

176th BOARD YEAR

LEGISLATIVE ITEMS RECEIVED FOR COMMITTEE REFERRAL

File No.	Rec/Ref:	To:	Title
176-O-097	12/01/21 12/02/21	HR FI	ORD: Approve 2022 Salary Range Adjustment For Seasonal And Temporary Classifications And Broaden The Pay Ranges For Certain Seasonal Classifications
176-O-098	12/01/21 12/02/21	HR FI	ORD: Approve 2022 Salary Range Adjustment To The Non-Represented 2021 Salary Ranges And Modify The Medical Salary Ranges
176-O-099	11/24/21 12/02/21	CB	ORD: Approve Compromise Settlement For Worker's Compensation Case Entitled Bryan Bindel vs. County Of Waukesha
176-O-100	12/01/21 12/02/21	CB	ORD: Approve Settlement Agreements With Certain Opioid Distributors And Manufacturers And Approve Attorney General And Local Government Allocation Agreements
176-O-101	12/03/21 12/06/21	LU	ORD: Reauthorization Of Property Assessed Clean Energy (PACE) Financing Loan Program And Participation In Pace Commission

1 REAUTHORIZATION OF PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCING LOAN
2 PROGRAM AND PARTICIPATION IN PACE COMMISSION
3
4

5 WHEREAS renovations or additions to premises located in the County made to improve energy
6 efficiency, improve water efficiency, and/or use renewable resource applications, increase
7 property values, stimulate local economic activity, provide local and global environmental
8 benefits, and promote the general welfare of County residents; and
9

10 WHEREAS Section 66.0627, Wis. Stats., as amended, authorizes a county to make a loan or
11 enter into an agreement regarding loan repayments to a 3rd party for owner-arranged or lessee-
12 arranged financing, to an owner or a lessee of a premises located in the County for making or
13 installing an energy efficiency improvement, a water efficiency improvement or a renewable
14 resource application to a premises; and
15

16 WHEREAS the County can facilitate loans arranged by property owners or lessees to make such
17 improvements by treating loan principal and interest, fees, and other charges as special charges
18 eligible for inclusion on the tax roll for these properties; and
19

20 WHEREAS such financings are commonly referred to as "Property Assessed Clean Energy" or
21 "PACE" financings; and
22

23 WHEREAS through Enrolled Ordinance 172-072 the Waukesha County Board of Supervisors
24 adopted a Property Assessed Clean Energy (PACE) Financing Ordinance that automatically
25 sunset three (3) years after its effective date unless the Board adopted an ordinance for its
26 continuation; and
27

28 WHEREAS through Enrolled Ordinance 172-073 the Board authorized the joining of the
29 Wisconsin PACE Commission and execution of a Joint Exercise of Powers Agreement related
30 thereto; and
31

32 WHEREAS it is desirable that the County reauthorize the PACE Program and its PACE Financing
33 Ordinance as well as reaffirm its participation in the Wisconsin PACE Commission.
34

35 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS:
36

37 PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCING ORDINANCE
38

39 (1) TITLE. This Ordinance shall be known as, referred to, and cited as the "PROPERTY
40 ASSESSED CLEAN ENERGY (PACE) FINANCING ORDINANCE" and hereinafter referred to
41 as the "Ordinance."
42

43 (2) DEFINITIONS. In this Ordinance:
44

45 (a) "Annual installment" means the portion of the PACE loan that is due and payable for
46 a particular year under the supplemental agreement.
47

- 48 (b) "Borrower" means the property owner or lessee of the subject property that
49 borrows the proceeds of a PACE loan.
50
- 51 (c) "Default loan balance" means the outstanding balance, whether or not due, of a
52 PACE loan at the time the County receives foreclosure proceeds.
53
- 54 (d) "Foreclosure proceeds" means the proceeds received by the County from the
55 disposition of a subject property through an *in rem* tax foreclosure.
56
- 57 (e) "Loan amount" means the principal, interest, administrative fees (including the
58 Program Administrator's fees) and other loan charges to be paid by the borrower
59 under the PACE loan.
60
- 61 (f) "PACE" means the acronym for property assessed clean energy.
62
- 63 (g) "PACE default provisions" means:
64
- 65 1. The delinquent annual installment(s) due when the County initiates the *in rem*
66 property tax foreclosure on the subject property;
67
 - 68 2. Any additional annual installment(s) that become due between the time that the
69 County initiates *in rem* tax foreclosure on the subject property and the date the
70 County receives the foreclosure proceeds;
71
 - 72 3. Any default interest charges applied to unpaid annual installments referenced in
73 subs. (1.) and (2.) above, as provided in the supplemental agreement; and
74
 - 75 4. Any default loan balance.
76
- 77 (h) "PACE lender" means any person that makes a PACE loan, and which may include an
78 affiliate of the borrower.
79
- 80 (i) "PACE loan" means a loan made by a PACE lender to a borrower under this
81 Ordinance for energy efficiency improvements, water efficiency improvements,
82 renewable resource applications or any other purpose that may be authorized under
83 Section 66.0627, Wis. Stats., as it may be amended from time to time, made to or
84 installed on a subject property.
85
- 86 (j) "Person" means any individual, association, firm, corporation, partnership, limited
87 liability company, trust, joint venture or other legal entity, or a political subdivision
88 as defined in Section 66.0627, Wis. Stats.
89
- 90 (k) "Program Administrator" means the person retained by the Wisconsin PACE
91 Commission as provided in subsection (4)(b) of this Ordinance.
92
- 93 (l) "Subject property" means any premises located in the County on which an energy
94 efficiency improvement, water efficiency improvement, renewable resource

95 application, or other improvement authorized under Section 66.0627, Wis. Stats., as
96 it may be amended from time to time, are being or have been made and financed
97 through an outstanding PACE loan.
98

99 (m) "Supplemental agreement" means a written agreement among a borrower, a PACE
100 lender and the County, as provided for in subsection (6) of this Ordinance.
101

102 (n) "Wisconsin PACE Commission" means the Wisconsin PACE Commission formed
103 under Section 66.0301, Wis. Stats., as amended, by the County and one or more
104 other political subdivisions as defined in Section 66.0627, Wis. Stats., pursuant to a
105 Joint Exercise of Powers Agreement relating to the Wisconsin PACE Commission.
106

107 (3) PACE LOANS AS SPECIAL CHARGES; DELINQUENT AMOUNTS AS LIENS. Any PACE loan
108 made and secured pursuant to this Ordinance shall be considered a special charge on
109 the subject property. Any annual installment or portion of a PACE loan made and
110 secured pursuant to this Ordinance that becomes delinquent according to the terms of
111 the PACE loan shall be a lien against the subject property and placed on the tax roll, as
112 permitted pursuant to Section 66.0627, Wis. Stats., as amended.
113

114 (4) WISCONSIN PACE COMMISSION.
115

116 (a) Any of the powers and duties of the County under this Ordinance, except for those
117 under subsection (8) may (but are not required to) be delegated to the Wisconsin
118 PACE Commission.
119

120 (b) The Wisconsin PACE Commission is further authorized to retain a Program
121 Administrator to act as its agent to administer the PACE program, subject to
122 adherence with PACE program requirements set forth in this Ordinance and in
123 Section 66.0627, Wis. Stats., as amended.
124

125 (5) LOAN APPROVAL.
126

127 (a) A prospective borrower applying for a PACE loan shall comply with the loan
128 application process set forth in the program manual approved by the County.
129

130 (b) The County shall approve the financing arrangements between a borrower and PACE
131 lender.
132

133 (6) SUPPLEMENTAL AGREEMENT.
134

135 (a) The County, the borrower and the PACE lender shall execute the supplemental
136 agreement which, without limitation:
137

- 138 1. Shall inform the participants that the PACE loan amount shall be imposed as and
139 considered a special charge, and each year's annual installment may be included
140 on the property tax roll of the subject property as a special charge and an annual

141 installment that is delinquent shall be a lien against the subject property
142 pursuant to Section 66.0627, Wis. Stats., as amended;
143
144 2. Shall recite the amount and term of the PACE loan;
145
146 3. Shall provide for the amount, or a method for determining the amount, of the
147 annual installment due each year;
148
149 4. Shall provide whether default interest may be applied to unpaid annual
150 installments;
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152 5. Shall require the PACE lender and the borrower to comply with all federal, state,
153 and local lending and disclosure requirements;
154
155 6. Shall provide for any fees payable to the County and/or Program Administrator;
156
157 7. Shall recite that the supplemental agreement is a covenant that runs with the
158 land;
159
160 8. May provide for prepayments of annual installments by the borrower with a
161 resulting reduction in the special charge for the prepayment, subject to any
162 prepayment premium charged by the PACE lender, if any; and
163
164 9. May allow for amendment by the parties.
165
166 (b) Prior to executing the supplemental agreement, the owner of the subject property,
167 if different from the borrower, and any existing mortgage holder(s) on the subject
168 property must have executed a separate writing acknowledging the borrower's use
169 of PACE financing for the subject property and the special charge that will be
170 imposed under this Ordinance and its consequences, including the remedies for
171 collecting the special charge.
172
173 (c) Each PACE loan shall be amortized over the term of the PACE loan as provided in the
174 supplemental agreement.
175
176 (d) The annual payments of a PACE loan may be payable in installments as authorized
177 by Section 66.0627, Wis. Stats., as amended.
178
179 (7) ANNUAL INSTALLMENTS ADDED TO TAX ROLLS. Upon request of the Program
180 Administrator the County shall place each year's annual installment on the tax roll for
181 the subject property as permitted pursuant to Section 66.0627, Wis. Stats., as amended.
182
183 (8) REMITTANCE OF SPECIAL CHARGES. The County shall promptly remit to the Wisconsin
184 PACE Commission any payment(s) for a special charge imposed under this Ordinance,
185 including penalties and charges thereon, it may receive from any taxing district or the
186 County treasurer pursuant to Chapter 74 of the Wisconsin Statutes, as amended.
187

188 (9) PROPERTY TAX FORECLOSURE PROCEDURE.

189
190 (a) The County elects to utilize the provisions of Section 75.521, Wis. Stats., as
191 amended, for the purpose of enforcing tax liens if a subject property owner fails to
192 pay any special charge imposed on the subject property under this Ordinance as
193 required.

194 (b) The County shall include such subject property in its annual *in rem* property tax
195 foreclosure proceeding, unless the County determines such subject property is a
196 "brownfield" (as defined in Section 75.106, Wis. Stats., as amended) or that
197 including the subject property in the *in rem* property tax foreclosure is not in the
198 best interest of the County due to a condition of the subject property or for any
199 other reason.

200
201 (c) If the County has determined that it will not include such subject property in its
202 annual *in rem* property tax foreclosure proceeding, or if included, that it does not
203 wish to take judgment on the subject property for any reason, then the PACE lender
204 may request that the County, pursuant to Section 75.106, Wis. Stats., as amended,
205 commence or continue the *in rem* proceeding against the subject property and
206 assign the County's right to take judgment against the subject property to the PACE
207 lender, provided that the PACE lender and the County fully comply with all
208 provisions of Section 75.106, Wis. Stats., as amended, concerning the subject
209 property and the PACE lender agrees to pay the amounts required by Section
210 75.36(3)(a)1, 1m and 3, as amended.

211
212 (d) Any assignment to the PACE lender pursuant to Section 75.106, Wis. Stats., as
213 amended, permitted under sub (c) shall include and be conditioned upon an
214 indemnification from the PACE lender that holds the County harmless against any
215 loss, expense, liability or damage that the County may incur as a result of an action
216 under Sections 75.144, 75.521(14a) or 893.25, Wis. Stats., as amended.

217
218 (10) SALE OF FORECLOSED PROPERTY. If the County obtains judgment in an *in rem* property
219 tax foreclosure proceeding against a subject property, the County shall diligently
220 proceed to sell the subject property pursuant to the procedures set forth in Section
221 75.69, Wis. Stats., as amended, and Chapter 6, Article VI of the Waukesha County Code,
222 as amended.

223
224 (11) DISTRIBUTION OF FORECLOSURE PROCEEDS. The County treasurer shall follow the
225 procedures set forth in Section 75.36, Wis. Stats., as amended, to distribute the
226 proceeds from the sale of a subject property.

227
228 BE IT FURTHER ORDAINED that Waukesha County reaffirms its participation in the Wisconsin
229 PACE Commission.

230
231 BE IT FURTHER ORDAINED that the Waukesha County Executive or his designee is authorized to
232 execute any document or take any further action as may be necessary to reaffirm participation
233 in the Wisconsin PACE Commission, following review and approval by Waukesha County
234 Corporation Counsel.

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BE IT FURTHER ORDAINED that the Waukesha County Executive shall have the power to designate the Waukesha County "Representative Director" to the Board of Directors of the Wisconsin PACE Commission. Such designation shall be subject to approval by the County Board but said designee shall serve at the sole pleasure of the Waukesha County Executive.