

City of Milwaukee  
Office of Environmental Sustainability

Milwaukee Energy Efficiency (Me2)  
Clean Energy Financing  
PROGRAM MANUAL  
6/27/2011



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## **Executive Summary**

The City of Milwaukee recognizes that stimulating the market for cost-effective energy efficiency and water saving upgrades in commercial buildings as a *public purpose*, since these upgrades in properties located within the City increase property values, protect the tax base, increase local economic activity, provide improved environmental benefits, and promote the general welfare of the people of the City of Milwaukee

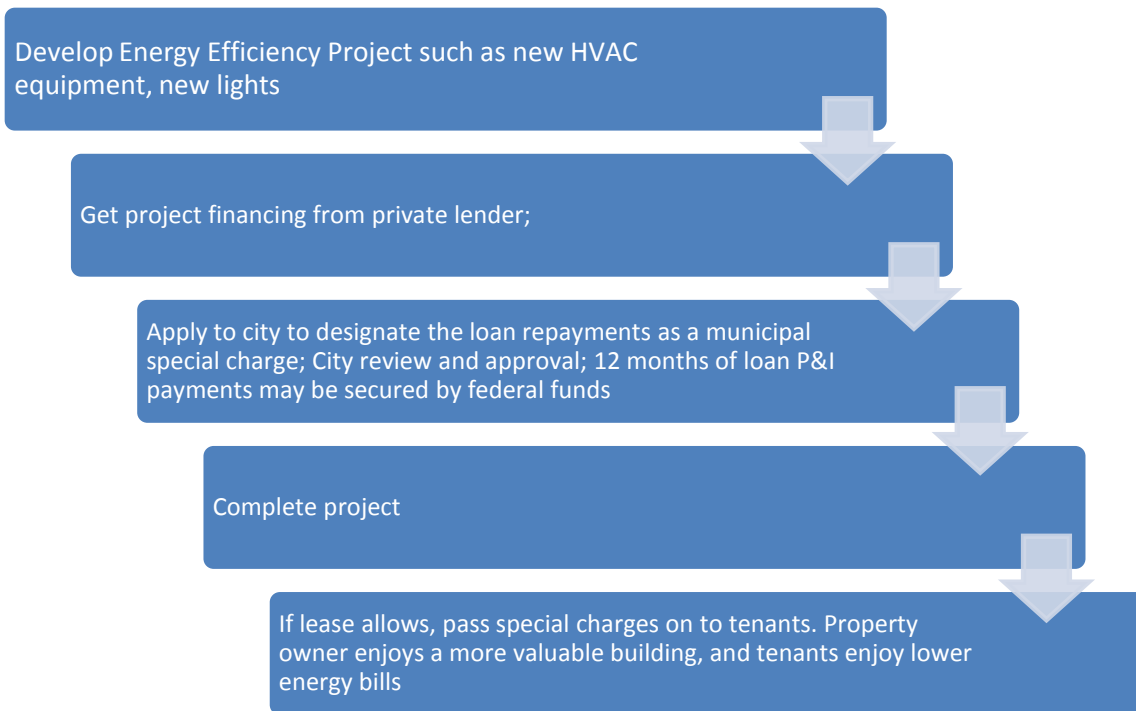
The *Me<sup>2</sup> Clean Energy Financing Program* creates a strong incentive for some commercial property owners to undertake energy efficiency upgrades in their buildings. Commercial property owners whose tenants, by their lease terms, pay the energy bills, may not see a strong business case for investing in energy efficiency upgrades in their buildings. The *Me<sup>2</sup> Clean Energy Financing Program* strengthens the business case for energy upgrades by potentially allowing a property owner to invest in an energy efficiency upgrade and pass the energy savings and upgrade loan repayments to their tenants via a governmental special charge<sup>1</sup>.

Through the *Me<sup>2</sup> Clean Energy Financing Program*, property owners develop a qualifying energy efficiency project. They then arrange project financing with a financial institution of their choice. The property owner and lender then apply to the City of Milwaukee to designate loan repayments as a governmental special charge. If approved, the City, the Property Owner, and Financial Institution, will enter into a three party agreement to finance the project.

The Milwaukee Clean Energy Financing Program also provides additional security to financial institutions to make energy efficiency loans. Through this program, up to 12 months of principal and interest payments are secured through federal funds. If a property owner defaults on their loan payments, the financial institution is thus guaranteed up to 12 months of principal and interest payments, even if the City is unable to collect the special charge from the property owner.

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<sup>1</sup> Treatment as a special charge *may* allow a property owner to pass through the cost of the improvements to the building's tenants under certain types of lease agreements. The City provides no advice on whether such pass-through is legally allowable and the property owner is solely dependent on seeking independent legal and/or accounting advice if such a pass-through of special charges under the City Ordinance is permissible. The City will not mediate any disputes between a property owner and tenants regarding the disposition or collection of the special charge.



**State of Wisconsin Enabling Statute:** 66.0627(8): A political subdivision may make a loan to an owner or lessee of a premises located in the political subdivision for making or installing an energy efficiency improvement, a water efficiency improvement, or a renewable resource application to the premises, or enter into an agreement with the owner or lessee regarding loan repayments to a 3rd party for owner-arranged or lessee-arranged financing for such purposes. If a political subdivision makes such a loan or enters into such an agreement, the political subdivision may collect the loan repayment as a special charge under this section. Notwithstanding the provisions of sub. (4), a special charge imposed under this subsection may be collected in installments and may be included in the current or next tax roll for collection and settlement under ch. 74 even if the special charge is not delinquent.

**City of Milwaukee File:** 110139. Non-residential owner-arranged clean energy financing. This ordinance establishes the local authority for the City of Milwaukee to classify particular energy efficiency loans as a special charge, potentially collectable through the tax roll.

**City of Milwaukee Liability:** The City shall have no liability to a property owner or third party lender for participation in this Program or related to or for the energy, or water savings and renewable energy improvements, including the failure to achieve projected energy or water savings, financed pursuant to this Program. A City administered Debt Service Reserve Fund shall be established to protect the City, and the City shall have no financial liability for loan repayment beyond what is available in the reserve fund. For each approved project, twelve months of principal and interest of each loan made through the *Me<sup>2</sup> Clean Energy Financing Program* is secured by a US Department of Energy Better Buildings grant. The Better Buildings program is designed to support innovative financing strategies to boost U.S. property

owner investment in energy efficiency upgrades. If the property owner defaults on the special charge, the participating lender may be guaranteed to receive up to 12 months of principal and interest payments. This Reserve fund was authorized in Common Council file 110140.

## **General Program Information**

**Administrating Agency:** City of Milwaukee Department of Administration, in partnership with the Wisconsin Energy Conservation Corporation and the City Treasurer.

**Eligible Properties:** This Program is only available to an eligible property owner(s) of an eligible property located within the City of Milwaukee.

**Eligible Projects:** An eligible energy efficiency improvement project or renewable energy improvement project must exceed a minimum size of \$20,000 and will result in increased energy efficiency by reducing current energy use by at least 15% and may include a water saving improvement component. A stand-alone water saving improvement project must have minimum savings of 50 ccf per quarter from current use. The energy and/or water savings from the project must exceed the cost of the improvements over the life of the improvement. Eligible renewable energy projects include a fixture, product, device or interacting group of devices installed behind a customer's meter at a qualifying property that produces energy or heat from renewable resources, including, but not limited to, photovoltaic systems, solar thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems, wood pellet systems and any other system eligible for funding under the federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.

The amount of financing for the project must not create a maximum loan to assessed property value that exceeds 15% on the eligible property assessed value. For a non-profit owner of an eligible property, the loan to most recent (defined as less than three (3) years) appraised value shall be used.

**Eligible Property Owner:** The person or persons possessed of the most recent fee title or land contract vendee's interest of an eligible property as shown by the records of the county registrar of deeds. To be eligible to participate in the program, an eligible property owner must, at a minimum:

- a. Provide proof of legal ownership of the eligible property;
- b. Certify that the eligible property:
  - (1) is current on property taxes, mortgage payments and water bill charges and has been so for the prior three (3) years;
  - (2) is not and has not been in bankruptcy or have any federal income bills, judgments or involuntary liens for the prior three years
  - (3) is not subject to an unpaid special assessment or special tax and has not been so for the prior three (3) years, and
  - (4) has an existing loan to assessed value ratio that does not exceed 85% prior to the proposed eligible improvements [for an

eligible non-profit owner of an eligible property the existing loan to most recent (defined as less than three (3) years) appraised value shall be used].

**Program Size:** Approximately \$7.5 million in private capital for energy efficiency projects is leveraged through this program for first generation financing. This is supported by up to \$1.5 million from the U.S. Department of Energy Better Buildings grant (Council file 110140) which will be used as a Debt Service Reserve Fund to protect the City from financial liability in the event of defaults.

**Operations Fee:** a one-time program operation fee of 0.5% of the total amount of the Qualifying project must be paid to the City pursuant to execution of the finance agreement with the City.

## **Application Process**

An eligible property owner as Applicant must submit a completed application including the following supporting information on a proposed project to the City Office of Environmental Sustainability or third party entity retained by the City to administer the Program:

- a. A completed Application form with a copy of an executed or proposed Financing agreement between the applicant property owner and a third party lender setting forth the proposed terms and conditions to finance an eligible project at an eligible property.
  
- b. All documentation necessary to ensure the applicant is eligible for the Program based on the eligibility requirements listed in the “General Program Information” section and supporting information from a design firm, energy services provider (including an Energy Services Company (ESCO), or other qualified entity to allow an assessment of the cost-effectiveness and eligibility of the proposed energy efficiency, water savings and renewable energy project;
  
- c. Provide a written lien waiver from the existing mortgage holder on the eligible property for the proposed Financing agreement and treating the payments under the Financing agreement as special charges applied to the eligible property pursuant to this Program.
  
- d. Any other supporting information as detailed in the program manual developed by the City Department of Administration to complete an application to allow the eligibility of a proposed eligible property or project to be determined.

The Office of Environmental Sustainability shall develop a written Application form for the Clean Energy Financing program.

The City reserves the right to decline an Applicant if any of the application or underwriting requirements are not met or if there is an insufficient reserve fund to protect the City.

## **City Approval**

The City, or a third party entity retained by the City, shall review the application to participate in the Program. The City may approve, subject to conditions, any completed application to participate in the Program that meets the City's eligibility criteria for approval as a Qualifying project. The City shall provide the property owner and proposed third party lender with written notice of the City's approval or disapproval within 30 business days of a completed application being submitted to the City. All approvals of a Qualifying project for recovery of the Financing agreement payments as a special charge under this ordinance shall be conditioned upon:

- a. The acceptance of the property owner and lender to pay a one-time program operation fee of 0.5% of the total amount of the Qualifying project to the City ;
- b. Clear delineation of the scope of the City's review of the financial arrangement to focus solely on project eligibility under the terms of this program manual
- c. The signing of a written agreement between the City, property owner and financial institution with minimum terms set forth below.

## **Written Agreement to Treat as Special Charge**

Upon approval as a Qualifying project, the property owner, third-party lender and City shall enter into a written three-party agreement setting forth the terms for the property owner to consent and the lender to accept the treatment of the loan repayments under the Financing agreement between the property owner and third party lender as a special charge pursuant to section 66.0627, as amended. This written agreement shall, at a minimum, comply with all federal, state and local lending and disclosure requirements and include the following:

- a. The names and addresses of the current owners of the Qualifying property
- b. The address of the Qualifying property including its tax map and lot number.
- c. A description of the approved energy efficiency, water savings and/or renewable energy improvement project to be implemented;
- d. A provision authorizing the treatment of the Financing agreement payments between the property owner and lender to be collected as a special charge by the City in accordance with s.66.0627 Wis, Stats., as amended.
- e. A provision stating the method of payment of the special charge including the amount and due date of each annual or installment payment.
- f. A provision stating the duration over which annual payments under the Financing agreement may be treated as a special charge;
- g. A provision that provides that no more than 12 months of repayment principal and interest of the Financing Agreement shall be treated as a special charge on an annual basis at any time and that any remaining unpaid balance of the Financing Agreement beyond the amount treated as a special charge for that annual period may not be treated as a special charge and may not be accelerated by the lender upon a delinquency to be treated as a special charge during that annual period.

- h. How any special charge will be treated upon sale or transfer of the property including judicial sale or foreclosure;
- i. A provision providing that the special charge payments prior to a delinquency, shall be made by the property owner to the lender in monthly installments, and that the lender shall notify the City of a delinquency pursuant to the terms of the written agreement;
- j. A provision requiring that the qualifying project must be installed by Me<sup>2</sup> approved commercial contractors.
- k. A calculation showing that annual energy savings accruing to tenants should be more than annual special charge payments accruing to the tenants.
- l. A provision providing that a notice of delinquency from a lender and a failure of the property owner to cure the delinquency shall terminate the ability for the future treatment of any unpaid balance under the Financing agreement beyond the current year to be collected as special charges under the written agreement or any subsequent agreement.
- m. How a notice of delinquency of special charges and date will be noticed in a public record consistent with the requirements of Section 8 below;
- n. A provision that the property owner or lender agree to pay 0.5% of the total Qualified project Financing agreement amount as a program operation fee to the City.
- o. Treatment as a special charge *may* allow a property owner to pass through the cost of the improvements to the building's tenants under certain types of lease agreements. The City provides no advice on whether such pass-through is legally allowable and the property owner is solely dependent on seeking independent legal and/or accounting advice if such a pass-through of special charges under the City Ordinance is permissible. The City will not mediate any disputes between a property owner and tenants regarding the disposition or collection of the special charge.
- p. Only one year of financing agreement payments at a time may be treated as a special charge and no acceleration of such payments under the financing agreement will be allowed. The unpaid balance of the financing agreement shall not be considered a special charge during that year.
- q. If a special charge becomes delinquent, the delinquent special charge shall be placed on the property tax roll and recovery *may* be sought by the City through Chapters 74 and 75 of the Wisconsin Statutes except that any recovery if the result of a judicial sale of the property shall first be used to satisfy any outstanding delinquent City special assessments or other special charges on the property.
- r. This written agreement shall not include any provision that requires the City, directly or indirectly, to assume responsibility for or to guarantee in any manner, in whole or in part, the repayment of the private Financing agreement between the lender and property owner except as expressly provided through the Me<sup>2</sup> Debt Service Reserve Fund or to



- expend its own funds, directly or indirectly, to implement the Qualifying project covered by the written agreement.
- s. The City shall no liability to a property owner or lender for participation in this Program or related to or for design, installation and operation of the energy efficiency, water savings and renewable energy improvements, including any failure to achieve the projected energy or water savings from such improvements

### **Recording of the Written Agreement**

Participation in the Program for an approved Qualifying project shall be effective upon the filing of a written agreement above between the property owner, lender and City with the Milwaukee County Registrar of Deeds to provide notice to the public of said agreement. The notice shall include the name and address of the person/entity filing the notice. A discharge of the special charge created under this ordinance upon full payment by the property owner or full discharge of the debt by the third party lender shall be filed with the Milwaukee County Registrar of Deeds on the Qualifying property.

### **Education & Outreach Program**

The Office of Environmental Sustainability or its designee shall implement an education and outreach program shall be implemented to make owners of non-residential properties located within the City of Milwaukee aware of the energy and water savings opportunities available from this Program.

### **Approved Contractors**

All projects financed through the Clean Energy Financing Program must be installed commercial contractors approved through the Me<sup>2</sup> program. Approved Me<sup>2</sup> contractors must meet the terms of the Community Workforce Agreement approved in Common Council File 100007.