

**DIVISION OF BUILDING STANDARDS AND CODES**

STATE OF NEW YORK

**DEPARTMENT OF STATE**

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ANDREW M. CUOMO  
GOVERNOR

ROSSANA ROSADO  
SECRETARY OF STATE

Minutes of the NYS Fire Prevention and Building Code Council meeting on Friday, December 06, 2019, commencing at 10:05 a.m. and held by videoconference at:

- ❖ 99 Washington Avenue, Albany, NY, Conference Room 505;
- ❖ 123 Williams Street, NYC, NY, Conference Room 231; and
- ❖ 65 Court Street, Buffalo, NY, Conference Room 208.

**Council members and designees present:**

Matthew Tebo, Presiding (Albany)  
Paul Martin (Albany)  
Joseph Palozzola (NYC)  
Vincent Rapacciuolo (Albany)  
Keith Wen (NYC)  
Michael Sabatino, Jr. (NYC)  
David Seeley (Buffalo)  
Claudia Braymer (Albany)

Joseph Toomey (Albany)  
Shawn Hamlin (Albany)  
Timothy DeRuyscher (Albany)  
Robert Hughes (Albany)  
William Tuyn (Buffalo)  
Patrick Dolan (NYC)  
Dominic Marinelli (Buffalo)

**Staff present:** John Addario, Panagiota Hyde, Kevin Duerr-Clark, Emma Gonzalez-Laders, and Daniel Carroll.

**Agenda Item 1. Welcome.**

Mr. Duerr-Clark called the roll. Mr. Tebo noted that a quorum was present.

Mr. Tebo called the meeting to order. Mr. Tebo welcomed new Code Council members Claudia Braymer (County Official), Joseph Toomey (Fire Deputy Chief), David Seeley (Town Supervisor), and new Secretary for the Code Council Kevin Duerr-Clark.

**Agenda Item 2. Minutes of the meeting of September 27, 2019. Consideration of motion to approve.**

Mr. Tebo asked if anyone had any changes to the minutes of the September 27, 2019 meeting. Hearing none, Mr. Tebo called for a voice vote on adoption of the minutes. The motion to adopt the minutes was approved by voice vote (new members Joseph Toomey, Claudia Braymer, and David Seeley abstained. Paul Martin also abstained.)

**Agenda Item 3. Update on NOTICES OF ADOPTION relating to the amendments and updates of the Uniform Code and Energy Code.**

Ms. Gonzalez-Laders presented a summary of updates to the Uniform Code and the Energy Code taking place since the vote to adopt the rules to amend the codes on September 27, 2019.

Mr. Tebo thanked the division staff for the quick turn-around in correcting errata.

Mr. DeRuyscher asked about the provision for heat detection power sources and whether wireless detectors could still be used. Also whether referenced standards had been deleted. Staff



**Department  
of State**

responded that no changes were made to whether or not wireless detectors were permitted, only to add heat detection to the power source section and that referenced standards were not deleted, rather, modifications were made to represent which ones were incorporated by reference into the Codes of New York State.

Ms. Braymer asked whether any changes made were substantive. Staff confirmed that no substantive changes were made.

**Agenda Item 4. Uniform Code Update – consideration of motion to adopt the rule amending and updating the New York State Uniform Fire Prevention and Building Code (19 NYCRR Parts 1219 to 1227) based on the November 2019 editions of the 2020 NYS Code Books.**

Ms. Hyde presented a potential motion, summarized as follows, for the Code Council authorizing declarations to the effect that this rule amending the Uniform Code will not have a significant environmental impact or adverse effect on any significant fish or wildlife habitat, scenic resource of statewide significance, important agricultural land, or area included in an approved local waterfront revitalization program.

Mr. Tebo made the 1<sup>st</sup> motion, read by Ms. Hyde, and seconded by Mr. Martin. No discussion. The motion was passed unanimously, with a vote of 15 to 0.

Ms. Hyde presented a second potential motion, summarized as follows, that the Code Council adopt the rule now being approved to supersede the rule approved at the September 27, 2019 meeting, that the Department of State not file a Notice of Adoption with respect to the rule approved at the September 27, 2019 meeting, and that the Department of State file a Notice of Adoption with respect to the rule now being approved amending the Uniform Code to become effective 90 days after publication of the Notice of Adoption in the State Register.

Mr. Tebo made the 2<sup>nd</sup> motion, read by Ms. Hyde, and seconded by Mr. DeRuyscher. No discussion. The motion was passed unanimously, with a vote of 15 to 0.

**Agenda Item 5. Energy Code Update- consideration of motion to adopt the rule amending and updating the State Energy Conservation Construction Code (19 NYCRR Part 1240) based on the November 2019 edition of the 2020 ECCCNY.**

Ms. Hyde presented a potential motion, summarized as follows, for the Code Council authorizing declarations to the effect that this rule amending the Energy Code will not have a significant environmental impact or adverse effect on any significant fish or wildlife habitat, scenic resource of statewide significance, important agricultural land, or area included in an approved local waterfront revitalization program.

Mr. Tebo made the 1<sup>st</sup> motion, read by Ms. Hyde, and seconded by Mr. Hamlin. No discussion. The motion was passed unanimously, with a vote of 15 to 0.

Ms. Hyde presented a second potential motion, summarized as follows, that the Code Council adopt the rule now being approved to supersede the rule approved at the September 27, 2019 meeting, that the Department of State not file a Notice of Adoption with respect to the rule approved at the September 27, 2019 meeting, and that the Department of State file a Notice of Adoption with respect to the rule now being approved amending the Energy Code to become effective 90 days after publication of the Notice of Adoption in the State Register.

Mr. Tebo made the 2<sup>nd</sup> motion, read by Ms. Hyde, and seconded by Ms. Braymer. No discussion. The motion was passed unanimously, with a vote of 15 to 0.

**Agenda Item 6. More Restrictive Local Standards, Uniform Code (Executive Law §379)**

- **Town of Fallsburg Local Law #8 of 2014**

Mr. Carroll presented the background on MRLS process, a summary of the Town of Fallsburg's application, and the Staff analysis of the MRLS request.

Mr. Toomey indicated that the applicant had missed the 30-day window and asked if a denial could be based on untimeliness alone. Legal staff replied that if the Code Council approved the MRLS then the Town may have legal issues enforcing the local law because it is a procedural requirement of Executive Law §379. However, the Code Council has previously denied applications for an MRLS based on untimeliness alone. Mr. Tebo indicated his position to address the substantive issues rather than denying based on untimeliness alone.

Ms. Braymer asked about the current fire separation requirement and staff responded that under a 5-foot separation distance, the requirement was one-hour.

Mr. Hughes asked if the applicant had given a reason for the delay. Staff responded that the applicant indicated having been unaware of the requirement until they received a code outreach document sent by the DBSC and acted shortly thereafter.

Mr. DeRuyscher noted that although the petition had been submitted very late, the Council was also late in reviewing it. He argued that the petition had merit based on the typically deficient construction standards of bungalows when compared to current code requirements and when compared to typical urban or suburban areas with closely spaced buildings.

Mr. Tebo acknowledged the delay in responding due to large portion of DBSC staff working on updating the 2020 Codes.

Mr. Martin asserted that he is a fierce defender of the "Uniform Code" being uniform and that the bar for exceptions due to special conditions should be set exceedingly high.

Mr. Tebo echoed the need to maintain uniformity and that if the request were found to have merit, it should be addressed in the Code.

Ms. Braymer indicated a preference for home rule if the law was passed in the community but could also see the importance of uniformity in the application of the Code.

Mr. Hughes agreed that the bar for exceptions should be high and noted that the Town of Fallsburg had not met that bar. He noted that replaced buildings would necessarily comply with a higher standard.

Mr. Toomey noted that procedural requirement for timelines had not been met, and that the merits of the application should be considered as a potential revision to the Uniform Code.

Mr. Hamlin asked for more information on the fire examples provided by the applicant that were specific to cottages. Mr. Carroll gave further detail.

Mr. Tuyn urged not to minimize the importance of maintaining the uniformity of the Uniform Code and that the bar for special conditions should be high. He reminded everyone of the challenges posed when different codes were enforced by individual municipalities. Mr. Tuyn indicated that meeting the procedural requirements was not as important as the municipality not having met the high bar necessary for an MRLS.

Ms. Braymer asked if the Council would hear from the petitioner and/or the public. Staff indicated that upon receiving a copy of our draft Analysis, the petitioner had sent a letter earlier in the week declining attendance and submitting new information.

Mr. Tebo made a motion, read by Ms. Hyde, to deny the application based on no special conditions found prevailing within the Town to make the petition reasonably necessary. Mr. Tebo indicated that the motion was based on the Staff Analysis. Mr. Martin seconded. Mr. Tebo asked for amendments to the motion. None were made. Discussion: Mr. DeRuyscher asked if with a vote of yes, denying the request, the Town could re-submit. Mr. Tebo responded that the Town is able to amend their local law and submit a new request providing new special conditions. The motion was passed with a vote of 12 yes to 3 no (Braymer, DeRuyscher, and Toomey) and the application was denied.

#### **Agenda Item 7. Public Comment Period.**

Mr. Victor Rodriguez spoke on behalf of Gas It Up. Mr. Rodriguez indicated difficulty in determining to whom additional data should be provided following the last Code Council meeting. He has also reached out to the chief of police in Nassau County, but that Chapter 57 of the Fire Code was not adopted in New York State. He would like to see Chapter 57 adopted at least in Nassau County for a trial period. His company provides mobile fueling services in New York City and is expanding to other cities. They have assisted the city of Philadelphia in adopting Chapter 57.

Mr. Tebo noted that this had been submitted as a Public Comment and asked the reasons for not adopting at the time. Staff responded that fueling of vehicles in parking lots and on streets is outside the purview of Uniform Code and the challenges in a code enforcement official's ability to enforce. Further, that while not included in the Code, a local municipality could allow it.

Mr. DeRuycher indicated that the Building Code may not apply, but the Fire Code deals with fire safety features that are not in buildings and that this item could be revisited within the scope of the Task Force. Mr. Addario and Mr. Tebo agreed.

#### **Agenda Item 8. Future Meetings.**

Mr. Tebo indicated that the dates of next year's meetings, as previously shared with the Council, are March 6, June 19, September 25, and December 4, subject to change based on weather or otherwise.

#### **Agenda Item 9. Other Business.**

Mr. Martin announced that after 40 years, he will be retiring effective February 5, 2019. He expressed pride in his work and his disappointment that two cycles had gone by since the International Residential Code included residential sprinklers in 1 and 2-family homes. Although he was proud of the expediency of this group and the hard work of the Division in adopting the 2020 Codes, he noted that the Council has not adopted those provisions and, to date, 648 people have died in household-related fires. He challenged his colleagues to take on the charge to improve safety for new construction. Mr. Tebo thanked Mr. Martin for his counsel and his years of service.

Mr. Sabatino announced that as an elected official his term will end at the end of this month. He has been proud to serve and learn, and that he would love to continue to do so in another seat, should it become available. Mr. Tebo thanked Mr. Sabatino for his years of service.

Mr. DeRuyscher asked when the Task Force will begin to meet. Mr. Tebo estimated that it would begin at the end of January.

Mr. Tebo wished everyone a happy and safe holiday season.

**The meeting adjourned at approximately 11:12 a.m.**