

STATE OF NEW YORK
DEPARTMENT OF STATE

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Minutes of the NYS Fire Prevention and Building Code Council meeting on Friday, September 23, 2022, commencing at 10:02 a.m. and held by videoconference at:

- ❖ 99 Washington Avenue, Albany, NY, Conference Room 505;
- ❖ 123 Williams Street, NYC, NY, Conference Room 231; and
- ❖ 295 Main Street, Buffalo, NY, Conference Room 803.

Council members and designees present:

Matthew Tebo, Presiding (Albany)
Vincent Rapacciuolo (Albany)
Joseph M. DeStefano (Albany)
Claudia Braymer (Albany)
Joseph Toomey (Albany)
Shawn Hamlin (Albany)

Timothy DeRuyscher (Albany)
Robert Hughes (Albany)
William Tuyn (Buffalo)
Dominic Marinelli (Buffalo)
Joseph Palozzola (NYC)
Keith Wen (remote location)

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

Agenda Item 1. Welcome.

Chairperson Tebo called the meeting to order.

Chairperson Tebo welcomed back Keith Wen, designee for the newly appointed Mayor of New York City, Eric Adams.

Kevin Duerr-Clark read the roll of people attending at each location open to the public to establish a quorum, then read the names of those attending from a remote location (not open to the public). Eleven (11) members attended from locations open to the public, and one (1) member (Keith Wen) participated via videoconference from a remote location. Chairperson Tebo noted that a quorum was present, called the meeting to order, and asked Kevin Duerr-Clark to explain the meeting procedures.

Kevin Duerr-Clark explained the general rules and procedures for the meeting.

Chairperson Tebo asked if there were any agenda changes. Kevin Duerr-Clark stated that there was a small change to the agenda; the City of Ithaca made a slight revision to the supplement that was included in their energy code filing, subsequently, the agenda was revised. The new agenda, and updated meeting packet, were sent to the Code Council members in advance of the meeting.

Chairperson Tebo noted that the Executive Order allowing remote meetings was not extended and that from now on meetings will follow the procedures established pursuant to the new Public Officers Law §103-a, which took effect June 8, 2022; then added that the new law allows Code Council members to attend remotely in extraordinary circumstances upon request in accordance with the resolution and written procedures adopted by the Code Council, and that Keith Wen exercised that allowance for today's meeting.



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Agenda Item 2. Draft Minutes – June 17, 2022

Chairperson Tebo asked if anyone wished to propose changes to the minutes of the June 17, 2022 meeting. Hearing none, Chairperson Tebo made a motion to adopt the minutes without changes. Joseph Toomey seconded the motion. Keith Wen, Timothy DeRuyscher, and Joseph DeStefano abstained from voting because they did not attend that meeting. The motion was approved unanimously, by voice vote, by the remaining nine (9) Code Council members.

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

Emma Gonzalez-Laders presented the Energy Code filings in 3 groups: (1) two filings that are adoptions of NYStretch without modifications, (2) three filings that are adoptions of NYStretch severing the mechanical ventilation provisions of Section R403.6.2, and (3) two filings that are adoptions of a local energy code supplement. Emma Gonzalez-Laders noted that most filings were made within the required 30 days of adoption (with two exceptions) and are therefore enforceable until, and unless, the Code Council determines they are not more restrictive; then went on to say that the Village of Nyack filed 39 days after adoption, and the City of Ithaca filed an amended version 69 days after adoption, and that neither is enforceable until, and unless, the Code Council determines them to be more restrictive than the State Energy Code. The Energy Code filings were then presented in the following order.

- Village of Nyack – LL No. 3 of 2022
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and moved by Chairperson Tebo, seconded by Robert Hughes, unanimous approval by roll call vote.
- Town of Marbletown– LL No. 8 of 2022
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and moved by Chairperson Tebo, seconded by Shawn Hamlin, unanimous approval by roll call vote.
- Village of Croton-on-Hudson– LL No. 7 of 2022
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and moved by Chairperson Tebo, seconded by Joseph Toomey, unanimous approval by roll call vote.
- Town of New Lebanon – LL No. 2 of 2022
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and moved by Chairperson Tebo, seconded by Robert Hughes, unanimous approval by roll call vote.
- Town of Danby – LL No. 5 of 2022
 - Motion to approve the local energy code as more restrictive read by Panagiota Hyde and moved by Chairperson Tebo, seconded by Claudia Braymer, unanimous approval by roll call vote.

Emma Gonzalez-Laders presented the last two filings from the City of Ithaca and the Town of Ithaca, who jointly developed the Ithaca Energy Code Supplement (IECS) and each adopted substantially similar versions. The City of Ithaca adopted the IECS through Ordinance #2 of 2021 on 5/5/2021, then revised it on 7/13/2022; and the Town of Ithaca adopted LL #5 of 2021 on 6/14/2021 adding a new Chapter 144 to the Town of Ithaca Code, entitled Energy Code Supplement (LL #5 was later amended by LL #8 of 2022). It was noted that the revisions of the IECS were editorial and contained some clarifications and increased the energy efficiency of one lighting power density provision.

Emma Gonzalez-Laders then described the nuances of the IECS in the following manner:

- Similar to NYStretch, the IECS was developed to be an overlay and not a replacement of the State Energy Code, though the actual content of the supplement is different from the contents of NYStretch. Compliance with the State Energy Code in its entirety is a prerequisite of the local code and additional provisions apply.
- While the specific details often vary, the IECS includes for both Commercial and Residential buildings a prescriptive compliance path and a performance-based compliance path. The prescriptive path is a point-based system which includes broad provisions for sustainability, energy efficiency, and Greenhouse Gas (GHG) emissions reduction where a minimum number of points must be earned. The performance-based path requires compliance with one of several nationally recognized third-party, above code, standards.
- The IECS includes a glide path that, in their estimation, will result in a 40% reduction in GHG emissions in the first year, an 80% reduction in the 2nd year, and net-zero carbon new construction in 2026.

Emma Gonzalez-Laders closed the presentation by noting that, regardless of the compliance path chosen, the provisions of the IECS apply above and beyond the provisions of the State Energy Code and are more restrictive than those of the State Energy Code, and the Division recommends that the Code Council find that the local energy code adopted by the City of Ithaca (as revised), and the local energy code adopted by the Town of Ithaca (as amended), are more restrictive than the State Energy Code, provided that such local energy codes are interpreted and enforced as follows:

1. Variances granted by the local jurisdiction due to unreasonable hardship apply only to those provisions of the local energy code that are more restrictive than the State Energy Code.
2. Regardless of how the local code defines and addresses Residential and Commercial buildings - it does not change the definitions, the scope, or how the provisions of the State Energy Code apply to Residential or Commercial buildings.
3. Where the local energy code references the National Electric Code (NEC) "in effect at the time of application for a permit" it shall be interpreted to mean the version of the NEC incorporated by reference in the State Energy Code.
4. As it pertains to the Town of Ithaca, in Chapter 144 of the Town Code, the term "ECCCNYS" shall be interpreted to mean the State Energy Conservation Construction Code in its entirety.

Chairperson Tebo asked if anyone had any questions. Robert Hughes wanted to verify that both the City and Town can only grant variances to the more restrictive local energy code provisions and not to the State Energy Code provisions. Emma Gonzalez-Laders confirmed.

Claudia Braymer asked whether these conditions were mentioned to each of the municipalities. Emma noted that there was no reason to believe the municipalities' understanding was otherwise, that representatives of the municipalities were listening to the meeting, and that they would be notified as part of the Code Council's determination today.

Kevin Duerr-Clark noted that the Robert Fell-DeWalt for the City of Ithaca and Marty Mosely for the Town of Ithaca were in attendance.

Shawn Hamlin noted that where the definitions applicable to the State Energy Code differ from the IECS definitions it could be confusing for a design professional. Emma explained that the local code applies and applications are reviewed in parallel to the State Energy Code and the paths don't cross.

Bill Tuyn was not comfortable with the change of definitions and wanted to confirm that the provisions are still more restrictive than the State Energy Code for mixed use buildings. Emma Gonzalez-Laders confirmed.

Kevin Duerr-Clark read comments posted in the Webex chat from Robert Fell-DeWalt and Marty Mosely. Robert Fell-DeWalt noted that the intent is to supplement the State Energy Code and not intended to lessen the requirements; Marty Mosely noted that the IECS is intended to be a supplement to the State Energy Code and that if there is a conflict in provisions then the more stringent standards of State Energy Code are applicable.

- City of Ithaca – Ordinance No. 2021-02
 - Motion to approve the local energy code as more restrictive, provided that the local energy code is interpreted and enforced with conditions, read by Panagiota Hyde and moved by Chairperson Tebo, seconded by Joseph DeStefano, unanimous approval by roll call vote.
- Town of Ithaca – LL No. 5 of 2021 and LL No. 8 of 2022
 - Motion to approve the local energy code as more restrictive, provided that the local energy code is interpreted and enforced with conditions, read by Panagiota Hyde and moved by Chairperson Tebo, seconded by Joseph Toomey, unanimous approval by roll call vote.

Chairperson Tebo thanked Emma Gonzalez-Laders and her staff for their work.

Agenda Item 4. Other More Restrictive Local Standards and Energy Code Filings

Chairperson Tebo invited Kevin Duerr-Clark to present the next agenda item titled Other More Restrictive Local Standards and Energy Code Filings. Kevin Duerr-Clark noted that the Division, on behalf of the Code Council, received a few more restrictive local standards for construction submissions, but for several reasons, they are not ready to be formally presented to the Code Council at this time. Kevin Duerr-Clark stated that the Division staff will continue their review and present them at the next appropriate meeting. Finally, Kevin Duerr-Clark noted that Division staff have completed their coordination with the Village of Elmsford as requested by the Code Council at the March 2022 meeting and will review any new Notice and Petition submitted by the Village.

Agenda Item 5. Uniform Code and Energy Code

Chairperson Tebo invited Kevin Duerr-Clark to present a timeline for the next Uniform Code and Energy Code update. Kevin Duerr-Clark mentioned that this agenda item is intended to be used throughout the code update process to keep the Code Council informed of the progress and to allow for a dedicated space on the agenda for any discussion on the topic, and then presented the following:

- As determined by the Code Council at the March 2022 meeting, Division Staff has begun coordinating and planning a code update based on the 2024 International Code Council Model Code books. The first step in that process is to develop a detailed timeline of the code adoption process as well as to analyze the previous adoption to determine if there are ways to improve and streamline the process.
- The 2024 model codes are currently in their final stages, having just finished the Group B public comment hearings last week. It is anticipated that the changes will be finalized by the end of this year and that the published books will be available between March and September of 2023. Accordingly, the high-level schedule at this time has Division Staff presenting the changes included in the 2021 and 2024 model code books as well as any code change proposals received by the public and other state agencies over the next four

meetings. Following that, a notice of rule in development which is the first step in the adoption process, is anticipated in the fall of 2023.

- Division Staff is working closely with the International Code Council to streamline the incorporation of the NYS specific changes into the 2024 model codes. This includes staff utilizing the publishing software used by ICC to insert the changes needed directly into the code books, and a closer collaboration with ICC publishing staff.
- Staff anticipates having a more detailed schedule available to share with the Code Council members at the December meeting, as well as the first round of proposed changes.

Chairperson Tebo added that the goal is to adopt the ICC 2024 code books in 2024 in order to stay as closely aligned with ICC as possible, but noted that to achieve it will require a tight schedule and it will be a strain on staff and members over the next year. Chairperson Tebo then asked if there were any questions. Robert Hughes asked if it is reasonable to adopt the new codes by 2024. Chairperson Tebo expressed his belief in the possibility, but added that, because the New York State regulatory process has a number of built in requirements that take time, the 2024 NY State code books may not go live until 2025. Then added that it is likely that there will be code change discussions at every meeting and encouraged Code Council members to carefully review materials sent between meetings and to ask Kevin, Emma, John, and himself questions.

Keith Wen asked when the Code Council should anticipate seeing the proposed changes. Kevin Duerr-Clark noted that the expectation is for the ICC 2024 language to be finalized at the end of the Fall 2022, and that staff will continue to review the changes and make presentations at each of the next 4 meetings. Chairperson Tebo added that there will be an increasing level of detail in the language over the next year and the proposed changes will progress from conceptual to final language in late 2023.

Agenda Item 6. Division Update

John Addario presented the Code Council with the following updates:

- In 2021, as a result of legislation, a Radon Task Force was created. John Addario participates on the Task Force as the designee for the Secretary of State. The Task Force is drafting a report to be presented to the Governor, Senate, and Assembly. Part of the report is a recommendation that the Code Council consider the adoption of the ICC's Residential Code Radon Control Methods appendix in the next code update. Currently, the appendix is included in the NY Residential Code for informational purposes only: it was not specifically adopted, and therefore not a requirement. This would result in all new homes being built in local governments where there are known high levels of radon to include passive radon systems. Some of the other recommendations in the report are: the addition of statewide licensing for testers and mitigators, disclosure at the point of real estate transaction, and a few other related education and outreach components. The report is projected to be released for public comment in October
- Part 1203 minimum standards for administration and enforcement will go into effect December 30, 2022, at which time local governments will need to have updated their local law. The division has drafted a model local law for municipalities to use as a reference. Technical Support and counsel have been fielding questions and assisting local governments with this process.
- Similar to Part 1203 for local governments, DOS has regulations for enforcement in Part 1202. John Addario stated that staff have started the rule making process, to make changes to Part 1202, with the goal of having 1202 coincide with the changes made in part 1203. The amended Part 1202 will be published in the state register on September 28th and a public hearing is scheduled for November 30th.
- The public hearing for the Group B, ICC 2024 code changes was held in Kentucky. The Division had close to 15 proposed changes. Division staff defended a few proposals that

were denied at the committee action hearings and are now simply waiting for the final vote and determination to be made by the governmental members in the very near future. John Addario expressed thanks to all staff for their hard work and long hours defending our proposals.

Chairperson Tebo thanked John Addario for the update; noted that once the radon report is released, it will be sent to the Code Council for their review. Chairperson Tebo then reiterated gratitude toward the staff for their work at the hearings.

Agenda Item 7. Public Comment Period

Chairperson Tebo opened the floor for public comment. No one from the public wished to provide comment.

Agenda Item 8. Future Meetings

The remaining Code Council meeting date for 2022 is December 9. Chairperson Tebo reminded the members that from now on, unless there is a new Executive Order, the meetings will be held in person. The scheduled dates for 2023 are March 31, June 23, September 22, and December 1. Chairperson Tebo asked members to let staff know of any potential conflicts with those dates.

Agenda Item 9. Other Business.

Chairperson Tebo asked if there was any other business for the Code Council. Kevin Duerr-Clark noted that staff sent a letter to the Department of Environmental Conservation (DEC) with comments on their petroleum bulk storage regulations following a meeting between staff and DEC. The main takeaways were as follows: DEC regulation should acknowledge the existence of the Uniform Code, the Uniform Code trumps any design and construction standards in the DEC regulation, that no major conflicts were found during staff review, and that some of their reference standards were outdated and should match the reference standards in the current Uniform Code.

Chairperson Tebo asked if anyone had any questions. Hearing none, Chairperson Tebo proceeded to thank everyone for attending, and adjourned the meeting.

The meeting adjourned at approximately 11:05 a.m.