DRAFT AS OF 9/29/29
CONGRESSIONAL LETTER TO NFPA

[DATE]

Mr. Ross Ashley
President and Chief Executive Officer
National Fire Protection Association
1 Batterymarch Park
Quincy, MA 02169-7471

Re: The 2027 Edition of NFPA 101 and Its Disparate Impact on Elderly and Disabled Residents

Dear Mr. Ashley,

I am writing to urge the National Fire Protection Association ("NFPA") to reverse a revision (Section 31.7.5.2) recently adopted for the 2027 Edition of NFPA 101®, *the Life Safety Code*®, before that edition is adopted by state and local governments across the country. The standard at issue is contained in DECISION #26-9; SC #26-8-10-a. I understand an appeal of this decision is pending and that NFPA decided to publish it without regard to that appeal.

Background

Valet trash services collect trash, recycling, and compost from multifamily residential buildings by picking up materials that residents place in containers directly outside their unit doors, rather than requiring residents to carry waste to a centralized dumpster. These services, which have been in place for thirty years, are widely relied upon by elderly and disabled residents who are unable to access a centralized collection point.

The 2024 Edition of NFPA 101® permits valet trash services in buildings that are not fully protected by automatic sprinkler systems, provided the service uses containers meeting specified fire-safety standards, including liquid-tight, lidded containers constructed of noncombustible materials or materials meeting a specified maximum heat-release rate, and subject to limits on container size and the duration trash may remain in a corridor.

NFPA has since revised this provision for the 2027 Edition. As published, valet trash services would be permitted only in buildings protected throughout by a supervised automatic sprinkler system, eliminating the fire-retardant-container alternative that currently allows unsprinklered buildings to offer the service. Public comments against this change noted that NFPA provided no technical or fire-incident-based justification for eliminating the container-based compliance path it had approved only one cycle earlier. By eliminating that path, the revision would cause an estimated eight million residential units in unsprinklered buildings to lose access to valet trash service without justification.

Because a substantial number of state and local governments (as well as some federal agencies) incorporate NFPA 101 by reference into their fire and building codes, this revision would translate directly into a binding legal prohibition when those jurisdictions adopt the 2027 Edition.

Disparate Impact on Elderly and Disabled Residents

Eliminating valet trash service in unsprinklered buildings would disproportionately harm elderly and disabled residents who depend on the service because they cannot physically carry trash, recycling, and compost to a centralized location. Title II of the *Americans with Disabilities Act* ("ADA") prohibits public entities from utilizing criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination, even absent discriminatory intent. *The Fair Housing Act* ("FHA") likewise imposes liability for a facially neutral practice that actually or predictably produces a disparate impact on the basis of handicap, unless the practice is necessary to a substantial, legitimate interest that cannot be served by a less discriminatory alternative.

Because state and local fire codes are government programs subject to these statutes, a code provision that eliminates a service relied on by disabled residents for waste removal—without a demonstrated safety justification for doing so—places every adopting jurisdiction at risk of ADA and FHA liability. NFPA, as the drafting body whose model code will be incorporated wholesale into hundreds of state and local laws, should not finalize a change that exposes those governments to liability without a documented safety basis.

I also understand NFPA is seeking congressional support of the *Pro Codes Act* (S.4145 / H.R.4009) to give its fire safety codes, including this new one, greater protection. I would appreciate an explanation of why Congress should support a bill that gives greater protection to a code that could violate federal law like this one.

Requested Action

I encourage NFPA to:

1. Restore the 2024 Edition's fire-retardant-container compliance path for unsprinklered buildings, or otherwise supply a documented, fire-incident-based justification for removing it from the 2027 Edition;

2. Confirm what analysis, if any, NFPA performed regarding the provision's impact on elderly and disabled residents and on the ADA and FHA exposure of the state and local governments that will adopt the 2027 Edition; and

3. Explain why Congress should support a bill giving greater protection to NFPA's codes, when codes like this expose implementing governments to liability under the ADA and FHA or shifts the burden of defending it to the same states and municipalities that NFPA claims it is helping.[1]

[1] "Federal, state, and municipal governments recognize the value of NFPA standards, and many choose to incorporate them by reference into laws and regulations, enhancing public safety w**ithout duplicating costly research or administrative effort**. NFPA, "Why NFPA Codes and Standards Matter, available at: https://www.nfpa.org/about-nfpa/why-nfpa-codes-and-standards-matter (emphasis added) (last visited Sept. 29, 2026). NFPA's action here will vastly increase costs to those governments.

As NFPA is aware, a substantial number of state and local governments will incorporate the 2027 Edition of NFPA 101® by reference into binding law. NFPA's own role in drafting model codes that are adopted wholesale by government bodies carries with it a responsibility to ensure that its provisions do not expose those adopting governments to civil rights liability without a documented, safety-based justification.

I would welcome the opportunity to discuss this matter further. Please do not hesitate to contact my office with any questions.

Sincerely,

The Honorable [FIRST NAME] [LAST NAME]

Member of Congress