

STATE OF NEW YORK
DEPARTMENT OF STATE

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Draft minutes of the NYS Fire Prevention and Building Code Council meeting on Friday, September 27, 2024, commencing at 10:05 a.m. and was 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)

James Cable (Albany)

Vincent Rapacciuolo (Albany)

Joseph DeStefano (Albany)

Robert Hughes (Albany)

Shawn Hamlin (Albany)

Dominic Marinelli (Buffalo)

William Tuyn (Buffalo)

Joseph Palozzola (NYC)

Patrick Dolan (NYC)

Keith Wen (NYC)

Michael Sabatino (NYC)

Staff present: John Addario, Kevin Duerr-Clark, Emma Gonzalez-Laders, China Clarke, Chad Sievers, Jeanne Rice, Stephen Van Hoose, Larissa DeLango, Gregory Benton, Christopher Jensen, Daniel Carroll, David Gonzalez, Anna Binau, and Amalia Talty

Agenda Item 1. Welcome.

Chairperson Tebo opened and welcomed everyone to the meeting, then introduced a new staff member: Larissa DeLango, a Code Compliance Specialist II for the Code Development Unit. Kevin Duerr-Clark read the attendance roll, noted that quorum was established with twelve (12) members in locations open to the public, with no members attending remotely at a location not open to the public. Additionally, Kevin Duerr-Clark noted that Timothy DeRuyscher and Joe Toomey were absent. Chairperson Tebo noted that the Council's Third Quarter meeting happened on July 26, 2024, and that this September 27, 2024 meeting was a special meeting of the Code Council with a limited purpose and agenda. Chairperson Tebo stated that the primary goal of the meeting was to vote on the State Environmental Quality Review (SEQR) Final Scope following the recently concluded 30-day public comment period, which occurred during the month of August and a portion of September. Chairperson Tebo also noted that the public comment for the Notice of Rule in Development (NRD) period for the Uniform Code and Energy Code ended a few days prior to the meeting and stated that DBSC has received more than 1500 comments to date. Chairperson Tebo stated that there would be no public comment agenda item included in this meeting.

Chairperson Tebo asked Kevin Duerr-Clark if there were any agenda changes, and was informed there were none.



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Chairperson Tebo stated that there is one more meeting upcoming for 2024 and the meeting dates for 2025 are yet to be determined and will be based on the availability of members as well as the requirements of the other laws that guide the Council's processes.

Agenda Item 2. Draft Minutes – July 26, 2024

Chairperson Tebo asked if there were any changes to be made to the minutes of the July 26, 2024, meeting. Hearing none, Chairperson Tebo motioned to approve the minutes, which was seconded by James Cable. The motion was unanimously approved by voice vote.

Agenda Item 3. Division Update

Chairperson Tebo stated that the Division update will be centered around the pool barrier legislation and stated that Panagiota Hyde would present the details.

Panagiota Hyde advised the Council that the informational packet provided prior to the meeting contained Chapter 292 of the Laws of 2024, signed by the Governor on August 29th, which amends Executive Law §378. Panagiota Hyde explained that Executive Law §378(14)(a) previously required gates in swimming pool enclosures to be self-closing and self-latching with the latch handle located within the enclosure and at least 40 inches above grade. Panagiota Hyde stated that Chapter 292 of the Laws of 2024 removed the requirement that the latch handle be located within the enclosure at 40 inches above grade and added a requirement that the release mechanism standards shall be developed by the Code Council based on internationally recognized standards. Panagiota Hyde clarified that this amendment allows the Council to review and adopt requirements based on internationally recognized standards such as ICC's model codes and stated that Executive Law §378 will be amended in this manner effective December 31, 2025, but noted that, effective immediately, the addition, amendment, and/or repeal of any rule or regulation necessary for the implementation on the effective date is authorized to be made and completed on or before such effective date. It was also noted that staff are in the process of amending the latch mechanism provisions in the Code and that the new provisions will be part of the Notice of Proposed Rulemaking (NPRM). Chairman Tebo inquired if the Council had any questions and hearing none, he concluded Agenda Item 3.

Agenda Item 4. Uniform Code and Energy Code – SEQR

Chairman Tebo stated that the Uniform and Energy Code update was centered on SEQR and, noting that the SEQR Draft Scope was posted in the Environmental Notice Bulletin (ENB) of the New York State Department of Environmental Conservation (DEC) and issued for public comment for a 30-day period. Chairman Tebo then turned the meeting over to Panagiota Hyde for her presentation.

Panagiota Hyde began by mentioning that Ben Kosinski presented an overview of the SEQR process to the Code Council members at the July 26th meeting and reminded the Council that their vote at that meeting designated the Code Council as lead agency for the purpose of environmental review under the SEQRA, and gave permission for the Department of State to act administratively on behalf of the Code Council to file, post, and publish any supporting documents. Panagiota Hyde continued by summarizing that the Notice of Draft Scope appeared in the ENB on August 7, 2024, and public comments were received through September 6, 2024.

The Department received two (2) comment letters and made modifications to the Draft Scope resulting in the Final Scope. Panagiota Hyde stated that the Final Scope document outlines the scope of environmental review which shall form the draft Generic Environmental Impact Statement (GEIS) which will accompany the NPRM at the December 6th meeting. Panagiota Hyde further clarified that the Final Scope document outlines the significant issues that the Code Council and the Department of State might undertake in the Notice of Proposed Rulemaking (NPRM) for the purposes of environmental review under SEQRA and emphasized that the vote is not an adoption of those issues at this time.

Chairman Tebo inquired if there were any questions or matters for discussion. Councilmember Bill Tuyn provided a comment on the differences between the SEQR process for the State and for private individuals, noting that such differences can cause increased time and expense.

Chairperson Tebo made a motion, read by Panagiota Hyde:

1. that the document titled Final Scope to prepare the Draft Generic Environmental Impact Statement for proposed amendment of the New York State Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code be published on the New York State Department of State website and a Notice of Final Scope be published in the Environmental Notice Bulletin for compliance with Article 8 of the Environment Conservation Law (6 NYCRR §617.12(c)(1),(5)); and
2. that the Department of State shall prepare the Draft Generic Environmental Impact Statement for proposed amendment of the New York State Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code in accordance with the Final Scope.

Robert Hughes seconded the motion, and Chairperson Tebo asked for any discussion or comments on the motion. Hearing none, Chairperson Tebo instructed Kevin Duerr-Clark to call the vote by roll. The motion passed unanimously.

Agenda Item 5. Future Meetings

Chairperson Tebo noted that the fourth quarter meeting of the New York State Fire Prevention and Building Code Council will be held on December 6, 2024. Additionally, Chairperson Tebo noted that dates are under review for the 2025 quarterly meetings with the intent that the Code Council should receive a schedule of confirmed dates before the December 6th meeting.

Chairperson Tebo stated that the NPRM should be out to Council members in advance of the December 6th meeting in order to allow time for review. Chairperson Tebo mentioned that the code update process is a huge undertaking and commended the Department of State's Code Development Unit for their quick progress thus far drafting the NPRM documents, noting that staff are ahead of schedule. Chairperson Tebo predicted that the December 6th meeting may be very lengthy due to discussion of the proposed changes.

Agenda Item 6. Other Business

Chairperson Tebo asked if there was any other business and, hearing none, moved to enter into executive session to discuss litigation strategy in the case of *Mulhern Gas Co., Inc., et al. v. Walter T. Mosley, et al.*

Joseph DeStefano seconded the motion, and Chairperson Tebo asked for any discussion or comments on the motion. Hearing none, Chairperson Tebo instructed Kevin Duerr-Clark to call the vote by roll. The motion passed unanimously.

Agenda Item 7. Executive Session – 10:20 – 10:38 am

The Code Council meeting exited the executive session and went back on record at 10:38 am.

Agenda Item 8. Adjourn

Chairperson Tebo motioned to adjourn the meeting until December 6, 2024.

The meeting adjourned at approximately 10:41 am.

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