

MEMO

TO: Members, State Fire Prevention and Building Code Council (Code Council)

FROM: Undersigned Business Associations

SUBJECT: Code Updates Mandated by GHG Emission Limits

DATE: September 29, 2023

The Climate Leadership and Community Protection Act (CLCPA) commits New York to aggressive GHG emission reduction, renewable energy, and economy-wide electrification mandates. While significant measures are necessary to address the growing challenge of climate change, it is essential that new mandates provide workable and affordable compliance provisions that avoid significant economic and emission leakage out of New York State – an eventuality that will have adverse impacts on both global emissions and in-state businesses, employees, and residents.

The legislature recognized the challenges posed by major sector-specific transitions driven by the CLCPA. In adopting an “e-building” mandate in the FY 2024 state budget, it attempted to balance the need for significant decarbonization in the buildings sector with practical limitations on eliminating all fossil-fuel based equipment from new construction, including critical energy reliability concerns.

While the budget language, and earlier Energy Law amendments, established general policy mandates, it leaves significant details to be set forth in regulatory amendments to the state’s energy conservation construction and uniform fire prevention and building codes.

In drafting and proposing these regulatory changes, we urge the Code Council to carefully consider these statutory provisions and assure that final code updates reflect the letter and spirit of the intended legislative balance.

Our organizations and the businesses we represent stand ready to work with Code Council members and other stakeholders to achieve adoption of code updates that advance the state’s energy and climate change policy while ensuring energy reliability and providing building developers and owners with a workable path to compliance.

Some key issues to be addressed in Code updates include:

- The statute (Energy Law §11-104.6(b)) prohibits the “installation” of fossil-fuel equipment and building systems effective 12/31/25 for buildings up to seven stories and commercial/industrial buildings up to 100,000 square feet, and in other buildings by 12/31/28. The Council needs to clarify the application of this provision, e.g., the impact on systems undergoing installation and on systems approved but not yet installed, and the interaction of this restriction and existing statutory provisions, including the variance and modification provisions of Energy Law § 11-106.

- The statute (Energy Law §11-104.7(b)) provides that the State energy conservation construction code “shall include exemptions” that allow the installation of fossil-fuel equipment and building systems for a) emergency back-up power and standby power, b) manufactured homes and c) in buildings used for manufacturing, commercial food, laboratory, car wash, laundromat, hospital or other medical facility, critical infrastructure, agricultural buildings, fuel cell systems and crematorium. The code council needs to: define these terms for exempt equipment and building categories; adopt

regulations governing how (except for manufactured homes and agricultural buildings) this exemption will be limited to building systems and areas where a prohibition is infeasible (including but not limited to technological limits, physical space, reasonable availability of equipment, among others); and further details on what it means for such exempt areas to be made “electrification ready;” and how to evaluate whether these exemptions could result in adverse effects on health, safety, security or fire protection.

- The statute (Energy Law §11-104.7(e)) provides an exemption for a new building that requires new or expanded electric service which cannot be reasonably provided by the grid. Statute directs the Public Service Commission to determine “reasonableness” for this purpose, and the Code Council needs to include mechanisms in regulation as to how these PSC criteria or determinations are to be applied.

- Provisions adopted in Chapter 374, Laws of 2022 also direct the Code Council in adopting code updates to assure that the code remains cost effective, including consideration of “life-cycle costs” (whether the total costs of the energy system will be recovered over the design life of the building). The Code Council needs to ensure integration of Chapter 374 provisions with the 2023 e-building provisions and its allowed exemptions.

These and other code changes will have a significant impact on residents and businesses in the state and final rules must be consistent with the careful balance the legislature sought to achieve between facilitation of emissions reductions and protection of critical economic and energy reliability needs. We urge the Code Council to resist the entreaties of certain stakeholders to impermissibly expand the reach of the statutory mandate and/or weaken the safeguards included in the legislation.

Associated Builders and Contractors – Empire State
Buffalo Niagara Manufacturing Alliance
Buffalo Niagara Partnership
Business Council of New York State, Inc.
Business Council of Westchester
Capital Region Chamber of Commerce
Chemung County Chamber of Commerce
Construction Exchange of Buffalo & WNY
Cortland Area Chamber of Commerce
Empire State Energy Association, Inc
Long Island Association
MACNY, The Manufacturers Association
Manufacturers Alliance of New York
Manufacturers Association of the Southern Tier
New York State Association of Plumbing, Heating, Cooling Contractors, Inc.
New York State Association of REALTORS® Inc.
New York State Car Wash Association
New York State Restaurant Association
North Country Chamber of Commerce
Plumbing-Heating-Cooling Contractors Association
Rochester Technology & Manufacturing Association
Ulster County Regional Chamber of Commerce
Upstate United
Western New York Association of Plumbing and Mechanical Contractors