



# City of Delray Beach

*Environmental Services Department*

## M E M O R A N D U M

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**TO:** John Morgan

**FROM:** Ana Puszkina-Chevlin

**DATE:** February 21, 2017

**SUBJECT:** Updates to PACE Program, Resolutions and Ordinances for Commission Approval

I am hoping to advance the Property Assessed Clean Energy (PACE) program in Delray Beach, which has been relatively dormant since inception in 2012. To do this, the City needs to: 1) adopt an ordinance that establishes guidelines for multiple, non-exclusive PACE programs providing PACE funding within the City and provides additional consumer protections for our residents ; 2) Join the Second Amended Interlocal Agreement with Florida Green Finance Authority (the "Authority"), implemented through the RenewPACE qualifying improvements program, by adopting a resolution which provides that the original 2012 membership agreement is still in effect; and 3) join the Interlocal Agreement that forms the Green Corridor PACE District, currently administered by Ygrene Energy Fund, Florida LLC., by entering into a membership agreement with the Green Corridor District. Below I have provided a summary of the PACE program's history, its benefits and an explanation of why these three actions are needed to make PACE active and successful in Delray Beach.

### **Background:**

**What is PACE?** Property Assessed Clean Energy (PACE) was authorized by the Florida Legislature in 2010 through Section 163.08 F.S., in an effort to improve energy efficiency, incentivize installation of solar arrays, and increase storm resilience of Florida's built environment.

PACE offers property owners a novel form of low-interest rate, long-term, private sector financing for environmentally sustainable building improvements that is tied to the real estate property asset, rather than the credit of the property owner(s). The financed amount is repaid annually through a non-ad valorem property tax assessment over a period of years, based on the life-span of the qualified improvements. PACE does not cause local jurisdictions to incur any costs, as it does not involve government subsidies or tax incentives. While cities and counties must join PACE districts to allow property owners to use the program, participation by the city's property owners is completely voluntary.

**Simplified Explanation of How it Works** –Section 163.08 F.S., authorizes local governments to create PACE programs and create a framework within which local governments (including municipalities, counties or special districts) can levy and collect a non-ad valorem assessment to pay for qualified improvements. In order to reduce the difficulty and administrative costs of individual local governments organizing, financing, implementing and managing the PACE programs, separate legal entities have been created pursuant to Section 163.01, F.S. the Florida Intergovernmental Coordination Act of 1969, which then procure third-party administrators for their programs. Local governments join in an Interlocal Agreement establishing such separate legal entities through membership agreements, which then allow that entity (the funding authority) along with their third-party administrator to provide their PACE funding program

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within the boundaries of the municipality in order to:

- Identify a funding source, either private capital from either private equity firms or bond offering
- Certify the property improvements per the statute;
- Provide financing to the property owners;
- Assess and collect the non ad valorem assessment on the improved property; and,
- Repay the funds within the program.

Essentially, the program functions without further involvement or cost to the participating municipality.

From the property owner's perspective, an owner wishing to make qualifying improvements contacts either a participating contractor, or the PACE program administrator, which can suggest a list of qualified contractors they have vetted. Properties that meet a standard lending criteria are eligible for the program. The criteria include: 1) the property is located within the geographic boundaries of the program, that is within the boundaries of the municipalities party to that Interlocal Agreement 2) there are no delinquent taxes or late taxes in the past three years, 3) there are no bankruptcies on record for the owner. The property owners complete a PACE project and financing application, select a contractor, gets approved for the scope of the qualifying improvements and then completes the financing agreement. The PACE Administrator disburses funds to the contractor for the work, ensuring that the work is properly permitted and completed prior to disbursement. The PACE administrator then arranges for the project costs to be placed as a non ad valorem assessment on the property for the period of time it takes to pay off the improvements, finance charges and administrative fees. The property owner sees the amount on their next property tax bill and pays back the assessment in annual installments until it is paid off. If the property is sold during the intervening period, the remaining lien amount has typically been paid at the closing, prior to transfer.

**PACE Benefits** - Using PACE, property owners can implement a variety of 'qualifying improvements' including, but not limited to, the installation of energy efficient air conditioning systems, water heaters, insulation, impact resistant and insulated windows and doors, solar energy panels, and roof improvements that address energy efficiency and/or wind mitigation on homes and commercial buildings.

- These improvements to the residential and commercial inventory increase community resilience to coastal storms, driving down insurance costs and utility bills and increase property values.
- The property improvements advance community sustainability, reducing the community's carbon footprint by lowering energy consumption and promoting the use of solar, which reduces the need for new power sources.
- Unlike traditional loan or home equity line, the PACE financing rate is not based directly on credit quality of the owners and does not impact the owners' credit rating, allowing property owners to make building improvements they might not otherwise be able to finance.
- The PACE Assessment is tied to the equity in the real estate asset, and amortized over the life-expectancy of the improvements. The cost savings in terms of property insurance or utility costs is intended to offset a portion of the monthly repayment amount.
- PACE is seen as economic development tool, driving business to local contractors and stimulating job growth.
- Cities may see a small increase in revenue from permit fees filed for the work.
- The PACE administrators vet and enlist only licensed qualified contractors for implementing the

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improvements. As PACE will only release payment to contractors once the work is completed to the property owners' satisfaction and appropriate permits have been closed out, the program provides a measure of consumer protection and quality control on all installations. They also are required to mediate and resolve disputes.

**History of PACE** - PACE was born in California in 2008 and gained momentum nationally, but particularly on the West Coast in its early years. Florida legislature passed Section 163.08 F.S. authorizing local governments to create PACE programs in 2010. Locally, the Town of Lantana and the Town of Mangonia Park led the development of a PACE program called Florida Green Energy Works. To raise the financing, administer the program and the assessments, the Florida Green Finance Authority (Authority) and Florida Green Energy Works were created by Interlocal Agreement. The Authority is the financing agency, and because it is a separate legal body, there is no obligation to the City for financing contributions. In July 2012, the City of Delray Beach passed Resolution 24-12 joining the Interlocal Agreement with Florida Green Finance Authority, and Florida Green Energy Works PACE program. To our south approximately 20 cities joined a similar Interlocal establishing the Clean Energy Green Corridor District, administered by Ygrene. LLC. Other programs have been established in other geographic regions of the state.

Just as the Florida's PACE programs were getting established, the Federal Housing Finance Agency (FHFA), Fannie Mae, and Freddie Mac cast a chill over the growing PACE movement, raising questions about the seniority of the PACE lien over the mortgage. Litigation involving these institutions hung over the PACE program from 2010 through late 2012, slowing its proliferation nationally and leading some PACE providers to focus exclusively on commercial projects during this period. Ultimately, the Federal Courts did not strike down, nor affirm the validity of PACE programs, but issued narrow rulings on procedural issues, allowing PACE to proceed. In 2012, FHFA issued a Notice of Proposed Rulemaking and later a Proposed Rule concerning the underwriting standards related to PACE. FHFA's guidelines quelled concerns about foreclosing on properties with PACE improvements and financing, but affirmed that FHFA and related institutions would not purchase mortgages with PACE liens, thus requiring sellers to satisfy the liens prior to a property transfer or refinance.

Additionally, in Florida, between 2013 and 2015, several parties filed suits in State court against some of the financing districts, contesting their bond validations. Districts whose bonds were not appealed, including Green Corridor District, administered by Ygrene, grew steadily. Those caught up in litigation, including Florida Green Finance Authority, to which Delray Beach was party, were unable to advance effectively and remained rather inactive until litigation in State Courts was finally resolved in October 2015. In September 2015, as the litigation was concluding, Florida Green Energy Works was purchased by Renew Financial, a very large and well-funded California-based PACE provider eager to expand in this market.

In January 2016, the Obama Administration issued directive to FHA/ HUD and the VA to facilitate PACE. The FHA guidelines released in late July 2016 outline how properties with PACE assessments can now be purchased and refinanced with a FHA-insured mortgage, permitting among other things, that some PACE assessments can roll-over to a new property owner. Freddie and Fannie backed mortgages still require the lien to be satisfied, but the policy direction is shifting toward unencumbering PACE. This suggests that PACE finally has a "green light", and a period of steady growth and consumer adoption is anticipated.

#### **Justification for the requested actions**

As PACE programs have matured, new players entered the market and there have been some consolidations among firms. The PACE market has also evolved from a model of having one-financing authority and administrator dominating a specific geographic territory, to a more competitive model

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where municipalities and counties are party to multiple Interlocal Agreements run by different administrators. As the number of PACE providers has grown, cities, along with a national non-profit PACE advocacy organization, PACE Nation, developed best-practice guidelines for these programs and their administrators. The guidelines are intended to raise the professionalism of the PACE providers, create some standardization and most importantly, protect consumers from poor business practices. Cities have used the guidelines to craft local ordinances that ensure PACE operators are working within these best practices.

The ordinance and resolutions that should be presented to the Commission address these changes in the PACE market.

1. The new ordinance will establish that the City will have multiple PACE providers and it will require that current and future PACE providers financing property in Delray Beach to have transparent and fair operating and marketing practices with clear disclosures to consumers. The ordinance is fashioned to mirror the ordinances adopted in Boynton Beach and West Palm Beach, though most similar to West Palm's format.

While RenewPACE (fka Florida Green Energy Works) program and Ygrene Energy Fund Florida, LLC already adopted consumer protection and disclosure measures commensurate to those recommended by PACE Nation, other companies entering the market have different operating models. Adopting a local PACE ordinance will require any new PACE administrator to adhere to these nationally recognized business practices. The ordinance ensures that the City has taken steps to protect residents participating in the program and Commission need not entertain joining other Interlocal Agreements that do not meet these requirements.

2. Staff recommends that two resolutions be presented to the City Commission. The first resolution will authorize the City to join the Second Amended and Restated Interlocal Agreement with Delray Beach's current PACE program entity, Florida Green Finance Authority. The Second Amended and Restated Interlocal reflects a change in the program name pursuant to the acquisition of the third-party administrator by Renew Financial. It also introduces changes providing greater flexibility for the Authority's Board of Supervisors, greater geographic representation on the board, and provides that the 2012 membership agreement is still in full force and effect.

Although the former Florida Green Energy Works program was impacted by the challenges to its bond validation and did not roll out many projects, the Florida Green Finance Authority expanded to include 49 jurisdictions across nine counties including Alachua Broward, Escambia, Indian River, Martin, Orange, Palm Beach, Pasco, and Pinellas. The program's acquisition by Renew Financial brings significant resources, both monetary and personnel, to help make the program more successful throughout Florida.

Renew Financial administers the largest multi-jurisdictional PACE program in California, CaliforniaFIRST, which available to 27 million people in over 300 local governments in California. Renew Financial has closed on over 7,300 PACE assessments at a total value of \$186 Million across the U.S. and secured \$650 million in total financing to date. The RenewPACE program now launching the residential portion of its program with an expedient project approval process. Since July 2016, RenewPACE has completed approximately \$70,000 in residential transactions.

3. The second resolution and a membership Agreement allows joinder by the City to the Interlocal Agreement forming the Clean Energy Green Corridor District, currently administered by Ygrene Energy Fund Florida, LLC ("Ygrene"). This will allow Delray Beach residents to have a choice in selecting which PACE provider to work with, if they choose to use the program.

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Ygrene was one of the first, and is the largest PACE provider in Florida, having funded more than 2000 projects in Miami-Dade and Broward Counties. It now includes 52 jurisdictions in Florida. The company has closed on more than \$300 million dollars in projects nationally and has a well-developed network of approved contractors and easy electronic application portal that simplifies and expedites use of the program. Ygrene approached the City in early 2016 and presented their program to staff and Delray Beach's Green Implementation Advancement Board in April 2016. Local contractors who have work with Ygrene in other cities also asked staff to make Ygrene a local PACE provider. The GIAB unanimously passed a motion to support opening up the PACE to Ygrene and potentially other providers. GIAB and city staff recognized the benefit of having multiple administrators, noting that competition could lower application and administration fees, provide slightly different financing options, and allow residents to choose from a larger pool of approved contractors. Moreover, Ygrene is known for an expeditious approval process and an ability to finance small projects. The second resolution would also direct staff to, on occasion, review and present to commission other PACE programs that are successfully operating in Florida, thus creating more choice for consumers.