



**Contra
Costa
County**

To: Board of Supervisors
From: INTERNAL OPERATIONS COMMITTEE
Date: June 26, 2018
Subject: PACE Financing

RECOMMENDATION(S):

AUTHORIZE the Conservation and Development Director, or designee, to modify and streamline the County's PACE financing application and Operating Agreement to reduce the County's regulation of PACE financing in areas now being regulated by the State of California.

FISCAL IMPACT:

None

BACKGROUND:

Summary

In 2015, the Board of Supervisors directed the Department of Conservation and Development to develop and administer an application process for PACE programs seeking to operate within the County's jurisdiction. Subsequently, the Board authorized 3 PACE programs to operate within the unincorporated area after completing the County's application process. Hundreds of home owners in the unincorporated area have since used PACE financing to fund energy and water efficiency improvements to their property.

☒ APPROVE

☐ OTHER

☐ RECOMMENDATION OF CNTY ADMINISTRATOR

☒ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **06/26/2018** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: June 26, 2018

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Jason Crapo,
925-674-7722

In 2017, two new State laws (AB 1284 and SB 242) became effective that add significant new State regulatory requirements for PACE programs, including the requirement that all PACE programs obtain a

BACKGROUND: (CONT'D)

license to operate in California from the State Department of Business Oversight by January 1, 2019.

The new regulatory requirements now being implemented by the State are intended to achieve objectives similar to the County's PACE application process. Common objectives include protecting consumers of PACE financing through disclosure of information and reducing the risk that PACE will excessively burden property owners with property-secured debt. However, the State's regulatory requirements are more comprehensive and detailed than the County's requirements for PACE programs.

Therefore, the Internal Operations Committee recommends the County's PACE application process be streamlined by accepting a PACE program's valid State operating license as satisfying many of the County's disclosure and financing requirements. The Committee recommends the County continue to have a PACE application process to ensure PACE programs seeking to operate within the County's jurisdiction are complying with State law and regulatory requirements and that they meet the County's requirements in other areas, such as indemnification and insurance.

What is PACE Financing?

California law allows cities, counties, and other authorized public agencies, such as some joint powers authorities (JPA), to establish voluntary financing districts to facilitate energy and water efficiency improvements to existing residential and commercial properties. Such financing is commonly referred to as Property Assessed Clean Energy (PACE) financing. Once established, property owners within the boundaries of such a financing district can voluntarily enter into a contract to borrow funds from the district to make energy or water efficiency improvements to their property. The assessment is then repaid in installments on the property tax bill.

PACE financing programs are generally not operated directly by cities or counties. Rather, the common model that has emerged in California is that PACE programs are established by a JPA that contracts with a private financial services firm to administer day-to-day operations of the program. The PACE program becomes available to property owners within a local jurisdiction if that city or county is a member of the JPA and the city council or board of supervisors adopts a resolution authorizing the JPA to operate its PACE program within the local jurisdiction.

Benefits and Risks of PACE

PACE financing offers environmental and economic benefits to County residents, and is consistent with County policy objectives to improve energy efficiency and reduce greenhouse gas emissions. Improved energy efficiency on private property reduces greenhouse gas emissions and the associated negative impacts of climate change,

consistent with the County's Climate Action Plan. Construction of energy and water efficiency improvements on private property also stimulates the local economy, expanding employment and increasing tax revenue for the County.

However, PACE financing also involves risks to property owners and the County. PACE financing is a complex financial product, similar in many ways to a mortgage or a home equity line of credit. The contractual terms of PACE loans are complicated, and can be difficult to understand. Therefore, as with mortgages and other complex financial products, there is a risk that consumers may not fully understand the products they are buying, potentially resulting in the purchase of a loan that is not in the best interest of the consumer.

PACE not only shares the risks to consumers typically associated with other complex financial products, but also has additional risks to consumers resulting from regulatory intervention by the federal government to discourage the use of PACE financing. In 2010, the Federal Housing Financing Agency (FHFA), the federal agency that regulates the mortgage industry, took actions to prevent Fannie Mae and Freddie Mac from purchasing mortgages for properties with PACE liens. This negatively impacts consumers, resulting in circumstances where home owners have been forced to pay off their PACE loans in order to sell their home or refinance their existing mortgage.

The risks for consumers associated with PACE financing also result in risks for the County. Although the County does not directly operate PACE programs, the Board of Supervisors must authorize the operation of PACE programs within the County's jurisdiction. Therefore, the County is at risk of being named in law suits that may arise from the actions of PACE financing programs and their impacts on consumers.

PACE in Contra Costa County

To facilitate the environmental benefits of PACE financing while also managing the risks such programs represent to home owners and the County, on June 16, 2015, the Board of Supervisors approved the recommendation of the Internal Operations Committee to direct the Department of Conservation and Development (DCD) to establish an application process and accept applications from PACE providers to operate within the unincorporated area of the County. The Board also approved the form of an Operating Agreement the County requires PACE providers to enter into with the County as a condition of operations.

The purpose of the County's PACE application process is to provide protections to property owners by ensuring disclosure of risks and costs to PACE consumers and to protect the County by indemnifying the County from legal claims associated with the operation of PACE programs authorized to operate within the County's jurisdiction.

Following the Board's direction in June 2015 that County staff establish a PACE application process, DCD has received and processed PACE applications from three

PACE financing programs: HERO, CaliforniaFirst, and Ygrene. The Board of Supervisors adopted resolutions authorizing these three PACE programs to operate within the unincorporated area of the County. To date, approximately 400 PACE loans have been issued to residential property owners in the unincorporated area, representing over \$13 million in financed improvements.

Recent State Action Concerning PACE

Although Contra Costa County and several other cities and counties within California have established local requirements intended to protect consumers from risks associated with PACE financing, most cities and counties have not done so. As a result, PACE has until recently remained a lightly regulated corner of the financial services industry compared to other complex lending products. But that has now changed significantly.

The PACE industry has grown substantially in recent years and PACE has proved to be a highly successful financial product. Tens of thousands of property owners have entered into PACE assessments, representing billions of dollars in financed property improvements. In 2017, the Wall Street Journal described PACE financing as one of the fastest growing lending products in the United States.

However, as PACE has grown, there have also been numerous complaints from consumers concerning the complexity PACE financing, and in some cases, allegations of misinformation and fraud by PACE providers and their agents.

These concerns came to a head in 2017 with the passage of two new State laws that establish a robust role for the State in regulating the PACE industry: AB 1284 and SB 242. Both laws became effective in October 2017. These two new laws regulate PACE financing in much the same way as mortgages and other complex consumer lending products are regulated in California. Some of the key provision of these two laws that are now in effect include:

- PACE program administrators must obtain a State license to operate from the Department of Business Oversight by January 1, 2019, similar to other financial lenders and brokers
- PACE administrators must make a good-faith determination that the property owner has the reasonable ability to repay the PACE loan
- Establishes State-wide criteria concerning the credit history and current indebtedness of property owners seeking PACE loans
- PACE administrators must provide oral confirmation (typically a phone call) that the property owner has received required loan documents and disclosures and is aware of the main financial terms of the PACE loan prior to executing a PACE financing contract
- Such oral confirmation must be made available in multiple languages, including Spanish, Chinese, and Korean
- Borrowers are now granted additional rights to terminate a PACE financing contract, including an unconditional 3-day right to cancel

- The business and financial relationships between PACE program administrators and contractors working on their behalf are now regulated so as to reduce conflicts of interest

New State Regulations Reduce Need for County-level Review

Taken together, these new State requirements represent a much more comprehensive and detailed regulatory framework of consumer protections than those adopted by the County through its PACE application process. These regulatory requirements provide significant additional protections to PACE consumers, and such requirements are now consistent across all local jurisdictions in California.

With the State's new role providing comprehensive regulatory oversight for PACE, the need for County-level consumer protections has been substantially reduced. Therefore, the Internal Operations Committee recommends that the Board authorize DCD to streamline the County's PACE application process by accepting a valid PACE operating license from the State Department of Business Oversight as satisfying many of the County's current requirements, specifically in the areas of consumer disclosure and financing requirements. The County will continue to have a PACE application process and Operating Agreement to confirm that PACE providers seeking to operate within the County's jurisdiction are complying with State law and regulatory requirements and to ensure the County's interests are met in areas such as indemnification and insurance.

If the recommended action is approved, County staff will develop a streamlined form of Operating Agreement, apply that form to future proposals from prospective PACE operators and bring proposed Operating Agreements to the Board for approval.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board of Supervisors does not approved the recommendation of the Internal Operations Committee, County staff will not receive authorization to revise and streamline the County's application process for new PACE financing providers.

ATTACHMENTS

Summary of New PACE Laws

County PACE Application

County PACE Operating Agreement