



DATE: July 10, 2017

TO: Council Sustainability Committee

FROM: Director of Utilities & Environmental Services

SUBJECT Consideration of CMFA Open PACE

RECOMMENDATION

That the Committee recommends that the City Council adopt a resolution authorizing the City Manager to execute an agreement to join CMFA Open PACE and sign ABAG member addendums to the PACE Regional Collaborative Services Agreement.

BACKGROUND

Property Assessed Clean Energy (PACE) programs are intended to 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 affordable and 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 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 potential risk of PACE financing is that it increases the debts of property owners and may lead to foreclosure in the case of default. In addition, because marketing for PACE is led by the contractor, there is potential for contractor misrepresentation.

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 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.

The last PACE report to the Committee was on January 9, 2017.

DISCUSSION

Consideration of CMFA Open PACE

One of the purposes of this report is to present an additional Open PACE program to the Committee 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 does join CMFA Open PACE, then any future PACE programs sponsored by CMFA will also be authorized to operate in Hayward. However, if the City does not want to authorize a program, then it can choose to opt out of individual programs 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 carries the risk of contractor fraud or misrepresentation of financing terms. Because the industry is 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 with 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: In addition, the Association of Bay Area Governments (ABAG) has created a Regional Collaborative Services Agreement (RCSA) with residential PACE programs to improve transparency and reporting standards. Commercial PACE programs were not included in the RCSA because they tend to be highly customized, have built-in protections (e.g. lender consent), and the transactions do not lend themselves to standardization. Most of the residential PACE programs operating in the Bay Area have signed the RCSA, including E3. RCSA features include:

- Designates ABAG as the liaison regarding implementation of the Agreement
- 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 RPP's and local governments to monitor program performance locally and improve reporting
- Clarifies that RPP's are responsible for negligence in administering PACE programs

Cities can sign individual member addendums to the ABAG RCSA with the residential PACE programs that they have approved to operate in their jurisdiction. 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 the Committee recommends that Council pass a resolution authorizing the City Manager to sign member addendums to the ABAG Regional Collaborative Services Agreement.

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. There have been no 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 passed in the Senate on May 30, 2017. 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 authorizes 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 also being opposed by Natural Resources Defense Council and the Rocky Mountain Institute.

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. 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 the Committee recommends that Council adopt a resolution authorizing the City Manager to join CMFA Open PACE and sign ABAG addendums to the RCSA, then staff will bring a resolution to Council in early fall.
2. If the Committee recommends that Council pass a resolution authorizing the City Manager to sign ABAG addendums to the RCSA, then staff will bring a separate

resolution as part of the same Council agenda item in early fall. Staff will then follow up with each of the City's residential PACE programs to execute addendums.

Prepared by: Mary Thomas, Management Analyst

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

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written over a horizontal line.

Kelly McAdoo, City Manager