Construction Codes Advisory Council
c/o Minnesota Department of Labor and Industry
443 Lafayette Road
St. Paul, MN 55155

Monday, Nov. 10, 2025

Re: 2024 CODE ADOPTION ***Via Electronic Delivery***

Members of the Construction Codes Advisory Council,

Housing First Minnesota is writing to seek the Council's support of a recommendation that the Commissioner act to keep homeownership affordable in Minnesota with the adoption of the next Residential Energy Code.

By way of background, Housing First represents the housing industry across Minnesota, and our membership includes homebuilders and trade partners who seek to provide affordable homeownership options to Minnesotans. We are driven by our mission of homeownership opportunities for all Minnesotans. Housing First also operates Minnesota's largest energy-efficient new home construction program, Minnesota's Green Path, which, to date, has rated and tested more than 49,000 homes across Minnesota. Our members and their trade partners are experts in housing affordability and efficiency.

Our comments to CCAC highlight:

I. **Market Analysis:** The adverse impact of over-regulating housing construction on Minnesota's affordable housing crisis.
II. **IECC Recommendations and Housing Affordability:** A proposed cost-neutral alternative.
III. **IRC EV Capable Proposal:** Highlights how the proposal should be excluded from the CCAC recommendation.
IV. **Role of Efficiency Rewards vs. Mandates:** Minnesota's nation-leading energy efficiency is driven by incentives, not over-regulation.
V. **Mitchell Provision:** Relevant to the Residential Energy Code adoption in Minnesota is the legislation enacted as a part of 2024 MN Session Laws Chapter 127, HF 5247[1], referred to as the Mitchell Provision.

The letter references the technical review of the 2024 International Energy Conservation Code (IECC) as published by the International Code Council, as the State of Minnesota uses an amended version of the IECC as its residential energy code, and the International Residential Code (IRC) as this document serves as the basis for Minn. Rules Chapter 1309. The IECC technical review was undertaken by the Technical

[1] HF 5247 was an omnibus bill. The original legislation for this provision was SF 4202 (Mitchell) / HF 4242 (Kraft), hearings for which are part of the legislative record.

Advisory Group, and Minnesota-specific amendments in question are hereto referred to as reviewed by the TAG (Code Change Proposals for this TAG were assigned RE numbers).

I. MINNESOTA'S HOUSING RECORD

Minnesota's housing market is the most heavily regulated in the Upper Midwest, and the impact has depressed housing construction in Minnesota.

- Minnesota is **98,000 homes short** of a stabilized housing market, with nearly **75,000 of these missing homes** needed in the Twin Cities region.[2] The state's housing deficit has **DOUBLED** since 2018.[3]
- The state's housing deficit now represents **4½ years of construction activity**.[4]
- With a median price of $555,000, **Minnesota is the most expensive state in the region** for new homes.[5]
- **Housing construction is plummeting** as permits have fallen 35% in Minnesota and 43% in the Twin Cities (2021-24).[6]
- **Housing affordability is at an all-time low**, according to national experts.[7]

Just last week, the *Minnesota Star Tribune* highlighted how Minnesotans must earn a household income of more than $100,000, well above the state's median household income, to enter homeownership.[8] By every objective measure, **now is the time to reduce housing costs, not raise them**. Unfortunately, the Technical Advisory Groups' (TAG) recommendations increase costs substantially and without a rational basis.

Specific to affordability, this has been the North Star to the State Building Code for five decades. In its *Guide to the State Building Code* dated March 2020, the Department of Labor and Industry highlights two critical elements within its statutory charge:

> "Provide for the use of modern methods, devices, materials and techniques which will **in part tend to lower construction costs** – encourage and recognize innovation and technologies that provide cost savings in labor, equipment, and building materials
>
> The construction of buildings should be **permitted at the least possible cost consistent with recognized standards of health and safety** – manage adoption of nationally recognized safety and health codes to keep construction costs as low as possible."
> (Page 7, Emphasis Added)

II. IECC RECOMMENDATION: ADOPTION OF 2024 IECC WITHOUT INCREASING EFFICIENCY

---

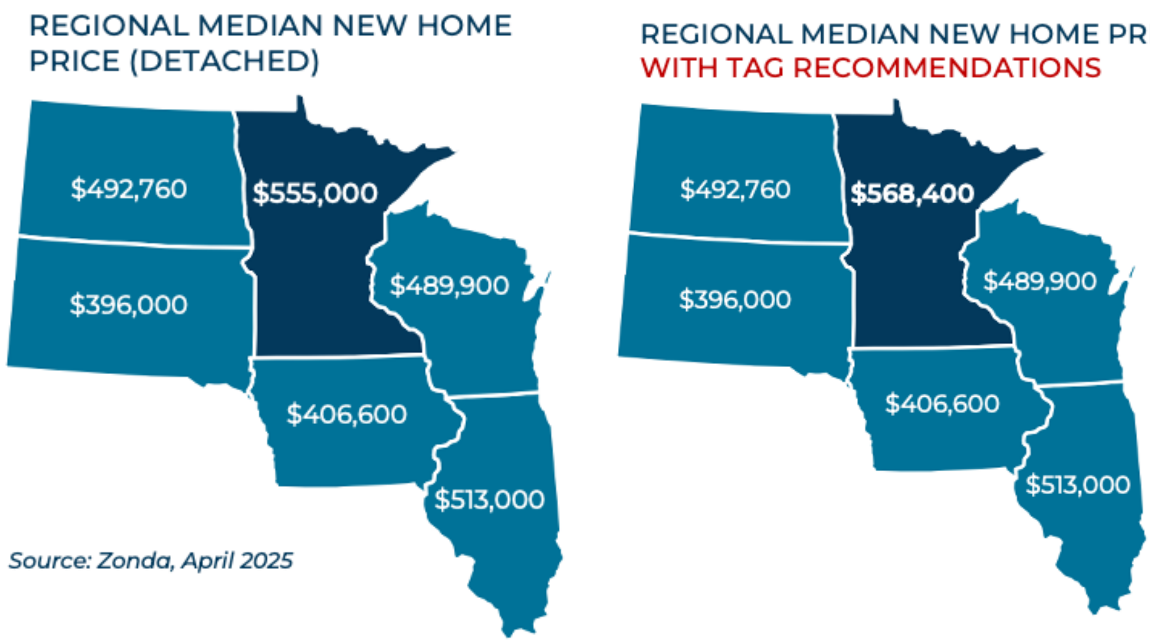
[2] Up for Growth, Housing Underproduction in the United States https://upforgrowth.org/apply-the-vision/housing-underproduction-reports/
[3] Figure based on 2018 State Task Force Report, Aug. 2018. https://mn.gov/gov-stat/pdf/Housing%20Task%20Force%20Report_FINAL.pdf
[4] Calculation: Up for Growth Estimate and Census Building Permit Survey. BPS available at https://www.census.gov/construction/bps/xls/stateannual_202499.xls
[5] Zonda, Median New Single-Family Detached Closing Price. April 2025.
[6] U.S. Census Bureau. https://www.census.gov/construction/bps/xls/stateannual_202499.xls
[7] Realtor.com "Home Affordability Is 'Historically Low,' Says JPMorganChase." June 2025. https://www.realtor.com/news/trends/housing-affordability-report-jpmorganchase/
[8] *Minnesota Star Tribue*. "In Minnesota, it now takes a six-figure income to buy a home". Nov. 3, 2025. https://www.startribune.com/most-minnesota-needs-earn-income-six-figures-100k-own-house-middle-class-afford-market/601476873

With a median Home Energy Rating System (HERS) in Minnesota of 47 in 2024, most new homes already exceed the state's 16% targeted increase in efficiency this code cycle. Under Housing First's recommendations that exclude the costly mandates of the proposed amendments to the Residential Energy Code, there would only be a minimal cost increase for new housing in Minnesota while complying with the requirements of the Mitchell Provision.

As the IECC TAG neared the completion of its work, Housing First Minnesota undertook a cost analysis to calculate the cost to consumers if the Commissioner and CCAC choose to adopt the TAG's recommendations. An initial cost analysis proved that TAG's IECC recommendations will increase housing costs as set forth below:

- **Townhome:** More than **$7,700** (At least **18,000 families priced out** by TAG recommendations).[9]
- **Slab-on-Grade Single-Level Home:** More than **$10,000** (At least **23,330 families priced out** by TAG recommendations).[6]
- **Two-Story Home with Basement:** More than **$13,400** (At least **31,000 families priced out** TAG recommendations).[6]

FIGURE 1: MIDWEST MEDIAN NEW HOME PRICE



Adoption of the full slate of IECC TAG recommendations would be the first significant cost increase from the Commissioner of the Department of Labor and Industry in more than 10 years. And because it impacts **ALL NEW HOMES**, it surpasses the impact of the now-invalidated sprinkler mandate.

To avoid any significant cost increase, the Department need only to adopt the 2024 International Energy Conservation Code (IECC) with the current IECC efficiency targets. To accomplish this, Housing First proposes that the following Code Change Proposals (CCPs) be rejected:

---

[9] Calculation: Based on NAHB Priced-Out Estimates for 2025 https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics-plus/special-studies/2025/special-study-households-priced-out-of-the-housing-market-march-2025.pdf?rev=557833ecb28e410c983deb86813645a8

RE-39 **RE-40** **R-41.1** **R43.1** **RE-45** **RE-50** **RE-52**

Housing First's recommendation is the most cost-effective path forward, as most new-home buyers in Minnesota would see a minor cost increase, tied only to the legislatively mandated adoption. Our recommendation also allows the state to make significant progress toward the long-term goals of the Mitchell Provision. While the recommendation from DLI staff includes not adopting four of these CCPs, **a recommendation for which Housing First Minnesota and its members are thankful**, it is important to note that three of the above-mentioned CCPs have been included.

V. IRC EV CAPABLE AMENDMENT

The Department of Labor of Industry has broken with protocol and allowed a special interest group to submit a code change proposal to CCAC despite ample time for Fresh Energy to resubmit the proposal to the TAG. According to the TAG's records, similar proposals were rejected on May 20, 2025, and July 15, 2025. Mr. Fowler had ample time to prepare and submit a revised CCP before the final TAG meeting but did not do so.

His proposal asks a simple question: ***In the middle of a growing housing crisis, should Minnesota mandate a luxury upgrade that consumers often choose not to include, when any cost savings are based on potential future consumer-driven choices that may or may not happen?***

The proposal's stated need highlights how this proposal was supported in the 2021 IECC review. The Department has since determined that this is **out of scope of the IECC** as the IECC cannot increase energy consumption on the site of a home, which this CCP does.

The proposal's stated reasonableness is predicated on cost savings in future years paid for today, meaning it **lacks an *essential nexus***. Those who pay for the cost increase are not necessarily the benefiting party.

Need and **reasonableness** are the cornerstone of Minnesota's rulemaking requirements. Amending the model codes to include costly mandates is, rightfully, a high bar. Section V of this letter highlights the specifics of these requirements in depth.

According to Housing First Minnesota's members, those building at the more affordable price points reported in 2023 that their EV charger upgrade rates were between 0-3%. Builders within the middle market reported a rate of no higher than 10% of buyers choosing an EV. The only part of the housing market that sees high adoption is the luxury home market, meaning the consumers who are least price sensitive.

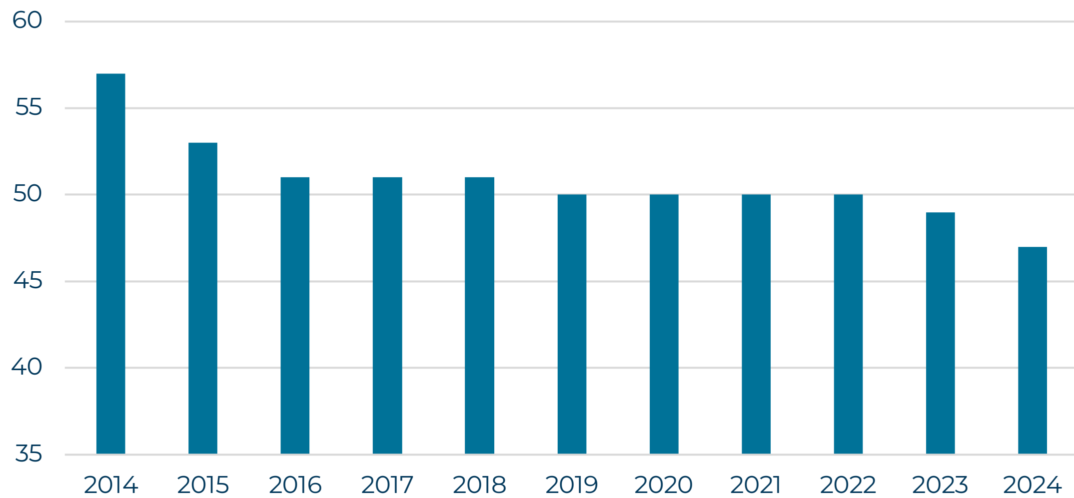
IV. EFFICIENCY INCENTIVES VS. MANDATES

With a median HERS of **47** and more than 8,800 homes rated in 2024, Minnesota is **THE MOST EFFICIENT NEW HOME CONSTRUCTION STATE** in the United States.[10] This record-setting efficiency was achieved under the 2012 IECC with Minnesota Amendments. When former Commissioner Peterson wisely decided not to open rulemaking in 2018, efficiency groups claimed that Minnesota would "fall behind"

[10] Resnet, 2024 HERS® Activity by State. https://www.resnet.us/wp-content/uploads/2024-HERS-Activity-by-State.pdf

without adoption of the new code, claims repeated with groups pressing for the enactment of the Mitchell Provision. These claims were unfounded, and the truth was the opposite. Data proves that despite not adopting a new energy code, homes in Minnesota grew MORE efficient and Minnesota maintained its nation-leading status for more than the past five years.

FIGURE 2: MINNESOTA ENERGY EFFICIENCY OVER TIME (AVG. HERS)[11]



It should be noted that a 2006 reference home has a HERS of 100 and the average HERS for a pre-2006 reference home is 130. This less efficient housing also makes up the greatest share of our state's housing inventory. The state's new proposed approach to energy efficiency via the Mitchell Provision penalizes new construction while ignoring both the most inefficient homes and the largest stock of housing.

The success of our efficiency record is tied to the role the incentive programs play in our housing regulatory system. These programs reward and incentivize energy efficiency construction only when builders for beyond code. A stable code has allowed builders, trade partners, and building code officials to become more comfortable with increasing efficiency in a variety of ways without increasing construction costs. Both of these would be lost without taking Housing First Minnesota's recommendation on the IECC.

The flexibility of the code also has allowed Minnesota to grow into an innovation hub for energy efficiency. Minnesota-based companies are building their businesses here because our unique climate and an innovation-supporting regulatory framework provide them flexibility to build beyond code. We are also the Silicon Valley of windows, and flexible options in Minnesota allow our local firms to continue to be innovative in their backyards.

V. MITCHELL PROVISION

As noted, the adoption of the 2024 IECC falls just before the state will implement the Mitchell Provision, which, according to DLI's presentation to CCAC on Nov. 12, 2024[12], does not impact this code adoption. The Mitchell Provision states:

---

[11] Source: RESNET HERS Activity By State. 2014-24.

[12] Construction Codes Advisory Council PowerPoint. Nov. 21, 2024, Meeting.
https://www.dli.mn.gov/sites/default/files/pdf/ccac_112124_presentation.pdf

> Beginning in 2026, the commissioner shall act on the new model residential energy code by adopting each new published edition of the International Energy Conservation Code or a more efficient standard. The residential energy code in effect in 2038 and thereafter must achieve a 70 percent reduction in annual net energy consumption or greater, using the 2006 International Energy Conservation Code State Level Residential Codes Energy Use Index for Minnesota, as published by the United States Department of Energy's Building Energy Codes Program, as a baseline. The commissioner shall adopt residential energy codes from 2026 to 2038 that ***incrementally move toward achieving the 70 percent reduction in annual net energy consumption***. By January 15 of the year following each new code adoption, the commissioner shall submit a report on progress under this section to the legislative committees with jurisdiction over the energy code.
> (2024 MN Session Laws Chapter 127, HF 5247, (emphasis added)

Notably, the Legislature did not exempt the Commissioner from the statutorily mandated rulemaking requirements, nor the penalties under Minn. Stat. § 14.69, which provides (emphasis added):

> "the court may affirm the decision of the agency or remand the case for further proceedings; or it ***may reverse or modify the decision*** if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:
>
> (a) in violation of constitutional provisions; or
> (b) ***in excess of the statutory authority or jurisdiction of the agency***; or
> (c) made upon unlawful procedure; or
> (d) affected by other error of law; or
> (e) ***unsupported by substantial evidence in view of the entire record as submitted***; or
> (f) ***arbitrary or capricious***."

In the past decade, the Department has seen two notable examples of this from the Minnesota Court of Appeals, invalidating actions of the Department under this statute. In *BATC v. DLI,* the so-called sprinkler mandate was tossed out as the Court found the Department's rationale for the mandate was "arbitrary and not supported by substantial evidence in the record." [13] More recently, in an October 2025 nonprecedential decision, the Minnesota Court of Appeals said the Department was found to have been enforcing an unpromulgated rule.[14] In both instances, the provisions were found to be unenforceable and invalidated under Minnesota's Administrative Procedure Act.

While the state must move to a 70% increase in efficiency by 2038 and adopt each new publication of the IECC beginning with any version published after 2026, it may not do so in an arbitrary and capricious manner. The state may not adopt a rule that violates Minnesota's constitution, exceeds statutory authority, or fails to comply with rulemaking procedures. Any Minnesota amendments must be supported by substantial evidence. Further, the Mitchell Provision explicitly says "***net energy consumption***," not each provision, must move in an "***incremental***" manner. It does not state that each provision must also become more efficient in an "incremental" manner.

---

[13] *BATC v. DLI*, 872 N.W.2d 263 (Minn. App. 2015)
[14] *In the Matter of the Petition of Todd Geske to Cease Enforcement of an Unadopted Rule Pursuant to Minn. Stat. § 14.381,* A25-0214, 2025 WL 2965031 (Minn. Ct. App. Oct. 20, 2025).

Finally, with the Mitchell Provision, the Department of Labor and Industry broke with its longstanding view that the State Legislature should stay out of the technical code development process when it did not advocate against this provision as it has done with affordability-centric and consumer protection bills in the past. Housing First Minnesota believes that the agency should work to reform or repeal the Mitchell Provision to ensure affordability shocks, like the IECC TAG proposed, are not merely pushed off into the future.

CONCLUSION

Adoption of the EV Charger proposal, given its suspect rationale and disregard for the TAG's recommendation, would be a step backward for Minnesota.

Implementation of the 2024 IECC will be a significant change for homebuilders, their trade partners, and code officials. The effectiveness of a code requires all parties to understand what the code says and how it should be implemented in the field. We applaud the Department for the recommendation that the four CCPs noted (RE-39, RE-41.1, RE-43.1, and RE-50) not be adopted. But this will only delay, not prevent, larger cost increases in the future.

New housing construction is already plummeting, and any further reductions in demand place jobs at risk, and stress already depressed housing inventory levels. The Department should now focus on its stated position of keeping the legislature out of the code and work with the industry to repeal the Mitchell Provision.

Respectfully submitted,

Nick Erickson
Sr. Director of Housing Policy
Housing First Minnesota

CC:
Commissioner Nicole Blissenbach
Sen. Jen McKewan, Chair, Senate Labor Committee
Sen. Gene Dornick, Ranking Member, Senate Labor Committee
Rep. Dave Baker, Co-Chair, House Workforce, Labor, and Economic Development Finance and Policy Committee
Rep. Dave Pinto, Co-Chair, House Workforce, Labor, and Economic Development Finance and Policy Committee