

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to amend and reordain Chapter 7 (COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM) of Title 7 (PLANNING AND DEVELOPMENT) of the Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 7 of Title 7 of the Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by deleting the text shown in strikethrough and adding the text shown in underline as follows:

**CHAPTER 7 – Commercial Property Assessed Clean Energy (C-PACE) Financing Program**

**Sec. 7-7-1 – Purpose.**

The purpose of this chapter is to create a "City of Alexandria Commercial Property Assessed Clean Energy (C-PACE) Financing Program," to operate in coordination with the statewide C-PACE program, all in accordance with the Commonwealth of Virginia's Clean Energy Financing Law, section 15.2-958.3 of the Code of Virginia of 1950, as amended (hereinafter the "Act"). The local and statewide C-PACE Programs, working together, will facilitate loans made by Capital Providers to Borrowers to finance renewable energy production and distribution facilities, energy efficiency improvements, resiliency improvements, water usage efficiency improvements, or stormwater management improvements for which loans may be offered. Resiliency improvements may include mitigation of flooding or the impacts of flooding or stormwater management improvements with a preference for natural or nature-based features and living shorelines as defined in section 28.2-104.1. 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. 7-7-2 – Definitions.**

For the purpose of this chapter, the following words shall have the meanings respectively ascribed to them as follows:

(a) "Act" means Virginia's "financing clean energy, resiliency, and stormwater management programs" law, section 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) "Assessment Payment Schedule" means the schedule of installments of C-PACE Payments to be made in the repayment of the C-PACE Loan, which shall be included among the summary of the terms of the C-PACE Loan in Exhibit B to the C-PACE Program Agreement.

(de) "Borrower" means:

- 1 (1) The owner(s) of Eligible Property who obtain(s) a C-PACE Loan from a Capital  
2 Provider in accordance with the Program Guide; or  
3 (2) A successor in title to the Borrower.

4 **(f) "Borrower Certification" means a notarized certificate from Borrower, certifying**  
5 **that (i) Borrower is current on payments on Loans secured by a mortgage or deed of**  
6 **trust lien on the Property and on real estate tax payments, tax payments, (ii) that the**  
7 **Borrower is not insolvent or in bankruptcy proceedings, and (iii) that the title of the**  
8 **Property is not in dispute, as evidenced by a title report or title insurance**  
9 **commitment from a title insurance company acceptable to the Program**  
10 **Administrator and Capital Provider.**

11 **(eg)** "Capital Provider" means:

- 12 (1) A private lending institution that has been approved by the Program Administrator in  
13 accordance with the Program Guide to originate a C-PACE Loan and its successors and  
14 assigns; or  
15 (2) The current holder of a C-PACE Loan.

16 **(fh)** "City" or "City of Alexandria" means the City of Alexandria, Virginia.

17 **(gi)** "City Council" or "Council" means the City Council of the City of Alexandria, Virginia.

18 **(j) "Clerk's Office" means the Office of the Clerk of the Circuit Court of the City of**  
19 **Alexandria, Virginia.**

20 **(hk)** "Commonwealth" means the "Commonwealth of Virginia."

21 **(il)** "C-PACE" means Commercial Property Assessed Clean Energy.

22 **(jm)** "C-PACE Lien" or "Lien" means a voluntary special assessment lien duly Recorded  
23 against an Eligible Property to secure Loan Payment. Each Lien (i) shall run with the land,  
24 and those portions of Loan Payment secured by such Lien that have not yet become due are  
25 not eliminated by foreclosure of a property tax lien, and (ii) shall have the same priority  
26 status as a real property tax lien, except that such Lien shall have priority over any previously  
27 recorded mortgage or deed of trust lien on the Property only if a written subordination  
28 agreement is executed by the holder of each such previously recorded lien. Such  
29 subordination agreement shall be Recorded with the Lien, and shall be in a form and  
30 substance acceptable to the prior lienholder in its sole and exclusive discretion. Prior to the  
31 Recording of any Lien, Borrower must submit to the Capital Provider evidence that: (i)  
32 Borrower is current on payments on all loans secured by a mortgage or deed of trust lien on  
33 the Eligible Property and on property tax payments to the City, (ii) Borrower is not insolvent  
34 or subject to bankruptcy proceedings, and (iii) Borrower's title to the Eligible Property is not  
35 in dispute.

36 **(kn)** "C-PACE Lien Certificate" means the voluntary special assessment lien document duly  
37 recorded among the Land Records against an Eligible Property to secure a C-PACE Loan.

38 **(lo)** "C-PACE Loan" or "Loan" means a loan from a Capital Provider to a Borrower to  
39 finance a Project, in accordance with the Program Guide.

40 **(mp)** "C-PACE Program" or "Program" means the program established by the City through  
41 this chapter, in accordance with the Act, that facilitates the financing of Eligible  
42 Improvements and provides for a C-PACE Lien to be levied and recorded against the  
43 Property to secure the C-PACE Loan.

1 (~~ng~~) "C-PACE Program Agreement" means the Agreement between the Borrower, City, and  
2 Capital Provider, and their respective successors and assigns, which includes the terms and  
3 conditions for participation in the C-PACE Program; the Borrower's acknowledgment and  
4 consent for the City to impose a voluntary special assessment and record a C-PACE Lien  
5 Certificate against the Borrower's Eligible Property; and a summary of the terms of the C-  
6 PACE Loan. A copy of the draft C-PACE Program Agreement is included herein as Exhibit  
7 A.

8 (~~or~~) "Delinquent Payment" means any C-PACE Loan payment that was not paid by a  
9 Borrower in accordance with the Loan Documents.

10 (~~ps~~) "DMME Guidelines" means the Uniform Statewide Financial Underwriting Guidelines  
11 for C-PACE Loans, issued on December 1, 2015, by the PACE Stakeholder Committee  
12 organized by the Virginia Department of Mines, Minerals, and Energy (DMME), as amended  
13 from time to time.

14 (~~qt~~) "Eligible Improvement" means the initial acquisition and installation of ~~clean~~ **renewable**  
15 **energy, energy efficiency, water efficiency, environmental remediation, electric vehicle**  
16 **infrastructure,** resiliency, or stormwater **management** improvements for both existing  
17 properties and new construction, as further prescribed in this chapter and the Program Guide.

18 (~~ru~~) "Eligible Property" or "Property" means real property located within the City other than  
19 residential property with fewer than five dwelling units or a condominium as defined in  
20 Virginia Code § 55.1-2000.

21 (~~sv~~) "Financing Agreement" means the written agreement, as may be amended, modified, or  
22 supplemented from time to time, between a Borrower and a Capital Provider, regarding  
23 matters related to the extension and repayment of a C-PACE Loan to finance Eligible  
24 Improvements.

25 (~~tw~~) "Land Records" means the land records of the Clerk of the Circuit Court of the City of  
26 Alexandria.

27 (~~ux~~) "Loan Amount" means the aggregate amount of a Loan, inclusive of principal, interest,  
28 and any financed fees, costs, or expenses, all as provided for in the Loan Documents.

29 (~~vy~~) "Loan Documents" means the C-PACE Program Agreement, Financing Agreement, a C-  
30 PACE Lien Certificate, and any other document, agreement, or instrument executed in  
31 connection with a C-PACE Loan.

32 (~~wz~~) "Loan Payment," means the periodic installment payments of the C-PACE Loan by a  
33 Borrower, due and payable to the City or Capital Provider as permitted by the Act in such  
34 amounts and at such times as described in the Loan Documents.

35 (~~aa~~) "Program Administrator" means the person or entity retained by the City **or the**  
36 **statewide administrator as defined by Virginia Code §15.2-958.3.E.3** to administer the  
37 Program in accordance with the requirements of the Act, this chapter, and the Program  
38 Guide.

39 (~~ybb~~) "Program Fee(s)" means the fee(s) authorized by the Act and charged to participating  
40 Borrowers to cover the costs to design and administer the Program, including without  
41 limitation, compensation of the Program Administrator and recovery of expenses incurred by  
42 the City.

1 (~~zcc~~) "Program Guide" means a comprehensive document setting forth the procedures,  
2 eligibility rules, restrictions, Program Fee(s), responsibilities, and other requirements  
3 applicable to the governance and administration of the Program.

4 (~~aadd~~) "Program Manager" means the City Manager or such person designated in writing by  
5 the City Manager to supervise the Program and act as liaison with the Program  
6 Administrator.

7 (~~bbee~~) "Project" means the construction or installation of Eligible Improvements on Eligible  
8 Property.

9 (~~eeff~~) "Residential Property" means improved real property used or occupied, or intended to  
10 be used or occupied, for residential purposes with fewer than five dwelling units.

11 (~~ddgg~~) "Stabilized Occupancy" means the occupancy level that an income producing  
12 Property is expected to achieve after the property is exposed to the market for lease over a  
13 reasonable period of time and at comparable terms and conditions to other similar properties.

14 (~~eehh~~) "Stabilized Value" means the market value of the Property after it reaches stabilized  
15 occupancy as evidenced by an appraisal of the Property.

16 **(ii) "Statewide Program" means the statewide C-PACE financing program sponsored**  
17 **by Virginia Energy, established to provide C-PACE Loans to Borrowers in**  
18 **accordance with the C-PACE Act, this chapter, the Locality Agreement, the C-PACE**  
19 **Documents and the Program Guide.**

20 (~~ffjj~~) "Subordination Agreement" means a written agreement executed by the holder of each  
21 existing lien, mortgage, or deed of trust on Eligible Property that is the subject of a C-PACE  
22 Loan, which allows the C-PACE lien to have senior priority to the existing mortgage or deed  
23 of trust.

24 **(kk) "Treasurer" means the Director of Finance of the City of Alexandria.**

25 (~~ggll~~) "Useful Life" means the normal operating life of the Fixed asset as determined by  
26 Generally Accepted Accounting Principles (GAAP).

27 **(mm) "Virginia Energy" means the Virginia Department of Energy, formerly the**  
28 **Virginia Department of Mines, Minerals, and Energy (DMME).**

29  
30 **Sec. 7-7-3 – Effective Date.**

31 This chapter shall become effective immediately following its adoption.

32  
33 **Sec. 7-7-4 – C-PACE Program; Eligible Improvements.**

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

- 38 (1) Renewable energy production and distribution facilities, including but not limited to,  
39 solar photovoltaic, solar thermal, geothermal, wind, fuel cells, biomass systems, biogas,  
40 or methane recovery systems, **whether attached to a building or sited on the ground,**  
41 **and the storage and/or distribution of the energy produced thereby, whether for**  
42 **use on-site or sale or export to a utility pursuant to a power purchase agreement**  
43 **with a non-utility purchaser;**

1 (2) Energy usage efficiency systems reasonably expected to reduce the energy usage of  
2 the eligible property, including but not limited to, high efficiency lighting and building  
3 systems, heating, ventilation and air conditioning upgrades, air duct sealing, high  
4 efficiency boilers and furnaces, high efficiency hot water heating systems, combustion  
5 and burner upgrades, fuel switching, heat recovery and steam traps, cogeneration  
6 systems, building shell or envelope improvements, reflective roof, cool roof, or green  
7 roof systems, weather-stripping, fenestration and door improvements and modifications,  
8 insulation (both in walls, roofs, floors and foundations and in heating, ventilation and air  
9 conditioning systems' radiant barriers), building energy management systems, process  
10 equipment upgrades, and other forms of conservation; provided, ~~that for qualifying~~  
11 ~~improvements that are part of a new building or structure,~~ such qualifying improvements  
12 shall **result in the reduction of the consumption of energy over a baseline established**  
13 **in accordance with the Program Guide** ~~exceed the minimum energy efficiency~~  
14 ~~requirements of then applicable law, ordinance, regulation or code;~~

15 (3) Electric vehicle charging infrastructure **such as charging stations;**

16 (4) Water usage efficiency improvements such as recovery, purification, recycling, and  
17 other forms of water conservation. **Such qualifying improvements shall result in the**  
18 **reduction of the consumption of water over a baseline established in accordance**  
19 **with the Program Guide** ~~For new construction, these improvements qualify for program~~  
20 ~~financing only if they exceed the minimum water usage efficiency requirements of then~~  
21 ~~applicable law, ordinance, regulation, or code;~~

22 (5) Stormwater **management** improvements that reduce onsite stormwater runoff into the  
23 stormwater system such as reduction in the quantity of impervious surfaces, and onsite  
24 filtering of stormwater.

25 (6) ~~Improvements that reduce the impacts of water or wind-related natural or manmade~~  
26 ~~events, such as installation of wet and dry floodproofing, raising mechanical and~~  
27 ~~electrical equipment and reinforcement of building envelope to reduce impacts of wind.~~  
28 **Resiliency improvements which increase the capacity of a structure or**  
29 **infrastructure to withstand or recover from natural disasters, the effects of climate**  
30 **change, and attacks and accidents, including, but not limited to:**

31 **A. Flood mitigation or the mitigation of the impacts of flooding;**

32 **B. Inundation adaptation;**

33 **C. Natural or nature-based features and living shorelines, as defined in Va.**  
34 **Code §28.2-104.1;**

35 **D. Enhancement of fire or wind resistance, including but not limited to**  
36 **reinforcement and insulation of a building envelope to reduce the impacts of**  
37 **heat or wind;**

38 **E. Enhancement of the resilience capacity of a natural system, infrastructure,**  
39 **or structure, including, but not limited to, the raising of mechanical and**  
40 **electrical equipment;**

41 **F. Microgrids;**

42 **G. Energy storage;**

43 (7) **Soil and groundwater remediation;**

1 (78) Construction, renovation, or retrofitting of a Property directly related to the  
2 accomplishment of any purpose listed in subsections (1), (2), or (3) above, whether such  
3 Eligible Improvement was erected or installed in or on a building or on the ground, it  
4 being the express intention of the City to allow Eligible Improvements that constitute, or  
5 are a part of, the construction of a new structure or building to be financed with a C-  
6 PACE Loan; or

7 **(9) Environmental remediation improvements, including, but not limited to:**

8 **A. Improvements that promote indoor air and water quality;**

9 **B. Asbestos remediation;**

10 **C. Lead paint removal; and**

11 **D. Mold remediation, or**

12 **(810) Any other category of improvement (i) approved by the Program Administrator**  
13 **with the consent of the Program Manager as qualifying for financing under the C-PACE**  
14 **Act and the Program or (ii) added by the General Assembly to the Act after the date**  
15 **of adoption of this chapter.**

16 (b) Use of C-PACE Loan Proceeds. The proceeds of a C-PACE Loan may be used to pay for  
17 the construction, development, and consulting costs directly related to Eligible  
18 Improvements, including without limitation, the cost of labor, materials, machinery,  
19 equipment, plans, specifications, due diligence studies, consulting services (e.g., engineering,  
20 energy, financial, and legal), Program Fees, C-PACE Loan fees, capitalized interest, interest  
21 reserves, and C-PACE transaction underwriting and closing costs.

22 (c) Program Applications; Prioritization. The Program Administrator will develop a Program  
23 application process, **or make available the Statewide Program's program application,**  
24 **that allows for the review and approval of proposed Eligible Improvements and C-PACE**  
25 **Loan Documents. Program applications will be processed on a first come, first serve basis, or**  
26 **by the Statewide Program;** provided, however, that the applicant meets **in accordance with**  
27 **the** eligibility requirements as set forth in the Program Guide.

28  
29 **Sec. 7-7-5 - C-PACE Loan Requirements; Program Fees; Reporting; Program**  
30 **Administrator; Program Guide.**

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

33 (b) C-PACE Loan Amount Thresholds. The minimum Loan Amount that may be financed  
34 for each Project is fifty thousand dollars (\$50,000). ~~The maximum Loan Amount that may be~~  
35 ~~financed for each Project is twenty-five million dollars (\$25,000,000) or thirty percent (30%)~~  
36 ~~of the Stabilized Value of the Property, whichever is greater.~~ **There is no maximum**  
37 **aggregate amount that may be financed with respect to an Eligible Property, except as**  
38 **stipulated in the Program Guide.** ~~The Program Administrator may also accept other forms~~  
39 ~~of valuation including, but not limited to, assessed value or value derived from a minimum~~  
40 ~~assessment agreement.~~ There shall be no limit on the total value of all C-PACE Loans issued  
41 under the **C-PACE** Program.

42 **(c) C-PACE Loan Refinancing or Reimbursement. The Program Administrator may**  
43 **approve a Loan application submitted within two (2) years of the City of Alexandria's**  
44 **issuance of a certificate of occupancy or other evidence that the Eligible Improvements**

1 **comply substantially with the plans and specifications previously approved by the City**  
2 **of Alexandria and that such Loan may refinance or reimburse the Borrower for the**  
3 **total costs of such Eligible Improvements.**

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

6 (de) C-PACE Loan Term. The term of a C-PACE Loan shall not exceed the (i) Useful Life of  
7 the Project Improvement with the longest Useful Life or (ii) thirty (30) years, whichever is  
8 less.

9 (ef) C-PACE Loan Amortization. The amount of the C-PACE Loan shall be fully amortized  
10 in the C-PACE Payments over the term of the C-PACE Loan as agreed by the Borrower and  
11 the Capital Provider.

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

14 (gh) Financing Agreements. Capital Providers may use their own Financing Agreements for  
15 C-PACE Loans, but the Financing Agreement may not conflict with the provisions of this  
16 chapter, the Act, or the C-PACE Program Agreement. To the extent of any conflict, this  
17 chapter, the Act, and the C-PACE Program Agreement shall prevail.

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

28 (ij) Repayment of C-PACE Loan; Collection of Loan Payments. C-PACE Loans will be  
29 repaid by the Borrower through Loan Payments. Upon assignment of the Lien to the Capital  
30 Provider, as described in §7-7-6(c) hereof, the Borrower shall make all such Loan Payments  
31 directly to the Capital Provider pursuant to the Financing Agreement, and the Capital  
32 Provider shall be responsible, subject to and in accordance with the terms of the Financing  
33 Agreement, for all billing, collection, enforcement and administrative duties in respect of  
34 each of the Loan, and the Loan Payment and the Lien, **except that in cases of default the**  
35 **Capital Provider may request the City of Alexandria, through the Program Manager,**  
36 **to collect delinquent amounts pursuant to §7-7-6 of this ordinance. Under no**  
37 **circumstances shall the City's Department of Finance be responsible for servicing C-**  
38 **PACE Loans other than providing delinquent collection services as noted herein. If a**  
39 **Capital Provider fails to service a C-PACE Loan, such** ~~In the alternative,~~ C-PACE Loans  
40 may be serviced by the Program Administrator, and the Program Administrator shall remit  
41 Loan Payments it receives from Borrowers to the Capital Provider within thirty (30) days of  
42 receipt.

43 (jk) C-PACE Loan Assumed. The Borrower shall assume the obligation to repay all  
44 remaining unpaid Loan Payments, whether it obtained ownership of the Property voluntarily

1 or involuntarily, which are due upon acquisition of the Property, if any, and which accrue  
2 during Borrower's period of ownership. Only the current Loan Payment and any Delinquent  
3 Payments, together with any costs of collection, shall be payable at the settlement of a  
4 Property upon sale or transfer, unless otherwise agreed to by the Capital Provider.

5 ~~(k)~~ Transfer of C-PACE Loans.

6 (1) C-PACE Loans may be transferred, assigned, or sold by a Capital Provider to another  
7 Capital Provider at any time unless the C-PACE Loan is paid in full provided that Capital  
8 Provider shall:

9 A. Notify the Borrower and Program Administrator prior to the billing date of the  
10 next Loan Payment due;

11 B. Record a C-PACE Loan Assignment among the Land Records; and

12 C. Deliver a copy of the recorded C-PACE Assignment to the Borrower, City, and  
13 Program Administrator as set forth in the C-PACE Program Agreement and Program  
14 Guide.

15 (2) Recordation of the C-PACE Assignment shall constitute an assumption by the new  
16 Capital Provider of the rights and obligations of the original Capital Provider contained in  
17 the Loan Documents.

18 ~~(lm)~~ Program Fees. The C-PACE Program ~~will be~~ self-financed through Program Fee(s)  
19 charged to participating Borrowers **together with any funds budgeted by the General**  
20 **Assembly, if available, as support through coordination or use of the Statewide**  
21 **program.** The Program Fee(s) are established to cover the actual and reasonable costs to  
22 design and administer the Program, including the compensation of a third-party Program  
23 Administrator **or the Statewide Program.** Program Fee(s) will be assessed as a percentage  
24 fee of the C-PACE Loan paid at closing. The amount(s) of the Program Fees shall be set  
25 forth in the Program Guidelines. Program Fee(s) may be changed by the Program Manager  
26 from time to time and shall only apply to C-PACE Loans executed after the date the revised  
27 Fees are adopted. The Capital Provider shall collect ~~the~~ **all applicable** Program Fee(s) from  
28 Borrower at Loan closing, and shall remit any such Program Fee(s) so collected to the  
29 Program Administrator within ten (10) days of the date of such closing, without requiring  
30 demand or notice from the Program Administrator.

31 ~~(mn)~~ Notification of Proposed Loan and Closing. The Program Guide will set forth the C-  
32 PACE Loan notification requirements and Loan closing process.

33 ~~(no)~~ Reporting. The City may require the Capital Provider and/or the Program Administrator  
34 to provide a written report with summary information regarding the C-PACE Loan Program,  
35 the portfolio performance of participating Capital Providers, or other Program statistics as  
36 required in the Program Guide.

37 ~~(op)~~ Program Administrator. The City will enter into a contract with a third-party Program  
38 Administrator pursuant to the City's procurement process and in accordance with any  
39 requirements of the Virginia Public Procurement Act. The Program Administrator's principle  
40 duties shall be those set forth in its contract with the City, which may include, but not be  
41 limited to:

42 (1) Creating the Program Guide and revising and updating the Guide, as necessary;

43 (2) Certifying that prospective C-PACE service providers and Capital Providers are  
44 eligible to participate in the program;



- 1 (3) Processing C-PACE applications to determine Project eligibility for a C-PACE Loan
- 2 and related Eligible Improvements;
- 3 (4) Coordinating the billing and collection process by serving as a servicer for C-PACE
- 4 Loans or subcontracting with a qualified C-PACE Loan servicer;
- 5 (5) Ensuring compliance with the requirements of the C-PACE Program; and
- 6 (6) Performing marketing, outreach, and promotion for participation in the C-PACE
- 7 Program.

8 In the alternative, the City may use any public C-PACE administrator established by the  
9 Commonwealth **for purposes of administering the Statewide Program or** for the purposes  
10 of administering local C-PACE programs. The Program Administrator:

- 11 (1) Will endeavor to conduct a competitive, open-market Program, available to all pre-
- 12 certified Capital Providers, contractors, engineers, and consultants who apply to provide
- 13 services or funding for the Program, and;
- 14 (2) Shall not grant any Capital Provider or service provider an exclusive right to provide
- 15 services or funding for the Program.

16 (pg) Program Guide.

- 17 (1) The Program Guide shall be developed by the Program Administrator under the
- 18 direction of, and in consultation with the Program Manager. The Program Guide and any
- 19 subsequent amendments thereto shall become effective only:
  - 20 A. To the extent that the Program Guide and such amendments do not contravene this
  - 21 chapter or the Act; and
  - 22 B. After review by the City Attorney and written approval by Program Manager.
- 23 (2) The Program Guide shall include, without limitation:
  - 24 A. Disclosures about program fees, costs, and program processes;
  - 25 B. Eligibility requirements for participation in the program by Capital Providers,
  - 26 Contractors, and other stakeholders;
  - 27 C. Eligibility requirements for Borrowers, Eligible Improvements, and projects.
  - 28 Eligibility of Property Owners shall be contingent upon submission of a Property
  - 29 Owner Certification and any necessary Lender Consents;
  - 30 D. Technical assessment requirements, which may be based on the size and type of
  - 31 the building and the size and scope of the proposed Eligible Improvements;
  - 32 E. Template Program forms, including but not limited to, the program application,
  - 33 Property Owner Certification, and C-PACE assignment; and
  - 34 F. Suggested underwriting criteria including, without limitation, underwriting
  - 35 guidelines established by the Virginia Department of Mines, Minerals, and Energy or
  - 36 the Mid-Atlantic PACE Alliance Regional C-PACE Toolkit published in June 2018,
  - 37 such as financial ratios related to:
    - 38 1. Total loan (including program loan) to value benchmarks;
    - 39 2. Program assessment to value benchmarks;
    - 40 3. Savings to investment ratio; and
    - 41 4. Debt service coverage ratio.

42 (3) The Program Guide may incorporate other appropriate underwriting guidelines  
43 consistent with this type of Program. The Program Guide will be designed to create an  
44 open, competitive, and efficient Program. The Program Administrator may modify the

1 Program Guide from time to time subject to the approval of the Program Manager and in  
2 accordance with the intent and purpose of the C-PACE Program as approved by the City  
3 Council.

4 (4) The Program Guide, including any amendments thereto, shall contain the following  
5 provisions:

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

15  
16 "THIS GUIDE IS ONLY A REFERENCE DOCUMENT, AND CREATES NO  
17 LEGAL RIGHTS IN FAVOR OF ANY BORROWER, CAPITAL PROVIDER,  
18 SERVICE PROVIDER, CONTRACTOR, OR ANY OTHER PERSON, NOR DOES  
19 IT IMPOSE ANY LEGAL DUTY OR OBLIGATION ON THE CITY OF  
20 ALEXANDRIA, VIRGINIA."  
21

#### 22 **Section 7-7-6 – Levy of Assessment; Recordation; Priority; Amendment.**

23 (a) Levy of Voluntary Special Assessment Lien. Beginning on the effective date of this  
24 chapter and for each C-PACE Loan made under the Program, the City Council hereby levies  
25 a voluntary special assessment (C-PACE Lien) against each Property benefitting from  
26 Eligible Improvements financed with C-PACE Loans, in an amount equal to the C-PACE  
27 Loan **including all interest, delinquent interest, late fees, penalties, Program fees and**  
28 **collection costs as specified in loan documents or Program Guide**, upon recordation of the  
29 C-PACE Lien Certificate.

30 (b) Notification of Closing. Upon the financial closing of a Project, the Capital Provider will  
31 promptly provide notice thereof to each of Program Manager and Administrator, which  
32 notice shall include: (i) a statement of the Loan Amount, (ii) a copy of the Financing  
33 Agreement executed by Borrower and Capital Provider, (iii) a written subordination  
34 agreement with each holder of a prior mortgage or deed of trust lien on the Eligible Property,  
35 and (iv) evidence that (A) Borrower is current on payments on loans secured by a mortgage  
36 or deed of trust lien on the Property and on property tax payments to the City, (B) Borrower  
37 is not insolvent or subject to bankruptcy proceedings, and (C) Borrower's title to the Eligible  
38 Property is not in dispute.

39 (c) Recordation of C-PACE Lien Certificate; Assignment. ~~Upon receipt of such notice in §7-~~  
40 ~~7-6(a) hereof, t~~The Capital Provider, as authorized by the City for such purposes, shall  
41 promptly Record the Certificate of Levy and Lien of Special Assessment on behalf of the  
42 City. Promptly thereafter, the Capital Provider, as authorized by the City for such purposes,  
43 shall assign the Lien from the City to the Capital Provider, to cause the Capital Provider to be  
44 named as the holder of the Lien in the land records of the City, by Recording an Assignment

1 of Special Assessment Lien. Such assignment shall include only the City's right, title and  
2 interest in and to the Loan Payment and the Lien, and the City shall retain all of its other  
3 rights and remedies, including any special powers of enforcement or collection to which the  
4 City, by virtue of its status as a political subdivision of the Commonwealth, is entitled or  
5 empowered to exercise under applicable laws of the Commonwealth.

6 (d) Priority. The C-PACE Lien shall have the same priority as a real property tax lien and  
7 priority over any previously recorded lien, mortgage, or deed of trust, as evidenced by  
8 Subordination Agreement(s) obtained from each prior lien holder, mortgagee, or trustee(s) of  
9 any deed(s) of trust. Only the current Loan Payment and any Delinquent Payments, in  
10 addition to real property taxes levied by the City, shall constitute a first lien on the Property.

11 (e) Amendment of Lien. Upon written request by a Capital Provider in accordance with the  
12 Program Guide, the Program Manager may execute an amendment of the C-PACE Lien after  
13 the closing of a C-PACE Loan. The Program Administrator will record the Amendment in  
14 the Land Records.

15 **(f) Enforcement and collection costs. In the event of Borrower's default under the terms**  
16 **of the C-PACE Documents, upon notice of the Program Manager to the Department of**  
17 **Finance, the City of Alexandria acting by and through the Director of Finance or their**  
18 **designees, shall, subject to their discretion regarding collection methods, enforce the C-**  
19 **PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest,**  
20 **and any costs of collection in the same manner that a property tax lien against real**  
21 **property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, to include**  
22 **the use of third party collection agents as authorized by law. All collection and**  
23 **enforcement costs and expenses (including legal fees and costs), interest, late fees and**  
24 **penalties incurred by the City of Alexandria and/or its agents, as applicable and**  
25 **consistent with the C-PACE Act and the Virginia Code, shall (i) be added to the**  
26 **Delinquent Payments being collected, (ii) become part of the aggregate amount sued for**  
27 **and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE**  
28 **Lien. Nothing herein shall prevent the Capital Provider to which the C-PACE Lien has**  
29 **been assigned from otherwise enforcing the C-PACE Lien to the fullest extent**  
30 **permitted by the C-PACE Documents, the C-PACE Act or general law.**

31 **(g) The Department of Finance shall apply any loan payment collected via default**  
32 **procedures herein, first to the City's real estate taxes, penalties, and interest which are**  
33 **due and payable on the date of receipt of the payment, and second, upon having paid all**  
34 **real estate taxes due, to the C-PACE Lien in accordance with the C-PACE Loan**  
35 **documents.**

### 36 37 **Section 7-7-7 – Role of the City; Limitation of Liability.**

38 (a) By executing the Loan Documents including the C-PACE Program Agreement, or by  
39 otherwise participating in the Program **or the Statewide Program**, the Borrower and Capital  
40 Provider acknowledge and agree that as a condition of participation in the Program:

41 (1) The City undertakes no obligations under the Program except as expressly stated  
42 herein or in the C-PACE Program Agreement;

43 (2) In the event of a default by a Borrower, the City has no obligation to use City funds to  
44 make Loan Payments to any Capital Provider including, without limitation, any fees,

1 expenses, and other charges and penalties, pursuant to a Financing Agreement between  
2 the Borrower and Capital Provider;

3 (3) No C-PACE Loan, Loan Payment, C-PACE Lien, or other obligation arising from any  
4 Loan Document, the Act, or the chapter shall be backed by the credit of the City, the  
5 Commonwealth, or its political subdivisions, including, without limitation, City taxes or  
6 other City funds;

7 (4) No C-PACE Loan, Loan Payment, C-PACE Lien or other obligation arising from any  
8 Loan Document, the Act, or the chapter shall constitute an indebtedness of the City  
9 within the meaning of any constitutional or statutory debt limitation or restriction;

10 (5) The City has not made any representations or warranties, financial or otherwise,  
11 concerning a Borrower, Eligible Property, Project, Capital Provider, or C-PACE Loan;

12 (6) The City makes no representation or warranty as to, and assumes no responsibility  
13 with respect to, the accuracy or completeness of any Loan Document, or any Assignment  
14 or amendment thereof;

15 (7) The City assumes no responsibility or liability in regard to any Project, or the  
16 planning, construction, or operation thereof;

17 (8) Each Borrower or Capital Provider shall, upon request, provide the City with any  
18 information associated with a Project or a C-PACE Loan that is reasonably necessary to  
19 confirm that the Project or C-PACE Loan satisfies the requirements of the Program  
20 Guide; and

21 (9) Each Borrower, Capital Provider, or other participant under the Program, shall  
22 comply with all applicable requirements of the Program Guide.  
23

24 **Sec. 7-7-8 – Additional Provisions.**

25 (a) Severability. The provisions of this chapter are severable. If a court of competent  
26 jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section,  
27 or other provision is invalid or that the application of any part of the chapter or provision to  
28 any person or circumstance is invalid, the remaining provisions of the chapter shall not be  
29 affected by that decision and continue in full force and effect.  
30

31 Section 2. That Chapter 7 as enacted pursuant to Section 1 of this ordinance, be, and  
32 the same hereby is, reordained as part of the City of Alexandria City Code.  
33

34 Section 3. That this ordinance shall become effective upon the date and at the time of  
35 its final passage.  
36

37 JUSTIN WILSON  
38 Mayor  
39  
40  
41

1	Introduction:	October 11, 2022
2	First Reading:	October 11, 2022
3	Publication:	
4	Public Hearing:	October 15, 2022
5	Second Reading:	October 15, 2022
6	Final Passage:	October 15, 2022