

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Date: August 26, 2016

CAO File No. 0160-01573-0000  
Council District: All  
Council File No. 14-1478

To: The Mayor  
The Council

From: Miguel A. Santana, City Administrative Officer *MAS*

Reference: Council report back under Council File No. 14-1478

Subject: **EXISTING BUILDING ENERGY & WATER EFFICIENCY ORDINANCE FEE STUDY**

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### RECOMMENDATION

That the Council, subject to the approval of the Mayor, adopt the Office of the City Attorney's proposed ordinance to add Division 97 of Article I, Chapter IX of the Los Angeles Municipal Code to adopt the Existing Building Energy and Water Efficiency Program which includes the fees recommended in Attachment 1, penalties based on a peer city review, and requires existing buildings to undergo energy and water efficiency audits and annual benchmarking of energy and water consumption.

### SUMMARY

On November 24, 2015, the Council adopted an Energy and Environment Committee (E&E) Report (C.F. 14-1478) requesting the Office of the City Attorney (City Attorney) to draft an ordinance to effectuate the Existing Building Energy and Water Efficiency (EBEWE) Program. On August 4, 2016, our Office completed a fully burdened time and materials cost analysis (Attachment 1) to determine the EBEWE Program fees. Additionally, a peer city review (Attachment 2) was conducted to determine the appropriate penalties to assess when a building owner fails to correct the non-compliance violation within a reasonable time. Benchmarking penalties are set between \$500 and \$1,000. Audits and retro-commissioning penalties are set between \$1,250 and \$20,000. Penalty amounts are set based on building size and the time elapsed after due date. The recommended fees and penalties are included in a proposed City Attorney ordinance adding Division 97 of Article I, Chapter IX of the Los Angeles Municipal Code to adopt the EBEWE Program.

## **FISCAL IMPACT STATEMENT**

There is no General Fund impact. The fees for the Existing Building Energy and Water Efficiency (EBEWE) Program are set at full cost recovery. Therefore, any cost incurred by the Department of Building and Safety to administer the EBEWE Program will be offset by fees collected. This recommendation is consistent with the City's Financial Policies as on-going expenditures will be fully supported by on-going revenues.

*MAS:YC:ACA:JLK:02170023c*

## **ATTACHMENTS**

## FY 2016-17 Existing Building Energy and Water Efficiency (EBEWE) Fee Analysis

The following provides the estimated Department of Building and Safety costs to provide services per the EBEWE Ordinance.

Tasks	No. Hours Per Task (A)	Classification Performing Task (B)	Code PG (C)	Top Step Hourly Salary Rate (D)	CAP 37 <sup>1</sup> (E)	Annual Expenses <sup>2</sup> (F)	Hourly Expenses (F)/1800=(G)	Total Hourly Rate (D)+(E)+(G)=(H)	Total Hourly Fee (A)*(H)=(I)
<b>Verify Compliance with Annual Disclosure</b>									
Send Notification									
Sort database; review, print & mail notification <sup>3</sup>	0.08	OFFICE ENGRG TECH III	7212-3	36.47	35.98	4,352	2.42	74.87	6.24
Answer questions from customers	0.25	OFFICE ENGRG TECH III	7212-3	36.47	35.98	4,352	2.42	74.87	18.72
Verify and log complete submissions	0.08	OFFICE ENGRG TECH III	7212-3	36.47	35.98	4,352	2.42	74.87	6.24
Engineering support activities <sup>4,5</sup>	0.08	MECH ENGRG ASSC IV	7554-4	59.89	59.09	6,481	3.60	122.58	10.22
Supervisory support activities <sup>5,6</sup>	0.04	BLD MECH ENGR II	7561-2	70.42	69.48	6,098	3.39	143.29	5.97
Clerical support activities <sup>5,6</sup>	0.04	SR ADMINISTRATIVE CLERK	1368-0	30.99	30.58	4,352	2.42	63.99	2.67
<b>Fee Subtotal - Annual Disclosure</b>									<b>\$ 50</b>
<b>Verify Compliance with Audit and Retro-Commissioning (5-years)</b>									
Send Notification									
Sort database; review, print & mail notification <sup>3</sup>	0.08	OFFICE ENGRG TECH III	7212-3	36.47	35.98	4,352	2.42	74.87	6.24
Answer questions from customers	0.25	OFFICE ENGRG TECH III	7212-3	36.47	35.98	4,352	2.42	74.87	18.72
Supervisory support activities <sup>5,6</sup>	0.03	BLD MECH ENGR II	7561-2	70.42	69.48	6,098	3.39	143.29	4.78
Engineering support activities <sup>4,5</sup>	0.07	MECH ENGRG ASSC IV	7554-4	59.89	59.09	6,481	3.60	122.58	8.17
Clerical support activities <sup>5,6</sup>	0.03	SR ADMINISTRATIVE CLERK	1368-0	30.99	30.58	4,352	2.42	63.99	2.13
Technical Verification									
Verify required information is provided	0.50	OFFICE ENGRG TECH III	7212-3	36.47	35.98	4,352	2.42	74.87	37.44
Answer questions from customers	0.50	OFFICE ENGRG TECH III	7212-3	36.47	35.98	4,352	2.42	74.87	37.44
Engineering support activities <sup>5,7</sup>	0.30	MECH ENGRG ASSC IV	7554-4	59.89	59.09	6,481	3.60	122.58	36.77
Supervisory support activities <sup>5,6</sup>	0.10	BLD MECH ENGR II	7561-2	70.42	69.48	6,098	3.39	143.29	14.33
Clerical support activities <sup>5,6</sup>	0.10	SR ADMINISTRATIVE CLERK	1368-0	30.99	30.58	4,352	2.42	63.99	6.40
<b>Fee Subtotal - Audit and Retro-Commissioning</b>									<b>\$ 172</b>
<b>Additional Notice(s) for Annual Disclosure or Audit and Retro-Commissioning</b>									
Sort database; review, print & mail addtl notification	0.08	OFFICE ENGRG TECH III	7212-3	36.47	35.98	4,352	2.42	74.87	6.24
Supervisory support activities <sup>5,6</sup>	0.01	BLD MECH ENGR II	7561-2	70.42	69.48	6,098	3.39	143.29	1.19
Clerical support activities <sup>5,6</sup>	0.01	SR ADMINISTRATIVE CLERK	1368-0	30.99	30.58	4,352	2.42	63.99	0.53
<b>Fee Subtotal - Additional Notices</b>									<b>\$ 8</b>
<b>Noncompliance for Annual Disclosure or Audit and Retro-Commissioning</b>									
Assess fee, send to owner, follow through	2.00	OFFICE ENGRG TECH III	7212-3	36.47	35.98	4,352	2.42	74.87	149.74
Supervisory support activities <sup>9</sup>	0.20	BLD MECH ENGR II	7561-2	70.42	69.48	6,098	3.39	143.29	28.66
Clerical support activities <sup>6</sup>	0.20	SR ADMINISTRATIVE CLERK	1368-0	30.99	30.58	4,352	2.42	63.99	12.80
<b>Fee Subtotal - Noncompliance</b>									<b>\$ 191</b>

<sup>1</sup> CAP 37 includes Fringe, CS, CTO & Dept Ad=98.67%	<b>Fringe</b>	<b>Central Services</b>	<b>Dept Admin</b>	<b>CTO</b>	<b>Total</b>
	40.73%	14.07%	22.03%	21.84%	98.67%

<sup>2</sup> Expenses include Mileage, Printing and Binding, Contractual Services, Office & Admin, Operating Supplies, and Equipment; these expenses vary per classification.

<sup>3</sup> Includes one notice sent to all customers. Additional notices or noncompliance situations are assessed separately.

<sup>4</sup> Time needed for these support activities calculated based on 20% of OET time needed for this task.

<sup>5</sup> See position descriptions for additional information on tasks performed by these positions.

<sup>6</sup> Time needed for these support activities calculated based on 10% of OET time needed for this task.

<sup>7</sup> Time needed for these support activities calculated based on 30% of OET time needed for this task, due to additional complexity anticipated during technical verification tasks.

<b>Jurisdiction</b>	<b>Compliance Details</b>	<b>Additional Requirements</b>
<b>Atlanta</b>	<b>Enforcement:</b> Yes <b>Penalties for Non-Compliance:</b> Yes <b>Description:</b> Written notice of first violation; Fine of \$1,000 if 30 days late, an additional \$1,000 every year thereafter	<b>Audits:</b> Yes <b>Water Use Tracking:</b> Yes
<b>Austin</b>	<b>Enforcement:</b> Yes <b>Penalties for Non-Compliance:</b> Yes <b>Description:</b> Proof of culpable mental state is not required for a fine of up to \$500. If a person acts with criminal negligence, a fine of up to \$2,000 may be assessed.	<b>Audits:</b> Yes <b>Retrocommissioning:</b> No <b>Water Use Tracking:</b> No
<b>Boston</b>	<b>Enforcement:</b> Yes <b>Penalties for Non-Compliance:</b> Yes <b>Description:</b> \$75 to \$200 per day for owners. Maximum annual fine is \$3,000. Non-residential tenants may be fined up to \$35 at a time for failing to supply building owners with their energy data. Residential tenants will not be fined. <b>Compliance Rate (Based on Building Area):</b> 84% (2014)	<b>Audits:</b> Yes <b>Water Use Tracking:</b> Yes
<b>Chicago</b>	<b>Enforcement:</b> Yes <b>Penalties for Non-Compliance:</b> Yes <b>Description:</b> Owner subject up to \$100 fine for 1st violation and additional fines up to \$25/day <b>Number of Buildings in Compliance:</b> 1,774 <b>Area of Buildings in Compliance:</b> 210,200,000 Sq. Feet <b>Compliance Rate (Based on # of Buildings):</b> 84% <b>Compliance Rate (Based on Building Area):</b> 92% <b>Description:</b> Compliance numbers represent 2014 data, taken from the 2015 Chicago benchmarking report.	<b>Audits:</b> No <b>Retrocommissioning:</b> No <b>Water Use Tracking:</b> No
<b>District of Columbia</b>	<b>Enforcement:</b> Yes <b>Penalties for Non-Compliance:</b> Yes <b>Description:</b> Up to \$100 per day. <b>Number of Buildings in Compliance:</b> 490 <b>Area of Buildings in Compliance:</b> 170,000,000 Sq. Feet <b>Compliance Rate (Based on # of Buildings):</b> 83% <b>Description:</b> Compliance numbers from February 2014.	<b>Water Use Tracking:</b> Yes

Jurisdiction	Compliance Details	Additional Requirements
<u>Minneapolis</u>	<b>Enforcement:</b> Yes <b>Penalties for Non-Compliance:</b> Yes <b>Description:</b> Warning notice mailed to the building owner, indicating 45 days to comply else face a penalty. Failure to comply with penalties may result in a suspension of commercial building registration. <b>Number of Buildings in Compliance:</b> 102 <b>Area of Buildings in Compliance:</b> 21,000,000 Sq. Feet <b>Compliance Rate (Based on # of Buildings):</b> 87% (2013) <b>Description:</b> Compliance data from November 2013	<b>Water Use Tracking:</b> Yes
<u>New York City</u>	<b>Enforcement:</b> Yes <b>Penalties for Non-Compliance:</b> Yes <b>Description:</b> \$500 fine for missing May 1st benchmarking deadline, additional \$500 fines for each subsequent quarter failing to benchmark (maximum: \$2,000) <b>Number of Buildings in Compliance:</b> 19,670 <b>Compliance Rate (Based on # of Buildings):</b> 84% <b>Compliance Rate (Based on Building Area):</b> 84% <b>Description:</b> Compliance data is based on NYC's Private Sector Second Benchmarking Report, released in September 2014. This report analyzed benchmarking data collected for calendar year 2012	<b>Audits:</b> Yes <b>Retrocommissioning:</b> Yes <b>Water Use Tracking:</b> Yes
<u>Philadelphia</u>	<b>Enforcement:</b> Yes <b>Penalties for Non-Compliance:</b> Yes <b>Description:</b> \$300 fine for the 1st 30 days, and then \$100/day <b>Compliance Rate (Based on # of Buildings):</b> 90% <b>Compliance Rate (Based on Building Area):</b> 90% <b>Description:</b> Based on 2014 Energy Benchmarking Report, detailing statistics from 2013.	<b>Water Use Tracking:</b> Yes
<u>Portland</u>	<b>Enforcement:</b> Yes <b>Penalties for Non-Compliance:</b> Yes <b>Description:</b> \$500 for every 90 day period during which violations continue.	<b>Audits:</b> No <b>Retrocommissioning:</b> No <b>Water Use Tracking:</b> No

Jurisdiction	Compliance Details	Additional Requirements
<b>San Francisco</b>	<b>Enforcement:</b> Yes	<b>Audits:</b> Yes
	<b>Penalties for Non-Compliance:</b> Yes	<b>Retrocommissioning:</b> Yes
	<b>Description:</b> Warning, then public notice, then fine	<b>Water Use Tracking:</b> No
	<b>Compliance Rate (Based on Building Area):</b> 82% (2013)	
<b>Seattle</b>	<b>Enforcement:</b> Yes	<b>Audits:</b> No
	<b>Penalties for Non-Compliance:</b> Yes	<b>Retrocommissioning:</b> Yes
	<b>Description:</b> Penalties accrue quarterly, starting 90 days after reporting deadlines. Buildings 50,000 SF or greater: \$1,000/quarter. Buildings greater than or equal to 20,000 SF and less than 50,000 SF: \$500/quarter	<b>Water Use Tracking:</b> No
	<b>Number of Buildings in Compliance:</b> 2,992	
	<b>Area of Buildings in Compliance:</b> 267,200,000 Sq. Feet	
	<b>Compliance Rate (Based on # of Buildings):</b> 99.2 (2013)	
	<b>Compliance Rate (Based on Building Area):</b> 99.4% (2013)	
	<b>Description:</b> This compliance data is for the 2013 energy reporting year. Non-Residential: 1,651 buildings (99% compliance) with 178.6 million square feet (99.2% compliance). Multifamily: 1,565 buildings (99.5% compliance) with 102.4 million square feet (99.7% compliance).	