

Agenda

Planning & Economic Development Committee

October 16, 2019, 6:00 pm, Room 331

Gerace Office Building, Mayville, NY

- A. Call to Order
- B. Approval of Minutes (09/18/19)
- C. Privilege of the Floor
 - 1. Proposed Local Law Intro. 5-19 - A Local Law to Amend the Sustainable Energy Loan Program in the County of Chautauqua
 - 2. Proposed Resolution – Accept Grant Funding from the New York State Department of Agriculture and Markets to Update the Chautauqua County Agriculture and Farmland Protection Plan
 - 3. Proposed Resolution – Environmental Assessment of Projects for 2020 2% Occupancy Tax Projects
 - 4. Proposed Resolution - Authorize Advance of Funds to Chautauqua County Soil & Water for WQIP Projects – Jamestown Riverwalk Restoration and Silver Creek Dam Removal
 - 5. Other

**LOCAL LAW
INTRODUCTORY NUMBER 5-19
CHAUTAUQUA COUNTY**

**A LOCAL LAW TO AMEND THE SUSTAINABLE ENERGY LOAN PROGRAM
IN THE COUNTY OF CHAUTAUQUA**

BE IT ENACTED, by the County Legislature of the County of Chautauqua, as follows:

Section 1. This Legislature previously enacted Local Law No. 4-18 of the County of Chautauqua pursuant to provisions of New York General Municipal Law, to establish an amended Sustainable Energy Loan Program. This program authorized the Energy Improvement Corporation (“EIC”), a local development corporation acting on behalf of the County, to make funds available to qualified property owners for the installation of renewable energy systems and energy-efficiency measures. EIC has launched a new product called Open C-PACE, which removes the County’s administrative and financial obligations in the implementation of PACE financing. Therefore, the purpose of this law is to amend Local Law No. 4-18 to make the County’s Sustainable Energy Loan Program in conformity with EIC’s new Open C-PACE program. This local law shall be known as the “Energize NY Open C-PACE Local Law”.

Section 2. Local Law No. 4-18 of the County of Chautauqua, entitled “A Local Law to Amend the Sustainable Energy Loan Program in the County of Chautauqua,” is hereby amended in its entirety to read as follows:

ARTICLE I

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

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

- B. The Municipality is authorized to execute, deliver and perform the Municipal Agreement and otherwise to implement this Energize NY Open C-PACE Financing Program pursuant to the Constitution and laws of New York, including particularly Article IX of the Constitution, Section 10 of the Municipal Home Rule Law, the Enabling Act and this local law.
- C. This local law, which is adopted pursuant to Section 10 of the Municipal Home Rule Law and the Enabling Act shall be known and may be cited as the “Energize NY Open C-PACE Local Law”.

§2. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

State – the State of New York.

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

- A. An Energize NY Open C-PACE Financing Program is hereby established by the Municipality, whereby EIC acting on its behalf pursuant to the Municipal Agreement, may arrange for the provision of funds by Financing Parties to Qualified Property Owners in accordance with the Enabling Act and the procedures set forth under this local law, to finance the acquisition, construction, reconstruction, and installation of Qualified Projects and Eligible Costs and Financing Charges approved by EIC and by the Financing Party under the Finance Agreement. EIC, on behalf of the Municipality, and with the consent of the Benefited Property Owner, will record a Benefit Assessment Lien on the Benefited Property in the Secured Amount (the “Benefit Assessment Lien”) on the land records for the Municipality. Such recording shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality.
- B. Before a Qualified Property Owner and a Financing Party enter into a Finance Agreement which results in a loan to finance a Qualified Project, repayment of which is secured by a Benefit Assessment Lien, a written consent from each existing mortgage holder of the Qualified Property shall be obtained, permitting the Benefit Assessment Lien and each Annual Installment Lien to take priority over all existing mortgages.

§4. Procedures for eligibility

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

§5. Application criteria

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

- A. The property owner may not be in bankruptcy and the property may not constitute property subject to any pending bankruptcy proceeding;

- B. The amount financed under the Program shall be repaid over a term not to exceed the weighted average of the useful life of Renewable Energy Systems and Energy Efficiency Improvements to be installed on the property as determined by EIC;
- C. Sufficient funds are available from Financing Parties to provide financing to the property owner;
- D. The property owner is current in payments on any existing mortgage on the Qualified Property;
- E. The property owner is current in payments on any real property taxes on the Qualified Property; and
- F. Such additional criteria, not inconsistent with the criteria set forth above, as the State, the Municipality, or EIC acting on its behalf, or other Financing Parties may set from time to time.

§6. Energize NY Finance Agreement

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

§7. Terms and conditions of repayment

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

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

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

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

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

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

Annual Installment Lien shall be subordinate to all Municipal Liens, whether created by Section 902 of the RPTL or by any other State or local law. No portion of a Secured Amount shall be recovered by the Municipality, EIC, or an assignee upon foreclosure, sale or other disposition of the Benefited Property unless and until all Municipal Liens are fully discharged. Each Annual Installment Lien, however, shall have priority over all Non-Municipal Liens, irrespective of when created, except as otherwise required by law.

- D. Neither the Benefit Assessment Lien nor any Annual Installment Lien shall be extinguished or accelerated in the event of a default or bankruptcy of the Benefited Property Owner. Each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall be collected by EIC, on behalf of the Municipality, at the same time and in the same manner as real property taxes or municipal charges. Each Annual Installment Lien shall remain a lien until paid. Amounts collected in respect of an Annual Installment Lien shall be remitted to EIC, on behalf of the Municipality, or the Financing Party, as may be provided in the Finance Agreement.
- E. EIC shall act as the Municipality's agent in collection of the Annual Installment Amounts. If any Benefited Property Owner fails to pay an Annual Installment Amount, the Financing Party may redeem the Benefited Property by paying the amount of all unpaid Municipal Liens thereon, and thereafter shall have the right to collect any amounts in respect of an Annual Installment Lien by foreclosure or any other remedy available at law. Any foreclosure shall not affect any subsequent Annual Installment Liens.
- F. EIC, on behalf of the Municipality, may sell or assign for consideration any and all Benefit Assessment Liens and Annual Installment Liens to Financing Parties that provide financing to Qualified Properties pursuant to Finance Agreements. The Financing Parties may sell or assign for consideration any and all Benefit Assessment Liens and Annual Installment Liens received from EIC, on behalf of the Municipality, subject to certain conditions provided in the administration agreement between EIC and the Financing Party. The assignee or assignees of such Benefit Assessment Liens and Annual Installment Liens shall have and possess the same powers and rights at law or in equity as the Municipality would have had if the Benefit Assessment Lien and the Annual Installment Liens had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection.

§9. Verification and report

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

§10. Separability. If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the

clause, sentence, paragraph, section, or part thereof involved in the controversy in which such judgment shall have been rendered.

Section 3. This local law shall take effect upon filing with the Secretary of State.

**CHAUTAUQUA COUNTY
RESOLUTION NO. _____**

DWM 9-23-19
ABC 9/24/19
SMA 9/24/19
KMD 9/24/19
KLC 9/25/19
GMB 9/26/19

TITLE: Accept Grant Funding from the New York State Department of Agriculture and Markets to Update the Chautauqua County Agriculture and Farmland Protection Plan

BY: Planning & Economic Development and Audit & Control Committees:

AT THE REQUEST OF: County Executive George M. Borrello:

WHEREAS, Sixty-one percent of land in Chautauqua County is designated as prime farmland and a total of 1,228 active farm operations make up thirty-five percent of total land area in the County; and

WHEREAS, the current Chautauqua County Farmland Protection Plan was adopted in 2000 and reflects agricultural and economic information that is outdated and no longer useful; and

WHEREAS, Chautauqua County's agricultural industry and agricultural markets have changed over the past eighteen years, creating new and evolving challenges; and

WHEREAS, the Chautauqua 20/20 Comprehensive Plan prioritizes strategies to protect and support the County's agricultural resources and economy and to promote agri-tourism and alternative enterprises that support the viability of farms; and

WHEREAS, an updated Chautauqua County Agriculture and Farmland Protection Plan will provide resources and strategies to protect agricultural lands and support economic viability of agriculture and related businesses; and

WHEREAS, pursuant to Resolution No. 244-18, the Chautauqua County Legislature authorized the County to submit an application for funding for County Agriculture and Farmland Protection Planning Grants from the New York State Department of Agriculture and Markets; and

WHEREAS, the Chautauqua County Division of Planning and Community Development applied for and was awarded a \$50,000 grant from the New York State Department of Agriculture and Markets to update the Chautauqua County Agriculture and Farmland Protection Plan; and

WHEREAS, the Chautauqua Region Community Foundation has pledged \$30,000 towards the required match for this project; and

WHEREAS, Chautauqua County's Cornell Cooperative Extension and the Chautauqua County Division of Planning and Community Development will provide the remaining local match of \$20,000 in staff time; and

WHEREAS, the County is required to officially accept the County Agriculture and Farmland Protection Planning Grant from the New York State Department of Agriculture and Markets; and

WHEREAS, a subsequent resolution to propose necessary amendments to revenue and expenditure budgets will be prepared when the County is ready to implement the grant; now therefore be it

RESOLVED, That the Chautauqua County Legislature officially accepts the County Agriculture and Farmland Protection Planning Grant from the New York State Department of Agriculture and Markets in the amount of \$50,000; and be it further

RESOLVED, That the County Executive is hereby authorized to enter into any and all contracts necessary to implement said funding.

APPROVED

VETOES (VETO MESSAGE ATTACHED)

County Executive

Date

**CHAUTAUQUA COUNTY
RESOLUTION NO. _____**

DWM 9-23-19
ABC 9/25/19
SMA 9/30/19
KMD 10/1/19
KLC 10/2/19
GMB 10/2/19

TITLE: Environmental Assessment of Projects for 2020 2% Occupancy Tax Projects

BY: Planning & Economic Development and Audit & Control Committees:

AT THE REQUEST OF: County Executive George M. Borrello:

WHEREAS, the Chautauqua County Legislature requested by Resolution No. 235-19 that the Chautauqua County Department of Planning and Development (“CCDPD”) conduct a New York State Environmental Quality Review (“SEQRA”) for three projects approved by the Waterways Panel for funding in 2020 as set forth below, and provide a report and recommendations to the County Legislature; and

WHEREAS, CCDPD and the various involved agencies have reviewed the projects consistent with SEQRA and applicable state regulations; and

WHEREAS, the CCDPD recommends that the projects that are ranked as numbers 8, 9 and 10 on the Waterways Panel list provided below be classified as Unlisted Actions under 6 N.Y.C.R.R. Part 617.2 of the Environmental Conservation Law; and

WHEREAS, the County has caused the attached Short Environmental Assessment Forms (SEAF) to be prepared for all projects recommended to be classified as Unlisted Actions; and

WHEREAS, the County has reviewed and analyzed the SEAF for each project, and considered any relevant areas of environmental concern and probable environmental impacts of the Actions to determine if the Actions may have any significant adverse environmental effects; now therefore be it

RESOLVED, That the County hereby finds and determines that Actions listed and identified below will not have a significant adverse environmental impact in accordance with New York State Environmental Quality Review Act, Article 8 of the New York Environmental Conservation Law, and pursuant to the implementing regulations found at 6 N.Y.C.R.R. Part 617, and accordingly, is issuing a negative declaration.

Project/Agency or Organization	Rank	Amount Requested	Amount Recommended
Lighthouse Point	8	\$ 24,136	\$ 24,136
Morse	9	\$ 11,612	\$ 11,612
Park	10	\$ 10,760	\$ 10,760
TOTALS		\$ 46,508	\$ 46,508

APPROVED

VETOES (VETO MESSAGE ATTACHED)

County Executive

Date

CHAUTAUQUA COUNTY
RESOLUTION NO. _____

DWM 9-25-19
ABC 9/27/19
SMA 9/30/19
KMD 10/1/19
KLC 10/2/19
GMB 10/2/19

TITLE: Authorize Advance of Funds to Chautauqua County Soil & Water for WQIP Projects - Jamestown Riverwalk Restoration and Silver Creek Dam Removal

BY: Planning & Economic Development and Audit & Control Committees:

AT THE REQUEST OF: County Executive George M. Borrello:

WHEREAS, Chautauqua County Soil & Water (Soil & Water) is the recipient of funding from the New York State Department of Environmental Conservation (NYSDEC) Water Quality Improvement Program (WQIP) in the amount of \$313,890 for the Jamestown Riverwalk Restoration project and \$217,000 for the Silver Creek Dam Removal project (hereinafter "Projects"); and

WHEREAS, Soil & Water has entered into a State Assistance Contracts (SAC) with the NYSDEC in which Soil & Water will contract with outside contractors to execute the scope of work for each Project as defined in its SAC; and

WHEREAS, work under the SAC for the Jamestown Riverwalk Restoration project will commence during Fall 2019 and the work for the Silver Creek Dam Removal project will commence during Summer 2020; and

WHEREAS, NYSDEC WQIP grants are for reimbursement of eligible grant-related costs; and

WHEREAS, Soil & Water has submitted requests to the NYSDEC to provide a 25% cash advance for each Project, which assists successful applicants with cash flow during the implementation of their projects; and

WHEREAS, Soil & Water anticipates additional cash flow needs during the implementation of the Projects not to exceed \$398,167.50; and

WHEREAS, pursuant to Section 223 of the County Law, Chautauqua County desires to advance Soil & Water up to \$398,167.50 over the next two years to fund these projects under the SAC, and Soil & Water shall reimburse the County such funds upon receiving reimbursement for eligible grant-related project costs; and

WHEREAS, these funds are not allocated in the 2019 Budget; now therefore be it

RESOLVED, That the Chautauqua County Legislature authorizes the County to advance Chautauqua County Soil & Water up to \$398,167.50 over the next two years to fund those projects under the State Assistance Contract with the New York State Department of Environmental Conservation, and Soil & Water shall reimburse the County such funds upon receiving its New York State Local Assistance Award; and be it further

RESOLVED, That the County Executive is hereby authorized to enter into any contracts with Chautauqua County Soil & Water to advance funds up to \$398,167.50 over the next two years for those projects under the State Assistance Contract; and be it further

APPROVED

VETOES (VETO MESSAGE ATTACHED)

County Executive

Date

RESOLVED, That the Director of Finance is authorized and directed to make the following amendments to the 2019 Budget:

INCREASE APPROPRIATION ACCOUNT:

A.8020.WTRS.4 Contractual – Planning, Watershed Administration \$398,168

INCREASE REVENUE ACCOUNT:

A.8020.WTRS.R238.9002 Shared Services--Oth Home & Community
SvcS – Oth Govts \$398,168

APPROVED

VETOES (VETO MESSAGE ATTACHED)

County Executive

Date