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**Open Source America's Operating System**

"It's Not Just A Good Idea—It's The Law!"

December 26, 2013

Melike S. Oncu  
Assistant General Counsel  
International Code Council  
500 New Jersey Avenue, NW, 6th Floor  
Washington, DC 20001

Dear Ms. Oncu:

I am in receipt of your **communication of December 26** regarding the posting of the International Code Council publication, "International Mechanical Code" (2009) at <https://law.resource.org/pub/us/code/ibr/icc.imc.2009.pdf>. We are responsible for uploading this document. In addition, we have placed this document at <https://archive.org/details/gov.law.icc.imc.2009>.

The 2009 Edition of "International Mechanical Code" was Incorporated by Reference by the State of Alabama under authority of Alabama Code §41-9-171 "for the health and welfare of the people of Alabama." The 2009 International Mechanical Code has also been adopted by the Arkansas Heating, Ventilation, Air Conditioning and Refrigeration Licensing Board pursuant to Act 277 of 1991, by the State of Wisconsin under Wisconsin Administrative Code SPS 361.05, by the State of Virginia under 13 Virginia Administrative Code 5-63-10, by the State of Idaho under the Idaho Administrative Code 07.07.01, by the State of Montana under the Administrative Rules of Montana Title 24, Chapter 301, and by literally hundreds of municipalities around the country.

Not only has the standard been incorporated by law, the very purpose of the document is to become the law. The "purpose of the code is to establish the minimum acceptable level of safety and to protect life and property" (IMC 2009, p. v.) and the document begins with a "SAMPLE ORDINANCE FOR ADOPTION OF THE INTERNATIONAL MECHANICAL CODE ORDINANCE NO. \_ \_ \_ \_ \_" (IMC 2009, p. ix) which states that "The [GOVERNING BODY] of the [JURISDICTION] does ordain ... each and all of the regulations, provisions, penalties, conditions and terms of said Mechanical Code ... are hereby referred to, adopted, and made a part hereof."

As this standard has been incorporated into law, the standard contained in this document is the law of the United States, and people in the United States are compelled to obey it. Long-standing precedent of the United States Supreme Court

holds that copyright claims cannot prevent citizens from reading and speaking the law. See *Wheaton v. Peters*, 33 U.S. 591 (1834); *Banks v. Manchester*, 128 U.S. 244 (1888).

While the standards drafted by the International Code Council, were entitled to copyright protection when issued, once they were incorporated into regulations these standards became the law, and thus have entered the public domain. Chief Judge Edith H. Jones of the 5th Circuit expressed this principle clearly in her opinion in *Veeck v. Southern Building Code Congress*, which concerned a model building code incorporated in the law of two Texas towns:

"The issue in this en banc case is the extent to which a private organization may assert copyright protection for its model codes, after the models have been adopted by a legislative body and become "the law." Specifically, may a code-writing organization prevent a website operator from posting the text of a model code where the code is identified simply as the building code of a city that enacted the model code as law? Our short answer is that as law, the model codes enter the public domain and are not subject to the copyright holder's exclusive prerogatives. As model codes, however, the organization's works retain their protected status." 293 F.3d 791 (5th Cir. 2002) (en banc).

As you can see by looking at the document in question, a cover sheet has been prepended clearly spelling out the section of the laws that have incorporated by reference this document into law. Please note that we were careful to only publish the specific document incorporated by law. As the 2009 Edition is the one required by law and as it has been duly incorporated into law, we respectfully decline to remove this document and respectfully decline to request permission.

Sincerely yours,



Carl Malamud

Digitally signed by Carl  
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