

Clerk#9, County Attorney

Subject: PACE ordinance with provider comments
Attachments: Redline - Pinellas Ordinance (Combined PACE Providers Comments Nov 28 2017).pdf
Importance: High

From: Todd Josko [<mailto:todd@ballardfl.com>]
Sent: Wednesday, November 29, 2017 11:26 AM
To: Crowell, Don S <dcrowell@co.pinellas.fl.us>
Cc: White, Jewel <jwhite@co.pinellas.fl.us>
Subject: PACE ordinance with provider comments
Importance: High

Don,

I don't believe we've met, but I'm based in Tampa. Renew Financial is my client and I have been working in cooperation with all four major PACE providers on Pinellas County's draft PACE ordinance. Thank you for all your office has done to get this ordinance drafted and ready to go before the Board for their consideration.

As I indicated to my below email to Commissioner Welch, all the PACE providers have signed off on the attached document requesting modifications to the draft ordinance. These requested modifications are all operational in nature and, in our opinion, will resolve current language making PACE financing more cumbersome for a property owner of contractor to use versus other financing options.

We would appreciate the opportunity to meet with your office, or hold a conference call, to further discuss these proposed modifications in the hope of coming to a resolution prior to this ordinance coming before the BOCC on December 12th.

Please let me know if this is something we can schedule. I am happy to coordinate scheduling with all the PACE providers if that is of benefit to you and your office.

Thank you for your help in this matter.

-Todd

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From: Todd Josko <todd@ballardfl.com>

Date: Tuesday, November 28, 2017 at 4:50 PM

To: "Welch, Kenneth" <kwelch@co.pinellas.fl.us>

Cc: "Crowell, Don S" <dcrowell@co.pinellas.fl.us>, "Woodard, Mark S" <mwoodard@co.pinellas.fl.us>, "Long, Janet C" <JanetCLong@co.pinellas.fl.us>, "Seel, Karen" <kseel@co.pinellas.fl.us>, "Morrone, John" <jmorrone@co.pinellas.fl.us>, "Eggers, Dave" <deggers@co.pinellas.fl.us>, "Gerard, Pat" <pgerard@co.pinellas.fl.us>, "Justice, Charlie" <cjustice@co.pinellas.fl.us>

Subject: Re: PACE ordinance with provider comments

Thanks Commissioner. We understand and agree. When all the PACE providers recently met with county staff, the meeting was very productive. Ideally, we can conduct another similar meeting soon in order to iron out these operational concerns, as well as discuss the status of the service agreements between individual providers and the County. Service agreements are required, along with the ordinance, to launch PACE in the County.

-Todd

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From: "Welch, Kenneth" <kwelch@co.pinellas.fl.us>

Date: Tuesday, November 28, 2017 at 4:31 PM

To: Todd Josko <todd@ballardfl.com>

Cc: "Crowell, Don S" <dcrowell@co.pinellas.fl.us>, "Woodard, Mark S" <mwoodard@co.pinellas.fl.us>, "Long, Janet C" <JanetCLong@co.pinellas.fl.us>, "Seel, Karen" <kseel@co.pinellas.fl.us>, "Morrone, John" <jmorrone@co.pinellas.fl.us>, "Eggers, Dave" <deggers@co.pinellas.fl.us>, "Gerard, Pat" <pgerard@co.pinellas.fl.us>, "Justice, Charlie" <cjustice@co.pinellas.fl.us>

Subject: Re: PACE ordinance with provider comments

Thanks Todd - obviously we don't have time to review your recommended changes in time for tonight's public hearing. Because of that, and the absence of two Commissioners today, I'm pulling the item from tonight's public hearing agenda. I will suggest that the chair agenda the item for December 12th Commission meeting. I strongly suggest that you meet with our staff and iron out any remaining details, to the extent possible, before that meeting. Thanks again for your comments.

KT

Kenneth T. Welch - Vice Chair

Pinellas County Commission, District 7

727•464•3614

Please note: all mail sent to and from Pinellas County government is subject to the public records law of the State of Florida.

Sent from my iPad Pro

On Nov 28, 2017, at 11:32 AM, Todd Josko <todd@ballardfl.com> wrote:

Commissioner Welch,

Per my voicemail, this document reflects the joint comments from Renew Financial, Ygrene, FPFA and Renovate America. The goal of these comments is to update requirements in the ordinance that would make providing PACE financing within Pinellas County prohibitively burdensome to providers, contractors and/or homeowners in the marketplace, while still retaining the key consumer protections needed to help ensure effective PACE offerings for constituents of Pinellas County. We believe our requested changes meet this goal and ask that the County update the ordinance to reflect such comments.

The most critical comments are highlighted in yellow. If the Board is not comfortable adopting these highlighted comments at tonight's hearing, we respectfully request a delay in the adoption of the ordinance to allow us additional time, as needed, to continue working with County staff.

Thank you for your help in this matter. Please feel free to call me on my cell if I can answer any questions or provide additional information.

-Todd

<image001.png>

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<Redline - Pinellas Ordinance (Combined PACE Providers Comments Nov 28 2017).pdf>

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ORDINANCE NO. 17-

AN ORDINANCE OF THE COUNTY OF PINELLAS, FLORIDA, CREATING A PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM FOR PINELLAS COUNTY, TO BE CODIFIED AS ARTICLE XIII OF CHAPTER 42 OF THE PINELLAS COUNTY CODE; PROVIDING FINDINGS OF FACT; PROVIDING A SHORT TITLE; PROVIDING A PURPOSE; PROVIDING DEFINITIONS; PROVIDING PACE PROGRAM BOUNDARIES; PROVIDING FOR PACE LOCAL GOVERNMENTS; PROVIDING FOR PACE PROGRAM STANDARDS; PROVIDING FOR ELIGIBLE PARTICIPANTS; PROVIDING FOR NON-AD VALOREM ASSESSMENTS; PROVIDING FOR PACE PROGRAM ADMINISTRATION; PROVIDING FOR RECORDATION; PROVIDING FOR NOTICE TO PURCHASER; PROVIDING FOR SUSPENSION OR TERMINATION; PROVIDING FOR ENFORCEMENT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

21 **WHEREAS**, §163.08, Florida Statutes, provides that certain improvements to real
22 properties for energy conservation and efficiency, renewable energy improvements, or wind
23 resistance improvements, may qualify for funding through governmental programs, which allow
24 for the collection of such funding financed by the local government to be voluntarily collected
25 through the non-ad valorem assessment process;

26
27 **WHEREAS**, the Pinellas County Charter provides for the exercise of countywide powers
28 by ordinance to the extent they are not inconsistent with municipal ordinances;

29
30 **WHEREAS**, §§163.01 and 163.08, Florida Statutes, allow for and contemplate the
31 creation of separate legal entities to act as a local government for the purposes of providing such
32 PACE Program funding sources;

33
34 **WHEREAS**, several entities have been created within the state which have sought to
35 provide both the sources of such funding to property owners within Pinellas County and all
36 administrative services in providing and collecting such funding;

37
38 **WHEREAS**, the Pinellas County Board of County Commissioners is receptive to allowing
39 such special purpose local government entities to operate within Pinellas County provided that
40 certain guidelines are followed for the protection of the property owners and citizens of Pinellas
41 County;

42
43 **WHEREAS**, while these special purpose local governments may be permitted to operate a
44 PACE Program within Pinellas County by interlocal agreement with the Board, the Board intends

45 to as fully as practicable protect the County and its citizens from potential liabilities associated
46 with operation of a PACE Program by such separate special purpose local governments; and

47 **WHEREAS**, this ordinance will provide minimum standards and limitations for the
48 operation of any PACE Program within Pinellas County.

49
50 **NOW, THEREFORE**, BE IT ORDAINED BY THE BOARD OF COUNTY
51 COMMISSIONERS OF PINELLAS COUNTY, FLORIDA, at its regular meeting assembled this
52 _____ day of _____, 2017, that:

53 **SECTION 1.** There is hereby created a new Article XIII of Chapter 42 of the Pinellas County
54 Code (the “Code), entitled “Property Assessed Clean Energy (PACE) Program”.

55 **SECTION 2.** Article XIII of Chapter 42 of the Code is hereby created to read as follows:

56 **ARTICLE XIV. PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM**

57 **Sec. 42-440. Definitions.** For the purposes of this Article, the following
58 definitions shall apply:

- 59 (a) *Board* shall mean the Pinellas County Board of County
60 Commissioners.
- 61 (b) *County* shall mean Pinellas County, Florida.
- 62 (c) *Eligible Participant* shall mean any residential or non-residential
63 Property owner who voluntarily participates in the PACE Program
64 and satisfies the eligibility requirements set forth in Section 42-447.
- 65 (d) *PACE Act* shall mean Section 163.08, Florida Statutes, as it may be
66 amended from time to time.
- 67 (e) *PACE Administrator* shall mean a for-profit or not-for-profit
68 organization responsible for administering a PACE Program on
69 behalf of and at the discretion of a PACE Local Government
70 consistent with Section 163.08(6), Florida Statutes.
- 71 (f) *PACE Assessment* shall mean the non-ad valorem assessment
72 placed on a property owner’s tax bill as a result of financing
73 obtained pursuant to the PACE Financing Agreement.
- 74 (g) *PACE Contractor* shall mean a contractor authorized by the PACE
75 Local Government to sell, construct or install Qualifying
76 Improvements funded through the PACE Program.
- 77 (h) *PACE Financing Agreement* shall mean the agreement entered into
78 between the Eligible Participant and the PACE Local Government
79 specifying the Qualifying Improvements to be installed at the
80 Property and the terms and conditions for financing those

81 improvements through non-ad valorem assessments levied on the
82 Property.

83 (i) *PACE Interlocal* shall mean an agreement entered into between
84 Pinellas County and a PACE Local Government authorizing the
85 PACE Local Government to administer a PACE Program within
86 Pinellas County in accordance with Section 163.01, Florida
87 Statutes, and this Article.

88 (j) *PACE Local Government* shall mean a separate legal entity, other
89 than a county or municipality, created pursuant to Section
90 163.01(7), Florida Statutes. To the extent that a PACE Local
91 Government operates a PACE Program within Pinellas County
92 through a contracted PACE Administrator, such term shall include
93 for purposes hereof such PACE Administrator, provided that the
94 PACE Local Government is responsible for the actions or inactions
95 of the PACE Administrator acting within Pinellas County in
96 furtherance of the PACE Program as if it had taken such action, or
97 failed to take such action, itself, and provided further, that nothing
98 herein shall contravene or prohibit PACE Local Governments from
99 obtaining and relying on indemnification from their PACE
100 Administrators with respect to any such actions or omissions.

101 (k) *PACE Program or Program* shall mean the Property Assessed
102 Clean Energy program (authorized by Section 163.08, Florida
103 Statutes) within the boundaries of Pinellas County, excepting any
104 municipality that has opted out of the Pinellas County PACE
105 Program, operated by a PACE Local Government pursuant to the
106 terms of this Article.

107 (l) *Property* means a residential or non-residential property, located
108 within the jurisdictional boundaries of Pinellas County excepting
109 any municipality that has opted out of the Pinellas County PACE
110 Program.

111 (m) *Qualifying Improvements* shall mean those improvements to real
112 property provided for in Section 163.08, Florida Statutes, including,
113 but not limited to, energy conservation and efficiency, renewable
114 energy and wind-resistance improvements.

115 **Sec. 42-441. Findings of Fact.**

116 (a) Section 163.08, Florida Statutes, authorizes local governments
117 defined as a county, a municipality, a dependent special district as
118 defined in Section 189.012, Florida Statutes, or a separate legal entity
119 created pursuant to Section 163.01(7), Florida Statutes, to establish
120 and administer PACE financing programs pursuant to which owners
121 of real property may obtain funding for Qualifying Improvements.

- 122 (b) Several PACE Local Governments have been created and the
123 availability of the voluntary, non-exclusive PACE program offered
124 by the separate PACE Local Governments is able to be utilized by
125 Pinellas County through interlocal agreement without cost,
126 assumption of liability by, or demand upon the credit of Pinellas
127 County.
- 128 (c) Section 163.08(3), Florida Statutes, authorizes a PACE Local
129 Government to levy non-ad valorem assessments to fund Qualifying
130 Improvements.
- 131 (d) It is in the best interests of the citizens of Pinellas County to create a
132 PACE Program through the adoption of an ordinance that sets
133 uniform consumer protections that apply to all PACE Local
134 Governments who implement and manage PACE Programs in
135 Pinellas County excepting any municipality that has opted out of the
136 Pinellas County PACE Program.
- 137 (e) PACE Local Governments shall be authorized to implement the
138 PACE Program through individual PACE Interlocal agreements.
- 139 (f) The installation and operation of Qualifying Improvements not only
140 benefits the affected properties for which the improvements are
141 made, but also provides a public benefit by assisting in fulfilling the
142 goals of the State's and County's energy and hurricane mitigation
143 policies.
- 144 (g) The voluntary participation in the PACE Program by property
145 owners will provide an alternative financing option to finance and
146 repay the costs to provide and install Qualifying Improvements to
147 property located within Pinellas County.
- 148 (h) It is within the best interests of the citizens of Pinellas County to
149 have uniform consumer protection regulations that apply to all
150 PACE Local Governments and PACE Administrators who
151 implement and manage PACE Programs in Pinellas County
152 excepting any municipality that has opted out of the Pinellas County
153 PACE Program.

154 **Sec. 42-442. Short Title.**

155 This article shall be known as the "Pinellas County Property Assessed Clean
156 Energy (PACE) Program."

157 **Sec. 42-443. Purpose.**

158 PACE Programs have been developed to allow a property owner to voluntarily
159 finance Qualifying Improvements through a non-ad valorem assessment

160 implemented and managed by a PACE Local Government and repaid through
161 collection on the annual property tax bill.

162 The purpose of this Ordinance is to provide uniform consumer protection
163 regulations for all PACE Local Governments that are authorized to operate within
164 Pinellas County to ensure that:

- 165 (i) the citizens of Pinellas County are fully apprised of the Program;
- 166 (ii) PACE Local Governments have developed a responsive complaint
167 process;
- 168 (iii) Qualifying Improvements meet the statutory goals set forth in
169 Section 163.08, Florida Statutes; and
- 170 (iv) PACE Contractors meet certain standards of conduct.

171 This Article is intended to add requirements to the provisions of §163.08, Florida
172 Statutes (2017), and other applicable law as it currently exists and should be
173 construed consistently with the PACE Act and any such other applicable law. To
174 the extent that the PACE Act provides for additional or more restrictive
175 requirements not otherwise found in this Article or applicable law, the provisions of
176 the PACE Act must be met. To the extent that this Article provides for more
177 restrictive or additional requirements not found in the PACE Act or any such other
178 applicable law, the provisions of this Article are intended to apply.

179 **Sec. 42-444. PACE Program Boundaries.**

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181 The PACE Program shall be available to Eligible Participants within
182 unincorporated Pinellas County upon the effective date of this Article, and within
183 Pinellas County municipalities one hundred and twenty (120) days after the
184 effective date of this Article, excepting any municipality that has opted out of the
185 Pinellas County PACE Program by the passing of an ordinance in conflict with this
186 Article.

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188 **Sec. 42-445. PACE Local Governments.**

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190 Upon entering into a PACE Interlocal with Pinellas County, a PACE Local
191 Government shall be authorized to administer a PACE Program pursuant to Section
192 163.08, Florida Statutes, the terms of this Article, as may be amended from time to
193 time, the PACE Interlocal and other regulations adopted by the Board within
194 unincorporated Pinellas County and those municipalities that have not opted out of
195 the Pinellas County PACE Program.

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197 **Sec. 42-446. PACE Program standards.** At a minimum, PACE Local
198 Governments shall comply with each of the following standards and include the
199 following requirements:

- 200 (a) Qualifying Improvements: All Qualifying Improvements shall be
201 properly permitted (where applicable) and must comply with
202 Florida and local codes. PACE Local Governments shall finance
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only Qualifying Improvements that are permanently affixed to the Property.

(b) Licensed Contractors: Any contractor constructing or installing a Qualifying Improvement shall be properly licensed and insured, and authorized by the PACE Local Government as a PACE Contractor.

(c) Materials and Improvements: PACE Local Governments shall fund, and PACE Contractors shall construct or install, only Qualifying Improvements. PACE Local Governments shall establish an “Eligible Measures List” that identifies the types and specifications of Qualifying Improvements, using efficiency standards for materials and installation established by the U.S. Department of Energy, the U.S. Environmental Protection Agency, or Florida state agencies, or independent third-party expert rating entities, as applicable. ~~Any solar photovoltaic system financed under a PACE Program must have an online monitoring system for maintenance and production monitoring purposes unless the property owner declines the monitoring system in writing.~~ The Eligible Measures List shall be regularly updated and made publicly available. ¹ The County shall have the right to review ~~and approve~~ ² that list annually to confirm compliance with this Ordinance.

(d) Data Security and Consumer Privacy: PACE Local Governments shall take security measures to protect the security and confidentiality of consumer records and information to the extent permitted or mandated by law. In addition, a privacy policy must be in place that complies with state and federal law and, in particular, shall provide a property owner the ability to opt-out of having the property owner’s information shared with third parties, except where expressly permitted or required by state or federal law.


(e) Contractor Pricing: Within six months of entering into a PACE Interlocal agreement, PACE Local Governments shall have in place pricing rules and enforcement mechanisms to ⁴ help ensure ³ property owners are protected from excessive or unjustified prices and charges of PACE Contractors.

(f) Estimated Energy Savings Disclosure: PACE Local Governments shall require that PACE Contractors inform Eligible Participants of the following:

- 1) Where applicable, an estimate of energy and/ or insurance cost savings, including the range of efficiency options if appropriate, to the best of the PACE Contractors’ knowledge and using industry best practices;

Summary of Comments on Microsoft Word - ~wtf10416ADE

Page: 6


 Number: 1 Author: DSegal Subject: Highlight Date: 11/28/2017 8:27:41 AM

 Number: 2 Author: DSegal Subject: Sticky Note Date: 11/28/2017 8:29:52 AM

Each provider's list is approved by its PACE program issuer and managed by the provider. Subjecting the list to County annual "approval" would be operationally prohibitive and would cause an unworkable experience for contractors, who rely on the list.

 Number: 3 Author: DSegal Subject: Sticky Note Date: 11/28/2017 8:31:07 AM

PACE providers cannot ensure the POs are protected from excessive or unjustified pricing. While mechanisms are put in place to help prevent this, prices are set by POs and COs .

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- 2) Available rebates or incentives;
- 3) The benefits of installing energy efficiency improvements before renewable energy to reduce costs overall;
- 4) The benefits of a full Energy Audit of their property, names or websites of energy audit professionals qualified through the Residential Energy Services Network, Building Performance Institute, Association of Energy Engineers, or other comparable program, and any available incentive programs associated with a Qualifying Improvement;
- 5) That the actual potential energy savings and/ or insurance cost savings will depend on usage patterns, seasonal variation and weather, insurance or utility rates and trends and product specifications;
- 6) That any tax incentives, credits or rebates should be confirmed and discussed with an independent tax professional of the Eligible Participant's choosing if there are any tax questions; and
- 7) Costs of the Energy Audit are eligible for financing as part of the assessment. This Estimated Energy Savings Disclosure requirement shall be included in the ~~"Code of Conduct" and in training for~~ agreement between the PACE Local Government and the PACE Contractors.

(g) Notice to Property Owner: Prior to or contemporaneously with entering into a PACE Financing Agreement, PACE Local Governments shall provide the property owner with a written notice disclosing the following items:

- 1) The total amount of the debt, including interest;
- 2) The maximum annual PACE Assessment and payment term that does not exceed the useful life of the improvements;
- 3) ~~The~~ That for residential properties the three-day right to cancel the PACE Financing Agreement;
- 4) That the PACE Assessment will appear on the property owner's tax bill;
- 5) That for residential properties there is no penalty for paying the PACE Assessment early;
- 6) That the PACE Assessment will be collected in the same manner as real estate taxes, that failure to pay the PACE Assessment may cause a tax certificate to be issued against the property, and that failure to pay may result in the loss of property subject to the PACE Assessment, including homestead property, in the same manner as failure to pay property taxes;
- 7) That the installation of Qualifying Improvements and PACE Assessment may or may not affect the overall market value of the Property or energy cost savings;

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~~8) That all applicable warranties or guarantees terms are set forth in writing, and what materials or labor are not warranted or guaranteed for each Qualifying Improvement;~~

8) ~~9)~~ That the PACE Assessment may affect the sale or refinance of the property;

9) ~~10)~~ That the property owner may be required to pay any PACE assessment in full at the time of refinance or sale of the property; and

10) ~~11)~~ That if the property owner is using an escrow or impound account to pay their property taxes, they should contact their lender immediately to ensure that the escrow payments are adjusted correctly and the property owner is aware of and prepared for the increased payment amount.

The notice shall be signed and dated by the property owner to acknowledge that they understand these conditions. The PACE Local Government shall record, or cause to be recorded, the Notice in the public records as an attachment to the PACE Financing Agreement. The signature page must clearly designate that it relates to the PACE Financing Agreement and Notice to Property Owner acknowledgement. In the alternative, the foregoing notice provisions may be incorporated into the ~~recorded~~ financing agreement or recorded summary memorandum of financing agreement, or supporting documentation referenced within such documents, relating to the PACE Assessment.



(h) PACE Financing Agreement. After achieving compliance with all other mandated steps provided for by law, including but not limited to receiving a verified copy or other proof of such notice required by §163.08(13), Florida Statutes (2016), the PACE Local Government shall enter into a voluntary written agreement with each Eligible Participant. Such agreement, or supporting documentation referenced within such agreement and attached thereto, must include, at a minimum, the following:

- 1) The full legal description of the property subject to the PACE Assessment.
- 2) The amount of funding to be provided to the Eligible Participant.
- 3) Express voluntary consent by the Eligible Participant to accept the non-ad valorem assessment collection process, set forth in Section 197.3632, Florida Statutes.
- 4) The length of time for the Eligible Participant to pay the non-ad valorem assessment, which shall not exceed the expected life of the most costly Qualifying Improvement(s) funded by the PACE Program, or 30 years, whichever is less.

T Number: 1 Author: DSegal Subject: Highlight Date: 11/28/2017 8:31:41 AM

W Number: 2 Author: DSegal Subject: Sticky Note Date: 11/28/2017 8:39:32 AM

These requirements can all be found in the PO financing document set, which are referenced in the financing agreement or in the recorded memorandum of financing agreement. Requiring that these be added into the recorded document would add prohibitive operational burdens and expense to the PO.

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- 5) The Eligible Participant shall be responsible for verifying that the Qualifying Improvements are completed as reflected in the approved application documents. The Eligible Participant also consents to providing access to the PACE Local Government or its agent to the Property to verify that the Qualifying Improvements have been completed as proposed in the application.
- 6) At or before the execution of a contract for the sale and purchase of any Property for which a non-ad valorem assessment for the PACE Program has been levied and has an unpaid balance due, the seller shall give the prospective purchaser a notice of the lien in accordance with 163.08(14), Florida Statutes.
- 7) The risks associated with participating in the PACE Program shall be clearly disclosed in plain language in the written agreement with the Eligible Participant, or supporting documentation referenced within such agreement, including risks related to the failure of the Eligible Participant to make payments, the risk that they may not be able to refinance the home or sell the home unless the PACE Assessment is paid off in full first, and the risk of issuance of a tax certificate and loss of the Property pursuant to Chapter 197, Florida Statutes.
- 8) Description of the Qualifying Improvements, their cost, and estimated completion date.
- 9) Notice of the non-ad valorem assessment shall be recorded in the public records for the Property.
- 10) The PACE Financing Agreement shall clearly disclose, in plain language, the interest rate to be charged, including points, as well as any and all fees or penalties that may be separately charged to the Eligible Participant, including potential late fees. The subsequent charging or collecting any additional fees that were not specifically disclosed in the written agreement with the property owner shall be prohibited.

- (i) The PACE Local Government shall record, or cause to be recorded, the following notice, or provide such notice in supporting documentation referenced within a recorded document, in ¹ public records within five (5) days after execution of the PACE Financing Agreement, along with appropriate PACE Local Government contact information for property owner inquiries:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE. This property is located within the jurisdiction of a PACE Local Government that has placed an assessment on the property pursuant to Section 163.08, Florida Statutes. The

T Number: 1 Author: DSegal Subject: Highlight Date: 11/28/2017 8:40:06 AM

= Number: 2 Author: DSegal Subject: Sticky Note Date: 11/28/2017 8:41:19 AM


This requirement can all be found in the PO financing document set, i.e. the financing agreement, which is referenced in the memorandum that is recorded. Requiring that these be added into the recorded document would add prohibitive operational burdens and expense to the PO.

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assessment is for a Qualifying Improvement to the property relating to energy efficiency, renewable energy or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law.

- (j) No Prepayment Penalties on Residential Properties. The PACE Program shall not charge or impose a prepayment penalty on residential property.
- (k) Financing. The PACE Local Government may offer only fixed simple interest rates and payments that fully amortize the obligation. Variable or negative amortization financing terms are not permitted. Capitalized interest included in the original balance of PACE financing does not constitute negative amortization.
- (l) Project Completion. The PACE Local Government shall require compliance with each of the following conditions prior to the issuance of any payment to a PACE Contractor for which a property will be assessed:
 - 1) PACE Contractor and Property owner has certified in writing that any necessary permits have been¹, or will be, obtained² any necessary inspections have been completed to close out any such permits;
 - 2) Verification that the Qualifying Improvements have been constructed or installed; and
 - 3) The property owner and the PACE Contractor have signed a certificate of completion that all improvements have been installed to the property owner's satisfaction.
- (m) Lender notification. The PACE Local Government shall ensure that the property owner provides notice to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property of the owner's intent to enter into a PACE Assessment that, at a minimum satisfies the requirements of Section 163.08(13), Florida Statutes (2017).
- (n) PACE Contractor Management. Each PACE Local Governments shall:
 - 1) To the extent possible, conduct outreach to and enroll local contractors as PACE Contractors;
 - 2) Establish a "Code of Conduct" that sets standards for PACE Contractors such as licensing, advertising and marketing,

 Number: 1 Author: DSegal Subject: Highlight Date: 11/28/2017 8:42:01 AM

 Number: 2 Author: DSegal Subject: Sticky Note Date: 11/28/2017 8:43:31 AM

Permits are not necessary for all products and many of them will not be obtained (i.e. finalized) until after a PACE project is complete, as the process can take quite some time. A PO and CO can certify that they have or will obtain any permits that are necessary.

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accurate representation of the program, and consumer protections.

- 3) Have and shall strictly enforce anti-kickback policies and procedures that prohibit direct ¹ or indirect financial or other monetary incentives to PACE Contractors in exchange for ~~or~~ ² related to such PACE Contractor being awarded work under a PACE Program, excepting payment for the PACE Contractor's construction or installation of eligible improvements.
- 4) Train all PACE Contractors on the regulations related to the PACE program and the Code of Conduct;
- 5) ~~Ensure~~ Require that all PACE Contractors hold necessary licenses and insurance;
- 6) Require that PACE Contractors meet state law requirements with respect to warranties, materials and labor;
- 7) ~~6)~~ Confirm PACE Contractor qualifications at least annually and as necessary based upon consumer complaints or other indications of lack of compliance with the terms of the agreement entered into with the PACE Contractor; and
- 8) ~~7)~~ Remove PACE Contractors from the PACE Program who no longer meet program criteria; have not met program requirements, or fail to resolve consumer complaints.

(o) Customer Service: PACE Local Governments or their PACE Administrators shall provide customer service, including:

- 1) Access to customer service representatives by email and phone during normal business hours (not less than 9 a.m. to 5 p.m. Monday through Friday excluding holidays);
- 2) A detailed website with specific reference to the Pinellas County PACE Program;
- 3) A transparent customer feedback and complaint process with intended to obtain a quick response and resolution by both the PACE Contractor and the PACE Local Government or PACE Administrator as applicable.
 - a) A document outlining complaint process shall be clearly available on the PACE Local Government or PACE Administrator's website and provided to customers.
 - b) The document shall make clear that Pinellas County is not operating or administering the PACE Program in any way and that all concerns about the Program should be addressed directly to the PACE Local Government, with clear contact information provided.
 - c) All complaints and resolutions shall be logged, with the following information at a minimum: date and time of complaint, customer and PACE Contractor information,

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PACE Providers agree not to provide monetary incentives in exchange for approval of financing for a project. The original language, however, is too broad.

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details of complaint, when and what actions were taken by both the PACE Local Government or PACE Administrator, and the PACE Contractor, and final resolution.

d) All disputes and complaints shall be investigated, and resolved in a timely manner. Reports of the number of complaints received, time until resolution of each complaint, and method of resolution of each complaint shall be provided to Pinellas County annually.

(p) Marketing and Communications:

1) Marketing practices for a PACE Local Government that are or could appear to be unfair, deceptive, abusive, or misleading, or that violate applicable laws or regulations, that are inappropriate, incomplete or are inconsistent with the PACE Local Government’s purpose are prohibited.

2) Neither PACE Local Governments nor their PACE Administrators or PACE Contractors, shall use facsimiles of the County, city, Property Appraiser, or Tax Collector logos in their marketing materials. Marketing materials shall NOT state that PACE:

- a) is a free program;
- b) is a county or city program;
- c) does not involve a financial obligation by the property owner; or
- d) is a form of public assistance.

(q) Protected Classes. No PACE Local Government, ~~nor its~~ PACE Administrator, ~~nor PACE Contractor~~ shall discriminate against individuals on the basis of race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information.

(r) Metrics Reporting: After not more than one year from the date of adoption of this ordinance, PACE Local Governments shall track Program metrics and report those metrics to Pinellas County and any participating municipalities, by jurisdiction and in total, at least quarterly, in spreadsheet format or another electronic format agreed upon by Pinellas County. Those metrics shall include, at a minimum:


- 1. Dates of the reporting period;
- 2. List of PACE projects (including municipal jurisdiction, financed amount, interest rate, assessment duration, and


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- project description) started during the reporting period, separated by building type (e.g., single family, multifamily, retail, office, industrial, etc.);
3. List of PACE projects (including municipal jurisdiction) completed during the reporting period, separated by building type project (e.g., single family, multifamily, retail, office, industrial, etc.), specify: (1) the qualifying improvements made; (2) project start date and completion date; (3) the projected energy savings and/or amount of potential renewable energy to be generated; (4) financial information such as ¹potential ²per kilowatt hour saved/generated; (5) other resource savings if data is available; and (6) energy audits performed detailing the audit results, if applicable to the project;
 4. Number of actual or estimated jobs created during the reporting period, including ³if available ⁴local versus non-local jobs and permanent versus temporary jobs;
 5. Number of applications declined during the reporting period;
 6. Unresolved complaints and/or contractor issues and status;
 7. PACE assessment defaults and tax certificates issued on Properties subject to PACE Assessment (updated annually); and
 8. All data included in the reports must be developed and collected using standardized and verified principles and methodologies for the industry. The methodologies and supporting assumptions and/or sources must be made available to the County by the PACE Local Government. It is the responsibility of the PACE Local Government to test and verify the data collection and reporting methods and models used. ~~All~~ Notwithstanding the reporting requirements provided in this Section, all reports shall include only aggregate data, excluding any nonpublic personal information.


(s) Amendments. County reserves the right to amend this ordinance to revise PACE Program standards. It is the obligation of the PACE Local Governments to remain abreast of and comply with all changes in applicable law, including changes to this ordinance made at public hearings; ⁵ provided that, County will use good faith reasonable efforts to provide PACE Local Governments with prior notice of such changes and such changes will only apply to new applications initiated after such changes became effective. ⁶


(t) Reporting. PACE Local Governments will respond to County requests for information on the PACE Program in a timely manner


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 Number: 2 Author: DSegal Subject: Sticky Note Date: 11/28/2017 8:52:52 AM
PACE providers can provide estimated savings of energy, but cannot provide actual cost per kilowatt hour saved/generated as they do not have access to this data and this would be operationally prohibitive.

 Number: 3 Author: DSegal Subject: Highlight Date: 11/28/2017 8:50:43 AM

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PACE Providers are not able to track permanent versus temporary jobs accurately.

 Number: 5 Author: DSegal Subject: Highlight Date: 11/28/2017 8:47:22 AM

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Any changes to the ordinance should only apply to PACE projects that are not already in flight. The alternative would harm POs and COs and would be operationally prohibitive to PACE providers. Additionally, so that PACE providers are able to get into compliance, we ask that the County use good faith efforts to inform us of updates to the ordinance.

- 616 (a) Be the legal owner of the Property and provide proof of ownership
617 in the application for the PACE Program;
618
619 (b) Property must be within the PACE Program boundaries, as defined
620 in Section 42-444;
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622 (c) All property taxes and any other assessments levied on the same bill
623 as property taxes are paid and have not been delinquent for the
624 preceding three (3) years or the Property owner's period of
625 ownership, whichever is less;
626
627 (d) Property owner must be current on any mortgage on the subject
628 property;
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630 (e) Property owner cannot be in bankruptcy nor can the Property be an
631 asset in any bankruptcy proceeding;
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633 (f) Property cannot have any federal income tax lien, judgment lien or
634 similar involuntary lien, including construction liens, encumbering
635 it; and
636
637 (g) There is no pending recorded Notice of Default on the property and
638 no more than one recorded Notice of Default during the preceding
639 three (3) years or the property owner's period of ownership,
640 whichever is less.

641
642 **Section 42-448. Non-ad valorem Assessments.**

643 Pursuant to Section 163.08, Florida Statutes, the PACE Local Government is
644 authorized to impose non ad-valorem assessments on Property to secure the
645 repayment of the costs incurred by an Eligible Participant to pay for Qualified
646 Improvement(s), which shall be collected pursuant to Section 197.3632, Florida
647 Statutes, or any successor Section. Notwithstanding Section 197.3632(8)(a),
648 Florida Statutes, the assessments shall not be subject to discount for early payment
649 and shall not require notice and adoption as set forth in Section 197.3632(4),
650 Florida Statutes. Pursuant to Chapter 197, Florida Statutes, non-ad valorem
651 assessments levied pursuant to this Article shall remain liens, coequal with the lien
652 of all state, County, district and municipal taxes, superior in dignity to all other
653 liens, titles and claims, until paid.

654 **Sec. 42-449. PACE Program Administration.**

655
656 The PACE Program shall be administered pursuant to Section 163.08, Florida
657 Statutes, this Article and any additional regulations adopted by the Board.
658

659 **Sec. 42-450. Recordation.**

660 Any financing agreement entered into or a summary memorandum of such agreement
661 between the Eligible Participant and the PACE Local Government shall be
662 recorded in the public records of the County within five (5) days after execution of
663 the agreement pursuant to Section 163.08(8), Florida Statutes. The recorded agreement
664 or summary memorandum of such agreement shall provide constructive notice that
665 the assessment to be levied on the Property constitutes a lien of equal dignity to
666 County taxes and assessments from the date of recordation.

667 **Sec. 42-451. Notice to Purchaser.**

- 668 (a) Property owner must comply with Section 163.08(14) regarding
669 providing a written disclosure statement to a prospective purchaser.
- 670 (b) Failure to provide the notice referenced above to a purchaser of the
671 Property shall have no effect on either the validity of any PACE
672 Assessment or any obligation of a Property owner.

673 **Sec. 42-452. Suspension or Termination.**

674
675 In the event any PACE Local Government fails to abide by the provisions of this
676 Ordinance and the PACE Interlocal, following sixty day notice to cure, the Board
677 of County Commissioners in its sole discretion, may suspend or terminate the
678 Interlocal agreement and the PACE Local Government shall have no authority to
679 continue with any new projects within Pinellas County. Notwithstanding
680 termination of the Interlocal agreement, however, property owners whose applications
681 were approved prior to the termination date, and who received funding through the
682 PACE Program, shall continue to be a part of the PACE Program, for the sole purpose
683 of paying their outstanding assessment payments, until such time that all outstanding
684 assessment payments have been satisfied.

685
686 **Sec. 42-453. Enforcement**

687
688 This Ordinance is enforceable by all means provided by law.
689

690 **SECTION 3. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this
691 article, amendment or the particular application thereof, shall be held invalid by any court,
692 administrative agency, or other body with appropriate jurisdiction, the remaining section,
693 subsection, sentence, clause or phrase and application shall not be affected thereby.
694

695 **SECTION 4. INCLUSION IN THE CODE.** The provisions of this Ordinance shall be included
696 and incorporated in the Pinellas County Code, as an addition or amendment thereto, and shall be
697 appropriately renumbered to conform to the uniform numbering system of the Pinellas County
698 Code.
699

700 **SECTION 5. FILING OF ORDINANCE; EFFECTIVE DATE.** Pursuant to Section 125.66,
701 Florida Statutes, a certified copy of this Ordinance shall be filed with the Department of State by
702 the Clerk of the Board of County Commissioners within ten (10) days after enactment by the

703 Board of County Commissioners, and shall become effective upon filing with the Department of
704 State.

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Document comparison by Workshare 9 on Monday, November 27, 2017 9:37:16 PM

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Description	Pinellas Ordinance - October 23, 2017 comments by Pinellas
Document 2 ID	file://C:\Users\DSegal\Documents\Florida\Territory Expansion\Pinellas\Pinellas Ordinance (Combined PACE Providers Comments Nov 27, 2017).docx
Description	Pinellas Ordinance (Combined PACE Providers Comments Nov 27, 2017)
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Insertions	29
Deletions	19
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Format changed	0
Total changes	48

571 and shall provide sufficient documentation as requested by the
572 County to ensure that the requirements of this Article and the State
573 statutes are being met. The PACE Local Government shall retain
574 sufficient books and records demonstrating compliance with the
575 Agreement and State and County requirements for a minimum
576 period of seven years from the initial date of each non-ad valorem
577 assessment, and shall allow County representatives access to such
578 books and records upon request.
579

580 (u) Additional Program standards for residential properties: PACE
581 Local Governments that finance PACE Qualifying Improvements
582 on residential properties within Pinellas County shall, at a
583 minimum, comply with at least one (1) of the following additional
584 standards for projects affecting residential properties with four (4)
585 residential units or fewer:
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587 1) Financing limits: PACE Local Governments shall ensure that
588 all mortgage-related debt on the underlying property does not
589 exceed 90% of the Property's fair market value (as determined
590 by the Pinellas County Property Appraiser, by a credentialed
591 commercial or residential property appraiser, or by an
592 automated valuation service or model from a reputable third
593 party) and that the total mortgage-related debt of the Property
594 plus the PACE program financing does not exceed the fair
595 market value of the Property prior to the improvements. ; or

596 2) Mortgage Holder Consent or Escrow: PACE Local
597 Governments shall verify that each prior mortgage or financing
598 instrument holder has consented to any proposed Financing
599 Agreement and PACE Assessment, or that the prior mortgage or
600 financing instrument holder or loan servicer has consented to
601 escrow sufficient funds to ensure payment of the annual
602 assessment with each year's tax bill; or

603 3) Insurance or Energy Savings: PACE Local Governments shall
604 verify that the total cost of the PACE Assessment is equal to or
605 less than the projected savings to the property owner based upon
606 the projected energy savings in a written statement from a
607 Certified Energy Auditor, certified by the Association of Energy
608 Engineers, the Residential Energy Services Network, or the
609 Building Performance Institute, or the projected insurance
610 savings in a written statement from the property owner's insurer.
611

612 **Sec. 42-447. Eligible Participants.** In order to be an Eligible Participant, a
613 Property owner (or Property) must meet the criteria listed below. The PACE Local
614 Government is responsible for verifying that all of these conditions are met.
615