




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

October 29, 2021

TO: Tom Hucker, President
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Introduction of Bill XX-21 – Environmental Sustainability – Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments

It is my pleasure to transmit the attached legislation (XX-21, Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments) modify the County's current C-PACE Financing program to reflect enhancements made to the state-enabling legislation (HB 517) as well as additional program enhancements including:

- Allowing water efficiency, environmental remediation, and resiliency measures as eligible projects, per recent changes to state-enabling legislation,
- Permitting twelve-month retroactive financing for eligible C-PACE measures, per recent changes to state-enabling legislation,
- Introducing a five-year pilot for increased loan-to-value amounts for existing and newly constructed buildings,
- Clarifying the new construction participation requirements to ensure projects that both meet and exceed building code up to 5 percent can access C-PACE financing; and
- Removing the County Designated Lender role from the County's C-PACE program, as the program has been established for seven years and this role is no longer necessary.

The County's C-PACE financing program was established in March 2015 and officially opened its doors in April 2016. In that time, thirteen projects totaling more than \$10M have been financed by private capital funding for energy efficiency and renewable energy projects. In early 2021, the County was excited to select the Montgomery County Green Bank as the new C-PACE Program Manager, where building owners can now go to one organization for comprehensive financing options for building improvements.

Tom Hucker, President
October 29, 2021
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I have attached a memorandum from DEP Director Adam Ortiz that provides more detailed information about the legislation.

If you have any questions, please contact David Crow in FIN at 240-777-8859 or David.Crow@montgomerycountymd.gov or Lindsey Shaw in DEP at 240-777-7754 or Lindsey.Shaw@montgomerycountymd.gov.

ME: ls

Enclosures: Memorandum from Adam Ortiz, the Director of Department of Environmental Protection

CC: David Crow, Fiscal Projects Manager, Department of Finance
Lindsey Shaw, Manager, Department of Environmental Protection
Stan Edwards, Division Chief, Department of Environmental Protection
Adriana Hochberg, Office of the County Executive



DEPARTMENT OF ENVIRONMENTAL PROTECTION


Marc Elrich
County Executive

Adam Ortiz
Director

MEMORANDUM

October 22, 2021

TO: Marc Elrich, County Executive

FROM: Adam Ortiz, Director 
Department of Environmental Protection

SUBJECT: Introduction of Bill XX-21 – Environmental Sustainability – Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments

It is my pleasure to transmit the attached legislation (XX-21, Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments) to modify the County's current C-PACE Financing program to reflect enhancements made to the state-enabling legislation (HB 517) as well as additional program enhancements including:

- Allowing water efficiency, environmental remediation, and resiliency measures as eligible projects, per recent changes to state-enabling legislation,
- Permitting twelve-month retroactive financing for eligible C-PACE measures, per recent changes to state-enabling legislation,
- Introducing a five-year pilot for increased loan-to-value amounts for existing and newly constructed buildings,
- Clarifying the new construction participation requirements to ensure projects that both meet and exceed building code up to 5 percent can access C-PACE financing; and
- Removing the County Designated Lender role from the County's C-PACE program, as the program has been established for six years and this role is no longer necessary.

The County's C-PACE financing program was established in March 2015 and officially opened its doors in April 2016. Since then, thirteen projects totaling more than \$10M have been financed by private capital funding for energy efficiency and renewable energy projects. In early 2021, the County selected the Montgomery County Green Bank as the new C-PACE Program Manager, where building owners can now go to one organization for comprehensive financing options for building improvements.

The County’s 2018 greenhouse gas inventory shows that commercial building energy use accounts for twenty-six percent of community-wide emissions.¹ As described in the County’s Climate Action Plan,² the unprecedented challenge of climate change will require creative solutions, particularly in paying for climate action. The expansion of the C-PACE program as described below leverages this existing tool for private property owners to make their buildings more energy efficient, thus improving operating costs and reducing greenhouse gas emissions.

Additional Eligible Project Types: To align with the recent changes to the C-PACE state enabling legislation (HB 517) to allow for resiliency measures, the County proposes to amend C-PACE project eligibility to include broad categories. These include climate resiliency, climate adaptation, water conservation, environmental health and safety upgrades—and removing the prescriptive and limited list of measures that currently exist in the C-PACE law.

Climate resiliency is an important aspect of many C-PACE programs nationally, and resiliency is being heavily promoted at the Maryland state level. Climate resiliency is a strong risk mitigation tool. The risks associated with climate change are not only multiplying, but they are also disproportionately affecting more vulnerable populations. Montgomery County is not immune to extreme weather events exacerbated by climate change, and C-PACE can be a tool to effectively finance solutions rather than absorb the payout costs of insurance afterward. Additionally, broadening the eligible measures list provides flexibility to add measures relating to climate that do not fit in the current legislative definition of clean energy. It is important to set up the program to be responsive to the County’s declared climate emergency, particularly climate resiliency.

Pilot Program for Higher Loan-to-Value Amounts: Bill XX-21 proposes a new five-year pilot program for larger project size eligibility for existing building and new construction projects:

- Existing Buildings: Increase the Loan-to-Value ratio from 20% to 30%
- New Construction Meeting or Exceeding Building Code up to 5%: Increase the Loan-to-Value ratio from 15% to 20%
- New Construction Exceeding Building Code by 5% or greater: Increase the Loan-to-Value ratio from 20% to 30%

The Debt-to-Value ratios remain unchanged from the current C-PACE allowance of debt carried by the property such that the property is not overleveraged. After the five-year pilot period, the C-PACE program would revert to the original loan-to-value ratios unless extended by the Director of Finance.

Nationally, PACE loan-to-value ratios fall within the range of 20% -35%. A comparison of other jurisdictions appears below:

Jurisdiction	Maximum C-PACE lien to value ratio
New York	35%
Delaware	No maximum
Washington, D.C.	35% (80% total LTV)
Arlington, VA	30%
MD-PACE (all MD except MC, PG, and Baltimore)	Capital provider determined
Baltimore	20%

¹ Montgomery County’s GHG emissions inventory, 2018.

<https://www.montgomerycountymd.gov/green/climate/ghg-inventory.html>

² Montgomery County’s Climate Action Plan, 2021.

<https://www.montgomerycountymd.gov/climate>

Increasing project values would be consistent with other markets and thus provide more ease for contractors and capital providers to navigate neighboring jurisdictions. Increasing project sizes can drive down average transaction costs and efforts for building owners and lenders. Moreover, increasing project values and allowing for additional sustainability building upgrades would be consistent with current climate goals for the County’s private building stock.

Retroactive Financing: Also permitted by HB 517, retroactive financing has been allowed in the state of Maryland. Bill XX-21 amends the County’s C-PACE law to permit retroactive financing. This allows building owners who have made eligible energy efficiency and renewable energy upgrades to access C-PACE program financing up to twelve months after the project is completed.

Retroactive financing is used in twelve other state programs with one-to-three-year lookback periods. In Maryland, retroactive C-PACE is available in the City of Baltimore and Prince George’s County. A comparison of other jurisdictions appears below:

California - CSCDA	3 years, longer on case-by-case basis
California - WRCOG	3 years
New York (Energize)	30 months +
Pennsylvania (new program)	24 months
Michigan (Lean & Green)	3 years+
Florida (FRED)	3 years
Ohio (various programs)	3 years+
Kentucky (KY-PACE)	24 months
Utah (Utah PACE)	3 years
Rhode Island	3 years
Wisconsin (PACE Wisconsin)	30 months
Texas (Texas PACE Authority)	Not available
District of Columbia	case-by-case basis
Connecticut	One year
Cook County (Chicago) - *just released	Since 2017
Maryland	Baltimore project (Greenworks closed on January 2021). No timeframe specified.

Commercial entities face a variety of challenges in building maintenance, including emergency measures. When facing emergency maintenance/replacement issues, there is often not enough time to submit a C-PACE application ahead of time and wait for the County’s standard ten-day application approval time. Retroactivity can also provide an economic recovery opportunity in response to COVID-19. Commercial and multi-family properties that have recently had qualifying energy work done may find themselves with cash preservation goals to cover working capital needs. Retroactive C-PACE allows property owners to replace more expensive debt with C-PACE’s low-rate, long-term financing repaid through the property tax bill. Lastly, retroactive financing allows the C-PACE program to address equity barriers that can exist with financing programs, as described in the Climate Action Plan. If a commercial entity did not have the time/resources to investigate C-PACE at the time of an improvement, the opportunity to retroactively utilize C-PACE would provide a more efficient and equitable capital source

Clarification of New Construction Program Participation: Presently, the County legislation section on new construction eligibility refers exclusively to exceeding code. The proposed amendments also provide for properties that meet the relevant building code to access C-PACE financing.

Introduction of Bill XX-21 – Environmental Sustainability – Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments

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Existing buildings can already use C-PACE to improve current conditions to code and achieve energy savings. Thus, offering this for new construction would be the equivalent of what is already offered for existing buildings. Developers of new construction can obtain a lower weighted average cost of capital using C-PACE than alternative commercial sources. As the County implements the 2018 International Green Construction Code, access to C-PACE to meet this sustainability overlay code will be a valuable incentive for developers in Montgomery County.

Removal of County Designated Lender: To assist with the initial development of the C-PACE program, the County established a County Designated Lender role to serve alongside the Program Manager role to provide building owners with straightforward and County-contracted access to capital. This was intended to build a strong pipeline of projects and give building owners access to a lender experienced with C-PACE financing. In practice, the presence of a County Designated Lender created confusion with the open-lending C-PACE model we intended to create. However, with the County's C-PACE program in its sixth year, the role of County Designated Lender is no longer needed now that the Montgomery County Green Bank is the C-PACE Program Manager. The Green Bank brings established and trusted relationships with local lenders willing and able to lend private capital in the County's open-market C-PACE program.

These changes are likely to increase C-PACE deal flow, and as a result, improve climate outcomes for the County. As with any effort to increase private capital deployment, a greater number of projects raises the potential of defaults. C-PACE, however, has certain built-in risk mitigation aspects, including senior lender consents, Capital Provider underwriting standards, non-acceleration, and individual project approvals, contributing to its strength in outperforming commercial finance defaults.

This legislation is strongly supported by the County's Climate Change Officer and the Departments of Environmental Protection (DEP) and Finance (FIN), primarily because these amendments provide a cost-effective approach to meeting our ambitious climate goals. This legislation has also been reviewed by the County Attorney for form and legality.

DEP requests that these amendment to the C-PACE Financing program are transmitted to the County Council on behalf of the County Executive.

If you have any questions, please contact David Crow in FIN at 240-777-8859 or David.Crow@montgomerycountymd.gov or Lindsey Shaw in DEP at 240-777-7754 or Lindsey.Shaw@montgomerycountymd.gov.

Fiscal Impact Statement
Bill XX-21 – Environmental Sustainability – Commercial Property Assessed Clean Energy (C-PACE) Financing Amendments

1. Legislative Summary.

Bill XX-21 updates the County’s Commercial Property Assessed Clean Energy (C-PACE) financing program to reflect the changes made to the state-enabling legislation (HB 517 of 2021). The Bill allows for 12-month retroactive financing for eligible C-PACE measures; introduces a 5-year pilot for increased loan-to-value amounts for existing and newly constructed buildings; clarifies new construction participation requirements to ensure projects that both meet and exceed code up to 5 percent can access C-PACE financing; and removes the County Designated Lender role from the County’s C-PACE program.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

This bill is not expected to have an impact on County revenues or expenditures.

Implementation of the legislation will be performed by the new Program Manager at the Montgomery County Green Bank and will thus not directly impact the County government’s budget. Capital funding for C-PACE projects comes from the private sector.

C-PACE projects may result in buildings with a higher assessed value, which may positively impact tax receipts, but this impact cannot be reliably estimated at this time.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

See the response to Question #2.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Non applicable.

5. An estimate of expenditures related to County’s information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

The bill is not expected to impact County IT or ERP systems.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Future spending is not authorized under the bill.

7. An estimate of the staff time needed to implement the bill.

Staff time needed to implement the Bill is dependent upon the number of C-PACE applications received as a result of these program changes. However, it is expected that the existing staff in the Departments of Finance and Environmental Protection will continue to oversee the C-PACE program and incoming applications.

8. An explanation of how the addition of new staff responsibilities would affect other duties.

Implementation of the bill is not expected to materially impact staff responsibilities.

9. An estimate of costs when an additional appropriation is needed.

No additional appropriations would be required to implement the bill.

10. A description of any variable that could affect revenue and cost estimates.

The bill is not expected to have an impact on County revenues or expenditures.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

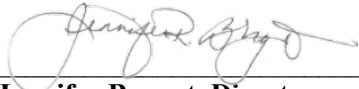
County staff that oversees the C-PACE program will continue to do so. Capital funding for C-PACE projects comes from the private sector.

13. Other fiscal impacts or comments.

The expansion of the C-PACE program provides a tool for private property owners to make their buildings more energy efficient, thus improving building operating costs and reducing greenhouse gas emissions. Because implementation of this bill does not require additional County resources, this is a very cost-effective strategy to help the County meet its ambitious climate goals.

14. The following contributed to and concurred with this analysis:

David Crow, Department of Finance
Stan Edwards, Department of Environmental Protection
Lindsey Shaw, Department of Environmental Protection
Lindsay Lucas, Office of Management and Budget



**Jennifer Bryant, Director
Office of Management and Budget**

9/21/21

Date

Bill No. XX-21
Concerning: Environmental
Sustainability - Commercial Property
Assessed Clean Energy Program -
Revisions
Revised: [date] Draft No. [#]
Introduced: [date]
Expires: [18 mos. after intro]
Enacted: [date]
Executive: [date signed]
Effective: July 1, 2020
Sunset Date: [date expires]
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) update the County's C-PACE financing program to reflect the changes made to the state-enabling legislation (HB 517) that allow water efficiency, environmental remediation, and resiliency measures as eligible projects, and retroactive financing;
- (2) allow for 12-month retroactive financing for eligible C-PACE measures;
- (3) introduce a 5-year pilot for increased loan-to-value amounts for existing and newly constructed buildings;
- (4) clarify new construction participation requirements to ensure projects that both meet and exceed code up to 5 percent can access C-PACE financing;
- (5) remove the County Designated Lender role from the County's C-PACE program; and
- (6) generally revise County law regarding environmental sustainability.

By amending

Montgomery County Code
Chapter 18A, Environmental Sustainability
Article 5
Sections 18A-33, 18A-34, 18A-35, 18A-36 and 18A-37

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 18A-33, 18A-34, 18A-35, 18A-36 and 18A-37 are amended**
2 **as follows:**

3
4 **Article 5. COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY**
5 **PROGRAM.**

6
7 **18A-33. Definitions.**

8
9 [(a)]*Definitions.* In this Section, the following words have the meanings
10 indicated:

11
12 *Certified General Real Estate Appraiser* means an individual who is
13 certified as a certified real estate appraiser for general real estate under
14 Title 16 of the Business Occupations Article of the Maryland Code.

15
16 *Climate Related Improvements* or *Improvements* include measures that
17 address:

- 18
19 (1) renewable energy,
20
21 (2) energy and water efficiency,
22
23 (3) environmental remediation,
24
25 (4) grid resilience; or
26
27 (5) property resilience.

28
29 *Commercial property* means any real property located in the County that
30 is either not designed for or intended for human habitation, or that is used
31 for human habitation as a multi-family dwelling of more than 4 rental
32 units.

33
34 *Commercial Property Assessed Clean Energy Program* or *Program*
35 means a program that facilitates Climate Related Improvements [energy
36 improvements] and requires repayment through a surcharge on the
37 owner's property tax bill.

38
39 *[County designated lender]* means a person who may be selected by the
40 County through a competitive process to offer financing, and if offered

41 and accepted by the County, related funding for administrative services
42 for the Program.]

43
44 *County designated program manager* means a person who may be
45 selected by the County through a competitive process to provide
46 administrative and management services for the Program.

47
48 *Department* means the Department of Finance.

49
50 *Director* means the Director of the Department or the Director's
51 designee.

52
53 *Energy efficiency* [and/or *renewable energy improvement* or
54 *improvement*] means any equipment, device, or material that is intended
55 to decrease energy consumption or [expand] use [of renewable energy
56 sources, including;] less energy to perform the same task.

57
58 [(1) insulation in any wall, roof, floor, foundation, or heating and
59 cooling distribution system;

60
61 (2) a storm window or door, multi-glazed window or door, heat-
62 absorbing or heat-reflective glazed and coated window and door
63 system, or additional glazing, reduction in glass area, and other
64 window and door system modification that reduces energy
65 consumption;

66
67 (3) an automated energy control system;

68
69 (4) a heating, ventilating, or air-conditioning and distribution system
70 modification or replacement;

71
72 (5) caulking, weather-stripping, and air sealing;

73
74 (6) replacement or modification of a lighting fixture to reduce the
75 energy use of the lighting system;

76
77 (7) an energy recovery system;

78
79 (8) a day lighting system;

80

- 81 (9) the installation or upgrade of electrical wiring or outlets to charge
 82 a motor vehicle that is fully or partially powered by electricity;
 83
- 84 (10) a measure that reduces the usage of water or increases the
 85 efficiency of water usage;
 86
- 87 (11) any other installation or modification of equipment, device, or
 88 other material intended to decrease energy consumption or expand
 89 the use of a renewable energy source;
 90
- 91 (12) any measure or system that makes use of or expands a renewable
 92 source of energy, including solar water heater, solar thermal
 93 electric, photovoltaic's, wind, biomass, hydroelectric, geothermal
 94 electric, geothermal heat pumps, anaerobic digestion, tidal energy,
 95 wave energy, ocean thermal, fuel cells using renewable fuels, and
 96 geothermal direct-use; or
 97
- 98 (13) any renewable energy system that is a fixture, product, device, or
 99 interacting group of fixtures, products, or devices on the
 100 customer's side of the electricity meter that uses at least one
 101 renewable energy source to generate electricity. A renewable
 102 energy system includes a biomass system, but does not include an
 103 incinerator or digester.]
 104

105 Environmental remediation means any project that is intended to remove
 106 environmental or health hazards, including addressing indoor air quality
 107 and building material contaminants.
 108

109 Grid resilience means any capital improvement investment that addresses
 110 reliability improvements during electrical service disruptions and that are
 111 consistent with Public Service Commission regulations on
 112 interconnection and franchising.
 113

114 *Private lender* means a lender selected by the property owner to provide
 115 loan funds to the property owner for an [improvement] Improvement.
 116

117 *Property owner* means a person who owns qualified property or has a
 118 ground lease or a long-term lease of 8 or more years on qualified property.
 119

120 Property resilience means any built or nature-based improvement that
 121 increases the capacity of a property to withstand natural disasters and the
 122 effects of climate change.

123
 124 *Qualified property* means any new or existing commercial real property
 125 that meets the eligibility criteria for the Program.

126
 127 *Renewable energy [source]* means [a source of] energy that naturally
 128 replenishes over a human, not a geological, time frame and that is
 129 ultimately derived from solar power, water power, or wind power. A
 130 renewable energy source does not include petroleum, nuclear, natural gas,
 131 or coal.

132
 133 [*Renewable energy source* does not include petroleum, nuclear, natural
 134 gas, or coal. A renewable energy source comes from the sun or from
 135 thermal inertia of the earth and minimizes the output of toxic material in
 136 the conversion of the energy and includes:

- 137
 138 (1) non-hazardous, organic biomass material;
 139
 140 (2) solar electric and solar thermal energy;
 141
 142 (3) wind energy;
 143
 144 (4) geothermal energy; and
 145
 146 (5) methane gas captured from a landfill.]

147
 148 *Surcharge* means the annual repayment of a loan, including principal,
 149 interest, and related charges, that funds an improvement and is collected
 150 through the real property tax billing process.

151
 152 **Sec. 18A-34. Commercial Property Assessed Clean Energy Program established.**

- 153
 154 (a) *Established.* The Director must create and administer a Commercial
 155 Property Assessed Clean Energy Program.
 156
 157 (b) *Third-party lender.*
 158

- 159 (1) The Director may enter into an agreement with a third-party
 160 lender that [is either a County designated lender or a private
 161 lender that] funds a loan for [an improvement] a Climate Related
 162 Improvement. The agreement must provide for the repayment of
 163 the loan for the [improvement] Improvement and any cost of
 164 administering the Program through a [surcharge] Surcharge on
 165 the qualified property. The loan may include the cost of
 166 materials and labor necessary for installation, any permit fee, any
 167 inspection fee, any application or administrative fee, any bank or
 168 lender fee, and any other fee that the property owner may incur
 169 for the installation of the [improvement] Climate Related
 170 Improvement. The third-party lender must submit a request for
 171 collection of each [surcharge] Surcharge amount to the County
 172 designated program manager or, if there is no County designated
 173 program manager, to the Department no later than April 1 of each
 174 year.
 175
- 176 (2) The third-party lender must record a document among the land
 177 records of Montgomery County within 30 days of the time the
 178 loan is funded, which provides notice of the Commercial
 179 Property Assessed Clean Energy loan associated with the
 180 property and that the surcharge will be collected and have lien
 181 status like all other real property taxes.
 182
- 183 (c) *County designated program manager.* The Director may enter into an
 184 agreement with a County designated program manager. The County
 185 designated program manager must notify the Department of the amount
 186 of the [surcharge] Surcharge for each account to be collected on the real
 187 property tax bill for that year's levy no later than May 1 of each year,
 188 and in a format approved by the Department. The County designated
 189 program manager will receive the collections from the County,
 190 reconcile the collected and billed [surcharge] Surcharge for each
 191 account, and remit the [surcharge] Surcharge amount to the [County
 192 designated lender or] private lender. The County designated program
 193 manager must report annually to the County on the participants in the
 194 Program by name, property address, property tax account number,
 195 amount of each [surcharge] Surcharge billed, collected by the County,
 196 and remitted to the private lender, description of project, any
 197 administrative fees, the amount of each loan, the amount of each loan
 198 balance, and the term of each loan. This report must be submitted to

199 the Department no later than February 15 of each year pertaining to
200 activity in the prior calendar year.

201
202 [(d) The Director may enter into an agreement with one person who
203 provides both County designated lender and County designated
204 program manager services.]
205

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

207
208 In order to be eligible for this Program, the following criteria must be met:
209

210 (a) *Eligibility.*

- 211
- 212 (1) The property must be a qualified property.
 - 213
 - 214 (2) Before any loan is approved under the Program, the County must
215 give due regard to the property owner’s ability to repay a loan in
216 a manner substantially similar to that required for a mortgage
217 loan under Sections 1-401, 12-127, 12-311, 12-409.1, 12-925,
218 and 12-1029 of the Commercial Law Article of the Maryland
219 Code. The County has authority to deny approval of any loan
220 under the Program that, in its sole determination, does not meet
221 these Sections of the Maryland Code.
222
 - 223 (3) The property owner must submit the following to the [private]
224 lender [or the County designated lender] at the time of
225 application for funding:
226
 - 227 (A) express written consent of any holder of an existing
228 mortgage or deed of trust on a qualified property;
229
 - 230 (B) verification that there are no delinquent fees, taxes, water or
231 sewer charges, liens, or other special assessments on the
232 qualified property; and
 - 233
 - 234 (C) confirmation that:
235
 - 236 (i) the proposed [improvements] Climate Related
237 Improvement will be properly permitted and

238 permanently affixed to the qualified property and
 239 comply with all applicable State and federal statutes
 240 and regulations, as determined by the appropriate
 241 regulatory authority[.]; or

242
 243 (ii) final inspection of an installed Climate Related
 244 Improvement has occurred within a one-year (12
 245 months) period immediately preceding the date of
 246 Program application.

247
 248 (4) For new commercial construction, the property must be designed
 249 to meet or exceed the energy performance required by the County
 250 building code that is in effect at the time a property owner applies
 251 to participate in the Program.

252
 253 (5) The loan amount under this Program must meet the following
 254 criteria:

255
 256 (A) [For existing] Existing commercial construction[:]. This
 257 subsection, 18A-35(a)(5)(A), shall be in effect for five (5)
 258 calendar years after the effective date of this amendment
 259 unless further legislative action is taken to extend it. After
 260 such date, loan amounts are subject to the conditions set by
 261 subsection 18A-35(a)(5)(C) or may be set at a higher
 262 amount subject to Director approval.

263
 264 (i) The loan amount must be at least \$5,000 and not
 265 more than [20%] 30% of either the full cash value or
 266 the appraised value of the qualified property.

267
 268 (ii) The loan amount, together with the outstanding
 269 balance of the mortgage or deed of trust, must be no
 270 more than 90% of either the full cash value or the
 271 appraised value of the qualified property.

272
 273 (iii) The full cash value is determined by the Maryland
 274 State Department of Assessments and Taxation. The
 275 appraised value must be determined by a Certified
 276 General Real Estate Appraiser and must have been

277 certified no more than 12 months before the date of
 278 the loan application.

279

280 (B) For new commercial construction[:]. This subsection, 18A-
 281 35(a)(5)(B), shall be in effect for five (5) calendar years
 282 after the effective date of this amendment unless further
 283 legislative action is taken to extend it. After such date, loan
 284 amounts are subject to the conditions set by subsection 18A-
 285 35(a)(5)(D) or may be set at a higher amount subject to
 286 Director approval.

287

288 (i) If a qualified property is designed to meet or exceed
 289 the energy performance required by the County
 290 building code by no more than 5%, the maximum
 291 loan amount must not exceed [15%] 20% of the full
 292 cash value or appraised value of the qualified
 293 property.

294

295 (ii) If a qualified property is designed to exceed the
 296 energy performance required by the County building
 297 code by 5% or greater, the maximum loan amount
 298 must not exceed [20%] 30% of the full cash value or
 299 appraised value of the qualified property.

300

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

305

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

313

314 (C) Existing commercial construction.

315

- 316 (i) The loan amount must be at least \$5,000 and not
 317 more than 20% of either the full cash value or the
 318 appraised value of the qualified property.
 319
- 320 (ii) The loan amount, together with the outstanding
 321 balance of the mortgage or deed of trust, must be no
 322 more than 90% of either the full cash value or the
 323 appraised value of the qualified property.
 324
- 325 (iii) The full cash value is determined by the Maryland
 326 State Department of Assessments and Taxation. The
 327 appraised value must be determined by a Certified
 328 General Real Estate Appraiser and must have been
 329 certified no more than 12 months before the date of
 330 the loan application.
 331
- 332 (D) For new commercial construction.
 333
- 334 (i) If a qualified property is designed to meet or exceed
 335 the energy performance required by the County
 336 building code by no more than 5%, the maximum
 337 loan amount must not exceed 15% of the full cash
 338 value or appraised value of the qualified property.
 339
- 340 (ii) If a qualified property is designed to exceed the
 341 energy performance required by the County building
 342 code by 5% or greater, the maximum loan amount
 343 must not exceed 20% of the full cash value or
 344 appraised value of the qualified property.
 345
- 346 (iii) The loan amount, together with the outstanding
 347 balance of the mortgage or deed of trust, must be no
 348 more than 90% of either the full cash value or the
 349 appraised value of the qualified property.
 350
- 351 (iv) The full cash value and appraised value of the
 352 property must be determined based on the estimated
 353 value of the property as completed. The appraised
 354 value must be determined by a Certified General Real
 355 Estate Appraiser and must have been certified no

356 more than 12 months before the date of the loan
 357 application.

358
 359 (b) *Property assessed clean energy surcharge.*

360
 361 (1) The property owner of qualified property must agree to repay the
 362 amount financed through a [surcharge] Surcharge levied on the
 363 County's real property tax bill for the qualified property.

364
 365 (2) A [surcharge] Surcharge must be imposed under a written
 366 agreement between the [County designated or] private lender and
 367 the County. The [surcharge] Surcharge will be recorded in land
 368 records of the County, at the expense of the owner, within 30
 369 days of the execution of a clean energy loan financing agreement.

370
 371 (3) As a condition for entering into an agreement under the Program,
 372 the [County designated lender or] private lender must provide the
 373 County designated program manager and the Department a copy
 374 of the loan documents and documents that verify:

375
 376 (A) the property owner's ability to repay the Property Assessed
 377 Clean Energy loan in a manner substantially similar to that
 378 required for a mortgage loan;

379
 380 (B) there are no delinquent taxes, special assessments, liens, or
 381 water or sewer charges on the qualified property;

382
 383 (C) there are no delinquent assessments on the qualified
 384 property under the Program;

385
 386 (D) existing mortgage or deed of trust lender consent;

387
 388 (E) appraised value of the qualified property as certified in the
 389 appraisal report submitted by a Certified General Real
 390 Estate Appraiser if the eligibility requirement in 18A-
 391 35(a)(4) is based on the appraised value of the qualified
 392 property;

393
 394 (F) loan to value documentation; and
 395

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

398

399 (4) In addition to the administrative fees in Section 18A-34(c), the
400 County may collect an administrative fee through the [surcharge]
401 Surcharge to cover charges relating to lending, program
402 management, billing, or collection.

403

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

405

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

415

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

419

420 (c) If the property owner sells the qualified property, the buyer must
421 continue to pay the [surcharge] Surcharge levied on the annual property
422 tax bill.

423

424 (d) The [surcharge] Surcharge and any accrued interest or penalty
425 constitutes a first lien on the real property to which the [surcharge]
426 Surcharge applies until paid. An unpaid [surcharge] Surcharge will be,
427 until paid, a lien on the qualified property on which it is imposed from
428 the date it becomes payable. The [surcharge] Surcharge will accrue
429 interest and penalty and will be treated and collected like all other
430 County property taxes. Any delinquency will be collected through the
431 County Tax Sale process. The provisions of Title 14, Subtitle 8 of the
432 Tax – Property Article of the Maryland Code that apply to a tax lien
433 will also apply to the lien created under this law. Any delinquent
434 [surcharge] Surcharge collected through the County Tax Sale process

435 must be forwarded to the County designated program manager or, if
436 there is no County designated program manager, to the lender no later
437 than 30 days after the payment was received.

438

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

440

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

443

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

448

449 **Sec. 2. Expedited Effective Date.**

450 The Council declares that this legislation is necessary for the immediate
451 protection of the public interest. This Act takes effect on the date on which it becomes
452 law.

453 *Approved:*

454

455

Sidney Katz, President, County Council Date

456 *Approved:*

457

Marc Elrich, County Executive Date

458 *This is a correct copy of Council action.*

459

Selena Mendy Singleton, Clerk of the Council Date

Bill No. XX-21
Concerning: Environmental
Sustainability - Commercial Property
Assessed Clean Energy Program -
Revisions
Revised: [date] Draft No. [#]
Introduced: [date]
Expires: [18 mos. after intro]
Enacted: [date]
Executive: [date signed]
Effective: July 1, 2020
Sunset Date: [date expires]
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) update the County's C-PACE financing program to reflect the changes made to the state-enabling legislation (HB 517) that allow water efficiency, environmental remediation, and resiliency measures as eligible projects, and retroactive financing;
- (2) allow for 12-month retroactive financing for eligible C-PACE measures;
- (3) introduce a 5-year pilot for increased loan-to-value amounts for existing and newly constructed buildings;
- (4) clarify new construction participation requirements to ensure projects that both meet and exceed code up to 5 percent can access C-PACE financing;
- (5) remove the County Designated Lender role from the County's C-PACE program; and
- (6) generally revise County law regarding environmental sustainability.

By amending

Montgomery County Code
Chapter 18A, Environmental Sustainability
Article 5
Sections 18A-33, 18A-34, 18A-35, 18A-36 and 18A-37

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 18A-33, 18A-34, 18A-35, 18A-36 and 18A-37 are amended**
2 **as follows:**

3
4 **Article 5. COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY**
5 **PROGRAM.**

6
7 **18A-33. Definitions.**

8
9 *Definitions.* In this Section, the following words have the meanings indicated:

10
11 *Certified General Real Estate Appraiser* means an individual who is
12 certified as a certified real estate appraiser for general real estate under
13 Title 16 of the Business Occupations Article of the Maryland Code.

14
15 *Climate Related Improvements or Improvements* include measures that
16 address:

- 17
18 (1) renewable energy,
19
20 (2) energy and water efficiency,
21
22 (3) environmental remediation,
23
24 (4) grid resilience; or
25
26 (5) property resilience.

27
28 *Commercial property* means any real property located in the County that
29 is either not designed for or intended for human habitation, or that is used
30 for human habitation as a multi-family dwelling of more than 4 rental
31 units.

32
33 *Commercial Property Assessed Clean Energy Program or Program*
34 means a program that facilitates Climate Related Improvements and
35 requires repayment through a surcharge on the owner's property tax bill.

36
37 *County designated program manager* means a person who may be
38 selected by the County through a competitive process to provide
39 administrative and management services for the Program.
40

41 *Department* means the Department of Finance.

42
43 *Director* means the Director of the Department or the Director's
44 designee.

45
46 *Energy efficiency* means any equipment, device, or material that is
47 intended to decrease energy consumption or use less energy to perform
48 the same task.

49
50 *Environmental remediation* means any project that is intended to remove
51 environmental or health hazards, including addressing indoor air quality
52 and building material contaminants.

53
54 *Grid resilience* means any capital improvement investment that addresses
55 reliability improvements during electrical service disruptions and that are
56 consistent with Public Service Commission regulations on
57 interconnection and franchising.

58
59 *Private lender* means a lender selected by the property owner to provide
60 loan funds to the property owner for an Improvement.

61
62 *Property owner* means a person who owns qualified property or has a
63 ground lease or a long-term lease of 8 or more years on qualified property.

64
65 *Property resilience* means any built or nature-based improvement that
66 increases the capacity of a property to withstand natural disasters and the
67 effects of climate change.

68
69 *Qualified property* means any new or existing commercial real property
70 that meets the eligibility criteria for the Program.

71
72 *Renewable energy* means energy that naturally replenishes over a human,
73 not a geological, time frame and that is ultimately derived from solar
74 power, water power, or wind power. A renewable energy source does
75 not include petroleum, nuclear, natural gas, or coal.

76
77 *Surcharge* means the annual repayment of a loan, including principal,
78 interest, and related charges, that funds an improvement and is collected
79 through the real property tax billing process.

80

81 **Sec. 18A-34. Commercial Property Assessed Clean Energy Program established.**
 82

83 (a) *Established.* The Director must create and administer a Commercial
 84 Property Assessed Clean Energy Program.

85
 86 (b) *Third-party lender.*

87
 88 (1) The Director may enter into an agreement with a third-party
 89 lender that funds a loan for a Climate Related Improvement. The
 90 agreement must provide for the repayment of the loan for the
 91 Improvement and any cost of administering the Program through
 92 a Surcharge on the qualified property. The loan may include the
 93 cost of materials and labor necessary for installation, any permit
 94 fee, any inspection fee, any application or administrative fee, any
 95 bank or lender fee, and any other fee that the property owner may
 96 incur for the installation of the Climate Related Improvement.
 97 The third-party lender must submit a request for collection of
 98 each Surcharge amount to the County designated program
 99 manager or, if there is no County designated program manager,
 100 to the Department no later than April 1 of each year.

101
 102 (2) The third-party lender must record a document among the land
 103 records of Montgomery County within 30 days of the time the
 104 loan is funded, which provides notice of the Commercial
 105 Property Assessed Clean Energy loan associated with the
 106 property and that the surcharge will be collected and have lien
 107 status like all other real property taxes.

108
 109 (c) *County designated program manager.* The Director may enter into an
 110 agreement with a County designated program manager. The County
 111 designated program manager must notify the Department of the amount
 112 of the Surcharge for each account to be collected on the real property
 113 tax bill for that year's levy no later than May 1 of each year, and in a
 114 format approved by the Department. The County designated program
 115 manager will receive the collections from the County, reconcile the
 116 collected and billed Surcharge for each account, and remit the
 117 Surcharge amount to the private lender. The County designated
 118 program manager must report annually to the County on the
 119 participants in the Program by name, property address, property tax
 120 account number, amount of each Surcharge billed, collected by the

121 County, and remitted to the lender, description of project, any
 122 administrative fees, the amount of each loan, the amount of each loan
 123 balance, and the term of each loan. This report must be submitted to
 124 the Department no later than February 15 of each year pertaining to
 125 activity in the prior calendar year.
 126

127 **Sec. 18A-35. Eligibility.**
 128

129 In order to be eligible for this Program, the following criteria must be met:
 130

131 (a) *Eligibility.*
 132

- 133 (1) The property must be a qualified property.
 134
 135 (2) Before any loan is approved under the Program, the County must
 136 give due regard to the property owner's ability to repay a loan in
 137 a manner substantially similar to that required for a mortgage
 138 loan under Sections 1-401, 12-127, 12-311, 12-409.1, 12-925,
 139 and 12-1029 of the Commercial Law Article of the Maryland
 140 Code. The County has authority to deny approval of any loan
 141 under the Program that, in its sole determination, does not meet
 142 these Sections of the Maryland Code.
 143
 144 (3) The property owner must submit the following to the lender at
 145 the time of application for funding:
 146
 147 (A) express written consent of any holder of an existing
 148 mortgage or deed of trust on a qualified property;
 149
 150 (B) verification that there are no delinquent fees, taxes, water or
 151 sewer charges, liens, or other special assessments on the
 152 qualified property; and
 153
 154 (C) confirmation that:
 155
 156 (i) the proposed Climate Related Improvement will be
 157 properly permitted and permanently affixed to the
 158 qualified property and comply with all applicable
 159 State and federal statutes and regulations, as

- 160 determined by the appropriate regulatory authority;
161 or
162
- 163 (ii) final inspection of an installed Climate Related
164 Improvement has occurred within a one-year (12
165 months) period immediately preceding the date of
166 Program application.
167
- 168 (4) For new commercial construction, the property must be designed
169 to meet or exceed the energy performance required by the County
170 building code that is in effect at the time a property owner applies
171 to participate in the Program.
172
- 173 (5) The loan amount under this Program must meet the following
174 criteria:
175
- 176 (A) Existing commercial construction. This subsection, 18A-
177 35(a)(5)(A), shall be in effect for five (5) calendar years
178 after the effective date of this amendment unless further
179 legislative action is taken to extend it. After such date, loan
180 amounts are subject to the conditions set by subsection 18A-
181 35(a)(5)(C) or may be set at a higher amount subject to
182 Director approval.
183
- 184 (i) The loan amount must be at least \$5,000 and not
185 more than 30% of either the full cash value or the
186 appraised value of the qualified property.
187
- 188 (ii) The loan amount, together with the outstanding
189 balance of the mortgage or deed of trust, must be no
190 more than 90% of either the full cash value or the
191 appraised value of the qualified property.
192
- 193 (iii) The full cash value is determined by the Maryland
194 State Department of Assessments and Taxation. The
195 appraised value must be determined by a Certified
196 General Real Estate Appraiser and must have been
197 certified no more than 12 months before the date of
198 the loan application.
199

200 (B) For new commercial construction. This subsection, 18A-
201 35(a)(5)(B), shall be in effect for five (5) calendar years
202 after the effective date of this amendment unless further
203 legislative action is taken to extend it. After such date, loan
204 amounts are subject to the conditions set by subsection 18A-
205 35(a)(5)(D) or may be set at a higher amount subject to
206 Director approval.

207
208 (i) If a qualified property is designed to meet or exceed
209 the energy performance required by the County
210 building code by no more than 5%, the maximum
211 loan amount must not exceed 20% of the full cash
212 value or appraised value of the qualified property.

213
214 (ii) If a qualified property is designed to exceed the
215 energy performance required by the County building
216 code by 5% or greater, the maximum loan amount
217 must not exceed 30% of the full cash value or
218 appraised value of the qualified property.

219
220 (iii) The loan amount, together with the outstanding
221 balance of the mortgage or deed of trust, must be no
222 more than 90% of either the full cash value or the
223 appraised value of the qualified property.

224
225 (iv) The full cash value and appraised value of the
226 property must be determined based on the estimated
227 value of the property as completed. The appraised
228 value must be determined by a Certified General Real
229 Estate Appraiser and must have been certified no
230 more than 12 months before the date of the loan
231 application.

232
233 (C) Existing commercial construction.

234
235 (i) The loan amount must be at least \$5,000 and not
236 more than 20% of either the full cash value or the
237 appraised value of the qualified property.

238

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

243
 244 (iii) The full cash value is determined by the Maryland
 245 State Department of Assessments and Taxation. The
 246 appraised value must be determined by a Certified
 247 General Real Estate Appraiser and must have been
 248 certified no more than 12 months before the date of
 249 the loan application.

250
 251 (D) For new commercial construction.

252
 253 (i) If a qualified property is designed to meet or exceed
 254 the energy performance required by the County
 255 building code by no more than 5%, the maximum
 256 loan amount must not exceed 15% of the full cash
 257 value or appraised value of the qualified property.

258
 259 (ii) If a qualified property is designed to exceed the
 260 energy performance required by the County building
 261 code by 5% or greater, the maximum loan amount
 262 must not exceed 20% of the full cash value or
 263 appraised value of the qualified property.

264
 265 (iii) The loan amount, together with the outstanding
 266 balance of the mortgage or deed of trust, must be no
 267 more than 90% of either the full cash value or the
 268 appraised value of the qualified property.

269
 270 (iv) The full cash value and appraised value of the
 271 property must be determined based on the estimated
 272 value of the property as completed. The appraised
 273 value must be determined by a Certified General Real
 274 Estate Appraiser and must have been certified no
 275 more than 12 months before the date of the loan
 276 application.

277
 278 (b) *Property assessed clean energy surcharge.*

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317
- (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 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 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, liens, 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.

318 (4) In addition to the administrative fees in Section 18A-34(c), the
 319 County may collect an administrative fee through the Surcharge
 320 to cover charges relating to lending, program management,
 321 billing, or collection.
 322

323 **Sec. 18A-36. Payment of surcharge; lien.**
 324

325 (a) The County must collect the amount financed through a Surcharge on
 326 the property owner's real property tax bill and forward payments
 327 received by the County to the County designated program manager or,
 328 if there is no County designated program manager, to the lender no later
 329 than 30 days after the payment due dates for real property taxes.
 330 Payment due dates for semi-annual real property taxes are September
 331 30 for the first installment and December 31 for the second installment,
 332 and for annual real property taxes the payment due date is September
 333 30.
 334

335 (b) After receiving written notice from the County designated program
 336 manager of the execution of a clean energy loan financing agreement,
 337 the County must add the Surcharge to the property tax bill.
 338

339 (c) If the property owner sells the qualified property, the buyer must
 340 continue to pay the Surcharge levied on the annual property tax bill.
 341

342 (d) The Surcharge and any accrued interest or penalty constitutes a first lien
 343 on the real property to which the Surcharge applies until paid. An
 344 unpaid Surcharge will be, until paid, a lien on the qualified property on
 345 which it is imposed from the date it becomes payable. The Surcharge
 346 will accrue interest and penalty and will be treated and collected like all
 347 other County property taxes. Any delinquency will be collected
 348 through the County Tax Sale process. The provisions of Title 14,
 349 Subtitle 8 of the Tax – Property Article of the Maryland Code that apply
 350 to a tax lien will also apply to the lien created under this law. Any
 351 delinquent Surcharge collected through the County Tax Sale process
 352 must be forwarded to the County designated program manager or, if
 353 there is no County designated program manager, to the lender no later
 354 than 30 days after the payment was received.
 355

356 **Sec. 18A-37. Regulations; annual report.**
 357

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

360
361 (b) The Executive must submit an annual report to the County Council by
362 March 15 of each year describing program participation, number and
363 dollar value of Surcharge billed and collected, and other relevant
364 information pertaining to the prior calendar year.

365
366 **Sec. 2. Expedited Effective Date.**

367 The Council declares that this legislation is necessary for the immediate
368 protection of the public interest. This Act takes effect on the date on which it becomes
369 law.

370 *Approved:*
371
372

Sidney Katz, President, County Council Date

373 *Approved:*
374

Marc Elrich, County Executive Date

375 *This is a correct copy of Council action.*
376

Selena Mendy Singleton, Clerk of the Council Date