Legislation Details (With Text)

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File created:	2/27/2013	**In control:**	COMMON COUNCIL
On agenda:		**Final action:**	7/2/2013
Effective date:			

Title: A substitute ordinance relating to the city's clean energy financing program.

Sponsors: ALD. MURPHY, ALD. KOVAC

Indexes: ENERGY RESOURCES

Attachments: 1. Setting the PACE Feb 2013-final, 2. WS Binary Comparison, 3. Visio-PACE Drawing 1 v2 March 26 2013, 4. Visio-PACE Drawing 2 March 26 2013, 5. Leave Behind on Enhancement to Me2, 6. Support - Clean Fund LLC, 7. Support - Structured Finance Associates, 8. Support - MMAC, 9. Support - BOMA Wisconsin, 10. Support - Compass Properties, 11. Hearing Notice List 4-1-13, 12. Hearing Notice List 4-22-13, 13. Hearing Notice List 5-7-13, 14. Hearing Notice List 6-24-13, 15. Notice Published on 7-22-13

Date	Ver.	Action By	Action	Result	Tally
2/27/2013	0	COMMON COUNCIL	ASSIGNED TO		
3/26/2013	1	CITY CLERK	DRAFT SUBMITTED		
3/27/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
3/27/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
4/1/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
4/17/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
4/17/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
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4/17/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
4/22/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	4:0
5/8/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
5/8/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
5/13/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	5:0
6/21/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
6/21/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	HEARING NOTICES SENT		
6/24/2013	2	COMMUNITY & ECONOMIC	RECOMMENDED FOR PASSAGE	Pass	5:0

		DEVELOPMENT COMMITTEE			
6/24/2013	2	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	RECONSIDERED	Pass	5:0
6/24/2013	2	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	SUBSTITUTED	Pass	5:0
6/24/2013	3	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	5:0
6/24/2013	1	COMMUNITY & ECONOMIC DEVELOPMENT COMMITTEE	SUBSTITUTED	Pass	5:0
7/2/2013	3	COMMON COUNCIL	PASSED	Pass	15:0
7/12/2013	3	MAYOR	SIGNED		
7/22/2013	3	CITY CLERK	PUBLISHED		

121591

SUBSTITUTE 3

ALD. MURPHY AND KOVAC

A substitute ordinance relating to the city’s clean energy financing program.

304-26.5 rc

This ordinance facilitates owner-arranged financing with a third-party lender for commercial property owners making renovations to improve the energy efficiency to their properties by levying annual installments as a special charge onto the property tax bill.

The city will make all reasonable and customary efforts to collect these special charges once they are levied onto the tax bill and remit them to the lender when collected. The city will be entitled to an administrative fee for services rendered in collecting and otherwise processing these special charge payments.

State law mandates that monies received by the city treasurer as payment on the property tax bill be used to pay obligations on the property bill in the following order:

1. Special charges, delinquent utility charges and personal property taxes.
2. Special assessments.
3. Special taxes.
4. Property taxes.

By levying these annual installments as a special charge onto the property tax bill, this ordinance places a portion of a debt owed by the property owner to a private lender before the owner’s property tax obligation to the city. However, in the event of foreclosure, the city receives all foreclosure proceeds and will pay the private lender only after the city receives full payment for all property taxes and other charges levied against the foreclosed property.

In addition, this ordinance repeals code provisions which effectively guaranteed one year's principal and interest payments on clean energy financing loans through a grant-funded reserve fund.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Section 304-26.5 of the code is repealed and recreated to read:

304-26.5. Clean Energy Financibg.

1. PURPOSE. The city finds that renovations of privately-owned commercial properties made to improve energy efficiency, save water, use renewable energy, increase property values, stimulate local economic activity, provide environmental benefits and promote the general welfare of city residents. The purpose of this section is to facilitate loans arranged by commercial property owners to make energy-efficient renovations by treating principal and interest repayments, fees and other charges for these loans as special charges eligible for inclusion on the tax bill for these properties.

2. DEFINITIONS. a. "Annual installment" means the portion of the loan amount that is due for a particular year under the loan agreement.

b. "Default loan balance" means the outstanding balance of a PACE loan at the time the city receives foreclosure proceeds on a property subject to special charges under this section.

c. "Foreclosure proceeds" means the proceeds resulting from the disposition of a property the city received through an in rem tax foreclosure.

d. "Foreclosure reconstructive costs" means the sum of a stream of costs equal to the annual city portion of property taxes levied a property in in rem tax foreclosure, from the initiation of an in rem tax foreclosure action by the city until the city prevails in a foreclosure action.

e "Incentive" means any reimbursable or non-reimbursable credit enhancement or other grants of funds by or through the city to a PACE lender in connection with a PACE loan.

f. "Loan agreement" means a written agreement among a borrower, a PACE lender and the city as provided in sub. 7.

g. "Loan amount" means the amount of principal, interest, administrative fees, incentives and other loan charges under the loan agreement to be paid by the borrower under the PACE loan.

h. "PACE" means property assessed clean energy.

i. "PACE default provisions" means the sum of:

i-1. Any additional interest charges the loan agreement stipulates shall be applied to unpaid annual installments levied as special charges under this section onto the property tax bill when the city initiates tax foreclosure on the property.

i-2. Any additional annual installments stipulated by the loan agreement that become due between the time the city initiates tax foreclosure on the property and the date the city receives proceeds from the disposition of the tax foreclosed property.

i-3. Any additional interest charges the loan agreement stipulates shall be applied to annual installments included in paragraph i-2.

i-4. Any default loan balance.

j. "PACE lender" means a lender that makes a PACE loan.

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k. "PACE loan" means a loan made by a PACE lender to a borrower under this section for energy-efficiency improvements made to a commercial property.
l. "Reimbursable incentive" means an incentive that must be paid back to the city pursuant to the loan agreement upon the collection of the annual installments or the foreclosure proceeds.
m. "Subject property" means any property on which energy-efficiency improvements have been made and financed through an outstanding PACE loan.
3. STATE COMPLIANCE. Annual installments shall be considered special charges on the subject property, and each year's annual installment shall be levied onto the property tax bill of the subject property pursuant to s. 66.0627, Wis. Stats., as amended.
4. INCENTIVES. The city may offer incentives to the PACE lender subject to the availability of funds or grants.
5. AFFILIATE FINANCING. Nothing in this section shall be construed to prohibit an affiliate of the property owner of a commercial property, including without limitation, a single-member limited liability company owned by the property owner, from providing the funds for a PACE loan with respect to the property. In such case, the property owner shall be considered the borrower, and the affiliate shall be considered the PACE lender.
6. LOAN APPROVAL. a. A prospective borrower applying for a PACE loan shall comply with the loan application process as set forth in the program manual prepared by the department of administration.
b. The department of administration shall approve the financing arrangements between a borrower and a PACE lender.
7. LOAN AGREEMENT. a. The department of administration, the borrower and the PACE lender shall execute the loan agreement which:
a-1. Shall inform the participants that the loan amount shall be considered a special charge, and each year's annual installment shall be levied onto the property tax bill of the subject property as a special charge and be a lien against the subject property pursuant to s. 66.0627, Wis. Stats., as amended.
a-2. Shall set forth the amount of the annual installment due each year.
a-3. Shall stipulate any default interest to be applied to unpaid annual installments.
a-4. May provide for fees to the city to administer the program.
a-5. 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.
a-6. May allow for amendment by the parties.
b. Each loan shall be amortized over the term of the loan as provided in the loan agreement. The annual installments may be collected in 10 monthly installments pursuant to s. 74.87, Wis. Stats., as amended.
c. The city shall agree in the loan agreement to enforce the special charge under this section and to account for the funds collected as special charges with respect to each subject property.
d. The loan agreement shall require the PACE lender and the borrower to comply with all federal, state and local lending and disclosure requirements and this section.
8. ANNUAL INSTALLMENTS ADDED TO TAX BILLS. The department of administration, following the city's customary practices, shall cause each year's annual installment to be levied onto the property tax bill of the subject property as a special charge pursuant to

s. 66.0627, Wis. Stats., as amended, and be a lien against the subject property.

9. COLLECTION OF SPECIAL CHARGES. The department of administration, following the city's customary practices, shall cause each year's annual installments to be levied onto the appropriate property tax bills as special charges. The office of the treasurer shall follow its customary practices to collect special charges under this section once placed on the tax rolls, including assessing penalties and charging interest.

10. REMITTANCE OF SPECIAL CHARGES. a. The office of the treasurer shall not submit special charges levied onto property tax bills under this section to the city comptroller for remittance, or in any other way cause unpaid special charges under this section to be remitted to the department of administration, the PACE lender or any other party.

b. The department of administration shall regularly monitor the property tax bill accounts of subject properties, keep an accounting of payments received by the city for these special charges and obtain written confirmation of these payments from the office of the treasurer. The department of administration shall establish a procedure, in consultation with the city comptroller and the city treasurer, to authorize the city comptroller to remit payments received for special charges levied onto property tax bills under this section to the appropriate PACE lender, less any service fees or incentive reimbursement owed to the city by the PACE lender, taking special precautions to prevent remitting any monies before receipt by the city, on the following schedule:

b-1. Payments in full made by January 31 shall be remitted not later than February 28.

b-2. The sum of installment payments received by May 31 shall be remitted not later than June 30.

b-3. The sum of installment payments received between May 31 and October 31 shall be remitted not later than November 30.

11. ADMINISTRATION AND COLLECTION SERVICES FEES. The department of administration shall, in consultation with the city comptroller and the city treasurer, determine fees to charge the PACE lender for services rendered in administrating, collecting and remitting special charges levied onto property tax bills under this section, and shall include these fees in the loan agreement.

12. PROPERTY FORECLOSURE PROCEDURES. a. If an owner fails to pay special charges levied on a property under this section, either in full by January 31 or through a city-approved installment plan, the city treasurer, following its customary and ordinary practices, shall begin a property tax foreclosure proceeding on the subject property at the earliest time allowed under state statutes, unless the condition of the property, or for other reasons, the city determines a foreclosure is not in the best interests of the city. The department of administration shall inform the PACE lender eligible to receive special charge payment remittances on this property of the city’s determination not to pursue foreclosure within 30 days of the city’s determination not to proceed.

b. If the city is unwilling to foreclose on a subject property, under s. 75.521, Wis. Stats., the PACE lender may request that the city, pursuant to s. 75.106, Wis. Stats., assign the city’s right to take judgment against the subject property, provided the PACE lender fully complies with all provisions of s. 75.106, Wis. Stats., as amended, concerning the subject property, and agrees to reimburse the city for foreclosure costs, pays the city all other charges accruing to the foreclosed property, including but not limited to, special charges other than special charges levied on the property under this section, delinquent utility charges and personal property taxes, special assessments, special taxes, interest

and penalties, and property taxes.

13. INITIAL MARKETING PERIOD. a. If the city treasurer prevails in a property-tax foreclosure action against a subject property, the PACE lender may request, and the department of city development shall grant, if requested, a 90-day initial marketing period during which the department of city development shall consider offers to purchase the subject property from the PACE lender before considering any other purchase offers for the subject property. The PACE lender shall have 5 business days after receiving written notice that the department of city development is prepared to market the subject property for sale to request this 90-day initial marketing period, and the 90-day initial marketing period shall begin immediately upon the department of city development's receipt of the PACE lender's request.

b. No PACE lender in violation of s. 304-49-8 shall be eligible to request this 90-day initial marketing period, and a PACE lender shall not sell a subject property acquired under this section to any party in violation of s. 304-49-8.

c. Any purchase offer negotiated during this period shall be approved by the common council as provided in s. 304-49-7.

d. If the PACE lender sells a subject property acquired under this section for an amount that exceeds the sum of PACE default provisions and the purchase cost incurred to buy the property from the city, the PACE lender shall apply this excess to the amount owed the city on the subject property under sub. 14-c-1 to 6 less the amount paid to the city to acquire the property.

14. FORECLOSURE PROCEEDS DISTRIBUTIONS. a. If the city treasurer prevails in a property-tax foreclosure action against a subject property, the foreclosure proceeds shall be credited to the city's reserve for tax deficit fund in accordance with s. 304-49-11.

b. The department of administration shall determine the PACE default provisions when the city receives foreclosure proceeds on a subject property.

c. The department of administration, in consultation with the city comptroller and the city treasurer, shall develop a procedure to authorize the city comptroller to remit to the PACE lender a portion of the foreclosure proceeds to satisfy all or part of the PACE default provisions, provided the foreclosure proceeds exceed the sum total of:

c-1. All costs incurred by the city in pursuing this foreclosure action.

c-2. Any reimbursable incentives paid by the city to the PACE lender or the PACE lender's representative.

c-3. Any administrative fees stipulated in the loan agreement.

c-4. Any interest and penalties accruing to special charges added to the property tax bill under this section.

c-5. All other charges accruing to the foreclosed property, including but not limited to, special charges other than special charges levied on the property under this section, delinquent utility charges and personal property taxes, special assessments, special taxes, interest and penalties, and property taxes.

c-6. All foreclosure reconstructive costs.

APPROVED AS TO FORM

_____
Legislative Reference Bureau
Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

_____
Office of the City Attorney
Date: _____

LRB #145551 - 3
Aaron Cadle
June 21, 2013