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Texas Sunset Commission
P.O. Box 13066
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Dear Texas Sunset Commission,

I am writing on behalf of the International Code Council (the “Code Council”) to provide a recommendation on an issue managed by the Texas Department of Licensing and Regulation (TDLR) and not included in the Texas Sunset Commission report.

The Code Council is a member-focused association dedicated to building safety and resiliency. We are proud to count Texas and many of its local jurisdictions as our Governmental Members and understand TDLR’s importance to the continued growth of the building safety industry in the Lone Star State. Code Council membership develops the model building codes, the I-Codes, used in the design, build and compliance process to construct safe, sustainable, affordable and resilient structures. The I-Codes, including the *International Mechanical Code*, are the most widely used and adopted set of building codes in Texas, the U.S. and around the world. Developed through a nationally recognized and federally accepted consensus process, the I-Codes incorporate the latest technology and provide the safest structures for our families and communities.

Notably, a broad range of stakeholders, including the American Institute of Architects, the Building Owners and Managers Association, the National Association of Homebuilders, the American Gas Association, the Air Conditioning Contractors of America, the Sheet Metal and Air Conditioning Contractors’ National Association and the major engineering design group ASHRAE support the I-Codes.

Respectfully, we request the Sunset Commission analyze the efficiency and prudence of basing the TDLR Air Conditioning and Refrigeration (ACR) Licensing exam on two different mechanical codes and consider updating administrative rules and recommend changes to state statute that adopt a single mechanical code, the International Mechanical Code, thereby creating consistent licensing requirements and eliminating inefficient and inconsistent regulations.

Currently, Texas Occupations Code §1302 states that TDLR, “shall adopt rules for the practice of air conditioning and refrigeration contracting that are at least as strict as the standards provided by the Uniform Mechanical Code (UMC) and the International Mechanical Code (IMC),”¹ developed by the Code Council.

In addition, Texas Administrative Code, Title 16 Economic Regulation, Part 4 TDLR, Chapter 75 Air Conditioning and Refrigeration, Rule 75.100 Technical Requirements, states, “(1) The standard for the practice of air conditioning and refrigeration in a municipality is the code the municipality adopted by ordinance that is consistent with the standards established under the Act and this chapter. (2) The standard for the practice of air conditioning and refrigeration in an area where no code has been adopted is: (A) The applicable edition of the International Residential Code (IRC) for one- and two-family dwellings, and multiple single family dwellings (townhouses) not more than three stories in height with separate means of egress, together with the applicable editions of the International Fuel Gas Code (IFGC) and the

¹ See <https://statutes.capitol.texas.gov/Docs/OC/htm/OC.1302.htm>

International Energy Conservation Code (IECC); (B) For commercial work and any multiple family residential work that exceeds the limitations of subparagraph (A), the contractor performing the work may choose between: (i) the applicable edition of the UMC; or (ii) the applicable editions of the IMC, IFGC and IECC.”²

In January 2018, TDLR adopted amendments to Administrative Rule §75.110 became effective and updated the ACR code editions from the 2012 to the 2015 for the UMC, the IMC, IRC, and other applicable codes, including the IECC, and IFGC.³

Although TDLR adopted the 2015 UMC and IMC and related I-Codes for ACR, it must be understood that not all jurisdictions adopt or enforce the same mechanical code edition and only a handful of Texas cities choose to adopt the UMC.

To this end, two mechanical codes are neither logical nor efficient when: (1) the IMC is the predominant mechanical code adopted in Texas and the U.S.; (2) the UMC does not correlate with other mandated building codes in Texas; (3) TDLR develops one exam based on two different mechanical codes which is a costly and complex technical burden; (4) it creates unnecessary confusion and difficulty for the Texas mechanical industry; (5) one mechanical code, the IMC, is consistent with what TDLR adopts for Industrialized Housing; (6) Texas grants reciprocity to States for ACR Licenses that only adopt the IMC; (7) one mechanical code, the IMC, is consistent with the codes adopted by the Texas Facilities Commission for State Buildings; and (8) the UMC does not correlate with the building codes (I-Codes) required for FEMA Public Assistance.

THE IMC IS THE PREDOMINANT MECHANICAL CODE ADOPTED IN TEXAS AND THE U.S.

(1) Two conflicting codes create unneeded complexity in the mechanical industry when the overwhelming choice of mechanical code adoptions in Texas, and the U.S. at large, is the IMC. Forty-six (46) out of the Fifty (50) U.S. States and most U.S territories adopt and enforce the IMC.

In Texas, where jurisdictions have the choice to adopt either the UMC or IMC, we are aware of only eight (8) jurisdictions that adopt the UMC: Alpine, Austin, Cibolo, Galena Park, Houston, Junction, La Porte and Pasadena.

In comparison, most Texas jurisdictions choose to adopt and enforce the IMC, including, but not limited to large cities such as, Dallas, Fort Worth and San Antonio, as well as Abilene, Allen, Alvin, Amarillo, Arlington, Bay Town, Bellaire, Belton, Brownsville, Buda, Carrollton, Cedar Park, Cleveland, Conroe, Corpus Christi, El Paso, Frisco, Galveston, Garland, Georgetown, Harlingen, Hutto, Katy, Kyle, Laredo, Leander, Lubbock, Mansfield, Midland, Missouri City, Montgomery, New Braunfels, Pearland, Plano, Port Aransas, Portland, Odessa, Richmond, Rockport, Rosenberg, Round Rock, San Angelo, San Marcos, Shiner, Sugar Land, Waco, and the list goes on.

Contractors, developers, manufacturers, and other businesses value predictability over inconsistency and are accustomed to working with the IMC in most Texas jurisdictions. Having two different mechanical codes creates confusing code challenges and restrictive design choices in UMC cities causing undue hardship with delayed project timelines, cost re-estimating of labor and materials, and burdensome logistical changes.

² See [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=T&app=9&p_dir=P&p_rloc=185614&p_tloc=&p_ploc=1&pg=2&ptac=&ti=16&pt=4&ch=75&rl=110](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=T&app=9&p_dir=P&p_rloc=185614&p_tloc=&p_ploc=1&pg=2&ptac=&ti=16&pt=4&ch=75&rl=110)

³ See <https://www.tdlr.texas.gov/acr/acr.htm>

Furthermore, one mechanical code for TDLR and Texas, the IMC, will make it easier for inspectors, mechanical contractors, installers and manufacturers to expand their reach and increase their business across not only visible geographical boundaries, but invisible business borders. For example, nationally recognized corporations such as Home Depot and Target, prefer code consistency rather than having to comply with multiple mechanical codes and differing requirements within the same state. One mechanical code, correlated with other building codes required in Texas, allows them to design uniform buildings and systems, that are replicable, which saves time, valuable resources, and attracts business development.

Analyzing unneeded complexity is especially timely in light of Governor Greg Abbott's recent request, "Reforming Texas's occupational-licensing rules must be a priority for all state leaders" and "Sensible licensing rules, when necessary, can protect the public from legitimate harm, but overbroad rules stymie innovation, raise consumer prices, and limit economic opportunity."⁴

Since part of TDLR's purpose is to eliminate burdens and government interference with business practices, we recommend that the agency solely adopt the IMC. It is the code that is clearly chosen as the definitive mechanical code for Texas and the U.S. and is most consistent with the business community and open markets.

THE UMC DOES NOT CORRELATE WITH THE OTHER MANDATED BUILDING CODES IN TEXAS

(2) The IMC is an essential member of the I-Codes, the correlated family of building safety codes including the IRC, the IBC, the IPC, and the IECC, which are statutorily mandated building codes for the State. Further, in 2019, the International Swimming Pool and Spa Code (ISPSC), also developed by the Code Council, was signed into law as the pool and spa code for Texas.⁵

The I-Codes are correlated to work together without conflicts, thereby eliminating confusion in building design or inconsistent code enforcement among different jurisdictions. This correlation enables ease of use by all stakeholders. Residential and commercial structures cannot be built with a mechanical code alone. Correlated building and residential codes, as well as other applicable I-Codes, which most jurisdictions choose to adopt, are needed to construct safe structures.

Through the I-Codes, designers and builders may work across jurisdictional, county and state boundaries with conformity and ease. The UMC does not work in concert with any of the mandated I-Codes in Texas nor do the I-Codes reference the UMC. Using non-correlated codes, such as the UMC, can create hours of additional review time and may require drafting additional local amendments to coordinate with state mandated I-Codes. This technical and laborious amendment process is entirely unnecessary for jurisdictions adopting the IMC.

To safeguard the public and streamline TDLR regulations, it is prudent for the agency to adopt a mechanical code that correlates with the other mandated building codes in Texas. Coordinated and correlated codes from a single source will better organize the building regulatory system in Texas by bringing consistency and compatibility to multiple layers of requirements existing at the federal, state and local levels.

TDLR MUST CREATE ONE EXAM BASED ON TWO DIFFERENT MECHANICAL CODES - A COSTLY ADMINISTRATIVE AND COMPLEX TECHNICAL BURDEN

⁴ See <https://www.texastribune.org/2019/11/22/greg-abbott-reduce-regulations-cut-fees/>

⁵ See Texas House Bill 2858, <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB2858>

(3) TDLR's role is to keep costs low, reduce unnecessary burdens, and apply clear, consistent, and commonsense standards to Texas regulation. One exam based on two different mechanical codes does not make sense and is costly to TDLR, the Licensee and the mechanical industry.

Upon any mechanical code update, TDLR, associated exam committees, the third-party testing entity, instructors and continuing education partners, are required to complete time-consuming technical reviews of two different mechanical codes. This is an inefficient use of time and resources when the predominant mechanical code in Texas and the U.S. is the IMC.

For TDLR, it is arduous to develop one ACR exam that meets the requirements of different mechanical codes developed by different organizations through different processes. TDLR must ensure that every question and answer is consistent with both codes. Moreover, TDLR essentially cannot ask a question that could result in different answers based on the two codes. It is unclear in this muddy process if it is even possible to develop an exam that will safely and properly ascertain the test takers' knowledge of the mechanical industry. In addition, recognizing two mechanical codes creates a cumbersome regulatory patchwork forcing instructors to tackle the difficult task of instructing on two conflicting mechanical codes in a State that predominantly adopts the IMC.

Lastly, comparing the documents reveals definitive technical differences and economic advantages through correlation with the other Texas building codes favoring the IMC which should be carefully considered by the Sunset Commission.

Common sense supports an ACR exam that is based on the predominant mechanical code in Texas and the U.S., the IMC. This change will decrease costs and increase efficiencies for the mechanical regulatory program as well as promote prudent resource management for TDLR and industry stakeholders who are responsible for safe mechanical installations.

**TWO CODES CREATE UNNECESSARY CONFUSION AND DIFFICULTY FOR THE CURRENT AND FUTURE
TEXAS MECHANICAL INDUSTRY**

(4) Part of TDLR's responsibilities, with input from advisory boards and industry subject matter experts, is to keep licensing examinations current and relevant for the benefit of licensees and the public.

To this end, it is important for the agency to consistently update the ACR exam to reflect the most current mechanical code that is available to the public. This will ensure that licensees are being tested on the most up-to-date, safest, and cost-effective methodologies available. Updating an exam that considers two different mechanical codes is resource intensive and an extremely inefficient process for TDLR.

Like the other I-Codes mandated by Texas, the IMC follows a similar 3-year update cycle and uses the same widely recognized Governmental Consensus Process. The UMC is developed by an entirely different organization through an entirely different process. New editions of these codes may require significant changes as well as conflicting requirements and may not be available to the public at the same time. Thus, delaying inclusion of new technologies and methodologies in future iterations of the ACR exam.

The TDLR exam is currently based on the 2015 UMC and IMC. However, multiple jurisdictions including, but not limited to San Antonio, Allen, Alvin, Bellaire, Mansfield, Montgomery, New Braunfels, Odessa, Pearland, Plano, Rowlett and Rosenberg, have updated to the 2018 IMC with many more in the coming months.

TDLR ACR exams should be current and relevant. It is extremely difficult to accomplish this using two different mechanical codes. It does not benefit TDLR, ACR licensees, or the public to educate, train and test on older conflicting mechanical codes especially when the IMC is the predominantly adopted and updated mechanical code in Texas.

ONE MECHANICAL CODE, THE IMC, IS CONSISTENT WITH TDLR INDUSTRIALIZED HOUSING CODE

(5) By administrative rule, TDLR deemed that it is in the public interest for the mandatory building codes for industrialized housing and buildings, modules, and modular components, to be the 2015 family of I-Codes. This rule mandates one single mechanical code, the IMC, as the Mechanical Code of the Texas Industrialized Housing and Buildings Program.⁶

Adoption of the IMC for ACR that is consistent with Industrialized Housing is not only sensible for TDLR, but also ensures consistent and correlated building codes across all regulated licenses which is in the best interest of the State.

TEXAS GRANTS RECIPROCITY TO STATES FOR ACR LICENSES THAT ONLY ADOPT THE IMC

(6) Texas currently has reciprocal TDLR ACR contractor licensing agreements with South Carolina and Georgia.⁷ Both these states solely adopt and enforce the IMC, not the UMC.

Adopting two different mechanical codes is confusing and could be an impediment for future reciprocal agreements. Since most of the United States adopts the IMC and current reciprocity agreements are with IMC states, sole recognition of the IMC, will simplify and provide clarity to the Texas licensing process for both in-state and out-of-state individuals wishing to work in the Texas mechanical industry.

ONE MECHANICAL CODE, THE IMC, IS CONSISTENT WITH THE CODES ADOPTED BY THE TEXAS FACILITIES COMMISSION FOR STATE BUILDINGS

(7) The Texas Facilities Commission (TFC) has deemed the statutory building requirements for Texas State Buildings as the most restrictive requirements of the International Code Council family of codes (I-Codes) (latest published editions).⁸ Thus, one mechanical code, the IMC, complies with the TFC.

Consequently, adoption of a single mechanical code by TDLR, consistent with TFC statutory requirements, will increase efficiencies and consistency, and harmonize regulatory requirements in Texas.

THE UMC DOES NOT CORRELATE WITH THE BUILDING CODES REQUIRED FOR FEMA PUBLIC ASSISTANCE

(8) Unfortunate events like Hurricane Harvey have shown the need for Texas to become better prepared to take mitigating steps to build stronger for the future. A fast recovery after a catastrophic event can be difficult; therefore, a streamlined and efficient regulatory process is important to getting people safely and quickly back into their homes and their jobs.

FEMA's Public Assistance program requires "As a condition of assistance, buildings eligible for repair, replacement, or construction located in hazard-prone areas will use, at a minimum, the hazard-resistant

⁶ See <https://www.tdlr.texas.gov/ihb/ihbrules.htm#70100>

⁷ See <https://www.tdlr.texas.gov/acr/acreciprocity.htm>

⁸ See <http://www.tfc.state.tx.us/divisions/facilities/prog/construct/formsindex/01%20-%202018%20A-E%20GUIDELINES.pdf>

standards referenced in the most recent edition of the model building code (IBC, International Existing Building Code (IEBC), and IRC) as of the disaster declaration date.⁹ Since only the IMC correlates with the IBC, IEBC, and the residential mechanical provisions are included within the IRC, use of a different mechanical code could impede an efficient recovery, cause marketplace confusion, and possibly delay receipt of FEMA disaster funds.

Another unintended consequence in recognizing the UMC could occur during post disaster rebuilding. Since 46 out of 50 States follow the IMC, most out-of-state ACR contractors helping Texas recover after a disaster event will largely be trained and familiar with the IMC's requirements. Recognizing two mechanical codes causes confusion and could further delay disaster recovery efforts. One code, the IMC, clarifies rebuilding requirements, correlates with the IBC, IEBC, IRC and complies with FEMA disaster assistance requirements.

SUMMARY

In summary, Texas currently recognizes two mechanical codes, creating confusing and inconsistent mechanical licensing requirements. Adopting one widely adopted and accepted mechanical code, the IMC, will increase efficiencies in the TDLR ACR licensing process and ensure licensees are effectively instructed and prepared with knowledge of the predominantly adopted code in Texas and the U.S.

In addition, one mechanical code supports TDLR's mission to be current and consistent with Texas and U.S. market demands. The proposed recommendation for TDLR ACR regulation will also remove impediments, streamline regulations, safeguard the public, and ensure our licensing process is simpler for our licensees.

We believe the reasons outlined above justify the Sunset Commission to review and recommend the adoption of and testing to one single mechanical code, the *International Mechanical Code*, by TDLR and for Texas ACR Licensees.

Upon request, the Code Council is happy to follow-up with additional materials/ data to aid in the Texas Sunset Commission's work.

Thank you for the opportunity to comment on the TDLR Sunset Commission review. The Code Council, through our 4,200 Texas members and 18 active Texas Chapters, hopes our position is met with your acceptance and encouragement.

Sincerely,

Kelly D. Sadler

Kelly D. Sadler, J.D.
International Code Council, Government Relations Manager, TX

⁹ See https://www.fema.gov/media-library-data/1537275645199-ee6a1fa78f9b9262dcbc7fb756515c7c/PA_Minimum_Standards_Policy_508_FINAL_ARCHIVED.pdf