

Before the International Code Council
Appeals Board

National Association of Home Builders
Appeal of the ICC 2019 Group B Code Cycle
Final Action Results

**Written Submission of
National Association of Home Builders
In Support of Appeal of CE217 Parts I and II and RE147
(Scope and Intent)**

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I. INTRODUCTION

Proposals to change plumbing codes do not belong in fire codes. To prevent this from happening, CP#28-05 prohibits code change proposals that are in the wrong place from being considered, advanced, or finalized. If such proposals get adopted regardless, it would constitute a material and significant irregularity of process and procedure.

Yet CE217 Parts I and II and RE147, proposals that—at best—have a tenuous connection with the International Energy Conservation Code (“IECC”), were adopted. The IECC’s Intent Sections (C101.3 and R101.3) clearly provide that the IECC only intends to regulate the design and construction of buildings so that the building structure itself effectively uses and conserves energy. Neither CE217 nor RE147 fall within this scope. CE217 requires new buildings to include electric vehicle (“EV”) charging spaces, and RE147 requires residential buildings to install electric circuits and add space based on the mere possibility that some future resident may decide to switch from gas-fueled water heaters, dryers, or cooking equipment to electric water heaters, dryers, or cooking equipment. Critically, these code change proposals do not result in the effective use and conservation of energy from the building structure itself.

Allowing any proposal to pass so long as a proposed building regulation leads to some effective use and conservation of energy would render the Intent Sections of the IECC meaningless because too many factors in people's everyday lives affect energy consumption. For example, building codes that discourage people from eating meat or flying on airplanes suddenly would become eligible for the IECC, since such actions lead to energy conservation.

The adoption of CE217 Parts I and II and RE147—two codes far beyond the scope and intent of the IECC—is a material and significant irregularity of process or procedure. To maintain the procedural integrity of the International Code development process, NAHB respectfully asks the Appeals Board to sustain this appeal and recommend to the ICC Board that CE217 Parts I and II and RE147 be repealed.

II. ARGUMENT

The question the Appeals Board must resolve is not whether the code change proposal is environmentally friendly or even a good idea, but *whether it belongs in the IECC*. CE217 Parts I and II and RE147 are beyond the scope and intent of the IECC and do not belong there for three reasons:

- IECC's scope is limited to energy improvements of the building itself.

Allowing any building regulation to pass so long as it improves energy

use and conservation in some capacity would negate the limits established by IECC's Intent Sections, since every resident action arguably affects energy use.

- CE217 Parts I and II promote EVs. At best, energy conservation occurs from replacing fossil-fueled cars and the **building's** energy use will increase. This is counter to the plain language of the IECC.
- RE147 adds electric circuits and space for a possible switch to electric water heaters, dryers, or cooking equipment. The energy conservation hinges entirely on the resident's potential future decision to change fuel sources for those appliances.

CP#28-05 prohibits proposals like CE217 and RE147 that clearly fall outside the scope and intent of the IECC from being considered, let alone finalized. Accordingly, CE217 and RE147 should not have been considered and their adoption is a material and significant irregularity of process and procedure.

A. CE217 Parts I and II and RE147 Are Outside the Scope and Intent of the IECC.

The IECC Intent Sections exclude building regulations that improve energy use and conservation extrinsic to the building itself. CE217 and RE147 fall outside IECC's scope because even though the measures regulate buildings, the "effective use and conservation of energy" happens in areas

completely unrelated to those buildings (replacement of fossil fueled cars and use of electric appliances).

1. IECC’s Scope and Intent Is Limited to Energy Improvements of the Building Itself.

The IECC Scope and Intent Sections expressly state what code change proposals may be included. Both C101.3 and R101.3, the “Intent Sections” that govern commercial buildings and residential buildings respectively, state the following:

This code shall regulate the design and construction ***of buildings*** for the effective use and conservation of energy over the useful life ***of each building***. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective. This code is not intended to abridge safety, health or environmental requirements contained in other applicable codes or ordinances.

The text of C101.3 and R101.3 is clear—“the effective use and conservation of energy” must be accomplished by each building itself. Just because energy improvements occur *as an effect* of the proposal is not a sufficient reason for it to be included in the IECC. An alternative reading provides no limiting principle on what building codes are excluded, and functionally vacates the Intent Sections without process. A comparison of the scope and intent sections of other International Codes and the related drafting history further highlights the restrictive nature of the IECC.

First, an alternative interpretation effectively allows constituents to propose *any* building code, regardless of whether it is actually intended to regulate energy use. This is because virtually every action in people’s lives arguably affects the use and conservation of energy, such as choosing what to eat or where to travel.

Setting some limiting principle in the context of energy codes is essential. Without it, the codes could be distorted beyond recognition. To illustrate, if a proposal can belong in the IECC so long as it regulates buildings with the goal of improving energy use, a proposal that requires every new building to include a garden would also be within the scope and intent of the code. Proponents could argue that gardens allow the building inhabitants to locally source their food, which would improve energy performance by decreasing society’s reliance on industrialized agriculture and the long-distance transportation of food that is fuel-intensive.

Second, an expansive interpretation ignores the limiting language that is implicit in the term “for” (in “for the effective use and conservation of energy”), which excludes effects of an action from being considered as accomplishing a goal. While the word “for” has many definitions, in this case it is most properly understood as a function word to indicate a purpose, goal,

or desire.¹ And assumed in this understanding is that acting “for” a certain purpose implies a direct relationship between the action and purpose, as distinguished from doing something which merely *affects* the purpose.

To follow *Merriam-Webster’s* example sentence that illustrates the definition of “for,” if someone received a “grant for studying medicine,” it is commonly understood that the grant was not for something else that could eventually result in the studying of medicine. As a different example, if a law states that it shall regulate “goods produced for commerce,” it would be unreasonable to argue that such law regulates all goods under the logic that either any good could end up in sale or any good could affect the general economy and commerce.

Third, the Intent Sections explicitly state that the effective use and conservation of energy must occur “over the useful life of each building.” Admitting proposals beyond those that improve a building structure’s energy use and conservation would render the phrase “over the useful life of each building” superfluous and obsolete. CE217 Parts I and II demonstrate this problem—installing EV parking spaces has no bearing on energy use *over the useful life of the building*. Once the EV replaces the fossil-fueled car, the

¹ “For.” *Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/for>.

energy conservation from driving EVs will have occurred regardless of the building's useful life.

Lastly, the scope and intent sections of other industrial codes provide a stark contrast—they show how IECC's Intent Sections could have been worded if they were intended to include measures that could conserve energy outside the building structure. For example, the International Green Construction Code's ("IgCC") purpose and scope sections incorporate much more expansive language, none of which are present in the IECC:

- Section 101.2.1 (1.1) of the IgCC states that the purpose of the code is, among other things, to “reduce emissions from buildings and *building systems*” and “protect local biodiversity and ecosystem services.” The reference to “building systems” and “ecosystem services” indicates that benefits may occur outside the confines of the building.
- Section 101.3.1 (2.1) of the IgCC states that the code “contains requirements that address *site* sustainability.” Site is broadly defined in Section 301.2 (3.2) as “a contiguous area of land that is under the ownership or control of one entity.”

In fact, members of the ICC have presented proposals to change C101.3 and R101.3 to more closely align with some of the language in the scope and

intent sections of the IgCC, but all such proposals were rejected.² Other attempts to expand the scope and intent of the IECC, such as making the codes account for “general welfare” (ADM10), “life safety” (CE5), and “human comfort” (CE6), have all failed. The fact that the Intent Sections have largely stayed the same for over ten years without adding more factors for consideration reflects a common understanding: IECC is only concerned with the effective use and conservation of energy of the building itself.³

2. CE217 Parts I and II Do Not Meet IECC’s Scope and Intent Because They Promote Electric Cars.

CE217 Parts I and II would require new buildings to provide for EV-charging infrastructure.⁴ The general idea is that adding EV-friendly appliances would encourage EV purchase and use, which would replace fossil-fueled cars that are supposedly more energy-intensive.

The rationale for supporting CE217 Parts I and II demonstrates the attenuated, indirect relationship between the proposal and the goal of

² CE3 Parts I and II attempted to include building “systems” as part of IECC’s coverage, similar to Section 101.2.1 (1.1) of the IgCC. In addition, CE1 Parts I and II attempted to include “sites” as part of IECC’s coverage, similar to Section 101.3.1 (2.1) of the IgCC.

³ Attached as an exhibit, a Declaration by Wayne Jewell, former participant for multiple IECC Development Cycles (which included the drafting of C101.3 and R101.3), further validates how the Intent Sections of the IECC have been collectively understood.

⁴ Part I applies to commercial buildings, and Part II applies to residential buildings.

improving energy use. The following is a non-exhaustive chain of assumptions that the advocates for CE217 are making:

- The person needs a car, and public transportation, taking a bike, or walking are all insufficient.
- The person can afford an EV over a regular car.
- The EV appliances incentivize the person to choose an EV over a regular car.
- If the person replaces the regular car with an EV due to the EV appliances, the disposal of the regular car has minimal energy use or conservation effects.
- The electricity source of the EV is, in fact, more energy efficient than oil or gas.
- The usage of EV would be the same as what people would normally use in regular cars. In other words, there is no risk that people drive more because they think EVs are more environmentally friendly, which leads to a net energy usage increase.

The point is not to scrutinize each of these contingencies. Instead, this series of assumptions proves that accomplishing IECC's goal of "effective use and conservation of energy" under CE217 is intrinsically tangential, probabilistic,

and indirect. Energy use improvement is at most a *possible effect* of the proposal, but the measure alone cannot accomplish the effect.⁵

Even accepting all the assumptions listed above, CE217 still fails to meet the scope and intent of the IECC because the supposed effective use and conservation of energy come from the replacement of cars, not from the building itself. In fact, energy consumption of the building would *increase* under the proposal: building inhabitants would be consuming energy to charge their EVs that would not be consumed without CE217. It would be a perverse reading of the Intent Sections to argue that a code intended to “regulate . . . buildings for the . . . conservation of energy” justifies a code that increases energy consumption at the building based on the assumption of an unknown and unproven offset of larger magnitude elsewhere.

3. RE147 Does Not Meet IECC’s Scope and Intent Since the Energy Conservation Hinges Entirely on the Resident’s Future Choice to Switch Appliance Fuel Sources.

RE147 would require new residential buildings to (1) install electric circuits and receptacles near the building’s gas/propane water heater, dryer, or cooking equipment, and (2) preserve indoor space near the water heater

⁵ A helpful contrast would be codes that improve heating insulation in a building. Heat insulation codes do not rely on additional steps to conserve energy. Adopting the measure alone directly improves energy efficiency of the building structure.

(in case an electric water heater gets installed). Proponents argue that, ***should the residential inhabitants decide*** to switch to electric appliances over future fuel cost, availability concerns, or even reasons completely unrelated to energy conservation, RE147 would make that transition easier.

Thus, advocates for RE147 admit: effective use and conservation of energy will *never* occur from the proposal absent the building inhabitant's decision to switch fuels and/or heating source. In other words, any energy use improvements from RE147 are entirely hypothetical. And even if one assumes that everyone will switch to electric appliances for the sake of the RE147 proponents' argument, the proposal and IECC's goal of improved energy use is at least one degree removed, which reveals the tenuous relationship RE147 has with the code.

Adopting proposals in which energy conservation depends exclusively on the building inhabitant's future decisions (based on unknown factors) sets an unpredictable interpretive standard for identifying the appropriate boundaries of the IECC. As discussed previously, countless factors, including numerous appliances and appendages in a building structure, can influence a person's energy consumption choice. The only limiting principle that avoids future disputes on what resident behavior counts as effective energy

use is for the IECC to exclusively concern energy savings by the building itself. The Committee recognized this issue and rejected the proposal accordingly.

B. Adopting Code Change Proposals That Are Outside the Scope and Intent of the Code Materially and Significantly Violates Procedure.

By being out of scope of the IECC, CE217 Parts I and II and RE147 did not comply with CP#28-05, which governs the Rules of Procedure for developing all International Codes.⁶ Because this defect was never corrected, these proposals should neither have advanced nor been considered. The failure to reject the proposals and, instead, advance them for consideration constitutes a material and significant irregularity of process and procedure.

First, proposals that are outside the scope and intent of the code are necessarily defective. They are defective because they do not satisfy the foundational, common-sense principle that code change proposals must correspond to the appropriate code. The alternative would allow proposals to change parts of the International Fuel Gas Code to be included in the International Swimming Pool and Spa Code, or the committee for the

⁶ CP#28-05, Section 1.1.

International Zoning Code to deliberate the merits of amending the International Mechanical Code.

Multiple provisions in CP#28-05 clearly require that proposals match the appropriate International Code:

- Section 3.3.2 requires that the proposal correspond to the appropriate code section: “Each code change proposal ***shall relate to the applicable code sections(s)*** in the latest edition of the Code.” Section 3.3 states that each submission of a code change proposal “shall contain the following information” (which includes the requirement in Section 3.3.2).
- Section 3.6.2.2 similarly requires that “The standard ***shall be appropriate for the subject*** covered.” According to Section 3.6, “In order for a standard to be considered for reference or to continue to be referenced by the Codes, a standard shall meet the following criteria” (which includes the requirement in Section 3.6.2.2).

Second, defective, out-of-scope proposals cannot advance in the code development process. Preventing defective proposals from being considered, voted on, and finalized is essential not just to save everyone’s time but also to uphold the institutional integrity of the code development process. Just because a proposal could be the most effective way to conserve

energy (which proponents have not established) cannot justify bypassing ICC procedures.

CP#28-05 understands the value in making sure code change proposals follow the Rules that all ICC's members have agreed on, and has established safeguards against proposals that do not comply:

- Section 1.3 grants the ICC Board the authority to reject proposals that are outside the scope and intent of the IECC because the ICC Board “shall determine the title and the general ***purpose and scope of each Code*** published by the ICC.” In fact, the ICC Board has used this authority to reject an out-of-scope proposal in the previous code development cycle.⁷
- Section 3.1 states that code change proposals “will be duly considered ***when in conformance*** to these Rules of Procedure.” Implicit in this statement is that due consideration of a proposal is not automatic just based on the proposal's merits; the proposal must follow all procedural requirements outlined in CP#28-05.

⁷ In the 2016 IECC Code Development Cycle, there was a dispute as to whether proposals to set minimum plumbing fixture flow rates belonged in the IECC or the International Plumbing Code. After the issue was brought to the ICC Board's attention, the ICC Board made a unanimous motion to exclude the proposals from the IECC.

- Section 4.3 states: “When a code change proposal is submitted with incorrect format, without the required information or judged as not in compliance with these Rules of Procedure, the Secretariat shall notify the proponent of the specific deficiencies and the **proposal shall be held** until the deficiencies are corrected” In other words, proposals that are outside the subject matter of the code cannot even advance to the committee because they lack the “required information” and do not comply with the Rules of Procedure. Instead, they must be held until the proponent corrects the defect, i.e. identify the proper code and submit the proposal accordingly.
- Section 3.6.3.1.1 also instructs the committee to reject proposals that are outside of their jurisdiction and expertise, which provides an additional institutional check against code change proposals that are out of scope. The Section states: “The code change proposal shall be considered at the Committee Action Hearing **by the applicable code development committee** responsible for the corresponding proposed changes to the code text.” Only “applicable” code development committees may consider the code change proposals at issue—if a proposal falls outside the committee’s area of applicable authority or proficiency, the committee cannot consider it.

Collectively, the provisions of CP#28-05 deem proposals that fall outside the scope and intent of the appropriate code—like CE217 Parts I and II and RE147—procedurally defective and prevent them from being adopted. Code change proposals outside the scope and intent of the IECC cannot be available for consideration, or subject to any final vote. If it did, the ICC Board must exclude the proposal to uphold the appropriate scope of the IECC. Because CE217 and RE147 do not belong in the IECC, they were ineligible for advancement and their adoption is a material and significant irregularity of process and procedure.

III. CONCLUSION

Based on the reasons explained above, CE217 Parts I and II and RE147 fall outside the scope and intent of the IECC, which intends exclusively to improve energy efficiency of the building itself. Finalizing a code change proposal that is outside the scope and intent of the code grossly violates the Rules of Procedure. The only appropriate remedy for a proposal that materially and significantly violated procedure yet still got adopted is to repeal it, and the panel should recommend that the ICC Board do so here.

Dated: August 19, 2020

Respectfully submitted,

By: /s/ S. Craig Drumheller

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Attachment

Declaration by Wayne Jewell

DECLARATION OF WAYNE JEWELL

1. My name is Wayne R. Jewell. I declare and testify the following.
2. I attended and participated during Committee Action Hearings and Public Comment Hearings in multiple International Energy Conservation Code (“IECC”) Development Cycles.
3. As a Governmental Voting Member during previous IECC Development Cycles, through casting my vote I was involved in developing, considering, and finalizing the language of IECC C101.3 and R101.3 (also known as the “Intent Sections”).
4. Throughout the discussions over finalizing IECC C101.3 and R101.3, it was well-understood that the language in these Intent Sections were meant to regulate “the effective use and conservation of energy” of the building itself. The energy saving must come from the building itself, not a factor extrinsic to the building, such as the building inhabitant’s choice of transportation, or even the choice of fuel inside the building.
5. Specifically, it was well-understood that regulations on building construction and design which could save energy depending on the consumer or inhabitant’s behavior would not fall under the scope of the IECC, because C101.3 and R101.3 precluded such code change proposals.

6. The IECC is not intended to regulate or establish social or behavior changes. It is a code solely for the construction of buildings.
7. This well-established understanding of C101.3 and R101.3 has not changed over the course of the time.
8. Therefore, a proper reading of C101.3 and R101.3 indicates that CE217 (Parts I and II) and RE147 must be excluded because they are outside the scope and intent of the IECC. This reading is based on the text itself, and the development history of C101.3 and R101.3.

Signed on 18 day of August, 2020.

By: Wayne R. Jewell CBO

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