

AIA Position on Appeals from the OGCV in the 2019 Code Development Cycle RE107-19

The American Institute of Architects (AIA) is proud of its active engagement with the International Code Council (ICC) during its initial creation and history of code development. AIA's public policies support the development and adoption of codes and standards using the following guidelines.

AIA's public policy on Building Codes and Standards states:

The AIA supports regulation by a single set of comprehensive, coordinated, and contemporary building codes and standards that establish sound threshold values of health, safety, and the protection of the public welfare throughout the United States and abroad. To that end, the AIA espouses the development and adoption of model building codes that:

- *Include participation by architects and the public in a consensus process;*
- *Are the product of informed education and research;*
- *Are without favoritism or bias to any special interest;*
- *Include provision for a prompt appeals procedure for all that might be aggrieved;*
- *Are cost-effective in relation to public benefit; and*
- *Promote building code provisions that set performance rather than prescriptive criteria.*

(emphasis added)

AIA's public policies support the development of codes and standards that improve the building environment using the following guidelines.

AIA's public policy on Energy and Carbon in the Built Environment states:

The AIA advocates for policies, programs, and incentives for energy efficiency and renewable energy for the planning, design, construction, and operations of buildings. These strategies reduce anthropogenic greenhouse gas emissions that cause climate change, lowering risks and costs for our clients and the public. Architects must prioritize energy efficiency and renewable energy to achieve carbon neutral new construction and major renovations by 2030 (2030 Commitment) and a carbon neutral built environment by 2050 (2050 Imperative).

(emphasis added)

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AGA and APGA Appeal of RE107-19

In their appeal dated May 5, 2020, AGA and APGA (hereafter referred to as the appellant) claim that the prohibition of a continuously burning pilot light in new construction of residential buildings is a “de facto ban” on such appliances that use pilots that burn continuously. They further claim that as a result, this ban conflicts with federal law that preempts promulgation of requirements regarding efficiency standards for products:

This proposal to ban continuously burning pilot lights, which results in a de facto ban on standing pilot ignition of gas-fired appliances, is in conflict with federal law that preempts promulgation of requirements that conflict with federal minimum efficiency standards for products "covered" by the Energy Policy and Conservation Act of 1975 (Pub.L. 94-163, 89 Stat. 871) and its amendments (collectively, "EPCA"), which prohibit promulgation of efficiency standards that differ from federal minimum efficiencies. The proposal justifies banning continuously burning pilot lights, and in consequence standing pilot ignition, on the basis of appliance efficiency.
(emphasis added)

AIA believes that contrary to the appellant’s assertion, neither claim is accurate. First, the assumption that if incorporated into the ICC International Residential Code (IRC) code change RE107-19 presents a conflict with the current law is a legal decision that the appellant cannot claim. While the appellant may be a party to the question, any judgement made related to a conflict with the federal law can only be resolved in the hands of a federal judge after a due process hearing on the validity of that claim.

Further, the ICC’s codes are merely models for use and adoption by state and local jurisdictions to use in its enforcement of police powers granted to it by the US Constitution. ICC’s International Residential Code (IRC) is not an enforceable document by any agency prior to its being adopted and put into effect (promulgated) by legislative or administrative powers granted to such agency. How the membership of ICC determines what is contained in the model it publishes does not in any way fall under the purview or control of the Energy Policy and Conservation Act of 1975 and its amendments (EPCA). As an independent body, ICC’s membership may place any requirement or restriction it feels is appropriate for inclusion and thus should not be allowed to be challenged as creating a conflict. The choice by a state or local jurisdiction to incorporate the ICC model into its legal application of codes and standards is theirs and theirs alone. Any question of conflict with other pieces of legislation, federal or local is best determined when adoption and enforcement would commence, and is, as a practice, done frequently. ICC is not in a position to make that decision.

Second, the code provision in RE107-19 bears no connection to the issue of product efficiency standards. Any such standards within the EPCA remain; however limiting the use of products containing a standing pilot light addresses the overall efficiency of the building in which the

product is installed. The ICC's Residential Energy Code does not address the appliances performance standard, it simply applies various limitations on the design, construction and use of the structures within the scope of the code.

The AIA believes that the argument put forth by the appellant is invalid and should be rejected, allowing the action by the ICC membership on code change RE107-19 to stand.

Presented for your consideration.

A handwritten signature in black ink, appearing to read 'D. Collins', with a horizontal line extending to the right.

David S. Collins, FAIA

Representing the American Institute of Architects