Consent
AGENDA ITEM: C.

DATE: 8/10/26

To: Select Board
From: Matthew Scruton, Town Administrator
Date: August 6, 2026
Re: C-PACER Ordinance

The State has recommended revisions to the proposed C-PACER Ordinance. Town legal counsel and the Energy Committee have reviewed the recommended changes, which are incorporated into the updated proposed final draft.

Because the ordinance has been revised since the previous draft was presented, an additional public hearing is required. The Energy Committee recommends holding the public hearing during the Select Board meeting on August 24, 2026.

The Select Board should vote to schedule the public hearing on the proposed C-PACER Ordinance for August 24, 2026.

Suggested Motion:

Motion to schedule a public hearing on the proposed C-PACER Ordinance for August 24, 2026.

ENERGY EFFICIENCY AND CLEAN ENERGY DISTRICT ORDINANCE

Town of Rye, New Hampshire
Pursuant to RSA 53-F

ARTICLE I – AUTHORITY, PURPOSE, AND LEGISLATIVE FINDINGS

Section 1.1 Authority

1.1.1 This ordinance is adopted in accordance with Article 28 of the 2026 Town Meeting and is adopted pursuant to RSA chapter 53-F.

Section 1.2 Purpose

1.2.1 The purpose of this ordinance is to authorize the establishment and administration of a municipal C-PACER (Commercial Property Assessed Clean Energy or Resiliency) program to promote and finance qualifying clean energy, energy efficiency, water conservation, and resiliency improvements on eligible real property that is residential, commercial, industrial or other uses, excluding residential property containing less than five (5) dwelling units. This ordinance implements the authority granted by RSA 53-F to:

1.2.1.(a) Advance public benefits by reducing community energy costs, lowering greenhouse gas emissions, and decreasing public health and emergency response risks;

1.2.1.(b) Enable private financing for permanently affixed qualifying improvements through voluntary special assessment agreements that attach to the property and run with the land;

1.2.1.(c) Protect municipal and taxpayer interests by ensuring program administration, project eligibility, lien priority, mortgagee consent, and enforcement procedures are consistent with state law and the program guidebook; and

1.2.1.(d) Encourage resilient, sustainable development by facilitating investments in renewable energy, energy conservation, water efficiency, and property resilience while preserving the municipality's fiscal integrity.

1.2.2 This ordinance is intended to be implemented in a manner consistent with RSA 53-F and the program guidebook, to ensure transparent administration, informed property owner consent, and appropriate protections for mortgagees, Capital Providers, and the municipality.

Section 1.3 Board Findings

1.3.1 The Select Board of the Town of Rye ("the Board", following a public hearing held on July 8, 2026, hereby finds that energy conservation and efficiency and clean energy improvements will serve the public purposes as set forth in RSA chapter 53-F and will not primarily be for the benefit of private persons or uses even though such private benefits and uses may incidentally result.

Section 1.4 Resolution to Establish District – Required Findings

1.4.1 The Select Board further adopts the following resolution in accordance with RSA 53-F:3, III-d: (a) the Board finds that financing qualified projects through special assessments is a valid public purpose; (b) the Town of Rye intends to authorize direct financing between property owners and Capital Providers as the means to finance qualified projects; (c) the Town of Rye intends to authorize voluntary special assessments, entered into by a property owner with the Town by means of a written assessment contract, as the means to repay such financing; (d) Qualified Projects, as that term is defined in Section 2.2.14 herein, may be subject to special assessments; (e) the boundaries of the District shall be the entirety of the Town of Rye and all properties within its municipal boundaries; (f) administration of the Program shall be by the Authority or its designee; and (g) the Municipal Program Official responsible for executing documentation for the imposition of a special assessment shall be the Town Administrator.

ARTICLE II – DEFINITIONS

Section 2.1 Definitions Incorporated

2.1.1 Incorporation. The definitions set forth in RSA 53-F:1 are incorporated by reference as though fully set forth herein and shall be construed to include any subsequent amendments to RSA 53-F unless the Town Meeting expressly provides otherwise.

Section 2.2 Definitions

2.2.1 Authority shall have the same definition as "Authority" as set forth in RSA 53-F:1, I, as that term may be amended. For purposes of this Ordinance, "Authority means the New Hampshire Finance Authority ("NH BFA").

2.2.2 Capital Provider shall have the same definition as "Capital Provider" as set forth in RSA 53-F:1, II, as that term may be amended.

2.2.3 C-PACER shall have the same definition as "C-PACER" as set forth in RSA 53-F:1, III, as that term may be amended.

2.2.4 District shall have the same definition as "District" as set forth in RSA 53-F:1, IV, as that term may be amended.

2.2.5 Eligible Property shall have the same definition as "Eligible Property" as set forth in RSA 53-F:1, V, as that term may be amended.

2.2.6 Financing Agreement shall have the same definition as "Financing Agreement" as set forth in RSA 53-F:1, VI, as that term may be amended.

2.2.7 Municipal Program Official means the municipal Town Administrator. The Board hereby authorizes the Town Administrator to take all actions permitted under RSA chapter 53-F,

including the authorization to execute on behalf of the Town all compliant Assessment Agreements, notices of assessment and lien, assignments of assessment agreements, and any other documents necessary to implement the Program, provided such documents are in a form approved by the Town Counsel and provided the Qualifying Project complies will all requirements under RSA chapter 53-F and this Ordinance.

2.2.8 Municipality means the Town of Rye.

2.2.9 Program means the implementation and administration of C-PACER projects and financings under this Ordinance and RSA 53-F, including application review, project approval, lien recording, and verification.

2.2.10 Program Administrator shall have the same definition as "Program Administrator" as set forth in RSA 53-F:1, X, as that term may be amended. For purposes of this Ordinance, "Program Administrator" means the New Hampshire Business Finance Authority ("NH BFA").

2.2.11 Program Guidebook shall have the same definition as "Program Guidebook" as set forth in RSA 53-F:1, XI, as amended.

2.2.12 Project Application shall have the same definition as "Project Application" as set forth in RSA 53-F:1, XII, as that term may be amended.

2.2.13 Qualifying Improvement shall have the same definition as "Qualifying Improvement" as set forth in RSA 53-F:1, XIII, as that term may be amended. A Qualifying Improvement shall not include products or devices not permanently affixed to commercial property, see RSA 53-F:3 III-a.

2.2.14 Qualifying Project shall have the same definition as "Qualifying Project" as set forth in RSA 53-F:1, XIV, as that term may be amended, and shall be a project which satisfies all requirements and conditions under this Ordinance.

2.2.15 Special Assessment shall mean a special assessment within the meaning and subject to the provisions of RSA 80:19, except as provided in RSA 53-F:8, consistent with RSA 53-F:1 XV.

2.2.16 Assessment Agreement shall have the same definition as "Assessment Agreement" or "Special Assessment Agreement" as set forth in RSA 53-F:1, XVI, as that term may be amended.

2.2.17 Lien shall have the same definition as "Special Assessment Lien" or "Lien" as set forth in RSA 53-F:1, XVII, as that term is amended.

ARTICLE III – PROGRAM ELIGIBILITY AND PROCEDURES

Section 3.1 Eligibility Criteria

3.1.1 Owner requirement. Only the legal owner of Eligible Property shall be eligible to participate in the Program under this Ordinance.

3.1.2 Tax and lien status. To be eligible to participate under the Program under this Ordinance:

3.1.2.(a) All property taxes and any other assessments levied with property taxes on the subject property are current; and

3.1.2.(b) There must be no involuntary liens (including mechanic's liens) on the property in excess of $10,000 that are not removed at the time of the close of the financing transaction, consistent with RSA 53-F:5 II.

3.1.3 Location and use. The property must be an Eligible Property located within the District established under Article III and otherwise meet the statutory eligibility rules, consistent with RSA 53-F:1 V.

3.1.4 Financing Amount. The principal amount of any financing, excluding interest, shall not exceed the limits set forth in RSA 53-F:6 II. The financing may also include the allowable costs listed in RSA 53-F:6 II(b).

3.1.5 Permanence of improvements. An Applicant seeking to participate in the Program must demonstrate that only Qualifying Improvements that are permanently affixed to the Eligible Property are proposed to be financed. Said Qualifying Improvements must be planned or must have been constructed within thirty-six (36) months of the date of the Project Application. The Applicant must provide documentation signed by the Program Administrator that the Qualifying Improvements have been reviewed and have been determined to be qualified for the Program. The Program Administrator may, in accordance with RSA 53-F, grant waivers from the 36-month requirement.

3.1.6 Mortgagee and lienholder consent. The Municipal Program Official shall require written consents from each mortgagee or lienholder whose security interest is recorded against the property when such consent is required by RSA 53-F. Such written consents shall be provided as a part of a complete Project Application. . All required consents shall be recorded with the notice of assessment at the Rockingham County Registry of Deeds prior to or contemporaneous with recording the notice of assessment, consistent with RSA 53-F:5 III. Mortgagee consents shall be provided on the Program Administrator's standard mortgagee consent form and shall be recorded contemporaneously with the notice of assessment and lien at the Rockingham County Registry of Deeds.

3.1.7 Term limit. The term of repayment for any Assessment shall not exceed thirty (30) years, consistent with RSA 53-F:5 IV.

Section 3.2 Procedures and Conditions Precedent

3.2.1 Before the Town executes any Assessment Agreement, the following conditions shall be satisfied:

3.2.1.(a) The Town has executed an administrative agreement (also known as C-PACER Participation Agreement) with the Program Administrator.

3.2.1(b) The Program Administrator has certified the Project Application as required by RSA 53-F:7 I.

3.2.1.(b) All property taxes and any other assessments levied with property taxes on the subject property are current, and there are no involuntary liens in excess of $10,000 that are not removed at the time of the close of the financing transaction, consistent with RSA 53-F:5 II.

3.2.1.(c) Written consents of mortgagees or lienholders required by RSA 53-F:5 III have been obtained and will be recorded with the notice of assessment and lien.

3.2.1.(d) The principal amount and items included in the financing conform to RSA 53-F:6 II.

3.2.1.(e) The term of repayment does not exceed thirty years, consistent with RSA 53-F:5 IV.

3.2.1.(f) Project Applications satisfy the requirements of RSA 53-F:6 I, and after project completion, the applicant provides the verification required by RSA 53-F:6 V.

3.2.2 All applications shall be complete, in compliance with RSA 53-F and the Program Guidebook, and approved by the Authority.

Section 3.3 Notice of Assessment – Contents and Recording

3.3.1 The notice of assessment and lien prepared by the Program Administrator shall contain the information required by RSA 53-F:7 II(b), including: (1) the amount of the assessment; (2) the legal description of the property; (3) the name of each property owner; (4) a copy of the written assessment agreement; (5) the date on which the lien was created; (6) the principal amount of the lien; and (7) the term of the lien. The Municipal Program Official shall ensure that the notice of assessment and lien is recorded at the Rockingham County Registry of Deeds, consistent with RSA 53-F:7 II. Mortgagee consents recorded with the notice of assessment shall be on the Program Administrator's standard form.

Section 3.4 Post-Completion Verification

3.4.1 After an approved project is completed, the property owner shall provide the Program Administrator the written verification required by RSA 53-F:6 V, as defined in the Program Guidebook, stating that the Qualifying Project was properly completed and is operating as intended. The Municipal Program Official shall retain the verification in the project file.

ARTICLE IV – ESTABLISHMENT, ADMINISTRATION, AND PROGRAM OVERSIGHT

Section 4.1 Creation of District

4.1.1 Pursuant to RSA 53-F:2, the Town of Rye hereby establishes the Town-Wide Energy Efficiency and Clean Energy District (the "District").

Section 4.2 Authority to Execute and Record Documents

4.2.1 Duly Authorized Official. Consistent with RSA 53-F:6 III(a), the Town authorizes the Municipal Program Official to execute on behalf of the Town: (a) Assessment Agreements; (b) notices of assessment and lien; (c) assignments of Assessment Agreements and notices of assessment and lien to Capital Providers; and (d) any other documents necessary to implement the Program, provided such documents conform to forms approved by town counsel or as otherwise authorized by the Board.

4.2.2 Recording. The Municipal Program Official shall cause all required notices, assignments, and lien documents to be recorded at the Rockingham County Registry of Deeds in a timely manner and shall provide copies to the property owner, the Program Administrator, and the Town Clerk.

4.2.3 Limitations. Execution of any notices, assignments, or lien documents by the Municipal Program Official shall be subject to any conditions or approvals required by the Select Board (for example, counsel review or approval for non-standard terms) and shall not bind the Town beyond the authority granted by this ordinance and RSA 53-F.

4.2.4 Municipal Withdrawal. The Town of Rye may discontinue participation in the Program upon sixty (60) days' written notice to the Authority; provided, however, that the obligations of the Town under any Assessment Agreements, C-PACER Loans, C-PACER Liens, and C-PACER Assessments in place prior to the termination date shall survive and remain enforceable in accordance with their terms and RSA chapter 53-F.

Section 4.3 Duties and Responsibilities

4.3.1 General Duties. The Municipal Program Official shall perform the duties required by RSA 53-F and this ordinance, including but not limited to:

4.3.1.(a) Executing an Administrative Agreement with the Program Administrator;

4.3.1.(b) Coordinating certification from the Program Administrator prior to execution of any Assessment Agreement, as required by RSA 53-F:7 I;

4.3.1.(c) Ensuring that the mortgagee or lienholder consents required by RSA 53-F:5 III are obtained, recorded, and maintained as part of the project file;

4.3.1.(d) Executing and recording Assessment Agreements, notices of assessment and lien, and assignments of notices of assessment and lien, in accordance with RSA 53-F:4 III, RSA 53-F:6 III, and RSA 53-F:7;

4.3.1.(e) Ensuring that the Program Guidebook, current fee schedule, and the NH BFA's list of approved Capital Providers on the Town website and shall provide links to the NH BFA's published materials.

4.3.1 (f) Maintaining complete program records, including Project Applications, approvals, consents, executed agreements, recorded liens, assignments, verifications of completion, and any correspondence with the Authority or Capital Providers and property owners; and

4.3.1.(g) Ensuring that all Assessment Agreements use the Program Administrator's standard Assessment Agreement form, mortgagee consent form, notice of assessment and lien form, and assignment form. Any deviation from the Authority's standard forms must be approved in writing by Town Counsel prior to execution.

4.3.2 Application Review. Upon receipt of a Project Application, the Municipal Program Official shall ensure that any mortgagee or lienholder consents required by RSA 53-F:5 III are obtained and recorded with the notice of assessment; the recording of such consents shall have the legal effect described in RSA 53-F:5 III. The Municipal Program Official shall confirm satisfaction of the conditions set forth in Article III.

4.3.3 Compliance and Enforcement. The Municipal Program Official shall ensure that billing, collection, and enforcement of special assessments are performed in accordance with RSA 53-F:8 and 53-F:3 V and any delegation set forth in an assignment to the Capital Provider. The Town may delegate billing, collection, and enforcement to a third party approved by the Program Administrator and acceptable to the Town.

4.3.4 Reporting. The Municipal Program Official shall provide periodic reports to the Board (at least annually) summarizing Program activity, fees collected, outstanding liens, and any material issues or disputes.

Section 4.4 Administrative Rules, Fees, and Records

4.4.1 Program Fees and Reimbursement. As part of any closing for a C-PACER lien, an applicant shall pay to the Program Administrator, administrative fees in an amount equal to the necessary costs to pay for and/or reimburse the Town for an opinion of title, legal fees, notice and/or recording costs, and other costs incurred by the Town related to the Program. The Program Administrator (NH BFA) may collect program administrative fees from Property Owners as set forth in the Program Guidebook. The Town may submit requests for reimbursement of actual municipal expenses to the NH BFA on a form provided by the NH BFA; NH BFA will remit such reimbursements to the Town to the extent program fees collected permit, consistent with the Program Guidebook and any fee remittance procedures agreed between the Town and the NH BFA.

Section 4.5 Liability, Indemnity, and Non-Pledge

4.5.1 Limited Liability. The Town, and its officers, employees, agents, attorneys, and assigns shall not be liable at law or in equity for actions taken in good faith to administer the Program, except for gross and willful misconduct, consistent with RSA 53-F:6 IV.

Section 4.6 Notice Contents and Recording Cross-Reference

4.6.1 The Municipal Program Official shall ensure that the notice of assessment and lien recorded contains the items required by RSA 53-F:7 II(b) and that the recording is completed at the Rockingham County Registry of Deeds.

Section 4.7 Lien Priority and Effect of Mortgagee Consents

4.7.1 A special assessment that meets the requirements of RSA 53-F:5 shall have the priority and effect described in RSA 53-F:7 III: (a) it is a first and prior lien against the commercial property from the date the notice of special assessment is recorded until paid; (b) it has the same priority status as a lien for any other ad valorem tax, except that it shall be junior to any lien for property tax or other taxes or assessments by the municipality; and (c) the lien runs with the land and unpaid portions that are not yet due may not be accelerated or eliminated by foreclosure of a property tax lien or any foreclosure under state law, consistent with RSA 53-F:7 III.

4.7.2 Any provision of a deed of trust, mortgage, or other agreement that purports to accelerate any payment solely as a result of entering into an assessment agreement is unenforceable, consistent with RSA 53-F:5 III. Mortgage holders or loan servicers may, however, adjust escrow amounts to accommodate payment of the assessment.

ARTICLE V – ASSESSMENT AGREEMENTS

Section 5.1 Form and Required Terms of Assessment Agreements

5.1.1 Written contract. An Assessment Agreement shall be a written contract between the municipality and the recorded property owner or the owner of a leasehold estate to be assessed, consistent with RSA 53-F:3 III-b and RSA 53-F:1 XVI.

5.1.2 Contents. The Assessment Agreement shall stipulate that all funding for the Qualifying Improvements shall be provided by private lenders pursuant to a separate financing agreement between the lender and the property owner, and that the financing shall be secured by a special assessment lien on the Eligible Property. Each financing agreement shall state the amount financed, interest rate, term, conditions of prepayment, and penalties and interest for late or delinquent payment, consistent with RSA 53-F:1 XVI; RSA 53-F:4 II. The Assessment Agreement shall be in a form and substance acceptable to the Town and the Town Counsel.

5.1.3 Payment Schedule. The Assessment Agreement shall include a payment schedule showing the term over which payments will be due, the frequency with which payments will be billed, the amount of each payment, and the annual amount due on the assessment, see RSA 53-F:4 I(b).

5.1.4 Runs with the land. Each Assessment Agreement shall state that the obligations under the Assessment Agreement and lien will run with the Eligible Property, consistent with RSA 53-F:4 I(b).

5.1.5 Funding source and lien security. The Assessment Agreement shall state that funding for the Qualifying Improvements is provided by private lenders and that the financing is secured by a Special Assessment Lien on the Eligible Property, consistent with RSA 53-F:4 I(b).

5.1.6 Associated Risk. The Assessment Agreement shall disclose the risks associated with participation, including the risk of enforcement by power of sale under RSA 479 and other enforcement remedies, consistent with RSA 53-F:4 II.

Section 5.2 Conditions Precedent to Execution

5.2.1 Certification. No Assessment Agreement shall be executed by the Town until the Program Administrator has certified the Project Application, consistent with RSA 53-F:7 I.

Section 5.3 Execution, Recording, and Assignment

5.3.1 Recording. Upon receiving certification from the Program Administrator pursuant to RSA 53-F:7 I, upon the performance of the eligibility check under Section 4.3, the Municipal Program Official may execute the notice of assessment and lien prepared by the Program Administrator and record the notice of assessment and lien, and any assignment, upon approval from, and in coordination with, the Program Administrator in the Rockingham County Registry of Deeds, consistent with RSA 53-F:7 II. The Program Administrator shall prepare the standard notice of assessment and lien and assignment forms; the Municipal Program Official is responsible for executing and recording such documents at the Rockingham County Registry of Deeds. The notice shall contain the information required by RSA 53-F:7 II(b). Upon full payment of the amount of the Special Assessment Lien, including all outstanding interest and charges and any penalties that may become due, the Municipal Assessing Official shall provide the then participating property owner with a written statement certifying that the Special Assessment Lien has been paid in full and shall record a discharge of the lien from the private lender, consistent with RSA 53-F:4 I(b).

5.3.3 Assignment. The Town may assign the recording of executed assignments of the notice of assessment and lien, consistent with RSA 53-F:7 II(c).

Section 5.4 Billing, Collection, and Enforcement

5.4.1 Municipal responsibility and delegation. Upon execution of the Assessing Agreement and recording of all notices and liens, the Town shall be responsible for billing, collection, and enforcement of the Special Assessment and Lien, provided that the Town reserves the right to delegate such responsibilities to an outside third party approved by the Program Administrator and acceptable to the municipality, consistent with RSA 53-F:8 I.

5.4.2 Enforcement procedures. Enforcement of delinquent installments by a Capital Provider shall follow the procedures in RSA 53-F:8 II and RSA 479, including the power of sale, subject to the limitations in RSA 53-F.

Section 5.5 Administrative Provisions

5.5.1 Costs and reimbursement. Anticipated expenses for administration shall be borne by participating property owners, provided that, to the extent that the Program Administrator collects such costs from property owners, the Town may seek reimbursement from the Town for actual expenses incurred in performing municipal duties, consistent with RSA 53-F:3 I and RSA 53-F:3 III-e.

Section 5.6 Lender Protections and Escrow

5.6.1 The Municipal Program Official shall recognize that any consenting mortgagee or lienholder may increase escrow amounts to cover annual Assessment payments and that such escrow remittances shall be handled in the same manner as property tax escrow payments, consistent with RSA 53-F:5 III.

ARTICLE VI – TAX LIENING, TAX DEEDING, SALE PROCEEDS

6.1.1 For any C-PACER property which is tax liened pursuant to RSA chapter 80 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.

6.1.2 For any C-PACER property which is tax deeded pursuant to RSA chapter 80 for failure to pay Real Estate Taxes, the Town 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 Town 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.

6.1.3 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.").

6.1.4 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.

ARTICLE VII – STATUTORY CONTROL, CONFORMITY, AND SUPREMACY

Section 7.1 Conformity with RSA 53-F and the Program Guidebook

7.1.1 The Program shall be administered in strict conformity with RSA 53-F and the Program Guidebook issued by the Authority. All Project Applications, Assessment Agreements, notices of assessment and lien, mortgagee or lienholder consent forms, assignment forms, and other program documents shall conform to the forms and procedures prescribed by the Program Guidebook unless a specific deviation is expressly authorized in writing by Town Counsel and the Program Administrator.

Section 7.2 Supremacy of State Law

7.2.1 To the extent any provision of this ordinance conflicts with RSA 53-F or the Program Guidebook or any other controlling state statute, the provisions of the state statute shall control and supersede the conflicting provision of this ordinance. No provision of this ordinance shall be interpreted or applied so as to require the Town to take any action that would be inconsistent with or prohibited by state law.

7.2.2 Nothing in this ordinance shall be construed to pledge, encumber, or otherwise obligate the full faith and credit of the Town, the state, the county, or the Program Administrator beyond the limits expressly authorized by RSA 53-F.

Section 7.3 Municipal Implementation and Compliance

7.3.1 If the Authority issues amendments to the Program Guidebook or the Authority's standard forms, the Municipal Program Official is authorized to adopt conforming administrative changes without further amendment to this ordinance, provided such changes do not expand substantive municipal obligations beyond those authorized by RSA 53-F.

Section 7.4 Severability

7.4.1 If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of its provisions to other persons or circumstances shall not be affected thereby and shall remain in full force and effect.

C-PACER Warrant Article #28 was approved by the Rye Voters on March 10, 2026

Approved by the Rye Select Board on June 8, 2026