

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

NOTICE OF ENACTMENT

NOTICE IS HEREBY GIVEN, that on December 15, 2021, the Snohomish County Council approved Ordinance 21-097, which shall be effective December 26, 2021. A summary is as follows:

ORDINANCE NO. 21-097

AN ORDINANCE CREATING A COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY (C-PACER) PROGRAM IN SNOHOMISH COUNTY

Section 1. A new chapter is added to Title 2.900 of the Snohomish County Code to read:

COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY PROGRAM (C-PACER)

Sections:

2.900.010	Program established.
2.900.020	Program administrator.
2.900.030	C-PACER program guide.
2.900.040	Lien precedence.
2.900.050	Assessment agreement.
2.900.060	Recording.
2.900.070	Fee.
2.900.080	Appeals.
2.900.090	Reporting.
2.900.100	Liability.
2.900.110	Limitations on county actions.
2.900.120	Definitions.

SCC 2.900.010 Program established.

The executive shall establish a commercial property assessed clean energy and resiliency program and make it available to eligible properties within incorporated and unincorporated Snohomish County. The program shall comply with the provisions outlined in chapter 36.165 RCW and will allow owners of agricultural, commercial and industrial properties and multifamily residential properties with five or more dwelling units to obtain low-cost, long-term financing for qualified improvements. Qualified projects must be located wholly within the jurisdiction of Snohomish County.

In accordance with RCW 36.165.030, the program shall be established and begin accepting applications no later than one year after the effective date of this ordinance.

SCC 2.900.020 Program administrator.

The program shall be administered through the department of conservation and natural resources or through a third-party administrator, subject to county council approval by motion. The program administrator shall be responsible for ensuring the program complies with chapter 36.165 RCW.

SCC 2.900.030 C-PACER program guide.

The program guide shall be developed by the program administrator consistent with the requirements of RCW 36.165.020 and shall include a definition of qualified improvement that aligns with the following goals:

- (1) Reduce greenhouse gas emissions;
- (2) Conserve energy, water, and resources and use renewable energy technologies;
- (3) Electrification of HVAC infrastructure;
- (4) Increase resilience for fires and natural hazards; and
- (5) Proactively address impacts climate change.

Prior to initial program implementation, the executive shall submit the guidebook and all documents created in conjunction with the guidebook to the county council by motion for approval.

SCC 2.900.040 Assessment agreement and lien precedence.

The county and the property owner will enter into an assessment agreement by which the property owner whereby the county agrees to place a C-PACER lien on the property to secure the property owner's obligation to repay the financing to the capital provider. The C-PACER lien recorded pursuant to this chapter will take precedence over all other liens except for a lien for taxes as described in RCW 36.165.060.

Before a capital provider may enter into a financing agreement to provide financing of a qualified project to the record owner of any eligible property, the capital provider must obtain written consent from any holder of a lien, mortgage, or security interest in the real property that the property may participate in the program and that the C-PACER lien will take precedence over all other liens except for a lien for taxes as described in RCW 36.165.060. The county may rely on the capital provider's representations as to the identity and existence of any lienholders affected by the C-PACER lien. The county has no duty or obligation to obtain a title report or otherwise determine the identity or existence of any lienholders affected by the C-PACER lien.

Before a capital provider may enter into a financing agreement to provide financing of a qualified project to the record owner of any multifamily residential real property with five or more dwelling units, the capital provider must obtain written consent from any and all holders of affordable housing covenants, restrictions or regulator agreements in the real property that the property may participate in the program and that the C-PACER lien will take precedence over all other liens except for taxes as described in RCW 36.165.060. The county may rely on the capital provider's representations as to the identity and existence of any holders of affordable housing covenants, restrictions or regulator agreements affected by the C-PACER lien. The county has no duty or obligation to obtain a title report or otherwise determine the identity or existence of any holders of affordable housing covenants, restrictions or regulator agreements affected by the C-PACER lien.

SCC 2.900.050 C-PACER agreement.

The capital provider and the county shall enter into a C-PACER agreement prior to the disbursement of any funds from the capital provider to the property owner. All C-PACER agreements shall:

- (1) State that the capital provider is solely responsible for identifying all lienholders on an eligible property and for notifying the county of the identity of the lienholders;
- (2) Include language wherein the capital provider indemnifies the county from any and all claims that may be asserted by a lienholder, known or unknown, on an eligible property;
- (3) State that the capital provider is solely responsible for all enforcement as contemplated in chapter 36.165 RCW; and
- (4) Provide for the recording of a lien as described in SCC 2.900.050.

SCC 2.900.060 Recording.

Financing for qualifying improvements will be repaid to a capital provider and secured by a county lien assigned to a capital provider for all the administrative aspects of billing, collecting, and enforcing the lien.

In accordance with RCW 36.165.050, the executive, or their designee, shall record each lien in the real property records of the county. The recording must include:

- (1) The legal description of the eligible property;
- (2) The assessor's parcel number of the property;
- (3) The grantor's name, which must be the same as the property owner on the assessment agreement;
- (4) The grantee's name, which must be Snohomish County;
- (5) The date on which the lien was created;
- (6) The principal amount of the lien;
- (7) The terms and length of the lien; and
- (8) A copy of the assessment agreement between the county and the property owner.

The executive, or their designee, shall also record the assignment of the lien from the county to the appropriate capital provider.

SCC 2.900.070 Fee.

As authorized in chapter 36.165 RCW, the executive shall establish an application fee that achieves cost recovery for program implementation and operation. The executive may adjust the fee as necessary to comply with this section.

SCC 2.900.080 Appeals.

If the department of conservation and natural resources is acting as the program administrator, a final decision on the eligibility of a proposed improvement may be appealed within 30 days of the decision to the office of the hearing examiner by filing an appeal with the hearing examiner, in accordance with chapter 2.02 SCC.

If a third party administrator is acting as the program administrator, a final decision on the eligibility of a proposed improvement may be appealed within 30 days of the decision to the department of conservation and natural resources by filing an appeal. The department of conservation and natural resources decision may be

subsequently appealed to the office of the hearing examiner, in accordance with chapter 2.02 SCC, within 30 days of the decision issued by the department of conservation and natural resources.

Failure to appeal constitutes a waiver of all rights to an administrative hearing and determination of the matter.

SCC 2.900.090 Reporting.

The executive shall provide a report to the county council two years after beginning to accept applications and every two years following. The report shall be submitted to the county council via ECAF and must include:

- (1) The number of project applications received and processed;
- (2) The total value of project applications received and processed; and
- (3) The estimated energy and water savings and renewable energy deployed from projects, and the number of resilience measures financed.

SCC 2.900.100 Liability.

This chapter does not confer any right of action nor property interest upon any party to a C-PACER transaction against the county, and the county shall incur no liability for enacting this program, nor shall the county its governing body, executive, or employees be personally liable as a result of exercising any rights or responsibilities granted under this chapter or chapter 36.165 RCW.

SCC 2.900.110 Limitations on county actions.

The county shall not:

- (1) Enforce any privately financed debt under this or any other chapter or law;
- (2) Use public funds to fund or repay any loan between a capital provider and property owner;
- (3) Make the issuance of a permit, license, or other authorization from the county to a person who owns property in the county contingent on the person entering into a written contract to repay the financing of a qualified project under chapter 36.165 RCW; or
- (4) Compel a person who owns property in the county to enter into a written contract to repay the financing of a qualified project under chapter 36.165 RCW.

SCC 2.900.120 Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assessment agreement" means a voluntary agreement between the county and property owner whereby the county agrees to place a lien on the property to secure the property owner's obligation to repay the financing to the capital provider.

(2) "Capital provider" means any private entity or the entity's designee, successor or assign, that makes or funds financing under this chapter.

(3) "C-PACER program guide" means a comprehensive document that designates the applicable region for the program and establishes guidelines, specifications, processes, and contains standard application forms and other documents consistent with the administration of a program.

(4) "Eligible property" means privately owned commercial, industrial or agricultural real property or multifamily residential real property with five or more dwelling units. Eligible property may be owned by any type of business, corporation, individual, or nonprofit organization permitted by state law.

(5) "Financing" means an investment from a capital provider to a property owner to finance or refinance a qualified project.

(6) "Financing agreement" means the contract under which a property owner agrees to repay a capital provider for financing including, but not limited to, details of any finance charges, fees, debt servicing, accrual of interest, accrual of penalties and any terms relating to treatment of prepayment and partial payment of the financing.

(7) "Lien" means the lien recorded at the county on the eligible property to secure the financing debt owed to the capital provider, which remains on the property until paid in full.


(8) "Program" means a commercial property assessed clean energy and resiliency program established under this chapter.

(9) "Project application" means an application submitted to the county to demonstrate that a proposed project qualifies for financing and for a lien.

(10) "Qualified improvements" means a qualified improvement as described in the program guide.

(11) "Qualified project" means a project approved by the program administrator, involving the installation or modification of a qualified improvement, including new construction or the adaptive reuse of eligible property with a qualified improvement.

Dated this 17th day of December, 2021.



Asst. Clerk of the Council

Publish: December 22, 2021

SUBMIT AFFIDAVIT TO: Council
SUBMIT INVOICE TO: Council - 104482