

COLORADO COMMISSION ADOPTS REGULATION TO FORCE OWNERS OF LARGER EXISTING OR NEW COMMERCIAL, MULTIFAMILY, AND PUBLIC BUILDINGS TO ABANDON USE OF NATURAL GAS

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On August 17, 2023, the Colorado Air Quality Control Commission sided with agency staff and special interest advocacy groups to impose an unprecedented legal mandate setting building performance standards for “covered buildings” (commercial, multifamily, and public buildings 50,000 sq. ft. and larger). The Commission voted to adopt the regulation despite two days of undisputed testimony from over a dozen local and County government officials and owners of multifamily and commercial buildings across Colorado that the building performance standards were too stringent to be realistically achievable and would have severe adverse impacts on commercial real estate and the rental market.

Regulation 28, entitled “Building Benchmarking and Performance Standards,” will take effect in October and quickly requires “covered building” owners to either:

- (1) retrofit existing buildings to convert natural gas equipment to electric space and water heating—effectively eliminating their use of natural gas equipment;
- (2) meet energy efficiency targets by reducing the energy consumption of the building through non-space and water heating efficiency retrofits (insulation, energy efficiency timed lights, etc.); or
- (3) use some combination of efficiency and natural gas conversion measures.

Regulation 28 has two timed compliance deadlines of 2026 and 2030, by which time “covered building” owners must meet arbitrary building “energy-use intensity” building performance standards.

Testimony from the broad array of soon-to-be regulated parties made clear that the three “compliance pathways” in Regulation 28 provide no real “flexibility” and will instead force building owners to abandon existing natural gas heating and cooling equipment in favor of fully electric equipment. Much of this equipment is new and well-maintained, providing heating and cooling at a lower cost than fully electrified equipment.

Representatives from the Colorado Apartment Association and Apartment Association of Metro Denver testified that the “compliance pathways” in Regulation 28 were set so stringently that the only feasible method of achieving the “energy-use intensity” performance standards is to scrap existing HVAC equipment with significant remaining useful life. Senior officials with large multifamily housing property owner and management groups testified they had completed engineering analyses for existing buildings subject to Regulation 28, and that even with improvements to building envelopes and upgrading lighting systems, such buildings would still be required to electrify existing natural gas HVAC systems to meet the 2030 “energy-use intensity” performance standards. In addition, these representatives testified that Regulation 28 will challenge builders’ ability to secure loans for new multifamily housing developments, straining the availability in Colorado’s multifamily housing rental market. Further testimony made clear that the costs of forced electrification would also be primarily shouldered by Colorado’s renters, making apartment housing increasingly unaffordable in Colorado.

Regulation 28 will also adversely impact Colorado's mountain communities. Representatives from Mountain Capital Partners, which owns the Purgatory Lodge in Durango, Colorado, testified that the "energy-use intensity" performance standards in Regulation 28 had no allowances for the extreme mountain climates and unique challenges those buildings face for heating. Purgatory Lodge's professional consultants testified that the only feasible method for the Purgatory Lodge to meet the 2030 "energy-use intensity" performance standards was to electrify existing HVAC equipment. A Managing Partner of Mountain Capital Partners testified that converting the building's existing fossil fuel-fired HVAC equipment would implicate serious life and safety concerns as the electric grid in Durango is frequently interrupted in the winter months, making electric heating much more problematic.

Regulation 28 was also opposed by several local governments, including the Pikes Peak Regional Building Department and its member jurisdictions including El Paso County. Remarkably, the Pikes Peak Regional Building Department's LEED Silver Certified Building, built in 2005, cannot meet the stringent 2030 "energy-use intensity" performance standards absent converting the building's existing natural gas HVAC equipment. The Commission ignored the local government's concerns about the serious budgetary problems for local governments who will have to choose between footing the bill for expensive electrification upgrades and providing critical governmental services. El Paso County representatives explained that the "energy-use intensity" building performance standards would likely require electrification of its county administration campus. El Paso County representatives testified that the County cannot simply "shut down" critical government buildings such as the Citizens Service Center, the Criminal Justice Center, and the Central Utility Plant, which provide 24/7 government services to accommodate time-intensive retrofits.

Representatives from the International Facilities Management Association testified that Regulation 28 would drastically impair office buildings in Colorado, which are already facing low occupancy rates and strains from increased interest rates, threatening the health of Colorado's existing office market. Representatives also testified that Colorado's construction and HVAC labor force was already strained and expressed doubts that building owners would have sufficient bandwidth to install required electrification retrofits in time to meet the 2026 and 2030 compliance deadlines. Similarly, a representative from the Colorado Real Estate Alliance testified that Regulation 28 would upend commercial building owners' long-term reliance on existing building codes, requiring them to retrofit and modify buildings built to code despite significant remaining useful life of existing building systems and potentially scaring builders away from Colorado all together.

In deliberating on whether to adopt Regulation 28, the Commissioners acknowledged that the regulation would be "difficult and costly" for building owners to comply with, could negatively impact Colorado's ski tourism industry, and could raise rental rates. The Commissioners also acknowledged that the building performance standards were based on incomplete benchmarking data (having only two years of state data collected, with only 60% of building owners reporting benchmarking data). They would likely need to be updated in the future to ensure the greenhouse gas reduction goals set by the legislature were on target. Instead of waiting for more robust benchmarking data, the Commissioners decided to move forward in a ready-aim-fire approach, noting the Air Pollution Control Division could come back later and modify the building performance standards "if needed."

Remarkably, the Air Quality Control Commission’s mandate is clear—Colorado’s commercial business and multifamily housing “covered buildings” must immediately start to comply with Regulation 28 and bear the brunt of this costly experiment, regardless of whether it is feasible or will make any meaningful impact on air quality in Colorado.