

CHAPTER 43
(Revised 7-26-2017)
PROPERTY ASSESSED CLEAN ENERGY FINANCING

43.01 PROPERTY ASSESSED CLEAN ENERGY FINANCING PROGRAM

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

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

(3) DEFINITIONS. In this section:

(a) "Annual installment" means the portion of the PACE loan that is due and payable for a particular year under the supplemental agreement.

(b) "Borrower" means the property owner or lessee of the subject property that borrows the proceeds of a PACE loan.

(c) "Default loan balance" means the outstanding balance, whether or not due, of a PACE loan at the time that the County receives foreclosure proceeds.

(d) "Foreclosure proceeds" means the proceeds received by the County from the disposition of a subject property through an *in rem* property tax foreclosure.

(e) "Loan amount" means the principal, interest, administrative fees (including the Program Administrator's fees) and other loan charges to be paid by the borrower under the PACE loan.

(f) "PACE" means the acronym for property assessed clean energy.

(g) "PACE default provisions" means:

1. The delinquent annual installment(s) due when the County initiates the *in rem* property tax foreclosure on the subject property;

2. Any additional annual installment(s) that become due between the time that the County initiates *in rem* property tax foreclosure on the subject property and the date the County receives the foreclosure proceeds;

3. Any default interest charges applied to unpaid annual installments referenced in subs. (1.) and (2.) above, as provided in the supplemental agreement; and

4. Any default loan balance.

(h) "PACE lender" means any person that makes a PACE loan, and which may include an affiliate of the borrower.

(i) "PACE loan" means a loan made by a PACE lender to a borrower under this Section for energy efficiency improvements, water efficiency improvements, or renewable resource applications made to or installed on a subject property.

(j) "Person" means any individual, association, firm, corporation, partnership, limited liability company, trust, joint venture or other legal entity, or a political subdivision as defined in Wis. Stat. § 66.0627.

(k) "Program Administrator" means the person retained by the Wisconsin PACE Commission as provided in subsection (5)(b).

(l) "Subject property" means any premises located in the County on which an energy efficiency improvements, water efficiency improvements, or renewable resource applications are being or have been made and financed through an outstanding PACE loan.

(m) "Supplemental agreement" means a written agreement among a borrower, a PACE lender and the County, as provided for in subsection (7).

(n) "Wisconsin PACE Commission" means the Wisconsin PACE Commission formed under Wis. Stat. § 66.0301, as amended, by the County and one or more other political subdivisions as defined in Wis. Stat. § 66.0627, pursuant to a Joint Exercise of Powers Agreement relating to the Wisconsin PACE Commission.

(4) PACE LOANS AS SPECIAL CHARGES; DELINQUENT AMOUNTS AS LIENS. Any PACE loan made and secured pursuant to this Section shall be considered a special charge on the subject property. Any annual installment or portion of a PACE loan made and secured pursuant to the Section that becomes delinquent according to the terms of the PACE loan shall be a lien against the subject property and placed on the tax roll, as permitted pursuant to Wis. Stat. §66.0627 as amended.

(5) WISCONSIN PACE COMMISSION.

(a) Any of the powers and duties of the County under this Section, except for those under subsection (9) may (but are not required to) be delegated to the Wisconsin PACE Commission.

(b) The Wisconsin PACE Commission is further authorized to retain a Program Administrator to act as its agent and administer the PACE program, subject to adherence with PACE program requirements set forth in this Section and in Wis. Stat. § 66.0627 as amended.

(6) LOAN APPROVAL.

(a) 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.

(b) The County shall approve the financing arrangements between a borrower and PACE lender.

(7) SUPPLEMENTAL AGREEMENT.

(a) The County, the borrower and the PACE lender shall execute the supplemental agreement which, without limitation:

1. 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;

2. Shall require that any Borrower of a PACE Loan regarding Property located in Brown County is required at the time of obtaining said PACE Loan to provide Formal Written Notice, to any and all Tenants of said Property that are subject to relevant pass-through provisions in their lease with said Borrower, that said Tenants may effectively become financially responsible for said PACE Loan Payments if said PACE Loan Payments are placed on the tax roll as a special charge which may be passed through to said Tenants;

3. Shall recite the amount and the term of the PACE loan;

4. Shall provide for the amount, or a method for determining the amount, of the annual installment due each year;

5. Shall provide whether default interest may be applied to unpaid annual installments;

6. Shall require the PACE lender and the borrower to comply with all federal, state and local lending and disclosure requirements;

7. Shall provide for any fees payable to the County and/or Program Administrator;

8. Shall recite that the supplemental agreement is a covenant that runs with the land;

9. 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

10. May allow for amendment by the parties.

(b) 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.

(c) Each PACE loan shall be amortized over the term of the PACE loan as provided in the supplemental agreement.

(d) The annual payments of a PACE loan may be payable in installments as authorized by Wis. Stat. § 66.0627, as amended.

(8) ANNUAL INSTALLMENTS ADDED TO TAX ROLLS. Upon the request of the Program Administrator the County shall place each year's annual installment on the tax roll for the subject property as permitted pursuant to Wis. Stat. § 66.0627, as amended.

(9) REMITTANCE OF SPECIAL CHARGES. The County shall promptly remit to the Wisconsin PACE Commission any payment(s) for a special charge imposed under this Section, including penalties and charges thereon, it may receive from any taxing district or the County treasurer pursuant to Wis. Stat. Ch. 74, as amended.

(10) PROPERTY TAX FORECLOSURE PROCEDURES.

(a) The County elects to utilize the provisions of Wis. Stat. § 75.521, as amended, for the purpose of enforcing tax liens if a subject property owner fails to pay any special charges imposed on the subject property under this Section as required.

(b) The County shall begin an in rem property tax foreclosure proceeding on the subject property at the earliest time allowed under Wisconsin Statutes, unless the County determines that subject property is a "brownfield" (as defined in Wis. Stat. § 75.106, as amended) or that in rem property tax foreclosure is not in the best interests of the County due to the condition of the property or for other reasons.

(c) If the County has determined that it will not commence an in rem property tax foreclosure proceeding, then the PACE lender may request that the County, pursuant to Wis. Stat. § 75.106, as amended, assign the County's right to take judgment against the subject property, provided that the PACE lender and the County fully comply with all provisions of Wis. Stat. § 75.106, as amended, concerning the subject property and the PACE lender agrees to pay the amounts required by Wis. Stat. § 75.36(3)(a)1 and 1m, as amended.

(11) SALE OF FORECLOSED PROPERTY. If the County prevails in an in rem property tax foreclosure action against a subject property, the County shall diligently proceed to sell the subject property pursuant to the procedures set forth in Wis. Stat. § 75.69, as amended.

(12) DISTRIBUTION OF FORECLOSURE PROCEEDS. 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.