City of Aliso Viejo

AGENDA ITEM

DATE: December 6, 2017

TO: Mayor and City Council

FROM: David A. Doyle, City Manager
       Omar Dadabhoy, Director of Planning Services
       Erica Roess, Senior Planner

SUBJECT: COUNCIL POLICY 600-3: MINIMUM QUALIFICATION STANDARDS FOR PACE PROVIDERS TO OPERATE IN THE CITY OF ALISO VIEJO

Recommended Action:

1. Make findings that the City’s establishment of standards for PACE providers to operate in the City of Aliso Viejo is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines section 15378(b)(5); and

2. Approve City Policy 600-3 (Attachment 1) and associated Participation Agreement (Attachment 2).

Background:

Property Assessed Clean Energy (PACE) Programs allow property owners to finance renewable energy, energy and water efficiency improvements, seismic strengthening, and electric vehicle charging infrastructure. If a property owner chooses to participate, the installed improvements are financed by the issuance of bonds, and the owner agrees to repay the amount borrowed through the owner’s property taxes. The bonds are secured by a voluntary contractual assessment levied on such owner’s property, with no obligation by the local government or other participating jurisdictions. To date, the City has approved four (4) PACE providers to service Aliso Viejo residents by levying assessments on participants’ property taxes: California HERO, CaliforniaFIRST, Figtree PACE, and Ygrene PACE programs.

Based on City Council direction from their March 16, 2016 meeting, on October 5, 2016, staff provided with a draft list of minimum standards a PACE provider would need to meet in order to service Aliso Viejo residents (Attachment 3). Since that meeting, staff has worked with the PACE providers (and attorneys) to fine-tune the details of the standards. Three (3) items contributed to the time spent since the item first being considered by City Council. First, the attorneys needed to develop and agree upon a mechanism for ensuring that items, such as insurance and indemnification, which were not uniformly (and originally) provided by all PACE providers, could be obtained and made uniform pursuant to this Policy document. Second, the draft standards identified
on October 5th identified meeting the requirements in the FHA and VA guidance letter dated July 19, 2016, and it was staff's understanding, based on communication with the existing PACE providers prior to that October 5th City Council meeting, that this was acceptable to the PACE providers. However, when the language was provided verbatim from the FHA and VA guidance letter, dated July 19, 2016, PACE providers raised objections and concerns. Third, around the time that it appeared that staff and the providers could not come to a consensus on the language regarding the FHA and VA guidance letter, it became likely that new legislation, AB 1284, was going to be approved and signed into law. The draft language was responsive to staff's concerns regarding disclosures and financing oversight; and it was important to wait and see if the legislation was approved.

Discussion:

Significant legislation regarding PACE has either been approved or became effective in 2017. Below is a summary of the newest PACE legislation:

Effective January 1, 2017, a summary of AB 2693 is as follows:

Prior to entering a PACE assessment, the homeowner must receive a “Financing Estimate and Disclosure,” which is similar to the mortgage industry's “Know-Before-You-Owe” forms. This requirement helps ensure that every applicant sees the interest rate, APR, fees, terms and total amount financed before signing any contract, and the disclosure clearly provides that the homeowner may pay off the financing if they sell or refinance their home. When entering into PACE financing, the homeowner must also be given three (3)-days to cancel the assessment without penalty or obligation.

Effective January 1, 2018 (signed by Governor October 4, 2017), AB 1284 includes the following provisions:

1. Establishes a licensing and regulatory framework for the PACE industry in California which will be subject to oversight by the California Department of Business Oversight (DBO). It requires PACE providers to undergo background investigations and satisfy net worth requirements in order to obtain a license. Additionally, it empowers the DBO with enforcement authority to take action against PACE providers that do not meet their obligations to promote the interests of consumers.

2. Requires PACE providers to enroll and train individuals who solicit property owners to enter into assessment contracts. The training would be on topics including PACE disclosures, ethics, fraud prevention, and consumer protection. AB 1284 holds PACE providers accountable for screening and monitoring the PACE solicitors enrolled in their programs, including a process to cancel a PACE solicitor's enrollment if the solicitor failed to meet minimum qualifications.

3. New underwriting standards will include an evaluation of a property owner's ability-to-pay to determine that property owners can meet their annual PACE obligation in addition to their current debt obligations and basic household expenses.
4. Strengthens and standardizes current underwriting standards for PACE financing based on home equity and on-time mortgage and tax payment history. It also prescribes standards for how Automated Valuation Models are used for establishing the value of the home.

Effective January 1, 2018 (signed by Governor October 4, 2017), SB 242 includes the following provisions:

1. PACE providers will be required to call every property owner (live, recorded phone call) to confirm that he/she acknowledges and agrees to the key terms of their PACE financing prior to the commencement of work on the property. This is in addition to AB 2693’s written disclosure requirements. Phone calls and contract documents must also be made available in five (5) other specified languages.

2. Establishes an expanded (AB 2693) three (3)-day “Right to Cancel” policy for a property owner using PACE. Among other things, a contractor is prohibited from making PACE-related improvements in a home in which the homeowner has cancelled the PACE assessment contract.

3. Establishes a ban on compensating contractors beyond the cost of the home improvement project, as well as prohibiting paying for contractor co-marketing and limiting contractor reimbursements to $100 for bona fide training expenses.

4. Prohibits a contractor from quoting a different price for a project financed by a PACE assessment than the price a contractor would provide if the project was paid for in cash by the property owner. The legislation also prevents PACE providers from disclosing to contractors the amount of funds the property owner is eligible for under a PACE assessment or the amount of equity in a property.

5. New reporting requirements will mandate PACE program administrators to report data to local government partners, including estimates on energy and water savings, local economic and job impacts, and the types of products installed and age demographics of homeowners served.

Following the discussions that ensued over the last year, as well as the approval of new State legislation, the following are the set of standards (in italics) that are included in the Attachment 1, City Policy 600-3. Notes to what might have changed or what has been added since October 2016 are referenced below each standard.

1. *PACE Providers must participate in the State’s PACE Loss Reserve Program, and provide annual documentation showing they are still a member and in good standing. The annual documentation shall be provided to staff by December 31st of each year, beginning in 2018.*

The initial, annual documentation deadline of December 31, 2018 was added. The Loss Program audits each provider yearly and this will help to ensure that providers
are operating in good faith, are meeting the requirements of the new laws, and the City would be made aware if any issues with providers arises.

2. Once licenses are available to obtain from the California Department of Business Oversight, PACE providers must obtain a license, and provide annual documentation of a license in good standing to staff by December 31st of each year.

This is an entirely new provision that was added due to the recent legislation, AB 1284, which establishes PACE oversight by the California Department of Business Oversight.

3. All PACE Providers must include a residential component; providers that include only a commercial component will not be permitted to provide financing in the City of Aliso Viejo.

The second part of the sentence “providers that include only a commercial component will not be permitted to provide financing in the City of Aliso Viejo” was added for clarification.

4. The PACE Provider shall include an allowance of prepayment and discussion of the prepayment options available to the property owner throughout the tenure of the assessment.

The “prepayment options” premise is the same; however, the sentence was expanded upon for clarification.

5. The existing PACE Providers, approved as of December 31, 2017, shall sign and submit to the City of Aliso Viejo a “Participation Agreement Regarding Minimum PACE Provider Qualifications” with the City of Aliso Viejo by December 31, 2018. Failure to do so may cause the City to pursue revocation of the Resolutions of Approval. Any PACE Provider that is approved after December 31, 2017 by the City of Aliso Viejo will be subject to including the qualifications identified in a City Resolution of Approval in a form approved by the City Attorney.

This specific provision was not included in the draft October 2016 report; however, it was added after comments provided by City Council to ensure that all existing providers agree to meet the minimum PACE provider qualifications.

6. Pursuant to the “Participation Agreement Regarding Minimum PACE Provider Qualifications,” any existing PACE Provider (approved as of December 31, 2017), that has not already executed an Indemnification Agreement with the City on behalf of the Provider or provided insurance to the City of Aliso Viejo for up to $1,000,000.00 shall provide documentation within 30 days of an executed Participation Agreement.
PACE Providers approved after December 31, 2017 will be subject to provide indemnification by the PACE Provider and insurance to the City of Aliso Viejo for up to $1,000,000.00.

A standard regarding indemnification was included in the October 2016 report; however, the current provision also includes a statement regarding insurance.

7. If the PACE Provider requires the City to join the umbrella Authority entity that is offering the PACE Programs, the document/agreement that allows the City to join the Authority shall be approved as to form by the City Attorney to ensure that the City's role in the Authority is clearly delineated in addition to receiving Council approval.

The standard pertaining to an umbrella authority was considered in October 2016; however, “shall be approved as to form by the City Attorney” was added to clarify implementation.

8. The PACE Provider Agreements shall include language that allows the City to easily withdraw from the Program(s).

The reference to including withdrawal language is the same; however, “and/or amend the criteria” was eliminated and included as separate provision in #9 below.

9. The PACE Provider Agreements shall include language that allows for administrative amendments based on new State legislation.

Please see response to #8 above.

10. The PACE Provider materials shall include a disclosure statement, approved to form by the City Attorney which provides that, other than enabling the financing, the City of Aliso Viejo is not affiliated with the Program.

This specific provision was not included in the draft October 2016 list; however, it was added after comments provided by City Council to ensure that it known that the City of Aliso Viejo is not affiliated with the PACE providers.

11. New PACE Providers are only eligible to be heard by City Council the first and third quarters of each year, and shall be a “consent calendar item” if the minimum criteria described above is met. Staff shall be provided with the complete documentation a minimum of forty-five (45) days prior to the scheduled City Council meeting date.

The second sentence regarding the “forty-five (45) days prior” was added to ensure staff with adequate processing time.

There were two provisions that were identified in the October 2016 proposal that have now been eliminated in the current proposal. The first is to “meet the requirements identified in the FHA and VA guidance letter dated July 19, 2016” (formerly a portion of
provision #2 in October 2016 staff report). As discussed in the “Background,” above, certain PACE providers were not comfortable with agreeing to the verbatim language of the letter, and staff was unable to provide mutually agreeable language or concessions. Specifically, the providers were concerned about being obligated, even in a form of a notice on title, to provisions over which they did not have complete control. However, it became a “non-issue” when subsequent legislation was passed that specifically relates to financing oversight and disclosures. The second provision that was eliminated was the “statement that there is a risk that the homeowner may need to pay off the PACE assessment at the time of sale or refinance” (formerly a portion of provision #3 in October 2016 staff report). AB 2693 already includes this provision and it was further strengthened by the added disclosures in SB 242. For this latest draft, staff provide the four (4) existing PACE provider representatives with a week to review the policy and participation agreement; however, no comments were received.

Lastly, to further strengthen Policy provision #10, staff has drafted language to appear on the City’s website regarding City involvement in PACE. The draft language is included as Attachment 4.

**Fiscal Impact:**

The fiscal impact is limited to City Staff time.

**Environmental:**

Staff recommends the City Council find the proposed action exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines section 15378(b)(5). The action is an administrative activity of the City that involves internal development of guidelines. The report does not authorize any development or changes to land use. Thus, the project would not result in any direct or indirect changes to the environment, and consequently, this action is not a project within the meaning of CEQA.

Prepared by: Erica Roess
Senior Planner

Reviewed by: Omar Dadabhoy
Director of Planning Services
APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

[Signature]

David A. Doyle
City Manager

Attachments:

1. Draft Council Policy 600-3
2. Draft Participation Agreement
3. October 5, 2016 City Council Staff Report
4. Draft City Website Language
The City Council desires to allow residential and non-residential property owners to finance renewable energy, energy and water efficiency improvements, seismic strengthening, and electric vehicle charging infrastructure via Property Assessed Clean Energy (PACE) programs in the City of Aliso Viejo.

Under the State guidelines identified in AB 811 and SB 555, properties may be annexed into a PACE program and subject to the property tax assessment that is imposed to repay project financing only if (i) the Council adopts a resolution consenting to the inclusion of parcels in the incorporated areas of the City within the program and (ii) each participating owner consents in writing to the annexation of its property into the PACE program or PACE Community Facilities District (CFD).

To date, the City has approved four (4) PACE providers to service Aliso Viejo residents by levying assessments on participants’ property taxes: California HERO, CaliforniaFIRST, Figtree PACE, and Ygrene PACE programs. An additional two (2) PACE providers have requested City Council consideration and more requests are expected.

Therefore, the purpose of this Policy is to (i) establish a set of agreed upon standards for future PACE providers and (ii) to ensure that the existing PACE providers conform to the minimum standards described below within one (1) year of the date of Policy adoption.

**Standards**

1. PACE Providers must participate in the State’s PACE Loss Reserve Program, and provide annual documentation showing they are still a member and in good standing. The annual documentation shall be provided to staff by December 31st of each year, beginning in 2018.

2. Once licenses are available to obtain from the California Department of Business Oversight, PACE providers must obtain a license, and provide annual documentation of a license in good standing to staff by December 31st of each year.

3. All PACE Providers must include a residential component; providers that include only a commercial component will not be permitted to provide financing in the City of Aliso Viejo.

4. The PACE Provider shall include an allowance of prepayment and discussion of the prepayment options available to the property owner throughout the tenure of the assessment.

5. The existing PACE Providers, approved as of December 31, 2017, shall sign and submit to the City of Aliso Viejo a “Participation Agreement Regarding Minimum PACE Provider Qualifications” with the City of Aliso Viejo by December 31, 2018. Failure to do so may cause the City to pursue revocation of the Resolutions of Approval. Any PACE Provider that is
approved after December 31, 2017 by the City of Aliso Viejo will be subject to including the qualifications identified in a City Resolution of Approval in a form approved by the City Attorney.

6. Pursuant to the "Participation Agreement Regarding Minimum PACE Provider Qualifications," any existing PACE Provider (approved as of December 31, 2017), that has not already executed an Indemnification Agreement with the City on behalf of the Provider or provided insurance to the City of Aliso Viejo for up to $1,000,000.00 shall provide documentation within 30 days of an executed Participation Agreement.

PACE Providers approved after December 31, 2017 will be subject to provide indemnification by the PACE Provider and insurance to the City of Aliso Viejo for up to $1,000,000.00.

7. If the PACE Provider requires the City to join the umbrella Authority entity that is offering the PACE Programs, the document/agreement that allows the City to join the Authority shall be approved as to form by the City Attorney to ensure that the City's role in the Authority is clearly delineated in addition to receiving Council approval.

8. The PACE Provider Agreements shall include language that allows the City to easily withdraw from the Program(s).

9. The PACE Provider Agreements shall include language that allows for administrative-level amendments based on new State legislation.

10. The PACE Provider materials shall include a disclosure statement, approved to form by the City Attorney which provides that other than enabling the financing, the City of Aliso Viejo is not affiliated with the PACE Program.

11. New PACE Providers are only eligible to be heard by City Council the first and third quarters of each year, and shall be a "consent calendar item" if the minimum criteria described above is met. Staff shall be provided with the complete documentation a minimum of forty-five (45) days prior to the scheduled City Council meeting date.
PARTICIPATION AGREEMENT REGARDING
MINIMUM PACE PROVIDER QUALIFICATIONS

This agreement (the "Agreement") dated for purposes of identification only this ___ day of ______________, 2018, is entered into by and between [NAME OF PROVIDER AND LEGAL STATUS (ie., Corporation, LLP, etc.)] (hereinafter referred to as "Provider") and the City of Aliso Viejo (hereinafter referred to as the "City"). Provider and City are referred to collectively as the "Parties."

WHEREAS, the City desires to allow residential and non-residential property owners to voluntarily enter into contracts to finance renewable energy, energy and water efficiency improvements, seismic strengthening, and electric vehicle charging infrastructure through the levy of assessments or special taxes secured against participating properties via Property Assessed Clean Energy (PACE) programs in the City of Aliso Viejo; and

WHEREAS, the City has approved Provider to provide PACE financing to properties located within the boundaries of Aliso Viejo; and

WHEREAS, the Aliso Viejo City Council adopted Council Policy _____ (the "PACE Policy"), effective ______, 2018, which policy sets forth minimum PACE Provider Qualifications in order to (i) establish a set of agreed upon standards for future PACE providers, and (ii) ensure that the existing PACE providers conform to the minimum standards described in the PACE Policy within one (1) year of the date of adoption of the PACE Policy; and

WHEREAS, Provider is willing and desires to conform to such minimum standards.

NOW, THEREFORE, Provider hereby agrees as follows:

1. The recitals set forth above are hereby incorporated herein by reference as though set forth in full, and are made a part of this Agreement.

2. Provider agrees to comply with all provisions of the PACE Policy, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

3. If Provider has not already executed an Indemnification Agreement with City to indemnify City for any and all actions taken by or on behalf of Provider relating to the PACE program administered by Provider in the City of Aliso, Provider agrees to execute such Indemnification Agreement within thirty (30) days of the effective date of this Agreement in a form approved by the Aliso Viejo City Attorney.

4. If Provider has not already named the City in an Insurance Policy to insure the City for any and all actions taken by or on behalf of Provider relating to the PACE program administered by Provider in the City of Aliso, Provider agrees to name the City in a general liability insurance policy for up to One Million Dollars ($1,000,000.00) thirty (30) days of the effective date of this Agreement in a form approved by the Aliso Viejo Director of Administrative Services.
5. Except as supplemented by the related Joint Powers Authority Agreement, this Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

6. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

7. This Agreement shall be binding on the successors and assigns of Provider.

8. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

9. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

10. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

11. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

12. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

13. This Agreement shall become effective upon execution by Provider, and shall remain in effect throughout the term in which Provider is administering the PACE program within the City of Aliso Viejo.

[NAME OF PROVIDER] Dated ____________________________

By [NAME AND TITLE]
City of Aliso Viejo

AGENDA ITEM

DATE: October 5, 2016

TO: Mayor and City Council

FROM: David A. Doyle, City Manager
       Omar Dadabhoy, Director of Planning Services
       Erica Roess, Senior Planner

SUBJECT: CONSIDER APPROVING MINIMUM QUALIFICATION STANDARDS FOR PACE PROVIDERS TO OPERATE IN THE CITY OF ALISO VIEJO

Recommended Action:

1. Make findings that the City’s establishment of standards for future PACE provider requests is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines section 15378(b)(4);

2. Provide direction to staff on the preferred set of minimum qualification standards for PACE providers to operate in the City; and

3. Direct staff to place only PACE providers that meet minimum qualifications on City Council’s agenda and to place as consent items.

Project Summary:

Property Assessed Clean Energy (PACE) Programs allow property owners to finance renewable energy, energy and water efficiency improvements, seismic strengthening, and electric vehicle charging infrastructure. If a property owner chooses to participate, the installed improvements are financed by the issuance of bonds. The bonds are secured by a voluntary contractual assessment levied on such owner’s property, with no obligation by the local government or other participating jurisdictions. Participation in a PACE program is completely voluntary. Property owners who desire to participate in the program agree to repay the amount borrowed through their property taxes. This financing is available for eligible improvements on both residential and non-residential properties.

To date, the City has approved four (4) PACE providers to service Aliso Viejo residents by levying assessments on participants’ property taxes: California HERO, CaliforniaFIRST, Figtree PACE, and Ygrene PACE programs.

Given the discussions that ensued regarding Ygrene’s admittance into the City of Aliso Viejo, staff was directed to develop a list of minimum standards a PACE provider would
need to meet prior to being placed on the City Council agenda and as a consent item. Currently, the City has two (2) additional requests and anticipates more in the future, given the success of the various PACE programs.

**Background:**

Staff has researched industry best practices, other City and County programs, contacted applicable organizations/agencies, and looked ahead to legislation that would affect the current PACE legislation.

**City Programs, County Programs, and Associations**

The City of Berkeley was where PACE financing began, and where the State tiered from in creating the legislation. In 2008, the City of Berkeley launched the Berkeley Financing Initiative for Renewable and Solar Technology (FIRST), a program to promote solar photovoltaic (PV) installations using a pioneering financing mechanism. The now concluded program served as a model for PACE programs across the country, and it was the platform for AB811. (It's important to note that Berkeley's FIRST Program has concluded and the PACE program offerings in the City are administered by third-party administrators such as CaliforniaFIRST and the HERO program.) Additionally, in 2010, the City of San Diego and the Counties of Sonoma and Placer were early innovators in PACE financing, and staff reviewed the history and findings of those programs to determine what could be gleaned. Additionally, staff considered the City of Anaheim's program, more specifically its "Participation Agreement" with PACE providers.

Staff also had correspondence with one of the City's attorneys who had valuable insight due to her work with other cities and the various PACE administrators. Staff spoke with (and received an email) from an Association of California Cities Orange County (ACCOC) representative stating that the organization has no vetting process for PACE providers. Staff also spoke to a representative from Orange County Realtors Association (OCAR) to understand the Association's concerns. While the representative did identify areas of concern, OCAR does not endorse individual PACE providers as well. Staff spoke to a representative from the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), which administers the State’s Loss Reserve Program, as described more fully below. Lastly, when anticipating an August Council date on this matter, staff provided a draft of the staff report's “Background,” “Current Legislation” (as of June 2016), and “Discussion” in July to the four (4) existing PACE providers as well as the two (2) organizations requesting City admittance for comment. Staff received comments from all the organizations, and the comments included:

- Support for the current State legislation (AB 2693), as well as describing consumer protections certain organizations provide in addition to, or duplicative to what is in the legislation;
- A recommendation to wait to see what version of the PACE-related bill is signed before bringing this report forward to Council; and
References to the National PACE Standards that were set forth by PACE Nation as of May 2016, Statewide Consumer Protection Policy (CPP), and the Federal Housing Administration (FHA) and Veterans Administration (VA) Guidance on PACE Programs as of July 19, 2016;

A statement from one PACE provider asserting that indemnification is more relevant from the administrator rather than the joint powers authority since a third-party administrator is executing the day-to-day activities of the PACE Program;

An announcement that Figtree's residential program began on August 15, 2016; and

Concerns regarding Council's previous considerations related to mortgage related debt and contractual-assessed related debt not exceeding 90% of the property's fair market value (which is different than current state law), and the definition of a "pre-payment fee".

State of California's PACE Loss Reserve Program

Launched in March 2014, the PACE Loss Reserve Program, administered by CAEATFA, was intended to mitigate potential risks to first mortgage lenders by making them whole for losses incurred due to the existence of a first-priority PACE lien on a property during a foreclosure or forced sale. The Budget Act of 2013 funded the Program with $10,000,000.00. (To date, no claims have been submitted.) In addition to operating the reserve as a first-step in addressing any risks to first mortgage lenders associated with PACE, CAEATFA collects necessary data on the performance of PACE financing over time to better understand the actual risk to mortgage lenders and inform future best practices and standards for residential PACE financing.

Through Program applications, CAEATFA collects the information on program policies, eligibility measures, underwriting criteria, transactional costs, credit enhancements (if any), quality assurance and consumer protection requirements, and the total number and value of the existing portfolio.

Furthermore, CAEATFA collects semi-annual reports due October 1st and March 1st, which include the assessor's parcel number, principal amount, annual assessment amount, term of each new financing originated in the reporting period, total number and principal amount of new financing originated in the reporting period, projected annual energy and/or water savings resulting from enrolled financing (to the extent the information is available), and total number and principal value of all outstanding financings.

An application to CAETFA is evaluated for the following factors:
The use by the PACE program of best practices, adopted by the authority, to qualify eligible properties for participation in underwriting the PACE program.

The cost efficiency of the applicant's PACE program, including bond issuance, credit enhancement, or insurance.

The projected number of jobs created by the PACE program.

The applicant's PACE program requirements for quality assurance and consumer protection as related to achieving efficiency and clean energy production.

The mechanisms by which savings produced by this program are passed on to the property owners.

**Federal Housing Administration (FHA) and Veterans Administration (VA)**

On July 19, 2016, the FHA and VA released guidance to their lenders to formally enable mortgages on properties with PACE liens to be insured under their respective programs. In the guidance letter, FHA and VA state that properties which will remain encumbered with a PACE obligation may be eligible for FHA-insured mortgage financing, provided that the mortgagee determines that the following requirements have been met:

- Under the laws of the state where the property is located, the PACE obligation is collected and secured by the creditor in the same manner as a special assessment against the property;

- The property may only become subject to an enforceable claim (i.e., a lien) that is superior to the FHA-insured mortgage for delinquent regularly scheduled PACE special assessment payments. The property shall not be subject to an enforceable claim (i.e., lien) superior to the FHA-insured mortgage for the full outstanding PACE obligation at any time (i.e., through acceleration of the full obligation.) However, a notice of lien for the full PACE obligation may be recorded in the land records;

- There are no terms or conditions that limit the transfer of the property to a new homeowner. Legal restrictions on conveyance arising from a PACE obligation that could require the consent of a third party before the owner can convey the real property are prohibited, unless such provisions may be terminated at the option of, and with no cost to, the homeowner;

- The existence of a PACE obligation on a property is readily apparent to mortgagees, appraisers, borrowers and other parties to an FHA-insured mortgage transaction in the public records and must show the obligation amount, the expiration date and cause of the expiration of the assessment, and in no case may default accelerate the expiration date; and
In the event of the sale, including a foreclosure sale, of the property with outstanding PACE financing, the obligation will continue with the property causing the new homeowner to be responsible for the payments on the outstanding PACE amount.

For properties with existing PACE obligations, the property sales contract must indicate whether the obligation will remain with the property or be satisfied by the seller at, or prior to closing. Where the obligation will remain, all terms and conditions of the PACE obligation must be fully disclosed to the borrower and made part of the sales contract between the seller and the borrower.

Where energy and other PACE-allowed improvements have been made to the property through a PACE program, and the PACE obligation will remain outstanding, the appraiser must analyze and report the impact on the value of the property, whether positive or negative, of the PACE-related improvements and any additional obligation (i.e., the PACE special assessment).

Current Legislation – AB 2693

Assembly Bill 2693 was introduced in February of 2016 and was signed by the Governor on September 25, 2016. The bill becomes effective on January 1, 2017, and in it specifies:

1. A new “right to cancel” policy up to the third business day and the contents and format of the “Right to Cancel” (Attachment 1 includes Bill Language for “Financing Estimate and Disclosure” – page 9).

2. The contents and format of the “Financing Estimate and Disclosure” (Attachment 1 includes Bill Language for “Financing Estimate and Disclosure” – page 11).

Discussion:

The following standards are recommended for PACE providers to operate in the City and incorporate staff’s research and understanding thus far:

1. PACE programs must participate in the State’s PACE Loss Reserve Program, and provide annual documentation showing they are still a member and in good standing. As discussed in the “Background” section of the report, PACE Providers have to provide numerous documents for CAEFTA to consider. Staff believes CAEFTA has the staffing and expertise to properly vet PACE providers.

As of September 13, 2016, three (3) of the four (4) of the existing PACE providers were enrolled in the State’s PACE Loss Reserve Program. According to a representative from CAEFTA, the fourth PACE provider, Figtree, has an application currently under review. Staff will verify that the providers are either accepted (as in the case of Figtree) or still within the State’s program by the first of every year. If for
some reason a provider is no longer a participant, staff recommends a six-month grace period to determine cause, and/or potential elimination from the City.

2. **PACE programs must include a residential component for the PACE financing, and meet the requirements identified in the FHA and VA guidance letter dated July 19, 2016.** Although the State's PACE Loss Reserve Program provides coverage for both residential and commercial financing, the commercial financing protection is rather minimal in comparison since there are additional protections for commercial financing. Therefore, PACE providers without a residential component, are most likely not enrolled in the CAEFTA. Additionally, support from FHA and VA for residential projects is vital, and their comments further support transparency and consumer protection.

3. **Disclosure terms for residential properties shall include a statement that there is a risk that the homeowner may need to pay off the PACE assessment at the time of sale or refinance; and a statement of the prepayment options.** As described in AB 2693, it is important for property owners to receive clear and specific disclosure statements given the potential risks with their mortgage.

4. **The PACE Program shall indemnify the City for any actions taken under the Agreement or through the PACE program.** The indemnification shall be given to the City from the PACE Program directly as well as through the third-party administrator.

5. **If the PACE Program requires the City to join the umbrella Authority entity that is offering the PACE Programs, the document/agreement that allows the City to “join” the Authority should clearly delineate the City’s role in the Authority.** For example, it should be clear that the City is joining the Authority as an associate member for the express purpose of allowing this one, or two, or three specific PACE Programs in its jurisdiction. The Program documents should specify the exact PACE Program into which the City is opting. Some PACE Programs offer several programs, and the City should be able to pick and choose in which one it would like to participate. One of the pending requests is from a PACE provider whom the City is already participating in the umbrella authority.

6. **There should be language that allows the City to easily withdraw from the Program(s), and/or amend the criteria.** The PACE program is still in its infancy and staff wants the City to have the ability to withdraw from a program for any reason, including its inability to stay in step with any new legislation or findings, or be able to require additional criteria, if applicable.

7. **PACE Programs are only eligible to be heard by Council the first and third quarter of each year, and shall be a “consent calendar item” if the minimum criteria is met.** Given the City's relatively small Planning staff, and the fact that more PACE providers are entering the market requests from PACE providers shall be grouped into two (2) Council meetings; one to occur in the first quarter and the other to occur in the third quarter.
Additional protections that could be considered by the City Council based on Council's earlier discussions during the Ygrene PACE vetting process:

- The mortgage related debt and contractual-assessed related debt shall not exceed 90% of the property’s fair market value.

- Requires some mechanism of at least limited subordination of the PACE loan to the mortgage related loan. State law does not allow PACE loans to be completely subordinated to the mortgagee. However, staff is aware of some existing PACE Programs that agree to limited forms of subordination. For example, a PACE Program may agree to hold off on a foreclosure proceeding unless and until the mortgagee expressly authorizes the Pace Program to initiate the proceeding. A PACE Program could also agree that in a foreclosure proceeding, the mortgagee will be paid first, before the PACE Program is paid.

- There shall be no pre-payment penalties; however, fees to process pre-payments are industry standard and would not be impacted.

If the Council elects to move forward with any of the above recommendations, staff will then 1) create a City Policy for PACE Programs to bring back to the Council for final approval; 2) work with the City Attorney’s office to see what is already included in each of the existing PACE providers agreements with the City, and what modifications could be made to existing agreements so that they conform to a new City policy document; and 3) once the Council approves the new Policy, provide the new policy document to the pending providers to ensure that they meet the City’s requirements prior to being considered by City Council.

**Fiscal Impact:**

The fiscal impact is limited to City Staff time.

**Environmental:**

Staff recommends the City Council find the proposed action exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines section 15378(b)(5). The action is an administrative activity of the City that involves internal development of guidelines. The report does not authorize any development or changes to land use. Thus, the project would not result in any direct or indirect changes to the environment, and consequently, this action is not a project within the meaning of CEQA.
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APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

David A. Doyle
City Manager

Attachment:

AB 2693 Bill Language
**Draft Language for City of Aliso Viejo Website**

**Property Assessed Clean Energy (PACE) Financing**

**What is PACE financing?**

Property owners may obtain financing for energy efficiency, water conservation, seismic strengthening, and solar energy improvements that is repaid as assessments on their property tax bills through property assessed clean energy (PACE).

**Who are the PACE program providers?**

Currently, there are four (4) financing companies, California HERO, CaliforniaFIRST, Figtree PACE, and Ygrene PACE, authorized to provide PACE financing on properties in Aliso Viejo. Each of the companies can finance residential, commercial, or both types of properties.

There is no affiliation between the City of Aliso Viejo and the PACE providers. The City Council was required only to approve the PACE providers’ participation in the City for those lenders to utilize a property owner’s tax bill for payment purposes. Therefore, Aliso Viejo residents are advised to carefully evaluate any proposed provider and review all contractual assessment terms and conditions before participating in any PACE program.

**Are the contractors being used by the PACE providers licensed?**

The City of Aliso Viejo does not endorse any PACE program provider or third party PACE contractor. However, the PACE providers do require necessary City building permits to be obtained, and the City requires contractors to have their state licenses for their particular classification when obtaining a building permit. If you are unsure, ask your PACE provider information about the contractor working in and around your home, or check with the California Department of Consumer Affairs.

**Who should or could I talk to before committing to a PACE loan regarding consumer questions and alternative lenders?**

- Your current mortgage lender;
- The PACE provider contractor/salesman;
- The PACE loan provider;
- Local real estate professionals; and
- Commercial banks, lenders, and all other financial institutions.