




Office of the City Manager

CONSENT CALENDAR

April 7, 2015

To: Honorable Mayor and Members of the City Council  
From:  Christine Daniel, City Manager  
Submitted by: Eric Angstadt, Director, Planning and Development  
Subject: Property Assessed Clean Energy (“PACE”) Seismic Financing

RECOMMENDATION

Adopt a Resolution consenting to the inclusion of properties within the City of Berkeley’s jurisdiction in the California Statewide Communities Development Authority (CSCDA) Open PACE program; authorizing the CSCDA to accept applications from property owners, conduct contractual assessment proceedings and levy contractual assessments within Berkeley; and authorizing related actions.

FISCAL IMPACTS OF RECOMMENDATION

There is no negative fiscal impact from consenting to the inclusion of properties within the City limits in CSCDA Open PACE. The program is managed by the CSCDA and its administrators. All Open PACE administrative costs are covered through an initial administrative fee included in the property owner’s voluntary contractual assessment and an annual administrative fee, collected on the property owner’s tax bill. The City’s costs would be limited to existing staff time to post information about the program on the City’s website, inform property owners as part of the soft story program management and monitor uptake.

CURRENT SITUATION AND ITS EFFECTS

In January 2014, Berkeley launched mandatory requirements for owners of soft weak or open front (SWOF) buildings with five or more dwelling units. Owners must apply for a building permit by December 2016 and retrofit their buildings within two years of applying. As of January 2015, there are 133 buildings that still need to retrofit. Some property owners may face difficulties financing the mandatory retrofits.

Property Assessed Clean Energy (“PACE”) financing creates an assessment lien on the property and is repaid as semi-annual installments on the property tax bill. On November 6, 2014, the CSCDA expanded the eligible use of funds for PACE to include seismic retrofits. The City of Berkeley has already authorized PACE financing through the CSCDA CaliforniaFIRST program and the HERO program for energy efficiency, renewable energy and water conservation upgrades.

In the past, CSCDA offered PACE financing through a sole administrator, Renewable Funding LLC, administrator of CaliforniaFIRST. In 2014, CSCDA created the Open PACE

platform, with two PACE providers, AllianceNRG and Renewable Funding LLC, to allow consumers to choose from a variety of providers. They may add additional providers to this platform in the future. The AllianceNRG team consists of Deutsche Bank Securities Inc., CounterPointe Energy Solutions, LLC and Leidos Engineering, LLC.

PACE assessments are in a superior position to mortgages and could be in violation of existing mortgage contracts. Staff is not aware of any adverse actions to date, other than borrowers being required to pay off PACE loans upon sale or refinancing. Existing PACE lenders include disclosures that identify the potential risks to borrowers.

In terms of commercial loans, CaliforniaFIRST requires consent from existing mortgage holders for commercial properties. The AllianceNRG had previously indicated they could require consent from existing mortgage holders for the City of Berkeley, although it is not their policy in other jurisdictions. After further discussions, CSCDA indicated they would not allow a PACE provider to offer different practices for different jurisdictions. Therefore, the Alliance NRG will not be able to require consent of existing mortgage holders. Their representative indicated that when mortgages are securitized, it can be unfeasible to obtain lender consent. Their application form includes the following disclaimer:

*Before completing the final application, property owner should carefully review any mortgages, deeds of trust, loan agreements or security instruments which affect the property or to which the property owner(s) are a party. Entering into an assessment contract without the consent of the property owners existing lenders could constitute an event of default under such mortgages, deeds of trust, loan agreements or other security instruments. Defaulting under a mortgage, deed of trust, loan agreement or other security instrument could have serious consequences to the property owner, which could include the acceleration of your repayment obligations.*

## BACKGROUND

CSCDA, the largest Joint Powers Authority in California, is implementing PACE under the provisions of Chapter 29 of Division 7 of the Streets & Highways Code (commonly referred to as "AB 811") on behalf of its member counties and cities. AB811 authorizes a legislative body to designate an area within which authorized public officials (including a joint powers authority) and free and willing property owners may enter into voluntary contractual assessments to finance the installation of renewable energy, energy efficiency, water efficiency, and seismic strengthening improvements affixed to real property. PACE is operating in over 250 jurisdictions throughout the state, and nearly half a billion dollars have been funded.

PACE provides a means of financing by securing loans through a voluntary special tax or assessment on the property. The improvements on the owner's property are financed by the issuance of bonds by CSCDA, secured by a contractual assessment levied on the owner's property by CSCDA and collected in annual installments through the county secured property tax bill. While most private loans are due on sale of the property, a voluntary contractual assessment stays with the property upon transfer of ownership, unless the mortgage provider requires it be paid at the time of sale.

The resolution expressly provides that the county or city will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies in assessment payments, or the issuance, sale or administration of any bonds issued in connection with CSCDA Open PACE.

Since PACE assessments are in a superior position to mortgages, concerns over risks to borrowers and lenders suspended residential PACE loans in Berkeley. On September 9, 2014, Council reaffirmed authorization of residential PACE based on a State loan loss reserve fund and communications from the Federal Housing Finance Agency. This loan loss reserve fund will only cover losses for financing of energy efficiency, renewable energy or water conservation improvements and not seismic retrofits. The September 9, 2014 Council report provided a detailed explanation of the risks of PACE financing.

On September 9, 2014, Council referred an item from the Housing Advisory Commission to the Energy Commission regarding the use of PACE Financing for multifamily seismic retrofits. On January 20, 2015, the Energy Commission recommended City Council opt in to Open PACE and opt in to seismic PACE with CaliforniaFIRST. The Energy Commission supported the recommendation on December 3, 2014 by a vote of 6-1. City Council voted to proceed and requested that staff prepare a resolution. Since CaliforniaFIRST is now part of Open PACE, by opting in to Open PACE, Berkeley will also be opting into seismic PACE with CaliforniaFIRST.

#### ENVIRONMENTAL SUSTAINABILITY

There may be opportunities to make energy improvements as part of seismic retrofits. Retrofitting will reduce the loss of the natural resources embodied in existing buildings.

#### RATIONALE FOR RECOMMENDATION

PACE financing may provide seismic retrofit financing to property owners who would otherwise not have access to financing and therefore increase compliance with the SWOF ordinance and contribute towards protecting the safety of building occupants.

#### ALTERNATIVE ACTIONS CONSIDERED

Participation and non-participation in Open PACE, as well as restricting participation to commercial properties were considered.

#### CONTACT PERSON

Neal De Snoo, Secretary, Berkeley Energy Commission, 510-981-7439  
Jenny McNulty, Program and Administration Manager, Planning Dept., 510-981-7451

Attachments:

1: Resolution

RESOLUTION NO. \_\_\_\_\_

CONSENTING TO THE INCLUSION OF PROPERTIES WITHIN THE CITY OF BERKELEY'S JURISDICTION IN THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY (CSCDA) OPEN PACE PROGRAM; AUTHORIZING THE CSCDA TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN BERKELEY; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California, including the City of Berkeley (the "City"); and

WHEREAS, the Authority is implementing Property Assessed Clean Energy (PACE) programs, which it has designated CSCDA Open PACE, consisting of CSCDA Open PACE programs each administered by a separate program administrator (collectively with any successors, assigns, replacements or additions, the "Programs"), to allow the financing or refinancing of renewable energy, energy efficiency, water efficiency and seismic strengthening improvements, electric vehicle charging infrastructure and such other improvements, infrastructure or other work as may be authorized by law from time to time (collectively, the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") within counties and cities throughout the State of California that consent to the inclusion of properties within their respective territories in the Programs and the issuance of bonds from time to time; and

WHEREAS, the program administrators currently active in administering Programs are the AllianceNRG Program (presently consisting of Deutsche Bank Securities Inc., CounterPointe Energy Solutions LLC and Leidos Engineering, LLC) and Renewable Funding LLC, and the Authority will notify the City in advance of any additions or changes; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner or owners of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

WHEREAS, the City desires to allow the owners of property ("Participating Property Owners") within its territory to participate in the Program and to allow the Authority to conduct assessment proceedings under Chapter 29 within its territory and issue bonds to finance or refinance Improvements; and

WHEREAS, the territory within which assessments may be levied for the Program shall include all of the territory within the City's official boundaries; and

WHEREAS, the Authority will conduct all assessment proceedings under Chapter 29 for the Program and issue any bonds issued in connection with the Program; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Program.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley as follows:

Section 1. The City Council hereby finds and declares that properties in the territory of the City will benefit from the availability of the Program within the territory of the City and, pursuant thereto, the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 and the issuance of bonds to finance or refinance Improvements.

Section 2. In connection with the Program, the City hereby consents to the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 on any property within the territory of the City and the issuance of bonds to finance or refinance Improvements; provided, that

(1) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments;

(2) The City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Program.

Section 3. The appropriate officials and staff of the City are hereby authorized and directed to make applications for the Program available to all property owners who wish to finance or refinance Improvements; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The following staff persons, together with any other staff persons chosen by the City Manager from time to time, are hereby designated as the contact persons for the Authority in connection with the Program: Neal DeSnoo, Energy Program Officer and Jenny McNulty, Program and Administration Manager.

Section 4. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such certificates, requisitions, agreements and related documents as are reasonably required by the Authority to implement the Program.

Section 5. The City Council hereby finds that adoption of this Resolution is not a “project” under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

Section 6. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of the Authority at: Secretary of the Board, California Statewide Communities Development Authority, 1400 K Street, Sacramento, CA 95814.