

## **LOCAL LAW NO. 1 of 2018**

### **A LOCAL LAW TO AMEND THE SUSTAINABLE ENERGY LOAN PROGRAM IN THE CITY OF MIDDLETOWN**

Be it enacted by the City of Middletown New York in the County of Orange as follows:

#### **Section 1. Purpose of this Enactment**

The Common Council of the City of Middletown in 2016 adopted Local Law No. 2 of 2016 to add a new Chapter 237 entitled Energize NY Benefit Financing Program to the Code of the City of Middletown, in order to allow the Energy Improvement Corporation ("EIC"), a local development corporation, acting on behalf of the City of Middletown, to make funds available to qualified property owners for the installation of renewable energy systems and energy efficiency measures. Such funds will be repaid by such property owners through charges on the real properties benefited by such funds. This program is authorized pursuant to Article 5-L of the New York General Municipal Law. The purpose of this enactment is to amend Chapter 237 of the Code of the City of Middletown to conform with various provisions of Article 5-L of the New York General Municipal Law and to insure that the program incorporates the latest policy objectives advanced by New York State.

#### **Section 2 . Amendment of Existing Chapter 237 of the Code of the City of Middletown**

The existing Chapter 237 of the Code of the City of Middletown, entitled "Energize NY Benefit Financing Program," is hereby repealed and replaced in its entirety by the following:

#### **CHAPTER 237: ENERGIZE NY BENEFIT FINANCING PROGRAM**

##### **§237-1. Legislative findings, intent and purpose, authority.**

A. It is the policy of both the City of Middletown and the State of New York to achieve energy efficiency and renewable energy goals, reduce greenhouse gas emissions, mitigate the effect of global climate change, and advance a clean energy economy. The City of Middletown finds that it can fulfill this policy by providing property-assessed clean energy financing to property owners for the installation of renewable energy systems and energy efficiency measures. This chapter establishes a program that will allow the Energy Improvement Corporation ("EIC"), a local development corporation, acting on behalf of the City of Middletown pursuant to the municipal agreement to be entered into between the City of Middletown and EIC pursuant to Article 5-G of the New York General Municipal Law ("the Municipal Agreement"), to make funds available to qualified property owners that will be repaid by such property owners through charges on the real properties benefited by such funds, thereby fulfilling the purposes of this chapter and fulfilling an important public purpose.

B. The City of Middletown is authorized to implement this Energize NY Benefit Financing Program pursuant to the New York Municipal Home Rule Law and Article 5-L of the New York General Municipal Law.

C. This chapter shall be known and may be cited as the "Energize NY Benefit Financing Program Law of the City of Middletown."

## **§237-2. Definitions**

For purposes of this chapter, and unless otherwise expressly stated or unless the context requires, the following terms shall have the meanings indicated:

**Authority** – The New York State Energy Research and Development Authority, as defined by subdivision two of section eighteen hundred fifty-one of the New York Public Authorities law, or its successor.

**EIC** – the Energy Improvement Corporation, a local development corporation, duly organized under section fourteen hundred eleven of the Not-For-Profit Corporation Law, authorized hereby on behalf of the City of Middletown to implement the Energize NY Benefit Financing Program by providing funds to qualified property owners (as defined in this chapter) and providing for repayment of such funds from monies collected by the City of Middletown tax collecting officer as a charge to be levied on the real property and collected in the same manner and same form as the City of Middletown taxes.

**Energy Audit** – A formal evaluation or "assessment" of the energy consumption of a permanent building or structural improvement to real property, conducted by a contractor certified by the Authority, or certified by a certifying entity approved by the Authority, for the purpose of identifying appropriate energy efficiency improvements that could be made to the property.

**Energy Efficiency Improvement**-Any renovation or retrofitting of a building to reduce energy consumption, such as window and door replacement, lighting, caulking, weather stripping, air sealing, insulation, and heating and cooling system upgrades, and similar improvements, determined to be cost-effective pursuant to criteria established by the Authority, not including lighting measures or household appliances that are not permanently fixed to real property.

**Qualified Property Owner** – An owner of residential or commercial real property located within the boundaries of the City of Middletown that is determined to be eligible to participate in the Energize NY Benefit Financing Program under the procedures for eligibility set forth under this chapter.

**Renewable Energy System** – An energy generating system for the generation of electric or thermal energy, to be used primarily at such property, except when the Qualified Property Owner is a commercial entity, in which case the system may be used for other properties in addition to the subject property, by means of solar thermal, solar photovoltaic, wind, geothermal, anaerobic digester gas-to-electricity systems, fuel cell technologies, or other renewable energy technology

approved by the Authority not including the combustion or pyrolysis of solid waste.

**Renewable Energy System Feasibility Study** – A written study, conducted by a contractor certified by the Authority, or certified by a certifying entity approved by the Authority, for the purpose of determining the feasibility of installing a renewable energy system.

### **§237-3. Establishment of an Energize NY Benefit Financing Program**

A. An Energize NY Benefit Financing Program is hereby established by the City of Middletown whereby EIC, acting on the City's behalf pursuant to the Municipal Agreement, may provide funds to Qualified Property Owners in accordance with the procedures set forth under this chapter, to finance the acquisition, construction and installation of Renewable Energy Systems and Energy Efficiency Improvements and the verification of the installation of such systems and improvements.

B. For funds provided to a Qualified Property Owner which is a commercial entity, not-for-profit organization, or entity other than an individual, EIC shall have the authority to impose requirements on the maximum amount of funds to be provided, which may consider factors including, but not limited to, the property value, projected savings, project costs, and existing indebtedness secured by such property.

C. For financings made to a Qualified Property Owner who is an individual, the funds provided shall not exceed the lesser of (i) ten percent of the appraised value of the real property where the Renewable Energy Systems and/or Energy Efficiency Improvements will be located, or (ii) the actual cost of installing the Renewable Energy Systems and/or Energy Efficiency Improvements, including the costs of necessary equipment, materials, and labor and the cost of verification of such systems and improvements.

### **§237-4. Procedures for eligibility**

A. Any property owner in the City of Middletown 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 Middletown offices.

B. Every application submitted by a property owner shall be reviewed by EIC acting on behalf of the City of Middletown which shall make a positive or negative determination on such application based upon the criteria for making a financing decision as enumerated in Section 237-5 of this chapter. 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 Middletown, the property owner shall be deemed a Qualified Property Owner and shall be eligible to participate in the Energize NY Benefit Financing Program in accordance with the procedure set forth under Section 237-6 of this chapter; provided that in no case shall a property owner that has received funds from another municipal corporation for the acquisition, construction and installation of Energy Efficiency Improvements and/or Renewable Energy Systems be deemed a Qualified Property Owner.

### **§237-5. Application criteria**

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

- A. The proposed Energy Efficiency Improvements and/or Renewable Energy Systems are determined to be cost effective based on guidelines issued by the Authority;
- B. The property owner may not be in bankruptcy, and the property may not constitute property subject to any pending bankruptcy proceeding;
- C. The amount financed under the Energize NY Benefit Financing 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;
- D. Sufficient funds are available From EIC to provide financing to the property owner;
- E. The property owner is current in payments on any existing mortgage;
- F. The property owner is current in payments on any existing real property taxes and has been current on real property taxes for the previous three years; and
- G. Such additional criteria, not inconsistent with the criteria set forth above, as the City of Middletown, or EIC acting on its behalf, may set from time to time.

### **§237-6. Opt-in, Energize NY Finance Agreement**

- A. A Qualified Property Owner may participate in the Energize NY Benefit Financing Program through the execution of an energize NY finance agreement made by and between the Qualified Property Owner and EIC, acting on behalf of the City of Middletown (“the Energize NY Finance Agreement”).
- B. Upon execution of the Energize NY Finance Agreement, the Qualified Property Owner shall be eligible to receive funds from EIC acting on behalf of the City of Middletown for the acquisition, construction, and installation of qualifying Renewable Energy Systems and Energy Efficiency Improvements; provided the requirements of Section 237-7 of this chapter have been met.
- C. The Energize NY Finance Agreement shall include the terms and conditions of repayment set forth under Section 237-8 of this chapter.

### **§237-7. Energy audit, renewable energy system feasibility study**

- A. No funds shall be made available for Energy Efficiency Improvements unless

determined to be appropriate through an Energy Audit as defined in Section 237-2 of this chapter.

B. No funds shall be made available for a Renewable Energy System unless determined to be feasible through a Renewable Energy System Feasibility Study as defined in Section 237-2 of this chapter.

C. The cost of such Energy Audit and/or Renewable Energy System Feasibility Study shall be borne solely by the property owner but may be included in the financed amount if the work is approved.

#### **§237-8. Terms and conditions of repayment**

The Energize NY Finance Agreement between the Qualified Property Owner and EIC, acting on behalf of the City of Middletown, shall set forth the terms and conditions of repayment in accordance with the following:

A. The principal amount of the funds paid to the Qualified Property Owner hereunder, together with the interest thereon, shall be paid by the property owner as a charge on their City of Middletown tax bill and shall be levied and collected at the same time and in the same manner as City of Middletown property taxes, provided that such charge shall be separately listed on the tax bill. The City of Middletown shall make payment to EIC or its designee in the amount of all such separately listed charges within 30 days of the date the payment is due to be made to the City of Middletown.

B. The term of such repayment shall be determined at the time the Energize NY Finance Agreement is executed by the property owner and EIC, provided that in no case shall the term exceed the weighted average of the useful life of the systems and improvements as determined by EIC acting on behalf of the City of Middletown.

C. The rate of interest for the charge shall be fixed by EIC acting on behalf of the City of Middletown at the time the Energize NY Finance Agreement is executed by the property owner and EIC.

D. The charge shall constitute a lien upon the real property benefited by the Energize NY Benefit Financing Program as set forth in Article 5-L of the New York General Municipal Law and shall run with the land. A transferee of title to the benefited real property shall be required to pay any future installments, including interest thereon.

#### **§237-9. Verification and report**

A. EIC shall be responsible for verifying and reporting to the City of Middletown on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by such Program.

B. The City of Middletown shall verify and report on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by the Energize NY Benefit Financing Program in such form and manner as the Authority may establish.

### **Section 3. Severability**

The invalidity of any word, phrase, sentence, paragraph or provision of this Local Law shall not affect the validity of any other part or provision of this Local Law.

### **Section 4. Type II Action for Purposes of SEQRA**

With respect to the application of the New York State Environmental Quality Review Act (“SEQRA”), the Common Council finds and determines that, pursuant to 6 NYCRR Section **617.5(c)(20)**, the adoption of this Local Law is a Type II Action for purposes of SEQRA and no further environmental review of this Local Law is required .

### **Section 5. Effective Date.**

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