

ORDINANCE NO. 13-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, ESTABLISHING REQUIREMENTS FOR THE CITY OF DELRAY BEACH'S PROPERTY ASSESSED CLEAN ENERGY PROGRAM ("PACE"); PROVIDING FOR MULTIPLE, NON-EXCLUSIVE PACE PROGRAMS IN ORDER TO ALLOW FOR THIRD-PARTY ADMINISTRATORS, EITHER FOR-PROFIT OR NOT-FOR-PROFIT, TO ADMINISTER THE PACE PROGRAM WITHIN THE CITY PURSUANT TO STATE LAW AND THE REQUIREMENTS SET BY THE CITY; PROVIDING A CONFLICTS CLAUSE AND A SEVERABILITY CLAUSE; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Property Assessed Clean Energy (PACE) is a program which provides upfront capital to property owners to invest in energy-efficient, renewable energy or wind-resistance improvements to their properties; and

WHEREAS, Sec 163.08, *Florida Statutes*, has provided supplemental authority for such improvements through general law and states that the "...Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance"; and

WHEREAS, Sec. 163.08, *Florida Statutes*, also authorizes a local government to either levy non-ad valorem assessments in order to fund qualifying improvements or ,alternatively, allows a for-profit entity or a not-for-profit organization to act as a third-party administer for a PACE program on behalf of and at the discretion of the local government such that a financing agreement with the property owner, when recorded, constitutes a lien of equal dignity to county taxes and assessments from the date of recordation; and

WHEREAS, a property owner's participation in such financing agreements is entirely voluntary and the local government shall not incur or be requested to authorize any obligations secured by special assessments associated with qualifying improvements imposed by the third-party administrator; and

WHEREAS, based upon the above elements of the PACE program, the City Commission of Delray Beach deems it necessary and to be in the best interests of the health, safety, and welfare of the citizens and residents of the Delray Beach, to adopt the following minimum standards within the City of Delray Beach such that its residents will be able to finance energy improvements to their properties through non-ad valorem assessments on their tax bills and

also allow for PACE programs within the City which will ultimately promote energy conservation, energy security, and the reduction of greenhouse gases in conformance with the declared public policy of the state.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF CITY OF DELRAY BEACH, FLORIDA THAT:

Section 1. Incorporation. The recitations set forth above are incorporated herein.

Section 2. Title 11. Business Regulations. at Chapter 111. Reserved. of the Code of Ordinances of the City of Delray Beach, Florida, shall hereby be repealed and readopted to read as provided in Exhibit "A":

See EXHIBIT A attached hereto and made a part hereof

Section 3. Severability. If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the validity of the remaining portions or applications remaining in full force and effect.

Section 4. Compliance Period. With respect to the compliance period established by Section 111.10 of the Code, a PACE provider's initial agreement with the City shall be deemed to be such PACE's provider's first agreement with the City executed concurrent with or after the effective date of this Ordinance, or as provided at Sec. 111.10.

Section 5. Codification. Authority is hereby granted to codify the text amendments set forth in EXHIBIT "A" this Ordinance.

Section 6. Conflicts. All ordinances or parts of ordinances, resolutions or part of resolutions in conflict herewith are to the extent of such conflicts hereby repealed.

PASSED AND ADOPTED in regular session on second and final reading on this _____ day of _____, 2017.

Mayor

ATTEST:

City Clerk

First Reading _____

Second Reading _____

EXHIBIT "A"

To be codified at: TITLE 11. BUSINESS REGULATIONS.

CHAPTER 111. ~~Reserved.~~ PROPERTY ASSESSED CLEAN ENERGY PROGRAM ("PACE")

Sec. 111.01 - DEFINITIONS

Definitions. For purposes of this article, the following words and phrases shall have the following meanings:

Financing agreement shall mean the financing agreement or the summary memorandum of such agreement required to be recorded in the public records of Palm Beach County in accordance with F.S. sec. 163.08.

PACE assessment shall mean the non-ad valorem assessment placed on a property owner's tax bill as a result of financing obtained under a PACE program.

PACE program shall mean one or more authorities or programs authorized by the city commission to offer financing of qualifying improvements.

Program administrator shall mean the entity responsible for offering, managing and administering the specific PACE program.

Qualifying improvement shall include those improvements as defined by F.S. sec. 163.08, including energy efficiency, renewable energy and wind resistance or as may be amended by law.

Sec. 111.02 - ELIGIBLE PROPERTIES.

(A) Residential property with 4 units or fewer may be eligible for financing qualifying improvements through a PACE program provided each of the following criteria are met:

- (1) All property taxes and other assessments levied on the property tax bill have been paid and have not been delinquent for the preceding three (3) years, or the property owner's period of ownership, whichever is less; and
- (2) There are no involuntary liens, including but not limited to construction liens on the property; and
- (3) 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
- (4) All mortgage debt on the property is current and not delinquent; and
- (5) The amount to be financed by the PACE program may not exceed 20 percent of the just value of the property as determined by the county property appraiser, excepted as otherwise provided by statute; and
- (6) The total mortgage-related debt on the underlying property plus PACE program financing may not exceed the fair market value of the property.

(B) Multi-family residential properties of 5 or more units, in addition to commercial,

industrial, agricultural, and other non-residential properties may be eligible for financing qualifying improvements through a PACE program.

Sec. 111.03 - ELIGIBLE IMPROVEMENTS.

Energy efficiency, renewable and wind resistance improvements that are permanently affixed to the property shall be eligible for financing under a PACE program in accordance with statute. PACE programs and program administrators shall identify efficiency standards established by the U.S. Department of Energy, the U.S. Environmental Protection Agency, or Florida state agencies, as applicable. PACE programs and program administrators shall confirm that property owners intend to install eligible products, and that at the time of funding such improvements have been installed.

Sec. 111.04 - PRICING.

Each PACE program shall establish pricing rules and enforcement mechanisms to ensure that property owners are protected from excessive or unjustified prices and charges.

Sec. 111.05 - CONSUMER PROTECTION.

(A) *Property owner.* Only the record owner of the property may enter into a financing agreement with a PACE program.

(B) *Consumer notice.* In addition to any statutory disclosure requirements the program administrator shall ensure that each property owner is provided with a separate, written notice disclosing each of the following

- (1) 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);
- (2) The 3-day right to cancel the financing;
- (3) A repayment term that does not exceed the average expected useful life of the improvements;
- (4) The repayment process and terms, amounts and a schedule that fully amortizes the amount financed including the estimated annual assessment amount;
- (5) Identification of any pre-payment fees or penalties;
- (6) That there is no representation that the property improvements to be financed will increase the overall value of the property;
- (7) That there is no discount for paying the PACE assessment early;
- (8) That the PACE assessment will appear on the property owner's tax bill;
- (9) The nature of the lien recorded and 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 the property subject to the PACE assessment in the same manner as failure to pay property taxes;
- (10) The specific improvements to be financed and installed;

(11) 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.

(C) The consumer notice described in this section must be delivered to the property owner by the program administrator, 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.

(D) *Protected classes.* The PACE program and the program administrator shall not discriminate on the grounds of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status, or sexual orientation. Additionally, The PACE program and the program administrator shall specifically develop and implement a program that validates the understanding of the PACE program and the terms of such financing by any property owner who is 65 years of age or older.

(E) *Funding.* The PACE program shall require compliance with each of the following conditions prior to the issuance of any funding to the contractor:

- (1) Any necessary permits have been obtained;
- (2) Verification that the appropriate financed products and improvements have been installed; and

(3) The property owner and the contractor have signed a certificate of completion that all improvements have been installed to the property owner's satisfaction.

(F) *Consumer privacy.* The PACE program shall have and maintain a privacy policy 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 by state and federal law.

(G) *Data Security.* The Pace program shall be responsible for taking security measures that protect the security and confidentiality of property owner records and information in proportion to the sensitivity of the information, and as may be required by state and federal law.

Sec. 111.06 - MARKETING

Marketing practices for a PACE program that are or could appear to be unfair, deceptive, abusive, or misleading, or that violate laws or regulations, or that are inappropriate, incomplete or are inconsistent with the program's purpose are prohibited.

Sec. 111.07 - 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 license, certified or registered pursuant to state law.

(B) Contractors performing work under a PACE program shall comply with each of the following conditions:

- (1) Be licensed and insured pursuant to the applicable statutory requirements;
- (2) Agree to comply with all program requirements and marketing guidelines;

(3) Act in good faith to timely resolve property owner complaints.

(C) No cash payment may be made to or from a contractor 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.

Sec. 111.08 - INQUIRIES AND COMPLAINTS.

(A) Complaints regarding contractors. The PACE program or program administrator 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 program or program administrator shall investigate and mediate disputes between property owners and contractors in a timely manner.

(B) Payment inquiries. The PACE program or program administrator shall be required to respond to inquiries and resolve any issues, in a timely and complete manner, related to payments, including but not limited to prepayments and payment reconciliation.

(C) Review. In the event that ten percent or more of a PACE program's projects result in complaints or disputes, or complaints or disputes remain unresolved six months after completion of a project, the city may review the PACE program or program administrator's handling of complaints.

Sec. 111.09 - REPORTING.

Each PACE program shall provide a report to the city on a quarterly calendar basis, which shall include, at a minimum, the following information:

- (A) Dates of reporting period;
- (B) List of PACE projects started during the reporting period, separated by building type (e.g., single family, multifamily, retail, office, industrial, etc.);
- (C) List of PACE projects completed during the reporting period, separated by building type (e.g., single family, multifamily, retail, office, industrial, etc.). For each completed project, 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 (may be based on averages for type of improvement); (4) financial information such as cost per kWh saved/generated; (5) other resource savings if data is available; and (6) audits performed detailing the audit results, if applicable to the project.
- (D) Number of jobs created during the reporting period, including local versus non-local jobs and permanents versus temporary jobs;
- (E) Number of applications declined during the reporting period;
- (F) Unresolved complaints or contractor issues and status;
- (G) Description of the standardized third-party methodologies and supporting assumptions used to verify data, and any changes in the methodologies and assumptions from the previous reporting period.

Sec. 111.10 - COMPLIANCE PERIOD.

Any PACE program that does not have the current ability to provide the pricing rules and enforcement mechanisms or the minimum reporting required by this article shall have one year from the date of its initial agreement with the city to modify its pricing mechanisms, data collection and data maintenance systems to comply with this chapter. Florida Green Finance Authority (FGFA) shall continue funding pursuant to the adopted Amended Interlocal Agreement (recorded in public records for Palm Beach County at ORB 28757, Page 0813) and the Party Membership Agreement originally executed on June 25, 2012, but shall be subject retroactively to these requirements: and FGFA shall have one year from the effective date of this ordinance to comply with the requirements of this chapter if it does not already comply.

Sec. 111.11 - SUSPENSION OF PROGRAM.

(A) Failure of a PACE program or program administrator to cooperate with the city's review of the administration of such program shall be grounds for suspension of that PACE program or program administrator by the city commission. Any project that has been initiated as of the time of suspension shall be permitted to be completed.

(B) The city commission may suspend a PACE program from funding new projects for a term determined appropriate by the city commission, should the city commission find that the PACE program or its program administrator has failed to comply with the statutory requirements or the requirements of this article. Any project that has been initiated as of the time of suspension shall be permitted to be completed.

Secs. 111.12–111.99. RESERVED.