

**AMENDMENT TO THE FAIRFAX COUNTY CODE RELATING TO THE  
ESTABLISHMENT OF A GREEN BANK TO PROMOTE INVESTMENT IN, AND  
PROVIDE FINANCING FOR, CLEAN ENERGY TECHNOLOGIES**

**AN ORDINANCE to amend the Fairfax County Code by adding a new chapter numbered 128, relating to the establishment of a Green Bank pursuant to Virginia Code § 15.2-958.3:1, and as may be amended.**

[Date]

**Be it ordained by the Board of Supervisors of Fairfax County:**

- 1. The Fairfax County Code is amended by adopting a new chapter number 128 as follows:**

**CHAPTER 128. FAIRFAX COUNTY GREEN BANK**

**ARTICLE 1. – General Provisions**

**Section 128-1-1. – Short Title.**

This ordinance shall be known as the Fairfax County Green Bank Ordinance (this “Ordinance”).

**Section 128-1-2. – Mission and Authority.**

- (a) Authority.** Pursuant to the authority granted in Virginia Code § 15.2-958.3:1, and as may be amended from time to time hereafter (the “Green Bank Statute”), any Virginia locality may enact an ordinance to establish a green bank that will promote the investment in Clean Energy Technologies in its locality, and provide financing for Clean Energy Technologies.
- (b) Establishment.** After due consideration, the Board of Supervisors determines that the County shall establish a green bank in accordance with the Green Bank Statute and other applicable law.
- (c) Mission.** The Green Bank will facilitate the achievement of the County’s community energy and climate goals by leveraging innovative ventures and private capital and financing to accelerate the growth of a clean energy economy by making Clean Energy accessible and more affordable to all, thereby improving the general health and welfare of the County and

46 enhancing community prosperity where everyone can participate in, and  
47 benefit from, clean energy solutions.  
48

49 **Section 128-1-3. – Certain Definitions.**

50  
51 **“Board of Supervisors”** means the Board of Supervisors of Fairfax County,  
52 Virginia.  
53

54 **“Clean Energy”** means renewable energy, energy efficiency, energy storage, and  
55 non-fossil energy used directly for transportation.  
56

57 **“Clean Energy Technologies”** means energy resources and emerging  
58 technologies and their enabling infrastructure that have significant potential for  
59 commercialization and do not involve (i) the combustion of coal, petroleum or  
60 petroleum products, or municipal solid waste or (ii) nuclear fission. “Clean  
61 Energy Technologies” includes, but is not limited to, renewable energy sources,  
62 projects, and infrastructure; energy efficiency projects; alternative fuels used for  
63 electricity generation; alternative fuel vehicles and related infrastructure, such as  
64 electric vehicle charging station infrastructure; and smart grid.  
65

66 **“Code”** means the Internal Revenue Code of 1986, as amended, or the  
67 corresponding provisions of any subsequent federal tax laws, together with the  
68 regulations pertinent thereto.  
69

70 **“County”** means Fairfax County, Virginia.  
71

72 **“End-use Customers”** means individuals, businesses, nonprofit or community  
73 organizations, governmental entities, or institutions that use or pay for energy or  
74 energy-using devices, equipment, or products that benefit from improved energy  
75 performance or the use of Clean Energy.  
76

77 **“Fairfax County and Green Bank Agreement” or “Agreement”** means one or  
78 more agreements or memoranda of understanding between the County and the  
79 Green Bank that will outline the funding and in-kind support by the County to the  
80 Green Bank for its management, administration and operation; the roles of each  
81 party; and the responsibilities of each party to the other.  
82

83 **“Financial Investment” or “Financial Support”** means making, purchasing,  
84 funding, or providing loans, guarantees, loan loss reserves, interest rate  
85 buydowns, grants, rebates, incentives, or other forms of assistance that foster the  
86 growth, development and use of Clean Energy Technologies. These terms also  
87 include, but are not limited to, the provision of any administration, management  
88 and oversight of such loans, guarantees, loan loss reserves, interest rate  
89 buydowns, grants, rebates, incentives, or other such forms of assistance.  
90

91 “Green Bank” means the nonstock corporation that is established by the County  
92 pursuant to the authority granted under the Green Bank Statute and this Ordinance  
93 that will effectuate and administer the purpose of this Ordinance. .  
94

95 “Green Bank Party(ies)” means End-use Customers, property owners, residents,  
96 private capital or financing providers, contractors and other such parties.  
97

98 “Renewable Energy” means any energy created by processes that do not involve  
99 (i) the combustion of coal, petroleum or petroleum products, or municipal solid  
100 waste or (ii) nuclear fission. The term “Renewable Energy” includes, but is not  
101 limited to, energy created by or from solar and wind technologies, water  
102 movement and geothermal heat.  
103

## 104 **ARTICLE 2. – Green Bank Functions**

105  
106 **Section 128-2-1.** The Green Bank’s functions may include the following:  
107

- 108 (a) Finance investment or financial support of investment in Clean Energy  
109 Technologies to foster the growth and development of Renewable Energy  
110 sources;  
111
- 112 (b) Stimulate the demand for Renewable Energy and the deployment of Clean  
113 Energy Technologies that serve End-use Customers;  
114
- 115 (c) Before making any Financial Investment or providing Financial Support for  
116 Clean Energy Technologies, develop rules, policies, and procedures to specify  
117 borrower eligibility and any other term or condition of Financial Investment  
118 or Financial Support;  
119
- 120 (d) Provide Financial Investment or Financial Support for Clean Energy  
121 Technologies;  
122
- 123 (e) Develop consumer protection standards for Financial Investments and  
124 Financial Support; and  
125
- 126 (f) Undertake any other activity as needed to support the mission of the Green  
127 Bank.  
128

129 **Section 128-2-2.** The foregoing functions may also include such other powers  
130 that may be authorized by the Green Bank Statute or other applicable law by  
131 resolution of the Board of Supervisors or the amendment of this Ordinance.  
132

133 **Section 128-2-3.** Notwithstanding anything to the contrary in this Ordinance, the  
134 Green Bank shall not purchase, incur, create, issue, assume, guarantee or  
135 otherwise become liable, directly or indirectly, for any indebtedness without an  
136 authorizing resolution of the Board of Supervisors.

137  
138 **ARTICLE 3. – Eligible Green Bank Initiatives**  
139

140 **Section 128-3-1. Financial Investment and Financial Support.**  
141

142 (a) The Green Bank may provide Financial Investment and Financial Support for  
143 Clean Energy Technologies.  
144

145 (b) Before providing any Financial Investment or Financial Support for Clean  
146 Energy Technologies, the Green Bank will develop rules, policies, and  
147 procedures to specify borrower eligibility and any other term or condition of  
148 such investment or support. Any such rules, policies, and procedures must  
149 include the following:  
150

- 151 1) A commitment that any County funding of Financial Investments or  
152 Financial Support will inure to the benefit of Fairfax County. This  
153 provision will not preclude the Green Bank from entering into agreements  
154 with other jurisdictions to participate in its initiatives.  
155
- 156 2) Policies that promote the investment or support of the growth or  
157 deployment of Clean Energy Technologies by low- and moderate-income  
158 communities and End-use Customers.  
159
- 160 3) Consumer protection standards for Financial Investments and Financial  
161 Support.  
162
- 163 4) Provide private lending institutions the opportunity to participate in the  
164 Financial Investment and Financial Support activities of the Green Bank.  
165

166 **Section 128-3-2. Stimulate Demand and Deployment.** The Green Bank is  
167 authorized to support any initiative that increases the demand for Renewable  
168 Energy and the deployment of Clean Energy Technologies that serve End-use  
169 Customers. Such efforts may include, but are not limited to:  
170

- 171 (a) Financial Investment and Financial Support;
- 172 (b) Marketing and advertising;
- 173 (c) Educational efforts and programming;
- 174 (d) Consumer awareness campaigns; and
- 175 (e) Training, education and other such assistance to develop the workforce  
176 needed to provide and implement these technologies.  
177

178 **ARTICLE 4. – Program Arrangements; Funding**  
179

180 **Section 128-4-1. Corporate Form.** The Green Bank will be established as a  
181 nonstock corporation that will apply for and seek to obtain tax-exempt status

182 under Code section 501(c)(3).  
183

184 **Section 128-4-2. Articles of Incorporation.**  
185

186 (a) The Green Bank’s articles of incorporation must provide that the Green Bank:  
187

- 188 1) be a nonstock corporation with no members;
- 189 2) be incorporated in the Commonwealth of Virginia; and
- 190 3) be incorporated for the sole purpose of serving as the County’s green  
191 bank, as authorized by the Green Bank Statute and this Ordinance, while  
192 also meeting the requirements to seek to obtain tax-exempt status under  
193 Code section 501(c)(3).  
194

195 (b) The Green Bank’s legal name must include the words “Fairfax County” [or:  
196 The Green Bank’s legal name set forth in the articles of incorporation may be  
197 amended from time to time by the Directors]. The Green Bank’s legal name  
198 shall satisfy all requirements under Virginia and will not use any word or  
199 phrase that is prohibited by Virginia law.  
200

201 (c) The Green Bank’s articles of incorporation may contain any provision, not  
202 inconsistent with law or this Ordinance, necessary or desirable to govern and  
203 manage the Green Bank.  
204

205 **Section 128-4-3. Board of Directors and By-laws.**  
206

207 (a) **Board of Directors.** The Green Bank will be managed by a Board of  
208 Directors (the “Board of Directors” or “Directors”). At the first meeting of  
209 Directors, the Directors will adopt initial by-laws of the Green Bank in substantial  
210 conformance with those attached as Appendix A.  
211

212 (b) **Amendment to By-laws.** The Board of Directors may amend the Green  
213 Bank’s by-laws, provided any amendment to its by-laws comports with the  
214 requirements of this Ordinance and complies with applicable law. [The Board of  
215 Directors must submit any proposed amendment to the Green Bank’s articles of  
216 incorporation or by-laws to the Board of Supervisors for review, comment [and  
217 approval?] at least sixty days prior to the Board taking any final action on the  
218 amendment.][The Board must submit a copy to the Board of Supervisors of each  
219 adopted amendment to the Green Bank’s articles of incorporation or by-laws  
220 within [five] days after adoption]. [OR for each of these alternatives, consider  
221 requiring delivery to the County Executive rather than the Board of Supervisors.  
222 Comments from the Board of Supervisors would require board action, which  
223 might be a cumbersome process.]  
224

225 (c) **Other.** The by-laws may contain any other provision, not inconsistent with  
226 this Ordinance, applicable law or the articles of incorporation, necessary or  
227 desirable to govern and manage the Green Bank.

228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273

**Section 128-4-4. Requirements.** The Green Bank and its by-laws must comport with the following requirements:

- (a) **Number of Voting Members.** The Board of Directors will be comprised of not fewer than five nor more than nine voting members.
- (b) **Number of Non-Voting Members.** There shall be at least two Fairfax County employees who will also serve on the Board of Directors in a non-voting capacity.
- (c) **Composition.** Voting Directors should include individuals with substantial experience in any one or more of the following areas:
  - 1) Private banking and lending institutions;
  - 2) Law, particularly in real estate transactions or Clean Energy development;
  - 3) Real estate project development, particularly related to Clean Energy Technologies or environmental projects;
  - 4) Use of Clean Energy Technologies or Clean Energy; and
  - 5) Community-based organizations that serve the public interest in support of affordable housing and meeting the needs of low- or moderate-income communities.
- (d) **Selection.** The initial Board of Directors of the Green Bank will be selected by the **Fairfax County Executive.** The initial terms of the voting members of the initial Board of Directors will be staggered between two- and three-year terms, subject to such voting member's earlier death, resignation, or removal. After the appointment of the initial Board of Directors, the Board of Directors will nominate and select future voting Directors. After the initial term, the term of any voting Director shall be three years. Non-voting Directors will be appointed from time to time by, and can be removed for any or no reason by, the County Executive.
- (e) **Reporting.** Not less than once per year (but in any event, no later than June 30<sup>th</sup> of each year), the Chair of the Board of Directors or the Green Bank's chief executive officer shall provide a written report to the Fairfax County Board of Supervisors. This report will include the following information:
  - 1) The number, kind, and amount of all Green Bank activities and initiatives, including, without limitation, all Financial Investments and Financial Support made or provided by the Green Bank during the reporting period.
  - 2) A description of the results of the activities and initiatives during the reporting period, including any that were not successful or in which a property owner defaulted, including the amount of any such default, and an analysis or review of the reasons that led to the default or unsuccessful

274 outcome. These activities and initiatives include any marketing,  
275 advertising or educational efforts designed to further the mission of the  
276 Green Bank.

- 277  
278 3) A review of any administrative issues related to the Green Bank.  
279  
280 4) Any other information that may be requested by the Board of Supervisors  
281 or the County Executive.

282  
283 **(f) Virginia Freedom of Information Act.** If the Green Bank is supported  
284 wholly or principally by public funds, the Green Bank shall be subject to the  
285 provisions of the Virginia Freedom of Information Act (Virginia Code § 2.2-  
286 3700 *et seq.*), as may be amended from time to time.

287  
288 **Section 128-4-4. Funding.** Green Bank’s funding sources may include:

- 289  
290 **(a)** Federal, state and other government provided funds;  
291  
292 **(b)** County funds, grants and in-kind contributions, which shall be subject to  
293 appropriations for such purpose by the Board of Supervisors and the  
294 Agreement between the Green Bank and the County;  
295  
296 **(c)** Loans and other financing from private sources; and  
297  
298 **(d)** Charitable gifts, grants, or contributions and loans from individuals,  
299 corporations or other entities, endowments, and philanthropic foundations.

300  
301 **ARTICLE 5. – Limitation of Liability**

302  
303 **Section 128-5-1.** Green Bank Parties participate in the Green Bank and its  
304 programs, initiatives and activities at their own risk. By executing any agreement  
305 with the Green Bank or otherwise participating in any program, initiative or activity  
306 of the Green Bank, each Green Bank Party acknowledges and agrees, for the benefit  
307 of the County and as a condition to its participation in the Green Bank that:

- 308  
309 **(a)** The County does not undertake any covenants, duties or obligations under or in  
310 connection with the Green Bank or this Ordinance, and no implied covenants,  
311 duties or obligations of the County exist; and  
312  
313 **(b)** The Green Bank, its Financial Investment or Financial Support or initiatives of  
314 the Green Bank and this Ordinance: (1) are not backed by any credit or property  
315 of the County, or any taxes, taxing power, or governmental funds, and (2) shall  
316 not constitute an indebtedness or loan of credit of the County within the  
317 meaning of any constitutional or statutory debt limitation or restriction; and  
318

319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343

- (c) The County has not made, is not making, and will not make any representations, covenants, or warranties, financial or otherwise, regarding any Green Bank Party, the Green Bank, or any Green Bank initiatives or activities; and
- (d) The County assumes no responsibility or liability for the Green Bank or its activities, or the planning, construction or operation thereof, and
- (e) Each Green Bank Party and other Green Bank participants shall comply with all applicable requirements of this Ordinance and all applicable laws and requirements of the Green Bank.

**Section 128-5-2.** Nothing in this Ordinance will be construed to create or create any partnership, joint venture, fiduciary relationship, agency or other similar relationship between the County and the Green Bank or between the County and any Green Bank Parties.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jill Cooper  
Clerk to the Board of Supervisors