

## **RESOLUTION NO. 2019-0092**

Adopted by the Sacramento City Council

March 26, 2019

### **Adopting an Amended Policy for Property Assessed Clean Energy Programs in the City of Sacramento and Rescinding Resolution 2016-0419**

#### **BACKGROUND**


- A. The State of California has provided local governments with the ability to authorize property assessed clean energy (“PACE”) programs for purposes of allowing property owners to finance energy efficiency, water efficiency, seismic improvements, and renewable energy projects on existing structures through a voluntary assessment on the property pursuant to Chapter 29 of Division 7 of the Streets & Highways Code, as amended by Assembly Bill 811 in 2007; and the Mello-Roos Community Facilities Act of 1982, as amended by Senate Bill 555 in 2011.
- B. The City has currently authorized five PACE programs to provide financing to property owners in city limits: 1) Ygrene PACE programs; 2) the California Statewide Communities Development Authority Open PACE programs; 3) the California HERO Program; 4) the California Municipal Finance Authority PACE Program; and 5) the Figtree PACE Program.
- C. On December 6, 2016 City Council adopted the citywide PACE Policy (Resolution No. 2016-0419) to establish the City of Sacramento’s expectations regarding the operation of PACE programs within city limits and set forth standards for consumer protections and responsible lending practices.
- D. Multiple state laws have been passed since adoption of the citywide PACE Policy, including: AB 2693 (Chapter 618, Statutes of 2016), AB 1284 (Chapter 475, Statutes of 2017) and SB 242 (Chapter 484, Statutes of 2017). These laws establish a new regulatory, oversight, and licensing framework for PACE program administrators to be managed by the California Department of Business Oversight and ensure that PACE programs comply with best practices.
- E. Staff propose adoption of the amended citywide Policy to better reflect and align with recent state law and clearly communicate the City’s expectations of PACE programs/providers operating within city limits.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. Resolution No. 2016-0419 is hereby rescinded.
- Section 2. Exhibit A: Property Assessed Clean Energy Policy is hereby incorporated into and is a part of this Resolution.

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Exhibit A – PACE Policy Procedure

Adopted by the City of Sacramento City Council on March 26, 2019, by the following vote:

- Ayes: Members Carr, Guerra, Hansen, Harris, Jennings, Schenirer, Warren and Mayor Steinberg
  - Noes: None
  - Abstain: None
  - Absent: Member Ashby
  - Attest: Wendy Klock-Johnson, MMC  
 Digitally signed by Wendy Klock-Johnson, MMC  
Date: 2019.03.28 13:35:02 -07'00'
- 
- Wendy Klock-Johnson, Assistant City Clerk

*The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.*

## Property Assessed Clean Energy Policy

**Scope: CITYWIDE**

### **Policy Contact**

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Resolution 2019-0092

**Effective Date:**

## I. PURPOSE AND INTENT

The purpose of this policy is to establish the City of Sacramento's expectations regarding the operation of property assessed clean energy (PACE) programs within city limits. This policy sets forth standards, guidelines and best practices for consumer protections and responsible financing practices. This policy has the following primary objectives:

- a. Foster consumer protection practices.
- b. Encourage cost-effective improvements that result in real reductions in energy and water use.
- c. Affirm the City's commitment to support and, where applicable, defer to state law including: AB 2693 (Chapter 618, Statutes of 2016), AB 1284 (Chapter 475, Statutes of 2017) and SB 242 (Chapter 484, Statutes of 2017).
- d. Provide guidance to City staff for appropriate oversight and expectations of PACE programs in the City of Sacramento.

PACE programs offer an alternative means to finance energy, water, and seismic improvements that are permanently affixed to existing properties. Eligible improvements may vary by PACE program, but generally include improvements for energy and water efficiency, distributed generation renewable energy facilities such as solar photovoltaics, and vehicle charging. Property owners participate by entering into a contract, which provides for placement of an assessment lien on the property to secure repayment of full project costs. Upfront costs are paid directly to the contractor completing the improvements. Property owners then repay the costs of improvements, fees, and interest as a special assessment on property tax bills, typically over a five- to twenty-year period. PACE is a property-secured form of financing, which can remain with the property if sold or transferred.

## 2. DEFINED TERMS

The following definitions are used in this policy for clarity and shared understanding but may differ slightly from defined terms in state regulation. In the event of conflict, state law and regulation shall control.

- a. "City" refers to the City of Sacramento.
- b. "Consumer" refers to the owner of real property within the City's boundaries that is considering or applying for PACE financing or has executed an agreement for a PACE assessment on the property.
- c. "PACE assessment" means a voluntary contractual assessment, voluntary special tax, or special tax, as described in subdivisions (a), (b), and (c) of Section 26054 of the Public Resources Code.
- d. "PACE program" refers to a PACE provider's distinct property-secured program for the financing of energy, water, seismic improvements, or other purposes deemed eligible by state law on properties in city limits, or other improvements as deemed eligible by the California legislature that will be permanently affixed to real property, with the cost of improvements to be repaid through contractual assessments. PACE programs are generally characterized by a unique program administrator, in addition to customized program branding, underwriting criteria, and approved participating contractors. Several PACE programs may operate under a single PACE provider. For

example, PACE providers may offer separate programs for residential and nonresidential properties, with different program names and branding. PACE programs can offer financing to residential and/or commercial properties, depending on the structure of the given program.

- e. “PACE provider” refers to the joint powers authority authorized by resolution of the City Council to conduct PACE-related proceedings for property within the City limits. PACE providers may delegate certain responsibilities and operations to entities that administer, manage, or assist with PACE program implementation, such as the review and approval of applications, securitization of financing, preparation and submission of annual levies, management of assessment repayments, and the administration of requirements for participating contractors. PACE providers may offer one or more PACE programs within City limits, with each program typically managed by a unique administrator working on behalf of the PACE provider. This definition includes PACE administrators to whom certain PACE provider responsibilities are delegated.
- f. “Participating contractor” is any contractor or subcontractor working on behalf of a contractor, that sells, installs, or completes improvements to real property for consumers pursuant to a PACE program in city limits.
- g. “PACE solicitor” means a person authorized by a PACE provider to solicit a property owner to enter into an assessment contract. A “PACE solicitor agent” means an individual who is employed or retained by, and acts on behalf of, a PACE solicitor to solicit a property owner to enter into an assessment contract. “PACE solicitor” and “PACE solicitor agent” do not include any of the following:
  - i. A person employed by a PACE provider.
  - ii. A person, including a home improvement contractor or subcontractor, who does not solicit property owners to enter into assessment contracts.
  - iii. A person who performs purely administrative or clerical tasks.
  - iv. A person who advertises a PACE program, if the content of the advertising is created, prepared, or approved by a PACE provider, and advertising is subject to, and in compliance with this division.
  - v. A person who obtains information regarding prospective applicants for PACE financing, or who provides to a PACE provider information regarding prospective applicants for PACE financing, if such information was not obtained in connection with advertising or soliciting a PACE program.

### 3. MINIMUM STANDARDS

The City requires PACE programs to meet the following minimum standards and comply with state law. Each PACE program should maintain PACE-related documentation, which may be necessary for demonstrating procedures, disclosures, and operations pursuant to state law, and as summarized in this policy. All standards apply to both residential and commercial PACE financing unless otherwise specified.

- a. All PACE providers must comply with expectations, operative dates and provisions of this policy and applicable state laws, including: AB 2693 (Chapter 618, Statutes of 2016), AB 1284 (Chapter 475, Statutes of 2017) and SB 242 (Chapter 484, Statutes of 2017). Requirements include:
  - i. As of January 1, 2019, each PACE provider providing PACE financing to

residential properties with four or fewer units and commercial properties with a market value of less than one million dollars (\$1,000,000) shall be licensed by the California Department of Business Oversight and are subject to an inspection, examination, or investigation by the Commissioner. As such,

- a) PACE providers must comply with the California Financial Information Privacy Act regarding the duty to safeguard nonpublic personal information.
  - b) PACE providers must have a net worth of at least \$25,000 and must maintain a surety bond of at least \$25,000.
  - c) As of January 1, 2019, new PACE providers who want to do business in the City of Sacramento must apply to the California Department of Business Oversight Commissioner and pay their required fee at least 10 days before engaging in business in the City.
- ii. In the event that a PACE provider is offering PACE financing to properties that do not require licensing and regulation from the California Department of Business Oversight, those PACE providers shall apply the expectations set forth by state law and summarized in this policy as guidance and best practices which the City will use to evaluate, approve, deny or terminate authorizations of PACE providers within the City.
- b. Consumer Protections and Disclosure
- i. Each PACE provider shall offer a three-day right to cancel the contractual assessment at any time prior to midnight on the third business day after financial disclosure is provided to the property owner, with no penalty or obligation.
    - a) A PACE provider may not authorize a participating contractor to begin work under an assessment agreement until after a property owner's three-day right to cancel expires.
  - ii. A PACE provider must orally confirm the key terms and conditions of the assessment contract with a property owner, in the preferred language of the property owner and maintain a written record of the confirmation(s). Voicemail messages do not satisfy this requirement for financing term confirmation.
    - a) A PACE provider must provide a property owner copies of the key documents in the same language as the oral confirmation of terms.
  - iii. Each PACE provider should provide information to consumers online, in written materials, or in video or another digital format, which encourages the completion of efficiency measures before generation installation such as solar photovoltaics.
  - iv. For residential properties: Prior to, or concurrent with, PACE assessment contract execution, each PACE provider should require written applicant acknowledgment of the Federal Housing Finance Authority position on PACE financing.
  - v. For non-residential properties: Prior to agreement execution, each PACE provider should require written lender affirmative acknowledgement from any senior mortgage lender, acknowledging the assessment under consideration by

the property owner. Documentation of acknowledgement should be maintained.

- vi. A PACE provider or participating contractor is prohibited from making materially false or misleading statements or representations to a property owner about the terms or conditions of an assessment contract. PACE providers should consider termination or suspension of participating contractors or solicitors found to be making false or misleading statements or representations. Where required by the state, PACE providers shall suspend or terminate participating contractors for violations of state requirements. PACE providers shall not work with any ineligible contractors as identified by the California Department of Business Oversight.
  - vii. A PACE provider, solicitor or participating contractor shall not represent a PACE program as a City-endorsed or administered program.
  - viii. A PACE provider, solicitor or participating contractor shall not represent the tax deductibility of an assessment contract unless the representation is consistent with the law.
    - a) Within advertising materials, program websites, and written agreements with consumers, each PACE provider should give written statements to consumers that recommend consultation with a tax professional prior to claiming any tax deductions associated with the project.
  - ix. PACE providers should provide written confirmation to the property owner upon extinguishment of a PACE assessment. PACE providers must preserve accounts, and records for at least three years after recording the extinguishment of a PACE assessment.
- c. PACE Eligibility
- i. Any PACE provider regulated by the Department of Business Oversight may not approve an assessment contract unless certain underwriting criteria (as established by the Department of Business Oversight) are satisfied and the PACE provider determines the property owner has the ability to pay.
  - ii. Prior to approval, PACE providers shall verify all mandatory information for each residential PACE assessment contract as required by the California Department of Business Oversight, including the following:
    - a) The property taxes and mortgage debt for the property are current.
    - b) The property has no recorded and outstanding involuntary liens over \$1,000.
    - c) The property has no current recorded notices of default.
    - d) The property owner has not filed for bankruptcy in the past four years.
    - e) The property owner has not been more than 30 days late on a single mortgage payment in the past six months.
    - f) The property is within the geographical boundaries of the applicable PACE program and property improvements are eligible for PACE financing.
    - g) The financing is less than 15 percent of the property value.
    - h) After PACE financing, total mortgage-related debt will not exceed 97 percent of the property value (assessed at the time of the improvements).
    - i) The term of the agreement does not exceed the estimated useful life of

the property improvement for which the greatest portion of funds are disbursed. The PACE provider shall determine estimated useful life for based upon credible third-party standards or certification criteria that have been established by appropriate government agencies or nationally recognized standards and testing organizations.

- j) Whether the property has other PACE assessments.
- iii. A PACE provider must verify a property's fair market value through any applicable methods provided by law, and disclose this information to the property owner.
    - a) Each PACE provider shall establish maximum assessment amounts by property type that are reasonable in relation to property value, and identify limitations on the total amount of any annual property taxes and assessments.
- d. Quality of Work and Customer Service
- i. Each PACE provider and any participating contractors must perform all work in a manner consistent with the level of competency and standard of care normally observed by an entity delivering PACE-related services, and in accordance with generally accepted professional practices and standards of care.
  - ii. A PACE contractor may not charge a homeowner a higher price for using PACE financing than if the property owner paid in cash.
  - iii. Each PACE program should include a requirement that all participating contractors obtain final permit approval, or proof of permit approval, for any applicable permits.
  - iv. PACE providers must have an enrollment process for contractors, solicitors and solicitor agents, a compliance evaluation process, an enrollment cancellation process, and a complaint response process.
  - v. Each PACE program must establish training programs and management systems for participating contractors or solicitors that are acceptable to the Commissioner of the Department of Business Oversight, including but not limited to standards for allowable improvements, processes to ensure consumer protections, and quality assurance procedures. Participating contractors or solicitors must complete the relevant training programs and management systems as established by the PACE provider.
  - vi. Any PACE provider regulated by the Department of Business Oversight must notify the Commissioner of each solicitor and solicitor agent that enrolls with the PACE provider and each solicitor and solicitor agent whose enrollment is cancelled or withdrawn.
  - vii. PACE providers are prohibited from permitting PACE solicitors or participating contractors to violate the law.
  - viii. Each PACE program should establish, publish and maintain a list and/or database of available eligible products and related guidelines and supporting documentation. Each PACE program should follow a process for adding to or modifying the list of available eligible products and that process should utilize



currently available performance standards, useful life information, and other information developed by reputable third parties including, without limitation, the U.S. Department of Energy, U.S. Environmental Protection Agency, and/or other federal and state agencies.

- ix. Each PACE program shall include a post-project dispute resolution process, which is summarized online or in written format.

e. Financial Policies

- i. Each PACE provider should use fixed, non-variable, interest rates.
- ii. Each PACE provider should provide payment schedules for consumers that fully amortize the total obligation with no balloon payments.
- iii. A PACE provider may not waive or defer the first payment on an assessment contract.
- iv. Each PACE program with assessment offerings to residential properties must be enrolled in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loan Loss Reserve Program, or a comparable loan loss reserve program that, at a minimum, meets CAEATFA eligibility criteria.

f. General Processes and Documentation

- i. Each PACE program shall include a standardized financial disclosure form in proposals and provide the disclosure form to consumers for review and signature prior to execution of an assessment agreement. The disclosure forms shall be maintained for as long as the assessments remain on consumers' property. The financial disclosure form shall clearly identify: a) product costs (including labor/installation); b) financing costs (application fees and costs, prepaid interest, other costs and total amount financed); c) Annual Percentage Rate (APR), simple interest rate, and cost of total annual principal, interest and administrative fees; d)) repayment process and schedule; e) total to be paid for the life of the loan; f) all other costs (such as appraisal fees, bond related costs, annual administrative fees, estimated closing costs, credit reporting fees, recording fees; g) total financing costs and closing costs; h) estimated cash (out of pocket) to close; and i) any additional information about the financing or other important considerations.
- ii. Each PACE provider shall notify the City of any delinquencies and foreclosure actions as a result of a default in the payment of a PACE assessment.
- iii. Each PACE provider shall establish guidelines and procedures to remove satisfied assessments and manage delinquencies. The PACE provider should give multiple written notices to any property owner with delinquencies, and offer options for repayment prior to initiating legal action for collections.
- iv. Each PACE provider must submit a minimum of two reports annually to the City of Sacramento for which they administer PACE programs. The reports, or access to an up-to-date online data portal, should show performance metrics such as total number of residential and nonresidential project financings, total financed amount, estimated energy and water savings, and energy capacity of any

generation improvements installed. For PACE providers with more than one program, the PACE provider shall be responsible for providing the City with metrics in a standardized format.

- v. Each PACE provider shall maintain documentation on PACE-related transactions and furnish to the City upon request within thirty calendar days.

## **5. ADDITIONAL RECOMMENDED GUIDANCE**

The City encourages consideration and implementation of the following additional practices.

- a. Within preliminary proposals, each PACE program is encouraged to include documents that disclose estimated cost savings in utility bills and energy reductions over the payback period for project improvements.
- b. Each PACE program should include materials online and in written format that encourage consumers to consider available rebates and incentives for improvements, including but not limited to those offered by the Sacramento Municipal Utility District, Pacific Gas and Electric, the City of Sacramento, and other local, state, or federal rebates, as applicable.

## **6. POLICY COMPLIANCE**

Consistent with the foregoing, the City states the following:

- a. Starting January 1, 2019, the Department of Business Oversight will license and regulate PACE providers as defined in Section 22018 of the California Financial Code. It is authorized to investigate the assessment contracts and examine the books, accounts, records, and files used in the business of every PACE provider. It may also suspend a license or bar a person from being employed with a licensee if that the person has willfully misled the public regarding his or her qualifications or experience. However, notwithstanding the foregoing, should a PACE provider or its PACE programs fail to meet the City's expectations as identified in this policy, the City reserves its right to alter or terminate its relationship or membership with the PACE provider.
- b. Recognizing the state's role, the City Council reserves the right to approve, deny or terminate authorizations of PACE providers as the City sees fit; official oversight and regulation will be provided by the Department of Business Oversight for applicable programs and providers. Notwithstanding the foregoing, this policy should not be relied on by consumers as to the fairness or legitimacy of any specific PACE program.
- c. This policy constitutes the City's expectations and provides guidance to City staff to review the compliance of PACE programs and set forth recommendations for City Council's consideration. The Sustainability Manager or appropriate staff of Public Works shall be responsible for administering this policy and providing recommendations to City Council accordingly, together with any other staff persons chosen by the City Manager.
- d. Nothing in this policy amends the City's role or responsibilities as identified in the authorizing resolutions for each PACE provider as defined herein, and the City shall not be responsible for the conduct of any assessment proceedings; the levy of assessments; any remedial action in the case of delinquencies; or the issuance, sale or administration of any bonds issued in connection with the PACE programs.