



Pinellas County

Staff Report

File #: 17-423A, Version: 1

Subject:

Authority to advertise a public hearing to be held on April 11, 2017, regarding the adoption of a proposed ordinance relating to requirements and guidelines for Property Assessed Clean Energy programs in unincorporated Pinellas County.

Recommended Action:

Authorize a public hearing to be held on April 11, 2017, regarding the adoption of a proposed ordinance relating to requirements and guidelines for Property Assessed Clean Energy (PACE) programs in unincorporated Pinellas County.

Strategic Plan:

Practice Superior Environmental Stewardship

3.1 Implement green technologies and practices where practical

3.4 Reduce/reuse/recycle resources including energy, water, and solid waste

Summary:

The proposed ordinance provides a mechanism to establish the baseline floor for PACE programs in unincorporated Pinellas County. An ordinance is recommended as it is anticipated that multiple PACE providers will ultimately seek to participate in providing PACE funding opportunities within the County. While an ordinance is not required, the efforts to negotiate with PACE providers without such established guidelines has led to areas of concern because different entities take different approaches that best suit the needs of the provider without focusing on the needs of the County and its property owners.

Background Information:

PACE programs are governmental programs established under Section 163.08, Florida Statutes, to help property owners finance energy conservation and efficiency, renewable energy improvements, or wind resistance improvements. Property owners who utilize PACE funding for the purposes of financing qualifying improvements commit to repaying the amount borrowed through a "voluntary non-ad valorem assessment" collected on their property tax bill. By law, PACE non-ad valorem assessments are given priority over other liens on the property, including purchase money mortgages, and are collected in the same manner as taxes. However, PACE assessments are not subject to the early payment discounts that apply to property taxes or other non-ad valorem assessments. Collection on the tax bill has the effect of high collection rates because the failure to pay the assessment results in the initiation of the statutory collection process beginning with the sale of tax certificates and potentially ending with the sale of the property to satisfy such tax certificates.

The dominant Florida PACE program model involves a special purpose local governmental entity being created by Florida general purpose local governments. This is done by the general purpose local governments entering into an interlocal agreement to create this new special purpose separate local government entity. The interlocal agreements creating these PACE entities vary. These special purpose PACE entities typically engage a third party administrator (TPA) entity to perform day-to-day functions of the PACE entity and actually manage the PACE program of the entity. These TPAs are

typically for-profit entities that often have a role in the creation of the PACE entity itself.

Funding for PACE program loans, for which the assessments are levied to repay come from a variety of sources. Most transparently, municipal bonds are issued by the PACE entity and the proceeds of the bonds are loaned to property owners for the purpose of making qualifying improvements. These loans are collected through the non-ad valorem assessments to repay the bondholders and collect the fees and costs of the program, which are paid to the TPA and contractors at the time of funding of the loan.

Other forms of PACE program funding exist, but involve financial sources often connected to TPAs and/or other private investment funds, or bank funding on a project by project basis. In some cases, the debt created by the financings are themselves grouped together, securitized, and sold to investors. The revenues collected through the non-ad valorem assessments on the tax bills are then used to secure the investment.

The proposed ordinance is intended to provide a mechanism to guide County staff, PACE entities, and the public on what policies the Board finds acceptable within the broad range of differing program scenarios. The ordinance is intended to be incorporated by reference into separate interlocal agreements between the County and PACE entities. These interlocal agreements would allow those PACE entities access to the unincorporated County tax rolls for the purpose of levying non-assessments in furtherance of PACE programs, while maintaining separation from such special purpose governmental entities. This separation would allow the County to focus on its general governmental responsibilities without the added time and financial costs of taking on the responsibilities and liabilities of the separate PACE entities themselves.

Having these guidelines in the ordinance and incorporated into the agreements is intended to allow changes to be made over time by the Board through ordinance amendment, thereby affecting directly all PACE programs in effect in unincorporated County at once.

The proposed ordinance was drafted with certain policy decisions presumed based on the initial but dated guidance from the Board, and assumptions of County Attorney and Administration staff. These decisions are obviously policy decisions for the Board and are only presented in this way so that either: 1) the Board may adopt the ordinance, as proposed; 2) the Board may give guidance for changes on some or all of the policy issues raised by the positions as they are addressed in the draft; or 3) the Board may decline to adopt this or any PACE program or ordinance.

The primary policy questions to consider:

- 1) Should an ordinance be passed defining consistent parameters or guidelines within PACE programs operating in unincorporated Pinellas County or should each PACE program be able to negotiate its own parameters for operations? This ordinance is proposed to create a consistent set of foundational guidelines.
- 2) Should the County maintain its separation from PACE entities or should the County become fully a part of the PACE entities themselves? The proposed ordinance provides separation from the PACE program entities to allow the County to focus on its core services.
- 3) Should PACE programs in Pinellas County involve residential properties or not, and if not, how should that division be defined? The proposed ordinance excludes residential properties as these

have been the subject of concern from realtors and the Federal Housing Administration (FHA). The FHA has provided some guidance but is not entirely clear when applied in Florida.

4) Should PACE programs in Pinellas County be authorized to utilize funds other than municipal bond proceeds as a source of funding to be collected on Pinellas County tax bills? The proposed ordinance permits only the use of municipal bond funds to maintain the governmental nature of the program and the funds at issue.

5) Should PACE loans be allowed that are subject to prepayment penalties? The proposed ordinance provides that there will be no prepayment penalties allowed as these increase the complexity of the financing and ability to calculate risks to the property owners.

6) What other consumer protection notifications would the Board require beyond what is shown in the proposed ordinance, or are there elements in the current proposed ordinance that go beyond what the Board wants to require? The proposed ordinance suggests notices that are an effort to make property owners aware of potential issues which may arise with this form of financing while not creating so much burden on the PACE program as to become unworkable.

Fiscal Impact:

N/A

Staff Member Responsible:

James L. Bennett, County Attorney

Donald S. Crowell, Managing Assistant County Attorney

Partners:

N/A

Attachments:

Proposed ordinance

Notice of Public Hearing