



Broward County Commission Regular Meeting

70.

Meeting Date: 06/07/2016

Director's Name: Henry A. Sniezek

Department: Environmental Protection

Division: Environ. Planning & Comm. Resilience

Information

Requested Action

MOTION TO ADOPT Resolution directing the County Administrator to publish Notice of Public Hearing to be held on Tuesday, June 14, 2016, at 2:00 p.m., in Room 422 of the Governmental Center to consider adoption of a proposed Resolution Amending the Administrative Code, the title of which is as follows:

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO PROPERTY ASSESSED CLEAN ENERGY ("PACE") POLICY; CREATING CHAPTER 22, PART XXVIII OF THE BROWARD COUNTY ADMINISTRATIVE CODE ("ADMINISTRATIVE CODE"); PROVIDING FOR POLICIES GOVERNING PACE FINANCING OF AND ASSESSMENTS FOR QUALIFYING IMPROVEMENTS TO REAL PROPERTY; PROVIDING FOR DEFINITIONS, GENERAL REQUIREMENTS, AND ADDITIONAL REQUIREMENTS FOR CERTAIN RESIDENTIAL QUALIFYING IMPROVEMENTS; PROVIDING FOR SEVERABILITY, INCLUSION IN THE ADMINISTRATIVE CODE, AND AN EFFECTIVE DATE.

Why Action is Necessary

The Broward County Charter requires the posting of notice and a public hearing for adoption of amendments to the County Administrative Code.

What Action Accomplishes

Creates definitions, establishes general requirements for PACE projects, and establishes additional requirements for certain residential PACE projects.

Is this Action Goal Related



Established Commission Goal

Previous Action Taken

None.

Summary Explanation/Background

THE ENVIRONMENTAL PROTECTION AND GROWTH MANAGEMENT DEPARTMENT AND THE ENVIRONMENTAL PLANNING AND COMMUNITY RESILIENCE DIVISION RECOMMEND ADOPTION.

This item supports the Commission's Value: Encouraging investments in renewable energy, sustainable practices and environmental protection; and the Goal: Seek funding for, implement policies, and pursue projects promoting the use of alternative energy, resource conservation, sustainable practices and environmental protection via support for expanded access to Property Assessed Clean Energy as a finance strategy to support energy efficiency, renewable energy and wind resistance improvements to real property.

Property Assessed Clean Energy ("PACE") is an approach to financing energy efficiency, renewable energy, and wind resistance improvements to real property through non-ad valorem assessments and was authorized in Florida by Section 163.08, Florida Statutes ("PACE Statute"). The PACE Statute also establishes that financing such projects is subject to local government ordinance or resolution.

The proposed resolution creates Chapter 22, Part XXVIII, of the Broward County Administrative Code, including establishing consumer protection policies applicable to PACE projects for residential properties (see Exhibit 3). Specifically, the provisions create definitions relevant to PACE projects; establish that qualifying improvements are those provided for in the PACE Statute; require use of licensed and permitted contractors; require use of materials meeting

federal, state, and local energy, wind, and building code standards; and require that PACE Local Governments be responsible for consumer data security. Additionally, residential projects affecting property with four residential units or less must comply with at least one of the following:

1. Ensure that the total amount of annual property taxes and assessments shall not exceed 5% of the property's Fair Market Value as determined by the Broward County Property Appraiser or by a credentialed commercial property appraiser or licensed realtor, and that the total amount of the annual PACE assessments shall not exceed 4% of the total annual gross income of the property owner, as indicated on a signed affidavit of income; or
2. Verify mortgage provider consent of the PACE funding or loan servicer consent to escrow the annual assessment payments; or
3. Verify projected insurance savings equal to or greater than the PACE project cost by written statement from the property owner's insurer or verify projected energy savings as determined by an Association of Energy Engineers Certified Energy Auditor.

Background

In 2012, a Turnkey Energy Efficiency and Service Program solicitation was issued, and on October 8, 2013, the Board of County Commissioners ("Board") waived the Procurement Code and directed staff to negotiate with the two top-ranked PACE providers. While negotiations began, third-party litigation challenging each PACE providers' bond validations interposed a substantial delay in the availability of financing. The litigation was resolved in late 2015 resulting in only minor adjustments to the bond validation, and negotiations were renewed in early 2016. During that time, the Board enacted an ordinance specifying disclosure requirements for PACE financing within Broward County on October 27, 2105, and began work on the development of the consumer protections proposed in this agenda item. On June 14, 2016, the Board is expected to consider two items, adoption of a Resolution authorizing PACE financing within Broward County and approving agreements with the two top-ranked PACE providers, and a public hearing on adoption of a Resolution establishing the consumer protections described above in the Broward County Administrative Code.

Source of Additional Information

Dr. Jennifer Jurado, Environmental Planning and Community Resilience Division, 954-519-1464 

Fiscal Impact

Fiscal Impact/Cost Summary:
Not applicable.

Attachments

[Exhibit 1 - PACE Policies Resolution - Reso-pub-Reso](#)

[Exhibit 2 - PACE Policies Resolution](#)

[Exhibit 3 - PACE Memo](#)

1 RESOLUTION DIRECTING THE COUNTY ADMINISTRATOR TO
2 PUBLISH NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION
3 OF A RESOLUTION AMENDING THE ADMINISTRATIVE CODE

4 BE IT RESOLVED by the Board of County Commissioners of Broward County,
5 Florida, that:

6
7 Section 1. The County Administrator in and for Broward County, Florida, and
8 Ex-Officio Clerk of the Board of County Commissioners of Broward County is authorized
9 and directed to publish notice of intent of the Board of County Commissioners of
10 Broward County to consider at public hearing on Tuesday, June 14, 2016, at 2:00 p.m.,
11 the adoption of a Resolution Amending the Administrative Code, to be entitled:

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13 "A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
14 BROWARD COUNTY, FLORIDA, PERTAINING TO PROPERTY
15 ASSESSED CLEAN ENERGY ("PACE") POLICY; CREATING
16 CHAPTER 22, PART XXVIII, OF THE BROWARD COUNTY
17 ADMINISTRATIVE CODE ("ADMINISTRATIVE CODE"); PROVIDING FOR
18 POLICIES GOVERNING PACE FINANCING OF AND ASSESSMENTS FOR
19 QUALIFYING IMPROVEMENTS TO REAL PROPERTY; PROVIDING FOR
20 DEFINITIONS, GENERAL REQUIREMENTS, AND ADDITIONAL
21 REQUIREMENTS FOR CERTAIN RESIDENTIAL QUALIFYING
22 IMPROVEMENTS; AND PROVIDING FOR SEVERABILITY, INCLUSION IN
23 THE ADMINISTRATIVE CODE, AND AN EFFECTIVE DATE."

24 Section 2. Such notice shall be made pursuant to the applicable provisions of
Section 3.04 of the Broward County Charter.

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Section 3. This Resolution shall take effect upon adoption.

ADOPTED this day of , 2016.

MCO/gmb
06/02/16
PACE Policies Resolution - Reso-pub-Reso.doc
#16-057.02

1 RESOLUTION NO. 2016-

2 A RESOLUTION OF THE BOARD OF COUNTY
3 COMMISSIONERS OF BROWARD COUNTY, FLORIDA,
4 PERTAINING TO PROPERTY ASSESSED CLEAN ENERGY
5 ("PACE") POLICY; CREATING CHAPTER 22, PART XXVIII,
6 OF THE BROWARD COUNTY ADMINISTRATIVE CODE
7 ("ADMINISTRATIVE CODE"); PROVIDING FOR POLICIES
8 GOVERNING PACE FINANCING OF AND ASSESSMENTS
9 FOR QUALIFYING IMPROVEMENTS TO REAL
PROPERTY; PROVIDING FOR DEFINITIONS, GENERAL
REQUIREMENTS, AND ADDITIONAL REQUIREMENTS
FOR CERTAIN RESIDENTIAL QUALIFYING
IMPROVEMENTS; AND PROVIDING FOR SEVERABILITY,
INCLUSION IN THE ADMINISTRATIVE CODE, AND AN
EFFECTIVE DATE.

10 WHEREAS, the Broward County Board of County Commissioners ("Board") has
11 identified investments in renewable energy, sustainable practices, and environmental
12 protection as a Board Value with Goals that include seeking funding for, implementing
13 policies, and pursuing projects promoting the use of alternative energy, resource
14 conservation, sustainable practices, and environmental protection that can be advanced
15 through planning, policies, and projects; and

16 WHEREAS, the Board is also committed to reducing regional greenhouse gas
17 emissions while furthering investments in community resiliency in order to mitigate the
18 magnitude of future climate change and community vulnerability to predicted impacts,
19 especially from sea level rise and extreme storms; and

20 WHEREAS, the Board has adopted a number of policies to further local and
21 regional climate mitigation and resiliency efforts, including an eighty percent (80%)
22 reduction in greenhouse gas emissions by 2050, relative to the 2010 baseline, and a
23 twenty percent (20%) renewable energy goal, recognized to deliver the interrelated
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1 benefits of clean energy, energy independence, and green sector economic development;
2 and

3 WHEREAS, County staff completed an updated greenhouse gas emissions
4 inventory in 2015 which estimates that forty-one percent (41%) of regional emissions is
5 associated with energy consumption in the commercial and residential sectors; and

6 WHEREAS, staff also completed vulnerability assessments and led resilient
7 redesign planning activities focused on the integration of resiliency investments in the
8 built environment, as part of the existing landscape; and

9 WHEREAS, on January 26, 2016, the Board adopted the Broward County Climate
10 Action Plan 2015 update, which includes the specific recommendation to lead in the
11 development of regional energy efficiency strategies and programs, including specific
12 support for implementation of a countywide Property Assessed Clean Energy ("PACE")
13 program; and

14 WHEREAS, PACE programs are designed to facilitate access to financing and
15 implementation of energy efficiency, energy conservation, renewable energy, and
16 weatherization improvements by residential and commercial property owners; and

17 WHEREAS, in furtherance of the Board Value and Goals stated herein, the Board
18 desires to expand community access to PACE, while providing a consistent framework
19 and guidelines for PACE program providers in Broward County, NOW, THEREFORE,

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21 BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF
22 BROWARD COUNTY, FLORIDA:

1 Section 1. Part XXVIII of Chapter 22 of the Broward County Administrative
2 Code is hereby created to read as follows:

3 [Underlining omitted]

4 **PART XXVIII. Broward County Property Assessed Clean Energy ("PACE")**
5 **Program Policies**

6 **22.175. Definitions.**

7 For the purposes of this section, the following words and phrases shall have the
8 following meanings:

9 a. *Financing Agreement* shall mean the financing agreement or the summary
10 memorandum of such agreement required to be recorded in the public records pursuant
11 to the PACE Statute.

12 b. *PACE* shall mean property assessed clean energy.

13 c. *PACE Assessment* shall mean the non-ad valorem assessment placed on
14 a property owner's tax bill as a result of financing obtained under the PACE Statute.

15 d. *PACE Local Government* shall mean a local government (as defined in the
16 PACE Statute) that has taken all required actions to fund PACE Qualifying Improvements,
17 and any person or entity acting on that local government's behalf.

18 e. *PACE Qualifying Improvements* shall mean those improvements to real
19 property provided for in Section 163.08(2)(b), Florida Statutes, including, but not limited
20 to, energy conservation and efficiency, renewable energy, and wind resistance
21 improvements.

22 f. *PACE Statute* shall mean Section 163.08, Florida Statutes, which
23 establishes Florida's PACE program.

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Coding: Words in ~~struck-through~~ type are deletions from existing text.
Words in underscored type are additions.

1 **22.176. PACE Program Requirements.**

2 In addition to any requirements in the PACE Statute and Section 20-14, Broward
3 County Code of Ordinances, PACE Local Governments that extend financing pursuant to
4 the PACE Statute and levy a non-ad valorem assessment to fund PACE Qualifying
5 Improvements within Broward County shall, at a minimum, comply with each of the
6 following standards:

7 a. PACE Qualifying Improvements: All PACE Qualifying Improvements shall
8 be properly permitted. PACE Local Governments shall finance only PACE Qualifying
9 Improvements that are permanently affixed to the property.

10 b. Licensed Contractors: Any contractor constructing or installing a PACE
11 Qualifying Improvement shall be properly licensed and insured.

12 c. Materials: PACE Local Governments shall fund, and contractors and
13 owner-builders shall construction or install, only those improvements products that meet
14 all relevant energy, wind, and building code standards established by the U.S.
15 Department of Energy, the U.S. Environmental Protection Agency, the State of Florida,
16 Broward County, and the municipality, if any, in which a PACE Qualifying Improvement
17 is constructed or installed.

18 d. Data Security: PACE Local Governments shall take security measures to
19 protect the security and confidentiality of consumer records and information to the extent
20 permitted by law.

21 **22.177. Additional PACE Program Requirements for Residential Projects.**

22 In addition to any requirements in the PACE Statute, Section 20-14, Broward
23 County Code of Ordinances, and Section 22.176 above, PACE Local Governments that
24 finance PACE Qualifying Improvements within Broward County shall, at a minimum,

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Words in underscored type are additions.

1 comply with at least one (1) of the following additional standards for projects affecting
2 residential properties with four (4) residential units or fewer:

3 a. Financing Limits: ensure that the total amount of any annual property taxes
4 and assessments do not exceed five percent (5%) of the property's fair market value,
5 determined at the time financing is approved, and that an affidavit is obtained from the
6 property owner attesting that the total amount of annual PACE assessments do not
7 exceed four percent (4%) of the total annual gross income of the property owner in the
8 prior calendar or fiscal year. Fair market value shall be that value determined by the
9 Broward County property appraiser or by a credentialed commercial property appraiser
10 or licensed realtor.

11 b. Mortgage Holder Consent or Escrow: verify that each prior mortgage or
12 financing instrument holder has consented to any proposed Financing Agreement and
13 PACE Assessment, or that the prior mortgage or financing instrument holder or loan
14 servicer has consented to escrow sufficient funds to ensure payment of the annual
15 assessment with each year's tax bill;

16 c. Insurance or Energy Savings: verify that the total cost of the Financing
17 Agreement or PACE Assessment is equal to or less than the projected savings to the
18 property owner based upon the projected energy savings in a written statement from an
19 Association of Energy Engineers Certified Energy Auditor, or the projected insurance
20 savings in a written statement from the property owner's insurer.

21 Section 2. SEVERABILITY.

22 If any portion of this Resolution is determined by any Court to be invalid, the invalid
23 portion shall be stricken, and such striking shall not affect the validity of the remainder of
24 this Resolution. If any Court determines that this Resolution, or any portion hereof, cannot



BERTHA W. HENRY, County Administrator

115 S. Andrews Avenue, Room 409 • Fort Lauderdale, Florida 33301 • 954-357-7362 • FAX 954-357-7360

MEMORANDUM

DATE: June 3, 2016
TO: Board of County Commissioners
FROM: Alan J. Cohen, Assistant to the County Administrator
SUBJECT: **Consumer Protections Incorporated in the Proposed PACE Resolution**

Amongst the issues considered by the County negotiation team working on the proposed Property Assessed Clean Energy (PACE) resolution on the June 7, 2016 Regular Agenda (Item #71), residential property consumer protections were high on the list (the working presumption is that commercial property owners were better able to determine the financial viability of moving forward with a PACE project on their property.) This memo describes in more detail those protections.

The history to date for PACE has been a good one. We have found no evidence of the proposed PACE providers committing fraud or otherwise taking advantage of consumers. The due diligence they perform prior to authorizing a PACE funding to a property owner is extensive and the default rate is remarkably zero, as compared to a national average of 1.77%. Nonetheless the County team wanted to take extra steps to ensure that all property owners in Broward County, particularly those most financially vulnerable, were protected to the greatest extent possible.

The resolution as written offers several alternative standards for with which a PACE provider can comply. The first place limits on the amount of PACE funding that a property owner can acquire based on the value of their home (5% of property fair market value (FMV)) and their gross income (4% of property owner annual gross income). Fair market value shall be that value determined by the Broward County Property Appraiser or by a credentialed commercial property appraiser or licensed realtor. While property owners at any point on the socioeconomic scale would need to carefully consider the merits of a PACE project and its associated costs, our focus was initially on lower income property owners, particularly those on fixed incomes. For example, there are 22,325 seniors in Broward County that have qualified for the Senior Exemption (property tax exemption). To qualify for this exemption in 2016, you must be 65 years old and make no more than \$28,482. Of the 22,325 seniors who qualify, 18,879 own their home outright (no mortgage) while 3,446 are still making mortgage payments.

The 5% limit of total ad valorem and PACE assessments as a percentage of the property's FMV is a standard that has been adopted by many PACE providers across the nation. It creates a reasonable nexus between the cost of the annual property tax bill that also contains the PACE assessment and what the value of the underlying property is. The average millage rate in Broward is ~2.09% of the property value (20.88 mills - <http://www.bcpa.net/taxcalc.asp>), leaving ~2.91% for all non-ad valorem assessments, including things like Fire Fees, Special District Fees (e.g. hospital, water) and PACE. The problem with this measure by itself is that it does not take into consideration the income of the property owner, particularly their discretionary income.

We worked with our Human Services Department and the Bureau of Labor Statistics in Washington to generate discretionary income data for those on the lower end of the socioeconomic scale. We specifically looked at data for those making \$15,000-\$19,999, \$20,000-\$29,999 and \$30,000-\$39,999. What we determined is that the discretionary income (available income after normal household expenses) was in the range of 8-10% of total gross income, with discretionary income rising as gross income increased through these ranges and beyond. In an abundance of caution we used the 8% figure to develop the 4% threshold contained in the proposed resolution. The thinking was that we did not want a property owner to spend all of their discretionary income on a new PACE assessment and have no financial cushion for unexpected expenses.

In the case of someone earning an income of \$15,000 a year, their discretionary income would be \$1200. The 4% threshold would limit their allowable annual PACE assessment to \$600. Based on average PACE funding interest rates over a 15 year period (the average length of a PACE funding assessment), that would allow for a maximum project cost of \$5,232. Assuming existing non-ad valorem assessments did not exceed .91%, the minimum property FMV would have to be \$30,000 to support an annual assessment of \$600. Please see the chart below for this and other funding limit examples.

Annual Income	Discretionary Income (8%)	Proposed Pace Limit (4%)	Minimum Property FMV	Maximum Project Cost
\$15,000	\$1,200	\$600	\$30,000	\$5,232
\$25,000	\$2,000	\$1,000	\$50,000	\$8,720
\$35,000	\$2,800	\$1,400	\$70,000	\$12,207
\$200,000	\$16,000	\$8,000	\$400,000	\$69,760

Another alternative standard would be to gain the approval of the property owner's mortgage provider. In order to provide such an approval, the mortgage provider would perform its typical due diligence in order to ensure that the property owner has the financial capability to take on the additional cost of the PACE assessment. While this is the most preferred measure, it is also the least likely as most banks will not approve a PACE funding due to the banking industry's general opposition to PACE.

Another alternative standard would be for the property owner to request and receive approval from their mortgage servicer (the entity that administers mortgage payments) to escrow the PACE payments along with the mortgage, insurance and taxes for the property. The likelihood of the mortgage servicer agreeing is very high, as it is in the best interests of the mortgage funder to ensure that the PACE assessment is paid to better protect the financial interests of the mortgage funder, on whose behalf they are collecting the funds. If the PACE assessment is not paid, that could trigger a default with the County, which is something the mortgage funder would want to avoid.

A final alternative standard is for the property owner to demonstrate that projected annual property insurance savings or energy savings are equal to or exceed the annual PACE assessment. It is often the case when a property owner is installing impact windows (an eligible PACE activity) that insurance savings that meet this standard can be achieved. Proof of savings would be provided in the form of a written statement from the insurance provider. In the case of energy savings, the resolution requires that an energy audit be performed by an Association of Energy Engineers Certified Energy Auditor to ensure that a more accurate savings projection is provided.

Staff is available if you have any questions on this matter.

Cc: Evan A. Lukic, County Auditor
Joni Armstrong Coffey, County Attorney
Kevin B. Kelleher, Deputy Director, Finance and Administrative Services Department
Dr. Jennifer L. Jurado, Director, Environmental Protection & Growth Management Dept.
Michael C. Owens, Senior Assistant County Attorney
Moneyede M. Martin, Assistant County Attorney