

CITY OF RYE

NOTICE

There will be a regular meeting of the City Council of the City of Rye on Wednesday, March 26, 2014, at 7:30 p.m. in Council Chambers at City Hall. *The Council will convene at 6:30 p.m. and it is expected they will adjourn into Executive Session at 6:31 p.m. to discuss attorney client matters. The Council will adjourn into Executive Session at the end of the meeting to discuss personnel.*

AGENDA

1. Pledge of Allegiance.
2. Roll Call.
3. General Announcements.
4. Draft unapproved minutes of the regular meeting of the City Council held March 12, 2014.
5. Issues Update/Old Business.
6. Public Hearing to revise the Mission Statement for the Rye Senior Advocacy Committee.
7. Residents may be heard on matters for Council consideration that do not appear on the agenda.
8. Authorization for the City Manager to enter into a management agreement with Powell Catering Services Inc. to operate the Café/Snackbar and Vendor Cart at the Rye Golf Club.
Roll Call.
9. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department: Amendment of General Order #113.7, "Domestic Violence".
10. Acceptance of donation to the City of Rye of a bike rack from the Rye Chamber of Commerce and the Farmers Market to be installed in the Central Business District.
Roll Call.
11. Miscellaneous communications and reports.
12. New Business.
13. The Council will convene into Executive Session to discuss personnel.
14. Adjournment.

The next regular meeting of the City Council will be held on Wednesday, April 9, 2014 at 7:30 p.m. A Joint Meeting of the City Council of the City of Rye and the Rye City School District Board of Education will be held on Saturday, April 5, 2014 at 9:00 a.m. in Rye City Hall.

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

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



CITY COUNCIL AGENDA

NO. 4

DEPT.: City Clerk

DATE: March 26, 2014

CONTACT: Dawn Nodarse

AGENDA ITEM Draft unapproved minutes of the Regular Meeting of the City Council held March 12, 2014, as attached.

FOR THE MEETING OF:

March 26, 2014

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council approve the draft minutes.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Approve the minutes of the Regular Meeting of the City Council held March 12, 2014, as attached.

DRAFT UNAPPROVED MINUTES of the
Regular Meeting of the City Council of the City of
Rye held in City Hall on March 12, 2014 at 7:30 P.M.

PRESENT:

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

ABSENT: None

The Council convened at 6:30 p.m. Councilwoman Bucci made a motion, seconded by Councilman Slack and unanimously carried to immediately adjourn into executive session to discuss labor relations. Councilwoman Killian made a motion, seconded by Councilwoman Brett and unanimously carried, to adjourn the executive session at 7:37 p.m. The regular meeting convened at 7:40 p.m.

1. Pledge of Allegiance

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

2. Roll Call

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

3. General Announcements by the Council

Announcements were made regarding upcoming events that may be of interest to residents.

4. Draft unapproved minutes of the regular meeting of the City Council held February 26, 2014

Councilwoman Brett made a motion, seconded by Councilman McCartney and unanimously carried, to approve the minutes of the regular meeting of the City Council held on February 26, 2014.

5. Issues Update/Old Business

- Update on the City of Rye General Code revision project

City Manager Pickup said the City is working on an update to the current Code. The information before the Council is the first of a series of revisions to clean up the Code and make it more logical and easier to work with. The Corporation Counsel is meeting with department heads regarding revisions, which will then be forwarded to an editor at General Code for formatting. It will ultimately come back to the Council for adoption. Corporation Counsel Wilson pointed out that the revisions are to the Code and not the City Charter.

- Parking on Park Lane

Mayor Sack asked the City Manager to provide the Council with a history of parking issues for residents living on this street located near the Milton Firehouse. Residents are looking for an exemption to the Snow Ordinance parking requirements.

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

Mayor Sack said that a site visit was held that was attended by a number of interested individuals since the public hearing was opened at the last meeting. He added that the public hearing will be held open until questions about traffic and environmental issues are addressed. City Planner Miller summarized a memo he prepared in response to comments made during the public hearing at the last meeting. He recommended that additional information be provided for the Council's review in three areas: (1) a Phase II Analysis should be prepared; (2) the applicant should prepare a traffic study; and, (3) a fiscal impact analysis should be done.

Residents speaking at the public hearing included: *John Alfano; Joe Murphy, 57 Franklin Avenue; Greg Faughnan, 131 Purchase Street; Jim Amico, 350 Midland Avenue; Bruce Macleod, 2 Topsail Lane; John Shoemaker, 255 Theodore Fremd Avenue; Dawn Wilson, Hammond Road; Walter Saurack, 10 Hammond Road; and Carolyn Cunningham, 18 Soundview Avenue, who also read a letter submitted by Patrick McGunagle former Chair of the Human Rights Commission.* Comments were made both in favor of and against the proposed zoning change. The Council was encouraged to look at Rye Manor on Theall Road as an example of a successful affordable senior housing project in Rye. There was also great concern expressed regarding environmental and traffic issues related to the site on Theodore Fremd Avenue and North Street and the Council was urged not to make a decision on the proposed zoning change until questions regarding these issues were answered. *John Shoemaker* also submitted three letters from residents who own properties within a 100-foot radius of the subject property, protesting the proposed zoning change. Submission of these letters triggers a requirement for a super-majority vote of the Council in order to adopt the zoning change.

The public hearing will be kept open until the April 9th City Council meeting.

7. Presentation by the Sustainability Committee regarding the City of Rye participating in a local environmental consortium

Councilwoman Killian provided background on the Southern Westchester Energy Action Consortium (SWEAC), a collaboration of municipalities addressing energy and sustainability concerns in Southern Westchester. Sara Goddard, Chair of the Sustainability Committee, also provided information on the Northern Westchester Energy Action Committee (NWEAC) and said that the two organizations were merging to become Sustainable Westchester at some time in 2014. She urged the Council to approve the City of Rye joining SWEAC and said it would also benefit from the merging of the two organizations. It was noted that there was no fee for joining SWEAC but there may be an annual fee, estimated at \$1,000, to join Sustainable Westchester.

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

RESOLVED, that the City Council of the City of Rye hereby directs the City Manager to take all necessary steps for the City of Rye to become a member of the Southern Westchester Energy Action Consortium (SWEAC).

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

George Szczerba, 16 Adelaide Street, spoke about the revised proposal for the Field House at Playland and said that he felt the plan would present problems from a public safety and first responder perspective due to the close location of the parking to the structure.

Deirdre Curran, 111 Prospect Street, Port Chester, also spoke about the revised plan for the Field House. She urged the Council to give the Playland issue the same diligence as the proposed zoning change on Theodore Fremd Avenue.

Leon Sculti, 10 Ridgeland Terrace, spoke about issues related to the Golf Club and asked for an update on the claim the City filed with the insurance company. Mayor Sack noted that there has not been a response by the insurance company to date and asked that City staff find out where the insurance company stands on the claim in order for the Council to make a decision on how to proceed. *Mr. Sculti* also referred to conflicts of interest of former Golf Club Manager Scott Yandrasevich which resulted in the losses to the Golf Club.

9. Authorization for City Manager to enter into an Intermunicipal Agreement with the Village of Port Chester to remove an historic mile marker located in Port Chester along Boston Post Road

Councilwoman Brett and City Manager Pickup provided a brief history of the mile marker which is currently located on the old United Hospital property in Port Chester but is believed to have originally been located in the City of Rye.

Councilman Mecca made a motion, seconded by Councilwoman Bucci and unanimously approved, with Mayor Sack and Councilwoman Killian being absent, to adopt the following Resolution:

RESOLVED that the City Council of the City of Rye hereby authorizes the City Manager to enter into an Intermunicipal Agreement with the Village of Port Chester to remove an historic mile marker located in Port Chester along the Boston Post Road and return it to the City of Rye.

10. Resolution to authorize expenditure of Police donation funds for the purchase of Storm Tech outwear jackets with the PBA logo
Roll Call.

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

WHEREAS, the City Manager and Interim Police Commissioner have approved a request of the Rye Police Association (“RPA”) dated December 19, 2013 to purchase Storm Tech outwear jackets with the PBA logo in the amount of \$3,400 for the Rye Police Department with funds available in the police donations account, and;

WHEREAS, sufficient funds exist in the police donations account to comply with the aforementioned request of the RPA; now, therefore be it;

RESOLVED, that the \$3,500 be appropriated from the police donations account to increase 2014 General Fund appropriations for Police uniforms.

ROLL CALL:

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

The Resolution was adopted by a 7-0 vote.

11. One appointment to the Landmarks Advisory Committee for a three-year term, by the Mayor with Council approval.

Mayor Sack made a motion, unanimously approved by the Council, to appoint Paula Gamache to the Landmarks Advisory Committee for a three-year term expiring on January 1, 2017.

12. One appointment to the Rye Town Park Advisory Committee for a three-year term, by the Mayor with Council approval.

Mayor Sack made a motion, unanimously approved by the Council, to appoint Ted Stein to the Rye Town Park Advisory Committee for a three-year term expiring on January 1, 2017.

13. Consideration of a request by the Milton Elementary School PTO to approve a parade to precede the Milton Elementary School Fair on Saturday, March 15, 2014 from 9:00 a.m. to 10:15 a.m.

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

RESOLVED, that the City Council of the City of Rye hereby approves the request of the Milton Elementary School PTO for use of City streets on Saturday, March 15, 2014 from 9:00 a.m. to 10:15 a.m. for a parade to precede the Milton Elementary School Fair.

14. Resolution to declare certain equipment as surplus
Roll Call.

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

WHEREAS, the City has been provided with a list of City equipment identified as being obsolete or will become obsolete during 2014, and,

WHEREAS, these Departments have recommended that said equipment be declared surplus, now, therefore, be it

RESOLVED, that said equipment are declared surplus, and, be it further

RESOLVED, that authorization is given to the City Comptroller to sell or dispose of said equipment in a manner that will serve in the best interests of the City.

List of Surplus Equipment:

Police Department:

- 9 Sierra Wireless MP 595 3G 1X/EVDO CDMA Modems
- 1 HP Compaq DC5100 MT Workstation Computer, Serial #MXL533ONDB
 - Floppy Drive, Missing DVD ROM, No Hard Drive, No Memory, Missing various frame parts. 7 years old.
- 1 HP Compaq DC5100 MT Computer, Serial #MXL533ONDB
 - DVD ROM, Floppy Drive, No Hard Drive and No Memory, 7 years old

IT Department

Item	Make	Model	Serial #
Monitor	ViewSonic	VCDTS22037	21P0050000380
Fax	HP	HP640	CN86G4MOW8
Computer	HP	D530sff	USU4 09WH
Docking Station	hp	Compaq	157935-001
Monitor	HP	LA1951G	CNCO51NV5L
Monitor	HP	LA1945W	3CQ9250NCC
Tablet	HP	KRD404034X	DQ871A#ABA
Card Printer	Zebra	D310CM	ER267814
Monitor	ELO	Touchsystem	723420805C
Monitor	ELO	Touchsystem	723420788C
Printer	HP	LJ1505	VND3G36008
POS	JIVA	TP8600B	TP8A1118
Printer	Epson	M188B	F73G159317
Computer	HP	DX2400 Micro Tower	2UA8211HPH
Paper Shredder	Achiever	SCSG	N/A

ROLL CALL:

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

The Resolution was adopted by a 7-0 vote.

15. Miscellaneous Communications and Reports

There was nothing discussed under this Agenda item.

16. New Business

There was nothing discussed under this Agenda item.

This Agenda item was discussed after Agenda item 17.

16A. Consideration of FOIL Appeal submitted by Timothy Chittenden

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

RESOLVED, that the City Council of the City of Rye hereby denies the Appeal submitted by Timothy Chittenden regarding the response to a FOIL request for “all records of any agreements and/or all other documents with regard to any stipend, additional pay or benefits provided to Robert Falk as interim/acting Rye Police Commissioner since 1/1/2014” because he was provided with all of the responsive documents and was provided with the pertinent section of the Public Officer Law (POL 87(2)(b)) by which redactions to the documents were made.

ROLL CALL:

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

The Resolution was adopted by a 7-0 vote.

17. The Council will convene into Executive Session to discuss personnel

Councilwoman Brett made a motion, seconded by Councilman Mecca and unanimously carried to adjourn into executive session to discuss personnel and litigation matters at 9:40 p.m. Councilwoman Killian made a motion, seconded by Councilman McCartney and unanimously carried, to adjourn the executive session at 11:50 p.m. The regular meeting reconvened at 11:51 p.m.

18. Adjournment

There being no further business to discuss Councilman Mecca made a motion, seconded by Councilwoman Killian and unanimously carried, to adjourn the meeting at 11:55 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk



CITY COUNCIL AGENDA

NO. 5

DEPT.: City Council

DATE: March 26, 2014

CONTACT: Mayor Joseph Sack

AGENDA ITEM: Issues Update/Old Business

FOR THE MEETING OF:

March 26, 2014

RYE CITY CODE,

CHAPTER

SECTION

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

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:



CITY COUNCIL AGENDA

NO. 6

DEPT.: City Manager's Office

DATE: March 26, 2014

CONTACT: Scott Pickup, City Manager

ACTION: Public Hearing to revise the Mission Statement for the Rye Senior Advocacy Committee.

FOR THE MEETING OF:

March 26, 2014

RYE CITY CODE,

CHAPTER 10

SECTION 4

RECOMMENDATION: That the Council hold a Public Hearings to amend the Mission Statement for the Rye Senior Advocacy Committee.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The Senior Advocacy Committee was approved by Resolution at the City Council Meeting of March 20, 2002 and adopted into the City Code through Local Law #04-2006 at the City Council Meeting of March 1, 2006 with the Mission Statement "to enhance the quality of life of Rye's senior residents by offering information, guidance, and assistance for services on an as needed basis."

Joseph Murphy, Chair if the Senior Advocacy Committee, addressed the City Council at the January 29, 2014 meeting with a request to revise the Committee's Mission Statement. Since the Committee was codified, a change to the Mission Statement must be done through a Public Hearing.

See attached amended Mission Statement and draft Local Law.

RECOMMENDED MODIFICATION OF THE RSAC MISSION STATEMENT

MISSION: The mission of the RYE SENIOR ADVOCACY COMMITTEE is to support the concerns of Rye's elder adults, to advocate for their needs, and seek new models and opportunities to better accommodate Rye's growing older population.

Our vision is to develop and maintain a healthy, diverse populace in which citizens of all ages have the opportunity to contribute to the strength of the Rye community.

ROLE: In order to best coordinate the implementation of its mission, the chairperson of the RSAC is to be designated SENIOR ADVOCATE for the City of Rye, and will be responsible for carrying out the Committee's purposes that are aligned to the goals of the Mayor and City Council in its commitment to serve our senior residents.

BACKGROUND: The Rye Senior Advocacy Committee (RSAC) is a civic body made up of seven individuals, composed of both professional members and community leaders, all of whom were appointed by the Mayor and confirmed by the members of the City Council when it was first adopted by the City Council as an arm of governance in 2001. From its early beginnings, the Committee initiated the development of a "Resource Directory" wherein many levels of community resources were identified and detailed to offer our local citizenry the opportunity to utilize the information to enhance decision making related to the welfare of our older population and their families. The Committee, from its beginning, adopted an advocacy strategy focused on persons and families. The Committee echoed the values of community based on its study of the problems and recommended action steps, specifically aligned to the older population groups living in Rye. The community leaders and the professionals members collaborated in supporting recommendations that addressed the presenting problems by offering balanced insights and ideas to improve and advance better lifestyles of living for our aging population. In this process, the primary attention was advocating for persons as they aged. Based on the Committee's mission, the outcomes expanded the community's confidence in the RSAC.

In the past 12 years of operation, the Committee's thinking evolved to find new ways to foster ideas that were more expansive to better meet the growing needs of the senior population. While its purpose has continued to serve individuals, the Committee now finds that it must address more comprehensive concerns aimed at improving the "quality of life" for a wider audience. The Committee will hereafter embrace opportunities for seniors to live comfortably and affordably in Rye as well as address health and nutrition issues, transportation and parking, family crises, and any other matter of interest to seniors. In addition, the Committee will enlarge its advocacy role to develop new models for upgrading services and seeking new initiatives for expanding senior services and activities.

The Committee is committed to supporting the interests of the City in meeting the issues and concerns of our elders. For it must be remembered it was this group of individuals, who in their younger years, contributed enormously to the growth of the City that enabled many to stay and upgrade our municipality, which has been shaped by their visions.

A more expansive objective for the RSAC will be one that is committed to support the interests of the City in meeting the issues and concerns of our elders who have continually contributed to fostering the growth and well being of Rye's character and charm. For it was this group of individuals, who in their younger years contributed enormously to the growth of the City that enabled many to will to stay and enjoy the benefits of the municipal upgrades that were long shaped by their visions.

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

**A Local Law to amend Chapter 10, Committees, Article II,
Rye Senior Advocacy Committee of the Code of the City of Rye
by amending § 10-4 Legislative Intent**

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

Section 1: Chapter 10, Article II, Rye Senior Advocacy Committee

§ 10-4 Legislative Intent.

The mission of the City of Rye Senior Advocacy Committee is to support the concerns of Rye's elder adults, to advocate for their needs, and seek new models and opportunities to better accommodate Rye's growing older population ~~enhance the quality of life of Rye's senior residents by offering information, guidance, and assistance for services on an as needed basis.~~ The vision of the City of Rye Senior Advocacy Committee is to develop and maintain a healthy, diverse populace in which citizens of all ages have the opportunity to contribute to the strength of the Rye community.

Section 2. This local law will take effect immediately upon filing in the Office of the Secretary of State.

(New material is underlined and deleted material is printed in ~~strikethrough~~.)



CITY COUNCIL AGENDA

NO. 8

DEPT.: City Manager

DATE: March 26, 2014

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Authorization for the City Manager to enter into a management agreement with Powell Catering Services Inc. to operate the Café/Snackbar and Vendor Cart at the Rye Golf Club.

FOR THE MEETING OF:

March 26, 2014

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Mayor and Council authorize the City Manager to enter into the agreement with Powell Catering Services Inc. to operate the Café/Snackbar and Vendor Cart at the Rye Golf Club.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Powell Catering Services Inc. submitted a proposal to operate the Snack Bar located at the Rye Golf Club as part of the City's RFP process. The RGC Commission voted unanimously at their meeting on March 20, 2014 to support the hiring of Powell Catering Services Inc. under the terms outlined in the attached agreement. The Council is asked to authorize the City Manager to enter into this agreement with Powell Catering Services Inc. to operate a concession providing food and beverages at the snack bar located by the swimming pool at the Golf Club and a beverage cart to offer beverages and snacks to players while they are playing the golf course at the Golf Club

See attached documentation.

THIS AGREEMENT made the _____ day of _____ 20__

by and between

THE CITY OF RYE, a municipal corporation of the State of New York, having an office and place of business at 1051 Boston Post Road, Rye, New York 10580 (hereafter the "City")

and

POWELL CATERING SERVICES, INC., having an office and principal place of business at 58 Halstead Avenue, Harrison, New York 10528 (hereafter the "Licensee")

WITNESSETH:

WHEREAS, the Rye Golf Club (the "Golf Club") and the Whitby Castle (the "Castle") both are located at 330 Boston Post Road, Rye, New York 10580; and

WHEREAS, the City desires to provide certain services and make certain facilities available for the accommodation of the members of the Golf Club; and

WHEREAS, the City separately is arranging for catering services for the Castle to be provided on an exclusive basis by a third party (the "Caterer"); and

WHEREAS, the Licensee desires to provide such services and operate such facilities for the Golf Club as requested by the City, all subject to and on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto in consideration of the terms and conditions herein contained do agree as follows:

1. Description. The City hereby grants to Licensee, and Licensee hereby accepts from the City, a License to operate a concession providing food and beverages at the snack bar located by the swimming pool at the Golf Club (the "Pool Snack Bar Concession") and a beverage cart to offer beverages and snacks to players while they are playing the golf course at the Golf Club (the "Beverage Cart Service"), as more particularly described in Schedule "A", attached hereto and made a part hereof (the "Agreement" or "License"). The Licensee shall operate the License in the areas designated by the City (the "Licensed Premises"). As part of the Services to the City, the Licensee will have the obligation of providing food and beverage services during specialty events (e.g., pool opening night, Lobster Night, Swim Team events, etc.) from the Snack Bar kitchen. However, the City, itself, or through the Caterer, shall have exclusive right to occupy and use, and cater and book events (*i.e.* golf outings) at and through, the Castle, including the restaurant, patio and other spaces located therein.

2. **Term.** This License shall commence on April ____, 2014 (the “Commencement Date”) and shall expire on September 31, 2014 (the “Termination Date”) for the Pool Snack Bar Concession and Beverage Cart Concession unless sooner terminated as herein provided. However, the parties may agree to modify the Commencement Date or the Termination Date by mutually agreeing in writing.

3. **License Fee and Other Fees.** (a) Licensee, as compensation for the privilege of operating this License, shall pay to the City the following License fees:

April, 2014	-	\$4,000
May, 2014	-	\$4,000
June, 2014	-	\$4,000
July, 2014	-	\$4,000
August, 2014	-	\$4,000
September, 2014	-	\$4,000

It is the intention of the parties hereto that the License fee specified in this paragraph 3 shall be net to the City during the term of this Agreement, and that all costs, expenses and obligations of every kind relating to the Licensed Premises (except as otherwise specifically provided in this Agreement) which may arise or become due during the term of this Agreement shall be paid by the Licensee, and that the City shall be indemnified by the Licensee against such costs, expenses and obligations,

The net License fee shall be paid to the City on or before the first day of each month, commencing with April 1st, without abatement, reduction or setoff, except as otherwise specifically provided in this Agreement.

All fees due to the City hereunder shall be payable to the City at the City of Rye City Hall, 1051 Boston Post Road, Rye, New York, or at such other offices or address as the City may designate by notice, in such form and in such manner as the City may reasonably require.

(b). The Golf Club will be responsible for usual and customary utility charges. If it is determined by the Golf Club that the utility charges incurred by Licensee are excessive (more than 115% of the average costs for the License Premises in respect of the Pool Snack Bar Concession and the Beverage Cart Service for the same time period the prior 2 years), the Licensee shall be responsible for that portion which is above the average.

4. **Hours of License.** Licensee shall operate the License granted hereunder as follows: Off Peak Times, 7 a.m. to 9 a.m.; Peak Times 9 a.m. to 5 p.m.; and weekends 10a.m. to 6 p.m.

5. **Accounts.** The Licensee shall keep accurate books of account and records of its business operation hereunder (including without limitation with respect to all cash transactions) in accordance with generally accepted accounting principles consistently applied and in a manner acceptable to the City. The City shall have the right to inspect and audit such books and records at all reasonable times to ensure the Licensee’s compliance with the terms of this Agreement.

The Licensee shall submit to the City Manager an audited statement of gross receipts and of profits and losses from the operation of the License during the term of this Agreement. Said statements must be prepared and signed by an independent Certified Public Accountant and shall be submitted to the City Manager within seventy-five (75) days after the Termination Date.

(a). Rye Golf Club will provide Licensee with access to and use of the electronic point-of-sale being used at the Golf Club (the "POS") so that members of the Golf Club may charge their purchases from Licensee. The Licensee shall encourage members to use the member charge. However, Licensee covenants and agrees to accept cash and credit card payment from guests and during special events (such as County Pool Meet and other similar special events). To the extent cash is used to pay Licensee, such amount will be retained by Licensee subject to providing documentation of such sales to the City as requested.

(b) Licensee shall provide the City with a weekly sales report documenting all member charges on the POS, accompanied by signed receipts for each transaction. As long as Licensee provides those reports and receipts to the City by 10 a.m. on Monday, Licensee will be paid on the following Thursday, disputed transactions excepted. Any credit card charges for Services that are received by the City will be paid over to Licensee net of credit card processing fees.

(c) Licensee will be responsible for collecting and paying, and filing all reports and returns in connection with, sales tax on goods and services sold by Licensee hereunder.

6. Repair and Maintenance. The Licensee, at its sole cost and expense, shall keep all of the Licensed Premises, and the fixtures and equipment thereon, as well as surrounding areas within a radius of fifteen (15) feet, clean and in good order. The City shall make all structural repairs at the Licensed Premises that it deems necessary in its discretion, other than damages caused by Licensee, which shall be the responsibility of Licensee. Licensee shall be responsible for maintaining and repairing all equipment, pumps, lighting, decorations, and carpeting in or about the Licensed Premises. Licensee shall keep all refuse in closed containers and shall provide professional exterminating services as deemed necessary by the City. Licensee shall have access to and may use the Golf Club's dumpsters.

7. Equipment, Alterations and Beverage Cart. (a) The Licensee, at its sole cost and expense, shall supply, repair, and replace all equipment required for the proper operation of the License. All such equipment shall comply with all applicable fire and electrical safety codes and requirements.

Upon expiration or termination of this Agreement, the Licensee shall promptly remove, at its sole cost and expense, all its equipment and other property from the Licensed Premises and the Castle and the Golf Club. Any property of the Licensee remaining thereon after such expiration or termination shall be deemed abandoned by the Licensee and all costs and expenses incurred in the removal thereof shall be charged to the Licensee.

The Licensee shall not install any fixtures or make any improvements or alterations to the Licensed Premises without the prior written consent of the City Manager. Any fixtures,

improvements, or alterations shall immediately upon installation be deemed to be affixed to the realty and shall become property of the City.

During the term hereof, the Licensee shall be permitted to use (and shall maintain and repair at its sole cost and expense as aforesaid) City owned equipment present in the Licensed Premises.

The Licensee acknowledges that it has made its own inspection and investigation of the condition and suitability of the Licensed Premises, that it has not relied upon any representations by the City as to the fitness thereof, and that the Licensee accepts the Licensed Premises "as-is." An inspection with the Licensee and the City Manager, or one of his designees, of the Licensed Premises will be performed prior to the opening of the Snack Bar for business. The Licensee covenants and agrees to store any overflow equipment, materials or goods offsite with the exception that the Licensee shall be provided reasonable access to the kitchen in the administrative building as agreed upon between the Licensee and the General Manager.

(b). Licensee shall be responsible at its own cost and expense for providing a suitable cart or vehicle ("Beverage Cart") to provide the Beverage Cart Service, and for paying for all expenses associated with the operation and maintenance of same. Licensee shall not permit the Beverage Cart to be operated other than by a qualified individual with the legal capacity to do so and in full compliance with all applicable laws, rules and regulations.

8. Inspection. Any authorized City agent or representative shall be entitled to enter the Licensed Premises and any other City space used by the Licensee hereunder for the purpose of inspecting, observing, and monitoring any aspect of the Licensee's operations or performance hereunder. The Licensee shall also permit inspection of same by any Federal, State, City or municipal officer having jurisdiction. The Licensee, at its sole cost and expense, shall promptly remedy any and all violations issued as a result of any such inspection.

9. Flammables. The Licensee shall not use or store any explosives, toxic materials or flammables on or about the Licensed Premises.

10. Quality and Price. The Licensee warrants that all services and/or merchandise shall be made available to the public at commercially reasonable prices, and further warrants that any goods or merchandise offered by Licensee shall be of good and merchantable first quality, fit for the particular use intended and in compliance with all applicable laws. The Licensee shall submit to the City for approval a schedule listing the menu of the articles to be offered for sale and the prices to be charged therefor. A schedule of such approved prices shall be printed and displayed at the expense of the Licensee in a conspicuous place and manner on the Licensed Premises. A copy of the proposed menu is annexed as Appendix __. The approval of the Golf Commission of the Golf Club shall be required for any material changes to the approved menu and any changes to the approved prices.

11. Advertising. All advertising and promotions to be employed by the Licensee in connection with the operation of the License shall require the prior written approval of the City

before first use. Licensee shall not place any sign or advertisement on any property of the City without prior written approval of the City.

12. Personnel. The Licensee shall employ a manager to supervise and manage the operation of the License. All employees of Licensee who are to work at the Licensed Premises must submit to a background check as provided in paragraph 28 hereof, the results of which shall be provided to the Golf Commission for review and approval. Any employees with a criminal background may, to the extent legally permissible, be subject to disqualification, depending on the type of offense committed. The Licensee shall employ a sufficient number of trained and knowledgeable personnel to ensure the safe and proper operation of the License. The Licensee shall provide, and its employees shall wear, appropriate employee identification and, if reasonably required by the City, uniforms. Employees' identification and apparel shall be subject to the reasonable approval of the City.

The operation of the License shall be conducted in an orderly and proper manner so as not to annoy, disturb, or offend others using the City's recreational facilities. The Licensee shall immediately remove the cause of any objection made by the City regarding its operation, including unacceptable odors, or regarding the demeanor, conduct or appearance of any of Licensee's employees, invitees, or business guests.

13. Assignment. The Licensee shall not assign, sublet, subcontract, or otherwise dispose of this License, or any right, duty, or interest herein, without the prior written consent of the City, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant the License and privileges provided by this Agreement personally and solely to the Licensee named herein. No assignment, subcontracting, subletting, or other such disposition of this License, either with or without such consent of the City shall serve to relieve the Licensee of its obligations hereunder.

14. Fire Damage, Destruction. In the event the Licensed Premises, or any building or structure thereon, become unfit for use or occupancy due to damage by fire or other casualty, the License shall terminate immediately upon notice to that effect from the City given to the Licensee, and the City shall have no liability to the Licensee hereunder; provided, however, that should such damage result from any act or omission of the Licensee, the Licensee, at its sole cost and expense, shall repair the damage, and, provided further, at the City's option, this License shall continue in full force and effect,. Upon the failure of the Licensee to make such repairs for which it is responsible, the City may repair such damages at the Licensee's cost and expense.

15. Termination. The City, upon ten (10) days written notice, may terminate the License and this Agreement, in whole or in part, with or without cause, when it deems such termination to be in the City's best interest.

In the event that the Licensee defaults in the performance of any term, condition or covenant herein contained, the City, at its option, and in addition to any other remedy it may have to seek damages, judicial enforcement or any other lawful remedy, may terminate this License upon forty-eight (48) hours written notice to the Licensee; provided, however, that if the Licensee cures the default complained of to the reasonable satisfaction of the City within such

notice period, such termination notice shall be deemed withdrawn and this Agreement shall continue in effect. In the event of a second default by the Licensee, following such notice and cure, the City at its option and in addition to any other remedy it may have to seek damages, judicial enforcement or any other lawful remedy, may terminate this License immediately upon written notice to the Licensee, without any opportunity to cure. In the event of such termination, the City may take custody of and use any property of the Licensee located at the Licensed Premises on the date of termination in order to operate The Pool Snack Bar Concession and the Beverage Cart Service until such time as a new vendor has been engaged by the City to operate the same.

16. Permits and Regulations. The Licensee hereby expressly represents and warrants that it is qualified and in good standing and duly authorized to conduct business in the State of New York. The Licensee shall, at its sole cost and expense, procure and maintain in full force and effect for the term of this Agreement all permits, licenses and approvals from all applicable governmental authorities necessary to perform its obligations hereunder, except that the City be responsible for obtaining and maintaining an appropriate liquor license to permit the Licensee to provide the Services (the "Liquor License"). The Licensee shall comply with all applicable Federal, State and local laws, rules, regulations and orders, including, but not limited to, all liquor, labor workers' compensation, unemployment insurance, state and municipal health (including the Westchester County Sanitary Code) and Federal social security laws, rules and regulations, and all rules and regulations promulgated by the United States Department of Labor and/or the Industrial Commissioner of the State of New York, and all amendments and additions to any of the foregoing.

17. Security Deposit. The Licensee shall provide a \$1,000 security deposit to the City as security for the faithful performance of its obligations under this Agreement and for the payment of fees and charges due hereunder. In the event of any default by the Licensee hereunder, the City may, but shall not be required to, apply such security deposit toward curing such default and may also withhold monies owed to the Licensee until such default is cured. Upon the application of all or part of such security deposit hereinabove provided, the Licensee shall, upon demand, replenish such bond to its original amount or deposit with the City the amount applied so that the entire security deposit shall remain with the City throughout the term of this License. Nothing hereunder shall be construed to limit any other right the City may have in the event of a default by the Licensee. If the Licensee shall fully and faithfully comply with all of the terms and conditions of this License, the security deposit, or any balance thereof, shall be returned to the Licensee upon the expiration of this License and the removal of the Licensee and its property from the Licensed Premises after an inspection is performed by the Licensee and the General Manager, or one of his or her designees. In addition, the final two payments will be withheld from Licensee until such time as this final inspection is performed.

18. Insurance and Indemnification. In addition to, and not in limitation of, the insurance requirements contained in Schedule "C" entitled "Standard Insurance Provisions," attached hereto and made a part hereof, the Licensee agrees:

- (a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the City, the Licensee shall indemnify and

hold harmless the City, its officers, employees, and agents from and against any and all liability, damages, claims, demands, costs, judgments, fees, attorney's fees, or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Licensee or third parties under the direction or control of the Licensee, including, without limiting the generality of the foregoing, any individual operating the Beverage Cart;

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto; and

(c) to reimburse the City for six (6) months of the insurance costs for the Liquor License, as defined in paragraph 16.

19. No Lease. It is expressly understood and agreed that no building, structure, equipment, or space is leased to the Licensee, and the Licensee's privilege to use and occupy the Licensed Premises solely for the purpose of providing the Services and shall continue only so long as the Licensee shall comply with each and every term and condition of this Agreement. Under no circumstance shall this Agreement be deemed or construed to be a lease of any specific portion of real property.

20. Risk of Operation. The Licensee assumes all risks in the performance of this Agreement. The Licensee shall comply with any and all rules and regulations prescribed by the City, as the same may be amended or supplemented from time to time, applicable to the Services or the operation of the Licensed Premises. Upon request, the City shall furnish a copy of such rules and regulations to the Licensee.

21. Bankruptcy. If at any time during the term of this License, any petition in bankruptcy shall be filed by or against the Licensee or if the Licensee shall be adjudicated and bankrupt; or if a Receiver shall be appointed to take possession of the Licensee's property; or if the Licensee shall make any assignment for the benefit of creditors, this License shall immediately cease, terminate and expire. Nothing hereunder shall relieve the Licensee from any liability incurred under this License, and the Licensee covenants and agrees to yield and deliver to the City possession of the Licensed premises promptly and in good condition on the date of the cessation of this License, whether such cessation be by termination, expiration, or otherwise.

22. MBEWBE. Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the City to use its best efforts to encourage, propagate and increase the participation of business enterprises owned and controlled by persons of color or women in contract and projects funded by all departments of the City. Attached hereto and forming a part hereof as Schedule "D" is a Questionnaire entitled Business Enterprises Owned and Controlled by Person of Color or Women. The Licensee agrees to complete the questionnaire attached hereto as Schedule "D", as part of this Agreement.

23. Required Disclosure. Attached hereto and forming a part hereof as Schedule “E” is a non-collusive Affidavit of Compliance with Section 103D of the General Municipal Law. The Contractor agrees to complete said questionnaire. If there are any changes in the information set forth thereon during the term of this Agreement, Contractor agrees to notify City in writing within ten (10) business days of any such change.

24. Notices. All notices of any nature referred to in this Agreement shall be in writing and sent by register or certified mail, postage pre-paid, to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing:

To the City:

City Manager
City Hall
1051 Boston Post Road
Rye, New York 10580

With a copy to:

City Attorney
City Hall
1051 Boston Post Road
Rye, New York 10580

To the Licensee:

Powell Catering Services, Inc.
58 Halstead Avenue
Harrison, New York 10528

25. Remedies Cumulative. The failure of the City to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect. Acceptance by the City of payment of any fee due hereunder with knowledge of a breach of any term or condition hereof shall not be deemed a waiver of any such breach and no waiver by the City of any provision hereof shall be implied.

26. Non-Discrimination. The Licensee expressly agrees:

- (a) that in the hiring of employees for the performance of work under this License or any subcontract hereunder, neither the Licensee or any such subcontractor, nor any person acting on behalf of the Licensee or any such subcontractor, shall by reason of race, creed, color, sex, age, physical disability, or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates; and

- (b) that neither the Licensee or any subcontractor, nor any person acting on either of their behalf, shall in any manner discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, sex, age, physical disability, or national origin; and
- (c) that there may be deducted from any amount payable to the Licensee by the City under this Agreement a penalty of ONE THOUSAND DOLLARS (\$1,000.00) per person for each calendar day during which a person was discriminated against or intimidated in violation of the provisions of this Agreement; and
- (d) that this License may be canceled or terminated by the City, and all moneys due or to become due to Licensee hereunder may be forfeited, for any second or subsequent violation of this section of this Agreement.

27. Entire Agreement. This Agreement and its attachments constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, comments and writings. It shall not be released, discharged, changed, or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

28. Criminal Background Disclosure. The Licensee agrees to complete or cause to be completed the Criminal Background Disclosure attached as Schedule “D” with respect to each individual who will be providing Services or otherwise working at the Licensed Premises for or on behalf of Licensee in connection with this Agreement.

29. Approval. This Agreement shall not be enforceable until signed by both parties and approved by the City’s Corporation Counsel.

IN WITNESS WHEREOF, The City of Rye and the Licensee have caused this Agreement to be executed.

THE CITY OF RYE

By: _____
 Name:
 Title:

**POWELL CATERING SERVICES, INC.
 LICENSEE**

By: _____
Name:
Title:

Approved as to form
and manner of execution

City Attorney
City of Rye

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
CITY OF)

On the _____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: _____

Notary Public

CERTIFICATE OF AUTHORITY
(CORPORATION)

I, _____,
(Officer other than officer signing contract)

certify that I am the _____ of
(Title)
the _____
(Name of Corporation)

a corporation duly organized and in good standing under the _____
(Law under which organized, e.g., the New York Business Corporation Law) named in the
foregoing agreement; that

(Person executing agreement)

who signed said agreement on behalf of the _____
(Name of Corporation)

was, at the time of execution

(Title of such person)

of the Corporation and that said agreement was duly signed for and on behalf of said Corporation
by authority of its Board of Directors, thereunto duly authorized and that such authority is in full
force and effect at the date hereof.

(Signature)

STATE OF NEW YORK)
) ss.:
CITY OF)

On the _____ day of _____ in the year 20__ before me, the undersigned, a
Notary Public in and for said State, _____ personally appeared,
personally known to me or proved to me on the basis of satisfactory evidence to be the officer
described in and who executed the above certificate, who being by me duly sworn did depose
and say that he/she resides at _____,
and he/she is an officer of said corporation; that he/she is duly authorized to execute said
certificate on behalf of said corporation, and that he/she signed his/her name thereto pursuant to
such authority.

Notary Public
Date

SCHEDULE 'A'

SCOPE OF SERVICES

Pool Snack Bar Concession Responsibilities:

- Operate and maintain, the Pool Snack Bar Concession in accordance with a schedule acceptable to the City of Rye;
- Maintain and keep in good repair all equipment and the facility;
- Operate the concession in a clean and efficient manner; and
- Provide courteous and efficient service maximizing customer satisfaction.

SCHEDULE "B"

STANDARD INSURANCE PROVISIONS **(Licensee)**

1. Prior to commencing work, the Licensee shall obtain at its own cost and expense the required insurance from insurance companies Licensed in the State of New York for both the Snack Bar and the Beverage Cart services, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the City of Rye, as may be required and approved by the Director of Risk Management of the City. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the City Manager of the City of Rye by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Licensee and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the City, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the City, the Licensee shall upon notice to that effect from the City, promptly obtain a new policy, submit the same to the Department of Risk Management of the City of Rye for approval and submit a certificate thereof. Upon failure of the Licensee to furnish, deliver and maintain such insurance, the Agreement, at the election of the City, may be declared suspended, discontinued or terminated. Failure of the Licensee to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Licensee from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Licensee concerning indemnification. All property losses shall be made payable to and adjusted with the City.

In the event that claims, for which the City may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Licensee until such time as the Licensee shall furnish such additional security covering such claims in form satisfactory to the City of Rye.

2. The Licensee shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 (9/07) or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester City, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: www.wcb.state.ny.us (click on Employers/Businesses, then Business Permits/Licenses/Contracts to see instruction manual).

If the employer is self-insured for Worker's Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

(b) Employer's Liability with minimum limit of \$100,000.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or a combined single limit of \$1,000,000 (c.s.1), naming the City of Rye as an additional insured. This insurance shall include the following coverage's:

- (i) Premises - Operations.
- (ii) Broad Form Contractual.
- (iii) Independent Contractor and Sub-Contractor.
- (iv) Products and Completed Operations.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverage's:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

(e) Licensee's Professional Liability. The Licensee shall provide proof of such insurance. (Limits of \$1,000,000 per occurrence/\$3,000,000 aggregate).

3. All policies of the Licensee shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the City of Rye (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the City of Rye is named as an insured, shall not apply to the City of Rye.

(c) The insurance companies issuing the policy or policies shall have no recourse against the City of Rye (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Licensee.

SCHEDULE "C"

QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR

As part of the City's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in City contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A "business enterprise owned and controlled by women or persons of color" means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability corporation, or corporation, that either:

- 1.) meets the following requirements:
 - a. is at least 51% owned by one or more persons of color or women;
 - b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
 - c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
 - d. is an enterprise authorized to do business in this state which is independently owned and operated.
- 2.) is a business enterprise certified as a minority business enterprise ("MBE") or women business enterprise ("WBE") pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., **OR**
- 3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term "persons of color," as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

_____ No

_____ Yes

Please note: If you answered “yes” based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.

2. If you answered “Yes” above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

_____ Women

_____ Persons of Color (please check off below all that apply)

_____ Black persons having origins in any of the Black African racial groups

_____ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race

_____ Native American or Alaskan native persons having origins in any of the original peoples of North America

_____ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

Name of Business Enterprise: _____

Address: _____

Name and Title of person completing questionnaire: _____

Signature: _____

Notary Public

Date

SCHEDULE “D”
CRIMINAL BACKGROUND DISCLOSURE
INSTRUCTIONS

The City is requiring a record of criminal background disclosure from all persons providing work or services in connection with any City contract, including leases of City-owned real property and Licenses:

- a.) If any of the persons providing work or services to the City in relation to a City contract are not subject to constant monitoring by City staff while performing tasks and/or while such persons are present on City property pursuant to the City contract; and
- b.) If any of the persons providing work or services to the City in relation to a City contract may, in the course of providing those services, have access to sensitive data (for example SSNs and other personal/secure data); facilities (secure facilities and/or communication equipment); and/or vulnerable populations (for example, children, seniors, and the infirm).

In those situations, the persons who must provide a criminal background disclosure (“Persons Subject to Disclosure”) include the following:

- a.) Licensees, Contractors, Licensees, Lessees of City-owned real property, their principals, agents, employees, volunteers or any other person acting on behalf of said Contractor, Licensee, Licensee, or Lessee who is at least sixteen (16) years old, including but not limited to SubLicensees, subcontractors, Sublessess, or SubLicensees who are providing services to the City, and
- b.) Any family member or other person, who is at least sixteen (16) years old, residing in the household of a City employee who lives in housing provided by the City located on City property.

It is the obligation of every City Licensee, Contractor, Licensee, or Lessee to inquire of each and every Person Subject to Disclosure and disclose whether they have been convicted of a crime or whether they are subject to pending criminal charges, and to submit this form with that information.¹ Accordingly, you are required to complete the attached Criminal Background Disclosure Form and Certification.

Please note that under no circumstances shall the existence of a language barrier serve as a basis for the waiver of or an exception from this requirement. If translation services are required by the Licensee, Contractor, Licensee, or Lessee to fulfill this obligation, it shall be at the sole cost and expense of the Licensee, Contractor, Licensee, or Lessee.

Please also note that the conviction of a crime(s) and/or being subject to a pending criminal charge(s) will not automatically result in a denial of a person’s right to work on a City contract,

¹ For these disclosures, a “crime” or “pending criminal charge” includes all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State.

right to be on City property, or License, but may, if the City determines that the prior conviction(s) or pending criminal charge(s) create an unacceptable risk. However, if a person fails to list or falsifies any part of his/her conviction history or any pending criminal charge(s) for any reason; he/she may be prohibited from working or being on City property without any risk assessment. If it is later determined that a Person Subject to Disclosure failed to disclose a criminal conviction or pending criminal charge for any reason, his/her right to work on a City contract, be on City property, or License may be terminated at any time.

Please finally note that any failure by a City Licensee, Contractor, Licensee, or Lessee to comply with the disclosure requirements of Executive Order 1–2008 may be considered by the City to be a material breach and shall be grounds for immediate termination by the City of the related City contract.

Exemptions

The City exempts from the aforementioned disclosure requirements Persons Subject to Disclosure:

- a.) for whom the City has already conducted a background check and issued a security clearance that is in full force and effect; and
- b.) for whom another state or federal agency having appropriate jurisdiction has conducted a security and/or background clearance or has implemented other protocols or criteria for this purpose that apply to the subject matter of a City contract that is in full force and effect.

If you are claiming an exemption for one or more Persons Subject to Disclosure, you must notify the City Manager. The City Manager, in consultation with other City personnel, will then determine whether the Person(s) Subject to Disclosure are actually exempt, and provide written notification of his/her determination. If the City Manager determines that a Person Subject to Disclosure is not exempt, the City Manager will notify you of that determination, and you will have to include disclosures for that person on your Criminal Background Disclosure Form and Certification.

SubLicensees, Subcontractors, Sublessees, or SubLicensees

It is your duty to ensure that any and all approved subLicensees, subcontractors, sublessees, or subLicensees complete and submit the attached Criminal Background Disclosure Form and Certification for all of their respective Persons Subject to Disclosure. This must be done before such a subLicensee, subcontractor, sublessees, or subLicensees can be approved to perform work on a contract.

New Persons Subject to Disclosure

You have a **CONTINUING OBLIGATION** to maintain the accuracy of the Criminal Background Disclosure Form and Certification (and any accompanying documentation) for the duration of this contract, including any amendments or extensions thereto. Accordingly, it is your duty to complete and submit an updated Criminal Background Disclosure Form and Certification whenever there is a new Person Subject to Disclosure for this contract. **NO NEW PERSON SUBJECT TO DISCLOSURE SHALL PERFORM WORK OR SERVICES OR ENTER ONTO CITY PREMISES UNTIL THE UPDATED CRIMINAL BACKGROUND DISCLOSURE FORM AND CERTIFICATION IS FILED WITH THE PROCURING OFFICER.** You shall also provide the City with any other updates that may be necessary to comply with the disclosures required..

CRIMINAL BACKGROUND DISCLOSURE
FORM AND CERTIFICATION

If this form is being completed by a subLicensee, subcontractor, sublessee, or subLicensee, please consider all references in this form to "Licensee, contractor, lessee, or Licensee" to mean "subLicensee, subcontractor, sublessee, or subLicensee" and check here: _____

I, _____, certify that I am a principal or a
(Name of Person Signing Below)

representative of the Licensee, Contractor, Lessee, or Licensee and I am authorized to complete and execute this Criminal Background Disclosure Form and Certification. I certify that I have asked each Person Subject to Disclosure the following questions:

- **Have you or your company ever been convicted of a crime (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State) including, but not limited to, conviction for commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property?**

- **Are you or your company subject to any pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State)?**

I certify that the names and titles of Persons Subject to Disclosure who refused to answer **either** of the questions above are:

1. _____
2. _____
3. _____
4. _____
5. _____

(If more space is needed, please attach separate pages labeled "REFUSED to Answer - Continued.")

I certify that the names and titles of Persons Subject to Disclosure who answered “Yes” to **either of the** questions above are:

1. _____
2. _____
3. _____
4. _____
5. _____

(If more space is needed, please attach separate pages labeled “YES Answers - Continued.”)

Each Person Subject to Disclosure listed above who has either **been convicted of a crime(s)** and/or **is subject to a pending criminal charge(s)** must answer additional questions. Those questions are below.

A Person Subject to Disclosure who has **been convicted of a crime(s)** must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on City property if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the City, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2.) Please list all criminal convictions along with a brief description of the crime(s) (including all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please provide the date and place of each conviction.
- 4.) Please provide your age at the time of each crime for which you were convicted.
- 5.) Please provide the legal disposition of each case.
- 6.) Please provide any information either produced by yourself or someone on your behalf in regards to your rehabilitation and good conduct.

A Person Subject to Disclosure who **is subject to a pending criminal charge(s)** must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on City property and if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the City, including but not limited to, access to sensitive data and facilities and access to vulnerable

- populations.
- 2.) Please identify all pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
 - 3.) Please briefly describe the nature of the pending charges and the date upon which it is alleged that a crime was committed.

I hereby certify that all of the information provided herein (and in any and all attachments) is true and accurate and that all disclosures required by Executive Order 1-2008 and this Criminal Background Disclosure Form and Certification have been completed. By my signature below, I hereby affirm that all of the facts, statements and answers contained herein (and in any and all attachments) are true and correct. I understand that providing false or incomplete information or withholding by omission or intention pertinent information will be cause for refusing further consideration of my being utilized under this contract.

It is understood and agreed that no Person Subject to Disclosure shall perform work or services or enter onto City property until this required Criminal Background Disclosure Form and Certification is filed with the Procuring Officer.

It is understood and agreed that to the extent that new Persons Subject to Disclosure are proposed to perform work or provide services under this contract after filing of this Criminal Background Disclosure Form and Certification with the Procuring Officer, such new Persons Subject to Disclosure shall not perform work or provide services or enter into City property until an updated Criminal Background Disclosure Form and Certification has been filed with the Procuring Officer.

It is further understood and agreed that the Licensee, contractor, lessee, or Licensee has a continuing obligation to maintain the accuracy of the Criminal Background Disclosure Form and Certification for the duration of this contract, including any amendments or extensions thereto, and shall provide any updates to the information to the City as necessary to comply with the requirements of Executive Order 1-2008.

 Name: _____
 Title: _____
 Date: _____

 Notary Public

 Date

Licensee Certification

I hereby certify that all of the information provided herein is true and accurate and that all additional required Disclosure Forms have been completed.

It is understood and agreed that to the extent that new Persons Subject to Disclosure are proposed to be added after execution of this Certification Form, the Licensee shall not utilize such persons or permit said individual onto City property until the updated Disclosure Forms are filed with the Procuring Officer.

No Person Subject to Disclosure shall perform work or services or enter onto City premises until the Disclosure Forms are filed with the Procuring Officer.

It is further understood and agreed that the Licensee has a continuing obligation to maintain the accuracy of the Disclosure Forms for the duration of this Contract, including any amendments or extension thereto, and shall provide any updates to the Information to the City as necessary to comply with these requirements.

Name: _____

Title: _____

Date: _____

Notary Public

Date

**NAMES AND TITLES OF PERSONS SUBJECT TO DISCLOSURE
THAT ANSWERED "YES" TO ANY QUESTION ABOVE**

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____

Note: If more names and titles must be added, please attach a separate page

LICENSEE CERTIFICATION

I hereby certify that all of the information provided herein is true and accurate and that all additional required Disclosure Forms have been completed.

No Person Subject to Disclosure shall perform work or services or enter onto City premises until the Disclosure Forms are filed with the Procuring Officer.

It is understood and agreed that to the extent that new Persons Subject to Disclosure are proposed to be added after execution of this Certification Form, the Licensee shall not utilize such persons or permit said Individual onto City property until the updated Disclosure Forms are filed with the City.

It is further understood and agreed that the Licensee has a continuing obligation to maintain the accuracy of the Disclosure Forms for the duration of this Contract, including any amendments or extensions thereto, and shall provide any updates to the information to the City as necessary to comply with these requirements,

Name:
Title and Date:

Notary Public

Contract # _____
Name of Licensee/SubLicensee _____

**CRIMINAL BACKGROUND DISCLOSURE FORM FOR
PERSONS WHO HAVE BEEN CONVICTED OF A CRIME**

The conviction of a crime will not automatically result in a denial of your right to work on a City contract, your right to be on City property or your License, but may, if the City determines that the prior conviction(s) create an unacceptable risk. However, if you fail to list any part of your conviction history, whether due, but not limited to any omission, intentional falsification or any failure to disclose for any reason, you may be prohibited from working or being on City property without any risk assessment. If it is later determined that you failed to disclose a criminal conviction for any reason, your right to work on a City contract, be on City property or your License may be terminated at any time.

_____, am _____
(Name of Person Signing Below) (Title Relevant to License)

- 1) Describe the reason for being on City property if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the City, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.**

- 2) Please list all criminal convictions along with a brief description of the crime(s) (including all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).**

- 3) Please provide the date and place of each conviction.**

- 4) Please provide your age at the time of each crime for which you were convicted.**

5) Please provide the legal disposition of each case.

6) Please provide any information either produced by yourself or someone on your behalf in regards to your rehabilitation and good conduct.

I certify that this information is correct and complete. I understand that providing false or incomplete information or withholding by omission or intention pertinent information will be cause for refusing further consideration of my employment on this project.

No Person Subject to Disclosure shall perform work or services or enter onto City premises until the Disclosure Forms are filed with the Procuring Officer.

I understand that I have a continuing obligation to maintain the accuracy of this form for the duration of this Contract, including any amendments or extensions thereto, and shall provide any updates to the information to the City as necessary to comply with the requirements of Executive Order 1-2008.

By my signature below I hereby affirm that all of the facts, statements and answers contained herein and all attachments are true and correct.

Name:

Title:

Date:

Notary Public

Date

CRIMINAL BACKGROUND DISCLOSURE FORM FOR
PERSONS WHO ARE SUBJECT TO PENDING CRIMINAL CHARGES

A pending criminal charge will not automatically result in a denial of your right to work on a City contract, your right to be on City property or your License, but may, if the City determines that the pending charge(s) create an unacceptable risk. However, if you fail to list any part of your conviction history, whether due, but not limited to any omission, intentional falsification or any failure to disclose for any reason, you may be prohibited from working or being on City property without any risk assessment. If it is later determined that you failed to disclose a criminal conviction for any reason, your right to work on a City contract, be on City property or your License may be terminated at any time.

I, _____, am _____
(Name of Person Signing Below) (Title Relevant to License)

- 1) Describe the reason for being on City property and if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the City, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2) Please identify all pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).

3) Please briefly describe the nature of the pending charges and the date upon which it is alleged that a crime was committed.

I certify that this information is correct and complete. I understand that providing false or incomplete information or withholding by omission or intention pertinent information will be cause for refusing consideration of my employment on this project.

No Person Subject to Disclosure shall perform work or services or enter onto City premises until the Disclosure Forms are filed with the City.

I understand that I have a continuing obligation to maintain the accuracy of this form for the duration of this Contract, including any amendments or extensions thereto, and shall provide any updates to the information to the City as necessary to comply with these requirements.

By my signature below I hereby affirm that all of the facts, statements and answers contained herein and all attachments are true and correct.

Name:
Title:
Date:

Notary Public

Date

PERSONS THAT REFUSED TO ANSWER

Please list the names and titles of each Person that refused to answer any of the questions above

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

LICENSEE CERTIFICATION

I hereby certify that all of the information provided herein is true and accurate.

No Person Subject to Disclosure shall perform work or services or enter onto City Premises until the Disclosure Forms are filled with the City.

It is understood and agreed that to the extent that new Persons Subject to Disclosure are proposed to be added after execution of this Certification Form, the Licensee shall not utilize such persons or permit said individual onto City property until the updated Disclosure Forms are filed with the City.

It is further understood and agreed that the Licensee has a continuing obligation to maintain the accuracy of the Disclosure Forms for the duration of this Contract, in including any amendments or extensions thereto, and shall provide any updates to the information to the City as necessary to comply with the requirements of Executive Order 1-2008.

Name:
Title:
Date:

Notary Public

Appendix ___ City's Conflict of Interest Form

Appendix ____
Sample Menu



CITY COUNCIL AGENDA

NO. 9 DEPT.: Police DATE: March 26, 2014
CONTACT: Robert J. Falk, Interim Police Commissioner

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

FOR THE MEETING OF:

March 26, 2014

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: Amendment of General Order #113.7, "Domestic Violence."

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

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

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

A copy of the proposed revision noting the changes in "strike and replace" format is attached. The proposed revision was provided to the Rye Police Association for review pursuant to the provisions of the collective bargaining agreement.

CITY OF RYE POLICE DEPARTMENT

General Order #113.7	New [] Revised [x] Supersedes: G.O. 113.7 11/1/96
Subject: Domestic Violence Incidents	
Date Issued 11/01/96	Date Effective 11/01/96
Page 1 of 13	
Issuing Authority: William a. Pease , Lt. Robert Falk, Interim Police Commissioner	

PURPOSE:

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

POLICY:

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

DEFINITIONS:

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

- f. Are unrelated persons who are continually or at regular intervals living in the same household or who have in the past continuously or at regular intervals lived in the same household.
- g. Are unrelated persons who have had intimate or continuous social contact with one another and who have access to one another's household.
- h. Assert that they are intimate partners, in that they have or have had a dating relationship, including same sex couples.

Domestic incidents, as defined in Subsection A, incorporates assaultive and non-violent conduct that injures, attempts injury, or is coercive in its intent. Sub § B identifies the persons to be protected under this policy. The definition of "domestic relationship" recognizes that these relationships take many forms and that law enforcement officers must ensure equal protection under law for all victims of domestic offenses, not only victims of family offenses. The definition also recognizes that domestic incidents may continue after the formal or informal relationship has ended, and may include "stalking" behaviors such as harassment and menacing.

Sub § B.(2) follows the National Council of Juvenile and Family Court Judges Model Code on Domestic and Family Violence, § 102(2) (c) and (d): "c. Adults or minors who are dating or who have dated. d. Adults or minors who are engaged in or who have engaged in sexual relationship." Other states, such as California, define a dating relationship as "frequent intimate associations of affection or sexual involvements independent of financial consideration."

3. Domestic Violence occurs when a family or household member commits or attempts to commit:

a. Any of the following which are designated as Family Offenses:

- 1. Attempted assault
- 2. Assault in the second degree
- 3. Assault in the third degree
- 4. Reckless endangerment (1 & 2)
- 5. Menacing (2 & 3)
- 6. Disorderly conduct (including, for Family Court purposes only, disorderly conduct not in a public place)
- 7. Harassment (1 & 2)
- 8. Aggravated Harassment 2nd degree
- 9. Criminal Mischief 1st, 2nd, 3rd and 4th degree
- 10. Criminal Obstruction of Breathing or Blood Circulation
- 11. Forcible Touching
- 12. Sexual Abuse 2nd and 3rd degree
- 13. Sexual Misconduct
- 14. Stalking 1st, 2nd 3rd and 4th degree
- 15. Strangulation 1st and 2nd degree

b. Offenses such as attempted murder, kidnapping, rape, unlawful imprisonment, coercion, arson or criminal mischief against another household/family member. In addition, threats or acts of violence against the victim or others, or damaged property or harm to pets may in some circumstances form the basis of the offenses of tampering with a witness or intimidating a victim or witness. The

offenses.

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

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

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

DISPATCH PROCEDURES

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

- g. Complaint history at that location.

- h. Identity of caller (i.e., victim, neighbor, child).

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

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

5. Responding Officer Procedures

- a. A domestic incident call signifies people are in need of help, and shall be responded to as quickly and safely as circumstances permit. **Domestic incident calls are one of the most dangerous calls to which officers are dispatched.**
- b. Upon arrival at the scene, officers should be alert to sounds coming from the location to identify what is transpiring, and wait for backup officers when appropriate.
- c. The responding on-scene officer shall:
 - 1. Restore order by gaining control of the situation and separating the involved parties.
 - 2. Take control of all weapons used or threatened to be used in the incident.
 - 3. Locate and visually check all occupants of the location to verify their safety and well being.
 - 4. Assess the need for medical attention and request that any required assistance be dispatched.
 - 5. Interview all available parties and witnesses, separately if practicable.
 - 6. After all interviews have been conducted, determine whether an offense has been committed; whether an arrest should be made, and whether other action should be taken. If an arrest is made, advise the victim that release of the suspect can occur at any time so that the victim can take desired safety precautions.
 - 7. Advise the victim of the availability of shelter and other victim services in the community, and provide the victim with a copy of the Victim Rights Notice. If necessary, read the Victim Rights Notice to the victim.

8. Collect and record potential evidence, including spontaneous utterances by parties or witnesses. Where appropriate,
General Order #113.7 Page 5 of 13

canvass the area for witnesses, take photographs of injuries and/or property damage or, in accordance with Department policies, request the dispatch of appropriate crime scene investigators if needed.

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

4. Provide the victim with referral information regarding domestic violence shelters and services.

General Order #113.7 Page 6 of 13

5. Assist in arranging for transportation or take the victim and family or household members to a place of safety.

6. Officer Arrest Procedures

- A. All warrantless arrests shall be made in conformance with section 140.10 of the Criminal Procedure Law and applicable Department policy and procedure. It is the responsibility of all officers to be thoroughly familiar with and guide their actions in accordance with CPL 140.10 and Department Policy and Procedure.
- B. In all domestic incidents ~~where in which~~ a law has been violated, in addition to enforcing the law, the objective is to protect the victim. The victim should not be informed about or requested to make a civilian arrest when the officer may make a lawful warrantless arrest. The purpose of this policy is to take the burden of an arrest decision away from the victim, who may be ill-prepared to undertake it due to social, economic, psychological or other pressures and constraints. Even if the victim actively intercedes and requests that no arrest be made, a lawful warrantless arrest based on probable cause shall be made in accordance with CPL 140.10.
- C. In the following specific circumstances, without attempting to reconcile the parties or mediate, an arrest shall be made when the officer has probable cause to believe that the following violations have occurred:
 1. Any felony against a member of the same family or household (except certain forms of grand larceny 4 - Penal Law §155.30 [3], [4]. [9] or [10]).
 2. Any misdemeanor constituting a Family Offense unless, with out inquiry by officer, the victim requests otherwise. When such a request is spontaneously made, the officer may, nevertheless, make an arrest.
 3. A violation of an order of protection committed through the failure of the person to whom it was directed to comply with a "stay away" provision of such order, or through the commission of a Family Offense. The order must be one issued pursuant to sections 240 or 252 of the Domestic Relations Law; Articles 4, 5, 6 or 8 of the Family Court Act; or section 530.12 of the Criminal Procedure Law, and it must have been duly served, or the person to whom it was directed has actual knowledge of it because he or she was present in court when the order was issued.

NOTE: The foregoing listing of specific circumstances in which an arrest shall be made shall not be deemed to restrict or impair the authority of any municipality or political subdivision from promulgating rules,

regulations and policies requiring the arrest of persons in additional circumstances where domestic violence has allegedly occurred.

- D. Officers are reminded that there is no requirement that a crime (felony or misdemeanor) must occur in the officer's presence to

General Order #113.7 Page 7 of 13

authorize an arrest. A lawful warrantless arrest may be, and often is, ~~founded~~ based upon factors other than the officer's direct observations. They include, but are not limited to, factors such as visible physical injury, property damage, signs of disruption at the scene, or statements made by the victim, children or other witnesses.

- E. When an officer has probable cause and is required to effect an arrest under this policy, the following examples are not valid reasons for failing to adhere to such policy:

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

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

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

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

Section 6 mandates the arrest of suspects in cases in which the officer determines that probable cause exists that an offense was committed in the context of a domestic relationship. Such a law enforcement response, encourage by Federal Law and currently in place in many departments across New York State, provides victims immediate protection and an opportunity to seek safety and to consider legal options. Law enforcement executives across the country have embraced mandatory arrest policies in the hope of establishing consistent, effective practice which may protect departments from liability for inadequate response in these cases. The Family Protection and Domestic Violence Intervention Act amends C.P.L. §140.10 (4) (c) to read, "...no cause of action for damages shall arise in favor of any person by reason of any arrest made by a police officer pursuant to this subdivision." It should be

noted that while the law provides immunity from liability in cases in which a good faith arrest is made, it does not protect officers who fail to make arrests when appropriate.

General Order #113.7 Page 8 of 13

7. Family Offense Arrest Processing

~~Family Protection Registry Information Sheet and A New York State Standardized DCJS 3221 Domestic Incident Report~~ will be completed at time of arrest and ~~put~~ **filed** with arrest paper work.

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

1. That there is concurrent jurisdiction with respect to family offenses in both Family Court and the Criminal Courts. Victims of family offenses may proceed in either or both the Family and Criminal Courts.
2. That a Family Court proceeding is a civil proceeding for purposes of attempting to stop the violence, end the family disruption, and obtain protection.
3. That a proceeding in the criminal courts is for the purpose of prosecuting the alleged offender and can result in criminal conviction of the offender.
4. That a proceeding subject to the provisions of section 812 of the Family Court Act is initiated at the time of the filing of a petition, not at the time of arrest or request for arrest (when Family Court is not in session a criminal court may issue a Family Court order of protection).
5. That an arrest may precede the initiation of a Family Court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding. The arrest of an alleged offender shall be made under circumstances described in subdivision four of section 140.10 of the Criminal Procedure Law.

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

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

8. Non-Family Offenses Arrest Processing

A. Offenses that are not designated Family Offenses, but which occur

in domestic incident situations cannot be handled in Family Court. Criminal Courts have exclusive jurisdiction over these acts (e.g., murder or attempted murder, criminal possession of a weapon, rape, unlawful imprisonment).

- B. Booking procedures, fingerprinting and photographing shall conform to current Department procedures and section 160.10 of the Criminal Procedure law. In addition, ~~Family Protection Registry~~

General Order #113.7 Page 9 of 13

~~Information Sheet~~ and a NYS DCJS 3221 Standardized Domestic Incident Report will be ~~done~~ completed in all Domestic arrest situations.

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

9. Orders of Protection

A. Temporary Orders of Protection

1. A Criminal Court Judge as well as a Family Court Judge can issue orders of protection and temporary orders for victims of any crime or violation as well as for members of the victim's family or any designated witnesses (CPL Sections 530.12(1); 530.13(1)).
2. Temporary orders can be issued as soon as the accusatory instrument or petition is filed. It is not necessary to wait until the defendant is arrested.
3. A temporary order may be issued as a condition of bail, ROR, or with an ~~adjournment in contemplation of dismissal (ACD)~~.
4. Temporary orders of protection may be in effect while the prosecution is pending or during the period of an ACD.
5. When Family Court is not in session, after 5 PM on weekdays and on weekends, City Court Judges must accept Family Court petitions and can issue Family Court Orders of Protection (CPL Section 530.11; Family Court Act Sections 155 and 161). If an adult is arrested for a "family offense" and the victim elects to have the case heard in the Family Court when it is not in session, the offender shall be taken to the most accessible magistrate and arraigned before him ~~or her~~. The magistrate may then issue a temporary order of protection, hold the abuser, fix bail or release him ~~or her~~ for a hearing before the Family Court. Again, the victim should be told to respond to Family Court the next court day or the case will not be heard.
6. It is not necessary that any previous proceedings have occurred i.e., criminal charge, Family Court petition, or temporary order of protection, before the police make an arrest.
7. An order of protection is similar to a warrant of arrest. The presentation of such an order to any peace officer shall

constitute authority for him to take into custody a person charged with violating the terms of the order and bring such person before the Court (CPL Section 530.12(8); Family Court Action Section 168(1)). This is especially so where the order contains a "stay away" provision which is violated or where the violation consists of a family offense. ~~Effective July 1, 1995,~~ Police officers must arrest in these latter two situations regardless of the victim's desire.

General Order #113.7 Page 10 of 13

8. Copies of all temporary orders of protection must be given to the victim or witnesses protected by the order, to the defendant (either in court or delivered with a summons or an arrest warrant) and to the defense attorney (CPL Section 530.12(8); 530.13(6)).
9. Copies of every order must be filed by the local court with the appropriate police agencies having jurisdiction of the home, work, or school of the persons protected. Additional copies may be filed with police or sheriff's office by the complainant. ~~A statewide computerized registry of orders of protection has been established.~~

B. Orders of Protection

1. These are issued after a conviction and may be given in conjunction with a conditional discharge, a sentence of probation, or a sentence of imprisonment (CPL Section 530.12(5); 530.13(4); PL Section 65.10(2) (K)).
2. Orders of Protection may be effective for the entire period of a sentence of probation, or the duration of the conditional discharge, i.e., for a felony 5 years, a misdemeanor 3 years, conditional discharge 1 year. Family Court orders of protection can be effective for one year or, if aggravating circumstances exist, up to 3 years.
3. These orders may contain the same prohibitions as temporary orders of protection.
4. Arrest mandates are equally applicable to these orders.

C. Service

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

D. Enforcement

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

1. The on scene officer shall make an evaluation of the facts and circumstances surrounding the incident.
2. A lawful warrantless arrest may be made based on probable cause even though the protected person may be unable to present a valid copy of the order, but the officer shall attempt to verify the existence and terms of the order

General Order #113.7 Page 11 of 13

through Department records or ~~NYSPIN~~ eJUSTICE. However, if the order is not produced or its existence cannot be verified, the officer should proceed as though an order of protection does not exist.

3. Where an officer receives a complaint from a protected person or has an independent basis to believe that an order of protection has been violated, and has probable cause to believe that the terms of such order have been violated, an arrest shall be made for the appropriate degree of criminal contempt regardless of whether the prohibited conduct occurred in the officer's presence. A copy of the order of protection shall be attached to the court accusatory instrument.
4. If an arrest is made for violating an order of protection and the protected person does not verify (sign) the accusatory instrument, the officer should attempt to obtain a deposition, or prepare his or her own accusatory instrument which shall include a statement that the terms of the order were violated and a description of the behavior constituting the alleged offense.
5. In instances where the conduct prohibited by the order of protection is also conduct constituting another offense, the offender shall be charged with violation of the order of protection (e.g., criminal contempt) and the independent offense.
- ~~6. In any case where an arrest has been made for violation of a criminal court order of protection, it is advisable for the protected person to be present at arraignment.~~

E. Out-of-State Orders

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

10. Firearms

- A. Whenever an officer responds to a scene of domestic violence in which a weapon or firearm was used or threatened to be used the weapon or firearm will be confiscated as evidence of the offense. If there are any other firearms at the scene of a Domestic Incident in which a weapon or firearm was used or threatened to be used they will be confiscated for safekeeping.
- B. Upon arresting an individual who is licensed to carry, possess, repair or dispose of firearms, the arresting officer should, whenever practicable, notify the arraignment court that the

General Order #113.7 Page 12 of 13

alleged offender is so licensed and also advise the court of the licensing authority and county of issuance.

11. Appearance Tickets and Bail

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

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

- B. Any deviation from this procedure must be approved by the ~~officer in-charge~~ Tour Supervisor, and the reasons for such deviation must be documented in the case file.
- C. Officers shall not assure victims that an arrested individual will remain in custody overnight because of the provisions of this policy. Such assurances to the victim might influence decisions regarding safety precautions that the victim may take.

12. Additional Functions

- A. The Department will maintain a current listing of agencies that provide aid to victims of domestic violence. Officers will refer victims to these agencies when appropriate. (see attachment #1)
- B. Officers will ~~arrange assist in arranging for the~~ transport and accommodation ~~of for~~ victims of domestic violence and their children at available shelters or other places of safety, ~~or will assist in making such arrangements.~~

- C. Where victims of domestic violence are incapacitated by physical, mental or emotional impairments, officers will consult with Adult Protective Services and assist, where appropriate, in supportive interventions. (see G.O. 119.3) ~~Child Protective Services should be contacted for children who may be present during domestic violence situations whether they were a victim or a witness to the event.~~
- D. Officers and communications personnel should be trained on an ongoing basis in this policy, the problem of domestic violence, the applicable statutes concerning domestic violence ~~and the criminalization trend to reduce domestic violence.~~

General Order #113.7 Page 13 of 13

~~E. The Department shall designate specific personnel to periodically review the adequacy of this policy, assess and enforce compliance with its provisions by department personnel, and make recommendations to the head of the Department of any indicated revisions deemed necessary to improve or enhance the implementation of this policy.~~

13. Responsibility

- A. All officers shall follow the procedures set forth in this directive, except under extraordinary circumstances where they can clearly demonstrate that their use was unsuitable for a particular situation. Any such circumstances must be fully documented by the reporting officer on the incident report, and a copy thereof shall be forwarded to the Patrol Lieutenant via the chain of command for review purposes.

The ~~officer in charge~~ tour supervisor is ultimately responsible to see that officers ~~under their~~ his or her command comply with department policy and procedure when dealing with incidents of domestic violence.

- B. The Police Commissioner will designate a command level officer to coordinate department domestic violence programs. Responsibilities will include:
 - 1. Coordination of Department training in domestic violence.
 - 2. Policy review, suggestions for revisions, and policy implementation.
 - 3. Routine analysis of department data regarding reports of domestic violence, offense dispositions and arrest statistics as a measure for program success.
 - 4. Department liaison with state and local domestic violence agencies, community service organizations and the public in matters relating to domestic violence.
 - 5. ~~The forwarding of all domestic incident reports to NYS Division of Criminal Justice Services.~~

14. DOMESTIC VIOLENCE - LAW ENFORCEMENT OFFICER INVOLVED

In the event that a law enforcement officer from outside this jurisdiction is the subject of a domestic violence incident the Tour Supervisor shall notify the subject's Commanding Officer, or his or her designee. This notification will be conducted verbally as soon as possible and in writing within forty-eight hours of the incident.

Note:

The above procedure is to be followed in addition to any other applicable procedure in this section or elsewhere within the Department General Orders including without limitation to those pertaining to arrest and the seizure of firearms.

Attachment #1

REFERRALS

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

Adult Protective Services	995-2259
Abused Spouse Assistance Service - 24 hour 29 Sterling Avenue, White Plains, NY	997-1010949-1212 949-6741
Alcoholics Anonymous 39 No. Broadway, White Plains, NY	949-1200212-647-1680
Department of Social Services	285-5459995-5000
Domestic Violence Program (Night Emergency No)	592-3791
Domestic Violence Prosecution Unit District Attorney 111 Grove Street, White Plains, NY	285-3000995-3000
Legal Aid Society of Westchester 1 North Broadway, White Plains, NY	682-3400286-3400
National Organization of Women (N.O.W.)	428-7744202-6288669
New Rochelle Guidance Center	636-4440
New York State Child Abuse and Maltreatment Register Albany, NY	1-800-342-3720
Northern Westchester Shelter - 24 hrs. Individual, Family and Group Therapy	747-0707747-0828
Putnam-Northern Westchester Women's Center	628-9284
Emergency 2 Mahopac Plaza, Mahopac, NY	628-2166
Rap Group for Battered Women 515 North Street, White Plains, NY	949-67416227

Samaritan House - Grace Church Shelter (Women, Men, Children) 33 Church Street, White Plains, NY (Shelter/Meals)		948-3075
The Shelter (Women and Children) Yonkers, NY	Hotline Admin.	968-43451-800-298-7233 969-5800
Westchester County Information & Referral Family Court		285-2170824-5500
Westchester County Office for Women 112 East Post Road, White Plains, NY		285-5972
Westchester Legal Services 171 East Post Road 90 Maple Ave, White Plains, NY		949-6161 949-1305
W.I.S.H. (Women in self help)	Hotline	946-5757
Attachment #1 continued		
Women of Westchester (W.O.W.)		698-3112
Yonkers Women Task Force and My Sisters Place 2 Manor House Square, Yonkers, NY 24 hours		969-5800 968-4345
My Sisters Place		683-1333
Westchester County Social Services 24- hr emergency		995-2099
Child Abuse Hotline		1 800-342-3720

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

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

**Court ORI No: NYO _____J	**Court: _____
**Order No: 199__-_____	**County: _____
**Docket/Index NO _____	**Expiration Date: _____
Law Enforcement Agency at which Copy of Order is Filed:	
**Name: _____	**Police ORI: NY _____

- | | |
|---|---|
| **ACTION TO BE TAKEN: | **SERVICE OF ORDER: |
| <input type="checkbox"/> New Order | <input type="checkbox"/> Police to Serve Order <input type="checkbox"/> Other |
| <input type="checkbox"/> Order Modified/Finalized | <input type="checkbox"/> Order served in Court (Date: _____) |
| <input type="checkbox"/> Corrected Information | <input type="checkbox"/> Notification by Mail (Date: _____) |
| | <input type="checkbox"/> Order Previously served (Date: _____) |
| (Circle ALL corrected information on ALL documents) | (no new service to be done) |

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

ENJOINED PARTY (Party Against Whom Order Runs)			
**Name: (First)	(MI)	(Last)	
Alias or Nickname: (First)	(MI)	(Last)	NYSID:
**Address: (Street)	(City)	(State)	**Addr. Confid? <input type="checkbox"/> yes <input type="checkbox"/> no
(Zip)	(County)		
Employers Name:			
Employers Address:		Hrs. of Employment	

Phone (Home):	Phone (work):
**Date of Birth:	**Sex: <input type="checkbox"/> male <input type="checkbox"/> female SS No.
**Race: <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Native American <input type="checkbox"/> Asian/Pacific Island <input type="checkbox"/> Unknown	Height Eye Color
**Ethnicity (select one): <input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic	Weight Hair Color
License Plate No.:	State:
Drivers ID:	State: Mothers Maiden Name
Is Police Caution Advised?IF yes, why:	



CITY COUNCIL AGENDA

NO. 10

DEPT.: City Manager

DATE: March 26, 2014

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Acceptance of donation to the City of Rye of a bike rack from the Rye Chamber of Commerce and the Farmers' Market to be installed in the Central Business District.

FOR THE MEETING OF:

March 26, 2014

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council adopt the following resolution:

Whereas, the Rye Chamber of Commerce and the Farmers' Market desires to donate a bike rack to the City of Rye; and

Whereas, the bike rack will be placed in the Central Business District parking lot for use by bicyclists; and

Whereas, the donation will enhance the Central Business District; now, therefore be it Resolved, that the City Council of the City of Rye accepts the aforementioned donation.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

Sally Wright, Rye Chamber of Commerce, advised the City Manager that the Rye Chamber of Commerce and the Farmers' Market would like to donate a bike rack to be installed in the Central Business District. The bike rack will be placed in one of the islands next to the Theodore Fremd entrance of the Farmers' Market. The City Manager recommends acceptance of this donation.