REWIRING AMERICA

I. Building Sector Action Needed to Meet New York State GHG Target

The New York Climate Leadership and Community Protection Act (CLCPA) of 2019 requires New York to limit statewide greenhouse gas emissions to 60% of 1990 levels by 2030 and 15% of 1990 levels by 2050 and achieve net-zero greenhouse gas emissions across New York State's economy.

Buildings are the largest source of greenhouse gas (GHG) emissions in New York State so the duty to decarbonize the building sector is vital to achieving our statutorily required GHG reduction targets.[1] The Climate Action Council Scoping Plan, which provides the pathway to meet the GHG reduction targets, provides that, "energy efficiency and managed electrification in buildings will be critical to meet New York State's GHG emissions limits under the Climate Act."[2] Building decarbonization is the reduction or elimination of GHG emissions from building end uses through energy efficiency improvements to reduce energy demand and through switching from equipment and systems powered by burning gas, oil, or other fossil fuels to highly efficient equipment and systems powered by zero-emission energy sources.[3]

II. New York's 2025 Building Code Update should have Incorporated New York's Electrification and Energy Efficiency Laws

New York State law requires the Building Code Council to periodically update the State Building Code to reflect the new objectives and standards that the legislature has added to the Building Code Act.[4] The 2025 Building Code, approved in July 2025, was the first time that Building Code Council updated the New York State Building Code since the enactment of three laws requiring the Building Code Council to update the NYS Building Code to reflect New York's Greenhouse Gas emissions reduction targets.

Executive Law § 377 provides:

> New York State Uniform Fire Prevention and Building Code. 1. The council shall formulate a uniform fire prevention and building code...The council ... **shall periodically review the entire code**

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[1] Statewide Greenhouse Gas Emissions Report, NYS Department of Environmental Conservation, https://dec.ny.gov/environmental-protection/climate-change/greenhouse-gas-emissions-report
[2] Climate Action Council Scoping Plan, page 176
[3] Id.
[4] Article 18 of the NYS Executive Law

> **to assure that it effectuates** the purposes of this article and **the specific objectives and standards hereinafter set forth**.

Currently, the New York State Building Code is updated every three to five years and incorporates the updates of the International Code Council (ICC) model building code which is issued every three years. The ICC issued model codes in 2018, 2021, and 2024. Generally, it takes New York State another two years after receiving the ICC model building code to incorporate the updates into New York's Building Code.

New York's 2020 Building Code was based largely on the ICC's 2018 building code model with some of the 2021 ICC building code model included. The Building Code Council is also required to incorporate any building code related laws enacted by the State of New York since the last building code update. The 2025 NY Building Code Update should have incorporated the three laws enacted since the 2020 Building Code Update. New York cannot wait until the next NYS Building Code Update, which won't occur until 2027 to 2029, to decarbonize our building sector.

A. Three Enacted Building Electrification and Energy Efficiency Laws

Since 2019, New York has enacted three laws requiring the Building Code Council to consider the State's greenhouse gas emissions reduction targets and to update the State Building Code to reflect those goals. The 2025 Update should have incorporated all requirements from these three Acts:

1) On May 3, 2023, Governor Hochul signed into law the All Electric Building Act[5] (AEBA) as part of the 2023-24 New York State Budget.

2) On July 5, 2022, the State enacted the Advanced Building Codes, Appliance and Equipment Efficiency Standards Act[6] (Advanced Building Codes Act).

3) On July 18, 2019, the State enacted the Climate Leadership and Community Protection Act[7] (Climate Act).

[5] Chapter 54 of the laws of 2023
[6] Chapter 374 of the laws of 2022
[7] Chapter 106 of the laws of 2019

1. The All Electric Building Act requires the Council to: i) recognize the importance of the decarbonization of new and existing buildings to achieve our climate goals, ii) to update the building code to achieve our climate goals and iii) to prohibit fossil fuel combustion systems in new construction

On May 3, 2023, the AEBA updated the statutory purpose of the Building Code Council to make it the Council's official policy to recognize that decarbonization of new and existing buildings is closely related to the State's clean energy and climate agenda, and that the building code is to enable the State's greenhouse gas reduction and clean energy objectives.

Executive Law § 371(2) was updated to the following language:

> New York State Uniform Fire Prevention and Building Code Act:... Statement of legislative findings and purposes... 2. The legislature declares that it shall be the public policy of the state of New York to:...(3) recognize that **the decarbonization of new and existing buildings** is closely related to the state's clean energy and climate agenda as described in the New York Climate leadership and community protection act ...and that **the uniform code shall enable the state's clean energy objectives**...

a) Prohibition of Fossil Fuel Combustion Building Systems and Equipment

The AEBA requires all newly constructed buildings in New York State to be built with all-electric building systems and equipment. Accordingly, the 2025 Building Code Update must include the prohibition of fossil-fuel combustion equipment and building systems as provided by law.

Executive Law 378 (19) has been updated to provide:

> **Standards for New York state uniform fire prevention and building code**... To support the **goal of zero on-site greenhouse gas** reduction requirements...the **uniform code shall prohibit the installation of fossil-fuel equipment and building systems**, in any new building not more than seven stories in height, except for a commercial or industrial building greater than one hundred thousand square feet in conditioned floor area, on or after December thirty-first, two thousand twenty-five, and the uniform code shall prohibit the installation of fossil-fuel equipment and building systems, **in all new buildings** on or after December thirty-first, two thousand twenty-eight.

Energy law 11-104 (6) has been updated to provide:

> **State Energy Conservation Construction Code Act**...to support the **goal of zero on-site greenhouse gas emissions** and help achieve the state's clean energy and climate agenda...the **code shall prohibit the installation of fossil-fuel equipment and building systems**, in any new building not more than seven stories in height, except for a new commercial or industrial building greater than one hundred thousand square feet in conditioned floor area, on or after December thirty-first, two thousand twenty-five, and the code shall prohibit the installation of fossil-fuel equipment and building systems, **in all new buildings** after December thirty-first, two thousand twenty-eight.

2. The Advanced Building Code Act Requires Council to Conform to the State Energy Policy and incorporate the recommendations of the Climate Action Council.

a) State Energy Policy

On July 5, 2022, the Advanced Building Code Act updated the State Energy Policy to require that the Building Code Council actively promote greenhouse gas reduction in the construction and operation of new buildings and the rehabilitation of existing buildings.

Energy Law 3-101(2) provides:

> It shall be the energy policy of the state...to encourage conservation of energy and **to promote the clean energy and climate agenda, including but not limited to greenhouse gas reduction**...**in the construction and operation of new construction** and operation of new commercial, industrial, agricultural and residential buildings, **and in the rehabilitation of existing structures**, through heating, cooling, ventilation, lighting, insulation and design techniques...

Energy law 3-103 provides:

> Conformance with state energy policy. Every agency of the state **shall conduct its affairs so as to conform to the state energy policy** expressed in this chapter.

b) Climate Action Council Scoping Plan Key Strategies

The Advanced Building Code Act updated the law to require the Building Code Council to update the Building Code to include the Key Strategies identified by the Climate Action Council to the fullest extent feasible.

Building Code Council members should have only approved a proposed Building Code that included the key strategies of the Climate Action Council.

The Building Code Council should have demonstrated that they reviewed all of the key strategies of the Climate Action Council relevant to the Building Code, as set forth in the Scoping Plan, and at a minimum conducted a feasibility analysis to determine the fullest extent feasible that the Key Strategies could be included in the 2025 Building Code update.

Unfortunately, the code council completely disregarded the law requiring the Building Code to be updated to reflect the key strategies of the Climate Action Council.

Energy Law § 11-104 (6) provides

> State Energy Conservation Construction Code ...To the fullest extent feasible, the **standards for construction of buildings** in the code **shall be designed** to help achieve the state's clean energy and climate agenda, including but not limited to greenhouse gas reduction ...**as further identified by the New York state climate action council**...

c) Highly efficient newly constructed buildings by 2025

The Climate Action Council scoping plan found that when new buildings are constructed there are cost-effective opportunities for decarbonization. The Climate Action Council scoping plan tasked the Building Code Council to update the Building Code to include highly efficient newly constructed buildings by 2025. The Energy law requires the Building Code Council to update the Building Code to include the Climate Action Council's key strategies for new buildings construction to be highly efficiency to the fullest extent feasible.[8]

Accordingly, the 2025 Building Code Update should have required that permits filed for the construction of a new building starting in 2025 include the following Highly Efficient requirements: highly insulated thermal performance and air tightness; electric readiness for space conditioning, hot water, cooking and dryers; electric vehicle readiness where parking is provided; and solar wherever the opportunity exists and is feasible.

Ultimately, the Building Code Council was delegated the discretion to determine what is the fullest extent feasible to incorporate the highly efficient newly constructed building strategy in the 2025 Building Code. However, the Building Code Council was not authorized to simply ignore the law requiring this strategy to be included in the 2025 Building Code Update.

[8] Energy Law § 11-104(6)

Climate Action Council Key Strategy B1. provides:

> **Update regulations [Building Codes] to improve energy efficiency**: 2025: Adopt highly efficient State Energy Code (New York State Energy Conservation Construction Code) for new construction of residential and commercial buildings to **require highly insulated thermal performance and air tightness; EV electric readiness where parking is provided; and solar wherever the opportunity exists and is feasible** These requirements should apply to construction of buildings that file for a building permit starting in 2025.[9]

d) Resilient New Construction by 2025

The Climate Action Council scoping plan found that building resilience is the ability of the building system to be prepared for, withstand, adapt, and quickly recover from disruptions such as severe weather, power outages, and chronic changes to the climate.[10] The Climate Action Council approved a key strategy that the Building Code Council update the 2025 Building Code to require newly constructed buildings to be resilient.

The Energy law requires the Building Code Council to include the resilient new construction requirement into the 2024 Building Code to the fullest extent feasible.

Accordingly, the 2025 Building Code Update should have required that permits filed for the construction of a new building starting in 2025 include the following resilient requirements: **require energy storage or on-site renewable energy generation** that is able to operate independent of the grid; require grid-interactive electrical appliances as feasible (such as batteries and hot water heaters) to support grid reliability; and eliminate barriers to residential adoption of ground source heat pumps.

Climate Action Council Key Strategy B1 provides:

> **Update regulations [Building Codes] to improve ... building resilience**: 2025: Adopt additional building resilience features into State codes for new construction to **require energy storage or onsite renewable generation** that is able to operate independent of the grid, with specifications for sizing to meet resilience demands. Also **require grid-interactive electrical appliances** as feasible to support grid reliability and eliminate barriers to

[9] Climate Action Council Scoping Plan Key Strategy B1; page 186
[10] Climate Action Council Scoping Plan Key Strategy B1; page 185

residential adoption of ground source heat pumps.[11]

3. The Climate Act required the Building Code Council to Consider the State's Greenhouse Gas Reduction Goals and Prohibited Disproportionate burdens on Disadvantaged Communities

a) The Building Code Council Should Have Considered the State's Greenhouse Gas Reduction Goals before approval

On July 18, 2019, the Climate Leadership and Community Protection Act (Climate Act) was signed into law. New York State's Climate Act is among the most ambitious climate laws in the nation and requires New York to reduce economy-wide greenhouse gas pollution 40 percent by 2030 and no less than 85 percent by 2050 from 1990 levels.

The Climate Act required the Department of State, Division of Codes and Standards and the Building Code Council to consider if their approval of the 2025 Building Code was inconsistent with or will interfere with the attainment of the state's greenhouse gas reduction targets. Since the building sector is the largest source of greenhouse gas pollution in New York State, the Building Code Council's duty to consider such climate-crisis requirements is of vital importance.

Accordingly, the Building Code Council should have determined whether the 2025 Building Code Update as a whole will support our greenhouse gas reduction targets. If the 2025 Building Code Update is inconsistent with those limits, the Council should have provided a detailed statement of justification for why the Building Code Council approved a 2025 Building Code Update that is inconsistent with the state's greenhouse gas emissions limits.

Unfortunately, the Building Code Council and the Hochul administration again completely ignored this statutory requirement and performed no analysis.

Climate Act § 7(2) provides

> In **considering and issuing... administrative approvals and decisions**...all state agencies...and divisions...**shall consider** whether such decisions are **inconsistent with or will interfere with attainment of the statewide greenhouse gas emissions limits**... Where such decisions are deemed to be inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits, each agency ...**shall provide a detailed**

[11] Climate Action Council Scoping Plan Key Strategy B1, page 186

> **statement of justification** as to why such limits/criteria may not be met...[12]

b) Building Code Council impact on Disadvantaged Communities

In addition to advancing New York's nation-leading climate and energy agenda, a fundamental objective of the Climate Act is to ensure that New York's transition to a clean energy economy works to address the structural disadvantages that have caused historically marginalized communities (e.g. people of color, indigenous, low-income, women) to bear a disproportionate burden of the impacts of climate change and pollution.

The Climate Act prohibited the Building Code Council, the Division of Codes and Standards and Department of State from approving a 2025 Building Code Update that continues to disproportionately burden disadvantaged communities and requires the Building Code Council to prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities when approving the 2025 Building Code Update.

Climate Act § 7(3) provides:

> In considering and issuing ...administrative approvals and decisions... all state agencies ... and divisions **shall not disproportionately burden disadvantaged communities**... All state agencies ... and divisions shall also **prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities**...

The Climate Action Council scoping plan provides:

> The Climate Act also contains important provisions that ensure agency decision-making does not disproportionately burden Disadvantaged Communities and prioritizes reductions of the GHG emissions and co-pollutants in these communities. These are priorities that **encompass all State agencies and authorities, and a coordinated approach to implementation is needed to ensure these provisions of law are integrated into agency actions**.

In order to assist the Building Code Council, the Division of Codes and Standards, the Department of State and others in determining how the Building Code creates barriers to decarbonizing buildings within disadvantaged communities and to identify opportunities to decarbonize buildings within disadvantaged communities, the Climate Act required that the

[12] Chapter 106 of the Laws of 2019

Department of Environment Conservation, NYSERDA, NYPA and other agencies issue the Barriers and Opportunities report.

Climate Act § 6 provides:

> **Report on barriers to and opportunities** for, community ownership of services and commodities in disadvantaged communities...department of environmental conservation...shall prepare a report on **barriers to...energy efficiency and weatherization investments** ...**adaptation measures to improve the resilience of homes and local infrastructure to the impacts of climate change**...other services and infrastructure that can reduce the risks associated with climate-related hazards...

The Climate Action Council Scoping Plan provides

> As appropriate, **all state entities are expected** to **incorporate these three themes and eight recommendations into their program administration and process** activities related to implementation of the Climate Act.
> The Barriers and Opportunities Report recommends that State agencies and authorities **conduct a self-assessment** and barriers analysis **related to their policies and programs guided by the findings in the Report.** In conducting the self assessment and barriers analysis, each State entity should be expected to: Identify appropriate program staff to conduct the work and **phase it in according to a feasible and impactful timeline**; conduct a self assessment and barriers analysis that includes identifying the barriers and opportunities identified in the Report **that are applicable to the agency or authority's portfolio**; translate the results into a plan that identifies the relevant barriers and opportunities, specific workstreams that the agency or authority will undertake to address these barriers and opportunities, a timeline for each workstream, and expected outcome of each workstream.

In accordance with the Climate Act, the NYS Disadvantaged Communities Barriers and Opportunities report was issued in December of 2021. Pursuant to the Climate Act, the recommendations from the Barriers and Opportunities report were included in the Scoping Plan and pursuant to the Advanced Building Code Act should have been incorporated into the Building Code to the fullest extent feasible. Yet, the Code Council failed to incorporate any provisions related to the disproportionate burden on disadvantaged communities into the 2025 Building Code update.

The report identifies numerous barriers and opportunities related to the Building Code that the Building Code Council, the Division of Codes and Standards and Department of State should have reviewed and incorporated into the 2025 Building Code Update.

The Building Code Council should not have approved the 2025 Building Code Update since it is in violation of the Climate Act's prohibition on disproportionately burdening disadvantaged communities and the 2025 Building Code Update fails to prioritize ways to decarbonize disadvantaged communities.

The Disadvantaged Communities report specifically recommends to "update codes, rules, and policies that currently limit or prevent climate change solutions," to "increase building health and safety and energy code enforcement efforts and partnerships" and to "address building integrity from a health and safety perspective." The report states "Dramatic action must be taken at the intersection of environmental and housing policy to mitigate and adapt to climate change. The most vulnerable communities and households will bear the brunt of the changing climate and increasingly frequent and severe natural disasters." Below are some of the specific recommendations related to the 2024 Building Code Update:

The NYS Disadvantaged Communities Barriers and Opportunities Report Recommendation 8 provides:

> Improve housing conditions and **adherence to local building codes**...8a **Address building integrity** from a health and safety perspective... 8e Increase building health and safety and **energy code enforcement efforts** and partnerships 8f **Bring energy code education and training to frontline contractors**.

The NYS Disadvantaged Communities Barriers and Opportunities Report[13] Recommendation 3 provides:

> Work across intersecting challenges and interests to address needs holistically...3f **Update codes, rules and policies that currently limit or prevent climate change solutions**.

The NYS Disadvantaged Communities Barriers Opportunities Report Recommendation 5 provides:

> **Establish people-centered policies**, programs and funding across local, State and federal governments ...5d Assess opportunities to merge, combine, or closely coordinate related

[13]https://climate.ny.gov/-/media/Project/Climate/Files/21-35-NY-Disadvantaged-Communities-Barriers-and-Opportunities-Report.pdf

programs across State agencies, to the extent consistent with legal requirements. 5e. Review and reemphasize the **State's role as the connector between federal and local programs and service across different market actors**.

III. The Building Code Council should have complied with its clear legal obligations

The Building Code Council has a clear legal obligation to update the Building Code in compliance with the All-Electric Building Act, the Advanced Building Codes, Appliance and Equipment Efficiency Standards Act, and the Climate Leadership and Community Protection Act. This means they should have included in the 2025 Update:

Permits filed for the construction of new buildings starting in 2025 include the following efficiency requirements:

- electric readiness for space conditioning, hot water, cooking and dryers;
- electric vehicle readiness where parking is provided and
- solar wherever the opportunity exists and is feasible.

Permits filed for the construction of new buildings starting in 2025 include the following resilient requirements:

- energy storage or on-site renewable energy generation that is able to operate independent of the grid;
- grid-interactive electrical appliances as feasible (such as batteries and hot water heaters) to support grid reliability; and
- eliminate barriers to residential adoption of ground source heat pumps.

This means that the Code Council should have done the following while preparing the 2025 Code Update:

● Recognize that the decarbonization of new and existing buildings is closely related to the State's clean energy and climate agenda as described in the Climate Act and update the building code to enable the state's objectives

● Promote the State's clean energy and climate agenda in the construction and operation of new construction and the rehabilitation of existing structures through heating, cooling, ventilation, lighting, insulation and design techniques.

● Determine whether approval of the 2025 Building Code Update was inconsistent with or will interfere with the attainment of the Statewide greenhouse gas emissions limits.

○ If determined it is inconsistent, provide a detailed Statement of Justification as to why the 2025 Building Code Update is inconsistent with the Statewide greenhouse gas

emissions limits and why such limits cannot be met and identify any mitigation measures.

● Conduct a Disadvantaged Communities self-assessment and barriers analysis related to the 2025 Building Code Update as identified in the Disadvantaged Communities Barriers and Opportunities report.

● Do not approve a 2025 Building Code Update that continues to disproportionately burden disadvantaged communities or fails to incorporate the opportunities to remedy the existing disproportionate burden on disadvantaged communities.