COUNTY OF JEFFERSON
STATE OF WASHINGTON

An Ordinance Adopting a New Chapter 15.20 of the Jefferson County Code to Establish A Commercial Property Assessed Clean Energy and Resiliency ("C-PACER") Program within Jefferson County	)))))))	**ORDINANCE NO. XX-XXXX-XX**

WHEREAS, ongoing detrimental impacts from climate change pose a threat to Jefferson County's natural environment, economic security, and public health and safety; and

WHEREAS, the Intergovernmental Panel on Climate Change ("IPCC")[1] was established in 1988 as the United Nations body for assessing the science related to climate change, with the objective of providing governments at all levels with scientific information they can use to develop climate policies; and

WHEREAS, in 2018, the IPCC issued a special report assessing projected impacts at a global average warming of 1.5°C and higher levels of warming, and indicated that "ambitious mitigation actions are indispensable to limit warming to 1.5°C while achieving sustainable development and poverty eradication."[2] The report included new warnings on the impacts of climate change, and documented that global emissions need to be on a steep decline within the next decade to avoid the worst impacts of climate change; and

WHEREAS, Washington State has set a legal commitment to reduce climate pollution 45% below 1990 levels by 2030, and by 95% by 2050,[3] and has set requirements for reduction of greenhouse gas emissions from buildings by passage of the Clean Buildings Act in 2019; and

WHEREAS, in 2009, the Jefferson County Board of County Commissioners ("BoCC") and Port Townsend City Council jointly adopted the first "Inventory of Energy Usage and Associated Greenhouse Gas Emissions" by Jefferson County Resolution Number 06-09 and City of Port Townsend Resolution Number 09-002, which measured 2005 greenhouse gas emissions associated with the community, the city and the county; and

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[1] *See* https://www.ipcc.ch/about/
[2] *See Special Report: Global Warming of 1.5°C* (IPCC 2018) https://www.ipcc.ch/sr15/chapter/chapter-1/
[3] Washington State Office of Financial Management, *Proposed 2022 Supplemental Budget and Policy Highlights* at 1 (https://ofm.wa.gov/sites/default/files/public/budget/statebudget/highlights/budget22/08_Climate2022.pdf)

WHEREAS, the City of Port Townsend and Jefferson County joint Climate Action Committee in its February 27, 2019 meeting[4] authorized a more expansive inventory of community-wide emissions to include those emissions associated with the City of Port Townsend, Jefferson County, Jefferson Transit, Jefferson Healthcare, Port of Port Townsend, Jefferson Public Utility District, Port Townsend Paper Corporation and the Fort Worden Public Development Authority; and

WHEREAS, the Climate Action Committee approved an updated 2018 inventory on June 24, 2020, finding that the community-wide greenhouse gas contributions of residential, commercial and industrial sectors declined from 2005 to 2018 by 88.1%, 85.7% and 51.1% respectively and a net decrease in greenhouse gas emissions of 40% from 2005 levels;[5] and

WHEREAS, the 2018 updated inventory documents that 32% of community-wide carbon dioxide emissions originated from stationary sources such as buildings for residences, agricultural activities and industry;[6] and

WHEREAS, on June 11, 2020 SSHB 2405, the Washington Legislature's adopted Commercial Property Assessed Clean Energy and Resilience ("C-PACER") program went into effect in Washington, which allows counties to implement their own county C-PACER programs in accordance with chapter 36.165 RCW; and

WHEREAS, C-PACER helps communities achieve important energy and water conservation goals through efficiency projects that upgrade old equipment to maximize energy efficiency and replace fossil fuels with renewables and thereby reduce greenhouse gas emissions; and

WHEREAS, C-PACER programs provide a structure for owners of existing or newly designed agricultural, commercial, and multi-family residential properties to obtain low-cost, long-term, financing for energy and resiliency projects in exchange for generating community benefits that may reduce greenhouse gases, increase flood and earthquake resiliency; and

WHEREAS, by providing access to more affordable financing property owners that may have been unable to afford energy efficiency or other resiliency upgrades to their properties such as earthquake or flood improvements may now be able to do so; and

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[4] https://test.co.jefferson.wa.us/WeblinkExternal/DocView.aspx?id=2182448&dbid=0&repo=Jefferson

[5] *See Jefferson County, WA 2018 Inventory of Greenhouse Gas Emissions* at 8 (Climate Action Comm., 6/24/2020) *https://www.co.jefferson.wa.us/DocumentCenter/View/10166/2018_JeffCo_GHG_Inventory_Report_approved_062420*

[6] *Id. at* 6.

WHEREAS, Jefferson County has determined that creation and operation of a commercial property assessed clean energy and resiliency program is in the public's best interest to serve public health and safety interests within the community through energy and water conservation and reduction in emergency response risks; and

WHEREAS, the BoCC will hold a public hearing on this ordinance and take public testimony at its regularly scheduled meeting on October 9, 2023 at 1220 Jefferson Street, Port Townsend, WA.

NOW THEREFORE, BE IT ORDAINED:

Section 1. The BoCC hereby adopts the above "Whereas" clauses as Findings of Fact.

Section 2. The BoCC adopts a new chapter 15.20 of the Jefferson County Code, as set out in the Appendix 1.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or section of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Ordinance or its application to other persons or circumstances shall be fully valid and shall not be affected.

Section 4. Effective Date. The Ordinance becomes effective on November 5, 2023.

Section 5. SEPA Categorical Exemption. This ordinance is categorically exempt from the State Environmental Policy Act under WAC 197-11-800 (19).

(SIGNATURES FOLLOW ON THE NEXT PAGE)

APPROVED and ADOPTED this ________ day of _____________, 2023.

JEFFERSON COUNTY BOARD OF COMMISSIONERS

____
Greg Brotherton, Chair

____
Kate Dean, Member

SEAL:

____
Heidi Eisenhour, Member

ATTEST:

____
Carolyn Gallaway Date
Clerk of the Board

Approved as to form only:

____
Barbara Dykes Ehrlichman Date
Civil Deputy Prosecuting Attorney

APPENDIX 1

A new chapter 15.20 of the Jefferson County Code is enacted to read:

COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY ("C-PACER") PROGRAM

15.20.010 Program established.

(1) There is hereby established a Commercial Property Assessed Clean Energy and Resiliency ("C-PACER") Program ("the program"), which is available to owners of eligible property under the program located in Jefferson County, both in incorporated and unincorporated areas, including the City of Port Townsend.

(2) The program is enacted as authorized by Chapter 36.165 of the Revised Code of Washington ("the C-PACER Act"). It is a voluntary program to allow owners of agricultural, commercial, and industrial properties and of multifamily residential properties to obtain low-cost, long-term financing for qualifying improvements, including energy efficiency, water conservation, renewable energy, and resiliency projects. The program shall be consistent with the C-PACER Act. The program may include additional requirements to ensure efficiency and to provide meaningful benefits to Jefferson County and its citizens from clean energy and resiliency projects.

(3) No services may be offered or advertised through the program, including marketing and participant education services, except separately itemized services offered upon impartial terms by qualified third-party providers.

(4) The program shall be administered by the Department of Community Development ("department"), which is the authority to administer the program consistent with its purposes. The department may contract for the program to be wholly or partially administered by any public or private entity or organization, provided that the department shall retain final authority over the content of the program guidebook and program forms.

(5) The department shall charge fees as set out in the department's fee schedule. The department may also charge an administration fee to offset costs of establishing and administering the program as specified in the fee schedule.

15.20.20 Definitions.

(1) "Assessment" means the voluntary agreement of a property owner to allow a county to place an annual assessment on their property to repay C-PACER financing.

(2) "Assessment agreement" means the form agreement approved by the department and described in JCC 15.20.040.

(3) "Assignment" means the form assignment agreement approved by the department and described in JCC 15.20.050.

(4) "Capital provider" means any private entity, their designee, successor, and assigns that makes or funds C-PACER financing under a C-PACER Financing Arrangement to owners of eligible property and meets all requirements of JCC 15.20.070 and the program guidebook.

(5) "C-PACER assessment" mans an annual assessment to an eligible property imposed by Jefferson County under an assessment agreement.

(6) "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 chapter.

(7) "C-PACER financing arrangement" means the complete financing agreement between a capital provider and the owner of eligible property for the purpose of financing qualified improvements and eligible costs.

(8) "C-PACER lien" means the lien recorded against an eligible property by Jefferson County to secure payment of a C-PACER assessment and related amounts under the C-PACER financing arrangement.

(9) "Department" means the lien recorded against an eligible property by Jefferson County to secure payment of a C-PACER assessment and related amounts under the C-PACER financing arrangement.

(10) "Department" means the Jefferson County Department of Community Development.

(11) "Eligible costs" means the cost of materials and labor necessary for or incident to the installation or modification of a qualified improvement. Eligible costs may include the pro-rata or specific costs (as appropriate) of permit and inspection fees, project development and engineering fees, program application and administration fees, third-party review and verification fees, lender's fees, capitalized interest, interest reserves, and escrow for prepaid property taxes and insurance. Total eligible costs for new construction may not exceed 30 percent of total costs of the qualified project. Eligible costs do not include costs related to land acquisition or environmental or geological testing or remediation.

(12) "Eligible property" means privately-owned commercial, industrial, or agricultural real property, or multifamily residential real property with five or more dwelling units, located in Jefferson County. Eligible property may be owned by any type of business, corporation, individual, or nonprofit organization permitted by state law.

(13) "Financing agreement" means the contract under which a property owner agrees to repay a capital provider 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.

(14) "Greenhouse gas" has the same meaning as provided in RCW 70A.45.010.

(15) "Fossil fuel" has the same meaning as provided in RCW 19.405.020.

(16) "Owner" means the fee simple owner(s) of an eligible property and includes any group of persons or entities who together own eligible property in fee simple.

(17) "Program" means the Jefferson County C-PACER program established under this chapter.

(18) "Program administrator" means the department or an organization contracting with the department for the administration of the program.

(19) "Program guidebook" means a comprehensive document which details the program requirements, and any appropriate guidelines, specifications, underwriting, and approval criteria, as well as any standard application forms, determined by the department to be necessary or appropriate for the administration of the program and consistent with this chapter.

(20) "Qualified improvement" means a permanent improvement affixed to real property, and intended to:

- (a) decrease energy consumption or demand through 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;
- (b) 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, allow for the reduction in demand, or reduce or eliminate lead from water which may be used for drinking or cooking; or
- (c) increase resilience, including but not limited to seismic retrofits, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.

"Qualified improvement" does not include the installation, maintenance, or repair of equipment that burns fossil fuel or an improvement that merely replaces an existing improvement without providing any additional public benefit.

(21) "Qualified project" means a project approved by the program administrator involving the purchase and installation or modification of a qualified improvement, including new construction or the adaptive reuse of eligible property with a qualified improvement, that provides a significant public benefit related to the intended purpose of qualified improvement.

(22) "Significant public benefit for existing structures" means that the qualified improvement, or the resulting performance of the system or structure as a whole if the qualified improvement cannot be independently evaluated:

- (a) Will 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;

(b) Meets or exceeds energy performance standards in Chapter 194-50 WAC if the structure is a building covered by that chapter;

(c) Is reasonably expected to reduce the annual amount of energy purchased from a utility, or the amount of greenhouse gas emitted, by at least 20 percent, including through on-site production and use of clean, renewable energy;

(d) Is the replacement of existing fossil-fuel burning space or water-heating equipment with electric options, which may include the replacement of related system elements;

(e) Meets or exceeds the requirements for water efficiency under Jefferson County building codes or, if more stringent, Washington State building codes;

(f) Meets or exceeds safe drinking water standards for lead contamination, as set by the Washington State Department of Health; or

(g) Meets or exceeds seismic, flood, or other building resiliency requirements under Jefferson County building codes or, if more stringent, Washington State building codes.

(23) "Significant public benefit for new construction" means that the qualified improvement, or the resulting performance of the system or the new structure as a whole if the qualified improvement cannot be independently evaluated:

(a) Exceeds the requirements of the Washington State Energy Code;

(b) Is reasonably expected to reduce the annual amount of energy that would otherwise be expected to be used or purchased from a utility, or the amount of greenhouse gas emitted, by at least 30 percent, including on-site production and use of clean, renewable energy;

(c) Exceeds the requirements for water efficiency under the Washington State building codes;

(d) Exceeds safe drinking water standards set by the Washington State Department of Health for lead contamination; or

(e) Exceeds seismic, flood, or other building resiliency requirements under Washington State building codes.

<u>15.20.030 Application process</u>.

(1) The owner(s) of eligible property, or its agent, and a capital provider may jointly submit a project application to the program administrator for review. The holder of a ground lease may apply if appointed by the owner as an agent for purposes of participating in the program and the owner agrees with encumbrance of the eligible property with a C-PACER lien. The appointment must include an acknowledgment that the C-PACER lien 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, as provided in RCW 36.165.060.

(2) The project application must include certification by a licensed and qualified professional engineer, or other professional identified in JCC 15.20.080, that the qualified improvements,

either individually or in combination with other qualified improvements included in the qualified project, are expected to provide a significant public benefit, and that the term of the proposed C-PACER Financing does not exceed the weighted average effective useful life of the proposed qualified improvements. Significant public benefit may be determined by any reasonable means, including by comparisons of actual or estimated utility costs or greenhouse gas emissions.

(3) The project application must include:

(a) A declaration signed under penalty of perjury by the owner(s) stating that:

(i) The qualified improvements shall be permanently affixed; and

(ii) Upon completion of the qualified project, the owner will provide the program administrator with written notice that the project is properly completed and is operating as intended;

(b) The capital provider's written assurance that it will be responsible for the billing and collection of the annual C-PACER assessment, and for the enforcement and foreclosure of the C-PACER lien, including judgment sale requirements; and

(c) Any additional items appropriate for administrative purposes specified in the program guidebook.

(4) As soon as practicable after receipt, the program administrator must inform the applicants whether the project application has been approved or denied.

(a) If a project application is complete, the program administrator will approve the application.

(b) If the project application is denied, the program administrator will identify the reasons for denial. The applicant must have an opportunity to correct or supplement the project application for resubmission.

(c) If a project application is finally denied, the owner and capital provider may appeal the denial in an adjudicative proceeding subject to chapter 2.30 JCC, filed with the Jefferson County hearing examiner as an appeal of a non-land use matter under JCC 2.30.080 (2) (b) (vii).

(5) The project application must include the written consent for the eligible property to participate in the program from the holders of all liens, mortgages, or other security interests in the eligible property. If the eligible property is a multifamily residential property with five or more dwelling units, the project application must also include written consent for the eligible property to participate in the program from all holders of any affordable housing covenants, restrictions, or regulatory agreements burdening the eligible property. The consent must include the subordination of the holder's interest and acknowledgment that the C-PACER lien 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, as provided in RCW 36.165.060.

(6) If a project application is approved, the owner and capital provider must submit the following additional materials to the program administrator:

(a) A copy of the C-PACER financing arrangement meeting the requirements of JCC 15.20.060;

(b) An assessment agreement meeting the requirements of this chapter, signed by the owner(s) and capital provider, and in a format meeting all recording requirements;

(c) A notice of the assessment and the C-PACER Lien, which meets all recording requirements of RCW 36.165.050, that that includes language acknowledging that liens for taxes imposed by the state, a local government, or a junior taxing district are superior to and take precedence over the C-PACER Lien, as provided in RCW 36.165.060;

(d) An assignment meeting the requirements of JCC 15.20.050 and this chapter, signed by the owner(s) and capital provider, and in a format meeting all recording requirements;

(e) A current title report suitable for title insurance purposes; and

(f) A request by the capital provider that Jefferson County either record the assessment agreement, the C-PACER lien, and assignment; or provide some or all of the original executed documents to an escrow agent for recording.

(7) Within a reasonable amount of time after submission of all additional materials, or at a later date requested by the applicants, Jefferson County shall sign the assessment agreement and the assignment, and shall either record the assessment agreement, C-PACER lien, and assignment, or provide original executed documents to an escrow agent for recording, as requested by the capital provider.

15.20.040 Assessment agreement.

The assessment agreement must include the owner's:

(1) Request for an annual assessment on the eligible property and consent for Jefferson County to record a C-PACER lien to secure payment of the assessment;

(2) Authorization for Jefferson County to delegate all duties and assign all rights under the assessment agreement to the capital provider; and

(3) Acknowledgment that approval of the C-PACER application, participation in the C-PACER assessment, and recording of the C-PACER lien do not constitute an endorsement by Jefferson County of the qualified improvements, qualified project, or the C-PACER financing arrangement.

15.20.50Assignment.

The assignment shall assign and delegate Jefferson County's rights and duties under the assessment agreement and the C-PACER lien to the capital provider. The language of the assignment shall include all of the requirements of this section, stated substantially as follows:

(1) Jefferson County delegates, and the capital provider assumes all obligations, responsibilities, and duties of Jefferson County or its officers, to the extent permitted by law, for billing, collection, and enforcement of annual assessment payments and the enforcement and foreclosure of the C-PACER lien;

(2) Jefferson County has no obligation to defend the C-PACER assessment agreement or C-PACER lien against any claim by the holder of any other security interest in the eligible property;

(3) As provided in the chapter 36.165 RCW, billing and collection of C-PACER assessments and delinquent payments, and enforcement of the C-PACER lien are the responsibility of the capital provider. The capital provider assumes all contractual and statutory obligations as set out

in the chapter 36.165 RCW and this chapter. Jefferson County has no obligation to prosecute the foreclosure of a C-PACER lien on behalf of the capital provider; and

(4) The capital provider agrees to indemnify and hold Jefferson County harmless for any cost, expense, loss, or damages arising out of the imposition, assignment, recording, enforcement, and foreclosure of the C-PACER lien.

15.20.060 Financing arrangements.

The financial underwriting, evaluation, and terms of C-PACER financing arrangement are the responsibility of the capital provider. Notwithstanding the foregoing, a C-PACER financing arrangement may not include a security interest of any kind in the eligible property, a qualified improvement, or the qualified project, other than the C-PACER lien, unless subordinate to the C-PACER lien.

15.20.70Capital provider requirements.

A capital provider will be approved to participate in the program if it is any one of the following:

(1) Any entity that is currently registered as a C-PACE or C-PACER capital provider in at least two states or at least two other counties in Washington;
(2) A federal or state-chartered bank or credit union;
(3) Any entity approved to participate in a C-PACER program by the Washington State Department of Commerce; or
(4) An entity otherwise approved by the department or program administrator as provided in the program guidebook.

15.20.080 Certification of professionals.

The individual or firm providing any certification required in conjunction with a C-PACER application must be an energy, sustainability, or green building, water, or resiliency professional certified by one of the following organizations:

(1) American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE);
(2) Association of Energy Engineers;
(3) Building Performance Institute;
(4) Association of State Floodplain Managers, or
(5) North American Board of Certified Energy Practitioners; or
(6) Additional organizations or professional qualifications may be approved by the department or program administrator as provided in the program guidebook.

15.20.90 Liability.

(1) Jefferson County shall have no liability for and may not enforce any privately-financed debt under this chapter, nor use public funds to fund or repay any loan under the program.

(2) Nothing in this chapter may be interpreted to pledge, offer, or encumber the full faith and credit of Jefferson County. No local government located within, or partially within, Jefferson County may pledge, offer, or encumber its full faith and credit for any amount through the program.
(3) No employee or elected official of Jefferson County, including members of the Jefferson County Board of County Commissioners, the treasurer, the assessor, or department director shall have any personal liability as a result of exercising any rights or responsibilities under this chapter.

15.20.100 Program guidebook; form documents; open application date; reporting requirements.

(1) The program administrator shall establish form documents for use with the program, subject to approval by the department.
(2) The program administrator shall work with capital providers and other stakeholders to develop and publish a program guidebook meeting the requirements of RCW 36.165.020(3). The department may amend the program guidebook as necessary for the efficient administration of this chapter through the same stakeholder process. In accordance with RCW 36.165.020, the program guidebook need not be completed prior to accepting and approving program applications, so long as the program complies with the provisions of this chapter and chapter 36.165 RCW.
(3) The form documents, program guidebook, and program outline submitted to the Board of County Commissioners with the ordinance shall become effective on the same date that this chapter becomes effective.
(4) The program administrator shall begin accepting project applications upon the effective date of this chapter.