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# New York City Releases C-PACE Program Guidelines

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After nearly 2 years of anticipation, New York City recently re-released its C-PACE program guidelines in an effort to plug what had been seen as critical holes in previous iterations. Highlights include: (1) New Construction and Major Renovations officially becoming C-PACE eligible (as opposed to just retrofits being eligible), (2) electrified buildings and certain other efficient improvements' being exempt from the 1.0 SIR requirement, (3) ground leased projects officially becoming C-PACE eligible and (4) the future adoption of the City's tax lien securitization program as an enforcement mechanism for lenders. More below:

## **1. Eligibility of New Construction and Major Renovations/Gut Rehabs**

a. C-PACE Proceeds can now be applied to:

- i. "New Construction" (i.e., projects for which a new building permit is required under item 1 of section 28-105.2 of the New York City Administrative Code); or
- ii. "Major Renovations" (i.e. any renovation, retrofit or capital improvement project in an existing building that increases floor surface area by more than 110%).

b. Note that the Savings-to-Investment Ratio ("SIR") requirement does not apply to New Construction or Major Renovations.

*c. However:*

i. In order for New Construction or a Major Renovation to qualify, the project must entail the development of a "Low Carbon Building".

1. A "Low Carbon Building" is one in which no combustion-causing equipment or system emits more than 25 kg of carbon dioxide per million British thermal units of energy, and which otherwise complies with the technical parameters promulgated by relevant agencies.

2. Note this 25 kg emission requirement does not pertain to the following:

a. Any device installed or used in the building that (1) has no connection to gas or oil lines, (2) is used intermittently, and (3) is not used to supply the building or any portion with heat or hot water; or

b. A building in which such combustion is necessary for

i. Manufacturing;

ii. Operation of a laboratory, laundromat, hospital, crematorium, or commercial kitchen;

iii. Providing emergency or standby power; or

iv. Any use otherwise expressly permitted by DOB ruling.

ii. C-PACE Proceeds may only fund the costs of eligible improvements, energy audits, and/or renewable energy feasibility studies and related eligible soft costs.

iii. The C-PACE loan amount cannot exceed 30% of the project's "Total Project Costs" (i.e. costs of material, equipment and labor, excluding land acquisition value or components not permanently affixed to the property). Note that while C-PACE lenders have questioned the necessity for such a limitation, for now the limitation stands.

## **2. 1.0 Savings-to-Investment Ratio (“SIR”)**

- a. As noted above, this does not apply to New Construction or Major Renovations.
- b. SIR is also not required for:
  - i. “Pre-Qualified Projects” (i.e., retrofit projects that are designed so the building is completely electrified), for which the entire project (including non-electrification measures, such as window upgrades) are exempt.
  - ii. “Pre-Qualified Electric Energy Efficiency Improvements” (i.e., HVAC systems, electric domestic hot water systems, and electric energy recovery ventilators with efficiencies satisfying ASHRAE 90.1) for which the costs and savings are not required to be included in a project’s SIR; thus, the full cost of these improvements can be funded by the C-PACE loan.
- c. This change is considered a win for the industry and there are hopes it will unlock more NYC CPACE eligible projects.

## **3. Ground Lease Projects**

- a. The Program Guidelines expressly provide for C-PACE eligibility for ground leased projects (as opposed to only projects owned in fee simple).
- b. In order for such a ground leased project to be eligible, the following conditions must be met:
  - i. The ground lease landlord (i.e., the fee owner) agrees in writing to CPACE financing;
  - ii. The property has no outstanding civil penalties, taxes, or other debt owed to the City or the City’s Water Board at the time of the CPACE closing;
  - iii. The leased premises is on one or more entire Borough Block Lots (BBL) (a portion of a BBL is prohibited);
  - iv. The remaining term on the ground lease is more than the term of the CPACE loan; and
  - v. The leasehold interest has been recorded or is eligible to be recorded.
- c. Given the popularity of ground leased projects in NYC, this clarification is welcome news.

## **4. Lender Remedies**

- a. The program suggests a potential lender enforcement mechanism vis a vis the transfer or sale of a C-PACE lien to a City tax lien trust.
- b. However, such a transfer or sale would be subject to consent of the City and the applicable tax lien trust, and only to the extent the City itself is authorized to sell or transfer its own tax liens to a trust.

## **5. Other**

- a. The program formally clarifies that the C-PACE loan is non-accelerable upon an event of default and runs with the land.
- b. The guidelines formally state that the entirety of CPACE proceeds of the loan must be disbursed on the closing date or held in escrow and disbursed in installments to borrower as advances.

If you have any questions regarding C-PACE, please contact:



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