

Chapter 8
PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCING

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8.01 **PURPOSE.** Sheboygan 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 Ordinance 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.

8.02 **DEFINITIONS.** In this Chapter:

- (1) **Annual installment** means the portion of the PACE loan that is due and payable for a particular year under the supplemental agreement.
- (2) **Borrower** means the property owner or lessee of the subject property that borrows the proceeds on a PACE loan.
- (3) **Default loan balance** means the outstanding balance, whether or not due, of a PACE loan at the time that the County receives foreclosure proceeds.
- (4) **Foreclosure proceeds** mean the proceeds received by the County from the disposition of a subject property through an *in rem* property tax foreclosure.
- (5) **Loan amount** means the principal, interest, administrative fees (including the Program Administrator's fees) and other loan charges to be paid by the borrower under the PACE loan.
- (6) **PACE** means Property Assessed Clean Energy.
- (7) **PACE default provisions** means:
 - (a) The delinquent annual installment(s) due when the County initiates the *in rem* property tax foreclosure on the subject property;
 - (b) 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.
 - (c) Any default interest charges applied to unpaid annual installments referenced in Subsections (a) and (b), above, as provided in the supplemental agreement; and
 - (d) Any default loan balance.
- (8) **PACE lender** means any person that makes a PACE loan and which may include an affiliate of the borrower.

- (9) **PACE loan** means a loan made by a PACE lender to a borrower under this Section for energy efficiency improvements, water efficiency improvements, or renewable resource applications made to or installed on a subject property.
 - (10) **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 Wis. Stat. § 66.0627.
 - (11) **Program Administrator** means the person retained by the Wisconsin PACE Commission as provided in Section 8.05(2).
 - (12) **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.
 - (13) **Supplemental agreement** means a written agreement among a borrower, a PACE lender, and the County as provided for in Section 8.07.
 - (14) **Wisconsin PACE Commission** means the Wisconsin PACE Commission formed under Wis. Stat. § 66.0301, as may be amended, by the County and one or more other political subdivisions as defined in Wis. Stat. § 66.0627 pursuant to a Joint Exercise of Powers Agreement relating to the Wisconsin PACE Commission as provided hereafter.
- 8.03 STATUTORY AUTHORITY. This Section is enacted pursuant to Wis. Stat. § 66.0627 as may be amended which authorizes a county to make a loan or enter into an agreement regarding loan repayments to a third 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..
- 8.04 PACE LOANS AS SPECIAL CHARGES; DELINQUENT AMOUNTS AS LIENS. Any PACE loan made and secured pursuant to this Chapter shall be considered a special charge on the subject property. Any installment or portion of a PACE loan made and secured pursuant to this Chapter that becomes delinquent according to the terms of the PACE loan shall be a lien against the subject property and placed on the tax roll as permitted pursuant to Wis. Stat. § 66.0627 as may be amended.
- 8.05 WISCONSIN PACE COMMISSION.
- (1) In the event a Wisconsin PACE Commission is formed and Sheboygan County becomes originator of such PACE Commission and any Joint Exercise of Powers Agreement thereunder, any of the powers and duties of the County under this Chapter, except for those under Section 8.09, may (but are not required to) be delegated to the Wisconsin PACE Commission.
 - (2) The Wisconsin PACE Commission shall further be authorized to retain a Program Administrator to act as its agent and administer the PACE program, subject to adherence with PACE program requirements consistent with this Chapter and Wis. Stat. § 66.0627 as may be amended.
- 8.06 LOAN APPROVAL.
- (1) 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.
 - (2) The County shall approve the financing arrangements between a borrower and PACE lender.
- 8.07 SUPPLEMENTAL AGREEMENT.

- (1) The County, the borrower, and the PACE lender shall execute the supplemental agreement which, without limitation:
 - (a) Shall inform the participants that the PACE loan amount shall, if requested by the Program Administrator, be imposed as and considered a special charge, and any year's annual installment, if delinquent, 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 Wis. Stat. § 66.027 as may be amended;
 - (b) Shall recite the amount and the term of the PACE loan;
 - (c) Shall provide for the amount or a method for determining the amount of the annual installment due each year;
 - (d) Shall provide whether default interest shall be applied to unpaid annual installments;
 - (e) Shall require the PACE lender and the borrower to comply with all federal, state, and local lending and disclosure requirements;
 - (f) Shall provide for any fees payable to the County and/or Program Administrator;
 - (g) Shall recite that the supplemental agreement is a covenant that runs with the land;
 - (h) 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
 - (i) May allow for amendment by the parties.
 - (2) 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.
 - (3) Each PACE loan shall be amortized over the term of the PACE loan as provided in the supplemental agreement.
 - (4) The annual payments of a PACE loan may be payable in installments as authorized by Wis. Stat. § 66.0627 as may be amended.
- 8.08 ANNUAL INSTALLMENTS ADDED TO TAX ROLLS. Upon the request of the Program Administrator, the County shall place any year's annual installment, if delinquent, on the tax roll for the subject property as permitted pursuant to Wis. Stat. § 66.0627 as may be amended.
- 8.09 REMITTANCE OF SPECIAL CHARGES. The County shall promptly remit to the Wisconsin PACE Commission any payment(s) it receives with respect to any special charge imposed under this Section including penalties and charges thereon it may receive from any taxing district or the County Treasurer pursuant to Wis. Stat. Ch. 74, as amended, subject to the County retaining any agreed-upon portion thereof for its own costs and expenses attributable to administering the PACE loan and its collection.
- 8.10 PROPERTY TAX FORECLOSURE PROCEDURES.
- (1) If a subject property owner fails to pay any special charges imposed on the subject property under this Section as required, the county may proceed in collecting the special charge pursuant to Chapter 91 of this Code.

- (2) The County shall begin an *in rem* property tax foreclosure proceeding on the subject property at the earliest time allowed under the Wisconsin Statutes unless the County determines that that subject property is a "brownfield" (as defined in Wis. Stat. § 75.106 as may be amended) or that *in rem* property tax foreclosure is not in the best interests of the County due to the condition of the property or other reasons.
- (3) 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, pursuant to Wis. Stat. § 75.106, as may be amended, assign the County's right to take judgment against the subject property, provided that the PACE lender and the County fully comply with all provisions of Wis. Stat. § 75.106, as may be amended, concerning the subject property, and the PACE lender agrees to pay the amounts required by Wis. Stat. § 75.36(3)(a)1 and 1m, as may be amended.

History: Ord. 7 (2016/17);