

ORDINANCE NO. _____

An Ordinance Adopting a New Chapter 18.30 of the Kitsap County Code, "C-PACER Program," to Establish a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program in Kitsap County.

Whereas, ongoing climate change poses a threat to Kitsap County's natural environment and economic security, and to public health and safety; and

Whereas, to address climate change, Puget Sound Regional Council's Vision 2050 goal for the Puget Sound region is to reduce GHG emissions to 80% below 1990 levels by 2050; and

Whereas, in alignment with the state, Kitsap County's Comprehensive Plan's Environment and Climate Change Elements strives to improve air quality and reduce carbon emissions countywide; and

Whereas, climate change fueled by GHG emissions increases the frequency of severe weather events and resulting wildfires and flooding, necessitating resiliency improvements in some built environments; and

Whereas, lower-cost financing of higher-efficiency electrified systems and resiliency improvements will make efficiency upgrades and building retrofits more accessible and affordable for building owners and will increase local green job opportunities; and

Whereas, Washington State has authorized counties to adopt C-PACER programs under which lower-cost financing is repaid through voluntary assessments on property; and

Whereas, the 2024 Comprehensive Plan identifies the adoption of a C-PACER program as a strategy to reduce GHG and meet targets for reducing emissions,

NOW, THEREFORE BE IT ORDAINED, the Kitsap County Board of Commissioners adopts a NEW CHAPTER in Kitsap County Code Title 18.30 subject to the following findings

Section 1. The Board finds that facilitating financing for qualified C-PACER projects, repaid by voluntary assessments on benefited property, is in the public interest for safety, health, and other common good reasons.

Section 2. The Board hereby establishes the Kitsap County Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program, available throughout Kitsap County, and adopts a new Chapter 18.30 of the Kitsap County Code, "C-PACER Program," as shown in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 3. As required by RCW 36.165.040, the Board will hold a public hearing on this proposed Ordinance. The public hearing will be held at the date and time provided in the Commissioner's regularly published Commissioner's Meeting Agenda.

DATED this ____ of _____.

KITSAP COUNTY BOARD OF COMMISSIONERS

Katherine T. Walters, Chair

Charlotte Garrido, Commissioner

Dana Daniels, Clerk of the Board

Christine Rolfes, Commissioner

Approved as to form:

Deputy Prosecuting Attorney

DRAFT

"NEW CHAPTER"

Chapter 18.30

C-PACER PROGRAM

Sections:

- 18.30.010 Establishment.**
- 18.30.020 Definitions.**
- 18.30.030 Application Process.**
- 18.30.040 Assessment Agreement.**
- 18.30.050 Assignment.**
- 18.30.060 Financing Arrangements.**
- 18.30.070 Capital Provider Requirements.**
- 18.30.080 Certification of Professionals.**
- 18.30.090 No Liability.**
- 18.30.100 Program Guidebook; Form Documents; Open Application Date; Reporting Requirements.**
- 18.30.110 Severability.**

18.30.010 Establishment.

- A. There is hereby established a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program (the Program) for Eligible Property located in Kitsap County. The Program will be available to Owners of Eligible Property working with a Capital Provider.
- B. The Program is enacted using the powers granted Kitsap County by the Washington State Constitution and, without limiting the foregoing, as authorized under Chapter 36.165 of the Revised Code of Washington (the C-PACER Act). Pursuant to these authorities, the Program is intended to be co-extensive with the C-PACER Act while including additional requirements for the efficient operation of the Program and to ensure that clean energy and resiliency projects under the Program provide meaningful benefits for the common good of Kitsap County and its citizens.
- C. No services may be offered or advertised through the Program, including marketing and participant education services, except separately itemized services offered upon impartial terms by qualified third-party providers.
- D. The Program will be administered by Kitsap County Department of Community Development (Department), which is hereby granted and authorized to exercise all powers necessary and appropriate to administer the Program consistent with its purposes. The Department may arrange for the Program to be wholly or partially administered by any public or private entity or organization, provided that the Department must retain final authority over the content of the Program Guidebook and Program forms.
- E. The Department may charge an application fee consistent with the fee schedule. The Department may also determine and charge an administration fee to offset costs of establishing and administering the Program of up to one percent of the total costs of the Qualified Project. Application and administration fees collected must be deposited to the Department for administration of the Program.

18.30.020 Definitions.

- A. "Assessment Agreement" means the form agreement approved by the Department and described in KCC 18.30.040.
- B. "Assignment" means the form assignment agreement approved by the Department and described in KCC 18.30.050.
- C. "C-PACER Assessment" means an annual assessment on Eligible Property imposed by Kitsap County under an Assessment Agreement.
- D. "C-PACER Financing Arrangement" means the totality of the agreement between a Capital Provider and the Owner of Eligible Property for the purpose of financing Qualified Improvements and Eligible Costs.
- E. "C-PACER Lien" means the lien recorded against Eligible Property by Kitsap County to secure payment of a C-PACER assessment and related amounts under the Financing Arrangement.
- F. "Department" means the Department of Community Development.
- G. "Eligible Costs" means the cost of materials and labor necessary for or incident to the installation or modification of a Qualified Improvement, including the pro-rata costs, or specific costs where appropriate, of permit and inspection fees, project development and engineering fees, program application and administration fees, third-party review and verification fees, lender's fees, capitalized interest, interest reserves, and escrow for prepaid property taxes and insurance. Total Eligible Costs for new construction may not exceed 30 percent of total costs of the Qualified Project. Eligible Costs do not include costs related to land acquisition or environmental or geological testing or remediation.
- H. "Eligible Property" means privately-owned commercial, industrial, or agricultural real property, or multifamily residential real property with five or more dwelling units, located in Kitsap County.
- I. "Greenhouse gas" has the same meaning as in RCW 70A.45.010.
- J. "Fossil fuel" has the same meaning as in RCW 19.405.020.
- K. "Owner" means the fee simple owner of Eligible Property and includes any group of persons or entities who together own Eligible Property in fee simple.
- L. "Program" means the Kitsap County C-PACER program established under this Chapter.
- M. "Program Administrator" means the Department or an organization contracting with the Department for the administration of the Program.
- N. "Program Guidebook" means a comprehensive document detailing the Program requirements, and any additional guidelines, specifications, underwriting, or approval criteria, as well as any standard application forms, determined by the Department to be necessary or appropriate for the administration of the Program and consistent with this Chapter.

- O. "Capital Provider" means any private entity, their designees, successors, or assigns, that provides funding under a C-PACER Financing Arrangement to Owners of Eligible Property on impartial terms and meets all requirements of KCC 18.30.070 and the Program Guidebook.
- P. "Qualified Improvement" means a permanent improvement affixed to real property, including an efficiency or safety technology, product, device, activity, or an interacting group of any of them, installed or constructed on or after January 1, 2025, with the intended purpose of:
1. Reducing, or supporting or allowing the reduction of, the consumption or demand of energy or fossil fuels through, as nonexclusive examples, energy efficiency improvements, electrification improvements, improvements that reduce greenhouse gas emissions, installation of electric vehicle charging infrastructure, building design or envelope improvements, or the replacement of fossil fuel-burning equipment with clean-energy alternatives;
 2. Supporting the on-site production of clean, renewable energy, including electrical and thermal;
 3. Reducing, or supporting or allowing a reduction in, water consumption or demand;
 4. Reducing or eliminating lead in water which may be used for drinking or cooking; or
 5. Increasing or improving resilience through, as nonexclusive examples, seismic retrofits, energy storage systems or microgrids, or improvements for flood mitigation, stormwater management, or wildfire and wind resistance.
- Q. "Qualified Improvement" does not include the installation, maintenance, or repair of equipment that burns fossil fuel or an improvement that merely replaces an existing improvement without providing any additional public benefit.
- R. "Qualified Project" means a project approved by the Program Administrator involving the purchase and installation or modification of a Qualified Improvement, including new construction or the adaptive reuse of Eligible Property, that provides a Significant Public Benefit related to the intended purpose of Qualified Improvement.
- S. "Significant Public Benefit" for existing structures means that the Qualified Improvement, or the resulting performance of the system or structure as a whole if the Qualified Improvement cannot be independently evaluated:
1. Meets or exceeds the requirements of the Kitsap County Energy Code or, if more stringent, the Washington State Energy Code;
 2. Meets or exceeds energy performance standards in Chapter 194-50 WAC if the structure is a building covered by that Chapter;
 3. Is reasonably expected to reduce the annual amount of energy purchased from a utility, or the amount of greenhouse gas emitted, by 20 percent, including through on-site production and use of clean, renewable energy;
 4. Is the replacement of existing fossil-fuel burning space or water-heating equipment with electric options, which may include the replacement of related system elements;

5. Meets or exceeds the requirements for water efficiency under Kitsap County building codes or, if more stringent, Washington State building codes;
 6. Meets or exceeds safe drinking water standards, as set by the Washington State Department of Health, for lead contamination; or
 7. Meets or exceeds seismic, flood, or other building resiliency requirements under Kitsap County building codes or, if more stringent, Washington State building codes.
- T. "Significant Public Benefit" for new construction means that the Qualified Improvement, or the resulting performance of the system or the new structure as a whole if the Qualified Improvement cannot be independently evaluated:
1. Exceeds the requirements of the Kitsap County Energy Code or, if more stringent, the Washington State Energy Code;
 2. Is reasonably expected to reduce the annual amount of energy that would otherwise be expected to be used or purchased from a utility, or the amount of greenhouse gas emitted, by 30 percent, including on-site production and use of clean, renewable energy;
 3. Exceeds the requirements for water efficiency under Kitsap County building codes or, if more stringent, Washington State building codes;
 4. Exceeds safe drinking water standards set by the Washington State Department of Health for lead contamination; or
 5. Exceeds seismic, flood, or other building resiliency requirements under Kitsap County building codes or, if more stringent, Washington State building codes.

18.30.030 Application Process.

- A. The Owner of Eligible Property, or its agent, and a Capital Provider may jointly submit a project application to the Department for review. The holder of a ground lease may apply if appointed by the Owner as an agent for purposes of participating in the Program and encumbering the Eligible Property with a C-PACER Lien. The appointment must include an acknowledgment that the C-PACER Lien takes precedence over all other liens or encumbrances, except a lien for taxes imposed by the state, a local government, or a junior taxing district.
- B. The project application must include certification by a licensed and qualified professional engineer, or other professional identified in KCC 18.30.080, that the Qualified Improvements, either individually or in combination with other Qualified Improvements included in the Qualified Project, are expected to provide a related Significant Public Benefit, and that the term of the proposed C-PACER Financing does not exceed the weighted average effective useful life of the proposed Qualified Improvements. Significant Public Benefit may be determined by any reasonable means, including by comparisons of actual or estimated utility costs or greenhouse gas emissions.
- C. The project application must include the Owner's declaration that:
 1. The Qualified Improvements are to be permanently affixed;

2. Upon completion of the Qualified Project, the Owner will provide the Program with written notice that the project is properly completed and is operating as intended;
 3. The Capital Provider's acknowledgement that it will be responsible for the billing and collection of the annual C-PACER Assessment and for the enforcement and foreclosure of the C-PACER Lien, including judgment sale requirements; and
 4. Any additional items appropriate for administrative purposes specified in the Program Guidebook.
- D. As soon as practicable after receipt, the Program Administrator must inform the applicants whether the project application has been approved or denied.
1. If a project application is complete, the Program Administrator will approve the application.
 2. If the project application is denied, the Program Administrator will identify the reasons for denial. The applicants must have an opportunity to correct or supplement the project application for resubmission.
 3. If a project application is finally denied, the Owner and Capital Provider may appeal the denial in an adjudicative proceeding subject to the applicable provisions of chapter 34.05 RCW and filed with the Kitsap County Consolidated Board of Appeals under KCC 14.04 Article 15.
- E. The project application must include the written consent for the Eligible Property to participate in the Program from the holders of all liens, mortgages, or other security interests in the Eligible Property, and in addition, if the Eligible Property is a multifamily residential property with five or more dwelling units, from all holders of any affordable housing covenants, restrictions, or regulatory agreements burdening the Eligible Property. The consent must include the subordination of the holder's interest and acknowledgment that the C-PACER Lien takes precedence over all other liens or encumbrances, except a lien for taxes imposed by the state, a local government, or a junior taxing district.
- F. If a project application is approved, the Owner and Capital Provider must submit the following additional materials to the Program Administrator:
1. A copy of the C-PACER Financing Arrangement meeting the requirements of KCC 18.30.060.
 2. An Assessment Agreement, suitable for recording, prepared by the applicants and signed by the Owner and Capital Provider.
 3. A notice of the assessment and the C-PACER Lien, suitable for recording, that has been prepared by the applicants and that includes language acknowledging that liens for taxes imposed by the state, a local government, or a junior taxing district are superior to and take precedence over the C-PACER Lien.
 4. The Assignment, suitable for recording, prepared by the applicants and signed by the Capital Provider and the Owner.
 5. A current title report suitable for title insurance purposes.

6. The Capital Provider's request for Kitsap County to either record the Assessment Agreement, C-PACER Lien, and Assignment, or provide some or all of the original executed documents to an escrow agent for recording.
- G. Within five business days of submission of all additional materials, or at a later date requested by the applicants, Kitsap County will sign the Assessment Agreement and the Assignment, and shall either record the Assessment Agreement, C-PACER Lien, and Assignment, or provide original executed documents to an escrow agent for recording, as requested by the Capital Provider.

18.30.040 Assessment Agreement.

The Assessment Agreement must include the Owner's:

- A. Request for an annual assessment on the Eligible Property and consent for Kitsap County to record a C-PACER Lien to secure payment of the assessment; and
- B. Authorization for Kitsap County to delegate all duties and assign all rights under the Assessment Agreement to the Capital Provider; and
- C. Acknowledgment that approval of the C-PACER application, participation in the C-PACER assessment, and recording of the C-PACER Lien do not constitute an endorsement by Kitsap County of the Qualified Improvements, Qualified Project, or the C-PACER Financing Arrangement.

18.30.050 Assignment.

The Assignment must assign and delegate Kitsap County's rights and duties under the Assessment agreement and the C-PACER Lien to the Capital Provider. The Assignment must include all of the provisions of this subsection, stated substantially as follows:

- A. Kitsap County delegates, and the Capital Provider assumes, all obligations, responsibilities, and duties of Kitsap County or its officers, to the extent permitted by law, for billing, collection, and enforcement of annual Assessment payments and the enforcement and foreclosure of the C-PACER Lien.
- B. Kitsap County has no obligation to defend the C-PACER Assessment or C-PACER Lien against any claim by the holder of any other security interest in the Eligible Property.
- C. As provided in the C-PACER Act, billing and collection of C-PACER assessments and delinquent payments and enforcement of the C-PACER Lien are the responsibility of the Capital Provider. The Capital Provider assumes all such contractual and statutory obligations. Kitsap County has no obligation to prosecute the foreclosure of a C-PACER Lien on behalf of the Capital Provider.
- D. The Capital Provider agrees to indemnify and hold Kitsap County harmless for any cost, expense, loss, or damages arising out of the imposition, assignment, recording, enforcement, and foreclosure upon the C-PACER Lien.

18.30.060 Financing Arrangements.

The financial underwriting, evaluation, and terms of C-PACER Financing Arrangement are the responsibility of the Capital Provider. Notwithstanding the foregoing, a C-PACER Financing

Arrangement may not include a security interest of any kind in the Eligible Property, a Qualified Improvement, or the Qualified Project, other than the C-PACER Lien, unless subordinate to the C-PACER Lien.

18.30.070 Capital Provider Requirements.

A Capital Provider will be approved to participate in the Program if it is any one of the following:

- A. Any entity that is currently registered as a C-PACE or C-PACER Capital Provider in at least two states or at least two other counties in Washington;
- B. A federal or state-chartered bank or credit union;
- C. Any entity approved to participate in a C-PACER program by the Washington State Department of Commerce; or
- D. An entity otherwise approved by the Department or Program Administrator as provided in the Program Guidebook.

18.30.080 Certification of Professionals.

The individual or firm providing any certification required in conjunction with a C-PACER application must be an energy, sustainability, or green building, water, or resiliency professional certified by one of the following organizations:

- A. American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE);
- B. Association of Energy Engineers;
- C. Building Performance Institute; or
- D. North American Board of Certified Energy Practitioners.

Additional organizations or professional qualifications may be approved by the Department or Program Administrator as provided in the Program Guidebook.

18.30.090 No Liability.

- A. Kitsap County shall have no liability for and may not enforce any privately-financed debt under this Chapter, nor use public funds to fund or repay any loan under the Program. No Section under this Chapter may be interpreted to pledge, offer, or encumber the full faith and credit of Kitsap County. No local government located within, or partially within, Kitsap County may pledge, offer, or encumber its full faith and credit for any amount through the Program.
- B. No employee or elected official of Kitsap County, including members of the Kitsap County Board of Commissioners, the Administrator, or the Assessor Treasurer, shall have any personal liability as a result of exercising any rights or responsibilities under this Chapter.

18.30.100 Program Guidebook; Form Documents; Open Application Date; Reporting Requirements.

- A. The Program Administrator must establish form documents for use with the Program,

subject to approval by the Department, and shall work with Capital Providers and other interested parties to develop and publish a Program Guidebook meeting the requirements of RCW 36.165.020(3). The Department may amend the Program Guidebook as necessary for the efficient administration of this Chapter through the same interested parties process. In accordance with RCW 36.165.020, the Program Guidebook need not be completed prior to accepting and approving Program applications, so long as the Program complies with the provisions of this Chapter and the C-PACER Act.

- B. The form documents, draft Program Guidebook, and Program outline must be submitted in a report to the Board of County Commissioners no later than 270 days after the effective date of this Chapter. The report should include sufficient program details to allow Owners and Capital Providers to evaluate whether proposed projects are likely to qualify.
- C. The Program Administrator must begin accepting project applications as soon as possible thereafter, but no later than 300 days from the effective date of this Chapter.

15.10.110 Severability.

If any provision of this Chapter or its application to any person or circumstance is held invalid or unenforceable, the remainder of the Chapter or the application of its provisions to other persons or circumstances shall not be affected.