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CITY OF SEATTLE
ORDINANCE _____
COUNCIL BILL 117575

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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: <ul style="list-style-type: none"> a) Is subject to the provisions of the Seattle Building Code, and b) Has a gross area of more than ((10,000)) <u>20,000</u> 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 <u>which:</u> ((containing five or more dwelling units and)) <ul style="list-style-type: none"> a) Has a gross area of more than ((10,000)) <u>20,000</u> square feet, excluding parking, and b) <u>Is</u> classified under the Seattle Building Code as a Residential Group R-2 occupancy. 	Multi-family benchmarking
3. <u>A structure or any portion of a structure which:</u> <ul style="list-style-type: none"> a) <u>Has a gross area of less than 20,000 square feet excluding parking.</u> b) <u>Is classified under the Seattle Building Code as a Residential Group R-2 occupancy.</u> 	<u>Encourage voluntary benchmarking compliance</u>
4. Buildings subject to the Seattle Residential Code.	Exempt
5. All others not listed	Exempt

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

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

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

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

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

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

18 **22.920.020 Definitions**

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

20 ((A-)) "Building Owner" means an individual or entity possessing a fee interest in an
21 nonresidential or multi-family benchmarking building. Where a condominium is subject to this
22 chapter, "Building Owner" means the owners' association. In a condominium where the powers
23 of an owners' association are exercised by or delegated to a master association, as defined in
24 RCW 64.34.276, "Building Owner" means the master association.
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1 ~~((B.))~~ "Certificate of Occupancy" means the certificate issued by the Director after final
2 inspection, allowing the building to be occupied.

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

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

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

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

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

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

20 ~~((I.))~~ "Initial Occupancy Date" means the date that a certificate of occupancy was first
21 issued for a building. If no certificate of occupancy was issued, the date any utility service was
22 first billed for the building shall be the initial occupancy date.

1 “Notice of Violation” means a written notice issued to a building owner for failure to
2 comply with the requirements of this chapter or for making any misrepresentation of any
3 material fact in a document required to be prepared or disclosed by this chapter.

4 ((J))“Owners’ Association” means the entity consisting exclusively of all the unit owners
5 in a condominium, as defined under RCW 64.34.300.

6 ((K))“Tenant” means a person occupying or holding possession of a building or premises
7 pursuant to a rental agreement

8 ((L))“Utility” means an entity that distributes and sells natural gas, electric, or thermal
9 energy services for buildings.
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12 **Section 3.** Section 22.920.030 of the Seattle Municipal Code, which section was enacted by
13 Ordinance 123226, is amended as follows:
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15 **22.920.030 Nonresidential-benchmarking buildings – preparing energy**
16 **benchmarking reports**

17 Building owners of each building subject to nonresidential benchmarking requirements
18 shall provide to the Director, using the Energy Star Portfolio Manager or a similar rating system
19 and in such form as established by Director’s rule, ~~((an initial))~~ energy benchmarking reports
20 and, where available, ~~((an))~~ energy performance ratings for each building according to the
21 following schedule:
22

23 A. ~~((By April 1, 2011 for))~~ For buildings larger than 50,000 square feet and having an
24 initial occupancy date before January 1, 2010, reports and ratings pertaining to benchmarking for
25 the year 2011 shall be submitted by October 1, 2012. Reports and ratings pertaining to
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1 benchmarking for the year 2012 shall be submitted by April 1, 2013, and thereafter, annual
2 reports and ratings for each subsequent year shall be due each April 1st;

3 B. ~~((By April 1, 2012 for))~~ For buildings smaller than 50,000 square feet and larger than
4 ((10,000)) 20,000 square feet and having an initial occupancy date before January 1, ((2011))
5 2012, reports and ratings pertaining to benchmarking for the year 2012 shall be submitted by
6 April 1, 2013, and thereafter, annual reports and ratings for each subsequent year shall be due
7 each April 1st; and

8
9 C. By one year after the initial occupancy date for all other buildings having an initial
10 occupancy date of January 1, ~~((2011))~~ 2012 or later.

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

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15 **22.920.040 Multi-family-benchmarking buildings – preparing energy**
16 **benchmarking reports**

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

22
23 A. By ~~((April 1, 2012))~~ October 1, 2012 and by April 1 annually thereafter for buildings
24 larger than 50,000 square feet having an initial occupancy date before January 1, 2011;

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

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

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

10 **22.920.060 Maintaining energy utility records**

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

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16 On and after June 1, 2010, upon written or secure electronic authorization by an
17 authorized representative of the building owner, the utility providing energy service to the
18 building shall upload the utility consumption data for the accounts specified by an authorized
19 representative of the building owner to the United States Environmental Protection Agency's
20 Energy Star Portfolio Manager, in a form that does not disclose personally-identifying
21 information. Utility companies have ~~((60))~~30 days from receipt of such written or secure
22 electronic authorization to upload information to Energy Star Portfolio Manager.
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1 **Section 6.** Section 22.920.100 of the Seattle Municipal Code, which section was enacted by
2 Ordinance 123226, is amended as follows:

3 **22.920.100 Authority to enforce**

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

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

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

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

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

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

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

21 **22.920.110 Investigating violations and issuing ~~((citations or))~~ notices of violation**

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

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

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

10 D. The ~~((citation or))~~ notice of violation shall be served on the building owners, tenants
11 or other persons subject to this chapter as provided for in ~~((Seattle Municipal Code))~~ Section
12 23.90.006 C.

13 E. A copy of the ~~((citation or))~~ notice of violation may be filed with the King County
14 Department of Records and Elections if any building owner fails to correct the violation or the
15 Director requests the City Attorney take appropriate enforcement action.

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

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

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26 **22.920.120 - ~~((Remedies))~~Sanctions**

1 A. ~~((If the Director determines that a building owner has failed))~~ Fines for the failure of a
2 building owner to prepare, submit or annually update ((an accurate)) energy benchmarking
3 reports and energy performance ratings as required by ((this chapter, the Director may, in
4 addition to any other remedy authorized by law or equity, seek the following remedies)) Section
5 22.920.040 shall be imposed as follows:

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

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

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

20
21 1. For Non-Residential buildings greater than 50,000 square feet having an
22 initial occupancy date before January 1, 2011, upon the failure to submit the report and
23 rating pertaining to benchmarking for the year 2011 by October 1, 2013, a fine of \$2,000
24 shall be imposed; upon the failure to submit such report and rating by January, 1, 2013,
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1 the fine shall be increased to \$3,000; and upon the failure by April 1, 2013, the fine shall
2 be increased to \$4,000.

3 2. For multi-family buildings greater than 50,000 square feet having an
4 initial occupancy date before January 1, 2011, upon the failure to submit the report and
5 rating pertaining to benchmarking for the year 2011 by January 1, 2013, a fine of \$1,000
6 shall be imposed; upon the failure to submit such report and rating by April, 1, 2013, the
7 fine shall be increased to \$2,000; upon the failure to submit such report and rating by July
8 1, 2013, the fine shall be increased to \$3,000; and upon the failure by October 1, 2013,
9 the fine shall be increased to \$4,000.

10
11 3. For annual reports and ratings pertaining to benchmarking for the year
12 2012 and each subsequent year thereafter, for buildings greater than 50,000 square feet,
13 for each annual energy benchmarking report (including a performance rating when
14 available), the following fines shall be imposed for the failure to submit the report and
15 performance rating by the following dates:

- 16
17 a. 90 days after April 1 due date - total fine of \$1,000
18 b. 180 days after due date - total cumulative fine of \$2,000
19 c. 270 days after due date - total cumulative fine of \$3,000
20 d. 360 days after due date - total cumulative fine of \$4,000

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22 provided, however, that no fine shall be imposed when failure to prepare or report an
23 energy benchmarking report is due to a tenant's failure to provide information required
24 under Section 22.920.050;
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1 4. For annual reports and ratings pertaining to benchmarking for the year
2 2012 and each subsequent year thereafter, for buildings fewer than 50,000 square feet, for
3 each annual energy benchmarking report (including a performance rating when
4 available), the following fines shall be imposed for the failure to submit the report and
5 performance rating by the following dates:

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

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

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

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

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

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

17 B. If the Director determines that a building owner has failed to disclose an energy
18 benchmarking report or energy performance rating as required by ~~((this chapter))~~ Section
19 22.920.080, the Director may, in addition to any other remedy authorized by law or equity, seek
20 the following remedies:

21 1. A \$150 ~~((citation may))~~ fine shall be ((issued)) fine imposed for the first
22 violation,
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1 2. A \$500 ~~((citation may be issued))~~ fine imposed~~((citation may))~~ fine shall
2 be ~~((issued))~~imposed for the second or subsequent violation, and

3 3. If a building owner of any building subject to this chapter has been
4 previously issued a ~~((citation))~~notice of violation under this chapter within the past two
5 ~~((2))~~ years, all subsequent violations by that building owner for failing to disclose an
6 energy benchmarking report shall be subject to a \$500 ~~((citation))~~fine.
7

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

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

13 2. A \$500 ~~((citation may be issued))~~ fine imposed~~((citation may))~~ fine shall
14 be ~~((issued))~~imposed for the second or subsequent violation, and
15

16 3. If a tenant of any building subject to this chapter has been previously
17 issued a ~~((citation))~~ notice of violation under this chapter within the past two ~~((2))~~
18 years, all subsequent violations by that tenant for failing to provide information to a
19 building owner as required under Section 22.920.050 shall be subject to a \$500
20 ~~((citation))~~fine.
21

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

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

3 E. The fines set forth in subsection 22.920.120.A shall be imposed by serving a notice of
4 violation that sets forth the specific violation, the amounts of each increase in fines and the
5 specific dates upon which each increase in fines will accrue. A building owner shall have 30
6 days from the date of mailing or service of the notice of violation to seek an administrative
7 review of the imposition of all such fines, including each increase in fines, contained within the
8 notice of violation. The initiation of such an administrative review is governed by Section
9 22.920.130. The failure of a building owner to initiate such an appeal within 30 days of the date
10 of mailing or service of the notice of violation shall be deemed a waiver of the right to such
11 administrative review and any subsequent appeal or request for mitigation to the Hearing
12 Examiner under Section 22.920.155 or Section 22.920.160 of all fines contained within the
13 notice of violation including each increase in fines.

14 The fines set forth in subsections 22.920.120.B, C, and D shall be imposed by serving a
15 notice of violation stating each violation and each corresponding penalty. Administrative review
16 and appeal of all violations and penalties contained within a notice of violation shall be governed
17 in accordance with Sections 22.920.130, 155 and 160.

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

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

21 **22.920.125 Response to Notice of Violations**

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

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

4 2. Request in writing an administrative review in accordance with Section
5 22.920.130 and provide a mailing address to which a benchmarking and reporting
6 program violation challenge form may be sent.

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

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

17 **22.920.130 Administrative Review of Notice of Violation by Director**

18 A. A notice of violation shall be ~~((final and not subject to further))~~ subject to
19 administrative review ~~((unless an))~~ if the aggrieved party requests in writing a review by the
20 Director within ~~((10))~~ 30 days after service of the notice of violation. When the last day of the
21 review-request period is a Saturday, Sunday, or federal or City holiday, the period shall run until
22 5:00 p.m. on the next business day.
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1 B. To be considered by the Director, the written request for review must be submitted
2 with the Energy Benchmarking and Reporting Violation Review Form, which will document the
3 reason for the review.

4 ~~((B))~~C. After receiving a request for review, the Director shall notify the requesting
5 party, the building owners who were issued a notice of violation, and any person who requested
6 notice of the review that a request for review has been received. ~~((Additional information to be~~
7 ~~considered by the Director shall be submitted to the Director no later than 15 days after the~~
8 ~~written request for a review is mailed.))~~

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

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

18 ~~((D))~~E. The Director's administrative review decision ~~((shall become))~~ is final but is
19 subject to a request for a mitigation hearing or a contested hearing before the Hearing Examiner
20 in accordance with Sections 22.920.155 and 22.920.160 ~~((and not subject to further~~
21 ~~administrative ((appeal)) review by the Director. The Director's decision shall be subject to~~
22 ~~mitigation or an appeal to the Hearing Examiner for a contested hearing in accordance with~~
23 Sections 22.920.155 and 22.920.160.
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1 **Section 11.** Section 22.920.140 of the Seattle Municipal Code is repealed.

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

5 **22.920.150 Failure to respond to ((citation)) an administrative review decision**

6 If a person fails to respond to ((a citation)) an administrative decision within 15 days of
7 service, an order shall be entered by the Director ((Hearing Examiner)) finding that the person
8 cited committed the violation stated in the ((citation)) notice of violation and assessing the
9 penalty specified in the ((citation)) notice of violation.
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12 **Section 13.** A new Section 22.920.155 is added to the Seattle Municipal Code as
13 follows:
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15 **22.920.155 Response to an administrative review decision.**

16 A. A person must respond to an administrative decision in one of the following ways:

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

19 2. Request in writing a mitigation hearing to explain the circumstances
20 surrounding the commission of the violation and provide a mailing address to which notice of
21 such hearing may be sent; or
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23 3. Request in writing a contested hearing and specify the reason why the
24 cited violation did not occur or why the person cited is not responsible for the violation, and
25 provide a mailing address to which notice of such hearing may be sent.
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1 B. A response to an administrative decision must be received by the Office of the
2 Hearing Examiner no later than fifteen days after the date the administrative decision is mailed
3 or served. When the last day of the appeal period so computed is a Saturday, Sunday, or federal
4 or City holiday, the period shall run until 5 p.m. on the next business day.

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

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9 **22.920.160 ((Citation)) Administrative decision mitigation hearings**

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

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

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22 C. Disposition. The Hearing Examiner shall determine whether the person's explanation
23 justifies reduction of the penalty; however, the penalty may not be reduced unless ~~((DPD))~~ the
24 Director affirms or certifies that the violation has been corrected prior to the mitigation hearing.
25 Factors that may be considered in whether to reduce the penalty include whether the violation
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1 was caused by the act, neglect, or abuse of another; or whether correction of the violation was
2 commenced promptly prior to ((citation)) notice of violation but that full compliance was
3 prevented by a condition or circumstance beyond the control of the person cited.

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

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8 **22.920.170 Contested ((citation)) hearings**

9 A. Date and Notice. If a person requests a contested hearing, the hearing shall be held
10 within 60 days after the written response to the ((citation)) notice of violation requesting such
11 hearing is received.

12 B. Hearing. Contested hearings shall be conducted pursuant to the procedures for hearing
13 contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for
14 hearing contested cases, except as modified by this section. The issues heard at the hearing shall
15 be limited to those that are raised in writing in the response to the ((citation)) notice of violation
16 and that are within the jurisdiction of the Hearing Examiner. The Hearing Examiner may issue
17 subpoenas for the attendance of witnesses and the production of documents.
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19 C. Sufficiency. No ((citation)) notice of violation shall be deemed insufficient for failure
20 to contain a detailed statement of the facts constituting the specific violation which the person
21 cited is alleged to have committed or by reason of defects or imperfections, provided such lack
22 of detail, or defects or imperfections do not prejudice substantial rights of the person cited.
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1 D. Amendment of ~~((Citation))~~ Notice of Violation. A ~~((citation))~~ notice of violation may
2 be amended prior to the conclusion of the hearing to conform to the evidence presented if
3 substantial rights of the person cited are not prejudiced.

4 E. Evidence at Hearing.

5 1. The certified statement or declaration authorized by RCW 9A.72.085
6 submitted by ~~((an inspector))~~ the Director shall be prima facie evidence that a violation
7 occurred and that the person cited is responsible. The certified statement or declaration of
8 the ~~((inspector))~~ Director authorized under RCW 9A.72.085 and any other evidence
9 accompanying the report shall be admissible without further evidentiary foundation.
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11 2. Any certifications or declarations authorized under RCW 9A.72.085 shall
12 also be admissible without further evidentiary foundation. The person cited may rebut the
13 ~~((DPD))~~ evidence and establish that the cited violation(s) did not occur or that the person
14 contesting the ~~((citation))~~ notice of violation is not responsible for the violation.
15

16 F. Disposition. If the ~~((citation))~~ notice of violation is sustained at the hearing, the
17 Hearing Examiner shall enter an order finding that the person cited committed the violation. If
18 the violation remains uncorrected, the Hearing Examiner shall impose the applicable penalty.
19 The Hearing Examiner may reduce the monetary penalty in accordance with the mitigation
20 provisions in Section 22.920.160 if the violation has been corrected. If the Hearing Examiner
21 determines that the violation did not occur, the Hearing Examiner shall enter an order dismissing
22 the ~~((citation))~~ notice of violation.
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1 G. Appeal. The Hearing Examiner's decision is the final decision of the City. Any
2 judicial review must be commenced in Seattle Municipal Court with review of any Municipal
3 Court decision being subject to review under the Civil Rules for Courts of Limited Jurisdiction.

4
5 **Section 16.** Section 22.920.180 of the Seattle Municipal Code, which section was
6 enacted by Ordinance 123226, is amended as follows:

7
8 **22.920.180. Failure to appear for ((~~citation~~)) notice of violation hearing**

9 Failure to appear for a requested hearing will result in an order being entered finding that
10 the person cited committed the violation stated in the ((~~citation~~)) notice of violation and
11 assessing the penalty specified in the ((~~citation~~)) notice of violation. For good cause shown and
12 upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order
13 entered upon a failure to appear.
14

15
16 **Section 17.** Section 22.920.190 of the Seattle Municipal Code, which section was
17 enacted by Ordinance 123226, is amended as follows:

18
19 **22.920.190 Collection of ((~~citation~~)) notice of violation penalties**

20 If the person cited fails to pay a penalty imposed pursuant to this chapter, the penalty may
21 be referred to a collection agency. The cost to the City for the collection services will be assessed
22 as costs, at the rate agreed to between the City and the collection agency, and added to the
23 penalty. Alternatively, the City may pursue collection in any other manner allowed by law.
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1 **Section 18.** A new Section 22.920.195 is added to the Seattle Municipal Code as
2 follows:

3 **22.920.195 Utilities - Recovery of costs.**

4 Utilities may establish and require building owners to pay a reasonable charge to recover
5 the costs of uploading a building's utility consumption data to the United States Environmental
6 Protection Agency's Energy Star Portfolio Manager.
7
8

9 **Section 19.** The provisions of this ordinance are declared to be separate and severable.

10 If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods
11 having run, finds any provision of this ordinance to be invalid or unenforceable as to any person
12 or circumstance, such offending provision shall, if feasible, be deemed to be modified to be
13 within the limits of enforceability or validity. However, if the offending provision cannot be so
14 modified, it shall be null and void with respect to the particular person or circumstance, and all
15 other provisions of this ordinance in all other respects, and the offending provision with respect
16 to all other persons and all other circumstances, shall remain valid and enforceable.
17

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

21 **Section 21.** This ordinance shall take effect and be in force thirty (30) days from and
22 after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)
23 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
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1 Passed by the City Council the ____ day of _____, 2012, and signed by
2 me in open session in authentication of its passage this ____ day of _____, 2012.

3
4
5 _____
6 President _____ of the City Council

7
8 Approved by me this ____ day of _____, 2012.

9
10 _____
11 Michael McGinn, Mayor

12 Filed by me this ____ day of _____, 2012.

13
14 _____
15 Monica Martinez Simmons, City Clerk

16 (Seal)