

1 Introduced by the Council President at the request of the Mayor and  
2 Substituted by the Rules Committee and amended on the Floor of  
3 Council:

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5  
6 **ORDINANCE 2021-824-E**

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

23  
24 **WHEREAS**, the Florida Legislature has enacted Florida Statute  
25 §163.08, which provides that certain improvements to real properties  
26 for energy conservation and efficient, renewable energy improvements,  
27 or wind resistance improvements, may qualify for funding by the local  
28 government to be voluntarily collected through non-ad valorem special  
29 assessment process; and

30 **WHEREAS**, the Commercial Property Assessed Clean Energy (C-PACE)

1 Program enables commercial property owners a mechanism to finance  
2 energy improvements that increase efficiency, reduce energy  
3 consumption or reduce emergency resource impacts which is a benefit  
4 to society as a whole and specifically the citizens of the City of  
5 Jacksonville; and

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

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

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

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

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

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

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

30 \* \* \*

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,

1 which shall be affixed to a building or facility that  
2 is part of the property, as set forth in F.S.  
3 §163.08(10).

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

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

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

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

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

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

27 **Sec. 344.103 - Purpose**

28 The assessments authorized by this Chapter shall be imposed,  
29 levied, collected and enforced against commercial properties located  
30 within Duval County which have voluntarily agreed to enhance their

1 commercial property with energy efficient improvements that they wish  
2 to be financed and repaid through non-ad valorem special assessments.

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

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

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

1           **Sec. 344.105 - Program Administration.** Pursuant to Florida  
2 Statute §163.08(6), the City and C-PACE Local Government in  
3 establishing its C-PACE Program may utilize private administrators,  
4 defined in s. 344.102, *Ordinance Code*, as C-PACE Administrators, to  
5 facilitate the program application and approval process.

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

11           A.    *Application*

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

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

1            regarding open government which apply to their  
2            organization.

3            *B. Notices*

4            (i) *To Lender.* At least 30 days before entering into a  
5            financing agreement, the property owner shall  
6            provide to the holders or loan servicers of any  
7            existing mortgages encumbering or otherwise  
8            secured by the property a notice of the owner's  
9            intent to enter into a financing agreement together  
10           with the maximum principal amount to be financed  
11           and the maximum annual assessment necessary to  
12           repay that amount. A verified copy or other proof  
13           of such notice shall be provided to the C-PACE  
14           Local Government and the C-PACE Administrator. .

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

23           *C. Improvements*

24           (i) All C-PACE Qualifying Improvements shall be  
25           properly permitted (where applicable) and must  
26           comply with Florida and local codes.

27           *D. Permits*

28           (i) *Pre-Performance.* Contractors are responsible  
29           for obtaining any and all permits required by law for  
30           installation of the C-PACE Qualifying Improvements.

1 If a project requires use of sub-contractors or other  
2 licensed specialty contractors (i.e. electrical,  
3 plumbing, etc.), the general or lead contractor is  
4 responsible for verifying that all permits have been  
5 obtained for the specialty/sub-contracted work.

6 *E. Contractors.*

7 (i) *Licensure.* As required under Florida Statutes  
8 §163.08(11), and other state and local laws, any  
9 contractor constructing or installing a C-PACE  
10 Qualifying Improvement shall be properly licensed  
11 as a Contractor.

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

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

15 (b) Strictly enforce anti-kickback policies and  
16 procedures consistent with federal, state and  
17 local law;

18 (c) Ensure that all Contractors hold necessary  
19 licenses;

20 (d) Confirm Contractor qualifications based upon  
21 consumer complaints or other indications of  
22 lack of compliance; and

23 *F. Financing.* The C-PACE Administrator shall do the  
24 following:

25 (i) *Agreement.* After achieving compliance with all  
26 other mandated steps provided for by law, including  
27 but not limited to receiving a verified copy or  
28 other proof of such notice required by F.S.  
29 §163.08(13), the C-PACE Administrator shall  
30 coordinate the execution of the C-PACE Financing



1 Agreement, including obtaining the signatures of  
2 all applicable parties. Such agreement and  
3 supporting documentation referenced within such  
4 agreement and attached thereto, must include, at a  
5 minimum, the following:

6 (a) The full legal description or property  
7 address of the property, subject to the C-  
8 PACE Assessment.

9 (b) The amount of funding, including a breakdown  
10 of the estimated costs for the C-PACE  
11 Qualifying Improvements, any fees or  
12 administrative costs, and the estimated  
13 annual assessment figure to be provided to  
14 the Eligible Participant.

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

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

27 (e) The Eligible Participant shall be responsible  
28 for verifying that the C-PACE Qualifying  
29 Improvements are completed as reflected in  
30 the approved application documents. The

1 Eligible Participant also consents to  
2 providing access to the C-PACE Administrator  
3 and the C-PACE Local Government to the  
4 property to verify that the C-PACE Qualifying  
5 Improvements have been completed as proposed  
6 in the application.

7 (f) At or before the execution of a contract for  
8 the sale and purchase of any property against  
9 which a voluntary non-ad valorem special  
10 assessment for the JAX C-PACE Program has been  
11 levied and has an unpaid balance due, the  
12 seller shall give the prospective purchaser a  
13 notice of the lien in accordance with F.S.  
14 §163.08(14).

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

27 (h) Description of the C-PACE Qualifying  
28 Improvements, their cost, and, if applicable,  
29 the estimated completion date.

30 (i) Notice of the voluntary non-ad valorem

1 special assessment for the property shall be  
2 recorded in the public records maintained by  
3 the Clerk of Courts for Duval County Florida.

4 (j) The C-PACE Financing Agreement shall clearly  
5 disclose, in plain language, the interest  
6 rate to be charged, as well as any and all  
7 fees or penalties that may be separately  
8 charged to the Eligible Participant,  
9 including potential late fees. The subsequent  
10 charging or collecting of any additional fees  
11 that were not specifically disclosed in the  
12 written agreement with the property owner  
13 shall be prohibited.

14 (k) The C-PACE Financing Agreement shall clearly  
15 disclose, in plain language, that Eligible  
16 Participants have the right at any time to  
17 prepay in whole or in part the C-PACE  
18 assessments as further outlined in the  
19 financing agreement upon ten (10) days notice  
20 to the C-PACE Administrator.

21 *G. Prohibited Practices*

22 (i) *Marketing and Communications.*

23 (a) Marketing practices for a C-PACE  
24 Administrator that are or could appear to be  
25 unfair, deceptive, abusive, or misleading, or  
26 that violate applicable laws or regulations,  
27 that are inappropriate, incomplete or are  
28 inconsistent with the C-PACE Administrator's  
29 or C-PACE Local Government's purpose are  
30 prohibited.

1 (b) C-PACE Administrators shall not use  
2 facsimiles of the county, city, property  
3 appraiser, or tax collector logos in their  
4 marketing materials. Marketing materials  
5 shall not state that the JAX C-PACE Program:

- 6 1. Is a free program;
- 7 2. Is a county or city program;
- 8 3. Does not involve a financial obligation  
9 by the property owner; or
- 10 4. Is a form of public assistance.

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

16 H. *Reporting*

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

- 28 (a) Dates of the reporting period;
- 29 (b) List of C-PACE projects (including municipal  
30 jurisdiction, financed amount, project cost,

1 interest rate, assessment duration, and  
2 project description) started, but not  
3 completed, during the reporting period,  
4 separated by building type (e.g. retail,  
5 office, industrial, etc.);

6 (c) List of C-PACE projects (including municipal  
7 jurisdiction) completed during the reporting  
8 period, separated by building type project  
9 (e.g. retail, office, industrial, etc.),  
10 specifying:

- 11 1. The C-PACE Qualifying Improvements made;
- 12 2. Project start date and completion date;
- 13 3. At the aggregate level, the projected  
14 energy savings and/or amount of  
15 potential renewable energy to be  
16 generated;
- 17 4. At the aggregate level, financial  
18 information such as projected energy  
19 savings and/or amount of potential  
20 renewable energy to be generated;
- 21 5. At the aggregate level, other resource  
22 savings if data is available; and
- 23 6. Energy audits performed detailing the  
24 audit results, if applicable to the  
25 project;

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

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

30 (f) C-PACE Assessment defaults and tax

1 certificates issued on properties subject to  
2 C-PACE Assessment (updated annually); and

3 (g) All data included in the reports must be  
4 developed and collected using standardized  
5 and verified principles and methodologies for  
6 the industry. The methodologies and  
7 supporting assumptions and/or sources must be  
8 made available to the City by the C-PACE  
9 Administrator. It is the responsibility of  
10 the C-PACE Administrator to test and verify  
11 the data collection and reporting methods and  
12 models used. All reports shall include only  
13 aggregate data, excluding any nonpublic  
14 personal information.

15 (ii) *City requests.* C-PACE Administrators will respond  
16 to City requests for information on the JAX C-PACE  
17 Program in a timely manner and shall provide  
18 sufficient documentation as requested by the City  
19 to ensure that the requirements of this article and  
20 the state statutes are being met. The C-PACE  
21 Administrator shall retain sufficient books and  
22 records demonstrating compliance with the  
23 agreement and state and City requirements for a  
24 minimum period of seven years from the non-ad  
25 valorem assessment and shall allow City  
26 representatives including the Council Auditor's  
27 Office access to such books and records upon  
28 request.

29 *I. Recording.* The City, C-PACE Local Government or C-PACE  
30 Administrator, as applicable, shall record, or cause to

1 be recorded, the C-PACE Financing Agreement or a  
2 Memorandum thereof, in the public records of the Clerk  
3 of Courts for Duval County within five days after  
4 execution of the C-PACE Financing Agreement, along with  
5 appropriate C-PACE Administrator contact information for  
6 property owner inquiries.

7 (i) The recorded agreement or summary memorandum of  
8 such agreement shall provide constructive notice  
9 that the assessment to be levied on the property  
10 constitutes a lien of equal dignity to City/county  
11 taxes and assessments from the date of recordation.

12 *J. Amendments.* City reserves the right to amend this  
13 article to revise JAX C-PACE Program standards. It is  
14 the obligation of the C-PACE Administrators to remain  
15 abreast of and comply with all changes in applicable  
16 law, including changes to this ordinance made at public  
17 hearings.

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

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

25 A. Be the legal owner of the property and provide proof of  
26 ownership in the application for the JAX C-PACE Program;  
27 (i) In the event the property is owned by a  
28 corporation, LLC, joint venture, or limited  
29 partnership, consent to participate in the project  
30 shall be provided as an attachment to the

1 application in the form of a Resolution that  
2 reflects the majority opinion of the Board of  
3 Directors or membership of the entity, signed by  
4 the appropriate officer, member, or partner.

5 B. Property must be within the JAX C-PACE Program  
6 boundaries, as defined in section 344.107, *Ordinance*  
7 *Code*;

8 C. The C-PACE Administrator must evaluate the property and  
9 its ownership under the obligations set forth in F.S.  
10 §163.08 to determine if the property meets all legal  
11 requirements and thus qualifies as an Eligible Property  
12 and Eligible Participants.

13 **Sec. 344.109 - Program Completion and Non-ad valorem special**  
14 **assessment implementation.** Pursuant to F.S. §163.08(4), the City or  
15 C-PACE Local Government is authorized to impose non-ad valorem special  
16 assessments on property to secure the repayment of the costs incurred  
17 by an Eligible Participant to pay for Qualified Improvement(s), which  
18 shall be collected pursuant to F.S. §197.3632 or any successor  
19 section. Notwithstanding F.S. §197.3632(8)(a), the special  
20 assessments shall not be subject to discount for early payment and  
21 shall not require notice and adoption as set forth in F.S.  
22 §197.3632(4). Pursuant to F.S. ch. 197, non-ad valorem special  
23 assessments levied pursuant to this article shall remain liens,  
24 coequal with the lien of all state, county, district and municipal  
25 taxes, superior in dignity to all other liens, titles and claims,  
26 until paid.

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



1 make the *Ordinance Code* consistent with the intent of this legislation  
2 are approved and directed herein, and changes to the *Ordinance Code*  
3 shall be made forthwith and when inconsistencies are discovered.

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

6

7 Form Approved

8

9   /s/ Trisha Bowles

10 Office of General Counsel

11 Legislation Prepared by: Trisha Bowles

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