

How Can You Change a Building Code?

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I'm sure that most of you who work frequently with one or more of the locally adopted codes have come across a requirement that seems to make no sense, or has been rendered obsolete by new methods or materials. What some of you may not know is that *ANYBODY* can submit a proposal for a code change. Both the International Code Council (ICC) and the National Fire Protection Association (NFPA) provide open processes that allow changes to their published codes and standards.

Codes are written to accommodate all types of construction at a national, and currently, international level. Specific code requirements can be added, modified, or deleted at the local level to reflect local conditions or laws. Many jurisdictions allow public comment within their local code adoption process. This is a good opportunity to make a change without having to go through the process at the national level.

An excellent example of how anyone can sponsor a code change is illustrated in the story behind the change in use of wired glass.

A Reason for Change

In 1977, the Consumer Product and Safety Commission (CPSC) developed a safety glazing performance standard titled 16 CFR 1201 "Safety Standard for Architectural Glazing Material." This standard increased the minimum performance over that required by ANSI Z97.1, the industry standard up until that time. However, wired glass, which was the only fire-rated glazing at the time, could not pass the more restrictive standards of CPSC 16 CFR 1201. So, CPSC established a "temporary" exception that allowed the use of wired glass in fire doors and windows until industry developed products that met the new standard. The model code organizations followed CPSC's lead by inserting the same exception in their respective building codes. More than 25 years later, the "temporary" exception still existed...that is until Greg Abel became involved.

In January 2001, Greg Abel's son, who was attending the University of Oregon, received severe nerve damage to his arm and fingers when his hand impacted a wired glass door while playing basketball in the school's gymnasium. As a result, Greg Abel started a crusade to have the exception that wired glass has enjoyed for so many years removed from the codes and standards. He established a nonprofit organization called Advocates for Safe Glass (AFSG), and set out on their first mission to change Oregon law.

With the support of an Oregon State senator, AFSG successfully persuaded the Oregon State Building Codes Division to ban the use of wired glass in hazardous locations where safety glazing is required. The ban, passed in September 2003, came in the form of an amendment to the Oregon Structural Specialty Code. With that success in their pocket, AFSG took on their next challenge: the *International Building Code*. But, before I go into the details of AFSG's code change journey, I first want to describe the code development process.

The Code Development Process

As previously mentioned, both the ICC and NFPA have processes that allow the public to propose changes to their codes. However, the processes are significantly different in some ways. Since most of the jurisdictions in the state adopt one or more of the *International* codes, the focus will be on the process used by the ICC. The ICC has available on their website a document for download titled “Code Development Process for the International Codes,” which explains their process in detail. Likewise, the NFPA has available for download on their website a document titled “Codes and Standards for a Safer World,” which describes their code and standard development process.

Within the ICC process, the main element is the code development cycle. The cycle starts when proposals are requested, and ends with the publication of final action on code change proposals. Until 2002, the ICC was on an annual cycle that resulted in the publication of 2 supplements within the 3-year code publication cycle. To allow more time for preparation by proposers and ICC staff, the cycle was changed to an 18-month period with one interim supplement between code publications. The first 18-month cycle ended in June 2004.

The change proposal is the first step in the cycle. The proponent, who could be either an individual or organization, must complete a proposal form. This is probably the most critical step in the process as an improperly prepared proposal form won’t go beyond this step. If the proposal form isn’t properly completed, then ICC will notify the proponent of the deficiencies and hold the proposal until a corrected one is received.

The proposal form consists of two equally crucial parts: 1) the text of the proposed change itself, and 2) the supporting information. In preparing the proposed change, the proponent must write the text in the mandatory language used by the code. Additionally, the text should be complete and specific to avoid any potential confusion or misinterpretation.

Content of the supporting information includes the purpose and reasons for the change, any substantiating evidence or information to support the change, and the cost impact the change would have on building construction. For example, let’s assume a requirement in the building code is vague to you. In preparing your proposal, the “purpose” would be to clarify the requirement to make it more specific and enforceable. Your “justification” for the change may include several examples of where the requirement was interpreted differently on several of your projects between different jurisdictions, and/or between plan reviewers and building inspectors. The “cost impact” would consist of either “none” or “this proposal will increase cost of construction” depending on the expected material and/or labor costs associated with the specific requirement. If you feel uncomfortable writing the proposal yourself, approach one or more of the building officials you work with, a code consultant, or your local chapter of ICC. They might agree with your proposal and be willing to assist you in drafting the proposal text and collecting supporting information.

A Public Hearing will be scheduled after the deadline for submitting proposals, to allow the public to comment either for or against the proposed changes. In the hearings, a floor discussion will take place where proponents and opponents present their views on the changes to the committees assigned to review the changes. During this period, written modifications to proposals from the floor may be presented by anyone attending the hearing. If accepted, a floor discussion on that modification will begin immediately.

Following the floor discussion, the proposed changes go through committee action. Most codes will have one committee, while others, such as the *IBC*, will have 2 or more that are assigned specific areas of the code. The Committee Action phase of the hearings is limited to committee members only; however, others may attend and listen to the proceedings. During Committee Action, one of three motions will be made on each change proposal: approved as submitted (AS), approved as modified (AM), or disapproved (D). A simple majority is required to approve the motion. Every committee must submit a reason for their vote.

Following the committee's action, and before the next proposal is addressed, the vote of the committee is open to the public hearing attendees for any motion that objects to the committee's action. Any accepted floor motions will be voted on by the ICC members in attendance at the hearing. This vote is called an Assembly Action. A vote by Assembly Action may differ from that of the committee's, and therefore, automatically puts the change proposal on the agenda for individual consideration at the Final Action Consideration.

The results of the Public Hearing phase are published no later than 60 days prior to the Final Action Consideration.

The Final Action Consideration gives the public an opportunity to comment on specific code change proposals. Proponents and opponents are given additional time to present their views based on the Public Hearing results. Prior to the Final Action Consideration, public comments are submitted in written form, which include the desired final action (AS, AM, or D) and supporting information. The supporting information must provide a reason and justification for the desired final action.

Like the Public Hearing, the Final Action Consideration is an open meeting; however, only those attending as representatives of governmental members may vote. Governmental members are those government or municipal agencies, departments, or units that are "engaged in administration, formulation or enforcement of laws, regulations or ordinances relating to public health, safety and welfare." This is probably the single most significant difference between ICC and NFPA. NFPA allows all members having a membership on record for at least 180 days to vote on proposed changes.

Change proposals that have received no public comments, or did not have an Assembly Action at the Public Hearing, are placed on the Final Action Consent Agenda. Approval of the consent agenda accepts the results of the Public Hearing for those changes. All remaining changes are placed on the Individual Consideration Agenda.

The author of a Public Comment is allowed to make an initial statement prior to voting. Voting on a final action agenda item follows a strict procedure. An initial motion on the item will be made based on the committee action from the Public Hearing. For example, if an item received a vote for disapproval by the committee at the Public Hearing, then the first motion considered will be for disapproval. If a majority vote is not achieved on the initial motion, subsequent motions for one of the two other actions are made. This is repeated until motions on all three possible actions are voted on. If a majority vote is not achieved on any of the three actions, the item will automatically receive a final action of disapproval.

The final actions on all proposed changes are published at the earliest possible date following Final Action Consideration. Any person not satisfied with the final action decision may submit a written appeal within 30 days of notice of the action.

Now, read on for the conclusion of Greg Abel's experience with the ICC code development process.

An Uphill Battle

Mr. Abel, under the AFSG banner, submitted a code change proposal in accordance with ICC procedures and it was accepted and included in the 2003/2004 code development cycle. He attended the Public Hearing in September 2003, but, unfortunately for AFSG, the structural code development committee didn't agree with him and voted for disapproval. The proposal was then open for Assembly Consideration followed by a Floor Motion for an "approved as submitted" action. The Assembly Action vote on the motion fell short of the required 2/3 majority, thereby requiring a public comment for the change proposal to be considered again during the Final Action Consideration (Note: ICC has since revised the Assembly Action vote to a simple majority).

The next step--Public Comment. Greg and fellow supporter John LaTorra, from the Peninsula Chapter of ICC, submitted written comments recommending a desired final action of "approved as submitted." At the meeting for Final Action Consideration, the case against wired glass was presented to the governmental voting members. The initial motion made was for disapproval, since this was the committee's action from the Public Hearing. Fortunately for AFSG, the vote failed to achieve the simple majority necessary, so the next motion was made for the desired final action: Approved as Submitted. According to ICC procedures, a 2/3 majority would be necessary to approve the desired final action. And, a 2/3 majority is what they got. So the change proposal was approved as submitted. But, that's not the end of the story...

The wired glass industry, upset that their market share was about to vaporize, submitted an appeal to the ICC Appeals Board, and the final action was stayed. In early September, the Appeals Board listened to both sides, but voted in AFSG's favor to uphold the Final Action result. Then, the Board of Directors, at their national meeting in late September 2004, voted to accept the recommendation of the ICC Appeals Board. Under most circumstances, this would have been the end of the process, but the wired glass manufacturers wanted to present their case directly to the ICC Board of Directors. On October 8, 2004, they were given that opportunity, but at the end of the presentations by both parties, the Board of Directors voted to uphold their previous vote, and the use of wired glass as an acceptable safety glazing material was deleted from the *IBC*.

When he submitted his code change proposal, Greg Abel felt that it didn't "have a snowball's chance" of getting approved. In past attempts at changing the building code, the wired glass industry put great effort into defeating the proposed change. However, in the end, Greg said that the process was extremely fair. The only downside, he added, was he would've liked more than the 2 minutes allowed to present their views at the Public Hearing and Final Action Consideration. Regarding wired glass and the CPSC, he thinks the 2-1/2 year "temporary" exemption of wired glass should have been removed by internal maintenance of the standard, and not left to outside action.

As for the future, Greg Abel and AFSG are continuing with their agenda to promote safe glass. They're currently working on a congressional mandate to have all wired glass in hazardous locations replaced within a specified time frame, and they're actively pursuing the possibility of a recall through CPSC. And, not too far out of the realm of possibility, is the potential for a class action lawsuit against manufacturers of wired glass. Greg even indicated that they're in the process of creating a consulting business, Safe Glass Consulting LLC, to help schools, businesses, and other facility owners in identifying

safety glazing problems within their buildings, and assist in developing solutions to correct those problems. For more information on AFSG, go to their website at www.safeglass.org.

The 2004/2005 ICC code development cycle is already under way with the Public Hearing phase scheduled for February 22 through March 6, 2005, at the 2005 Codes Forum in Cincinnati, Ohio. “Code development is the foundation for building safety and safeguarding the public,” said ICC CEO James Lee Witt. “We have a record 2,000 suggested code changes on the table. Such active participation ensures that the International Codes address public safety for everyone and that the code change process works.”

To comment on this article, suggest other topics, or submit a question regarding codes, contact the author at ron@specsandcodes.com.

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