

A regular meeting of the Hornell Common Council was held on Monday, October 9, 2017, at 7 p.m. in Council Chambers at 82 Main St., Hornell, N.Y.

PRESENT: Shawn D. Hogan Mayor; Council members Ponticello, Brown, McKay, McCumiskey, Cleveland, Lehman, Bassage, Buckley and Carbone; City Attorney Joe Pelych, Stenographer Karen Schu and City Clerk Barbara Perrott.

ALSO PRESENT: Mitch Cornish, Liz Benedict, John Lewis, City Chamberlain Michele Smith and 1 high school student.

ABSENT: Council member Foreman

INVOCATION: Pastor Alan Bliss from the Free Methodist Church

PLEDGE TO THE FLAG: Mayor Shawn D. Hogan

By: Buckley/Lehman

RESOLVED, that the minutes of the Common Council of September 11, 2017 be approved as read.

Carried – 9

Absent – 1 (Foreman)

By: McCumiskey/Brown

RESOLVED, that the Reports of Officers be and hereby are approved and placed on file.

REPORTS FILED:

BPS Minutes – 8/10/17; Project Summary Project – 9/15/17; Police – 8/2017; EDLP Summaries – 9/2017; Codes – 8/2017; Housing Rehab Summary – 9/2017; Codes Log – 8/2017; City Clerk – 9/2017; Fire & Ambulance – 8/2017; General Fund Exp. – 9/2017; BPW Minutes – 8/2017; Water Fund Exp. – 9/2017; DPW & Sewer – 8/2017; General Fund Rev. – 9/2017; WTP – 8/2017; Water Fund Rev. – 9/2017; WPCP – 8/2017; Humane Society – 9/2017

Carried – 9

Absent – 1 (Foreman)

By: Buckley/Lehman

RESOLVED, that the Reports of Committees be accepted and placed on file.

Carried – 9

Absent – 1 (Foreman)

COMMITTEE REPORTS:

AUDIT COMMITTEE

October 6, 2017

To the Honorable Shawn D. Hogan, Mayor

And

Members of the Common Council

Ladies and Gentlemen:

Bills were audited and approved by Audit Committee Members Jeff Brown, Fred Lehman, Joseph McKay and Audit Committee Chairman John Carbone.

Bills audited and approved:

Common Council	\$304,503.34
CD	\$ 36,704.88
Payrolls	<u>\$ 82,601.66</u>
TOTAL	\$423,809.88

Respectfully submitted,

John Carbone, Chairman
Audit Committee

RESOLUTIONS:

By: Carbone/Buckley

HN-17-63 – Local Law #4 of 2017 – Community Choice Aggregation Program

A Local Law to add a section to the General Law of the City of Hornell, 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 Hornell as follows:

Section 1. Purpose and Intent

It is the intent of the City of Hornell 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 Hornell and to adopt certain provisions relating to the creation and implementation of the CCA Program.

Section 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 Hornell 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 Hornell authorizes the creation of an opt-out CCA Program pursuant to rules of the NYSPSC in this community for the provision of electric 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. 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. 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; 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.

MUNICIPALITY: Reference to these terms throughout this Local Law indicate the City of Hornell, 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. For purposes of this Local Law, the term Utility will refer to NYSEG.

Section 5. Establishing Community Choice Aggregation

The City of Hornell hereby establishes a CCA Program for aggregation of electric 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. Provisions for Implementing CCA Program

Part A. Implementation Plan

1. The City of Hornell, 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 Hornell 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 Hornell's residents. Therefore, prior to or in conjunction with the enactment of this Local Law, and thereafter from time to time, the City of Hornell, 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 Hornell 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 Hornell 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 City of Hornell letterhead, in official City of Hornell 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 Hornell.

Part B. Public Outreach and Education

1. The City of Hornell, 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 Hornell 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 Hornell, 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 Hornell, 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 NYSEG 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. CCA Administrator

Part A. CCA Administration Agreement

The City of Hornell 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 Hornell'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 Hornell 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 Hornell Common Council, report to the City of Hornell regarding customer service matters.

Section 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 Hornell, 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 Hornell CCA Program. This shall include, but not be limited to, compliance with any reporting requirements related to the CCA Program.

Section 9. Review and/or Dissolution of the CCA Program

A. The City of Hornell 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 Hornell 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 NYSEG, 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. 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. Liability

Nothing in this Local Law shall be read to create liability on the part of the City of Hornell 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 Hornell will not assume the role of ESCO or utility in the sale or delivery of energy services.

Section 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. Effective Date

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

Carried – 9

Absent – 1 (Foreman)

By: McCumiskey/Cleveland

HN-17-64 – Community Choice Aggregation Program Education/Outreach Plan & Opt-Out Letter

WHEREAS, the City of Hornell 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 stable, lower-cost energy prices, as well as environmental benefits and/or a community-based solution to meeting our collective energy needs; and

WHEREAS, the City of Hornell 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 City of Hornell 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 Common Council of the City of Hornell 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.

Carried – 9

Absent – 1 (Foreman)

By: Ponticello/Brown

HN-17-65 – Oppose Elimination of SALT Deduction

WHEREAS Congress is giving serious consideration to eliminating the federal income tax deduction for state and local taxes;

WHEREAS this deduction, which has been in place for more than 100 years, is heavily utilized by residents of our community and our State;

WHEREAS New York residents already pay more into the federal treasury than the federal government returns to New York;

WHEREAS the state and local tax deduction is a fundamental principle of federalism and without it our residents would be faced with double taxation as they would be forced to pay federal income taxes on the taxes they pay to state and local governments;

WHEREAS this federal cost shift onto local governments would place extreme pressure on municipal budgets, including diminished revenue for essential local government investments, including public safety and public infrastructure; and

WHEREAS increased federal taxation and reduced municipal services will harm our local housing market, decrease home values and erode our local tax base,

NOW THEREFORE BE IT RESOLVED THAT the City of Hornell expresses its strong opposition to any tax reform proposal that would eliminate the State and Local Tax (SALT) Deduction and urges Representative [insert name of Member of Congress] to join us in publicly opposing any such proposal.

Carried – 9

Absent – 1 (Foreman)

By: Cleveland/Brown

HN-17-66 – Budget Adjustment

WHEREAS, a transfer of funds is necessary to reflect a budget adjustment,

NOW, THEREFORE BE IT RESOLVED by the Common Council of the City of Hornell, NY that the 2017-2018 City of Hornell budget now reflects the following adjustments:

Increase Fire Department Equipment (A3410.2) and Federal Aid – Public Safety (A4389) by \$629,055 due to two (2) grants by FEMA for fire hose and portable radios.

Carried – 9

Absent – 1 (Foreman)

By: Cleveland/Brown

HN-17-67 – Set Trick or Treat Hours

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Hornell hereby sets trick-or-treating hours for 6-8 p.m. on the night of Tuesday, October 31, 2017.

Carried – 9

Absent – 1 (Foreman)

Claims:

By: Buckley/Carbone

NOW, THEREFORE, BE IT RESOLVED, that claims in the amount of \$423,809.88, as audited by the Audit Committee of the Common Council of the City of Hornell, be approved and authorized paid as audited.

Common Council	\$304,503.34
CD	\$ 36,704.88
Payrolls	<u>\$ 82,601.66</u>
TOTAL	\$423,809.88

Carried – 9

Absent – 1 (Foreman)

By: Buckley/Cleveland

Resolved, that there being no further business the Common Council adjourn at 7:42 p.m.

Carried – 9

Absent – 1 (Foreman)

Shawn D. Hogan
Mayor

Barbara M. Perrott
City Clerk