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Sent: Monday, December 05, 2022 12:03 PM
To: Planning <Planning@a2gov.org>
Cc: Lenart, Brett <BLenart@a2gov.org>; David Pierson <dpierson@malansing.com>
Subject: Uniform Development Code Proposed Amendments

Please see the attached correspondence from David Pierson.

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BERNARDO A. BALLESTEROS

December 5, 2022

VIA EMAIL
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Planning Commission
City of Ann Arbor
301 E. Huron St.
Ann Arbor, MI 48107

Dear Planning Commissioners:

We represent the Home Builders Association of Michigan and are writing on their behalf in connection with the proposed amendments to the City of Ann Arbor Uniform Development Code, the zoning ordinance, that would require all future construction, as well as renovation above a certain threshold, to be all-electric with no gas connection. These requirements would directly conflict with Michigan's Statewide Construction Code and should not be adopted.

It is generally understood by local officials (but worth repeating) that Michigan law adopts a Statewide Construction Code and requires its uniform application throughout the state. Local governments may choose to provide inspections and enforce the code (subject to compliance with state Construction Code Commission requirements) but cannot choose other codes to apply or vary the statewide code. In this case, although the amendment is styled as a zoning amendment, it addresses matters covered by, and preempted by, the Statewide Construction Code.

As prescribed by statute:

[T]he code shall consist of the international residential code, the international building code, the international mechanical code, the international plumbing code the international existing building code, and the international energy conservation code published by the international code council, and the national electrical code published by the national fire prevention association, with amendments, additions, deletions as the director determines appropriate. The director may adopt all or any part of these codes or the standards contained within these codes by reference.

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MCL 125.1504(2). For the state's energy code, starting in 1978, the Legislature had already required the use of a single, statewide energy code, without local modifications. See, 1978 PA 442.

The Statewide Construction Code applies throughout the state, MCL 125.1508a. Local governments do not have the option to vary the code as adopted and promulgated under state statute, and the exception for zoning ordinances may not be used to change that legislative mandate. As the Court of Appeals noted in *City of Wyoming v Kragt*, an unpublished opinion of the Michigan Court of Appeals, Docket No. 255836 (March 9, 2006), quoting *Huggett v Dep't of Natural Resources*, 232 Mich App 188, 194 (1998), affirmed 464 Mich 711 (2001), "Statutory exceptions operate to restrict the general applicability of legislative language and are strictly construed." In other words, calling a construction regulation a zoning requirement does not make it so. Otherwise, a local government could change any section of the Statewide Construction Code simply by adopting its own variant as part of the zoning ordinance. The provisions of the amendment would directly conflict with the building code, residential code, mechanical code, and energy code components of the Statewide Construction Code. The same would be true if it were styled as any other form of ordinance.

The City of Ann Arbor has already recognized that these provisions must be addressed as part of the Statewide Construction Code. For the public hearing on the proposed adoption of amendments to the Michigan Energy Code residential rules (Part 10), R 408.31001 - R 408.31086, by the Michigan Department of Licensing and Regulatory Affairs ("LARA"), Bureau of Construction Codes, as part of the Statewide Construction Code, the City of Ann Arbor proposed a series of detailed amendments, presented by Zach Waas Smith, to 24 provisions of the proposed rules, including the adoption of Appendix CC of the 2021 International Energy Conservation Code, all to implement all-electric construction and prohibit gas. Each proposed rule change request from the City presented detailed code amendments, rationale, and a clear explanation of how the changes fit within and, in the City's view, advance the goals of the Michigan Energy Code as part of the Statewide Construction Code. LARA has yet to make a decision on the changes to those provisions of the Statewide Construction Code. The zoning ordinance proposal is in direct conflict with that process. Before a decision is even made by LARA, the ordinance proposal would operate under the pretense that these changes are a zoning issue. They clearly are not, as the City has recognized.

The aim of the Statewide Code is clearly stated in the statute, including providing standards and requirements for construction and construction materials consistent with nationally recognized standards and requirements, to eliminate restrictive, obsolete, conflicting, or unnecessary construction regulations that tend to increase construction costs unnecessarily or restrict the use of new materials, products, or methods of construction, or provide preferential treatment to types or classes of materials or products or methods of construction, as well as to adequately protect the health, safety, and welfare of the people.

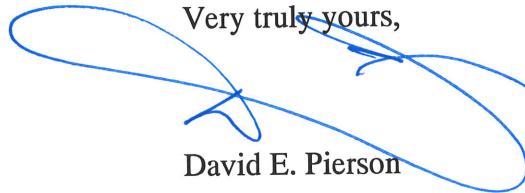
The Home Builders Association of Michigan ("HBAM") is a statewide association whose members develop and build single-family residential homes and communities throughout

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Michigan and work ensure that Michigan homebuyers can buy homes built to a high standard, at a cost that they can afford. Although HBAM and the City may not agree on what all of the code provisions should be, we are, and should be, part of the same process of addressing those provisions as part of the Statewide Construction Code. The City should not try to recast them as zoning rules in direct conflict with state law.

Very truly yours,



David E. Pierson

DEP/cko

cc via email: Mr. Robert Filka
Mr. Richard Kligman
Ms. Dawn Crandall
Mr. Brett Lenart, Planning Manager