

LOCAL LAW NO. ____ OF 2019

**CITY COUNCIL
CITY OF BEACON**

**PROPOSED LOCAL LAW TO CREATE CHAPTER 106,
ARTICLE III OF THE CODE OF THE CITY OF BEACON**

A LOCAL LAW to
create Chapter 106,
Article III of the Code
of the City of Beacon
concerning the Energize
NY Open C-PACE
Financing Program.

BE IT ENACTED by the City Council of the City of Beacon as follows:

Section 1. Chapter 106, Article III of the Code of the City of Beacon entitled “Energize NY Open C-PACE Financing Program” is hereby created as follows:

§ 106-20 Legislative findings; intent and purpose; authority.

- A. It is the policy of both the City of Beacon 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. The City of Beacon 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 City of Beacon, pursuant to a municipal agreement (the “Municipal Agreement”) to be entered into between the City of Beacon 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 City of Beacon 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”.

§ 106-21 **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 106-27, paragraph B.

ANNUAL INSTALLMENT LIEN

Shall have the meaning assigned in Section 106-27, paragraph B.

AUTHORITY

The New York State Energy Research and Development Authority.

BENEFIT ASSESSMENT LIEN

Shall have the meaning assigned in Section 106-22, 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 § 1411 of the Not-For-Profit Corporation Law of the State, authorized hereby on behalf of the City of Beacon to implement the Program by providing funds to Qualified Property Owners and providing for repayment of such funds from monies collected by or on behalf of the City of Beacon 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 106-25, paragraph A 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.

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 City of Beacon 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 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 Program.

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 106-27, paragraph C.

STATE

The State of New York.

§ 106-22 Establishment of an Energize NY Open C-PACE Financing Program.

- A. An Energize NY Open C-PACE Financing Program is hereby established by the City of Beacon, 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 City of Beacon, 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 City of Beacon.
- 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.

§ 106-23 Procedures for eligibility.

- A. Any property owner in the City of Beacon 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 City of Beacon offices.
- B. Every application submitted by a property owner shall be reviewed by EIC, acting on behalf of the City of Beacon, which shall make a positive or negative determination on such application based upon the criteria enumerated in the Enabling Act and Section 106-24 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 City of Beacon, the property owner shall be deemed a Qualified Property Owner and shall be eligible to participate in Program in accordance with Section 106-25 of this local law.

§ 106-24 Application criteria.

Upon the submission of an application, EIC, acting on behalf of the City of Beacon, 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 City of Beacon, or EIC acting on its behalf, or other Financing Parties may set from time to time.

§ 106-25 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 City of Beacon, 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 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.

§ 106-26 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 City of Beacon. 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 the EIC, on behalf of the City of Beacon, 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 City of Beacon.

- 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 City of Beacon, as provided in the Finance Agreement.

§ 106-27 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 City of Beacon. 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 City of Beacon, in the land records for properties in the City of Beacon. Such recording shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the City of Beacon. The Benefit Assessment Lien shall not be foreclosed upon by or otherwise enforced by the City of Beacon.
- 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 City of Beacon, on the Benefited Property in the same manner as other 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 City of Beacon. 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 City of Beacon, 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 City of Beacon, 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 City of Beacon, or the Financing Party, as may be provided in the Finance Agreement.

- E. EIC shall act as the City of Beacon'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 City of Beacon, 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 City of Beacon, 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 City of Beacon 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.

§ 106-28 Verification and report.

EIC, on behalf of the City of Beacon, 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.

Section 2. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, Chapter 106 of the City of Beacon is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 3. Numbering for Codification

It is the intention of the City of Beacon and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the City of Beacon; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 4. Severability

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local Law would have been adopted if such illegal, invalid or

unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 5. Effective Date

This Local Law shall take effect immediately upon filing with the Office of the Secretary of State.