

ADDITIONAL MATERIAL
PUBLIC HEARING

OCTOBER 8, 2024

SUBMITTED AT THE REQUEST OF
RESILIENT ENVIRONMENT
DEPARTMENT



Resilient Environment Department
115 S. Andrews Avenue, Room 329 • Fort Lauderdale, Florida 33301 • 954-357-6613 • FAX 954-357-8655

To: Broward County Board of County Commissioners

From: Leonard Vialpando, PE, Director, Resilient Environment Department

A handwritten signature in black ink, appearing to read "L. Vialpando", is written over the "From:" line.

Date: Oct 4, 2024

RE: Agenda Item #47 - PACE Ordinance Amendment

The Resilient Environment Department (RED) was an active contributor in the initial establishment (2016) and subsequent update of PACE program requirements to incorporate enhanced consumer protections (2019). RED also serves as the primary agency liaison for residents seeking information and assistance when PACE consumer issues arise.

Pursuant to the Board's current effort to update the existing PACE ordinance for consistency with July 2024 updates to state statutes, RED staff has actively participated in the dialog with the PACE industry throughout the process and attempted to thoughtfully update the consumer protections to reflect the evolving nature of PACE, particularly given the expanded list and scale of newly PACE-eligible projects provided in Senate Bill 770 as well as staff experience interacting with consumer complaints in the years since PACE was established.

While the Department is generally supportive of the language presented in the draft ordinance (Exhibit 1), the Department offers additional information for Board consideration regarding two potential consumer protection issues:

1. Equity – The existing PACE ordinance establishes a 10% equity requirement for residential PACE participation but does not clearly define how the required equity must be calculated. During the current update, staff proposed use of "Just Value", as determined by the Property Appraiser, to define borrower equity vis-a-vis Fair Market Value. PACE program administrators responded that Just Value was too low and unnecessarily restrictive. The PACE program administrators instead proposed use of an Automated Valuation Model (AVM) for establishing the equity available. This language is included in the draft ordinance. While the draft ordinance also includes a reference to optional use of a certified property appraiser for value determination, it does not require such and the AVM was stated to be the preferred alternative by industry representatives.

RED Response: While the Department does not formally object to the AVM method, it is noted that the AVM is expected to regularly produce a value greater than the Just Value, and that these values might differ by 20% or more. Further, it is not clear how responsive the AVM might be to a declining market condition, with the potential for significant over-leveraging of residential properties (as market value rebound is traditionally prolonged while rate of decline can be swifter). Should AVM be retained as a

stated means for establishing equity requirements, staff advises that the Board may need to revisit this approach in the future.

2. Project Pricing – The amended PACE ordinance seeks to bolster the pricing due diligence required of the PACE program administrators by establishing that PACE project pricing shall not exceed 125% of the average project prices for the tri-county region. Agency staff also proposed that an industry-accepted source be used to estimate these project costs for comparison purposes. However, the proposed ordinance includes two recent additions which the Department does not support, as neither of these solidly improves upon the existing circumstance:

- a. Industry proposal: Require a contractor attestation that project costs adhere to the 125% threshold. This language was included in the draft ordinance.

RED Response: Recommend deletion of the contractor attestation of pricing compliance, requiring instead that the program administrator and/or third-party administrator assume full responsibility for ensuring pricing compliance. Price due diligence is a core responsibility of PACE program administrators dating back to initial approval of PACE in Broward County; in addition, contractor attestation is not enforceable by the County against state licensed contractors (state preemption) and may give a false sense of security to consumers who might understandably assume such attestation is meaningfully enforced by the County.

- b. Industry proposal: Inclusion of internal construction cost estimates as an acceptable tool for determining average pricing. This language was included in the draft ordinance.

RED Response: Recommend deletion of “internal construction cost estimates” as a referenced costing tool. Instead, limit the Code reference to industry-accepted sources exclusively, which would be subject to review for efficacy during audit.

It is with this context that RED presents for the Board’s consideration: 1) an amendment to Exhibit 3 to include RED specific comments; and 2) an amendment to Exhibit 1 to address the project pricing concerns identified in bullet 2.a. above; and 3) an amendment to Exhibit 1 to address the project pricing concerns identified in bullet 2.b. above.

Finally, staff notes inclusion of Exhibit 4, a resolution advanced by the Climate Change Task Force (CCTF) pertaining to PACE wherein the CCTF expresses continued support for PACE and the expanded list of PACE eligible projects as provided for per Florida Statute. Staff emphasizes that the CCTF also expressed support for heightened consumer protections during their discussion.

Open Issues Outline

Issue	Ask or Position	County Staff's Position	Resolution	RED
1. Sec. 20-176.136(a) - 10% EQUITY REQUIREMENT BASED ON JUST VALUE DETERMINED BY PROPERTY APPRAISER'S OFFICE.	Industry: Using only Property Appraiser's Office's just value is too restrictive; requests that alternate methods, including AVM (automated algorithm-based appraisal), Certified Property Appraiser, or Real Estate Professional be permitted.	Allowing AVM, Certified Property Appraiser, or Property Appraiser's Office just value, but not Real Estate Professionals, will adequately protect consumers in determining 10% equity limit.	Resolved based on County Staff's position.	Most protective approach relies upon Just Value. AVM may lag market trends with potential for overleveraging in a declining market or be subject to bias if models with highest valuations are used exclusively. At minimum, suggest right to review and revisit
2. Sec. 20-176.136(c) - REQUIRES PROGRAM ADMINISTRATORS AND THIRD-PARTY PROGRAM ADMINISTRATORS TO CONDUCT PRICE DUE DILIGENCE TO ENSURE CONTRACTOR PRICING OF APPLICABLE PROJECT IS WITHIN 125% OF CONSTRUCTION COST DATABASE ESTIMATE.	Industry: Requests that this cap be omitted as unnecessary given state law changes; if County unwilling to omit, some stakeholders request that they be allowed to use internal construction cost estimates and require contractor attestation of price cap compliance, which PACE administrator can confirm. County Auditor: Requests this restriction be strengthened to allow prices at only 110% of cost estimates.	Maintain the 125% cap on construction cost estimates based on tricounty area. Agreed to modify to require administrator due diligence and keeping of written confirmation of contractor pricing complying with limitation.	Partially resolved based on County Staff's position and stakeholder request. After such partial resolution, two other stakeholders suggested different revisions which have not been made.	Recommend deletion of Contractor attestation. Price due diligence is a core responsibility of PACE providers dating back to initial approval of PACE in Broward County; contractor attestation not enforceable by County and may give false sense of security to consumers. Further, request deletion of "internal construction cost estimates" as a referenced costing tool, and limit reference to industry-accepted sources, which would be subject to review for efficacy during audit.

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3. Sec. 20-176.133(c)(1) - REQUIRES INTERLOCAL AGREEMENTS.	Industry: Request that current ILAs be amended rather than require new agreements and that County continues participation as a "party" or "member" in program administrator organizations. One stakeholder that lacks a current ILA requested time after the ordinance's effective date to enter into an ILA.	Require new or amended ILAs, but will include language to address business operations "gap," "party/member" concern raised by industry, addition of "amended and restated" to the title to underscore continuity, and 60 days to enter into any new ILA.	Partially resolved based on County Staff's position. After such partial resolution; one stakeholder requested 180 days to be able to integrate County requirements into financing processes (change has not been made).	Recommend the proposed 60-day timeline (Dec 9) for ILA execution.
4. SEC. 20-176.136(f) and (g) - FINANCING LIMITS. 5% LIMIT (BASED ON FAIR MARKET VALUE) ON ALL TAXES AND ASSESSMENTS, AND ANNUAL PACE ASSESSMENTS CANNOT EXCEED 4% OF TOTAL ANNUAL GROSS INCOME OF PROPERTY OWNER.	Industry: Requests both limits omitted or, if not, requests different methodology for calculating fair market value similar to Issue #1.	Maintain consumer protection limits. Agreed to allow fair market valuation method for all borrowers to be based on AVM, Certified Property Appraiser, or Just Value as determined by Property Appraiser's Office.	Resolved based on County Staff's position.	Most protective approach relies upon Just Value. AVM may lag market trends with potential for overleveraging in a declining market. At minimum, suggest right to review and revisit.

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<p>5. PACE LIEN REGISTRY/CONTRACTOR REGISTRATION.</p> <p>NOT CURRENTLY COVERED BY ORDINANCE.</p>	<p>Industry: Requests County require a lien registry for all program and third-party administrators and County register contractors to permit them to participate in PACE-financed improvements.</p>	<p>County does not want to require a lien registry by ordinance (only a single vendor seems available) or register contractors (given concern that County registration would be used in market to imply approval by County). County public record checks will also disclose recorded financing agreements.</p>	<p>Partially resolved; voluntary use of the registry can be handled as part of industry self-reporting of consumer protections; contractor registration issue remains open.</p>	<p>Support as industry-managed effort, but not by County.</p>
<p>6. SEC. 20-176.136(d)(2) – TIMING OF NOTICE TO PROPERTY OWNERS</p> <p>County Agency (RED) Request - require notice prior to execution of loan documents and commencement of work.</p>	<p>Industry: No objections expressed until 9/23/2024.</p>	<p>Adding language protects consumers in the event work is commenced prior to documents being fully executed.</p>	<p>Partially resolved based on County Staff's position; one stakeholder belatedly requested further revision (which has not been made).</p>	<p>Retain as is.</p>
<p>7. CHANGE TO ILA SECTION 10.2 AUDIT RIGHTS AND RETENTION OF RECORDS.</p> <p>COUNTY AUDITOR REQUEST</p>	<p>Industry: No objections expressed until 9/23/2024.</p>	<p>Agrees.</p>	<p>Partially resolved based on County Staff's position; one stakeholder belatedly requested revisions to not require provision of certain records (the revision was not made).</p>	<p>Retain as is.</p>

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<p>8. LIMIT CLOSING COSTS TO 1%.</p> <p>COUNTY AUDITOR REQUEST</p> <p>NOT CURRENTLY COVERED BY ORDINANCE.</p>	<p>Industry: Rejects changes as unduly limiting market and not based on any empirical analysis of problem</p>	No position expressed.	Not included in proposed Ordinance.	Understand different providers have different business models.
<p>9. CAPPING INTEREST RATE.</p> <p>COUNTY AUDITOR REQUEST</p> <p>NOT CURRENTLY COVERED BY ORDINANCE.</p>	<p>Industry: Rejects changes as unduly limiting market and not based on any empirical analysis of problem</p>	No position expressed.	Not included in proposed Ordinance.	No position.
<p>10. FURTHER OWNER DISCLOSURES.</p> <p>COUNTY AUDITOR REQUEST</p> <p>NOT CURRENTLY COVERED BY ORDINANCE.</p>	<p>Industry: Rejects changes as unduly limiting market and not based on any empirical analysis of problem</p>	No position expressed.	Not included in proposed Ordinance.	No position.

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11. PROTECTION FOR CONSUMER OVERCHARGES. COUNTY AUDITOR REQUEST NOT CURRENTLY COVERED BY ORDINANCE.	Industry: Rejects changes as unduly limiting market and not based on any empirical analysis of problem	No position expressed.	Not included in proposed Ordinance.	No position.
12. OWNER RECOURSE FOR PROJECT LENGTH OR DELAY. COUNTY AUDITOR REQUEST NOT CURRENTLY COVERED BY ORDINANCE.	Industry: Rejects changes as unduly limiting market and not based on any empirical analysis of problem	No position expressed.	Not included in proposed Ordinance.	
13. NO COST TO OWNER FOR ANY REQUIRED REWORK OR REINSPECTION. COUNTY AUDITOR REQUEST NOT CURRENTLY COVERED BY ORDINANCE.	Industry: Rejects changes as unduly limiting market and not based on any empirical analysis of problem	No position expressed.	Not included in proposed Ordinance.	No position.

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~~ ensure 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 tricounty 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~~ pricing;

(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 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

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 tricounty 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 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