



## **COMMON COUNCIL COMMITTEE MEETING**

**PLANNING, ECONOMIC DEVELOPMENT AND LAND USE COMMITTEE**  
**Cathy M. Fahey, Chair**

**DATE:** Thursday, February 20, 2020

**PLACE:** City Court Room 209 – 2<sup>nd</sup> Fl. City Hall

**TIME:** 5:30 PM (Prior to Caucus)

### **TOPICS OF DISCUSSION:**

**LOCAL LAW B – 2020**

**A LOCAL LAW CREATING CHAPTER 376 OF THE CODE OF THE CITY OF ALBANY (COMMUNITY CHOICE AGGREGATION) AUTHORIZING THE CREATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM, AND ADOPTING CERTAIN PROVISIONS TO FACILITATE PROGRAM IMPLEMENTATION**

**RESOLUTION NUMBER 9.21.20R**

**RESOLUTION ADOPTING COMMUNITY CHOICE AGGREGATION PROGRAM EDUCATION AND OUTREACH PLAN AND CUSTOMER OPT-OUT LETTER**

**PUBLIC COMMENT PERIOD: Yes**

**Council Member Fahey introduced the following:**

**LOCAL LAW B – 2020**

**A LOCAL LAW CREATING CHAPTER 376 OF THE CODE OF THE CITY OF ALBANY (COMMUNITY CHOICE AGGREGATION) AUTHORIZING THE CREATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM, AND ADOPTING CERTAIN PROVISIONS TO FACILITATE PROGRAM IMPLEMENTATION**

**BE IT ENACTED by the Common Council of the City of Albany as follows:**

**Section 1. Section 376-1 of Chapter 376 of the Code of the City of Albany is hereby amended to read as follows:**

§ 376-1. Purpose.

It is the intent of the City of Albany to establish a Community Choice Aggregation (“CCA”) Program to aggregate the energy supply needs of residents and small commercial customers, and to negotiate and enter into, or authorize its agent to negotiate and enter into, Energy Supply Agreements (“ESAs”) with Energy Service Companies (“ESCOs”) on behalf of eligible citizens to obtain stable, lower-cost energy prices, as well as environmental benefits and/or a community-based solution to meeting our collective energy needs. The purpose of this Local Law is two-fold: to establish a CCA Program in the City of Albany and to adopt certain provisions relating to the creation and implementation of the CCA Program.

**Section 2. Section 376-2 of Chapter 376 of the Code of the City of Albany is hereby amended to read as follows:**

§ 376-2. Findings.

- A. New York State’s energy industry is in the midst of a significant transition; a shift away from the old top-down, utility-centered model toward a cleaner, more affordable, more resilient system in which consumers and communities will have a substantial role to play. The State’s ongoing Reforming the Energy Vision (“REV”) initiative emphasizes the importance of reliability and grid-resilience, distributed energy resources, increased renewable generation, and greater opportunity for citizens to take an active role in helping the State reach its energy goals and in making more informed energy choices in their homes, businesses and communities.
- B. As part of this REV initiative, the New York State Public Service Commission (“NYSPSC”), on April 21, 2016, adopted an Order authorizing cities, towns and villages within the State to create Community Choice Aggregation Programs, by themselves or in concert with other municipalities (hereinafter “NYSPSC Order Authorizing CCAs”), and/or to retain a CCA Administrator to implement the program and negotiate ESAs.
- C. CCA Programs allow communities to take control of their energy supply through an

open, transparent and competitive electric and/or gas supply procurement process driven by the consumers themselves.

- D. A successful CCA Program offers citizens cost savings, more stable energy prices, deterrence of deceptive marketing practices by unscrupulous ESCOs, fair contracts negotiated directly with energy suppliers, and/or the opportunity to pursue goals and initiatives important to the community, such as reliability, grid resiliency, supporting renewable energy generation, cutting greenhouse gas emissions, protecting the State's natural resources, and improving energy efficiency.
- E. The City of Albany has explored the CCA policy and background, and believes it would provide numerous benefits in this community, enhancing the public welfare and making energy more affordable and costs more predictable for our residents.
- F. Therefore, the City of Albany authorizes the creation of an opt-out CCA Program pursuant to rules of the NYSPSC in this community for the provision of electric and/or natural gas supply service, as well as other high priority energy related value-added services as may be determined to meet the community's goals.

**Section 3. Section 376-3 of Chapter 376 of the Code of the City of Albany is hereby amended to read as follows:**

§ 376-3. Authority.

The NYSPSC Order Authorizing CCAs expressly empowers cities, towns and villages in this state to create CCA Programs. Further, the New York Municipal Home Rule Law, Article 2, Section 10, authorizes a municipality to adopt general laws relating to its property, affairs and government, the protection and enhancement of its physical and visual environment, the protection and well-being of persons within the municipality, and for other authorized purposes.

**Section 4. Section 376-4 of Chapter 376 of the Code of the City of Albany is hereby amended to read as follows:**

§ 376-4. Definitions.

**AUTOMATICALLY ELIGIBLE CUSTOMERS:** shall mean customers' accounts in those utility service classes eligible for inclusion in the CCA Program on an opt-out basis, as set forth in the NYSPSC Order Authorizing CCAs, Appendix C, or as otherwise specified by the Commission. Generally, these classes of customers include those receiving residential electric or gas supply service, including those in multi-family housing, certain types of institutions, and some small commercial customers covered by "small general service" class designations. Automatically Eligible Customers shall not include customers' accounts that have already been enrolled in service through an ESCO, enrolled in utility programs which require them to take supply service from their current utility, or that have a block on their utility account at the time of CCA

formation<sup>1</sup>; those customers' accounts shall be eligible to participate on an opt-in basis, if they so desire.

**ELIGIBLE CUSTOMERS:** shall mean all automatically eligible customers plus those utility customers eligible for inclusion in the CCA Program on an opt-in basis, as set forth in the NYSPSC Order Authorizing CCAs or otherwise authorized by the Commission. Those customers eligible to participate in the CCA Program on an opt-in basis currently include: those customers already enrolled in service through an ESCO at the time of CCA formation, customers in large commercial, institutional, or industrial utility service classes that cannot be automatically enrolled in the CCA on an opt-out basis, and all other customers not considered “automatically eligible customers.” References to the broader class of “eligible customers” shall signify the entire pool of customers participating in the aggregation, either because they have been automatically enrolled on an opt-out basis, or because they have affirmatively opted in.

**CCA ADMINISTRATOR:** An agent of the municipality charged with overseeing creation, implementation and operation of a CCA Program, as well as competitively procuring and negotiating Energy Supply Agreements with ESCOs. The CCA Administrator shall be retained by the municipality via a separate CCA Administration Agreement, adopted by Resolution of the municipality's governing board.

**COMMUNITY CHOICE AGGREGATION (CCA)/CCA PROGRAM:** A Program authorized by the New York State Public Service Commission (NYSPSC) to aggregate residential and commercial electric and/or natural gas supply and/or energy related value-added products and services within a given municipality, and/or among multiple municipalities, in order to leverage that energy demand to negotiate favorable Energy Supply Agreements directly with ESCOs. Customers within a CCA Program would no longer purchase their energy supply directly from their utility. However, the utility would continue to deliver energy to these customers, to charge for that delivery, and will retain its transmission and distribution network. The energy supply portion of a customer’s energy service is provided by an ESCO or ESCOs, pursuant to an Energy Supply Agreement competitively procured and negotiated for the CCA Program at large, then delivered to customers via the local utility.

**ENERGY SUPPLY AGREEMENT (ESA):** An agreement between an energy customer and an Energy Services Company (ESCO) to provide electricity or gas service to the customer for a fixed or variable price. For purposes of this Local Law, the CCA Administrator would conduct a competitive procurement on behalf of all eligible customers, and would enter into an Energy Service Agreement(s) with an ESCO to provide power to all such customers in the community.

**ENERGY SERVICES COMPANY (ESCO):** A third-party energy supplier eligible to sell electricity, natural gas and/or energy related value-added services to customers in New York State, utilizing the transmission and distribution systems of existing utilities. ESCOs are regulated by the New York State Department of Public Service and the New York State Public Service Commission, and must comply with the New York State Public Service Law.

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<sup>1</sup> Except Assistance Program Participants (“APPs”), customers enrolled in utility low-income assistance programs who may have blocks on their accounts with their existing utility, but who may still be eligible to participate.

MUNICIPALITY: Reference to these terms throughout this Local Law indicate the City of Albany unless otherwise noted.

UTILITY: This term refers to traditional electric and/or natural gas utilities regulated by the New York State Department of Public Service and the New York State Public Service Commission and permitted to provide electric and/or gas supply, transmission and distribution services to all customers within their designated service territory.

**Section 5. Section 376-5 of Chapter 376 of the Code of the City of Albany is hereby amended to read as follows:**

§ 376-5. Establishing Community Choice Aggregation.

City of Albany hereby establishes a CCA Program for aggregation of electric and/or natural gas supply to serve all eligible customers in its jurisdiction. All automatically eligible customers shall be included in the CCA Program on an opt-out basis, and shall be afforded the opportunity to opt-out of the CCA Program, within a specified period, at no cost. All customers who are not automatically eligible to be included in the CCA Program on an opt-out basis shall be permitted to affirmatively opt into the program in accordance with the terms of the ESA and/or the NYSPSC Order Authorizing CCAs.

**Section 6. Section 376-6 of Chapter 376 of the Code of the City of Albany is hereby amended to read as follows:**

§ 376-6. Provisions for Implementing CCA Program.

***Part A. Implementation Plan***

1. The City of Albany with support from its CCA Administrator, will create and follow a CCA Implementation Plan which shall outline the details of how the CCA Program will be created and operated, including how public outreach and education will occur, what rules will apply to the Program, how the procurement process will be implemented, how energy contracts will be selected, and how responsibilities will be divided amongst CCA Administrator, municipality, and eligible customers.
2. In accordance with the NYSPSC Order Authorizing CCAs, the CCA Implementation Plan will be reviewed and approved by the Public Service Commission. Such review may involve NYSPSC approval of a generic CCA Implementation Plan, with the understanding that community-specific Appendices would be submitted later and would outline appropriately tailored local education and outreach efforts.
3. Where a generic CCA Implementation Plan will be used, the City of Albany and the CCA Administrator will make community-specific revisions to the Plan's Appendices to ensure the Plan is properly tailored to the needs of the City of Albany's residents. Therefore, prior to or in conjunction with the enactment of this Local Law, and thereafter from time to time, the City of Albany with support from the CCA

Administrator, will create and update a CCA Program Opt-Out Letter, as well as an Education and Outreach Plan, as provided in the Implementation Plan Appendix for this community.

4. The City of Albany Opt-Out Letter and Education and Outreach Plan shall conform to those requirements for public outreach, education, and opt-out procedures set forth in the NYSPSC Order Authorizing CCAs, and in any other applicable laws or regulations, and shall ensure that the City of Albany and its CCA Administrator engage in a robust effort to educate and inform the community about the CCA Program and their options for participating or opting out.
5. Opt-out letters will be provided to all automatically eligible customers no less than 30 days prior to the time at which those customers would be automatically enrolled in the CCA Program. The letters will be printed on the City of Albany letterhead, in official City of Albany envelopes. The logo of the CCA Administrator and selected ESCO may also be included on these letters, so long as it is clear that the letter is official correspondence from the City of Albany.

#### ***Part B. Public Outreach and Education***

1. The City of Albany, together with its CCA Administrator, will provide public notices, presentations, information sheets, and other forms of outreach, as outlined in the Appendix of the Implementation Plan, to ensure residents are informed about the CCA Program and their options for participating or opting out.
2. Once the CCA Program is operating, the City of Albany and its CCA Administrator will continue to engage in public outreach to keep CCA customers informed about any changes to the CCA Program; opportunities for new products or services available through the CCA Program, such as renewable energy buying options; important terms and durations of ESAs; information about the selected ESCOs; and any other matters related to the CCA Program.

#### ***Part C. Customers Moving into or out of the Community After CCA Adoption***

Residents and small commercial customers who establish utility accounts in this community after the effective date of this Local Law shall be afforded the opportunity to join the CCA Program within a reasonable time after their utility account is established, in accordance with contractual agreements between the CCA Administrator any ESCO(s) providing service to the Program.

#### ***Part D. Customer Data Protection***

The City of Albany or its CCA Administrator, will create and follow a Customer Data Protection Plan which ensures that any confidential or sensitive personal customer information provided by the utility to the City of Albany its CCA Administrator, and/or the selected ESCO(s), will be given all privacy protections required by law and regulation, and protected from

unauthorized release or use to the greatest extent possible. This Customer Data Protection Plan will ensure that the CCA Program and any selected ESCO(s) handle all confidential or sensitive customer data in keeping those customer data protections already afforded by Utility prior to the enactment of this Local Law.

This Plan will also ensure that CCA customer data, such as contact information, is not used for inappropriate purposes, such as solicitation of business unrelated to the CCA Program, its goals and objectives.

**Section 7. Section 376-7 of Chapter 376 of the Code of the City of Albany is hereby amended to read as follows:**

§ 376-7. CCA Administrator.

***Part A. CCA Administration Agreement***

The City of Albany will enter into a CCA Administration Agreement with its CCA Administrator. Such agreement will set forth the various rights and responsibilities of the parties, and will govern the manner in which the CCA Program is run. This Agreement shall also authorize the CCA Administrator to act as the City of Albany's agent for the purpose of procuring energy supply or other energy related value-added services for CCA Program eligible customers.

***Part B. Customer Service, Complaints***

The CCA Administrator will provide the City of Albany with clear, up-to-date contact information for customer questions, concerns or complaints. The CCA Administrator shall, from time to time, and/or at the request of the City of Albany's Mayor or Common Council, report to the City of Albany regarding customer service matters.

**Section 8. Section 376-8 of Chapter 376 of the Code of the City of Albany is hereby amended to read as follows:**

§ 376-8. Compliance with Public Service Law and Regulations.

In accordance with the NYSPSC Order Authorizing CCAs, it shall be the responsibility of the City of Albany, supported by any CCA Administrator that may be under contract, to ensure the CCA Program is operated in compliance with all applicable provisions of the New York State Public Service Law, regulations of the New York State Public Service Commission and/or the New York State Department of Public Service, the Uniform Business Practices (to the extent applicable), the NYSPSC Order Authorizing CCAs and any other relevant laws or regulations. This provision applies regardless of whether a CCA Administrator is retained to organize and implement the City of Albany's CCA Program. This shall include, but not be limited to, compliance with any reporting requirements related to the CCA Program.

**Section 9. Section 376-9 of Chapter 376 of the Code of the City of Albany is hereby**

**amended to read as follows:**

§ 376-9. Review and/or Dissolution of the CCA Program.

- A. The City of Albany will, from time to time, review the CCA Program and its progress to determine how the program is faring, confirm it is affording benefits to the community, and provide information to the public thereon.
- B. As the expiration of its ESA(s) approaches, or in the event an ESCO provides notice of its intention to terminate an ESA (where authorized by the terms of that ESA), the City of Albany may consider whether it wishes to discontinue the CCA Program. Dissolution of the CCA Program will require (1) enactment of a Local Law amending or repealing this Local Law, (2) lawful termination of ESAs in accordance with their terms, (3) lawful termination of the CCA Administration Agreement, in accordance with its terms, and (4) at least 60 days' notice to customers that their energy services will be automatically returned to Utility, an effective date upon which such a change would occur, and information on what other options may be available to those customers, if applicable.

**Section 10. Section 376-10 of Chapter 376 of the Code of the City of Albany is hereby amended to read as follows:**

§ 376-10. Conflicts.

In the event the New York State Public Service Commission, the State Legislature, or other State agency, enacts laws or regulations regarding the operation of CCAs which are in conflict with this Local Law, the state provisions shall govern.

**Section 11. Section 376-11 of Chapter 376 of the Code of the City of Albany is hereby amended to read as follows:**

§ 376-11. Liability.

Nothing in this Local Law shall be read to create liability on the part of the City of Albany related to the provision of electric and/or natural gas service to customers. The ESCO selected to provide such service will be ultimately responsible for compliance with all applicable laws, rules and regulations governing retail energy services, and will assume any liability stemming from the provision of such service to retail customers, including any potential liability associated with the service itself, customer data and information, and any other matters which would traditionally fall under the purview of a merchant utility providing the same service to customers prior to the formation of the CCA. This Local Law is meant merely to facilitate the creation of an aggregation program in this community. The City of Albany will not assume the role of ESCO or utility in the sale or delivery of energy services.

**Section 12. Section 376-12 of Chapter 376 of the Code of the City of Albany is hereby amended to read as follows:**

§376-12. Severability.

Each provision of this Law is severable from the others, so that if any provision is held to be illegal or invalid for any reason whatsoever, such illegal or invalid provision shall be severed from this Law, which shall nonetheless remain in full force and effect.

**Section 13. Section 376.13 of Chapter 376 of the Code of the City of Albany is hereby amended to read as follows:**

§ 376-13. Effective Date.

This Local Law shall take effect upon final passage, public hearing and filing with the Secretary of State.

**Albany Common Council  
Memorandum in Support of Legislation**

**Local Law B - 2020**

**Sponsor(s):** Council Member Fahey

**Title:** A LOCAL LAW CREATING CHAPTER 376 OF THE CODE OF THE CITY OF ALBANY (COMMUNITY CHOICE AGGREGATION) AUTHORIZING THE CREATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM, AND ADOPTING CERTAIN PROVISIONS TO FACILITATE PROGRAM IMPLEMENTATION

**Purpose:** To codify the City of Albany’s participation in the Capital Region Community Choice Aggregation.

**Summary:** Enables the aggregation of energy supply needs of both the City of Albany and other Capital Region residents and small commercial businesses, and negotiating energy supply contracts with Energy Service Companies (“ESCOs”) to obtain stable, lower-cost energy prices, as well as environmental benefits and/or a community-based solution to meeting our collective energy needs.

**Justification:** New York State Public Service Commission (“NYSPSC”), on April 21, 2016, adopted an Order authorizing cities, towns and villages within the State to create Community Choice Aggregation Programs, by themselves or in concert with other municipalities (hereinafter “NYSPSC Order Authorizing CCAs”), and/or to retain a CCA Administrator to implement the program and negotiate ESAs.

**Fiscal Impact:** To be determined.

**Effective Date:** Upon final passage, public hearing and filing with the Secretary of State.

**Council Member Fahey introduced the following:**

**RESOLUTION NUMBER 9.21.20R**

**RESOLUTION ADOPTING COMMUNITY CHOICE AGGREGATION PROGRAM  
EDUCATION AND OUTREACH PLAN AND CUSTOMER OPT-OUT LETTER**

**WHEREAS**, the City of Albany has established a Community Choice Aggregation (“CCA”) Program to aggregate the energy supply needs of residents and small commercial businesses, and to negotiate and enter into energy supply contracts with Energy Service Companies (“ESCOs”) on behalf of these citizens to obtain competitively priced energy, often at a fixed or predictable cost, as well as environmental benefits and opportunities to pursue community-based energy initiatives; and

**WHEREAS**, the City of Albany is required to adopt a community-specific plan for engaging in public education and outreach regarding the CCA Program in this community, as well as an opt-out letter on the City of Albany’s letterhead informing members of the public of their right to opt-out of the CCA Program, and providing a clear procedure for so doing; and

**WHEREAS**, these community-specific documents, once adopted, will be incorporated into the CCA Program Implementation Plan, to be administered by the CCA Administrator, as approved by the New York State Public Service Commission (“NYSPSC”), to ensure compliance with rules and regulations governing CCAs;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Albany hereby adopts a public education and outreach plan and CCA opt-out letter;

**AND BE IT FURTHER RESOLVED THAT**, the plan and letter will be provided to the CCA Administrator and New York State Department of Public Service staff charged with reviewing on behalf of the NYSPSC, for incorporation into the CCA Program Implementation Plan.

**Albany Common Council  
Memorandum in Support of Legislation**

**Resolution 9.21.20R**

**Sponsor(s): Council Member Fahey**

**Title:** RESOLUTION ADOPTING COMMUNITY CHOICE AGGREGATION PROGRAM EDUCATION AND OUTREACH PLAN AND CUSTOMER OPT-OUT LETTER

**Purpose:** To approve the opt-out letter that must be approved by the State and submitted to the State with Local Law B of 2020 upon its passage; to prove to the State that the City fulfilled the 60-day minimum period of education and used multiple methods to reach constituents.

**Summary:** Enables the aggregation of energy supply needs of both the City of Albany and other Capital Region residents and small commercial businesses, and negotiating energy supply contracts with Energy Service Companies (“ESCOs”) to obtain stable, lower-cost energy prices, as well as environmental benefits and/or a community-based solution to meeting our collective energy needs.

**Justification:** New York State Public Service Commission (“NYSPSC”), on April 21, 2016, adopted an Order authorizing cities, towns and villages within the State to create Community Choice Aggregation Programs, by themselves or in concert with other municipalities (hereinafter “NYSPSC Order Authorizing CCAs”), and/or to retain a CCA Administrator to implement the program and negotiate ESAs.

**Fiscal Impact(s):** To be determined.