SEATTLE CITY COUNCIL

Legislative Summary

CB 118631

Record No.:	CB 118631	**Type:**	Ordinance (Ord)	**Status:**	Passed
Version:	1		**125002**	**In Control:**	City Clerk
				File Created:	10/09/2015
				Final Action:	03/10/2016

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

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Sawant

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: christie.baumel@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File **Legal Notice Published:** ☐ Yes ☐ No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	02/02/2016	Mayor's leg transmitted to Council	City Clerk			

Action Text: The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk
Notes:

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	02/02/2016	sent for review	Council President's Office			

Action Text: The Council Bill (CB) was sent for review. to the Council President's Office
Notes:

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Council President's Office	02/04/2016	sent for review	Sustainability and Transportation Committee			

Action Text: The Council Bill (CB) was sent for review. to the Sustainability and Transportation Committee
Notes:

1	Council President's Office	02/18/2016	sent for review	Energy and Environment Committee		

Action Text: The Council Bill (CB) was sent for review. to the Energy and Environment Committee
Notes:

1	Full Council	02/22/2016	referred	Energy and Environment Committee		
1	Energy and Environment Committee	02/25/2016	pass			Pass

Action Text: The Committee recommends that Full Council pass the Council Bill (CB).
Notes:

In Favor: 3 Chair Sawant, Vice Chair Juarez, O'Brien

Opposed: 0

1	Full Council	02/29/2016	held			

Action Text: Council Bill 118631 was held until March 7, 2016.

1	Full Council	03/07/2016	passed			Pass

Action Text: The Council Bill (CB) was passed by the following vote and the President signed the Bill:

In Favor: 7 Councilmember Burgess, Councilmember González , Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant

Opposed: 0

1	City Clerk	03/08/2016	submitted for Mayor's signature	Mayor		

Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
Notes:

1	Mayor	03/10/2016	Signed			

Action Text: The Council Bill (CB) was Signed.
Notes:

1	Mayor	03/10/2016	returned	City Clerk		

Action Text: The Council Bill (CB) was returned. to the City Clerk
Notes:

1	City Clerk	03/10/2016	attested by City Clerk			

Action Text: The Council Bill (CB) was attested by City Clerk.
Notes:

CITY OF SEATTLE

ORDINANCE 125002

COUNCIL BILL 118631

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 though 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. 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 22.930.140 or Section 22.930.160 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, 22.930.140, 22.930.150 and 22.930.160.

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 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 and 22.930.170.

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 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 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 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 7th day of MARCH, 2016, and signed by me in open session in authentication of its passage this 7th day of MARCH, 2016.

President Pro Tem of the City Council

Approved by me this 10th day of March, 2016.

Edward B. Murray, Mayor

Filed by me this 10th day of MARCH, 2016.

Monica R. Simmons

Monica Martinez Simmons, City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

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

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

1. BILL SUMMARY

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

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

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

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

The cost of compliance to property owners is variable, and depends on the cost of hiring a tune-up specialist for inspection, and the cost to make operational changes as identified in the inspection. Initial costs are expected to range from $0.10-$0.50 per square foot, and pay back in energy savings in an average of 2-3 years.

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

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

2. CAPITAL IMPROVEMENT PROGRAM

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

3. SUMMARY OF FINANCIAL IMPLICATIONS

_X_ This legislation has direct financial implications.

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

3.a. Appropriations

__X__ This legislation adds, changes, or deletes appropriations.

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

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

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

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

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

b) $155,000 in 2018 for the following:
    a. Continued outreach: $5,000

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

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

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

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

3.b. Revenues/Reimbursements

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

Anticipated Revenue/Reimbursement Resulting from this Legislation:

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

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

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

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

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

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

3.c. Positions

____ **This legislation adds, changes, or deletes positions.**

4. OTHER IMPLICATIONS

a) **Does the legislation have indirect or long-term financial impacts to the City of Seattle that are not reflected in the above?**
There are ongoing costs to administer the Building Tune-Up program, and these costs are noted above. Ongoing budget appropriations to assist the private sector in compliance, track compliance, conduct enforcement activities, and perform ongoing IT/database maintenance are anticipated to be between $140,000 and $190,000 per year, as mentioned in Section 3a, depending upon levels of investment in technical assistance and education to the private sector, and periodic program analysis.

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

b) Is there financial cost or other impacts of not implementing the legislation?
This legislation helps implement the Climate Action Plan and contribute to meeting the City's carbon reduction goals. By not implementing this legislation, the City is anticipated to make less progress in achieving carbon and energy reduction goals. There are future financial costs to the City for not implementing the legislation.[1]

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

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

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

e) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?
No further publication is required. A notice was filed in The Daily Journal of Commerce for a Determination of Non-Significance in compliance with State Environmental Policy Act requirements.

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

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

[1] https://www.whitehouse.gov/sites/default/files/docs/the_cost_of_delaying_action_to_stem_climate_change.pdf

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

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

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

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

List attachments/exhibits below:
None.

STATE OF WASHINGTON -- KING COUNTY

--ss.

335264

No. 125001,02,03,04,05,06

CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:TITLE ONLY ORDINANCES

was published on

03/25/16

The amount of the fee charged for the foregoing publication is the sum of $95.70 which amount has been paid in full.

Subscribed and sworn to before me on

03/25/2016

Notary public for the State of Washington,
residing in Seattle

JENNIFER A. BARNES
NOTARY PUBLIC
STATE OF WASHINGTON

Affidavit of Publication

State of Washington, King County

City of Seattle

Title Only Ordinances

The full text of the following legislation, passed by the City Council on March 7, 2016, and published below by title only, will be mailed upon request, or can be accessed at http://clerk.seattle.gov. For information on upcoming meetings of the Seattle City Council, please visit http://www.seattle.gov/council/calendar.

Contact: Office of the City Clerk at (206) 684-8344.

Ord 125001

An ordinance appropriating money to pay certain audited claims and ordering the payment thereof.

Ord. 125002

AN ORDINANCE requiring periodic building energy tune ups for certain non-residential 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.

Ord. 125003

AN ORDINANCE relating to the Pacific Place Garage and the Parking Garage Operations Fund; authorizing the loan of funds from the Fleet Services Subfund (50320), a subfund of the Finance and Administrative Services Fund, to the Parking Garage Operations Fund (46010).

Ord. 125004

AN ORDINANCE relating to the Seattle Department of Transportation; authorizing the Director of Transportation to enter into a lease agreement with the National Railroad Passenger Corporation for Amtrak's continued use and occupancy of a portion of King Street Station to provide passenger rail services.

Ord. 125005

AN ORDINANCE relating to the 2016 Budget; amending Ordinance 124927, which adopted the 2016 Budget, including the 2016 2021 Capital Improvement Program (CIP); creating nonexempt positions; adding new projects; and revising existing projects.

Ord. 125006

AN ORDINANCE relating to grant funds from non City sources; authorizing the Director of Transportation to accept specified grants and execute related agreements for and on behalf of the City; amending Ordinance 124927, which adopted the 2016 Budget, including the 2016 2021 Capital Improvement Program (CIP); changing appropriations to the Seattle Department of Transportation; revising allocations and spending plans for certain projects in the 2016 2021 CIP; and ratifying and confirming certain prior acts.

Date of publication in the Seattle Daily Journal of Commerce, March 25, 2016.

3/25(335264)