

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") 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 Chapter 2024-273, Laws of Florida, the Board of County Commissioners finds it
26 appropriate to amend the PACE-related provisions in the Broward County Code of
27 Ordinances; and

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

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

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36 repealed in its entirety,

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

40 [Underlining omitted]

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

42 **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 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: (i) being provided a qualifying improvement; (ii) entering into a financing agreement; and (iii) 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.

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

109 administrator to offer PACE financing within the jurisdictional boundaries of
110 that municipality (if elected and for the duration of any such election, an
111 “Opt-Out Municipality”). The PACE Interlocal Agreement does not authorize
112 the program administrator to operate within the jurisdictional boundaries of
113 any Opt-Out Municipality. No program administrator or third-party
114 administrator may provide PACE financing within an Opt-Out Municipality
115 unless and until the applicable program administrator is expressly
116 authorized to operate by that municipality within its jurisdictional
117 boundaries.

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

- 122 (1) The proposed list of qualifying improvements offered to property owners;
- 123 (2) The standard financing terms and agreements to be utilized;
- 124 (3) The name, address, and contact information for all affiliated third-party
125 administrators;
- 126 (4) Documentation demonstrating the consumer protection policies and
127 practices of the program administrator and each affiliated third-party
128 administrator, including, without limitation, as required by the PACE Statute
129 or the Broward PACE Act;
- 130 (5) All forms of the PACE notices required by the PACE Statute and
131 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 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:

- 177 (1) No person or entity may engage in any marketing or advertising practice
178 relating to the installation or financing of qualifying improvements that: (i) is
179 unfair, deceptive, abusive, or misleading; (ii) violates any applicable law or
180 regulation including, without limitation, Sections 20-160 and 20-161 of the
181 Code; or (iii) violates the PACE Statute or the Broward PACE Act;
- 182 (2) No person or entity may create, use, or distribute marketing materials or
183 communications stating, suggesting, or implying: i) that the PACE program
184 is a government assistance program; ii) that the qualifying improvements or
185 the PACE financing are free or provided at no cost; iii) that utilizing PACE
186 financing does not require repayment of the financial obligation; iv) any
187 affiliation or endorsement of the PACE program by the County; v) any
188 guarantee or assurance that PACE financing or the PACE-related
189 assessments will be repaid by the subsequent owner(s) of the property; vi)
190 any guarantee or assurance that the qualifying improvements will pay for
191 themselves; or vii) any guarantee or assurance that the property owner(s)
192 will receive tax benefits from participating in the PACE program; and
- 193 (3) No marketing and communications materials, including any advertisement,
194 poster, circular, book, pamphlet, flyer, website, stationery, newsletter,
195 disclosure, or other material or publication, relating to the installation or
196 financing of qualifying improvements shall include the County's official logo,
197 or any facsimile thereof, in any manner whatsoever. Any violation of
198 Section 21-1 of the Code by a program administrator, third-party

199 administrator, or contractor is also a violation of this section of the Broward
200 PACE Act.

201 **Sec. 20-176.135. Disclosure Requirements.**

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

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

208 (1) The full legal description, address, and folio number or parcel identification
209 number of the property subject to the PACE assessment;

210 (2) Any discount for paying property taxes early will not apply to the PACE
211 assessment;

212 (3) There is no discount for prepayment of the PACE assessment; and

213 (4) The property improvements and PACE assessment may or may not affect
214 the fair market value of the property.

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

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

219 (a) *Equity requirement.* Upon entering into a financing agreement for a
220 qualifying improvement to residential property, the property owner(s) must have equity in
221 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 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

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

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

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

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

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

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

335 therein. A violation of the Broward PACE Act may also be enforced through a civil action
336 for damages and/or an injunction and such suit or action may be instituted and maintained
337 in the name of Broward County by the Office of the County Attorney, which is hereby
338 authorized to maintain any such suit or action. Nothing contained herein shall be
339 construed to preempt any more stringent requirements or higher penalties required or
340 imposed by local, state, or federal law.

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

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

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

353 (f) Each day a violation of any provision of the Broward PACE Act occurs or
354 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

...

366	<u>(43)</u>	<u>Program administrator operating without a</u>		
367		<u>PACE interlocal Agreement (sec. 20-176.133)</u>	<u>250.00</u>	<u>500.00</u>
368	<u>(44)</u>	<u>Failure to comply with disclosure</u>		
369		<u>requirements (sec. 20-176.135)</u>	<u>250.00</u>	<u>500.00</u>
370	<u>(45)</u>	<u>Failure to comply with additional requirements</u>		
371		<u>for residential projects (sec. 20-176.136)</u>	<u>250.00</u>	<u>500.00</u>
372	<u>(46)</u>	<u>Any other violation of the Broward PACE Act</u>	<u>100.00</u>	<u>250.00</u>
373		. . .		

374 Section 4. Severability.

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

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

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

387 Section 6. Effective Date.

388 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 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

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