



## Legislation Text

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Staff Report for Property Assessed Clean Energy (PACE) Financing Programs - Adoption of Resolutions Authorizing Membership in Five (5) PACE Programs and Approval of Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement (RCSA) with Residential PACE Providers

### **SUMMARY AND RECOMMENDATIONS**

Property Assessed Clean Energy (PACE) is a mechanism for local home and business owners to finance the upfront cost of energy efficiency, water conservation, and renewable energy improvements to their properties. Property owners borrow funds for the improvements and repay the loan via a special voluntary property tax assessment.

There is currently one PACE program, CaliforniaFIRST, operating in the City of San Leandro. Several additional PACE lenders have approached the City in recent months requesting that the City take the necessary actions to allow them to also offer PACE loans in San Leandro, including joining in three Joint Powers Authority (JPAs). JPA-sponsored PACE programs offer little risk to local jurisdictions because the JPA assumes the legal liability. Any bonds issued to finance projects are issued by the JPA.

To help San Leandro and other cities evaluate the PACE requests, the Association of Bay Area Governments (ABAG) worked with the PACE providers to develop and agree to follow a set of best practices that will ensure that the programs meet certain basic quality and reporting standards. On behalf of its member jurisdictions (including San Leandro), ABAG developed a Regional Collaborative Services Agreement (RCSA) to ensure these best practices.

In order to provide property owners with more options, staff recommends that the City Council take a series of actions outlined in this report that will allow several new PACE programs (all of which have signed on to the ABAG RSCA) to operate in San Leandro. Staff recommends that the City Council:

1. Adopt and authorize execution of the attached resolutions and agreements consenting to:
  - a. join the Western Riverside Council of Governments (WRCOG), a joint powers authority, as an associate member and participate in the California HERO PACE program;
  - b. join the California Enterprise Development Authority (CEDA), a joint powers authority, as an associate member and participate in the Figtree PACE program;
  - c. join the California Home Finance Authority (CHFA)/Golden State Finance Authority (GSFA), a joint powers authority, as an associate member and participate in the Ygrene 555 and Ygrene 811 PACE Programs (two separate resolutions); and
  - d. participate in the OPEN PACE program with the California State Community Development Authority.
  
2. Authorize the City Manager to approve and sign the acknowledgement addendums of the

Regional Collaborative Services Agreement, as executed between ABAG and Residential PACE Providers for each of the PACE providers listed above.

## **BACKGROUND**

PACE financing is a relatively new model. Two pieces of legislation enable PACE programs in California and several additional laws clarify and expand this legislation:

1. California AB 811 (July 21, 2008) allows renewable energy sources and energy efficiency upgrades to be financed through an assessment district. California AB 474 (January 1, 2010) and California SB 1340 (September 30, 2010) expanded AB 811 to include water-efficiency improvements and the installation of charging stations for electric vehicles.
2. Senate Bill (SB) 555 (October 5, 2011) amended the Mello-Roos Community Facilities Act to allow for the creation of Community Facilities Districts (“CFDs”) for the purpose of financing or refinancing the acquisition, installation, and improvement of energy efficiency, water conservation, renewable energy and electric vehicle charging infrastructure. Individual properties can be annexed into the district and be subject to the special tax that is imposed to repay project financing if the City Council adopts a resolution consenting to the inclusion of parcels in the incorporated areas of the City within the CFD and each participating owner provides its unanimous written approval for annexation of its property into the PACE CFD.

In July 2010, the Federal Housing Finance Agency (FHFA), along with Fannie Mae and Freddie Mac, objected to the first priority lien status of residential PACE financing and announced they would not purchase mortgages for homes with PACE obligations due to concerns that PACE loans would be paid first in case of foreclosure. This announcement slowed the residential PACE market for several years. In response, in 2013 Governor Brown signed SB 96, which created a \$10 million PACE Loan Loss Reserve to keep mortgage lenders whole during a foreclosure or a forced sale of a property with a PACE assessment. While the FHFA has not changed its position, the California PACE market grew rapidly with the assurance of the State reserve.

## **PACE in the City of San Leandro**

In January 2010, in response to AB 811 and in conjunction with the other cities in Alameda County, San Leandro’s City Council adopted a resolution authorizing the City to join the California Statewide Communities Development Authority, a joint powers authority, and opted in to participate in the CaliforniaFIRST PACE Program. CaliforniaFIRST is currently the only PACE program offered in San Leandro. It has been providing energy efficiency financing in San Leandro to commercial properties since 2012 and to residential properties since September 2014. To date, there are a total of 72 CaliforniaFIRST residential upgrade projects in San Leandro that have received a total of \$4,616,045 in funding, resulting in lifetime savings of 160 kWh of electricity and 373,897 gallons of water; and 2,390 tons of greenhouse gas emission reductions.

## **Analysis**

PACE programs provide an additional means of financing to make environmentally sustainable property improvements more affordable and accessible to property owners. PACE financing provides capital for renewable energy systems and a range of energy and water efficiency improvements to

buildings. Some PACE programs also include seismic upgrades as an eligible improvement. The offerings differ from traditional home equity loans or lines of credit in that eligibility is based on property equity rather than the credit worthiness of the applicant. Some advantages to PACE financing include 100% financing for eligible improvements, a repayment period of up to twenty years, and the reliability of pre-approved contractors.

PACE also differs from traditional financing in its repayment structure. Debt obligations run with the property rather than the applicant, since the repayment is generated from the utility savings associated with the improvements. Thus, whoever owns the building is responsible for repayment per the conditions of the agreement with the program administrator. Terms vary by program, but are generally considered in line with market rate options for similar improvements. As with other forms of private lending, all transactions are voluntary and no property owner is required to participate in any program.

### **Benefits of PACE Programs**

When the country's first PACE program launched in Berkeley in 2008, it was a new and untested financing mechanism. At that time, a handful of municipalities launched self-funded PACE programs. Since then, over 30 states have passed PACE-enabling legislation and private financing companies have entered the market by partnering with joint powers authorities to establish and finance PACE programs.

Creating a competitive marketplace provides a variety of options for home and business owners to finance improvement projects based on finance terms, conditions of approval, and eligible measures offered by the different programs. Additionally, authorizing multiple providers ensures that financing will remain available if one or more providers cease to operate in San Leandro. Finally, it is anticipated that there will be increased economic activity as a result of each new provider operating locally.

Supporting an expanded PACE marketplace helps to implement the City of San Leandro Climate Action Plan (CAP), adopted by City Council in December 2009, which includes policies to develop comprehensive energy efficiency programs for the residential and commercial/industrial sectors. The CAP specifically includes action item 3.1.2 to "Adopt a third-party or municipal financing program for residential energy efficiency projects" and 3.3.1 to "Adopt a third-party or municipal financing program for solar (PV and solar hot water) and other renewable technology projects."

### **Program Comparison**

Increasing the number of PACE providers operating in San Leandro would result in a diverse and competitive local market. Authorizing these providers would not limit City Council's ability to consider additional providers in San Leandro at a later date; however, given the greatly expanded PACE choices proposed below, staff does not anticipate recommending additional PACE providers for approval in the near future.

An overview of each of the proposed PACE programs follows.

#### **California HERO Program**

The California HERO Program has primarily served residential projects, and is the largest provider by

volume of projects completed, financing provided, and number of participating communities. More than 404 cities and counties have adopted the program since its launch in 2010, including the Alameda County cities of Albany, Berkeley, Dublin, Hayward, Oakland, and Union City, as well as unincorporated Alameda County. As of May 2016, the program has completed more than 61,636 building improvement projects. The economic activity associated with these projects includes 12,300 jobs created and more than 2.51 million tons of CO2 emissions reductions annually.

The California HERO program requires City Council approval of associate membership in the Western Riverside Council of Governments JPA, which administers the program. This membership authorizes the program to provide services in San Leandro and is limited in scope to the PACE program only.

#### Figtree PACE Program

The Figtree PACE Program has primarily served commercial, industrial, and multifamily properties, but is launching a single-family residential service later this year. Since its launch in 2011, 149 cities and counties in California have adopted the program, including the Alameda County cities of Dublin, Hayward, Oakland, and Union City, as well as unincorporated Alameda County. More than \$300 million in financing has been approved for commercial projects. The program has 75 contractors providing service in Alameda County.

The Figtree PACE Program requires membership in the California Enterprise Development Authority (CEDA), of which San Leandro is already a member. Furthermore, because Alameda County has already adopted the Figtree PACE Program, the City Council is only required to pass a resolution of consent to opt into the County Figtree PACE Program.

#### Ygrene PACE Program

The Ygrene PACE Program serves residential and commercial projects, and is the only provider originating in multiple states. In California, over 180 cities and counties have adopted the program since its launch in 2013, including Alameda County, cities of Hayward, Oakland, and Union City. To date, the program has approved funding of more than \$1.1 Billion and has certified 2,532 contractors in California.

The Ygrene PACE Program requires City Council approval of membership in the California Home Finance Authority (CHF), which administers the program. Membership in this JPA authorizes the program to provide services in San Leandro and is limited in scope to the PACE program only. Because of the unique nature of the CHF YgreneWorks program, two Resolutions are required for authorization. The first Resolution would make all properties in San Leandro eligible to participate in CHF's Community Facilities District (CFD) for PACE financing as authorized under SB 555 (2011). The second Resolution would make all properties in San Leandro eligible to participate in CHF's Contractual Assessment program for PACE authorized under AB 811 (2009), which is similar to the other PACE programs presented for City Council consideration. As with the other programs, the City Council's approval of the YgreneWorks program is limited to making the PACE financing option available to individual San Leandro property owners who voluntarily decide to use it.

#### CSCDA Open PACE Program: CaliforniaFIRST (Previously Authorized), AllianceNRG, and PACEfunding, CleanFund Commercial PACE Capital, and Spruce Finance

CSCDA Open PACE launched in 2015 and operates under AB 811. It is sponsored by the California Statewide Communities Development Authority (CSCDA), of which San Leandro is a member.

CSCDA founded Open PACE with the goal of creating a platform to vet and pre-qualify PACE providers so that local governments only need to pass a single resolution to authorize multiple programs.

Currently, CSCDA Open PACE has pre-qualified five PACE programs - CaliforniaFIRST (which the City of San Leandro already participates in - see details under "BACKGROUND"), AllianceNRG, PACEfunding, CleanFund Commercial PACE Capital, and Spruce Finance. Any additional PACE programs that are qualified under Open PACE after the adoption of the CSCDA Open PACE resolution by the City will be automatically authorized to operate within San Leandro.

- AllianceNRG, established in 2015, serves residential and commercial projects through a collaboration of Leidos Engineering and CounterPointe Energy Solutions.
- PACEfunding was added to the CSCDA's Open PACE network in September 2015. PACEfunding is the first private PACE program manager to partner with a US consumer lending bank - Admirals Bank. The program currently serves the residential market and is anticipating expanding to the commercial sector in 2016.
- CleanFund Commercial PACE Capital was added to CSCDA's Open PACE network in April, 2016 and provides long-term financing to commercial properties. CleanFund's PACEDirect™ flexible financing program enables property owners to install modern energy and water technology with no up-front cost, increasing property cash flows and value. CleanFund's SolarPACE™ financing specifically addresses the demands of commercial property owners enabling immediate positive cash flow, with a financing term of up to 30 years.
- Spruce Finance was added to CSCDA's Open PACE network in April 2016 and is a technology-enabled finance company serving the residential solar, energy and water efficiency markets in the United States. Spruce was created via the combination of Clean Power Finance ("CPF"), a solar financing market place, and Kilowatt Financial ("Kilowatt"), an investor in solar and energy efficiency financing for consumers. Spruce's mission is to provide financing that empowers consumers to improve their environment.

In California, 98 cities and counties have approved the Open PACE suite of programs, including Alameda County, Albany, Berkeley, El Cerrito, Hayward, Oakland, Piedmont, and Union City.

### **ABAG Regional Collaborative Services Agreement**

The PACE provider's primary relationship is with the JPA partner (who issues bonds or related financial instruments to PACE providers, and provides oversight of the financing and administrative activities). As such, cities have limited control over local PACE activities. In order to safeguard consumer interests and promote program success, ABAG and the Bay Area Regional Energy Network developed the "Regional Collaborative Services Agreement" (RCSA), which establishes the terms, conditions and roles each residential PACE provider will follow when operating in ABAG territory (the RCSA does not apply to commercial PACE programs). While the Agreement is between ABAG and PACE providers, the language of the agreement states that it also applies to actions of the PACE provider in participating cities and towns that choose to authorize PACE programs.

Features of the ABAG agreement include:

- Designates ABAG as the liaison to the residential PACE providers locally;
- Requires all residential PACE providers to have clearly visible disclosures regarding the FHFA's policies on residential PACE programs
- Requires all residential PACE providers to participate in the state's PACE Loss Reserve program;
- Limits claims that residential PACE providers (or their designated contractors) can make to applicants regarding the tax deductibility of PACE assessments;
- Requires data sharing between the residential PACE providers and participating cities to monitor program performance locally and report out to local stakeholders; and
- Requires residential PACE providers to accept responsibility for negligence in administering PACE programs.

At this time, the following residential PACE providers have signed on to the RCSA with ABAG:

- Western Riverside Council of Governments (California HERO Program);
- Figtree Financing (Figtree PACE Program);
- Ygrene Energy Fund California LLC (Ygrene PACE Program);
- CounterPointe Energy Solutions (CA) LLC (AllianceNRG Program); and
- PACE Funding Group LLC.

Staff has attached a blank "Acknowledgement Addendum to the Association of Bay Area Governments" (ABAG) for City Council to review and give the City Manager authorization to sign on its behalf, along with one copy of the fully executed Regional Collaborative Services Agreement by the Western Regional Council of Governments (WRCOG) as an example of the agreement that all of the above PACE providers have signed. The City Manager will be signing an Acknowledgement Addendum for each of the above residential PACE providers.

## **Recommendation**

In order to create a competitive PACE marketplace with multiple providers that will expand options for home and business owners, stimulate local job development, and help to support the City's Climate Action Plan, staff recommends that the City Council adopt the attached draft Resolutions to join the following PACE programs:

- California HERO Program, administered by the Western Regional Council of Governments;
- Figtree PACE Program, administered by Figtree Financing;
- Ygrene PACE Program, administered by the California Home Finance Authority (CHF); and
- CSCDA Open PACE, a joint provider organization administered by California Statewide Communities Development Authority (CSCDA), offering CaliforniaFIRST, AllianceNRG, PACE Funding, Spruce Finance and CleanFund programs.

Staff also recommends that the City Council authorize the City Manager to approve and sign an Acknowledgement Addendum to the Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement (RCSA), as executed between ABAG and the following residential

PACE providers:

- Western Riverside Council of Governments (California HERO Program);
- Figtree Financing (Figtree PACE Program);
- Ygrene Energy Fund California LLC (Ygrene PACE Program);
- CounterPointe Energy Solutions (CA) LLC (AllianceNRG Program); and
- PACE Funding Group LLC.

### **Current Agency Policies**

In December 2009, the City Council adopted the San Leandro Climate Action Plan (CAP) which includes a series of measures that the City can implement in order to reach its greenhouse gas emissions target of 25% below 2005 levels by the year 2020. Of these, Action 3.1.2 states that the City should “Adopt a third-party or municipal financing program for residential energy efficiency projects” and Action 3.3.1 states that the City should “Adopt a third-party or municipal financing program for solar (PV and solar hot water) and other renewable technology projects.”

### **Previous Actions**

In February 2010, the City Council approved the City of San Leandro’s participation in the CaliforniaFIRST Program, offered by the California Statewide Communities Development Authority (CSCDA or California Communities). CSCDA is a California joint powers authority (JPA), of which the City is already a member.

### **Applicable General Plan Policies**

The City’s General Plan, adopted in 2002, includes a series of goals and policies related to resource conservation and environmental sustainability. The proposed municipal financing for energy efficiency and renewable energy and residential retrofit programs are both in conformance with the General Plan policies that encourage energy and water conservation and better air quality. Chapter 5 (Open Space, Parks and Conservation), states that “(a) *nother mission of this Element is to promote conservation practices among San Leandro residents and businesses. Three areas are emphasized: water conservation, recycling, and energy conservation.*” (General Plan, page 5-1)

Furthermore, the General Plan supports the proposed programs with the following Policies and Actions, among others:

**Policy 26.06 - Intergovernmental Coordination** *Coordinate with the appropriate regional, state and federal agencies and other organizations in their efforts to conserve and enhance ecological resources in San Leandro. Refer local projects to these agencies as required for their review and comment.*

**Policy 28.01 - Conservation Advocacy** *Strongly advocate for increased energy conservation by San Leandro residents and businesses, and ensure that the City itself is a conservation role model.*

**Policy 28.02 Planning and Building Practices** *Encourage construction, landscaping, and site planning practices that minimize heating and cooling costs and ensure that energy is efficiently used.*

*Local building codes and other City regulations and procedures should meet or exceed state and federal standards for energy conservation and efficiency.*

**Policy 28.03 Weatherization** *Promote the weatherization and energy retrofitting of existing homes and businesses, including the development of solar space heating and water heating systems, and the use of energy-efficient lighting, fixtures and appliances.*

### **Environmental Review**

The proposed resolutions are categorically exempt from the requirements of the California Environmental Quality Act (CEQA) because the resolutions are not a “project” as that term is defined in Title 14, California Code of Regulations, Section 15378, because the program does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment.

### **Legal Analysis**

The proposed residential PACE provider agreements and the ABAG Regional Agreement for Collaborative Services were reviewed and approved as to form by the City Attorney’s Office.

### **Fiscal Impacts**

The capital for the PACE programs is from private sources and the transactions are between program administrators and building owners. As such, the City of San Leandro will incur no cost or risk associated with program activities. The City will provide no administrative support or marketing for the programs, which are conducted by the program administrators. Authorization by the City Council is necessary for the programs to conduct business in the City of San Leandro, per the requirements of AB 811 and SB 555.

## **ATTACHMENTS**

### **Attachments to Staff Report**

- Exhibit A: Memorandum regarding the Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement (RCSA)
- Exhibit B: Model Acknowledgement Addendum to the Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement (RCSA)
- Exhibit C: Fully Executed Regional Collaborative Services Agreement (RCSA) signed by WRCOG/HERO

### **Attachments to Resolutions**

- Attached to Resolution to Join WRCOG and Participate in California HERO:
  - Exhibit A: JPA Agreement
- Attached to Resolution to Join CEDA and Participate in Figtree:
  - Exhibit A: CEDA Resolution of Intention
  - Exhibit B: Indemnification Agreement
- Attached to Resolution to Join CHFA and Participate in Ygrene 555:
  - Exhibit A: JPA Agreement



- Attached to Resolution to Join CHFA and Participate in Ygrene 811:
  - Exhibit A: JPA Agreement

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