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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 1 - 0 0 6 3
FEB 1 6 2011

REPORT RE:

**DRAFT ORDINANCE AMENDING DIVISION 23, CHAPTER 7, ARTICLE 3,
SECTION 23.141 OF THE LOS ANGELES ADMINISTRATIVE CODE
REGARDING THE DEPARTMENT OF WATER AND POWER'S UTILITY
INFRASTRUCTURE LOAN 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. 07-0739-S1

Honorable Members:

This Office has prepared and now transmits for your consideration the attached draft ordinance, approved as to form and legality. The ordinance would amend Los Angeles Administrative Code (LAAC) § 23.141 to update and revise the Department of Water and Power's Utility Infrastructure Loan Program (Loan Program), particularly in broadening the scope of applicants who can qualify for the Loan Program by allowing tenants of buildings served by the Department fully to participate. The Loan Program has been and remains open only to service account holders of record, whose number have not included tenants whose utility services are not separately metered.

Background

In 1998, by an ordinance codified as LAAC § 23.137 – 23.140, the Department's General Manager was authorized to enter into long-term energy contracts with its

customers and to allow loan financing to these customers for energy efficiency projects. In 2000, LAAC § 23.141 was approved to allow all customers to participate in the loan financing for energy efficiency equipment installations. In 2007, § 23.141 was expanded to include Water Conservation, Solar Energy, and Utility Infrastructure Projects to the list of acceptable loan-financed projects. The purpose of the Loan Program is to encourage water conservation and energy efficiency projects, stimulate the installation of solar photovoltaic systems, and to assist customers with the cost of utility upgrades in the City of Los Angeles.

Recommendation by the Board of Water and Power Commissioners that Participation be Broadened and Other Changes be Made to the Utility Infrastructure Loan Program

On October 5, 2010, the Board of Water and Power Commissioners adopted a resolution (No. 011-104) recommending that the City Council adopt the draft ordinance before you. In addition to calling for expansion of the Loan Program to include tenants who are not separately metered, the proposed ordinance would also: (a) require collateral on all loans; (b) require the Board of Water and Power Commissioners to adopt and periodically review a Loan Security Protocol setting lending standards; and (c) provide that if the customer is a tenant, the landlord's written consent to the installation must be provided to the Department or, if such consent is not obtained, the tenant shall demonstrate that its lease agreement authorizes the installation and shall provide a suitable indemnity to the Department in regard to any legal claims that may be asserted by the landlord or others. See proposed § 23.141(h).

Authorizing Charter Provisions

By ordinance the Council may under Charter § 373 establish parameters on long-term contracts entered into by City departments and offices and under Charter § 604(c) set monetary limits on contracts in the proprietary departments that do not require board approval.

Council Rule 38 Referral

The approval of the draft ordinance by the Board of Water and Power Commissioners satisfies Council Rule 38's requirement that the draft be submitted to the Board "for comment and recommendation."

If you have any questions regarding this matter, please contact Deputy City Attorney Tina Shim at (213) 367-2372. She or another member of this Office will be present when you consider this matter.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:TS:ml
Transmittal

ORDINANCE NO. _____

An ordinance amending Division 23, Chapter 7, Article 3, Section 23.141 of the Los Angeles Administrative Code entitled: Contracting Authority of the General Manager of the Department of Water and Power Related to Energy Efficiency Projects, Utility Infrastructure Projects, Water Conservation and Solar Energy Projects. These amendments broaden the definition of a Los Angeles Department of Water and Power customer to include tenants of buildings served by the Department, and to remove language in the Administrative Code that is no longer applicable to the program.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Los Angeles Administrative Code Section 23.141 is amended to read as follows:

Sec. 23.141. Additional Contracting Authority of the General Manager of the Department of Water and Power Related to Energy Efficiency Projects, Utility Infrastructure Projects, Water Conservation and Solar Energy Projects.

The Board of Water and Power Commissioners (Board) under the authority of Charter Sections 373 and 604(c) is authorized to delegate to the General Manager of the Department of Water and Power (Department) the authority and the power to enter into loan agreements with Department customers for water conservation and energy efficiency projects (WCEEP), solar energy projects (SEP) and utility infrastructure projects (UIP), subject to the following requirements.

- (a) The Chief Accounting Employee of the Department must first certify that the proposed contract satisfies all the requirements of this section.
- (b) Department customers include any person, persons, association, corporation, partnership, leaseholder, tenant, renter, or governmental agency supplied or entitled to be supplied with water or electricity from the Department.
- (c) All customers receiving WCEEP, SEP, and UIP loans shall remain customers of the Department for the life of the loan.
- (d) All customers receiving SEP loans shall install the solar energy system by using a business entity that has a City of Los Angeles Business Tax Registration Certificate and whose principal place of business is located within the City of Los Angeles. This requirement shall be made an express condition precedent to every SEP loan.

(e) The funds provided by the Department to finance WCEEP, SEP, and UIP loans along with applicable interest payments shall be above the Department's cost of funds.

(f) WCEEP, SEP, and UIP loans shall provide that they must be repaid by the earlier of: (i) the payback period of the project financed; or (ii) the expiration date of the customer's lease/rental agreement, but, in any event, by no later than ten years from the date of the loan.

(g) Excluding any loans made to the City of Los Angeles, the Department's aggregate outstanding loan balance pursuant to this section shall not exceed \$15 million without further City Council approval.

(h) The Department's General Manager and/or Department's Chief Accounting Employee shall conduct credit checks on customers seeking WCEEP, SEP, and UIP loans and develop the necessary safeguards to insure repayment. Collateral will be required on all loans. The Board shall adopt a Loan Security Protocol (LSP) setting lending standards, including required collateral, and prescribing procedures to be followed in making loans to customers. The LSP shall be adopted by the Board after a review of lending standards and procedures followed by other utilities for comparable loans. After initial adoption, the Board shall review the LSP no less frequently than annually. Unless an LSP is in effect, no loan shall be made to any person other than: (i) a customer who is the service account holder of record with the Department for the facility where the equipment will be installed; or (ii) a customer for equipment installed in the Department's service area and whose loan is secured by real property. If the customer is a tenant, the landlord's written consent to the installation must be provided to the Department or, if such consent is not obtained, the tenant shall demonstrate that its lease agreement authorizes the installation and shall provide a suitable indemnity to the Department in regard to any legal claims that may be asserted by the landlord or others.

(i) The Department's Chief Accounting Employee shall determine, on at least a quarterly basis and through a generally accepted sampling method, whether the conditions described in this section have been met. These quarterly audits shall include a description of the number of WCEEP, SEP, and UIP loan agreements entered into and an analysis and summary of delinquency and default rates by customers, and administrative costs and expenses. The General Manager and the Chief Accounting Employee shall report these findings to the Board and to the City Council on at least an annual basis.

(j) All loans that exceed \$150,000 shall require approval from the Board.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By Tina Shim (PBE)
TINA SHIM
Deputy City Attorney

Date 2/16/11

File No. _____