

Spokane County, Washington

C-PACER
PROGRAM GUIDEBOOK

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I. Introduction

ABOUT C-PACER

Spokane County (the “County”) administers a Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) financing program (the “C-PACER Program” or the “Program”) under Chapter 36.165 of the Revised Code of Washington (RCW) (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 improvements. While the financing is repaid to the Capital Provider, the C-PACER Act directs the County to levy a voluntary assessment and record a lien (the “C-PACER Lien”) on the property. 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.

In 2020, the Washington State legislature passed C-PACE enabling legislation, HB 2405. 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 (including seismic) for qualifying buildings. Improvements made to reduce lead in drinking water also qualify as improvements.

In Washington, C-PACER financing is available in four categories: energy efficiency, renewable energy, water conservation, and resiliency (including but not limited to seismic) improvements. Improvements that reduce greenhouse gas emissions would qualify, provided that the improvements also conserve energy or result in renewable energy improvements. A voluntary C-PACER loan is secured by a senior lien on the property and paid back over time; tax liens and other government assessments remain superior to the C-PACER 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. In the event of default, only the payments in arrears are due. This arrangement spreads the cost of qualifying improvements – such as energy-efficient HVAC equipment, upgraded insulation, new windows, solar installations, or seismic upgrades – over the useful life of the measures.

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

SPOKANE COUNTY C-PACER PROGRAM GUIDEBOOK

This Guidebook 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. A major benefit to using a ready-made and legally reviewed program is that it allows counties, property owners, contractors, and capital providers to follow a standard set of rules. This is critical in attracting the broadest capital investment to C-PACER projects.

In this document you can find information about:

- Statutory and programmatic eligibility requirements for C-PACER properties and projects in Washington and Spokane County
- Process for applying for C-PACER project approval

II. Benefits of C-PACER

C-PACER offers benefits to building owners, developers, municipalities, mortgage holders, and building professionals.

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.
- **Triple-net and Full-net leases may allow pass-through of assessment installments to tenants.** Under triple/full net leases, C-PACER payments can be passed along to tenants, who also typically derive benefit from any energy savings through reduced operating costs.

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 grow in a C-PACER-enabled jurisdiction, C-PACER is a powerful business growth catalyst for building professionals like energy auditors and contractors.

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.

III. C-PACER Financing Program Rules

The purpose of this Program Guidebook is to provide standard guidelines for counties to use in establishing efficient and effective C-PACER programs that are consistent from county to county across Washington State.

This Program Guidebook (the “Guidebook”) is prepared as required by the C-PACER Act, at the direction of Spokane County, and is approved in connection with 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.

The Guidebook establishes guidelines, eligibility, approval criteria, and an application form for the administration of the C-PACER Program for Spokane 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 this Guidebook.

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 Washington State, and
- The appropriate steps and forms needed for the County to receive and process a C-PACER project lien application.

1. Establishment of C-PACER Program Boundaries

Spokane County adopted Ordinance number _____ on _____, establishing the C-PACER Program for all eligible commercial properties within the boundaries of Spokane County, including both incorporated and unincorporated territory (the “Region”).

2. Administration of Program; Authorized Officials

The Spokane County Building and Planning Department is designated and authorized to review each Project Application to confirm that it is complete and contains no errors on its face. The Spokane County Building and Planning Department will then execute the Assessment Agreement and C-PACER Lien documents on behalf of the County and record them with the real property records.

As part of Program operation, the Spokane County Building and Planning Department 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, Notice of Assessment Interest and C-PACER Lien (“Notice

of Assessment Interest”) and Assignment of Notice of Assessment Interest and Assessment Agreement (“Assignment”).

- Record the Notice of Assessment Interest and Assignment.

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 the Region (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, allow for the reduction in demand, or reduce or eliminate lead from water which may be used for drinking or cooking (“Water Conservation Improvement”); or
- Increase resilience, including but not limited to seismic retrofits, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids (“Resiliency 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 three (3) years prior to the date of Project Application.

Qualifying Capital Provider may be any of the following:

- a corporation, partnership, or other legal entity that provides proof that it is currently registered as a C-PACER Capital Provider in two different states with C-PACER programs;
- a federal or state-chartered bank or credit union; or

- a private entity, whose principal place of business is located in Washington state, provided it is licensed or permitted to do business within the state and can produce its most recent audited financial statement or regulatory business filing.

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;
- Third-party review fees, including verification review fees;
- Capitalized interest;
- Interest reserves;
- Escrow for prepaid property taxes and insurance;
- 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 Washington C-PACER statute reduces the administrative burden on participating counties as much as possible. Thus, the Spokane County Building and Planning Department 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. All applicants are encouraged to review the Project Application Checklist accompanying the Application to ensure that the types of information that Spokane 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).
- (2) The Spokane County Building and Planning Department will have 10 business days to review and approve the Project Application. If the department 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 10 additional business days.
- (3) Spokane County application review process is confined to confirming that the Project Application is complete, and all attachments conform to these guidelines. ***County application 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 Spokane County Building and Planning Department 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 Spokane County Building and Planning Department 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) Upon receipt of approval, the Capital Provider will draft the following “Closing Documents”: The Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of the Notice of Assessment and Assessment Agreement. At or before closing, at the request of the applicant, the designated and authorized official will execute Closing Documents.
- (5) 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.
- (6) At closing, Spokane County will record the Assessment Agreement, the Notice of Assessment Interest and C-PACER Lien, and the Assignment of the Notice of Assessment Interest and C-PACER Lien in the Office of the Auditor for Spokane County. At the election of the applicant, the County may delegate the recording of the Closing Documents to the applicant or their designee(s).
- (7) Upon confirmation of recordation, the Capital Provider will disburse funds in accordance with the Financing Agreement.
- (8) The Property Owner begins making assessment payments per the Assessment Agreement and in accordance with the Financing Agreement

5. Application Documents

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

- Project Application Checklist (form attached)
- Lienholder(s) Consent (form attached)
- Certificate of Qualified Improvements:
 - (1) For Renewable Energy Improvements or Energy Efficiency Improvements on an existing building: A certification stating that (a) 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; or (b) the subject property as a whole prior to the installation of the Qualified Improvements does not conform to the meeting the current building energy or water code for the County, but will do so after the Qualified Improvements are installed.

The certification must be performed by a licensed professional engineer or accredited individual or firm from the following list:

- American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE)
 - Building Energy Assessment Professional (BEAP)

- Building Energy Modeling Professional (BEMP)
- Operations & Performance Management Professional Certification (OPMP)
- High-Performance Building Design Professional Certification (HBDP)
- Association of Energy Engineers (AEE)
 - Certified Energy Manager (CEM)
 - Certified Measurement and Verification Professional (CMVP)
 - Certified Energy Auditor (CEA)
- Building Performance Institute
 - Energy Auditor
- Investor Confidence Project
 - ICP Quality Assurance Assessor

Other professional entities may be accepted by the Spokane County Building and Planning Office at its discretion.

- (2) For Renewable Energy Improvements that are solar photovoltaics, a North American Board of Certified Energy Practitioners (NABCEP) PV design specialist certification is acceptable, or a licensed Electrical Engineer, Building Energy Assessment Professional (BEAP), Building Energy Modeling Professional (BEMP), Certified Energy Manager (CEM), Certified Measurement and Verification Professional (CMVP), or Certified Energy Auditor (CEA). Other professional entities may be accepted by the Spokane County Building and Planning Office at its discretion.
- (3) For lead reduction in water improvements, a Water Quality Association Professional Certification.
- (4) For Resilience Improvements on an existing building: Certification by a licensed professional engineer stating that the Qualified Improvements will result in improved resilience, including but not limited to seismic resilience, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.
- (5) For new construction:
 - (A) Relating to energy or water efficiency, certification by a licensed professional engineer stating that each proposed Qualified Improvement will enable the subject property to exceed the energy efficiency, water efficiency, or renewable energy code requirements. Alternatively, if the building as whole performs above code, 20% of the Total Eligible Construction Costs qualify for C-PACER financing.
 - (B) Relating to resilience, certification by a licensed professional Civil Engineer that the proposed Qualified Improvements will enable the subject property to exceed the resiliency requirements of the current building code. Alternatively, if the building as a whole performs above code, 10% of the Total Eligible Construction Costs qualify for C-PACER financing.
 - (C) For buildings choosing the alternative path, if both efficiency and resiliency measures are present in a building that performs above code for both, 30% of the Total Eligible Construction Costs qualify for C-PACER financing.
 - (D) “Total Eligible Construction Costs” or “TECC” means all direct and indirect costs of materials, labor, and soft costs related to the design, installation, and construction of the new structure. Soft costs may include, for example, architecture and engineering fees, energy modeling costs, surveys, and development fees and financing costs. Costs that are excluded from TECC

include the costs of land acquisition, off-site improvements, site permitting, environmental testing and remediation, and equipment not permanently installed on the property.

- (6) For all Qualified Improvements, the licensed engineer, individual or firm providing the certification of eligibility of the Qualified Improvements must attest that the proposed term of the financing does not exceed the weighted average effective useful life of the proposed Qualified Improvements and that the Qualified Improvements are permanently affixed, as described in this Guidebook.

6. Closing Documents

The following documents require the signature of Spokane 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 it is expected that Property Owners and Capital Providers will negotiate variations tailored to their specific projects.

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

7. Interest Rates

Interest rates are negotiated in a Financing Agreement between the Property Owner and the Capital Provider. Spokane 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 assessment installments payments, including foreclosure, remain the responsibility of the Capital Provider, and the terms are negotiated within the Financing Agreement.

9. Enforcement of C-PACER Lien

The assessment and C-PACER lien shall be assigned by Spokane County to the Capital Provider at the close of any approved C-PACER financing. The C-PACER lien may be enforced with respect to delinquent C-PACER assessment installments by the Capital Provider at any time after one year from the date of delinquency, and may be foreclosed in the same manner as a mortgage lien under chapter 61.12 RCW, except that no sale of the property shall discharge or in any manner affect the priority of the C-PACER lien with respect to installments not yet due and payable at the time of sale, and no deficiency judgment may be sought by the Capital Provider with respect to any unpaid assessment at the time of sale.

10. Program Fee

Spokane County, for cost recovery of time and any associated costs for reviewing a Project Application for completeness and executing the Assessment Agreement, C-PACER Lien, and Assignment, is entitled to

fees which shall be established and listed on the Spokane County Building and Planning Department fee schedule.

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, Notice of Assessment Interest and C-PACER Lien, and Assignment of Notice of Assessments Interest and Assessment Agreement. 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 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 Spokane 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 lien, mortgage, or security interest in the real property.

For qualifying multifamily projects (residential projects of 5 or more dwelling units), the Capital Provider must obtain written consent from any holder of affordable housing covenants, restrictions, or regulatory agreements encumbering the real property as a condition precedent to the participation in the Program by the property.

If the consents are executed at 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 Spokane County Building and Planning Office, an amended Project Application with the consents attached must be sent to the Spokane County Building and Planning 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 Marketing and Participant Education

This Guidebook will be made available to the public on the Spokane County Building & Planning website. It is determined that there is no need for marketing and participant education at this time. It is presumed that Property Owners and Capital Providers understand the principles and processes associated with C-PACER financing and will look to the Guidebook for understanding and clarification of the County Program.

15. County Has No Liability or Financial Responsibility

Neither Spokane County, its governing body, executives, or employees are personally liable as a result of exercising any rights or responsibilities granted under this Program. Spokane 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