

DIVISION OF BUILDING STANDARDS AND CODES

STATE OF NEW YORK

DEPARTMENT OF STATE

ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
WWW.DOS.NY.GOV

KATHY HOCHUL
GOVERNOR

ROSSANA ROSADO
SECRETARY OF STATE

Minutes of the New York State Fire Prevention and Building Code Council meeting on Thursday, September 16, 2021, commencing at 10:05 a.m. and held by videoconference.

Council members and designees present:

Matthew Tebo, Presiding
Benjamin Keller
Joseph Palozzola
Vincent Rapacciuolo
Keith Wen
Joseph DeStefano
Claudia Braymer

Joseph Toomey
Shawn Hamlin
Timothy DeRuyscher
Robert Hughes
William Tuyn
Patrick Dolan
Dominic Marinelli

Guest speakers present:

Christopher Sgroi, representing the NYS Energy Research and Development Authority (NYSERDA).

Dorothy Mazzarella, representing the International Code Council (ICC).

Staff present: John Addario, Panagiota Hyde, Kevin Duerr-Clark, Gregory Benton, China Clarke, Emma Gonzalez-Laders, and Chad Sievers.

Agenda Item 1. Welcome.

Chairperson Tebo called the meeting to order, welcomed all, and thanked David Seeley, who resigned the position of Supervisor of the Town of Irondequoit, for his service on the Council.

Kevin Duerr-Clark called the roll and announced that fourteen (14) Council members were present. Chairperson Tebo noted that there was a quorum. Kevin Duerr-Clark explained that the meeting was being held via videoconference pursuant to Chapter 417 of Laws of 2021 and the procedures to be followed during meeting.

Agenda Item 2. Minutes of the meeting of June 25, 2021. Consideration of motion to approve.

Chairperson Tebo asked if anyone wished to propose changes to the minutes of the June 25, 2021 meeting. Hearing none, Chairperson Tebo asked for a motion to adopt the minutes without changes. The motion was approved by voice vote with Timothy DeRuyscher, William Tuyn, Keith Wen, and Patrick Dolan abstaining, since they were not present at that meeting.

Agenda Item 3. More Restrictive Energy Code Filings (Energy Law §11-109)

Kevin Duerr-Clark presented, as introduction to Agenda items 3 and 4, a reminder to Code Council members of the Energy Law provisions for municipalities adopting a local energy code and the provisions of the Executive Law for municipalities adopting more restrictive local construction standards. Kevin Duerr-Clark also indicated that two municipalities had submitted both an Energy



Department
of State

Code filing pursuant to Energy Law §11-109 and a Notice and Petition pursuant to Executive Law §379.

Chairperson Tebo asked if there were any questions, and hearing none, invited Christopher Sgroi, a senior project manager with the New York State Energy Research and Development Authority (NYSERDA), to speak about the NYStretch Code.

Christopher Sgroi stated that NYStretch 2020 is a more restrictive supplement intended to amend, not replace, the State Energy Code and that it was developed through stakeholder groups that included the Division of Building Standards and Codes (DBSC). He indicated that the residential provisions are nearly 20% more efficient and the commercial provisions are more than 7% more efficient than the State Energy Code. Christopher Sgroi also noted that NYSEDA is preparing a revised analysis to determine the impact of local governments severing one or more provisions in their adoption of NYStretch; that there are incentives for adoption effective through December of this year; and that that a largely editorial Version 2 update is being developed which will not change the intent or the stringency of the current version.

Shawn Hamlin asked if the provisions of NYStretch were limited to heating and cooling equipment or if it included building envelope provisions. Christopher Sgroi answered that NYStretch includes efficiencies for most building systems, including lighting, envelope, and others.

Robert Hughes offered that there are good comparisons and other useful documents on NYSEDA's website. Christopher Sgroi agreed and added that those are shared with municipalities.

Claudia Braymer thanked NYSEDA for the update and indicated that the local laws received to date suggest that better guidance is needed for municipalities to ensure consistency and ease of adoption. She also suggested that the Code Council consider adopting these more stringent measures into the State Energy Code to ensure uniformity across the State. Chairperson Tebo responded that the DBSC has been working with NYSEDA and considering adopting the 2021 International Energy Code amended with the provisions of NYStretch.

William Tuyn questioned why more restrictive filings for the Energy Code are treated differently from petitions under the Uniform Code and expressed concerns about the lack of uniformity when various energy codes are adopted by municipalities with relative ease. Kevin Duerr-Clark and Panagiota Hyde responded that two separate laws govern the provisions of each code and the actions to be taken by the Code Council: Executive Law for the Uniform Code and Energy Law for the Energy Code, which includes, among others, a 10-year payback analysis. Claudia Braymer, William Tuyn, and Chairperson Tebo indicated that legislative changes are necessary regarding the adoption of more strict energy codes.

Claudia Braymer reiterated the request that better outreach and adoption guidance be offered by NYSEDA to municipalities considering adoption of NYStretch.

Chairperson Tebo thanked Christopher Sgroi for the presentation and asked that a copy of the presentation be shared for the benefit of Code Council members.

Kevin Duerr-Clark indicated that twelve (12) local energy codes have been filed with the Code Council and presented them in groups as follows:

First, Kevin Duerr-Clark noted there are five (5) filings that require no action by the Code Council to allow these municipalities to enforce these local laws since (a) the local law adopted NYStretch without modifications, (b) such local energy codes can be found to be more stringent than the State Energy Code based on NYSEDA's presentations at this and prior meetings, and (c) were filed within thirty (30) days. They include a revised filing by the Town of Bedford and new filings for the City of New Rochelle, Town of Dryden, Town of Ossining, and Town of Marbletown. Kevin Duerr-Clark

also noted that representatives from the Town of Bedford and the Town of Ossining were present should the Code Council have any specific questions.

Second, Kevin Duerr-Clark noted that the DBSC received filings of a local energy code from the Town of Newfield and the Village of Athens. However, both severed a requirement for a heat recovery ventilator or energy recovery ventilator and, per Christopher Sgroi's earlier presentation, the stringency of the local energy code is yet to be determined. Kevin Duerr-Clark also stated that the Village of Athens submitted their filing more than 30-days after adoption, and therefore, cannot enforce their local law until and unless the Code Council makes a determination that the local law is more restrictive than the State Energy Code.

Third, Kevin Duerr-Clark noted that a filing from the Village of Montour Falls appears to indicate that the local law adopted NYStretch as a replacement of the State Energy Code and not as a supplement, which would result in numerous baseline requirements of the State Energy Code not being in effect. The DBSC recommended that the Code Council find that, based on NYSERDA's presentation indicating NYStretch is a supplement and not a standalone energy code, and pursuant to Energy Law §11-109, that Local Law No. 1 of 2021 is not more restrictive than the State Energy Code. Kevin Duerr-Clark noted that the Department of State (DOS) reached out to the Village on multiple occasions, including informing them of today's meeting and the DBSCs intended recommendation to the Code Council, and no response from the Village had been received. At this point, Kevin Duerr-Clark asked if anyone from the Village wished to speak or if there were questions from the Code Council.

Hearing none, Chairperson Tebo made a motion, read by Panagiota Hyde, to determine, pursuant to subdivision (2) of §11-109 of the Energy Law, that the Village of Montour Falls' local energy conservation construction code, as amended by Local Law No. 1 of 2021, is less restrictive than the currently effective version of the State Energy Code. The motion was seconded by Joseph Toomey. The motion carried unanimously. Chairperson Tebo asked that Kevin Duerr-Clark notify the Village of the determination and that NYSERDA work with the Village to pass a new local law that adopts NYStretch as a supplement and re-file.

Fourth, Kevin Duerr-Clark noted that the City of Ithaca, Town of Ithaca, Town of Bethel, and City of Kingston have also filed local energy codes with the Division on behalf of the Code Council but that these four (4) municipalities requested additional time to supplement their filings before they are formally presented to the Code Council.

Chairperson Tebo asked whether Christopher Sgroi was aware of other municipalities considering adoption of NYStretch. Christopher Sgroi indicated that fewer than ten (10) additional filings should be expected.

Agenda Item 4. More Restrictive Local Standards, Uniform Code (Executive Law §379).

Kevin Duerr-Clark noted that DBSC has also received three (3) Notices and Petitions on behalf of the Code Council pursuant to Executive Law §379 including the Town of Bethel and the City of Kingston, which simultaneously submitted a local energy code filing and a Notice and Petition to the Uniform for their adoption of NYStretch; however, neither municipality specifically identified the requirements within their local law that constitute more restrictive construction provisions necessitating a Notice and Petition and both requested additional time to provide supplemental information before the Division performs a review of their filings and/or Notices and Petitions. Kevin Duerr-Clark did not recommend any action be taken by the Code Council at this time.

Kevin Duerr-Clark also noted that the Village of Elmsford submitted a Notice and Petition of a local law requiring automatic sprinkler systems in certain buildings and certain renovation projects but that during an initial cursory review the Village requested additional time to provide supplemental information. No action was recommended to the Code Council at this time and no questions were posed.

Agenda Item 5. Surfside, Florida – Building Collapse

Chairperson Tebo noted that the tragic building collapse in Surfside, Florida had taken place a day prior to the June 25th Code Council meeting and, thereafter, the DOS has been contacted by State Senators seeking that the Code Council be proactive, and that those letters have been shared with the members of the Code Council. Chairperson Tebo also noted that the DOS immediately assigned staff to look into ways to prevent this type of tragedy from happening in New York and that John Addario had been asked to participate on a panel discussion held by the International Code Council (ICC) and the National Institute of Building Sciences on August 17, 2021.

John Addario presented an overview of the organizations and stakeholders involved, as well as the focus of the panel intended to determine how communities monitor the safety of existing buildings, what guidance exists for building owners, and how future events can be avoided. He noted that Miami-Dade County has requirements in place for most buildings, with some exceptions, for a 40-year recertification, or assessment of the structural and electrical systems performed by a design professional to be submitted in writing to the code official. He underscored the consensus opinion of all in attendance to wait for release of the final investigative report from NIST to learn whether design, construction, code, maintenance, other issues, or any combination thereof contributed to the building collapse before proceeding with any actions and recommendations.

Joseph DeStefano noted that, in this case, the homeowners' association had not followed the 40-year assessment's recommendations and asked if there was a requirement in New York for notification to be provided to the building department or code official of any findings when similar reports or recommendations are made. John Addario indicated that a design professional's responsibilities are governed by the State Education Department and that they might have a duty to report an unsafe structure to the code official.

Robert Hughes asked (in reference to Florida's regulations) whether there was a requirement to submit the 40-year recertification report to the municipality. John Addario answered that there is and that when a municipality where the requirement is in place does not receive a report, they deem the building to be unsafe.

Chairperson Tebo asked whether a coastline location had been considered as a likely cause of failure. John Addario answered that there had been extensive discussion on potential contributing factors such as location, local environment, areas subject to frequent flooding, and others. He mentioned that the County and ICC are developing an appendix that includes setting building zones and asked Dorothy Mazzarella, representing ICC to share additional information.

Dorothy Mazzarella noted that Florida has a similar adoption process for building codes as New York State; however, there is no statewide property maintenance code. Dorothy Mazzarella also noted that the codes are continuously updated with lessons learned from every disaster.

Claudia Braymer noted that, per the Senators' letter, the Property Maintenance Code needs to be expanded to include structural systems. Robert Hughes indicated that while codes are foundational, enforcement is very important and stressed the need for education for code enforcement officers and better staffing of building departments. Timothy DeRuysner noted the level of detail needed for structural inspections and suggested the work be performed by design professionals with structural expertise rather than burdening code officials. Shawn Hamlin added that failures could be the result of construction issues, underscoring the importance of site inspections and special testing/inspections.

Chairperson Tebo proposed the creation of another Workgroup to focus on these issues and requested that William Tuyn, Timothy DeRuysner, Shawn Hamlin, and Robert Hughes, who are members of the current Workgroup, be part of the new group, and asked that elected officials and any other interested Code Council members reach out to the Chairperson or the DBSC.

Agenda Item 6. Director Update

John Addario spoke about the following:

- After today's meeting, the DBSC will no longer be providing continuing education credits for attending Code Council meetings because the content and length of each meeting varies significantly making it impossible to assign a topic area or the number of the applicable credits as well as its overall inconsistency with approving courses based on the regulations.
- Training has continued virtually since May 2020. Four hundred (400) code enforcement officials were certified in 2020, and over six hundred (600) are on track to be certified this year with certification taking place within approximately four (4) months.
- Public comment period for Part 1203 ended in July and DBSC is assessing public comments. The Notice of Adoption will be filed shortly thereafter, providing local governments about a year to update their local laws and code enforcement programs.
- The Climate Leadership and Community Act (CLCPA) Climate Action Council is finalizing the scoping plan including recommendations to adopt code updates sooner but that legislative changes are needed in light of the 10-year payback.
- The ICC hearings are next week and DBSC has several code change proposals that will be heard. Dorothy Mazzarella added that the hearings will be webcast so anyone can view.
- Staff continues to evaluate the 2021 I-Codes. Chairperson Tebo noted that the NYS 2020 Codes already include a number of important 2021 Code provisions.

Agenda Item 7. Workgroup Update

Kevin Duerr-Clark provided an update on the two Workgroup meetings held since the last Code Council meeting which focused on completing all topics, topic summaries, and executive summary of the report with the goal to finalize the report in November and present it to the Code Council at the December 2021 meeting. Kevin Duerr-Clark provided the list of all of the topics being reviewed by the workgroup as follows:

1. Fire Code Section 903.2.11.3 of sprinkler pipe of 55' vs 30'
2. Heat detection and alarm connection for multiple-station smoke alarms for attached garages vs 45-minute separation
3. Deletion of emergency responder radio coverage in existing buildings
4. Deletion of mobile fueling operations
5. Deletion of several exceptions in ICC language about fire partitions when they are and are not required
6. Changes to fire command center sizing charts
7. Updating to the current sprinkler standards for NFPA 13, 13R, 13D, 14, 20, 24, and 72 updating to the 2019 versions as opposed to versions currently in the code.
8. Townhouse sprinkler discussion
9. Sprinkler provisions for new bed and breakfasts
10. The use of 10-year battery backups in smoke detectors
11. Interconnection of new smoke alarms using wireless technology
12. Updating reference standard NFPA 72 to use 7th edition of UL 217 regarding smoke alarms and 8th edition of UL 268 regarding smoke detectors
13. Performance Code.

Agenda Item 8. Public Comment Period. None.

Agenda Item 9. Future Meetings

The next Code Council meetings is scheduled for December 3, 2021.

The schedule for 2022 is: March 4, June 24, September 23, and December 9. Chairperson Tebo reminded Code Council members of the option to hold an extraordinary meeting if necessary.

Agenda Item 10. Other Business. None

Hearing no other business, Chairperson Tebo made a motion to adjourn. The motion carried by unanimous voice vote.

The meeting adjourned at approximately 11:36 a.m.