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September 10, 2024

VIA ELECTRONIC MAIL

Electrical Technical Advisory Committee
Florida Building Commission
Office of Codes and Standards
Department of Business and Professional Regulations
2601 Blair Stone Road
Tallahassee, Florida 32399

Re: Opposition to Proposed Code Modification #E11060

Dear Committee Members:

This firm represents National Lightning Protection Corporation and has done so before the Florida Building Commission (“Commission”) since 2017. We write to you today to express our client’s opposition to Proposed Code Modification #E11060 and explain our position.

Proposed Code Modification #E11060 seeks to enact Section 2703 Lightning Protection Systems. Under the proposed language, lightning protection systems would be required to be installed in accordance with NFPA 780 or UL 96A. *See* § 2703.2, Proposed Code Modification #E11060. Both NFPA 780 and UL 96A provide installation standards for one type of lightning protection system—the Franklin Rod system—leaving alternative lightning protection systems non-compliant with new installation standards. Our client opposes Proposed Code Modification #E11060 for the following reasons:

I. Solution in Search of a Problem

Proposed Code Modification #E11060 aims to solve a problem that simply does not exist. Under the current standards, there are no public safety concerns or public policy reasons for why this modification should be made. There have not been any documented or evidenced instances of lightning protection systems not working as designed. Neither NFPA nor UL guarantee their lightning protection systems’ performance. There are many instances of alternative technically advance lightning protection systems working very well at high profile venues, such as the Raymond James Stadium in Tampa.

II. Unnecessarily Discriminatory

Implementing Proposed Code Modification #E11060 would be an anti-competitive move aimed at boxing out competition by making alternative lightning protection systems non-compliant with the Florida Building Code. Excluding existing alternative lightning protection systems from the Florida marketplace that are UL-certified and offer UL inspection is simply an unreasonable horizontal restraint of trade. If alternative lightning protection systems can provide the same, if not better, protection for Floridians and be a more cost-effective way of protecting Floridians from lightning, locking these systems out of the market is nothing short of anti-competitive. Proposed Code Modification #E11060 offers no justification for the exclusion of other certified lightning protection products, methods, and systems, and, therefore, must be rejected.

III. Substantial Cost Impacts

Proposed Code Modification #E11060 would needlessly—but substantially—unfairly tax those subjected to the proposed Code requirements. The rationale states that “the code change will not increase or decrease the cost of construction.” However, that statement is unsupported by any analysis and is demonstrably false. The addition of a specific lightning protection system to these projects will unquestionably increase the cost of construction. In the aggregate, the burdensome effect of these increased costs will be substantial and must be further analyzed and considered.

Moreover, there are many scenarios—existing construction, zero boundary property lines, and even certain architectural features—in which one particular lightning protection system may not be the best solution. In these instances, owners would be left with the choice of having no lightning protection whatsoever (clearly in opposition with public policy in Florida) or installing an economically unfriendly Franklin Rod system, adding cost to homeowners and business owners across Florida. Moreover, given the lack of any scientific or technical proof that a Franklin Rod system performs better than other systems, there is no justification to add such a financial burden on Floridians.

IV. Reliance on NFPA 780 is Misplaced

The Commission should not rely on NFPA 780 as the basis for the new lightning protection system requirement in these code sections. NFPA 780 was downgraded from a code to a standard in 1995. *See* Bryan, Biermann, Erickson, *Report of the Third-Party Independent Evaluation Panel on the Early Streamer Emission Lightning Protection Technology*, NFPA Standards Council, Sept. 1, 1999 (“Bryan Report”). The Bryan Report was issued by a third-party independent evaluation panel serving as a NFPA Standards Council “for issuance of a standard for Early Streamer Emission lightning Protection Systems, and to conduct a *de novo* review, reweighing and considering all evidence, including evidence not previously available, anew.” Bryan Report at p. 4. The Bryan Report concluded:

The NFPA 780 document should be reformulated as a Guide or Recommended Practice. It appears to the panel the NFPA 780 document does not meet the NFPA criteria for a standard since the recommended lightning protection system has never been scientifically or technically validated and the Franklin rod air terminals have not been validated in field tests under thunderstorm conditions. The NFPA criteria for a standard as stated in the NFPA 99 Directory is as follows:

Standard – A document, the main text of which contains only mandatory provisions using the word “shall” to indicate requirements and which is in a form generally suited for mandatory reference by another standard or code or for adoption into law. Nonmandatory provisions shall be located in an appendix, footnote, or fine print and are not to be considered as part of the requirements of a standard.

It appeared to the panel the NFPA 780 document is currently not suitable for mandatory reference by another standard or code or for adoption into law. The current NFPA 780 document appears to have been recognized by historical rather than by experimental and scientific validation. (emphasis added) (citing to NFPA, National Fire Protection Association 1999 Directory, Quincy, MA 11-98, p. 52) Bryan Report at pp. 28-29.

V. History of Failed Policy

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On behalf of our client and in coordination with a multitude of stakeholders in the building industry, we have pushed back against and fought several iterations of this proposed code modification, a handful of times since 2017. Each time, proponents of the modification offered zero evidence showing that their proposal would benefit public safety. Each instance has resulted in the Florida Building Commission rejecting the proposed modification.

Under the bold leadership of Governor DeSantis, Florida has and continues to be a beacon for capital investment, job creation, and free enterprise. This proposed code modification only seeks to erode competition and utilize government regulation to garner market share. As such, Commission staff has repeatedly recommended disapproval of the proposed change and they do so now, citing that it is not the Commission's policy to include provisions in the Florida Building Code for lightning protection. Accordingly, this proposal flies in the face of the aforementioned leadership that makes Florida the best state in the nation to live and conduct business in – **we urge the Electrical TAC and Commission to again reject this proposal.**

If you have any questions at all, please do not hesitate to reach out to me directly at (305) 913-0532 or by email at joseph.salzverg@gray-robinson.com.

Sincerely,



Joseph R. Salzverg

cc: Mo Madani, Florida Building Code: Technical Unit Manager
Joe Bigelow, Electrical TAC