



MEMORANDUM

TO: City Council

FROM: Kathleen Dooley, City Attorney

DATE: October 24, 2018

RE: C-PACE Ordinance

Issue:

Shall the City create a property assessed clean energy financing program, under which improvements to existing buildings or new construction may be financed through a loan that is secured by a voluntary special assessment on the improved property? The public purposes of the program include the renovation and construction of non-residential buildings and structures by incorporating renewable energy production and distribution facilities, energy usage efficiency improvements, and water usage improvements.

Recommendation:

Adopt the ordinance on first reading on October 30th, and hold the public hearing and adopt the ordinance on second reading on November 13, 2018.¹ While the ordinance would be available to qualifying properties and eligible improvements City-wide, its first use is anticipated to be in connection with the multi-purpose stadium. Thus, exploring the feasibility of C-PACE financing was one of the City's responsibilities under the July 11, 2018 Letter of Intent with Potomac Baseball, LLC.

¹ The October 16 memo proposed that City Council would hold its public hearing on October 30th. However, the public hearing ad did not reach the newspaper in time to make this schedule. Therefore, the proposed schedule has been revised.

Update (October 24, 2018):

The revised draft ordinance includes some requested clarifying provisions, which are shown using italics and strikeouts in the ordinance in the October 30, 2018 meeting packet:

- Clarified the “C-PACE assessment to value ratio” definition in 38-501.
- Clarified the “Total loan to value ratio” definition in 38-501.
- Limited term of loan to the “weighted average useful life of the Qualifying Improvements” or 20 years, whichever is shorter, in 38-504(B).
- Established a maximum single loan amount of \$5 million in 38-504(F).

Background:

- **What is “C-PACE” and what are the public and private benefits of this program?**

“C-PACE” stands for Commercial Property Assessed Clean Energy Financing. Local programs are authorized under Code of Virginia §15.2-958.3. Many Virginia localities are considering adopting a C-PACE ordinance, but only Arlington County has adopted one so far, and no loans have been made under that ordinance to date. Many other states have adopted C-PACE financing authority, and it has been used successfully to incorporate energy efficiency and water use efficiency in plans for new construction (e.g. [D.C. United Audi Field](#) in Washington, D.C.) and for the renovation of existing buildings.

The public benefits of C-PACE financing (listed in **§38-500** of the ordinance) include:

- Environmental benefits of high efficiency energy production, distribution, and usage improvements;
- Environmental benefits of high efficiency water usage improvements, particularly on the public water supply and public wastewater treatment services provided by the City;
- Renovation, retrofit, or rehabilitation of older buildings, including “contributing structures” to the City’s Historic Fredericksburg overlay zoning district;
- Enhancement of the real property tax base;
- Make older buildings more attractive to tenants, thereby promoting employment and economic growth in the City.

The benefits of C-PACE financing for the property owner include:

- 100% financing for eligible improvements;
- Voluntary special assessment lien has the same priority as real estate taxes;

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- Voluntary special assessment lien survives the sale of the building or a real estate tax foreclosure;
- More comfortable commercial buildings, lower energy and water utility payments, enhanced value and marketability;
- The structure of the financing permits property owners to pass-through payment obligations and energy/water savings to tenants.²

- **Qualifying Improvements, §38-502:**

The first goal in developing the list of “Qualifying Improvements” was to stay within the statutory authority, which identifies three categories of improvements -- renewable energy production and distribution facilities, energy usage efficiency improvements, and water usage efficiency improvements – as qualifying for C-PACE financing. Second, we attempted to provide more information about the types of improvements that would be considered within each category. Finally, the types of Qualifying Improvements listed in the ordinance are intended to achieve the public and private benefits of the program. The draft ordinance incorporates guidance as to what types of improvements should be eligible for financing through the program. The guidance was developed by the [Mid-Atlantic PACE Alliance](#), a collaboration between the Virginia Department of Mines, Minerals, and Energy, the District of Columbia Department of Energy and Environment, the Maryland Clean Energy Center, and other industry and non-for-profit partners.

- **Eligible properties, §38-503:**

The definition of “Eligible Properties” is broad, intended to encompass both taxable and tax exempt (e.g. churches) properties. Since the special assessment lien is voluntary, even a tax exempt property owner may voluntarily participate in this program. Energy efficiency, in particular, can be a particular challenge for older buildings such as churches. Energy efficiency improvements to a tax exempt property could be financed through the program, and the Commissioner of Revenue would record the voluntary special assessment lien on the City’s tax books. Opening the C-PACE financing program to taxable and tax exempt properties gives the City and City land owners maximum opportunities to achieve the public and private benefits of the program.

² Elements of a Well-Designed C-PACE Statute and Program to Attract Private Capital and Foster Greater Transaction Volumes, January 16, 2018, by the PACE Nation coalition, <http://pacenation.us/wp-content/uploads/2018/01/Well-Designed-CPACE-Programs-1-25-18.pdf> (accessed October 15, 2018).

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C-PACE is not available to residential properties at this time, under the statute, but multi-family residential buildings with five or more units are eligible to participate. Condominium projects are also excluded from the program under state law and the draft ordinance; the complications of special assessment liens on common areas make this program problematic for buildings in a condominium ownership structure.

- **Program arrangements, §38-504(A-F):**

The statute authorizes the creation of a local loan program, and then requires the locality to offer private lending institutions the opportunity to participate in the loan program. The draft ordinance reflects this program structure, and states that the local program will be funded by public dollars to the extent they are appropriated for that purpose by City Council. However, plans at this time are for private lending institutions to take the lead as capital providers.

The other program arrangements include a maximum term of the C-PACE loan of 20 years, and a minimum loan amount of \$20,000. These terms are proposed to make C-PACE loans attractive to owners of older existing buildings in the City. C-PACE loan payments will be combined with the City's real property tax billing and collection. The Treasurer will collect the payments and then remit them to the capital provider.

The program arrangements protect the City's own interests by directing the Treasurer to apply any loan payment first to the City's own real estate taxes, penalties, and interest which are due and payable on the date of receipt of payment, and second, to the C-PACE voluntary assessment. This program arrangement is authorized by statute, and will protect the City from a situation where a private lender is receiving payments but the real estate taxes on the property are delinquent. The City's real estate taxes revenues do not subsidize C-PACE loan payments.

In fact, the loan program is intended to be administered at no significant cost to City taxpayers – with the costs of the application process and collections work borne by the borrower. A final protection for City taxpayers is included in §38-504(F), which sets the maximum aggregate dollar amount that may be financed through C-PACE at \$15 million. This figure represents 1% of the total assessed value of commercial and industrial properties

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in the City (\$1.5 billion).³ The City Manager is authorized to continue to accept C-PACE loan applications until the total outstanding amount of loans is \$15 million.

- **Underwriting requirements, §38-504(G):**

When the Virginia General Assembly revised the C-PACE statute in 2015, it directed the Virginia Department of Mines, Minerals and Energy (DMME) to develop uniform statewide financial underwriting guidelines for C-PACE loans.⁴ DMME published its guidance in a document dated December 1, 2015, and that guidance is incorporated into the City's draft ordinance. The underwriting requirements are intended to make the loan program attractive to lenders and borrowers, while also protecting the public from bad loans or loans that do not achieve the public and private purposes of C-PACE. Each of the criteria used in this section are defined in §38-501.

- **Additional requirements, §38-504(H):**

The additional program requirements in this section were developed in consultation with the Treasurer's legal advisor, Taxing Authority Consulting Services, P.C., attorneys John Rife and Gregory L. Haynes. The provisions of this section were developed in light of the City's and Treasurer's experience with the voluntary special assessment liens that secured the Celebrate Virginia South Community Development Authority loan for infrastructure improvements to that development. They are intended to discourage delays in the lien foreclosure process, if that ever becomes necessary under C-PACE.

- **Voluntary special assessment lien, §38-506:**

The voluntary special assessment lien is the aspect of C-PACE that is attractive to lenders and borrowers, and which sets the program apart from purely private loans. The voluntary special assessment lien has priority equal to City real estate taxes – priority over all other liens on the property – and for this to be true, any existing private lienholders must consent to the creation of the special assessment lien. Lienholders tend to agree to subordinate their lien to the C-PACE lien if they perceive a benefit to the property – better value, marketability, income generation – and when they conclude that the C-PACE loan obligation does not accelerate in the event of foreclosure. Under §38-507, the City leaves

³ The October 16, 2018 memo stated that the total assessed value of all C-PACE Eligible Properties was \$15B. This was an error. The figure \$1.5 billion represents the total assessed value of real estate classified as "commercial" or "industrial," by the Commissioner of Revenue in the 2018 Land Book.

⁴ 2015 Acts of the Assembly Chs. 389 and 427, §2.)

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these determinations to the sole discretion of the lienholders, as is appropriate – the City is not providing legal advice or issuing warranties to existing lienholders.

Finally, the draft ordinance takes advantage of statutory authority for an early foreclosure action on C-PACE special assessments, which protects private lenders and the City. The Treasurer may foreclose on the voluntary special assessment lien after December 31st following the first anniversary of either the real estate tax or the special assessment payment becoming due. The Treasurer will not have to wait until the second anniversary, as is the case with real estate tax payments generally. The earlier commencement of foreclosure proceedings, in combination with the other requirements discussed above, reduces the City's exposure to the consequences of an unpaid voluntary special assessment lien.

Fiscal Impact:

The program is proposed to be self-financing, through the collection of a nonrefundable application fee and a portion of each loan installment payment collected. As stated, the ordinance contains provisions intended to mitigate any adverse impact of the program on the City's collection of real estate taxes.

Attachments:

- Code of Virginia §15.2-958.3 Financing clean energy programs
- Final uniform statewide financial underwriting guidelines for clean energy loans made by localities under §15.2-958.3 of the Code of Virginia, Virginia Department of Mines, Minerals, and Energy, December 1, 2015
- Draft ordinance
- Resolution establishing C-PACE fees



MOTION:

October 30, 2018¹

SECOND:

Regular Meeting

Ordinance No. 18-__

**RE: Creation of a Program for Financing Clean Energy Improvements, Known as
 “C-PACE”**

ACTION: APPROVED; Ayes: 0; Nays: 0

Sec. I. Introduction.

The Virginia General Assembly adopted Code of Virginia §15.2-958.3 to authorize localities to facilitate loans for the acquisition and installation of clean energy improvements to existing and new buildings and structures. Loans may be offered for renewable energy production and distribution facilities, energy usage efficiency improvements, and water usage efficiency improvements. These loan programs advance many public purposes, as stated in the ordinance, and City Council has determined to make this type of financing available to eligible properties in Fredericksburg. In adopting underwriting requirements for this program, City Council has been guided by the “Final uniform statewide financial underwriting guidelines for clean energy loans made by localities under §15.2-958.3 of the Code of Virginia,” prepared by the Virginia Department of Mines, Minerals and Energy, dated December 1, 2015.

City Council held its duly advertised public hearing on this ordinance on October 30, 2018.

It is hereby ordained by the Fredericksburg City Council that Chapter 38 of the City Code is amended as follows:

¹ Italics and strike-outs show changes from the 10/16/2018 draft ordinance.

Sec. II. City Code Amendment.

City Code Chapter 38, "Environment," is amended by adding a new Article V, "Commercial Property Assessed Clean Energy Financing Program," as follows:

Article V.

Commercial Property Assessed Clean Energy Financing Program.

Sec. 38-500. Commercial Property Assessed Clean Energy Financing Program; established; purpose.

- A. City Council hereby establishes the Commercial Property Assessed Clean Energy Financing Program, (C-PACE), under the authority of Code of Virginia §15.2-958.3. Under C-PACE, the City may enter into contracts to provide loans for the initial acquisition and installation of clean energy improvements with free and willing property owners of both existing properties and new construction. In addition, private lending institutions shall be provided the opportunity to participate in C-PACE.
- B. The purpose of C-PACE is to promote the renovation and construction of non-residential buildings and structures by incorporating renewable energy production and distribution facilities, energy usage efficiency improvements, or water usage efficiency improvements. City Council finds that this will promote the general health and welfare of the community. Water usage efficiency improvements, in particular, benefit the public water supply and wastewater treatment services provided by the City.
- C. In establishing C-PACE, the City Council finds that Fredericksburg has numerous older buildings with many years of remaining life, and that the renovation, retrofit, or rehabilitation of these buildings with qualifying clean energy improvements would make them more efficient and reduce their greenhouse gas emissions. The rehabilitation of commercial and industrial buildings and structures that are at least 40 years old, in particular, supports the same public purposes advanced by the real estate tax exemption provided for this activity.

D. City Council further finds that the promotion and development of new buildings and structures with energy efficient or water efficient features that exceed current building code requirements, or which use renewable energy will enhance the real property tax base of the City, make these buildings, if rented, more attractive to tenants, and thereby promote employment and economic growth in the City.

Sec. 38-501. Definitions.

“Borrower” means the person, as defined in Code of Virginia §1-230, who owns or leases an eligible property and voluntarily applies for and obtains a C-PACE loan, or that person’s successor in title.

“Borrower Certifications” means evidence that the property owner is current on payments on loans secured by a mortgage or deed of trust lien on the property and on property tax payments, that the property owner is not insolvent or in bankruptcy proceedings, and that the title of the benefitted property is not in dispute.

“Capital Provider” means the private lending institution, or their successors or assigns in interest; or, if City Council appropriates funds for this purpose and if applicable, the City. The Capital Provider is the source of funding for, or the current holder of, C-PACE loans.

“C-PACE assessment to value ratio” means the ratio of the C-PACE voluntary special assessment secured by a property to the appraised value of the structure ~~including any C-PACE loan~~ if the C-PACE loan is greater than \$100,000; or, if the C-PACE loan is \$100,000 or less, the assessed property value. *In each case the property value shall include along with* the anticipated added value to the property provided by the ~~C-PACE~~ *Qualifying Improvements*.

“Cost” as applied to “Qualifying Improvements” shall have the meaning given to it in the Public Finance Act, Code of Virginia §15.2-2602.

“Debt service coverage ratio” means net operating income (yearly gross revenue minus operating expenses) of the property divided by the total debt service, including anticipated C-PACE financing.

“Project” means the development of Qualifying Improvements on an Eligible Property.

“Property” means an Eligible Property as defined in Section 38-503 located within the City of Fredericksburg, for which a program loan is applied for or received.

“Savings to investment ratio” means the ratio of overall project savings to overall project costs.

“Total loan to value ratio” means the ratio of total debt to be secured by an Eligible Property (*including the C-PACE loan*) to the appraised value of the Eligible Property (including the anticipated added value of any Qualifying Improvements) if the C-PACE loan is greater than \$100,000; or if the C-PACE loan is \$100,000 or less, the ratio of total debt to be secured by an Eligible Property (*including the C-PACE loan*) to the assessed property value (including the anticipated added value provided by the Qualifying Improvements). The purpose of this ratio is to assure that there is sufficient collateral to secure the C-PACE voluntary special assessment in the event of a default.

Sec. 38-502. Qualifying improvements.

The costs of the following types of Qualifying Improvements to existing buildings and structures, or new construction, on Eligible Property, may be financed through C-PACE. The Sample List of Eligible Improvements published by the Mid-Atlantic PACE Alliance dated June 2018 shall be used as a guide in determining which proposed improvements qualify for C-PACE funding.

1. Renewable energy production and distribution facilities, including but not limited to, solar photovoltaic, solar thermal, geothermal, wind, fuel cells, biomass systems, biogas or methane recovery systems.
2. Energy usage efficiency systems reasonably expected to reduce the energy usage of the Eligible Property, including but not limited to, high efficiency lighting and building systems, heating, ventilation and air conditioning (HVAC) upgrades, air duct sealing, high efficiency boilers and furnaces, high efficiency hot water heating systems, combustion and burner upgrades, fuel switching, heat recovery and steam traps, cogeneration systems, building shell or envelope improvements, reflective roof, cool roof or green roof systems, weather-stripping, fenestration and door improvements and modifications, insulation (both in walls, roofs, floors and foundations and in HVAC systems' radiant barriers), building energy management systems, process equipment upgrades, and other forms of conservation; provided, that for Qualifying Improvements that are part of a new building

- or structure, such Qualifying Improvements shall exceed the minimum energy efficiency requirements of then-applicable law, ordinance, regulation or code.
3. Water usage efficiency improvements, such as recovery, purification, recycling and other forms of water conservation. For new construction, these improvements qualify for C-PACE financing only if they exceed the minimum water usage efficiency requirements of then-applicable law, ordinance, regulation, or code.
 4. Construction, renovation or retrofitting of Eligible Property directly related to the accomplishment of any purpose listed in clauses 1, 2, or 3, above, whether such Qualifying Improvement was erected or installed in or on a building or on the ground, it being the express intention of the City to allow Qualifying Improvements that constitute, or are part of, the construction of a new structure or building to be financed with a C-PACE Loan.
 5. Any other category of improvement approved by the City Manager as qualifying for financing under C-PACE, with the concurring written opinion of either the City Attorney or other legal counsel engaged to serve as counsel for C-PACE that such improvement is authorized by or consistent with the Commonwealth's authorizing legislation for C-PACE programs.
 6. With respect to the foregoing "Qualifying Improvements," a C-PACE Loan may fund the cost of all (a) labor, (b) materials, machinery and equipment, (c) architectural, engineering, consulting (such as energy audits and assessments, feasibility studies and reports, and financial projections), financial and legal services, (d) plans, specifications and studies, (e) physical and building condition surveys, (f) commissioning expenses, (g) project management, (h) energy savings or performance guaranty or insurance, (i) post-installation evaluation, measurement and verification, and building accreditation, (j) permitting fees, (k) due diligence and closing costs for the C-PACE Loan, including administrative and Capital Provider fees that are directly attributable to a Qualifying Improvement, and (l) reserves for construction period interest.

Sec. 38-503. Eligible Properties.

Eligible Properties include all assessable real estate located within the City of Fredericksburg, with all buildings located or to be located thereon, whether vacant or occupied, whether improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the City, other than (a) any condominium project as defined in Code of Virginia §55-79.2, or (b) any residential property containing four or fewer dwelling units. Eligible Properties shall be eligible to participate in C-PACE.

Sec. 38-504. Program arrangements.

- A. The Capital Providers for C-PACE may be private lending institutions. Public funds may be the source of C-PACE funding to the extent appropriated for that purpose by City Council.
- B. The time period during which Borrowers shall repay the C-PACE loan shall not exceed *the weighted average useful life of the Qualifying Improvements or 20 years, whichever is less.*
- C. C-PACE loan payments shall be combined with the City's real property tax billing and collection, and payable into the treasury of the City. The Treasurer shall apply any loan payment first to the City's real estate taxes, penalties, and interest which are due and payable on the date of receipt of the payment, and second, upon having paid all real estate taxes due, to the C-PACE voluntary special assessment. Borrower shall notify Treasurer if any C-PACE loan payment is a prepayment, at the time the payment is made.
- D. The interest rate of a C-PACE loan shall be determined by mutual agreement of the Borrower and the Capital Provider.
- E. All of the costs incidental to financing, administration, and collection of the C-PACE loan shall be borne by the Borrower. C-PACE is intended to be self-financed through fees that are designed to cover the costs to design and administer the program, including the compensation of any third-party administrator. The City Manager shall collect a non-refundable program application fee from the Borrower upon receipt of an application for C-PACE financing. In addition, the City shall impose a fixed fee to be collected with each loan payment, which shall

be stated in the written contract between the City, property owner, and capital. The amounts of these fees shall be established by City Council by resolution from time to time as needed.

F. The minimum amount of any single C-PACE loan shall be \$20,000. *The maximum amount of any single C-PACE loan shall be \$5 million.* The maximum aggregate dollar amount that may be financed through C-PACE is \$15 million. In the event that applications for C-PACE financing appear likely to exceed the maximum aggregate dollar amount, priority shall be given to applicants on a first-come, first-served basis.

G. Underwriting requirements for C-PACE loans.

1. The maximum total loan to value ratio for any property is 90%.
2. The maximum C-PACE assessment to value ratio is 20%.
3. The minimum savings to investment ratio is 1.
4. The minimum debt service coverage ratio is 1.

H. Additional requirements.

1. Every Borrower, on behalf of itself and any affiliated entities whether in existence at the time of the C-PACE application or created thereafter and any of its individual shareholders, principals, managers or other associated individuals, shall *(a) waive the right to bid, either directly or indirectly, on the property at any auction held in the course of foreclosure for delinquent real estate taxes or the C-PACE voluntary special assessment, and (b) waive the right to occupy, possess, or use, either directly or indirectly, any Eligible Property for a period of five years from the date of the foreclosure auction.*
2. Every Borrower shall:
 - a. Waive all defenses, affirmative or otherwise, to the foreclosure action related to any collection suit brought for the nonpayment of any C-PACE obligation. This waiver shall apply to any litigation action initiated under the laws of the Commonwealth of Virginia or any administrative collection action as afforded the City of Fredericksburg Treasurer or her duly appointed collection agent;

- b. Waive all defenses to the imposition of personal liability for corporate officers as permitted under Virginia Code §58.1-3965(F) and the collection thereof as stated in subparagraph (a) above;
- c. Waive all rights afforded under the Fair Debt Collection Practices Act pursuant to 15 USC 1692, *et seq.*
- d. Agree to provide a confession of judgment pursuant to Virginia Code §8.01-432, *et seq.*, if requested by the City or the Capital Provider to accompany any note related to the financing for any Qualifying Project.
- e. These waiver provisions shall be a burden that runs with the land intended to bind successors or assigns in title while any C-PACE obligation remains outstanding.

Sec. 38-505. City Manager authorization; loan agreements.

- A. A draft contract specifying the terms and conditions of C-PACE loan agreements ~~is shall be adopted by subsequent resolution. as an appendix to Ordinance 18—, which established C-PACE.~~ Each C-PACE loan agreement shall be in substantially the form established by the draft contract, with such additions, deletions or alterations as permitted by this Article.
- B. The City Manager is authorized to enter into C-PACE loan agreements on behalf of the City. The City Manager may procure C-PACE administration services if needed, to the extent that funds for this purpose are appropriated.
- C. The parties to any C-PACE loan agreement shall be the Borrower, the Capital Provider, and the City.
- D. The City Manager may not execute any C-PACE loan agreement unless the conditions for the priority status of the voluntary special assessment lien are met, in addition to the underwriting requirements.

- E. No Capital Provider or Borrower may amend any C-PACE loan agreement without consent of the City, as evidenced by the signature of the City Manager.

Sec. 38-506. Voluntary special assessment lien.

- A. A C-PACE loan shall be secured by a voluntary special assessment lien equal in value to the loan against the property where the Qualifying Improvements are being installed, the existence, terms and conditions of which shall be evidenced by the recordation of a Memorandum of C-PACE Lien in the Clerk's Office of the Circuit Court of the City of Fredericksburg. The Capital Provider shall record the Memorandum within three business days of closing. The Capital Provider shall inform the City of Fredericksburg Commissioner of Revenue of the anticipated yearly assessment on or before July 31st of each year for which C-PACE loan payments are due.
- B. The voluntary special assessment lien shall have the same priority status as a property tax lien against real property so long as (1) a written subordination agreement, in a form and substance acceptable to each prior lien holder in its sole and exclusive discretion, is executed by the holder of each mortgage or deed of trust lien on the property and recorded with the special assessment lien, and (2) Borrower Certifications are submitted to the City prior to recording the Memorandum of C-PACE Lien.
- C. The City's obligation to remit C-PACE payments to the Capital Provider shall be a limited obligation, only payable if and when installment payments are received from the Borrower and not applied by the Treasurer to the City's real property taxes, penalties, and interest as directed by this article. The Treasurer shall promptly process, deposit, and credit C-PACE installment payments no later than 30 days after receipt.
- D. The voluntary special assessment lien, and the Memorandum of C-PACE Lien, shall not be amended without the City's consent, except for transfer, assignment, or sale as provided in this section. C-PACE loans may be transferred, assigned or sold by a Capital Provider at any time during the loan term without consent from Borrower or the City or any other party; provided that Capital Provider shall (i) record a C-PACE Assignment in the Clerk's Office, and (ii) deliver a copy of the recorded C-PACE Assignment to the Commissioner of Revenue, Treasurer, and program administrator if applicable. The Treasurer shall not be obligated to

remit C-PACE payments to a new Capital Provider unless a recorded copy of the C-PACE Assignment has been provided to the Treasurer at least thirty days before the next installment payment due date. Recordation of the C-PACE Assignment shall constitute an assumption by the new Capital Provider of the C-PACE rights and obligations contained in the C-PACE loan documents.

- E. The voluntary special assessment lien shall run with the land. That portion of the assessment that has not yet become due is not eliminated by foreclosure of a property tax lien.
- F. The voluntary special assessment shall be payable to the Treasurer in installments over a period of years, due at the same time as real property taxes. C-PACE loans shall not constitute a pledge of the faith and credit of the City.
- G. Delinquent payments shall be subject to all fees and collection methods permitted under the laws of the Commonwealth of Virginia for the collection of delinquent taxes.
- H. The Treasurer may enforce the voluntary special assessment lien in the same manner that a property tax lien against real property is enforced. The Treasurer shall be entitled to recover costs and expenses, including attorney fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect delinquent property taxes, including utilizing any administrative remedies provided by Virginia law. For the purposes of enforcement of the voluntary special assessment lien herein, any Eligible Property which has an outstanding voluntary special assessment imposed pursuant to this Article shall be enforceable after December 31st following the first anniversary of either the real estate tax or the special assessment having become due under the authority of Virginia Code §58.1-3965.1.

Sec. 38-507. Role of the City; limitation of liability.

Borrowers and Capital Providers participate in C-PACE at their own risk. The City makes no representation or warranty as to the validity, enforceability, priority, or any other character of any C-PACE loan agreement or voluntary special assessment lien and Borrower and Capital Providers agree to release and hold the City of Fredericksburg harmless against any and all liabilities, claims, suits, liens, judgments, damages, losses and expenses, including without limitation, reasonable legal

fees and costs arising in whole or in part from acts, omissions, breach or default of Borrower or Capital Providers in relation to or under the performance of any C-PACE loan agreement.

SEC. III. Effective Date.

This ordinance shall be effective immediately.

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

Approved as to form:

Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 18- duly adopted at a meeting of the City Council meeting held Date, 2018 at which a quorum was present and voted.

Tonya B. Lacey, CMC
Clerk of Council