Building Owners and Managers Association International

and the

National Multifamily Housing Council

December 2023

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- Match the short-term availability of intermittent renewable energy sources, such as wind and solar

3.0 Sample Code Language

This section contains model code language for any state or local government to overlay the 2021 IECC or that can be adapted to other existing residential energy codes.

3.1 Definitions

The following definition shall be added to Section R202 of the 2021 IECC residential energy code.

DEMAND-RESPONSIVE CONTROL. An automatic control that can receive and automatically respond to DR requests from a utility, electrical system operator, or third-party DR program provider.

3.2 Demand-Responsive Thermostats

The following DR requirements shall be placed in Section R403.1.1 of the 2021 IECC residential energy code or analogous location of other existing code.

R403.1.1 Programable thermostat. The thermostat controlling the primary heating or cooling system of the dwelling unit shall be capable of controlling the heating and cooling system on a daily schedule to maintain different temperature setpoints at different times of the day and different days of the week. This thermostat shall include the capability to set back or temporarily operate the system to maintain zone temperatures of not less than 55°F (13°C) or not greater than 85°F (29°C) [F] R403.1.1(1) 5.g

c. Comply with IEC 62746-10-1, an international standard for the open automated DR system interface between the smart appliance, system, or energy management system and the controlling entity, such as a utility or service provider[1], or

d. Comply with the communication protocol required by a controlling entity, such as a utility or service provider, to participate in an automated DR program.

2. All demand-responsive controls shall be capable of communicating to the VEN using one or more of the following: Wi-Fi, ZigBee, BACnet, Ethernet, or hard-wiring any other bi-
s . 0 0 1 T c

4.0 References

42 USC 6833. Chapter 42, U.S. Code, Section 6833. Available at http://www.gpo.gov/fdsys/pkg/USCODE- 2011-title42/pdf/USCODE-2011-title42-chap81-subchapII.pdf.

CASE (California Statewide Codes and Standards Enhancement). 2020. Nonresidential Grid Integration Final CASE Report. Measure Number: 2022-NR-GRID-INT-F. Prepared by Energy Solutions for the California Statewide Codes and Standards Enhancement (CASE) Initiative under the auspices of the California Public Utilities Commission. https://title24stakeholders.com/wp-content/uploads/2020/08/NR

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Bylaws for the International Code Council, Inc.
A Delaware Nonprofit Nonstock Corporation
Effective December 10, 2021

ARTICLE I — NAME AND OBJECTIVES

1.1 Name - This organization shall be known as the International Code Council, Inc., hereinafter in these Bylaws referred to as the "Council" or the "Corporation".

1.2 General Purposes - The Council is a nonprofit nonstock corporation and is not organized for the private gain of any person. The Corporation is organized exclusively as an organization described in Section 501(c)(6) of the Internal Revenue Code of 1986, as amended, or the corresponding provision in any future United States internal revenue law (the "Code"). Notwithstanding any other provision herein, the

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ARTICLE IV —GEOGRAPHICAL REPRESENTATION

4.1 Limitations - To encourage wide geographical representation, no more than two Governmental Member Voting Representatives designated by Governmental Members located in the same state may serve simultaneously on any one committee nor may more than two Governmental Member Voting Representatives designated by Governmental Members located in the same state serve simultaneously on the Board of Directors.

4.2 Distribution -
ctions are establie shed:

Section A Alask01s British Columbi-, Weshin(d)6 (ct)3.6 (on,)3.6 ( )0.5 (O)0.6 (r)-1.3 (eg(d)6 (on,)3.5 ( )0.6 (
Idaho, Montan-, Woming, f.5 ( )0.6 (N)-1.6 (ed)-1.3 (t)3.6 (h)6.5 (D)-1.5 (ak01s)ota, Sh Dak01s

Section C Utah, Ariz01s, Coledado, New Mexi Oklah.5 (ak01n99 0.59156 Td92.98 338.0w 10 0 0 10.0

5.3 Removal of a Director - Any director may be removed from office upon the affirmative vote of two-thirds of the Voting Members present and voting at a duly held meeting of the members at which a quorum is present.

5.4 Election - Except as provided herein, the Board of Directors shall establish policies governing the conduct of elections and copies thereof shall be provided to any member requesting a copy. At each Annual Business Meeting a majority of the Voting Members present and voting shall elect such number of directors as necessary to fill vacancies of directors whose terms expire as of such meeting.

5.5 Quorum - At all meetings of the Board of Directors, two-thirds of the voting directors then in office shall constitute a quorum for transaction of business, and the act of a majority of the voting directors present at the meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by the law of the State of Delaware or by the certificate of incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the directors present there at may adjourn the meeting from time to time, without notice other than announcement at the meeting until a quorum shall be present.

5.5.1 Written Action - Unless otherwise restricted by the certificate of incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if all voting members of the Board of Directors consent thereto in writing, and the writing or writings are filed with the minutes or proceedings of the Board of Directors.

5.5.2 Participation in Meet

11.2 Board Authority - Any member of any committee or council may be removed by the Board at any time, subject to the limitations of the laws of the State of Delaware, and subject to any limitations of the Certificate of Incorporation or Bylaws regarding actions which require approval of the Voting Members. Each committee or council shall be under the direction of the Board and shall have such authority as shall be delegated and prescribed by the Board.

11.3 Nominating Committee - There shall be a Nominating Committee chaired by the Immediate Past President and consisting of Governmental Member Voting Representatives and/or Honorary Members having a reasonably distributed geographical representation. The Board of Directors shall establish policies governing the Nominating Committee and the conduct of elections. The Nominating Committee, excluding the Chairperson, shall have no more than one Governmental Member Voting Representative or Honorary Member from any one state.

11.4 Meeting s of Committees - Except as otherwise provided by these Bylaws, committees and councils shall comply with the policies established by the Board of Directors.

ARTICLE XII — CHAPTERS

12.1 Organization - The Council shall encourage and recognize the establishment of regional, state, student, professional, local area and international chapter organizations of its members, the purpose of which shall be the furtherance of the objectives of the Council. Applications for the establishment of a chapter, together with a copy of the proposed chapter Bylaws and a list of
those who have agreed to become members of the chapter, shall be submitted to the Board of Directors for approval. The chapter shall be established upon approval by the Board of Directors.

12.2 Management - All chapters shall be managed in accordance with policies established by the Board of Directors.

ARTICLE XIII — AUDITING AND REPORTS

13.1 Fiscal Year - The fiscal year of the Council shall be as determined by the Board of Directors.

13.2 Audit - There shall be an audit of the activities and financial affairs of the Council at the end of each fiscal year by an independent auditor selected by the Chief Executive Officer with the advice and consent of the Board of Directors. Such audit shall be submitted to the Board of Directors.

ARTICLE XIV — ish fORTOf1 (e 02)62Tw -44.9)0.1 [(A)-0.6 (U)5.5 (D)-0.6 (I)4.6 (T)2.2 (I)4.5 (N)7(ear)0.7pn1 1 Tf ( )0.5

trust) by reason of the fact that such person is or was an agent of the Corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful.

14.3 Indemnification in Actions by or in the Right of the Corporation - The Corporation shall have power to indemnify any person who was or is a party to, or is threatened to be made a party to, any threatened, pending or completed action by or in the right of the Corporation, or brought by the Attorney General or a person granted relator status by the Attorney General for breach of duty relating to assets held in charitable trust, to procure a judgment in its favor by reason of the fact that such person is or was an agent of the Corporation, against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such persoonN2Toraton e orpor ( )64 ()-2 (h)0( )64 (n (uc)-2

In the event of any inconsistencies between this Article XIV and any other provisions regarding indemnification of Directors and Officers by the Corporation, this Article XIV shall prevail. Nothing contained in this Article XIV shall affect any right to indemnification held by persons other than Directors and Officers.

14.8 Forms of Indemnification Not Permitted - No indemnification or advance shall be made under this Article XIV, except as provided in Section 14.4 or 14.5(b), in any circumstances where it appears:

(a) That it would be inconsistent with a provision of the Certificate of Incorporation, these Bylaws, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(b) That it would be inconsistent with any condition expressly imposed by a court in approving a settlement.

14.9 Nonpaid Directors - Except as otherwise required under Delaware Law, there shall be no monetary liability on the part of, and no cause of action for damages shall be asserted against, any nonpaid Director, including any nonpaid Director who is also a nonpaid Officer of the corporation, based upon any alleged failure to discharge the person's duties as Director or Officer if the duties are performed in a manner that meets all of the following criteria:

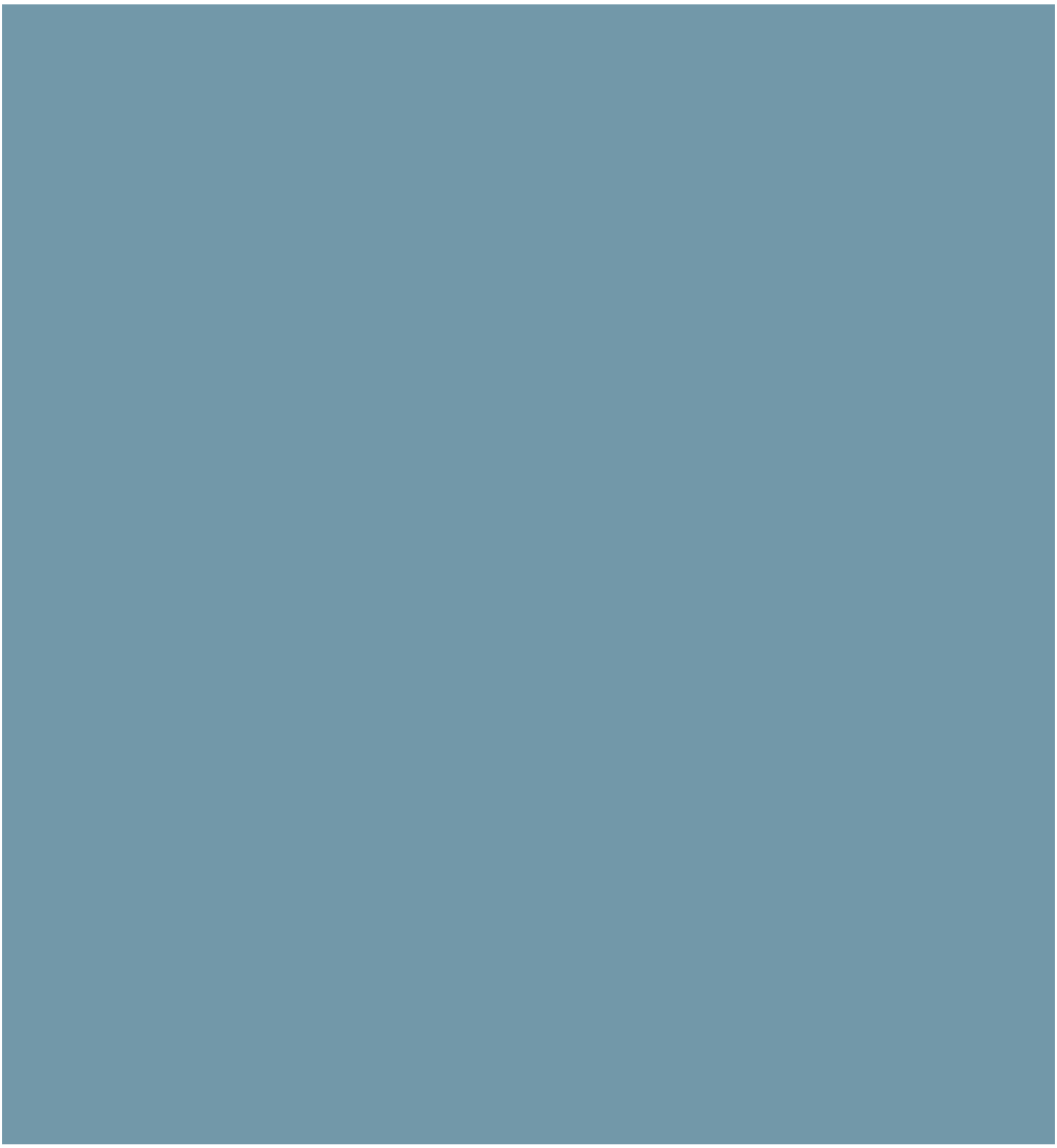
(a) The duties are performed in good faith;

(b) The duties are performed in a manner such Director believes to be in the best interests of the Corporation; and

(c) The duties are performed with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

14.10 Insurance - The Corporation shall have power to purchase and maintain insurance on behalf of any agent of the Corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not the Corporation would have the power to indemnify the agent against such liability under the provisions of this Article XIV; provided, however, that the Corporation shall have no power to purchase and maintain such insurance to indemnify any agent of the Corporation for a violation that may not be indemnified under Delaware law.

14.11 Nonapplicability to Fiduciaries of Employee Benefit Plans - This Article XIV does not apply to any proceeding against any Director, investment manager, or other fiduciary of an employee benefit plan in such person's capacity as such, even though such person may also be an agent of the Corporation as .



Introduction

Multifamily development is subject to a variety of regulations at all levels of government. While some of these r
are necessary to protect the health and safety of residents as well as the integrity of the building or community
informative to know the financial impact of each type of regulation, particularly in an era of widespread cost inc
worsening a ordability problems for renters. Each added cost means the developer must increase rents for the
remain financially feasible.

Regulations cover a wide-range of issues, and while they may be well-intentioned, the costs and burdens of an
must be carefully weighed against the benefits. Few would argue, for example, that basic safety standards for s
workers are unnecessary. But, when regulation constitutes an average of 40.6 percent of a project's developme
raises questions about how thoroughly governments are considering the consequences of their actions. Are the

Perhaps more importantly, some of these regulatory mandates can discourage developers from building in the marketplaces that have the greatest need for more housing. This can prove to be particularly burdensome in a rising costs. For example, 47.9 percent of multifamily developers said they avoid building in jurisdictions with po as inclusionary zoning, and a full 87.5 percent will avoid building in a jurisdiction with rent control in place.

There are also significant obstacles to development at the community level that are unrelated to governmental For instance, our research shows that “Not in My Backyard” (NIMBY) opposition to multifamily development ad average of 5.6 percent to total development costs and delays the delivery of new housing by an average of 7.4 mont While most Americans agree that we need more housing and more housing a ordable to middle-income house too many change their opinion when someone proposes to put that new housing in their neighborhood. The int opposition is escalated if that housing is rental housing.

About the Research

NAHB and NMHC distributed an identical survey in April 2022 to their respective memberships to access a wid of development scales across the United States. The primary purpose was to quantify how much regulation ex developers to contend with and how much that regulation is adding to the cost of developing new multifamily p

Some of these questions quantify the impact of regulations, such as inclusionary zoning and rent control, that r directly increase the costs of projects that are built but a ect the supply and cost of housing in the community b some projects not to be built at all. An additional set of questions asked about the financial impact of NIMBYism that has been widely identified as one of the major cost drivers impacting a ordability but where little quantifiab currently exists.

A total of 49 usable responses were received. The responses from the survey were combined with existing pub other survey collections to calculate the financial cost as a percent of total development cost for each regulatio description of the assumptions used in the calculations can be found in Appendix 1.

Regulation: 40.6 Percent of the Cost of a Multifamily Development

Most respondents (91.8 percent) were also required by their local jurisdiction to include certain design features project design that go beyond what they would ordinarily include. Examples include energy-e iciency upgrades design requirements for facades. When present, complying with these requirements amounted to an average c percent of total development costs.

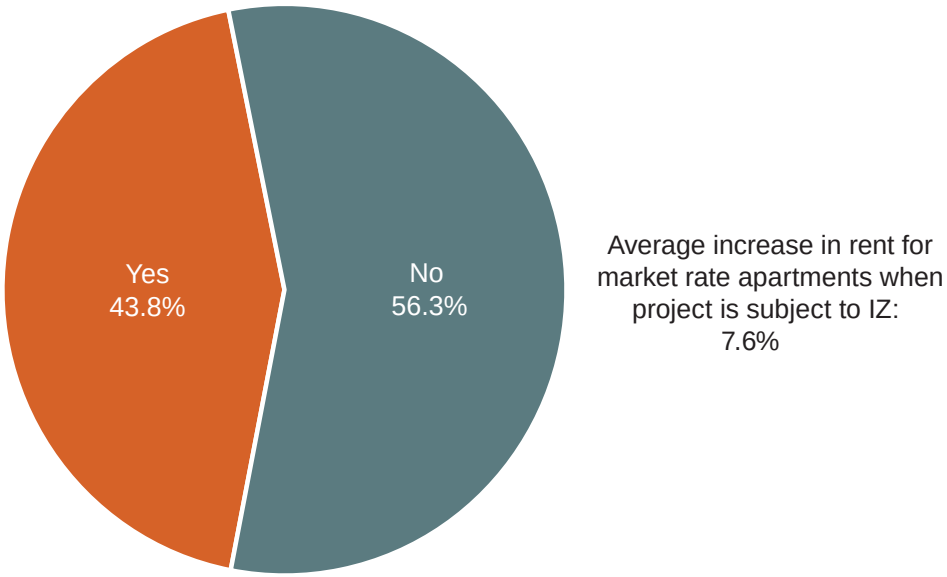
Governments can also require developers to leave a portion of the development site dedicated for government unbuilt. This requirement reduces the amount of developable area, which means the revenue from that area is must either be absorbed or made up for elsewhere. This requirement was present for approximately half (51.0 respondents; when present, it represented an average of 4.7 percent of total development costs.

Jurisdictions also often charge fees when site work is completed to authorize building construction. Examples costs include a fee when filing for a building permit or fees for additional utility hook-ups. Almost all responden percent) reported paying some sort of fee at this phase of development, with an average cost of 4.6 percent of development cost when present.

Local a ordability mandates are another important cost driver. These mandates are designed to increase the su a ordable apartments. A common example is inclusionary zoning, where developers must o er a certain percen apartments at below-market rent levels. In many cases, a density bonus is provided to developers, which allow include more units in their project than ordinarily permitted by zoning to o set those lowered rents.

Unfortunately, these incentives are often inadequate and do not fully cover the lost rental revenue. In those cas developers are forced to raise rents on the unrestricted apartments to fill the gap or to abandon the project altc because it is no longer financially feasible.[1] These mandates were present in slightly over one-third (38.8 percent) of respondents' typical projects, and when present, they made up an average of 6.9 percent of total development (Figure 2). Respondents subject to inclusionary zoning report having to raise rents by an average of 7.6 percen

Figure 2. Is Respondent's Typical Project in a Jurisdiction with Inclusionary Zoning?
(Percent of Respondents)



Source: NAHB and NMHC

[1] NAHB has developed an Inclusionary Zoning Calculator Tool to help developers and local jurisdictions determine if incentives are adequate allow a project to be built.

The increase in costs to comply with changes to building codes over the past 10 years was the largest driver o development cost, amounting to 11.1 percent of total development costs.

Most jurisdictions have been adopting, revising and enforcing building codes for decades, and an entire indust emerged supporting and encouraging changes to existing building codes. While building codes play an import protecting resident safety and building integrity, they have evolved well beyond their original purpose and now used to promote public policies like energy e iciency and sustainability.

Building code development and adoption are complex, and it is essential to consider impacts to housing a orda throughout the process. State and local jurisdictions adopt and enforce building codes, but federal policymaker active in the development of international model codes, and they promote the adoption of certain code editions example, the U.S. Department of Energy encourages states to adopt the most stringent versions of the model codes. Various policy groups, industry organizations and individual companies also advocate for code changes promote specific goals. These changes do not always balance the needs of housing a ordability and have the drive up construction costs[2] without improving building safety or integrity.

Developers are also subject to complying with Occupational Safety and Health Administration (OSHA) requirem and other labor regulations throughout the development process. While measures to protect the safety and he construction workers are essential, NAHB has argued that some OSHA policies, like its [illegible] standards residential construction, simply drive construction costs up without impacting health or safety.

Fully 93.9 percent of respondents said they had to comply with these regulations and that they added 2.7 perc development costs.

Almost all respondents (95.9 percent) also reported that complying with regulations caused some sort of delay typical project. We estimate that “pure” cost of delay—the financial cost that taking the time to comply with that would incur—would be an average of 0.5 percent of total development costs. This may not seem like a substan but in an era of rising costs and diminishing a ordability, any additional cost can impact project feasibility.

A ordability Mandates and

Research has shown, however, that these quick fixes, particularly rent control, have many pitfalls. One major pitfall of both,

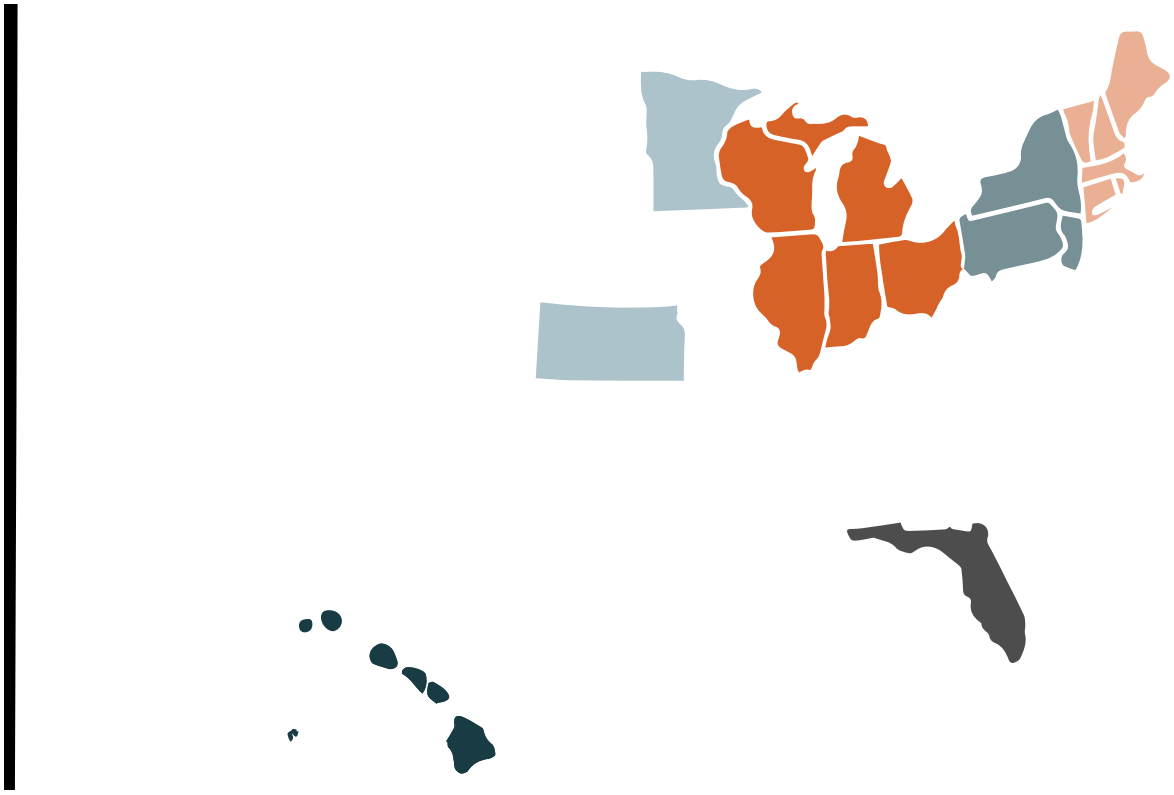
Regulation: 40.6 Percent of the Cost of a Multifamily Development

Respondent Pro le

A total of 49 usable responses were received from multifamily developers, with a slightly higher concentration o members than NMHC members (and no duplicates). In one instance, two survey responses were accepted fro member company because the respondents represented di erent geographic areas.

All geographic areas in the United States were represented (see Figure 5). Respondents were able to choose one region of operation. The South Atlantic region (DE, DC, FL, GA, MD, NC, SC, VA, WV) had the largest rep with 42.9 percent of respondents operating there, followed by the Mountain region (AZ, CO, ID, NM, MT, UT, N 30.6 percent and the Pacific region (AK, CA, HI, OR, WA) with 22.4 percent. The West North Central (IA, KS, ND, SD) and West South Central (AR, LA, OK, TX) had the lowest representation at 6.1 percent of respondent

Figure 5. Share of Respondents Who Build in Each of the Nine Census Divisions



Source: NAHB and NMHC; U.S. Census Bureau

The respondents' typical project size varied widely: from fewer than 10 units to 499 (see Figure 6). The majorit respondents (54.2 percent) reported a typical project size of 150 to 349 units. Note that this is project size, not size, meaning that each category could comprise both garden-style communities, which frequently have units s across multiple buildings, as well as high-rise buildings, where all units are traditionally in one building.

Appendix 1: Assumptions Used in the Calculations

To calculate a final e ect on development costs, many of the NAHB-NMHC survey responses need to be comb additional information. Primarily these are assumptions about the terms of development and construction loans, construction typically takes, and how to allocate costs to di erent stages of the development and construction p This appendix lists all the assumptions used in the calculations and gives the sources for each.

Loan Terms

1. 1 point charged for all land acquisition, development, and construction (AD&C) loans, based on results from

Appendix 2: Survey Questionnaire

1. What regions do you build in? Please select all that apply.
   - o New England (CT, ME, MA, NH, RI, VT)
   - o Mid Atlantic (NJ, NY, PA)
   - o South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)
   - o East North Central (IN, IL, MI, OH, WI)
   - o West North Central (IA, KS, MN, MO, NE, ND, SD)
   - o East South Central (AL, KY, MS, TN)
   - o West South Central (AR, LA, OK, TX)
   - o Mountain (AZ, CO, ID, NM, MT, UT, NV, WY)
   - o Pacific (AK, CA, HI, OR, WA)

2. How many units does your typical multifamily project have?
   - o 2-4 Units
   - o 5-9
   - o 10-49
   - o 50-149
   - o 150-349
   - o 350-499
   - o 500 units or more

3. What is the total dollar amount spent on development costs in your typical project?

   $_____

4. For a typical piece of land, how much does it cost to apply for zoning approval as a % of total development cost? *(Include costs of fiscal or traf ic impact or other studies and any review or other fees that must be paid by the time of application. Please enter "0" if application costs are Zero percent).*

   _____%

5. For a typical project, how many months does it take between the time you apply for zoning approval and the time you begin site work?

   _____months

6. How much does it cost to comply with regulations when site work begins, as a % of total development costs? *(Include costs of complying with environmental or other regulations as well as the cost of hook-up or impact or other fees.) Please enter "0" if cost of complying with these regulations is Zero percent.*

   _____%

7. How much do development requirements that go beyond what you would otherwise do (in terms of property layout, landscaping, materials used on building facades, etc.) add to your cost as a % of total development costs? *(Please enter "0" if the jurisdiction's requirements don't go beyond what you would normally do.)*

_____%

8. In the typical case, what is the value of any land that must be dedicated to the local government or

_____

_____

_____

_____

_____

_____

15. Over the past 10 years, how much have changes in construction codes and standards added to the cost o building a typical multifamily project as a % of total development costs? *(Please enter "0" if code changes have had minimal impact on costs).*

_____%

- o Please select if you have not been in operation for the past 10 years

16. How much does complying with OSHA or other labor regulations cost, as a % of total development cost? *(Please enter "0" if labor regulations have no impact on development costs).*

_____%

17. Have you experienced added costs or delays due to neighborhood opposition to multifamily construction?
    - o Yes
    - o No

18. In the typical case, how much costs are added to a project due to neighborhood opposition to multifamily development as a % of total development costs?

_____%

19. In a typical case, how much extra time (in months) does it take to address neighborhood opposition to multifamily development?

_____months

20. Comments:

The scope and intent of ICC codes and standards are set by the Board of Directors in accordance with Council Policy 28. The Board has not previously provided updates or clarification to the scope or intent of codes or standards during an active development process, allowing the development process to proceed to resolution. If a topic is contained in the scope or intent statement, it may be included either in the base of the code or as an appendix, as determined by the consensus body. Generally, appendices in the I-Codes fall under one of two categories: available for state/local adoption and for informational purposes only. In both cases, they undergo the rigors of the process no differently than text considered for the minimum requirements in the code. Each appendix in the respective I-Code notes the specific application of the appendix.

> *Any content within the scope and intent of the code may be included either in the body of the code as minimum requirements or as an adoptable appendix based on the determination of the responsible Consensus Committee. Where content is to be included in an adoptable appendix, the appendix must include mandatory enforceable language.*

Cc: Dominic Sims, CEO