



Legislation Text

File #: CB 118631, Version: 1

CITY OF SEATTLE
ORDINANCE _____
COUNCIL BILL _____

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.

WHEREAS, The City of Seattle (City) has a goal to become a carbon-neutral city by 2050 and has adopted a strategy for achieving this goal through Resolution 31447, adopting the 2013 Seattle Climate Action Plan; and

WHEREAS, the 2013 Seattle Climate Action Plan includes 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 at optimum efficiency; and

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

WHEREAS, as part of its 2013 Seattle Climate Action Plan, the City set a 2050 goal for reducing emissions from all commercial buildings by 45 percent 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 energy reductions to meet these targets; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 22.930 is added to the Seattle Municipal Code as follows:

CHAPTER 22.930 BUILDING TUNE-UPS

22.930.010 Applicability

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

22.930.020 Definitions

In this Chapter 22.930, the following definitions apply:

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

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

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

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

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

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

"Notice of violation" means a written notice issued to a building owner for failure to comply with the requirements of this Chapter 22.930 or for making any misrepresentation of any material fact in a document

required to be prepared or disclosed by this Chapter 22.930.

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

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

22.930.030 Requirement for building tune-ups

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

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

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

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

22.930.040 Exemptions and extensions

A. Buildings meeting one or more of the following conditions may apply for an exemption from complying with a single interval of tune-ups as required by this Chapter 22.930. Building owners shall demonstrate they meet a condition for exemption by submitting evidence of the condition to the OSE Director no later than 180 days before the tune-up compliance date as specified in Section 22.930.050. The OSE Director shall notify applicants within 60 days of receiving an exemption request on the determination of whether the exemption is granted. Conditions meeting an exemption include but are not limited to:

1. Buildings with a high certified ENERGY STAR score preceding the tune-up compliance date

identified in Section 22.930.050, as determined by the Director;

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

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

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

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

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

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

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

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

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

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

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

22.930.050 Schedule for tune-ups and reporting

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

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.

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

C. A building owner may apply for a one-year compliance extension by showing good cause. Receiving an extension does not alter the future schedule for compliance. By requesting and receiving an extension, the

building's next compliance schedule will be less than the typical five-year schedule. The OSE Director is authorized to prescribe rules for applying for an extension under this subsection 22.930.050.C. Conditions to receive an extension include but are not limited to:

1. Buildings with less than 50 percent of the rentable floor area occupied;
2. Buildings or building owners that can demonstrate a disproportionate burden of this Chapter

22.930, as determined by the OSE Director.

22.930.060 Building tune-up requirements

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

1. Bill analysis: examine and verify energy and water data and perform basic billing analysis;
2. Sensors: Examine for proper operation and appropriate location;
3. Schedules: Optimize schedules of all equipment for actual daily, weekly, holiday, and seasonal schedules;
4. Set points: Optimize setpoints for all zones and equipment, and implement reset and lock-outs for equipment;
5. Outside air control: Calculate ventilation requirements, measure actual ventilation rates, and optimize ventilation delivery and control;
6. Equipment controls: Optimize equipment controls for energy efficient operations;
8. Maintenance check: Check for common maintenance items that impact energy usage;
9. Design issues: Identify design issues leading to high energy use such as missing insulation, missing controls, large leaks, unbalanced systems, critical zones;
10. Lighting: Identify outdated lighting technologies, over-lit spaces, and areas needing lighting controls; and
11. Domestic plumbing system maintenance.

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

22.930.060.A.

22.930.070 Building energy tune-up results reports

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

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

22.930.080 Qualifications for tune-up specialists

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

22.930.090 Violations

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

22.930.100 Authority to enforce

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

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

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

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

E. The OSE Director may delegate the enforcement of any provision of this Chapter 22.930 to any other

appropriate City of Seattle department including but not limited to the authority to investigate and determine if any building owner, tenant, or other person subject to this Chapter 22.930 has not complied with its requirements, to issue notices of violation, and to collect assessed penalties.

22.930.110 Investigating violations and issuing notices of violation

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

B. If after investigation the Director determines that the requirements of this Chapter 22.930 have been violated, the Director may issue a notice of violation as provided in this Section 22.930 to the building owners, tenants, or other responsible persons subject to this Chapter.

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

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

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

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

22.930.120 Penalties

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

Section 22.930.050.

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

- a. 180 days after October 1 due date - \$5,000;
- b. 360 days after due date - \$20,000.

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

- a. 180 days after due date - \$2,500;
- b. 360 days after due date - \$10,000.

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

- a. 180 days after due date - \$2,000;
- b. 360 days after due date - \$8,000.

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

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

C. If the Director determines that a building owner has intentionally misrepresented the results of a tune

-up in its report, the OSE Director may, in addition to any other remedy authorized by law or equity, seek the following remedies:

1. A \$5,000 fine shall be imposed for the first violation; and
2. A \$10,000 fine shall be imposed for the second and any subsequent violations.

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

E. The penalties in subsection 22.930.120.A shall be imposed by serving a notice of violation that states the specific violation, the amounts of each increase in penalties, and the specific dates that each increase in penalties will accrue. A building owner shall have 30 days from the date of mailing or service of the notice of violation to seek an administrative review of the imposition of the penalties, including each increase in penalties, contained in the notice of violation. The initiation of an administrative review is governed by Section 22.930.140 <<https://www.municode.com/library/>>. The failure of a building owner to initiate an appeal within 30 days of the date of mailing or service of the notice of violation shall be a waiver of the right to an administrative review and a waiver of any subsequent appeal or request for mitigation to the Hearing Examiner under Section 22.930.1 <<https://www.municode.com/library/>>40 or Section 22.930.160 <<https://www.municode.com/library/>> of all penalties contained within the notice of violation.

The penalties in subsections 22.930.120.B and 22.930.120.C shall be imposed by serving a notice of violation stating each violation and each corresponding penalty. Administrative review and appeal of all violations and penalties contained within a notice of violation shall be governed in accordance with Sections 22.930.130 <<https://www.municode.com/library/>>, 22.930.140, 22.930.150 <<https://www.municode.com/library/>> and 22.930.160 <<https://www.municode.com/library/>>.

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

22.930.130 Response to notice of violation

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

1. Paying the amount of the penalty specified in the notice of violation, in which case the record shall show a finding that the person cited committed the violation; or
2. Requesting in writing an administrative review in accordance with Section 22.930.140 <<https://www.municode.com/library/>> and providing a mailing address to which a benchmarking and reporting program violation challenge form may be sent.

B. A response to a notice of violation shall be received by the Office of Sustainability and Environment

within 30 days after the date the notice of violation is mailed or otherwise served. When the last day of the administrative appeal period is a Saturday, Sunday, or federal or City holiday, the period shall run until 5 p.m. on the next business day.

22.930.140 Administrative review of notice of violation by OSE Director

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

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

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

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

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

E. The OSE Director's administrative review decision is final but is subject to a request for a contested hearing or a mitigation hearing before the Hearing Examiner according to Sections 22.930.160 <<https://www.municode.com/library/>> and 22.930.170 <<https://www.municode.com/library/>>.

22.930.150 Failure to respond to an administrative review decision

If a person fails to respond to an administrative decision within 15 days of service, an order shall be entered by

the OSE Director finding that the person cited committed the violation stated in the notice of violation and assessing the penalty specified in the notice of violation.

22.930.160 Response to an administrative review decision

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

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

2. Requesting in writing a mitigation hearing to explain the circumstances surrounding the commission of the violation and providing a mailing address to which notice of such hearing may be sent; or

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

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

22.930.170 Administrative decision mitigation hearings

A. Date and notice. If a building owner requests a mitigation hearing, the mitigation hearing shall be held within 30 days after a written response to the administrative decision requesting a hearing is received by the Hearing Examiner. Notice of the time, place, and date of the hearing will be sent in accordance with Section 3.02.090 <<https://www.municode.com/library/>> not less than ten days prior to the hearing date.

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

C. Disposition. The Hearing Examiner shall determine whether the building owner's explanation justifies reduction of the penalty; however, the penalty may not be reduced unless the Director affirms or certifies that the violation has been corrected before the mitigation hearing. Factors that may be considered in

whether to reduce the penalty include: whether the violation was caused by the act, neglect, or abuse of another; or whether correction of the violation was commenced promptly before notice of violation but that full compliance was prevented by a condition or circumstance beyond the control of the person cited.

22.930.180 Contested hearings

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

B. Hearing. Contested hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 <<https://www.municode.com/library/>> and the rules adopted by the Hearing Examiner for hearing contested cases, except as modified by this Section 22.930.180. The issues heard at the hearing shall be limited to those that are raised in writing in the response to the notice of violation and that are within the jurisdiction of the Hearing Examiner. The Hearing Examiner may issue subpoenas for the attendance of witnesses and the production of documents.

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

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

E. Evidence at hearing

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

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

F. Disposition. If the notice of violation is sustained at the hearing, the Hearing Examiner shall enter an order finding that the person cited committed the violation. If the violation remains uncorrected, the Hearing Examiner shall impose the applicable penalty. The Hearing Examiner may reduce the monetary penalty in accordance with the mitigation provisions in Section 22.930.160 <<https://www.municode.com/library/>> if the violation has been corrected. If the Hearing Examiner determines that the violation did not occur, the Hearing Examiner shall enter an order dismissing the notice of violation.

G. Appeal. The Hearing Examiner's decision is the final decision of the City. Any judicial review shall

be commenced by applying for a writ of review in the King County Superior Court within 14 days from the date of the decision in accordance with the procedure set forth in chapter 7.16 RCW, other applicable laws, and court rules.

22.930.190 Failure to appear for notice of violation hearing

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

22.930.200 Collection of notice of violation penalties

If the person cited fails to pay a penalty imposed pursuant to this Chapter 22.930, the penalty may be referred to a collection agency. The cost to the City for the collection services will be assessed as costs, at the rate agreed to between the City and the collection agency, and added to the penalty. Alternatively, the City may pursue collection in any other manner allowed by law.

22.930.210 Referral to City Attorney for enforcement

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

22.930.220 Appeal to Superior Court

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

Section 2. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of its

application to any person or circumstance, does not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

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

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

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.

Monica Martinez Simmons, City Clerk

(Seal)