

**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, September 27, 2019, commencing at 10:08 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)  
Benjamin Keller (Albany)  
Michael Weber (Albany)  
Vincent Rapacciuolo (Albany)  
Keith Wen (NYC)

Michael Sabatino, Jr. (NYC)  
Robert Hughes (Albany)  
Timothy DeRuyscher (Albany)  
William Tuyn (Buffalo)  
Dominic Marinelli (Buffalo)

**Staff present:** John Addario, Panagiota Hyde, Gerard Hathaway, Daniel Carroll, Emma Gonzalez-Laders, and Jeffrey Hinderliter.

**Agenda Item 1. Welcome.**

Mr. Tebo called the meeting to order. Mr. Tebo welcomed new Code Council member Mr. Robert Hughes and acknowledged the work of the Council and the DBSC over the past 3 years.

Mr. Hathaway called the roll and noted that a quorum was present.

**Agenda Item 2. Minutes of the meeting of June 21, 2019.**

Mr. Tebo noted that the minutes of the June 21, 2019 meeting were provided to the Code Council prior to this meeting and asked if anyone had any changes. Hearing none, Mr. Tebo called for a voice vote on adoption of the minutes. The motion to adopt the minutes was unanimously approved by voice vote.

**Agenda Item 3. Update on NOTICES OF PROPOSED RULE MAKING relating to the proposed amendment and update of the Uniform Code and Energy Code – Summary of Public Comments received, Codes Division’s analysis of those comments, and changes made to proposed rules in response to those comments.**

Mr. Hathaway presented a summary of assessment of public comments for the Uniform Code.

Mr. Marinelli asked about the status of the “visitability” provisions for the disabled he sent to staff on September 25<sup>th</sup> for possible inclusion in the Residential Code. Mr. Tebo acknowledged receiving the provisions and requested staff works with Mr. Marinelli to determine the impact of this change.

Ms. Gonzalez-Laders presented summary of assessment of public comments for Energy Code.

**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).**

Mr. Tebo called on Ms. Hyde to present 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. DeRuyscher. The motion was passed unanimously, with a vote of 10 to 0.

Ms. Hyde presented a second potential motion, summarized as follows, that the Code Council adopt the rule amending the Uniform Code as a permanent rule 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. Rapacciuolo. The motion was passed unanimously, with a vote of 10 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).**

Mr. Wen asked the effective date of the Energy Code.

Ms. Hyde answered that it would be aligned with the Uniform Code Update - 90 days after publication in the State Register – that the exact date has not yet been set, and that the effective date will be no sooner than March 2020.

Mr. Tebo called on Ms. Hyde to present 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. Hughes. The motion was passed unanimously, with a vote of 10 to 0.

Ms. Hyde presented a second potential motion, summarized as follows, that the Code Council adopt the rule amending the Energy Code as a permanent rule 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. The motion was passed unanimously, with a vote of 10 to 0.

**Agenda Item 6. Update on NOTICE OF PROPOSED RULE MAKING relating to Energy Storage Systems (ESS) – Summary of Public Comments received, Codes Division’s analysis of those comments, and changes made to the proposed rule in response to those comments.**

Mr. Hinderliter presented a summary of assessment of public comments for ESS.

Mr. Weber asked how we stand to keep pace with an area of rapid growth and expansion while maintaining safety and whether the DBSC has been working with NYSERDA.

Mr. Hinderliter answered that the DBSC agrees and is fully aware of the challenge. The DBSC will remain aware of industry standards, in collaboration with NYSERDA and other State Agencies, and flexible to amend the provisions as needed.

**Agenda Item 7. ESS Permanent Rule Making – consideration of motion to adopt the rule on a permanent basis.**

Mr. Tebo called on Ms. Hyde to present 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. Rapacciuolo. The motion was passed unanimously, with a vote of 10 to 0.

Ms. Hyde presented a second potential motion, summarized as follows, for the Code Council to consider:

- a) Upon expiration of the prior, substantially similar version of this rule that was adopted as an emergency rule on July 1, 2019, the Uniform Code will no longer have provisions that adequately protect buildings from the hazards of fire associated with ESS;
- b) Regulated parties are expressing immediate and increasing interest in the installation of ESS,
- c) A rule amending the Uniform Code to add provisions regulating ESS is necessary;
- d) Developing, proposing, adopting, and implementing the proposed rule in compliance with the requirements of the State Administrative Procedures Act would delay the effective date of the rule and may result in unsafe installations;
- e) Developing, proposing, adopting, and implementing the proposed rule to become effective at least ninety (90) days after the date on which notice of such change has been published in the State Register would delay the effective date of the rule and may result in unsafe installations;
- f) Adopting this rule as a permanent rule to be effective on November 1, 2019, after the emergency rule expires, is necessary to protect health, safety, and security; and
- g) The effective date of this rule shall be on November 1, 2019.

Mr. Tebo made the 2<sup>nd</sup> motion, read by Ms. Hyde, and seconded by Mr. DeRuyscher. The motion was passed unanimously, with a vote of 10 to 0.

**Agenda Item 8. ESS Emergency Rule Making – consideration of motion to adopt the rule on an emergency basis before the permanent rule becomes effective.**

Mr. Tebo called on Ms. Hyde to present 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. Rapacciuolo. The motion was passed unanimously, with a vote of 10 to 0.

Ms. Hyde presented a second potential motion, summarized as follows, for the Code Council to consider:

- a) Upon expiration of the prior, substantially similar version of this rule that was adopted as an emergency rule on July 1, 2019, the Uniform Code will no longer have provisions that adequately protect buildings from the hazards of fire associated with ESS;
- b) Regulated parties are expressing immediate and increasing interest in the installation of ESS,
- c) A rule amending the Uniform Code to add provisions regulating ESS is necessary;
- d) Developing, proposing, adopting, and implementing the proposed rule in compliance with the requirements of the State Administrative Procedures Act would delay the effective date of the rule and may result in unsafe installations;
- e) Developing, proposing, adopting, and implementing the proposed rule in compliance with the requirements of State Administrative Procedure Act Section 202(1) and to become effective at least ninety (90) days after the date on which notice of such change has been published in the State Register would delay the effective date of the rule and may result in unsafe installations;
- f) Adopting this rule as an emergency rule to be effective immediately upon the filing of the Notice of Emergency Adoption is necessary to protect public safety, health, security, and general welfare; and
- g) The effective date of this rule shall be the date on which the rule is filed for publication with the State Register.

Mr. Tebo made the 2<sup>nd</sup> motion, read by Ms. Hyde, and seconded by Mr. Hughes. The motion was passed unanimously, with a vote of 10 to 0.

**Agenda Item 9. Public Comment Period.**

None.

**Agenda Item 10. Future Meetings.**

Mr. Tebo announced that a November date is not available. Mr. Hathaway indicated that he will contact that members to schedule the next Code Council meeting since the December 5, 2019 date is no longer available.

**Agenda Item 7. Other Business.**

Mr. Tebo thanked the Division staff for their hard work and for an excellent product. No other business was planned or discussed.

**The meeting adjourned at approximately 10:59 PM.**