

Legislation Text

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AN ORDINANCE establishing a commercial property assessed clean energy and resiliency financing program; amending Ordinance 4461, Section 2, as amended, and K.C.C. 20.22.040 and Ordinance 4461, Section 2, as amended, and K.C.C. 20.22.040 and adding a new chapter to K.C.C Title 18.

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, LGBTQIA+ 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.

The plan finds that future conservation efforts will require a much greater focus on reducing on-site consumption of fossil fuels. That can be accomplished through conversions to higher-efficiency electrified systems and cleaner fuels. The 2020 Strategic Climate Action Plan sets goals for the phase out of fossil fuel use in existing buildings by at least twenty percent by 2030, fifty percent by 2040 and eighty percent by 2050, compared to a 2017 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 and 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 C-PACER improvements, is in the public interest for safety, health and other

common-good reasons.

As required by RCW 36.165.040, the King County council shall hold a public hearing on this proposed ordinance in accordance with its COVID 19 protocols and at a time to be established by a council's agenda.

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 the 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 annual 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 provides financing under this chapter.

C. "C-PACER Program Guidebook" means a comprehensive document that designates the applicable region for the program and establishes guidelines, specifications and processes and contains standard application forms and other documents consistent with the administration of the 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. "Fossil fuel" means fossil fuels as defined in K.C.C. 21.A.06.532C.

H. "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.

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

J. "Program administrator" means the party designated by the county to administer the program.

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

L. "Qualified improvement" means a permanent improvement affixed to real property. "Qualified improvement" includes at least one of the following:

1. An energy-efficiency improvement, which means it decreases electricity consumption or demand or reduces greenhouse gas emissions through the use of efficiency technologies, products or activities that reduce or support the reduction of electricity consumption, or that it allows for the reduction in electricity demand. Energy efficiency improvements shall not include the installation, maintenance or repair of equipment that burns fossil fuels;
2. An electrification improvement, which means it eliminates the combustion of fossil fuels through the electrification of space or water heating;
3. Electric vehicle charging infrastructure, which means it supports the electrification of the transportation sector and the reduction of greenhouse gas emissions;
4. A renewable energy improvement, which means it supports the production of a clean, renewable resource 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 generates electricity, provides thermal energy or

regulates temperature;

5. A water conservation improvement, which means it decreases water consumption or demand 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, or reduces or eliminates lead from water that might be used for drinking or cooking through the use of technologies, products, or activities that address safe drinking water; and

6. A resilience improvement, which means it increases building or community resilience, including but not limited to seismic retrofits, flood mitigation, stormwater management, fire detection and suppression, wildfire and wind resistance, energy storage and microgrids that reduce public risk and emergency response.

M. "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.

NEW SECTION. SECTION 3. There is hereby added to the 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 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 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 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.

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

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.

NEW SECTION. SECTION 4. There is hereby added to the 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 the owner of record 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 owner of record 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 the 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 moneys to support or repay any loan between a capital provider and property owner.

NEW SECTION. SECTION 6. There is hereby added to the 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.

SECTION 7. Ordinance 4461, Section 2, as amended, and K.C.C. 20.22.040 are hereby amended to read as follows:

The examiner shall issue final decisions in the following cases:

A. Appeals of orders of the ombuds under the lobbyist disclosure code, K.C.C. chapter 1.07;

- B. Appeals of sanctions of the finance and business operations division in the department of executive services imposed under K.C.C. chapter 2.97;
- C. Appeals of career service review committee conversion decisions for part-time and temporary employees under K.C.C. chapter 3.12A;
- D. Appeals of electric vehicle recharging station penalties of the Metro transit department under K.C.C. 4A.700.700;
- E. Appeals of notice and orders of the manager of records and licensing services or the department of local services permitting division manager under K.C.C. chapter 6.01;
- F. Appeals of adult entertainment license denials, suspensions and revocations under K.C.C. chapter 6.09;
- G. Appeals of the fire marshal's decisions on fireworks permits under K.C.C. chapter 17.11;
- H. Appeals of cable franchise nonrenewals under K.C.C. 6.27A.060 and notices and orders under K.C.C. 6.27A.240;
- I. Appeals of notices and orders of the department of natural resources and parks under K.C.C. chapter 7.09;
- J. Appeals of decisions of the director of the department of natural resources and parks on surface water drainage enforcement under K.C.C. chapter 9.04;
- K. Appeals of decisions of the director of the department of natural resources and parks on requests for rate adjustments to surface and storm water management rates and charges under K.C.C. chapter 9.08;
- L. Appeals of decisions on water quality enforcement under K.C.C. chapter 9.12;
- M. Appeals of notices and orders of the manager of animal control under K.C.C. chapter 11.04;
- N. Certifications by the finance and business operations division of the department of executive services involving K.C.C. chapter 12.16;
- O. Appeals of orders of the office of civil rights under K.C.C. chapter 12.17, K.C.C. chapter 12.18,

K.C.C chapter 12.20 and K.C.C. chapter 12.22;

P. Appeals of noise-related orders and citations of the department of local services, permitting division, under K.C.C. chapter 12.86;

Q. Appeals of utilities technical review committee determinations on water service availability under K.C.C. 13.24.090;

R. Appeals of decisions regarding mitigation payment system, commute trip reduction and intersection standards under K.C.C. Title 14;

S. Appeals of suspensions, revocations or limitations of permits or of decisions of the board of plumbing appeals under K.C.C. chapter 16.32;

T. Appeals from denials of C-PACER applications under K.C.C. chapter 18.xx (the new chapter created under section 1 of this ordinance);

U. Appeals of all Type 2 decisions under K.C.C. chapter 20.20, with the exception of appeals of shoreline permits, including shoreline substantial development permits, shoreline variances and shoreline conditional uses, which are appealable to the state Shoreline Hearings Board;

~~((U-))~~ V. Appeals of SEPA decisions, as provided in K.C.C. 20.44.120 and public rules adopted under K.C.C. 20.44.075;

~~((V-))~~ W. Appeals of completed farm management plans under K.C.C. 21A.30.045;

~~((W-))~~ X. Appeals of decisions of the interagency review committee created under K.C.C. 21A.37.070 regarding sending site applications for certification under K.C.C. chapter 21A.37;

~~((X-))~~ Y. Appeals of citations, notices and orders, notices of noncompliance, stop work orders issued pursuant to K.C.C. Title 23 or Title 1.08 of the rules and regulations of the King County board of health;

~~((Y-))~~ Z. Appeals of notices and certifications of junk vehicles to be removed as a public nuisance as provided in K.C.C. Title 21A and K.C.C. chapter 23.10;

~~((Z-))~~ AA. Appeals of decisions not to issue a citation or a notice and order under K.C.C.

23.36.010.A.2;

((AA-)) BB. Appeals of fee waiver decisions by the department of local services, permitting division, as provided in K.C.C. 27.02.040;

((BB-)) CC. Appeals from decisions of the department of natural resources and parks related to permits, discharge authorizations, violations and penalties under K.C.C. 28.84.050 and 28.84.060;

((CC-)) DD. Appeals of transit rider suspensions under K.C.C. 28.96.430;

((DD-)) EE. Appeals of department of public safety seizures and intended forfeitures, when properly designated by the chief law enforcement officer of the department of public safety as provided in RCW 69.50.505; and

((EE-)) FF. Other applications or appeals that are prescribed by ordinance.

SECTION 8. Section 9 of this ordinance takes effect on the date that the minimum time period after adoption of Ordinance 19276 required by RCW 70.77.250(4) has passed.

SECTION 9. Ordinance 4461, Section 2, as amended, and K.C.C. 20.22.040 are hereby amended to read as follows:

The examiner shall issue final decisions in the following cases:

A. Appeals of orders of the ombuds under the lobbyist disclosure code, K.C.C. chapter 1.07;

B. Appeals of sanctions of the finance and business operations division in the department of executive services imposed under K.C.C. chapter 2.97;

C. Appeals of career service review committee conversion decisions for part-time and temporary employees under K.C.C. chapter 3.12A;

D. Appeals of electric vehicle recharging station penalties of the Metro transit department under K.C.C. 4A.700.700;

E. Appeals of notice and orders of the manager of records and licensing services or the department of local services permitting division manager under K.C.C. chapter 6.01;

- F. Appeals of adult entertainment license denials, suspensions and revocations under K.C.C. chapter 6.09;
- G. Appeals of the fire marshal's decisions on fireworks permits under K.C.C. chapter 6.26;
- H. Appeals of cable franchise nonrenewals under K.C.C. 6.27A.060 and notices and orders under K.C.C. 6.27A.240;
- I. Appeals of notices and orders of the department of natural resources and parks under K.C.C. chapter 7.09;
- J. Appeals of decisions of the director of the department of natural resources and parks on surface water drainage enforcement under K.C.C. chapter 9.04;
- K. Appeals of decisions of the director of the department of natural resources and parks on requests for rate adjustments to surface and storm water management rates and charges under K.C.C. chapter 9.08;
- L. Appeals of decisions on water quality enforcement under K.C.C. chapter 9.12;
- M. Appeals of notices and orders of the manager of animal control under K.C.C. chapter 11.04;
- N. Certifications by the finance and business operations division of the department of executive services involving K.C.C. chapter 12.16;
- O. Appeals of orders of the office of civil rights under K.C.C. chapter 12.17, K.C.C. chapter 12.18, K.C.C. chapter 12.20 and K.C.C. chapter 12.22;
- P. Appeals of noise-related orders and citations of the department of local services, permitting division, under K.C.C. chapter 12.86;
- Q. Appeals of utilities technical review committee determinations on water service availability under K.C.C. 13.24.090;
- R. Appeals of decisions regarding mitigation payment system, commute trip reduction and intersection standards under K.C.C. Title 14;
- S. Appeals of suspensions, revocations or limitations of permits or of decisions of the board of

plumbing appeals under K.C.C. chapter 16.32;

T. Appeals from denials of C-PACER applications under K.C.C. chapter 18.xx (the new chapter created under section 1 of this ordinance);

U. Appeals of all Type 2 decisions under K.C.C. chapter 20.20, with the exception of appeals of shoreline permits, including shoreline substantial development permits, shoreline variances and shoreline conditional uses, which are appealable to the state Shoreline Hearings Board;

~~((U.))~~ V. Appeals of SEPA decisions, as provided in K.C.C. 20.44.120 and public rules adopted under K.C.C. 20.44.075;

~~((V.))~~ W. Appeals of completed farm management plans under K.C.C. 21A.30.045;

~~((W.))~~ X. Appeals of decisions of the interagency review committee created under K.C.C. 21A.37.070 regarding sending site applications for certification under K.C.C. chapter 21A.37;

~~((X.))~~ Y. Appeals of citations, notices and orders, notices of noncompliance, stop work orders issued pursuant to K.C.C. Title 23 or Title 1.08 of the rules and regulations of the King County board of health;

~~((Y.))~~ Z. Appeals of notices and certifications of junk vehicles to be removed as a public nuisance as provided in K.C.C. Title 21A and K.C.C. chapter 23.10;

~~((Z.))~~ AA. Appeals of decisions not to issue a citation or a notice and order under K.C.C. 23.36.010.A.2;

~~((AA.))~~ BB. Appeals of fee waiver decisions by the department of local services, permitting division, as provided in K.C.C. 27.02.040;

~~((BB.))~~ CC. Appeals from decisions of the department of natural resources and parks related to permits, discharge authorizations, violations and penalties under K.C.C. 28.84.050 and 28.84.060;

~~((CC.))~~ DD. Appeals of transit rider suspensions under K.C.C. 28.96.430;

~~((DD.))~~ EE. Appeals of department of public safety seizures and intended forfeitures, when properly designated by the chief law enforcement officer of the department of public safety as provided in RCW

69.50.505; and

~~((EE-))~~ FF. Other applications or appeals that are prescribed by ordinance.

SECTION 10. Ordinance 18230, Section 16, as amended, and K.C.C. 20.22.070 to read as follows:

A. K.C.C. 20.22.080 applies to all appeals to the office of the hearing examiner. If there is a direct conflict between the appeal provisions in K.C.C. 20.22.080, and the appeal provisions found in subsection B. of this section, the appeal provisions found in subsection B. of this section shall control.

B. The provisions for appealing the following decisions are found in the following chapters of the King County Code:

1. Career service review, K.C.C. chapter 3.12A;
2. Appeals under K.C.C. Title 6, except for for-hire transportation, K.C.C. chapter 6.64, shall follow this chapter;
3. Discrimination and equal employment opportunity in employment by contractors, subcontractors and vendors, K.C.C. chapter 12.16;
4. Unfair housing practices, K.C.C. chapter 12.20;
5. Denial of C-PACER applications, K.C.C. chapter 18.xx (the new chapter created under section 1 of this ordinance);
6. Regional motor sports facility, K.C.C. 21A.55.105;
- ~~((6-))~~ 7. Abandoned, wrecked, dismantled or inoperative vehicles, K.C.C. chapter 23.10;
- ~~((7-))~~ 8. Citations, K.C.C. chapter 23.20;
- ~~((8-))~~ 9. Penalty appeals, K.C.C. chapter 23.32;
- ~~((9-))~~ 10. Transit Rider suspension appeals, K.C.C. 28.96.430; ~~((and))~~
- ~~((10-))~~ 11. Other appeals that are prescribed by ordinance.