ORDINANCE NO. 2017-012

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ESTABLISHING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM ORDINANCE; PROVIDING FOR A TITLE; PROVIDING FOR AUTHORITY; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Property Assessed Clean Energy (PACE) programs have been established across the country to provide mechanisms for funding energy efficiency, renewable energy, and other types of improvements to residential and commercial properties; and

WHEREAS, PACE programs are typically established by local governments and are administered by the local government or by for-profit or not-for-profit entities; and

WHEREAS, PACE financing is repaid as an assessment on the property’s regular tax bill; and

WHEREAS, Section 163.08, Florida Statutes, authorizes programs, typically referred to as PACE programs, that levy non-ad valorem assessments allowing property owners to apply to local governments for financing certain energy efficiency, renewable energy and wind resistant improvements; and

WHEREAS, Section 163.08, Florida Statutes, provides that properties retrofitted with energy-related qualifying improvements benefit from reduced energy consumption, reduced potential for wind damage, and assist in the fulfillment of the state’s energy and hurricane mitigation policies; and

WHEREAS, the PACE assessment is collected pursuant to Florida’s uniform method for the levy, collection and enforcement of non-ad valorem assessments, Section 197.3632, Florida Statutes; and

WHEREAS, the Board of County Commissioners intends to establish qualifications and consumer protection disclosure requirements for PACE programs that provide financing for qualifying improvements in accordance with Section 163.08, Florida Statutes, and provisions of this Ordinance; and
WHEREAS, it is the intent of the County to enter into interlocal agreements with multiple PACE agencies/authorities/districts to encourage competition and provide more choices for property owners; and

WHEREAS, the Board of County Commissioners acknowledges the Florida Legislature’s finding that there is a compelling state interest in enabling property owners who wish to undertake such improvements and to enable property owners to voluntarily finance such improvements with local government assistance and finds that creation of a PACE program will serve the public health and welfare of the citizens of Palm Beach County; and

WHEREAS, the Board of County Commissioners has conducted a duly noticed public hearing to consider this Ordinance in accordance with Section 125.66, Florida Statutes; and

WHEREAS, the Board of County Commissioners of Palm Beach County, pursuant to its authority under the Florida Constitution, Article VIII, Section 1(g), Section 125.01, Florida Statutes, and the Palm Beach County Charter, hereby adopts the Palm Beach County Property Assessed Clean Energy (PACE) Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. TITLE:

This Ordinance shall be titled the “Palm Beach County Property Assessed Clean Energy (PACE) Ordinance.”

Section 2. AUTHORITY:

This article is adopted pursuant to the authority granted to charter counties under Article VIII, Section 1(g) of the Florida Constitution, Chapter 125, Florida Statutes and Article 1 of the Palm Beach County Home Rule Charter.

Section 3. APPLICABILITY:

This Ordinance shall be applicable within the unincorporated areas of Palm Beach County, and in all municipalities that have not adopted an ordinance governing any or all of the subject matter of this Ordinance, regardless of the time of passage of the municipal ordinance.

Section 4. DEFINITIONS:

For purposes of this Ordinance, the following words and phrases shall have the following meanings:

(1) Board or County is the Palm Beach County Board of County Commissioners.
(2) **Financing Agreement** shall mean the financing agreement or the summary memorandum of such agreement the property owner signs establishing terms and conditions for the financing of qualified improvements which is required to be recorded in the public records pursuant to the PACE Statute.

(3) **Qualifying Improvements** includes energy conservation and efficiency, renewable energy, and wind resistance improvements as defined by Section 163.08, Florida Statutes, as may be amended by law.

(4) **PACE assessment** shall mean the non-ad valorem assessment placed on a property owner's tax bill as a result of financing obtained pursuant to this Ordinance.

(5) **PACE agencies/authorities/districts** shall mean one or more local governments defined in Section 163.08(2)(a), Florida Statutes, authorized by Palm Beach County to offer PACE financing for qualifying improvements.

(6) **PACE Program** shall mean the County’s provision through interlocal agreements with PACE agencies/authorities/districts offering financing for qualifying improvements as approved by the State of Florida pursuant to Section 163.08, Florida Statutes, further refined in this Ordinance, as may be amended by law.

(7) **PACE Statute** shall mean Section 163.08, Florida Statutes and all future amendments thereto.

(8) **Residential Property** shall mean a residential property consisting of four (4) or less residential units.

(9) **Non-Residential Property** shall mean commercial, industrial, agricultural and residential properties consisting of five (5) or more residential dwelling units.

**Section 5. PACE PROGRAM AUTHORIZATION:**

(1) PACE agencies/authorities/districts offering financing for Qualifying Improvements pursuant to this Ordinance shall be approved by the County and authorized through interlocal agreements to provide financing subject to the requirements of this Ordinance and the PACE Statute. A resolution indicating the County’s desire to join a PACE agency/authority/district shall be prepared by County staff and presented to the Board for consideration with each interlocal agreement. The interlocal agreements shall include specific terms and conditions for PACE agencies/authorities/districts to operate within Palm Beach County.
(2) PACE agencies/authorities/districts desiring to provide financing pursuant to this
Ordinance shall provide sufficient documentation as requested by the County to provide
reasonable assurance that the requirements of this Ordinance and the PACE Statute can be
met by the PACE agency/authority/district.

Section 6. DISCLOSURE REQUIREMENTS:

(1) In addition to any disclosure requirements in the PACE Statute, PACE
agencies/authorities/districts that extend financing pursuant to the PACE Statute and levy
non-ad valorem assessments to fund the qualifying improvements shall present to the
property owner a separate, written notice disclosing the following ("Notice"):  
(a) 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" or "APR");
(b) That PACE agencies/authorities/districts may only offer fixed simple interest rates and
payments that fully amortize the obligation. Variable or negative amortization
financing terms are not permitted. Capitalized interest included in the original balance
of a PACE financing does not constitute negative amortization.
(c) The repayment process and terms, amounts and a schedule that fully amortizes the
amount financed including the estimated annual PACE assessment;
(d) That the PACE assessment will appear on the property owner's tax bill;
(e) That there is no discount for paying the PACE assessment early;
(f) 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 of payment thereof
may result in the loss of property subject to the PACE assessment, including homestead
property, in the same manner as failure to pay property taxes;
(g) The specific improvements to be financed and installed and that such improvements
and PACE assessment may or may not affect the overall value of the property;
(h) A PACE assessment payment term that does not exceed the useful life of the
improvements;
(i) The right of pre-payment without penalty;
(j) 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; and
(k) The 3-day right to cancel the financing.

(2) The Notice must be delivered to the property owner by the PACE agency/authority/district 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. The property owner and the PACE agency/authority/district must keep the signed Notice with the property owner’s executed financing agreement.

(3) The PACE agency/authority/district shall record, or cause to be recorded, the financing agreement or a summary memorandum of the financing agreement, in accordance with Section 163.08(8), Florida Statutes.

Section 7. ELIGIBLE PROPERTIES/PROGRAM REQUIREMENTS:

(1) As defined in the PACE Statute, PACE agencies/authorities/districts that extend financing pursuant to the PACE Statute and levy non-ad valorem assessments to fund the qualifying improvements shall comply with the following:

(2) Residential Property. PACE agencies/authorities/districts may finance qualifying improvements on Residential Properties provided they comply with the following criteria inclusive of all eligibility criteria listed in the PACE Statute and all future amendments thereto, along with additional consumer protections.

(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment for a property under the PACE Statute may not exceed twenty percent (20%) of the just/fair market value of the property as determined by the county property appraiser, excepted as otherwise provided by statute; and

(b) All property taxes and other assessments levied on the property tax bill have been paid and have not been delinquent for the preceding three years, or the property owner’s period of ownership, whichever is less; and

(c) There are no involuntary liens, including but not limited to construction liens on the property; and

(d) 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, additionally

(e) All mortgage debt on the property is current and not delinquent; and
(f) All mortgage-related debt on the underlying property may not exceed 90% of the property’s fair market value; and

(g) The total mortgage-related debt on the underlying property plus the PACE program financing may not exceed the fair market value of the property.

(3) Non-Residential Properties. PACE agencies/authorities/districts may finance Qualifying Improvements on Non-Residential Properties provided they comply with the requirements set forth in the PACE Statute and all future amendments thereto and inclusive of those listed under Section 7(2)(a-d) of this Ordinance.

(4) Qualifying Improvements. The PACE agency/authority/district will finance energy efficiency, renewable energy and wind resistant improvements that are permanently affixed to the property as more specifically described in the PACE Statute. All improvements and products should identify efficiency standards established by the U.S. Department of Energy, the U.S. Environmental Protection Agency, or Florida state agencies as applicable. All qualifying improvements must comply with the PACE Statute for energy efficiency, renewable energy and wind resistance or other improvements as permissible by law. PACE agencies/authorities/districts shall establish procedures confirming that the property owner applying for financing through the PACE agency/authority/district intends to install eligible products, and that at the time of funding such improvements have been installed.

(5) Inquiries and Complaints.

(a) The PACE agency/authority/district shall be required to receive, manage, track, timely resolve and report on complaints from property owners regarding the funded work performed by the contractors. The PACE agency/authority/district shall investigate and mediate disputes between property owners and contractors in a timely manner.

(b) Payment inquiries. The PACE agency/authority/district shall be required to respond to inquiries and resolve any issues in a timely manner, related to payments, including but not limited to prepayments and payment reconciliation.

(c) Review. In the event that ten percent or more of a PACE agency/authority’s/district’s projects result in complaints or disputes, or such complaints or disputes remain unresolved six months after completion of a project, the County may review the PACE agency/authority’s/district’s handling of complaints and may request corrective actions or initiate suspension proceedings pursuant to Section 7(13).

(6) Data Security. The PACE agency/authority/district is responsible for taking security
measures that protect the security and confidentiality of consumer records and information
in proportion to the sensitivity of the information, and as required by state and federal law.

(7) Consumer Privacy. The PACE agency/authority/district must develop 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.

(8) Marketing and Communications. Marketing practices for a PACE agency/authority/district
that are or could appear to be unfair, deceptive, abusive, or misleading, or that violate
applicable laws or regulations, that are inappropriate, incomplete or are inconsistent with
the PACE agency’s/authority’s/district’s purpose are prohibited.

(9) Protected Classes. The PACE agency/authority/district shall not discriminate against
individuals on the basis of race, color, ancestry, disability, national origin, religion, age,
familial status, marital status, sex, gender, sexual orientation, gender identity and
expression, or genetic information.

(10) Contractor Management.

(a) Any work under a PACE agency/authority/district 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 or local law.

(b) Contractors performing work under a PACE agency/authority/district shall comply
with each of the following conditions: (i) Be licensed and insured pursuant to the
applicable statutory requirements; (ii) Agree to comply with all program requirements
and marketing guidelines; (iii) Act in good faith to timely resolve property owner
complaints.

(c) PACE programs shall have and shall strictly enforce anti-kickback policies and
procedures that prohibit direct financial or other monetary incentives to contractors 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.

(11) Financing. The PACE agency/authority/district will establish pricing rules and
enforcement mechanisms to ensure property owners are protected from excessive or
unjustified prices and charges. In addition, the PACE agency/authority/district shall
require compliance with each of the following conditions prior to the issuance of any
funding to the contractor:
(a) Contractors have certified that any necessary permits have been obtained;
(b) Verification that the qualifying improvements have been installed;
(c) The property owner and the contractor have signed a final inspection and/or certificate
of completion that all improvements have been installed to the property owner’s
satisfaction.

(12) **Reporting.** Each PACE agency/authority/district shall provide a report to the County
on a quarterly calendar basis, which shall include, at a minimum, the following
information:
(a) Dates of the reporting period;
(b) List of PACE projects (including addresses including municipal jurisdiction, financed
amount, interest rate, assessment duration, and project description) started during the
reporting period, separated by building type (e.g., single family, multifamily, retail,
office, industrial, etc.);
(c) List of PACE projects (including addresses including municipal jurisdiction)
completed during the reporting period, separated by building type project (e.g., single
family, multifamily, retail, office, industrial, etc.), specify: (1) the qualifying
improvements made; (2) project start date and completion date; (3) the projected energy
savings and/or amount of potential renewable energy to be generated; (4) financial
information such as cost per kilowatt hour saved/generated; (5) other resource savings
if data is available; and (6) audits performed detailing the audit results, if applicable to
the project;
(d) Number of actual or estimated jobs created during the reporting period, including local
versus non-local jobs and permanent versus temporary jobs;
(e) Number of applications declined during the reporting period;
(f) Unresolved complaints and/or contractor issues and status; and
(g) Description of the standardized third-party methodologies and supporting assumptions
used to verify data, and any changes in the methodologies and assumptions from the
previous reporting period.

(13) **Suspension or Termination of PACE agency/authority/district.** In the event any PACE
agency/authority/district fails to incorporate and continually provide for all of the foregoing
service components or to otherwise abide by the provisions of this Ordinance and/or the
interlocal agreement the County, in its sole discretion, may suspend or terminate the
interlocal agreement and support of the County at any time upon written notice to that
PACE agency/authority/district. Any project that has been initiated as of the time of
suspension or termination shall be permitted to be completed.

Section 8. REPEAL OF LAWS IN CONFLICT:
All local laws and ordinances in conflict with any provisions of this Ordinance are
hereby repealed to the extent of such conflict.

Section 9. SEVERABILITY:
If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any
reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,
such holding shall not affect the remainder of this Ordinance.

Section 10. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:
The provisions of this Ordinance shall become and be made a part of the Palm Beach
County Code. The sections of this Ordinance may be renumbered or relabeled to accomplish
such, and the word Ordinance may be changed to section, article, or other appropriate word.

Section 11. ENFORCEMENT:
This Ordinance is enforceable by all means provided by law. Additionally, the County
may choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm
Beach County.

Section 12. PENALTY:
Any violation of any portion of this Ordinance shall be punishable as provided by law.

Section 13. CAPTIONS:
The captions, section headings and section designations used in this Ordinance are for
convenience only and shall have no effect on the interpretation of the provisions of this
Ordinance.

Section 14. EFFECTIVE DATE:
The provisions of this Ordinance shall become effective upon filing with the
Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm
Beach County, Florida, on this the 4th day of April, 2017.
SHARON R. BOCK, CLERK   PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

By:  Paulette Burdick, Mayor

Deputy Clerk

By:  Paulette Burdick, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:  County Attorney

EFFECTIVE DATE:  Filed with the Department of State on the seventh day of
April, 2017.
April 7, 2017

Honorable Sharon R. Bock  
Clerk and Comptroller  
Palm Beach County  
301 North Olive Avenue  
West Palm Beach, Florida  33401  

Attention: Timothy Montiglio, Administrative Specialist II

Dear Ms. Bock:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2017-012, which was filed in this office on April 7, 2017.

Sincerely,

Ernest L. Reddick  
Program Administrator  

ELR/lb