

## ARTICLE 5. COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM.

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### Sec. 18A-33. Definitions.

(a) *Definitions.* In this Section, the following words have the meanings indicated:

*Certified General Real Estate Appraiser* means an individual who is certified as a certified real estate appraiser for general real estate under Title 16 of the Business Occupations Article of the Maryland Code.

*Commercial property* means any real property located in the County that is either not designed for or intended for human habitation, or that is used for human habitation as a multi-family dwelling of more than 4 rental units.

*Commercial Property Assessed Clean Energy Program* or *Program* means a program that facilitates energy improvements and requires repayment through a surcharge on the owner's property tax bill.

*County designated lender* means a person who may be selected by the County through a competitive process to offer financing, and if offered and accepted by the County, related funding for administrative services for the Program.

*County designated program manager* means a person who may be selected by the County through a competitive process to provide administrative and management services for the Program.

*Department* means the Department of Finance.

*Director* means the Director of the Department or the Director's designee.

*Energy efficiency and/or renewable energy improvement* or *improvement* means any equipment, device, or material that is intended to decrease energy consumption or expand use of renewable energy sources, including:

- (1) insulation in any wall, roof, floor, foundation, or heating and cooling distribution system;
- (2) a storm window or door, multi-glazed window or door, heat-absorbing or heat-reflective glazed and coated window and door system, or additional glazing, reduction in glass area, and other window and door system modification that reduces energy consumption;
- (3) an automated energy control system;
- (4) a heating, ventilating, or air-conditioning and distribution system modification or replacement;
- (5) caulking, weather-stripping, and air sealing;
- (6) replacement or modification of a lighting fixture to reduce the energy use of the lighting system;
- (7) an energy recovery system;
- (8) a day lighting system;
- (9) the installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity;
- (10) a measure that reduces the usage of water or increases the efficiency of water usage;
- (11) any other installation or modification of equipment, device, or other material intended to decrease energy consumption or expand the use of a renewable energy source;
- (12) any measure or system that makes use of or expands a renewable source of energy, including solar water heater, solar thermal electric, photovoltaic's, wind, biomass, hydroelectric, geothermal electric, geothermal heat pumps, anaerobic digestion, tidal energy, wave energy, ocean thermal, fuel cells using renewable fuels, and geothermal direct-use; or
- (13) any renewable energy system that is a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the electricity meter that uses at least one renewable energy source to generate electricity. A renewable energy system includes a biomass system, but does not include an incinerator or digester.

*Private lender* means a lender selected by the property owner to provide loan funds to the property owner for an improvement.

*Property owner* means a person who owns qualified property or has a ground lease or a long-term lease of 8 or more years on qualified property.

*Qualified property* means any new or existing commercial real property that meets the eligibility criteria for the Program.

*Renewable energy source* means a source of energy that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power.

*Renewable energy source* does not include petroleum, nuclear, natural gas, or coal. A *renewable energy source* comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy and includes:

- (1) non-hazardous, organic biomass material;
- (2) solar electric and solar thermal energy;
- (3) wind energy;

- (4) geothermal energy; and
- (5) methane gas captured from a landfill.

*Surcharge* means the annual repayment of a loan, including principal, interest, and related charges, that funds an improvement and is collected through the real property tax billing process. ([2013 L.M.C., ch. 33](#), § 1; [2015 L.M.C., ch. 16](#), § 1; [2016 L.M.C., ch. 23](#), § 1; [2019 L.M.C., ch. 9](#), § 1.)

#### **Sec. 18A-34. Commercial Property Assessed Clean Energy Program established.**

- (a) *Established.* The Director must create and administer a Commercial Property Assessed Clean Energy Program.
- (b) *Third-party lender.*

(1) The Director may enter into an agreement with a third-party lender that is either a County designated lender or a private lender that funds a loan for an improvement. The agreement must provide for the repayment of the loan for the improvement and any cost of administering the Program through a surcharge on the qualified property. The loan may include the cost of materials and labor necessary for installation, any permit fee, any inspection fee, any application or administrative fee, any bank or lender fee, and any other fee that the property owner may incur for the installation of the improvement. The third-party lender must submit a request for collection of each surcharge amount to the County designated program manager or, if there is no County designated program manager, to the Department no later than April 1 of each year.

(2) The third-party lender must record a document among the land records of Montgomery County within 30 days of the time the loan is funded, which provides notice of the Commercial Property Assessed Clean Energy loan associated with the property and that the surcharge will be collected and have lien status like all other real property taxes.

(c) *County designated program manager.* The Director may enter into an agreement with a County designated program manager. The County designated program manager must notify the Department of the amount of the surcharge for each account to be collected on the real property tax bill for that year's levy no later than May 1 of each year, and in a format approved by the Department. The County designated program manager will receive the collections from the County, reconcile the collected and billed surcharge for each account, and remit the surcharge amount to the County designated lender or private lender. The County designated program manager must report annually to the County on the participants in the Program by name, property address, property tax account number, amount of each surcharge billed, collected by the County, and remitted to the lender, description of project, any administrative fees, the amount of each loan, the amount of each loan balance, and the term of each loan. This report must be submitted to the Department no later than February 15 of each year pertaining to activity in the prior calendar year.

(d) The Director may enter into an agreement with one person who provides both County designated lender and County designated program manager services. ([2015 L.M.C., ch. 16](#), § 1; [2016 L.M.C., ch. 23](#), § 1.)

#### **Sec. 18A-35. Eligibility.**

In order to be eligible for this Program, the following criteria must be met:

- (a) *Eligibility.*

(1) The property must be a qualified property.

(2) Before any loan is approved under the Program, the County must give due regard to the property owner's ability to repay a loan in a manner substantially similar to that required for a mortgage loan under Sections 12-127, 12-311, 12-409.1, 12-925, and 12-1029 of the Commercial Law Article of the Maryland Code.

(3) The property owner must submit the following to the private lender or the County designated lender at the time of application for funding:

(A) express written consent of any holder of an existing mortgage or deed of trust on a qualified property;

(B) verification that there are no delinquent fees, taxes, water or sewer charges or other special assessments on the qualified property; and

(C) confirmation that the proposed improvements will be properly permitted and permanently affixed to the qualified property and comply with all applicable State and federal statutes and regulations, as determined by the appropriate regulatory authority.

(4) For new commercial construction, the property must be designed to exceed the energy performance required by the County building code that is in effect at the time a property owner applies to participate in the Program.

(5) The loan amount under this Program must meet the following criteria:

(A) For existing commercial construction:

(i) The loan amount must be at least \$5,000 and not more than 20% of either the full cash value or the appraised value of the qualified property.

(ii) The loan amount, together with the outstanding balance of the mortgage or deed of trust, must be no more than 90% of either the full cash value or the appraised value of the qualified property.

(iii) The full cash value is determined by the Maryland State Department of Assessments and Taxation. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of

the loan application.

(B) For new commercial construction:

(i) If a qualified property is designed to exceed the energy performance required by the County building code by no more than 5%, the maximum loan amount must not exceed 15% of the full cash value or appraised value of the qualified property.

(ii) If a qualified property is designed to exceed the energy performance required by the County building code by 5% or greater, the maximum loan amount must not exceed 20% of the full cash value or appraised value of the qualified property.

(iii) The loan amount, together with the outstanding balance of the mortgage or deed of trust, must be no more than 90% of either the full cash value or the appraised value of the qualified property.

(iv) The full cash value and appraised value of the property must be determined based on the estimated value of the property if construction is completed. The appraised value must be determined by a Certified General Real Estate Appraiser and must have been certified no more than 12 months before the date of the loan application.

(b) *Property assessed clean energy surcharge.*

(1) The property owner of qualified property must agree to repay the amount financed through a surcharge levied on the County's real property tax bill for the qualified property.

(2) A surcharge must be imposed under a written agreement between the County designated lender or private lender and the County. The surcharge will be recorded in land records of the County, at the expense of the owner, within 30 days of the execution of a clean energy loan financing agreement.

(3) As a condition for entering into an agreement under the Program, the County designated lender or private lender must provide the County designated program manager and the Department a copy of the loan documents and documents that verify:

(A) the property owner's ability to repay the Property Assessed Clean Energy loan in a manner substantially similar to that required for a mortgage loan;

(B) there are no delinquent taxes, special assessments, or water or sewer charges on the qualified property;

(C) there are no delinquent assessments on the qualified property under the Program;

(D) existing mortgage or deed of trust lender consent;

(E) appraised value of the qualified property as certified in the appraisal report submitted by a Certified General Real Estate Appraiser if the eligibility requirement in 18A-35(a)(4) is based on the appraised value of the qualified property;

(F) loan to value documentation; and

(G) any other financial or program document that the Director deems necessary.

(4) In addition to the administrative fees in Section 18A-34(c), the County may collect an administrative fee through the surcharge to cover charges relating to lending, program management, billing, or collection. ([2015 L.M.C., ch. 16, § 1](#); [2016 L.M.C., ch. 23, § 1](#); [2017 L.M.C., ch. 12, § 1](#); [2018 L.M.C., ch. 31, § 1](#); [2019 L.M.C., ch. 9, § 1](#); [2019 L.M.C., ch. 23, § 1](#).)

#### **Sec. 18A-36. Payment of surcharge; lien.**

(a) The County must collect the amount financed through a surcharge on the property owner's real property tax bill and forward payments received by the County to the County designated program manager or, if there is no County designated program manager, to the lender no later than 30 days after the payment due dates for real property taxes. Payment due dates for semi-annual real property taxes are September 30 for the first installment and December 31 for the second installment, and for annual real property taxes the payment due date is September 30.

(b) After receiving written notice from the County designated program manager of the execution of a clean energy loan financing agreement, the County must add the surcharge to the property tax bill.

(c) If the property owner sells the qualified property, the buyer must continue to pay the surcharge levied on the annual property tax bill.

(d) The surcharge and any accrued interest or penalty constitutes a first lien on the real property to which the surcharge applies until paid. An unpaid surcharge will be, until paid, a lien on the qualified property on which it is imposed from the date it becomes payable. The surcharge will accrue interest and penalty and will be treated and collected like all other County property taxes. Any delinquency will be collected through the County Tax Sale process. The provisions of Title 14, Subtitle 8 of the Tax – Property Article of the Maryland Code that apply to a tax lien will also apply to the lien created under this law. Any delinquent surcharge collected through the County Tax Sale process must be forwarded to the County designated program manager or, if there is no County designated program manager, to the lender no later than 30 days after the payment was received. ([2015 L.M.C., ch. 16, § 1](#); [2018 L.M.C., ch. 31, § 1](#).)

#### **Sec. 18A-37. Regulations; annual report.**

(a) The Executive may adopt regulations under Method (2) to administer the Program.

(b) The Executive must submit an annual report to the County Council by March 15 of each year describing program participation, number and dollar value of surcharge billed and collected, and other relevant information pertaining to the prior calendar year. ([2015](#)

