



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2022-1633, **Version:** 1

An ordinance amending Title 5 of the Metropolitan Code of Laws to adopt a Commercial Property Assessed Clean Energy and Resilience (C-PACER) program within Davidson County to be administered by the Office of the Metropolitan Trustee.

WHEREAS, pursuant to the Commercial Property Assessed Clean Energy and Resilience Act, Tenn. Code Ann. § 68-205-101, et seq. (the “C-PACER Act”), the Tennessee General Assembly granted local governments the authority to establish a commercial property assessed clean energy and storm resiliency (C-PACER) program that jurisdictions can voluntarily implement to ensure that free and willing owners of agricultural, commercial, and industrial properties and certain multi-family residential properties can obtain low-cost, long-term financing for certain real property improvements; and,

WHEREAS, the C-PACER Act allows this financing to be used for qualifying improvements, including energy efficiency, water conservation, renewable energy, and resiliency measures such as flood mitigation, stormwater management, wildfire and wind resistance, energy storage, microgrids, and fire suppression; and,

WHEREAS, a C-PACER program promotes voluntary energy efficiency, energy conservation, and resiliency, and such improvements not only save money for building owners, but also support the reduction of energy consumption, support the production of clean, renewable energy, and reduce greenhouse gas emissions; and,

WHEREAS, unlike commercial loans, C-PACER financing is secured by a local government lien and has a long-term, fixed-rate that makes annual payments more affordable to applicants pursuing projects, and additionally, unlike commercial loans, because C-PACER improves the property, it is transferable upon sale to a new owner; and,

WHEREAS, C-PACER programs also encourage a decrease in energy and water usage and corresponding costs, and further realize associated environmental, economic, and social co-benefits; and,

WHEREAS, the 2021 Report to the Mayor on the Metropolitan Government’s Climate Change Mitigation Action Plan recommended that the Metropolitan Government pursue adoption of a local C-PACER program to unlock financing tools that support sustainability and resilience within Metropolitan Nashville and Davidson County’s built infrastructure; and,

WHEREAS, the Metropolitan Government in RS2022-1358 has adopted government and community targets of reducing greenhouse gas emissions by eighty percent (80%) by 2050, and energy, water, and resiliency improvements can support achieving this target; and,

WHEREAS, pursuant to Tenn. Code Ann. § 68-205-105(a), the Metropolitan Government previously adopted Resolution No. RS2022-1767 declaring its intent to explore the adoption of a C-PACER program within Metropolitan Nashville and Davidson County; and,

WHEREAS, the Metropolitan Government held a duly-advertised public hearing regarding a local C-PACER program on October 4, 2022; and,

WHEREAS, the Office of the Metropolitan Trustee has agreed to serve as Program Administrator for the C-PACER program; and,

WHEREAS, the Metropolitan Government has determined that it is in the best interests of the citizens of

Metropolitan Nashville and Davidson County that a C-PACER program be established.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Title 5 of the Metropolitan Code of Laws be amended to add a new Chapter 5.22 entitled "Commercial Property Assessed Clean Energy and Resilience (C-PACER) Program" as follows:

5.22.010 Establishment; Legislative Intent

There is hereby established within the boundaries of The Metropolitan Government of Nashville and Davidson County a Commercial Property Assessed Clean Energy and Resilience ("C-PACER") program as provided for by Tenn. Code Ann. § 68-205-101, et seq. The metropolitan government finds that it is convenient and advantageous to establish the Program allowing an eligible property owner to finance a loan for a Qualified Project that is repaid through voluntary, annual assessment installment payments secured by a metropolitan government special assessment and lien levied on the Eligible Property. The metropolitan government further finds that the Program is in the public interest, provides a safety, health, and environmental public benefit, and provides for economic development of the community. The Program shall allow financing for the full range of Qualified Improvements on all Eligible Properties, as authorized by the C-PACER Act, and shall abide by and operate according to the C-PACER Act.

5.22.020 Definitions

The definitions as used in this chapter:

1. "Application Checklist" means the list of items required by the C-PACER Act, this chapter, the Program Guidelines, and the corresponding documentation that the metropolitan government accepts or may request in order to show the requirements of the C-PACER Act and this chapter have been met.
1. "Assessment" means the special assessment levied on the Eligible Property by the metropolitan government to require the payment of annual Assessment Installments in an amount sufficient to repay C-PACER Financing, together with interest, penalties, and fees. 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.
2. "Assessment Agreement" means an agreement between the metropolitan government, Program Administrator, Property Owner, and Capital Provider whereby the parties agree to the metropolitan government placing an Assessment and C-PACER Lien on the Eligible Property to secure the obligation to repay the C-PACER Financing and that the Property Owner will make payments to the Program Administrator in the same manner as ad valorem property taxes.
3. "Assessment Installment" means annual payments as provided for in the Assessment Agreement to be made by or on behalf of the Property Owner to repay the C-PACER Financing.
4. "Capital Provider" means any private entity, its designee, successor, and assignees that makes or funds C-PACER Financing pursuant to the Program.
5. "C-PACER Act" shall mean the Commercial Property Assessed Clean Energy and Resilience Act as codified at Tennessee Code Annotated 68-205-101 et seq.
6. "C-PACER Financing" means an investment from a Capital Provider to a Property Owner to finance or refinance a Qualified Project. The proposed C-PACER Financing for a Qualified Improvement may authorize the Property Owner to:
 - a. purchase directly the related equipment and materials for the installation or modification of a

Qualified Improvement; and

- b. contract directly, including through lease or other service contract, for the installation or modification of a Qualified Improvement.
7. "C-PACER Lien" means the lien for the Assessment as recorded with the Davidson County Register of Deeds on the Eligible Property to secure repayment of the C-PACER Financing, which runs with the land and remains on the Eligible Property until the C-PACER Financing is paid in full.
8. "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. Eligible Property may also include property owned by a state or local governmental entity, but leased to a privately-owned entity, which may include an industrial development corporation; housing authority; or health, educational and housing facilities board.
9. "Financing Agreement" means the contract under which a Property Owner agrees to repay a Capital Provider for the C-PACER Financing including, but not limited to, details of any finance charges, fees, debt servicing, accrual of interest and penalties, and any terms relating to treatment of prepayment and partial payment of the C-PACER Financing.
10. "Notice of Assessment Interest and C-PACER Lien" means the instrument recorded with the Davidson County Register of Deeds giving notice of the Assessment and C-PACER Lien on the Eligible Property.
11. "Program" means the Commercial Property Assessed Clean Energy and Resilience program established pursuant to this chapter.
12. "Program Administrator" means the Office of the Metropolitan Trustee, which has been designated by the metropolitan government to administer the Program.
13. "Program Guidebook" means, collectively, the documents adopted and utilized by the Program Administrator for the Program, including, without limitation, the Program Guidelines, Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and other supporting documents and forms.
14. "Program Guidelines" means the criteria developed by the Program Administrator, in accordance with the requirements of this chapter and the C-PACER Act, that details the necessary requirements for approval.
15. "Property Owner" means an owner (or in the case of a ground lease, owner of an estate for years) of an Eligible Property who desires to install Qualified Improvements and provides willing consent to the Assessment against the Eligible Property.
16. "Qualified Improvement" means a permanent improvement affixed to real property and intended to: (a) decrease energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption, allow for the reduction in demand, or 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; (b) 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, allow for the reduction in demand, or reduce or eliminate lead from water which may be used for drinking or cooking; or (c) increase resilience, including but not limited to seismic retrofits, fire suppression, flood mitigation, stormwater

management, wildfire and wind resistance, energy storage, and microgrids.

17. “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, including Qualified Improvements installed no more than two (2) years prior to the date of application. Together, Qualified Improvements, inclusive of all related and eligible costs pursuant to the C-PACER Act that are to be financed as described in an application and approved by the Program Administrator, are a Qualified Project.

5.22.030 Territory

The Program shall be available to all Eligible Property located within the territory of the metropolitan government.

5.22.040 Program Administration

The metropolitan government designates the Office of the Metropolitan Trustee as the Program Administrator. The Program Administrator shall review and approve applications to the Program submitted in accordance with the Program Guidelines; collect any fees for the Program; develop, execute, acknowledge and deliver, on behalf of the metropolitan government, all documents necessary to carry out the purposes of the Program and this chapter; record with the Davidson County Register of Deeds requisite documents for the Program; and collect and remit to the Capital Provider payments made to the metropolitan government for the Assessment.

5.22.050 C-PACER Financing

1. C-PACER Financing, in accordance with the C-PACER Act, is to be provided by Capital Providers through a Financing Agreement entered into with the Property Owner of an Eligible Property to fund a Qualified Project.
2. The C-PACER Financing may cover costs including:
 - a. The cost of materials and labor necessary for installation or modification of a Qualified Improvement;
 - b. Permit fees;
 - c. Inspection fees;
 - d. Financing or origination fees;
 - e. Program application and administrative fees;
 - f. Project development, architectural and engineering fees;
 - g. Third-party review fees, including verification review fees;
 - h. Capitalized interest;
 - i. Interest reserves; or
 - j. Any other fees or costs that may be incurred by the Property Owner incident to the installation, modification, or improvement of a Qualified Improvement on a specific or pro rata basis.
3. Prior to entering into a Financing Agreement, the Capital Provider must receive written consent from every holder of a deed of trust or mortgage interest in the Eligible Property that will be subject to the Assessment and C-PACER Lien who agree that the Property Owner may participate in the Program and that the C-PACER Lien will take precedence over all other liens on the Eligible Property except for

a lien for ad valorem property taxes.

5.22.060 C-PACER Lien

1. Following approval of an application to the Program by the Program Administrator, the Property Owner shall execute an Assessment Agreement consenting to the Assessment and C-PACER Lien being placed against the Eligible Property.
2. The C-PACER Lien amount, plus any interest, penalties, fees and charges accrued or accruing on the C-PACER Lien:
 - a. 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 on the Eligible Property, which liens for taxes shall have priority over such C-PACER Lien; and
 - b. is a first and prior lien, equal to the lien for taxes imposed by the state, a local government, or a junior taxing district against the Eligible Property on which the C-PACER Lien is imposed, from the date on which the notice of the C-PACER Lien is recorded until the C-PACER Lien, interest, penalties, fees and charges accrued or accruing are paid in full.
3. The C-PACER Lien runs with the land, and that portion of the C-PACER Lien that has not yet become due is not accelerated or eliminated by enforcement of the C-PACER Lien by tax sale or any lien for taxes imposed by the state, a local government, or junior taxing district against the real property on which the C-PACER Lien is imposed.
4. After the C-PACER Lien is recorded as provided for in this chapter, the Assessment, C-PACER Financing and the C-PACER Lien may not be contested on the basis that the improvement is not a Qualified Improvement or that the project is not a Qualified Project.

5.22.070 Application and Review

1. A Property Owner and Capital Provider shall apply to the Program and submit all required supporting documents included in the Program Guidebook for review by the Program Administrator.
2. The application to the Program shall require:
 - a. An attestation by the Property Owner that the proposed project consists of one or more Qualified Improvements.
 - b. For an existing building seeking improvements (a) where energy or water usage improvements are proposed, a certification by a licensed engineering firm, engineer, or other qualified professional listed in the Program Guidelines stating that the proposed Qualified Improvements will either result in 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; (b) where safe drinking water measures are proposed, a certification by a licensed professional engineer stating that the Qualified Improvements will result in the reduction of lead in potable water; or (c) where resilience improvements are proposed, a certification by a licensed professional engineer stating that the Qualified Improvements will result in improved resilience.
 - c. For new construction, a certification by a licensed professional engineer stating that the proposed Qualified Improvements, individually, or acting as a whole, will enable the project to exceed the energy efficiency, water efficiency, renewable energy, renewable water, or resilience requirements of the current building codes of the metropolitan government.
3. The Program Administrator shall review an application according to the Application Checklist to

determine whether it: (i) is complete, (ii) proposes a Qualified Improvement, (iii) contains no errors on its face, and (iv) that all information is provided in the substance and form required by the Application Checklist. If an application and supporting documents comply with the Application Checklist, the Program Administrator may sign the Application Checklist indicating that an application is deemed approved and the project is a Qualified Project. If an application to the Program is incomplete and/or does not conform to the requirements of the Application Checklist, the Program Administrator shall inform the applicant as soon as practicable that an application is denied, the reasons for the denial, and any corrections that could make the application. If feasible, the applicant shall have an opportunity to correct its application.

4. The application review process is confined to confirming that an application is complete, that all attachments conform to the Program Guidelines, and that the Capital Provider and Property Owner are found to sufficiently meet the Program's criteria. The Program Administrator's approval shall not constitute endorsement of any representations that may be made with regard to the operation and any savings associated with the Qualified Improvements.
5. An application may be conditionally approved if the application is complete but the attachment regarding lender consent of the C-PACER Lien is not yet available per requirements outlined in the Program Guidelines. If after 30 days, not all necessary documents are submitted by the applicant, or a lender does not submit the consent form, the application is deemed as incomplete and the conditional approval is moved to not approved.
6. Upon approval of an application, a Property Owner or Capital Provider shall provide the completed and executed Assessment Agreement and Notice of Assessment Interest and C-PACER Lien to the Office of the Metropolitan Trustee for execution at least five (5) days prior to close of the C-PACER transaction, along with a requested date for recordation of such forms.
7. The metropolitan government shall record the Assessment Agreement and the Notice of Assessment Interest and C-PACER Lien with the Davidson County Register of Deeds. At the request of the Property Owner and the Capital Provider, the recording of the executed documents may be delegated to the Capital Provider.

5.22.080 Program Guidelines

1. The C-PACER Program shall be administered in accordance with the requirements contained in this chapter, the C-PACER Act, and the Program Guidelines as established by the Program Administrator.
2. The Program Guidelines, Program Guidebook, and other forms may be amended by the Program Administrator from time to time to carry out the intent and purposes of this chapter, provided that such amendments comply with the C-PACER Act, this chapter, and applicable law. Notwithstanding, material amendments to the Program, Program Guidelines, or Program Guidebook concerning the eligibility of an Eligible Property, Property Owner, Qualified Improvement, Qualified Project, or concerns the roles and responsibilities of the metropolitan government in administering the Program shall be approved by the metropolitan council, which shall be by resolution.

5.22.090 Collection and Enforcement; Delinquencies

1. Assessment Installments shall be paid to the Program Administrator and be due and payable at the same time and in the same manner as ad valorem property taxes. The Program Administrator shall cause the Assessment Installment to be reflected on the annual property tax bill for the Eligible Property, provided that failure to do so shall not be a defense for not making a payment when due.
2. Failure to pay any Assessment Installment by the due date shall result in penalties and interest

accruing on unpaid amounts as provided for in the Financing Agreement. Statutory interest and penalties, as allowed for delinquent ad valorem property taxes, shall also accrue on delinquent Assessment Installments, which shall be retained by the metropolitan government.

3. Collection of Assessment Installments and enforcement of C-PACER Liens due to delinquent Assessment Installments, including enforcement by tax sale, shall be enforced by the delinquent tax attorney in the same manner and at the same time as delinquent real property taxes.

5.22.100 Fees

The Program Administrator is authorized to collect an application fee at the time of application to the Program that is up to one percent (1%) of the applicable C-PACER Financing, but not to exceed \$50,000. The fee shall be calculated to offset the actual and reasonable causes to the metropolitan government for administration of the Program. If an application is declined, the fee paid shall be returned to the applicant, less the amount necessary to offset the actual and reasonable costs of reviewing the application.

5.22.110 Severability

If any provision or clause of this chapter or the application thereof to any person or circumstance is held to be unenforceable by a court of competent jurisdiction, such clause or provision and the remainder of this chapter shall remain effective and enforceable to the full extent allowed by law, and all clauses and provisions of this chapter are hereby declared to be severable. In the event and to the extent of a conflict exists between this chapter and the C-PACER Act, the C-PACER Act shall govern.

5.22.120 No Liability

Except for a right of action to enforce the terms of this chapter, this chapter does not confer any right of action nor property interest upon any party to a C-PACER transaction against the metropolitan government, and, so long as metropolitan government complies in good faith with the terms of the C-PACER Act and this chapter, the metropolitan government shall incur no liability for enacting the Program, nor shall the metropolitan government, its governing body, officers, employees, or agents be personally liable as a result of exercising any rights or responsibilities granted pursuant to this chapter.

Section 2. That this ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This Ordinance adopts and codifies in Title 5 of the Metropolitan Code a Commercial Property Assessed Clean Energy and Resilience ("C-PACER") program to be administered by the Metropolitan Trustee. Local governments are expressly authorized by Tenn. Code Ann. § 68-208-101, et seq. (the "Act") to adopt C-PACER programs to assist owners of agricultural, commercial, industrial, and some multi-family residential properties to obtain low-cost and long-term financing for qualifying improvements to the property. The Act requires a public hearing and adoption of an initial resolution (RS2022-1767) to declare the intent to create a C-PACER program. The public hearing was held on October 4, 2022.

The Act prohibits Metropolitan Government funds from being utilized to fund or repay loans related to C-PACER financing. C-PACER loans would be secured with government lien against the property and would run with the land until the loan is paid in full. The lien would have the same priority status as a lien for property taxes and cannot be accelerated or eliminated by foreclosure of a property tax lien.

The program would apply throughout all of the Metropolitan Government for eligible properties with qualifying projects. A project would qualify if it involves the installation or modification of an improvement affixed to the property if it, among other things, decreases energy consumption/demand, decreases water consumption/demand, or increases resilience, fire suppression, flood mitigation, stormwater management, etc. The Metropolitan Trustee would review and approve applications that are qualified in accordance with the Program Guidelines (see BL2022-1634) and, on behalf of the Metropolitan Government, execute, acknowledge, and deliver all necessary documents to carry out the purposes of the program. The Metropolitan Trustee would assess and collect a fee from the applicant for administration of the program up to 1% of the financing, not to exceed \$50,000. The C-PACER loans would be financed by a private entity who would be required to obtain written consent from all other lienholders for the property owner to participate in the program.

The Metropolitan Government would enter separate assessment agreements with property owners and financing entities where the parties would agree to place an assessment on the subject property that is to be paid in annual installments and sufficient to cover the principal, interest, and any penalties/fees related to the debt. The Metropolitan Trustee would include the annual assessment on the tax bill and the property owner would make its annual assessment payment, along with the property taxes, to the Metropolitan Trustee who would forward the assessment receipts to the financing entity. Failure to make timely assessment payments would result in penalties/interest on unpaid amounts due to the financing entity and will incur interest and penalties in the same manner as delinquent property taxes.