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A resolution/ordinance by Supervisor Lipscomb, Sr., creating Section 6.08 of the Milwaukee County Code of General Ordinances; allowing Milwaukee County (the County) to implement a Property Assessed Clean Energy (PACE) program by joining the Wisconsin PACE Commission; executing the Commission Agreement; adopting the PACE Ordinance; and entering into a Memorandum of Understanding with the City of Milwaukee (the City) regarding administration of the City and County PACE programs, by recommending adoption of the following:

A RESOLUTION/ORDINANCE

WHEREAS, Property Assessed Clean Energy (PACE) financing provides property owners with low-cost, long-term loans for energy efficient, renewable energy, and water conservation improvements to their properties; and

WHEREAS, PACE helps property owners invest in these improvements by financing expensive upfront costs; and

WHEREAS, PACE is a national initiative, but programs are established locally, as state legislation is required to authorize political subdivisions to charge an assessment on properties for eligible projects; and

WHEREAS, following the passage of state legislation, a local government has the option to pass a local ordinance to institute an assessment and subsequently develop a PACE program; and

WHEREAS, Section 66.0627(8) of the Wisconsin State Statutes (State Statutes) authorizes a city, village, a town, and a county in this State to, among other things: make a loan to or otherwise arrange, participate in, or facilitate the financing of an energy improvement, a water efficiency improvement, or a renewable resource application to a real property within its jurisdiction and to provide for such financing through the imposition of a special charge against the property benefitted by the energy or water efficiency improvement or renewable resource project, known as PACE financing; and

WHEREAS, it is in the public interest to provide real property owners, lessees, lenders, and other transaction parties in Milwaukee County (the County) with access to a uniformly-administered program for PACE financing; and

WHEREAS, the resolution in File No. 17-339 authorized the County Director of Economic Development (ED Director) to develop a PACE program proposal, and make a recommendation regarding its administration; and

WHEREAS, in July 2017, the ED Director issued a Request for Proposals (RFP) for the creation of a County PACE program; and

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WHEREAS, based on the proposals received, the RFP review committee recommends that the Wisconsin Energy Conservation Corporation (WECC) implement and administer the County PACE program; and

WHEREAS, WECC’s proposal is contingent on the County joining the statewide PACE program, PACE Wisconsin; and

WHEREAS, WECC is program administrator for PACE Wisconsin, which was created and is governed by the Wisconsin PACE Commission (the Commission); and

WHEREAS, the Commission was formed in 2016 by Dunn, Eau Claire, and La Crosse counties, with the support and counsel of the Wisconsin Counties Association, League of Wisconsin Municipalities, Green Tier Legacy Communities, and other stakeholders; and

WHEREAS, the Commission operates in accordance with the Joint Exercise of Powers Agreement Relating to Wisconsin PACE Commission (Commission Agreement), hereto attached to this file; and

WHEREAS, as of April 2018, the Commission has grown to 30 members, including the counties of Dane, Brown, Ozaukee, Washington, Kenosha, and Racine; and

WHEREAS, Commission member counties are not obligated to repay any PACE Wisconsin-related costs, per the Commission’s Wisconsin PACE Special Charge and Financing Agreement, Section 5, “The Commission and the County do not assume any responsibility for, or guarantee in any manner whatsoever, in whole or in part, the repayment of the PACE Financing between the Property Owner and the Capital Provider or the payment of the PACE Special Charges or any Installment. In no event shall the Commission, the County or any County Party ever be required to expend its own funds directly or indirectly on the Project.”; and

WHEREAS, it is in the County’s best interests to join the Commission and authorize the execution of the Commission Agreement; and

WHEREAS, in accordance with Section 66.0627 of the State Statutes and the provisions of the Commission Agreement, the County must adopt an Ordinance relating to the administration of PACE financings in the County and throughout the State (PACE Ordinance); and

WHEREAS, the attached PACE Ordinance authorizes the County to impose a PACE special charge, collect payments for the special charge in installments, place those installments on the tax roll at its discretion, and delegate these powers to the Commission; and

93 WHEREAS, adoption of the PACE Ordinance is a necessary condition to the
94 County entering into the Commission Agreement; and

95
96 WHEREAS, since 2013, the City of Milwaukee's (the City) PACE financing
97 program has helped commercial property owners in the City finance over \$13 million in
98 energy efficiency, water efficiency, and renewable energy upgrades; key projects
99 include the University Club, Springhill Suites Hotel, Westin Hotel, Mackie Building, and
100 Wally Schmidt Tavern; and

101
102 WHEREAS, attached is a proposed Memorandum of Understanding (MOU) with
103 the City, which defines how the County's PACE program would relate to the City's
104 existing PACE program, and how the two programs would be independently
105 administered; and

106
107 WHEREAS, the Committee on Economic and Community Development, at its
108 meeting of July 16, 2018, recommended adoption of File No. 18-536 (vote 5-0); now,
109 therefore,

110
111 BE IT RESOLVED, the Milwaukee County Board of Supervisors (the County
112 Board) hereby authorizes Milwaukee County (the County) to implement a Property
113 Assessed Clean Energy (PACE) program by joining the Wisconsin PACE Commission,
114 executing the Commission Agreement, and adopting the PACE Ordinance; and

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116 BE IT FURTHER RESOLVED, the County Executive is hereby authorized to
117 enter the County into the Commission Agreement and the Memorandum of
118 Understanding with the City of Milwaukee (the City) regarding administration of the City
119 and County PACE programs; and

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121 BE IT FURTHER RESOLVED, the County Executive is hereby authorized to
122 appoint, with the approval of the County Board, a local public official (Appointee) in
123 accordance with the Commission Agreement to act as the County's official
124 representative in relation to taking all action necessary to effectuate the intent of this
125 resolution/ordinance; and

126
127 BE IT FURTHER RESOLVED, the Appointee is to serve an initial term ending
128 upon the third Tuesday in April of the next even numbered year, and shall thereafter, be
129 appointed by the County Executive, with the approval of the County Board, to serve
130 two-year terms ending on the third Tuesday in April of even-numbered years or as soon
131 thereafter as successors are appointed and qualified; and

132
133 BE IT FURTHER RESOLVED, the County Board hereby creates Section 6.08 of
134 the Milwaukee County Code of General Ordinances by adopting the following:

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136 **AN ORDINANCE**

137
138 The County Board of Supervisors of the County of Milwaukee does ordain as
139 follows:

140
141 **SECTION 1.** Chapter 6 of the Milwaukee County Code of General Ordinances is
142 amended as follows to add Section 6.08:

143 **6.08 – PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCING**

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146 **1. PURPOSE.**

147 The County finds that renovations or additions to premises located in the
148 County made to improve energy efficiency, improve water efficiency,
149 and/or use renewable resource applications, increase property values,
150 stimulate local economic activity, provide local and global environmental
151 benefits, and promote the general welfare of County residents. The
152 purpose of this Section is to facilitate loans arranged by property owners
153 or lessees to make such improvements by treating loan principal and
154 interest, fees, and other charges as special charges eligible for inclusion
155 on the tax roll for these properties.

156
157 **2. STATUTORY AUTHORITY.**

158 This ordinance is enacted pursuant to Wis. Stat. § 66.0627, as amended,
159 which authorizes a County to make a loan or enter into an agreement
160 regarding loan repayments to a 3rd party for owner-arranged or lessee-
161 arranged financing, to an owner or a lessee of a premises located in the
162 County for making or installing an energy efficiency improvement, a water
163 efficiency improvement, or a renewable resource application to a
164 premises.

165
166 **3. DEFINITIONS.** For this section the following definitions shall apply:

- 167 (a) Annual installment means the portion of the PACE loan that is due and
168 payable for a particular year under the supplemental agreement.
169 (b) Borrower means the property owner or lessee of the subject property
170 that borrows the proceeds of a PACE loan.
171 (c) Default loan balance means the outstanding balance, whether or not
172 due, of a PACE loan at the time that the County receives foreclosure
173 proceeds.
174 (d) Foreclosure proceeds means the proceeds received by the County from
175 the disposition of a subject property through an *in rem* property tax
176 foreclosure.
177 (e) Loan amount means the principal, interest, administrative fees (including
178 the Program Administrator’s fees) and other loan charges to be paid by
179 the borrower under the PACE loan.
180 (f) PACE means the acronym for property assessed clean energy.
181 (g) PACE default provisions mean:

- 182 (h) PACE lender means any person that makes a PACE loan, and which may
183 include an affiliate of the borrower.
- 184 (i) PACE loan means a loan made by a PACE lender to a borrower under
185 this Section for energy efficiency improvements, water efficiency
186 improvements, or renewable resource applications made to or installed
187 on a subject property.
- 188 (j) Person means any individual, association, firm, corporation, partnership,
189 limited liability company, trust, subdivision as defined in Wis. Stat. §
190 66.0627.
- 191 (k) Program Administrator means the person retained by the Wisconsin
192 PACE Commission as provided in subsection (5)(b).
- 193 (l) Subject property means any premises located in the County on which an
194 energy efficiency improvement, water efficiency improvement, or
195 renewable resource applications are being or have been made and
196 financed through an outstanding PACE loan.
- 197 (m) Supplemental agreement means a written agreement among a borrower,
198 a PACE lender and the County, as provided for in subsection (7).
- 199 (n) Wisconsin PACE Commission means the Wisconsin PACE Commission
200 formed under Wis. Stat. § 66.0301, as amended, by the County and one
201 or more other political subdivisions as defined in Wis. Stat. §66.0627,
202 pursuant to a Joint Exercise of Powers Agreement relating to the
203 Wisconsin PACE Commission.

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205 4. PACE LOANS AS SPECIAL CHARGES; DELINQUENT AMOUNTS AS LIENS.

206 Any PACE loan made and secured pursuant to this Section shall be
207 considered a special charge on the subject property. Any annual
208 installment or portion of a PACE loan made and secured pursuant to the
209 Section that becomes delinquent according to the terms of the PACE loan
210 shall be a lien against the subject property and placed on the tax roll, as
211 permitted pursuant to Wis. Stat. §66.0627 as amended.

212

213 5. WISCONSIN PACE COMMISSION.

- 214 (1) Any of the powers and duties of the County under this Section, except for
215 those under subsection (9) may (but are not required to) be delegated to the
216 Wisconsin PACE Commission.
- 217 (a) The Wisconsin PACE Commission is further authorized
218 to retain a Program Administrator to act as its agent and
219 administer the PACE program, subject to adherence with
220 PACE program requirements set forth in this Section
221 and in Wis. Stat. §66.0627 as amended.
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6. LOAN APPROVAL.

- (1) A prospective borrower applying for a PACE loan shall comply with the loan application process set forth in the program manual approved by the County.
 - (a) The County shall approve the financing arrangements between a borrower and PACE lender.

7. SUPPLEMENTAL AGREEMENT.

- (1) The County, the borrower and the PACE lender shall execute the supplemental agreement which, without limitation:
 - (a) Shall inform the participants that the PACE loan amount shall be imposed as and considered a special charge, and each year's annual installment may be included on the property tax roll of the subject property as a special charge and an annual installment that is delinquent shall be a lien against the subject property pursuant to Wis. Stat. §66.0627, as amended;
 - (b) Shall recite the amount and the term of the PACE loan;
 - (c) Shall provide for the amount, or a method for determining the amount, of the annual installment due each year;
 - (d) Shall provide whether default interest may be applied to unpaid annual installments;
 - (e) Shall require the PACE lender and the borrower to comply with all federal, state and local lending and disclosure requirements;
 - (f) Shall provide for any fees payable to the County and/or Program Administrator;
 - (g) Shall recite that the supplemental agreement is a covenant that runs with the land;
 - (h) May provide for prepayments of annual installments by the borrower with a resulting reduction in the special charge for the prepayment, subject to any prepayment premium charged by the PACE lender, if any; and
 - (i) May allow for amendment by the parties.
 - i. Prior to executing the supplemental agreement, the owner of the subject property, if different from the borrower, and any existing mortgage holder(s) on the subject property must have executed a separate writing acknowledging the borrower's use of PACE financing for the subject property and the special charge that will be imposed under this Section and its consequences, including the remedies for collecting the special charge.

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12. DISTRIBUTION OF FORECLOSURE PROCEEDS.

(1) The County treasurer shall follow the procedures set forth in Wis. Stat. §75.36, as amended, to distribute the proceeds from the sale of a subject property.

SECTION 2. The provisions of this Ordinance shall take effect upon passage and publication.

ars
07/16/18
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