

RESOLUTION R-033-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS, ESTABLISHING A PROPERTY ASSESSED CLEAN ENERGY PROGRAM.

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”), which allows the governing body of a local government, including a City to designate an area of the territory of the local government as a region within which an authorized representative of a local government and the record owners of commercial, industrial, and large multifamily residential (5 or more dwelling units) real property may enter into written contracts to impose assessments on the property to repay the financing by the owners of permanent improvements fixed to the property intended to decrease energy or water consumption or demand;

WHEREAS, the installation or modification by property owners of qualified energy or water saving improvements to commercial, industrial, and large multifamily residential real property in the City of Borger will further the goals of energy and water conservation without cost to the public;

WHEREAS, the City Council finds that third-party financing of energy and water conserving projects through contractual assessments maintained by the City of Borger (“PACE financing”) furthers essential government purposes, including but not limited to, economic development, reducing energy consumption and costs, conserving water resources, and reducing greenhouse gas emissions;

WHEREAS, the City Council adopted a Resolution of Intent to establish a PACE program for City on November 5th, 2019, including a reference to the report on the proposed program prepared as required by Section 399.009 of the PACE Act and made the report available to the public on the City’s website and for inspection in the City Manager’s office;

WHEREAS, The City Council finds that the administration of the PACE program by a qualified non-profit organization as an independent third-party Authorized Representative contracted by City and compensated by application and administration fees paid by the participating property owners, will enable the program to be administered without use of City resources, will assure the objectives of impartiality and confidentiality of owner information, and will be convenient and advantageous to the City and

WHEREAS, the City Council also finds that because no City funds will be expended for PACE financing of the Authorized Representative’s services, the selection of

such an independent third-party Authorized Representative is not subject to the Professional Services Procurement Act or other City purchasing requirements; and

WHEREAS, the City Council held a public hearing on November 19th, 2019 at 1:30 PM in the City Council Chambers, 600 N. Main Street, Borger, Texas, at which the public could comment on the proposed program, including the report available for public inspection as mentioned above and as required by Section 399.008(a)(2):

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BORGER, TEXAS THAT:

1. Recitals. The recitals to this Resolution are true and correct and are incorporated into this resolution for all purposes.
2. Establishment of Program. The City of Borger hereby adopts this Resolution Establishing the City of Borger Property Assessed Clean Energy Program (“Borger PACE”), herein called “the Program,” and finds that financing qualified projects through contractual assessments pursuant to the PACE Act is a valid public purpose and is convenient and advantageous to the City and its citizens.
3. Contractual Assessments. The City will, at the property owner’s request, impose contractual assessments on the property to repay PACE financing for qualified energy and water conserving projects available to owners of privately owned commercial, industrial, and large multifamily property.
4. Qualified Projects. The following types of projects are qualified projects for PACE financing that may be subject to such contractual assessments:

Projects that (a) involve the installation or modification of a permanent improvement fixed to privately owned commercial, industrial, or residential real property with five (5) or more dwelling units, and (b) are intended to decrease energy or water consumption or demand, including a product, device, or interacting group of products or devices on the customer’s side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

An assessment may not be imposed to repay the financing of facilities for undeveloped lots or lots undergoing development at the time of the assessment or the purchase or installation of products or devices not permanently fixed to real property.

5. Region. The boundaries of the entire geographic area within City’s jurisdiction, including its extra territorial jurisdiction (ETJ) are included in the boundaries of the region where PACE financing and assessments can occur.

6. Third- Party Financing. Financing for qualified projects under the Program will be provided by qualified third-party lenders chosen by the owners. Such lenders will execute written contracts with the Authorized Representative to service the debt through assessments, as required by the PACE Act. The contracts will provide for the lenders to determine the financial ability of owners to fulfill the financial obligations to be repaid through assessments, advance the funds to owners on such terms as are agreed between the lenders and the owners for the installation or modification of qualified projects, and service the debt secured by the assessments, directly or through a servicer, by collecting payments from the owners pursuant to financing documents executed between the lenders and the owners. The City will maintain and continue the assessments for the benefit of such lenders and will enforce the assessment lien for the benefit of a lender in the event of a default by an owner. The City of Borger will not, at this time, provide financing of any sort for the City's PACE program.
7. Authorized Representative. The City Council will designate the Texas PACE Authority, a non-profit organization, to act as the Authorized Representative with authority to enter into written contracts with the record owners of real property in the City of Borger to impose assessments pursuant to the PACE Act to repay the financing of qualified projects on the owners' property, to enter into written contracts with the parties that provide third-party financing for such projects to service the debts through assessments, and to file written notice of each contractual assessment in the real property records of the Hutchinson County, all on behalf of City. The Authorized Representative may make technical and conforming updates as necessary so long as the changes are consistent with the resolution to establish the PACE program and the statute. The Mayor or his designee will be the liaison with the Authorized Representative.
8. Enforcement. The City will enforce the collection of past due assessments and may contract with a qualified law firm to assist in collection efforts.
9. Report. The final report on the - PACE program, prepared in accordance with Section 399.009 of the Texas Local Government Code is attached and incorporated into this resolution. The City will post the resolution and report on the City's website.
10. Amendment of Program. The City Council may amend the City's PACE Program by resolution. However, another public hearing is required before the Program may be amended to provide for City financing of qualified improvements through assessments.

PASSED, APPROVED, AND ADOPTED, on this the 19th day of November, 2019, at a regular meeting of the City Council of the City of Borger, Texas which meeting was held in compliance with the Open Meetings Act, Tex Gov't Code, §551.001, et.seq. at which meeting a quorum was present and voting.

Marvin “Bubba” Dickson, Mayor
City of Borger

Marvin “Bubba” Dickson
Mayor

Charles, “Pete”, Loftis
Council Member Place 1

Karen Felker
Mayor Pro Tem, Place 2

James Marrs II
Council Member Place 3

Milton R. Ooley
Council Member, Place 5

ATTEST:

Stella Sauls, City Secretary
City of Borger