



BOROUGH OF HIGHLANDS  
COUNTY OF MONMOUTH

## ORDINANCE O-25-22

### OPTING INTO THE GARDEN STATE C-PACE PROGRAM TO FACILITATE THE FINANCING OF C-PACE PROJECTS

**WHEREAS**, facilitating the direct financing of clean energy and resiliency-related improvements ("C-PACE Projects") on commercial and certain other types of property will enable [insert name of municipality] ("Municipality") in the County of [insert name of county] ("County") 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 "Authority") has issued Guidelines for the Garden State C-PACE Program; and

**WHEREAS**, any capitalized terms used in this Ordinance if not defined herein shall have their meaning as set forth in 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 Authority; 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 Eligible 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 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 the Municipality and will generate more economic opportunities for citizens, property owners, and commercial businesses alike; and

**WHEREAS**, the Municipality, pursuant to the Act and the Garden State C-PACE Program Guidelines and Supplemental Guidelines, as may be amended from time to time (collectively the “Program 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**, the 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 and in case of conflict the Act and the Program Guidelines shall control.

**NOW, THEREFORE BE IT ORDAINED**, by the governing body of the Municipality as follows:

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

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

B. The 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 Eligible Properties located within the Municipality.

D. The [select: Mayor, municipal manager or business administrator (as appropriate to the form of local government), municipal clerk] or any of their designees in writing are designated as the “Authorized Officers” for purposes of executing and delivering the various agreements and documents authorized by this Ordinance.

E. An Authorized Officer is hereby authorized and directed to enter into the Garden State Program Agreement with the Authority in substantially the form attached as Exhibit A hereto.

F. An Authorized Officer under the direction of the [select: Mayor or municipal manager (as appropriate to the form of government)] is hereby authorized and directed to (i) enter into C-PACE Assessment Agreements, Notices of Assessment, and any other Uniform Assessment Documents with Eligible Owners, and arrange for the recording of such documents in the Recording Office of the County; and (ii) enter into Assignment Agreements and any other Uniform Assessment Documents with Qualified Capital Providers, and arrange for the recording of such documents in the Recording Office of the County.

**2. Definitions**

Such terms and meanings as defined in this Ordinance or in the Program Guidelines shall be applicable to municipal actions and municipal documents required to carry out the purposes of this Ordinance.

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

To qualify for a C-PACE Assessment, a proposed project must meet the criteria in the Program Guidelines for eligibility and have been approved by the Authority.

**4. Municipal C-PACE Liaison**

The [select: 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. The Municipal C-PACE Liaison shall be or become qualified as described in the Garden State Program Agreement and shall have the responsibilities and obligations set forth in the Garden State Program Agreement.

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

Municipal C-PACE fees and the recording of Uniform Assessment Documents for a C-PACE Project shall be as set forth in the Garden State Program Agreement. The amount of any fee 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 a fee shall not apply retroactively to any prior fee paid for which a completed C-PACE Project application was submitted but shall apply to all prospective fees 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. All Uniform Assessment Documents, financial documents, or other documents in the form set forth in the Uniform Assessment Documents to be entered into between the Municipality and an Eligible Owner or a Qualified Capital Provider shall be subject to review by the [select: Mayor or municipal manager (as appropriate to the form of government)] or their designee to determine their substantive adherence to the forms as set forth in the Uniform Assessment Documents and shall be approved by resolution of the governing body, prior to execution of any such documents. 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 Program Guidelines.

B. 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.

**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, the Municipality shall impose interest thereon ("statutory interest") at the same rate as may be imposed upon unpaid property taxes in the Municipality. Such 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. All delinquent payments of C-PACE Assessments, together with statutory interest thereon, accrued interest, and any penalties for such delinquency, shall be collected and enforced in the same manner as unpaid property taxes, which may include accelerated tax sales. The proceeds of the tax sale shall also pay the outstanding past unpaid amounts of the C-PACE Assessment. 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 a Property Owner is delinquent on a C-PACE Assessment as well as delinquent on taxes, charges, or other assessments, the Municipality shall apply any payment made by the Property Owner to any and all such other delinquencies before being applied to any delinquent C-PACE Assessment.

E. In the event that any lien on an 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 treasury or any other source in furtherance of or to satisfy the C-PACE Assessment.

G. 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.

H. 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. The C-PACE Assessment 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, U.S.C. Title 11.

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.

First Reading and Set Hearing Date for O-25-22:

	INTRODUCED	SECOND	AYE	NAY	ABSTAIN	ABSENT
CERVANTES						
CHELAK						
MELNYK						
OLSZEWSKI						
BROULLON						

This is a Certified True copy of the Original Ordinance on file in the Municipal Clerk’s Office.

DATE OF VOTE: August 20, 2025

\_\_\_\_\_  
Nancy Tran, Municipal Clerk  
Borough of Highlands

Public Hearing for O-25-22:

	INTRODUCED	SECOND	AYE	NAY	ABSTAIN	ABSENT
CERVANTES						
CHELAK						
MELNYK						
OLSZEWSKI						
BROULLON						

This is a Certified True copy of the Original Ordinance on file in the Municipal Clerk’s Office.

DATE OF VOTE: September 3, 2025

\_\_\_\_\_  
Carolyn Broullon, Mayor

\_\_\_\_\_  
Nancy Tran, Municipal Clerk  
Borough of Highlands