



Office of the County Executive Monroe County Legislature

Adam J. Bello
County Executive

Michael Yudelson
Legislator - District 13

April 9, 2021

To The Honorable
Monroe County Legislature
407 County Office Building
Rochester, New York 14614

OFFICIAL FILE COPY
No. 210131
Not to be removed from the Office of the Legislature Of Monroe County
Committee Assignment
AGENDA/CHARTER
ENV. & PUB. WORKS
WAYS & MEANS

Subject: Enact a Local Law Establishing a Sustainable Energy Loan Program (OPEN C-PACE) in Monroe County and Authorize a Contract with Energy Improvement Corporation to Administer the Energize NY Open C-PACE Program

Honorable Legislators:

We recommend that Your Honorable Body enact a local law establishing a Sustainable Energy Loan Program (OPEN C-PACE) in Monroe County and authorize a contract with the Energy Improvement Corporation to administer this program for a period of ten (10) years commencing on or about July 1, 2021, with the option to renew for two (2) additional five-year terms.

The Commercial Property Assessed Clean Energy program, known as the Energize NY Open C-PACE Financing Program ("Open C-PACE") in New York, channels private capital to commercial and non-profit building owners to make energy upgrades to existing buildings or build new construction to higher energy standards. Open C-PACE enables building owners to improve their properties, lower operating expenses, and reduce energy consumption.

Open C-PACE differs from traditional bank loans as follows:

- Financing is available up to 100% of the project cost and may be combined with other financing.
- Competitive private financing from EIC-approved capital providers.
- Customizable loan terms up to the expected life of the improvements.
- Benefit assessment lien is subordinate to municipal taxes and senior to other liens (consent from mortgage holder is required).
- Automatically transfers to new owner upon sale of property.

Open C-PACE financing is a public benefit authorized by state law, with repayment secured through a benefit assessment lien on the improved property. The Energy Improvement Corporation ("EIC"), a non-profit, statewide local development corporation, administers Open C-PACE on behalf of its member municipalities. According to New York State Energy, Research, and Development Authority, EIC is the only authorized Open C-PACE program provider in Upstate New York. There are presently 61 member municipalities, including the City of Rochester.

To offer Open C-PACE, the County must pass a local law and sign an EIC municipal agreement. The County would have no fees to join the program, nor any financial exposure or responsibility to administer the program. Because the City of Rochester offers Open C-PACE within the City limits, the County's Open C-PACE Program would only be available to commercial and non-profit building properties within the County but outside the City municipal boundaries.

Once enabled, the County would provide the public benefit of Open C-PACE financing and EIC would administer the program. EIC would record the lien on the land records, bill the property owner directly, and administer collection of the payment. The capital provider would enforce the Open C-PACE lien only after paying any delinquent municipal taxes owed by the property owner to the municipality.

The specific legislative actions required are:

1. Schedule and hold a public hearing on the proposed Local Law.
2. Enact a Local Law establishing a Sustainable Energy Loan Program (OPEN C-PACE) in Monroe County.
3. Upon the effective date of the Local Law, authorize the County Executive, or his designee, to execute a contract, and any amendments thereto, with Energy Improvement Corporation, 2875 Route 35, Katonah, New York 10536, or any subsidiary or successor, to administer the Open C-PACE program for a period of ten (10) years commencing on or about July 1, 2021, with the option to renew for two (2) additional five-year terms.

This is a Type II Action pursuant to 6 NYCRR §6217.5(c)(26) ("routine continuing agency administration and management not including new programs or major reordering of priorities that may affect the environment") and (33) ("adoption of regulations, policies, procedures and local legislative decisions in connection with any action on this list") and is not subject to further review under the State Environmental Quality Review Act.

No net County support is required in the current Monroe County budget.

The records in the office of the Monroe County Treasury have indicated that neither the Energy Improvement Corporation, nor its principal officer, Susan Morth, CEO, owe any delinquent Monroe County property taxes.

We recommend this matter be referred to the appropriate committee(s) for favorable action by Your Honorable Body.

Sincerely,

Adam J. Bello
Monroe County Executive

Sincerely,

Michael Yudelson
Monroe County Legislator – District 13

By Legislators _____ and _____

Intro No. _____

LOCAL LAW NO. _____ OF 2021

ENACT A LOCAL LAW TO ESTABLISH A SUSTAINABLE ENERGY LOAN PROGRAM (OPEN C-PACE) IN MONROE COUNTY

BE IT ENACTED BY THE LEGISLATURE OF THE COUNTY OF MONROE, as follows:

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

ARTICLE I

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

- A. It is the policy of both Monroe County and the State of New York 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. Monroe County 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 Monroe County pursuant to the municipal agreement (the “Municipal Agreement”) to be entered into between Monroe County and EIC 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. Monroe County is a municipality of the State constituting a tax district as defined in Section 1102 of the RPTL. Monroe County 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 Monroe County 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 Monroe County 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 Monroe County.

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 Monroe County 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 Monroe County, 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 Monroe County, 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 of the Monroe County Clerk’s Office. Such recording shall be exempt from any charge, mortgage recording tax, or other fee in the same manner as if recorded by Monroe County.
- 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 Monroe County 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 Monroe County's offices.
- B. Every application submitted by a property owner shall be reviewed by EIC, acting on behalf of Monroe County, 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 Monroe County, 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 Monroe County, 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 on payments, with respect to the Qualified Property, on any real property taxes, municipal charges, and governmentally imposed assessments in respect of services or benefits, including the Monroe County Hotel Room Occupancy Tax, if applicable; and
- F. Such additional criteria, not inconsistent with the criteria set forth above, as the State, Monroe County, 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 Monroe County, 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 of the Monroe County Clerk's Office. 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 Monroe County, 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 Monroe County.
- C. The rate of interest for the Secured Amount shall be fixed by the Financing Party in conjunction with EIC, acting on behalf of Monroe County, 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

Monroe County. 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 Monroe County, on the land records of the Monroe County Clerk's Office. Such recording shall be exempt from any charge, mortgage recording tax, or other fee in the same manner as if recorded by Monroe County. The Benefit Assessment Lien shall not be foreclosed upon by or otherwise enforced by Monroe County.

- 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 Monroe County, on the Benefited Property in the same manner as levies for county charges and shall become a lien on the Benefited Property at midnight on the thirty-first day of December of the preceding year (the "Annual Installment Lien") and shall remain a lien until fully paid or otherwise satisfied or cancelled as provided by law. 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 Monroe County. 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 pursuant to the RPTL, the Monroe County Tax Act, or by any other State or local law. No portion of a Secured Amount shall be recovered by Monroe County, 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 Monroe County, at the same time and in the same manner as real property taxes or county 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 Monroe County, or the Financing Party, as may be provided in the Finance Agreement.
- E. EIC shall act as Monroe County'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 Monroe County, 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 Monroe County 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. Notwithstanding the foregoing, no sale or assignment of a Benefit Assessment Lien and/or Annual Installment Lien shall be valid unless notice of such sale is recorded in the Monroe County Clerk's Office against the particular Qualified Property(ies) for which the Benefit Assessment Liens and/or Annual Installment Liens are being sold or assigned.

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

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

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

Committee of the Whole; April __, 2021 - CV:
File No. 21-

ADOPTION: Date: _____ Vote: _____

ACTION BY THE COUNTY EXECUTIVE

APPROVED: _____ VETOED: _____

SIGNATURE: _____ DATE: _____

EFFECTIVE DATE OF LOCAL LAW: _____