

**RESOLUTION ADOPTING PROPOSED LOCAL LAW NO. 2 OF 2021,
ENTITLED, "ESTABLISHING THE OFFICE OF CONFLICT DEFENDER
FOR THE COUNTY OF ESSEX"**

The following resolution was offered by Supervisor Giordano, who moved its adoption.

WHEREAS, by Resolution No. 86 duly adopted on April 5, 2021, the County of Essex introduced Local Law No. 2 for 2021, entitled "Establishing the Office of Conflict Defender for the County of Essex"; and

WHEREAS, that a Public Hearing was duly held on the 19th day of April, 2021, at 11:00 a.m. to hear any and all persons concerning the adoption of said local law.

BE IT RESOLVED that the Essex County Board of Supervisors hereby adopts proposed Local Law No. 2 of 2021, entitled, "Establishing the Office of Conflict Defender for the County of Essex", as follows:

"ESSEX COUNTY LOCAL LAW NO. 2 OF 2021

A local law establishing the Office of Conflict Defender for the County of Essex.

BE IT ENACTED by the Board of Supervisors of Essex County as follows:

SECTION 1 - LEGISLATIVE INTENT.

The County of Essex, through the Essex County Board of Supervisors, recognizes its responsibilities in providing legal representation to indigent persons in those matters for which the County is required by law to provide legal counsel. It is the intent of this Local Law to create the Essex County Office of Conflict Defender to provide said mandated legal representation when a conflict of interest disqualifies the Public Defender; and provide the procedural and substantive framework for the position of Conflict Defender, including but not limited to, the duties, qualifications and term of office thereof.

SECTION 2 - DEFINITIONS.

- A. Conflict Assignment: As used in this Local Law, the term "conflict assignment" shall mean a court proceeding wherein the defendant or other litigant is eligible for Public Defender Services, but where a conflict of interest would occur if the Public Defender represented the defendant.
- B. Eligible: As used in this Local Law, the term "eligible" shall mean only those defendants or other litigants who meet the income eligibility standards and who are defendants or other litigants in those classes of cases for which the Public

Defender's Office is required by law, to provide legal representation. The eligibility of a particular person shall be determined by the Public Defender's Office, the Assigned Counsel Administrator or any other entity legally mandated to do so or as established by resolution by this Board.

- C. Essex County Assigned Counsel Attorneys: As used in this Local Law, the term Essex County Assigned Counsel Attorneys shall mean those attorneys participating in the Essex County Assigned Counsel Plan/Program per Article 18-b of the New York State County Law at the time and as set forth on the Assigned Counsel Panel List at the time.
- D. Essex County Assigned Counsel Plan: As used in this Local Law, the term Essex County Assigned Counsel Plan shall mean the Essex County Assigned Counsel Plan currently in force and effect at the time and as mandated by Article 18-b of the New York State County Law.

SECTION 3 - CREATION OF DEPARTMENT.

Pursuant to the provisions of §10 of the Municipal Home Rule Law, the Essex County Office of Conflict Defender is hereby created. The office will be under the supervision and direction of an Essex County Conflict Defender as herein established and provided.

SECTION 4 - CONFLICT DEFENDER: APPOINTMENT, TERM AND QUALIFICATIONS.

APPOINTMENT

- A. Upon the passage of this Local Law there shall be a Conflict Defender who shall be appointed by the Board of Supervisors for an initial term commencing on a date determined by the County Legislature and ending on December 31, 2021. Thereafter, the Conflict Defender shall be appointed for additional two (2) year terms as herein below set forth.
- B. The appointment by the Board of Supervisors of the Conflict Defender shall be subsequent to a selection process created and implemented by the Essex County Board of Supervisors.
- C. The Conflict Defender shall be responsible to and serve at the pleasure of the Essex County Board of Supervisors.
- D. The Conflict Defender position shall be a full-time position.
- E. The total compensation of the Conflict Defender shall be fixed by the Essex County Board of Supervisors.

TERM

- A. On or after January 1, 2022 there shall be a Conflict Defender who shall be appointed by the Board of Supervisors on or after January 1, 2022 for a two (2) year term from and including January 1, 2022 and ending December 31, 2023. And similarly thereafter, there shall be a Conflict Defender who shall be appointed by the Board of Supervisors on or after January 1 of an even numbered calendar year for a two year term from and including January 1 of said even numbered calendar year and ending on December 31 of the following odd numbered calendar year.
- B. Any vacancies occurring otherwise than by expiration of the term, shall be filled by appointment by the Essex County Board of Supervisors for the unexpired portion of the term.

MINIMUM QUALIFICATIONS

- A. The Conflict Defender shall have the qualifications set forth in Section 3 of the New York State Public Officer's Law, except that the provisions of Section 3(1) of the New York State Public Officers Law requiring a person to be a resident of the political subdivision or municipal corporation of the state for which he or she shall be chosen or within which his or her official functions are required to be exercised, shall not prevent a person from holding the office of Conflict Defender provided that such person resides in Essex County or an adjoining county within the State of New York, it being the intent of this section to supersede the provisions of New York State Public Officers Law Section 3(1) with respect to said public officer holding the office of Conflict Defender.
- B. Conflict Defender shall be an attorney duly licensed to practice law in the State of New York and admitted to practice in all courts within the scope of his/her duties.
- C. She/he shall have a minimum of three (3) years experience in criminal defense and/or Family Court. The Conflict Defender shall hold no other public or political office and will not engage or maintain a private practice of law and shall devote full working time to this County position.

SECTION 5 - GENERAL POWERS.

- A. **Representative of the Board:** The Conflict Defender shall, as herein provided, act as representative of the Board of Supervisors in providing mandated representation.
- B. **Legal Representation Duties; Conflict Assignment:**
 - 1. **Criminal:** In the event primary mandated representation cannot be

provided when a conflict of interest exists in the Public Defender's Office, then the conflict defender shall represent, without charge, at the request of the eligible defendant, or by order of the court with the consent of the defendant, each eligible indigent defendant who is charged with a crime as defined in Section 722-a of the County Law in the county or counties in which such conflict defender serves. When representing an eligible indigent defendant, the conflict defender shall counsel and represent him at every stage of the proceedings following arrest, shall initiate such proceedings as in his/her judgment are necessary to protect the rights of the accused, and may, in his/her discretion, prosecute any appeal, if in his/her judgment the facts and circumstances warrant such appeal.

2. **Civil:** The conflict defender shall also represent, without charge, in a proceeding in family court or surrogate's court in the county or counties where such conflict defender serves, any eligible person entitled to counsel pursuant to §262 and §1120 of the Family Court Act, and §407 of the Surrogate's Court Procedure Act, or any person entitled to counsel pursuant to Article 6-C of the Correction Law, who is financially unable to obtain counsel, and who, for whatever reason, is not represented by the public defender. When representing such person, the conflict defender shall counsel and represent him at every stage of the proceedings, shall initiate such proceedings as in the judgment of the conflict defender are necessary to protect the rights of such person, and may prosecute any appeal when, in his/her judgment the facts and circumstances warrant such appeal.
3. **Resources:** Within the appropriations therefor, the Conflict Defender may assign professional, technical and clerical personnel in the investigation, preparation, conduct and appeal in any court proceedings involving indigent defendants or respondents.
4. **Conflict Defender's Conflict:** In the event that the Conflict Defender has a conflict, he/she will refer any such matters to the Essex County Assigned Counsel Administrator/Office and those matters shall be handled by the Essex County Assigned Counsel Plan/Panel pursuant to New York County Law Article 18-b.
5. Prepares the budget for the operation of the office.
6. Identifies and applies for distributions, grants and other funding available from New York State and any other possible funding sources; assures compliance with requirements of said funding.
7. Ensures the office maintains a client-centered ethos of quality representation.
8. Responds to and assists in public inquiries regarding representation, and makes referrals as necessary.

9. Keeps records, collects data and makes reports as required by the County and causes proper accounts and records of the office to be kept and ensure that all accounts and records are correctly made.
10. Operates within all state or federal mandated caseload caps.
11. Comply with all laws, rules and regulations pertaining to the operation of the office and perform all the functions, powers and duties imposed by law or this Board governing its operations.

C. Administrative and Supervisory Duties:

1. **Office Operations:** The Conflict Defender shall be responsible for the management and operation of the Conflict Defender's Office in accordance with sound management principles, Board of Supervisor's policies, and Civil Service law, and shall have the powers and duties necessary to carry out the functions of the office as set forth herein and such other responsibilities as may from time to time be imposed by resolution of the Board of Supervisors. She/he shall develop and administer the systems, policies, practices and procedures of the office, and shall coordinate and administer all activities of the office. She/he shall prepare such reports as may be required by the Board of Supervisors, and develop and administer the budgets of the office and advise the Board of Supervisors as to such other matters as to the Conflict Defender, and in his/her professional judgment, would contribute to enhancing and improving the quality of conflict defense provided by Essex County. Subject to the approval and authorization of the Board of Supervisors, and provided there is sufficient funds appropriated in the budget therefore, the Conflict Defender may appoint such assistant attorneys, clerks, investigators, stenographers, confidential secretaries and other employees as he/she may deem necessary. The compensation of such assistants and staff shall be within the amounts appropriated for such purposes.

SECTION 6 - POWERS OF APPOINTMENT AND REMOVAL.

The Conflict Defender is vested with the power and authority to appoint, supervise, discipline and remove assistant Conflict Defenders and employees, and assign and re-assign powers and duties to such employees, consistent with the laws of the State of New York. Pursuant to §716 of Article 18-A of the County Law, the Conflict Defender may appoint as many assistant attorneys, clerks, investigators, stenographers and other employees as she/he may deem necessary, subject to the authorization of the Board of Supervisors.

SECTION 7 - REMOVAL OF THE CONFLICT DEFENDER.

A. Grounds for Removal: The Conflict Defender shall be removed by the Board of Supervisors, prior to the expiration of the term of office, upon cause, as follows:

1. Because the Conflict Defender was at the time of his/her appointment or has since become ineligible to hold such office;
2. For malfeasance, misfeasance, or nonfeasance in office;
3. Upon the conviction of a crime or of any offense involving moral turpitude, or violation of the oath of office;
4. For failure to perform his/her duties as provided by this Local Law in an honorable, competent and reasonably efficient manner;
5. In the event the Conflict Defender becomes morally, physically or mentally unfit to act on behalf of the County; or
6. For insubordination, immoral character, inefficiency, incompetency or neglect of duty.

B. Procedures for Removal: The Board of Supervisors shall adopt a resolution stating their intention to remove the Conflict Defender and their reasons therefore. A copy of the resolution shall be served upon the Conflict Defender. The Conflict Defender, within ten (10) days, may demand a hearing. If the Conflict Defender demands a hearing, the Board of Supervisors shall appoint a committee to hold the hearing, in executive session, not less than ten (10) days nor more than thirty (30) days from the date of the demand. After the hearing, the committee shall recommend dismissal or retention of the Conflict Defender. The Board of Supervisors may accept or reject the recommendation of the committee. The decision of the Board of Supervisors shall be final and binding, subject to the right of appeal in accordance with the existing law. If the Conflict Defender does not demand a hearing, the Board of Supervisors may dismiss the Conflict Defender ten (10) days after service of a copy of the resolution upon the Conflict Defender. Upon the passage of the resolution, the Board of Supervisors may suspend the Conflict Defender from his/her official duties without pay. If the charges against the Conflict Defender are not sustained by the Board of Supervisors or are not sustained after any appeal from the decision of the Board of Supervisors, the Conflict Defender shall be entitled to be paid for the period of suspension. If the charges against the Conflict Defender are sustained by the Board of Supervisors and are sustained after any appeal, the Conflict Defender shall be terminated from employment with Essex County.

SECTION 8 - CLASSIFICATION.

Pursuant to Municipal Home Rule Law §10, the Conflict Defender shall be placid in the unclassified service.

SECTION 9 - SEPARABILITY.

If any clause, sentence, paragraph or section of this Local Law shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate the remainder hereof, but shall be confined to its operation to the clause, sentence, paragraph or section directly involved in the controversy in which judgment shall have been rendered.

SECTION 10 - EFFECTIVE DATE.

This Local Law shall take effect upon its being duly filed as provided by the Municipal Home Rule Law.

This resolution was duly seconded by Supervisor Tyler, and adopted, upon a roll-call vote as follows:

AYES: 2306 votes
NOES: 0 votes
ABSENT: 615 votes (Rand, Merrihew)

**RESOLUTION ADOPTING PROPOSED LOCAL LAW NO. 3
OF 2021, ENTITLED “A LOCAL LAW TO ESTABLISH A
SUSTAINABLE ENERGY LOAN PROGRAM (OPEN C-PACE)
IN THE COUNTY OF ESSEX”**

The following resolution was offered by Supervisor Scozzafava, who moved its adoption.

WHEREAS, by Resolution No. 87 duly adopted on April 5, 2021, the County of Essex introduced proposed Local Law No. 3 of 2021, entitled “A Local Law to Establish a Sustainable Energy Loan Program (Open C-PACE) in the County of Essex”; and

WHEREAS, that a Public Hearing was duly held on the 19th day of April, 2021, at 11:15 a.m. to hear any and all persons concerning the adoption of said local law.

BE IT RESOLVED that the Essex County Board of Supervisors hereby adopts proposed Local Law No. 3 of 2021, entitled “A Local Law to Establish a Sustainable Energy Loan Program (Open C-PACE) in the County of Essex”, as follows:

“ESSEX COUNTY LOCAL LAW NO. 3 OF 2021”

A local law to establish a sustainable energy loan program (OPEN C-PACE) in the County of Essex.

BE IT ENACTED by the County of Essex (the “Municipality”) as follows:

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

Article I 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 Essex, 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.

Article I 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.

Article I 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.

Article I 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.
- G. 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").
- H. 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.

- I. The Finance Agreement shall include the terms and conditions of repayment of the Secured Amount and the Annual Installment Amounts.
- J. 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.

Article I 6. 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.

Article I 7. 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.

Article I 8. 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.

Article I 9. 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.

§11. SEQRA Determination. Essex County, hereby finds and determines that this law constitutes a Type II Action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title Six of the New York Code of Rules and Regulations (6 NYCRR) and within the meaning of Section 8-0109(2) of the New York Environmental Conservation Law

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

This resolution was duly seconded by Supervisor Hughes, and adopted, upon a roll-call vote as follows:

AYES: 2306 votes
NOES: 0 votes
ABSENT: 615 votes (Rand, Merrihew)