



Legislation Text

File #: ORD. 2020-129, **Version:** 1

To amend Ord. No. 2019-274, adopted Nov. 12, 2019, which amended ch. 11 of the City Code by adding therein a new art. VIII (§§ 11-190-11-197) to establish a commercial property assessed clean energy program in accordance with Va. Code § 15.2-958.3, for the purpose of facilitating the development of clean energy projects, to revise the effective date of the program.

THE CITY OF RICHMOND HEREBY ORDAINS:

I. That Ordinance No. 2019-274, adopted November 12, 2019, be and is hereby amended and reordained as follows:

§ 1. That Chapter 11 of the Code of the City of Richmond (2015) be and hereby is **amended** and reordained by adding therein a new article number VIII, consisting of sections numbered 11-190 through 11-197, as follows:

ARTICLE VIII

COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY

FINANCING PROGRAM

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, non-profit and multi-family 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 chapter, 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 subsections (a), (b), or (c), above, 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 onsite stormwater runoff into the stormwater system such as reduction in the quantity of impervious surfaces, and onsite 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. 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.

Each program loan agreement shall be in substantially the form of the document attached to Ordinance No. 2019-____, adopted _____, 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 attorneys' 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 30th 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 the document entitled "C-PACE Assessment and Financing Agreement" attached to this ordinance

shall be the program loan agreement to which the new section 11-195(a) of the Code of the City of Richmond (2015), as amended, refers.

§ 3. This ordinance shall be in force and effect [~~July~~] March 1, [~~2020~~] 2021.

II. This amendatory ordinance shall be in force and effect upon adoption.