File #: 2021-0301, **Version:** 1

AN ORDINANCE establishing a commercial property assessed clean energy and resiliency financing program.

PREAMBLE:

In 2018, the Intergovernmental Panel on Climate Change issued new warnings on the impact of climate change and documented that global emissions need to be on the steep decline within the next decade to avoid the worst impacts of climate change.

According to the most recent data prepared by ICLEI Local Governments for Sustainability, an international technical consulting organization, commercial and industrial buildings make up thirty eight percent of greenhouse gas emissions in King County.

Greenhouse gas emissions are linked to climate change, which poses a threat to King County residents, the county's natural environment and the county's economic security.

Frontline communities are those communities that often experience the earliest and most acute impacts of climate change, face historic and current inequities and have limited resources and capacity to adapt to climate change. This includes Black, Indigenous and People of Color communities, immigrants and refugees, people with low incomes, communities experiencing disproportionate pollution exposure, women and gender non-conforming, LGTBQIA+ people, people who live or work outside, people with existing health issues, people with limited English skills, people experiencing pregnancy and other climate-vulnerable groups. Climate change is a threat multiplier to other social issues such as affordable housing and food security.

In 2020 the executive transmitted to the council the 2020 Strategic Climate Action Plan, which recommended bold action on greenhouse gas emission reductions across the county and in county government operations. The plan includes recommended actions that support countywide goals of fifty percent greenhouse gas emission reductions by 2030 and eighty percent greenhouse gas emission reductions by 2050, compared to a 2007 baseline.

King County must move aggressively to reduce greenhouse gas emissions to protect the region from the most severe impacts of climate change, while addressing effects already experienced in our region, including increased flooding, sea-level rise, hotter summers and wildfire smoke.

In addition to climate change, King County must prepare for threats that could arise from a major earthquake disaster. King County is home to a significant number of active fault lines that have been identified in the central Puget Sound area.

The 2020-2025 King County Regional Hazard Mitigation Plan states that there is up to a twenty percent chance of a major earthquake striking King County with potentially catastrophic damages in the next thirty-five years. The earthquake hazard presents regional potential for damages, casualties, economic, and social impacts.

The 2020-2025 King County Regional Hazard Mitigation Plan states that unreinforced buildings are a priority earthquake vulnerability. Brick and masonry buildings are extremely susceptible, even to minor earthquakes. Unreinforced masonry buildings are likely to collapse or partially collapse and be a leading source of fatalities due to falling debris.

In 2020 the Washington state Legislature enacted Engrossed Second Substitute House Bill 2405, an act relating to commercial property assessed clean energy and resiliency.

Chapter 36.165 RCW authorizes the establishment of a commercial property assessed clean energy and resiliency ("C-PACER") program that jurisdictions can voluntarily implement to ensure that free and willing owners of agricultural, commercial and industrial properties and of multifamily residential properties with five or more dwelling units can obtain low-cost, long-term financing for qualifying improvements, including energy efficiency, water conservation, renewable energy and resiliency projects.

Under the C-PACER program, qualifying improvements will be repaid through a voluntary assessment on the property, secured by a county lien and assigned to a capital provider for all the administrative aspects of billing, collecting and enforcing the lien. The C-PACER program allows for costs incurred by the county to be recovered via a fee paid by the building owner.

Improvements to energy efficiency and renewable energy installations for commercial and multifamily residential buildings through property assessed financing will result in reductions in energy use thereby reducing greenhouse gas emissions in the county.

Resiliency upgrades will harden building stock in the county against the impacts of future earthquakes and other natural events, including floods, wildfires, wind, and disruptions to electricity supplies, improving human safety and protecting against economic damages.

Low-cost funding opportunities through property assessed financing make efficiency upgrades and building retrofits more accessible and affordable for building owners and increase local green job opportunities.

Facilitating the financing of qualified projects, repaid by voluntary assessments on property benefited by property assessed C-PACER improvements, is in the public interest for safety, health and other common-good reasons.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Sections 2 through 6 of this ordinance should constitute a new chapter in K.C.C. Title 18.

NEW SECTION. SECTION 2. There is hereby added to new chapter created in section 1 of this ordinance a new section to read as follows:

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

A. "Assessment" means the voluntary agreement of a property owner to allow the county to place an assessment on the owner's property to repay financing.

B. "Capital provider" means any private entity or the entity's designee, successor or assign, that makes or funds financing under this chapter.

C. “C-PACER Program Guide” means a comprehensive document that designates the applicable region for the program and establishes guidelines, specifications, processes, and contains standard application forms and other documents consistent with the administration of a program.

D. "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.

E. "Financing" means an investment from a capital provider to a property owner to finance or refinance a qualified project.

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

G. "Lien" means the lien recorded at the county on the eligible property to secure the voluntary annual assessment, which remains on the property until paid in full.

H. "Program" means a commercial property assessed clean energy and resiliency program established under this chapter.

I. "Program administrator" means the party designated by the county or the state Department of Commerce to administer a program.

J. "Project application" means an application submitted to the county to demonstrate that a proposed project qualifies for financing and for a lien.

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K. "Qualified improvement" means a permanent improvement affixed to the real property that is at least one of the following:

1. An energy-efficiency improvement, which means it:

a. decreases electricity consumption or demand through the use of efficiency technologies, products or activities that reduce or support the reduction of electricity consumption;

b. allows for the reduction in demand; or

c. reduces greenhouse gas emissions;

2. An electrification improvement, which means it uses electricity for space or water heating;

3. A renewable energy improvement, which means it supports the production of clean, renewable energy as defined in RCW 19.405.020(34), including, but not limited to a product, device or interacting group of products or devices on the customer's side of the meter that generate electricity, provide thermal energy or regulate temperature;

4. A water conservation improvement, which means it decreases water consumption or demand and addresses safe drinking water through the use of efficiency technologies, products or activities that reduce or support the reduction of water consumption, that allow for the reduction in demand that or reduce or eliminate lead from water that might be used for drinking or cooking; or

5. A resilience improvement, which means it increases building or community resilience, including, but not limited to seismic retrofits, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, microgrids and public safety and emergency response.

L. "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.

<u>NEW SECTION. SECTION 3.</u> There is hereby added to new chapter created in section 1 of this ordinance a new section to read as follows:

A. The executive shall establish a commercial property assessed clean energy and resiliency program, commonly known as a C-PACER program, available in the entire jurisdiction of King County, including both unincorporated and incorporated territory. The program shall allow owners of agricultural, commercial and industrial properties and of multifamily residential properties with five or more dwelling units, to obtain low-cost, long-term financing for qualified improvements. Qualified projects must be located wholly within the jurisdiction of King County.

B. The executive shall establish the program substantially in the form of Attachment A to this ordinance, the King County C-PACER Program Guide.

C. The qualifying improvements will be repaid through a voluntary assessment on the property, secured by a county lien, and assigned to a capital provider for all the administrative aspects of billing, collecting, and enforcing the lien.

D. In accordance with RCW 36.165.030, the program must begin accepting applications and approving applications no later than one year after the effective date of this ordinance.

E. In accordance with RCW 36.165.050, the executive, or a proxy, shall record each lien in the real property records of the county. The recording must include:

1. The legal description of the eligible property;
2. The assessor's parcel number of the property;
3. The grantor's name, which must be the same as the property owner on the assessment agreement;
4. The grantee's name, which must be King County;
5. The date on which the lien was created;
6. The principal amount of the lien;
7. The terms and length of the lien; and
8. A copy of the voluntary assessment agreement between the county and the property owner.

F. The executive shall also record the assignment of the lien from the county to the appropriate capital provider.

G. The executive shall ensure that the program complies with chapter 36.165 RCW.

H.1. If King County is acting as the program administrator, a final decision on the eligibility of a proposed improvement may be appealed to the office of the hearing examiner by filing an appeal with the hearing examiner or the program administrator in accordance with K.C.C. 20.22.080. The examiner may adopt reasonable rules or regulations for conducting its business. The executive or designee shall make the rules and regulations freely accessible to the public.

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

I.1. The executive shall provide a report two years after beginning to accept applications, and every two years following. The report shall include:

a. the number of project applications received and processed;

b. the total value of project applications received and processed; and

c. the estimated energy and water savings and renewable energy deployed from projects, and the number of resiliency measures financed.

2. The executive should electronically file the report required by this section with the clerk of the council, who shall retain an electronic copy and provide an electronic copy to all councilmembers.

NEW SECTION. SECTION 4. There is hereby added to new chapter created in section 1 of this ordinance a new section to read as follows:

A. Before a capital provider may enter into a financing agreement to provide financing of a qualified project to a record owner of any eligible property, the capital provider must receive written consent from any holder of a lien, mortgage, or security interest in the real property that the property may participate in the program and that the lien will take precedence over all other liens except for a lien for taxes as described in RCW 36.165.060.

B. Before a capital provider may enter into a financing agreement to provide financing of a qualified project to the record owner of any multifamily residential real property with five or more dwelling units, the program administrator must also receive written consent from any and all holders of affordable housing covenants, restrictions or regulatory agreements in the real property that the property may participate in the program and that the lien will take precedence over all other liens except for a lien for taxes as described in RCW 36.165.060.

C. The executive or designee may impose a fee equal to one percent of the total cost of the qualified project or fifteen thousand dollars, whichever is less, when acting as the program administrator.

NEW SECTION. SECTION 5. There is hereby added to new chapter created in section 1 of this ordinance a new section to read as follows:

King County, in conjunction with the program, may not:

A. Make the issuance of a permit, license, or other authorization from the county to a person who owns property in the region contingent on the person entering into a written contract to repay the financing of a qualified project under chapter 36.165. RCW;

B. Compel a person who owns property in the region to enter into a written contract to repay the financing of a qualified project under chapter 36.165 RCW; or

C. Enforce any privately financed debt by a capital provider under this chapter or use public funds to fund or repay any loan between a capital provider and property owner.

NEW SECTION. SECTION 6. There is hereby added to new chapter created in section 1 of this ordinance a new section to read as follows:

The members of the council, the executive, and county employees are not personally liable as a result of exercising any rights or responsibilities conveyed by chapter 36.165 RCW and this chapter.

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