16 October 2012

Chairman Wally Bailey  
cdpACCESS Steering Committee Members  
Mr. Robert Dupler, President ICC  
c/o Mr. Dominic Sims  
International Code Council  
500 New Jersey Avenue, NW,  
6th Floor, Washington, DC 20001

RE:  cdp-ACCESS  
Observations and recommendations

Gentlemen:

I am writing on behalf of the American Iron and Steel Institute, a not-for-profit organization that represents the North American steel producers. We have had the opportunity to participate in the ICC cdpACCESS web meetings and ICC open forums. As a follow-up to those meetings we would like to articulate our observations and recommendations for consideration by the cdpACCESS Steering Committee and ICC Board of Directors.

**Voting and Balloting**

We agree with the position by the ICC Fire Service Membership Council, in their letter dated 18 August 2012, that the location for eligible voting members to vote would be more suitably located following the committee action hearing, and not the final action hearing.

The Fire Service Membership Council has outlined compelling points which we believe are worth repeating:

- The opportunity to provide input on all the code committee’s positions for all the code change proposals, versus only those that fail to make the consent agenda at the public comment hearing.
• The opportunity to be involved in both the committee action hearing through remote balloting, and the public comment hearing through attendance.

We would also ask that additional issues with balloting be considered when balloting follows the public comment period, which include:

• The impact of an extended wait period for final results: Longer wait times for the final results to be made public will have a critical impact for those parties who have invested in the process. It represents lost time in preparing for significant changes.
• The lack of interaction: While we appreciate the development of the stakeholder’s online collaboration tool, we are not confident that this tool will represent a true substitute for the face-to-face interaction which is part of the current ICC code development process. We encourage the ICC to aggressively promote the governmental members attendance at ICC events and hearings.
• The full impact of same subject proposals during the public comment hearings: In this case, when proposals and comments on the same subject are being heard we have the ability to adjust our positions based upon the membership vote in real time, if necessary. Without that critical input the adjustment process is no longer possible. Consequently, alternate options will be employed that will possibly prolong the hearing process so that testifiers can compensate for a worst case scenario.

In the near future we hope that ICC will be able to pursue and fund “real time remote voting,” much like what happens with participants in both the committee action and public comment hearings.

**Consent Agenda**
We support the cdpACCESS Steering Committee’s recommendation to have consent agenda items voted as a slate at the public comment hearing.

If a code change proposal has been vetted at the committee action hearing, and subsequently does not receive a public comment, we agree that the proposal has received sufficient scrutiny to warrant being excluded from further balloting.

**Government Member Voting Representative**
We have two recommendations under this category.

• First, require that the Primary Representative register prior to the committee action hearing, rather than prior to the public comment hearing.
• Second, increase the number of calendar days to a minimum of one-hundred eighty (180) calendar days prior to each committee action
hearing for eligible voting members to register their names with the International Code Council.

What is the advantage to these changes? Our first observation is that the extended registration period time frame will allow additional time for ICC staff to process the submissions. The 30 day period which is currently in place is just too short a period of time to both process and enforce the voter designation process.

Further, we have had the opportunity to be present at the code hearings where the residential sprinklers and the energy code subjects, heard at the 2006 through 2010 code hearing cycles. While we recognize the decision made by the ICC Appeals Panel, and subsequent confirmation of the outcome by the ICC Board of Directors, it is our observation that this would benefit from further attention. We remain concerned that the recommended process will allow the opportunity for mass or block voting to take place. By increasing the number of days so that the deadline for submission is prior to the committee action hearing, we feel that the potential for mass or block voting will be reduced since no one will have full knowledge of the proposals being submitted to that code cycle.

**Stakeholders Online Collaboration**

While we recognize the impact of Section 230 of the Communications Decency Act, we would also draw your attention to other common sense issues and observations regarding this tool. We have been in contact with other trade associations, and we support the suggestions made by the Mr. Steve Szoke, Portland Cement Association, which states in part:

“…We do believe that there is a valuable period during which collaboration could occur. This requires altering the code development process to allow collaboration after the proposed code change submittal deadline and the code change proposals have been published, at least electronically. During this period similar code changes could be refined and merged into a single code change by willing proponents of individual changes. This would improve the quality of code changes, reduce the number of code changes, and minimize the need for floor modifications being proposed during the hearings. This activity already occurs, but is not facilitated as well as it could be by the current process and thus modifications are being written during the hearing and consuming an inordinate amount of valuable hearing time….’

**Ethical Conduct**

We appreciate the ICC creating the “Statement of Ethic Conduct” and applaud the categories identified in the statement. However, we remain concerned over the lack of an enforcement mechanism for use if and when there is evidence of unethical conduct. The remote voting process will bestow a great amount of trust
upon governmental voting members. There needs to be “checks and balances” in place to ensure that the fairness of the process is maintained. Currently we can only find two courses of action for ICC to officially take in these situations; that of revocation of voting rights and revocation of membership to ICC. This lacks the necessary teeth to enforce this policy.

Without this so called police power we are afraid that this policy will be ignored or not enforced. While we recognize Mr. William J. Tanye’s philosophy of “trusting the membership,” we also believe that we must be practical in its application. In this case we recommend that the ICC develop and fund policies and procedures for policing their member’s ethical conduct. Perhaps consideration should be given to having a policy of reporting an individual which has been found to have violated this statement of ethical conduct to the relevant jurisdictional authorities.

**Participation at Hearings**

While we appreciate the desire to create a remote participation option, we also want to strongly encourage ICC to continue to focus on the importance of having governmental members participate at the hearings. Face-to-face interaction is a preeminent quality of the ICC process.

We will look forward to continuing to support positive progress of this program. If the members of the cdpACCESS Steering Committee or ICC Board of Directors have any questions please feel to contact us.

Sincerely,

Jonathan Humble, AIA, NEBCA, LEED AP-BD&C
Regional Director

CC: R. Wills, VP-SMDI
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