

## **ORDINANCE NO. 21-16**

**AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA, CREATING A NEW CHAPTER 17, CITY OF BELLE ISLE CODE OF ORDINANCES ESTABLISHING REQUIREMENTS FOR A PROPERTY ASSESSED CLEAN ENERGY PROGRAM (“PACE”); PROVIDING FOR MULTIPLE, NON-EXCLUSIVE PACE PROGRAMS IN ORDER TO ALLOW FOR THIRD-PARTY ADMINISTRATORS TO ADMINISTER THE PACE PROGRAM WITHIN THE CITY PURSUANT TO STATE LAW AND THE REQUIREMENTS SET BY THE CITY; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.**

### **RECITALS**

WHEREAS, Property Assessed Clean Energy (PACE) is a program which provides upfront capital to property owners to invest in energy-efficient, renewable energy or wind-resistance improvements to their properties; and

WHEREAS, Section 163.08, Florida Statutes, has provided supplemental authority for such improvements through general law and states that 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, Section 163.08, Florida Statutes, also authorizes a local government to either levy non-ad valorem assessments in order to fund qualifying improvements or, alternatively, allows a for-profit entity or a not-for-profit organization to act as a third party administrator for a PACE program on behalf of and at the discretion of the local government such that a financing agreement with the property owner, when recorded, constitutes a lien of equal dignity to county taxes and assessments from the date of recordation; and

WHEREAS, a property owner’s participation in such financing agreements is entirely voluntary and the local government shall not incur or be requested to authorize any obligations secured by special assessments associated with qualifying improvements imposed by the third-party administrator; and

WHEREAS, the City desires to adopt a PACE program subject to the conditions and requirements set forth herein.

**NOW THEREFORE, BE IN ENACTED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA AS FOLLOWS:**

**Section 1. Recitals.** The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance as legislative findings.

**Section 2. City Code Amendment.** A new Chapter 17 of the City of Belle Isle Code of Ordinances pertaining to Property Assessed Clean Energy Program (“PACE”) is hereby adopted

to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

## **Chapter 17 – PROPERTY ASSESSED CLEAN ENERGY PROGRAM (PACE)**

**Section 17-1. – Definitions** For purposes of this article, the following words and phrases shall have the following meanings:

Financing agreement shall mean the financing agreement or the summary memorandum of such agreement required to be recorded in the public records of Orange County, Florida in accordance with F.S. Section 163.08.

PACE assessment shall mean the non-ad valorem assessment placed on a property owner's tax bill as a result of financing obtained under a PACE program.

PACE program shall mean one or more authorities or programs authorized by resolution of the City Council to offer financing of qualifying improvements.

Program administrator shall mean the entity responsible for offering, managing and administering the specific PACE program.

Qualifying improvement shall include those improvements as defined by F.S. section 163.08, including energy efficiency, renewable energy and wind resistance or as may be amended by law.

## **Section 17-2. – Eligible Properties.**

(a) Residential property with 4 units or fewer may be eligible for financing qualifying improvements through a PACE program provided each of the following criteria have been met:

- (1) All property taxes and other assessments levied on the property tax bill have been paid and have not been delinquent for the preceding three (3) years, or the property owner's period of ownership, whichever is less; and
- (2) There are no involuntary liens, including but not limited to construction liens on the property; and
- (3) No notices of default or other evidence of property-based debt delinquency have been recorded during the preceding three years, or the property owner's period of ownership, whichever is less; and
- (4) All mortgage debt on the property is current and not delinquent; and
- (5) The amount to be financed by the PACE program may not exceed 20 percent of the just value of the property as determined by the county property appraiser, except as otherwise provided by statute; and
- (6) The total mortgage-related debt on the underlying property plus PACE program financing may not exceed the fair market value of the property.

(b) Multi-family residential properties of 5 or more units, in addition to commercial, industrial, agricultural, and other non-residential properties may be eligible for financing qualifying improvements through a PACE program.

### **Section 17-3. – Eligible Improvements.**

Energy efficiency, renewable and wind resistance improvements that are permanently affixed to the property shall be eligible for financing under a PACE program in accordance with statute. PACE programs and program administrators shall be eligible for financing under a PACE program in accordance with the statute. PACE programs and program administrators shall identify efficiency standards established by the U.S. Department of Energy, the U.S. Environmental Protection Agency, or Florida statute agencies, as applicable. PACE programs and program administrators shall confirm that property owners intend to install eligible products, and that at the time of funding such improvements have been installed.

### **Section 17-4. – Pricing.**

Each PACE program shall establish pricing rules and enforcement mechanisms to ensure that property owners are protected from excessive or unjustified prices and charges.

### **Section 17-5.- Consumer Protection.**

- (a) *Property owner.* Only the records of the property owner may enter into a financing agreement with a PACE program.
- (b) *Consumer notice.* In addition to any statutory disclosure requirements the program administrator shall ensure that each property owner is provided with a separate, written notice disclosing each of the following:
  - (1) The estimated total amount of the debt, including amount financed, fees, fixed interest rate, capitalized interest and the effective rate of the interest charged (annual percentage rate);
  - (2) The 30 day right to cancel the financing;
  - (3) A repayment term that does not exceed the average expected useful life of the improvements;
  - (4) The repayment process and terms, amounts and a schedule that fully amortizes the amount financed including the estimated annual assessments amount;
  - (5) Identification of any pre-payment fees or penalties;
  - (6) That there is no representation that the property improvements to be financed will increase the overall value of the property;
  - (7) That there is no discount for paying the PACE assessment early;
  - (8) That the PACE assessment will appear on the property owner's tax bill;
  - (9) The nature of the lien recorded and that the PACE assessment will be collected in the same manner as real estate taxes, that failure to pay the PACE assessment may cause a tax certificate to be issued against the property, and that failure to pay may result in the loss of the property subject to the PACE assessment in the same manner as failure to pay property taxes;

- (10) The specific improvements to be financed and installed;
- (11) Notice that the property owner may be required to pay any PACE assessment in full at the time of refinance or sale of the property.
- (c) Notice. The consumer notice described in this section must be delivered to the property owner by the program administrator, and must be signed and dated by the property owner prior to or contemporaneously with the property owner's signing of any legally enforceable documents under the PACE program.
- (d) Funding. The PACE program shall require compliance with each of the following conditions prior to the issuance of any funding to the contractor:
- (1) Any necessary permits have been obtained;
  - (2) Verification that the appropriate financed products and improvements have been installed; and
  - (3) The property owner and the contractor have signed a certificate of completion that all improvements have been installed to the property owner's satisfaction.
- (e) Consumer privacy. The PACE program shall have and maintain a privacy policy that complies with state and federal law and, in particular, shall provide a property owner the ability to opt-out of having the property owner's information shared with third parties, except where expressly permitted by state and federal law.
- (f) Data security. The PACE program shall be responsible for taking security measures that protect the security and confidentiality of property owner records and information in proportion to the sensitivity of the information, and as may be required by state and federal law.

**Section 17-6.- Marketing.** Marketing practices for a PACE program that are or could appear to be unfair, deceptive, abusive, or misleading, or that violating laws or regulations, or that are inappropriate, incomplete or are inconsistent with the program's purpose are prohibited.

#### **Section 17-7.- Contractor Management.**

- (a) Any work under a PACE program requiring a license under any applicable law to make a qualifying improvement shall be performed by a contractor properly licensed, certified or registered pursuant to state law.
- (b) Contractors performing work under a PACE program shall comply with each of the following conditions:
- (1) Be licensed and insured pursuant to the applicable statutory requirements;
  - (2) Agree to comply with all program requirements and marketing guidelines;
  - (3) Act in good faith to timely resolve property owner complaints.
- (c) No cash payment may be made to or from a contractor in exchange for or related to such contractor being awarded work under a PACE program, excepting payment for the contractor's installation of eligible improvements.

**Section 17-8.- Collection of Special Assessments.**

The PACE program shall be solely responsible for professionally coordinating all interface with the Orange County Tax Collector and/or Orange County Property Appraiser in regards to imposition and collection of any special assessments and for ensuring compliance with all laws, rules and regulations in the imposition and collection of any special assessments levied upon property owned by participating property owners.

**Section 17-9.- No City liability.**

In no event shall the City be liable for or obligated to pay or perform any debts, liabilities, conditions or obligations arising as a result of any financing agreement, financing documents, special assessment, qualifying improvements or any act or omission of any property owner or its/their agents. City shall have no monetary, appropriation or budgetary obligations under any agreement or any authorizing resolution concerning any PACE program. The City shall have no liability or responsibility to any property owners concerning the PACE program, any qualifying improvement, program administrator's failure to comply with the requirements of this chapter or its obligations and duties under any financing agreement, concerning any PACE program or program administrator's statement or claim concerning the PACE program, or any proposed financing agreement or qualifying improvements.

**Section 3. Codification.** Section 2 of this Ordinance will be codified and incorporated into the Belle Isle City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made.

**Section 4. Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

**Section 5. Conflicts.** In the event of a conflict or conflicts between this Ordinance and any other Ordinance or provision of law, this Ordinance governs and controls to the extent of any such conflict(s).

**Section 6. Effective Date.** This Ordinance shall become effective upon its adoption by the City Council of the City of Belle Isle, Florida.

**FIRST READING:** \_\_\_\_\_, 2021.

**SECOND READING:** \_\_\_\_\_, 2022.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_ 2022, by the City Council of the City of Belle Isle, Florida.

	YES	NO	ABSENT
Ed Gold	_____	_____	_____
Anthony Carugno	_____	_____	_____
Karl Shuck	_____	_____	_____
Randy Holihan	_____	_____	_____
Beth Lowell	_____	_____	_____
Jim Partin	_____	_____	_____
Sue Nielsen	_____	_____	_____

CITY COUNCIL  
CITY OF BELLE ISLE

ATTEST:

\_\_\_\_\_  
Nicholas Fouraker, Mayor

\_\_\_\_\_  
Yolanda Quiceno, City Clerk

\_\_\_\_\_  
Daniel W. Langley, City Attorney  
Approved as to form and legality for the use  
and reliance of the City of Belle Isle, FL,  
only.

STATE OF FLORIDA

COUNTY OF ORANGE

I, YOLANDA QUICENO, City Clerk of the City of Belle Isle, do hereby certify that the above and foregoing document was duly and legally passed by the Belle Isle City Council, in session assembled on the \_\_\_\_ day of \_\_\_\_\_, 2022, at which session a quorum of its members were present.

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Yolanda Quiceno, City Clerk

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