



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: October 2, 2018

TO: James N. Holgersson, Interim City Manager

FROM: Andrew Clough, Public Works Director

SUBJECT: Resolution Of The City Council Of The City Of Emeryville Amending Resolution Number 17-26, Limiting The Authorization For The Inclusion Of Properties Within The Territory Of The City In The California Statewide Communities Development Authority (CSCDA) Open PACE Programs; Authorizing CSCDA To Accept Applications, Conduct Contractual Assessment Proceedings And Levy Contractual Assessments Only From Commercial Property Owners Within The Territory Of The City; And Withdrawing Authorization For CSCDA To Provide PACE Services To Residential Properties

RECOMMENDATION

Staff recommends that the City Council adopt the above-referenced resolution.

BACKGROUND

Property Assessed Clean Energy (PACE) is a means for property owners to finance the up-front cost of energy efficiency, water conservation, and renewable energy improvements to their properties by repaying the funds (as level principal and interest payments over a term that generally matches the average useful life of the installed improvements) via a special voluntary property tax assessment. Currently over \$1.5 billion in energy efficient improvements have been financed in California. PACE programs initially focused on single-family homes, but commercial properties have been an increasing focus in recent years.

Under the most popular model for PACE adoption, local jurisdictions make PACE available to their property owners by passing an authorizing resolution to “opt in” to a joint power authority. A JPA is an entity made up of two or more public agencies; it has its own board of directors, and is formed to exercise specific authorities for the participating agencies. In this case, Emeryville is already a member of the California Communities Development Authority (CSCDA) JPA, and has approved its PACE providers to operate within the City’s jurisdiction. The JPAs have partnered with private PACE providers, who arrange capital, administer programs, vet and work with installation contractors, and service assessments in partnership with county tax collectors.

DISCUSSION

PACE programs provide an option for property owners wishing to improve their energy efficiency and/or water conservation, which helps the City achieve the greenhouse gas reduction goals in its adopted Climate Action Plan. Achieving a 40% decrease in greenhouse gas emissions community-wide will require both large and small actions by government and private entities.

PACE programs can present risks to consumers and some PACE programs and contractors have been implementing aggressive marketing tactics. The Association of Bay Area Governments (ABAG) developed a Regional Collaborative Services Agreement (RCSA) to improve transparency, reporting standards, and customer protections for residential PACE programs. All residential PACE providers in Emeryville have signed the RCSA.

Further, in response to concerns about malfeasance on the part of some entities involved with PACE funding, the JPAs and the State Legislature have recently increased the stringency of the JPA's oversight requirements and the content of the financial information to and from the property owners. State legislation signed into law in 2017 includes SB 242 (Skinner) and AB 1284 (Dababneh), which require additional reporting, financial disclosures, ability-to-pay analysis, and discussions with owners, and prohibits kickbacks from contractors to PACE providers, among other protections.

In addition, CSCDA amended all of its contracts with PACE providers in 2018, requiring the following:

- Each PACE administrator shall maintain a list of contractors they have determined are eligible to provide PACE Program services (each being an "Eligible Contractor"). Any contractor the administrator has determined uses false or misleading marketing efforts, including but not limited to using lead-generating companies to distribute information that implies that the federal, state, or local government, or any governmental entity other than CSCDA, provides the program, shall not be included in the list of eligible contractors.
- Each PACE administrator shall not approve a property owner application for Open PACE Program funding if such application: (a) does not identify an Eligible Contractor or (b) identifies a contractor who procured the work through marketing efforts that could reasonably be interpreted as implying that the federal, state, or local government, or any governmental entity other than CSCDA, provides the PACE program.
- CSCDA shall not authorize an assessment against a property, record a lien or otherwise assist in providing Open PACE Program funding for any application approved in violation of the sections outlined above.

In Emeryville, just one residential project has been funded for a loan amount of \$34,578. There have been no complaints or delinquencies in Emeryville. The total number of projects statewide that have been funded through CSCDA is 23,795, with a value over \$600 million. There have been nine complaints elevated to CSCDA for resolution, and 17 delinquencies among those loans, with no foreclosures. James Hamill, Managing Director of CSCDA, notes that if a property with a PACE loan goes into tax delinquency, CSCDA strips the PACE delinquency off the tax bill and pursues repayment outside of the City or County process.

Although there is some concern about the risk to residential property owners, commercial PACE is less of a concern, since businesses are in a better position to analyze and consider long-term risks and benefits than many homeowners. In addition, Emeryville's community energy use is largely commercial: 88% of electricity and natural gas used in Emeryville is attributable to commercial energy accounts, with only 12% used by residents. The potential value of PACE funding in the commercial market in the effort to achieve Emeryville's Climate Action Plan goals is substantial.

CSCDA is an "open" PACE program, meaning that once a municipality has joined the JPA and authorized the PACE program, the JPA can sponsor additional PACE programs, without additional approvals by the municipality, that can also operate in the city. However, if a city decides it does not want a specific JPA-sponsored program to operate in their jurisdiction, the city may opt out of that program.

FISCAL IMPACT

There is no anticipated fiscal impact to the City of Emeryville for approving the limited operation of the Open PACE program to solely for commercial projects within the city. The City of Emeryville will continue to have no administrative responsibilities, marketing obligations, or financial obligations associated with this program.

STAFF COMMUNICATION WITH THE PUBLIC

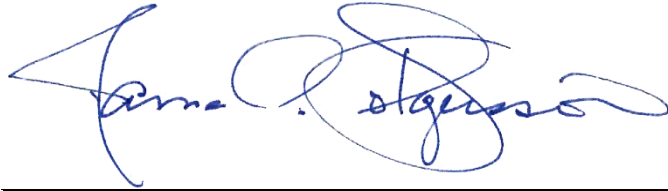
Representatives of CSCDA, BayRen, and several PACE providers contacted both staff and Councilmembers to discuss this issue.

CONCLUSION

Along with potential energy efficiency and quality of life improvements PACE programs can offer consumers, they can also present risks. Some PACE programs and contractors have been implementing aggressive marketing tactics. The risk to homeowners can be reduced by eliminating the option for residential properties to use PACE funding for energy efficiency and water conservation upgrades.

PREPARED BY: Nancy Humphrey, Environmental Programs Supervisor

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**

A handwritten signature in blue ink, appearing to read "James N. Holgersson", is written over a horizontal line.

James N. Holgersson, Interim City Manager

ATTACHMENTS

- Resolution
- Resolution 17-26, Authorizing CSCDA Open PACE