

**INDUSTRY DEFENSE FUND
APPLICATION FOR FUNDS**

TO: BOMA IDF Oversight Committee

FROM:
(Applicant)

RE:
(Name of Project)

AMOUNT of REQUEST:

DATE:

I. PURPOSE:

In completing this section, please pay special attention to the Purpose of the Industry Defense Fund and the Application Process sections of the IDF Rules. In the space provided, please indicate the purpose for which these IDF funds will be used. Please supplement your request by attaching reference materials if appropriate.

II. MEMBER IMPACT:

In completing this section, please pay special attention to the Purpose of the Industry Defense Fund and the Application Process sections of the IDF Rules.

A. Please indicate the number of BOMA members that will be impacted by the proposed action. For example, “All BOMA members in the City of Los Angeles or LA County, or all BOMA members in the State of Texas”.

B. Please also indicate any regional or nationwide impact to BOMA members.

III. BOMA MEMBERS’ INTERESTS IMPACTED:

In the space provided, please indicate which specific member interests will be impacted through this project. Examples might include private property rights, need to maximize return on investment, secure fair tax treatment, etc. Please reference all applicable BOMA policy statements, and list all interests that would be impacted using additional sheets if needed and attach supplemental materials if appropriate.

1.

2.

3.

IV. PRECEDENT VALUE:

Has this issue been litigated, legislated, or the subject of regulation in another local or state jurisdiction, or at the federal level?

NO

YES

If Yes, where and what was the result?

V. MATCHING FUNDS:

In completing this section, please refer to the Application Process and Disbursement of Funds sections of the IDF Rules. The leveraging of additional funds to defend the industry’s interests is a key goal of the IDF. Please indicate the amounts and specific source(s) of funds you are dedicating to this issue.

Amount of Matching Funds

Source of Matching Funds (Please use additional sheets if necessary)

VI. ACCOUNTABILITY:

A. Please provide the following information on the individual who will serve as lead on this project and will verify all relevant payment requests.

Name:

Address:

Phone:

FAX:

E-mail:

B. How will project costs be tracked, and how will the required updates, financial statements, and related documentation outlined in the Disbursement of Funds process (Section VII of the IDF Rules) be provided to the IDF Oversight Committee?

VII. DURATION OF FUNDING:

IDF funds are available for 12 months following the authorization of disbursements. Please indicate the time table for resolution of this issue, including when disbursement of funds will be expected.

VIII. OUTLOOK:

A. Please indicate the likelihood of success of the planned action and your reasons for making such an assessment.

POOR FAIR GOOD EXCELLENT

Please explain:

B. Please indicate the likelihood of success of planned action without IDF funding and your reasons for making such an assessment.

POOR FAIR GOOD EXCELLENT

Please explain:

IX. SELF HELP:

A. Please list actions already undertaken toward achievement of the stated project goal:

B. Do you have a Government Relations Committee or similar entity to assist and/or provide oversight in pursuing this issue?

X. WORK PRODUCT:

A. Will this application result in a work product that may be used by other BOMA members, local associations, or state coalitions?

YES NO

Please list expected products:

Making the case for a complete, open state plumbing code adoption

Bad policy. Without notifying Minnesota's building stake holders, the Minnesota State Plumbing Board adopted the Uniform Plumbing Code more than four years ago. It only held the rulemaking this year and prevented any comparison of both model plumbing codes.

Minnesota has long needed to adopt a model plumbing code to replace its outdated home-grown state plumbing code. The Minnesota Legislature in 2008 gave the Minnesota State Plumbing Board (MSPB) the capability to adopt a model code. After two subcommittee meetings to discuss its options, the MSPB was supposed to start evaluating both the Uniform Plumbing Code and the International Plumbing Code.

But that's not what happened on April 19, 2011. The MSPB allowed only a 10-minute review of the IPC and the UPC. That's the equivalent of an "elevator pitch" on a major core construction code that affects all other construction codes. It was a once in a lifetime, major policy decision. And without notifying stake holders like you, the MSPB voted to exclude the IPC from any sober consideration.

Bad process. State law encourages stake holders to be part of the discussion of adopting a new code by requiring notification before adoption occurs. Not after the decision is made.

Since April 2011, the MSPB made no effort to allow a side-by-side review of the IPC with the UPC. That's despite the fact that the UPC is not nationally correlated with Minnesota's other building codes: **The International Building Code, International Residential Code, International Mechanical Code, International Fuel Gas Code, and International Existing Building Code.**

The **International Plumbing Code** is correlated with Minnesota's other core building codes. The I-Codes are correlated as one single code for easier and less costly use by building designers, architects, building owners and managers, construction contractors, plan reviewers and inspectors.

More importantly, the IPC is the performance-based plumbing code. This allows for more flexibility in design which can produce savings in construction and maintenance. The UPC, according to its promoters, is the prescriptive-based plumbing code. It removes flexibility to reduce labor hours, materials and fixtures, locking in a higher cost of installation and maintenance.

If the IPC is correlated with Minnesota's other core building codes and if the IPC allows for lower costs of installation and maintenance, why did the MSPB refuse to consider it? Why weren't we, the stake holders of this public policy, notified and consulted in making such a far-reaching decision?

The UPC is a competitor to the IPC. Both codes have a record of being safe. True. But why wasn't it allowed to compete in an open and public process of code adoption?

Bad governance. The difference between IPC and UPC goes back to who has the final say on what becomes public policy.

All codes developed and updated by the International Code Council are the product of a voting process called the *governmental consensus process*. Code officials who carry out public policy by state and local governments make up the voting membership of ICC. The ICC process obtains the input of these public

servants along with the advice and input of industry and other vested stake holders. But in the final vote on all ICC building codes, the only ones allowed to vote on their model codes are the code officials.

A plumbing code is public policy, not an installation guide for plumbers. Plumbing codes are used by all stake holders along with the other ICC building codes.

The UPC, developed and updated by the International Association of Plumbing & Mechanical Officials (IAPMO), does not use the governmental consensus process. IAPMO's leadership rejects it for the development of its model public policy. Instead, industry and vested interests vote along with plumbing code officials to create its *prescriptive-based model code*. It's an industry code.

The kicker is the Minnesota State Plumbing Board. It's an authoritative board made up largely of people in the plumbing installation business. It is not an advisory board. It was given the power to not only evaluate both model plumbing codes, but also to adopt one of them through the legal state code adoption and rulemaking process. (Its members are appointed for two years by the Governor, but not even the Governor can remove a member without cause and going through a hearing process.)

The net effect: An industry-based public policy board has the power to write the laws all stake holders must live by. Without adequate warning, it chose the industry-based plumbing code, locking in higher costs of installation. It chose to ignore the competitor model code. It chose to ignore the consideration of stake holders who, frankly, don't agree the industry code makes the best public policy.

Bad precedent. The MSPB spent four years to force its industry model code into law.

The International Code Council, building code officials and many stake holders in Minnesota's built environment are seeking a legal solution to the MSPB's over-reach of forcing the UPC into law.

The MSPB made the decision in a vote taken in April 2011. But it only started the rulemaking process to complete the decision within the last year. In fact, stake holders were only notified officially last spring that the MSPB's adoption decision would impact them. But that decision was made four years ago.

More than 50 large and small businesses, associations and code officials objected and requested the MSPB's actions be reversed. They sought a hearing before an Administrative Law Judge as the first step. The judge, an employee of the administration, kept his scope narrowed to the rulemaking process of the last year. His decision didn't reverse the MSPB's action.

Now it's time to take the case to the judicial branch with the Appellate Court. To make sure our point is understood, your voice is important. Please join ICC's appeal by participating in the Amicus Brief.

If the MSPB is allowed to continue its power grab, it sets a precedent for more bad policies for many years to come.