



Legislation Text

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AN ORDINANCE relating to updating the King County Code that governs the foreclosure process for C-PACER to comply with changes in state law; amending Ordinance 19360, Section 3, and K.C.C. 18.19.020; and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings:

A. In 2020, the Washington Legislature adopted the Commercial Property Assessed Clean Energy and Resilience ("C-PACER") program in Washington, which allowed counties to implement their own county C-PACER programs in accordance with chapter 36.165 RCW. The C-PACER program is intended to improve access for commercial properties to financing for qualifying energy efficiency, renewable energy and resiliency improvements.

B. The county exercised this statutory authority to create its own C-PACER program with the adoption of Ordinance 19360, codified at K.C.C. chapter 18.19. As required by chapter 36.165 RCW, a county program had to follow certain requirements contained in the state law, including the provisions of how a C-PACER lien must be foreclosed.

C. As originally adopted, RCW 35.165.060 created an ambiguity as to the extent a lender could rely on a county to foreclose a C-PACER lien. Recognizing this ambiguity, and in keeping with the intent that a county should not be responsible for foreclosing a C-PACER lien, the Washington legislature passed Substitute Senate Bill 5862, which went into effect on March 17, 2022, as Chapter 101, Laws of Washington 2022. By changing the processes by which a C-PACER lien may be foreclosed from the procedures in chapter 84.64 RCW, which governs how a county may foreclose its own tax liens, to chapter 61.12 RCW, how a lender may foreclose a

mortgage, the legislature eliminated the confusion as to whether a C-PACER lender could require a county to foreclose a lien on the lender's behalf.

D. Currently both K.C.C. chapter 18.19 and the C-PACER Program Guidebook contain the outdated provisions regarding foreclosure.

E. The King County C-PACER Program Guidebook, which governs how the county's C-PACER program, must be administered in accordance with K.C.C. 18.19.020.B., requires the program administrator to review and approve the project application within fifteen business days of receipt by the county absent extenuating circumstances. However, even if extenuating circumstances exist, such a review must be completed no more than thirty days from receipt of the application. At present, two applications are pending with the program administrator that cannot be processed within the thirty-day time limit because the county's C-PACER program is out of compliance with recent legislative changes made to RCW 35.165.060. Without amending the county's C-PACER program to comply with the new foreclosure provisions set out in RCW 35.165.060, the county cannot facilitate the very financial assistance its C-PACER program was intended to engender; and specifically, the two pending applications may lapse, causing the private funding of those improvements to be lost, if not more costly to the borrower.

SECTION 2. Ordinance 19360, Section 3, and K.C.C 18.19.020 are hereby amended 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 areas. 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 from private capital providers. 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 (~~Ordinance 19360~~) 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. The county shall have no obligation to prosecute the foreclosure of a C-PACER lien on behalf of the capital provider, and the capital provider, by being a party to the assessment agreement, accepting an assignment of a C-PACER lien in accordance with the assignment of the notice of assessment and assessment agreement, shall ((perform the obligations, responsibilities and duties of a county foreclosing a tax lien under chapter 84.64 RCW as it pertains to the foreclosure of a C-PACER lien. If a court of competent jurisdiction determines, with prior notice of the proceeding to the county, that the capital provider does not have the authority to issue a deed upon the sale of property pursuant to a C-PACER lien foreclosure judgment and orders the county to facilitate the issuance of a deed following such a sale, the capital provider shall reimburse the county for all costs arising from the issuance of that deed, including fees, taxes and attorneys' fees)) be responsible for the collection payments and enforcement of any delinquencies. The capital provider may foreclose the C-PACER lien at any time after one year from the date of delinquency of an assessment payment in the same manner as a mortgage lien under chapter 61.12 RCW except that a sale of the property shall not 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. The participation of the county sheriff in any such a foreclosure action shall not be deemed a violation of or inconsistent with RCW 36.165.110 and K.C.C. 18.19.040.

E. In accordance with RCW 36.165.030, the program must begin accepting applications and approving applications no later than six months after December 10, 2021.

F. In accordance with RCW 36.165.050, the executive or designee 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.

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

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

I. Denial of an application may be appealed to the office of the hearing examiner by filing an appeal with the hearing examiner. K.C.C. 20.22.080.B. through G. shall govern the appeal process. The examiner shall issue a final decision in accordance with K.C.C. 20.22.040. The examiner may adopt reasonable rules or regulations for conducting its business. The executive or designee shall make the rules freely accessible to the public. The fee for filing an appeal under this subsection shall be the same as required by K.C.C. 4A.780.010. The fee shall be paid at the time the appeal statement is delivered and is not refundable.

J.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.

SECTION 3. The county council finds as a fact and declares an emergency exists and that this ordinance is necessary for the immediate preservation of public peace, health, or safety or for the support of county government and its existing public institutions.