

1 The Rules Committee offers the following Substitute to file number  
2 2021-824:

3  
4 Introduced by the City Council President at the request of the  
5 Mayor:

6  
7  
8 **ORDINANCE 2021-824**

9 AN ORDINANCE MAKING CERTAIN FINDINGS AND  
10 AUTHORIZING "COMMERCIAL PROPERTY ASSESSED CLEAN  
11 ENERGY" (C-PACE) ASSESSMENTS TO ENCOURAGE THE  
12 ENERGY EFFICIENCY OF THE COMMERCIAL BUSINESSES  
13 IN THE CITY; CREATING A NEW CHAPTER 344, TITLE  
14 VIII, *ORDINANCE CODE*; PROVIDING FOR DEFINITIONS;  
15 PROVIDING A SHORT TITLE; PROVIDING A PURPOSE;  
16 PROVIDING AUTHORITY FOR LOCAL GOVERNMENTS;  
17 PROVIDING FOR C-PACE PROGRAM ADMINISTRATION;  
18 PROVIDING FOR C-PACE PROGRAM REQUIREMENTS;  
19 PROVIDING FOR C-PACE PROGRAM BOUNDARIES;  
20 PROVIDING FOR ELIGIBLE PARTICIPANTS; PROVIDING  
21 REQUIREMENTS FOR PROGRAM COMPLETION AND  
22 ASSESSMENT IMPLEMENTATION; PROVIDING  
23 CODIFICATION INSTRUCTIONS AND AUTHORITY; AND  
24 PROVIDING AN EFFECTIVE DATE.

25  
26 **WHEREAS**, the Florida Legislature has enacted Florida Statute  
27 §163.08, which provides that certain improvements to real properties  
28 for energy conservation and efficient, renewable energy improvements,  
29 or wind resistance improvements, may qualify for funding by the local  
30 government to be voluntarily collected through non-ad valorem special  
31 assessment process; and

1           **WHEREAS**, the Commercial Property Assessed Clean Energy (C-PACE)  
2 Program enables commercial property owners a mechanism to finance  
3 energy improvements that increase efficiency, reduce energy  
4 consumption or reduce emergency resource impacts which is a benefit  
5 to society as a whole and specifically the citizens of the City of  
6 Jacksonville; and

7           **WHEREAS**, Section 163.08(3), Florida Statutes, authorizes "local  
8 governments", which are defined in §163.08(2)(a) to include a county,  
9 a municipality, a dependent special district (per F.S. §189.012), or  
10 separate legal entities (per F.S. §163.01(7)), to levy non-ad valorem  
11 special assessments to fund qualifying improvements; and

12           **WHEREAS**, the use of administrators to manage and take  
13 responsibility for the Program and its operation without cost to the  
14 City taxpayers or the City's general fund, while simultaneously  
15 relieving the City of any liability or impacting its credit, and

16           **WHEREAS**, the creation of an ordinance specifically providing  
17 minimum standards and limitation for the operation of C-PACE Program  
18 provides protections for the participants and operators of the  
19 Program, and

20           **BE IT ORDAINED** by the Council of the City of Jacksonville:

21           **Section 1.           Incorporation of Recitals.** The foregoing  
22 "WHEREAS" clauses are hereby ratified and confirmed as being true and  
23 correct and are hereby made a specific part of this Ordinance upon  
24 adoption hereof.

25           **Section 2.           Title VIII (Construction Regulations and**  
26 **Building Codes), Ordinance Code, amended.** Title VIII (Construction  
27 Regulations and Building Codes), *Ordinance Code*, is hereby amended  
28 to create a new Chapter 344 (Commercial Property Assessed Clean Energy  
29 (C-PACE) Program) as follows:

30           **Title VIII - Construction Regulations and Building Codes**

31                           \* \* \*

1 **Chapter 344 - Commercial Property Assessed Clean Energy (C-PACE)**

2 **Program**

3 **Sec. 344.101 - Short Title.** This title shall be known as the  
4 "City of Jacksonville Commercial Property Assessed Clean Energy  
5 Program" or "JAX C-PACE."

6 **Sec. 344.102.- Definitions.** For the purpose of this Title, the  
7 definitions for the following terms, shall apply:

8 A. *City* shall mean the consolidated City of Jacksonville  
9 and Duval County.

10 B. *C-PACE Assessment* shall mean the voluntary non-ad  
11 valorem assessment placed on a property owner's tax  
12 bill as a result of financing obtained pursuant to the  
13 C-PACE Financing Agreement.

14 C. *Contractor* shall mean an appropriately licensed  
15 contractor authorized by the C-PACE Administrator to  
16 sell, construct or install C-PACE Qualifying  
17 Improvements funded through the JAX C-PACE Program.

18 D. *C-PACE Financing Agreement* shall mean the agreement  
19 entered into between the Eligible Participant and the  
20 City, the C-PACE Local Government, or the C-PACE  
21 Administrator, as applicable, specifying the C-PACE  
22 Qualifying Improvements to be installed at the property  
23 and the terms and conditions for financing those  
24 improvements through voluntary non-ad valorem special  
25 assessments levied on the property.

26 E. *C-PACE Qualifying Improvement* shall mean those  
27 improvements to new or existing commercial real  
28 property provided for in F.S. §163.08(2)(b), including,  
29 but not limited to, energy conservation and efficiency,  
30 renewable energy and wind-resistance improvements,  
31 which shall be affixed to a building or facility that

1 is part of the property, as set forth in F.S.  
2 §163.08(10).

3 F. *C-Pace Program, Program or JAX C-PACE Program* shall mean  
4 the City of Jacksonville's C-PACE program.

5 G. *Eligible Participant* shall mean any commercial property  
6 owner who voluntarily participates in the C-PACE  
7 Program and satisfies the eligibility requirements set  
8 forth in section 344.108, below.

9 H. *Eligible Property* means nonresidential properties and  
10 planned developments, as well as multifamily apartment  
11 buildings with five or more leased apartment units  
12 owned by an entity legally authorized to enter a  
13 contract, located within the jurisdictional boundaries  
14 of Duval County excepting any municipality that has  
15 opted out of the JAX C-PACE Program.

16 I. *PACE Act* shall mean F.S. §163.08, as it may be amended  
17 from time to time.

18 J. *C-PACE Administrator* shall mean a for-profit or not-  
19 for-profit organization responsible for administering  
20 the JAX C-PACE program on behalf of and at the  
21 discretion of the City or a C-PACE Local Government  
22 consistent with F.S. §163.08(6).

23 K. *C-Pace Local Government* shall be defined as provided in  
24 the *Pace Act*, F.S. s.163.08(2)(a), which may be amended  
25 from time to time.

26 **Sec. 344.103 - Purpose**

27 The assessments authorized by this Chapter shall be imposed,  
28 levied, collected and enforced against commercial properties located  
29 within Duval County which have voluntarily agreed to enhance their  
30 commercial property with energy efficient improvements that they wish  
31 to be financed and repaid through non-ad valorem special assessments.

1           This ordinance further provides requirements for all C-PACE  
2 Local Governments that are authorized to operate within Duval County  
3 to ensure that: (1) The citizens of Jacksonville are fully apprised  
4 of the Program; (2) C-PACE Qualifying Improvements meet the statutory  
5 goals set forth in F.S. §163.08; and (3) Contractors meet certain  
6 standards of conduct as set forth in federal, state, or local law.

7           This article is intended to add requirements to the provisions  
8 of F.S. §163.08 and other applicable law as it currently exists and  
9 should be construed consistently with the PACE Act and any such other  
10 applicable law. To the extent that the PACE Act provides for  
11 additional or more restrictive requirements not otherwise found in  
12 this article or applicable law, the provisions of the PACE Act must  
13 be met. To the extent that this article provides for more restrictive  
14 or additional requirements not found in the PACE Act or any such  
15 other applicable law, the provisions of this article are intended to  
16 apply.

17           **Sec. 344.104 - Authority.** The City of Jacksonville, a  
18 consolidated municipal corporation and political subdivision existing  
19 under the laws of the State of Florida, is authorized under Florida  
20 Statute §163.08(3) to levy voluntary non-ad valorem special  
21 assessments to fund C-PACE Qualifying Improvements. Consistent with  
22 the findings of the Florida Legislature set forth in Florida Statute  
23 §163.08(1)(c), the use of voluntary special assessments to finance  
24 C-PACE Qualifying Improvements represents a direct and special  
25 benefit to the real properties electing to participate in the Program  
26 which is in furtherance of compelling state and local interests in  
27 energy conservation and promotes the health, safety and welfare of  
28 the public.

29           **Sec. 344.105 - Program Administration.** Pursuant to Florida  
30 Statute §163.08(6), the City and C-PACE Local Government in  
31 establishing its C-PACE Program may utilize private administrators,

1 defined in s. 344.102, *Ordinance Code*, as C-PACE Administrators, to  
2 facilitate the program application and approval process.

3 **Sec. 344.106 - Program Requirements.** C-PACE Administrators shall  
4 establish a uniform process for Eligible Participants to apply for  
5 participation in the JAX C-PACE program. Any JAX C-PACE program  
6 established shall comply with the following standards, at a minimum,  
7 and include the following:

8 A. *Application*

9 (i) *Data Security.* C-PACE Administrators and C-PACE  
10 Local Governments shall take security measures to  
11 protect the security and confidentiality of  
12 consumer records and information to the extent  
13 permitted or mandated by law. In addition, a  
14 privacy policy must be in place that complies with  
15 state and federal law and, in particular, shall  
16 provide a property owner the ability to opt-out of  
17 having the property owner's information shared with  
18 third parties, except where expressly permitted or  
19 required by state or federal law.

20 (ii) *Florida Public Records and Sunshine laws.* C-PACE  
21 Administrators shall be required to abide by all  
22 applicable laws related to public records, and  
23 their retention, including those set forth in  
24 Chapter 119, Florida Statutes. Further, C-PACE  
25 Administrators shall ensure that the organization  
26 and its employees/directors comply with any  
27 requirements of Chapter 286, Florida Statutes,  
28 regarding open government which apply to their  
29 organization.

30 B. *Notices*

31 (i) *To Lender.* At least 30 days before entering into a

1 financing agreement, the property owner shall  
2 provide to the holders or loan servicers of any  
3 existing mortgages encumbering or otherwise  
4 secured by the property a notice of the owner's  
5 intent to enter into a financing agreement together  
6 with the maximum principal amount to be financed  
7 and the maximum annual assessment necessary to  
8 repay that amount. A verified copy or other proof  
9 of such notice shall be provided to the C-PACE  
10 Local Government and the C-PACE Administrator.

11 (ii) *To Purchaser.* Property owner must comply with F.S.  
12 §163.08(14) regarding providing a written  
13 disclosure statement to a prospective purchaser.  
14 Failure to provide the notice referenced above in  
15 F.S. §163.08(14) to a purchaser of the property  
16 shall have no effect on either the validity of any  
17 C-PACE Assessment or any obligation of a property  
18 owner.

19 C. Improvements

20 (i) All C-PACE Qualifying Improvements shall be  
21 properly permitted (where applicable) and must  
22 comply with Florida and local codes.

23 D. Permits

24 (i) *Pre-Performance.* Contractors are responsible  
25 for obtaining any and all permits required by law for  
26 installation of the C-PACE Qualifying Improvements.  
27 If a project requires use of sub-contractors or other  
28 licensed specialty contractors (i.e. electrical,  
29 plumbing, etc.), the general or lead contractor is  
30 responsible for verifying that all permits have been  
31 obtained for the specialty/sub-contracted work.

1           E.    *Contractors.*

2           (i)   *Licensure.*  As required under Florida Statutes  
3                   §163.08(11), and other state and local laws, any  
4                   contractor constructing or installing a C-PACE  
5                   Qualifying Improvement shall be properly licensed  
6                   as a Contractor.

7           (ii) *Management.*  Each C-PACE Administrator shall:

8                   (a)  To the extent possible, conduct outreach to  
9                   and enroll local contractors as Contractors;

10                   (b)  Strictly enforce anti-kickback policies and  
11                   procedures consistent with federal, state and  
12                   local law;

13                   (c)  Ensure that all Contractors hold necessary  
14                   licenses;

15                   (d)  Confirm Contractor qualifications based upon  
16                   consumer complaints or other indications of  
17                   lack of compliance; and

18           F.    *Financing.*  The C-PACE Administrator shall do the  
19                   following:

20           (i)   *Agreement.*  After achieving compliance with all  
21                   other mandated steps provided for by law, including  
22                   but not limited to receiving a verified copy or  
23                   other proof of such notice required by F.S.  
24                   §163.08(13), the C-PACE Administrator shall  
25                   coordinate the execution of the C-PACE Financing  
26                   Agreement, including obtaining the signatures of  
27                   all applicable parties.  Such agreement and  
28                   supporting documentation referenced within such  
29                   agreement and attached thereto, must include, at a  
30                   minimum, the following:

31                   (a)  The full legal description or property



1 address of the property, subject to the C-  
2 PACE Assessment.

3 (b) The amount of funding, including a breakdown  
4 of the estimated costs for the C-PACE  
5 Qualifying Improvements, any fees or  
6 administrative costs, and the estimated  
7 annual assessment figure to be provided to  
8 the Eligible Participant.

9 (c) Express voluntary consent by the Eligible  
10 Participant to accept the voluntary non-ad  
11 valorem special assessment collection  
12 process, set forth in F.S. § 197.3632, with  
13 express consent regarding waiver of published  
14 notice and other procedural requirements that  
15 are not applicable due to the single property  
16 being assessed in every scenario.

17 (d) The length of time for the Eligible  
18 Participant to pay back the amount financed  
19 through the voluntary non-ad valorem special  
20 assessment, which shall not exceed 30 years.

21 (e) The Eligible Participant shall be responsible  
22 for verifying that the C-PACE Qualifying  
23 Improvements are completed as reflected in  
24 the approved application documents. The  
25 Eligible Participant also consents to  
26 providing access to the C-PACE Administrator  
27 and the C-PACE Local Government to the  
28 property to verify that the C-PACE Qualifying  
29 Improvements have been completed as proposed  
30 in the application.

31 (f) At or before the execution of a contract for

1 the sale and purchase of any property against  
2 which a voluntary non-ad valorem special  
3 assessment for the JAX C-PACE Program has been  
4 levied and has an unpaid balance due, the  
5 seller shall give the prospective purchaser a  
6 notice of the lien in accordance with F.S.  
7 §163.08(14).

8 (g) The risks associated with participating in  
9 the JAX C-PACE Program shall be clearly  
10 disclosed in plain language in the C-PACE  
11 Financing Agreement with the Eligible  
12 Participant, including risks related to the  
13 failure of the Eligible Participant to make  
14 payments, the risk that they may not be able  
15 to refinance the property or sell the property  
16 unless the C-PACE assessment is paid off in  
17 full first, and the risk of issuance of a tax  
18 certificate and loss of the property pursuant  
19 to F.S. ch. 197.

20 (h) Description of the C-PACE Qualifying  
21 Improvements, their cost, and, if applicable,  
22 the estimated completion date.

23 (i) Notice of the voluntary non-ad valorem  
24 special assessment for the property shall be  
25 recorded in the public records maintained by  
26 the Clerk of Courts for Duval County Florida.

27 (j) The C-PACE Financing Agreement shall clearly  
28 disclose, in plain language, the interest  
29 rate to be charged, as well as any and all  
30 fees or penalties that may be separately  
31 charged to the Eligible Participant,

1 including potential late fees. The subsequent  
2 charging or collecting of any additional fees  
3 that were not specifically disclosed in the  
4 written agreement with the property owner  
5 shall be prohibited.

6 (k) The C-PACE Financing Agreement shall clearly  
7 disclose, in plain language, that Eligible  
8 Participants have the right at any time to  
9 prepay in whole or in part the C-PACE  
10 assessments as further outlined in the  
11 financing agreement upon ten (10) days notice  
12 to the C-PACE Administrator.

13 *G. Prohibited Practices*

14 (i) *Marketing and Communications.*

15 (a) Marketing practices for a C-PACE  
16 Administrator that are or could appear to be  
17 unfair, deceptive, abusive, or misleading, or  
18 that violate applicable laws or regulations,  
19 that are inappropriate, incomplete or are  
20 inconsistent with the C-PACE Administrator's  
21 or C-PACE Local Government's purpose are  
22 prohibited.

23 (b) C-PACE Administrators shall not use  
24 facsimiles of the county, city, property  
25 appraiser, or tax collector logos in their  
26 marketing materials. Marketing materials  
27 shall not state that the JAX C-PACE Program:  
28 1. Is a free program;  
29 2. Is a county or city program;  
30 3. Does not involve a financial obligation  
31 by the property owner; or

1                                   4.    Is a form of public assistance.

2                   (ii) *Protected Classes*. No C-PACE Administrator, nor  
3                   Contractor shall discriminate against individuals  
4                   on the basis of race, color, religion, national  
5                   origin, sex, sexual orientation, gender identity,  
6                   marital or familial status, age and disability.

7           H.    *Reporting*

8                   (i) *Metrics*. After not more than one year from the date  
9                   of adoption of this ordinance, C-PACE  
10                   Administrators shall track program metrics and  
11                   report those metrics to City, through the Mayor's  
12                   JAX C-Pace Program designee, which is the Chief  
13                   Administrative Officer, and any participating  
14                   quasi-municipalities, by jurisdiction and in  
15                   total, at least quarterly, in spreadsheet format  
16                   or another electronic format agreed upon by City.  
17                   Those metrics, if available, shall include, at a  
18                   minimum:

19                               (a) Dates of the reporting period;

20                               (b) List of C-PACE projects (including municipal  
21                               jurisdiction, financed amount, project cost,  
22                               interest rate, assessment duration, and  
23                               project description) started, but not  
24                               completed, during the reporting period,  
25                               separated by building type (e.g. retail,  
26                               office, industrial, etc.);

27                               (c) List of C-PACE projects (including municipal  
28                               jurisdiction) completed during the reporting  
29                               period, separated by building type project  
30                               (e.g. retail, office, industrial, etc.),  
31                               specifying:

1. The C-PACE Qualifying Improvements made;
2. Project start date and completion date;
3. At the aggregate level, the projected energy savings and/or amount of potential renewable energy to be generated;
4. At the aggregate level, financial information such as projected energy savings and/or amount of potential renewable energy to be generated;
5. At the aggregate level, other resource savings if data is available; and
6. Energy audits performed detailing the audit results, if applicable to the project;

(d) Number of applications declined during the reporting period;

(e) Unresolved complaints and/or contractor issues and status;

(f) C-PACE Assessment defaults and tax certificates issued on properties subject to C-PACE Assessment (updated annually); and

(g) All data included in the reports must be developed and collected using standardized and verified principles and methodologies for the industry. The methodologies and supporting assumptions and/or sources must be made available to the City by the C-PACE Administrator. It is the responsibility of the C-PACE Administrator to test and verify the data collection and reporting methods and

1 models used. All reports shall include only  
2 aggregate data, excluding any nonpublic  
3 personal information.

4 (ii) *City requests.* C-PACE Administrators will respond  
5 to City requests for information on the JAX C-PACE  
6 Program in a timely manner and shall provide  
7 sufficient documentation as requested by the City  
8 to ensure that the requirements of this article and  
9 the state statutes are being met. The C-PACE  
10 Administrator shall retain sufficient books and  
11 records demonstrating compliance with the  
12 agreement and state and City requirements for a  
13 minimum period of seven years from the initial date  
14 of each non-ad valorem assessment and shall allow  
15 City representatives including the Council  
16 Auditor's Office access to such books and records  
17 upon request.

18 *I. Recording.* The City, C-PACE Local Government or C-PACE  
19 Administrator, as applicable, shall record, or cause to  
20 be recorded, the C-PACE Financing Agreement or a  
21 Memorandum thereof, in the public records of the Clerk  
22 of Courts for Duval County within five days after  
23 execution of the C-PACE Financing Agreement, along with  
24 appropriate C-PACE Administrator contact information for  
25 property owner inquiries.

26 (i) The recorded agreement or summary memorandum of  
27 such agreement shall provide constructive notice  
28 that the assessment to be levied on the property  
29 constitutes a lien of equal dignity to City/county  
30 taxes and assessments from the date of recordation.

31 *J. Amendments.* City reserves the right to amend this

1 article to revise JAX C-PACE Program standards. It is  
2 the obligation of the C-PACE Administrators to remain  
3 abreast of and comply with all changes in applicable  
4 law, including changes to this ordinance made at public  
5 hearings.

6 **Sec. 344.107 - Program Boundary.** The C-PACE Program is open to  
7 Eligible Participants within Duval County upon the effective date of  
8 this Chapter.

9 **Sec. 344.108 - Eligible Participants.** In order to be an Eligible  
10 Participant, a property owner or its owners and the property itself  
11 must meet the criteria listed below. The C-PACE Administrators are  
12 responsible for verifying that all of these conditions are met.

13 A. Be the legal owner of the property and provide proof of  
14 ownership in the application for the JAX C-PACE Program;  
15 (i) In the event the property is owned by a  
16 corporation, LLC, joint venture, or limited  
17 partnership, consent to participate in the project  
18 shall be provided as an attachment to the  
19 application in the form of a Resolution that  
20 reflects the majority opinion of the Board of  
21 Directors or membership of the entity, signed by  
22 the appropriate officer, member, or partner.

23 B. Property must be within the JAX C-PACE Program  
24 boundaries, as defined in section 344.107, *Ordinance*  
25 *Code*;

26 C. The C-PACE Administrator must evaluate the property and  
27 its ownership under the obligations set forth in F.S.  
28 §163.08 to determine if the property meets all legal  
29 requirements and thus qualifies as an Eligible Property  
30 and Eligible Participants.

31 **Sec. 344.109 - Program Completion and Non-ad valorem special**

1 **assessment implementation.** Pursuant to F.S. §163.08(4), the City or  
2 C-PACE Local Government is authorized to impose non-ad valorem special  
3 assessments on property to secure the repayment of the costs incurred  
4 by an Eligible Participant to pay for Qualified Improvement(s), which  
5 shall be collected pursuant to F.S. §197.3632 or any successor  
6 section. Notwithstanding F.S. §197.3632(8)(a), the special  
7 assessments shall not be subject to discount for early payment and  
8 shall not require notice and adoption as set forth in F.S.  
9 §197.3632(4). Pursuant to F.S. ch. 197, non-ad valorem special  
10 assessments levied pursuant to this article shall remain liens,  
11 coequal with the lien of all state, county, district and municipal  
12 taxes, superior in dignity to all other liens, titles and claims,  
13 until paid.

14 Funds generated as a result of the special assessments shall be  
15 held in a separate account called the "C-PACE Fund." The Director of  
16 Finance and Administration is hereby authorized to create said Fund  
17 and make disbursements of the C-PACE funds as follows:

- 18 A. provide applicable payments to the C-PACE Administrator  
19 based on the amount collected for the C-PACE Assessments  
20 pursuant the C-PACE Financing Agreement; and
- 21 B. reimburse the City of Jacksonville for administrative  
22 costs associated with the implementation of the  
23 assessment, if applicable.

24 Funds held in the C-Pace Fund will not lapse, but will carry  
25 forward without further action required by the City Council.

26 **Section 2. Codification Instructions.** The Codifier and the  
27 Office of General Counsel are authorized to make all chapter and  
28 division "tables of contents" updates consistent with the changes set  
29 forth herein. Such editorial changes and any others necessary to  
30 make the *Ordinance Code* consistent with the intent of this legislation  
31 are approved and directed herein, and changes to the *Ordinance Code*



1 shall be made forthwith and when inconsistencies are discovered.

2           **Section 3.           Effective Date.** This Ordinance shall become  
3 effective upon signature of the Mayor.

4

5 Form Approved

6

7 /s/ Trisha Bowles

8 Office of General Counsel

9 Legislation Prepared by: Trisha Bowles

10

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