ORDINANCE NO. 20081106-047

AN ORDINANCE ADDING A NEW CHAPTER 6-7 TO THE CITY CODE RELATING TO ENERGY CONSERVATION AUDIT AND DISCLOSURE REQUIREMENTS; CREATING AN OFFENSE AND IMPOSING PENALTIES UP TO $2,000 FOR EACH OFFENSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The City Code is amended to add a new Chapter 6-7 to read:

CHAPTER 6-7. ENERGY CONSERVATION.

ARTICLE 1. General Provisions.

§ 6-7-1 DEFINITIONS.

In this chapter:

(1) COMMERCIAL FACILITY means a non-residential, civic, or commercial building and does not include an industrial building.

(2) DIRECTOR means the director of the Austin Electric Utility.

(3) MULTI-FAMILY FACILITY means a site with five or more dwelling units.

(4) OWNER means a person with a freehold interest in a facility to which this chapter applies.

(5) RESIDENTIAL FACILITY means a site with four or fewer dwelling units.

(6) TIME OF SALE means the date of the recording of a deed transferring legal title to real property to implement the sale of property.

§ 6-7-2 APPLICABILITY.

This chapter applies to a commercial, residential, or multi-family facility if the facility 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 Section 6-7-3.

(B) A residential energy audit required under this chapter will meet the energy audit requirement of this chapter for a period of ten years after the audit is initially performed.

Article 2. Residential Facilities.

§ 6-7-11 Residential Energy Audit.

The owner of a residential facility must, before the time of sale of the facility, have an energy audit of the facility completed.

§ 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 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, or

(b) received a 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 at least ten years old on June 1, 2009 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.

§ 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 bring the facility to within 110% 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 though participation in an Austin Electric Utility rebate program no more than ten years before June 1, 2009;

(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; 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.

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 must calculate an energy use rating for the facility not later than June 1, 2011, using an audit or rating system approved by the director.

(B) The owner of a commercial facility not required to calculate an energy use rating for the facility under subsection (A) must calculate an energy use rating 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. Enforcement.

§ 6-4-41 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.

§ 6-4-42 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 June 1, 2009.

PASSED AND APPROVED

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November 6, 2008 §

Will Wynn
Mayor

APPROVED:

David Allan Smith
City Attorney

ATTEST:

Shirley A. Gentry
City Clerk