

July 1, 2010

Construction Industries Division  
2550 Cerrillos Road, P.O. Box 25101  
Santa Fe, New Mexico 87504  
Attention: Public Comments

NAIOP NM Chapter, the Commercial Real Estate Development Association, has several concerns regarding the proposed 2009 New Mexico Building Codes.

1. The current proposed amendments include a section that relates to existing buildings. NMAC 14.7.7.17 indicates that if there is an occupancy group change or if a remodel involves 50% or more of the square footage of an existing building, the new code would require that the entire building and its systems be brought up to the 2009 New Mexico Energy Conservation Code, including the envelope and any occupied tenant areas.

NAIOP is very concerned that this requirement will create legal problems involving new and existing tenant leases.

It will also create a hardship since there are no mitigating conditions related to the age of the building, or the specific area of the building being remodeled, or the extent of the building's systems being remodeled. In addition, the value of the building in the eyes of a lender is compromised, and an owner may not be able to use the building as collateral in obtaining new loans or extending existing ones.

Finally, this amendment would have the unintended consequences of discouraging the remodel of existing, infill buildings, and would create an unprecedented financial burden on building owners to meet these standards. Tenants would face higher rents, discouraging company expansions or relocations.

2. Secondly, NAIOP is concerned about the 10% increase in energy conservation requirements over and above those standards set in the un-amended 2009 International Building Code and International Energy Conservation Code (on which the NM Codes are based).

The 2009 International Energy Conservation Code states in its Preface that *"This Code is founded on the principles intended to establish provisions consistent with the scope of an energy conservation code that adequately conserves energy; provisions that do not unnecessarily increase construction costs; provisions that do not restrict the use of new materials, products or methods of construction; and provisions that do not give preferential treatment to particular classes of materials, products or methods of construction."* From this it can be concluded that any attempt to go beyond this standard runs the risk of unnecessarily increasing construction costs and limiting materials, equipment types and construction methods.

The requirement to exceed this standard in the midst of a serious recession does not make financial sense and will seriously affect the ability of the real estate development industry to finance new developments, or to find clients willing or able to pay the increased rents required to reimburse the costs of these upgrades.

This 10% additional requirement does increase the cost of new buildings in relation to surrounding states. We compete against these states and cities to acquire re-locating businesses bringing jobs and revenue. Additional construction costs are not an incentive to encourage companies to locate to New Mexico.

As part of the 10% increase, NMAC 14.7.6.13 of the 2009 New Mexico Energy Conservation Code adds a Section 506 to the 2009 International Energy Conservation Code related to Additional Energy Packages. There are different paths that can be taken to achieve code compliance. In the prescriptive path for new buildings or 50% or more remodels, the code requires that one of these packages be chosen in the design and construction of the project. The 3 options include an HVAC Option which increases HVAC equipment efficiencies above those in the standard. Examples include small packaged rooftop equipment which would require a SEER rating of 15 and furnaces with a thermal efficiency of 92%. The international standard is 13 SEER and 80% thermal efficiency. This means products meeting this requirement will be more expensive, harder to find, and, in some cases, not available.

The second of the three options is a lighting power reduction package. The wattage required in the new code violates state standards for school lighting, and will be exceedingly difficult to meet in office buildings. Again, the hurdles are cost and availability of product.

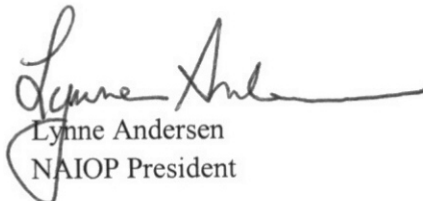
The third option requires that 3% of the buildings energy be produced on-site by two alternative sources, sun and wind. Wind is not viable in most areas of New Mexico leaving only the solar option. This may be problematic, particularly in the case of existing buildings due to available land, size of the building or other design issues.

The result is that this section creates real hurdles in both developing new projects and in upgrading existing ones. There is a question as to whether the problem in achieving the lighting and solar requirements leaves only the HVAC option. This in turn raises the question about the legality of this section since the increased equipment efficiencies requirement exceeds the standard set by the industry. This was a problem several years ago in the Albuquerque Energy Code, and the state court placed a moratorium on that code.

3. NAIOP would ask that the CID Commission eliminate the section requiring entire existing buildings to be brought up to 2009 codes. We urge that only those portions or systems of a building being remodeled would have to meet the new codes.

NAIOP also asks that the Additional Energy Packages section be removed since the 3 options all have problems related to excessive costs, availability of product, or potential legal problems with increasing required standards above industry standards.

Sincerely,



Lynne Andersen  
NAIOP President