

1 Introduced by the Council President at the request of the Mayor and
2 Substituted by the Rules Committee and amended on the Floor of
3 Council:
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6 **ORDINANCE 2021-824-E**

7 AN ORDINANCE MAKING CERTAIN FINDINGS AND
8 AUTHORIZING "COMMERCIAL PROPERTY ASSESSED CLEAN
9 ENERGY" (C-PACE) ASSESSMENTS TO ENCOURAGE THE
10 ENERGY EFFICIENCY OF THE COMMERCIAL BUSINESSES
11 IN THE CITY; CREATING A NEW CHAPTER 344, TITLE
12 VIII, *ORDINANCE CODE*; PROVIDING FOR DEFINITIONS;
13 PROVIDING A SHORT TITLE; PROVIDING A PURPOSE;
14 PROVIDING AUTHORITY FOR LOCAL GOVERNMENTS;
15 PROVIDING FOR C-PACE PROGRAM ADMINISTRATION;
16 PROVIDING FOR C-PACE PROGRAM REQUIREMENTS;
17 PROVIDING FOR C-PACE PROGRAM BOUNDARIES;
18 PROVIDING FOR ELIGIBLE PARTICIPANTS; PROVIDING
19 REQUIREMENTS FOR PROGRAM COMPLETION AND
20 ASSESSMENT IMPLEMENTATION; PROVIDING
21 CODIFICATION INSTRUCTIONS AND AUTHORITY; AND
22 PROVIDING AN EFFECTIVE DATE.
23

24 **WHEREAS**, the Florida Legislature has enacted Florida Statute
25 §163.08, which provides that certain improvements to real properties
26 for energy conservation and efficient, renewable energy improvements,
27 or wind resistance improvements, may qualify for funding by the local
28 government to be voluntarily collected through non-ad valorem special
29 assessment process; and
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31 **WHEREAS**, the Commercial Property Assessed Clean Energy (C-PACE)
32 Program enables commercial property owners a mechanism to finance

1 energy improvements that increase efficiency, reduce energy
2 consumption or reduce emergency resource impacts which is a benefit
3 to society as a whole and specifically the citizens of the City of
4 Jacksonville; and

5 **WHEREAS**, Section 163.08(3), Florida Statutes, authorizes "local
6 governments", which are defined in §163.08(2)(a) to include a county,
7 a municipality, a dependent special district (per F.S. §189.012), or
8 separate legal entities (per F.S. §163.01(7)), to levy non-ad valorem
9 special assessments to fund qualifying improvements; and

10 **WHEREAS**, the use of administrators to manage and take
11 responsibility for the Program and its operation without cost to the
12 City taxpayers or the City's general fund, while simultaneously
13 relieving the City of any liability or impacting its credit, and

14 **WHEREAS**, the creation of an ordinance specifically providing
15 minimum standards and limitation for the operation of C-PACE Program
16 provides protections for the participants and operators of the
17 Program, and

18 **BE IT ORDAINED** by the Council of the City of Jacksonville:

19 **Section 1. Incorporation of Recitals.** The foregoing
20 "WHEREAS" clauses are hereby ratified and confirmed as being true and
21 correct and are hereby made a specific part of this Ordinance upon
22 adoption hereof.

23 **Section 2. Title VIII (Construction Regulations and**
24 **Building Codes), Ordinance Code, amended.** Title VIII (Construction
25 Regulations and Building Codes), *Ordinance Code*, is hereby amended
26 to create a new Chapter 344 (Commercial Property Assessed Clean Energy
27 (C-PACE) Program) as follows:

28 **Title VIII - Construction Regulations and Building Codes**

29 * * *

30 **Chapter 344 - Commercial Property Assessed Clean Energy (C-PACE)**
31 **Program**

1 **Sec. 344.101 - Short Title.** This title shall be known as the
2 "City of Jacksonville Commercial Property Assessed Clean Energy
3 Program" or "JAX C-PACE."

4 **Sec. 344.102.- Definitions.** For the purpose of this Title, the
5 definitions for the following terms, shall apply:

6 A. *City* shall mean the consolidated City of Jacksonville
7 and Duval County.

8 B. *C-PACE Assessment* shall mean the voluntary non-ad
9 valorem assessment placed on a property owner's tax
10 bill as a result of financing obtained pursuant to the
11 C-PACE Financing Agreement.

12 C. *Contractor* shall mean an appropriately licensed
13 contractor authorized by the C-PACE Administrator to
14 sell, construct or install C-PACE Qualifying
15 Improvements funded through the JAX C-PACE Program.

16 D. *C-PACE Financing Agreement* shall mean the agreement
17 entered into between the Eligible Participant and the
18 City, the C-PACE Local Government, or the C-PACE
19 Administrator, as applicable, specifying the C-PACE
20 Qualifying Improvements to be installed at the property
21 and the terms and conditions for financing those
22 improvements through voluntary non-ad valorem special
23 assessments levied on the property.

24 E. *C-PACE Qualifying Improvement* shall mean those
25 improvements to new or existing commercial real
26 property provided for in F.S. §163.08(2)(b), including,
27 but not limited to, energy conservation and efficiency,
28 renewable energy and wind-resistance improvements,
29 which shall be affixed to a building or facility that is
30 part of the property, as set forth in F.S. §163.08(10.

31 F. *C-Pace Program, Program or JAX C-PACE Program* shall mean

the City of Jacksonville's C-PACE program.

G. *Eligible Participant* shall mean any commercial property owner who voluntarily participates in the C-PACE Program and satisfies the eligibility requirements set forth in section 344.108, below.

H. *Eligible Property* means nonresidential properties and planned developments, as well as multifamily apartment buildings with five or more leased apartment units owned by an entity legally authorized to enter a contract, located within the jurisdictional boundaries of Duval County excepting any municipality that has opted out of the JAX C-PACE Program.

I. *PACE Act* shall mean F.S. §163.08, as it may be amended from time to time.

J. *C-PACE Administrator* shall mean a for-profit or not-for-profit organization responsible for administering the JAX C-PACE program on behalf of and at the discretion of the City or a C-PACE Local Government consistent with F.S. §163.08(6).

K. *C-Pace Local Government* shall be defined as provided in the *Pace Act*, F.S. s.163.08(2)(a), which may be amended from time to time.

Sec. 344.103 - Purpose

The assessments authorized by this Chapter shall be imposed, levied, collected and enforced against commercial properties located within Duval County which have voluntarily agreed to enhance their commercial property with energy efficient improvements that they wish to be financed and repaid through non-ad valorem special assessments. This ordinance further provides requirements for all C-PACE Local Governments that are authorized to operate within Duval County to ensure that: (1) The citizens of Jacksonville are fully

1 apprised of the Program; (2) C-PACE Qualifying Improvements meet the
2 statutory goals set forth in F.S. §163.08; and (3) Contractors meet
3 certain standards of conduct as set forth in federal, state, or local
4 law.

5 This article is intended to add requirements to the provisions
6 of F.S. §163.08 and other applicable law as it currently exists and
7 should be construed consistently with the PACE Act and any such other
8 applicable law. To the extent that the PACE Act provides for
9 additional or more restrictive requirements not otherwise found in
10 this article or applicable law, the provisions of the PACE Act must
11 be met. To the extent that this article provides for more restrictive
12 or additional requirements not found in the PACE Act or any such
13 other applicable law, the provisions of this article are intended to
14 apply.

15 **Sec. 344.104 - Authority.** The City of Jacksonville, a
16 consolidated municipal corporation and political subdivision existing
17 under the laws of the State of Florida, is authorized under Florida
18 Statute §163.08(3) to levy voluntary non-ad valorem special
19 assessments to fund C-PACE Qualifying Improvements. Consistent with
20 the findings of the Florida Legislature set forth in Florida Statute
21 §163.08(1)(c), the use of voluntary special assessments to finance
22 C-PACE Qualifying Improvements represents a direct and special
23 benefit to the real properties electing to participate in the Program
24 which is in furtherance of compelling state and local interests in
25 energy conservation and promotes the health, safety and welfare of
26 the public.

27 **Sec. 344.105 - Program Administration.** Pursuant to Florida
28 Statute §163.08(6), the City and C-PACE Local Government in
29 establishing its C-PACE Program may utilize private administrators,
30 defined in s. 344.102, *Ordinance Code*, as C-PACE Administrators, to
31 facilitate the program application₅ and approval process.

1 **Sec. 344.106 - Program Requirements.** C-PACE Administrators shall
2 establish a uniform process for Eligible Participants to apply for
3 participation in the JAX C-PACE program. Any JAX C-PACE program
4 established shall comply with the following standards, at a minimum,
5 and include the following:

6 A. *Application*

7 (i) *Data Security.* C-PACE Administrators and C-PACE
8 Local Governments shall take security measures to
9 protect the security and confidentiality of
10 consumer records and information to the extent
11 permitted or mandated by law. In addition, a
12 privacy policy must be in place that complies with
13 state and federal law and, in particular, shall
14 provide a property owner the ability to opt-out of
15 having the property owner's information shared with
16 third parties, except where expressly permitted or
17 required by state or federal law.

18 (ii) *Florida Public Records and Sunshine laws.* C-PACE
19 Administrators shall be required to abide by all
20 applicable laws related to public records, and
21 their retention, including those set forth in
22 Chapter 119, Florida Statutes. Further, C-PACE
23 Administrators shall ensure that the organization
24 and its employees/directors comply with any
25 requirements of Chapter 286, Florida Statutes,
26 regarding open government which apply to their
27 organization.

28 B. *Notices*

29 (i) *To Lender.* At least 30 days before entering into a
30 financing agreement, the property owner shall
31 provide to the holders or loan servicers of any

1 existing mortgages encumbering or otherwise
2 secured by the property a notice of the owner's
3 intent to enter into a financing agreement together
4 with the maximum principal amount to be financed
5 and the maximum annual assessment necessary to
6 repay that amount. A verified copy or other proof
7 of such notice shall be provided to the C-PACE
8 Local Government and the C-PACE Administrator. .

9 (ii) *To Purchaser.* Property owner must comply with F.S.
10 §163.08(14) regarding providing a written
11 disclosure statement to a prospective purchaser.
12 Failure to provide the notice referenced above in
13 F.S. §163.08(14) to a purchaser of the property
14 shall have no effect on either the validity of any
15 C-PACE Assessment or any obligation of a property
16 owner.

17 C. Improvements

18 (i) All C-PACE Qualifying Improvements shall be
19 properly permitted (where applicable) and must
20 comply with Florida and local codes.

21 D. Permits

22 (i) *Pre-Performance.* Contractors are responsible
23 for obtaining any and all permits required by law for
24 installation of the C-PACE Qualifying Improvements.
25 If a project requires use of sub-contractors or other
26 licensed specialty contractors (i.e. electrical,
27 plumbing, etc.), the general or lead contractor is
28 responsible for verifying that all permits have been
29 obtained for the specialty/sub-contracted work.

30 E. Contractors.

31 (i) *Licensure.* As required under Florida Statutes

1 §163.08(11), and other state and local laws, any
2 contractor constructing or installing a C-PACE
3 Qualifying Improvement shall be properly licensed
4 as a Contractor.

5 (ii) *Management*. Each C-PACE Administrator shall:

6 (a) To the extent possible, conduct outreach to
7 and enroll local contractors as Contractors;

8 (b) Strictly enforce anti-kickback policies and
9 procedures consistent with federal, state and
10 local law;

11 (c) Ensure that all Contractors hold necessary
12 licenses;

13 (d) Confirm Contractor qualifications based upon
14 consumer complaints or other indications of
15 lack of compliance; and

16 F. *Financing*. The C-PACE Administrator shall do the
17 following:

18 (i) *Agreement*. After achieving compliance with all
19 other mandated steps provided for by law, including
20 but not limited to receiving a verified copy or
21 other proof of such notice required by F.S.
22 §163.08(13), the C-PACE Administrator shall
23 coordinate the execution of the C-PACE Financing
24 Agreement, including obtaining the signatures of
25 all applicable parties. Such agreement and
26 supporting documentation referenced within such
27 agreement and attached thereto, must include, at a
28 minimum, the following:

29 (a) The full legal description or property
30 address of the property, subject to the C-PACE

- 1 (b) The amount of funding, including a breakdown
2 of the estimated costs for the C-PACE
3 Qualifying Improvements, any fees or
4 administrative costs, and the estimated
5 annual assessment figure to be provided to
6 the Eligible Participant.
- 7 (c) Express voluntary consent by the Eligible
8 Participant to accept the voluntary non-ad
9 valorem special assessment collection
10 process, set forth in F.S. § 197.3632, with
11 express consent regarding waiver of published
12 notice and other procedural requirements that
13 are not applicable due to the single property
14 being assessed in every scenario.
- 15 (d) The length of time for the Eligible
16 Participant to pay back the amount financed
17 through the voluntary non-ad valorem special
18 assessment, which shall not exceed 30 years.
- 19 (e) The Eligible Participant shall be responsible
20 for verifying that the C-PACE Qualifying
21 Improvements are completed as reflected in
22 the approved application documents. The
23 Eligible Participant also consents to
24 providing access to the C-PACE Administrator
25 and the C-PACE Local Government to the
26 property to verify that the C-PACE Qualifying
27 Improvements have been completed as proposed
28 in the application.
- 29 (f) At or before the execution of a contract for
30 the sale and purchase of any property against
31 which a voluntary non-ad valorem special

1 assessment for the JAX C-PACE Program has been
2 levied and has an unpaid balance due, the
3 seller shall give the prospective purchaser
4 a notice of the lien in accordance with F.S.
5 §163.08(14).

6 (g) The risks associated with participating in
7 the JAX C-PACE Program shall be clearly
8 disclosed in plain language in the C-PACE
9 Financing Agreement with the Eligible
10 Participant, including risks related to the
11 failure of the Eligible Participant to make
12 payments, the risk that they may not be able
13 to refinance the property or sell the property
14 unless the C-PACE assessment is paid off in
15 full first, and the risk of issuance of a tax
16 certificate and loss of the property pursuant
17 to F.S. ch. 197.

18 (h) Description of the C-PACE Qualifying
19 Improvements, their cost, and, if applicable,
20 the estimated completion date.

21 (i) Notice of the voluntary non-ad valorem
22 special assessment for the property shall be
23 recorded in the public records maintained by
24 the Clerk of Courts for Duval County Florida.

25 (j) The C-PACE Financing Agreement shall clearly
26 disclose, in plain language, the interest
27 rate to be charged, as well as any and all
28 fees or penalties that may be separately
29 charged to the Eligible Participant,
30 including potential late fees. The subsequent
31 charging or collecting of any additional fees

1 that were not specifically disclosed in the
2 written agreement with the property owner
3 shall be prohibited.

- 4 (k) The C-PACE Financing Agreement shall clearly
5 disclose, in plain language, that Eligible
6 Participants have the right at any time to
7 prepay in whole or in part the C-PACE
8 assessments as further outlined in the
9 financing agreement upon ten (10) days notice
10 to the C-PACE Administrator.

11 *G. Prohibited Practices*

12 (i) *Marketing and Communications.*

- 13 (a) Marketing practices for a C-PACE
14 Administrator that are or could appear to be
15 unfair, deceptive, abusive, or misleading,
16 or that violate applicable laws or
17 regulations, that are inappropriate,
18 incomplete or are inconsistent with the C-
19 PACE Administrator's or C-PACE Local
20 Government's purpose are prohibited.

- 21 (b) C-PACE Administrators shall not use
22 facsimiles of the county, city, property
23 appraiser, or tax collector logos in their
24 marketing materials. Marketing materials
25 shall not state that the JAX C-PACE Program:

- 26 1. Is a free program;
27 2. Is a county or city program;
28 3. Does not involve a financial obligation
29 by the property owner; or
30 4. Is a form of public assistance.

31 (ii) *Protected Classes.* No C-PACE Administrator, nor

Contractor shall discriminate against individuals on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, marital or familial status, age and disability.

H. Reporting

(i) *Metrics.* After not more than one year from the date of adoption of this ordinance, C-PACE Administrators shall track program metrics and report those metrics to City, through the Mayor's JAX C-Pace Program designee, which is the Chief Administrative Officer, and any participating quasi-municipalities, by jurisdiction and in total, at least quarterly, in spreadsheet format or another electronic format agreed upon by City. Those metrics, if available, shall include, at a minimum:

(a) Dates of the reporting period;

(b) List of C-PACE projects (including municipal jurisdiction, financed amount, project cost, interest rate, assessment duration, and project description) started, but not completed, during the reporting period, separated by building type (e.g. retail, office, industrial, etc.);

(c) List of C-PACE projects (including municipal jurisdiction) completed during the reporting period, separated by building type project (e.g. retail, office, industrial, etc.), specifying:

1. The C-PACE Qualifying Improvements made;
2. Project_start date and completion date;

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3. At the aggregate level, the projected energy savings and/or amount of potential renewable energy to be generated;

4. At the aggregate level, financial information such as projected energy savings and/or amount of potential renewable energy to be generated;

5. At the aggregate level, other resource savings if data is available; and

6. Energy audits performed detailing the audit results, if applicable to the project;

(d) Number of applications declined during the reporting period;

(e) Unresolved complaints and/or contractor issues and status;

(f) C-PACE Assessment defaults and tax certificates issued on properties subject to C-PACE Assessment (updated annually); and

(g) All data included in the reports must be developed and collected using standardized and verified principles and methodologies for the industry. The methodologies and supporting assumptions and/or sources must be made available to the City by the C-PACE Administrator. It is the responsibility of the C-PACE Administrator to test and verify the data collection and reporting methods and models used. All reports shall include only aggregate data, excluding any nonpublic

personal information.

(ii) *City requests.* C-PACE Administrators will respond to City requests for information on the JAX C-PACE Program in a timely manner and shall provide sufficient documentation as requested by the City to ensure that the requirements of this article and the state statutes are being met. The C-PACE Administrator shall retain sufficient books and records demonstrating compliance with the agreement and state and City requirements for a minimum period of seven years from the non-ad valorem assessment and shall allow City representatives including the Council Auditor's Office access to such books and records upon request.

I. *Recording.* The City, C-PACE Local Government or C-PACE Administrator, as applicable, shall record, or cause to be recorded, the C-PACE Financing Agreement or a Memorandum thereof, in the public records of the Clerk of Courts for Duval County within five days after execution of the C-PACE Financing Agreement, along with appropriate C-PACE Administrator contact information for property owner inquiries.

(i) The recorded agreement or summary memorandum of such agreement shall provide constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to City/county taxes and assessments from the date of recordation.

J. *Amendments.* City reserves the right to amend this article to revise JAX C-PACE Program standards. It is the obligation of the C-PACE Administrators to remain

1 abreast of and comply with all changes in applicable
2 law, including changes to this ordinance made at public
3 hearings.

4 **Sec. 344.107 - Program Boundary.** The C-PACE Program is open to
5 Eligible Participants within Duval County upon the effective date of
6 this Chapter.

7 **Sec. 344.108 - Eligible Participants.** In order to be an Eligible
8 Participant, a property owner or its owners and the property itself
9 must meet the criteria listed below. The C-PACE Administrators are
10 responsible for verifying that all of these conditions are met.

11 A. Be the legal owner of the property and provide proof of
12 ownership in the application for the JAX C-PACE Program;
13 (i) In the event the property is owned by a
14 corporation, LLC, joint venture, or limited
15 partnership, consent to participate in the project
16 shall be provided as an attachment to the
17 application in the form of a Resolution that
18 reflects the majority opinion of the Board of
19 Directors or membership of the entity, signed by
20 the appropriate officer, member, or partner.

21 B. Property must be within the JAX C-PACE Program
22 boundaries, as defined in section 344.107, *Ordinance*
23 *Code*;

24 C. The C-PACE Administrator must evaluate the property and
25 its ownership under the obligations set forth in F.S.
26 §163.08 to determine if the property meets all legal
27 requirements and thus qualifies as an Eligible Property
28 and Eligible Participants.

29 **Sec. 344.109 - Program Completion and Non-ad valorem special**
30 **assessment implementation.** Pursuant to F.S. §163.08(4), the City or
31 C-PACE Local Government is authorized to impose non-ad valorem special

1 assessments on property to secure the repayment of the costs incurred
2 by an Eligible Participant to pay for Qualified Improvement(s), which
3 shall be collected pursuant to F.S. §197.3632 or any successor
4 section. Notwithstanding F.S. §197.3632(8)(a), the special
5 assessments shall not be subject to discount for early payment and
6 shall not require notice and adoption as set forth in F.S.
7 §197.3632(4). Pursuant to F.S. ch. 197, non-ad valorem special
8 assessments levied pursuant to this article shall remain liens,
9 coequal with the lien of all state, county, district and municipal
10 taxes, superior in dignity to all other liens, titles and claims,
11 until paid.

12 **Section 2. Codification Instructions.** The Codifier and
13 the Office of General Counsel are authorized to make all chapter and
14 division "tables of contents" updates consistent with the changes
15 set forth herein. Such editorial changes and any others necessary
16 to make the *Ordinance Code* consistent with the intent of this
17 legislation are approved and directed herein, and changes to the
18 *Ordinance Code* shall be made forthwith and when inconsistencies are
19 discovered.

20 **Section 3. Effective Date.** This Ordinance shall become
21 effective upon signature of the Mayor.

22
23 Form Approved

24
25 /s/ Trisha Bowles

26 Office of General Counsel

27 Legislation Prepared by: Trisha Bowles