

DATE: Sept 14, 2010

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Resolution in Support of Property Assessed Clean Energy (PACE) Program Financing

RECOMMENDATION

That the City Council reviews this report and adopts the attached resolution in Support of Property Assessed Clean Energy (PACE) Program Financing (Attachment I).

BACKGROUND

Property-assessed clean energy (PACE) refers to a type of municipal financing that allows property owners to finance the installation of energy efficiency, water conservation, and renewable energy improvements on their home or business and pay the amount back as a line item on their property tax bill. On December 2, 2009, the Council Sustainability Committee recommended, and on January 5, 2010, the City Council adopted a resolution, to join CaliforniaFIRST, which is a PACE program established by the California Statewide Communities Development Authority. Such a financing program addresses five of the recommended actions included in the City's Climate Action Plan, which was adopted in July 2009. The resolution adopted by Council authorizes program implementers to accept applications from owners of property within the City of Hayward for financing of renewable energy, energy efficiency, and water efficiency improvements through the CaliforniaFIRST Program.

On March 2, 2010, the City Council adopted a resolution authorizing the County of Sacramento to apply, on behalf of the City of Hayward and thirteen other jurisdictions, for State Energy Program (SEP) funds to support a pilot phase of the CaliforniaFIRST program. Additional details of the CaliforniaFIRST program are in the January 5¹ and March 2² City Council reports. On April 21, 2010, the California Energy Commission approved \$16.5M of SEP funds to help fund the CaliforniaFIRST pilot..

¹ The January 5, 2010 Council report is available at <http://www.hayward-ca.gov/citygov/meetings/cca/rp/2010/rp010510-07.pdf>

² The March 2, 2010 Council report is available at <http://www.hayward-ca.gov/citygov/meetings/cca/rp/2010/rp030210-03.pdf>

DISCUSSION

The CaliforniaFIRST pilot was originally scheduled to launch in summer of 2010; however, several obstacles have postponed the launch. The Federal Housing Finance Agency (FHFA), Fannie Mae, and Freddie Mac, the government entities that guarantee more than half of the residential mortgages in the United States, issued statements and guidance that have stalled PACE programs across the country. Of particular importance are letters that Fannie Mae & Freddie Mac issued to lenders in regards to the question of seniority of the tax lien to the mortgage. The fear is that lenders will refuse to refinance a mortgage until the PACE assessment is paid off. On July 6, 2010, FHFA issued a statement expressing that senior PACE liens are in violation of their standard mortgage contracts (see Attachment II). In response to the FHFA statement, most PACE programs throughout the country were placed on hold, including CaliforniaFirst.

Many of the fourteen local agency members of the CaliforniaFIRST pilot program are adopting resolutions similar to the one attached to show State and Federal legislators that there is strong local support for keeping PACE programs alive. Other recent responses to protect PACE involve the following:

- On July 14, 2010, California Attorney General Jerry Brown filed suit in United States District Court in Oakland, Calif., asking that the court declare that participation in PACE programs does not violate the standards of Fannie and Freddie, which are government chartered. The suit also asks that an injunction be issued to prevent Fannie and Freddie from taking action against homeowners whose properties already have PACE liens.
- The PACE Assessment Protection Act of 2010 was introduced in the U.S. House of Representatives on July 15, 2010 (HR 5766)³ and in the Senate on July 22, 2010 (S 3642). The bill would ensure the following:
 1. Fannie Mae and Freddie Mac are mandated to adopt the underwriting standards outlined in the DOE Guidelines issued on May 7, 2010.
 2. PACE liens and assessments would comply with Fannie Mae and Freddie Mac's Uniform Security Instruments and does not cause default on the existing mortgage or other remedies.
 3. Property owners would not be required to repay the PACE assessment prior to financing, refinancing, or selling the property.
 4. In cases of delinquency, there is no acceleration of the assessment.
 5. FHFA, Fannie Mae, and Freddie Mac would not take adverse action against communities with PACE programs.
- On July 27, 2010, the County of Sonoma filed a lawsuit against Fannie Mae, Freddie Mac, and the FHFA; and on July 30, 2010, the Sierra Club filed a similar lawsuit. The Town of Babylon, New York has announced it is pursuing litigation as well.

³ The legislation text can be seen online at <http://www.govtrack.us/congress/bill.xpd?bill=h111-5766>

The California Energy Commission (CEC) is taking action to rework the SEP 1 program in a way that would allow for programs to continue, adding other financing mechanisms in addition to PACE while the issues with PACE are resolved. To do this, the Commission had to cancel the Municipal Financing Program (SEP 1) solicitation and the Notice of Proposed Awards under PON 400-09-401, which it did on July 28, 2010. The next step is to revise the solicitation guidelines to include the addition financing options. The last update released by the CEC indicated that the amended guidelines would be considered for approval at a Business Meeting on August 6th, but the CEC has not released further information at this point.⁴

The attached resolution will demonstrate Hayward's support for Congressional action to restore PACE programs and authorize the Mayor to send a letter echoing that support to Hayward's Congressional representatives and the President of the United States.

ECONOMIC IMPACT

As discussed in the January 5, 2010 report to Council, a PACE program in Hayward is expected to generate a positive economic impact on the community. The financing will provide Hayward residents and business owners access to capital to implement energy and water saving improvements at their properties, reducing their energy and water bills, and increasing the value of their properties. Additionally, the improvement projects will create jobs for local contractors.

FISCAL IMPACT

Adoption of the resolution to support PACE will have no fiscal impact to the City of Hayward's General Fund. As discussed in the January 5, 2010 report to Council, the administrative costs associated with the CaliforniaFIRST program development will be covered by participants of the program.

NEXT STEPS

If the Council adopts the attached resolution, staff will forward it with an accompanying letter to the President of the United States, U.S. Congressman Pete Stark, U.S. Senators Barbara Boxer and Dianne Feinstein, and others. Also, staff will provide the Council with regular updates regarding the status of development of PACE and the CaliforniaFIRST programs as they become available.

Prepared by: Amelia Schmale, Sustainability Coordinator

Recommended by: David Rizk, AICP, Development Services Director

⁴ To access the full CEC staff report and memo outlining the CEC's continued support for PACE financing see http://www.energy.ca.gov/business_meetings/2010_packets/2010-07-28/2010-07-28_Item_05/

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Resolution in Support of Property Assessed Clean Energy Financing
- Attachment II July 6, 2010 Letter from Federal Housing Finance Agency

HAYWARD CITY COUNCIL

RESOLUTION NO. 10-

Introduced by Council Member

RESOLUTION IN SUPPORT OF PROPERTY ASSESSED
CLEAN ENERGY (PACE) PROGRAMS

WHEREAS, utility bills represent a major portion of operating costs for home and business owners; and

WHEREAS, persistent unemployment, particularly in the construction industry, continues to burden our families and community; and

WHEREAS, energy security and reliance on fossil fuels continue to threaten public health and the environment; and

WHEREAS, residential and commercial buildings consume nearly 40% of all electricity and are responsible for 40% of national annual carbon dioxide emissions; and

WHEREAS, investing in cost-effective energy efficiency and renewable energy improvements to homes and businesses can save energy, cut utility bills, create thousands of local jobs, reduce reliance on fossil fuels, and dramatically reduce greenhouse gas emissions; and

WHEREAS, the upfront cost and potentially long payback periods prevent property owners from making otherwise cost-effective clean energy improvements; and

WHEREAS, Property Assessed Clean Energy (PACE) financing programs are an innovative local government solution to help property owners finance energy efficiency, water conservation, and renewable energy improvements, such as energy efficient boilers, upgraded insulation, new windows, solar installations, etc., to their homes and businesses; and

WHEREAS, twenty-two states, including California, have passed laws enabling local governments to develop PACE programs; and

WHEREAS, the White House and the U.S. Department of Energy strongly support PACE, have dedicated \$150 million to develop local PACE programs, and issued guidelines to ensure that PACE programs meet safety and soundness requirements and adequately protect both bond buyers and property owners; and

WHEREAS, the City of Hayward City Council adopted Resolution 10-004 on January 5, 2010, and Resolution 10-026 on March 2, 2010, to participate in and support CaliforniaFIRST, a PACE program; and

WHEREAS, despite PACE's great promise, the Federal Housing Finance Agency (FHFA) and the Office of the Comptroller of the Currency (OCC) on July 6th issued statements that immediately forced existing PACE programs to halt operations and froze the development of dozens of PACE programs nationwide; and

WHEREAS, in support of PACE, legislation has been introduced in both the United States House of Representatives and United States Senate to "ensure that the underwriting standards of Fannie Mae and Freddie Mac facilitate the use of property assessed clean energy programs to finance the installation of renewable energy and energy efficiency improvements" (HR 5766 and S 3642 PACE Assessment Protection Act).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward urges the California congressional delegation to support HR 5766 and S 3642 and other related actions that clearly guarantee local governments the right to assess special taxes for clean energy programs and restore the promise of PACE.

BE IT FURTHER RESOLVED that the Mayor is hereby authorized and directed to send a letter in support of PACE financing programs to the President of the United States and Hayward's representatives in Congress.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2010

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

FEDERAL HOUSING FINANCE AGENCY



STATEMENT

For Immediate Release
July 6, 2010

Contact: Corinne Russell (202) 414-6921
Stefanie Mullin (202) 414-6376

FHFA Statement on Certain Energy Retrofit Loan Programs

After careful review and over a year of working with federal and state government agencies, the Federal Housing Finance Agency (FHFA) has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks. Specifically, programs denominated as Property Assessed Clean Energy (PACE) seek to foster lending for retrofits of residential or commercial properties through a county or city's tax assessment regime. Under most of these programs, such loans acquire a priority lien over existing mortgages, though certain states have chosen not to adopt such priority positions for their loans.

First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. The size and duration of PACE loans exceed typical local tax programs and do not have the traditional community benefits associated with taxing initiatives.

FHFA urged state and local governments to reconsider these programs and continues to call for a pause in such programs so concerns can be addressed. First liens for such loans represent a key alteration of traditional mortgage lending practice. They present significant risk to lenders and secondary market entities, may alter valuations for mortgage-backed securities and are not essential for successful programs to spur energy conservation.

While the first lien position offered in most PACE programs minimizes credit risk for investors funding the programs, it alters traditional lending priorities. Underwriting for PACE programs results in collateral-based lending rather than lending based upon ability-to-pay, the absence of Truth-in-Lending Act and other consumer protections, and uncertainty as to whether the home improvements actually produce meaningful reductions in energy consumption.

Efforts are just underway to develop underwriting and consumer protection standards as well as energy retrofit standards that are critical for homeowners and lenders to understand the risks and rewards of any energy retrofit lending program. However, first liens that disrupt a fragile housing finance market and long-standing lending priorities, the absence of robust underwriting standards to protect homeowners and the lack of energy retrofit standards to assist homeowners, appraisers, inspectors and lenders determine the value of retrofit products combine to raise safety and soundness concerns.

On May 5, 2010, Fannie Mae and Freddie Mac alerted their seller-servicers to gain an understanding of whether there are existing or prospective PACE or PACE-like programs in jurisdictions where they do business, to be aware that programs with first liens run contrary to the Fannie Mae-Freddie Mac Uniform Security Instrument and that the Enterprises would provide additional guidance should the programs move beyond the experimental stage. Those lender letters remain in effect.

Today, FHFA is directing Fannie Mae, Freddie Mac and the Federal Home Loan Banks to undertake the following prudential actions:

1. For any homeowner who obtained a PACE or PACE-like loan with a priority first lien prior to this date, FHFA is directing Fannie Mae and Freddie Mac to waive their Uniform Security Instrument prohibitions against such senior liens.
2. In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:
 - Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;
 - Ensuring that loan covenants require approval/consent for any PACE loan;
 - Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;
 - Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance.

Fannie Mae and Freddie Mac should issue additional guidance as needed.

3. The Federal Home Loan Banks are directed to review their collateral policies in order to assure that pledged collateral is not adversely affected by energy retrofit programs that include first liens.

Nothing in this Statement affects the normal underwriting programs of the regulated entities or their dealings with PACE programs that do not have a senior lien priority. Further, nothing in these directions to the regulated entities affects in any way underwriting related to traditional tax programs, but is focused solely on senior lien PACE lending initiatives.

FHFA recognizes that PACE and PACE-like programs pose additional lending challenges, but also represent serious efforts to reduce energy consumption. FHFA remains committed to working with federal, state, and local government agencies to develop and implement energy retrofit lending programs with appropriate underwriting guidelines and consumer protection standards. FHFA will also continue to encourage the establishment of energy efficiency standards to support such programs.

###

The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.9 trillion in funding for the U.S. mortgage markets and financial institutions.