CITY OF POMONA COUNCIL REPORT

December 4, 2017

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted by: Darron Poulsen, Water Resources Director

Subject: **Discussion and Direction on Whether to Adopt Resolutions Approving Participation in Four (4) Property Assessed Clean Energy (PACE) Programs or to Reject the Resolutions as Presented**

OVERVIEW

Recommendation – That the City Council provide direction on whether to:

1. Reject the Resolutions approving participation in four (4) Property Assessed Clean Energy (PACE) Programs

Or

2. Adopt a Resolution approving the City's participation in the California Municipal Finance Authority (CMFA) Open PACE Programs (Attachment 2);
   i. Authorize the California Municipal Finance Authority CMFA to accept applications from property owners, conduct contractual assessment proceedings and levy contractual assessment within the City and authorized related actions;
3. Adopt a Resolution approving the participation in the California Statewide Communities Development Authority's CSCDA Open PACE Programs (Attachment 3);
   i. Authorize CSCDA to accept applications from property owners, conduct contractual assessment proceedings, and levy contractual assessment within the City and authorized related actions;
4. Adopt a Resolution to join the California Enterprise Development Authority CEDA as an Associate Member(Attachment 4);
   i. Authorizing CEDA, through Figtree Financing, to offer their program and levy assessments within the City;
5. Adopt two Resolutions for the Golden State Finance Authority (GSFA) Ygrene Works Program:

i. To join the Joint Powers Authority (JPA) as an Associate Member and permit property owners within the City to participate in the GSFA SB555 Community Facilities District to offer their program and levy assessments within the City finance (Attachment 5);
ii. To join the JPA as an Associate Member, permitting property owners within the City to participate in the GSFA AB811 Authority PACE Programs (Attachment 6); and

6. Authorize the City Manager to execute all appropriate documents and take any actions necessary to carry out the intent of these resolutions, subject to the review of the City Attorney.

Fiscal Impact – There is no fiscal impact incurred by consenting to the inclusion of properties within the City limits in any or all of the four (4) PACE Programs. There is also no cost to the City in becoming an Associate Member of the JPA's which the City has not yet joined or by opting into the PACE Programs as presented herein.

The California Foundation for Stronger Communities' Board of Directors also acts as the Board of Directors for the CMFA. The CMFA shares a portion of the issuance fees it receives with the member communities. The City will receive a portion of the issuance fee from the CMFA. Such grant may be used for any lawful purpose chosen by the City. An additional amount will be donated by the CMFA to a non-profit organization located in the City at their discretion. No expenditures of these fees could be made without Council action to recognize the funds and appropriate them.

Previous Related Action – On July 15, 2013, City Council adopted a Resolution Approving Participation in the California Home Energy Renovation Opportunity (HERO) Program for Financing of Residential Efficiency Projects which is part of the Los Angeles County PACE Programs.

EXECUTIVE SUMMARY

Staff seeks City Council's direction on whether to adopt the resolutions authorizing the City participation in four (4) Property Assessed Clean Energy (PACE) Programs which provide alternative methods for Pomona property owners to finance energy related improvements. The PACE Programs were established by Assembly Bill 811 (AB811), which was signed into effect on July 21, 2008. The PACE Programs allow property owners to finance various types of energy efficiency, renewable energy, and water efficiency projects through amortized annual assessments that are included in the property owner's tax bill. The PACE Programs are voluntary and are not administered by the City.

DISCUSSION

AB811 along with AB474, effective January 1, 2010, authorized a legislative body to designate an area which authorized public officials and property owners enter into a voluntary contractual assessments to finance the installation of distributed generation renewable energy sources (such as solar panels), energy efficiency, electric vehicle charging infrastructure, and/or water conservation improvements that are permanently fixed to real property, as specified by each program. The financing for these improvements can be made available to property owners through the PACE Programs. There are no guarantees that energy cost savings will off-set the cost of the improvements.

The PACE Program promotes that the services and products add value and are beneficial to participating home and business owners. They can point to numerous communities where they have seen positive results. In contrast to these positive benefits, there are also a number of individuals and organizations who feel the PACE Program is not a good program for all home and business owners and that their lending practices are unfair and misleading. Here is a list of the pros and cons from the perspective positions:

Positive PACE Program Position:

- The (PACE) Programs can help property owners incorporate energy saving improvements into their property taxes while deferring the often high upfront costs.
- The loans can be paid over a long period of time, ranging from 10 to 20 years with average interest rates of 8% to 9%, plus fee, as part of their property taxes.
- The PACE Program providers state that participating consumers are given comprehensive disclosures, responsible underwriting, and a repurchase guarantee.
- Authorizing multiple PACE providers in the City would create a steady competition that may allow property owners to shop for the best rates and services through each provider.
- Authorizing multiple providers also provides increased alternatives to financing energy efficient upgrades.
- All contractors and their sales persons enter into a contract, and are required to complete training courses, maintain insurance, post bonds, and follow terms of the programs.
- Easy to qualify: PACE eligibility is relatively easy compared to home equity loans, which are popular alternatives for expensive home improvements. A property owner’s FICO credit score is less important with PACE, but current or recent issues in credit reports can cause problems. The property owner must also be current on all property taxes.
- 100 percent financing: PACE allows the property owner to fund the entire cost of a project with no need for a down payment. As a result, the project can get started quickly without having to save up for projects or move money around.
- The debt can be transferred to the next owner: If the property is sold after making improvements, the loan does not necessarily have to be paid off the loan. The loan is attached to the property, so it can be transferred and paid off by the next owner.

- Since 2010, the State of California, in conjunction with PACE providers, has taken several actions to ensure PACE does not pose a big risk to the mortgage industry.
- Potential tax credits: PACE funding might make it easier to qualify for environmental tax credits —property owners should check with your tax advisor before making any decisions.
- Tax deductible: It may be possible to deduct interest costs related to your project. However, tax laws are complex — a local tax preparer should be consulted to verify ability to take deductions.

Negative PACE Program Position:

- Currently, the PACE Programs do not fall under the Truth in Lending Act. This means that PACE Program lenders are not subject to mandatory disclosure of basic information that applies to traditional lenders, such as the annual percentage rate, a schedule of payments, and the total cost of the loan.
- Underwriting does not verify if a borrower can afford the loan since the loan is secured by the real estate. **The loans are attached to the property instead of belonging to the individua**l. Depending on the financial institution, the loan can remain with the property when it is sold and be paid off by the new property owner, but in other cases, it can be challenging to refinance or sell those properties.
- Risk of foreclosure: PACE loans are secured by the property owner's home, so it's possible to lose the property in foreclosure if mortgage payments are not made. In many cases, a PACE loan moves into "first position", in front of the mortgage lender, which means there is risk foreclosure even if regular mortgage payments are made as agreed.
- Federal Housing Finance Agency (FHFA) Issues: On July 2010, the Federal Housing Finance Agency (FHFA) announced its opposition to the PACE financing programs. FHFA's rationale for opposing PACE Programs is based on the senior lien status afforded by California law to PACE transactions. In the event of a default, borrowers could be required to repay PACE lenders prior to repaying their original mortgage lenders. FHFA fears that this priority in repayment could make mortgages on properties participating in PACE more risky for mortgage lenders.
- Conflicts of interest: PACE financing is often arranged through contractors who might have an incentive to promote expensive upgrades. This can be a convenient form of one-stop-shopping, but contractors don't know about individual home owner's finances and what is "affordable. Most service providers are honest, and it's ultimately up to the buyer to make smart decisions; but a small percentage of contractors may make misleading statements just to get high paying jobs. In addition to getting paid for the

work they perform, contractors might get additional referral fees from a lender if they arrange funding, so the potential for conflicts of interest is real.

- Payment shock: Even if the amount is repaid over an extended period, making payments can be a burden. Most people think in terms of monthly payments, but property assessments are often paid only once or twice per year and the additional PACE payment will inflate the bi-annual payment amount. In some cases, if the property owner's home loan servicer pays property taxes through an escrow account, the PACE payment will be added to the monthly mortgage payment in smaller chunks.
- Interest costs: PACE funding is relatively easy to qualify for. However, PACE interest rates are sometimes higher than a home equity loan or line of credit — especially if the home owner has good credit. PACE loans are not necessarily cheap.
- Costs and benefits: These programs make the most sense for individuals who cannot afford less expensive loans, often due to credit problems or limited income. Projects like replacing windows can add to home value, so some of the PACE investment will be returned when the house is sold. However, there may not be a substantial change in utility costs — but there will be higher charges on the property tax bill until the PACE loan is paid.
- Government-related: Local governments make PACE funding available, and PACE programs are sometimes confused with government-offered programs. Ultimately, they're just loans like any other loan — they need to be repaid, and there are consequences for failing to repay.
- Tax deductible: Unfortunately, some property owners believe that the entire cost of a project is deductible because the payment is part of a property tax bill, and this is not typically accurate.
- Only property *owners* can participate in the PACE programs which could leave renters at a disadvantage.

The risks above do not mean that PACE programs are bad. However, it is worth knowing the positives and negatives of these arrangements before signing up. Unfortunately, the risks are often overlooked because PACE programs are perceived to be "safe."

PACE loans are overseen by the JPA through program administrators. The administrators assist property owners with funding and consumer protection, support contractors with certification, marketing, and administrative needs. The JPA also provides all assessment administration, bond issuance, and bond administration for their PACE Programs. The City will not be a party to any loans or any assessment proceedings. The City is not responsible for any assessment levies, delinquencies, or the issuance, sale, guarantee, or administration of any bonds associated with the PACE Programs.

The City currently participates in the California Home Energy Renovation Opportunity (HERO) PACE Programs and the Los Angeles County PACE Programs. The following list includes the additional lending providers requesting approval to offer financing options within the City boundaries, further program descriptions can be found as Attachment 1 to this report:

- CMFA Open Pace
- CSCDA Open Pace
- CEDA Figtree Financing
- GFSA Ygrene Works

Each of the PACE Programs provide full service administration: application procedures, loan origination, underwriting, funding, loan servicing, legislative compliance responsibilities, and more are handled by the JPA overseeing the PACE Programs. The City will have no administrative responsibilities, marketing obligations, or financial obligations associated with PACE Programs.

By adopting the proposed resolutions, the City Council will be authorizing the City of Pomona property owners to participate in any of the PACE Programs providers listed below, in addition to the HERO and the Los Angeles County's PACE Programs. The PACE Programs are 100 percent voluntary to property owners.

Attachments:
1. PACE Program Descriptions
2. Resolution to join the CMFA Open PACE Program
3. Resolution to join the CSCDA Open PACE Program
4. Resolution to join the CEDA Figtree Finance
5. Resolution GSFA SB555 Community Facilities District
6. Resolution GSFA AB811

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