



August 20, 2012

Chairman Wally Bailey
cdp Access Steering Committee
c/o Dominic Sims
International Code Council
Birmingham District Office
900 Montclair Road
Birmingham, AL 35213

RE: Suggestions to the cdp-Access Steering Committee

Dear Chairman Bailey and Members of the cdp Access Steering Committee:

Please accept this letter as an expression of qualified support by the Fire Service Membership Council - Governing Committee (FSMC-GC) for ICC's goal of expanding the opportunity for Voting Governmental Members to remotely participate in the code development process. The FSMC-GC has closely followed the work of the cdp Access Steering Committee, and after reviewing the latest draft implementation plan, the governing committee identified several enhancements that would: 1) More fully embrace remote participation in code development, 2) Bolster safeguards to ensure that fairness and transparency are not diminished, and 3) Streamline code development committee hearings.

The suggestions offered herein stem from the FSMC-GC's July 30th meeting, and they were unanimously supported by the members in attendance. At the meeting, Tom Frost presented an update on cdp-Access, which included a review of the draft implementation plan. Following Tom's presentation, the FSMC-GC had a comprehensive discussion about the plan and possible ways to further engage Voting Governmental members in code development without risking the integrity or quality of the governmental consensus process. I'm sure that this is exactly the type of discussion that the cdp-ACCESS Steering Committee has sought to stimulate among ICC members.

SUGGESTION 1: REPOSITION THE REMOTE PARTICIPATION ACTIVITY AND THE WINDOW OF REMOTE VOTING TO OCCUR AFTER THE CODE DEVELOPMENT COMMITTEE HEARINGS RATHER THAN AFTER THE FINAL ACTION HEARINGS.

By moving the remote voting activity to follow the committee hearings, voting Governmental members would be given an opportunity to have input on ALL of the code change proposals, not just the relative handful that are considered at the final action hearing because someone submitted a public comment. This would demonstrate an even greater commitment by ICC to remote participation because more of the process would be accessible to voting members who are unable to attend some or all of the committee hearings due to travel restrictions or limitations on out-of-office time. It is also expected that, by engaging more voting members early in the process, ICC will increase interest in proposals and

code development, which should in-turn increase member interest in seeing the process through to conclusion by attending final action hearings.

It is also expected that, with this change, members who are only able to attend one of the two hearings each cycle will choose to attend final action hearings, rather than committee hearings. Some code officials currently attend committee hearings rather than final action hearings because there is greater benefit to be gained, given that most code change proposals are accepted or rejected based on testimony and discussions at committee hearings with no further consideration at a final action hearing.

From the perspective of process integrity, moving remote participation to the mid-point of the code development process cures what we find to be the most significant shortcoming of the draft implementation plan. It is an absolute certainty that some voting members will be exposed to and perhaps persuaded by lobbying efforts, either by private industry or by other voting members, if the code development process is changed to continue voting beyond the final action hearing. Although such influences exist in the current process, the current process is safeguarded by the final action hearing as a public forum where all parties are given a final opportunity to present competing viewpoints to voting members immediately prior to an in-person vote.

By allowing a debate to continue post-hearing, well-resourced and well networked advocacy groups would have an opportunity to push one side of an issue, perhaps with new information that was never presented at the final action hearing. Likewise, there would be no equal platform for opponents to respond, if they were even aware of the activity. The result could be voting members casting votes based on different sets of facts, or perhaps fiction, that were conveyed out of the public view, and all of this would certainly fail transparency and fairness tests. The only backstop would be ICC's appeal process...not a good scenario.

In summary, it doesn't take a creative mind to envision how social media and code official chat groups could be leveraged during the remote voting window after a final action hearing to deliver a particular outcome, and the consequences of such an event could prove devastating to the reputation of ICC's governmental consensus process and the integrity and reputation of our codes. This prospect must be avoided.

SUGGESTION 2: STRUCTURE THE REMOTE MEMBERSHIP VOTE THAT FOLLOWS THE COMMITTEE HEARING SUCH THAT ONLY VOTING GOVERNMENTAL MEMBERS CAST VOTES AND SUCH THAT A 2/3 MAJORITY VOTE CHANGES THE PREVAILING FINAL ACTION MOTION.

By giving Voting Governmental Members the authority to modify the prevailing final action motion (which could be regarded as "overturning" the committee action), remote voting following the committee hearing would be truly meaningful and would encourage participation. On the surface, this might appear to be diminishing the importance of the code development committees' contributions to the process, but further study reveals that this is not really true.

Consider that only Voting Governmental Members would be casting remote votes, and that these are the same members who would be empowered to vote to change a committee action at the final action hearing anyway. It's inconceivable that, if Voting Governmental Members disagreed with a committee recommendation by a 2/3 margin, that committee recommendation would survive the public comment

and final action hearing unscathed. Nevertheless, it is difficult to envision that there will be many cases where the results of remote voting, with the suggested limitations, would be inconsistent with committee recommendations.

SUGGESTION 3: DISCONTINUE THE ALLOWANCE FOR FLOOR MOTIONS AND AUDIENCE VOTING AT COMMITTEE HEARINGS.

With the current process limiting the impact of a floor motion and audience vote to generation of a public comment on behalf of the audience, the audience vote has become essentially meaningless since any individual or group has the right to submit the same comment. The process provided in Suggestion 2 above offers a more meaningful review of committee recommendations.

It is recognized that the current process might be superficially viewed as providing an opportunity for private interests to vote in ICC's code development process, but even minimal scrutiny exposes the reality that such votes have no impact on the process results. Furthermore, history has shown us that some individuals, whose perspectives are clearly in the minority, will use floor motions and audience votes as a means to vent frustration and interrupt code hearings. With hearings already requiring long, such wasted time cannot be afforded.

In conclusion, The FSMC-GC believes that the suggestions presented herein are consistent with ICC's commitment to members to offer opportunities for remote participation in the code development process, while minimizing the impact on or risk to the process as it exists today. It is also our belief that these suggestions will increase participation by Voting Governmental Members beyond what would be achieved through the current cdp-Access draft implementation plan. The resulting increase in familiarity with new code editions by Voting Governmental Members could conceivably increase jurisdictions' interest in adopting updated codes.

Representatives of the FSMC-GC are planning to attend the cdp-Access Steering Committee meeting on September 21, 2012 in Dallas at their own expense to discuss this proposal and answer any questions that the Steering Committee may have. We hope that the Steering Committee will give these suggestions favorable consideration so that they may be conveyed to ICC's membership for further review and comment, recognizing that there is nothing to prohibit ICC from considering remote final action participation at some point in the future if desired.

Sincerely,

Fulton R. Cochran

Fulton R. Cochran, CFO CBO

Chair - Governing Committee; Fire Service Membership Council

cc: ICC Board of Directors
Chair, Building Official Membership Council Governing Committee
Chair, PMG Official Membership Council Governing Committee
Chair, Sustainability Membership Council Governing Committee
Chair, Global Membership Council Governing Committee