

## **Legistar File No. 75280 Body – Substitute**

**DRAFTER’S ANALYSIS:** This ordinance will create a building energy savings code for the City of Madison. Under this code, property owners of commercial buildings over 25,000 square feet will be required to benchmark their building’s energy use on an annual basis and perform building tune-ups every four-years for commercial buildings over 50,000 square feet. This ordinance will be part of the property maintenance code and be administered by the Sustainability and Resilience Manager in the Mayor’s Office, with enforcement actions to be undertaken by the Building Inspection Division.

The City of Madison is committed to reaching 100% renewable energy and net-zero carbon emissions for City operations by 2030 and community-wide by 2050. According to a 2015 greenhouse gas inventory, commercial buildings were responsible for 30% of community-wide greenhouse gas emissions. Improving energy efficiency in commercial buildings is a proven strategy for saving energy and reducing their carbon footprint. More than 40 other cities, counties, and states have established policies focused on improving energy efficiency in existing buildings. Cities that have enacted a benchmarking requirement include Minneapolis, Chicago, Ann Arbor, St. Louis, Boulder, New York, Boston, San Francisco, Seattle, Austin, Washington D.C., and Philadelphia. Cities including Salt Lake City, Seattle and Philadelphia have policies that require tune-ups. In addition, many states, including Wisconsin, have benchmarking requirements for state-owned buildings.

Benchmarking is a well-established practice of assessing and analyzing a building’s annual energy use, thereby helping the building’s owners understand current patterns of energy use, identify opportunities to save energy and reduce greenhouse gas emissions, and track changes over time. Once aware of the building’s energy consumption and opportunities to improve efficiency, building owners may find that it is advantageous to make energy efficiency improvements to the building to reduce energy costs, reduce greenhouse gas emissions, increase occupant comfort and satisfaction, increase the value of the property, and make the building more sustainable and marketable. In addition, these changes made by private property owners will help the City meet its climate and energy goals. Research by U.S. EPA shows that buildings that benchmark their energy use see an average annual energy savings of 2.4% per year that accrues over time, resulting in an 8 to 10% total reduction in annual energy use.

To benchmark, property owners of covered buildings must enter their building’s data into a designated free national benchmarking tool and submit this information to the City. Benchmarking requirements will be phased in over a three-year period beginning in 2024.

A building tune-up is a process wherein property owners have a qualified professional assess a building’s existing energy systems, controls, and maintenance practices and perform no- to low-cost operational adjustments, maintenance, or minor repairs that improve system performance and save energy. Analysis by Pacific Northwest National Laboratory shows that buildings that tune up reduce their annual energy use by 12% on average, with some buildings’ energy savings as high as 52%. Like benchmarking, building tune-ups can help building owners save money on utility bills while also helping the City meet its climate goals. Tune-up requirements will be phased in over a two-year period beginning in 2025.

Tenants shall be required to provide property owners with relevant information to allow them to benchmark their property and access to the leased areas to perform tune-up assessment and corrective actions. These requirements on tenants are not inconsistent with the statutory limitations in Wis. Stat. Sec. 66.0104(2)(d), since they neither require the landlord to communicate any information to tenants, nor do they require landlords to communicate to the City any information concerning the landlord or tenant.

Finally, the bond schedule is being amended to enable the Building Inspection Division to enforce this Section by the issuance of citations.

This substitute makes several changes following staff discussions with interested groups, policy makers, and input received at committee meetings. Additional information is being added to the findings to more clearly state the intent of building tune-ups, what that work is meant to consist of, and to specify that a tune-up workbook and guidance documents will be created as part of this program. Steps that the City will take to implement the program are also being outlined in the ordinance. Some of the definitions are being updated to account for clarity and feedback received, including expressly exempting life safety systems from the base building systems that require tune-ups and clearly stating that buildings used solely for manufacturing are not subject to the requirements.

Regarding the benchmarking requirements, the annual compliance deadline has been pushed back from March 31 to June 30, and an exemption application and review process, more closely tracking the tune-up exemption process, has been added to this subsection. Finally, buildings that are 50% or more vacant and not leased are now eligible for a benchmarking exemption, in line with the tune-up exemptions.

Regarding the tune-up requirements, the large building portfolio alternate scheduling option will now apply to owners with 5 or more covered buildings instead of 10 or more. The criteria for alternate compliance pathways has been updated based upon input from interested parties to incorporate additional criteria that are consistent with the intent of the ordinance. Acceptable qualifications for tune-up specialists have been updated likewise. Tune-up reports may now include tune-up activities that occurred within two years of the compliance date. Also, the extension language is being updated to clarify that an extension is available for buildings that are 50% or more vacant and unleased.

Lastly, the Substitute makes the ordinance's effective date January 1, 2024.

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The Common Council of the City of Madison do hereby ordain as follows:

1. Section 29.40 entitled "Building Energy Savings Code" of the Madison General Ordinances is created read as follows:

***"BUILDING ENERGY SAVINGS***

**29.40 BUILDING ENERGY SAVINGS CODE**

(1) Intent and Purpose.

(a) The Common Council of the City of Madison hereby finds that:

1. The Madison Sustainability Plan, adopted on June 12, 2012 by RES-12-00434 and as updated on March 21, 2017 by RES-17-00213, calls for the City to reduce overall energy consumption fifty percent (50%) by 2030 in the public and private sectors, and to achieve 100% renewable energy and net zero carbon emissions for city operations by 2030 and community-wide by 2050.
2. The Sustainability Plan calls for the City to make energy efficiency upgrades to City-owned buildings to meet specific energy performance targets.
3. The Sustainability Plan also calls for gathering benchmarking information on private buildings.

4. Benchmarking and tune-ups are important tools used by municipalities and states throughout the United States, including the State of Wisconsin, to encourage property owners to track and improve the energy efficiency of their buildings. Requiring benchmarking and tune-ups demonstrably improves building energy efficiency.
5. Benchmarking and tune-ups will lead to energy efficiency improvements in commercial buildings community-wide. This will lead to an increase in the quality and sustainability of the buildings in the City, raise property values and occupancy rates, and demonstrate City, City businesses and City residents' commitment toward climate action and sustainability.
6. Energy efficiency improvements made as a result of benchmarking and tune-ups will create local employment opportunities that will benefit the City, the City's businesses and the City's residents.
7. Benchmarking and tune-ups will lead to reduced energy use in Madison, and therefore a reduction in greenhouse gas emissions. This will help the City meet its energy and climate goals, improve air and water quality, and benefit public health and the environment in the City and the region.
8. Buildings that benchmark their energy use see an average annual energy savings of 2.4 percent per year that accrues over time, resulting in an 8 to 10 percent total reduction in annual energy.
9. Building tune-ups help buildings perform at optimum efficiency, and, on average, have been shown to reduce energy consumption by 12 percent and have a short payback period for property owners.
10. Building tune-ups are intended to ensure buildings' existing energy systems are performing at their best without wasting energy. Tune-ups include operational adjustments, standard maintenance, and minor repairs to existing energy systems, which are considered part of standard operating procedures and routine maintenance, to achieve energy efficiency. Tune-ups do not require installation of new systems or replacement of functional equipment.
11. This Section will be supplemented by the creation and implementation of a tune-up workbook and program guidance documents. The City will develop the tune-up workbook and program guidance documents with input from building owners and managers, facilities and sustainability experts, and others. The tune-up workbook is intended to provide guidance for the tune-up process, including concepts such as sampling a portion of a building's systems during a tune-up rather than reviewing all pieces of identical equipment. The City will take a flexible approach to foster reasonable compliance with this Section.
12. This Section seeks to recognize building owners making progress toward improved building energy efficiency and strives to acknowledge building owners who have already made improvements.
- ~~4013.~~ The public policy interests served by this Section's benchmarking and tune-up requirements will include increasing energy efficiency in the City and helping the City meet its climate goals while

mitigating the future impacts of climate change, the costs of which will be borne by the City, property owners and residents alike. Building owners may be reluctant to share benchmarking and tune-up information with the City out of concern that this information could be made public and that public knowledge of this information would pose reputational or economic risk. Hence, the public's interest in disclosure of these reports, in full or in a way that identifies the buildings and owners, is outweighed by the City's interests in establishing and carrying out this building energy savings code. See Subsection 5 on Data Privacy below.

- (b) Consistent with the aforementioned findings, the purpose of this ordinance is to improve the energy efficiency of commercial buildings and reduce overall energy use and greenhouse gas emissions while providing benefits to building owners and tenants. This ordinance is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of the City of Madison pursuant to the powers set forth in Wis. Stat. § 62.11(5).
  - (c) Implementation of this Section is expected to include education, outreach and support for the business community, including free trainings on the elements of the program, a help desk to ensure building owners and managers have the information they need to easily and successfully benchmark and tune-up their buildings, and information on resources building owners can leverage to improve energy performance such as rebates, incentives, and financing from across local, state, and federal sources.
- (2) Definitions. For the purposes of this Section the following definitions apply:
- Administrator means the Sustainability and Resilience Manager.
  - Base Building Systems mean the systems or ~~sub-systems~~ subsystems of a building that use energy and/or impact energy consumption including but not limited to: (1) primary HVAC (heating, ventilation, air conditioning) systems; (2) conveying systems; (3) domestic hot water systems; (4) electrical and lighting systems. Base building systems shall not include life safety systems, such as fire detection and suppression, and equipment used for industrial or manufacturing processes.
  - Benchmarking Report means ~~a report~~ the ENERGY STAR Statement of Energy Performance, generated by ENERGY STAR Portfolio Manager, summarizing the annual energy performance of a building.
  - Building Owner or Owner means the owner of record of a building. In the case of a building held in cooperative or condominium form of ownership, the term Building Owner or Owner shall refer to the board of managers, board of directors, condominium association, or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations to the building.
  - Building Tune-Up or Tune-Up means ~~an inspection~~ a review of base building systems by a tune-up specialist and subsequent appropriate corrective actions to increase a covered building's energy efficiency.
  - Certificate of Occupancy means the certificate issued by the Building Inspection Division under Section 29.11 allowing the building to be occupied.
  - Commercial Building means public buildings and places of employment subject to the commercial building code, Wis. Admin. Code Ch. SPS 361-366, and Wis. Admin Code Ch. SPS 375-379, excluding buildings used solely for multifamily housing, manufacturing, or industrial purposes.

Corrective Actions means operational adjustments, maintenance or minor repairs to existing building equipment or systems to resolve issues identified during the building tune-up assessment. ~~These corrective actions will all be minor repairs, which is defined as low-cost repairs to existing equipment.~~

Covered Building means buildings required to comply with either Subsection (3) or (4).

Energy Benchmarking means the assessment of a building's energy use and efficiency.

ENERGY STAR Portfolio Manager means the tool developed and maintained by the United States Environmental Protection Agency to track and assess the relative energy performance of similar buildings nationwide.

ENERGY STAR Score means a 1 to 100 score generated by ENERGY STAR Portfolio Manager that demonstrates the energy efficiency of a building relative to similar buildings across the country.

Floor Area is the gross floor area for the building, as determined by the City Assessor.

Tenant means a person occupying or holding possession of a building or premises pursuant to a rental-lease agreement.

Tune-Up Specialist means a person qualified to conduct a building tune-up, per Subsection (4)(b)5.

Tune-Up Report means a report of required tune-up activities as established by the Administrator and completed by a tune-up specialist, summarizing the findings, recommendations, and corrective actions taken as a result of the building energy tune-up and estimated energy savings.

Utility means an entity that distributes and sells natural gas, electric, or thermal energy services for buildings.

(3) Energy Benchmarking.

(a) Applicability.

1. Covered Buildings. This Subsection applies to all commercial buildings that are equal to or larger than 25,000 square feet of floor area. In addition:
  - a. For buildings with both residential and non-residential uses, this Subsection applies to non-residential portions of a building where the non-residential floor area is equal to or larger than 25,000 square feet;
  - b. ~~Any two or more commercial buildings that are served by one common energy meter without sub-metering, such that their energy use cannot be tracked individually, shall be considered one building for the purpose of determining floor area.~~ Any commercial building located on a parcel of real property classified as manufacturing by the City of Madison's Assessor's Office in accordance with the most recent version of the Wisconsin Property Assessment Manual is not subject to this subsection; and,
  - c. Any commercial building, regardless of size, which has no installed heating system and cooling system is not subject to this subsection.
2. Benchmarking Schedule. Owners of covered buildings under Paragraph 1 shall complete their annual energy benchmarking requirements by ~~March 31~~ June 30 of each year. The requirements of this Subsection shall be applicable on the following schedule:

- a. Covered buildings of 100,000 square feet of floor area or larger shall comply by ~~March 31~~ June 30, 2024.
  - b. Covered buildings between 50,000 and 99,999 square feet of floor area shall comply by ~~March 31~~ June 30, 2025.
  - c. Covered buildings between 25,000 and 49,999 square feet of floor area shall comply by ~~March 31~~ June 30, 2026.
3. Exemptions. The requirements of this Subsection do not apply to the following: The Administrator may grant a building owner an exemption from one-year of benchmarking compliance, as follows:
- a. Buildings located on a parcel of real property classified as manufacturing by the City of Madison's Assessor's Office in accordance with the most recent version of the Wisconsin Property Assessment Manual. Application. Building Owners seeking an exemption from one year of benchmarking compliance may submit a benchmarking exemption request and accompanying documentation, on a form provided by the Administrator, that shows either:
    - b. ~~Any building, regardless of size, which has no installed lighting, heating system, and cooling system.~~
    - c. ~~Unoccupied buildings, provided that the owner submits documentation to the Administrator, on a form provided by the Administrator, establishing that the property met one or both of the following conditions for the calendar year to be benchmarked:~~
      - i. ~~The building property did not have a certificate of occupancy for the full year to be benchmarked;~~
      - ii. ~~The building was demolished or otherwise not receiving utility services for at least 30 days of the year to be benchmarked.~~
      - iii. Fifty percent or more of non-residential floor area of the building was physically vacant and not leased during a consecutive 6-month period within the 12-months of the calendar year to be benchmarked.
  - b. Deadline. Requests for benchmarking compliance exemptions must be submitted to the Administrator no sooner than January 1 following the year to be benchmarked, and no later than March 30 of the year following the year to be benchmarked. The Administrator shall notify applicants within 60 days of receiving an exemption request on the determination of whether the exemption is granted. If the exemption is not granted, the Administrator shall within such 60 day period provide a reasonably detailed explanation as to why the request was not granted.

(b) Requirement for Energy Benchmarking and Reporting.

1. Requirement.

- a. Owner. The owner of a covered building subject to this Subsection shall benchmark aggregate, whole-building energy use for the building via ENERGY STAR Portfolio Manager. The energy benchmarking report and ENERGY STAR score, where applicable, shall be based on data from the twelve consecutive months of the previous calendar year.

- b. Tenant Reporting. Where the owner of a covered building leases the entire covered building to a single tenant, and the tenant is responsible for managing all energy usage for the building, the owner may, with the agreement of the tenant, delegate all responsibilities under this Subsection to the tenant. Such delegation shall be provided in writing to the Administrator, on a form provided by the Administrator. Upon such a delegation, the tenant shall be considered an owner under this subsection and be required to comply with the terms hereof, although the building owner remains responsible for building compliance.
  2. Reporting. The owner shall provide to the Administrator, on a form provided by the Administrator, an energy benchmarking report for the previous calendar year by March 31 of each year.
  3. Extension. A building owner may apply for a 60 day compliance extension from the reporting deadline in Paragraph 2 by showing good cause. Receiving an extension does not alter the future schedule for compliance. Conditions to receive a 60 day extension under this Subparagraph include, but are not limited to:
    - a. The building owner purchased the building within 180 days prior to the compliance deadline. Evidence of the transaction and new ownership information must be submitted.
    - b. The building owner has encountered technical difficulties preventing the on-time submission of the benchmarking report.
    - c. The building owner can demonstrate proof of financial hardship preventing completion of benchmarking as evidenced by any of the following:
      - i. The building is the subject of a tax lien sale or public auction due to property tax arrearages;
      - ii. The building is controlled by a court appointed receiver; or
      - iii. The building has been acquired by a deed in lieu of foreclosure.
    - d. Good cause is shown by the building owner, as determined by the Administrator.
  4. Amendments and Updates to Benchmarking Report.
    - a. Where the Owner of a covered building learns that any information reported as part of the annual benchmarking submission is inaccurate or incomplete, the Owner shall amend the information reported within Portfolio Manager and shall provide the Administrator with an updated benchmarking report within 30 days of learning of the inaccuracy.
    - b. No amendment of data under this paragraph shall be required after June 30 of the second year following the year for which such data was originally reported.
- (c) Building Tenant Responsibility.
1. Each tenant located in a covered building shall, within 30 days of a request by the building owner, provide in a form that does not disclose personally-identifying information, all information that

cannot otherwise be acquired by the building owner and that is needed by the building owner to comply with the requirements of this Subsection.

2. Nothing in this Subsection shall be construed to permit a property owner to use tenant energy usage data for purposes other than compliance with this Section, nor shall the reporting requirements of this Subsection be construed to excuse property owners from compliance with federal or state laws governing direct access to tenant ~~utility~~-energy data from the responsible utility.
3. Where, despite good faith effort to obtain data as provided in this subsection (c), an owner is unable to obtain data for a portion of a building because the tenant in control of such portion of the building failed to comply with this ordinance, the owner may report partial-building data.

(4) Building Tune-Ups.

(a) Applicability.

1. Covered Buildings. This Subsection applies to all commercial buildings that are equal to or larger than 50,000 square feet of floor area. In addition:
  - a. For buildings with both residential and non-residential space uses, this Subsection applies to non-residential portions of a building where the non-residential floor area is equal to or larger than 50,000 square feet.
2. Schedule. Covered buildings are subject to the following building tune-up compliance dates:
  - a. Initial Tune-Up. Owners of covered buildings under Paragraph 1 shall conduct an initial building tune-up on the following schedule:
    - i. Covered buildings of 100,000 square feet of floor area or larger shall comply by October 31, 2025.
    - ii. Covered buildings between 50,000 and 99,999 square feet of floor area shall comply by October 31, 2026.

For buildings with both residential and non-residential uses, the compliance deadline will be based on the square footage of floor area for non-residential areas.

- b. New Buildings. Newly constructed buildings shall comply with the later of the applicable schedule for the building under Subparagraph a, or by October 31 following the point at which the building has had its certificate of occupancy for at least three years.
- c. Subsequent Tune-Up. Covered buildings must conduct subsequent building tune-ups by October 31 of every fourth year after the first tune-up compliance date established under Subparagraphs a and b.
- d. Alternative Schedules for Large Building Portfolios. A building owner may seek an alternative schedule for tune-up compliance by submitting a large portfolio compliance plan to the Administrator, on a form provided by the Administrator, if they own a portfolio of ~~40~~5 or more covered buildings subject to this Subsection.



3. Exemptions. The Administrator may grant a building owner an exemption from the building tune-up compliance date established under Paragraph 2, for a specified period of time, as follows:
  - a. Application. Building Owners seeking an exemption from an initial tune-up or subsequent tune-up must submit a tune-up exemption request and accompanying documentation, on a form provided by the Administrator, that shows either:
    - i. One of the following alternative compliance pathways identified in this Paragraph has been achieved; or,
    - ii. One of the barriers to compliance identified in this Paragraph applies.
  - b. Deadline. Requests for exemptions must be submitted to the Administrator no sooner than 2 years in advance of, and no later than April 30 of the year of the building's applicable tune-up compliance date. The Administrator shall notify applicants within 60 days of receiving an exemption request on the determination of whether the exemption is granted. If the exemption is not granted, the Administrator shall, within such 60 day period, provide a reasonably detailed explanation as to why the request was not granted.
  - c. Alternative Compliance Pathways. An exemption from ~~the~~ a single building tune-up compliance cycle (including the building tune-up and reporting requirements of this subsection) may be granted for a covered building if one or more of the following alternative compliance pathways are shown to exist:
    - i. The building has a certified ENERGY STAR score of 75 or greater ~~in for~~ the calendar year preceding the tune-up compliance date;
    - ii. The building has received a rating of LEED Gold or better for Operations + Maintenance v4 (or later editions), or another green building certification that is equivalent to standards accepted in the industry for an efficiently operating building as determined by the Administrator within the three years preceding the tune-up compliance date;
    - iii. The building has completed a full commissioning, retro- or re-commissioning procedure within the ~~three calendar~~ years preceding the tune-up compliance date;
    - iv. The building has achieved a certified net zero energy recognition from the International Living Future Institute, the Passive House Institute of the United States, or other comparable or equivalent organization as determined by the Administrator within the three years preceding the tune-up compliance date;
    - v. ~~The building can demonstrate an annualized 15% reduction in weather-normalized site Energy Use Intensity (EUI) relative to the building's prior two-~~

~~year average site EUI. Accuracy of the ENERGY STAR Portfolio Manager and energy benchmarking account information for all three years must be verified by an individual meeting the qualifications of a tune-up specialist, as defined below; The building can demonstrate evidence of continuous energy efficiency improvement as shown by a 10% reduction in weather normalized site energy use intensity (EUI) over a four-year period preceding the tune-up compliance date;~~

- vi. The owner has completed an energy audit for the building that is no less stringent than the ASHRAE Level II standard and implemented all energy efficiency measures providing a simple payback of ~~two-three~~ years or less that were identified in the audit in the ~~two-three~~ years preceding the tune-up compliance date;
- vii. The buildings has a site EUI equal to or less than 20 kBtu per square foot per year for at least two of the three calendar years preceding the tune-up compliance date; ~~and~~
- viii. The building has received Dane County Climate Champion recognition in the category of Building Energy Use within the three years preceding the tune-up compliance date;
- ix. The building is part of the portfolio of buildings for which the owner has received a Better Buildings Goal Achievers recognition from the U.S. Department of Energy's Better Buildings Challenge within the three years preceding the tune-up compliance date;
- x. The building has achieved the BOMA 360 designation for office buildings from the Building Owners and Managers Association (BOMA) with an application that received 6 or more total points for Energy Star Benchmarking, Building Energy Management, and Energy Audit and System Commissioning in the Energy Section of the application;
- xi. The building has won a "The Outstanding Building of the Year Award" (also known as a TOBY award) from BOMA in the Office category with an application that received 5 or more points for Benchmarking & Performance Rating within the three years preceding the tune-up compliance date;
- xii. The building has won a "The Outstanding Building of the Year Award" (also known as a TOBY award) from BOMA in the Earth category with an application that received 6 or more points for Benchmarking & Performance Rating within the three years preceding the tune-up compliance date;  
or

~~viii-xiii.~~ Other applicable criteria that demonstrate compliance with the intent of this Subsection, as determined by the Administrator.

d. Barriers to Compliance. An ~~extension~~ exemption to a building tune-up compliance date may be granted for a covered building if one or more of the following barriers to compliance are shown to exist:

- i. The building has been approved for demolition under Section 28.185 within one year of the building tune-up compliance date;
- ii. The building's owner is experiencing significant financial distress such as bankruptcy or insolvency or the building is the subject of a pending or recent foreclosure action; ~~and or,~~
- iii. Other applicable criteria that demonstrates that the owner may have a barrier to complying with the requirements of this Subsection, as determined by the Administrator.

(b) Requirement for Building Tune-Ups and Reporting.

1. Requirement. Owners of covered buildings are required to conduct an initial building tune-up and subsequent building tune-ups every four years thereafter by the building tune-up compliance date, as provided for under Subdivision (a).
2. Reporting. Owners must provide a building tune-up report to the Administrator, on a form provided by the Administrator, by the applicable building tune-up compliance date. The building tune-up report shall include findings, recommendations, and corrective actions taken as a result of the building energy tune-up and estimated energy savings. The building tune-up report shall include tune-up activities that have occurred no more than two years prior to the compliance date per Subsection (4)(a)2.
3. Extensions. A building owner may apply for a one-year compliance extension from the building tune-up compliance date by showing good cause. If the Administrator grants such an extension, the future schedule for compliance remains the same, and the building's next compliance schedule will be less than the typical four-year schedule. Requests for extensions must be submitted to the Administrator no later than April 30 of the building tune-up compliance year, on a form provided by the Administrator. However, in the case of a change of ownership after April 30 of the compliance year, the building owner may submit an extension request up to the building tune-up compliance date. Conditions to receive a one-year extension include but are not limited to:
  - a. A change of building ownership within one year of the compliance date. Evidence of the transaction and new ownership information must be submitted with the tune-up extension request;
  - b. ~~Buildings with less than a 50% occupancy rate in nonresidential spaces in which 50% or more of non-residential floor area was physically vacant and not leased~~ during a consecutive 6-month period within the 12-months preceding the compliance date. The Building Owner must

- submit clear evidence of a minimum 50% physical vacancy with the tune-up extension request;
- c. Buildings in which permitted mechanical improvements or permitted renovations are underway, which must be complete before a tune-up can reasonably occur. The Building Owner must provide permits and work schedules with the tune-up extension request;
- d. The building owner demonstrates proof of financial hardship preventing on-time completion of a tune-up. This may be evidenced by any of the following:
  - i. The building is the subject of a tax lien sale or public auction due to property tax arrearages;
  - ii. The building is controlled by court appointed receiver; or
  - iii. The building has been acquired by a deed in lieu of foreclosure.
- e. Good cause for a one-year extension is shown by the building owner, as determined by the Administrator.

4. Tune-Up Requirements.

- a. Tune-Up. A tune-up performed under this Subsection includes:
  - i. ~~An inspection~~ A review of base building systems conducted by a qualified tune-up specialist and resulting in a report of findings and recommendations for improving building energy operations; and,
  - ii. Corrective actions taken to optimize energy performance by implementing all low-cost adjustments, maintenance and minor repairs to the building's existing base building systems as determined by the Administrator.
- b. Systems Included in a Tune-Up. Building tune-ups will include the following base building systems or subsystems that use energy or impact energy consumption, ~~including~~:
  - i. The building envelope;
  - ii. HVAC systems (heating, ventilation, and air conditioning);
  - iii. Conveying systems;
  - iv. Domestic hot water systems; and
  - v. Electrical lighting systems.
- c. Systems Not Included in a Tune-Up. The following building systems are exempt from assessment and corrective actions during a tune-up:
  - i. Tenant-owned systems, when the tenant's leased space is 5,000 square feet or less and the system only serves that space;
  - ii. Industrial or manufacturing processes; and,
  - iii. Lighting associated with surface-level parking lots.
- d. Corrective Actions. For each system included in the tune-up, the following elements will be examined, if present, and undergo corrective actions, if needed:
  - i. Sensors: examine for proper operation and appropriate location.

- ii. Schedules: examine schedules of all equipment for actual daily, weekly, holiday, and seasonal schedules; determine optimal schedules to meet current building needs.
- iii. Set points: examine set points for all zones and equipment.
- iv. Outside air controls: calculate ventilation requirements, measure actual ventilation rates, and determine optimal ventilation delivery and control.
- v. Equipment controls: determine optimal equipment controls for energy efficient operations.
- vi. Maintenance check: check for common maintenance items that impact energy usage.
- vii. Design issues: identify design issues leading to a high energy use, such as missing insulation, missing controls, large leaks, unbalanced systems, critical zones.
- viii. Lighting: identify outdated lighting technologies, over-lit spaces, and areas needing lighting controls.
- ix. Domestic plumbing system: determine maintenance needs.
- x. Other: other ~~systems elements~~ shall be examined if required by the Administrator.

5. Tune-up Specialists.

- a. Requirement. Building tune-ups under this Subsection shall be conducted by a qualified tune-up specialist, or by a team that is under the direct supervision and oversight of a qualified tune-up specialist, with the tune-up specialist finalizing and signing the tune-up report. The members of the team working under the supervision of a tune-up specialist are not required to meet the qualifications of tune-up specialist.
- b. Qualifications. In order to be qualified as a tune-up specialist, the person must have, at a minimum, three or more years of commissioning, tune-up, energy auditing, or building energy system management experience and possesses one or more of the following certifications:
  - i. A Professional Engineer (PE) in Mechanical or Architectural Engineering licensed in the State of Wisconsin;
  - ii. Building Operator Certification (BOC) Level II;
  - iii. Certified Energy Manager (CEM), Certified Building Commissioning Professional (CBCP), or Existing Building Commissioning Professional (EBCP), issued by the Association of Energy Engineers (AEE);
  - iv. Building Commissioning Professional (BCxP) or Building Energy Assessment Professional (BEAP), issued by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);

- v. Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin;
  - vi. Certified Commissioning Professional administered by the Building Commissioning Certification Board;
  - vii. Commissioning Authority (CxA) administered by the AABC Commissioning Group (ACG); or
  - viii. Energy Management Professional (EMP) certification issued by the Energy Management Association (EMA);
  - ix. Certified Healthcare Facility Manager (CHFM) issued by the American Hospital Association; or
  - ~~viii-x.~~ Additional qualified certifications as the Administrator deems appropriate.
- c. Administration.
- i. Criteria. The Administrator shall develop criteria to establish the qualifications for a tune-up specialist to ensure that this work is performed consistent with the intent of this Section.
  - ii. Specialist List. The Administrator may maintain a list of qualified tune-up specialists that meet standards set forth in this Paragraph.
  - iii. Removal. The Administrator is authorized to remove qualified tune-up specialists from the list at any time based on evidence that they are operating in bad faith. Operating in bad faith may be determined based on at least three incidences of misrepresenting facts, or as determined by the Administrator. The Administrator may refuse to accept future tune-up reports submitted by tune-up specialists that have been removed from the list.
- (c) Inspections/Verifications; New Tune-Up.
- 1. Inspections/Verifications. The Administrator is authorized to conduct quality control and assurance verification inspections related to ~~tune-ups~~ tune-up reports and tune-up specialists to verify good faith efforts for compliance. Good faith efforts for compliance include accurately representing the facts and completing the full scope of a tune-up as required under this Subsection. An owner shall not unreasonably interfere with or impede ~~an inspection of the building~~ the verification process under this Paragraph.
  - 2. New Tune-Up. Following ~~an inspection~~ verification, or upon otherwise learning of inconsistencies between the tune-up report and the quality assurance ~~assessment~~ verification, the Administrator may require the building owner to have a new tune-up completed by a date determined by the Administrator.
- (d) Building Tenant Responsibility. Unless otherwise restricted by statute, lease or contract, tenants shall allow building owners and tune-up specialists reasonable access to tenant spaces, building systems, and ~~utility energy~~ information for the purpose of complying with the terms of this Subsection, including tune-up assessment and corrective actions.
- (5) Data Privacy.

- (a) Individual building benchmarking reports and tune-up reports subject to this Section shall not be released by the City except when required by state or federal statute.
- (b) The City may aggregate data for analysis and public release and will take reasonable precautions to ensure that specific building or owner data cannot be readily determined.
- (6) Administration. This Administrator shall be responsible for the administration of this Section, and in that capacity has the authority to create and implement program documents, guidelines, and regulations necessary for the implementation of this Section. The Administrator shall coordinate enforcement efforts with the Director of the Building Inspection Division.
- (7) Violations and Penalties. It shall be unlawful for any entity or person to fail to comply with the requirements of this Section or to misrepresent any material fact in a document required to be prepared or disclosed by this Section. The penalties for violating this Section are as follows:
  - (a) Any person who fails to comply with the energy benchmarking requirements of Subsection (3)(a)3.b shall, upon conviction thereof, be subject to a forfeiture of \$1,000 for each ninety (90) days of non-compliance.
  - (b) Any person who fails to comply with the building tune-ups requirements of Subsection (4)(b) shall, upon conviction thereof, be subject to the following forfeitures:
    - 1. For buildings greater than or equal to 100,000 square feet:
      - a. One hundred eighty (180) days out of compliance will result in a forfeiture of three thousand dollars (\$3,000); and
      - b. Three hundred sixty-five (365) days out compliance will result in a forfeiture of ten thousand dollars (\$10,000).
    - 2. For buildings between 50,000 and 99,999 square feet:
      - a. One hundred eighty (180) days out of compliance will result in a forfeiture of two thousand dollars (\$2,000); and
      - b. Three hundred sixty-five (365) days out compliance will result in a forfeiture of eight thousand dollars (\$8,000).
  - (c) Any person who intentionally falsifies data required by Subsections (3) or (4) shall, upon conviction thereof, be subject to a forfeiture of three thousand dollars (\$3,000) for the first violation, and five thousand dollars (\$5,000) for each subsequent violation.
  - (d) Any person who otherwise fails to comply with the requirements of this Section, other than as provided for under Subdivisions (a) through (c), shall, upon conviction thereof, be subject to a forfeiture of not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each violation thereof. Each day that a violation exists shall constitute a separate offense.

2. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by creating and amending therein the following:

"Offense	Ord. No./Adopted Statute No.**	Deposit*

Permit for use of tents for merchandising or display required.	29.32(4)	\$50
<u>Fail to Comply with Benchmarking Requirements</u>	<u>29.40(3)(b)</u>	<u>\$1,000/90 days</u>
<u>Fail to Comply with Building Tune-Up Requirements (100,000 Square Feet or More)</u>	<u>29.40(4)(b)</u>	<u>\$3,000, 1<sup>st</sup> 180 days</u> <u>\$10,000, 365 days</u>
<u>Fail to Comply with Building Tune-Up Requirements (Less than 100,000 Square Feet)</u>	<u>29.40(4)(b)</u>	<u>\$2,000, 1<sup>st</sup> 180 days</u> <u>\$8,000, 365 days</u>
<u>Falsify Building Energy Savings Code Data</u>	<u>29.40(7)(c)</u>	<u>\$3,000, 1<sup>st</sup></u> <u>\$5,000, 2<sup>nd</sup>+</u>
<u>Fail to Comply with Building Energy Savings Code</u>	<u>29.40(7)(d)</u>	<u>\$20, 1<sup>st</sup></u> <u>\$50, 2<sup>nd</sup></u> <u>\$100, 3<sup>rd</sup>+</u>
HVAC work performed without permit.	30.01(5)	\$200, 1 <sup>st</sup> \$500, 2nd w/in 1 yr. \$1,000, 3rd w/in 1 yr.”

3. This ordinance will be effective on January 1, 2024.

EDITOR’S NOTE: New bail deposits must be approved by the Municipal Judge prior to adoption. This deposit has been so approved.