



DATE: October 17, 2017
TO: Mayor and City Council
FROM: Director of Utilities & Environmental Services
SUBJECT Consideration of CMFA Open PACE

RECOMMENDATION

That Council adopts resolutions authorizing the City Manager to 1) execute an agreement to join CMFA Open PACE, and 2) sign ABAG member addendums to the PACE Regional Collaborative Services Agreement.

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 previously authorized eight PACE programs to operate in Hayward (www.hayward-ca.gov/PACE). There have been over 300 PACE projects completed in Hayward thus far.

This report presents an additional PACE program for Council's consideration. California Municipal Finance Authority (CMFA) Open PACE sponsors one residential PACE program and three commercial PACE programs. After reviewing the terms of each program, staff is recommending that Council authorize CMFA Open PACE to operate in Hayward.

In addition, this report presents the Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement (RCSA), which ABAG created to improve transparency and reporting standards for residential PACE Programs. Staff is recommending that Council authorize the City Manager to sign member addendums to the RCSA with each of the residential PACE programs operating in Hayward.

BACKGROUND

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 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 require some down payment and do not certify specific contractors; however, they may have lower interest rates than PACE financing.

The City Council has previously authorized eight PACE programs to operate in Hayward. Five of the programs serve both commercial and residential customers, two serve exclusively commercial, and one serves exclusively residential. Links to each of the programs and past staff reports are available on the [City's PACE website](#).

Up to this point, Council has taken the approach of creating an open PACE market in Hayward to maximize the amount of financing and offerings available to Hayward property owners. In other words, Council has approved all PACE programs that request to operate in Hayward once staff has reviewed them to ensure there are no program-specific concerns. Many other Bay Area jurisdictions have taken the same approach, including Fremont, Oakland, San Leandro, and Berkeley.

PACE in the News

There have been anecdotal cases reported by local news outlets of PACE contractors misrepresenting financing terms to customers. In these cases, the related PACE program has removed the contractor from its list of certified contractors and has refused to finance the proposed work. In some cases, the PACE program has assisted the homeowners with claims against the contractor. Staff has no knowledge of reports with verifiable data of systematic contractor misrepresentations or a growth in customer dissatisfaction with PACE. However, staff is aware that these scenarios are possible and is monitoring the news.

The Kern County Board of Supervisors recently voted to disband their PACE programs after groups of realtors voiced their concerns. The heated testimony at their meetings included many voices on both sides. Each side offered anecdotal evidence of PACE benefits and potential downsides of PACE financing, but no data showing trends. There are approximately 2,500 properties with PACE assessments in Kern County.

The California State Assembly is currently considering [SB-242](#) (Skinner), which has passed in both the Senate and Assembly and is pending amendments. This bill expands on the consumer protection rules that were passed by the State in 2016, including requiring PACE program administrators to record an oral confirmation that the property owner has reviewed key terms of the contract.

In addition, the California State Senate is currently considering [AB-271](#) (Galgiani), which passed in the Assembly on May 30, 2017. This bill would authorize the county tax collector to direct the county auditor to remove delinquent PACE installments from the tax roll so they do not accrue penalties. Delinquent property taxes can accrue higher penalties than other types of delinquent payments and come with greater risks. Proponents of this bill claim that it removes the incentives for PACE lenders to profit from the penalty provision of the property tax collection system.

The US Senate is currently considering a Republican-sponsored bill titled the [Protecting Americans from Credit Exploitation \(PACE\) Act](#). This bill is being backed by the Mortgage Bankers Association and the California Association of Realtors. The bill would require PACE issuers to follow the same regulations and disclosures as banks and mortgage lenders. The PACE industry is opposing this bill, claiming it would be overly burdensome and harm the industry. The bill is being opposed by Natural Resources Defense Council and the Rocky Mountain Institute.

Council Sustainability Committee (CSC) Action

The Council Sustainability Committee reviewed these items at its [July 10, 2017 meeting](#) and recommended that Council approve the staff recommendations. In addition, Committee members commented that Hayward now has a robust PACE marketplace and they feel that Hayward is reaching a limit for additional PACE programs.

DISCUSSION

Consideration of CMFA Open PACE

One of the purposes of this report is to present an additional Open PACE program to Council for consideration. Over the past several months, California Municipal Finance Authority (CMFA) Open PACE has contacted City staff and elected officials to state their interest in operating in Hayward. CMFA Open PACE is currently operating in over eighty California jurisdictions, mostly in Southern California. In the Bay Area, Berkeley and Fremont have joined and San Francisco is currently considering joining.

CMFA Open PACE is the same model as California Statewide Communities Development Authority (CSCDA) Open PACE, which the City has already joined. Both 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, they can be served by any PACE programs that the JPA reviews and decides to sponsor.

If Council joins CMFA Open PACE, then any future PACE programs sponsored by CMFA will also be authorized to operate in Hayward. However, if Hayward decides it does not want a specific CMFA-sponsored program to operate in Hayward, then the City can choose to opt out of that individual program at any point in the future.

CMFA Open PACE currently sponsors these four PACE Programs:

- BluePACE - commercial only
- Structured Finance - commercial only
- OnPACE Energy Solutions - commercial only
- Energy Efficient Equity (E3) - residential only

Staff has reviewed the three commercial-only programs, BluePACE, Structured Finance, and OnPACE Energy Solutions, and found that they each have very similar terms, interest rates, and consumer protection measures as existing PACE commercial programs in Hayward.

Staff spent additional time vetting Energy Efficiency Equity (E3) because it is a residential program and staff is sensitive to the fact that residential customers may be less knowledgeable than commercial customers when it comes to financing programs. Of the over 300 PACE projects in Hayward so far, approximately 95% have been residential. Staff does not have program-specific concerns about E3's program, which is similar to the other residential PACE programs in Hayward. A few areas where E3 stands out:

- E3 offers slightly lower interest rates than other PACE programs in certain instances. For example, they have a 4.99% rate for a five-year repayment term for customers with a good credit profile.
- E3 has all their contractors sign a repurchase agreement to protect homeowners from contractor fraud and program misrepresentation.
- E3 uses BBB ratings and Yelp reviews as part of their contractor screening.
- E3 requires homeowners to have the household income necessary to pay back the assessment, in addition to the industry standard equity requirements (many PACE programs do not have an income requirement).
- Like other PACE programs, E3 allows property owners to borrow up to 96.5% of the equity in their home.

Mitigating Risks Related to an Open PACE Market

As with most financing mechanisms, PACE programs can present risks to consumers. In particular, PACE increases the debts of property owners and may lead to foreclosure in the case of default. In addition, because marketing for PACE is usually led by a contractor, there is potential for contractor misrepresentation. Because the industry is fairly new, the laws regulating the industry continue to evolve. States and the Federal government are still debating which types of regulations will best protect consumers without unnecessarily hindering the growth of the PACE industry.

The State of California requires PACE programs to complete a degree of contractor screening and training. In addition, the State passed [AB 2693](#) in September 2016, which requires specific disclosure guidelines consistent with the federal Consumer Financial Protection Bureau's [Know Before You Owe](#) disclosures. In a parallel effort, the Obama administration and HUD (FHA) announced in July 2016 that the FHA would back mortgages with PACE liens for its programs for veterans and low-income property owners. HUD released [consumer protection requirements](#) that PACE assessments must meet for the property to qualify for FHA insurance (it is not yet clear if this will change under the Trump administration).

Staff has not received any concerns or complaints from Hayward community members since the launch of PACE. The State of California monitors most PACE programs, including E3, through its California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA). The Authority administers the State's Loss Reserve program, which makes first mortgage lenders whole for losses if a PACE lien is in foreclosure. To date, CAEATFA has not received any claims on the loss reserve. CAEATFA collects statewide information on PACE participation, which can be found at: <http://www.treasurer.ca.gov/caeatfa/pace/activity.asp>

ABAG Regional Collaborative Services Agreement

The Association of Bay Area Governments (ABAG) has created a Regional Collaborative Services Agreement (RCSA) for residential PACE programs to improve transparency and reporting standards.

- Designates ABAG as the liaison regarding implementation of the Agreement, meaning that ABAG will follow up with PACE providers when concerns are raised about customer protections or reporting
- Requires all residential PACE programs to have clearly visible disclosures regarding the Federal Housing Finance Authority's (FHFA) policies on residential PACE programs
- Requires all residential PACE programs to participate in the State's PACE Loss Reserve
- Requires data sharing between the PACE programs and local governments to monitor program performance locally and improve reporting
- Clarifies that RPP's are responsible for negligence in administering PACE programs

Most of the residential PACE programs operating in the Bay Area, including E3, have executed the RCSA with ABAG. As a next step, cities can sign individual member addendums to the ABAG RCSA with each residential PACE program. The purpose of these addendums is to ensure the PACE providers are aware that the City will hold the providers accountable to the terms of the RCSA. Staff is recommending that Council passes the attached resolution authorizing the City Manager to execute the member addendum agreements to the ABAG Regional Collaborative Services Agreement.

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities strategy 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 also supports the Tennyson Corridor Strategic Initiative. The purpose of the Tennyson Corridor Strategy 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

FISCAL AND ECONOMIC IMPACTS

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.

The primary economic benefit of allowing an open PACE market in Hayward is that it increases the total amount of financing available to Hayward property owners for improvements. This also increases the total debts carried by property owners who choose to take part, which creates potential economic risks, especially given higher interest rates associated with PACE programs compared with conventional home equity loans. 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 the State's loss reserve to date.

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.

NEXT STEPS

1. If Council adopts the attached resolution authorizing the City Manager to join CMFA Open PACE, staff will execute the necessary agreements.
2. If the Council adopts the attached resolution authorizing the City Manager to sign ABAG addendums to the RCSA, then staff will then follow up with each of the City's residential PACE programs to execute addendums.

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Approved by:



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