

**NEW YORK STATE DEPARTMENT OF STATE
DIVISION OF CODE ENFORCEMENT AND ADMINISTRATION**

DRAFT Minutes of the Wednesday, March 9, 2016 meeting of the NYS Fire Prevention and Building Code Council commencing at 10 a.m., held by teleconference at:

- ❖ Empire State Plaza Meeting Room 3, Albany, NY;
- ❖ 123 Williams Street, NYC, NY, Conference Room 231; and
- ❖ 65 Court Street, Buffalo, NY, Conference Room 208.

The following Council members, designees and staff were in attendance:

Council Members and Designees Attending:

Ronald Piester, Presiding	Barbara Rice (arrived 10:45 AM)
Timothy DeRuyscher	Michael Sabatino
John Flanigan	Joseph Sauerwein
Shawn Hamlin	William Tucker
Paul Martin	William Tuyn (arrived 10:25 AM)
Joseph Palozzola	Keith Wen
Vincent Rapacciuolo	

Staff Attending:

Joe Ball	Nick McAndrew
Mark Blanke	Miriam McGiver

Agenda Item 1. Welcome.

Ronald Piester called the meeting to order at 10:10 AM, welcomed all, and introduced the agenda.

Mark Blanke took a roll call attendance, and noted that a quorum was present. Mr. Blanke provided a summary of Agenda items, and of documents submitted before the meeting to the Code Council members for consideration.

Ron Piester announced that two Code Council members, Barbara Rice and William Tuyn, are caught in traffic and expect to arrive later. He requested that the Code Council move Agenda Items 5 and 6 before Agenda Items 3 and 4, to provide Ms. Rice and Mr. Tuyn the opportunity to vote during consideration of adoption of the code updates. A motion to do so was made by Mr. Flanigan, approved by Mr. Martin, and passed unanimously with no discussion.

Agenda Item 2. Minutes of the August 19, 2015 meeting.

Mr. Piester introduced the minutes. There was no discussion. John Flanigan made a motion to approve the minutes, seconded by Mr. Hamlin. The motion was approved unanimously.

**Agenda Item 5. More Restrictive Local Standards - Town of Brookhaven – Local #3 of 2014.
(moved before Agenda Items 3 and 4)**

Mr. Sauerwein said that in the interest of full disclosure, he would like to state for the record that he worked for the Town of Brookhaven for several decades until retirement, that he had discussed with Joe Ball the possible need to recuse himself from consideration of petitions from the Town of Brookhaven to the Code Council (Agenda Items 5 and 6), and that he was satisfied that he should not do so.

Mr. Blanke introduced request for the Code Council to adopt this more restrictive local standard (MRLS) per Article 18 §379 of the Executive Law, and provided a summary of this MRLS petition. The Town of Brookhaven petitioned the Council to approve their local law #19 of 2014 (hereinafter referred to as Brookhaven LL#19-2014), which requires all new and existing dwelling units to have at least one carbon monoxide alarm or detector equipped with a digital display with certain requirements more restrictive than the Uniform Code provisions, including digital display of low levels of CO and including replacement of existing units in existing buildings. The Town of Brookhaven did not indicate any special conditions prevailing within the municipality that warrants this MRLS. The petition was not submitted by the Chief Executive Officer of the Town, as is required by §379. It is not clear what equipment is generally available on the commercial market that complies with the LL#19 – 2014, or at what added cost. The Town did not submit documentation of whether such equipment is available, is so from what source, at what cost or of substantiated benefit.

After some discussion, Mr. Sauerwein asked if the Uniform Code could be improved by implementing aspects of the LL#19-2014. Mr. Sauerwein made a motion to approve the MRLS, Tim DeRuyscher seconded. Joe Ball clarified that statute provides that the Code Council may adopt MRLS if certain conditions are met, including identification of a local special condition. No special condition has been established, and there may be other MRLS requirements that are not met. Mr. Sauerwein stated that at that time he was personally unable to identify special conditions within the Town of Brookhaven, and withdrew his motion. The motion did not pass with a quorum of nine, with ten members present during the vote.

Mr. Hamlin moved to deny the MRLS, seconded by Mr. DeRuyscher. Mr. Blanke took a roll call vote of the eleven Code Council members present. Voting aye were Ron Piester, Paul Martin, Joseph Palozzola, Vincent Rapacciuolo, Michael Sabatino, William Tucker, Shawn Hamlin and Tim DeRuyscher. Voting nay were John Flanigan, Joseph Sauerwein and Keith Wen. The motion failed, as it did not receive a quorum of nine ayes. This agenda item should be resolved at a future meeting.

Agenda Item 6. More Restrictive Local Standards - Town of Brookhaven – Local Law #5 of 2015 (moved before Agenda Items 3 and 4)

Mr. Blanke introduced request for the Code Council to adopt this more restrictive local standard (MRLS) per Article 18 §379 of the Executive Law, and provided a summary of this MRLS petition. This MRLS requires carbon monoxide detection devices and/or systems in all new and existing commercial buildings used for human occupancy, as specified by the chief fire marshal.

Mr. Flanigan moved that the Code Council postpone consideration of this agenda item to allow the Town of Brookhaven the opportunity to submit documentation needed to comply with statute and to answer questions by the code council members. Seconded by Mr. Wen; the motion passed.

Code council members questioned:

What special conditions justify a more restrictive local standard,

What the differences are between the Brookhaven regulations and the current State regulation; and

Why Brookhaven choose not to refer to a reference standard or the State code for installation requirements, rather than leave the decision to the individual judgment of a Town official.

Item 3. Uniform Code Change Adoption – Based on 2015 ICC Codes.

Mr. Blanke introduced this agenda item, and presented a summary and assessment of public comment, and a description of minor adjustments made to the rule in response. We received approximately 3,000 public comments; many as form letters which addressed a few separate topics. Principal topics were:

- Opposing and advocating residential fire suppression sprinklers;
- Advocating modifying the access setbacks for roof-installed solar panels;
- Advocating lowering the maximum allowable flow rate of plumbing fixture;
- Opposing and advocating fire extinguishing systems at gas stations;
- Requests to enhance flood protection requirements and resiliency measures, without specific details;
- Requests to add ICC appendices with provisions for straw bale and straw clay construction;
- Requests to remove requirements for whole house ventilation.

Mr. Blanke provided a summary of the adjustments to the rule-making documents, including adjusting the access area around solar panels on roofs.

After some discussion, Mr. Flanigan moved that the Code Council find and determine that the amendment of the State Uniform Fire Prevention and Building Code, the Uniform Code, to be implemented by the adoption of the rule identified in the agenda item three, Uniform Code update. It will not have a significant environmental impact and will not have a significant adverse effect on any significant fish or wildlife habitat, scenic resources of Statewide significance, important agricultural land, for areas included in approved waterfront revitalization program and that Mark Blanke be authorized to sign and deliver with respect to such rule adoption: One, the State Environmental Quality Review Short Environmental Assessment Form, the State Environmental Quality and Review Negative Declaration, the New York State Department of State Coastal Management Program, Coastal Assessment Form and a certificate of no significant costal impact. Mr. Tuyn seconded this motion. The motion passed unanimously.

Mr. Flanigan further moved, seconded by Mr. De Ruyscher, that the rule to amend the Uniform Code be changed to use revised text presented at this meeting, to incorporate by reference specific printings of the reference standards, to include revised text for the New York Code Rules and Regulations, and to incorporate by reference of the revised 2016 Uniform Code Supplement presented at this meeting, and as discussed at this meeting.

Two, that the Code Council find and determine that for the purpose of the State Administrative Procedure Act, the changes made to the rule do not constitute a substantial revision to the rule as originally proposed.

Three, that the rule to amend the Uniform Code in the form of the text presented at this meeting, which incorporated by reference the later printing of the code books and revised revisions of the 2016 Uniform Code supplement be approved.

Four, that per Executive Law Section 378 15A, this rule and changes made to this Uniform Code by this rule shall be effective on the 180th day after notice of the adoption of this rule shall have been published in the State Register, and that the Code Council direct, pursuant to Executive Law Section 37815(b), that in the transition period between the adoption of this rule and the date on which this rule and the changes made to this Uniform Code by this rule become effective, a person shall have the option to comply with either the provisions of the Uniform Code as changed by this rule or with the provisions of the Uniform Code as in effect immediately prior to the adoption of this rule.

Prior to vote on Mr. Flanigan's second motion for agenda item #3, Mr. Sabatino moved to revise the proposed language regarding access areas adjacent to roof installed solar panels to require a two foot setback. There was no second, so Mr. Sabatino's motion ended without vote.

Mr. Flanigan's second motion for agenda item #3 passed unanimously.

Mr. Piester closed this agenda item by saying there are a couple of issues that deserve further consideration in future updates to the Uniform Code. These include the plumbing fixture flow rate, which was the water sense proposal that was submitted by NRDC. Another is consideration of the International Green Construction Code, as an overlay to the State code, potentially as a model for local communities to consider as they push their agenda with respect to conserving natural resources. And not least, DEC recommended that we consider making changes to address the ongoing effects of sea level rise, storm surge and climate change, and it is important to keep aware of the development of bodies of knowledge, forecasts and documents that provide tools for prescriptive or performance codes that address this. It is a discussion that is worthy of the Council's time as we move forward.

Item 4. Energy Code Change Adoption –

Mr. Blanke introduced this agenda item. He presented a summary and assessment of public comment, and a description of minor adjustment made to the rule in response. Public comments addressed a few principal topics, including:

- Requests to delay the effective date;
- Requests for a prescriptive compliance path for typical log homes;
- Requests to approve alternative compliance software and compliance paths with higher standards;
- Requests to address the potential for moisture build-up in walls with continuous insulation;
- Request to reconsider the air leakage restrictions and test methods;

After some discussion, Mr. Flanigan moved, seconded by Mr. Tuyn, that the Code Council find and determine that the amendment of the State Energy Conservation Construction Code (the Energy Code) by the adoption of the rule Energy Code Update will not have a significant environmental impact and will not have a significant adverse effect on any significant fish or wildlife habitat, scenic resources or statewide significance of important agricultural land or area included in an approved local waterfront revitalization program, and that Mark Blanke be authorized to sign and deliver, with respect to such rule adoption: one, the State Environmental Equality Review Short Environmental Assessment Form; two, the State Environmental Quality Review Negative Declaration; three, the New York State Department of State Coastal Management Program Coastal Assessment Form; and four, the certificate of no significant coastal impact.

Mr. Flanigan further moved a rule to amend the Energy Code that was proposed by notice of proposed rule-making published in the State Register on November 25, 2015, with change to: one, use the revised NYCRR text presented at this meeting; two, incorporated by reference the second printing, May 2015 of the 2015 IECC; three, to incorporate by reference the July 2014 printing of ASHRAE 90.1 2013; and four, incorporate by reference the revised Energy Code Supplement, as presented and discussed at this meeting, entitled the 2016 Supplement to the New York State Energy Conservation Construction Code. Mr. Flanigan moved that the Code Council find and determine that for the purpose of the State Administrative Procedure Act, the changes made to this rule do not constitute a substantial revision to the rule as originally proposed, and that the rule to amend Energy Code in the form of the revised NYCRR text presented at this meeting, which incorporates by reference the May 2015 printing of the 2015 IECC, the July 2014 printing of ASHRAE 90.1 2013 and the revised the Energy Code Supplement be approved; and that the rule of the changes made in this Energy Code by this rule shall be effective on the 180th day after the notice of the adoption of this rule shall have been published in the State Register. Mr. Hamlin seconded.

Both motions were approved unanimously.

Mr. Piester closed this agenda item with a comment that there are a few items that may deserve further consideration by the code council, including an alternative compliance path for log homes and use of Passive House compliance software to document higher levels of compliance.

Item 7. Public Comment Period.

There were two speakers during the public comment period.

The first was Dr. Jens Ponikau, who requested that the code council amend the Residential Code for swimming pool barriers. The background is that children die or are injured every year from swimming pool accidents, in spite of fences and other protective measure in the current code and proposed update. Dr. Ponikau believes that pool covers would prevent these deaths and injuries, and that language allowing and acknowledging powered safety covers should be added to the Residential Code, as it is in the Building Code. NYS has revised language regarding pools to address NYS statutory requirements, and this language does not include acknowledging powered safety covers as is done in the 2015 IRC.

The second speaker was Larry Levine, who stressed the importance and fiscal prudence of water saving fixtures, and requested a separate rulemaking to target this issue. Supporters of this include six State legislators, the Rockland County Department of Health, the Plumbing Foundation of New York City, New York City Mayor's office, a number of other environmental NGOs, as well as one private water comment Suez, formerly known as United Water, which operates in Rockland County drinking water utility.

Item 8. Future meetings.

Mr. Blanke announced the code council meetings scheduled in 2016, with dates of June 2nd, August 25th, and November 17th. The next scheduled meeting of the Code Council is June 2, 2016.

Item 9. Other Business.

Mr. Piester thanked the code council members for the significant achievement that culminated in the Code Updates approved at this meeting.

The meeting adjourned at 12:08 PM by motion of Mr. Flanigan, seconded by Mr. Sauerwein.