

By:   
Office of the City Attorney

By:   
DEPT. Development

NORFOLK, VIRGINIA

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## PH-1                      ORDINANCE NO: 48,012

AN ORDINANCE TO AMEND AND REORDAIN THE CODE OF THE CITY OF NORFOLK, VIRGINIA, 1979, BY ADDING A NEW CHAPTER 45.8 ENTITLED "COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM" **SO AS TO** ESTABLISH THE COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY FINANCING PROGRAM PURSUANT TO § 15.2-958.3 OF THE CODE OF VIRGINIA, 1950, AS AMENDED.

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WHEREAS, subject to the limitations set forth in this ordinance and other applicable laws, including, without limitation the Commonwealth of Virginia's Clean Energy Financing Law (§ 15.2-958.3 of the Code of Virginia of 1950, as amended), the City desires to create a "Commercial Property Assessed Clean Energy (C-PACE) Financing Program";

WHEREAS, § 15.2-958.3 of the Code of Virginia, 1950, as amended, allows localities to facilitate loans made by qualified lenders to non-residential property owners to finance initial acquisition and installation costs of clean energy, resiliency, and stormwater management improvements, and for such loans, inclusive of principal, interest, and any financed fees, costs or expenses, to be (i) repaid through special assessment

payments either directly to the lender or through the locality to the lender and (ii) secured by a voluntary special assessment lien on the subject property with such lien having the same priority status as a property tax lien against real property;

WHEREAS, facilitating improvements to non-residential properties that involve clean energy, energy efficiency, water efficiency, resiliency, or stormwater improvements for both existing properties and new construction will promote the general welfare and help the City reach its Climate Action Plan goals; now, therefore;

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That in furtherance of the above-stated desire to support and create the Commercial Property Assessed Clean Energy (C-PACE) Financing Program in the City, the Code of the City of Norfolk, 1979, is hereby amended and reordained by adding thereto a new Chapter 45.8 establishing the Commercial Property Assessed Clean Energy (C-PACE) Financing Program pursuant to the terms of § 15.2-958.3 of the Code of Virginia, 1950, as amended, to read as follows:

**Chapter 45.8 COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE)  
FINANCING PROGRAM**

**ARTICLE I.**

**Commercial Property Assessed Clean Energy (C-PACE) Financing  
Program**

**Sec. 45.8-1. Intent.**

The purpose of this chapter is to create a "Norfolk Commercial Property Assessed Clean Energy (C-PACE) Financing Program," in accordance with the Commonwealth of Virginia's Clean Energy Financing Law, § 15.2-958.3 of the Code of Virginia of 1950, as amended (hereinafter the "Act"). The C-PACE Program will facilitate loans made by Capital Providers to Borrowers to finance renewable energy production and distribution facilities, energy efficiency improvements, or water

usage efficiency improvements. Subject to the limitations set forth in this chapter, the Act, or other applicable law, each C-PACE Loan, inclusive of principal, interest, and any financed fees, costs, or expenses, will be secured by a voluntary special assessment lien on the property that is the subject of such Loan.

**Sec. 45.8-2. Definitions.**

For the purposes of this chapter, and unless otherwise indicated to the contrary, the following term(s) shall have the following meaning(s):

- (a) "Act" means Virginia's "financing clean energy, resiliency, and stormwater management programs" law, § 15.2-958.3 of the Code of Virginia of 1950, as amended.
- (b) "Amendment" means an amendment of the C-PACE Lien as permitted under the Loan Documents and Program Guide.
- (c) "Assignment" means an assignment of the Loan Payments and/or C-PACE Lien pursuant to the terms of the assignment document.
- (d) "Borrower" means (A) the owner(s) of Eligible Property who obtain(s) a C-PACE Loan from a Capital Provider in accordance with the Program Guide or (B) a successor in title to the Borrower.
- (e) "Capital Provider" means (A) a private lending institution that has been approved by the Program Administrator in accordance with the Program Guide to originate a C-PACE Loan and its successors and assigns or (B) the current holder of a C-PACE Loan.
- (f) "City" means the City of Norfolk, Virginia.
- (g) "City Council" means the City Council of the City of Norfolk, Virginia.
- (h) "Commonwealth" means the "Commonwealth of Virginia."
- (i) "C-PACE" means Commercial Property Assessed Clean Energy.

- (j) "C-PACE Lien" or "Lien" means the voluntary special assessment lien levied against the Property as security for the C-PACE Loan.
- (k) "C-PACE Lien Certificate" means the voluntary special assessment lien document duly recorded among the Land Records against an Eligible Property to secure a C-PACE Loan.
- (l) "C-PACE Loan" or "Loan" means a loan from a Capital Provider to a Borrower to finance a Project in accordance with the Program Guide.
- (m) "C-PACE Program" or "Program" means the program established by the City through this chapter, in accordance with the Act, that facilitates the financing of Eligible Improvements and provides for a C-PACE Lien to be levied and recorded against the Property to secure the C-PACE Loan.
- (n) "C-PACE Program Agreement" means the Agreement between the Borrower, City, and Capital Provider, and their respective successors and assigns, which includes (i) the terms and conditions for participation in the C-PACE Program, (ii) the Borrower's acknowledgment and consent for the City to impose a voluntary special assessment and to record a C-PACE Lien Certificate against the Borrower's Eligible Property, and (iii) a summary of the terms of the C-PACE Loan. The form C-PACE Program Agreement is included herein as Exhibit A.
- (o) "Delinquent Payment" means any C-PACE Loan payment that was not paid by a Borrower in accordance with the Loan Documents.
- (p) "DMME Guidelines" means the Uniform Statewide Financial Underwriting Guidelines for C-PACE Loans, issued on December 1, 2015, by the PACE Stakeholder Committee organized by the Virginia Department of Mines, Minerals, and Energy (DMME), as amended from time to time.
- (q) "Eligible Improvement" means the initial acquisition and installation of clean energy, energy efficiency, water efficiency,

resiliency, or stormwater improvements for both existing properties and new construction, as further prescribed in this chapter and the Program Guide.

- (r) "Eligible Property" or "Property" means real property located within the City other than residential property or a condominium as defined in Virginia Code § 55-79.2.
- (s) "Financing Agreement" means the written agreement, as may be amended, modified, or supplemented from time to time, between a Borrower and a Capital Provider regarding matters related to the extension and repayment of a C-PACE Loan to finance Eligible Improvements.
- (t) "Land Records" means the land records of the Clerk of the Circuit Court of the City of Norfolk.
- (u) "Loan Amount" means the aggregate amount of a Loan, inclusive of principal, interest, and any financed fees, costs, or expenses, all as provided for in the Loan Documents.
- (v) "Loan Documents" means the C-PACE Program Agreement, Financing Agreement, a C-PACE Lien Certificate, and any other document, agreement, or instrument executed in connection with a C-PACE Loan.
- (w) "Loan Payment" means the periodic installment payments of the C-PACE Loan by a Borrower, due and payable to the City or Capital Provider as permitted by the Act in such amounts and at such times as described in the Loan Documents.
- (x) "Program Administrator" means the person or entity retained by the City to administer the Program in accordance with the requirements of the Act, this chapter, and the Program Guide, which entity may include either a private administrator or any public C-PACE administrator established by the Commonwealth for the purposes of administering local C-PACE programs.

- (y) "Program Fee(s)" means the fee(s) authorized by the Act and charged to participating Borrowers to cover the costs to design and administer the Program, including, without limitation, compensation of the Program Administrator and recovery of expenses incurred by the City.
- (z) "Program Guide" means a comprehensive document setting forth the procedures, eligibility rules, restrictions, Program Fee(s), responsibilities, and other requirements applicable to the governance and administration of the Program.
- (aa) "Program Manager" means the City Manager or such person designated in writing by the City Manager to supervise the Program and act as liaison with the Program Administrator.
- (bb) "Project" means the construction or installation of Eligible Improvements on Eligible Property.
- (cc) "Residential Property" means improved real property used or occupied, or intended to be used or occupied, for residential purposes.
- (dd) "Stabilized Occupancy" means the occupancy level that an income producing Property is expected to achieve after the property is exposed to the market for lease over a reasonable period of time and at comparable terms and conditions to other similar properties.
- (ee) "Stabilized Value" means the market value of the Property after it reaches stabilized occupancy as evidenced by an appraisal of the Property.
- (ff) "Subordination Agreement" means a written agreement executed by the holder of each existing lien, mortgage, or deed of trust on Eligible Property that is the subject of a C-PACE Loan, which allows the C-PACE lien to have senior priority to the existing mortgage or deed of trust.
- (gg) "Useful Life" means the normal operating life

of the fixed asset as determined by Generally Accepted Accounting Principles (GAAP).

## **ARTICLE II. PROGRAM STRUCTURE**

### **Sec. 45.8-3. C-PACE Program; eligible improvements.**

(a) C-PACE Program: The C-PACE Program shall be available throughout the City, provided that the Borrower, the Property, and the proposed Eligible Improvements all qualify for the Program. The following types of Eligible Improvements may be financed with a C-PACE Loan:

- (1) Renewable energy production and distribution facilities (e.g., solar photovoltaic, solar thermal, wind, wave and/or tidal energy, and the storage and/or distribution of the energy produced thereby);
- (2) Energy usage efficiency systems (e.g., high efficiency lighting and building systems, heating, ventilation, and air conditioning (HVAC) upgrades, air duct sealing, high efficiency hot water heating systems, building shell or envelope improvements, reflective roof, cool roof, or green roof systems, and/or weather-stripping);
- (3) Water usage efficiency improvements (e.g., recovery, purification, recycling, and other forms of water conservation);
- (4) Construction, renovation, or retrofitting a Property directly related to the accomplishment of any purpose listed in subsections (1), (2), or (3) above, whether such Eligible Improvement was erected or installed in or on a building or on the ground, it being the express intention of the City to allow Eligible Improvements that constitute, or are a part of, the construction of a new structure or building to be financed with a C-PACE Loan; and
- (5) Any other category of improvement approved by the Program Administrator with the consent of the Program Manager as qualifying for financing under the C-PACE Act and the Program.

(b) Use of C-PACE Loan Proceeds: The proceeds of a C-PACE Loan may be used to pay for the construction, development, and consulting costs directly related to Eligible Improvements, including without limitation, the cost of labor, materials, machinery, equipment, plans,

specifications, due diligence studies, consulting services (e.g., engineering, energy, financial, and legal), Program Fees, C-PACE Loan fees, capitalized interest, interest reserves, and C-PACE transaction underwriting and closing costs.

(c) Program Applications; Prioritization: The Program Administrator will develop a Program application process that allows for the review and approval of proposed Eligible Improvements and C-PACE Loan Documents. Program applications will be processed on a first come, first serve basis; provided, however, that the applicant meets eligibility requirements as set forth in the Program Guide.

**Sec. 45.8-4. C-PACE Loan Requirements; Program Fees; Reporting; Program Administrator; Program Guide.**

(a) Source of Loans: C-PACE Loans shall be originated by Capital Providers. The City shall have no obligation to originate or guarantee any C-PACE Loans.

(b) C-PACE Loan Amount Thresholds: The minimum Loan Amount that may be financed for each Project is Fifty Thousand and 00/100 Dollars (\$50,000). The maximum Loan Amount that may be financed for each Project is Twenty-Five Million and 00/100 Dollars (\$25,000,000) or thirty percent (30%) of the Stabilized Value of the Property, whichever is greater. The Program Administrator may also accept other forms of valuation including, but not limited to, assessed value or value derived from a minimum assessment agreement. There shall be no limit on the total value of all C-PACE Loans issued under the Program.

(c) C-PACE Loan Interest: The interest rate of a C-PACE Loan shall be as set forth in the Loan Documents.

(d) C-PACE Loan Term: The term of a C-PACE Loan shall not exceed the shorter of (i) the Useful Life of the Project Improvement or (ii) thirty (30) years.

(e) C-PACE Loan Amortization: The amount of the C-PACE Loan shall be fully amortized over the term of the C-PACE Loan as agreed by the Borrower and the Capital Provider.

(f) Apportionment of Costs: All costs incidental to the financing, administration, collection, and enforcement of the C-PACE Loan shall be borne by the Borrower.

(g) Financing Agreements: Capital Providers may use

their own Financing Agreements for C-PACE Loans, but the Financing Agreement may not conflict with the provisions of this chapter, the Act, or the C-PACE Program Agreement. To the extent of any conflict, this chapter, the Act, and the C-PACE Program Agreement shall prevail.

(h) C-PACE Program Agreement: In order to participate in the C-PACE Program, Borrower and Capital Provider shall enter into a C-PACE Program Agreement with the City, which sets forth certain terms and conditions for participation in the City's C-PACE Program. This Agreement shall be binding upon the parties and their respective successors and assigns until the C-PACE Loan is paid in full. Each C-PACE Program Agreement shall be in substantially the form provided herein in Exhibit A. The C-PACE Program Agreement may be modified as necessary to further the Program's purpose and to encourage Program participation, including such additions, deletions, or alterations as may be approved by the Program Manager and City Attorney, so long as such modifications do not conflict with the Program Guide, this chapter, or the Act.

(i) Repayment of C-PACE Loan; Collection of Loan Payments: C-PACE Loans will be repaid by the Borrower through Loan Payments made in the amounts and at such times as set forth in the Loan Documents and Program Guide. The Capital Provider shall be responsible, subject to and in accordance with the terms of the C-PACE Program Agreement and other Loan Documents, for the servicing of the C-PACE Loans and the collection of Loan Payments.

(j) C-PACE Loan Assumed: The Borrower shall assume the obligation to repay all remaining unpaid Loan Payments, whether it obtained ownership of the Property voluntarily or involuntarily, which are due upon acquisition of the Property, if any, and which accrue during Borrower's period of ownership. Only the current Loan Payment and any Delinquent Payments, together with any costs of collection, shall be payable at the settlement of a Property upon sale or transfer, unless otherwise agreed to by the Capital Provider.

(k) Transfer of C-PACE Loans: C-PACE Loans may be transferred, assigned, or sold by a Capital Provider to another Capital Provider at any time until the C-PACE Loan is paid in full provided the Capital Provider shall (i) notify the Borrower and Program Administrator prior to the billing date of the next Loan Payment due, (ii) record a C-PACE Loan Assignment among the Land Records, and (iii) deliver a copy of the recorded C-PACE Assignment to the

Borrower, City, and Program Administrator as set forth in the C-PACE Program Agreement and Program Guide. Recordation of the C-PACE Assignment shall constitute an assumption by the new Capital Provider of the rights and obligations of the original Capital Provider contained in the Loan Documents.

(l) Program Fee(s): The Program Fee(s) and its effective date shall be set by a resolution of the City Council and may be amended from time to time in the same manner. The Program Guide shall include the most current Program Fee(s) in effect. Program Fee(s) shall be designed to cover the City's and Program Administrator's costs to administer the Program and shall be paid by the Borrower as set forth in the Loan Documents. If the Program Fee is implemented in whole or in part as a component of the C-PACE Loan's interest rate, it may be capped at a dollar amount designed to encourage participation in the Program.

(m) Notification of Proposed Loan and Closing: The Program Guide will set forth the C-PACE Loan notification requirements and Loan closing process.

(n) Reporting: The City may require the Capital Provider and/or the Program Administrator to provide a written report with summary information regarding the C-PACE Loan Program, the portfolio performance of participating Capital Providers, or other Program statistics as required in the Program Guide.

(o) Program Administrator: The City will enter into a contract with a Program Administrator pursuant to the City's procurement process and in accordance with any requirements of the Virginia Public Procurement Act. The Program Administrator's duties shall be those set forth in its contract with the City, which may include, but not be limited to: (i) creating the Program Guide and revising and updating the Program Guide, as necessary; (ii) coordinating the billing and collection process by serving as a servicer for C-PACE Loans or subcontracting with a qualified C-PACE Loan servicer; (iii) processing C-PACE applications to determine Project eligibility; (iv) ensuring compliance with the requirements of the C-PACE Program; and (v) performing marketing and outreach with regard to the C-PACE Program. In the alternative, the City may use any public C-PACE administrator established by the Commonwealth for the purposes of administering local C-PACE programs

(p) Program Guide: The Program Guide shall be developed by the Program Administrator under the direction

of, and in consultation with, the Program Manager. The Program Guide and any subsequent amendments thereto shall become effective only (i) to the extent that the Program Guide and such amendments do not contravene this chapter or the Act, and (ii) after review by the City Attorney and written approval by the Program Manager. The Program Guide may incorporate the DMME Guidelines or other appropriate underwriting guidelines consistent with this type of Program. The Program Guide will be designed to create an open, competitive, and efficient Program. The Program Administrator may modify the Program Guide from time to time subject to the approval of the Program Manager and in accordance with the intent and purpose of the C-PACE Program as approved by the City Council.

**Sec. 45.8-5. Levy of Assessment; recordation; priority; amendment; enforcement and collection costs.**

(a) Levy of Voluntary Special Assessment Lien: Beginning on the effective date of this chapter and for each C-PACE Loan made under the Program, the City Council hereby levies a voluntary special assessment (C-PACE Lien) against each Property benefitting from Eligible Improvements financed with C-PACE Loans, in an amount equal to the C-PACE Loan, upon recordation of the C-PACE Lien Certificate.

(b) Recordation of C-PACE Lien Certificate: Each C-PACE Loan shall be secured by a C-PACE Lien as evidenced by the recordation of the C-PACE Lien Certificate among the Land Records. The Program Manager, on behalf of the City, is hereby authorized to execute the C-PACE Lien Certificate prior to recordation. The C-PACE Lien Certificate shall be filed in the Land Records upon execution of the Loan Documents and funding of the Project.

(c) Priority: The C-PACE Lien shall have the same priority as a real property tax lien and priority over any previously recorded lien, mortgage, or deed of trust, as evidenced by Subordination Agreement(s) obtained from each prior lien holder, mortgagee, or trustee(s) of any deed(s) of trust. Only the current Loan Payment and any Delinquent Payments shall constitute a first lien on the Property.

(d) Amendment of Lien: Upon written request by a Capital Provider in accordance with the Program Guide, the Program Manager may execute an amendment of the C-PACE Lien after the closing of a C-PACE Loan.

The Amendment will be recorded in the Land Records.

(e) Enforcement and Collection Costs: In the event of Borrower's default under the terms of the Loan Documents, the City shall enforce the C-PACE Lien for the amount of the Delinquent Payments, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced. In the alternative, the City may assign the C-PACE Lien to the Capital Provider by executing a C-PACE Lien Assignment and recording the Assignment in the Land Records. Upon such assignment, the Capital Provider may enforce the C-PACE Lien according to the terms of the Loan Documents. All collection and enforcement costs, expenses, interest, and penalties incurred by the City or Capital Provider, as applicable and consistent with the Act, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider from enforcing the C-PACE Lien to the fullest extent permitted by the Loan Documents, the Act, or general law.

#### **Sec. 45.8-6. Role of the City; limitation of liability.**

By executing the Loan Documents including the C-PACE Program Agreement, or by otherwise participating in the Program, the Borrower and Capital Provider acknowledge and agree that as a condition of participation in the Program: (i) the City undertakes no obligations under the Program except as expressly stated herein or in the C-PACE Program Agreement; (ii) in the event of a default by a Borrower, the City has no obligation to use City funds to make Loan Payments to any Capital Provider including, without limitation, any fees, expenses, and other charges and penalties, pursuant to a Financing Agreement between the Borrower and Capital Provider; (iii) no C-PACE Loan, Loan Payment, C-PACE Lien, or other obligation arising from any Loan Document, the Act, or the chapter shall be backed by the credit of the City, the Commonwealth, or its political subdivisions, including, without limitation, City taxes or other City funds; (iv) no C-PACE Loan, Loan Payment, C-PACE Lien or other obligation arising from any Loan Document, the Act, or the chapter shall constitute an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction; (v) the City has not made any representations or warranties, financial or otherwise, concerning a Borrower, Eligible Property, Project, Capital Provider, or C-PACE Loan; (vi) the City makes no representation or warranty as to, and assumes no responsibility with respect to, the

accuracy or completeness of any Loan Document, or any Assignment or amendment thereof; (vii) the City assumes no responsibility or liability in regard to any Project, or the planning, construction, or operation thereof; (viii) each Borrower or Capital Provider shall, upon request, provide the City with any information associated with a Project or a C-PACE Loan that is reasonably necessary to confirm that the Project or C-PACE Loan satisfies the requirements of the Program Guide; and (ix) each Borrower, Capital Provider, or other participant under the Program, shall comply with all applicable requirements of the Program Guide.

**Sec.45.8-7. Additional provisions.**

(a) Required Program Guide Provisions: The Program Guide, including any amendments thereto, shall contain the following provisions:

"This Program Guide (this "Guide") has been prepared for purpose of providing a more detailed description of the requirements, rules, procedures, and fees applicable to the Norfolk Commercial Property Assessed Clean Energy (C-PACE) Financing Program (the "Program"). This Guide and all provisions hereof are subject to the applicable chapter of the City Code of the City of Norfolk, Virginia (the "Chapter"), in all respects including, without limitation, the provisions of the Chapter governing the amendment of this Guide. In the case of any conflict between the provisions of this Guide and the provisions of the Chapter, the provisions of the Chapter shall control."

"THIS GUIDE IS ONLY A REFERENCE DOCUMENT AND CREATES NO LEGAL RIGHTS IN FAVOR OF ANY BORROWER, CAPITAL PROVIDER, CONTRACTOR, OR ANY OTHER PERSON, NOR DOES IT IMPOSE ANY LEGAL DUTY OR OBLIGATION ON THE CITY OF NORFOLK, VIRGINIA."

(b) Severability: The provisions of this chapter are severable. If a court of competent jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the chapter or provision to any person or circumstance is invalid, the remaining provisions of the chapter shall not be affected by that decision and continue in full force and effect.

Section 2:- That this ordinance shall be in effect from and after the date of its adoption.

ATTACHMENTS:

Exhibit A - C-PACE PROGRAM AGREEMENT (9 pages)

Adopted by Council June 9, 2020  
Effective June 9, 2020

TRUE COPY  
TESTE:

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RICHARD ALLAN BULL

BY: 

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CHIEF DEPUTY CITY CLERK