



## ICC NORTHEAST REGIONAL COALITION

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Dominic Sims, CEO  
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Friday, December 29, 2023

**Subject: Formal Appeal of the addition of sections, R404.5, R404.6 & R404.7 into the 2024 IECC Residential Provisions and corresponding sections in the 2024 IRC chapter 11**

Dear Mr. Sims,

We, the Region VI Code Development and Review Committee, hereby submit this formal appeal to the International Code Council Appeals Board regarding the IECC Residential Consensus Committee Balloting Final Result. With the utmost respect for the pursuit of fair and effective building standards, we wish to address matters of significant concern pertaining to the International Energy Conservation Code and its application of the CP-28 Code Development Process, CP-12 Standards Development Procedures, CP-07 Committees and Members and the ICC Consensus Procedures specifically regarding the addition of sections R404.4, R404.5, R404.6 and R404.7.

We believe that the addition of these sections into the code was not conducted in adherence to the established code development procedures by a consensus committee who in part may have misrepresented their interest category and merits careful review. It has also been stated on a number of occasions that a large portion of this committee met outside the transparencies of the consensus committee to forge agreements for passing each other's code changes rather than reviewing each proposal on its own merit. Based on the [energy.cdpassess.com/](http://energy.cdpassess.com/) website, there is no documentation of why and how sections R404.5, R404.6 and R404.7 were added into the code. While there were some good code changes made in this session of public comment submission, these particular sections exceed what is considered minimum requirements based on the



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guidance information and documentation provided by the Board of directors.

1) **Scope and Intent:** The provisions of the Energy Conservation Code along with other guidance documents pertaining specifically to the energy code “standards development process” emphasize the importance of aligning code changes with their scope and intent. Our concern with this is that the proposed sections exceed the stated codes intended boundaries in the accompanying instructional literature. Such deviations have significant implications for the harmonious evolution of energy efficiency standards.

Section R101.3 INTENT, in the residential provisions of the IECC specifies “The code may include non-mandatory appendices incorporating additional energy efficiency and greenhouse gas reduction resources developed by the Code Council and others.” (A. A Path Forward) This is the only place carbon reduction is mentioned in the intent section, therefore it would make sense to assume that requirements regarding the reduction of non-electric energy based systems should be included in appendices and not in the body of the code. Section R101.3 goes on to state “This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this intent.” (A. A Path Forward) Section R404.5 Electric readiness makes it mandatory that no matter what fuel source is being used by the homeowners to run their major appliances at the time of home construction, that they have to wire the house as if the major appliances were electric. Not only does this go against the idea of providing flexibility, this is also an unreasonable extra expense. It is not ICC’s responsibility nor is it Authority to determine what fuel sources the world will use moving forward. At worst that is the responsibility of the national governments of the world. It is the responsibility of ICC and the IECC Consensus Committee to provide safe and enforceable codes that regulate construction within those international regulations

Section R404.7 makes it mandatory for New one- and two- family dwellings and townhouses to install electrical infrastructure for EV-capable, EV-ready or EVSE regardless if they own an EV. According to consumer reports, only 4% of cars sold in 2021 were electric vehicles, including plug-in hybrids. (C. CR 2021) To make mandatory the installation of infrastructure supporting



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vehicles which on their own are, at minimum, 15% more expensive to purchase than standard fuel burning vehicles; none of ICC's building codes dictate vehicle maintenance and fueling in a dwelling setting. This is an overreach of building code and at minimum does not belong in the body of the code.

2) **Inadequate Consensus Process:** We have observed concerning discrepancies in the code development process, raising doubts about the legitimacy of the consensus approach. Along with other anomalies in the procedure, it was stated by subcommittee members that they would be interested in seeing the sections of concern moved to an appendix, however when these proposals were submitted, it was then specified by 2024 IECC Project Team and Kris Stenger that those sections were no longer open for comment. It's within the consensus committee's purview to reject based on consensus voting in committee, but for the project team and secretariat to reject our submission on a technicality that was not well explained, while admitting other proposals that did not meet the submission requirements may not have been prejudicial but are inconsistent. (D. RECPI-6-21), (E. RECPI-7-21)

Proposals modified in committee need to have those changes included in the cost justification as well as other pertinent substantiation. Roughly 43 minutes into the 3/9/23 Consensus Committee meeting, Eric Lacey calls attention to the fact that the consensus committee has been approving modifications made by committee that have not been properly reviewed or following proper procedure.

Also, there were a number of public comments that were allowed and changes that were allowed to be submitted or made during committee that did not follow the guidelines set forth in the Consensus Procedures as well as CP-28. Code changes and agreements were made outside of public view by the group within the consensus committee referenced as the "Omnibus". Based on testimony of members of the Consensus Committee, decisions on how the majority of the committee would be voting were made outside of publicized and publicly attended meetings. While recognizing the work put into the Omnibus, Eric Tate expresses his concern and frustration about the missing parties and lack of procedure during the 2/17/23 Electrification sub-committee meeting at approximately 2 hours and 1 min into the meeting.



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Section 7 of the ICC Consensus Procedures defines meetings as being “held to conduct business, such as making assignments, receiving reports of work, considering draft standards, resolving differences among subgroups, and considering views and objections from any source.” Following the ICC Consensus Procedures Section 7.1, meetings should be open to all members and have a minimum of 2 weeks notice. These types of discontinuities undermine the transparency and inclusivity that are integral to a robust code development process. The omnibus included more than ½ of the consensus committee where meetings were held to discuss committee business and make agreements that are completely contrary to procedure and the objective of having public comment which should not be allowed as each submission should be reviewed publicly on its own merit by all stakeholders.

Committee Conduct on a number of occasions didn’t follow the regulations put forth council policies and consensus procedures and also should not be a representation on the ideals of ICC as a diverse and inclusive national entity. At roughly minute 75 of the 1/19/23 consensus committee meeting, when discussing moving section R404.5 from an appendix to the main body of the code, Rock Johnson called for a vote in the middle of the discussion because he didn’t like what was being said. Gyathry seconded and the committee moved forward, clearing all hands who were still patiently waiting for their turn to speak.

Any actions during the convergence of official ICC committee meetings and subgroups that are vigorously unaligned with ICC’s Code of Ethics as well as the diverse and inclusive ideology of the ICC should not be tolerated.

Committee makeup should be reevaluated to ensure that the code enforcement community has a balanced presence separate from other governmental sectors. Generally speaking, the code enforcement community offers unbiased opinions on code updates based on their experience in the field. It is important to have governmental members who have experience in the implementation and enforcement of building codes.

**3) Economic Feasibility and Cost Analysis:** The economical aspect of our proposals closely align with the intent of the Residential Energy Provisions to consider economic feasibility, costs, and savings for consumers and building owners. The extent to which cost effectiveness analysis has been considered to determine a quantifiable basis to which new proposals should be measured, while communicating to the consumer to what extent the regulation is in their best interest. It has also been determined



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that it is the Board of Directors intent to have the energy code follow the Council Policy 28 based on the November 20<sup>th</sup> release of the ICC Pulse newsletter. Council Policy 28 provides requirements for what information is to be provided with public comments and code change submissions, and what actions are to be taken depending on the inclusion or exclusion of that information with regard to cost efficiency. This unsubstantiated cost information voids the necessity of cost efficiency analysis.

Section R404.7 makes it mandatory for New one- and two- family dwellings and townhouses to install electrical infrastructure for EV-capable, EV-ready or EVSE regardless if they own an EV. The addition of this code section makes mandatory the installation of infrastructure supporting vehicles which are more expensive to purchase; none of the building codes dictate vehicle maintenance and fueling in a dwelling setting. This is clearly an unreasonable increase in cost. Why does a consumer's vehicle purchase have any bearing on the construction of their home?

It is unreasonable to try to justify requiring installation of systems because it will cost more to do so at a later point. Generally, this is untrue. If at some point, EV's become mandatory, the demand will require an increase in supply and therefore lowering the price as more materials and services are available. New products and services are more expensive being a niche market. Technology is constantly changing and upgrading and becoming more efficient so to assume that retrofitting or later installation would cost more later than installing now is an unfounded assumption.

Section R404.6 Requires the design of a solar array system and the installation of the infrastructure of a system which the owner may not even want to install. The design and installation of a system that won't be used is a clear unsubstantiated increase in cost. The exceptions available either require the installation of a system or require engineering analysis for sun exposure which would cause the owner / developer to incur yet another unjustifiable expense.

The 30 year cost analysis used for justification is only relevant to a new home built and occupied for 30 years, which is not the case for most homeownership situations. This also does not consider upgrades required in remodeling, which there are typically more permits for than new homes, which often are "out of pocket" and not over a 30 year timeline.



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A number of unjustified relative cost claims were made during committee. Not only are they unjustified but based on CP-28, sections 3.3.5.6, 4.2 and 4.3, it was ICC staff's responsibility to vet the cost analysis and without the proper substantiation, withhold the comment or code change until that information was provided." (B. ICC Pulse Newsletter)

4) **Flexibility and Long-Term Viability:** The concerns about overly burdensome expenses and outdated systems align with our apprehension that certain mandates could impose undue strain on developers, homeowners, landlords, and renters. Striking a balance between energy efficiency and long-term viability is pivotal to the code's effectiveness and adoptability. There is also the concern about the committee makeup in general. When looking at the people chosen for the consensus committee, the position some registered to fill and their actual occupation and corporate representation fall into different categories. All the affiliated organizations of the committee nominees should be considered as influencing their vote.

The technical abilities of entities writing code language not familiar with the enforcement and administration of the code without refinement may lead to unintended consequences such as the IECC being disregarded by communities as unrealistic, unfair and unenforceable. The technical aspect is the first step but clarifying and simplifying the information to comprehensive and enforceable code is needed to provide a usable code/standard. If language and processes in the code are written only to be understood by specialists and engineers, then code officials and subsequently citizens will be unable to understand, follow and enforce the code language. If the code is not comprehensive and enforceable then there will be no reason for communities to adopt it and is in contradiction of Section 1 of CP-49 specifies "it is the goal of ICC that its Codes and Standards should not contain any provisions that would preclude the Codes and Standards from being adopted internationally."

As topics like electrification and Electric Vehicles do not correlate directly with energy efficient design and construction, much of the nation's electric grid and transportation still come from fuel burning sources. These code changes target the consumer directly while putting no burden of responsibility on power producers. The scope of leading the way calls for flexibility within the code and by dictating a single source of energy will diminish competition and innovation in the advancement of the industry. Section R404.6





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Renewable Infrastructure, while not calling out solar in its title, focuses primarily on the installation of solar systems which prioritizes one industry.

The adverse effects of leaving these sections in, will force code officials to have to explain how these sections relate to dwelling energy efficiency. Plainly, they don't. Customer service is constantly a concern being a regulatory department but having to enforce regulation that doesn't fall under our jurisdiction while appearing to frivolously increase cost while benefiting specific industries is more of a penalty and general building deterrent rather than regulation. This will diminish our relationships with the public being the "bearer of erroneous regulations" and not having a factual or productive way to explain it. Costing people money on things that, by definition, exceed minimum energy conservation code will strain the relationship that some of us have worked very hard on with our customers and also with ICC. If the customers don't want to work with us it will lead to them doing work without permit and lead to Code Officials having to recommend against the adoption of the IECC.

Writing simple code is not easy, and we do not wish to diminish the hard work of the good people on the committee, but there have been some fatal errors in this process that need to be corrected. Determining orientation from true North and shading from direct sunlight for more than 2500 annual hours are beyond the vast majority of my customers ability to demonstrate so will fall on our already scarce resources. REC paperwork is to be interpreted by the Building Official to meet minimum code? It is excessive to require drawings and details for systems that are not going to be installed. Trying to get cooperation from a utility to determine a minimum code requirement will increase the time it takes to get a permit and lead to further denigration towards officials from our customers. With about 52 options on the not less than 2 required "extra" efficiencies, that is anything but simple. Options are a good thing, but simplicity leads to compliance.

In conclusion, throughout this new IECC standards development process, it has been made apparent ICC Consensus Procedures ambiguity and lack of completeness sets the stage to allow rules to be misconstrued and applied inconsistent with those procedures. The procedural document which provides guidance for this system of code development should be much more encompassing, relieving the need to contrast multiple council policies and guidance documentation. Specific references to the other guidance documentation should be provided where holes in the procedures documents are to be filled. We urge the Appeals Board to give thoughtful consideration to our appeal as well as all other appeals that were dismissed without due process or deliberation, incorporating the



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points raised above. It is our opinion that Sections R404.5, R404.6, R404.7 and their corresponding sections in the International Residential Code, do not meet the intent of the IECC and were added to the code without following proper procedures, therefore they should be moved into their own appendices as shown in the supporting documents.

In addition to moving these sections into their own appendices, it is our recommendation that the board look at the consensus committee make-up and the full scope of nominee affiliations to better understand why many of these unreasonable code changes were passed in committee. Many of these committee members represented institutions, while claiming “unbiased” general interest, have direct and significant financial affiliations with electric utility or electric product production companies. There needs to be more balanced committees and subcommittees with regard to enforcement, owner representation and special interest. Being that the consensus committee accepts recommendations made by subcommittees, the subcommittees need to have their makeup evenly created as well.

Coinciding with the above suggested remediation methods, completing the required cost analysis documentation should be required, at least for the inclusion of completely new code sections. There should be a committee/working group overseeing the cost fluctuation in the code cycle limiting the increase in cost rather than continuing to allow the increase in home construction cost to repeatedly price people out of being able to build or update their home. With the number of special interest lobbyists on the committee, there absolutely needs to be oversight on the cost of what is approved and the number of code changes that were made, modified and approved by the committee, the staff oversight should include cost justification which should have been included in any proposed change. To make that process simpler, it would help if there were an easily accessible template for providing cost justification and what information is required to do so.

Our commitment to advancing energy efficiency is imperative while our dedication to code and our communities is unwavering. We are confident that your impartial evaluation will serve the best interests of both our region and the broader International Code Council community.

In accordance with CP#1-03 section 3.3.3.3 as organizations affected by this may be exceedingly numerous, we would name the residential consensus committee. As we do not have a mailing address, we recognize the 2024 IECC Residential Consensus Committee as an entity of ICC and any other individuals or organizations participating in the





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“IECC Interested Party Update” email notification to have their email address substitute for their mailing address.

Thank you for your time, consideration, and dedication to maintaining the integrity of our building codes.

Sincerely,

William Mckinney, Chairman  
ICC Region VI

Bibliography:

- A. (A. A Path Forward)
- B. (B. ICC Pulse News letter)
- C. (C. CR 2021) Consumer reports article
- D. (D. RECPI-6-21) RECPI-6-21 Balloting Document
- E. (E. RECPI-7-21) RECPI-7-21 Balloting Document

Accessory documents:

New Appendix RC

New Appendix RJ

New Appendix RK