

Chapter 37

PROPERTY ASSESSED CLEAN ENERGY (“PACE”) FINANCING

(1) PURPOSE.

Door County (“County”) finds that renovations or additions to premises located in the County made to improve energy efficiency, improve water efficiency, and/or use renewable resource applications, increase property values, stimulate local economic activity, provide local and global environmental benefits, and promote the general welfare of County residents. The purpose of this Chapter is to facilitate loans arranged by property owners or lessees to make such improvements by treating loan principal and interest, fees, and other charges as special charges eligible for inclusion on the tax roll for these properties.

(2) STATUTORY AUTHORITY.

This ordinance is enacted pursuant to § 66.0627, Wis. Stats., which authorizes a County to make a loan or enter into an agreement regarding loan repayments to a 3rd party for owner-arranged or lessee-arranged financing, to an owner or a lessee of a premises located in the County for making or installing an energy efficiency improvement, a water efficiency improvement or a renewable resource application to a premises.

(3) DEFINITIONS. In this Chapter:

- (a) “Annual installment” means the portion of the PACE loan that is due and payable for a particular year under the supplemental agreement.
- (b) “Borrower” means the property owner or lessee of the subject property that borrows the proceeds of a PACE loan.
- (c) “Default loan balance” means the outstanding balance, whether or not due, of a PACE loan at the time that the County receives foreclosure proceeds.
- (d) “Foreclosure proceeds” means the proceeds received by the County from the disposition of a subject property through an *In Rem* property tax foreclosure and subsequent sale.
- (e) “Loan amount” means the principal, interest, administrative fees (including the Program Administrator’s fees) and other allowable loan charges to be paid by the borrower under the PACE loan.
- (f) “PACE” is an acronym for Property Assessed Clean Energy.
- (g) “PACE default provisions” means:
 - 1. The delinquent annual installment(s) due when the County initiates the *In Rem* property tax foreclosure on the subject property;
 - 2. Any additional annual installment(s) that become due between the time that the County initiates *In Rem* property tax foreclosure on the subject property and the date the County receives the foreclosure proceeds;
 - 3. Any default interest charges applied to unpaid annual installments referenced in subs. (1.) and (2.) above, as provided in the supplemental agreement; and
 - 4. Any default loan balance.
- (h) “PACE lender” means any person that makes a PACE loan, and which may include an affiliate of the borrower.
- (i) “PACE loan” means a loan made by a PACE lender to a borrower under this Chapter for energy efficiency improvements, water efficiency improvements, or renewable resource applications made to or installed on a subject property.
- (j) “Person” means any individual, association, firm, corporation, partnership, limited liability company, trust, joint venture or other legal entity, or a political subdivision as defined in § 66.0627, Wis. Stats.

- (k) "Program Administrator" means the person retained by the Wisconsin PACE Commission as provided in subsection (5)(b).
 - (l) "Subject property" means any premises located in the County on which an energy efficiency improvements, water efficiency improvements, or renewable resource applications are being or have been made and financed through an outstanding PACE loan.
 - (m) "Supplemental agreement" means a written agreement among a borrower, a PACE lender and the County, as provided for in subsection (7).
 - (n) "Wisconsin PACE Commission" means the Wisconsin PACE Commission formed under § 66.0301, Wis. Stats., (as amended), by the County and one or more other political subdivisions as defined in § 66.0627, Wis. Stats., pursuant to a Joint Exercise of Powers Agreement relating to the Wisconsin PACE Commission.
- (4) PACE LOANS AS SPECIAL CHARGES; DELINQUENT AMOUNTS AS LIENS.
- (a) A PACE loan made and secured under this Chapter shall, as permitted under §66.0627, Wis. Stats., be considered a special charge on the subject property.
 - (b) A special charge imposed under paragraph (4)(a) may be collected in installments and may be included in the current or next tax roll for collection and settlement under Ch. 74, Wis. Stats. (as amended) even if the special charge is not delinquent as permitted under §66.0627, Wis. Stats.
 - (c) An installment payment of a PACE loan authorized under this Chapter that is delinquent becomes a lien on the subject property as of the date of delinquency as permitted under §66.0627, Wis. Stats.
- (5) WISCONSIN PACE COMMISSION.
- (a) Any of the powers and duties of the County under this Chapter, except for those under subsection (9) may (but are not required to) be delegated to the Wisconsin PACE Commission.
 - (b) The Wisconsin PACE Commission is further authorized to retain a Program Administrator to act as its agent and administer the PACE program, subject to adherence with PACE program requirements set forth in this Chapter and in § 66.0627, Wis. Stats.
- (6) LOAN APPROVAL.
- (a) A prospective borrower applying for a PACE loan shall comply with the loan application process set forth in the program manual approved by the County.
 - (b) The County may approve financing arrangements between a borrower and PACE lender.
- (7) SUPPLEMENTAL AGREEMENT.
- (a) The County, the borrower and the PACE lender shall execute the supplemental agreement which, without limitation:
 1. Shall inform the participants that the PACE loan amount shall be imposed as and considered a special charge, and each year's annual installment may be included on the property tax roll of the subject property as a special charge and an annual installment that is delinquent shall be a lien against the subject property pursuant to § 66.0627, Wis. Stats.;
 2. Shall recite the amount and the term of the PACE loan;
 3. Shall provide for the amount, or a method for determining the amount, of the annual installment due each year;
 4. Shall provide whether default interest may be applied to unpaid annual installments;
 5. Shall require the PACE lender and the borrower to comply with all federal, state and local lending and disclosure requirements;
 6. Shall provide for any fees payable to the County and/or Program Administrator;
 7. Shall recite that the supplemental agreement is a covenant that runs with the land;
 8. May provide for prepayments of annual installments by the borrower with a resulting reduction in the special charge for the prepayment, subject to any prepayment premium charged by the PACE lender, if any; and

9. May allow for amendment by the parties.

- (b) Prior to executing the supplemental agreement, the owner of the subject property, if different from the borrower, and any existing mortgage holder(s) on the subject property must have executed a separate writing acknowledging the borrower's use of PACE financing for the subject property and the special charge that will be imposed under this Chapter and its consequences, including the remedies for collecting the special charge.
- (c) Each PACE loan shall be amortized over the term of the PACE loan as provided in the supplemental agreement.
- (d) The annual payments of a PACE loan may be payable in installments as authorized by § 66.0627, Wis. Stats.

(8) ANNUAL INSTALLMENTS ADDED TO TAX ROLLS.

Upon the request of the Program Administrator the County shall place each year's annual installment on the tax roll for the subject property if and as permitted under § 66.0627, Wis. Stats.

(9) REMITTANCE OF SPECIAL CHARGES.

The County shall promptly remit to the Wisconsin PACE Commission any payment(s) for a special charge imposed under this Chapter, including penalties and charges thereon, it may receive from any taxing district or the County treasurer pursuant to Ch. 74, Wis. Stats.

(10) PROPERTY TAX FORECLOSURE PROCEDURES.

- (a) The County elects to utilize the provisions of § 75.521, Wis. Stats. (as amended) for the purpose of enforcing tax liens if a subject property owner fails to pay any special charges imposed on the subject property under this Chapter as required.
- (b) The County shall begin an *In Rem* property tax foreclosure proceeding on the subject property as allowed under Wisconsin Statutes, unless the County determines, in its sole and absolute discretion, that the subject property is a "brownfield" (as defined in § 75.106, Wis. Stats. as amended) or that *In Rem* property tax foreclosure is not otherwise in the best interests of the County.
- (c) If the County has determined that it will not commence an *In Rem* property tax foreclosure proceeding, then the PACE lender may request that the County, if and as permitted under § 75.106, Wis. Stats., assign the County's right to take judgment against the subject property. In the event assignment is authorized, the PACE lender and the County shall fully comply with all provisions of § 75.106, Wis. Stats., concerning the subject property and, the PACE lender shall pay the amounts required by §§ 75.36(3)(a)1 & 1m, Wis. Stats. (as amended).

(11) DISPOSITION OF FORECLOSED PROPERTY.

- (a) If the County prevails in an *In Rem* property tax foreclosure action against a subject property, the County shall diligently proceed to dispose of the subject property in a manner it considers, in good faith, to be most advantageous to the County, as allowed under Wisconsin Statutes.
- (b) Post-foreclosure sale of the subject property shall be as set forth in § 75.69, Wis. Stats. (as amended). Distribution of proceeds of any sale shall be as set forth in § 75.36, Wis. Stats. (as amended).

(12) EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the date of its enactment and publication as required by law

(Ord. 2017-08; 6/27/17)