

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: August 23, 2022

() Consent (X) Regular
() Workshop () Public Hearing

Department: Office of Resilience

Submitted By: Office of Resilience

Submitted For: Office of Resilience

I. EXECUTIVE BRIEF

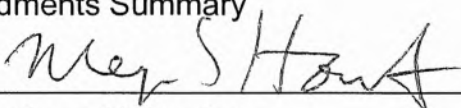
Motion and Title: Staff recommends motion to approve on preliminary reading and advertise for public hearing on October 18, 2022, at 9:30 A.M.: an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, amending Palm Beach County Code, Chapter 17, Article XVII, (Ordinance 2017-012), section 17-504 through section 17-507, regarding the Property Assessed Clean Energy (PACE) Program; providing for a savings clause; providing for repeal of laws in conflict; providing for severability; providing for inclusion in the code of laws and ordinances; providing for enforcement; providing for penalties; providing for captions; and providing for an effective date.

Summary: In recent years, Office of Resilience (OOR) staff has presented to the Board of County Commissioners (BCC) at several workshops and received BCC direction to amend Palm Beach County Code, Chapter 17, Article XVII, (Ordinance 2017012), section 17-504 through section 17-507, regarding the PACE Program that operates in the County. At the September 28, 2021, workshop, the BCC recommended that staff work to increase the applicability of the Ordinance for non-residential financing, streamline administrative tasks, increase consumer protections, and explore capping interest rates. At the June 7, 2022, BCC meeting, OOR staff brought an agenda item recommending a motion to approve on preliminary reading and advertise for public hearing staff's proposed PACE ordinance changes. The BCC directed staff to postpone the request to advertise and work with stakeholders to find additional common ground for ordinance amendments. Since then, staff has met with local PACE representatives and the Tax Collector's Office to align further on ordinance revisions. Upon final direction, staff will advertise the proposed ordinance amendments for adoption at the October 18, 2022, BCC meeting. Countywide (RM)

Background and Policy Issues: Section 163.08, Florida Statutes, authorizes local governments to create PACE programs that fund energy efficiency, renewable energy, and wind resistance improvements for residential and commercial properties. In 2017, the BCC established a PACE program in the County, which is applicable within unincorporated areas of the County and within all municipalities that have not adopted their own PACE ordinance or resolution. With PACE, property owners within a participating district can finance a qualified project through a voluntary non-ad valorem assessment on their annual property tax bill. Failure to pay the PACE assessment may result in the loss of property subject to the PACE assessment, similar to failing to pay one's property taxes.

Attachments:

- 1. Recommended Ordinance Amendments
- 2. PACE Proposed Amendments Summary

Recommended by:  7-25-22
Department Director Date

Approved by:  8/8/22
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	<u> 0</u>	<u> 0</u>	<u> 0</u>	<u> 0</u>	<u> 0</u>
Operating Costs	<u> 0</u>	<u> 0</u>	<u> 0</u>	<u> 0</u>	<u> 0</u>
External Revenues	<u> 0</u>	<u> 0</u>	<u> 0</u>	<u> 0</u>	<u> 0</u>
Program Income (County)	<u> 0</u>	<u> 0</u>	<u> 0</u>	<u> 0</u>	<u> 0</u>
In-Kind Match (County)	<u> 0</u>	<u> 0</u>	<u> 0</u>	<u> 0</u>	<u> 0</u>
NET FISCAL IMPACT	<u> 0</u>	<u> 0</u>	<u> 0</u>	<u> 0</u>	<u> 0</u>

ADDITIONAL FTE

POSITIONS (Cumulative) 0 0 _____ _____

Is Item Included in Current Budget? Yes _____ No X

Does this item include the use of federal funds? Yes _____ No X

Budget Account No.:


Fund _____ Department _____ Unit _____ Object _____ Program _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:


C. Department Fiscal Review: 

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:



CJA 7-27-22
 JLE 7-27-22
 OFMB



 Contract Development and Control

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

 Department Director

ORDINANCE NO. 20____ - _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING PALM BEACH COUNTY CODE, CHAPTER 17, ARTICLE XVII, (ORDINANCE 2017-012), SECTION 17-504 THROUGH SECTION 17-507, REGARDING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM; PROVIDING FOR A SAVINGS CLAUSE; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, Property Assessed Clean Energy (PACE) programs for Residential and
2 Non-Residential Properties have been established across the country to provide mechanisms
3 for funding energy efficiency, renewable energy, and other types of improvements to
4 residential and commercial properties; and

5 **WHEREAS**, PACE Programs for Residential and Non-Residential Properties are
6 typically established by local governments, as defined by Section 163.08, Florida Statutes, and
7 are administered by the local government or by for-profit or not-for-profit entities; and

8 **WHEREAS**, PACE financing for Residential and Non-Residential Properties is repaid
9 as an assessment on the property's regular tax bill; and

10 **WHEREAS**, Section 163.08, Florida Statutes, authorizes programs, typically referred
11 to as PACE Programs, that levy non-ad valorem assessments allowing property owners to
12 apply to local governments for financing certain energy efficiency, renewable energy, and
13 wind resistant improvements; and

14 **WHEREAS**, Section 163.08, Florida Statutes, provides that properties retrofitted with
15 energy-related Qualifying Improvements benefit from reduced energy consumption, reduced
16 potential for wind damage, and assist in the fulfillment of the state's energy and hurricane
17 mitigation policies; and

18 **WHEREAS**, the PACE assessment is collected pursuant to Florida's uniform
19 method for the levy, collection, and enforcement of non-ad valorem assessments, Section
20 197.3632, Florida Statutes; and

1 **WHEREAS**, the County has entered into interlocal agreements with multiple PACE
2 Agencies/Authorities/Districts to encourage competition and provide more choices for
3 property owners; and

4 **WHEREAS**, the Board of County Commissioners intends to clarify and strengthen
5 qualifications and consumer protection disclosure requirements for PACE Programs for
6 Residential and Non-Residential Properties that provide financing for Qualifying
7 Improvements in accordance with Section 163.08, Florida Statutes, and provisions of this
8 Ordinance; and

9 **WHEREAS**, the Board of County Commissioners of Palm Beach County, pursuant to
10 its authority under the Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida
11 Statutes, and the Palm Beach County Charter, hereby adopts the following amendments to the
12 Palm Beach County Property Assessed Clean Energy (PACE) Ordinance (Ordinance 2017-
13 012).

14

15 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
16 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

17 **Section 1. Chapter 17, Article XVII, Section 17-504, entitled "DEFINITIONS" is hereby**
18 **amended as follows:**

19 For purposes of this Ordinance, the following words and phrases shall have the following
20 meanings:

21 (1) Board or County is the Palm Beach County Board of County Commissioners.

22 (2) Fair Market Value shall mean the value of the property as determined by a reputable valuation
23 service, the method of which shall be reported to the County quarterly.

24 ~~(2)~~ (3) Financing Agreement shall mean the financing agreement or the summary memorandum
25 of such agreement the property owner signs establishing terms and conditions for the
26 financing of ~~qualified improvements~~ Qualifying Improvements which is required to be
27 recorded in the public records pursuant to the PACE Statute.

28 ~~(3)~~ (4) Qualifying Improvements ~~includes~~ shall mean energy conservation and efficiency,
29 renewable energy, and wind resistance improvements as defined by ~~Section~~ F.S. § 163.08;
30 ~~Florida Statutes~~, as may be amended by law.

31 ~~(4) PACE assessment~~ shall mean the non-ad valorem assessment placed on a property owner's
32 tax bill as a result of financing obtained pursuant to this Ordinance.

Coding: Words in strike through type are deletions from existing text. Words in underscored type are additions.

1 ~~PACE agencies/authorities/districts~~(5) PACE Third-Party Administrator shall mean the entity
2 administering the PACE Program and operating on behalf of the PACE
3 Agency/Authority/District. The Third-Party Administrator is an entity contracted with a
4 PACE Agency/Authority/District to perform administrative functions, including, but not
5 limited to, processing PACE financing applications and determining eligibility.

6 (5) ~~(6) PACE Agencies/Authorities/Districts~~ shall mean one or more local governments defined
7 in Section 163.08(2)(a), Florida Statutes, authorized by Palm Beach County to offer PACE
8 financing for ~~qualifying improvements~~Qualifying Improvements.

9 ~~(7) PACE Assessment~~ shall mean the non-ad valorem assessment placed on a property owner's
10 tax bill as a result of financing obtained pursuant to this Ordinance for Qualifying
11 Improvements.

12 ~~(6) (8) PACE Program~~ shall mean the County's provision through interlocal agreements with
13 ~~PACE agencies/authorities/districts~~Agencies/Authorities/Districts offering financing for
14 ~~qualifying improvements~~Qualifying Improvements as approved by the State of Florida
15 pursuant to Section 163.08, Florida Statutes, further refined in this Ordinance, as may be
16 amended by law.

17 ~~(7) (9) PACE Statute~~ shall mean Section 163.08, Florida Statutes and all future amendments
18 thereto.

19 ~~(8) (10) Residential Property~~ shall mean a residential property consisting of four (4) or
20 ~~less~~fewer residential dwelling units.

21 ~~(9) (11) Non-Residential Property~~ shall mean commercial, industrial, agricultural, mixed use
22 and residential properties consisting of five (5) or more residential dwelling units.

23 **Section 5.-2. Chapter 17, Article XVII, Section 17-505, entitled "PACE PROGRAM**
24 **AUTHORIZATION" is hereby amended as follows:**

25 (1) PACE ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party
26 Administrators offering financing for Qualifying Improvements on Residential and Non-
27 Residential Properties pursuant to this Ordinance shall be approved by the County and
28 authorized through interlocal agreements to provide financing subject to the requirements
29 of this Ordinance and the PACE Statute. A resolution indicating the County's desire to
30 join a PACE ~~agency/authority/district~~Agency/Authority/District shall be prepared by
31 County staff and presented to the Board for consideration with each interlocal agreement.

32 The interlocal agreements shall include specific terms and conditions for PACE
Coding: Words in strike through type are deletions from existing text. Words in underscored type are additions.

1 ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party
2 Administrators to operate within Palm Beach County.

3 (2) ~~PACE agencies/authorities/districts~~PACE Agencies/Authorities/Districts and Third-Party
4 Administrators desiring to provide financing pursuant to this Ordinance shall provide
5 sufficient documentation as requested by the County to provide reasonable assurance that
6 the requirements of this Ordinance and the PACE Statute can be met by the PACE
7 ~~agency/authority/district.~~Agencies/Authorities/Districts and Third-Party Administrators.
8 Document requests shall include but are not limited to a list of Qualifying Improvements,
9 standard financing agreements, consumer protection provisions, and certificates of
10 insurance. PACE Agencies/Authorities/Districts and Third-Party Administrators shall
11 comply with reasonable requests for data and business practices within 90 days, consistent
12 with state and federal law.

13 **Section 6-3. Chapter 17, Article XVII, Section 17-506, entitled “DISCLOSURE**
14 **REQUIREMENTS” is hereby amended as follows:**

15 (1) ~~In~~(1) For Residential Properties, in addition to any disclosure requirements in the PACE
16 Statute, ~~PACE agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party
17 Administrators that extend financing pursuant to the PACE Statute and levy non-ad
18 valorem assessments to fund the ~~qualifying improvements shall present to~~Qualifying
19 Improvements must have the property owner sign a separate, written notice disclosing.
20 PACE Agencies/Authorities/Districts and Third-Party Administrators must disclose to
21 property owners essential terms in a “Residential Consumer Disclosure Notice” that must
22 be pre-approved by the County. The County will not unreasonably withhold approval. The
23 Residential Consumer Disclosure Notice must be a consolidated summary of the following
24 (“Notice”):information:

25 (a) (a) The estimated total amount of the debt, including amount financed, fees, fixed
26 interest rate, capitalized interest and the effective rate of the interest charged (“Annual
27 Percentage Rate” or “APR”);

28 (b) ~~That PACE agencies/authorities/districts~~(b) That PACE Agencies/Authorities/Districts
29 and Third-Party Administrators may only offer fixed simple interest rates and payments
30 that fully amortize the obligation. Variable or negative amortization financing terms
31 are not permitted. Capitalized interest included in the original balance of a PACE
32 financing agreement does not constitute negative amortization.

- 1 ~~(e)~~ (c) The repayment process and terms, amounts and a schedule that fully amortizes the
2 amount financed including the estimated annual PACE assessment;
- 3 ~~(d)~~ (d) That the PACE assessment will appear on the property owner's tax bill;
- 4 ~~(e)~~ (e) That there is no discount for paying the PACE assessment early;
- 5 ~~(f)~~ (f) The nature of the lien recorded and that the PACE assessment will be collected in
6 the same manner as real estate taxes. That failure to pay the PACE assessment may
7 cause a tax certificate to be issued against the property, and that failure of payment
8 thereof may result in the loss of property subject to the PACE assessment, including
9 homestead property, in the same manner as failure to pay property taxes;
- 10 (g) The specific improvements to be financed and installed and that such improvements
11 and PACE assessment may or may not affect the overall value of the property;
- 12 (h) A PACE assessment payment term that does not exceed the useful life of the
13 improvements, as determined by reputable third-party sources, including, but not
14 limited to, the U.S. Department of Energy;
- 15 (i) The right of pre-payment without penalty;
- 16 (j) Notice that the property owner may be required to pay any PACE assessment in full at
17 the time of refinance or sale of the property;
- 18 (k) The property owner has at least a three-day right to cancel the financing. PACE
19 Agencies/Authorities/Districts and Third-Party Administrators must furnish to the
20 property owner a notice of the right to rescind the PACE financing agreement. The
21 property owner may exercise the right to rescind until midnight of the third business
22 day following the execution of the agreement by giving notice to the other party by
23 either certified or registered mail, electronic mail, fax machine, phone call, or any other
24 method approved by the PACE Agencies/Authorities/Districts and Third-Party
25 Administrators;
- 26 (l) The property owner has a three-day right to cancel a home improvement contract per
27 Section 520.72, Florida Statutes;
- 28 (m) In the event of an emergency, property owners may waive their right to the PACE
29 financing agreement three-day right to cancel to allow PACE contractors to begin the
30 project. For the purposes of this section, an emergency is defined as a situation that
31 poses an immediate threat to the health, safety, or well-being of the property owner and
32 requires immediate abatement by the installation of a Qualifying Improvement. The

1 property owner may waive their right to the three-day right to cancel for emergencies
2 either through the Consumer Disclosure Notice or by giving notice by either certified
3 or registered mail, or electronic mail, fax machine, phone call, or any other method
4 approved by the PACE Agencies/Authorities/Districts and Third-Party Administrators;

5 (n) An emergency waiver option for the three-day right to cancel;

6 (o) Except as required by law, PACE Agencies/Authorities/Districts and Third-Party
7 Administrators may not disclose or permit disclosure to a PACE contractor or third-party
8 engaged in soliciting financing agreements of the maximum amount of the PACE
9 financing for which a property owner is eligible;

10 (p) That the County has programs that property owners may qualify for to fund
11 improvements, such as the Weatherization Assistance Programs. The County retains
12 the right to provide information about County programs within and/or in addition to
13 the Residential Consumer Disclosure Notice, which the PACE
14 Agencies/Authorities/District and Third-Party Administrator must provide to the
15 homeowner; and

16 (q) That before the PACE three-day right to cancel ends, the PACE
17 Agencies/Authorities/Districts or Third-Party Administrators will speak with the
18 property owner or authorized representative to review the terms of the PACE financing
19 agreement and confirm that the property owner understands the financial implications
20 and communicate all essential terms including what the Consumer Disclosure Notice
21 requires. The PACE Agencies/Authorities/Districts or Third-Party Administrators will
22 conduct the conversation in the property owner's preferred language. The PACE
23 Agencies/Authorities/Districts or Third-Party Administrators will record the "confirm
24 terms" call, unless the property owner declines to be recorded. If the property owner
25 declines to be recorded, the PACE entity must take detailed notes of the conversation
26 to demonstrate compliance with the "confirm terms" requirement; and

27 (r) Contact information for the PACE Agency/Authority/District or Third-Party
28 Administrator, including the name, phone number, and email (if applicable).

29 (2) For Non-Residential Properties under \$250,000 for a PACE assessment, in addition to any
30 disclosure requirements in the PACE Statute, PACE Agencies/Authorities/Districts and
31 Third-Party Administrators that extend financing pursuant to the PACE Statute and levy
32 non-ad valorem assessments to fund the Qualifying Improvements shall have the property

1 owner sign a separate, written notice. PACE Agencies/Authorities/Districts and Third-
2 Party Administrators must disclose to property owners essential terms in a “Non-
3 Residential Consumer Disclosure Notice” that must be pre-approved by the County. The
4 County will not unreasonably withhold approval. The Non-Residential Consumer
5 Disclosure Notice must be a consolidated summary of the following information:

6 (a) The estimated total amount of the debt, including amount financed, fees, fixed or
7 variable interest rate, capitalized interest and the effective rate of the interest charged
8 (APR);

9 (b) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only
10 offer payments that fully amortize the obligation. Negative amortization financing
11 terms are not permitted. Capitalized interest included in the original balance of a PACE
12 financing does not constitute negative amortization;

13 (c) The repayment process and terms, amounts and a schedule that fully amortizes the
14 amount financed including the estimated annual PACE assessment;

15 (d) That the PACE assessment will appear on the property owner's tax bill;

16 (e) That there is no discount for paying the PACE assessment early;

17 (f) The nature of the lien recorded and that the PACE assessment will be collected in the
18 same manner as real estate taxes. That failure to pay the PACE assessment may cause
19 a tax certificate to be issued against the property, and that failure of payment thereof
20 may result in the loss of property subject to the PACE assessment in the same manner
21 as failure to pay property taxes;

22 (g) (g) The specific improvements to be financed and installed and that such improvements
23 and PACE assessment may or may not affect the overall value of the property;

24 (h) (h) A PACE assessment payment term that does not exceed the useful life of the
25 improvements;

26 (i) The right, as determined by reputable third-party sources, including, but not limited to,
27 the U.S. Department of pre-payment without penalty Energy;

28 (j) (i) Notice that the property owner may be required to pay any PACE assessment in full
29 at the time of refinance or sale of the property; and

30 (k) The 3-day right to cancel the financing.

31 The Notice must be delivered to the property owner by the PACE
32 agency/authority/district(j) The 3-day right to cancel the financing. PACE

1 Agencies/Authorities/Districts and Third-Party Administrators must furnish to the
2 property owner a notice of the right to rescind the PACE financing agreement. The
3 property owner may exercise the right to rescind until midnight of the third business
4 day following the execution of the agreement by giving notice to the other party by
5 either certified or registered mail, electronic mail, fax machine, or a recorded phone
6 call;

7 (k) In the event of an emergency, property owners may waive their right to the PACE
8 financing agreement three-day right to cancel to allow PACE contractors to begin the
9 project. For the purposes of this section, an emergency is defined as a situation that
10 poses an immediate threat to the health, safety or well-being of the property owner and
11 requires immediate abatement by the installation of a Qualifying Improvement. The
12 property owner may waive their right to the three-day right to cancel for emergencies
13 either through the Consumer Disclosure Notice or by giving notice by either certified
14 or registered mail, or electronic mail, fax machine, phone call, or any other method
15 approved by the PACE Agencies/Authorities/Districts and Third-Party Administrators;

16 (l) An emergency waiver option for the three-day right to cancel; and

17 (m) Contact information for the PACE Agency/Authority/District or Third-Party
18 Administrator, including the name, phone number, and email (if applicable).

19 (3) Non-Residential PACE Agencies/Authorities/Districts and Third-Party Administrators
20 providing PACE financing in the amount of \$250,000 or greater are not required to provide
21 a Consumer Disclosure Notice. However, they are required to conform to the following
22 obligations:

23 (a) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only
24 offer payments that fully amortize the obligation. Negative amortization financing
25 terms are not permitted. Capitalized interest included in the original balance of a PACE
26 financing does not constitute negative amortization; and

27 (b) That PACE Agencies/Authorities/Districts and Third-Party Administrators may only
28 provide a PACE assessment payment term that does not exceed the useful life of the
29 improvements, as determined by reputable third-party sources, including, but not
30 limited, to the U.S. Department of Energy.

31 (4) For both Residential and Non-Residential where applicable, PACE
32 Agency/Authority/District or Third Party-Administrators must submit updated Consumer

1 Disclosure Notices that incorporate the updated Palm Beach County-approved consumer
2 protection language. Once approved by the County, PACE Agency/Authority/District or
3 Third Party-Administrators must fully implement and utilize the approved Palm Beach
4 County-approved Consumer Disclosure Notice within one hundred and eighty (180) days
5 of notice of approval.

6 ~~(2)~~ (5) A copy of the Consumer Disclosure Notices must be provided to the property owner
7 either by electronic mail or hard copy by the PACE Agency/Authority/District or Third
8 Party Administrator within the 3-day right to cancel period and must be signed and dated
9 by the property owner prior to or contemporaneously with the property owner's signing of
10 any legally enforceable documents under the PACE program-Program. Upon the property
11 owner's request, the PACE Agency/Authority/District or Third-Party Administrator must
12 provide the property owner with a hardcopy of the Consumer Disclosure Notice within the
13 three-day right to cancel. The property owner and the PACE
14 agency/authority/districtAgency/Authority/District or Third-Party Administrator must
15 keep the signed Consumer Disclosure Notice with the property owner's executed financing
16 agreement.

17 ~~(3) The PACE agency/authority/district~~ (6) The PACE Agency/Authority/District or Third-
18 Party Administrator shall provide the signed Consumer Disclosure Notice to the Palm
19 Beach County Office of Resilience and the Palm Beach County Tax Collector in electronic
20 format within five (5) business days after execution of the PACE financing agreement.

21 (7) The PACE Agency/Authority/District and Third-Party Administrator shall record, or cause
22 to be recorded, the financing agreement or a summary memorandum of the financing
23 agreement, in accordance with Section 163.08(8), Florida Statutes.

24 **Section 7.—4. Chapter 17, Article XVII, Section 17-507, entitled “ELIGIBLE**
25 **PROPERTIES/PROGRAM REQUIREMENTS” is hereby amended as follows:**

26 ~~(1)~~ (1) _____As defined in the PACE Statute, PACE
27 agencies/authorities/districtsAgencies/Authorities/Districts and Third-Party
28 Administrators that extend financing pursuant to the PACE Statute and levy non-ad
29 valorem assessments to fund the qualifying improvementsQualifying Improvements shall
30 comply with the following: terms of this subsection. Subsections apply to both Residential
31 and Non-Residential Properties except where the subsection specifically refers to
32 Residential or Non-Residential.

1 ~~(2)~~ (2) _____ *Residential* _____ *Property.* _____ PACE
2 ~~agencies/authorities/districts~~ Agencies/Authorities/Districts _____ and _____ Third-Party
3 Administrators may finance ~~qualifying improvements~~ Qualifying Improvements on
4 Residential ~~p~~Properties provided they comply with ~~the following criteria inclusive of all~~
5 eligibility criteria listed in the PACE Statute and all future amendments thereto, along with
6 additional consumer protections:;
7 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or
8 otherwise secured by the property, the total amount of any non-ad valorem assessment
9 for a property under the PACE Statute may not exceed twenty (20) percent ~~(20%)~~ of
10 the ~~just/fair market~~ value of the property as determined by the county property
11 appraiser, excepted as otherwise provided by statute; ~~and~~
12 (b) All property taxes and other assessments levied on the property tax bill have been paid
13 and have not been delinquent for the preceding three years, or the property owner’s
14 period of ownership, whichever is less; ~~and~~
15 (c) There are no involuntary liens, including but not limited to construction liens on the
16 property; ~~and~~
17 (d) No notices of default or other evidence of property-based debt delinquency have been
18 recorded during the preceding three (3) years, or the property owner’s period of
19 ownership, whichever is less; and, additionally
20 (e) All mortgage debt on the property is current and not delinquent; ~~and~~
21 (f) All mortgage-related debt on the underlying property may not exceed ninety percent
22 (90%) of the property’s ~~fair market value~~; ~~and~~ Fair Market Value;
23 (g) The total mortgage-related debt on the underlying property plus the PACE ~~p~~Program
24 financing may not exceed the ~~fair market value~~ Fair Market Value of the property; ~~i~~
25 (h) The total estimated annual payment amount for the PACE assessment does not exceed
26 10 percent of the property owner's annual household income determined using
27 sufficient and credible documentation, for example using adjusted gross income from
28 a recent tax return; and
29 (i) That the property owner is not currently in bankruptcy proceedings.

30 (3) _____ *Non-Residential* _____ *Properties.* _____ PACE _____ ~~agencies/authorities/districts~~ PACE
31 Agencies/Authorities/Districts and Third-Party Administrators may finance Qualifying
32 Improvements on Non-Residential Properties provided they comply with the ~~requirements~~

1 ~~set forth~~ following criteria inclusive of all eligibility criteria listed in the PACE Statute and
2 all future amendments thereto ~~and inclusive of those listed~~, along with the following
3 consumer protections:

4 ~~(3)~~(a) Without the consent of the holders or loan servicers of any mortgage
5 encumbering or otherwise secured by the property, the total amount of any non-ad
6 valorem assessment for a property under Section 7(2)(s-d) of this Ordinance. the PACE
7 Statute may not exceed twenty percent (20%) of the just value of the property as
8 determined by the county property appraiser, excepted as otherwise provided by
9 statute;

10 (b) All property taxes and other assessments levied on the property tax bill have been paid
11 and have not been delinquent for the preceding three years, or the property owner's
12 period of ownership, whichever is less;

13 (c) There are no involuntary liens, including but not limited to construction liens on the
14 property;

15 (d) No notices of default or other evidence of property-based debt delinquency have been
16 recorded during the preceding three years, or the property owner's period of ownership,
17 whichever is less;

18 (e) All mortgage debt on the property is current and not delinquent; and

19 (f) That the property owner is not currently in bankruptcy proceedings.

20 (4) Qualifying Improvements. The PACE ~~agency/authority/district~~ Agency/Authority/District
21 and Third-Party Administrator will finance energy efficiency, renewable energy and wind
22 resistant improvements that are permanently affixed to the property as more specifically
23 described in the PACE Statute. All improvements and products should identify efficiency
24 standards established by the U.S. Department of Energy, the U.S. Environmental
25 Protection Agency, or Florida state agencies as applicable. All ~~qualifying~~
26 improvements Qualifying Improvements must comply with the PACE Statute for energy
27 efficiency, renewable energy, and wind resistance or other improvements as permissible
28 by law. PACE ~~agencies/authorities/districts~~ Agencies/Authorities/Districts and Third-

29 (4) Party Administrators shall establish procedures confirming that the property owner
30 applying for financing through the PACE
31 ~~agency/authority/district~~ Agencies/Authorities/Districts and Third-Party Administrators
32 intends to install ~~eligible products~~ Qualifying Improvements, and that at the time of funding

1 such improvements have been installed.

2 (5) *Inquiries and Complaints.*

3 ~~(a)(c)~~ The Complaints. PACE ~~agency/authority/district~~ shall
4 ~~be~~ Agencies/Authorities/Districts and Third-Party Administrators are required to
5 receive, manage, track, timely resolve, and report on complaints from property owners
6 regarding the funded work performed by the contractors. ~~The PACE~~
7 ~~agency/authority/district shall~~ PACE Agencies/Authorities/Districts and Third-Party
8 Administrators must investigate and mediate disputes between property owners and
9 contractors in a timely manner.

10 ~~(b)(d)~~ Payment inquiries. ~~The PACE agency/authority/district shall be~~ PACE
11 Agencies/Authorities/Districts and Third-Party Administrators are required to respond
12 to inquiries and resolve any issues in a timely manner, related to payments, including
13 but not limited to prepayments and payment reconciliation.

14 ~~(e)(e)~~ Review. In the event that ten percent or more of a PACE
15 ~~agency's/authority's/district's~~ Agency's/Authority's/District's and Third-Party
16 Administrator's projects result in complaints or disputes, or such complaints or disputes
17 remain unresolved six (6) months after completion of a project, the County may review
18 the PACE ~~agency's/authority's/district's~~ Agency's/Authority's/District's and Third-
19 Party Administrator's handling of complaints and may request corrective actions or
20 initiate suspension proceedings pursuant to Section 7(~~43~~17-508(1)).

21 (6) *Data Security.* ~~The PACE agency/authority/district is~~ Agencies/Authorities/Districts and
22 Third-Party Administrators are responsible for taking security measures that protect the
23 security and confidentiality of consumer records and information in proportion to the
24 sensitivity of the information, and as required by state and federal law.

25 (7) *Consumer Privacy.* ~~The PACE agency/authority/district~~ Agencies/Authorities/Districts and
26 Third-Party Administrators must develop and maintain a privacy policy that complies with
27 local, state, and federal law and, in particular, shall provide a property owner the ability to
28 opt-out of having the property owner's information shared with third-parties, except where
29 expressly permitted by local, state, and federal law.

30 (8) *Marketing and Communications.* ~~Marketing~~

31 ~~(8)(a)~~ A person or entity may not engage in PACE marketing practices for a PACE
32 agency/authority/district that are or could appear to be unfair, deceptive, abusive, or

1 misleading, or that violate applicable laws or regulations, that are inappropriate,
2 incomplete or are inconsistent with the PACE agency's/authority's/district's purpose
3 ~~are prohibited~~ ordinance. Violations are subject to code enforcement proceedings.

4 (b) A person or entity may not create, use, or distribute PACE marketing material that
5 conveys the following messages: that PACE financing is a free form of public
6 assistance, that PACE financing is a Palm Beach County government program, that
7 PACE financing will be repaid by the subsequent owner of the qualifying residential
8 property, that the improvements will pay for themselves, or that the property owner
9 will receive tax benefits from the program. Violations are subject to code enforcement
10 proceedings.

11 *(9) Protected Classes.* ~~The~~ PACE ~~agency/authority/district~~ PACE
12 Agencies/Authorities/Districts and Third-Party Administrators shall not discriminate
13 against individuals on the basis of race, color, ancestry, disability, national origin, religion,
14 age, familial status, marital status, sex, gender, sexual orientation, gender identity and
15 expression, or genetic information.

16 *(10) Contractor Management.*

17 ~~(a) Any work under a PACE agency/authority/district requiring a license under any~~
18 ~~applicable law to make a qualifying improvement shall be performed by a contractor~~
19 ~~properly licensed, certified or registered pursuant to state or local law.~~

20 (a) Contractors performing work under a PACE agency/authority/district shall comply with
21 each of the following conditions: (i) No contractor shall contract for or install any
22 Qualifying Improvement pursuant to the PACE program unless the contractor is properly
23 licensed, registered, certified, or otherwise legally authorized to perform such work. A
24 PACE Agency/Authority/District or Third-Party Administrator may not finance
25 Qualifying Improvements that are installed by contractors that a PACE
26 Agency/Authority/District or Third-Party Administrator knows, or should know, are not
27 properly licensed, registered, certified, or otherwise legally authorized to perform such
28 work. PACE Agencies/Authorities/Districts and Third-Party Administrators must obtain
29 the contractor's written agreement that the contractor shall comply with each of the
30 following conditions:

- 31 1. Be licensed and insured pursuant to the applicable statutory state and local
32 requirements; (ii)

1 2. Agree to comply with all program requirements and marketing guidelines; ~~(iii)~~and
2 ~~(b)~~ 3. Act in good faith to timely resolve property owner complaints.

3 ~~PACE programs~~(b) PACE Agencies/Authorities/Districts and Third-Party Administrators for
4 Residential Properties must execute a contractor agreement with all contractors for which
5 they intend to use to complete Residential PACE projects. The contractor agreement must
6 address at a minimum the following:

7 1. Agree to not present a higher price for a Qualifying Improvement on financed by
8 a PACE financing agreement than the contractor would otherwise reasonably
9 present if the Qualifying Improvement were not being financed through a PACE
10 financing agreement;

11 2. Branding and/or marketing guidelines, including imposing enhanced monitoring
12 at a minimum for contractors found to have violated the marketing and
13 communications provisions;

14 3. Consumer protection code of conduct for the contractor;

15 4. PACE training for contractors that the contractor must attend in order to become
16 an eligible contractor; and

17 5. Suspension and termination provisions.

18 ~~(e)~~ (c) Kickbacks. PACE Agencies/Authorities/Districts and Third-Party Administrators
19 shall have and shall strictly enforce anti-kickback policies and procedures that prohibit
20 direct financial or other monetary incentives to contractors in exchange for or related
21 to such contractor being awarded work under a PACE ~~p~~Program, excepting payment
22 for the contractor's installation of ~~eligible improvements.~~Qualifying Improvements.

23 1. Any person or entity who accepts, provides or facilitates kickback payments
24 or incentives in exchange for work being awarded under a PACE program commits a
25 violation of this ordinance.

26 ~~(d)~~ For Residential and Non-Residential Projects Less than \$250,000, before disbursing
27 funds to a PACE contractor, PACE Agencies/Authorities/Districts or Third-Party
28 Administrators must first confirm the applicable work or service has been completed,
29 either through written certification from the property owner, a recorded telephone call
30 with the property owner, time-stamped and geo-tagged photos, or a site inspection
31 through third-party means. For Non-Residential Projects equal to or larger than

1 \$250,000, PACE Agencies/Authorities/Districts and Third-Party Administrators shall
2 disburse funds in accordance with the terms of their finance agreement.

3 (11) *Financing.* ~~The PACE agency/authority/district~~PACE Agencies/Authorities/Districts
4 and Third-Party Administrators will must establish pricing rules and enforcement
5 mechanisms to ensure property owners are protected from excessive or unjustified prices
6 and charges. —In addition, the —PACE agency/authority/district
7 ~~shall~~Agencies/Authorities/Districts and Third-Party Administrators must require
8 compliance with each of the following conditions prior to the issuance of any ~~funding~~final
9 disbursement to the contractor:

- 10 (a) Contractors have certified that any necessary permits have been obtained;
- 11 (b) Verification that the ~~qualifying improvements~~Qualifying Improvements have been
12 installed; and
- 13 (c) The property owner and the contractor have signed a final inspection and/or certificate
14 of completion that all improvements have been installed to the property owner’s
15 satisfaction.

16 (12) *Reporting.* ~~Each PACE agency/authority/district shall~~Agency/Authority/District and
17 Third-Party Administrator must provide a report to the County on a quarterly calendar
18 basis, ~~which~~due 30 days following the close of the quarter. Each PACE
19 Agency/Authority/District and Third-Party Administrator shall utilize the County-supplied
20 spreadsheet for the report. This spreadsheet shall not be modified, though additional
21 information may be supplied in a separate spreadsheet. The quarterly reports shall include,
22 at a minimum, the following information:

- 23 (a) Dates of the reporting period;
- 24 (b) List of PACE projects (including addresses including municipal jurisdiction, parcel
25 control numbers, financed amount, annual estimated payments, interest rate,
26 assessment duration, and project description) started during the reporting period,
27 separated by building type (e.g., single family, multifamily, retail, office, industrial,
28 etc.);
- 29 (c) List of PACE projects (including addresses including municipal jurisdiction and parcel
30 control numbers) completed during the reporting period, separated by building type
31 project (e.g., single family, multifamily, retail, office, industrial, etc-), ~~specify;~~ (1) ~~the~~
32 ~~qualifying improvements made;~~ (2) ~~project start date and completion date;~~ the projected

1 ~~energy savings and/or amount of potential renewable energy to be generated;~~ (4)
2 ~~financial information such as cost per kilowatt hour saved/generated;~~ (5) other resource
3 ~~savings if data is available; and (6) audits performed detailing the audit results, if~~
4 ~~applicable to the project;).~~ For each project, specify:

- 5 1. The Qualifying Improvements made;
- 6 2. Project start date and completion date;
- 7 3. The projected energy savings and/or amount of potential renewable energy to be
8 generated;
- 9 4. Financial information such as projected cost per kilowatt hour saved/generated or
10 estimated utility bill savings;
- 11 5. Other resource savings if data is available;
- 12 6. Audits performed detailing the audit results, if applicable to the project;
- 13 7. Total amount financed, including total amount (in dollars) of financing spent on
14 each improvement, if multiple; and
- 15 8. Annual estimated payments.

16 (d) Number of actual or estimated jobs created during the reporting period, including local
17 versus non-local jobs and permanent versus temporary jobs;

18 (e) Number of applications declined during the reporting period;

19 ~~(f) Unresolved~~Resolved and unresolved complaints and/or contractor issues and status;
20 and

21 ~~(g)(f)~~ Description, including category of each complaint and/ or issue, when the
22 standardized third-party methodologies and supporting assumptions used to verify data,
23 and any changes in the methodologies and assumptions from the previous reporting
24 period.complaint/issue was filed, and when the complaint/issue was resolved;

25 (g) Assumptions and methodologies used for energy savings, renewable energy, cost per
26 kilowatt hour saved/generated, other resource savings, audits, and jobs calculations
27 under this subsection, including third-party sources and methodologies. Describe any
28 changes in the methodologies and assumptions from the previous reporting period. If
29 available, PACE Agencies/Authorities/Districts and Third-Party Administrators shall
30 use nationally accepted standardized assumptions and methodologies so that reporting
31 is consistent. If no national standards are available, PACE
32 Agencies/Authorities/Districts and Third-Party Administrators shall work with the

1 County to agree upon and use the same assumptions and methodologies so that the
2 County has a consistent data. If the PACE Agencies/Authorities/Districts and Third-
3 Party Administrators are unable to agree on uniform assumptions and methodologies,
4 the County reserves the right to cite reputable, nationally recognized standard
5 assumption and methodology sources for these calculations that the PACE
6 Agencies/Authorities/Districts and Third-Party Administrators must use within 90 days
7 of receipt, going forward with data collection;

8 (h) Just value of property as determined by the county property appraiser for the most
9 recent calendar year;

10 (i) Fair Market Value used during underwriting;

11 (j) Method for determining the Fair Market Value used during underwriting and proof of
12 that determination available upon request; and

13 (k) Date of Confirmed Terms Call.

14 (13) Data and Document Requests. Each PACE Agency/Authority/District and Third-Party
15 Administrator must comply with reasonable requests for additional data or documents from
16 the County and provide such data within 60 days of the request, consistent with federal and
17 state law.

18 (14) Incomplete Data or Late Reporting. In the event any PACE Agency/Authority/District
19 or Third-Party Administrator fails to provide complete data or provide reports by the stated
20 due dates, they will be given 60 days to cure the defect, after which written notice will be
21 given prior to any administrative act to suspend. The suspension will take place 30 days
22 after this notice is given. After such defect, any new project starts from the PACE
23 Agency/Authority/District or Third-Party Administrator of which the reports are
24 incomplete will be suspended until the complete data is provided. The right to cure is an
25 option before suspension or termination will occur. Suspension will be done by the County
26 Administrator or designee.

27 (15) Administrative Fees. PACE Agencies/Authorities/Districts and Third-Party
28 Administrators will be responsible for paying administrative fees to the County on an
29 annual basis. The Board will establish fees for administrative tasks carried out by County
30 staff, including interlocal agreements, indemnification agreement for new PACE
31 Agencies/Authorities/Districts and Third-Party Administrators, Residential projects
32 funded during the year, and Non-Residential projects funded during the year. PACE

1 Agencies/Authorities/Districts and Third-Party Administrators shall send an annual
2 summary of all projects completed within that year and provide a payment per project to
3 the County.

4 **Section 5. Chapter 17, Article XVII, Section 17-508, entitled “ENFORCEMENT” is**
5 **hereby created as follows:**

6 (13) (1) Suspension or Termination of PACE
7 agency/authority/district.Agency/Authority/District and Third-Party Administrators. In the
8 event any PACE ~~agency/authority/district~~Agency/Authority/District or Third-Party
9 Administrator fails to incorporate and continually provide for all of the foregoing service
10 components or to otherwise abide by the provisions of this Ordinance and/or the interlocal
11 agreement the County, in its sole discretion, may suspend or terminate the interlocal
12 agreement or by other means prohibit a PACE Agency/Authority/District or Third-Party
13 Administrator from operating in the County’s jurisdiction and support of the County at any
14 time upon written notice to that PACE agency/authority/district.Agency/Authority/District
15 or Third-Party Administrators. Suspension, termination or prohibition will be done by the
16 County Administrator or designee. Any project that has been initiated or received PACE
17 financing as of the time of suspension or termination shall be permitted to be completed,
18 and continue until such time that all outstanding debt has been satisfied.

19 ~~Section 8.(2)~~ Code Enforcement Officers and any other enforcement personnel as authorized
20 by the County Administrator are authorized to enforce Section (8), *Marketing and*
21 *Communications*, and Section 4(10)(c), *Kickbacks*, of this Ordinance.

22 (3) Code Enforcement Officers and other authorized enforcement personnel do not have to
23 provide a reasonable time period to correct the violation prior to issuing a citation or notice
24 of violation and may immediately issue a citation or notice of violation if a repeat violation
25 is found or if the code enforcement officer has reason to believe that the violation presents
26 a serious threat to the public health, safety, or welfare, or if the violation is irreparable or
27 irreversible.

28 (4) A violation of Section 4(8), *Marketing and Communications*, or Section 4(10)(c),
29 *Kickbacks*., of this Ordinance may be enforced pursuant to terms and procedures in Chapter
30 162, F.S., Local Government Code Enforcement Boards Act, and Article 10 of the Palm
31 Beach County Unified Land Development Code, all as may be amended or recodified from
32 time to time. Pursuant to Section 162.09(2)(d), F.S., the Palm Beach County Special Master

Coding: Words in strike through type are deletions from existing text. Words in underscored type are additions.

1 may impose fines that shall not exceed one thousand dollars (\$1,000.00) per day per
2 violation for a first violation, five thousand dollars (\$5,000.00) per day per violation for a
3 repeat violation, and up to fifteen thousand dollars (\$15,000.00) per violation if the Palm
4 Beach County Special Master finds the violation to be irreparable or irreversible in nature.
5 In determining the amount of the fine, the Palm Beach County Special Master shall
6 consider:

7 (a) The gravity of the violation;

8 (b) Any actions taken by the violator to correct the violation; and

9 (c) Any previous violations committed by the violator.

10 (5) A violation of Section 4(8), *Marketing and Communications*, or Section 4(10)(c), *Kickbacks*,
11 of this Ordinance may also be enforced pursuant to the procedures and penalties of Chapter
12 162, F.S., Supplemental County or Municipal Code or Ordinance Enforcement Procedures as
13 may be amended or recodified from time to time, as follows:

14 (a) The County court shall have jurisdiction over all civil citations issued pursuant to this
15 Ordinance.

16 (b) The County shall maintain a system by which violators are given written notice of all
17 violations.

18 (c) Code Enforcement Officers and other authorized enforcement personnel who have
19 reasonable cause to believe that a person has committed an act in violation of this
20 Ordinance shall issue a civil citation. If the person who has committed the violation does
21 not contest the citation, the fines shall be \$400.00 but may be increased to \$500 if the
22 fine is contested in county court.

23 (d) Payment shall be made, either by mail or in person, to the location and within the time
24 specified upon the citation. If such person follows this procedure, the person shall be
25 deemed to have admitted to the infraction and to have waived the right to a hearing on
26 the issue of the commission of the infraction.

27 (e) Any person who fails to make payment within the time period specified on the citation
28 shall be deemed to have waived the right to pay the civil penalty as set forth in the
29 citation and shall appear before the county court.

30 (f) Any person who elects to appear before the court to contest the citation shall be deemed
31 to waive the right to pay the civil penalty. The court, after a hearing, shall make a finding

1 as to whether a violation has occurred and may impose a civil penalty not to exceed five
2 hundred dollars (\$500.00) plus court costs.

3 (g) If a person fails to pay the civil penalty or fails to appear in court to contest the citation,
4 he shall be deemed to have waived his right to contest the citation and, in such case, a
5 default judgment shall be entered and the judge may impose a penalty up to the maximum
6 civil penalty of five hundred dollars (\$500.00) plus court costs.

7 (h) Any person who refuses to sign and accept a citation issued pursuant to this Section shall
8 be guilty of a misdemeanor of the second degree, punishable as provided by Sections
9 775.082 or 775.083, F.S.

10 (6) In addition to the sanctions contained herein, the County may take any other appropriate legal
11 action to enforce the provisions of this Ordinance, including, but not limited to, cease and
12 desist orders, instituting civil action, and requesting temporary and permanent injunctions.

13 (7) It is the purpose of this Ordinance to provide additional cumulative remedies.

14 (8) Each day in violation of the provisions of this Ordinance shall constitute a separate violation
15 or offense and be punishable as such.

16 **Section 6. REPEAL OF LAWS IN CONFLICT:**

17 All local laws and ordinances in conflict with any provisions of this Ordinance are
18 hereby repealed to the extent of such conflict.

19 **Section 7. SAVINGS CLAUSE:**

20 Notwithstanding the section of this ordinance regarding repeal of laws in conflict, all
21 administrative and court orders, fines, and pending enforcement issued pursuant to this
22 authority and procedures established by Chapter 17, Article XVII, of the Palm Beach County
23 Code shall remain in full force and effect.

24 **Section 8. SEVERABILITY:**

25 If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any
26 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
27 such holding shall not affect the remainder of this Ordinance.

28 **Section 9. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

29 The provisions of this Ordinance shall become and be made a part of the Palm Beach
30 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
31 such, and the word Ordinance may be changed to section, article, or other appropriate word.

1 **Section 11. PENALTY:**

2 Any violation of any portion of this Ordinance shall be punishable as provided by law.

3 **Section 12. CAPTIONS:**

4 The captions, section headings and section designations used in this Ordinance are for
5 convenience only and shall have no effect on the interpretation of the provisions of this
6 Ordinance.

7 **Section 13. EFFECTIVE DATE:**

8 The provisions of this Ordinance shall become effective upon filing with the
9 Department of State.

10

11 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm
12 Beach County, Florida, on this the ____ day of _____, 20 ____.

13

14 **JOSEPH ABRUZZO, CLERK**

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

15

16

17

18

19 **By:** _____

By: _____

20 **Deputy Clerk**

Robert Weinroth, Mayor

21

22 **APPROVED AS TO FORM AND
23 LEGAL SUFFICIENCY**

24

25

26

27 **By:** _____

28 **County Attorney**

29

30 **EFFECTIVE DATE:** Filed with the Department of State on the ____ day of
31 _____, 20 ____.



Office of Resilience

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West Palm Beach, FL 33411-2743
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FAX: (561) 233-2414
www.pbcgov.com/resilience



**Palm Beach County
Board of County
Commissioners**

Robert S. Weinroth, Mayor
Gregg K. Weiss, Vice Mayor
Maria G. Marino
Dave Kerner
Maria Sachs
Melissa McKinlay
Mack Bernard

County Administrator

Verdenia C. Baker

*"An Equal Opportunity
Affirmative Action Employer"*

Official Electronic Letterhead

TO: Robert Weinroth, Mayor, and Members of the Board of
County Commissioners
FROM: Megan Houston, Director, Office of Resilience
DATE: August 3, 2022
SUBJECT: Property Assessed Clean Energy Program (PACE) Proposed
Ordinance Amendments Summary

I. Background

In recent years, Office of Resilience (OOR) staff has presented to the Board of County Commissioners (BCC) at several workshops and received BCC direction on the Palm Beach County Property Assessed Clean Energy (PACE) Program that operates in the County. On June 7, 2022, OOR and other stakeholders presented at a BCC meeting on proposed ordinance amendments to increase consumer protections and streamline improvements to the County PACE Program. The BCC directed staff to continue working with stakeholders to recommend amendments to the Palm Beach County Code, Chapter 17, Article XVII, (Ordinance 2017012), section 17-504 through section 17-507, regarding the PACE Program.

Staff has met with local PACE representatives and the Tax Collector's Office (TCO) multiple times since June 7th to collaborate on these efforts. Additionally, staff has continued to work with the TCO on these recommendations. Staff has summarized below the areas of compromise and majority agreement, areas of key concessions, and outstanding areas of disagreement, which require final Board direction. OOR staff will be presenting proposed Ordinance amendments to the BCC at the August 23, 2022, BCC meeting.

II. Areas of Compromise and Majority Agreement

The PBC OOR has worked diligently with the PACE Industry and the PBC TCO to reach agreement on many Ordinance amendment suggestions. These include:

- The definition of Third Party Administrator.
- Requiring only Residential and Non-Residential Projects less than \$250,000 to complete Consumer Disclosure Notices (CDN).
 - CDN- standardized language will be provided by PBC OOR, and PACE Industry CDNs must be pre-approved by PBC.
 - Deliver methods of CDNs expanded to include fax machine and recorded phone call.
 - Removed language about Tax Collector's responsibility from CDN.
 - Allowing property owners to waive their three-day right to cancel the PACE financing agreement for emergency situations.
 - The three-day right to cancel waiver option will be included on the CDN.
 - For Residential projects, a "confirm terms" calls will be mandated by the ordinance.
 - PACE Agency/Authority/District or Third Party Administrator's contact information will be provided on the CDN.
- Not requiring Non-Residential PACE Projects equal or greater than \$250,000 to provide a CDN, but including the obligation to provide an assessment payment term that does not exceed the useful life of the improvements and



prohibiting negative amortization.

- Removing previously recommended Residential underwriting qualifications and replacing with provisions stating that the PACE assessment annual payment cannot exceed 10% of the adjusted gross household income and that the property owner is not currently in bankruptcy proceedings.
- Adding eligible contractors to the marketing and communications prohibitions.
- Simplifying the contractor management section using language from PACE contractor management best practices.
- Subjecting violators of the Marketing and Anti-Kickback provisions to code enforcement.
- Allowing for prepayment penalties for Non-Residential Projects.

III. Key Concessions to Highlight for BCC Consideration

- Non-Residential Projects (less than \$250,000).
 - Allowing variable interest rates.
 - Requester: PACE industry is asking for this amendment.
 - Staff Position: Staff is comfortable with allowing variable interest rates for this sector.
 - Not requiring phone call to confirm terms and explain PACE financing, as with Residential projects.
 - Requester: PACE industry is asking for this amendment.
 - Staff Position: Staff is comfortable with not requiring a phone call to confirm terms for small non-residential projects because the property owners will have some added consumer protections, such as a consumer disclosure notice, compared to the larger non-residential projects.
- Residential PACE Projects.
 - Providing a hardcopy of the Consumer Disclosure Notices (CDN) only upon request.
 - Requester: PACE industry claims requiring a hardcopy is onerous and overly burdensome.
 - Staff Position: Staff is comfortable with not requiring hard copies of the CDN because of the new requirement that PACE Industry must offer a hard copy to property owners that will be delivered within the 3-day right to cancel, and the new requirement that PACE Industry must conduct a phone call with the property owner to confirm terms within the 3-day right to cancel.

IV. Board Direction Needed – Areas without Majority Agreement

PBC staff provided Ordinance amendment suggestions based on BCC direction and industry best practices with which not all PACE stakeholders agree. Staff will be asking the BCC for further direction on whether staff should include or revise the following in the Ordinance amendments.

- Palm Beach County PACE Administrative Fees: \$25 one-time fee for each closed PACE project, and \$500 per new/amended Interlocal and indemnification agreements.
 - Staff Position: Supports including these new fees as it will help



offset the costs of administering the program and will make PACE Districts responsible for the costs of program administration and oversight, rather than Palm Beach County residents that are not necessarily benefiting from the program funding staff time with their tax dollars. Staff reached out to our counterparts in other Florida municipalities and counties. While it does not seem that any other local government imposes an administrative fee, many were interested in the idea given the substantial workload that PACE administrative brings.

- Industry Position: Opposes fees.
- Definition of Fair Market Value (for two of the three Residential valuation-based thresholds) requires third parties to use a reputable third party valuation service to determine fair market value. Staff and PACE Industry have come to agreement on this definition.
 - Staff Position: Supports using fair market value for mortgage-related threshold determinations, which is what mortgages are actually based upon (i.e. how much the property actually sold from a willing seller to a willing buyer). Staff has limited the options for Industry to use in determining Fair Market Value. In addition, staff will be collecting new reporting data to include Just Value, Fair Market Value, and method for determining Fair Market Value to address concerns about using inappropriate fair market values.
 - PACE Industry Position: Supports this definition.
 - Tax Collector's Office Position: Recommends using Just Value in all cases where property value is determined, rather than keeping fair market value as used in the original PBC PACE Ordinance, for consistency in their evaluations and to avoid determining property owner eligibility based on potentially inflated housing values.
- Sending Consumer Disclosure Notices to OOR and TCO.
 - Staff Position: Recommends including this new requirement as it ensures that PACE Industry is following this important consumer protection policy and gives the County and Tax Collector's Office more detailed information about projects with which to monitor that projects are being completed in accordance with Ordinance provisions.
 - PACE Industry Position: Opposes sending staff and/or the TCO the Consumer Disclosure Notices.
- Enforcement Section for Marketing and Communications and Kickback Sections.
 - Staff Position: Recommends including this new section as it gives the County the authority to enforce the areas of the Ordinance that serve to protect consumers from inappropriate marketing and communications, and kickbacks between PACE Industry and PACE Contractors.
 - PACE Industry Position: Some of the industry opposes including an enforcement section in the PACE ordinance.
- Reporting on Local versus Non-local Jobs and Permanent versus Temporary Jobs.
 - Staff Position: Recommends leaving in this reporting requirement, as it is an important metric to staff and the Board. Staff plans to work with the PBC Housing and Economic Development



Department and Office of Equal Business Opportunity to determine the best way to define local vs. non-local and permanent vs. temporary jobs to make reporting more consistent by PACE Industry.

- PACE Industry Position: PACE industry says it is difficult to report on local/non-local and permanent/temporary jobs.