AGENDA--CITY COUNCIL
CITY OF MARTINSVILLE, VIRGINIA

Council Chambers – Municipal Building
6:30pm CLOSED Session 7:00pm Regular Session
Tuesday December 12, 2023

6:30 pm – CLOSED SESSION

1. Items to be considered in Closed Session, in accordance with the Code of Virginia, Title 2.2, Chapter 37—Freedom of Information Act, Section 2.2-3711(A)—Closed Meetings, the following:
   A. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business or industry's interest in locating or expanding its facilities in the community, as authorized by Subsection 5.
   B. Consultation with legal counsel and briefings by staff members, attorneys or consultants pertaining to actual or probable litigation, or other specific legal matters requiring the provision of legal advice by such counsel, as authorized by Subsection 7.

7:00 pm - Regular Session

Pledge to the American Flag and Invocation by Council Member Tammy Pearson.

1. Approve minutes from the September 19, 2023 Joint Session with the School Board, September 25, 2023 Closed Session, September 26, 2023 Council Meeting, October 4, 2023 Special Meeting, October 6 City Manager Oath and Welcome, October 16, 2023 Closed Meeting, and October 21, 2023 Closed Meeting. (5 mins)

2. Hear a presentation and consider approval of a resolution supporting Share the Air. (10 mins)

3. Hear an end of the year update from Uptown Partnership. (10 mins)

4. Consider approval of the Nuisance Ordinance amendment. (5 mins)

5. Consider the Ordinance to adopt the City's participation in the Commercial Property Assessed Clean Energy (C-PACE) program on second reading. (10 mins)

6. Discuss a proposed electric rate increase. (10 mins)

7. Hear an update on expenditure of funds the City received through the American Rescue Plan Act of 2021. (10 mins)

8. Business from the Floor –
   The public comment portion of the Council meeting provides citizens the opportunity to discuss matters relevant to the operation of the City, which are not listed on the printed agenda. Citizens who wish to participate in a meeting's public comment period may do so by emailing their comments to Karen Roberts, Clerk of Council, at kroberts@ci.martinsville.va.us, calling in their comments to 276-403-5182, faxing comments to 276-403-5280,or mailing comments to City of Martinsville, attn.: Karen Roberts, P.O. Drawer 1112, Martinsville, VA 24114. *Comments must be received by 12:00noon Monday, December 11, 2023.* Citizens may also request to speak at the Council meeting in the same manner. Comments, or a request to speak, must be received by noon the day before a Council meeting for consideration by Council at the meeting. Any person submitting comments or requesting to speak must identify themselves by name and address, including zip code, limit their remarks to 3 minutes or less (as read aloud), address a topic of City business, and refrain from making any personal references or accusations of a factually false and/or malicious nature. Priority for comments is given to City residents, taxpayers, and business owners. Speakers may not yield time. Groups of speakers on the same topic must designate a single representative. Comments violating these rules may not be presented at the Council meeting. Any speaker violating these rules may be removed from the podium or from the Council chamber. This policy does not apply to public hearings, at which any citizen of Martinsville may appear and speak on the subject of the public hearing.

9. Comments by members of City Council. (5 mins)

10. Comments by City Manager. (5 mins)

Martinsville
A CITY WITHOUT LIMITS

City Council Agenda Summary

Meeting Date: December 12, 2023

Item No: 1.

Department: Clerk of Council

Issue: Consider approval of minutes

Summary: None

Attachments:
September 19, 2023 Joint Session with the School Board
September 25, 2023 Closed Session
September 26, 2023 Council Meeting
October 4, 2023 Special Meeting
October 6 City Manager Oath and Welcome
October 16, 2023 Closed Meeting
October 21, 2023 Closed Meeting

Recommendations: Motion to approve minutes as presented.

Martinsville
A CITY WITHOUT LIMITS

City Council Agenda Summary

Meeting Date: December 12, 2023

Item No: 2.

Department:

Issue: Hear a presentation and consider approval of a resolution supporting Share the Air

Summary: Share the Air is an organization committed to tobacco-free and vape-free parklands, facilities, and open public spaces to provide a clean, healthy, and safe environment for all Virginians.

Attachments: Resolution, Share the Air Fact Sheet, Sign-on Letter, and additional information

Recommendations: Staff recommends approval of the resolution

FACT SHEET

KEY FACTS

- Tobacco products are the most littered item nationwide, accounting for nearly 40% of all littered items.[1]
- A non-user exposed to secondhand aerosol smoke produced by the exhaled particles from electronic cigarettes could be exposed to particles similar in size to tobacco smoke and diesel engine smoke.[2]
- Taking steps to eliminate outdoor tobacco and e-cigarette use promotes health equity for all by de-normalizing unhealthy behaviors and establishing community norms that tobacco and e-cigarette use is not accepted behavior.[3]
- Tobacco smoke is one of the most common asthma triggers. Children with asthma who are exposed to secondhand smoke are at risk for more severe and frequent asthma attacks, which can be fatal.[4]

WHY IT MATTERS

- Heavy nicotine use can prime adolescent brains for future substance use.[11]
- One in 15 Virginians currently have asthma, and that number is increasing.[10]
- Over 125,000 youth in VA currently have asthma.
    - Nearly 1 in 5 students went to the emergency room or urgent care center last year because of their asthma.[10]
- Litter from cigarettes and nicotine vapor products liquid poses an ingestion risk for young children. Ingesting discarded cigarettes or cigarette butts can cause vomiting, tremors, weakness, unresponsiveness, and may lead to respiratory arrest and death.[5]
    - Ingesting discarded nicotine liquid used for e-cigarettes can cause vomiting, a racing heart, difficulty breathing, and even death—a teaspoon of concentrated liquid nicotine can be fatal for toddlers 26 pounds and under.[6]
- People exposed to second-hand aerosol smoke produced by e-cigarettes have shown similar nicotine absorption levels similar to passive smokers. [7]
- E-cigarettes do not produce just water vapor. [e-cigs emit] "harmful chemicals like diacetyl, heavy metals like nickel and lead, and even benzene, the stuff that comes out of your exhaust pipe."[8,9]
    - Dangerous metal particles such as chromium are found in vape clouds and the toxic metal can build in your lungs over time.[12]

1. Keep America Beautiful, Inc. 2009 National Visible Litter Survey and Litter Cost Study. https://www.kab.org/sites/default/files/News%20%26%20Info_Research_2009_NationalVisibleLitterSurveyandCostStudy_Final.pdf

2. Thornburg, J., Malloy, Q., Cho, S-H., Studabaker, W., & Lee, Y. (2015). Exhaled electronic cigarette emissions: What's your secondhand exposure? (RTI Press Publication No. RB-0008-1503). Research Triangle Park, NC: RTI Press. https://doi.org/10.3768/rtipress.2015.rb.0008.1503

3. Lowrie, C., Pearson, A. L., & Thomson, G. (2018). Inequities in coverage of smokefree outdoor space policies within the United States: school grounds and playgrounds. BMC public health, 18(1), 736.

4. Centers for Disease Control and Prevention. Health Effects of Secondhand Smoke, 2018. https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/index.htm

5. Aleguas A, Alpert HR, Connolly GN, et al. Unintentional Child Poisonings Through Ingestion of Conventional and Novel Tobacco Products. Pediatrics. 2010; 125(5):896-899. https://pediatrics.aappublications.org/content/125/5/896

6. American Academy of Pediatrics. (2018). Liquid Nicotine Used in E-Cigarettes Can Kill Children. Retrieved from https://www.healthychildren.org/English/safety-prevention/at-home/Pages/Liquid-Nicotine-Used-in-E-Cigarettes-Can-Kill-Children.aspx

7. Flouris, A. D., Chorti, M. S., Poulianiti, K. P., Jamurtas, A. Z., Kostikas, K., Tzatzarakis, M. N., ... & Koutedakis, Y. (2013). Acute impact of active and passive electronic cigarette smoking on serum cotinine and lung function. Inhalation toxicology, 25(2), 91-101. Retrieved from https://www.ncbi.nlm.nih.gov/pubmed/23363041

8. Jensen, R. P., Luo, W., Pankow, J. F., Strongin, R. M., & Peyton, D. H. (2015). Hidden formaldehyde in e-cigarette aerosols. New England Journal of Medicine, 372(4), 392-394.

9. Reilly, S. M., Bitzer, Z. T., Goel, R., Trushin, N., & Richie Jr, J. P. (2018). Free Radical, Carbonyl, and Nicotine Levels Produced by Juul Electronic Cigarettes. Nicotine & tobacco research: official journal of the Society for Research on Nicotine and Tobacco.

10. 10. Virginia Department of Health, Virginia 2018 Asthma Burden Report (2018). http://www.vdh.virginia.gov/content/uploads/sites/94/2018/11/Asthma-Burden-Report_Final_10232018-1.pdf

11. Cold Spring Harbor Perspectives in Medicine 2012 Dec; 2(12): a012120. Short- and Long-Term Consequences of Nicotine Exposure during Adolescence for Prefrontal Cortex Neuronal Network Function. Natalia A. Goriounova and Huibert D. Mansvelder. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/

12. Olmedo, P., Goessler, W., Tanda, S., Grau-Perez, M., Jarmul, S., Aherrera, A., ... & Rule, A. M. (2018). Metal concentrations in e-cigarette liquid and aerosol samples: the contribution of metallic coils. Environmental Health Perspectives (Online), 126(2). Agency for Toxic Substances and Disease Registry (ATSDR). 2012. Toxicological Profile for Chromium. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Services.

SHARE THE AIR

Meet the Presenters

Anissa Morfa

WILLIAM FLEMING HIGH SCHOOL
Y STREET LEADERSHIP TEAM

Cheyenne Sebastian

WILLIAM FLEMING HIGH SCHOOL
Y STREET LEADERSHIP TEAM

What is YST ?

- Y Street is the Virginia Foundation for Healthy Youth's award-winning volunteer statewide youth initiative.
- Launched in 2004 to work on 2 major issues: **TOBACCO & OBESITY**
- Partnered with **90+** High Schools across Virginia to train and engage youth in policy change.

Campaign Goal: Create **100% Tobacco-Free and E-Cigarette-Free Outdoor Public Spaces**

Become a Champion by **adopting** a tobacco-free and e-cigarette-free outdoor policy.

Does your department have any existing rules or policies on tobacco use?

WHY GO TOBACCO-FREE?

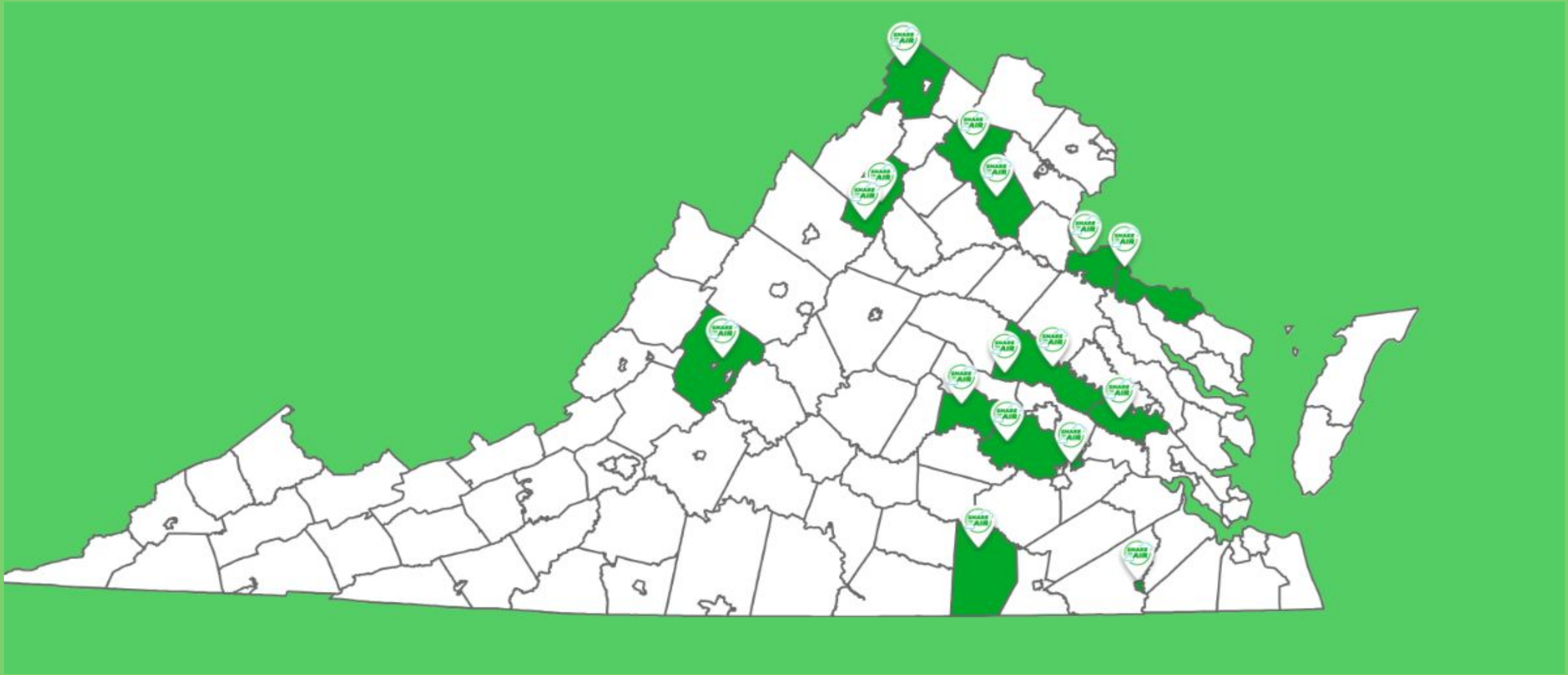
- Tobacco and e-cigarette use in outdoor places **creates litter** that is not only unsightly but also poses **significant risks** to humans, pets, and the environment.
- Parklands and recreation centers serve as **pillars of health** for families and should reflect that to promote **healthy communities**.
- Recent events **banning e-cigarette products** from store shelves highlight risks associated with usage.

93% Virginians in and around Martinsville believe that cigarettes, empty e-cigarette, and vaping cartridges are litter, and are toxic to humans and animals.

85% of Virginians in and around Martinsville believe tobacco litter negatively impacts their outdoor experience.

98% of Virginians in and around Martinsville area are in favor of tobacco-free outdoor policies.

Check Out Share The Air's Partners!!



sharetheairva.com

POLICY IMPLEMENTATION AND PARTNER RESPONSE

This program being very low cost and low barrier was the perfect way to start initiatives in our town that help improve the quality of life for our citizens. Not just for our residents, but our visitors as well.

Emmy Houck, Parks & Recreation Coordinator, Ashland

When I or my staff have been at parks or playgrounds, and fields, parents have pointed out the signs and they've been very happy that we are advertising the fact that you shouldn't be smoking or vaping near sports fields or playgrounds.

Chris Clarke, Director of Parks and Recreation, King George County

SHARE THE AIR

FREE Tobacco-Free Signage

Aluminum Signs
12” x 18”

Decals
8” x 8”

ALUMINUM SIGNS: BEST FOR OUTDOOR AREAS

- Sign Poles/Lampposts
- Fences
- Athletic Fields or Playgrounds
- Parking Lots
- Outside of Buildings

DECALS: BEST FOR ENTRIES

- Windows
- Glass Doors

FREE Resources

Toolkit Includes:

- **Tobacco-Free and E-Cigarette-Free Model Policy**
- **Comprehensive Policy Checklist**
- **Implementation & Communication Resources**
- **And more!**

QUESTIONS?

RESOLUTION
SHARE THE AIR

WHEREAS, tobacco products are the most littered item nationwide, accounting for nearly 40% of all littered items; and

WHEREAS, a non-user exposed to secondhand aerosol smoke produced by the exhaled particles from electronic cigarettes could be exposed to particles similar in size to tobacco smoke and diesel engine smoke; and

WHEREAS, taking steps to eliminate outdoor tobacco and e-cigarette use promotes healthy equity for all by de-normalizing unhealthy behaviors and establishing community norms that tobacco and e-cigarette use is not accepted behavior; and

WHEREAS, tobacco smoke is one of the most common asthma triggers. Children with asthma who are exposed to secondhand smoke are at risk for more severe and frequent asthma attacks which can be fatal; and

WHEREAS, Martinsville will establish a voluntary compliance to prohibit tobacco and electronic smoking device use on park properties, open public spaces, all enclosed and designated areas including common areas, playgrounds, and shelters, and will enforce the tobacco and e-cigarette-free voluntary policy when violations occur.

NOW THEREFORE, I, LC Jones, Mayor of Martinsville City Council, Virginia, do hereby proclaim and declare the City of Martinsville's support and urge our citizens to join with me in honoring and abiding the Share the Air Tobacco-Free and E-Cigarette-Free model policy to protect our citizens and make Martinsville a cleaner, safer city.

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LC Jones, Mayor

Martinsville
A CITY WITHOUT LIMITS

City Council
Agenda Summary

Meeting Date: December 12, 2023

Item No: 3.

Department:

Issue: Hear an end of year update from Uptown Partnership

Summary: Spencer Koger, Executive Director of Uptown Partnership will provide an end of year update to Council.

Attachments: PowerPoint

Recommendations: Information purposes only

Executive Director – Spencer Koger

End of Year Report

Road Map

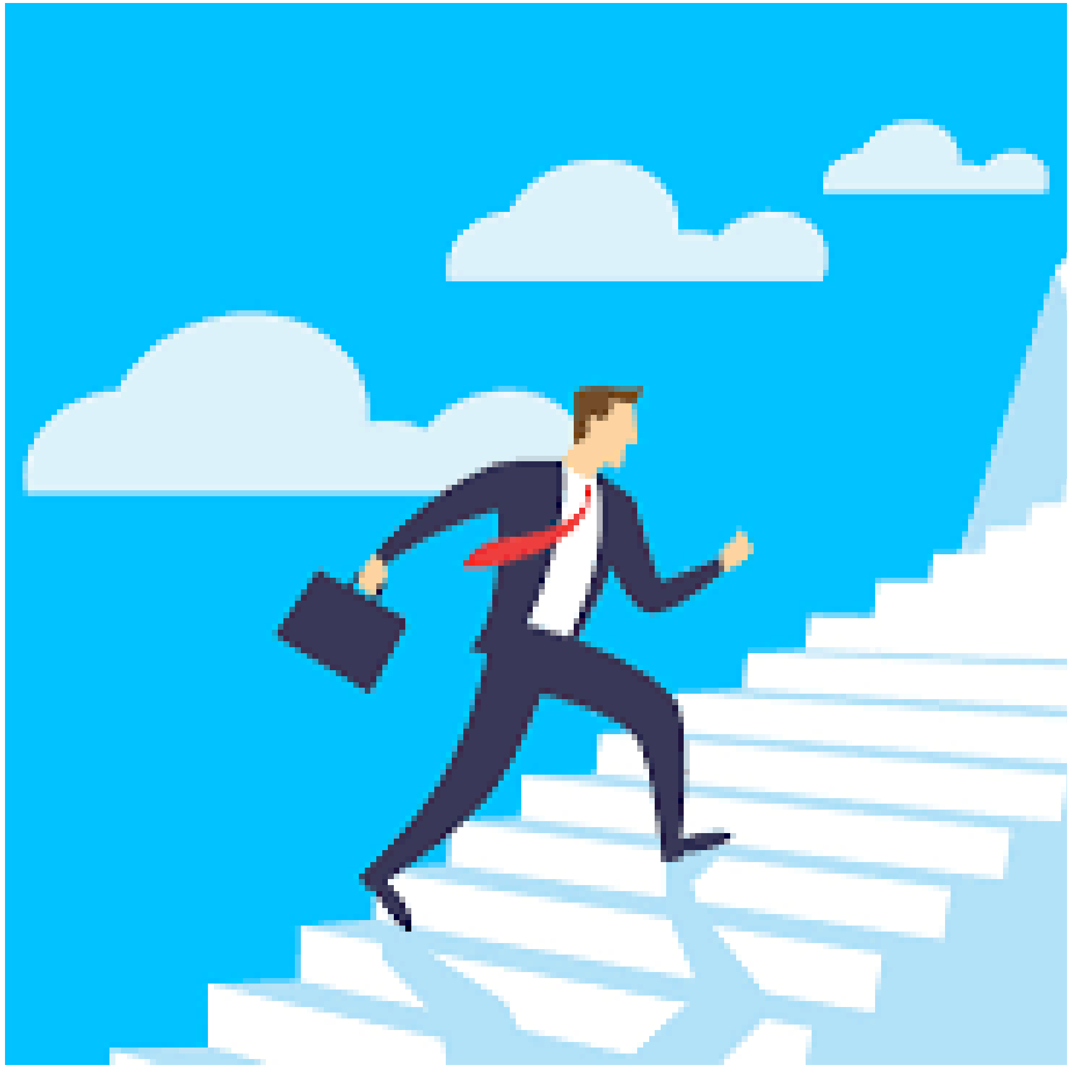
- Main Street Update
- Organization Update
- Success
- Future Plans

Virginia Main Street & DHCD

- Mobilizing Main Street Update
  - Advancing Mainstreet update
- Main Street Conference – May 2024
  - Presentation

Organization Update

- Work Planning
- Fundraising Planning
- Full Board



Successes

- Relationship Building
- Project Hope Grant Awardee
- DHCD requirements completed
- Sponsorships of events
  - Juneteenth
  - TGIF
- Rob Alleyway Dedication & Memorial
- Uptown Partnership's Holiday Ornament Making
- Mascot Update

Future Plans

ZOMBIE FUN RUN

ORNAMENT MAKING MAKING IT BIGGER

COLLABORATING AND CREATING NEW PARTNERSHIPS

Martinsville
A CITY WITHOUT LIMITS

City Council Agenda Summary

Meeting Date: December 12, 2023

Item No: 4.

Department: Community Development

Issue: Consider approval of the Nuisance Ordinance amendment

Summary: In an effort to reduce the number of times the City must abate the frequently cited properties, we are proposing to amend the ordinance to allow the City to replant these properties in clover, or other low and slow growth ground cover. There are also some adjustments to the language concerning how much of the lot is applicable to be cited and cleaned up. This also clears up how we are currently enforcing this ordinance through the Community Development office instead of Public Works.

Attachments: Amended ordinance 15.5

Recommendations: Staff recommends approval of the new ordinance amendments.

City of Martinsville, Virginia

Ordinance No. 2023-___

BE IT ORDAINED by the Council of the City of Martinsville, Virginia, in Regular Session held ______, 2023 that Sections 13-37, 15.5-21 and 15.5-22of the Code of the City of Martinsville be amended to hereafter read as follows:

Sec. 13-37. Excessive growth of grass, weeds, etc., on vacant property.

(a) It shall be the duty of the owner of any parcel of land in the city to cut or cause to be cut all grass, weeds or like vegetative growth so that such growth at no time exceeds a height of eighteen (18) inches above the ground unless such growth, due to unusual physical characteristics of the property is deemed by the director of public works to not create a potential threat to public health or safety; and it shall be the duty of the owner of any legally established lot situated in the city fronting a city-maintained public street to cut thereon any weeds, brush, grass or like vegetative growth if an occupied building or residence is situated on an adjacent lot, subject to the following:

(1) All grass, weeds or like vegetative growth shall be cut so that no such growth exceeds at any time a height of ten (10) inches above ground for a depth of eighty (80) feet from the street line measured at ninety (90) degrees with the street line; and

(2) Such vegetative growth shall be cut as often as necessary to comply with the standards stated herein, which shall be no less frequent than two (2) times per year between May 15 and June 15; and between August 1 and September 1.

The director of public works may grant a variance from these requirements if, in his opinion, steep slopes or terrain make it impractical to cut such vegetative growth as described above provided that the intent of these requirements is complied with. Should the owner of any such property fail or refuse to abide by this requirement, the director of public works shall give a written notice to such owner requiring him to cut or have cut such grass, weeds or vegetative growth within fifteen (15) days after the date of the notice.

(b) The notice referred to in subsection (a) above shall be given to the owner by personally serving a copy of such notice on the owner or his agent or by mailing a copy to the owner at his last known post office address by registered or certified mail, return receipt requested, or if the owner or his address is unknown, by publication of such notice in a newspaper of general circulation in the city once per week for two (2) successive weeks. A copy of such notice sent to the owner by registered or certified mail at the address of such owner listed on the land books of the city shall be deemed sufficient and equivalent to notice having been received by the owner, regardless of whether such copy is returned undelivered or not.

(c) Upon the failure or refusal of the owner, after serving of the notice pursuant to this section, to cut or cause to be cut the grass, weeds or vegetative growth within the time provided, the director of public works may have the necessary work done by city employees or city agents under contract. All of the actual costs and expenses of such work, plus the cost of serving the notice, shall be chargeable to and paid by the owner of the property. Any bill sent to the owner which is not paid within thirty (30) days shall be transmitted to the city treasurer, who shall include such bill in the next regular real estate tax bill sent to the owner. Every such charge with which the owner has been assessed and which remains unpaid after the deadline for the payment of the next installment of real estate taxes shall constitute a lien against such property; provided, however, that such lien shall be recorded in the same manner as liens for real estate taxes are recorded. It shall be the duty of the city treasurer to assure the proper recording of any such lien.

(d) The failure or refusal of any property owner to comply with the terms of any notice to cut grass, weeds or other growth served pursuant to this section shall constitute a Class 4 misdemeanor. In any prosecution, there shall be a rebuttable presumption that any growth exceeding three (3) feet in height creates a potential threat to public health or safety.

(e) Nothing in this section shall be construed to require the cutting of any tree or ornamental shrubbery, unless it is creating a safety hazard.

(f) In the event that the director of public works finds it necessary to abate violations of this section in accordance with subsection (c) herein, upon the fourth such abatement within a calendar year for any specific parcel the director of public works may have such property reseeded in non-invasive clover or other non-invasive, low-growth vegetative cover as the director deems appropriate.

Charter reference(s)—Authority of city to require premises be kept clean, sanitary and free from weeds, Ch. 1, § 2(20).

Cross reference(s)—Penalty for Class 4 misdemeanor, § 1-11; removal or screening of accumulations of waste material on private property, § 18-2.

State law reference(s)—Authority for above section, Code of Virginia, §§ 15.2-901, 15.2-1115.

Sec. 15.5-21. Nuisances prohibited; term defined.

It shall be unlawful for the owner or owners, occupant or occupants of any property or premises located in the city to create, cause, or permit the continuation of any nuisance. The term "nuisance" to include, without limitation, the examples set forth as follows:

(1) Any condition which is breeding ground or harbor for mosquitoes or a breeding ground for rats or other pests.

(2) Any place of weeds, grass or other noxious vegetation over ten (10) inches in height that is within fifty (50) feet of an inhabited residence or other occupied structure.

(3) An open place of collection of water where insects tend to breed. For the purposes of this chapter, an "open place of collection of water" shall be held to mean and be that contained in ditches, pools, ponds (natural or artificial), excavations, holes, depressions, open cesspools, privy vaults, fountains, cisterns, tanks, shallow wells, barrels, troughs, urns, cans, boxes, bottles, tubs, buckets, partially disassembled vehicles, defective house roof gutters, tanks of flush closets or similar containers.

(4) An open place of combustible items such as mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, debris from the clearing or grading of lots, old clothes, rags or any other combustible materials or objects of a like nature.

(5) An open place of collection of garbage, food waste, animal waste or other rotten or putrescible matter of any kind.

(6) Any furniture, appliance or other metal products of any kind or nature openly kept which have rough or jagged edges of metal or glass.

(7) Any furniture or other articles not specifically intended for outdoor use or exposure to the elements and which would tend to absorb or retain moisture thereby attracting insects, pests or vermin.

(8) Any accumulation of rubbish, trash, old building materials or junk causing or threatening to cause a fire hazard, or causing or threatening to cause the accumulation of stagnant water, or causing or threatening to cause the inhabitance of mice, snakes or vermin of any kind which may be dangerous or prejudicial to the public health.

(9) Any condition detrimental to the public health which violates the rules and regulations of the health department.

The code official heretofore designated by council to enforce the building maintenance code in the city and alternatively the city attorney are hereby vested with discretionary authority to decline to undertake enforcement of this section with respect to nuisances which are (a) deemed to be of a private nature between neighboring property owners, or (b) deemed not to constitute a public nuisance, or (c) not visible to the unaided eye from street or ground level outside the boundaries of the property on which the subject nuisance exists.

Sec. 15.5-22. Notice of abatement; correction by city.

(a) Whenever it shall be reported to the code official heretofore designated by council to enforce the building maintenance code in the city that there exists on any lot or parcel of land in the city any such nuisance, he shall forthwith give the owner or owners, occupant or occupants of said premises written notice to promptly remove, raze, or abate such nuisance and specify a reasonable time for such discontinuance or abatement. The council conclusively finds that three (3) days from the receipt of such notice is a reasonable amount of time for completion of removal razing or abatement of any nuisance, and also finds any longer period prescribed by the notifying official to be reasonable. Such notice shall be in writing and shall be served upon the owner or owners, occupant or occupants by mailing a copy thereof to the last known post office address of said person or persons, or by delivery in person or by delivering it and leaving it in possession of any person in charge of the premises, or by posting the notice in a conspicuous place on the premises if such person or persons cannot be found on said premises; and if the person or persons receiving the notice to abate fail to comply within the given period of time, the code official shall cause the corrections to be made, either through other city agencies or by contract or arrangement with private persons, and charge and collect the cost thereof from the owner or owners, occupant or occupants of the property affected in any manner provided by law for the collection of state or local taxes.

(b) In the event that the director of public works finds it necessary to abate violations of section 15.5-21 of the city code in accordance with subsection (a) herein, upon the fourth such abatement within a calendar year for any specific parcel the director of public works may have such property reseeded in non-invasive clover or other non-invasive, low-growth vegetative cover as the director deems appropriate.

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Attest:

____

Karen Roberts, *Clerk of Council*

City Council
Agenda Summary

Date: December 12, 2023

Item No: 5.

Department: Community Development

Issue: Consider Ordinance to adopting the City's participation in the Commercial Property Assessed Clean Energy (C-PACE) program.

Summary: Commercial Property Assessed Clean Energy (C-PACE) is a market-based financing tool building owners and developers can use to fund energy efficiency, renewable energy, water saving property enhancements, or other improvements as authorized by law without upfront costs. Private capital providers fund building improvements or new construction after a rigorous assessment of the project. It transforms and reduces expenses related to energy through a capital investment.

In 2020 the General Assembly passed legislation allowing Virginia to offer a statewide C-PACE program. The program launched in September 2022 and is now active and open to localities wishing to participate. The Virginia PACE Authority (VPA) is administering the program for the state energy office (Virginia Energy). The enacted legislation enabled localities to implement local C-PACE programs but required each jurisdiction to enact its own ordinance. Though the legislation requires action by localities, localities are neither the lender nor guaranteeing the collection of funds. The City is facilitating a property rights transaction that carries with the land. Although State law mandates that the City levy the lien, private capital providers carry the risk if the property owner defaults on a loan. C-PACE repayments are collected by the providers of the fund.

C-PACE benefits a wide variety of stakeholders: property owners who need to update older buildings, to build in resiliency, reduce energy costs and increase net operating income; contractors who are seeking job opportunities; lenders providing financing; builders who will be able to finance more energy efficiency and renewable energy in new commercial buildings; and citizens who seek reduced greenhouse gas emissions and a healthier environment.

Funding is provided by capital lenders. Lenders work with building owners and contractors to assess qualifications for financing. With 100 percent financing, building owners can take on large projects that can produce immediate savings and preserve cash flow. Capital providers can then bring their lending power to a sector of the market where others have not been able to capitalize on an opportunity. Eligible improvements can include Heating, Ventilation and Air Conditioning (HVAC), boilers, solar photovoltaic (PV) systems, high efficiency lighting, insulation, windows, water conservation and energy audits.

In order to participate in the program, both a public hearing and ordinance are required. The public hearing was held on October 24, 2023 and the ordinance was approved on first reading at the November 28, 2023 Council meeting.

Concerns that had been raised by some constitutional officers have been resolved to their satisfaction. The revised ordinance is presented as an attachment.

Attachments: Copy of § 15.2-958.3 Commercial Property Assessed Clean Energy (C-PACE) financing programs and Copy of an Ordinance of the City of Martinsville creating a commercial property assessed clean energy (C-PACE) financing program

Recommendations: Proceed with the second reading for approval of the Ordinance creating a C-PACE financing program

AN ORDINANCE OF THE CITY OF MARTINSVILLE, VIRGINIA CREATING A COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM

BE IT ORDAINED by the City Council of the City of Martinsville, Virginia that Chapter 25, Commercial Property Assessed Clean Energy (C-PACE) Financing and Resiliency Program of the City Code of the City of Martinsville, Virginia is hereby enacted as set forth below, including Appendix A and Appendix B.

CHAPTER 25- COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING AND RESILIENCY PROGRAM

ARTICLE I. - IN GENERAL

Sec. 25-1. - Purpose.

The purpose of this chapter is to create a "The City of Martinsville Commercial Property Assessed Clean Energy (C-PACE) Financing Program," to operate in coordination with the statewide C-PACE program, all in accordance with Va. Code §15.2-958.3 (hereinafter, the "C-PACE Act"). The local and statewide C-PACE programs, working together, will facilitate Loans made by Capital Providers to Property Owners of Eligible Properties to finance Eligible Improvements thereon. The C-PACE program will facilitate loans made by Capital Providers to Property Owners to finance renewable energy production and distribution facilities, energy efficiency improvements, water usage efficiency, resiliency, and stormwater management improvements. Subject to the limitations set forth in this chapter, the C-PACE Act, or other applicable law, each C-PACE Loan, inclusive of principal, interest, and any financed fees, costs, or expenses, will be secured by a voluntary special assessment lien on the Property that is the subject of such Loan.

Sec. 25-2. - Definitions.

(a) *Assessment Payment Schedule* means the schedule of installments of C-PACE Payments to be made in the repayment of the C-PACE Loan, which shall be attached as Exhibit A-2 to the C-PACE Program Agreement.

(b) *Capital Provider* means (i) a private lending institution that has been approved by the Program Administrator in accordance with the Program Guidelines to originate a C-PACE Loan and its successors and assigns; or (ii) the current holder of a C-PACE Loan.

(c) *City* means the City of Martinsville, Virginia.

(d) *Clerk's office* means the Office of the Clerk of the Circuit Court of the City of Martinsville, Virginia.

(e) *Commonwealth* means the Commonwealth of Virginia.

(f) *Council* means the Council of the City of Martinsville, Virginia.

(g) *C-PACE* means Commercial Property Assessed Clean Energy.

(h) *C-PACE Act* means Virginia's "Commercial Property Assessed Clean Energy (C-PACE) financing programs" law, codified at Va. Code §15.2-958.3.

(i) *C-PACE Amendment* means an amendment of the C-PACE Lien executed by the Capital Provider, the Property Owner and the Program Manager, as permitted in the C-PACE Documents, which C-PACE Amendment shall be recorded in the Clerk's Office to evidence each amendment to the C-PACE Loan and the C-PACE Lien.

(j) *C-PACE Assignment (CP)* means a written assignment by one Capital Provider to another Capital Provider of the C-PACE Payments and/or C-PACE Lien pursuant to the terms of the assignment document.

(k) *C-PACE Assignment (Locality)* means a written assignment by the City to the Capital Provider to whom the C-PACE Loan is then due, wherein the City relinquishes and assigns its right to enforce the C-PACE Lien to the Capital Provider, substantially in the form attached as Addendum 1 to the C-PACE Lien Certificate.

(l) *C-PACE Documents* means the C-PACE Program Agreement, Financing Agreement, C-PACE Lien Certificate, C-PACE Assignment (CP) (if any), C-PACE Assignment (Locality) (if any), C-PACE Amendment (if any), and any other document, agreement, or instrument executed in connection with a C-PACE Loan.

(m) *C-PACE Lien* or *Lien* means the voluntary special assessment lien levied against the Property as security for the C-PACE Loan.

(n) *C-PACE Lien Certificate* means the voluntary special assessment lien document duly recorded among the Land Records against an Eligible Property to secure a C-PACE Loan.

(o) *C-PACE Loan* or *Loan* means a loan from a Capital Provider to finance a Project, in accordance with the Program Guidelines.

(p) *C-PACE Payment* means the periodic installment payments of the C-PACE Loan by a Property Owner, due and payable to the Capital Provider or Program Administrator as permitted by the C-PACE Act in such amounts and at such times as described in the Assessment Payment Schedule.

(q) *C-PACE Program* means the program established by the City through this chapter, in accordance with the C-PACE Act, that in coordination with the Statewide Program facilitates the financing of Eligible Improvements and provides for a C-PACE Lien to be levied and recorded against the Property to secure the C-PACE Loan.

(r) *C-PACE Program Agreement* means the agreement executed among the Property Owner, the City, the Treasurer and the Capital Provider, and their respective successors and assigns, which includes the terms and conditions for participation in the C-PACE Program and the Property Owner's acknowledgment and consent for the City to impose a voluntary special assessment, record a C-PACE Lien Certificate against the Property Owner's Eligible Property and, if the City so determines, assign the rights to enforce the C-PACE Lien and C-PACE Lien Certificate to the Capital Provider (and if so assigned, also a consent of the Treasurer to such assignment). The C-PACE Program Agreement shall be substantially in the form attached hereto as Appendix A.

(s) *Delinquent Payment* means any C-PACE Payment that was not paid by a Property Owner in accordance with the C-PACE Documents.

(t) *Eligible Improvements* means the initial acquisition and installation of any of the following improvements made to Eligible Properties:

(1) Energy efficiency improvements;

(2) Water efficiency and safe drinking water improvements;

(3) Renewable energy improvements;

(4) Resiliency improvements;

(5) Stormwater management improvements;

(6) Environmental remediation improvements; and

(7) Electric vehicle infrastructure improvements.

Eligible Improvements may be made to both existing Properties and new construction, as further prescribed in this chapter and the Program Guidelines. Eligible Improvements shall include types of authorized improvements added by the General Assembly to the C-PACE Act after the date of adoption of this chapter, without need for a conforming amendment of this chapter. In addition to the elaboration on the types of Eligible Improvements provided in Sec. 25-4(a), below, a Program Administrator may include in its Program Guidelines or other administrative documentation definitions, interpretations, and examples of these categories of Eligible Improvements.

(u) *Eligible Property or Property* means all assessable commercial real estate located within the City, with all buildings located or to be located thereon, whether vacant or occupied, improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the City, excluding (i) a residential dwelling with fewer than five (5) units, and (ii) a residential condominium as defined in Va. Code §55.1-2100. Exclusion of condominium projects will be limited to residential condominium projects as defined in the 2021 amendment to the C-PACE Act effective July 1, 2021. Common areas of real estate owned by a cooperative or a property owners' association described in Va. Code Title 55.1, Subtitle IV (§55.1-1800 *et* *seq*.), that have a separate real property tax identification number are Eligible Properties. Eligible Properties shall be eligible to participate in the C-PACE Program.

(v) *Financing Agreement* means the written agreement, as may be amended, modified, or supplemented from time to time, between a Property Owner and a Capital Provider, regarding matters related to the extension and repayment of a C-PACE Loan to finance Eligible Improvements. The Financing Agreement may contain any lawful terms agreed to by the Capital Provider and the Property Owner.

(w) *Land Records* means the Land Records of the Clerk's Office.

(x) *Lender Consent* means a written subordination agreement executed by each mortgage or deed of trust lienholder with a lien on the Property that is the subject of a C-PACE Loan, which allows the C-PACE Lien to have senior priority over the mortgage or deed of trust liens.

(y) *Loan Amount* means the original principal amount of a C-PACE Loan.

(z) *Locality Agreement* means the Virginia Energy – Locality Commercial Property Assessed Clean Energy Agreement between Virginia Energy and the City, pursuant to which the City elects to participate in the Statewide Program. The Locality Agreement shall be substantially in the form attached hereto as Appendix B.

(aa) *Program Administrator* means the private third party retained by Virginia Energy to provide professional services to administer the Statewide Program in accordance with the requirements of the C-PACE Act, this chapter, the Locality Agreement and the Program Guidelines.

(bb) *Program Fee(s)* means the fee(s) authorized by the C-PACE Act and charged to participating Property Owners to cover the costs to design and administer the Statewide Program, including, without limitation, compensation of the Program Administrator. While Capital Providers are required to service their C-PACE Loans, if a Capital Provider does not do so and the Program Administrator assumes the servicing responsibility and charges a servicing fee, the servicing fee shall also be included among the Program Fees.

(cc) *Program Guidelines* means a comprehensive document available from the Program Administrator setting forth the procedures, eligibility rules, restrictions, Program Fee(s), responsibilities, and other requirements applicable to the governance and administration of the Statewide Program dated September 2022, as such Program Guidelines may be amended from time to time.

(dd) *Program Manager* means the City Manager, or such person designated in writing by the City Manager to (i) supervise the City's C-PACE Program and participation in the Statewide Program, (ii) act as liaison with the Program Administrator and (iii) advise the Program Administrator as to who will sign the C-PACE Documents to which the Locality is a party on the Locality's behalf. If the employee of the City who customarily signs agreements for the Locality is not the person designated as Program Manager, then references in this Ordinance and in the C-PACE Documents to the Program Manager signing certain C-PACE Documents on behalf of the Locality shall be construed to also authorize such customary signatory for the City to execute such C-PACE Documents.

(ee) *Project* means the construction or installation of Eligible Improvements on Eligible Property.

(ff) *Property Owner* means (i) the Property Owner(s) of Eligible Property who voluntarily obtain(s) a C-PACE Loan from a Capital Provider in accordance with the Program Guidelines; or (ii) a successor in title to the Property Owner.

(gg) *Property Owner Certification* means a notarized certificate from Property Owner, certifying that (i) Property Owner is current on payments on Loans secured by a mortgage or deed of trust lien on the Property and on real estate tax payments, (ii) that the Property Owner is not insolvent or in bankruptcy proceedings, and (iii) that the title of the Property is not in dispute, as evidenced by a title report or title insurance commitment from a title insurance company acceptable to the Program Administrator and Capital Provider.

(hh) *Statewide Program* means the statewide C-PACE financing program sponsored by Virginia Energy, established to provide C-PACE Loans to Property Owners in accordance with the C-PACE Act, this chapter, the Locality Agreement, the C-PACE Documents and the Program Guidelines.

(ii) *Treasurer* means the Treasurer of the City.

(jj) *Useful Life* means the normal operating life of the fixed asset.

(kk) *Virginia Code or Va. Code* means the Code of Virginia of 1950, as amended.

(ll) *Virginia Energy* means the Virginia Department of Energy.

Sec. 25-3. - Effective date.

This chapter shall become effective immediately following its adoption.

ARTICLE II. - PROGRAM STRUCTURE

Sec. 25-4. - C-PACE Program; Eligible Improvements.

(a) *C-PACE Program.* The C-PACE Program shall be available throughout the City, provided that the Property Owner, the Property, the proposed Eligible Improvements, the Capital Provider and the principal contractors all qualify for the Statewide Program. The following types of Eligible Improvements may be financed with a C-PACE Loan:

(1) Energy usage efficiency systems (e.g., high efficiency lighting and building systems, heating, ventilation, and air conditioning (HVAC) upgrades, air duct sealing, high

efficiency hot water heating systems, building shell or envelope improvements, reflective roof, cool roof, or green roof systems, and/or weather-stripping), or other capital improvements or systems which result in the reduction of consumption of energy over a baseline established in accordance with the Program Guidelines;

(2) Water usage efficiency and safe drinking water improvements (e.g., recovery, purification, recycling, and other forms of water conservation), or other capital improvements or systems which result in the reduction of consumption of water over a baseline established in accordance with the Program Guidelines;

(3) Renewable energy production facilities (e.g., solar photovoltaic, fiber optic solar, solar thermal, wind, wave and/or tidal energy, biomass, combined heat and power, geothermal and fuel cells), whether attached to a building or sited on the ground, and the storage and/or distribution of the energy produced thereby, whether for use on-site or sale or export to a utility or pursuant to a power purchase agreement with a non-utility purchaser;

(4) Resiliency improvements which increase the capacity of a structure or infrastructure to withstand or recover from natural disasters, the effects of climate change, and attacks and accidents, including, but not limited to:

a. Flood mitigation or the mitigation of the impacts of flooding;

b. Inundation adaptation;

c. Natural or nature-based features and living shorelines, as defined in Va. Code § 28.2-104.1;

d. Enhancement of fire or wind resistance, including but not limited to reinforcement and insulation of a building envelope to reduce the impacts of excessive heat or wind;

e. Microgrids;

f. Energy storage; and

g. Enhancement of the resilience capacity of a natural system, structure, or infrastructure;

(5) Stormwater management improvements that reduce onsite stormwater runoff into a stormwater system, such as reduction in the quantity of impervious surfaces or providing for the onsite filtering of stormwater;

(6) Environmental remediation improvements, including but not limited to:

a. Improvements that promote indoor air and water quality;

b. Asbestos remediation;

c. Lead paint removal; and

d. Mold remediation;

(7) Soil or groundwater remediation;

(8) Electric vehicle infrastructure improvements, such as charging stations;

(9) Construction, renovation, or retrofitting of a Property directly related to the accomplishment of any purpose listed in subsections (1) – (8) above, whether such Eligible Improvement was erected or installed in or on a building or on the ground; it being the express intention of the City to allow Eligible Improvements that constitute, or are a part of, the construction of a new structure or building to be financed with a C-PACE Loan; and

(10) Any other category of improvement (i) approved by the Program Administrator with the consent of the Program Manager as qualifying for financing under the Statewide Program, in accordance with the C-PACE Act (including amendments thereto which authorize additional types of Eligible Improvements), or (ii) added by the General Assembly to the C-PACE Act after the date of adoption of this chapter, without need for a conforming amendment of this chapter. In addition, a Program Administrator may include in its Program Guidelines or other administrative documentation definitions, interpretations and examples of these categories of Eligible Improvements.

(b) *Use of C-PACE Loan proceeds.* The proceeds of a C-PACE Loan may be used to pay for the construction, development, and consulting costs directly related to Eligible Improvements, including without limitation, the cost of labor, materials, machinery, equipment, plans, specifications, due diligence studies, consulting services (e.g., engineering, energy, financial, and legal), program fees, C-PACE Loan fees, capitalized interest, interest reserves, and C-PACE transaction underwriting and closing costs.

(c) *Program applications; prioritization.* The Program Administrator shall make available the Statewide Program's program application process, to provide for the review and approval of proposed Eligible Improvements and C-PACE Documents. Program applications will be processed by the Statewide Program in accordance with the eligibility requirements and procedures set forth in the Program Guidelines.

Sec. 25-5. - C-PACE Loan requirements; Program Fees; reporting; Program Administrator; Program Guidelines.

(a) *Source of Loans.* C-PACE Loans shall be originated by Capital Providers. The City and/or its respective governmental entities shall have no obligation to originate or guarantee any C-PACE Loans.

(b) *C-PACE Loan Amount thresholds.* The minimum Loan Amount that may be financed for each Project is fifty thousand dollars ($50,000.00). There is no maximum aggregate amount that may be financed with respect to an Eligible Property, except as stipulated in the Program

Guidelines. There shall be no limit on the total value of all C-PACE Loans issued under the C-PACE Program.

(c) *C-PACE Loan Refinancing or Reimbursement.* The Program Administrator may approve a Loan application submitted within two (2) years of the City's issuance of a certificate of occupancy or other evidence that the Eligible Improvements comply substantially with the plans and specifications previously approved by the City and that such Loan may refinance or reimburse the Property Owner for the total costs of such Eligible Improvements.

(d) *C-PACE Loan interest.* The interest rate of a C-PACE Loan shall be as set forth in the C-PACE Documents.

(e) *C-PACE Loan Term.* The term of a C-PACE Loan shall not exceed the weighted average Useful Life of the Eligible Improvements, as determined by the Program Administrator.

(f) *Apportionment of Costs.* All of the costs incidental to the financing, administration, collection, and/or enforcement of the C-PACE Loan shall be borne by the Property Owner.

(g) *Financing Agreements.* Capital Providers may use their own Financing Agreements for C-PACE Loans, but the Financing Agreement may not conflict with the provisions of this chapter, the C-PACE Act, or the C-PACE Program Agreement. To the extent of any conflict, this chapter, the C-PACE Act, and the C-PACE Program Agreement shall prevail.

(h) *C-PACE Program Agreement.* In order to participate in the C-PACE Program, Property Owner and Capital Provider shall enter into a C-PACE Program Agreement, which sets forth certain terms and conditions for participation in the C-PACE Program. The Program Manager is authorized to approve the C-PACE Loan and execute the C-PACE Program Agreement on behalf of the City without further action by the City Council. The Treasurer is also authorized to execute the C-PACE Program Agreement without further action by the City Council. The C-PACE Program Agreement shall be binding upon the parties thereto and their respective successors and assigns until the C-PACE Loan is paid in full. The Program Administrator may modify the C-PACE Program Agreement as necessary to further the Statewide Program's purpose and to encourage Program participation, so long as such modifications do not conflict with the Program Guidelines, this chapter, the Locality Agreement, or the C-PACE Act.

(i) *Repayment of C-PACE Loan; collection of C-PACE Payments.* C-PACE Loans will be repaid by the Property Owner through C-PACE Payments made in the amounts and at such times as set forth in the Assessment Payment Schedule, the C-PACE Documents and Program Guidelines. The Capital Provider shall be responsible, subject to and in accordance with the terms of the C-PACE Program Agreement and other C-PACE Documents, for the servicing of the C-PACE Loans and the collection of C-PACE Payments. If a Capital Provider fails to service a C-PACE Loan, such C-PACE Loan shall be serviced by the Program Administrator. Nothing herein shall prevent the Capital Provider or the Program Administrator from directly billing and collecting the C-PACE Payments from the Property Owner to the extent permitted by the C-PACE Act or other applicable law. The enforcement of C-PACE Loans and their C-PACE Documents during an event of default thereunder is governed by Section 25-6(e).

(j) *C-PACE Loan Assumed.* A party which acquires a Property which is subject to a C-PACE Lien, whether it obtained ownership of the Property voluntarily or involuntarily, becomes the Property Owner under the C-PACE Documents and, by virtue of the C-PACE Lien running with the land, assumes the obligation to repay all remaining unpaid C-PACE Payments which are due and which accrue during such successor Property Owner's period of ownership. Only the current C-PACE Payment and any Delinquent Payments, together with any penalties, fees and costs of collection, shall be payable at the settlement of a Property upon sale or transfer, unless otherwise agreed to by the Capital Provider.

(k) *Transfer of C-PACE Loans.* C-PACE Loans may be transferred, assigned, or sold by a Capital Provider to another Capital Provider at any time until the C-PACE Loan is paid in full provided that the Capital Provider shall (i) notify the Property Owner and the Program Administrator of the transfer prior to the billing date of the next C-PACE Payment due (and within thirty (30) days if the C-PACE Loan is serviced by the Program Administrator), (ii) record a C-PACE Assignment (CP) among the Land Records, and (iii) deliver a copy of the recorded C-PACE Assignment (CP) to the Property Owner, the City, and the Program Administrator. Recordation of the C-PACE Assignment (CP) shall constitute an assumption by the new Capital Provider of the rights and obligations of the original Capital Provider contained in the C-PACE Documents.

(l) *Program Fees.* The Statewide Program is self-financed through the Program Fees charged to participating Property Owners, together with any funds budgeted by the General Assembly to support the Statewide Program. The Program Fees are established to cover the actual and reasonable costs to design and administer the Statewide Program, including the compensation of a third-party Program Administrator. The amount(s) of the Program Fees shall be set forth in the Program Guidelines. Program Fees may be changed by the Program Administrator from time to time and shall only apply to C-PACE Loans executed after the date the revised fees are adopted.

(m) *Locality Agreement.* The City shall opt into the Statewide Program by entering into the Locality Agreement, adopting the Statewide Program as the City's own C-PACE Program. In accordance with the C-PACE Act, opting into the C-PACE Program shall not require the City to conduct a competitive procurement process. The Program Manager is authorized to execute the Locality Agreement on behalf of the City without further action by the City Council.

(n) *Program Guidelines.* The Program Administrator, under the direction of and in consultation with Virginia Energy, has designed the Program Guidelines to create an open, competitive and efficient C-PACE Program. The Program Administrator may modify the Program Guidelines from time to time, provided such amendments are (i) consistent with the C-PACE Act and (ii) approved by Virginia Energy before taking effect.

(o) *Indemnification*. The Program Administrator shall indemnify, defend and hold the City harmless against any claim brought against the City or any liability imposed on the City as a result of any action or omission to act by the Program Administrator.

Sec. 25-6. - Levy of assessment; recordation; priority; amendment; enforcement and collection costs.

(a) *Levy of voluntary special assessment lien.* Each C-PACE Loan made under the C-PACE Program shall be secured by a voluntary special assessment lien (i.e., a C-PACE Lien) levied by the City against each Property benefitting from the Eligible Improvements financed by such C-PACE Loan. The C-PACE Lien shall be in the Loan Amount but shall secure not only the principal of the C-PACE Loan, but also all interest, delinquent interest, late fees, penalties, Program Fees and collection costs (including attorneys' fees and costs) payable in connection therewith.

(b) *Recordation of C-PACE Lien Certificate.* Each C-PACE Lien shall be evidenced by a C-PACE Lien Certificate in the Loan Amount but shall also expressly state that it also secures all interest, delinquent interest, late fees, other types of fees, penalties, and collection costs (including attorneys' fees and costs) payable in connection therewith, and a copy of the Assessment Payment Schedule shall be attached thereto as an exhibit. The Program Manager is hereby authorized to, and shall promptly, execute the C-PACE Lien Certificate on behalf of the City and deliver it to the Capital Provider, without any further action by the City Council. Upon the full execution of the C-PACE Documents and funding of the C-PACE Loan, the Capital Provider shall cause the recordation of the C-PACE Lien Certificate in the Land Records.

(c) *Priority.* The C-PACE Lien shall have the same priority as a real property tax lien against real property, except that it shall have priority over any previously recorded mortgage or deed of trust lien on the Property only if prior to the recording of the C-PACE Lien, (i) Property Owner has obtained a written Lender Consent, in a form and substance acceptable to the holder of such prior mortgage or deed of trust in its sole and exclusive discretion, executed by such lienholder and recorded with the C-PACE Lien Certificate in the Land Records; and (ii) prior to the recording of the C-PACE Lien Certificate, Property Owner has delivered an executed Property Owner Certification to the City in connection with the C-PACE Loan closing. Only the current C-PACE Payment and any Delinquent Payments shall constitute a first lien on the Property. The C-PACE Lien shall run with the land and that portion of the C-PACE Lien under the C-PACE Program Agreement that has not yet become due shall not be eliminated by foreclosure of a real property tax lien.

(d) *Amendment of lien.* Upon written request by a Capital Provider in accordance with the Program Guidelines, the Program Manager, without any further action by the City Council, shall join with the Capital Provider and the Property Owner in executing a C-PACE Amendment of the C-PACE Loan and the C-PACE Lien after the closing of a C-PACE Loan. The C-PACE Amendment shall be recorded in the Land Records.

(e) *Enforcement and collection costs.* In the event of Property Owner's default under the terms of the C-PACE Documents, the City is given the right under the C-PACE Act, acting by and through the Treasurer, to enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39, Article 4 of the Virginia Code. Va. Code Sec. 58.1-3965.1 shall be applied to the sale of any Property to enforce a C-PACE Lien to collect Delinquent Payments. However, as allowed by the C-PACE Act, the City elects not to enforce the C-PACE Lien, but shall assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and delivering such instrument to the Capital Provider for recordation in the Land Records at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. In accordance with such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the name of the City and its Treasurer, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement. Such legal counsel, being authorized to institute suit in the name of the City and its Treasurer, shall have the status of "Special Counsel to the City and its Treasurer" and an "attorney employed by the governing body," and possess all the rights and powers of an attorney employed under Va. Code Secs. 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to a local government and/or its Treasurer and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code. The City, on its behalf and on behalf of the Treasurer, waives its right to the optional bond described in Va. Code Sec. 58.1-3966. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the City or Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property's sale, in accordance with Va. Code Secs. 58.1-3974 and 58.1-3975.

Sec. 25-7. - Role of the City; limitation of liability.

Property Owners and Capital Providers participate in the C-PACE Program and the Statewide Program at their own risk. By executing the C-PACE Documents, including the C-PACE Program Agreement, or by otherwise participating in the C-PACE Program and the Statewide Program, the Property Owner, Capital Provider, contractor, or other party or participant acknowledge and agree, for the benefit of the City and as a condition of participation in the C-PACE Program and the Statewide Program, that: (i) the City undertakes no obligations under the C-PACE Program and the Statewide Program except as expressly stated herein or in the C-PACE Program Agreement; (ii) in the event of a default by a Property Owner, the City has no obligation to use City funds to make C-PACE Payments to any Capital Provider including, without limitation, any fees, expenses, and other charges and penalties, pursuant to a Financing Agreement between the Property Owner and Capital Provider; (iii) no C-PACE Loan, C-PACE Payment, C-PACE Lien, or other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter shall be backed by the credit of the City, the Commonwealth, or its political subdivisions, including, without limitation, City taxes or other City funds; (iv) no C-PACE Loan, C-PACE Payment, C-PACE Lien or other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter shall constitute an indebtedness of the City within the meaning of any constitutional or statutory debt limitation or restriction; (v) the City has not made any representations or warranties, financial or otherwise, concerning a Property Owner, Eligible Property, Project, Capital Provider, or C-PACE Loan; (vi) the City makes no representation or warranty as to, and assumes no responsibility with respect to, the accuracy or completeness of any C-PACE Document, or any assignment or amendment thereof; (vii) the City assumes no responsibility or liability in regard to any Project, or the planning, construction, or operation thereof; (viii) each Property Owner or Capital Provider shall, upon request, provide the City with any information associated with a Project or a C-PACE Loan that is reasonably necessary to confirm that the Project or C-PACE Loan satisfies the requirements of the Program Guidelines; and (ix) each Property Owner, Capital Provider, or other participant under the C-PACE Program, shall comply with all applicable requirements of the Program Guidelines.

Sec. 25-8. - Severability.

As provided by Section 1-4 of the Code of the City, the provisions of this chapter are severable. If a court of competent jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid, or that the application of any part of the chapter or provision to any person or circumstance is invalid, the remaining provisions of this chapter shall not be affected by that decision and continue in full force and effect.

Second Reading: December 12, 2023.

Recorded Vote (Second Reading):

Appendix A – C-PACE Program Agreement

CITY OF MARTINSVILLE COMMERICAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING PROGRAM

C-PACE PROGRAM AGREEMENT

THIS C-PACE PROGRAM AGREEMENT (the "Agreement") is made and entered into as of the date it is fully executed (the "Effective Date"), by and among the **CITY OF MARTINSVILLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the " City "); the **TREASURER OF THE CITY** (the "Treasurer"); _________________________, a [*state of organization*] [*type of business entity*] (the "Property Owner"); and __________________________, a [*state of organization*] [*type of business entity*] (the "Capital Provider"), and their respective successors and assigns (collectively, the "Parties").

RECITALS:

WHEREAS, §15.2-958.3 of the Virginia Code (the "C-PACE Act"), authorizes the creation of a statewide Commercial Property Assessed Clean Energy ("C-PACE") Program (the "Statewide Program"), sponsored by Virginia Energy and managed by the Virginia PACE Authority, its selected program administrator (the "Program Administrator"), and authorizes Virginia localities to opt into the Statewide Program instead of establishing a stand-alone C-PACE Program for the locality; and

WHEREAS, the Statewide Program facilitates Capital Providers making C-PACE Loans to Property Owners to enable the Property Owners to make Eligible Improvements to Eligible Properties; and

WHEREAS, each C-PACE Loan is secured by a Property Owner's voluntary grant of a C-PACE Lien on an Eligible Property to the locality in which the Eligible Property is located; and

WHEREAS, the City has determined to enable Property Owners to obtain C-PACE Loans for Eligible Improvements located on Eligible Properties in the City by causing the City to opt into the Statewide Program, adopting the Statewide Program as the City 's own C-PACE Program, and to implement such determination, the Council] of the City has adopted Chapter 25 of the Code of Ordinances of the City (the "Ordinance"); and

WHEREAS, pursuant to the C-PACE Act, the Ordinance, a Locality Agreement between Virginia Energy and the City and the Program Guidelines, the Parties are required to enter into a written agreement specifying the terms and conditions for participating in the Statewide Program;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and to implement the purposes of the C-PACE Act and the Ordinance, the Parties hereby agree as follows:

Section 1 - Definitions.

Unless otherwise defined herein, capitalized terms in this Agreement shall have the meanings given them in the Ordinance.

Section 2 – Representations and Covenants.

(a) Property Owner represents and covenants that it is the fee simple record owner of the Eligible Property more particularly described in Exhibit A hereto (the "Property").

(b) Property Owner represents and covenants that (i) it has applied to participate in the Statewide Program, (ii) the Program Administrator has given notice to the City of its approval of Property Owner's application for C-PACE financing and (iii) desires to obtain a C-PACE Loan to construct or install certain Eligible Improvements on the Property.

(c) Property Owner represents and covenants that it has entered or will enter into a Financing Agreement with the Capital Provider that sets forth the terms of the C-PACE Loan. The Assessment Payment Schedule for the C-PACE Loan is set forth in Exhibit B hereto. Property Owner and Capital Provider acknowledge and agree that the Financing Agreement shall include only those costs and fees (including Program Fees) for which a C-PACE Lien may be imposed under the C-PACE Act and the Ordinance.

(d) The Parties acknowledge and agree that should Property Owner default on the C-PACE Loan, the City, acting through its Treasurer, may enforce the C-PACE Lien for the benefit of Capital Provider according to the C-PACE Documents, the C-PACE Act, the Locality Agreement and the Ordinance. If the City , acting through its Treasurer, determines not to enforce the C-PACE Lien, which determination shall be made within thirty (30) days of receipt by the City from the Capital Provider of notice of the Property Owner's default under the terms of the C-PACE Documents, then the City shall, within fifteen (15) days of the City 's determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and deliver such instrument to the Capital Provider for recordation in the Land Records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including at the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default.

(e) Property Owner and Capital Provider confirm that they have obtained Lender Consents for each deed of trust or mortgage lien against the Property.

Section 3 – Program Terms and Conditions.

(a) C-PACE Loan. The Capital Provider will provide financing for the Property Owner's Eligible Improvements in accordance with the C-PACE Documents.

(b) Program Fee(s): Property Owner agrees that Program Fee(s) will be [paid directly by Property Owner to the Program Administrator][deducted from C-PACE Loan proceeds at funding and remitted by Capital Provider to the Program Administrator][deducted from C-PACE Payments and remitted by Capital Provider to the Program Administrator] in accordance with the C-PACE Documents and the Program Guidelines and in the amount of $_______, as follows: ____ ____.

(c) Imposition of C-PACE Lien. In consideration for the C-PACE Loan provided to Property Owner under the Program, Property Owner hereby requests and authorizes the City to levy a C-PACE Lien against the Property in the Loan Amount, together with all interest, delinquent interest, late fees, other types of fees, penalties and collection costs (including attorneys' fees and costs) payable in connection therewith. To evidence the C-PACE Lien, Property Owner requests that the City execute a C-PACE Lien Certificate that will be recorded in the Land Records of the City, which C-PACE Lien Certificate shall state that it secures both the Loan Amount and also all interest, delinquent interest, late fees, other types of fees, penalties, Program Fees and collection costs (including attorneys' fees and costs) payable in connection therewith, and a copy of the Assessment Payment Schedule shall be attached thereto as an exhibit.

(d) C-PACE Payments. The C-PACE Loan is due and payable to the Capital Provider as set forth in the Assessment Payment Schedule and remitted as follows: ______________________________________ ____ ____ ____ ____.
Once the C-PACE Loan, including all accrued interest (both current and delinquent), late fees, other types of fees, penalties, collection costs and Program Fees, has been satisfied and paid in full, Capital Provider and the City, acting at the request and direction of Capital Provider (which shall certify such payment in full to the City), shall execute a joint release of the C-PACE Lien Certificate, and the Capital Provider shall record the release in the Land Records and deliver a copy of the recorded release to Property Owner and the City.

(e) Remittance of C-PACE Payments to Capital Provider: The C-PACE Loan shall be serviced by the Capital Provider, and Property Owner's C-PACE Payments shall be paid directly to its Capital Provider. The foregoing notwithstanding, if for any reason Property Owner's C-PACE Payments are payable to the Program Administrator, then the Program Administrator receiving such C-PACE Payments shall remit all such payments to the Capital Provider within thirty (30) days of receipt, subject, if applicable, to the deduction and remittance of the Program Fees to the Program Administrator as set forth in Section 3(b), above, the C-PACE Documents and the Program Guidelines.

(f) Maintenance of Assessment. The City agrees that the C-PACE Lien on the Property for the benefit of Capital Provider shall continue until the C-PACE Loan, including all principal, interest, fees, other types of fees, penalties, collection costs and Program Fees and other sums due, is paid in full.

(g) Assignment. Capital Provider shall have the right to assign the C-PACE Loan and C-PACE Lien to a successor Capital Provider by the execution, delivery and recordation of a C-PACE Assignment (CP) in the Land Records, provided all of the following conditions are met:

(1) The C-PACE Assignment (CP) is made pursuant to the requirements of the Ordinance and the Program Guidelines;

(2) The Program Administrator and Property Owner are notified in writing of the assignment or transfer and provided the address where future C-PACE Payments should be mailed, either at closing, if the assignment occurs then, or at least thirty (30) days before the next Payment is due according to the Assessment Payment Schedule; and

(3) The assignee or transferee, by operation of the C-PACE Assignment (CP) or otherwise, assumes Capital Provider's obligations under the C-PACE Documents.

Upon written notice to the Program Administrator and Property Owner of an assignment or transfer of the right to receive the C-PACE Payments that meets all of these conditions, the assignor shall be released of all of the obligations of the Capital Provider under the C-PACE Documents accruing after the date of the assignment. Any attempt to assign or transfer the C-PACE Loan or C-PACE Lien that does not meet all of these conditions is void.

(h) Lien Priority and Enforcement. Pursuant to the C-PACE Act, the Ordinance and the Program Guidelines:

(1) Delinquent Payments on the C-PACE Loan will incur interest and penalties as set forth in the C-PACE Documents.

(2) The C-PACE Lien, together with any penalties and interest thereon:

(i) has the same priority status as a lien for City real estate taxes;

(ii) has superior lien status to all subordinated liens against the Property from the date on which the C-PACE Lien Certificate is filed in the Land Records until the financing secured by the C-PACE Lien and any penalties and interest are paid in full;

(iii) shall run with the land, and notwithstanding Va. Code Sec. 58.1-3967, any portion of the C-PACE Lien that has not yet become due under the C-PACE Documents is not eliminated by the foreclosure of: (i) a City property tax lien, or (ii) the lien for any past due portion of the C-PACE Loan.

(iv) In the event of a sale or transfer of the Property by Property Owner, the obligation for the C-PACE Lien and Property Owner's obligations under the C-PACE Documents will be assumed by and transferred to the succeeding owner.

(3) In the event of Property Owner's default under the terms of the C-PACE Documents, the City is given the right under the C-PACE Act, acting by and through the Treasurer, to enforce the C-PACE Lien for the amount of the Delinquent Payments, late fees, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39, Article 4 of the Virginia Code. Va. Code Sec. 58.1-3965.1 shall be applied to the sale of any Property to enforce a C-PACE Lien to collect Delinquent Payments. However, as allowed by the C-PACE Act, the City has elected not to enforce the C-PACE Lien itself but shall assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the Capital Provider by executing a C-PACE Assignment (Locality) and delivering such instrument to the Capital Provider for recordation in the Land Records by the Capital Provider at the C-PACE Loan's closing and at the Capital Provider's expense, regardless of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the Capital Provider is authorized to, and shall, enforce the C-PACE Lien according to the terms of the C-PACE Documents, in the same manner that a property tax lien against real property may be enforced under Title 58.1, Chapter 39 of the Virginia Code, including the institution of suit in the name of the City and its Treasurer, and this right to enforce expressly includes authorization for the Capital Provider to engage legal counsel to advise the Capital Provider and conduct all aspects of such enforcement. Such legal counsel, being authorized to institute suit in the name of the City and its Treasurer, shall have the status of "Special Counsel to the City and its Treasurer" and an "attorney employed by the governing body," and possess all the rights and powers of an attorney employed under Va. Code Secs. 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the Capital Provider every power granted to a local government or its Treasurer and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Title 58.1, Chapter 39, Article 4 of the Virginia Code. The City, on its behalf and on behalf of the Treasurer, waives its right to require such legal counsel to post the optional bond described in Va. Code Sec. 58.1-3966. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the City or Capital Provider, as applicable and consistent with the C-PACE Act and the Virginia Code, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to which the C-PACE

Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act or general law. The Property Owner of a Property being sold to pay Delinquent Payments, or other interested party, may redeem the Property at any time prior to the Property's sale, in accordance with Va. Code Secs. 58.1-3974 and 58.1-3975.

(4) In a bill in equity for sale of a Property to collect Delinquent Payments, the City will be entitled to recover the Delinquent Payments, late fees, other types of fees, penalties, Program Fees, interest due, and the costs and expenses of collection, including attorney's fees and costs, all as set forth in the C-PACE Documents.

(i) Property Owner's Waiver of Certain Defenses; Confession of Judgment: By executing this Agreement, Property Owner acknowledges and agrees as follows:

(1) After the C-PACE Lien Certificate is recorded, Property Owner waives the right to contest the Lien on the basis that the improvements funded with the C-PACE Loan are not Eligible Improvements;

(2) Property Owner waives all defenses, affirmative or otherwise, to any enforcement or collection action brought as a result of Property Owner's default in the payment of the C-PACE Payments due pursuant to the C-PACE Documents;

(3) To the extent permitted by the Financing Agreement, Property Owner waives all defenses to the imposition of personal liability for corporate officers as permitted under Section 58.1-3965(F) of the Virginia Code;

(4) Property Owner shall provide a confession of judgment if requested by the Capital Provider.

(j) Written Contract Required by the C-PACE Act and Ordinance. This C-PACE Program Agreement constitutes the written contract specifying the terms and conditions for C-PACE Program participation as required by §15.2-958.3(A)(7) of the C-PACE Act.

(k) Transfer of C-PACE Funded Improvements. Property Owner agrees that all Improvements purchased, constructed, or installed through financing obtained pursuant to the C-PACE Program shall be permanently affixed to the Property and will transfer with the Property to the transferee in the event of and sale or assignment of the Property; provided, however, that if Improvements become obsolete or the Property Owner otherwise determines they need to be replaced with other Improvements of equal or greater value, such Improvements may be removed and other Improvements of equal or greater value installed.

(l) No Cost to City . No provision of this Agreement requires the City to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

(m) Term of the Agreement. The term of this Agreement shall commence upon the Effective Date and shall be in full force and effect until the C-PACE Loan has been irrevocably paid in full.

Section 4 - Indemnification.

Without limiting any other obligation or liability of the Property Owner, or any right or remedy of the Capital Provider or the City , Property Owner agrees to indemnify and hold harmless the Capital Provider and the City , their respective council members, directors, officers, employees, agents, subsidiaries, and affiliates (each, an "Indemnified Party"), from and against all damages, losses, settlement payments, obligations, liabilities, claims, suits, penalties, assessments, citations, directives, demands, judgments, actions or causes of action, whether created by statute or common law, including all costs and expenses, including attorneys' fees, arising from or associated with this C-PACE Loan transaction. This section shall survive the expiration of the Term of this Agreement.

Section 5 - Miscellaneous Provisions.

(a) Construction. This Agreement is to be construed in accordance with and with reference to the C-PACE Act, the Ordinance, the Locality Agreement and the Program Guidelines.

(b) Further Assurances. Property Owner further covenants and agrees to do, execute and deliver, or cause to be done, executed and delivered all such further acts for implementing the intention of this Agreement as may be reasonably necessary or required.

(c) Severability. If the C-PACE Act, the Ordinance, the Locality Agreement or any clause, provision, or section of this Agreement, is challenged and held by a court of competent jurisdiction to be unenforceable by the City or Capital Provider, Property Owner agrees to continue to make the C-PACE Payments required under the C-PACE Documents and agrees to execute any and all documentation to perfect and enforce the C-PACE Loan as required by the City or Capital Provider. The invalidity of any clause, provision, or section of this Agreement shall not affect any remaining clauses, provisions, or sections of this Agreement, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision, or section had not been included herein.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument. Electronically transmitted and digitally signed signatures shall have the same force and effect as, and shall be treated as, a "wet ink" original signature.

(e) Notices. All notices, requests, consents and other communications (collectively, "Notices") shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, or overnight delivery service, to the Parties, as follows:

If to the City:

[Address]

If to the Property Owner:

[Address]

If to the Capital Provider:

[Address]

If to the Program Administrator:

[Address]

Notice by e-mail under this paragraph is only permitted if each party listed above has furnished its respective e-mail address as part of its notice address above. By doing so, each such party agrees, for itself and its successors and assigns, to supply to each of the other Parties any replacement e-mail address within two (2) business days of its adoption, by a permitted means other than e-mail. All Notices are effective when received.

(f) Amendment and Waivers. Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed by the Parties.

(g) Applicable Law and Venue. This Agreement and its provisions shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. In any action, in equity or at law, with respect to the enforcement or interpretation of this Agreement, venue shall be in the City City].

(h) Successors and Assigns. This Agreement is binding upon and made for the benefit of the Property Owner, the Capital Provider, the City and its Treasurer, and their respective successors and permitted assigns.

(i) Entire Agreement. This instrument constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings and agreements between the Parties relating to the subject matter of this Agreement.

(j) Headings. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement and do not affect its meaning or construction.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the City , its Treasurer, the Property Owner and the Capital Provider have each caused this Agreement to be executed on the date(s) entered below:

CITY OF MARTINSVILLE, VIRGINIA

By: ______________________________
Name: ______________________________
Title: ______________________________
Date: ______________________________

TREASURER OF CITY

By: ______________________________
Name: ______________________________
Title: ______________________________
Date: ______________________________

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES CONTINUE ON NEXT PAGE]

PROPERTY OWNER:
[insert Property Owner's name]

By: ________________________________
Name: ________________________________
Title: ________________________________
Date: ________________________________

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES CONTINUE ON NEXT PAGE]

[CAPITAL PROVIDER'S SIGNATURE PAGE TO C-PACE PROGRAM AGREEMENT]

CAPITAL PROVIDER:
[insert Capital Provider's name]

By: ________________________________
Name: ________________________________
Title: ________________________________
Date: ________________________________

Exhibit A

Property Description

Exhibit B

Assessment Payment Schedule

Appendix B – Locality Agreement

VIRGINIA ENERGY – LOCALITY
COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of ________________, 20__, between the City of Martinsville**,** Virginia, a political subdivision of the Commonwealth of Virginia (the "Locality"), and the Virginia Department of Energy ("Virginia Energy"), a public agency of the Commonwealth of Virginia.

RECITALS

1. Pursuant to § 15.2-958.3. of the Code of Virginia, entitled "Financing clean energy, resiliency, and stormwater management programs" ("C-PACE Act"), Locality has exercised its right to authorize contracts to provide C-PACE loans through the adoption of a C-PACE ordinance ("Ordinance"), attached hereto as Exhibit B-1.

2. Pursuant to the C-PACE Act and Ordinance, Locality has agreed to opt into the statewide C-PACE loan program sponsored by Virginia Energy ("Virginia C-PACE Program") and administered by a competitively selected private program administrator ("Program Administrator"). The current Program Administrator and its contact information are set forth on Exhibit B-2 attached hereto.

3. The Virginia C-PACE Program provides the Locality with a uniform process for the application, approval, closing and servicing of C-PACE loans and with outreach and training support to promote the program to property owners. A Locality participating in the Virginia C-PACE Program agrees to adopt the set of legal and administrative documents and to abide by the requirements of the statewide C-PACE Program Guidelines ("Program Guidelines") attached hereto as Exhibit B-3.

NOW THEREFORE, to implement the local C-PACE Ordinance, the Locality hereby opts into the Virginia C-PACE Program sponsored by Virginia Energy and managed and operated by Virginia Energy's Program Administrator, on the terms set forth hereinbelow and in accordance with the program design detailed in the Program Guidelines.

ARTICLE 1

(a) Term. The term of this Agreement shall commence upon the date the last party executes the Agreement. This Agreement shall remain in full force and effect until either Virginia Energy terminates the Virginia C-PACE Program, or the Locality opts out of the Virginia C-PACE Program. Either party may terminate this Agreement at any time upon ninety (90) days' advance written notice to the other party, provided that the collection of C-PACE Lien payments for C-PACE loans made prior to the termination date shall continue until all C-PACE Lien payments (including the interest, penalties, and fees thereon) have been collected and all such C-PACE loans have been paid in full.

(b) Servicing of C-PACE Loans. C-PACE Loans shall be serviced by their respective Capital Provider, in accordance with the Ordinance and the Program Guidelines.

(c) Enforcement of C-PACE Liens. The Locality has delegated enforcement of the C-PACE Lien to a third party in accordance with the C-PACE Act, the obligations of which are described in the Ordinance and the Program Guidelines.

(d) Cooperation in Operating C-PACE Program. The Locality shall cooperate with the Program Administrator in the latter's operation of the C-PACE Program in the Locality. This cooperation shall include, but not be limited to the Locality:

> (i) designating (A) an employee of the Locality to serve as Program Manager, and if the Program Manager wishes to delegate some or all of the duties assigned to the Program Manager, identifying the Program Manager's designee and promptly communicating the contact information for the Program Manager and any designee to the Program Administrator and (B) which employee(s) of the Locality will sign documents requiring the Locality's signature for C-PACE Loan closings;
>
> (ii) complying with the review and other periods of time prescribed for the Locality to take a required action specified in the Program Guidelines;
>
> (iii) taking reasonable steps to procure the timely participation of the Locality's Treasurer in the processes and procedures described in the Program Guidelines and the Ordinance as involving the Treasurer, it being understood that such processes and procedures are based on the collection of C-PACE Payments in the same manner as real property taxes and that the Locality has delegated enforcement of the C-PACE Lien to a third party in accordance with the C-PACE Act; and
>
> (iv) in the discretion of the Locality, providing reasonable assistance in jointly promoting the Locality's C-PACE Program to lenders, contractors and businesses located in, or considering locating in, the Locality.

ARTICLE 2

MISCELLANEOUS PROVISIONS

(a) Model Ordinance. The Locality represents and warrants to Virginia Energy and its Program Administrator that the Ordinance substantially conforms to model ordinance adopted by the Program Administrator for use in the Virginia C-PACE Program and furnished to the Locality in a form acceptable to the Program Administrator.

(b) Non-Assignability. The Locality may not assign or transfer its rights or obligations under this Agreement without prior written consent of Virginia Energy; provided, however, that this paragraph shall not be construed to apply to, or restrict, the assignment of C-PACE Liens in accordance with the Locality's Ordinance and related C-PACE Documents.

(c) Locality Acknowledgments. The Locality acknowledges and agrees that: (i) Virginia Energy has employed the Program Administrator to carry out Virginia Energy's obligations under this Agreement and the Virginia C-PACE Program generally; (ii) if Virginia Energy replaces the Program Administrator listed on Exhibit B-2, then the successor Program Administrator will succeed to the rights, duties and obligations of the Program Administrator, except to the extent specified in Virginia Energy's agreements with such Program Administrators; (iii) for purposes of this Agreement and the Locality's C-PACE program, the Program Administrator shall speak and act for Virginia Energy and that any notices required under the terms of this Agreement to be sent to Virginia Energy shall also be sent to the Program Administrator; (iv) the Program Administrator is made a third party beneficiary of this Agreement, and by accepting the benefits of such status, shall be deemed to have covenanted with the Locality to adhere to and comply with its obligations under the Program Guidelines in administering the Locality's C-PACE Program; and (v) the Program Administrator is entitled to be paid by Property Owners (the Locality having no liability therefor) the Program Fees set forth from time in the Program Guidelines.

(d) Non-waiver; Amendment. Any waiver of any provision of this Agreement must be in writing and mutually agreed to by Virginia Energy and the Locality. Except for a specific provision of this Agreement which is amended, this Agreement shall remain in full force and effect after such amendment and is subject to the same laws, obligations, conditions, provisions, rules, and regulations as it was before the amendment.

(e) Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

(f) Counterparts; Scanned and Digital Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument. Scanned signatures (e.g., a "PDF" document) and digital signatures (e.g., DocuSign) shall have the same force, effect and validity as an original signature.

(g) Notices. All notices, requests, consents and other communications shall be in writing and shall be delivered, mailed by first class mail, postage prepaid, hand delivered, or overnight delivery service, to the parties, as follows:

If to the Locality:

City of Martinsville, Virginia
55 West Church Street
Martinsville, Virginia 24112
Attention: City Manager

If to Virginia Energy:

817 Washington Building
1100 Bank Street
Richmond, Virginia 23219
Attention: Energy Efficiency and Financing Programs Manager

With a copy to the Program Administrator at the address on Exhibit B-2.

Any party may change its notice address by providing the new notice address to the other parties in accordance with this paragraph (g).

(h) Jurisdiction and Venue. This Agreement shall be construed, interpreted, and enforced according to the laws of the Commonwealth of Virginia. Any claim brought in connection with this Agreement must be brought in the Circuit Court of the City of Richmond and the parties consent to its jurisdiction.

(i) Definitions and Captions. Capitalized terms not defined in this Agreement shall have the meaning ascribed to them in the Ordinance attached hereto in Exhibit B-1. The headings in this Agreement are solely for convenience, do not constitute a part of this Agreement, and do not affect its meaning or construction.

(j) Integration. This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements between the parties relating to the subject matter of this Agreement.

(k) No Joint Venture, etc. Nothing in this Agreement, and no act of the Locality, Virginia Energy or the Program Administrator, shall be deemed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any other relationship between the Locality and Virginia Energy.

[*Remainder of the page intentionally left blank*]

IN WITNESS WHEREOF, the Locality and Virginia Energy have each caused this Agreement to be executed and delivered as of the date set forth above:

CITY OF MARTINSVILLE,
VIRGINIA

By: __________________________

Name: __________________________

Title : __________________________

Date:____________________________

[*Remainder of the page intentionally left blank; Signature pages continue*]

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENERGY

By: ______________________________

Name: ______________________________

Title: ______________________________

Date: ______________________________

EXHIBIT B-1

COPY OF LOCALITY ORDINANCE

(See attached)

EXHIBIT B-2

NAME AND ADDRESS OF PROGRAM ADMINISTRATOR

Virginia PACE Authority
c/o Gather Newport News
700 Tech Center Pkwy, Suite 200
Newport News, VA 23606

Attention: Abigail C. Johnson
Executive Director
Tel: 757-603-3555
abby@virginiapace.com

EXHIBIT B-3

PROGRAM GUIDELINES

(See attached)

Martinsville
A CITY WITHOUT LIMITS

City Council Agenda Summary

Meeting Date: December 12, 2023

Item No: 6.

Department: Electric

Issue: Discuss a proposed electric rate increase.

Summary: Increase in Market Power pricing in the 24-25 calendar years.

Attachments:

Recommendations: A rate increase of 5.20656% will reflect a 1.2 million cost escalation.

Martinsville CY 24-25 Market Power Supply

Summary of cost increase and recommended action

Martinsville
A CITY WITHOUT LIMITS

Market Cost and Drivers

The current block purchase cost for CY 23 energy only is $29.30 MWh

24-25 CY cost will be $57.95 MWh

This increase reflects market uncertainty, natural gas prices, and the post-economic recovery after Covid.

Current long-term pricing is trending lower, and opportunities are being explored.

Natural gas prices are one of the main drivers of electric costs. Both domestic and international markets influence the cost of natural gas.

Recommended Increase

The increase in energy cost will result in an approximate 1.2-million-dollar shortfall compared to the current budget.

The recommended increase in PCA from the current 0 to .00794 per kWh will result in an annual revenue increase of $1,270,400 based on projected 160,000,000 annual kWh sales. Temperatures primarily drive actual sales.

The recommended PCA represents a 5.20656% increase.

The current total of $152.50 for 1000 kWh residential service will increase to $160.44, including taxes.

Martinsville
A CITY WITHOUT LIMITS

Martinsville
A CITY WITHOUT LIMITS

Date: December 12, 2023

Item No: 7.

Department: City Manager/Finance

Issue: Hear an update on expenditure of funds the City received through the American Rescue Plan Act of 2021.

Summary: Under the American Rescue Plan Act of 2021, the City of Martinsville has received a total of $15,463,451. Half of the funds were received in June, 2021 and the remaining half in June, 2022. At several previous Council meetings and work sessions, discussions have occurred regarding potential usage of ARPA funding.

At the Council's meeting on December 12th , staff will provide an update on expenditures that have occurred to date, projected remaining usage of funds based on approved projects and earmarks, and remaining funds to be considered for future use.

Attachments: None, information will be presented at the meeting.

Recommendations: Council can discuss options for potential usage of remaining funds.