EXECUTIVE SUMMARY:

Estimated staff presentation: 15 minutes. At the December 12, 2017 meeting, staff presented an overview of the Property Assessed Clean Energy Program (PACE) to the Board of County Commissioners (Board). This overview outlined several options for a PACE program, including a hybrid model, which provided some additional protections for property owners. The Board directed staff to draft an ordinance for the PACE program and a Request for Interest for alternative funding programs.
BACKGROUND/RELATED STRATEGIC GOAL:

Staff has compiled the following information as a review of the PACE program and to assist the Board in its re-evaluation of the program.

The Property Assessed Clean Energy (PACE) model is an innovative mechanism for low-cost, long-term financing for energy efficiency, renewable energy, and wind resistance improvements on private property. These improvements are paid for through a voluntary property assessment and processed the same way as other public benefit assessments (sidewalks, sewers, etc.). PACE programs exist for both residential properties and commercial properties.

Martin County initiated joining its first PACE program on December 17, 2013 when the BOCC approved an Interlocal Agreement drafted by the Towns of Lantana and Mangonia Park. Additional parties to this agreement included the Cities of Stuart and West Palm Beach. Currently, there are 110 local governments that have joined that program. Martin County terminated its participation in this agreement at the May 23, 2017 BOCC meeting.

Property owners typically learn about PACE programs through contractors or through the individual PACE program providers. They apply for program financing and are approved based on specific underwriting criteria. PACE programs have specific statutory requirements that must be met.

Staff has drafted an ordinance with the intention of creating a framework that allows PACE providers to operate, while at the same time requiring safeguards and information that will allow Martin County to audit the program and protect property owners.

At the December 12th meeting staff also suggested creating a Request for Interest (RFI) for other alternative funding programs. This suggestion was a result of exploring the options currently available to property owners, who may not meet the financial requirements of traditional funding sources for home improvements (banks, credit card providers, retailers, etc.) including PACE. This would include low and moderate income (LMI) property owners.

Florida has some of the highest rates of underbanked and unbanked populations (individuals not having sufficient or no access to a mainstream financial institution).

Programs of this type typically require partnership or financial support from the municipalities in which they operate. Staff has drafted a RFI to solicit organizations that have an interest in providing non-traditional funding to these underserved or underbanked populations within Martin County.

With the Board’s approval, the RFI will be advertised and staff will engage in discussion and negotiations for the terms of an agreement. The agreement and information on the financial impact will be brought back to the Board for approval.

ISSUES:

The Federal Housing Finance Authority banned federal programs from purchasing PACE assessed home loans. However, it should be noted that PACE default rates track closely to national default rates on traditional mortgages.

LEGAL SUFFICIENCY REVIEW:
Adoption of an ordinance is a legislative matter. Legislative decisions are those in which the local government formulates policy rather than applying specific rules to a particular situation. A local government’s approval or denial of an issue in its legislative capacity is typically subject to a fairly debatable standard of review. Fairly debatable means that the government’s action must be upheld if reasonable minds could differ as to the propriety of the decision reached. Decisions subject to the fairly debatable standard of review need only be rationally related to a legitimate public purpose, such as the health, safety, and welfare of the public, to be valid. Given this broad discretion, only decisions that are arbitrary and capricious or illegal are subject to serious legal challenge.

Advertising the Request for Interest is a matter of Board policy; though to the extent it contains legal issues, it has been reviewed for legal sufficiency.

RECOMMENDED ACTION:

RECOMMENDATION
Move that the Board approve the draft ordinance for the PACE program and authorize staff to negotiate with providers for services in Martin County.
Move that the Board authorize staff to advertise the Request for Interest for alternative funding programs and negotiate an agreement with selected respondent(s).

ALTERNATIVE RECOMMENDATIONS
Move that the Board hear the presentation and provides further direction.
Move that the Board hear the presentation and takes no action.

FISCAL IMPACT:

RECOMMENDATION
None

ALTERNATIVE RECOMMENDATIONS
None

DOCUMENT(S) REQUIRING ACTION:

- Budget Transfer / Amendment
- Chair Letter
- Contract / Agreement
- Grant / Application
- Notice
- Ordinance
- Resolution
- Other:

ROUTING:

- ADM
- BLD
- CDD
- COM
- ENG
- FRD
- GMD
- GSD
- ITS
- LIB
- MCA
- MPO
- PRD
- USD
- CA
- ACA
- LEG

80986ded

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ORDINANCE NO. 2018-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, FLORIDA, CREATING A NEW ARTICLE 14 PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM, OF CHAPTER 71 FINANCE AND TAXATION, GENERAL ORDINANCES, MARTIN COUNTY CODE ESTABLISHING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM, PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, APPLICABILITY, FILING WITH THE DEPARTMENT OF STATE, EFFECTIVE DATE, AND CODIFICATION.

WHEREAS, Property Assessed Clean Energy (PACE) programs have been authorized in Florida since 2010, with the adoption of Section 163.08, Florida Statutes, to provide a funding mechanism for energy efficiency, renewable energy, and other types of improvements to residential and commercial properties; and

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

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

WHEREAS, Section 163.08, Florida Statutes, authorizes PACE programs that levy voluntary 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 reduce energy consumption and potential wind damage as well as fulfilling the state’s energy and hurricane mitigation policies; and

WHEREAS, the PACE assessment is generally collected pursuant to Florida’s uniform method of 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, and providers to encourage competition and provide more options for property owners; and

WHEREAS, the Board of County Commissioners acknowledges the Florida Legislature’s finding that there is compelling state interest in enabling property owners, who wish to undertake such improvements, to enable property owners to finance such improvements with local government assistance, serving the public health and welfare of the citizens of Martin County.

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

PART I. ARTICLE 14 PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM OF CHAPTER 71 FINANCE AND TAXATION, GENERAL ORDINANCES, MARTIN COUNTY CODE, IS HEREBY ADOPTED TO READ AS FOLLOWS:

ARTICLE 14. PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM

Sec. 71.475. Applicability.
This Article shall be applicable within the unincorporated area of Martin County.

Sec. 71-476. Definitions.
For purposes of this Article, the following words and phrases shall have the following meanings:
1. Board shall mean the Martin County Board of County Commissioners.
2. Contractor shall mean a contractor, as defined in §489.105(3), F.S., who is performing work on a project.
3. County shall mean Martin County, a political subdivision of the State of Florida.
4. Fair market value shall mean the value of real property assessed considering each of the factors set out in §193.011, F.S.
5. Non-residential property shall mean commercial, industrial and agricultural properties and residential properties consisting of five (5) or more residential dwelling units, within the unincorporated area of the County.
6. PACE assessment shall mean the voluntary non-ad valorem assessment as a result of financing obtained pursuant to §163.08, F.S. and the requirements of this Article, which is placed on a property owner’s tax bill or collected in some other authorized manner.
7. PACE entity shall mean a local government as defined in §163.08(2)(a), F.S., offering PACE financing for qualifying improvements, inclusive of its third-party PACE administrators.
8. PACE program shall mean the offering of financing for qualifying improvements through a PACE entity pursuant to §163.08, F.S. and this Article, as may be amended by law.
9. Project shall mean the installation of qualified improvements under a PACE program.
10. **Qualifying improvements** shall mean improvements which are eligible for funding under a PACE program and include energy conservation and efficiency, renewable energy, and wind resistance improvements as defined by §163.08, F.S., as may be amended by law.

11. **Residential property** shall mean a residential property within the unincorporated area of the County consisting of four (4) or less residential units.

**Sec. 71-477. PACE entities.**

71.477.A. PACE entities desiring to operate in the County shall:

1. Comply with the requirements of this Article;

2. Establish its eligibility to operate in the County by providing sufficient documentation as requested by the County to provide reasonable assurance that the requirements of this Article and §163.08, F.S. can be met by the PACE entity; and

3. Submit to the County draft documents to be considered by the Board with specific terms and conditions related to the operations of the PACE entity as it seeks to operate within Martin County; including but not limited to, resolutions and agreements.

71.477.B. Prior to initiating operations within Martin County, each PACE entity must be approved to do so by the Board and authorized through a written agreement with the County to provide financing subject to the requirements of this Article and §163.08, F.S.

71.477.C. Each PACE entity shall provide the County seven (7) days prior written notice of all meetings of the PACE entity board when board business is anticipated to include discussion or action items pertaining to proposed amendments to the underlying PACE program documents approved by the County under this section.

**Sec. 71-478. Eligible properties and improvements.**

71.478.A. **Eligible properties.** Criteria for any property to be eligible for participation in a PACE Program are as follows:

1. The property must be located within the unincorporated area of the County;

2. The criteria in §163.08, F.S. must be met;

3. There are no involuntary liens, including but not limited to construction liens on the property;

4. 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;

5. The total mortgage-related debt on the underlying residential property, plus the PACE program financing, may not exceed the fair market value of the property;

6. All mortgage-related debt on the underlying residential property may not exceed ninety percent (90%) of the property’s fair market value; and
7. All mortgage-related debt on the underlying non-residential property may not exceed ninety-five percent (95%) of the property’s fair market value.

71.478.B. **Eligible improvements.** Qualifying improvements are eligible improvements for a project under a PACE program if they meet the criteria in this section.

1. All improvements and products must identify efficiency standards established by the U.S. Department of Energy, the U.S. Environmental Protection Agency, or Florida state agencies, or other certified government or industry standards such as the AWEA Small Wind Turbine Performance and Safety Standard and the Underwriters Laboratory Subject 2594 Standard Testing for Charging Stations, as applicable;

2. The qualifying improvements are properly installed by the contractor in accordance with industry standards and all applicable permits, rules and regulations and accepted by the property owner; and

3. The qualifying improvements are confirmed in writing by the PACE entity as meeting the requirements of §163.08, F.S. and this section. Such written confirmation may be provided by a statement included in the authorization or Notice to Proceed provided by the PACE entity to the contractor.

**Sec. 71-479. Program requirements.**

71.479.A. The requirements for operation of a PACE program within the County as set forth in this section are in addition to any and all requirements in §163.08, F.S.

71.479.B. **Disclosure notice requirements.** Each PACE entity shall present to any property owner interested in a project through a PACE program the written disclosures in this section prior to the property owner signing any binding financing documents. The disclosures will include, but not be limited to the following:

1. For projects on residential property, 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”);

2. That PACE entities 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.

3. The repayment process and terms, amounts and a schedule that fully amortizes the amount financed including the estimated annual PACE assessment;

4. That the PACE assessment will appear on the property owner’s tax bill (or specify any other method of collection as may be required);

5. That there is no discount for paying the annual PACE assessment early;

6. 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;

7. 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;

8. The payment term for the PACE assessment, which may not exceed the useful life of the improvements;

9. That the PACE assessment may be pre-paid without penalty;

10. That the property owner may be required to pay any PACE assessment in full at the time of refinance or sale of the property;

11. For projects on residential property, that the property owner may cancel the financing within 3-days of signing the financing documents;

12. That any tax incentives, credits or rebates should be discussed with an independent tax professional of the participant's choosing, if there are any tax questions; and

13. That costs of any Energy Audit related to the project are eligible for financing as part of the PACE assessment.

71.479.C. Disclosure notice process. The disclosure notice must be delivered to the property owner by the PACE entity 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 entity must keep the signed disclosure notice with the property owner’s executed financing agreement.

71.479.D. Inquiries and complaints.
1. Each PACE entity is required to receive, manage, track, resolve in a timely manner, and report complaints from property owners regarding the funded work performed by contractors.
2. Each PACE entity shall investigate and mediate disputes between property owners and contractors in a timely manner.
3. Each PACE entity 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.
4. In the event that ten percent (10%) or more of a PACE entity’s projects result in complaints or disputes, or such complaints or disputes remain unresolved six (6) months after the project’s completion, the County may review the PACE entity’s process for complaint resolution and may request corrective actions or initiate suspension or termination of the PACE entity’s operations in the County pursuant to Sec. 71.480.

71.479.E. Data security. Each PACE entity is responsible for security measures that adequately protect the security and confidentiality of consumer records and information reflective of the sensitivity of the information and as required by state and federal law.

*Added language is underlined; deleted language is struckthrough*
71.479.F. **Consumer privacy.** Each PACE entity 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.

71.479.G. **Marketing and communications.**
1. Marketing practices for a PACE entity are prohibited if they are or could appear to be unfair, deceptive, abusive, misleading, violate applicable laws or regulations, inappropriate, incomplete, or are inconsistent with the PACE entity’s purpose.
2. PACE entities are prohibited from using the County seal in any marketing or communications without specific prior written consent from the County.

71.479.H. **Protected classes.** PACE entities 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.

71.479.I. **Contractor management.**
1. Each PACE entity is responsible for confirming that contractors used to perform work for a project are properly licensed, certified or registered as required by law to perform the work.
2. Contractors performing work on a project 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; and
   iii) Act in good faith to expedite resolution of property owner complaints.
3. Each PACE entity and associated entities involved in a PACE program 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 award of work under a PACE program, excepting payment for the installation of qualifying improvements.
4. Each PACE entity is responsible for ensuring its contracts include language required by §119.0701, F.S. related to public records and that its contractors who enter into a contract for services with a PACE entity and are acting on behalf of the public agency are informed of their responsibilities.

71.479.J. **Financing.**
1. The PACE entity will establish pricing rules and enforcement mechanisms to help ensure that property owners receive competitive pricing for qualifying improvements and are protected from excessive prices and charges.
2. In addition, the PACE entity shall require compliance with each of the following conditions prior to the issuance of any funding to the contractor:
   i) Contractors must produce evidence that any necessary permits have been or will be obtained;

*Added language is underlined; deleted language is struckthrough*
ii) Verification, through a certificate of completion or other mechanism, that the qualifying improvements have been installed; and

iii) 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.

71.479. K. Reporting.

1. Each PACE entity shall provide a quarterly report to the County, in a spreadsheet format agreed upon by the County, which shall include the following information, as permitted by applicable law:
   i) Dates of the reporting period;
   ii) List of projects under construction during the reporting period, separated by building type (single family, multi-family, retail, office, industrial, etc.) including, at a minimum:
      (1) financing information including, but not limited to, amount, interest rate, and assessment duration;
      (2) project description including, but not limited to, qualifying improvements, start and completion dates, projected energy savings or amount of renewable energy generated, financial information such as estimated cost per kilowatt hour saved/generated, other resource savings if applicable, and audit results, if collected and applicable to the project;
   iii) Number of actual/estimated jobs created during the reporting period, including, if collected and available, local versus non-local and permanent versus temporary jobs;
   iv) Number of applications declined during the reporting period; and
   v) Unresolved complaints and/or contractor issues and status.

2. Each PACE entity shall also provide on a quarterly basis a 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.

3. Project related information shall be retained by the PACE entity for 7 years from the initial date of each PACE assessment.

4. For each project approved by the PACE entity:
   i) a verification by the PACE entity that:
      (1) the total cost of the assessment is equal to or less than the projected savings based upon the projected energy savings in a written statement from a Certified Energy Auditor, certified by the Assoc. of Energy Engineers, the Residential Energy Services Network, or the Building Performance Institute; or
      (2) the projected insurance savings in a written statement from the property owner’s insurer; or
   ii) a signed acknowledgment by the property owner that the project may not meet this requirement.

5. Reports may include only aggregate data and exclude any personally identifiable information.

6. Each PACE entity shall provide County representatives any and all PACE program related records upon request.
Sec. 71.480. Suspension or termination of PACE entity’s operation.
In the event any PACE entity fails to incorporate and consistently provide the service components or to otherwise abide by the provisions of this Article and/or any agreement with the County, the County, in its sole discretion, may suspend or terminate any agreements between the County and the PACE entity at any time upon written notice to that PACE entity. Upon the County providing notice of suspension or termination to the PACE entity, the PACE entity shall have up to sixty (60) days to come into compliance and shall otherwise immediately suspend or terminate, as appropriate, any and all activities within Martin County. Any applications that have been approved and projects that have been initiated by the PACE entity as of the time of suspension or termination shall be permitted to be completed.

PART II. CONFLICTING PROVISIONS.

Special acts of the Florida Legislature applicable only to the unincorporated area of Martin County, Martin County ordinances, County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict except for ordinances concerning either adoption or amendment of the Comprehensive Plan.

PART III. SEVERABILITY.

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void by a court of competent jurisdiction, such holding shall not affect the remaining portions of this ordinance. If the ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstance by a court of competent jurisdiction, such holding shall not affect its applicability to any other person, property or circumstance.

PART IV. APPLICABILITY OF ORDINANCE.

This Ordinance shall be applicable throughout the unincorporated area of Martin County.

PART V. FILING WITH DEPARTMENT OF STATE.

The Clerk shall be and is hereby directed forthwith to scan this ordinance in accordance with Rule 1B-26.003, Florida Administrative Code, and file same with the Florida Department of State via electronic transmission.

PART VI. EFFECTIVE DATE.

This ordinance shall take effect upon filing with the Office of Secretary of State.

PART VII. CODIFICATION.

Provisions of this ordinance shall be incorporated into the General Ordinances, Martin County Code, except that Parts II through VII shall not be codified. The word “ordinance” may be changed to “article,” “section,” or other word, and the sections of this ordinance may be renumbered or re-lettered.
DULY PASSED AND ADOPTED THIS ___ DAY OF ____________, 20__.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

BY:____________________

CAROLYN TIMMANN
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER

BY:_______________________________

EDWARD V. CIAMPI, CHAIRMAN

APPROVED AS TO FORM
& LEGAL SUFFICIENCY:

BY:_______________________________

SARAH W. WOODS
COUNTY ATTORNEY
REQUEST FOR INTEREST (RFI) FOR PROFESSIONAL SERVICES 2018-

Martin County Board of County Commissioners (BOCC)
Purchasing Division
2401 S.E. Monterey Road
Stuart, Florida 34996
(772) 288-5481
pur_div@martin.fl.us
www.martin.fl.us

The Martin County Board of County Commissioners, Martin County, Florida, will receive letters of interest for:

ALTERNATIVE FINANCING PROGRAMS FOR LOW AND MODERATE INCOME HOMEOWNERS

Sealed responses will be received by the Information Desk on the 1st Floor at the address above until TIME local time, on DATE. Proposals received after the designated time and date will not be considered

Martin County is an equal opportunity/affirmative action employer.

By order of the Board of County Commissioners of Martin County, Florida.

PURPOSE

The BOCC of Martin County, Florida shall accept and review proposals from professional non-profit organizations (ORGANIZATION) to provide financing/funding services to underserved and underbanked low and moderate income (LMI) homeowners, who wish to make improvements to their property but are unable to secure financing from traditional lenders. The intent is to offer options that will provide the lowest overall borrowing cost to the residents.

It is the expectation of the BOCC that the ORGANIZATION will provide the following:

Office: Within 60 days after the Effective Date, the ORGANIZATION shall establish an office in Martin County with staff available to assist County residents with energy and financing expertise.

Target Market Assessment: The ORGANIZATION shall complete a target market assessment of Martin County to identify (LMI) census tracts and communities that are underserved and underbanked. In cooperation with the County, the ORGANIZATION shall use this assessment to prioritize residential neighborhoods for the ORGANIZATION’s services.
Financing Program: The ORGANIZATION shall demonstrate the ability to raise low-cost capital from banks, private investors, and other alternative sources.

The ORGANIZATION shall deploy low-cost capital for residential homeowners that will generate sustainable building practices, clean energy alternatives, water quality improvements, climate resilience, and local, green jobs.

Scope of Work
This project has two strategic goals:

1. Provide low-cost capital for residential homeowners that will generate sustainable building practices, clean energy alternatives, water quality improvements, climate resilience, and local green jobs.

2. Increase the resiliency and improve housing conditions in Martin County.

Submittal Requirements

- Letter of Interest including official company name, mailing address, telephone number and name & e-mail address of appropriate contact person, signed by an authorized corporate officer, principal, or partner (2 pages maximum).
- Firm qualifications (3 page maximum) and current areas of operation.
- Detailed summaries of funded/completed projects and the source of the funding, with an emphasis on those in Martin County or adjacent municipalities.

Martin County Staff will review each letter of interest and statement of qualifications. Staff will then contact the organization(s), which it wishes to engage in further discussion.
NOTICE OF PUBLIC HEARING

Notice is hereby given that the Martin County Board of County Commissioners will conduct a public hearing on May 8, 2018, to consider adoption of an ordinance authorizing the Property Assessed Clean Energy (PACE) program. The hearing will be conducted at the Martin County Administrative Center, 1st Floor, Commission Chambers, 2401 S.E. Monterey Road, Stuart, Florida, at 9:00 am or as soon thereafter as the item may be heard.

The title of the proposed ordinance is:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, FLORIDA, CREATING A NEW ARTICLE 14 PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM, OF CHAPTER 71 FINANCE AND TAXATION, GENERAL ORDINANCES, MARTIN COUNTY CODE ESTABLISHING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM, PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, APPLICABILITY, FILING WITH THE DEPARTMENT OF STATE, EFFECTIVE DATE, AND CODIFICATION.

All interested persons are invited to attend and be heard. Written comments may be sent to: Administration Department, 2401 S.E. Monterey Road, Stuart, Florida 34996. Copies of the items will be available from the Administration Department. For more information, contact Domenica Labbate at (772) 463-3228.

Persons with disabilities who need an accommodation in order to participate in this proceeding are entitled, at no cost, to the provision of certain assistance. This does not include transportation to and from the meeting. Please contact the office of the Office of the County Administrator at (772) 221-2360 or in writing to 2401 S.E. Monterey Road, Stuart, FL 34996 no later than three days before the hearing date. Persons using a TDD device, please call 711 Florida Relay Services.

If any person decides to appeal any decision made with respect to any matter considered at the meetings or hearings of any board, committee, commission, agency, council or advisory group, that person will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record should include the testimony and evidence upon which the appeal is to be based.
NOTICE TO PUBLISHER:

1. Please publish as a Block Ad on Thursday, April 26, 2018.

2. The words, "Notice Of Public Hearing ", must be in 18 point type. The rest of the text should be in 10 point type.

4. Please send sample of ad with billing to:

    MARTIN COUNTY COMMISSION
    ACCOUNTING DEPARTMENT
    POST OFFICE BOX 9016
    STUART, FLORIDA 34995-3397
MARTIN COUNTY, FLORIDA
SUPPLEMENTAL MEMORANDUM

TO: Honorable Members of the Board of County Commissioners

DATE: May 1, 2018

VIA: Taryn Kryzda
County Administrator

FROM: Elizabeth V. Lenihan
Assistant County Attorney

REF: ORIGINANCE TO IMPLEMENT A PROPERTY ASSESSED CLEAN ENERGY PROGRAM

The attached draft ordinance has been updated by staff based on comments received from the industry. Modifications include a change in the definition of Fair Market Value and to the verification reporting requirement in Section 71.479.K.4. as follows:

Fair market value shall mean the value of real property determined by the Martin County Property Appraiser, by a credentialed commercial property appraiser or licensed realtor, or by an automated valuation service or model from a reputable third-party source, assessed considering each of the factors set out in §193.011, F.S.

AND

4. A verification by the PACE entity that for each project approved by the PACE entity met one of the following criteria, including the total number of projects met by each:
   (i) a verification by the PACE entity that:
      (1) the total cost of the assessment is equal to or less than the projected savings based upon the projected energy savings in a written statement from a Certified Energy Auditor, certified by the Assoc. of Energy Engineers, the Residential Energy Services Network, or the Building Performance Institute; or
      (2) the projected insurance savings in a written statement from the property owner’s insurer;
   or
   (ii) the property owner signed an acknowledgment by the property owner that the total cost of the assessment project may not meet this requirement be greater than any realized savings.

Added language is underlined; deleted language is struckthrough

TK/EL
Attachment

Reviewed by County Attorney’s Office
ORDINANCE NO. 2018-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, FLORIDA, CREATING A NEW ARTICLE 14 PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM, OF CHAPTER 71 FINANCE AND TAXATION, GENERAL ORDINANCES, MARTIN COUNTY CODE ESTABLISHING THE PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM, PROVIDING FOR CONFLICTING PROVISIONS, SEVERABILITY, APPLICABILITY, FILING WITH THE DEPARTMENT OF STATE, EFFECTIVE DATE, AND CODIFICATION.

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

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WHEREAS, Section 163.08, Florida Statutes, provides that properties retrofitted with energy-related qualifying improvements reduce energy consumption and potential wind damage as well as fulfilling the state’s energy and hurricane mitigation policies; and

WHEREAS, the PACE assessment is generally collected pursuant to Florida’s uniform method of 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

Added language is underlined; deleted language is struck through
WHEREAS, it is the intent of the County to enter into interlocal agreements with multiple PACE agencies, authorities, districts, and providers to encourage competition and provide more options for property owners; and

WHEREAS, the Board of County Commissioners acknowledges the Florida Legislature’s finding that there is compelling state interest in enabling property owners, who wish to undertake such improvements, to enable property owners to finance such improvements with local government assistance, serving the public health and welfare of the citizens of Martin County.

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

PART I. ARTICLE 14 PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM OF CHAPTER 71 FINANCE AND TAXATION, GENERAL ORDINANCES, MARTIN COUNTY CODE, IS HEREBY ADOPTED TO READ AS FOLLOWS:

ARTICLE 14. PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM

Sec. 71.475. Applicability.
This Article shall be applicable within the unincorporated area of Martin County.

Sec. 71-476. Definitions.
For purposes of this Article, the following words and phrases shall have the following meanings:
1. Board shall mean the Martin County Board of County Commissioners.
2. Contractor shall mean a contractor, as defined in §489.105(3), F.S., who is performing work on a project.
3. County shall mean Martin County, a political subdivision of the State of Florida.
4. Fair market value shall mean the value of real property determined by the Martin County Property Appraiser, by a credentialed commercial property appraiser or licensed realtor, or by an automated valuation service or model from a reputable third-party source.
5. Non-residential property shall mean commercial, industrial and agricultural properties and residential properties consisting of five (5) or more residential dwelling units, within the unincorporated area of the County.
6. PACE assessment shall mean the voluntary non-ad valorem assessment as a result of financing obtained pursuant to §163.08, F.S. and the requirements of this Article, which is placed on a property owner’s tax bill or collected in some other authorized manner.
7. PACE entity shall mean a local government as defined in §163.08(2)(a), F.S., offering PACE financing for qualifying improvements, inclusive of its third-party PACE administrators.
8. PACE program shall mean the offering of financing for qualifying improvements through a PACE entity pursuant to §163.08, F.S. and this Article, as may be amended by law.
9. Project shall mean the installation of qualified improvements under a PACE program.
10. **Qualifying improvements** shall mean improvements which are eligible for funding under a PACE program and include energy conservation and efficiency, renewable energy, and wind resistance improvements as defined by §163.08, F.S., as may be amended by law.

11. **Residential property** shall mean a residential property within the unincorporated area of the County consisting of four (4) or less residential units.

**Sec. 71-477. PACE entities.**

71.477.A. PACE entities desiring to operate in the County shall:

1. Comply with the requirements of this Article;

2. Establish its eligibility to operate in the County by providing sufficient documentation as requested by the County to provide reasonable assurance that the requirements of this Article and §163.08, F.S. can be met by the PACE entity; and

3. Submit to the County draft documents to be considered by the Board with specific terms and conditions related to the operations of the PACE entity as it seeks to operate within Martin County; including but not limited to, resolutions and agreements.

71.477.B. Prior to initiating operations within Martin County, each PACE entity must be approved to do so by the Board and authorized through a written agreement with the County to provide financing subject to the requirements of this Article and §163.08, F.S.

71.477.C. Each PACE entity shall provide the County seven (7) days prior written notice of all meetings of the PACE entity board when board business is anticipated to include discussion or action items pertaining to proposed amendments to the underlying PACE program documents approved by the County under this section.

**Sec. 71-478. Eligible properties and improvements.**

71.478.A. **Eligible properties.** Criteria for any property to be eligible for participation in a PACE Program are as follows:

1. The property must be located within the unincorporated area of the County;

2. The criteria in §163.08, F.S. must be met;

3. There are no involuntary liens, including but not limited to construction liens on the property;

4. 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;

5. The total mortgage-related debt on the underlying residential property, plus the PACE program financing, may not exceed the fair market value of the property;

6. All mortgage-related debt on the underlying residential property may not exceed ninety percent (90%) of the property’s fair market value; and
7. All mortgage-related debt on the underlying non-residential property may not exceed ninety-five percent (95%) of the property’s fair market value.

71.478.B. Eligible improvements. Qualifying improvements are eligible improvements for a project under a PACE program if they meet the criteria in this section.
1. All improvements and products must identify efficiency standards established by the U.S. Department of Energy, the U.S. Environmental Protection Agency, or Florida state agencies, or other certified government or industry standards such as the AWEA Small Wind Turbine Performance and Safety Standard and the Underwriters Laboratory Subject 2594 Standard Testing for Charging Stations, as applicable;
2. The qualifying improvements are properly installed by the contractor in accordance with industry standards and all applicable permits, rules and regulations and accepted by the property owner; and
3. The qualifying improvements are confirmed in writing by the PACE entity as meeting the requirements of §163.08, F.S. and this section. Such written confirmation may be provided by a statement included in the authorization or Notice to Proceed provided by the PACE entity to the contractor.

Sec. 71-479. Program requirements.
71.479.A. The requirements for operation of a PACE program within the County as set forth in this section are in addition to any and all requirements in §163.08, F.S.

71.479.B. Disclosure notice requirements. Each PACE entity shall present to any property owner interested in a project through a PACE program the written disclosures in this section prior to the property owner signing any binding financing documents. The disclosures will include, but not be limited to the following:
1. For projects on residential property, 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");
2. That PACE entities 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.
3. The repayment process and terms, amounts and a schedule that fully amortizes the amount financed including the estimated annual PACE assessment;
4. That the PACE assessment will appear on the property owner’s tax bill (or specify any other method of collection as may be required);
5. That there is no discount for paying the annual PACE assessment early;
6. 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

Added language is underlined; deleted language is struckthrough
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;
7. 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;
8. The payment term for the PACE assessment, which may not exceed the useful life of the
improvements;
9. That the PACE assessment may be pre-paid without penalty;
10. That the property owner may be required to pay any PACE assessment in full at the time of
refinance or sale of the property;
11. For projects on residential property, that the property owner may cancel the financing within 3-
days of signing the financing documents;
12. That any tax incentives, credits or rebates should be discussed with an independent tax
professional of the participant's choosing, if there are any tax questions; and
13. That costs of any Energy Audit related to the project are eligible for financing as part of the
PACE assessment.

71.479.C. Disclosure notice process. The disclosure notice must be delivered to the property owner
by the PACE entity 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 entity must keep the signed disclosure
notice with the property owner’s executed financing agreement.

71.479.D. Inquiries and complaints.
1. Each PACE entity is required to receive, manage, track, resolve in a timely manner, and report
complaints from property owners regarding the funded work performed by contractors.
2. Each PACE entity shall investigate and mediate disputes between property owners and
contractors in a timely manner.
3. Each PACE entity 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.
4. In the event that ten percent (10%) or more of a PACE entity’s projects result in complaints or
disputes, or such complaints or disputes remain unresolved six (6) months after the project’s
completion, the County may review the PACE entity’s process for complaint resolution and may
request corrective actions or initiate suspension or termination of the PACE entity’s operations in
the County pursuant to Sec. 71.480.

71.479.E. Data security. Each PACE entity is responsible for security measures that adequately
protect the security and confidentiality of consumer records and information reflective of the
sensitivity of the information and as required by state and federal law.

Added language is underlined; deleted language is struckthrough
71.479.F. Consumer privacy. Each PACE entity 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.

71.479.G. Marketing and communications. 
1. Marketing practices for a PACE entity are prohibited if they are or could appear to be unfair, deceptive, abusive, misleading, violate applicable laws or regulations, inappropriate, incomplete, or are inconsistent with the PACE entity’s purpose.
2. PACE entities are prohibited from using the County seal in any marketing or communications without specific prior written consent from the County.

71.479.H. Protected classes. PACE entities 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.

71.479.I. Contractor management. 
1. Each PACE entity is responsible for confirming that contractors used to perform work for a project are properly licensed, certified or registered as required by law to perform the work.
2. Contractors performing work on a project 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; and
   iii) Act in good faith to expedite resolution of property owner complaints.
3. Each PACE entity and associated entities involved in a PACE program 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 award of work under a PACE program, excepting payment for the installation of qualifying improvements.
4. Each PACE entity is responsible for ensuring its contracts include language required by §119.0701, F.S. related to public records and that its contractors who enter into a contract for services with a PACE entity and are acting on behalf of the public agency are informed of their responsibilities.

71.479.J. Financing. 
1. The PACE entity will establish pricing rules and enforcement mechanisms to help ensure that property owners receive competitive pricing for qualifying improvements and are protected from excessive prices and charges.
2. In addition, the PACE entity shall require compliance with each of the following conditions prior to the issuance of any funding to the contractor: 
   i) Contractors must produce evidence that any necessary permits have been or will be obtained;
ii) Verification, through a certificate of completion or other mechanism, that the qualifying improvements have been installed; and

iii) 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.

71.479.K. Reporting.

1. Each PACE entity shall provide a quarterly report to the County, in a spreadsheet format agreed upon by the County, which shall include the following information, as permitted by applicable law:
   i) Dates of the reporting period;
   ii) List of projects under construction during the reporting period, separated by building type (single family, multi-family, retail, office, industrial, etc.) including, at a minimum:
      1) financing information including, but not limited to, amount, interest rate, and assessment duration;
      2) project description including, but not limited to, qualifying improvements, start and completion dates, projected energy savings or amount of renewable energy generated, financial information such as estimated cost per kilowatt hour saved/generated, other resource savings if applicable, and audit results, if collected and applicable to the project;
   iii) Number of actual/estimated jobs created during the reporting period, including, if collected and available, local versus non-local and permanent versus temporary jobs;
   iv) Number of applications declined during the reporting period; and
   v) Unresolved complaints and/or contractor issues and status.

2. Each PACE entity shall also provide on a quarterly basis a 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.

3. Project related information shall be retained by the PACE entity for 7 years from the initial date of each PACE assessment.

4. A verification by the PACE entity that each project approved by the PACE entity met one of the following criteria, including the total number of projects met by each:
   i) the total cost of the assessment is equal to or less than the projected savings based upon the projected energy savings in a written statement from a Certified Energy Auditor, certified by the Assoc. of Energy Engineers, the Residential Energy Services Network, or the Building Performance Institute; or
   ii) the property owner signed an acknowledgment that the total cost of the assessment may be greater than any realized savings.

5. Reports may include only aggregate data and exclude any personally identifiable information.

6. Each PACE entity shall provide County representatives any and all PACE program related records upon request.
Sec. 71.480. Suspension or termination of PACE entity’s operation.
In the event any PACE entity fails to incorporate and consistently provide the service components or to otherwise abide by the provisions of this Article and/or any agreement with the County, the County, in its sole discretion, may suspend or terminate any agreements between the County and the PACE entity at any time upon written notice to that PACE entity. Upon the County providing notice of suspension or termination to the PACE entity, the PACE entity shall have up to sixty (60) days to come into compliance and shall otherwise immediately suspend or terminate, as appropriate, any and all activities within Martin County. Any applications that have been approved and projects that have been initiated by the PACE entity as of the time of suspension or termination shall be permitted to be completed.

PART II. CONFLICTING PROVISIONS.

Special acts of the Florida Legislature applicable only to the unincorporated area of Martin County, Martin County ordinances, County resolutions, or parts thereof, in conflict with this ordinance are hereby superseded by this ordinance to the extent of such conflict except for ordinances concerning either adoption or amendment of the Comprehensive Plan.

PART III. SEVERABILITY.

If any portion of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void by a court of competent jurisdiction, such holding shall not affect the remaining portions of this ordinance. If the ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstance by a court of competent jurisdiction, such holding shall not affect its applicability to any other person, property or circumstance.

PART IV. APPLICABILITY OF ORDINANCE.

This Ordinance shall be applicable throughout the unincorporated area of Martin County.

PART V. FILING WITH DEPARTMENT OF STATE.

The Clerk shall be and is hereby directed forthwith to scan this ordinance in accordance with Rule 1B-26.003, Florida Administrative Code, and file same with the Florida Department of State via electronic transmission.

PART VI. EFFECTIVE DATE.

This ordinance shall take effect upon filing with the Office of Secretary of State.
PART VII.  CODIFICATION.

Provisions of this ordinance shall be incorporated into the General Ordinances, Martin County Code, except that Parts II through VII shall not be codified. The word “ordinance” may be changed to “article,” “section,” or other word, and the sections of this ordinance may be renumbered or re-lettered.

DULY PASSED AND ADOPTED THIS 8th DAY OF MAY, 2018.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

BY:____________________
CAROLYN TIMMANN
CLERK OF THE CIRCUIT COURT
AND COMPTROLLER

BY:____________________
EDWARD V. CIAMPI, CHAIRMAN

APPROVED AS TO FORM
& LEGAL SUFFICIENCY:

BY:____________________
SARAH W. WOODS
COUNTY ATTORNEY