

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

DRAFT MINUTES - STATE FIRE PREVENTION AND BUILDING CODE COUNCIL

Minutes of the Tuesday, October 8, 2013 meeting of the New York State Fire Prevention and Building Code Council via videoconferencing held at: One Commerce Plaza, 99 Washington Avenue, Albany, New York, Conference Room 505; 123 Williams Street, New York City, New York, Conference Room 231 and 65 Court Street, Buffalo New York, Conference Room 208 commencing at 10:00 a.m. The following Council members, designees and staff were in attendance:

COUNCIL MEMBERS PRESENT:

Ronald Piester, Presiding
Nicholas Altieri
John Flanigan
Maria Guizzotti
Robert Hankin
Gary Higbee
Judith L. Kennedy
John Lee
Willie J. Lightfoot
John Torpey
William K. Tucker
Joseph Sauerwein

ALSO PRESENT:

Michael G. Auerbach
Joseph Ball, Esquire
Mark Blanke
Michael J. Vatter

Agenda Item 1 – Welcome

Ronald Piester called the meeting to order at 10:03 a.m. welcomed everyone and offered apologies in reference to the last attempted meeting. Ron announced the appointments returning Council member Nicholas Altieri Designee for Helen Hudson from the City of Syracuse. Mark Blanke took a roll call attendance and noted that a quorum was present.

Agenda Item 2 - Minutes of the July 16, 2013, and September 11, 2013 Meetings

Motion by John Flanigan to approve the minutes as corrected by Joe Sauerwein with regard to the Village of Mastic Beach comments of the **July 16, 2013, meeting** seconded by Judy Kennedy. After discussion regarding procedure the motion was approved unanimously.

Motion by John Flanigan to approve the minutes of **September 11, 2013 meeting** seconded by Robert Hankin approved unanimously.

Agenda Item 3 – Public Comment Period

Mark Blanke noted that there were seven (7) speakers in attendance to present public comments. The speakers addressed provisions of codes as noted herein. Additional speakers addressed other agenda items concerning more restrictive local standards (MRLS) when those items occurred during the meeting.

John McBride representing the International Association of Electrical Inspectors spoke about the requirements for updating the edition of referenced standard, the National Electrical Code (NEC), National Fire Protection Association (NFPA) 70 Code and submitted two letters for further consideration. He noted various reasons including the rapidly emerging technology regarding electrical power for automobiles and necessary safeguards thereto. He further stated that the NEC is focused on advancing electrical safety and the importance of regularly updating that standard to recognize new methods and installation practices to address safety concerns not previously covered in the code.

James Backes spoke about provisions in the codes regarding the hazards of mud walk-off carpeting in vestibules and clearances therein. He related his deceased mother's personal experiences and the concerns she and he had about safety.

Mary Beth Boruta from Columbia County spoke about provisions of the code with respect to temporary occupancies based upon her experience operating a business and submitted material regarding same. Ron Piester noted that this was a rule that was being considered, that it had not yet been finalized or decided upon and that her comments should be considered. Mary Beth noted many of the reasons including agritourism as well as business development as to reasons why her concerns should be considered. She was directed to the appropriate regional service representative to ensure that her concerns were further addressed. Robert Hankin noted that these were reasonable concerns and that anyone that was interested should get involved in the discussion regarding the topic. Judy Kennedy requested additional information regarding the proposal and was advised that she would receive information if requested. Judy Kennedy noted that this topic brought up a lot of the issues about doing business in New York and how to support those businesses.

Sam Khalil from Buffalo spoke about provisions of the code with respect to Fire Code Section 2505, regarding the outside storage of tires, and specifically 2505.4 with respect to distances between tire storage or piles and lot lines and buildings. Sam expressed that he felt the codes were not clear enough and that he had obtained different responses from different officials. He also noted that he would like a clear definition and greater clarity regarding Section 902 of the code. Ron Piester suggested that Sam Khalil speak further with regional field staff and that if he would like a more specific interpretation, they could provide information regarding that as well. Ron continued that the Code Council was not the venue for requesting interpretations of the state code and that if a change to the code was being proposed that regional staff could also assist with that effort. John Flanigan noted that there had been a January 29, 2013 interpretation done by Cheryl Fisher a previous staff member of the Codes Division. Joe Ball noted that there was a difference between advice given by the code staff and a code interpretation. That a code interpretation is specifically authorized by the statute and is more formal and binding advice provided and that is why Ron Piester had suggested contacting regional staff members for further information on how to do that. Joe added that they might also provide further information on other approaches.

Agenda Item 4 – More Restrictive Local Standards (MRLS)

• Village of Mastic Beach – Local Laws #3, #4, and #5 of 2013

Mark Blanke provided some history and gave an overview of the petition for a MRLS regarding fire detection and alarm provisions subsequent to the July 16, 2013 Codes Council meeting. Mark noted that during discussion at the July 16, 2013 meeting the Code Council recognized the similarity to the Town of Brookhaven's previously approved MRLS and requested that the village provide a comparison between the village and the town's requirements. At that meeting representatives from the village agreed to provide the Code Council with a comparison between the two standards. This was to be presented at the then scheduled September 11, 2013 meeting. Prior to the September 11, 2013 meeting the Codes Division received a letter from the mayor of the Village of Mastic Beach asking the Code Council to delay their decision until the then next scheduled meeting which was going to be December 11, 2013. The September 11th meeting was canceled and a new meeting was scheduled for October 8, 2013. The mayor also agreed not to enforce the more restrictive local standards until the December 11, 2013 meeting of the Code Council. Mark noted that the provisions were reported at the last meeting and he summarized them again for the group.

Mark noted that there were three public speakers who wanted to address the Codes Council. Jane Powers, Bruce Summa and Maura Sperry all spoke about their concerns regarding the approval of various aspects of the MRLS including: aspects regarding the need for additional fire marshals; the arming of those marshals; the retroactive provisions; self imposition; conflicting regulations with regard to phragmites grass; vacancy rates; inconsistencies in the application; tax ramifications and the concerns about abuse of administrative provisions.

Robert Hankin questioned when a village is formed within a municipality with existing more restrictive local standards, do those more restrictive local standards continue in that newly formed village? Joseph Ball responded that they do for two years and at that point they automatically expire unless the village does something to extend them or if they do something to repeal them.

John Torpey commented about previous presentations, commitments, extensions and asked about past practices. Ron Piester responded that it was the prerogative of the Council to take action if it feels that it is appropriate to do so. Ron added that in the past requests for additional time or postponement have usually been to a specific meeting, that there was not a precedent for multiple postponements. Additional discussion regarding the previous commitments and actions ensued.

Robert Hankin questioned the retroactive provisions of the laws. Joseph Ball noted that there were provisions and exceptions regarding same.

Willie Lightfoot questioned whether the additional information that was asked to be provided to the Council, was provided? Mark Blanke indicated that it was not provided.

Willie Lightfoot made motion to deny the three separate petitions as they stand now based on the fact that additional information had not been provided and that their current restrictions already meet the necessary needs. John Torpey and Judith Kennedy seconded the motion.

There was discussion on the motion including a question from Robert Hankin and responses from Mark Blanke and Ron Piester who read a letter from the village. There was additional discussion about procedures, notification and public meetings from Nicholas Altieri, Gary Higbee, Mark Blanke, Michael Auerbach, Robert Hankin, Judy Kennedy, Michael Vatter, Joseph Ball, Ronald Piester and John Lee.

A roll call vote was taken on the motion to deny and it carried 11 to 1. The petition was not approved.

Agenda Item 4 – More Restrictive Local Standards (MRLS)

• Town of Bedford – Local Laws #3 of 2013

Mark Blanke noted that there were no representatives from the town present and then provided some history and gave an overview of the proposed MRLS regarding enhancing fire alarm systems and truss-construction signage requirements. Mark noted that this local law was adopted on June 18, 2013, that the Code Development unit received the petition from the town on August 16, 2013, which was far more than 30 days beyond the requirement of the Executive Law. And in addition, the petition was not submitted by the Chief Executive Officer. Staff informed the town of these difficulties as well as what we felt were some deficiencies in the petition with respect to the special local conditions. Eric L. Gordon, the town attorney informed the Codes Division of their intent to repeal the local law at a future town meeting and then to reenact it at a later date. The Codes Division did receive an email addressed to Michael Auerbach from the Eric L. Gordon, town attorney on September 12, 2013 stating that the town did repeal the Local Law No. 3 of 2013 at their September 3, 2013 meeting. The Codes Division has not heard from the town since that date. Mark noted that a formal withdrawal of their petition had not been received. Mark continued to report that the highlights of the local law which included requiring a fire detection system for all new commercial construction and requiring truss signage requirements for all new buildings and additions for residential and commercial use.

There was discussion about potential actions and status by Ron Piester, Joseph Ball, and Robert Hankin. Judith Kennedy made motion that the petition be deemed moot due to the communications received from the town's attorney, seconded by Robert Hankin. There were questions from Joseph Sauerwein regarding the appropriateness of the motion and a response from Ron Piester that the intent as understood was to essentially just to send a message to the Town of Bedford that the Council does not believe the petition has any status at this time and if they want to come back to us, they're going to have to start over. The motion to deem moot passed unanimously with one abstention by Joseph Sauerwein.

Agenda Item 5. Next Uniform Code and Energy Code Adoption Update

Ronald Piester provided a brief update on the status of the ongoing updates to the Uniform Code and the Energy Code. Ron noted that staff was still working on the development of the rulemaking documents for the Uniform Code and that those would hopefully be brought back to the Code Council at the December meeting. Ron indicated that staff was still reviewing and working on the final report of the Residential Code Technical Subcommittee, along with a report of the Fire Code Technical Subcommittee regarding fire suppression systems at gas stations. That those were the two outstanding items with respect to the Uniform Code rulemaking proposal that would need to be brought before the Code Council for direction in the future.

Ron continued that with respect to the Energy Code update, which was also in two parts. The first was that the Council had already endorsed rulemaking documents for the Commercial Energy Code provisions, which were specifically focused on American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) 90.1, 2010, "Energy Standard for Buildings Except Low-Rise Residential Buildings" and that staff was still waiting for the report from the Pacific Northwest National Laboratory (PNNL) that is critical to the rulemaking documents before sending that rulemaking package over to the Governor's office for prepublication review. Ron noted that at the same time that we have been waiting for that report, we have reached the point where we are going to miss the deadline established by the U.S. Department of Energy for updating the commercial provisions of our Energy Code. That deadline is October 18, 2013. Ron indicated that a formal request for an extension had been submitted to the United States, Department of Energy (DOE) and that there had been no response to date. Ron added that staff has been in continuous contact with DOE, that DOE knows that we have sent the request for an extension. Ron indicated that the Codes Division was hopeful that they would receive an affirmative response from the DOE in the near future.

Ron noted that the residential provisions of the Energy Code are coupled with the Uniform Code rulemaking package that will, hopefully, go into public comment sometime in the relatively near future.

John Lee questioned aspects of the PNNL report and when the extension would be good until. Ron responded that the report was expected last June, 2013 and at this point staff was not exactly sure of when it would be received and that DOE had preliminarily suggested that New York receive a nine month extension.

John Lee had additional questions based upon the responses regarding whether a draft report was available for review and the consequences if the time frames were not met? Ron Piester responded that he did not believe that a draft had been released and that the consequences were unknown. He added that staff was also concerned and that they had been in communication continuously with the DOE hoping to resolve that issue in the very near future. Ron continued that for the record as soon as the PNNL report from the Department of Energy was received the Council would be notified in writing by electronic mail and that the Council would also be informed of the results of the request for an extension and what ultimately occurs with respect to that request.

Agenda Item 6 –Future Meetings

Mark Blanke noted that the next meeting was December 11, 2013 and that four meeting dates for 2014 would be established and discussed at the December 11, 2013 meeting.

Agenda Item 7 – Other Business.

Ron Piester thanked everyone and inquired whether there was any other business that the Council would like to bring forward today?

Mark Blanke reminded participants about Continuing Education Units (CEUs). Mark also noted that at the July meeting there was a topic brought up by Robert Hankin that was briefly discussed that dealt with the Department of State, Division of Licensing Services with regard to licensing requirements for fire alarm installers. Mark indicated that the discussion was really more specific to installing smoke alarms and what the role of electricians and homeowners were. He noted that basically the homeowner could install their

own smoke alarm system. A previous response had been that anyone doing that work would have to be licensed by the Division of Licensing Services. Mark noted he had been asked to look into it and follow up, and that he had. Mark noted that he obtained his information from the Division of Licensing Services Internet website and that they had a 13-page pamphlet available that identifies the General Business Law that initiates this requirement and the regulations for it. That the website also had a “questions-and-answers” section and that based upon that Mark came away with a reading that they in fact can install their own smoke alarms. And the reason is because in doing so, they're not actually in the business of installing fire alarm systems, they're just doing it for themselves. The same question and answer applies to a commercial business owner. And the answer would be the same, they can install.

Mark continued that another topic discussed at the last meeting was about electricians, licensed locally or not licensed locally. Robert Hankin brought up the question as to whether a licensed electrician can bring all the wiring up to the smoke alarm but they're not licensed to make those actual connections. The answer is mixed. If an electrician is licensed locally, Mark's reading of the pamphlet was that they do not have to be licensed to make that final connection. They do have to register with the Division of Licensing Services. So he made assumption that in that process they would have to show that they are in fact licensed locally.

If there's no licensing requirement locally for electricians, electricians would have to be licensed to install a fire alarm system, or in this case the smoke alarms, if they wanted to make that final connection as Robert Hankin had brought up previously.

And lastly, just to reinforce, if it wasn't known before that, is that this does not apply to battery-operated smoke alarms. That was also on that website. So if anybody wants to confirm that, Mark encouraged them to check the website, because he didn't want to be the one interpreting what was indicated.

Robert Hankin commented that he understood that the final connection is, as Mark explained not electrical. The electrician hooks up the final wires. It's putting the two screws in that fasten the smoke detector to the box. So it's not wiring. The final connection is not an electrical connection.

Mark responded that he had spoken to someone in the Division of Licensing Services, and the answer he received was that they technically had to be licensed to do that.

Judith Kennedy questioned who makes rules like this? Ron Piester responded that this was a licensure requirement that falls under the Department of State.

John Flanigan made motion to adjourn and Nicholas Altieri seconded. It was approved unanimously and the meeting concluded at 11:55 a.m.

Record of the meeting prepared by:

Michael G. Auerbach, R.A., Senior Building Construction Engineer
Division of Code Enforcement and Administration
Code Development Unit