

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

Meeting Date: October 18, 2022 Consent Regular
 Workshop Public Hearing

Department: Office of Resilience
Submitted By: Office of Resilience
Submitted For: Office of Resilience

I. EXECUTIVE BRIEF

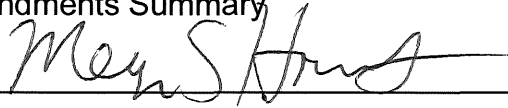
Motion and Title: Staff recommends motion to approve on preliminary reading and advertise for public hearing on November 15, 2022, at 9:30 A.M.: an Ordinance of the Board of County Commissioners of Palm Beach County, Florida, amending Palm Beach County Code, Chapter 17, Article XVII, (Ordinance 2017-012), 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 item and work with stakeholders to find additional common ground for ordinance amendments. At the August 23, 2022, BCC meeting, the Board postponed the permission to advertise agenda item, per PACE industry requests. Since then, staff has met with local PACE representatives to hear additional feedback. Upon final direction, staff will advertise the proposed ordinance amendments for adoption at the November 15, 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 program. 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:  9-21-22
Department Director **Date**

Approved by:  9/27/22
Assistant County Administrator **Date**

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
20 following 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 of
25 such agreement the property owner signs establishing terms and conditions for the financing
26 of ~~qualifying improvements~~ Qualifying Improvements which is required to be recorded in
27 the public records pursuant to the PACE Statute.

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

30 ~~(3)~~(5) *Qualifying Improvements* includes shall mean energy conservation and efficiency,
31 renewable energy, and wind resistance improvements as defined by F.S. § 163.08, as may be
32 amended by law.

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

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

9 ~~(6)(8) PACE Program~~ shall mean the County's provision through interlocal agreements with
10 PACE ~~agencies/authorities/districts~~ Agencies/Authorities/Districts offering financing for
11 ~~qualifying improvements~~ Qualifying Improvements as approved by the State of Florida
12 pursuant to F.S. § 163.08, further ~~r~~defined in this Ordinance, as may be amended by law.

13 ~~(7)(9) PACE Statute~~ shall mean F.S. § 163.08 and all future amendments thereto.

14 ~~(8)(10) Residential Property~~ shall mean a residential property consisting of four (4) or ~~less-fewer~~
15 residential dwelling units.

16 ~~(9)(11) Non-Residential Property~~ shall mean commercial, industrial, agricultural, mixed use
17 and residential properties consisting of five (5) or more residential dwelling units.

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

20 (1) PACE agencies/authorities/districts Agencies/Authorities/Districts and Third-Party
21 Administrators offering financing for qualifying improvements Qualifying Improvements
22 on Residential and Non-Residential Properties pursuant to this Ordinance shall be approved
23 by the County and authorized through interlocal agreements to provide financing subject
24 to the requirements of this Ordinance and the PACE Statute. A resolution indicating the
25 County's desire to join a PACE agency/authority/district Agency/Authority/District shall
26 be prepared by County staff and presented to the Board for consideration with each
27 interlocal agreement. The interlocal agreements shall include specific terms and conditions
28 for PACE agencies/authorities/districts Agencies/Authorities/Districts and Third-Party
29 Administrators to operate within Palm Beach County.

30 (2) PACE agencies/authorities/districts Agencies/Authorities/Districts and Third-Party
31 Administrators desiring to provide financing pursuant to this Ordinance shall provide
32 sufficient documentation as requested by the County to provide reasonable assurance that

1 the requirements of this Ordinance and the PACE Statute can be met by the PACE
2 ~~agency/authority/district~~Agency/Authority/District and/or Third-Party Administrator.
3 Document requests shall include but are not limited to a list of Qualifying Improvements,
4 standard financing agreements, consumer protection provisions, and certificates of
5 insurance. PACE Agencies/Authorities/Districts and Third-Party Administrators shall
6 comply with reasonable requests for data and business practices within 90 days, consistent
7 with state and federal law.

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

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

20 ~~(1)~~(a) The estimated total amount of the debt, including amount financed, fees, fixed
21 interest rate, capitalized interest and the effective rate of the interest charged (“Annual
22 Percentage Rate” or “APR”);

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

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

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

31 ~~(5)~~(e) That there is no discount for paying the PACE assessment early;

32 ~~(6)~~(f) The nature of the lien recorded and that the PACE assessment will be collected in

1 the same manner as real estate taxes. That failure to pay the PACE assessment may
2 cause a tax certificate to be issued against the property, and that failure of payment
3 thereof may result in the loss of property subject to the PACE assessment, including
4 homestead property, in the same manner as failure to pay property taxes;

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

7 ~~(8)(h)~~ A PACE assessment payment term that does not exceed the useful life of the
8 improvements, as determined by reputable third-party sources, including, but not
9 limited to, the U.S. Department of Energy;

10 ~~(9)(i)~~ The right of pre-payment without penalty;

11 ~~(10)(j)~~ Notice that the property owner may be required to pay any PACE assessment in full
12 at the time of refinance or sale of the property; and

13 ~~(11)(k)~~ The three-day right to cancel the financing. The property owner has at least a three-day
14 right to cancel the financing. PACE Agencies/Authorities/Districts and Third-Party
15 Administrators must furnish to the property owner a notice of the right to rescind the
16 PACE financing agreement. The property owner may exercise the right to rescind until
17 midnight of the third business day following the execution of the agreement by giving
18 notice to the other party by either certified or registered mail, electronic mail, fax
19 machine, phone call, or any other method approved by the PACE
20 Agencies/Authorities/Districts and Third-Party Administrators;

21 ~~(l)~~ The property owner has a three-day right to cancel a home improvement contract per
22 F.S. § 520.72;

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

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

- 1 (o) Except as required by law, PACE Agencies/Authorities/Districts and Third-Party
2 Administrators may not disclose or permit disclosure to a PACE contractor or third-party
3 engaged in soliciting financing agreements of the maximum amount of the PACE
4 financing for which a property owner is eligible;
- 5 (p) That the County has programs that property owners may qualify for to fund
6 improvements, such as the Weatherization Assistance Programs. The County retains
7 the right to provide information about County programs within and/or in addition to
8 the Residential Consumer Disclosure Notice, which the PACE
9 Agencies/Authorities/District and Third-Party Administrator must provide to the
10 homeowner; and
- 11 (q) That before the PACE three-day right to cancel ends, the PACE
12 Agencies/Authorities/Districts or Third-Party Administrators will speak with the
13 property owner or authorized representative to review the terms of the PACE financing
14 agreement and confirm that the property owner understands the financial implications
15 and communicate all essential terms including what the Consumer Disclosure Notice
16 requires. The PACE Agencies/Authorities/Districts or Third-Party Administrators will
17 conduct the conversation in the property owner's preferred language. The PACE
18 Agencies/Authorities/Districts or Third-Party Administrators will record the "confirm
19 terms" call, unless the property owner declines to be recorded. If the property owner
20 declines to be recorded, the PACE entity must take detailed notes of the conversation
21 to demonstrate compliance with the "confirm terms" requirement; and
- 22 (r) Contact information for the PACE Agency/Authority/District or Third-Party
23 Administrator, including the name, phone number, and email (if applicable).
- 24 ~~(b) The Notice must be delivered to the property owner by the PACE agency/authority/district~~
25 ~~and must be signed and dated by the property owner prior to or contemporaneously with~~
26 ~~the property owner's signing of any legally enforceable documents under the PACE~~
27 ~~program. The property owner and the PACE agency/authority/district must keep the signed~~
28 ~~Notice with the property owner's executed financing agreement.~~
- 29 ~~(e) The PACE agency/authority/district shall record, or cause to be recorded, the financing~~
30 ~~agreement or a summary memorandum of the financing agreement, in accordance with F.S.~~
31 ~~§ 163.08(8).~~

1 (2) For Non-Residential Properties under \$250,000 for a PACE assessment, in addition to any
2 disclosure requirements in the PACE Statute, PACE Agencies/Authorities/Districts and
3 Third-Party Administrators that extend financing pursuant to the PACE Statute and levy
4 non-ad valorem assessments to fund the Qualifying Improvements shall have the property
5 owner sign a separate, written notice. PACE Agencies/Authorities/Districts and Third-
6 Party Administrators must disclose to property owners essential terms in a “Non-
7 Residential Consumer Disclosure Notice” that must be pre-approved by the County. The
8 County will not unreasonably withhold approval. The Non-Residential Consumer
9 Disclosure Notice must be a consolidated summary of the following information:

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

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

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

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

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

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

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

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

- 1 (j) The 3-day right to cancel the financing. PACE Agencies/Authorities/Districts and
2 Third-Party Administrators must furnish to the property owner a notice of the right to
3 rescind the PACE financing agreement. The property owner may exercise the right to
4 rescind until midnight of the third business day following the execution of the
5 agreement by giving notice to the other party by either certified or registered mail,
6 electronic mail, fax machine, or a recorded phone 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 (5) A copy of the Consumer Disclosure Notices must be provided to the property owner either
7 by electronic mail or hard copy by the PACE Agency/Authority/District or Third Party
8 Administrator within the 3-day right to cancel period and must be signed and dated by the
9 property owner prior to or contemporaneously with the property owner's signing of any
10 legally enforceable documents under the PACE Program. Upon the property owner's
11 request, the PACE Agency/Authority/District or Third-Party Administrator must provide
12 the property owner with a hardcopy of the Consumer Disclosure Notice within the three-
13 day right to cancel. The property owner and the PACE Agency/Authority/District or Third-
14 Party Administrator must keep the signed Consumer Disclosure Notice with the property
15 owner's executed financing agreement.

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

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

23 **Section 4. Chapter 17, Article XVII, Section 17-507, entitled "ELIGIBLE**
24 **PROPERTIES/PROGRAM REQUIREMENTS" is hereby amended as follows:**

25 (a) As defined in the PACE Statute, PACE
26 ~~agencies/authorities/districts~~ Agencies/Authorities/Districts and Third-Party
27 Administrators that extend financing pursuant to the PACE Statute and levy non-ad
28 valorem assessments to fund the ~~qualifying improvements~~ Qualifying Improvements shall
29 comply with the following: terms in the subsections below. Subsections apply to both
30 Residential and Non-Residential Properties except where the subsection specifically refers
31 to Residential or Non-Residential.

1 (1) *Residential Property.* PACE ~~agencies/authorities/districts~~
2 Agencies/Authorities/Districts and Third-Party Administrators may finance ~~qualifying~~
3 ~~improvements~~ Qualifying Improvements on Residential Properties provided they comply
4 with the following criteria inclusive of all eligibility criteria listed in the PACE Statute and
5 all future amendments thereto, along with additional consumer protections:;

6 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or
7 otherwise secured by the property, the total amount of any non-ad valorem assessment
8 for a property under the PACE Statute may not exceed twenty (20) percent of the
9 ~~just/fair market~~ value of the property as determined by the county property appraiser,
10 excepted as otherwise provided by statute; ~~and~~

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

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

16 (d) No notices of default or other evidence of property-based debt delinquency have been
17 recorded during the preceding three (3) years, or the property owner's period of
18 ownership, whichever is less; ~~and, additionally~~

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

20 (f) All mortgage-related debt on the underlying property may not exceed ninety (90)
21 percent of the property's Fair Market Value ~~fair market value~~; ~~and~~

22 (g) The total mortgage-related debt on the underlying property plus the PACE ~~p~~Program
23 financing may not exceed the ~~fair market value~~Fair Market Value of the property;;

24 (h) The total estimated annual payment amount for the PACE assessment does not exceed
25 10 percent of the property owner's annual household income determined using
26 sufficient and credible documentation, for example using adjusted gross income from
27 a recent tax return; and

28 (i) That the property owner is not currently in bankruptcy proceedings.

29 (2) *Non-Residential Properties.* PACE
30 ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party
31 Administrators may finance Qualifying Improvements on Non-Residential Properties
32 provided they comply with the ~~requirements set forth~~ eligibility criteria listed in the PACE

1 Statute and all future amendments thereto ~~and inclusive of those listed under Section 17-~~
2 ~~507(a)(1)(a.—d.) of this article.~~, along with the following consumer protections:

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

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

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

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

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

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

18 (3) *Qualifying Improvements.* The PACE ~~agency/authority/district~~Agency/Authority/District
19 and Third-Party Administrator will finance energy efficiency, renewable energy and wind
20 resistant improvements that are permanently affixed to the property as more specifically
21 described in the PACE Statute. All improvements and products should identify efficiency
22 standards established by the U.S. Department of Energy, the U.S. Environmental Protection
23 Agency, or Florida state agencies as applicable. All ~~qualifying improvements~~Qualifying
24 Improvements must comply with the PACE Statute for energy efficiency, renewable energy,
25 and wind resistance or other improvements as permissible by law. PACE
26 ~~agencies/authorities/districts~~Agencies/Authorities/Districts and Third-Party Administrators
27 shall establish procedures confirming that the property owner applying for financing through
28 the PACE ~~agency/authority/district~~Agencies/Authorities/Districts and Third-Party
29 Administrators intends to install ~~eligible products~~Qualifying Improvements, and that at the
30 time of funding such improvements have been installed.

31 (4) *Inquiries and Complaints.*

32 a. *Complaints.* PACE ~~agency/authority/district~~Agencies/Authorities/Districts and
Coding: Words in strike through type are deletions from existing text. Words in underscored type are additions.

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

6 b. *Payment inquiries.* ~~The PACE agency/authority/district shall be~~PACE
7 Agencies/Authorities/Districts and Third-Party Administrators are required to respond to
8 inquiries and resolve any issues in a timely manner, related to payments, including but not
9 limited to prepayments and payment reconciliation.

10 c. *Review.* In the event that ten percent or more of a PACE ~~agency's/authority's/district's~~
11 Agency's/Authority's/District's and Third-Party Administrator's projects result in complaints
12 or disputes, or such complaints or disputes remain unresolved six (6) months after completion
13 of a project, the County may review the PACE
14 ~~agency's/authority's/district's~~Agency's/Authority's/District's and Third-Party
15 Administrator's handling of complaints and may request corrective actions or initiate
16 suspension proceedings pursuant to Section ~~17-507(a)(12).~~17-508(1).

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

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

26 (7) *Marketing and Communications.* Marketing

27 (a) A person or entity may not engage in PACE marketing practices for a PACE
28 agency/authority/district that are or could appear to be unfair, deceptive, abusive, or misleading,
29 or that violate applicable laws or regulations, that are inappropriate, incomplete or are inconsistent
30 with the PACE agency's/authority's/district's purpose are prohibited ordinance. Violations are
31 subject to code enforcement proceedings.

32 (b) A person or entity may not create, use, or distribute PACE marketing material that conveys

1 the following messages: that PACE financing is a free form of public assistance, that PACE
2 financing is a Palm Beach County government program, that PACE financing will be repaid by
3 the subsequent owner of the qualifying residential property, that the improvements will pay for
4 themselves, or that the property owner will receive tax benefits from the program. Violations are
5 subject to code enforcement proceedings.

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

10 (9) *Contractor Management.*

11 (a) ~~Any work under a PACE agency/authority/district requiring a license under any~~
12 ~~applicable law to make a qualifying improvement shall be performed by a contractor~~
13 ~~properly licensed, certified or registered pursuant to state or local law. No contractor~~
14 ~~shall contract for or install any Qualifying Improvement pursuant to the PACE program~~
15 ~~unless the contractor is properly licensed, registered, certified, or otherwise legally~~
16 ~~authorized to perform such work. A PACE Agency/Authority/District or Third-Party~~
17 ~~Administrator may not finance Qualifying Improvements that are installed by~~
18 ~~contractors that a PACE Agency/Authority/District or Third-Party Administrator~~
19 ~~knows, or should know, are not properly licensed, registered, certified, or otherwise~~
20 ~~legally authorized to perform such work. PACE Agencies/Authorities/Districts and~~
21 ~~Third-Party Administrators must obtain the contractor's written agreement that the~~
22 ~~contractor shall comply with each of the following conditions:~~

- 23 1. Be licensed and insured pursuant to the applicable state and local requirements;
24 2. Agree to comply with all program requirements and marketing guidelines; and
25 3. Act in good faith to timely resolve property owner complaints.

26 (b) ~~Contractors performing work under a PACE agency/authority/district shall comply with~~
27 ~~each of the following conditions: (i) Be licensed and insured pursuant to the applicable~~
28 ~~statutory requirements; (ii) Agree to comply with all program requirements and marketing~~
29 ~~guidelines; (iii) Act in good faith to timely resolve property owner complaints.~~PACE
30 Agencies/Authorities/Districts and Third-Party Administrators for Residential Properties
31 must execute a contractor agreement with all contractors for which they intend to use to

1 complete Residential PACE projects. The contractor agreement must address at a
2 minimum the following:

- 3 1. Agree to not present a higher price for a Qualifying Improvement on financed by
4 a PACE financing agreement than the contractor would otherwise reasonably
5 present if the Qualifying Improvement were not being financed through a PACE
6 financing agreement;
- 7 2. Branding and/or marketing guidelines, including imposing enhanced monitoring
8 at a minimum for contractors found to have violated the marketing and
9 communications provisions;
- 10 3. Consumer protection code of conduct for the contractor;
- 11 4. PACE training for contractors that the contractor must attend in order to become
12 an eligible contractor; and
- 13 5. Suspension and termination provisions.

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

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

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

31 10. Financing. The PACE agency/authority/district PACE Agencies/Authorities/Districts and
32 Third-Party Administrators will must establish pricing rules and enforcement mechanisms to ensure

1 property owners are protected from excessive or unjustified prices and charges. In addition, the
2 PACE ~~agency/authority/district shall~~Agencies/Authorities/Districts and Third-Party
3 Administrators must require compliance with each of the following conditions prior to the issuance
4 of any ~~funding~~final disbursement to the contractor:

- 5 (a) Contractors have certified that any necessary permits have been obtained;
- 6 (b) Verification that the ~~qualifying improvements~~Qualifying Improvements have been
7 installed; and
- 8 (c) The property owner and the contractor have signed a final inspection and/or certificate
9 of completion that all improvements have been installed to the property owner's
10 satisfaction.

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

- 17 (a) Dates of the reporting period;
- 18 (b) List of PACE projects (including addresses including municipal jurisdiction, parcel
19 control numbers, financed amount, annual estimated payments, interest rate,
20 assessment duration, and project description) started during the reporting period,
21 separated by building type (e.g., single family, multifamily, retail, office, industrial,
22 etc.);
- 23 (c) List of PACE projects (including addresses including municipal jurisdiction and parcel
24 control numbers) completed during the reporting period, separated by building type
25 project (e.g., single family, multifamily, retail, office, industrial, etc.), For each project,
26 specify:
 - 27 1. The ~~q~~Qualifying iImprovements made;
 - 28 2. Project start date and completion date;
 - 29 3. The projected energy savings and/or amount of potential renewable energy to be
30 generated;
 - 31 4. Financial information such as projected cost per kilowatt hour saved/generated or
32 estimated utility bill savings;

- 1 5. Other resource savings if data is available;
- 2 6. Audits performed detailing the audit results, if applicable to the project;
- 3 7. Total amount financed, including total amount (in dollars) of financing spent on
- 4 each improvement, if multiple; and
- 5 8. Annual estimated payments.
- 6 (d) Number of actual or estimated jobs created during the reporting period, including local
- 7 versus non-local jobs and permanent versus temporary jobs;
- 8 (e) Number of applications declined during the reporting period;
- 9 (f) ~~Unresolved~~Resolved and unresolved complaints and/or contractor issues and status; ~~and~~
- 10 Description, including category of each complaint and/ or issue, when the standardized
- 11 third-party methodologies and supporting assumptions used to verify data, and any
- 12 changes in the methodologies and assumptions from the previous reporting
- 13 period. complaint/issue was filed, and when the complaint/issue was resolved;
- 14 (g) Assumptions and methodologies used for energy savings, renewable energy, cost per
- 15 kilowatt hour saved/generated, other resource savings, audits, and jobs calculations
- 16 under this subsection, including third-party sources and methodologies. Describe any
- 17 changes in the methodologies and assumptions from the previous reporting period. If
- 18 available, PACE Agencies/Authorities/Districts and Third-Party Administrators shall
- 19 use nationally accepted standardized assumptions and methodologies so that reporting
- 20 is consistent. If no national standards are available, PACE
- 21 Agencies/Authorities/Districts and Third-Party Administrators shall work with the
- 22 County to agree upon and use the same assumptions and methodologies so that the
- 23 County has a consistent data. If the PACE Agencies/Authorities/Districts and Third-
- 24 Party Administrators are unable to agree on uniform assumptions and methodologies,
- 25 the County reserves the right to cite reputable, nationally recognized standard
- 26 assumption and methodology sources for these calculations that the PACE
- 27 Agencies/Authorities/Districts and Third-Party Administrators must use within 90 days
- 28 of receipt, going forward with data collection;
- 29 (h) Just value of property as determined by the county property appraiser for the most
- 30 recent calendar year;
- 31 (i) Fair Market Value used during underwriting;
- 32 (j) Method for determining the Fair Market Value used during underwriting and proof of

1 that determination available upon request; and

2 (k) Date of Confirmed Terms Call.

3 ~~(12) Suspension or Termination of PACE agency/authority/district. In the event any PACE~~
4 ~~agency/authority/district fails to incorporate and continually provide for all of the foregoing~~
5 ~~service components or to otherwise abide by the provisions of this article and/or the~~
6 ~~interlocal agreement the County, in its sole discretion, may suspend or terminate the~~
7 ~~interlocal agreement and support of the County at any time upon written notice to that PACE~~
8 ~~agency/authority/district. Any project that has been initiated as of the time of suspension or~~
9 ~~termination shall be permitted to be completed. *Data and Document Requests.* Each PACE~~
10 ~~Agency/Authority/District and Third-Party Administrator must comply with reasonable~~
11 ~~requests for additional data or documents from the County and provide such data within 60~~
12 ~~days of the request, consistent with federal and state law.~~

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

22 (14) *Administrative Fees.* PACE Agencies/Authorities/Districts and Third-Party
23 Administrators will be responsible for paying administrative fees to the County on an
24 annual basis. The Board will establish fees for administrative tasks carried out by County
25 staff, including interlocal agreements, indemnification agreement for new PACE
26 Agencies/Authorities/Districts and Third-Party Administrators, Residential projects
27 funded during the year, and Non-Residential projects funded during the year. PACE
28 Agencies/Authorities/Districts and Third-Party Administrators shall send an annual
29 summary of all projects completed within that year and provide a payment per project to
30 the County.

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

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

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

13 (2) Code Enforcement Officers and any other enforcement personnel as authorized by the
14 County Administrator are authorized to enforce Section 17-507(a)(7), *Marketing and*
15 *Communications*, and Section 17-507(a)(9)(c), *Kickbacks*, of this Ordinance.

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

22 (4) A violation of Section 17-507(a)(7), *Marketing and Communications*, or Section 17-
23 507(a)(9)(c), *Kickbacks*, of this Ordinance may be enforced pursuant to terms and
24 procedures in Chapter 162, F.S., Local Government Code Enforcement Boards Act, and
25 Article 10 of the Palm Beach County Unified Land Development Code, all as may be
26 amended or recodified from time to time. Pursuant to Section 162.09(2)(d), F.S., the Palm
27 Beach County Special Master may impose fines that shall not exceed one thousand dollars
28 (\$1,000.00) per day per violation for a first violation, five thousand dollars (\$5,000.00) per
29 day per violation for a repeat violation, and up to fifteen thousand dollars (\$15,000.00) per
30 violation if the Palm Beach County Special Master finds the violation to be irreparable or
31 irreversible in nature. In determining the amount of the fine, the Palm Beach County
32 Special Master shall consider:

- 1 (a) The gravity of the violation;
- 2 (b) Any actions taken by the violator to correct the violation; and
- 3 (c) Any previous violations committed by the violator.
- 4 (5) A violation of Section 17-507(a)(7), *Marketing and Communications*, or Section 17-
- 5 507(a)(9)(c), *Kickbacks*, of this Ordinance may also be enforced pursuant to the procedures
- 6 and penalties of Chapter 162, F.S., Supplemental County or Municipal Code or Ordinance
- 7 Enforcement Procedures as may be amended or recodified from time to time, as follows:
- 8 (a) The County court shall have jurisdiction over all civil citations issued pursuant to this
- 9 Ordinance.
- 10 (b) The County shall maintain a system by which violators are given written notice of all
- 11 violations.
- 12 (c) Code Enforcement Officers and other authorized enforcement personnel who have
- 13 reasonable cause to believe that a person has committed an act in violation of this
- 14 Ordinance shall issue a civil citation. If the person who has committed the violation does
- 15 not contest the citation, the fines shall be \$400.00 but may be increased to \$500 if the
- 16 fine is contested in county court.
- 17 (d) Payment shall be made, either by mail or in person, to the location and within the time
- 18 specified upon the citation. If such person follows this procedure, the person shall be
- 19 deemed to have admitted to the infraction and to have waived the right to a hearing on
- 20 the issue of the commission of the infraction.
- 21 (e) Any person who fails to make payment within the time period specified on the citation
- 22 shall be deemed to have waived the right to pay the civil penalty as set forth in the
- 23 citation and shall appear before the county court.
- 24 (f) Any person who elects to appear before the court to contest the citation shall be deemed
- 25 to waive the right to pay the civil penalty. The court, after a hearing, shall make a finding
- 26 as to whether a violation has occurred and may impose a civil penalty not to exceed five
- 27 hundred dollars (\$500.00) plus court costs.
- 28 (g) If a person fails to pay the civil penalty or fails to appear in court to contest the citation,
- 29 he shall be deemed to have waived his right to contest the citation and, in such case, a
- 30 default judgment shall be entered and the judge may impose a penalty up to the maximum
- 31 civil penalty of five hundred dollars (\$500.00) plus court costs.

1 (h) Any person who refuses to sign and accept a citation issued pursuant to this Section shall
2 be guilty of a misdemeanor of the second degree, punishable as provided by Sections
3 775.082 or 775.083, F.S.

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

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

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

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

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

13 **Section 7. SAVINGS CLAUSE:**

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

18 **Section 8. SEVERABILITY:**

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

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

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

26 **Section 11. PENALTY:**

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

28 **Section 12. CAPTIONS:**

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

1 **Section 13. EFFECTIVE DATE:**

2 The provisions of this Ordinance shall become effective one hundred and eighty days
3 (180) after ~~upon~~ filing with the Department of State.

4

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

7

8 **JOSEPH ABRUZZO, CLERK**

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

9

10

11

12

13 **By:** _____

By: _____

14 **Deputy Clerk**

Robert Weinroth, Mayor

15

16

17

18

19 **APPROVED AS TO FORM AND**
20 **LEGAL SUFFICIENCY**

21

22

23

24 **By:** _____

County Attorney

25

26

27 **EFFECTIVE DATE:** Filed with the Department of State on the ____ day of

28 _____, 20____.



TO: Robert Weinroth, Mayor, and Members of the Board of County Commissioners
FROM: Megan Houston, Director, Office of Resilience
DATE: September 21, 2022
SUBJECT: Property Assessed Clean Energy Program (PACE) Proposed Ordinance Amendments Summary

Office of Resilience
 2300 North Jog Road, 4th Floor
 West Palm Beach, FL 33411-2743
 (561) 233-2400
 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

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. On August 23rd, this agenda item was postponed until Oct 18, 2022 at the request of PACE Industry.

Staff has met with local PACE representatives twice since August 23rd to collaborate with industry representatives. 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 October 18, 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.
- 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 mandating a requirement of 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 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 because it should be applicable to all contractors, not just PACE contractors.