

Sarasota County DRAFT PACE Ordinance

Open for Public Comment through June 2, 2017.

Submit input to: SustainableSarasota@scgov.net

or call 941-861-5000 for more information.

ORDINANCE NO. 2017-____

AN ORDINANCE OF THE COUNTY OF SARASOTA, FLORIDA, RELATING TO THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM, CODIFIED AS ARTICLE XIV OF CHAPTER 38 OF THE SARASOTA COUNTY CODE; PROVIDING FINDINGS OF FACT; PROVIDING A SHORT TITLE; PROVIDING A PURPOSE; PROVIDING DEFINITIONS; PROVIDING PACE PROGRAM BOUNDARIES; PROVIDING FOR PACE LOCAL GOVERNMENTS; PROVIDING FOR PACE PROGRAM STANDARDS; PROVIDING FOR ELIGIBLE PARTICIPANTS; PROVIDING FOR NON-AD VALOREM ASSESSMENTS; PROVIDING FOR PACE PROGRAM ADMINISTRATION; PROVIDING FOR RECORDATION; PROVIDING FOR NOTICE TO PURCHASER; PROVIDING FOR SUSPENSION OR TERMINATION; PROVIDING FOR ENFORCEMENT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA:

SECTION 1. There is hereby created a new Article XIV of Chapter 38 of the Sarasota County Code of Ordinances (the “Code), entitled “Property Assessed Clean Energy (PACE) Program”.

SECTION 2. Article XIV of Chapter 38 of the Code is hereby created to read as follows:

ARTICLE XIV. PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM

Sec. 38-320. Findings of Fact.

- (a) Section 163.08, Florida Statutes authorizes counties, municipalities and certain separate Local Government entities established by the legislature to establish and administer financing programs pursuant to which owners of real property may obtain funding for energy conservation and efficiency, renewable energy and wind resistance improvements and repay such funding through voluntary special

assessments, levied upon the improved property pursuant to financing agreements between the property owner and the PACE Local Government(s).

- (b) The availability of the voluntary, non-exclusive PACE Program offered by the PACE Local Governments is without cost, assumption of liability by, or demand upon the credit of Sarasota County
- (c) Section 163.08(3), Florida Statutes authorizes a PACE Local Government to levy non-ad valorem assessments to fund Qualifying Improvement within a county or city jurisdiction subject to an interlocal agreement entered into with that county or city and an ordinance or resolution authorizing PACE Local Governments to operate within its jurisdiction.
- (c) The installation and operation of Qualifying Improvements not only benefits the affected properties for which the improvements are made, but also provides a public benefit by assisting in fulfilling the goals of the County's energy and hurricane mitigation policies.
- (d) The voluntary participation in the PACE Program by property owners will provide an alternative financing option to finance and repay the costs to provide and install Qualifying Improvements to property located within Sarasota County.
- (e) It is within the best interests of the citizens of Sarasota County to have uniform consumer protection regulations that apply to all PACE Local Governments who implement and manage the PACE Program in unincorporated Sarasota County and those municipalities who choose to opt into the Program.

Sec. 38-321. Short Title.

This article shall be known as the "Sarasota County Property Assessed Clean Energy Program".

Sec. 38-322 Purpose.

The Sarasota County Property Assessed Clean Energy (PACE) Program has been developed to allow a property owner to voluntarily finance energy efficient, renewable energy, or wind resistant improvements through a non-ad valorem assessment implemented and managed by a PACE Local Government and repaid through the annual tax bill. The purpose of this Ordinance is to provide uniform consumer protection regulations for all PACE Local Governments that are authorized to operate

within Sarasota County to ensure that: (i) the citizens of Sarasota County are fully apprised of the Program, (ii) PACE Local Governments have developed a responsive complaint process, (iii) that Qualifying Improvements meet the statutory goals set forth in Section 163.08, Florida Statutes; and (iv) that contractors meet certain standards of conduct.

Sec. 38-323. Definitions.

- (a) *Board* shall mean the Sarasota County Board of County Commissioners.
- (b) *Eligible Participant* shall mean any residential or non-residential Property owner who voluntarily participates in the PACE Program and satisfies the eligibility requirements set forth in Section 38-327.
- (d) *PACE Act* shall mean Section 163.08, Florida Statutes.
- (e) *PACE Assessment* shall mean the non-ad valorem assessment placed on a property owner's tax bill as a result of financing obtained pursuant to the PACE Financing Agreement .
- (f) *PACE Financing Agreement* shall mean the agreement entered into between the Eligible Participant and the PACE Local Government specifying the Qualifying Improvements to be installed at the Property and the terms and conditions for financing those improvements through non-ad valorem assessments levied on the Property.
- (g) *PACE Interlocal* shall mean an agreement entered into between Sarasota County and a PACE Local Government authorizing the PACE Local Government to administer the PACE Program within unincorporated Sarasota County.
- (h) *PACE Local Government* shall mean a separate legal entity created pursuant to Section 163.01(7), Florida Statutes, or its designated administrator.
- (i) *PACE Program or Program* shall mean the Property Assessed Clean Energy (initiative authorized by Section 163.08, Florida Statutes within the boundaries of unincorporated Sarasota County and any municipality that has opted into the Sarasota County PACE Program.
- (j) *Property* means a residential or commercial property, located within the jurisdictional boundaries of unincorporated Sarasota County and any municipality that has opted into the Sarasota County PACE Program.

- (k) *Qualifying Improvements* shall mean those improvements to real property provided for in Section 163.08(2), Florida Statutes, including, but not limited to, energy conservation and efficiency, renewable energy and wind-resistance improvements.

Sec. 38-324. PACE Program Boundaries.

The PACE Program shall be available to Eligible Participants residing within unincorporated Sarasota County and within Sarasota County municipalities, provided that the municipality has adopted a resolution or ordinance authorizing those areas to be included in the PACE Program.

Sec. 38-325. PACE Local Governments.

Upon entering into a PACE Interlocal with Sarasota County, a PACE Local Government shall be authorized to administer the PACE Program pursuant to Section 163.08, Florida Statutes, the terms of this Article, as may be amended from time to time, the PACE Interlocal and other regulations adopted by the Board within unincorporated Sarasota County and those municipalities that have opted into the PACE Program.

Sec. 38-326 PACE Program standards. At a minimum, PACE Local Governments shall comply with each of the following standards:

(a) General

- (1) Qualifying Improvements: All Qualifying Improvements shall be properly permitted. PACE Local Governments shall finance only Qualifying Improvements that are permanently affixed to the Property.
- (2) Licensed Contractors: Any contractor constructing or installing a Qualifying Improvement shall be properly licensed and insured.
- (3) Materials: PACE Local Governments shall fund, and contractors and owner-builders shall construct or install, only Qualifying Improvements. PACE Local Governments shall establish an “Eligible Measures List” that identifies the types and specifications of Qualifying Improvements, using criteria that will ensure that materials and installation procedures used in the Qualifying Improvement are recognized by credible third-party standards or government entities for reducing energy use or increasing wind resistance. If the product falls within an eligible category under ENERGY STAR, the product must be ENERGY STAR Certified. The Eligible Measures List shall be

regularly updated and made publicly available. The County shall have the right to review and approve that list annually.

- (4) Data Security and Consumer Privacy: PACE Local Governments shall take security measures to protect the security and confidentiality of consumer records and information to the extent permitted by law. In addition, a privacy policy must be in place that complies with state and federal law and, in particular, shall provide a property owner the ability to opt-out of having the property owner's information shared with third parties, except where expressly permitted by state and federal law.
- (5) Contractor Pricing: PACE Local Governments shall establish pricing rules and enforcement mechanisms to ensure property owners are protected from excessive or unjustified prices and charges.
- (6) Estimated Energy Savings Disclosure: PACE Local Governments shall ensure that contractors inform Eligible Participants of the following:
 - aa. Estimate of energy and/ or insurance cost savings and return on investment, including the range of efficiency options if appropriate;
 - bb. Available rebates or incentives;
 - cc. The benefits of installing energy efficiency improvements before renewable energy to reduce costs overall;
 - dd. The benefits of a full Energy Audit of their property, names of energy audit professionals qualified through the Residential Energy Services Network, Building Performance Institute, Association of Energy Engineers, or other comparable program, and any available incentive programs; and
 - ee. Costs of the Energy Audit are eligible for financing as part of the assessment.
- (7) Notice to Property Owner: Prior to or contemporaneously with entering into a PACE Financing Agreement, PACE Local Governments shall provide the property owner with a separate written notice disclosing the following items:
 - aa. The total amount of the debt, including interest;

- bb. The maximum annual PACE Assessment and payment term that does not exceed the useful life of the improvements;
- cc. The three-day right to cancel the PACE Financing Agreement;
- dd. That the PACE Assessment will appear on the property owner's tax bill;
- ee. That there is no discount or penalty for paying the PACE Assessment early;
- ff. That the PACE Assessment will be collected in the same manner as real estate taxes, that failure to pay the PACE Assessment may cause a tax certificate to be issued against the property, and that failure to pay may result in the loss of property subject to the PACE Assessment, including homestead property, in the same manner as failure to pay property taxes;
- gg. That the property improvements and PACE Assessment may or may not affect the overall market value of the Property;
- hh. That the PACE Assessment may affect the sale or refinance of the property; and
- ii. That the buyer's financing agency may require that the assessment be paid off at or before closing.
- jj. That if the property owner is using escrow, they should contact their lender immediately to ensure that the escrow payments are adjusted correctly and the property owner is aware of and prepared for the increased payment amount.

The notice shall be signed and dated by the property owner to acknowledge that they understand these conditions. The PACE Local Government shall record, or cause to be recorded, the signed Notice in the public records as an attachment to the PACE Financing Agreement.

(8) PACE Financing Agreement. The PACE Local Government shall enter into a voluntary written agreement with each Eligible Participant which shall include, at a minimum, the following:

- aa. The full legal description of the property subject to the PACE Assessment.
- bb. The source and amount of funding to be provided to the Eligible Participant.
- cc. Express voluntary consent by the Eligible Participant to accept the non-ad valorem assessment

collection process pursuant to Section 197.3632, Florida Statutes.

- dd. The length of time for the Eligible Participant to repay the non-ad valorem assessment, which shall not exceed 30 years.
- ee. The Eligible Participant shall be responsible for assuring the Qualifying Improvements are completed as reflected in the approved application documents. The Eligible Participant also consents to providing access to the Property to verify that the Qualifying Improvements have been completed as proposed in the application.
- ff. At the time of a transfer of Property ownership (except a transfer resulting from foreclosure), the past due balances of any non-ad valorem assessment shall be due for payment, but future payments shall continue as a lien on the Property, provided mortgagor, if any, agrees. At or before the execution of a contract for the sale and purchase of any Property for which a non-ad valorem assessment for the PACE Program has been levied and has an unpaid balance due, the seller shall give the prospective purchaser a Notice of the lien.
- gg. The risks associated with participating in the PACE Program shall be clearly disclosed in plain language in the written agreement with the Eligible Participant, including risks related to the failure of the Eligible Participant to make payments, the risk that they may not be able to refinance the home or sell the home unless the PACE Assessment is paid off in full first, and the risk of issuance of a tax certificate and loss of the Property pursuant to Chapter 197, Florida Statutes.
- hh. Description of the Qualifying Improvements, their cost, estimated completion date and estimated savings. Statement on potential savings will include a disclosure that actual savings will depend on usage patterns, seasonal variation and weather, utility rates and trends and product specifications.
- ii. Notice of the non-ad valorem assessment shall be recorded in the public records for the Property.
- jj. The PACE Financing Agreement shall clearly disclose, in plain language, the interest rate to be charged, including points, as well as any and all fees or penalties that may be separately charged to the Eligible Participant, including potential late

fees. The subsequent charging or collecting any additional fees that were not specifically disclosed in the written agreement with the property owner shall be prohibited.

- (9) No Prepayment Penalties. No prepayment penalties may be charged or allowed. The PACE Local Government shall provide a mechanism for re-amortization of PACE assessments to account for partial pre-payment, particularly for application of tax credits, rebates, or other incentives.
- (10) Financing. The PACE Local Government may offer only fixed simple interest rates and payments that fully amortize the obligation. Variable or negative amortization financing terms are not permitted. Capitalized interest included in the original balance of PACE financing does not constitute negative amortization.
- (11) Project Completion. Property owner verification of work and sign-off on project completion to owner's satisfaction will be required before issuance of final payment to any contractor(s).
- (12) Lender notification. The PACE Local Government shall notify lenders of the PACE Assessment directly.
- (13) Contractor Management. PACE Local Governments shall:
 - aa. To the extent available, use local contractors;
 - bb. Conduct local recruitment workshops;
 - cc. PACE Local Governments shall establish a "Code of Conduct" that sets standards for participating contractors such as licensing, advertising and marketing, accurate representation of the program, and consumer protections.
 - dd. Train all PACE program contractors on the regulations related to the PACE program and the Code of Conduct;
 - ee. Ensure that all contractors hold necessary licenses and insurance;
 - ff. Confirm contractor qualifications at least annually and as necessary based upon consumer complaints or other indications of lack of compliance; and
 - gg. Remove contractors from the PACE program who no longer meet program criteria; have not met program requirements or failure to resolve consumer complaints.

(14) Customer Service: PACE Local Governments shall provide a high level of customer service, including:

- aa. Access to customer service representatives by email and phone during normal business hours;
- bb. A detailed website localized to the Sarasota County PACE Program;
- cc. A transparent customer feedback and complaint process with quick response and resolution by both the contractor and the PACE Local Government.

aaa. A document outlining complaint process shall be clearly available on the PACE Local Government website and provided to customers.

bbb. The document shall make clear that Sarasota County is not operating or administrating the PACE Program in any way and that all concerns about the Program should be addressed directly to the PACE Local Government, with clear contact information provided.

ccc. All complaints and resolutions shall be logged, with the following information at a minimum: date and time of complaint, customer and contractor information, details of complaint, when and what actions were taken by both the PACE Local Government and the contractor, and final resolution.

ddd. All disputes and complaints shall be investigated, mediated, and resolved in a timely manner. Reports shall be provided to Sarasota County upon request and a summary provided annually.

(15) Marketing: Neither PACE Local Governments nor their contractors, shall not use facsimiles of the county logo in their marketing materials. Marketing materials shall not state that PACE is a free program, a government program, or otherwise imply that it does not involve a financial obligation by the property owner or that it is a form of public assistance.

(16) Reporting: PACE Local Governments shall track Program metrics and report those metrics to Sarasota County and

any participating municipalities, by jurisdiction and in total, at least quarterly, in an electronic format agreed upon by Sarasota County. Those metrics shall include, at a minimum, the total number and value of projects approved and completed in that reporting period and a running total of the projects approved and completed since the beginning of the Program, and the following:

- aa. Name, address, contact information and sector type (commercial, industrial or residential) for participants;
- bb. Defaults or delinquencies;
- cc. Project description including qualifying improvement made, completion dates, contractor information, financed value, assessment amount, assessment duration, and total cost;
- dd. Baseline energy use, and estimated annual savings of energy use, energy cost and insurance cost; whether ENERGY STAR certified materials were used, if appropriate; solar capacity installed with expected annual renewable energy generation; any other resource saving metrics such as gallons of water saved;
- ee. Actual energy use, energy cost and insurance cost savings per projects (collecting and comparing energy usage and cost data and insurance cost data from the participant or through a utility information release form)
- ff. Audits performed, detailing the audit results, if applicable;
- gg. Number of actual or estimated jobs created during the reporting period, including local versus non-local jobs and permanent vs. temporary jobs;
- hh. Record of complaints and resolution. County reserves the right to review the material used to prepare the reports and to contact customers or contractors directly to verify experiences. If the PACE Local Government does not currently have the ability to provide reports that contain this minimum reporting information, it should modify its data collection and maintenance procedures and systems within one year in order to comply.

- (17) Amendments. County reserves the right to amend this ordinance to revise Program standards.

(18) Reporting. PACE Local Governments will respond to County requests for information on the Program in a timely manner and shall provide sufficient documentation as requested by the County to ensure that the requirements of this Article and the State statutes are being met. The PACE Local Government shall retain sufficient books and records demonstrating compliance with the Agreement and State and County requirements for a period of seven years from the initial date of each special assessment, and shall allow County representatives access to such books and records upon request.

(b) Additional Program standards for residential properties: PACE Local Governments that finance PACE Qualifying Improvements on residential properties within Sarasota County shall, at a minimum, comply with at least one (1) of the following additional standards for projects affecting residential properties with four (4) residential units or fewer:

(1) Financing limits: PACE Local Governments shall ensure that the total amount of any annual property taxes and assessments do not exceed five percent (5%) of the Property's fair market value, determined at the time financing is approved and ensure that the total amount of annual PACE Assessments do not exceed four percent (4%) of the total annual gross income of the Property owner in the prior calendar or fiscal year, based upon an affidavit or attestation by the Property owner of the owner's total annual gross income. Fair market value shall be that value determined by the Sarasota County Property Appraiser, by a credentialed commercial property appraiser or licensed realtor, or by an automated valuation service or model preapproved by the County.

(2) Mortgage Holder Consent or Escrow: PACE Local Governments shall verify that each prior mortgage or financing instrument holder has consented to any proposed Financing Agreement and PACE Assessment, or that the prior mortgage or financing instrument holder or loan servicer has consented to escrow sufficient funds to ensure payment of the annual assessment with each year's tax bill; or

(3) Insurance or Energy Savings: PACE Local Governments shall verify that the total cost of the PACE Assessment is equal to or less than the projected savings to the property

owner based upon the projected energy savings in a written statement from a Certified Energy Auditor, certified by the Association of Energy Engineers, the Residential Energy Services Network, or the Building Performance Institute, or the projected insurance savings in a written statement from the property owner's insurer.

Sec. 38-327. Eligible Participants.

In order to be an Eligible Participant, a property owner (or property) must meet the following criteria:

- (a) Be the legal owner of the Property and provide proof of ownership in the application for the PACE Program;
- (b) Property must be within the PACE Program boundaries, as defined in Section 38-324.
- (c) All property taxes and any other assessments levied on the same bill as property taxes are paid and have not been delinquent for the preceding three (3) years or the Property owner's period of ownership, whichever is less;
- (d) Property owner must be current on any mortgage.
- (e) Property owner cannot be in bankruptcy nor can the Property be an asset in any bankruptcy proceeding.
- (f) Property cannot have any federal income tax lien, judgment lien or similar involuntary lien, including construction liens, encumbering it.
- (g) Notices of default or other evidence of Property-based debt delinquency cannot have been recorded during the preceding three (3) years or the Property owner's period of ownership, whichever is less.

Section 38-328. Non-ad valorem Assessments

Pursuant to Section 163.08, Florida Statutes, the PACE Local Government is authorized to impose non ad-valorem assessments on Property to secure the repayment of any loan by an Eligible Participant to pay for Qualified Improvement(s), which shall be collected pursuant to Section 197.3632, Florida Statutes, or any successor Section. Notwithstanding Section 197.3632(8)(a), the assessments shall not be subject to discount for early payment and shall not require notice and adoption as set forth in Section 197.3632(4). Pursuant to Chapter 197, Florida Statutes, non-ad valorem

assessments levied pursuant to this Article shall remain liens, coequal with the lien of all state, County, district and municipal taxes, superior in dignity to all other liens, titles and claims, until paid.

Sec. 38-329. PACE Program Administration.

The PACE Program shall be administered pursuant to Section 163.08, Florida Statutes, this Article and any additional regulations adopted by the Board.

Sec. 38-330. Recordation.

The agreement between the Eligible Participant and the PACE Local Government shall be recorded in the public records of the County within five (5) days after execution of the agreement. The recorded agreement shall provide constructive notice that the assessment to be levied on the Property constitutes a lien of equal dignity to County taxes and assessments from the date of recordation. Failure to record the agreement with such five (5) day period shall invalidate the terms of the agreement.

Sec. 38-331. Notice to Purchaser.

- (a) As a courtesy, at or before the execution of a contract for the sale and purchase of any property for which a non-ad valorem assessment for the PACE Program has been levied and has an unpaid balance due, the seller shall give the prospective purchaser the following notice in writing:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY OR WIND RESISTANCE. The property being purchased is located within the jurisdiction of a PACE Local Government that has placed an assessment on the property pursuant to Section 163.08, Florida Statutes. The assessment is for a qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of the property. This assessment will require an additional payment to the Tax Collector until such time as the assessment is fully paid off. You are encouraged to contact the Sarasota County Property Appraiser to learn more about this and other assessments that may be provided by law.

- (b) Failure to provide the courtesy notice referenced above to a purchaser of the Property shall have no effect on either the validity of any PACE Assessment or any obligation of a Property owner.

- (c) Notice, as provided below, shall be recorded in the public records for the Property within five (5) days after execution of the PACE Agreement:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE. This property is located within the jurisdiction of a PACE Local Government that has placed an assessment on the property pursuant to Section 163.08, Florida Statutes. The assessment is for a Qualifying Improvement to the property relating to energy efficiency, renewable energy or wind resistance, and is not based on the value of property. This assessment will require an additional payment to the Tax Collector until such time as the assessment is fully paid off. You are encouraged to contact the Sarasota County Property Appraiser to learn more about this and other assessments that may be provided by law.

Sec. 38-332. Suspension or Termination.

In the event any PACE Local Government fails to abide by the provisions of this Ordinance and the PACE interlocal, following sixty day notice to cure, the County in its sole discretion, may suspend or terminate the interlocal agreement and the PACE Local Government shall have no authority to continue with any new projects within Sarasota County.

Sec. 38-333. Enforcement

This Ordinance is enforceable by all means provided by law. Additionally, the County may choose to enforce this Ordinance by seeking injunctive relief in the Twelve Judicial Circuit Court.

SECTION 3. Severability Clause.

If any provision of this ordinance is for any reason finally held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions.

SECTION 4. Effective Date.

This Ordinance shall take effect upon filing with the Office of Secretary of State of the State of Florida.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Sarasota County, Florida, this _____ day of _____, 2017.

**BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA**

By: _____
Chairman

ATTEST:

KAREN E. RUSHING, Clerk of the
Circuit Court and Ex-Officio Clerk
of the Board of County Commissioners
of Sarasota County, Florida

By: _____
Deputy Clerk

DRAFT