

1 AN ORDINANCE TO AMEND CHAPTER 35.5
2 OF THE CITY CODE PERTAINING TO
3 COMMERCIAL PROPERTY ASSESSED CLEAN
4 ENERGY (C-PACE) FINANCING AND
5 RESILIENCY PROGRAM
6

7 Sections Amended: §§ 35.5-1 through 35.5-8
8

9 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VIRGINIA BEACH,
10 VIRGINIA:
11

12 That Chapter 35.5 is hereby amended to the Code of the City of Virginia Beach
13 and ordained to read as follows:
14

15 **CHAPTER 35.5 - COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE)**
16 **FINANCING AND RESILIENCY PROGRAM**
17

18 **Article I. - In General**
19

20 **Sec. 35.5-1. Purpose.**
21

22 The purpose of this Chapter is to create a “The City of Virginia Beach Commercial
23 Property Assessed Clean Energy (C-PACE) Financing Program,” to operate in
24 coordination with the statewide C-PACE program, all in accordance with the
25 Commonwealth of Virginia’s Clean Energy Financing Law, Va. Code § 15.2-958.3
26 (hereinafter the “C-PACE Act”). The local and statewide C-PACE Programs, working
27 together, will facilitate Loans made by Capital Providers to Property Owners to finance
28 Eligible Improvements thereon. Subject to the limitations set forth in this Chapter, the C-
29 PACE Act, or other applicable law, each C-PACE Loan, inclusive of principal, interest,
30 and any financed fees, costs, or expenses, will be secured by a voluntary special
31 assessment lien on the property that is the subject of such Loan.
32

33 **Sec. 35.5-2. – Definitions.**
34

35 *Assessment Payment Schedule* means the schedule of installments of C-PACE
36 Payments to be made in the repayment of the C-PACE Loan, which shall be attached as
37 Exhibit B to the C-PACE Program Agreement.
38

39 *Capital Provider* means (i) a private lending institution that has been approved by
40 the Program Administrator in accordance with the Program Guide to originate a C-PACE
41 Loan and its successors and assigns; or (ii) the current holder of a C-PACE Loan.
42

43 *City* means the City of Virginia Beach, Virginia.
44

45 *Clerk's office* means the Office of the Clerk of the Circuit Court of the City of Virginia
46 Beach, Virginia.

47
48 *Commonwealth* means the "Commonwealth of Virginia."

49
50 *Council* means the City Council of the City of Virginia Beach, Virginia.

51
52 *C-PACE* means Commercial Property Assessed Clean Energy.

53
54 *C-PACE Act* means Virginia's "financing clean energy programs" law, § 15.2-958.3
55 of the Va. Code.

56
57 *C-PACE Amendment* means an amendment of the C-PACE Lien executed by
58 Capital Provider, the Property Owner and the Program Manager, as permitted in the C-
59 PACE Documents, which C-PACE Amendment shall be recorded in the Clerk's Office to
60 evidence each amendment to the C-PACE Loan.

61
62 *C-PACE Assignment (CP)* means a written assignment by one Capital Provider to
63 another Capital Provider of the C-PACE Payments and/or C-PACE Lien pursuant to the
64 terms of the assignment document.

65
66 *C-PACE Assignment (Locality)* means a written assignment by the City to the
67 Capital Provider to whom the C-PACE Loan is then due, wherein the City relinquishes
68 and assigns its right to enforce the C-PACE Lien to the Capital Provider, substantially in
69 the form attached as Addendum 1 to the C-PACE Lien Certificate.

70
71 *C-PACE Documents* means the C-PACE Program Agreement, Financing
72 Agreement, C-PACE Lien Certificate, C-PACE Assignment (CP) (if any), C-PACE
73 Assignment (Locality) (if any), C-PACE Amendment (if any), and any other document,
74 agreement, or instrument executed in connection with a C-PACE Loan.

75
76 *C-PACE Lien or Lien* means the voluntary special assessment lien levied against
77 the Property as security for the C-PACE Loan.

78
79 *C-PACE Lien Certificate* means the voluntary special assessment lien document
80 duly recorded among the Land Records against an Eligible Property to secure a C-PACE
81 Loan.

82
83 *C-PACE Loan or Loan* means a loan from a Capital Provider to finance a Project,
84 in accordance with the Program Guidelines.

85
86 *C-PACE Payment* means the periodic installment payments of the C-PACE Loan
87 by a Property Owner, due and payable to the Capital Provider or Program Administrator
88 as permitted by the C-PACE Act in such amounts and at such times as described in the
89 Assessment Payment Schedule.

90

91 *C-PACE Program or Program* means the program established by the City through
92 this Chapter, in accordance with the C-PACE Act, that in coordination with the Statewide
93 Program facilitates the financing of Eligible Improvements and provides for a C-PACE
94 Lien to be levied and recorded against the Property to secure the C-PACE Loan.
95

96 *C-PACE Program Agreement* means the Agreement executed between the
97 Property Owner, the Treasurer City, and the Capital Provider, and their respective
98 successors and assigns, which includes the terms and conditions for participation in the
99 C-PACE Program and the Property Owner's acknowledgment and consent for the City to
100 impose a voluntary special assessment, record a C-PACE Lien Certificate against the
101 Property Owner's Eligible Property and, if the City so determines, assign the rights to
102 enforce the C-PACE Lien and C-PACE Lien Certificate to the Capital Provider (and if so
103 assigned, also a consent of the Treasurer to such assignment). The C-PACE Program
104 Agreement shall be substantially in the form attached hereto as Appendix A.
105

106 *Delinquent Payment* means any C-PACE Payment that was not paid by a Property
107 Owner in accordance with the C-PACE Documents.
108

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

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

118
119 Eligible Improvements may be made to both existing Properties and new construction, as
120 further prescribed in this Chapter and the Program Guidelines. The Eligible Improvements
121 shall include types of authorized improvements enacted by the General Assembly to the
122 C-PACE Act after the date of adoption of this Chapter, without need for a conforming
123 amendment of this Chapter. In addition to the elaboration on the types of Eligible
124 Improvements provided in Sec. 35.5-4, below, a Program Administrator may include in its
125 Program Guidelines or other administrative documentation definitions, interpretations,
126 and examples of Eligible Improvements.
127

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

137
138 *Financing Agreement* means the written agreement, as may be amended,
139 modified, or supplemented from time to time, between a Property Owner and a Capital
140 Provider, regarding matters related to the extension and repayment of a C-PACE Loan to
141 finance Eligible Improvements. The Financing Agreement may contain any lawful terms
142 agreed to by the Capital Provider and the Property Owner.

143
144 *Land Records* means the land records of the Clerk’s Office.

145
146 *Lender Consent* means a written subordination agreement executed by each
147 mortgage or deed of trust lienholder with a lien on the Property that is the subject of a C-
148 PACE Loan, which allows the C-PACE Lien to have senior priority over the mortgage or
149 deed of trust liens.

150
151 *Loan Amount* means the original principal amount of the C-PACE Loan.

152
153 *Locality Agreement* means the Virginia Energy – Locality Commercial Property
154 Assessed Clean Energy Agreement between Virginia Energy and the City pursuant to
155 which the City elects to participate in the Statewide Program. The Locality Agreement
156 shall be substantially in the form attached hereto as Exhibit B.

157
158 *Program Administrator* means the private third party retained by Virginia Energy to
159 provide professional services to administer the Statewide Program in accordance with the
160 requirements of the C-PACE Act, this Chapter, the Locality Agreement and the Program
161 Guidelines.

162
163 *Program Fee(s)* means the fee(s) authorized by the C-PACE Act and charged to
164 participating Property Owners to cover the costs to design and administer the Statewide
165 Program, including, without limitation, compensation of the Program Administrator. While
166 Capital Providers are required to service their C-PACE Loans, if a Capital Provider does
167 not do so and the Program Administrator assumes the servicing responsibilities and
168 charges a servicing fee, the servicing fee shall also be included among the Program Fees.

169
170 *Program Guidelines* means a comprehensive document setting forth the
171 procedures, eligibility rules, restrictions, Program Fee(s), responsibilities, and other
172 requirements applicable to the governance and administration of the Statewide Program.

173
174 *Program Manager* means the City Manager or such person designated in writing
175 by the City Manager to (i) supervise the City’s C-PACE Program, (ii) act as liaison with the
176 Program Administrator and (iii) advise the Program Administrator as to who will sign the
177 C-PACE Documents to which the Locality is a party on the Locality’s behalf. If the
178 employee of the City who customarily signs agreements for the Locality is not the person
179 designated as Program Manager, then references in this Ordinance and in the C-PACE
180 Documents to the Program Manager signing certain C-PACE Documents on behalf of the
181 Locality shall be construed to also authorize such customary signatory for the City to
182 execute such C-PACE Documents.

183
184 *Project* means the construction or installation of Eligible Improvements on Eligible
185 Property.
186

187 *Property Owner* means (i) the Property Owner(s) of Eligible Property who
188 voluntarily obtain(s) a C-PACE Loan from a Capital Provider in accordance with the
189 Program Guidelines; or (ii) a successor in title to the Property Owner.
190

191 *Property Owner Certification* means a notarized certificate from Property Owner,
192 certifying that (i) Property Owner is current on payments on Loans secured by a mortgage
193 or deed of trust lien on the Property and on real estate tax payments, (ii) that the Property
194 Owner is not insolvent or in bankruptcy proceedings, and (iii) that the title of the Property
195 is not in dispute, as evidenced by a title report or title insurance commitment from a title
196 insurance company acceptable to the Program Administrator and Capital Provider.
197

198 *Statewide Program* means the statewide C-PACE financing program sponsored
199 by Virginia Energy, established to provide C-PACE Loans to Property Owners in
200 accordance with the C-PACE Act, this Chapter, the Locality Agreement, the C-PACE
201 Documents and the Program Guidelines.
202

203 *Useful Life* means the normal operating life of the fixed asset.
204

205 *Virginia Code or Va. Code* means the Code of Virginia of 1950, as amended.
206

207 *Virginia Energy* means the Virginia Department of Energy.
208

209 **Sec. 35.5-3. - Effective date.**

210 This Chapter shall become effective immediately following its adoption.
211
212

213 **ARTICLE II. - PROGRAM STRUCTURE**

214 **Sec. 35.5-4. - C-PACE Program; Eligible Improvements.**

215 (a) *C-Pace Program*. The C-PACE Program shall be available throughout the City of
216 Virginia Beach, provided that the Property Owner, the Property, the proposed
217 Eligible Improvements, the Capital Provider and the principal contractors all qualify
218 for the Statewide Program. The following types of Eligible Improvements may be
219 financed with a C-PACE Loan:
220
221

- 222
223 (1) Renewable energy production and distribution facilities (e.g., solar
224 photovoltaic, fiber optic solar, solar thermal, wind, wave and/or tidal energy,
225 biomass, combined heat and power, geothermal and fuel cells), whether
226 attached to a building or sited on the ground, and the storage and/or
227 distribution of the energy produced thereby, whether for use on-site or sale

- 228 or export to a utility or pursuant to a power purchase agreement with a non-
229 utility purchaser;
230
- 231 (2) Energy usage efficiency systems (e.g., high efficiency lighting and building
232 systems, heating, ventilation, and air conditioning (HVAC) upgrades, air
233 duct sealing, high efficiency hot water heating systems, building shell or
234 envelope improvements, reflective roof, cool roof, or green roof systems,
235 and/or weather-stripping), or other capital improvements or systems which
236 result in the reduction of consumption of energy over a baseline established
237 in accordance with Program Guidelines;
238
- 239 (3) Water usage efficiency and safe drinking water improvements (e.g.,
240 recovery, purification, recycling, and other forms of water conservation), or
241 other capital improvements or systems which result in the reduction of
242 consumption of water over a baseline established in accordance with
243 Program Guidelines;
244
- 245 (4) Resiliency improvements which increase the capacity of a structure or
246 infrastructure to withstand or recover from natural disasters, the effects of
247 climate change, and attacks and accidents, including, but not limited to:
248
- 249 a. Flood mitigation or the mitigation of impacts of flooding;
 - 250 b. Inundation adaptation;
 - 251 c. Natural or nature-based features and living shorelines, as defined in
252 Va. Code § 28.2-104.1;
 - 253 d. Enhancement of fire or wind resistance, including but not limited to
254 reinforcement and insulation of a building envelope to reduce the
255 impacts of excessive heat or wind;
 - 256 e. Microgrids;
 - 257 f. Energy storage; and
 - 258 g. Enhancement of resilience capacity of a natural system, structure,
259 or infrastructure.
- 260
- 261 (5) Stormwater management improvements that reduce onsite stormwater
262 runoff into a stormwater system, such as reduction in the quantity of
263 impervious surfaces or providing for the onsite filtering of stormwater;
264
- 265 (6) Environmental remediation improvements, including but not limited to:
266 a. Improvements that promote indoor air and water quality;
- 267 b. Asbestos remediation;
 - 268 c. Lead paint removal; and
 - 269 d. Mold remediation;
- 270
- 271 (7) Soil or groundwater remediation;
- 272
- 273 (8) Electric vehicle infrastructure improvements such as charging stations;

274
275 (9) Construction, renovation, or retrofitting of a Property directly related to the
276 accomplishment of any purpose listed in subsections (1) – (8), above,
277 whether such Eligible Improvement was erected or installed in or on a
278 building or on the ground; it being the express intention of the City to allow
279 Eligible Improvements that constitute, or are a part of, the construction of a
280 new structure or building to be financed with a C-PACE Loan; ~~or~~ and

281
282 (10) Any other category of improvement (i) approved by the Program
283 Administrator with the consent of the Program Manager as qualifying for
284 financing under the Statewide Program, in accordance with the C-PACE Act
285 (including amendments thereto which authorize additional types of Eligible
286 Improvements), or (ii) added by the General Assembly to the C-PACE Act
287 after the date of adoption of this Chapter, without need for a conforming
288 amendment of this Chapter. In addition, a Program Administrator may
289 include in its Program Guidelines or other administrative documentation
290 definitions, interpretations and examples of these categories of Eligible
291 Improvements.

292
293 (b) *Use of C-PACE Loan Proceeds.* The proceeds of a C-PACE Loan may be used to
294 pay for the construction, development, and consulting costs directly related to
295 Eligible Improvements, including without limitation, the cost of labor, materials,
296 machinery, equipment, plans, specifications, due diligence studies, consulting
297 services (e.g., engineering, energy, financial, and legal), Program Fees, C-PACE
298 Loan fees, capitalized interest, interest reserves, and C-PACE transaction
299 underwriting and closing costs.

300
301 (c) *Program Applications; Prioritization.* The Program Administrator shall make
302 available the Statewide Program’s Program application process, to provide for the
303 review and approval of proposed Eligible Improvements and C-PACE Documents.
304 Program applications will be processed by the Statewide Program in accordance
305 with the eligibility requirements and procedures as set forth in the Program
306 Guidelines.

307
308 **Sec. 35.5-5. - C-PACE Loan Requirements; Program Fees; Reporting; Program**
309 **Administrator; Program Guide.**

310
311 (a) *Source of Loans.* C-PACE Loans shall be originated by Capital Providers. The City
312 and/or its respective governmental entities shall have no obligation to originate or
313 guarantee any C-PACE Loans.

314
315 (b) *C-PACE Loan Amount Thresholds.* The minimum Loan Amount that may be
316 financed for each Project is fifty thousand dollars (\$50,000). There is no maximum
317 aggregate amount that may be financed with respect to an Eligible Property,
318 except as stipulated in the Program Guidelines. There shall be no limit on the total
319 value of all C-PACE Loans issued under the C-PACE Program.

- 320
321 (c) *C-PACE Loan Refinancing or Reimbursement.* The Program Administrator may
322 approve a loan application submitted within two years of the City's issuance of a
323 certificate of occupancy or other evidence that the Eligible Improvements comply
324 substantially with the plans and specifications previously approved by the City and
325 that such loan may refinance or reimburse the Property Owner for the total costs
326 of such Eligible Improvements.
327
- 328 (d) *C-PACE Loan Interest.* The interest rate of a C-PACE Loan shall be as set forth in
329 the C-PACE Documents.
330
- 331 (e) *C-PACE Loan Term.* The term of a C-PACE Loan shall not exceed the weighted
332 average Useful Life of the Eligible Improvements, as determined by the Program
333 Administrator.
334
- 335 (f) *Apportionment of Costs.* All of the costs incidental to the financing, administration,
336 collection, and/or enforcement of the C-PACE Loan shall be borne by the Property
337 Owner.
338
- 339 (g) *Financing Agreements.* Capital Providers may use their own Financing
340 Agreements for C-PACE Loans, but the Financing Agreement may not conflict with
341 the provisions of this Chapter, the C-PACE Act, or the C-PACE Program
342 Agreement. To the extent of any conflict, this Chapter, the C-PACE Act, and the
343 C-PACE Program Agreement shall prevail.
344
- 345 (h) *C-PACE Program Agreement.* In order to participate in the C-PACE Program,
346 Property Owner and Capital Provider shall enter into a C-PACE Program
347 Agreement, which sets forth certain terms and conditions for participation in the
348 City's C-PACE Program. The Program Manager is authorized to approve the C-
349 PACE Loan and execute the C-PACE Program Agreement on behalf of the City
350 without further action by the City Council. The Treasurer is also authorized to
351 execute the C-PACE Program Agreement without further action by the City
352 Council. The C-PACE Program Agreement shall be binding upon the parties
353 thereto and their respective successors and assigns until the C-PACE Loan is paid
354 in full. The Program Administrator may modify the C-PACE Program Agreement
355 as necessary to further the Statewide Program's purpose and to encourage
356 Program participation, so long as such modifications do not conflict with the
357 Program Guidelines, this Chapter, the Locality Agreement or the C-PACE Act.
358
- 359 (i) *Repayment of C-PACE Loan; Collection of C-PACE Payments.* C-PACE Loans
360 will be repaid by the Property Owner through C-PACE Payments made in the
361 amounts and at such times as set forth in the Assessment Payment Schedule, the
362 C-PACE Documents and Program Guidelines. The Capital Provider shall be
363 responsible, subject to and in accordance with the terms of the C-PACE Program
364 Agreement and other C-PACE Documents, for the servicing of the C-PACE Loans
365 and the collection of C-PACE Payments. If a Capital Provider fails to service a C-

366 PACE Loan, such C-PACE Loan shall be serviced by the Program Administrator.
367 Nothing herein shall prevent the Capital Provider or Program Administrator from
368 directly billing and collecting the C-PACE Payments from the Property Owner to
369 the extent permitted by the C-PACE Act or other applicable law. The enforcement
370 of C-PACE Loans and their C-PACE Documents during an event of default
371 thereunder is governed by Section 35.5-6.
372

373 (j) *C-PACE Loan Assumed.* A party which acquires a Property which is subject to a
374 C-PACE Lien, whether it obtained ownership of the Property voluntarily or
375 involuntarily, becomes the Property Owner under the C-PACE Documents and, by
376 virtue of the C-PACE Lien running with the land, assumes the obligation to repay
377 all remaining unpaid C-PACE Payments which are due and which accrue during
378 such successor Property Owner's period of ownership. Only the current C-PACE
379 Payment and any Delinquent Payments, together with any penalties, fees and
380 costs of collection, shall be payable at the settlement of a Property upon sale or
381 transfer, unless otherwise agreed to by the Capital Provider.
382

383 (k) *Transfer of C-PACE Loans.* C-PACE Loans may be transferred, assigned, or sold
384 by a Capital Provider to another Capital Provider at any time until the C-PACE
385 Loan is paid in full provided that Capital Provider shall (i) notify the Property Owner
386 and Program Administrator prior to the billing date of the next C-PACE Payment
387 due (and within thirty (30) days if the C-PACE Loan is serviced by the Program
388 Administrator), (ii) record a C-PACE Loan Assignment (CP) among the Land
389 Records, and (iii) deliver a copy of the recorded C-PACE Assignment (CP) to the
390 Property Owner, City, and Program Administrator. Recordation of the C-PACE
391 Assignment (CP) shall constitute an assumption by the new Capital Provider of
392 the rights and obligations of the original Capital Provider contained in the C-PACE
393 Documents.
394

395 (l) *Program Fees.* The Statewide Program will be self-financed through Program
396 Fees charged to participating Property Owners together with any funds budgeted
397 by the General Assembly to support the Statewide Program. The Program Fees
398 are established to cover the actual and reasonable costs to design and administer
399 the Statewide Program, including the compensation of a third-party Program
400 Administrator. The amount(s) of the Program Fees shall be set forth in the
401 Program Guidelines. Program Fees may be changed by the Program
402 Administrator from time to time and shall only apply to C-PACE Loans executed
403 after the date the revised Fees are adopted.
404

405 (m) *Locality Agreement.* The City shall opt into the Statewide Program by entering into
406 the Locality Agreement, adopting the Statewide Program as the City's own C-
407 PACE Program. In accordance with the C-PACE Act, opting into the C-PACE
408 Program shall not require the City to conduct a competitive procurement process.
409 The Program Manager is authorized to execute the Locality Agreement on behalf
410 of the City without further action by the City Council.
411

412 (n) *Program Guidelines.* The Program Administrator, under the direction of and in
413 consultation with Virginia Energy, has designed the Program Guidelines to create
414 an open, competitive, and efficient C-PACE Program. The Program Administrator
415 may modify the Program Guidelines from time to time provided such amendments
416 are (i) consistent with the C-PACE Act and (ii) approved by Virginia Energy before
417 taking effect._

418
419 (o) *Indemnification.* The Program Administrator shall indemnify, defend and hold the
420 City harmless against any claim brought against the City or any liability imposed
421 on the City as a result of any action or omission to act by the Program
422 Administrator.

423
424 **Sec. 35.5-6. - Levy of assessment; recordation; priority; amendment; enforcement**
425 **and collection costs.**

426
427 (a) *Levy of Voluntary Special Assessment Lien.* Each C-PACE Loan made under the
428 C-PACE Program shall be secured by a voluntary special assessment lien (i.e. a
429 C-PACE Lien) levied by the City against each Property benefitting from Eligible
430 Improvements financed by such C-PACE Loan. The C-PACE Lien shall be in the
431 Loan Amount, but shall secure not only the principal of the C-PACE Loan, but also
432 all interest, delinquent interest, late fees, penalties, Program Fees, and collection
433 costs (including attorneys' fees and costs) payable in connection therewith._

434
435 (b) *Recordation of C-PACE Lien Certificate.* Each C-PACE Lien shall be evidenced
436 by a C-PACE Lien Certificate in the Loan Amount, but shall also expressly state
437 that it also secures all interest, delinquent interest, late fees, penalties and
438 collection costs (including attorneys' fees and costs) payable in connection
439 therewith, and a copy of the Assessment Payment Schedule shall be attached
440 thereto as an exhibit. The Program Manager is hereby authorized to, and shall
441 promptly, execute the C-PACE Lien Certificate on behalf of the City and deliver it
442 to the Capital Provider, without further action by the City Council. Upon the full
443 execution of the C-PACE Documents and funding of the C-PACE Loan, Capital
444 Provider shall cause the recordation of the C-PACE Lien Certificate in the Land
445 Records of the Clerk's Office.

446
447 (c) *Priority.* The C-PACE Lien shall have the same priority as a real property tax lien
448 against real property, except that it shall have priority over any previously recorded
449 mortgage or deed of trust lien on the Property only if prior to the recording of the
450 C-PACE Lien, (i) Property Owner has obtained a written Lender Consent, in a form
451 and substance acceptable to the holder of such prior mortgage or deed of trust in
452 its sole and exclusive discretion, executed by such lienholder and recorded with
453 the C-PACE Lien Certificate in the Land Records; and (ii) prior to the recording of
454 the C-PACE Lien Certificate, Property Owner has delivered an executed Property
455 Owner Certification to the City in connection with the C-PACE Loan closing. Only
456 the current C-PACE Payment and any Delinquent Payments shall constitute a first
457 lien on the Property. The C-PACE Lien shall run with the land and that portion of

458 the C-PACE Lien under the C-PACE Program Agreement that has not yet become
459 due shall not be eliminated by foreclosure of a real property tax lien.
460

461 (d) *Amendment of Lien.* Upon written request by a Capital Provider in accordance with
462 the Program Guidelines, the Program Manager without further action by the City
463 Council, shall join with the Capital Provider and the Property Owner in executing
464 a C-PACE Amendment of the C-PACE Loan and the C-PACE Lien after the
465 closing of the C-PACE Loan. The C-PACE Amendment shall be recorded in the
466 Land Records.
467

468 (e) *Enforcement and Collection Costs.* In the event of Property Owner's default under
469 the terms of the C-PACE Documents, the City, acting by and through the
470 Treasurer, may enforce the C-PACE Lien for the amount of the Delinquent ~~C-~~
471 ~~PACE~~ Payments, late fees, penalties, interest, and any costs of collection in the
472 same manner that a property tax lien against real property may be enforced under
473 Title 58.1, Chapter 39, Article 4 of the Virginia Code. If the City elects not to enforce
474 the C-PACE Lien, which election shall be made within thirty (30) days of receipt
475 by the City from the Capital Provider of notice of the Property Owner's default
476 under the terms of the C-PACE Documents, then the City, acting by and through
477 the Treasurer, shall, within fifteen (15) days of the City's determination not to
478 enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in
479 accordance with the terms of the C-PACE Documents to the Capital Provider by
480 executing a C-PACE Lien Assignment (Locality) and delivering such instrument to
481 the Capital Provider for recordation in the Land Records. The preceding sentence
482 notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded
483 at any time during the term of the C-PACE Loan, including the C-PACE Loan's
484 closing, regardless of whether the C-PACE Loan is then in default. Upon such
485 assignment and recordation, the Capital Provider is authorized to and shall
486 enforce the C-PACE Lien according to the terms of the C-PACE Documents in the
487 same manner that a property tax lien against real property may be enforced under
488 Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the
489 name of the City and its Treasurer, and this right to enforce expressly includes the
490 authorization for the Capital Provider to engage legal counsel to advise the Capital
491 Provider and conduct all aspects of such enforcement. Such legal counsel, being
492 authorized to institute suit in the name of the City and its Treasurer, shall have the
493 status of "Special Counsel to the City and its Treasurer" and an "attorney
494 employed by the governing body," and possess all the rights and powers of an
495 attorney employed under Va. Code §§ 58.1-3966 and 58.1-3969, with the express
496 authority to exercise for the benefit of the Capital Provider every power granted to
497 a local government and/or its Treasurer and its or their attorneys for the
498 enforcement of a property tax lien under, or in connection with, any provision
499 contained in Title 58.1, Chapter 4 of the Virginia Code. The City, on its behalf and
500 on behalf of its Treasurer, waives its right to require such legal counsel to post the
501 optional bond described in Va. Code § 58.1-3966. All collection and enforcement
502 costs, and expenses (including legal fees and costs), interest, late fees, other
503 types of fees, and penalties charged by the City or Capital Provider, as applicable

504 and consistent with the C-PACE Act and the Virginia Code, shall (i) be added to
505 the Delinquent Payments being collected, (ii) become part of the aggregate
506 amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be
507 secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to
508 which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to
509 the fullest extent permitted by the C-PACE Documents, the C-PACE Act, or
510 general law. The Property Owner of a Property being sold to pay Delinquent
511 Payments, or other interested party, may redeem the Property at any time prior to
512 the Property's sales, in accordance with Va. Code §§ 58.1-3974 and 58.1-3975.
513

514 **Sec. 35.5-7. -. Role of the City; limitation of liability**
515

516 Property Owners and Capital Providers participate in the C-PACE Program and
517 the Statewide Program at their own risk. By executing the C-PACE Documents including
518 the C-PACE Program Agreement, or by otherwise participating in the C-PACE Program
519 and the Statewide Program, the Property Owner, Capital Provider, contractor, or other
520 party or participant acknowledge and agree, for the benefit of the City and as a condition
521 of participation in the C-PACE Program and the Statewide Program, that: (i) the City
522 undertakes no obligations under the C-PACE Program and the Statewide Program
523 except as expressly stated herein or in the C-PACE Program Agreement; (ii) in the event
524 of a default by a Property Owner, the City has no obligation to use City funds to make C-
525 PACE Payments to any Capital Provider including, without limitation, any fees, expenses,
526 and other charges and penalties, pursuant to a Financing Agreement between the
527 Property Owner and Capital Provider; (iii) no C-PACE Loan, C-PACE Payment, C-PACE
528 Lien, or other obligation arising from any C-PACE Document, the C-PACE Act, or this
529 Chapter shall be backed by the credit of the City, the Commonwealth, or its political
530 subdivisions, including, without limitation, City taxes or other City funds; (iv) no C-PACE
531 Loan, C-PACE Payment, C-PACE Lien or other obligation arising from any C-PACE
532 Document, the C-PACE Act, or this Chapter shall constitute an indebtedness of the City
533 within the meaning of any constitutional or statutory debt limitation or restriction; (v) the
534 City has not made any representations or warranties, financial or otherwise, concerning
535 a Property Owner, Eligible Property, Project, Capital Provider, or C-PACE Loan; (vi) the
536 City makes no representation or warranty as to, and assumes no responsibility with
537 respect to, the accuracy or completeness of any C-PACE Document, or any assignment
538 or amendment thereof; (vii) the City assumes no responsibility or liability in regard to any
539 Project, or the planning, construction, or operation thereof; (viii) each Property Owner or
540 Capital Provider shall, upon request, provide the City with any information associated with
541 a Project or a C-PACE Loan that is reasonably necessary to confirm that the Project or
542 C-PACE Loan satisfies the requirements of the Program Guidelines; and (ix) each
543 Property Owner, Capital Provider, or other participant under the Program, shall comply
544 with all applicable requirements of the Program Guidelines.
545

546 **Sec. 35.5-8. – Severability.**
547

548 As provided by § 1-13 of the City Code of the City of Virginia Beach, the provisions
549 of this Chapter are severable. If a court of competent jurisdiction determines that a word,

550 phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid, or
551 that the application of any part of the Chapter or provision to any person or circumstance
552 is invalid, the remaining provisions of this Chapter shall not be affected by that decision
553 and continue in full force and effect.

Adopted by the City Council of the City of Virginia Beach, Virginia, on the 21st
day of February, 2023.