

CHAPTER 32

PROPERTY ASSESSED CLEAN ENERGY FINANCING

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32.01 Title.

This ordinance may be referred to as the Property Assessed Clean Energy Financing Ordinance or the PACE Ordinance.

32.02 Authority.

This ordinance is enacted under the authority of Wis. Stat. § 66.0627.

32.03 Statement of Policy.

Wisconsin Stat. § 66.0627 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 make or install an energy efficiency improvement, a water efficiency improvement, or a renewable resource application. Manitowoc County finds that such improvements, renovations, and/or additions to premises located in the County increase property values, stimulate local economic activity, provide local and global environmental benefits, and promote the general welfare of Manitowoc County residents.

32.04 Purpose.

This ordinance is enacted for the purpose of facilitating loans arranged by property owners or lessees to make improvements, renovations, or additions to premises located in Manitowoc County to improve energy efficiency, improve water efficiency, and/or use renewable resource applications by treating loan principal and interest, fees, and other charges as special charges eligible for inclusion on the tax roll for these properties.

32.05 Definitions.

For the purpose of administering and enforcing this Property Assessed Clean Energy Financing Ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; words in the plural number include the singular number. The word “shall” is mandatory, the word “should” is advisory, and the word “may” is permissive. Any word not defined in this Property Assessed Clean Energy Financing Ordinance shall be presumed to have its customary dictionary definition.

The following terms used in this Property Assessed Clean Energy Financing Ordinance mean:

- (1) “Annual Installment” means the portion of the PACE loan that is due and payable for a particular year under the supplemental agreement.
- (2) “Borrower” means the property owner or lessee of the subject property that borrows the proceeds of a PACE loan.
- (3) “Default Loan Balance” means the outstanding balance, whether or not due, of a PACE loan at the time that Manitowoc County receives foreclosure proceeds.
- (4) “Foreclosure Proceeds” means the proceeds received by Manitowoc County from the disposition of a subject property through an *in rem* property tax foreclosure.
- (6) “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.
- (7) “PACE” means the acronym for property assessed clean energy.
- (8) “PACE Default Amount” means:
 - (a) The delinquent annual installment(s) due when Manitowoc County initiates the *in rem* property tax foreclosure on the subject property; and
 - (b) Any additional annual installment(s) that become due between the time that Manitowoc County initiates *in rem* property tax foreclosure on the subject property and the date Manitowoc County receives the foreclosure proceeds; and
 - (c) Any default interest charges applied to unpaid annual installments referenced in §§ 32.05(8)(a) and (b) above, as provided in the supplemental agreement; and
 - (d) Any default loan balance.

- (9) “PACE Lender” means any person that makes a PACE loan, and which may include an affiliate of the borrower.
- (10) “PACE Loan” means a loan made by a PACE lender to a borrower under this PACE Ordinance for energy efficiency improvements, water efficiency improvements, or renewable resource applications made to or installed on a subject property.
- (11) “Person” means any individual, association, firm, corporation, partnership, limited liability company, trust, joint venture, municipality, or any other legal entity, or a political subdivision as defined in Wis. Stat. § 66.0627.
- (12) “Program Administrator” means the person retained by the Wisconsin PACE Commission as permitted in § 32.07(2) of this PACE Ordinance.
- (13) “Subject Property” means any premises located in Manitowoc 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.
- (14) “Supplemental Agreement” means a written agreement among a borrower, a PACE lender and Manitowoc County, as provided for in § 32.09 of this PACE Ordinance.
- (15) “Wisconsin PACE Commission” means the Wisconsin PACE Commission formed under Wis. Stat. § 66.0301 by Manitowoc County and one or more other political subdivisions as defined in Wis. Stat. § 66.0627, as amended, pursuant to a Joint Exercise of Powers Agreement relating to the Wisconsin PACE Commission.

32.06 Pace Loans as Special Charges; Delinquent Amounts as Liens.

Any PACE loan made and secured pursuant to this PACE Ordinance shall be considered a special charge on the subject property. Any annual installment or portion of a PACE loan made and secured pursuant to this PACE Ordinance 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.

32.07 Wisconsin Pace Commission.

- (1) Any of the powers and duties of Manitowoc County under this PACE Ordinance, except for those under § 32.09 of this PACE Ordinance may (but are not required to) be delegated to the Wisconsin PACE Commission.
- (2) 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 PACE Ordinance and in Wis. Stat. § 66.0627 as amended.

32.08 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 Manitowoc County.
- (2) Manitowoc County shall approve the financing arrangements between a borrower and PACE lender.

32.09 Supplemental Agreement.

- (1) Manitowoc County, the borrower, and the PACE lender shall execute a supplemental agreement which, without limitation:
 - (a) Shall inform the participants that the PACE loan amount shall be imposed as and considered a special charge against the subject property, 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 Manitowoc 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.
- (2) 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 PACE Ordinance and its consequences, including the remedies for collecting the special charge.

- (3) Each PACE loan shall be amortized over the term of the PACE loan as provided in the supplemental agreement.
- (4) The annual payments of a PACE loan may be payable in installments as authorized by Wis. Stat. § 66.0627, as amended.

32.10 Annual Installments Added to Tax Rolls.

Upon the request of the Program Administrator, Manitowoc County should place each year's annual installment on the tax roll for the subject property as permitted pursuant to Wis. Stat. § 66.0627.

32.11 Remittance of Special Charges.

Manitowoc County shall promptly remit to the Wisconsin PACE Commission any payment(s) for a special charge imposed under this PACE Ordinance, including penalties and charges thereon, it may receive from any taxing district or Manitowoc County Treasurer pursuant to Wis. Stat. ch. 74, as amended.

32.12 Property Tax Foreclosure Procedures.

- (1) Manitowoc 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 PACE Ordinance as required.
- (2) Manitowoc County should begin an *in rem* property tax foreclosure proceeding on the subject property at the earliest time allowed under Wisconsin Statutes, unless Manitowoc County determines that subject property is a "brownfield" (as defined is Wis. Stat. § 75.106, as amended) or that *in rem* property tax foreclosure is not in the best interests of Manitowoc County.
- (3) If Manitowoc County has determined that it will not commence an *in rem* property tax foreclosure proceeding, then the PACE lender may request that Manitowoc County, pursuant to Wis. Stat. § 75.106, as amended, assign Manitowoc County's right to take judgment against the subject property to the PACE lender, provided that the PACE lender and Manitowoc 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, 1m, and 3, as amended.

32.13 Sale of Foreclosed Property.

If Manitowoc County obtains judgment in an *in rem* property tax foreclosure action against a subject property, Manitowoc County should diligently proceed to sell the subject property pursuant to the procedures set forth in Wis. Stat. § 75.69, as amended.

32.14 Distribution of Foreclosure Proceeds.

The Manitowoc 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.

HISTORY

02/14/2017: Created by Ord. No. 2016/2017-69 effective 02-22-2017.