

OFFICE OF SUSTAINABILITY
AMENDMENTS TO REGULATIONS ON BUILDING ENERGY PERFORMANCE

The Regulations on Building Energy Performance of The Office of Sustainability are hereby amended as follows:

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 2. 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 their 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 9-3404 of The Philadelphia Code.
 - iv. Benchmarking Policy – The requirements for benchmarking energy and water use 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 9-3404 of The Philadelphia Code.

ix. Director – The Director of OOS, or their assign(s).

x. Element – an Assessment Element

xi. Extensive Portfolio Owner – a Large Portfolio Owner with recorded ownership of fifty (50) or more Covered Buildings.

xii. 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.

xiii. Specialist – a Qualified Tune-up Specialist as set forth in Section 9-3404 of The Philadelphia Code.

xiv. 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.), 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 4. 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. An individual must be either a licensed Professional Engineer or Certified Energy Manager to qualify as a Specialist.

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;

B. The owner conducts a subsequent quality assurance audit of the completed work by a third-party Specialist;

C. That Specialist shall submit an independent 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 an Assessment Element was 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. The results from these quality assurance audits demonstrate the absence of substantial deficiencies, as defined by the Director. If the results from these quality assurance audits demonstrate significant deficiencies, 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.

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

iv. Building owners other than Large Portfolio Owners may petition the Director in writing to conduct a Tune-up with employees. The petitioner must demonstrate to the satisfaction of OOS that hiring a third-party Specialist would cause a hardship, such as a financial hardship based on inability to afford a Specialist. 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 5. 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. Exhibit A may be updated at the discretion of the Office of Sustainability. 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, specific uses or public health reasons, such as alterations to ventilation and outside air percentage recommended by ASHRAE or the CDC to reduce transmission of diseases during health emergencies. 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 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) recommended 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 may conduct a randomized inspection of at least 15% of that Element, unless otherwise specified in the Assessment Overview column of Exhibit A. The inspection shall be random in that it shall include not only Elements that are known to be new or in working order and shall be focused not only on a specific zone and/or floor of any building with multiple zones and/or floors. 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 shall 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 shall provide to

the Specialist a description of further steps beyond fixing the sampled elements, if any, the building will take. The Specialist shall 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 and repairs, building owners and Tune-up specialists shall proceed according to ANSI/ASHRAE/ACCA Standard 180-2012 (or current edition).

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

Section 6. 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. Tune-up reports shall specifically include the following, as well as any other criteria the Office may, at its discretion, subsequently add:

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

Section 7. Tune-up Requirement Exemptions.

a. 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 (Philadelphia Code 9-3402) for the two (2) most recent calendar years preceding its Tune-up Compliance Deadline.

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, or analogous section of the report, except for the Specialist’s information. No exemption shall be granted as of right.

c. An ENERGY STAR Certification exemption shall require either (1) a copy of the EPA-issued ENERGY STAR Certificate of Achievement or (2) the congratulatory email confirming certification dated no less than 365 days prior to the compliance deadline 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 for certification.

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;

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

iii. For other retro-commissioning 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 retro-commissioning or recommissioning.

iv. For certification of fifteen percent energy savings, either:

A. ENERGY STAR Statement of Performance (SEP) evidencing a site EUI reduced fifteen percent (15%) compared to the highest weather-normalized EUI in the three most recent calendar years prior to the Tune-up date. Applicant must also provide 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

B. For C-PACE certification, the verification by the Philadelphia CPACE Program Administrator regarding the annual energy savings projection approved as part of the building's C-PACE financing, if C-PACE financing was used for the reduction.

v. For energy audits no less stringent than the ASHRAE Level II Commercial Building Energy Audit standard, 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 the no-cost/low-cost energy efficiency measures, defined as providing a simple payback of three years or less, identified in the audit, and shall verify to the satisfaction of the OOS that implementation of these measures is complete by the building's Compliance Deadline.

vi. For exemption under Active Optimization efforts, HVAC and mechanical systems related to domestic hot water must be covered. Base-building lighting must also be covered. The following documentation is required:

A. For manual ongoing commissioning:

1. 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

2. One year of quarterly (or more frequent) reports that detail findings from efforts and corrections made.

B. For automated Active Optimization (CCx)

1. Description of the system(s); and

One year of quarterly (or more frequent) reports generated by the automated system. These reports must include the following:

- Faults/issues detected;
- Date each fault/issue was detected;
- Date of correction/repair for each fault/issue, if

corrected/repared; and

- Staff/vendor notes on what was done to remedy

each fault/issue (optional).

3. If base-building lighting systems are not covered by the automated system, Owner may submit alternative documentation to demonstrate manual ongoing commissioning. This documentation can either be an ongoing commissioning plan and reports as referenced in Section 7.d.vi.i or a written description of the protocols to ensure lighting systems and their use reflect the occupant and space needs.

C. Documentation must demonstrate that the Owner is making a reasonable effort to address faults/issues detected, specifically those that would require a corrective action through a Tune-up. OOS reserves the right to reject an exemption request if reports demonstrate unsatisfactory maintenance of systems.

D. Building owners may petition OOS to accept alternative documentation for either manual ongoing commissioning or automated Active Optimization if the documentation from their efforts do not match the above definitions. A petition does not guarantee an exemption, and OOS reserves the right to reject any and all petitions.

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

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

B. 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. Such other factors as determined by the Director to justify an exemption consistent with the purposes of this Section.

f. Extensions.

i. Building owners pursuing the fifteen percent (15%) 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. 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 energy audits no less stringent than the ASHRAE Level II Commercial Building Energy Audit standard exemption may request a nonguaranteed extension of one (1) year to submit the required documentation related to the implementation of the no-cost/low-cost energy efficiency measures, defined as providing a simple payback of three years or less, identified in the audit. 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. If the application fails, the Covered Building shall conduct a Tune-up within one (1) year of the date of its exemption denial.

iii. 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.

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

B. 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.

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

A. In light of the COVID-19 Emergency, the initial Compliance Deadline for buildings of at least 200,000 square feet was amended to September 30, 2022. All subsequent Compliance Deadlines shall be in accordance with their original reporting date, as provided by Section 9-3404(4) of The Philadelphia Code, with subsequent Tune-ups reports to be submitted by September 30, 2026 and five years thereafter.

Section 8. 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 the exemption sought.

ii. For buildings that will conduct a Tune-up in the Compliance Year during which the plan is submitted, the plan must include 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, or the first business day after this date. 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 8.

d. The initial Compliance Deadline for Extensive Portfolio Owners shall be no later than September 30, 2029. Extensive Portfolio Owners shall adhere to the requirements for alternative schedules as set forth in this Section 8.

Section 9. 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.

c. In the collection of the daily fines that will accrue to non-compliant buildings, OOS reserves the right to aggregate fines over a period (*e.g.*, a month or fiscal quarter) and send a lump sum bill to the Owner. OOS will inform noncompliant buildings when penalties begin to take effect and the period over which daily fines will be aggregated.

Section 10. Miscellaneous Provisions.

a. Data Privacy.

i. Tune-up reports for individual Covered Buildings shall not be made public.

ii. 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 11. Effective Date. OOS shall implement these regulations immediately upon confirmation from the Department of Records that they are permanent.