



Rewiring America
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February 3, 2023

New York State Building Code Council
Attn: Matthew W. Tebo, Chair
One Commerce Plaza
Albany, NY 12231
Code.development@dos.ny.gov

Re: Climate Law ("CLCPA") Implementation

Dear Chair Tebo and New York State Building Code Council Members:

During the Building Code Council meeting held Friday, December 9, 2022, Chair Tebo stated that the Building Code Council ("the council") would "probably" not be including full electrification in the updated building code unless further legislative action mandated it. He also stated that the council would likely avoid reviewing the Scoping Plan and discussing the relevant changes the plan proposes as a group to avoid triggering open meetings law requirements.

The undersigned write to express deep concern with this proposed approach. While we are supportive of legislation specifically mandating the council to update the building code to prohibit fossil fuel combustion building systems and equipment, we believe that the council has an existing statutory mandate to update the building code to implement the Climate Action Council's ("CAC") plan to prohibit fossil fuel combustion building systems and equipment in new construction by 2025 and 2028 under New York Energy Law § 11-104(6). Additionally, the council should conduct a review of the Scoping Plan and its recommended modifications to the building code in a transparent and public manner.

We call on the council to implement the CAC recommendations to update the building code to prohibit fossil fuel combustion systems in new construction and to hold a public Building Code Council meeting dedicated to discussing the Scoping Plan's recommended changes to the building code and its plans to act.

Statutory Mandate

Energy Law § 11-104(6) provides the following:

In addition to meeting the purposes set forth in section 11-101 of this article, the code **shall be designed** to satisfy the following criteria:... 6. To the **fullest extent feasible**, the standards for construction of buildings in the code **shall be designed to** help achieve the state's clean energy and climate agenda, including but not limited to greenhouse gas reduction, set forth within chapter six of the laws of two thousand nineteen, also known as the New York state climate leadership and community protection act, and **as further identified by** the New York state climate action council established pursuant to section 75-0103 of the environmental conservation law.

Based on Energy Law 11-104, there is a clear legal mandate that the council updates the standards for the construction of buildings in the building code to achieve the State's climate mandates as further identified by the Climate Action Council. At a minimum, the Code Council must complete a feasibility analysis on all CAC-recommended changes to the building code and incorporate such changes to the fullest extent feasible.

Final Scoping Plan

On Monday, December 19, 2022, the New York State Climate Action Council approved and adopted the Scoping Plan, a blueprint for meeting the mandates of the Climate Leadership and Community Protection Act ("CLCPA") that includes 525 recommendations for policies and actions to help meet the mandates of CLCPA. Section 12 of the Scoping Plan specifically identifies actions the council needs to take for the State to achieve its carbon reduction goals. According to NYSERDA's Scoping Plan Integration Analysis, 56% of the emissions cuts needed will require the "clean electrification" of buildings, vehicles, and power plants. The Scoping Plan identifies the updating of the State building code for new construction as a key building sector decarbonization strategy.

Concerning the construction of new buildings, the Scoping Plan provides:

The Advanced Building Codes, Appliances and Equipment Efficiency Standards Act of 2022 **requires** the New York State Energy Conservation Construction Code to be updated to achieve energy efficiency and Greenhouse Gas emission reductions in support of the Climate Act. The...[Code Council]...should adopt codes and standards for new construction (and additions and alterations as applicable) of residential and commercial buildings to be built to a highly efficient, zero-emission standard, and incorporate requirements for building resilience.

Adopt regulations to end on-site emissions: DOS, NYSERDA and the Code Council should advance code provisions that prohibit fossil fuel combustion equipment for space conditioning, hot water, cooking, and appliances. ...

2025: Adopt State codes that prohibit building systems or equipment used for the combustion of fossil fuels in new construction statewide of single-family and low-rise multifamily residential buildings having three stories or less (and additions and alterations as applicable). These requirements should apply to construction of buildings subject to residential codes and standards that file for a building permit starting in 2025.

2028: Adopt State codes that prohibit building systems or equipment used for the combustion of fossil fuels in new construction statewide of multifamily residential buildings having four stories or more and commercial buildings (and additions and alterations as applicable). These requirements should apply to construction of buildings subject to commercial codes and standards that file for a building permit starting in 2028.

Transparency & Accountability

Additionally, during the December 9, 2022, Building Code Council meeting, Chair Tebo stated that members of the council would probably not be reviewing the Scoping Plan and/or building code update drafts together to avoid holding a meeting subject to open meetings law. Chair Tebo mentioned at the meeting that he had the option of calling an additional meeting and would be deciding whether or not to do so in the upcoming months. The undersigned assert that the council *should* convene a meeting subject to open meetings law to ensure that such discussions are held in a transparent and accountable manner.

Questions:

- 1) Has the council already made a determination on the feasibility (or infeasibility) of prohibiting fossil fuel combustion equipment for space conditioning, hot water, cooking,

and appliances for new construction in 2025 and 2028 as identified by the adopted Scoping Plan?

1a) If a determination has not yet been made, we ask the council to clarify on the record that no such determination has been made and to identify the timeline on which a feasibility study will be conducted and a determination made.

1b) If a determination has indeed been made, we request the publication of additional documentation used in this determination: feasibility assessments, stakeholder feedback, or other relevant records or data. Will the council publish any documentation used in this determination, if applicable?

2) We request that the council convene a public meeting to discuss the Scoping Plan recommendations relevant to the council and the related changes to the building code. Will the council schedule such a meeting?

The Building Code Council has a clear legal obligation to update the building code to align with the recommendations of the Climate Action Council. If the Building Code Council does not plan to update the building code in alignment with the CAC scoping plan, we request a lawful justification for declining to do so.

Please respond by **Friday, March 3, 2023**.

Thank you in advance.

Sincerely,



Michael Hernandez, Esq.
New York Policy Director
Rewiring America

- Conor Bambrick, Policy Director, Environmental Advocates NY
- Alex Beauchamp, Northeast Region Director, Food & Water Watch
- Betta Broad, Campaign Director, Association for Energy Affordability
- Melissa Carlson, Sole Proprietor, Melissa Carlson, Architect
- Allison Considine, Senior Campaign Representative, NY Sierra Club
- Heather Deese, Director of Policy & Regulatory Affairs, Dandelion
- Brian Eden, Policy Coordinator, Campaign for Renewable Energy
- Jake Elliot, Sr. Manager of Impact and Advocacy, SunCommon
- Jonathan Finewood, Passive House Consultant, Rochester Passive House Consulting

- Sara Gronim, Co-Leader, 350Brooklyn
- Christine Hoffer, Executive Director, NY-GEO
- Susan Hughes-Smith, Partner, Roctricity LLC
- John Keevert, Co-Chair, Environmental Justice Ministry of First Unitarian of Rochester
- Deb Peck Kelleher, Deputy Director, The Alliance for Clean Energy New York
- Lisa Marshall, Director of Advocacy and Organizing, New Yorkers for Clean Power
- Patrick McClellan, Policy Director, New York League of Conservation Voters
- Rich Schrader, Policy and Legislative Director, Natural Resources Defense Council (NRDC) Northeast
- Erin Sherman, Senior Associate, RMI
- Pete Sikora, Climate & Inequity Campaigns Director, New York Communities for Change
- Lisa Tyson, Executive Director, Long Island Progressive Coalition
- Juan-Pablo Velez, Co-Founder, Win Climate

CC:

Governor Kathy Hochul

Secretary of State Robert J. Rodriguez

Assembly Speaker Carl E. Heastie

Senate President Pro Tempore Andrea Stewart-Cousins

Senate Environmental Conservation Committee Chair Pete Harckham

Assembly Environmental Conservation Committee Chair Deborah J. Glick

Public Service Commission, Jessica Waldoff, Director of Policy Implementation

NYSERDA, Doreen M. Harris, President and CEO