

ADDITIONAL MATERIAL
PUBLIC HEARING/REGULAR MEETING

OCTOBER 8, 2024

SUBMITTED AT THE REQUEST OF

OFFICE OF THE
COUNTY ATTORNEY



ANDREW J. MEYERS, County Attorney

115 S. Andrews Avenue, Room 423 • Fort Lauderdale, Florida 33301 • 954-357-7600 • FAX 954-357-7641

MEMORANDUM

TO: Board of County Commissioners

FROM: Andrew J. Meyers, County Attorney /s/ *Andrew J. Meyers*

DATE: October 3, 2024

RE: **Additional Material on PACE Items (Items 47, 48, and 49 on the October 8, 2024, Agenda)**

As has been or will be discussed during your agenda briefings, we have continued to review the PACE items (Items 47, 48, and 49 on the October 8 meeting agenda) and have received additional input from staff and from stakeholders. The County Attorney's Office is proposing one substantive change as shown on the attached pages (those pages also track a number of nonsubstantive "clean up" changes). The substantive change we are recommending is merely to delay the effective date of both the Ordinance (item 47) and the Resolution (item 48) until November 13, 2024. This delay would provide five weeks, including two Board meetings, to address any issues that might require an amendment, and would also provide additional time for PACE program administrators and third-party administrators to implement the Ordinance requirements.

Senior Assistant County Attorneys Michael Owens (x7614) and Jennifer Brown (x7118) are the lead attorneys on this matter. Please feel free to call either of them or me with any questions or concerns.

Attachments

c: Monica Cepero, County Administrator
Robert Melton, County Auditor
Kimm Campbell, Deputy County Administrator
Lenny Vialpando, Director, Resilient Environment Department
Kathie-Ann Ulett, Deputy County Auditor
Rene Harrod, Chief Deputy County Attorney
Michael Owens, Senior Assistant County Attorney
Jennifer Brown, Senior Assistant County Attorney

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

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

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

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

74 (a) *Authorization.* By December 9, 2024, ~~E~~each program administrator that
75 provides PACE financing, directly or indirectly, and/or levies an assessment to fund
76 qualifying improvements within Broward County, must: (i) be authorized by a resolution of
77 the Board of County Commissioners of Broward County, Florida (“Board”); and (ii) enter
78 into and maintain a currently valid interlocal agreement with the County pursuant to the
79 Broward PACE Act (“PACE Interlocal Agreement”) and the PACE Statute. After December
80 9, 2024, no program administrator, third-party administrator, or contractor is authorized to
81 offer, solicit, market, or sell qualifying improvements, enter into PACE financing, record
82 financing agreements for qualifying improvements, or levy assessments based on
83 unrecorded or new financing agreements pursuant to the PACE Statute or the Broward
84 PACE Act without: (i) authorization to operate within Broward County by resolution of the
85 Board; and (ii) a PACE Interlocal Agreement with the County that is currently in effect in

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

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

99 (c) *Interlocal Agreements.*

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

- (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, which addresses must contain links showing their annual reports, operational audit reports, and the status of registered qualifying improvement contractors as 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:

Coding: Words ~~stricken~~ are deletions from existing text. Words underlined are additions to existing text.

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

178 (1) No person or entity may engage in any marketing or advertising practice
179 relating to the installation or financing of qualifying improvements that: (i) is
180 unfair, deceptive, abusive, or misleading; (ii) violates any applicable law or
181 regulation including, without limitation, Sections 20-160 and 20-161 of the
182 Code; or (iii) violates the PACE Statute or the Broward PACE Act;

183 (2) No person or entity may create, use, or distribute marketing materials or
184 communications stating, suggesting, or implying: (i) that the PACE program
185 is a government assistance program; (ii) that the qualifying improvements
186 or the PACE financing are free or provided at no cost; (iii) that utilizing PACE
187 financing does not require repayment of the financial obligation; (iv) any
188 affiliation or endorsement of the PACE program by the County; (v) any
189 guarantee or assurance that PACE financing or the PACE-related
190 assessments will be repaid by the subsequent owner(s) of the property; (vi)
191 any guarantee or assurance that the qualifying improvements will pay for
192 themselves; or (vii) any guarantee or assurance that the property owner(s)
193 will receive tax benefits from participating in the PACE program; and

194 (3) No marketing and communications materials, including any advertisement,
195 poster, circular, book, pamphlet, flyer, website, stationery, newsletter,
196 disclosure, or other material or publication, relating to the installation or
197 financing of qualifying improvements shall include the County's official logo,
198 or any facsimile thereof, in any manner whatsoever. Any violation of

the subject property of at least ten percent (10%) of the fair market value of the property demonstrated by: (i) the just value determined by 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;

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

(c) *Price due diligence.* Before entering into a financing agreement for a qualifying improvement to residential property, program administrators and/or third-party administrators shall require contractors to attest that the contractor's prices for services, materials, and products for the qualifying improvement project do not exceed one hundred twenty-five percent (125%) of the average market price in the tricity area, consisting of Broward, Miami-Dade, and Palm Beach counties, for the same services, materials, and products, and the program administrators and/or third-party administrators shall conduct appropriate due diligence using either the program administrator's and/or the third-party administrator's internal construction cost estimates or industry-accepted sources for construction costs estimates, such as the RSMeans construction cost database, to 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 disclosures required by the PACE statute and: (i) the actual total amount to be financed, including the total and itemized cost of the qualifying improvement; (ii) all program, administrative, and collection costs; (iii) all capitalized interest, closing costs, and the actual annual assessment amount; and (iv) 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.

388 Section 6. Effective Date.

389 This Ordinance is effective ~~as of the date provided by law~~ on November 13, 2024.

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 09/25/2024
Jennifer D. Brown (date)
Assistant County Attorney

By: /s/ Michael C. Owens 09/25/2024
Michael C. Owens (date)
Senior Assistant County Attorney

JDB/gmb
PACE Ordinance
09/25/2024
#1080961.12

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...

1.10. **Program Administrator** means the legal entity identified in the opening paragraph of this Agreement. The term "Program Administrator" should be construed consistent with the definition of Program Administrator in Section 163.08(2) of the PACE Statute and includes any third-party administrator(s) as defined by Section 163.08(7) of the PACE Statute.

...

4.4. The Program Administrator represents and warrants, acknowledging that the County, the Tax Collector, and the Property Appraiser are relying on such representations and warranties, that the Special Assessments: (i) must be collected pursuant to Sections 197.3632 and 163.08, et seq., Florida Statutes; (ii) are not imposed by the County, the participating municipality, the Property Appraiser, or the Tax Collector; and (iii) are levied and imposed solely by the Program Administrator, and only upon voluntary application of a property owner as authorized by the PACE Statute. The Program Administrator further acknowledges and stipulates that the Program Administrator is required by law to use the uniform method of collecting such Special Assessments, and that the statutory duties of the Property Appraiser and the Tax Collector with respect to the Special Assessments are ministerial in nature.

...

8.8. Unless prohibited by the applicable policy, the Program Administrator and any affiliated third-party administrator waive any right to subrogation that any of the Program Administrator's or affiliated third-party administrator's insurers may acquire against the County, and shall obtain same in an endorsement of the Program Administrator's or affiliated third-party administrator's insurance policies.

10.3. Independent Contractor. The Program Administrator is an independent contractor of the County, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. Neither the Program Administrator, any affiliated third-party administrator, nor their agents shall act as officers, employees, or agents of the County. Neither the Program Administrator nor any affiliated third-party administrator shall ~~not~~ have the right to bind the County to any obligation not expressly undertaken by County under this Agreement.

10.19. Prior Agreements. . . . Any and all prior agreements still in effect between the Parties in any form relating to the PACE Program are hereby terminated as of the effective date of this Agreement, except: (i) as stated in Section 2.1.2, to the extent necessary to permit the Program Administrator to perform the PACE Program within the jurisdictional boundaries of Broward County, subject to the municipal jurisdiction limitations in Section 2.5; and (ii) any agreements with the Broward County Tax Collector regarding the collection and disbursement of Special Assessments shall continue to be valid to the extent such agreements comply with Applicable Law and have not otherwise expired or been terminated. . . .