

Approved: 12/15/2021  
Effective: 12/26/2021

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

ORDINANCE NO. 21-097

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

WHEREAS, on June 11, 2020 SSHB 2405 went into effect creating a mechanism for the state and local jurisdictions to create commercial property clean energy and resiliency programs (C-PACER); and

WHEREAS, C-PACER programs provide a structure for owners of commercial properties (agricultural, commercial, and some multi-family residential properties) to obtain low-cost, long-term, financing for energy and resiliency projects for new buildings and retrofits to existing buildings; and

WHEREAS, by providing access to more affordable financing property owners that may have been on the fence or unable to afford energy efficiency upgrades to their properties may now be able to do so; and

WHEREAS, Snohomish County has determined that creation and operation of a commercial property assessed clean energy and resiliency program is in the public's best interest to serve public health and safety interests within the community through energy and water conservation and reduction in emergency response risks; and

WHEREAS, as required by RCW 36.165.040, the Snohomish county council will hold a public hearing on this proposed ordinance in accordance with the county's COVID-19 protocols.

NOW THEREFORE, BE IT ORDAINED:

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.

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

- 1 2.900.060 Recording.
- 2 2.900.070 Fee.
- 3 2.900.080 Appeals.
- 4 2.900.090 Reporting.
- 5 2.900.100 Liability.
- 6 2.900.110 Limitations on county actions.
- 7 2.900.120 Definitions.

8  
9 SCC 2.900.010 Program established.

10  
11 The executive shall establish a commercial property assessed clean energy and  
12 resiliency program and make it available to eligible properties within incorporated and  
13 unincorporated Snohomish County. The program shall comply with the provisions  
14 outlined in chapter 36.165 RCW and will allow owners of agricultural, commercial and  
15 industrial properties and multifamily residential properties with five or more dwelling  
16 units to obtain low-cost, long-term financing for qualified improvements. Qualified  
17 projects must be located wholly within the jurisdiction of Snohomish County.

18  
19 In accordance with RCW 36.165.030, the program shall be established and begin  
20 accepting applications no later than one year after the effective date of this ordinance.

21  
22 SCC 2.900.020 Program administrator.

23  
24 The program shall be administered through the department of conservation and  
25 natural resources or through a third-party administrator, subject to county council  
26 approval by motion. The program administrator shall be responsible for ensuring the  
27 program complies with chapter 36.165 RCW.

28  
29 SCC 2.900.030 C-PACER program guide.

30  
31 The program guide shall be developed by the program administrator consistent  
32 with the requirements of RCW 36.165.020 and shall include a definition of qualified  
33 improvement that aligns with the following goals:

- 34  
35 (1) Reduce greenhouse gas emissions;  
36 (2) Conserve energy, water, and resources and use renewable energy  
37 technologies;  
38 (3) Electrification of HVAC infrastructure;  
39 (4) Increase resilience for fires and natural hazards; and  
40 (5) Proactively address impacts climate change.

41  
42 Prior to initial program implementation, the executive shall submit the guidebook  
43 and all documents created in conjunction with the guidebook to the county council by  
44 motion for approval.

1 SCC 2.900.040 Assessment agreement and lien precedence.

2  
3 The county and the property owner will enter into an assessment agreement by  
4 which the property owner whereby the county agrees to place a C-PACER lien on the  
5 property to secure the property owner's obligation to repay the financing to the capital  
6 provider. The C-PACER lien recorded pursuant to this chapter will take precedence  
7 over all other liens except for a lien for taxes as described in RCW 36.165.060.  
8

9 Before a capital provider may enter into a financing agreement to provide  
10 financing of a qualified project to the record owner of any eligible property, the capital  
11 provider must obtain written consent from any holder of a lien, mortgage, or security  
12 interest in the real property that the property may participate in the program and that the  
13 C-PACER lien will take precedence over all other liens except for a lien for taxes as  
14 described in RCW 36.165.060. The county may rely on the capital provider's  
15 representations as to the identity and existence of any lienholders affected by the C-  
16 PACER lien. The county has no duty or obligation to obtain a title report or otherwise  
17 determine the identity or existence of any lienholders affected by the C-PACER lien.  
18

19 Before a capital provider may enter into a financing agreement to provide  
20 financing of a qualified project to the record owner of any multifamily residential real  
21 property with five or more dwelling units, the capital provider must obtain written  
22 consent from any and all holders of affordable housing covenants, restrictions or  
23 regulator agreements in the real property that the property may participate in the  
24 program and that the C-PACER lien will take precedence over all other liens except for  
25 taxes as described in RCW 36.165.060. The county may rely on the capital provider's  
26 representations as to the identity and existence of any holders of affordable housing  
27 covenants, restrictions or regulator agreements affected by the C-PACER lien. The  
28 county has no duty or obligation to obtain a title report or otherwise determine the  
29 identity or existence of any holders of affordable housing covenants, restrictions or  
30 regulator agreements affected by the C-PACER lien.  
31

32 SCC 2.900.050 C-PACER agreement.

33  
34 The capital provider and the county shall enter into a C-PACER agreement prior  
35 to the disbursement of any funds from the capital provider to the property owner. All C-  
36 PACER agreements shall:  
37

38 (1) State that the capital provider is solely responsible for identifying all  
39 lienholders on an eligible property and for notifying the county of the identity of the  
40 lienholders;

41 (2) Include language wherein the capital provider indemnifies the county from  
42 any and all claims that may be asserted by a lienholder, known or unknown, on an  
43 eligible property;

44 (3) State that the capital provider is solely responsible for all enforcement as  
45 contemplated in chapter 36.165 RCW; and

46 (4) Provide for the recording of a lien as described in SCC 2.900.050.

1  
2 SCC 2.900.060 Recording.

3  
4 Financing for qualifying improvements will be repaid to a capital provider and  
5 secured by a county lien assigned to a capital provider for all the administrative aspects  
6 of billing, collecting, and enforcing the lien.  
7

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

- 10  
11 (1) The legal description of the eligible property;  
12 (2) The assessor's parcel number of the property;  
13 (3) The grantor's name, which must be the same as the property owner on the  
14 assessment agreement;  
15 (4) The grantee's name, which must be Snohomish County;  
16 (5) The date on which the lien was created;  
17 (6) The principal amount of the lien;  
18 (7) The terms and length of the lien; and  
19 (8) A copy of the assessment agreement between the county and the property  
20 owner.  
21

22 The executive, or their designee, shall also record the assignment of the lien  
23 from the county to the appropriate capital provider.  
24

25 SCC 2.900.070 Fee.

26  
27 As authorized in chapter 36.165 RCW, the executive shall establish an  
28 application fee that achieves cost recovery for program implementation and operation.  
29 The executive may adjust the fee as necessary to comply with this section.  
30

31 SCC 2.900.080 Appeals.

32  
33 If the department of conservation and natural resources is acting as the program  
34 administrator, a final decision on the eligibility of a proposed improvement may be  
35 appealed within 30 days of the decision to the office of the hearing examiner by filing an  
36 appeal with the hearing examiner, in accordance with chapter 2.02 SCC.  
37

38 If a third party administrator is acting as the program administrator, a final  
39 decision on the eligibility of a proposed improvement may be appealed within 30 days of  
40 the decision to the department of conservation and natural resources by filing an  
41 appeal. The department of conservation and natural resources decision may be  
42 subsequently appealed to the office of the hearing examiner, in accordance with chapter  
43 2.02 SCC, within 30 days of the decision issued by the department of conservation and  
44 natural resources.  
45

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

3  
4 SCC 2.900.090 Reporting.

5  
6 The executive shall provide a report to the county council two years after  
7 beginning to accept applications and every two years following. The report shall be  
8 submitted to the county council via ECAF and must include:

- 9  
10 (1) The number of project applications received and processed;  
11 (2) The total value of project applications received and processed; and  
12 (3) The estimated energy and water savings and renewable energy deployed  
13 from projects, and the number of resilience measures financed.

14  
15 SCC 2.900.100 Liability.

16  
17 This chapter does not confer any right of action nor property interest upon any  
18 party to a C-PACER transaction against the county, and the county shall incur no  
19 liability for enacting this program, nor shall the county its governing body, executive, or  
20 employees be personally liable as a result of exercising any rights or responsibilities  
21 granted under this chapter or chapter 36.165 RCW.

22  
23 SCC 2.900.110 Limitations on county actions.

24  
25 The county shall not:

- 26  
27 (1) Enforce any privately financed debt under this or any other chapter or law;  
28 (2) Use public funds to fund or repay any loan between a capital provider and  
29 property owner;  
30 (3) Make the issuance of a permit, license, or other authorization from the county  
31 to a person who owns property in the county contingent on the person entering into a  
32 written contract to repay the financing of a qualified project under chapter 36.165 RCW;  
33 or  
34 (4) Compel a person who owns property in the county to enter into a written  
35 contract to repay the financing of a qualified project under chapter 36.165 RCW.

36  
37 SCC 2.900.120 Definitions.

38  
39 The definitions in this section apply throughout this chapter unless the context clearly  
40 requires otherwise.

- 41  
42 (1) "Assessment agreement" means a voluntary agreement between the county  
43 and property owner whereby the county agrees to place a lien on the property to  
44 secure the property owner's obligation to repay the financing to the capital provider.  
45 (2) "Capital provider" means any private entity or the entity's designee, successor  
46 or assign, that makes or funds financing under this chapter.

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

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

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

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

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

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

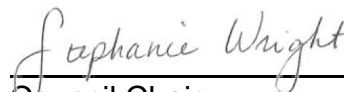
20 (9) "Project application" means an application submitted to the county to  
21 demonstrate that a proposed project qualifies for financing and for a lien.

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

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

27  
28  
29 PASSED this 15th day of December, 2021.  
30

31  
32 SNOHOMISH COUNTY COUNCIL  
33 Snohomish County, Washington  
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37 \_\_\_\_\_  
38 Council Chair  
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1 ATTEST:

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*Melena Rao*

Asst. Clerk of the Council

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11 (X) APPROVED

12 ( ) EMERGENCY

13 ( ) VETOED

14

15

DATE: December 16, 2021

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*[Signature]*

19

County Executive

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21

22 ATTEST:

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*Melissa Geraghty*

26

27

28 Approved as to form only:

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31

Rebecca J. Guadamud 11-30-2021

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Deputy Prosecuting Attorney