

BILL NO. 19-14

ORDINANCE NO. 4.465

AN ORDINANCE REPEALING ORDINANCE 4.398 PERTAINING TO THE MISSOURI CLEAN ENERGY DISTRICT AND PROPERTY ASSESSED CLEAN ENERGY PROGRAM.

WHEREAS, the City Council understands the advantages of the Property Assessed Clean Energy (PACE) program through the Missouri Clean Energy District for its residents; and

WHEREAS, the City Council also understands the burden that the collecting of the PACE program liens has placed on the Clay County Collector and Assessor, in addition to the collecting of the City's real or personal property taxes levied; and

THEREFORE, the City Council does not wish to burden the County any more than needed.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI AS FOLLOWS:

Section 1. That the City Council of the City of Gladstone, Missouri hereby repeals City Ordinance 4.398 in its entirety.

Section 2. That this Ordinance shall become effective upon the date of passage.

INTRODUCED, READ, PASSED, AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 25TH DAY OF MARCH 2019.



Mayor Bill Garnos

Attest:



Ruth Bocchino, City Clerk

1st Reading: March 25, 2019

2nd Reading: March 25, 2019



Request for Council Action

RES ☐ # City Clerk Only

BILL ☒ # 19-14

ORD # 4.465

Date: 1/30/2019

Department: Community Development

Meeting Date Requested: 3/25/2019

Public Hearing: Yes ☐ Date: [Click here to enter a date.](#)

Subject: Ordinance repealing Ordinance #4.398

Background: The Clay County Collector and Assessor have both advised the City that they cannot handle the collection of the Missouri Clean Energy District, Property Assessed Clean Energy (PACE) program and the City's assessment of real or personal property taxes.

Budget Discussion: Funds are budgeted in the amount of \$ 0.00 from the N/A Fund. Ongoing costs are estimated to be \$ 0.00 annually. Previous years' funding was \$0.00

Public/Board/Staff Input: Staff has discussed this matter and spoken/emailed representatives from MCED and feel that until Missouri Clean Energy District and Clay County come to an agreement the City needs to dissolve its agreement with Missouri Clean Energy District.

Provide Original Contracts, Leases, Agreements, etc. to: City Clerk and Vendor

Alan Napoli
Community Development Administrator/Building Official

PC
Attorney

SW
City Manager

LYDIA McEVOY

Clay County Collector

CATHY RINEHART

Clay County Assessor

One Courthouse Square
Liberty, MO 64068

lmcevoy@claycountymo.gov
crinehart@claycountymo.gov

December 3, 2018

Re: City collections contract, notice of non-renewal

Dear City Council and officials:

Effective with the 2019 tax year, for cities that have enabled residential Property Assessed Clean Energy (PACE) programs to operate within their borders, the Offices of Collector and Assessor will choose to dedicate county resources to monitoring and collecting those liens, and will no longer be able to collect real or personal property taxes levied by those cities.

Beginning in 2017, the Offices of Collector and Assessor have been presented with an exponentially increasing number of residential PACE liens to be collected on residential real property tax bills. Clay County has rejected this program, but the liens are coming to the tax bills through city ordinances authorizing these liens at the city level.

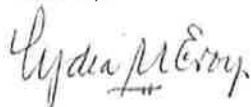
Unfortunately, these liens are creating an excessive administrative burden on county offices, and no reasonable compensation for this additional work has been offered by the Missouri Clean Energy District or the authorizing cities. Since these liens were added as special assessments, both offices have seen a dramatic increase in customer service and legal concerns, absorbing staff time and resources.

Since residential PACE liens are an optional item for each city, but are required to be collected by the county, the most efficient use of government resources requires us to collect city taxes or PACE liens, but not both. Please note that commercial PACE liens do not present the same concern and are not the subject of this letter. Commercial PACE liens are collected by third parties, and thus do not create any burden on county offices.

We are giving you this notice as far in advance as possible, so that city officials can determine the best course of action. The Offices of Collector and Assessor view each city as an important ally, and we seek to serve each city well. These liens are interfering with those established relationships, and we stand ready to discuss options for compromise.

If the city is unwilling to simply rescind its residential PACE participation ordinance, please call us to schedule a meeting to discuss other options for compromise.

Sincerely,



Lydia H McEvoy
Clay County Collector of Revenue



Cathy Rinehart
Clay County Assessor



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February 25, 2019

The Honorable Lydia McEvoy
Clay County Collector
One Courthouse Square
Liberty, MO 64068

Re: Missouri Clean Energy District IGA

Dear Collector McEvoy:

Thank you for your email to David Pickerill, dated February 7, 2019, regarding the proposed intergovernmental agreement ("IGA") between the Missouri Clean Energy District (the "District") and Clay County, and your proposed edits and additions to the IGA. I have been asked by the District to respond to your email and suggested edits and additions, because they largely focus on legal issues, rather than administrative issues.

In reading your email and submission, it occurred to me that you may not be familiar with the Missouri HERO Program Handbook; the HERO Financing Program Application, which attaches a form of the Assessment Contract and its Addendum, along with a four-page Financing Estimate; and the Completion Certificate (collectively, "the Contractual Documents" or "the Contract"). Exhibit B to the Assessment Contract states that the Contract includes the Assessment Contract itself and these documents. The law firm which prepared these Contractual Documents made sure that they complied with Missouri law generally and Missouri's PACE statutes in particular. I enclose copies of these Contractual Documents for your review.

I trust that after reading this letter, which references specific provisions in these Contractual Documents, and reviewing these Contractual Documents in detail, you will become more familiar with the District's PACE program, and your concerns about the PACE program will be assuaged. I begin by now addressing the numbered points in your email, which state your goals for an IGA.

1. COMPLIANCE WITH STATE LAW AND BEST PRACTICES

Like you, the District's goal is to comply with state law and to adopt those best practices that are suitable to Missouri as a whole. As shown in detail in the remainder of this letter, the Contract does comply with state law, in particular the PACE statutes which govern the PACE program.

With respect to the Department of Energy's Best Practice Guidelines, once you have reviewed all the Contractual Documents and considered our analysis in this letter, if there is a specific guideline that you think is neglected by the District, please let us know which guideline that is. We are willing to consider specific recommendations.

However, it is not your prerogative to "enforce this compliance by excluding non-compliant liens from the tax bill." As the Court of Appeals made clear, you as the Collector have no right to refuse to bill and collect PACE contracts. Should you persist in believing that the assessments do not comply with state law, even after reading the Contractual Documents, your remedy is to ask the County Prosecutor to request the state Attorney General to investigate whether that is the case. It is not your role to rule on compliance with state law; nor is it in your purview as Collector to enforce what you believe may be best practices. Your jurisdiction is limited in both subject matter and geography.

Your counsel's letter of February 15, 2019 erroneously asserts (in item # 8) that the District and Renovate America have no program for holding contractors accountable. (As you know, Renovate America partners with the District to administer the residential PACE program.) In fact, before Renovate America adds a contractor to its list, it reviews the contractor's corporate information, including licensing and insurance, Dunn & Bradstreet information, and social media ratings. It does not allow contractors who do not meet its initial screen into the PACE program. Additionally, it has the right to terminate from the program contractors for behaviors that conflict with its participation guidelines, and it exercises that right when appropriate.

2. PROPER PAYMENT TO THE COLLECTOR

Your second stated goal is to ensure "proper payment to the Office of Collector for the additional administrative burden related to the customer service of these liens." That was also the stated reason for your letter to the municipalities in Clay County, demanding that they either rescind their PACE ordinances or suffer your termination of contracts to collect their property taxes. From my review of your edits to the IGA, you appear to address this payment issue in your proposed changes to paragraphs 1 B and E. We currently have no objection to your changes to 1 B. However, your reference to obtaining additional reporting only by special request at "appropriate compensation" is too vague a price term to be acceptable or even enforceable as a contract term. Please specify a price for us to consider.

Given this payment issue was the premise for your demand that the municipalities rescind their PACE ordinances, any agreement on this issue would be subject to your reversing your position and assuring the municipalities in writing that they need not rescind the PACE ordinances in order for you to collect their property taxes.

3. FAIRNESS TO TAXPAYERS

Your third stated goal is to ensure "fundamental fairness to taxpayers, similar to that afforded by all other ad valorem taxes." Like you, the District's goal is to be fair with property owners, and the Contractual Documents are fair. To demonstrate this, I now address your stated goal's five bullet points.

- INTEREST AND PENALTIES ON DELINQUENCIES

Your first bullet point regarding "single source interest on delinquent bills" is misplaced. You, Trish Hughes, and I discussed this issue previously. As I have explained, the law does not support your personal opinion on this issue. Section 67.2815.3, RSMO, of the PACE statutes indicates that the special assessments issued to property owners who enter into assessment contracts may include "administration fees, interest and other financing costs reasonably required by a clean energy board." The statutes are also clear that the initial special assessment may include both principal and interest. It is this total amount--of principal and interest--that the Collector is to collect "in the same manner and with the same priority as ad valorem real property taxes." Section 62.2815.5, RSMo. These collection procedures also include the imposition of interest and penalties on the full amount of the special assessment. Moreover, the Financing Estimate (on page 3) clearly informs the property owner, "If your property tax payment is late, you are subject to penalties and late fees established by the tax collector." The property owner must initial that disclosure to signify she has read and agrees to this term. All of these factors demonstrate that the collection of a penalty for delinquent PACE payments is authorized by statute and contract and thus complies with state law and is fair.

- RIGHT TO PROTEST

As to your second bullet point, we agree that borrowers should have the right to protest if the Collector misstates the amount the assessment contract specifies is due, because that is the only recourse that the taxpayer has against the Collector in the administrative scheme. However, the right to protest is not the appropriate remedy for consumers who may have a disagreement with Renovate America or the District. The relationship between borrowers and Renovate America is not an administrative relationship, but a contractual relationship. Thus, borrowers have contractual rights and remedies with respect to Renovate America and the District that are not available in your administration of your revenue collection duties. In addition, while your assessment of property taxes is mandatory, borrowers enter into PACE assessment contracts voluntarily, fully informed beforehand of their rights and obligations. Borrowers even have the contractual right to cancel their assessment agreements "at no cost, at any time prior to signing a Completion Certificate." Assessment Contract, Section 15. Thus, the Contract provides borrowers with adequate remedies, and the right to protest is confined, as otherwise, to protesting an error you may make in stating the amount the assessment contract specifies is due.

- DETAILED DISCLOSURE OF AMOUNTS TO BE PAID

We agree with respect to the third bullet point that borrowers have the right to know and understand what they are paying. For this reason, Renovate America has included detailed disclosure regarding the amounts to be paid in principal, interest, and fees, both annually and over the life of the assessment, in the Missouri HERO Program Handbook, the HERO Financing Program Application, the Assessment Contract and the Financing Estimate. See, for example, the Assessment Contract's Section 3, Exhibit B and Addendum; pages 1 and 2 of the Financing Estimate; and, Section 6 of the Handbook. Once you have carefully reviewed these Contractual Documents, we would be open to considering any specific request you might have.

Additionally, both Renovate America and the District publish their contact information so that property owners may call them with questions about the PACE program. Property owners may find contact information on the District's website (including all its executive officers; simply enter Missouri Clean Energy District in your browser) and just above the District's signature line on their Notice of Assessment. Renovate America publishes a toll free number (855-HERO-411) and an email address (info@heroprogram.com) on the top of each page of the Application, in the middle of page 1 of the Financing Estimate, and on the top of the first page of the Completion Certificate. Sections 2.2 and 2.3 of the Program Handbook (which can be found online) also explain the operations of the Program Call Center and provide other program contact information and useful resources. Accordingly, you can direct taxpayers to these resources for answers to their questions or concerns.

- DISCLOSURE OF RIGHTS

We agree with respect to your fourth bullet point that borrowers should receive written documents that accurately reflect their rights under the PACE assessment contracts. Once again, we believe that the Missouri HERO Program Handbook, the HERO Financing Program Application, the Assessment Contract and the Financing Estimate adequately inform the applicants of their rights. See, for example, the HERO Financing Program Application's Section 2; the Assessment Contract's Section 13(j) and 15; the Financing Estimate's notice of Right to Cancel at page 3; and, Section 8 of the Handbook. Once you have carefully reviewed these Contractual Documents, if you feel some particular law or Constitutional provision has been overlooked, please specify in writing what that law or provision may be and why you think it is overlooked, for our consideration.

- WAIVER OF JURY TRIAL AND ARBITRATION

With respect to your fifth bullet point, please specify what right you believe taxpayers are asked to waive that you believe is applicable in this contractual context. You have not identified any in your letter.

In the past, you have complained about the arbitration provisions in the assessment contracts, so perhaps your concern is the waiver of the right to a jury trial, which is part of Section 13, entitled Arbitration Agreement. Your concern in this regard is unjustified.

As a general matter, arbitration is an accepted alternative to expensive judicial proceedings, and the Supreme Court has repeatedly upheld its use, provided adequate disclosure is made and consent manifested. Our contractual documents meet the disclosure and consent requirements. The Assessment Contract clearly and conspicuously explains the arbitration and waiver provisions over the course of a page; and, it requires the property owner to acknowledge and separately agree to these terms with their initials at the conclusion of this lengthy explanation. This same clear and conspicuous explanation also appears in the application at page 4-5, such that the property owner has ample time to consider these points and, if she desires, consult with an attorney. Additionally, both the Application, in subsection "i" on page 5, and the Assessment Contract, in Section 13(j) provide the borrower with the right to opt out of the Arbitration Agreement within 15 days of signing the contract. This is a manifestly fair approach to agreeing to arbitration; and, no Missouri court has ruled otherwise.

4. YOUR PROPOSED CHANGES TO THE IGA

I will now address the specific changes you made to our proposed IGA. We believe the specific changes you request are unwarranted. Most if not all of your concerns are unfounded and reflect the fact that you are not familiar with our Contractual Documents. Additionally, it is not in your purview as Collector to force the District to change its documentation or adopt what you believe may be a best practice by refusing to bill and collect PACE assessments. Nevertheless, if you specifically identify a particular practice recommended by the DOE, we are willing to consider any specific recommendation for the future, particularly those that pertain to your ministerial duty to bill and collect PACE assessments.

- YOUR PROPOSED SECTION 1

We currently have no objection to your changes to SECTION 1 B or to SECTION 1 D.

We have two objections to your changes to SECTION 1 E. One, your reference to obtaining additional reporting only by special request at "appropriate compensation" is too vague a price term to be acceptable or even enforceable. Two, your approval of a special request should not be unreasonably withheld and, if withheld, the reason for withholding consent should be expressly stated in writing.

- YOUR PROPOSED SECTION 2

With respect to your addition to SECTION 2 A, please specify what form you are requesting that the District use, so that we can consider whether it is feasible and appropriate. Your current language is too vague for us to agree to.

We have two objections to your proposed SECTION 2 B. First, on a minor point, it is unnecessary for the District to give you each year all assessment contracts. It suffices for the District to provide you with copies of contracts for those assessments that will be collected for the first time in any given year. Second, our Contractual Documents already contain the requisite finding of economic benefit. In Section 9 (d) of the Assessment Contract, "The Property Owner expressly acknowledges that the acquisition

and/or installation of the Project on the Property confer a special economic benefit to the Property in an amount at least equal to the total assessments under this Contract." Similarly, the last paragraph in Section 12 provides, "The Property Owner further acknowledges that the Property Owner has received or will receive an estimated benefit by financing a project through the District that equals or exceeds the total assessments under the assessment contract as required by Section 67.2815 of the PACE Act." Moreover, the issue of economic benefit is not within the purview of your duties; and, you do not have the technical qualifications or expertise in finance or energy conservation to evaluate the economic benefit of energy conservation efforts and clean energy improvements. RSMO 67.2810.3 directs the responsibility for evaluating the economic benefits of the PACE program to the Director of the Department of Natural Resources, not to you or any other individual collector across the state.

In your proposed SECTION 2 C, you ask that we provide copies of the annual report we are required to provide the Department of Natural Resources in this regard. We are agreeable to doing so; and the report should satisfy your personal curiosity regarding PACE's economic benefits, because it includes:

- (1) A brief description of each project financed by the clean energy development board during the preceding calendar year ...;
- (2) The amount of assessments due and the amount collected during the preceding calendar year;
- (3) The amount of clean energy development board administrative costs incurred during the preceding calendar year;
- (4) The estimated cumulative energy savings resulting from all energy efficiency improvements financed during the preceding calendar year; and
- (5) The estimated cumulative energy produced by all renewable energy improvements financed during the preceding calendar year.

Moving on, we object to your proposed SECTION 2 D for all the reasons discussed above. As noted, the Contractual Documents adequately inform borrowers of their rights and obligations, and the right to protest is only applicable to errors made by the Collector in listing the amount of the contractual assessment. Additionally, we note that the Contractual Documents discuss the legal timeline for foreclosure. See, for example, Assessment Contract Section 6 and Application Section 1 b.

We object to your proposed SECTION 2 E for all the reasons discussed on page 1 above, including that you misread the law specific to PACE assessments.

- YOUR PROPOSED SECTION 5

We have no objection to your proposed SECTION 5 A.

Even though we have been sending you signed copies of each assessment contract, we object to your proposed SECTION 5 B. You have a ministerial duty to bill and collect all PACE assessments, regardless of what they state and whether they bear a wet signature. Moreover, the assessment contract meets the six requirements of RSMO Section 67.2815.2, as I shall now explain in detail.

RSMO Section 67.2815.2(1) Exhibits A and B to each Assessment Contract describe the project (e.g. the installation of a solar photovoltaic system consisting of a panel and an inverter) and the estimated cost of the project in the estimated disbursement amount. Section 4.4 of the Handbook describes how

the project will either reduce energy consumption or create energy from renewable sources through the use Eligible Products, as described in the online Eligible Product List. (See Handbook Appendix D for the link for the list.) Section 7 of the Application provides "financing will not be used to finance any equipment that is not an Eligible Product on the Program's Eligible Product List or approved as a custom product by the Program." Section 1 j of the Handbook also describes validation procedures.

RSMO Section 67.2815.2(2) The Contract verifies the final cost of each project through the Completion Certificate and insures that any amounts advanced by the District will not exceed the final cost by enforcing a maximum financing amount on each project, as explained in Section 4.5.1 of the Handbook.

RSMO Section 67.2815.2(3) Please refer to the contractual acknowledgements of economic benefits, discussed above.

RSMO Section 67.2815.2(4) Section 3 of the assessment agreement contains the required agreement by the property owner to pay annual special assessments for a period not to exceed twenty years.

RSMO Section 67.2815.2(5) The Handbook discloses in Section 7.8.1 that the special PACE assessments stay with the property when it is sold. Additionally, the Assessment Contract in Section 9(b) states, "This Contract establishes rights and obligations that are for the benefit of the Property and, therefore such rights and obligations run with the land pursuant to Section 67.2815 and shall be obligations upon future owners of the Property."

RSMO Section 67.2815.2(6) Section 9(c) of the Assessment Contract acknowledges no subdivision of the property subject to the assessment contract shall be valid unless the contract or an amendment divides the total annual assessment due between the newly subdivided parcels pro rata to the special benefit realized by each.

Moving on to your proposed SECTION 5 C, we do not agree to provide to the homeowner contracts in the language primarily spoken in their home. Chinese, Japanese, French, German or some other language may be the taxpayer's primary language, but she may comprehend English sufficiently to enter into a contract in English. Thus, the broad rule you demand is unnecessary. Do you provide your property tax statements in the taxpayer's primary language?

We object to your proposed SECTION 5 D, for all reasons explained above. As noted, you fail to identify any particular "best practice", let alone one that the Contract ignores. Should you take the time to review our Contractual Documents and specifically identify a particular practice recommended by the DOE, we are willing to consider any specific recommendation for the future. However, it is not in your purview as Collector to force the District to adopt what you believe may be a best practice by refusing to bill and collect PACE assessments.

We also object to your proposed SECTION 5 E. It would require that in certain value calculations, the District use the "market value of the property as determined by the Assessor." Among other things, we believe that this conflicts with the DOE's Best Practices, Section 2.2. That section recommends that PACE programs "should determine market value of the property using valuation methods and tools appropriate for their market and individual properties, including automated valuation methods or desktop appraisals performed by a licensed appraiser with training and certification in the valuation of green and sustainable buildings." In conformity with that recommendation, Renovate America uses an automated value model that is appropriate for buildings with energy conservation and green energy improvements. See Application Section 1 g. (If the property owner disagrees with the AVM value, she may choose to pay for an appraisal, pursuant to Handbook Section 4.3.) We do not believe that the

Lydia McEvoy
The Honorable Lydia McEvoy
February 25, 2019
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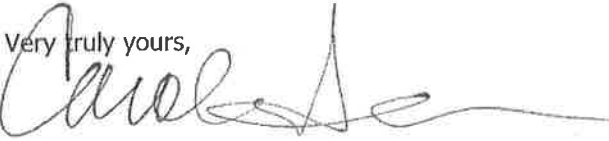
BRYAN
CAVE
LEIGHTON
PAISNER **BLP**

Assessor's valuation methodology meets the recommended best practice, while Renovate America's does.

Please let me know if you would like us to prepare another version of the IGA that incorporates those of your suggestions that we agree to.

Finally, just as you copied your email to Kansas City, we are copying Kansas City and the other municipalities listed below on this letter and its attachments, so that they may better understand our Contract and rest assured that it is compliant with state law and best practices.

Very truly yours,



Carole L. Iles

Enclosures: Missouri HERO Program Handbook
HERO Financing Program Application
Financing Estimate
HERO Financing Program Completion Certificate

cc: Excelsior Springs
Gladstone
Kansas City
North Kansas City