

Arlington County C-PACE Frequently Asked Questions

June 25, 2018

Sustainable Real Estate Solutions (SRS), as the Administrator of the Arlington County C-PACE Program, after consulting with the Arlington County Attorney, is providing these FAQs to aid in the implementation and administration of the Program.

Any capitalized term shall have the meaning given by Chapter 68 of the Code of Arlington County, Virginia (the C-PACE Ordinance). In the event of any inconsistency between the C-PACE Ordinance and this FAQ, the C-PACE Ordinance shall control.

1. Authorization

Q: *Is the Program validly enacted?*

A: The County Attorney advises that the County enacted its C-PACE Ordinance in accordance with applicable law, including but not limited to, the Code of Virginia of 1950, as amended, and in particular Section 15.2-958.3 (the Clean Energy Financing Law).

As more fully detailed in the C-PACE Ordinance, including the proposed form of Financing Agreement, and in the Program Manual, the Program is structured to allow Lenders and Property Owners to negotiate a Loan, knowing that a Loan under the C-PACE Ordinance entitles those parties to the benefit of the Assessment Payments and the Lien for the Loan on the Project.

The County has delegated to the Lender authority to perform the ministerial acts of recording the Lien and assigning the Lien to the Lender.

The County has not under the Program delegated or limited any of the County's other rights and benefits under Virginia law, including its ability to foreclose on the Lien. (See, for instance, Sec. 68-6.B of the C-PACE Ordinance.)

The C-PACE Ordinance is based on the Clean Energy Financing Law and does not expand the powers granted the Arlington County Board. The Ordinance reflects a legislative determination by the Board of the method by which to enact those granted powers. Such enactment and the corresponding methods are entirely consistent with Virginia law.

2. Program Costs

Q: *How do the County and the Lender seek reimbursement for their respective costs under the Program?*

A: The costs to design and administer the Program are financed through Program Fees charged to participating Property Owners. (See Sec. 68 - 5.B of the C-PACE Ordinance.) Details regarding the current Program Fees are provided in the Program Guide. Note, however, that the County may change the Program Fees that will apply to future Projects. (See the definition of “Program Fees” at Sec. 68-2 of the C-PACE Ordinance.)

The Lender collects the Program Fees from the Property Owner at Loan closing and remits the fees to the Administrator, as further described in Sec. 68 - 5.B of the C-PACE Ordinance and Sec. 2.2 of the Financing Agreement.

Separately from the Program Fees, the Lender is responsible for its own costs and expenses and for reimbursing the County for its reasonable out-of-pocket expenses relating to the review, preparation and recording of Loan documentation. (See Sec. 68 - 6.D of the C-PACE Ordinance.)

If provided for in the executed Financing Agreement with the Property Owner, however, the Lender may recover those costs, expenses and reimbursements from the Property Owner. (See Section 2.1 of the Financing Agreement.) If the Lender does not include such costs and expenses in the Assessment Payments structured at Loan closing, the Lender must bill and collect the costs and expenses from the Property Owner separately from the Assessment Payments. (See Section 2.2 of the Financing Agreement.)

3. Enforcement

Q: *What is the detailed process for collection and enforcement of delinquent Loan payments?*

A: The Property Owners are borrowers under the Financing Agreement, meaning that a Lender has the same contractual collection remedies as with any other lender/borrower relationship.

In addition, the Loan payments are secured by the Lien, which the County may enforce in the same manner as it may enforce real property tax liens. Under Virginia law, the County may enforce its property tax liens by filing a bill in equity for the

forced sale of the subject property. Such a bill in equity may only be filed with respect to tax installments that remain unpaid on the December 31 following the second anniversary of their original due date.