

ORDINANCE NO.

1 AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD
2 COUNTY, FLORIDA, PERTAINING TO THE PROPERTY ASSESSED CLEAN ENERGY
3 ("PACE") PROGRAM IN BROWARD COUNTY; REPEALING SECTION 20-14 OF THE
4 BROWARD COUNTY CODE OF ORDINANCES ("CODE"); CREATING
5 SECTIONS 20-176.130 THROUGH 20-176.137 TO BE KNOWN AS THE "BROWARD
6 PACE ACT"; PROVIDING FOR DEFINITIONS, INTERLOCAL AGREEMENTS,
7 PROGRAM ADMINISTRATOR REQUIREMENTS, AND DISCLOSURE
8 REQUIREMENTS; AMENDING SECTION 8½-16, CREATING A FEE SCHEDULE FOR
9 VIOLATIONS OF THE BROWARD PACE ACT; AND PROVIDING FOR SEVERABILITY,
10 INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

11 (Sponsored by the Board of County Commissioners)

12

13 WHEREAS, Section 163.08, et seq., Florida Statutes ("PACE Statute"), allows
14 local governments, dependent special districts, and separate legal entities created
15 pursuant to Section 163.01(7), Florida Statutes, to provide voluntary financing for certain
16 qualifying improvements and to collect payment through non-ad valorem assessments
17 (collectively, "PACE financing");

18 WHEREAS, since at least 2016, Broward County ("County") ~~permits~~has permitted
19 property assessed clean energy ("PACE") programs to operate in Broward County,
20 subject to certain requirements, to allow property owners access to PACE financing for
21 qualifying improvements to their real property;

22 WHEREAS, to address concerns regarding inadequate disclosures of financial
23 obligations, inappropriate use of the County logo, and misrepresentation of affiliation with
24 the County, and to update the County PACE-related requirements to be consistent with
25 ~~the amendments to the PACE Statute made during the 2024 Session of the Florida~~
26 Legislature Chapter 2024-273, Laws of Florida, the Board of County Commissioners finds
27 it appropriate to amend the PACE-related provisions in the Broward County Code of
28 Ordinances; and

29 WHEREAS, the proposed Ordinance will update and strengthen the County's
30 PACE-related requirements by, among other things, requiring a current interlocal
31 agreement with the County to offer PACE financing in Broward County, prohibiting
32 misleading or deceptive marketing, including misuse of the County logo, by PACE-related
33 entities, and establishing additional enforcement mechanisms,

34 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
35 BROWARD COUNTY, FLORIDA:

36 Section 1. Section 20-14 of the Broward County Code of Ordinances is hereby
37 repealed in its entirety,

38 Section 2. Chapter 20, Article VII, of the Broward County Code of Ordinances
39 is hereby amended to create Division 8, including Sections 20-176.130 through
40 20-176.137, to read as follows:

41 [Underlining omitted]

42 **DIVISION 8. BROWARD COUNTY PROPERTY ASSESSED**

43 **CLEAN ENERGY ("PACE") ACT**

Sec. 20-176.130. Title.

This division shall be known as the “Broward County Property Assessed Clean Energy Act” or the “Broward PACE Act.”

Sec. 20-176.131. Applicability.

The Broward PACE Act is applicable countywide to the extent permitted by the Florida Constitution, Article VIII, Section 1, and the Charter of Broward County, Florida.

Sec. 20-176.132. Definitions.

The definitions provided in Section 163.08, Florida Statutes, as ~~may be~~ amended from time to time, apply to this division. Additionally, the following words and phrases have the following meanings:

Assessment means the non-~~ad~~ valorem assessment placed on a property owner’s tax bill because of financing obtained under the PACE Statute.

Code means the Broward County Code of Ordinances, as amended from time to time.

Contractor means any contractor or subcontractor providing services, directly or indirectly, or soliciting, marketing, or otherwise communicating with potential consumers regarding services, that would result in an owner of real property ~~(a: (i))~~ being provided a qualifying improvement, ~~(b: (ii))~~ entering into a financing agreement, ~~;~~ and ~~(ciii)~~ having a PACE assessment levied on the real property pursuant to the PACE Statute. “Contractor” as used in the Broward PACE Act includes “qualifying improvement contractor” as defined by the PACE Statute.

65 *Financing agreement* means the agreement between the property owner(s) and a
66 program administrator or third-party administrator to finance qualifying improvements
67 through assessments on the affected real property.

68 *PACE financing* means financing for qualifying improvements through
69 assessments on the affected real property in Broward County pursuant to the PACE
70 Statute.

71 *PACE Statute* means Section 163.08, et seq., Florida Statutes, as amended from
72 time to time.

73 **Sec. 20-176.133. Authorization and Deauthorization of Program Administrators;**
74 **Interlocal Agreements.**

75 (a) *Authorization.* Each program administrator that provides PACE financing,
76 directly or indirectly, and/or levies an assessment to fund qualifying improvements within
77 Broward County, must: (i) be authorized by a resolution of the Board of County
78 Commissioners of Broward County, Florida ("Board"); and (ii) enter into and maintain ~~an~~
79 currently valid interlocal agreement with the County pursuant to the Broward PACE Act
80 ("PACE Interlocal Agreement") and the PACE Statute. After December 9, 2024, ~~None~~
81 program administrator, third-party administrator, or contractor is authorized to offer, solicit,
82 market, or sell, ~~contract for, or provide PACE financing, install~~ qualifying improvements
83 ~~financed through,~~ enter into PACE financing, record financing agreements for qualifying
84 improvements, or levy ~~new~~ assessments underbased on unrecorded or new financing
85 agreements pursuant to the PACE Statute, ~~unless or the applicable program administrator~~
86 ~~has~~ Broward PACE Act without: (i) authorization to operate within Broward County by
87 resolution of the Board; and (ii) a PACE Interlocal Agreement with the County that is

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currently in effect in accordance with this section, Sections 163.081(b) and 163.082(b), Florida Statutes, and Section 9 of Chapter 2024-273, Laws of Florida.

(b) *Deauthorization.* If the resolution authorizing a program administrator to operate within Broward County is repealed by the Board and a PACE Interlocal Agreement ~~required under Section 20-176.133(a)~~ is terminated, expired, or no longer validly in effect, as required under Section 20-176.133(a), the applicable program administrator is deauthorized as of the date of such repeal and termination, expiration, or other effective invalidation from any and all of the following in Broward County: offering, soliciting, marketing, selling, or contracting for PACE financing for qualifying improvements; accepting or approving new applications for PACE financing; providing PACE financing or recording financing agreements for qualifying improvements; or levying ~~new~~ assessments based on unrecorded or new financing agreements under the PACE Statute.

(c) *Interlocal Agreements.*

(1) A program administrator seeking to provide PACE financing in Broward County must submit a request for authorization to operate within Broward County and provide the documentation required in Section 20-176.133(d). If the County determines that the requirements of Section 20-176.133(d) are met, the County will provide to the program administrator the applicable PACE Interlocal Agreement that must be executed and recorded in the Official Records of Broward County, Florida, before the program administrator may offer PACE financing in Broward County.

(2) The PACE Interlocal Agreement provides a mechanism for each municipality within Broward County to elect not to permit the program administrator to offer PACE financing within the jurisdictional boundaries of that municipality (if elected and for the duration of any such election, an “Opt-Out Municipality”). The PACE Interlocal Agreement does not authorize the program administrator to operate within the jurisdictional boundaries of any Opt-Out Municipality. No program administrator or third-party administrator may provide PACE financing within an Opt-Out Municipality unless and until the applicable program administrator is expressly authorized to operate by that municipality within its jurisdictional boundaries.

(d) Any program administrator seeking to provide PACE financing in Broward County must provide the following documentation: (i) before entering into a PACE Interlocal Agreement; (ii) upon request by the County at any time; and (iii) promptly upon any material change in the documentation previously submitted:

- (1) The proposed list of qualifying improvements offered to property owners;
- (2) The standard financing terms and agreements to be utilized;
- (3) The name, address, and contact information for all affiliated third-party administrators;
- (4) Documentation demonstrating the consumer protection policies and practices of the program administrator and each affiliated third-party administrator, including, without limitation, as required by the PACE Statute or the Broward PACE Act;

- (5) All forms of the PACE notices required by the PACE Statute and Section 20-176.136;
- (6) Certificates of insurance for the program administrator and each affiliated third-party administrator evidencing current coverage, or a commitment to obtain such coverage prior to offering PACE financing in Broward County, compliant with the current minimum insurance requirements established by the County (available online at the Broward County Natural Resources Division website);
- (7) Documentation of the program administrator's process for registering, monitoring, suspending, penalizing, and terminating qualifying improvement contractors pursuant to the PACE Statute;
- (8) The website addresses of the program administrator and each affiliated third-party administrator ~~that include~~which addresses must contain links showing their annual reports, operational audit reports, and the status of registered qualifying improvement ~~contracts~~contractors required by the PACE Statute; and
- (9) Documentation of all authorizations and deauthorizations to operate within the jurisdictional boundaries of any municipality within Broward County.

Sec. 20-176.134. PACE Program Requirements.

(a) *General requirements.* Each program administrator, third-party administrator, and contractor must comply with all applicable requirements of the PACE Statute and the Broward PACE Act. Each program administrator, third-party administrator,

and contractor must also comply with, and each qualifying improvement must meet, the following minimum standards:

- (1) All applicable federal, state, and local permits and/or licenses to install the qualifying improvements must be applied for and obtained;
- (2) Financing agreements must be limited to qualifying improvements that are permanently affixed to the property and comply with all applicable requirements of the PACE Statute and the Broward PACE Act;
- (3) All contractors must be properly registered, licensed, and insured in accordance with all applicable municipal, County, and state requirements, including Section 163.083, Florida Statutes.
- (4) Program administrators and third-party administrators shall fund, and contractors shall construct or install, only those qualifying improvements and related products that meet all applicable energy, wind, and building code standards established by the U.S. Department of Energy, the U.S. Environmental Protection Agency, the State of Florida, the County, and/or the applicable municipality;
- (5) Program administrators and third-party administrators must take necessary and appropriate measures to protect the security and confidentiality of consumer records and other personally identifiable information, to the extent required by applicable law; and
- (6) All qualifying improvements must be, as applicable: (i) at least as energy efficient as the rating of the product being replaced (if any); (ii) Energy Star

certified or compliant with current national efficiency standards; and (iii) sized appropriately.

(b) *Marketing and communications.* The following provisions are in addition to the requirements of the PACE Statute:

- (1) No person or entity may engage in any marketing or advertising practice relating to the installation or financing of qualifying improvements that: (i) is unfair, deceptive, abusive, or misleading; (ii) violates any applicable law or regulation including, without limitation, Sections 20-160 and 20-161 of the Code; or (iii) violates the PACE Statute or the Broward PACE Act;
- (2) No person or entity may create, use, or distribute marketing materials or communications stating, suggesting, or implying: i) that the PACE program is a government assistance program; ii) that the qualifying improvements or the PACE financing are free or provided at no cost; iii) that utilizing PACE financing does not require repayment of the financial obligation; iv) any affiliation or endorsement of the PACE program by the County; v) any guarantee or assurance that PACE financing or the PACE-related assessments will be repaid by the subsequent owner(s) of the property; vi) any guarantee or assurance that the qualifying improvements will pay for themselves; or vii) any guarantee or assurance that the property owner(s) will receive tax benefits from participating in the PACE program; and
- (3) No marketing and communications materials, including any advertisement, poster, circular, book, pamphlet, flyer, website, stationery, newsletter, disclosure, or other material or publication, relating to the installation or

financing of qualifying improvements shall include the County's official logo, or any facsimile thereof, in any manner whatsoever. Any violation of Section 21-1 of the Code by a program administrator, third-party administrator, or contractor is also a violation of this section of the Broward PACE Act.

Sec. 20-176.135. Disclosure Requirements.

(a) The disclosure requirements of this section are in addition to the disclosure requirements of the PACE Statute.

(b) Each program administrator and third-party administrator must obtain each property owner's individual written acknowledgment of each of the following disclosures before entering into a financing agreement for qualifying improvements to the property owner's real property:

- (1) The full legal description, address, and folio number or parcel identification number of the property subject to the PACE assessment;
- (2) Any discount for paying property taxes early will not apply to the PACE assessment;
- (3) There is no discount for prepayment of the PACE assessment; and
- (4) The property improvements and PACE assessment may or may not affect the ~~overall~~fair market value of the property.

Sec. 20-176.136. Additional Requirements for Residential Property.

In addition to the requirements of the PACE Statute, program administrators and third-party administrators that provide PACE financing for qualifying improvements to residential property in Broward County must also comply with the following requirements:

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223 (a) *Equity requirement.* Upon entering into a financing agreement for a
224 qualifying improvement to residential property, the property owner(s) must have equity in
225 the subject property of at least ten percent (10%) of the justfair market value of the
226 property, ~~as demonstrated by (i) the just value~~ determined by the Broward County
227 Property Appraiser for the most recent calendar year, (ii) an industry-quality appraisal
228 performed by a credentialed commercial property appraiser, or (iii) automated valuation
229 modeling;

230 (b) *Application fee.* No application fee may be charged for rejected applications
231 for PACE financing of qualifying improvements to residential property;

232 (c) *Price due diligence.* Before entering into a financing agreement for a
233 qualifying improvement to residential property, program administrators and/or third-party
234 administrators ~~must conduct appropriate due diligence using industry-accepted sources~~
235 ~~for construction costs estimates, such as the RSMeans construction cost database, shall~~
236 require contractors to ~~ensure~~attest that ~~contractor~~the contractor's prices for services,
237 materials, and products for the qualifying improvement project do not exceed one hundred
238 twenty-five percent (125%) of the average market price in the tricounty area, consisting
239 of Broward, Miami-Dade, and Palm Beach counties, for the same services, materials, and
240 products, and the program administrators and/or third-party administrators shall conduct
241 appropriate due diligence using either the program administrator's and/or the third-party
242 administrator's internal construction cost estimates or industry-accepted sources for
243 construction costs estimates, such as the RSMeans construction cost database, to
244 confirm, in a writing they maintain, the accuracy of the contractor's attestation;

(d) *County-approved PACE notice.* Each program administrator must use and require its third-party administrators to use a County-approved PACE notice that provides the ~~relevant information pertaining to the PACE project costs, fees, interest, annual payment amount, and term~~disclosures required by the PACE statute and the actual total amount to be financed, including the total and itemized cost of the qualifying improvement, all program, administrative, and collection costs, all capitalized interest, closing costs, and the actual annual assessment amount, and the term of the financing agreement and the schedule for the non-ad valorem assessments, with all such information printed in at least 18-point bold font.

(1) The program administrator must submit the proposed PACE notice form to the County for review and must obtain the County's written approval of the proposed notice form prior to offering PACE financing for residential properties in Broward County.

(2) The PACE notice must be signed and dated by each individual property owner before or contemporaneously with the property owner's execution of any legally binding document obligating the property owner to pay for any qualifying improvement including, without limitation, any financing agreement and before the commencement of work to construct or install any qualifying improvement.

(3) The program administrator or third-party administrator must submit a copy of the executed PACE notice to the Broward County Natural Resources Division at Resilience@Broward.org within ninety (90) days after execution

by the property owner(s). The executed PACE notices may be submitted in bulk monthly, subject to the foregoing timing requirement.

- (4) The program administrator shall record, or cause to be recorded, the signed PACE notices in the Official Records of Broward County, Florida, as an attachment to the recorded financing agreement or, if applicable, to the summary memorandum of the financing agreement recorded in the Official Records pursuant to the PACE Statute.

(e) *Disclosure interview.* On entering into a financing agreement for a qualifying improvement to residential property, the program administrator or third-party administrator must conduct a disclosure interview with each property owner to confirm the property owner's understanding of the disclosures in the PACE notice and understanding of the following: (i) the total number of years of the annual PACE assessment; (ii) mandatory collection as part of the annual property tax bill for which the property owner is responsible; (iii) the potential impact on escrow amounts for those property owners with a mortgage on the subject property; and (iv) the absence of government relief, including bankruptcy, to avoid collection of the PACE assessment.

- (1) The program administrator or third-party administrator must prepare and maintain, for a retention period of at least five (5) years after the PACE financing agreement is fully executed, an audio recording of the disclosure interview. The property owner may, at any time during the applicable retention period, request in writing a copy of the audio recording of the disclosure interview, and the program administrator or third-party administrator shall promptly provide same at no cost.

(2) If requested in writing during the aforementioned retention period, the program administrator or third-party administrator shall promptly provide a copy of the audio recording of the disclosure interview to the County at no cost.

(f) *Financing Limits.* Except as provided in Section 20-176.136(g), the program administrator or third-party administrator must ensure that the total amount of all annual property taxes and assessments, in the aggregate, does not exceed five percent (5%) of the property's fair market value, determined at the time financing is approved, utilizing the just value ~~as~~ determined by: (i) the Broward County Property Appraiser for the most recent calendar year; (ii) an industry-quality appraisal performed by a credentialed commercial property appraiser; or (iii) automated valuation modeling; and ensure that the total amount of all annual PACE assessments does not exceed four percent (4%) of the total annual gross income of the property owner(s) in the prior calendar or fiscal year, based on the amount of the ~~property owner's (owners')~~ total annual gross income as stated in a sworn statement made by the property owner(s).

(g) *Alternative mortgage holder consent or escrow.* If the ~~property owner's (owners')~~ total annual household income of the property owner(s) is greater than one hundred twenty percent (120%) of the average median income for Broward County, as most recently published (as of the time of financing approval) by the U.S. Department of Housing and Urban Development (HUD) in the HUD Income Limits Summary, the program administrator or third-party administrator may: ~~(1) utilize a credentialed commercial property appraiser or licensed realtor or an automated valuation model to determine the just value to comply with the Financing Limits under Section 26-176.136(f);~~

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313 ~~or (2),~~ as an alternative to the Financing Limits requirements of Section 26-176.136(f),
314 verify that each prior mortgage or financing instrument holder consented to the proposed
315 financing agreement and PACE assessment, or that the prior mortgage or financing
316 instrument holder(s) or loan servicer(s) consented to the escrowing of sufficient funds to
317 ensure payment of the annual assessment with each year's tax bill.

318 (h) Automated Valuation Modeling. Program administrator or third-party
319 administrator utilization of automated valuation models to determine the fair market or just
320 value of property under Section 20-176.136(a) and (f) shall comply with the following
321 criteria:

322 (1) Each automated valuation model must be provided by a third-party vendor.

323 (2) Each automated valuation model must have estimation models with
324 confidence scores or forecast standard deviations and undergo regular
325 statistical calibration by the third-party vendor.

326 (3) At least three (3) automated valuation models must be utilized for each
327 property.

328 (4) The program administrator or third-party administrator shall utilize the
329 property value associated with the lowest forecast standard deviation or the
330 highest confidence score as the market value. However, if market value is
331 expressed as a range based on the lowest forecast standard deviation or
332 the highest confidence score, the program administrator or third-party
333 administrator shall utilize the average value of the range associated with the
334 lowest standard deviation or the highest confidence score.

Sec. 20-176.137. Violations.

(a) If a program administrator, third-party administrator, or contractor fails to comply with the requirements of the Broward PACE Act or the applicable PACE Interlocal Agreement, as determined by the Broward County Administrator, the County may suspend or terminate the PACE Interlocal Agreement or otherwise prohibit the program administrator from operating in Broward County. Any such suspension or termination may be effectuated by the Broward County Administrator or designee upon written notice to the program administrator.

(b) Any violation of the Broward PACE Act may be enforced according to the alternate code enforcement procedures provided in Chapter 8½, Article II, or Chapter 20, Article VII, Division 1 of the Code, and is subject to the civil fines or penalties stated therein. A violation of the Broward PACE Act may also be enforced through a civil action for damages and/or an injunction and such suit or action may be instituted and maintained in the name of Broward County by the Office of the County Attorney, which is hereby authorized to maintain any such suit or action. Nothing contained herein shall be construed to preempt any more stringent requirements or higher penalties required or imposed by local, state, or federal law.

(c) Violations of Sections 20-176.134(b)(1) and (2) constitute an unfair, deceptive, or unconscionable act or practice under the Florida Deceptive and Unfair Trade Practices Act, Section 501.201, et seq., Florida Statutes, and Chapter 20, Article VII of the Code. Violations of Section 20-176.134(b) shall be enforced in the manner set forth in Section 21-1 and Chapter 8½, Article II of the Code.

(d) Code enforcement officers and other authorized enforcement personnel may immediately issue a citation if a repeat violation is found or upon reasonable belief the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

(e) The remedies set forth in the Broward PACE Act are cumulative and in addition to any remedies otherwise available to the County or consumers under this Code or applicable law.

(f) Each day a violation of any provision of the Broward PACE Act occurs or continues constitutes a separate violation or offense and may be punishable as such.

Section 3. Section 8½-16 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 8½-16. Schedule of Civil Penalties.

...

SCHEDULE OF CIVIL PENALTIES

...

(f) *Miscellaneous provisions:*

Fine

Violation

First

Repeat

Violation

Violation

...

| | | | | |
|-----|-------------|---|---------------|---------------|
| 377 | <u>(43)</u> | <u>Program administrator operating without a</u> | | |
| 378 | | <u>PACE interlocal Agreement (sec. 20-176.133)</u> | <u>250.00</u> | <u>500.00</u> |
| 379 | <u>(44)</u> | <u>Failure to comply with disclosure</u> | | |
| 380 | | <u>requirements (sec. 20-176.135)</u> | <u>250.00</u> | <u>500.00</u> |
| 381 | <u>(45)</u> | <u>Failure to comply with additional requirements</u> | | |
| 382 | | <u>for residential projects (sec. 20-176.136)</u> | <u>250.00</u> | <u>500.00</u> |
| 383 | <u>(46)</u> | <u>Any other violation of the Broward PACE Act</u> | <u>100.00</u> | <u>250.00</u> |
| 384 | | . . . | | |

Section 4. Severability.

If any portion of this Ordinance is determined by any court to be invalid, the invalid portion will be stricken, and such striking will not affect the validity of the remainder of this Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be legally applied to any individual, group, entity, property, or circumstance, such determination will not affect the applicability of this Ordinance to any other individual, group, entity, property, or circumstance.

Section 5. Inclusion in the Broward County Code of Ordinances.

It is the intention of the Board of County Commissioners that the provisions of this Ordinance become part of the Broward County Code of Ordinances as of the effective date. The sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase to the extent necessary to accomplish such intention.

398 Section 6. Effective Date.

399 This Ordinance is effective as of the date provided by law.

ENACTED

PROPOSED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

By: /s/ Jennifer D. Brown 0709/25/2024
 Jennifer D. Brown (date)
 Assistant County Attorney

By: /s/ Michael C. Owens 0709/25/2024
 Michael C. Owens (date)
 Senior Assistant County Attorney

JDB/gmb
PACE Ordinance
0709/25/2024
#1080961.12

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