HASTINGS CITY COUNCIL
WORKSESSION AGENDA

Council Chambers – City Hall
220 North Hastings Avenue
November 4, 2019
5:30 PM

ROLL CALL:

MOTION TO ADOPT CURRENT AGENDA for November 4, 2018 Worksession.

PUBLIC NOTICE - Official Notice of the Worksession was published in the Hastings Tribune on Friday, November 1, 2019. Pursuant to Nebraska Revised Statute Section 84-1412, the public is advised that a copy of today's agenda and all reproducible written material which will be discussed at today's meeting is available. Also, a current copy of the Nebraska Open Meetings Act is posted and accessible to members of the public.

DISCUSSION ITEMS

1. Presentation of Heartland Pet Connection Annual Report - Jennie Theesen.

2. Discussion of the possibility of enacting a Property Assessment for Clean Energy (PACE) Program.

3. Presentation of "Hastings Utilities 101".

ADJOURN:

The Mayor and City Council reserve the right to enter into an executive session at any time during the meeting, in accordance with the Nebraska Open Meetings Act, even though the closed session may not be indicated on the agenda.

It is the intention of the Mayor and City Council to take up the items on the agenda in sequential order. However, the Mayor and City Council reserve the right to take up matters in a different order to accommodate the schedules of the city council members, person having items on the agenda, and the public.

ORDINANCE NO. 46__

AN ORDINANCE OF THE CITY OF HASTINGS, NEBRASKA TO CREATE A CLEAN ENERGY ASSESSMENT DISTRICT; TO ESTABLISH DEFINITIONS; TO PROVIDE FOR THE FINANCING, ADMINISTRATION, AND COLLECTIONS, TO PROMOTE ENERGY EFFICIENCY IMPROVEMENTS AND RENEWABLE ENERGY SYSTEMS; TO REPEAL ANY PROVISIONS INCONSISTENT HEREWITH, TO PROVIDE THE EFFECTIVE DATE HEREOF; AND TO PROVIDE FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM.

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

Section 1. Purpose.

A. The City of Hastings, Nebraska desires to create a clean energy assessment district to enable property assessed clean energy financing for its property owners;

B. 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

C. The City desires to pass an ordinance, upon its effective date thereof, shall create a clean energy assessment district, which shall be known as the City of Hastings, Nebraska PACE District, as authorized by Neb. Rev. Stat. §§13-3203 and 13-3204(3), as the same may be from time to time amended, which boundaries shall be the corporate boundaries of the City of Hastings.

Section 2. Findings and Determinations. The City Council of the City of Hastings, Nebraska (the "City"), hereby finds and determines as follows:

A. Pursuant to Neb. Rev. Stat. §§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. Upfront 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.

B. 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 upfront costs for energy efficiency improvements and renewable energy systems by using private capital and equity, rather than public debt.

C. Pursuant to the Act the City of Hastings 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. Stat. §§ 13-801, et seq.), for the joint creation, administration, or creation and administration of clean energy assessment districts, pursuant to the Act. 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, and as the same may from time to time be amended the provisions of which shall automatically become part hereof if inconsistent herewith.

Section 3. Title and Definitions. That this Ordinance shall be known and may be cited as "The City of Hastings, Nebraska 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 City of Hastings PACE District, created pursuant to this Ordinance, as authorized by the Act, which boundaries shall be the corporate boundaries of the City and its extraterritorial jurisdiction.

"District Administrator" means 1) the City Administrator of the City; 2) a designated representative of the City Administrator of the City; 3) another employee of the City designated by the Mayor of the City; or, 4) 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, including multifamily residential property having more than four dwelling units, and industrial property located in the District.

Section 4. District Boundaries and Requirements Pursuant to the Act.

A. The City finds that the financing of energy efficiency improvements and renewable energy systems is a valid public purpose. Such public purposes include, but are 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 as allowed by the Act.

C. The District Administrator shall use a form contract for assessment contracts among 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, which provides for repayment of the costs financed through annual assessments upon the qualifying property benefited by the energy project.

D. The District Administrator is authorized to enter into assessment contracts on behalf of the City.

E. The District Administrator shall 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:

   1. 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) Whether the applicant is requesting a waiver of the estimated economic benefit requirement;

m) Title report showing any mortgage or lien holders;

n) Lender consent;

o) Projected jobs created by PACE project;

p) Project environmental benefits;

q) Funding source;

r) All other such information as needed to demonstrate the project complies with all the requirements of the Act.

2. The District Administrator may grant an applicant's request to waive the estimated economic benefit requirement. If the District Administrator denies the applicant's waiver request, the applicant may appeal the denial by submitting a request in writing to the Assistant City Administrator of the City. The appeal shall be mailed by certified mail or hand delivered to the Assistant City Administrator within fourteen days after the denial. The Assistant City Administrator will review the matter on the record made by the District Administrator and, after providing the applicant an informal opportunity to be heard, the Assistant City Administrator will make the final decision.

3. 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.

4. 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.
5. Upon approval of an application, the District Administrator is authorized to proceed with and execute an assessment contract.

F. Pursuant to §13-3205(7) of the Act, annual assessments agreed to under an assessment contract shall be levied against the qualifying property and collected in accordance with the Act; and, direct collection, whereby a third-party lender provides assessment invoices to the borrower and the borrower remits payments to the third-party lender directly shall be permitted.

G. The District shall establish procedures to determine the following in the future:

i. Provisions for an adequate debt service reserve fund created under §13-3209 of the Act, if applicable;

ii. Provisions for an adequate loss reserve fund created under §13-3208 of the Act, if applicable; and

iii. Any application, administration, or other program fees to be charged to owners participating in the program that will be used to finance costs incurred by the City as a result of the program;

Any costs shall be deducted before remitting the assessment to the third-party PACE program administrator.

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

I. 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.

J. 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 §13-3205(3)(d) of the Act, 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.

K. In connection with providing PACE financing, the City will provide for marketing and participant education. (Remove this unless for a fee?)

L. The City shall obtain, or applicable third-party lenders shall obtain and provide to the City, verification that the renewable energy system(s) or energy efficiency improvement(s) was/were properly installed and is operating as intended.

Section 5. Authorization for PACE Program. That, pursuant to §13-3204(1) of the Act, the District shall be governed by the Hastings 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.

B. 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.

C. 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 6. Liability of City Officials; Liability of City. That notwithstanding any other provision of law to the contrary, officers and other officials of the City, the District, and the County in which the City is located shall not be personally liable to any person for any claims, of whatever kind or nature, under or related to the City's participation in the District's PACE Program, including, without limitation, claims for or related to uncollected PACE Assessments. The City has no liability to a property owner for or related to energy savings improvements funded under a PACE Program.

Section 7. This Ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by the law, and satisfaction of any conditions set forth in this Ordinance.

PASSED AND APPROVED this _____ day of _____________________, 2019.

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Mayor

ATTEST:

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City Clerk

(S E A L)

Approved as to form:

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City Attorney