

MEMORANDUM

November 29, 2022

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Bill 13-22, Electricity – Buildings – Comprehensive Building Decarbonization

PURPOSE: Final Action - **Addendum**

We received the attached memorandum from the County Executive Office regarding Bill 13-22 following the publication of this Staff Report on November 23, 2022. The memorandum is attached at © 1.

This packet contains:
County Executive Memorandum dated November 28, 2022

Circle #
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OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

November 28, 2022

TO: Gabe Albornoz, Council President
Montgomery County Council

FROM: Marc Elrich, County Executive *Marc Elrich*

SUBJECT: Bill 13-22, Comprehensive Building Decarbonization, Proposed Amendments
Posted November 23, 2022

I am writing to you regarding the proposed amendments posted on November 23, 2022, for Bill 13-22, Comprehensive Building Decarbonization. Codifying the requirements to create all-electric buildings standards is a crucial step for the County to achieve its zero-greenhouse gas emissions goal by ensuring that future construction does not rely on fossil fuels. I am grateful that the Planning, Housing, and Economic Development (PHED) Committee unanimously recommended adoption of Bill 13-22 with amendments and the Council has acted swiftly to bring it to the agenda for final action.

Electric buildings are being built today in Montgomery County, including the Marriott Headquarters in downtown Bethesda and the Housing Opportunities Commission's Hillandale Gateway project. There is no economic, technological, or scientific reason to delay implementation or weaken Bill 13-22.

However, I am concerned by the most recent set of last-minute amendments that weaken the original intent of Bill 13-22 and jeopardize our ability to effectively address the climate emergency. Overall, I am concerned with deviations from how the Department of Permitting Services (DPS) implements and enforces building codes and the potential for additional exemptions to ultimately allow fossil fuels to be used in buildings post-construction. This memo outlines my concerns in detail below:

Effective Dates

The changes made to the effective dates are concerning, and I do not support these new date changes. First, while matching Washington, D.C.'s effective date makes sense from a regional perspective, this only further delays the implementation of the all-electric building code in our climate emergency. As stated in their Sustainable DC plan, Washington, D.C. strives for a 60% reduction in greenhouse gas (GHG) emissions by 2030. In contrast, Montgomery County has more ambitious goals to reduce GHG emissions 80% by 2027 and eliminate GHG emissions by 2035. Further delay only makes achieving our goals more challenging, if not impossible.

Secondly, these amendments to the effective dates create a longer transition period for multi-family and affordable housing. At first blush, this gives affordable and multi-family housing more time and flexibility to plan for all-electric systems in new construction projects. However, continuing to delay all-electric requirements for multi-family and affordable housing results in residents – who call these properties home – being left behind and locked into inefficient, fossil-fuel systems, while single-family residents benefit earlier from cost-effective, clean all-electric technologies. Rejecting this amendment will align with the BEPS Law I introduced in April 2021, and this Council unanimously voted for in April 2022, such that all multi-family properties will benefit from energy efficiency and indoor air quality from electrification without delay.

Lastly, the phase-in for residential buildings based on the number of units deviates from how DPS currently reviews and processes building permits. Based on a variety of factors (e.g., number of floors), each building is designated either a residential or commercial building, and different teams within DPS review those buildings, applying the relevant commercial or residential building code as appropriate. This amendment that phases in residential code enforcement does not conform to how the residential team applies building code to residential properties. Hence, requiring the plan reviewers and inspectors to implement different versions of building code in a more granular way that deviates from current practice, causes more opportunity for human error, and requires additional staff and training to comply with this too-nuanced, phased-in approach. The County Executive supports the PHED Committee date amendments but does not support these last-minute implementation delays.

Report on Results of the PSC Study

I have no concerns about this amendment. Providing an additional report to the County Council regarding the results of studies currently being undertaken by the Public Service Commission would inform our next steps with all-electric building standards.

Alternative Energy Sources

The reference to a new “waiver process” does not conform to how DPS currently handles variations to required building codes. DPS has a [code modification process](#) that could be used if an owner or developer can validate that the building will be carbon-neutral or net-zero. I strongly recommend that the term “waiver” be replaced with the term “code modification” within the language of this amendment to align with current DPS processes.

Change from Method (2) to Method (1) Regulations

Per the PHED Committee's amended version of the legislation, Bill 13-22 would require the County Executive to issue Method (2) regulations for the all-electric building codes. Chapter 8 of the County Code establishes that building codes are required to be adopted through Method (2) regulations. By amending this bill to a Method (1) regulation, Bill 13-22 would be a deviation from the current County Code.

Additionally, following the State's adoption of each building code, local jurisdictions are able to amend the building code to be more stringent than the State's version—a necessary action to achieve our climate goals that the County has benefitted from in the past. The technical experts in DPS can recommend and put forth building codes that align with complementary codes and our climate goals, while keeping our built environment safe. If Council has Method (1) authority over building codes, regulation revisions could inadvertently be made that are in conflict with other codes that work in concert with one another, or in violation of State-adopted codes if the codes are amended to be weaker than the state. I strongly recommend that this amendment be rejected.

Additional Exemptions: gas fireplaces and outdoor grills

These last-minute exemptions for cosmetic gas fireplaces and outdoor grills will enable natural gas infrastructure to be placed in any, and potentially all, new construction – directly in contrast to the intent of Bill 13-22. The exemptions in Bill 13-22 were provided because commercially available alternatives to fossil fuels do not exist. There are commercially available and cost-competitive electric fireplaces and outdoor grills available on the market today, which do not fit the spirit of exemptions in the version of Bill 13-22 that PHED voted unanimously on.

Although fireplaces and outdoor grills are relatively minor uses of natural gas, allowing natural gas lines in new construction for relatively frivolous uses, while more primary end uses are not permitted, will have resounding negative long-term impacts for the enforcement of the legislation. The Department of Permitting Services reviews and inspects newly constructed buildings to ensure their compliance with applicable building codes and issues use and occupancy permits. However, WSSC oversees and implements permits related to natural gas uses during construction and after occupancy. Once a natural gas line is provided to the property, a property owner only needs to obtain a [WSSC permit](#) to modify the existing gas service for a fireplace or outdoor grill to later fuel an HVAC system or cooking appliance. This removes oversight of the building code from DPS and will create challenges in enforcing the intent of the standards.

This amendment enables the builder to run a gas line to any property. Even if not used, the line has a monthly “system charge” from the gas utility. For example, the current Washington Gas tariff structure allows the utility to collect \$11.55 per month from residential properties. This standard customer charge is in addition to, and is separate from, supply and distribution charges that vary based on the quantity of gas used—and is charged to the customer even if no natural gas is consumed. This creates a financial risk for new homebuyers because it will obligate these customers with long-term monthly fees even if they have no use for the gas line. This

amendment will increase the number of new homes being built with unnecessary gas infrastructure and wasteful fees. I strongly recommend that this amendment to add new exemptions be rejected.

Annual Audit

The County Executive has no strong concerns about this amendment. DPS could develop an annual audit as described based on information tracked in the current building permit system. However, WSSC handles all permits related to natural gas use and infrastructure, so an audit provided by DPS without WSSC data may not provide a complete view of new construction electrification.

Conclusion

All-electric building standards are crucial for the County to achieve its zero-greenhouse gas emissions goal by ensuring that future construction is electrified. However, these last-minute amendments were put forth without any engagement from our technical building experts in DPS and gave enormous allowances to special interests in future building code cycles. I urge the Council to reject the most recent amendments to Bill 13-22 that weaken our response to the climate emergency and take action on the amended legislation that the PHED Committee unanimously recommended.