

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 29, 2023, commencing at 10:02 a.m. and held by videoconference at:

- ❖ 99 Washington Avenue, Albany, NY, Conference Rooms 505, 1112, and 1135;
- ❖ 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)

Ben Keller (Albany)

Michael Weber (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)

Keith Wen (Remote)

Patrick Dolan (Remote)

Michael Sabatino, Jr. (NYC) (Joined at 10:32 am)

Staff present: John Addario, Panagiota Hyde, David Gonzalez, Kevin Duerr-Clark, Daniel Carroll, Chad Sievers, China Clarke (NYC), Gregory Benton, (Albany - Overflow room 1135), Jeanne Rice (Albany - Overflow room 1112)

Agenda Item 1. Welcome.

Chairperson Tebo called the meeting to order at 10:02 am, summarized the meeting agenda, and mentioned that a short recess would be called for lunch around 11:30 as needed.

Kevin Duerr-Clark called the roll and announced that twelve (12) Code Council members were present in locations open to the public, and two (2) Code Council members were present remotely at locations not open to the public. Kevin Duerr-Clark reminded speakers at other locations to announce their name when they begin speaking and to place the room on mute when they were done speaking. Kevin Duerr-Clark stated that there are 16-18 people who signed up to give public comment and noted that, to allow all commenters to have time to speak, public comments will be limited to three (3) minutes per public speaker.

Chairperson Tebo asked if there were any agenda changes and Kevin Duerr-Clark replied that there were none.

Agenda Item 2 – Draft Minutes of June 23, 2023, Meeting.

Chairperson Tebo asked if anyone wished to propose changes to the draft minutes of the June 23, 2023, meeting. Hearing none, Chairperson Tebo asked for a motion to accept the draft minutes. Joe Toomey moved to approve the minutes and Dominic Marinelli seconded the motion. The motion was unanimously approved by voice vote.



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Agenda Item 3 - Notice of Adoption - Part 1263 Implementation of State Environmental Quality Review Act.

Chairperson Tebo introduced agenda item 3, the Notice of Adoption (NOA) for Part 1263 Implementation of State Environmental Quality Review Act (SEQRA), which was previously presented to the Council at the June meeting. Panagiota Hyde stated that the Notice of Proposed Rule Making (NPRM) was published in the State Register on July 5, 2023, and that no individuals attended the public hearing held on September 6, 2023. Panagiota Hyde noted that one comment letter was received and that non-substantive changes were made to the rule in response to this comment in order to complement DEC's regulations found in 6 NYCRR §617.5(c)(11). Chairperson Tebo asked the members if they had any discussion regarding the rule and the two proposed motions. Hearing none, Chairperson Tebo asked Panagiota Hyde to present the motions.

Panagiota Hyde read a motion regarding no significant environmental impact and no significant coastal impact for this NOA, as well as authorizing Kevin Duerr-Clark to sign and deliver forms, on behalf of the Code Council and DOS, which was moved by Chairperson Tebo, seconded by Joe Toomey, and approved unanimously (14 votes, Michael Sabatino was absent).

Panagiota Hyde read a motion for adoption of permanent rule to repeal and replace Part 1263, effective upon publication of the NOA in the State Register, which was moved by Chairperson Tebo, seconded by Ben Keller, and approved unanimously (14 votes, Michael Sabatino was absent).

Agenda Item 4 – Division Update.

Chairperson Tebo introduced agenda item 4, stating that the Division is currently very busy working on the code update, then asked John Addario to provide an update.

John Addario noted that Division staff continues to work with other agencies in various workgroups, including workgroups on micromobility devices with lithium-ion batteries. John Addario noted that the lithium-ion battery workgroup has some proposed code-related matters, and noted that staff have informed the workgroup that the Code Council will be considering adopting the 2024 International Fire Code during this code update process, which contains provisions addressing the use of powered micromobility devices, including: prohibiting the use of residential occupancies for charging of commercially-owned micromobility devices; requiring powered micromobility devices to be charged in accordance with manufacturer's instructions using only manufacturer-provided charging equipment; requiring powered micromobility devices to be listed and labeled in accordance with UL standards; and provides requirements for when commercial charging locations must meet certain fire safety provisions, such as a fire safety plan.

John Addario stated that the ICC code development process, which will make changes to the 2024 code in order to develop the 2027 code, would be starting in April of 2024. John Addario noted that some Division staff have been appointed to ICC committees: Jeanne Rice was appointed to the IBC structural committee, Kevin Duerr-Clark was appointed as an IEBC committee alternate, Emma Gonzalez-Laders and China Clark were appointed to the Residential interpretation committee, Chris Jensen was appointed to the Energy Code interpretation committee, and Brian Tollisen sits on the ICC 1100 spray foam committee. John Addario noted that New York City has several appointments on the ICC committees as well. John Addario stated that the Division anticipates that they will submit several change proposals to the 2024 ICC code change process.

Kevin Duerr-Clark then provided an overview of current MRLS under review. Kevin Duerr-Clark stated that there is one MRLS under review – the Town of Goshen, NY, which has submitted an MRLS related to flood provisions. Kevin Duerr-Clark stated that staff have begun the review and have scheduled a meeting with the town to discuss outstanding questions and concerns.

Following this meeting, staff will finish reviewing the MRLS and develop an analysis, which will be provided to the Code Council members.

Agenda Item 5 – Uniform Code and Energy Code Development Update.

Kevin Duerr-Clark provided an update to the status of the code development process for the Uniform Code and Energy Code. Kevin Duerr-Clark stated the following:

- At the June 2023 meeting, Division staff provided draft version 2.0 code development documents for the Uniform Code, which contained changes made through the 2024 and 2021 ICC development cycles. However, the Building Code document was not complete for the June 2023 meeting and only contained 50% of the 2021 ICC code change proposals. Version 2.1 was provided prior to this meeting and includes all IBC 2024 and 2021 changes.
- For the Energy Code, Version 1.0 of the draft development document, presented at the March 2023 meeting, included some changes necessitated by the Advanced Building Codes Act of 2022, including treatment of historic buildings; consolidation of exceptions; and consideration of “clean energy” and “greenhouse gas emission” reductions.
 - The draft version 2.0 Energy Code documents contain some of the goals set in the Scoping Plan for the Climate Leadership and Community Protection Act (CLCPA), such as: provisions of the 2021 IECC and provisions of NYStretch 2020 that modify the ECCCNY and were not anticipated to change further in the development of the 2024 IECC; and proposed changes received from the public since publication of the 2020 ECCCNY.
 - Future versions of the energy code documents will include provisions of NYStretch 2020, NYSERDA’s AEE proposals, other NYS specific changes, changes from the 2024 IECC development cycle, and any remaining CLCPA recommendations.
- Since June, Division staff have been working on advancing the development of the next version of the draft documents by reviewing and incorporating New York State specific modifications, including changes which were made in the 2020 code, and changes which must be made based on recent legislation, such as the ban on fossil fuels, the Advanced Building Code Act, and the CLCPA.

Kevin Duerr-Clark noted that the code update process necessitates coordination with a number of other state entities, and that coordination with said entities is underway. Kevin Duerr-Clark highlighted recent coordination with the Historic Preservation office and upcoming coordination with the Department of Public Service. Kevin stated that version 3.0 of the draft documents was anticipated to be completed and issued by the 1st quarter of 2024.

Kevin Duerr-Clark stated that a representative of NYSERDA had attended the meeting with intent to speak about the NYSERDA process and timeline. Kevin Duerr-Clark noted that, due to required rule-making procedures (such as the SAPA process), the Codes would be effective approximately one year after NYSERDA’s regulation is adopted, though this time would be increased if substantive changes are needed due to public comments.

Chris Corcoran from NYSERDA spoke about recent legislation requiring NYSERDA to update the cost effectiveness criteria for considering revisions to the Energy Code, including life cycle costs of buildings and societal effects. Chris Corcoran stated that there will be a number of opportunities for public comment on the proposed criteria, with NYSERDA hosting 4 public meetings across the state and virtually from October 17th through October 27th. NYSERDA will then provide the Code Council with a comprehensive overview of the proposed cost effectiveness criteria, incorporating any changes based on public comments, at the December

Code Council meeting. Chris Corcoran noted that NYSERDA is targeting the formal rulemaking kickoff in January 2024, with a final adoption in May 2024.

Chairperson Tebo stated that the code update process cannot move forward until NYSERDA is finished developing the new cost effectiveness criteria but noted that the Notice of Rule in Development (NRD) process can begin prior to NYSERDA filing their Notice of Adoption. Chairperson Tebo stated that the NRD is anticipated for spring 2024, after NYSERDA has started the formal rulemaking process. Chairperson Tebo stated that, after NYSERDA has adopted the cost effectiveness criteria, the rest of the code update process can begin, and will take roughly a year to complete unless substantive changes are needed based on public comments, pushing the anticipated completion date to December 2024. Chairperson Tebo noted that there would be a 3-month wait until the new code was effective, and that in previous updates, publication took up to 6 months to complete. Chairperson Tebo stressed that, in both NYSERDA's cost effectiveness update process and the update process for the Uniform Code and Energy Code, there are many opportunities for public comment, and asked any parties wishing to comment to take advantage of these opportunities.

Claudia Braymer noted that this is a critically important update and asked for a high-level summary of changes for the public to review. Chairperson Tebo agreed that understanding is important, and stated that this was a goal of staff, beginning at the December meeting. Claudia Braymer inquired whether the next version of the code documents (version 3.0) would include NYS statutory requirements including CLCPA provisions and electrification. Kevin Duerr-Clark confirmed that version 3.0 is anticipated to cover those items.

Ben Keller asked if the Division has been provided with an update from ICC regarding receiving final code documents. John Addario noted that we have not received the 2024 Fire Code, Residential Code, and Energy Code, but we are working off the 2021 Energy Code.

Robert Hughes inquired as to whether the remainder of 2024 ICC codes will be on time.

Chairperson Tebo noted that IRC is dependent upon the IECC before they can finalize the IRC, but we can finalize our documents sooner because we can remove Chapter 11 of the IRC.

Robert Hughes noted that we are much further ahead in NYS than we have been historically, and that, as a code enforcement official, he is very appreciative of this work.

Agenda Item 6 – Public Comment Period.

Chairperson Tebo gave the public an opportunity to address the Code Council which included in-person and online commentors. 13 public commentors presented. Comment topics predominantly included the following:

- Support of electrification or decarbonization of buildings and building systems;
- Concerns over the impacts of requiring sprinkler systems in buildings regulated by the Residential Code and that impact on manufactured (HUD Code) homes;
- Concerns over housing shortages and lack of affordable housing for middle-class people, and how various code changes could affect the costs of building new homes; and
- Support of the adoption of proposed appendix for air quality concerns

The following individuals gave public comment, either in person at Albany and NYC, or remotely via Webex:

- Ken Pokalsky – Business Council of New York State, Inc.
- Cliff Fonstein – New York Religious Action Center of reform Judaism

- Robert Capenos – New York Housing Association
- Steve McDaniel – City of Corning
- John Steele – Johnson Controls International PLC
- Erin Sherman – Rocky Mountain Institute
- Michael Hernandez – Rewiring America
- Michael Fazio – New York State Builders Association
- Anne Pernick – SAFE Cities at Stand.Earth
- Bill Nowak – NY-GEO
- Deb Peck Kelleher – Alliance for Clean Energy NY
- Cara-Leigh Battaglia – BPCA-NYS Inc
- Anshul Gupta - New Yorkers for Clean Power

Two individuals wrote into chat regarding the publication of the ICC:

- Richard Roberts
- Thomas McKinney

Agenda Item 7 – Future Meetings

Chairperson Tebo noted the following dates are scheduled for future meetings:

- 2023: December 1
- 2024: March 22, June 28, September 27, and December 6

Agenda Item 8 – Other Business

Chairperson Tebo asked if there was any other business to come before the council, and hearing none, thanked everyone for attending and declared the meeting adjourned.

The meeting adjourned at approximately 11:21 a.m.