

## **CITY OF RYE**

### **NOTICE**

There will be a regular meeting of the City Council of the City of Rye on Wednesday, January 29, 2014, at 7:30 p.m. in Council Chambers at City Hall. *The Council will adjourn into Executive Session at the end of the meeting to discuss litigation and personnel matters.*

### **AGENDA**

1. Pledge of Allegiance.
2. Roll Call.
3. General Announcements.
4. Announcement of an opening for a City Court Judge (part-time) at the Rye City Court.
5. Draft unapproved minutes of the regular meeting of the City Council held January 8, 2014.
6. Issues Update/Old Business.
  - Proposal for Affordable Senior Housing on the County-owned property located on Theodore Fremd Avenue
7. Presentation by the Playland Advisory Committee.
8. Resolution authorizing the 2012 Rye City Share of Capital for Rye Town Park.
9. Resolution to transfer \$50,000 from contingency to Public Works to purchase salt for storm coverage for the remainder of the winter season.
10. Residents may be heard on matters for Council consideration that do not appear on the agenda.
11. Council designation to the Litigation and Case Management Committee.
12. Designation of the City Council Liaisons by the Mayor.
13. Appointments to Boards and Commissions, by the Mayor with Council approval.
  - A) One appointment to the Board of Architectural Review for a three-year term.
  - B) One appointment to the Conservation Commission/Advisory Council for a three-year term.
  - C) Two appointments to the Finance Committee for a three-year term.
  - D) Four appointments to the Flood Advisory Committee for a three-year term.
  - E) Three appointments to the Landmarks Advisory Committee for a three-year term.
  - F) Four appointments to the Rye Cable and Communications Committee for a three-year term.
  - G) Two appointments to the Rye Town Park Advisory Committee for a three-year term.

14. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: Amendment of General Order #113.7, "Domestic Violence".
15. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: Approval of new General Order #113.21, "Guidelines for Recording Custodial Interrogations of Suspects".
16. Miscellaneous communications and reports.
17. Old Business.
18. New Business.
19. The Council will convene into Executive Session to discuss litigation and personnel matters.
20. Adjournment.

\*\*\*\*\*

The next regular meeting of the City Council will be held on Wednesday, February 5, 2014.

\*\* City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at [www.ryeny.gov](http://www.ryeny.gov) under "RyeTV Live".

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



# CITY COUNCIL AGENDA

NO. 4

DEPT.: City Council

DATE: January 29, 2014

CONTACT: Mayor Joseph Sack

**AGENDA ITEM:** Announcement of an opening for a City Court Judge (part-time) at the Rye City Court.

**FOR THE MEETING OF:**

January 29, 2014

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:**

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

There is an opening for a City Court Judge at the Rye City Court. The part-time Judge position has a six-year term.



# CITY COUNCIL AGENDA

NO. 5

DEPT.: City Clerk

DATE: January 29, 2014

CONTACT: Dawn Nodarse

**AGENDA ITEM** Draft unapproved minutes of the Regular Meeting of the City Council held January 8, 2014, as attached.

**FOR THE MEETING OF:**

January 29, 2014

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the Council approve the draft minutes.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** Approve the minutes of the Regular Meeting of the City Council held January 8, 2014, as attached.

***DRAFT UNAPPROVED MINUTES*** of the  
Regular Meeting of the City Council of the City of  
Rye held in City Hall on January 8, 2014 at 7:30 P.M.

PRESENT:

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

ABSENT: None

1. Pledge of Allegiance

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

2. Roll Call

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

Agenda Item 13 was taken prior to Agenda Item 3.

3. The State of the City Address by the Mayor

“If this address was meant to have top billing tonight, it certainly got upstaged by the appointments of Councilman Mecca and Councilman Slack. But that’s alright with me, because we’ll need the hard work of these new members of our team, long after the few words spoken here tonight have faded away.

“Fifty years ago, in 1964, the building in which we are gathered tonight, our Rye City Hall, was first dedicated and opened for business.

“For decades, from the time that the Village of Rye was first incorporated in 1904, and from the time that the Village became a City in 1942, our government was run out of the historic Square House across the Village Green.

“But by the 1960’s, Rye’s working needs had grown larger than could be accommodated by the historic tavern in which George Washington once slept.

“Saving the day was the vision of former Mayor John Motley Morehead, who generously donated the funds to begin construction on this site – where the Rye Playhouse movie theater and then a gas station once stood – of a new and modern City Hall.

“There are two bronze plaques in the hallway outside Council Chambers commemorating Mayor Morehead’s gift, and noting the Council members who presided over the dedication in 1964, including future Mayors Ed Grainger and John Carey, who are still very active in Rye today.

“So 2014 is a historic milestone year in Rye, and we will make plans to properly celebrate this building’s Golden Anniversary.

“As we head into the New Year, there is no shortage of important issues on our plate. These issues are not new. They are the same issues that we’ve faced over the past few years. But what we can change is the way that we approach these issues. And in so doing, perhaps we may achieve some resolution to these issues, and find outcomes which are most beneficial to the people of Rye.

“The police union arbitration decision was issued in October of last year. There was much effort by one party or another to couch this decision in the context of “we won” and “they lost.” This type of spin, whether real or imagined, completely misses the point. That is, because both sides could not come to a negotiated settlement, and because our combined fates were left to be decided by an arbitrator over whom we had no control, both sides had already lost well before the arbitration decision even came out.

“We need a fresh start where both parties – management and collective bargaining units alike – work together to cultivate mutual understanding of the respective economic pressures which we are all under, in order to arrive at mutual respect and trust. Let’s try to get a deal done this year.

“The future plans for Playland seem to be moving forward and accelerating. The concept of re-inventing Playland for the 21<sup>st</sup> Century is certainly appealing. But amongst some residents, there has been apprehension, frustration and even anger, fueled mainly by a belief that they’re not getting information. Likewise, one can see how supporters of change have become disenchanted, concluding that no answer they give will ever be seen as good enough.

“If you ask legitimate critical questions, you shouldn’t have to be labeled as unruly. At the same time, on the other side, if you are making an effort to conduct a rational dialogue, you shouldn’t have to be called out for stonewalling.

“There is a distinct role for the City to play here. We shouldn’t be unthinking cheerleaders. Nor should we be cantankerous obstructionists. We can and must facilitate the simple asking of questions, and the provision of helpful answers.

Ultimately, if the plans for Playland cannot withstand scrutiny, then there is a problem. But if the plans for Playland can stand up to reasonable analysis, then fault should not be found. Let's defuse the situation with clear communication.

"There are two sites in Rye which have been discussed for significant multi-family residential development: The vacant lot near the corner of Theo Fremd and North Street, behind the gas station and abutting the train tracks, where there is a proposal for County-subsidized affordable housing units. And 120 Old Post Road, the old Mobius Building, along the Playland Parkway access road, where there is a formative concept for a senior assisted living facility.

"We cannot allow these projects to meander. We need to be more assertive in defining the City's interests in these projects, and in leading the residents of our community towards an informed consensus. Let's step it up this year.

"At Rye Golf Club, we need to more aggressively pursue the employee theft insurance claim that we filed in the wake of the management scandal that we've unfortunately had to endure. Let's get some movement here.

"This week, we had the first meeting of the Rye Golf Club RFP Review Committee. We need to quickly and thoroughly analyze the responses we received, in order to decide whether to negotiate an agreement with one of the responders. Things are starting to look up. Let's finally turn the corner on this.

"We have a number of infrastructure projects, mainly emanating out of the 2012 bond issue referendum, which will finally get into full swing this year. Let's keep tabs on them, and also find time to pursue other important but long-neglected projects, like improvements and parking at the MTA-owned Railroad station plaza, and possible renovations at the court house facility.

"Checks and balances and oversight have been less than tight in the City. Let's institute necessary changes to the City Charter to allow Council members to request documents and information from the City Manager at any time, and to permit City Council members to meet directly with department heads, without having to go through the City Manager.

"Let's not let up in working with the County regarding flood mitigation projects, including at the County Airport, and in reviewing other potential projects for additional upstream retention.

"Earlier today, I was asked to sign a tax warrant for over \$20 million, representing the money to be raised from our residents in 2014 City property taxes. Therefore, let's also not ever lose sight of the fact that the financial stability of our City is one of our top priorities. Let's identify long-term liabilities and expenditures so that we can reserve appropriately, and let's identify ways to reduce the City's long term liabilities for pensions and healthcare.

“And let’s make sure that we have a firm handle on all personnel matters as we embark on the transition to our new Council administration.

“This Rye City Hall has served us well for a half century. It may need some updating and refurbishing, but it has good bones.

“The same might be said of the state of our City – we are built on a solid foundation, but we can also stand to make some improvements, and to keep up with the demands of changing times and new challenges.

“Because at the end of the day, Rye is not about this building, it is not about the brick and mortar. Rather, Rye is about the folks who populate this building, who breathe life into this building. Rye is about the dedicated employees who serve us here. Rye is about our friends and family and neighbors who volunteer their time here, and who do good deeds both large and small, in the unending hope of making Rye an even better place than it already is.

“And that is why the state of our City is strong and always will be.

“Thank you and God Bless us all.”

4. General Announcements by the Council

Announcements are made that may be of interest to the public.

5. Draft unapproved minutes of the Regular Meeting of the City Council held December 18, 2013

Councilwoman Brett made a motion, seconded by Councilwoman Killian and unanimously carried by the three members of the Council who attended the meeting, to approve the minutes of the regular meeting of the City Council held on December 18, 2013, as amended.

6. Issues Update/Old Business

City Manager Pickup updated the Council on the following matters:

- Park next to Central Avenue Bridge – During construction of the bridge, questions were raised about site distances and other issues that have been brought to the Traffic and Pedestrian Safety Committee (TPS). They are working on a proposal about parking restrictions that impact the pedestrian crosswalks and turning movements in the area. The “park” area has not been restored after construction of the bridge. Based on recommendations from TPS, the Council could decide to use the area for parking or restore it to its original condition. There may also be a request to use the property as a staging site for construction going on at 2 Central Avenue. Research into the parcel indicates that it does not have a designation as parkland and is not part of the grant for the



Rye Nature Center. The City Manager was asked to put up different fencing from what is currently at the lot and to ask TPS how many parking spaces the lot could hold. *Doug Carey* commented on the history of using the site as a passive park and asked about the City's plans for the park going forward.

- Lowenstein Bridge – the bridge needs repairs on the landings on either side, so it is not considered safe for use as a pedestrian crossing at this time. The previous Council had expressed interest in having the bridge removed. Mayor Sack asked to have TPS look into the issue and make a recommendation.
- City Manager's Compensation – The City Manager explained the difference between his base salary as listed in his contract and amount listed on his W-2. There are three reasons: (1) As part of the Administrative Pay Group, the Manager has the ability to receive payment for five days of unused annual vacation; (2) there is a car allowance benefit; and (3) a reimbursement for not utilizing City health benefits.

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

*Jim Amico, 350 Midland Avenue*, spoke about the tone of Council meetings going forward.

8. Appointment of the 2014 Deputy Mayor by the Mayor

Mayor Sack appointed Councilwoman Brett as Deputy Mayor for a one-year term commencing on January 1, 2014, to serve as Acting Mayor in the Mayor's absence.

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

Mayor Sack appointed Councilman McCartney as Trustee of the Police Pension Fund for a one-year term commencing January 1, 2014.

10. Designation of the City Council's Audit Committee by the Mayor

Mayor Sack appointed Councilwoman Killian and Councilwoman Bucci, to the City Council's Audit Committee for a one-year term commencing January 1, 2014.

11. Designation of the City Council Liaisons by the Mayor

Mayor Sack said he felt that, in some cases, City Council Liaisons to Boards and Commissions should be obsolete and suggested that possibly Councilmembers should be liaisons to City Departments instead. He also suggested that the Chairs of the Board and Commissions could server as the liaisons and report directly to the Council. This agenda item was deferred.

12. Designation of official City newspaper

Corporation Counsel Wilson reviewed the statutory requirements for naming an official City Newspaper for the purpose of publishing legal notices. She added that the Council does have the ability to designate an official newspaper and an alternate paper as long as they both meet the statutory requirements. There was a discussion among the Council regarding naming a daily newspaper or a weekly newspaper, or both, in order to meet the mandated noticing requirements.

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

**RESOLVED**, that the Journal News is hereby designated as the official City newspaper for purposes of publishing legal notices.

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

**RESOLVED**, that the Rye City Review is hereby designated as the alternate City newspaper for purposes of publishing legal notices.

This Agenda Item was taken prior to Agenda Item 3.

13. Appointment of two City Council Members for terms expiring January 1, 2015

Mayor Sack said that the two vacancies on the Council, created by his election as Mayor and Catherine Parker's election to the County Board of Legislators, would be filled at this meeting. As per the City Charter, the appointments are made by majority vote of the Council. There are two years remaining on the terms. The appointees will serve for the remainder of this year and a special election will be held in November to determine who will serve the last year of the term.

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

**RESOLVED**, that the City Council of the City of Rye hereby appoints Richard Mecca to serve as a Member of the Rye City Council until January 1, 2015.

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

**RESOLVED**, that the City Council of the City of Rye hereby appoints Richard Slack to serve as a Member of the Rye City Council until January 1, 2015.

After the vote was taken, the new Members of the Council were sworn in by City Court Judge Joseph Latwin and both made brief remarks.

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

A) Two appointments to the Board of Appeals for a three-year term

Mayor Sack made a motion, seconded by Councilwoman Brett and unanimously carried, to reappoint Alan Weiner to the Board of Appeals for a three-year term expiring on January 1, 2017.

Mayor Sack made a motion, seconded by Councilwoman Brett and unanimously carried, to appoint Susan Brown to the Board of Appeals for a three-year term expiring on January 1, 2017.

B) Four appointments to the Board of Architectural Review for a three-year term

Mayor Sack made a motion, seconded by Councilwoman Killian and unanimously carried, to appoint Lisa Hogan Luthringer to the Board of Architectural Review for a three-year term expiring on January 1, 2017.

Mayor Sack made a motion, seconded by Councilman McCartney and unanimously carried, to appoint Kevin Grainger to the Board of Architectural Review for a three-year term expiring on January 1, 2017.

Mayor Sack made a motion, seconded by Councilwoman Killian and unanimously carried, to appoint Kathy Grainger Hobbins to the Board of Architectural Review for a three-year term expiring on January 1, 2017.

C) One appointment to the Board of Ethics for a three-year term

Mayor Sack made a motion, seconded by Councilwoman Brett and unanimously carried, to reappoint Beth Griffin Matthews to the Board of Ethics for a three-year term expiring on January 1, 2017.

D) One appointment to the Conservation Commission/Advisory Council for a three-year term

This appointment was deferred.

E) Two appointments to the Finance Committee for a three-year term

These appointments were deferred.

F) Four appointments to the Flood Advisory Committee for a three-year term

These appointments were deferred.

G) Three appointments to the Landmarks Advisory Committee for a three-year term

These appointments were deferred.

H) Two appointments to the Planning Commission for a three-year term

Mayor Sack made a motion, seconded by Councilwoman Brett and unanimously carried, to reappoint Hugh Greechan to the Planning Commission for a three-year term expiring on January 1, 2017.

Mayor Sack made a motion, seconded by Councilwoman Killian and unanimously carried, to appoint Al Vitiello to the Planning Commission for a three-year term expiring on January 1, 2017.

I) Two appointments to the Recreation Commission for a three-year term

Mayor Sack made a motion, seconded by Councilwoman Bucci and unanimously carried, to reappoint Caroline Surhoff to the Recreation Commission for a three-year term expiring on January 1, 2017.

Mayor Sack made a motion, seconded by Councilwoman Brett and unanimously carried, to appoint Tim Walsh to the Recreation Commission for a three-year term expiring on January 1, 2017.

J) Four appointments to the Rye Cable and Communications Committee for a three-year term

These appointments were deferred.

K) Five appointments to the Rye Playland Advisory Committee for a three-year term

Mayor Sack made a motion, seconded by Councilwoman Brett and unanimously carried, to reappoint Lloyd Emmanuel to the Rye Playland Advisory Committee for a three-year term expiring on January 1, 2017.

Mayor Sack made a motion, seconded by Councilwoman Bucci and unanimously carried, to reappoint Lucinda McKinnon to the Rye Playland Advisory Committee for a three-year term expiring on January 1, 2017.

Mayor Sack made a motion, seconded by Councilman McCartney and unanimously carried, to reappoint Bill Meyers to the Rye Playland Advisory Committee for a three-year term expiring on January 1, 2017.

Mayor Sack made a motion, seconded by Councilman Mecca and unanimously carried, to appoint Mike Visci to the Rye Playland Advisory Committee for a three-year term expiring on January 1, 2017.

Mayor Sack made a motion, seconded by Councilman Mecca and unanimously carried, to appoint Ken Ball to the Rye Playland Advisory Committee for a three-year term expiring on January 1, 2017.

L) Two appointments to the Rye Town Park Advisory Committee for a three-year term

These appointments were deferred.

M) Two appointments to the Traffic & Pedestrian Safety Committee for a three-year term

Mayor Sack made a motion seconded by Councilman Mecca and unanimously carried, to reappoint Jim Burke to the Traffic and Pedestrian Safety Committee for a three-year term expiring on January 1, 2017.

Mayor Sack made a motion, seconded by Councilwoman Killian and unanimously carried, to reappoint Ben Stacks to the Traffic and Pedestrian Safety Committee for a three-year term expiring on January 1, 2017.

15. Designation of the amounts of faithful performance bonds:

Councilwoman Brett made a motion, seconded by Councilman Slack, to recommend the following amounts of faithful performance bonds:

A. City Comptroller	\$ 1,000,000
B. City Clerk	\$ 500,000
C. City Marshall	\$ 100,000

ROLL CALL:

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney,  
Mecca and Slack

NAYS: None

ABSENT: None

The Resolution was adopted by a 7-0 vote.

16. Continuation of Public Hearing to adopt a local law to amend Chapter 197 Article IV "Use Regulations" and Article VI "Appeals" to establish regulations regarding outdoor fire pits and outdoor kitchens

A suggestion was made to close the public hearing and move the item off the Agenda until the new Council decides they are ready to put it back on.

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

17. New Business

There was nothing discussed under this Agenda item.

18A. The Council will convene into Executive Session to discuss litigation and personnel matters

Councilwoman Brett made a motion, seconded by Councilman Slack and unanimously carried, to adjourn into executive session do discuss litigation related to Rye Town Park and the Rye Golf Club and personnel matters related to a potential Acting Police Commissioner at 9:10 p.m. Councilwoman Killian made a motion, seconded by Councilwoman Killian and unanimously carried to adjourn the executive session at 10:58 p.m. No decisions were made.

18. Adjournment

There being no further business to discuss Councilwoman Brett made a motion, seconded by Councilwoman Killian and unanimously carried, to adjourn the meeting at 11:00 p.m.

Respectfully submitted,

Dawn F. Nodarse  
City Clerk



# CITY COUNCIL AGENDA

NO. 6

DEPT.: City Council

DATE: January 29, 2014

CONTACT: Mayor Joseph Sack

**AGENDA ITEM:** Issues Update/Old Business

**FOR THE MEETING OF:**

January 29, 2014

**RYE CITY CODE,**

**CHAPTER**

**SECTION**

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

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

- Proposal for Affordable Senior Housing on the County-owned property located on Theodore Fremd Avenue



# CITY COUNCIL AGENDA

NO. 7

DEPT.: City Council

DATE: January 29, 2014

CONTACT: Mayor Douglas French

**AGENDA ITEM:** Presentation by the Playland Advisory Committee.

**FOR THE MEETING OF:**

January 29, 2014

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:**

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

A presentation will be made by members of the Playland Advisory Committee.





# CITY COUNCIL AGENDA

NO. 8

DEPT.: City Council

DATE: January 29, 2014

CONTACT: Mayor Joseph Sack

**ACTION:** Resolution authorizing the 2012 Rye City Share of Capital for Rye Town Park.

**FOR THE MEETING OF:**

January 29, 2014

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the Council authorize the 2012 Rye City Share of Capital for Rye Town Park.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:** The City of Rye share of the 2012 Capital Expense for Rye Town Park is \$11,000 as outlined in the Audited Statements from O'Connor Davies, LLP. The Council must approve payment to the Rye Town Park Commission.

See attached.



**TOWN OF RYE**

10 PEARL STREET  
PORT CHESTER, NY 10573

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www.townofryeny.com

JOSEPH CARVIN  
SUPERVISOR

WILLIAM VILLANOVA  
DEPUTY SUPERVISOR

TOWN COUNCIL  
CHRISTINA COLLINS  
MICHELE MENDICINO DALY  
ROBERT NIORAS

Mr. Joseph Fazzino  
Rye City Acting Comptroller  
1051 Boston Post Road  
Rye, New York 10580

Dear Mr. Fazzino,

The Town of Rye is requesting the following amounts due from the City of Rye. These amounts are due to the Rye Town Park Commission as Rye City's share of the operating losses and Capital Expenditures for Rye Town Park as per the Audited Statements provided by our Auditors, O'Connor Davies, LLP. The Audited Statement for Fiscal Year 2012 is attached

<u>For Rye Town Park Capital Projects</u>	<u>Capital</u>
Total of Capital Outlay for 2012 (page 25)	\$ 65,126.00
Less Grants, Aid and donations	<u>\$ 37,120.00</u>
<u>Net 2012 Capital Expense</u>	\$ 28,006.00
Rye City Share of Capital @ .39278 (Note 2, C Page 17)	\$ 11,000.00

Please make this payment to: "Rye Town Park Commission" and forward it to:

Rye Town Park Commission  
Office of the Supervisor  
10 Pearl Street  
Port Chester, New York 10573

For one of the first times ever, there were no Operating Losses as our audited statement shows an Operating Surplus of \$1,346.00 for FY2012. These funds will be kept in the Rye Town Park Operating Fund Balance to be applied in the future as per the direction of the Rye Town Park Commission.

Please contact me with any questions.  
Thank you very much for your help with this.  
Sincerely,

Bishop M. Nowotnik  
Confidential Secretary to the Supervisor  
[bnowotnik@townofryeny.com](mailto:bnowotnik@townofryeny.com)  
914-939-3075 ext. 101

**Rye Town Park Commission, New York**

**Financial Statements and  
Supplementary Information**

**Year Ended December 31, 2012**

# Rye Town Park Commission, New York

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## Independent Auditors' Report

The Board of Commissioners of the  
Rye Town Park Commission, New York

### Report on the Financial Statements

We have audited the accompanying financial statements of the governmental activities and each major fund of the Rye Town Park Commission, New York ("Commission") as of and for the year ended December 31, 2012, and the related notes to the financial statements, which collectively comprise the Commission's basic financial statements as listed in the table of contents.

### *Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### *Auditors' Responsibility*

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Commission's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

O'CONNOR DAVIES, LLP

500 Mamaroneck Avenue, Suite 301, Harrison, NY 10528 | Tel: 914.381.8900 | Fax: 914.381.8910 | [www.odpkf.com](http://www.odpkf.com)

O'Connor Davies, LLP is a member firm of the PKF International Limited network of legally independent firms and does not accept any responsibility or liability for the actions or inactions on the part of any other individual member firm or firms.

## ***Opinions***

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of the Commission, as of December 31, 2012, and the respective changes in financial position, thereof, for the year then ended in accordance with accounting principles generally accepted in the United States of America.

## **Other Matters**

### ***Required Supplementary Information***

Management has omitted Management's Discussion and Analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Government Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. Our opinion on the basic financial statements is not affected by this missing information.

### ***Supplementary and Other Information***

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Commission's basic financial statements. The individual fund financial statements and schedules are presented for purposes of additional analysis and are not a required part of the basic financial statements.

The individual fund financial statements and schedules are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

*O'Connor Davies, LLP*

O'Connor Davies, LLP  
Harrison, New York  
October 9, 2013

Rye Town Park Commission, New York

Statement of Net Position  
December 31, 2012

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	<u>Governmental Activities</u>
<b>ASSETS</b>	
Cash and equivalents	\$ 148,703
Investments	14,766
Receivables	
Due from other governments	101,418
State and Federal aid	15,831
Capital assets	
Not being depreciated	50,000
Being depreciated, net	<u>3,715,320</u>
Total Assets	<u>4,046,038</u>
<b>LIABILITIES</b>	
Accounts payable	52,428
Due to other governments	222,709
Security deposit	<u>4,235</u>
Total Liabilities	<u>279,372</u>
<b>NET POSITION</b>	
Net investment in capital assets	3,765,320
Unrestricted	<u>1,346</u>
Total Net Position	<u>\$ 3,766,666</u>

The notes to the financial statements are an integral part of this statement.



Rye Town Park Commission, New York

Statement of Activities

Year Ended December 31, 2012

Functions/Programs	Expenses	Program Revenues			Net (Expense) Revenue and Changes in Net Position
		Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	
Governmental activities					
Culture and Recreation	<u>\$ 1,152,349</u>	<u>\$ 835,159</u>	<u>\$ 1,141</u>	<u>\$ 37,120</u>	<u>\$ (278,929)</u>
General revenues					
Unrestricted investment income					67
Other					57,512
Sponsor funding					<u>28,006</u>
Total General Revenues					<u>85,585</u>
Change in Net Position					(193,344)
Net Position - Beginning					<u>3,960,010</u>
Net Position - Ending					<u>\$ 3,766,666</u>

The notes to the financial statements are an integral part of this statement.

Rye Town Park Commission, New York

Balance Sheet  
 Governmental Funds  
 December 31, 2012

	General	Capital Projects	Total Governmental Funds
<b>ASSETS</b>			
Cash and equivalents	\$ 148,703	\$ -	\$ 148,703
Investments	14,766	-	14,766
Receivables			
Due from other governments	90,418	11,000	101,418
State and Federal aid receivable	-	15,831	15,831
Due from other funds	-	66,430	66,430
	<u>90,418</u>	<u>93,261</u>	<u>183,679</u>
<b>Total Assets</b>	<b><u>\$ 253,887</u></b>	<b><u>\$ 93,261</u></b>	<b><u>\$ 347,148</u></b>
<b>LIABILITIES AND FUND BALANCES</b>			
<b>Liabilities</b>			
Accounts payable	\$ 52,428	\$ -	\$ 52,428
Due to other funds	66,430	-	66,430
Due to other governments	129,448	93,261	222,709
Security deposit	4,235	-	4,235
	<u>252,541</u>	<u>93,261</u>	<u>345,802</u>
<b>Total Liabilities</b>	<b>252,541</b>	<b>93,261</b>	<b>345,802</b>
<b>Fund balances</b>			
Unassigned	<u>1,346</u>	<u>-</u>	<u>1,346</u>
<b>Total Liabilities and Fund Balances</b>	<b><u>\$ 253,887</u></b>	<b><u>\$ 93,261</u></b>	<b><u>\$ 347,148</u></b>

The notes to the financial statements are an integral part of this statement.

**Rye Town Park Commission, New York**

**Reconciliation of Governmental Funds Balance Sheet to  
the Government - Wide Statement of Net Position  
December 31, 2012**

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Fund Balances - Total Governmental Funds \$ 1,346

Amounts Reported for Governmental Activities in the Statement of Net  
Position are Different Because

Capital assets used in governmental activities are not financial  
resources and, therefore, are not reported in the funds.

3,765,320

Net Position of Governmental Activities

\$ 3,766,666

The notes to the financial statements are an integral part of this statement.

Rye Town Park Commission, New York

Statement of Revenues, Expenditures and  
Changes in Fund Balances  
Governmental Funds  
Year Ended December 31, 2012

	General	Capital Projects	Total Governmental Funds
<b>REVENUES</b>			
Sale of permits	\$ 105,505	\$ -	\$ 105,505
Parking	283,649	-	283,649
North gate guest	41,204	-	41,204
Mid gate guest	231,743	-	231,743
South gate guest	84,044	-	84,044
Rent - Concessions	89,014	-	89,014
Investment income	67	-	67
Federal aid	1,141	37,120	38,261
Other	57,512	-	57,512
	<u>893,879</u>	<u>37,120</u>	<u>930,999</u>
<b>Total Revenues</b>			
<b>EXPENDITURES</b>			
<b>Current</b>			
<b>Culture and recreation</b>			
Personal services	440,074	-	440,074
Employee benefits	87,439	-	87,439
Equipment	4,850	-	4,850
Supplies and printing	20,205	-	20,205
Utilities, telephone and refuse	51,632	-	51,632
Building and grounds repairs	98,036	-	98,036
Insurance	41,462	-	41,462
Office	5,014	-	5,014
Blind Brook sewer tax	34,333	-	34,333
Uniforms	6,321	-	6,321
Accounting fees	14,400	-	14,400
Audit fees	19,885	-	19,885
Attorney fees	5,004	-	5,004
Equipment repairs and maintenance	10,640	-	10,640
Secretary fees	18,500	-	18,500
Concerts	6,200	-	6,200
Interest	17,901	-	17,901
Miscellaneous	10,637	-	10,637
Capital outlay	-	65,126	65,126
	<u>892,533</u>	<u>65,126</u>	<u>957,659</u>
<b>Total Expenditures</b>			
<b>Excess (Deficiency) of Revenues Over Expenditures</b>	<u>1,346</u>	<u>(28,006)</u>	<u>(26,660)</u>
<b>OTHER FINANCING SOURCES</b>			
Sponsor funding capital - Town (60.722%)	-	17,006	17,006
Sponsor funding capital - City (39.278%)	-	11,000	11,000
	<u>-</u>	<u>28,006</u>	<u>28,006</u>
<b>Total Other Financing Sources</b>			
<b>Net Change in Fund Balances</b>	1,346	-	1,346
<b>Fund Balances - Beginning of Year</b>	-	-	-
<b>Fund Balances - End of Year</b>	<u>\$ 1,346</u>	<u>\$ -</u>	<u>\$ 1,346</u>

The notes to the financial statements are an integral part of the this statement.

**Rye Town Park Commission, New York**

**Reconciliation of the Statement of Revenues,  
Expenditures and Changes in Fund Balances of Governmental Funds  
to the Statement of Activities  
Year Ended December 31, 2012**

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**Amounts Reported in the Statement of Activities are Different Because**

<b>Net Change in Fund Balances - Total Governmental Funds</b>	<b>\$ 1,346</b>
 The fund financial statements report capital outlays as expenditures. However, in the statement of activities, the cost of those assets is allocated over their estimated useful lives and reported as depreciation expense.	
Depreciation expense	<u>(194,690)</u>
 <b>Change in Net Position of Government Activities</b>	 <b><u>\$ (193,344)</u></b>

The notes to the financial statements are an integral part of this statement.

Rye Town Park Commission, New York

General Fund

Statement of Revenues, Expenditures and Changes

in Fund Balance - Budget and Actual

Year Ended December 31, 2012

	Original Budget	Final Budget	Actual	Variance with Final Budget Positive (Negative)
<b>REVENUES</b>				
Sales of permits	\$ 94,000	\$ 94,000	\$ 105,505	\$ 11,505
Parking	282,950	282,950	283,649	699
North gate guests	43,727	43,727	41,204	(2,523)
Mid gate guests	257,062	257,062	231,743	(25,319)
South gate guests	93,753	93,753	84,044	(9,709)
Rent - Concessions	89,554	89,554	89,014	(540)
Investment income	200	200	67	(133)
Federal aid	-	-	1,141	1,141
Other	56,650	56,650	57,512	862
<b>Total Revenues</b>	<b>917,896</b>	<b>917,896</b>	<b>893,879</b>	<b>(24,017)</b>
<b>EXPENDITURES</b>				
<b>Current</b>				
<b>Culture and recreation</b>				
Personal services	462,467	462,467	440,074	22,393
Employee benefits	89,345	89,345	87,439	1,906
Equipment	10,000	10,000	4,850	5,150
Supplies and printing	26,000	26,000	20,205	5,795
Utilities, telephone and refuse	50,300	50,300	51,632	(1,332)
Building and grounds repairs	108,072	108,072	98,036	10,036
Insurance	41,612	41,612	41,462	150
Office	6,600	6,600	5,014	1,586
Blind Brook sewer tax	30,000	30,000	34,333	(4,333)
Uniforms	7,500	7,500	6,321	1,179
Accounting fees	14,400	14,400	14,400	-
Audit fees	10,000	10,000	19,885	(9,885)
Attorney fees	6,000	6,000	5,004	996
Equipment repairs and maintenance	11,000	11,000	10,640	360
Secretary fees	20,000	20,000	18,500	1,500
Concerts	5,600	5,600	6,200	(600)
Interest	15,000	15,000	17,901	(2,901)
Miscellaneous	4,000	4,000	10,637	(6,637)
<b>Total Expenditures</b>	<b>917,896</b>	<b>917,896</b>	<b>892,533</b>	<b>25,363</b>
<b>Excess of Revenues Over Expenditures</b>	<b>-</b>	<b>-</b>	<b>1,346</b>	<b>1,346</b>
<b>Fund Balance - Beginning of Year</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Fund Balance -End of Year</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,346</b>	<b>\$ 1,346</b>

The notes to the financial statements are an integral part of this statement.

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**Note 1 - Summary of Significant Accounting Policies**

The Rye Town Park Commission, New York ("Commission") was established in 1907 and operates in accordance with the laws of the State of New York. The Board of Commissioners is the legislative body responsible for overall operation of the Commission. The president of the Commission serves as the chief executive officer and the treasurer serves as the chief financial officer. The Commission provides recreation services to the residents of the area.

The accounting policies of the Commission conform to generally accepted accounting principles as applicable to governmental units and the Uniform System of Accounts as prescribed by the State of New York. The Governmental Accounting Standards Board ("GASB") is the accepted standard setting body for establishing governmental accounting and financial reporting principles. The following is a summary of the Commission's more significant accounting policies:

**A. Financial Reporting Entity**

The financial reporting entity consists of a) the primary government, which is the Commission, b) organizations for which the Commission is financially accountable and c) other organizations for which the nature and significance of their relationship with the Commission are such that exclusion would cause the reporting entity's financial statements to be misleading or incomplete as set forth by GASB.

In evaluating how to define the Commission, for financial reporting purposes, management has considered all potential component units. The decision to include a potential component unit in the Commission's reporting entity was made by applying the criteria set forth by GASB, including legal standing, fiscal dependency and financial accountability. Based upon the application of these criteria, there are no other entities which would be included in the financial statements.

**B. Government-Wide Financial Statements**

The government-wide financial statements (i.e. the Statement of Net Position and the Statement of Activities) report information on all non-fiduciary activities of the primary government as a whole. For the most part, the effect of interfund activity has been removed from these statements, except for interfund services provided and used. Governmental activities are supported by taxes and intergovernmental revenues.

The Statement of Net Position presents the financial position of the Commission at the end of its fiscal year. The Statement of Activities demonstrates the degree to which direct expenses of a given function or segment are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include (1) charges to customers or applicants who purchase, use or directly benefit from goods or services, or privileges provided by a given function or segment, (2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment and (3) interest earned on grants that is required to be used to support a particular program. Other items not identified as program revenues are reported as general revenues. The Commission does not allocate indirect expenses to functions in the Statement of Activities.



**Note 1 - Summary of Significant Accounting Policies (Continued)**

Separate financial statements are provided for governmental funds. Major individual governmental funds are reported as separate columns in the fund financial statements.

**C. Fund Financial Statements**

The accounts of the Commission are organized and operated on the basis of funds. A fund is an independent fiscal and accounting entity with a self-balancing set of accounts which comprise its assets, deferred outflows of resources, liabilities, deferred inflows of resources, fund balances/net position, revenues and expenditures/expenses. Fund accounting segregates funds according to their intended purpose and is used to aid management in demonstrating compliance with finance related legal and contractual provisions. The Commission maintains the minimum number of funds consistent with legal and managerial requirements. The focus of governmental fund financial statements is on major funds as that term is defined in professional pronouncements. Each major fund is to be presented in a separate column, with non-major funds, if any, aggregated and presented in a single column. Fiduciary funds are reported by type. Since the governmental fund statements are presented on a different measurement focus and basis of accounting than the government-wide statements' governmental activities column, a reconciliation is presented on the pages following, which briefly explain the adjustments necessary to transform the fund based financial statements into the governmental activities column of the government-wide presentation. The Commission's resources are reflected in the fund financial statements in one broad fund category, in accordance with generally accepted accounting principles as follows:

**Fund Categories**

- a. Governmental Funds - Governmental Funds are those through which most general government functions are financed. The acquisition, use and balances of expendable financial resources and the related liabilities are accounted for through governmental funds. The following are the Commission's major governmental funds:

General Fund - The General Fund constitutes the primary operating fund of the Commission and is used to account for and report all financial resources not accounted for and reported in another fund.

Capital Projects Fund - The Capital Projects Fund is used to account for and report financial resources that are restricted, committed or assigned to expenditures for capital outlays, including the acquisition or construction of major capital facilities and other capital assets.

**D. Measurement Focus, Basis of Accounting and Financial Statement Presentation**

The accounting and financial reporting treatment is determined by the applicable measurement focus and basis of accounting. Measurement focus indicates the type of resources being measured such as current financial resources (current assets less current liabilities) or economic resources (all assets and liabilities). The basis of accounting indicates the timing of transactions or events for recognition in the financial statements.

**Note 1 - Summary of Significant Accounting Policies (Continued)**

The government-wide financial statements are reported using the *economic resources measurement focus* and the *accrual basis of accounting*. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

Governmental fund financial statements are reported using the *current financial resources measurement focus* and the *modified accrual basis of accounting*. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. A ninety day availability period is used for revenue recognition for all other governmental fund revenues. Charges for services and intergovernmental revenues are considered to be susceptible to accrual and have been recognized as revenues of the current fiscal period. Fees and other similar revenues are not susceptible to accrual because generally they are not measurable until received in cash. If expenditures are the prime factor for determining eligibility, revenues from Federal and State grants are accrued when the expenditure is made. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. General capital asset acquisitions are reported as expenditures in governmental funds. Issuance of long-term debt and acquisitions under capital leases are reported as other financing sources.

**E. Assets, Liabilities, Deferred Outflows/Inflows of Resources and Net Position or Fund Balances**

**Deposits, Investments and Risk Disclosure**

**Cash and Equivalents** - Cash and equivalents consist of funds deposited in demand deposit accounts, time deposit accounts and certificates of deposit with original maturities of less than three months.

The Commission's deposits and investment policies are governed by State statutes. The Commission has adopted its own written investment policy which provides for the deposit of funds in FDIC insured commercial banks or trust companies located within the State. The Commission is authorized to use demand deposit accounts, time deposit accounts and certificates of deposit. Permissible investments include obligations of the U.S. Treasury, U.S. Agencies, repurchase agreements and obligations of New York State or its political subdivisions, and accordingly, the Commission's policy provides for no credit risk on investments.

Collateral is required for demand deposit accounts, time deposit accounts and certificates of deposit at 100% of all deposits not covered by Federal deposit insurance. The Commission has entered into custodial agreements with the various banks which hold their deposits. These agreements authorize the obligations that may be pledged as collateral. Such obligations include, among other instruments, obligations of the United States and its agencies and obligations of the State and its municipal and school district subdivisions.

**Note 1 - Summary of Significant Accounting Policies (Continued)**

Custodial credit risk is the risk that in the event of a bank failure, the Commission's deposits may not be returned to it. GASB Statement No. 40 directs that deposits be disclosed as exposed to custodial credit risk if they are not covered by depository insurance and the deposits are either uncollateralized, collateralized by securities held by the pledging financial institution or collateralized by securities held by the pledging financial institution's trust department but not in the Commission's name. The Commission's aggregate bank balances that were not covered by depository insurance were not exposed to custodial credit risk at December 31, 2012.

**Investments** - The Commission participates in the Cooperative Liquid Assets Securities System ("CLASS"), a cooperative investment pool, established pursuant to General Municipal Law that meets the definition of a 2a7-like pool. In accordance with the provisions of General Municipal Law, Article 3A, CLASS has designated Cutwater Asset Management, a wholly owned subsidiary of MBIA, Inc. as its registered investment advisor. MBIA, Inc. is registered with the Securities and Exchange Commission ("SEC"), and is subject to all of the rules and regulations of an investment advisor handling public funds. As such, the SEC provides regulatory oversight of CLASS.

The pool is authorized to invest in various securities issued by the United States and its agencies. The amount represents the amortized cost of the cooperative shares and is considered to approximate fair value. The Commission's position in the pool is equal to the value of the pool shares. Additional information concerning the cooperative is presented in the annual report of CLASS, which may be obtained from MBIA Municipal Investors Service Corporation, 113 King Street, Armonk, NY 10504.

CLASS is rated AAAM by Standard & Poor's. Local government investment cooperatives in this rating category meet the highest standards for credit quality, conservative investment policies and safety of principal. The cooperative invests in a high quality portfolio of investments legally permissible for municipalities and school districts in the State.

The Commission was invested only in the above mentioned obligations and, accordingly, was not exposed to any interest rate or credit risk.

**Other Receivables** - Other receivables include amounts due from other governments and individuals for services provided by the Commission. Receivables are recorded and revenues recognized as earned or as specific program expenditures/expenses are incurred. Allowances are recorded when appropriate.

**Due From/To Other Funds** - During the course of its operations, the Commission has numerous transactions between funds to finance operations, provide services and construct assets. To the extent that certain transactions between funds had not been paid or received as of December 31, 2012, balances of interfund amounts receivable or payable have been recorded in the fund financial statements.

**Note 1 - Summary of Significant Accounting Policies (Continued)**

**Inventory** - There are no inventory values presented in the balance sheets of the respective funds of the Commission. Purchases of inventoriable items at various locations are recorded as expenditures at the time of purchase and year-end balances at these locations are not material.

**Capital Assets** - Capital assets, which include property, plant, equipment and infrastructure assets (e.g., roads, bridges, sidewalks and similar items) are reported in the applicable governmental or business-type activities column in the government-wide financial statements. Capital assets are defined by the Commission as assets with an initial, individual cost of more than \$5,000 and an estimated useful life in excess of one year. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed. Donated capital assets are recorded at estimated fair market value at the date of donation.

In the case of the initial capitalization of general infrastructure assets (i.e., those reported by governmental activities), the Commission chose to include all such items regardless of their acquisition date or amount. The Commission was able to estimate the historical cost for the initial reporting of these assets through backtrending (i.e., estimating the current replacement cost of the infrastructure to be capitalized and using an appropriate price-level index to deflate the cost to the acquisition year or estimated acquisition year).

Major outlays for capital assets and improvements are capitalized as projects are constructed. The cost of normal maintenance and repairs that do not add to the value of the asset or materially extend assets lives is not capitalized.

Land is not depreciated. Property, plant, equipment and infrastructure of the Commission are depreciated using the straight line method over the following estimated useful lives.

<u>Class</u>	<u>Life in Years</u>
Buildings and Improvements	20-40
Infrastructure	10-50
Machinery and Equipment	5-20

The costs associated with the acquisition or construction of capital assets are shown as capital outlay expenditures on the governmental fund financial statements. Capital assets are not shown on the governmental fund balance sheet.

**Deferred Outflows/Inflows of Resources** - In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element represents a consumption of net position that applies to a future period and so will not be recognized as an outflow of resources (expense/expenditure) until then.

In addition to liabilities, the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element represents an acquisition of net position that applies to a future period and so will not be recognized as an inflow of resources (revenue) until that time.

**Note 1 - Summary of Significant Accounting Policies (Continued)**

As of December 31, 2012, no amounts were required to be reported as deferred outflows/inflows of resources.

**Net Position** - Net position represents the difference between assets, deferred outflows of resources, liabilities and deferred inflows of resources. Net position is reported as restricted when there are limitations imposed on its use either through the enabling legislation adopted by the Commission or through external restrictions imposed by creditors, grantors, or laws or regulations of other governments. Net position on the Statement of Net Position includes, net investment in capital assets. The balance is classified as unrestricted.

**Fund Balance** - Generally, fund balance represents the difference between current assets and current liabilities. In the fund financial statements, governmental funds report fund classifications that comprise a hierarchy based primarily on the extent to which the Commission is bound to honor constraints on the specific purposes for which amounts in those funds can be spent. Under this standard the fund balance classifications are as follows:

Nonspendable fund balance includes amounts that cannot be spent because they are either not in spendable form (inventories, prepaid amounts, long-term receivables, advances) or they are legally or contractually required to be maintained intact (the corpus of a permanent fund).

Restricted fund balance is to be reported when constraints placed on the use of the resources are imposed by grantors, contributors, laws or regulations of other governments or imposed by law through enabling legislation. Enabling legislation includes a legally enforceable requirement that these resources be used only for the specific purposes as provided in the legislation. This fund balance classification will be used to report funds that are restricted for debt service obligations and for other items contained in the General Municipal Law of the State of New York.

Committed fund balance will be reported for amounts that can only be used for specific purposes pursuant to formal action of the entity's highest level of decision making authority. The Board of Commissioners is the highest level of decision making authority for the Commission that can, by the adoption of a resolution prior to the end of the fiscal year, commit fund balance. Once adopted, these funds may only be used for the purpose specified unless the Commission removes or changes the purpose by taking the same action that was used to establish the commitment. This classification includes certain amounts established and approved by the Board of Commission.

Assigned fund balance, in the General Fund, will represent amounts constrained either by the Commission Board for amounts assigned for balancing the subsequent year's budget or the Commission Treasurer for amounts assigned for encumbrances. An assignment cannot result in a deficit in the unassigned fund balance in the General Fund. Assigned fund balance in all other governmental funds represents any positive remaining amount after classifying nonspendable, restricted or committed fund balance amounts.

Unassigned fund balance, in the General Fund, represents amounts not classified as nonspendable, restricted, committed or assigned. The General Fund is the only fund that would report a positive amount in unassigned fund balance. For all governmental funds

**Note 1 - Summary of Significant Accounting Policies (Continued)**

other than the General Fund, unassigned fund balance would necessarily be negative, since the fund's liabilities and deferred inflows of resources, together with amounts already classified as nonspendable, restricted and committed would exceed the fund's assets and deferred outflows of resources.

When both restricted and unrestricted amounts of fund balance are available for use for expenditures incurred, it is the Commission's policy to use restricted amounts first and then unrestricted amounts as they are needed. For unrestricted amounts of fund balance, it is the Commission's policy to use fund balance in the following order: committed, assigned, and unassigned.

**F. Use of Estimates**

The preparation of the financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets, deferred outflows of resources, liabilities and deferred inflows of resources and disclosures of contingent assets and liabilities at the date of the financial statements. Estimates also affect the reported amounts of revenues and expenditures/expenses during the reporting period. Actual results could differ from those estimates.

**G. Subsequent Events Evaluation by Management**

Management has evaluated subsequent events for disclosure and/or recognition in the financial statements through the date that the financial statements were available to be issued, which date is October 9, 2013.

**Note 2 - Stewardship, Compliance and Accountability**

**A. Budgetary Data**

The Commission does not follow specific guidelines nor are there any legal requirements in establishing the budgetary data reflected in the financial statements. Each year, the Board of Commissioners adopts an annual budget. This budget is adopted on a basis consistent with generally accepted accounting principles. The Commissioners have established legal control of the budget at the object level of expenditures. Transfers between appropriation accounts, at the object level, require approval by the Board. Any modification to appropriations resulting from increases in revenue estimates or supplemental reserve appropriations also require a majority vote by the Board.

Budgeted amounts are as originally adopted or as amended by the Board of Commissioners.

**B. Compliance with Statute**

The Commission has not adopted an investment policy as required by New York State Law.

**Rye Town Park Commission, New York**

Notes to Financial Statements (Continued)  
December 31, 2012

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**Note 2 - Stewardship, Compliance and Accountability (Continued)**

**C. Sponsoring Agencies**

The Rye Town Park Commission was created pursuant to an act of the New York State Legislature in March 1907. The act specified that the governing body of the Commission would consist of the Supervisor of the Town of Rye; the Mayor of the Village of Port Chester; the Mayor of the City of Rye (formally the Village of Rye); together with two commissioners, one appointed from the Town of Rye and one appointed from the City of Rye (effective May 15, 1987, the Mayor of the Village of Rye Brook was also appointed to the Rye Town Park Commission). The Commissioners of the Rye Town Park shall have exclusive charge of the acquisition of lands, and shall have full supervision of the construction, improvement and management of the park.

The agreement also provided that any and all outstanding debts or other obligations or interest thereon of the Rye Town Park, shall be born and paid in the proportions of 49.835% by the City and 50.165% by the Town. In the event that any debts, obligations or interest thereon of the Rye Town Park are hereafter incurred or if any profits from the operation of the Rye Town Park are distributed by its Park Commission, the respective total assessed valuations of the property within the City and the remaining property within the Town shall be equalized in each year and such amounts shall be apportioned and charged or paid to the Town and the City, in the above ratios. For capital projects related expenditures, the sponsoring agencies share the expense in the proportions of 39.278% by the City and 60.722% by the Town.

**D. Application of Accounting Standards**

For the year ended December 31, 2012, the Commission implemented GASB Statement No. 63, "Financial Reporting of Deferred Outflows of Resources, Deferred Inflows of Resources, and Net Position" ("GASB Statement No. 63"). This statement provides financial reporting guidance for these elements first introduced in GASB Concept Statement No. 4, "Elements of Financial Statements". Previous financial reporting standards did not include guidance for reporting these financial statement elements, which are distinct from assets and liabilities.

**E. Excess of Actual Expenditures Over Budget**

The following expenditure categories of the General Fund exceeded their budgetary authorization by the amounts indicated:

Culture and Recreation		
Utilities, telephone and refuse	\$	1,332
Blind Brook sewer tax		4,333
Audit fees		9,885
Concerts		600
Interest		2,901
Miscellaneous		6,637

Rye Town Park Commission, New York

Notes to Financial Statements (Continued)  
December 31, 2012

**Note 3 - Detailed Notes on All Funds**

**A. Due From/To Other Funds**

The balances reflected as due from/to other funds at December 31, 2012 were as follows:

Fund	Due From	Due To
General	\$ -	\$ 66,430
Capital Projects	66,430	-
	<u>\$ 66,430</u>	<u>\$ 66,430</u>

The outstanding balances between funds results mainly from the time lag between the dates that 1) interfund goods and services are provided or reimbursable expenditures occur, 2) transactions are recorded in the accounting system and 3) payments between funds are made.

**B. Capital Assets**

Changes in the Commission's capital assets are as follows:

Class	Balance January 1, 2012	Additions	Balance December 31, 2012
<b>Governmental Activities</b>			
Capital Assets, not being depreciated			
Land	\$ 50,000	\$ -	\$ 50,000
Capital Assets, being depreciated			
Buildings and improvements	\$ 3,676,931	\$ -	\$ 3,676,931
Infrastructure	1,267,580	-	1,267,580
Machinery and equipment	691,520	-	691,520
Total Capital Assets, being Depreciated	<u>5,636,031</u>	<u>-</u>	<u>5,636,031</u>
Less Accumulated Depreciation for			
Buildings and improvements	798,211	123,022	921,233
Infrastructure	347,128	27,007	374,135
Machinery and equipment	580,682	44,661	625,343
Total Accumulated Depreciation	<u>1,726,021</u>	<u>194,690</u>	<u>1,920,711</u>
Total Capital Assets, being Depreciated, net	<u>\$ 3,910,010</u>	<u>\$ (194,690)</u>	<u>\$ 3,715,320</u>
Governmental Activities Capital Assets, net	<u>\$ 3,960,010</u>	<u>\$ (194,690)</u>	<u>\$ 3,765,320</u>



**Note 3 - Detailed Notes on All Funds (Continued)**

Depreciation expense was charged to the Commission's functions and programs as follows:

Governmental Activities	
Culture and Recreation	\$194,690

**C. Pension Plans**

The Commission participates in the New York State and Local Employees' Retirement System ("ERS") ("System"). The System is cost-sharing, multiple-employer defined benefit pension plans. The System provides retirement, disability and death benefits to plan members. Obligations of employers and employees to contribute and benefits to employees are governed by the New York State Retirement and Social Security Law. The System issues a publicly available financial report that includes financial statements and required supplementary information for the System. That report may be obtained by writing to the New York State and Local Employees' Retirement System, 110 State Street, Albany, New York 12224.

Funding Policy - The System is non-contributory except for employees in tiers 3 and 4 that have less than ten years of service, who contribute 3% of their salary, employees in tier 5 who also contribute 3% of their salary without regard to their years of service and employees in tier 6 who contribute between 3% and 6% depending on salary levels and also without regard to years of service. Contributions are certified by the State Comptroller and expressed as a percentage of members' salary. Contribution rates are actuarially determined and based upon membership tier and plan. Contributions consist of a life insurance portion and a regular pension contribution. Contribution rates for the plans' year's ended March 31, 2013 are as follows:

<u>Tier/Plan/Option</u>	<u>Rate</u>
4 A15	18.4 %

Contributions made or accrued to the Systems for the current and two preceding years were as follows:

	<u>ERS</u>
2012	\$ 5,500
2011	4,950
2010	6,600

These contributions were equal to 100% of the actuarially required contributions for each respective fiscal year.

The current ERS contribution was charged to the General Fund.

**Note 3 - Detailed Notes on All Funds (Continued)**

**D. Long-Term Liabilities**

**Compensated Absences**

The Rye Town Park Commission employees are compensated pursuant to the same collective bargaining agreement as employees of the Town of Rye, New York. Sick leave is not paid upon separation of service and vacation time is generally taken in the year earned. The Commission, therefore, has no liability at December 31, 2012 for unused sick and vacation leave.

**E. Net Position**

The components of net position are detailed below:

*Net investment in capital assets* - the component of net position that reports the difference between capital assets less both the accumulated depreciation and the outstanding balance of debt, excluding unexpended proceeds, that is directly attributable to the acquisition, construction or improvement of those assets.

*Unrestricted* - all other amounts that do not meet the definition of "restricted" or "net investment in capital assets".

**F. Fund Balance**

Certain elements of fund balance are described above. Those additional elements, which are not reflected in the Statement of Net Position but are reported in the governmental funds balance sheet are described below.

Unassigned fund balance of \$1,346 in the General Fund represents amounts not classified as nonspendable, restricted or assigned.

**Note 4 - Summary Disclosure of Significant Contingencies**

**A. Litigation**

The Commission, in common with other municipalities, receives numerous notices of claims for money damages arising from false arrest, property damage or personal injury. There are numerous tort claims pending against the Commission. Commission management has indicated there are individual tort claims for amounts in excess of insurance coverage. However, it is anticipated that insurance coverage will be sufficient to satisfy any resolution of the tort claims pending against the Commission.

**B. Risk Management**

The Commission purchases various conventional insurance coverages to reduce its exposure to loss. The Commission maintains a commercial package policy with general liability insurance coverage up to \$2 million, boiler and machinery insurance coverage up to \$1 million, umbrella liability insurance coverage with policy limits of \$3 million and commercial auto insurance coverage

**Note 4 - Summary Disclosure of Significant Contingencies (Continued)**

with a limit of \$1 million is also purchased. Workers' compensation insurance is secured with statutory coverages. The Commission does not provide health insurance for its employees. Settled claims resulting from these risks have not exceeded commercial coverage in any of the past three fiscal years.

**C. Contingencies**

The Commission participates in various Federal grant programs. These programs are subject to program compliance audits pursuant to the Single Audit Act. The amount of expenditures which may be disallowed by the granting agencies cannot be determined at this time, although the Commission anticipates such amounts, if any, to be immaterial.

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Rye Town Park Commission, New York

General Fund  
Balance Sheet  
December 31, 2012

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**ASSETS**

Cash and equivalents	\$	148,703
Investments		14,766
Due from other governments		<u>90,418</u>
Total Assets	\$	<u><u>253,887</u></u>

**LIABILITIES AND FUND BALANCE**

Accounts payable	\$	52,428
Due to other funds		66,430
Due to other governments		129,448
Security deposit		<u>4,235</u>
Total Liabilities		252,541

**FUND BALANCE**

Unassigned		<u>1,346</u>
Total Liabilities and Fund Balance	\$	<u><u>253,887</u></u>

Rye Town Park Commission, New York

Statement of Revenues, Expenditures and Changes  
in Fund Balance - Budget and Actual  
General Fund  
Year Ended December 31, 2012

	Original Budget	Final Budget	Actual	Variance with Final Budget Positive (Negative)
<b>REVENUES</b>				
Sales of permits	\$ 94,000	\$ 94,000	\$ 105,505	\$ 11,505
Parking	282,950	282,950	283,649	699
North gate guests	43,727	43,727	41,204	(2,523)
Mid gate guests	257,062	257,062	231,743	(25,319)
South gate guests	93,753	93,753	84,044	(9,709)
Rent - Concessions	89,554	89,554	89,014	(540)
Investment income	200	200	67	(133)
Federal aid	-	-	1,141	1,141
Other	56,650	56,650	57,512	862
<b>Total Revenues</b>	<b>917,896</b>	<b>917,896</b>	<b>893,879</b>	<b>(24,017)</b>
<b>EXPENDITURES</b>				
Current				
Culture and recreation				
Personal services	462,467	462,467	440,074	22,393
Employee benefits	89,345	89,345	87,439	1,906
Equipment	10,000	10,000	4,850	5,150
Supplies and printing	26,000	26,000	20,205	5,795
Utilities, telephone and refuse	50,300	50,300	51,632	(1,332)
Building and grounds repairs	108,072	108,072	98,036	10,036
Insurance	41,612	41,612	41,462	150
Office	6,600	6,600	5,014	1,586
Blind Brook sewer tax	30,000	30,000	34,333	(4,333)
Uniforms	7,500	7,500	6,321	1,179
Accounting fees	14,400	14,400	14,400	-
Audit fees	10,000	10,000	19,885	(9,885)
Attorney fees	6,000	6,000	5,004	996
Equipment repairs and maintenance	11,000	11,000	10,640	360
Secretary fees	20,000	20,000	18,500	1,500
Concerts	5,600	5,600	6,200	(600)
Interest	15,000	15,000	17,901	(2,901)
Miscellaneous	4,000	4,000	10,637	(6,637)
<b>Total Expenditures</b>	<b>917,896</b>	<b>917,896</b>	<b>892,533</b>	<b>25,363</b>
Excess of Revenues Over Expenditures	-	-	1,346	1,346
Fund Balance - Beginning of Year	-	-	-	-
Fund Balance -End of Year	\$ -	\$ -	\$ 1,346	\$ 1,346

Rye Town Park Commission, New York

Capital Projects Fund

Balance Sheet

December 31, 2012

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**ASSETS**

Due from other governments	\$	11,000
State and Federal aid receivable		15,831
Due from other funds		<u>66,430</u>

Total Assets

\$ 93,261

**LIABILITIES**

Due to other governments	\$	<u>93,261</u>
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**Rye Town Park Commission, New York**

**Capital Projects Fund  
Statement of Revenues, Expenditures and Changes  
in Fund Balance  
Year Ended December 31, 2012**

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**REVENUES**

Federal aid \$ 37,120

**EXPENDITURES**

Capital outlay 65,126

Deficiency of Revenues Over Expenditures (28,006)

**OTHER FINANCING SOURCES**

Sponsor funding capital - Town (60.722%) 17,006

Sponsor funding capital - City (39.278%) 11,000

Total Other Financing Sources 28,006

Net Change in Fund Balance -

Fund Balance - Beginning of Year -

Fund Balance - End of Year \$ -



# CITY COUNCIL AGENDA

NO. 9

DEPT.: Finance

DATE: January 29, 2014

CONTACT: Joseph S. Fazzino, Deputy City Comptroller

**AGENDA ITEM:** Resolution to transfer funds from contingent account to the Public Works Department to purchase salt for storm coverage for the remainder of the winter season.

**FOR THE MEETING OF:**  
January 29, 2014

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

WHEREAS, City staff has determined that the amounts required for salt for storm coverage in fiscal 2014 will exceed the amounts provided for in the adopted 2014 budget by \$50,000, and,

WHEREAS, the General Fund Contingent Account has a balance of \$300,000, now therefore be it

RESOLVED, that the City Comptroller is authorized to transfer \$50,000 from the General Fund Contingent Account to the Public Works Department.

**IMPACT:**    Environmental    Fiscal    Neighborhood    Other:

**BACKGROUND:** Use and status of the Contingent Account:

01/01/2014 Beginning balance	\$300,000
01/29/2014 Transfer to Public Works for Salt	<u>(50,000)</u>
01/29/2014 Balance	<u>\$250,000</u>





# CITY COUNCIL AGENDA

NO. 11

DEPT.: City Council

DATE: January 29, 2014

CONTACT: Mayor Douglas French

**AGENDA ITEM:** Council designation to the Litigation and Case Management Committee.

**FOR THE MEETING OF:**

January 29, 2014

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** That the Council approve the appointment(s) to the Litigation and Case Management Committee.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**



# CITY COUNCIL AGENDA

NO. 12

DEPT.: City Council

DATE: January 29, 2014

CONTACT: Mayor Joseph Sack

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

**FOR THE MEETING OF:**

January 29, 2014

**RYE CITY CODE,**

CHAPTER

SECTION

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

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

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

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

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



# CITY COUNCIL AGENDA

NO. 13

DEPT.: City Council

DATE: January 29, 2014

CONTACT: Mayor Joseph Sack

**ACTION:** Appointments to Boards and Commissions, by the Mayor with Council approval.

**FOR THE MEETING OF:**

January 29, 2014

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** that the City Council approve the appointments.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

**BACKGROUND:**

- A) One appointment to the Board of Architectural Review for a three-year term.
- B) One appointment to the Conservation Commission/Advisory Council for a three-year term.
- C) Two appointments to the Finance Committee for a three-year term.
- D) Four appointments to the Flood Advisory Committee for a three-year term.
- E) Three appointments to the Landmarks Advisory Committee for a three-year term.
- F) Four appointments to the Rye Cable and Communications Committee for a three-year term.
- G) Two appointments to the Rye Town Park Advisory Committee for a three-year term.



# CITY COUNCIL AGENDA

NO. 14 DEPT.: Police DATE: January 29, 2014  
CONTACT: Robert J. Falk, Interim Police Commissioner

**AGENDA ITEM:** Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: General Order #113.7 “Domestic Violence”.

**FOR THE MEETING OF:**

January 29, 2014

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** Amendment of General Order #113.7, “Domestic Violence.”

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:  
Enhancement of the operational effectiveness of the Department.

**BACKGROUND:** The proposed revision of General Order #113.7 updates the Department’s procedures regarding domestic violence to reflect the current state of the law and procedure. It also revises the title of the procedure from “Domestic Violence” to the more comprehensive and descriptive “Domestic Incidents.”

The revised directive establishes procedures for the handling of domestic incidents involving police officers from this Department as well as from other agencies.

A copy of the proposed revision noting the changes in “strike and replace” format is attached. The proposed revision was provided to the Rye Police Association on December 9, 2013 for review pursuant to the provisions of the collective bargaining agreement.

**CITY OF RYE POLICE DEPARTMENT**

General Order #113.7

New [ ]      Revised [ x ]  
Supersedes: G.O 113.7 11/01/96

Subject:  
Domestic ~~Violence~~Incidents

Date Issued                      Date Effective  
~~11/01/96~~                      11/01/96

Page 1 of 13

Issuing Authority:  
William ~~A. Pease~~R. Connors, Police Commissioner

PURPOSE:

Crimes committed between family or household members are serious events. ~~This is true~~ regardless of the relationships or living arrangements of those involved. The purpose of this policy is to prescribe a course of action which members of this Department shall follow in response to domestic incidents that will enforce the law while also serving to intervene and prevent future incidents of violence.

POLICY:

It shall be the policy of this Department to respond to every report of a domestic ~~incident~~violence and to consider domestic violence as conduct that shall be investigated as would any other offense. Dispute mediation will not be used as a substitute for appropriate criminal proceedings in domestic ~~violence incident~~ cases. Department members shall protect victims of domestic violence and provide them with support through a combination of law enforcement and community services. The Department will further promote officer safety by ensuring that officers are fully prepared to respond to and effectively deal with domestic violence calls for service.

DEFINITIONS:

1. Domestic Incident means any dispute, or report of an offense between individuals within a family or household where police intervention is requested. A domestic incident is not necessarily a violation of law.
2. Members of the same family or household are defined as such by the Family Court Act and the Criminal Procedure law in that they:
  - a. Are legally married to one another.
  - b. Were formerly married to one another.
  - c. Are related by blood.
  - d. Are related by marriage.
  - e. have a child in common regardless of whether they were ever married or lived together at any time.



may in some circumstances form the basis of the offenses of tampering with a witness or intimidating a victim or witness. The criminal courts have exclusive jurisdiction over these types of offenses.

- c. Coercive acts or conduct which, though non-criminal in nature, serve to instill fear of physical harm or property damage. Such a pattern may involve abuse language, physical or verbal threats of damage to jointly held marital property, or acts which violate the terms of an order of protection issued by the Family, Criminal or Supreme Courts.

General Order #113.7 Page 3 of 13

This section enumerates the range of offensive acts employed by many perpetrators in domestic incidents, underscoring the range of violent acts and fear inducing or harmful conduct officers may identify in investigating these incidents, including but not limited to designated family offenses.

4. Concurrent Jurisdiction exists when different courts have jurisdiction over the same matter. A victim of a Family Offense may elect to proceed in either a civil or criminal court or in both. Criminal courts and the Family Court have concurrent jurisdiction when:
  - a. A designated family offense (see 3.A.1-~~6-15~~ above) is alleged to have been committed, and
  - b. A family/household relationship (see 2. above) exists, and
  - c. The alleged offender is 16 years of age or older.(if either of the first two conditions is not met, a victim may only proceed in a criminal court for legal relief).

#### DISPATCH PROCEDURES

1. A domestic incident call will be given the same priority and prompt response as any other call for service. ~~Staff assigned to communication functions~~ The Desk Officer will, whenever practicable, dispatch at least two officers.
2. Upon ~~receipt notification~~ of a domestic incident ~~call staff officers assigned to communication~~ Function the Desk officer will, along with information normally gathered, make every effort to determine and relay the following information to the responding officers:
  - a. Whether the suspect is present and, if not, the suspect's description and possible whereabouts.
  - b. Whether weapons or dangerous instruments are involved or known to be at the location or if any other threats exist (e.g., dogs).
  - c. Whether medical assistance is needed at the scene.
  - d. Whether the suspect or victim is under the influence of drugs or alcohol.

- e. Whether there are children present.
- f. Whether the victim has a current protective or restraining order.
- g. Complaint history at that location.
- h. Identity of caller (i.e., victim, neighbor, child).

The computerized registry for orders of protection should be checked prior to the arrival of officers to inform them of any current order of protection and its terms and conditions.

General Order #113.7 Page 4 of 13

The computerized registry ~~for of~~ orders of protection can be checked for the presence of a current family offense order and its terms and conditions. It is not necessary to check the registry to confirm a victim's physical copy of the order, unless the order is missing or appears altered. The Statewide Registry only carries information on Orders of Protection issued in family offense proceedings and warrants issued for violations of such orders. Departmental records should be checked in non-family offense cases and ~~NYSPIN-Be~~JUSTICE should be checked in all cases for warrant information.

5. Responding Officer Procedures

- a. A domestic incident call signifies people are in need of help, and shall be responded to as quickly and safely as circumstances permit. Domestic incidents calls are one of the most dangerous calls to which officers are dispatched to.
- b. Upon arrival at the scene, officers should be alert to sounds coming from the location to identify what is transpiring, and wait for backup officers when appropriate.
- c. The responding on-scene officer shall:
  - 1. Restore order by gaining control of the situation and separating the involved parties.
  - 2. Take control of all weapons used or threatened to be used in the incident.
  - 3. Locate and visually check all occupants of the location to verify their safety and well being.
  - 4. Assess the need for medical attention and request that any required assistance be dispatched.
  - 5. Interview all available parties and witnesses, separately if practicable.
  - 6. After all interviews have been conducted, determine whether



an offense has been committed; whether an arrest should be made, and whether other action should be taken. If an arrest is made, advise the victim that release of the suspect can occur at any time so that the victim can take desired safety precautions.

7. Advise the victim of the availability of shelter and other victim services in the community, and provide the victim with a copy of the Victim Rights Notice. If necessary, read the Victim Rights Notice to the victim.
8. Collect and record potential evidence, including spontaneous utterances by parties or witnesses. Where appropriate, canvass the area for witnesses, take photographs of injuries and/or property damage or, in accordance with Department policies, request the dispatch of appropriate crime scene investigators if needed.

General Order #113.7 Page 5 of 13

9. Complete the Standard Domestic Incident Report Form and any other reports necessary to fully document the officer's response, whether or not an offense was committed or an arrest is made. Provide the victim with the victim's copy of the Standard Domestic Incident Report/Victim Rights Notice Form immediately upon its completion at the scene.
10. If the officer has probable cause to believe a crime has been committed, the officer will attempt to locate and arrest a suspect who has left the scene without unnecessary delay by:
  - a. Conducting a search of the immediate area.
  - b. Obtaining information from the victim and witnesses that will aid in apprehending the suspect.
  - c. Continuing the investigation as necessary or referring the matter to the proper unit for follow up investigation and arrest or warrant application.
  - d. If the search for the offender is unsuccessful and the victim has elected to remain at the scene, advise the victim to call the department if the offender returns.
  - e. Prior to leaving the scene, officers should attempt to obtain a signed information, complaint or signed statement from the victim.
- d. Responding officers at the scene of a domestic incident shall provide the following assistance to victims and, where appropriate, the children or other family or household members:
  1. Advise all involved parties about the serious nature of domestic violence, its potential for escalation, and of legal and social assistance available.

2. Assess the immediate safety and welfare of the children.
3. Remain at the scene until satisfied that the immediate threat of violence has passed or all appropriate options to protect and assist the victim have been exhausted.
4. Provide the victim with referral information regarding domestic violence shelters and services.
5. Assist in arranging for transportation or take the victim and family or household members to a place of safety.

6. Officer Arrest Procedures

- A. All warrantless arrests shall be made in conformance with section 140.10 of the Criminal Procedure Law and applicable Department policy and procedure. It is the responsibility of all officers to be thoroughly familiar with and guide their actions in accordance with CPL 140.10 and Department Policy and Procedure.

General Order #113.7 Page 6 of 13

- B. In all domestic incidents where-in which a law has been violated,

in

addition to enforcing the law, the objective is to protect the victim. The victim should not be informed about or requested to make a civilian arrest when the officer may make a lawful warrantless arrest. The purpose of this policy is to take the burden of an arrest decision away from the victim, who may be ill-prepared to undertake it due to social, economic, psychological, or other pressures and constraints. Even if the victim actively intercedes and requests that no arrest be made, a lawful warrantless arrest based on probable cause shall be made in accordance with CPL 140.10.

- C. In the following specific circumstances, without attempting to reconcile the parties or mediate, an arrest shall be made when the officer has probable cause to believe that the following violations have occurred:

1. Any felony against a member of the same family or household (except certain forms of grand larceny 4 - Penal Law §155.30 [3], [4], [9] or [10]).
2. Any misdemeanor constituting a Family Offense unless, without inquiry by officer, the victim requests otherwise. When such a request is spontaneously made, the officer may, nevertheless, make an arrest.
3. A violation of an order of protection committed through the failure of the person to whom it was directed to comply with a "stay away" provision of such order, or through the commission of a Family Offense. The order must be one issued pursuant to sections 240 or 252 of the Domestic Relations Law; Articles 4, 5, 6 or 8 of the Family Court Act; or section 530.12 of the Criminal Procedure Law, and it must

have been duly served, or the person to whom it was directed has actual knowledge of it because he or she was present in court when the order was issued.

NOTE: The foregoing listing of specific circumstances in which an arrest shall be made shall not be deemed to restrict or impair the authority of any municipality or political subdivision from promulgating rules, regulations and policies requiring the arrest of persons in additional circumstances where domestic violence has allegedly occurred.

- D. Officers are reminded that there is no requirement that a crime (felony or misdemeanor) must occur in the officer's presence to authorize an arrest. A lawful warrantless arrest may be, and often is, ~~founded-based~~ upon factors other than the officer's direct observations. They include, but are not limited to, factors such as visible physical injury, property damage, signs of disruption at the scene, or statements made by the victim, children or other witnesses.
- E. When an officer has probable cause and is required to effect an arrest under this policy, the following examples are not valid reasons for failing to adhere to such policy:

General Order #113.7 Page 7 of 13

1. There may be financial consequences caused by an arrest.
2. The complainant has made prior frequent calls.
3. The involved parties appear to be impaired by alcohol or drugs.
4. The offender gives verbal assurance that he or she will not harm the victim.

F. Cross Complaints. Officers are not required to arrest both parties when physical force was used against each other, but shall attempt to learn ~~which whether a~~ party may have lawfully used physical force in accordance with Article 35 of the Penal Law, and to determine which party was the primary aggressor.

G. Civilian Arrests. When the officer lacks legal authority to make a warrantless arrest, the victim should be informed of the opportunity to make a civilian arrest. Such an arrest, however, shall not be used as a substitute for an authorized arrest by the officer as provided for in this policy.

H. In all arrests, other than civilian arrests, the officer shall emphasize to the victim and the alleged offender that the criminal action is being initiated by the State and not the victim.

Section 6 mandates the arrest of suspects in cases in which the officer determines that probable cause exists that an offense was committed in the context of a domestic relationship. Such a law enforcement response, encourage by Federal Law and currently in place in many departments across New York State, provides victims immediate protection and an opportunity to seek

safety and to consider legal options. Law enforcement executives across the country have embraced mandatory arrest policies in the hope of establishing consistent, effective practice which may protect departments from liability for inadequate response in these cases. The Family Protection and Domestic Violence Intervention Act amends C.P.L. §140.10 (4) (c) to read, "...no cause of action for damages shall arise in favor of any person by reason of any arrest made by a police officer pursuant to this subdivision." It should be noted that while the law provides immunity from liability in cases in which a good faith arrest is made, it does not protect officers who fail to make arrests when appropriate.

7. Family Offense Arrest Processing

~~Family Protection Registry Information Sheet and A New York State Standardized~~ DCJS 3221 Domestic

Incident Report will be completed at time of arrest and ~~put-filed~~ with arrest paper work.

A. Officers will provide victims of a Family Offense with the following information:

1. That there is concurrent jurisdiction with respect to family offenses in both Family Court and the Criminal Courts. Victims of family offenses may proceed in either or both the Family and Criminal Courts.
2. That a Family Court proceeding is a civil proceeding for purposes of attempting to stop the violence, end the family disruption, and obtain protection.

General Order #113.7 Page 8 of 13

3. That a proceeding in the criminal courts is for the purpose of prosecuting the alleged offender and can result in criminal conviction of the offender.
4. That a proceeding subject to the provisions of section 812 of the Family Court Act is initiated at the time of the filing of a petition, not at the time of arrest or request for arrest (when Family Court is not in session a criminal court may issue a Family Court order of protection).
5. That an arrest may precede the initiation of a Family Court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding. The arrest of an alleged offender shall be made under circumstances described in subdivision four of section 140.10 of the Criminal Procedure Law.

B. When a victim wishes to proceed in a criminal court, ~~provide~~ Advise ~~advise him or her~~ that the victim is not required to be present at arraignment. ~~If an order of protection is desired, the court should be advised of such request. All arrests for domestic incidents should be arraigned in front of a judge so that a temporary order of protection can be issued at the time of arraignment.~~

C. Booking procedures, fingerprinting and photographing shall conform to current department procedures and section 160.10 of the Criminal Procedure Law.

8. Non-Family Offenses Arrest Processing

A. Offenses that are not designated Family Offenses, but which occur in domestic incident situations cannot be handled in Family Court. Criminal Courts have exclusive jurisdiction over these acts (e.g., murder or attempted murder, criminal possession of a weapon, rape, unlawful imprisonment).

B. Booking procedures, fingerprinting and photographing shall conform to current Department procedures and section 160.10 of the Criminal Procedure law. In addition, ~~Family Protection Registry Information Sheet and a NYS~~ DCJS 3221 Standardized Domestic

Incident

Report will be ~~done-completed~~ in all Domestic Violence Arrest situations.

C. Although the violation of an order of protection is not a designated Family Offense, the Family Court has concurrent jurisdiction to enforce such an order when issued by it.

9. Orders of Protection

A. Temporary Orders of Protection

1. A Criminal Court Judge as well as a Family Court Judge can issue orders of protection and temporary orders for victims of any crime or violation as well as for members of the victim's family or any designated witnesses (CPL Sections 530.12(1); 530.13(1)).

2. Temporary orders can be issued as soon as the accusatory instrument or petition is filed. It is not necessary to wait until the defendant is arrested.

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3. A temporary order may be issued as a condition of bail, ROR, or with an adjournment in contemplation of dismissal (ACD).

4. Temporary orders of protection may be in effect while the prosecution is pending or ~~during~~ during the period of an ACD.

5. When Family Court is not in session, after 5 PM on weekdays and on weekends, City Court Judges must accept Family Court petitions and can issue Family Court Orders of (CPL Section 530.11; Family Court Act Sections If an adult is arrested for a "family offense" victim elects to have the case heard in the

Protection  
155 and 161).  
and the  
Family

Court when it is not in session, the offender shall be taken to the most accessible magistrate and arraigned before him

or her.

The magistrate may then issue a temporary order of protection, hold the abuser, fix bail or release him hearing before the Family Court. Again,

or her for a  
the victim

should be told to respond to Family Court the next court day or the case will not be heard.

6. It is not necessary that any previous proceedings have occurred i.e., criminal charge, Family Court petition, or temporary order of protection, before the police make an arrest.
7. An order of protection is similar to a warrant of arrest. The presentation of such an order to any peace officer shall constitute authority for him to take into custody a person charged with violating the terms of the order and bring such person before the Court (CPL Section 530.12(8); Family Court Act Section 168(1)). This is especially so where the order contains a "stay away" provision which is violated or where the violation consists of a family offense. ~~Effective July 1, 1995, police officers must~~ arrest in these latter situations regardless of the victim's desire.
8. Copies of all temporary orders of protection must be given to the victim or witnesses protected by the order, to the defendant (either in court or delivered with a summons or an arrest warrant) and to the defense attorney (CPL Section 530.12(8); 530.13(6)).
9. Copies of every order must be filed by the local court with the appropriate police agencies having jurisdiction of the home, work, or school of the persons protected. Additional copies may be filed with police or sheriff's office by the complainant. A statewide computerized registry of orders of protection has been established.

B. Orders of Protection

1. These are issued after a conviction and may be given in conjunction with a conditional discharge, a sentence of probation, or a sentence of imprisonment (CPL Section 530.12(5); 530.13(4); PL Section 65.10(2) (K)).

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2. Orders of Protection may be effective for the entire period of a sentence of probation, or the duration of the conditional discharge, i.e., for a felony 5 years, a misdemeanor 3 years, conditional discharge 1 year. Family Court orders of protection can be effective for one year or, if aggravating circumstances exist, up to 3 years.
3. These orders may contain the same prohibitions as temporary orders of protection.
4. Arrest mandates are equally applicable to these orders.

C. Service

The Rye Police Department will serve any order of protection presented to it as long as the person to be served can be located within the City of Rye. The original order and the affidavit of service will be stored in the ~~detective-Detective division-Division~~ under the care of the warrant officer. He/She will ~~be-ensure that~~ a copy of each is on file at the desk. Upon successful service of the Order of Protection, the serving officer will, without delay, enter the required information into ~~NYSPIN-EJUSTICE~~ using the on-line format "OSRV".

D. Enforcement

The following policy shall be followed in the enforcement of an order of protection:

1. The on scene officer shall make an evaluation of the facts and circumstances surrounding the incident.
2. A lawful warrantless arrest may be made based on probable cause even though the protected person may be unable to present a valid copy of the order, but the officer shall attempt to verify the existence and terms of the order through Department records or ~~NYSPINEJUSTICE~~. However, if the order is not produced or its existence cannot be verified, the officer should proceed as though an order of protection does not exist.
3. Where an officer receives a complaint from a protected person or has an independent basis to believe that an order of protection has been violated, and has probable cause to believe that the terms of such order have been violated, an arrest shall be made for the appropriate degree of criminal contempt regardless of whether the prohibited conduct occurred in the officer's presence. A copy of the order of protection shall be attached to the court accusatory instrument.
4. If an arrest is made for violating an order of protection and the protected person does not verify (sign) the accusatory instrument, the officer should attempt to obtain a deposition, or prepare his or her own accusatory instrument which shall include a statement that the terms of the order were violated and a description of the behavior constituting the alleged offense.

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5. In instances where the conduct prohibited by the order of protection is also conduct constituting another offense, the offender shall be charged with violation of the order of protection (e.g., criminal contempt) and the independent offense.
6. In any case where an arrest has been made for violation of a criminal court order of protection, it is advisable for the protected person to be present at arraignment.

E. Out-of-State Orders

Orders of protection issued in another State shall be given full faith and credit in New York. When an officer is presented with an order of protection issued in a state other than New York or by a tribal court, the officer shall attempt to determine its validity, similar to assessment of a New York order. Unless clearly invalid, an out-of-state order will be presumed to be valid, and shall be enforced in the criminal court with jurisdiction over the acts constituting the offense. If the validity of the out-of-state order is in question, the officer should arrest for a substantive charge if warranted, rather than for a violation of the order.

10. Firearms

Upon arresting an individual who is licensed to carry, possess, repair or dispose of firearms, the arresting officer should, whenever practicable, notify the arraignment court that the alleged offender is so licensed and also advise the court of the licensing authority and county of issuance.

11. Appearance Tickets and Bail

- A. Following an on scene arrest for a crime arising from a domestic incident, an appearance ticket shall not be issued. Instead, the officer shall remove the alleged offender from the scene and complete pre-arraignment booking procedures in accordance with department policy and section 160.10 of the Criminal Procedure Law.

C.P.L. 140.20.2 provides that, for certain offenses, pre-arraignment bail may be set or an appearance ticket issued to the arrested party. Given the extraordinarily high level of recidivism among domestic violence offenders, the high number of arrested persons under the influence of alcohol or other drugs and the propensity for reprisals in these cases, departments are advised to hold domestic offenders for arraignment. The exercise of departmental discretion in releasing these suspects prior to arraignment may create liability risks if any further harm is done to the victim by the suspect upon release. Such risk is best avoided by bringing all domestic offenders before the court of arraignment. The U.S. Supreme Court, in County of Riverside v. McLaughlin and the New York Court of Appeals in People ex. rel. Maxian v. Brown define constitutional time frames for processing arrests. Departments are advised to coordinate with the District Attorney and local judiciary to ensure that the period of pre-arraignment detention does not exceed 24 hours.

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- B. Any deviation from this procedure must be approved by the ~~officer in charge~~ Tour Supervisor, and the reasons for such deviation must be documented in the case file.

- C. Officers shall not assure victims that an arrested individual will remain in custody overnight because of the provisions of this



policy. Such assurances to the victim might influence decisions regarding safety precautions that the victim may take.

12. Additional Functions

- A. The Department will maintain a current listing of agencies that provide aid to victims of domestic violence. Officers will refer victims to these agencies when appropriate. (see attachment #1)
- B. Officers will arrange for the transport and accommodation of victims of domestic violence and their children at available shelters or other places of safety, or will assist in making such arrangements.
- C. Where victims of domestic violence are incapacitated by physical, mental or emotional impairments, officers will consult with Adult Protective Services and assist, where appropriate, in supportive interventions. (see G.O. 119.3)  
Child Protective Services should be contacted for children who may be present during domestic violence situations whether they were a-victims or a-witnesses to the event.
- D. Officers and communications personnel should be trained on an on-going basis in this policy, the problem of domestic violence, the applicable statutes concerning domestic violence, ~~and the criminalization trend to reduce domestic violence.~~
- E. The Department shall designate specific personnel to periodically review the adequacy of this policy, assess and enforce compliance with its provisions by department personnel, and make recommendations to the head of the Department of any indicated revisions deemed necessary to improve or enhance the implementation of this policy.

13. Responsibility

- A. All officers shall follow the procedures set forth in this directive, except under extraordinary circumstances where they can clearly demonstrate that their use was unsuitable for a particular situation. Any such circumstances must be fully documented by the reporting officer on the incident report, and a copy thereof shall be forwarded to the Patrol Lieutenant via the chain of command for review purposes.  
  
The ~~officer in charge~~ (tour supervisor) is ultimately responsible to see that officers under ~~their~~ his or her command comply with department policy and procedure when dealing with incidents of domestic violence.
- B. The Police Commissioner will designate a command level officer to coordinate department domestic violence programs. Responsibilities will include:

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- 1. Coordination of Department training in domestic violence.

2. Policy review, suggestions for revisions, and policy implementation.
3. Routine analysis of department data regarding reports of domestic violence, offense dispositions and arrest statistics as a measure for program success.
4. Department liaison with state and local domestic violence agencies, community service organizations and the public in matters relating to domestic violence.

5. The forwarding of all domestic incident reports to NYS Division of Criminal Justice Services.

#### DOMESTIC INCIDENTS - POLICE OFFICER INVOLVED

1. The Tour Supervisor shall respond to the scene of all domestic incidents involving police officers, regardless of the involved officer's jurisdiction or rank. If the officer involved in the domestic incident is a higher-ranking officer than the responding supervisor, an officer of equal or higher rank than the involved officer shall be notified and shall respond to the scene, when possible.
2. The supervisor shall assume command of the investigation and shall contact an on-duty supervisor of the department that employs the officer.
3. When probable cause exists for arrest, an arrest shall be made in accordance with Article 140 of the New York State Criminal Procedure Law and with Department procedures.
4. Whenever a police officer is arrested, the Tour Supervisor shall relieve the accused officer of his or her service weapon regardless of whether the officer is a member of this Department or another law enforcement agency. Where permissible under federal, state, or local statutes, all other firearms owned or possessed by the accused officer shall also be removed to ensure the victim's safety. If the victim is a police officer, the responding supervisor shall evaluate the situation to determine whether the victim's weapon should be removed from the premises to ensure victim safety.
5. When an arrest is not made, the responding supervisor will evaluate the circumstances to determine whether weapons should be removed from the premises.
6. Whenever a police officer-involved domestic incident does not result in an arrest, the responding supervisor shall prepare a New York State Domestic Incident Report, which should include details of why an arrest was not made or a warrant was not sought.
7. The responding supervisor shall note on the Domestic Incident Report the fact that an on-duty supervisor in the involved officer's department has been notified.
8. The responding supervisor shall ensure that the Patrol Commander is notified. If further investigation or the assistance of detectives is required, the Detective Division Commander will also be notified. The Patrol Commander will ensure that the Police Commissioner is notified. A Supplementary Report will be prepared containing the details of the incident as well as all notifications made.

Formatted: Bullets and Numbering

Attachment #1

REFERRALS

Telephone numbers that may be of assistance to victims of violence.

Abused Spouse Assistance Service - 24 hour 29 Sterling Avenue, White Plains, NY	<del>997-1010</del> <u>949-1212</u> <del>949-6741</del>
Alcoholics Anonymous <del>39 No. Broadway, White Plains, NY</del>	<del>949-1200</del> <u>212-647-1680</u>
Department of Social Services	<del>285-5459</del> <u>995-5000</u>
Domestic Violence Program (Night Emergency No)	592-3791
Domestic Violence Prosecution Unit	<del>285-3000</del>
District Attorney _____	<u>995-3000</u>

111 Grove Street, White Plains, NY

Legal Aid Society of Westchester 1 North Broadway, White <del>plains</del> Plains, NY	<del>682-3400</del> <u>286-3400</u>
National Organization of Women (N.O.W.)	<del>428-7744</del> <u>202-628-8669</u>
New Rochelle Guidance Center	636-4440
New York State Child Abuse and Maltreatment Register Albany, NY	1-800-342-3720
Northern Westchester Shelter - <del>24 hrs</del> <u>24 hrs.</u> Individual, Family and Group Therapy	<del>747-0707</del> <u>747-0828</u>
Putnam-Northern Westchester Women's Center	628-9284
Emergency 2 Mahopac Plaza, Mahopac, NY	628-2166
Rap Group for Battered Women 515 North Street, White Plains, NY	949- <del>6741</del> <u>6227</u>
Samaritan House - Grace Church Shelter (Women, Men, Children) 33 Church Street, White Plains, NY (Shelter/Meals)	948-3075
The Shelter (Women and Children) Yonkers, NY	Hotline <del>968-4345</del> Admin. <del>969-5800</del> <u>1-800-298-7233</u>
Westchester County <del>Information &amp; Referral</del> <u>Family Court</u> <u>5500</u>	<del>285-2170</del> <u>824-</u>
Westchester County Office for Women 112 East Post Road, White Plains, NY	285-5972
Westchester Legal Services <del>171 East Post Road</del> <u>90 Maple Ave</u> , White Plains, NY	<del>949-6161</del> <u>949-1305</u>
W.I.S.H. (Women in self help) ————— Hotline —————	<del>946-5757</del>
Attachment #1 continued	
<del>Women of Westchester (W.O.W.)</del> —————	<del>698-3112</del>
<del>Yonkers Women Task Force and My Sisters Place</del> —————	<del>969-5800</del>
<del>2 Manor House Square, Yonkers, NY 24 hours</del> —————	<del>968-4345</del>
<del>My Sisters Place</del> —————	<del>683-1333</del>

Enter "UNK" in all Fields      Family Protection Registry  
where data is not obtainable      Information Sheet

\*\*\*\*\*Asterisked Areas Are Required\*\*\*\*\*

**Court ORI No: NYO _____ J	**Court: _____
**Order No: 199 _____	**County: _____
**Docket/Index NO _____	**Expiration Date: _____

Law Enforcement Agency at which Copy of Order is Filed:

\*\*Name: \_\_\_\_\_ \*\*Police ORI: NY \_\_\_\_\_

\*\*ACTION TO BE TAKEN:

- New Order
- Order Modified/Finalized
- Corrected Information

\*\*SERVICE OF ORDER:

- Police to Serve Order       Other
- Order served in Court (Date: \_\_\_\_\_)
- Notification by Mail (Date: \_\_\_\_\_)

[] Order Previously served (Date: \_\_\_\_)  
(no new service to be done)

(Circle ALL corrected information on ALL documents)

APPLYING PARTY (Party Requesting Order)			
**Name: (First)	(MI)	(Last)	
Alias or Nickname: (First)		(Last)	
** Address: (Street)	(City)	(State)	**Addr. Confid. []yes []no
(Zip)	(County)		**Protected Party []yes []no
Phone (Home):		(Work)	
**Date of Birth:	**Sex: ?male ?female	SS No.:	
**Race: []White []Black []Native American	height:	Eye Color:	
[]Asian/Pacific Islander []Unknown			
**Ethnicity (select one): []Hispani []Non-Hispanic	weight:	Hair Color:	

ENJOINED PARTY (Party Against Whom Order Runs)			
**Name: (First)	(MI)	(Last)	
Alias or Nickname: (First)		(Last)	NYSID:
**Address: (Street)	(City)	(State)	**Addr. Confid?[]yes[]no
(Zip)	(County)		
Employers Name:			
Employers Address:		Hrs. of Employment	
Phone (Home):		Phone (work):	
**Date of Birth:	**Sex: []male []female	SS No.	
**Race: []White []Black []Native American	Height	Eye Color	
[]Asian/Pacific Island []Unknown			
**Ethnicity (select one): []Hispanic [] Non-Hispanic	Weight	Hair Color	
License Plate No.:		State:	
Drivers ID:	State:	Mothers Maiden Name	
Is Police Caution Advised?IF yes, why:			



# CITY COUNCIL AGENDA

NO. 15 DEPT.: Police DATE: January 29, 2013  
CONTACT: Robert J. Falk, Interim Police Commissioner

**AGENDA ITEM:** Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: General Order #113.21 "Guidelines for Recording Custodial Interrogations of Suspects."

**FOR THE MEETING OF:**

January 29, 2013

**RYE CITY CODE,**

CHAPTER

SECTION

**RECOMMENDATION:** Approval of a new General Order #113.21 "Guidelines for Recording Custodial Interrogations of Suspects."

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:  
Enhancement of the operational effectiveness of the Department.

**BACKGROUND:** The Department is one of several Police departments in Westchester County to be awarded funding, pursuant to a grant obtained by the Westchester County District Attorney's Office, for the purchase of equipment for recording of custodial interrogations of suspects in criminal cases. The proposed General Order implements guidelines for the use of such equipment, and is a requirement of the grant. It is based on a model policy adopted by the New York State Division of Criminal Justice Services, which incorporates recommendations of the New York State Justice Task Force that was convened in 2009 by Chief Judge Jonathan Lippman of the New York Court of Appeals. Recording of statements in appropriate circumstances will enhance the prosecution of serious cases.

A copy of the proposed order is attached. The proposed revision was provided to the Rye Police Association on December 27, 2013 for review pursuant to the provisions of the collective bargaining agreement.



William R. Connors  
Police Commissioner

## POLICE DEPARTMENT

City of Rye, New York  
21 McCullough Place  
Rye, N. Y. 10580  
Phone: (914) 967-1234  
FAX: (914) 967-8341



December 27, 2013

Police Officer Franco Compagnone  
President  
Rye Police Association  
P.O. Box 246  
Rye, New York 10580

Dear Police Officer Compagnone:

Enclosed, for your review, is a draft of General Order #113.21, "Guidelines for Recording Custodial Interrogation of Suspects."

Please submit any comments to me in writing within ten days. If I have not received comments within ten days, the proposed order will be presented to the City Council for review and approval at the next meeting scheduled thereafter.

Very truly yours,

A handwritten signature in black ink that reads "William R. Connors".

William R. Connors  
Police Commissioner

WRC/wrc



**CITY OF RYE POLICE DEPARTMENT**

General Order #113.21	New [ x ] Supersedes:	Revised [ x ]
Subject: Guidelines for Recording Custodial Interrogations of Suspects		
Date Issued 01/xx/14	Date Effective 01/xx/14	Page 1 of 6
Issuing Authority: William R. Connors, Police Commissioner		

**Purpose:** The purpose of this policy is to establish broad guidelines for the electronic recording of suspects' statements in custodial interrogations and the associated use, management, storage and retrieval of such recordings. While these guidelines endorse the practice of recording custodial interrogations, they also recognize the dynamics of police work, field operations and suspect encounters. These guidelines provide latitude for officers in conducting interrogations at times that may not lend themselves to the availability of recording equipment.

**Intent:** It is expected that electronically recording custodial suspect interrogations will enhance the investigative process and assist in the investigation and prosecution of criminal cases. Critical evidence can be captured through the recording of interrogations. The recording will also preserve information needed regarding a person's right to counsel and the right against self-incrimination and it can be used to resolve a person's claim of innocence. Similarly, the electronic recording of custodial interrogations will assist in defending against civil litigation and allegations of officer misconduct.

**Definitions:**

**1. Custodial Interrogation:**

**a. Custodial:** The objective standard for determining a suspect's custodial status is whether a reasonable person, innocent of any wrongdoing, would have believed that he or she was not free to leave.

**b. Interrogation:** Interrogation refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally associated with arrest and custody) that the police should know are reasonably likely to elicit an incriminating response.

**2. Electronic Recording:** A digital, electronic video or other recording on electronic media.

**3. Electronic Media:** Video signals recorded on any of several storage media, including analog tape (VHS, S-VHS, Hi 8), digital recording (DVD) or other portable digital storage media (CD, MP3 player, hard drive, etc.).

**4. Subject:** The person being interrogated.

5. **Department:** The City of Rye Police Department.
6. **Members:** All sworn police officers of the City of Rye Police Department.
7. **Interview Room:** The room designated for the recording of interrogations. The equipment required in the room is specified in the "Equipment" section below.
8. **Qualifying Offense:** Interrogation of suspects relating to the following crimes will be recorded:
  - a. All A-1 non-drug felonies, to include: Aggravated Enterprise Corruption; Aggravated Murder; Arson in the First Degree; Conspiracy in the First Degree; Crimes of Terrorism; Criminal Possession of a Chemical Weapon or Biological Weapon in the First Degree; Criminal Use of a Chemical Weapon in the First Degree; Kidnapping in the First Degree; Murder in the First Degree; Murder in the Second Degree;
  - b. All violent B felonies, to include: Attempted murder in the Second Degree; Attempted Kidnapping in the First Degree; Attempted Arson in the First Degree; Manslaughter in the First Degree; Aggravated Manslaughter in the First Degree; Rape in the First Degree; Criminal Sexual Act in the First Degree; Aggravated Sexual Abuse in the First Degree; Course of Sexual Conduct Against a Child in the First Degree; Assault in the First Degree; Kidnapping in the Second Degree; Burglary in the First Degree; Arson in the Second Degree; Robbery in the First Degree; Incest in the First Degree; Criminal Possession of a Weapon in the First Degree; Criminal Use of a Firearm in the First Degree; Criminal Sale of a Firearm in the First Degree; Aggravated Assault upon a Police Officer or a Peace officer; Gang Assault in the First Degree; Intimidating a Victim or Witness in the First Degree; Hindering Prosecution of Terrorism in the First Degree; Criminal Possession of a Chemical Weapon or Biological Weapon in the Second Degree; Criminal use of a Chemical Weapon or Biological Weapon in the Third Degree;
  - c. All other crimes as determined by the Commanding Officer, Detective Division or his/her designee.

## **General**

1. **When to Record:** All members of the Department shall, whenever possible and practicable, utilize the electronic recording system located in the Detective Division when conducting a custodial interrogation of someone suspected of committing a qualifying offense.
2. **When Recording may not be Practicable:** It is understood that recording may not always be possible. The following are some, but not all, of the practical reasons that may prevent a qualifying offense from being recorded:
  - a. Electronic recording equipment malfunctions.
  - b. Electronic recording equipment is not available, e.g., it is already in use.
  - c. Statements are made in response to questions that are routinely asked during the process of arresting a person.
  - d. Spontaneous statements are made that are not in response to police questioning.
  - e. Statements are made by the suspect at the time of arrest.
  - f. Statements are given in response to an interrogation at a time when the interviewer is unaware that a qualifying offense occurred.
  - g. Statements are made during an interrogation that is conducted at another location not equipped with recording devices, and the reasons for using that location are not to subvert the intent of this policy.

- h. Statements are made at a location other than the interview room identified in these procedures because the defendant cannot be in the interview room, e.g., the defendant is out of the state, in a hospital or is in a correctional facility.
- i. Statements are made after a suspect has made a documented refusal to participate in the interrogation if it is recorded and the officer has consequently turned off the recording equipment.
- j. Inadvertent error or oversight occurs that was not the result of intentional conduct of law enforcement personnel.

**3. Equipment in View vs. Hidden Equipment:** At the discretion of the Department, recorded interrogations can be done with the equipment in view or with the equipment hidden. The Department can decide whether or not to inform the suspect that the interrogation is being recorded. If the Department chooses to inform the suspect of the recording, it can be done in a number of ways, for example, by orally informing the suspect, by providing the suspect with written notice, or by posting signage in the interview room or in the police station. If the equipment is hidden and the subject asks if the interrogation is being recorded, the interrogating officer should answer truthfully and continue the interrogation.

**4. Field Interviews:** These guidelines are not meant to discourage field interviews. Gathering “real time” information in the field can be critical for an investigation. For example, information is often immediately needed to locate a weapon, to find victims or accomplices, or to secure a crime scene. If information is gathered from the suspect in the field regarding a qualifying event, efforts should be made to memorialize the statements at the earliest practicable time.

**5. Interrogation Methods:** Depending on the circumstances of the case, an interrogation can be conducted in a variety of ways to enhance the investigation and to protect the rights of the suspect. The use of pointed interrogations, accusatory questions, deception and other similar tactics are recognized as appropriate law enforcement techniques in interrogation, provided the tactics are not “fundamentally unfair” as defined by New York courts (*People v Tarsia*, 50 N.Y.2d 1, 11-12 [1980]). Note: Members should receive training to ensure that officers know how to conduct an interrogation. The entire interrogation, including the use of pointed questions, accusatory questions, deception and other similar tactics, must be recorded according to the Department’s video recording protocols.

**6. Juvenile Room:** So that juveniles (over seven and less than sixteen years old) and adults can be questioned in the interview room, the room may also be designated a juvenile room, where practical. To meet these criteria, the room must have been designated by the Chief Administrator of the Courts as a suitable place for the questioning of juveniles and it must comply with the requirements of the Uniform Rules for the Family Court, Part 205. Note: A juvenile room is not required for a person between thirteen and fifteen years of age who will be prosecuted as an adult in criminal court as a *juvenile offender*. CPL 1.20 (42) [defining “juvenile offender”].

**7. Search of the Suspect:** Prior to the interview, the interviewing officer should be certain that the suspect, who is in custody, was searched for weapons, contraband, evidence, electronic devices or telephones and that all relevant items were removed.

**8. Illegal Eavesdropping:** Members must avoid any circumstance where conversations are recorded in which a party is either unaware of or has not consented to the recording.

**9. Use of Translator:** If the subject requests a translator or if the officer deems that a translator is necessary, the officer will seek a translator, in conformance with the existing Department policy. Translators used during the interrogation will be identified on the recording by name and affiliation.

## **The Interrogation**

### **Use of the Equipment**

- 1. Familiarity with the Equipment:** At least one officer conducting the interrogation shall be responsible for operating the recording device used during the interrogation and should know the Department's electronic recording protocols.
- 2. Interview Room Setup:** Consideration should be given to pre-designating the locations within the room where the various parties should sit. In covert recordings, the suspect should, if possible, remain in a location that can be viewed by the camera. If the suspect moves around the room, the suspect could move out of camera range.
- 3. Storage Media Capacity:** Before the interrogation begins, the officer should make sure that there is enough capacity to record the entirety of the interrogation, e.g., enough DVD, disc, or other storage media space.
- 4. Date and Time Stamping:** Date and time stamping of the electronic recording is encouraged. A clock can also be on the wall of the interview room and in view of the recording device.
- 5. Problem with the Equipment:** The time and nature of any irregularities that occur with the equipment should be documented by the officer in writing. Even if there is a problem with the electronic media, the electronic media must be preserved.

### **Recording the Interrogation**

- 1. Location of Recording:** The interrogation should take place in the designated interview room, which is equipped for recording.
- 2. Identify Participants:** The names of all of the parties present in the interview room during the interrogation should be documented.
- 3. When to Start and End the Recording:** The recording equipment should be turned on prior to the subject being placed within the interview room and should only be turned off after the subject has left the room after the interrogation is completed. All discussions in the interview room, including any pre-interrogation discussions, even if they occur before the reading of Miranda Warnings, must be included in the recording. Should the need arise for either the subject or the interrogating officer to leave the interview room, recording devices can continue to operate without interruption. If the recording is temporarily stopped, the reason for stopping the recording and the duration should be documented.
- 4. Hidden Equipment:** If the Department chooses to make the electronic recording equipment covert, the officer shall not inform the subject that the interrogation is being recorded, nor discuss the topic of recording unless the subject asks whether the interrogation is being recorded. If the subject does ask about recording, the interrogating officer should answer truthfully and continue the interrogation.
  - a. If the subject refuses to participate in the interview if it is being recorded, then the subject's refusal should be documented on the recording. If the subject insists that the recording be ended immediately, the subject's refusal should be documented in writing. The interview can then continue without the recording.**

**5. Accommodations for Suspect:** Where possible, it should be made clear on the recording when a subject is or has previously been provided with food, drink, cigarettes, access to toilet facilities, etc.

**6. Written Statement:** After the subject of the interrogation has provided all of the pertinent information, a written statement may be obtained from the subject. If the officer opts to obtain a written statement, that procedure should also be recorded.

### **Reading Miranda Warnings and Right to Counsel (in Brief)**

**1. Miranda Warnings:** Any custodial interrogation must be preceded by the reading of Miranda Warnings. This does not preclude pre-interrogation discussions with the subject before Miranda Warnings are read and the actual interrogation commences. In qualifying cases where the interrogation is to be recorded, all conversations that occur inside the interview room must be recorded, including pre-interrogation discussions and the administration of the Miranda Warnings.

**2. Invocation of the Right to Remain Silent:** A suspect has a Fifth Amendment right not to speak with the police; this right must be carefully honored. This right presents a choice which is the suspect's to make. However, for the invocation of this right to be effective, it must be unequivocally stated by the suspect, e.g., "I don't want to say anything." This means that if the subject definitely and unambiguously states that he or she does not want to speak with the police, the interrogation must end immediately.

**3. Invocation of the Right to Counsel:** A subject has a right to counsel and this right must be carefully honored. Whether or not to request the presence of counsel is the suspect's choice to make. However, for the invocation of this right to be effective, it must be unequivocally stated by the subject, e.g., "I want an attorney." This means that if the subject definitely and unambiguously states that he or she wishes to speak with an attorney, the interrogation must end immediately.

**4. Attorney Visit:** If the subject of a recorded interrogation has an attorney visit, the subject and attorney shall be offered a separate, private area in which to confer if one is available. The recording of the empty room can continue during their absence to memorialize the event until such time that the interrogation is either resumed or terminated. Alternatively, a record can be made of when the recording was discontinued for the attorney visit. If the interrogation recommences after the attorney visit, then there should be documentation of the attorney's agreement to allow the questioning to continue and the time that the recording began again. In no event shall the visit between the attorney and the suspect be recorded.

**5. Questioning a Juvenile and Simplified Miranda Warnings:** When questioning a juvenile, who will be prosecuted as a juvenile delinquent under the Family Court Act (over seven and less than sixteen years old), the interview should take place in a designated juvenile room. The officer should be aware of other considerations, including the parental notification requirements of Family Court Act Section 305.2 (applicable to the questioning of juvenile delinquents), and Criminal Procedure Law Section 140.20(6) (applicable to the questioning of juvenile offenders, who will be prosecuted as adults in criminal court). The officer may also consider using simplified Miranda Warnings when questioning a juvenile.

## **Preservation of Evidence and Discovery**

**1. Labeling the Electronic Storage Media:** After the interrogation, the officer(s) conducting the interrogation, or an employee designated by the Department, shall label all applicable documents, recorded media and notes according to Department protocols.

**2. Copies:** Copies of the recorded interrogation should be made according to Department protocols.

**3. Storage of Electronic Media:** The original of the electronic media should be appropriately invoiced in accordance with Departmental evidence procedures.

**4. Retention of Original:** The original should be retained according to the Department's retention policy.

**5. Defense Request for a Copy of the Interrogation:** Any defense request for a copy of the interrogation should be referred to the District Attorney's office.

**6. No Alteration of the Original:** No person shall, in any manner or for any purpose, alter the original "master" electronic recording of a custodial interrogation.

**7. Dissemination:** Any dissemination of any recording shall be carried out according to documented Department rules and procedures.

**8. Viewing of the Electronic Media:** Recordings of statements shall not be replayed for other than authorized Department personnel without the permission of the Commanding Officer, Detective Division. The Commanding Officer, Detective Division will be responsible for overseeing the maintenance of records regarding recordings, as well as processing requests for production thereof by the District Attorney or other authorized parties.

**9. Felony Interview Reporting Form** (*only for jurisdictions that use this form*): A Felony Interview Reporting Form must be completed indicating that a recording was made of a suspect's interrogation, even if the suspect only refused to speak on the recording. The form provides notice to the prosecutor about the existence of an audio/video recorded statement to ensure that the prosecution can provide adequate notice under Criminal Procedure Law Sections 710.30 and 240.20(1)(g). Failure to so notify the prosecution of the recorded interrogation could result in a court ruling prohibiting the use of the defendant's statements.

### **Training:**

Officers must be trained in the operation of recording equipment, as well as the procedures for conducting a recorded interrogation, prior to conducting recorded interviews. Officers should be familiar with how to conduct an interrogation, as well as the suspect's right to counsel and the suspect's right to remain silent.