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September 25, 2020

Mr. Jay Withrow, Director  
Division of Legal Support, ORA, OPPPI, and OWP Virginia Department of Labor and Industry  
600 E. Main Street, Suite 207  
Richmond, Virginia 23219

Dear Mr. Withrow:

On behalf of the Apartment and Office Building Association of Metropolitan Washington (AOBA), I write to express our members' concerns and opposition with proposed permanent workplace safety standards (16VAC25-220).

AOBA's member companies own and operate a collective portfolio of roughly 71 million square feet of commercial office space and over 286,000 multifamily residential units located throughout Northern Virginia. Also represented by AOBA are over 200 companies who provide products and services to the real estate industry. These businesses are directly impacted by the proposed permanent workplace safety standards.

As building owners and managers, our members have been on the front lines and on the leading edge of efforts to control, prevent and mitigate the spread of the COVID-19 virus. We have worked diligently to keep our members informed in order to ensure that they remain in compliance with ever-evolving and difficult-to-navigate standards, regulations and best practices governing capacity and operational limitations, social distancing, cleaning and disinfection, testing and reporting, etc. Our industry's actions clearly demonstrate that we share in the stated objective of the proposed standards – to protect employees, tenants and visitors to our buildings. However, the proposed regulations exceed the purview of the Safety and Health Codes Board, add a layer of complexity and inconsistency with existing federal standards and guidance, and heap unreasonable and exorbitant costs on Virginia business at a time when they already face tremendous challenges due to the COVID-19 pandemic.

AOBA has joined as a member of the Virginia Business Coalition, from which you have also received comments. We share in the broader concerns voiced by the coalition in their September 25 letter. Our industry is particularly concerned, though, with proposed regulations which encroach upon the Commonwealth's highly regarded codes development process, especially those that pertain to required retrofits of existing buildings and building systems. While the Department of Labor and Industry has functional design authority under the Virginia Uniform Statewide Building Code (USBC) for occupational safety, USBC 103.5/COV 36-98 state that functional design is for "building activities not covered by the USBC." Several provisions of the proposed permanent workplace safety standards exceed this license.



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For instance, air handler installation and design fall squarely within the purview of the USBC. While restricted to those businesses that fall under the “high-risk” category, these requirements will broadly impact commercial office buildings that house medical laboratories, medical/chiropractic and other treatment-related practices as tenants. These businesses are not just located in hospital facilities or medical office buildings. If such businesses are classified as “high or very high risk,” the entire building will be required to come into compliance with the updated standards. Additionally, the definition of “suspected to be” infected casts a broad net that can include virtually any one entering that tenant’s space that could subject an entire building’s HVAC system to meet retrofit its air circulation systems at tremendous cost. Similarly, proposed requirements dictating the construction of floor-to-ceiling barriers are also construction-related and thereby covered under the USBC.

These proposed requirements represent a substantial cost to Virginia businesses and ignore the longstanding tenet of building codes application wherein buildings constructed to the code in place at the time of construction are deemed in compliance and not forced to retrofit and conform to requirements put into place subsequent to their development. This policy is clearly articulated in the Code of Virginia, Sections 36-103 and 26-99.01. Section 36-103 provides, in part, that “any building or structure, for which a building permit has been issued or on which construction has commenced...shall remain subject to the building regulations in effect at the time of such issuance or commencement of construction. However, the Board may adopt and promulgate...building regulations that facilitate the maintenance, rehabilitation, development and reuse of existing buildings at the least possible cost...Subsequent reconstruction renovation, repair or demolition of such buildings or structures shall be subject to the pertinent construction and rehabilitation provisions of the Building Code. The provisions of this section shall be applicable to all equipment.”

Virginia’s codes development process, overseen by the Board of Housing and Community Development (BHCD), has been nationally recognized for incorporating the input of experts and stakeholders across the spectrum to produce the most functionally sound building standards. AOBA opposes any effort to usurp the authority of BHCD, the rightfully positioned and empowered entity to determine appropriate requirements pertaining to such matters. The Safety and Health Codes Board lacks sufficient authority, process and expertise to unilaterally adopt regulations pertaining to such matters.

We thank you for your consideration of our comments and concerns.

Sincerely,

A handwritten signature in black ink that reads "Brian Gordon". The signature is written in a cursive, flowing style.

Brian M. Gordon, MPA  
Vice President Government Affairs, Virginia

