

RESOLUTION 22-08

A RESOLUTION OF THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF WHITE HOUSE, TENNESSEE, ADOPTING THE COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY (C-PACER) PROGRAM.

WHEREAS, per Tenn. Code Ann. §§ 68-205-101 et seq., as amended (the “C-PACER Act”), 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; and

WHEREAS, the C-PACER Act 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 the C-PACER Act 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; and

WHEREAS, the Board of Mayor and Aldermen has on this date at this meeting considered the matter at a duly-advertised public hearing and concludes that adoption will further the public health, safety, and welfare;

NOW, THEREFORE, BE IT RESOLVED by the Board of Mayor and Aldermen of the City of White House, Tennessee, adopt the following **Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program**:

Section 1. Establishment of Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program. There is hereby established within the boundaries of the City of White House, Tennessee (the “City”) a Commercial Property Assessed Clean Energy and Resiliency (“C-PACER”) program (the “Program”) in accordance with the C-PACER Act. 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. 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.

Section 2. Definitions

The definitions in this section apply throughout the following policy 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 Resolution, the Program Guidebook, and the corresponding documentation that the City accepts 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 his/her property in an amount sufficient to re-pay C-PACER financing, together with interest, penalties, fees and charges related thereto. The period of the Assessment must not exceed the weighted average of the useful life of the Qualified Project that is the basis for the Assessment.
3. “Assessment Agreement” means an agreement among the City, Program Administrator, and a Property Owner whereby the City agrees to place an Assessment to repay C-PACER financing and C-PACER Lien on the property to secure the obligation to repay the financing.
4. “Assessment Installment” means annual payments assessed against the Qualified Project to repay C-PACER Financing.

5. "Capital Provider" means any private entity, its designee, successor, and assignees that makes or funds C-PACER Financing under this Resolution.
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 Resolution that satisfies the requirements of the C-PACER Act. 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.
7. "C-PACER Lien" means the lien recorded at the City on the Eligible Property satisfying the requirements of the C-PACER Act to secure the C-PACER Financing, which remains on the property until the C-PACER Financing is paid in full.
8. "Eligible Property" means privately owned commercial, industrial, or agricultural real property or privately owned residential real property with five or more dwelling units, including property owned by nonprofit, charitable or religious organizations. Eligible Property must otherwise meet the C-PACER Program requirements. Eligible Property may be owned by the State of Tennessee, the City, another local government entity, industrial development corporations, housing authorities or health, educational and housing facility boards, and leased to a privately owned entity. Eligible Property may include ground leased real property. Notwithstanding anything in the C-PACER Act or this Resolution to the contrary, prior to approval of financing on a leasehold interest for a property that is owned by the State of Tennessee or a local government entity as described above, but leased to a privately owned entity as described above, the consent of the Property Owner must be obtained. A change to the leasehold must be approved by the governmental entity property owner. The governmental entity Property Owner must be held harmless if the privately owned entity to which the leasehold is leased defaults on a Financing Agreement for a leasehold in accordance with this Resolution or the C-PACER Act.
9. "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, 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.
10. "Program" means the C-PACER program established under this Resolution in accordance with the C-PACER Act.
11. "Program Administrator" means the department or office designated by the City to administer the C-PACER Program.
12. "Program Guidebook" means documents that, collectively, are incorporated in Exhibit A of this Resolution, including the Assessment Agreement and the Notice of Assessment Interest and C-PACER Lien and which satisfy the requirements of the C-PACER Act.
13. "Program Application" means the application submitted to demonstrate that a proposed project qualifies for C-PACER Financing and for a C-PACER Lien which shall contain the requirements set forth in the C-PACER Act.
14. "Property Owner" means an owner of an Eligible Property who desires to install Qualified Improvements and provides willing consent to the Assessment against the Eligible Property.
15. "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 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, fire suppression, flood mitigation, stormwater management, wildfire and wind resistance, energy storage, and microgrids.
16. "Qualified Project" means a project approved by the Program Administrator in accordance with the C-PACER Act, 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.

Section 3. Territory

The Program shall be available to Eligible Property located in the areas of the City shown on the map attached hereto as Exhibit A, in accordance with the C-PACER Act.

Section 4. Program Administration

1. Pursuant to the C-PACER Act, the City designates the City Administrator or its designee as the Program Administrator. The Program Administrator, as designee and without further action by the City, shall review and approve the Program Applications submitted in accordance with the Program Guidebook, collect any fees, execute the documents required by the Program Guidebook to enable C-PACER financing, and record the documents requested by the Property Owner and Capital Provider.

Section 5. 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 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. 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;
 - i. Interest reserves; or
 - j. Any other fees or costs that may be incurred by the Property Owner incident to the installation, modification, or improvement of a Qualified Improvement on a specific or pro rata basis.
3. Prior to entering into a Financing Agreement, the Capital Provider must receive written consent from every holder of a deed of trust or mortgage interest in the real property that will be subject to the Assessment and C-PACER Lien agreeing that the property may participate in the program and that the C-PACER Lien will take precedence over all other liens except for a lien for taxes, as described below.

Section 6. C-PACER Lien

1. 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 real 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 5(3) above; 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 real 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.
2. 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.
3. Delinquent Assessment Installments incur interest and penalties as specified in the Financing Agreement and shall be include in the enforcement or foreclosure action.

4. The City may apply the proceeds of an enforcement action in the same manner as it applies the proceeds from enforcement actions for delinquent property taxes, including the local government's right to apply the proceeds to the payment of the actual costs of the enforcement action as provided in Tenn. Code Ann. Section 67-5-2501.
5. After the C-PACER Lien is recorded as provided in this Resolution, 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.

Section 7. 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(s)" as defined in section 2(15) above.
 - b. For an existing building seeking improvements (a) 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; (b) 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 (c) 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 energy efficiency, water efficiency, renewable energy, renewable water, or resilience requirements of the current building code of the City.
 - d. A certification by the Property Owner that it is the legal owner of the property; is current on mortgage and property tax payments; is not insolvent or in bankruptcy proceedings; and title to the property is not in dispute.
 - e. A certification by the Property Owner that the amount of the assessment, plus existing indebtedness on the property does 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. Section 42 are exempt from this requirement.
 - f. A certification that the amount of the assessment does not exceed twenty-five percent (25%) of the fair market value of the property as determined by a qualified appraiser.
 - g. All other information and certifications required by the C-PACER Act.
3. The Program Administrator shall review the Program Application according to the Application Checklist solely to determine whether it is complete, proposes a "Qualified Improvement," contains no errors on its face, and 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. Upon approval of a Program Application, a Property Owner or Capital Provider shall provide the completed Assessment Agreement and Notice of Assessment Interest and C-PACER Lien to the City Administrator for execution at least five (5) days prior to close of the C-PACER transaction, along with a requested date for recordation of such forms.
5. The City shall cause the Assessment Agreement and the Notice of Assessment Interest and C-PACER Lien to be recorded in the real property records in which the real property is located, at the date requested by the Property Owner and Capital Provider or, at the request of the Property Owner and the Capital Provider, the recording of such documents may be delegated to the Capital Provider.

6. For a Property Owner and Capital Provider whose Program Application is denied by the City's 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.

Section 8. 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 which shall meet the requirements of the C-PACER ACT.
2. The Program Guidebook and forms may be amended by the Program Administrator in accordance with the C-PACER Act without approval by the Board of Mayor and Aldermen of the City, provided that such amendments comply with the C-PACER Act and other applicable law.

Section 9. Collection and Enforcement

1. Collection of Assessment Installments and enforcement of C-PACER Liens due to delinquent Assessment Installments, including enforcement by tax sale, shall be enforced in the same manner that a property tax lien against commercial property is enforced by the City.
2. The City hereby designates the Finance Department to collect Assessment Installments in accordance with its practices regarding the collection of real property taxes, and enforce C-PACER Liens due to delinquent Assessment Installments. The Finance Department shall remit any and all Assessment Installments it collects to the Capital Provider to whom the payment is due within 30 days of receipt thereof.

Section 10. Fees

An application fee shall be paid to the City when the Program Application is submitted. The amount of the application fee shall be determined by the City Administrator. The City Administrator shall establish an application fee that makes the costs of the C-PACER program cost-neutral to the City provided, however that the application fee for any Assessment may not exceed 1% of the applicable C-PACER Financing and shall not in any case exceed \$50,000. Any portion of the application fee that is retained by the City to service the applicant's Assessment Installments shall be placed into a reserve account and utilized for assessor-related costs. If a Program Application is declined, the application fee paid shall be returned to the applicant, less the amount necessary to offset the actual and reasonable costs of reviewing the Program Application.

Section 11. Enactment

The provisions of this Resolution 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 Resolution. No provision of the Municipal Code or violation of any provision of the Code shall be deemed to impair the validity of this Resolution or the instruments authorized by this Resolution or to impair the security for or payment of the instruments authorized by this Resolution; 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 Resolution and the C-PACER Act, the C-PACER Act shall govern.

Section 12. No Liability.

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

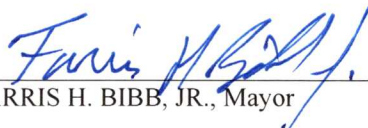
Section 13. Severability. Should any provision or provisions of this Resolution be declared invalid or

unenforceable in any respect by final decree of any court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, ordinance, or provisions shall not affect the remaining provisions of such Resolution.

Section 14. Repeal of Conflicting Resolutions. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 15. Effective Date. This Resolution shall take effect upon its adoption, the welfare of the Municipality requiring it.

ADOPTED and approved this 21st day of July, 2022.



FARRIS H. BIBB, JR., Mayor



DEREK WATSON, City Recorder

