



November 20, 2023

ICC Board of Directors:

On behalf of the American Gas Association (“AGA”), American Public Gas Association (“APGA”), and National Propane Gas Association (“NPGA”) (collectively, “Joint Requesters”), we are writing to request that the International Code Council (“ICC”) Board of Directors (“Board”) issue a 60-day extension to the appeal period for the 2024 International Energy Conservation Code – Commercial, 2024 International Energy Conservation Code – Residential, and 2024 International Residential Code – Chapter 11 (collectively, “2024 IECC”), as well as a stay of the publication of the 2024 IECC until all appeals have been decided.

### **A. Interests**

AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 77 million residential, commercial, and industrial natural gas customers in the U.S., of which 95 percent—more than 73 million customers—receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets more than one-third of the United States’ energy needs.<sup>1</sup>

APGA is the trade association for more than 730 communities across the U.S. that own and operate their retail natural gas distribution entities. They include not-for-profit gas distribution systems owned by municipalities and other local government entities, all locally accountable to the citizens they serve. Public gas systems focus on providing safe, reliable, and affordable energy to their customers and support their communities by delivering fuel to be used for cooking, clothes drying, and space and water heating, as well as for various commercial and industrial applications.<sup>2</sup>

NPGA is the national trade association of the propane industry with a membership of about 2,500 companies, and 36 state and regional associations representing members in all 50 states. NPGA’s membership includes retail marketers of propane gas who deliver the fuel to the consumer, propane producers, transporters and wholesalers, and manufacturers and distributors of equipment, containers, and appliances. Propane, or liquefied petroleum gas, is used in millions of installations nationwide for home and commercial heating and cooking as well as various other agricultural, industrial, and transportation sectors. The variety of appliances powered by propane include the pool heaters subject to the agency’s proposal.

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<sup>1</sup> For more information, please visit [www.aga.org](http://www.aga.org).

<sup>2</sup> For more information, please visit [www.apga.org](http://www.apga.org).

Joint Requesters provide fuel for the thermal energy needed by the homes and businesses that will ultimately be impacted by these codes. The Requesters have engaged in the 2024 IECC development process from the beginning, both as interested parties and consensus committee members. Accordingly, Joint Requesters and our members are critical stakeholders in this proceeding.

## **B. Requests**

- a. An extension of the IECC appeal period is justified due to inconsistent, vague, and lack of communication pertaining to the code’s development and appeals process.**

Joint Requesters ask the ICC Board to extend the 2024 IECC appeals period for 60 days due to a number of concerns that deprive both Joint Requesters and all interested stakeholders of a reasonable opportunity to review the tentative changes to the IECC and develop a meaningful appeal, if necessary. Such extension is warranted for a number of reasons, as discussed below.

For any stakeholders not in attendance at the ICC’s Board of Directors annual meeting on October 7, 2023, in St. Louis, Mo. or not a member of an IECC committee, the earliest potential notification of how the 2024 IECC appeals process would operate came in the form of an October 23, 2023, Building Safety Journal (“BSJ”) article.<sup>3</sup> According to the article, the appeals process was “anticipated to begin on December 5, 2023.” Not surprisingly, it was a shock to many when, on November 3, 2023, an email was sent from ICC staff to interested stakeholders, announcing the beginning of the appeals period and that it would conclude on December 3, 2023. The extreme inconsistency regarding the announced anticipated appeals period start date and actual start date is reason enough to extend the 2024 IECC appeals period.

For any stakeholders that do not subscribe or closely monitor the BSJ publication, the November 3<sup>rd</sup> email would be their first notice of how the appeals process would operate. Unfortunately, the BSJ article only vaguely noted that the ICC Board had decided to “[f]ollow Section 4.1 of CP-1 – Appeals for properly submitted appeals.” Section 4.1 states:

“If the appeal is not in regard to a committee or staff action, the appeal shall be placed before the Appeals Board within thirty (30) days of receipt of the appeal.”

Not only does this provision not clearly explain how appeals regarding a committee or staff action will be handled, it also does not clarify whether the rest of CP-1 applies to the 2024 IECC appeals process, including what constitutes “properly submitted appeals.” Joint Requesters have reached out to ICC staff to gain clarification on a number of questions surrounding the appeals process, but, as of the writing of this letter, have yet to receive necessary clarifications.

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<sup>3</sup> <https://www.iccsafe.org/building-safety-journal/bsj-news/highlights-from-the-international-code-council-board-of-directors-fall-2023-meeting/#>.

As a respected independent code development organization, it is important for ICC to be clear in its public communications, including those related to any processes related to the development and finalization of its codes. Accordingly, Joint Requesters are concerned about how this apparent inconsistency may impact the current IECC appeals. Not only is it crucial for ICC to extend the appeals period due to this vague and lack of communication regarding the process, but it also must be sure to adequately notify interested stakeholders with any clarifications.

The appeals period for the 2024 IECC also encompasses two federal holidays when many stakeholders are away from work, including ICC employees.<sup>4</sup> The limited staff available during this time will make it difficult to develop meaningful appeals in response to the final balloting of the 2024 IECC. This challenge is paired with the fact that stakeholders continue to face significant supply chain and worker shortages that pose further obstacles to giving these complex and lengthy code changes the critical review and feedback that are required.

Finally, ICC staff did not and does not plan to release a final tentative version of the 2024 IECC with all changes from the 2021 edition clearly redlined.<sup>5</sup> This is particularly concerning, as the copious amount of tentative changes to the 2024 IECC are now ultimately spread across numerous documents comprised of hundreds of pages. The current appeal period is simply not sufficient time for Joint Requesters and other interested stakeholders to not only compile a master list of all the changes voted forward but also closely scrutinize those provisions and the code as a whole in order to develop meaningful appeals.

Given the numerous compounding factors impacting stakeholders' ability to investigate potential legal and procedural violations, review the final actions of the committees, and develop meaningful appeals in the allotted time, the ICC Board should extend the appeal period by at least an additional 60 days. This will allow adequate time for all stakeholders to review and understand the tentative 2024 IECC, which will ensure all have the opportunity to file a meaningful appeal, if needed. Providing a 60-day extension for the submission of appeals will also not cause a significant delay in ICC's release of the 2024 IECC, as ICC appeared to be prepared for an appeals process that did not even begin until December.<sup>6</sup>

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<sup>4</sup> The federal holidays encompassed by the comment period include the following: Veteran's Day, observed (November 10, 2023) and Thanksgiving Day (November 23, 2023). In the November 2023 ICC Connections email sent to subscribers on November 4, 2023, ICC staff announced that all U.S. Code Council offices would be closed on November 10, 23, and 24.

<sup>5</sup> Email from K. Stenger, ICC, to R. Lani, APGA, in response to a number of inquiries regarding the 2024 IECC appeals process (Nov. 14, 2023) ("I will say that we will not be putting out another draft so you will need to look at PCD2 and the Committee Action Reports.").

<sup>6</sup> See fn. 3.

- b. Staying the publication of the 2024 IECC before all appeals have been decided is justified, as not doing so would result in premature publication of the code, call into question the validity of the appeals process, and invite confusion into building code adoption processes.**

Despite the fact that ICC has already begun accepting pre-orders on a code that has not yet been finalized,<sup>7</sup> we believe it prudent for the ICC Board to cease and desist from promulgating those provisions of the 2024 IECC that may be legally and procedurally defective and stay the publication of the 2024 IECC until all filed appeals are appropriately handled. In 2020, ICC chose to hold the publication of the pending 2021 IECC until all appeals were decided. This decision was critical, as the ICC Board ultimately decided to remove a number of provisions from the 2021 IECC as part of the appeals process. As the removal of provisions from the tentative 2024 IECC might again be a remedy that the ICC Board chooses to invoke as part of the appeals process, publication of the 2024 IECC before the appeals process has concluded would call into question the validity of the appeals process and introduce unnecessary confusion into the building code adoption process for any jurisdiction looking to adopt the most updated version of the code. Accordingly, we ask that the ICC Board follow the precedent set in 2020 and order a stay of the publication of the 2024 IECC.

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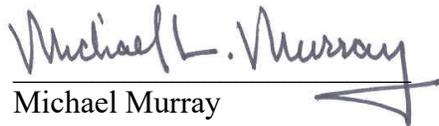
We appreciate your consideration of these requests. Please do not hesitate to contact any of us directly if you have questions.

Respectfully submitted,

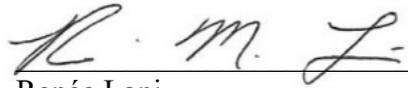
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<sup>7</sup> [https://shop.iccsafe.org/international-codes/model-codes/2024-international-energy-conservation-coder.html?utm\\_medium=email&\\_hsmi=282570391&\\_hsenc=p2ANqtz-13RxHDtVZW\\_SUJYF6lCSNqHf\\_WUsWFGNKSMH0t4EfuVEVdSLxqe0ncInje9\\_vGIRqawMT4IN0xFX3uI26wvtGsFw&utm\\_content=282570391&utm\\_source=hs\\_email](https://shop.iccsafe.org/international-codes/model-codes/2024-international-energy-conservation-coder.html?utm_medium=email&_hsmi=282570391&_hsenc=p2ANqtz-13RxHDtVZW_SUJYF6lCSNqHf_WUsWFGNKSMH0t4EfuVEVdSLxqe0ncInje9_vGIRqawMT4IN0xFX3uI26wvtGsFw&utm_content=282570391&utm_source=hs_email) (IECC preorders); [https://shop.iccsafe.org/international-codes/model-codes/2024-international-residential-coder.html?utm\\_medium=email&\\_hsmi=282570391&\\_hsenc=p2ANqtz--Nh4lZjMKVcoYUowhOHwfZkrqgDfisqyNn2Np0iL5o3W2K248KFn5LEhjcCIYqZHZY\\_G62PutEI0eMN9xXH08t5P1AA&utm\\_content=282570391&utm\\_source=hs\\_email](https://shop.iccsafe.org/international-codes/model-codes/2024-international-residential-coder.html?utm_medium=email&_hsmi=282570391&_hsenc=p2ANqtz--Nh4lZjMKVcoYUowhOHwfZkrqgDfisqyNn2Np0iL5o3W2K248KFn5LEhjcCIYqZHZY_G62PutEI0eMN9xXH08t5P1AA&utm_content=282570391&utm_source=hs_email) (IRC preorders).

It is concerning that the pre-order form for the IRC appears to highlight a change from a Chapter 11 appendix that is not yet finalized as part of the 2024 IECC development process. Additionally, the most recent “Coffee with the Sustainability Membership Council” webinar on November 17, 2023, also discussed the changes to the IECC as though they were final, despite the pending appeals period.



Michael Murray  
General Counsel  
American Gas Association  
400 N. Capitol Street, NW  
Washington, DC 20001



Renée Lani  
Assistant General Counsel  
American Public Gas Association  
201 Massachusetts Avenue NE, Suite C-4  
Washington, DC 20002



Benjamin Nussdorf  
General Counsel  
National Propane Gas Association  
1140 Connecticut Avenue, NW, Suite 1075  
Washington, DC 20036