

1 Introduced by Council President Salem:
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4 **ORDINANCE 2023-612**

5 AN ORDINANCE DECLARING THAT FLORIDA PACE FUNDING
6 AGENCY'S CONTINUED OPERATION IN THE CITY OF
7 JACKSONVILLE WITHOUT AUTHORIZATION FROM THE CITY
8 OF JACKSONVILLE IS A PUBLIC HEALTH, SAFETY AND
9 WELFARE EMERGENCY AND AUTHORIZING THE OFFICE OF
10 GENERAL COUNSEL TO INITIATE LITIGATION, AS
11 APPROPRIATE, TO STOP FLORIDA PACE FUNDING AGENCY
12 OPERATIONS IN THE CITY OF JACKSONVILLE;
13 PROVIDING AN EFFECTIVE DATE.
14

15 **WHEREAS**, Section 163.08, Florida Statutes, creates the framework
16 for the administration of Property Assessed Clean Energy or "PACE"
17 programs, wherein property owners enter into financing agreements to
18 obtain specified qualifying improvements that are paid with the levy
19 of non-ad valorem assessments on the property owners' tax bills; and

20 **WHEREAS**, Section 163.08, Florida Statutes, expressly provides
21 that such statute is additional and supplemental to county and
22 municipal home rule authority, and not a derogation or limitation on
23 such authority; and

24 **WHEREAS**, the City of Jacksonville ("City") adopted Chapter 344
25 of the Ordinance Code entitled "Commercial Property Assessed Clean
26 Energy Program or JAX C-PACE" authorizing PACE assessments for non-
27 residential properties; and

28 **WHEREAS**, the City has never adopted an ordinance authorizing
29 PACE assessments for residential properties; and

30 **WHEREAS**, without any notice to the City, Florida PACE Funding
31 Agency ("FPFA") initiated bond validation proceedings in the Circuit

1 Court for Leon County, Florida, which resulted in the issuance of a
2 final judgment ("Bond Validation Judgment") authorizing the FPFA to
3 finance qualifying improvements for property owners in Florida in the
4 aggregate principal amount of Five Billion Dollars (\$5,000,000,000);
5 and

6 **WHEREAS**, the Bond Validation Judgment asserts that FPFA has
7 independent statewide authority to operate its PACE program "without
8 interference or regulation from local governments;" and

9 **WHEREAS**, in or about January 2023, FPFA began operating a
10 residential PACE program in the City and began recording Notices of
11 Assessment in the Official Records of Duval County, Florida, which
12 constitute liens on residential properties within the City ("PACE
13 Liens"); and

14 **WHEREAS**, FPFA has asserted that it has the authority to operate
15 a residential PACE program anywhere in the State of Florida, including
16 the City, without the need for any local regulation, in part under
17 the alleged authority of the Bond Validation Judgment; and

18 **WHEREAS**, the PACE Liens reflect that the subject residential
19 property owners are being charged interest between 6.99% and 9.99%
20 to finance qualifying improvements to their homes such as air
21 conditioners, roofs, windows, and water heaters, and will be paying
22 grossly inflated property tax bills for up to 30 years until the
23 financing is paid off; and

24 **WHEREAS**, FPFA's continued unauthorized operations pose an
25 immediate danger to the health, safety, and welfare of the City's
26 citizens requiring immediate action; and

27 **WHEREAS**, the significant legal rights of the City will be
28 compromised if a court proceeding does not take place before
29 compliance with the provisions of Chapter 164, Florida Statutes,
30 entitled the "Florida Governmental Conflict Resolution Act;" and

31 **WHEREAS**, Section 164.1041(2), Florida Statutes, requires that

1 the City of Jacksonville find, by a three-fourths vote, that an
2 immediate danger to the health, safety or welfare of the public
3 requires immediate action or that significant legal rights will be
4 compromised if a court proceeding does not take place before
5 compliance with Chapter 164, Florida Statutes; now therefore

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

7 **Section 1. Purpose.** The purpose of this Ordinance is to
8 declare that FPFA's unauthorized operation of a residential PACE
9 program in the City is a public health, safety and welfare emergency,
10 and to authorize the Office of General Counsel to immediately initiate
11 litigation to stop FPFA's operations in the City and to protect the
12 City's significant legal rights which will be compromised if a court
13 proceeding does not take place before compliance with Chapter 164,
14 Florida Statutes.

15 **Section 2. Declaration of Emergency.** The City Council
16 hereby finds that an emergency exists under Section 164.1041(2) such
17 that the public health, safety, and welfare of the City will be
18 negatively impacted without the immediate initiation of litigation
19 against FPFA to stop its operations in the City.

20 **Section 3. The Office of General Counsel Authorized and**
21 **Directed to Commence Litigation.** The City Council hereby affirms and
22 authorizes the Office of General Counsel to investigate and pursue
23 litigation, through the appellate process if necessary, associated
24 with the prosecution of claims arising out of the origination of
25 FPFA's PACE loans in Duval County. This affirmation and authority
26 includes and is not limited to any and all claims against any and all
27 parties (including but not limited to Florida PACE Funding Agency)
28 associated with residential PACE loans as determined by the Office
29 of General Counsel.

30 **Section 4. Effective Date.** This Ordinance shall become
31 effective upon signature by the Mayor or upon becoming effective

1 without the Mayor's signature.

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3 Form Approved:

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5 /s/ Chris Garrett

6 Office of General Counsel

7 Legislation Prepared By: Tiffiny Douglas Pinkstaff

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