

**Process to adopt the Commercial Property Assessed Clean Energy and Resiliency
(C-PACER) District, RSA 53-F**

For use by:

Towns without a Charter

Some Charter Towns that are:

- **Official Ballot Town Meeting (RSA 49-D:3, II-a) (town will have to check Charter language to see if ordinances require Town Meeting approval)**

Village Districts:

1. Placed on the annual warrant by the governing body (Select Board or Commissioners);
cannot be added to the warrant by petition under RSA 39:3.
2. "To see if the [] will vote to adopt RSA chapter 53-F and establish a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) District which shall [encompass the entire area within the boundaries of the [] of [] OR [] OR [], whereby properties within the boundaries of the District may fund qualifying improvements to real property through private lenders whereby the financing is then secured by a special assessment lien on the property through an assessment agreement between the property owner and the []; and further to authorize the [] to execute all documents and perform all municipal functions in accordance with RSA chapter 53-F; and further to authorize the [] to enter into special assessment agreements with qualifying property owners."
3. If the warrant article passes, the [] shall notice and hold a single public hearing and vote on whether energy conservation and efficiency and clean energy improvements will serve the public purposes as set forth in RSA chapter 53-F and not primarily be for the benefit of private persons or uses even though such private benefits and uses may incidentally result.

For use by:

Cities

Towns with Charters as follows:

- **Town Council (RSA 49-D:3, I)**
- **Official Ballot Town Council (RSA 49-D:3, Ia)**
- **Budgetary Town Meeting (RSA 49-D:3, II)**

- 1a. Follow normal procedures for adoption of resolutions, ordinances and other legislation.
The motion/question for consideration is:

To adopt RSA chapter 53-F and establish a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) District which shall [encompass the entire area within the boundaries of the [Town/City of _____] OR

[_____] OR [_____],

whereby properties within the boundaries of the District may fund qualifying improvements to real property through private lenders whereby the financing is then secured by a special assessment lien on the property; and to execute all documents and perform all municipal functions in accordance with RSA chapter 53-F; and to enter into special assessment agreements with qualifying property owners.

- 1b. Vote on the required statutory findings, RSA 53-F:3:
- a. Whether the energy conservation and efficiency and clean energy improvements will serve the public purposes as set forth in RSA chapter 53-F and not primarily be for the benefit of private persons or uses even though such private benefits and uses may incidentally result.
 - b. This 2nd vote must occur after the adoption vote, but can occur at the same meeting so long as it was noticed and held as a public hearing – if it was not, then the Council must notice and hold a public hearing before voting on the required statutory findings.

OR:

- 2.a. The legislative body (Council) may vote to place the question on the official ballot for any regular municipal election:

Shall the [Town/City of _____] adopt RSA chapter 53-F and establish a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) District which

shall [encompass the entire area within the boundaries of the [Town/City of _____] OR [_____] OR [_____]], whereby properties within the boundaries of the District may fund qualifying improvements to real property through private lenders whereby the financing is then secured by a special assessment lien on the property through an assessment agreement between the property owner and the [_____]; and further to authorize the [_____] to execute all documents and perform all municipal functions in accordance with RSA chapter 53-F; and further to authorize the [_____] to enter into special assessment agreements with qualifying property owners.

- 2b. The [_____] shall notice and hold a public hearing and vote on the required statutory findings, RSA 53-F:3:
- a. Whether the energy conservation and efficiency and clean energy improvements will serve the public purposes as set forth in RSA chapter 53-F and not primarily be for the benefit of private persons or uses even though such private benefits and uses may incidentally result.

Counties, for *Unincorporated Places*:

Follow normal procedures for adoption of resolutions:

RESOLUTION

**Commercial Property Assessed Clean Energy and Resiliency
(C-PACER) District, RSA 53-F**

I move that we, the County Convention, adopt RSA chapter 53-F and establish a Commercial Property Assessed Clean Energy and Resiliency (C-PACER) District as follows:

Whereas, the New Hampshire legislature passed Energy Efficiency and Clean Energy Districts (RSA chapter 53-F), which allows municipalities and counties to establish Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Districts;

Whereas, an energy efficiency and clean energy district will provide public benefits of protecting the economic and social well-being by reducing energy costs in the community and risks to the community associated with future escalation in energy prices; and

Now, therefore, be it resolved by the County Convention of _____ County, New Hampshire, as follows:

Section 1. Purpose.

The commercial property assessed clean energy and resiliency program (C-PACER) permitted by RSA 53-F, allows the County to establish an energy efficiency and clean energy district whereby properties within the boundaries of the district may fund qualifying improvements to real property through private lenders/capital provider whereby the financing is then secured by a special assessment lien on the property through an assessment agreement between the property owner and the County.

Section 2. Authority.

The [County of _____] hereby adopts RSA 53-F subject to the following provisions.

Section 3. Declaration of Public Purpose and Findings.

It is declared that the financing of qualified projects through special assessments is a valid public purpose. The [County of _____] therefore intends, in accordance with RSA 53-F, the following:

- A. To authorize direct financing between property owners and capital providers as the means to finance qualified projects; and

- B. To authorize special assessments, entered into voluntarily by a property owner with the [County of _____] by means of a written assessment contract, as the means to repay the financing for qualified projects available to property owners by Capital Providers pursuant to a Financing Agreement.

Section 4. Applicability/Boundaries.

The commercial property assessed clean energy and resiliency district [shall encompass the entire area within the boundaries of the [unincorporated place of _____] located in the [County of _____].

Section 5. Definitions.

This Ordinance hereby incorporates the definitions as set forth in RSA 53-F, as may be amended; in addition, as used in this chapter, the following definitions apply:

Administrative Agreement – means the agreement entered into between the New Hampshire Business Authority and the County outlining the terms of the NHBFA’s administration of the C-PACER program for the County and the County roles and responsibilities.

Property Owner – means the fee title owner(s) of the property seeking participation in the C-PACER Program. Property Owner may also include the holder of a leasehold estate on the property, provided it is approved by the NH BFA, the holder of said lease provides a copy of the recorded lease or lease term sheet, and a signed and notarized consent of the fee title owner(s) or some other recorded document sufficient to show the leaseholder’s right to bind the property to a C-PACER assessment and lien.

Real Estate Taxes – as defined in RSA chapter 72, RSA 76:5, RSA chapter 80, and RSA chapter 81, except shall not include the C-PACER special assessment

Taxes – means Real Estate Taxes including the C-Pacer special assessment.

Section 6. Qualified Projects and Improvements.

The following applies to qualified projects and improvements:

- A. Must be a type of resiliency improvement, energy conservation and efficiency improvement, clean energy improvement, or water conservation improvement, on privately owned commercial, industrial, or agricultural real property, or multifamily residential real property with five or more dwelling units.
- B. May be new construction or a retrofit, rehabilitation, or redevelopment of existing construction.

C. The types of qualified projects and improvements include, but are not limited to:

- a. Solar PV
- b. Solar Thermal
- c. Wood biomass
- d. Wind
- e. Geothermal systems
- f. Air sealing
- g. Insulation
- h. HVAC systems meeting or exceeding ENERGY STAR standards
- i. Building modifications to increase use of daylighting
- j. Replacement of windows with units meeting or exceeding ENERGY STAR standards
- k. Energy controls or energy recovery systems
- l. Efficient lighting equipment
- m. Air quality improvements
- n. Snow and/or flood mitigation
- o. Energy storage and microgrids
- p. Alternative vehicle charging infrastructure
- q. Fire and/or wind resistance improvements
- r. Measures, equipment, or devices that:
 - i. decrease the consumption of, or demand for, water,
 - ii. address safe drinking water
 - iii. eliminate lead from water used for drinking or cooking

D. Improvements must be permanently affixed to a building or facility that is part of the real property.

Section 7. Program Administration.

The C-PACER Program shall be administered by the New Hampshire Business Finance Authority (“NHBFA”), or a third party designated by the NHBFA.

Section 8. Local Administration; Program Official.

The [] shall be the designated County’s Program Official responsible for: executing the appropriate documentation for the imposition of the special assessment; working with the NHBFA; and administering the duties and responsibilities of the County set forth in the administrative agreement with the NHBFA.

Section 9. Priority; Collection and Enforcement.

The County has the authority to bill and collect on the special assessment and lien, except that the County may delegate such responsibilities to any outside third party approved by the NH BFA; such delegation shall occur on the “Assignment of Notice of Assessment and C-PACER

Lien and Assignment of Assessment Agreement for C-PACER Financing” (the “Assignment”) whereby the County assigns the special assessment lien to the Capital Provider.

- A. If the County does not delegate billing and collection responsibilities to a third party, the County shall bill and collect the special assessments and such billing and collection may be made by the tax collector or other official responsible for property tax collection pursuant to RSA 80:19, by bills for water or sewer service or another municipal service, or by separate bills.
- B. Delinquent payments incur interest and penalties as specified in the financing agreement between the property owner and the capital provider.
- C. Each special assessment imposed under this ordinance, including any interest on the assessment and any penalty, constitutes a first and prior lien against the property on which the assessment is imposed, from the date on which the notice of special assessment is recorded at the Registry of Deeds in the county in which the district area is located until the assessment, interest, or penalty is paid.
- D. The lien runs with the property.
- E. Notwithstanding RSA 80:19, in the case of default or delinquency, enforcement shall only be by the capital provider through the procedures under RSA 479, including the power of sale, or as set forth in the Deed of Trust, if applicable. Any outstanding and delinquent property taxes at the time of the enforcement action shall be satisfied along with the delinquent amounts of the special assessment lien. The County is not responsible for, nor required to, tax deed the property for any default or delinquency of C-PACER payments to the Capital Provider.
- F. Assessments not yet due may not be accelerated.
- G. Assessments may not be eliminated by foreclosure or bankruptcy.

Section 10. Tax Liening, Tax Deeding, Sale Proceeds.

For any C-PACER property which is tax lienied pursuant to RSA chapter 80 and RSA chapter 81 for failure to pay Real Estate Taxes, the C-PACER lender shall be permitted to redeem the property by making sufficient payment as required by RSA 80:32 or RSA 80:76.

For any C-PACER property which is tax deeded pursuant to RSA chapter 80 and RSA chapter 81 for failure to pay Real Estate Taxes, the County will make all reasonable attempts to sell the property in as short a time frame as possible, following the process of RSA 80:76 et seq., including the 90-day right of repurchase requirements contained in RSA 80:89. The County will include in any public notice for the sale of the property, any auction notice, any bid documents, and any Purchase and Sale, a clear notification that the property is subject to a C-PACER assessment and lien.

Upon sale of the property, the process laid out in RSA 80:88 et seq. for the distribution of proceeds shall be followed, and any delinquent C-PACER special assessment payments are considered “taxes” for purposes of payment from sale proceeds (RSA 80:19 – “For the purposes of this chapter, the word ‘taxes’ shall include special assessments.”).

The C-PACER special assessment and lien remain on the property and shall pass to the new owner, who becomes responsible for payment upon transfer of title.

Section 11. Liability.

The County shall incur no liability as a result of the C-PACER Program or for the private debt created or evidenced by the Assessment Agreement, the Assessment and C-PACER Lien, the Financing Agreement, or any related document, nor shall any members of the governing body, employees, board members or officers of the County be personally liable for exercising any rights or responsibilities pursuant to or in furtherance of the C-PACER Program. The County’s participation in the C-PACER Program shall not be interpreted to pledge, offer, or encumber the County’s full faith and credit.