

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

**REGULAR MEETING OF THE CITY COUNCIL
Wednesday, October 16, 2019
7:30 p.m.**

Please Note: The Council will convene at 6:15 p.m. and it is expected they will adjourn into Executive Session at 6:16 p.m. to discuss attorney-client privileged matters, personnel matters and labor negotiations.

1. Pledge of Allegiance.
2. Roll Call
3. General Announcements.
4. Draft unapproved minutes of the Regular Meeting of the City Council held October 2, 2019.
5. Residents may be heard on matters for Council consideration that do not appear on the Agenda.
6. Presentation regarding Nursery Field Turf Project and consideration of a resolution declaring the City Council's Intent to be Lead Agency pursuant to SEQRA and directing that the project advance to the Planning Commission for wetland review and an advisory coastal consistency determination.
7. Review of results of food scrap test pilot and discussion and possible action on next steps related to:
A) Drop-off Facilities
B) Curbside Pickup.
8. Open a public hearing to add Article VI "Vestibules" to Chapter 167 (Streets and Sidewalks) of the City Code of the City of Rye to facilitate the use and implementation of vestibules on the City's sidewalks, allowing commercial properties to insulate interiors in a safe and proper manner.
9. Open a public hearing on a local law amending §197-86 of the Code of the City of Rye to Amend the Regulation of Accessory Seasonal Outdoor Customer Seating.
10. Report of the City's 3rd Quarter financial results by the Deputy Comptroller.
11. Ratify the Memorandum of Agreement with the CSEA, Local 1000 AFSCME, AFL-CIO, City of Rye Clerical Unit and Westchester County Local 860 union.
Roll Call
12. Acceptance of resignation of City Manager and resolution authorizing Mayor to execute employee separation agreement including release and waiver of claims.

13. Resolution authorizing Mayor to execute employment agreement with Interim City Manager.
14. Authorize a request from the Boat Basin Commission to transfer \$150,000.00 from the Boat Basin unassigned fund balance to Boat Basin Unrestricted Net Assets to cover the cost of the Biological Testing and the purchase of a hauling trailer.
Roll Call
15. Resolution to increase the Corporation Counsel Retainer Agreement by \$20,000 for the remainder of 2019 to allow for a Legal Assistant.
Roll Call
16. Resolution to transfer \$20,000 from General Fund-unassigned Fund Balance to Corporation Counsel Account.
Roll Call
17. Resolution to transfer 2018 Rye TV Fund-unassigned Fund Balance of \$1,010,665 to the Capital Reserve Account.
Roll Call
18. Consideration of a request by the American Legion Post 128 to conduct its usual Veterans' Day observance on the Village Green on Monday, November 11, 2019 from 10:30 a.m. to 11:15 a.m. In case of rain, the American Legion Post 128 requests the use of City Hall on that date and time.
19. Appointments to Boards and Commissions, by the Mayor with Council approval.
20. Old Business/New Business.
21. Adjournment

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The next regular meeting of the City Council will be held on Wednesday, November 6, 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.

DRAFT UNAPPROVED MINUTES of the
Regular Meeting of the City Council of the City of
Rye held in City Hall on October 2, 2019, at 7:30
P.M.

PRESENT:

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

ABSENT:

RICHARD MECCA,
Councilmember

The Council convened at 6:30 P.M. Councilman Mecca made a motion, seconded by Councilwoman Hurd, to enter into executive session to discuss litigation and personnel matters. At 7:34 P.M., Councilman Mecca made a motion, seconded by Councilwoman Hurd, to exit executive session and commence the regular meeting of the City Council. The meeting began at 7:39 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 Tagger-Epstein said that the Annual Halloween Window Painting will be held October 20, 2019. She was happy to announce that once again, there will be a sensory room at the Square House during the event, offering a safe space for families who have special needs. There will be games and activities, and parental supervision is needed. She said that the sensory room was very successful last year and that she looks forward to another great event.

Councilwoman Souza announced that pumpkin carving has been added as an activity at this year's Halloween Window Painting. She encouraged all interested to sign up.

Councilman Stacks announced that the Closing Day Scramble will be held at the Rye Golf Club on October 20, 2019.

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

Mauricio Vilches, 131 Purchase Street, addressed the Council. He was upset that he had been getting parking tickets for parking on Wappanocca Avenue for more than two hours at a time. He asked that the Council consider special on-street permit parking. Mayor Cohn and the Council acknowledged the issue and Mr. Vilches' concerns. City Clerk D'Andrea invited Mr. Vilches to contact the clerk's office to learn about the available parking permits.

Douglas Carey, 131 Purchase Street, addressed the Council. He thanked them for their courage to decide against the Verizon installation. He said that the progression of this type of growth and the number of antennas in the area had been overwhelming. He said that he was at the meeting to ask that the Council demonstrate that same courage going forward to be stewards of the environment. He felt concerned about flooding and other local environmental issues. Mr. Carey felt concerned specifically about the recent discussion about turfing Nursery Field. He was upset about the material used for the turf and that the potential for flooding.

5. Draft unapproved minutes of the Regular Meeting of the City Council held September 18, 2019

Councilwoman Souza made a motion, seconded by Councilwoman Hurd and unanimously carried, to approve the minutes of the regular meeting of the City Council held September 18, 2019.

6. Continuation of a public hearing for a Verizon Wireless application for a special permit to install a public utility wireless communication facility on the roof of the Verizon building located at 182 Purchase Street.

Judi Eisenberg, 216 Purchase Street, addressed the Council. She said that she was the representative for her building tenants. She said that the neighborhood was concerned about the project and the property values. She felt concerned about a number of other items. She said they would like a different location to be considered for this proposed installation.

Andrew Avalone, 240 Purchase Street, stated that the location proposed was a heavily residential area. He said that the proposed cell tower upgrades may not be good. He was concerned about traffic disruption, noise during the continued operation, potential negative impact on resident communications, and potential health concerns.

Mayor Cohn responded that as a matter of law, the City Council was prohibited from considering potential health concerns with regard to this application.

Raul Bello, 36 New Street, felt concerned about the new structure. He felt troubled about the health impacts on residents. He further said he was concerned about the noise and traffic as

well. He said that this was the first they were hearing about the application, and as such would appreciate more time to look at the plans.

Mayor Cohn reiterated the prohibition to consider health concerns by a matter of federal law.

Nicholas Szczerba, 54 New Street, said that at one time 150 Purchase Street was being considered for the same thing and the City Council rejected it. He felt concerned about the potential safety and health impacts.

Leslie Snyder, Snyder & Snyder, addressed the Council and community on behalf of the applicant, Verizon Wireless. She said this facility has been strategically designed and located on the rooftop to fit in with the current façade so that the antennas are concealed. She said that the proposed plan complies fully with City Code Chapter 196, “Telecommunications.” She stated that the proposed facility would provide enhanced communications to the area. She said that the BAR reviewed the application and on September 9, 2019 unanimously voted in favor of the application and that the facility had been integrated to match the character of the building. Ms. Snyder said that in response to the resident comments tonight at the meeting, there will be no traffic created by this proposed installation, as this is an unmanned facility. With respect to health concerns, she reiterated that the Council could not consider those as a matter of law. However, she said that as a matter of fact, the proposed facility does comply with federal RF emission regulations. To address the concern about property values, she said it has been found throughout Westchester County that residential buyers are less likely to purchase a home if an area does not have adequate wireless coverage. She further stated that this cell phone facility will not interfere with current communications or technology. There will be no “fall zone,” as no tower is being built. She said that the application is attempting to install rooftop equipment that has been sealed from view. She asked the Council to close the public hearing and due to the shot clock and the requirements that you vote this evening, issue a negative declaration under SEQRA and issue the permit.

Councilwoman Hurd said that she disagreed with the findings of the BAR. She said that she did not think there were similar rooftops that were close by. She also said that it would only be appropriate I don’t think there are similar rooftops that are close by. She said she felt this type of installation would only be appropriate on tall structures, identified in the City Code as four stories or more; she said that this building was two stories. She was concerned about the residential view to the installation, particularly from New Street.

Ms. Snyder said that this was not a two-story structure and that the application complied with the City Code, as it prescribes the use of existing structures and not residential structures. She demonstrated the visual analysis that showed stone on the building. She said that all residents would see is the bulkheads that conceal the antennas.

Councilwoman Hurd added that setbacks are important to residential community.

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

Corporation counsel Wilson stated that what the applicant was asking of the Council to issue a special use permit under City Code Chapter 196 and that the Council waive certain requirements, such as setback for the installation.

Mayor Cohn read the following resolution:

**RESOLUTION OF THE RYE CITY COUNCIL DENYING THE APPLICATION
SUBMITTED BY NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON
WIRELESS TELECOMMUNICATIONS FACILITY**

WHEREAS, the BAR, as required, did review the Application and issued an advisory opinion finding that the type and color of material proposed to encase the three structures was three dimensional and was consistent with the façade of the existing building; and

WHEREAS, the Applicant is proposing three (3) different Facility locations on top of the existing building on the Site – one Facility on the northern side of the roof; one Facility on the southern side of the Facility; and a larger Facility in the middle of the roof; and

WHEREAS, the City Council scheduled a public hearing (“Public Hearing”) for September 18, 2019 in connection with the Special Use Permit Application and in accordance with Section 196-15 of the Code; and

WHEREAS, proper notice was published and the Applicant notified all affected property owners by certified mail regarding the Public Hearing on September 18, 2019 in accordance with the City’s Assessor’s Records, and filed an Affidavit of Service with the Planning Department that such property owners were so notified; and

WHEREAS, the Applicant posted a sign at the site on August 30, 2019 noticing the public of the City Council’s Public Hearing and filed an Affidavit of Posting with the Planning Department that such sign was posted; and

WHEREAS, the City Council conducted a Public Hearing on September 18, 2019; and

WHEREAS, the City Council continued the Public Hearing until October 2, 2019; and

WHEREAS, the City Council listened to comments from the public at the Public Hearing and considered written comments it had received; and

WHEREAS, the Public Hearing was closed on October 2, 2019; and

WHEREAS, the definition of “Tall Structure” set forth in Chapter 196 states, in relevant part, that a tall structure includes, but is not limited to,...nonresidential rooftops at least four stories in height or greater....”; and

WHEREAS, a “Story” is defined under the Rye City Zoning Code as “[t]hat portion of a building included between the surface of any floor and the surface of the floor next above it, or, if there be no floor above it, then the space between the floor and the ceiling next above it. A mezzanine shall be deemed a full story where it covers more than 50% of the ground story area.”

WHEREAS, the existing building on the Site is two Stories; and

WHEREAS, the RF analysis is based on “street level” data and there is no information pertaining to any RF analysis at the adjacent building or on New Street; and

WHEREAS, at the Public Hearing it was established that the building at the Site was not a tall structure within the meaning of Chapter 196; and

WHEREAS, a “Stealth Facility” is defined, in relevant part as a wireless telecommunications facility that is either: (1) virtually imperceptible to the casual observer, such as an antennae 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; and

WHEREAS, in accordance with Sections 196-1 “Purpose and legislative intent” and 196-4 “Policy and goals for special use permits and special exception permits,” the City Council has taken into consideration the health, safety, public welfare and environment and the potential adverse visual and sonic impacts on the community and its character;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby makes the following finding of fact in connection with the Special Use Permit with the understanding that the Applicant must show it meets the standards in Section 196-5(G) by clear and convincing evidence:

1. The Applicant has not established that the Facility is designed and placed to minimize the visual impact on the community as required under Section 196-5(G)(1)(c).
 - a. The Facility is proposed on a Site that has easily over 100 households within 750 feet. Although the Applicant states that it meets the criteria in Chapter 196 because the Site is used for non-residential purposes, the immediate neighborhood is a dense residential area.
 - b. The Applicant proposes to create three vertical architectural oddities on the rooftop along a busy road through the heart of downtown Rye. There are no similar rooftops in the vicinity and, due to the large number of apartment buildings and the topography of the area with higher residential streets immediately behind and above the Site, the rooftop is highly visible from other residential units.

- c. Two of the antennae are proposed to be located within the non-conforming front yard setback and side yard setbacks resulting in the Facility/ies being located closer to the street and to the adjoining residential units than permitted.
2. The Applicant has not demonstrated that the Facility will not significantly alter the Site. Indeed, the installation of the three Facilities will dramatically change the visual characterization from Purchase Street, the surrounding buildings and New Street.
3. The Applicant has not demonstrated that the Facility is necessary for the provision of services and that its Facility location is the least intrusive for providing service as required in Section 196-5(G)(1)(e).
 - a. The Site is in a residential zone and residential area.
 - b. The rooftop of the building is highly visible from residences behind the Site.
4. The Applicant has not proven that the Facility qualifies as a Stealth Facility. The three separate rectangular boxes sitting on top of a roof line in a residential neighborhood is not “virtually imperceptible”. Simply enclosing the antennae in box-like roof top structures does not qualify as being Stealth. Unintegrated material alterations in building profile do not qualify as stealth. Section 196-5(G)(2).
5. In addition, the Applicant has not shown that the Facility is using universal antennae as required under Section 196-5(I)(5)(e).
6. The Facility does not comply with the priority of locations listed under Section 196-5(I). As set forth above, the building does not meet the definition of a Tall Structure, the Applicant is not proposing collocation, the Site is not in a commercially zoned area, and the Site is in a residential area. In addition, due to the topographic conditions of the Site and its surrounding areas, those living in residences immediately behind the Site on New Street and those living in apartment buildings nearby are at similar elevations to the roof of the building.
7. With respect to the Alternative Analysis, the City Council disagrees with John Pepe’s conclusion that the Facility is proposed to be located on a tall structure. Mr. Pepe’s attempt to “solve” his alternative analysis by simply concluding that the existing two-story building is an existing tall structure is unavailing and contradicts the topography and the visibility of the building’s rooftop from adjacent residential units. There are dramatic elevation changes between the front of the existing building and the back. The front of the building is at approximately 35’ and the elevation near the back is between 55’ to 60’. Section 196-6(F). Furthermore, the Applicant did not provide any written correspondence supporting the statements that other locations were considered and were not feasible for a stated reason. There are other sites within the City of Rye that are topographically higher than the proposed building and there are other existing structures that are taller.

8. The Applicant has submitted a long form environmental assessment form and the visual addendum. However, the City Council finds that there will be an adverse visual impact and constructing three rectangular structures on top of a roof will be visible to nearby residential units and create a new roofline that is detrimental to the community. Furthermore, the three new vertical protrusions do not meet the definition of a Stealth Structure as mentioned above. Sections 196-6(I), (J) and (K).

NOW, THEREFORE BE IT FURTHER RESOLVED, the the City Council further finds that the building on the Site does not meet the definition of “Tall Structure”, the Site is the lowest priority area set forth in Section 196-5(I), and the Applicant fails to put forward any basis upon which the City Council should exercise its discretion and grant the following waivers:

- 1) 40’ minimum setback between the Facility and a residential unit. The waiver would result in a reduction from 40’ to 28’ – a 30% reduction in the required setback. Section 196-6(8)(a).
- 2) 25’ minimum front yard setback. Based on Applicant’s drawings, the Applicant would need an approximate 17’ variance to allow one of the antennae to be located 8’ back from where the front yard setback is measured – resulting in an approximate 68% variance. Section 196-12(C).
- 3) 40’ combined side yard setback. Applicant would need an approximate 27-foot variance for the combined yard setback requirement – resulting in an approximate 68% variance. Applicant would also need a 20-foot variance – resulting in 100% relief for one of the side yard setbacks and a 7-foot variance resulting in a 35% variance for the second side yard. Section 196-12(C).

As a result, the City Council hereby denies the requested waivers.

NOW, THEREFORE BE IT FURTHER RESOLVED, that pursuant to its authority under Section 196-5(I)(5), the City Council finds that the potential cumulative impacts of allowing these roof protrusions to exist in a residential neighborhood essentially creates an entirely new and unwelcomed aesthetic feature in the downtown and the Applicant has not minimized the visual impact to the nearby residential units. The City Council’s jurisdiction to review the visual and aesthetic impacts of the Facility and the impacts to the residential character of this area of Rye is much broader than the BAR’s;

NOW, THEREFORE, BE IT FURTHER RESOLVED, that in light of the foregoing findings, the City Council does not feel it is necessary to review and address any remaining requirements set forth under Chapter 196 at this time and denies the requested waivers and, therefore, denies the Special Permit Application for the Facility.

Ms. Snyder objected to the resolution and stated that if the Council was going to base its decision on the waivers, the applicant needs to review them. She said that she was not told that any variance was needed. She said that only waiver that was discussed was for one antenna.

Corporation Counsel Wilson stated that on the contrary, the applicant's architect/engineer had noted on the plans submitted with the application that a waiver was needed for relief with the setbacks.

Ms. Snyder said that the City gave the applicant no suggestions for anything that could be done to improve its chance of being approved. She said that if the City had an objection, the applicant should have been made aware. She said that Rye had a history of not wanting any wireless facilities. She said the applicant spent a lot of time designing this proposal on a nonresidential existing structure. She said that building was tall relative to others in Rye. She asked that the Council not vote this evening and give the applicant a chance to improve the application.

Mayor Cohn stated that the applicant could always resubmit a different proposal.

Councilwoman Souza made a motion, seconded by Councilwoman Hurd, to adopt the resolution above.

ROLL CALL

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

7. Discussion of Rye TV.

Councilwoman Hurd made the following statement:

"I am happy to have the opportunity tonight to move forward the dialogue towards recommendations from the RyeTV subcommittee. The subcommittee is composed of me, Councilwoman Goddard and Councilman Stacks. First I would like to review the work we have done over the past year and several months before moving on to more substantive discussion.

First, I would like to again underscore the City Council's appreciation for the role that RyeTV plays in our community. Public access to information is critical for the democratic functioning of our local government and RyeTV is one of our local vehicles for providing that access.

Second, a review of where we have been. In early 2018, the Mayor's revitalized Finance Committee conducted a review of RyeTV operations. Their very in-depth review determined that in a best case scenario, assuming a series of large, anticipated expenditures immediately, that within ten years, RyeTV's spending needs would likely exceed its Fund Balance. Other realities, including an increase in households "cutting the cord" and FCC changes to PEG rules, contribute to a bleaker financial outlook.

Given that RyeTV was on the verge of several large expenditures, namely a full time hire, a studio buildout at City Hall and an overhaul of equipment - totaling over \$1M - the Finance Committee recommended that RyeTV pause while the City Council take a closer look. The Mayor appointed a subcommittee to conduct an assessment of RyeTV in May 2018.

Over the past year, the Subcommittee has met with industry experts, neighboring municipalities as well as other cable facilities in the area and hired a local industry expert, Steve Micewicz the New Rochelle cable coordinator and a consultant to municipalities, to help us with our review. His report presents a comparison of the current operation of RyeTV with the usage of PEG Access in 30 plus communities in westchester county.

Tonight we consider the Micewicz report as well as the Buske report, a needs assessment conducted in connection with our cable franchise agreement negotiations. The Buske report is based on a statistically significant survey with 382 of the City's approximately 9,000 cable subscribers responding.

WHAT IS RYE TV AND WHAT DOES IT DO:

RyeTV is a Public, Education and Government (or PEG) television access facility, established in 1986, to serve the City of Rye and its residents.

Although the department is funded for 2 full time employees and 6 part times, in recent years the department has been staffed by 1 full time employee and 1-2 part time employees.

RyeTV is located at Rye High School in an approximately 1,000 square foot space with 4 editing bays and a 3 camera studio.

RyeTV is a City of Rye department. Rye TV is not a non-profit although a relatively inactive Friends of RyeTV 501(c)(3) exists. RyeTV works closely with the City Council appointed Cable and Communications Committee. The Committee, which is comprised of resident volunteers, serves an advisory role to the City Council on communications technology, including television, issues with the cable companies and budgetary matters for Rye TV. Today's Committee is also active in the creation of programming for RyeTV.

Rye TV's mission is to provide a voice for the community, civic engagement, government transparency and educational resources in media literacy. This translates to three main service areas:

1. RyeTV facilitates Public access to the PEG channels.
2. Rye organizations and individuals may use RyeTV equipment, request production help and then cablecast their programs. RyeTV provides the majority of its services to this smaller set of customers.
3. Rye TV also provides training, education and summer opportunities for children to learn about aspects of TV.

Our consultant's report is useful in its comparison of RyeTV to cable facilities in neighboring municipalities. Nearly half of municipalities have some degree of public access.

While the survey completed by the consultant indicates that some communities in Westchester County do not have government channels, transparency and public access to government meetings and workshops is a priority for the City Council. There has been discussion of more access to more meetings through broadcasting of Planning, Zoning and Rye Golf meetings.

Councilman Stacks will discuss funding and Councilwoman Goddard will discuss public access partnership."

Councilman Stacks said there were some noteworthy observations regarding how other municipalities were allocating franchise fees. He said that the City allocates 100% of franchise fees to RyeTV which is unique to this municipality. He said that most other towns put this into their General Fund. One of the recommendations of our subcommittee is to divert these to Rye's General Fund and operating budget. There is currently a reserve of over \$1 million. The analysis showed prudent fiscal management of Rye TV. The subcommittee also recommends that this be moved into the capital project fund reserves for the City.

Councilwoman Hurd said that since 1988, the City has not reconsidered the decision to allocate franchise fees directly to Rye TV. She said that studio equipment is expensive. The City needs to weigh the cost of the service to the benefit to the community, as we do with all other departments. She said that the City is in a position where it has tremendous capital needs and everyone was working diligently with the Finance Committee to streamline expenses to pay for critical needs.

Councilwoman Goddard stated that one of the other ideas that has cropped up over the last year and a half is how do a work with Rye TV to enhance its programming to expand its reach to a broader audience. The subcommittee has been looking at a number of issues related to the organizational structure, asking what the best way would be to reach the greatest number of residents. She said that they had casual conversations with a few local entities. Some of the issues discussed are partnership structures, withstanding external macro pressures, how to leverage tech developments, and how to engage the entire Rye community. Currently, a working group was being created that would put together an RFP for a Rye TV partnership with the City. The working group would likely be made up of the Rye TV Commission Chair and relevant Councilmembers.

Councilwoman Souza asked for clarification on several issues. She first wanted to be clear that in moving the money to the other pockets, it meant that Rye TV would operate just as the other departments in Rye for budgeting purposes; that they would be treated similarly for accounting purposes. The second issue she brought up was the extensive renovations at the school, as Rye TV was located there. She suggested the group take a look at possible avenues for permanent studio space.

There was general discussion about location of a permanent studio space and possible partnership with an organization like the Rye Free Reading Room or Rye Arts Center.

Councilwoman Tagger-Epstein said that not everyone in Rye uses the Rye City School District. Moving to a more accessible permanent location would give other students the opportunity to take advantage of Rye TV. Other Councilmembers agreed.

Mayor Cohn said that in reading our consultant's report, there are frequent mentions of online access, etc. He felt it important as the working group goes forward to consider the changes in technology and effectively the changes the way everyone communicates.

Councilwoman Hurd said that in terms of a timeline, she would like to see a plan in place before she leaves the Council at the end of December.

Ken Knolls, 4 Fullerton Place, Rye TV Cable Committee, said that the Council had been discussing this for a year and a half. He asked that the Council realize two things: 1) Steve Fairchild is important to consult, as he has done this professionally for many years. Mr. Knolls said that this was not a static situation. This is going to keep moving in terms of technology. He said that the Committee has saved a lot of money over a ten year period. He asked the Council to not put a clock on it, but to please sit with the Committee and walk through it in a conscientious way.

Councilman Stacks agreed on working together.

There was discussion to put forth a formal resolution at an upcoming meeting to adopt the recommendations of the subcommittee.

8. Open a public hearing to create a new local law Chapter 176, "Energy Conservation", of the Rye City Code by authorizing the provision of financing through Open C-PACE to Qualified Properties within its geographical boundaries.

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

Sarah Smiley, Energize NY, addressed the Council. She discussed the Energize NY and PACE Finance Program, which provides an avenue for those wanting to invest in green capital updates. On September 18, 2019, Energize NY made a presentation proposing the creation of a new local law, authorizing the provision of financing through Open C-PACE to Qualified Properties within its geographical boundaries and has authorized Energy Improvement Corporation (EIC) to act on its behalf to effectuate Open C-PACE within the City of Rye. EIC has established the Program as a sustainable energy financing program pursuant to the Enabling Act through which the member municipalities, including the City of Rye, may levy charges against Qualified Properties within the City of Rye for the purpose of promoting, facilitating and financing clean energy improvements to Qualified Properties, thereby promoting the public good by reducing greenhouse gas emissions, mitigating the effect of global climate change and lessening the burdens of government.

Mayor Cohn clarified that the new local law would remove the City's risk from the PACE program. The Council agreed that this would be beneficial.

There being no one else to speak, Councilwoman Souza made a motion, seconded by Councilman Stacks to close the public hearing.

Councilwoman Souza made a motion, seconded by Councilman Stacks and unanimously carried, to adopt a local Chapter 176, "Energy Conservation", of the Rye City Code by authorizing the provision of financing through Open C-PACE to Qualified Properties within its geographical boundaries as follows:

LOCAL LAW NO. 7 2019

A LOCAL LAW TO ESTABLISH A NEW SUSTAINABLE ENERGY LOAN PROGRAM (OPEN C-PACE) IN THE CITY OF RYE

Be it enacted by the City of Rye (the "Municipality") as follows:

Section 1. This local law shall be known as the "Energize NY Open C-PACE Financing Program" and shall read as follows:

ARTICLE I

§1. Legislative findings, intent and purpose, authority.

- A. It is the policy of both the Municipality and the State of New York (the "State") to achieve energy efficiency and renewable energy improvements, reduce greenhouse gas emissions, mitigate the effect of global climate change, and advance a clean energy economy. The Municipality finds that it can fulfill this policy by providing property assessed clean energy financing to Qualified Property Owners (as defined below) for the installation of renewable energy systems and energy efficiency measures. This local law establishes a program that will allow the Energy Improvement Corporation (as defined below, "EIC"), a local development corporation, acting on behalf of the Municipality pursuant to the municipal agreement (the "Municipal Agreement") to be entered into between the Municipality and EIC, to make funds available to Qualified Property Owners that will be repaid through charges on the real properties benefited by such funds, thereby fulfilling the purposes of this local law and accomplishing an important public purpose. This local law provides a method of implementing the public policies expressed by, and exercising the authority provided by, Article 5-L of the General Municipal Law (as defined below, the "Enabling Act").
- B. The Municipality is authorized to execute, deliver and perform the Municipal Agreement and otherwise to implement this Energize NY Open C-PACE Financing Program pursuant to the Constitution and laws of New York, including particularly Article IX of the Constitution, Section 10 of the Municipal Home Rule Law, the Enabling Act and this local law.

- C. This local law, which is adopted pursuant to Section 10 of the Municipal Home Rule Law and the Enabling Act shall be known and may be cited as the “Energize NY Open C-PACE Local Law”.

§2. Definitions

- A. Capitalized terms used but not defined herein have the meanings assigned in the Enabling Act.
- B. For purposes of this local law, and unless otherwise expressly stated or unless the context requires, the following terms shall have the meanings indicated:

Annual Installment Amount – shall have the meaning assigned in Section 8, paragraph B.

Annual Installment Lien – shall have the meaning assigned in Section 8 paragraph B.

Authority – the New York State Energy Research and Development Authority.

Benefit Assessment Lien – shall have the meaning assigned in Section 3, paragraph A.

Benefited Property – Qualified Property for which the Qualified Property Owner has entered into a Finance Agreement for a Qualified Project.

Benefited Property Owner – the owner of record of a Benefited Property.

EIC – the Energy Improvement Corporation, a local development corporation, duly organized under section 1411 of the Not-For-Profit Corporation Law of the State, authorized hereby on behalf of the Municipality to implement the Program by providing funds to Qualified Property Owners and providing for repayment of such funds from money collected by or on behalf of the Municipality as a charge to be levied on the real property.

Eligible Costs – costs incurred by the Benefited Property Owner in connection with a Qualified Project and the related Finance Agreement, including application fees, EIC’s Program administration fee, closing costs and fees, title and appraisal fees, professionals’ fees, permits, fees for design and drawings and any other related fees, expenses and costs, in each case as approved by EIC and the Financing Party under the Finance Agreement

Enabling Act – Article 5-L of the General Municipal Law of the State, or a successor law, as in effect from time to time.

Finance Agreement – the finance agreement described in Section 6A of this local law.

Financing Charges – all charges, fees and expenses related to the loan under the Finance Agreement including accrued interest, capitalized interest, prepayment premiums, and penalties as a result of a default or late payment and costs and reasonable attorneys’ fees incurred by the Financing Party as a result of a foreclosure or other legal proceeding brought against the Benefited Property to enforce any delinquent Annual Installment Liens.

Financing Parties – Third party capital providers approved by EIC to provide financing to Qualified Property Owners or other financial support to the Program which have entered into separate agreements with EIC to administer the Program in the Municipality.

Municipality – the City of Rye, a municipality of the State constituting a tax district as defined in Section 1102 of the RPTL of the State.

Municipal Lien – a lien on Qualified Property which secures the obligation to pay real property taxes, municipal charges, or governmentally imposed assessments in respect of services or benefits to a Qualified Property.

Non-Municipal Lien – a lien on Qualified Property which secures any obligation other than the obligation to pay real property taxes, municipal charges, or governmentally-imposed assessments in respect of services or benefits to a Qualified Property Owner or Qualified Property.

Program – the Energize NY Open C-PACE Financing Program authorized hereby.

Qualified Project – the acquisition, construction, reconstruction or equipping of Energy Efficiency Improvements or Renewable Energy Systems or other projects authorized under the Enabling Act on a Qualified Property, together with a related Energy Audit, Renewable Energy System Feasibility Study and/or other requirements under or pursuant to the Enabling Act, with funds provided in whole or in part by Financing Parties under the Program to achieve the purposes of the Enabling Act.

Qualified Property – Any real property other than a residential building containing less than three dwelling units, which is within the boundaries of the Municipality that has been determined to be eligible to participate in the Program under the procedures for eligibility set forth under this local law and the Enabling Act and has become the site of a Qualified Project.

Qualified Property Owner – the owner of record of Qualified Property which has been determined by EIC to meet the requirements for participation in the Program as an owner, and any transferee owner of such Qualified Property.

RPTL – the Real Property Tax Law of the State, as amended from time to time.

Secured Amount – as of any date, the aggregate amount of principal loaned to the Qualified Property Owner for a Qualified Project, together with Eligible Costs and Financing Charges, as provided herein or in the Finance Agreement, as reduced pursuant to Section 8, paragraph C.

State – the State of New York.

§3. Establishment of an Energize NY Open C-PACE Financing Program

A. An Energize NY Open C-PACE Financing Program is hereby established by

the Municipality, whereby EIC acting on its behalf pursuant to the Municipal Agreement, may arrange for the provision of funds by Financing Parties to Qualified Property Owners in accordance with the Enabling Act and the procedures set forth under this local law, to finance the acquisition, construction, reconstruction, and installation of Qualified Projects and Eligible Costs and Financing Charges approved by EIC and by the Financing Party under the Finance Agreement. EIC, on behalf of the Municipality, and with the consent of the Benefited Property Owner, will record a Benefit Assessment Lien on the Benefited Property in the Secured Amount (the “Benefit Assessment Lien”) on the land records for the Municipality. Such recording shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality.

- B. Before a Qualified Property Owner and a Financing Party enter into a Finance Agreement which results in a loan to finance a Qualified Project, repayment of which is secured by a Benefit Assessment Lien, a written consent from each existing mortgage holder of the Qualified Property shall be obtained, permitting the Benefit Assessment Lien and each Annual Installment Lien to take priority over all existing mortgages.

§4. Procedures for eligibility

- A. Any property owner in the Municipality may submit an application to EIC on such forms as have been prepared by EIC and made available to property owners on the website of EIC and at the Municipality’s offices.
- B. Every application submitted by a property owner shall be reviewed by EIC, acting on behalf of the Municipality, which shall make a positive or negative determination on such application based upon the criteria enumerated in the Enabling Act and § 5 of this local law. EIC may also request further information from the property owner where necessary to aid in its determination.
- C. If a positive determination on an application is made by EIC, acting on behalf of the Municipality, the property owner shall be deemed a Qualified Property Owner and shall be eligible to participate in the Program in accordance with § 6 of this local law.

§5. Application criteria

Upon the submission of an application, EIC, acting on behalf of the Municipality, shall make a positive or negative determination on such application based upon the following criteria for the making of a financing:

- A. The property owner may not be in bankruptcy and the property may not constitute property subject to any pending bankruptcy proceeding;
- B. The amount financed under the Program shall be repaid over a term not to exceed

the weighted average of the useful life of Renewable Energy Systems and Energy Efficiency Improvements to be installed on the property as determined by EIC;

- C. Sufficient funds are available from Financing Parties to provide financing to the property owner;
- D. The property owner is current in payments on any existing mortgage on the Qualified Property;
- E. The property owner is current in payments on any real property taxes on the Qualified Property; and
- F. Such additional criteria, not inconsistent with the criteria set forth above, as the State, the Municipality, or EIC acting on its behalf, or other Financing Parties may set from time to time.

§6. Energize NY Finance Agreement

- A. A Qualified Property Owner may participate in the Program through the execution of a finance agreement made by and between the Qualified Property Owner and a Financing Party, to which EIC, on behalf of the Municipality, shall be a third-party beneficiary (the “Finance Agreement”). Upon execution and delivery of the Finance Agreement, the property that is the subject of the Finance Agreement shall be deemed a “Benefited Property”).
- B. Upon execution and delivery of the Finance Agreement, the Benefited Property Owner shall be eligible to receive funds from the Financing Party for the acquisition, construction, and installation of a Qualified Project, together with Eligible Costs and Financing Charges approved by EIC and by the Financing Party, provided the requirements of the Enabling Act, the Municipal Agreement and this local law have been met.
- C. The Finance Agreement shall include the terms and conditions of repayment of the Secured Amount and the Annual Installment Amounts.
- D. EIC may charge fees to offset the costs of administering the Program and such fees, if not paid by the Financing Party, shall be added to the Secured Amount.

§7. Terms and conditions of repayment

The Finance Agreement shall set forth the terms and conditions of repayment in accordance with the following:

- A. The principal amount of the funds loaned to the Benefited Property Owner for the Qualified Project, together with Eligible Costs and Financing Charges approved by EIC and by the Financing Party, shall be specially assessed against the Benefited Property and will be evidenced by a Benefit Assessment Lien recorded against the Benefited Property on the land records on which liens are recorded

for properties within the Municipality. The special benefit assessment shall constitute a “charge” within the meaning of the Enabling Act and shall be collected in annual installments in the amounts certified by the Financing Party in a schedule provided at closing and made part of the Benefit Assessment Lien. Said amount shall be annually levied, billed and collected by EIC, on behalf of the Municipality, and shall be paid to the Financing Party as provided in the Finance Agreement.

- B. The term of such repayment shall be determined at the time the Finance Agreement is executed by the Benefited Property Owner and the Financing Party, not to exceed the weighted average of the useful life of the systems and improvements as determined by EIC, acting on behalf of the Municipality.
- C. The rate of interest for the Secured Amount shall be fixed by the Financing Party in conjunction with EIC, acting on behalf of the Municipality, as provided in the Finance Agreement.

§8. Levy of Annual Installment Amount and Creation of Annual Installment Lien

- A. Upon the making of the loan pursuant to the Finance Agreement, the Secured Amount shall become a special Benefit Assessment Lien on the Benefited Property in favor of the Municipality. The amount of the Benefit Assessment Lien shall be the Secured Amount. Evidence of the Benefit Assessment Lien shall be recorded by EIC, on behalf of the Municipality, in the land records for properties in the Municipality. Such recording shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality. The Benefit Assessment Lien shall not be foreclosed upon by or otherwise enforced by the Municipality.
- B. The Finance Agreement shall provide for the repayment of the Secured Amount in installments made at least annually, as provided in a schedule attached to the Benefit Assessment Lien (the “Annual Installment Amount”). The Annual Installment Amount shall be levied by EIC, on behalf of the Municipality, on the Benefited Property in the same manner as levies for municipal charges, shall become a lien on the Benefited Property as of the first day of January of the fiscal year for which levied (the “Annual Installment Lien”) and shall remain a lien until paid. The creation or any recording of the Annual Installment Lien shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality. Payment to the Financing Party shall be considered payment for this purpose. Such payment shall partly or wholly discharge the Annual Installment Lien. Delinquent Annual Installment Amounts may accrue Financing Charges as may be provided in the Finance Agreement. Any additional Financing Charges imposed by the Financing Party pursuant to the Finance Agreement shall increase the Annual Installment Amount and the Annual Installment Lien for the year in which such overdue payments were first due.

- C. The Benefit Assessment Lien shall be reduced annually by the amount of each Annual Installment Lien when each Annual Installment Lien becomes a lien. Each Annual Installment Lien shall be subordinate to all Municipal Liens, whether created by Section 902 of the RPTL or by any other State or local law. No portion of a Secured Amount shall be recovered by the Municipality, EIC, or an assignee upon foreclosure, sale or other disposition of the Benefited Property unless and until all Municipal Liens are fully discharged. Each Annual Installment Lien, however, shall have priority over all Non-Municipal Liens, irrespective of when created, except as otherwise required by law.
- D. Neither the Benefit Assessment Lien nor any Annual Installment Lien shall be extinguished or accelerated in the event of a default or bankruptcy of the Benefited Property Owner. Each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall be collected by EIC, on behalf of the Municipality, at the same time and in the same manner as real property taxes or municipal charges. Each Annual Installment Lien shall remain a lien until paid. Amounts collected in respect of an Annual Installment Lien shall be remitted to EIC, on behalf of the Municipality, or the Financing Party, as may be provided in the Finance Agreement.
- E. EIC shall act as the Municipality's agent in collection of the Annual Installment Amounts. If any Benefited Property Owner fails to pay an Annual Installment Amount, the Financing Party may redeem the Benefited Property by paying the amount of all unpaid Municipal Liens thereon, and thereafter shall have the right to collect any amounts in respect of an Annual Installment Lien by foreclosure or any other remedy available at law. Any foreclosure shall not affect any subsequent Annual Installment Liens.
- F. EIC, on behalf of the Municipality, may sell or assign for consideration any and all Benefit Assessment Liens and Annual Installment Liens to Financing Parties that provide financing to Qualified Properties pursuant to Finance Agreements. The Financing Parties may sell or assign for consideration any and all Benefit Assessment Liens and Annual Installment Liens received from EIC, on behalf of the Municipality, subject to certain conditions provided in the administration agreement between EIC and the Financing Party. The assignee or assignees of such Benefit Assessment Liens and Annual Installment Liens shall have and possess the same powers and rights at law or in equity as the Municipality would have had if the Benefit Assessment Lien and the Annual Installment Liens had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection.

§9. Verification and report

EIC, on behalf of the Municipality, shall verify and report on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by the Program in such form and manner as the Authority may establish.

§10. Separability

If any clause, sentence, paragraph, section, or part of this local law 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 involved in the controversy in which such judgment shall have been rendered.

Section 2. This local law shall take effect upon filing with the Secretary of State.

ROLL CALL

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

9. Authorize the City Manager to sign the municipal agreement with the Energy Improvement Corporation and the City of Rye to conclude the C-PACE process.

Councilwoman Goddard made a motion, seconded by Councilwoman Hurd and unanimously carried, to authorize the City Manager to sign the municipal agreement with the Energy Improvement Corporation and the City of Rye to conclude the C-PACE process.

10. Consider setting a public hearing for October 16, 2019 for a T-Mobile waiver request and legal memorandum in support of the request for a determination that the proposed facility upgrade at 66 Milton Road is exempt from Planning Board or Zoning Board of Adjustment Jurisdiction.

Frank Ferraro, attorney for applicant T-Mobile, addressed the Council. He clarified that the applicant was looking to obtain an eligible facility permit pursuant to both Rye City Code and the FCC. T-Mobile currently has a facility at 66 Milton Road, which has gone through numerous upgrades over the last several years. In this proposal, the applicant is looking to remove two of the antennas and replace with 4 antennas with some additional ancillary equipment. T-Mobile's current facility on the roof is on a steel platform, which has been requested to be moved/ upgraded by the building. Mr. Ferraro explained that currently there is an abandoned shelter also located on the roof. The applicant is hoping to relocate into the existing Nextel shelter in an attempt to cure the tenants' complaints and trying to upgrade the facility. Mr. Ferraro stated that as this request falls into the eligible facility requests of the FCC, only administrative approval is required. He further stated that the new antennas that are going in will have no visibility.

Corporation Counsel Wilson explained that this was an existing facility meeting the definition under the FCC of an eligible facility. Approval would be purely administrative, but she felt it necessary to keep the Council apprised of the application.

Councilwoman Hurd commented on the stealth aspect, the current facility was an eyesore.

There was general discussion about the applicant applying to the building department.

Corporation Counsel Wilson stated that the applicant had the right as an eligible facility to go to the building department to start the process.

11. Resolution to appropriate \$11,105.92 of the Police Department's 1033 account and transfer to the Building and Vehicle Fund for the detailing of three police vehicles acquired through the NYS LESO 1033 program for use in the specialized and auxiliary enforcement units.

City Manager Serrano explained that the police vehicles in question were acquired through the surplus process. These funds would make them operational.

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

WHEREAS, the Rye Police Department has determined that the amounts required for the detailing of four police vehicles obtained through the NYS LESO program for specialized and auxiliary enforcement was not provided for in the adopted 2019 budget by \$11,105.92, and;

WHEREAS, the Police Department's 1033 account has enough funds to be appropriated for this purchase, now, therefore be it;

RESOLVED, that the City Comptroller is authorized to transfer \$11,105.92 from the Police Department's 1033 account to the Building and Vehicle Fund, for the detailing of four police vehicles obtained through the NYS LESO program for specialized and auxiliary enforcement.

ROLL CALL

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

12. Authorize Corporation Counsel to sign a settlement and release in the insurance matter of City of Rye vs. Travelers.

Corporation Counsel Wilson explained that this was a matter that the City commenced against Travelers Insurance as a result of roof damage at the Golf Club. The settlement of \$75,000 was reached. She said she was asking for authorization to sign the release. After expenses are paid, the remaining funds would go back to Rye Golf Club.

Councilman Souza made a motion, seconded by Councilwoman Tagger-Epstein, to authorize Corporation Counsel to sign a settlement and release in the insurance matter of City of Rye vs. Travelers.

ROLL CALL

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

13. Consideration of a request by the Rye YMCA for the use of City streets for the 32nd Annual Rye Derby on Sunday, April 26, 2020 from 9:00 a.m. to 2:00 p.m.

Councilman Souza made a motion, seconded by Councilwoman Tagger-Epstein and unanimously carried, to approve their use of City streets for the 32nd Annual Rye Derby on Sunday, April 26, 2020 from 9:00 a.m. to 2:00 p.m.

14. Consideration of a request by the Rye Little League to approve a parade to kickoff Opening Day of the 63rd Little League Season on Saturday, April 18, 2020 beginning at 12:00 p.m.

Councilwoman Souza made a motion, seconded by Councilwoman Hurd and unanimously carried, to approve a parade to kickoff Opening Day of the 63rd Little League Season on Saturday, April 18, 2020 beginning at 12:00 p.m.

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

There was nothing to report on this agenda item.

16. Old Business/New Business.

There was nothing to report on this agenda item.

17. Adjournment

There being no further business to discuss, Councilwoman Tagger-Epstein made a motion, seconded by Councilwoman Souza and unanimously carried, to adjourn the meeting at 9:34 P.M.

Respectfully submitted,

Carolyn D'Andrea
City Clerk



CITY COUNCIL AGENDA

NO. DEPT.: City Manager DATE: October 11, 2019
CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Presentation regarding the Nursery Field Turf Project and consideration of a resolution declaring the City Council's Intent to be Lead Agency pursuant to SEQRA and directing that the project advance to the Planning Commission for wetland review and an advisory coastal consistency determination.

FOR THE MEETING OF:
October 16, 2019
RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: Consider adopting the attached resolution.

IMPACT: ☒ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

Background:

See attached resolution.

R E S O L U T I O N

Resolution for the Nursery Field Turf Project Declaring the City Council's Intent to be Lead Agency pursuant to SEQRA and Directing that the Project Advance to the Planning Commission for Wetland Review and an Advisory Coastal Consistency Determination.

WHEREAS, the Rye City Council is considering a donor-funded project to replace the existing grass playing surface at Nursery Field with artificial turf; and

WHEREAS, the City Council has funded a consultant to prepare the requisite plans, studies and specifications and to secure required permits and approvals; and

WHEREAS, a portion of the project is located within 100-feet of existing wetland on the property and is subject to wetland review by the Rye City Planning Commission; and

WHEREAS, the project is located within a designated Local Waterfront Revitalization Area and is subject to the requirements of Chapter 73, *Coastal Zone Management Waterfront Consistency Review*, of the Rye City Code which requires a coastal consistency determination by the Rye City Council; and

WHEREAS, the proposed action is subject to environmental review and determination of significance pursuant to the requirements of State Environmental Quality Review Act (SEQRA);

NOW, THEREFORE, BE IT RESOLVED, that the City Council declares its intent to be Lead Agency for the environmental review of the proposed action pursuant to SEQRA; and

BE IT FURTHER RESOLVED, that pursuant to the requirements of §73-5.C of the Rye city Code the City Council refers the proposed action to the Rye City Planning Commission for its advisory coastal consistency determination; and

BE IT FUTHER RESOLVED, that the City Council refers the proposed action to the Rye City Planning Commission for wetland permit review pursuant to Chapter 195, *Wetlands and Watercourses*, of the Rye City Code.



CITY COUNCIL AGENDA

NO. DEPT.: Planning DATE: October 11, 2019
CONTACT: Christian K. Miller, City Planner

AGENDA ITEM: Open a Public Hearing on a Local Law to add Article VI "Vestibules" to Chapter 167 (Streets and Sidewalks) of the City Code of the City of Rye.

FOR THE MEETING OF:
October 16, 2019
RYE CITY CODE,
CHAPTER
SECTION 167

RECOMMENDATION: Conduct the public hearing on the draft local law and consider the resolution adopting the local law, SEQRA Negative Declaration and amending the City Fee Schedule.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND:

Please see attached memorandum.

RESOLUTION

A Local Law to add Article VI “Vestibules” to Chapter 167 (Streets and Sidewalks) of the City Code of the City of Rye to facilitate the use and implementation of seasonal vestibules on the City’s sidewalks, allowing commercial properties to insulate interiors in a safe and proper manner.

WHEREAS, on September 18, 2019, the Rye City Council set a public hearing for October 16, 2019 on a local law to add Article VI “Vestibules” to Chapter 167 (Streets and Sidewalks) of the City Code of the City of Rye to facilitate the use and implementation of seasonal vestibules on the City’s sidewalks, allowing commercial properties to insulate interiors in a safe and proper manner.; and

WHEREAS, the City Council has reviewed the Environmental Assessment Form (EAF) and determines that the proposed action is consider an Unlisted Action; and

WHEREAS, the City Council is the only Involved Agency in connection with the proposed action; and

WHEREAS, the City Council conducted a noticed public hearing on October 16, 2019 and all those wishing to be heard were given the opportunity to be heard;

NOW, THEREFORE, BE IT RESOLVED, that the City Council designates itself as Lead Agency and based on its review of the Environmental Assessment Form (EAF), the criteria listed in Section 617.7(c) of SEQRA and the complete record, the City Council finds that the proposed action will not have a significant adverse environmental impact; and

BE IT FURTHER RESOLVED, that the City Council adopts Local Law #_____-2019 to add Article VI “Vestibules” to Chapter 167 (Streets and Sidewalks) of the City Code of the City of Rye to facilitate the use and implementation of seasonal vestibules on the City’s sidewalks, allowing commercial properties to insulate interiors in a safe and proper manner; and

BE IT FURTHER RESOLVED, that the City Council amends the current City Fee Schedule to add the following new fees: 1) “Vestibule Permit - \$200”.

DRAFT

CITY OF RYE LOCAL LAW NO. __ OF 2019

A Local Law to add Article VI “Vestibules” to Chapter 167 (Streets and Sidewalks) of the City Code of the City of Rye to facilitate the use and implementation of seasonal vestibules on the City’s sidewalks, allowing commercial properties to insulate interiors in a safe and proper manner.

Section 1. General

§ 167-66 Purpose.

The purpose of this chapter is to establish regulations for the design, construction, installation and maintenance of seasonal vestibules in the City of Rye, in order to maintain safe conditions that protect the well-being of the community and to allow for additional insulation and protections to be provided during the winter season.

§ 167-67 Permit required.

- A. No person, firm or corporation conducting or maintaining any place of business in the entire City shall keep, use, erect, construct or maintain any vestibule in or upon the sidewalks or rights-of-way in the City unless the person, firm or corporation obtains a vestibule permit from the City of Rye Building Inspector.

§ 167-68 Permit applications.

- A. All applications for vestibule permits shall be submitted to the City of Rye Building Department and contain the following information:
 - (1) The name and business address of the applicant.
 - (2) The name of the street, alley or sidewalk onto which it is desired to place the vestibule.
 - (3) A site plan with appropriate dimensions showing the size and configuration of the vestibule and the extent of encroachment on adjacent City property, the location of adjacent buildings and storefront entrances and the dimensions to City curb and other existing obstructions (e.g. trees, signs, planters or other street amenities).

DRAFT

- (4) A drawing showing the materials, color and other physical elements and appearance of the vestibule in sufficient detail to facilitate review by the Board of Architectural Review.
- (5) Other information and plans as may be required by the City of Rye Building Department.
- (6) Application form and fee as set forth in the Fee Schedule adopted by the City Council.

B. No vestibule permit shall be issued until the Building Inspector has approved the proposed vestibule location and the sufficiency of the pedestrian pathway.

§ 167-69 Permit conditions; effect on existing vestibules.

A. Any vestibule permit shall be conditioned on the following:

- (1) Vestibule permits are effective from November 1 to April 15 each year. Vestibule permits are only effective for one winter season.
- (2) Any vestibule must allow for at least five (5) feet of unobstructed sidewalk to allow for sufficient pedestrian passage.
- (3) Before any permit is issued, the applicant shall furnish the City with proof of insurance naming the City of Rye as an additional insured in the amount of at least two-million dollars (\$2 Million) in addition to a signed and notarized hold harmless and indemnification agreement holding the City of Rye harmless from any liability and indemnifying the City of Rye. All documents shall be submitted to the Building Department and subject City Attorney for review and approval.
- (4) All vestibules shall be approved by the City of Rye Board of Architectural Review prior to receiving a permit, which approval shall be valid for a period not to exceed three (3) seasons. **Upon Board of Architectural Review approval and prior to the start of each vestibule seasons the applicant shall file with the City Building Department an application form and fee as set forth in the fee schedule of the City budget adopted by the City Council. Filing with the Building Department shall only be permitted if there have been no enforcement actions against the applicant in the preceding season for failure to comply with the original permit approved by the Board of Architectural Review.**

B. Any person, firm or corporation which has a vestibule located on the sidewalk along any streets or City rights-of-way in the City shall immediately remove same or comply with the terms of this article.

DRAFT

§ 167-70 **Permit denial or revocation; appeal.**

- A. The Building Inspector may deny a vestibule permit or modify the above requirements if such vestibule would interfere with safe pedestrian passage on a particular area of sidewalk. If the Building Inspector denies a permit, he/she must state his/her reason(s) for denying the vestibule permit, in writing, and mail a copy of the written decision to the applicant.
- B. The Building Inspector may issue a notice of violation for persons or entities violating any provision of this article or conditions of the approved vestibule permit. Such notice shall be in writing and specify the provision(s) violated, the remedial action to be taken and the time limit for compliance, which shall be no less than three (3) days from the date of the mailing of the notice of violation.
- C. If a person, firm or corporation willfully and consistently fails to comply with the provisions of this article, the City may take any necessary steps to ensure a clear pedestrian pathway of at least five (5) feet and assess against such party the costs of maintaining such pedestrian pathway.
- D. Right of appeal. Any holder of a vestibule permit who has had his/her permit revoked or who has been ordered by the Building Inspector to incur expense in connection with the clearing or maintenance of a vestibule, or any applicant whose application has been denied, may appeal to the Board of Appeals within 15 days of such revocation, order or decision.

§ 167-71 **Fees.**

Prior to the issuance of a vestibule permit, application and seasonal licensing fees as set forth in the Fee Schedule adopted by the City Council.

Section 2. Severability

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

Section 3. Effective Date

D R A F T

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

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CITY OF RYE

Department of Planning

Memorandum

To: Marcus Serrano, City Manager

From: Christian K. Miller, City Planner
Kristen K. Wilson, Esq. Corporation Counsel

cc: Kerry Lenihan, Building Inspector

Date: October 11, 2019

Subject: **Local Law for the Regulation of Temporary Seasonal Vestibules**

Attached hereto for consideration by the City Council is a draft local law amending the City Code to add new regulations for the review, approval and installation of vestibules at entrances to businesses during winter months. These vestibules allow for a reduction of heat loss at commercial properties. The local law establishes new standards and requirements when they encroach into the City right-of-way and adjacent sidewalks.

The local law is modeled after the proposed seasonal outdoor seating regulations currently under consideration for amendment by the City Council to reduce procedural and cost burdens to City businesses. Applicant's seeking to install vestibules would need annual approval from the City Building Inspector and must maintain a minimum of five feet of unobstructed sidewalk for pedestrian passage. Each vestibule would require approval by the Board of Architectural Review once every three years and would only be permitted between November 1 and April 15 of each year. As requested by the City Council at its September 18 meeting, the draft local law was amended to allow renewal by the Building Department provide there have been no enforcement actions against the applicant for violating the terms of the original three-year permit approval. Those changes are shown in **red and highlighted yellow** on the attached draft.

Attached for the City Council's consideration is a draft resolution implementing the local law and amending the City's Fee Schedule to establish a \$200 annual vestibule application fee (which is the same fee charged for outdoor dining applications). Consistent with City Council direction of a desire to reduce fees, no licensing fee is proposed for the use of City property.

Also attached as required by law a short Environmental Assessment Form (EAF). It is not anticipated that the proposed local law will have any significant environmental impact.

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:				
Project Location (describe, and attach a location map):				
Brief Description of Proposed Action:				
Name of Applicant or Sponsor:			Telephone:	
			E-Mail:	
Address:				
City/PO:		State:	Zip Code:	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?			NO	YES
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.			<input type="checkbox"/>	<input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency?			NO	YES
If Yes, list agency(s) name and permit or approval:			<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, are adjoining or near the proposed action:				
5. Urban	Rural (non-agriculture)	Industrial	Commercial	Residential (suburban)
<input type="checkbox"/> Forest	Agriculture	Aquatic	Other(Specify):	
<input type="checkbox"/> Parkland				

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>	<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	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
If Yes, identify: _____	<input type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation services 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 the site of the proposed action?	<input type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input type="checkbox"/>	<input 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	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	<input type="checkbox"/>	<input type="checkbox"/>	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____			

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 Agricultural/grasslands Early mid-successional Wetland <input type="checkbox"/> Urban 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 type="checkbox"/>	YES <input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO <input type="checkbox"/>	YES <input 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? b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____ _____	NO <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>
49. 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 <input type="checkbox"/>	YES <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 <input type="checkbox"/>	YES <input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: _____ Date: _____ Signature: _____ Title: _____		

Project:

Date:

Short Environmental Assessment Form

Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept “Have my responses been reasonable considering the scale and context of the proposed action?”

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
2. Will the proposed action result in a change in the use or intensity of use of land?		
3. Will the proposed action impair the character or quality of the existing community?		
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
7. Will the proposed action impact existing:		
a. public / private water supplies?		
b. public / private wastewater treatment utilities?		
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		

Project:

Date:

Short Environmental Assessment Form

Part 3 Determination of Significance

For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency

Date

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)



CITY COUNCIL AGENDA

NO. DEPT.: Planning DATE: October 11, 2019
CONTACT: Christian K. Miller, City Planner

AGENDA ITEM: Open a Public Hearing on a Local Law to amend §197-86 of the Code of the City of Rye to amend the Regulation of Accessory Seasonal Outdoor Customer Seating.

FOR THE MEETING OF:
October 16, 2019
RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: Conduct the required public hearing and consider adopting the draft local law.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND:

Please see attached memorandum.

DRAFT

CITY OF RYE LOCAL LAW NO. ____-2019

A local law amending §197-86 of the Code of the City of Rye to Allow Accessory Seasonal Outdoor Customer Seating

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

Section 1. §197-86 Table of Regulations: Table B Business Districts-Use Regulations, Column 3, Permitted Accessory Uses, Row B-1 Central Business Districts, of the Code of the City of Rye is hereby amended to add the following new subsection:

(3) Seasonal outdoor customer seating ~~annual~~ permit. Upon application to the City Planning Department, the Planning Commission may annually permit for a period of up to three (3) years seasonal outdoor customer seating and tables on a property and, to a limited degree, extensions onto abutting City property, subject to the following limitations:

(a) The applicant shall submit an application form, plans detailing the area of proposed seasonal outdoor dining and fee as set forth in the fee schedule of the City budget adopted by the City Council.

(b) Outdoor customer seating shall only be permitted from April through October and shall require a new permit approved by the Planning Commission after three (3) outdoor dining before each seasons. During the months of November through March, the tables, chairs and any related equipment must be stored inside of the building or removed from the site.

(c) The Planning Commission shall limit the area of outdoor customer seating such that it will not interfere in any way with fire exits or other requirements of the Building Code of New York State.

(d) The Planning Commission shall limit the area to be devoted to outdoor customer seating so that it will not interfere with access by the handicapped and shall maintain on any City sidewalk a safe, adequate and unobstructed passageway for pedestrians not less than five feet in clear width from the edge of the outdoor seating area to the nearest obstruction.

(e) The outdoor area to be devoted to seasonal outdoor customer seating shall not be considered for the purpose of determining on-site parking requirements.

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- (ef) The Planning Commission may impose conditions and requirements as it deems appropriate, including, but not limited to, size and configuration of the outdoor seating area; maximum number of tables and chairs; permitted hours of outdoor seating; type, size and color of tables and chairs; requirements for the daily removal of tables and chairs; limitations on the placement of tables during City-approved outdoor events, and/or standards for cleanliness and removal of debris.
- (fg) The Planning Commission shall not issue a permit if it finds that the proposed outdoor seating would be incompatible with other uses on the property or an abutting property.
- (gh) The Planning Commission may deny the issue of a permit if it finds that during the prior year the permit holder violated any condition of the permit, that during the prior year the applicant or the property owner provided or permitted outdoor seating without having obtained a permit or that there are outstanding notices of violation concerning the property or the applicant's use.
- (hi) Upon Planning Commission approval and prior to the start of each outdoor dining season the applicant shall file with the City Building Department an outdoor dining application form and fee as set forth in the fee schedule of the City budget adopted by the City Council. Filing with the Building Department shall only be permitted if there have been no enforcement actions against the applicant in the preceding season for failure to comply with the original permit approved by the Planning Commission. If such seasonal outdoor dining involves use of City property~~A~~ an insurance certificate naming the City as an additional insured in the amount of at least \$2,000,000 and a signed and notarized indemnification and hold harmless agreement shall also be provided ~~for any seasonal outdoor customer seating approved by the Planning Commission on City property to the City Building Department.~~
- (ij) For properties located in the B-1 Neighborhood Business District, the applicant shall notify the neighbors by sending out a public notification provided by the City. The applicant shall prepare a notification list, based on the most current City of Rye Tax Maps and Tax Assessment roll, showing the Tax Map sheet, block and lot number, the owner's name and owner's mailing address for each property located, wholly or partially, within 300 feet of the subject property. If a property on the public notification list is also listed as a cooperative or an apartment, the notice shall be mailed to the property owner of record. These mailing requirements must be performed in accordance with the following requirements:

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- [1] The mailing shall be limited solely to the notice provided by the City.
- [2] The notice shall be mailed to all property owners at a post office or official depository of the Postal Service at least 10 days prior to the submission of the outdoor dining application to the City. The applicant must obtain a certificate of mailing for every notice mailed.
- [3] The applicant must provide to the City a copy of the notice that was circulated and a copy of the certificate of mailings.

Section 2. §197-86 Table of Regulations: Table B Business Districts-Use Regulations, Column 3, Permitted Accessory Uses, Row B-2 Central Business Districts, of the Code of the City of Rye is hereby amended to add the following new subsection:

- (4) Seasonal outdoor customer seating ~~annual permit~~. Upon application to the City Planning Department, the Planning Commission may annually permit for a period of upto three (3) years seasonal outdoor customer seating and tables on a property and, to a limited degree, extensions onto abutting City property, subject to the following limitations:
 - (a) The applicant shall submit an application form, plans detailing the area of proposed seasonal outdoor dining and fee as set forth in the fee schedule of the City budget adopted by the City Council.
 - ~~(a)(b)~~ Outdoor customer seating shall only be permitted from April through October and shall require a new permit approved by the Planning Commission after three (3) before each outdoor dining seasons. During the months of November through March, the tables, chairs and any related equipment must be stored inside of the building or removed from the site.
 - ~~(b)(c)~~ The Planning Commission shall limit the area of outdoor customer seating such that it will not interfere in any way with fire exits or other requirements of the Building Code of New York State.
 - ~~(c)(d)~~ The Planning Commission shall limit the area to be devoted to outdoor customer seating so that it will not interfere with access by the handicapped and shall maintain on any City sidewalk a safe, adequate and unobstructed passageway for pedestrians not less than five (5) feet in clear width from the edge of the outdoor seating area to the nearest obstruction.

DRAFT

~~(d)~~(e) The outdoor area to be devoted to seasonal outdoor customer seating shall not be considered for the purpose of determining on-site parking requirements.

~~(e)~~(f) The Planning Commission may impose conditions and requirements as it deems appropriate, including, but not limited to size and configuration of the outdoor seating area; maximum number of tables and chairs; permitted hours of outdoor seating; type, size and color of tables and chairs; requirements for the daily removal of tables and chairs; limitations on the placement of tables during City-approved outdoor events, and/or standards for cleanliness and removal of debris.

~~(f)~~(g) The Planning Commission shall not issue a permit if it finds that the proposed outdoor seating would be incompatible with other uses on the property or an abutting property.

~~(g)~~(h) The Planning Commission may deny the issue of a permit if it finds that during the prior year the permit holder violated any condition of the permit, that during the prior year the applicant or the property owner provided or permitted outdoor seating without having obtained a permit or that there are outstanding notices of violation concerning the property or the applicant's use.

~~(h)~~(i) Upon Planning Commission approval and prior to the start of each outdoor dining season the applicant shall file with the City Building Department an outdoor dining application form and fee as set forth in the fee schedule of the City budget adopted by the City Council. If such seasonal outdoor dining involves use of City property an insurance certificate naming the City as an additional insured in the amount of at least \$2,000,000 million and a signed and notarized indemnification and hold harmless agreement shall also be provided for any seasonal outdoor customer seating approved by the Planning Commission on City property to the City Building Department.

Section 3. The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part of this Local Law that can be given effect without such invalid part or parts.

Section 4. This local law shall take effect immediately upon filing in the office of the Secretary of State.

R E S O L U T I O N
Adopting a local law amending §197-86 of the Code of the City of Rye to
Amend the Regulation of Accessory Seasonal Outdoor Customer Seating and
Amending the City of Rye Fee Schedule for Fees Related to
Seasonal Outdoor Customer Seating Permits

WHEREAS, on September 18, 2019 the Rye City Council set a public hearing for October 16, 2019 on a local law amending §197-86 of the Code of the City of Rye to amend the regulation of accessory seasonal outdoor customer seating; and

WHEREAS, the notice of hearing was circulated to the Westchester County Planning Board and abutting communities as required by Sections 277.61 and 277.71 of the Westchester County administrative code; and

WHEREAS, the City Council has reviewed the Full Environmental Assessment Form (EAF) dated September 13, 2019 and determines that the proposed action is consider a Type I; and

WHEREAS, the City Council is the only Involved Agency in connection with the proposed action; and

WHEREAS, the City Council conducted a noticed public hearing on October 16, 2019 and all those wishing to be heard were given the opportunity to be heard;

NOW, THEREFORE, BE IT RESOLVED, that the City Council designates itself as Lead Agency and based on its review of the Environmental Assessment Form (EAF), the criteria listed in Section 617.7(c) of SEQRA and the complete record, the City Council finds that the proposed action will not have a significant adverse environmental impact; and

BE IT FURTHER RESOLVED, that the City Council adopts Local Law #____-2019 amending §197-86 of the Code of the City of Rye to Allow Accessory Seasonal Outdoor Customer Seating; and

BE IT FURTHER RESOLVED, that the City Council amends the current City Fee Schedule to change the existing Outdoor Dining Fee from six-hundred and fifty dollars (\$650) to five-hundred dollars (\$500), to remove the Outdoor Dining License Fee of one-hundred dollars (\$100) per table located on City property and to add a new Outdoor Dining Renewal Fee of two-hundred dollars (\$200).

Christian K. Miller
City Planner
1051 Boston Post Road
Rye, New York 10580



Tel: (914) 967-7167
Fax: (914) 967-7185
E-mail: cmiller@ryeny.gov
<http://www.ryeny.gov>

CITY OF RYE
Department of Planning

Memorandum

To: Marcus Serrano, City Manager

From: Christian K. Miller, City Planner

A handwritten signature in blue ink, appearing to be 'C.K. Miller', is written over the 'From' line.

cc: Kristen K. Wilson, Esq., Corporation Council
Kerry Lenihan, Building Inspector
Rye City Planning Commission

Date: October 11, 2019

Subject: **Amendments to the City's Accessory Outdoor Seating Requirements**

Attached hereto for consideration by the City Council is a draft local law amending the current regulations of accessory seasonal outdoor seating. These revisions were initiated at the City Council's request and in response to the concerns of the Rye Chamber of Commerce that the current regulations are procedurally burdensome and costly to businesses. Attached hereto is a copy of a July 18 email from Pam Dwyer, Rye Chamber of Commerce President, requesting changes to the current regulations.

Consistent with the City Council's suggestion the attached law changes the requirement that outdoor seating must be approved annually by the City Planning Commission to once every three years. For renewal years the applicant must file with the City Building Department. As requested by the City Council at its September 18 meeting the draft local law was amended to allow renewal by the Building Department provide there have been no enforcement actions against the applicant for violating the terms of the original three-year permit approval. Those changes are shown in **red and highlighted yellow** on the attached draft. No other changes to the law are proposed.

The attached resolution amends the City Fee schedule to reduce the Outdoor Dining Fee from six-hundred and fifty dollars (\$650) to the prior fee of five-hundred dollars (\$500) and to remove the Outdoor Dining License Fee of one-hundred dollars (\$100) per table located on City property. The resolution adds a new Outdoor Dining Renewal Fee of two-hundred dollars (\$200) for filing with the City Building Department.

Also attached as required by law is a short Environmental Assessment Form (EAF). It is not anticipated that the proposed local law does not have any significant environmental impact.

Miller, Christian K.

From: Dwyer, Pamela <PDwyer@WebsterBank.com>
Sent: Thursday, July 18, 2019 2:03 PM
To: Souza, Julie A.; Miller, Christian K.
Cc: Hurd, Emily P.
Subject: RE: Outdoor seating permit

Good afternoon, Christian

Emily and Julie suggested that I contact you for some feedback.

I am representing the Rye Chamber of Commerce member's concerns regarding the high permit fees for outdoor seating and additional fees for each table.

- We were told the permit fees are to cover administrative costs. We find \$650 excessive. How do you arrive at that number? Last year it was \$500 which was high, but this new fee is quite an increase.
- It is a burden for our businesses to pay the \$650 and then \$100 for each additional table. This impacts the cash flow of our members, who cannot make up the expense. These tables are aesthetically pleasing adding to the beauty and charm of Rye. The Chamber pays for the hanging flowers, which adds to the beauty of our town.
- Getting the permits is time consuming. How can this be simplified? Can this be done online?
- Does this permit apply to places like Longford's? Some businesses would like to put benches out front, does this apply to them?
- Who enforces the permits?

I have spoken to other Chambers. The general consensus is that our fees are extremely high. Many towns do not charge fees. Those that do charge are between \$100 to \$250 without additional fees.

Could we reach a compromise on a two year permit at \$300 with the understanding that establishment would need to resubmit if changes are made before the permit expires. No Table tax.

If the fee is to cover the administration and enforcement of the permit, then do away with it and require the businesses to lodge and insurance rider with the town to cover their liability. Many members view this as a tax. I hope we can work together to reach a good solution for all.

I welcome your comments.

Pam Dwyer
Rye Chamber of Commerce President

Pamela Dwyer VP, Banking Center Manager
Webster Bank 72 Purchase St, Rye NY 10580
Office: 914 967-1679 fax 914 967-7397
Email: pdwyer@websterbank.com
Encryptwebster

-----Original Message-----

From: Souza, Julie A. [mailto:jsouza@ryeny.gov]
Sent: Wednesday, June 05, 2019 9:44 PM
To: Dwyer, Pamela; Miller, Christian K.
Cc: Hurd, Emily P.
Subject: [EXTERNAL] Outdoor seating permit

Pam,

Emily and I raised the topic of the outdoor seating permit process at this evening's council meeting. The council has asked our city planner, Christian, to consider the current process and see if there are opportunities for efficiencies and cost savings. I am connecting you with Christian here in the event that there are specific thoughts or ideas that the Chamber would like to share and he considers the issue.

Emily and I look forward to seeing you tomorrow evening at the Chamber's meeting.
Best,
Julie and Emily

Caution: This email came from outside Webster Bank.

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Webster Bank, N.A - Equal Housing Lender

George Latimer
County Executive

County Planning Board

September 27, 2019

Christian K. Miller, City Planner
Rye City Planning Department
1051 Boston Post Road
Rye, NY 10580

Subject: Referral File No. RYC 19-003 — Zoning Text Amendment: Accessory Outdoor Seating

Dear Mr. Miller:

The Westchester County Planning Board has received a proposed local law to amend the text of the City of Rye Zoning Ordinance. The amendment would allow the Planning Commission to approve accessory outdoor seating special permits valid for three years, where currently these permits are valid for one year. These special permits are applicable within the B-1 and B-2 Central Business Districts. The City Building Department would issue renewal permits for accessory outdoor seating prior to each outdoor dining season.

We have reviewed this matter under the provisions of Section 239 L, M and N of the General Municipal Law and Section 277.61 of the County Administrative Code and find this to be a matter for local determination in accordance with the City's planning and zoning policies.

Thank you for calling this matter to our attention.

Respectfully,
WESTCHESTER COUNTY PLANNING BOARD

By:



Norma V. Drummond
Commissioner

NVD/MV

**PUBLIC NOTICE
CITY OF RYE**

Notice of Public Hearing on a proposed local law to amend Chapter 197, Zoning, of the Code of the City of Rye by amending § 197-86 to amend the regulation of accessory seasonal outdoor customer seating.

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on October 16, 2019 at 7:30 P.M. at City Hall, Boston Post Road, in said City, at which interested persons will be afforded an opportunity to be heard concerning a proposal to amend Chapter 197, Zoning, of the Code of the City of Rye by amending § 197-86 to amend the regulation of accessory seasonal outdoor customer seating.

Copies of said local law may be obtained from the office of the City Clerk.

Carolyn D'Andrea
City Clerk

Dated: September 25, 2019

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:				
Project Location (describe, and attach a location map):				
Brief Description of Proposed Action:				
Name of Applicant or Sponsor:			Telephone:	
			E-Mail:	
Address:				
City/PO:		State:	Zip Code:	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?			NO	YES
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.			<input type="checkbox"/>	<input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency?			NO	YES
If Yes, list agency(s) name and permit or approval:			<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, are adjoining or near the proposed action:				
5. Urban	Rural (non-agriculture)	Industrial	Commercial	Residential (suburban)
<input type="checkbox"/> Forest	Agriculture	Aquatic	Other(Specify):	
<input type="checkbox"/> Parkland				

5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	NO <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input type="checkbox"/>	N/A <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 type="checkbox"/>	YES <input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <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 project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO <input type="checkbox"/> <input type="checkbox"/>	YES <input type="checkbox"/> <input 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? 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: _____ _____ _____	NO <input type="checkbox"/> <input type="checkbox"/>	YES <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 Agricultural/grasslands Early mid-successional Wetland <input type="checkbox"/> Urban 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 type="checkbox"/>	YES <input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO <input type="checkbox"/>	YES <input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO <input type="checkbox"/>	YES <input type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input type="checkbox"/>	<input type="checkbox"/>
If Yes, briefly describe: _____ _____		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>
49. 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 <input type="checkbox"/>	YES <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 <input type="checkbox"/>	YES <input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: _____ Date: _____ Signature: _____ Title: _____		

Project:

Date:

Short Environmental Assessment Form

Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept “Have my responses been reasonable considering the scale and context of the proposed action?”

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
2. Will the proposed action result in a change in the use or intensity of use of land?		
3. Will the proposed action impair the character or quality of the existing community?		
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
7. Will the proposed action impact existing:		
a. public / private water supplies?		
b. public / private wastewater treatment utilities?		
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		

Project:

Date:

Short Environmental Assessment Form

Part 3 Determination of Significance

For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency

Date

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)



CITY COUNCIL AGENDA

NO. DEPT.: City Manager DATE: October 4, 2019
CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Ratify the Memorandum of Agreement with the CSEA, Local 1000 AFSCME, AFL-CIO, City of Rye Clerical Unit and Westchester County Local 860 ("the Union").

FOR THE MEETING OF:

October 16, 2019

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council ratify the MOA with the City and the Union.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND:

The Union and the City of Rye have reached a contract agreement that has been outstanding since December 31, 2016.

See attached MOA.

MEMORANDUM OF AGREEMENT

Memorandum of Agreement by and between the City of Rye (the "City") and the CSEA, Local 1000 AFSCME, AFL-CIO, City of Rye Clerical Unit, Westchester County Local 860 (the "Union") dated this ___ day of October, 2019.

WHEREAS, the City and the Union are parties to a collective bargaining agreement which expired December 31, 2016; and

WHEREAS, the City and the Union have entered into negotiations for a successor agreement in accordance with the Taylor Law; and

WHEREAS, the City and the Union have reached a tentative agreement subject to ratification by the City Council and membership of the Union, it is stipulated and agreed as follows:

1. All proposals not addressed by this Memorandum of Agreement are dropped.
2. The term of the Agreement shall be January 1, 2017 through December 31, 2023.
3. Wages

Modify Article III, Section 1 to provide that the pay plan shall be increased as follows:

- A) 2.5% effective January 1, 2017;
- B) 2.25% effective January 1, 2018;
- C) 3.0% effective January 1, 2019;
- D) 3.0% effective January 1, 2020;
- E) 3.0% effective January 1, 2021;
- F) 3.0% effective January 1, 2022; and
- G) 3.0% effective January 1, 2023.

The wage increases set forth in this Memorandum of Agreement shall not apply to employees who retired on or before ratification of this Memorandum of Agreement. Retroactive wage payments shall be made within ninety (90) days from the date the Memorandum of Understanding is ratified.

4. Longevity

Delete Article III, Section 2 (B) and (C) and amend Article III, Section 2(D), Longevity, to provide as follows:

Effective January 1, 2020, the following cumulative longevity payments shall be made for all employees:

1. At the completion of seven (7) years of service, an additional \$600.00;
2. At the completion of ten (10) years of service, an additional \$600.00;
3. At the completion of fifteen (15) years of service, an additional \$650.00; and
4. At the completion of twenty (20) years of service, an additional \$650.00.

Longevity payments shall be added to base pay for the sole purpose of calculating employee overtime rates. Longevity increases shall not be used to calculate wage increases.

Section D shall be renamed Section "B."

5. Health Plan

Article XVI shall be replaced as follows:

- A. Effective January 1, 2020, the City shall have the right to cease offering Aetna health insurance coverage and instead shall offer coverage under the New York State Health Insurance Plan ("NYSHIP") at its highest level that NYSHIP offers. The transition to NYSHIP shall include all bargaining unit members. Effective January 1, 2020, the NYSHIP health insurance contribution for all employees who were on the City's payroll as of January 1, 2020 shall be twenty-five percent (25%) of the applicable premium capped at five percent (5%) of base salary. The contribution for any employee hired on or after January 1, 2020 shall be twenty-five percent (25%) of the premium capped at six and one-half percent (6.5%) of base salary. Employees hired on or after January 1, 2020 shall continue to contribute during their retirement at twenty-five percent (25%) of the applicable premium capped at nine and one-half percent (9.5%) of base salary at the time of retirement.
- B. The Association agrees that the City shall have the option to request discussions with the Association on any proposed change in the health insurance plan. This request shall not be unnecessarily denied. In addition to those rights to change health insurance carriers under Article XVI (B) and (C), the City shall have the right to resume coverage under MEBCO Plan or its successor on sixty days' notice to the CSEA.
- C. Upon mutual consent of the City and the CSEA, the City shall have the right to change health insurance carriers based on the following conditions:
 1. Any anticipated change shall be brought to the CSEA at least 45 days in advance to allow review of benefits.
 2. All benefits shall be equivalent, if not greater, than benefits currently enjoyed by the employees under the current health plan.
 3. In the event of diminished benefits, the CSEA has the right to go directly to arbitration to recover the difference in payments. Such costs of arbitration shall be split equally between the City CSEA and the City.

- D. Effective January 1, 2020, to the extent permissible by law and the terms of the health insurance plan from which the employee withdraws from coverage, the City shall provide a health insurance buyout for any member who has alternate coverage, and who chooses not to take the City-offered NYSHIP plan. The value of the buyout shall be 25% of the City's net savings, and the dollar amount shall be prorated throughout the yearly payroll so that if a qualifying event takes place which necessitates that the employee re-enroll, the buyout payments shall cease.
- E. Effective January 1, 2020, in case of a line-of-duty death, the City shall continue to provide full premium payments for the deceased member's spouse until the spouse is eligible for continuing coverage under Medicare or obtains coverage by another source, such as employer or spousal coverage. Dependents are also eligible for continued participation at the City's expense for premium payments in health insurance plan until emancipation, the attainment of the maximum age for dependent eligibility, or until coverage is obtained by another source.
- F. The City shall provide employees with access to flexible savings accounts ("FSAs"), which may also include access to dependent care savings.
- G. In reaching agreement regarding health insurance issues as set forth above, including newly hired employees upon their retirement, the parties agree not to seek in future negotiations retiree health insurance contributions from any individuals employed prior to January 1, 2020. The parties shall not, therefore, submit proposals in negotiations or impasse proceedings on the subject of retiree health insurance contributions for any individuals employed by the City prior to January 1, 2020. The parties shall, however, reserve their rights to negotiate changes in retiree health insurance contributions for any individuals hired on or after January 1, 2020.

6. Bereavement Leave

Article X, Section B shall be amended to include aunts and uncles in the definition of the employee's "member of the family" definition. Employees shall be granted three (3) days of bereavement leave in the event of the death of an aunt or uncle.

7. Unused Vacation

Amend Article V, Section J to provide as follows:

"All members of the Bargaining Unit with five or more years of service are permitted to submit up to ten (10) unused vacation days for payment upon their anniversary date at their daily rate of pay."

8. Unused Sick Leave

Amend VII, Section O(1) to provide as follows:

The City will make an annual cash payment for unused sick leave according to the following schedule:

<u>Sick Days Taken</u>	<u>Bonus Hours</u>
0	32
1	22
2	18
3	14
4	10
5 or more	0

FOR THE CITY

Mary Ann

FOR THE UNION

Arista Cough
Angela Cipri
Valerie Calh



CITY COUNCIL AGENDA

NO. DEPT.: Legal DATE: October 16, 2019
CONTACT: Kristen Wilson, Corporation Counsel

AGENDA ITEM: Acceptance of resignation of City Manager and resolution authorizing Mayor to execute employee separation agreement including release and waiver of claims.

FOR THE MEETING OF:

October 16, 2019

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council accepts this resignation.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND:

See attached separation agreement.

**EMPLOYEE SEPARATION AGREEMENT, INCLUDING
RELEASE AND WAIVER OF CLAIMS**

WHEREAS, the City of Rye is a municipal corporation organized under the laws of the State of New York (herein, "City");

WHEREAS, the City is governed by a duly elected Mayor and City Council; and

WHEREAS, Marcus Serrano (hereinafter, "Serrano" or "Employee") is employed by the City (the "Employer") as City Manager pursuant to an Employment Agreement with an effective date of June 29, 2015 (annexed hereto as Exhibit "A"); and

WHEREAS, Mr. Serrano has indicated his intention to resign his position as City Manager effective October 16, 2019 in contemplation of his retirement; and

WHEREAS, Mr. Serrano will remain on the City's payroll as a consultant at his regular rate of pay through November 15, 2019 in order to assist with the transition to an Interim City Manager; and

WHEREAS, the City and Mr. Serrano have reached this Separation Agreement, Including Release and Waiver of Claims ("Agreement"), and that this Agreement supersedes the previous above-mentioned Employment Agreement;

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES
SET FORTH BELOW, THE CITY AND MR. SERRANO AGREE AS FOLLOWS:**

1. **Letter of Resignation.** By the letter of resignation dated October 16, 2019, annexed hereto as Attachment "B", and as part of this Agreement, Mr. Serrano submits a letter of resignation from his position as City Manager effective October 16, 2019, at 9:00 a.m., and from any and all positions he holds with the City of Rye effective on that date and time. The signed letter of resignation shall be held in escrow by Mr. Serrano's attorney, John Pappalardo, Jr., until the agreement is approved by the Rye City Council at which time it shall be transmitted to the City's counsel for labor and employment law matters.
2. **Consideration.** In consideration for Mr. Serrano signing this Agreement and complying with the promises made in this Agreement and Mr. Serrano's dutiful observation of and compliance with all the promises contained herein:
 - a. Employer agrees to continue paying Mr. Serrano, on a bi-weekly basis, his usual and current increments of his annualized salary (\$195,000.00) through November 15, 2019, subject to all ordinary and lawful deductions and in accordance with such pay periods as the City has established for other regular employees.

- b. The City also agrees to pay Mr. Serrano for any accrued but unused vacation time in the amount of \$ 22,500, representing thirty vacation days less applicable withholdings and deductions.
- c. Employer agrees to pay Mr. Serrano a one-time severance payment equal to four month's salary (\$65,000.00) on or before November 15, 2019, provided that Mr. Serrano executes an additional Release and Waiver of Claims for the time period from the date of the execution of this Agreement to the last date of his employment with the City, and provided that Mr. Serrano complies with all other terms of this Agreement. Such one-time severance payment shall be less any deductions including employment taxes required under federal and state law.
- d. Based upon having met the service requirements established by the New York State Health Insurance Plan (NYSHIP) and the City, Serrano shall be eligible for retiree health insurance coverage through the City. The City shall pay seventy-five percent (75%) of the applicable premium and Serrano shall pay the remaining twenty-five percent (25%) of the premium. During the period between his separation from the City employment and the date of his retirement through the New York State Retirement System, the City shall, commencing in 2020, reimburse Serrano for twenty-five percent (25%) of the prevailing premium for family coverage under the New York State Health Insurance Plan. This amount shall be payable in a lump sum, less any withholdings or deductions required by law, in December of each year in which Serrano does not receive retiree health insurance coverage through the City. This reimbursement obligation shall cease on the earlier of the date of his becoming Medicare eligible or upon his reenrolling in the City's health insurance plan. Serrano must otherwise meet all eligibility requirements of the health plan for retirees under the City's Administrative Pay Group or as may be established by the applicable health insurance plan.
- e. Mr. Serrano acknowledges and agrees he is not entitled to any further compensation and/or benefits except as specified in this Agreement, and that he will not earn or otherwise accumulate employee benefits, including but not limited to additional time off, of any kind whatsoever, other than those described herein, from October 16, 2019 onward.
- f. Mr. Serrano agrees and understands that he will assist the Interim City Manager, as requested by the Interim City Manager, by e-mail at an email address to be provided by Mr. Serrano, on any matter relating to the operations of the City. This obligation shall cease subject to paragraph "9" below on November 16, 2019.
- g. Mr. Serrano agrees and understands that this Agreement supersedes his prior Employment Agreement (annexed hereto as Exhibit "A"), and that

he waives his rights with regard to removal or termination as City Manager pursuant to that Employment Agreement, and pursuant to the relevant provisions of the Rye City Charter.

3. **Expiration of Rights, Benefits, and Privileges.** Mr. Serrano understands and agrees that except for the payment and benefits outlined in Paragraph 2 of this Agreement, he is entitled to no other pay or benefits from Employer of any kind. Mr. Serrano understands and agrees that he would not receive the payment and benefits specified in Paragraph 2 except for his execution of this Agreement and the fulfillment of the promises contained herein. As of October 16, 2019, Mr. Serrano shall only be entitled to the payments and benefits specified in this Agreement and no others.
4. **Tax Deductions.** The amount(s) to be paid to Mr. Serrano under the terms of this Agreement, as such amount is described in Paragraph 2 of this Agreement, is a gross amount of income to Mr. Serrano from which Employer shall make all lawful and required deductions. Such payment, together with such other benefits as are described in Paragraph 2, is all that Mr. Serrano is entitled to receive from the City in exchange for choosing to accept the terms and conditions of this Agreement.
5. **Knowing and Voluntary Consent.** Mr. Serrano acknowledges and agrees that:
 - a. he has read this Agreement and understands its meaning and effect.
 - b. he knowingly and voluntarily enters into this Agreement of his own free will.
 - c. by signing below, he indicates his understanding and acknowledgement that he has been given the opportunity to consult with an attorney of his choice prior to signing this agreement.
 - d. he freely consents to enter this Agreement, such consent not having been induced by fraud, duress, or any other undue influence.
 - e. he has been advised by his attorney as to the full meaning and consequence of his irrevocable submission to the City Council of the letter of resignation attached hereto as Exhibit "B".
6. **Release and Waiver of All Claims.** Mr. Serrano knowingly and voluntarily releases and forever discharges Employer and its current or former officers, Mayor, City Council members, employees and/or agents and representatives from any and all claims whether presently known or unknown, which he has or may have against Employer at any time prior to the date of the execution of this Agreement. Such discharge includes, but is not limited to, any and all claims that have been brought or which could be brought by him against Employer and its current or former officers, Mayors, City Council members, employees and/or agents and representatives pursuant to:

- a. Any rights or privileges Employee may have under the Americans with Disabilities Act ("ADA"), which prohibits discrimination on the basis of disability, a record of having a disability, or the perception of a disability;
- b. The Age Discrimination in Employment Act ("ADEA"), which prohibits discrimination on the basis of age;
- c. The Older Workers' Benefit Protection Act ("OWBPA");
- d. Title VII of the Civil Rights Act of 1964, as amended, which prohibits retaliation and discrimination in employment on the basis of race, color, national origin, religion or sex;
- e. The Family and Medical Leave Act ("FMLA");
- f. Claims pursuant to the Fair Labor Standards Act ("FLSA");
- g. Claims pursuant to the New York State Executive Law, also known as the New York Human Rights Law ("NYHRL");
- h. Claims pursuant to the New York State Labor Law;
- i. The Employee Retirement Income Security Act of 1974 ("ERISA"), as amended;
- j. Any provision of Article I of the state constitution which may be read so as to give rise to any cause of action under any theory of discrimination in employment;
- k. Any other federal, state, or local law or regulation prohibiting employment discrimination;
- l. Any theory of wrongful discharge whether based on claimed violations of law or regulation, or common law claims based in contract, tort, or equity;
- m. Any theory of failure to pay wages due, or other moneys or remuneration owed;
- n. Any theory of fraud, misrepresentation, defamation, or interference with contract or prospective economic advantage;
- o. Any theory of intentional or negligent infliction of emotional distress; and
- p. Any theory of violation of any other federal, state, or local civil rights or human rights law, or any other alleged violation of any federal, state, or local law, regulation or ordinance, and/or public policy, contract, or tort or other common law provision having any bearing whatsoever on the terms and conditions of and/or cessation of employment with the Employer, including but not limited to any allegations for costs, fees, or other expenses, including attorneys' fees, incurred in this matter which Serrano ever had, now has or may have as of the date of this Agreement.

Mr. Serrano agrees not to initiate any legal action, charge, complaint or other proceeding, at law or in equity, against Employer and its current or former officers, Mayors, City Council members, employees and/or agents and representatives in any

forum whatsoever, and to immediately discontinue any such action previously commenced. To the extent that any such action or proceeding had been or is brought, Mr. Serrano expressly waives claim to any form of monetary or other damages, or any other form of recovery or relief in connection therewith, or in connection with any action brought against the Employer and its current or former officers, Mayors, City Council members, employees and/or agents and representatives by any third party.

Mr. Serrano agrees that this release is intended to be as complete and inclusive as may be permitted under law with respect to all claims whatsoever, including without limitation, claims arising from his employment or the cessation of that employment by the City.

On the last day of his employment with the City, Mr. Serrano agrees to execute another Waiver and Release in the same form as this paragraph, for the period up to and including that date (see Waiver and Release annexed as Exhibit C).

7. **Consideration Period.** Mr. Serrano affirmatively further acknowledges that he has been offered twenty-one (21) days to consider the terms of this Agreement and upon signing this Agreement has elected to waive the remaining days of this period and as such agrees he has until October 15, 2019, to consider the terms of this Agreement and upon signing this Agreement has elected to waive any remaining days of this period. Mr. Serrano's signature shall be conclusive evidence of such waiver after having had full opportunity to consult with the attorney of his choice, regarding the terms and conditions of this Agreement.
8. **Revocation Period.** Mr. Serrano further acknowledges that he has seven (7) days following the date of the full execution of this Agreement to revoke the Agreement, and this Agreement will not become effective, enforceable, or irrevocable until this seven (7) day revocation period has expired. Any revocation must be in writing and delivered to the City's Corporation Counsel by personal delivery on or before the seventh day following execution of this Agreement or by mail, postmarked and sent on or before the seventh day following execution of this Agreement. Employer reserves the right to pursue any disciplinary action against Mr. Serrano, and to pursue all of its rights, should this Agreement be revoked prior to the expiration of the 7-day period referenced in this paragraph.
9. **Duty to Cooperate.** Mr. Serrano agrees to provide reasonable cooperation that does not unduly interfere with any new job taken by Mr. Serrano in any legal, investigative or other matters in which Employer or any of its employees, boards, or commissions are currently involved or may be involved in arising out of the time period when Mr. Serrano acted as an employee of the City. This obligation to reasonably cooperate exists now, during any transition period, and in the reasonable future. This cooperation includes, but is not limited to, any litigation matters, arbitrations, insurance coverage matters, investigations, and other proceedings. The Employer agrees to pay for any reasonable and customary out of pocket expenses including lost

wages upon written prior approval of such expenses associated with Mr. Serrano's assistance in any of the above-listed matters.

10. **Non-disparagement.** Mr. Serrano and the City agree that they will not make, transmit, convey or publish to any person or entity any statement, whether oral, written or otherwise, that directly or indirectly denigrates or disparages, or has the effect or perceived effect of denigrating or disparaging, the City or the employee and any of its former or current Mayors, City Council members, employees and/or agents and representatives. Nothing herein shall preclude either party from fulfilling any obligation imposed by law, including testimony in any proceedings.
11. **Requests for References.** Mr. Serrano agrees to refer any current or future requests for references from the Mayor or City Council to the City's Human Resources Department. Employer hereby agrees that, in response to any and all such requests received, it shall (1) provide the Employee's positions while within the employ of the City, and his dates of employment; and (2) advise the inquiring party that it is the policy of the Employer not to provide any further information regarding the employment of former employees. Nothing herein shall preclude Serrano from requesting a personal reference from any Mayor or member of the City Council or City Official, provided that no such member or official shall be obligated to provide same.
12. **Return of Property.** By entering into this Agreement Mr. Serrano agrees to return immediately to Employer any and all of its property which may, with or without the permission of the Employer and regardless of the duration of the Employee's control, be within the possession and/or control of the Employee and/or any other individual not employed by the Employer to whom the Employee entrusted such property. "Property" for purposes of this Paragraph includes but is not limited to any and all City of Rye documents, cell phones, laptops, vehicles, documents and/or software that may be in the possession or control of the Employee, and to which the Employee does not have a right to retain possession or control pursuant to any policy or procedure of the Employer, or any federal, state, or local law or regulation.
13. **Nondisclosure.** By entering into this Agreement, Mr. Serrano agrees not to appropriate, use, rent, provide, sell, trade upon or otherwise disclose to any other person, business, or other legal entity, any of City's confidential, proprietary, sensitive or otherwise secret information, including but not limited to union negotiation proceedings, litigation strategy, or any other legal or financial information. The Parties agree that the City is entitled to an injunction and attorney's fees in the event of a breach of the provisions of this paragraph. To the extent that such provisions are invoked in any judicial, administrative, equitable, or other forum, they shall be presumed reasonable for purposes of adjudicating any challenge, action, claim, or proceeding between Employer and Employee.
14. **Violation of Separation Agreement.** The initiation and/or prosecution of any action, suit, claim, assertion, demand, or other legal proceeding, whether valid or

invalid, by Mr. Serrano against the City or Employer, within the scope of this Agreement, or any other breach of any term of this Agreement shall entitle Employer to retain all of the rights and benefits of the General Release of Paragraph 6 and shall additionally entitle Employer to the cancellation of any and all future obligations of this Agreement and the recovery or recoupment of the value of any and all payments, benefits, rights or other remuneration paid hereunder, together with any attorney's fees incurred by Employer in exercising such entitlement.

15. **No Admission of Liability.** Mr. Serrano agrees that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time and for any purpose whatsoever as an admission by the City, its officers, its current and former City Council members, employees, agents and representatives, of any liability for any form of improper or unlawful conduct or motivation whatsoever.
16. **Severability.** If for any reason any provision of this Agreement is declared invalid by any court of competent jurisdiction in any administrative, judicial or equitable proceeding whatsoever, such invalidity shall not affect such provisions of the Agreement as remain, which shall be fully severable, and given full force and effect.
17. **Modifications.** No modification, amendment or waiver of any of the provisions contained herein, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any party hereto unless made in writing and signed by such party, or by a duly authorized agent or officer of such party.
18. **Jurisdiction.** The Parties hereby agree that this Agreement shall be governed and interpreted in accordance with the laws of the state of New York without regard to any conflict of laws doctrines. The parties irrevocably consent to jurisdiction and venue of any action or proceeding brought in connection with or to enforce any rights, duties, or obligations under this Agreement, in the Supreme Court of the State of New York for the County of Westchester, or alternatively in the United States District Court for the Southern District of New York in White Plains, New York.
19. **Agreement.** If after full consideration of this Agreement, including the release and waiver of claims as described in Paragraph 6, Serrano voluntarily chooses to accept the terms and conditions of this Agreement, he shall sign and date this Agreement in the presence of a witness in the signature blocks provided below. Employee understands and agrees that he must execute this Agreement first.
20. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter contained herein.

{remainder of page intentionally blank}

BY SIGNING BELOW, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTOOD THIS AGREEMENT, INCLUDING THE WAIVER AND RELEASE PROVISIONS OF PARAGRAPH 6, AND I VOLUNTARILY CHOOSE TO ACCEPT THE TERMS OF THIS AGREEMENT IN CONNECTION WITH MY SEPARATION FROM EMPLOYMENT.


MARCUS SERRANO

10/16/19
DATE

JOSH COHN
FOR CITY OF RYE

DATE

STATE OF NEW YORK)
COUNTY OF WESTCHESTER)

On the ____ day of _____, 2019, before me, the undersigned, personally appeared Josh Cohn, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF WESTCHESTER)

On the 15th day of OCT., 2019, before me, the undersigned, personally appeared MARCUS SERRANO personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

JOHN D. PAPPALARDO
NOTARY PUBLIC, STATE OF NEW YORK
No. 02PA6008981
Qualified in Westchester County
Commission Expires June 22, 2022



CITY COUNCIL AGENDA

NO. DEPT.: Legal DATE: October 16, 2019
CONTACT: Kristen Wilson, Corporation Counsel

AGENDA ITEM: Resolution authorizing Mayor to execute employment agreement with Interim City Manager.

FOR THE MEETING OF:

October 16, 2019

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council authorizes the Mayor to execute the agreement.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND:



CITY COUNCIL AGENDA

NO.

DEPT.: City Manager

DATE: October 11, 2019

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Authorize a request from the Boat Basin Commission to transfer \$150,000.00 from the Boat Basin Unassigned Fund Balance to Boat Basin Unrestricted Net Assets to cover the cost of the Biological Testing and the purchase of a hauling trailer.

FOR THE MEETING OF:

October 16, 2019

RECOMMENDATION: That the City Council approve the transfer.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND:

As part of the Boat Basin's dredging plan, the Marina would like to biologically test its waters to see if it suitable for open water disposal which would greatly reduce the cost of the dredge. In addition to testing, the Boat Basin would like to start offering hauling services and require the purchase of a trailer.

City of Rye
Boat Basin Commission Meeting
9/4/2019
Rye Recreation

Chairman November
Vice Chairman Pecora
Commissioner Monaldo
Safety Coordinator Caminiti
Commissioner Pymm
Commissioner Malouin
Deputy Mayor Hurd
Absent
Commissioner Pilkington
Commissioner Doyle

Guest Bill Gates, Finance Committee

Meeting called to order @ 1906

Changes in minutes from previous meeting -budget season, not sesone

1.7 for cash

Commissioner Monaldo made the points

Motion to accept the minutes with changes: Monaldo 2nd Pecora

Supervisor Report

Work continues around the property and with the buildings. Lights on floats have been upgraded and repaired.

discussion avbout letter to the slip holders about the dredging

discussion about winter storage new fees

\$35.00 per foot for residents

\$47.00 for non residents

furtherdiscussion about WS and resident non slip holder rate. Next year

Motion for new rates for this winter to go to the council on Sept 18th for approval

by Monaldo second Pecora all in favor

In water rate for WS \$40.00 Resident and \$54.00 NR

Monaldo made the motion and Malouin Second all in favor

Carefree Discussion

Not to move forward with the fuel proposal but for the marina to look into for ourselves

Tank safety

Permits?

Enviromental issues?

Military surplus

Dredging Discussion

November gave brief update

depth survey and a report on siltation from the consultant

42 month period evaluated half a foot to a foot on places and in the brook mouth
2 1/2 to 3
3 possible dredge scenarios for minimum dredge
this is at least a must do
They were based on money we currently have
Permit for the channel has been submitted and is pending
2020 is earliest of possible dredge
Cost continue to escalate
2019 depth survey discussion
\$200.00 per cubic yard for upland
March 2019 found out marina was contaminated
original project 24,500 cubic yards for both combined
Now considerably less. Marina less than 10,000 because of souring cost
Projects are now split and will maximize permits
Permit for open water needs agencies from 3 different places Feds, CT and NY
Upland permit which has no max is only NY
and Feds
Discussion of working group and its ideas and reasons
time line expected from the consultant
Discussion on Biological Study
Real chance to lose or get a huge savings.
NYACOE our results are extreme but elevated
Biological \$50,000 to \$115,000 in cost
the commission voted to move forward on Biological Testing and RFP to
go upland
Move on parallel tracks
Contamination in the basin mainly petroleum products and Paint
upland quicker than biological

November authorize biological testing Monaldo motion Pecora Second 5-0 pass
RFP for upland same as Biological 5-0 pass
also discussion of discussion with another consultant with his views. Natches
City Planner now involved in groups
We need to generate \$250,000.00 per year to sustain
if nothing is done we sign the closure of the facility
new numbers do not work in our favor from the consultant
2016 hours Chairman - Keep Ryan in charge of the dredge project

Discussion on whether the Council has to approve the Biological
DM Hurd discussed the working group
need more involved. Disagrees with spending the money without more
oversight
Pymm added about over all flooding and doing basin and helping Milton Rd
November difficult issues lie ahead
More discussion on letter to slip holders
Hand out from November with a draft letter
Coast line actually hired in 2013

To : Marcus Serrano, City Manager

From: George Hogben

Reference: Boat Basin Commission

Date: 9/9/2019

At the September 4th 2019 Boat Basin Commission Meeting, the Commission voted to move forward with Biological testing. The Commission also voted to move forward with the RFP for upland disposal.

Hogben, George - NEW

From: AOL <ernov@aol.com>
Sent: Friday, October 04, 2019 8:10 AM
To: Hogben, George - NEW; pecora99@aol.com; matthewpymm@gmail.com; matthew.malouin@gmail.com; mebpilkington@gmail.com; slam617@verizon.net; bdoyle_us@yahoo.com
Subject: Re: Boat Basin Commission

regarding the purchase order--the Commission has voted to do it and the City has approved and processed, so send it. Regarding the bios, all that is necessary it seem to me is to have the incumbent commissioners "bios" say they are incumbent commissioners and that they have been slipholders since xx. I do not see any point in delaying the electionn. Bob November

-----Original Message-----

From: Hogben, George - NEW <ghogben@ryeny.gov>
To: 'AOL' <ernov@aol.com>; 'pecora99' <pecora99@aol.com>; 'Matthew Pymm' <matthewpymm@gmail.com>; 'Matthew Gerard Malouin' <matthew.malouin@gmail.com>; 'Mary Ellen Pilkington' <mebpilkington@gmail.com>; 'Stephen Monaldo' <slam617@verizon.net>; bdoyle_us@yahoo.com <bdoyle_us@yahoo.com>
Sent: Fri, Oct 4, 2019 7:58 am
Subject: Boat Basin Commission

Commissioners

Good morning...hope all is well. Attached is the purchase order for the trailer that was discussed for the marina to take over the hauling. Take a look before it goes to the vendor to start the process. This way you know costs associated with the trailer to go forward. Let me know to proceed.

On another note the elections are supposed to start Monday. We have had no interest in the commissioner positions. We have received no bios from anyone. We will need Bios from all of the commissioners that are up for election. If you want me to hold off on the election another week you need to tell me by email and I can send another note to the slip holders etc. Let me your pleasure on the election as well.

Thank you

George

Need Bios from:

Joe Pecora

Brendan Doyle

Matthew Malouin

Steve Monaldo

Matthew Pymm



CITY COUNCIL AGENDA

NO. DEPT.: Legal DATE: October 1, 2019
CONTACT: Kristen Wilson, Corporation Counsel

AGENDA ITEM: Resolution to increase the Corporation Counsel Retainer Agreement by \$20,000 for the remainder of 2019 to allow for a Legal Assistant.

FOR THE MEETING OF:
October 16, 2019

RECOMMENDATION: That the Council approve the Retainer Agreement increase for the Corporation Counsel for the remainder of 2019.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: See attached updated agreement.

BLANCHARD & WILSON, LLP

235 MAIN STREET
SUITE 330
WHITE PLAINS, NEW YORK 10601

KRISTEN KELLEY WILSON
PARTNER
DIRECT: (914) 844-1909
KWILSON@BLANCHARDWILSON.COM

October 16, 2019

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

**Re: Updated Proposal for Legal Services – Corporation Counsel
Kristen Kelley Wilson/Blanchard & Wilson, LLP**

Dear Mayor Cohn:

This letter will summarize the proposed terms of my representation of the City of Rye (the “City”) as Corporation Counsel on an independent contractor basis, including the scope of my services and the agreed upon fee and billing arrangement.

Scope of Engagement/City Invoices

I proposed to amend my 2019 annual retainer of \$140,000 to \$160,000 to accommodate the hiring of a Legal Assistant. This remainder of this updated retainer would be paid monthly over the rest of 2019 in accordance with the regular payroll of the City. My Legal Assistant and I would provide most of the general legal services to the City including, for example, and this list is not meant to be exhaustive:

- (1) attending all City Council Meetings and special meetings;
- (2) attending other meetings as needed (Planning Commission/Board of Appeals/Boat Basin/Rye Golf Commission/Landmarks);
- (3) rendering legal opinions as needed for the City Council and all City Commissions/Boards;
- (4) preparing and assisting in the preparation of resolutions, local laws, contracts, MOUs and IMAs, as needed;
- (5) assisting the Records Access Officer and Appeals Officer in responding to Freedom of Information Law (“FOIL”) requests;
- (6) assist the City Manager’s office in rendering decisions on administrative matters;

- (7) monitor and provide pertinent updates on all matters handled by outside insurance counsel; and
- (8) being available to the City staff for consultation on pertinent issues. I propose to have office hours at City Hall and be available to City staff on all issues.

To the extent necessary I will receive assistance from other attorneys at my firm, including Mark Blanchard, Esq., Edward Dunphy, Esq. and Dennis Lynch, Esq.

Matters that will be exempted from the annual retainer include:

- (1) those matters listed below;
- (2) matters for which insurance provides counsel;
- (3) matters involving municipal finance and labor issues; and
- (4) such other matters, as we may mutually agree.

Excluded from the annual retainer will be the following which will be billed directly by Blanchard & Wilson, LLP to the City at an hourly rate of \$215 an hour for each attorney: (1) any litigation, including trials and appeals of tax certiorari matters; (2) Disciplinary or other similar hearings before the City or any other administrative agency and appeals of same; and (3) extraordinary projects requiring extensive research and investigation. All out of pocket expenses for excluded matters shall be reimbursed through my law firm Blanchard & Wilson, LLP. Article 78 proceedings and any other legal matters beyond those covered under the annual retainer would be billed at an hourly rate of \$215 an hour. Prior to working on any litigation matters outside of the annual retainer, I will discuss with the City Council and City Manager the anticipated time and cost necessary to defend (or commence) a particular action.

Other Charges

In addition to our fees for rendering professional services, our billing statements will include separate charges for performing services such as photocopying, delivery charges, long distance telephone calls, facsimile transmissions, specialized computer applications, travel, and other expenses and services incurred incidentally to the performance of our legal services.

Effective Date

The effective date of this agreement is October 16, 2019.

Billing Cycle

Fees for legal services and other charges are billed monthly and are payable within thirty (30) days of receipt.

Termination of Engagement

No termination will relieve the City of the obligation to pay the legal fees owed to me or Blanchard & Wilson, LLP for services performed and other charges owed to us through the date of termination. After the completion of our services on the City's behalf, changes may occur in applicable laws or regulations that could have an impact upon the City's future rights and liabilities.

Conclusion of Representation; Disposition of Client Documents

The City shall provide me and Blanchard & Wilson, LLP with at least ninety (90) days written notice if it wishes to terminate this agreement. Similarly, I (and Blanchard & Wilson, LLP) will provide the City with at least ninety (90) days written notice if we wish to terminate this agreement. Our representation of the City will terminate upon our sending you our final statement for services rendered in a matter. Following such termination, any otherwise nonpublic information you have supplied to us that is retained by us will be kept confidential in accordance with applicable rules of professional conduct. At your request, we will return your papers and property promptly after receipt of payment for any outstanding fees and costs. Our own files pertaining to the matter will be retained by the firm. These firm files include, for example, firm administrative records; internal lawyers' work product such as drafts, notes, internal memoranda; and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. We will retain all remaining documents for a certain period of time, but reserve the right for various reasons including the minimization of unnecessary storage expenses, to destroy or otherwise dispose of them within a reasonable time after the termination of the engagement.

Client Responsibilities

You agree to cooperate fully with us and to provide promptly all information known or available to you relevant to our representation. You also agree to pay in a timely manner our statements for services and expenses as provided above.

Possible Conflicts

Blanchard & Wilson, LLP represents many other companies and individuals. It is possible that during the time we are representing you or other parties subject to this representation, some of our present or future clients will have disputes or transactions with you or them. You agree that we may continue to represent or may undertake to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse. We agree, however, that you

City of Rye
October 16, 2019
Page 4

Blanchard & Wilson, LLP

prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instances where, as a result of our representation of you, we have obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage.

I look forward to working with you, the City Council and City staff to protect the interests of the City. I appreciate the continued opportunity to represent the City of Rye. If this proposal is acceptable, please so indicate by returning an executed copy of this letter.

Very truly yours,



Kristen Kelley Wilson

ACKNOWLEDGED & AGREED

Josh Cohn
Mayor, City of Rye



CITY COUNCIL AGENDA

NO. DEPT.: Finance DATE: October 1, 2019
CONTACT: Joe Fazzino, Comptroller

AGENDA ITEM: Resolution to transfer \$20,000 from General Fund-unassigned Fund Balance to Corporation Counsel Account.

FOR THE MEETING OF:
October 16, 2019

RECOMMENDATION: That the Council approve the fund transfer.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: This transfer is to cover the cost of a Legal Assistant for the Corporation Counsel.



CITY COUNCIL AGENDA

NO. DEPT.: Finance DATE: October 1, 2019
CONTACT: Joe Fazzino, Comptroller

AGENDA ITEM: Resolution to transfer 2018 Rye TV Fund-unassigned Fund Balance of \$1,010,665 to the Capital Reserve Account.

FOR THE MEETING OF:
October 16, 2019

RECOMMENDATION: That the Council approve the fund transfer.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: This transfer will increase the Capital Reserve Account and allow the unmarked funds to be available for capital projects.



CITY COUNCIL AGENDA

NO. DEPT.: City Manager DATE: October 4, 2019
CONTACT: Marcus Serrano

AGENDA ITEM: Consideration of a request by the American Legion Post 128 to conduct its usual Veterans' Day observance on the Village Green on Monday, November 11, 2019 from 10:30 a.m. to 11:15 a.m. In case of rain, the American Legion Post 128 requests the use of City Hall on that date and time.

FOR THE MEETING OF:
October 16, 2019

RECOMMENDATION: That the Council consider granting the request.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND:

The American Legion Post 128 is requesting the Council approve use of the Village Green from 10:30 – 11:15 am on Monday, November 11, 2019 in observance of Veterans' Day. City Hall would be the back-up in case of rain.

See attached request from Tim Moynihan, Finance Officer and Adjutant.

October 4, 2019

Carolyn E. D'Andrea
City Clerk
City of Rye
1051 Boston Post Road
Rye, NY 10580

Dear Ms. D'Andrea,

Rye American Legion Post 128 plans to conduct its usual Veterans Day observance on Monday, November 11, 2019. Kindly grant us permission to use the Village Green for that purpose.

The ceremony will commence at 10:30 AM and will last for approximately thirty minutes. Please provide a speaker stand, PA system, and seating for seventy guests. Also, can we make arrangements to have access to City Hall in case of inclement weather and to use the restrooms?

Thank you very much for your assistance.

Sincerely,

Tim Moynihan
Finance Officer and Adjutant
Phone: (914) 420-5264
Rye American Legion Post 128
PO Box 128
Rye, NY 10580