and thus the quality of life in the City.

B. By enacting this Chapter, the City intends to:

- (1) Ensure that the placement, construction or modification of wireless telecommunications facilities and related equipment is consistent with the City’s land use policies and Zoning Code¹;
- (2) Minimize the negative and adverse visual and aesthetic impacts of wireless telecommunications facilities to the maximum extent practicable through careful design, siting, landscaping, screening and innovative camouflaging techniques;
- (3) Assure a comprehensive review of environmental impacts of such facilities;
- (4) Protect the health, safety and welfare of the City of Rye;
- (5) Account for when shared use of wireless telecommunication facilities is the more aesthetically sensitive alternative consistent with the City’s authority under Federal Communications Order 18-133;
- (6) Establish fair and efficient processes for review and approval of applications;

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¹ 1. Editor’s Note: See Ch. 197, Zoning.

- (7) Protect City residents and businesses from potential adverse impacts of wireless telecommunication facilities, to the extent permitted under law, and to attempt to preserve the visual character of established communities and the natural beauty of the landscape;
- (8) Protect property values;
- (9) Minimize the impact of wireless telecommunications facilities on residential properties;
- (10) Encourage the siting of wireless telecommunications facilities on properties and areas which are not used exclusively for residential purposes.

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C. The City finds that minimization of clutter and structures in the rights-of-way is important to the welfare of the community, and that placement near residential structures and in historical areas should be restricted where not critical to the provision of services.

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§ 196-2. Title.

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

§ 196-3. Definitions; word usage.

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

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

APPLICANT — Includes any individual, corporation, estate, trust partnership, joint-stock company, association of two or more persons, limited liability company or entity submitting an application to the City of Rye for a Special Use Permit for a Wireless Telecommunications Facility.

Deleted: Wireless Facility

APPLICATION — The form as may be amended from time to time, together with all necessary and appropriate documentation that an applicant must submit in order to receive a Special Use Permit for a Wireless Telecommunications Facility.

Deleted: Wireless Facility

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

BASE STATION - A facility or equipment at a fixed location that enables any wireless [telecommunications](#) between user equipment and a [telecommunications](#) network. The term does not encompass a Tower as defined herein or Accessory Facility or Structure associated with a Tower. The term Base Station includes, without limitation:

- (1) Equipment associated with wireless [telecommunications](#) services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (2) Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks or micro-wireless facilities); provided that, wireline connections in the rights of way linking Antennas to other elements of a small cell, DAS or similar network will not be treated as part of the [Wireless Telecommunications Facility](#) and instead their placement shall be subject to review consistent with applicable provisions of the Rye City Code, the applicable franchise; and New York law.
- (3) Any Supporting Structure, other than a Tower, that at the time the relevant application is filed with the City under this section, supports or houses equipment described in paragraphs (1)-(2) that has been reviewed and approved for placement of such equipment under this Chapter, or under another State or local regulatory review process, even if the Supporting Structure was not built for the sole or primary purpose of providing that support. For Supporting Structures that support equipment described in paragraphs (1)-(2), including but not limited to the sides of buildings, water Towers, or utility poles, the term includes only that portion of a Supporting Structure specifically approved to support the wireless equipment described in paragraphs (1)-(2), and only relates to activities necessary to permit the installation, maintenance, replacement or collocation of wireless equipment described in the preceding paragraph. The exemption of a Supporting Structure from review is not an approval.

Deleted: Wireless Facility

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

CARRIER ON WHEELS or CELL ON WHEELS (“COW”) - A portable self-contained temporary facility that can be moved to a location and set up to provide Personal Wireless Services. A COW is normally vehicle-mounted and contains a telescoping boom to support the Antenna. A COW shall only be in place in connection with an emergency or event, but no longer than required for the emergency or event, provided the installation does not involve excavation, movement or removal of existing facilities.

CITY — The City of Rye, New York.

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

COLLOCATION — The use of an Existing Tower or Base Station to install additional transmission equipment or Antennas for the provision of wireless [telecommunications](#) services.

COMMERCIAL IMPRACTICABILITY or COMMERCIALLY IMPRACTICABLE —

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

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

CONCEALMENT ELEMENT - Any design feature, including but not limited to painting, landscaping, shielding requirements and restrictions on location, proportions, or physical dimensions in relation to the surrounding area or Supporting Structures that are intended to and do make a [Wireless Telecommunications Facility](#) or any Supporting Structure supporting it substantially less visible to the casual observer.

Deleted: Wireless Facility

COUNCIL — The City Council of the City of Rye, which is the officially designated agency or body of the community to whom applications for a Special Use Permit for a [Wireless Telecommunications Facility](#) must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or revoking Special Use Permits for Wireless [Telecommunications](#) Facilities. The Council may, at its discretion, delegate or designate other official agencies of the City to accept, review, analyze, evaluate and make recommendations to the Council with respect to the granting or not granting, recertifying or not recertifying or revoking Special Use Permits for Wireless [Telecommunications](#) Facilities.

Deleted: Wireless Facility

[DISTRIBUTED ANTENNAE SYSTEM \(DAS\)](#) – [Network of spatially separated antenna sites connected to a common source that provides wireless telecommunications service within a geographic area or structure.](#)

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EAF — The Environmental Assessment Form approved by the New York Department of Environmental Conservation.

ELIGIBLE FACILITY PERMIT – The official document or permit by which an applicant meets the criteria for administrative review of a [Wireless Telecommunications Facility](#) as granted by the City Engineer and Corporation Counsel.

Deleted: Wireless Facility

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

EXISTING - In place as of the date an application is received for installation or modification of a [Wireless Telecommunications Facility](#).

Deleted: Wireless Facility

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

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

HEIGHT — When referring to a Tower or Supporting Structure, the distance measured from the preexisting grade level to the highest point on the Tower or Supporting Structure, even if said highest point is an Antenna.

HISTORIC STRUCTURE

Any structure in the City of Rye that is:

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

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

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NIER — Nonionizing electromagnetic radiation.

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

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

RESIDENTIAL RIGHT-OF-WAY – the right-of-way in a Residential Zone.

RESIDENTIAL STRUCTURE – a structure located in a residential zone with its principal use being residential.

RESIDENTIAL UNIT – a dwelling unit - One or more rooms with provision for living, cooking, sanitary and sleeping facilities arranged for the use of one family, as defined in Rye City Code Chapter 197 “Zoning”.

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RESIDENTIAL ZONE – those zones designated as “Residence Districts” under the City of Rye City Code Chapter 197 “Zoning”.

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

SMALL WIRELESS FACILITY — A wireless telecommunications facility, including but not limited to DAS and micro-wireless facilities that meets each of the following criteria:

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(1) The structure on which antenna facilities are mounted:

a. Is 50 feet or less in height, or

b. Is no more than 10 percent taller than other adjacent structures, or

c. Is not extended to a height of more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and

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(2) Each antenna (excluding associated antenna equipment) is not more than three cubic feet in volume; and

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(3) All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and

(4) The facility does not require antenna structure registration under Part 17;

(5) The facility is not located on Tribal lands, as defined under 26 C.F.R. § 800.16(x); and

(6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Rule 1.1307(b);

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SPECIAL USE PERMIT — The official document or permit by which an applicant is allowed to construct and use a Wireless Telecommunications Facility, as granted by the City.

STEALTH FACILITY - Any Wireless Telecommunications Facility that is integrated as an architectural feature of a an Existing Supporting Structure or any new Wireless

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Telecommunications Facility that is camouflaged or concealed so that the presence of the Wireless **Telecommunications** Facility is either: (1) virtually imperceptible to the casual observer, such as an Antenna behind louvers on a building, or inside a steeple or similar structure; or (2) camouflaged, through stealth design, so as to blend in with its surroundings to such an extent that it is indistinguishable by the casual observer from the structure on which it is placed or the surrounding in which it is located. Examples of Stealth Facilities include Wireless **Telecommunications** Facilities which are disguised as flagpoles, as indigenous trees, as rocks, or as architectural elements such as dormers, steeples and chimneys. To qualify as “stealth” design, the item in question must match the character of its surroundings and the type of item that it is mimicking in size, scale, shape, dimensions, color, materials, function, and other attributes as closely as possible. The elements that make a facility a Stealth Facility are Concealment Elements.

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SUPPORTING STRUCTURE – Any building, mast, pole, Utility Pole or other facility capable of supporting or housing a Base Station. Except as used in the definition of the term “Tower,” the term “Supporting Structure” does not include and is not used to refer to a Tower.

SUBSTANTIAL CHANGE - Substantial change has the same meaning as the term “Substantial Change” as defined by Federal Communications Commission regulations, 47 C.F.R. §1.40001(b)(7).

TALL STRUCTURE – A tall structure includes, but is not limited to, existing Towers, non-residential building rooftops at least 4 stories in height or greater, and domes, belfry’s, lanterns, spires, steeples or other architectural features on top of the roof of a building that is at least 45 feet high.

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

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

TOWER – Any supporting structure built for the sole or primary purpose of supporting any Antennas (and related Base Station and Accessory Facilities or Structures), including supporting structures that are constructed for wireless telecommunications including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include Utility Poles.

UNDERGROUND AREAS – Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right-of-way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled, at the time of determination, to be converted from overhead to underground. If any area that currently has electrical facilities above-ground is later converted to an area with all such facilities under-ground, then such an area will be considered an “Underground Areas” and the responsible party for above-ground Wireless Telecommunications Facilities and Accessory Facilities must comply with all regulations for Underground Areas within one year of such conversion. For the purposes of this Chapter, any Residential Area outside the FEMA designated 50-year floodplain as depicted on the most recently approved FEMA flood maps is considered an Underground Area. An “electrical

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facility” is a distribution facility owned by an electric utility and does not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

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

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WIRELESS TELECOMMUNICATIONS FACILITY — All elements of a facility or proximate to a common location used in connection with the provision of any wireless telecommunications, including the Antenna, Base Station (but excluding any Existing Supporting Structure to which the Base Station is attached or within which it is enclosed), Tower, if any, and Accessory Facilities or Structures serving that Base Station.

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

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WIRELESS REGULATIONS – Those regulations, adopted by majority vote of City Council pursuant to this Chapter and implementing the provisions set forth herein.

§ 196-4. Policy and goals for Special Use Permits and Special Exception Permits.

In order to ensure that the placement, construction and modification of Wireless Telecommunications Facilities conforms to the City’s purpose and intent of this chapter, the Council creates a Special Use Permit for Wireless Telecommunications Facilities for the purpose of achieving the following goals:

- A. Implementing an application process for person(s) seeking a Special Use Permit or Special Exception Permit for a Wireless Telecommunications Facility.
- B. Establishing a policy for examining an application for and issuing Special Use Permits and Special Exception Permits for Wireless Telecommunications Facilities that is both fair and consistent.
- C. Establishing timeframes for granting or not granting a Special Use Permits and Special Exception Permits for Wireless Telecommunications Facilities, or recertifying or revoking the Special Use Permit or Special Exception Permit granted under this chapter.
- D. Promoting and encouraging, wherever possible, but only where it will result in the least overall visual and sonic impact for residential dwelling units, the collocation of Wireless Telecommunications Facilities.
- E. Promoting and encouraging, wherever possible, the placement of a Wireless Telecommunications Facility in such a manner as to cause minimal disruption to the land, property, buildings and other facilities adjacent to, surrounding and in generally the same area as the requested location of such a Wireless Telecommunications Facility and to

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minimize adverse visual, sonic, and aesthetic impacts to the community and risk of adverse impacts to community character and property value.

§ 196-5. Special Use Permit, Special Exception Permits and Eligible Facility Permits.

A. All Wireless [Telecommunications](#) Facilities within the City must [comply](#) with this Chapter and all other applicable law and regulations. A person who installs Wireless [Telecommunications](#) Facilities pursuant to this section must comply with all safety codes; comply with requirements for RF emissions; and must utilize Concealment Elements and maintain facilities to minimize visibility of the Wireless [Telecommunications](#) Facilities. [All Wireless Telecommunications Facilities are subject to the registration requirements of Section 167.72, if applicable, regardless of their status under, or the applicability of, this Chapter.](#)

B. This Chapter does not apply to any device designed for end-user over-the-air reception, not transmission, of television broadcast signals, multi-channel multi-point distribution service, or direct broadcast satellite service; or for end user reception of signals from an Internet service provider and end user transmission of signals to an Internet service provider.

C. All Wireless [Telecommunications](#) Facilities (including modifications), or construction, modification or replacement of Support Structures in connection with the installation of Wireless [Telecommunications](#) Facilities must be permitted by a Special Use Permit, Special Exception Permit or Eligible Facility Permit. [Notwithstanding the foregoing, the following Wireless Telecommunications Facilities do not require a Special Use Permit, except where the same are on, substantially contiguous to, or affect a Historic Structure, or an Environmentally Sensitive Area. Requirements that may apply to the underlying Supporting Structure to which a Base Station is to be attached, as well as all other applicable laws and regulations continue to apply. Such Wireless Telecommunications Facilities that do not require a Special Use Permit shall require a Special Exception Permit and pay the associated fee to the City Manager or his/her designee. Such Wireless Telecommunications Facilities shall be authorized to be installed on condition that any and all other required permits or approvals have been received.](#)

(1) Wireless [Telecommunications](#) Facilities that are less than 1 cu ft. in size create no measurable sound and [are](#) placed on Existing Supporting Structures without increasing the physical dimensions of the Existing Supporting Structures. The “cubic footage” takes into account all the elements of the [Wireless Telecommunications Facility](#) (including Accessory Facilities or Structures).

(2) Wireless [Telecommunications](#) Facilities placed on the rooftop of non-residential structures; that make no measurable sound beyond the rooftop; that are at least 40 feet from any residential unit; and that include some Concealment Elements so that the Wireless [Telecommunications](#) Facilities [are not visible from the street.](#)

(3) Wireless [Telecommunications](#) Facilities within Existing Supporting Structures (other than [Historical Structures](#)) that are not visible [from and that do not create](#)

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any sound greater than 10 db(A) measured at the source from outside the Supporting Structure and do not change the physical dimensions or appearance of the Supporting Structure within which they are placed.

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- (4) Carriers on Wheels where the placement is permitted, and complies with, applicable FCC regulations for temporary placement of Wireless Telecommunications Facilities.

- (5) Routine maintenance, or replacement of elements of a Wireless Telecommunications Facility or Supporting Structure that do not change the dimensions, visibility, or audibility of a Wireless Telecommunications Facility or Supporting Structure.

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(6) Micro-Wireless Facilities.

- D. The City Manager or his/her designee shall prepare application forms that must be used by persons seeking to place Wireless Telecommunications Facilities in the City and which shall require additional submission of at least the information required by the City Code, and may require information that the City may consider in acting upon an application

(1) Franchise Required. In addition to the Special Use Permit, Special Exception Permit and Eligible Facilities Permit required herein, the placement of a wireless telecommunications facility in the public rights-of-way requires the persons who will own or control those facilities to obtain a franchise or permit to be located within the City's right-of-way, unless that person holds a franchise from the State which authorizes it to use the right-of-way for that purpose, without further permission of the City. Pursuant to Chapter 167 "Streets and Sidewalks", such franchise or permit may be approved by the City.

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- E. As part of the administration of this Article, the City Council may adopt by simple majority vote regulations governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this Article, including regulations governing collocation and resolution of conflicting applications for placement of wireless telecommunications facilities, and guidelines for placement of wireless telecommunications facilities on City-owned or controlled structures in the rights-of-way.

- (1) Develop acceptable designs for wireless telecommunications facilities in particular corridors, taking into account the zoning districts bounding the rights-of-way;

- (2) The City Manager shall issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued. If the City Manager issues a notice of incompleteness, any applicable timeframes to review the application shall be re-initiated upon the delivery of the missing material as if the application was received anew as described in 196-6(C).

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- (3) The City Manager shall develop forms and procedures for submission of applications for placement or modification of wireless telecommunication facilities, and proposed changes to any support structure consistent with this Article.

F. For eligible facilities requests, as defined in the Federal Communications regulation 47 C.F.R. §1.40001(b)(3), implementing federal law, 47 U.S.C. §1455, an Eligible Facility Permit is required prior to installation (including modifications) of Wireless Telecommunications Facilities or modification of Existing Support Structures in connection with the installation of Wireless Telecommunications Facilities.

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- (1) An Eligible Facility Permit may be issued administratively by the City Engineer and Corporation Counsel jointly after all applicable safety and fire code regulations have been complied with. The Eligible Facility Permit shall specifically provide that it is being issued at the direction of the federal government and without the consent of the City and shall be of no further force and effect when the permit for the underlying facility expires, or the federal law changes so that the permit as issued is no longer required.

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- (2) The application for any Eligible Facility Permit must contain at least the information required to permit the City Manager and Corporation Counsel to determine that the application is an eligible facilities request, including (i) the underlying approval for the existing Tower and Base Station; (ii) any approved modifications to the same where the modifications were approved prior to February 22, 2012; and (iii) detailed information about the physical dimensions of Tower and Base Station as the same exist on the date of the application, and as proposed to be modified.

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- (3) The application shall be denied if it is not an eligible facilities request or if all the information required under Section 196-6(V) is not submitted. If an application is denied because it is determined that it is not an eligible facilities request, the applicant may request that the application be treated as a request for special permit by submitting all the information required for a special permit within ten (10) days of the denial of application. The applicant has the burden of proof in all aspects of its permit request by providing clear and convincing evidence.

G. All other Wireless Telecommunications Facility installations (including modifications), or construction, modification or replacement of Support Structures in connection with the installation of Wireless Telecommunications Facilities require a Special Use Permit or Special Exception Permit.

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- (1) Special Use Permits and Special Exception Permits may be granted where applicant shows by clear and convincing evidence:

- (a) The Wireless Telecommunications Facility proposed is not being built speculatively (that is, there is a customer for the Wireless

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[Telecommunications Facility](#)), and it will be built and used promptly upon approval.

- (b) The applicant is a utility under New York law or a provider described in (e) below [or a governmental entity](#). The applicant and any entity whose equipment would be included in the installations has all the authorizations required to place the Wireless [Telecommunications Facilities](#) from the state, or the City (other than the Special Use Permit requested), or the owner of the property, and to modify, replace or attach to a Supporting Structure, and the placement, construction and operation of the Wireless [Telecommunications Facilities](#) (including Supporting Structures) will be in compliance with all applicable laws.

- (c) The [Wireless Telecommunications Facility](#) is designed and placed to minimize the visual and sonic impact on the community.

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- (d) The [Wireless Telecommunications Facility](#) does not significantly impact the site upon which it will be located or the properties that will be disturbed as a result of its installation.

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- (e) If Applicant is confirmed to be a utility under New York law or is confirmed to be a provider, as described below, it must demonstrate that the [Wireless Telecommunications Facility](#) is necessary for the provision of services. All Applicants must show that the proposed installation is the least intrusive alternative for providing service. If the applicant is a provider of wireless services or facilities under 47 U.S.C. § 332(c)(7), it must show that absent approval, there will be a prohibition in the provision of wireless services within the meaning of federal law.

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- (2) City may approve a Special Use Permit or Special Exception Permit without the showing required by Section G(1)(e) where the facility is not located in or does not affect [Historic Structures](#) or Environmentally Sensitive Areas and the [Wireless Telecommunications Facility](#):

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- (a) Is a Stealth Facility that otherwise satisfies the provisions of this ordinance.

- (b) Contains Concealment Elements, and is to be placed or shielded on an Existing Supporting Structure in such a way such that the [Wireless Telecommunications Facility produces no measureable sound greater than 10 db\(A\) and](#) is not readily visible [to, surrounding](#) properties, and is not subject to modification except at the discretion of the City.

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- (3) Notwithstanding the foregoing, City may require the showing under Section G(1)(e) where the City determines installation or modification of the [Wireless Telecommunications Facility](#) substantially alters the size, proportions or dimensions of an Existing Supporting Structure.

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- (4) Notwithstanding any other provisions of this Chapter, the City Council may for reasonable cause and based on substantial evidence exempt any applicant from any requirement of this Chapter or require the location or character of a Wireless Telecommunications Facility to be other than that which this Chapter might otherwise mandate.

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- (5) Prohibited on certain structures. No Wireless Telecommunications Facility shall be located on single-family detached residences, single-family attached residences, two-family residences, or any residential accessory structure.

H. General Standards for Wireless Telecommunications Facilities in the Rights-of-Way

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- (1) Generally. All Wireless telecommunications facilities in the rights-of-way shall: first, be located in accordance with the location priorities in subsection I below; and second, be the most aesthetically pleasing alternative for the type of location. In addition, such facilities must meet the minimum requirements set forth in this ordinance, the Wireless Regulations, and the requirements of any other applicable law. An Applicant must establish that it is installing Stealth Facilities to the extent possible and must:

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- (a) Show that it is installing facilities in the highest priority locations that are available and necessary to the provision of service or to avoid a prohibition. As part of its application, an applicant must describe in detail its efforts to place a Wireless Telecommunications Facility at each higher priority location, including what properties were contacted, and the reasons why applicant claims the Wireless Telecommunications Facility cannot be placed at a higher priority location.

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- (b) Submit RF engineering data signed by an engineer for the relevant wireless provider, including propagation maps and supporting information identifying areas where a Wireless Telecommunications Facility could be placed that would serve the areas where applicant believes that service is required, and describing the Wireless Telecommunications Facility required to provide such services;

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- (c) Submit a written explanation as to why it claims its proposed Wireless Telecommunications Facility is the least intrusive alternative, considered individually, and as part of any project of which it is a part that involves installation of more than one Wireless Telecommunications Facility; and taking into account all potential alternatives, whether or not raised by the City or its citizens, including all those that a diligent applicant acting in good faith would raise.

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- (2) Waiver of Requirements. Subject to Section 196-5(G)(4), the Wireless Regulations and decisions on applications for placement of wireless telecommunications facilities in the rights-of-way shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless, in the case only of an applicant who has the requisite status protected by federal laws, it is determined that applicant has established that denial of an application would, within the meaning of federal

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law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, under circumstances such that deployment of the facilities must be authorized. If that determination is made, the requirements of this ordinance, including any regulations and forms to implement this ordinance, may be waived, but only to the minimum extent required to avoid conflict with federal law.

(3) Standards. Wireless telecommunications facilities in the rights-of-way shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, complies in the rights-of-way with the City's prioritization list in subsection I(2) below and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights-of-way and compliance with health and safety codes; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon or vacate the rights-of-way or any portion thereof, or the ability of the City or other government agencies to cause the improvement, modification, relocation, vacation or abandonment of facilities in the rights-of-way.

(4) Concealment. The Special Use Permits for Wireless Telecommunications Facilities in the rights-of-way shall incorporate specific concealment elements to minimize visual impacts consistent with the Wireless Regulations, and shall incorporate design requirements ensuring compliance with all standards for noise emissions and in accordance with Chapter 133 of the Rye City Code. In general, all equipment shall be the smallest and least visibly and sonically intrusive equipment feasible. Unless it is determined that another design is less intrusive or placement is required under applicable law:

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- a. Antennas located at the top of support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure;
- b. Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.
- c. Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on the utility pole, placed to avoid interfering or creating any hazard to any other use of the public rights-of-way, and located on one side of the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that visibility is limited to the fewest number of people, the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed. In Underground Areas, the equipment cabinets shall be located underground with any above ground intrusion minimized. If an equipment cabinet must

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

- d. Wiring and cabling shall be neat and concealed within, or or within conduit, flush to the support structure, ensuring concealment of these components to the greatest extent possible.
- e. Ground-mounted or pole mounted (other than antennas) equipment associated with a wireless telecommunications facility is prohibited in Underground Areas and shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be undergrounded, located in alleys or otherwise shielded. Ground-mounted equipment shall not interfere with pedestrian or vehicular traffic.
- f. Wireless telecommunications facilities shall comply with FCC regulations governing radio frequency (“RF”) emissions. At all times, every Wireless Telecommunications Facility shall comply with applicable FCC regulations governing RF emissions, and failure to comply shall be a treated as a material violation of the terms of any permit or lease. No special use permit shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with those regulations; any areas where occupational or general public exposures will exceed FCC limits are identified, and there is a clear plan addressing safety for any areas where exposures may exceed those limits.
- g. No Towers greater than 80 feet shall be permitted in the public rights-of-way, and no Wireless Telecommunications Facilities shall be permitted above-ground in Underground Areas; towers less than or equal to 80 feet may be placed in the public rights-of-way only on major roads in the Membership Club zoning district or on golf courses provided that the City Council determines that such towers in the public right-of-way or on the golf course would be the most aesthetically pleasing means to serve an area with low residential density. Any Tower design must be as consistent as possible with the corridor in which the facility is placed, and minimize the obtrusiveness of the facility considered individually and as part of a network of wireless telecommunications facilities. For Towers proposed to be located in the right-of-way, all other restrictions including, but not limited to equipment type and placement, setback requirements, safety concerns and aesthetics shall still apply.

5. No electric meters shall be placed on a Utility Pole or any other Supporting Structure.

6. Underground installations will have no protrusions above pre-existing grade.

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~~Electrical and land-based telephone lines extended to serve the wireless telecommunications facility shall be installed underground.~~

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7. ~~Any graffiti on any Small Wireless Telecommunications Facility support structure or any accessory equipment shall be removed within thirty (30) days upon notification of the owner.~~

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I. Demonstration of compliance with Wireless Regulations.

As part of showing that the proposed location and structure meets the criteria in this law and the Wireless Regulations, an applicant is required to show how it has complied with the priority lists below unless the applicant can show that compliance is prohibitory:

(1) The highest priority locations for all installations are:

- (a) On existing tall structures or telecommunications towers.
- (b) Collocation on a site with existing telecommunications towers or tall structures.
- (c) In commercially zoned areas along Interstate 95, Interstate 287 or railroad tracks.
- (d) In nonresidential areas or on a golf course.
- (e) On other property in the City.

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(2) The priority of locations for installations in the residential right-of-way are (assuming, first, compliance with subsection (1) above), in order of priority:

- (a) Located on a major road, at least 60 feet or more from the nearest residential unit;
- (b) Located on other roads but only when required to be non-prohibitory, and at least 60 feet or more from the nearest residential unit;
- (c) Located on a major road, at least 40 feet from the nearest residential unit;

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(3) Municipal property in category (1) and (2) above shall be a higher priority than other locations in the same category.

(4) Installations in the Residential Right-of-Way shall be Micro-Wireless Facilities only unless this requirement would be prohibitory.

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¶
Micro-Wireless Facilities in non-residential zones;¶
DAS in non-residential zones;¶
Small Wireless Facilities in non-residential zones;¶
Micro-Wireless Facilities and DAS in Residential Zones; ¶
Small Wireless Facilities in Residential Zones;¶
Towers in non-residential zones;¶
Towers in Residential Zones.¶

(5) An applicant is further required to show that its proposed installation or modification:

- (a) Minimizes the visual impact of the Wireless Telecommunications Facilities and associated Supporting Structures upon the community, and in particular upon residential units, as proposed and under any modification that could be made to that installation as of right; and
- (b) Is designed to be consistent with the overall characteristics of the area where the facilities are located; and
- (c) Has minimized the new Supporting Structures proposed, and the impact of those Supporting Structures.
- (d) In considering the visibility of Wireless Telecommunications Facilities, City may consider separately and in conjunction with any nearby or similar facilities, or any other facilities then proposed, the mass and size of the facilities, the scale of the facilities (or the effect of the placement on the mass, size and scale of Supporting Structures to which or within which the Wireless Telecommunications Facilities may be attached or concealed), and any other factor that may affect the impact on the community. It may consider the elements of a Wireless Telecommunications Facility separately and collectively, and may require a showing the visibility of each element of the Wireless Telecommunications Facility, and the effect on any Supporting Structure to which the Wireless Telecommunications Facility will be attached, has been minimized.
- (e) It has proposed facilities using universal antennae, each having and utilizing multi-carrier capacity to the fullest extent technologically possible.

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(6) The City may approve or require placement in a location that is not the highest priority where the record shows a proposed installation at a different location will result in less impact on the community, considering the specific installation that is proposed and any project of which it is a part that involves installation of more than one Wireless Telecommunications Facility.

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(7) In considering whether a proposal meets the general requirements of this law and the Wireless Regulations, the City will consider the impact of a planned project as a whole, taking into account the factors specified above.

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§ 196-6. Special Use Permit, Special Exception Permit, and Eligible Facility Permit Application Requirements.

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A. All applicants for a Special Use Permit or a Special Exception Permit (in the case of a Special Exception Permit only to the extent set forth in subsection (U) and in the case of an Eligible Facility Permit only to the extent set forth in subsection (V)) for a Wireless Telecommunications Facility or any modification of such facility shall comply with the

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requirements set forth in this section. In addition to the information required by Section 196-5(E), an applicant for a Special Use permit must comply with the requirements of this section, as applicable.

- B.** An application shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Council, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction, or to revocation of the permit if the permit is issued. No application shall be accepted and no Special Use Permit, Special Exception Permit or Eligible Facility Permit application shall be issued for a property where the Building Inspector has found, or there exists, a violation of the City Code and where such violation has not been corrected.

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- C.** Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the Council. Upon notice of incompleteness by the City, the applicable shot clock will reset to zero and the City shall have the original applicable time period permitted by law to act on the completed application. The shot clock shall remain tolled until the applicant submits the required supplemental information. If the application for a wireless telecommunications permit is incomplete, all other permits requested by the same applicant that must be acted upon by the same date as that application will also be deemed incomplete or denied. If any other permit that must be acted upon by the same date as the wireless telecommunications application is incomplete, both it and the wireless telecommunications application shall be declared incomplete or denied.

- D.** The applicant shall include a statement in writing that:

- (1) The applicant's proposed Wireless Telecommunications Facility will be maintained in a safe manner and in compliance with all conditions of the Special Use Permit, Special Exception Permit or an Eligible Facility Permit, without exception, unless specifically granted relief by the Council in writing, as well as all applicable and permissible local codes, ordinances and regulations, including any and all applicable county, state and federal laws, rules and regulations.
- (2) The construction of the Wireless Telecommunications Facility is legally permissible, including but not limited to the fact that the applicant is authorized to do business in New York State.

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- E.** Each application for a Special Use Permit or Special Exception Permit shall include a complete plan for the site proposed, and if the application is submitted as part of a larger project that will include multiple sites, a description of that project, and the number and type of installations required, and complete application materials for each site proposed, so that the Council has the ability to and shall review and make a determination with respect to each individually and as part of any larger project. For Special Use Permits or Special Exception Permits, the site plan shall be reviewed and approved by the Council prior to issuance of the Special Use Permit or Special Exception Permit by the City Council. Where

a certification is required, the certification shall be in the form of a report containing the information hereinafter set forth, signed by a licensed professional engineer registered in the state and acceptable to the City, unless otherwise noted. The application shall include, to the extent applicable, the following information:

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- (1) Documentation that shows applicant satisfies the requirements of Section 196-5(E)-(H), as applicable.
- (2) Name and address of the engineer or engineers submitting any certifications, and to whom questions regarding the certification should be submitted.
- (3) Name and address of the property owner, operator and applicant, to include the legal form of the applicant. Name and address of any person who will own equipment associated with the Wireless Telecommunications Facility.
- (4) Postal address and Tax Map parcel number of the property.
- (5) Zoning district or designation in which the property is situated.
- (6) Size of the property stated both in square feet and lot line dimensions and a diagram showing the location of all lot lines where the facility is proposed to be located outside of the right of way, and within the rights-of-way, the location of the proposed facility in relation to the right of way, pedestrian and non-motorized vehicle pathways and cross-walks, and the location in relation to driveways on the same right-of-way and within 750 feet.
- (7) Location of all residential structures within 750 feet.
- (8) Location of all habitable structures within 750 feet.
- (9) Location of all structures on the property which is the subject of the application, or for the right of way, within 250 feet of the proposed facility.
- (10) Location, size and height of all proposed and Existing Wireless Telecommunications Facilities and Supporting Structures at the proposed site.
- (11) Type, size and location of all proposed and existing landscaping.
- (12) The number, type and design of the Wireless Telecommunications Facility(s) proposed and the basis, if any, for the calculations of the Wireless Telecommunications Facility's capacity to accommodate multiple users.
- (13) The make, model and manufacturer of each of the elements of the Wireless Telecommunications Facility.
- (14) A detailed description of each element of the proposed Wireless Telecommunications Facility and any Existing Support Structure which will be utilized, which description shall include, but not be limited to, a description of the

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Supporting Structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting. For a modification to a facility, applicant must describe precisely any change in physical dimensions to any portion of the [Wireless Telecommunications Facility](#) or and describe in detail any additional equipment installed as part of the modification and any modifications required to the Supporting Structure (including, but not limited to, modifications to meters, powers supplies, cabling, and guys).

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- (15) The frequency, modulation and class of service of radio or other transmitting equipment.
- (16) Transmission and maximum effective radiated power of the Antenna(s).
- (17) Direction of maximum lobes and associated radiation of the Antenna(s).
- (18) Certification by a qualified RF engineer that NIER levels at the proposed site are within the threshold levels adopted by the FCC.
- (19) The applicant's proposed [Wireless Telecommunications Facility](#) maintenance and inspection procedures and related system of records.
- (20) A copy of the FCC license applicable for the use of the [Wireless Telecommunications Facility](#), if any, and a copy of any certificate issued by the State of New York for the facility; and proof that applicant and any person who will own facilities associated with the proposed [Wireless Telecommunications Facility](#) are authorized to place the facilities at the location proposed.
- (21) For a Tower, certification that a topographic and geomorphologic study and analysis has been conducted and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed s Tower on the proposed site. The certifying engineer need not be approved by the City.
- (22) Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites signed by a suitable engineer and the provider(s) that will utilize the proposed installation.
- (23) The applicant shall disclose, in writing, any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new [Wireless Telecommunications Facility](#) that it constructs.
- (24) The applicant shall provide a notarized affidavit that either the proposed installation meets all laws, codes and ordinances or that it meets the same except as specifically listed on said affidavit.
- (25) Information relating to the expected useful life of the proposed Wireless Telecommunications Facility.

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F. In the case of a new [Wireless Telecommunications Facility](#), the applicant shall be required to submit a report demonstrating its efforts to secure shared use of existing [Wireless Telecommunications Facility](#)(s). Copies of written requests and responses for shared use shall be provided to the Council.

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G. Certification that the [Wireless Telecommunications Facility](#) and, if applicable, the Existing Supporting Structure both are designed and constructed (“as built”) to meet all county, state and federal structural requirements for loads, including wind and ice loads.

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H. After construction and prior to receiving a certificate of compliance, certification that the [Wireless Telecommunications Facility](#) and related facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.

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I. The applicant shall submit a completed long form EAF and a completed Visual EAF addendum. The Council may require submission of a more detailed visual analysis based on the results of the Visual EAF addendum. Applicants are encouraged to seek pre-application meetings with the City Council to address the scope of the required visual assessment.

J. A visual impact assessment shall be provided with each application which shall include:

- (1) A Zone of Visibility Map, which shall be provided in order to determine locations where the facility may be seen.
- (2) Pictorial representations of before and after views from key viewpoints, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; environmentally sensitive areas; preserves and [Historic Structures](#) normally open to the public; and from any other location where the site is visible to a large number of visitors or travelers. The City will provide guidance concerning the appropriate key sites at a pre-application meeting.
- (3) An assessment of the visual impact of the facility base, guy wires and accessory buildings from abutting and adjacent properties and streets.
- (4) Scaled and dimensioned photo simulations of the before and after images of the project and project site from at least three different angles and showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the [Wireless Telecommunications Facility](#).

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K. The applicant shall identify any Concealment Elements proposed for the [Wireless Telecommunications Facility](#), and for a Stealth Facility, shall specifically show that the proposed [Wireless Telecommunications Facility](#) qualifies as a Stealth Facility and effectively screen from view its proposed wireless telecommunications facilities and structures, subject to Council approval.

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L. All utilities serving any wireless telecommunications facility shall be installed underground, embedded in existing construction or otherwise shielded from view and in compliance with all laws, rules and regulations of the City, including specifically, but not

limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate. The Council may waive or vary the requirements of undergrounding installation of utilities whenever, in the opinion of the Council, such variance or waiver shall not be detrimental to the health, safety, general welfare or environment, including the visual and scenic characteristics of the area. Where possible, for Wireless [Telecommunications](#) Facilities located outside of the rights of way wiring and other components shall be located within buildings. Wireless [Telecommunications](#) Facilities installed on the exterior of Existing buildings/Supporting Structures shall be integrated into the design of such buildings/Supporting Structures. The intent of this provision is to make the installation invisible or indistinguishable from other existing architectural features. Both the [Wireless Telecommunications Facility](#) and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the Existing Supporting Structure to which it may be affixed and with the natural surroundings. Where possible, for facilities in the rights of way, when existing Utility Poles are replaced, the [Wireless Telecommunications Facility](#) will be placed within a pole approved by the City and the utility.

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M. An access road and parking to assure adequate emergency and service access shall be provided, should such be deemed necessary by the Council. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

N. Every [Wireless Telecommunications Facility](#), and the Existing Support Structures to which Wireless [Telecommunications](#) Facilities are attached shall be constructed, operated, maintained, repaired, modified or restored in strict compliance with the then-current version of all technical, safety and safety-related codes adopted by the City, county, state or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. The applicant is responsible for ensuring compliance with the foregoing for the [Wireless Telecommunications Facility](#) and any portion of an Existing Supporting Structure affected by the [Wireless Telecommunications Facility](#). In the event of a conflict between or among any of the preceding, the more stringent shall apply.

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O. Every person constructing or owning a [Wireless Telecommunications Facility](#) shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or law and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.

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P. The Council intends to be the lead agency, pursuant to SEQRA. The Council shall conduct a review of the proposed project in combination with its review of the application under this chapter.

Q. An applicant shall submit to the City Engineer the number of completed applications determined to be needed at the pre-application meeting. A copy of the notification of application shall be provided to the legislative body of all adjacent municipalities and to the Westchester County Planning Board.

R. If the applicant is proposing the construction of a Tower or installation on an Existing Tower or building, the applicant shall examine the feasibility of designing a multi-carrier use to extent practicable and consistent with other requirements of this Chapter. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the Wireless Telecommunications Facility is not technologically feasible, or is commercially impracticable and creates an unnecessary and unreasonable burden, based upon:

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(1) The number of FCC licenses foreseeably available for the area.

(2) The kind of Wireless Telecommunications Facility proposed, or Existing Supporting Structure that would be utilized.

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(3) Available space on existing and approved Towers.

S. Unless waived by the Council, there shall be a pre-application meeting required for every Special Use Permit. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. Where the application is for the shared use of an Existing Tower or Supporting Structure, the applicant can seek to waive any application requirements that may not be applicable. At the pre-application meeting, the waiver requests, if appropriate, will be decided by the City. Costs of the City's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

T. Without limiting the foregoing, except where it is demonstrated that denial would result in a prohibition of the provision of wireless services within the meaning of federal law:

(1) In the rights-of-way, no Towers are permitted except as permitted in Section 196-5(H)(4)(g).

(2) No Wireless Telecommunications Facilities are permitted within Underground Areas except those that are located underground.

(3) A new or replacement Supporting Structure, other than a Stealth Facility or one permitted in Section 196-5(H)(4)(g), street lighting or traffic control structure may not be approved that is greater in height from ground level than the average height of existing distribution utility poles in the same area. No extension of an existing Supporting Structure (other than street lighting or traffic control structures) to permit installation of a Wireless Telecommunications Facility may be approved that unless the addition complies with subsection 5 and increases the height of the supporting structure by no more than the lesser of 20% or six feet.

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(4) Except for cabling within a conduit, the lowest edge of any component of the Wireless Telecommunications Facility on a Utility Pole must be at least 12 feet above the ground unless concealed within the pole.

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(5) All Wireless Telecommunications Facilities mounted to the side of a Supporting Structure in the right of way, other than in the communications space, must be flush-mounted, sized and painted so that the facility to the extent possible the facility is concealed;

(6) All Wireless Telecommunications Facilities mounted to the top of a Utility Pole must be designed so that the facilities form a continuous and uninterrupted line with the pole, and as a Concealment Element, are no more than 10% greater in diameter than the pole itself; provided that simple dipole antennas comprised of a single metal rod not more than 40 inches as measured from the top of the pole long fastened straight upright on, and flush to, the top of the pole, are also acceptable.

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(7) Any indicator lights should be recessed or otherwise designed so that they present no hazard to traffic or interfere with enjoyment of properties from which the lights may be visible.

(8) In addition to any more restrictive provisions of this Chapter, in placing Wireless Telecommunications Facilities, the following rules apply:

(a) Wireless Telecommunications Facilities should be at least 40 feet from any residential unit, and located so that the facilities are not directly in front of any front window or door of a residential structure.

(b) Locations that are less visible from a residential structure are preferred over locations that are more visible.

(c) With the exception of those facilities that qualify for a Special Exception Permit, locations of Wireless Telecommunications Facilities in the rights-of-way shall be located no closer than 1000 feet measured in all directions to another Wireless Telecommunications Facility of the same carrier. Wireless Telecommunications Facilities in the rights-of-way for different carriers shall be located no closer than 600 feet measured in all directions from each other.

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(i) For Wireless Telecommunications Facilities that qualify for a Special Exception Permit in the right-of-way, such facilities shall be located no closer than 400 feet measured in all directions to another Wireless Telecommunications Facility of the same carrier and shall be located no closer than 200 feet measured in all directions to another Wireless Telecommunications Facility for different carriers.

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(d) All Wireless Telecommunications Facilities shall make maximum use of universal antennae capable of serving multiple carriers.

- (e) Stealth and concealment shall have priority over collocation.
- (f) Subject to (d) and (e) above, towers shall have provisions to allow for multiple carriers.

U. To the extent applicable, every applicant for a Special Exception Permit shall comply with Sections 196-6 (A-D), (E 1-8, 10, 12-20, 22, 24), (F-H), (K), (N), (O), (Q), (S), and (T).

V. To the extent applicable, every applicant for an Eligible Facility Permit shall comply with Sections 196-6 (A-D), E (1-8, 10, 11-14, 18-21, and 24-25), G, H, I, J, N, O, Q and R.

§ 196-7. Failure to pursue an application.

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

§ 196-8. Height of Wireless Telecommunications Facilities.

A. Wireless Telecommunications Facilities shall be no higher than the minimum height necessary. Unless an area variance for height is granted by the Board of Appeals, the maximum height of Wireless Telecommunications Facilities approved pursuant to Section 196-5(H)(4)(g) shall be 80 feet and the maximum height of Wireless Telecommunications Facilities located outside the rights of way shall be 90 feet, based on three collocated Antenna arrays and ambient tree height of 70 feet. Height shall be measured from ground level, to the highest point on the Wireless Telecommunications Facility, or if higher, the highest point on any extension to an Existing Supporting Structure required to support the Wireless Telecommunications Facility. In Towers, universal antennas allowing multicarrier use will be utilized to the extent technologically possible and maximum height shall be reduced accordingly.

B. The maximum height of any Wireless Telecommunications Facility constructed after the effective date of this chapter shall not exceed that which shall permit operation without artificial lighting of any kind in accordance with municipal, county, state and/or any federal law and/or regulation.

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§ 196-9. Visibility of facilities.

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

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§ 196-10. Security of facilities.

All Wireless [Telecommunications](#) Facilities shall be secured in a manner which prevents unauthorized access to hazardous components. Specifically:

- A. Where possible, Wireless [Telecommunications](#) Facilities and modifications to Existing Supporting Structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; Towers will be fenced and shielded to prevent unauthorized access to the structure unless the Tower is a Stealth Facility or the fencing or shielding is inconsistent with required Concealment elements; and
- B. To the extent possible, Wireless [Telecommunications](#) Facilities shall be installed so that powered elements are readily accessible only to persons authorized to operate or service them.

§ 196-11. Signage

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

§ 196-12. Lot size and setbacks. [Amended 10-1-2003 by L.L. No. 7-2003]

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

- A. All proposed Towers shall be set back from abutting parcels, recorded rights-of-way and road and street lines a distance sufficient to substantially contain on site all ice-fall or debris from a Tower or Tower failure and to preserve the privacy and sanctity of any adjoining properties.
- B. Towers, other than Towers placed on an existing Supporting Structure shall be setback from any property line at least a distance equal to the height of the facility plus 10 feet, or the existing setback requirement of the underlying zoning district, whichever is greater. Further, any Accessory Facility or Structure shall be located so as to comply with the minimum zoning setback requirements for the principal building on the property on which it is situated.
- C. Where a [Wireless Telecommunications Facility](#) involves an attachment to an existing building or Supporting Structure other than a Supporting Structure in the rights of way, the facility, including but not limited to Antennas, accessory Supporting Structures, and/or other appurtenances, shall be setback from any property line the distance of the setback requirement of the underlying zoning district and shall comply with the setbacks set forth in Section 196-5(I)

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

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

§ 196-14. Existing Facilities.

All Wireless [Telecommunications](#) Facilities existing on or before the original effective date of this chapter shall be allowed to continue as they presently exist; provided, however, any owner of such existing facility must submit the Inventory Report Form and provide the City information set forth in Section 196-17 to the extent it applies and any modification to existing facilities must comply

with this chapter. All other wireless telecommunications facilities existing prior to January 14, 2019 must apply for a Special Use Permit, Special Exception Permit or Eligible Facility Permit and otherwise come into compliance with this Chapter.

§ 196-15. Public hearing required for Special Use Permit and Special Exception Permit.

- A.** Public hearing and public notification by applicant. Before the City Council acts on any application for a Special Use Permit or Special Exception Permit, it shall hold a public hearing thereon in accordance with the General City Law. To facilitate notification of the public, a public notification list shall be prepared by the applicant, using the most current City of Rye Tax Maps and Tax Assessment Roll, showing the Tax Map sheet, block and lot number, the owners name and owner's mailing address for each property located wholly or partially within 300 feet of the perimeter of the property in any direction. If a property on the public notification list is also listed as a cooperative or an apartment on a list entitled "Apartment List City of Rye," maintained by the City Assessor's office, the notice shall only be mailed to the property owner of record. When the public hearing is required by the City Council, the applicant shall deliver a copy of the public notice provided by the City Planner to all of the property owners contained on the public notification list by certified mail with certificate of mailing.

The above mailing and posting notice requirements must be performed in accordance with the following requirements:

- (1) The delivery of mailing shall be limited solely to the public notice provided by the City Planner.
 - (2) The public notice shall be mailed to all property owners with a certificate of mailing (no return receipt necessary) at a post office or official depository of the Postal Service, at least 14 calendar days prior to the date of the public hearing.
 - (3) At least five business days prior to the public hearing, the applicant shall provide to the City Planner all certificates of mailing.
 - (4) For all application for a Special Use Permit and Special Exception Permit, at least one week preceding the date of the public hearing, at least one sign, a minimum of two feet by three feet in size and carrying a legend prescribed by the City Council announcing the public hearing, shall be posted on the property. The height of the lettering on the sign shall be no less than two inches, except that the words "PUBLIC NOTICE" appearing at the top of the sign shall have no less than five-inch-high lettering. The sign shall be in full public view from the street and not more than 30 feet therefrom. The sign shall be removed from the property within two days after the public hearing.
- B.** The Council shall schedule the public hearing referred to in Subsection A of this section once it finds the application is complete. The Council, at any stage prior to issuing a Special Use Permit or Special Exception Permit, may require such additional information as it deems necessary.

- C. Council may waive any requirement hereof and of Section 196-16 as required to comply with state or federal law.

§ 196-16. Action on application for Special Use Permits and Special Exception Permits.

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

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§ 196-17. Recertification of Special Use Permits, Special Exception Permits, and Eligible Facility Permit

- A. At any time between 12 months and six months prior to the five-year anniversary date after the effective date of the permit and all subsequent fifth anniversaries of the original Special Use Permit Special Exception Permit or Eligible Facility Permit for a Wireless Telecommunications Facility, the holder of such permit shall submit a written request for recertification. In the written request for recertification, the holder of such Special Use Permit or Special Exception Permit shall note the following:

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- (1) The name of the holder of the Special Use Permit, Special Exception Permit or Eligible Facility Permit for the Wireless Telecommunications Facility.

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(2) If applicable, the number or title of the Special Use Permit, ~~Special Exception Permit, or Eligible Facility Permit.~~

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(3) The date of the original granting of the Special Use Permit, ~~Special Exception Permit, or Eligible Facility Permit.~~

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(4) Whether the Wireless Telecommunications Facility has been moved, relocated, rebuilt, repaired or otherwise modified since the issuance of the Special Use Permit, ~~Special Exception Permit, or Eligible Facility Permit.~~

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(5) If the Wireless Telecommunications Facility has been moved, relocated, rebuilt, repaired or otherwise modified, then whether the Council approved such action, and under what terms and conditions, and whether those terms and conditions were complied with and abided by.

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(6) Any requests for waivers or relief of any kind whatsoever from the requirements of this chapter and any requirements for a Special Use Permit, ~~Special Exception Permit, or Eligible Facility Permit.~~

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(7) That the Wireless Telecommunications Facility is in compliance with the Special Use Permit, ~~Special Exception Permit, or Eligible Facility Permit~~ and compliance with all applicable codes, laws, rules and regulations.

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(8) Whether the facility is still being used; and whether it is the least intrusive means of providing service, including whether it can be reduced in size, combined with or replaced by other facilities or otherwise altered to make it less visible or less audible.

(9) Whether it complies with then applicable requirements of the City Code for placement of Wireless Telecommunications Facilities.

(10) Whether there have been any changes in the legal status of the applicant or any entity whose facilities are part of the Wireless Telecommunications Facility; and whether all required authorizations and consents are still in full force and effect.

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B. If, after such review, the Council determines that the permitted Wireless Telecommunications Facility is in compliance with the Special Use Permit, ~~Special Exception Permit, or Eligible Facility Permit~~ and all applicable codes, laws and rules; that it continues to be used in the provision of wireless services; that all relevant entities continue to have all necessary authorizations; and that the facility cannot be modified or replaced so that it is less visible or less audible, or has a lesser adverse impact on aesthetics, community character or property values, then the Council shall issue a recertification Special Use Permit, ~~Special Exception Permit, or Eligible Facility Permit~~ for the Wireless Telecommunications Facility, which may include any new provisions or conditions that may be lawfully imposed, or that are required by codes, law or regulation.

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C. If the Council does not complete its review, as noted in Subsection B of this section, prior to the five-year anniversary date of the original permit, or subsequent fifth anniversaries, then the applicant for the permitted Wireless Telecommunications Facility shall receive an extension of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit for up to six months, in order for the Council to complete its review.

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D. If the holder of a Special Use Permit, Special Exception Permit, Or Eligible Facility Permit for a Wireless Telecommunications Facility does not submit a request for recertification of such permit within the time frame noted in Subsection A of this section, or if the Council finds that the Wireless Telecommunications Facility has been moved, relocated, rebuilt, or otherwise modified without approval of such having been granted by the Council under this chapter, or that the conditions for recertification have not been met, then such Special Use Permit, Special Exception Permit, or Eligible Facility Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit or subsequent fifth anniversaries, unless the holder of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit adequately demonstrates to the Council that extenuating circumstances prevented a timely recertification request. If the Council agrees that there were legitimately extenuating circumstances, then the holder of the permit may submit a late recertification request. Council may also recertify subject to additional conditions that it establishes, and contingent on satisfaction of those conditions.

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§ 196-18. Extent and parameters of Special Use Permit, Special Exception Permit and Eligible Facility Permit.

The extent and parameters of a Special Use Permit, Special Exception Permit or an Eligible Facility Permit for a Wireless Telecommunications Facility shall be as follows:

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A. Such permit shall be nonexclusive.

B. Such permit shall not be assignable or transferable without the express written consent of the Council.

C. Such permit may be revoked, canceled or terminated for a violation of the conditions and provisions of the Special Use Permit or Special Exception Permit for a Wireless Telecommunications Facility, or for a material violation of this chapter or applicable law.

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D. Such permit shall be valid for a period of five (5) years, or such longer period as is required by state law, but the permit may be recertified upon application, which application must demonstrate:

(1) The Wireless Telecommunications Facility is still in use; and for facilities where a demonstration of need or effective prohibition was required, that the facility remains necessary or that recertification is required to avoid an effective prohibition; and

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(2) The impact of the Wireless Telecommunications Facility cannot reasonably be further minimized.

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§ 196-19. Application fee.

- A. At the time that a person submits an application for a Special Use Permit or Special Exception Permit for a new Wireless Telecommunications Facility, such person shall pay an application fee to the City of Rye as set annually by the City Council set forth in the fee schedule. If the application is for a Special Use Permit for collocating on an Existing Wireless Telecommunications Facility, the applicant shall also pay a fee as set forth in the fee schedule.
- B. Applicants for recertification of a Special Use Permit or Special Exception Permit for a Wireless Telecommunications Facility shall also pay a fee as set forth in the fee schedule.

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§ 196-20. Performance security.

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

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§ 196-21. Reservation of authority to inspect Wireless Telecommunications Facilities.

- A. In order to verify that the holder of a Special Use Permit, ~~Special Exception Permit, or~~ Eligible Facility Permit for a Wireless Telecommunications Facility and any and all lessees, renters and/or licensees of a Wireless Telecommunications Facility place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including but not limited to Towers, Antennas and buildings or other Supporting Structures constructed or located on the permitted site. The Applicant shall pay for costs associated with such an inspection
- B. Payment of such costs shall be made to the City within 30 days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is (are) appealed in accordance with the procedures set forth in this chapter, said reimbursement payment must still be paid to the City, and the reimbursement shall be placed in an escrow account established by the City specifically for this purpose, pending the final decision on appeal.

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§ 196-22. NIER certification.

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

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§ 196-23. Liability insurance.

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

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F. Before construction of a permitted Wireless Telecommunications Facility is initiated, but in no case later than 15 days after the grant of the Special Use Permit or Special Exception Permit, the holder of the Special Use Permit or Special Exception Permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts. All insurance carriers must have an A.M. Best rating of at least A and be authorized to do business in New York.

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§ 196-24. Indemnification.

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

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§ 196-25. Penalties for offenses.

A. Civil sanctions. Any person who violates any of the provisions of this chapter shall be liable for a civil penalty of not more than \$5,000 for every such violation. Each consecutive day of violation will be considered a separate offense. Such civil penalty may be released or compromised by the City Council. In addition, the City Council shall have power, following a hearing, to direct the violator to comply with the provisions of this chapter.

B. Criminal sanctions. Any person, firm or corporation who or which willfully violates any of the provisions of this chapter or permits promulgated thereunder, excluding provisions set forth in the rules and regulations promulgated thereunder, upon conviction thereof of the first offense, shall be guilty of a violation punishable by a fine of not less than \$5,000 and not more than \$10,000 and, for a second offense and each subsequent offense, shall be guilty of a violation punishable by a fine of not less than \$10,000 nor more than \$20,000 or a term of imprisonment of not more than 15 days, or both. Each consecutive day of violation will be considered a separate offense.

C. Notwithstanding anything in this chapter, the holder of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit for a Wireless Telecommunications Facility may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the holder of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit to termination and revocation of such permit. The City may also seek injunctive relief to prevent the continued violation of this chapter.

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§ 196-26. Default and/or revocation.

- A. If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or of the Special Use Permit, Special Exception Permit, or or Eligible Facility Permit, then the Council shall notify the holder of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit, in writing, of such violation. Such notice shall specify the nature of the violation or noncompliance and that the violations must be corrected within seven (7) days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this chapter, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Council may, at its sole discretion, order the violation remedied within 24 hours.
- B. If within the period set forth in Subsection A above the Wireless Telecommunications Facility is not brought into compliance with the provisions of this chapter, or of the Special Use Permit, Special Exception Permit, or Eligible Facility Permit or substantial steps are not taken in order to bring the affected Wireless Telecommunications Facility into compliance, then the Council may revoke such Special Use Permit or Special Exception Permit for a Wireless Telecommunications Facility and shall notify the holder of the Special Use Permit or Special Exception Permit within 48 hours of such action.
- C. Without limiting the foregoing, if a Supporting Structure, Accessory Facility or Structure, or Tower no longer complies with applicable codes, and may no longer be safely used to support other elements of a Wireless Telecommunications Facility, the City may require removal of those elements, in addition to taking any action against the owner of the Supporting Structure or Tower.

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§ 196-27. Removal of Wireless Telecommunications Facilities.

- A. Under the following circumstances, the Council may determine that the health, safety and welfare interests of the City warrant and require the removal of a Wireless Telecommunications Facility:
- (1) A Wireless Telecommunications Facility with a permit has been abandoned (i.e., not used as a Wireless Telecommunications Facility) for a period exceeding 90 days or a total of 180 days in any three-hundred-sixty-five-day period, except for periods caused by force majeure or acts of God.
 - (2) A permitted Wireless Telecommunications Facility falls into such a state of disrepair that it creates a health or safety hazard.
 - (3) A Wireless Telecommunications Facility has been located, constructed or modified without first obtaining the required Special Use Permit, or any other necessary authorization.

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(4) A Wireless Telecommunications Facility that has allowed its Special Use Permit or Special Exception Permit to lapse or has otherwise failed to timely comply with providing the City with the required inspection reports, NIER certifications or other information in order to confirm such facility's compliance with this Chapter.

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B. If the Council makes such a determination as noted in Subsection A of this section, then the Council shall notify the holder of the Special Use Permit or Special Exception Permit for the Wireless Telecommunications Facility within 48 hours that said Wireless Telecommunications Facility is to be removed. The Council may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facility.

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C. The holder of the Special Use Permit or Special Exception Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facility, and all associated Supporting Structures or portions of Supporting Structures and Accessory Facilities and Structures used solely by it, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Council. However, if the owner of the property upon which the Wireless Telecommunications Facility is located wishes to retain any access roadway to the Wireless Telecommunications Facility, the owner may do so with the approval of the Council.

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D. If removal, or substantial progress to complete removal has not occurred within 90 days after the permit holder has received notice, then the Council may order officials or representatives of the City to remove the Wireless Telecommunications Facility and associated structures at the sole expense of the owner or permit holder.

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E. If the owner of property that is removed does not claim the property and remove the property from the site to a lawful location within 10 days, then the City may take steps to declare the property abandoned and sell it and its components.

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

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

A. Any applicant can request the waiver of application requirements that are inapplicable to their permit application. Such request shall be in writing. Requests should be discussed at the pre-application meeting. The applicant shall have the burden of supporting such

requests. Determinations as to applicability of application requirements shall be made by the City.

- B. In determining permit conditions, the City Council can waive inapplicable permit requirements, consistent with the policy goals and priorities of this chapter. The applicant shall have the burden of supporting such requests. Determinations as to applicability of permit condition requirements shall be made by the City Council.

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

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

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§ 196-30. Conflict with other laws.

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

§ 196-31. Severability.

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

§ 196-32. Enforcement.

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

§ 196-33. Authority.

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

Section 2: Effective date.

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



CITY COUNCIL AGENDA

NO. 13

DEPT.: Legal

DATE: January 9, 2019

CONTACT: Kristen Wilson, Corporation Council

AGENDA ITEM: Approve a license agreement with Rye Town Park Commission to grant them permission to make the necessary sidewalk repairs on City property as part of rebuilding the Dearborn Ave seawall.

FOR THE MEETING OF:

July 9, 2019

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council approve the license agreement.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other

BACKGROUND:

See attached.

LICENSE AGREEMENT FOR DEARBORN SEAWALL

This License Agreement (“Agreement”) is made the ____ day of_____, 2019, between the CITY OF RYE, having an address at 1051 Boston Post Road, New York 10580 (“Licensor” or “City”) and RYE TOWN PARK COMMISSION, having an address at 95 Dearborn Avenue, Rye, New York 10580 (“Licensee”).

WITNESSETH:

WHEREAS, the seawall located in Rye Town Park at the end of Dearborn Avenue (the “Seawall”) was damaged and the Licensee is in the process of reconstructing a portion of the Seawall; and

WHEREAS, Licensee desires to obtain: 1) a permanent license to construct footing(s) and pilings underneath City sidewalks located along Dearborn Avenue (the “Permanent License”); and 2) a temporary license agreement to allow for use of City property during the construction period of the Seawall on certain conditions (the “Temporary License”); and

WHEREAS, the City desires to grant to Licensee permission to utilize said premises.

NOW THEREFORE, in consideration of the premises and the mutual promises and covenants herein contained, the parties do hereby agree as follows:

1. The City hereby grants to the Licensee the right, license and privilege to utilize a portion of the City-owned sidewalk on the North side of the Seawall along Dearborn Avenue to construct a footing(s) and pilings underneath the City owned property identified on the attached plans for the Reconstruction of the Dearborn Avenue Seawall annexed hereto as Exhibit A (the “Premises”) (the “Permanent License”).

2. During the construction of the Seawall, the City hereby grants to the Licensee the use City owned property abutting Dearborn Avenue, including, but not limited to, the sidewalk, curbing, and adjacent right-of-way areas to perform the necessary construction work and to store materials (the "Temporary License").
3. The Licensee agrees that it shall replace any necessary curbing and sidewalks associated with the work for the Permanent License and Temporary License in accordance with the City of Rye City Code and with authorization from the City Engineer at at the sole cost and expense of the Licensee.
4. The Licensee agrees to permit the City Engineer and such other agents or employees of the City, as the City Engineer may desire, to have free and unrestrained access to the Premises and to inspect the same.
5. The Licensee agrees that it will maintain the Premises, and the surrounding area, and keep same free from any and all trash, rubbish, garbage, and the like, and will maintain the area in a clean and safe fashion.
6. It is expressly understood that the rights granted hereunder are those of a license and this document shall not be construed as a lease.
7. The Licensee shall pay to the City the sum of One Dollar (\$1.00) for the term of this license.
8. During the period of this license, the Licensee agrees to maintain the Premises in full and complete repair to the satisfaction of the City Engineer, or his designee, at the sole cost and expense of the Licensee.
9. At the end of the construction of the Seawall, the Temporary License shall be terminated and all construction materials and debris shall be removed by the

Licensee and any areas of the Premises which have been disturbed shall be restored to a condition equal to or better than existed prior to the license by the Licensee.

10. The Licensee assumes all risk in the operation of this license and agrees to fully comply, at its own cost and expense, with all Federal, State or local laws, rules and regulations affecting this licensed Premises and the use thereof by Licensee.
11. The Licensee expressly agrees to hold the City, its agents, servants and/or employees, harmless from any and all claims, or losses from claims, arising out of any violation of law, rules, regulation or order, and from any and all claims for loss, damage or injury to persons or property of whatever kind or nature, arising from the operation of this license or from the act or omission of any agent, servant or employee of the Licensee, and the Licensee expressly agrees to indemnify the City, its agents and employees, to the extent of any recoveries against it or them individually and/or jointly arising from the operation of this license.
12. Licensee shall indemnify, defend and save the City (and its employees and agents) harmless of, from, and against any and all loss, cost, expense, and liability, including without limitation, legal fees and disbursements, that the City (and its employees and agents) may directly or indirectly sustain, suffer or incur as a result of the use of the Premises by the Licensee provided same has not been caused solely by the City (its employees and agents); and Licensee agrees to assume, on behalf of the City, the defense (with counsel reasonably satisfactory to the City, its employees, agents) of any action at law or in equity, or other legal proceeding, which may be brought against the City (its employees and agents) upon or by reason of such damage, injury or claim and to pay on behalf of the City, the amount of any

judgment, decree award, or order that may be entered against the City in any such action or proceeding.

13. The Premises shall be added to the Licensee's liability and property damage insurance coverage for a minimum amount of One Million Dollars (\$1,000,000). A certificate of insurance shall also be filed with the City Manager within ten (10) days of the execution of this license. If a certificate of insurance is not filed by Licensee adding the Premises to its insurance, this license shall be null and void. Licensee shall immediately notify the City, as a certificate holder, in writing by U.S. Certified Mail, return receipt requested, when and if the certificate of insurance for the Premises is cancelled.
14. In the event that either party shall be prohibited from completing its obligations under this agreement by reason of any illegality, then this license shall in all respects terminate.
15. In the event that the City commences any action or proceeding against the Licensee arising out of or pursuant to this license, then in such event, the Licensee agrees to pay all costs incurred by the City as a result, including court costs and fees and reasonable attorneys' fees, should the City prevail in such action or proceeding.
16. This license shall not be assigned by the Licensee and the Licensee covenants, promises and warrants that it will not assign any right granted herein.
17. Either party shall have the right to terminate the Temporary License at any time upon thirty (30) days' written notice to be made by U.S. Certified Mail, return receipt requested, and in the event of any such early termination or the expiration of this agreement, the Licensee agrees to restore the Premises to the condition

existing prior to its erection of any structure or other such fixtures on the subject Premises and shall obtain any and all necessary permits and approvals from the City of Rye.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed and sealed the day and year just above written.

CITY OF RYE

(Licensor)

By:_____

Marcus Serrano
City Manager

RYE TOWN PARK COMMISSION

(Licensee)

By:_____

Gary Zuckerman
Supervisor
Town of Rye

STATE OF NEW YORK)
 : ss.:
COUNTY OF WESTCHESTER)

On the ____ day of _____ in the year 20019 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of Individual
taking acknowledgment

STATE OF NEW YORK)
 : ss.:
COUNTY OF WESTCHESTER)

On the ____ day of _____ in the year 2019 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of Individual
taking acknowledgment



CITY COUNCIL AGENDA

NO. 15

DEPT.: City Council

DATE: January 9, 2019

CONTACT: Mayor Josh Cohn

ACTION: Appointment of a Council Member as Trustee of the Police Pension Fund, by the Mayor with Council approval, for a one-year term.

FOR THE MEETING OF:

January 9, 2019

RYE CITY CODE,

CHAPTER 31

SECTION 31-4

RECOMMENDATION: that the following resolution be adopted:

RESOLVED, that a Council member be appointed as Trustee of the Police Pension Fund for a one-year term commencing January 1, 2019.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: The Police Pension Fund was established by the City Council on 1-21-1942. Chapter 31 of the City Code outlines the rules for the Fund. Section § 31-4, "Trustees and other officers of fund" stipulates that "The Mayor, the Chief of Police and a member of the Council to be appointed by the Mayor with the approval of the Council in January of each year, except the year 1942, shall constitute the Trustees of the fund." The Trustees have charge of and administer the Fund and are empowered to make all necessary contracts and take all necessary and proper actions and proceedings in connection, including making payments of pensions from this fund. There is one recipient of the Police Pension Fund.



CITY COUNCIL AGENDA

NO. 16

DEPT.: City Council

DATE: January 9, 2019

CONTACT: Mayor Josh Cohn

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

FOR THE MEETING OF:

January 9, 2019

RECOMMENDATION: that the following resolution be adopted:

RESOLVED, that two Council members be appointed to the City Council's Audit Committee for a one-year term commencing January 1, 2019.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

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



CITY COUNCIL AGENDA

NO. 17

DEPT.: City Council

DATE: January 9, 2019

CONTACT: Mayor Josh Cohn

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

FOR THE MEETING OF:

January 9, 2019

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

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

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

Audit Committee
Board of Appeals
Board of Architectural Review
Boat Basin Commission
Conservation Commission/Advisory Council
Emergency Medical Services
Finance Committee
Flood Advisory Committee
Government Policy & Research Committee
Landmarks Advisory Committee
Legal Case Management Committee
Planning Commission

Police Pension Fund
Recreation Commission
Rye Cable and Communications Committee
Rye City School Board
Rye Free Reading Room
Rye Golf Commission
Rye Merchants Association
Rye Playland Advisory Committee
Rye Town Park
Sustainability Committee
Traffic & Pedestrian Safety Committee



CITY COUNCIL AGENDA

NO. 18

DEPT.: City Manager's Office

DATE: January 9, 2019

CONTACT: Marcus Serrano, City Manager

ACTION: Designation of the official City newspaper.

FOR THE MEETING OF:
January 9, 2019

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

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

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



CITY COUNCIL AGENDA

NO. 19

DEPT.: City Manager's Office

DATE: January 9, 2019

CONTACT: Marcus Serrano, City Manager

ACTION: Designation of the amounts of faithful performance bonds.

FOR THE MEETING OF:

January 9, 2019

RYE CITY CODE,

CHAPTER C Charter
SECTION C-23-3

RECOMMENDATION: That the Mayor and City Council designate faithful performance bonds for the City Comptroller, City Clerk and City Marshal.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: Section § C23-3, "Surety bonds" of the City Charter stipulates that "The City Comptroller, City Clerk, City Judge, Acting City Judge, City Marshal and such other officers and employees as may be specified by the Council shall give bond for the faithful performance of their duties. The bond shall be in such sum and with such corporate sureties as may be approved by the Council. The premium of all such surety bonds shall be paid by the city."

Faithful performance bonds will be designated in the following amounts:

- | | |
|---------------------|-------------|
| A. City Comptroller | \$1,000,000 |
| B. City Clerk | \$ 500,000 |
| C. City Marshal | \$ 100,000 |