



City of Grand Island

Tuesday, October 22, 2019

Council Session

Item F-2

#9752 - Consideration of Amending Chapter 37 of the Grand Island City Code Relative to Creating a Clean Energy Assessment District (PACE)

This item relates to the aforementioned Public Hearing item E-3.

Staff Contact: Jerry Janulewicz

ORDINANCE NO. 9752

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA TO AMEND CHAPTER 37 OF CITY CODE ADDING ARTICLE V. GRAND ISLAND PACE DISTRICT TO CREATE A CLEAN ENERGY ASSESSMENT DISTRICT; TO ESTABLISH DEFINITIONS; TO PROVIDE FOR THE FINANCING, ADMINISTRATION, AND COLLECTIONS, TO PROMOTE ENERGY EFFICIENCY IMPROVEMENTS AND RENEWABLE ENERGY SYSTEMS; TO CLARIFY AND/OR MAKE GENERAL CORRECTIONS TO VARIOUS CODE SECTIONS; TO REPEAL ANY ORDINANCE OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND TO PROVIDE THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND NEBRASKA:

SECTION 1. Chapter 37 Title and Article V. Sections 37-36 thru 37- of the Grand Island City Code is hereby amended to read as follows:

CHAPTER 37 PLANNING, COMMUNITY DEVELOPMENT AND GI-PACE

Article V. Grand Island PACE District

§37-36. Grand Island PACE (GI-PACE) District; Creation

The City of Grand Island desires to create a clean energy assessment district to enable property assessed clean energy financing for its property owners while; to authorize the clean energy assessment district to enable third-party lenders to accept applications and enter into financing agreements with property owners within the boundaries of the district; and to create a clean energy assessment district, which shall be known as the Grand Island PACE District (“GI-PACE”), as authorized by Nebraska Revised Statute Sections 13-3203 and 13-3204(3), which boundaries shall be the corporate boundaries of the City of Grand Island and its extraterritorial jurisdiction.

§37-37. Findings and Determinations

That the City Council of the City of Grand Island, Nebraska (the “City”), hereby finds and determines as follows:

Pursuant to Neb. Rev. Stat. §§13-3201 to 13-3211, inclusive, the Property Assessment Clean Energy Act (the “Act”), energy efficiency and the use of renewable energy are important for preserving the health and economic well-being of Nebraska’s citizens. Using less energy decreases the cost of living and keeps the cost of public power low by delaying the need for additional power plants. To further these goals, it is necessary for the City to promote energy efficiency improvements and renewable energy systems. Upfront costs for energy efficiency improvements and renewable energy systems may prohibit or deter many property owners from

Approved as to Form	by _____
October 18, 2019	City Attorney

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making improvements. It is necessary for the City to implement an alternative financing method through the creation of a clean energy assessment district.

Financing energy projects to further these goals is a valid purpose and can be accomplished through Property Assessed Clean Energy (“PACE”) financing, which is used to overcome the upfront costs for energy efficiency improvements and renewable energy systems by using private capital and equity, rather than public debt.

Pursuant to the Act and Neb. Rev. Stat. §13-3204, the City of Grand Island is authorized to establish a clean energy assessment district so that owners of qualifying property can access PACE financing for energy efficiency improvements or renewable energy improvements to their properties located in the City. The City also may enter into an agreement with one or more other municipalities pursuant to the Interlocal Cooperation Act, Neb. Rev. Stat. §§13-801, et seq., for the joint creation, administration, or creation and administration of clean energy assessment districts, pursuant to Neb. Rev. Stat. §13-3210. The City declares its intent that the provisions of this Chapter shall be in conformity with federal and state laws. The City enacts this Chapter pursuant to the Act, as amended.

§37-38. Title and Definitions

Except the words and phrases specifically defined below or in Neb. Rev. Stat. §13-3203, as amended, words and phrases used in this Article shall have their customary meanings. As used in this Chapter, the following words and phrases shall have the following meanings:

District. The City of Grand Island PACE District, created pursuant to this Chapter, as authorized by Neb. Rev. Stat. §§13-3203 and 13-3204(3), which boundaries shall be the corporate boundaries of the City and its extraterritorial jurisdiction.

District Administrator. The GI-PACE committee consisting of the Planning Director, Building Department Director, Public Works Director, Utilities Director and City Attorney, or the designee of each, or a third-party administrator selected by the City. The committee shall appoint a designee for signatures.

Energy Project. The installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system. Energy Projects shall be limited to projects having an estimated cost of \$250,000 or more.

PACE Financing. Funds provided to the owner(s) of qualified property by a third-party lender, pursuant to the Act and this Chapter, for an energy efficiency improvement or renewable energy system(s).

Qualifying Property. Commercial property, including multifamily residential property having more than four (4) dwelling units, and industrial property located in the District.

§37-39. District Boundaries and requirements Pursuant to Neb. Rev. Stat. §13-3204(3).

The City finds that the financing of energy efficiency improvements and renewable energy systems is a valid public purpose. Such public purposes include, but are not limited to, reduced energy and water costs, reduced greenhouse gas emissions, economic stimulation and development, improved property valuation, and increased employment.

- a) The boundaries of the District shall be the corporate boundaries of the City and its extraterritorial jurisdiction, as allowed pursuant to Neb. Rev. Stat. § 13-3204(1).
- b) The District Administrator shall use a form contract, as contained in the GI-PACE Manual, for assessment contracts among the City, the owner of the qualifying property, and a third-party lender, governing the terms and conditions of financing and annual assessments in accordance with the Act, including Neb. Rev. Stat. § 13-3205(1), which provides for repayment of the costs financed through annual assessments upon the qualifying property benefited by the energy project.
- c) The District Administrator is authorized to enter into assessment contracts on behalf of the City.
- d) The District Administrator will use a financing application process and eligibility requirements, which shall be more specifically defined in a program manual created by the District Administrator for financing energy projects in accordance with the requirements of the Act and accepted by the third-party lender.

§37-40. Minimum Program Eligibility Requirements

Submission of an application, contained in the GI-PACE Manual, to the District Administrator, which shall include, but not be limited to, the following information:

- a) Applicant name and contact information, including property owner and developer;
- b) Project location and legal description;
- c) Identification of contractor or supplier, including anticipated PACE contractor and a copy of the approved bid for the energy efficiency project;
- d) Project description;
- e) Total project cost; in an amount of not less than Two-Hundred Fifty Thousand (\$250,000.00) Dollars;
- f) Description of proposed improvements;
- g) Description of energy efficiency project to be financed;
- h) Amount of requested assessment;
- i) Interest rate on the PACE assessment and any required fees;
- j) Term of assessment;
- k) Energy savings report indicating estimated energy savings and estimated cost savings for the energy project issued by a duly licensed Nebraska Professional Engineer;

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- l) Whether the applicant is requesting a waiver of the estimated economic benefit requirement;
- m) Title report showing any mortgage or lien holders;
- n) Lender consent;
- o) Projected jobs created by PACE project;
- p) Project environmental benefits;
- q) Funding source; and
- r) All other such information as needed to demonstrate the project complies with all the requirements of the Act.

§37-41. Estimated Economic Benefit; Waiver; Denial; Appeal

The District Administrator may grant an applicant's request to waive the estimated economic benefit requirement. If the District Administrator denies the applicant's waiver request, the applicant may appeal the denial by submitting a request in writing to the City Administrator for the City. The appeal shall be mailed by certified mail or hand delivered to the City Administrator within fourteen (14) days after the denial. The City Administrator will review the matter on the record made by the District Administrator and, after providing the applicant an informal opportunity to be heard, the City Administrator will make the final decision.

§37-42. Project Eligibility

The District Administrator shall review the application to determine whether the energy project meets the eligibility requirements of the Act and this Ordinance. An energy project shall not be eligible for PACE financing if the qualifying property is subject to any of the following:

- a) Delinquent ad valorem taxes;
- b) Delinquent personal property taxes;
- c) Delinquent special assessments;
- d) Overdue or delinquent electric, water or sewer charges;
- e) Involuntary liens, including but not limited to construction liens;
- f) Notice of default pursuant to any mortgage or deed of trust related to the qualifying property, or
- g) If the property owner or property developer is delinquent in the payment of any assessment required to be paid for any energy efficiency improvement financed pursuant to the Act.

§37-43. Application Approval

If the energy project is determined to be eligible under the terms of the Act and as required in this Chapter, the District Administrator shall review the application and approve, request additional information, or deny the application at their discretion.

§37-43. Assessment Contract

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Upon approval of an application, the District Administrator is authorized to proceed with and execute an assessment contract. The form Contract is attached as “Exhibit A.”

§37-44. Assessment Levy

Pursuant to Neb. Rev. Stat. § 13-3205(7), annual assessments agreed to under an assessment contract shall be levied against the qualifying property and collected in accordance with the Act.

§37-45. Debt Servicing

The District shall establish procedures to determine the following in the future:

- a) Subject to prior approval of the City Council, the District Administrator or third party administrator shall establish Pprovisions for an adequate debt service reserve fund created under Neb. Rev. Stat. §13-3209, if applicable;
- b) Subject to prior approval of the City Council, the District Administrator or third party administrator shall establish Pprovisions for an adequate loss reserve fund created under Neb. Rev. Stat. §13-3208, if applicable; and
- c) Any application, administration, or other program fees to be charged to owners participating in the program that will be used to finance costs incurred by the City as a result of the program.

§37-46. Assessment Term.

The assessment term shall not exceed the weighted average useful life of the energy project paid for by the annual assessments.

§37-47. Transfer Upon Sale; Movable Property

Any energy efficiency improvement that is not permanently affixed to the qualifying property upon which an annual assessment is imposed to repay the cost of such energy efficiency improvement must be conveyed with the qualifying property if a transfer of ownership of the qualifying property occurs during the assessment term.

§37-48. Transfer Upon Sale; Purchaser Assumes Responsibility

Prior to the effective date of any contract that binds the purchaser to purchase qualifying property upon which an annual assessment is imposed, the owner shall provide notice to the purchaser that the purchaser assumes responsibility for payment of the annual assessment as provided in Neb. Rev. Stat. § 13-3205(3)(d), and that the obligations set forth in the assessment contract, including the obligation to pay annual assessments, are a covenant that shall run with the land and be assessed upon future owners of the qualifying property.

§37-49. Marketing and Participant Education

In connection with providing PACE financing, the City will provide for marketing and participant education.

§37-50. Verification of Operation

The City shall obtain, or applicable third-party lenders shall obtain and provide to the City, written verification by a duly licensed Nebraska Professional Engineer that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended.

§37-51. Authorization for PACE Program.

Pursuant to Neb. Rev. Stat. § 13-3204(1), the District shall be governed by the Grand Island City Council.

- a) The District Administrator shall comply with the Act and the provisions of this Chapter and follow any applicable City procurement policy and procedures for selecting a third-party administrator, should a third-party administrator be selected for the administration of the PACE program. Any such third-party administrator must ensure that there is no financial requirement, liability, or exposure to the District or City. The District Administrator as defined in Section 2 of this ordinance may serve as the administrator of the PACE program for the District and City.
- b) The District or City may also engage the services of a state or local financing agency for the purposes of providing conduit bond financing for the District or City as part of its third-party administration.
- c) Upon selection of a third-party administrator, that third-party administrator may, on behalf of the City, accept applications for financing energy efficient improvements within the District boundaries, facilitate the financing application process, and review eligibility requirements for financing energy projects in accordance with the requirements of the Act and as accepted by the third-party lender.
- d) The District may be expanded via the Interlocal Cooperation Act in order to create a program of sufficient size and scale to attract qualified third-party administrators and/or to promote energy efficiency across multiple political subdivisions, as authorized under the Act.

§37-52. Liability of City Officials; Liability of City

That notwithstanding any other provision of law to the contrary, officers, officials, employees, or agents of the City, the District, or Hall County shall not be personally liable to any person or entity for any claims, liabilities, costs, or expenses, of whatever kind or nature, under, arising out of, or related to the City's or District's participation in the District's PACE Program or any PACE Financing, including, without limitation, claims for or related to uncollected PACE

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Assessments. Not in limitation of the foregoing, the City has no liability to a property owner or lender for or related to energy savings improvements or funding under a PACE Financing or Program, other than to remit PACE Assessments received in accordance with the Act.

SECTION2. Any Ordinance or parts of ordinances in conflict herewith be, and hereby are, repealed.

SECTION 3. That this ordinance shall be in force and take effect from and after its passage and publication, within fifteen days in one issue of the *Grand Island Independent* as provided by law.

Enacted: October 22, 2019

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk