



DATE: July 17, 2018

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT: Adoption of a Resolution to Rescind Authorization for the CaliforniaFirst PACE Program to Operate in Hayward

RECOMMENDATION

That Council reviews and comments on this report and considers adoption of the attached draft resolution.

SUMMARY

Property Assessed Clean Energy (PACE) programs allow property owners to finance energy and water efficiency improvements and pay off the debt through annual installments on their property tax bill. The City Council has authorized five PACE programs to operate in Hayward (www.hayward-ca.gov/PACE). Two of the five are 'Open PACE' programs, each of which have several program administrators. PACE programs can present risks to consumers and some PACE programs and contractors have been implementing aggressive marketing tactics. CaliforniaFirst engaged with a contractor that mailed postcards that misled consumers about the nature of PACE financing and the City's involvement.

Council Sustainability Committee – On May 14, 2018, the Council Sustainability Committee reviewed a [staff report](#) about marketing tactics of some PACE programs and recommended that Council adopt a resolution to rescind authorization for CaliforniaFirst to operate in Hayward for two years. The Committee also suggested that the City cancel any PACE provider that has not signed the Regional Collaborative Services Agreement (RCSA), which improves residential customer protections.

BACKGROUND

PACE programs allow property owners to finance energy and water efficiency improvements and pay off the debt through annual installments on their property tax bill. The intent is to provide an additional means of financing to make environmentally sustainable property improvements and seismic upgrades more accessible to property

owners. The potential benefits of PACE financing over other financing options include 100% financing for eligible improvements, a longer repayment period of up to twenty years, and the potential reliability of pre-approved contractors. Traditional home improvement loans or second mortgages do not certify specific contractors; however, they may have lower interest rates than PACE financing.

The City Council has authorized five PACE programs to operate in Hayward. Two of the five programs, the California Municipal Finance Authority (CMFA) and the California Statewide Communities Development Authority (CSCDA), are Open PACE programs, which are Joint Powers Authorities (JPAs) that select specific PACE providers to administer their PACE financing programs. The model is considered “open” because once a municipality has joined the JPA, the JPA can sponsor additional PACE programs without additional approvals by the municipality. Once a city joins an open PACE JPA, then any future PACE programs sponsored by JPA are also authorized to operate in the city. However, if a city decides it does not want a specific JPA-sponsored program to operate in their jurisdiction, then the burden is on the City to opt out of that individual program. The most recently added PACE program was CMFA Open PACE, which was authorized by Council on October 17, 2017. The programs currently authorized to operate in Hayward are listed in the table below.

TABLE 1: PACE PROGRAMS AUTHORIZED TO OPERATE IN HAYWARD

Authority	Program Administrator	Programs	
		Residential	Commercial
CMFA Open PACE	Energy Efficient Equity (E3)	x	
CMFA Open PACE	Blue PACE		x
CMFA Open PACE	Structured Finance Associates		x
CMFA Open PACE	OnPACE Energy Solutions		x
CMFA Open PACE	Petros PACE		x
CSCDA Open PACE	AllianceNRG (a program of CounterPointe)	x	
CSCDA Open PACE	CaliforniaFirst (a program of Renew Financial)	x	x
CSCDA Open PACE	PACE Funding Group LLC	x	
CSCDA Open PACE	SpruceFinance	x	
CSCDA Open PACE	CounterpointeSRE		x
CSCDA Open PACE	CleanFund		x
CEDA	Figtree (Dividend Finance)		x
GSFA	Ygrene	x	x
WRCOG	HERO	x	

CMFA = California Municipal Finance Authority

CSCDA = California Statewide Communities Development Authority

CEDA = California Enterprise Development Authority

GSFA = Golden State Finance Authority

WRCOG = Western Riverside Council of Governments

CaliforniaFirst, administered by Renew Financial, was the first PACE program established in the nation and Council approved the program on [January 5, 2010](#). CaliforniaFirst was brought under the umbrella of the Open PACE program implemented by the California Statewide Communities Development Authority¹ (CSCDA) in 2015. CSCDA's Open PACE program was approved by Council on [July 7, 2015](#). In addition to CaliforniaFirst, CSCDA implements five other PACE programs in Hayward including AllianceNRG, PACE Funding Group, SpruceFinance, CounterpointeSRE, and CleanFund.

PACE programs can present risks to consumers and some PACE programs and contractors have been implementing aggressive marketing tactics. The Association of Bay Area Governments (ABAG) developed a Regional Collaborative Services Agreement (RCSA) to improve transparency, reporting standards, and customer protections for residential PACE Programs. At this time, all residential PACE programs authorized to operate in Hayward have signed the RCSA. As shown in Table 2, most PACE programs signed the RCSA in 2016. Spruce Finance signed in January 2018 and CaliforniaFirst signed on May 30, 2018.

TABLE 2. RESIDENTIAL PROGRAMS & DATE RCSA EXECUTED

Authority	Program Administrator	RCSA Executed with ABAG
CMFA Open PACE	Energy Efficient Equity (E3)	June 9, 2016
CSCDA Open PACE	AllianceNRG (a program of CounterPointe)	April 8, 2016
CSCDA Open PACE	CaliforniaFirst (a program of Renew Financial)	May 30, 2018
CSCDA Open PACE	PACE Funding Group LLC	March 30, 2016
CSCDA Open PACE	SpruceFinance	January 26, 2018
GSFA	Ygrene	March 30, 2016
WRCOG	HERO	March 30, 2016

On October 17, 2017, Council authorized the City Manager to sign member addendums to the RCSA with each of the residential PACE programs operating in Hayward. The addendums are intended to ensure the PACE providers are aware that the City will hold the providers accountable to the terms of the RCSA. All addendums, except for CaliforniaFirst have been signed and transmitted to the residential PACE Programs. If Council adopts the attached resolution (Attachment II), Hayward can execute the member addendum to the RCSA signed by CaliforniaFirst if or when CaliforniaFirst is re-authorized to operate in Hayward. If Council does not adopt the attached resolution, it would be appropriate for Hayward to execute a member addendum to the RCSA signed by CaliforniaFirst.

¹ The California Statewide Communities Development Authority (CSCDA) was created in 1988 by the League of California Cities and the California State Association of Counties (CSAC) to provide local governments with a tool for financing community-based public benefit projects. CSCDA has more than 500 member agencies and is the Joint Powers Authority and conduit bond issuer sponsored by the League and CSAC. More information about CSCDA is available at www.cscda.org.

The California Statewide Communities Development Authority (CSCDA) is an Open PACE program offering five different programs. CSCDA has been discussing aggressive marketing tactics with staff at ABAG and has decided to amend the contracts with all their PACE programs. On May 3, the CSCDA Board voted to amend contracts with all their PACE administrators requiring:

- Each PACE administrator shall maintain a list of contractors who they have determined are eligible to provide PACE Program services (each being an “Eligible Contractor”). Any contractor who the administrator has determined uses false or misleading marketing efforts, including but not limited to using lead generating companies to distribute postcards with content that implies that the federal, state, or local government, or any governmental entity other than CSCDA, provides the Program, shall not be included in the list of eligible contractors
- Each PACE administrator shall not approve a property owner application for Open PACE Program funding if such application: (a) does not identify an Eligible Contractor or (b) identifies a contractor who procured the work through marketing efforts that reasonably could be interpreted as implying that the federal, state, or local government, or any governmental entity other than CSCDA, provides the PACE program.
- CSCDA shall not authorize an assessment against a property, record a lien or otherwise assist in providing Open PACE Program funding for any application approved in violation of sections outlined above.

CSCDA staff confirmed that all their PACE programs have executed the amended contracts.

As discussed in the May 14 Sustainability Committee report, the California legislature approved bills in 2017 that increase consumer protections. Senate Bill 242 (Skinner-Dababneh), became law in October 2017 and became effective on April 1, 2018. It expands on the consumer protection rules, including requirements for a homeowner to prove their "ability to pay." Previously, PACE liens could be established based on the value of the home and there was no consideration of the homeowner's cash flow. CaliforniaFirst, HERO and others implemented this change in January this year and their application approvals have decreased by 40%. AB 1284 (Dababneh-Skiner-Calderon), also became law in October 2017 and will be effective on January 1, 2019, is intended to enhance PACE underwriting, regulate PACE at the state level, and enforce compliance with all PACE laws by PACE administrators and individual contractors. More information on these bills is included in the May 14 Committee report.

DISCUSSION

Council Sustainability Committee – On May 14, 2018, the Council Sustainability Committee considered a staff report including a postcard that Hayward residents reported receiving in April 2018 (see Attachment III). The postcards implied a relationship with the City that does not exist. The postcards indicated that the City was a “sponsor” of the program, incorporated

the name of the City in the website address, and stated that the program uses “government authorized funds.” The May 14 Committee report stated that “the postcards were mailed by a company hired by CaliforniaFirst, which is one of the programs that had not signed the RCSA.” Staff since found that the company sending the postcards, Flex Energy, was hired by True Renewable Energy, which is a CaliforniaFirst Registered Contractor based in Livermore.

PACE Marketing – Residents have also received many phone calls from companies seeking to generate leads for contractors. In the fall of 2017, Flex Energy was using actual city logos on postcards. The City of San Leandro sent them a cease and desist order and in February 2018, they changed to using just city names and generic logos (see Attachment III). San Leandro called the vendor in early 2018 and they were not willing to make any additional changes to the postcard.

On May 22, 2018, Hayward residents reported receiving additional postcards (see Attachment IV) stating that homeowners can take advantage of a “Newly released Government Backed Program.” On one side of the postcard, it states, “Hayward Authorized Program” and on the other side in very small print it states, “Hayward is not officially affiliated with, does not endorse and has not approved of www.helphayward.com or its messaging.” PACE Funding and their logo was included on the postcard. A Hayward resident called the phone number on the postcard and talked with the contractor True Renewable Energy. In this case, True Renewable Energy was hired by PACE Funding Group,

Staff notified ABAG and CSCDA and they responded by sending letters to PACE Funding and True Renewable Energy. A series of additional letters and activities ensued:

May 24, 2018	Letter from ABAG to PACE Funding Group stating that they violated the RCSA by allowing the postcards
May 24, 2018	Letter from PACE Funding to City apologizing for the misleading messaging used by True Renewable Energy and stated that True Renewable Energy just terminated their relationship with Flex Energy
May 25, 2018	City staff updated the PACE webpage with an announcement about the postcards and also posted an announcement on Nextdoor.
May 30, 2018	Letter from law firm representing CSCDA to PACE Funding Group demanding that they immediately stop using misleading lead generation postcards
May 30, 2018	Letter from law firm representing CSCDA to True Renewable Energy demanding that they immediately stop using misleading lead generation postcards
May 30, 2018	After years of urging by ABAG and CSCDA, Renew Financial (CaliforniaFirst) signed the RCSA
June 5, 2018	True Renewable Energy responded via email to CSCDA to say that they are “no longer are using PACE or any finance programs, or mentioning government funded. No city logos, on our new cards which is branding our company.”

Staff feels that the recent actions by PACE Funding have been well-intentioned and responsive.

Renew Financial – Recent Activities – According to Renew Financial, they recently contacted their contractors to “reiterate the expectation that they only use clear and transparent marketing practices with regards to PACE and remind them that they are responsible for the actions of any third-party they may hire for marketing or other purposes.” On April 16, 2018, Renew Financial sent a cease and desist letter to Flex Energy demanding that they stop using misleading marketing materials.

As noted above, Renew Financial signed the RCSA on May 30, 2018 after learning of the Sustainability Committee’s direction and after receiving requests from CSCDA.

On June 15, 2018, Renew Financial submitted a letter (Attachment X) addressed to Council requesting permission to continue operating in Hayward and detailing their recent actions.

On June 29, 2018, Renew Financial informed the City that their relationship with True Renewable Energy has been terminated and that True Renewable Energy will no longer be able to originate PACE projects through CaliforniaFirst (By comparison, when staff contacted PACE Funding Group about the postcards in May, they terminated their relationship with TRE within two days).

From 2010 through June 2018, CaliforniaFirst has completed 186 projects valued at just over \$5 million. There are currently 11 active CaliforniaFirst Residential PACE applications in Hayward. None of the 11 projects are using TRE. The last project TRE completed in Hayward was completed in November 2017. The status of the twelve applications is as follows:

- Applied but not yet approved (3 applications)
- Conditionally Approved, i.e. awaiting documents from homeowner, typically to verify income (1 application)
- Under-Construction, e.g. notice to proceed has been sent out (5 applications)
- Contractor has been paid, recording with County and bonding in progress (2 applications)

Staff Recommendation – In light of the recent actions taken by Renew Financial, staff recommends that CaliforniaFirst not be permitted to operate in Hayward for one year rather than the two years recommended by the Sustainability Committee on May 14. While the attached draft resolution would rescind authorization for CaliforniaFirst to operate in Hayward permanently, staff intends to come back to Council in twelve months for reconsideration and possible re-authorization of the program.

Other Cities – The City of Emeryville’s Sustainability Committee discussed PACE programs at their May 2018 meeting and will likely take it up at their September 2018 Council meeting.

ECONOMIC IMPACT

Allowing PACE programs to operate in Hayward increases options to Hayward property owners for financing improvements. Some improvements are cost-effective and can provide for a reasonable return on investment. PACE financing also increases the total debts carried by property owners who choose to take part. In the worst case, cost savings may not materialize as predicted and the owners could end up owing more than they can afford, which could result in increased foreclosures. However, this has not been the experience of PACE programs up to this point. On the contrary, most PACE programs claim that the default rates of their property owners are lower than nationwide averages, which is reflected by the fact that there have been zero claims on California's loss reserve to date. Furthermore, the recent state laws mentioned above should help to mitigate the risks to property owners.

FISCAL IMPACT

The City's participation in PACE programs does not impact the General Fund or any City funds. PACE programs use private sector capital to provide property owners with funding. Some staff time is spent monitoring and reporting on programs.

STRATEGIC INITIATIVES

The PACE programs support the Complete Communities Strategic Initiative. The purpose of the Complete Communities strategic initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all. This item supports the following goal and objective:

Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods

Objective 4: Create resilient and sustainable neighborhoods.

This agenda item supports the Tennyson Corridor Strategic Initiative. The purpose of the Tennyson Corridor Strategic Initiative is to develop an attractive, cohesive, thriving Tennyson Corridor through thoughtful engagement of residents, businesses and community partnerships. This item supports the following goal and objective:

Goal 5: Increase Community Resiliency

Objective 6: Reduce resident utility bills through efficiency

SUSTAINABILITY FEATURES

PACE Financing is supported by Hayward's Climate Action Plan and offers the following Sustainability features:

Energy: Access to PACE funding enables solar photovoltaic installations and energy efficiency upgrades – both of which reduce the community’s reliance on fossil fuels.

Air: Access to PACE funding enables energy efficiency upgrades, which may reduce the use of wood-burning stoves/fireplaces and related emissions.

Water: Access to PACE funding enables water upgrades, which reduce Hayward’s per capita water consumption.

Seismic: Access to PACE funding enables seismic upgrades, which will increase structures’ resiliency after an earthquake.

According to CSCDA, CaliforniaFirst has completed 186 residential projects and no commercial projects in Hayward. The residential projects have installed a total of 389 kW of solar and are saving 582,891 gallons of water, 17,273, and 237,012 kWh of electricity annually. Renewable energy projects make up 39% of the projects, 55% are energy efficiency projects, and 6% are water efficiency projects.

PACE Program	Approved Applications	Declined	Funded	In Flight	Withdrawn	Total Value of Applications Funded
PACE Funding	3	2	1	2	1	\$19,300
CounterPointe	9	2	2	1	2	\$58,467
CaliforniaFirst	342	122	186	17	213	\$5,002,826

PUBLIC CONTACT

When staff became aware of the postcards received by Hayward residents in May, staff fielded phone calls from residents and posted a notice on the City’s website and on Nextdoor.

NEXT STEPS

If Council adopts the attached resolution, staff will notify CSCDA and CaliforniaFirst that CaliforniaFirst is not authorized to operate in Hayward until further notice. Staff would monitor CaliforniaFirst’s activities in other jurisdictions and could return to Council in one year to re-authorize CaliforniaFirst to operate in Hayward.

If Council does not adopt the attached resolution, staff would sign the member addendum to the RCSA and work with CaliforniaFirst and CSCDA to ensure that marketing and consumer protections are consistent with state law and CSCDA’s program terms.

Prepared by: Erik Pearson, Environmental Services Manager

Recommended by: Alex Ameri, Director of Utilities & Environmental Services

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', is positioned above a horizontal line.

Kelly McAdoo, City Manager