

1 Introduced at the request of the Mayor:
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3

4 **ORDINANCE 2021-824**

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

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

28 **WHEREAS**, the Commercial Property Assessed Clean Energy (C-PACE)
29 Program enables commercial property owners a mechanism to finance
30 energy improvements that increase efficiency, reduce energy
31 consumption or reduce emergency resource impacts which is a benefit

1 to society as a whole and specifically the citizens of the City of
2 Jacksonville; and

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

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

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

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

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

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

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

27 * * *

28 **Chapter 344 - Commercial Property Assessed Clean Energy (C-PACE)**
29 **Program**

30 **Sec. 344.101 - Short Title.** This title shall be known as the
31 "City of Jacksonville Commercial Property Assessed Clean Energy

1 Program" or "JAX C-PACE."

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

4 A. *City* shall mean the consolidated City of Jacksonville
5 and Duval County.

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

10 C. *C-PACE Contractor* shall mean an appropriately licensed
11 contractor authorized by the C-PACE Administrator or the
12 City to sell, construct or install Qualifying
13 Improvements funded through the JAX C-PACE Program.

14 D. *C-PACE Finance Agreement* shall mean the agreement
15 entered into between the Eligible Participant, and the
16 C-PACE Administrator, an independent financier and the
17 City, if applicable, specifying the qualifying
18 improvements to be installed at the property and the
19 terms and conditions for financing those improvements
20 through voluntary non-ad valorem special assessments
21 levied on the property.

22 E. *C-PACE Qualifying Improvement* shall mean those
23 improvements to new or existing commercial real
24 property provided for in F.S. §163.08(2)(b), including,
25 but not limited to, energy conservation and efficiency,
26 renewable energy and wind-resistance improvements.

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

29 G. *Eligible Participant* shall mean any commercial property
30 owner who voluntarily participates in the C-PACE
31 Program and satisfies the eligibility requirements set

1 forth in section 344.108, below.

2 H. *Eligible Property* means those uses defined in *Ordinance*
3 *Code* in Chapter 656, Subparts B, C, and D, or other
4 similar uses as determined by the Director of the
5 Planning and Development Department; exclusive of
6 single-family homes and multi-family dwelling units at
7 less than 10 units per acre, located within the
8 jurisdictional boundaries of Duval County excepting any
9 municipality that has opted out of the JAX C-PACE
10 Program.

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

13 J. *C-PACE Administrator* shall mean a for-profit or not-
14 for-profit organization responsible for administering
15 the JAX C-PACE program on behalf of and at the
16 discretion of a C-PACE Local Government consistent with
17 F.S. §163.08(6).

18 **Sec. 344.103 - Purpose**

19 The assessments authorized by this Chapter shall be imposed,
20 levied, collected and enforced against commercial properties located
21 within the City of Jacksonville which have voluntarily agreed to
22 enhance their commercial property with energy efficient improvements
23 that they wish to be financed and repaid through non-ad valorem
24 special assessments.

25 This ordinance further provides uniform consumer protection
26 regulations for all C-PACE Local Governments that are authorized to
27 operate within the City of Jacksonville to ensure that: (1) The
28 citizens of Jacksonville are fully apprised of the Program; (2) C-
29 PACE local governments have developed a responsive complaint process;
30 (3) Qualifying improvements meet the statutory goals set forth in
31 F.S. §163.08; and (4) C-PACE contractors meet certain standards of

1 conduct.

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

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

24 **Sec. 344.105 - Program Administration.** Pursuant to Florida
25 Statute §163.08(6), the City of Jacksonville in establishing its C-
26 PACE Program may utilize private administrators to facilitate the
27 program application and approval process.

28 **Sec. 344.106 - Program Requirements.** C-PACE Program
29 Administrators shall establish a uniform process for Eligible
30 Participants to apply for participation in the JAX C-PACE program.
31 Any JAX C-PACE program established shall comply with the following

standards, at a minimum, and include the following:

A. *Application*

(i) *Data Security.* PACE local governments shall take security measures to protect the security and confidentiality of consumer records and information to the extent permitted or mandated by law. In addition, a privacy policy must be in place that complies with state and federal law and, in particular, shall provide a property owner the ability to opt-out of having the property owner's information shared with third parties, except where expressly permitted or required by state or federal law.

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

B. *Notices*

(i) *To Lender.* The C-PACE Administrator shall ensure that the property owner provides notice to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property of the owner's intent to enter into a C-PACE Assessment that, at a minimum satisfies the requirements of F.S. §163.08(13).

1 (ii) *To Purchaser.* Property owner must comply with F.S.
2 §163.08(14) regarding providing a written
3 disclosure statement to a prospective purchaser.
4 Failure to provide the notice referenced above in
5 F.S. §163.08(14) to a purchaser of the property
6 shall have no effect on either the validity of any
7 C-PACE Assessment or any obligation of a property
8 owner.

9 C. *Improvements*

10 (i) All qualifying improvements shall be properly
11 permitted (where applicable) and must comply with
12 Florida and local codes. C-PACE Administrators
13 shall finance only qualifying improvements that
14 are permanently affixed to the property.

15 D. *Permits*

16 (i) *Pre-Performance.* Contractors are responsible
17 for obtaining any and all permits required by law for
18 the completion of the project. If a project requires
19 use of sub-contractors or other licensed specialty
20 contractors (i.e. electrical, plumbing, etc.), the
21 general or lead contractor is responsible for
22 verifying that all permits have been obtained for the
23 specialty/sub-contracted work.

24 E. *Contractors.*

25 (i) *Licensure.* As required under Florida Statute
26 §163.08(11), and other state and local laws, any
27 contractor constructing or installing a qualifying
28 improvement shall be properly licensed and
29 insured, and authorized by the City or C-PACE
30 Administrator as a C-PACE contractor.

31 (ii) *Contractor Pricing.* Within six months of the

1 passage of this ordinance, C-PACE Administrators
2 or the City shall have in place pricing rules and
3 enforcement mechanisms to ensure property owners
4 are protected from excessive or unjustified prices
5 and charges of C-PACE Contractors.

6 (iii) *Management*. Each C-PACE Administrator shall:

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

10 (b) Establish a "code of conduct" that sets
11 standards for C-PACE Contractors such as
12 licensing, advertising and marketing,
13 accurate representation of the program, and
14 consumer protections;

15 (c) Have and shall strictly enforce anti-kickback
16 policies and procedures that prohibit direct
17 or indirect financial or other monetary
18 incentives to C-PACE Contractors in exchange
19 for or related to such C-PACE Contractor being
20 awarded work under a C-PACE program,
21 excepting payment for the C-PACE Contractor's
22 construction or installation of Qualifying
23 Improvements;

24 (d) Ensure that all C-PACE Contractors hold
25 necessary licenses and insurance;

26 (e) Confirm C-PACE Contractor qualifications at
27 least annually and as necessary based upon
28 consumer complaints or other indications of
29 lack of compliance; and

30 F. *Financing*. The C-PACE Administrator shall do the
31 following:

1 (i) *Agreement.* After achieving compliance with all
2 other mandated steps provided for by law, including
3 but not limited to receiving a verified copy or
4 other proof of such notice required by F.S.
5 §163.08(13), the C-PACE Administrator shall enter
6 into a voluntary written agreement with each
7 eligible participant. Such agreement, or
8 supporting documentation referenced within such
9 agreement and attached thereto, must include, at a
10 minimum, the following:

11 (a) The full legal description or property
12 address, if a metes and bounds legal
13 description is not provided, of the property
14 subject to the C-PACE Assessment.

15 (b) The amount of funding to be provided to the
16 eligible participant.

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

25 (d) The length of time for the eligible
26 participant to pay back the amount financed
27 through the voluntary non-ad valorem special
28 assessment, which shall not exceed the
29 expected life of the most costly qualifying
30 improvement(s) funded by the JAX C-PACE
31 Program, or 30 years, whichever is less.

1 (e) The eligible participant shall be responsible
2 for verifying that the qualifying
3 improvements are completed as reflected in
4 the approved application documents. The
5 Eligible Participant also consents to
6 providing access to the C-PACE Administrator
7 to the property to verify that the Qualifying
8 Improvements have been completed as proposed
9 in the application.

10 (f) At or before the execution of a contract for
11 the sale and purchase of any property against
12 which a voluntary non-ad valorem special
13 assessment for the JAX C-PACE Program has been
14 levied and has an unpaid balance due, the
15 seller shall give the prospective purchaser a
16 notice of the lien in accordance with F.S.
17 §163.08(14).

18 (g) The risks associated with participating in
19 the JAX C-PACE Program shall be clearly
20 disclosed in plain language in the written
21 agreement with the Eligible Participant,
22 including risks related to the failure of the
23 Eligible Participant to make payments, the
24 risk that they may not be able to refinance
25 the property or sell the property unless the
26 C-PACE assessment is paid off in full first,
27 and the risk of issuance of a tax certificate
28 and loss of the property pursuant to F.S. ch.
29 197.

30 (h) Description of the qualifying improvements,
31 their cost, and estimated completion date.

1 (i) Notice of the voluntary non-ad valorem
2 special assessment for the property shall be
3 recorded in the public records maintained by
4 the Clerk of Courts for Duval County Florida.

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

15 G. *Prohibited Practices*

16 (i) *Marketing and Communications.*

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

24 (b) Neither C-PACE Administrators or C-PACE
25 Contractors, shall use facsimiles of the
26 county, city, property appraiser, or tax
27 collector logos in their marketing materials.
28 Marketing materials shall not state that the
29 JAX C-PACE Program:

- 30 1. Is a free program;
31 2. Is a county or city program;

1 3. Does not involve a financial obligation
2 by the property owner; or

3 4. Is a form of public assistance.

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

10 H. *Reporting*

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

21 (a) Dates of the reporting period;

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

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

1 specifying:

- 2 1. The qualifying improvements made;
- 3 2. Project start date and completion date;
- 4 3. The projected energy savings and/or
- 5 amount of potential renewable energy to
- 6 be generated;
- 7 4. Financial information such as projected
- 8 energy savings and/or amount of
- 9 potential renewable energy to be
- 10 generated;
- 11 5. Other resource savings if data is
- 12 available; and
- 13 6. Energy audits performed detailing the
- 14 audit results, if applicable to the
- 15 project;

16 (d) Number of actual jobs created during the

17 reporting period;

18 (e) Number of applications declined during the

19 reporting period;

20 (f) Unresolved complaints and/or contractor

21 issues and status;

22 (g) C-PACE Assessment defaults and tax

23 certificates issued on properties subject to

24 C-PACE Assessment (updated annually); and

25 (h) All data included in the reports must be

26 developed and collected using standardized

27 and verified principles and methodologies for

28 the industry. The methodologies and

29 supporting assumptions and/or sources must be

30 made available to the City by the C-PACE

31 Administrator. It is the responsibility of

1 the C-PACE Administrator to test and verify
2 the data collection and reporting methods and
3 models used. All reports shall include only
4 aggregate data, excluding any nonpublic
5 personal information.

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

19 A. *Recording.* The C-PACE Administrator shall record, or cause
20 to be recorded, the C-PACE Financing Agreement in the
21 public records of the Clerk of Courts for Duval County
22 within five days after execution of the C-PACE Financing
23 Agreement, along with appropriate C-PACE Administrator
24 contact information for property owner inquiries.

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

30 I. *Amendments.* City reserves the right to amend this
31 article to revise JAX C-PACE Program standards. It is

1 the obligation of the C-PACE Administrators to remain
2 abreast of and comply with all changes in applicable
3 law, including changes to this ordinance made at public
4 hearings.

5 **Sec. 344.107 - Program Boundary.** The C-PACE Program is open to
6 Eligible Participants within the consolidated City of Jacksonville
7 upon the effective date of this Chapter, except those in any quasi-
8 municipality unless the municipality opts into the Program by passing
9 an ordinance authorizing compliance under this Chapter.

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

14 A. Be the legal owner of the property and provide proof of
15 ownership in the application for the JAX C-PACE Program;

16 (i) In the event of more than one property owner,
17 consent to participate in the project shall be
18 provided on the application materials with a
19 notarized signature for each and every property
20 owner.

21 (ii) In the event the property is owned by an entity,
22 consent to participate in the project shall be
23 provided as an attachment to the application in the
24 form of a board resolution signed by the majority
25 of the members or officers.

26 B. Property must be within the JAX C-PACE Program
27 boundaries, as defined in section 344.107;

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

1 and Eligible Participants.

2 **Sec. 344.109 - Program Completion and Non-ad valorem special**
3 **assessment implementation.** Pursuant to F.S. §163.08, the City is
4 authorized to impose non-ad valorem special assessments on property
5 to secure the repayment of the costs incurred by an Eligible
6 Participant to pay for Qualified Improvement(s), which shall be
7 collected pursuant to F.S. §197.3632 or any successor section.
8 Notwithstanding F.S. §197.3632(8)(a), the special assessments shall
9 not be subject to discount for early payment and shall not require
10 notice and adoption as set forth in F.S. §197.3632(4). Pursuant to
11 F.S. ch. 197, non-ad valorem special assessments levied pursuant to
12 this article shall remain liens, coequal with the lien of all state,
13 county, district and municipal taxes, superior in dignity to all
14 other liens, titles and claims, until paid.

15 **Section 2. Codification Instructions.** The Codifier and the
16 Office of General Counsel are authorized to make all chapter and
17 division "tables of contents" updates consistent with the changes set
18 forth herein. Such editorial changes and any others necessary to
19 make the *Ordinance Code* consistent with the intent of this legislation
20 are approved and directed herein, and changes to the *Ordinance Code*
21 shall be made forthwith and when inconsistencies are discovered.

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

24
25 Form Approved

26
27 _____
28 Office of General Counsel

29 Legislation Prepared by: Trisha Bowles

30
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