

PROPOSED

RESOLUTION NO. 2019-

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO DEFINITIONS, PERFORMANCE STANDARDS, AND CONSUMER PROTECTIONS FOR PROPERTY ASSESSED CLEAN ENERGY PROJECTS; AMENDING SECTIONS 22.175, 22.176, AND 22.177 OF THE BROWARD COUNTY ADMINISTRATIVE CODE ("ADMINISTRATIVE CODE"); AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE ADMINISTRATIVE CODE, AND AN EFFECTIVE DATE.

WHEREAS, Broward County launched the Broward Property Assessed Clean Energy ("PACE") program on June 14, 2016, expanding access to and affordability of energy efficiency, renewable energy, and resiliency improvements to property owners through private financing repaid through a non-ad valorem special assessment;

WHEREAS, Broward allows PACE providers to enter into financing agreements with property owners, subject to the consumer protections already in state law and the Broward County Code of Ordinances;

WHEREAS, PACE financing has supported more than 9,500 property improvements in Broward County, substantially aiding in the advancement of resilience and energy improvements in the residential sector;

WHEREAS, staff has identified, from communications with property owners, needed improvements to the PACE program related to consumer protections, transparency about financial obligations and total project cost, and energy efficiency performance for installed equipment, and staff has coordinated with PACE providers regarding these proposed improvements; and

WHEREAS, these proposed improvements will serve to: 1) highlight financial responsibilities and long-term costs of PACE financing to the property owner by requiring

1 a uniform, one-page, large-font residential disclosure; 2) reduce the potential for financial
2 obligations in excess of property owners' ability to pay based on thresholds of earnings,
3 equity, and real estate taxes/assessments; and 3) ensure full disclosure of PACE project
4 terms and costs in a recorded interview with the property owner, prior to issuance of the
5 notice to proceed, NOW, THEREFORE,

6
7 BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF
8 BROWARD COUNTY, FLORIDA:

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10 Section 1. Section 22.175 of the Broward County Administrative Code is hereby
11 amended to read as follows:

12 **22.175. Definitions.**

13 For the purposes of this section, the following words and phrases shall have the
14 following meanings:

- 15 a. *Financing ~~a~~Agreement* shall mean the financing agreement or the summary
16 memorandum of such agreement required to be recorded in the public
17 records pursuant to the PACE Statute.
- 18 b. *PACE* shall mean property assessed clean energy.
- 19 c. *PACE ~~a~~Assessment* shall mean the non-ad valorem assessment placed on
20 a property owner's tax bill as a result of financing obtained under the PACE
21 Statute.
- 22 d. *PACE ~~l~~ocal ~~g~~overnment* shall mean a local government (as defined in
23 the PACE Statute) that has taken all required actions to fund PACE
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underscored type are additions.

1 Qualifying Improvements, and any person or entity acting on that local
2 government's behalf.

3 e. ~~PACE~~ Qualifying iImprovements shall mean those improvements to real
4 property provided for in Section 163.08(2)(b), Florida Statutes, including,
5 but not limited to, energy conservation and efficiency, renewable energy,
6 and wind resistance improvements.

7 f. ~~PACE~~ sStatute shall mean Section 163.08, Florida Statutes, which
8 establishes Florida's PACE program.

9
10 Section 2. Section 22.176 of the Broward County Administrative Code is hereby
11 amended to read as follows:

12 **22.176. PACE Program Requirements.**

13 In addition to any requirements in the PACE Statute and Section 20-14, Broward
14 County Code of Ordinances, PACE Local Governments that extend financing pursuant to
15 the PACE Statute and levy a non-ad valorem assessment to fund PACE Qualifying
16 Improvements within Broward County shall, at a minimum, comply with each of the
17 following standards:

18 . . .

19 f. Performance Standards: All PACE Qualifying Improvements must be: 1) at
20 least as energy efficient as the rating of the existing product; 2) Energy Star
21 compliant or meet current national efficiency standards, as applicable; and
22 3) sized appropriately.

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1 Section 3. Section 22.177 of the Broward County Administrative Code is hereby
2 amended to read as follows:

3 **22.177. Additional PACE Program Requirements for Residential Projects.**

4 In addition to any requirements in the PACE Statute, Section 20-14, Broward
5 County Code of Ordinances, and Section 22.176 above, PACE Local Governments that
6 finance PACE Qualifying Improvements within Broward County shall, ~~at a minimum,~~
7 comply with ~~at least one (1) of~~ the following additional standards for projects affecting
8 residential properties with four (4) residential units or fewer:;

9 a. For property owners whose annual income is greater than
10 one hundred twenty percent (120%) of the average median income for
11 Broward County, as determined by the U.S. Department of Housing and
12 Urban Development for the most recent calendar year, at least one (1) of
13 the following:

14 1. Financing Limits: ensure that the total amount of any annual property
15 taxes and assessments does not exceed five percent (5%) of the
16 property's fair market value, determined at the time financing is
17 approved, and ensure that the total amount of annual PACE
18 assessments does not exceed four percent (4%) of the total annual
19 gross income of the property owner in the prior calendar or fiscal
20 year, based upon an affidavit or attestation by the property owner of
21 the owner's total annual gross income. Fair market value shall be
22 that value determined by the Broward County Property Appraiser, by
23 a credentialed commercial property appraiser or licensed realtor, or
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1 by an automated valuation service or model preapproved by the
2 County;

3 ~~b.~~ 2. Mortgage Holder Consent or Escrow: verify that each prior mortgage
4 or financing instrument holder has consented to any proposed
5 Financing Agreement and PACE Assessment, or that the prior
6 mortgage or financing instrument holder or loan servicer has
7 consented to escrow sufficient funds to ensure payment of the
8 annual assessment with each year's tax bill; or

9 ~~e.~~ 3. Insurance or Energy Savings: verify that the total cost of the
10 Financing Agreement or PACE Assessment is equal to or less than
11 the projected savings to the property owner based upon the
12 projected energy savings in a written statement from a Certified
13 Energy Auditor, certified by the Association of Energy Engineers, the
14 Residential Energy Services Network, or the Building Performance
15 Institute, or the projected insurance savings in a written statement
16 from the property owner's insurer.

17 b. For property owners whose annual income is equal to or less than
18 one hundred twenty percent (120%) of the average median income for
19 Broward County, as determined by the U.S. Department of Housing and
20 Urban Development for the most recent calendar year, financing limitations
21 to ensure that the total amount of any annual property taxes and
22 assessments does not exceed five percent (5%) of the property's fair market
23 value, determined at the time financing is approved, and ensure that the
24 total amount of annual PACE assessments does not exceed four percent

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1 (4%) of the total annual gross income of the property owner in the prior
2 calendar or fiscal year, based upon an affidavit or attestation by the property
3 owner of the owner's total annual gross income. Fair market value shall be
4 that value determined by the Broward County Property Appraiser, by a
5 credentialed commercial property appraiser or licensed realtor, or by an
6 automated valuation service or model preapproved by the County
7 Administrator or designee.

8 c. Ensure that for all applications:

- 9 1. The property owner shall have at least a ten percent (10%) equity
10 interest in the subject property;
- 11 2. No application fee shall be charged for rejected PACE applications;
- 12 3. No prepayment penalty or fee shall be charged or otherwise applied,
13 except for the charging of specific and reasonable administrative
14 fees (e.g., estoppel fees when an estoppel certificate is requested);
- 15 4. A recorded disclosure interview shall be conducted by the PACE
16 Local Government or Licensed Contractor with the property owner at
17 least three (3) business days prior to issuance of the PACE project
18 notice to proceed, providing confirmation of the property owner's
19 understanding of the individual Broward PACE Program "Notice"
20 provisions, including the total amount of the PACE debt, amount of
21 the annual PACE assessment, the total number of years of the
22 annual PACE assessment, mandatory collection via property taxes
23 for which the property owner is responsible, the potential impacts on
24 escrow fees for those property owners with a mortgage on the

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1 subject property, the absence of government relief, and the ability to
2 cancel the agreement within three (3) business days after the day of
3 the contract execution or the recorded disclosure interview,
4 whichever comes later. In the event of a consumer dispute, and at
5 the request of the property owner, a digital recording of the interview
6 must be made available to the property owner upon his/her request;
7 and

8 5. Commencing on October 1, 2019, PACE providers must present and
9 process, in a form maintained by the County Administrator or
10 designee, a PACE Disclosure Statement for Residential Properties
11 that must be signed and dated by the property owner in advance of,
12 or contemporaneously with, the property owner's signing of any
13 legally enforceable documents consistent with the "Notice" provision
14 of Section 20-14 of the Broward County Code of Ordinances. All
15 information on the disclosure form that is filled in by the PACE
16 provider must be in an 18-point font. Fields filled in by PACE Local
17 Governments or Licensed Contractors pertaining to PACE project
18 costs, fees, interest, annual payment amount, and term must be
19 completed in red ink. A color copy of the executed Disclosure
20 Statement must be submitted to the Broward County Environmental
21 Planning and Community Resilience Division within sixty (60) days
22 after execution at Resilience@Broward.org, and may be submitted
23 in monthly groups.

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1 Section 4. Severability.

2 If any portion of this Administrative Code Resolution is determined by any court to
3 be invalid, the invalid portion will be stricken, and such striking will not affect the validity
4 of the remainder of this Administrative Code Resolution. If any court determines that this
5 Administrative Code Resolution, in whole or in part, cannot be legally applied to any
6 individual, group, entity, property, or circumstance, such determination will not affect the
7 applicability of this Administrative Code Resolution to any other individual, group, entity,
8 property, or circumstance.

9
10 Section 5. Inclusion in the Broward County Administrative Code.

11 It is the intention of the Board of County Commissioners that the provisions of this
12 Administrative Code Resolution become part of the Broward County Administrative Code
13 as of the effective date. The sections of this Administrative Code Resolution may be
14 renumbered or relettered and the word "resolution" may be changed to "section," "article,"
15 or such other appropriate word or phrase to the extent necessary in order to accomplish
16 such intention.

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1 Section 6. Effective Date.

2 This Administrative Code Resolution is effective upon adoption.

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4 ADOPTED this day of , 2019.

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

8 By /s/ Michael C. Owens 05/22/19
9 Michael C. Owens (date)
10 Senior Assistant County Attorney

11 By /s/ Maite Azcoitia 05/22/19
12 Maite Azcoitia (date)
13 Deputy County Attorney

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MCO/gmb
PACE Standards and Consumer Protections Resolution
05/22/19
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