



Law and Legislation Committee Report

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Sacramento, CA 95814

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File #: 2016-01208

Discussion Item 02

Title: Review and Approval of a Proposed Policy for Property Assessed Clean Energy (PACE) Programs

Recommendation: 1) Review a Resolution establishing a policy for Property Assessed Clean Energy (PACE) Programs in the City of Sacramento; and 2) pass a Motion forwarding the Resolution to City Council for approval.

Location: Citywide

Contact: Randi L. Knott, Director of Government Affairs, (916) 808-5771, Office of the City Manager

Presenter: Jennifer Venema, Sustainability Manager, (916) 808-1859, Department of Public Works

Department: City Manager's Office

Attachments:

1-Description/Analysis

2-Resolution

3-Exhibit A (PACE Policy Procedure DRAFT)

Description/Analysis

Issue Detail: Property Assessed Clean Energy (PACE) programs provide property owners with a means to finance energy improvements to existing buildings through a voluntary special tax assessment on their property. Four PACE providers are currently authorized to offer financing within the City limits. The policy proposed for adoption would establish guidelines for PACE providers authorized by the City. The recommended policy reflects newly released guidance and best management practices for consumer protection and responsible lending practices.

Policy Considerations: The State of California has provided local governments with the ability to authorize PACE programs for purposes of allowing property owners to finance energy efficiency, water efficiency, seismic improvements, and renewable energy projects on existing structures. Financing occurs through a voluntary special tax on participating properties, pursuant to either 1) Chapter 29 of Division 7 of the Streets & Highways Code, as amended by Assembly Bill 811 in 2007; or 2) the Mello-Roos Community Facilities Act of 1982, as amended by Senate Bill 555 in 2011. Both types of PACE programs operate in the city. Approval of the resolution recommended in this report would create a new local policy applicable to existing PACE programs and those that the Council may authorize in the future. The following table identifies the PACE programs currently authorized to provide financing to properties within city limits.

Authorized PACE Providers

PACE Provider	Resolution No.
Ygrene	2011-539, 2012-0552, 2015-0390
California Statewide Community Development Authority Open PACE	2016-0008
California Home Energy Renovation Opportunity (HERO) Program	2016-0016
California Municipal Finance Authority	2016-0211

Economic Impacts: None

Environmental Considerations: The recommendation in this report is not a project under the California Environmental Quality Act (CEQA), because it does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).

Sustainability: The recommendation in this report would support City Council's economic and sustainability priorities. PACE programs are one of the implementation actions identified in the 2011 Sustainability Plan and a voluntary implementation item in the City's Climate Action Plan. Access to funding and financing is a key barrier to the widespread implementation of energy and water improvements in the existing building stock. PACE programs provide another option to property owners seeking to finance energy and water conservation improvements that lower utility expenses, reduce greenhouse gas emissions, and support local job creation.

Commission/Committee Action: Not applicable

Rationale for Recommendation: The recommended policy would address recent challenges and emerging practices in the PACE industry. The number of PACE transactions has grown rapidly, with recent experience across the state indicating the importance of government oversight for consumer disclosure, contractor performance, and responsible lending. Currently, no state or federal agency regulates PACE programs. In the absence of regulation, numerous cities and counties have elected to adopt local guidelines for PACE. Several government agencies and non-governmental organizations have recently released guidance for best practices and performance standards in PACE financing, including the U.S. Department of Energy Best Practices for Residential PACE Financing Programs (July 19, 2016), the U.S. Department of Housing and Urban Development Mortgage Letter 2016-11 (July 19, 2016), and the PACENation PACE Consumer Protection Policies Version 1.0 (May 10, 2016). Yet due to the absence of state or federal regulation, there is currently no established process or tool to ensure that PACE programs authorized by City Council comply with best practices. The policy recommended for approval in this report would equip the City to consider and evaluate current PACE programs and any future PACE proposals consistent with best practices.

Financial Considerations: Not applicable

Local Business Enterprise (LBE): Not applicable

RESOLUTION NO. 2016-

Adopted by the Sacramento City Council

APPROVING A POLICY FOR PROPERTY ASSESSED CLEAN ENERGY PROGRAMS IN THE CITY OF SACRAMENTO

BACKGROUND

- A. The State of California has provided local governments with the ability to authorize property assessed clean energy (“PACE”) programs for purposes of allowing property owners to finance energy efficiency, water efficiency, and renewable energy projects on existing structures through a voluntary special tax on the property pursuant to Chapter 29 of Division 7 of the Streets & Highways Code, as amended by Assembly Bill 811 in 2007; and the Mello-Roos Community Facilities Act of 1982, as amended by Senate Bill 555 in 2011; and
- B. The City has currently authorized four PACE programs to provide financing to property owners in city limits: 1) Ygrene PACE programs, operating through the Golden State Financing Authority and the City of Sacramento Clean Energy Community Facilities District; 2) the California Statewide Communities Development Authority Open PACE programs; 3) the California HERO Program; and 4) the California Municipal Finance Authority PACE Program; and
- C. The number of PACE transactions has grown rapidly, raising questions as to whether PACE programs are adequately addressed by government regulation; and
- D. Currently, no state or federal agency is responsible for the enforcement of minimum standards in PACE programs; and
- E. Numerous government agencies and non-governmental organizations have recently released guidance for best practices and performance standards in PACE financing, including the U.S. Department of Energy and the non-governmental PACENation organization; and
- F. Other jurisdictions have adopted local guidance for PACE programs, including the County of Sacramento, Marin County, Sonoma County, the City of Benicia, and the City of Chula Vista, in addition to several jurisdictions that have signed the Association of Bay Area Governments Regional Collaborative Services Agreement with Residential PACE Providers; and

- G. Staff propose adoption of a policy to establish guidelines and overall expectations for the performance and operation of PACE programs authorized by the City of Sacramento, applicable to both existing programs and those that the Council may authorize in the future.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. Adoption of the Property Assessed Clean Energy Policy as set forth in Exhibit A to this Resolution is approved.

Table of Contents:

Exhibit A – PACE Policy Procedure

Property Assessed Clean Energy Policy

Scope: CITYWIDE

Policy Contact

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Table of Contents

Purpose and Intent

Defined Terms

Minimum Standards

Additional Recommended Guidance

Policy Compliance

Regulatory References

Council Resolution 2016-XXX

Effective Date: November XX, 2016

I. PURPOSE AND INTENT

The purpose of this policy is to provide the City of Sacramento's expectations regarding the operation of property assessed clean energy (PACE) programs within city limits. This policy sets forth standards for consumer protections and responsible lending practices. The City intends that this policy will support the following primary objectives:

- a. Foster consumer protection practices;
- b. Encourage cost-effective improvements that result in real reductions in energy and water use; and
- c. Provide guidance to City staff for the oversight of PACE programs in the City of Sacramento.

PACE programs offer an alternative means to finance energy, water, and seismic improvements that are permanently affixed to existing properties. Eligible improvements may vary by PACE program, but generally include improvements for energy and water efficiency, distributed generation renewable energy facilities such as solar photovoltaics, and vehicle charging. Property owners participate by entering into a voluntary contract, which allows for placement of an assessment lien on the property for full project costs. Upfront costs are paid directly to the contractor completing improvements. Property owners then repay the costs of improvements, fees, and interest as a special assessment on property tax bills, typically over a five- to twenty-year period. PACE is a property-secured form of financing, which can remain with the property if sold or transferred.

2. DEFINED TERMS

For purposes of this policy, the following terms are defined and used hereinafter.

- a. "City" refers to the City of Sacramento.
- b. "Consumer" refers to the owner of property within the City's official boundaries that is considering or applying for PACE financing, or has executed an agreement for a PACE assessment on said property.
- c. "PACE program" refers to a PACE provider's distinct property-secured offering for the financing of energy, water, or seismic improvements on properties in city limits, or other improvements as deemed eligible by the California legislature that will be permanently affixed to real property, whereby the funds for improvements are repaid through contractual assessments. PACE programs are generally characterized by a unique program administrator, in addition to customized program branding, underwriting criteria, and approved participating contractors. Several PACE programs may operate under a single PACE provider. For example, PACE providers may offer separate programs for residential and nonresidential properties, with different program names and branding.

- d. “PACE provider” refers to the government authority authorized by resolution of the City Council to conduct PACE-related proceedings for property within the City’s official boundaries, pursuant to Chapter 29 of Division 7 of the Streets & Highways Code, which is commonly referred to as Assembly Bill 811 (Levine, 2008). PACE providers may delegate certain responsibilities and operations to entities that administer, manage, or assist with PACE program implementation, such as the review and approval of applications, securitization of financing, preparation and submission of annual levies, management of assessment repayments, and the administration of requirements for participating contractors. PACE providers may offer one or more PACE programs within City limits, with each program typically managed by a unique administrator working on behalf of the PACE provider. This definition includes PACE administrators, in instances where certain PACE provider responsibilities are delegated thereto.
- e. “Participating contractor” is any contractor that sells, installs, or completes improvements to real property for consumers pursuant to a PACE assessment in city limits. This definition includes any subcontractors working on behalf of a participating contractor as defined herein.

3. MINIMUM STANDARDS

The City expects PACE programs to meet the following minimum standards. Each PACE program should maintain PACE-related documentation, which may be necessary for demonstrating procedures, disclosures, and operations pursuant to the expectations in this policy.

- a. Consumer Disclosure
 - i. Each PACE provider should offer a three-day right to cancel the contractual assessment at any time prior to midnight on the 3rd business day after financial disclosure is provided to the property owner, with no penalty or obligation.
 - ii. Each PACE provider should provide information to consumers online, in written materials, or in video or another digital format, which encourages the completion of efficiency measures before generation installation such as solar photovoltaics.
 - iii. For residential properties:
 - a) Prior to assessment agreement execution, each PACE provider should require written applicant acknowledgment of the Federal Housing Finance Authority position on PACE financing on a signature acknowledgement page.
 - b) PACE providers should verify terms of financings live by telephone for homeowners age 64 years or older to verify that applicants understand financing terms and proposed project improvements prior to agreement execution, and maintain a written record of such acknowledgements, in addition to phone verification for any other special categories of homeowners. Voicemail messages do not satisfy this guidance for financing term confirmation.

- iv. For non-residential properties: Prior to agreement execution, each PACE provider should require written lender affirmative acknowledgement from any senior mortgage lender, acknowledging the assessment under consideration by the property owner. Documentation of acknowledgement should be maintained.
 - v. Under no circumstance should a PACE provider or participating contractor represent a PACE program as a City-endorsed or administered program.
 - vi. Within advertising materials, program websites, and written agreements with consumers, each PACE provider should give written statements to consumers that recommend consultation with a tax professional prior to claiming any tax deductions associated with the project.
- b. PACE Eligibility
- i. Each PACE provider should verify that property owners are current on all property taxes and mortgage debt for the subject property prior to approving a property for an assessment.
 - ii. Each PACE provider should establish maximum assessment amounts by property type that are reasonable in relation to property value, and identify limitations on the total amount of any annual property taxes and assessments.
 - iii. Each PACE provider should deny projects where total mortgage-related debt on the underlying property and total assessment value would exceed the fair market value of the property.
- c. Quality of Work and Customer Service
- i. Each PACE provider and any participating contractors should perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by an entity delivering PACE-related services, and in accordance with generally accepted professional practices and standards of care.
 - ii. Each PACE program should include a requirement that all participating contractors obtain finalized permit approval, or proof of permit approval, for any applicable permits.
 - iii. Each PACE program should contain minimum training and management systems for participating contractors, including but not limited to standards for allowable improvements, processes to ensure consumer protections, and quality assurance procedures.
 - iv. Each PACE program should contain an eligible products database for use by its participating contractors, which identifies allowable products and specifications with maximum costs. The database should only contain products that are recognized by the U.S. Department of Energy, U.S. Environmental Protection Agency, or California state agencies to provide reductions in energy and water use.
 - v. Each PACE program should include a post-project dispute resolution process, which is summarized online or in written format.

- d. Financial Policies
 - i. Each PACE provider should use fixed interest rates that are not variable.
 - ii. Each PACE provider should provide payment schedules for consumers that fully amortize the total obligation with no balloon payments.
 - iii. Each PACE program with assessment offerings to residential properties should be enrolled in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loan Loss Reserve Program, or a comparable loan loss reserve program that, at a minimum, meets CAEATFA eligibility criteria.
- e. General Processes and Documentation
 - i. Each PACE program should include a standardized financial disclosure form in proposals and provide to consumers for review and signature prior to execution of an assessment agreement. Documentation of said disclosure forms shall be maintained for as long as the assessments remain on consumers' property. The financial disclosure form shall clearly identify a) the amount financed, including capital costs, interest, and fees; b) repayment process and schedule; c) annual payment amounts; d) total to be paid for the life of the loan; e) simple interest rate; f) annual percentage rate, or APR; and g) any prepayment fees.
 - ii. Each PACE provider should notify the City of any delinquencies and foreclosure actions as a result of a default in the payment of an assessment.
 - iii. Each PACE provider should establish guidelines and procedures to remove satisfied assessments and manage delinquencies. The PACE provider should give multiple written notices to any property owner with delinquencies, and offer options for repayment prior to initiating legal action for collections.
 - i. Each PACE provider should give the City program reports upon City request, or access to an online data portal, to show performance metrics such as total number of residential and nonresidential project financings, total financed amount, estimated energy and water savings, and energy capacity of any generation improvements installed. For PACE providers with more than one program, the PACE provider shall be responsible for providing the City with metrics in a standardized format.
 - iv. Each PACE provider should maintain documentation on PACE-related transactions and furnish to the City upon request within thirty calendar days.

5. ADDITIONAL RECOMMENDED GUIDANCE

The City encourages consideration and implementation of the following additional practices.

- a. Within preliminary proposals, each PACE program is encouraged to include documents that disclose estimated cost savings in utility bills, energy reductions, and the payback period for project improvements.
- b. Each PACE provider should encourage participating contractors to recommend cost-effective improvements for PACE financing with payback periods that are within the useful life of the equipment.
- c. Each PACE program should include materials online and in written format that encourage consumers to consider available rebates and incentives for improvements, including but not limited to those offered by the Sacramento Municipal Utility District, Pacific Gas and Electric, the City of Sacramento, and other local, state, or federal rebates, as applicable.

6. POLICY COMPLIANCE

Consistent with the foregoing, the City makes the following general representations:

- a. Should a PACE provider or its PACE programs fail to meet the City's expectations as identified in this policy, the City reserves its right to alter or terminate its relationship or membership with the PACE provider.
- b. This policy constitutes the City's expectations and provides guidance to City staff to conduct oversight of PACE programs; however, notwithstanding the foregoing, this policy should not be relied on by consumers as to the fairness or legitimacy of any specific PACE program.
- c. The Sustainability Manager of Public Works shall be responsible for administering this policy and providing recommendations to City Council accordingly, together with any other staff persons chosen by the City Manager.
- d. Nothing in this policy amends the City's role or responsibilities as identified in the authorizing resolutions for each PACE provider as defined herein, and the City shall not be responsible for the conduct of any assessment proceedings; the levy of assessments; any remedial action in the case of delinquencies; or the issuance, sale or administration of any bonds issued in connection with the PACE programs.