

August 14, 2024

Mayor Lucas, Mayor Pro Tem Parks-Shaw, Members of the Kansas City City Council:

On behalf of the Thomas Hart Benton Group (THBG) of the Sierra Club Missouri Chapter and its more than 5,000 members and supporters in Kansas City, MO, I write to urge the Council to vote No on the [proposed Third Committee Substitute Ordinance 240434](#). This proposed ordinance would address none of the issues it purports to resolve, namely permit processing time; it would violate the Council and City's goals of furthering housing affordability, efficiency, health, and durability established by the council when it adopted the 2021 International Energy Conservation Code (IECC) in 2023 and adopted its Climate Protection and Resiliency Plan in 2022; and it would make permit processing and compliance with the city's building code even more challenging by creating a loophole in the city's energy code, punishing builders who build quality homes for residents while rewarding those who would not. For these reasons, outlined below and supported by the notes in the attached addendum, please Vote No on the ordinance.

The proposed ordinance's stated intention is to offer an alternative pathway for compliance with the City's building energy code adopted 2021 IECC. **This proposed legislation constitutes a significant violation of the City's** adopted goals and strategies for enhancing the quality of our housing stock through higher efficiency, affordability, and durability while addressing the climate crisis under the 2022 **Kansas City, MO Climate Protection & Resiliency Plan** (CPR Plan). The tactic this proposed ordinance offers to accomplish this strategy B-3 falls short of what the Plan requires. Testimony given to the Committee by the public and City staff over the past few months demonstrate that this new pathway **cannot be considered an equivalent to the existing pathways** of 2021 IECC. This ordinance would lock a weaker "additional path" into the City's energy code, regardless of future iterations of the IECC. This blatantly contradicts the CPR Plan's explicit call in section B-3.1 for KC to regularly review and update its energy code to meet or exceed the energy standards enumerated in the IECC. **Enacting Ordinance 240434 will demonstrate to the Kansas City community that the Council was not serious in its assertions regarding the need to address the impacts of climate change** faced by residents and to have City plans, policies, and initiatives be informed and driven by the CPR Plan adopted by residents and the Council.

Additionally, proponents of the ordinance have maintained, despite mountains of evidence in the record and available publicly rebutting it, the unsubstantiated argument regarding the additional costs of complying with the 2021 IECC. In fact, proponents cite this energy policy as the sole or primary reason for any decrease in home building permits in the City. **The estimates of the incremental cost of compliance with the 2021 IECC provided by the HCBA have a poor foundation and are excessively out of line** with sound estimates and analyses provided by members of the building community in Kansas City, the City's own staff, by non-profit groups, and by federal agencies. Builders have further demonstrated that the incremental cost of compliance with Kansas City's current code will be offset by savings in utility costs for occupants of housing. This is especially beneficial to those in need of affordable housing such as rental units. Denying this cost savings from KC's energy code to residents means that they, and particularly renters, who make up nearly half the City's population and have no say in how their home is built, will be burdened by rising utility bills as energy rates continue to increase.

The focus of attention on this proposed ordinance has served as a distraction from efforts to resolve the alleged problems involved in the City's processing of home building permits and in identifying the causal factors for an asserted drop in the number of such permits in Kansas City. During a March 2024 City Council Business Meeting, one of the sponsors of this ordinance observed on the issue of home building permits, "We're not building enough stuff. Let's figure out what the issues are, work through it together as a city." The wisdom in this declaration has been absent in the arguments pushed by proponents of this legislation. The proposed ordinance ignores the evidence provided by City staff, experts, residents, and builders who have named other issues as the reasons for challenges to the building industry—permit processing; communications

from City staff; taking advantage of the opportunities for education on the needed construction methods. With its exclusive reliance on the input of a few members of a self-interested lobbying group, this ordinance fails in the promise to holistically “work through it together as a city.” Additionally, **the Council should exercise extreme caution in considering adopting any version of Ordinance 240434 because of the inequity that would result for those builders and contractors who have expended substantial time, effort, and money in order to learn, understand, and comply with the City’s energy code. Importantly, recent data as of August 1 showing a rise in the volume of permits issued in the city, and showing Kansas City, MO as the leading issuer of permits in July, suggests the need to question the assertion of “not building enough stuff” as a result of the City’s energy code.**

The bottom line is that this proposed ordinance represents a serious weakening of the City’s CPR Plan and building policy, and it fails to recognize the imperative that very strong evidence should be offered to make such a change to a plan that was adopted with substantial input from a wide variety of community stakeholders over a rigorous, multi-year process by the City.

The efforts of Kansas City for improved home affordability, durability, and energy efficiency in its built environment must be seen in a larger context. As the Department of Energy [asserted](#) in September 2023: homes built to today’s energy codes are nearly 40% more efficient than homes built just 15 years ago, dramatically cutting costs for consumers. If all states updated to the latest model energy codes, over the course of 30 years, this action would save enough energy to power all households in the United States for a full year. Switching to the updated energy codes would equate to almost 2 billion metric tons of CO2 emissions reduction, the equivalent of [removing over 445 million gas powered cars](#) from the road over the same 30 years. In Kansas City, which is facing worsening heat waves, home energy bills, and climate impacts, this action is an essential component to serving all residents with healthier, durable, and more affordable homes.

Please reject Ordinance 240434.

A handwritten signature in blue ink, appearing to read "Don Wallace".

Don Wallace, Sixth District Resident
Member, Legislative Committee, Thomas Hart Benton Group
Sierra Club Missouri Chapter

cc: Brian Platt, Mario Vasquez, Andy Savastino

ADDENDUM

Violation To Goals And Strategies Of 2022 KCMO Climate Protection & Resiliency Plan (CPR Plan):

1) Ordinance 240434 makes only a brief reference to the 2022 KCMO Climate Protection and Resiliency Plan. In its preambular language it asserts that the ordinance will provide an “additional path of compliance” with IECC 2021 *“that accomplishes Strategies B-2 and B-3 of the 2022 Climate Protection & Resiliency Plan.”*

a) The reference by Ordinance 240434 to Strategy B-2 is clearly misplaced as this strategy deals only with helping “tenants, residents, landlords, and property managers make home improvements.” The exclusive focus of this strategy is on existing residential structures and does not identify owners of single family homes as beneficiaries of the target of this assistance.

b) Strategy B-3 of the Plan does refer to new home construction making the call to “Ensure Climate-Ready, Efficient Construction.” This Strategy B-3 calls upon the use of “building code updates ... to ensure new buildings are designed to be highly efficient.” The goal of this strategy is not limited to a reduction of GHG emissions, but to also ensure that these “high efficiency buildings improve the comfort and wellbeing of occupants”

2) The tactic this proposed ordinance offers to accomplish this strategy B-3 falls short of what the CPR Plan requires. The alternative pathway offered under Section 1 of Ordinance 240434 is for submission of a Home Energy Rating System (HERS) “Projected Report” “based on the building plans showing an index score of 60” or less.

a) This represents a substantial deviation from what was contemplated in the CPR Plan and required for compliance with the 2021 IECC. According to Sharla Riead in her public comment to Ordinance 240434, the “Energy Index path in the code as written, requires an index number of 51.3 in Kansas City.”

b) It strains credibility to assert that this tactic “accomplishes” Strategy B-3; especially when Strategy B-3 of the CPR Plan identifies as an impact of this strategy: “A Maximum Greenhouse Gas Emissions Reduction Potential by 2040 of 2%. By building new homes with a HERS score of 50 and commercial buildings with an average EUI of 61.4 kBtu/sq.ft”

i) The quoted statement from the CPR Plan provides the strategy of building new homes with a HERS score of 50 for arriving at the goal for the year 2040 of maximum GHG reduction.

ii) There is no mention of arriving at merely an *average* HERS score of 50 for new homes built between now and the year 2040, the strategy is that new homes will be built “*with a* HERS score of 50.”

3) Further denigration to the CPR Plan is seen in Section 4 of Ordinance 240434 which would allow the City to create a method to reduce the HERS score required for its proposed alternate Compliance Path. “Such reductions shall occur no more than once every three years from the effective date of this Ordinance, shall be published at least one year in advance of their effective date(s), shall not exceed a 3 HERS-point reduction over any 3-year period from the prior score, and shall be based on analyzing data from the prior time period’s actual HERS scores.”

a) This language would lock in this “additional path” regardless of future iterations of the IECC and would contradict the CPR Plan’s explicitly call for actions in section B-3.1, which include reviewing the

“building code every three years and update new construction buildings codes based on outcomes of the review, with the goal of adopting, at minimum, the most recent IEC building performance standards.” These calls for actions were seen in the CPR as immediate in 2022 or already underway.

b) The one-year advance publication requirement for all such reductions inexplicably exceeds the Missouri statutory requirement of only 90 days (RSMO 67.280).

c) Section 4 adds language to this formula for 3-year reduction making it unclear, by stating that the reductions in HERS scores “shall be based on analyzing data from the prior time period’s actual HERS scores.” There is much uncertainty here for there is no criteria let alone a rubric provided in Section 4 for this analysis.

4) Notably this Third Committee Substitute Ordinance 240434 purports to offer only an “alternative” pathway; this is not an “equivalent” pathway in its assertion that it “accomplishes” these strategies of the CPR Plan.

a) The proposed Third Substitute Ordinance 240434 continues to offer a weakened pathway that will functionally serve as a substitute, displacing the three other pathways of compliance for 2021 IECC.

b) Testimony given to the Committee by the public and City staff at prior hearings on earlier iterations of this ordinance demonstrate that this new pathway cannot be considered an equivalent to the existing pathways of 2021 IECC. These observations raise questions regarding how a target of a HERS score of 60 will serve the goal of the CPR.

i) As Sharla Riead, a *RESNET Accredited Training Provider*, observes in public comments *RE Ordinance 240434*: “I agree that a HERS Index should be allowed to prove compliance to the energy codes, but it should be required to be a 51 in order to match the other compliance paths.”

ii) The Metropolitan Energy Center ([MEC](#)) observes, “In 2022 the [average HERS® Energy Index Score for homes in Missouri was 61.](#)”

iii) Tony Libra of Aspen Homebuilders noted, “We advocate for the preservation of the 2021 Energy code in its original form. This code already includes an ERI path with a score of 51 and lower, while the path proposed by the HBA significantly deviates from the standards set by the 2021 IECC.”

5) This Third Committee Substitute Ordinance 240434 misstates the strategies and goals of the City’s 2022 City’s Climate Protection & Resiliency Plan and does violence to the promises made by the Council to the Kansas City Community concerning its many efforts to address climate change.

a) In 2020, the KCMO City Council adopted Resolution No. 200005, which directed staff to update the 2008 Climate Protection Plan to accelerate GHG emission reductions, and to elevate the importance of resiliency and equity. *and incorporate the ideas into City policy and operations*. Resolution No. 200005 led to the planning process of the Climate Protection and Resiliency Plan.

b) The KCMO City Council on November 4, 2021, adopted Resolution No. 210967 directing the City Manager to declare a climate and ecological emergency that threatens our city, region, state, nation, civilization, humanity, and the natural world. This resolution recognized the need for City policy to be driven by concern for addressing the challenges of climate change

c) On August 25, 2022, the KCMO City Council adopted Resolution 220596, which adopted the City's Climate Protection and Resiliency Plan, incorporating its findings and recommendations into City policy and operations.

i) In adopting this CPR Plan the Council affirmatively declared in Section 2 that the efforts to address the goals of the Plan shall be incorporated in all City plans, policies, and other initiatives

ii) The adopted final *Climate Protection and Resiliency Plan* developed climate action strategies and includes action plans for strategies for implementation through 2025. These strategies and actions were not listed in the Plan in order of priority, “as *all* are necessary for achieving our climate goals.”

iii) Among the Climate Resiliency Strategies in the Plan is a recognition of the need to build resilience to climate risks of extreme heat and severe winter weather.

iv) Highlighted in the Plan is the recognition that homes and buildings can “promote climate justice by reducing housing burden (the percentage of household annual income spent on rent or mortgage) ...” Further, “climate justice” was seen to include “prioritizing ... improving indoor air quality and other unsafe indoor health and living conditions,”

v) The Plan observes that “[i]n 2019, energy use in homes and building accounted for almost two thirds of the GHG emissions in Kansas City. ... These emissions come from electricity and natural gas use in these buildings.”

vi) The Plan further observes that it can be expected that “energy use and emissions in homes and businesses [will] continue to increase without the implementations of strategies designed to improve energy efficiency.

6) Enacting Ordinance 240434 will demonstrate to the Kansas City community that the Council was not serious in its assertions regarding the need to address the impact of climate change and to have City plans, policies, and other initiatives embrace efforts at mitigation and adaptation.

Incremental Cost Of Compliance With 2021 IECC:

1) While the rationale for the need to enact this proposed ordinance is not identified, in the multiple hearings on this proposed ordinance, assertions have been made that an alternative pathway for compliance is required because of the inordinately high incremental costs entailed in the construction techniques and materials required for compliance with IECC2021 is prohibitively high for new home buyers.

a) The KCHBA has provided a uniquely high estimate that with the code changes, there would be “an additional increase in price of \$31,853.” (2021 IECC Adoption Consumer Impact)

i) The methodology underlying this estimate is at best uncertain and limited.

ii) For this estimate the KCHBA noted that it “asked several builders to provide cost data for achieving the unamended 2021 IECC requirements on locally built homes.” There is no description of how these builders were identified, how many builders were asked, how

representative this sample is of builders in the Kansas City area, and how the results of all the requested builders were selected.

iii) Only one compliance pathway under the 2021 IECC was used by this undefined sample of builders. This Prescriptive Compliance Path is the strictest path to compliance. The estimate is based on “the additional local cost of a double-wall home, a requirement to meet 2021 IECC.” However:

iv) There are two other pathways for compliance with the 2021 IECC.

(1) One of which is the Energy Rating Index Option, which is similar to the Prescriptive Compliance Path, but allows some flexibility in the building methods.

(2) A third is the Total Building [Performance Path](#) to comply with building codes. This customizable option not only follows all recently updated building codes, it also has long provided an efficient and affordable way forward for new and existing construction projects.

b) Other estimates for the incremental cost of compliance are far lower than that of KCHBA.

i) The Midwest Energy Efficiency Alliance calculated the cost attributed to continuous wall insulation using Means Construction Cost Data and arrived at a number about three times less than that proposed in the memorandum (i.e., \$6,958 as compared to \$18,137).

ii) The “Additional Energy Package” that is cited by [KCHBA](#) to cost around \$3,000 was found by the Metropolitan Energy Center ([MEC](#)) to be unnecessary if a builder puts all the ducts in conditioned space, which is a common building practice in many Midwestern homes (and is better for air quality in general).

iii) [MEC](#) observed “[A]ctual permitted plans by building professionals revealed an estimate of approximately \$10,000 in increased costs.” This lower estimate is supported by builders who recently had designs approved under the 2021 energy code compared to the City’s previous heavily amended 2012 version.

iv) In a public comment to Ordinance 240434, Curtis Tate of SAB Homes observed that “Our current cost on a 3000 SF home under the IECC is currently just over 13k, which is substantially less than what builders were anticipating. *** That same house is supposed to be saving over \$2500 annually on utility cost per the HERS projection so in just over 5 years that investment will have been paid for...”

v) As reported in the KC Business Journal on August 1, 2024: Architect Dominique Davison, whose company Draw Architecture + Design LLC has worked on projects such as the Kansas City International Airport and Beacon Hill neighborhood, opposes the ordinance, saying in a letter to the City Council that the drop in permits has more to do with rising interest rates and contractors hiking their prices. In her own residential construction, Davison said a house built to the new code adds no more than \$1,500 to the cost.

vi) On [May 28, 2024 HUD and USDA](#) confirmed the determination that the 2021 IECC and ASHRAE 90.1-2019 do not negatively affect the availability or affordability of houses covered by EISA

(1) Table 9 shows the incremental construction costs associated with the 2021 IECC compared to the 2009 IECC for a single family dwelling unit.

vii) A federal study found that North Carolina’s proposed code update would have added at most about \$6,500 to the price of a newly built home. [According to the analysis](#), these changes would have paid for themselves through lower power bills and, during the first year alone, reduced carbon dioxide emissions by the equivalent of taking 29,000 cars off the road.

c) Additionally, contractors who build or substantially renovate energy-efficient homes can claim federal tax credits up to \$5,000 per home.

d) The [July 29, 2023, Kansas City Star editorial](#) noted the many cost variables in building a house and highlighted the point that builders are able to absorb those costs. Yet, the marginal increased costs of compliance with the 2021 IECC are those that a homeowner will likely recover through decreased utility bills.

e) Especially for those in need of affordable housing, there are additional financial benefits for the occupants of residences built to the standards of the 2021IECC.

i) According to [Cost Effectiveness For Residential Buildings in Missouri](#) (2021), prepared for the U.S. Department of Energy by The Pacific Northwest National Laboratory: For low-income homebuyers supported by FHA, who have a smaller than average down payment, the net positive cash flow from moving from IECC 2009 to 2021 is just 1.2 years.

ii) Many of those in greatest need of low-cost housing will be renting. As such, rental housing built to the energy efficiency standards of IECC 2021, is needed to minimize their utility costs, where it is unlikely that landlords will voluntarily update the energy efficiency of their properties.

iii) Should Council enact this proposed ordinance, the trade-off between those low-income families needing affordable rental housing and those who have resources to purchase a new home will be only aggravated. As Tate Williams of CoBuild, observes, a single person would be needing to earn about \$100K a year to justify being able to afford a new starter home. That’s not realistic for a huge portion of our communities. Consequently, homeownership is a luxury good and will remain so...

Distraction From Identifying Causal Factors In Alleged Decreased Numbers Of Home Building Permits

1) The lengthy consideration of the various iterations of this proposed ordinance have served as a distraction from efforts to identify and resolve the causal factors in the alleged decreased numbers of home building permits. There is a clear path forward for the Council to address systemic issues impacting builders to the benefit of all. One of the sponsors of this ordinance observed during the March 7, 2024, Council Business Meeting on the issue of home building permits, “We’re not building enough stuff. Let’s figure out what the issues are, work through it together as a city.”

a) “Figure Out What The Issues Are”:

i) This proposed ordinance does not accomplish the initial task in this call of “figur[ing] out what the issues are.”

(1) It ignores the evidence provided by City staff, experts, residents, and builders who have named other issues—permit processing; communications from City staff; taking advantage of the opportunities for education on the needed construction methods, to name a few.

(2) With its exclusive reliance on the input of a self-interested lobbying group, this ordinance fails in the promise to holistically “work through it together as a city.”

ii) Public statements submitted in opposition to Ordinance 240434 by individuals in the KCMO building trades industry point to factors other than IECC2021 for an asserted slow-down in permits:

(1) Curtis Tate of SAB Homes observed: “The problem KCMO is currently having with building permits isn’t an IECC issue, I believe this is a builder and city planning communication issue.”

(2) Ryan Chambers of Crest Capital observed: “The City should and must do a better job making the rules clear, logical, and pragmatic to real world building scenarios. *** The best way to counter higher costs is a fast and efficient permitting system and responsive staff. Increases in speed to build help drive down costs.”

(3) Tony Libra of Aspen Homes noted: “With more and more people taking the initiative to fully understand what it takes to comply with this code, the permits will start to pick back up. We have several homes submitted for permitting and know our HERS Rater has worked on over 100 homes for 2021 IECC. We, along with many other builders, have adapted to this code and do not see a problem with the code itself.”

(4) A Local Insulation Company in its statement wrote: “The implementation of the 2021 IECC building codes has been delayed for far too long. ... This letter is a call for all trades in the Kansas City area to work together with energy auditors and city inspectors, as well as builders to find cost-effective ways to build efficient homes.”

iii) This ordinance presumes that there is no effect on building permits from the City’s permitting processes, the impact of climbing interest rates, the glut of home building permits issues prior to the effective date of IECC 2021, the financial abilities of potential homebuyers, among other factors.

(1) This substitute Ordinance 240434 precipitously dispenses with any need for additional information on these critical issues.

(2) Rather than pass this fourth version of Ordinance 240434, the best course of action would be for the Neighborhood Planning and Development Committee to take a step back from this proposed ordinance and demand convincing empirical evidence as to the specific causal factors underlying the numbers of building permits.

(3) There may be any number of factors underlying what appears to the proponents to be a slow-down in approved building permits under the new Code. These possible causal factors remain largely undetermined, and clearly more data and time are needed to inform this Committee of the correct course of action.

b) “We’re not building enough stuff. Further, it could be that with the additional time provided in this protracted discussion of this distractive proposed legislation, that the asserted of “not building enough stuff,” is no longer supported by the data.

i) Over the last 10 months, the data are showing that KCMO that as of August 5, 2024, there are under the 2021IECC 88 Permits In Review, 126 Plan Applications Approved, and 124 Permits Issued. Under the old code, as of the same time-frame there are 4 Permits In Review, 176 Plan Applications Approved, and 310 Permits Issued. has reviewed, issued, or approved.

ii) Additionally, in the metropolitan region KCMO apparently was the leading permit issuer for the month of July.

iii) Even with permit processing issues and the confusion sown by the extended debate on whether the 2021 IECC standards will be weakened, home builders are apparently continuing to learn the code and getting to work constructing new homes.

iv) With this recent data, clearly, at this point adding a weaker alternative path will create confusion for all in the building trades while unfairly awarding those builders who have held back in acquiring the training and resources needed to comply with 2021 IECC all at the expense of building durability, efficiency, and affordability.

c) Further caution for the Council to consider adopting any version of Ordinance 240434 is the inequity resulting for those builders and contractors who have expended substantial resources of time and money in order to comply with the 2021 IECC.

i) Changing these energy efficiency standards after many in the building trades industry have relied on what the Council enacted only benefits those who stubbornly refused to make the effort to acquire the skills and resources needed to comply with 2021 IECC.

ii) Public comments to Ordinance 240434 raise this point:

(1) Local HVAC contractor observed, “From a business standpoint, we have invested \$70,000 in new machinery to ensure compliance with and surpassing the new codes ..., raising concerns about fairness to builders who have invested resources to meet these standards, only to face potential changes.”

(2) Curtis Tate of SAB Homes asserted, “If IECC is amended it’ll put the builders who have done the work and put forth the effort to comply with the new IECC at a disadvantage ...”

(3) Tony Libra of Aspen Homebuilders noted, “The builders ... who have adapted to this code have out a lot of initial investment into building better homes and feel that we are going to get the short end of the stick if this proposal is passed. All the builders, who have put the time, money, and effort into building these better homes will have a market disadvantage as opposed to those who pulled permits early or have been waiting for the code to be reduced.”