

1 191-92017

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3 **ORDINANCE: Create Section 3.15 of the General Code of Winnebago County: Property**
4 **Assessed Clean Energy (PACE) Financing Ordinance**

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7 **TO THE WINNEBAGO COUNTY BOARD OF SUPERVISORS:**

8 **WHEREAS**, the Winnebago County Board of Supervisors adopted a resolution on September 19, 2017,
9 which authorized Winnebago County to become a member of a Property Assessed Clean Energy (PACE)
10 Commission in order to provide real property owners, lessees, lenders, and other financial parties in
11 Winnebago County with access to a uniformly-administered program to provide PACE financing as authorized
12 by § 60.0627(8), Wis Stats, and

13 **WHEREAS**, in order to implement the authority provided in said resolution, it is necessary for
14 Winnebago County to enact an enabling ordinance;

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16 **NOW, THEREFORE**, the Winnebago County Board of Supervisors does ordain as follows: That
17 Section 3.15 of the General Code of Winnebago County is hereby adopted to read as follows:

18 **3.15 PROPERTY ASSESSED CLEAN ENERGY (PACE) FINANCING**

19 (1) **PURPOSE:** Winnebago County finds that renovations or additions to premises located in Winnebago
20 County made to improve energy efficiency, improve water efficiency, and/or use renewable resource
21 applications, increase property values, stimulate local economic activity, provide local and global environmental
22 benefits, and promote the general welfare of Winnebago County residents. The purpose of this Ordinance is to
23 facilitate loans arranged by property owners or lessees to make such improvements by treating loan principal
24 and interest, fees, and other charges as special charges eligible for inclusion on the tax roll for these properties.

25 (2) **DEFINITIONS:** In this Chapter:

26 (a) **Annual Installment:** The portion of the PACE loan that is due and payable for a particular year
27 under the supplemental agreement.

28 (b) **Borrower:** The property owner or lessee of the subject property that borrows the proceeds on a
29 PACE loan.

30 (c) **Default Loan Balance:** The outstanding balance, whether or not due, of a PACE loan at the time
31 that the County receives foreclosure proceeds.

32 (d) **Foreclosure Proceeds:** The proceeds received by Winnebago County from the disposition of a
33 subject property through an *in rem* property tax foreclosure.

34 (e) **Loan Amount:** The principal, interest, administrative fees (including the Program Administrator's
35 fees), and other loan charges to be paid by the borrower under the PACE loan.

36 (f) **PACE:** Property Assessed Clean Energy.

37 (g) **PACE Default Provisions:**

38 1. The delinquent annual installment(s) due when Winnebago County initiates an *in rem* property
39 tax foreclosure on the subject property;

40 2. Any additional annual installment(s) that become due between the time that Winnebago
41 County initiates an *in rem* property tax foreclosure on the subject property and the date the County receives the
42 foreclosure proceeds.

43 3. Any default interest charges applied to unpaid annual installments referenced in Subsections
44 (2)(g)1. and 2., above, as provided in the supplemental agreement; and

45 4. Any default loan balance.

46 (h) **PACE Lender:** Any person that makes a PACE loan, which may include an affiliate of the
47 borrower.

48 (i) **PACE Loan:** A loan made by a PACE lender to a borrower under this Section for energy
49 efficiency improvements, water efficiency improvements, or renewable resource applications made to or
50 installed on a subject property.

51 (j) **Person:** Any individual, association, firm, corporation, partnership, limited liability company, trust,
52 joint venture, or other legal entity or a political subdivision as defined in § 66.0627, Wis Stats.

53 (k) **Program Administrator:** The person retained by the Wisconsin PACE Commission as provided
54 in Subsection (5)(b).

55 (l) **Subject Property:** Any premises located in Winnebago County on which energy efficiency
56 improvements, water efficiency improvements, or renewable resource applications are being or have been
57 made and financed through an outstanding PACE loan.

58 (m) **Supplemental Agreement:** A written agreement among a borrower, a PACE lender, and
59 Winnebago County as provided for in Subsection (7).

60 (n) **Wisconsin PACE Commission:** The Wisconsin PACE Commission formed under
61 § 66.0301, Wis Stats, as may be amended by Winnebago County, and one or more other political subdivisions
62 as defined in § 66.0627, Wis Stats, pursuant to a Joint Exercise of Powers Agreement relating to the Wisconsin
63 PACE Commission as provided hereafter.

64 (3) **STATUTORY AUTHORITY:** This Section is enacted pursuant to § 66.0627, Wis Stats, as may be
65 amended, which authorizes a county to make a loan or enter into an agreement regarding loan repayments to a
66 third party for owner-arranged or lessee-arranged financing to an owner or a lessee of a premises located in the
67 county for making or installing an energy efficiency improvement, a water efficiency improvement, or a
68 renewable resource application to a premises..

69 (4) **PACE LOANS AS SPECIAL CHARGES; DELINQUENT AMOUNTS AS LIENS:** Any PACE loan
70 made and secured pursuant to this Chapter shall be considered a special charge on the subject property. Any
71 installment or portion of a PACE loan made and secured pursuant to this Chapter that becomes delinquent
72 according to the terms of the PACE loan shall be a lien against the subject property and placed on the tax roll
73 as permitted pursuant to § 66.0627, Wis Stats, as may be amended.

74 (5) **WISCONSIN PACE COMMISSION:**

75 (a) In the event a Wisconsin PACE Commission is formed and Winnebago County becomes the
76 originator of such PACE Commission and any Joint Exercise of Powers Agreement thereunder, any of the
77 powers and duties of Winnebago County under this Chapter, except for those under Subsection (9) may (but
78 are not required to) be delegated to the Wisconsin PACE Commission.

79 (b) The Wisconsin PACE Commission shall further be authorized to retain a Program Administrator to
80 act as its agent and administer the PACE program, subject to adherence with PACE program requirements
81 consistent with this Chapter and § 66.0627, Wis Stats, as may be amended.

82 (6) LOAN APPROVAL:

83 (a) A prospective borrower applying for a PACE loan shall comply with the loan application process
84 set forth in the program manual approved by Winnebago County.

85 (b) The financing arrangements between a borrower and PACE lender shall be subject to the
86 approval of Winnebago County.

87 (7) SUPPLEMENTAL AGREEMENT:

88 (a) The County, the borrower, and the PACE lender shall execute the supplemental agreement
89 which, without limitation:

90 1. Shall inform the participants that the PACE loan amount shall, if requested by the Program
91 Administrator, be imposed as and considered a special charge, and any year's annual installment, if delinquent,
92 may be included on the property tax roll of the subject property as a special charge, and an annual installment
93 that is delinquent shall be a lien against the subject property pursuant to § 66.027, Wis Stats, as may be
94 amended;

95 2. Shall recite the amount and the term of the PACE loan;

96 3. Shall provide for the amount or a method for determining the amount of the annual installment
97 due each year;

98 4. Shall provide whether default interest shall be applied to unpaid annual installments;

99 5. Shall require the PACE lender and the borrower to comply with all federal, state, and local
100 lending and disclosure requirements;

101 6. Shall provide for any fees payable to Winnebago County and/or the Program Administrator;

102 7. Shall recite that the supplemental agreement is a covenant that runs with the land;

103 8. May provide for prepayments of annual installments by the borrower with a resulting reduction
104 in the special charge for the prepayment, subject to any prepayment premium charged by the PACE lender, if
105 any; and

106 9. May allow for amendment by the parties.

107 (b) Prior to executing the supplemental agreement, the owner of the subject property, if different from
108 the borrower, and any existing mortgage holder(s) on the subject property, must have executed a separate
109 writing acknowledging the borrower's use of PACE financing for the subject property and the special charge
110 that will be imposed under this Chapter and its consequences, including the remedies for collecting the special
111 charge.

112 (c) Each PACE loan shall be amortized over the term of the PACE loan as provided in the
113 supplemental agreement.

114 (d) The annual payments of a PACE loan may be payable in installments as authorized by
115 § 66.0627, Wis Stats, as may be amended.

116 (8) ANNUAL INSTALLMENTS ADDED TO TAX ROLLS: Upon the request of the Program Administrator,
117 Winnebago County shall place any year's annual installment, if delinquent, on the tax roll for the subject
118 property as permitted pursuant to § 66.0627, Wis Stats, as may be amended.

119 (9) REMITTANCE OF SPECIAL CHARGES: Winnebago County shall promptly remit to the Wisconsin
120 PACE Commission any payment(s) it receives with respect to any special charge imposed under this
121 Subsection including penalties and charges thereon it may receive from any taxing district or the Winnebago
122 County Treasurer pursuant to Chapter 74, Wis Stats, as amended, subject to Winnebago County retaining any
123 agreed-upon portion thereof for its own costs and expenses attributable to administering the PACE loan and its
124 collection.

125 (10) PROPERTY TAX FORECLOSURE PROCEDURES:

126 (a) If a subject property owner fails to pay any special charges imposed on the subject property under
127 this Section as required, Winnebago County may proceed in collecting the special charge pursuant to the
128 General Code for Winnebago County.

129 (b) Winnebago County shall begin an *in rem* property tax foreclosure proceeding on the subject
130 property at the earliest time allowed under the Wisconsin Statutes unless the County determines that that
131 subject property is a "brownfield" (as defined in § 75.106, Wis Stats, as may be amended) or that *in rem*
132 property tax foreclosure is not in the best interests of the County due to the condition of the property or other
133 reasons.

134 (c) If Winnebago County has determined that it will not commence an *in rem* property tax foreclosure
135 proceeding, then the PACE lender may request that the County, pursuant to § 75.106, Wis Stats, as may be
136 amended, assign the County's right to take judgment against the subject property, provided that the PACE
137 lender and the County fully comply with all provisions of § 75.106, Wis Stats, as may be amended, concerning
138 the subject property, and the PACE lender agrees to pay the amounts required by § 75.36(3)(a)1 and 1m,
139 Wis Stats, as may be amended.

140 (11) EFFECTIVE DATE: The herein Ordinance shall take effect on October 15, 2017.

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142 Respectfully submitted by:

143 **PERSONNEL AND FINANCE COMMITTEE**

144 Committee Vote: **3-1**

145 Vote Required for Passage: **Majority of Those Present**

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147 Approved by the Winnebago County Executive this ____ day of _____, 2017.

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150 _____
151 Mark L Harris
152 Winnebago County Executive