



# City of Sacramento City Council

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**Meeting Date:** 9/13/2011

**Report Type:** Consent

**Title:** Resolution Declaring the City Council's Intent to Establish a Property Assessed Clean Energy Program

**Report ID:** 2011-00817

**Location:** Citywide

**Recommendation:** Adopt a **Resolution** declaring the City Council's intent to make voluntary contractual assessment financing available to owners of commercial property and calling a public hearing.

**Contact:** Yvette Rincon, Sustainability Program Manager, (916) 808-5827; Reina J. Schwartz, Director, Department of General Services, (916) 808-7195

**Presenter:** Not applicable

**Department:** General Services Dept

**Division:** Office of the Director

**Dept ID:** 13001021

## **Attachments:**

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- 1- Description/Analysis
- 2- Attachment 1-Background
- 3- Resolution

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## **City Attorney Review**

Approved as to Form  
Joseph Cerullo  
9/12/2011 6:31:19 PM

## **Approvals/Acknowledgements**

Department Director or Designee: Reina Schwartz

## Description/Analysis

**Issue:** Staff is requesting City Council adopt a resolution declaring its intent to create a Commercial Property Assessed Clean Energy (“PACE”) program that will make voluntary contractual assessment financing available citywide to owners of commercial property who wish to install distributed-generation renewable-energy sources or energy-efficiency or water-conservation improvements. The assessments will be imposed in accordance with chapter 29 (beginning with section 5898.10) in part 3 of division 7 in the Streets and Highways Code (“Chapter 29”). In accordance with Chapter 29, the resolution also identifies the kinds of improvements that may be financed; describes the area within which PACE financing will be available; describes the proposed arrangements for financing the program and the criteria for determining the creditworthiness of property owners who desire to participate; orders City staff to prepare a report that describes the program; directs that City staff consult with the Sacramento County Auditor’s Office on what additional fees, if any, will be charged for putting the assessments on the tax roll; and states that the City Council will hold a public hearing on September 27, 2011, at which interested persons may object to, or comment upon the program.

**Policy Considerations:** The recommendations in this report are consistent with the City Council’s economic and sustainability priorities for the City. Participation in the PACE program will be entirely voluntary and will enable owners of commercial property to finance renewable-energy, energy-efficiency, or water-conservation improvements using investor funds repaid through assessments added to their property-tax bills. These projects will reduce operating costs for business owners, create jobs, and reduce greenhouse-gas emissions.

### Environmental Considerations:

**California Environmental Quality Act (CEQA):** Adoption of a resolution declaring the City Council’s intent to establish the commercial PACE program is not a “project” subject to CEQA because (a) it has no potential to cause a significant effect on the environment and (b) it pertains to creation of a government-funding mechanism not involving a commitment to a specific project that may result in a potentially significant physical impact on the environment. (Cal. Code Regs. title. 14, §§ 15061(b)(3) & 15378(b)(4).)

**Sustainability:** Creating a commercial PACE program is one of the implementation actions identified in the 2011 Sustainability Plan and a voluntary implementation item in the City’s Climate Action Plan.

**Commission/Committee Action:** None

**Rationale for Recommendation:** The proposed PACE program will benefit the environment as well as the local economy. A study commissioned by the City, and completed by the Center for Strategic Economic Research, calculates that this program has the potential to annually create \$30 million in economic output, 232 jobs, \$13 million in salaries, and \$1.6 million in state and local tax revenue.

**Financial Considerations:** There is no financial impact to the City. All costs will be paid either by the property owners who participate in the program (through interest they pay on their loans plus application fees) or from an Energy Efficiency and Conservation Block Grant that the City Council accepted on May 22, 2009, by adopting Resolution No. 2009-320. A total of \$630,812 of this grant has been programmed in the City's Federal Energy Efficiency Grant Project (G13000050, Fund 2702, Operating Grants) for establishment of a regional assessment-financing program.

**Emerging Small Business Development (ESBD):** None

Respectfully Submitted by: \_\_\_\_\_  
Yvette Rincon  
Sustainability Program Manager

Approved by: \_\_\_\_\_  
Reina J. Schwartz  
Director, Department of General Services

Recommendation Approved:

\_\_\_\_\_  
John F. Shirey  
City Manager



## **Background**

The City of Sacramento is and has been a leader in sustainability and continually seeks opportunities to enhance that status. The City’s goal is to reduce greenhouse-gas (“GHG”) emissions communitywide to 1990 levels by 2020. In the City, GHG emissions from commercial and industrial buildings are second only to transportation related GHG emissions — exceeding even residential GHG emissions. Reaching the communitywide GHG-emission-reduction goal will require a number of programs and policies. The commercial PACE program is one important program that the City will pursue, not only to reduce GHG but also to create jobs and reduce operating costs for commercial buildings in the City.

This program will address two major financial hurdles to these capital-intensive projects: the high up-front cost and the potential that those costs will not be recovered upon sale of the property. Under the proposed program, there is little or no up-front cost to the property owner, and if the property is sold before the investors are repaid the new owner simply assumes responsibility for the remaining assessments as part of the property’s annual tax bill.

The commercial PACE program will enable owners of commercial property to obtain investor funding for renewable-energy, energy-efficiency (e.g., solar thermal, solar electric), and water-conservation improvements and repay the investors over a multi-year period (not to exceed 20 years) through annual assessments on their property-tax bills. The program is completely voluntary: no property will be subject to an assessment unless the owner volunteers to participate in the program and enters into a contract for the assessment. Moreover, each participating owner will pay only for the cost of qualifying improvements to that owner’s property (including principal, interest, reserves, and administrative costs) plus application fees.



## RESOLUTION NO. 2011-XXXX

Adopted by the Sacramento City Council

September 13, 2011

### DECLARING INTENT TO ESTABLISH A CITY SPONSORED COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY PROGRAM

#### BACKGROUND

- A.** The upfront cost of distributed-generation renewable-energy sources and energy-efficiency and water-conversion improvements (“**Eligible Improvements**”) that will make real property more energy and water efficient prevents many property owners from making those improvements. To make Eligible Improvements more affordable and to promote their installation, the Legislature has enacted Chapter 29 (beginning with section 5898.10) in part 3 of division 7 of the California Streets and Highways Code (“**Chapter 29**”), which authorizes voluntary contractual assessments to finance the cost of Eligible Improvements that are permanently fixed to commercial real property.
- B.** The City Council wishes to declare its intent to establish a Commercial Property Assessed Clean Energy program (the “**PACE Program**”) under which the City would make voluntary contractual-assessment financing available to owners of commercial property within the City who wish to install Eligible Improvements on that property, subject to the conditions set forth below.

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

**Section 1.** The City Council hereby declares that the statements in paragraphs A and B of the Background are correct.

**Section 2.** The City Council determines that it would be convenient, advantageous, and in the public interest to designate the entire City as an area within which authorized City officials and owners of commercial property may enter into voluntary contractual assessments in accordance with Chapter 29 to finance the installation of Eligible Improvements. The City Council further determines that financing the installation of Eligible Improvements through voluntary contractual assessments is in the public interest. Accordingly, the City Council hereby declares that it proposes to make voluntary contractual assessment financing available to owners of commercial property to finance the installation of Eligible Improvements.

**Section 3.** The Eligible Improvements include but are not limited to the following:

- (a) *Energy Efficiency.* Air sealing and ventilation (air filtration, building envelope, duct leakage and sealing); bathroom, ceiling, attic, and whole-house fans; insulation; defect correction; attic, floor, walls, roof, and ducts; weather stripping; home sealing; geothermal-exchange heat pumps; HVAC systems; evaporative coolers (coolers must have a separate ducting system from air conditioning and heating ducting system); natural-gas-storage water heater (energy star listed); tank-less water heater; solar water-heater system; reflective insulation or radiant barriers; cool roof; windows and glass doors (U value of 0.40 or less and solar-heat-gain coefficient of 0.40 or less); window filming; skylights; solar tubes; additional building openings to provide additional natural light; lighting (Energy Star listed – no bulb, only retrofits); and pool equipment (e.g., pool-circulating pumps).
- (b) *Other Non-residential Building Measures.* Occupancy-sensor lighting fixtures (SMART parking-lot bi-level fixture; SMART parking-garage bi-level fixtures; SMART pathway lighting; SMART wall-pack fixtures); task ambient office lighting; classroom lighting; refrigerator case LED lighting with occupancy sensors; wireless daylight-lighting controls; kitchen exhaust variable air-volume controls; and wireless HVAC controls and fault detection.
- (c) *Solar Equipment.* Photovoltaic and solar-thermal equipment such as solar thermal hot-water systems; solar thermal systems for pool heating; photovoltaic systems (electricity); and emerging technologies (see Custom Projects).
- (d) *Water Conservation.* Faucet aerators; core-plumbing system; gray-water system; instantaneous hot-water heater; recirculation hot-water system; demand initiated hot-water system; hot-water pipe insulation; irrigation-control system; irrigation system; rainwater cistern; low-flow showerhead; high-efficiency toilets; demand water softener; whole-house water-manifold system; cooling-condensate reuse; cooling-tower conductivity controllers; deionization; filter upgrades; foundation drain water; industrial-process water-use reduction; pre-rinse spray valves; recycled water source; urinals; and waterless urinals.
- (e) *Custom Projects.* City staff can evaluate and approve funding for projects that are not “off the shelf” Eligible Improvements. These custom projects may involve large-scale industrial or commercial energy-efficiency improvements; processing or industrial mechanical systems; and renewable energy-generation from sources such as geothermal and fuel cells. Custom energy-efficiency measures include but are not limited to building energy-management controls, HVAC duct zoning-control systems, irrigation pumps and controls, lighting controls, and industrial- and process-equipment motors and controls. Custom energy-generation measures include but are not limited to fuel cells, wind-turbine power system, natural gas, hydrogen fuel, other fuel sources (emerging technologies), and co-generation (heat and energy).

**Section 4.** The area within which voluntary contractual assessments may be entered into in accordance with Chapter 29 is all land within the defined boundaries of the City.

**Section 5.** The proposed arrangements for financing the contractual assessment financing program are briefly described as follows:

- (a) The City will enter into a professional-services agreement with Ygrene Energy Fund, Inc. (“Ygrene”), which will provide investor funding for the PACE Program and will administer the PACE Program on the City’s behalf.
- (b) The investor funds that Ygrene advances through the PACE Program will be repaid in accordance with assessment agreements between the City and participating property owners, under which voluntary contractual assessments imposed on the improved properties will be collected in installments using the property-tax system.
- (c) Eligibility for participation in the PACE program will be based on the following underwriting criteria, which will be more fully developed in, and may be revised by, the report prepared in accordance with Section 7 below:
  - (1) The minimum funding request is \$2,500.
  - (2) Financings of \$250,000 or less.
    - (A) Only Eligible Improvements may be financed.
    - (B) The property to be improved must be located within the City and must be on the property-tax rolls.
    - (C) The property owner must notify all lenders who have liens on the property that the property owner intends to record a voluntary contractual assessment against the property, that the assessment lien will be senior to existing liens, and that the lender may object to recordation of the assessment lien if the lender can demonstrate that the assessment lien will violate the terms of the lender’s financing agreements. If a lender objects, then the property owner will not qualify for the program unless the property owner can resolve the issue with the lender.
    - (D) Each holder of fee-simple title to the property must sign the PACE Program documents.
    - (E) The property owner must participate in applicable federal, state, utility company, and City-sponsored incentive programs to the extent the project qualifies for the incentive programs, which must not conflict with requirements of the PACE Program.
    - (F) The property owner must agree to provide Ygrene with access to the property’s utility-usage records so that Ygrene may monitor energy savings.
    - (G) The property owner must be current in the payment of all obligations secured by the property (including loans, property taxes,

assessments, and tax liens) and must have been current for all such obligations during the previous three years (or since the property owner has held title to the property, if for less than three years). Ygrene may review public records and private credit histories, including county real-property records, to verify compliance with this requirement. Certain allowances may be made for delays in property-tax payment that do not reflect financial distress. The application of a property owner who is appealing a property-tax assessment will be reviewed, and the property owner's eligibility will be determined, on a case-by-case basis.

- (H) The total mortgage debt on the subject property must not exceed 85% of the property's value.
  - (I) The aggregate principal amount of the PACE assessment on the property must not exceed 10% of the property's value.
  - (J) The total annual aggregate taxes and assessments on the property, including the PACE assessment, must not exceed 5% of the property's value.
  - (K) Ygrene will conduct an energy audit for the property to estimate the utility-cost savings from the Eligible Improvements. The savings must be greater than the total cost of installing the improvements and operating them over their useful life.
- (3) Financings of more than \$250,000 but less than \$500,000.
- (A) All of the requirements listed under subsection 5(c)(2) above, plus the following:
  - (B) Ygrene will open an escrow with a local title company and obtain title insurance that will protect the property owner and the investors if there's a defect in the title to the property.
  - (C) The property owner must submit a Natural Hazard Zone Disclosure Report on the property. If the report indicates the possible presence of environmental contaminants, then Ygrene will require that the property owner submit a Phase I Environmental Assessment.
- (4) Financings of more than \$500,000.
- (A) All of the requirements listed under subsections 5(c)(2) and 5(c)(3) above, plus the following:
  - (B) The energy audit and determination of estimated energy savings must be conducted by an engineering firm, qualified in the field of energy-efficiency and renewable-energy analysis.
  - (C) The property owner must obtain insurance that will guarantee the energy cost savings over the life of the Eligible Improvements, as predicted by the energy audit.

- (d) The City Treasurer's Office will have audit authority over the accounting structure developed by Ygrene to run the Program.

**Section 6.** The City Council will hold a public hearing on September 27, 2011, at 6:00 p.m. in the City Council's Chambers located on the first floor of New City Hall, 915 I Street, Sacramento, California, all as required by section 5898.26 of Chapter 29. The City Clerk is hereby directed to publish notice of the public hearing in accordance with section 5898.24 of Chapter 29. At the public hearing all interested persons may object to, or inquire about, the PACE Program and any of its particulars.

**Section 7.** The Director, Department of General Services, is hereby directed to do both of the following:

- (a) prepare a report on the PACE Program in accordance with sections 5898.22 and 5898.23 of Chapter 29 and submit the report to the City Clerk before the hearing; and
- (b) enter into consultations with the Sacramento County Auditor-Controller's Office in order to reach agreement on what additional fees, if any, will be charged to the City for incorporating the proposed voluntary contractual assessments into the assessments of the general taxes of the City on real property.