

ORDINANCE NO. ORD-2022-03

**AN ORDINANCE TO ADOPT THE CLEAN ENERGY LOAN PROGRAM  
ORDINANCE**

**RECITALS**

Washington County, Maryland (the *County*) wishes to establish a clean energy loan program to encourage the finance or refinance of energy and water efficiency projects, environmental remediation projects, renewable energy projects, and resiliency projects as set forth in Maryland Code, Local Government Article, §§1-1101 *et seq.*

Maryland Code, Local Government Article, §1-1102 authorizes counties and municipalities to enact such an act to establish a clean energy loan program

A public hearing was held on March 1, 2022, following due notice and advertisement of the text of the Clean Energy Loan Program Ordinance (the *Ordinance*).


Public comment was received, reviewed, and considered concerning the aforesaid Ordinance.

The Board believes it to be in the best interests of the citizens of the County for the Board to adopt the attached Clean Energy Loan Program Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Washington County, Maryland, that the attached ordinance entitled "Clean Energy Loan Program Ordinance" is hereby adopted.

Adopted and effective this 1<sup>st</sup> day of March, 2022.

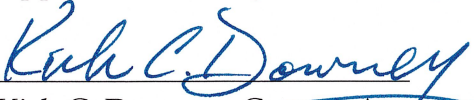
ATTEST:

  
Kirk C. Downey, County Attorney

BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND

BY:   
Jeffrey A. Cline, President

Approved as to legal sufficiency:

  
Kirk C. Downey, County Attorney

Mail to:

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100 W. Washington Street, Suite 1101  
Hagerstown, MD 21740-4735

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## CLEAN ENERGY LOAN PROGRAM ORDINANCE

### Section 1. Clean Energy Loan Program.

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

(1) "Clean Energy Financing Agreement" means an agreement between a Property Owner and a Clean Energy Lender providing for the terms and conditions of a Clean Energy Loan.

(2) "Clean Energy Lender" means a private lender providing a Clean Energy Loan.

(3) "Clean Energy Loan" means any loan made by a private lender to a Property Owner under the Clean Energy Loan Program.

(4) "Clean Energy Loan Program Administrator" means any person or entity selected by the County to manage the Clean Energy Loan Program.

(5) "Clean Energy Loan Obligation" means all indebtedness and obligations of a Property Owner to a Clean Energy Lender under a Clean Energy Financing Agreement.

(6) "Commercial Property" has the meaning stated in the Local Government Article, §§ 1-1101 et. seq., of the State Code.

(7) "Property Owner" means an owner of Commercial Property as defined in this subsection.

(8) "Surcharge" means the repayment obligation of a Clean Energy Loan, including principal, interest, any applicable fees and administrative costs, collected from a Property Owner through the County's property tax billing system in accordance with the Act and as authorized by Section 2 of the Ordinance.

(9) "Surcharge Lien" means the lien automatically established upon the County's levy of the Surcharge on the property tax bill.

(b) **Program.** There is a Clean Energy Loan Program to finance or refinance energy and water efficiency projects, environmental remediation projects, renewable energy projects, and resiliency projects as provided in the Local Government Article, §§1-1101 et seq., of the State Code.

(c) **Rules and regulations.** The County may adopt rules and regulations to administer the Clean Energy Loan Program consistent with this ordinance.

(d) **Program Administrator.** The County may enter into an agreement with a private entity to administer the Clean Energy Loan Program.

(e) **Scope.** Property Owners are eligible to participate in the Clean Energy Loan Program for non-accelerating loans greater than \$25,000.

(f) **Eligibility.** In order to be eligible for a Clean Energy Loan, the Property Owner shall:

(1) have a 100% ownership interest in the property located in Washington County for which projects are proposed;

(2) demonstrate that the most recent property taxes, assessments, and charges on the property have been paid;

(3) provide a copy of written notice to all current holders of a mortgage or deed of trust who have a priority recorded lien on the property and written proof of express consent to the Clean Energy Loan as a priority lien by all current holders of a mortgage or deed of trust on the property that is to be financed under the Clean Energy Loan Program; and

(4) establish that the owner of the Commercial Property is able to repay the loan provided under the Clean Energy Loan Program, in a manner substantially similar to that required for a mortgage loan under §§ 12-127, 12-311, 12-409.1, 12-925, and 12-1029 of the Commercial Law Article of the State Code.

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(g) **Qualifying projects.** The following projects, either new or replacement, qualify as energy or water efficiency, renewable energy, environmental remediation, or resiliency projects under the Clean Energy Loan Program:

(1) solar energy equipment;

(2) geothermal energy devices;

(3) wind energy systems;

(4) water conservation devices;

(5) any construction, renovation or retrofitting of Commercial Property to reduce energy or water consumption, including but not limited to, high efficiency lighting and building systems, heating ventilation air conditioning (HVAC) upgrades, high efficiency boilers and furnaces, high efficiency hot water heating systems, combustion and burner upgrades, fuel switching, heat recovery and steam traps, building shell or envelope improvements, fenestration improvements, building energy management systems, and process equipment upgrades;

(6) any construction, renovation or retrofitting of Commercial Property that is intended to remove environmental or health hazards, including but not limited to, projects that promote indoor air and water quality, asbestos remediation, lead paint removal, and mold remediation;



(7) any construction, renovation or retrofitting of Commercial Property that is intended to increase the capacity of a property to withstand natural disasters and the effects of climate change, including but not limited to, flood mitigation, stormwater management, a project to increase fire or wind resistance, a project to increase the capacity of a natural system, an inundation adaptation project, alternative vehicle charging infrastructure, energy storage; and

(8) any other project approved by the County or the Clean Energy Loan Program Administrator as qualifying as an energy or water efficiency, renewable energy, environmental remediation, or resiliency project.

(h) **Qualifying costs.** A Clean Energy Loan may be used to pay for all costs incurred by a Property Owner in connection with the qualifying projects, including the cost of the energy audit; feasibility studies and reports; project management, design, installation, and construction of the qualifying projects; commissioning; energy savings or performance guaranty or insurance; building accreditation; closing costs of the Clean Energy Loan; permitting fees; administrative fees; post-install Evaluation, Measurement & Verification; and, building accreditation.

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## **Section 2. Real property tax surcharge.**

(a) **Repayment of Loans.** A Property Owner participating in the Clean Energy Loan Program shall repay the Clean Energy Loan through a Surcharge on their real property tax bill. Upon receipt of written notice from the Clean Energy Loan Program Administrator of the execution of a Clean Energy Loan Financing Agreement, the County shall add the Surcharge to the tax property bill on July 1 of the year indicated by the payment schedule of the Clean Energy Loan Financing Agreement. The Surcharge shall constitute a first lien on the property from the date it becomes payable until the unpaid Surcharge and interest and penalties on the Surcharge are paid in full, regardless of a change in ownership, whether voluntary or involuntary. A person or entity that acquires property subject to a Surcharge assumes the obligation to pay such Surcharge. The County may assign the Surcharge lien to the Clean Energy Loan Program Administrator.

(b) **Calculation.** The Surcharge for a Clean Energy Loan shall include the Clean Energy Loan Obligation and any administrative costs incurred by the County which shall be the actual expenses incurred to administer the program.

(c) **Statement of Levy and Lien of Surcharge.** Upon receiving written notice from the Clean Energy Loan Program Administrator of the execution of a Clean Energy Loan Financing Agreement, the Property Owner shall execute an agreement with the County and the Clean Energy Lender that will be recorded in the land records of Washington County, at the expense of the property owner, and which shall include:

(1) the date the Clean Energy Loan was made to the Property Owner and the property became subject to the Surcharge;

(2) the term of the Clean Energy Loan and over which the Surcharge will apply to the property;

(3) the Clean Energy Loan Obligation and estimated County administrative costs for the first year;

(4) the annual principal and interest amount for each year of the term of the Clean Energy Loan, including any partial year prorated amounts;

(5) prepayment requirements and any prepayment premium that may apply to a prepayable Clean Energy Loan;

(6) notice that the Clean Energy Loan Obligations and the County's administrative costs will be repaid through a Surcharge included on the owner's real property tax bill due and payable on the same date as the real property tax bill;

(7) notice that an unpaid Clean Energy Loan Surcharge constitutes a first lien on the property that has priority over prior or subsequent liens in favor of private parties and that the Surcharge will continue as a lien on the property from the date it becomes payable until the unpaid Surcharge and interest and penalties on the Surcharge are paid in full, regardless of a change in ownership of the property, whether voluntary or involuntary; and

(8) notice that if payments of Surcharges are not timely paid, the Surcharge will be collectible as a tax lien through the tax sale process authorized under Tax-Property Article, Title 14, Subtitle 8 of the State Code and in accordance with Section 2-103 of the Code of Public Local Laws for Washington County and that an overdue Surcharge will be so collected, irrespective of whether real property taxes (or any other taxes, charges, or assessments) are due and owing.

(d) **Default.** In the event of default on the Clean Energy Loan Surcharge, the County shall be required to collect the lien pursuant to Tax-Property Article, Title 14, Subtitle 8 of the State Code and in accordance with Section 2-103 of the Code of Public Local Laws for Washington County, irrespective of whether property taxes (or any other taxes, charges, or assessments) are due and owing. The County shall not incur any liability to the Clean Energy Lender or others in the event of default.

(e) **Credit of Payments.** Payments received from a Property Owner shall be credited first to all county taxes, assessments, and charges.

(f) **Payment to Clean Energy Lender.** The County shall have no ownership of the Surcharges collected except for administrative costs provided under this ordinance. The County shall pay all Surcharge payments in any calendar month to the applicable Clean Energy Lender or the Clean Energy Loan Program Administrator within 30 days after the end of the month in which such amounts are collected. The County shall have no obligation to make payments to any Clean Energy Lender with respect to any Clean Energy Loan Obligation other than that portion of Surcharge actually collected from a Property Owner for the repayment of a Clean Energy Loan.

### **Section 3. Financing.**

(a) **Private Lenders, Terms** Clean Energy Loans may be provided by any private lender and a Clean Energy Financing Agreement may contain any terms agreed to by the Clean Energy Lender and the Property Owner, as permitted by law, for the financing of Clean Energy Loans. The County may not finance or fund any loan under the program, shall serve only as a program sponsor to facilitate loan repayment by including the Surcharge on the County real property tax bill for the property, and shall incur no liability for the loan. The loan must be repaid over a term not to exceed the weighted average useful life of the project as determined by the Clean Energy Loan Program.

(b) **County Role.** The County's role in the Clean Energy Loan Program is limited to sponsoring the program and collecting and forwarding the Surcharges imposed under the program. The County may not provide Clean Energy Loans or other financing in connection with this program.

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