

**GARDEN STATE C-PACE PROGRAM  
MODEL OPT-IN ORDINANCE**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OPTING INTO THE GARDEN STATE C-PACE PROGRAM TO  
FACILITATE AND FINANCE C-PACE PROJECTS**

**WHEREAS**, facilitating the Direct Financing of commercial property assessed clean energy projects (“C-PACE Projects”) on commercial and certain other types of property will enable our Municipality to contribute toward the goals of community sustainability and the reduction of greenhouse gas, carbon emissions and energy consumption, while also providing a valuable service to the citizens of this community that will create jobs and strengthen our ratable base; and

**WHEREAS**, the Legislature and the Governor of the State of New Jersey (the “State”) have declared it to be the public policy of this State to invest in clean energy and resiliency-related improvements to conserve our resources and allay the impact of natural disasters; and

**WHEREAS**, the Legislature and the Governor of the State have authorized the establishment of the Garden State C-PACE Program, pursuant to P.L. 2021, c. 201 (N.J.S.A. 34:1B-374 et seq.) (the “Act”); and

**WHEREAS**, pursuant to the Act, the New Jersey Economic Development Authority (the “NJEDA”) has issued Guidelines for the Garden State C-PACE Program (the “Program Guidelines”); and

**WHEREAS**, pursuant to the Act and the Program Guidelines, municipalities may “opt in” to the Garden State C-PACE Program to facilitate the Direct Financing of C-PACE Projects; and

**WHEREAS**, in order to participate in the Garden State C-PACE Program, a municipality must adopt an opt-in ordinance authorizing it to enter into a Garden State Program Agreement with the New Jersey Economic Development Authority or such other entity as may be statutorily authorized to enter into a Garden State Program Agreement with a municipality; and

**WHEREAS**, in compliance with the Act and the Program Guidelines, and in order to facilitate Direct Financing pursuant to the Garden State C-PACE Program, this Ordinance authorizes the creation of C-PACE Assessments to be imposed on Properties located within the Municipality, at the request of their Eligible Owners; and

**WHEREAS**, pursuant to the Act and the Program Guidelines, a C-PACE Assessment shall be considered a single, continuous first lien, paramount to all prior or subsequent alienations and descents or encumbrances thereon, except subsequent taxes, charges or assessments, and such lien shall not be extinguished by the Municipality’s *in rem* foreclosure proceedings; and

**WHEREAS**, pursuant to the Act and the Program Guidelines, a C-PACE Assessment shall be treated as a municipal lien rather than a contractual lien for all purposes of law; and

**WHEREAS**, a C-PACE Assessment shall be entered into voluntarily by an Eligible Owner and all Property Owners to facilitate the Direct Financing of a C-PACE Project with a loan from a Qualified Capital Provider, the repayment of which is made by way of the C-PACE Assessment on the Eligible Property on which the C-PACE Project is or will be located; and

**WHEREAS**, opting-in to the Garden State C-PACE Program is in the best interests of the health, safety, and welfare of **[name of Municipality]** and will generate more economic opportunities for citizens, property owners, and commercial businesses alike; and

**WHEREAS**, **[name of Municipality]**, pursuant to the Act and the Guidelines, does hereby declare its commitment to opt in and participate in the Garden State C-PACE Program and to enter into a Garden State Program Agreement with the Authority; and

**WHEREAS**, **[name of Municipality]** further declares that participating in the Garden State C-PACE Program is a valid public purpose; and

**WHEREAS**, if and to the extent there is any inconsistency between this Ordinance and the Act or Program Guidelines, this Ordinance shall be construed consistently with the provisions and requirements of the Act and the Program Guidelines.

**NOW, THEREFORE BE IT ORDAINED**, by the governing body of **[name of Municipality]** in the County of **[name of County]** in the State of New Jersey, as follows:

**1. Scope and Purpose; Approval of Certain C-PACE Project Documents**

A. Pursuant to the Act, this Ordinance shall constitute the **[name of Municipality]** “opt-in” ordinance that authorizes participation in the Garden State C-PACE Program, which shall be available to qualifying Properties situated within the Municipality and authorizes execution of a Garden State Program Agreement.

B. The **[name of Municipality]** shall accept C-PACE Projects in accordance with the Garden State Program Agreement to be entered into with the Authority.

C. In accordance with the Act, the Municipality shall levy, bill, collect, remit, and enforce C-PACE Assessments with respect to participating Properties located within the Municipality.

D. The **[Mayor or municipal manager (as appropriate to the form of government)]**, Municipal Clerk, or such other appropriate municipal personnel under the direction of the **[Mayor or municipal manager (as appropriate to the form of government)]**, are hereby authorized and directed to enter into a Garden State Program Agreement with the Authority. The Garden State Program Agreement shall be subject to review by the **[Mayor or municipal manager (as appropriate to the form of government)]** or **[Mayor’s or municipal manager’s (as appropriate to the form or government)]** designee and the Municipal Attorney and shall be approved by resolution of the governing body, prior to execution of any such document.

E. The **[Mayor or municipal manager (as appropriate to the form of government)]**, Municipal Clerk, or such other appropriate municipal personnel under the direction

of the [Mayor or municipal manager (as appropriate to the form of government)], are hereby authorized and directed to (i) enter into C-PACE Assessment Agreements and Notices of Assessment with Eligible Owners and Property Owners, and arrange for the recording of such documents in the [name of County] Recording Office; and (ii) enter into Assignment Agreements with Qualified Capital Providers, and arrange for the recording of such documents in the [name of County] Recording Office. The standard forms of the C-PACE Assessment Agreement, Notice of Assessment, and Assignment Agreement, as prepared by the Authority, shall be subject to review by the [Mayor or municipal manager (as appropriate to the form of government)] or [Mayor's or municipal manager's (as appropriate to the form of government)] designee and the Municipal Attorney and shall be approved by resolution of the governing body, prior to such forms being used in connection with C-PACE Projects.

## 2. Definitions

A. As used in this Ordinance, the following terms shall have the following meanings. In addition, such terms and meanings shall be applicable to municipal actions and municipal documents required to carry out the purposes of this Ordinance. Capitalized terms used but not defined in this Ordinance shall have the meanings given such terms in the Program Guidelines.

1. “Annual Servicing Fee” shall mean the Annual Servicing Fee described in Section 5 hereof and authorized by the Act and the Program Guidelines.

2. “Assessment Amendment Fee” shall mean the Assessment Amendment Fee described in Section 5 hereof and authorized by the Act and the Program Guidelines.

3. “Assignment Agreement” shall have the meaning assigned in the Program Guidelines.

4. “Authority” shall mean the New Jersey Economic Development Authority, or such other entity as the New Jersey Economic Development Authority may designate pursuant to N.J.S.A. 34:1B-377(c) as authorized to enter into a Garden State Program Agreement with a municipality.

5. “Closing Fee” shall mean the Closing Fee described in Section 5 hereof and authorized under the Act and the Program Guidelines.

6. “C-PACE” shall mean commercial property assessed clean energy.

7. “C-PACE Assessment” shall have the meaning given such term in the Program Guidelines.

8. “C-PACE Assessment Agreement” shall have the meaning given such term in the Program Guidelines.

9. “C-PACE Project” shall have the meaning given to such term in the Program Guidelines.

10. “C-PACE Project Document” or “C-PACE Project Documents” shall mean, individually or collectively as the case may be, with respect to each C-PACE Project, the related C-PACE Assessment Agreement, Notice of Assessment, and Assignment Agreement, and, if applicable, Notice of Amendment of Assessment and/or any amendments to any of the foregoing.

11. “Direct Financing” shall have the meaning given such term in the Program Guidelines.

12. “Direct Financing Agreement” shall mean an agreement entered into between a Qualified Capital Provider and an Eligible Owner regarding the Direct Financing provided by the Qualified Capital Provider.

13. “Electric Vehicle Charging Infrastructure” shall have the meaning given such term in the Act and the Program Guidelines.

14. “Eligible Owner” shall have the meaning given such term in the Program Guidelines.

15. “Eligible Property” shall have the meaning given to such term in the Program Guidelines.

16. “Energy Efficiency Improvement” shall have the meaning given such term in the Act and the Program Guidelines.

17. “Flood Resistant Construction Improvement” shall have the meaning given such term in the Act and the Program Guidelines.

18. “Garden State C-PACE Program” shall mean the program established by the Authority pursuant to N.J.S.A. 34:1B-377 and N.J.S.A. 34:1B-378.

19. “Garden State C-PACE Program Guidelines” or “Program Guidelines” shall mean the guidelines adopted by the Authority, as the same may be revised or amended from time to time, and which shall include all program-related documents, prepared, and published by the Authority that apply to the Garden State C-PACE Program, including the form of this Ordinance.

20. “Garden State Program Agreement” shall have the meaning given such term in the Program Guidelines.

21. “Hurricane Resistant Construction Improvement” shall have the meaning given such term in the Act and the Program Guidelines.

22. “Microgrid” shall have the meaning given such term in the Act and the Program Guidelines.

23. “Municipality” shall mean the Municipality adopting this Ordinance.

24. “Notice of Amendment of Assessment” shall have the meaning given such term in the Program Guidelines.

25. “Notice of Assessment” shall have the meaning given such term in the Program Guidelines.

26. “Property” shall have the meaning given such term in the Program Guidelines.

27. “Property Owner” shall have the meaning given such term in the Program Guidelines.

28. “Qualified Capital Provider” shall have the meaning given such term in the Program Guidelines, and such Qualified Capital Provider’s successors and assigns.

29. “Rebilling Fee” shall mean the Rebilling Fee described in Section 5 hereof and authorized by the Act and the Program Guidelines.

30. “Renewable Energy System” shall have the meaning given such term in the Act and the Program Guidelines.

31. “Stormwater Management System” shall have the meaning given such term in the Act and the Program Guidelines.

32. “Uniform Assessment Documents” shall have the meaning given such term in the Program Guidelines.

33. “Water Conservation Improvement” shall have the meaning given such term in the Act and the Program Guidelines.

**3. Criteria For Qualifying A C-PACE Project For A C-PACE Assessment**

A. To qualify for a C-PACE Assessment, a proposed project must meet the criteria in the Program Guidelines for eligibility.

**4. Municipal C-PACE Liaison**

A. The [Mayor or municipal manager (as appropriate to the form of government)], shall designate a municipal official, who shall be known as the Municipal C-PACE Liaison, to serve as the Municipality’s liaison to the Garden State C-PACE Program. The Municipality shall have a designated Municipal C-PACE Liaison at all times during the Municipality’s participation in the Garden State C-PACE Program.

B. The Municipal C-PACE Liaison shall be qualified by training and experience to serve in that role.

C. The Municipal C-PACE Liaison shall be responsible for ensuring the Municipality’s compliance with the Garden State C-PACE Program, including compliance with

the Program Guidelines, compliance with the Garden State Program Agreement, enforcement of C-PACE Assessments, and establishment of the appropriate municipal processes to fully participate in the Garden State C-PACE Program.

D. The Municipal C-PACE Liaison shall also be responsible for maintaining records and reporting such events as required by the Garden State Program Agreement.

**5. Municipal C-PACE Fees; Recording of C-PACE Project Documents**

A. Closing Fee: The Municipality shall be entitled to charge an Eligible Owner a Closing Fee at the closing of the Direct Financing for the Municipality's activities to prepare for the ongoing billing, collecting, and remittance of the C-PACE Assessment with respect to a C-PACE Project. The amount of the Closing Fee shall be set forth in the Garden State Program Agreement, shall not be revised without providing prior written notice to the Authority, and shall not exceed the amount set forth in the Program Guidelines. Any increase in the amount of the Closing Fee shall not apply with respect to any C-PACE Project for which the Eligible Owner's completed application to the Authority was filed prior to the date of implementation of the increase.

B. Annual Servicing Fee: The Municipality shall be entitled to charge an Eligible Owner an Annual Servicing Fee with respect to each C-PACE Project of the Eligible Owner, for the Municipality's billing, collection, and remittance services rendered with respect to such C-PACE Project. The Annual Servicing Fee shall be charged each calendar year, or part thereof, in which a C-PACE Assessment is in effect with respect to such C-PACE Project. The Annual Servicing Fee may be billed together with the C-PACE Assessment amount and payable in respect of one quarter each year, such amount to be retained by the Municipality before remitting the balance to the Qualified Capital Provider, or the Annual Servicing Fee may be billed separately. The amount of the Annual Servicing Fee shall be set forth in the Garden State Program Agreement between the Authority and the Municipality, shall not be revised without providing prior written notice to the Authority, and shall not exceed the amount set forth in the Program Guidelines. Any increase in the amount of the Annual Servicing Fee shall not apply retroactively to any prior Annual Servicing Fee paid for a C-PACE project that was previously approved but shall apply to all prospective Annual Service Fees for all C-PACE Projects, including any C-PACE Project with an existing C-PACE Assessment.

C. Rebilling Fee: The Municipality shall be entitled to charge a Rebilling Fee to the Eligible Owner each time that the Eligible Owner requests a change in the Repayment Schedule of the C-PACE Assessment, requiring the Municipality to reissue a bill for the C-PACE Assessment during the course of the same annual billing cycle. The amount of the Rebilling Fee shall be set forth in the Garden State Program Agreement between the Authority and the Municipality, shall not be revised without providing prior written notice to the Authority, and shall not exceed the amount set forth in the Program Guidelines. Any increase in the amount of the Rebilling Fee shall not apply retroactively to any prior Rebilling Fee paid for a C-PACE Project that was previously approved but shall apply to all prospective Rebilling Fees for all C-PACE Projects, including any C-PACE Project with an existing C-PACE Assessment.

D. Assessment Amendment Fee: The Municipality shall be entitled to charge an Eligible Owner an Assessment Amendment Fee each time that the Eligible Owner and the

Qualified Capital Provider jointly request the Municipality to execute an amendment to any C-PACE Project Document. The Assessment Amendment Fee shall be paid when the request to amend the C-PACE Project Documents is made by the Eligible Owner and the Qualified Capital Provider. The amount of the Assessment Amendment Fee shall be set forth in the Garden State Program Agreement between the Authority and the Municipality, shall not be revised without providing prior written notice to the Authority, and shall not exceed, for each occurrence of an amendment, the amount set forth in the Program Guidelines. Any increase in the amount of the Assessment Amendment Fee shall not apply retroactively to any prior Assessment Amendment Fee paid for a C-PACE Project that was previously approved but shall apply to all prospective Assessment Amendment Fees for all C-PACE Projects, including any C-PACE Project with an existing C-PACE Assessment.

E. Recording of C-PACE Project Documents: The Municipality shall have the right to designate in the Garden State Program Agreement whether the responsibility to record or arrange for the recording of the C-PACE Project Documents or amendments shall be the Municipality's responsibility or the Capital Provider's responsibility. The Municipality's designation as set forth in the Garden State Program Agreement shall not be revised without providing prior written notice to the Authority, and any such revision shall not apply retroactively to any recording for a C-PACE Project that was previously approved but shall apply to all prospective recordings for all C-PACE Projects, including any C-PACE Project with an existing C-PACE Assessment.

## **6. Forms of Uniform Assessment Documents and Related Documents**

A. In addition to the forms of the C-PACE Project Documents, all such other Uniform Assessment Documents, financial documents, or other documents to be entered into between the Municipality and an Eligible Owner, Property Owners, or a Qualified Capital Provider shall be subject to review by the [Mayor or municipal manager (as appropriate to the form of government)] or [Mayor's or municipal manager's (as appropriate to the form of government)] designee and the Municipal Attorney and shall be approved by resolution of the governing body, prior to execution of any such document.

B. All C-PACE Project Documents, such other Uniform Assessment Documents, and other related documents to be entered into in connection with the Garden State C-PACE Program shall be in compliance with the Act, this Ordinance, the Garden State Program Agreement, and the Garden State C-PACE Program Guidelines.

C. All final documents to be executed by the Municipality in connection with its participation in the Garden State C-PACE Program shall be subject to review and approval by the Municipal Attorney.

D. The definitions codified in Section 2 above shall be applicable to all documents created by the Municipality in connection to its participation in the Garden State C-PACE Program.

**7. Acceptance of Projects**

A. Pursuant to Section 1 of this Ordinance, the Municipality hereby agrees to accept C-PACE Projects pursuant to the Garden State C-PACE Program in accordance with the Act, the Program Guidelines, and the Garden State Program Agreement entered into with the Authority.

B. All C-PACE Projects and Eligible Owners shall have satisfied the criteria set forth in Section 3 of this Ordinance.

**8. Collection, Enforcement and Remittance**

A. If any payment of a C-PACE Assessment is not made when that payment shall have become due, or later, consistent with any grace period provided or extended by the Municipality for the payment of property tax bills as may be permitted or required by law, interest thereon shall be imposed at the same rate as may be imposed upon unpaid property taxes in the Municipality. The statutory interest shall be in addition to any accrued interest and any amount fixed as a penalty for delinquency pursuant to the Direct Financing Agreement.

B. The delinquent amounts shall be collected and enforced in the same manner as unpaid property taxes, including by accelerated tax sale. The proceeds of the sale shall also pay the outstanding past unpaid amounts of the C-PACE Assessment. However, the remaining balance not delinquent on a C-PACE Assessment shall not be subject to acceleration or extinguishment in the event of a default in payment.

C. Any statutory interest collected by the Municipality on a delinquent C-PACE Assessment shall be retained by the Municipality. Any accrued interest, or any amount fixed as a penalty for delinquency pursuant to the Direct Financing Agreement shall be remitted to the Qualified Capital Provider.

D. If the Property Owner is delinquent on a C-PACE Assessment as well as delinquent on taxes, charges, or other assessments, any payment shall be applied towards any and all such other delinquencies before being applied to any delinquent C-PACE Assessment.

E. In the event that any lien on the Eligible Property shall be exposed to tax sale, pursuant to the "tax sale law," N.J.S.A. 54:5-1 et seq., and is struck off and sold to the Municipality, the C-PACE Assessment shall survive any subsequent action to foreclose the right of redemption and continue as a first lien upon the real estate described in the C-PACE Assessment, paramount to all prior or subsequent alienations and descents of the real estate or encumbrances, except subsequent taxes, charges, or other assessments.

F. While the Municipality holds the lien or owns the Eligible Property, the Municipality shall not be responsible for or required to make any payment from its funds or any other source in furtherance of or to satisfy the C-PACE Assessment. The Municipality shall not bear any other responsibility in furtherance or satisfaction of a C-PACE Assessment, except that a Qualified Capital Provider may seek to compel the Municipality to enforce a lien through an action to foreclose.



G. The Municipality's appropriate administrative personnel are authorized to make payments to the Qualified Capital Provider or its designee in accordance with the Assignment Agreement without the necessity of prior approval from the governing body, in accordance with N.J.S.A 40A:5-17 and the appropriate provisions of the Local Fiscal Affairs Law, N.J.S.A. 40A:5-1 et seq.

**9. Public Funds Not To Be Utilized To Pay Delinquent Assessment**

A. The Municipality shall not be responsible for or required to make any payment from its funds or any other source of public funds in furtherance of or to satisfy the C-PACE Assessment.

B. This Ordinance shall not be construed to confer any right of action or property interest upon any party participating in a C-PACE transaction with the Municipality, nor shall it be interpreted to pledge, offer, or encumber the full faith and credit of the Municipality for any C-PACE lien or C-PACE Assessment.

**10. Revenue From The C-PACE Assessment Not A Part of General Fund**

A. All C-PACE Assessments in respect of a C-PACE Project shall be assigned directly by the Municipality, and any assignee thereof, to the Qualified Capital Provider with respect to such C-PACE Project, as security for the Direct Financing.

B. Such assignment shall be an absolute assignment of all of the Municipality's right, title, and interest in and to the C-PACE Assessment, except for its obligations to levy, bill, collect, remit, and enforce C-PACE Assessments. The proceeds of a C-PACE Assessment shall be considered "special revenues" owned by the Qualified Capital Provider pursuant to chapter 9 of the federal bankruptcy code.

C. Pursuant to N.J.S.A 34:1B-378, C-PACE Assessments assigned shall not be included in the Municipality's general funds, or be subject to any laws regarding the receipt, deposit, investment, or appropriation of public funds, and shall retain such status notwithstanding enforcement of the C-PACE Assessment by the Municipality or its assignee.

D. If the Municipality is otherwise subject to tax or revenue sharing pursuant to law, the C-PACE Assessments shall not be considered part of the tax or revenue sharing formula or calculation of municipal revenues for the purpose of determining whether the Municipality is obligated to make payment to, or receive a credit from, any tax sharing or revenue sharing pool. However, the redemption of any delinquent and unpaid C-PACE Assessments, including any interest, penalties, or other charges related thereto, shall be paid no later than on the first available tax bill after the property has been sold after an action to foreclose the right of redemption.

**11. Independent Sections, Conflicts & Effective Date**

A. Each section of this Ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void, invalid or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other section or parts thereof which shall survive in full force and effect.

B. All ordinances and parts of ordinances that conflict with or that are inconsistent with this Ordinance are hereby repealed but only to the extent of such conflict or inconsistency.

C. This Ordinance shall take effect after final adoption and approval following publication in accordance with law.