



*City of Arts & Innovation*

# Utility Services / Land Use / Energy Development Committee

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**TO: UTILITY SERVICES/LAND USE/ENERGY  
DEVELOPMENT COMMITTEE MEMBERS**

**DATE: MAY 12, 2016**

**FROM: PUBLIC UTILITIES**

**WARDS: ALL**

**SUBJECT: UPDATE AND PROVIDE DIRECTION TO STAFF REGARDING THE PROPERTY  
ASSESSED CLEAN ENERGY (PACE) PROGRAM IN THE CITY OF RIVERSIDE**

## **ISSUE:**

The issue for consideration is to receive an analysis on the potential impact of allowing additional Property Assessed Clean Energy (PACE) program providers to operate in the City.

## **RECOMMENDATION:**

That the Utility Services, Land Use, and Energy Development Committee:

1. Receive an analysis on the potential impact of allowing additional PACE program providers to offer PACE financing in the City; and
2. Provide policy direction to staff regarding allowing additional PACE program providers to operate within the City of Riverside.

## **BACKGROUND:**

On March 10, 2016, the Utility Services, Land Use, Energy Development Committee with Chair Mac Arthur, Vice Chair Soubrouse and Member Gardner (absent) received a report from the Mayor's Office regarding the potential expansion of other PACE program providers to operate in the City (Attachment 1). The Committee agreed with the recommendation for an analysis of PACE programs from Public Utilities to be presented back to the Committee within 60 days.

## ***Legislative History:***

On July 21, 2008, Assembly Bill (AB) 811 was signed into law authorizing Property Assessed Clean Energy (PACE) to finance the installation of distributed renewable energy generation, as well as energy efficiency improvements for residential and commercial property owners in the state of California.

On February 24, 2009, Assembly Bill (AB) 474 authorized water conservation improvements to be added to the list of eligible PACE-financed improvements. Instead of altering the City's Charter and creating a special tax district, both AB 811 and AB 474 alters Chapter 29 of Part 3 of Division 7 of the Streets and Highways Code. As a result, these two legislations authorize legislative bodies to designate an area within which public officials and free and willing property owners may enter into voluntary contractual assessments to finance the installation of energy and water efficiency improvements.

On October 5, 2011, Senate Bill (SB) 555 was signed into law and amended the Mello-Roos Community Facilities Act, which is outlined in sections 53311 through 53368.3 of the California Government Code and created a second legislative framework for PACE financing. SB 555 allows 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 improvements permanently affixed to private or publicly-owned real property. Financing is repaid through the biannual imposition of special tax levies on the improved property for terms not to exceed the useful life of the improvements.

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### *What PACE does for property owners?*

PACE financing allows residential and commercial property owners to finance 100% of the cost of eligible improvements, such as solar energy systems, Energy Star windows and doors, insulation, high-efficiency air conditioning units, and water efficiency through an assessment on the property. The cost of the improvements is placed on the property tax rolls and repaid through their property tax invoices for the term of the loan.

Although several PACE providers offer a commercial financing product, is primarily a residential financing tool. This is due to several factors including businesses not owning the building, thus requiring landlord approval prior to allowing the additional property assessment tax under PACE. In addition, commercial borrowers have many other attractive financing tools such as Small Business Administration Loans, lines of credit or others their through existing banking relationships.

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### *PACE Program Challenges:*

On July 6, 2010, the Federal Housing Finance Agency (FHFA) issued a statement, and the Office of the Comptroller of the Currency (OCC) issued a bulletin. The FHFA and the OCC determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks for PACE programs. In effect, these two directives ordered Fannie Mae and Freddie Mac to require that all PACE loans be approved by the mortgage holder. Staff research found that Fannie Mae and Freddie Mac backed over 60% of all home mortgages in 2015. The FHFA was concerned that residential PACE assessments had a "lien status" superior to that of existing mortgages underwritten by Fannie Mae and Freddie Mac. A superior "lien status" would mean that in the event of default, any outstanding PACE assessments (though not the entire amount financed) would be paid off before other liens such as first deeds of trust.

As with all property-related assessments, the PACE loan has a super – priority lien over all existing mortgage debt and therefore, Fannie Mae and Freddie Mac will not purchase any mortgages with unapproved PACE loans. The directives also raise serious concerns for PACE participants who are trying to refinance or sell their houses. This effectively stopped residential PACE programs, with the exception of a few pilot programs statewide.

Since 2010, some program modifications have attempted to address concerns associated with residential PACE programs in California. Changes include implementing instruments to address FHFA concerns through disclosing the consequences a PACE lien can have on existing mortgages and the establishment of a statewide PACE loss reserve program.

In 2013, Senate Bill (SB) 96 directed the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to develop the PACE Loss Reserve Program to mitigate the potential risk to mortgage lenders associated with residential PACE financing. The \$10 million Loss Reserve will make first mortgage lenders whole for any losses in a foreclosure or a forced sale that are attributable to a PACE lien covered under the program. The goal of the PACE Loss Reserve Program is to put first mortgage lenders in the same position without regard to a PACE lien associated with a property.

In addition, some PACE program providers such as HERO and California First now facilitate requests to subordinate its assessment to a new deed of trust(s) as an accommodation to homebuyers and lenders (Attachment 2). This solution is typically only available at the time of sale and requires a transaction fee payable at the close of escrow.

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#### *Riverside's Energy High Efficiency Loan Program (E-HELP):*

Riverside Public Utilities initially saw potential in this type of financing for energy and water efficiency measures for property owners. On September 22, 2009, the City Council approved the Energy High Efficiency Loan Program (E-HELP) to provide low-interest loans to property owners for installing energy efficiency and renewable generation measures on their properties (Attachment 3). On May 25, 2010, City Council adopted a resolution forming a Sustainable Energy Financing District to provide financing to City property owners (Attachment 4). The new special tax district would be citywide and apply only to those property owners who chose to “opt-in” to borrow money for the installation of these energy and water efficiency measures. On July 27, 2010, City Council directed staff to suspend the E-HELP program prior to any customer's applying for the program, pending resolution of the FHFA statement and the increased risk (Attachment 5). The City has continued to offer energy and water efficiency rebates for residential and commercial customers through the electric and water public utility.

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#### *Western Riverside Council of Governments – HERO PROGRAM*

In April 2011, the City of Riverside adopted a Resolution of Participation and an Implementation Agreement that allowed for Western Riverside Council of Governments (WRCOG) to develop and implement a PACE Program, called the Home Energy Renovation Opportunity (HERO) Program In Western Riverside County (Attachment 6). The program allows property owners in the City of Riverside to finance energy efficiency, water conservation, and renewable energy projects and to

pay that financing back through a voluntary assessment on the property owner's tax bill. The Program has both a residential and commercial component (Attachment 7).

WRCOG obtained funding from Renovate America, who finances and administers the HERO Program for WRCOG. HERO issued a disclaimer for their residential programs warning potential participants in order to address the concerns of the FHFA proclamation with their mortgage lender before borrowing through the HERO PACE Program. HERO's disclosure regarding assessment financing states, "Entering into a program assessment contract without the consent of the owner's existing lender(s) could constitute an event of default under such agreements or security instruments. Defaulting on an existing agreement or security instrument could have serious consequences for the property owner, which could include the acceleration of the repayment obligations due under such agreement or security instrument." The Program is completely implemented and controlled by WRCOG and their program has zero financial risk to the City.

Since its launch in 2011, WRCOG's HERO Program has been widely used in the community. In August and September of 2012, the WRCOG Executive Committee and the City of Riverside respectively, approved an Amendment to the Joint Powers Agreement of WRCOG to permit the provision of PACE services statewide (Attachment 8). Currently, WRCOG's HERO Program (residential component only) has completed almost \$50 million in projects within the City of Riverside since 2011. To date, HERO has only financed three commercial projects in the City.

Community Summary					
Name	Launch Date	Property Count	Completed Projects	Approved Amount (\$)	Completed Projects Amount (\$)
Riverside	12/14/2011	68,554	2,811	\$184,500,000.00	\$49,917,830.28

#### *WRCOG's PACE Consumer Protection Policies:*

As of recent, the Press Enterprise (PE) has reported on PACE financing through HERO (Attachment 9) and the way the program is being communicated to consumers by HERO and its contractors. At the request of property owners and the Inland Valley Association of Realtors (IVAR), the Riverside County District Attorney's Office real estate fraud unit is reviewing whether consumers are being properly informed about the risks associated with this type of financing vehicle. Property owners have complained that it was not clear what they were signing stating that they were led to believe the PACE loan stayed with the house when it was sold or refinanced. Since then, WRCOG has adopted enhanced PACE Consumer Protection Policies, which include post-funding homeowner support, disclosures, documentation and privacy to name a few (Attachment 10). WRCOG has advised its members to be sure that other PACE providers have similar consumer protection policies that WRCOG adopted for the HERO program to protect potential borrowers.

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#### **OTHER PACE FINANCING PROGRAMS:**

Currently, WRCOG's HERO Program is the only PACE program authorized by Riverside City Council to operate within the City. However, there are many other PACE providers that are offering programs throughout the State of California. Each is eligible to be approved for operation in the City through the adoption of a City Council resolution.

Staff has prepared a comprehensive matrix of all the providers shown in this report and their

respective program offerings including terms, rates, fees, consumer protection and number of financed projects.

*California Statewide Communities Development Authority (CSCDA):*

The California Statewide Communities Development Authority (CSCDA) is a statewide joint powers authority (JPA) formed by the California State Association of Counties and the League of California Cities under AB 811 and AB 474. The CSCDA Program operates very similar to WRCOG's HERO program with the main difference being that CSCDA has contracted with multiple program providers. The City of Riverside is a member of CSCDA. Therefore, these PACE program providers will be available to the City should City Council authorize participation with CSCDA. CSCDA has also developed Consumer Protection policies (Attachment 11).

*Open PACE Program:*

CSCDA offers the Open PACE Program model that is a new initiative intended to provide local governments a turn-key PACE program. The Open PACE program is offered through multiple pre-qualified PACE financing providers to create competition and choice based on experience, terms, service and interest rates. The prequalified program administrators operating under the CSCDA Open PACE Program are:

1. CaliforniaFIRST

CaliforniaFIRST PACE program is administered by Renew Financial and is available to residential and commercial properties using the AB 811 PACE model. Consent from the residential lender is not required. The CaliforniaFIRST residential loan application informs the loan applicant that they should review the existing loan documents to determine whether entering into the CaliforniaFIRST loan would violate terms of the existing loan (Attachment 12).

2. Alliance NRG

The Alliance NRG Program provides up to 100% financing for energy efficiency and renewable energy products for both residential and commercial property owners using the AB 811 PACE model (Attachment 13).

3. PACE Funding

PACE funding is a leading energy efficiency, water conservation and renewable energy finance company for residential customers. They are a technology start-up but partnered with an established financial institution with substantial experience in consumer lending (Attachment 14).

4. Spruce Finance, Inc.

Spruce works with a national network of contractor and channel partners to provide consumer financing for residential solar systems and water conservation and energy efficiency upgrades through AB 811. This will be Spruce's first year engaging in PACE financing (Attachment 15).

Should the City decide to proceed with the Open PACE model, all four of these CSCDA PACE program services will automatically be made available to Riverside residents and businesses.

Additionally, should CSCDA add any additional providers under Open PACE in the future, these new providers will automatically be added to the program at the discretion of CSCDA and not the City.

*California Enterprise Development Authority (CEDA):*

The California Enterprise Development Authority (CEDA) is a joint powers authority established by the California Association for Local Economic Development (CALED). The City of Riverside is a member of the CEDA. Therefore, this PACE program will be available to the City should City Council authorize participation.

5. Figtree PACE

CEDA's PACE program is known as Figtree and is administered by Figtree Energy Financing. This program is only available to commercial, industrial, and multifamily properties. CEDA issues limited obligation bonds, notes or other forms of indebtedness secured by the contractual assessments revenue to finance improvements in the district in which it operates. These bonds are pooled to include multiple projects before being sold to investors on the open market. The Figtree PACE Program is authorized through AB 811 (Attachment 16).

*California Home Finance Authority (CHFA):*

The California Home Finance Authority (CHFA), formerly known as the Golden State Finance Authority (GSFA), is also a statewide JPA formed in 1993. CHFA offers financing for single family residential, multifamily and commercial building owners in order to address the high up-front costs to improve properties and install measures that will generate renewable energy or reduce their energy and water use. The City of Riverside is a member of GSFA. Therefore, this PACE program will be available to the City should City Council authorize participation.

6. Ygrene Energy Fund

CHF contracts with Ygrene Energy Fund, LLC (Ygrene) to serve as the program administrator and to operate the financing program in California. Ygrene Energy Fund is authorized through SB 555 (Mello-Roos CFD), AB 811 and AB 474 (Attachment 17).

*California Municipal Finance Authority (CMFA):*

California Municipal Finance Authority (CMFA) is a joint powers authority created to strengthen local communities by assisting the financing of economic development and charitable activities throughout the state of California. The City of Riverside is a member of CMFA. Therefore, this PACE program will be available to the City should City Council authorize participation. On April 6, 2015, CMFA completed a statewide validation action authorizing the CMFA to offer PACE to its members.

7. Energy Efficiency Equity ("E3")

The CMFA has partnered with Energy Efficient Equity ("E3") to administer the program throughout California. E3 uses the AB 811 PACE model that authorizes them to finance residential and commercial energy efficiency upgrades. To date, E3 has not financed any properties in the state of California. (Attachment 18).

RPU staff has met with the majority of statewide PACE providers both individually and collectively

to discuss program offerings, best practices as well as program concerns and potential areas of mutual cooperation.

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### **OTHER CITIES USING PACE PROGRAMS:**

#### *Anaheim:*

The City of Anaheim has currently authorized three PACE providers that offer financing on properties within the City. Each of the following companies can finance residential, commercial or both types of properties:

- California HERO: tailored to residential single family homes
- Figtree PACE: tailored to multifamily and commercial buildings
- CaliforniaFIRST: tailored to both residential single family homes and commercial buildings

#### *Colton:*

The City of Colton has currently authorized three PACE providers to offer financing on properties within the City. Each of the following companies can finance residential, commercial or both types of properties:

- California HERO: tailored to residential single family homes and commercial
- Figtree PACE: tailored to multifamily and commercial buildings
- Open PACE Model: CaliforniaFIRST, Alliance NRG, PACE Funding, and Spruce Finance

#### *Moreno Valley:*

The City of Moreno Valley currently authorizes two PACE providers to offer financing on properties within the City. Each of the following companies can finance residential, commercial or both types of properties:

- California HERO: tailored to residential single family homes and commercial
- Open PACE Model: CaliforniaFIRST, Alliance NRG, PACE Funding, and Spruce Finance

#### *Unincorporated Riverside County:*

The County of Riverside currently authorizes three PACE providers to offer financing on properties within the unincorporated locations of the county. Each of the following companies can finance residential, commercial or both types of properties:

- California HERO: tailored to residential single family homes and commercial
- Open PACE Model: CaliforniaFIRST, Alliance NRG, PACE Funding, and Spruce Finance
- Ygrene Works: tailored to both multifamily and commercial buildings

#### *Corona:*

The City of Corona currently authorizes one PACE provider to offer financing on properties within the City.

- California HERO: tailored to residential single family homes and commercial

#### *Rancho Cucamonga:*

The City of Rancho Cucamonga currently authorizes two PACE providers to offer financing on properties within the City. Each of the following companies can finance residential, commercial or both types of properties:

- California HERO: tailored to residential single family homes and commercial
  - Open PACE Model: CaliforniaFIRST, Alliance NRG, PACE Funding, and Spruce Finance
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## **DISCUSSION:**

### **Pros:**

PACE assists with some of the challenges that have hindered the adoption of energy efficiency and related projects by offering financing with little to no upfront cost. In addition, there is no impact to personal credit scores because borrowers are not qualified based on their credit, but on the equity in the property. PACE can help property owners financing projects through long financing terms, and quick approvals because payments are made through property taxes. As a result, PACE encourages energy efficiency improvements either before the original equipment breaks or needs replacing by offering little to no upfront costs.

PACE programs can also stimulate economic growth by creating jobs in the community by boosting business for contractors.

In addition, California Senate Bill (SB) 350 seeks to increase energy efficiency in buildings by 50% by 2030 and gives reference to having PACE Programs available in communities for participation to assist in achieving this energy efficiency goal.

### **Cons:**

PACE programs have been very controversial over the years primarily because of FHFA regulatory concerns over the issues related to residential PACE property tax assessments having a lien status superior to that of existing mortgages underwritten by Fannie Mae and Freddie Mac. In addition, associated property transactional problems created challenges for homebuyers, lenders, real estate agents and sellers.

Although there is no upfront or out of pocket cost for customers financing through PACE, high assessment fees between 4% - 7% of the cost of the loan are rolled into the property tax assessment.

There have also been consumer complaints about aggressive and predatory tactics by PACE providers and PACE contractors. Some consumers believe PACE contractors have not adequately disclosed the concerns regarding the PACE property tax lien and the potential problems that may arise when the property is sold, transferred, or refinanced.

In addition, many residents are led to believe that contractors are representing programs that RPU is promoting or associated with. As a result, RPU has received complaints from customers believing that the City has provided contractors with their sensitive contact information. RPU ensures customers that these programs are not associated with any utility program and that RPU maintains a strict confidentiality policy in regards to utility customer account information. Some PACE providers specifically prohibit contractors from telemarketing, however, this has often proved difficult to enforce.

Most PACE Providers are located throughout the state of California and may not have a local presence in the jurisdiction being served. As a result, this can impact the customer service for residents and businesses that are financing projects as the local office can be outside the region.

### ***Program Alternatives:***

By reviewing all alternatives, the City can pursue different options when deciding the next steps



of PACE financing.

1. First, the City can continue with the status quo and operate exclusively with WRCOG's HERO Program.
2. Second, the City can allow any and all PACE Provider(s) to offer their service within the City of Riverside.
3. Third, the City can allow only PACE providers that meet certain agreed upon qualifying criteria set forth by the city, for example, experience, willingness to agree with WRCOG's Consumer Protection Policy, agreement to share a portion of the loan fees, etc.
4. Fourth, the City can defer further consideration of additional PACE providers until such time that there are additional legislative or administrative remedies to address specific program concerns, such as Fanny Mae and Freddy Mac loan subordination issues, disclosure and additional consumer protection.
5. Fifth, direct staff to issue a Request for Services (RFS) requiring PACE providers to apply through a competitive process and have staff return to the City Council with a recommendation on one or more qualified providers.

### **FISCAL IMPACT:**

There is no fiscal impact associated with this report.

Prepared by: Girish Balachandran, Public Utilities General Manager

Certified as to

Availability of funds: Scott Miller, Interim Finance Director/Treasurer

Approved by: John Russo, City Manager

Approved as to form: Gary G. Geuss, City Attorney

### **Attachments:**

1. March 10, 2016, Land Use Report (Potential Expansion of PACE)
2. HERO Subordination Instructions
3. September 22, 2009, City Council Report (E-HELP)
4. May 25, 2010, City Council Report (Finance District)
5. July 27, 2010, City Council Report (Suspended E-HELP)
6. April 26, 2011, City Council Report (Resolution for HERO)
7. HERO Program Matrix
8. September 25, 2012, City Council Report (HERO Program Statewide)
9. Pros/Cons News Articles
10. Consumer Protection Policy
11. CSCDA – Open PACE Consumer Protection Policy
12. CSCDA – CaliforniaFIRST – Program Matrix and FAQ's
13. CSCDA – Alliance NRG – Program Matrix
14. CSCDA – PACE Funding – Program Matrix and FAQ's
15. CSCDA – Spruce Financing – Program Matrix
16. CALED – Figtree Financing – Program Matrix and FAQ's
17. GSFA/CHFA – Ygrene Energy Fund – Program Matrix, FAQ's, Consumer Protection Policy
18. CMFA – Energy Efficiency Equity – Program Matrix and FAQ's
19. Presentation