

PROGRAM GUIDELINES: C-PACER PROGRAM

Davidson County, Tennessee

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I. Introduction

ABOUT C-PACER

In 2021, the Tennessee State legislature passed C-PACE enabling legislation, HB 667. This legislation allows counties to establish Commercial Property Assessed Clean Energy and Resilience (C-PACER) programs. The legislation emphasized allowing resilience improvements, adding an “R” to the popular acronym. C-PACER allows property owners to access financing for qualifying energy efficiency, renewable energy, water conservation, and resiliency improvements for qualifying buildings. Improvements made to reduce lead in drinking water also qualify as improvements.

In [REDACTED], The Metropolitan Government of Nashville and Davidson County (the “County” or “Metro”) established a Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) financing program (the “C-PACER Program” or the “Program”) under Tennessee Code Annotated 68-205-101 et seq. (the “C-PACER Act”). The C-PACER Program allows owners of eligible commercial property to obtain long-term financing from private capital providers for certain qualified clean energy and resiliency improvements. Participating property owners repay the financing through voluntary special assessments placed on their properties through recording of a lien, which are billed and collected as part of their annual property tax bills and then remitted to the private lender. This approach to financing has been used by programs like C-PACER on thousands of properties in more than 24 states and the District of Columbia.

Creating a county C-PACER program consists of the following steps: first, a county adopts an ordinance and guidelines that govern how its C-PACER program works. Second, since the repayment of the C-PACER financing is between a private lender and a property owner, when the lender’s lien against the property is filed, a county reviews the lien application for compliance with the C-PACER state law and local program guidelines, and then records a unique agreement that includes the acknowledgment of a special property “assessment” by the county.

In Tennessee, C-PACER financing is available in four categories: energy efficiency, renewable energy, water conservation, and resiliency improvements. Improvements that reduce greenhouse gas emissions would qualify, provided that the improvements also conserve energy or result in renewable energy improvements. A C-PACER loan is paid back over an extended period of time and is secured by a senior lien on the property that has the same priority as a government’s property tax lien. Like other assessments, C-PACER financing is non-accelerating, which means only current or past due payments can be collected, while future payments are the responsibility of whomever owns the property at the time. The C-PACER repayment obligation transfers automatically to the next owner if the property is sold.

While the Metropolitan Trustee administers Nashville’s program, Metro Government does not have any responsibility for C-PACER financing, other than imposition of the C-PACER voluntary special assessment per the financing agreement and the collection and remittance of the financing installment payments.

Metro’s right to enforce and collect its property taxes is unaffected by the enactment of a C-PACER program. Property owners with C-PACER special assessments are still required to annually pay their property taxes when due. If they do not, Metro can file a delinquent tax lawsuit, as it normally would, to have the property sold to collect the past-due tax debt. The tax sale purchaser who becomes the new owner would then be responsible for paying future property taxes on the property and any remaining C-PACER special assessments owed under the financing agreement. Additionally, the C-PACER assessment contract

between Metro and the property owner will require that payments received by the Metropolitan Trustee will first be applied to any property taxes (or other non-C-PACER assessments) owed at the time of such payment before any payments are sent to the C-PACER lender.

The Program exists as a function of Tennessee's C-PACER legislation and the rules established by Metro. No change in the Program or in Tennessee's C-PACER legislation will affect a property owner's obligations to pay C-PACER assessments incurred under the Program prior to such changes.

TN-PACER Program Guidebook

Davidson County developed these guidelines based on the TN-PACER Program Guidebook, which was developed to help counties launch C-PACER programs. The Guidebook and related model materials are available at no cost to counties to use and adopt.

Davidson County C-PACER Program Guidelines

In this document you can find information about:

- Statutory and programmatic eligibility requirements for C-PACER properties and projects in Tennessee and Davidson County
- Process for applying for C-PACER project approval
- Answers to other frequently asked questions about the Davidson County C-PACER program

II. Benefits of C-PACER

C-PACER offers benefits to building owners, developers, municipalities, mortgage holders, and building professionals. This includes environmental benefits, cost savings, local jobs, and high-performing building stock that result in a stronger and healthier community.

For Building Owners and Developers: One of the biggest barriers to converting potential projects to completed projects for efficiency and resiliency upgrades are the up-front cost of the types of measures identified in the statute as qualifying improvements. C-PACER financing typically requires little up-front investment, and qualifying improvements improve property value. Energy efficiency measures, in particular, also lower operating costs. In addition, C-PACER financing has the following benefits:

- **Up to 100%, long-term financing.** Many owners lack the capital to complete efficiency and resiliency improvements. All direct and indirect costs incidental to the qualified improvements can be wrapped into C-PACER financing.
- **Transferrable upon sale.** Some owners may want to sell the building before the financing is repaid. The C-PACER lien and assessment are attached to the property and transfers to the new owner.
- **Cash flow benefits.** C-PACER financing may be repaid over the useful life of the improvements, which because of the long-term financing options can have positive effects on cash flow.

For Energy Auditors, Architects, Building Engineers, and Contractors: By allowing a property owner to access 100% up-front financing for longer terms than are typically available for conventional financing, more substantial efficiency and resiliency improvements are now more affordable with C-PACER. Energy auditors, architects, engineers, and contractors can suggest C-PACER financing as a way for their clients to implement needed energy or resiliency upgrades that might otherwise be unaffordable. Since the demand for building efficiency and resiliency improvements will increase in a C-PACER-enabled jurisdiction, C-

PACER is a powerful business growth catalyst for building professionals like energy auditors and contractors.

For Counties: C-PACER is an economic development tool. By making it more affordable for building owners to make major improvements to their buildings, local building stock value can be enhanced, and more jobs are created. Energy and resiliency upgrades create a more competitive environment for retaining and attracting new businesses by lowering energy costs and improving the structural soundness of buildings. Upgraded buildings can generate higher property tax payments for the county. Energy upgrades also typically reduce greenhouse gases and other pollutants, which facilitates adherence to county or state climate action plans or goals.

For Existing Lien Holders: C-PACER improvements can enhance property value and typically improve a building's longevity, thereby reducing the risk of property value decline over time. In addition, C-PACER financing is non-accelerating, meaning only current or past due annual payments can be collected each year while future payments stay with the property. As such, existing mortgage holders see their collateral improved without substantial increase in credit risk and with only a modest impact on lien priority. C-PACER financing is not permitted without the consent of all existing lien holders and, under certain circumstances, the holders of certain other obligations encumbering commercial residential property.



Reducing energy consumption means fewer environmental impacts with property operation.

11 million metric tons of carbon avoided and 36 billion kilowatt-hours energy saved nationally since the inception of PACER funding¹



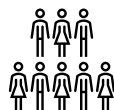
Efficient buildings cost less to heat, cool, and operate. This results in cost savings for properties and redirection of resources to other needs.

~20% return on investment for energy efficiency upgrades²



Higher performing properties results in increased value of commercial building stock.

Buildings with energy-efficient improvements have an average **16.5%** sale price premium and **3-6%** rental premium³



Qualified improvements can result in creation of local jobs.

42,000 job-years have been added as a result of C-PACER improvements across the country⁴



C-PACER programs are proven to spur investment in sustainable and resilient improvements to buildings across the nation

More than **37** States have C-PACER enabling legislation resulting in more than **\$3.4 billion** in green project financing⁵

¹ Savings inclusive of impacts of commercial and residential PACER funding. PACE Nation, <https://www.pacenation.org/pacenation-releases-a-pace-enabled-world-a-new-resource-detailing-the-economic-environmental-and-resilience-benefits-of-pace-financing/>.

² American Council for an Energy Efficient Economy, <https://www.aceee.org/sites/default/files/halfway-there-0919.pdf>.

³ Eichholtz et al (2010). Doing Well by Doing Good? Green Office Buildings, The American Economic Review, Vol. 100, No. 5, <https://www.jstor.org/stable/41038771>.

⁴ PACE Nation, <https://www.pacenation.org/pace-market-data/>.

⁵ *Ibid.*

III. C-PACER Financing Program Rules

These program Guidelines (the “Guidelines”) are prepared as required by the C-PACER Act, at the direction of the County, and is approved in connection with, and as an attachment to, the enabling ordinance for this program (the “C-PACER Ordinance”) dated _____. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the C-PACER Ordinance.

These guidelines establish eligibility, approval process and criteria, and associated forms for the administration of the C-PACER Program for the County. The C-PACER Program enables financing for commercial property owners (“Property Owners”) to make certain energy efficiency, renewable energy, water conservation, and resiliency improvements (each, a “Qualified Improvement”) as described in the C-PACER Act and further clarified in these guidelines.

Qualified Improvements, including all eligible costs that are to be financed as described in a project application (the “Project Application”) approved by the Program, constitute a “Qualified Project.” Property Owners may receive funding for their Qualified Improvements only from qualified private investors (“Capital Providers”) pursuant to a separate Financing Agreement negotiated between the Property Owner and Capital Provider (a “Financing Agreement”).

In the following numbered subsections, a reader can find information about:

- Statutory and programmatic eligibility requirements for C-PACER project financing in Tennessee State, and
- The appropriate steps and forms needed for a County to receive and process a C-PACER project lien application.

1. Establishment of C-PACER Program Boundaries

Metro Nashville Government adopted Ordinance number _____ on _____, establishing the C-PACER Program for all eligible commercial properties within the boundaries of Davidson County.(the “Region”). The Region is illustrated in Exhibit 2.

2. Administration of Program; Authorized Officials

The Office of the Metropolitan Trustee (the “Trustee”) is designated and authorized to review each Project Application to confirm that it is complete and contains no errors on its face. The Trustee will then execute the Assessment Agreement and C-PACER Lien documents on behalf of Metro and record them with the Register of Deeds.

As part of Program operation, the Trustee will:

- Accept Project Applications (see Attachment A, Application) from Property Owners and Capital Providers for prospective C-PACER projects.
- Review the Project Application to determine conformance with the Application Checklist (See Attachment B).
- Approve/conditionally approve/disapprove the Project Application and communicate to applicant.
- Execute the Assessment Agreement and Notice of Assessment Interest and C-PACER Lien (“Notice of Assessment Interest”).
- Record the Notice of Assessment Interest.
- Coordinate with capital providers and appropriate Metro Nashville departments, including the

Assessor of Property and the Department of Finance, and other stakeholders to ensure that the C-PACER voluntary special assessment is correctly billed, collected, and disbursed per the financing agreement.

3. Eligibility Requirements

Eligible Property means any privately-owned commercial, agricultural, industrial, or multi-family real property of five (5) or more dwelling units located within the boundaries of Davidson County (including properties owned by a not-for-profit organization).

Ground leases on Eligible Property are permitted, so long as all requirements of the C-PACER Ordinance are met, including requiring the Property Owner to enter into an Assessment Agreement. On ground-leased property, therefore, the assessment and C-PACER Lien encumber the fee interest in the property, not the ground leasehold.

Property Owner means an owner of qualifying eligible property, which is the record owner of title to the Eligible Property. The Property Owner may be any type of business, corporation, individual, or non-profit organization.

Qualified Improvements means a permanent improvement affixed to the real property that must meet at least one of these criteria:

- Decrease energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption or allow for the reduction in demand or reduce greenhouse gas emissions (“Energy Efficiency Improvement”);
- Support the production of clean, renewable energy, including but not limited to a product, device, or interacting group of products or devices on the customer's side of the meter that generates electricity, provides thermal energy, or regulates temperature (“Renewable Energy Improvement”);
- Decrease water consumption or demand and address safe drinking water through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption, or allow for the reduction in demand (“Water Efficiency Improvement”);
- Reduce or eliminate lead from water which may be used for drinking or cooking (“Safe Drinking Water Improvement”);
- Increase water and wastewater resilience, including through storm retrofits, flood mitigation, and stormwater management, or wind resistance, energy storage, microgrids, and other resilience projects approved by the local government (“Resiliency Improvement”);
- Increase seismic resilience of new or existing buildings by making improvements necessary to comply with seismic provisions of the locally adopted technical building codes (“Seismic Improvement”).

Qualified Projects include the following:

- The acquisition, construction (including new construction), lease, installation, or modification of a Qualified Improvement permanently affixed to an Eligible Property.
- Qualified Projects include the refinancing of existing properties that have had Qualified

Improvements installed and completed for no more than two (2) years prior to the date of Project Application.

Qualifying Capital Provider may be any private third-party entity, including its designee, successor, and assigns, that makes or funds C-PACER financing, including refinancing.

Qualifying costs that can be C-PACER financed include:

- Materials and labor necessary for installation or modification of a Qualified Improvement;
- Permit fees;
- Inspection fees;
- Financing or origination fees;
- Program application and administrative fees;
- Project development, architectural and engineering fees;
- Capitalized interest;
- Interest reserves;
- Any other fees or costs that may be incurred by the Property Owner incident to the installation, modification, or improvement on a specific or pro rata basis.
- See also the definition of Total Eligible Construction Costs in Section 5(5)(D).

4. Application Process

The Trustee will review the Application for proof of compliance with the requirements of the statute that are necessary for the County to approve the application and execute the applicable documents for the proposed C-PACER transaction. Applicants are encouraged to review the Project Application Checklist accompanying the Application to ensure that the types of information that the County will rely upon to verify compliance with the statute are present in the completed Application.

The process of obtaining financing under the Program starts when a Property Owner approaches a Capital Provider. The Capital Provider will work with the Property Owner to collect a number of diligence items. Once all the items have been received, reviewed, and approved by the Capital Provider, the parties should settle on the loan terms.

The general flow of the C-PACER application process will be as follows:

- (1) The Property Owner and the Capital Provider prepare the Project Application, consisting of the Project Application Checklist and all supporting documents (described below). Applicants should review the Project Application Checklist accompanying the Project Application to ensure that the types of information that the County will rely upon to verify compliance with the C-PACER Act and C-PACER Ordinance are present in the completed Project Application.
- (2) The Trustee will accept C-PACER applications the first 5 business days of each month. The Trustee will have ten business days to review and approve the Project Application. If the office has received an unusually high number of applications, or if review is delayed because of some force majeure event, the office may notify the applicant that the application review and approval will be delayed by no more than ten additional business days.
- (3) The County application review process is confined to confirming that the Project Application is complete, and all attachments conform to these guidelines. ***County approval does not constitute endorsement of any representations that may be made with regard to the operation and any savings associated with the Qualified Improvements.*** The Trustee will review the Project

Application for proof of compliance with the requirements of the C-PACER Act and C-PACER Ordinance that are necessary for the County to approve the Project Application and execute the applicable documents for the proposed C-PACER transaction. Incomplete Project Applications will be returned to the applicant, and the Trustee will notify the applicant about which items from the Project Application Checklist were not provided or are insufficient or inaccurate on their face. If the Project Application and supporting documents comply with the Project Application Checklist, the Project Application will be approved, and the approval communicated in writing to the applicant.

- (4) The Project Application may be conditionally approved if the application is complete but the attachment regarding lender consent is not yet available. Conditional approval will be treated the same as an approval, with exceptions noted below. After 30 days, if all necessary documents are not submitted by applicant or the lender does not submit the consent form, the application is deemed as incomplete and the conditional approval is moved to not approved.
- (5) Upon receipt of approval, the Capital Provider will draft or prepare the following “Closing Documents” for the purpose of Davidson County’s C-PACER program: The Assessment Agreement and the Notice of Assessment Interest and C-PACER Lien. At or before closing, at the request of the applicant, the designated and authorized official will execute Closing Documents.
- (6) If the Project Application received conditional approval, the Closing Documents executed by the County may not be released from escrow unless and until all lender consents have been received and executed in accordance with the C-PACER Act and C-PACER Ordinance.
- (7) At closing, the County will record the Assessment Agreement and the Notice of Assessment Interest and C-PACER Lien in the Office of the Register of Deeds for Davidson County. At the election of the applicant, the County may delegate the recording of the Closing Documents to the applicant or their designee(s).
- (8) Upon confirmation of recordation, the Capital Provider will disburse funds in accordance with the Financing Agreement.
- (9) The Property Owner begins making assessment payments per the Assessment Agreement and in accordance with the Financing Agreement. The Trustee will pass through the C-PACER special assessment payment to the C-PACER lender.

5. Application Documents

The Project Application must be submitted with the following documents appended:

- Project Application Checklist (form attached)
- Lienholder(s) Consent (form attached)
- Economic Benefits Certification (form attached): The applicant will certify that the economic benefits of the Qualified Improvements exceed the costs of the assessment.
- Certificate of Qualified Improvements: For all categories of qualified improvements, a licensed Professional Engineer or an authorized representative of a licensed engineering firm will certify that Qualified Improvements will result in energy, water, renewable energy, or resilience outcomes. The certifying individual may hold additional licenses or qualifications demonstrating their qualifications.

- (1) For Renewable Energy Improvements, Energy Efficiency Improvements, or Water Efficiency Improvements on an existing building: A certification stating that the proposed Qualified Improvements will result in either the more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water.
- (2) For Safe Drinking Water Improvements on an existing building: A certification stating that the proposed Qualified Improvements will result in the reduction of lead in potable water.
- (3) For Resilience Improvements on an existing building: A certification that the Qualified Improvements will result in improved resilience, which may include, without limitation, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, measures to enhance performance during seismic events, and microgrids.
- (4) For new construction: A certification that each proposed Qualified Improvement or the building as a whole will enable the subject property to exceed the energy efficiency or, water efficiency or, renewable energy or, renewable water, or resilience requirements of the current building code requirements of the county.

6. Closing Documents

The following documents require the signature of the County and shall be part of the closing of any C-PACER transaction. Each document must be substantially similar in substance to the forms provided, although Property Owners and Capital Providers may negotiate variations tailored to their specific projects.

- Assessment Agreement (Form attached)
- Notice of Assessment Interest and C-PACER Lien (Form attached)

7. Interest Rates

Interest rates are negotiated in a Financing Agreement between the Property Owner and the Capital Provider. The County has no role in reviewing, setting, or opining on such interest rates or other aspects of the Financing Agreement. Market forces – such as competition, the intended use of the property, potential risk –will affect the terms negotiated by the Property Owners and Capital Providers.

8. Billing and Collection of Assessments

Billing, collection and enforcement of delinquent C-PACER Liens or C-PACER financing installment payments will be handled by the County using the same process that it uses for collecting ad valorem property taxes. For Davidson County, this means that billing and collection for C-PACER financing installment payments will be mailed the first week of October each year and due by the last day of February. Delinquent C-PACER payments will be processed and collected from March through the following February of each year.

9. Enforcement of C-PACER Lien

The County will enforce the C-PACER Lien through the same tax sale mechanism that it uses to enforce the liens for ad valorem property taxes. Metro's right to enforce and collect its property taxes is unaffected by the enactment of a C-PACER program. Property owners with C-PACER special assessments are still required to annually pay their property taxes when due. If they do not, Metro can file a delinquent tax lawsuit, as it normally would, to have the property sold to collect the past-due tax debt. The tax sale purchaser who becomes the new owner would then be responsible for paying future property taxes on the property and any remaining C-PACER special assessments owed under the financing agreement. *Additionally, the C-PACER assessment contract between Metro and the property owner requires that payments received by the Metropolitan Trustee will first be applied to any property taxes (or other non-C-PACER assessments) owed at the time of such payment before any payments are sent to the C-PACER lender.*

10. Program Fee

Per state enabling statute, Metro government has the ability to assess a fee associated with the program administration. Metro, as compensation for time and costs incurred in the establishment of the C-PACER Program as well as for reviewing a Project Application for completeness and executing the Assessment Agreement and C-PACER lien, is proposing a fee equal to 1% of the amount financed by the property owner, not to exceed \$50,000. The property owner must pay this fee to Metro, and such payment is a condition precedent to recording. The Metropolitan Trustee will invoice such payment separately to the applicant (property owner).

11. Term of an Assessment; Calculation of Useful Life of Qualified Improvements

The maximum term of an assessment may not exceed the useful life of the Qualified Improvement or weighted average life if more than one Qualified Improvement is included in the Qualified Project.

12. Form of Closing Documents

The Program has adopted form Closing Documents: The Assessment Agreements and Notice of Assessment Interest and C-PACER Lien. A Property Owner and Capital Provider may adapt the forms to the needs of their particular transaction but must not modify or omit any material substantive terms contained in the forms. The County reserves the right to reject any modifications to the forms.

The forms are attached as **Exhibit 1 [and ____]** and respectively incorporated herein as referenced.

13. Written Consent from Lienholder(s) Required

Before entering into an Assessment Agreement with the County, the Capital Provider must obtain, and the Project Applications must show proof of, written consent for the placement of the assessment and C-PACER Lien from any holder of a mortgage or a deed of trust interest in the real property.

If the consents will not be executed until closing, the signatures of the County to the Closing Documents will be held in escrow and will not be released until the consents are obtained. After closing, at the election of the Trustee's Office, an amended Project Application with the consents attached must be sent to the

Trustee's Office. Capital Providers are responsible for providing their own form of consent that conforms to the C-PACER Ordinance and C-PACER Act.

14. Provisions for Participant Education

These guidelines will be made available to the public on the County website. Upon participating in the program, it is presumed that Property Owners and Capital Providers understand the principles and processes associated with C-PACER financing and will look to the guidelines for understanding and clarification of the County Program. The Trustee is also available as a resource to answer questions about its role in C-PACER program administration.

15. County Has No Liability or Financial Responsibility

Neither the County, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this Program. The County shall not pledge, offer, or encumber its full faith and credit for any lien amount under the C-PACER program. No public funds may be used to repay any C-PACER financing obligation.

EXHIBIT 2

Davidson County C-PACER Program Boundary

