

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenue	-0-	-0-	-0-	-0-	-0-
Program Income(County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match(County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	-0-	-0-	-0-	-0-	-0-
#ADDITIONAL FTE	-0-	-0-	-0-	-0-	-0-
POSITIONS (CUMULATIVE)	-0-	-0-	-0-	-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 Agency Organization Object

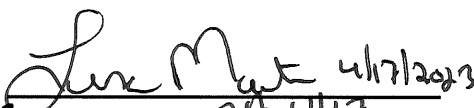
B. Recommended Sources of Funds/Summary of Fiscal Impact:


C. Departmental Fiscal Review:

III. REVIEW COMMENTS:

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

for review
for review
4/17/23


OFMB 4/17/23


Contract Dev. & Control 4/17/23

B. Legal Sufficiency


for DO.
Chief Assistant County Attorney

C. Other Department Review

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

Background and Justification (Continued from page 1): FPFA received the Leon County Circuit Court’s Order on November 14, 2022, two days before the County’s adoption of the Amended PACE Ordinance. Despite being in communication with County staff and appearing before the BCC on several occasions, FPFA representatives failed to provide the County with notice of the aforementioned bond validation proceedings.

On March 7, 2023, the County sent a response letter to FPFA acknowledging their termination of the Interlocal Agreement and demanding that FPFA cease and desist its continued operations in the County, as doing so violates the Amended PACE Ordinance. The County also emphasized that the Leon County Court Order, is not binding authority, extends beyond the statutory scope of a bond validation ruling, and it violates the County’s procedural and substantive due process rights.

To date, FPFA has not complied with the County’s demand letter and continues to operate in the County without being required to comply with the consumer protection provisions in the Amended PACE Ordinance. To wit, as of April 11 2023, FPFA has originated at least 136 loans in Palm Beach County worth at least \$4,430,877.17 since the County sent its March 7, 2023 letter.

FPFA’s unlawful activity in the County is a danger to public health, safety and welfare and requires immediate action, and the County’s significant legal rights will be compromised if a court proceeding does not take place before the County exhausts the intergovernmental conflict resolution procedures.

RESOLUTION NO. 2023 __

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, DECLARING THAT FLORIDA PACE FUNDING AGENCY'S CONTINUED OPERATION IN PALM BEACH COUNTY WITHOUT ADHERING TO THE PACE ORDINANCE IS A PUBLIC HEALTH, SAFETY AND WELFARE EMERGENCY AND AUTHORIZING THE COUNTY ATTORNEY'S OFFICE TO INITIATE LITIGATION, AS APPROPRIATE, TO STOP FLORIDA PACE FUNDING AGENCY FROM OPERATING IN PALM BEACH COUNTY WITHOUT PROPER AUTHORITY UNDER THE PACE ORDINANCE.

WHEREAS, Section 163.08, Florida Statutes, creates the framework for the administration of PACE programs, wherein property owners can finance certain projects through financing agreements that allow property owners to repay PACE loans over time as assessments on their property tax bills; and

WHEREAS, Section 163.08, Florida Statutes, and provides, in part, that all PACE financing agreements are subject to local government ordinance or resolution, and clarifies that the statute is additional and supplemental to county and municipal home rule authority, and not a derogation or limitation on such authority; and

WHEREAS, on April 4, 2017, Palm Beach County (the "County") adopted Ordinance 2017-012 (the "PACE Ordinance") which required all PACE Districts to enter interlocal agreements with the County and to comply with the enumerated consumer protections and guidelines contained therein; and

WHEREAS, on August 15, 2017, the County entered into an interlocal agreement with Florida PACE Funding Agency ("FPFA"), in which FPFA agreed to operate its program in compliance with the PACE Ordinance, as may be amended from time to time; and

WHEREAS, on November 16, 2022, Palm Beach County adopted Ordinance 2022-030 (the “Amended PACE Ordinance”), which amended the PACE Ordinance for added consumer protections and updated reporting procedures for PACE Districts and their administrators; and

WHEREAS, without providing any notice to the County, FPFA initiated bond validation proceedings in Leon County Circuit Court, which resulted in issuance of an Order (the “Order”) authorizing FPFA to finance qualifying improvements for property owners in Florida in the aggregate principal amount of Five Billion Dollars (\$5,000,000,000.00) and asserting that FPFA has independent statewide authority to operate its PACE program without interference or regulation from local governments; and

WHEREAS, on January 3, 2023, Palm Beach County received a letter from FPFA’s Executive Director announcing the immediate termination of its interlocal agreement with Palm Beach County and its intent to continue operations in the County based on “independent statewide authority” the Leon County Circuit Court asserted it had in the Order; and

WHEREAS, on March 7, 2023, the County sent a letter to FPFA acknowledging the termination of FPFA’s interlocal agreement and demanding that FPFA cease and desist its continued operations in the County in violation of the Amended PACE Ordinance, No. 2022-030; and maintaining that the Order is not binding, extends beyond the statutory scope of a bond validation ruling, and constitutes a violation of the County’s procedural and substantive due process rights; and

WHEREAS, to this date, FPFA has not complied with Palm Beach County’s March 7, 2023 letter and continues to unlawfully execute financing agreements in the County; and

WHEREAS, pursuant to 163.01, Florida Statutes, FPFA is a governmental entity,

WHEREAS, FPFA’s continued operations poses an immediate danger to the health, safety and welfare of the citizens of the County that requires immediate action; and

WHEREAS, the significant legal rights of the County will be compromised if a court proceeding does not take place before compliance with the provisions of the Chapter 164, Florida Statutes, the Florida Governmental Conflict Resolution Act; and

WHEREAS, Section 164.1041, Florida Statutes, requires that the Board of County Commissioners find, by a three-fourths vote, that an immediate danger to the health, safety or welfare of the public requires immediate action or that significant legal rights will be compromised if a court proceeding does not take place before compliance with the provisions of the Chapter 164, Florida Statutes, the Florida Governmental Conflict Resolution Act.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

- 1. The recitals above are true and correct and form a part of this Resolution.
- 2. This Board finds that FPFA’s continued operations poses an immediate danger to the health, safety and welfare of the citizens of the County and compromises the significant legal rights of the County, and therefore requires immediate action against it before compliance with the provisions of Chapter 164, Florida Statutes, the Florida Governmental Conflict Resolution Act.

The foregoing Resolution was offered by Commissioner _____, who moved for its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

District 1	Commissioner Maria G. Marino	_____
District 2	Commissioner Gregg K. Weiss, Mayor	_____
District 3	Commissioner Michael A. Barnett	_____

District 4	Commissioner Marci Woodward	_____
District 5	Commissioner Maria Sachs, Vice Mayor	_____
District 6	Commissioner Sara Baxter	_____
District 7	Commissioner Mack Bernard	_____

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2023.

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

SHARON R. BOCK,
CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:  _____
Assistant County Attorney

ORDINANCE NO. 2022 - 030

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.

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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 ~~d~~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

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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

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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;

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- 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 ~~(c) 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;

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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

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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

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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~~shall be Agencies/Authorities/Districts and

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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

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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 pProgram, 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

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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;

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- 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

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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:

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- 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:

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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 15th day of November, 2022.

7

8 **JOSEPH ABRUZZO, CLERK**

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

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

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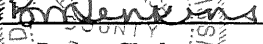
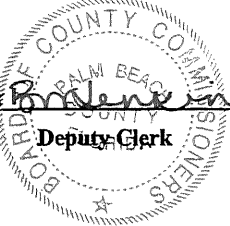
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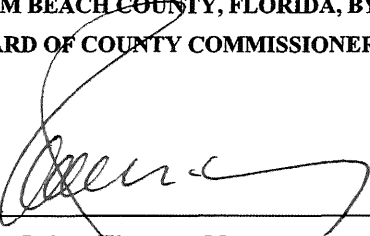
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By: 

Deputy Clerk

By: 
Robert Weinroth, Mayor

By: 
County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 16th day of
November, 2022.



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

November 16, 2022

Honorable Joseph Abruzzo
Clerk of the Circuit Court and Comptroller
Palm Beach County
301 North Olive Avenue
West Palm Beach, Florida 33401

Attn: Biaggia Jenkins

Dear Honorable Joseph Abruzzo:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2022-030, which was filed in this office on November 16, 2022.

Sincerely,

Anya Owens
Program Administrator

ACO/rra

R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
Telephone: (850) 245-6270



VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

January 3, 2023

Dear County Attorney:

I'm writing to share some promising changes in the Florida PACE Funding Agency's operations that will have a positive impact on property owners in your county.

Since its inception in 2011, the Florida PACE Funding Agency and its partners have been working diligently to provide all eligible property owners with an affordable and accessible financing option to make needed property improvements to resist the impacts of hurricanes and tropical storms, reduce energy usage, and improve access to renewable energy. As we have seen just this year, natural disasters are affecting all of Florida's property owners, and low-to-moderate income homeowners often lack access to the ability to secure their homes against these natural disasters.

There is no single solution to solve the challenges facing Florida's property owners during these trying times. Limited, and frequently expensive, property insurance availability and the need to continually make investments to harden properties against weather-related disasters will continue to disadvantage the State financially, particularly as higher proportions of losses are borne by Citizens Property Insurance.

This is the reason that the Legislature adopted section 163.08 of the Florida Statutes, commonly referred to as the Property-Assessed Clean Energy, or PACE, program. Though PACE is not the only financing option for these qualifying improvements, it is a necessary and extremely useful tool in helping homeowners to affordably manage property maintenance and economic uncertainty.

The Florida PACE Funding Agency has long been a leader in advancing the mission of PACE statewide while championing consumer protection measures. To provide clarity on the respective responsibilities for carrying out the PACE program, the Agency underwent a judicial validation process that concluded this fall. This process finally determined that improvements such as seawalls that harden properties against storm surge qualify for PACE financing, and further clarified that the Agency has independent authority to carry out its mission of offering PACE financing statewide, without requiring additional efforts from individual counties or cities.

Over the past several years, Palm Beach County, seemingly at the behest of the Tax Collector, has worked to impose more stringent restrictions on the local governments operating PACE programs in the County. This culminated with the adoption of Ordinance 2022-030 last November. During your discussions, you were informed that adoption of the then-proposed Ordinance would violate terms of the interlocal agreement, and members of the Board of County Commissioners expressed concerns that overreaching regulation would result in the power to regulate being taken away.

Unfortunately, these fears have come to pass. The Agency finds that the adoption of Ordinance 2022-030 violates the terms of the interlocal agreement, and by this communication we are providing notice of that breach. As the County took this action after being informed it would place them in breach of the Agreement,

www.FloridaPace.gov

Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233



it is not appropriate to provide additional time to cure, and therefore the Agreement is terminated effective immediately. However, should the County decide to repeal its ordinance, this letter also serves as notice of termination for convenience effective sixty (60) days from today. Please note this termination does not affect the Agency's contractual relationships with the Tax Collector, which remain in effect pursuant to the settlement agreement reached in 2017.

Pursuant to general law, the Agency will transition its operations to the independent authority recognized by the court system (for more details, please see the final judgment recorded in the Official Records of Palm Beach County, instrument number 20220465228, which is binding on the County). Our reports to your Office of Resilience will be completed for the quarter ending December 31, 2022, and afterwards will be made available in a general format online. We are happy to continue working with Resilience staff, but will decline to participate in the regulatory structure you have established, including specified forms of disclosure, fees, or specialized reporting.

This means that PACE financing will remain available to property owners in your county, and every county in the state, with industry-standard homeowner protections. The Agency will operate on a uniform statewide basis, and invites participation from counties and cities through a new interlocal agreement that facilitates information sharing and feedback. The interlocal agreement is not necessary to provide PACE in your county, but you will likely find collaboration on helping property owners harden homes and businesses against natural disasters beneficial. Attached, please find the new Interlocal Agreement (ILA).

A brief overview of both the PACE process, from the county's perspective, and an overview of the takeaways from the judicial validation proceeding, are included here. While the ruling only directly impacts the Florida PACE Funding Agency's relationship with counties and cities, other PACE authorities may be treated the same way by Florida law, and dialogue with those entities is encouraged. Florida PACE Funding Agency staff is always available for communication and assistance, so please reach out if necessary to: Info@FloridaPACE.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Moran".

Michael A. Moran

Executive Director

www.FloridaPace.gov

Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233



MEMORANDUM REGARDING PACE JUDICIAL VALIDATION

From: Jamy Dinkins, CivForge Law, P.A.

Date: December 1, 2022

The Florida PACE Funding Agency obtained a judgment this fall from the Circuit Court in Leon County validating up to \$5,000,000,000 in PACE bonds and establishing several pertinent legal concepts. Each of those is detailed below.

SEAWALLS ARE QUALIFYING IMPROVEMENTS UNDER THE PACE STATUTE

PACE assessments, or assessments for "Qualifying Improvements" under section 163.08, can be imposed by a local government such as the Florida PACE Funding Agency when they are used to fund and finance improvements to real property that fit into one of three criteria: energy efficiency, renewable energy, and wind-resistance. Previously, there was a question as to whether improvements (such as seawalls) that protect a property against wind-driven water damage (i.e., storm surge during a tropical storm) are wind-resistance improvements for purposes of the state statute. The recent judicial validation determined that they are. Accordingly, a property owner may now use PACE financing to install a seawall on property that is at risk for damage from storm surge.

THE COLLECTION OF PACE ASSESSMENTS IS A MINISTERIAL DUTY OF THE TAX COLLECTOR, NOT SUBJECT TO ADDITIONAL CONTRACTUAL DEMANDS OR TIMEFRAMES

As a method of consumer protection, PACE assessments must be collected using the Uniform Method of Collection, a process by which assessments are collected on the same bill as taxes. The Uniform Method imposes a ministerial duty on each county's tax collector to place assessments on the tax bill without questioning the authority or propriety of the assessments—the Legislature has committed that judgment to the local government imposing the assessments. Unfortunately, some tax collectors in the state have ignored this law, and Florida Department of Revenue direction, and imposed unlawful conditions or timeframes on the collection of PACE assessments.

In addition, the Uniform Method requires reimbursement of actual costs of collection to the tax collectors, with a cap of two percent of the collection. This cost is passed on to property owners. While counties who have calculated actual costs arrive at a number consistently below one percent, some tax collectors do not calculate the costs and instead charge the statutory maximum.

The recent judicial validation directs tax collectors to place the assessments on the same bill as taxes without these conditions and to report, on request, the actual costs of collection so that they may be reimbursed (as opposed to simply charging the statutory cap on expenses).

FPFA HAS INDEPENDENT AUTHORITY TO IMPOSE ASSESSMENTS STATEWIDE

The PACE statute does not grant authority to any entity to impose assessments. Rather, it allows entities who already have such a power to impose the specific type of assessment described, within the limitations of the statute.

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Some general purpose local governments have attempted to use home-rule power to limit the authority of other local governments to impose PACE assessments. This can come in the form of prohibiting PACE assessments altogether, imposing a fee on assessments, or requiring adherence to particular contracts or extra-statutory conditions. **The recent judicial validation clarifies that such ordinances apply only to those programs administered by the municipality or county adopting the ordinance, but not to those PACE programs administered by other local governments.** The judicial validation further clarifies that, because the Florida PACE Funding Agency derives its authority to impose assessments from state statute, it does not need further authority or permission from a general purpose local government to operate within any particular territory, and no local government has liability, responsibility, or authority relating to PACE programs of another local government.

www.FloridaPace.gov

Florida PACE Funding Agency c/o Mike Moran 4411 Bee Ridge Rd #134 Sarasota FL 34233

INTERLOCAL AGREEMENT
between
THE FLORIDA PACE FUNDING AGENCY
and
[NAME OF COUNTY], FLORIDA
relating to

PROVISION OF FUNDING AND FINANCING FOR QUALIFYING IMPROVEMENTS

THIS INTERLOCAL AGREEMENT is made and entered into as of _____ 1, 202_, (“Agreement”), by and between the Florida PACE Funding Agency, a separate legal entity and unit of local government established pursuant to section 163.01(7), Florida Statutes (“Agency”), and [Name of County], a political subdivision of the State of Florida (“County”), by and through their respective governing bodies, for the purpose of recognizing the authority of the Agency to fund and finance qualifying improvements within the boundaries of the County, assisting the County with coordinating efforts to mitigate the effects of, and adapt to, climate events, and coordinating efforts to reduce energy consumption and mitigate damage from hurricanes and other windstorms.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Agency and the County hereby agree as follows:

1. FINDINGS.

(A) Agency and County have reviewed the provisions of section 163.08(1), Florida Statutes, and find those facts as originally determined by the Legislature to be true in relation to the County and its inhabitants as of the date of this Agreement, and therefore incorporate those recitals as if fully set forth herein.

(B) Agency and County find that County has no liability or obligation relating to the activities of the Agency, and Agency’s authority is derived from state statute and governed by Agency’s governing board, not ordinance or resolution of County.

(C) County will benefit from the provision of standard periodic reports from Agency to quantify Agency’s activity within the boundaries of County for the purpose of environmental and windstorm mitigation calculation, planning, and reporting.

2. AUTHORITY. The execution of this Agreement has been duly authorized by Resolution of the governing bodies of each party hereto. Nothing within this Agreement limits the authority of Agency to enter into similar agreements with other local

governments or provide its program outside of the boundaries of County. Nothing within this Agreement limits the authority of County to establish programs of a similar nature, or to contract with or otherwise enable other local governments to provide similar programs within the boundaries of County.

3. RESPONSIBILITIES OF AGENCY.

(A) Agency will provide County with access to a report no less frequently than once per calendar quarter that quantifies basic, aggregate information about Agency activities within the boundaries of County. This report will include, for example, number and value of projects completed within the boundaries of Subdivision, both monthly and in aggregate.

(B) Agency will conduct a public meeting in the third quarter of each calendar year at which comments and suggestions may be submitted to the governing body by County, in addition to written or verbal communication between Agency staff and County staff as the need arises.

(C) Agency will promptly respond to specific constituent concerns brought to the attention of Agency by County.

4. RESPONSIBILITIES OF COUNTY. County will forward any complaint or other communication from a constituent to Agency promptly for Agency resolution.

5. ADMINISTRATION.

(A) Agency and County are both units of local government within the State of Florida, and as such, are subject to the provisions of chapter 119, Florida Statutes. Nothing within this Agreement changes the rights or responsibilities of the parties with respect to public records.

(B) Agency and County are both units of local government within the State of Florida, and as such, are invested with certain privileges and immunities from liability and exemptions from laws, ordinances, and rules which apply to the activity of officials, officers, agents, or employees of public bodies. Nothing within this Agreement disturbs or constitutes a waiver by either party of any such privilege, immunity, or exemption.

(C) The term of this Agreement will begin on the date first written above, and will continue until terminated by either party upon ninety (90) days' written notice delivered to the other. No amendment, supplement, modification, or waiver of this Agreement is binding unless executed in writing by both parties. The parties understand that termination of this agreement does not affect the obligations and authorities of the parties to initiate or collect non-ad valorem assessments under section 163.08, Florida Statutes. If this Agreement is terminated for any reason, the Agency will operate in the County as recognized in *Florida PACE Funding Agency v. State*, No. 2022-CA-1562 (Fla.

2d Cir. Ct. Oct. 6, 2022), which recognized Agency has independent authority to conduct its programs within the boundaries of County without transfer of power from County.

(D) This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes any prior agreements, understandings, negotiations, and discussions of the parties, written or oral, with respect thereto. This Agreement is binding on the parties, their respective successors, and assigns, and inures to the benefit of the parties, their respective successors, and assigns. This Agreement may not be assigned except to the lawful governmental successor of a party.

(E) Should any portion of this Agreement be held to be invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other aspect of this Agreement.

(F) This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which constitute but one and the same document. A true and correct facsimile copy may serve as an original in all respects.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed under seal and entered into as of the date first written above.

FLORIDA PACE FUNDING AGENCY

[NAME OF COUNTY]

By: _____

Mike Moran, Executive Director

(seal)

Attest: _____

Wendi Leach, Director of Operations

By: _____

[Name and title]

(seal)

Attest: _____

[Name and title]



Denise Coffman
County Attorney

Litigation Section

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(561) 355-2225
www.pbcgov.com



**Palm Beach County
Board of County
Commissioners**

Gregg K. Weiss, Mayor

Maria Sachs, Vice Mayor

Maria G. Marino

Michael A. Barnett

Marci Woodward

Sara Baxter

Mack Bernard

County Administrator

Verdenia C. Baker

*"An Equal Opportunity
Affirmative Action Employer"*

Official Electronic Letterhead

March 7, 2023

Florida Pace Funding Agency (FPFA)
c/o Mike Moran
4411 Bee Ridge Ed. #134
Sarasota, FL 34233

Dear Mr. Moran,

Palm Beach County Attorney's Office is in receipt of your January 3, 2023 Letter.

We acknowledge the termination of FPFA's Interlocal Agreement with the County (ILA). However, it is the County's position that FPFA does not have the legal authority to continue operating in Palm Beach County without an executed ILA and outside of the amended PACE Ordinance No. 2022-030.

The bond validation judgment rendered in Case No. 2022-CA-1562, by a Circuit Court in Leon County, is not binding on Palm Beach County. The court's conclusion that FPFA may operate independent of local government regulation on a statewide basis is beyond the statutory scope of bond validation proceedings, and infringes upon the County's constitutional authority.

We are also troubled that though Palm Beach County was member of FPFA at the time that judgment was issued, and had interest in properties affected by the judgment, FPFA never published notice in Palm Beach County, nor did it notify the County that the bond validation proceeding was pending. This is a clear violation of the County's constitutional and statutory procedural due process rights because the County was deprived of a real opportunity to be heard on a matter that ultimately infringed upon the County's substantive rights.

In conclusion, we demand that you immediately cease and desist your operations in Palm Beach County, and immediately stop executing new financing agreements with property owners in Palm Beach County.

Best regards,

Marianna Sarkisyan, Esq.
Assistant County Attorney
Palm Beach County Attorney's Office

ec: David Ottey, Chief Assistant County Attorney
Scott Holtz, Assistant County Attorney