

ORDINANCE NO. 2345

AN ORDINANCE OF THE CITY OF YORK, NEBRASKA TO CREATE A CLEAN ENERGY ASSESSMENT DISTRICT; TO ESTABLISH DEFINITIONS; TO PROVIDE FOR FINANCING, ADMINISTRATION, AND COLLECTIONS, TO PROMOTE ENERGY EFFICIENCY IMPROVEMENTS AND RENEWABLE ENERGY SYSTEMS; AND TO PROVIDE THE EFFECTIVE DATE HEREOF.

WHEREAS, the City of York desires to create a clean energy assessment district to enable property assessed clean energy financing for its property owners; and,

WHEREAS, the City also desires 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,

WHEREAS, this Ordinance upon execution, shall create a clean energy assessment district, which shall be known as the York PACE District, as authorized by Neb. Rev. Stats. §§ 13-3203 and 13-3204(3), which boundaries shall be the corporate boundaries of the City of York and its extraterritorial jurisdiction.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF YORK, NEBRASKA:

Section 1. Findings and Determinations.

That the City Council of the City of York, Nebraska (the "City"), hereby finds and determines as follows:

Pursuant to Neb. Rev. Stats. §§13-3201 to 13-3211, inclusive, the Property Assessed 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. Up-front costs for energy efficiency improvements and renewable energy systems may prohibit or deter many property owners from 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 public purpose and can be accomplished through Property Assessed Clean Energy ("PACE") financing, which is used to overcome the up-front 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 York 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. Stats. §§ 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 Ordinance shall be in conformity with federal and state laws. The City enacts this Ordinance pursuant to the Act, as amended.

Section 2. Title and Definitions.

That this Ordinance shall be known and may be cited as "The City of York Property Assessed Clean Energy (PACE) Ordinance." Except the words and phrases specifically defined below or in Neb. Rev. Stat. § 13-3203, as amended, words and phrases used in this Ordinance shall have their customary meanings. As used in this Ordinance, the following words and phrases shall have the following meanings:

"District" means the York PACE District, created pursuant to this Ordinance, as authorized by Neb. Rev. Stats. §§ 13-3203 and 13-3204(3), which boundaries shall be the corporate boundaries of the City and its extraterritorial jurisdiction.

"District Administrator" means the City Administrator or a designated representative, or a third-party administrator selected by the City.

"PACE financing" means funds provided to the owner(s) of qualified property by third-party lender, pursuant to the Act and this Ordinance, for an energy efficiency improvement or renewable energy system(s).

"Qualifying Property" means commercial property and industrial property.

Section 3. District Boundaries and Requirements Pursuant to Neb. Rev. Stat. § 13-3204(3).

- A. The City finds that the financing of energy efficiency improvements and renewable energy systems is a valid public purpose. Such public purpose includes, but is not limited to, reduced energy and water costs, reduced greenhouse gas emissions, economic stimulation and development, improved property valuation, and increased employment.
- B. 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).
- C. The District Administrator shall use a form contract for assessment contracts

between the City, the owner of the qualifying property, and a third-party lender, containing terms as attached hereto as Exhibit "A," 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 benefitted by the energy project.

- D. The District Administrator is authorized to enter into assessment contracts on behalf of the City.
- E. The annual assessments will be made and collected as provided in the form contract.
- F. 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 as attached hereto as Exhibit "B," for financing energy projects in accordance with the requirements of the Act and accepted by the third-party lender. The application process and program eligibility requirements shall be, at a minimum, as follows:
 - i. Submission of an application as attached hereto as Exhibit "C" 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;
 - 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;
 - l) Title report showing any mortgage or lien holders;
 - m) Lender consent;
 - n) Funding source;
 - o) All other such information as needed to demonstrate the project complies with all the requirements of the Act.
- ii. 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 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.
- iii. The District Administrator shall determine that there are sufficient resources to complete the energy project and that the energy project creates an estimated economic benefit, including, but not limited to, energy and water cost savings, maintenance cost savings, and other property operating savings expected during the financing period, which is equal to or greater than the principal cost of the energy project. The estimated economic benefit may be derived from

federal, state, or third-party engineer certifications or from standards of energy or water savings associated with a particular energy efficiency improvement or set of energy efficiency improvements. The City may waive the requirements of this subdivision upon request of the owner of the qualifying property, and, if such request is denied, the owner may appeal the denial to the Mayor.

- iv. If the energy project is determined to be eligible under the terms of the Act and as required in this Ordinance, the District Administrator shall review the application and approve, request additional information, or deny the application at his/her sole discretion.
 - v. Upon approval of an application, the District Administrator is authorized to proceed with and execute an assessment contract.
- G. 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.
- H. The District shall establish procedures to determine the payment of fees to be charged to owners participating in the program that will be used to finance the costs incurred by the City as a result of the program. The fees are as follows:

Application fee \$500

A one-time administrative processing fee to the City in the amount of 1% of the project costs financed through the Loan (i.e., the Loan amount less all fees and expenses incurred in issuing the Loan), not to exceed Forty Thousand Dollars (\$40,000.00). The administrative fee shall be subject to a 50% reduction for a project that is also responsible for tax increment financing (TIF) fees. The TIF reduction to the administrative fee is calculated before the cap is considered. For example: an administrative fee of \$54,000 is reduced to \$27,000 before considering the administrative cap of \$40,000. Such payment shall be included in the initial Installment.

Annual fee \$250

Any costs shall be deducted before remitting the assessment.

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

- K. 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.
- L. In connection with providing PACE financing, the City will provide for marketing and participant education.
- M. The City shall obtain, or applicable third-party lenders shall obtain and provide to the City, verification that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended.

Section 4. Authorization for PACE Program.

That, pursuant to Neb. Rev. Stat. § 13-3204(1), the District shall be governed by the York City Council.

- A. The District Administrator shall comply with the Act and the provisions of this Ordinance 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.

Section 5. 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 York 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 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 or notify the County of a delinquency in payment pursuant to applicable law

Section 6. All ordinances and parts of ordinances in conflict herewith are repealed.

Section 7. This ordinance shall take effect and be in full force and effect from and after its passage, approval and publication as required by law.

PASSED AND APPROVED by the York City Council this 3 day of November, 2022.


Barry Redfern, Mayor

ATTEST:


Amanda Ring, York City Clerk

