



January 11, 2020

Board of Directors
International Code Council
500 New Jersey Avenue, NW
6th Floor
Washington, DC 20001

Dear Members of the Board of Directors,

On behalf of the Natural Resources Defense Council, we write in opposition to the International Code Council's proposal to develop the International Energy Conservation Code (IECC) and Chapter 11 of the International Residential Code (IRC) using a standards development process. While we agree that the current code development process is not perfect, we are not convinced that using a standards development process will result in a stronger, more efficient end product – especially without key checks and balances in place.

To be clear, it is certainly possible from a technical perspective to develop a strong code through either a code development or a standards development process. We understand the potential benefits that a standards development process could offer, particularly giving more time for collaboration on proposals that are technically complex. However, we continue to support the current code development process because it is more inclusive and gives governmental voting members the final say in what should or should not be a part of their code.

NRDC submitted an initial letter to the Board of Directors on December 2, 2020, included here as Attachment A. The concerns we raised in that letter still remain. While we appreciate the response we received from ICC (include as Attachment B), we remain concerned that many of the issues we and others raised have not been adequately addressed or explored.

NATURAL RESOURCES DEFENSE COUNCIL

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What assurance is there that the IECC will not be weakened by the standards committee, and will continue to serve the policy needs of local jurisdictions?

We are concerned that there are few checks and balances in place in the standards development process, as currently described, to ensure forward progress. The IECC is fundamentally different than the other I-Codes, in that it directly supports and influences long-term energy and climate policy at the local level. We emphasize that fact not to discount the utmost importance of the mechanical, structural, or other codes – but rather to underscore the unique importance of a strong and continuously-improving IECC to a sustainable national and global future. Many of the members who voted for improvements to the 2021 IECC work for jurisdictions that have direct, binding goals to reduce emissions and improve the efficiency of their new buildings. The code development process, which prioritizes the voices of governmental members, ensures that individuals can vote in alignment with their jurisdiction's policy goals. This is important not only to move the efficiency of the code forward, but also to ensure that the code does not *decrease* in efficiency.

The standards development process does not currently include such checks and balances. If the code is developed solely by a standards development committee, jurisdictions have very little say in the final outcome and therefore the code may or may not ultimately align with their policy goals.

Will ICC issue a binding charge to the committee? If so, exactly what is the charge, and will it ensure that the code will make forward progress without rollbacks, and without getting stuck in deadlock?

Perhaps most fundamental to our opposition to a standards development process is that there are no implicit or explicit goals - set by the ICC or the committee itself - for how code development should progress. We have not seen a clear statement outlining the purpose of setting this standard and the ICC has not given any information about what the specific charge would be to the committee. Such a charge must center on a commitment to advancing energy efficiency in a safe, cost-effective, timely manner, and importantly,

must be done in such a way that the committee could not undo or ignore. Weakening revisions should absolutely not be within the scope of the committee's mandate.

We would be significantly more likely to support (or least not oppose) this type of process change if it was clear that the committee would be working toward a clear and explicit goal of continuously improving the efficiency of the code in a manner that is cost-effective. While the ICC has indicated that the 2021 IECC will be the starting point for discussions, at this point there is nothing that would prevent immediate committee action to try to reverse recent progress. As we have seen from recent code development cycles, different stakeholders have extremely divergent positions on whether the IECC should be modernized and improved to align with the needed climate goals, or rolled back and made less efficient. Without all parties working toward the same goal – or even working under the same charge that the purpose of this process is to *improve* the efficiency of the code – this structure seems to be a recipe for gridlock.

In the ICC's response to NRDC's December 2, 2020 letter, ICC noted that the standards procedure "will allow the Code Council to update the IECC more quickly to respond to the growing concern about climate change." We agree that it is absolutely critical for the IECC to be a policy tool to fight climate change – but the current proposal, as outlined, offers no guardrails or incentives to promote such progress. There are many questions about the timeframe for committee consideration and action, and how that will align with the current IECC code revision and publication cycle – particularly if this follows a consensus process that requires each comment to be adequately addressed before a standard can be finalized. All of these details must be worked out and discussed, with input from stakeholders, before any final decision is made.

What criteria will apply to the selection of committee members? How will ICC ensure that committee members are held to the charge of the

committee, and ensure that even a “balanced” committee does not still prioritize certain interests?

NRDC’s primary issue with the code development process in recent years has been the lack of balance in the residential technical committee, which has been dominated by builder interests. This has made it difficult to pass pro-efficiency proposals through the committee, though the governmental voting process has provided a counterweight since there is a mechanism to overturn the committee recommendation. In contrast, a standards development process does not give the membership the final say, but rather leaves the decision-making solely to the discretion of the standards development committee.

[The ICC Consensus Procedures](#) outline the interest categories that may be represented on a standards development committee.¹ While the procedures specify that no single interest category should constitute more than one third of the membership of the committee, there is no requirement for all relevant interest categories to be represented, nor for interest categories outside this list to be represented. Of specific concern, there is no requirement for the energy efficiency or environmental community to be represented in any way, which we find to be completely unacceptable. Further, governmental voting members would be represented under the “Public Segment” sector, yet it seems unlikely that wide variety of voting members (including code officials, sustainability experts, energy or environment departments, and others) would be represented within this broad category. The importance of the governmental member voice will be severely lessened – yet the final code remains as important as ever to these stakeholders.

A committee makeup that adheres to these requirements does not constitute an adequate safeguard in and of itself. Many committee actions require a two-thirds vote for approval, as outlined in Section 9.4 of the

¹ The categories are as follows: Manufacturer, Builder, Standards Promulgator/Testing Laboratory, User, Utility, Consumer, Public Segment, Government Regulator, and Insurance.

Consensus Procedures. This means that such actions could likewise be blocked with a one-third vote – and if any single interest category constitutes one-third of the membership, then that group can easily scuttle progress. This is not a system that would promote progress, and therefore we are not comfortable with it.

How will ANSI requirements for balance and transparency be applied in practice?

We are also concerned about duplication that would violate ANSI conflict and duplication rules. ANSI standards are already developed for commercial (ASHRAE 90.1) and residential (ASHRAE 90.2). ICC has historically worked very closely with ASHRAE to develop and harmonize these standards, yet the path forward is very unclear.

It is also unclear how ANSI's essential requirements for balance will be fairly applied, and specifically whether there will be transparency requirements applied by the ICC to ensure that consulting relationships or other financial interests will not upset the committee balance. This type of transparency is critical to ensure a fair and truly balanced process.

In summary, we do not believe the proposal as currently outlined by the ICC will provide sufficient incentives toward progress, or checks and balances against reversing the gains of recent years. Without stronger goals and protections in place, and without giving governmental members the final say in their energy code, we request that the ICC continue to develop the IECC through the code development process.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren M. Baker". The signature is written in a cursive, flowing style.

Lauren Urbanek
Senior Energy Policy Advocate

APPENDIX A: 12/2/20 Letter from NRDC to ICC Board

December 2, 2020

Board of Directors
International Code Council
500 New Jersey Avenue, NW
6th Floor
Washington, DC 20001

Dear Members of the Board of Directors,

We write today to express our opposition to the International Code Council's Long-Term Code Development Committee's recommendation to replace the International Energy Conservation Code (IECC) with a standard. We have serious concerns with the implications of such a decision, and urge the Board to reject this recommendation.

Moving from a code to a standard is a dramatic and unnecessary change that would disenfranchise the voices of thousands of ICC governmental members. The code development process ultimately results in a product that has been reviewed and voted on by the governmental professionals who adopt and use the code. These members have no financial stake in the outcome of the code, and therefore are able to develop a code that aligns with the policy needs of their jurisdictions.

In contrast, a standard is developed solely by a committee, without the checks and balances provided by a governmental member vote. It is highly likely that the committee will include members with a vested financial interest in whether or not the code is made more efficient. This puts the impartiality of the IECC at risk, which could make jurisdictions wary of adopting this new product. There are other significant issues that have not been resolved – or even explored - related to topics such as the IECC's place

in federal law, the interaction of a standard with state and local laws, how often such a standard would be updated, and how the committee would be developed and maintained, among many others.

We have further concerns about the lack of transparency of the process to date. The issue of changing from a code to a standard was raised as a single line in a Board decision about IECC appeals. There has been no written proposal, and therefore it is difficult to discern the details of what this change may entail. The proposal has been discussed only during the LTCD meetings, which are not well-publicized and are not well attended by governmental voting members. Many governmental voting members have no idea such a change is being considered – yet they are the ones who will be impacted most.

If the Board chooses to move forward with consideration of this recommendation – which we do not support – it is imperative that they do so in a way that prioritizes governmental member input and feedback. There must be a detailed, written proposal presented, with a formal comment period of at least 60 days. All comments must be reviewed, considered, and addressed by the Board, and any Board decisions must be documented and justified.

Transparency is a crucial and long-standing tenet of the International Code Council, which must extend to such an important and monumental decision.

Sincerely,

A handwritten signature in black ink that reads "Lauren Urbanek". The signature is written in a cursive, slightly slanted style.

Lauren Urbanek
Senior Energy Policy Advocate

Appendix B: ICC Response to NRDC Letter

December 9, 2020

Lauren Urbanek
Senior Energy Policy Advocate
National Resources Defense Council
1152 15th Street NW
Washington, DC 20005
lurbanek@nrdc.org

Dear Ms. Urbanek,

On behalf of the International Code Council and the Board of Directors, we'd like to thank you for your continued commitment to the International Codes (I-Codes) and the code development process. We also want to thank you for sharing your comments regarding the future of the International Energy Conservation Code (IECC).

The Code Council is deeply committed to helping create safe, affordable, and sustainable buildings and communities. Our codes and standards are the cornerstone of our organization, and we believe strongly in continual improvement in these living documents and the processes that develop them. We took note when our stakeholders told us that the process for developing the IECC needed to be updated.

In October, the Code Council Board asked the Board Committee on the Long-Term Code Development Process (Blue Ribbon Committee) to consider switching to a standards development process for the IECC and Chapter 11 of the International Residential Code. This was suggested by the Appeals Board in response to feedback from many segments of the building safety and design community that a change was needed. The Code Council Board agreed that a different process is necessary to keep up with the needs of our industry. The Blue Ribbon Committee has met multiple times to discuss this issue and has collected input from all sides of the debate. At their November 20 meeting, the Blue Ribbon Committee voted to recommend moving to a standards development process. The Code Council Board will consider information from

the committee at an upcoming meeting and discuss the possibility of collecting additional feedback from members and stakeholders.

If it moves forward, the starting point for the 2024 IECC will be the 2021 IECC. The name of the IECC will not change. It will remain a part of our family of I-Codes. The transition to a standards development process will have no bearing on its adoptability in the U.S. In fact, *OMB Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities* does not differentiate between codes and standards. According to federal law, the important thing is that codes and standards must follow a national voluntary consensus process.

There are many examples of similar standards, including the International Green Construction Code, International Fuel Gas Code and the National Electrical Code, which are all part of the ICC family of codes. The ICC standards development process – while different from the ICC governmental consensus process – protects against undue influence from one segment of the industry and follows the tenets of openness and transparency. In addition, a standards development process provides more time for technical discussion than our current code development process, which would help to address many of the concerns raised by energy advocates, architects and others. Our standards procedure will allow the Code Council to update the IECC more quickly to respond to the growing concern about climate change. Code officials will still have the opportunity to participate in the development process and will be encouraged to do so.

The Code Council is accredited by the American National Standards Institute as a standards developing organization that adheres to the essential requirements of openness, balance, consensus and due process. Our consensus procedures used to develop Code Council standards were recently updated and approved in April 2020. Our accreditation shows that we are able to develop standards in the most efficient manner available in the industry.

We've put together a selection of public articles and commentary from industry, energy advocates, home builders and code officials that has helped to inform the decisions made by the Code Council Board:

- [“EVs dealt major blow in building code ruling”](#) in EnergyWire, October 22, 2020

- [“At Long Last, a Truly Final 2021 Energy Code”](#) (October 2020) and [“Energy Code Appeals Put Efficiency Progress at Risk”](#) (September 2020) by Lauren Urbanek, NRDC
- [“This is easy — new buildings should be designed for a fossil fuel-free future”](#) in Los Angeles Times, October 19, 2020
- [“Radical New Building Codes Could Help Madison Achieve Environmental Dreams, But at What Cost?”](#) by the MacIver Institute, October 19, 2020
- [“The 2021 IECC’s Circuitous Path To Conclusion”](#) by Kim Cheslak, New Buildings Institute, October 12, 2020
- [“ICC Board Issues Split Decision on NAHB Building Codes Appeals”](#) (October 2020); [“ICC to Move Forward with 2021 Building Codes Despite NAHB Objections”](#) (April 2020); and [“Building Codes Vote Marred by ‘Zombie Proposals’ Could Impact Housing Affordability”](#) (February 2020) by the National Association of Home Builders
- [“Inside the climate battle quietly raging about US homes”](#) in The Guardian, October 9, 2020
- [“2021 IECC: Protecting the Code Development Process”](#) by Leading Builders of America, August 2020
- [“How the Energy Code Broke the Code Development Process”](#) and [“ICC Manages the Best Code Development Process”](#) by Greg Johnson, Regulatory Consultant, June 2020
- [“Secret Deal Helped Housing Industry Stop Tougher Rules on Climate Change”](#) in New York Times, October 2019
- A list of letters received by the Code Council related to the 2019 Group B Appeals – many having to do with the 2021 IECC – are [available here](#).

We greatly appreciate the long and enduring partnership with the National Resources Defense Council, and we look forward to continuing to work with you in the months and years to come.

Sincerely,
Greg Wheeler, CBO Dominic Sims, CBO
President Chief Executive Officer
International Code Council International Code Council