



Snohomish County Council

Committee: Conservation, Sustainability, and Recreation

Analyst: Nicole Gorle

ECAF: 2021-0977

Ordinance: 21-097

Date: Nov. 29, 2021

Consideration:

Add a new section to Snohomish County Code, SCC 2.900, establishing a Commercial Property and Clean Energy and Resiliency Program in Snohomish County.

Background:

History

A C-PACER program provides a financial tool for commercial property owners to obtain low-cost financing for energy efficiency and resiliency upgrades that carries with the life of the property instead of the property owner.

This concept, while not new, came from a local government in Berkley, California. The Mayor was looking for a way to provide financing to residents for rooftop solar and passed an ordinance allowing financing for this through a lien on the property, similar to how garbage collections and sewers are financed there.¹ Today, according to PaceNation, 37 out of 50 US States have enacted some sort of PACE enabling legislation.²

On June 11, 2020, SSHB 2405 went into effect creating a mechanism for the state and local jurisdictions to create a Commercial Property Clean Energy and Resiliency Program, herein C-PACER.

On July 19, 2021, Snohomish County Council passed Motion 21-242 establishing a workgroup comprised of the treasurer, office of energy and sustainability, executive, and council staff with the directive to create an ordinance and program material to implement a C-PACER program in Snohomish County. The goal for having this material submitted to council for consideration was September 7th.

On September 28, 2021, an update was provided to Council on the workgroups progress with two main points:

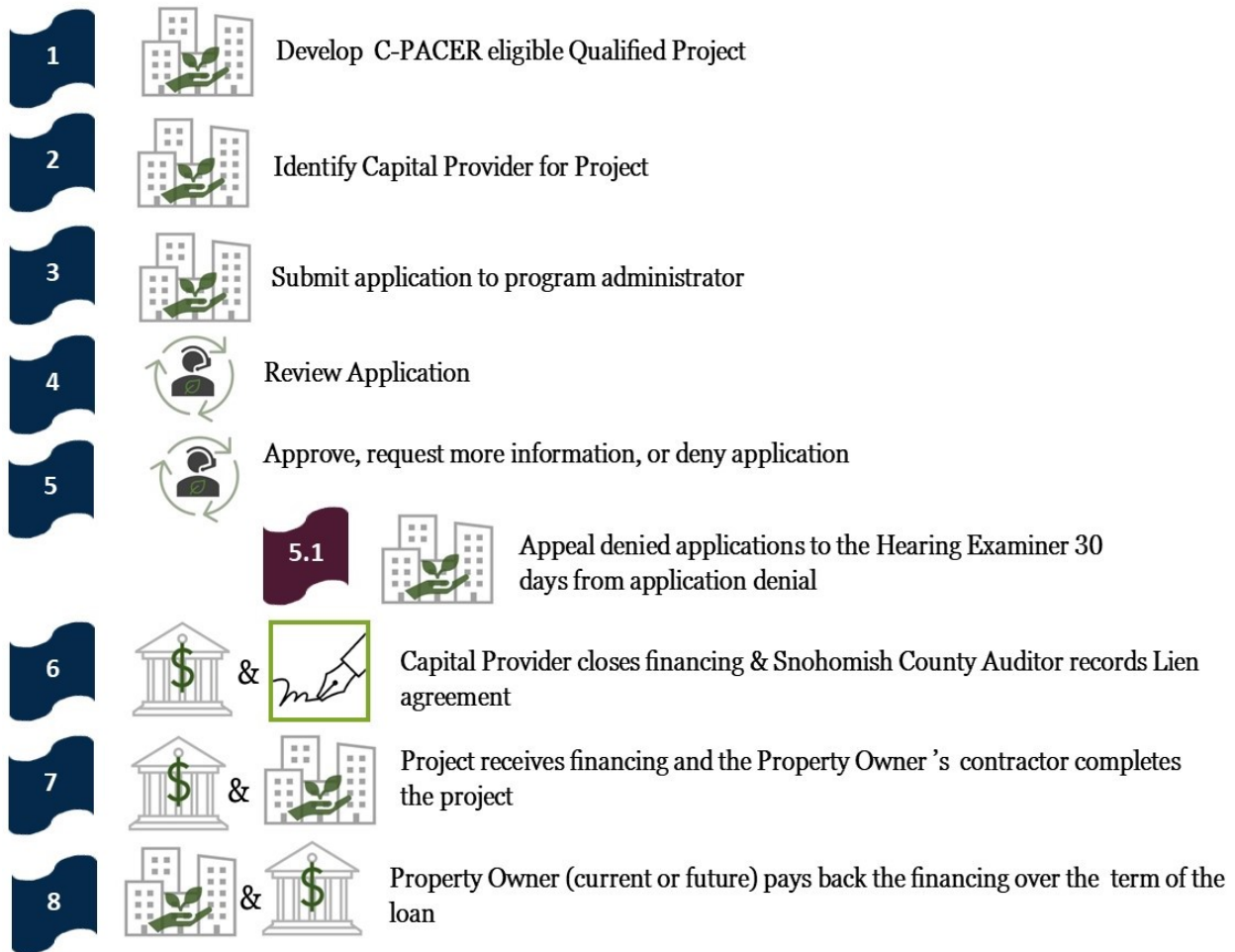
1. The workgroup decided to go with a more simplified version of the ordinance instead of codifying everything that is in the program guidebook. If adopted, the program guidebook will be developed after its adopted and come back to Council for approval via motion.
2. Changed the goal for having the ordinance before council from September 7th to having it adopted by the end of the year.

This Ordinance is the final product of the workgroup.

¹ <https://greenworkslending.com/growth-of-the-c-pace-industry/>

² <https://www.pacenation.org/pace-programs/>

How It Works



Property Owner



Program Administrator



Capital Provider



Auditor

Current Proposal:

Overview

The Ordinance before you would add Title 2.900 to Snohomish County Code – Commercial Property Assessed Clean Energy and Resiliency Program (C-PACER).

If enacted, the Department of Conservation and Natural Resources would have one year to develop the program guidebook and associated documents, submit to council for approval via motion, and begin accepting applications.

Once the program is up and running, the County's role is:

1. Establish an application fee that makes the program cost neutral to the county (DCNR/Executive);

2. Review and approve applications based on completion only, essentially go through a check list and make sure all required documents are there and filled out completely (DCNR);
3. Hear appeals on denied program applications. The hearing examiner may apply their standard fee to each filing (Office of Hearings Examiner); and
4. Record the lien against the property (Auditor³).

The enforcement and all other aspects of the program, and financing, is not the county's responsibility.

Staff

The amount of staff resources needed to operate the county's roll in this program will be driven by demand/the number of applications received annually. King, Thurston, and Whatcom Counties have indicated that they are using existing FTE's to administer the program, at least to start. The time these FTEs spend working on C-PACER applications will be accounted for and covered by the program application fee.

The Ordinance before you also provides the County the option to utilize a third party administrator to serve as the program administrator (King County has this as well).

Ordinance Summary by Section

SCC 2.900.010 – Program established

- Establishes the program and provides a high-level overview of what it is.
- Program is available in incorporated and unincorporated Snohomish County.
- Per RCW, applications will start being accepted no later than one-year after adoption of the ordinance.

SCC 2.900.020 – Program administrator

- Program administrator is the Department of Conservation and Natural Resources or a third-party administrator (TPA). Council approval is required for the TPA.

SCC 2.900.030 – C-PACER program guide

- Directs the Department of Conservation and Natural Resources to develop the program guidebook and other necessary materials for program implementation.
- Provides five goals that the guidebook must align with.
- Requires the guidebook and all other relative documents to come before council for approval prior to implementation.

SCC 2.900.040 – Lien precedence

- C-PACER lien will take precedence over all other liens except for taxes in RCW 36.165.060.
- Requires the capital provider obtain written consent from all lien holders on a property prior to entering into a C-PACER financing agreement and outlines the process.

³ <https://snohomishcountywa.gov/278/Recording>

- Exempts the County from having any duty or obligation to obtain a title report or otherwise identify any lienholder affected by a C-PACER lien.

SCC 2.900.050 – C-PACER agreement

- Outlines the requirements to be included in a C-PACER agreement between the capital provider and the County.

SCC 2.900.060 – Recording

- Outlines the recording requirements for a C-PACER lien.

SCC 2.900.070 – Fee

- Authorizes the Executive to establish a fee that achieves cost recovery for program implementation and operation. The fee may be adjusted as necessary.

SCC 2.900.080 – Appeals

- Outlines the process for appealing the denial of a C-PACER application, whether the Department of Conservation and Natural Resources is the program administrator or a TPA is used.

SCC 2.900.090 – Reporting

- Requires a report to Council two years after the first application is accepted that includes the number of applications received/processed; value of project applications received and processed; and estimated energy and water savings and renewable energy deployed and the number of resilience measures financed.

SCC 2.900.100 – Liability

- Statement that the county, executive, and any employees may not be held liable as a result of any actions taken under RCW 36.165.

SCC 2.900.110 – Limitations on county actions

- Clarifies that the county can't enforce the lien; use public funds to repay liens; make entering into a C-PACER lien a contingency for receiving a county permit, license, or other authorization; or compel someone to enter into a contract to repay the financing of a qualified project.

SCC 2.900.120 – Definitions

- Adds definitions to various key words and phrases used throughout the ordinance.

2021 Budget: None

While there was no direct fiscal impact in 2021, significant staff time was used in the creation of this ordinance and may be accounted for in the program implementation cost/development of the application fee.

Future Budget Impact:

\$100,000 of general fund dollars was included in the 2022 budget to assist with the development of program materials and implementation of the program. There will be a cost in the outyears, but that is anticipated to be offset with application fees as the intent is that this program is cost neutral to counties through the collection of the application fee.⁴

Handling: Expedite – 12/31/21

Approved-as-to-form: Yes

Risk Management: N/A

Executive Recommendation: N/A

Attachment:

Attachment #1 – Next Steps

Attachment #2 – List of program documents and descriptions

Amendments: None

Request: Set time and date for a public hearing on December 15th at 10:30 a.m.

⁴ 36.165.030(2) RCW - The program may charge an application fee to cover the costs of establishing and conducting the application review process.

C-PACER // Next Steps

(if ordinance is adopted)

1. *DCNR/Stakeholder Workgroup develop program guidebook and associated documents. This work will be led by DCNR.

A stakeholder workgroup will be formed to assist with the guidebook development as required by 36.165.020(1)(b)(iv) RCW.

2. DCNR will finalize the guidebook and associated documents.
3. *DCNR will submit a Motion to Council, as required in this ordinance, that contains the program guidebook and associated documents for review and approval by Council.

There will be an opportunity for public comment on the Motion/program documents when it comes up to Council for consideration.

4. Begin accepting applications .

Per 36.165.030(5), the County must begin accepting applications within one year of establishing a C-PACER program. It is unclear if this language means one year from adoption or one year from the ordinance going into effect.

Either way, if the ordinance is adopted on December 15, 2021, the deadline to begin accepting applications would be the second half of December 2022 or first half of January 2023 (the Council has five working days to get the adopted ordinance to the Executive, the Executive then has 10 working days to either sign or veto the ordinance, and then the ordinance will go into effect 10 days after it has been signed by the Executive – Snohomish County Charter 2.110)

**Public/Stakeholder Involvement Opportunities*

The below is a list of documents relating to the C-PACER program and necessary for implementation. Council can expect to see something similar to this submitted for review and approval via motion within one year of adoption of this ordinance.

- **Program Guidebook**
- **Application**
- **Project Application Checklist**

This is the document that will be used by the DCNR staff person reviewing the application for completion.
- **Lien Holder Consent to C-PACER Assessment and lien**

Because a C-PACER lien takes precedent over all other liens (except those outlined in RCW), in order to obtain C-PACER financing the property owner must obtain consent from all other lien holders on the property for their participation.
- **Certification of Qualified Improvements**

This document will be filled out by either a Professional Engineer certified in Washington State or an individual employed by an accredited firm listed on the form. The individual who fills out this form is responsible for determining if the project being proposed meets the definition of “qualified improvement” under RCW and the program guidebook.
- **Certificate of Capital Provider Qualifications**

Asks questions about the capital providers qualifications:

 - 1) are they registered to provide C-PACE loans in at least two other states;*
 - 2) have they financed at least one C-PACE project in another jurisdiction;*
 - 3) are they a federally chartered bank, thrift institution, or credit union;*
 - 4) are they a privately owned entity wholly located in Washington State, and provide additional detail as to why they should be qualified to finance a C-PACER lien.*
- **Assessment Agreement**

This agreement is between the County and the property owner whereby the property owner agrees to have the County place a lien on the property for repayment of financing provided by a capital provider for a qualified improvement under the program.
- **Notice of Assessment Interest and C-PACER Lien**

This document is used for recording purposes. It states that a lien is being placed on the property and provides the required information prescribed in RCW (owner name, legal description of the property, parcel number, etc.)
- **Assignment of Assessment Interest and C-PACER Lien**

Agreement between County and Capital Provider that essentially assigns the assessment agreement and notice of assessment interest and C-PACER Lien to the Capital Provider. This agreement states that the County is not responsible for enforcement of the program and addresses liability. In Snohomish County’s ordinance, this is called the C-PACER agreement and specific items are listed for inclusion in the agreement to minimize risk to the County.
- **Certificate of C-PACER Improvements Completion**

Document stating that the C-PACER improvements have been completed.