

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

**REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS, CITY HALL
Wednesday, December 21, 2022
6:30 p.m.**

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

Please note: The Council will convene at 5:30 p.m. and it is expected they will adjourn into Executive Session at 5:31 p.m. to discuss pending litigation, personnel matters and pending contracts.

1. Pledge of Allegiance.
2. Roll Call.
3. Draft unapproved minutes of the Regular Meetings of the City Council held November 30 and December 7, 2022.
4. Swearing-in of full-time City Court Judge Valerie A. Livingston by Judge Joseph Latwin.
5. Flooding Update.
6. Resolution to accept a \$284,000 grant from the Long Island Sound Futures Fund for the design of the Blind Brook Riparian Buffer Restoration at the Rye Nature Center.
7. Continue the public hearing on the 2023 Budget.
8. Open the public hearing to adopt a Local Law to override the State enacted tax levy limitation.
Roll Call
9. Resolution to adopt the 2023 Budget and establish the 2023 tax levy and 2023 tax rate.
Roll Call
10. Resolution authorizing the City Comptroller to make the necessary year-end closing transfers.

11. Continue the public hearing to adopt a new local law, Chapter 88 “Explosives, Blasting and Mechanical Rock Excavation”, Repeal Chapter 98, Fire Prevention, Article VII, Explosives and Amend Sections 133-8, 133-9 and 133-10 of the Code of the City of Rye.
12. Residents may be heard on matters for Council consideration that do not appear on the agenda.
13. Resolution to set a public hearing for January 4, 2023 to amend Chapter 196 “Wireless Telecommunications Facilities” of the Code of the City of Rye to remove a mandatory referral to the Board of Architectural Review.
14. Resolution authorizing the Mayor to enter into an agreement with the Rye Free Reading Room to furnish library services for 2023.
Roll Call.
15. Resolution to participate in the 2022 Tree City program.
16. Resolution authorizing the Mayor to sign a retainer agreement with McDermott Will and Emery for a fixed cost of \$40,000 with authorization to transfer these funds from Undesignated Fund Balance.
17. Appointments to Boards and Commissions by the Mayor with Council approval.
18. Farewell to Councilwoman Hurd.
19. Old Business/New Business.
20. Adjournment

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The next regular meeting of the City Council will be held on Wednesday, January 4, 2023 at 6:30 p.m.

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

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

PRESENT:

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

ABSENT:

EMILY HURD
CAROLINA JOHNSON
Councilmembers

The Council convened at 5:30 P.M. Councilman Nathan made a motion, seconded by Councilman Stacks, to adjourn into executive session to discuss litigation and personnel matters. The Council reconvened for the public meeting at 6:30 P.M. The meeting was streamed live at www.ryeny.gov for public viewing.

1. Pledge of Allegiance.

Mayor Cohn led the Council in the Pledge of Allegiance.

2. Roll Call.

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

3. Draft unapproved minutes of the Regular Meeting of the City Council held November 4, 2022.

Councilwoman Souza made a motion, seconded by Councilman Stacks, to draft the unapproved minutes of the City Council meeting held November 4, 2022.

4. Flooding Update.

Mayor Cohn reported that the City of Rye had a call on November 30, 2022. Mayor Cohn, the City Manager Greg Usry, the Mayor of Rye Brook, and the Rye Brook Village Manager were present with the Purchase College Sustainability Committee. He reported that they learned about the reluctance on the part of Purchase College to give the City of Rye a support letter for the City's FEMA application. Mayor Cohn said the call surprised him in terms of the depth of concern and the lack of correlation of some of the points raised with the views of the engineers. Mayor Cohn said the City will have to consider how it goes forward in trying to continue what has been begun as a constructive dialogue.

5. 2023 Proposed Budget Discussion.

Mayor Cohn reported that the Council has been going through a process over the past couple of weeks of trying to examine everything that's contained in the budget and the proposed tax increase and try to see if they can find ways to diminish the proposed tax increase. The Council is doing with the recognition of the fact that the City is dealing with inflation, but so are its constituents dealing with inflation. The City compromises only a small part of its constituents' state and local burden. Mayor Cohn said if it's a small part that the Council can make smaller, they as a Council have felt impelled to try to do that. The Council has asked for some reductions.

City Manager Greg Usry explained that he and the Deputy Comptroller Joseph Fazzino as well as the department heads have continued to try to consider places that they can modify and alter. The budget is much more complex this year given the information that's coming in and the timing of that information and the impacts that they're seeing from both inflation as well as possible slowdowns. They have made a few modifications that would in effect lower the tax rate.

Mr. Usry explained that the original proposed budget from two weeks ago contained a proposed tax increase of 5.24%. 3.46% of that is the base, the operating budget. Two additional new items would be included in the tax rate. One is an additional \$250,000 for street resurfacing that would bring the total resurfacing budget in the tax rate to \$950,000. That's \$600,000 in the tax rate, \$100,000 in street opening permit revenue, and another \$250,000 in the tax rate. The second item that was included in the original proposed budget was another \$250,000 dedicated toward flood mitigation and resiliency. These items would be for additional monies available to the Council every year. Mr. Usry said he and Mr. Fazzino have received additional guidance from the State Controller's Office as well as from the County in terms of sales tax collections. They are still running at approximately 15% above last year. Mr. Usry and Mr. Fazzino are comfortable making an assumption of additional sales tax collections going into next year's budget. That would increase that amount by \$100,000 as an assumed income.

Mr. Usry explained that the City invests both its general fund over the course of the year as well as its fund balances, including CAPEX and now bond proceeds in interest-bearing accounts. An expected additional Fed action will be coming in the next 30 to 60 days projected to be as much as 75 basis points; it may be 50. He is projecting that the City will be investing its fund balances at approximately 4%. For that reason, Mr. Usry and Mr. Fazzino are increasing the City's assumed revenues by \$50,000 for that investment income, over and above what the original budget provided for. That adds \$150,000 to the assumed income, which has the corresponding result in dropping property taxes by that amount, which is .53%.

Mr. Usry said that he and Mr. Fazzino project both liability insurance premium as well as healthcare insurance costs based upon estimates as adjusted from last year. They don't receive those premium quotes until the end of the year. On November 29, 2022, Mr. Fazzino informed Mr. Usry that as opposed to a 10% increase in the City's health insurance premiums for this year, depending upon the plan and whether it's retiree or current employee, those expenses are going up between 15 and 20%. The City has historically baked in a 10% increase in insurance premium

that in recent history has been sufficient. Some years it's been a few percent below that, but it has always been in that general area. This is an unexpected increase.

The impact of that increase is to add \$255,000 to the expense side of the budget, a little under a 1% increase. In recognition of these additional costs, Mr. Usry asked Mr. Fazzino and his team as well as the department heads to try to check the couch cushions for whatever they possibly could to offset some of these cost expenses as well as reflect the fact that both the Council and Mr. Usry and Mr. Fazzino's personal preference is to reduce the property tax increase to the extent possible.

Mr. Usry and Mr. Fazzino identified four areas that they are comfortable reducing in the budget for next year: a consulting line, a salary increase, certain building improvements, materials and supplies. That they are comfortable moving some of these expenses and paying out of some existing fund balances as opposed to actually putting in the tax rate. The City is going to have to make upgrades to the police station for the new radio equipment. Mr. Usry explained that the City will use building funds as opposed to putting that in the tax rate. Mr. Usry and Mr. Fazzino looked at some of the material and supply costs and are comfortable cutting out a little under \$50,000 there. He and Mr. Fazzino are comfortable cutting the consulting line in the City Engineer's budget without there being any sort of service impact on residents or the City's ability to provide that.

Mr. Usry explained that in terms of salary increases, the City has had an unprecedented number of retirements in the last two months, at relatively senior-level positions. Some of those individuals' assistants are being promoted to that senior position, and Mr. Usry and Mr. Fazzino's expectation after looking at them more closely is that some of the unfilled positions that will be filled will not be coming in at the same salary level as those that retired, so that's where much of that adjustment in the salary increases came from. Mr. Usry and Mr. Fazzino are comfortable that these changes will not impact residents or the City's ability to deliver services.

The assumed higher revenues, the additional healthcare costs, and then the reduction in those four expense line items will result in a net reduction from the original budget of \$63,000, which would bring the gross tax increase to 5.02%. In the original budget, there were the two line items of streets and flooding. The additional tax rate added would mean that in the regular operating budget, there would be generated approximately \$1 million in order to pay for the streets. The City would be drawing down on some additional CAPEX monies and using more grant monies to backfill for that expense. Mr. Usry recommends it from a responsible budgeting standpoint, but it is not in this year going to have a material impact. The long-term impact is he and Mr. Fazzino would like to apply more of the grant money to the bigger capital projects budget that Council has identified and not use that grant money if the City doesn't have to for streets.

Mayor Cohn explained that the million dollars a year per the City's consultants' latest information keeps the City increasing the improvements over time that have already put the City in a situation that it has materially better streets than many of its neighbors. Councilwoman Souza suggested taking that \$250,000 out of roads because it's already elsewhere in the budget. The City can continue to keep an eye on it forward. Mayor Cohn said that he gathered from discussions with his colleagues that though the City doesn't have a firm annual number for supplementing the sort of studies that the City needs to do in order to be able to move forward on flooding projects,

the Council knows that this year the City will spend more than that much money on consultants and advisors, and the Council expects that will continue for some period of time. He believes there is probably a consensus to keep that other \$250,000 in.

Mr. Usry explained that the resulting tax increase based upon moving the street resurfacing out of the tax rate for this year is a tax increase of 4.13%. A motion to move the \$250,000 for roads out would need to include everything that's included in the memo, because what was originally proposed is what the Council would be amending. If the City had a tax cap-compliant budget this year would mean cutting an additional \$1.3 million. Given that 65 to 70% of the budget is personnel, cutting \$1.3 million means that there would be headcount reductions, which means cuts to service for public works, for example, or it means cutting rec programs, because the tax rate supplements rec programs, all of which would result in a much more significant impact on services. With regard to public safety, Mr. Usry explained that the first thing that would go would be start having to go would be the elimination of a village officer for most of the week. A vote on the tax cap would require a super-majority, and that will take place on December 21st prior to adopting the budget.

Mr. Fazzino explained that FEMA monies are not in the tax rate, and he and Mr. Usry are assuming that it's in the year-end surplus. They are expecting about \$1 million total. Mr. Usry explained that this is a one-time extraordinary item. The Council can defer it, but if it keeps everything equal, the Council will have to make that up in next year's tax increase. Councilwoman Souza said if the Council knows they're going to be able to have that money, to be able to cover the City's expenses and everything the Council wants to do this year, then maybe the Council can get the number down. Mr. Fazzino explained that whatever the Council decides to use as money to cover the City's rate increase this year, the Council has to start with that deficit next year because it doesn't have that money.

Mr. Usry explained that he and Mr. Fazzino estimated inflationary impacts on materials and supplies. What that actually comes in this year, as it relates to salt, electricity, road product, the City could be facing those impacts next year. Councilman Nathan said he believes the County is going to have a budget reduction because of some good fortune they've had, so he thinks people will feel some improvement on that side. Mr. Usry said that the starting number of 5.24%, for the average homeowner, which is a \$27,000 assessed value, was an increase of \$244. Based upon these numbers and taking it down to the 4.13%, \$193 is the tax rate increase for that per year, which is the city portion of the tax bill. Mayor Cohn asked for a motion to accept provisionally as the City's budgeted tax increase, the 4.13%, on the basis of the memo that Mr. Usry provided to the Council.

Councilwoman Souza made a motion, seconded by Councilman Nathan, to adopt the following resolution:

RESOLVED, that the proposed 2023 budget is amended as follows:

- Increase Sales Tax revenue by \$100,000
- Increase Interest Income by \$50,000
- Increase Health Insurance costs by \$255,000

- Decrease Consultant costs by \$27,000
- Decrease Salaries and Benefits by \$48,000
- Decrease Building Improvements by \$50,000
- Decrease Material & Supplies expense by \$43,000
- Remove \$250,000 of street resurfacing from the tax rate

ROLL CALL

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

The adopted resolution will result in a tentative property tax rate of \$198.74 or a 4.13% increase.

6. Appointment of Judge Valerie A. Livingston to City Court Judge (full-time), by the Mayor with Council approval, for a ten-year term expiring January 1, 2033 upon the retirement of City Court Judge Joseph Latwin on December 31, 2022.

Mayor Cohn asked for Council approval for the appointment of Judge Valerie A. Livingston full-time to City Court. The Council unanimously agreed. Judge Valerie A. Livingston thanked the Mayor and Councilmembers and said she felt fortunate to be chosen for this role.

7. Resolution to name the newly erected lower pavilion at Rye Recreation after retired Rye Recreation Superintendent and 37-year City of Rye employee, Sally Rogol.

Mayor Cohn made a motion, seconded by Councilwoman Souza and unanimously approved, to adopt the following resolution:

RESOLUTION

Naming the newly erected lower pavilion at Rye Recreation after retired Rye Recreation Superintendent and 37-year City of Rye employee, Sally Rogol.

WHEREAS, Sally came to work in Rye as a Recreation Leader in 1985; and

WHEREAS, Sally continued her career in the Rye Recreation Department for 37 years;
and

WHEREAS, during Sally's tenure, Rye Recreation has provided innovative and valuable programs for young and old; and

WHEREAS, Sally, in addition to her responsibilities at Rye Recreation, has been a full participant in the community, generously sharing her time with many volunteer and community organizations; and

WHEREAS, Sally has distinguished herself among recreation department leaders, including as President of the Westchester Recreation and Park Society and recipient of many awards; and

WHEREAS, throughout Sally has shared her good and caring nature, her wit and her intelligence with one and all; and

WHEREAS, Sally has played an essential role in the Rye Recreation improvements of the last 24 months, including the new outdoor pavilions; and

WHEREAS, Sally is now retired as Superintendent;

NOW, THEREFORE, BE IT RESOLVED, that the City Council has decided to name the outdoor lower pavilion, the Sally Rogol Pavilion.

8. Continue the public hearing to adopt a new local law, Chapter 122, “Leaf Blower Regulations”.

Mayor Cohn explained as the draft law says in its purpose clause, the Council is intent on moving Rye from gas-powered leaf blowers to electric leaf blowers in time. The City's DPW has told the Council what it can do with electric leaf blowers, and the DPW is prepared to go electric to the extent that the electric technology can actually support its getting its work done that way. The Council has seen a demonstration by the DPW of the efficacy of a single-gas-powered blower versus multiple electric leaf blowers, backpack leaf blowers all, in terms of moving and accumulation of wet autumn leaves. Mayor Cohn said as electric leaf blowers get stronger, he assumes that many of the objections to gas leaf blowers and the sorts of pollution they create will rise, and then the Council will have to try to be responsive.

Councilman Henderson explained there were three changes that the Council made to the last draft of the law. One, they have defined motorized landscaping equipment, and they have outlawed the use of that equipment on 13 designated holidays. The draft law also referenced Westchester County law Section 863-312 to 330, which concerns Westchester's licensing of commercial landscapers. With the updated proposed law, police can write a ticket for a landscaper, if they are not licensed under Westchester law. The Council is not creating a new licensing requirement in Rye, but it is including that they must be licensed as a matter of Rye law and they could get a ticket for it. The law is making it clear that a violation is a civil offense, which will simplify enforcement and paying fines.

Leslie Winters, 87 Grace Church Street, said in reviewing the proposal to revise the current leaf blower ban, she did not see a definition for high-density areas. She suggested that much of Rye falls within this broad category, especially the areas in the central business district, which include Grace Church Street, Palisade Road, and Grapal Street. She expressed frustration over the zones and differences with respect to the law and said that blowers are used year-round on tiny lots. She asked how it would work to carve out R1 mini-zones in much larger R3 zones affect condos, apartments, and businesses on Midland Avenues, with multiple homeowners each owning a percentage of the community. Ms. Winters said now that violations are to be considered a civil

rather than a criminal offense, why a homeowner's time and date-stamped photographs and videos would not meet the level of evidence needed to issue a summons. She said that a decibel meter should be used to record gas-powered blowers' levels.

Curtis Spacavento, 176 Theodore Fremd and of Spacavento Landscaping, expressed concern that perhaps the December 15 cutoff may be too early, should a November snowstorm should hit, followed by a rise in temperatures. He said his company is doing the best it can and by acting pursuant to the law. He said the City should wait for blower companies to make the electronics better so the City and landscaping companies aren't putting firefighters and people's houses in jeopardy.

Katherine Briggs, 1 Walnut Street, explained electric blowers take too long to charge for landscaping jobs she does and that gas-powered blowers are more efficient. She said she would prefer a civil penalty as opposed to a criminal penalty.

Paul Murphy 36 Onondaga Street, said he wasn't aware of the leaf-blowing law for the last year because his house was flooded and he didn't have a lawn. He said that his landscaper told him he received a \$750 fine for using multiple leaf blowers, which he wasn't aware of, and he refused to pick up the leaves on Mr. Murphy's lawn. Mr. Murphy said that gas-powered leaf blowers are more efficient than electric blowers. He said that are intended consequences. Landscapers will pass the cost of fines onto homeowners. He is for electric-powered leaf blowers when they can be more efficient.

John Mayo-Smith, 3 Fairlawn Court said electric leaf blowers are not always quieter than gas-powered leaf blowers, citing an article in Consumer Reports. He said that not all homeowners who do their own lawn service think it's necessary to blow leaves year-round. Mr. Smith said he uses a mower that cuts the grass and mulches the leaves instead of a leaf blower.

Councilwoman Souza responded to a letter that was sent about the lack of enforcement. She said that the increase in summons year over year shows greater enforcement. Councilman Stacks said that someone sent in a comment about banning leaf blowing on Sundays, making the argument that contractors aren't allowed to work on Sundays as well. Councilwoman Souza said she is in favor of allowing electric leaf blowers year-round. The number of months that gas leaf blowers can be used have been reduced to two-and-a-half months and the hours per day have also been reduced. On weekdays they can be used from 8:00 a.m. to 6:00 p.m., and from 10:00 a.m. to 4:00 p.m. on weekends.

Mayor Cohn said with respect to enforcement, that despite the best efforts of the City's police department, that enforcing the gas leaf blower ban is very, very difficult and to many unsatisfactory despite the greater efforts that the police department has been making. Councilman Nathan said he would like to see a Saturday-only law on the weekends. He also would like to see decibels addressed in the law, to the point that there are electric blowers that are loud. For many people, the issue is about noise level. Councilman Henderson replied that it's a matter of enforcement. The police aren't going around with decibel readers. He further said that the principal thing about keeping the decibels down is the requirement that only one leaf blower being allowed in most places.

Councilman Nathan said that the issue of high-density areas in Rye gets complicated because the City has large-zoned pieces of property surrounded by smaller-zoned properties. Councilman Henderson replied that he looked at the maps and where the properties were. The idea is to lower the noise in the neighborhoods where it's the greatest nuisance. They kept the one gas leaf blower prohibition, which was already in the law. He said he thinks a big factor will be whether or not the landscaping community follows the law. He also said you can't legislate being a good neighbor, and so hopefully people will talk to their neighbors instead of calling the police, and people won't want to get tickets.

Councilman Henderson explained the reasoning for fining the operator who is the employee was because it would be hard to fine the landscaping owner without fining the employee. He also explained that they believed it was important to fine all three parties if they wanted to get the most compliance that they could. Councilman Henderson replied that there are limits to the amounts of fines the City can impose as a small jurisdiction. Mayor Cohn said the law would have to be changed to deal with loud electric blowers. Councilman Henderson said his understanding is that electric blowers are not nearly as loud as gas-powered blowers. Councilman Souza said this legislation will have to evolve. Councilman Nathan asked if electric leaf blowers have a time limit during the day. Councilman Henderson replied that there's a general time limit for all blowers.

Mr. Mayo-Smith said he wonders how many people there are who do their own lawn maintenance and don't use leaf blowers and that this new law is making more leaf blowing in the spring and summer. Mayor Cohn replied that the City doesn't legally have leaf blowing, but it has prolific leaf blowing despite the law. Councilman Henderson said in the summer, people are using weed-whackers to clean their patios because they're not leaf-blowers, and they think this will encourage both the landscapers and the homeowners to start investing in electric leaf blowers. Mr. Mayo-Smith said he has five neighbors who do their lawn maintenance on five different days, so his whole week is filled with leaf blower noise.

Ms. Winters said she called in five complaints about leaf blowers on properties contiguous to hers being used all over on Veterans Day. She doesn't believe that anyone received a summons and that the R3s should be left as R3s.

Ms. Briggs said in regards to leaf blowers during the summer, they're getting requested for only certain types of plants. She also said she wanted the City Council to be aware that there have been assaults by homeowners on landscapers and their property, and she is going to encourage the landscapers to call the police.

Councilwoman Souza said people should approach this issue with a sense of civility and neighborliness, and she's been disappointed to see civility decline. Councilman Nathan asked about the standard of evidence/ proof that the police would need if operating against the leaf blower law would now be a violation. Corporation Council Kristen Wilson said the standard of proof is lower, but for a neighbor/ witness to be involved in the prosecution, the City would still need the videographer of evidence to be involved in the entire proceeding and sign a detailed affidavit.

Councilman Henderson said he doesn't believe the police are issuing tickets unless they see a violation. Ms. Wilson said anyone can make a record and file a police report.

Mr. Murphy asked if people reporting violations can remain anonymous. He said that he felt the person who gets the ticket should know who reported him or her to make for a bigger incentive to resolve the situation without getting the police involved. Ms. Wilson said the people can submit a FOIL request to find out who reported them, but that information is only released on a case-by-case basis pursuant to FOIL law (Public Officers Law).

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

Mayor Cohn asked for a motion to pass the legislation, recognizing that it's something the Council is going to need to revisit in the not-too-distant future. Councilman Stacks made a motion, seconded by Councilwoman Souza, to adopt the following legislation:

CITY OF RYE

LOCAL LAW NO. 8 2022

A local law to add a new Chapter 122 “Leaf Blower Regulations” of the Code of the City of Rye to regulate the use of gas-powered leaf blowers as follows:

Section 1: Chapter 122, Leaf Blower Regulations

§ 122-1 Purpose.

The City Council finds that motorized landscaping activities generate noise, and more specifically the use of gas-powered leaf blowers can significantly increase the level of noise, particularly in the higher density neighborhoods of Rye. Gas-powered leaf blowers also create pollution and contribute to global warming through the release of carbon emissions. Accordingly, it is the intent and purpose of this chapter to place limits on the use of gas-powered leaf blowers, while promoting the use of quieter electric-powered leaf blowers, with the ultimate objective of eliminating the use of gas-powered leaf blowers at the time when a more suitable and quieter technology becomes available.

§ 122-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

LANDSCAPER – Any person, corporation, partnership, or business entity of any form who tends, plants, installs, maintains, or repairs lawns, or performs general yard maintenance work or leaf collection of any kind on real property which such person does not own or at which s/he does not reside.

ELECTRIC LEAF BLOWER – a moveable, portable, handheld, backpack-style, tow-behind or other device or unit powered by electricity or battery and used for the purpose of blowing, moving, removing, dispersing, vacuuming, or redistributing leaves, dust, dirt, grass clippings, cuttings, and trimmings from trees and shrubs or any other type of litter or debris.

GAS LEAF BLOWER – a moveable, portable, handheld, backpack-style, tow-behind or other device or unit powered by an internal combustion engine using gasoline or other hydrocarbon fuel and used for the purpose of blowing, moving, removing, dispersing, vacuuming, or redistributing leaves, dust, dirt, grass clippings, cuttings, and trimmings from trees and shrubs or any other type of litter or debris.

MOTORIZED LANDSCAPING EQUIPMENT – Electric, battery or internal combustion engine powered equipment commonly used for general yard maintenance work including cutting grass, aerating and seeding lawns, planting, digging holes, trimming hedges and shrubs, collecting and removing leaves and other common yard maintenance activities.

Section 122-3 Use of Electric Leaf Blowers.

Effective January 1, 2023, Electric Leaf Blowers may be used for landscaping activities on a year-round basis.

§ 122-4 Use of Gas Leaf Blowers.

Effective January 1, 2023, Gas Leaf Blowers may only be used during the Fall and Spring Cleanup Seasons defined as from October 1 to December 15 and from March 1 to April 30. At all other times of the calendar year, the use of Gas Leaf Blowers is prohibited. Except in R-1 Residence Districts, and on lots greater than one (1) acre in size, only one (1) Gas Leaf Blower may be utilized per lot during the Fall and Spring Cleanup Seasons as defined above.

§ 122-5 Hours of operation of Motorized Landscaping Equipment including leaf blowers.

- A. The use of Motorized Landscaping Equipment, including lawn mowers, leaf blowers and other outdoor machine-powered equipment is permitted only between 8:00 a.m. and 6:00 p.m. on weekdays and 10:00 a.m. and 4:00 p.m. on weekends. The permitted hours described in this subsection will apply to the use of Gas Leaf Blowers during the Fall and Spring Cleanup seasons when the use of Gas Leaf Blowers is permitted.
- B. The use of Motorized Landscaping Equipment, including lawn mowers, leaf blowers and other outdoor machine-powered equipment is not permitted on the following holidays: New Year’s Day, Birthday of Martin Luther King, Jr., Washington’s Birthday, Easter, Memorial Day, Independence Day, Labor Day, Rosh Hashanah, Columbus Day, Veterans Day, Yom Kippur, Thanksgiving Day, and Christmas Day.

- C. The head of the Rye Department of Public Works may permit the expanded use of Gas Leaf Blowers, or use of Motorized Landscaping Equipment on holidays, for a period not to exceed fourteen (14) days after significant storm events or during other emergency situations.
- D. The restrictions regarding the use of Motorized Landscaping Equipment, including Gas Leaf Blowers and other outdoor machine-powered equipment in this Chapter shall not apply to the following entities and activities: municipal, schools, religious institutions, membership clubs, golf courses, hospital and retirement communities, cemeteries, and driveway/road paving and sealing activities.
- E. The above-restrictions shall not apply to snow-blowers or use of motorized equipment for the purposes of snow or ice removal.
- F. Moving leaves or yard debris to City streets, public property, storm drains or abutting lots is prohibited at all times.

§ 122-6 Enforcement.

The provisions of this chapter shall be enforced by the City of Rye Police Department, the Rye Building Department or any other city employee designated by the City Manager.

§ 122-7 Penalties for offenses.

- A. **Gas Leaf Blowers** - The following parties shall have committed a violation of this law if it is not complied with:
 - (1) The party(ies) operating the Gas Leaf Blower(s); and
 - (2) The party who employed the person(s) who operated the Gas Leaf Blower(s) at the time of violation; and
 - (3) The party who owns, rents or otherwise controls the property where the violation occurs.
- B. **Conducting Motorized Landscaping Work outside of Permitted Hours or on Restricted Holidays** - The following parties shall have committed a violation of this law if it is not complied with:
 - (1) The party(ies) operating the motorized landscaping equipment; and
 - (2) The party who employed the person(s) who operating the motorized landscaping equipment at the time of violation; and
 - (3) The party who owns, rents or otherwise controls the property where the violation **occurs**.

C. Failure of Commercial Landscapers to comply with the provisions of Westchester County Law §§ 863.312-330 - Commercial Landscapers who fail to comply with WCC §§ 863.312 through 863.330, including working without a valid Westchester County license or failure to display license decals and required identification information on its vehicles, shall also be in violation of this law.

D. Any person violating any of the provisions of this chapter shall be guilty of a civil violation and, upon conviction thereof, shall be punished by a fine not to exceed the sum of \$250 for the first offense. A second violation shall be punishable by a fine not to exceed the sum of \$350 and a third violation shall result in a fine not to exceed the sum of \$1,500.

Section 2. Severability.

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

Section 3: Effective Date.

This local law will take effect on January 1, 2023.

ROLL CALL

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

9. Set a public hearing for December 7, 2022 to adopt a new local law, Chapter 88 “Explosives, Blasting and Mechanical Rock Excavation”, repeal in part Chapter 98, “Fire Prevention”, Article VII, “Explosives” and amend Chapter 133 “Noise” Sections 133-8, 133-9 and 133-10 of the Code of the City of Rye.

Mayor Cohn said that the explosives and blasting section has been gone through in the company of engineer consultants expert in blasting. And they have helped guide the Council on certain of the provisions. He said the Council has tried to render parallel provisions dealing with blasting and mechanical rock excavation with chipping and other mechanicals means where they could. And they have shortened the rock-chipping time from 38 days to 15.

Councilman Henderson said the attachment to the environmental assessment form is a good summary of the proposed law. He said there is a provision for neighborhoods so that if there's rock-chipping in one house, it used to be a 60-day period where there could be no rock-chipping in the period. He said they've exempted geothermal systems from the legislation so people can still drill for geothermal heat. They've also allowing homeowners two days to do technical investigations. He said if you do rock-chipping, drilling, or blasting, you cannot do it again for 18 months.

Councilman Stacks made a motion, seconded by Councilwoman Souza and unanimously carried by the Council, to set a public hearing for December 7, 2022 to consider the adoption of a

new local law, Chapter 88, repeal in part Chapter 98, Article VII, and amend Chapter 133, “Noise,” Sections 133-8, 133-9 and 133-10 of the Code of the City of Rye.

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

Kelsey Johnson of 31 Centre Street thanked the City staff for helping the community be heard about the Forest Avenue sidewalk. She thanked the City Council for providing information to residents on how the funding is going to work. She also thanked the residents for taking on sidewalk maintenance. She said she is available for questions on the history of the project and that the scope of the project has changed materially.

Mr. Usry said that there was a workshop with those residents that would be directly impacted if the sidewalk moved ahead; that was done about ten days ago. There will need to be a public hearing on the matter before anything moves to the state or federal funding or to design, which would be another six to nine months. Councilwoman Souza said that there is a funding source behind this project as the City applied for and received the grant. Mr. Usry said there isn't a final cost estimate or final construction drawings, but there was a grant received for a substantial portion of the cost.

Kristan Watson, 1 Beary Court, expressed her support for the sidewalk project as well. She said she has worked with Kelsey on some of the project. The project is not located on her side of the street, so she will not be impacted by snow removal, but flooding will still be an issue. She said she is aware catch basins would be added. She wants the street to be safer for her children.

11. Open a public hearing to consider an application from Airosmith Development engaged with AT&T to modify an existing facility located at 66 Milton Rd that does not substantially change the physical dimensions of the current facility.

There were no representatives from Airosmith who attended the meeting. Ms. Wilson recommended opening and adjourning the public hearing until December 21, 2022, so the public hearing would not have to be re-noticed. Ms. Wilson said she was unsure how the shot clock would be impacted given Airosmith's failure to show when the City was ready to act.

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

There was no one present to speak.

Councilman Nathan made a motion, seconded by Councilwoman Souza, to adjourn the hearing until December 21, 2022.

12. Resolution to approve a new retainer agreement with the Corporation Counsel.

Councilwoman Souza made a motion, seconded by Councilman Stacks, to approve a new retainer agreement with the Corporation Counsel.

ROLL CALL

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

13. Resolution to waive parking restrictions and parking fees in all downtown parking lots and Purchase Street starting December 17 and through December 26, 2022.

Councilwoman Souza said the Chamber appreciates this resolution. Councilwoman Souza made a motion, seconded by Councilman Nathan, to approve a resolution to waive parking restrictions and parking fees in all downtown parking lots and Purchase Street starting December 17 through December 26, 2022.

ROLL CALL

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

14. Resolution designating the days and time of regular meetings of the City Council for 2023 setting January 4, 2023 as the first regular meeting.

Councilman Henderson said he will miss the January 18, 2023 meeting. Councilwoman Souza made a motion, seconded by Councilman Henderson, to approve the resolution designating the days and time of regular meetings for the City Council for 2023 setting January 4, 2023 as the first regular meeting. The Council unanimously agreed.

The 2023 calendar dates for City Council meetings are as follows:

- January 4, 18
- February 1, 15
- March 1, 15
- April 12, 26
- May 10, 24
- June 14
- July 12
- August 9
- September 13
- October 4, 18
- November 1, 15
- December 6, 20

The 2023 Budget Workshops are set as follows:

- November 13, 28

The Joint Meeting of the City Council and School Board is set for April 22, 2023.

15. CONSENT AGENDA

- a. Consideration of a request by the Rye Little League to approve a parade to kickoff Opening Day of the Little League Season on Saturday, April 22, 2023 beginning at 11:00 a.m.
- b. Consideration of a request by Christ’s Church to add a rain date of Sunday, December 4, 2022 for its Annual Christmas Tree Sale from 8:00am-5:00pm (for the associated road closure). The event has already been approved for December 3, 2022

Councilwoman Souza made a motion, seconded by Councilman Nathan, to approve both consent agenda items. The Council unanimously agreed.

16. Old Business/New Business.

There was no old business or new business discussed.

17. Adjournment.

Councilwoman Souza made a motion to adjourn, seconded by Councilman Nathan. The Council was in favor and the meeting was adjourned at 8:14 P.M.

Respectfully submitted,

Carolyn D’Andrea
City Clerk

DRAFT UNAPPROVED MINUTES of the
Regular Meeting of the City Council of the City of
Rye held in City Hall on December 7, 2022, at 6:30
P.M.

PRESENT:

JOSH COHN, Mayor
BILL HENDERSON
EMILY HURD
CAROLINA JOHNSON
JOSHUA NATHAN
JULIE SOUZA
Councilmembers

ABSENT:

BENJAMIN STACKS
Councilmember

The Council convened at 5:30 P.M. Councilwoman Souza made a motion, seconded by Councilman Nathan, to adjourn into Executive Session at 5:31 P.M. to discuss litigation and personnel matters. The Council reconvened in a public videoconference at 6:30 P.M. The meeting was streamed live at www.ryeny.gov for public viewing.

1. Pledge of Allegiance.

Mayor Cohn led the Council in the Pledge of Allegiance.

2. Roll Call.

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

3. Drafting of the unapproved minutes of the regular meeting of the City Council held November 30, 2022.

City Manager Greg Usry said that the minutes were going to be considered for approval at the December 21, 2022 City Council meeting.

4. Flooding Update.

Mayor Cohn said that the City continues to reflect on the discussion with SUNY Purchase. The City has an upcoming meeting with the Department of Environmental Conservation next week on its resilient stream study in the Blind Brook watershed and other related topics.

5. Mayor and Council amendments to the proposed 2023 City of Rye Budget. Roll Call.

Mr. Greg Usry said that he and Deputy Comptroller Joseph Fazzino, along with a couple of department heads, identified two areas to find some additional savings in expenses. One is a

line item that has historically been in the manager’s budget that allows the City Manager to engage consultants, which the Manager has needed from time to time. Projecting ahead to next year, this proposed spend can be reduced. Mr. Usry went into detail about the different efforts of the City’s consultants and felt confident that this was an area that could reflect a reduction in expenses.

Mr. Usry further said that there were some small consulting lines in the City Engineer’s budget he and City Engineer Coyne agreed to be lessened in the budget. Those two areas together result in a \$45,000 reduction in expenses for the proposed budget, and if amended, would reduce the property tax increase by a few tenths of a percent and result in a net of 3.97% for the 2023 budget. Mr. Usry said that reduction would not interfere with the City’s operating budget and city services, although there is a chance that he may come to the Council at some point in 2023 identifying a specific need for a consultant that the City would fund at a fund balance.

Councilwoman Souza made the motion, seconded by Councilwoman Johnson, to adopt the following amendments to the proposed 2023 City of Rye budget:

RESOLVED, that the proposed 2023 budget is amended as follows:

- Decrease Consultant expenditures by \$45,000.

ROLL CALL

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

The adopted resolution will result in a tentative property tax rate of \$198.43 or a 3.97% increase.

Mayor Cohn said there was a misconception that the Council removing extra funding from the tax rate for roads meant that the City was taking away a project. He explained that the City will have adequate money in the budget in 2023 to satisfy what the City’s road consultant has told the City is an appropriate amount to keep the upward process of the condition of the City’s roads. The road consultant has also told the City that the condition of the City’s roads at this point exceeds the quality of the condition of many of the City’s neighbors’ roads. Mayor Cohn said the City wants to keep to an upward trajectory, but given these inflationary times and the City’s sensitivity with respect to the tax increase, it seemed appropriate not to embed that extra amount in the tax rate.

Councilwoman Souza said there was some inaccurate reporting in the Rye Record saying that the Council was suggesting flood mitigation be pulled back. She said the quote was attributed to her when she never said it. Mayor Cohn said he thought she was just asking for close review of the expenses as they come in. Councilwoman Souza agreed. Councilman Nathan said he understood her comment as more of prompting explanation and discussion, not as a suggestion, and that the Councilmembers are committed to the flooding work.

Mayor Cohn said that some Councilmembers have asked for an opportunity to ask questions regarding the Rye Golf Club rates. Rye Golf Club Commission Chairman Terrence

McCartney thanked the Council for their service. Chairman McCartney gave an overview of the club, its needs, how it started and how it has evolved over time. He explained that the Rye Golf Club is run as a private course. In 1965, the idea was to be run as a public course, but the club has evolved a great deal over those 57 years.

Chairman McCartney said Rye Golf Club becoming a membership-only club may have been tied to when the Commission decided to have a no-refund policy and prompted membership applications. The Rye Golf Club, when established in 1965, operated under the Rye Recreation Commission. He said there is a cap on the number of members. Even though the City owns the golf club, one needs to be a member in order to be on Rye Golf Club property. There are signs on the property saying it's a members-only facility.

Mayor Cohn said anyone can pay their money on an annual basis subject to the cap on number of members. Chairman McCartney agreed and replied that there is a waitlist of 300 people for club membership. People can't pay to use the club on a daily basis. Councilwoman Hurd said all Rye residents are eligible to join the club, but they need to pay yearly dues. People can't pay to play per green fee. Chairman McCartney said annual dues can be paid on a quarterly basis.

Mayor Cohn said, from the literature that Corporation Counsel Kristen Wilson circulated, he thought a key difference was the initial declaration in 1965 said the club was to be operated on a self-sustaining and self-liquidating basis, and it was up to the Rye Golf Club Commission to figure out how to do that. Chairman McCartney said he agreed, and that was his second point he was going to make. Mayor Cohn said it was his understanding that much of the tax base wanted the golf club insulated from the tax base. People didn't want to both pay their taxes and pay dues to use the club.

Chairman McCartney said in the 20 years before 1965, there were four different entities on the property of the Rye Golf Club that had failed, which is why the City wrote the language about self-liquidating. The golf club is an enterprise fund and is not a burden on the City taxpayer. Chairman McCartney said the club puts \$400,000 into the City's coffers every year. When looking for a charter, he found a document summarizing what an enterprise fund is. The document stated that the golf club is responsible for all costs associated with the operation and maintenance of the Rye Golf Club, including debt service, capital improvements, and administrative fees charged to it by the general fund. It also stated that membership and user fees are structured to provide revenues sufficient to cover all expenses.

Chairman McCartney said the Commission is trying to constantly figure out ways to maintain the club's membership levels but also raise money to pay for capital projects. He said he can think of \$15 million worth of capital projects that the Commission needs to do, and the Commission has just under \$4 million in its general fund. The pool at the club is the biggest concern of the Commission. It was built in the 1980s and needs repairs every year. He said replacing the pool would be a \$10 million project, and the Commission would likely be asking the Council for a bonding issue.

Chairman McCartney explained that the Commission has an irrigation project that they need to do at the golf club that could cost \$2 two \$3 million. In addition, the bunkers need repair

and would cost \$2 million. The Commission also needs as much as \$500,000 to repair the castle. He explained that the fee structures support these projects. He said the course was originally designed for a number of rounds per year in the teens, and there have been over 30,000 rounds this year.

Councilwoman Hurd said there has been a dramatic change in the demographics, the demand, and use of the golf club, and so these budget concerns were new information to the Council. She explained that the Commission's proposal is a dramatic change to what the Council has seen in the past. Chairman McCartney said that the last five budgets that the Council has approved have all been slightly different. He said the Commission raised the membership rates for anyone who's been at the club ten years or longer by 2%, and newer members' rates were raised by 4%.

Councilman Henderson said the City of Rye owns the golf course and is responsible for the enterprise fund, and the golf club is under the management of the golf club general manager, who reports to the City Manager. The City Council is required every year to approve the rates of the Rye Golf Club. It is a municipally-owned golf course owned by the City of Rye. The City Council is responsible for approving the rate every year and the enterprise fund, and the Rye Golf Club Commission is an advisory committee.

Chairman McCartney agreed with Councilman Henderson. He said that the Commission tries to provide the Council the best advice it can, and the Council always follows it. The Commission is balancing a lot of different things. Chairman McCartney said that the Commission has provided the Council with 57 years' worth of budgets.

He said the first time the Commission raised the new members' 10% a couple years ago, when they had a waiting list. The rate increase did not impact people's willingness to join the golf club. The increase was forgiven when members renewed. When the Commission did its analysis the following year, they raised rates for new members, and the Council approved it. Chairman McCartney said in the second membership year, the golf club would no longer treat a member as a new member.

He said the change in the proposed budget is a well-thought out change because the waiting list hasn't gone away, and compared to other golf courses in the area such as Harrison Meadows, membership at the Rye Golf Club is a bargain. Councilwoman Hurd replied that Harrison Meadows is under new management within the last one or two years, and that private clubs aren't an appropriate analogy because they are private clubs, whereas the Rye Golf Club is a municipal facility. She stated that the quality of the Rye Golf Club is incredible and that the Commission have been incredible stewards of the club.

Chairman McCartney said that the club is a lot closer to that of a private golf club. It is unique because the city owns the property. Councilman Henderson said that members have no equity in the club. Chairman McCartney said that residents can dine at Whitby Castle without being members as a part of the contract the Commission with Lessings to run a public restaurant. However, people have to be members of the club to use any club facilities.

Mayor Cohn said that he didn't find the public/private distinction illuminating. He said that the club is an enterprise fund and must be self-sustaining. And the 1965 papers basically say that it's up to the Commission to propose the rate structure. The Commission is not able to draw on the tax base to supply the pool or the new irrigation or the bunkers.

Councilman Henderson said in 2022 that a new member pays 39% more to join Rye Golf Club in almost every membership category. It's about \$2,000 for a family membership, and it's around \$1,600 for individual daily golf. He said the Council was told that the current fee structure was part of a club dues reform that occurred at the Commission's September 28th meeting. He said he understood the big change to be that in past years is that new members after 2022 are now in their own class. New members who paid a 39% premium will continue to pay 39% more than members who joined the club before 2022. Chairman McCartney said the Commission didn't promise the discount to new members. Councilman Henderson said the Council understood that there would be two different classes of members, and that members would be locked in at the higher rates. Councilwoman Souza asked if anyone was signing a long-term contract. Chairman McCartney said membership is year-to-year.

Councilwoman Hurd said the Council had been told that second-year members were able to get the renewing rate that everybody else paid who's been a member in the past as long as they subscribed by a certain date. Chairman McCartney said that has always been the practice at the golf club. Councilman Nathan asked if the idea was to get a few bumps to raise some extra capital. Chairman McCartney replied that the proposed change is worth \$250,000 to the Commission to not give the grandfather clause to the second-year members.

Councilman Henderson said that the Council was told in the budget workshop that people were going to be sorted into classes, and they were going to keep their base, and all increased would be based on that class. Chairman McCartney replied that the budget and dues structure change year to year. Councilman Henderson said that the golf club is a public facility owned by the City of Rye and the Council approves the rates, and that the Council has been told that people getting the same privileges are going to be paying different amounts in perpetuity. He said he thinks members should pay the same amount regardless of how long they've been with the club and that the Commission should be financing CAPEX expenses all on the new members.

Councilwoman Souza said she thinks the Council is projecting what they think might happen in the future, and this is a budget for this year, and that Commission will come before the Council next year with a different strategy if they get pushback from members.

Councilman Nathan said he believed that the higher fees for new members would be similar to an initiation fee for a new member at a private club. He said he struggled with the indefiniteness of the person who signs on today and doesn't know when they get to be treated like older members. Chairman McCartney replied that they can charge new members extra as long as they're willing to pay. Councilwoman Johnson said that determining a budget is a dynamic process. Councilwoman Souza said that the Commission will have to rethink their dues strategy if people leave the club in response to it.

Councilman Henderson said he could live with a new member paying more and then paying the same as everyone else the next year. He said what he didn't think was fair that from now on, the new members would pay more and would continue to pay more. He said everyone who is a citizen of Rye should have the same opportunity to join Rye Golf Club and be able to pay the same rates, and that a rate increase should be applied across all members.

Chairman McCartney said if the Commission raised everyone's dues, that's \$250,000 they'd lose long-term members in droves. He also said new members are not complaining about the rate increase. Councilwoman Hurd said they're not complaining because there isn't transparency around the rates, and so they don't understand that they are paying so much more than other people. She said there are no rates displayed on the website. She said the Commission could bond with the City backing them.

Chairman McCartney said the problem with new members is that they do not stay. They come to Rye while they're on the wait lists for other clubs and go to those clubs as soon as they get off the wait lists. Councilman Henderson said he thought the Commission should charge the same amounts to everybody and that it's unfair to new families in Rye to pay 39% more for what the Council was informed was going to be in perpetuity.

Chairman McCartney said fairness should extend to Rye Golf Club members who need the capital projects done, and that the \$250,000 would fund a quarter of the bunker project. Councilwoman Hurd asked if there would not be a discounted rate for renewing members going forward. Councilman Nathan asked if there were other enterprise fund programs, or was this policy created by the Commission. Chairman McCartney said the policy originated with the Commission and reiterating that discounting members was a year-to-year decision.

Councilwoman Souza said that as a member, she could be called on to spend more in a given year if the needs of the club had it. Councilwoman Hurd said she would prefer to see an open, transparent initiation fee because then maybe the Commission would get more of the members that it wanted. Chairman McCartney said that the Commission doesn't feel like they owe members a bargain while they're looking to join private clubs because they're new and haven't paid into anything like older members have.

Councilwoman Hurd said she would like to see more transparency with respect to rates, because the Rye Golf Club is a public golf course. She would like to see them posted on the City website. She said a policy was made in 2018 to have the rates taken off the website to make the club feel more like a private club. Councilman Henderson said all the rate information should be posted on the club's website. Mayor Cohn said he suspected that most of the Council would be in favor of greater transparency and that he didn't understand a problem with publishing the rates. He said that the Council could require the Commission to publish the rates.

Councilwoman Hurd made a motion, seconded by Councilman Nathan, to require rate transparency by posting the rates on the website, and to take the comments back to the Rye Golf Commission for them to address in the coming months.

Councilman Nathan said he would be in favor of the Chairman McCartney returning to the Council in January after it meeting with the Commission and responding to the Council's request for transparency and sharing his thoughts on that. Chairman McCartney said that request couldn't be tied to the budget because the Commission cannot delay on that. Councilman Nathan said he believed that the transparency issue is a separate issue from the budget issue. Councilman Henderson said he didn't think the rates were fair, but he could vote for them for a year. He said he would like to see all members paying the same amount in all the classes.

Mayor Cohn said it sounded as though there was a modification to the motion to give Chairman McCartney time to come back to the Council and speak to the transparency point after he had the Commission's thoughts. Ms. Wilson said the motion could be tabled until the second meeting in February if the Council so wished. Otherwise the live motion would be Councilwoman Hurd's, which was seconded. Councilwoman Hurd said she wouldn't be at the February meeting but that she would like a breakdown of the club's membership. Chairman McCartney replied that that was possible. Mayor Cohn asked for a vote, seconded by Councilman Henderson, on tabling the motion.

ROLL CALL

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

Mayor Cohn complimented the Commission and said he thinks they had a terrific challenge and that a 39% increase of a cheap deal is still a cheap deal. He said he knew that figuring out the balance between new and old members is difficult and will be a continuing challenge. Councilman Henderson also thanked the Commission for their service.

Mr. Usry said the manner in which the City is going to pay for a robust resurfacing program is no way going to impact the way the rating agencies look at the City's credit. He said in all aspects, Mr. Fazzino and his team and the way department heads have built the budget only reinforces the AAA rating and the positive that agencies made about the City when it issued the debt. Councilman Nathan asked if there were any long-term budgeting concerns as the Council thinks about tax increases in the future. Mr. Usry replied that no changes would impact longer-term viability. He said that his and Mr. Fazzino's goal was to continue building on their budgets things that they know are ongoing and reoccurring.

Councilman Nathan said the Council is seeing a lot of demands around quality-of-life issues, such as things happening on different pieces of property and code issues, and a lot of pressure in Rye. He asked Mr. Usry if it was a matter of allocating the resources the City has to address those issues, or was there a concern that at some point would the City find itself short on resources to address them. Mr. Usry replied that it was always going to be about the allocation of resources and trying to balance the cost of that with the residents and the Council's expectation for responsiveness. He said he and Mr. Fazzino know that leaf-blower has stretched the budget and that land-use matters are becoming more complex. He said that for 2023 he believes the City is on good footing.

Councilman Nathan asked Mr. Usry if the Council would be looking at breaking the tax cap again next year. Mr. Usry replied that he couldn't project into next year and that given the state formula that says the lesser of 2% or actual inflation, in an inflationary environment, it makes things very difficult. 61% of the budget is labor costs. There are four union contracts that are coming up for renegotiation at the end of next year. The City has insurance premiums that it can't control, as well as supply and material costs that are out of its control.

Mayor Cohn said that everyone in Albany is aware that a tax cap that's the lower of inflation or 2% in the present inflationary environment makes for huge challenges for municipalities and that a tax-cap change has to be changed as a matter of state law.

6. Open the public hearing on the 2023 Budget.

Councilwoman Souza made a motion, seconded by Councilwoman Hurd, to open a hearing on the 2023 Budget. The motion was unanimously approved. No one from the public appeared before the Council. Councilwoman Souza made a motion, seconded by Councilwoman Hurd, to carry over the public hearing until the December 21, 2022 meeting. The motion was unanimously approved.

7. Open a public hearing to adopt a new local law, Chapter 88, "Explosives, Blasting, and Mechanical Rock Excavation", Repeal in part Chapter 98, "Fire Prevention", Article VII, "Explosives", and Amend Chapter 133 "Noise" Sections 133-8, 133-9, and 133-10 of the Code of the City of Rye.

Mayor Cohn said that in the draft, the Council was bringing forward months of work by a Council subcommittee of Councilwoman Hurd, Councilman Henderson, and Mayor Cohn, along with City Manager Usry, City Planner Miller, and Corporation Counsel Wilson, and tech support by engineering firm Arcadis. Mayor Cohn said the subcommittee was hopeful that they were striking a balance between the rights of property owners or developers or contractors working for property owners and their neighbors. He said the subcommittee was doing this work against a setting of resident complaint about the difficulties in tolerating what sometimes goes on, on properties that are being renovated. Mayor Cohn said as the subcommittee was going through the city code, they decided to make a small change in the hours that construction work can take place on a daily basis.

City Planner Miller said that included in the packet distributed to the Council was the draft local law, a resolution for adoption, an environmental assessment form, and the narrative attached to the form detailing the substantive changes over existing conditions. Mr. Miller said the City has blasting laws and rock-chipping laws. Mr. Miller said the committee is looking to significantly enhance the blasting law and make modifications to the current rock-removal requirements. The City is in a moratorium that limits the kinds of rock-removal activities people are allowed to do. 15 days is the maximum permitted period. Blasting is prohibited. The utility exemption has been reduced under the current moratorium. Councilwoman Hurd said the moratorium was extended until February 4, 2023.

Mr. Miller said the committee creating a new blasting law codifying the existing practices and procedures. He said the existing law didn't have a lot of things codified that the City had practiced but weren't codified. He said things like penalties, insurance, and maximum velocity were incorporated into the new law. Mr. Miller said the committee removed chipping and blasting from the noise section because many people said blasting should be subjected to the noise law, and it's in the noise section. He said the City is not trying to regulate the maximum permitted noise levels for chipping or any rock-removal activities.

Mr. Miller said in the blasting law, the committee is defining some of the approval authority. Under the proposed law, it's a combination of the building inspector, the public safety commissioner, and/or the fire inspector or some combination thereof. Mr. Miller explained that under the current law, blasting is limited to 38 days. The proposed law does not have a 38-day restriction to prioritize safety over speed. The City wants to be able to reduce blasting velocities, stop a project if it's doing something it shouldn't be doing, impose penalties, and take the time to revisit blasting plans if things go awry. He added that the City does not want the pressure of a clock ticking against it.

Mr. Miller explained that the committee looked at both blasting and rock-chipping because as the City changes regulations for chipping, it may alter existing patterns for blasting. There is no change in the days of the week and times of day that people can blast. And the new law maintains the restriction that once blasting is done on a property, it cannot be done again for another 18 months.

Mr. Miller said that currently under both rock-hammering and blasting, if people are within 500 ft. of a school and there's testing days, they are prohibited from doing rock-removal activities during that time. In the new law, the distance has been increased from 500 ft. to 750 ft. There is a consistent 750 ft. of distance for notice and exclusions. Under the new law, blasting within 700 ft. of another location cannot occur until 60 days has passed. Under the current moratorium, it's a 30-day restriction and 1,000 ft.

Councilwoman Souza asked if the construction window was subject to the new law. Mr. Miller replied that it wasn't because the rock-removal restrictions have a much smaller window. No construction is allowed on Saturday and Sunday, and hours are 9:30 to 3:30. Councilman Nathan asked what the basis for 750 ft. of distance. Mr. Miller replied that there is no restriction under current law. There is under the moratorium 1,000 ft. Mr. Miller took noise measurements and found noise couldn't be heard within 1,000 ft. Mayor Cohn said the committee did a map exercise where they figured out with a circle what 750 ft. looked like in terms of reaching actual streets in the City.

Mr. Miller said that notification distances have increased from 500 ft. to 750 ft. A permit cannot be issued until 28 days in advance, so people have to wait almost a month before the permit can be issued and the certification mailing is submitted. Mr. Miller said the committee changed the standard for pre-blast survey so that it's consistent from 500 to 750 ft. A pre-blast survey is not codified today. It's practiced. The City and insurance companies require it. The City must offer the opportunity to conduct an inspection of a property internally and externally if permitted by the property owner to do an analysis so if there's claim of a damage, the City has a pre-

construction, pre-survey of the blast versus post. The survey will be paid for by the blaster. The records will be given to the homeowner upon request. The Building Department will not maintain photographs and video and whatever else of people's homes.

Mr. Miller said the new law continues to maintain a registry of who is blasting and when and what permits are out and the length of time. He said the permit is up to the four months from permit issuance to completion with a four-month extension. But the City must know when a property owner starts seven days in advance to put it on the website. The notice is to let the neighbors know that an application is being submitted and that it will occur. There will a seven-day advance notice on what the specific date is.

Councilman Souza asked that the City consider requiring the same people who get the notice to get the notice seven or ten days beforehand. Mr. Miller replied that the issue is that when someone submits the application, it goes to a consulting firm and there is a lot of back-and-forth. Councilman Souza said the blaster should send a notice to the people within the 750 ft.-range stating the real window for the blasting. Mr. Miller said that the mailing costs hundreds of dollars, and it's all for the permits. He has to know exactly when the permit is going to be issued. A blaster or chipper has four months within which to exercise their 15 days of blasting or chipping. Mr. Miller said once the permit is issued, the blaster has to send out and certify the mailing back to the city seven to days on top of that. Councilwoman Hurd said there are issues such as availability of machinery and weather that impact a particular start date. And so to be able to forecast with any specificity is difficult.

Mr. Miller said rock removal was removed from the noise section and is now embodied in its own separate article under the new chapter. The definition of rock removal was expanded to include any form of rock removal, such as expansive grout, hydraulic splitters, drilling, and boring. The definition of unexpected circumstances was modified to make it a lot tighter. He said if someone were to seek an appeal, which is in the moratorium in the current law and the proposed law, there's a more specific definition on that.

Mr. Miller explained that the duration was reduced from 38 days to 15 days. 15 is the current limit on the moratorium. There was a provision in the existing law that utilities get essentially unlimited exemptions. That was reduced by the moratorium to two three-day periods. Storm water was taken out of the draft law. Rock removal is the same in the proposed law for time of day and day of week. It can't be done again for 18 months. The restriction zones were increased from 500 to 750 ft. for school testing days. And no rock removal can be done within 60 days within 750 ft. 750 ft. of notice, 28 days in advance, and a seven-day posting period are required for rock removal. Mr. Miller said these are some of the most labor-intensive permits because more often than not, people are asking not to get permits because they're not ready for them. Machinery unavailability or weather could impact a project's start time.

He also said the draft legislation expands the number of exemptions under the law. The idea is if someone is doing a blasting job or a 15-day permit, that would include the storm water measures. Drilling is not exempted from the proposed law. One of the exemptions is geothermal installations. It's posted on the website, but there's no notice to neighbors. The same time-of-day

and date restrictions apply, but it does not need a permit and does not trigger the 18 months because it's not getting that 15-day permit.

Drilling or boring for geotechnical investigations is exempt under the proposed law and allowed for two consecutive days. That's for people who need to understand the subsurface conditions for construction purposes. A storm water exemption can be done for two three-consecutive-day periods. Mr. Miller said the subcommittee felt that geothermal drilling was something to be encouraged and could be something that could not be possible if subject to the same 15 days. He added that drilling is generally less disruptive than rock hammering or blasting.

Mayor Cohn said that City has limited experience with geothermal installation. He said the committee is not sure how long it will take given the different sizes of installation and different technologies. Mr. Miller said there was a lot of financial incentive for people to install geothermal, but it's not available now. Councilman Nathan said geothermal installations are quicker and generally less noisy than rock chipping.

Mr. Miller said there could be residual pieces from blasting, and so people should have an opportunity to chip out some things so as to not encourage over-blasting. There are three consecutive calendar days of finishing work. The consecutive days do not include weekends. Councilman Henderson said that 15 days is actually 11 days because chipping can't be done on weekends. Mr. Miller explained that construction hours are being reduced in the proposed law by an hour per weekday. The hours are currently 7:30 a.m. to 6:30 p.m., and the proposed law changes them to 8:00 a.m. to 6:00 p.m. Weekend hours remain unchanged.

Councilman Hurd made a motion, seconded by Mayor Cohn, to open the public hearing on the revised law. The motion was passed unanimously.

Councilman Nathan asked what the City can do to put people on more specific notice. He said there's a burden on the neighbors. Councilman Henderson said the four months is just for blasting, not for chipping. Mr. Miller said once a chipping permit is given, it's posted on the City website seven days before start time, so there is a seven-day lead on the rock register. Mr. Miller said sometimes changes to permits need to be made because people request adjustments.

He said the committee didn't want to force the time issue on blasting. Councilman Henderson said there is a four-month time period for blasting, but that's because the City wants to make sure it's done carefully and correctly. Councilman Nathan said people in the radius of a blasting project should have sufficient notice of it to plan accordingly, and the burden of notice should be on the blaster. Councilwoman Johnson said there are many variables out of people's control, such as weather or machinery. Councilwoman Hurd said one of the things the committee tried to balance is the burden on the Building Department, so a tech solution would be great. Mayor Cohn asked if it was possible for users of the City app to sign up for push notices of varied sorts. Mr. Usry said that wasn't possible yet, but targeted pushes are a goal of the City.

Mr. Miller showed a sample project that had a notice of 750 ft. He said such a project produces 180 six-page mailings that has to be sent via certified mail. The Building Department cannot issue a permit until 28 days has passed since it saw the date on that. The permit then goes

to the City's consultant and gets fire, police, and the engineering and legal departments involved in it. The permit has a four-month expiration with a four-month possible continuation. A project's start date must be posted seven days in advance.

Councilman Nathan said the City needs to think about how the neighbors knows that a blasting project is going to be happening. Councilwoman Souza said she is more in favor of exploring whether or not there is a tech solution. Councilwoman Hurd said the unofficial burden would be put on residents to be good neighbors and inform people. Councilwoman Souza said she presumed that the certified mailing would direct people to the City website for further information. Mr. Miller replied that the Building Department has a notice that says that.

Mr. Miller said that residents are getting notices for chipping right away. He said that permit takes less time to administer because it is less involved. Councilman Nathan said if he received such a notice, he should have a good idea that the 15-day window is going to be around a certain time. Mr. Miller replied variables like rain and school testing could affect the project start time. Also, if there was a prior chipping project within the 60-day limit, that could impact the start time. Mr. Miller said that with chipping projects, neighbors have a tighter window for planning purposes.

Councilman Nathan asked why a pre-survey for chipping wasn't required. He said he experienced a resident's house shaking from a chipping project because his property and the property being chipped shared a piece of bedrock. Mayor Cohn said the subcommittee talked about how the intensity of particle velocity wasn't sufficient to damage and had far less damage than blasting.

Michael Quinn from Arcadis explained that ground movement was established for the blasting side of the code. He said there's a host from very small projects such as a small addition versus a brand-new house that's going to be put in deeper than an old house was put in. He said this is a code that addresses from the smaller projects to the largest projects. Mayor Cohn said the question the committee discussed in its meetings was whether the City needed to be concerned that rock hammering was going to damage neighboring houses. He said he thinks the answer the committee was that rock hammering did not create the kind of vibration or the vibrational intensity that was going to damage a neighbor's house. Mr. Quinn said he agreed with that assessment.

Councilman Nathan said he attended a chipping event, and the owner of the home invited many members of the Council to his home to observe the chipping and geothermal drilling separately and together. He said he then visited various neighbors to hear the sounds at their homes inside and outside to hear what they were concerned about. Councilman Nathan said in one of the homes, because it shared a rock ledge, the entire home shook. Councilman Nathan said he has not witnessed but heard from people that foundations crack, stucco cracks, brickwork repointing needs to be redone, that are there impacts from rock chipping. He reiterated that these are fairly substantial projects, and the burden should be on the blaster or chipper.

Mr. Miller said part of the money that was set aside by Council to support this effort was not only for the engineer, but also used to engage someone that measures particle velocity with a seismograph. Mr. Miller said at a visit to a site that was ongoing, he moved the seismograph

around and found that the chipping was not registering on the seismograph, which supports what the engineers told the committee, that it doesn't rise to the level of causing damage. The common convention for peak particle blasting is 2.0, which causes damage to plaster but not structural damage. The committee in the draft law is looking at numbers below 2.0. The project in question had very large machines.

Mr. Miller explained that the premise is to protect property from damage, but that doesn't mean that rock chipping isn't disruptive. In their tests, the subcommittee didn't get the peak particle velocity. Councilman Nathan said he hoped to hear from the public who have raised the issue about their experiences with rock chipping. He said when a house was demolished next to his house, his house shook. He said that with massive projects, the burden should be on the person doing the project. He suggested a pre-blast survey for a 15-day permit on chipping.

Councilwoman Souza said some of the other changes in the proposed law will have a compounding positive effect. Councilwoman Hurd said that none of the changes will stop people from building larger homes unless the City revisits the zoning code, but she added that the proposed law is a positive move against overdevelopment.

Councilman Nathan asked if the City had the same or similar insurance requirements for chipping as blasting. Ms. Wilson replied that the requirements are very similar and that as part of the legal review, those documents come across her desk, and if necessary, the legal department brings in the City's insurance broker to review the amounts. She said the amounts are similar to what other communities require for blasting. She said didn't believe the City has specific insurance requirements for chipping. Mr. Miller said the building department applies the standard for building permits. As the permit is accepted, the building department makes sure that the chipper is licensed and insured.

Councilman Nathan asked if there is damage to a neighbor's home in a blasting situation, and there are photos or videos documenting the damage, is there strict liability or just a debate. He asked if there is a presumption of liability or if the neighbor has the basis for a lawsuit and has to prove that the blasting actually caused the damage. Ms. Wilson replied that the City's code doesn't impose any type of strict liability. The City is just giving the neighbors the mechanisms and tools that if there were damage to occur, they'd have the video and any other pre-blast survey-type information to go after the property owner, but the City would not be a party to that.

Mayor Cohn asked if the City had authority to impose strict liability. Ms. Wilson replied that the City doesn't have that authority. Mr. Miller added that the City also doesn't have the expertise and will not even attempt to adjudicate claims. Councilman Nathan replied that he was looking for a homeowner whose house has been damaged by a blasting situation to not have to then go to court and prove liability but simply go to court, or as insurance companies might get involved, and show the monetary damages and cost of repair.

Mr. Miller said that there is a third-party inspector hired by the City that sets up seismographs so that they witness blasting and chipping. The inspector records every blast, the peak particle velocity, and the decibel readings. Each shot is recorded, and that becomes part of the City's record. They measure intensity and distance.

Councilman Nathan asked how long a blasting project is compared to a chipping project. Mr. Miller replied that a blast lasts about a fraction of a second. Mayor Cohn said there are issues of rock hardness, rock depth, and rock quantity. He said his suspicion which will be faster under which circumstances and how much faster is going to be variable from site to site.

Mr. Quinn said he thought the process of blasting took longer because of all the pre-blast surveys and all the prep work that has to be done. He said the actual removal of the rock is quicker, but the duration of the project is longer. He said he thought when Arcadis checked with the City that there were only a couple of blasting permits typically in a year. He added that with additional requirements on hammering or other types of mechanical rock removal, that may increase, which was why there was a lot of conversation about the duration and whether or not to limit those permits, and so that's where the timing came back into play so those types of projects are not rushed.

Councilman Henderson said people prefer to chip because it's cheaper than and not as laborious as getting a blasting permit and do all the things they need to do. He said the problem with the 15-day window is the City may force people to blast instead of chip because they might not think they can get all the work done in 15 days.

Councilman Nathan said he'd want to encourage the quicker disruption if the process of blasting takes more prep time to get it all organized and put through, but then the disruption to a neighbor is a day or two compared to 15 days. Mr. Miller replied that the City doesn't an entire site to be blasted at one time. A blast can be felt, so in that way it's more disruptive than chipping. But on the other hand, there isn't sustained noise eight hours a day for 15 days minus weekends with chipping. Mr. Miller said there might be three blasts a day, depending on weather and other variables.

Councilwoman Souza said shortening the window is going to force more to go into blasting if it's a big enough project. Councilman Nathan asked if people would be pushed to blast instead of chip. Councilman Henderson said the committee figured out a time period in which enough chipping could be done to complete a job. Mayor Cohn said the City has seen under the moratorium and the 15-day period some people accomplish a great deal of rock chipping.

Councilman Nathan asked if the committee considered requiring measures such as sound bafflers because the big issue with chipping is the repetitive eight hours of six hours of noise. Mr. Quinn replied that Arcadis contacted some local developers that are engaged blasting and chipping as well as some local suppliers and distributors of such equipment. He said Arcadis explored retrofitting some of the hammers with noise-reducing baffles or wall partitions. He said these products aren't available in the local market.

Councilman Henderson said he thought the law is written as such that if there is some kind of noise-cancelling measure, it can be required as part of the permitting process. Mr. Miller replied if there was something like that, he supposed the City had that discretion, but the committee couldn't find anything with the consultant. Noise-cancelling equipment wouldn't be prohibited by the code.

Councilman Nathan asked how the City's proposed regulation compares to other communities or like communities. Councilman Henderson replied that Larchmont allows 15 days of chipping. Mr. Miller replied that the City is probably more restrictive on the issue of peak particle velocity. Some communities will allow more than the City does. He said that Rye was probably the first community in the Westchester region to come up with a rock-removal law. He added that other communities copied the City's legislation but tweaked it.

Councilman Nathan asked if the City considered banning blasting and chipping except for exigent circumstances and maybe utility lines. Councilwoman Hurd said she thought the City talked about such measures. Councilman Henderson said everyone's property values are at stake every time the Council makes a regulation. He said the committee went from 38 days to 15 days. Councilwoman Hurd said the Council talked about the possibility of regulating the depth of basements due to water issues and other concerns.

Mayor Cohn said the committee decided that things they wanted to regulate like size of basement or treatment of groundwater or issues that might be affected by chipping but aren't chipping themselves, the Council should legislate on directly and not attempt to do it by a rock-chipping law. Councilman Henderson said he thought the focus was on the nuisance. Councilman Nathan replied that he was looking at the balance between property value and quality of life. Mayor Cohn replied that the committee has worked to address that balance.

Councilman Nathan asked Mr. Miller how the blasting and chipping affected the water table and potentially created a flooding issue. Mr. Miller replied that if you dig in Rye, you will often encounter rock or water or both. The rock is removed, and the water is required to be managed. The rock removal doesn't create water.

Councilman Nathan asked if there was any reason for the Council to be concerned about impact beyond the property. Mr. Quinn replied that there's no known residual effects with regards to subsurface rock and somebody digging down. Councilman Nathan said there was a resident who came to the Council and complained that his pond disappeared. Mr. Quinn replied that he was unaware of possible impacts for someone that was removing subsurface rock on any adjacent property or anything beyond the immediate effect right where it happened. He said if there was above-ground rock being removed and you could later surface grades, that could cause an impact.

Councilman Henderson said a lot of those issues are covered when you get a building permit from the Planning Commission and the CCAC. Mr. Miller said these issues were covered by building department review. He said that the Planning Commission in single-family home construction or the CCAC unless a wetland buffer encroachment was involved.

Mayor Cohn said if members of the public intended to share their thinking with the Council, he was hopeful that the legislation could be passed at this meeting. Councilwoman Souza said she was happy to pass the legislation because she believes the Council needed to do something and know they'll have to modify, but she was open to modifications and improvements. Councilman Nathan said he would encourage that the Council leave the session open until the next meeting, and if nobody from the public shows up, they vote on it. He said the draft legislation should

resonate with the public for a week or two before the Council votes on it. Councilwoman Johnson said she supported that suggestion.

Councilwoman Souza made a motion, seconded by Councilwoman Hurd, to continue to the public hearing until December 21, 2022. The motion passed unanimously.

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

There were no requests from residents, and no residents appeared before the Council.

9. Resolution to transfer \$45,000 from General Fund Unassigned Fund Balance to Legal Services.

This agenda item addressed the Verizon litigation costs.

Councilwoman Souza made a motion, seconded by Councilman Nathan, to adopt the following resolution:

WHEREAS, amounts required for the cost of legal services performed and on-going for various unanticipated legal cases were not provided for in the adopted 2022 budget, and;

WHEREAS, there are sufficient funds available in the General Fund's Unassigned Fund Balance, now therefore be it

RESOLVED, that the City Comptroller is authorized to transfer \$45,000 from the General Fund Unassigned Fund Balance to the City Legal Services Account.

ROLL CALL

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

10. Old Business/New Business.

There were no old business or new business items discussed.

11. Adjournment.

Councilwoman Souza made a motion, seconded by Mayor Cohn, to adjourn the City Council meeting at 9:09 P.M. The Council was in favor and the meeting was adjourned.

Respectfully submitted,

Carolyn D'Andrea
City Clerk



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: December 7, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Flooding Update.

FOR THE MEETING OF:

December 21, 2022

RECOMMENDATION: That the City Council hear the update.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: December 12, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Resolution to accept a \$284,000 grant from the Long Island Sound Futures Fund for the design of the Blind Brook Riparian Buffer Restoration at the Rye Nature Center.

FOR THE MEETING OF:

December 21, 2022

RECOMMENDATION: That the Council approve the grant.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Please see attached letter and summary from the Friends of Rye Nature Center regarding a design grant for the Blind Brook Riparian Buffer Restoration at the Rye Nature Center.



December 12, 2022

Mr. Greg Usry, City Manager
Rye City Hall
1051 Boston Post Road
Rye, NY 10580

Dear Greg,

Thank you for your continued support of Friends of Rye Nature Center (FRNC) and our efforts to secure funding for the ecological restoration of the riparian zone – streambank and surrounding area – along the 1,660-foot section of Blind Brook that passes through Rye Nature Center.

We are very excited to announce that we have been offered a grant in the amount of \$284,000 from the Long Island Sound Futures Fund (LISFF) for the *Blind Brook Riparian Buffer Restoration* at the Rye Nature Center. In accordance with the terms of our License Agreement with the City of Rye, we are seeking the City's permission to exercise this grant.

As you may recall from our previous correspondence in April when you provided a letter of support for this grant application, this is a federal grant administered through the National Fish and Wildlife Foundation to support projects that restore the health and living resources of Long Island Sound.

As stewards of the Nature Center property, we understand the importance of maintaining the ecological health of the 47 acres including the area surrounding this stretch of the Blind Brook. In November 2021, FRNC used internal funds as well as an initial grant from the Westchester Community Foundation to complete a stream characterization report with the environmental engineering firm, Barton and Loguidice. Their report assessed the current conditions and indicated what would be necessary to restore this area to its former state as a thriving riparian buffer and forest. The LISFF grant will be used to design this ecological restoration project and seek the necessary local, state, and federal permits required for its execution.

We kindly request the City's permission to exercise the Long Island Sound Futures Fund grant so that we can move forward with the design and permitting phase of this project.

Assuming the project moves forward, we acknowledge that FRNC will also require City permission to exercise any future grants. We look forward to advancing this plan and working in collaboration with you to ensure the riparian environment at the Rye Nature Center is properly restored without impacting existing infrastructure.

Sincerely,

Christine Siller
Executive Director

Blind Brook Riparian Buffer Restoration at The Rye Nature Center

Background: The Long Island Sound Futures Fund (LISFF) supports innovative approaches to conservation and transformative projects that protect the Long Island Sound. In May 2022, after receiving the City's permission to do so, Friends of Rye Nature Center applied to LISFF for funds for the design and permitting phase of the *Blind Brook Riparian Buffer Restoration* project. On November 4, 2022, FRNC was notified that we were one of 41 grants totaling \$10.1 million dollars.

Funds from the LISFF grant will be used to design a construction-ready restoration project plan and obtain the necessary federal, state, and local permits. Once designed and permitted, FRNC will seek the City's permission to apply for new grants (anticipated in 2024) to fund the complete restoration of the proposed project area.

In November 2021, using internal funds and a grant from Westchester Community Foundation, FRNC contracted environmental engineering firm Barton & Loguidice to complete a characterization report of the riparian's existing conditions (see enclosures).

Problem: Barton & Loguidice's characterization report determined that this portion of the brook is:

- Releasing over 228 tons of sediment into the Blind Brook per year due to streambank instability, undercutting, and erosion.
- Disconnected from its adjacent riparian buffer, which prevents it from filtering sediment and acting as flood flow retention for this reach of the brook.
- Lacking the necessary native biodiversity to maintain a healthy riparian ecosystem.

The purpose of FRNC's multiphase project is to address the significant erosion, undercutting, and habitat loss along the 1,660 feet of the Blind Brook's streambank and adjacent riparian buffer, or floodplain, within the Rye Nature Center.

Project Site Map



Solution: Based on their findings, B&L has made two general recommendations. The first is to repair the actively eroding banks that contribute significant sediment loads to Blind Brook and, ultimately, Long Island Sound. The second is to reconnect the active channel to its adjacent floodplain and enhance depressional wetlands by restoring floodplain hydrology and diversifying the current floodplain’s habitat flora, therefore supporting wetland wildlife.

Design Priority	Completed Restoration Outcome
Stabilize streambanks and repair failing channel and revetment points.	Reduce erosion/sedimentation rate from 228 tons per year to approximately 8 tons per year.
Remove invasives and replant native vegetation.	<ul style="list-style-type: none"> - Restore 8-acres of riparian buffer habitat - Filter sediment and act as flow retention.

Photos of Existing Bank Erosion and Undercut Tree Root Systems at Rye Nature Center



References for Successful Interventions

Ahilan et al. 2016. The influence of floodplain restoration on flow and sediment dynamics in an urban river. *J Flood Risk Management*. 11: S986–S1001. <https://doi.org/10.1111/jfr3.12251>

McMillan & Noe. 2017. Increasing floodplain connectivity through urban stream restoration increases nutrient and sediment retention. *Ecological Engineering*. 108: 284–295. <https://doi.org/10.1016/j.ecoleng.2017.08.006>

NYC Parks. Restoration Projects: Bronx River Forest Floodplain and River Channel Rehabilitation Project. Official Website of the New York City Department of Parks & Recreation. Accessed July 17, 2021. <https://www.nycgovparks.org/greening/natural-resources-group/bronx-river-wetlands/parkland-section/reach-11/rehabilitation>

Photo Examples of Successful Riparian Buffer Restoration Projects

BEFORE



AFTER





CITY COUNCIL AGENDA

DEPT.: City Manager's Office

DATE: December 9, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Continue the Public Hearing on the proposed 2023 Budget.

FOR THE MEETING OF:

December 21, 2022

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: That the Mayor and the Council continue the Public Hearing on the proposed 2023 Rye City Budget.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The City Manager presented the 2023 budget on November 9, 2022. The Council held Budget Workshops on November 14th and 16th.

The Public Hearing on the Budget was opened on December 7, 2022 and the Budget adoption is scheduled for today, December 21, 2022.

The proposed 2023 Budget is available on the City website www.ryeny.gov.



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: December 9, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Open the public hearing to adopt a Local Law to override the State enacted tax levy limitation.

FOR THE MEETING OF:

December 21, 2022

RECOMMENDATION: That the Mayor and the Council open the public hearing to adopt a Local Law to override the State enacted tax levy limitation.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: New York State enacted a 2% tax cap on June 24, 2011. A provision in the law allows a municipality to override this tax cap under certain provisions including:

- Local governments may override the tax levy limit only by first passing a local law that allows for the tax levy limit to be exceeded.
- This override vote requires a 60 percent vote of the total voting power of the governing body to pass.
- In a case where a weighted vote is used to pass the budget, the override will require a 60 percent weighted vote of the local government's governing body.
- The override vote must precede the vote on adoption of the budget although both votes may occur on the same day.

See attached draft Local Law.

LOCAL LAW NO. _____-2022

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

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

Section 1. Legislative Intent

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

Section 2. Authority

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

Section 3. Tax Levy Limit Override

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

Section 4. Severability

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

Section 5. Effective date

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



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: December 9, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Resolution to adopt the 2023 Budget and establish the 2023 City tax levy and 2023 tax rate.

FOR THE MEETING OF:
December 21, 2022

RECOMMENDATION: That the City Council adopt the following resolution:

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

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

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

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

- Decrease Consultant expenditures by \$45,000.

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

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

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: On November 9, 2022 the City Manager and City Comptroller presented the 2023 Tentative Budget to the City Council. The tentative budget has since been reviewed and amended by resolutions adopted by City Council at public meetings. The above resolution provides for the adoption of the 2023 Budget.



CITY COUNCIL AGENDA

DEPT.: Finance

DATE: December 13, 2022

CONTACT: Joseph Fazzino, Deputy Comptroller

AGENDA ITEM: Resolution authorizing the City Comptroller to make the necessary year-end closing transfers.

FOR THE MEETING OF:

December 21, 2022

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the City Council adopt the following resolution:

RESOLVED, that the City Comptroller is hereby authorized to make the necessary 2022 fiscal year-end budget transfers in City accounts, provided a list of such transfers over \$10,000 is furnished to the City Council after completion of such transfers.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: While at the fund level total actual expenditures do not exceed the total budgeted amount, there may be several detailed budget lines that show various over and under expended amounts. Funds that are not encumbered or reserved for a specific expense will be moved to Fund Balance from individual financial lines. This resolution authorizes the City Comptroller to make the necessary year-end budget adjustments to ensure that the line item budgets are properly allocated.



CITY COUNCIL AGENDA

DEPT.: Planning/Building/Law/Manager

DATE: December 7, 2022

CONTACT: Christian Miller, City Planner

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

FOR THE MEETING OF:

December 21, 2022

RYE CITY CODE,
CHAPTER 89 (New)
SECTION

RECOMMENDATION: That the City Council review the attached draft local law and environmental assessment form (EAF) with narrative and consider setting a public hearing on the draft local law.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The proposed action involves the adoption of a new local law to implement new and updated regulations and requirements for the use, storage and transportation of explosives and blasting in the City of Rye. The proposed local law repeals the City's existing blasting law in Chapter 98, Article VII, *Explosives*, which has become outdated and not reflective of current blasting standards and the actual administrative practices and blasting permit conditions required by the City. The proposed local law also incorporates the City's rock chipping requirements into the new Chapter 88, *Explosives, Blasting and Mechanical Rock Excavation*, and removes the existing rock chipping requirements from Chapter 133, *Noise*, of the City Code. There are number of substantive changes proposed to the current rock chipping and drilling regulations. Finally, the proposed local law changes permitted hours of weekday construction work. A more detailed description of the local law is found in the attachment to the Environmental Assessment Form (EAF).

LOCAL LAW

CITY OF RYE NO. _____ -2022

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

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

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

CHAPTER 88

EXPLOSIVES, BLASTING AND MECHANICAL ROCK EXCAVATION

Article I, Explosives and Blasting

§ 88-1. Purpose

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

§ 88-2. Applicability; technical standards

A. This article shall apply to each and every person, corporation and business engaged in the manufacture, sale, transportation, storage, handling or use of explosives in the City. This chapter sets forth procedures for the issuance of permits, payment of fees, recordkeeping, reporting and monitoring compliance. In addition, this chapter establishes penalties for the failure to comply with these requirements.

- B. The technical standards set forth in this chapter are based upon generally recognized criteria and accepted industry standards. See New York State Labor Law, Article 16; 12 NYCRR Part 39; NFPA No. 495-1973; 27 CFR 55; 49 CFR 171 through 178; and 49 CFR 390 through 397; Fire Code of NYS, Chapter 56 Explosives and Fireworks for other additional standards that may be applicable.

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

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

versus the potential danger and threat to public safety and tranquility of granting relief. If the Approving Authority grants an exemption under this section, the Approving Authority shall immediately notify the Public Safety Commissioner of the Approving Authority's decision and within five business days notify the City Manager stating the facts, the nature of the exemption and the underlying rationale.

§ 88-4. Definitions.

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

AIR BLAST

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

APPROVED

Acceptable to the Approving Authority.

APPROVING AUTHORITY

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

BLACK POWDER

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

BLASTER

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

BLASTING

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

BLASTING AGENT

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

BLASTING CAP

A detonator.

BLASTING LICENSE

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

BLASTING MACHINE

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

BLASTING MAT

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

BLASTING PERMIT

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

BLAST ZONE

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

BUILDING

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

BURDEN

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

CERTIFICATE OF COMPETENCY

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

CFR

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

CLASS A EXPLOSIVE

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

CLASS B EXPLOSIVE

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

CLASS C EXPLOSIVE

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

COMMERCIAL EXPLOSIVE

Any explosive except a propellant and nitrocarbonitrate, including but not limited to dynamite, black blasting powder, pellet powder, initiating explosive, blasting cap, electric

blasting cap, safety fuse, fuse igniter, fuse lighter, squib, cordeau detonant fuse, instantaneous fuse, igniter cord and igniter.

COMPETENT PERSON

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

DELAY INTERVAL

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

DETONATOR

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

ELECTRIC BLASTING CAP

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

EXPLOSIVE

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

FIREWORKS

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

FLY ROCK

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

FUEL

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

HERTZ

Cycles per second.

HIGH EXPLOSIVE

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

HIGHWAY

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

INHABITED BUILDING

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

INITIATING PRIMER

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

LOW EXPLOSIVE

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

MAGAZINE

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

MISFIRE

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

MOTOR VEHICLE

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

NFPA

National Fire Protection Association.

NITROCARBONITRATE

An explosive classified as a blasting agent.

NO. 8 TEST BLASTING CAP

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

OVERBURDEN

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

OXIDIZER

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

OXIDIZING MATERIAL

An oxidizer.

PEAK PARTICLE VELOCITY

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

PERMIT

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

PERSON

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

PROPELLANT

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

ROCK CHIPPING

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

SEISMOGRAPH

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

SEMICONDUCTIVE HOSE

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

SENSITIVITY

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

SINGLE DELAY

A delay in time of nine milliseconds or more.

SMALL ARMS AMMUNITION

A cartridge for a shotgun, rifle, pistol or revolver and a cartridge for propellant-actuated power devices and industrial guns. Military-type ammunition containing explosive bursting charges or any incendiary, tracer, spotting or pyrotechnic projectile is excluded from this definition.

SMOKELESS PROPELLANT

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

STEMMING

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

STRAY CURRENT

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

TESTING DAYS

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

U.S.C.

United States Code.

USDOT

United States Department of Transportation.

VIBRATION

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

WATER GEL

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

§ 88-5. Permit requirements

- A. No person shall manufacture, sell, possess, store, use or detonate explosives within the City unless a permit has been issued by the Approving Authority.

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

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

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

- (8) A United States Geologic Survey (USGS) bedrock geology map of the site indicating the anticipated type of bedrock and depth to bedrock.
- E. Based on the application and the pre-blast survey, if any, the Approving Authority shall estimate the cost of monitoring compliance with this chapter and furnish such estimate, together with a basis for Approving Authority's calculation, to the applicant. Before any permit is issued, the estimated cost of inspection services shall be deposited with the City, held in escrow, and applied to reimburse the City for costs and expenses actually incurred in connection with administering compliance with this chapter. Where the estimated amount deposited is insufficient to cover the City's costs, the property owner shall be responsible for any balance due. Where the estimated amount deposited with the City exceeds the costs incurred, the balance shall be refunded.
- F. The application for a permit to use explosives shall be signed by both the applicant and the blaster. In addition, the applicant shall sign an acknowledgment stating, under the penalties of perjury, that all information provided in the application or in support of the application is true and accurate. The blaster shall also sign an acknowledgment stating that the blaster has read the entire application, that in the blaster's opinion blasting at the particular location can be conducted safely, without unreasonable risk, and that, under the penalties of perjury, the blaster's state license is valid, that the blaster is fully authorized to conduct the type of activity set forth in the application and that the blaster agrees to abide by all state and federal safety standards.
- G. A permit to conduct and complete blasting activities shall be effective for a specific project and specific period of time, not to exceed four (4) months. The Approving Authority shall have sole discretion to extend the expiration of the approved permit by not more than four (4) months from the originally approved expiration dated.
- H. Expiration, revocation or cancellation of the blaster's state license shall automatically void any permit issued under this chapter.
- I. No blast shall be initiated at any location within the City unless a written permit to conduct blasting has first been obtained and signed by the City Engineer and Approving Authority authorizing blasting at the specific location.
- J. The Approving Authority may add to any permit issued under this chapter whatever terms and conditions deemed necessary to protect public health, safety and welfare.

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

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

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

handling, transporting or manufacturing explosive material or conducting blasting activity and, moreover, stating the applicant will defend and indemnify the City against any action brought by any third parties as a result of operating under a City permit issued under this chapter.

- C. No permit shall be issued unless and until the applicant has complied with these insurance requirements and provided an agreement indemnifying and holding the City harmless for any and all damage and injury.

§ 88-7. Inspection and revocation

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

§ 88-8. Blasting operations.

- A. No blast shall be initiated at any location within the City limits unless a written permit has first been obtained from the Approving Authority authorizing blasting at the specific location.
- B. Blasting conducted within the City must comply with the terms of the permit and, in addition, all applicable state and federal health and safety standards.

- C. At least five business days prior to the scheduled start of blasting, the permit holder shall request a pre-blast meeting with the Approving Authority to review and finalize the proposed blasting plan. No blasting shall be conducted unless a pre-blast meeting has been held with the Approving Authority and the Approving Authority has approved the proposed blasting plan.
- D. Each Blasting Permit holder shall establish and delineate a blast zone prior to detonating a blast. The blast zone must be clearly marked and adequate precautions implemented to prevent unauthorized entry into the area.
- E. Prior to each blast, the blaster or the blaster's designee shall be responsible for notifying all persons in the general area that blasting operations are scheduled to begin within a specified period of time. In addition, the blaster shall sound a recognized whistle, siren or horn loud enough to be heard throughout the designated blast zone approximately three minutes prior to blasting and again 30 seconds prior to blasting, warning all persons that blasting is imminent.
- F. The Approving Authority shall be permitted access to observe all aspects of the blasting operation, including but not limited to observation of all pre-blast preparatory site work, the explosion/detonation and access to the post-blast site. The property owner shall reimburse the City for the cost of all inspection services, including the cost of retaining an on-site inspector to monitor all aspects of blasting, where the Approving Authority deems such services necessary, by depositing the estimated cost of inspection services in a designated account to be held in escrow by the City and applied to reimburse the City for costs incurred in administering compliance with this chapter. The permit holder and the blaster shall, upon request, make available to the Approving Authority a copy of all seismic readings and any and all other documentation and data collected regarding any blast.
- G. The Blasting Permit holder shall notify the Approving Authority and the Police and Fire Departments of an impending blast at least two hours, but not more than 12 hours, prior to the time each blast is scheduled.
- H. The applicant shall be responsible for any costs incurred by the City in providing police, emergency services or any other personnel deemed necessary to ensure public safety.
- I. Notwithstanding any other regulations, no blasting shall be performed in such manner or under such circumstances as to eject debris into the air so as to constitute a hazard or danger or cause harm to persons or property. Before firing any blast which could cause injury to persons or damage property from fly rock, the material to be blasted shall be properly

covered or screened by a buffer of sufficient mass and strength to prevent, with a margin of safety, the ejection of any material capable of causing any injury or damage.

- J. No person shall use a quantity of explosives greater than necessary to break or move the target material or use an amount of explosives that poses a risk of injury to persons or property.
- K. Unless otherwise permitted by the Approving Authority, all holes drilled or otherwise excavated for holding an explosive charge shall be at least six feet deep. If, however, the permit holder/blaster can demonstrate a need to use a hole less than six feet deep and that such a cavity will not endanger public safety, the Approving Authority or the Approving Authority's designated representative may, in the Approving Authority's discretion, authorize the use of blast holes less than six feet deep.
- L. The blaster shall plan each blast and take every precaution in loading, delaying, initiation, confinement and stemming to control the throw of rock fragments and debris and limit ground vibrations and the effect of air concussions to the greatest extent possible. When blasting is to be conducted within 50 feet or less of a property line and the adjacent property owner is not a party to the blasting operation, the blaster shall take all precautions practicable, utilizing any combination of recognized methods, to control blasting effects to the greatest degree possible.
- M. A record of each blast shall be kept by the blaster on a form approved by the Approving Authority. All such records shall be retained by the permit holder and blaster as prescribed by state law and made available for inspection as a matter of public record.
 - (1) The permit holder shall record the following information for each blast and provide the Approving Authority with a duplicate copy at the end of each day:
 - (a) The name and license number of the blaster.
 - (b) The location of the blast.
 - (c) The date and time of each blast.
 - (d) The number of blasts.
 - (e) The number, diameter and depth of each hole and distance between holes.
 - (f) The burden depth.
 - (g) The stemming length.
 - (h) The make and type of explosives.
 - (i) The delay make, number and period.
 - (j) The weather conditions, including temperature, wind direction and speed.

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

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

N. Where an accident involves personal injury resulting from a blast, the permit holder shall immediately notify the Approving Authority that an accident has occurred, and no further blasting shall be conducted until the Approving Authority has had an opportunity to review the accident report and the permit. Any injury, accident or misfire involving explosives shall be recorded, and a full written report shall be attached to the blast report filed with the Approving Authority, including the names of all participants and witnesses and remedial actions taken. The Approving Authority may require such additional, specific information from the blaster as the Approving Authority deems necessary and appropriate to assure the public health and safety. Following an accident involving personal injury, the Approving Authority may amend the permit by adding whatever additional restrictions are deemed necessary to assure public health and safety is maintained and another similar accident does not reoccur.

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

P. No new/additional Blasting Permit shall be issued for the same subject property for 18 months from the date of any previously issued permit.

§ 88-9. Vibration and concussion standards

A. The maximum allowable concussion or air blast resulting from blast operations shall not exceed 130 decibels peak, measured at a flat frequency response (PMS two decibels) over the range of at least six to 200 hertz.

B. When blasting is of a continuing nature, 124 to 130 decibels shall be the acceptable range.

- C. The US Bureau of Mines Safe Vibration Criteria, with an upper allowable limit of 1.25PPV will be the governing standard. Charts plotting both the Peak Particle Velocity (in/s) and Peak Frequency (Hz) must be provided after each and every blast. The Approving Authority shall have the authority to set an upper allowable limit less than the governing standard if it is determined that nearby structures or natural features could be compromised at the governing standard. An upper allowable limit of 0.5PPV could be expected within residential areas.
- D. The permit holder shall report each blast exceeding acceptable parameters to the Approving Authority within 24 hours. Following a blast exceeding acceptable parameters, the Approving Authority shall have the authority to order blasting operations to be suspended, altered or stopped.

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

- A. No person shall engage in blasting operations within the City of Rye after the hour of 3:30 p.m. or before 9:00 a.m. on weekdays or at any time on Saturday and Sunday; or on any of the following holidays and time periods: New Year's Day, Presidents' Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Yom Kippur, Thanksgiving Day through Thanksgiving weekend and Christmas Day through New Year's Day except under authority of a special permit issued by the City Manager. In addition, blasting will be prohibited within seven hundred and fifty (750) feet of a school on testing days.
- B. Except as provided by § 88-17, no Rock Excavation Permit or new/additional Blasting Permit shall be issued for the same subject property for eighteen (18) months as measured from the expiration date any previously issued Blasting Permit.
- C. Except as provided by § 88-17, no Rock Excavation Permit or Blasting Permit shall be issued for a property that is located within a seven hundred and fifty (750)foot radius of another property that has received a Rock Excavation Permit or Blasting Permit for such activities for at least sixty (60) days as measured from the last day of the other property's permitted blasting or mechanical rock removal.

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

- A. Any individual who intends to engage in blasting on any property in the City of Rye shall submit its application for a Blasting Permit to the Approving Authority at least twenty-one (21) calendar days prior to the commencement of such blasting. Upon approval of the Blasting Permit the Approving Authority shall post the following information on the City's website at least seven (7) calendar days prior to the commencement of any blasting: 1) the property address; 2) earliest commencement date; and 3) the four (4) month expiration date of the Blasting Permit.
- (1) In addition to notifying the City as required above, the individual must also notify the neighbors in writing of the intent to blast. The applicant shall prepare a notification list, using the most current City of Rye Tax Maps and Tax Assessment Roll, showing the Tax Map sheet, block and lot number, the owner's name and owner's mailing address for each property located wholly or partially within seven-hundred and fifty (750) feet of the subject property. If a property on the public notification list is also listed as a cooperative or an apartment, the notice shall only be mailed to the property owner of record. These mailing requirements must be performed in accordance with the following requirements:
- (a) The notice shall be mailed to all property owners by regular United States mail at a post office or official depository of the Postal Service at least twenty-eight (28) calendar days prior to the commencement of mechanical rock excavation.
- (b) The individual must provide a copy of the certificate of mailing to the Approving Authority prior to the commencement of any mechanical rock excavation.
- B. The Approving Authority may also require that the notice of intent to blast be posted on each building or dwelling in a conspicuous place where it is reasonable to believe that persons entering or leaving the premises will see such notification.
- C. In the case of multi-occupancy structures, residential and commercial, located within seven hundred and fifty (750) feet of the blast site, the notice of intent to blast shall be conspicuously and continuously posted at all commonly used entrances to the structure at least twenty-eight (28) calendar days prior to blasting. It shall be the blaster's responsibility to ensure that notice is unobstructed and remains posted at the structure.

§ 88-12. Application responsible for costs

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

§ 88-13. Rules and regulations.

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

§ 88-14. Penalties for offenses; enforcement.

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

Article II, *Mechanical Rock Excavation*

§ 88-15. Definitions for Mechanical Rock Excavation

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

BLASTING PERMIT

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

MECHANICAL ROCK EXCAVATION

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

ROCK EXCAVATION PERMIT

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

SUBJECT PROPERTY

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

TESTING DAYS

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

UNEXPECTED CIRCUMSTANCES

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

§ 88-16. Mechanical Rock Excavation Permit

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

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

mechanical rock excavation. Upon approval of the Rock Excavation Permit the City Building Department shall post the following information on the City's website at least seven (7) calendar days prior to the commencement of any mechanical rock removal: 1) the property address; 2) earliest commencement date; and 3) when the fifteen (15) consecutive day period ceases.

(1) In addition to notifying the City as required above, the individual must also notify the neighbors by sending out a public notification prepared by the Building Department. The applicant shall prepare a notification list, using the most current City of Rye Tax Maps and Tax Assessment Roll, showing the Tax Map sheet, block and lot number, the owner's name and owner's mailing address for each property located wholly or partially within seven-hundred and fifty (750) feet of the subject property. If a property on the public notification list is also listed as a cooperative or an apartment, the notice shall only be mailed to the property owner of record. These mailing requirements must be performed in accordance with the following requirements:

(a) The mailing shall be limited solely to the public notice provided by the City Building Department.

(b) The notice shall be mailed to all property owners by regular United States mail at a post office or official depository of the Postal Service at least twenty-eight (28) calendar days prior to the commencement of mechanical rock excavation.

(c) The individual must provide a copy of the certificate of mailing to the City Building Department prior to the commencement of any mechanical rock excavation.

D. No person shall engage in mechanical rock excavation, as defined in §88-15 within the City of Rye before the hour of 9:00 a.m. or after 3:30 p.m. on weekdays or at any time on Saturday and Sunday; or on any of the following holidays and time periods: New Year's Day, Presidents' Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Yom Kippur, Thanksgiving Day through Thanksgiving weekend and Christmas Day through New Year's Day except under authority of a special permit issued by the City Manager. In addition, mechanical rock removal, including mechanical rock excavation will be prohibited within seven hundred and fifty (750) feet of a school on testing days.

- E. No person performing mechanical rock excavation shall have more than two (2) mechanical hammers operating on the subject property at the same time. Rock crushing shall not be permitted on the subject property.

- F. A property owner who has properly applied for and received a Rock Excavation Permit and has otherwise complied with the provisions of this chapter, may apply to the City Manager for an additional, one-time three (3)-consecutive-calendar-day waiver in addition to the fifteen (15) days above, subject to all the other restrictions contained herein. The property owner shall have the burden of demonstrating to the City Manager that a waiver is warranted due to Unexpected Circumstances as defined in § 88-17. The City Manager, at his/her sole discretion, may grant or deny the waiver. In making his/her determination, the City Manager may request documentation supporting Unexpected Circumstances, including a certification that the Unexpected Circumstances prevented the completion of mechanical rock excavation during this period. If the waiver is granted the period will be listed on the City website. No waiver shall be granted if the property owner has been found in violation of any provision of this Chapter.

§ 88-17 Penalties for offenses.

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

§ 88-18 Exempted Acts.

The following activities and agencies are exempt from the requirements of this article and shall be exempt from § 88-16(A) and C above:

- A. The actions of, or at the direction of, governmental agencies, including the Rye City School District and the Rye Neck Union Free School District, shall be specifically exempt from the requirements of this chapter.
- B. Removal of rock for the sole purpose of the installation of gas or electrical service, and the installation of water or sewer service, Any property owner seeking to utilize this exemption must certify in writing that the rock removal is solely for this purpose, and must provide at least 24 hours' notice to the City of same.- Removal of rock for these purposes must be accomplished in no more than two (2) – three (3) consecutive calendar day periods (a total of 6 days). Upon such notice(s), the activity will be listed on the City website.
- C Removal of rock for the sole purpose of stormwater drainage provided that the subject property has not received a rock excavation permit or Blasting Permit within the last 18 months. Any property owner seeking to utilize this exemption for stormwater drainage must certify in writing that the rock removal is solely for this purpose and that the subject property has not received a Rock Excavation Permit within the last 18 months and must provide at least 24 hours' notice to the City of same.- Removal of rock for the purpose of stormwater drainage shall be accomplished in no more than two (2) – three (3) consecutive calendar day periods (a total of 6 days). Upon such notice(s), the activity will be listed on the City website.
- D. Blasting and drilling activities related to permitted blasting activities. Those activities shall be regulated by Article I of this Chapter.
- E. The actions of utility providers, State, County or City governments or their contractors.
- F. Drilling activities in connection with the installation of geothermal systems.
- G. Drilling or boring for no more than 2 consecutive calendar days for the purposes of conducting geotechnical investigations or other similar exploratory sub-surface testing in connection with a potential application for a Rock Excavation Permit.
- H. Hammering or drilling activities solely to accomplish removal of man-made structures such as concrete structures, roadways, driveways, or buildings.
- I. Hammering, rock chipping or drilling activities within eighteen (18) months of a previously issued Blasting Permit shall be permitted for not more than three (3) consecutive calendar days. Any property owner seeking to utilize this exemption must notify the City in advance so that at least 24 hours of notice of the activity can be listed on the City website.

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

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

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

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

§ 133-9. Penalties for offenses.

In the event an activity is not being performed in accordance with this chapter, the owner of the property or the owner's agent or the person performing such violation shall be notified to suspend all work, and any such persons shall forthwith stop such work and suspend all activities. Any person who violates any provision of this chapter shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than \$250 or imprisonment for a term of not more than 15 days, or both, except that violations under § 133-8, Construction work prohibited at certain hours and on certain days, shall be treated as individual violations and for each and every such violation and noncompliance, respectively, thereof, shall be punished upon such first conviction by a fine of not more than \$1,000, an order to suspend mechanical rock excavation on the site for a period of not more than 72 hours, or by imprisonment not exceeding 15 days, or any combination of such fine, suspension, and imprisonment, and each day that such violation shall

continue shall be construed as a separate offense. Upon any subsequent conviction for the same offense such person shall be subject to a fine of not more than \$2,000, or an order to suspend mechanical rock excavation on the site for a period of not more than 72 hours, or by imprisonment not exceeding 15 days, or any combination of such fine, suspension and imprisonment. The imposition of one penalty for any violation shall not excuse or remedy such violations.

Section 5. Section 133-10, Exempt acts, paragraph B is hereby repealed

Section 6. Severability

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

Section 7. Effective Date

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

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

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

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

Part 1 – Project and Sponsor Information			
Name of Action or Project: Adoption of a Local Law Regarding Explosives, Blasting and Mechanical Rock Excavation			
Project Location (describe, and attach a location map): City of Rye, New York			
Brief Description of Proposed Action: The proposed action involves the adoption of a new local law that modifies and codifies existing requirements for explosives, blasting and mechanical rock removal in the City. Please see the attached narrative for a more detailed description.			
Name of Applicant or Sponsor: Rye City Council		Telephone: 914-967-7404 E-Mail: manager@ryeny.gov	
Address: 1051 Boston Post Road			
City/PO: Rye		State: NY	Zip Code: 10580
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:		NO <input type="checkbox"/>	YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action? _____ acres			
b. Total acreage to be physically disturbed? _____ acres			
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres			
4. Check all land uses that occur on, are adjoining or near the proposed action: <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify): <input type="checkbox"/> Parkland			

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

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____ _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: _____ _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
49. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: <u>Christian K. Miller</u> Date: <u>November 21, 2022</u> Signature: _____ Title: <u>City Planner</u>		

Project:

Date:

Short Environmental Assessment Form

Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

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

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

Project:

Date:

Short Environmental Assessment Form Part 3 Determination of Significance

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

<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.	
<input checked="" type="checkbox"/> Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.	
Rye City Council <hr/> Name of Lead Agency	November 21, 2022 <hr/> Date
Josh Cohn <hr/> Print or Type Name of Responsible Officer in Lead Agency	Mayor <hr/> Title of Responsible Officer
<hr/> Signature of Responsible Officer in Lead Agency	<hr/> Signature of Preparer (if different from Responsible Officer)

ATTACHMENT

Short Environmental Assessment Form Part 2 - Narrative

Description of Proposed Changes to City of Rye Blasting, Rock Removal and Construction Hour Laws

The proposed action involves the adoption of a new local law to implement new and updated regulations and requirements for the use, storage and transportation of explosives and blasting in the City of Rye. The proposed local law repeals the City's existing blasting law in Chapter 98, Article VII, *Explosives*, which has become outdated and not reflective of current blasting standards and the actual administrative practices and blasting permit conditions required by the City. More specifically, the proposed local law provides new technical definitions, codifies current administrative requirements for pre-blast surveys, increases insurance coverage requirements for blasters, codifies current administrative requirements for blasting operations, establishes maximum blasting decibel limits, codifies and lowers current administrative requirements for maximum peak particle velocity, codifies blasting notice requirements and codifies enforcement provisions and increases fines and penalties.

The proposed local law also incorporates the City's rock chipping requirements into the new Chapter 88, *Explosives, Blasting and Mechanical Rock Excavation*, and removes the existing rock chipping requirements from Chapter 133, *Noise*, of the City Code. There are number of substantive changes proposed to the rock chipping and drilling regulations including new or modified restrictions on the maximum permitted number of chipping days, types of exempted rock excavation activities, changes in the notice requirements, restrictions on rock removal activities within proximity of other permitted rock removal activities and modification of the definition of "unexpected circumstances".

Finally, the proposed local law reduces the permitted weekday construction hours from 7:30 AM to 6:30 PM to 8:00 AM to 6:00 PM.

The following provides a more detailed description of substantive changes to existing laws:

Blasting

- Existing law regarding Explosives (Chapter 98) is repealed and a new law is proposed largely consistent with City's non-codified practices and procedures.
- Blasting is currently administered by the Building Department with sign-offs other Departments. Current law has the City Manager and Fire Inspector responsible for issuing blasting permits. The proposed local law authorizes the City Manager to designate the Building Inspector, Fire Inspector and/or Public Safety Commissioner as the approval, administration and/or enforcement authority for the issuance of blasting permits.

- Blasting is not subject to the noise provisions of Chapter 133, though the new blasting law has a maximum decibel standard.
- In order to prevent potentially risky or aggressive blasting practices, blasting is no longer subject to a limit 38-day limit. Under the proposed law a blasting permit must be completed within four months of issuance. A one, four-month extension is permitted.
- Notification distances from a property seeking a Blasting Permit are increased from 500 feet to 750 feet. Notice of rock blasting must be sent to neighbors 28 days in advance of a permit issuance and must be noticed on the City website at least 7 days before blasting can begin.
- Restrictions on permitted blasting times of day, days of week, holidays and school testing days remain unchanged, except that the restricted area for school testing days has increased from 500 to 750 feet.
- No new Blasting or Rock Excavation Permit can be issued on a property within 18 months of the expiration of a previously issued permit.
- No Rock Excavation Permit or Blasting Permit shall be issued for a property that is located within a seven hundred and fifty 750-foot radius of another property that has received a mechanical rock removal permit or blasting permit for such activities for at least sixty (60) days as measured from the last day of the other property's permitted blasting or mechanical rock removal.
- Insurance requirements have been increased from existing practice and codified, where no such requirements currently exist in the City Code.
- Maximum limits on peak particle velocity (i.e. measurement of vibration) have been codified and lowered from City's prior practice. No such limits currently exist in the City Code.
- Maximum blasting decibel limits have been codified, where no such standard currently exist in the City Code.
- Penalties for offenses and enforcement provisions have been codified, where none currently exist in the City Code.

Mechanical Rock Removal

- The definition of "mechanical rock excavation" is modified to include all forms of rock excavation activities including rock hammering, drilling, boring, expansive grout,

hydraulic rock splitting or other similar machinery. Under the current law drilling, expansive grout and hydraulic rock splitting are exempt from the rock removal law.

- The definition of “Unexpected Circumstances” is modified to specify the types of inclement weather or events that constitute an unexpected circumstance. The revised definition also requires that mechanical failure must be documented.
- The maximum permitted period of mechanical rock excavation is reduced from 38 consecutive calendar days to 15 consecutive calendar days.
- Restrictions on permitted rock removal times of day, days of week, holidays and school testing days remain unchanged, except that the restricted area for school testing days has increased from 500 to 750 feet.
- No Rock Excavation Permit or Blasting Permit shall be issued for a property that is located within a seven hundred and fifty 750-foot radius of another property that has received a Rock Excavation Permit or Blasting Permit for such activities for at least sixty (60) days as measured from the last day of the other property’s permitted blasting or rock removal.
- Notification distances from a property seeking a Rock Excavation Permit are increased from 500 feet to 750 feet. Notice of rock excavation must be sent to neighbors 28 days in advance of a permit issuance and must be noticed on the City website at least 7 days before blasting can begin.
- Unlimited rock removal activities related to required stormwater measures or utility connections has been eliminated. Under the proposed law stormwater measures are required to be completed as part of a 15-day rock removal permit or blasting permit.
- Modified the current regulations to limit chipping activities for utility connections to two, three consecutive calendar day periods. Currently, chipping for utilities has no limitation on the number of days.
- Modified the exempted activities to include utility providers, State, County or City governments or their contractors.
- Added a regulation that drilling activities in connection with the installation of geothermal systems are exempt from the rock removal requirements.
- Added a regulation that drilling or boring for the purposes of conducting geotechnical investigations are exempt from the rock removal requirements, but shall be limited to not more than two consecutive days.
- Added regulation that the installation of stormwater measures where no prior rock removal permit has been issued for a property in the last 18 months are exempt from the rock removal requirements, but are limited to two, three consecutive calendar day periods.

- Added a regulation that hammering, chipping or drilling within 18 months of a previously issued blasting permit is permitted, but shall be limited to not more than three consecutive calendar days.

Construction Hours

- Weekday construction hours are reduced by one hour. Current permitted weekday construction hours are changed from 7:30 AM to 6:30 PM to 8:00 AM to 6:00 PM.

RESOLUTION

Adopting a Local Law to Add a New Chapter 88 “Explosives, Blasting and Mechanical Rock Excavation”, repeal in part Chapter 98 “Fire Prevention”, Article VII “Explosives” and amend Chapter 133 “Noise” Sections 133-8, 133-9 and 133-10 of the Code of the City of Rye

WHEREAS, as a result of several issues relating to the removal of rock through blasting and other mechanical rock removal means, the City Council reviewed its laws regulating the hours of operation and other conditions regulating these activities; and

WHEREAS, the City retained the professional services of Arcadis, a professional engineering firm, to assist it in researching the most effective methods for rock removal with the best available technology; and

WHEREAS, the Council studied the means and methods of rock removal while also considering the impact to the surrounding property owners; and

WHEREAS, on November 30, 2022, the City Council set a public hearing for December 7, 2022 on a draft local law to add a new Chapter 88 “Explosives, Blasting and Mechanical Rock Excavation”, repeal in part Chapter 98 “Fire Prevention”, Article VII “Explosives” and amend Chapter 133 “Noise” Sections 133-8, 133-9 and 133-10 of the Code of the City of Rye; and

WHEREAS, notice of the hearing was published and circulated as required by law; and

WHEREAS, the City Council conducted a noticed public hearing on the local law on December 7, 2022, in which it gave all those wishing to be heard were given the opportunity to be heard; and

WHEREAS, a draft local law and Environmental Assessment Form was presented to the City Council; and

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

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

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

BE IT FURTHER RESOLVED, that the City Council adopts Local Law #9-2022 to add a new Chapter 88 “Explosives, Blasting and Mechanical Rock Excavation”, repeal in part Chapter 98 “Fire Prevention”, Article VII “Explosives” and amend Chapter 133 “Noise” Sections 133-8, 133-9 and 133-10 of the Code of the City of Rye.



CITY COUNCIL AGENDA

DEPT.: City Manager's Office

DATE: December 12, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Resolution to set a public hearing for December 21, 2022 to amend Chapter 196 "Wireless Telecommunications Facilities" of the Code of the City of Rye to remove a mandatory referral to the Board of Architectural Review.

FOR THE MEETING OF:

December 21, 2022

RECOMMENDATION: That the Council set the public hearing.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: See attached proposed amendments to the law.

CITY OF RYE

LOCAL LAW NO. 2022

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

Section 1.

§ 196-1 Purpose and legislative intent.

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

§ 196-2 Title.

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

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

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§ 196-3 Definitions; word usage.

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

ACCESSORY FACILITY OR STRUCTURE

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

ANTENNA

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

APPLICANT

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

APPLICATION

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

BASE STATION

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

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

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

BREAK POINT

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

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

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

CITY

The City of Rye, New York.

CITY MANAGER

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

COLLOCATION

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

COMMERCIAL IMPRACTICABILITY or COMMERCIALLY IMPRACTICABLE

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

COMPLETED APPLICATION

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

CONCEALMENT ELEMENT

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

COUNCIL

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

DISTRIBUTED ANTENNAE SYSTEM (DAS)

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

EAF

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

ELIGIBLE FACILITY PERMIT

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

ENVIRONMENTALLY SENSITIVE AREA ("ESA")

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

EXISTING

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

FAA

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

FCC

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

HEIGHT

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

HISTORIC STRUCTURE

Any structure in the City of Rye that is:

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

Historic District.

MICRO-WIRELESS FACILITY

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

NIER

Nonionizing electromagnetic radiation.

PERSON

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

PERSONAL WIRELESS SERVICES

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

RESIDENTIAL RIGHT-OF-WAY

The right-of-way in a residential zone.

RESIDENTIAL STRUCTURE

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

RESIDENTIAL UNIT or A DWELLING UNIT

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

RESIDENTIAL ZONE

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

RIGHT-OF-WAY

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

SPECIAL USE PERMIT

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

STEALTH FACILITY

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

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

SUBSTANTIAL CHANGE

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

SUPPORTING STRUCTURE

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

TALL STRUCTURE

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

TELECOMMUNICATIONS

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

TEMPORARY

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

TOWER

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

UNDERGROUND AREAS

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

UTILITY POLE

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

WIRELESS REGULATIONS

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

the provisions set forth herein.

WIRELESS TELECOMMUNICATIONS FACILITY

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

WIRELESS TELECOMMUNICATIONS PROVIDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

telecommunications facility.

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

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

telecommunications facilities and structures, subject to Council approval.

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

an unnecessary and unreasonable burden, based upon:

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

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

§ 196-7 Failure to pursue an application.

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

§ 196-8 Height of wireless telecommunications facilities.

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

§ 196-9 **Visibility of facilities.**

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

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§ 196-10 **Security of facilities.**

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

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

§ 196-11 **Signage.**

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

§ 196-12 **Lot size and setbacks.**

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

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

limited to antennas, accessory supporting structures, and/or other appurtenances, shall be set back from any property line the distance of the setback requirement of the underlying zoning district and shall comply with the setbacks set forth in § **196-5I**.

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

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

§ 196-14 **Existing facilities.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 196-19 Application fee.

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

§ 196-20 Performance security.

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

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

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

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

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

§ 196-22 NIER certification.

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

§ 196-23 Liability insurance.

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

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

§ 196-24 Indemnification.

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

§ 196-25 Penalties for offenses.

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

§ 196-26 Default and/or revocation.

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

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

§ 196-27 **Removal of wireless telecommunications facilities.**

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

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

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

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

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

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

§ 196-30 Conflict with other laws.

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

§ 196-31 Severability.

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

§ 196-32 Enforcement.

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

§ 196-33 Authority.

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

Section 2. Severability.

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

Section 3: Effective Date.

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



CITY COUNCIL AGENDA

DEPT.: City Manager's Office

DATE: December 9, 2022

CONTACT: Greg Usry, City Manager

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

FOR THE MEETING OF:

December 21, 2022

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the City Council approve the following resolution:
RESOLVED, that the Mayor be and hereby is authorized to execute an agreement with the Rye Free Reading Room to furnish library services for 2023.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Each year the City of Rye financially supports the operations of the Rye Free Reading Room (RFRR). In FY 2022, the contribution was in the amount of \$1,335,000. The attached agreement for FY 2023 includes an appropriation of \$1,360,000. The agreement stipulates the specific rights and obligations of both parties, pursuant to section 256 of the Education Law of the State of New York.

See attached 2023 Agreement.



CITY OF RYE

THIS AGREEMENT, made as of the ____ day of December, 2022, by and between the CITY OF RYE, a municipal corporation located within the County of Westchester and State of New York, party of the first part, and RYE FREE READING ROOM, a free library association duly registered by the Regents of the University of the State of New York at a meeting thereof on January 24-25, 1917, and maintaining a free library in the City of Rye, County of Westchester and State of New York, party of the second part:

WITNESSETH, that the parties hereto, pursuant to section 256 of the Education Law of the State of New York, do hereby mutually covenant and agree as follows:

1. The party of the second part does hereby agree to furnish library privileges to the people of the City of Rye, under reasonable rules and regulations of the party of the second part, during the terms of this agreement.

2. The party of the second part does hereby agree that the Rye Free Reading Room will make all best efforts to offer service to the public a minimum of 47 hours in the winter and 47 hours in the summer. The Library will make all best efforts to ensure that within its hours of operation that Saturday is open. In addition, the Rye Free Reading Room will guarantee that they will be open for “special events” in accordance with the policies and procedures of the library as they occur throughout the year.

3. The party of the second part does hereby agree to submit to the City of Rye a financial report within two months of the close of its fiscal year and to provide copies of an annual narrative report prepared for association members. Copies of all audit reports prepared by independent audit firms or the State of New York will be filed, within 30 days of receipt, with the City Comptroller and the City Council's Audit Committee.

4. In consideration of the foregoing the party of the first part does hereby agree to pay the sum of One Million Three Hundred Sixty Thousand Dollars (\$1,360,000) to the party of the second part during the calendar year: Six Hundred Eighty Thousand Dollars (\$680,000) to be paid in January, and Six Hundred Eighty Thousand Dollars (\$680,000) to be paid in July.

5. Pursuant to said statute, such total sum shall be a charge upon the City of Rye and shall be raised, appropriated and paid in the same manner as other City charges.

6. If the capital improvements that were part of the 2012 bond resolution are installed in 2022, the Rye Free Reading Room will be responsible for all maintenance and repair costs of same.

7. This agreement shall be effective and continue for the calendar year 2023.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement as of the day and year first above written.

CITY OF RYE

By _____
Mayor

RYE FREE READING ROOM

By _____
President

Attest:

City Clerk



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: December 7, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Resolution to participate in the 2022 Tree City program.

FOR THE MEETING OF:

December 21, 2022

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Mayor and Council enable the City to participate in the Tree City program again this year.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

For over 20 years, the City of Rye has been declared a Tree City. The Tree City USA program provides communities with a four-step framework to maintain and grow their tree cover. It also gives the City an avenue to celebrate our work, showing residents, visitors, and the entire country that we're committed to the mission of environmental change. The four-step framework includes:

1. Maintaining a tree board or department
2. Having a community tree ordinance
3. Spending at least \$2 per capita on urban forestry
4. Celebrating Arbor Day (celebrated on November 15th this year)

RESOLUTION

Resolution to participate in the Tree City Program for 2022

WHEREAS, the Tree City USA program has been greening up cities and towns across America since 1976 and is a nationwide movement that provides the framework necessary for communities to manage and expand their public trees; and

WHEREAS, trees in our community increase property values, enhance the vitality of our business areas and neighborhoods, beautify our community, provide wildlife habitat, clean the air we breathe, moderate temperatures, provide shade, produce oxygen, and sequester carbon dioxide; and,

WHEREAS, the City has been recognized as a Tree City USA by the National Arbor Day Foundation for over 20 years; and,

WHEREAS, becoming a Tree City connects a community to a network of other communities who care about their trees;

NOW, THEREFORE, BE IT RESOLVED that the City of Rye has applied to be designated a Tree City again in 2022.



CITY COUNCIL AGENDA

DEPT.: Mayor

DATE: December 1, 2022

CONTACT: Josh Cohn, Mayor

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

FOR THE MEETING OF:
December 21, 2022

RECOMMENDATION: That the Council authorizes the Mayor to sign the agreement and transfer the funds.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: