

1 **22.930.010 Applicability**

2 This Chapter 22.930 applies to all nonresidential buildings that are (1) equal to or larger than
3 50,000 square feet of floor area; and (2) are subject to Energy Benchmarking requirements in
4 Section 22.920.010. For buildings with both residential and non-residential space uses, this
5 Chapter 22.930 applies to non-residential portions of a building where the non-residential space
6 is equal to or larger than 50,000 square feet of floor area.

7 **22.930.020 Definitions**

8 In this Chapter 22.930, the following definitions apply:

9 “Building owner” means an individual or entity possessing a fee interest in a
10 nonresidential benchmarking building. Where a condominium is subject to this chapter,
11 “Building Owner” means the owners’ association. In a condominium where the powers of an
12 owners’ association are exercised by or delegated to a master association, as defined in RCW
13 64.34.276, “Building Owner” means the master association.

14 “Building energy tune-up” is defined in 22.930.030.

15 “Certificate of occupancy” means the certificate issued by the Department of Planning
16 and Development Director after final inspection, allowing the building to be occupied.

17 “Energy benchmarking” means the assessment of a building's energy use and efficiency
18 as required in Chapter 22.920.

19 “Certified Energy Star score” means the score certified and provided by the
20 Environmental Protection Agency ENERGY STAR program for commercial buildings
21 indicating the relative energy performance of a building as compared to similar buildings
22 nationwide, as verified and stamped by a licensed professional engineer or registered architect.

1 “Initial occupancy date” means the date that a certificate of occupancy was first issued
2 for a building. If no certificate of occupancy was issued, the date any utility service was first
3 billed for the building shall be the initial occupancy date.

4 "Notice of violation" means a written notice issued to a building owner for failure to
5 comply with the requirements of this Chapter 22.930 or for making any misrepresentation of any
6 material fact in a document required to be prepared or disclosed by this Chapter 22.930.

7 “OSE Director” means the Director of the Office of Sustainability and Environment or
8 designee.

9 “Tenant” means a person or business occupying or holding possession of a building or
10 premises pursuant to a rental agreement.

11 **22.930.030 Requirement for building tune-ups**

12 A. Once every five years, owners of buildings subject to this Chapter 22.930 are required
13 to conduct a tune-up of building energy and water systems and submit a report to the City of
14 findings, outcomes, and actions taken based on the tune-up, pursuant to Section 22.930.050. A
15 building tune-up is defined as:

16 1. An inspection of building energy and water systems pursuant to Section
17 22.930.060, conducted by a qualified tune-up specialist pursuant to Section 22.930.080, and
18 resulting in a report of findings and recommendations for improving building energy operations
19 pursuant to Section 22.930.070; and

20 2. Actions taken to optimize energy and water performance by implementing all
21 low-cost adjustments and minor repairs to existing buildings’ energy and water systems as
22 determined by the OSE Director.

1 B. Unless otherwise restricted by statute or contract, tenants shall allow building owners
2 reasonable access to systems and utility information, if necessary to comply with the terms of
3 this Chapter 22.930.

4 **22.930.040 Exemptions and extensions**

5 A. Buildings meeting one or more of the following conditions may apply for an
6 exemption from complying with a single interval of tune-ups as required by this Chapter 22.930.
7 Building owners shall demonstrate they meet a condition for exemption by submitting evidence
8 of the condition to the OSE Director no later than 180 days before the tune-up compliance date
9 as specified in Section 22.930.050. The OSE Director shall notify applicants within 60 days of
10 receiving an exemption request on the determination of whether the exemption is granted.

11 Conditions meeting an exemption include but are not limited to:

12 1. Buildings with a high certified ENERGY STAR score preceding the tune-up
13 compliance date identified in Section 22.930.050, as determined by the Director;

14 2. Buildings that have received a green building certification that is equivalent to
15 standards accepted in the industry for an efficiently operating building within the three years
16 preceding the tune-up compliance date identified in Section 22.930.050. As of the date of the
17 ordinance introduced as Council Bill _____, a green building certification could be equivalent
18 to a Gold Rating under the USGBC's LEED for Operations and Maintenance v4, or a Net-Zero
19 Energy Certification from the International Living Future Institute;

20 3. Buildings that can show evidence of active monitoring and continuous
21 commissioning, as determined by the Director;

1 4. Buildings that have participated in and successfully completed an approved
2 utility retro-commissioning incentive program in the three years preceding the tune-up
3 compliance date identified in Section 22.930.050;

4 5. Buildings that have completed a full retro- or re-commissioning procedure
5 within the three years preceding the tune-up compliance date identified in Section 22.930.050,
6 with documentation that building performance was optimized;

7 6. Buildings that can demonstrate energy savings of at least 15 percent in the three
8 years preceding the tune-up compliance date identified in Section 22.930.050;

9 7. Buildings that have undergone an energy audit no less stringent than the
10 ASHRAE Level II standard and implemented all of the no-cost/low-cost energy efficiency
11 measures, defined as providing a simple payback of three years or less, identified in the audit in
12 the three years preceding the tune-up compliance date identified in Section 22.930.050;

13 8. Buildings that have participated in the Seattle City Light Energy Assistance
14 Analysis program or equivalent, as determined by the OSE Director, and implemented the
15 program defined cost-effective measures within the three years preceding the tune-up
16 compliance date identified in Section 22.930.050;

17 9. Buildings scheduled to be demolished within one year of the date the building
18 tune-up is due pursuant to Section 22.930.050, per documentation determined by the OSE
19 Director;

20 10. Buildings that demonstrate financial distress, such as being owned by a
21 financial institution though default of the borrower, or other conditions as determined by the
22 OSE Director.

1 11. Buildings receiving their initial certificate of occupancy less than three years
2 before the tune-up compliance date identified in Section 22.930.050.

3 B. The OSE Director is authorized to prescribe rules for requesting an exemption under
4 this Chapter 22.930.

5 **22.930.050 Schedule for tune-ups and reporting**

6 A. Building owners shall conduct an initial building tune-up according to the following
7 schedule. For buildings with both residential and non-residential uses, the compliance deadline
8 will be based on the square footage of non-residential use.

9 1. Buildings with non-residential uses of 200,000 square feet or larger shall
10 comply by October 1, 2018. Subsequent tune-ups shall be required by October 1 of every fifth
11 year thereafter.

12 2. Buildings with non-residential uses of at least 100,000 and less than 200,000
13 square feet shall comply by October 1, 2019. Subsequent tune-ups shall be required by October 1
14 of every fifth year thereafter.

15 3. Buildings with non-residential uses of at least 70,000 and less than 100,000
16 square feet shall comply by October 1, 2020. Subsequent tune-ups shall be required by October 1
17 of every fifth year thereafter.

18 4. Buildings with non-residential uses of at least 50,000 and less than 70,000
19 square feet shall comply by October 1, 2021. Subsequent tune-ups shall be required by October 1
20 of every fifth year thereafter.

21 B. Newly constructed buildings shall comply with the applicable schedule for the
22 building size pursuant to subsection 22.930.050.A.

1 C. A building owner may apply for a one-year compliance extension by showing good
2 cause. Receiving an extension does not alter the future schedule for compliance. By requesting
3 and receiving an extension, the building's next compliance schedule will be less than the typical
4 five-year schedule. The OSE Director is authorized to prescribe rules for applying for an
5 extension under this subsection 22.930.050.C. Conditions to receive an extension include but are
6 not limited to:

- 7 1. Buildings with less than 50 percent of the rentable floor area occupied;
- 8 2. Buildings or building owners that can demonstrate a disproportionate burden of
9 this Chapter 22.930, as determined by the OSE Director.

10 **22.930.060 Building tune-up requirements**

11 A. Building tune-ups and reports to the City shall address the following building
12 elements:

- 13 1. Bill analysis: examine and verify energy and water data and perform basic
14 billing analysis;
- 15 2. Sensors: Examine for proper operation and appropriate location;
- 16 3. Schedules: Optimize schedules of all equipment for actual daily, weekly,
17 holiday, and seasonal schedules;
- 18 4. Set points: Optimize setpoints for all zones and equipment, and implement reset
19 and lock-outs for equipment;
- 20 5. Outside air control: Calculate ventilation requirements, measure actual
21 ventilation rates, and optimize ventilation delivery and control;
- 22 6. Equipment controls: Optimize equipment controls for energy efficient
23 operations;

1 8. Maintenance check: Check for common maintenance items that impact energy
2 usage;

3 9. Design issues: Identify design issues leading to high energy use such as missing
4 insulation, missing controls, large leaks, unbalanced systems, critical zones;

5 10. Lighting: Identify outdated lighting technologies, over-lit spaces, and areas
6 needing lighting controls; and

7 11. Domestic plumbing system maintenance.

8 B. The OSE Director is authorized to prescribe detailed requirements for the elements in
9 subsection 22.930.060.A.

10 **22.930.070 Building energy tune-up results reports**

11 A. Reports to the City shall be in a form developed by the OSE Director and include
12 findings, recommendations, and actions taken as a result of the building energy tune-up and
13 projected energy reductions.

14 B. The City may publicly share information about compliance with this Chapter 22.930.
15 Building owners are also encouraged to provide tune-up results to buyers during a building sale.

16 **22.930.080 Qualifications for tune-up specialists**

17 Building tune-ups pursuant to this Chapter 22.930 shall be conducted by qualified tune-
18 up specialists. A licensed professional engineer qualifies as a tune-up specialist under this
19 Chapter 22.930. The OSE Director is also authorized to prescribe additional certifications and
20 training to meet the minimum qualifications of a qualified tune-up specialist.

21 **22.930.090 Violations**

1 No person or entity to which this Chapter 22.930 applies shall fail to comply with the
2 requirements of this Chapter 22.930 or misrepresent any material fact in a document required to
3 be prepared or disclosed by this Chapter 22.930.

4 **22.930.100 Authority to enforce**

5 A. The OSE Director shall have the authority to enforce this Chapter 22.930.

6 B. This Chapter 22.930 shall be enforced for the benefit of the health, safety, and welfare
7 of the general public and not for the benefit of any particular person or class of persons.

8 C. It is the intent of this Chapter 22.930 to place the obligation of complying with its
9 requirements upon the owners of the buildings and other persons subject to this Chapter 22.930.

10 D. No provision or term used in this Chapter 22.930 is intended to impose any duty upon
11 the City or any of its officers or employees that would subject them to damages in a civil action.

12 E. The OSE Director may delegate the enforcement of any provision of this Chapter
13 22.930 to any other appropriate City of Seattle department including but not limited to the
14 authority to investigate and determine if any building owner, tenant, or other person subject to
15 this Chapter 22.930 has not complied with its requirements, to issue notices of violation, and to
16 collect assessed penalties.

17 **22.930.110 Investigating violations and issuing notices of violation**

18 A. The OSE Director is authorized to investigate and determine if any building owner has
19 not complied with Sections 22.930.030, 22.930.050, 22.930.060, or 22.930.090, including
20 reviewing reported data and requiring a building owner to have an additional third party site visit
21 conducted to verify compliance with this ordinance.

22 B. If after investigation the Director determines that the requirements of this Chapter
23 22.930 have been violated, the Director may issue a notice of violation as provided in this

1 Section 22.930 to the building owners, tenants, or other responsible persons subject to this
2 Chapter.

3 C. The notice of violation shall state the requirement or requirements violated, the
4 necessary corrective action or actions, and any penalties or penalties imposed.

5 D. The notice of violation shall be served on the building owners as provided for in
6 subsection 23.90.006.C.

7 E. A copy of the notice of violation may be filed with the King County Department of
8 Records and Elections if any building owner fails to correct the violation or the OSE Director
9 requests the City Attorney take appropriate enforcement action as provided for in subsection
10 23.90.006.D.

11 F. Nothing in this Section 22.930.110 shall limit or preclude any action or proceeding to
12 enforce this Chapter 22.930, nor does anything in this Section 22.930.110 obligate the OSE
13 Director to issue a notice of violation before initiating a civil enforcement action.

14 **22.930.120 Penalties**

15 A. Penalties for the failure of a building owner to comply with Section 22.930.030,
16 22.930.050, or 22.930.070 shall be imposed as follows for each five-year tune-up requirement
17 pursuant to the schedule in Section 22.930.050.

18 1. For buildings greater than or equal to 200,000 square feet, the following
19 penalties shall be imposed for the failure to tune-up a building and submit a report as required by
20 Section 22.930.050:

21 a. 180 days after October 1 due date — \$5,000;

22 b. 360 days after due date — \$20,000.

1 2. For buildings greater than or equal to 100,000 square feet and less than 200,000
2 square feet, the following penalties shall be imposed for the failure to tune-up a building and
3 submit a report by the following dates:

4 a. 180 days after due date — \$2,500;

5 b. 360 days after due date — \$10,000.

6 3. For buildings greater than or equal to 50,000 square feet and less than 100,000
7 square feet, the following penalties shall be imposed for failure to tune-up a building and submit
8 a report by the following dates:

9 a. 180 days after due date — \$2,000;

10 b. 360 days after due date — \$8,000.

11 4. The OSE Director shall have the authority by OSE Director's rule to establish
12 grace periods for imposing penalties for any class of structure upon a finding that such grace
13 period will facilitate the submission of energy benchmarking reports and energy performance
14 ratings or otherwise further the purposes of this Chapter 22.930.

15 B. If a building owner of any building subject to this Chapter 22.930 has been previously
16 issued a notice of violation under this Chapter 22.930 within the past two years, all subsequent
17 violations by that building owner for failing to disclose an energy benchmarking report shall be
18 subject to a \$500 fine in addition to any other penalty imposed under this Chapter 22.930.

19 C. If the Director determines that a building owner has intentionally misrepresented the
20 results of a tune-up in its report, the OSE Director may, in addition to any other remedy
21 authorized by law or equity, seek the following remedies:

22 1. A \$5,000 fine shall be imposed for the first violation; and

23 2. A \$10,000 fine shall be imposed for the second and any subsequent violations.

1 D. A subfund shall be established in the City’s General Fund to receive revenue from
2 penalties under this Section 22.930.120. Revenue from penalties under this subsection shall be
3 allocated that aim to improve the energy and water efficiency of Seattle buildings. The OSE
4 Director shall recommend to the Mayor and City Council how these funds should be allocated.

5 E. The penalties in subsection 22.930.120.A shall be imposed by serving a notice of
6 violation that states the specific violation, the amounts of each increase in penalties, and the
7 specific dates that each increase in penalties will accrue. A building owner shall have 30 days
8 from the date of mailing or service of the notice of violation to seek an administrative review of
9 the imposition of the penalties, including each increase in penalties, contained in the notice of
10 violation. The initiation of an administrative review is governed by Section 22.930.140. The
11 failure of a building owner to initiate an appeal within 30 days of the date of mailing or service
12 of the notice of violation shall be a waiver of the right to an administrative review and a waiver
13 of any subsequent appeal or request for mitigation to the Hearing Examiner under Section
14 22.930.140 or Section 22.930.160 of all penalties contained within the notice of violation.

15 The penalties in subsections 22.930.120.B and 22.930.120.C shall be imposed by serving
16 a notice of violation stating each violation and each corresponding penalty. Administrative
17 review and appeal of all violations and penalties contained within a notice of violation shall be
18 governed in accordance with Sections 22.930.130, 22.930.140, 22.930.150 and 22.930.160.

19 Any other violation of this Chapter 22.930 shall be subject to the issuance of a notice of
20 violation and corresponding penalty provisions.

21 **22.930.130 Response to notice of violation**

22 A. A building owner shall respond to a notice of violation by:

1 1. Paying the amount of the penalty specified in the notice of violation, in which
2 case the record shall show a finding that the person cited committed the violation; or

3 2. Requesting in writing an administrative review in accordance with Section
4 22.930.140 and providing a mailing address to which a benchmarking and reporting program
5 violation challenge form may be sent.

6 B. A response to a notice of violation shall be received by the Office of Sustainability and
7 Environment within 30 days after the date the notice of violation is mailed or otherwise served.
8 When the last day of the administrative appeal period is a Saturday, Sunday, or federal or City
9 holiday, the period shall run until 5 p.m. on the next business day.

10 **22.930.140 Administrative review of notice of violation by OSE Director**

11 A. A notice of violation shall be subject to administrative review if the aggrieved party
12 requests in writing a review by the OSE Director within 30 days after service of the notice of
13 violation. When the last day of the review-request period is a Saturday, Sunday, or federal or
14 City holiday, the period shall run until 5 p.m. on the next business day.

15 B. To be considered by the OSE Director, the written request for review shall be
16 submitted with the Building Tune-Up and Reporting Violation Review Form, which will
17 document the reason for the review.

18 C. After receiving a request for review, the OSE Director shall notify the requesting
19 party, the building owners who were issued a notice of violation, and any person who requested
20 notice of the review that a request for review has been received.

21 D. The OSE Director will review the basis for issuing the notice of violation and the
22 Violation Review Form. The OSE Director may request clarification of information received.
23 After the review is completed, the OSE Director may:

- 1 1. Sustain the notice of violation;
- 2 2. Withdraw the notice of violation;
- 3 3. Continue the review to a date certain for receipt of additional information; or
- 4 4. Modify or amend the notice of violation.

5 E. The OSE Director's administrative review decision is final but is subject to a request
6 for a contested hearing or a mitigation hearing before the Hearing Examiner according to
7 Sections 22.930.160 and 22.930.170.

8 **22.930.150 Failure to respond to an administrative review decision**

9 If a person fails to respond to an administrative decision within 15 days of service, an order shall
10 be entered by the OSE Director finding that the person cited committed the violation stated in the
11 notice of violation and assessing the penalty specified in the notice of violation.

12 **22.930.160 Response to an administrative review decision**

13 A. A building owner shall respond to an administrative decision by:

- 14 1. Paying the amount of the penalty specified in the notice of violation, in which
15 case the record shall show a finding that the person cited committed the violation; or
- 16 2. Requesting in writing a mitigation hearing to explain the circumstances
17 surrounding the commission of the violation and providing a mailing address to which notice of
18 such hearing may be sent; or
- 19 3. Requesting in writing a contested hearing and specify the reason why the cited
20 violation did not occur or why the person cited is not responsible for the violation, and providing
21 a mailing address to which notice of such hearing may be sent.

22 B. A response to an administrative decision shall be received by the Office of the Hearing
23 Examiner no later than 15 days after the date the administrative decision is mailed or served.

1 When the last day of the appeal period is a Saturday, Sunday, or federal or City holiday, the
2 period shall run until 5 p.m. on the next business day.

3 **22.930.170 Administrative decision mitigation hearings**

4 A. Date and notice. If a building owner requests a mitigation hearing, the mitigation
5 hearing shall be held within 30 days after a written response to the administrative decision
6 requesting a hearing is received by the Hearing Examiner. Notice of the time, place, and date of
7 the hearing will be sent in accordance with Section 3.02.090 not less than ten days prior to the
8 hearing date.

9 B. Procedure at hearing. The Hearing Examiner shall hold an informal hearing that shall
10 not be governed by the Rules of Evidence. The person cited may present witnesses, but witnesses
11 may not be compelled to attend. A representative from the OSE Director may also be present and
12 may present additional information; however, attendance by a representative from the City of
13 Seattle or the OSE Director is not required.

14 C. Disposition. The Hearing Examiner shall determine whether the building owner's
15 explanation justifies reduction of the penalty; however, the penalty may not be reduced unless
16 the Director affirms or certifies that the violation has been corrected before the mitigation
17 hearing. Factors that may be considered in whether to reduce the penalty include: whether the
18 violation was caused by the act, neglect, or abuse of another; or whether correction of the
19 violation was commenced promptly before notice of violation but that full compliance was
20 prevented by a condition or circumstance beyond the control of the person cited.

21 **22.930.180 Contested hearings**

1 A. Date and notice. If a building owner requests a contested hearing, the hearing shall be
2 held within 60 days after the written response to the notice of violation requesting such hearing is
3 received.

4 B. Hearing. Contested hearings shall be conducted pursuant to the procedures for hearing
5 contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for
6 hearing contested cases, except as modified by this Section 22.930.180. The issues heard at the
7 hearing shall be limited to those that are raised in writing in the response to the notice of
8 violation and that are within the jurisdiction of the Hearing Examiner. The Hearing Examiner
9 may issue subpoenas for the attendance of witnesses and the production of documents.

10 C. Sufficiency. No notice of violation shall be deemed insufficient for failure to contain a
11 detailed statement of the facts constituting the specific violation that the person cited is alleged to
12 have committed or by reason of defects or imperfections, provided such defects or imperfections
13 or lack of detail do not prejudice substantial rights of the person cited.

14 D. Amendment of notice of violation. A notice of violation may be amended prior to the
15 conclusion of the hearing to conform to the evidence presented if substantial rights of the person
16 cited are not prejudiced.

17 E. Evidence at hearing

18 1. The certified statement or declaration authorized by RCW 9A.72.085 submitted
19 by the Director shall be prima facie evidence that a violation occurred and that the person cited is
20 responsible. The certified statement or declaration of the Director authorized under RCW
21 9A.72.085 and any other evidence accompanying the report shall be admissible without further
22 evidentiary foundation.

1 2. Any certifications or declarations authorized under RCW 9A.72.085 shall also
2 be admissible without further evidentiary foundation. The person cited may rebut the evidence
3 and establish that the cited violations did not occur or that the person contesting the notice of
4 violation is not responsible for the violation.

5 F. Disposition. If the notice of violation is sustained at the hearing, the Hearing Examiner
6 shall enter an order finding that the person cited committed the violation. If the violation remains
7 uncorrected, the Hearing Examiner shall impose the applicable penalty. The Hearing Examiner
8 may reduce the monetary penalty in accordance with the mitigation provisions in Section
9 22.930.160 if the violation has been corrected. If the Hearing Examiner determines that the
10 violation did not occur, the Hearing Examiner shall enter an order dismissing the notice of
11 violation.

12 G. Appeal. The Hearing Examiner's decision is the final decision of the City. Any judicial
13 review shall be commenced by applying for a writ of review in the King County Superior Court
14 within 14 days from the date of the decision in accordance with the procedure set forth in chapter
15 7.16 RCW, other applicable laws, and court rules.

16 **22.930.190 Failure to appear for notice of violation hearing**

17 Failure to appear for a requested hearing shall result in an order being entered finding that the
18 person cited committed the violation stated in the notice of violation and assessing the penalty
19 specified in the notice of violation. For good cause shown and upon terms the Hearing Examiner
20 deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

21 **22.930.200 Collection of notice of violation penalties**

22 If the person cited fails to pay a penalty imposed pursuant to this Chapter 22.930, the penalty
23 may be referred to a collection agency. The cost to the City for the collection services will be

1 assessed as costs, at the rate agreed to between the City and the collection agency, and added to
2 the penalty. Alternatively, the City may pursue collection in any other manner allowed by law.

3 **22.930.210 Referral to City Attorney for enforcement**

4 If a person fails to correct a violation or pay a penalty, the OSE Director shall refer the matter to
5 the City Attorney's Office for civil enforcement action. Civil actions to enforce a violation shall
6 be brought exclusively in Municipal Court.

7 **22.930.220 Appeal to Superior Court**

8 Because civil enforcement actions under this Chapter 22.930 are brought exclusively in
9 Municipal Court, notices of violations are not subject to judicial review under chapter 36.70C
10 RCW. Instead, final decisions of the Municipal Court may be appealed under the Rules for
11 Appeals of Decisions of Courts of Limited Jurisdiction.

12 Section 2. The provisions of this ordinance are declared to be separate and severable. The
13 invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance,
14 or the invalidity of its application to any person or circumstance, does not affect the validity of
15 the remainder of this ordinance or the validity of its application to other persons or
16 circumstances.

17 Section 3. In order to pay for necessary costs and expenses incurred or to be incurred, but
18 for which insufficient appropriations were made due to causes that could not reasonably have
19 been foreseen at the time of making the 2016 budget, appropriations for the following items in
20 the 2016 budget are increased from the funds shown, as follows:

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Item	Fund	Department	Budget Control Level	Amount
3.1	General Subfund (00100)	Office of Sustainability and Environment	Office of Sustainability and Environment (X1000)	\$ 103,000
Total				\$ 103,000

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Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2016, and signed by me in open session in authentication of its passage this ____ day of _____, 2016.

President _____ of the City Council

Approved by me this ____ day of _____, 2016.

Edward B. Murray, Mayor

Filed by me this ____ day of _____, 2016.

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Monica Martinez Simmons, City Clerk