

CITY OF SANTA ROSA  
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL  
FROM: GLORIA HURTADO, DEPUTY CITY MANAGER  
CITY MANAGER'S OFFICE  
SUBJECT: PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM,  
CONSIDERATION OF ADDITIONAL PROGRAMS IN SANTA  
ROSA

AGENDA ACTION: RESOLUTIONS

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RECOMMENDATION

The Council may choose one of the following options:

1. If the Council wants to offer more PACE financing options within the City boundaries beyond the currently available Sonoma County Energy Independence Program, it may choose, without endorsement of any particular program, to allow operation of three additional PACE programs by adoption of the following resolutions:
  - a. Approving the Amendment to the Joint Powers Agreement adding City of Santa Rosa as an Associate Member of the Western Riverside Council of Governments and authorizing the Mayor to sign; Approving the PACE Program Agreement between the City of Santa Rosa and Renovate America, Inc. and authorizing the Mayor to sign; and Consenting to the inclusion of properties within the City's Jurisdiction in the California HERO Program;
  - b. Approving the PACE Program Agreement between the City of Santa Rosa and Renew Financial Group, LLC and authorizing the Mayor to sign; and Consenting to the inclusion of properties within the City's Jurisdiction in the CaliforniaFIRST Program; and
  - c. Approving the Joint Powers Authority Associate Membership Agreement between the California Enterprise Development Authority and the City of Santa Rosa and authorizing the Mayor to sign; Approving the PACE Program Agreement between the City of Santa Rosa and Figtree Company, Inc. and authorizing the Mayor to sign; and Consenting to the Inclusion of properties within the City's Jurisdiction in the Figtree Program.
2. If the Council wants to offer only the California HERO Program in Santa Rosa, not as endorsement of the program but as it is the only new program that offered the City indemnification from both the program administrator, Renovate America, Inc., and the Joint Powers Authority, Western Riverside Council of Governments. The Council would adopt only the following resolution:

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- a. Approving the Amendment to the Joint Powers Agreement adding City of Santa Rosa as an Associate Member of the Western Riverside Council of Governments and authorizing the Mayor to sign; Approving the PACE Program Agreement between the City of Santa Rosa and Renovate America, Inc. and authorizing the Mayor to sign; and Consenting to the inclusion of properties within the City's Jurisdiction in the California HERO Program.
  3. If the Council chooses not to allow additional PACE programs within the City boundaries at this time, the Council need not take action. The Sonoma County Energy Independence Program remains available to all City of Santa Rosa property owners.
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## EXECUTIVE SUMMARY

AB 32, the California Global Warming Solutions Act of 2006, requires California to reduce its GHG emissions to 1990 levels by 2020. Installation of water and energy efficiency improvements is one of many ways to reduce GHG emissions. In 2009, the City Council authorized the City's participation in the Sonoma County Energy Independence Program (SCEIP), which is the County's Property Assessed Clean Energy (PACE) financing program. SCEIP allows for property owners to install distributed generation, renewable energy sources and energy efficiency improvements through contractual assessments that are paid back through the property tax bill. Since SCEIP was initiated, additional financing options have become available. In 2014, Sonoma County created the Sonoma County PACE Financing Marketplace (PACE Marketplace) expanding the financing options available to property owners within the unincorporated areas of the County. The PACE Marketplace integrates additional financing options from California HERO, CaliforniaFIRST Figtree programs and Ygrene into the region for water and energy efficiency upgrades and the installation of renewable energy. By allowing additional PACE providers to offer their services in the City of Santa Rosa, Santa Rosa citizens would have additional choices beyond the SCEIP Program. There are a number of policy considerations for the Council related to offering these programs.

Providing access to PACE programs within the City relates to Council Goal 3: Provide Leadership for Environmental Initiatives. PACE programs provide funding options for property owners to install water and energy efficiency improvements that will assist the City in progressing toward its GHG reduction targets.

## BACKGROUND

In 2005, the Governor of the State of California issued Executive Order S-3-05 requiring the reduction of GHG emissions to 2000 levels by 2010; the reduction of GHG emissions to 1990 levels by 2020; and the reduction of GHG emissions to 80 percent below 1990 levels by 2050. In 2015, the Governor issued Executive Order B-30-15,

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requiring the reduction of GHG emissions by 40 percent below 1990 levels by 2030. Installation of water and energy efficiency improvements is one of many ways to reduce GHG emissions.

On April 14, 2009, City Council adopted Resolution No. 27342, allowing property owners within the City's jurisdiction to participate in SCEIP. SCEIP financing allows property owners in the County to acquire and construct or install distributed generation, renewable energy sources and water and energy efficiency improvements through contractual assessments paid back through property taxes. Through February 2017, 715 residential and 23 commercial projects have been funded in Santa Rosa with SCEIP providing a total of \$21,242,636 in financing capital with estimated annual reduction in green house gas emissions of 1,372 MTCO<sub>2</sub>E<sup>1</sup>.

In November 2014, the County's Energy Independence Office developed the Sonoma County PACE Marketplace to promote the effectiveness and sustainability of PACE financing in the region by expanding the options available to property owners. The PACE Marketplace integrates additional financing options from California HERO, CaliforniaFIRST Figtree and Ygrene into the region for water and energy efficiency upgrades and the installation of renewable energy in addition to the financing option of SCEIP. Each of the PACE Marketplace members have entered into an agreement for Collaborative Services with the County to assure compliance with County requirements, including monitoring and reporting.

### PRIOR CITY COUNCIL REVIEW

On March 31, 2015, City Council adopted Resolution No. 28623 approving the Seventh Amendment to the cooperative agreement to participate in SCEIP for another ten (10) years.

On January 19, 2016, City and County of Sonoma staff presented an overview of the PACE Financing Marketplace in Study Session. The PACE Marketplace Programs have also requested that the City of Santa Rosa allow these programs to operate within the jurisdictional boundaries of Santa Rosa.

### ANALYSIS

Sonoma County's PACE Marketplace oversight development efforts continue and version 2.0 of the County's Collaborative Services Agreement is in review. The proposed agreements for PACE Program Administrators with the City would incorporate compliance with the County's Collaborative Services Agreement, including future

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<sup>1</sup> mtCO<sub>2</sub>e = metric tons of carbon dioxide equivalents. Equivalent CO<sub>2</sub> (CO<sub>2</sub>e) is the concentration of CO<sub>2</sub> that would cause the same level of radiative forcing as a given type and concentration of greenhouse gas. Examples of such greenhouse gases are methane, perfluorocarbons, and nitrous oxide.

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amendments, but does not provide the same level of oversight by City staff.

Presently, California HERO, CaliforniaFIRST and Figtree, the first three additional PACE programs requesting entry into Santa Rosa, are being brought forward for consideration by the Council. Allowing these programs to operate within Santa Rosa would expand the number of program financing options available to property owners, potentially increasing the pace of retrofits and generation projects, which would support further reduction in GHGs. All California HERO, CaliforniaFIRST and Figtree program administrative costs are included in the property owners' voluntary contractual assessment, which will be collected on the property owners' tax bills.

The allowance of additional PACE providers could also: expand local funding capacity; provide consumer choice; and increase program momentum and sustain and grow the contractor community.

There are a number of points for Council to consider in relation to authorizing additional PACE programs to operate within the City of Santa Rosa as follows:

- The City must participate in the sponsoring Joint Power Authorities, in order for the City to authorize new PACE programs to operate within Santa Rosa.
- If approved by Council, each of the Program Agreements contains indemnification provisions, from each of the proposed program administrators. Only one of the Joint Powers Agreements contains an indemnity provision in favor of the city. Despite requests, staff was unable to obtain any agreement for indemnity from CSCDA or CEDA with respect to their PACE programs.
- Currently there is a lawsuit pending against Los Angeles County and Renovate America as well as other lawsuits against other program administrators not included in this presentation, generally on the basis of misrepresentations and overcharging. This is an indication of the fact that the PACE programs are still relatively new and largely unregulated, though there have been some recent efforts towards imposing minimum disclosure requirements and other standards.
- Any resulting carbon credits will be owned by the financing providers and the County of Sonoma, and will not be owned by the City.
- Property owners within the PACE programs may be unable to refinance their properties without paying off the PACE assessments and in addition, if they enter into a PACE financing agreement without the consent of all current lenders on their properties, may be in default subjecting themselves to accelerated payment without the ability to refinance. There is also the possibility of foreclosure against participating property owners in the event of delinquency, though this may be reduced by agreements to limit acceleration of amounts due under PACE financing as well as some PACE Program Administrators offering limited subordination agreements, which would seek to make existing lenders whole in the event they are forced to absorb certain PACE lien payments.
- Some of the Programs may offer limited subordination agreements to new lenders in order to help facilitate subsequent real estate transfers, but PACE liens would still maintain their senior status as a property tax assessment which

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continues to cause concern to certain lenders including Fannie Mae and Freddie Mac. Additionally, the borrowers are required to indemnify and/or release various entities from any claims.

- The current interest rates, as of May 2017, for each financing program is as follows:
  - CaliforniaFIRST - Residential: 6.75%-8.49% 5 year - 6.75%; 10 year - 7.59%; 15 year - 7.99; 20 year – 8.29%; 25 year - 8.39%; 30 year - 8.49%. Commercial: depends on capital source, 6.0% or less fixed for 20 years is the prevailing rate (no change).
  - California HERO - Residential: 5 year - 6.75%, 10 year -7.69%; 15 year - 8.15%; 20 year - 8.35%; 25 year – 8.35%. Commercial: 5 year - 5.75%, 10 year - 6%, 15 year - 6.25%, 20 year - 6.5% same as residential
  - FigTree - Commercial: 4.94%-6.1% 5.50% to 7.50%. Figtree is planning to offer residential financing in fall 2016. Residential is currently projected at 4.63%-6.99%. No launch of residential yet.
  - SCEIP- 7.00% commercial and residential, terms of 10 year and 20 year.

These are in addition to administrative costs and fees charged to borrowers which vary by program creating a wide range of annual percentage rates (APR).

- While the industry is relatively new, unregulated and the programs are somewhat untested, there have been recent efforts towards development of standards and oversight for PACE programs, which is still in evolution. Some of those efforts are as follows:
  - PACE Nation, a national non-profit, PACE industry trade organization, revised their Consumer Protection Policy (CPP) document and the PACE Nation Board adopted version 2.0 on February 13, 2017. The version 2.0 CPP document incorporated many policy elements that were listed in the Department of Energy's Revised PACE Guidelines adopted in November 2016.
  - The California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) Board informational hearing took place on January 17, 2017 to discuss the current status of PACE in California and potential impacts the growth of PACE may have to their Loss Reserve program. Subsequently, CAEATFA released their revised guidelines pertaining to their Loss Reserve program in February 2017. The revisions clarify the current regulatory language; require participating PACE providers to report additional data sets and; strengthen the underwriting criteria through added consumer protections and best practices. The new guidelines are expected to be adopted by their Board through an emergency requested action by June/July 2017.

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- An informal PACE oversight committee, comprised of members from the various JPA issuers of PACE, has been established and there is an effort being led by Western Riverside Council of Governments (WRCOG), the JPA for HERO, to discuss statewide oversight.
- Various Legislation:
  - Assembly Bill 2693, Approved September 28, 2016.  
Financing requirements: property improvements. Creates an industry wide framework regarding residential PACE and consumer financing disclosures, standardizing and requiring all PACE providers utilize a financing estimate and disclosure (FED) form and provide a three day right to cancel to all property owners once their contract is signed.
  - Senate Bill 242: Proposed February 6, 2017  
Property Assessed Clean Energy program: program administrator. Would require a program administrator that administers a residential PACE program on behalf of a public agency to provide specific underwriting requirements and implement consumer protection measures and best practices.
  - Assembly Bill 271, Proposed February 1, 2017  
Would address when a property has defaulted on property tax payments and interest and penalties accrue. This would require, as to PACE-related assessments arising from contracts entered into on or after January 1, 2018, that those specified penalties and other specified costs, whether collected on the secured tax roll or pursuant to a sale or foreclosure, be deposited in a restricted county fund. The bill would require the county in possession of the fund to appropriate those moneys only for the purpose of offsetting general fund property tax revenues of local taxing agencies that are lost when a property, subject to a voluntary contractual PACE assessment or special tax securing a PACE bond, is sold at a tax defaulted land sale for less than a specified minimum price.
  - Senate Bill 151, Proposed January 1, 2017  
Property tax postponement. Would make various changes related to the Property Tax Postponement (PTP) Program, including the elimination of specified transfers to the General Fund beginning in 2018.
- City staff is not proposing to provide any oversight of the additional PACE programs, though staff has included compliance with existing consumer protections within the PACE Program Agreement. If the Council would desire

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PACE program oversight, additional funding would need to be allocated for City or County staff. City staff would need to look at options and bring them back to Council for consideration at a future Council meeting. There is a potential to operate the program as a fee based program, though this would require further study.

To allow property owners in the City of Santa Rosa to finance water and energy efficiency upgrades and the installation of renewable energy through California HERO, CaliforniaFIRST and Figtree, the City will need to do the following:

To offer all three programs:

- Join two Joint Powers Authorities (JPAs), the Western Riverside Council of Governments to offer the California HERO Program and the California Enterprise Development Authority to offer the Figtree Program. The City is already a member of the California Statewide Communities Development JPA for the CaliforniaFIRST Program. The City joined the California Statewide Communities Development JPA in September 1995 via Resolution No. 22406.
- Approve PACE Program Agreements with Renovate America Inc., which is the Program Administrator for California HERO; Renew Financial Group, LLC which is the Program Administrator for CaliforniaFIRST; and with Figtree Company Inc. which is the Program Administrator for Figtree.
- Approve participation in the California HERO, CaliforniaFIRST and Figtree programs.

To offer the California HERO Program only:

- Join the Western Riverside Council of Governments JPA to offer the California HERO Program; approve the PACE Program Agreement with Renovate America Inc., which is the Program Administrator for California HERO; and approve participation in California HERO.

If the Council chooses not to offer any of the programs in the City of Santa Rosa, the Council would not need to take any action. The Sonoma County Energy Independence Program remains available to all City of Santa Rosa property owners wishing to use PACE financing.

In the future, additional financial providers may join the PACE Marketplace or make specific requests to obtain access to operate within the City, at which time the Council may consider making these financing programs available to Santa Rosa property owners. The City has subsequently received requests from both Ygrene and CMFA. Based on Councilmember Rogers employment with Ygrene, the City Attorney's Office has requested a 1090 determination from the Fair Political Practices Commission as to whether the City Council is precluded from approving an agreement to allow Ygrene to operate in the City. The CMFA request was received too late to be included with this presentation, and is also not a member of the County's PACE Marketplace. City staff

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proposes to monitor the PACE Marketplace and to bring forward additional PACE Marketplace participant requests on an annual basis for Council consideration.

### FISCAL IMPACT

The exact fiscal impact, to be incurred by consenting to the inclusion of properties within the City limits in the California HERO, CaliforniaFIRST and Figtree programs, is unknown. There is likely to be staff time required to oversee the periodic review of the various contracts between the City and the three Program Administrators as well as the three JPAs. Funds currently being used for staff time were appropriated in a previously adopted budget as part of Council Goal 3 and the ongoing efforts to meet State, County and City, GHG reduction targets and requirements.

All California HERO, CaliforniaFIRST and Figtree program administrative costs are included in the property owners' voluntary contractual assessment, which is collected on the property owners' tax bill

### ENVIRONMENTAL IMPACT

The action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

### BOARD/COMMISSION/COMMITTEE REVIEW AND RECOMMENDATIONS

Not applicable

### NOTIFICATION

Not applicable

### ATTACHMENTS

- Attachment 1 – City Council SCEIP Resolution No. 27342
- Attachment 2 – City Council SCEIP Resolution No. 28623
- Attachment 3 – City Council CSCDA Resolution No. 22406
- Attachment 4 – CSCDA JPA Agreement
- Attachment 5 – Amendment to the WRCOG JPA Agreement
- Attachment 6 – CEDA JPA Agreement
- Attachment 7 – Renovate America Inc Program Agreement
- Attachment 8 – Renew Financial Group LLC Program Agreement
- Attachment 9 – Figtree Program Agreement

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