

City of Philadelphia Law Department
M e m o r a n d u m

TO: Brian Abernathy, Managing Director
James P. Leonard, Commissioner of Records

FROM: James C. Kellett

DATE: August 24, 2020

**SUBJECT: PHILADELPHIA OFFICE OF SUSTAINABILITY
REGULATIONS GOVERNING BUILDING ENERGY
PERFORMANCE**

I have reviewed the Proposed PHILADELPHIA OFFICE OF SUSTAINABILITY REGULATIONS GOVERNING BUILDING ENERGY PERFORMANCE (attached) and find the proposed Regulations to be legal and in proper form. These regulations are being promulgated pursuant to Section 8-407 of the Philadelphia Home Rule Charter, and shall be effective after thirty (30) days of submission to the Department of Records, pending any formal written request for a hearing.

/s/

James C. Kellett
Deputy City Solicitor

Cc: Scott Schwarz

OFFICE OF SUSTAINABILITY REGULATIONS ON BUILDING ENERGY PERFORMANCE POLICY

Section 1 Purpose. Bill No. 190600 (approved December 4, 2019) requires owners of certain large buildings in the city of Philadelphia to conduct Tune-ups of their energy and water systems in order to reach energy conservation targets, and more broadly combat the global climate change emergency. To implement this ordinance, the Office of Sustainability (“OOS”) hereby adopts the following regulations regarding building Tune-ups.

Section 1. Definitions.

- a. The definitions listed in the above-mentioned ordinance are hereby incorporated by reference as if set-forth at length.
- b. Other definitions.
 - i. Active Optimization – Ongoing maintenance of building systems by the owner or his or her designee, either through computerized or manual protocols, that determines on a consistent basis compliance with Tune Up protocols.
 - ii. Assessment Element – an individual facet of a Tune-Up, to be noted on the provided report template and used in assessing the compliance with these regulations and their enabling ordinance.
 - iii. Base Building System - shall have the meaning as set forth more fully in Section 9-3403 of the Philadelphia Code.
 - iv. Benchmarking Policy – Benchmarking Policy shall have the definition as set forth in Section 9-3402 of the Philadelphia Code.
 - v. Compliance Deadline – the calendar date by which a given Covered Building must submit a Tune-up report satisfactory to OOS.
 - vi. Compliance Plan – The alternative compliance schedule set forth by Large Portfolio Owners, where applicable.

- vii. Compliance Year – the three hundred sixty five (365) day period comprising the Compliance Deadline and the preceding three hundred sixty four (364) days.
- viii. Corrective Action- shall have the meaning set forth more fully in Section 9-3403 of the Philadelphia Code.
- ix. Director – The Director of OOS, or his/her assign(s).
- x. Large Portfolio Owner – the owner(s) of record of either (1) twenty (20) or more Covered Buildings, or (2) any number of Covered Buildings with a cumulative floor area of five million (5,000,000) square feet or more.”
- xi. Tune-up – Inspection by a Specialist and subsequent appropriate Corrective Actions to increase a Covered Building’s energy efficiency.

Section 3. Covered Buildings.

a. Subject to the exemptions set forth in subsection (b) below, a Covered Building is any non-residential building with indoor floor space of at least fifty thousand square feet (50,000 sq. ft.) of floor space, including but not limited to (1) Mixed-use buildings in any mixed-use zoning classification with nonresidential use greater than fifty thousand (50,000) square feet; (2) Industrial and manufacturing facilities; and (3) Temporary lodgings, including but not limited to hotels, motels and short term rental facilities, or any other use in which occupants are primarily transient and not utilizing the premises as a primary residence.

b. Covered Buildings shall not include (1) Residence halls, dormitories, and other non-transient large lodging places and (2) Parking lots and parking garages, or the portions of otherwise-Covered Buildings thereof used for parking.

c. OOS shall use its reasonable discretion in determining whether a building qualifies as a Covered Building.

Section 3. Qualified Tune-up Specialists. (“Specialists”)

a. The Office shall not issue an approval for a Covered Building Tune-up without first approving the Specialist. In addition to the minimum qualifications set forth by ordinance, all Specialists must comply with the following:

i. Submission of credentials to the Director, on an application provided by the Office of Sustainability, that shall include, but is not limited to, a resume proving necessary education and experience and documentation of licensure and/or certification. To the satisfaction of the Director, a Specialist must demonstrate at least seven (7) years of combined education and experience with commercial building operations and/or building energy management.

ii. Unless otherwise provided herein, Specialists shall be third-party contractors of the building owner(s), and not employees. A building owner may only use its employee(s) as specialists if:

- A. The owner is a Large Portfolio Owner, and the employee received approval from the Director pursuant to these regulations; and
- B. If the employee, or a combination of the owner's employees, produce(s) Tune Up Reports for greater than eighty-five percent (85%) of that owner's total covered square footage in any Compliance Year, the owner conducts a subsequent quality-assurance audit of the completed work by a third-party Specialist; and
- C. That Specialist shall submit his or her own report. For every portfolio of Covered Buildings, the Specialist shall randomly select Assessment Elements to inspect, but shall inspect each Assessment Element at least once. Each report shall state (1) which Assessment Elements were reviewed; (2) whether each Assessment Element had been properly addressed; (3) if not addressed, a satisfactory explanation as to why; and (4) a signed assessment that either the building owner complied in good faith or did not, with an optional explanation; and
- D. If the results from these quality assurance audits demonstrate significant deficiencies – as defined by the Director - the Director may require the Large Portfolio Owner to (1) reduce the percentage threshold for requiring a quality assurance audit in future Compliance Years; (2) require a certain percentage of Tune-up inspections be conducted by a third-party, and/or (3) disallow in-house staff from conducting future Tune-ups.

E. OOS reserves the right to reject any third-party Report, or request more information

iii. Building owners other than Large Portfolio Owners may petition the Director in writing to conduct a Tune-up with employees. The petitioner must demonstrate financial hardship and inability to afford a third-party Specialist to the satisfaction of OOS. If the Director provides this exception, the employee must demonstrate the appropriate qualifications for acting as a Specialist.

b. OOS may reject, or revoke, Tune-up approval at any time if an applicant is found to have provided false, misleading, or otherwise untrue information to the Office, or if the City conducts a quality-assurance assessment and finds errors in a Specialist's work and/or reporting that, to the determination of the Office, contains significant errors.

Section 4. Elements of a Tune-up. Tune-up reports shall be compiled using the workbook attached as Exhibit A and incorporated herein as if set forth in full. In completing the report, the following guidelines apply:

a. The Specialist shall indicate which Assessment Elements apply to each building inspected. If a building does not contain a certain Assessment Element, the Specialist should note this in the Inspection Finding column of the workbook, or analogous section of the report, and no corrective action is required.

b. Where a Covered Building utilizes an inefficient system of operation, the owner may be exempt from Corrective Action for adequate cause. This includes, but is not limited to, public health reasons or specific uses. A valid reason does not include personal preference, and OOS reserves the right to reject any exemptions. The Specialist shall sign-off on the exemption and its reasoning, and include it in the Description of Extenuating Circumstances column of the workbook or analogous section of the report.

c. The Qualified Tune-up Specialist must detail the outcomes of each inspection in the "Inspection Finding" column of the workbook or analogous section of the report, state whether or not there is a deficiency, and provide brief detail as to why a deficiency exists.

d. If the Specialist observes a deficiency, the Specialist must describe the action(s) they recommend to remedy it in the Corrective Action Description column. Upon reinspection following the completion of Corrective Actions, the Specialist should note in the "End Condition" column the current state of the Assessment Element and whether the deficiency was remediated.

e. Where an Assessment Element allows a sampling of system components, for instance the inspection of grilles and coils, the Specialist can conduct a randomized inspection of at least 15% of that Element, unless otherwise specified in the Assessment Overview column of Exhibit A. Within the "Sampling Approach" column, the Tune-up Specialist must note the number of elements included in the random inspection, the total

number of elements in the building (can be estimated), and the number of floors (as a % of total) on which an element was inspected.

f. If over fifty percent (50%) of sampled Elements demonstrate need for corrective actions, the Specialist should provide a recommendation to the building owner in the Corrective Action Description column about if (and how) to review and/or correct potential issues among the broader set of the elements throughout the building. Corrective action on elements outside the sampling range is voluntary. The building owners should provide to the Specialist a description of further steps beyond fixing the sampled elements, if any, the building will take. The Specialist should note this within the “End Condition” column and describe what, if anything, beyond the required corrective action was completed.

g. For Assessment Elements related to system maintenance & repairs, building owners and Tune-up specialists should proceed according to ANSI/ASHRAE/ACCA Standard 180-2012 (or current edition).

h. Partial exemption carve out:

1. If a Covered Building has Active Optimization for certain but not all building systems involved in a Tune Up, and is therefore unable to meet the full exemption criteria, the Covered Building may use Active Optimization to satisfy the Assessment Elements for entire sections of the Tune Up. In these instances, the Covered Building would provide the necessary documentation of the Active Optimization to the Specialist, and the Specialist would not be required to conduct an inspection of the Assessment Elements in the section of the report related to that system, unless the Specialist deems the Active Optimization inadequate. The Specialist would note Active Optimization in the Extenuating Circumstances column.
2. If Active Optimization is manual, ongoing commissioning, the following documentation must be furnished to the Specialist.
 - A. On-going commissioning plan (with all the elements required in LEED Operations and Maintenance v4 (or current edition) Ongoing Commissioning Energy and Atmosphere credit);
 - B. Two years of quarterly reports (one year, if program has been active for less than two years) that detail findings from efforts.

3. If Active Optimization is automated (CCx), the following documentation must be furnished to the Specialist.

A. Description of the system(s);

B. Two years of quarterly reports (one year, if program has been active for less than two years) generated by the automated system. Each report must include a sample of data (i.e., one week) covering the following:

Faults/issues detected

Date and time each fault/issue was detected

Location of each fault/issue

Date and time of correction/repair for each fault/issue

Staff/vendor notes on what was done to remedy each fault/issue (if available)

i. No recommendation or remedial action suggested pursuant to this Section shall be accepted or approved by OOS without the consent of the Director.

Section 5. Tune-up Reports.

a. Specialists shall submit Tune-up reports to OOS, in a manner acceptable to OOS and/or on a form provided by OOS, by the close of business on the Compliance Deadline.

b. Notwithstanding any requirements by ordinance, Tune-up reports shall specifically include the following, as well as any other criteria the Office may, at its discretion, subsequently add by amending these regulations:

i. "Any applicable columns from the Workbook. *See* Exhibit A;

ii. The date of the initial inspection;

iii. Date(s) of any corrective action review(s) and/or finalization(s);

iv. A brief description of at least five (5) required actions, listed by greatest projected impact;

v. A brief description of at least five (5) recommended actions, listed by greatest impact;

Section 6 Tune-up Requirement Exemptions.

a. Notwithstanding the provisions of the enabling ordinance, an owner may only apply for an exemption to the Tune-up requirement if the building has been compliant

with the City's Benchmarking Policy for the two (2) consecutive years preceding its Tune-up Compliance Date.

b. Applications for an exemption shall be made on a form provided by the Office and shall include (1) the proposed reason for the exemption; (2) evidence for this qualification; and (3) all items listed in the "Data Requirements" section of the Workbook, except for the Specialist's information. No exemption shall be granted as of right.

c. An ENERGY STAR Certification exemption shall require (1) either a copy of the EPA-issued ENERGY STAR Certificate of Achievement or (2) the congratulatory email confirming certification; and either (1) a copy of the application for Certification or (2) the Statement of Energy Performance (SEP) with the same year-ending date as the application.

d. Other certifications qualifying for exemption shall require building owners to achieve or re-certify those qualifications no more than three (3) years prior to the Compliance Deadline and to provide:

i. For green building certification exemptions, LEED Gold or Platinum certificate for Building Operations and Maintenance (O & M) (issued by United States Green Building Council (USGBC) and LEED scorecard); or Net-Zero Energy Certification issued by International Living Future Institute (ILFI), with any summary documentation; or

ii. For utility retro-commissioning, sufficient evidence, including final approval by PECO, of retrocommissioning the whole building, as defined in Pennsylvania Act 129 of 2008 as amended or subsequently altered for additional phase;

iii. For other retrocommissioning or recommissioning, such certification must cover greater than or equal to seventy-five percent (75%) of the Covered Building's square footage. The applicant must submit sufficient evidence of compliance with energy reduction requirements promulgated in Phase 3 of Act 129 and documentation by the provider who conducted the retrocommissioning or recommissioning.

iv. For certification of fifteen percent energy savings, either 1) ENERGY STAR Statement of Performance (SEP) for three calendar years evidencing a site EUI reduced fifteen percent (15%) compared to the highest weather-normalized EUI in the three referenced calendar years prior to the Tune-up date. Applicant must also provide and a cover letter, sufficient to the Office, verifying the accuracy of the reporting and signed by any person possessing the qualifications of a Specialist; or 2) For CPACE certification, the verification of a CPACE administrator regarding the energy savings, if CPACE financing was used for the reduction.

v. For energy audits, the Covered Building's owner shall submit to the Office an audit report and cover letter signed by the energy audit lead. Such cover letter

shall list all capital and operational measures projected to pay back within three (3) years, and shall verify implementation of these measures.

vi. For exemption under Active Optimization efforts, HVAC, domestic hot water, and lighting must all be covered, with the following documentation:

i. For manual ongoing commissioning:

A. On-going commissioning plan (with all the elements required in LEED Operations and Maintenance v4 (or current edition) Ongoing Commissioning Energy and Atmosphere credit); and

B. Two years of quarterly reports (one year, if program has been active for less than two years) that detail findings from efforts.

ii. Documentation for automated Active Optimization (CCx)

A. Description of the system(s); and

B. Two years of quarterly reports (one year, if program has been active for less than two years) generated by the automated system. Each report must include a sample of data (i.e., one week) covering the following:

- a. Faults/issues detected
- b. Date and time each fault/issue was detected
- c. Location of each fault/issue
- d. Date and time of correction/repair for each fault/issue
- e. Staff/vendor notes on what was done to remedy each fault/issue (if available)

e. Other Exemptions Authorized by the Office. Pursuant to Section 9-3403(3)(e) of the Philadelphia Code, OOS is authorized to promulgate any other such regulations as it sees fit to offer exemptions to the requirements set forth in the enabling ordinance. The Office therefore shall also consider exemptions for the following criteria:

i. Low Site EUI

1. Weather-normalized site EUI shall be equal to or less than twenty (20) kBtu/sq for at least two of the three preceding calendar years to the Compliance Date.

2. To qualify for a Low Site EUI exemption, owner(s) shall submit to the Director (1) a copy of the Statement of Energy Performance (SEP) for each of the qualifying years and (2) written validation of the SEP data by any person with Specialist qualifications. The Director shall, at his or

her discretion, approve or deny this exemption, and no exemption is available as-of-right.

ii. Renewable Energy Serving 100% of Electricity Load

1. Owners may apply for exemptions where the Covered Building acquires one hundred percent (100%) of its electricity load through on-site, or off-site purchase agreement, solar or wind energy. In order to be eligible, the owner shall retire the building's Renewable Energy Certificates.

2. Large Portfolio Owners that procure renewable energy for multiple buildings may allocate the generation across buildings within their portfolios. This allocation must be included in the Compliance Plan, and include total generation from renewable sources and electricity load of each building, averaged across the three (3) preceding years from the Compliance Date. This exemption may not be used for more than twenty five percent (25%) of Covered square footage across the portfolio.

3. This exemption requires the submission of (1) a copy of the SEP for the two preceding years before the Compliance Date and (2) written verification of the total generation of the renewable energy system over the preceding year before the Compliance Date.

f. Extensions.

i. Building owners pursuing the fifteen percent energy saving exemption above may request a non-guaranteed extension of one (1) year to submit the required documentation. No sooner than one hundred eighty (180) days prior to the Compliance Deadline, the owner shall provide in writing and in a form acceptable to the OOS, evidence sufficient to the OOS that the building will meet the exemption requirement, and if the application fails the Covered Building shall conduct a Tune-up within one (1) year of the date of its exemption denial.

ii. Building owners pursuing the Active Optimization exemption may, upon application no sooner than one hundred eighty (180) days prior to the Compliance Deadline and approval by OOS, receive an extension of no more than two (2) years from the Compliance Deadline to implement the Active Optimization and collect relevant data thereof. Extension applications under this subsection shall include: (1) description of the type of program; (2) systems to be actively optimized; (3) timeline for launch and data qualification; and (4) verification by a person possessing Specialist qualifications.

1. Extensions must be requested no sooner than one hundred eighty (180) days prior to the Compliance Deadline.

2. The Office reserves the right to reject any extension request, and Tune-ups shall be completed within one (1) year of the date of any notice of rejection of extension.

iii. Notwithstanding any provision in these regulations the Director may, at his or her discretion, delay any Compliance Dates or related enforcement deadline. Reasonable notice shall be given to the owner(s) of any Covered Building affected by such delay.

Section 7. Alternative Schedules for Large Building Portfolios

a. Large Portfolio Owners seeking alternative schedule(s) for compliance shall submit a Compliance Plan to the Director for review. No review shall be granted as of right. The Compliance Plan shall include, for each building: (1) the Covered Building OPA number; (2) Covered area in square feet of the Covered Building; (3) Whether the owner intends to conduct a Tune-up or seeks an exemption; and (4) the proposed Compliance Year for the building.

i. Where the owner seeks an exemption, the plan must include (1) the exemption sought and (2) an explanation for why the Covered Building qualifies.

ii. Where the owner will conduct a Tune Up, the plan must include the whether the Specialist conducting the tune up will be a third-party, or in-house staff.

b. Large Portfolio Owners must submit Compliance Plans no sooner than two hundred seventy (270) days prior to the Compliance Deadline. The Director shall respond to Compliance Plans within thirty (30) days. If the Director requests additional information, that information shall be submitted in full within thirty (30) days of the date of the Director's written response.

c. Compliance Plans may be amended in subsequent years. Amended Compliance Plans shall follow the same procedures as set forth in this Section 7.

Section 8. Penalties and Rights of Appeal.

a. Failure to comply with these regulations constitutes a violation of Title 9 of the Philadelphia Code, and subject to the penalties as set forth in Subsection A-601, Title 4 of the Philadelphia Code.

b. Appeals of any rejection or finding of OOS may be directed to the Director on a form provided by OOS within thirty (30) days of the date of the rejection or finding.

Section 9. Miscellaneous Provisions.

a. Data Privacy. Tune up reports for individual Covered Buildings shall not be made public.

i. The City may aggregate data for public release, and will take reasonable precautions to ensure that specific building data cannot be determined by a lay person in these aggregated data sets.

b. City Quality Assurance.

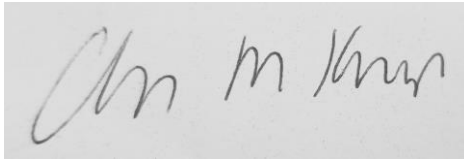
i. The City or its employee(s), agent(s), or assign(s) may conduct from time to time a quality assurance assessment on any Covered Building that submits a tune up report.

ii. The Director, upon a showing of inconsistencies between the tune up report and the quality assurance assessment, may require another tune up, conducted by a Specialist. Such remedial tune up shall be completed by any date set by the Director.

Section 10 Effective Date. OOS shall implement these regulations immediately upon confirmation from the Department of Records that they are permanent.

The City of Philadelphia, by and through

The Office of Sustainability:

A rectangular box containing a handwritten signature in black ink. The signature appears to read "Chr M Knapp".

Christine Knapp, Director

Date Signed: 8/21/20