

THIS IS A PROPOSED DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED ORDINANCE OR
RESOLUTION ADOPTED BY THE CITY COUNCIL.

AN ORDINANCE TO ESTABLISH

WHEREBY THE CITY OF SAN ANTONIO ESTABLISHES THE CITY OF SAN ANTONIO PROPERTY ASSESSED CLEAN ENERGY PROGRAM

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WHEREAS, the 83rd Regular Session of the Texas Legislature enacted the Property Assessed Clean Energy Act, Texas Local Government Code Chapter 399 (the PACE Act); and

WHEREAS, the PACE Act allows the governing body of a local government (including a city), to designate an area of the territory as a region where an authorized representative of a local government and record owner(s) of commercial, industrial, non-profit, and large multifamily residential (five or more dwelling units) real property, enter into written contract(s) to finance permanent, fixed energy and water conserving improvements through contractual assessments (PACE financing); and

WHEREAS, these contractual assessments on commercial, industrial, non-profit and large multifamily residential (five or more dwelling units) real property enforce repayment of the financing provided to the record the owner(s) for permanent, fixed improvements to real property intended to decrease energy or water consumption or demand; and

WHEREAS, the City Council finds that third-party PACE financing through contractual assessments maintained by the City furthers essential government purposes, including but not limited to, economic development, reduction of energy consumption and costs, conservation of water resources, reduction of greenhouse gas emissions and reduction of energy and water consumption at no additional cost to the public; and

WHEREAS, on February 20, 2020, the City Council adopted a Resolution of Intent to establish the City of San Antonio (COSA) PACE program; and

WHEREAS, in the Resolution of Intent, a reference to a report, detailing the proposed program, was made available to the public digitally at the COSA website and in the Economic Development Department Offices, at City Tower, 100 W. Houston St., Suite 1900, San Antonio, Texas 78205; and

WHEREAS, additionally on February 20, 2020, the City Council adopted an Ordinance authorizing an Interlocal Agreement between the City of San Antonio and the Alamo Area Council of Governments (AACOG) establishing AACOG as the Third-Party Administrator for the COSA PACE Program; and

OR/DEF
03/05/2020
Item No.

WHEREAS, AACOG will not receive any City funding by serving as the Third-Party Administrator for the COSA PACE Program, and any compensation AACOG receives through this Program shall be solely through the application and administration fees paid by participating property owners. Additionally, third-party administration by AACOG ensures impartiality and confidentiality is maintained of owner information; and

WHEREAS, the City Council finds City funds will not be expended for PACE financing of AACOG's services, and selection of additional independent third-party Authorized Representative(s) by AACOG are subject to a competitive solicitation process solely conducted and managed by AACOG; and

WHEREAS, during the City Council A Session on March 5th, 2020, at 9:00 a.m., in City Council Chambers, located at the Municipal Plaza Building, 114 W. Commerce St., San Antonio, Texas 78205, a public hearing on the proposed COSA PACE program and report was held: **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The recitals to this Ordinance are true and correct and incorporated into this Ordinance for all purposes.

SECTION 2. Establishment of Program. The City Manager, or his/her designee, is authorized to execute all documents necessary to fulfill the purpose and intent of this Ordinance. The City of San Antonio hereby adopts this Ordinance to Establish the COSA PACE Program, and finds financing qualified projects through contractual assessments pursuant to the PACE Act a valid public purpose that is convenient and advantageous to the City and its citizens.

SECTION 3. Contractual Assessments. At the property owner's request, the City will impose contractual assessments on the property to repay PACE financing for qualified energy and water conserving projects of privately owned commercial, industrial, non-profit and large multifamily property.

SECTION 4. Qualified Projects. The following projects qualify for PACE financing and may be subject to contractual assessments:

- a) Projects involving the installation or modification of a permanent improvement fixed to privately owned commercial, industrial, non-profit or residential real property with five or more dwelling units, and
- b) Projects intended to decrease energy consumption, water consumption or demand for energy or water. This may include a product, device, or interacting group of products or devices on the customer's side of the meter using energy technology to generate electricity, provide thermal energy, or regulate temperature.

SECTION 5. Assessments may not be used to repay financing of facilities for undeveloped lots, lots undergoing development at the time of the assessment, or the purchase or installation of products or devices not permanently fixed to real property.

SECTION 6. Region. The boundaries of the entire geographic area, the San Antonio city limits, are within the City's jurisdiction and included in the boundaries of the region where PACE financing and assessments can occur.

SECTION 7. Third- Party Financing. Financing for qualified projects under the COSA PACE Program is provided by qualified third-party lenders chosen by the owners. These lenders will execute written contracts with the Third-Party Administrator to service the debt through assessments required under the PACE Act. Under the contracts, lenders must first determine the financial ability of owners to fulfill the financial obligations to repay through assessments, then advance funds to owners on terms agreed upon between the lenders and the owners for the installation or modification of qualified projects, and then finally service the debt secured by the assessments, directly or through a servicer, collecting payments from the owners pursuant to financing documents that are executed between the lenders and the owners. The City will maintain and continue the assessments for the benefit of lenders and in the event of a default by an owner enforce the assessment lien for the benefit of a lender. The City will not, provide financing for the COSA PACE program.

SECTION 8. Authorized Representative. On February 20, 2020, an Interlocal Agreement between the City of San Antonio and the AACOG established AACOG as the Third-Party Administrator for the COSA PACE Program. AACOG shall select additional independent third-party Authorized Representative(s) through a competitive solicitation process that is solely conducted and managed by AACOG. The City Council contract with these independent Authorized Representatives, who then enter into written contracts with record owner(s) of real property in the region and in accordance with City Council adopted criteria. Independent Authorized Representatives are then authorized to do the following on behalf of the City: impose assessments on a record owners' property pursuant to the PACE Act, to repay financing for qualified projects; enter into written contracts between the parties providing third-party financing for qualified projects, so as to service the debts through contractual assessments; and, file written notice of these contractual assessments in the Bexar County real property records office. The Authorized Representative may make technical and conforming updates as necessary, so long as the changes are consistent with the ordinance to establish the COSA PACE program and the statute. The City Manager or his/her designee will be the liaison with the Authorized Representative.

SECTION 9. Enforcement. The City will enforce the collection of past due assessments and may contract with a qualified law firm to assist in collection efforts.

SECTION 10. Report. The final report on the PACE program, prepared in accordance with Section 399.009 of the Texas Local Government Code attached here as **Attachment I** and incorporated into this ordinance.

OR/DEF
03/05/2020
Item No.

SECTION 11. Amendment of Program. The City Council may amend the COSA PACE Program by resolution. However, public hearing is required before the Program may be amended to provide for City financing of qualified improvements through assessments.

SECTION 12. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 5th day of March 2020.

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

Andrew Segovia, City Attorney