

**CITY OF AUSTIN – AUSTIN ENERGY
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA DATE: 04/07/2011

SUBJECT: Approve an ordinance amending Chapter 6-7 of the City Code relating to Energy Conservation Audit and Disclosure requirements.

AMOUNT AND SOURCE OF FUNDING: There is no unanticipated fiscal impact.

FISCAL NOTE: A fiscal note is not required.

FOR MORE INFORMATION CONTACT: Karl Rábago, Distributed Energy Services Vice President, 322-6098.

PRIOR COUNCIL ACTION: November 6, 2008 – Approved Ordinance 20081106-047 (“ECAD” Ordinance) adding a Chapter 6-7 to the City Code, in support of Resolution No. 20081106-048 for Energy Efficiency, and Resolution No. 200715-023 for Austin Climate Protection Plan.

BOARD AND COMMISSION ACTION: To be reviewed by the Electric Utility Commission on March 21, 2011 and the Resource Management Commission on March 22, 2011.

The Energy Conservation Audit and Disclosure (“ECAD”) Ordinance was approved in 2008 and went into effect in June of 2009. It requires residential home sellers to disclose energy audit results to potential buyers, multi-family owners to disclose energy audit results to tenants and potential tenants, and commercial facility owners to disclose energy efficiency ratings to the City and to potential buyers.

This code amendment makes several clarifications and improvements to the ECAD ordinance, including ensuring that home sellers disclose energy audit results prior to the executing a contract with a buyer, adding a separate category related to condominiums, excluding commercial facilities under 10,000 square feet, phasing in commercial facilities reporting requirements over time based on the size of the facility, implementing annual rating of commercial buildings, and allowing that exemptions are valid for ten years.

These changes are important steps in achieving a higher level of efficacy for the ECAD Ordinance and will resolve ongoing issues associated with its implementation.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 6-7 OF THE CITY CODE RELATING TO ENERGY CONSERVATION AUDIT AND DISCLOSURE REQUIREMENTS.**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:****PART 1.** City Code Chapter 6-7 is amended to read:**CHAPTER 6-7. ENERGY CONSERVATION.****ARTICLE 1. General Provisions.****§ 6-7-1 DEFINITIONS.**

In this chapter:

- (1) **COMMERCIAL FACILITY** means a building used for non-residential, civic, or commercial, and/or industrial uses, excluding manufacturing-building and does not include an industrial building, with a gross floor area of 10,000 square feet or greater.
- (2) **CONDOMINIUM** means a site that combines separate ownership of individual units with common ownership of other elements such as common areas.
- (23) **DIRECTOR** means the director of the Austin Electric Utility.
- (4) **GROSS FLOOR AREA** means the total number of enclosed square feet measured between the exterior surfaces of the fixed walls within any structure used or intended for supporting or sheltering any use or occupancy.
- (35) **MULTI-FAMILY FACILITY** means a site with five or more dwelling units.
- (46) **OWNER** means a person with a freehold interest in a facility to which this chapter applies.
- (57) **RESIDENTIAL FACILITY** means a site with four or fewer dwelling units.
- (68) **TIME OF SALE** means the effective date of an executory contract the recording of a deed binding transferring the purchaser legal title to real property to purchase implement the sale of property.

§ 6-7-2 APPLICABILITY.

This chapter applies to a ~~commercial, residential, or multi-family facility~~ if the facility that receives electric service from the Austin Electric Utility, as determined by the director.

§ 6-7-3 ADMINISTRATIVE RULES.

- (A) The director shall adopt administrative rules for the implementation of this chapter.

- (B) The rules shall be available for inspection at the Austin Electric Utility administrative offices during normal business hours.

§ 6-7-4 VARIANCES.

- (A) The director may grant a variance from a requirement of this chapter if the director determines that, due to special circumstances unique to the applicant's facility and not based on a condition caused by actions of the applicant, strict compliance with provisions of this chapter would cause undue hardship. A variance granted under this subsection (A) must be limited to the minimum change necessary to avoid the undue hardship.
- (B) In addition to the variance authorized in subsection (A), the director may grant a variance from a requirement in this chapter if the director determines that:
- (1) application for a permit to substantially remodel or demolish the facility will be filed not later than 6 months after the time of sale; and
 - (2) in the case of remodel, the owner and the purchaser of the facility have entered into a binding agreement, in a form approved by the director, whereby the purchaser of the facility agrees to complete an energy audit within a specified period of time after remodel of the facility is complete.
- (C) In addition to the variance authorized in subsection (A), the director may grant a variance from the requirements of Article 4 *Commercial Facilities* if the director determines that the facility ~~is a data center or other high energy use facility that~~ cannot be adequately evaluated using currently available audit or rating tools.
- (D) A person may seek a variance by filing an application with the director. The director may require the applicant to provide information the director determines is necessary to evaluate the variance request.

§ 6-7-5 ENERGY AUDIT REQUIREMENTS.

- (A) A residential or multi-family energy audit required under this chapter must:
- (1) be conducted by a person certified as a building performance analyst or equivalent by an agency approved by the director; and
 - (2) use the audit and disclosure forms prescribed by rule under § 6-7-3.
- (B) A residential or multi-family energy audit ~~required under~~ performed in accordance with this chapter may be used to will meet the energy audit requirements of this chapter for a period of ten years after the audit is initially performed, unless a more recent audit meeting the requirements of this chapter has been conducted.

Article 2. Residential Facilities.

§ 6-7-11 RESIDENTIAL ENERGY AUDIT.

(A) The owner of a residential facility must, in order to meet the disclosure deadline requirements required under this article ~~before the time of sale of the facility~~, have an energy audit of the facility completed.

(B) The person conducting the audit must provide a copy of the energy audit to the director not later than 30 days after the audit is complete.

§ 6-7-12 DISCLOSURE REQUIRED.

The owner of a residential facility must provide a copy of the energy audit required under this article to the purchaser or prospective purchaser of the facility:

(1) concurrent with the seller's disclosure notice required under state law; or

(2) if no seller's disclosure notice is required under state law, before the time of sale ~~and the person performing the audit must provide a copy of the energy audit to the director not later than 30 days after the audit is complete.~~

§ 6-7-13 EXEMPTIONS.

(A) This article does not apply to transfers of title to real property in the following circumstances:

- (1) through a foreclosure sale or trustee's sale, or a deed in lieu of foreclosure;
- (2) through a pre-foreclosure sale where the seller has reached an agreement with the mortgage holder to sell the facility for an amount less than the amount owed on the mortgage;
- (3) through the exercise of or under the threat of eminent domain;
- (4) from one family member to another family member without consideration;
- (5) under a court order or probate proceedings; or
- (6) under a decree of legal separation or dissolution of marriage, or property settlement agreement incidental to such a decree.

(B) This article does not apply to a residential facility if one or more of the following apply:

- (1) the facility was constructed no more than ten years before the time of sale;
- (2) the facility participated in the Austin Energy Home Performance with Energy Star program, or an equivalent Austin Electric Utility program, not more than ten years before the time of sale and either:
 - (a) performed at least three of the efficiency measures,
 - (b) performed all recommended efficiency measures, as determined by the director, or

(b~~c~~) received from the Austin Electric Utility an energy efficiency rebate of an amount prescribed by rule, but not less than five hundred dollars (\$500.00);

- (3) the facility participated in the Austin Energy Free Weatherization Program, or an equivalent Austin Electric Utility program, not more than ten years before the time of sale;
- (4) the purchaser of the facility qualifies for and has signed an agreement, in a form acceptable to the director, agreeing to participate in the Austin Energy Free Weatherization Program or an equivalent Austin Electric Utility program, not later than six months after the time of sale; or
- (5) the facility is manufactured housing built on a permanent chassis and designed to be used without a permanent foundation.

Article 3. Multi-Family Facilities.

§ 6-7-21 MULTI-FAMILY ENERGY AUDIT.

- (A) The owner of a multi-family facility which ~~is~~ will be at least ten years old on June 1, 2009-2011 must have an energy audit of the facility performed not later than June 1, 2011.
- (B) The owner of a multi-family facility not required to perform an energy audit under subsection (A) must have an energy audit of the facility performed not later than 10 years after construction of the facility is complete.
- (C) The owner of a multi-family facility required to have an energy audit of the facility performed under subsection (A) or (B) must have subsequent energy audits performed not later than ten years after the date of the most recent required audit for the facility.

§ 6-7-22 DISCLOSURE REQUIRED.

The owner of a multi-family facility must post and provide to current and prospective tenants the results of the energy audit required under this article. The results must be on a form and in locations prescribed by rule. In addition, the owner must provide a copy of the required audit to the director not later than 30 days after the audit is complete.

§6-7-23 HIGH ENERGY USE FACILITIES.

- (A) Regardless of the date of construction of the facility, the director shall issue a notice to the owner of a multi-family facility that the director determines has an average per-square-foot energy usage exceeding 150% of the average for multi-family facilities within the Austin Electric Utility service area.
- (B) An owner who receives a notice issued under subsection (A) shall implement energy efficiency improvements to the facility sufficient to reduce ~~bring the per-square-foot energy usage of the facility to within 110% by 20% of the average per square foot energy~~

usage of multi-family facilities within the City not later than eighteen months after receipt of the notice.

- (C) An owner required to implement improvements under this section may apply to the director for additional time to complete the improvements, but must file the application not later than 90 days after receipt of the notice. If the director determines that more than eighteen months is required to complete the improvements, the owner may execute a contract in a form acceptable to the director whereby the improvements required under this section will be completed within a period of time determined by the director.

§ 6-7-24 EXEMPTIONS.

This article does not apply to a multi-family facility if:

- (1) the owner completed comprehensive duct remediation work on the facility through participation in an Austin Electric Utility rebate program no more than ten years before ~~June 1, 2009~~ the otherwise applicable audit deadline under this Article;
- (2) HVAC equipment was replaced through an Austin Electric Utility rebate program in all units of the facility no more than ten years before ~~June 1, 2009~~ the otherwise applicable audit deadline under this Article; or
- (3) HVAC equipment was replaced with equipment meeting the requirements for an Austin Electric Utility rebate program, though not participating in the program, in all units of the facility no more than ten years before ~~June 1, 2009~~ the otherwise applicable audit deadline under this Article.

Article 4. Commercial Facilities.

§ 6-7-31 COMMERCIAL FACILITY RATING.

- (A) The owner of a commercial facility that ~~is at least ten years old on June 1, 2009~~ has a gross floor area of 75,000 square feet or greater must calculate an energy use rating for the facility not later than June 1, ~~2014~~2012, using an audit or rating system approved by the director.
- (B) The owner of a commercial facility that has a gross floor area of 30,000 square feet or greater, but less than 75,000 square feet, must calculate an energy use rating for the facility not later than June 1, 2013, using an audit or rating system approved by the director.
- (C) The owner of a commercial facility that has a gross floor area of 10,000 square feet or greater, but less than 30,000 square feet, must calculate an energy use rating for the facility not later than June 1, 2014, using an audit or rating system approved by the director.
- (~~B~~D) The owner of a commercial facility ~~not~~ required to calculate an energy use rating for the facility under subsection (A), (B), or (C) must calculate an energy use rating for the facility by June 1 of each year following the first rating required for the facility not later

than 10 years after construction of the facility is complete, using an audit or rating system approved by the director.

§ 6-7-32 DISCLOSURE REQUIRED.

The owner of a commercial facility must make a copy of the energy rating calculation required under this article available to a purchaser or prospective purchaser of the facility before the time of sale and must provide a copy to the director not later than 30 days after the audit is complete.

Article 5. Condominiums.

§ 6-7-35 CONDOMINIUM AUDIT AND DISCLOSURE.

- (A) The owner of five or more dwelling units located within one condominium is required to meet the energy audit and disclosure requirements of Article 3 *Multi-Family Facilities*, with the exception of § 6-7-23 *High Energy Use Facilities*, for all dwelling units within the condominium owned by the owner.
- (B) The owner of any number dwelling units located within one condominium is required to meet the energy audit and disclosure requirements of Article 2 *Residential Facilities*, unless:
 - (1) an energy audit meeting the requirements of Article 3 *Multi-Family Facilities* has been performed for the condominium, and
 - (2) a copy of the energy audit performed on the condominium is disclosed to the purchaser or prospective purchaser prior to the time of sale.

Article 5-6. Enforcement.

§ 6-7-41 PRESUMPTION OF VIOLATION.

The record owner of property is presumed to be responsible for a violation of this chapter that occurs at a facility on the property.

§ 6-7-42 PENALTY.

- (A) A person commits a criminal offense if the person performs an act prohibited by this chapter or fails to perform an act required by this chapter. Each instance of a violation of this chapter is a separate offense.
- (B) Each offense under this chapter is subject to a fine.
 - (1) Proof of culpable mental state is not required for a fine of up to \$500.
 - (2) If the person acts with criminal negligence, a fine of up to \$2,000.00 may be assessed.
- (C) Proof of a higher degree of culpability than criminal negligence constitutes proof of criminal negligence.

(D) Prosecution of an offense and enforcement of other remedies under this chapter are cumulative.

PART 2. This ordinance takes effect on _____, 2011.

PASSED AND APPROVED

_____	§	_____
_____	§	_____
_____, 2011	§	_____
		Lee Leffingwell
		Mayor

APPROVED: _____
 Karen M. Kennard
 Acting City Attorney

ATTEST: _____
 Shirley A. Gentry
 City Clerk