

From: John Mirsky <johnmirsky@gmail.com>
Sent: Monday, October 03, 2022 12:40 PM
To: Stults, Missy <MStults@a2gov.org>; Lenart, Brett <BLenart@a2gov.org>
Cc: Gibb-Randall, Shannon (EC)
Subject: Re: building code documents

Hi Missy and Brett,

Brett, I've read your memo to the ORC regarding electrification and solar energy readiness which was discussed in its meeting last Thursday. I laud the City's efforts on this front.

On the other hand, as we all know and as Missy has acknowledged, the attempt to halt new NG connections through a zoning revision is not without risks. Over a year ago, we put all of our NG-banning eggs in one basket when it was attempted to have the ZEROCode included in the state's update of its energy code; unfortunately, that seems to have failed. Given we are in a climate emergency and we've already lost two years, I ask that the City considering pursuing parallel paths to achieve our objective of halting new NG connections, one via amendments to the zoning code (City Code Chapter 55) and the other via the building code (Chapter 100), as Ken Garber has proposed in a resolution introduced to the energy commission in 2020 (? I couldn't find it but I'm sure Ken can provide it to us in addition to the documents attached earlier in this thread). I realize that parallel processing involves more resources and a building code amendment also involves risks but serial processing risks losing even more time and continued approvals of NG-connected developments which are wiping out decarbonization gains on other fronts; moreover, that is also a significant resource loss.

Under a business-as-usual scenario, serial processing makes sense; however, we should be in crisis mode. I think that requires a paradigm shift in our thinking about approaches. We shouldn't put ourselves in the potential position where we look back two more years down the road and regret the fact that we didn't do more sooner.

I welcome your thoughts on this matter.

John

On Tue, Aug 30, 2022 at 7:17 AM Stults, Missy <MStults@a2gov.org> wrote:
Thanks, John. I just shared with legal to help inform their analysis.

Best,
Missy

Sent from my iPhone

On Aug 29, 2022, at 10:41 PM, John Mirsky <johnmirsky@gmail.com> wrote:

Hi Missy,

These are the documents I mentioned in our meeting this afternoon. A few comments:

- The Nash Hall and Ken Garber email thread and Ken's email exchange with former state senator Leon Stille are the most interesting of the group; Ken told me it's his recollection that I'm the only person he has shared them with.
 - Ken had apparently shared Nash Hall's blog with others, perhaps with you and Sarah Mills. If you haven't read it or don't recall, read it again for context but not as the final word.
- Note the following closing statement in his email: "Republicans in both the state House (HB 4575) and Senate (SB 820) have introduced legislation that would ban natural gas bans. So they don't think they're already banned."

After having reviewed all of Ken's documents and spoken with him afterwards, I definitely think that a new look at the prevailing interpretation of Michigan code by the City Attorney's office is worthwhile in addition to the other route you mentioned that is being evaluated. That's especially true given the dwindling odds of the ZEROCode with its EE and RE elements being included as an appendix to the updated energy code.

John

----- Forwarded message -----

From: **KEN GARBER** <kengarber@prodigy.net>

Date: Thu, Aug 25, 2022 at 12:39 PM

Subject: building code documents

To: John Mirsky <johnmirsky@gmail.com>

Hi John,

See the following attachments:

1. List of development projects approved since June 1, 2020. (Date of Council adoption of A2Zero plan). Includes unit and square footage totals, and summary of combined emissions. I'd be happy to provide my calculations, as I did earlier in my email to Travis Radina.
2. Nash Hall draft blog post about state law and city construction regulations, June 2020. I don't know if this was ever posted. Nash is now a judicial law clerk in federal district court in Minnesota.
3. Subsequent email thread between Nash and I. Note that Nash wrote that a court might agree with an interpretation of Stille-DeRossett-Hale section 125.1524 that's consistent with cities adopting their own building codes for new construction. And that he hopes some city will try this.
I don't think Oday Salim was aware of Nash's emails to me. He might only remember Nash's original blog post conclusion, that the law prevents localities from enacting their own construction regulations.
4. Former state senator Leon Stille's 6-18-20 email to me. (You've seen this before.)

Stille-DeRossett-Hale can be found at <https://law.justia.com/codes/michigan/2015/chapter-125/statute-act-230-of-1972/>

There is nothing in the law that explicitly states that cities can't pass their own building codes. Nash, in his blog post, concluded that "The Act severely restricts the ability of municipalities to enact construction regulations." But this interpretation rests on section 125.1524, "Effect of existing laws and regulations," where it reads, "Six months after the promulgation of the code and thereafter, construction regulations adopted by a governmental subdivision shall be considered repealed and invalid..." Nash, in his blog post, assumed that this meant both then-existing and future city construction regulations are invalid. In our subsequent email exchange, I pointed out that, given the title of this section ("Effect of existing laws

and regulations"), it more likely meant that only local construction regulations in place at the time of the law's passage are invalid. Nothing about future regulations. As you'll read, Nash agreed with me that that was also a reasonable interpretation, and that a court might go for it.

Of note, Republicans in both the state House (HB 4575) and Senate (SB 820) have introduced legislation that would ban natural gas bans. So they don't think they're already banned.

Thanks,

Ken

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