



## Legislation Details (With Text)

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<b>On agenda:</b>	9/11/2023	<b>Final action:</b>		9/11/2023	
<b>Title:</b>	To repeal City Code §§ 11-190-197, concerning a commercial property assessed clean energy financing program, and to amend ch. 11, art. VIII of the City Code by adding therein new §§ 11-190.1-11-197.1, concerning a commercial property assessed clean energy financing program, for the purpose of aligning the City Code with state law pertaining to commercial property assessed clean energy financing programs. (As Amended)				
<b>Sponsors:</b>	Mayor Stoney, Vice President Nye, Katherine Jordan, Michael President Jones, Stephanie Lynch, Ann-Frances Lambert, Ellen Robertson, Reva Trammell				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. Ord. No. 2023-152 - Amended 20230724, 2. 20230724 Amendment of Ord. No. 2023-152, 3. Bringing VA C-PACE to Richmond Presentation				

Date	Ver.	Action By	Action	Result
9/11/2023	1	City Council	adopted	Pass
9/5/2023	1	Organizational Development Standing Committee	recommended for approval	
7/24/2023	1	City Council	amended, continued and referred	
7/20/2023	1	Finance and Economic Development Standing Committee	forwarded with no recommendation	
6/26/2023	1	City Council	continued and referred back	
6/15/2023	1	Finance and Economic Development Standing Committee	recommended for continuance	
6/12/2023	1	City Council	continued and referred back	
5/18/2023	1	Finance and Economic Development Standing Committee	recommended for continuance	
5/8/2023	1	City Council	introduced and referred	

To repeal City Code §§ 11-190-197, concerning a commercial property assessed clean energy financing program, and to amend ch. 11, art. VIII of the City Code by adding therein new §§ 11-190.1-11-197.1, concerning a commercial property assessed clean energy financing program, for the purpose of aligning the City Code with state law pertaining to commercial property assessed clean energy financing programs. (As Amended)

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That sections 11-190 through 11-197 of the Code of the City of Richmond (2020) be and hereby are **repealed** as follows:

**[Sec. 11-190. Commercial property assessed clean energy financing program; established; purpose.]**

(a) There is hereby established the commercial property assessed clean energy financing program in accordance with Code of Virginia, § 15.2-958.3. Pursuant to this article, the City may authorize contracts to provide loans for the initial acquisition and installation of clean energy improvements with free and willing property owners of both existing properties and new construction. In addition, private lending institutions shall be provided the opportunity to participate in such contracts.

(b) The purpose of the program for which this article provides is to promote the renovation and construction of commercial, nonprofit and multifamily buildings and structures by incorporating renewable energy production and distribution facilities, energy usage efficiency improvements, or water usage efficiency improvements. The City finds that this will promote the general health and welfare of the community. Water usage efficiency improvements, in particular, benefit the public water supply and wastewater treatment services provided by the City.

(c) In establishing the program for which this article provides, the City finds that the City of Richmond has numerous older buildings with many years of remaining life, and that the renovation, retrofit, or rehabilitation of these buildings with qualifying clean energy improvements would make them more efficient and reduce their greenhouse gas emissions. The rehabilitation of commercial and industrial buildings and structures that are at least 40 years old, in particular, supports the same public purposes advanced by the real estate tax exemption provided for this activity.

(d) The City further finds that the promotion and development of new buildings and structures with energy efficient or water efficient features that exceed current building code requirements, or which use renewable energy, will enhance the real property tax base of the City, make these buildings, if rented, more attractive to tenants, and thereby promote employment and economic growth in the City.

#### **Sec. 11-191. Definitions.**

For the purposes of this article, the terms and phrases, when used in this article, shall have the meaning

ascribed to them in this section, except where the context clearly indicates that a different meaning is intended:

*Amortization schedule* means the amortization schedule for loan payments necessary to repay a loan.

*Borrower* means the person who owns or leases an eligible property and voluntarily applies for and obtains a program loan, or that person's successor in title.

*Borrower certificate* means a notarized certificate from the borrower, certifying that (i) the borrower is (a) current on payments on all loans secured by a mortgage or deed of trust lien on the property, (b) current on real and personal property tax payments, (c) current on all Federal, State, and local taxes and that there is no Federal income tax lien, judgment lien, or other involuntary lien against the property, and (d) not insolvent or in bankruptcy proceedings, and (ii) that the title of the benefitted property is not in dispute as evidenced by a title report or title insurance commitment from a title insurance company acceptable to the capital provider and the City.

*Capital provider* means the private lending institution that originates a program loan, or its successors or assigns in interest; or, if the City Council appropriates funds for this purpose and if applicable, the City. The capital provider is the source of funding for, or the current holder of, program loans.

*Cost* as applied to qualifying improvements shall include the cost of all (a) labor, (b) materials, machinery and equipment, (c) architectural, engineering, consulting (such as energy audits and assessments, feasibility studies and reports, and financial projections), financial and legal services, (d) plans, specifications and studies, (e) physical and building condition surveys, (f) commissioning expenses, (g) project management, (h) energy savings or performance guaranty or insurance, (i) post-installation evaluation, measurement and verification, and building accreditation, (j) permitting fees, (k) due diligence, financing, and closing costs for the program loan, including administrative and capital provider fees that are directly attributable to a qualifying improvement, and (l) reserves for construction period interest.

*Eligible property* means a property meeting the conditions specified in Section 11-193.

*Loan* means a loan from a capital provider to a borrower to finance a project in accordance with this article

and the program guidelines.

*Loan documents* means the program memorandum, financing agreement between the capital provider and the borrower, and any other document, agreement, or instrument executed in connection with a loan.

*Loan payment* means the periodic installment payments of a loan by a borrower, due and payable to the capital provider in such amounts and at such times as described in the loan documents.

*Program* means the commercial property assessed clean energy financing program created by this article.

*Program administrator* means an independent third party whose services are procured by the City.

*Program guidelines* means those procedures, rules, disclosures, and restrictions promulgated, imposed and enforced by the program administrator for the administration of the program.

*Program memorandum* means a memorandum concerning the assessment lien for which this article provides, which shall (i) be executed by the borrower, the capital provider, and the City, (ii) include the amortization schedule, and (iii) be recorded in the Clerk's Office of the Circuit Court of the City of Richmond against the property at closing to evidence the voluntary special assessment lien for which this article provides and to secure the repayment of the program financing to the capital provider.

*Project* means the development of qualifying improvements on an eligible property.

*Property* means an eligible property as defined in Section 11-193, located within the City of Richmond, for which a program loan is applied for or received.

*Qualifying improvements* means one or more of the improvements listed in Section 11-192.

#### **Sec. 11-192. Qualifying improvements.**

The cost of the following types of qualifying improvements to existing buildings and structures, or new construction, on eligible property, may be financed through the program:

(a) 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.

(b) 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 exceed the minimum energy efficiency requirements of then-applicable law, ordinance, regulation or code.

(c) Water usage efficiency improvements, such as recovery, purification, recycling and other forms of water conservation. 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.

(d) Construction, renovation, or retrofitting of eligible property directly related to the accomplishment of any purpose listed in subsection (a), (b), or (c) of this section, whether such qualifying improvement was erected or installed in or on a building or on the ground, it being the express intention of the City to allow qualifying improvements that constitute, or are part of, the construction of a new structure or building to be financed with a program loan.

(e) 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.

(f) Stormwater improvements that reduce on-site stormwater runoff into the stormwater system such as reduction in the quantity of impervious surfaces, and on-site filtering of stormwater.

(g) Any other category of improvement approved by the program administrator authorized by or consistent with the Commonwealth's authorizing legislation for commercial property accessed clean-energy financing programs.

**~~Sec. 11-193. Eligible properties.~~**

Eligible properties include all assessable real estate located within the City of Richmond, with all buildings located or to be located thereon, whether vacant or occupied, whether improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the City, other than (a) any condominium project as defined in Code of Virginia, § 55.1-2000 or (b) any residential property containing four or fewer dwelling units. Eligible properties shall be eligible to participate in the program.

**~~Sec. 11-194. Program arrangements.~~**

(a) The capital providers for the program may be private lending institutions. Public funds may be the source of program funding to the extent appropriated for that purpose by the City Council.

(b) The time period during which borrowers shall repay the program loan shall not exceed the weighted average useful life of the qualifying improvements or 30 years, whichever is less.

(c) Loans shall be repaid by the borrower through loan payments. The capital provider shall be responsible, subject to and in accordance with the program guidelines and loan documents, for the servicing of the loans and the collection of loan payments. In the alternative, loans may be serviced by the program administrator.

(d) The interest rate of a program loan shall be determined by mutual agreement of the borrower and the capital provider.

(e) All of the costs incidental to the financing, administration, and collection of the program loan shall be borne by the borrower. The program is intended to be self-financed through fees that are designed to cover the costs to design and administer the program, including the compensation of any third party administrator. The Chief Administrative Officer shall collect a non-refundable

~~program fee of \$500.00 from the borrower upon closing of the loan.~~

~~(f) The minimum amount of any single program loan shall be \$50,000.00. The maximum amount of any single program loan shall be \$25,000,000.00.~~

~~(g) Program administrator. The Chief Administrative Officer shall procure and contract with a program administrator in accordance with applicable public procurement laws and regulations. The program administrator's duties shall be those set forth in its contract with the City, which may include, but shall not be limited to (i) creating the program guidelines and revising and updating the guidelines, as necessary; (ii) processing loan applications to determine project eligibility; (iii) ensuring compliance with the requirements of this article, the program guidelines, and applicable state and local law; and (iv) performing marketing and outreach with regard to the program for which this article provides.~~

~~(h) The program administrator is authorized and directed to prepare program guidelines for program loans. The program guidelines shall include, without limitation:~~

- ~~(1) Disclosures about program fees, costs, and program processes;~~
- ~~(2) Eligibility requirements for participation in the program by capital providers, contractors, and other stakeholders;~~
- ~~(3) Eligibility requirements for borrowers, qualifying improvements, and projects; and~~
- ~~(4) 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:~~
  - ~~a. Total loan (including program loan) to value benchmarks;~~
  - ~~b. Program assessment to value benchmarks;~~
  - ~~c. Savings to investment ratio; and~~
  - ~~d. Debt service coverage ratio. Sec. 11-195. Loan agreements.~~

**~~Sec. 11-195. Loan agreements.~~**

Each program loan agreement shall be in substantially the form of the document attached to Ordinance No. 2019-274 ; adopted November 12, 2019; with such additions, deletions or alterations as permitted by this article.

**~~Sec. 11-196. Voluntary special assessment lien.~~**

(a) A program loan shall be secured by a voluntary special assessment lien in the amount of the initial program loan amount, plus all interest, penalties, fees, costs and other amounts accrued or accruing thereon in accordance with the program loan documents against the property where the qualifying improvements are being installed, the existence, terms and conditions of which shall be evidenced by the recordation of a program memorandum in the Clerk's Office of the Circuit Court of the City of Richmond. The capital provider shall record the program memorandum at closing.

(b) The voluntary special assessment lien shall have the same priority status as a property tax lien against real property so long as (i) a written subordination agreement, in a form and substance acceptable to each prior lien holder in its sole and exclusive discretion, is executed by the holder of each mortgage or deed of trust lien on the property and recorded with the special assessment lien, and (ii) a borrower certificate is submitted to the City prior to recording the program memorandum.

(c) The voluntary special assessment lien, and the program memorandum, shall not be amended without the City's consent, except as provided in the program loan documents, including, without limitation the capital provider's transfer, assignment, or sale as provided in this section. The City's consent shall not be unreasonably withheld, conditioned or delayed. Program loans may be transferred, assigned or sold by a capital provider at any time during the loan term without consent from the borrower, the City, or any other party; provided that the capital provider shall (i) record an assignment of the program loan in the Clerk's Office of the Circuit Court of the City of Richmond, and (ii) deliver a copy of the recorded assignment to the Director of Finance and the program administrator, if applicable. Recordation of the assignment shall constitute an assumption by the new capital provider of the rights and obligations contained in the program loan documents.



(d) The voluntary special assessment lien shall run with the land. That portion of the assessment that has not yet become due shall not be eliminated by foreclosure of a property tax lien.

(e) Delinquent payments shall be subject to all fees and collection methods permitted under the laws of the Commonwealth of Virginia for the collection of delinquent taxes.

(f) The Director of Finance shall enforce the voluntary special assessment lien in the same manner that a property tax lien against real property is enforced. The Director of Finance shall be entitled to recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect delinquent property taxes, including utilizing any administrative remedies provided by the Commonwealth of Virginia. The costs and expenses recovered by the City shall be in addition to any costs, expenses, interest, or other amounts due and owing to the capital provider in accordance with the program loan documents. For the purposes of enforcement of the voluntary special assessment lien herein, any eligible property which has an outstanding voluntary special assessment imposed pursuant to this article shall be enforceable after June 30 following the first anniversary of either the real estate tax or the special assessment having become due under the authority of Code of Virginia, § 58.1-3965.1.

**~~Sec. 11-197. Role of City; limitation of liability.~~**

Borrowers and capital providers participate in the program at their own risk. The City makes no representation or warranty as to the validity, enforceability, priority, or any other character of any program loan agreement or voluntary special assessment lien and borrowers and capital providers agree to release and hold the City harmless from and against any and all liabilities, claims, suits, liens, judgments, damages, losses, and expenses, including, without limitation, reasonable legal fees and costs arising in whole or in part from acts, omissions, breach or default of borrowers or capital providers in relation to or under the performance of any program loan agreement.]

§ 2. That Chapter 11, Article VIII of the Code of the City of Richmond (2020) be and hereby is amended and reordained by **adding therein new sections** numbered 11-190.1 through 11-197.1 as follows:

**Sec. 11-190.1. Purpose.**

The purpose of this chapter is to create a “The City of Richmond Commercial Property Assessed Clean Energy (C-PACE) Financing Program,” to operate in coordination with the statewide C-PACE program, all in accordance with Va. Code §15.2-958.3 (hereinafter, the “C-PACE Act”). The local and statewide C-PACE programs, working together, will facilitate Loans made by Capital Providers to Property Owners of Eligible Properties to finance Eligible Improvements thereon. Subject to the limitations set forth in this chapter, the C-PACE 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. 11-191.1. Definitions.**

*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 attached as Exhibit B to the C-PACE Program Agreement.

*Capital Provider* means (i) a private lending institution that has been approved by the Program Administrator in accordance with the Program Guidelines to originate a C-PACE Loan and its successors and assigns; or (ii) the current holder of a C-PACE Loan.

*City* means the City of Richmond, Virginia.

*City Council* means the Council of the City of Richmond, Virginia.

*City Clerk* means the City Clerk appointed pursuant to section 4.04 of the Charter of the City of Richmond (2020), as amended.

*Clerk’s office* means the Office of the Clerk of the Circuit Court of the City of Richmond, Virginia.

*Commonwealth* means the Commonwealth of Virginia.

*C-PACE* means Commercial Property Assessed Clean Energy.

*C-PACE Act* means Virginia’s “Commercial Property Assessed Clean Energy (C-PACE) financing programs” law, codified at Va. Code §15.2-958.3.

*C-PACE Amendment* means an amendment of the C-PACE Lien executed by the Capital Provider, the Property Owner and the Program Manager, as permitted in the C-PACE

Documents, which C-PACE Amendment shall be recorded in the Clerk’s Office to evidence each amendment to the C-PACE Loan and the C-PACE Lien.

*C-PACE Assignment (CP)* means a written assignment by one Capital Provider to another Capital Provider of the C-PACE Payments and C-PACE Lien, either or both, pursuant to the terms of the assignment document.

*C-PACE Assignment (Locality)* means a written assignment by the City to the Capital Provider to whom the C-PACE Loan is then due, wherein the City relinquishes and assigns its right to enforce the C-PACE Lien to the Capital Provider.

*C-PACE Documents* means the C-PACE Program Agreement, the Locality Agreement, Financing Agreement, C-PACE Lien Certificate, C-PACE Assignment (Locality) (if any), C-PACE Assignment (CP) (if any), C-PACE Amendment (if any), and any other document, agreement, or instrument executed in connection with a C-PACE Loan.

*C-PACE Lien* or *Lien* means the voluntary special assessment lien levied by the City against the Property as security for the C-PACE Loan.

*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.

*C-PACE Loan* or *Loan* means a loan from a Capital Provider to finance a Project, in accordance with the Program Guidelines.

*C-PACE Payment* means the periodic installment payments of the C-PACE Loan by a Property Owner, due and payable to the City or Capital Provider as permitted by the C-PACE Act in such amounts and at such

times as described in the Assessment Payment Schedule.

*C-PACE Program* means the program established by the City through this chapter, in accordance with the C-PACE Act, that in coordination with the Statewide Program 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.

*C-PACE Program Agreement* means the agreement executed among the Property Owner, the City, and the Capital Provider, and their respective successors and assigns, which includes the terms and conditions for participation in the C-PACE Program and the Property Owner's acknowledgment and consent for the City to impose a voluntary special assessment, and record a C-PACE Lien Certificate against the Property Owner's Eligible Property and, if the City so determines, assign the rights to enforce the C-PACE Lien and C-PACE Lien Certificate to the Capital Provider.

*Delinquent Payment* means any C-PACE Payment that was not paid by a Property Owner in accordance with the C-PACE Documents.

*Director of Finance* means the City's Director of the Department of Finance or the Director of Finance's designee.

*Eligible Improvements* means the initial acquisition and installation of any of the following improvements made to Eligible Properties:

- (1) Energy efficiency improvements;
- (2) Water efficiency and safe drinking water improvements;
- (3) Renewable energy improvements;
- (4) Resiliency improvements;
- (5) Stormwater management improvements;
- (6) Environmental remediation improvements; and
- (7) Electric vehicle infrastructure improvements.

Eligible Improvements may be made to both existing Properties and new construction, as further prescribed in this chapter and the Program Guidelines. Eligible Improvements shall include types of authorized improvements added by the General Assembly to the C-PACE Act after the date of adoption of this chapter, without need for a conforming amendment of this chapter. In addition to the elaboration on the types of Eligible Improvements provided in Section 11-193.1(a), below, a Program Administrator may include in its Program Guidelines or other administrative documentation, definitions, interpretations, and examples of these categories of Eligible Improvements.

*Eligible Property or Property* means all assessable commercial real estate located within the City, with all buildings located or to be located thereon, whether vacant or occupied, improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the City, excluding (i) a residential dwelling with fewer than five (5) units, and (ii) a residential condominium. Common areas of real estate owned by a cooperative or a property owners' association described in Va. Code Title 55.1, Subtitle IV (§55.1-1800 et seq.), that have a separate real property tax identification number are Eligible Properties. Eligible Properties shall be eligible to participate in the C-PACE Program.

*Financing Agreement* means the written agreement, as may be amended, modified, or supplemented from time to time, between a Property Owner and a Capital Provider, regarding matters related to the extension and repayment of a C-PACE Loan to finance Eligible Improvements. The Financing Agreement may contain any lawful terms agreed to by the Capital Provider and the Property Owner.

*Land Records* means the Land Records of the City of Richmond, Virginia Circuit Court Clerk's Office.

*Lender Consent* means a written subordination agreement executed by each mortgage or deed of trust lienholder with a lien on the Property that is the subject of a C-PACE Loan, which allows the C-PACE Lien to have senior priority over the mortgage or deed of trust liens.

*Loan Amount* means the original principal amount of a C-PACE Loan.

*Locality Agreement* means the Virginia Energy - Locality Commercial Property Assessed Clean Energy

Agreement between Virginia Energy and the City, pursuant to which the City elects to participate in the Statewide Program.

*Program Administrator* means the private third party retained by Virginia Energy to provide professional services to administer the Statewide Program in accordance with the requirements of the C-PACE Act, this chapter, the Locality Agreement and the Program Guidelines.

*Program Fee(s)* means the fee(s) authorized by the C-PACE Act and charged to participating Property Owners to cover the costs to design and administer the Statewide Program, including, without limitation, compensation of the Program Administrator. While Capital Providers are required to service their C-PACE Loans, if a Capital Provider does not do so and the Program Administrator assumes the servicing responsibility and charges a servicing fee, the servicing fee shall also be included among the Program Fees.

*Program Guidelines* 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 Statewide Program. The effective version of the Program Guidelines shall be determined according to Section 11-194.1(p).

*Program Manager* means the City's Chief Administrative Officer or such person designated in writing by the City's Chief Administrative Officer to (i) supervise the City's C-PACE Program and participation in the Statewide Program, (ii) act as liaison with the Program Administrator and (iii) advise the Program Administrator as to who will sign the C-PACE Documents to which the Locality is a party on the Locality's behalf. If the employee of the City who customarily signs agreements for the Locality is not the person designated as Program Manager, then references in this Ordinance and in the C-PACE Documents to the Program Manager signing certain C-PACE Documents on behalf of the Locality shall be construed to also authorize such customary signatory for the City to execute such C-PACE Documents.

*Project* means the construction or installation of Eligible Improvements on Eligible Property.

*[Property or Eligible Property]* means all assessable commercial real estate located within the City, with

all buildings located or to be located thereon, whether vacant or occupied, improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the City, excluding (i) a residential dwelling with fewer than five (5) units, and (ii) a condominium as defined in Va. Code §55.1-2100. Common areas of real estate owned by a cooperative or a property owners' association described in Va. Code Title 55.1, Subtitle IV (§55.1-1800 et seq.), that have a separate real property tax identification number are Eligible Properties. Eligible Properties shall be eligible to participate in the C-PACE Program.]

*Property Owner* means (i) the Property Owner(s) of Eligible Property who voluntarily obtain(s) a C-PACE Loan from a Capital Provider in accordance with the Program Guidelines; or (ii) a successor in title to the Property Owner.

*Property Owner Certification* means a notarized certificate from Property Owner, certifying that (i) Property Owner is current on payments on Loans secured by a mortgage or deed of trust lien on the Property and on real estate tax payments, (ii) that the Property Owner 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.

*Statewide Program* means the statewide C-PACE financing program sponsored by Virginia Energy, established to provide C-PACE Loans to Property Owners in accordance with the C-PACE Act, this chapter, the Locality Agreement, the C-PACE Documents and the Program Guidelines.

*Useful Life* means the normal operating life of the fixed asset.

*Virginia Code or Va. Code* means the Code of Virginia of 1950, as amended.

*Virginia Energy* means the Virginia Department of Energy.

#### **Sec. 11-192.1. Effective date.**

This chapter shall become effective immediately following its adoption.

**Sec. 11-193.1. C-PACE Program; eligible improvements.**

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

(1) Energy usage efficiency systems (e.g., high efficiency lighting and building systems, heating, ventilation, and air conditioning (HVAC) upgrades, air duct sealing, high efficiency hot water heating systems, building shell or envelope improvements, reflective roof, cool roof, or green roof systems, and/or weather-stripping), or other capital improvements or systems which result in the reduction of

consumption of energy over a baseline established in accordance with the Program Guidelines;

(2) Water usage efficiency and safe drinking water improvements (e.g., recovery, purification, recycling, and other forms of water conservation), or other capital improvements or systems which result in the reduction of consumption of water over a baseline established in accordance with the Program Guidelines;

(3) Renewable energy production facilities (e.g., solar photovoltaic, fiber optic solar, solar thermal, wind, wave and/or tidal energy, biomass, combined heat and power, geothermal and fuel cells), 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 or pursuant to a power purchase agreement with a non-utility purchaser;

(4) 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 excessive heat or wind;
  - e. Microgrids;
  - f. Energy storage; and
  - g. Enhancement of the resilience capacity of a natural system, structure, or infrastructure;
- (5) Stormwater management improvements that reduce onsite stormwater runoff into a stormwater system, such as reduction in the quantity of impervious surfaces or providing for the onsite filtering of stormwater;
- (6) 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;
- (7) Soil or groundwater remediation;
- (8) Electric vehicle infrastructure improvements, such as charging stations;
- (9) Construction, renovation, or retrofitting of a Property directly related to the accomplishment of any purpose listed in subsections (1) - (8) above, whether such Eligible Improvement was erected or installed in or on a building or on the ground; it being the express intention

of the City to allow Eligible Improvements that constitute, or are a part of, the construction of a new structure or building to be financed with a C-PACE Loan; and

(10) Any other category of improvement (i) approved by the Program Administrator with the consent of the Program Manager as qualifying for financing under the Statewide Program, in accordance with the C-PACE Act (including amendments thereto which authorize additional types of Eligible Improvements), or (ii) added by the

General Assembly to the C-PACE Act after the date of adoption of this chapter, without need for a conforming amendment of this chapter. In addition, a Program Administrator may include in its Program Guidelines or other administrative documentation, definitions, interpretations and examples of these categories of Eligible Improvements.

(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 shall make available the Statewide Program's program application process, to provide for the review and approval of proposed Eligible Improvements and C-PACE Documents. Program applications will be processed by the Statewide Program in accordance with the eligibility requirements and procedures set forth in the Program Guidelines.

**Sec. 11-194.1. C-PACE Loan requirements; program fees; reporting; program administrator; program guidelines.**

(a) *Source of Loans.* C-PACE Loans shall be originated by Capital Providers. The City or its respective governmental entities 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 (\$50,000.00). There is no maximum aggregate amount that may be financed with respect to an Eligible Property, except as stipulated in the Program Guidelines. 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'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 and upon a determination by the Program Administrator that such Loan may refinance or reimburse the Property Owner for the total costs of such Eligible Improvements.

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

(e) *C-PACE Loan term.* The term of a C-PACE Loan shall not exceed the weighted average Useful Life of the Eligible Improvements, as determined by the Program Administrator.

(f) *Apportionment of costs.* All of the costs incidental to the financing, administration, collection, and/or enforcement of the C-PACE Loan shall be borne by the Property Owner.

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

(h) *C-PACE Program Agreement.* In order to participate in the C-PACE Program, Property Owner and Capital Provider shall enter into a C-PACE Program Agreement, which sets forth certain terms and conditions for participation in the C-PACE Program. The Program Manager is authorized to approve the C-PACE Loan and execute the C-PACE Program Agreement on behalf of the City without further action by the City Council. The C-PACE Program Agreement shall be binding upon the parties thereto and their respective

successors and assigns until the C-PACE Loan is paid in full. [The] To conform to a modification of the Statewide Program template version of the C-PACE Program Agreement, the Program Administrator may modify [the Statewide Program template version of the] C-PACE Program Agreement in accordance with the provisions of section 11-194.1(p) as necessary to further the Statewide Program's purpose and to encourage Program participation, so long as such modifications do not conflict with the Program Guidelines, this chapter, the Locality Agreement or the C-PACE Act.

*(i) Repayment of C-PACE Loan; collection of C-PACE Payments.* C-PACE Loans will be repaid by the Property Owner through C-PACE Payments made in the amounts and at such times as set forth in the Assessment Payment Schedule, the C-PACE Documents and Program Guidelines. The Capital Provider shall be responsible, subject to and in accordance with the terms of the C-PACE Program Agreement and other C-PACE Documents, for the servicing of the C-PACE Loans and the collection of C-PACE Payments. If a Capital Provider fails to service a C-PACE Loan, such C-PACE Loan shall be serviced by the Program Administrator. Nothing herein shall prevent the Capital Provider or the Program Administrator from directly billing and collecting the C-PACE Payments from the Property Owner to the extent permitted by the C-PACE Act or other applicable law. The enforcement of C-PACE Loans and their C-PACE Documents during an event of default thereunder is governed by Section 11-195.1(e).

*(j) C-PACE Loan assumed.* A party which acquires a Property which is subject to a C-PACE Lien, whether it obtained ownership of the Property voluntarily or involuntarily, becomes the Property Owner under the C-PACE Documents and, by virtue of the C-PACE Lien running with the land, assumes the obligation to repay all remaining unpaid C-PACE Payments which are due and which accrue during such successor Property Owner's period of ownership. Only the current C-PACE Payment and any Delinquent Payments, together with any penalties, fees and costs of collection, shall be payable at the settlement of a Property upon sale or transfer, unless otherwise agreed to by the Capital Provider.

*(k) Transfer of C-PACE Loans.* C-PACE Loans may be transferred, assigned, or sold by a Capital

Provider to another Capital Provider at any time until the C-PACE Loan is paid in full provided that the Capital Provider shall (i) notify the Property Owner and the Program Administrator of the transfer prior to the billing date of the next C-PACE Payment due (and within thirty (30) days if the C-PACE Loan is serviced by the Program Administrator), (ii) record a C-PACE Assignment (CP) among the Land Records, and (iii) deliver a copy of the recorded C-PACE Assignment (CP) to the Property Owner, the City, and the Program Administrator. Recordation of the C-PACE Assignment (CP) in the Land Records shall constitute an assumption by the new Capital Provider of the rights and obligations of the original Capital Provider contained in the C-PACE Documents.

*(l) Program Fees.* The Statewide Program is self-financed through the Program Fees charged to participating Property Owners, together with any funds budgeted by the General Assembly to support the Statewide Program. The Program Fees are established to cover the actual and reasonable costs to design and administer the Statewide Program, including the compensation of a third-party Program Administrator. The amount(s) of the Program Fees shall be set forth in the Program Guidelines. Program Fees may be changed by the Program

Administrator from time to time and shall only apply to C-PACE Loans executed after the date the revised fees are adopted.

*(m) Locality Agreement.* The City shall opt into the Statewide Program by entering into the Locality Agreement, adopting the Statewide Program as the City's own C-PACE Program. In accordance with the C-PACE Act, opting into the C-PACE Program shall not require the City to conduct a competitive procurement process. The Program Manager is authorized to execute the Locality Agreement on behalf of the City without further action by the City Council.

*(n) Program Guidelines.* The Program Administrator, under the direction of and in consultation with Virginia Energy, has designed the Program Guidelines to create an open, competitive and efficient C-PACE Program. The Program Administrator may modify the Program Guidelines from time to time, provided such

amendments are (i) consistent with the C-PACE Act and (ii) approved by Virginia Energy before taking effect.

(o) *Indemnification.* The Program Administrator shall indemnify, defend and hold the City, its officers, agents and employees harmless against any and all losses, liabilities, claims, damages, and expenses (including court costs and reasonable attorneys' fees) arising from any material default or breach by the Program Administrator of its obligations to the City under or in connection with the Statewide Program as well as all claims against the City, its officers, agents and employees, arising from errors, omissions, negligent acts or intentional acts of the Program Administrator, its officers, agents and employees.

(p) *Effective Version of [Program Guidelines] Documents.*

(1) The effective version of the Program Guidelines, C-PACE Program Agreement, C-PACE Lien Certificate, C-PACE Amendment, C-PACE Assignment ("CP") and C-PACE Assignment (Locality) (the "Documents") in the City shall be the version in use by Virginia Energy and the Program Administrator as of the adoption date of Ordinance Number \_\_\_\_ - \_\_\_\_, adopted \_\_\_\_\_.  
\_\_\_\_\_.

(2) If [the Program Guidelines] any of the Documents are revised by Virginia Energy, the Program Administrator, or any other authorized party after the adoption date of the ordinance, the City shall adopt the revised [Program Guidelines] Documents automatically unless the proposed revision(s) to the [Program Guidelines] Documents may change the rights or obligations of the City ("Substantial Revisions").

(3) Substantial Revisions shall not take effect in the City until [sixty] 90 days after the Program Manager and the City Clerk receive written notice from Virginia Energy or the Program Administrator of such Substantial Revisions. During such 90-day period, City Council may reject the noticed Substantial Revisions through a resolution ("Rejection Resolution").

(4) If City Council adopts a Rejection Resolution during the aforementioned 90-day period,

the [Program Guidelines] Documents in effect in the City shall not include the Substantial Revisions unless the Substantial Revisions are resubmitted pursuant to subsection (p)(3) of this section and are not subject to a Rejection Resolution following such resubmission.

**Sec. 11-195.1. Levy of assessment; recordation; priority; amendment; enforcement and collection costs.**

(a) *Levy of voluntary special assessment lien.* Each C-PACE Loan made under the C-PACE Program shall be secured by a voluntary special assessment lien (i.e., a C-PACE Lien) levied by the City against each Property benefitting from the Eligible Improvements financed by such C-PACE Loan. Each C-PACE Lien shall be evidenced by a C-PACE Lien Certificate in the Loan Amount, [which secures] but the Lien Certificate shall secure and [ensures] ensure repayment of not only the principal of the C-PACE Loan, but also any delinquent and accrued interest, late fees, penalties, Program Fees, and collection costs (including reasonable attorneys' fees [of] and costs not to exceed 20% of the [unpaid principal Loan Amount] amount of the unpaid delinquent payments,) payable in connection therewith.

(b) *Recordation of C-PACE Lien Certificate.* Each C-PACE Lien Certificate shall have a copy of the Assessment Payment Schedule attached thereto as an exhibit. The Program Manager is hereby authorized to, and shall promptly, execute the C-PACE Lien Certificate on behalf of the City and deliver it to the Capital Provider, without any further action by the City Council. Upon the full execution of the C-PACE Documents and funding of the C-PACE Loan, the Capital Provider shall cause the recordation of the C-PACE Lien Certificate in the Land Records.

(c) *Priority.* The C-PACE Lien shall have the same priority as a real property tax lien against real property, except that it shall have priority over any previously recorded mortgage or deed of trust lien on the Property only if prior to the recording of the C-PACE Lien, (i) Property Owner has obtained a written Lender Consent, in a form and substance acceptable to the holder of such prior mortgage or deed of trust in its sole and exclusive discretion, executed by such lienholder and recorded with the C-PACE Lien Certificate in the Land

Records; and (ii) prior to the recording of the C-PACE Lien Certificate, Property Owner has delivered an executed Property Owner Certification to the City in connection with the C-PACE Loan closing. Only the current C-PACE Payment and any Delinquent Payments shall constitute a first lien on the Property. The C-PACE Lien shall run with the land and that portion of the C-PACE Lien under the C-PACE Program Agreement that has not yet become due shall not be eliminated by foreclosure of a real property tax lien.

*(d) Amendment of lien.* Upon written request by a Capital Provider in accordance with the Program Guidelines, the Program Manager, without any further action by the City Council, shall join with the Capital Provider and the Property Owner in executing a C-PACE Amendment of the C-PACE Loan and the C-PACE Lien after the closing of a C-PACE Loan. The C-PACE Amendment shall be recorded in the Land Records.

*(e) Enforcement and collection costs.* In the event of Property Owner's default under the terms of the C-PACE Documents, the City, acting by and through the Director of Finance, may enforce the C-PACE Lien for the amount of the Delinquent Payments, [plus the remaining unpaid principal balance of the Loan Amount,] late fees, penalties, interest, reasonable attorneys' fees [equal] and costs not to exceed 20% of the amount of the unpaid [principal Loan Amount] delinquent payments, and any other costs or expenses of collection, in the same manner that a delinquent tax may be pursued by action at law under the provisions of Virginia Code §§58.1-3953, et seq., or in like manner as the enforcement of a property tax lien against real property under the provisions of Virginia Code §§ 58.1-3965, et seq. If the City elects not to enforce the C-PACE Lien, which election shall be made within 30 days of receipt by the City from the Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the City shall, within 15 days of the City's determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and delivering such instrument to the Capital Provider for recordation in the land records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loans closing, regardless



of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real estate property may be enforced under Title 58.1, Chapter 39 of the Code of Virginia (1950), as amended, including the institution of suit in the name of the City and its Director of Finance, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement; provided, that prior to conducting any aspect of enforcement such legal counsel shall apply to the City Attorney for appointment as special counsel to the City pursuant to section 4.17 of the Charter of the City of Richmond (2020), as amended. Such legal counsel shall, upon appointment by the City Attorney, have the status of “Special Counsel to the City and its Director of Finance” and possess all the rights and powers of an attorney employed under sections 58.1-3966 and 58.1-3969 of the Code of Virginia (1950), as amended, with the express authority to exercise for the benefit of the Capital Provider every power granted to the City or its Director of Finance or its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code, as amended. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the City or the Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, as amended, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount for sued 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 enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act, or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property’s sale, in accordance with Va. Code Secs. 58.1-3974 and 58.1-3975 and any other right of redemption available to the Property Owner under Virginia law.

**Sec. 11-196.1. Role of the City; limitation of liability.**

Property Owners and Capital Providers participate in the C-PACE Program and the Statewide Program at their own risk. By executing the C-PACE Documents, including the C-PACE Program Agreement, or by otherwise participating in the C-PACE Program and the Statewide Program, the Property Owner, Capital Provider, contractor, or other party or participant acknowledge and agree, for the benefit of the City and as a condition of participation in the C-PACE Program and the Statewide Program, that: (i) the City undertakes no obligations under the C-PACE Program and the Statewide Program except as expressly stated herein or in the C-PACE Program Agreement; (ii) in the event of a default by a Property Owner, the City has no obligation to use City funds to make C-PACE Payments to any Capital Provider including, without limitation, any fees, expenses, and other charges and penalties, pursuant to a Financing Agreement between the Property Owner and Capital Provider; (iii) no C-PACE Loan, C-PACE Payment, C-PACE Lien, or other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter shall be backed by the credit of the City, the Commonwealth, or its political subdivisions, including, without limitation, City taxes or other City funds; (iv) no C-PACE Loan, C-PACE Payment, C-PACE Lien or other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter shall constitute an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction; (v) the City has not made any representations or warranties, financial or otherwise, concerning a Property Owner, Eligible Property, Project, Capital Provider, or C-PACE Loan; (vi) the City makes no representation or warranty as to, and assumes no responsibility with respect to, the accuracy or completeness of any C-PACE Document, or any assignment or amendment thereof; (vii) the City assumes no responsibility or liability in regard to any Project, or the planning, construction, or operation thereof; and (viii) each Property Owner, Capital Provider, or other participant under the C-PACE Program, shall comply with all applicable requirements of the C-PACE Documents.

**Sec. 11-197.1. Severability.**

As provided by Section 1-7 of the Code of the City, 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 this chapter shall not be affected by that decision and continue in full force and effect.

§ 3. That, as applicable, the documents used to effectuate the purposes of the Commercial Property Assessed Clean Energy Financing Program as set forth in Chapter 11, Article VIII, consisting of new sections 11-190.1 through 11-197.1, of the Code of the City of Richmond (2020), as amended, for which this ordinance provides, shall be substantially in the form of the documents attached to this ordinance labeled as “Attachment [B] A, As Amended,” “Attachment [C] B, As Amended,” “Attachment [D] C, As Amended,” “Attachment [E] D, As Amended,” [and] “Attachment [F] E, As Amended, and Attachment F, As Amended.”

§ 4. That, for purposes of the Commercial Property Assessed Clean Energy Financing Program as set forth in Chapter 11, Article VIII, consisting of new sections 11-190.1 through 11-197.1, of the Code of the City of Richmond (2020), as amended, for which this ordinance provides, and for the avoidance of doubt:

(a) The document entitled “Virginia Energy - Locality Commercial Property Assessed Clean Energy Agreement” and attached to this ordinance as “Attachment [B] A, As Amended” shall be the “Locality Agreement,” as defined in new section 11-191.1 of the Code of the City of Richmond (2020), as amended.

(b) The document entitled “Commercial Property Assessed Clean Energy (C-PACE) Financing Program, C-PACE Program Agreement” and attached to this ordinance as “Attachment [C] B, As Amended” shall be the “C-PACE Program Agreement,” as defined in new section 11-191.1 of the Code of the City of Richmond (2020), as amended.

(c) The document entitled “Notice and Certificate of C-PACE Special Assessment Lien and Abstract of Ordinance” and attached to this ordinance as “Attachment [D] C, As Amended” shall be the “C-PACE Lien

Certificate,” as defined in new section 11-191.1 of the Code of the City of Richmond (2020), as amended.

(d) The document entitled “Amended and Restated Notice and Certificate of C-PACE Special Assessment Lien” and attached to this ordinance as “Attachment [E] D, As Amended” shall be the “C-PACE Amendment,” as defined in new section 11-191.1 of the Code of the City of Richmond (2020), as amended.

(e) The document entitled “C-PACE Lien Assignment (CP)” and attached to this ordinance as “Attachment [F] E, As Amended” shall be the “C-PACE Assignment (CP),” as defined in new section 11-191.1 of the Code of the City of Richmond (2020), as amended.

(f) The document entitled “C-PACE Lien Assignment (Locality) and attached to this ordinance as “Attachment F, As Amended” shall be the “C-PACE Assignment (Locality) as defined in section 11.101.1 of the Code of the City of Richmond (2020), as amended.

§ 5. This ordinance shall be in force and effect upon adoption.