

STATE OF NEW YORK  
**DEPARTMENT OF STATE**

ONE COMMERCE PLAZA  
99 WASHINGTON AVENUE  
ALBANY, NY 12231-0001  
HTTPS://DOS.NY.GOV

KATHY HOCHUL  
GOVERNOR

ROBERT J. RODRIGUEZ  
SECRETARY OF STATE

Draft minutes of the NYS Fire Prevention and Building Code Council meeting on Friday, December 9, 2022, commencing at 10:01 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, New York, in Conference Room 803.

**Council members and designees present:**

Matthew Tebo, Presiding (Albany)  
Benjamin Keller (Albany)  
Michael Weber (Albany)  
Vincent Rapacciuolo (Albany)  
Joseph M. DeStefano (Albany)  
Claudia Braymer (Albany)  
Joseph Toomey (Albany)  
Timothy DeRuyscher (Albany)

Robert Hughes (Albany)  
William Tuyn (Buffalo)  
Dominic Marinelli (Buffalo)  
Michael Spano (NYC)  
Keith Wen (remote location)  
Patrick Dolan (remote location)

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

**Agenda Item 1. Welcome.**

Chairperson Tebo called the meeting to order, and stated that there was a short agenda today, as several items that were originally on the agenda were removed at the request of the municipalities involved. Chairperson Tebo stated that this meeting would include planning for future meetings, which are likely to be longer than average meetings.

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). Chairperson Tebo noted that a quorum of twelve (12) members were in attendance at locations open to the public, and two (2) members (Patrick Dolan and Keith Wen) were participating via videoconference from a remote location not open to the public. Chairperson Tebo then introduced Mayor Michael Spano, who was appointed to the Code Council for the “city over 100,000 population” seat, stating that Mayor Spano is from the City of Yonkers. Mayor Spano thanked Chairperson Tebo, greeted the Code Council, and noted they are excited to learn and looking forward to their time on the Council. Mayor Spano also thanked the Governor for the appointment.

Chairperson Tebo stated that, looking ahead, it is anticipated that all seats on the Code Council will be filled prior to the March meeting. Chairperson Tebo proceeded to explain the general rules and procedures for the meeting, and asked if there were any agenda changes, to which Kevin Duerr-Clark replied that there were none.

**Agenda Item 2. Draft Minutes – June 17, 2022**

Chairperson Tebo asked if anyone wished to propose changes to the minutes of the September 23, 2022 meeting. Hearing none, Joe Toomey made a motion to adopt the minutes without changes. Tim DeRuyscher seconded the motion. Michael Spano, Benjamin Keller, Patrick Dolan, and Michael Weber abstained from voting because they did not attend that meeting. The



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motion was approved unanimously, by voice vote, by the remaining ten (10) Code Council members.

### **Agenda Item 3. Chapter 651 of the Laws of 2022 – New Legislation for Hot Tubs and Spas**

Chairperson Tebo introduced the next agenda item and stated that Panagiota Hyde would speak on this topic.

Panagiota Hyde presented that on November 23, 2022, a Bill was signed by the Governor as Chapter 651 of the Laws of 2022 along with Approval Message No. 33. The law amends the Executive Law to provide that hot tubs and spas equipped with a safety cover which complies with ASTM F1346 (2003), or any similar standard which may be approved by the Code Council, are exempt from the pool alarm and barrier requirements of Subdivision 14. The original bill as signed extended the exception to swimming pools with an automatic power safety cover; however, the associated Approval Message No. 33 noted that there will be a Chapter Amendment to clarify that the legislature only intended to exempt hot tubs and spas with safety covers from both the pool alarm and barrier requirements of Subdivision 14 and that swimming pools with automatic power safety covers would still only be exempt from the pool alarm requirements, not the barrier requirements.

Chairperson Tebo asked if there were any questions.

William Tuyn asked what happens with application of the code in the interim before the code is amended. Panagiota Hyde noted that the Uniform Code provisions that are currently in effect are applicable. The statute lists the items that the Code Council is authorized to include within the Uniform Code, and with an immediate effective date it is not possible to immediately update the Uniform Code, especially in light of the Approval Message which indicates that there will be a Chapter Amendment changing the law.

Chairperson Tebo stated that typically the legislature would give 90 or 120 days before the new legislation was effective, but that in this case they did not, and it is not expected that the chapter amendment will include a change to the effective date.

Robert Hughes asked why, since this exception was present in the prior version of the code, it was not included in this version of the code. John Addario stated that during the previous code update cycle, DOS staff determined that the existing legislation was unclear on whether it allowed this exception for hot tubs and spas, and as such this exception was omitted. Since this new law clarifies the legislation, the code will be amended to include this exception.

William Tuyn moved for conceptual approval to allow the Department to file a Notice of Proposed Rule Making to amend the Uniform Code once the Chapter Amendment is signed, so that the Code Council may be in a position to vote on a Notice of Adoption at the next Code Council meeting scheduled for March 31, 2023. The motion was seconded by Robert Hughes and passed unanimously by voice vote.

### **Agenda Item 4. Division Update**

John Addario presented the Code Council with the following updates:

- The Radon Task Force is drafting a report which includes the recommendations that the Code Council adopt the Radon Appendix in the next code update. The draft report should be finalized early 2023.
- The final scoping plan from the Climate Action Committee is expected early 2023, with chapter 12 focusing on recommendations relating to buildings.

- The 2 million climate friendly homes initiative draft action plan will also be released early 2023.
- Part 1202 Notice of adoption was filed today, will appear in the State Register on December 28th, and will become effective December 30th which coincides with the Part 1203 effective date.
- As part of the next Code update the Division will coordinate with other State agencies, such as DEC, DOH, NYSEDA, and OPRHP concerning historic buildings meeting the Energy Code.

Joseph Toomey inquired about the Miami Florida building collapse, John Addario stated that he believes that the investigative report is not expected for a couple more years, but will follow up to confirm.

Robert Hughes mentioned that the new Part 1203 has language which requires the local AHJ to follow-up on code issues for schools. John Addario and Kevin Duerr-Clark clarified that this is not a new requirement, only gives the option for third-party inspections of schools, and was intended to keep the local jurisdiction informed of conditions at the schools. Kevin Duerr-Clark stated that this subject would be covered as part of the new Part 1203 training course that is under development. Joseph DeStefano asked if it is a mandate for local governments to inspect public schools. Kevin Duerr-Clark noted that it is not a mandate, but it allows the local government to be informed of the inspection because it is permissible to allow other parties to perform the inspections. Kevin Duerr-Clark reiterated that it will be covered in training. Robert Hughes discussed his concern that the new language requires the local municipality to follow up on code violations in a facility for which the local municipality lacks historical knowledge.

Michael Weber discussed that the State Environmental Bond Act was recently adopted and will result in the significant construction; questioning if the related construction would be completed under the current codes or would it be necessary for the Code Council to make modification to the code to meet the goals. Claudia Braymer asked how implementation of the recommendations of the climate action scoping document will be carried out, and whether NYStretch will become uniform across the State instead of having to approve individual communities.

Chairperson Tebo identified that any construction performed as a result of the bond act will be constructed under the Code in effect at the time of the Permit, therefore many projects will be constructed in compliance with the current code. Chairperson Tebo noted that some of the recommendations in the CLCPA and the two million homes report will require legislative action in order for the for the Code Council to be able to implement the recommendations. For example, full electrification will require a legislative action, as there is specific language in the law that prohibits favoring a specific energy type.

William Tuyn made a comment in hopes that the legislature is taking recommendations from the technical staff, stating that the grid may not have capacity to build according to the full electrification goals; with concerns that pragmatic or practical sequencing is not being considered in the overall plan by the legislators. William Tuyn stated that utility providers believe that the grid does not have capacity to provide power to these electrified homes. William Tuyn further expressed that the housing industry plays a significant role in the economy and that the lack of capacity in the grid may cause a disruption in the housing industry. William Tuyn closed by stating that the development of the grid is critical, and it needs a lot of work.

Timothy DeRuyscher asked for an overview of the “big picture” plan, and Chairperson Tebo recommended transitioning to the next agenda item.

### **Agenda Item 5. Uniform Code and Energy Code**

Based on the requests from the Code Council for the Division to work on streamlining the process for this upcoming code update, Kevin Duerr-Clark provided a basic overview of the code

update process, including some changes to streamline the code update process such as the use of the publishing software Adobe FrameMaker, and a new Notice of Rule in Development approach where the code changes will be summarized and highlighted (instead of the previous method which involved developing draft code books). The highlighted modifications will include the changes from the ICC code development process, legislative directives, and public comments. A mockup document will be transmitted to the members for their review, potentially next week.

The notable 2021 changes were presented during March Meeting and a draft of the 2024 code changes is projected to be available for the first Code Council meeting in 2023. The 2024 and 2021 changes will then have to be blended and combined with regulation and public comment changes and presented at subsequent meetings.

Chairperson Tebo mentioned that we will not have the 2024 ICC books until sometime between March and September, necessitating the use of the monographs in the meantime. In order to complete the Uniform Code update in 2024, Chairperson Tebo stated that it is necessary to enter the rule in development phase in September. John Addario informed the Code Council that the appeals process has not concluded yet for the 2024 ICC books. Chairperson Tebo requested the members review the document and provide staff comments to staff in-between meetings. Chairperson Tebo expects to be in the Notice of Proposed Rule Making phase in January 2024, and this method is necessary to maintain the 2024 update schedule while complying with the SAPA process.

Timothy DeRuyscher noted that we are following the process that ICC uses to see the changes to the documents, and asked how the public code change proposal will be incorporated. Kevin Duerr-Clark replied that those suggestions will be incorporated into the document and will be available as a PDF with links to the actual code language and the source of the change identifying it as a 2021 ICC change, 2024 ICC change, Legislative change, or a public proposal.

Keith Wen noted that there was a March 2022 staff highlight on the potential changes from the 2021 ICC codes which he did not receive, as he was reappointed in September, and asked for a copy of that document. Keith Wen stated that his understanding, looking at the March minutes, was that there was a discussion about Climate Action Council reports making several recommendations that would impact the Code Council and a couple of bullet points noted there should be achievements by 2030 for electrification and greenhouse gas reduction. Keith Wen inquired if, given the expectation for a Uniform Code update to be ready in 2024, are we still on target to address the recommendations for the Climate Action Council.

Chairperson Tebo noted that we are on track to adopt NYS codes at the end of 2024 so we can meet recommendations that the Code Council chooses to take up and has the legislative authority to take up.

Keith Wen asked that, if the Council members should be reviewing changes in between the quarterly meetings, whether there will be opportunities for the council members to discuss changes in between meetings.

Chairperson Tebo noted that right now due to the open meetings law, the members can meet outside of our meetings in numbers less than quorum which is 9 members. The statute requires four meetings per year, but the Chair can call additional meetings if necessary. Chairperson Tebo stated that the current plan is to have members individually review the changes and provide feedback to Department of State staff, and that any shared questions or items which require discussion can be raised at the next meeting.

Robert Hughes noted that the commentary from ICC gives understanding and improves enforcement in local jurisdictions, and stated that it might be helpful to create some kind of commentary since we are jumping a code cycle.

Chairperson Tebo noted that there is discussion about trying to get as much commentary available as possible to code users.

Timothy DeRuyscher similarly stated that it would be helpful if the rationale and history of NY code changes could be provided.

#### **Agenda Item 6. Public Comment**

Chairperson Tebo opened the floor for public comment.

Michael Hernandez, the Director of Policy for the organization “Rewiring America,” made comments regarding the Climate Action Council scoping plan; drew a distinction between the legislative delegating authority to make changes to the codes versus a mandate to make changes; and opined that the law passed July 2022 was a directive for the Code Council to update the code to reflect the carbon reduction goals in CLCPA and the final scoping plan, including specifically the electrification of new construction in NYS.

Chairperson Tebo thanked Michael Hernandez for his comments and asked if anyone else would like to speak. Hearing none, the public comment portion of the meeting was close.

#### **Agenda Item 7. Future Meetings**

The 2023 scheduled meeting dates are as follows: March 31, June 23, September 22, and December 1.

#### **Agenda Item 8. Other Business.**

Hearing no other business, Chairperson Tebo made a motion to adjourn. The motion was carried by a unanimous voice vote. Chairperson Tebo thanked staff and wished everyone a happy holiday.

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