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CITY ATTORNEY

REPORT NO. R 1 6 - 0 3 2 3  
OCT 0 6 2016

**REPORT RE:**

**DRAFT ORDINANCE ADDING DIVISION 97 TO ARTICLE 1, CHAPTER IX AND  
AMENDING DIVISION 4 OF ARTICLE 8, CHAPTER IX OF THE LOS ANGELES  
MUNICIPAL CODE TO ESTABLISH AN EXISTING BUILDING ENERGY AND  
WATER EFFICIENCY PROGRAM**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Council File No. 14-1478

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. This draft ordinance adds Division 97 to Article 1, Chapter IX of the Los Angeles Municipal Code (LAMC) and amends Division 4 of Article 8, Chapter IX to establish the Existing Buildings Energy and Water Efficiency Program, which would require buildings in the City of Los Angeles, including those in existence at the time of the effective date of the ordinance, to undergo periodic energy and water efficiency audits, retro-commissioning, and annual benchmarking of energy and water consumption.

Background

On December 3, 2014, City Council adopted a motion (Huizar-Blumenfield-Koretz) directing the Department of Building and Safety (DBS), in coordination with the non-profit City Energy Project and other City departments, as necessary, to convene a stakeholder process to develop a program to improve the energy and water efficiency of

existing buildings. The motion further instructed DBS to provide the City Council a status update on the matter, including a review of state actions relevant to the development of a citywide energy and water efficiency program.

Following the adoption of the motion, DBS and other City departments participated in a series of stakeholder meetings facilitated by the City Energy Project. Attendees included property managers, affordable housing advocates, multi-family residential building owners, commercial building owners, architects, engineers, labor organizations, among others.

On October 22, 2015, DBS submitted a status report to the City Council. The report recommended a list of requirements for a proposed Existing Buildings Energy and Water Efficiency (EBEWE) Program based on discussions at stakeholder meetings. The report also provided a list of relevant state legislation, including SB 350 (2015), AB 758 (2009), AB 802 (2015), and Executive Order B-29-15, that aligns with and encourages the development of the EBEWE Program. On October 23, 2015, the report was referred to the Energy and Environment Committee.

On November 18, 2015, the Energy and Environment Committee held a public hearing to consider the DBS report. The committee voted to recommend that City Council request that the City Attorney and DBS prepare and present an ordinance to implement the proposed recommendations in DBS's report and refer the matter to the Planning and Land Use Management (PLUM) Committee for consideration. On November 20, 2015, the City Council adopted the recommendations of the Energy and Environment Committee.

The draft ordinance imposes new fees related to its regulations. The City Administrative Officer (CAO) submitted a report related to these fees, dated August 26, 2016, consisting of an initial fee study and a proposed penalty schedule based on a peer-city review. The CAO report was referred to the Energy and Environment Committee on August 31, 2015, and to the PLUM Committee on September 20, 2016. On October 4, 2016, the CAO transmitted to the Mayor and to City Council an Addendum to his August 26, 2016, report containing a revised fee study consistent with the fee provisions of the enclosed draft ordinance.

#### Summary of Ordinance Provisions

The enclosed draft ordinance establishes the City of Los Angeles Existing Buildings Energy and Water Efficiency (EBEWE) Program. Subject to enumerated exemptions and exceptions, the EBEWE Program requires buildings above a certain size, including existing buildings, to undergo energy and water and efficiency audits and retro-commissioning every five years, and water and energy benchmarking every year.

The program applies to large buildings that tend to consume more energy and water to operate. Specifically, the program applies to privately-owned buildings that are 20,000 square feet or larger. The program also includes City-owned buildings that are 7,500 square feet or larger, except that City-owned buildings that are smaller than 15,000 square feet are not subject to the retro-commissioning and audit requirements. One- and two-family dwellings, among other buildings, are excluded from the program.

There are essentially two mandatory components to the program: (1) benchmarking and (2) audit and retro-commissioning. With regard to benchmarking, building owners must annually submit to DBS a benchmarking report of the building's total water and energy use. Owners are required to generate the benchmarking report based on an assessment in the free online tool, ENERGY STAR® Portfolio Manager, provided by the U.S. Environmental Protection Agency. DBS will make available on the internet limited summary data based on the benchmarking reports, and update the information at least annually for the public to view.

The audit and retro-commissioning requirement is the second part of the program. Every five years, unless subject to an exemption, a building owner must have a licensed engineer or architect conduct an efficiency audit and retro-commissioning of the building. Audits entail an evaluation of the building's base water and energy systems to identify potential modifications that can be made to equipment in order to utilize energy and water more efficiently. Retro-commissioning measures, on the other hand, may entail repairs, adjustments, or operational improvements to optimize a building's energy and water performance. Part of the retro-commissioning process includes identifying potential retrofit measures that an owner may undertake, such as installing new energy and/or water efficiency technologies.

Finally, the draft ordinance introduces new fees to cover the costs of implementing the EBEWE Program. The proposed submittal fee for processing the annual benchmarking report is \$61.00, and the proposed submittal fee for processing audit and retro-commissioning reports is \$183.00. A non-compliance fee of \$202.00 is also proposed in the draft ordinance.

#### CEQA Determination

City staff recommends that Council determine that the ordinance is not subject to the California Environmental Quality Act (CEQA) because it is categorically exempt.

Staff recommends that the proposed ordinance may be found categorically exempt from CEQA because it is an action taken, as authorized by state law, to maintain natural resources. CEQA Guidelines Section 15307. The draft ordinance may also be found exempt pursuant to CEQA Guidelines Section 15308, because it is an action taken, as authorized by state law, to protect the environment. *Id.* Section 15308. Here, the draft ordinance seeks to promote the efficient use of water and energy by

some of the largest buildings operating in the City of Los Angeles. The ordinance is intended to reduce water waste, conserve non-renewable sources of energy, decrease greenhouse gas emissions, and offset an unprecedented drought that continues to threaten the City's natural environment and inhabitants.

In addition to the aforementioned findings, staff suggests that you determine that the proposed ordinance is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15269(a) and (c) for Emergency Projects. For the last five years, the City's water supply has been seriously challenged by a persistent state-wide drought. Indeed, Governor Jerry Brown declared a drought state of emergency in his January 17, 2014 State of Emergency Proclamation and in his April 25, 2014 Continued State of Emergency Proclamation, which were subsequently ordered to remain in full force and effect, pursuant to Executive Order B-36-15, so long as drought conditions persisted. This draft ordinance establishes a water and energy efficiency program that is needed to mitigate these ongoing emergency drought conditions. Because there is no indication that the severe drought affecting the City of Los Angeles will end in the near future, immediate action is critical.

#### Fee Notice Requirement

We note that, because this ordinance would establish new fees, notice of its proposed adoption should be given in accordance with the provisions of California Government Code Sections 66018 and 6062a. Those sections of state law require that, before adoption of a new or increased fee, a public hearing be held and notice of that hearing be published in a newspaper with two publications at least five days apart over a ten-day period. The notice period begins the first day of publication, and there must be at least five days intervening between the first and the second publications, not counting the dates of publication.

#### Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Department of Building and Safety, the Department of Water and Power, and the Housing and Community Investment Department, with a request that all comments, if any, be presented directly to the City Council or its Committees when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Monica Castillo at (213) 978-8068. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON  
Chief Assistant City Attorney

DM/MDC/mv  
Transmittal