

**SUMMARY and FISCAL NOTE\***

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>Executive Contact/Phone:</b>
Office of Sustainability & Env't	Sandra Mallory / 5-0731	Aaron Blumenthal / 3-2656

*\* Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

**1. BILL SUMMARY**

**Legislation Title:** AN ORDINANCE requiring periodic building energy tune-ups for certain nonresidential buildings; adding a new Chapter 22.930 to the Seattle Municipal Code; and amending Ordinance 124927, which adopted the 2016 Budget, changing appropriations to various departments and budget control levels, and from various funds in the Budget; all by a 3/4 vote of the City Council.

**Summary and background of the Legislation:** This ordinance would require owners of non-residential buildings 50,000 square feet and larger to conduct a tune-up of energy and water performance once every five years. The tune-up legislation would require (1) an inspection of energy and water systems, and (2) action to improve identified deficiencies that are operational in nature (e.g. building temperature set points, as opposed to capital upgrades) and are low-cost improvements that on average pay back in two to three years, and (3) a report to the City Office of Sustainability and Environment (OSE) certifying the tune-up was accurately completed. The legislation would phase in based on building size over four years, beginning in 2018. The legislation offers several exemptions from the policy for building owners that can provide evidence that their buildings are already performing optimally and/or have recently been improved. The legislation also authorizes the OSE Director to develop Director's Rules to further detail program implementation.

The proposed Building Tune-Up Ordinance outlines a phased-in compliance schedule as follows:

1. Buildings with non-residential uses of 200,000 square feet or larger shall comply by October 1, 2018. Subsequent tune-ups shall be required by October 1 of every fifth year thereafter.
2. Buildings with non-residential uses of at least 100,000 and less than 200,000 square feet shall comply by October 1, 2019. Subsequent tune-ups shall be required by October 1 of every fifth year thereafter.
3. Buildings with non-residential uses of at least 70,000 and less than 100,000 square feet shall comply by October 1, 2020. Subsequent tune-ups shall be required by October 1 of every fifth year thereafter.
4. Buildings with non-residential uses of at least 50,000 and less than 70,000 square feet shall comply by October 1, 2021. Subsequent tune-ups shall be required by October 1 of every fifth year thereafter.

The cost of compliance to property owners is variable, and depends on the cost of hiring a tune-up specialist for inspection, and the cost to make operational changes as identified in the

inspection. Initial costs are expected to range from \$0.10-\$0.50 per square foot, and pay back in energy savings in an average of 2-3 years.

The program costs to implement the Building Tune-Up Ordinance are \$103,000 in 2016. An additional \$345,000 to \$855,000 will be required in the 2017-18 budget, depending on the program approach.

The City would also be required to comply with this ordinance, and would be subject to the same timeline and fines for non-compliance as property owners. Estimated cost of compliance is \$1.3 million between 2018 and 2021. The City has already committed to reducing the energy use of the overall portfolio of City-owned buildings 20% from 2008 – 2020. In 2013 the City passed Resolution 31491 adopting the City of Seattle Resource Conservation Management Plan (RCMP), which outlines the process for achieving the 20% by 2020 target. Conducting building investigations and making operational improvements, as required in the Building Tune-Up Ordinance, is already considered a necessary action within the RCMP in order to meet the 20% target and the tune-ups. This funding is anticipated as part of the RCMP work plan, but is only partially funded in 2016 and 2017 in the 2016-21 Capital Improvement Program ([Finance and Administrative Services CIP project “Energy Efficiency for Municipal Buildings”](#) – Project ID A1EXT02). There is currently no funding in the 2015-16 operating budget.

**2. CAPITAL IMPROVEMENT PROGRAM**

This legislation creates, funds, or amends a CIP Project.

**3. SUMMARY OF FINANCIAL IMPLICATIONS**

This legislation has direct financial implications.

<b>Budget program(s) affected:</b>				
<b>Estimated \$ Appropriation change:</b>	<b>General Fund \$</b>		<b>Other \$</b>	
	<b>2016</b>	<b>2017</b>	<b>2016</b>	<b>2017</b>
	<b>\$103,000</b>	<b>\$600,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Estimated \$ Revenue change:</b>	<b>Revenue to General Fund</b>		<b>Revenue to Other Funds</b>	
	<b>2016</b>	<b>2017</b>	<b>2016</b>	<b>2017</b>
	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Positions affected:</b>	<b>No. of Positions</b>		<b>Total FTE Change</b>	
	<b>2016</b>	<b>2017</b>	<b>2016</b>	<b>2017</b>
	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Other departments affected:</b>	\$7,000 of the above 2016 Appropriation is intended to secure DoIT staff resources for IT consulting.			

**3.a. Appropriations**

This legislation adds, changes, or deletes appropriations.

Fund Name and number	Dept	Budget Control Level Name/##*	2016 Appropriation Change	2017 Estimated Appropriation Change
General Fund 00100	OSE	OSE	\$103,000	\$600,000
<b>TOTAL</b>			<b>\$103,000</b>	<b>\$600,000</b>

\*See budget book to obtain the appropriate Budget Control Level for your department.

Appropriations Notes:

Changes to 2016 Appropriations for programmatic expenditures include: (1) \$96,000 for expenses related to technical analysis and public outreach in relation to development of the Director’s Rule, educating stakeholders regarding upcoming requirements, and conducting RSJI specific research and outreach; and (2) \$7,000 for initial IT consulting support from DoIT preceding database development work in 2017.

Additional Appropriations will be requested in the 2017-2018 Budget for program costs. Anticipated program costs for each year are identified below.

- a) A range of \$190,000 to \$700,000 in 2017 for the following:
  - a. Outreach and mailings about the requirement: \$10,000
  - b. Contracted staffing to develop educational materials, conduct trainings and provide technical assistance support to the private sector to comply: \$140,000
  - c. Updating the Energy Benchmarking database via a DoIT contract to track whether compliance with the tune-up ordinance is confirmed for each building (to combine enforcement action), and to develop electronic compliance forms: \$40,000-\$50,000
  - d. Developing a program database via a DoIT contract to house the information submitted in reports to allow ongoing data verification, quality assurance, and analysis. Note that the cost of conducting work through DoIT is estimated to be half that of working with a private IT contractor. If work is conducted through a private contract, costs are anticipated to double. A range of options, based on the following design considerations:
    - i. \$0 (existing staff resources) to build a simple spreadsheet of results that must be manually populated (field by field for each form). Under this option there would not be an automatic link to the Benchmarking database.
    - ii. Approximately \$150,000-\$200,000 to build a database that can link to the Benchmarking database (for ease of combined analysis), and where data transfer from electronic forms to database is semi-automated.
    - iii. Approximately \$400,000 - \$500,000 to build a database that (a) can link to the Benchmarking database for expanded analysis capabilities, and (b) enable online forms uploaded by the private sector to automatically populate the database, which helps ensure OSE can manage the compliance tracking process with existing staff resources.
  
- b) \$155,000 in 2018 for the following:
  - a. Continued outreach: \$5,000

- b. Contracted staffing for education, training and technical assistance: \$140,000
- c. Ongoing database maintenance: \$10,000

Ongoing annual budget will be necessary to assist the private sector in compliance, to track compliance, conduct enforcement activities (approximately \$1,000 per year beginning in 2019), perform ongoing IT/database maintenance, and analyze results (analysis of initial 2020 performance results for buildings 100,000 square feet or greater is anticipated in 2021).

Program staffing requirements are not anticipated to increase, as OSE anticipates redirecting existing staff resources to program development and ongoing operations. Staff resources will be redirected from other energy policy work and from the Energy Benchmarking staff, who will be responsible for managing program operations for both the Energy Benchmarking and Tune-Up programs.

In addition to program costs, an estimated \$1.3 million in capital and operating costs will be required for the City to meet the conditions of this ordinance. These costs will be included in future budget requests.

**3.b. Revenues/Reimbursements**

  X   This legislation adds, changes, or deletes revenues or reimbursements.

**Anticipated Revenue/Reimbursement Resulting from this Legislation:**

Fund Name and Number	Dept	Revenue Source	2015 Revenue	2016 Estimated Revenue
General Fund 00100	OSE/FAS	Enforcement Fines	\$0	\$0
<b>TOTAL</b>			<b>\$0</b>	<b>\$0</b>

Revenue/Reimbursement Notes:

This legislation establishes penalties for non-compliance. For failure to complete a tune-up and submit a report, the Office of Sustainability & Environment may issue the following penalties:

- a) Buildings equal to or greater than 200,000 square feet (first compliance deadline of Oct. 1, 2018):
  - a. \$5,000 penalty if out of compliance 180 days past the compliance due date
  - b. \$20,000 penalty if out of compliance 360 days past the compliance due date
- b) Buildings 100,000-199,999 square feet (first compliance deadline of Oct 1, 2019):
  - a. \$2,500 penalty if out of compliance 180 days past the compliance due date
  - b. \$10,000 penalty if out of compliance 360 days past the compliance due date
- c) Buildings 50,000-99,999 square feet (first compliance deadlines of Oct. 1, 2020 for buildings 70,000-99,999 square feet, and of Oct. 1, 2021 for buildings 50,000-69,999):
  - a. \$2,000 penalty if out of compliance 180 days past the compliance due date
  - b. \$8,000 penalty if out of compliance 360 days past the compliance due date

Fines are due thirty days past issuance, but experience in the Energy Benchmarking program is

that most (roughly 80%) of fines are paid within sixty days. Fines are collected by FAS and paid into the General Fund. The Ordinance establishes a dedicated sub-fund to receive the penalties, which would then be used to encourage and promote optimal building performance in the private market.

The intention of the penalty structure is to incentivize compliance and to allow OSE staff to work with building owners toward compliance. The table below estimates the timing and amount of revenue generated from penalties based on experience with Energy Benchmarking. Initially, compliance rates with Benchmarking were below 30%. With further investment in education, technical assistance, and an active enforcement process, compliance rates have grown to 99%. While OSE intends to emulate the education, technical assistance, and enforcement processes with this legislation, tune-ups will require a higher up-front cost investment to comply (although short paybacks of 2-3 years are also estimated). There is a possibility that some building owners may opt to pay a fine instead of complying, as it may be the less expensive option (ignoring the short paybacks) for many buildings. The following table estimates revenue from penalties assuming 20% non-compliance after six months and 10% non-compliance after 12 months.

<b>Building Size Complying</b> (square feet)	<b>Year Penalty Revenue First Received*</b>	<b>Total # Buildings</b> (per 2014 Benchmarking data)	<b>Estimated 6-Month Penalties &amp; Revenue</b>	<b>Estimated Additional 12-Month Penalties &amp; Revenue</b>
200,000 or greater	2019	183	20% or 36 buildings \$180,000, received Jun, 2019	10% or 18 buildings \$360,000, received Dec, 2019
100,000 – 199,999	2020	205	20% or 41 buildings \$102,500, received Jun, 2020	10% or 20 buildings \$200,000, received Dec, 2020
70,000 – 99,999	2021	147	20% or 29 buildings \$58,000, received Jun, 2021	10% or 14 buildings \$112,000, received Dec, 2021
50,000 – 69,999	2022	175	20% or 35 buildings \$70,000, received Jun, 2022	10% or 17 buildings \$136,000, received Dec, 2022
*Note, these are initial compliance deadlines, and each building size segment will be required to comply every five years.				

**3.c. Positions**

\_\_\_\_\_ This legislation adds, changes, or deletes positions.

**4. OTHER IMPLICATIONS**

a) **Does the legislation have indirect or long-term financial impacts to the City of Seattle that are not reflected in the above?**

There are ongoing costs to administer the Building Tune-Up program, and these costs are noted above. Ongoing budget appropriations to assist the private sector in compliance, track compliance, conduct enforcement activities, and perform ongoing IT/database maintenance are anticipated to be between \$140,000 and \$190,000 per year, as mentioned in Section 3a, depending upon levels of investment in technical assistance and education to the private sector, and periodic program analysis.

If the City does not continue to invest in energy efficiency improvements as outlined in the RCMP, the Tune-Up Ordinance would require an additional \$1-\$1.5 million in capital and operating expenditures to meet the conditions of the ordinance. The City would be subject to the same timeline and fines for non-compliance as property owners. Any additional expenditures would require appropriations in the 2019-2020 biennial budget to meet the requirements of the ordinance.

**b) Is there financial cost or other impacts of not implementing the legislation?**

This legislation helps implement the Climate Action Plan and contribute to meeting the City's carbon reduction goals. By not implementing this legislation, the City is anticipated to make less progress in achieving carbon and energy reduction goals. There are future financial costs to the City for not implementing the legislation.<sup>1</sup>

**c) Does this legislation affect any departments besides the originating department?**

Yes, we are working closely with Seattle City Light (Craig Smith) about the linkage between this legislation and their conservation incentive program for retro-commissioning. The legislation has the potential to drive demand for the incentive program in advance of compliance deadlines, and the legislation has the potential to limit the incentive program once tune-up actions are mandated, to the extent that requirements overlap with current incentive offerings. OSE and SCL are coordinating on this possibility.

Building owners who are deemed out of compliance and receive a Notice of Violation may request an Administrative Review of the decision by the OSE Director. After an Administrative Review, a building owner may request a mitigation hearing or contested hearing from the Hearing Examiner. Based on our experience with the Energy Benchmarking program, the likely volume to the Hearing Examiner's office would be low, and at the earliest begin in 2019. If 5% of all buildings ultimately appealed to the Hearing Examiner, this would generate a volume of 7-10 cases per year.

**d) Is a public hearing required for this legislation?**

No.

**e) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No further publication is required. A notice was filed in The Daily Journal of Commerce for a Determination of Non-Significance in compliance with State Environmental Policy Act requirements.

**f) Does this legislation affect a piece of property?**

No.

**g) Please describe any perceived implication for the principles of the Race and Social**

---

<sup>1</sup>[https://www.whitehouse.gov/sites/default/files/docs/the\\_cost\\_of\\_delaying\\_action\\_to\\_stem\\_climate\\_change.pdf](https://www.whitehouse.gov/sites/default/files/docs/the_cost_of_delaying_action_to_stem_climate_change.pdf)

**Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities?**

This legislation impacts buildings and owners of buildings at least 50,000 square feet in size. It is possible that the financial resources required to conduct a tune-up may be more difficult for lower-income owners to acquire. The legislation identifies financial hardship and disproportionate burden as causes for granting owners an exemption or an extension in complying. OSE is also conducting the RSJ Toolkit on the policy, including the rulemaking process anticipated to occur in 2016 to identify unintended impacts and actions to mitigate them.

This legislation helps to reduce carbon emissions and minimize the climate impacts anticipated to otherwise occur. Climate impacts like extreme heat events, air quality degradation, and flooding impacts from storm events are projected to disproportionately impact lower-income populations and people of color. Actions to reduce emissions and minimize climate impacts are helping reduce disproportionate climate impacts over time.

**h) If this legislation includes a new initiative or a major programmatic expansion: What are the long-term and measurable goals of the program? Please describe how this legislation would help achieve the program's desired goals.**

This new program was identified in the 2013 Climate Action Plan as part of the City's strategy to achieving a goal of carbon neutrality by 2050. This legislation requires buildings to periodically tune-up their building operations systems to ensure energy and water are not needlessly wasted. Optimizing energy performance is an important component of a long-term strategy to increase the energy efficiency of our building stock. To meet our carbon reduction goals, the City must reduce energy use in the building stock by 45% overall between 2008 and 2050. Given the area of commercial building space this legislation applies to, an assumption on percentage of space receiving an exemption from the policy, and an average of 10% energy savings achieved across the complying building stock, OSE's preliminary estimate for citywide commercial energy savings is 5%, which is a significant portion of the 45% energy reduction goal called for in the Climate Action Plan. Consultant analysis is underway to refine the assumptions and create a more robust estimate of anticipated energy and GHG impacts, which will be available in November.

**i) Other Issues:**

Building owners will also bear a cost in complying with this ordinance. Estimated up-front costs to building owners to conduct a tune-up range from \$0.10-\$0.50 per square foot. However, the activities conducted during a tune-up on average pay back within 2-3 years. The legislation includes an allowance for exemptions and extensions for demonstrating financial hardship in complying with the ordinance.

**List attachments/exhibits below:**

None.