



DATE: May 14, 2018

TO: Council Sustainability Committee

FROM: Director of Utilities & Environmental Services

SUBJECT Property Assessed Clean Energy (PACE) – Marketing by PACE Providers

RECOMMENDATION

That the Committee reviews and comments on this report.

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, which each have several program administrators. This report presents an update on some issues with marketing tactics of PACE programs.

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 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 and the California Statewide Communities Development Authority 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, then the JPA can sponsor additional PACE programs. These programs are then allowed to

operate in the municipality 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 Association of Bay Area Governments (ABAG) developed a Regional Collaborative Services Agreement (RCSA) to improve transparency and reporting standards for residential PACE Programs. The RCSA also:

- 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; and
- Requires data sharing between the PACE programs and local governments to monitor program performance locally and improve reporting.

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, intended to ensure the PACE providers are aware that the City will hold the providers accountable to the terms of the RCSA, have been signed and transmitted to the residential PACE Programs indicated below.

Authority	Program Administrator	Programs		RCSA Executed
		Residential	Commercial	
¹ CMFA Open PACE	Energy Efficient Equity (E3)	x		yes
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	
² CSCDA Open PACE	AllianceNRG	x	x	
CSCDA Open PACE	CaliforniaFirst	x	x	
CSCDA Open PACE	PACE Funding Group LLC	x		yes
CSCDA Open PACE	SpruceFinance	x		yes
CSCDA Open PACE	Renovate America	x		
CSCDA Open PACE	CounterpointeSRE		x	yes
CSCDA Open PACE	CleanFund		x	

¹ CMFA = California Municipal Finance Authority

² CSCDA = California Statewide Communities Development Authority

Authority	Program Administrator	Programs		RCSA Executed
		Residential	Commercial	
³ CEDA	Figtree (Dividend Finance)		x	yes
⁴ GSFA	Ygrene	x	x	yes
⁵ WRCOG	HERO	x		yes

DISCUSSION

PACE programs can present risks to consumers and some PACE programs and contractors have been implementing aggressive marketing tactics. In Hayward, residents have reported receiving postcards (see Attachment II) that imply 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 state that the program uses “government authorized funds”. The postcards were mailed by a company hired by California First, which is one of the programs that has not signed the RCSA. Residents have also received many phone calls from companies seeking to generate leads for contractors. In 2017, CaliforniaFirst’s vendor was using actual city logos on postcards. The City of San Leandro sent them a cease and desist order and they subsequently changed to using just city names and generic logos. San Leandro called the vendor in early 2018 and they were not willing to make any additional changes to the postcard.

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. In addition, staff from CSCDA have advised CaliforniaFirst that they need to sign the RCSA. 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.

³ CEDA = California Enterprise Development Authority

⁴ GSFA = Golden State Finance Authority

⁵ WRCOG = Western Riverside Council of Governments

- 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 have indicated that each PACE administrator will have two weeks to execute the amended contracts or face termination. According to CSCDA staff, most PACE programs were offering interest rates in the 8 to 9% range and are now around 5%.

In addition, CSCDA is working with PACE programs to standardize the reporting that is required by the RCSA and recent state legislation. PACE programs are required to provide cities with data so that cities know how many projects, the values of projects, and types of improvements, but each city has had to ask each PACE program for this information. Responses can take a long time and come in varying formats. CSCDA is preparing a standardized online platform where anyone will be able to download data from all five providers. The platform should be in place by early May and providers will be contractually required to report data using the platform. Data will include number of applications approved and declined by census tract, job creation, Kw of solar installed and resource savings. While CSCDA does not have contractual relationships with Ygrene and HERO, they are working toward either using the same platform or a similar format.

Legislation & Regulation – In 2017, the California legislature approved bills 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%. SB 242:

- requiring PACE program administrators to record an oral confirmation that the property owner has reviewed key terms of the contract.
- Expands "right to cancel" provisions for a property owner
- Establishes a ban on compensating contractors beyond the cost of the home improvement project.
- Requires contractors to quote a property owner the same price as cash for a home improvement project using PACE financing.
- Prevents PACE providers from disclosing to contractors the amount of funds the property owner is eligible for under a PACE assessment.
- Establishes data reporting requirements to local government partners, including data that speaks to the projected energy and water savings and local economic and job impacts, as well as on categories of products installed and homeowners served.

AB 1284 (Dababneh-Skinner-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. According to BuildItGreen.org, the legislation:

- Strengthens and standardizes the current underwriting standards in PACE based on home equity and on-time mortgage and tax payment history.
- Establishes new underwriting standards predicated on income verification and ability-to-pay to determine that property owners can meet their annual PACE obligation in addition to their current debt obligations and basic household expenses.
- Requires PACE providers to undergo background investigations and satisfy net worth requirements to obtain a license.
- Requires PACE providers to enroll and train home improvement contractors and their individual sales reps; and holds PACE providers accountable for screening and monitoring the contractors and individual sales reps enrolled in their programs.

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 have 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

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

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.

NEXT STEPS

Upon direction from the Committee, staff will continue to monitor the PACE programs operating in Hayward and will share data with the Committee. Staff could return in six months with data and observed changes in marketing practices.

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Approved by:



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