

# MEMORANDUM

CIOIC  
Agenda Item No. 1(G)1

---

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


**DATE:** January 9, 2024

**FROM:** Geri Bonzon-Keenan  
County Attorney

**SUBJECT:** Ordinance related to Property Assessed Clean Energy (“PACE”) programs; creating section 2-2083.5 of the Code; creating requirements related to reporting to the County, and communications with consumers, regarding interruptions in service by PACE entities, termination, cancellation, and suspension of PACE agreements with eligible participants, miscommunications and false statements, and financing; and requiring reports

---

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Kevin Marino Cabrera and Co-Sponsors Commissioner Marleine Bastien, and Senator René García.

  
Geri Bonzon-Keenan  
County Attorney

GBK/gh

MDC001



**MEMORANDUM**  
(Revised)

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

**DATE:** November 7, 2023

**FROM:**   
Gen Bonzon-Keenan  
County Attorney

**SUBJECT:** Agenda Item No. 4(B)

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 \_\_\_\_\_

Agenda Item No. 4(B)  
11-7-23

ORDINANCE NO. \_\_\_\_\_

ORDINANCE RELATED TO PROPERTY ASSESSED CLEAN ENERGY (“PACE”) PROGRAMS; CREATING SECTION 2-2083.5 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; CREATING REQUIREMENTS RELATED TO REPORTING TO THE COUNTY, AND COMMUNICATIONS WITH CONSUMERS, REGARDING INTERRUPTIONS IN SERVICE BY PACE ENTITIES, TERMINATION, CANCELLATION, AND SUSPENSION OF PACE AGREEMENTS WITH ELIGIBLE PARTICIPANTS, MISCOMMUNICATIONS AND FALSE STATEMENTS, AND FINANCING; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE; AND REQUIRING REPORTS

**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**, 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**, as reported in the Miami Herald, one of the administrators for one of the four PACE entities that operates within the unincorporated area of Miami-Dade County temporarily ceased operations, which may have affected property owners who were in the midst of ongoing PACE projects; and

**WHEREAS**, this Board is concerned that property owners in Miami-Dade County may have been negatively affected and whether such impacts or similar impacts could be avoided or minimized in the future; and

**WHEREAS**, although some property owners may have been impacted by the reported interruption in service, other 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, including for energy efficient property improvements and wind protection; and

**WHEREAS**, 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 PACE entities to provide for certain reporting and consumer communications, including: (1) information related to possible future disruptions in service, what plans or contingencies the PACE entities have in place to address such issues, what disclosures and information are currently provided to consumers as to such issues and contingencies, and what one-on-one in person assistance is already provided and would be provided in the event of such issue; (2) written notifications to the County within seven days of an interruption in service by the respective PACE entity; (3) written notification to the County if the respective PACE entity has terminated, cancelled, or suspended 30 or more of its agreements or pending agreements with eligible PACE participants within any 90-day time period; and (4) direct communication, including one-on-one assistance, no later than seven days after an incident or event, to every consumer who may be affected by an interruption in service or whose agreement was terminated, cancelled, or suspended; and

**WHEREAS**, in addition, this ordinance requires PACE Administrators to ensure that their agents, administrators, contractors, marketers, and employees are not making misrepresentations or false statements to the public or consumers with respect to PACE, such as using the County’s logo or seal, representing that PACE is a free or no cost program, or representing that a property owner will be able to transfer the cost of the property improvements to the next property owner; and

**WHEREAS**, although many of the above-mentioned issues are already prohibited in the County’s interlocal agreements with each PACE entity—for example, the use of the County logo is already prohibited in those interlocal agreements, and PACE entities are already required to disclose that a property owner may be required to pay off their PACE assessment at the time of sale or transfer—this ordinance creates new notice and reporting requirements related to such matters; and

**WHEREAS**, the provisions in this ordinance, by providing for additional consumer protections, required consumer communications, and reporting, may help maintain confidence and interest in the PACE program, which has the potential to further various Miami-Dade County goals related to reducing energy usage and protecting homes and other structures from storm and hurricane damage; and

**WHEREAS**, as such, one of the purposes of this ordinance is to implement the following policies of the Miami-Dade County Comprehensive Development Master Plan (“CDMP”):

- Policy LU-10E, which states, “Miami-Dade County shall continue to investigate opportunities to incentivize energy efficiency and, as appropriate, access available incentives and/or information regarding available incentives and make such information or accessed incentives available for developers and property owners to incorporate energy efficiency”;

- Policy LU-10H, which provides that, “Miami-Dade County shall take steps towards having 30% of countywide energy obtained from solar by 2030”;
- Objective HO-8, to “[b]ring about housing design and development alternatives that are aesthetically pleasing, encourage energy efficiency and enhance the overall health, safety and general welfare of County residents”;
- Policy HO-8D, which provides that, “[t]he County shall continue to encourage new legislation that promotes energy efficiency, use of alternative energy and conservation alternatives, in the construction and rehabilitation of new and existing buildings”;
- Policy CM-8M, which provides that, “Miami-Dade County shall also explore incentives and other measures to encourage the wind and/or flood hardening of structures”; and

**WHEREAS**, this ordinance’s implementation of such CDMP policies is further supported by section 163.08(b) of the Florida Statutes relating to PACE programs, which provides:

[t]he Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property’s burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property’s burden from potential wind damage. Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state’s energy and hurricane mitigation policies. In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance; and

**WHEREAS**, in addition, the provisions of this ordinance complement a number of existing requirements related to PACE, including, for example, the requirement in section 2-2083 of the Code of Miami-Dade County that the risks associated with participating in the PACE program be clearly disclosed in plain language in the written PACE agreement, and requirements in all four interlocal agreements that the PACE entities provide “optional one-on-one in person assistance regarding the PACE District Program, program terms, program process, program documents, and all other pertinent information,” and that “[i]nformation regarding this option for personal assistance shall be printed in English, Spanish, and Haitian Creole on PACE promotional materials”; and

**WHEREAS**, for all of the reasons referenced above, this Board wishes to require additional reporting and communication related to PACE,

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

**Section 1.** Section 2-2083.5 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:

**Sec. 2-2083.5. Requirements on Administrators related to interruptions in service and termination, cancellation; suspension of PACE agreements with eligible participants; required notices; communications; misrepresentations.**

Each administrator shall comply with the following requirements:

- (1) In the event of any interruption in service by or of an Administrator that affects or has affected any eligible participants in the unincorporated area of Miami-Dade County, the respective Administrator shall:
  - a. send written notice to Miami-Dade County of said interruption in service within seven days of the beginning of such interruption in service; and
  - b. provide written communication to all eligible participants who may be affected by such

interruption in service, advising such eligible participants of the interruption in service and of the impacts to said eligible participant, and offering one-on-one assistance by the Administrator. Such written communications shall be sent to each eligible participant who may be affected by such interruption in service within seven days of the beginning of such interruption in service.

- (2) In the event of any termination, cancellation, or suspension of a PACE agreement with an eligible participant, the respective Administrator shall send written notice within seven days to said eligible participant to inform them of termination, cancellation, or suspension of their PACE agreement and to offer one-on-one assistance by the Administrator.
- (3) In the event that any Administrator has more than 30 PACE agreements with eligible participants that are terminated, cancelled, or suspended, or any combination thereof, within any 90-day period, the respective Administrator shall send written notice to Miami-Dade County within 14 days of terminating, cancelling, or suspending the 30th such agreement.
- (4) Together with the written notice to Miami-Dade County required by paragraphs (1) and (3) of this section, the Administrator may include information related to potential mitigating factors, including, but not limited to, whether:
  - (i) any respective agreements with eligible PACE participants had not yet been funded;
  - (ii) any respective agreements were voluntarily cancelled by the eligible participant;
  - (iii) the underwriting criteria for the eligible participant or respective property were revised;
  - (iv) a change in a law affected the PACE program;
  - (v) the time to complete the qualified improvements to the respective property had expired under the eligible participant's agreement; or
  - (vi) any respective agreements were terminated due to false statements or other misconduct by the eligible participant or contractor.
- (5) Each Administrator shall send written notice to Miami-Dade County of: its plans or contingencies to address a possible interruption in service, if any; the disclosures and information it currently provides to consumers as to such issues and contingencies; and what one-on-one in person



assistance is already provided and would be provided in the event of such interruption in service.

- a. Such notice shall be sent to the County no later than March 1, 2024.
- b. Each Administrator shall send an updated written notice to Miami-Dade County on a biannual basis, by March 1 of the respective year.
- c. For PACE entities entering into an agreement with the County after that date, such written notice shall be sent at the time the agreement is entered into, and the updated written notice shall be sent on the same biannual schedule as for Administrators who were initially due on March 1, 2024.

- (6) Each Administrator's agreements with its respective agents, administrators, contractors, employees, marketers, and lead generators, including, but not limited to, any individuals or entities who are employed or paid by or through the Administrator, shall prohibit misrepresentations or false statements to the public, potential consumers, or eligible participants and shall specify that any such misrepresentations or false statements constitute grounds for termination of such agreement. Misrepresentations and false statements that constitute a violation of this requirement shall include, but not be limited to, the following:

- a. The use of the County seal or logo, whether fake or authentic;
- b. Any statement that falsely asserts or implies that a contractor, administrator, agent, or Administrator is approved by or otherwise associated with Miami-Dade County, or that a PACE program is a County program;
- c. Any statement that claims PACE is a free or no-cost program;
- d. Any statement that claims an eligible participant will be able to transfer the PACE special assessment to the next owner of the property;
- e. Any statement that claims the improvements to be financed will "pay for themselves," unless supported by an energy audit.

- (7) Each Administrator shall send written notice to the County, within 30 days, if any of the administrator's respective agents, administrators, contractors, employees, marketers, and lead generators, including, but not limited to, any individuals or entities who are employed or paid by or through the Administrator, make misrepresentations or false

statements to the public, potential consumers, or eligible participants within the County. Such written notice to Miami-Dade County shall identify the individual and entity responsible for making the misrepresentation or false statement and shall also include the actions taken by the Administrator to address said issue.

- (8) For all PACE agreements with an eligible participant, the respective Administrator shall provide written notice to the eligible participant when the Administrator has determined that sufficient financing is available for the eligible participant to proceed with the proposed qualifying improvements. Before providing such notice to an eligible participant, the Administrator shall ensure that it has at least 75 percent funding availability for the respective qualified improvements to prevent against any future interruption of service or other issues.
- (9) With respect to all notices required pursuant to this section, the County Mayor or County Mayor's designee may designate a County department or other designee to receive such notices and may provide Administrators with a courtesy notice of such designated department or designee.
- (10) For purposes of this section, "written notice to Miami-Dade County" means a notice sent in writing to the County Mayor or County Mayor's designee in a form acceptable to the County Mayor or County Mayor's designee.
- (11) The following reports shall be required:
  - (a) In the event that the County receives written notice from a PACE Administrator pursuant to this section, the County Mayor or County Mayor's designee shall prepare a written report for the Board of County Commissioners within 7 days of such receipt. The report shall be placed on an agenda of the full Board without committee review, pursuant to Rule 5.06(j), within 30 days of when the County received written notice from a PACE Administrator pursuant to this section.
  - (b) In the event that the County does not receive written notice from a PACE Administrator as required by this section after the occurrence of either an interruption in service or the termination, cancellation, or suspension of more than 30 PACE agreements with eligible participants within any 90

day period, then the County Mayor or County Mayor's designee shall prepare a written report for the Board of County Commissioners within 14 days of when the respective PACE Administrator should have sent written notice to the County. The report shall be placed on an agenda of the full Board without committee review, pursuant to Rule 5.06(j), within 30 days of when the respective PACE Administrator should have sent written notice to the County.

- (c) Such Mayoral reports are for informational purposes only, and any delay or failure in the provision of such reports shall not be deemed to limit or otherwise restrict the Board's authority in any way.

**Section 2.** 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 3.** 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 4.** 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:

ASR

Abbie Schwaderer Raurell

Prime Sponsor: Commissioner Kevin Marino Cabrera  
Co-Sponsors: Commissioner Marleine Bastien  
Senator René García