

ENROLLED ORDINANCE 172-072

AUTHORIZE PROPERTY ASSESSED CLEAN ENERGY (PACE)
FINANCING LOAN PROGRAM

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

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

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

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

WHEREAS, it is desirable that the County set forth by ordinance its intent to participate in PACE financings and the manner in which it will do so.

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

PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCING ORDINANCE

- (1) TITLE. This Ordinance shall be known as, referred to, and cited as the "PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCING ORDINANCE" and hereinafter referred to as the "Ordinance."
- (2) DEFINITIONS. In this Ordinance:
 - (a) "Annual installment" means the portion of the PACE loan that is due and payable for a particular year under the supplemental agreement.
 - (b) "Borrower" means the property owner or lessee of the subject property that borrows the proceeds of a PACE loan.
 - (c) "Default loan balance" means the outstanding balance, whether or not due, of a PACE loan at the time the County receives foreclosure proceeds.
 - (d) "Foreclosure proceeds" means the proceeds received by the County from the disposition of a subject property through an in rem tax foreclosure.

- (e) “Loan amount” means the principal, interest, administrative fees (including the Program Administrator’s fees) and other loan charges to be paid by the borrower under the PACE loan.
- (f) “PACE” means the acronym for property assessed clean energy.
- (g) “PACE default provisions” means:
1. The delinquent annual installment(s) due when the County initiates the in rem property tax foreclosure on the subject property;
 2. Any additional annual installment(s) that become due between the time that the County initiates in rem tax foreclosure on the subject property and the date the County receives the foreclosure proceeds;
 3. Any default interest charges applied to unpaid annual installments referenced in subs. (1.) and (2.) above, as provided in the supplemental agreement; and
 4. Any default loan balance.
- (h) “PACE lender” means any person that makes a PACE loan, and which may include an affiliate of the borrower.
- (i) “PACE loan” means a loan made by a PACE lender to a borrower under this Ordinance for energy efficiency improvements, water efficiency improvements, renewable resource applications or any other purpose that may be authorized under Section 66.0627, Wis. Stats., as it may be amended from time to time, made to or installed on a subject property.
- (j) “Person” means any individual, association, firm, corporation, partnership, limited liability company, trust, joint venture or other legal entity, or a political subdivision as defined in Section 66.0627, Wis. Stats.
- (k) “Program Administrator” means the person retained by the Wisconsin PACE Commission as provided in subsection (4)(b) of this Ordinance.
- (l) “Subject property” means any premises located in the County on which an energy efficiency improvement, water efficiency improvement, renewable resource application, or other improvement authorized under Section 66.0627, Wis. Stats., as it may be amended from time to time, are being or have been made and financed through an outstanding PACE loan.
- (m) “Supplemental agreement” means a written agreement among a borrower, a PACE lender and the County, as provided for in subsection (6) of this Ordinance.
- (n) “Wisconsin PACE Commission” means the Wisconsin PACE Commission formed under Section 66.0301, Wis. Stats., as amended, by the County and one or more other political subdivisions as defined in Section 66.0627, Wis. Stats., pursuant to a Joint Exercise of Powers Agreement relating to the Wisconsin PACE Commission.

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

(4) WISCONSIN PACE COMMISSION.

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

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

(5) LOAN APPROVAL.

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

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

(6) SUPPLEMENTAL AGREEMENT.

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

1. Shall inform the participants that the PACE loan amount shall be imposed as and considered a special charge, and each year's annual installment may be included on the property tax roll of the subject property as a special charge and an annual installment that is delinquent shall be a lien against the subject property pursuant to Section 66.0627, Wis. Stats., as amended;

2. Shall recite the amount and term of the PACE loan;

3. Shall provide for the amount, or a method for determining the amount, of the annual installment due each year;

4. Shall provide whether default interest may be applied to unpaid annual installments;

5. Shall require the PACE lender and the borrower to comply with all federal, state, and local lending and disclosure requirements;

6. Shall provide for any fees payable to the County and/or Program Administrator;

7. Shall recite that the supplemental agreement is a covenant that runs with the land;

8. May provide for prepayments of annual installments by the borrower with a resulting reduction in the special charge for the prepayment, subject to any prepayment premium charged by the PACE lender, if any; and

9. May allow for amendment by the parties.

(b) Prior to executing the supplemental agreement, the owner of the subject property, if different from the borrower, and any existing mortgage holder(s) on the subject property must have executed a separate writing acknowledging the borrower's use of PACE financing for the subject property and the special charge that will be imposed under this Ordinance and its consequences, including the remedies for collecting the special charge.

(c) Each PACE loan shall be amortized over the term of the PACE loan as provided in the supplemental agreement.

(d) The annual payments of a PACE loan may be payable in installments as authorized by Section 66.0627, Wis. Stats., as amended.

(7) ANNUAL INSTALLMENTS ADDED TO TAX ROLLS. Upon request of the Program Administrator the County shall place each year's annual installment on the tax roll for the subject property as permitted pursuant to Section 66.0627, Wis. Stats., as amended.

(8) REMITTANCE OF SPECIAL CHARGES. The County shall promptly remit to the Wisconsin PACE Commission any payment(s) for a special charge imposed under this Ordinance, including penalties and charges thereon, it may receive from any taxing district or the County treasurer pursuant to Chapter 74 of the Wisconsin Statutes, as amended.

(9) PROPERTY TAX FORECLOSURE PROCEDURE.

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

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

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

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

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


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


BE IT FURTHER ORDAINED that this Ordinance shall sunset three years after the effective date of this Ordinance unless the County Board adopts an ordinance for its continuation.

AUTHORIZE PROPERTY ASSESSED CLEAN ENERGY (PACE)
FINANCING LOAN PROGRAM

Presented by: Land Use, Parks and
Environment Committee

Approved by:
Finance Committee


David D. Zimmermann, Chair



James A. Heinrich, Chair



Kathleen M. Cummings


Timothy Dondlinger


Keith Hammitt


Thomas A. Michalski

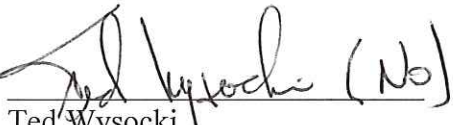

Robert L. Kolb


Richard Morris


William Mitchell


Duane E. Paulson

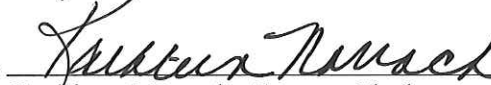

Thomas J. Schellinger


Ted Wysocki

ABSENT
Ted Wysocki
ABSENT


Steve Whittow

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 2/27/18, 
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X
Vetoed: _____

Date: 3-5-18, 
Paul Farrow, County Executive

| | | | |
|-----------------|---------|-------------------|-----|
| D1 - Kolb | AYE | D14 - Wood | AYE |
| D2 - Zimmermann | (M) AYE | D15 - Mitchell | AYE |
| D3 - Morris | AYE | D16 - Crowley | AYE |
| D4 - Batzko | AYE | D17 - Paulson | AYE |
| D5 - Dondlinger | AYE | D18 - Nelson | AYE |
| D6 - Walz | AYE | D19 - Cummings | AYE |
| D7 - Grant | NAY | D20 - Schellinger | AYE |
| D8 - Michalski | AYE | D21 - Zaborowski | AYE |
| D9 - Heinrich | AYE | D22 - Wysocki | NAY |
| D10 - Swan | AYE | D23 - Hammitt | AYE |
| D11 - Howard | (2) AYE | D24 - Whittow | AYE |
| D12 - Wolff | AYE | D25 - Johnson | AYE |
| D13 - Decker | AYE | | |

172-0-072

Passed (23 Y - 2 N - 0 Absent)

Majority Vote >