

**First Reading: April 11, 2023**  
**Second Reading: April 18, 2023**

ORDINANCE NO. 13972

AN ORDINANCE AMENDING CHATTANOOGA CITY CODE, PART II, CHAPTER 10, BUILDINGS, BY ADDING ARTICLE IV, ENTITLED, "COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY (C-PACER) PROGRAM", WITHIN THE CITY OF CHATTANOOGA.

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**WHEREAS**, per Tenn. Code Ann. §§ 68-205-101 *et seq.*, the State Legislature granted local governments the authority to establish 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 certain multi-family residential properties can obtain low-cost long-term financing for qualified improvements; and

**WHEREAS**, state law allows this financing to be used for qualifying improvements, including energy efficiency, water conservation, renewable energy, and resiliency measures such as flood mitigation, stormwater management, wildfire and wind resistance, energy storage, microgrids, and fire suppression; and

**WHEREAS**, the C-PACER program authorized in Tenn. Code Ann. §§ 68-205-101 *et seq.* promotes voluntary energy efficiency, energy conservation, and resiliency, and such improvements not only save money for building owners, but also support the reduction of energy consumption, support the production of clean, renewable energy, and reduce greenhouse gas emissions;

**WHEREAS**, the financing of qualified projects through special assessments is a valid public purpose; and

**WHEREAS**, the City of Chattanooga has considered this matter at a duly advertised public hearing and concludes that adoption will further the public health, safety, and welfare.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE:

SECTION 1. That Chattanooga City Code, Part II, Chapter 10, Article IV, is added to Chapter 10, Buildings, in the Chattanooga City Code which shall state as follows:

**Article IV. Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program**

- 10-50 Establishment
- 10-51 Definitions
- 10-52 Territory
- 10-53 Program Administration
- 10-54 C-PACER Financing
- 10-55 C-PACER Lien
- 10-56 Application and Review
- 10-57 Program Guidebook
- 10-58 Collection and Enforcement
- 10-59 Fees
- 10-60 Enactment
- 10-61 No Liability, and No Public Funds.

**Sec. 10-50. Establishment.**

There is hereby established within the boundaries of the City of Chattanooga (the “City”) a Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) program (the “Program”) in accordance with Tenn. Code Ann. §§ 68-205-101 (the “C-PACER Act”). The City finds that financing of qualified projects through special assessments is a valid public purpose. The City finds that it is convenient and advantageous to establish the Program, at no net cost to the City, in order to finance Qualified Projects (as hereinafter defined), repaid by voluntary annual assessment installment payments on the property benefited by such Qualified Projects, and that the Program is in the public interest, providing for the safety, health, and environmental public benefit, and provides for economic development of the community. Therefore, the City of Chattanooga intends to authorize direct financing between property owners and capital providers as the means of financing qualified projects. It also intends to authorize special assessments,

entered into voluntarily by a property owner with the City of Chattanooga by means of written assessment contract, as a means to repay the financing for qualified projects available to property owners. Thus, the Program shall allow financing for the full range of Qualified Improvements on all Eligible Properties, as authorized by the C-PACER Act, and shall abide by and operate according to the C-PACER Act.

**Sec. 10-51. Definitions.**

The definitions in this section apply throughout this Article of the Chattanooga City Code unless the context clearly requires otherwise:

1. "Application checklist" means the list of items in a Program Application required by the C-PACER Act, this ordinance, the Program Guidebook, and the corresponding documentation that the City accepts or may request in order to show the requirements of the C-PACER Act have been met.
2. "Assessment" means the voluntary agreement of a Property Owner pursuant to an Assessment Agreement to allow the City to require the payment of annual Assessment Installments on their property in an amount sufficient to re-pay C-PACER financing, together with interest, penalties, fees and charges related thereto.
3. "Assessment Agreement" means an agreement among the City, Program Administrator, and a Property Owner whereby the City agrees to place an Assessment to re-pay C-PACER financing and C-PACER Lien on the property to secure the obligation to repay the C-PACER Financing and that the Property Owner will make payments to the Capital Provider.
4. "Assessment Installment" means annual payments as provided for in the Assessment Agreement to be made by or on behalf of the Property Owner to repay the C-PACER Financing.
5. "Capital Provider" means any private entity, its designee, successor, and assignees that makes or funds C-PACER Financing under this ordinance.
6. "Commercial property" means privately owned commercial, industrial, or agricultural real property; privately owned residential real property consisting of five (5) or more dwelling units including property owned by nonprofit, charitable, or religious organizations; or property owned by this state or a local government entity, but leased to a privately owned entity, including: industrial development corporations; housing authorities; or health, educational and housing facility boards.
7. "C-PACER Financing" means an investment from a Capital Provider to a Property Owner to finance or refinance a Qualified Project as described under this Ordinance. The proposed C-PACER Financing for a Qualified Improvement may authorize the Property Owner to:

- a. purchase directly the related equipment and materials for the installation or modification of a Qualified Improvement; and
  - b. contract directly, including through lease or other service contract, for the installation or modification of a Qualified Improvement.
8. "C-PACER Lien" means the lien recorded at the Hamilton County Register of Deeds on the Eligible Property to secure the C-PACER Financing, which remains on the property until the C-PACER Financing is paid in full.
9. "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. Eligible Property may include ground leases.
10. "Financing" means financing and refinancing for qualified projects under this chapter.
11. "Financing Agreement" means the contract under which a Property Owner agrees to repay a Capital Provider through Assessment Installments for the C-PACER Financing including, but not limited to, details of any finance charges, fees, debt servicing, accrual of interest and penalties, and any terms relating to treatment of prepayment and partial payment of the C-PACER Financing.
12. "Local Government" means the governing body, any department, or any office within the government of the City of Chattanooga.
13. "Program" means the C-PACER program established under this ordinance.
14. "Program Administrator" means the entity designated by a local government to administer a C-PACER program, including: (1) department or individual within a local government; (2) a quasi-governmental organization such as an industrial development corporation, housing authority, or health, educational, and housing facility board; (3) a Capital Provider; or (4) another private and independent third party designated by the local government.
15. "Program Guidebook" means a comprehensive document that illustrates the applicable program and establishes appropriate guidelines, specifications, underwriting and approval criteria, and standard application forms consistent with the administration of a program and not detailed in this chapter, including: a form assessment contract between the local government and the property owner specifying the terms of assessment under the program, financing provided by a third party, and remedies for default or foreclosure; a form local government Notice of Assessment and C-PACER lien; or a form Notice of Assignment of Assessment and C-PACER lien between a local government and a Capital Provider.
16. "Program Application" means the application submitted to demonstrate that a proposed project qualifies for C-PACER Financing and for a C-PACER assessment and lien.

17. "Property Owner" means the owner or owners on title, duly recorded, of a commercial property or in the case of a ground lease, owner of an estate for years.

18. "Qualified Improvement" means a permanent improvement affixed to real property and intended to:

- a. 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
- b. Support the production of clean, renewable energy, including through the use of 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; or
- c. 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;
- d. Allow for the reduction or elimination of lead from water that may be used for drinking or cooking; or
- e. Increase water or waste water resilience, including through storm retrofits, flood mitigation, and stormwater management, or wind resistance, energy storage, microgrids, and other resilience projects approved by the local government; or
- f. Conform to seismic requirements of the most recent version of the International Building Code adopted by the Local Government.

19. "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, including Qualified Improvements installed no more than two (2) years prior to the date of application. Together, Qualified Improvements, inclusive of all related and eligible costs pursuant to the C-PACER Act that are to be financed as described in a Program Application and approved by the Program Administrator, are a Qualified Project.

**Sec. 10-52. Territory.**

The Program shall be available to all Eligible Property within the boundaries of the City of Chattanooga, in accordance with the C-PACER Act.

**Sec. 10-53. Program Administration.**

Pursuant to the C-PACER Act and in accordance with Tenn. Code Ann. § 68-205-105(a)(1)(i), the City designates the Director of Sustainability as the Program Administrator and the Hamilton County Assessor of Property for consulting about the collection of proposed special assessments with property taxes imposed on the assessed property. The Program Administrator and Hamilton County Assessor of Property shall review and approve the Program Applications submitted in accordance with the Program Guidebook, provide notice of approval or disapproval of Project Applications to relevant stakeholders, and collect any fees.

**Sec. 10-54. C-PACER Financing.**

1. C-PACER Financing, under the C-PACER Act, is to be provided by Capital Providers through a Financing Agreement entered into with the Property Owner of an Eligible Property to fund a Qualified Project.
2. The C-PACER Financing may include:
  - a. The cost of materials and labor necessary for installation or modification of a Qualified Improvement;
  - b. Permit fees;
  - c. Inspection fees;
  - d. Lender fees, such as financing or origination fees;
  - e. Program application and administrative fees;
  - f. Project development and engineering fees;
  - g. Third-party review fees, including verification review fees;
  - h. Capitalized interest, in an amount determined by the owner of the commercial property and the third party providing financing under this section;
  - i. Interest reserves; or
  - j. Other fees or costs incurred by the property owner incident to the installation, modification, or improvement on a specific or pro rata basis, as determined by the local government.
3. Assessment amount:
  - a. The amount of the assessment, plus existing indebtedness on the property, must not exceed ninety percent (90%) of the fair market value of the property as determined by a qualified appraiser, 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
  - a. The amount of the assessment must not exceed twenty-five percent (25%) of the fair market value of the property as determined by a qualified appraiser;
4. Prior to entering into the written assessment contract, the property owner shall obtain and furnish to the local government a written statement, executed by each holder of a

mortgage or deed of trust on the property securing indebtedness, in the sole and absolute discretion of each holder of a mortgage or deed of trust on the property, that consents to the assessment and indicates that the assessment does not constitute an event of default under the mortgage or deed of trust.

5. 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.

**Sec. 10-55. C-PACER Lien.**

1. Following approval of an application to the Program by the Program Administrator, the Property Owner shall execute an Assessment Agreement consenting to the Assessment and C-PACER Lien being placed against the Eligible Property.
2. The C-PACER Lien amount, plus any interest, penalties, fees and charges accrued or accruing on the C-PACER Lien:
  - a. Takes precedence over all other liens or encumbrances except a lien for taxes imposed by the state, a local government, or a junior taxing district on Eligible Property, which liens for taxes shall have priority over such C-PACER Lien, provided existing mortgage holders, if any, have provided written consent described in Section 10-54 (4); and
  - b. Is a first and prior lien, equal to the lien for taxes imposed by the state, a local government, or a junior taxing district against the Eligible Property on which the C-PACER Lien is imposed, from the date on which the notice of the C-PACER Lien is recorded until the C-PACER Lien, interest, penalties, fees and charges accrued or accruing are paid in full.
3. The C-PACER Lien runs with the land, and that portion of the C-PACER Lien that has not yet become due is not accelerated or eliminated by enforcement of the C-PACER Lien by tax sale or any lien for taxes imposed by the state, a local government, or junior taxing district against the real property on which the C-PACER Lien is imposed.
4. Delinquent Assessment Installments incur interest and penalties as specified in the Financing Agreement.
5. After the C-PACER Lien is recorded as provided in this Ordinance, the Assessment, C-PACER Financing and the C-PACER Lien may not be contested on the basis that the improvement is not a Qualified Improvement or that the project is not a Qualified Project.

**Sec. 10-56. Application and Review.**

1. A Property Owner and Capital Provider shall complete a Program Application and submit it to the Program Administrator for review.
2. The Program Application shall require:
  - a. An attestation by the Property Owner that the project consists of one or more “Qualified Improvement” as defined by 10-51 (18).
  - b. For an existing building seeking improvements:
    - i. Where energy or water usage improvements are proposed a certification by a licensed engineering firm, engineer, or other qualified professional listed in the Program Guidebook stating that 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;
    - ii. Where safe drinking water measures are proposed, a certification by a licensed professional engineer stating that the Qualified Improvements will result in the reduction of lead in potable water; or
    - iii. Where resilience improvements are proposed, a certification by a licensed professional engineer stating that the Qualified Improvements will result in improved resilience.
  - c. For new construction, a certification by a licensed professional engineer stating that the proposed Qualified Improvements, individually, or acting as a whole, will enable the project to exceed the current building code requirements for:
    - i. energy efficiency,
    - ii. water efficiency,
    - iii. renewable energy,
    - iv. renewable water,
    - v. or resilience requirements of the current building code of the City.
3. The Program Administrator shall review the Program Application according to the Application Checklist solely to determine whether (i) it is complete, (ii) proposes a “Qualified Improvement,” (iii) contains no errors on its face, and (iv) that all information is provided in the substance and form required by the Application Checklist. If so, the Program Administrator shall sign the Application Checklist indicating that the Program Application is deemed approved and the project is a Qualified Project. If a Program Application is incomplete and/or does not conform to the requirements of the Application Checklist, the Program Administrator shall inform the applicant as soon as practicable



that the Program Application is denied, the reasons for the denial, and any corrections that could make the Program Application acceptable. If feasible, the applicant shall have an opportunity to correct the Program Application.

4. The application review process is confined to confirming that an application is complete, that all attachments conform to the Program Guidelines, and that the Capital Provider and Property Owner are found to sufficiently meet the Program's criteria. The Program Administrator's approval shall not constitute endorsement of any representations that may be made with regard to the operation and any savings associated with the Qualified Improvements.
5. An application may be conditionally approved if the application is complete but the attachment regarding lender consent of the C-PACER Lien is not yet available per requirements outlined in the Program Guidelines.
6. The Program Administrator may coordinate with Capital Providers and appropriate City departments, including the Assessor of Property, and other stakeholders to ensure that the C-PACER voluntary special assessment is correctly billed, collected, and disbursed per the financing agreement.
7. Upon approval of a Program Application, a Property Owner or Capital Provider shall provide the completed (1) Assessment Agreement, (2) the Notice of Assessment Interest and C-PACER Lien to the City Manager for execution at least five (5) days prior to close of the C-PACER transaction. Upon execution, the City will provide and execute a Notice of Assignment of Assessment and C-PACER Lien to the Capital Provider. These executed documents will be held in escrow and will be provided to the Capital Provider at closing for recording.
8. The Capital Provider shall record (1) the Assessment Agreement, (2) the Notice of Assessment Interest and C-PACER Lien, and (3) Notice of Assignment of Assessment and C-PACER lien to the Capital Provider with the Hamilton County Register of Deeds.
9. For a Property Owner and Capital Provider whose Program Application is denied by the Program Administrator, either party, or both, may request an adjudicative proceeding before the City's adjudicative body, consistent with the City's rules and subject to the applicable provisions of Tennessee's Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 et seq.

**Sec. 10-57. Program Guidebook.**

1. The C-PACER Program shall be administered in accordance with the requirements contained in the Program Guidebook established by the Program Administrator from time to time.

2. The Program Guidebook and forms may be amended by the Program Administrator without approval by the Chattanooga Mayor and City Council, provided that such amendments comply with the C-PACER Act and other applicable law.

**Sec. 10-58. Collection and Enforcement.**

1. The City hereby designates the Capital Provider to collect Assessment Installments and enforce C-PACER Liens due to delinquent Assessment Installments.
2. Collection of Assessment Installments and enforcement of C-PACER Liens due to delinquent Assessment Installments shall be enforced in the same manner that a deed of trust is enforced by the Capital Provider.
3. City of Chattanooga funds are prohibited from being utilized to fund or repay loans related to C-PACER financing. C-PACER loans would be secured with government lien against the property and would run with the land until the loan is paid in full. The lien would have the same priority status as a lien for property taxes and cannot be accelerated or eliminated by foreclosure of a property tax lien.

**Sec. 10-59. Fees.**

The Program Administrator is authorized to collect an application fee. The amount of the fee shall be determined by the Program Administrator. Pursuant to the Program Guidebook, the Program Administrator shall establish a fee that makes the costs of the C-PACER program cost-neutral to the City and Program Administrator provided, however that the fees for any Assessment may not exceed 1% of the applicable C-PACER Financing and shall not in any case exceed \$50,000.

**Sec. 10-60. Enactment.**


The provisions of this ordinance are hereby declared to be severable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity or enforceability of the remainder of the sections, phrases and provisions hereof. All ordinances, orders, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed upon the effectiveness of this ordinance. No provision of the Chattanooga City Code or violation of any provision of the Code shall be deemed to impair the validity of this ordinance or the instruments authorized by this ordinance or to impair the security for or payment of the instruments authorized by this ordinance; provided further, however, that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for any violation of any provision of the Code. In the event and to the extent of a conflict between this ordinance and the C-PACER Act, the C-PACER Act shall govern.

**Sec. 10-61. No Liability.**

Except for a right of action to enforce the terms of this ordinance, this ordinance does not confer any right of action nor property interest upon any party to a C-PACER transaction against the City, Industrial Development Board of the City of Chattanooga, Tennessee or other related boards, or the Program Administrator, and, so long as the City, Industrial Development Board of the City of Chattanooga, Tennessee or other related boards, or the Program Administrator complies in good faith with the terms of the C-PACER Act and this ordinance, the City, Industrial Development Board of the City of Chattanooga, Tennessee or other related boards, or the Program Administrator shall incur no liability for enacting this Program, nor shall the City, Industrial Development Board of the City of Chattanooga, Tennessee, or other related boards, its governing body, executives, or employees, or the Program Administrator be personally liable as a result of exercising any rights or responsibilities granted under this ordinance.

SECTION 2. BE IT FURTHER ORDAINED, That this Ordinance shall take effect two (2) weeks from and after its passage.

Passed on second and final reading: April 18, 2023

  
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CHAIRPERSON

APPROVED:  DISAPPROVED:

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MAYOR

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