



## Legislation Text

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**File #:** ORD. 2019-249, **Version:** 1

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To amend 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.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 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:

*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.

*Program* means the Commercial Property Assessed Clean Energy Financing Program created by this article.

*Program administrator* means (i) an independent third party whose services are procured by the City or

(ii) the Chief Administrative Officer or the designee thereof.

*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) Any other category of improvement approved by the Chief Administrative Officer as qualifying for financing under the program, with the concurring written opinion of either the City Attorney that such improvement is authorized by or consistent with the Commonwealth's authorizing legislation for commercial property accessed clean-energy financing programs.
- (f) The Sample List of Eligible Improvements published by the Mid-Atlantic PACE Alliance dated June 2018 is non-exhaustive and may be used as a guide in determining which proposed improvements qualify for program funding.

**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 20 years, whichever is less. However, the maximum term of a program loan for solar improvements shall be 25 years.

(c) Program loan payments shall be combined with the City's real property tax billing and collection, and payable into the treasury of the City. The Director of Finance shall apply any loan payment 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 program voluntary special assessment in accordance with the program loan documents. The borrower shall notify the capital provider and the Director

of Finance if any program loan payment is a prepayment, at the time the payment is made.

(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 application fee of \$250.00 from the borrower upon receipt of an application for program financing. In addition, the Chief Administrative Officer shall collect a fee of 0.5 percent of the program loan amount, up to \$10,000.00, to be collected with each loan payment, which shall be stated in the written contract between the City, the borrower, and the capital provider to offset the cost of administering the program loans.

(f) The minimum amount of any single program loan shall be \$20,000. The maximum amount of any single program loan shall be \$5,000,000.00. The maximum aggregate dollar amount that may be financed through the program is \$15,000,000.00. In the event that applications for program financing appear likely to exceed the maximum aggregate dollar amount, priority shall be given to applicants on a first-come, first-served basis.

(g) 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.

(h) Additional requirements.

(1) Every borrower, on behalf of itself and any affiliated entities, whether in existence at the

time of the program application or created thereafter and any of its individual shareholders, principals, managers or other associated individuals, shall (a) waive the right to bid, either directly or indirectly, on the property at any auction held in the course of foreclosure for delinquent real estate taxes or the program voluntary special assessment, and (b) waive the right to occupy, possess, or use, either directly or indirectly, any eligible property for a period of five years after the date of the foreclosure auction.

(2) Every borrower shall:

a. Waive all defenses, affirmative or otherwise, to the foreclosure action related to any collection suit brought for the nonpayment of any program obligation. This waiver shall apply to any litigation action initiated under the laws of the Commonwealth of Virginia or any administrative collection action as afforded the Director of Finance or any duly appointed collection agent thereof;

b. Waive all defenses to the imposition of personal liability for corporate officers as permitted under Code of Virginia, § 58.1-3965(F) and the collection thereof as stated in subparagraph (a) above;

c. Agree to provide a confession of judgment pursuant to Code of Virginia, §§8.01-431 through 8.01-441, if requested by the City or the capital provider to accompany any note related to the financing for any qualifying improvements.

d. These waiver provisions shall be a burden that runs with the land intended to bind successors or assigns in title while any program obligation remains outstanding.

**Sec. 11-195. Chief Administrative Officer authorization; loan agreements.**

(a) 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.

(b) The Chief Administrative Officer is authorized to enter into program loan agreements on behalf of the City. The Chief Administrative Officer may procure program administration services if needed, to the extent that funds for this purpose are appropriated.

(c) The parties to any program loan agreement shall be the borrower, the capital provider, and the City.

d) The Chief Administrative Officer may not execute any program loan agreement unless the

conditions for the priority status of the voluntary special assessment lien are met, in addition to the underwriting requirements.

The program loan documents shall include provisions for the amendment of the program loan agreement. No capital provider or borrower may amend any program loan agreement without consent of the City, as evidenced by the signature of the Chief Administrative Officer, which shall not be unreasonably withheld, conditioned or delayed.

**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. The capital provider shall inform the Director of Finance of any changes to the anticipated yearly assessment, and of any changes to the amortization schedule, on or before July 1<sup>st</sup> of each year for which program loan payments are due.

(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 City's obligation to remit program payments to the capital provider shall be a limited obligation, only payable if and when installment payments are received from the borrower and not applied by the Director of Finance to the City's real property taxes, penalties, and interest as directed by this article. The Director of Finance shall promptly process, deposit, and credit program installment payments no later than 45 days after receipt.

(d) 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. The Director of Finance shall not be obligated to remit program payments to a new capital provider unless a recorded copy of the assignment has been provided to the Director of Finance at least thirty days before the next installment payment due date. Recordation of the assignment shall constitute an assumption by the new capital provider of the rights and obligations contained in the program loan documents.

(e) 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.

(f) The voluntary special assessment shall be payable to the Director of Finance in installments over a period of years, due at the same time as real property taxes. Program loans shall not constitute a pledge of the faith and credit of the City.

(g) 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.

(h) 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 30<sup>th</sup> 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 1, 2020.