



**DATE:** January 29, 2014

**TO:** City Council Sustainability Committee

**FROM:** Director of Public Works – Utilities & Environmental Services

**SUBJECT:** Figtree PACE (Property Assessed Clean Energy) Program

## **RECOMMENDATION**

That the Committee reviews this report and recommends that the City Council approve resolutions to join the Figtree PACE Program and the California Enterprise Development Authority.

## **BACKGROUND**

California AB 811 (July 21, 2008) and AB 474 (January 1, 2010) authorize Property Assessed Clean Energy (PACE) financing whereby legislative bodies may designate areas within which authorized public officials and willing property owners may enter into voluntary contractual assessments for the purpose of financing the installation of distributed generation renewable energy sources, energy efficiency and/or water conservation improvements that are permanently affixed to real property. An example of this would be a single-family homeowner planning to install solar photovoltaic panels or a commercial property owner performing water efficiency improvements.

The intent of the legislation was to make renewable energy, energy efficiency and water conservation improvements more affordable and to promote the installation of those improvements. PACE financing allows property owners to finance 100% of the cost of eligible improvements, such as solar energy systems, energy efficiency improvements, water conservation, and high-efficiency air conditioning units, through an assessment on the property that is paid over time with the property taxes. Participation in the program is voluntary and only those property owners who wish to participate in the program will pay an assessment. Hayward's Climate Action Plan, adopted in 2009, calls for the development of financing programs for energy efficiency retrofits for residential, multi-family, and commercial properties (Actions 3.7, 3.8, and 3.9).

CaliforniaFIRST – On January 5, 2010, Council adopted Resolutions to join CaliforniaFIRST and to authorize the California Statewide Communities Development Authority to accept applications from property owners and to conduct contractual assessment proceedings and levy contractual assessments on behalf of the City. CaliforniaFIRST was originally going to be a PACE program for all property types; however, in July 2010, the Federal Housing Finance Agency (FHFA) issued a statement, effectively halting development of residential PACE programs. Since September 2012, CaliforniaFIRST has been providing financing to non-residential properties within participating

cities and counties. CaliforniaFIRST launched in September 2012 with fourteen counties and more than 120 cities participating in the program throughout California. To date, there have been eighty applications for projects totaling over \$43 million throughout California. Of these, sixteen are in Alameda County (totaling approximately \$13 million) and two (totaling approximately \$600,000) are in Hayward.

*Residential PACE* – PACE assessments were designed to be senior to a mortgage, meaning that upon a foreclosure or forced sale, the assessment would be paid off prior to the mortgage. In July 2010, the FHFA, along with Fannie Mae and Freddie Mac, objected to the senior lien status that PACE financing shares with other property taxes and assessments and took steps to stop residential PACE. The Agency issued a statement advising Fannie Mae and Freddie Mac to avoid buying mortgages with PACE assessments and hinted at more drastic actions, such as finding PACE homeowners in default under their mortgages. Lawsuits were filed against the FHFA and other federal agencies by the State of California, Sonoma County, the City of Palm Desert, and others for actions taken by the federal agencies to block homeowners' access to PACE instruments.

In August 2011, the U.S. district court in northern California ordered the FHFA to begin a formal rulemaking process and solicit input from the public. While the FHFA appealed to a higher court, it began the rulemaking process. Meanwhile, in March 2013, the U.S. Court of Appeals for the Ninth Circuit reversed the lower district court, finding that the FHFA's actions cannot be challenged in court. On September 23, 2013, Governor Jerry Brown sent a letter to the FHFA explaining his intent to establish a reserve fund for residential PACE programs that would make Fannie Mae and Freddie Mac whole in the event of a foreclosure or forced sale. Governor Brown is hoping that the reserve fund, if accepted by the FHFA, will remove the financing obstacle for residential PACE implementation.

## **DISCUSSION**

Attachment I is a one-page summary describing PACE. In addition, PACE programs offer the following benefits to property owners:

- Access to funds: In today's economic environment, alternatives for property owners to finance renewable energy, energy efficiency and water conservation improvements may not be available. Therefore, many property owners do not have options available to them to lower their utility bills.
- Savings: Utility costs continue to rise and renewable energy, energy efficiency and water conservation improvements help lower utility bills. In addition, the interest paid may be tax-deductible.
- Payment obligation is tied to the property: The loan does not need to be repaid when the property is sold or transferred. The new owner assumes the obligation to repay the loan with the property taxes.
- Voluntary: Property owners choose to participate in the program at their own discretion.
- Repayment obligation matched to the useful life of the financed improvements: Loan terms can range from five to twenty years, depending on the expected usefulness of the improvements.

- Prepayment options: Property owners can pay off the assessments at any time, subject to applicable prepayment penalties as determined by each individual lender.
- Property owners' personal credit is not involved: The amount financing is based on the assessed value of the property (under certain circumstances an appraisal can be authorized) and the borrowers' personal financial rating is not involved. Commercial property owners appreciate the off-balance-sheet financing that doesn't impact their capacity to borrow for other business needs.
- Increased property values: More efficient properties are typically worth more and sell faster.

The Figtree PACE Program concentrates on commercial, industrial, retail, and multi-family properties. Staff was approached by Figtree in 2013 because they had a Hayward property owner interested in participating in their program. If approved, Figtree would be the second commercial PACE program available to Hayward property owners. There are several PACE programs operating in other parts of California and even more nationwide. The only other PACE program that is currently available to Hayward is the California HERO program, which was established by the Western Riverside Council of Governments. The City of San Jose recently decided to participate in both Figtree and California HERO. While Figtree is available to single-family residential properties with no mortgage or with a jumbo loan that does not meet FHFA lending criteria, California HERO is available to all single-family residential properties and does not require lender consent. In light of the statement issued by FHFA in July 2010, the HERO program recommends that residential property owners review their mortgage documents to determine whether or not entering into a HERO loan might "constitute an event of default". It would likely be difficult for the typical homeowner to determine whether or not participation in the HERO program would violate their existing mortgage. Therefore, staff recommends against participating in the HERO program at this time.

Founded in 2011, the Figtree PACE program is sponsored by the California Enterprise Development Authority (CEDA), a joint powers authority. Since the City is not an associate member of CEDA, Council would need to approve a resolution to become an associate member. There is no cost or liability associated with becoming a member of CEDA. While Figtree's focus is on non-residential properties, it also offers financing to residential properties that either do not have a mortgage lien or have a non-FHFA mortgage provided that the mortgage lien holder's acknowledgment to the PACE lien is obtained. Figtree is currently available in forty-nine cities and unincorporated areas in California, including Dublin and unincorporated Alameda County. Some other cities in Alameda County have considered participating in Figtree PACE, but have not done so because they have not had interested property owners. To date, Figtree has provided \$1.5 million in PACE financing to California businesses.

When Alameda County approved participation in Figtree in 2012, the Board of Supervisors established an assessment district for all of Alameda County. To participate in the Figtree program, Council would need to adopt one resolution to join CEDA and another resolution to opt into the Alameda County Figtree PACE assessment district . These actions will not expose the City to financial or other liability.

Jurisdictions are free to participate in multiple PACE programs and doing so may foster a competitive PACE marketplace. Regarding the differences between the Figtree PACE program and other PACE programs, Figtree offers the following:

- Full Service: FIGTREE works closely with the property owner from the moment an application is submitted until the project is successfully completed and funded. FIGTREE arranges the financing and obtains mortgage lender consent for each participating property owner.
- Free Market: FIGTREE funds projects through various sources to provide the best available rate and terms to participating property owners.
- Flexible: FIGTREE offers financing plans that can be tailored to a property owner's specific needs.

## **ECONOMIC IMPACT**

Participation in the Figtree PACE program is a cost effective means of offering property owners the opportunity to make energy and water efficiency retrofits to their property. Both CaliforniaFIRST and Figtree have similar benefits to property owners, including an opportunity to have alternative methods for owners to finance these types of improvements and to realize energy cost savings related to them. Both programs are 100% voluntary. Payment obligations stay with the property upon transfer of ownership, although some mortgage providers may require the assessment to be paid off before the property is transferred. Property owners would have a choice of provider when taking advantage of a PACE program to enhance their property. Participation in PACE will create jobs in the local economy and make clean energy available to Hayward property owners.

## **FISCAL IMPACT**

Participation in the Figtree PACE program will not impact on the General Fund or any City funds. PACE programs use private sector capital to provide property owners with funding. The City will not incur any cost or involvement and there is no administrative responsibility, marketing obligations, or financial exposure to the City. Figtree has provided a draft agreement to be signed by CEDA, Figtree, and the City releasing the City of all financial and legal liability. The City Attorney's office reviewed the draft agreement and will recommend that Council authorize its execution.

## **NEXT STEPS**

Upon a recommendation of the Committee, staff will present Council with two resolutions for adoption on February 18, 2014. One resolution will be to join CEDA and the other will be to opt into the Alameda County Figtree PACE assessment district.

*Prepared by:* Erik Pearson, AICP, Environmental Services Manager

*Recommended by:* Alex Ameri, Director of Public Works – Utilities & Environmental Services

Approved by:



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Fran David, City Manager

Attachments:

Attachment I              Brochure titled “What is PACE?”

# PACE. Property Assessed Clean Energy

## Innovative. Voluntary. Efficient.

### What is PACE?

PACE is Property Assessed Clean Energy, a new and innovative way for commercial property owners to pay for energy efficiency upgrades, on-site renewable energy projects, and water conservation measures. PACE funding is provided or arranged by a local government for 100% of a project's costs, and is repaid with an assessment over a term of up to 20 years. Local government assessment financing has been used efficiently for decades throughout the United States to fund improvements to private property that meet a public purpose.

- PACE financing is available for all types of commercial and industrial properties, large and small, and may be available to non-profits and government facilities as well.
- Financing approvals are simple, but PACE projects must be permanently affixed to the property and save money for the property owner.
- Benchmarking, energy audits and evaluations can be used to ensure that projects make sense, but PACE is 100% voluntary. In communities that adopt PACE, assessments are only paid by participating owners, and only for their own projects.

PACE is a national initiative, but programs are locally based and tailored to meet local market needs. Visit [www.pacenow.org](http://www.pacenow.org) to see if PACE financing is available in your community or learn more about how you can support development of a program.



### The Opportunity

Energy efficiency is the least expensive energy we can buy. In the U.S., buildings alone consume over 40 percent of the energy we use, and roughly 75 percent of all electricity. A 2012 study by the Rockefeller Foundation and DB Climate Change Advisors sees an investment opportunity of nearly \$280 billion over the next 10 years that would translate to over \$1 trillion in energy savings, over 3 million jobs, and 600 million fewer metric tons of carbon emissions per year. PACE is clearly working because it meets a market need.

- Property owners see an opportunity to save money and make their buildings more valuable
- Existing mortgage lenders support projects that meet their clients' objectives and increase the value of their collateral
- Energy service companies and contractors find PACE can help them make sales
- Local governments like PACE because it creates jobs, economic activity, and helps meet energy conservation goals
- Private market investors like PACE because assessment liens are a proven, strong credit

### Benefits of PACE

PACE financing has many features that can uniquely solve barriers to the adoption of energy efficiency measures.

- 100% financing requires no up-front cash investment
- Long-term financing (up to 20 years) results in immediate positive cash flow
- No payoff upon sale because PACE assessments (and energy savings) remain with the property
- Assessment costs and savings can be shared with tenants
- PACE can attract a wide range of private investors with low interest rates
- PACE may be treated as off balance sheet financing
- Non-recourse, non-accelerating financing
- PACE programs are local and community members are motivated to engage in outreach and marketing efforts

### WHERE IS PACE AVAILABLE?

PACE can now be used in 31 states and programs are being launched throughout the U.S. Over the past 12 months, financing activity has more than doubled, with more than \$30 million provided to improve over 160 buildings. Projects completed and in the works range from \$10 thousand to over \$3 million. In the coming year, programs in California, Connecticut, Florida, Georgia, Michigan, Minnesota, New York, Ohio, and others could easily triple these results.

PACE financing works for large and small projects on just about any commercial building. Some of the world's largest property owners, including Simon Property Group and Prologis, Inc. have used PACE to finance energy efficiency and renewable upgrades to their buildings.

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