CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117575

AN ORDINANCE relating to energy use benchmarking in buildings; modifying the penalty system, administrative review and appeal process for failure to timely submit energy benchmarking reports and performance ratings; authorizing the establishment of grace periods; creating an exemption for buildings used in industrial manufacturing; authorizing the delegation of enforcement authority; amending Sections 22.920.010, 22.920.020, 22.920.030, 22.920.040, 22.920.060, 22.920.100, 22.920.110, 22.920.120, 22.920.130, 22.920.150, 22.920.160, 22.920.170, 22.920.180, and 22.920.190 of the Seattle Municipal Code; adding new Sections 22.920.125, 22.920.155 and 22.920.195; and repealing Section 22.920.140.

WHEREAS, the City has adopted Ordinance 123226 in 2010 relating to energy conservation requiring owners of nonresidential and multifamily buildings to measure, report and disclosure energy efficiency performance, and adding a new chapter 22.920 to Title 22 of the Seattle Municipal Code; and

WHEREAS, the City has a strong interest in helping building owners understand the energy performance of their building and invest in increasing their building's energy performance; and

WHEREAS, the City recognizes that building energy measurement and disclosure approaches need to be tailored to building type so that the information is accessible and actionable; and

WHEREAS, the City recognizes that a phased implementation of the energy benchmarking and reporting requirement, and a streamlined enforcement process, is needed to ensure a successful program and to provide support for building owners to understand and comply with the requirement;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 22.920.010 of the Seattle Municipal Code, which was enacted by Ordinance 123226, is amended as follows:

22.920.010 Applicability

A. This chapter applies to all nonresidential and multi-family benchmarking buildings as defined in the following table:

Description	**Reporting Requirements**
1. A structure or any portion of a structure which: a) Is subject to the provisions of the Seattle Building Code, and b) Has a gross area of more than ((~~10,000~~)) 20,000 square feet, excluding parking, and c) Is any classified occupancy under the Seattle Building Code other than Residential R-2 or R-3.	Nonresidential benchmarking
2. A structure or any portion of a structure which: ((~~containing five or more dwelling units and~~)) a) Has a gross area of more than ((~~10,000~~)) 20,000 square feet, excluding parking, and b) Is classified under the Seattle Building Code as a Residential Group R-2 occupancy.	Multi-family benchmarking
3. A structure or any portion of a structure which: a) Has a gross area of less than 20,000 square feet excluding parking. b) Is classified under the Seattle Building Code as a Residential Group R-2 occupancy.	Encourage voluntary benchmarking compliance
4. Buildings subject to the Seattle Residential Code.	Exempt
5. All others not listed	Exempt

B. Building owners shall comply with the nonresidential-benchmarking building standards when 50% or more of the gross building area, excluding parking, is used for nonresidential-benchmarking building uses; and

C. Building owners shall comply with the multi-family-benchmarking building standards when more than 50% of the gross building area, excluding parking, is used for multi-family-benchmarking building uses.

D. This Chapter shall not apply to buildings used primarily for industrial manufacturing purposes.

E. The Office of Sustainability shall investigate new approaches for energy benchmarking and reporting in commercial and multifamily buildings under 20,000 square feet and report back to the Seattle City Council by April 1, 2014.

F. The Director shall have the authority to provide for grace periods.

Section 2. Section 22.920.020 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.020 Definitions

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

((~~A.~~)) "Building Owner" means an individual or entity possessing a fee interest in an nonresidential or multi-family 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.

((~~B.~~)) "Certificate of Occupancy" means the certificate issued by the Director after final inspection, allowing the building to be occupied.

((~~C.~~)) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions, as defined in RCW 64.34.020.

((~~D.~~)) "Director" means the Director of the Department of Planning and Development or his or her designee, and includes any person or agency or representative of such person or agency to whom authority is delegated under this Chapter.

((~~E.~~)) "Dwelling unit" means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

((~~F.~~)) "Energy Benchmarking" means the assessment of a building's energy use and efficiency.

((~~G.~~)) "Energy Performance Rating" means the score provided by the Energy Star Portfolio Manager program indicating the relative energy efficiency performance of a building as compared to similar buildings nationwide.

((~~H.~~)) "Energy Star Portfolio Manager" means the tool developed and maintained by the United States Environmental Protection Agency to track and assess the relative energy performance of similar buildings nationwide.

((~~I.~~)) "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 or for making any misrepresentation of any material fact in a document required to be prepared or disclosed by this chapter.

((~~J.~~))"Owners' Association" means the entity consisting exclusively of all the unit owners in a condominium, as defined under RCW 64.34.300.

((~~K.~~))"Tenant" means a person occupying or holding possession of a building or premises pursuant to a rental agreement

((~~L.~~))"Utility" means an entity that distributes and sells natural gas, electric, or thermal energy services for buildings.

Section 3. Section 22.920.030 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.030 Nonresidential-benchmarking buildings – preparing energy benchmarking reports

Building owners of each building subject to nonresidential benchmarking requirements shall provide to the Director, using the Energy Star Portfolio Manager or a similar rating system and in such form as established by Director's rule, ((~~an initial~~)) energy benchmarking reports and, where available, an energy performance ratings for each building according to the following schedule:

A. ((~~By April 1, 2011 for~~)) For buildings larger than 50,000 square feet and having an initial occupancy date before January 1, 2010, reports and ratings pertaining to benchmarking for the year 2011 shall be submitted by October 1, 2012. Reports and ratings pertaining to

benchmarking for the year 2012 shall be submitted by April 1, 2013, and thereafter, annual reports and ratings for each subsequent year shall be due each April 1st;

B. ((~~By April 1, 2012 for~~)) For buildings smaller than 50,000 square feet and larger than ((~~10,000~~)) 20,000 square feet and having an initial occupancy date before January 1, ((~~2011~~)) 2012, reports and ratings pertaining to benchmarking for the year 2012 shall be submitted by April 1, 2013, and thereafter, annual reports and ratings for each subsequent year shall be due each April 1st; and

C. By one year after the initial occupancy date for all other buildings having an initial occupancy date of January 1, ((~~2011~~))2012 or later.

Section 4. Section 22.920.040 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.040 Multi-family-benchmarking buildings – preparing energy benchmarking reports

Building owners of each building subject to multi-family benchmarking requirements shall provide to the Director, using the Energy Star Portfolio Manager or a similar rating system and in such form as established by Director's rule, ((~~an initial~~)) energy benchmarking reports and, where available, an energy performance ratings for each building according to the following schedule:

A. By ((~~April 1, 2012~~)) October 1, 2012 and by April 1 annually thereafter for buildings larger than 50,000 square feet having an initial occupancy date before January 1, 2011;

B. By April 1, 2013 and by April 1 annually thereafter for buildings larger than 20,000 square feet having an initial occupancy date after January 1, 2011 and before January 1, 2012; and

C. By one year after the date of initial occupancy for all other buildings having an initial occupancy date of January 1, 2011 or later.

Section 5. Section 22.920.060 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.060 Maintaining energy utility records

Utilities providing energy service to a nonresidential or multi-family benchmark building shall maintain energy consumption data for each building for at least the most-recent twelve months in a format capable of being uploaded to the United States Environmental Protection Agency's Energy Star Portfolio Manager.

On and after June 1, 2010, upon written or secure electronic authorization by an authorized representative of the building owner, the utility providing energy service to the building shall upload the utility consumption data for the accounts specified by an authorized representative of the building owner to the United States Environmental Protection Agency's Energy Star Portfolio Manager, in a form that does not disclose personally-identifying information. Utility companies have ((~~60~~))30 days from receipt of such written or secure electronic authorization to upload information to Energy Star Portfolio Manager.

Section 6. Section 22.920.100 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.100 Authority to enforce

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

B. This chapter 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 to place the obligation of complying with its requirements upon the owners of the buildings and other persons subject to this chapter.

D. ((~~The Director should exercise discretion when~~)) When enforcing this chapter the Director ((~~and~~)) shall not seek to impose penalties on a utility that is exercising good faith efforts to comply with the requirements of this chapter.

E. No provision or term used in this chapter 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.

F. The Director at his or her discretion may delegate the enforcement of any provision of this chapter to the Office of Sustainability and Environment or to its successor or to an otherwise suitable department or agency, including but not limited to the authority to investigate and determine if any building owner, tenant or other person subject to this chapter has not complied with its requirements, to issue notices of violation and to collect assessed fines.

Section 7. Section 22.920.110 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.110 Investigating violations and issuing citations or notices of violation

A. The Director is authorized to investigate and determine if any building owner, tenant or other person subject to this chapter has not complied with its requirements.

B. If after investigation, the Director determines that the requirements of this chapter have been violated, the Director may issue a ((~~citation or~~)) notice of violation as provided ((~~below~~)) in this Section 22.920.110 to the building owners, tenants or other persons subject to this chapter for failing to comply with this chapter.

C. The ((~~citation or)) ~~notice of violation shall state the requirement that was violated, ((~~and~~)) what corrective action is necessary to remedy the violation, and shall state any penalties or fines imposed.

D. The ((~~citation or)) ~~notice of violation shall be served on the building owners, tenants or other persons subject to this chapter as provided for in ((~~Seattle Municipal Code~~)) Section 23.90.006 C.

E. A copy of the ((~~citation or)) ~~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 Director requests the City Attorney take appropriate enforcement action.

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

Section 8. Section 22.920.120 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.120 - ((~~Remedies~~))Sanctions

A. ((~~If the Director determines that a building owner has failed~~)) Fines for the failure of a building owner to prepare, submit or annually update ((~~an accurate~~)) energy benchmarking reports and energy performance ratings as required by ((~~this chapter, the Director may, in addition to any other remedy authorized by law or equity, seek the following remedies~~))Section 22.920.040 shall be imposed as follows:

((~~1. A $150 citation may be issued the first time a building owner fails to prepare or update an energy benchmarking report. The citation shall not be issued to the building owner when failure to prepare or report an energy benchmarking report is due to a tenant's failure to provide information required under Section 22.920.050;~~

~~2. If a benchmarking report is not filed within 15 days of the date the citation is issued, the City may issue a notice of violation with a penalty of $150 per day for the first 10 days of noncompliance, then $500 per day for each day in violation past the 10th day until compliance is achieved; and~~

~~3. If a building owner of a building subject to this chapter has been previously issued a citation under this chapter within the past four (4) years of the date the citation was issued, all subsequent violations for failing to prepare or update an energy benchmarking report shall be subject to a notice of violation.~~))

1. For Non-Residential buildings greater than 50,000 square feet having an initial occupancy date before January 1, 2011, upon the failure to submit the report and rating pertaining to benchmarking for the year 2011 by October 1, 2013, a fine of $2,000 shall be imposed; upon the failure to submit such report and rating by January, 1, 2013,

the fine shall be increased to $3,000; and upon the failure by April 1, 2013, the fine shall be increased to $4,000.

2. For multi-family buildings greater than 50,000 square feet having an initial occupancy date before January 1, 2011, upon the failure to submit the report and rating pertaining to benchmarking for the year 2011 by January 1, 2013, a fine of $1,000 shall be imposed; upon the failure to submit such report and rating by April, 1, 2013, the fine shall be increased to $2,000; upon the failure to submit such report and rating by July 1, 2013, the fine shall be increased to $3,000; and upon the failure by October 1, 2013, the fine shall be increased to $4,000.

3. For annual reports and ratings pertaining to benchmarking for the year 2012 and each subsequent year thereafter, for buildings greater than 50,000 square feet, for each annual energy benchmarking report (including a performance rating when available), the following fines shall be imposed for the failure to submit the report and performance rating by the following dates:

a. 90 days after April 1 due date - total fine of $1,000

b. 180 days after due date - total cumulative fine of $2,000

c. 270 days after due date - total cumulative fine of $3,000

d. 360 days after due date - total cumulative fine of $4,000

provided, however, that no fine shall be imposed when failure to prepare or report an energy benchmarking report is due to a tenant's failure to provide information required under Section 22.920.050;

4. For annual reports and ratings pertaining to benchmarking for the year 2012 and each subsequent year thereafter, for buildings fewer than 50,000 square feet, for each annual energy benchmarking report (including a performance rating when available), the following fines shall be imposed for the failure to submit the report and performance rating by the following dates:

a. 90 days after April 1 due date - total fine of $500

b. 180 days after due date - total cumulative fine of $1,000

c. 270 days after due date - total cumulative fine of $1,500

d. 360 days after due date - total cumulative fine of $2,000

provided, however, that no fine shall be imposed when failure to prepare or report an energy benchmarking report is due to a tenant's failure to provide information required under Section 22.920.050;

5. The Director shall have the authority by Director's rule to establish grace periods for imposing fines 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.

B. If the Director determines that a building owner has failed to disclose an energy benchmarking report or energy performance rating as required by ((~~this chapter~~))Section 22.920.080, the Director may, in addition to any other remedy authorized by law or equity, seek the following remedies:

1. A $150 ((~~citation may~~)) fine shall be ((~~issued~~))imposed for the first violation,

2. A $500 ((~~citation may~~)) fine shall be ((~~issued~~))imposed for the second or subsequent violation, and

3. If a building owner of any building subject to this chapter has been previously issued a citation under this chapter within the past two (((~~2~~))) years, all subsequent violations by that building owner for failing to disclose an energy benchmarking report shall be subject to a $500 ((~~citation~~))fine.

C. If the Director determines that a tenant has failed to provide information to a building owner as required under Section 22.920.050, the Director may, in addition to any other remedy authorized by law or equity, seek the following remedies:

1. A $150 ((~~citation may~~)) fine shall be ((~~issued~~))imposed for the first violation,

2. A $500 ((~~citation may~~)) fine shall be ((~~issued~~))imposed for the second or subsequent violation, and

3. If a tenant of any building subject to this chapter has been previously issued a citation under this chapter within the past two (((~~2~~))) years, all subsequent violations by that tenant for failing to provide information to a building owner as required under Section 22.920.050 shall be subject to a $500 ((~~citation~~))fine.

D. If the Director determines that a building owner has submitted an inaccurate energy benchmarking report or energy performance rating as required by this chapter, the Director may, in addition to any other remedy authorized by law or equity, seek the following remedies:

1. A $150 fine shall be imposed for the first violation;

2. A $500 fine shall be imposed for the second and any subsequent violations.

E. The fines set forth in subsection 22.920.120.A shall be imposed by serving a notice of violation that sets forth the specific violation, the amounts of each increase in fines and the specific dates upon which each increase in fines 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 all such fines, including each increase in fines, contained within the notice of violation. The initiation of such an administrative review is governed by Section 22.920.130. The failure of a building owner to initiate such an appeal within 30 days of the date of mailing or service of the notice of violation shall be deemed a waiver of the right to such administrative review and any subsequent appeal or request for mitigation to the Hearing Examiner under Section 22.920.155 or Section 22.920.160 of all fines contained within the notice of violation including each increase in fines.

The fines set forth in subsections 22.920.120.B, C, and D 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 22.920.130, 155 and 160.

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

Section 9. A new Section 22.920.125 is added to the Seattle Municipal Code as follows:

22.920.125 Response to Notice of Violations

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

1. Pay 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. Request in writing an administrative review in accordance with Section 22.920.130 and provide a mailing address to which a benchmarking and reporting program violation challenge form may be sent.

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

Section 10. Section 22.920.130 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.130 <u>Administrative</u> Review of Notice of Violation by Director

A. A notice of violation shall be ((~~final and not subject to further~~)) <u>subject to</u> administrative review ((~~unless an~~)) <u>if the</u> aggrieved party requests in writing a review by the Director within ((~~10~~)) <u>30</u> 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 5:00 p.m. on the next business day.

B. To be considered by the Director, the written request for review must be submitted with the Energy Benchmarking and Reporting Violation Review Form, which will document the reason for the review.

((~~B~~))C. After receiving a request for review, the 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. ((~~Additional information to be considered by the Director shall be submitted to the Director no later than 15 days after the written request for a review is mailed.~~))

((~~C.~~))D. The Director will review the basis for issuing the notice of violation and the Violation Review Form. The Director may request clarification of information received ((~~and conduct a site visit~~)). After the review is completed, the 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.

((~~D.~~))E. The Director's decision shall become final and not subject to further administrative ((~~appeal~~)) review by the Director. The Director's decision shall be subject to mitigation or an appeal to the Hearing Examiner for a contested hearing in accordance with Sections 22.920.155 and 22.920.160.

Section 11. Section 22.920.140 of the Seattle Municipal Code is repealed.

Section 12. Section 22.920.150 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.150 Failure to respond to ((~~citation~~)) <u>an administrative review decision</u>

If a person fails to respond to ((~~a citation~~)) <u>an administrative decision</u> within 15 days of service, an order shall be entered by the <u>Director</u> ((~~Hearing Examiner~~)) finding that the person cited committed the violation stated in the ((~~citation~~)) <u>notice of violation</u> and assessing the penalty specified in the ((~~citation~~)) <u>notice of violation</u>.

Section 13. A new Section 22.920.155 is added to the Seattle Municipal Code as follows:

22.920.155 <u>Administrative decision appeal process</u>

A. A person must respond to <u>an administrative decision</u> ((~~a citation~~)) in one of the following ways:

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

3. Request 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 provide a mailing address to which notice of such hearing may be sent.

B. A response to ((~~a citation~~)) an administrative decision must be received by the Office of the Hearing Examiner no later than fifteen (15) days after the date the administrative decision ((~~citation~~)) is mailed or served. When the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until ((~~five (5:00)~~)) 5 p.m. on the next business day.

Section 14. Section 22.920.160 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.160 ((~~Citation~~)) Administrative decision mitigation hearings

A. Date and Notice. If a person requests a mitigation hearing, the mitigation hearing shall be held within ((~~thirty~~))30~~)~~)) days after a written response to the ((~~citation~~)) administrative decision requesting a hearing is received by the Hearing Examiner. Notice of the time, place, and date of the hearing will be sent ((~~by first-class mail to the address provided in the request for hearing~~)) in accordance with Section 3.02.090 not less than ten days prior to the hearing date.

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

C. Disposition. The Hearing Examiner shall determine whether the person's explanation justifies reduction of the penalty; however, the penalty may not be reduced unless ((~~DPD~~)) the Director affirms or certifies that the violation has been corrected prior to 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 prior to ((~~citation~~)) notice of violation but that full compliance was prevented by a condition or circumstance beyond the control of the person cited.

Section 15. Section 22.920.170 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.170 Contested ((~~citation~~)) hearings

A. Date and Notice. If a person requests a contested hearing, the hearing shall be held within 60 days after the written response to the ((~~citation~~)) 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 and the rules adopted by the Hearing Examiner for hearing contested cases, except as modified by this section. The issues heard at the hearing shall be limited to those that are raised in writing in the response to the ((~~citation~~)) 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 ((~~citation~~)) notice of violation shall be deemed insufficient for failure to contain a detailed statement of the facts constituting the specific violation which the person cited is alleged to have committed or by reason of defects or imperfections, provided such lack of detail, or defects or imperfections do not prejudice substantial rights of the person cited.

D. Amendment of ((~~Citation~~)) Notice of Violation. A ((~~citation~~)) 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 ((~~an inspector~~)) 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 ((~~inspector~~)) 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 ((~~DPD)~~) evidence and establish that the cited violation(s) did not occur or that the person contesting the ((~~citation~~)) notice of violation is not responsible for the violation.

F. Disposition. If the ((~~citation~~)) 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 22.920.160 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 ((~~citation~~)) notice of violation.

G. Appeal. The Hearing Examiner's decision is the final decision of the City. Any judicial review must be commenced in Seattle Municipal Court with review of any Municipal Court decision being subject to review under the Civil Rules for Courts of Limited Jurisdiction.

Section 16. Section 22.920.180 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.180. Failure to appear for ((~~citation~~)) <u>notice of violation</u> hearing

Failure to appear for a requested hearing will result in an order being entered finding that the person cited committed the violation stated in the ((~~citation~~)) <u>notice of violation</u> and assessing the penalty specified in the ((~~citation~~)) <u>notice of violation</u>. 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.

Section 17. Section 22.920.190 of the Seattle Municipal Code, which section was enacted by Ordinance 123226, is amended as follows:

22.920.190 Collection of ((~~citation~~)) <u>notice of violation</u> penalties

If the person cited fails to pay a penalty imposed pursuant to this chapter, 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.

Section 18. A new Section 22.920.195 is added to the Seattle Municipal Code as follows:

22.920.195 Utilities - Recovery of costs.

Utilities may establish and require building owners to pay a reasonable charge to recover the costs of uploading a building's utility consumption data to the United States Environmental Protection Agency's Energy Star Portfolio Manager.

Section 19. The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

Section 20. Any act authorized by this ordinance and taken after its passage is ratified and confirmed.

Section 21. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its passage this _____ day of _____, 2012.

_____
President _____of the City Council

Approved by me this ____ day of _____, 2012.

_____
Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____
Monica Martinez Simmons, City Clerk

(Seal)

Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Office of Sustainability & Environment	Rebecca Baker 206-615-1171	Melissa Lawrie 206-684-5805

Legislation Title:

AN ORDINANCE relating to energy use benchmarking in buildings; modifying the penalty system, administrative review and appeal process for failure to timely submit energy benchmarking reports and performance ratings; authorizing the establishment of grace periods; creating an exemption for buildings used in industrial manufacturing; authorizing the delegation of enforcement authority; amending Sections 22.920.010, 22.920.020, 22.920.030, 22.920.040, 22.920.060, 22.920.100, 22.920.110, 22.920.120, 22.920.130, 22.920.150, 22.920.160, 22.920.170, 22.920.180, and 22.920.190 of the Seattle Municipal Code; adding new Sections 22.920.125, 22.920.155 and 22.920.195; and repealing Section 22.920.140.

Summary of the Legislation:

This ordinance is related to energy use benchmarking in buildings, and revises certain policy components of the City's existing energy benchmarking program to improve participation in the program and streamline enforcement. The attached ordinance revises Section 22.920 of the Seattle Municipal Code, which was enacted by Ordinance 123226 in 2010.

The attached ordinance focuses the benchmarking requirement on buildings over 20,000 square feet, which is considered to be the building sector best able to benefit and act upon information gained from EPA's Portfolio Manager tool. The legislation also simplifies the enforcement process by moving from daily accruing fines to quarterly fines. The legislation formally creates an exemption for buildings used in industrial manufacturing, authorizes the delegation of enforcement authority and authorizes the establishment of grace periods. A requirement of administrative review by the director has also been added to avoid unduly burdening the hearing examiner process.

Background:

The City of Seattle was one of the first cities in the nation to enact an energy benchmarking requirement. In 2010, Council passed Ordinance 123226 requiring owners of nonresidential and multi-family buildings to measure and disclose energy efficiency performance. That ordinance required that owners of non-residential buildings of 10,000 square feet or large and of residential buildings of five units or more to submit of their building's energy performance using the US Environmental Protection Agency's Energy Star Portfolio Manager Tool. At that time the

Energy Benchmarking program was being administered by the Department of Planning and Development (DPD), but has since been transferred to the Office of Sustainability and Environment (OSE).

Since that time, the City has learned that building owners value the information that results from energy benchmarking, yet the program's compliance rates are lower than desired, and the rate of reporting errors is high. The changes in the attached ordinance support the development of a successful energy benchmarking program within the limits of the City's capabilities for enforcement, and encourage the desired energy efficiency outcomes in Seattle's existing buildings.

Please check one of the following:

____ **This legislation does not have any financial implications.**

X____ **This legislation has financial implications.**

Appropriations: There are no appropriation changes included this legislation. Funding to cover additional program delivery needs above those already budgeted in 2012 is being evaluated, and any change in appropriation will be reflected in the 2013-2014 Proposed Budget.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
General Fund (00100)	Office of Sustainability and Environment (OSE)	Enforcement Fines	$153,000	$178,000
TOTAL				

Revenue/Reimbursement Notes: The estimated revenue reflects payments resulting from quarterly fine amounts per building size as outlined in the accompanying legislation.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
None identified.

b) **What is the financial cost of not implementing the legislation?**
The proposed legislation streamlines the City's Benchmarking and Reporting Program, and ensures a robust Benchmarking program within the limits of City resources.

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

The Office of Sustainability is working with the Department of Finance and Administrative Services to establish an ongoing process for FAS to issue notices of violation to non-compliant property owners and collect enforcement fines on behalf of the City.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
None identified.

e) **Is a public hearing required for this legislation?**
No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.

g) **Does this legislation affect a piece of property?**
No.

List attachments to the fiscal note below:
OSE Benchmarking and Disclosure ATT A

Energy Benchmarking & Reporting Program

Why is the City proposing changes to the energy benchmarking program?

The City of Seattle was one of the first cities in the nation to enact an energy benchmarking requirement, and we've learned a lot from our experience and from the experience of others. The Office of Sustainability & Environment (OSE) is proposing the following changes to focus the requirement on buildings where it's the best fit, to simplify the enforcement process, and to provide time to refine data systems, conduct building outreach, and build general program awareness. The proposed changes are also necessary to ensure a successful benchmarking program within the limits of the City's current budget environment. OSE believes that changes outlined below will set the benchmarking and reporting program up for long-term success to achieve the desired energy efficiency outcomes in Seattle's existing buildings.

What are the proposed changes?

Issue	Current Policy	Proposed Policy
Building Size Threshold	• Non-residential buildings greater than 10,000 sq. feet. • Multifamily buildings with 5 units or more.	• Non-residential and multifamily buildings greater than 20,000 square feet. • Explore other policy options and approaches for smaller scale buildings
Benchmarking Requirement Timeline	Submit Energy Benchmarking Report by: <u>Non-residential buildings >50,000 sq. ft:</u> • April 1, 2012 (2011 data) <u>Non-residential buildings >10,000 sq. ft.:</u> • October 1, 2012 <u>Multifamily buildings with 5 units or more:</u> • October 1, 2012 <u>All required buildings:</u> • Update information annually on April 1	Submit Energy Benchmarking Report by: <u>Non-residential buildings >50,000 sq. ft:</u> • October 3, 2011 <u>Multifamily Buildings >50,000 sq. ft.:</u> • October 1, 2012 <u>Non-residential buildings & Multifamily buildings >20,000 sq. ft.:</u> • April 1, 2013 <u>All required buildings:</u> • Update information annually on April 1

Enforcement Process	Failure to submit benchmarking report: $150 citation. If report is not filed within 15 days of citation, the City may issue a notice of violation with a daily penalty ($150/day for first 10 days, $500/day thereafter). Option of administrative review or direct appeal to Hearing Examiner	Failure to submit benchmarking report: Buildings greater than 50,000 sq. ft.: • $1000 fine assessed quarterly up to a maximum of $4000/reporting year. Buildings between 20,000 and 50,000 sq. ft.: • $500 fine assessed quarterly up to a maximum of $2000/reporting year. Mandatory administrative review before appealing to Hearing Examiner

City of Seattle
Office of the Mayor

August 14, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill/Ordinance aimed at strengthening the City's energy benchmarking and reporting program, which was originally established in Ordinance 123226. This proposed Council Bill/Ordinance has been developed based on our first two years of program experience including consideration of national best practices and stakeholder feedback. The proposed Council Bill/Ordinance will ensure the City maintains a robust benchmarking and reporting program and is a foundational part of the City's strategy to increase energy efficiency in Seattle's buildings.

The proposed Council Bill/Ordinance amends Chapter 22.920 of the Seattle Municipal Code raising the building scale threshold to 20,000 square feet to focus the program on Seattle's building stock that is best suited to understand and respond to the information gained from benchmarking their building's energy performance using the U.S. Environmental Protection Agency's Energy Star Portfolio Manager tool. The proposal also outlines a staggered implementation timeline and streamlines the requirement's enforcement process. In addition, because the City is interested in energy efficiency in all buildings, the proposed Council Bill/Ordinance directs the Office of Sustainability to evaluate what energy benchmarking approaches are better suited for nonresidential and multifamily buildings under 20,000 square feet.

Thank you for your consideration of this important legislation. Should you have questions, please contact Jill Simmons, Director of the Office of Sustainability and Environment, at 684-9261 or Rebecca Baker, Benchmarking Program Manager, at 615-1171.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov