

MEMORANDUM

Substitute No. 2
Agenda Item No. 5(A)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: September 19, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance related to Property Assessed Clean Energy (PACE) programs; amending section 2-2081 of the Code; requiring PACE consumer disclosures; directing the County Mayor to take more vigorous enforcement measures related to PACE and consumer protection and to conduct an educational campaign; requiring report

This substitute no. 2 differs from substitute no. 1 in that it only requires a wet signature for the PACE Consumer Disclosure Form for Eligible Participants over the age of 65 who are using PACE for a residential property. In addition, this second substitute also (1) requires that the PACE entity provide at least two recorded phone calls to such Eligible Participants over the age of 65, to explain all of the provisions of the PACE Consumer Disclosure Form, including all financial terms, (2) makes conforming changes, and (3) revises the formatting of the new subsection (7).

Substitute no. 1 differs from the original item in that it also allows the consumer disclosure form to be provided via email, portal, or other electronic means, but like the original, this substitute still requires that the consumer execute the form on paper and in ink or other wet signature. The substitute allows for the consumer to execute the disclosure contemporaneously with an agreement and adds additional provisions to the consumer disclosure form about fees for prepayment, subcontractors that may be determined at a later date, and contacting the PACE administrator in addition to the PACE entity. In addition, the substitute provides for an exemption from this consumer disclosure form requirement where both (a) the cost estimate for the PACE improvements is \$250,000.00 or greater, and (b) the property subject to the assessment is a non-residential property or a residential property with five or more dwelling units.

Rule 5.06(i) of the Board's Rules of Procedure provides that where double underlining and double strike-through would not clearly show the differences between an original item and the substitute, comments may instead be provided. Pursuant to this rule, the preceding description of the differences between the original item and the substitute is provided in lieu of double underlining and double strike-through for this item.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Kevin Marino Cabrera.


Geri Bonzon-Keenan
County Attorney

GBK/uw

MDC001

Memorandum



Date: September 19, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava". The signature is written in a cursive style and is positioned to the right of the printed name.

Subject: Fiscal Impact Statement for Ordinance Relating to Consumer Protections for Voluntary Property Assessed Clean Energy (PACE) programs

The implementation of the proposed ordinance to enhance PACE consumer protections is not expected to have a fiscal impact to Miami-Dade County. However, a final comprehensive fiscal impact cannot be determined at this time, as it is not possible to determine if the additional protection and enforcement procedures stipulated in the proposed ordinance will create unforeseen demands on staff time devoted to this effort. If the proposed ordinance results in additional time commitments that cannot be handled by existing staff, then additional staffing resources may be required/ requested for one or more of the six County divisions/offices responsible for administering different aspects of Property Assessed Clean Energy (PACE) program components and procedures. Such costs could be offset by administrative fees to be paid by the PACE Districts. These fees could be established and approved by the Board through separate action as necessary.

The mandate for an educational campaign can similarly be fulfilled at no fiscal impact if executed through the County's existing promotional outlets such as County webpages, social media and public spaces available throughout departmental offices and service outlets. Outreach messaging may also be amplified through community partners interested in promoting this messaging.

A handwritten signature in blue ink, appearing to read "Jimmy Morales". The signature is written in a cursive style and is positioned above a horizontal line.


Jimmy Morales
Chief Operations Officer

Memorandum



Date: September 19, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Social Equity Statement for Ordinance Relating to Consumer Protections for Voluntary Property Assessed Clean Energy (PACE) programs

The proposed ordinance requires enhanced consumer protection measures, education, and enforcement, including the development of a County Property Assessed Clean Energy (PACE) consumer disclosure form to be provided to consumers before they execute PACE agreements with private-sector PACE financing and program administrators. The proposed PACE consumer protection disclosure form would contain key information that may be of assistance to consumers in Miami-Dade County. The ordinance also directs the County Mayor or County Mayor's designee to more vigorously enforce PACE-related consumer protection matters and to conduct an educational campaign related to the proposed new PACE consumer protection and enforcement measures.

The PACE financing program is intended to offer an alternative financing mechanism to commercial or residential consumers (property owners) when deciding how to finance qualifying improvements to their property, as governed by Florida Statutes, Section 163.08. PACE programs are intended to offer a voluntary long-term financing option to consumers that choose to participate. These property improvements may directly benefit participating consumers by increasing the safety and efficiency of their properties. Consumers also stand to gain from any appreciation in property value as a result of the improvements. These types of property improvements are aligned with the County's safety/disaster preparedness, economic, and sustainability goals. The majority of PACE property improvement contracts involve installing wind-resistant (hurricane resistant) roofs, windows, and doors.

The proposed ordinance seeks to provide additional consumer protections, including information to consumers regarding PACE procedures. The additional consumer protections and consumer education aspects of this proposed ordinance should provide a positive social equity impact for consumers utilizing a PACE program due to increased transparency.

Additional information about consumer protection, tips for hiring contractors, and financing options for sustainable property improvements can be found on several County webpages such as:

- **[Avoid Becoming a Victim of Fraud:](https://www.miamidade.gov/global/initiatives/fraud-free/home.page)** <https://www.miamidade.gov/global/initiatives/fraud-free/home.page>
- **[Advice to Property Owners Hiring a Contractor:](https://www.miamidade.gov/building/contractor-tips.asp)** <https://www.miamidade.gov/building/contractor-tips.asp>
- **[Sustainable Property Improvements:](https://www.miamidade.gov/global/economy/resilience/energy.page#:~:text=PACE%20is%20a%20financing%20program,and%20their%20selected%20PACE%20provider)** <https://www.miamidade.gov/global/economy/resilience/energy.page#:~:text=PACE%20is%20a%20financing%20program,and%20their%20selected%20PACE%20provider>

Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners
Page 2



Jimmy Morales
Chief Operations Officer



MEMORANDUM
(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: September 19, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Substitute No. 2
Agenda Item No. 5(A)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Substitute No. 2
Agenda Item No. 5(A)
9-19-23

ORDINANCE NO. _____

ORDINANCE RELATED TO PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS; AMENDING SECTION 2-2081 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REQUIRING PACE CONSUMER DISCLOSURES; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO TAKE MORE VIGOROUS ENFORCEMENT MEASURES RELATED TO PACE AND CONSUMER PROTECTION AND TO CONDUCT AN EDUCATIONAL CAMPAIGN; REQUIRING REPORT; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, a Property Assessment Clean Energy (PACE) program is a financing structure by which commercial or residential property owners may voluntarily opt into a special assessment district to receive financing for energy improvements and retrofits where such financing is repaid through an annual assessment on the property owner's property tax bill; and

WHEREAS, there have been several recent articles in the Miami Herald related to issues that consumers in Miami-Dade County and South Florida have had with PACE programs; and

WHEREAS, in addition, County staff have received some consumer complaints related to PACE, including, for example, complaints related to unauthorized and unlicensed contractors, as well as inaccurate representations that PACE is operated by Miami-Dade County; and

WHEREAS, some property owners in Miami-Dade County may have participated in a PACE program without any issues, and the PACE program does provide an additional option for financing of property improvements; and

WHEREAS, in order to best assist and protect property owners in Miami-Dade County, while still recognizing that PACE financing may be beneficial for some property owners, this Board wishes to require a PACE consumer disclosure form that includes key information for the consumer all in one place, including, for example, the interest rate, the dollar amount to be financed, and the name and license number of the contractor; and

WHEREAS, a PACE entity created under section 163.01(7), Florida Statutes, is considered a “local government” under Florida law; and

WHEREAS, Miami-Dade County has entered into four interlocal agreements with different PACE entities which authorize those entities to operate within the unincorporated area of the County; and

WHEREAS, those interlocal agreements require the PACE entities to comply with all Miami-Dade County ordinances and regulations, as they may be amended, including the requirements set forth in this ordinance; and

WHEREAS, this ordinance requires a PACE consumer disclosure form to be provided to consumers before they execute agreements related to PACE, and this PACE consumer disclosure form contains key information that may be of assistance to consumers in Miami-Dade County; and

WHEREAS, this ordinance also directs the County Mayor or County Mayor’s designee to more vigorously enforce PACE-related consumer protection matters and also to conduct an educational campaign related to PACE,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-2081 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 2-2081. Application.

As part of the application process, the following information shall be provided and maintained on file with the Administrator:

- (1) Proof of ownership and location of the Property. Organizational documents if the Property owner is not on the title as an individual.

* * *

>>(7) Proof that a complete and accurate PACE Consumer Disclosure form was provided to and executed by the Eligible Participant, in compliance with subsections (a)-(d) below:

(a) Proof that a complete and accurate PACE Consumer Disclosure form was provided to the Eligible Participant on paper or via email, portal, or other electronic means, and executed by the Eligible Participant prior to or contemporaneously with the Eligible Participant entering into any written agreement with respect to the Energy Savings Program.

(b) Notwithstanding anything stated herein, in addition to the exceptions provided in section 2-2091.1 of this article, the disclosure form requirement in this subsection (7) shall not apply where both (a) the cost estimate for the improvements is \$250,000.00 or above, and (b) the property subject to the assessment is a non-residential property or a residential property with five or more dwelling units.

(c) For any Eligible Participant over 65 years of age where the property subject to the assessment is a residential property, the following additional requirements shall apply: (i) signature in ink, or other

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

wet signature, by the Eligible Participant shall be the only acceptable form of execution by the Eligible Participant for the PACE Consumer Disclosure Form required by this subsection (7); and (ii) before the Eligible Participant executes such PACE Consumer Disclosure Form, the Administrator shall provide at least two phone calls to such Eligible Participant to review all information provided on such PACE Consumer Disclosure Form, including but not limited to all financial terms. Such required phone calls shall be recorded, in compliance with all applicable law. The Administrator shall make an Eligible Participant's recorded phone calls available to the County Mayor's designee upon request, provided that the respective Eligible Participant has also requested that such recorded calls be made available to the County, and any production of such recordings shall be carried out in compliance with applicable law.

(d) The PACE Consumer Disclosure form required pursuant to this subsection (7) shall be in a form prescribed by the County Mayor or County Mayor's designee and shall, at a minimum, include the following in boldface 12-point font:

PACE Consumer Disclosure

1. PACE is a program where you can have certain improvements made to your property, and money due for those improvements may appear on your Notice of Proposed Property Taxes, also known as the Truth in Millage (TRIM) Notice and property tax bill in the form of a non-ad valorem assessment (a "PACE assessment"). PACE assessments have a term of up to 30 years, include administrative fees, and are recorded in the public record with the Clerk of Courts.
2. If you do not pay your PACE assessment on time, you could potentially lose your property.
3. This PACE Consumer Disclosure is being made for the property located at _____, for the following improvements to your property: _____.
4. A cost estimate for the installation of the PACE improvements you selected was completed by the following licensed contractor: _____, whose license number is _____. This cost estimate includes all construction costs, equipment, permitting fees, recording fees for the assessment of liens, energy audit costs, and contingency fees for the following improvements to the property listed above in #3.

5. In addition to the cost estimate disclosed above in #4, the total amount of any additional fees, charges, or costs in connection with this PACE assessment is _____.
6. The total PACE assessment is \$ _____.
7. This PACE assessment has a term of _____ years. There [are / are not] any penalties for prepayment of this PACE assessment. The prepayment penalties for this PACE assessment are: _____
The fee for prepayment for this PACE assessment is: _____
8. The interest rate to be charged is _____. Over the _____ year term of this PACE assessment, at _____ % interest, the total cost of this PACE assessment to you will be approximately _____.
9. For this PACE assessment, the estimated amount due each year for this property is \$ _____. **This is in addition to what you would otherwise have to pay to the Miami-Dade County Tax Collector in property taxes.**
10. The improvements to your property will be done by the following licensed contractor(s) and subcontractor(s), whose names and license numbers are:

Contractor: _____	License# _____
Contractor: _____	License# _____
Subcontractor: _____	License# _____
Subcontractor: _____	License# _____

(For subcontractors that are not known at this time, the name and license number of each subcontractor shall be provided in writing to the Eligible Participant before the start of any work by the respective subcontractor on the property.)
11. You, the property owner, are ultimately responsible for the following:
 - a. Ensuring that the contractor engaged obtains all necessary permits for the improvements to your property described above;
 - b. Filing a Notice of Commencement prior to the start of work and posting same at your property;
 - c. Ensuring that all permits obtained receive final inspection approval; and
 - d. Consulting with your insurance agent regarding liability for damage to persons or property caused by day laborers working onsite.
12. Failure to obtain the necessary permits or obtain final inspection approval may include the levy of fines for unpermitted property improvements.
13. If you are unsatisfied with your contractor or subcontractor's work, you may wish to contact the PACE entity or administrator directly. As with all contracts, you are encouraged to review any contract that you enter into with respect to these improvements to make sure that you are satisfied with the provisions.
14. For further information:

- a. For general PACE information:
<https://www.miamidade.gov/global/economy/resilience/energy.page>
 - b. For questions regarding permits, commencement notices, required inspections: Miami-Dade County Construction Permitting and Building Code Division Permit Section at (786) 315-2100.
 - c. For state contractor and subcontractor license verification: Florida Department of Business and Professional Regulation at (850) 487-1395 or <https://www.myfloridalicense.com/w111.asp>.
 - d. For County contractor and subcontractor license verification: Miami-Dade County Building Division Contractor Licensing Section at (786) 315-2561.
15. A mortgage lender could require you to pay off the full amount of the PACE assessment prior to the sale or refinance of the property.
16. You have been provided a paper copy of this PACE Consumer Disclosure form.

Acknowledged by property owner: _____

Signature

Printed name

Date

I, _____, am an agent or employee of the following PACE entity: _____, and I hereby certify under the penalty of perjury that the required information was filled out accurately by me or another agent or employee of the above-listed PACE entity, that I have provided the filled-out PACE Disclosure form to the property owner, and that the property owner signed the filled-out PACE Disclosure form to acknowledge receipt, all of which were done before the property owner executed any agreement related to PACE or contemporaneously with such execution, and that all additional requirements related to property owners over the age of 65 have been complied with.

Signature

Printed name

Title

Date<<

Section 2. The Board of County Commissioners hereby directs the County Mayor or County Mayor's designee to more vigorously enforce the provisions of the County's interlocal agreements with the PACE districts and the County's consumer protection laws, as applicable, in order to better address any misrepresentations in advertisements and marketing suggesting, inaccurately, that PACE is a County-operated program. Such actions by the County Mayor or County Mayor's designee shall, at a minimum, include, contacting the PACE districts in writing to request information and written responses related to what measures each such PACE district is taking with respect to (a) misrepresentations in PACE-related advertisements and marketing and (b) contractors who may not be completing the work or closing out building permits for PACE-funded projects, to the detriment of Miami-Dade County residents and property owners. The Board of County Commissioners also directs the County Mayor or County Mayor's designee to develop an educational campaign in order to inform property owners in Miami-Dade County about the facts related to PACE and how the program works, including that such programs are not run by Miami-Dade County, and that PACE financing may be a beneficial option for some property owners but may also pose financial risks, including the potential loss of the property.

Section 3. The Board of County Commissioners hereby directs the County Mayor or County Mayor's designee to prepare a written status report with respect to the development of the PACE consumer disclosure form required by this ordinance, a description of the enhanced enforcement measures and other efforts taken pursuant to section 2 above, and regarding implementation of the educational campaign required by section 2. The report shall be placed on an agenda of the full Board without committee review, pursuant to Rule 5.06(j), within 180 days of the effective date of this ordinance.

Section 4. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 6. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

GKS for GBK

Prepared by:



Abbie Schwaderer-Raurell

Prime Sponsor: Commissioner Kevin Marino Cabrera