

ORDINANCE NO. 2017 - 012

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM ORDINANCE; PROVIDING FOR A TITLE; PROVIDING FOR AUTHORITY; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

1 **WHEREAS**, Property Assessed Clean Energy (PACE) programs have been
2 established across the country to provide mechanisms for funding energy efficiency, renewable
3 energy, and other types of improvements to residential and commercial properties; and

4 **WHEREAS**, PACE programs are typically established by local governments and are
5 administered by the local government or by for-profit or not-for-profit entities; and

6 **WHEREAS**, PACE financing is repaid as an assessment on the property's regular tax
7 bill; and

8 **WHEREAS**, Section 163.08, Florida Statutes, authorizes programs, typically referred
9 to as PACE programs, that levy non-ad valorem assessments allowing property owners to
10 apply to local governments for financing certain energy efficiency, renewable energy and wind
11 resistant improvements; and

12 **WHEREAS**, Section 163.08, Florida Statutes, provides that properties retrofitted with
13 energy-related qualifying improvements benefit from reduced energy consumption, reduced
14 potential for wind damage, and assist in the fulfillment of the state's energy and hurricane
15 mitigation policies; and

16 **WHEREAS**, the PACE assessment is collected pursuant to Florida's uniform
17 method for the levy, collection and enforcement of non-ad valorem assessments, Section
18 197.3632, Florida Statutes; and

19 **WHEREAS**, the Board of County Commissioners intends to establish qualifications
20 and consumer protection disclosure requirements for PACE programs that provide financing
21 for qualifying improvements in accordance with Section 163.08, Florida Statutes, and
22 provisions of this Ordinance; and

1 **WHEREAS**, it is the intent of the County to enter into interlocal agreements with
2 multiple PACE agencies/authorities/districts to encourage competition and provide more
3 choices for property owners; and

4 **WHEREAS**, the Board of County Commissioners acknowledges the Florida
5 Legislature’s finding that there is a compelling state interest in enabling property owners who
6 wish to undertake such improvements and to enable property owners to voluntarily finance
7 such improvements with local government assistance and finds that creation of a PACE
8 program will serve the public health and welfare of the citizens of Palm Beach County; and

9 **WHEREAS**, the Board of County Commissioners has conducted a duly noticed public
10 hearing to consider this Ordinance in accordance with Section 125.66, Florida Statutes; and

11 **WHEREAS**, the Board of County Commissioners of Palm Beach County, pursuant to
12 its authority under the Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida
13 Statutes, and the Palm Beach County Charter, hereby adopts the Palm Beach County Property
14 Assessed Clean Energy (PACE) Ordinance.

15

16 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
17 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

18 **Section 1. TITLE:**

19 This Ordinance shall be titled the “Palm Beach County Property Assessed Clean
20 Energy (PACE) Ordinance.”

21 **Section 2. AUTHORITY:**

22 This article is adopted pursuant to the authority granted to charter counties under Article
23 VIII, Section 1(g) of the Florida Constitution, Chapter 125, Florida Statutes and Article 1 of the
24 Palm Beach County Home Rule Charter.

25 **Section 3. APPLICABILITY:**

26 This Ordinance shall be applicable within the unincorporated areas of Palm Beach County,
27 and in all municipalities that have not adopted an ordinance governing any or all of the subject
28 matter of this Ordinance, regardless of the time of passage of the municipal ordinance.

29 **Section 4. DEFINITIONS:**

30 For purposes of this Ordinance, the following words and phrases shall have the
31 following meanings:

- 32 (1) *Board or County* is the Palm Beach County Board of County Commissioners.

- 1 (2) *Financing Agreement* shall mean the financing agreement or the summary memorandum
2 of such agreement the property owner signs establishing terms and conditions for the
3 financing of qualified improvements which is required to be recorded in the public
4 records pursuant to the PACE Statute.
- 5 (3) *Qualifying Improvements* includes energy conservation and efficiency, renewable energy,
6 and wind resistance improvements as defined by Section 163.08, Florida Statutes, as may
7 be amended by law.
- 8 (4) *PACE assessment* shall mean the non-ad valorem assessment placed on a property
9 owner's tax bill as a result of financing obtained pursuant to this Ordinance.
- 10 (5) *PACE agencies/authorities/districts* shall mean one or more local governments defined in
11 Section 163.08(2)(a), Florida Statutes, authorized by Palm Beach County to offer PACE
12 financing for qualifying improvements.
- 13 (6) *PACE Program* shall mean the County's provision through interlocal agreements with
14 PACE agencies/authorities/districts offering financing for qualifying improvements as
15 approved by the State of Florida pursuant to Section 163.08, Florida Statutes, further
16 refined in this Ordinance, as may be amended by law.
- 17 (7) *PACE Statute* shall mean Section 163.08, Florida Statutes and all future amendments
18 thereto.
- 19 (8) *Residential Property* shall mean a residential property consisting of four (4) or less
20 residential units.
- 21 (9) *Non-Residential Property* shall mean commercial, industrial, agricultural and residential
22 properties consisting of five (5) or more residential dwelling units.

23 **Section 5. PACE PROGRAM AUTHORIZATION:**

- 24 (1) PACE agencies/authorities/districts offering financing for Qualifying Improvements
25 pursuant to this Ordinance shall be approved by the County and authorized through
26 interlocal agreements to provide financing subject to the requirements of this Ordinance
27 and the PACE Statute. A resolution indicating the County's desire to join a PACE
28 agency/authority/district shall be prepared by County staff and presented to the Board for
29 consideration with each interlocal agreement. The interlocal agreements shall include
30 specific terms and conditions for PACE agencies/authorities/districts to operate within
31 Palm Beach County.

1 (2) PACE agencies/authorities/districts desiring to provide financing pursuant to this
2 Ordinance shall provide sufficient documentation as requested by the County to provide
3 reasonable assurance that the requirements of this Ordinance and the PACE Statute can be
4 met by the PACE agency/authority/district.

5 **Section 6. DISCLOSURE REQUIREMENTS:**

- 6 (1) In addition to any disclosure requirements in the PACE Statute, PACE
7 agencies/authorities/districts that extend financing pursuant to the PACE Statute and levy
8 non-ad valorem assessments to fund the qualifying improvements shall present to the
9 property owner a separate, written notice disclosing the following ("Notice"):
- 10 (a) The estimated total amount of the debt, including amount financed, fees, fixed interest
11 rate, capitalized interest and the effective rate of the interest charged ("Annual
12 Percentage Rate" or "APR");
 - 13 (b) That PACE agencies/authorities/districts may only offer fixed simple interest rates and
14 payments that fully amortize the obligation. Variable or negative amortization
15 financing terms are not permitted. Capitalized interest included in the original balance
16 of a PACE financing does not constitute negative amortization.
 - 17 (c) The repayment process and terms, amounts and a schedule that fully amortizes the
18 amount financed including the estimated annual PACE assessment;
 - 19 (d) That the PACE assessment will appear on the property owner's tax bill;
 - 20 (e) That there is no discount for paying the PACE assessment early;
 - 21 (f) The nature of the lien recorded and that the PACE assessment will be collected in the
22 same manner as real estate taxes. That failure to pay the PACE assessment may cause
23 a tax certificate to be issued against the property, and that failure of payment thereof
24 may result in the loss of property subject to the PACE assessment, including homestead
25 property, in the same manner as failure to pay property taxes;
 - 26 (g) The specific improvements to be financed and installed and that such improvements
27 and PACE assessment may or may not affect the overall value of the property;
 - 28 (h) A PACE assessment payment term that does not exceed the useful life of the
29 improvements;
 - 30 (i) The right of pre-payment without penalty;
 - 31 (j) Notice that the property owner may be required to pay any PACE assessment in full at
32 the time of refinance or sale of the property; and

- 1 (k) The 3-day right to cancel the financing.
- 2 (2) The Notice must be delivered to the property owner by the PACE agency/authority/district
3 and must be signed and dated by the property owner prior to or contemporaneously with
4 the property owner's signing of any legally enforceable documents under the PACE
5 program. The property owner and the PACE agency/authority/district must keep the
6 signed Notice with the property owner's executed financing agreement.
- 7 (3) The PACE agency/authority/district shall record, or cause to be recorded, the financing
8 agreement or a summary memorandum of the financing agreement, in accordance with
9 Section 163.08(8), Florida Statutes.

10 **Section 7. ELIGIBLE PROPERTIES/PROGRAM REQUIREMENTS:**

- 11 (1) As defined in the PACE Statute, PACE agencies/authorities/districts that extend financing
12 pursuant to the PACE Statute and levy non-ad valorem assessments to fund the qualifying
13 improvements shall comply with the following:
- 14 (2) *Residential Property.* PACE agencies/authorities/districts may finance qualifying
15 improvements on Residential Properties provided they comply with the following criteria
16 inclusive of all eligibility criteria listed in the PACE Statute and all future amendments
17 thereto, along with additional consumer protections.
- 18 (a) Without the consent of the holders or loan servicers of any mortgage encumbering or
19 otherwise secured by the property, the total amount of any non-ad valorem assessment
20 for a property under the PACE Statute may not exceed twenty percent (20%) of the
21 just/fair market value of the property as determined by the county property appraiser,
22 excepted as otherwise provided by statute; and
- 23 (b) All property taxes and other assessments levied on the property tax bill have been paid
24 and have not been delinquent for the preceding three years, or the property owner's
25 period of ownership, whichever is less; and
- 26 (c) There are no involuntary liens, including but not limited to construction liens on the
27 property; and
- 28 (d) No notices of default or other evidence of property-based debt delinquency have been
29 recorded during the preceding three years, or the property owner's period of ownership,
30 whichever is less; and, additionally
- 31 (e) All mortgage debt on the property is current and not delinquent; and

- 1 (f) All mortgage-related debt on the underlying property may not exceed 90% of the
2 property's fair market value; and
- 3 (g) The total mortgage-related debt on the underlying property plus the PACE program
4 financing may not exceed the fair market value of the property.
- 5 (3) Non-Residential Properties. PACE agencies/authorities/districts may finance Qualifying
6 Improvements on Non-Residential Properties provided they comply with the requirements
7 set forth in the PACE Statute and all future amendments thereto and inclusive of those
8 listed under Section 7(2)(a-d) of this Ordinance.
- 9 (4) Qualifying Improvements. The PACE agency/authority/district will finance energy
10 efficiency, renewable energy and wind resistant improvements that are permanently affixed
11 to the property as more specifically described in the PACE Statute. All improvements and
12 products should identify efficiency standards established by the U.S. Department of
13 Energy, the U.S. Environmental Protection Agency, or Florida state agencies as applicable.
14 All qualifying improvements must comply with the PACE Statute for energy efficiency,
15 renewable energy and wind resistance or other improvements as permissible by law. PACE
16 agencies/authorities/districts shall establish procedures confirming that the property owner
17 applying for financing through the PACE agency/authority/district intends to install
18 eligible products, and that at the time of funding such improvements have been installed.
- 19 (5) Inquiries and Complaints.
- 20 (a) The PACE agency/authority/district shall be required to receive, manage, track, timely
21 resolve and report on complaints from property owners regarding the funded work
22 performed by the contractors. The PACE agency/authority/district shall investigate
23 and mediate disputes between property owners and contractors in a timely manner.
- 24 (b) Payment inquiries. The PACE agency/authority/district shall be required to respond to
25 inquiries and resolve any issues in a timely manner, related to payments, including but
26 not limited to prepayments and payment reconciliation.
- 27 (c) Review. In the event that ten percent or more of a PACE agency's/authority's/district's
28 projects result in complaints or disputes, or such complaints or disputes remain
29 unresolved six months after completion of a project, the County may review the PACE
30 agency's/authority's/district's handling of complaints and may request corrective
31 actions or initiate suspension proceedings pursuant to Section 7(13).
- 32 (6) Data Security. The PACE agency/authority/district is responsible for taking security

- 1 measures that protect the security and confidentiality of consumer records and information
2 in proportion to the sensitivity of the information, and as required by state and federal law.
- 3 (7) Consumer Privacy. The PACE agency/authority/district must develop and maintain a
4 privacy policy that complies with state and federal law and, in particular, shall provide a
5 property owner the ability to opt-out of having the property owner's information shared
6 with third parties, except where expressly permitted by state and federal law.
- 7 (8) Marketing and Communications. Marketing practices for a PACE agency/authority/district
8 that are or could appear to be unfair, deceptive, abusive, or misleading, or that violate
9 applicable laws or regulations, that are inappropriate, incomplete or are inconsistent with
10 the PACE agency's/authority's/district's purpose are prohibited.
- 11 (9) Protected Classes. The PACE agency/authority/district shall not discriminate against
12 individuals on the basis of race, color, ancestry, disability, national origin, religion, age,
13 familial status, marital status, sex, gender, sexual orientation, gender identity and
14 expression, or genetic information.
- 15 (10) Contractor Management.
- 16 (a) Any work under a PACE agency/authority/district requiring a license under any
17 applicable law to make a qualifying improvement shall be performed by a contractor
18 properly licensed, certified or registered pursuant to state or local law.
- 19 (b) Contractors performing work under a PACE agency/authority/district shall comply
20 with each of the following conditions: (i) Be licensed and insured pursuant to the
21 applicable statutory requirements; (ii) Agree to comply with all program requirements
22 and marketing guidelines; (iii) Act in good faith to timely resolve property owner
23 complaints.
- 24 (c) PACE programs shall have and shall strictly enforce anti-kickback policies and
25 procedures that prohibit direct financial or other monetary incentives to contractors in
26 exchange for or related to such contractor being awarded work under a PACE program,
27 excepting payment for the contractor's installation of eligible improvements.
- 28 (11) Financing. The PACE agency/authority/district will establish pricing rules and
29 enforcement mechanisms to ensure property owners are protected from excessive or
30 unjustified prices and charges. In addition, the PACE agency/authority/district shall
31 require compliance with each of the following conditions prior to the issuance of any
32 funding to the contractor:

- 1 (a) Contractors have certified that any necessary permits have been obtained;
- 2 (b) Verification that the qualifying improvements have been installed;
- 3 (c) The property owner and the contractor have signed a final inspection and/or certificate
- 4 of completion that all improvements have been installed to the property owner's
- 5 satisfaction.
- 6 (12) Reporting. Each PACE agency/authority/district shall provide a report to the County
- 7 on a quarterly calendar basis, which shall include, at a minimum, the following
- 8 information:
- 9 (a) Dates of the reporting period;
- 10 (b) List of PACE projects (including addresses including municipal jurisdiction, financed
- 11 amount, interest rate, assessment duration, and project description) started during the
- 12 reporting period, separated by building type (e.g., single family, multifamily, retail,
- 13 office, industrial, etc.);
- 14 (c) List of PACE projects (including addresses including municipal jurisdiction)
- 15 completed during the reporting period, separated by building type project (e.g., single
- 16 family, multifamily, retail, office, industrial, etc.), specify; (1) the qualifying
- 17 improvements made; (2) project start date and completion date; (3) the projected energy
- 18 savings and/or amount of potential renewable energy to be generated; (4) financial
- 19 information such as cost per kilowatt hour saved/generated; (5) other resource savings
- 20 if data is available; and (6) audits performed detailing the audit results, if applicable to
- 21 the project;
- 22 (d) Number of actual or estimated jobs created during the reporting period, including local
- 23 versus non-local jobs and permanent versus temporary jobs;
- 24 (e) Number of applications declined during the reporting period;
- 25 (f) Unresolved complaints and/or contractor issues and status; and
- 26 (g) Description of the standardized third-party methodologies and supporting assumptions
- 27 used to verify data, and any changes in the methodologies and assumptions from the
- 28 previous reporting period.
- 29 (13) Suspension or Termination of PACE agency/authority/district. In the event any PACE
- 30 agency/authority/district fails to incorporate and continually provide for all of the foregoing
- 31 service components or to otherwise abide by the provisions of this Ordinance and/or the
- 32 interlocal agreement the County, in its sole discretion, may suspend or terminate the

1 interlocal agreement and support of the County at any time upon written notice to that
2 PACE agency/authority/district. Any project that has been initiated as of the time of
3 suspension or termination shall be permitted to be completed.

4 **Section 8. REPEAL OF LAWS IN CONFLICT:**

5 All local laws and ordinances in conflict with any provisions of this Ordinance are
6 hereby repealed to the extent of such conflict.

7 **Section 9. SEVERABILITY:**

8 If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any
9 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
10 such holding shall not affect the remainder of this Ordinance.

11 **Section 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

12 The provisions of this Ordinance shall become and be made a part of the Palm Beach
13 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
14 such, and the word Ordinance may be changed to section, article, or other appropriate word.

15 **Section 11. ENFORCEMENT:**

16 This Ordinance is enforceable by all means provided by law. Additionally, the County
17 may choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm
18 Beach County.

19 **Section 12. PENALTY:**

20 Any violation of any portion of this Ordinance shall be punishable as provided by law.

21 **Section 13. CAPTIONS:**

22 The captions, section headings and section designations used in this Ordinance are for
23 convenience only and shall have no effect on the interpretation of the provisions of this
24 Ordinance.

25 **Section 14. EFFECTIVE DATE:**

26 The provisions of this Ordinance shall become effective upon filing with the
27 Department of State.

28 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm
29 Beach County, Florida, on this the 4th day of April, 2017.

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1 SHARON R. BOCK, CLERK

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

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By: *Sharon R. Bock* Deputy Clerk  By: *Paulette Burdick*
Paulette Burdick, Mayor

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APPROVED AS TO FORM AND

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LEGAL SUFFICIENCY

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By: *James B. Burt*
County Attorney

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EFFECTIVE DATE: Filed with the Department of State on the 7th day of

18

April, 2017.



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

April 7, 2017

Honorable Sharon R. Bock
Clerk and Comptroller
Palm Beach County
301 North Olive Avenue
West Palm Beach, Florida 33401

Attention: Timothy Montiglio, Administrative Specialist II

Dear Ms. Bock:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2017-012, which was filed in this office on April 7, 2017.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb