

**ORDINANCE NO. 2021-**

An Ordinance Establishing the Ithaca Energy Code Supplement.

WHEREAS, the City of Ithaca Common Council has demonstrated its desire and commitment to be a leader in sustainability as most recently affirmed by its unanimous adoption of the Ithaca Green New Deal on June 5, 2019 which sets forth a goal to achieve carbon-neutrality community-wide by 2030; and

WHEREAS, locally, the building sector is responsible for more than half of greenhouse gas (GHG) emissions, and the most affordable and cost-effective time to reduce GHG emissions is when a building is built; and

WHEREAS, pursuant to section 11-109 of the New York State Energy Law, and subject to the provisions and requirements of that section, municipalities may promulgate local energy conservation construction codes more stringent than the NYS Energy Code; and

WHEREAS, in 2017 the City engaged an outside consultant in development of a green building code supplement to reduce GHG emissions in new construction; and

WHEREAS, the proposed energy code supplement assigns point values for various green building construction methods and components, assesses minimum point aggregates or paths for new residential and commercial construction to meet the proposed green building goals and requirements, and includes an implementation schedule governing when projects must meet these requirements; and

WHEREAS throughout the development process, the Planning Division convened regular meetings with internal and external stakeholder committees, which included representatives from the development community, major local institutions, and sustainability advocates; and

WHEREAS between 2017 and 2020, the Planning Division held numerous public outreach sessions resulting in hundreds of comments and public feedback, which have been incorporated into the proposed energy code supplement; and

WHEREAS, in support of the Ithaca Green New Deal and the City's ongoing sustainability goals and efforts to reduce greenhouse gas emissions, the City is interested in introducing this green building policy for new structures by amending the Building Code Enforcement provisions set forth in Chapter 146 of the City of Ithaca Municipal Code to insert a new Article VII, entitled, "Establishment and Implementation of the Ithaca Energy Code Supplement"; now, therefore

**BE IT ORDAINED AND ENACTED** by the Common Council of the City of Ithaca as follows:

**Section 1.** Findings of Fact. The Common Council finds that:

1. The City of Ithaca has long demonstrated its commitment to sustainability and related environmental concerns.
2. On June 5, 2019, the City established a goal of achieving a carbon neutral city by 2030 including a requirement that all new buildings in Ithaca produce 40% fewer greenhouse gas emissions than required by state code.
3. Buildings within the City of Ithaca are the most significant contributor to local greenhouse gas emissions.
4. It is more cost effective to design and build new structures to have lower greenhouse gas emissions than to retrofit existing buildings.
5. In recognition of the above findings of fact, the enactment of this Article is intended to establish a green building policy or local energy code supplement for new buildings.

**Section 2.** Creation of a new Article VII, Chapter 146. Chapter 146 of the City of Ithaca Municipal Code entitled “Building Code Enforcement” is hereby amended to add a new Article VII entitled “Establishment and Implementation of the Ithaca Energy Code Supplement.” Such Article shall read as follows:

Article VII – Establishment and Implementation of the Ithaca Energy Code Supplement

§ 146-50. Title, legislative purpose, intent, and effective date.

This Article shall be known and cited as the “Establishment and Implementation of the Ithaca Energy Code Supplement.” The purpose and intent of this Article is to establish a green building code for all new construction, certain additions, and major renovations, as specified and defined in this Article, of any buildings, structures, or premises, regardless of use or occupancy with requirements above and beyond the state energy code. The requirements set forth give priority to electrification, renewable energy, and affordability.

The intent of this Article is to: (1) deliver measurable and immediate reductions in greenhouse gas emissions from new buildings, major renovations, and new additions; (2) advance best practices in the design of affordable buildings to deliver reduced greenhouse gas emissions; and (3) provide a rapid but orderly transition to alternative sources of energy, e.g., not fossil fuel based, to supply major building energy needs, such as space heating and hot water heating, by 2030.

The regulatory structure set forth in this Article and requirements of the Article are effective upon enactment. Additional requirements to further reduce greenhouse gas emissions become effective in 2025 and 2030.

§ 146-51. Definitions

Addition - An extension or increase in heated floor area, number of stories or height of a building or structure.

Building - Any structure utilized or intended for supporting or sheltering any occupancy.

Construction - Work subject to the provisions of City Code Section 146 "Building Code Enforcement."

Director or Director of Planning – Shall refer to the Director of Planning and Development, or where not noted, but in the Director's discretion, may also include the Director's designee.

Final approved IECS Plan – A Project's final plan for compliance with the Ithaca Energy Code Supplement, as approved by the Director of Planning or designee.

Heated Floor Area – The horizontal projection of the floors associated with the heated space.

Heated Space - An area, or room that is enclosed within the building thermal envelope and is directly or indirectly heated using fossil fuel, electricity, or biomass as the energy source. Spaces are indirectly heated where they connect through openings with heated spaces, where they are separated from heated spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating using fossil fuel, electricity, or biomass.

Ithaca Energy Code Supplement -The regulations governing implementation of this Article setting forth the point requirements and criteria and compliance paths. Also referred to as the IECS or Supplement.

Major Renovation - Construction or renovation to an existing structure other than a repair or addition, where (a) the Work Area exceeds 75 percent of the conditioned floor area, and (b) two or more of the following occur:

1. Replacement or new installation of a heating plant or system (e.g. boiler, furnace, or other major system). Changes to ventilation and air conditioning systems are not considered renovations of the heating system.
2. Construction that involves disassembly of greater than 50% of the area of the thermal envelope.
3. Changes to, including but not limited to new installation, replacement, relocation, or removal of, lamps, lighting, or other illumination fixtures in greater than 50% of the building interior or within the boundaries of the thermal envelope. Space within a building that is not currently lit, and is not proposed to be lit, shall not count toward the 50% calculation.

Project - Any land use activity or construction which requires a building permit from the Building Division and will result in changes to the physical condition, appearance or type of use, or intensity of use, of property.

Renewable Energy Credits - A market-based instrument or tradable, non-tangible energy commodity representing the property rights to the environmental, social and other non-power attributes of renewable electricity generation, representing a credit for

each megawatt-hour (MWh) of electricity generated and delivered to the electricity grid from a renewable energy resource.

Renewable Energy Systems – Includes any energy systems producing electricity from solar, wind, or hydroelectric, or thermal energy from solar, geothermal, or hydrothermal resources, but shall not include systems producing thermal energy absorbed from or rejected to outdoor air/ground/water and used in conjunction with heat pumps.

Thermal Envelope -- The insulated exterior walls (above and below grade), floors, ceilings, roofs, and any other building element assemblies that enclose heated space or provide a boundary between heated space and unheated space.

Work Area - That portion or portions of a building consisting of all reconfigured spaces as indicated on the construction documents. Work area excludes other portions of the building where incidental work entailed by the intended work must be performed and portions of the building where work not initially intended by the owner is specifically required by the provisions of state Existing Building code.

#### § 146-52. Application of Ithaca Energy Code Supplement

A. Application. This Article shall apply to the following Construction:

1. New construction, excluding additions and major renovations not specified in this section;
2. Additions 500 square feet or larger to one-family dwellings or two-family dwellings;
3. Additions 1,000 square feet or larger to buildings other than one- family dwellings or two-family dwellings; and
4. Major Renovations;

B. Projects or Construction subject to this Article must comply with the standards and methods of compliance set forth in the Ithaca Energy Code Supplement, which is hereby made a part of this Chapter by reference, and as may be updated from time to time. The Ithaca Energy Code Supplement is available on the City's website, and in hardcopy from the Planning Department. Building permit applicants must comply with the most current version at the time of submission of the building permit application.

C. Except as specified in this Article or in the Ithaca Energy Code Supplement, this Article shall not be used to require the removal, alteration or abandonment of, nor prevent the continued use and maintenance of, an existing building or building system lawfully in existence at the time of adoption of this chapter.

#### § 146-53 Compliance Standards.

- A. Compliance Standards. All buildings, structures or premises must be designed to comply with the New York State Energy Code and the Ithaca Energy Code

Supplement, and any other referenced standards, in effect at the time of submission of the building permit application.

- B. As of the date of submission of the building permit application and based on the type of construction as determined by the Building Division (e.g. commercial or residential), all projects or construction subject to this Article must also demonstrate the means by which the project or construction will comply with the applicable standards and methods of compliance set forth in the IECS. Each project must submit documentation with the submission of a building permit application demonstrating the Project's proposed compliance with the applicable requirements of the Ithaca Energy Code Supplement.
- C. The Building Inspector shall review the proposed compliance plan. Upon satisfactory receipt of all documentation and other materials necessary to evaluate the plan and assess its compliance with the IECS, the Building Inspector shall determine whether the plan fulfills the applicable IECS requirements, and if so, approve the IECS as final. The final approved IECS plan shall be the basis for evaluating compliance with this Article and issuance of certificate(s) of compliance or occupancy and shall be maintained in the Building Division property file.
- D. Any Project using Renewable Energy Credits and/or Renewable Energy Systems to fulfill the compliance requirements established by this Article shall have additional document production and record keeping requirements as set forth in the Supplement. Production of the required documents or record keeping data, upon the City's inspection request, as well as conformity with the requirements set forth in the final approved IECS plan, shall be considered a basis for evaluating compliance with this Article and issuance of certificate(s) of compliance or occupancy.

#### § 146-54 Enforcement, inspection and violations

- A. Enforcement. The Director of Planning or designee shall be the enforcement official for the Ithaca Energy Code Supplement, responsible for inspection and enforcement of the standards set forth therein. In accordance with such responsibility, the Director or designee shall have the power to stop work or enforce as otherwise authorized in Article II of this Chapter for any work not conforming to the Ithaca Energy Code Supplement or being done in a generally careless or hazardous manner.
- B. Inspection. Compliance with the Project's approved building permit and relevant Ithaca Energy Code Supplement provisions shall be periodically inspected for conformance with the final approved IECS plan and building permit, including the maintenance, in accordance with all other certificates, inspections or other approvals required by the City Code or State law. If there is nonconformance, or if any of the final approved IECS plan items are not fulfilled, no certificate of occupancy or certificate of completion shall be issued. Where a property reverts

to nonconformance after the issuance of a certificate of occupancy or certificate of completion, current owners shall be notified in writing and given the opportunity to correct the situation. If the Director determines that the corrective measures are inadequate, the City may impose a fine of \$50/day per violation for any violations of the provisions of this chapter or of the Ithaca Energy Code Supplement.

- C. Violations. It shall be a violation of this Article to violate any provision or standard of the Ithaca Energy Code Supplement, including specifically, but not limited to, construction without and/or failure to maintain any element required by the project-specific approved IECS plan.

#### § 146-55 Unreasonable Hardship Exemption.

A. If compliance with this Chapter presents an unreasonable hardship, the applicant may apply for an exemption as set forth in this section. In applying for an exemption, the burden is on the applicant to demonstrate the unreasonable hardship, and that the proposed exemption fulfills alternative energy conservation standards or otherwise achieves to the maximum extent practicable the purposes of this Article, reduction of greenhouse gas emissions. Approval or denial of an unreasonable hardship exemption is at the discretion of the Director of Planning. In the Director of Planning's discretion, the exemption application may be referred to the Building Code Board of Appeals for determination or further input on the exemption application. Unreasonable hardship exemptions will only be granted in unusual circumstances based upon a showing of good cause and a determination that the public interest is not substantially prejudiced by the exemption or other compelling circumstances.

B. Notice of application for an exemption shall be given by posting an enlarged notice on the premises of the subject property; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the City within 200 feet of the property involved; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than ten days prior to the date of the decision on the application by the Director of Planning.

C. The determination of the Director of Planning shall become final ten calendar days after the date of decision unless appealed to the City Building Code Board of Appeals. For construction subject to City Code Chapter 228 "Landmarks Preservation," the Director of Planning may, at his or her discretion, refer the request for an unreasonable hardship exemption to the Ithaca Landmarks Preservation Commission for advisory decision to the Director of Planning.

D. If the Director of Planning or designee grants an exemption, the Director shall make a determination as to the maximum compliance requirements reasonably achievable for

**Commented [KF1]:** Alternative 146-55(B):

An applicant for an exemption shall publish notice twice in the official newspaper of the City of Ithaca, which notice shall state the relief sought, the applicant's name and the location of the property and that comments may be sent to the City Director of Planning and Development. The Director's decision shall not be made or become effective sooner than ten days from date of the first publication. The applicant is responsible for providing proof of publication.

the project and shall confirm the exemption compliance plan, which shall be marked "Approved with Exemption," and maintained with the Building Division property file. The construction shall be subject to the IECS approval and compliance process in this Article, based on the final approved with exemption IECS Plan.

§ 146-56 Appeals.

- A. Any determination or interpretation by the Director of Planning or designee concerning the application of the provisions of this Article and/or the Ithaca Energy Code Supplement, and any enforcement thereof may be appealed to the Director of Planning within 30 days of the written notification. Any person aggrieved by any decision of the Director may appeal to the Building Code Board of Appeals.
- B. Any person aggrieved by any decision of the Building Code Board of Appeals may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules.

§ 146-57 Authority to Update. The Director of Planning or designee is hereby authorized to make minor amendments and non-substantive revisions to the Ithaca Energy Code Supplement as deemed necessary from time to time, which may include clarifications concerning point values or additional point classifications of individual energy criteria. Substantive changes to point values or the classifications or amendments to the Phases, as described above, shall require Common Council approval.

§ 146-58 Severability.

If any section, paragraph or provision of this Article shall be determined to be invalid, such invalidity shall apply only to the section, paragraph or provision adjudged invalid, and the rest of this Article shall remain valid and effective.

**Section 3.** To incorporate the new Ithaca Energy Code Supplement set forth in new Article VII, the City of Ithaca Municipal Code is further **amended** as follows with any sections or subsections not modified below remaining unchanged:

§ 146-1 Legislative purpose and intent.

A. Title. This chapter shall be known and may be cited as the "Building Code Enforcement Ordinance of the City of Ithaca, New York."

B. Purpose and intent. The purpose of this chapter is to provide for enforcement procedures in the City of Ithaca for the New York State Uniform Fire Prevention and Building Code (Uniform Code) and the New York State Energy Conservation Construction Code (Energy Code), which were heretofore made applicable in the City of Ithaca by New York State Executive Law § 381, Subdivision 2, and regulations and standards made applicable in the City of Ithaca by the Common Council pertaining to the licensing,

examining, registering, inspecting and enforcement thereof of contractors, plumbers, electricians, heating and ventilating installers and their work, **and the Ithaca Energy Code Supplement, incorporated into this Chapter as Article VII.** Except as otherwise provided in the Uniform Code, other state law, or other section of this chapter, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions of this chapter.

§ 146-2 Compliance required.

No person shall construct, alter, repair, move, remove, demolish, equip, occupy, use or maintain any building, structure or portion thereof in violation of any provision of this chapter, the New York State Uniform Fire Prevention and Building Code, the Energy Code, **the Ithaca Energy Code Supplement**, this Municipal Code, laws, ordinances, rules and regulations of any agency having jurisdiction over the subject matter nor fail to comply with lawful orders of the Director of Planning and Development or his/her designee, nor shall any person engage in any trade or occupation required to be licensed pursuant to the provisions of this chapter without first obtaining the proper license provided for hereunder, nor shall any person engage in any trade or occupation required to be registered pursuant to the provisions of this chapter without first properly registering as provided for hereunder.

§ 146-4 Administrative officers and functions.

F. Enforcement

1. The Director of Planning and Development or his/her designee shall be responsible for the enforcement of the New York State Uniform Fire Prevention and Building Code, hereafter referred to as the "Uniform Code," ~~the~~ **the New York State Energy Conservation Construction Code, the City of Ithaca Zoning Ordinance, the Ithaca Energy Code Supplement**, and all other codes and ordinances applicable to building construction and land use, and shall have the power to stop work not conforming to the Building Code or being done in a generally careless or hazardous manner. The City of Ithaca Fire Marshal shall be responsible for enforcement of the Fire Code of NYS (see Chapter 181).

K. Compliance orders.

(1) The Director of Planning and Development or his/her designee is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, **the Ithaca Energy Code Supplement**, or this chapter. Upon finding that any such condition or activity exists, the Director of Planning and Development or his/her designee shall issue a compliance order. The compliance order shall:

§ 146-5 Building permits.

C. Exemption not deemed authorization to perform noncompliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in Subsection B of this section shall not be deemed an authorization for work to be

performed in violation of the Uniform Code, the Energy Code, the City of Ithaca Zoning Ordinance, **Ithaca Energy Code Supplement** or other applicable codes and ordinances.

D. Applications for building permits. Applications shall be made in writing on a form provided by the Building Department. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information sufficient to permit a determination by code enforcement personnel that the intended work complies with all applicable requirements of the Uniform Code, the Energy Code, the City of Ithaca Zoning Ordinance, **Ithaca Energy Code Supplement** and other applicable codes and ordinances. The application shall include or be accompanied by the following information and documentation:

...

(4) Where applicable, a statement of special inspections **or certifications** prepared in accordance with the provisions of the Uniform Code **and/or Ithaca Energy Code Supplement**; and

H. Issuance of building permits.

(1) An application for a building permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Building Code, the Energy Code, the City of Ithaca Zoning Ordinance, **the Ithaca Energy Code Supplement**, and other applicable codes and ordinances. The Code Enforcement Officer shall issue a building permit only if the proposed work is in compliance with the applicable requirements of the applicable codes and ordinances.

O. Time limits. Building permits shall become invalid unless the authorized work is commenced within six months following the date of issuance. Building permits shall expire two years after the date of issuance, except that building permits that authorize work with a construction value of more than \$15,000,000 shall remain in effect for a period of three years. A building permit may be renewed prior to the expiration date for one additional two-year period upon application by the permit holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer, provided that:

(1) The permit has not been revoked at the time of the application for renewal;  
(2) The relevant information supplied on the original permit application is current; and  
(3) All changes to the scope of work, or methods and materials to be used are in accordance with the construction documents submitted and with the Uniform Code, the Energy Code, the City of Ithaca Zoning Ordinance, **the Ithaca Energy Code Supplement** and other applicable codes.

P. Revocation or suspension of building permits. If the Code Enforcement Officer determines that a building permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a building permit was issued violates the Uniform Code, the Energy Code, the City of Ithaca Zoning Ordinance, **the Ithaca**

**Energy Code Supplement** or other applicable code **or provision of this Chapter**, the Code Enforcement Officer shall revoke the building permit, or suspend the building permit until such time as the permit holder demonstrates that:

- (1) All completed work is in compliance with all applicable provisions of the Uniform Code, the Energy Code, the City of Ithaca Zoning Ordinance, **the Ithaca Energy Code Supplement** or other applicable code **or provision of this Chapter**; and
- (2) All work proposed to be performed shall be in compliance with all applicable provisions of the Energy Code, the City of Ithaca Zoning Ordinance, **the Ithaca Energy Code Supplement**, or other applicable code **or provision of this Chapter**.

§ 146-6 Construction inspections.

F. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the applicable code. Work not in compliance shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code, the Energy Code, **Ithaca Energy Code Supplement**, or other applicable code, reinspected, and found satisfactory as completed.

§ 146-7 Stop-work orders.

A. The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:

- (1) Any work that is determined by Code Enforcement Officer to be contrary to any provision of the Uniform Code, the Energy Code, ~~or~~ the City of Ithaca Zoning Ordinance, **or the Ithaca Energy Code Supplement** without regard to whether such work is or is not work for which a building permit is required, and without regard as to whether a building permit has or has not been issued; or

§ 146-8. Certificates of occupancy and certificates of completion.

C. Issuance of certificates of occupancy and certificates of completion. The Director of Planning and Development or authorized code enforcement personnel shall issue a certificate of occupancy or certificate of completion if the work which was the subject of the building permit was completed in accordance with all applicable provisions of the Uniform Code, the Energy Code, **the Ithaca Energy Code Supplement** and the City of Ithaca Zoning Ordinance and/or, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all provisions of the Uniform Code, the Energy Code, **the Ithaca Energy Code Supplement** and the City of Ithaca Zoning Ordinance. The Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a certificate of occupancy or certificate of completion. In addition, where applicable, the following documents prepared in accordance with the provisions of the Uniform Code **or other requirements set forth by applicable Code or provisions of this Chapter** by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for a certificate of occupancy or a

certificate of completion shall be provided to the Code Enforcement Officer prior to the issuance of the certificate of occupancy or certificate of completion:

E. Temporary certificates.

(2) The Code Enforcement Officer may include in a temporary certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety. A temporary certificate shall be effective for a period of time, not to exceed six months, which shall be determined by the Code Enforcement Officer and specified in the temporary certificate. During the specified period of effectiveness of the temporary certificate, the permit holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code, the Energy Code, **the Ithaca Energy Code Supplement** the City of Ithaca Zoning Ordinance and the conditions of site plan approval, if any, **and any additional requirements set forth by applicable Code or provisions of this Chapter**. Temporary certificates of occupancy may be renewed for one additional period of not more than six months upon application and payment of the fee provided for in § 146-5K at the discretion of the Code Enforcement Officer.

§ 146-49. Compliance required.

All new installations of heating and/or ventilating apparatus repairs, alterations or additions thereto must be made in strict compliance with the regulations set forth in the Building Code, **the New York State Energy Code, and Ithaca Energy Code Supplement**.

**Section 4.** Existing Article VII "Penalties" shall be amended and renumbered as Article VIII, and starting with Section 146-58 with no other amendments to the Article.

**Section 5.** As required by Energy Law Section 11-109, Common Council directs the Director of Planning or designee to file a copy of this ordinance and Supplement with the New York State Fire Prevention and Building Code Council within thirty days after promulgation or adoption of this ordinance.

**Section 6.** Severability. Severability is intended throughout and within the provisions of this ordinance. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portion.

**Section 7.** Effective date. This ordinance shall take effect [immediately-90 days after approval by Common Council](#) and in accordance with law upon publication of notices as provided in the Ithaca City Charter.