

AIA Position on Appeals from the OGCV in the 2019 Code Development Cycle CE217-19

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)

AGA and APGA NAHB Appeal of CE217-19, Parts I and II

AGA and APGA claim that the cost of construction stated by the proponent is incorrect because the installation of electric vehicle equipment is unrelated to building energy efficiency.

A holistic view toward the impact of the cost of construction such equipment certainly impacts the efficiency of where a structure is located, its' access by vehicles, the elements associated with support for access, etc., all are associated with the costs of and conservation of energy.

AGA and APGA state:

This proposal would impose costs of construction in commercial and residential buildings by requiring electric vehicle (EV) equipment, EV "capable spaces," and EV "ready spaces" for reasons not relevant to building energy efficiency nor justified on the basis on building energy efficiency. The construction cost analysis approved by ICC staff and included with the publication of the proposal identifies increases in costs of construction that the proposal would cause, but neither the proponent nor ICC staff provide justification or commentary on energy savings to the building. As such, the proposal does not meet the "Intent" statement of the commercial building coverage of the IECC

Similar to the previous appeals, the AGA and APGA claim that ICC staff approved the construction cost analysis. The AIA disagrees with AGA and APGA conclusions. ICC Council Policy #28 (CP#28-05, updated 1/22/19) states:

3.3.5.6 Cost Impact: The proponent shall indicate one of the following regarding the cost impact of the code change proposal:

- 1) The code change proposal will increase the cost of construction;*
- 2) The code change proposal will decrease the cost of construction; or*
- 3) The code change proposal will not increase or decrease the cost of construction.*

The proponent shall submit information which substantiates such assertion. This information will be considered by the code development committee and will be included in the published code change proposal. Supporting documentation may be provided via a link to a website provided by the proponent and included in the cost substantiation statement. The cost substantiation statement shall include the date the link was created.

Any proposal submitted which does not include the requisite cost impact information shall be considered incomplete and shall not be processed.
(emphasis added)

The only direction given in CP#28 that ICC staff could have used to question whether the proposal was incomplete was the lack of “cost impact information.” The proponent stated in the Cost Impact portion of the proposal:

Cost Impact: *The code change proposal will increase the cost of construction. The code change proposal will increase the cost of initial construction, but provide long-term savings for EV owners through the avoided retrofit costs of installing EV charging infrastructure.*

The proponent went even further:

Multi-family residential (3 or more units): *The chart below compares the cost of installing the necessary electrical infrastructure to support EV-Ready spaces (complete circuit) and an EV-Capable spaces (PEV-capable) at the time of new construction versus a building retrofit. In one example, the cost estimate to retrofit an existing building with two EV-Capable spaces is \$5,640, and \$4,800 or 85 percent of that cost would be avoided if EV-Capable infrastructure was included during the initial construction of the parking lot. These additional retrofit costs typically include labor expenses for demolition, trenching and boring, balancing the circuits, and new permitting costs.*

The proponent outlined clearly the impact of both first cost and life cycle cost impact of this change. Justification based on future benefits to developers, owners building managers is as viable a means to measure cost and provide information.

The AGA and APGA have not shown any valid reason for overturning the decision of the ICC membership on CE217-19. The AIA believes that the argument by the AGA and APGA is incorrect and should be rejected, allowing the action by the membership on code change CE217-19 to stand.

LBA Appeal of CE217-19, Parts I and II

LBA claims in its appeal of April 30, 2020 that the number of voters is somehow unprecedented:

The OGCV results have a direct correlation to EECC's Voting Guide. Curiously, an unprecedented number of proposals were overturned from disapproval to approval (requiring 2/3rds) during the online vote. An unprecedented phenomenon that only occurred on IECC proposals, and only on those contained in the EECC Voting Guide.

The Online Governmental Consensus Vote (OGCV) has been in use by ICC during the past two code development cycles; the 2015-2016 and 2018-2019 hearings. As needed, the ICC Board of Directors has made changes in the procedures and methods used to develop the I-Codes to enhance the documents development and enhance the ability of a greater number of members to actively participate in the decision making process. Thus the OGVC system was developed and implemented.

Characterizing the results of the 2019 vote to be unprecedented due to the claimed influence of the Energy Efficiency Code Coalition (EECC) voting recommendations fails to recognize the evolution of procedures and ignores prior votes that have been perceived as equally unprecedented, but none-the-less valid according to the rules and policies of the Board of Directors of ICC.

Historically, there are many groups and organizations that develop and circulate positions on particular code changes. These organizations include in their number qualified and authorized voting representatives of the ICC member jurisdictions. Some of these groups and organizations specifically are developed by and for ICC members to build a stronger and more effective voice in the development of codes. EECC is simply one example of such an organization. Claiming that ICC is somehow responsible for what its membership chooses to do relative to joining organizations or groups that support the work they perform and identify with as providing the same services is irrational.

LBA also states:

Unfortunately, the final results of the 2021 IECC were achieved through deliberate and calculated manipulations through the leveraging of these overly subjective bylaws. The manipulations were orchestrated by proprietary interests which have a direct vested economic stake in the IECC being developed in their favor.

The Energy Efficient Code Coalition "EECC" has a mix of membership interests that are both proprietary and non-proprietary. Many of its members were permitted by ICC to vote during the OGCV. This poses not just a conflict of interest, but also undue process. EECC has inside, unfettered and confidential access to its members that are also online voters.

The OGCV results have a direct correlation to EECC's Voting Guide. Curiously, an unprecedented number of proposals were overturned from disapproval to approval (requiring 2/3rds) during the online vote. An unprecedented phenomenon that only occurred on IECC proposals, and only on those contained in the EECC Voting Guide.

There are any number of organizations that prepare voting guides. Such tools are deliberately prepared by such groups to influence and inform votes and have been part of the process of code development for decades. Organizations range from industry groups, manufacturers, state and local code official membership groups, professional organizations, etc. Members in many of these groups are also qualified to vote during the OGCV. LBA has not documented what in the ICC rules and bylaws were violated by claimed manipulation and leveraging through use and distribution of a voting guide.

Virtually all organizations that prepare voting guides could be claimed to include both proprietary and non-proprietary members simply by the fact that there is an organization to which there is something of value. LBA has not documented what proprietary interest was affected one way or another by the decision on CE217.

An unprecedented phenomenon regarding voting on code changes and a voting guide is difficult to determine. Should a consideration of votes taken by the representative of an organization that is wholly proprietary and the voting guides that they prepare clarify that such an unprecedented phenomenon has occurred multiple times over multiple code cycles? Simply because LBA claims it does not make it so. The overturning of a group of negative votes in one of two hearing cycles within one subject area of the codes does not constitute an "unprecedented phenomenon."

In addition, LBA included in its list of proposals they wish to overturn CE217-19. But the only claim directly associated with CE217-19 is:

*Overturned Commercial Proposals: CE12-19, CE49-19, CE56-19, CE217-19 and CE262-19
a. Of these CE217 is completely beyond the scope of the IECC.*

The scope of the IECC states in Section 101.1:

This code applies to commercial buildings and the buildings' sites and associated systems and equipment.

The IECC includes a comprehensive set of requirements and reference standards for a wide variety of elements associated with a building site and various applications of systems and equipment. CE217-19 merely establishes a minimum requirement for the capability to accommodate EV connections. Installation of such devices after initial construction becomes a major financial burden for developers, builders, home owners and residents that choose to have an EV. Capability to accommodate the future needs of the users is clearly included within the scope of the IECC.

Capability to add is already built into several provisions in the ICC Codes. In the IECC a reference to the NFPA 70 standard establishes several levels of excess load and capacity beyond a strict evaluation of the demand of the actual design of specific appliances, equipment and services. Safe operation of buildings has shown that such forward thinking is necessary and appropriate.

CE217 recognizes the impact it might have on buildings with limited parking and provides an exception where no parking is provided on the site, and only requires EV capable spaces where more than 10 parking spaces are to be constructed.

LBA claims that:

“ICC failed to do its due diligence by not instituting adequate and appropriate oversight to ensure that Governmental Members and /or their designated voting representatives were in fact engaged in the “administration, formulation, implementation or enforcement of laws, ordinances, rules or regulations relating to the public health, safety and welfare.”

ICC Staff, following the guidelines for accreditation of eligibility of voting membership confirmed the voting membership roster twice. First during the initial process of establishing who was eligible, and secondly during the Validation Committee’s process to confirm the final votes. In the ICC’s *Report on the Code Development Process: 2019 Group B Cycle*, it reported:

As requested by the Validation Committee, Code Council staff performed a comprehensive analysis of the twenty identified code changes. In addition, staff performed an analysis of the entire 2019 Group B cycle of all 388 code changes considered at the PCH and then the OGCV. The 2019 Group B analysis is reflected in Appendix A of this report and included a review of the following:

- *Governmental member (GM) and governmental member voting representative (GMVR) compliance with the definitions set forth in the bylaws.*
- *GM/GMVR compliance with application deadlines.*

The staff report also provided findings relative to “voting irregularities” cited in the Zaremba letter.

- *Staff determined that all 124 applicants met the bylaws definition.*
- *Staff found two other GMs who did not meet the application deadlines for the 2019 Group B cycle. Staff determined that votes cast by these two were not material to the outcome of the final action vote on code changes voted on as stipulated in Section 10.2 of CP 28.*
- *Staff found that all the applicants who participated in Group B met the bylaws definition.*

- *Staff found that all the applications were received in compliance with the deadline.*
- *Staff found that no voting irregularities occurred during the 2019 Group B cycle.* (emphasis added)

On March 20, 2020, the Validation Committee that:

Having found no irregularities or concerns material to the outcome of the voting process, the Validation Committee hereby certifies the results of the online governmental consensus vote and confirms a valid voting process for the 2019 Group B code development cycle.

The report also indicates:

The Validation Committee further stated that no additional voting guides were investigated.

Representatives on that committee included:

John Catlett, BOMA
Craig Drumheller, NAHB
Mae Drzyga, Dupont
Bill Dupler, ICC Past President, Chesterfield County, VA (retired)
Steve Thomas, City of Cherry Hills, CO

LBA has not shown any valid reason for overturning the decision of the ICC membership on CE217-19. The AIA believes that the argument by LBA are incorrect and should be rejected, allowing the action by the membership on code change CE217-19 to stand.

NAHB Appeal of CE217-19, Parts I and II

The NAHB in its May 8, 2020 appeal states:

Proposals RE147 and CE217 Parts I and II are both outside the scope and intent of the IECC (section R101.3 and C101.3). These proposals require the addition of electric vehicle charging outlets (CE217 Parts I and II) and the installation of electric outlets where gas appliances are installed that can be used for future electric appliance replacement (RE147). Neither proposal impacts the effective use and conservation of energy outlined in the IECC.

(emphasis added)

The design and construction of buildings as part of an overall strategy that anticipates events in the future has been a hallmark for the model codes. Energy conservation and the development of codes that enhance the performance of buildings to not only conserve energy but to anticipate the need for integration of systems and methods that will enhance even further reductions of energy use and the impact on the environment are an imperative.

CP#28 states:

3.3.5 Supporting Information: *Each code change proposal shall include sufficient supporting information to indicate how the code change proposal is intended to affect the intent and application of the Code.*

The intent of the IECC states:

C101.3 Intent. *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 proponent in his reason statement indicates:

In the United States, electric vehicle (EV) sales increased by 80 percent from 2017 to 2018 (1). According to a November 2018 forecast from the Edison Electric Institute, the number of EVs on U.S. roads is projected to grow from 1 million vehicles at the end of 2018, to 18.7 million by 2030. To recharge these new EVs, the U.S. will need 9.6 million charge ports, a substantial portion of which will be installed in single and multi-family residential buildings (2).

The proponent has clearly stated the innovative use of technology to provide flexibility to residential multi-family building needs in the future, a part of the intent of the IECC for the life of each building.

NAHB continues:

Item 3: Set aside the results of the 2019 IECC Online Governmental Consensus Vote and declare the Final Action on proposals RE21, RE29, RE32, RE33, RE36, RE37, RE126, RE145, RE147, RE151, RE182, RE184, RE192, RE204, RE209, CE12, CE49, CE56, CE217 Part II, and CE262 to be in accordance with the results of the Public Comment Hearing, as permitted in CP#28 Section 10.2. Also, modify CP#28 to prohibit proposals defeated at both the Committee Action Hearings and Public Comment Hearing from proceeding to the OGCV and consider such proposals Disapproved.
(emphasis added)

The basis for this request is outlined in its items 3 and 4 of NAHB's appeal. Item 3 states:

3) Spirit and Intent of ICC Council Policy #28 (CP#28)

ICC's Council Policy #28 establishes the policies and protocols ICC follows during the code development process. Prior to the Online Governmental Consensus Vote (OGCV) process, which was added in 2013, there were only two voting steps in the ICC code development process - the committee hearing and the final action hearing.
(emphasis added)

The change to the process in 2013 to add the OGCV was the latest in a series of changes made by the ICC Board of Directors specifically intended to enhance the ability of the ICC membership who could not attend the hearings to participate actively in the code development process. AIA was a part of the committee involved in the review and development of what is the current process known as the OGCV. One of the major focuses that led to this decision was an effort to assure that the membership truly ratified the final development of the codes.

As currently structured the Code Development Committee (CDC) hearing remains functionally as it was from the very beginning; vetting the code change proposals and giving them a technical review based on the expertise of the CDC. The second round of hearings, the Public Comment Hearing (PCH), is structured to allow a public response and input following what the CDC did initially. A vote at the PCH can validate what the CDC indicated, it can endorse a modification to the change, or it can indicate that neither of those choices are the desired result. That decision allows the ICC membership through the OGCV to then agree with that decision or disagree.

Votes at the final hearing often involve even a small percentage of those who represent the total number of certified voting membership of ICC. The cost to members for travel, room and

board at hearings, time dedicated to days of hearings, and similar obstacles such as the timing of hearings on specific items on the agenda all contribute to low vote counts. Often code changes were ratified, modified or denied by a very small number of votes.

For example, CE217-19 received a total of 22 votes at the public comment hearing. A total of 1,191 votes were counted after the OGCV. The breakdown was a final vote of 840 in support and 335 opposed.

In order to rectify that problem, the OGCV procedure was initiated so that a larger number of voting members of ICC can weigh in on the final decision without the burden of travel and attendance at the hearings. ICC facilitates the memberships opportunity to observe the hearings by transmitting them in real time and by allowing voting members to review a video of the hearings on each code change to help inform their vote. Following Robert's Rules of Order, a second obstacle ICC deliberately placed in the OGCV requiring a super majority of 2/3 of the voting members to overturn a negative vote at the final hearing.

NAHB states:

With the new online process, a proposal that is disapproved at both the committee and second hearing is allowed to move to the online vote. However, the current CP#28 does not allow proposed modifications to proposals that have been defeated twice to be discussed because the assumption is that the proposal is no longer viable. The current ICC process allows these partially vetted proposals to advance to the OGCV ballot and be approved with a 2/3 vote.
(emphasis added)

CP#28 allows consideration of what has been decided at the final hearing and allows the membership to agree or disagree with that vote. However, if the final hearing vote is to deny the change, in order to overturn and approve the change a 2/3rds super majority of the voting members must agree. CP#28 states:

7.5.9.10 Public Comment Hearing Results: *The result and vote count on each code change proposal considered at the Public Comment Hearing shall be announced at the hearing. In the event the electronic voting system is not utilized and a hand/standing count is taken in accordance with Sections 7.5.9.7 and 7.5.9.8, the vote count will not be announced if an individual standing vote count is not taken. The results shall be posted and included in the Online Governmental Consensus Ballot (see Section 8.2).*

All code changes are voted on by the OGCV procedure and contrary to NAHB's statement, none of them, whether approved, denied or modified are debated following the public comment hearing. There is no stated or implied "assumption" in CP#28 regarding the status of any of the code changes, contrary to NAHB's statement.

Since the code change that the NAHB is asking be overturned (CE217-19) was denied at the CDC hearing and at the PCH hearing, a 2/3rds vote was necessary to approve the change. The accredited voting members did cast a number of votes equaling 2/3rds to do just that.

NAHB states:

This makes little sense given prior precedent and all parties' interest in ensuring all viable proposals are fully evaluated. It is apparent that allowing a twice-defeated proposal to move to the OGCV without being fully vetted was a vestige of the earlier process and an oversight when CP#28 was modified to add the OGCV. In the four previous code cycles since the OGCV has been in place, not a single twice-defeated proposal has garnered a 2/3 online vote to pass, so the intent and spirit of CP#28 were never challenged.

Precedent in a process is a dangerous thing to assume. The changes in the voting procedures during ICC's existence have shifted the responsibility of the membership from attending hearings to being allowed to monitor the hearings and to vote online. NAHB's statement regarding "four previous code cycles" under the OGCV is incorrect; there have been only two cycles (2015-2017 and 2018-2020). ICC's documents are a package of interrelated codes that can't be disconnected. Due to the volume they have been split into two groups that span over two years of hearings, but both groups fall within one cycle. Precedent is hardly set if something unusual occurs during one of two cycles.

It isn't clear who they are referring to when they say "all parties' interest" in "all viable proposals" are considered. Such judgement is the responsibility of the individuals examining the each proposal to determine its "viability" and whether "interests" are involved in the code change proposal or those weighing in on the proposals.

NAHB also stated following a long list of code changes:

Of these 20 proposals, only RE 209 and CE 262 had an opportunity to be fully vetted. The other 18 proposals passed without full consideration given to their need, effectiveness, or potential resolution to known flaws.

The vetting process outlined by ICC for code changes allows any party the opportunity to raise the question of "need, effectiveness, or potential resolution to know flaws." If NAHB felt these changes had been overlooked or ignored, they had every opportunity to raise them during the hearing process by the CDC on which representatives of NAHB sit as well as to introduce public comments for the public comment hearing. Evidently they failed to do so.

NAHB also states:

This appeal does not dispute that the letter of CP#28 was followed in the Group B process, but it is clear that the spirit and intent of the process was exploited leading to the voting irregularities occurred.

NAHB isn't clear what "spirit and intent" was exploited, nor were voting irregularities it claims confirmed by both the ICC staff and the ICC validation committee on which NAHB has a representative. NAHB indicates in item 4 of its appeal:

4) Voter Validation

The eligibility of many of the Governmental Members Voting Representatives (GMVR) is suspect and NAHB believes the status of a subset of GMVRs should be reevaluated because it appears they do not meet the ICC Bylaw's definition.

*The ICC Bylaws state, "[A] Governmental Member [Voting Representative] ... shall be an employee or a public official **actively engaged** either full or part time, in the **administration, formulation, implementation or enforcement** of laws, ordinances, rules or regulations relating to the public health, safety and welfare."*

Presumably, ICC established certain parameters for GMVRs to ensure voters have the knowledge and experience to consider the installation and inspection practicalities associated with codes proposals and make educated decisions via their votes. It appears, however, that numerous GMVRs are not actively engaged in the administration, formulation, implementation, or enforcement of laws, ordinances, rules or regulations related to public health, safety and welfare. Absent this baseline knowledge or experience, there is little assurance that voters fully understand the impacts or consequences of proposals or their votes.

NAHB provides no evidence pertaining to their presumption. The decision regarding who shall cast the vote, what their knowledge and experience involves is wholly up to the ICC voting member jurisdiction. NAHB is claiming without foundation that the ICC membership does not exercise its responsibility to act according to the Bylaws in making this decision.

AIA strongly disagrees with NAHB's assertion. The AIA believes that the argument by NAHB are incorrect and should be rejected, allowing the action by the membership on code change CE217-19 to stand.

Presented for your consideration.



David S. Collins, FAIA

Representing the American Institute of Architects