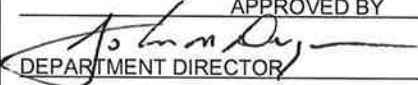



AGENDA ITEM NO. 9:15 AM#1 A
<u>COUNCIL MEETING: 12/16/2010</u>
APPROVED BY

DEPARTMENT DIRECTOR
CITY MANAGER

December 16, 2010

FROM: JOHN M. DUGAN, Director
Development and Resource Management Department

THROUGH: KEITH BERGTHOLD, Assistant Director
Development and Resource Management Department

BY: JOSEPH W. OLDHAM, Sustainability Manager 
Sustainable Fresno Division, Development and Resource Management Department

SUBJECT: **ADOPT A RESOLUTION OF THE CITY OF FRESNO DECLARING ITS INTENTION TO FORM A CONTRACTURAL ASSESSMENT DISTRICT TO PARTICIPATE IN THE CALIFORNIA PROPERTY ASSESSED CLEAN ENERGY PROGRAM TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY AND WATER EFFICIENCY IMPROVEMENTS FOR PROPERTY WITHIN THE CITY PURSUANT TO CHAPTER 29 OF PART 3 OF DIVISION 7 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE AND SETTING A PUBLIC HEARING THEREON FOR JANUARY 13, 2011 AT 10:00 AM**

RECOMMENDATIONS

Staff recommends that the City Council adopt a resolution of the City of Fresno declaring its intention to form a voluntary contractual assessment district to participate in the California Property Assessed Clean Energy Program to finance distributed generation renewable energy sources and energy and water efficiency improvements for property within the city pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code and setting a public hearing thereon for January 13, 2011.

EXECUTIVE SUMMARY

The Sustainable Fresno Division of the Planning and Development Department has been seeking to develop a financing program for energy efficiency upgrades on homes and businesses that would allow repayment through property taxes under the authority of State Assembly Bill 811. These financing programs developed to implement State Assembly Bill 811 are nationally referred to as PACE or Property Assessed Clean Energy programs. Council approved participation in the CaliforniaFIRST PACE program that focused on residential and commercial properties on January 14, 2010. However, the CaliforniaFIRST program was cancelled in August of 2010 prior to program implementation and assessments being levied due to an adverse opinion by the Federal Housing Finance Agency (FHFA) that PACE assessments were a violation of mortgage contracts for residential properties and the subsequent uncertainty surrounding residential PACE programs. Numerous lawsuits have been filed against the FHFA regarding this opinion and legislative action by Congress is being developed to remedy the issues.

Commercial PACE programs are not impacted by the same issues as the residential programs, and, because of this, several commercial PACE programs are currently operating. Most notable of these are Sonoma County, County of Los Angeles, City and County of San Francisco, and Placer County. The Sustainable

REPORT TO THE CITY COUNCIL

Adopt Resolution of Intent for CA PACE program

Dec. 16, 2010

Page 2

Fresno Division has been working with the Pacific Housing and Finance Agency, a state-wide joint powers authority, to implement a commercial PACE financing program within the city of Fresno to help commercial and industrial property owners finance cost-effective energy efficiency and renewable energy projects. Pacific Housing and Finance Agency (PHFA) has designed an energy and water efficiency program under AB 811 and AB 474 known as the California PACE (CA PACE) Program (the "Program") which permits the City of Fresno (the "City"), as a member of PHFA, to participate in the PHFA Program by the formation of an assessment district. The CA PACE Program provides to property taxpayers within its member cities an affordable financing program for energy-saving and water saving property improvements such as:

- (i) high-efficiency air conditioners,
- (ii) dual-pane windows,
- (iii) water saving equipment,
- (iv) solar panel systems, and
- (v) insulation.

PHFA will issue bonds to fund financing to property owners within its member cities, and the financing will be secured by property assessments from the property which is included in the assessment district by the owner's voluntary participation in the assessment district. The bonds will be subject to a judicial validation proceeding and will be secured solely by the assessment revenues from the liens on the property of the owners participating in the Program, and the real property in the event of default and tax sale. The City's revenues and funds will not be pledged to the payment of the bonds. Property owners will pay for the installation of water and energy savings improvements on their business as a line item on their property tax bill over time.

The proposed resolution is the first step in a two-step process necessary for the adoption of the City's CA PACE Program. This resolution declares the intent of the City Council to form an assessment district in order to cause the financing of energy and water efficiency improvements within the City. This resolution also authorizes staff to complete the details of the proposed financing program as a participating member of the PHFA. This resolution also sets January 13, 2011 at 10:00 AM, or as soon thereafter as possible, for the public hearing required for the formation of the assessment district.

Staff recommends that the City Council adopt a resolution of the City of Fresno declaring its intention to form a contractual assessment district and participate in the California PACE Program to finance distributed generation renewable energy sources and energy and water efficiency improvements for property within the City pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code and setting a public hearing thereon. The attached resolution has been reviewed by the City Attorney and approved as to form.

BACKGROUND

The Sustainable Fresno Division of the Planning and Development Department has been seeking to develop a financing program for energy efficiency upgrades on homes and businesses that would allow repayment through property taxes under the authority of State Assembly Bill 811. These financing programs developed to implement State Assembly Bill 811 are nationally referred to as PACE or Property Assessed Clean Energy programs. Council approved participation in the CaliforniaFIRST PACE program that focused on residential and commercial properties on January 14, 2010. However, the CaliforniaFIRST program was cancelled in

REPORT TO THE CITY COUNCIL

Adopt Resolution of Intent for CA PACE program

Dec. 16, 2010

Page 3

August of 2010 prior to implementation and assessments being levied due to an adverse opinion by the Federal Housing Finance Agency (FHFA) that PACE assessments were a violation of mortgage contracts for residential properties and the subsequent uncertainty surrounding residential PACE programs. Numerous lawsuits have been filed against the FHFA regarding this opinion and legislative action by Congress is being developed to remedy the issues.

Commercial PACE programs are not impacted by the same issues as the residential programs, and, because of this, several commercial PACE programs are currently operating. Most notable of these are Sonoma County, County of Los Angeles, City and County of San Francisco, and Placer County. The Sustainable Fresno Division has been working with the Pacific Housing and Finance Agency (PHFA), a state-wide joint powers authority, to implement a commercial PACE financing program within the city of Fresno. PHFA is a joint powers financing agency organized and existing pursuant to the Marks Roos Local Bond Pooling Act (Government Code Section 6584, et seq.). PHFA has the powers to issue bonds and notes, enter into agreements and create programs for the public purposes on behalf of PHFA and the Member Cities (and Counties) of the Agency (the "Member Agencies"). The City of Fresno became a member of PHFA on February 9, 1999.

Pacific Housing and Finance Agency (PHFA) has designed an energy and water efficiency program under AB 811 and AB 474 known as the California PACE (CA PACE) Program (the "Program") which permits the City of Fresno (the "City"), as a member of PHFA, to participate in the PHFA Program by the formation of an assessment district. The California PACE Program was approved and \$95 million dollars were authorized on January 25, 2010 at a meeting of the PHFA with Member Cities. The bonds sold by PHFA are special limited obligations of PHFA, and as such are not a debt of the Member Jurisdictions nor the State of California or any of its political subdivisions (other than PHFA), and neither the Member Jurisdictions, the State nor any of its political subdivisions (other than PHFA) is liable for the payment thereof. The Bonds are special obligations of PHFA payable exclusively from the Revenues (secured by Assessment District Liens on participating property owner property), and amounts held in certain funds and accounts created pursuant to the Indenture. The Bonds will not be payable from any other revenues or other assets of PHFA. PHFA does not have any taxing power. The Bonds do not represent or constitute debt or pledge the faith and credit of the City of Fresno, Member Agencies, the State or any of its political subdivisions. The Bonds do not constitute indebtedness within the meaning of any constitutional or statutory limitation or restriction.

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- (i) high-efficiency air conditioners,
- (ii) dual-pane windows,
- (vi) water saving equipment,
- (vii) solar panel systems, and
- (viii) insulation.

PHFA will issue bonds to fund financing to property owners within its member cities, and the financing will be secured by property assessments from the property which is included in the assessment district by the owner's voluntary participation in the assessment district. The bonds will be secured solely by the assessment revenues from the liens on the property of the owners participating in the Program, and the real property in the event of default and tax sale. The City's revenues and funds will not be pledged to the payment of the bonds.

REPORT TO THE CITY COUNCIL
Adopt Resolution of Intent for CA PACE program
Dec. 16, 2010
Page 4

Property owners will pay for the installation of water and energy savings improvements on their business as a line item on their property tax bill over time.

The proposed resolution is the first step in a two-step process necessary for the adoption of the City's CA PACE Program. This resolution declares the intent of the City Council to form an assessment district in order to cause the financing of energy and water efficiency improvements within the City. This resolution also authorizes staff to complete the details of the proposed financing program as a participating member of the PHFA. This resolution sets January 13, 2011 at 10:00 AM, or as soon thereafter as possible, for the public hearing required for the formation of the assessment district.

Staff is currently working with PHFA to refine the Program Report for CA PACE within the City of Fresno which includes details of the application process, full equipment list of measures that can be financed, contractor requirements, and fees for cost recovery. A copy of the final Program Report will be provided for Council and public review prior to the proposed hearing on January 13, 2011. The attached resolution has been reviewed by the City Attorney and approved as to form. All formation documents will be subject to City Attorney approval to form.

FISCAL IMPACT

All City of Fresno costs associated with formation and establishment of participation in the CA PACE Program are being paid for through funding from the U.S. Department of Energy, Energy Efficiency and Conservation Block Grant program. Any on-going City of Fresno administrative costs associated with the CA PACE program will be recovered through annual assessment fees. The bonds being issued by PHFA for this program do not represent or constitute debt or pledge the faith and credit of the City of Fresno. The City's revenues and funds will not be pledged to the payment of the bonds. There is no impact to the General Fund from this project.

ATTACHMENTS

Resolution of Intent to Form Contractual Assessment District

RESOLUTION NO. _____

RESOLUTION OF THE CITY OF FRESNO DECLARING ITS INTENTION TO FORM A CONTRACTUAL ASSESSMENT DISTRICT AND PARTICIPATE IN THE CALIFORNIA PACE PROGRAM TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY AND WATER EFFICIENCY IMPROVEMENTS FOR PROPERTY WITHIN THE CITY PURSUANT TO CHAPTER 29 OF PART 3 OF DIVISION 7 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE AND SETTING A PUBLIC HEARING THEREON

WHEREAS, the City of Fresno (the “City”) is a municipal corporation organized and existing pursuant to the laws of the State of California; and

WHEREAS, the Pacific Housing & Finance Agency (the “PHFA”) is a joint powers financing agency and has established an Energy and Water Efficiency Program (the “Program”) pursuant to Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (the “Act”); and

WHEREAS, through the California PACE – California Property Assessed Clean Energy and Water Efficiency Program, the PHFA facilitates voluntary assessment financing to property owners within PHFA’s participating member jurisdictions for the financing of distributed generation renewable energy sources and energy and water saving property improvements; and

WHEREAS, pursuant to the Act and the Program, PHFA requires its participating member jurisdictions to form a contractual assessment district, and the PHFA will finance participating property owners energy efficiency, distributed renewable energy and water efficiency improvements within the assessment district through PHFA funds secured by an assessment lien on the subject property; and

WHEREAS, the Program provides for the PHFA bond funding and administration of the assessment district for its member jurisdictions, without obligating the member jurisdiction’s general fund, bonding capacity, or taxing authority; and

WHEREAS, issuance of bonds will occur following receipt of final judgment in a validation action filed by PHFA pursuant to Code of Civil Procedure section 860 that the bonds are legal obligations of PHFA; and

WHEREAS, the City is a member of the PHFA and desires to declare its intention to form a contractual assessment district and take the steps necessary for the creation of such assessment district, and participation in the California PACE Program.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FRESNO
HEREBY FINDS, DETERMINES, RESOLVES AND ORDERS, AS FOLLOWS:**

Section 1. The City Council hereby finds and determines:

(a) Energy and water conservation efforts, including the promotion of energy and water efficiency improvements to residential, commercial, industrial, or other real property, will generate costs savings and promote local employment.

(b) The upfront cost of making residential, commercial, industrial or other real property more energy and water efficient prevents many property owners from making those improvements. To make those improvements more affordable and to promote the installation thereof, the Legislature has authorized an alternative procedure pursuant to Act to finance said improvements by the creation of contractual assessment districts.

(c) It is in the public interest of the City to authorize creation of an assessment district for the installation of distributed generation renewable energy sources and energy and water efficiency improvements which are permanently fixed to residential, commercial, industrial, or other real property.

Section 2. The City Council hereby declares its intention to form a contractual assessment district pursuant to the Act for the purposes set forth in Section 1 hereof. The assessment district shall be for the purposes of providing the installation of distributed generation renewable energy sources and energy and water efficiency improvements that are permanently fixed to qualifying real property, including but not limited to: high efficiency air conditioning and ventilation systems, high performance windows, high efficiency pool equipment, high efficiency water heating equipment, photovoltaic and thermal solar energy systems, zoning control and energy management control systems, high efficiency irrigation pumps and controls and natural gas fuel cells, wind and geothermal energy systems, wall, ceiling and roof insulation upgrades, water savings equipment and dual pane windows.

Section 3. The City Council further determines that the boundaries of the assessment district established pursuant to the Act shall be the geographical boundaries of the City.

Section 4. The assessment district shall be financed solely by the issuance of bonds of the Pacific Housing & Finance Agency, a joint powers authority pursuant to the Pacific Housing & Finance Agency California PACE Program. The principal and interest on the Bonds shall be secured by the payments of the contractual assessments and the assessment liens on the real property upon which the improvements are placed. Property owner creditworthiness shall be determined by Program criteria including legal ownership interest, equity, and condition of title. The assessments shall be collected at the same time and in the same manner as the general taxes of the City. The assessment shall be subject to the same penalties and lien priorities as the general taxes of the City in the event of delinquency and default. In the event of a delinquency in the payment of assessments by a property owner, the PHFA may commence proceedings to foreclose the assessment lien on the property in the manner provided by law and consistent with the Program requirements. Interest on the Bonds shall not exceed the current legal maximum of

12% per year or such other amount authorized by law. The maturity date of the Bonds shall not exceed the life of the equipment financed.

Section 5. The City Council hereby directs the City Manager/designee(s) thereof and each of them (“Authorized Officer”) to prepare, or cause to be prepared, and file with the City Council a report pursuant to Section 5898.22 of the California Streets and Highways Code (the “Report”) at or before the time of the public hearing described in Section 6 hereof. The Report shall contain all of the following:

- (a) A map showing the City boundaries as the boundaries of the assessment district.
- (b) A draft contract between the property owner and PHFA.
- (c) A statement of the City policies concerning voluntary contractual assessments including all of the following:
 - (i) Identification of types of facilities, distributed generation renewable energy sources, or energy efficiency improvements that may be financed through the use of contractual assessments;
 - (ii) Identification of a city official authorized to direct the Executive Director of the PHFA to enter into contractual assessments on behalf of the assessment district;
 - (iii) A maximum aggregate dollar amount of contractual assessments;
and
 - (iv) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.

(d) The plan of bond financing by the PHFA pursuant to Streets and Highways Code Section 5898.28. The plan shall include a statement of, or method for, determining the interest rate and time period during which contracting property owners would pay any assessment. The plan shall provide for any reserve fund or funds. The plan shall provide for the apportionment of all or any portion of the costs incidental to financing, administration, and collection of the voluntary contractual assessments under the Program among the consenting property owners and the assessment district.

Section 6. The City Council hereby authorizes noticing a public hearing to be held on January 13, 2011, at 10 AM, or as soon thereafter as feasible, at the Council Chambers, 2600 Fresno Street, Second Floor, Fresno, California 93721, on the proposed Report and the assessment district. At the public hearing, all interested persons may appear and hear and be heard and object to or inquire about the proposed voluntary contractual assessment financing program or any of its particulars. The City Clerk is hereby directed to provide (i) notice of the public hearing by publishing this Resolution once a week for two weeks, pursuant to Section

