

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE requiring periodic building energy tune-ups for certain nonresidential and multifamily buildings, and adding a new Chapter 22.930 to Title 22 of the Seattle Municipal Code

WHEREAS, the City has a goal to become a carbon neutral city by 2050, and adopted a strategy for achieving this goal through the 2013 Seattle Climate Action Plan; and

WHEREAS, the 2013 Seattle Climate Action Plan including an action to require periodic retro-commissioning or building tune-ups for the largest and least efficient commercial and multifamily buildings; and

WHEREAS, building tune-ups help buildings to perform as designed; and

WHEREAS, regular building tune-ups are on average shown to reduce energy consumption by 15% and provide short-term paybacks to owners; and

WHEREAS, as part of its 2013 Seattle Climate Action Plan, the City set 2030 interim targets for reducing emissions from all commercial and residential buildings by 45% and 32%, respectively from 2008 levels; and

WHEREAS, emissions tracking from 2008 to 2012 through a citywide greenhouse gas inventory shows the City is not currently on track in per-year emissions reduction to meet these targets; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 930 is added to Title 22 of the Seattle Municipal Code as follows:

22.930 Building Tune-Ups

22.930.010 Applicability

A. This chapter applies to all nonresidential buildings equal to or larger than 50,000 square feet of conditioned floor area that are subject to Energy Benchmarking requirements in SMC 22.920.010.

1 **22.930.020 Definitions**

2 For purposes of this chapter only, the following words shall mean:

3 A. "Building owner" means an individual or entity possessing a fee interest in a
4 nonresidential benchmarking building.

5 B. "Certificate of occupancy" means the certificate issued by the Department of
6 Planning and Development Director after final inspection, allowing the building to be occupied.

7 C. "OSE Director" means the Director of the Office of Sustainability and
8 Environment or his or her designee.

9 D. "Energy benchmarking" means the assessment of a building's energy use and
10 efficiency as required in SMC 22.920.

11 E. "Certified Energy Star score" means the score certified and provided by the
12 Energy Star Portfolio Manager program indicating the relative energy efficiency performance of
13 a building as compared to similar buildings nationwide, as verified and stamped by a licensed
14 professional engineer or registered architect.

15 F. "Initial occupancy date" means the date that a certificate of occupancy was first
16 issued for a building. If no certificate of occupancy was issued, the date any utility service was
17 first billed for the building shall be the initial occupancy date.

18 G. "Notice of Violation" means a written notice issued to a building owner for failure
19 to comply with the requirements of this chapter or for making any misrepresentation of any
20 material fact in a document required to be prepared or disclosed by this chapter.

21 H. "Building energy tune-up" is defined in 22.930.030.

22 I. "Tenant" means a person or business occupying or holding possession of a
23 building or premises pursuant to a rental agreement.

1 **22.930.030 Requirement for Building Tune-Ups**

2 A. Once every five years, owners of buildings subject to this ordinance are required
3 to conduct a tune-up of building energy and water systems and submit a report to the City of
4 findings, outcomes, and actions taken based on the tune-up, as outlined in SMC 22.930.040. A
5 building tune-up is defined as:

6 1. An inspection of building energy and water systems per SMC 22.930.060,
7 conducted by a qualified tune-up specialist as defined in SMC 22.930.080, and resulting in a
8 report of findings and recommendations for improving building energy operations per SMC
9 22.930.070; and

10 2. Actions taken to optimize energy and water performance by implementing all
11 adjustments and minor repairs to existing buildings' automation systems that the inspection
12 report calculates to have a simple payback via utility bill savings of three years or less.

13 **22.930.040 Exemptions**

14 A. Buildings meeting one or more of the following conditions may apply for an
15 exemption from complying with a single interval of tune-ups as required by this Chapter.

16 Building owners shall demonstrate they meet a condition for exemption by submitting evidence
17 of the condition to the OSE Director no later than 180 days prior to the tune-up compliance date
18 as specified in SMC 22.930.050. The OSE Director shall notify applicants within 60 days of
19 receiving an exemption request on the determination of whether the exemption is grant.

20 Conditions meeting an exemption include:

21 1. Buildings with a certified ENERGY STAR score of 85 or greater for at
22 least two of the past three years preceding the tune-up due date;

1 2. Buildings that can show evidence of active monitoring and continuous
2 commissioning, as determined by the Director;

3 3. Buildings that have participated in a Seattle City Light or Puget Sound
4 Energy retro-commissioning incentive program in the three years preceding the tune-up
5 compliance date identified per SMC 22.930.040;

6 4. Buildings that have completed a full re-commissioning procedure with
7 demonstrated energy savings of at least 15% energy savings in the three years preceding the
8 tune-up compliance date per SMC 22.930.040;

9 5. Buildings that have conducted 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 identified in the audit in the three years preceding the tune-up compliance date per
12 SMC 22.930.040;

13 6. Buildings with less than 50% of the rentable floor area occupied;

14 7. Buildings scheduled to be demolished within one year of the date the
15 building tune-up is due per SMC 22.930.040;

16 8. Buildings that demonstrate financial distress, such as being owned by a
17 financial institution though default of the borrower, or other conditions as determined by the
18 Director.

19 9. Buildings receiving their initial certificate of occupancy less than three
20 years prior to the date the building tune-up is due per SMC 22.930.040.

21 B. The OSE Director is authorized to prescribe rules for requesting an exemption
22 under this chapter.

23 **22.930.050 Schedule for Tune-Ups and Reporting**

1 A. Building owners will be required to conduct an initial building tune-up according
2 to the following schedule.

3 1. Buildings larger than 250,000 square feet comply by October 1, 2018.
4 Subsequent tune-ups will be required by October 1 of every fifth year thereafter.

5 2. Buildings between 100,000 and 250,000 square feet shall comply by
6 October 1, 2019. Subsequent tune-ups will be required by October 1 of every fifth year
7 thereafter.

8 3. Buildings between 75,000 and 100,000 square feet shall comply by
9 October 1, 2020. Subsequent tune-ups will be required by October 1 of every fifth year
10 thereafter.

11 4. Buildings between 50,000 and 75,000 square feet shall comply by October
12 1, 2021. Subsequent tune-ups will be required by October 1 of every fifth year thereafter.

13 B. Newly constructed buildings will be required to comply per the applicable
14 schedule for the building size per SMC 22.930.050.

15 C. A building owner may apply for a one-year compliance extension by showing
16 good cause. Receiving an extension does not alter the future schedule for compliance. By
17 requesting and receiving an extension, the building's next compliance schedule will be less than
18 the typical five year schedule. The OSE Director is authorized to prescribe rules for applying for
19 an extension under this subsection.

20 **22.930.060 Building Tune-Up Requirements**

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

23 1. Air-side economizer operation;

- 1 2. Air-handling unit static pressure control;
- 2 3. Air-handling unit discharge-air-temperature control;
- 3 4. Air-handling unit minimum outdoor-air operation;
- 4 5. Air-handling unit heating and cooling control;
- 5 6. Occupancy scheduling: Night and weekend temperature setback and
- 6 supply fan cycling during unoccupied hours;
- 7 7. Zone heating and cooling control;
- 8 8. Central utility plant cooling control; and
- 9 9. Central utility plant heating control.

10 B. The OSE Director is authorized to prescribe detailed requirements within the
11 elements above.

12 **22.930.070 Building Energy Tune-Up Results Reports**

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

16 **22.930.080 Qualifications for Tune-Up Specialists**

17 Building tune-ups per this Chapter are required to be conducted by qualified Tune-Up
18 specialists. The OSE Director is authorized to prescribe specific certifications and training to
19 meet the minimum qualifications of a qualified Tune-Up specialist.

20 **22.930.090 Violations**

21 It is a violation of this chapter for any person or entity to fail to comply with the
22 requirements of the chapter or misrepresent any material fact in a document required to be
23 prepared or disclosed by this chapter.

1 **22.930.100 - Authority to Enforce**

2 A. The OSE Director shall have the authority to enforce this chapter.

3 B. This chapter shall be enforced for the benefit of the health, safety, and welfare of
4 the general public, and not for the benefit of any particular person or class of persons.

5 C. It is the intent of this chapter to place the obligation of complying with its
6 requirements upon the owners of the buildings and other persons subject to this chapter.

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

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

14 **22.930.110 - Investigating violations and issuing notices of violation**

15 A. The OSE Director is authorized to investigate and determine if any building
16 owner, tenant or other person subject to this chapter has not complied with Sections 22.930.030,
17 22.930.050, 22.930.060, 22.930.070, 22.930.080, or 22.930.090.

18 B. If after investigation, the Director determines that the requirements of this chapter
19 have been violated, the Director may issue a notice of violation as provided in Chapter 22.930 to
20 the building owners, tenants, or other responsible persons that are subject to this chapter for
21 failing to comply with this chapter.

22 C. The notice of violation shall state the requirement that was violated, the corrective
23 action that is necessary to remedy the violation, and any penalties or penalties imposed.

1 D. The notice of violation shall be served on the building owners, tenants, or other
2 persons subject to this chapter as provided for in Section 23.90.006 C.

3 E. A copy of the notice of violation may be filed with the King County Department
4 of Records and Elections if any building owner fails to correct the violation or the OSE Director
5 requests the City Attorney take appropriate enforcement action as provided for in Section
6 23.90.006.D.

7 F. Nothing in this section shall be deemed to limit or preclude any action or
8 proceeding to enforce this chapter nor does anything in this section obligate the OSE Director to
9 issue a notice of violation prior to initiating a civil enforcement action.

10 **22.930.120 - Penalties**

11 A. Penalties for the failure of a building owner to comply with Section 22.930.030,
12 22.930.050, or 22.930.070 shall be imposed as follows.

13 1. For buildings greater than or equal to 250,000 square feet, for each five-
14 year tune-up requirement as specified in Section 22.930.050, the following penalties shall be
15 imposed for the failure to tune-up a building and submit a report as required by 22.930.050:

- 16 a. 180 days after October 1 due date — \$4,000
17 b. 360 days after due date — \$8,000.
18 c. For each 180 day period that passes after 360 days after due date,
19 an additional \$6,000 penalty shall be imposed.

20 2. For buildings less than 250,000 square feet, for each five-year tune-up
21 requirement, the following penalties shall be imposed for the failure to tune-up a building and
22 submit a report by the following dates:

- 23 a. 180 days after due date — f \$2,000;

- 1 b. 360 days after due date — \$4,000.
- 2 c. For each 180 day period that passes after 360 days after due date,
- 3 an additional \$3,000 penalty shall be imposed.

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

8 B. If a building owner of any building subject to this chapter has been previously
9 issued a notice of violation under this chapter within the past two years, all subsequent violations
10 by that building owner for failing to disclose an energy benchmarking report shall be subject to a
11 \$500 fine in addition to any other penalty imposed under this Chapter 22.930.

12 C. If the Director determines that a building owner has submitted an inaccurate tune-
13 up report as required by this chapter, the Director may, in addition to any other remedy
14 authorized by law or equity, seek the following remedies:

- 15 1. A \$150 fine shall be imposed for the first violation; and
- 16 2. A \$500 fine shall be imposed for the second and any subsequent
- 17 violations.

18 D. The penalties in subsection 22.930.120.A shall be imposed by serving a notice of
19 violation that states the specific violation, the amounts of each increase in penalties, and the
20 specific dates that each increase in penalties will accrue. A building owner shall have 30 days
21 from the date of mailing or service of the notice of violation to seek an administrative review of
22 the imposition of the penalties, including each increase in penalties, contained in the notice of
23 violation. The initiation of an administrative review is governed by Section 22.930.130. The

1 failure of a building owner to initiate an appeal within 30 days of the date of mailing or service
2 of the notice of violation shall be a waiver of the right to an administrative review and any
3 subsequent appeal or request for mitigation to the Hearing Examiner under Section 22.930.155
4 or Section 22.930.160 of all penalties contained within the notice of violation including each
5 increase in penalties.

6 The penalties in subsections 22.930.120.B, 22.930.120.C, and 22.930.120.D shall be
7 imposed by serving a notice of violation stating each violation and each corresponding penalty.
8 Administrative review and appeal of all violations and penalties contained within a notice of
9 violation shall be governed in accordance with Sections 22.930.130, 22.930.150 and 22.930.160.

10 Any other violation of this chapter shall be subject to the issuance of a notice of violation
11 and corresponding penalty provisions.

12 **22.930.120 - Response to Notice of Violations**

13 A. A person shall respond to a notice of violation in one of the following ways:

14 1. Pay 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. Request in writing an administrative review in accordance with Section
17 22.930.130 and provide a mailing address to which a benchmarking and reporting program
18 violation challenge form may be sent.

19 B. A response to a notice of violation shall be received by the Department of
20 Sustainability and Environment no later than 30 days after the date the notice of violation is
21 mailed or otherwise served. When the last day of the administrative appeal period so computed is
22 a Saturday, Sunday, or federal or City holiday, the period shall run until 5 p.m. on the next
23 business day.

1 **22.930.130 - Administrative Review of Notice of Violation by Director**

2 A. A notice of violation shall be subject to administrative review if the aggrieved
3 party requests in writing a review by the OSE Director within 30 days after service of the notice
4 of violation. When the last day of the review-request period is a Saturday, Sunday, or federal or
5 City holiday, the period shall run until 5:00 p.m. on the next business day.

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

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

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

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

19 E. The OSE Director's administrative review decision is final but is subject to a request
20 for a mitigation hearing or a contested hearing before the Hearing Examiner according to
21 Sections 22.930.150 and 22.930.160.

22 **22.930.140 - Failure to respond to an administrative review decision**

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

4 **22.930.150 - Response to an administrative review decision.**

5 A. A person shall respond to an administrative decision in one of the following ways:

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

8 2. Request in writing a mitigation hearing to explain the circumstances
9 surrounding the commission of the violation and provide a mailing address to which notice of
10 such hearing may be sent; or

11 3. Request in writing a contested hearing and specify the reason why the
12 cited violation did not occur or why the person cited is not responsible for the violation, and
13 provide a mailing address to which notice of such hearing may be sent.

14 B. A response to an administrative decision shall be received by the Office of the
15 Hearing Examiner no later than fifteen days after the date the administrative decision is mailed
16 or served. When the last day of the appeal period so computed is a Saturday, Sunday, or federal
17 or City holiday, the period shall run until 5 p.m. on the next business day.

18 **22.930.160 - Administrative decision mitigation hearings**

19 A. Date and Notice. If a person requests a mitigation hearing, the mitigation hearing
20 shall be held within 30 days after a written response to the administrative decision requesting a
21 hearing is received by the Hearing Examiner. Notice of the time, place, and date of the hearing
22 will be sent in accordance with Section 3.02.090 not less than ten days prior to the hearing date.

1 B. Procedure at Hearing. The Hearing Examiner shall hold an informal hearing
2 which shall not be governed by the Rules of Evidence. The person cited may present witnesses,
3 however, witnesses may not be compelled to attend. A representative from the OSE Director
4 may also be present and may present additional information; however, attendance by a
5 representative from the City of Seattle or the OSE Director is not required.

6 C. Disposition. The Hearing Examiner shall determine whether the person's
7 explanation justifies reduction of the penalty; however, the penalty may not be reduced unless
8 the Director affirms or certifies that the violation has been corrected prior to the mitigation
9 hearing. Factors that may be considered in whether to reduce the penalty include whether the
10 violation was caused by the act, neglect, or abuse of another; or whether correction of the
11 violation was commenced promptly prior to notice of violation but that full compliance was
12 prevented by a condition or circumstance beyond the control of the person cited.

13 **22.930.170 - Contested hearings**

14 A. Date and Notice. If a person requests a contested hearing, the hearing shall be
15 held within 60 days after the written response to the notice of violation requesting such hearing is
16 received.

17 B. Hearing. Contested hearings shall be conducted pursuant to the procedures for
18 hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing
19 Examiner for hearing contested cases, except as modified by this section. The issues heard at the
20 hearing shall be limited to those that are raised in writing in the response to the notice of
21 violation and that are within the jurisdiction of the Hearing Examiner. The Hearing Examiner
22 may issue subpoenas for the attendance of witnesses and the production of documents.

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

5 D. Amendment of Notice of Violation. A notice of violation may be amended prior
6 to the conclusion of the hearing to conform to the evidence presented if substantial rights of the
7 person cited are not prejudiced.

8 E. Evidence at Hearing.

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

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

18 F. Disposition. If the notice of violation is sustained at the hearing, the Hearing
19 Examiner shall enter an order finding that the person cited committed the violation. If the
20 violation remains uncorrected, the Hearing Examiner shall impose the applicable penalty. The
21 Hearing Examiner may reduce the monetary penalty in accordance with the mitigation provisions
22 in Section 22.930.160 if the violation has been corrected. If the Hearing Examiner determines

1 that the violation did not occur, the Hearing Examiner shall enter an order dismissing the notice
2 of violation.

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

7 **22.930.180. - Failure to appear for notice of violation hearing**

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

13 **22.930.190 - Collection of notice of violation penalties**

14 If the person cited fails to pay a penalty imposed pursuant to this chapter, the penalty may
15 be referred to a collection agency. The cost to the City for the collection services will be assessed
16 as costs, at the rate agreed to between the City and the collection agency, and added to the
17 penalty. Alternatively, the City may pursue collection in any other manner allowed by law.

18 **22.930.200 - Referral to City Attorney for enforcement**

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

22 **22.930.210 - Appeal to Superior Court**

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Edward B. Murray, Mayor

Filed by me this ____ day of _____, 2015.

Monica Martinez Simmons, City Clerk

(Seal)