

ORDINANCE 17-

AN ORDINANCE RELATING TO PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS WITHIN UNINCORPORATED PINELLAS COUNTY; PROVIDING FOR INTENT; PROVIDING FOR GUIDELINES FOR UNINCORPORATED PINELLAS COUNTY PACE PROGRAMS; PROVIDING FOR DEFINITIONS; PROVIDING FOR AREAS EMBRACED; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE PINELLAS COUNTY CODE; PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, any local government may only utilize its own tax and assessment rolls, and may not, without the express agreement of another local government, provide the ability to utilize the assessment roll of another governmental entity; and

WHEREAS, §§163.01 and 163.08, Florida Statutes, allow for and contemplate the creation of separate legal entities to act as the “local government” for the purposes of providing such PACE Program funding sources; and

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

WHEREAS, the Pinellas County Board of County Commissioners (Board) is receptive to allowing such special purpose local government entities to operate within unincorporated Pinellas County provided that certain guidelines are followed for the protection of the property owners and citizens of Pinellas County; and

WHEREAS, while these special purpose local governments may be permitted to operate a PACE Program within Pinellas County by contract with the Board, the Board intends to as fully as practicable protect the County and its citizens from potential liabilities associated with operation of a PACE Program by such separate special purpose local governments; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA, IN A MEETING DULY ASSEMBLED THIS _____ DAY OF _____ 2017, THAT:

SECTION 1. INTENT

§163.08, Florida Statutes, provides that certain improvements to real properties for energy conservation and efficiency, renewable energy improvements, wind resistance improvements, may qualify for funding through governmental programs which allow for the collection of such funding financed by the local government to be voluntarily collected through the non-ad valorem assessment process (PACE Program). The Pinellas County Board of County Commissioners intends to allow for the operation of PACE Programs within Pinellas County. Such PACE Programs shall be operated within Pinellas County only in accordance with the provisions of this ordinance and applicable Florida or federal law. PACE Programs within Pinellas County shall not be programs of Pinellas County nor administered by Pinellas County, but shall be wholly the responsibility - legally, financially and administratively - of the separate and independent PACE Provider(s) authorized by a PACE Interlocal Agreement with Pinellas County to so operate in accordance with this ordinance.

SECTION 2. ELIGIBLE PROPERTY TYPES

Notwithstanding any document to the contrary, all PACE Programs within Pinellas County shall only be effective and authorized to make or fund improvements within Eligible Property as that term is defined herein.

SECTION 3. QUALIFYING IMPROVEMENTS

Any improvement made to real property, for which the provisions and benefits of this ordinance are intended to apply, must comply with all provisions and requirements of both this ordinance and §163.08, Florida Statutes, as may be amended from time to time. In the event of a conflict, the provisions of this ordinance should be interpreted as a restriction and limitation on the provisions of §163.08, Florida Statutes, and the more restrictive provision shall apply.

SECTION 4. ADMINISTRATIVE FEES

All costs and administrative fees of the operation of a PACE Program within Pinellas County shall be borne by the PACE Provider. Notwithstanding the foregoing, a PACE Provider may, within the constraints of §163.08, Florida Statutes, or any applicable financing agreement, pass through such costs and fees to participating property owners subjecting their property to voluntary assessment.

SECTION 5. DEFINITIONS

All terms not defined herein shall be as defined within §163.08, Florida Statutes. The following terms shall, for the purposes of this ordinance and any PACE Interlocal Agreement entered in accordance with this ordinance, have the following meanings unless the text clearly indicates a different meaning. In the event of a conflict between the definitions within this ordinance and any PACE Interlocal Agreement entered into as limited by this ordinance, the provisions hereof shall apply.

- (a) "PACE Agency" means a separate legal governmental entity created by interlocal agreement of Florida local governments in accordance with the provisions of

Florida law for the purpose of providing a PACE Program to be operated in Florida in accordance with Florida law. This definition shall not be interpreted to include the various individual local governments participating in an interlocal agreement creating a PACE Agency, nor a PACE Program operated as contemplated thereby.

- (b) “PACE Program” means the entirety of the governmental process by which a PACE Agency provides financing to a property owner of an Eligible Property to make Qualified Improvements to real property including all actions and communications of the PACE Agency or its agents, contractors or employees, as well as the non-ad valorem assessment levied for the purpose of collecting such amounts financed.
- (c) “PACE Provider” means the administrative entity operating a PACE Program within unincorporated Pinellas County; the PACE Agency for which the aforementioned administrative entity operates within unincorporated Pinellas County; and any contractor making improvements in conjunction with the financing provided in anticipation of funding to be collected pursuant to a PACE Program.
- (d) “Eligible Property” means Non-Residential Properties within unincorporated Pinellas County which comply with the following criteria inclusive of all eligibility criteria listed in §163.08 Florida Statutes, and all future amendments thereto, along with the following additional consumer protections:
 - i. Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment to be levied pursuant to a PACE Program may not exceed twenty percent (20%) of the just value of the property as determined by the county property appraiser, excepted as otherwise provided by statute. Notwithstanding this, a non-ad valorem assessment for a qualifying improvement that is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment; and
 - ii. All property taxes and other assessments levied on the property tax bill have been paid and have not been delinquent for the preceding three years, or the property owner’s period of ownership, whichever is less; and
 - iii. There are no involuntary liens, including but not limited to construction liens on the property; and
 - iv. No notices of default or other evidence of property-based debt delinquency have been recorded during the preceding three years, or the property owner’s period of ownership, whichever is less; and

- v. All mortgage debt on the property is current and not delinquent; and
- vi. All mortgage-related debt on the underlying property may not exceed 90% of the property's fair market value ("FMV"); and
- vii. The total mortgage-related debt on the underlying property plus the PACE Program financing may not exceed the FMV of the property.

In the context of this definition, "Non-Residential" means only commercial uses, industrial uses, non-governmental institutional uses, agricultural uses, and specifically excludes all residential uses. For the purposes of this definition, transient accommodation facilities of ten or more units (hotels or motels), or such condominium common features – including but not limited to clubhouses, centralized common HVAC or chillers, or common building structural elements - for which a condominium association is legally responsible (for condominium developments with more than ten units) shall be considered commercial. To the extent that a particular property use is not specifically included herein, it is intended to be specifically excluded here from.

- (e) "Qualifying Improvement" means improvements authorized by Section 163.08, Florida Statutes on an Eligible Property to be funded through a PACE Agency with eligible funds acquired through bonds issued by that PACE Entity.
- (f) "PACE Interlocal" means an interlocal agreement between a PACE Agency and Pinellas County.

SECTION 6. REQUIREMENTS AND LIMITATIONS ON PINELLAS COUNTY PACE PROGRAMS

The following requirements or limitations are intended to either be more restrictive than those found within existing Florida law, or, in the event that the requirement or limitation is the same as existing Florida law, it is the intent of the Board of County Commissioners to keep the requirements or limitations that currently exist, notwithstanding future changes to Florida law which may be less restrictive. All PACE Programs obtaining access to the unincorporated rolls of Pinellas County for the purpose of making PACE Program assessments shall comply with all of the following requirements and limitations.

- (a) No PACE Program shall operate within unincorporated Pinellas County unless:
 - i. There is an approved PACE Interlocal in place providing that Pinellas County is a participant with a PACE Agency for the purposes of allowing the PACE Entity to access the tax and assessment rolls of unincorporated Pinellas County and for the purposes of the PACE Agency levying and collecting non-ad valorem assessments for the repayment of financing from a PACE Program;

1. Every PACE Interlocal must contain provisions addressing in substance the following issues:
 - a. Every PACE Agency, and every third party administrator of each PACE Agency separately and on their own behalf, must agree to indemnify and defend Pinellas County to the greatest extent permitted under Florida law;
 - b. Each PACE Interlocal is expressly subject to the provisions of County ordinance, including recognition that such applicable ordinance(s) may be amended from time to time;
 - c. Each PACE Interlocal must provide that Pinellas County is not subject to the general liabilities or indemnity liabilities of the PACE Agency, its administrators, nor any bond or debt obligations of the PACE Agency, and the County's connection to the PACE Interlocal is limited to the greatest degree possible which still allows the access by the PACE Agency to the County tax and assessment rolls for the purpose of the PACE Agency placing non-ad valorem assessments in accordance with a PACE Program;
 - d. Each PACE Agency, for itself and any administrators performing on its behalf, must agree to make notifications acceptable to Pinellas County as a part of its PACE Program which, at a minimum, make clear that its PACE Program, administration, financing, costs and assessments are not a function or program of Pinellas County, and are solely the responsibility of the PACE Agency; and
 - e. Each PACE Agency shall provide, as a condition precedent to any PACE Interlocal becoming effective, a written issuer's counsel opinion, from Bond counsel for the PACE Agency, reflecting that the use of PACE Agency bond proceeds are legally appropriate and available for funding Qualifying Improvements under the terms of bond covenant, PACE Agency creation documents or programs, Pinellas County ordinance(s), and the terms of the PACE Interlocal.
- ii. The PACE Entity has written agreements in place with the Pinellas County Property Appraiser and Tax Collector providing for levy and collection of non-ad valorem assessments;
- iii. The PACE Agency has provided for sources of funding secured by municipal bond proceeds from which all financing to property owners under the PACE Program for Qualifying Improvements is to be made within Pinellas County.
- iv. Inquiries and Complaints.
 - a. Complaints. The PACE Agency shall be required to receive, manage, track, timely resolve and report on complaints from

property owners regarding the funded work performed by the contractors. The PACE Agency shall investigate and facilitate the resolution of disputes between property owners and contractors in a timely manner. Pinellas County shall have no responsibility to receive, facilitate or resolve complaints pertaining to a PACE Program operation or administration.

- b. Payment inquiries. The PACE Agency shall be required to respond to inquiries and resolve any issues in a timely manner, related to payments, including but not limited to prepayments and payment reconciliation. Pinellas County shall have no responsibility to receive, facilitate or resolve complaints pertaining to a PACE Program operation or administration.
- v. Data Security. The PACE Agency is responsible for taking security measures that protect the security and confidentiality of consumer records and information in proportion to the sensitivity of the information, and as required by state and federal law.
- vi. Consumer Privacy. The PACE Agency must develop and maintain a privacy policy that complies with state and federal law.
- vii. Marketing and Communications. Marketing practices for a PACE Provider 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 Agency's purpose are prohibited.
- viii. Protected Classes. The PACE Agency shall not 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.
- ix. Contractor Management.
 - a. Any work under a PACE Program requiring a license under any applicable law to make a qualifying improvement shall be performed by a contractor properly licensed, certified or registered pursuant to state law.
 - b. Contractors performing work under a PACE Program shall comply with each of the following conditions: (i) Be licensed and insured pursuant to the applicable statutory requirements; (ii) Agree to comply with all PACE Program requirements and marketing guidelines; (iii) Act in good faith to timely resolve property owner complaints.
 - c. Each PACE Program shall have and shall strictly enforce anti-kickback policies and procedures that prohibit direct financial or other monetary incentives to contractors in exchange for or related to such contractor being awarded work under a PACE

Program, excepting payment for the contractor's installation of eligible improvements.

2. In addition, the PACE Agency shall require compliance with each of the following conditions prior to the issuance of any funding to the contractor:
 - a. Contractors have certified that any necessary permits have been obtained;
 - b. Verification that the qualifying improvements have been installed;
 - c. The property owner and the contractor have signed a certificate of completion that all improvements have been installed to the property owner's satisfaction.
- (b) In addition to any disclosure requirements in the PACE Statute, PACE Providers that extend financing pursuant to a PACE Program shall present to the property owner a separate, written notice disclosing the following ("Notice"):
- i. The estimated total amount of the debt, including amount financed, fees, fixed interest rate, capitalized interest and the effective rate of the interest charged ("Annual Percentage Rate" or "APR");
 - ii. The repayment process and terms, amounts and a schedule that fully amortizes the amount financed including the estimated annual PACE assessment;
 - iii. That the PACE assessment will appear on the property owner's tax bill;
 - iv. That there is no discount for paying the PACE assessment early;
 - v. The nature of the lien recorded and that the PACE assessment may only 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 of payment thereof 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;
 - vi. The specific improvements to be financed and installed and that such improvements and PACE assessment may or may not affect the overall value of the property;
 - vii. An assessment payment term that does not exceed the useful life of the improvements;
 - viii. The right of pre-payment without penalty;
 - ix. Notice 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
 - x. Notice that there is a 3 business day right to cancel the Financing Agreement.

- (c) The Notice must be delivered to the property owner by the PACE Agency and must be signed and dated by the property owner prior to or contemporaneously with the property owner's signing of any legally enforceable documents under the PACE Program. The property owner and the PACE Agency must keep the signed Notice with the property owner's executed Financing Agreement.
- (d) The PACE Agency shall record, or cause to be recorded, the Financing Agreement or a summary memorandum of the Financing Agreement, in accordance with §163.08(8), Florida Statutes.

SECTION 7. AREA EMBRACED

This provisions of this Ordinance shall be in effect in the unincorporated areas of Pinellas County.

SECTION 8. SEVERABILITY

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

SECTION 9. INCLUSION IN THE CODE

The provisions of this Ordinance shall be included and incorporated in the Pinellas County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Pinellas County Code.

SECTION 10. Filing of Ordinance; Effective Date.

Pursuant to Section 125.66, Florida Statutes, a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners and shall become effective upon filing with the Department of State.