

STATE OF NEW YORK
DEPARTMENT OF STATE

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SECRETARY OF STATE

Minutes of the NYS Fire Prevention and Building Code Council meeting on Friday, December 1, 2023, commencing at 10:07 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)
Michael Sabatino (NYC)
Vincent Rapacciuolo (Albany)
Keith Wen (Remote)
Claudia Braymer (Albany)
Joseph Toomey (Albany)
Shawn Hamlin (Albany)

Robert Hughes (Albany)
Timothy DeRuyscher (Albany)
Michael Weber (Albany)
James Cable (Albany)
Joseph DeStefano (Albany)
William Tuyn (Buffalo)
Dominic Marinelli (Buffalo)

Staff present: John Addario, David Gonzalez, Panagiota Hyde, Kevin Duerr-Clark, Emma Gonzalez-Laders, China Clarke, Chad Sievers, Jeanne Rice, Gregory Benton, Hendrick Shank, Christopher Jensen, Daniel Carroll, Anna Binau, Amalia Talty, and Ben Kosinski.

Guest: Chris Corcoran (NYSERDA)

Agenda Item 1: Welcome.

Chairperson Tebo opened the meeting and welcomed everyone to the meeting and gave a brief overview of the agenda for the meeting, including anticipated breaks. Chairperson Tebo then asked Kevin Duerr-Clark to call roll. Kevin Duerr-Clark read the attendance roll. Chairperson Tebo noted that a quorum was established with thirteen (13) members in locations open to the public, and one (1) remote. Kevin Duerr-Clark reviewed Webex logistics and reviewed the public comment procedures, noting that over 40 commentors signed up, and stating that each commentor will be given 3 minutes to speak. Chairperson Tebo inquired if there were any agenda changes, and hearing none, moved on to agenda item 2.

Agenda Item 2: Draft Minutes – September 29, 2023.

Chairperson Tebo asked if there were any changes to be made to the minutes of the September 29, 2023 meeting, and hearing none, moved to approve the minutes. Joe Toomey seconded the motion, which passed unanimously.

Agenda Item 3: Division Update.

John Addario provided an update on the fire safety for energy storage systems (ESS) and micro-mobility devices workgroup. The ESS workgroup is anticipated to have recommendations set forth in a report in January 2024, which will be considered for incorporation into the 2024 code update.



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John Addario stated that ICC code development change proposals are due by the first half of January, and that 6-12 proposals from staff are underway for submittal to ICC.

Kevin Duerr-Clark provided an update on MRLS submissions. The Town of Goshen MRLS flood provisions have been received and are still under review by staff. Kevin Duerr-Clark stated that staff met with the Town and DEC to discuss outstanding questions, and that staff will continue their review and provide their analysis to the Code Council for review. Kevin Duerr-Clark stated that, as directed by the Code Council, staff have been working with the Town of Farmington to develop their local law and noted that the Town has recently submitted a draft local law for review. Kevin Duerr-Clark also noted that one MRLES was received the day prior to the Code Council meeting, which is currently under review by staff.

Agenda Item 4: Uniform Code and Energy Code – Code Development Update.

Kevin Duerr-Clark provided a brief status update of the Uniform Code/Energy Code development update process, stating that version 3.0 documents (which will include NY-specific changes) are anticipated to be available no earlier than the March 2024 council meeting. Kevin Duerr-Clark noted that a summary document of the notable changes to the 2021 and 2024 ICC model code books was provided to the Code Council members prior to the meeting and stated that staff would provide verbal presentations to highlight specific notable changes in the ICC model codes. Kevin Duerr-Clark specified that these notable changes only include ICC changes, and do not include NYS-specific changes, nor do they constitute staff recommendations.

Kevin Duerr-Clark presented a summary of notable changes to the International Property Maintenance Code. Chad Sievers presented a summary of the notable changes to the International Building Code. Shawn Hamlin inquired about the specific modifications in regards to the mass timber provisions. Jeanne Rice and Chad Sievers explained that the tables have been amended to include construction types IV-A, IV-B, and IV-C, and confirmed that provisions have been added for fire-resistance rating requirements for building elements.

Jeanne Rice presented a summary of the notable changes to the International Residential Code. Robert Hughes confirmed that the changes being presented were to the 2021 and 2024 ICC model codes and did not contain NYS statutory specific provisions. Robert Hughes also noted that for habitable attics, whether or not they are counted as a story could affect sprinkler requirements and noted that the entire code must be reviewed for interactions with specific changes, which explains why this process takes a significant amount of time.

Chad Sievers presented a summary of notable changes to the International Fire Code. Joseph DeStefano inquired regarding alcohol storage, asking what impact there would be on “mom and pop” shops regarding quantity limits. Chad Sievers stated that he would review the language change and provide an answer to the Code Council.

Jeanne Rice presented summaries of the notable changes to the International Existing Building Code, International Plumbing Code, International Mechanical Code, and International Fuel Gas Code. Claudia Braymer inquired about expanding locations for fueling with compressed natural gas, to which Jeanne Rice stated that staff would review and provide the Council with an answer.

Chris Corcoran from NYSERDA gave a presentation on the NYSERDA cost methodology rulemaking update. Chris Corcoran stated that the NYSERDA board approved a draft rule which will be published in the State Register in either late December 2023 or early January 2024, with anticipated adoption of the final rule to have an effective date of July 2024. Chris Corcoran stated that the cost methodology update will apply life-cycle cost methodology and incorporate the value of societal effects.

Michael Weber expressed thanks to NYSERDA on behalf of DHCR for all of the outreach and coordination which has gone into policy making documents. Claudia Braymer noted that NYSERDA has done a good job with public outreach, and that, during the NYSERDA board meeting at least one member was very adamant about more consideration for societal effects. Claudia Braymer noted that NYSERDA's draft rule is a conservative approach, and asked if the Code Council is supposed to be involved in the rule making. Panagiota Hyde noted that NYSERDA is required to adopt the cost methodology which the Code Council will rely upon as part of determining cost effectiveness when amending the Energy Code. Panagiota Hyde noted that anyone can submit public comments during the mandatory SAPA 60-day public comment period for NYSERDA's rulemaking process.

William Tuyn noted that this life-cycle analysis is comparing electrification to electrification, and stated that right now, electrification is not the law. William Tuyn opined that the cost methodology discounts the cost of initial construction compared to the energy savings which will be achieved because it does not include such costs. William Tuyn noted that tax breaks will be provided for existing homes, but new homes will not be granted such tax breaks, resulting in increased costs. William Tuyn noted that, currently, a developer receives reimbursement from the gas utility provider over the course of 5 years, whenever new customers are connected to the gas service, which offsets the costs of installing gas service infrastructure to the development. William Tuyn stated that if infrastructure is installed prior to electrification, but within 5 years of the deadline for electrification, that the developer will lose money due to this law. William Tuyn stated that developers cannot currently get electrical service designs for electrified buildings, because every transformer is going to serve fewer homes, and the grid has not been improved to provide a reliable source of power for all-electric homes. William Tuyn stated that this would affect the economy and will affect initiatives to create more affordable housing in NYS. Claudia Braymer asked Chris Corcoran where NYPA is with the analysis of grid capacity. Chris Corcoran noted that DPS has been working on this continually, are planning for this, and changes will be in place to support future construction.

Robert Hughes noted that, specific to the Energy Code, there are difficulties due to the looming law, and asked if, when the Code Council was reviewing the proposed changes, they can decide to keep or remove certain items within the Energy Code? Chairperson Tebo noted that Executive Law §378 is filled with legislative directions, but the Code Council has never faced this situation.

Joseph Toomey stated that different grids are working on getting NYS to meet code requirements, and asked if there was a timeframe available for when the system will be able to handle the proposed code requirements. Chris Corcoran did not have a timeframe and deferred to DPS for a timeframe. William Tuyn noted that winter is cold in the Northeast and asserted that the grid will not be able to deliver the requirement for electric. William Tuyn stated that 43 people froze to death in the city of Buffalo last winter, and asserted that electrification goals, while laudable, are not going to work at this time. William Tuyn stated that electric utilities will not deliver a transformer until a house is "substantially under construction" and that connections to the utility cannot be made in advance because the load is unknown. Chairperson Tebo noted that the Code Council may need to bring in staff from PSC to provide clarity on these issues.

Agenda Item 5: Public Comment Period.

Chairperson Tebo gave the public an opportunity to address the Code Council which included in-person and online commentors. Chairperson Tebo noted that a lunch break would be taken around 12:15 pm, with public comments resuming afterwards. 42 public commentors presented, with four (4) present in person. Comment topics predominantly included the following:

- Support of electrification or decarbonization of buildings and building systems;

- Negative health consequences of gas appliances, especially gas stovetops;
- Electric grid capacity and resiliency;

Below is the list of speakers and/or organization they represented, presented in the order they spoke. A recess was taken at 12:21 pm, and the meeting resumed at 12:44 pm.

- Josh Cohen
- Daniel Micah Morrisey
- Ellen Banks
- Cliff Fonstein
- William Serratore – Director of Sustainability City of Yonkers on behalf of Mayor Mike Spano
- Emily Gallagher – Assemblymember
- Justin Flagg (Director of Environmental Policy) – State Senator Liz Krueger
- Michael Hernandez – Rewiring America
- Cara-Leigh Battaglia – BPCA-NYS Inc.
- Paul Fisk
- Allen Blair – NY Renews and Citizens Climate Lobby
- Gregory Thomas – Performance Systems Development (PSD) Consulting
- Clare Henrie
- Stephen Cowell – Northeast Energy Efficiency and Electrification Council
- Jodi Smits Anderson
- Nicole Abene – Building Decarbonization Coalition
- Lisa Marshall – Renewable Heat Now Campaign
- Savannah Bertrand
- Sara Bayer – NY Passive House
- Luis Garcia – The Association for Energy Affordability
- Caleb Crawford
- Conor Bambrick – Environmental Advocates NY
- Juan Martinez – PACENation
- Melissa Carlson
- Kashif Hussain – Office of the NYC Public Advocate Jumaane D. Williams
- Bria Donohue – American Institute of Architects New York
- Erin Sherman
- Thomas Wright – Beacon Climate Action Now
- Anne Pernick – SAFE Cities at Stand.earth
- Elizabeth Strum
- Michael Fazio – NYS Builders Association

- Anshul Gupta – New Yorkers for Clean Power
- Douglas Lawrence
- John Rath – NY Geothermal Energy Organization
- Denis Patel – NY Communities for Change
- Anne Erling
- Amber Ruther – Alliance for a Green Economy
- Sonia Dusza
- Eric Wood
- Veekas Ashoka
- Adam Flint
- Juan-Pablo Velez
- Hennessy Garcia

Agenda Item 6: Future Meetings.

Chairperson Tebo noted the following dates are scheduled for future meetings in 2024: March 22, June 28, September 27, and December 6.

Agenda Item 7: Other Business.

Chairperson Tebo asked if there was any other business to come before the Code Council, and hearing none, Chairperson Tebo made a motion to enter into executive session to discuss litigation strategy in the case of *Mulhern Gas Co., Inc., et al. v. Robert J. Rodriguez, et al.* This motion was seconded by Joseph DeStefano, and the motion passed unanimously.

Agenda Item 8: Executive Session.

The executive session began at 2:00 pm and lasted until 2:34 pm. Keith Wen was not present at the executive session, nor was he present during the end of the meeting after executive session was over.

Agenda Item 9: Adjourn.

Chairperson Tebo thanked Code Council members, staff, and counsel, and wished everyone happy holidays and happy new year. Chairperson Tebo moved to adjourn, Joseph Toomey seconded, and the motion was unanimously approved.

The meeting adjourned at approximately 2:35 p.m.