

**PROGRAM GUIDEBOOK:  
C-PACER PROGRAM  
KNOX COUNTY**

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## I. Introduction

### ABOUT C-PACER

The County of Knox (the "County") administers 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 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 2021, the Tennessee State legislature passed C-PACER enabling legislation, T.C.A. § 68-205-101, et seq., which was recently amended in 2022. This legislation allows counties, municipalities and local jurisdictions 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 Record 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.

Individual counties and municipalities may now take action to create their own C-PACER programs and help buildings become more efficient and resilient. Creating a County C-PACER program is simple: first, the county adopts a Resolution 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 Record Owner, when the lender's lien against the property is filed, the County only must review the lien application for compliance with the C-PACER state law, and then record 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 voluntary C-PACER loan is secured by a senior lien on the property and paid back over time; tax liens and other government assessments are equal in priority 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, or solar installations - over the useful life of the measures.

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

## II. Benefits of C-PACER

C-PACER offers benefits to building owners, developers, local governments, 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 Record 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, CPACER is a powerful business growth catalyst for building professionals like energy auditors and contractors.

**For Local Jurisdictions:** 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 is 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.

### **III. C-PACER Financing Program Rules**

This Program Guidebook (the "Guidebook") is 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 Resolution for this program (the "C-PACER Resolution") dated 07/24/2023. Capitalized terms used herein, but not defined herein, have the meaning given to such terms in the C-PACER Resolution.

The Guidebook establishes guidelines, eligibility, approval criteria, and an application form for the administration of the C-PACER Program for the County. The C-PACER Program enables financing for commercial Record Owners ("Record Owners") to make certain energy efficiency, renewable energy, water conservation, and resiliency improvements (each, a "Qualified Improvement") as described in the CPACER 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." Record Owners may receive funding for their Qualified Improvements only from qualified private investors ("Capital Providers") pursuant to a separate Financing Agreement negotiated between the Record 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**

The County adopted Resolution number R-23-7-904 on 07/24/2023, establishing the C-PACER Program for all eligible commercial properties within the boundaries of the County.

#### **2. Administration of Program & Authorized Officials**

The Knox County Trustee is designated and authorized to review each Project Application to confirm that it is complete and contains no errors on its face. We 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, Knox County will:

- Accept Project Applications (see Attachment A-2, Application) from Record 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 (1) the Assessment Agreement; (2) the Notice of Assessment Interest and C-PACER Lien; (3) Certificate of C-PACER Completion; (4) Economic Benefits Compliance Certificate; (5) Energy Water Resilience Compliance Certificate; (6) Mortgage Holder Consent; and (7) Program Application Checklist; and

- Record the (1) the Assessment Agreement; (2) the Notice of Assessment Interest and C-PACER Lien; (3) Certificate of C-PACER Completion; (4) Economic Benefits Compliance Certificate; (5) Energy Water Resilience Compliance Certificate; (6) Mortgage Holder Consent; and (7) Program Application Checklist

### **3. Eligibility Requirements**

Eligible Property means privately owned commercial, industrial, or agricultural real property, or privately owned residential real property consisting of five (5) or more dwelling units, property owned by nonprofit, charitable, or religious organizations, and property owned by pseudo-governmental organizations such as Industrial Development Corporations, Housing Authorities, or Health Educational and Housing Facility Boards. Pawn shops, adult entertainment and product stores, liquor and tobacco stores, payday loan and title loan establishments, as well as other business types determined in the Local Government's sole discretion shall not be considered Commercial Property.

Ground leases on Eligible Property are permitted, so long as all requirements of the C-PACER Resolution are met, including requiring the Record 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.

Prior to approval of financing on a leasehold owned by the state or the Local Government but leased to a privately owned entity as described in T.C.A. § 68-205-102(2),, the consent of this state or Local Government must be obtained. A change to the leasehold must be approved by this state or the Local Government, as applicable. The state or Local Government must be held harmless if the privately owned entity to which the leasehold is leased defaults on a financing agreement for a leasehold changed in accordance with the statute and Resolution.

The Eligible Property must be assessed by a state-certified appraiser. That assessment, plus existing indebtedness on the property, cannot exceed: (1) 90% of the fair market value prior to the completion of all planned real property improvements, with the exception that properties qualified under the federal low-income housing tax credit program set forth in 26 U.S.C. § 42 are exempt from this requirement; and (2) 25% of the fair market value of the property at the time of the completion of all planned real property improvements.

Minority and Women Owned Business Enterprise Participation means that anyone utilizing this Program on a Qualified Project shall use a "best faith effort" to reach Minority/Women Business Enterprise (MWBE) participation on the Qualifying Costs.

Record Owner means the owner or owners on title, duly recorded, of a Commercial Property, the owner listed on the property's legal documents on file, or the owner of an estate for years created pursuant to a written ground lease agreement or similar agreement.

The Record Owner may be any type of business, corporation, individual, or non-profit organization. The Record Owner must certify (1) the Record Owner is the legal owner of the Eligible Property; (2) the Record Owner is current on mortgage and property tax payments; (3) the Record Owner is not insolvent or in bankruptcy proceedings; and (4) the title of the Eligible Property is not in dispute.

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, 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; ("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, flood mitigation, and stormwater management adopted by Knox County Ordinance Chapter 26 Sections 132-150, and other resilience projects approved by the county ("Resiliency Improvement").
- Electrical vehicle charging infrastructure.
- Conform to the requirements of the most recent version of the 2018 International Energy Conservation Code adopted Knox County Ordinance Section 10 Sections 281-301 as well as the 2018 International Green Construction Code; or
- Conform to seismic requirements of the most recent version of the 2018 International Building Code adopted by Knox County Ordinance Chapter 10 Sections 302-321.

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 must exceed \$1,000,000.00 and can include:
  1. The cost of the Qualified Improvements plus the costs of materials and labor necessary for installation or modification of a Qualified Improvement.
  2. Permit fees
  3. Inspection fees
  4. Financing or origination fees
  5. Program application and administrative fees
  6. Project development, architectural and engineering fees
  7. Capitalized interest in an amount determined by the Record Owner and the Capital Provider not to exceed the maximum rate allowed by Tennessee law

8. Interest reserves
9. Any other fees or costs that may be incurred by the Record Owner incident to the installation, modification, or improvement on a specific or pro rata basis

The period of the special assessment for these qualifying costs must not exceed the weighted average of the useful life of the Qualified Project that is the basis for the assessment.

#### 4. Application Process

The Tennessee C-PACER statute reduces the administrative burden on participating counties, municipalities and local jurisdictions as much as possible. Thus, KNOX COUNTY TRUSTEE will review the Application for proof of compliance with the requirements of the statute that are necessary for KNOX COUNTY TRUSTEE 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 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 Record Owner approaches a Capital Provider. The Capital Provider will work with the Record 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 C-PACER application process will be as follows:

(1) The Record Owner and the Capital Provider prepare the Project Application, consisting of the Project Application Checklist and all supporting documents (described below). Applicants are encouraged to review the Project Application Checklist accompanying the Project Application to ensure that the types of information that KNOX COUNTY TRUSTEE will rely upon to verify compliance with the CPACER Act and C-PACER Resolution are present in the completed Project Application.

(2) The County will accept applications the first five business days of the month excluding county recognized holidays. THE KNOX COUNTY TRUSTEE shall take no longer than ten (10) business days to evaluate the application and officially act at a regularly scheduled meeting (typically on the third Wednesday of the month) or at a specially called meeting with required notice.

(3) The County's application review process is confined to confirming that the Project Application is complete, and all attachments conform to these guidelines. ***KNOX COUNTY TRUSTEE's 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.*** KNOX COUNTY TRUSTEE will review the Project Application for proof of compliance with the requirements of the C-PACER Act and C-PACER Resolution that are necessary for 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 KNOX COUNTY 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.

(5) Upon receipt of approval, the Capital Provider will draft the following "Closing Documents": (1) the Assessment Agreement; (2) the Notice of Assessment Interest and C-PACER Lien; (3) Certificate of C-PACER Completion; (4) Economic Benefits Compliance Certificate; (5) Energy Water Resilience Compliance Certificate; (6) Mortgage Holder Consent; and (7) Program Application Checklist 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 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 Resolution.

(7) At closing, County will record the Closing Documents in the Office of the Register of Deeds for Knox County. At the election of the applicant, KNOX COUNTY TRUSTEE 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 Record 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)
- 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:

(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, 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.

(5) For all Qualified Improvements, the aforementioned certifications (in subsections #1-4) must be completed by either a licensed Professional Engineer or an authorized representative of a licensed engineering firm. The certifying individual may hold additional licenses or qualifications.

Demonstrating their qualifications, the certifying individual must inspect the installation of the Qualified Improvements and provide a stamped inspection report from a Professional Engineer licensed with the State of Tennessee to County attesting all improvements have been installed to applicable code requirements and/or product specifications.

## 6. Closing Document

The following documents require the signature of 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 Record Owners and Capital Providers will negotiate variations tailored to their specific projects.

- Project Application Checklist
- Assessment Agreement
- Notice of Assessment Interest and C-PACER Lien
- Economic Benefits Compliance Certificate
- Energy Water Resilience Compliance Certificate
- Mortgage Holder Consent
- Certificate of C-PACER Completion

## 7. Interest Rates

Interest rates are negotiated in a Financing Agreement between the Record Owner and the Capital Provider but may not exceed the maximum rate allowed under Tennessee law. **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 Record 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 of Knox Trustee using the same process that it uses for collecting ad valorem property taxes.

## 9. Enforcement of C-PACER Lien

The County of Knox Trustee will enforce the C-PACER Lien through the same tax sale mechanism that it uses to enforce the liens for ad valorem property taxes.

## 10. Program Fee

County, as compensation for time and costs incurred in the establishment of the C-PACER Program, including the C-PACER Resolution, this Guidebook, the draft documents, as well as for reviewing a Project Application for completeness and executing the Assessment Agreement and C-PACER Lien is entitled to a fee equal to 1% of the amount financed by the Record Owner, not to exceed \$50,000. The Record Owner must pay this fee to KNOX COUNTY TRUSTEE at the closing of the transaction between the Record Owner and the Capital Provider, and such payment is a condition precedent to recording. The County shall invoice the applicant, collect the Program Fee and distribute 50% of the fee collected to the County of Knox Department of Finance.

#### **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 Record 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 in the Exhibits below 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 are executed at closing, the signatures of 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 County of Knox Trustee, an amended Project Application with the consents attached must be sent to the County of Knox Trustee. Capital Providers are responsible for providing their own form of consent that conforms to the C-PACER Resolution and C-PACER Act.

#### **14. Provisions for Marketing and Participant Education**

This Guidebook will be made available to the public on the KNOX COUNTY TRUSTEE website. It is determined that there is no need for marketing and participant education currently. It is presumed that Record 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 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.