

ORDINANCE NO. 5460

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.
- (~~e~~) "Borrower" means:

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

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

(eg) "Capital Provider" means:

- (1) 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
- (2) The current holder of a C-PACE Loan.

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

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

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

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

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

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

(kn) "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.

(lo) "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.

(mp) "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.

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

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

(~~ps~~) "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.

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

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

(~~sv~~) "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.

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

(~~ux~~) "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.

(~~vy~~) "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.

(~~wz~~) "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.

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

(~~ybb~~) "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.

(zcc) "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.

(aadd) "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.

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

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

(ddgg) "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.

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

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

(ffjj) "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.

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

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

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

Sec. 7-7-3 – Effective Date.

This chapter shall become effective immediately following its adoption.

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

(a) C-PACE Program. The C-PACE Program shall be available throughout the City of Alexandria, 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, including but not limited to, solar photovoltaic, solar thermal, geothermal, wind, fuel cells, biomass systems, biogas, or methane recovery systems, **whether attached to a building or sited on the ground, and the storage and/or distribution of the energy produced thereby, whether for use on-site or sale or export to a utility pursuant to a power purchase agreement with a non-utility purchaser;**

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

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

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

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

(6) Improvements that reduce the impacts of water or wind related natural or manmade events, such as installation of wet and dry floodproofing, raising mechanical and electrical equipment and reinforcement of building envelope to reduce impacts of wind.

Resiliency improvements which increase the capacity of a structure or infrastructure to withstand or recover from natural disasters, the effects of climate change, and attacks and accidents, including, but not limited to:

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

B. Inundation adaptation;

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

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

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

F. Microgrids;

G. Energy storage;

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

(78) Construction, renovation, or retrofitting of 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; or

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

A. Improvements that promote indoor air and water quality;

B. Asbestos remediation;

C. Lead paint removal; and

D. Mold remediation, or

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

(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, **or make available the Statewide Program's program application,** 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, **or by the Statewide Program;** ~~provided, however, that the applicant meets~~ **in accordance with the** eligibility requirements as set forth in the Program Guide.

Sec. 7-7-5 - 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 dollars (\$50,000). ~~The maximum Loan Amount that may be financed for each Project is twenty-five million dollars (\$25,000,000) or thirty percent (30%) of the Stabilized Value of the Property, whichever is greater.~~ **There is no maximum aggregate amount that may be financed with respect to an Eligible Property, except as stipulated in the Program Guide.** ~~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 C-PACE Program.

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

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

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

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

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

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

(~~gh~~) 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.

(~~hi~~) 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.

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

(~~jk~~) 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.

(kl) Transfer of C-PACE Loans.

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

- A. Notify the Borrower and Program Administrator prior to the billing date of the next Loan Payment due;
- B. Record a C-PACE Loan Assignment among the Land Records; and
- C. 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.

(2) 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.

(lm) Program Fees. The C-PACE Program will be self-financed through Program Fee(s) charged to participating Borrowers **together with any funds budgeted by the General Assembly, if available, as support through coordination or use of the Statewide**

program. The Program Fee(s) are established to cover the actual and reasonable costs to design and administer the Program, including the compensation of a third-party Program Administrator **or the Statewide Program**. Program Fee(s) will be assessed as a percentage fee of the C-PACE Loan paid at closing. The amount(s) of the Program Fees shall be set forth in the Program Guidelines. Program Fee(s) may be changed by the Program Manager from time to time and shall only apply to C-PACE Loans executed after the date the revised Fees are adopted. The Capital Provider shall collect **the all applicable** Program Fee(s) from Borrower at Loan closing, and shall remit any such Program Fee(s) so collected to the Program Administrator within ten (10) days of the date of such closing, without requiring demand or notice from the Program Administrator.

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

(no) 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.

(op) Program Administrator. The City will enter into a contract with a third-party 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 principle duties shall be those set forth in its contract with the City, which may include, but not be limited to:

- (1) Creating the Program Guide and revising and updating the Guide, as necessary;
- (2) Certifying that prospective C-PACE service providers and Capital Providers are eligible to participate in the program;

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

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

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

(pg) Program Guide.

- (1) 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:
 - A. To the extent that the Program Guide and such amendments do not contravene this chapter or the Act; and
 - B. After review by the City Attorney and written approval by Program Manager.
- (2) The Program Guide shall include, without limitation:
 - A. Disclosures about program fees, costs, and program processes;
 - B. Eligibility requirements for participation in the program by Capital Providers, Contractors, and other stakeholders;
 - C. Eligibility requirements for Borrowers, Eligible Improvements, and projects. Eligibility of Property Owners shall be contingent upon submission of a Property Owner Certification and any necessary Lender Consents;
 - D. Technical assessment requirements, which may be based on the size and type of the building and the size and scope of the proposed Eligible Improvements;
 - E. Template Program forms, including but not limited to, the program application, Property Owner Certification, and C-PACE assignment; and
 - F. Suggested underwriting criteria including, without limitation, underwriting guidelines established by the Virginia Department of Mines, Minerals, and Energy or the Mid-Atlantic PACE Alliance Regional C-PACE Toolkit published in June 2018, such as financial ratios related to:
 - 1. Total loan (including program loan) to value benchmarks;
 - 2. Program assessment to value benchmarks;
 - 3. Savings to investment ratio; and
 - 4. Debt service coverage ratio.
- (3) The Program Guide may incorporate 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.

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

A. "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 City of Alexandria 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 Codified Ordinances of the City of Alexandria, 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, SERVICE PROVIDER, CONTRACTOR, OR ANY OTHER PERSON, NOR DOES IT IMPOSE ANY LEGAL DUTY OR OBLIGATION ON THE CITY OF ALEXANDRIA, VIRGINIA."

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

(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 **including all interest, delinquent interest, late fees, penalties, Program fees and collection costs as specified in loan documents or Program Guide**, upon recordation of the C-PACE Lien Certificate.

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

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

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

(d) 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, in addition to real property taxes levied by the City, shall constitute a first lien on the Property.

(e) 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 Program Administrator will record the Amendment in the Land Records.

(f) Enforcement and collection costs. In the event of Borrower's default under the terms of the C-PACE Documents, upon notice of the Program Manager to the Department of Finance, the City of Alexandria acting by and through the Director of Finance or their designees, shall, subject to their discretion regarding collection methods, enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, to include the use of third party collection agents as authorized by law. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees and penalties incurred by the City of Alexandria and/or its agents, as applicable and consistent with the C-PACE Act and the Virginia Code, 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 to which the C-PACE Lien has been assigned from otherwise enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act or general law.

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

Section 7-7-7 – Role of the City; Limitation of Liability.

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

- (1) The City undertakes no obligations under the Program except as expressly stated herein or in the C-PACE Program Agreement;
- (2) 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;

(3) 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;

(4) 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;

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

(6) 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;

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

(8) 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

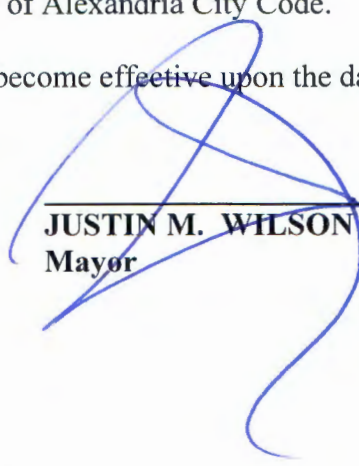
(9) Each Borrower, Capital Provider, or other participant under the Program, shall comply with all applicable requirements of the Program Guide.

Sec. 7-7-8 – Additional Provisions.

(a) 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 Chapter 7 as enacted pursuant to Section 1 of this ordinance, be, and the same hereby is, reordained as part of the City of Alexandria City Code.

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

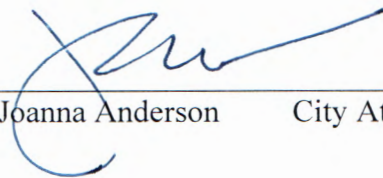


JUSTIN M. WILSON
Mayor

ATTEST:


Gloria A. Sitton, CMC City Clerk

APPROVED AS TO FORM:


Joanna Anderson City Attorney

Final Passage: October 15, 2022