



ABOVE AND BEYOND. BY DESIGN.

Date: Monday, February 11, 2019
To: Chair Tarwater and the House Committee on Commerce, Labor and Economic Development
From: City of Overland Park, Kansas
Re: Testimony in Opposition of HB 2703

Thank you for allowing the City of Overland Park to submit testimony in opposition of HB 2703. The City opposes HB 2703 because it: (1) preempts a city's home rule authority and ability to establish its own building code standards to meet its community's needs; (2) is overly broad, resulting in confusion of its application, as well as unintended consequences and potential legal issues.

In the submission of House Bill 2703, no data has been provided to show why this bill is necessary or what "harms" it is intended to address. This being said, the City supports the Constitutional home rule authority of Kansas cities, which provides, in part, "...cities are hereby empowered to determine their own local affairs and government..." Thus self-governance, and local control, is the rule established by our state's constitution. Through our governing body, the City is the governmental entity closest to our residents and businesses, and is best prepared to assess, evaluate and regulate city building standards in a thoughtful manner that is most responsive to our constituents' interests.

Historically, cities adopt and administer a specific model code to establish the construction standards within its jurisdiction. As model codes are updated to account for new and better construction practices and technology, cities periodically update and adopt the newer codes to address the same. For example, Overland Park is preparing to move from the 2012 International Building Code series to the 2018 International Building Code series. Unfortunately, the overly broad language of HB 2703 does not account for this practice or the public policy purposes for the same, creating a detrimental and unintended consequence. Under the bill's definition of "National model code" and the application of Section 1(b), it is unclear whether a city can still adopt a specific model code, and whether it must accept any code. Further, it appears a builder could seek to construct a new building using the 1965 BOCA Basic Building Code under the argument that HB 2703 allows the builder to use any model code recognized by a "nationally recognized technical association". This scenario unnecessarily endangers and harms the public good and public safety.

The past 12 months, Overland Park has undergone an extensive and deliberate process to review and prepare for the adoption of the 2018 International Building Code series. Staff spent 3-4 months analyzing the codes and ICC's proposed new changes; and staff then reported to the City Council and proposed a process to engage the community. Two separate task forces were convened consisting of representatives of: the building community, the development community, design professionals, the environmental advocacy council, a sustainability consultant, the chamber of commerce, the apartment owners' association, the building owners' association, private building code consultants and city staff. Over the course of 6 months, each task force met 7 times individually and twice jointly. These groups were able to successfully reach a consensus of code adoption and amendments. The city staff is now preparing for a public hearing and discourse before the City Council. As proposed, HB 2703 would completely upend this process and undo a year of thoughtful analysis and consensus building.

Model codes are developed through a national consensus code process, which allows for the development of technical and superior building codes. However, this process also recognizes that local jurisdictions need to evaluate the code based on their own standards and needs; and it further recognizes there are good proposals that are not always added to the model code that some local jurisdictions may choose to utilize. HB 2703 would forego this recognition and preempt this intended community process.

Through the years, Overland Park has adopted several ongoing amendments to its model code that promote the public good and public safety without a significant cost to builders. For example Overland Park requires horn strobes over fire connections for apartment complexes to help quickly direct firefighters to fire connections. This additional requirement decreases fire response time and safety while helping to limit property damage. Likewise, Overland Park has a security ordinance for longer screws and additional framing around residential doors to help prevent burglars kicking in doors. If HB 2703 is adopted, these and other beneficial code amendments would be lost and the process that resulted in their adoption would not be allowed.

HB 2703 fails to define “more stringent”, thus opening the door to misinterpretation and litigation. For example, the national model code requires sprinklers in single family structures.¹ Kansas Statute specifically disallows this. Is it “more stringent” to disallow what is in the model code, or is it “more stringent” to require what is in the model code? The standard of “more stringent” is a subjective one and relies on the perspective of individual interpretation. As such, HB 2703 will be misinterpreted. In addition, we further contend that the State introducing a broad, subjective and arbitrary standard of “stringency” is not the way to build better and safer buildings. Instead, a careful analysis of each individual code provision, such as the process recently undertaken by Overland Park, is a far superior process and better protects both the public and the industry stakeholders.

HB 2703 leaves open several other important yet unanswered questions:

- Is it intended to also override and restrict cities’ zoning regulations in addition to their building codes? Cities often have building/fencing material restrictions in their zoning regulations; however, a broad interpretation of Section 1(a)(2) might lead to an preemption of these zoning regulations and allow any material referenced in a model code despite the objections of the community. (For example, corrugated metal roofing on office buildings or barbed wire fencing in residential neighborhoods.)
- The International Code Council produces a property maintenance code. Is it therefore the intent of the bill to also include property maintenance standards and to prevent cities from drafting specific property maintenance standards that may be unique to the city’s locality?
- HB 2703 does not specifically address potential green construction codes, yet there are several green construction codes that meet HB 2703’s definition of a “national model code.” A green code does not in itself set forth building code requirements, but is instead a construction code directing the process of construction. So would HB 2703 not apply to green codes, or would it instead mean that green codes cannot be adopted or revised?
- In the exception in Section 1(c)(1)(D) for regulations related to the requirements of applicable city, county or other local jurisdiction safety standards, what types of things does this allow these entities to establish? Would these exceptions apply only to these entities or can these entities apply them throughout their jurisdiction as long as it is safety related?

In our opinion, local control is the best and most effective answer to questions on building codes. However, should there be a specific issue that needs to be addressed at the State level, such issues should be handled by a narrow and specific provision (e.g., the fire sprinkler ban reference in fn 1) and not by an indiscriminate broad brush approach of general regulatory restrictions that creates so many unintended and detrimental impacts. When specific issues are addressed, the appropriate experts and stakeholders can then be engaged to discuss the specific issue and any potential solutions or pitfalls. This process will then allow an informed decision to be made on a clear and precise solution. In contrast, a blanket unspecified and arbitrary standard such as HB 2703 will only lead to confusion and chaos.

Thank you for allowing the City to submit testimony on this legislation. We respectfully request that the Committee not approve HB 2703.

¹ Note: Pg. 2, Sect. (I), ll. 30-31 seem to conflict with the current Statute that prohibits cities from requiring fire sprinklers in single family homes.