

February 5, 2024

Dominic Sims
Chief Executive Officer
International Code Council
200 Massachusetts Ave NW
Washington, DC 20001

Dear Mr. Sims:

We write to you about an urgent matter pertaining to the 2024 International Energy Conservation Code (IECC) appeals on behalf of the American Council for an Energy-Efficient Economy (ACEEE), the American Institute of Architects (AIA), the Institute for Market Transformation (IMT), the Natural Resources Defense Council (NRDC), New Buildings Institute (NBI) and RMI.

Several troubling violations of the International Code Council (ICC) written policy for appeals (CP#1-03)¹ by ICC itself compel us to inform you that ICC's own rules require that you cancel the IECC Appeals Board hearings currently scheduled for February 21-23, 2024, so that ICC can work to bring the appeals process in line with CP#1-03. We are concerned that the ICC's current course jeopardizes not only the 2024 IECC, but the legitimacy of future versions of the IECC.

1. All posted appeals were submitted after ICC's appeals deadline

A summary of relevant facts:

- Section 3.1 of CP#1-03 states the following: "An appeal shall be in writing, and shall be directed to and received by the ICC CEO within 30 days of notice of the action or inaction which forms the issue being appealed or no appeal shall lie."
- During an October 7, 2023, meeting, the ICC Board of Directors affirmed the 30-day deadline based on "final committee balloting for the respective committee," referring to the IECC Commercial Consensus Committee and IECC Residential Consensus Committee.²
- Final committee balloting ended on November 2, 2023, with approval of the draft 2024 IECC with 2/3 supermajority vote of both Consensus Committees. A November 3, 2023, email from ICC staff confirmed that with regard to appeals of this action: "The submittal period for appeals now commences in accordance with Council Policy #1."³ The deadline for complete submittal of appeals is Sunday, December 3 at 11:59 pm Pacific." (See Attachment A.)

¹ <https://www.iccsafe.org/wp-content/uploads/CP01-03.pdf>

² <https://www.iccsafe.org/building-safety-journal/bsj-news/highlights-from-the-international-code-council-board-of-directors-fall-2023-meeting/>

³ Here the ICC staff email included a hyperlink to CP#1-03

- There is no mechanism under CP#1-03 by which the appeals deadline could be changed, yet the ICC released a statement on November 29, 2023 stating, “the International Code Council has extended the deadline to submit appeals relative to the 2024 International Energy Conservation Code® (IECC) to Tuesday, January 2, 2024, at 11:59 PM PT.” This statement was released with no notice of a change to CP#1-03, no notice of ICC Board of Directors approval, no review of consistency with ANSI standards processes, and no notice of consultation with interested parties aside from the appellants.
- All appeals on the ICC website were received after December 3, 2023 at 11:59 pm PT.

Conclusion: All appeals posted to the ICC website for the 2024 IECC are invalid as they were not submitted by the December 3, 2023, deadline. There is thus no basis for the Appeals Board hearings on the documents posted to the ICC website.

2. Appeals in regard to committee actions were not processed in accordance with ICC policy

A summary of relevant facts:

- Section 4.2 of CP#1-03 states the following: “If the appeal is in regard to a committee action, the CEO or a designee shall submit the appeal to the appropriate committee within 30 days of receipt of the appeal. No appeal to the Appeals Board shall lie until the committee has reconsidered the matter being appealed. The committee may reconsider substantive and/or procedural matters. The committee shall have full discretion to determine how it conducts the reconsideration, and to determine the information that it deems appropriate for purposes of the reconsideration. The appellant shall have the right to address the committee, under terms and conditions established by the committee, if so requested in writing prior to committee reconsideration.”
- All appeals sent to the IECC Appeals Board and posted to the ICC website relate to committee actions: the approval of the draft 2024 IECC by the Residential and Commercial Consensus Committees.
- The ICC has not submitted the appeals to either committee, and thus has not followed its written procedures vis-à-vis appeals in regard to committee actions.

Conclusion: Even if the appeals had been received by the December 3, 2023, deadline, their presentation before the Appeals Board is invalid because ICC Policy requires reconsideration by the Consensus Committees in accordance with Section 4.3 of CP#1-03 before any Appeals Board action.

3. Appeals in regard to staff actions were not processed in accordance with ICC policy

A summary of relevant facts:

- Section 4.4 of CP#1-03 states the following: “Appeals of a staff action shall be heard before the Codes and Standards Council. If the staff action is upheld, the appellant may file an appeal as set forth in Section 3.0. The CEO or a designee shall, within thirty (30) days of receipt, place the appeal before the Appeals Board. The Appeals Board shall process the appeal in accordance with this Policy.”

- All appeals posted to the ICC website include substantive complaints of staff action, with the exception of the AHRI appeal.
- Staff actions in the appeals far predate the final committee actions, including by more than one year.
- The Codes and Standards Council has not heard any of the appeals of staff actions. Thus the ICC has not followed its written procedures vis-à-vis appeals in regard to staff actions.

Conclusion: Even if all appeals excepting AHRI's appeal had been received by the December 3, 2023, deadline, these appeals before the Appeals Board would be invalid because ICC policy requires first a hearing before the Codes and Standards Council in accordance with Section 4.4 of CP#1-03.

4. Appeals outside ICC limits on Appeals Board review

A summary of relevant facts:

- Section 6.3.7 of CP#1-03 states the following: "Review by the Appeals Board shall be limited to matters of process and procedure. The Board of Appeals shall not render decisions on the relative merits of technical matters."
- The appeals posted to the ICC website include arguments for appeal outside of process and procedure, and appeals by AHRI and ICC Northeast Regional Coalition specifically describe themselves as being on technical matters.
- The ICC placed appeals before the Appeals Board despite all of the appeals including matters that are, to varying degrees, beyond the policy limits "to matters of process and procedure."

Conclusion: Even if all appeals had been received by the December 3, 2023, deadline, the ICC should not have placed them before the Appeals Board for review without redacting any matters that do not relate to process or procedure.

Overall Conclusion

As each of these violations of ICC's written policy for IECC appeals is clear, there are no valid appeals for placement before the Appeals Board. Now that we have highlighted these issues, we believe only one course is consistent with ICC policy: to find that there are no valid appeals to the draft 2024 IECC, and thus that the 2024 IECC development process is complete. That said, even if the ICC were to ignore the violations of its policy regarding the appeals deadline, there are multiple other violations of CP#1-03 that would require action to bring the appeals process in line with ICC policy and require Appeals Board hearings to be deferred until the other required processes are complete.

Thank you for your careful consideration of this letter and the important issues raised within it. We look forward to a swift resolution to the policy violations we have outlined and working with you to improve ICC's processes in the future.

Sincerely,

Michael Waite, Ph.D., P.E.
American Council for an Energy-Efficient Economy (ACEEE)

Daniel H. Nall, PE, FAIA, FASHRAE, LEED Fellow
American Institute of Architects (AIA)

Amy Boyce
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Joseph Vukovich
Natural Resources Defense Council (NRDC)

Ralph DiNola
New Buildings Institute

Erin Sherman
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ATTACHMENT A
ICC Staff Email Dated November 3, 2023

Subject: IECC Interested Party update
Date: Friday, November 3, 2023 at 2:22:14 PM Mountain Daylight Time
From: Kristopher Stenger

IECC Interested Parties-

The [Final Result](#) of the balloting process of the Commercial Consensus Committee on the Committee Action Report on Comments to Public Comment Draft #2 of the IECC Commercial was the approval of all balloted code changes by a 2/3 vote in accordance with Section 9.4 of the [ICC Consensus Procedures](#).

The approved code changes will be incorporated into the final draft of the 2024 IECC Commercial. The submittal period for appeals now commences in accordance with [Council Policy #1](#). The deadline for complete submittal of appeals is Sunday, December 3 at 11:59 pm Pacific.

Similarly, the [Final Result](#) of the balloting process of the Residential Consensus Committee on the Committee Action Report on Comments to Public Comment Draft #2 of the IECC Residential and IRC Chapter 11 was the approval of all balloted code changes by a 2/3 vote in accordance with Section 9.4 of the [ICC Consensus Procedures](#). The approved code changes will be incorporated into the final draft of the 2024 IECC Residential and IRC Chapter 11. The submittal period for appeals now commences in accordance with [Council Policy #1](#). The deadline for complete submittal of appeals is Sunday, December 3 at 11:59 pm Pacific.

Earlier this month the [ICC Building Safety Journal](#) included highlights from the ICC Board of Directors Fall 2023 Meeting. Included in the article is information related to the IECC appeals process (following Section 4.1 of [Council Policy #1](#)). Staff will be following up with further information on these matters including continuous maintenance. Please note the updates to Council Policy #28 noted in the article are not applicable to the IECC as it is developed through CP#7 and CP#12.

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