



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: October 8, 2012 REPORT NO: 12-125
ATTENTION: Natural Resources and Culture Committee
SUBJECT: Report and recommendations on additional PACE financing options,
PACE program metrics and PACE stakeholder meeting.
REFERENCE:

REQUESTED ACTION:

1. Direct City Attorney's Office to proceed with Council Action seeking approval to retain outside legal counsel for analysis and preparation of documents to form an SB 555 district. Upon completion of the legal analysis and document preparation, staff would report back to NR&C with the actions necessary to establish an SB 555 program.
2. Authorize staff to work with the City Attorney's Office to draft the documents and proceed to City Council with the necessary actions to opt-in to the California PACE program.
3. Direct the City Attorney's Office to proceed with the legal analysis for joining the HERO residential PACE program and if necessary request authorization from the City Council to retain outside legal counsel. Upon completion of the legal analysis, staff would report back to NR&C with the actions necessary to opt into the HERO residential PACE program.

STAFF RECOMMENDATION: Approve Requested Action

SUMMARY:

This report responds to Natural Resources and Culture (NR&C) Committee's three requests from the July 25, 2012 hearing on actions to join the CaliforniaFIRST program and proceed with development of additional PACE options. This section begins with a brief background on City PACE policy and then responds to committee requests that staff do the following:

1. Work with City Attorney to explore additional PACE options, including California PACE and SB555 PACE options and return to NR&C on October 10, 2012 with recommendations to proceed.
2. Hold an informational stakeholder meeting on additional programs before October 10, 2012, including stakeholders such as community-based organizations representing workers and low-income communities, businesses and contractors who perform typical work on PACE,

commercial building owners, multi-family building owners, local economic development organizations, local training and education institutions, and others.

3. Begin data collection on the California FIRST program and present in one year to the NR&C Committee on metrics including: which contractors, workers, building owners, and financial institutions are participating, which of these groups represent groups that are historically disadvantaged, and what marketing efforts including efforts geared towards economically and historically disadvantaged individuals and what workforce training opportunities have been made available. In addition for October 10, 2012, include a full set of metrics related to all programs for recommendation.

I. PACE POLICY BACKGROUND

The City of San Diego's commercial buildings number in the tens of thousands with a total square footage in the hundreds of millions. Retrofitting this building stock to reduce utility supplied energy and water consumption is consistent with City Council policies and has the potential to generate tens of thousands of new jobs in the construction, clean tech, and service sectors. However lack of appropriate financing is widely identified as an obstacle that makes it difficult for property owners to making these investments.

As of September 18, 2012 City property owners now have access to PACE financing via the CaliforniaFIRST program. This program represents the largest standardized PACE market in the country and is an open platform that allows other PACE providers to offer PACE products that conform to its basic parameters (e.g. underwriting rules, AB 811, existing lender affirmative acknowledgement).

However the PACE market is in its infancy. PACE processes are cumbersome and the legal environment is continually evolving. A number of entrepreneurial PACE providers are pioneering new approaches to marketing PACE, and shepherding property owners through the process of interfacing with energy auditors and contractors, engaging with lenders, obtaining competitive financing offers, and executing the contractual assessment.

The City should play an active role in enabling the growth of this market by welcoming alternative approaches as long as they are legally sound. Doing so will maximize choice for property owners allowing them to select the product that best fits their needs. This will in turn drive competition, innovation and specialization.

II. ADDITIONAL PACE OPTIONS

Staff have worked with PACE providers and the City Attorney's Office to explore additional PACE options. Below is an overview of three additional programs that represent opportunities to make alternative PACE financing choices available in San Diego. These include (A) California PACE, (B) SB 555, and (C) HERO Program. Below is an overview of each program with recommended next steps.

A. California PACE:

The California PACE program is operated by the California Economic Development Authority (CEDA) Joint Power Authority (JPA). The City of San Diego is not a currently a member of this JPA. The California PACE program allows property owners to choose among multiple lenders to obtain the best financing terms and use the contractor of their choice. The program is available to California jurisdictions to participate at no cost or administrative burden. Further, there is no cost or administrative burden associated with joining CEDA as an Associate Member.

The California PACE program is administered by FIGTREE Energy Resources Company ("Figtree"). Figtree is based in San Diego and has successfully completed the first and only multi-city pooled PACE bond to date. They have reportedly been successful in obtaining lender consent from multiple national and regional lenders including Wells Fargo, US Bank, Bank of the West, West America Bank and SBA Financings.

The City and City Attorney's Office have worked with Figtree over the last six months to develop a course of action for participation. At the request of the City Attorney's Office, a validation suit was filed on September 13, 2012 and if successful the action is expected to be finalized in December 2012. The City Attorney's Office has successfully worked with legal counsel for the California PACE program and come to agreement in principal on the legal issues they raised. The City Attorney's Office is currently awaiting final documents to provide to staff to recommend for approval to City Council.

Recommendation is to proceed with actions necessary to make the program available to San Diego property owners contingent upon successful completion of the judicial validation. To do so the following action should be brought forward to City Council for approval:

1. Resolution to join CEDA JPA as an Associate Member.
2. Resolution to join the California PACE program, delegating the necessary authorities to CEDA, including the authority to setup an AB 811 district, with condition that PACE applications may not be processed until successful completion of judicial validation.

B. SB 555 Program

SB 555 is a newer PACE-enabling law that was passed in 2011 subsequent to AB 811. To date, nearly all California PACE programs are based on AB 811 including: Sonoma County, Los Angeles, Palm Desert, Placer County, CaliforniaFIRST and California PACE. The first and only SB 555 district to date was formed by the City of Sacramento for a program to be administered by Ygrene Energy ("Ygrene").

Fundamentally, SB 555 and AB 811 accomplish the same purpose, allowing for capital to be provided to property owners for energy and water improvements and subsequently repaid via the property tax role. SB 555 does have a few nuanced advantages to AB 811 including:

- * Minimum waiting period between placement of lien and bond issuance is shortened from 30 to 15 days.
- *Lien amount placed on property is only for annual repayment obligation, rather than all amortized future repayments.

*Public agency liability limited to district creation and operation rather than program creation and operation.

*Some properties exempt from taxes are eligible to participate versus only taxpaying properties.

*Under very limited circumstances, new construction is eligible versus only existing construction.

*Payments may be billed off tax role in all situations rather than only in some situations.

Developing SB 555 based PACE options is consistent with the policy of providing maximum choice for property owners to enable a robust market place for PACE. However at this time there are no JPAs available that offer a PACE program based on SB 555. In order to bring SB 555 based PACE products to San Diego property owners, the City would need to form an SB 555 district, establish program rules, and contract directly with one or more PACE administrators.

Ygrene is a California based PACE provider that has been selected to administer PACE programs by the City of Sacramento and the "Green Corridor", a group of seven south Florida jurisdictions. Their Sacramento program is in the process of judicial validation and is expected to launch later this year. Ygrene is eager to offer SB 555 based PACE products in the City of San Diego and has requested that the City form an SB 555 district. Notwithstanding the fact that a City of San Diego SB 555 district would be open for other companies as well, Ygrene has offered to reimburse the City for all district setup costs and program establishment costs, including the cost of outside legal services required.

The City Attorney's Office has indicated that they need to seek outside legal expertise to provide an independent legal opinion on forming an SB555 district and a Sacramento model program. Additionally, independent legal counsel is needed to prepare the district formation and program documents for Council to consider. We recommend the City Attorney proceed by bringing an action before City Council authorizing the retention of outside legal counsel to provide legal analysis and prepare the documents necessary for NR&C and City Council to consider an action to begin establishing an SB555 program. Following the completion of these deliverables by outside legal counsel, we recommend staff bring forward an action to initiate district formation to NR&C.

C. HERO Program

The Western Riverside Council of Governments (WRCOG) launched a residential PACE program in January 2012 known as the HERO Program. WRCOG is a JPA with 18 member jurisdiction is Western Riverside County. The HERO Program provides financing to single family homeowners for energy upgrades. Terms range from 5 to 20 years. Interest rates at the time of writing ranged from 5.95% for 5 years to 8.25% for 20 years, although these are subject to change with market conditions. When a homeowner refinances or sells their property, their lender, or the buyer's lender, may require that the remaining assessment balance be paid off in full. The HERO program has successfully completed a judicial validation in for their Western Riverside program. The San Bernardino Association of Government (SAMBAG) has also adopted the HERO program. There are currently 18 jurisdictions actively participating in San Bernardino and Riverside Counties with another 25 in the process of launching.

HERO is operated by the San Diego based company, Renovate America, Inc (RA). RA uses its own channels to source their capital and places great emphasis on offering a streamlined process and easy customer experience. They offer one set of posted financing terms. As of September 30, 2012, nine months after program launch, RA reportedly had approved 1800 residential project applications representing \$56,000,000 in projects. Roughly two thirds of projects are energy efficiency, and one third install photovoltaic panels (solar). The most common energy efficiency measures are HVAC and window replacement. There are 429 participating contractors with 20-40 new ones signing up each month. Some 75% of homeowners are introduced to the HERO program via a contractor with the other 25% directly contacting HERO.

On August 6, 2012, WRCOG amended its Joint Powers Agreement to provide PACE services statewide. This allows other California jurisdictions to participate in the HERO program without incurring any cost or administrative burden. Draft resolutions for other jurisdictions to consider adopting will reportedly be ready in the next few weeks. RA is eager to offer the program in the City of San Diego and has offered to cover the cost of forming a district as well as the cost of retaining outside council as necessary. They will also conduct a judicial validation covering San Diego County

Recommendation is to direct CAO to undertake a legal review, and if necessary proceed with Council action to retain outside legal counsel. Subsequently, we recommend staff bring forward an action to NR&C consider opting into the HERO program via WRCOG.

III. INFORMATIONAL STAKEHOLDER MEETING

Per Committee direction, a meeting was held on September 26, 2012 to provide information and elicit feedback from a diverse array of PACE stakeholders. The two hour meeting was held at the California Center for Sustainable Energy. More than 25 organizations were invited including EHC, MAC, Workforce Partnership, EDC, CCSE, SDG&E, BIA, BOMA, SD Regional Chamber of Commerce, CleanTECH San Diego, USGBC, San Diego Apartment Owners Association, various solar contractors, various energy efficiency contractors and energy raters, commercial property managers and owners, and others. Roughly 40 stakeholders attended in person or by phone.

The meeting included the following:

- *Overview of the PACE concept, brief history, the City's PACE goals and policy direction
- *Overview of California FIRST, California PACE and SB 555 programs
- *Questions and answers on the above
- *Presentation from Renewable Funding on the CaliforniaFIRST program
- *Questions and answers
- *Presentation on the California PACE program by Figtree
- *Questions and answers
- *Presentation on a proposed SB-555 program by Ygrene
- *Questions and answers

In addition, a written questionnaire was distributed to each attendee. The questionnaire included fixed response and open ended question on each program and provided space for general feedback. Those who responded unanimously supported the City implementing both California PACE and Ygrene's SB 555 program with "competition" and "choice" frequently cited as important reasons. Feedback on metrics was also provided and has been incorporated.

IV. METRICS

The below list of metrics are proposed to be measured on an annual basis and reported to NR&C. These will apply to CaliforniaFIRST and all future programs the City makes available. These metrics will be calculated from data compiled from the following sources: project summaries provided by the program administrators for each project funded in the City of San Diego, Work Force Reports completed by participating contractors and financial institutions, Disadvantaged Business Enterprise certifications for participating contractors and financial institutions, and a supplemental contractor and lender questionnaire on the places of residence for employees. In addition, a summary of PACE marketing efforts undertaken by the City and other partners will be presented to NR&C.

A. Process Metrics:

*number of projects and total dollar value by location, by type of measure (i.e. water conservation, energy conservation, renewable generation);

B. Outcome Metrics:

*projected annual energy savings, projected annual water savings, projected annual utility bill savings;

*Estimated number of jobs created

C. Inclusionary Metrics:

*Number of contractors and lenders participating and breakdown by percentage qualifying as a "Small Business Concern" (as defined by the Small Business Act and Small Business Administration (SBA) regulations) and by percentage qualified as a Disadvantaged Business Enterprise (raw percentage and weighted percentages by number of projects and total dollar value to be reported).

*Workforce makeup among participating contractors, per categories in the Equal Opportunity Contracting Program Work Force Report, by location of residence.

FISCAL CONSIDERATIONS: Some staff time will be incurred although no new positions will be created. The costs associated with retaining outside legal counsel will be presented to the City Council for its consideration.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: On July 25, 2012, NR&C heard and approved action entering City into CaliforniaFIRST PACE financing program and directing staff to develop additional PACE financing options. Committee also requested staff hold an informational stakeholder meeting, and return October 10, 2012 with report on CalPACE and SB 555 options as well as proposed program performance metrics. Committee also directed staff to present in one year to NR&C committee on these metrics.

Council adopted R-2013-117, opting into CaliforniaFIRST PACE financing program and re-affirming direction to develop additional PACE options on September 18, 2012.

Council adopted R-2012-164, retention of outside counsel to form an assessment program/district under Assembly Bill 811 (AB 811) and provide related services on December 6, 2011,

Council adopted R-2011-145, establishing policy goals for home energy retrofit programs in the City of San Diego on September 13, 2010.

Council adopted R-2010-751, establishing City of San Diego Renewable Energy, Efficiency and Water Conservation Improvement District No. 1 on May 11, 2010.

Council adopted R-2010-754, approving the administration agreement for the Clean Generation Program on May 4, 2010.

Council adopted R-2010-752, determining the necessity to incur bonded indebtedness for City of San Diego Renewable Energy, Energy Efficiency and Water Conservation Improvement District No. 1 on April 27, 2010.

Council adopted O-2010-98, levying special taxes within City of San Diego Renewable Energy, Energy Efficiency and Water Conservation Improvement District No. 1 on April 27, 2010,

Council adopted R-2010-650, authorizing the Intention to Incur Indebtedness with respect to the City of San Diego Renewable Energy, Energy Efficiency and Water Conservation Improvement District No. 1 on March 24, 2010.

Council adopted R-2010-640, authorizing the Intention to Establish the City of San Diego Renewable Energy, Energy Efficiency and Water Conservation Improvement District No. 1 on March 24, 2010.

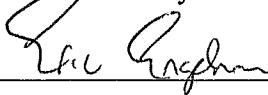
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Community, stakeholder and public outreach has been ongoing since November 2010 in the formulation and development of PACE policy. Environmental Services and Mayor's Office staff have engaged property owners, contractors, financiers, lenders, community groups, energy non-profits and industry groups.

Example meeting dates:

- California Center for Sustainable Energy, February 1, 2011
- Sustainable Energy Advisory Board, February 8, 2011
- California Center for Sustainable Energy, February 22, 2012
- California Center for Sustainable Energy, March 9, 2012
- Energy Efficiency Roundtable, March 13, 2012
- SANDAG Energy Working Group March 22, 2012
- Sunshot Financing Working Group, April 11, 2012
- Energy Innovation Center, August 23, 2012
- California Center for Sustainable Energy, September 26, 2012

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Eric Engelman
Originating Department
David Graham
Director of Policy/Chief Operating Officer



Originating Department



Director of Policy/Chief Operating Officer