

*Board of County Commissioners*

# **Commercial Property Assessed Clean Energy (C-PACE) Program Ordinance**

**Discussion Item**

**September 28, 2021**

# Presentation Outline

- Background
- Proposed Ordinance
- Items for Consideration
- Summary
- Next Steps



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# Background

## ■ What is C-PACE?

- Commercial Property Assessed Clean Energy (C-PACE)
- Established in 2010 under Section 163.08, Fla. Stat.
- Specially designed voluntary financing mechanism for energy/water efficiency, mechanical, and storm hardening improvements.
- Average 10 to 25 year financing terms
- Owner repays debt via annual property tax bill
- Connected to the property not the borrower
- No City/County funding required



Orlando, FL

# Background

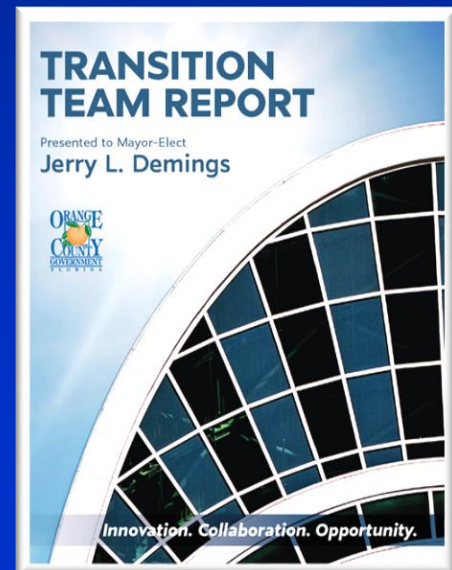
- Review of the June 8, 2021 BCC Work-session
- Present Ordinance to enable a voluntary financing program for energy efficiency and storm hardening improvements at commercial properties
- Board Discussion and Feedback





# Background

- Helps achieves Community-wide Sustainability goals:
  - *“Lead by example through Green Buildings and Green Infrastructure.” - 2016*
  - *“Enabling & Promoting Financing Options”*
    - Residential energy and roofing programs
    - Implement C-PACE Countywide for businesses
    - Workforce development
    - Green building development incentives and high-performance building policy

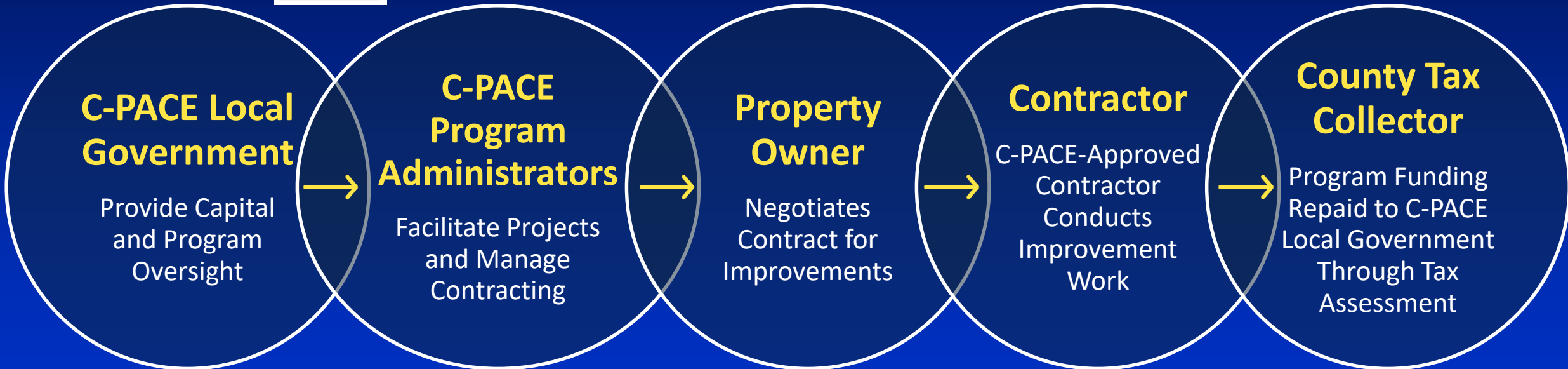


# Background

- **C-PACE Qualifying Improvements**
  - Roofing, windows, siding, façade
  - Air conditioning, insulation, lighting, water heaters, kitchens
  - Back up power and energy storage
  - Water conservation
  - Solar energy
- **Utilized for New Construction or Existing Buildings**



# C-PACE Process





# Background

## ▪ Local Roles:

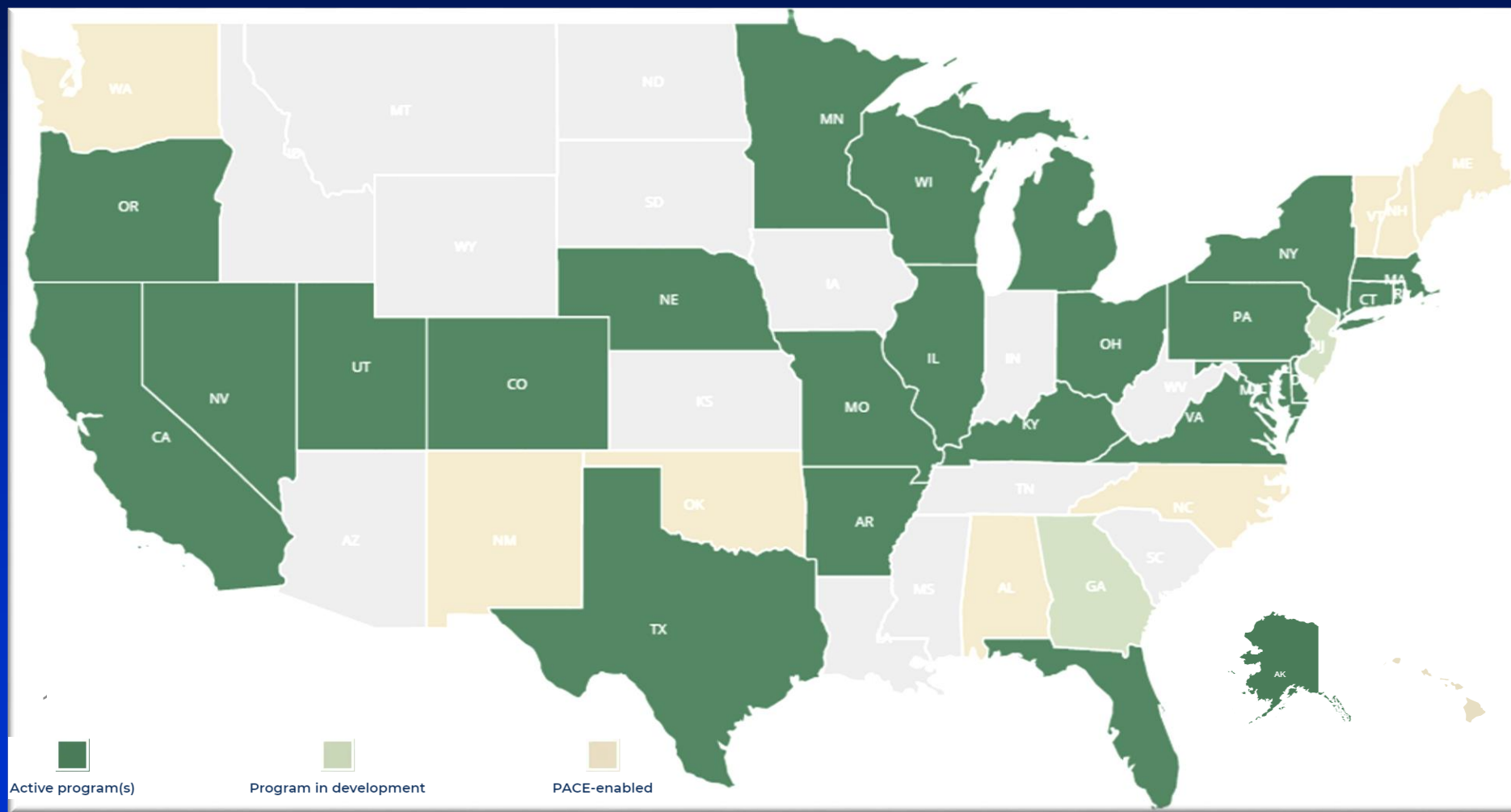
- **(Existing Role)** County Property Appraiser has minimal role to report and disclose assessment on property card.
- **(Existing Role)** County Tax Collector collects a 1% per transaction administrative fee from C-PACE Local Government.
- **(New Role)** Orange County BCC reviews metrics & reports quarterly and monitors C-PACE Local Government.





# Background

- 37 States active since 2005 with 200 Cities / Counties in Florida



State Statute  
Allows



City / County  
Enables



Special Districts  
Implement

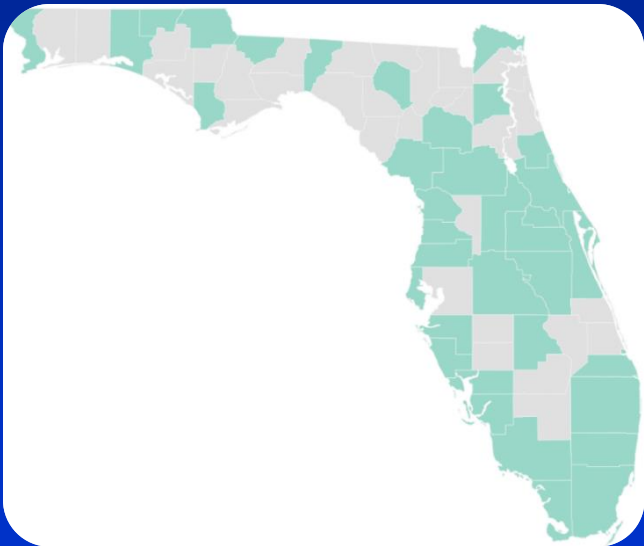
# Background

- Existing local C-PACE programs since 2015
- Currently coordinating with:
  - Maitland
  - Ocoee
  - Seminole County
  - Lake County
- Locally, C-PACE is running smoothly with few issues since 2018.



# Background

- Growth for C-PACE began in 2018 with \$75M statewide to date.
- Average \$1.5M to \$2M per project
- No C-PACE defaults or tax certificates to date in FL.
- More than 200 local governments in FL have enabled:



- City of Winter Park – 2015 - \$1M ( C )
- City of Orlando - 2016 -- >\$2M ( C )
- City of Apopka – 2017 -- <\$1M ( C )
- Miami-Dade County - 2017-- \$3.7M (unincorporated) ( C )
- Broward County – 2016 - \$300M ( C )
- Pinellas County – 2017 - >\$1M ( C )
- Lee County – 2013 -- \$3M ( C )
- Clay County – 2016-- \$3M ( C )
- Palm Beach County – 2017 - Requested

# Background

- **Why C-PACE? Participant Risks:**
  - Mortgage lender becomes subordinate to PACE
  - First position lien on property
  - Fees and interest rates may be higher than other sources of financing
  - Pre-payment penalties
  - Annual payments
  - Confusion with process and parties



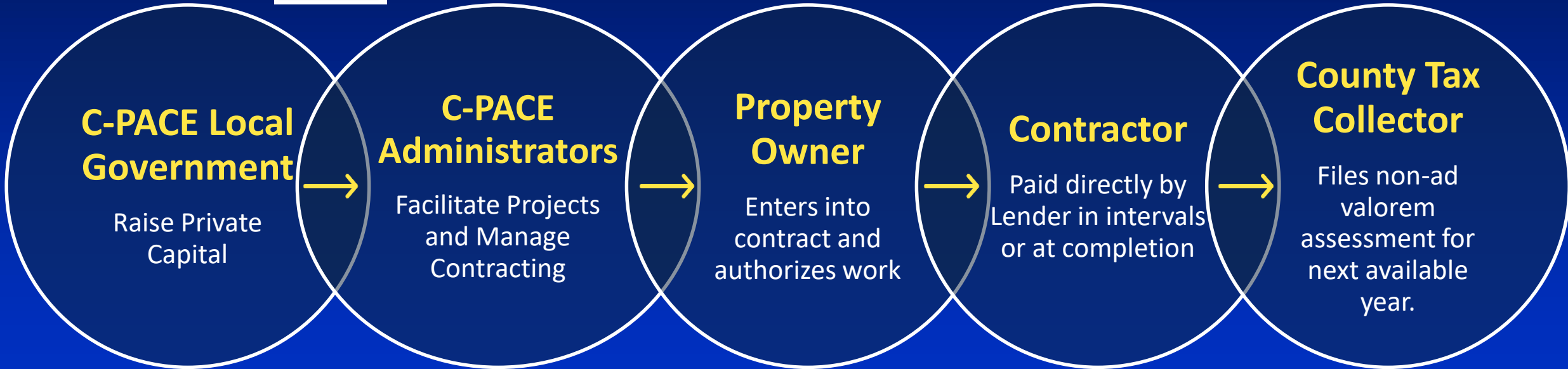


# Background

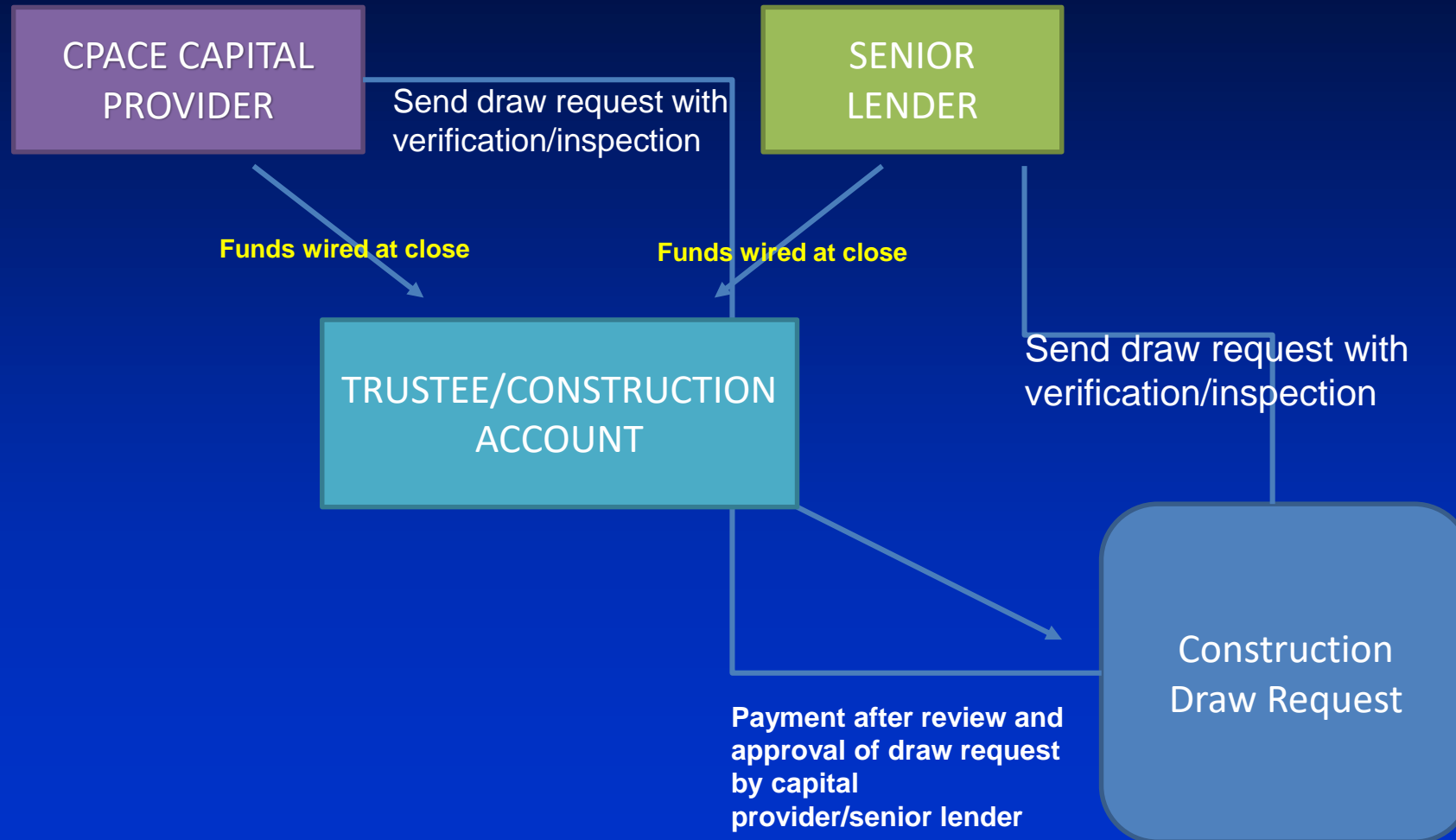
- **Why C-PACE? Participant Benefits:**
  - Not entirely credit based. Property as collateral
  - Relieves working capital
  - Fixed interest rate
  - Long payment term options
  - Bundling projects
  - No ongoing financial covenants on borrower



# C-PACE Flow of Funds



# C-PACE Flow of Funds



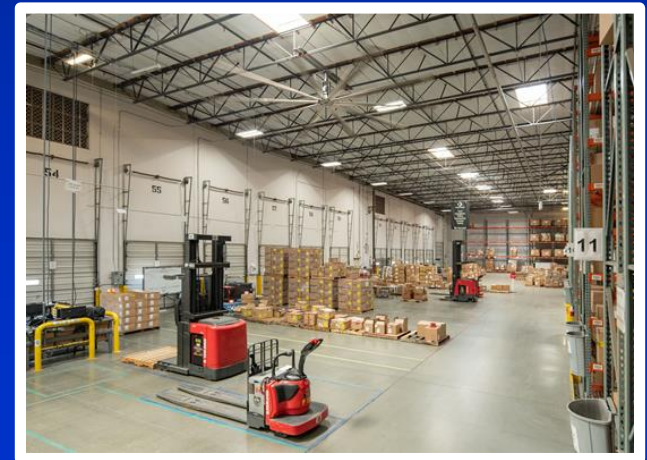
# Presentation Outline

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- **Proposed Ordinance**
- Items for Consideration
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# **Proposed Ordinance**

- **Creates Article XII under Chapter 25**
- **Intent of Ordinance**
  - Authorizes C-PACE programs within Orange County provided that certain standards are followed to protect property owners and residents.
  - Enables voluntary financing program for energy efficiency and storm hardening improvements.
  - Large, urban counties such as Miami-Dade, Broward, Palm Beach, Pinellas have enacted Ordinances instead of a Resolution

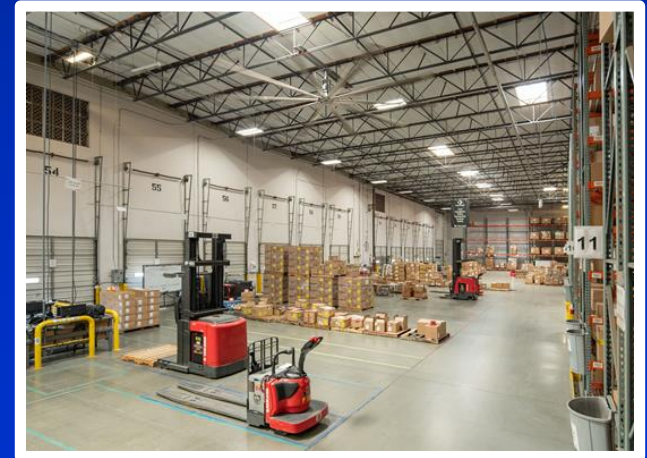




# Proposed Ordinance

## ■ Definition Highlights

- Commercial Property: nonresidential properties, including nonresidential portions of agricultural and planned developments,
- and multifamily residential properties with five (5) or more leased apartment units owned by an entity legally authorized to enter into a contract.





# Proposed Ordinance

## ■ Definition Highlights

- (e) C-PACE Assessment: the non-ad valorem assessment placed on a Commercial Property owner's tax bill as a result of financing obtained pursuant to a C-PACE Financing Agreement.
- (h) C-PACE Local Government: separate legal entities created pursuant to Section 163.08(2)(a) and Section 163.01(7), Florida Statutes.

Property Features

Values, Exemptions and Taxes

Sales Analysis

Location Info

Market Stats

Update Information

Historical Value and Tax Benefits ⓘ

Tax Year Values	Land	Building(s)	Feature(s)	Market Value	Assessed Value
2018  MKT	\$40,000	+	\$217,059	+	\$6,500 = \$263,559 (7.7%)
2017  MKT	\$27,000	+	\$211,327	+	\$6,500 = \$244,827 (11%)
2016  MKT	\$27,000	+	\$187,183	+	\$6,500 = \$220,683 (7.5%)
2015  MKT	\$27,000	+	\$171,783	+	\$6,500 = \$205,283

Tax Year Benefits

Tax Savings

2018	\$0
2017  \$	\$24
2016	\$0
2015	\$0

2018 Tax Breakdown

2018 Taxable Value and Certified Taxes ⓘ

TAX YEAR | 2018 • 2017 • 2016 • 2015

Taxing Authority	Assd Value	Exemption	Tax Value	Millage Rate	Taxes %
Public Schools: By State Law (Rle)	\$263,559	\$0	\$263,559	4.0510 (-4.05%)	\$1,067.68 21 %
Public Schools: By Local Board	\$263,559	\$0	\$263,559	3.2480 (0.00%)	\$856.04 17 %
Orange County (General)	\$263,559	\$0	\$263,559	4.4347 (0.00%)	\$1,168.81 23 %
City Of Orlando	\$263,559	\$0	\$263,559	6.6500 (0.00%)	\$1,752.67 35 %
Library - Operating Budget	\$263,559	\$0	\$263,559	0.3748 (0.00%)	\$98.78 2 %
South Florida Water Management District	\$263,559	\$0	\$263,559	0.1209 (-5.18%)	\$31.86 1 %
South Florida Wmd Okeechobee Basin	\$263,559	\$0	\$263,559	0.1310 (-5.35%)	\$34.53 1 %
South Florida Wmd Everglades Const	\$263,559	\$0	\$263,559	0.0417 (-5.44%)	\$10.99 0 %
			19.0521		\$5,021.36

2018 Non-Ad Valorem Assessments

Levying Authority	Assessment Description	Units	Rate	Amount
CITY OF ORLANDO	ORLANDO STORM - DRAINAGE - (407)246-2370	137.85	\$1.00	\$137.85
EAST PARK CDD	EAST PARK - COMMUNITY DEVELOPMENT - (954)603-0034	796.81	\$1.00	\$796.81
				\$934.66

2018 Tax Total:

\$5,956.02 ⓘ

# Proposed Ordinance

## ■ 25-352 Purpose.

- (a) Allow property owners to voluntarily finance Qualifying Improvements through non-ad valorem assessments implemented and managed by C-PACE Local Governments and repaid through collection on annual property tax bills.
- (b) Provide minimum standards and limitations for the operation of C-PACE Programs and authorize C-PACE Local Governments to operate pursuant to interlocal agreements with the County.



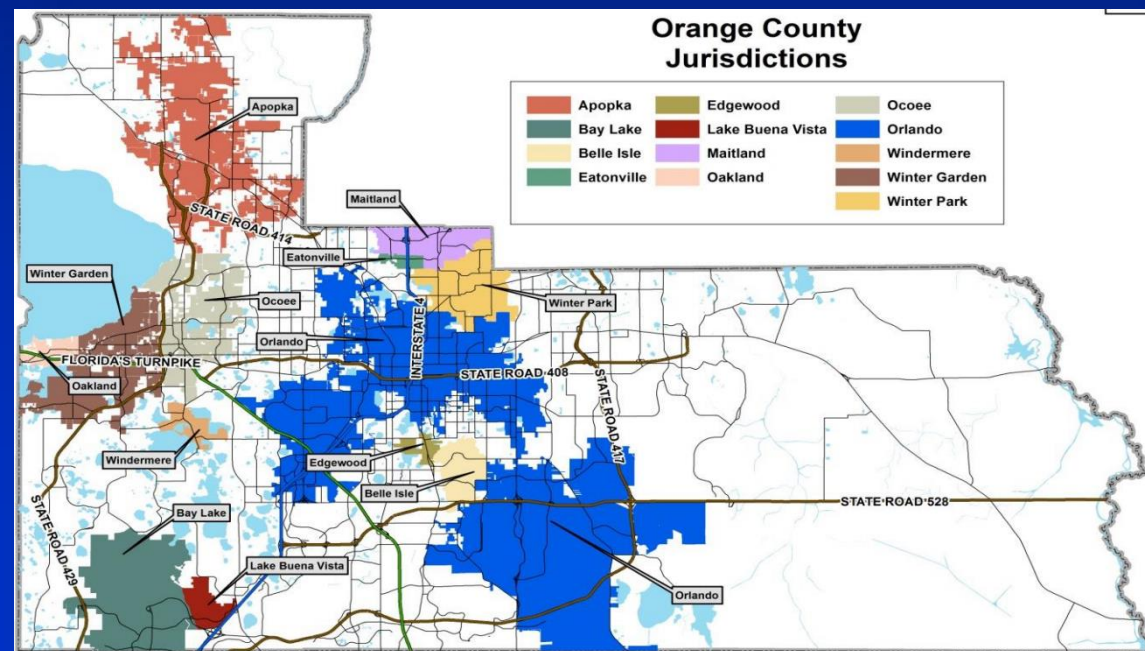


# Proposed Ordinance

## ■ 25-353 Authorization for C-PACE Programs.

—(b) C-PACE Local Governments to offer the voluntary, non-exclusive C-PACE Program to Eligible Participants without cost, assumption of liability by, or demand upon the credit of Orange County.

(c ) authorizes C-PACE Local Governments to levy non-ad valorem assessments to fund Qualifying Improvements.





# Proposed Ordinance

## ■ Section 25-356 C-PACE Program Standards.

- Qualifying improvements
- Licensed contractors and oversight
- Anti kick-back
- Compliance with FL Building Code, local codes, and permits
- Data security and consumer privacy







# Proposed Ordinance

- **Section 25-356 C-PACE Program Standards.**
- **C-PACE Financing Agreement**
  - Project descriptions, cost, and estimated completion date
  - Risks associated with participating in the C-PACE Program shall be clearly disclosed in plain language
  - Must be recorded in the public records of the County within 5 days
  - Clear disclosure of the interest rate to be charged, points, and any and all fees or penalties that may be separately charged



# Proposed Ordinance

## ▪ Section 25-356 Marketing and Communications.

- Prohibits: unfair, deceptive, abusive, or misleading language that violates applicable laws or regulations, are inappropriate, incomplete, or inconsistent with purpose.
- Prohibits use of Orange County logos or names including:
  - Property Appraiser
  - Tax Collector





# Proposed Ordinance

- **Section 25-356 Metrics Reporting**
  - Quarterly
  - # of executed agreements
  - # of completed projects
  - Building type: New/Existing/Renovation
  - Types of improvements
  - Amount financed (\$)
  - Term (yrs) / Interest Rate
  - # of defaults \$ tax certificates issued
  - Estimated savings

Orange County Commercial PACE Report Template-SAMPLE

Reporting Period [Year, Quarter]		Administrator	
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## SUMMARY

Signed Term Sheets	Executed Finance Agreements	Projects Completed	Estimated Jobs Created Local	Estimated Jobs Created Non-Local (if available)
1	1	1		

## PROJECT DETAILS

Closing Date	Building Type*	Construction Type (New/Gut Rehab, Retrofit)	Financed Amount (\$)	Interest Rate	Term (yrs)	Completion Date
10/31/2021	Multifamily	New	\$ 10,000,000	5.50%	20	TBD

## REPORTED ANNUALLY

Assessment Defaults		Tax Certificates			
		Issued	Redeemed		
Qualifying Improvements Included			Annual Estimated Energy/Resiliency Impact Data (if available)		
Energy Efficiency	Renewable Energy	Wind Resistance	Energy/Insurance Savings (\$)	Energy Efficiency Savings (KWh)	Clean Energy Generated (kWh)
X	X				250,000 kWh



# Proposed Ordinance

## ■ Section 25-357 Eligible C-PACE Program Participants.

- Must be legal owners of a commercial property
- No outstanding property taxes
- No notices of default or other evidence of property-based debt delinquency for the preceding three (3) years
- No liens: federal income tax lien, judgement lien, or similar involuntary liens, construction liens, etc.
- Current on mortgage on the subject property
- Cannot be in bankruptcy nor can the property be an asset in any bankruptcy

### Eligible Property Criteria





# Proposed Ordinance

- **Section 25-362 Suspension or Termination of C-PACE Programs**
  - Four Operating Agreements
  - County may suspend or terminate interlocal agreement revoking authority to operate program in Orange County.
  - Repeal of Ordinance to end program.

## ORANGE COUNTY ORDINANCE

AN ORDINANCE CREATING COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) PROGRAM(S) IN UNINCORPORATED ORANGE COUNTY, FLORIDA; ENACTING A NEW CHAPTER 25, ARTICLE XII OF THE ORANGE COUNTY CODE OF ORDINANCES; PROVIDING A TITLE; PROVIDING DEFINITIONS; PROVIDING A PURPOSE; PROVIDING AUTHORIZATION FOR C-PACE PROGRAMS; PROVIDING C-PACE PROGRAM BOUNDARIES; PROVIDING C-PACE LOCAL GOVERNMENT PROGRAM OPERATION; PROVIDING C-PACE PROGRAM STANDARDS; PROVIDING FOR ELIGIBLE C-PACE PROGRAM PARTICIPANTS; PROVIDING FOR C-PACE ASSESSMENTS; PROVIDING FOR C-PACE PROGRAM ADMINISTRATION; PROVIDING FOR RECORDATION OF C-PACE FINANCING AGREEMENT DOCUMENTATION; PROVIDING FOR NOTICE TO COMMERCIAL PROPERTY PURCHASER; PROVIDING FOR SUSPENSION OR TERMINATION OF C-PACE PROGRAMS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 163.08, Florida Statutes (the "PACE Act"), authorizes counties, municipalities, dependent special districts, and separate legal entities created pursuant to Section 163.01(7), Florida Statutes, to establish and administer financing programs pursuant to which property owners may apply for funding to finance energy conservation and efficiency, renewable energy, and wind resistance qualifying improvements that can reduce property repair and insurance costs, the burdens of fossil fuel energy production, and the burdens of high wind storms and hurricanes; and

WHEREAS, the PACE Act provides for said funding to be repaid by the property owners through non-ad valorem assessments levied upon their properties pursuant to financing agreements entered into between the property owners and the local governments establishing and administering the PACE programs; and

WHEREAS, several separate legal entities have been created in the State of Florida pursuant to the PACE Act and Section 163.01, Florida Statutes, to provide PACE qualifying improvement programs to property owners financed by levying non-ad valorem assessments on participating properties; and

**4 DISTRICT  
OPERATING  
AGREEMENTS**





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# Items for Consideration

- Opt-in ability for municipalities
- Lender Consent Requirement





# Items for Consideration

- **Opt-in ability for municipalities**
  - Section 25-354, Line 186
  - Allows the choice to participate in a C-PACE Program by adopting an ordinance or resolution.
    - Interest from Maitland and Ocoee
  - Does not override existing C-PACE Resolutions in:
    - Apopka
    - Orlando
    - Winter Garden
    - Winter Park





# Items for Consideration

- Opt-in ability for municipalities
- Lender Consent Requirement
  - For properties with a mortgage







# Items for Consideration

## ▪ Lender Consent (*Proposed*)

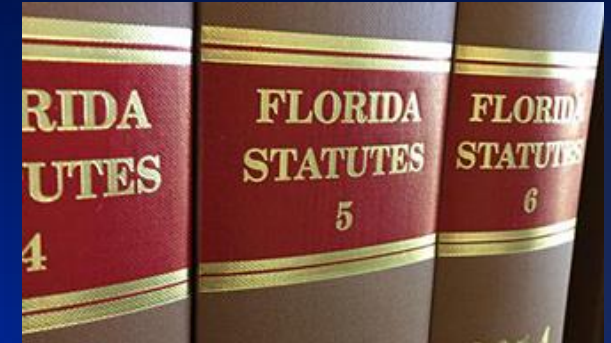
- Section 25-356, Part (g) Line 386
- Applies to all properties that have a mortgage
- Prior to entering into a C-PACE Financing Agreement
- Verify that holders or loan servicers of any mortgage or lien encumbering or otherwise secured by the Commercial Property have signed written consents consenting to the C-PACE Assessment considered...
- A verified copy or other proof of such consent must be provided to and maintained by the C-PACE Local Government.



# Items for Consideration

## ▪ Lender Notification (Required by Fla. Stat.)

- Fla. Stat. requires a 30 day notice to primary lender/mortgage holder of the property.
- No action required



## ▪ Lender Consent (Exceeds Fla. Stat.)

- Proposed ordinance requires all projects to seek action from the primary lender/mortgage holder.
- Other states have adopted Lender Consent into State Statute as best practice since 2016.

VS.





# Items for Consideration

## ■ Lender Consent Pros

- Forces involvement from current lender/mortgage holder
- Supported by 3 out of 4 C-PACE Districts
- 13 States since 2016 now require Lender Consent

## ■ Lender Consent Cons

- May restrict smaller projects and property owners
- Orange County would be the first in FL to require
- Other programs operate successfully without Lender Consent
- Opposed by 1 of 4 C-PACE Districts due to barrier it can create

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# Summary

- **Helps to enable & promote financing options along with Cities to achieve county-wide goals.**
- **C-PACE fills a financing gap identified by stakeholders, contractors, property owners and developers.**
- **C-PACE already functions well with no issues in 4 Cities within Orange County.**
- **Proposed Ordinance creates local roles, responsibilities, and program standards.**
- **Proposed ordinance enables program and interlocal agreements will authorize four C-PACE local governments.**

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## Next Steps

- **Incorporate Board feedback and changes into C-PACE Ordinance**
- **Schedule Public Hearing: November 16, 2021**
- **If adopted, draft 4 separate operating agreements with each C-PACE Local Government for BCC approval.**

*Board of County Commissioners*

# **Commercial Property Assessed Clean Energy (C-PACE) Program Ordinance**

**Discussion Item**

**September 28, 2021**



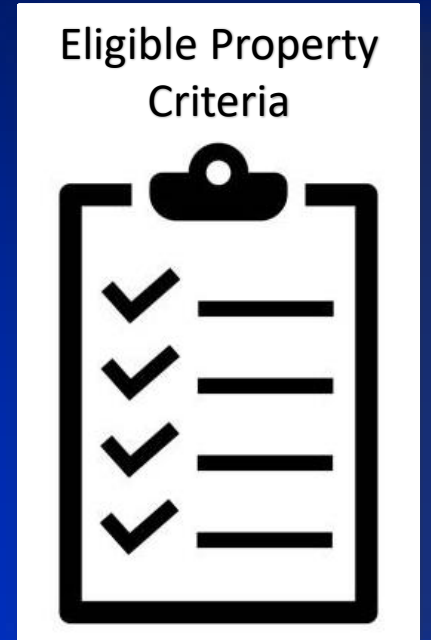


# Backup

- **Historical concerns about predatory lending practices and active litigation on Residential PACE led to research on what “consumer protections” are appropriate for Commercial.**
- **Staff reviewed other local government’s PACE program requirements:**
  - a. Hiring County staff to administer program
  - b. Hiring 3<sup>rd</sup> party oversight of program
  - c. Establishing minimum underwriting criteria
  - d. Requiring mortgage lender to acknowledge receipt of C-PACE Lender Notice required by Fla. Stat.
  - e. Requiring mortgage lender to consent to C-PACE agreement
- **2,500 Commercial projects financed: 1 default / Zero tax certificates.**
- **C-PACE in FL operates well with no issues reported.**

## ▪ Eligible Property Criteria (Proposed Ordinance)

- Must be legal owners of a commercial property
- No outstanding property taxes
- No notices of default or other evidence of property-based debt delinquency for the preceding three (3) years
- No liens: federal income tax lien, judgement lien, or similar involuntary liens, construction liens, etc.
- Current on mortgage on the subject property
- Cannot be in bankruptcy nor can the property be an asset in any bankruptcy





# Backup

- Lender Consent is intended to prevent overburden of debt
- Lender Consent creates additional review step:
  1. Mortgage Lender Review
  2. C-PACE provider and capital provider review
  3. Mortgage lender reviews the impact of the new C-PACE transaction on their interests in the property.

**Expected result: Lender will not consent if it believes it will jeopardize the ability of the property owner to make the payments they own on the debt.**