



DATE: June 10, 2020  
 TIME: 6:00 pm  
 LOCATION: City of Ithaca Public Meetings YouTube Channel

# PEDC Meeting

Planning and Economic Development Committee  
 Ithaca Common Council

## City Hall Remains Closed to the Public

This meeting will be conducted remotely via the online platform Zoom, pursuant to the Governor’s Executive Order 202.1. A live stream is available at [https://www.youtube.com/channel/UC7RtJN1P\\_RFaFW2IVCnTrDg](https://www.youtube.com/channel/UC7RtJN1P_RFaFW2IVCnTrDg)

### \*General Public Comments

Send written comments here: <http://www.cityofithaca.org/FormCenter/Planning-Economic-Development-Committee-18/Planning-Economic-Development-Committee--98> by 4:00 p.m. the day **BEFORE** the meeting. All comments received will be forwarded to the Common Council for their consideration. Written comments received in advance of the meeting give the Committee members time to fully consider them. If you want your comment read aloud, please state so in your email and limit the comment to three minutes. A minimum of 15 minutes will be allotted at the beginning to read comments, if needed. The Chair will make an effort to accommodate as many read comments as time permits.

### \*\*Scheduled Public Hearings

There are two options to participate in a public hearing:

1. Submit comments by email no later than 4 p.m. on the day **BEFORE** the meeting. (Contact below), and they will be read into the record. Each comment is limited to three minutes. Indicate in your email that the comment is for a public hearing.
2. To speak at the meeting, sign up and receive instructions through the contact(s) listed below.

All comments and questions can be emailed to Deborah Grunder at [dgrunder@cityofithaca.org](mailto:dgrunder@cityofithaca.org) or call (607) 274-6551.

### Agenda Items

Item	Voting Item	Presenter	Time Start
1) Call to Order/Agenda Review	No	Seph Murtagh, Chair	6:00
2) Public Comment *	No		6:05
3) Special Order of Business			
a) Public Hearing: COVID-19 Grant Funds **			6:20
4) Announcements, Updates, Reports			6:30
5) Action Items (Voting to Send on to Council)			
a) COVID-19 Grant Funds	Yes	Nels Bohn, Director, IURA	6:35
b) Route 13 Break-in-Access	Yes	Lisa Nicholas, Planning	6:50
c) PACE – Property Assesses Clean Energy	Yes	Tom Knipe, Planning	7:20
6) Review and Approval of Minutes			
a) February 2020	Yes		7:50
7) Adjournment	Yes		8:00

If you have a disability and require accommodations in order to fully participate, please contact the City Clerk at 274-6570 by 12:00 noon on Tuesday, June 9, 2020

## 2020 HUD Entitlement Program CDBG-CV (City of Ithaca, NY) – Funding Proposals Received

Last Updated: 5/26/20

#	Project	Sponsor	Funding Request	Matching Funds (Sec. & Unsec.)	Total Project Cost	ANTICIPATED AVAILABLE FUNDING			Brief Project Summary
						2020 CDBG-CV	CDBG (R/U)	TOTAL	
						\$131,299.20	\$29,753.00	\$161,052.20	
1	Laundry & Internet Needs During COVID-19	Opportunities, Alternatives, & Resources (OAR) of Tompkins County	\$ 11,000	\$ 2,300.00	\$ 13,300.00			\$ -	(1) Funding towards laundry and detergent for "Soap & Suds Laundry Program for the Homeless and Housing Insecure" during COVID-19 pandemic. (2) Funding towards internet for 40 students in "College Initiative Upstate Student" remote-learning program during COVID-19 pandemic.
2	Ithaca CARES About Re-Opening Child Care	Child Development Council of Central NY, Inc.	\$ 10,000	\$ 37,200	\$ 47,200.00			\$ -	Funding towards supplies related to operational changes to ensure health and safety of children for childcare programs in the City of Ithaca that are re-opening after 5/15/20.
3	Aid for Immigrants During COVID-19	Catholic Charities of Tompkins/Tioga Counties	\$ 10,879	\$ 6,377	\$ 17,256.00			\$ -	Funding towards salary/benefits to extend current Immigrant Services Program (ISP) program assistant position serving immigrant and refugee families/individuals of all ages, including the disabled, who need help accessing services to endure adverse economic impacts of COVID-19.
4	Safe Re-Opening from COVID-19	State Theatre of Ithaca, Inc.	\$ 15,990	\$ -	\$ 15,990.00			\$ -	Funding for real property improvements (e.g., high-speed internet; sanitizing stations; plastic barriers) to safely open theatre to the public.
5	Virtual Career Coach	Women's Opportunity Center	\$ 23,470	\$ -	\$ 23,470.00			\$ -	Funding for Employment Retention Specialist salary, program materials for virtual training classes, professional development, and advertising to reduce/eliminate barriers to employment and place women in living wage jobs.
6	Tuition Assistance Program	Downtown Ithaca Children's Center (DICC)	\$ 25,600	\$ 14,400	\$ 40,000.00			\$ -	Funding for staff wages/salaries to ensure DICC's ability to re-open.
7	Housing Linkages Project	Human Services Coalition of Tompkins County	\$ 65,000	\$ 91,000	\$ 156,000.00			\$ -	Funding for salaries/benefits and delivery costs to connect COVID-affected landlords with COVID-affected tenants with income/housing subsidies, thereby assisting 50 households (20 of which have experienced homelessness) to secure a 1-year lease.
8	COVID-19 Emergency Assistance Program	The Salvation Army of Ithaca	\$ 100,000	\$ 102,000	\$ 202,000.00			\$ -	Funding for financial assistance (e.g., rent/mortgage assistance; medical prescriptions/outstanding medical bills; transportation expenses; energy/utility payments) to households in need.
9	Operational & Planning Support for Kitchen Theatre Company	Kitchen Theatre Company, Inc.	\$ 75,000	\$ 74,500	\$ 149,500.00			\$ -	Funding to retain/rehire theatre staff to continue theatre's operations until it is able to re-open.
10	Deep Cleaning Services to Protect SJCS Ithaca Shelter	St. John's Community Services Ithaca Shelter	\$ 20,000	\$ -	\$ 20,000.00			\$ -	Funding for hiring Challenge Workforce Solutions to provide twice-weekly professional deep cleaning/sanitization of the Friendship Center, Pantry, and Shelter.
11	COVID-19 Testing for Vulnerable Populations	The REACH Project, Inc.	\$ 20,000	\$ -	\$ 20,000.00			\$ -	Funding for Registered Nurse and Community Health Worker, over 6 months, to provide regular, rapid, and timely COVID-19 testing for LMI people, people experiencing homelessness, and their front-line service providers.
12	Expanding Access to RIBs	The Center for Community Transportation	\$ 16,895	\$ 13,785	\$ 30,680.00			\$ -	Funding for staff salaries (including new part-time mechanic position and additional time for part-time RIBs director) to increase production of affordable refurbished bikes and provision of bike-repair services; and funding to further subsidize free/reduced-cost bikes or accessories for means-tested individuals.
13	Security Deposits for Safer Housing	Catholic Charities of Tompkins/Tioga Counties	\$ 25,000	\$ 2,250	\$ 27,250.00			\$ -	Funding towards security deposits for individuals/families, people currently homeless, and others who are losing current housing due to adverse economic impacts from COVID-19.
14	Mediation as Emergency Response: Students & Attorneys Provide Housing Aid to Community	Community Dispute Resolution Center	\$ 35,000	\$ 45,000	\$ 80,000.00			\$ -	Funding for part-time coordinator, administrative costs, equipment, volunteer training, and outreach to provide legal advice and mediation of COVID-19-related housing disputes, for the unemployed, individuals with physical/mental disabilities, homeless/housing-insecure, people re-entering the community post-incarceration, immigrants, LGBTQ individuals, and ESL populations.
15	COVID-19 Cleaning Services for Area Non-Profits	Challenge Workforce Solutions	\$ 96,651	\$ -	\$ 96,651.00			\$ -	Funding for salary and administrative costs for cleaners to provide free cleaning services to area non-profits struggling to re-open following COVID-19 pandemic, and faced with new safety guidelines/precautions that must be in place before safely re-opening.
16	Fair Housing Enforcement Project	Legal Assistance of Western New York, Inc.	\$ 60,000	\$ 20,236	\$ 80,236.00			\$ -	Funding for staff salaries, materials, and overhead expenses to expand legal assistance to individuals negatively impacted by COVID-19.
17	New Safety Measures for Ithaca ReUse Center Opening	Finger Lakes ReUse, Inc.	\$ 10,222	\$ 15,391	\$ 25,613.00			\$ -	Funding towards staff salaries to meet increased COVID-19-related need for labor to operate safely through 2020.
<b>TOTALS:</b>			<b>\$ 620,707.00</b>	<b>\$ 424,439.00</b>	<b>\$ 1,045,146.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<small>CDBG (R/U) = Recaptured/Unallocated (from prior years)</small>

**2020 HUD Entitlement Program CDBG-CV (City of Ithaca, NY)  
IURA-Recommended Project Funding for  
2nd Allocation of CDBG-CV Funds**

**(Results from IURA Review of 17 Funding Applications Received)**

6/4/2020

#	Project	Sponsor	Recommended CDBG-CV Funding	Brief Project Summary
1	Laundry & Internet Needs During COVID-19	Opportunities, Alternatives and Resources (OAR) of Tompkins County	\$ 11,000	(1) Funding towards laundry and detergent for "Soap & Suds Laundry Program for the Homeless and Housing Insecure" during COVID-19 pandemic. (2) Funding towards internet for 40 students in "College Initiative Upstate Student" remote-learning program during during COVID-19 pandemic.
2	Ithaca CARES about Re-Opening Child Care	Child Development Council of Central NY, Inc.	\$ 10,000	Funding for childcare programs in the City of Ithaca that are re-opening after 5/15/20 towards supplies related to operational changes to ensure health and safety of children in their care.
3	Aid for Immigrants During COVID-19	Catholic Charities of Tompkins/Tioga Counties	\$ 10,879	Funding towards salary/benefits to extend current Immigrant Services Program (ISP) program assistant position serving immigrant and refugee families/individuals of all ages, including the disabled, who need help accessing services to in response to adverse economic impacts of COVID-19.
6	DICC Child Care Center Re-Opening Assistance	Downtown Ithaca Children's Center (DICC)	\$ 25,600	Funding for staff wages/salaries to ensure ability to re-open.
8	COVID-19 Emergency Assistance Program	The Salvation Army of Ithaca	\$ 20,000	Funding for financial assistance (e.g., rent/mortgage assistance; medical prescriptions/outstanding medical bills; transportation expenses; energy/utility payments) to households in need.
11	COVID-19 Testing for Vulnerable Populations	The REACH Project, Inc.	\$ 20,000	Funding for Registered Nurse and Community Health Worker, over 6 months, to provide regular, rapid, and timely COVID-19 testing for LMI people, people experiencing homelessness, and their front-line service providers.
13	Security Deposits for Safer Housing	Catholic Charities of Tompkins/Tioga Counties	\$ 25,000	Funding towards security deposits for individuals/families, people currently homeless, and others who are losing current housing due to adverse economic impacts from COVID-19. Priority to households accessing Housing Choice Vouchers.
<b>TOTALS:</b>			<b>\$ 122,479</b>	

Maximum Funding Available	
CDBG-CV:	\$131,299
Unallocated 2018 CDBG:	\$29,753
Total:	\$161,052

\$38,573 Remaining funds available to address emerging COVID-19 needs

**Proposed Resolution**  
**Planning & Economic Development Committee**  
**June 10, 2020**

**2020 CDBG-CV: SECOND ALLOCATION**

WHEREAS, the April 6, 2020, City of Ithaca (City) has received an initial supplemental funding allocation of Community Development Block Grant (CDBG) funds from *The Coronavirus Aid, Relief, & Economic Security* (CARES Act), which funding is hereafter referred to as CDBG-CV, and

WHEREAS, the CDBG-CV allocation to the City provides \$321,299 to invest in CDBG-eligible activities to support community development efforts in response to the COVID-29 pandemic, and

WHEREAS, the City contracts with the Ithaca Urban Renewal Agency (IURA) to administer, implement and monitor the City's HUD Entitlement program in compliance with all applicable regulations, and

WHEREAS, the IURA has identified the following priority community needs:

1. Renter households whose ability to pay rent has been reduced by COVID-19 impacts
2. COVID-related relief, prevention, or recovery of persons experiencing homelessness
3. Small businesses adversely impacted by public health mandates and guidelines
4. Anchor non-profits entities with at least 51% earned income adversely impacted by public health mandates and guidelines, and

WHEREAS, the first allocation of CDBG-CV funds was directed to assist renter households by providing \$190,000 for the emergency rental assistance program, leaving \$131,299 remaining to be allocated, and

WHEREAS, the IURA issued a public call for funding proposals for CDBG-CV funds with a May 26, 2020 deadline, and

WHEREAS, at their May 28, 2020 and June 4, 2020 meetings, the IURA reviewed 17 proposals requesting a total of \$620,107 and recommended funding seven proposals at a total of \$122,479; and

WHEREAS, a public hearing on this matter was held on June 10, 2020; now, therefore, be it

**RESOLVED**, that the City of Ithaca Common Council hereby approves allocation of \$122,479 of CDBG-CV funds to the projects identified in the attached table titled "IURA-Recommended Project Funding for 2<sup>nd</sup> Allocation of CDBG-CV Funds", dated June 4, 2020.



**CITY OF ITHACA**  
**108 E. Green St. — Third Floor Ithaca, NY 14850-5690**  
**DEPARTMENT OF PLANNING AND DEVELOPMENT**

**JoAnn Cornish, Director**

Planning & Development – 607-274-6550

E-Mail: [dgrunder@cityofithaca.org](mailto:dgrunder@cityofithaca.org)

Community Development/IURA – 607-274-6565

**To:** Planning and Economic Development Committee  
**From:** Lisa Nicholas, Deputy Director of Planning  
**Date:** June 4, 2020  
**RE:** Break-in-Access (BIA) at Fifth Street and Rt 13. – Resolution of Support

Please find attached a draft resolution authorizing staff to pursue a BIA for your consideration. The resolution has been updated from the previous version provided to you in April to reflect ongoing developments in the project. Below is a timeline showing background and updates for your reference. I have provided links to new and previously submitted materials. Please do not hesitate to reach out if you have questions or need additional information.

**March 2020 Common Council [March 11 Common Council Agenda](#)** (see page 9)

- Planning and Engineer staff presented information about the BIA process, community wide benefits and transportation impacts
- After a lengthy discussion, staff were asked to conduct outreach to Northside neighbors, affected businesses and agencies about the proposal.
- Staff subsequently reached out to these groups via email. We provided information, asked for comments and attended a Northside United Meeting

**April 2020 PEDC [April 8, PEDC Agenda](#)** (see pages 15-23)

- Staff provided the Committee with the outreach materials, comments received, a recommendation from Engineering, a final draft of the Transportation Section of the Environmental Assessment and a proposed resolution directing staff to pursue a BIA with the DOT. It was not formally decided if the BIA should be a three or a four-way intersection, but the Committee seemed to be leaning towards the four-way option.
- After lengthy discussion the Committee agreed to table a vote until May so that Northside residents, agencies and businesses, who had opposed a four way intersection, could be informed about PEDC's imminent decision.
- Staff subsequently reported the outcome of the meeting to the above referenced groups. Seph stated he would also reach out to them.

**May 2020**

- Staff did not bring the resolution back to PEDC in May due to comments received from the NYSDOT, Region 3, indicating that they would not recommend the BIA unless the project was reduced in scale to lessen the vehicular impact during peak travel hours.
- Ultimately the Planning Board respectfully but strenuously disagreed with NYSDOT and issued a [Negative Declaration of Environmental Significance](#) (see Page 8 of the FEAF Part 3) for Carpenter Circle Project on May 26, 2020 stating the following:

..... In the correspondence, the DOT, an involved agency in the project, concludes that the above outlined mitigations do not mitigate “the substantial vehicular delays and queuing issues” and recommend that the project sponsors “reduce the density of both developments or phase their implementation until mitigation can be achieved along the corridor”. Although the Lead Agency does not concur, it acknowledges these comments and understands that the DOT has jurisdiction over permitting any work in the Route 13 ROW. The Lead Agency expects the applicant to continue to work with DOT to allow permitting of the proposed mitigations. The Lead Agency understands that if the mitigation listed above are changed or cannot be implemented additional environmental review will likely be required.

After reviewing all the pertinent information, the Lead Agency has determined that the applicant has mitigated the impacts to transportation to the maximum extent practicable. The key to maximum trip reduction (well beyond the 15% percent currently projected) is a well developed and implemented TDM Plan. Such a plan will be developed and approved in coordination with the City as a condition of Site Plan Approval. Although there is added vehicular burden on the capacity of Rte 13, the applicant has proposed project features and provided mitigations that will increase the ability to travel safely to and from the site by bus, bike or walking. The applicant has also provided mitigations to increase vehicular capacity that do not conflict with pedestrian and bike comfort and safety. Finally, the creation of housing units within the City in proximity to retail, services, employment and recreation presents a lasting potential to shift transportation modes away from single occupancy vehicles.

- The Planning Board also granted Preliminary Site Plan Approval with the following traffic-related conditions to be satisfied before Final Approval for any phase of the project:
  - Development by the applicant and acceptance by the City of a plan and schedule for the financing and implementation of transportation and emergency access improvements detailed in the FEAF Part 3, or other alternative improvements deemed equally appropriate and effective by the City
  - Development by the applicant and acceptance by the City of a plan and schedule for the financing, implementation and monitoring of a TDM program
- Transportation engineers for the project team have been working with DOT to provide additional analysis showing reduced traffic impacts without making the project smaller. They recently submitted a sensitivity analysis which is under review by DOT.

**DRAFT Planning Committee Resolution to authorize staff to pursue a Break -In-Access on Rte 13 at Fifth St June 10, 2020**

**WHEREAS:** Break-in-Access (BIA) refers to a modification to a State road that provides vehicular, pedestrian and/or bike access where there is currently no access, and

**WHEREAS:** A local government must apply to NYSDOT for a BIA. Such application must analyze transportation impacts and demonstrate that the proposed BIA has community-wide benefits, and

**WHEREAS:** Upon NYSDOT approval of a BIA, the local government and affected property owners must enter into agreements that define terms for, among other things, any transfer or purchase of real estate and construction of the BIA, and

**WHEREAS:** The City has long envisioned the transformation of Rte 13 into an urban boulevard – including sidewalks, landscaping and an intersection at Rte 13 and Fifth St as described in the 2015 Comprehensive Plan, the 2019 Waterfront Plan and a Federal Build Grant submitted by the City in 2018 and 2020 to fund the design and study needed to implement this idea, and

**WHEREAS:** The Project Sponsor of the Carpenter Circle Redevelopment Project has proposed a new intersection at NYS Route 13 and Fifth Street, to provide enhanced vehicular access and required emergency access to the project, and

**WHEREAS:** Community-wide benefits of the proposed BIA include:

1. Implementing the concept of Route 13 as an Urban Boulevard by re-establishing a street grid connecting the growing west side and urbanized east side of Rte 13 by, among other things, slowing traffic, providing pedestrian and bike amenities and improved crossings, adding an intersection at fifth street, installing landscaping and sidewalks and encouraging new developments to face the street
2. Developing a project that will provide up to 150 jobs, a medical facility, retail and 210 housing units on the same site in close proximity to two grocery stores, the Farmers Market, services, the Cayuga Waterfront Trail and other recreational amenities and will preserve the 2.5 acre community gardens
3. Building 45 permanently affordable housing units
4. Constructing a restricted (transit and emergency vehicle only) road connecting Third Street to Cascadilla St
5. Realizing the development of a long-vacant parcel in a highly visible and accessible location that will provide an estimated yearly \$2 million in total local taxes, including an estimated \$714,000 in new City taxes (not considering 7-10 year tax abatements)
6. Providing a full service medical facility, with services for Medicare eligible clients, within the City limits, accessible by transit walking and biking, and

**WHEREAS:** Transportation Impact Analyses provided by the Project Sponsor and reviewed by City and NYSDOT staff indicate that the project and the intersection will have a negative impact on vehicular traffic within the Rte 13 Corridor, meaning that it will take more time for vehicles to travel through the corridor at the peak morning and evening hours, and

**WHEREAS:** The Project Sponsor has proposed physical/infrastructure and programmatic mitigations for impacts to vehicular traffic. These include reduced and shared parking, implementation of a Transportation Demand Management Plan (TDMP), and improved pedestrian and bike access across Rte 13, and

**WHEREAS:** The Project Sponsor, in coordination with Engineering and Planning Staff, has developed two schematic designs for the intersection: 1) A signalized 3-way intersection with vehicular access on the west side only and pedestrian and bike crossings of Rte 13 with a protected median refuge and 2) A signalized 4-way intersection with vehicular access on both the east (Fifth street ) and west sides of Rte 13 and pedestrian and bike crossings of Rte 13 with a protected median refuge and

**WHEREAS:** the Planning Board, acting as Lead Agency in Environmental Review, did on May 26, 2020 issue a negative Declaration of environmental Significance for the Carpenter Circle Redevelopment Projects, stating that through the mitigations mentioned above, and more clearly described in the Full Environmental Assessment Form (FEAF) Part 3, the applicant had *mitigated the impacts to transportation to the maximum extent practicable, and*

**WHEREAS:** the Planning Board, did, on May 26, 2020 Grant Preliminary Site plan approval to the Project conditioned upon, among other things, acceptance of a more detailed TDMP and acceptance by the City of a plan and schedule for the financing and implementation of transportation and emergency access improvements detailed in the FEAF Part 3, or other alternative improvements deemed equally appropriate and effective by the City, and

**WHEREAS:** The applicant as well as Engineering and Planning staff continue to coordinate with NYSDOT Region 3 to reach a mutually acceptable balance between vehicular impacts and community benefits including those to multimodal transportation, and

**WHEREAS:** Staff has conducted outreach by email to Northside residents and business and Common Council has considered all comments received, and

**WHEREAS:** Common Council has received and considered recommendations from Planning and Engineering staff and has reviewed the 5/26/20 Negative Declaration of Environmental Significance for the Carpenter Circle Project, and

**WHEREAS:** Common Council understands that the BIA will require conceptual approval from NYSDOT Region 3, Final Approval from the NYSDOT Commissioner, and future legal agreements between the City, NYSDOT and the Project Sponsor, ***now therefore be it***

**RESOLVED:** That Common Council does hereby direct staff to take any and all actions to work with NYSDOT and the Project Sponsor to pursue a BIA at Rte 13 and Fifth St for a (THREE- WAY or a FOUR-WAY) intersection and associated improvement.





**CITY OF ITHACA**  
**108 E. Green St. — Third Floor Ithaca, NY 14850-5690**  
**DEPARTMENT OF PLANNING AND DEVELOPMENT**

**JoAnn Cornish, Director**

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E-Mail: [dgrunder@cityofithaca.org](mailto:dgrunder@cityofithaca.org)

Community Development/IURA – 607-274-6565

To: City of Ithaca Common Council, Planning & Economic Development Committee

From: Tom Knipe, Deputy Director for Economic Development

Date: June 4, 2020

**Re: Open C-PACE Financing Local Law and Municipal Agreement**

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The purpose of this memo is to provide background information on the proposed adoption of a new local law known as the “Energize NY Open C-PACE Financing Program” and a related resolution authorizing the City to enter into agreement with the entity who would administer this program on behalf of the City.

The City has had a Property Assessed Clean Energy (PACE) financing law and agreement on the books since 2015, with modifications made in 2018. The purpose of PACE financing is to assist qualified property owners who undertake energy efficiency measures and install renewable energy systems. To date, no property owners in the City have availed themselves of the program. However in mid-2019 New York State and the Energy Investment Corporation (EIC), the local development corporation charged by the State with overseeing and administering the program, changed it to make it more attractive to both municipalities and property owners. The name of the new program is Open C-Pace.

EIC currently has a pending project waiting for Open C-PACE to be enabled in the City. The new program has also been recently used in neighboring cities. For example, here is press from the first PACE project in Syracuse: [www.urbancny.com/energy-saving-upgrades-to-historic-syracuse-hotel-the-largest-pace-financing-investment-in-state-history/](http://www.urbancny.com/energy-saving-upgrades-to-historic-syracuse-hotel-the-largest-pace-financing-investment-in-state-history/). The City has also adopted a Green New Deal with bold carbon reduction goals.

In order to enact C-PACE, the City must adopt a new local law and enter into a new agreement with EIC, spelling out the new terms of the program. The new law would repeal and replace the existing local PACE law.

A separate memo from EIC further outlining advantages of Open C-PACE is attached, and Sarah Smiley, Director of Member Services for EIC, will attend the PEDC meeting on June 10<sup>th</sup> to present and answer questions. I am also available to answer questions about this resolution and local law at [tknipe@cityofithaca.org](mailto:tknipe@cityofithaca.org).

Attached:

- C-PACE Local Law
- Resolution – “Authorization for Municipal Agreement with the Energy Improvement Corporation to Implement the Energize NY Open C-PACE Financing Program”
- EIC Memo
- C-PACE Municipal Agreement

**Authorization for Municipal Agreement with the Energy Improvement Corporation  
to Implement the Energize NY Open C-PACE Financing Program**

WHEREAS, by Local Law No. 2015-2, the City of Ithaca created the Energize NY Benefit Financing Program (also known as the Sustainable Energy Loan Program) utilizing the Energy Improvement Corporation (EIC), a local development corporation acting on behalf of the City, to provide Property Assessed Clean Energy (PACE) financing to assist qualified property owners who undertake energy efficiency measures and install renewable energy systems; and

WHEREAS, in 2015 the City entered into a Municipal Agreement with EIC to administer the Energize NY Benefit Financing Program; and

WHEREAS, in 2018 the City amended the NY Benefit Financing Program by local law No. 2018-1 and modified its agreement with EIC to enable changes made by New York State at the local level, and

WHEREAS, in 2019 EIC launched a new PACE financing program called Open C-PACE which replaces EIC's former PACE program and enables municipalities to offer the public benefit of PACE without incurring any administrative or financial obligations, and

WHEREAS, in June 2019, Common Council adopted the Ithaca Green New Deal which included a goal to achieve a carbon neutral city by 2030 and with which Open C-PACE is in alignment, and

WHEREAS, by local law No. 2020-XX, known as the "Energize NY Open C-PACE Financing Program", the City of Ithaca repeals and replaces the City's former PACE law embodied in the provisions of Article VII, Chapter 4 of the City Code, and

WHEREAS, a new Municipal Agreement is required to establish the roles, responsibilities, and obligations of EIC and the City in the administration of the new Energize NY Open C-PACE Financing Program; now therefore be it:

RESOLVED, That the Mayor, upon review of the City Attorney, is hereby authorized to enter into a Municipal Agreement with the Energy Improvement Corporation, a local development corporation, to implement the Energize NY Open C-PACE Financing Program; this program will allow EIC, acting on behalf of the City, to make funds available to qualified property owners to fund renewable energy systems and energy efficiency measures on commercial properties; and be it further

RESOLVED, that said agreement shall be at no cost to the City; and be it further

RESOLVED, that said agreement shall be in substantially the same form as the Agreement attached hereto as "Appendix A" subject to the approval of the City Attorney.

May 28, 2020

To: City of Ithaca Common Council  
From: Energy Improvement Corporation (EIC)

RE: EIC NY Open C-PACE

In April of 2019, EIC launched a new Property Assessed Clean Energy (PACE) finance program, called Open C-PACE. This program channels private capital to commercial and non-profit building owners to make energy upgrades to their buildings, stimulating economic development and providing an important environmental benefit through reduced emissions. PACE financing is authorized by Article 5-L of NYS General Municipal Law, which enables municipalities to secure repayment of the financing through a benefit assessment lien on the improved property.

Open C-PACE replaces EIC's former "make whole" PACE program, and enables the municipality to offer the public benefit of PACE without incurring any administrative or financial obligations. To enable Open C-PACE, the City must adopt a new Local Law and authorize a new Municipal Agreement with EIC (template documents provided by EIC). These documents must remain uniform as Open C-PACE is a statewide program.

Advantages of Open C-PACE:

- **EIC will bill the property owner directly and administer collection of the payment; the municipality will not add a charge to the property's tax bill.**  
EIC converted to direct billing to remove administrative obligations from municipalities, and offer a more direct collection approach to capital providers. Separating the annual PACE installment amount from the municipal tax bill also enabled EIC to subordinate the PACE lien to municipal taxes.
- **The municipality is not responsible for guaranteeing the loan payment.**  
This change addressed concerns raised by municipalities and eliminated the need to charge higher fees to fund municipal loss reserves for new projects.
- **Funds are provided through EIC-approved capital providers, [listed on EIC's website](#).** An open market program makes more capital available to improve the building stock and fosters competition for projects, which lowers rates for property owners.
- **Financing is secured through a Benefit Assessment Lien which EIC will record on the land records of the benefited property. The Benefit Assessment Lien is subordinate to municipal taxes and senior to all other liens (consent from existing mortgage holders is required).**  
In the event of non-payment, the capital provider may enforce delinquent Annual Installment Liens by following the same timeline of foreclosure governing delinquent municipal taxes, and only after paying any taxes owed by the property owner to the municipality.

Commercial property owners and non-profits will benefit from lower fees, competitive interest rates, financing terms as long as 30 years and transferability if the property is sold. The community will benefit from more impactful clean energy projects.

EIC is a non-profit, local development corporation administering PACE finance on behalf of its member municipalities.

APPENDIX A – For Resolution “Authorization for Municipal Agreement with the Energy Improvement Corporation to Implement the Energize NY Open C-PACE Financing Program”

**MUNICIPAL AGREEMENT**

**BETWEEN**

**ENERGY IMPROVEMENT CORPORATION**

**AND**

**[PARTICIPATING MUNICIPALITY]**

**RELATING TO**

**ENERGIZE NY OPEN C-PACE FINANCING PROGRAM**

**DATED AS OF \_\_\_\_\_, 2020**

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**ENERGY IMPROVEMENT CORPORATION**  
**MUNICIPAL AGREEMENT (OPEN C-PACE)**

This Agreement made as of this \_\_\_ day of \_\_\_\_\_, 2019 (the “*Agreement*”), by and between [County/City/Town/Village], a municipal corporation organized and existing under the laws of the State of New York (the “*Participating Municipality*”) and the Energy Improvement Corporation, a local development corporation formed under the laws of the State of New York (“*EIC*”) (both the Participating Municipality and EIC may hereinafter be referred to individually as a “*Party*” and collectively as the “*Parties*”), sets forth the duties and obligations of each Party in connection with the Participating Municipality’s participation in the Energize NY Open C-PACE Financing Program (“*Open C-PACE*” or the “*Program*”), as more fully described herein. Capitalized terms used herein, unless otherwise defined herein, have the meanings assigned to them in Section 1 herein.

WHEREAS, EIC has established the Program as a sustainable energy financing program pursuant to the Enabling Act through which the member municipalities, including the Participating Municipality, may levy charges against Qualified Properties within the Participating Municipality for the purpose of promoting, facilitating and financing clean energy improvements to Qualified Properties, thereby promoting the public good by reducing greenhouse gas emissions, mitigating the effect of global climate change and lessening the burdens of government;

WHEREAS, the Participating Municipality has adopted the Local Law authorizing the provision of financing through Open C-PACE to Qualified Properties within its geographical boundaries and has authorized EIC to act on its behalf to effectuate Open C-PACE within the Participating Municipality; and

WHEREAS, EIC wishes to provide for the terms and conditions pursuant to which the Participating Municipality will participate in Open C-PACE.

Now, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

**1. Definitions.**

“Annual Installment Amount” means, with respect to each Benefited Property, the amount of the Benefit Assessment to be repaid by the Benefited Property Owner in installments made at least annually, in accordance with the schedule attached to the Finance Agreement for such Benefited Property. The Annual Installment Amount may be adjusted to reflect any Financing Charges as provided in Section 4(d) of this Agreement.

“Authority” means The New York State Energy Research and Development Authority, as defined by subdivision two of section 1851 of the Public Authorities Law of the State, or its successor.

“Benefit Assessment” means, as of the date a Finance Agreement is executed, the charge assessed against the Qualified Property, as such assessment may be modified pursuant to Section 4(d) of this Agreement, and as otherwise provided in the Finance Agreement.

“Benefit Assessment Lien” means a lien which evidences a Benefit Assessment and is recorded by EIC, on behalf of the Participating Municipality, on the land records against a Benefited Property.

“Benefited Property” means a Qualified Property for which the Qualified Property Owner has entered into a Finance Agreement for a Qualified Project.

“Benefited Property Owner” means the owner of record of a Benefited Property meeting requirements for participation in the Program as an owner.

“Business Day” means any day on which EIC is open for business and banks are not required by law to close in New York, New York.

“Eligible Costs” means costs incurred by the Benefited Property Owner in connection with a Qualified Project and the related Finance Agreement, including application fees, EIC’s Program administration fee, closing costs and fees, title and appraisal fees, professionals’ fees, permits, fees for design and drawings and any other related fees, expenses and costs, in each case as approved by EIC and the Financing Party under the Finance Agreement

“Enabling Act” means Article 5-L of the General Municipal Law of the State, or a successor law, as in effect from time to time.

“Energy Audit” is defined to have the meaning assigned thereto in the Enabling Act, as amended from time to time.

“Energy Efficiency Improvement” is defined to have the meaning assigned thereto in the Enabling Act, as amended from time to time.

“Finance Agreement” means a written agreement between a Financing Party and a Qualified Property Owner for the financing of a Qualified Project on the Qualified Property to which EIC, on behalf of the Participating Municipality, shall be a third-party beneficiary.

“Financing Charges” means all charges, fees and expenses related to the Loan including accrued interest, capitalized interest, prepayment premiums and penalties as a result of a default or late payment and costs and reasonable attorneys’ fees incurred by the Financing Party as a result of a foreclosure or other legal proceeding brought against the Benefited Property to enforce any delinquent Annual Installment Liens.

“Financing Party” means any third-party capital provider approved by EIC to provide financing to Qualified Property Owners or other financial support to Open C-PACE which has entered into an agreement with EIC to administer Open C-PACE in the Participating Municipality.

“Loan” means a loan made by a Financing Party to a Qualified Property Owner for a Qualified Project pursuant to Open C-PACE.

“Local Law” means Local Law No. \_\_ pursuant to Municipal Home Rule Law and the Enabling Act, authorizing the provision of financing through the Energize NY Open C-PACE Financing Program.

“Municipal Lien” means a lien on Benefited Property which secures the obligation to pay real property taxes, municipal charges or governmentally imposed assessments in respect of services of benefits to a Benefited Property.

“Non-Municipal Lien” means a lien on Benefited Property which secures any obligation other than the obligation to pay real property taxes, municipal charges, or governmentally-imposed assessments in respect of services or benefits to a Benefited Property Owner or Benefited Property.

“Policies and Procedures” shall have the meaning assigned thereto in Section 3(a)(ii) of this Agreement.

“Qualified Project” means the acquisition, construction, reconstruction or equipping of Energy Efficiency Improvements or Renewable Energy Systems or other projects authorized under the Enabling Act on a Qualified Property, together with a related Energy Audit, Renewable Energy System Feasibility Study and/or other requirements under or pursuant to the Enabling Act, with funds provided in whole or part by Financing Parties under the Program to achieve the purposes of the Enabling Act.

“Qualified Property” means any real property, other than a residential dwelling containing less than three dwelling units, located within the boundaries of the Participating Municipality that has been determined to be eligible to participate in the Program under the procedures for eligibility set forth under this Agreement, the Local Law and the Enabling Act and has become the site of a Qualified Project.

“Qualified Property Owner” means the owner of record of a Qualified Property meeting requirements for participation in the Program as an owner.

“Renewable Energy Systems” is defined to have the meaning assigned thereto in the Enabling Act, as amended from time to time.

“Renewable Energy System Feasibility Study” is defined to have the meaning assigned thereto in the Enabling Act, as amended from time to time.

“RPTL” means the Real Property Tax Law of the State, as amended from time to time.

“State” means the State of New York.

## **2. Representation and Warranties of the Parties.**

(a) EIC.

- (i) EIC hereby represents that it is a local development corporation, duly organized under section 1411 of the Not-For-Profit Corporation Law of the State, authorized to implement the Program by arranging Loans to Qualified Property Owners and providing for repayment of the Loans from monies collected by or on behalf of the Participating Municipality as a Benefit Assessment.



- (ii) EIC represents and warrants that it has complied with all laws and regulations concerning its organization, its existence and the transaction of its business and that all necessary steps have been taken to authorize it to execute, deliver and perform its respective obligations under this Agreement, and no consent or approval of any third-party is required for EIC's execution of this Agreement or the performance of its obligations contained herein. The individual executing this Agreement on behalf of EIC has been and is duly authorized to bind EIC.

(b) Participating Municipality.

- (i) *Authority.* The Participating Municipality is a municipal corporation, constituting a tax district as defined in Section 1102 of the RPTL of the State, duly organized and existing under the laws of the State and has full legal right, power and authority to (i) adopt the Local Law, (ii) assess, collect, remit and assign Benefit Assessments for Benefited Properties located within its geographical boundaries, (iii) levy Benefit Assessment Liens against Benefited Properties located within its geographical boundaries, (iv) conduct its business and own its properties, (v) enter into this Agreement and to comply with its terms, and (vi) carry out and consummate, by contract or otherwise, all other transactions contemplated by its participation in Open C-PACE.
- (ii) *Adoption of Local Law.* The Participating Municipality has on \_\_\_\_\_ adopted the Local Law authorizing the provision of financing through Open C-PACE to Qualified Properties for Qualified Projects.
- (iii) *Approvals and Consents.* The Participating Municipality has duly approved the execution and delivery of this Agreement and approved implementation of Open C-PACE by EIC and has authorized EIC to act on its behalf in effectuating Open C-PACE; and any and all consents, authorizations and approvals of any third-party required with respect thereto have been obtained.
- (iv) *Capacity.* The Participating Municipality has the legal, institutional, managerial, technical, contractual and financial capability to (a) ensure adequate and timely assessment and collection of property taxes in the Participating Municipality, (b) levy and record Benefit Assessment Liens on Benefited Properties within its geographical boundaries, and (c) assign or authorize EIC, on its behalf, to assign the Benefit Assessment Liens to third-party capital providers in connection with the financing of Qualified Projects.
- (v) *Binding Obligation.* This Agreement has been duly authorized, executed and delivered by the Participating Municipality and constitutes a legal, valid and binding obligation of the Participating Municipality except as

enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and the application of general principles of equity by a court of competent jurisdiction (whether in an action of law or a proceeding in equity); the defense of sovereign immunity is not available to the Participating Municipality in any proceedings by EIC to enforce any of the obligations of the Participating Municipality under this Agreement.

- (vi) *No Action.* There is no claim, action, suit, litigation, proceeding, arbitration, inquiry or investigation of any kind, at law or in equity, before or by any court, public board or body, pending or known to be threatened against the Participating Municipality, nor is there any basis therefore, (i) affecting the creation, organization or existence of the Participating Municipality or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin or in any way contest the execution of this Agreement, the Finance Agreement or any other agreement entered into in connection with the Participating Municipality's participation in the Program, or (iii) seeking to prohibit, restrain, enjoin or in any way contesting or affecting the validity or enforceability of the Local Law, this Agreement or any agreement or instrument relating to any of the foregoing or used or contemplated for use in the consummation of the transactions contemplated by any of the foregoing.
- (vii) *No Material Default.* The Participating Municipality is not in material default under any finance agreement, note, bond, mortgage or other instrument evidencing or securing indebtedness of the Participating Municipality. The execution and delivery of this Agreement, and the adoption of the Local Law and compliance with the respective provisions hereof and thereof, will not conflict with or constitute a breach of or material default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any agreement or other instrument to which the Participating Municipality is a party or by which it or any of its property is bound.

### **3. Obligations of EIC.**

It is understood by the Parties that EIC will be responsible for the performance of the following duties:

- (a) Program Requirements.
  - (i) The establishment and administration of Open C-PACE to provide financing to Qualified Properties within the Participating Municipality in order to promote, facilitate and finance Qualified Projects in accordance with the terms of the Local Law and this Agreement.

- (ii) Receive and review (or provide for the review of) applications submitted by Qualified Property Owners within the Participating Municipality for the financing of Qualified Projects, and the approval or disapproval of such applications in accordance with the Authority's guidelines, any restrictions imposed by the Participating Municipality, and the policies and procedures adopted by EIC with respect to Open C-PACE (the "*Policies and Procedures*"). The governing Board of EIC reserves the right to reject an application for financing for any reason.
  
- (iii) Prepare and deliver to the Participating Municipality by February 15<sup>th</sup> of each calendar year an annual report (the "*Annual Report*") which Annual Report may be filed by the Participating Municipality on the land records and shall contain information related to each Benefited Property within the Participating Municipality through December 31<sup>st</sup> of the immediately preceding calendar year, identified in the Annual Report by address and Tax Map Identification (i.e. section, block and lot) including:
  - A. A list of each Benefited Property for which a Qualified Property Owner executed a Finance Agreement during the prior calendar year (for which a Benefit Assessment Lien was added by EIC, on behalf of the Participating Municipality, to its land records in accordance with Section 3(d) below);
  - B. A list of each Benefited Property within the Participating Municipality where the Benefit Assessment and all obligations under the related Finance Agreement have been satisfied or paid in full during the prior calendar year, including the satisfaction date and a copy of the notice of satisfaction;
  - C. The total Annual Installment Amount paid to each Financing Party for each Benefited Property in the Participating Municipality during the prior calendar year;
  - D. For each Benefited Property with an outstanding Benefit Assessment, (i) the Annual Installment Amount collected in the current year, (ii) any amount of the Annual Installment Amount due and remaining uncollected in the current year, including any Financing Charges, and (iii) the Annual Installment Amount due to be collected in the following calendar year; and
  - E. All other information EIC may deem to be relevant to each Benefited Property within the Participating Municipality.

(b) Qualified Project Requirements.

If a Qualified Property Owner requests financing from EIC under the Program, EIC shall:

- (i) Require performance of an Energy Audit or Renewable Energy System Feasibility Analysis on the Qualified Property that assesses the expected energy cost savings of the Energy Efficiency Improvements or Renewable Energy Systems over the useful life of such Energy Efficiency Improvements and/or Renewable Energy Systems before approving such financing;
  - (ii) Impose requirements and criteria to ensure that the proposed Energy Efficiency Improvements or Renewable Energy Systems are consistent with the purpose of the Program;
  - (iii) Require that the Qualified Property Owner obtain the consent of any existing holder of a mortgage on the Qualified Property substantially in the form of Exhibit C attached hereto, prior to the recording of a Benefit Assessment Lien against the Qualified Property;
  - (iv) Receive the certificates of completion executed by the Benefited Property Owner or its duly authorized representative during or following installation or construction of the Qualified Project to determine compliance with the Policies and Procedures; and
  - (v) Verify and report to the Participating Municipality on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by the Program.
- (c) Finance Agreement for Qualified Project. The Financing Party and the Qualified Property Owner shall enter into a Finance Agreement for the Qualified Project which shall set forth the terms and conditions for the disbursement and repayment of the Loan and the duties and obligations of the parties with respect to the acquisition, construction and installation of the Qualified Project. EIC, on behalf of the Participating Municipality, shall be a third-party beneficiary to the Finance Agreement. The Finance Agreement shall state (a) the legal description of the Benefited Property, (b) the total Benefit Assessment that will be levied against the Benefited Property which shall include the cost of the Qualified Project together with any Eligible Costs and Financing Charges approved by EIC and by the Financing Party, (c) the fixed rate of interest on the Loan, and (d) a schedule of the Annual Installment Amounts due in each year of the Loan. Additionally, the Finance Agreement shall disclose the Financing Charges and risks associated with participation in the Program, including the risk of foreclosure in case of nonpayment of any Annual Installment Amount. Upon execution of the Finance Agreement by the Financing Party and the Qualified Property Owner, the property

that is the subject of the Finance Agreement shall be deemed a “Benefited Property.”

(d) Levy and Recording of Benefit Assessment Lien.

(i) Upon execution of a Finance Agreement, EIC, on behalf of the Participating Municipality, shall promptly record the Benefit Assessment Lien against the Benefited Property in the land records for properties in the Participating Municipality. The Benefit Assessment Lien shall be substantially in the form of Exhibit A to this Agreement and include a legal description of the Benefited Property and a schedule of the Annual Installment Amounts due in each year of the Loan. There shall be no charge, mortgage recording tax or other fee for recording the Benefit Assessment Lien on the land records for the Participating Municipality in the same manner as if recorded by the Participating Municipality. As provided in the Enabling Act and the Local Law, the Benefit Assessment levied pursuant to this Agreement and the interest, fees and any penalties thereon shall constitute a lien against the Benefited Property on which they are made until they are paid. The Benefit Assessment shall be payable by the Benefited Property Owner in Annual Installment Amounts as provided in the Finance Agreement. Only delinquent Annual Installment Amounts that are due and owing may be subject to enforcement.

(ii) Pursuant to the Finance Agreement, the final amount of the Benefit Assessment may be adjusted after the recording of the Benefit Assessment Lien on the land records for the Participating Municipality. Such an adjustment would likely be the result of a change in the energy improvement service contract amount during the construction period, additional Financing Charges, or an amendment to the Finance Agreement. In the event that the final Benefit Assessment needs to be adjusted at the completion of the Qualified Project, or any other time, EIC, on behalf of the Participating Municipality, will record the new Benefit Assessment Lien on the land records to reflect such adjustment, together with a new schedule of Annual Installment Amounts. Such recording of the new Benefit Assessment Lien against the Benefited Property shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Participating Municipality.

(e) Annual Installment Liens.

(i) As provided in the Local Law, each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall become a lien on the Benefited Property as of the first day of January of the fiscal year for which levied (the “Annual Installment Lien”) and shall remain a lien until paid. Payment to the Financing Party shall be considered payment for this purpose. Delinquent Annual Installment Amounts may accrue Financing Charges as may be provided in the Finance Agreement. Any additional

Financing Charges imposed by the Financing Party pursuant to the Finance Agreement shall increase the Annual Installment Amount and the Annual Installment Lien for the year in which such overdue payments were first due.

- (ii) The Benefit Assessment Lien shall be automatically reduced annually by the amount of each Annual Installment Lien when each Annual Installment Lien becomes a lien. Each Annual Installment Lien shall be subordinate to all Municipal Liens, whether created by Section 902 of the RPTL or any other State or Local Law. No Annual Installment Amount shall be recovered by the Participating Municipality, EIC, or any assignee upon foreclosure, sale or other disposition of the Benefited Property unless and until all Municipal Liens are fully discharged. Each Annual Installment Lien, however, shall have priority over all Non-Municipal Liens, irrespective of when created, except as otherwise required by law.
  - (iii) Neither the Benefit Assessment Lien nor any Annual Installment Lien shall be extinguished or accelerated in the event of a default or bankruptcy of the Benefited Property Owner. Each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall be collected by EIC, on behalf of the Participating Municipality, at the same time and in the same manner as real property taxes or municipal charges. Each Annual Installment Lien shall remain a lien until paid. Amounts collected in respect of an Annual Installment Lien shall be remitted to EIC or the Financing Party, as may be provided in the Finance Agreement.
- (f) Final Payment and Release. Upon notice from the Financing Party that the Benefit Assessment has been satisfied and paid in full, together with all Eligible Costs and Financing Charges provided under the Finance Agreement, EIC, on behalf of the Participating Municipality, will execute a Satisfaction and Release of Benefit Assessment Lien (the “Release”) substantially in the form attached hereto as Exhibit D, and record the Release on the land records for the Participating Municipality. There shall be no charge, mortgage recording tax or other fee for recording the Release on the land records for the Participating Municipality in the same manner as if recorded by the Participating Municipality.
- (g) Billing and Collection of Annual Installment Amounts.
- (i) The Finance Agreement shall provide for the repayment of the Benefit Assessment in Annual Installment Amounts. EIC will act as the Participating Municipality’s agent in the billing and collection of the Benefit Assessment for each Benefited Property listed in the Annual Report in accordance with the related Finance Agreement.
  - (ii) In the event of a default in payment of any Annual Installment Amount for a Benefited Property, EIC agrees to take at least the following steps to

collect the delinquent Annual Installment Amount on behalf of the Participating Municipality:

- A. Mail a written notice of delinquency and demand for payment to the Benefited Property Owner by both certified mail, return receipt requested, and first class mail; and
- B. Mail a second notice of delinquency to the Benefited Property Owner by both certified mail, return receipt requested, and first class mail at least 30 days after the date of the first notice if the delinquency is continuing.

(iii) If the Benefited Property Owner fails to cure the delinquency within 30 days after the mailing of the second notice of delinquency, then the Financing Party may redeem the Benefited Property and pursue collection of the delinquent Annual Installment Amounts as provided in paragraph (h) of this Section 3.

(h) Collection of Delinquent Payments.

(i) If any Benefited Property Owner fails to pay an Annual Installment Amount, the Financing Party may redeem the Benefited Property by paying the amount of all unpaid Municipal Liens thereon, and thereafter have the right to collect any amounts in respect of an Annual Installment Lien by foreclosure pursuant to the RPTL or any other remedy available at law.

(ii) EIC shall provide written notice to the Participating Municipality of the institution of a judicial foreclosure or other proceeding against any Benefited Property located within the Participating Municipality for payment of delinquent Annual Installment Amounts.

**4. Obligations of the Participating Municipality.**

(a) Appointment of EIC as Agent. The Participating Municipality hereby appoints EIC to act as its agent in the administration of the Open C-PACE Program within the Participating Municipality and in its dealings with Financing Parties, Qualified Property Owners and Benefited Property Owners. EIC is authorized on behalf of the Participating Municipality to levy and record the Benefit Assessment Lien, any amendments or assignments thereof and the Release in the land records for properties in the Participating Municipality without charge, and to take any reasonable actions in the performance of its duties hereunder.

(b) Assignment of Benefit Assessment Lien.

(i) The Participating Municipality authorizes EIC, on its behalf, to sell or assign any and all Benefit Assessment Liens and Annual Installment Liens to a Financing Party that provides financing to a Qualified Property pursuant to a Finance Agreement. The Assignment of Benefit Assessment Lien shall

be in substantially the form attached hereto as Exhibit B, and shall be filed by EIC, on behalf of the Participating Municipality, in the land records for the Participating Municipality at the same time as the Benefit Assessment Lien.

The Financing Party may sell or assign for consideration any and all Benefit Assessment Lien and Annual Installment Liens received from EIC, on behalf of the Participating Municipality, subject to certain conditions provided in the administration agreement between EIC and the Financing Party. Any such assignment shall be in a form acceptable to EIC, and shall be filed by the Financing Party or, at its request and upon indemnification, by EIC, on the land records for the Participating Municipality. The assignee or assignees of such Benefit Assessment Liens and Annual Installment Liens shall have and possess the same powers and rights at law or in equity as EIC would have had if the Benefit Assessment Lien and Annual Installments Liens had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection. There shall be no charge, mortgage recording tax or other fee for recording of any assignment on the land records for the Participating Municipality if filed by EIC, in the same manner as if recorded by the Participating Municipality.

(c) Notices.

- (i) Within 10 days of EIC's request, the Participating Municipality will provide written notice to EIC of any delinquency in the payment of real property taxes by a Benefited Property Owner if the Benefited Property is subject to a Benefit Assessment Lien.
- (ii) The Participating Municipality will also provide written notice to EIC of any sale or assignment of its real property taxes or any institution of a judicial foreclosure or other proceeding against any Benefited Property for delinquent real property taxes if such Benefited Property is subject to a Benefit Assessment Lien.

(d) Promotion of Program; Assistance to EIC; Modification of Program.

- (i) The Participating Municipality shall use good faith efforts to assist EIC in local marketing efforts and outreach to the local business community to encourage participation in the Program such as including Program information on the Participating Municipality's website.
- (ii) The Participating Municipality shall use good faith efforts to assist in gathering and providing information for EIC to administer the Program.
- (iii) Except with respect to Qualified Properties for which an application has previously been submitted, the Participating Municipality may at any time modify Open C-PACE by changing the types of properties that may receive financing for Qualified Projects. The Participating Municipality shall



provide written notice to EIC of such proposed modification. The proposed modification shall only become effective upon written approval from EIC provided to the Participating Municipality, which shall not be unreasonably withheld. Such approval shall have no effect on the duties and obligations owed by each Party hereto in connection with this Agreement and any Benefited Property for which a Finance Agreement was executed prior thereto.

**5. Indemnification**

EIC agrees that it will protect, defend, indemnify and hold harmless the Participating Municipality and its officers, agents and employees from and against all claims, demands, causes of action, damages, judgments, losses and expenses, including reasonable attorney's fees, arising out of or in connection with the negligent actions of EIC's officers, employees and agents under this Agreement. This provision shall survive termination of this Agreement.

**6. Term.**

The term of this Agreement shall commence upon the date first written above. This Agreement shall be in full force and effect until all of the Benefit Assessments for Benefited Properties in the Participating Municipality have been paid in full or deemed no longer outstanding. The Participating Municipality may opt-out of continuation in the program at any time on sixty (60) days advance notice to EIC, provided that the provisions of this Agreement shall continue with regard to Benefit Assessments assessed prior to such termination date until the Benefit Assessments have been paid in full or are no longer outstanding.

**7. Default.**

Each Party shall give the other Party written notice of any breach of any covenant or agreement under this Agreement and shall allow the defaulting Party 30 days from the date of its receipt of such notice within which to cure any such default or, if it cannot be cured within 30 days, to commence and thereafter diligently pursue to completion, using good faith efforts to effect such cure and to thereafter notify the other Party of the actual cure of any such default. The Parties shall have all other rights and remedies provided by law, including, but not limited to, specific performance, provided, however, in no event shall either Party have the right to terminate this Agreement prior to the expiration of the Term, except as provided in accordance with Section 6 of this Agreement.

**8. Remedies Upon Default.**

Should the Participating Municipality default in any of its obligations hereunder, EIC shall be entitled to any remedy it may have at law and as set forth below. EIC may utilize any one or all of these remedies at EIC's sole discretion:

- (a) EIC may sue the Participating Municipality for specific enforcement of this Agreement;

- (b) EIC shall have the right to discontinue providing any new financings to Qualified Properties located within the Participating Municipality.
- (c) EIC may suspend the Participating Municipality's membership in EIC.
- (d) EIC shall have all other rights and remedies provided by law.

**9. Miscellaneous.**

(a) Assignment or Transfer.

Except as provided in Section 4(b) hereof, neither Party may assign or transfer its rights or obligations under this Agreement to another unit of local government, political subdivision or agency of the State or to a private party or entity without the prior written consent of the other Party.

(b) Severability.

If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Agreement will be construed and enforced as if the illegal or invalid clause, provision or section has not been contained in it.

(c) Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

(d) Notices.

Any and all notices, demands, or other communications required or desired to be given hereunder by either Party shall be delivered electronically and in writing by certified mail, return receipt requested as follows:

EIC:

Susan Morth  
CEO  
Energy Improvement Corporation  
2051 Baldwin Road  
Yorktown Heights, NY 10598  
E-mail: [susanm@energizeny.org](mailto:susanm@energizeny.org)

Alain Pierroz  
Chief Operating and Financial Officer  
Energy Improvement Corporation  
2051 Baldwin Road  
Yorktown Heights, NY 10598  
E-mail: [alainp@energizeny.org](mailto:alainp@energizeny.org)

With a copy to:

Anna Lee, Esq.  
Partner  
Norton Rose Fulbright US LLP  
1301 Avenue of the Americas  
New York, New York 10019  
E-mail: [anna.lee@nortonrosefulbright.com](mailto:anna.lee@nortonrosefulbright.com)

PARTICIPATING MUNICIPALITY: \_\_\_\_\_

With a copy to:

[Participating Municipality's counsel]

Either Party hereto may change its address for purposes of this Section by providing written notice to the other Party in the manner provided above.

(e) Amendment and Waivers.

Except as otherwise set forth in this Agreement, any amendment to or waiver of any provision of this Agreement must be in writing and mutually agreed to by EIC and the Participating Municipality.

(f) Governing Law.

This Agreement shall be construed and governed in accordance with the laws of the State of New York. Any legal action to be brought under this Agreement must be instituted in State or Federal Courts having jurisdiction located in Westchester County, New York.

(g) Entire Agreement.

This instrument constitutes the entire agreement between the Parties with respect to the Open C-PACE Program and supersedes all previous discussions, understandings and agreements between the Parties relating to the Open C-PACE Program.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above.

Date: \_\_\_\_\_, 20\_\_

ENERGY IMPROVEMENT CORPORATION

By: \_\_\_\_\_

Name: Susan Morth

Title: Executive Director

Date: \_\_\_\_\_, 20\_\_

PARTICIPATING MUNICIPALITY NAME:

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A**

**CERTIFICATE OF LEVY AND LIEN OF BENEFIT ASSESSMENT**

Energy Improvement Corporation, a local development corporation formed under the laws of the State of New York (“EIC”), acting on behalf of [County/City/Town/Village] (the “Participating Municipality”) pursuant to Article 5-L of the General Municipal Law of the State of New York and the Local Law adopted by the Participating Municipality establishing the Energize NY Open C-PACE Financing Program in the Participating Municipality, and the Municipal Agreement between the Participating Municipality and EIC dated \_\_\_\_\_, 2019, HEREBY LEVIES A BENEFIT ASSESSMENT AGAINST AND LIEN UPON certain real property commonly referred to as \_\_\_\_\_ and described more particularly in the attached **Exhibit A** (the “Benefited Property”), situated in the Participating Municipality and owned on the date hereof in whole or in part by \_\_\_\_\_ (the “Benefited Property Owner”), said levy and lien shall secure the repayment of financing for energy improvements or other improvements from time to time authorized by the Enabling Act made or to be made to the Benefited Property pursuant to that certain Finance Agreement, by and between the Benefited Property Owner and [Capital Provider] dated \_\_\_\_\_, 2019, as may be amended (the “Finance Agreement”). The amount and repayment of said levy and lien, as determined by EIC, on behalf of the Participating Municipality, are as follows: an installment payment schedule set forth in the attached **Exhibit B** is in effect for payment of the Benefit Assessment, and is based on the principal amount of the Benefit Assessment of \$\_\_\_\_\_, with interest thereon at a fixed rate equal to \_\_\_\_\_% per annum, with [#] annual installments of principal and interest (the “Annual Installment Amount”) due and payable pursuant to the Finance Agreement. The Annual Installment Amount may be adjusted to reflect any permitted prepayments received or additional interest or charges due to late payments or defaults, as provided in the Finance Agreement.

Each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall become a lien on the Benefited Property as of the first day of January of the fiscal year for which levied (the “Annual Installment Lien”) and shall remain a lien until paid. In the event that any Annual Installment Amount shall remain unpaid for thirty days after the same shall become due and payable, interest and other charges shall be charged upon the unpaid Annual Installment Amount at the rate of \_\_\_\_\_% per annum, as provided in the Finance Agreement. All existing holders of any mortgage on the Benefited Property have consented to the levy and assessment of the Benefit Assessment Lien by the Participating Municipality against the Benefited Property, and copies of such consents have been provided to EIC.

At such time as the principal and interest payments of the Benefit Assessment have been satisfied and paid in full, a Satisfaction and Release of Benefit Assessment Lien shall be filed by EIC, on behalf of the Participating Municipality, in the land records for the Participating Municipality evidencing such release.

This Certificate constitutes a certificate of lien and is filed pursuant to the provisions of the Local Law to evidence a lien for the Benefit Assessment levied upon the Benefited Property for the special benefits conferred upon said Benefited Property by the energy improvements related thereto. Pursuant to the Act, this lien shall take precedence over all other liens or encumbrances

except a lien for taxes of the Participating Municipality on real property, municipal charges, or governmentally imposed assessments in respect of services or benefits to the Property, which liens shall have priority over this lien.

The portion of this Certificate which constitutes a levy of Benefit Assessment and notice of installment payment of Benefit Assessment is filed pursuant to the provisions of the Local Law and the General Municipal Law of the State of New York, as amended.

Dated at \_\_\_\_\_, New York this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

By: \_\_\_\_\_

Energy Improvement Corporation

Name:

Title:

Acknowledged and Agreed:

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Property Owner

STATE OF NEW YORK )  
 ) ss. \_\_\_\_\_, 2019  
COUNTY OF \_\_\_\_\_ )

On this the \_\_\_ day of \_\_\_\_\_ 20\_\_\_, before me \_\_\_\_\_,  
the undersigned officer, personally appeared \_\_\_\_\_, known to me  
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument and  
acknowledged that he/she executed the same for the purposes therein contained and that he/she  
acknowledged the same to be his/her free act and deed, before me, in his/her capacity as an  
authorized officer of the Energy Improvement Corporation, acting on behalf of  
[County/City/Town/Village].

\_\_\_\_\_  
Notary Public





## **Exhibit A- Property Description**

**Exhibit B- Payment Schedule**

Received for Record: \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ A.M./P.M.

Recorded in the \_\_\_\_\_ land records at Volume \_\_\_\_\_, Page \_\_\_\_\_.

\_\_\_\_\_  
Clerk of [County/City/Town/Village]

**EXHIBIT B**

**ASSIGNMENT OF BENEFIT ASSESSMENT LIEN**

KNOW ALL PERSONS BY THESE PRESENTS, that Energy Improvement Corporation, a local development corporation formed under the laws of the State of New York (hereinafter referred to as “EIC” or the “Assignor”), acting on behalf of [County/City/Town/Village], a New York municipal corporation (the “Municipality”), pursuant to Article 5-L of the General Municipal Law of the State of New York and the Local Law adopted by the Municipality establishing the Energize NY Open C-PACE Financing Program in the Municipality, and the Municipal Agreement between the Municipality and EIC dated \_\_\_\_\_, 2019 (the “Municipal Agreement”), in consideration of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, hereby quit-claims, grants, bargains, sells, conveys, assigns, transfers and sets over unto [Capital Provider] (the “Assignee”) under that certain Finance Agreement, by and between the Benefited Property Owner and [Capital Provider] dated \_\_\_\_\_, 2019, as may be amended (the “Finance Agreement”), without warranty and without recourse, all of its right, title and interest in and to that certain Benefit Assessment Lien and each Annual Installment Lien and the debts secured thereby together with such interest, fees, and expenses of collection as may be provided by law, filed by EIC, on behalf of the Municipality, on the land records, on property owned on the date hereof in whole or in part by \_\_\_\_\_ and as described on **Exhibit A** and also commonly referred to as \_\_\_\_\_, attached hereto and made a part hereof (the “Benefit Assessment Lien”), to have and to hold the same unto the said Assignee, its successor and assigns forever.

This Assignment is made, given and executed pursuant to the authority granted to Assignor as agent of the Municipality pursuant to Article 5-L of the General Municipal Law of the State of New York, the Local Law and the Municipal Agreement.

By execution of this Assignment, the Assignor assigns to Assignee, and the Assignee assumes, all of the rights at law or in equity, obligations, powers and duties as the Assignor or the Municipality would have with respect to the Benefit Assessment Lien, if the Benefit Assessment Lien had not been assigned with regard to precedence and priority of such Benefit Assessment Lien, the accrual of interest, charges, fees and expenses of collection, pursuant to the Local Law.

This Assignment by the Assignor is absolute and irrevocable and the [County/City/Town/Village] shall retain no interest, reversionary or otherwise, in the Benefit Assessment Lien.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Assignor

By: \_\_\_\_\_  
Energy Improvement Corporation  
Name:  
Title:

Acknowledged and Agreed:

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
[Capital Provider]

STATE OF NEW YORK )  
 ) ss. \_\_\_\_\_, 2019  
COUNTY OF \_\_\_\_\_ )

On this the \_\_\_ day of \_\_\_\_\_ 20\_\_\_, before me \_\_\_\_\_,  
the undersigned officer, personally appeared \_\_\_\_\_, known to me  
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument and  
acknowledged that he/she executed the same for the purposes therein contained and that he/she  
acknowledged the same to be his/her free act and deed, before me, in his/her capacity as an  
authorized officer of the Energy Improvement Corporation, acting on behalf of  
[County/City/Town/Village].

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) ss. \_\_\_\_\_, 2019  
COUNTY OF \_\_\_\_\_ )

On this the \_\_\_ day of \_\_\_\_\_ 20\_\_\_, before me \_\_\_\_\_,  
the undersigned officer, personally appeared \_\_\_\_\_, known to me  
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument and  
acknowledged that he/she executed the same for the purposes therein contained and that he/she  
acknowledged the same to be his/her free act and deed, before me, in his/her capacity as an  
authorized officer of [Capital Provider], and free act and deed of said body politic and corporate,  
before me.

\_\_\_\_\_  
Notary Public

Received for Record: \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ A.M./P.M.

Recorded in the \_\_\_\_\_ land records at Volume \_\_\_\_\_, Page \_\_\_\_\_.

\_\_\_\_\_  
Clerk of [County/City/Town/Village]



**EXHIBIT C**

**FORM OF CONSENT OF MORTGAGE HOLDERS**

**Date:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Owner:** \_\_\_\_\_  
**Municipality:** \_\_\_\_\_  
**APN:** \_\_\_\_\_  
**Loan Number:** \_\_\_\_\_  
**Estimated Annual Installment Amount:**  
**Maximum Benefit Assessment Amount:**

This Mortgage Holder Consent to Benefit Assessment (this “Consent”) is given by the undersigned entity, which is a mortgage holder (“Mortgage Holder”) on the above-referenced property (the “Property”) with respect to the above-referenced loan (the “Loan”).

**RECITALS**

Mortgage Holder is hereby notified that the above-referenced owner of the Property (the “Property Owner”) intends to finance installation on the Property of certain energy efficiency and/or renewable energy improvements that will be permanently fixed to the Property (the “Authorized Improvements”) by participating in the Energize NY Open C-PACE Financing Program (the “Program”), sponsored by the Municipality. New York State General Municipal Law Article 5-L authorizes municipal corporations to create a sustainable energy financing program, such as the Program, to provide loans to property owners to achieve statewide energy efficiency and renewable energy goals, reduce greenhouse gas emissions and mitigate the effect of global climate change, and advance a clean energy economy.

Mortgage Holder understands that, as a result of an agreement between Energy Improvement Corporation (“EIC”), on behalf of the Municipality, and the Property Owner, the Benefit Assessment described in the Notice will be levied on the Property, and that the Benefit Assessment will be collected in installments, in the same manner as and subject to the same remedies and lien priorities as real property taxes or municipal charges.

**CONSENT**

The undersigned hereby represents that it is authorized to execute this Consent on behalf of Mortgage Holder. Mortgage Holder hereby confirms:

A. Mortgage Holder understands that, as a result of an agreement between EIC, on behalf of the Municipality, and the Property Owner, the Benefit Assessment described herein will be levied on the Property, and that the Benefit Assessment will be collected in installments in the same manner as and subject to the same remedies and lien priorities as real property taxes or municipal charges. Mortgage Holder acknowledges that each annual installment in respect of the Benefit

Assessment shall create an Annual Installment Lien, and if such annual installment is not paid when due, each Annual Installment Lien shall constitute a statutory lien on the Property that is superior to the lien of the Loan.

B. Mortgage Holder acknowledges that the Benefit Assessment constitutes a statutory lien on the Property that is superior to the lien of the Loan.

C. This Consent shall not prohibit Mortgage Holder from pursuing any and all rights and remedies available to collect from Property Owner all amounts due to it under the Loan documents. Mortgage Holder shall have the right to cure any nonpayment by Property Owner of real property taxes and assessments (including the Benefit Assessment) to the same extent as Mortgage Holder has a right to cure nonpayment of real property taxes.

D. Mortgage Holder agrees that the levy of the Benefit Assessment will not constitute an event of default or trigger the exercise of any remedies under the Loan documents.

Mortgage Holder hereby acknowledges that the Property Owner and the Municipality will rely on the representation and consent of Mortgage Holder set forth in this Consent.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019

MORTGAGE HOLDER

By: \_\_\_\_\_

Name:

Title:



**EXHIBIT D**

**SATISFACTION AND RELEASE OF BENEFIT ASSESSMENT LIEN**

Energy Improvement Corporation, a local development corporation formed under the laws of the State of New York (“EIC”), acting on behalf of [County/City/Town/Village] (the “Participating Municipality”) pursuant to Article 5-L of the General Municipal Law of the State of New York (the “Enabling Act”) and the Local Law adopted by the Participating Municipality establishing the Energize NY Open C-PACE Financing Program in the Participating Municipality, and the Municipal Agreement between the Participating Municipality and EIC dated \_\_\_\_\_, 2019, having filed a Certificate of Levy and Lien of Benefit Assessment against the property of [Property Owner], on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ in the land records of \_\_\_\_\_, Book \_\_\_\_\_ page \_\_\_\_\_ on the following described real property in \_\_\_\_\_, New York in the amount of \$\_\_\_\_\_:

[Property description]

NOW, THEREFORE, the undersigned does hereby acknowledge satisfaction of the Lien of Benefit Assessment and does direct the Clerk of the [County/City/Town/Village] to release, cancel and discharge the Benefit Assessment Lien in accordance with the Enabling Act and the Local Law.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Energy Improvement Corporation

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged and Agreed:

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
[Capital Provider]

Acknowledged and Agreed:

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
[Property Owner]

STATE OF NEW YORK )  
 ) ss. \_\_\_\_\_, 2019  
COUNTY OF \_\_\_\_\_ )

On this the \_\_\_ day of \_\_\_\_\_ 20\_\_\_, before me \_\_\_\_\_,  
the undersigned officer, personally appeared \_\_\_\_\_, known to me  
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument and  
acknowledged that he/she executed the same for the purposes therein contained and that he/she  
acknowledged the same to be his/her free act and deed, before me, in his/her capacity as an  
authorized officer of the Energy Improvement Corporation, acting on behalf of  
[County/City/Town/Village].

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) ss. \_\_\_\_\_, 2019  
COUNTY OF \_\_\_\_\_ )

On this the \_\_\_ day of \_\_\_\_\_ 20\_\_\_, before me \_\_\_\_\_,  
the undersigned officer, personally appeared \_\_\_\_\_, known to me  
(or satisfactorily proven) to be the person whose name is subscribed to the within instrument and  
acknowledged that he/she executed the same for the purposes therein contained and that he/she  
acknowledged the same to be his/her free act and deed, before me, in his/her capacity as an  
authorized officer of the [Capital Provider], and the free act and deed of said body politic and  
corporate, before me.

\_\_\_\_\_  
Notary Public



Received for Record: \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ A.M./P.M.

Recorded in the \_\_\_\_\_ land records at Volume \_\_\_\_\_, Page \_\_\_\_\_.

\_\_\_\_\_  
Clerk of [County/City/Town/Village]



**A LOCAL LAW TO ESTABLISH A SUSTAINABLE ENERGY LOAN PROGRAM (OPEN C-PACE) IN THE CITY OF ITHACA**

Be it enacted by the City of Ithaca (the “Municipality”) as follows:

**Section 1.** This local law shall be known as the “Energize NY Open C-PACE Financing Program” and shall repeal and replace the existing provisions of Article VII, Chapter 4 of the City Code. This local law shall read as follows:

**ARTICLE I**

**§1. Legislative findings, intent and purpose, authority.**

- A. It is the policy of both the Municipality and the State of New York (the “State”) to achieve energy efficiency and renewable energy improvements, reduce greenhouse gas emissions, mitigate the effect of global climate change, and advance a clean energy economy. The Municipality finds that it can fulfill this policy by providing property assessed clean energy financing to Qualified Property Owners (as defined below) for the installation of renewable energy systems and energy efficiency measures. This local law establishes a program that will allow the Energy Improvement Corporation (as defined below, “EIC”), a local development corporation, acting on behalf of the Municipality pursuant to the municipal agreement (the “Municipal Agreement”) to be entered into between the Municipality and EIC, to make funds available to Qualified Property Owners that will be repaid through charges on the real properties benefited by such funds, thereby fulfilling the purposes of this local law and accomplishing an important public purpose. This local law provides a method of implementing the public policies expressed by, and exercising the authority provided by, Article 5-L of the General Municipal Law (as defined below, the “Enabling Act”).
- B. The Municipality is authorized to execute, deliver and perform the Municipal Agreement and otherwise to implement this Energize NY Open C-PACE Financing Program pursuant to the Constitution and laws of New York, including particularly Article IX of the Constitution, Section 10 of the Municipal Home Rule Law, the Enabling Act and this local law.
- C. This local law, which is adopted pursuant to Section 10 of the Municipal Home Rule Law and the Enabling Act shall be known and may be cited as the “Energize NY Open C-PACE Local Law”.

**§2. Definitions**

- A. Capitalized terms used but not defined herein have the meanings assigned in the Enabling Act.
- B. For purposes of this local law, and unless otherwise expressly stated or unless the context requires, the following terms shall have the meanings indicated:

**Annual Installment Amount** – shall have the meaning assigned in Section 8, paragraph B.

**Annual Installment Lien** – shall have the meaning assigned in Section 8 paragraph B.

**Authority** – the New York State Energy Research and Development Authority.

**Benefit Assessment Lien** – shall have the meaning assigned in Section 3, paragraph A.

**Benefited Property** – Qualified Property for which the Qualified Property Owner has entered into a Finance Agreement for a Qualified Project.

**Benefited Property Owner** – the owner of record of a Benefited Property.

**EIC** – the Energy Improvement Corporation, a local development corporation, duly organized under section 1411 of the Not-For-Profit Corporation Law of the State, authorized hereby on behalf of the Municipality to implement the Program by providing funds to Qualified Property Owners and providing for repayment of such funds from money collected by or on behalf of the Municipality as a charge to be levied on the real property.

**Eligible Costs** – costs incurred by the Benefited Property Owner in connection with a Qualified Project and the related Finance Agreement, including application fees, EIC’s Program administration fee, closing costs and fees, title and appraisal fees, professionals’ fees, permits, fees for design and drawings and any other related fees, expenses and costs, in each case as approved by EIC and the Financing Party under the Finance Agreement

**Enabling Act** – Article 5-L of the General Municipal Law of the State, or a successor law, as in effect from time to time.

**Finance Agreement** – the finance agreement described in Section 6A of this local law.

**Financing Charges** – all charges, fees and expenses related to the loan under the Finance Agreement including accrued interest, capitalized interest, prepayment premiums, and penalties as a result of a default or late payment and costs and reasonable attorneys’ fees incurred by the Financing Party as a result of a foreclosure or other legal proceeding brought against the Benefited Property to enforce any delinquent Annual Installment Liens.

**Financing Parties** – Third party capital providers approved by EIC to provide financing to Qualified Property Owners or other financial support to the Program which have entered into separate agreements with EIC to administer the Program in the Municipality.

**Municipality** – the City of Ithaca, a municipality of the State constituting a tax district as defined in Section 1102 of the RPTL of the State.

**Municipal Lien** – a lien on Qualified Property which secures the obligation to pay real property taxes, municipal charges, or governmentally imposed assessments in respect of services or benefits to a Qualified Property.

**Non-Municipal Lien** – a lien on Qualified Property which secures any obligation other than the obligation to pay real property taxes, municipal charges, or governmentally-imposed assessments in respect of services or benefits to a Qualified Property Owner or Qualified Property.

**Program** – the Energize NY Open C-PACE Financing Program authorized hereby.

**Qualified Project** – the acquisition, construction, reconstruction or equipping of Energy Efficiency Improvements or Renewable Energy Systems or other projects authorized under the Enabling Act on a Qualified Property, together with a related Energy Audit, Renewable Energy System Feasibility Study and/or other requirements under or pursuant to the Enabling Act, with funds provided in whole or in part by Financing Parties under the Program to achieve the purposes of the Enabling Act.

**Qualified Property** – Any real property other than a residential building containing less than three dwelling units, which is within the boundaries of the Municipality that has been determined to be eligible to participate in the Program under the procedures for eligibility set forth under this local law and the Enabling Act and has become the site of a Qualified Project.

**Qualified Property Owner** – the owner of record of Qualified Property which has been determined by EIC to meet the requirements for participation in the Program as an owner, and any transferee owner of such Qualified Property.

**RPTL** – the Real Property Tax Law of the State, as amended from time to time.

**Secured Amount** – as of any date, the aggregate amount of principal loaned to the Qualified Property Owner for a Qualified Project, together with Eligible Costs and Financing Charges, as provided herein or in the Finance Agreement, as reduced pursuant to Section 8, paragraph C.

**State** – the State of New York.

### **§3. Establishment of an Energize NY Open C-PACE Financing Program**

- A. An Energize NY Open C-PACE Financing Program is hereby established by the Municipality, whereby EIC acting on its behalf pursuant to the Municipal Agreement, may arrange for the provision of funds by Financing Parties to Qualified Property Owners in accordance with the Enabling Act and the procedures set forth under this local law, to finance the acquisition, construction, reconstruction, and installation of Qualified Projects and Eligible Costs and Financing Charges approved by EIC and by the Financing Party under the Finance Agreement. EIC, on behalf of the Municipality, and with the consent of the Benefited Property Owner, will record a Benefit Assessment Lien on the Benefited Property in the Secured Amount (the “Benefit Assessment Lien”) on the land records for the Municipality. Such recording shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality.
- B. Before a Qualified Property Owner and a Financing Party enter into a Finance Agreement which results in a loan to finance a Qualified Project, repayment of which is secured by a Benefit Assessment Lien, a written consent from each existing mortgage

holder of the Qualified Property shall be obtained, permitting the Benefit Assessment Lien and each Annual Installment Lien to take priority over all existing mortgages.

**§4. Procedures for eligibility**

- A. Any property owner in the Municipality may submit an application to EIC on such forms as have been prepared by EIC and made available to property owners on the website of EIC and at the Municipality's offices.
- B. Every application submitted by a property owner shall be reviewed by EIC, acting on behalf of the Municipality, which shall make a positive or negative determination on such application based upon the criteria enumerated in the Enabling Act and § 5 of this local law. EIC may also request further information from the property owner where necessary to aid in its determination.
- C. If a positive determination on an application is made by EIC, acting on behalf of the Municipality, the property owner shall be deemed a Qualified Property Owner and shall be eligible to participate in the Program in accordance with § 6 of this local law.

**§5. Application criteria**

Upon the submission of an application, EIC, acting on behalf of the Municipality, shall make a positive or negative determination on such application based upon the following criteria for the making of a financing:

- A. The property owner may not be in bankruptcy and the property may not constitute property subject to any pending bankruptcy proceeding;
- B. The amount financed under the Program shall be repaid over a term not to exceed the weighted average of the useful life of Renewable Energy Systems and Energy Efficiency Improvements to be installed on the property as determined by EIC;
- C. Sufficient funds are available from Financing Parties to provide financing to the property owner;
- D. The property owner is current in payments on any existing mortgage on the Qualified Property;
- E. The property owner is current in payments on any real property taxes on the Qualified Property; and
- F. Such additional criteria, not inconsistent with the criteria set forth above, as the State, the Municipality, or EIC acting on its behalf, or other Financing Parties may set from time to time.

**§6. Energize NY Finance Agreement**

- A. A Qualified Property Owner may participate in the Program through the execution of a finance agreement made by and between the Qualified Property Owner and a Financing Party, to which EIC, on behalf of the Municipality, shall be a third-party beneficiary (the “Finance Agreement”). Upon execution and delivery of the Finance Agreement, the property that is the subject of the Finance Agreement shall be deemed a “Benefited Property”).
- B. Upon execution and delivery of the Finance Agreement, the Benefited Property Owner shall be eligible to receive funds from the Financing Party for the acquisition, construction, and installation of a Qualified Project, together with Eligible Costs and Financing Charges approved by EIC and by the Financing Party, provided the requirements of the Enabling Act, the Municipal Agreement and this local law have been met.
- C. The Finance Agreement shall include the terms and conditions of repayment of the Secured Amount and the Annual Installment Amounts.
- D. EIC may charge fees to offset the costs of administering the Program and such fees, if not paid by the Financing Party, shall be added to the Secured Amount.

**§7. Terms and conditions of repayment**

The Finance Agreement shall set forth the terms and conditions of repayment in accordance with the following:

- A. The principal amount of the funds loaned to the Benefited Property Owner for the Qualified Project, together with Eligible Costs and Financing Charges approved by EIC and by the Financing Party, shall be specially assessed against the Benefited Property and will be evidenced by a Benefit Assessment Lien recorded against the Benefited Property on the land records on which liens are recorded for properties within the Municipality. The special benefit assessment shall constitute a “charge” within the meaning of the Enabling Act and shall be collected in annual installments in the amounts certified by the Financing Party in a schedule provided at closing and made part of the Benefit Assessment Lien. Said amount shall be annually levied, billed and collected by EIC, on behalf of the Municipality, and shall be paid to the Financing Party as provided in the Finance Agreement.
- B. The term of such repayment shall be determined at the time the Finance Agreement is executed by the Benefited Property Owner and the Financing Party, not to exceed the weighted average of the useful life of the systems and improvements as determined by EIC, acting on behalf of the Municipality.
- C. The rate of interest for the Secured Amount shall be fixed by the Financing Party in conjunction with EIC, acting on behalf of the Municipality, as provided in the Finance Agreement.

**§8. Levy of Annual Installment Amount and Creation of Annual Installment Lien**

- A. Upon the making of the loan pursuant to the Finance Agreement, the Secured Amount shall become a special Benefit Assessment Lien on the Benefited Property in favor of the Municipality. The amount of the Benefit Assessment Lien shall be the Secured Amount. Evidence of the Benefit Assessment Lien shall be recorded by EIC, on behalf of the Municipality, in the land records for properties in the Municipality. Such recording shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality. The Benefit Assessment Lien shall not be foreclosed upon by or otherwise enforced by the Municipality.
- B. The Finance Agreement shall provide for the repayment of the Secured Amount in installments made at least annually, as provided in a schedule attached to the Benefit Assessment Lien (the “Annual Installment Amount”). The Annual Installment Amount shall be levied by EIC, on behalf of the Municipality, on the Benefited Property in the same manner as levies for municipal charges, shall become a lien on the Benefited Property as of the first day of January of the fiscal year for which levied (the “Annual Installment Lien”) and shall remain a lien until paid. The creation or any recording of the Annual Installment Lien shall be exempt from any charge, mortgage recording tax or other fee in the same manner as if recorded by the Municipality. Payment to the Financing Party shall be considered payment for this purpose. Such payment shall partly or wholly discharge the Annual Installment Lien. Delinquent Annual Installment Amounts may accrue Financing Charges as may be provided in the Finance Agreement. Any additional Financing Charges imposed by the Financing Party pursuant to the Finance Agreement shall increase the Annual Installment Amount and the Annual Installment Lien for the year in which such overdue payments were first due.
- C. The Benefit Assessment Lien shall be reduced annually by the amount of each Annual Installment Lien when each Annual Installment Lien becomes a lien. Each Annual Installment Lien shall be subordinate to all Municipal Liens, whether created by Section 902 of the RPTL or by any other State or local law. No portion of a Secured Amount shall be recovered by the Municipality, EIC, or an assignee upon foreclosure, sale or other disposition of the Benefited Property unless and until all Municipal Liens are fully discharged. Each Annual Installment Lien, however, shall have priority over all Non-Municipal Liens, irrespective of when created, except as otherwise required by law.
- D. Neither the Benefit Assessment Lien nor any Annual Installment Lien shall be extinguished or accelerated in the event of a default or bankruptcy of the Benefited Property Owner. Each Annual Installment Amount shall be considered a charge upon the Benefited Property and shall be collected by EIC, on behalf of the Municipality, at the same time and in the same manner as real property taxes or municipal charges. Each Annual Installment Lien shall remain a lien until paid. Amounts collected in respect of an Annual Installment Lien shall be remitted to EIC, on behalf of the Municipality, or the Financing Party, as may be provided in the Finance Agreement.

- E. EIC shall act as the Municipality's agent in collection of the Annual Installment Amounts. If any Benefited Property Owner fails to pay an Annual Installment Amount, the Financing Party may redeem the Benefited Property by paying the amount of all unpaid Municipal Liens thereon, and thereafter shall have the right to collect any amounts in respect of an Annual Installment Lien by foreclosure or any other remedy available at law. Any foreclosure shall not affect any subsequent Annual Installment Liens.
  
- F. EIC, on behalf of the Municipality, may sell or assign for consideration any and all Benefit Assessment Liens and Annual Installment Liens to Financing Parties that provide financing to Qualified Properties pursuant to Finance Agreements. The Financing Parties may sell or assign for consideration any and all Benefit Assessment Liens and Annual Installment Liens received from EIC, on behalf of the Municipality, subject to certain conditions provided in the administration agreement between EIC and the Financing Party. The assignee or assignees of such Benefit Assessment Liens and Annual Installment Liens shall have and possess the same powers and rights at law or in equity as the Municipality would have had if the Benefit Assessment Lien and the Annual Installment Liens had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection.

**§9. Verification and report**

EIC, on behalf of the Municipality, shall verify and report on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by the Program in such form and manner as the Authority may establish.

**§10. Separability.** If any clause, sentence, paragraph, section, or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof involved in the controversy in which such judgment shall have been rendered.

**Section 2.** This local law shall take effect upon filing with the Secretary of State.

**City of Ithaca**  
**Planning & Economic Development Committee**  
**Wednesday, February 12, 2020 – 6:00 p.m.**  
**Common Council Chambers, City Hall, 108 East Green Street**

**Minutes**

<b>Committee Members Attending:</b>	Joseph (Seph) Murtagh, Chair; Cynthia Brock, Stephen Smith, Donna Fleming, and Laura Lewis
<b>Committee Members Absent:</b>	None
<b>Other Elected Officials Attending:</b>	Alderpersons McGonigal and Nguyen
<b>Staff Attending:</b>	JoAnn Cornish, Director, Planning and Development Department; Jennifer Kuszniir, Senior Planner; Alex Phillips, Planner; Nels Bohn, Ithaca Urban Renewal Agency; and Deborah Grunder, Executive Assistant
<b>Others Attending:</b>	Ari Lavine, City Attorney

Chair Seph Murtagh called the meeting to order at 6:00 p.m.

**1) Call to Order/Agenda Review**

No Changes were made to the agenda.

**2) Public Comment**

Theresa Alt, 206 Eddy Street, she is impressed how quickly the Planning Department they turned around the ADU ordinance. Now PEDC needs to send it onto Council. She further stated the R1 and R2 zones requirement for no more than one unrelated individuals would certainly make those zones pretty unsuitable for mass housing in small spaces. Now, attention needs to be directed to code enforcement.

Ellie Pfeffer, 1667 Clara Dickson Hall, reiterated Alt's comments. She thanked the City for all the hard work the City has done with the ADU ordinance. She further stated that short-term rentals must come out of the equation. It should be dealt with separately. Right now it is possible in all zones for developers can buy up all these



tenant housing. Owner-occupancy requirements would kill the ADU ordinance. She urged the committee to pass this ordinance.

Tom Shelley, 118 E. Court Street, supports the proposed ADU legislation, the green space requirement, and the tree ordinance that is being worked on. The county recently passed the ban of Styrofoam. The Governor will soon pass it. He encourages Council to pass this ban as well. He also encourages the City to ban the use of all plastics, i.e., plastic water bottles, food service carry out containers, etc.

Steph Rutknowsik, as student, 218 Sheldon Court. Thanked the committee for all the work being done on the ADU changes. Student goals are the same as other members of the community. He also expressed support in the new Green New Deal initiatives.

Sheryl Swink, 321 N. Albany Street, served on the Waterfront Committee. She stated the resolution and the letter regarding length don't match. They should. She further commented on the proposed setback recommendations. She doesn't find that the 20 feet setback that is specified from the Market and Newman Districts to be very generous.

#### **Response from Council:**

Aldersperson Lewis pointed out that ADUs is for discussion only tonight. She recommended it be tabled until we receive further information, but it will be discussed tonight. We need more guidance and recommendations.

### **3) Special Presentation**

#### **a) ~~Cayuga Street Bridge Project~~**

The presentation will take place at the March 2020 meeting.

### **4) Announcements, Updates, Reports**

The deadline for the sustainability director has passed. More than 20 applications have been submitted. They will be reviewed this Friday. It is a real robust response for a City job.

### **5) Action Items (Voting to Send on to Council)**

Nels Bohn, IURA Director, provided information on the contingent purchase agreement.

Alderson Lewis had some questions. She thanked Nels for all the work done on this project.

Attorney Lavine further clarified that there are two things happening here. There is an agreement of the sale of the property and then the building of the project. Each step will be voted on separately.

Alderson Brock asked for clarification as to parking. Parking will be two individual parking systems?

Bohn stated that the parking will be handled by two different developers.

Alderson Brock further asked if the number of parking spaces will be equivalent to what is there now. She raised concern regarding the lack of redundancy of elevators so that all floors are handicapped accessible. She further asked about the lease agreement for the parking. Bohn stated it will be a flat fee payment each year for a 30-year agreement.

Alderson Brock asked what the debt service total is. Bohn answer \$9.5 million.

Alderson Nguyen joined the meeting at 6:35 p.m.

Chair Murtagh asked for clarification of the displacement of Sunny Days and Home Green Home. Will they be able to move back?

Bohn stated that the IURA made it firm that any displacement will be remedied prior to any agreement.

**a) Contingent Purchase Agreement – East Section of Green Street Urban Renewal Project Site**

**Proposed Ordinance \_\_\_\_ - 2020  
Planning & Economic Development Committee  
February 12, 2020**

**Contingent Purchase Agreement – East Section of Green Street Urban Renewal Project Site Moved by Alderson Smith; seconded by Alderson Lewis. Carried unanimously.**  
WHEREAS, Ithaca Properties, LLC proposes to purchase an approximately 192' x 119' property at the eastern section of the Green Street parking garage site located at 120 East Green Street, Ithaca, NY (Premises) to undertake an urban renewal project, subject to Common Council approval, and

WHEREAS, the Premises consists of air rights above a privately-owned ground floor commercial use and contains two elevated public parking decks constructed in 1974, and

WHEREAS, Ithaca Properties, LLC is the owner of a commercial building located at 215 East State Street that extends immediately under and is thereby connected to the Premises, and

WHEREAS, on June 27, 2019, the Ithaca Urban Renewal Agency (IURA) designated Ithaca Properties, LLC as a “qualified and eligible sponsor” to potentially acquire the Premises to undertake an urban renewal project, and

WHEREAS, on December 23, 2019, the IURA endorsed a definition for a proposed urban renewal project at the Premises that includes reconstruction of two public parking decks to be leased back to the City for operation, and

WHEREAS, the Premises is encumbered by a 2014 purchase option held by Hotel Ithaca, LLC, the owners of the downtown Marriott Hotel, to acquire the Premises for \$1 in the event the City of Ithaca proposes to decommission or convey the Premises, and

WHEREAS, Hotel Ithaca, LLC has 12 months from the date of notice to exercise their option to acquire the Premises, and

WHEREAS, a 2016 structural study of the Green Street parking garage conducted by Stantec revealed that significant structural deficiencies exist in the east section that will require a sizable capital investment to address, and

WHEREAS, the Stantec study estimated the cost to the City to demolish the east section at more than \$2,030,000 in 2019 dollars, and

WHEREAS, a 2019 appraisal by Midland Appraisal Associates, Inc. concluded the market value of the Premises is \$2,380,000, assuming a structural platform is in place to support construction of a building utilizing the 140 ft. zoning envelop, and

WHEREAS, the existing structural system supporting the two parking decks does not support high-rise development, and

WHEREAS, the negotiated purchase price of \$350,000 represents a reasonable fair market value of the Premises after the avoided demolition cost is considered, and

WHEREAS, on February 18, 2020, the Board of Public Works considered whether retention of ownership of the Premises is necessary for municipal purposes, and

WHEREAS, the purchase agreement is contingent on City of Ithaca Common Council approval of an IURA-proposed disposition and development agreement with Ithaca Properties, LLC to implement an urban renewal project, and

WHEREAS, the City Charter requires approval by three-fourths of the Common Council to authorize sale of real property;

WHEREAS, the City Charter further requires notice of a proposed sale to be published no less than once each week for three weeks, the first such notice being published no less than 30 days prior to the approval vote, and such notices have been published; now, therefore,

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

**Section 1. Authorization for Disposition.**

- a. City ownership of the above-described Premises is surplus for municipal purposes.
- b. The Common Council for the City of Ithaca hereby authorizes the contingent sale of approximately 22,800 square feet of air rights property located at the eastern section of the Green Street parking garage site (part of tax parcel #70.-4-5.2) to Ithaca Properties, LLC at a purchase price of \$350,000. The closing of the sale is contingent upon Common Council approval of an Ithaca Urban Renewal Agency proposed disposition and development agreement to implement an urban renewal project.
- c. The Mayor, subject to advice of the City Attorney, is hereby authorized to execute a contingent purchase agreement substantially similar to the "Purchase Agreement, Eastern Section of Green Street Garage Urban Renewal Project Site" document, dated 2/7/20, to implement this resolution.

**Section 2. Effective Date.** This ordinance shall take effect immediately.

**b) Waterfront Area and Stepback Requirement**

**Approval to Circulate – Alderperson Smith moved to circulate; seconded by Alderperson Lewis. Carried unanimously.**

Alderperson Smith questioned whether the stepback requirement is necessary. He doesn't think that there is any canyon effect.

Alderperson Lewis stated there are residents who live across the inlet that have stated their concerns.

Alderperson McGonigal also served on the Waterfront Committee. The setbacks were closely focused on the narrow walkway in the inlet island area. He suggested to keep the stepback along Inlet Island. If it needs tweaking, the building height could be reduced to a four-story maximum.

**DRAFT**

PLANNING COMMITTEE:

An Ordinance Amending the Municipal Code of the City Of Ithaca, Chapter 325, Entitled "Zoning" To Establish New Zoning for the Waterfront Area

ORDINANCE NO. \_\_\_\_\_

**BE IT NOW ORDAINED AND ENACTED** by the Common Council of the City of Ithaca that Chapter 325 of the City Code be amended as follows:

**Section 1.** Chapter 325-3B of the Municipal Code of the City of Ithaca, entitled "Definitions and Word Usage", is hereby amended to add the following new definition:

**ROW HOUSE**

A residential structure composed of three or more attached modules with shared sidewalls, the facade of each module measuring no more than 25 feet in length. Modules within a row house may consist of a single dwelling unit or may contain multiple vertically stacked dwelling units. Each module must have one street-facing entry.

**Section 2.** Chapter 325-45.2B, Definitions for Collegetown Districts, is hereby amended to remove the definition of "Row House".

**Section 3.** Section 325-8, District Regulations, is hereby amended to change the permitted primary uses in the Cherry, West End/Waterfront, the Market, and the Newman Districts in order to replace townhouse with row houses in each of these districts.

**Section 4.** Section 325-8, District Regulations, is hereby amended to change the minimum front yard setback in the Cherry Street, West End/Waterfront, the Market, and the Newman Districts to only read 5' minimum required front yard setback measured from the inside edge of the sidewalk.

**Section 5.** Section 325-8C. Additional Restrictions in the West End/Waterfront, the Cherry Street District, the Market District, and the Newman Districts, is hereby amended to add new subsections (5) and (6), to read as follows:

(5) Sidewalk and Tree Lawn Requirements. All new construction located in the Cherry Street, the West End/Waterfront, the Market, or the Newman Districts must provide a 8' tree lawn and 5' sidewalk along the street frontage of the property. The Planning Board may amend this requirement based on site conditions.

(6) Maximum Building Length. All new structures located within the Cherry Street District and the West End/Waterfront District shall be constructed to be no more than 100' in length. Exceptions to maximum building length may be granted by the Planning Board.

**Section 6.** Section 325-8C.(3), "Stepback Requirements" is hereby amended to remove the stepback requirements in the Newman and Market Districts.

**Section 7.** The City Planning and Development Board, the City Clerk and the Planning Department shall amend the district

regulations chart in accordance with the amendments made herewith.

**Section 8.** Severability. Severability is intended throughout and within the provisions of this local law. If any section, subsection, sentence, clause, phrase or portion of this local law 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 9.** Effective date. This ordinance shall take effect immediately and in accordance with law upon publication of notices as provided in the Ithaca City Charter.

## 6) Approval to Circulate

### a) Special Permits – Alderperson Smith; seconded by Alderperson Lewis. Carried unanimously.

Alderperson Fleming would like to see something more similar to a PUD with additional language that specifies some kind of public benefit such as affordable housing must be a part of the project. She further stated the proposal offers two different sets of rules for multiple primaries and for ADUs.

Chair Murtagh stated he sees them as very different types of development. A multiple primary is a new one-family house or duplex on a larger lot. An ADU is converting a small space in a house or garage into an apartment.

**To:** Planning & Economic Development Committee  
**From:** Jennifer Kusznir, Senior Planner  
**Date:** February 6, 2020  
**RE:** **Proposed Amendments to Establish Criteria for Granting Special Permits for Multiple Primary Structures**

The City is currently considering a proposal to establish guidelines for accessory dwelling units. The proposal includes a restriction for multiple primary structures to only be allowed by a special permit. In order to provide guidance to the Planning Board when determining whether or not to grant a special permit staff is proposing the following amendments to the special permits sections of the City Code, sections 325-9 and 325-10.

- Section 325-9B.(1)(a).Special Permits-Applicability
- Replace (a) “Accessory Apartments” with “Multiple Primaries”

- Section 325-9D(1)(b)- Special Permits-Permit Review Criteria, shall be amended as follows:
- The Planning and Development Board shall deny a special permit where it finds that a proposed use would have a significant negative impact on traffic, parking, congestion, environment, property values, municipal services, character of the surrounding neighborhood, stormwater runoff, or if the use is not in line with the City Comprehensive Plan, including considerations of occupant load, night operation, and the use of chemical, biological, or radioactive agents expected in connection with the proposed activity, as well as failure to meet any additional conditions in Section 325-10.
- Section 325-10C. Additional Conditions for Special Permits-(1.) “Accessory Apartments” be replaced in its entirety with the following:
- Multiple Primary Structures. The following specific conditions shall be applicable to all special permits for multiple primary structures:
  - (a) Additional primary structures should not result in a significant loss of green space.
  - (b) Additional primary structures should not result in the removal of significant trees.
  - (c) Property Owners applying for a special permit should have separate utilities for multiple primary structures.

If you have any concerns or questions regarding any of this information, feel free to contact us at 274-6410.

## **7) Discussion**

### **a) Accessory Dwelling Units**

Chair Murtagh’s concerns are with short term rentals.

Director Cornish stated that short-term rentals is difficult legislation.

Aldersperson McGonigal stated that in Watkins Glen they’re facing extreme problems with young people not finding a place to rent or buy because it’s bought up quickly by developers who rent it by the week. That may happen to Ithaca.

Aldersperson Brock’s concern is with storm water runoff. Too many additional dwellings are the cause of more storm water runoff.

Director Cornish stated that South Hill has a serious problem with storm water because of its geology and topography.

Planner Phillips stated that short-term rentals are subject to three-year inspections.

Aldersperson Lewis stated that the Bell Sherman neighborhood is very similar to South Hill.

Aldersperson Fleming stated her concern of having two separate rules for the very same thing in different neighborhoods.

Chair Murtagh asked whether we are sending this on before short-term rentals legislation is enforced. He further stated that there are so many AirBnBs in the City which aren't regulated. Should we tackle short-term rentals first? He asked how long it will take to setup the regulations.

Director Cornish stated that it won't be easy. The Town of Ithaca and Cayuga Heights have just passed short-term rental legislation. The City should review their legislation.

Aldersperson Smith stated the majority of the committee agrees that owner occupancy should be a requirement for short-term rentals and ADUs.

Director Cornish stated it was suggested that this should be reviewed by the Committee of the Whole. There is a possible February date.

To: Planning and Economic Development Committee  
From: Jennifer Kuszniir, Senior Planner  
Alexander Phillips, Planner  
Date: December 6, 2019

**Re: Establishment of Regulations for Accessory Dwelling Units (ADUs)**

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The purpose of this memo is to provide information on a proposal to establish regulations for developing ADUs in the R-1 and R-2 zoning districts.

This proposal was last discussed at the February Common Council meeting. At that meeting the Common Council discussed the following:

- Council voted to amend the proposed ordinance to include a whereas statement that explains that the South Hill Overlay District will remain in place until after a South Hill neighborhood can be completed. The enclosed draft ordinance reflects this change.
- The proposed Council discussed an option to include a maximum size for attached accessory dwelling units (AADU). The draft that was presented to Council stated that AADU that do not change the exterior of the house do not have a maximum size.



However, several council members Council requested that a maximum size of 40% of the primary structure be added.

- Council also discussed the possibility of developing incentive zoning to encourage owner occupancy. In order to encourage owner occupancy the City could waive some of the ADU requirements in owner occupied properties, such as allowing multiple primaries as of right without a special permit, removing the size cap for AADUs, or eliminating the contiguous green space requirement.

If you have any concerns or questions regarding any of this information, feel free to contact us at 274-6410.

**DRAFT**

**PLANNING COMMITTEE:**

**An Ordinance Amending the Municipal Code of the City Of Ithaca, Chapter 325, Entitled "Zoning" In Order to Establish Regulations for the Development of Accessory Dwelling Units**

**ORDINANCE NO. \_\_\_\_\_**

1. **WHEREAS**, in 2017, the City established the South Hill Overlay District (SHOD) in response to concerns that were raised by the South Hill neighborhood rapid in-fill development of multiple primary structures(in the neighborhood and the impacts on both the aesthetic qualities and the character of the neighborhood, and
2. **WHEREAS**, the SHOD was intended to be a temporary measure to prevent further development until the City could establish regulations for this type of infill (ADUs), and
3. **WHEREAS**, in the interim, similar concerns about development pressure were raised throughout the City, and
4. **WHEREAS**, City staff were directed to research how infill(ADUs)development is regulated in other municipalities, and
5. **WHEREAS**, Planning Staff spent several months researching other communities and developing proposals to encourage the development of accessory dwelling units (ADUs) that would protect neighborhoods while allowing for housing options that could provide property owners with additional income, and
6. **WHEREAS**, on August 29, 2019, a community meeting was held, with approximately 70 people in attendance, who offered opinions on options to allow the development of appropriate ADUs, and
7. **WHEREAS**, and staff has considered feedback from the public, the Common Council, and other communities and has developed a set of regulations allowing property owners to develop ADUs, where appropriate, and the means to protect neighborhoods from the negative impacts of over development, and

8. **WHEREAS**, this ordinance does not repeal the South Hill Overlay District, which shall remain in place until the South Hill Plan is completed, **now therefore be it**

**ORDAINED AND ENACTED** by the Common Council of the City of Ithaca that Chapter 325, Zoning, be amended as follows:

**Section 1.** Chapter 325-3B of the Municipal Code of the City of Ithaca, entitled "Definitions and Word Usage", is hereby amended to add the following new definitions:

Accessory Dwelling Unit (ADU)— A second dwelling unit located in the rear or side yard on a lot with any one-family dwelling in R-1 and CR-1 zoning districts, or in any one-family dwelling or two-family dwelling in R-2 and CR-2 zoning districts(see Section 2.-F.3d). The second unit is created secondary to, and is always smaller than the primary one-family dwelling. The unit includes its own independent habitable space including provision for sleeping, cooking, and sanitation, and is designed to be occupied by an individual or a family, plus not more than one unrelated occupant, independent of the primary dwelling unit.

1. Attached Accessory Dwelling Unit (AADU) - A room or set of rooms, basement, or any other space that is located within a primary structure, but is established as a separate dwelling unit. AADUs may be occupied by an individual or a family, plus not more than one unrelated occupant.

2. Detached Accessory Dwelling Unit (DADU) - A separate dwelling unit that is constructed on a single family lot that is not connected to the primary structure. DADUs may be occupied by an individual or a family, plus not more than one unrelated occupant.

3. Out Building Conversion - A separate dwelling unit that is converted from an existing garage, carriage house, or other accessory structure. Out Building Conversion's may be occupied by an individual or a family, plus not more than one unrelated occupant.

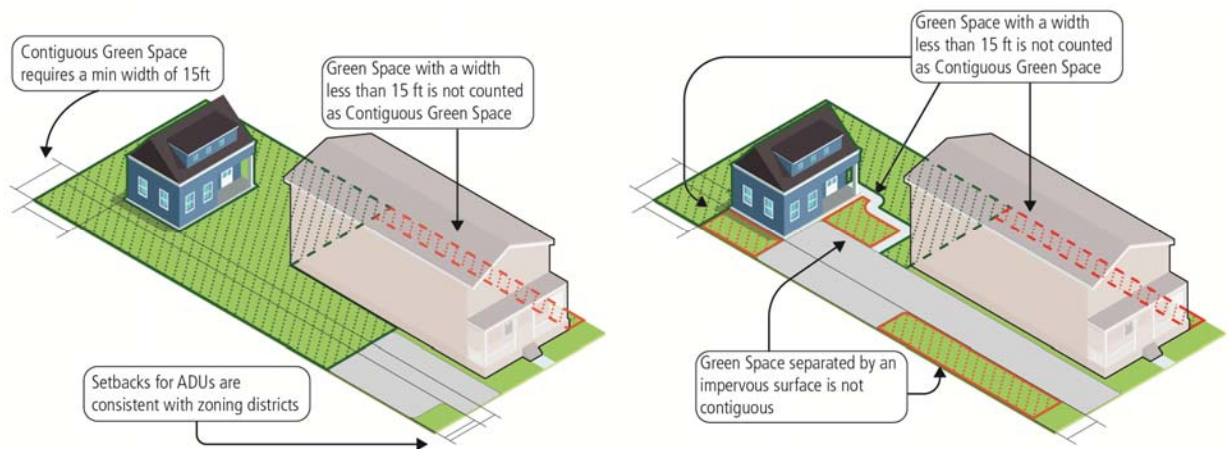
Contiguous Green Space - Green Space on a lot that is uninterrupted by structures or paved surfaces. Contiguous green space must be at least 15' in width.

**Section 2.** Chapter 325-8 of the Municipal Code of the City of Ithaca, entitled "District Regulations", is hereby amended to add a new section F, entitled "Additional Restrictions in the R-1, R-2, CR-1, and CR-2 Zoning Districts", to read as follows:

F. Additional Restrictions in the R-1, R-2, CR-1, and CR-2 Zoning Districts.

(1) Intent. This section authorizes the installation of accessory dwelling units in the R-1, R-2, CR-1, and CR-2 districts. The purpose and intent of permitting accessory dwelling units is:

- (a) To provide homeowners, especially those of low and moderate income, with a means of obtaining through rental income, companionship, security and services and thereby to enable them to stay more comfortably in homes and neighborhoods they might be forced to leave.
  - (b) To add inexpensive rental units to the housing stock to meet the needs of smaller households, both young and old.
  - (c) To make housing units available to low- and moderate-income households who might otherwise have difficulty finding homes within the City.
  - (d) To develop housing units in family neighborhoods that are appropriate for households at a variety of stages in the lifecycle, thereby lessening fluctuations in neighborhood demand for services.
  - (e) To preserve and allow more efficient use of the City's existing stock of dwellings while ensuring healthy and safe living environments.
  - (f) To allow for the creation of additional housing, while minimizing impacts to surrounding properties.
- (2) General Restrictions.
- (a) In the R-1, R-2, CR-1, and CR-2 Zoning Districts, only one primary structure is permitted as of right, the Planning Board may grant multiple primary structures by special permit.
- (3) Additional Requirements for Accessory Dwelling Units
- (a) All Accessory Dwelling Units that have any exterior changes to existing structures or any new ADUs that are new construction are subject to site plan review.
  - (b) Number of Accessory Dwelling Units. Only one accessory dwelling unit, attached or detached, is permitted on a lot.
  - (c) Parking. No additional parking is required for accessory dwelling units.
  - (d) Location. Accessory Dwelling Units may be located on any lot in the CR-1 or R-1 zoning district that contains a one-family dwelling and on any lot in the CR-2 and R-2 zoning district that contains a one- or two-family dwelling. ADUs are permitted in any side or rear yard but not in the required front yard. Corner Lots shall be considered to have two front yards.
  - (e) Additional Requirements for Detached ADUs.
    - [1] Notwithstanding any other requirements of this section, Setbacks for ADUs are consistent with existing zoning setbacks for primary structures
    - [2] A DADU may not be placed less than 5 feet from the primary structure.
    - [3] ADUs are not subject to the maximum lot coverage requirement, however, properties with ADUs are required to maintain 35% contiguous green space.



- (f) Number of Residents. Accessory Dwelling Units may be occupied by an individual or a family, plus not more than one unrelated occupant.
- (g) Appearance of Accessory Dwelling Units. Accessory Dwelling Units should not disrupt the overall architectural character of the neighborhood. A similar architectural style and roof pitch should connect the primary structure to the accessory dwelling unit.
- [1] Location of Entrances. New or additional front entrances are discouraged, but in any event must be compatible with the architectural style of the existing structure. Detached accessory dwelling units (DADU) are exempt from this standard.
- (h) Size Allowances.
- [1] Detached Accessory Dwelling Units- The maximum size of a DADU may be no more than 75% of the habitable area of the primary structure or 800 square feet, whichever is less.
- [2] Attached Accessory Dwelling Units- The maximum size of an AADU that is added onto the existing structure may be no more than 33.3% of the habitable area of the primary structure. AADUs which do not change the exterior appearance of the primary structure have no maximum size limit.
- [3] Out Building Conversion- Outbuilding **conversions** are exempt from all area requirements, including maximum lot coverage requirements, minimum green space requirements, and any setback requirements.

**Section 3.** Chapter 325-10 of the Municipal Code of the City of Ithaca, entitled "Accessory Apartments", is hereby deleted in its entirety.

**Section 4.** The City Planning and Development Board, the City Clerk and the Planning Department shall amend the district regulations chart in accordance with the amendments made herewith.

**Section 5.** Severability. Severability is intended throughout and within the provisions of this local law. If any section, subsection, sentence, clause, phrase or portion of this local law 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 6.** Effective date. This ordinance shall take effect immediately and in accordance with law upon publication of notices as provided in the Ithaca City Charter.

**b) 2020 Planning Department Work Program**

Director Cornish asked that the work program be reviewed and let staff know which neighborhood plan to work on next.

**8) Review and Approval of Minutes**

a) **December 2019** – minutes were not ready to be acted on

**9) Adjournment**

Moved by Alderperson Smith; seconded by Alderperson Lewis. Carried unanimously. The meeting was adjourned at 8:50 p.m.