

PROPOSED BY: DONOVAN  
INTRODUCTION DATE: \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AMENDING WHATCOM COUNTY CODE SECTION 16.50.090 (COLLECTION AND ENFORCEMENT) TO INCORPORATE CHANGES TO THE COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND RESILIENCY (C-PACER) PROGRAM ADOPTED BY THE STATE LEGISLATURE**

**WHEREAS**, in RCW 36.165.005, the State Legislature granted county governments in Washington 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 of multifamily residential properties with five or more dwelling units can obtain low-cost, long term financing; and

**WHEREAS**, the C-PACER program authorized in RCW 36.165 is consistent with goals and policies of the Whatcom County Comprehensive Plan and the Whatcom County Climate Action Plan; and

**WHEREAS**, on June 29, 2021, Whatcom County Council adopted Ordinance 2021-041 establishing a Whatcom County Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program (Whatcom County Code Chapter 16.50); and

**WHEREAS**, on March 17, 2022, during the 67<sup>th</sup> Legislature's 2022 Regular Session, Substitute Senate Bill 5862 was signed into law thereby amending RCW 36.165.060; and

**WHEREAS**, SSB 5862 clarifies responsibilities of capital providers of C-PACER funds to include billing, collections, and enforcement of delinquent C-PACER liens or assessment installments; and

**WHEREAS**, SSB 5862 also authorizes a C-PACER lien to be foreclosed in the same manner as a mortgage lien rather than in the same manner as delinquent property taxes; and

**WHEREAS**, SB5862 also specifies the order in which proceeds of the foreclosure sale of the property must be applied; and

**WHEREAS**, Whatcom County Council wishes to amend Whatcom County Code Section 16.50.090 Collection and Enforcement to bring the county's C-PACER program into compliance with recent state legislation.

**NOW, THEREFORE, BE IT ORDAINED** that the Whatcom County Code Section 16.50.090 (Collection and Enforcement) is hereby amended as shown in Exhibit A to this ordinance.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

\_\_\_\_\_  
Dana Brown-Davis, Clerk of the Council

\_\_\_\_\_  
Todd Donovan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON

( ) Approved ( ) Denied

Karen Frakes (by phone 3/25/2022)

\_\_\_\_\_  
Civil Deputy Prosecutor

\_\_\_\_\_  
Satpal Sidhu, County Executive

Date Signed: \_\_\_\_\_

## EXHIBIT A:

### 16.50.090 Collection and enforcement.

A. The Assessment and C-PACER Lien shall be assigned by the county to the capital provider at the close of any approved C-PACER financing by the county, as provided in RCW 36.165.050(3). The C-PACER Lien, as assigned to the Capital Provider shall maintain the same precedence and priority and characteristics set forth in section 16.50.060 of this chapter. Collection and enforcement of delinquent C-PACER liens or C-PACER financing installment payments, including foreclosure, shall remain the responsibility of the capital provider.

B. Billing, collection and enforcement of delinquent C-PACER Liens or C-PACER Financing installment payments, including foreclosure, shall remain the responsibility of the Capital Provider.

C. Pursuant to the assessment agreement, the C-PACER lien shall be solely enforced by the capital provider at any time after one year from the date of delinquency, and may be foreclosed in the same manner as a mortgage lien under chapter 61.12 RCW, except that no sale of the property shall discharge or in any manner affect the priority of the C-PACER Lien with respect to installments not yet due and payable at the time of sale, and no deficiency judgment may be sought by the Capital Provider with respect to any unpaid assessment at the time of sale. that the collection of delinquent real property taxes is enforced by the county, by prosecution of foreclosure proceedings under Chapter 84.64 RCW et seq. This includes the provisions of RCW 84.64.040, excepting that a sworn declaration by the capital provider or assignee attesting to the assessment delinquency of at least one year shall be used in lieu of the certificate of delinquency required under RCW 84.64.050. The sworn declaration shall have the same legal standing as a certificate of delinquency enumerated in RCW 84.64.050. The participation of the county sheriff in any such foreclosure action shall not be deemed in violation of, or inconsistent with 36.165.110 RCW limiting the role of the county in the enforcement of a C-PACER Lien.

~~Chapter 36.165 RCW provides that "collection and enforcement of delinquent C-PACER liens or C-PACER financing installment payments, including foreclosure, shall remain the responsibility of the capital provider" and that "the capital provider or their assignee shall have and possess the same powers and rights at law or in equity to enforce the C-PACER lien" in the "same manner that the collection of delinquent real property taxes is enforced by the county under chapter 84.64 RCW." As such, 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 accepting an assignment of a C-PACER lien pursuant to an assignment of notice of assessment and assessment agreement, shall assume under applicable law, the obligations, responsibilities, and duties of the county in respect of the enforcement and foreclosure of a C-PACER lien under Chapter 84.64 RCW. Any duties by the county deemed nondelegable by the county shall be performed, on a reimbursable basis, by the county on behalf of the capital provider. (Ord. 2021-041 Exh. A)~~

D. The Capital Provider may also pursue any other enforcement method authorized under RCW 36.165, as it may be amended from time to time.