



MOTION: DEVINE

SECOND: KELLY

RE: Creation of a Program for Financing Clean Energy Improvements, Known as "C-PACE"

**November 13, 2018
Regular Meeting
Ordinance No. 18-19**

FIRST READ: October 30, 2018

SECOND READ: November 13, 2018

ACTION: APPROVED; Ayes: 7; Nays: 0

Sec. I. Introduction.

The Virginia General Assembly adopted Code of Virginia §15.2-958.3 to authorize localities to facilitate loans for the acquisition and installation of clean energy improvements to existing and new buildings and structures. Loans may be offered for renewable energy production and distribution facilities, energy usage efficiency improvements, and water usage efficiency improvements. These loan programs advance many public purposes, as stated in the ordinance, and City Council has determined to make this type of financing available to eligible properties in Fredericksburg. In adopting various requirements for this program, City Council has been guided by the "Final uniform statewide financial underwriting guidelines for clean energy loans made by localities under §15.2-958.3 of the Code of Virginia," prepared by the Virginia Department of Mines, Minerals and Energy, dated December 1, 2015, and the Mid-Atlantic PACE Alliance (MAPA) Regional C-PACE Toolkit published in June 2018.

City Council held its duly advertised public hearing on this ordinance on November 13, 2018.

It is hereby ordained by the Fredericksburg City Council that Chapter 38 of the City Code is amended as follows:

Sec. II. City Code Amendment.

City Code Chapter 38, "Environment," is amended by adding a new Article V, "Commercial Property Assessed Clean Energy Financing Program," as follows:

Article V.

Commercial Property Assessed Clean Energy Financing Program.

Sec. 38-500. Commercial Property Assessed Clean Energy Financing Program; established; purpose.

- A. City Council hereby establishes the Commercial Property Assessed Clean Energy Financing Program; (C-PACE), under the authority of Code of Virginia §15.2-958.3. Under C-PACE, 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 C-PACE.

- B. The purpose of C-PACE 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. City Council 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 C-PACE, the City Council finds that Fredericksburg 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. City Council 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. 38-501. Definitions.

“Borrower” means the person, as defined in Code of Virginia §1-230, who owns or leases an eligible property and voluntarily applies for and obtains a C-PACE loan, or that person’s successor in title.

“Borrower Certificate” means a notarized certificate from Borrower, certifying that (i) 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 Capital Provider and City.

“C-PACE Memorandum” means a Memorandum of C-PACE Assessment Lien, which shall (i) be executed by Borrower, Capital Provider, and the City, (ii) include the Amortization Schedule, and (iii) be recorded in the Clerk’s Office against the Property at closing to evidence the C-PACE voluntary special assessment lien and to secure the repayment of the C-PACE financing to the Capital Provider.

“Capital Provider” means the private lending institution that originates a C-PACE loan, or its successors or assigns in interest; or, if 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, C-PACE 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 C-PACE Loan, including administrative and Capital Provider fees that are directly attributable to a Qualifying Improvement, and (l) reserves for construction period interest.

“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 City Manager or his or her designee.

“Program Guidelines” means those procedures, rules, disclosures, and restrictions promulgated, imposed and enforced by the Program Administrator for the administration of the Program.

“Project” means the development of Qualifying Improvements on an Eligible Property.

“Property” means an Eligible Property as defined in Section 38-503 located within the City of Fredericksburg, for which a program loan is applied for or received.

Sec. 38-502. 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 C-PACE.

1. Renewable energy production and distribution facilities, including but not limited to, solar photovoltaic, solar thermal, geothermal, wind, fuel cells, biomass systems, biogas or methane recovery systems.
2. Energy usage efficiency systems reasonably expected to reduce the energy usage of the Eligible Property, including but not limited to, high efficiency lighting and building systems, heating, ventilation and air conditioning (HVAC) 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 HVAC 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.

3. Water usage efficiency improvements, such as recovery, purification, recycling and other forms of water conservation. For new construction, these improvements qualify for C-PACE financing only if they exceed the minimum water usage efficiency requirements of then-applicable law, ordinance, regulation, or code.
4. Construction, renovation or retrofitting of Eligible Property directly related to the accomplishment of any purpose listed in clauses 1, 2, or 3, 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 C-PACE Loan.
5. Any other category of improvement approved by the City Manager as qualifying for financing under C-PACE, with the concurring written opinion of either the City Attorney or other legal counsel engaged to serve as counsel for C-PACE that such improvement is authorized by or consistent with the Commonwealth's authorizing legislation for C-PACE programs.
6. 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 C-PACE funding.

Sec. 38-503. Eligible Properties.

Eligible Properties include all assessable real estate located within the City of Fredericksburg, 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 §55-79.2, or (b) any residential property containing four or fewer dwelling units. Eligible Properties shall be eligible to participate in C-PACE.

Sec. 38-504. Program arrangements.

- A. The Capital Providers for C-PACE may be private lending institutions. Public funds may be the source of C-PACE funding to the extent appropriated for that purpose by City Council.
- B. The time period during which Borrowers shall repay the C-PACE 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 C-PACE loan for solar improvements shall be 25 years.
- C. C-PACE loan payments shall be combined with the City's real property tax billing and collection, and payable into the treasury of the City. The Treasurer 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 C-PACE voluntary special assessment in accordance with the C-PACE loan documents. Borrower shall notify the Capital Provider and the Treasurer if any C-PACE loan payment is a prepayment, at the time the payment is made.

- D. The interest rate of a C-PACE 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 C-PACE loan shall be borne by the Borrower. C-PACE 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 City Manager shall collect a non-refundable program application fee from the Borrower upon receipt of an application for C-PACE financing. In addition, the City shall impose a fixed fee to be collected with each loan payment, which shall be stated in the written contract between the City, Borrower, and Capital Provider. The amounts of these fees shall be established by City Council by resolution from time to time as needed.
- F. The minimum amount of any single C-PACE loan shall be \$20,000. The maximum amount of any single C-PACE loan shall be \$5 million. The maximum aggregate dollar amount that may be financed through C-PACE is \$15 million. In the event that applications for C-PACE 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 C-PACE loans. The Program Guidelines shall include, without limitation:
- a. disclosures about C-PACE fees, costs, and Program processes;
 - b. eligibility requirements for participation in the Program by Capital Providers, contractors and other PACE stakeholders;
 - c. eligibility requirements for Borrowers and C-PACE improvements and projects; and
 - d. suggested underwriting criteria including, without limitation, underwriting guidelines established by the Virginia Department of Mines, Minerals, and Energy or the Mid-Atlantic PACE Alliance Regional C-PACE Toolkit published in June 2018, such as financial ratios related to:
 1. total loan (including C-PACE loan) to value benchmarks;
 2. C-PACE assessment to value benchmarks;
 3. Savings to investment ratio; and

4. 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 C-PACE 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 C-PACE 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 C-PACE 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 City of Fredericksburg Treasurer or her duly appointed collection agent;
 - b. Waive all defenses to the imposition of personal liability for corporate officers as permitted under Virginia Code §58.1-3965(F) and the collection thereof as stated in subparagraph (a) above;
 - c. Agree to provide a confession of judgment pursuant to Virginia Code §8.01-432, *et seq.*, if requested by the City or the Capital Provider to accompany any note related to the financing for any Qualifying Project.
 - d. These waiver provisions shall be a burden that runs with the land intended to bind successors or assigns in title while any C-PACE obligation remains outstanding.

Sec. 38-505. City Manager authorization; loan agreements.

- A. A draft contract specifying the terms and conditions of C-PACE loan agreements is ~~shall be~~ adopted as an appendix to Ordinance 18-19, which established C-PACE. Each C-PACE loan agreement shall be in substantially the form established by the draft contract, with such additions, deletions or alterations as permitted by this article.
- B. The City Manager is authorized to enter into C-PACE loan agreements on behalf of the City. The City Manager may procure Program administration services if needed, to the extent that funds for this purpose are appropriated.
- C. The parties to any C-PACE loan agreement shall be the Borrower, the Capital Provider, and the City.

- D. The City Manager may not execute any C-PACE loan agreement unless the conditions for the priority status of the voluntary special assessment lien are met, in addition to the underwriting requirements.
- E. The C-PACE loan documents shall include provisions for the amendment of the C-PACE loan agreement. No Capital Provider or Borrower may amend any C-PACE loan agreement without consent of the City, as evidenced by the signature of the City Manager, which shall not be unreasonably withheld, conditioned or delayed.

Sec. 38-506. Voluntary special assessment lien.

- A. A C-PACE loan shall be secured by a voluntary special assessment lien in the amount of the initial C-PACE loan amount, plus all interest, penalties, fees, costs and other amounts accrued or accruing thereon in accordance with the C-PACE 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 C-PACE Memorandum in the Clerk's Office of the Circuit Court of the City of Fredericksburg. The Capital Provider shall record the Memorandum at closing. The Capital Provider shall inform the Commissioner of Revenue of any changes to the anticipated yearly assessment, and the Treasurer of any changes to the amortization schedule, on or before July 1st of each year for which C-PACE 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 (1) 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 (2) a Borrower Certificate is submitted to the City prior to recording the C-PACE Memorandum.
- C. The City's obligation to remit C-PACE 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 Treasurer to the City's real property taxes, penalties, and interest as directed by this article. The Treasurer shall promptly process, deposit, and credit C-PACE installment payments no later than 45 days after receipt.
- D. The voluntary special assessment lien, and the C-PACE Memorandum, shall not be amended without the City's consent, except as provided in the C-PACE loan documents, including, without limitation Capital Provider's transfer, assignment, or sale as provided in this section. The City's consent shall not be unreasonably withheld, conditioned or delayed. C-PACE loans may be transferred, assigned or sold by a Capital Provider at any time during the loan term without consent from Borrower or the City or any other party; provided that Capital Provider shall (i) record a C-PACE Assignment in the Clerk's Office, and (ii) deliver a copy of the recorded C-PACE Assignment to the Commissioner of Revenue, Treasurer, and program administrator if applicable. The Treasurer shall not be obligated to remit C-PACE payments to a new Capital Provider unless a recorded copy of the C-PACE Assignment has been

provided to the Treasurer at least thirty days before the next installment payment due date. Recordation of the C-PACE Assignment shall constitute an assumption by the new Capital Provider of the C-PACE rights and obligations contained in the C-PACE 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 Treasurer in installments over a period of years, due at the same time as real property taxes. C-PACE 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 Treasurer shall enforce the voluntary special assessment lien in the same manner that a property tax lien against real property is enforced. The Treasurer 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 Virginia law. The costs and expenses recovered by the Treasurer shall be in addition to any costs, expenses, interest, or other amounts due and owing to the Capital Provider in accordance with the C-PACE 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 Virginia Code §58.1-3965.1.

Sec. 38-507. Role of the City; limitation of liability.

Borrowers and Capital Providers participate in C-PACE at their own risk. The City makes no representation or warranty as to the validity, enforceability, priority, or any other character of any C-PACE loan agreement or voluntary special assessment lien and Borrowers and Capital Providers agree to release and hold the City of Fredericksburg 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 C-PACE loan agreement.

SEC. III. Effective Date.

This ordinance shall be effective immediately.

Votes:

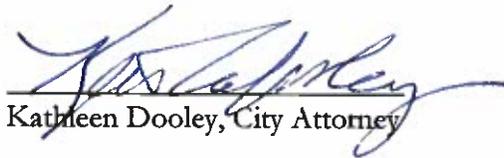
Ayes: Greenlaw, Withers, Devine, Duffy, Frye, Graham, Kelly

Nays: None

Absent from Vote: None

Absent from Meeting: None

Approved as to form:



Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 18-19 duly adopted at a meeting of the City Council meeting held November 13, 2018 at which a quorum was present and voted.



Tonya B. Lacey, CMC
Clerk of Council