



## **VILLAGE OF DOBBS FERRY BOARD OF TRUSTEES AGENDA**

**MEETING DATE:** NOVEMBER 10, 2020

**AGENDA ITEM SECTION:** MATTERS REQUIRING ACTION

**AGENDA ITEM NO. :** 1

**AGENDA ITEM:** CONSIDER A RESOLUTION TO ADOPT LOCAL LAW 6-2020 WHICH INCREASES THE LOCAL STANDARDS FOR ENERGY-RELATED IMPROVEMENTS AND PROVIDES ACCESS TO COMMERCIAL PROPERTY OWNERS FOR FINANCING

**ITEM BACKUP DOCUMENTATION:**

1. RESOLUTION ADOPTING LOCAL LAW 6-2020 STRETCH ENERGY CODE
2. RESOLUTION ADOPTING LOCAL LAW 6-2020 C-PACE FINANCING PROGRAM
3. INTRODUCTORY LOCAL LAW 6-2020

**Resolution Adopting Local Law 6-2020 Stretch Energy Code**

**WHEREAS**, the Board of Trustees of the Village of Dobbs Ferry has been considering adoption of Introductory Local Law 6 which proposes to replace the minimum energy base code known as the 2020 Energy Conservation Construction Code of New York State (2020 ECCCCNYS) with the more stringent standards of “NYStretch Energy Code - 2020”, a model code developed by the New York State Energy Research and Development Authority; and

**WHEREAS**, NYStretch Energy Code – 2020 is ten to twelve percent (10-12%) more efficient than the minimum requirements of 2020 ECCCCNYS and its applicability to new construction and substantial renovations will ensure reduced energy costs for Village residents and businesses; and

**WHEREAS**, for the purpose of receiving comment on said proposed local law the Board of Trustees conducted a duly noticed public hearing on October 27, 2020 during which the public had the opportunity to be heard; and

**WHEREAS**, the matter was the topic of further discussion and deliberation by the Board at the public meeting following the close of the hearing on October 27, 2020 and again at a public meeting on November 10, 2020, following which the Board determined there were no impediments to proceeding with adoption of the local law; and

**WHEREAS**, the Village Board of Trustees as Lead Agency with respect to the proposed local law in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder at 6 NYCRR 617 (collectively, “SEQRA”) has determined adoption of the local law meets the criteria of a Type II Action requiring no further review pursuant to SEQRA.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Trustees of the Village of Dobbs Ferry, pursuant to authority granted in the New York Energy Law §11-109(1) and Municipal Home Rule Law §10, and in accordance with the procedures detailed in Municipal Home Rule § 20, hereby adopts Local Law 6-2020 revising Chapter 127 of the Dobbs Ferry Code to establish NYStretch Energy Code as the local energy code applicable to all new construction and substantial renovations in the Village of Dobbs Ferry; and

**BE IT FURTHER RESOLVED**, that this local law shall take effect upon filing with the Secretary of State and the Village Clerk is hereby directed to file and distribute said Local Law No. 6-2020 in accordance with applicable law.

**Resolution Adopting Local Law 6-2020 C-Pace Financing Program**

**WHEREAS**, the Board of Trustees of the Village of Dobbs Ferry has been considering adoption of Introductory Local Law 6 which proposes to add a new Article VII to Chapter 127 of the Dobbs Ferry Code to establish a property-assessed clean energy financing program known as Energize NY Open C-PACE (the “Program”) in the Village of Dobbs Ferry; and

**WHEREAS**, the Program will provide a financing opportunity for the acquisition, construction, reconstruction or equipping of energy efficiency improvements or renewable energy systems undertaken by record owners of any real property other than a residential building containing less than three dwelling units within the Village boundaries; and

**WHEREAS**, for the purpose of receiving comment on said proposed local law the Board of Trustees conducted a duly noticed public hearing on October 27, 2020 during which the public had the opportunity to be heard; and

**WHEREAS**, the matter was the topic of further discussion and deliberation by the Board at the public meeting following the close of the hearing on October 27, 2020 and again at a public meeting on November 10, 2020, following which the Board determined there were no impediments to proceeding with adoption of the local law; and

**WHEREAS**, the Village Board of Trustees as Lead Agency with respect to the proposed local law in accordance with Article 8 of the Environmental Conservation Law of the State of New York and the regulations promulgated thereunder at 6 NYCRR 617 (collectively, “SEQRA”) has determined adoption of the local law meets the criteria of a Type II Action requiring no further review pursuant to SEQRA.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Trustees of the Village of Dobbs Ferry, hereby adopts Local Law 6-2020 adding Article VII to Chapter 127 of the Dobbs Ferry Code to establish the Energize NY Open C-PACE Program; and

**BE IT FURTHER RESOLVED**, that this local law shall take effect upon filing with the Secretary of State and the Village Clerk is hereby directed to file and distribute said Local Law No. 6-2020 in accordance with applicable law.

## INTRODUCTORY LOCAL LAW NO. 6-2020

**“Amendment to the Village of Dobbs Ferry Code to Adopt a Stricter Standard for Energy Efficiency Improvements and Provide Access to a Financing Program”**

A LOCAL LAW amending Chapter 127 “Building Construction” of the Code of the Village of Dobbs Ferry.

BE IT ENACTED by the Board of Trustees of the Village of Dobbs Ferry, as follows:

**Section 1. Legislative Intent.** The Village has a policy 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. As a means to advance these goals and to protect and promote public health, safety, and welfare of its residents, the Village Board of Trustees proposes to mandate energy efficient building standards and provide opportunities for the financing of energy efficient improvements. Under NY Energy Law § 11-109, the Village Board is authorized to adopt a local energy code more stringent than the 2020 Energy Conservation Construction Code of New York State (2020 ECCCNY) to apply to all new construction, substantial renovations, alterations and additions in the Village. The Village Board has chosen a model code published as the NYStretch Energy Code 2020 developed by the New York State Energy Research and Development Authority (NYSERDA) as the more stringent energy efficient building code. In support of this adoption of more stringent energy-related standards, the Board of Trustees also proposes to provide a program for property-assessed financing for qualified sustainable energy improvements.

**Section 2.** Chapter 127 of the Code of Dobbs Ferry is hereby renamed with new matter underlined as “Building Construction Standards and Energize NY Open C-PACE Financing Program”

**Section 3.** Section 127-1 of the Code of the Village of Dobbs Ferry “State Building Construction Code” is hereby amended as follows, with new matter underlined and deleted matter struck and in [brackets]:

- A. Except as may be set forth in this Code, [T]he New York State Uniform Fire Prevention [State] Building [Construction] Code provided for by Article 18 of the Executive Law of the State of New York and the New York State Energy Conservation Construction Code promulgated pursuant to Article 11 of the Energy Law (collectively “State Building Construction Code”) that regulat[ing]e

the construction, substantial renovations, alterations and additions [of buildings], including [and] the installation [therein] of equipment [that is] essential to building operation and maintenance, such as plumbing, heating, electrical, ventilation and fire protection equipment, shall [continue to] be applicable to all construction, substantial renovations, alterations and additions in the Village.

- B. Wherever it is provided in the State Building Construction Code that specified construction or equipment shall be installed in accordance with the regulations of the authority having jurisdiction, the appropriate provisions of this chapter, if any, shall apply.
- C. The Plumbing Standards of the State Building Construction Code not presently applicable to additions or alterations to existing plumbing systems within the Village are hereby made applicable to such additions or alterations.
- D. The Electrical Standards of the State Building Construction Code not presently applicable to existing electrical wiring for electric light, heat or power and for signal systems operating on 50 volts or more within the Village are hereby made applicable to such electrical wiring.
- E. Effective for all building permit applications submitted on or after the effective date of this local law, the NYStretch Energy Code 2020, published by the New York State Energy Research and Development Authority (hereafter referred to as "NYStretch"), shall be applicable to all new construction, substantial renovations, alterations and additions in the Village of Dobbs Ferry, as required by the 2020 Energy Conservation Construction Code of New York State and now amended by NYStretch.

**Section 4.** Chapter 127 of the Dobbs Ferry Code is hereby amended with the addition of Article VII as follows:

Article VII Energize NY Open C-PACE Financing Program.

§127-19 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 Article as adopted by local law.
- C. This Article as duly adopted by 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”.

#### **§127-20 Definitions**

- A. Capitalized terms used but not defined herein have the meanings assigned in the Enabling Act.
- B. For purposes of this Article as adopted by 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 §127-26 of this Article as adopted by local law.

**ANNUAL INSTALLMENT LIEN** – shall have the meaning assigned in §127-26 of this Article as adopted by local law.

**AUTHORITY** - The New York State Energy Research and Development Authority.

**BENEFIT ASSESSMENT LIEN** – shall have the meaning assigned in §127-21 of this Article as adopted by local law.

**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 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 §127-24 of this Article as adopted by 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 Village of Dobbs Ferry, 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 §127-26 of this Article as adopted by local law.

**STATE** – the State of New York.

#### **§127-21 Establishment of 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.

#### **§127-22 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 Article as adopted by 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 §127-23 of this Article as adopted by local law.

#### **§127-23 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; and
- E. 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.

**§127-24 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.

**§127-25 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.

**§127-26 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.

**§127-26 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.

**§127-27 Separability.**

If any clause, sentence, paragraph, section, or part of this Article as adopted by 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 5.** Except as otherwise provided herein, all other provisions of Chapter 127 “Building Construction Standards and Energize NY Open C-PACE Financing Program” shall remain the same.

**Section 6.** This Local Law shall take effect immediately upon publication, filing and posting as required by law.