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**MEMORANDUM**

DATE: March 25, 2015

TO: Tim Nogler, Managing Director, Building Code Council

FROM: Ann C. Essko, Senior Counsel, Office of the Attorney General

SUBJECT: **Request to Amend the Uniform Plumbing Code to Recognize the 2015 International Plumbing Code as a Statewide Preapproved Alternate Method**

This memorandum is written in response to your request for an analysis of the Building Code Council's authority to amend the Uniform Plumbing Code to recognize the 2015 International Plumbing Code as a statewide preapproved alternative method for installing plumbing and plumbing systems. For the reasons outlined in the balance of this memorandum, I conclude that a reviewing court is unlikely to conclude that the Council possesses the authority amend the Uniform Plumbing Code in this fashion.

Agencies possess only those powers expressly granted to them by the legislature or necessarily implied from their statutory grant of authority. *Tuerk v. Department of Licensing*, 123 Wn.2d 120, 124-125, 864 P.3d 1382 (1994). In RCW 19.27.031, the legislature took three actions pertinent to your inquiry.<sup>1</sup> First, the legislature formally adopted the Uniform Plumbing Code as part of the state building code. Second, the legislature mandated that the Uniform Plumbing Code, as part of the adopted state building code, "be in effect in all counties and cities." Third,

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<sup>1</sup> RCW 19.27.031 states in pertinent part that:

...there shall be in effect in all counties and cities the state building code which shall consist of the following codes which are hereby adopted by reference: ... (4) ... the Uniform Plumbing Code and Uniform Plumbing Code Standards, published by the International Association of Plumbing and Mechanical Officials.... The codes enumerated in this section shall be adopted by the council as provided in RCW 19.27.074.

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by referencing RCW 19.27.074 the legislature required that the Council promulgate the Uniform Plumbing Code as a rule and maintain it with amendments the Council deems appropriate.<sup>2</sup>

Established legal principles guide the interpretation of these statutes. The fundamental purpose of statutory construction is to ascertain and carry out the intent of the legislature, which is determined primarily from the statutory language itself. *In re Schneider*, 173 Wn.2d 353, 363, 268 P.3d 215 (2011). In the absence of ambiguity in the statutory language, a court will give effect to the plain meaning of the statute. *Id.*

Applying these principles to RCW 19.27.031, the statutory language appears plain -- the legislature adopted the Uniform Plumbing Code as part of the state building code and required the Uniform Plumbing Code to “be in effect” in all cities and counties. RCW 19.27.074 appears equally plain: the Council is to promulgate the Uniform Plumbing Code as a rule and make appropriate amendments to that specific code.

Even if a court were to deem these statutes be ambiguous, the Court would apply principles of statutory construction to help determine the legislature’s intent. *Anthis v. Copland*, 173 Wn.2d 752, 755-756, 270 P.3d 574 (2012). One such principle is that the expression of one thing in a statute implies the exclusion of other things, i.e., statutory omissions are deemed to be exclusions. *In re Detention of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002). As applied here, this principle would mean that the legislature’s express selection of the Uniform Plumbing Code requires the exclusion of the International Plumbing Code.

Moreover, what is being proposed does not appear to be an *amendment* of the Uniform Plumbing Code so much as the optional *replacement* of the Uniform Plumbing Code with the International Plumbing Code. To “amend” a document is “to make emendations (as a text) ... to change or modify in any way for the better ... to change or alter in any way esp. in phraseology ... *specif*: to alter (as a motion, bill, or law) formally by modification, deletion, or addition....” *Webster’s Third New International Dictionary*, 68 (1981) (italics in original). In contrast, the word “replace” means to “take the place of: serve as a substitute for or successor of: SUCCEED, SUPPLANT ... to put in place of: provide a substitute or successor for...” *Id.* at 1925 (capitalization in original).

These definitions are important because RCW 19.27.074(1)(a) authorizes the Building Code Council to “amend” the Uniform Plumbing Code. The question, accordingly, is whether the Council’s authority to *amend* the Uniform Plumbing Code allows the Council to approve the *replacement* of the Uniform Plumbing Code with the International Plumbing Code. When a statute does not provide a definition for a term such as “amend,” the term is given its common

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<sup>2</sup> RCW 19.27.074(1) states in pertinent part that the Council shall:

Adopt and maintain the codes to which reference is made in RCW 19.27.031 in a status which is consistent with the state’s interest .... In maintaining these codes, the council shall regularly review updated versions of the codes referred to in RCW 19.27.031 and other pertinent information and shall amend the codes as deemed appropriate by the council.

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law or ordinary meaning, *State v. Chester*, 133 Wn.2d 15, 22, 940 P.2d 1374 (1997), and the meaning may be discerned from the dictionary definition. *State v. Kintz*, 169 Wn.2d 537, 546-547, 238 P.3d 470 (2010). Based on the very different definitions of “amend” and “replace” it appears that the legislature did not intend to allow the Council to amend the Uniform Plumbing Code by entirely replacing it with the International Plumbing Code. Such an action does not appear to fall within the Council’s statutory authority to amend (i.e., to alter) *the Uniform Plumbing Code*.

In addition, the optional replacement of the Uniform Plumbing Code with the International Plumbing Code also appears to violate the statutory mandate that the Uniform Plumbing Code “be in effect” in all cities and counties. Self-evidently, if a city or county elected to use the International Plumbing Code, the Uniform Plumbing Code would no longer “be in effect” in that jurisdiction.

Furthermore, in light of this statutory framework, a reviewing court is unlikely to agree with the suggestion before the Council that the blanket substitution of one code for another is an allowable different “method” under section 301.2 of the Uniform Plumbing Code. Section 301.2 states that nothing in the code “is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety over those prescribed in this code.” Significantly, Section 301.2 cannot be applied to circumvent the overarching statutory framework that, as discussed above, does not appear to allow the substitution of the International Plumbing Code for the Uniform Plumbing Code. Rules are invalid if they conflict with the agency’s statutory authority. RCW 34.05.574(2)(c); *Edelman v. State ex rel. Public Disclosure Commission*, 152 Wn.2d 584, 591, 99 P.3d 386 (2004).

Finally, the substitution of the entirety of the International Plumbing Code for the Uniform Plumbing Code may not be a “method” within the meaning of section 301.2. A “method” is a “procedure or process for attaining an object.” *Webster’s Third New International Dictionary*, 1422 (1981). Here, by its own terms, Section 301.2 appears to state its objective as allowing the achievement of equivalent or superior performance using systems, methods, or devices other than those specified in *the Uniform Plumbing Code* (i.e., “in this code”). In other words, the Uniform Plumbing Code appears to remain the standard against which compliance with Section 301.2 is measured. This cannot occur if the Uniform Plumbing Code has been entirely replaced. It is also doubtful that wholesale replacement of the Uniform Plumbing Code would be a “procedure or process,” i.e., a “method” as that term is used in Section 301.2.

For all of these reasons, I conclude that a reviewing court is unlikely to conclude that the Council possesses the authority to allow the replacement of the legislatively adopted Uniform Plumbing Code with another code such as the International Plumbing Code. If I can provide any additional assistance, please don’t hesitate to contact me.