

## Executive Committee – Public Comments

**LOCATION:** DES Conference Center, Room 2330  
1500 Jefferson St SE  
Olympia WA 98501

**MEETING DATE:** May 17, 2019

SBCC Staff note: Following is public testimony. Committee member and SBCC staff comments are only included where context requires.

### **WAC 51-04-010 Declaration of purpose**

Doug Orth [Committee Chair]: Our objectives number one should be, in my opinion, align with what is in the RCW and not expand on what is in the RCW.

Dianne Glenn [Committee member] ...[addressing proposed text] energy and environmental housing affordability policies of the state, I have a question on that whether it is a charge of the building code council.

Willie Hill [BHC Consultants, representing myself]. I'm on the IRC TAG. I agree with Dianne and your most recent statement there. As code officials, we continually struggle with the scope of what it is we are being asked to do with the boots on the ground and [with] less and less resources. It always comes back to where the code started, what's the intent of the building codes, why are we out there doing what we do. Simply summed up is to provide a safe built environment. There is other mechanisms out there for control, for costs, housing costs, the revenue the whole commerce is involved with it. All this stuff gets down to how it is enforceable when the boots are on the ground at the local jurisdiction. I am in support of eliminating that language because I feel it goes beyond the scope of again, what the building codes are all about.

Kraig Stevenson [Representing International Code Council]: That may have been my comment that I put in there, and the reason why I put that in there is because in the findings and intent, item number four, RCW 19.27.031, the intent and findings that the legislature found for the whole purpose of changing this back in 1989. Legislature find that state building codes are an integral component of affordable housing in accordance with this finding the state building code council shall consider building code revisions related to improving affordable housing and that would be a policy of the state. However I agree with your opening statement that anything you work on in WAC need to be reflected somewhere in statute and I say that strongly in support of what you said because RCW 34.05 section 322 says that existing and enabling legislation that enabled an agency is not enough to write rule. There has to be something in statute, paraphrasing now here a little bit. There has to be something rooted here in statute that would give you the ability to do something. I am not going to debate or argue that it needs to stay, I think that this is a document that is a work in progress.

Jan Rohila [With BIAW]: Given the discussion that just took place, everywhere in the body of the document you reference what supports why you're doing that and without a reference here to support the environmental policies you would be talking about I would have to say I am in agreement with eliminating it.

Tony Usibelli [Representing the shift zero organization]: I think in general, related to the intent the organizations is not clear that there is a compelling need for overall amendments at this point since they were amended in 2017 and other than managerial and technical changes that might be necessary for clarity we don't generally support the change. With respect to the intent language we also echo much of the discussion which much of has already gone on here ... We believe that the intent language should essentially remain as is and that in fact that is more consistent with the underlying RCWs adopted by the legislature. I think many of you know, the legislature over the years has spent lots of time crafting what they do or do not want with respect to the direction of building codes so we think that is particularity important to keep in mind. ...

Sarah Varpahl [Department of Commerce]: We submitted a letter, by my colleague Chuck Murray. ... He wanted us to come and highlight that we had submitted this but we also will just highlight that in general we echo what Tony said about not making any changes right now that they had already been amended here recently. Chuck also wanted us to highlight the International Code sees that the intent of this section is that we shouldn't have [inaudible] in the WAC and that the Washington Model Code includes a number of other code recommendations including the international piece of this that should not be included in the updates.

Kraig Stevenson: In keeping with your opening comment about having something rooted within statute, there is a proposal by I don't know who where they've struck the word opinions and I support retaining the word opinions and striking the word they have included in interpretation based upon 19.27 [inaudible] last sentence. The council may issue opinions related to the [inaudible] building official charged with the local duty of enforcing building area code. In my opinion to use the word interpretation that's an authority of the official in charge at the authorized enforcement jurisdiction to interpret the code and not the function of the council.

Kraig Stevenson: In 1988 the then managing director, I don't remember his first name but his last name was Carmicheal, sent out a letter ... to all local building departments to send in their local amendments and notify the local governments that they were not able to amend the residential portions. That was in 1988. In 1999 I had a long discussion with BIAW president Don McDonald who told me that very specifically the building industry wanted the residential as defined four units and fewer to not have local amendments that would take it and be inconsistent from the builder's point of view from one jurisdiction to the next. So that is the history as I understand it through him, that was specific about not only making the residential energy code [inaudible] but having the mechanisms and statute to keep local jurisdictions consistent with the state adopted residential code and that is why there is the process of approving the amendment code to ensure it is consistent [inaudible].

Richard Brown [SBCC Staff]: We did have written comments from Commerce who is represented here and from IAPMO. Their issues were just voiced by others. ...

## **51-04-015 Definitions**

Doug Orth: There is a new added section subparagraph 2, which adds a definition for code official. ... I think it is probably fine to have a definition of code official but my comment was that it needs to be consistent with 19.27.031. ...

Willie Hill: ... I'm taking this one a little bit deeper. This goes back for my definition of code official, Kraig Stevenson remembers ... when we went to the I code from the uniform codes it was always building official. At one point I believe it was in 2000, ICC, Kraig, they had tried to

do away with the word entirely building official and go with just official. It took a little back and forth to end up with code official. The problem that I struggle with and other code officials have struggled with over the years and I can count it on all my fingers and toes. In the State of Washington ..., building departments that are managed by folks that are not trained as a code official. I don't know who all is on the phone or sitting there so I don't want to step on any toes but planning directors, public works directors, city administrators taking on that title of code official. I proposed a memo and I sent it off to Richard the other day, it's not in here. I just wanted to add some language as a qualifier to what defines a code official. When I tried to put that through the national code channel, it didn't make it through and they still stayed with official, then again a year or so later it came out again as code official. Am I remembering that right Kraig?

Kraig Stevenson: I believe so, yeah.

Willie Hill: So why put in as code official can still mean anything to anybody. I like to have a qualifier that says code official shall be or shall possess:...[inaudible], administration enforcement of the codes adopted under RCW 19.27. A code official shall demonstrate general knowledge, training and experience in administering and applying provisions of the codes as enumerated under RCW 19.27.

Dianne Glenn: ... Willie I agree with what you are trying to say but the council, I don't think, really should have that in there policy to define that role and how much training or education that they have for that role. I mean that would be really hard to do that as a council.

Willie Hill: I don't know you're throwing a definition in there that's not in there now, code official. I am just saying further expand it.

Eric Vander Mey: So should this definition be local official and not code official because local official is what we just referred to in the previous item b.

Jan Rohila: I don't care one way or another if this is in here but I just looked to see if it was consistent with what is in the IRC and this is consistent with the definition that you see in the IRC for code official. There is some basis for if you're going to use something use something that's defined some place else in one of the other model code books that we have adopted and used.

Willie Hill: ... I am happy with the [inaudible] I am hearing I understand the constraints that we have here with this I just saw this as an opportunity to try and revisit an issue I had awhile back and it looks like it has [inaudible] if I continue to pursue at that level.

Richard Brown read a written comment: There should be a definition to address when the codes are required to be adopted for cities and counties to allow for the code publishers to insert state amendments into the model code documents. I suggest the council change the mandatory adoption date to allow for the time needed for the council to share their amendments with the code publishers. So building officials can purchase their code books and get the updated needed prior to adoption. The current State Building Code Council code development process does not allow for the publisher to have the documents ready for sale in advance of the upcoming training so it is not economically feasible for code publishers to provide this service which is critical for the efficient design and enforcement of the codes. Having a model state and local amendments in one document significantly improves the efficiency for all users. This improves the efficiency for the user, this is the goal of WABO and

this is a goal WABO has established and I encourage the council to consider the value that this would add to all code particularly in Washington State.

Richard Brown: Commerce stated within their letter that they do not want this change.

Kraig Stevenson: Mr. Chairman, you would think that I wrote that one and I did not. I think it's consistent with what I heard from representatives at WABO expressed. I am kind of reading the room and this definition is probably not going to be accepted because it really has no words it has rational behind it but what is the process at a later date if somebody word smiths it so if they wanted to revisit it. Is it done and then you just split the day and there is no coming back?

Richard Brown: This is addressed in the Staff Report latter on today's agenda. The executive committee was directed by the full council to look into this. What comes from the executive committee will go back to the full council for consideration. Then based on the full council's direction, staff will go through the rule making process. Part of the rulemaking process is a 20 day comment period and then a public hearing. At that point you can respond to any of the proposed changes.

Kraig Stevenson: You reassured me Richard that the purpose of this meeting is to pare down to what the recommendation of the next iteration is proposed will be. Then will be the natural steps in place in the rule making process for the public.

Willie Hill: I was sitting here reflecting on this we represent multiple sides to these really small cities. I have worked for small cities my past, small towns and that term local official may actually be appropriate in a fair amount of cases when it comes to what we are talking about in this section in that you got a lot of small towns whatnot that maybe do just have a part time code official and what's being requested as a code change something that really affects policy, it comes by way of a policy a decision maybe from the council or the mayor. That city administrator or mayor might be the one asking for that code change. I can see that happening in a lot of small towns. Being the case not necessarily their code official because they don't really have a code official they got Joe who you know who retired from carpentry and he comes in giving them ten, twelve hours a week or looks wherever they need to look at. And there may not be a code official designated for that town it's the mayor or the city administrator or the manager.

#### **WAC 51-04-018 – Petition for preliminary review**

Jan Rohila: I actually think this came from a large jurisdiction that said how difficult it was to move it through the process and then have it be, and have it come back and the council say no that won't work. I think what the idea was that, I believe [inaudible] brought it forward that the City of Seattle the process was so long if they could get a preliminary idea from the council before they moved it forward it would smooth that process by saying the council is already preliminarily given us an okay. Where I think that makes sense. I think at first read your thinking along those lines if you miss that word preliminarily you kind of miss the whole point of what you're trying to say there. I don't agree with cropping out building code because it's the building code council, not the council.

Doug Orth: Yes, again my recommendation was to leave it as per the original and if Kraig you had a specific way to clean this up?

Kraig Stevenson: No I don't because I didn't understand it when I read it and the people toyed with it and now I understand what the purpose of it is. Let's keep it pure as Jan has said ...

### **WAC 51-04-020 Policies for the consideration of proposed statewide amendments**

Doug Orth: Kraig ... I asked earlier if anyone wanted to advocate for add of .328 on the 34.05. It seems like it is unnecessarily restrictive because .328 is part of the 34.05 and to narrow it down to just that one seems to put everything into a significant legislative rules requirement.

Kraig Stevenson: Well with the passing of house bill 1622 the council is now named as one of the agencies that [inaudible].

Kraig Stevenson: That is a good point that you make. I am trying to think back where in the statute that bill changed.

Doug Orth: I thought it was on statewide amendments they were trying as a significant standard legislative rules requirements. Richard do you recall that?

Richard Brown: 34.05.328 now lists the state building code council.

Kraig Stevenson: I think the way the piece of legislation went is it didn't alter 19.27 it altered 34.05. I agree with the chairs comment that by adding the .328 it could be read that the rest of the chapter does not apply.

Kraig Stevenson: The ICC groups its code into two parts, there is a code group A and a code group B and they list out what those codes are in the code group. So what that could mean is that if the council was dealing with the same code, the same code group you would have maybe more consistency with following the national process. Suppose to having, for instance in code group one you always have the plumbing mechanical fuel gas. And the way that you've done your groups that's in the second group correct?

Richard Brown: Yes. Correct.

Kraig Stevenson: The only reason to keep or align is if the council members feel it gives you more flexibility but if it adds unnecessary wordage that gives no benefit you should remove it and just deal with the reality of life when the codes are what they are.

Doug Orth: Subparagraph b. This is a proposal to go to a six year cycle. I think that Chuck's letter put it best in that this has come up for legislation consideration multiple times and it's never gained traction so why would we get ahead of the legislature?

Tony Usibelli: ... We strongly agree with that, this is a legislative issue not an administrative issue.

Kraig Stevenson: The statute 19.27 talks about the council shall regularly review and update. So what is regularly? Consistently over time regularly has been an interval that the council has decided to follow which is every time a new code is out they review them. The council could make a decision to review on a three year cycle and decide not to adopt one the way the statute is. To put a mandatory six year on it confines the council from making a decision that it thinks it's the best decision. There is only one instance where the council went six years and that was when model code organizations reorganized and they weren't sure how to go from the

1997 to the 2000 and they went to the 2003. So that was the only time that the council felt that it needed additional time to figure out how [inaudible]. I also talked with [inaudible] region ten and asked them how this would be viewed because if you really look at what this is it is not a six year cycle it is six or more years after the last adopted edition. From a federal emergency management aspect that could very well mean that your three additions behind current code that they would want you to rebuild in order to get the funding for any kind of either mitigation or any post disaster. I asked them to give me something in writing but I never got it. They did say in an email that if the council was to do this they really need to understand the ramifications of that decision.

Richard Brown: Commerce and IAPMO weighed in on no on the six year cycle.

Kraig Stevenson: [Regarding posting actions] Why is that buried there? Shouldn't that be up in b1 or b2?

Kraig Stevenson: I think taking out the word final, if that helps make it clear to those of us who know what a CR101 and a CR102 is great. Aside from that acronym we know that the 101 is the notice of intent to enter rule making. We know what the title of the CR102 is and we know that the CR103 is the final thing that is going to set the four. Does the public know that? Would it be helpful to use the terminology that the office of the code reviser uses that is the name of those reports so that people realize it's not a final action it's good we took that out but its posted what is to date because then as completing the second half, the second group, you're going to take final action to things become the CR103.

Kraig Stevenson: I am glad that we are having this sidebar because I don't want to have to go through a house bill 1622 again. And what element was that was in that piece of legislation was doing what we are doing right now. I would love to be in the position to say when people say I can't understand and I can't follow what the building code council's doing, well we didn't keep voodoo science, veiled behind the screen and use terms that people only on the council are familiar with, but it's right here in such a form that the public eye ought to be able to answer this question. Part of the reason why I am giving this commentary, and not to throw the state of Oregon under the bus, but it's been one of my states and I had somebody call me up, well I went through their process blah, blah, blah and now they have changed what we thought we got. How could that be? So I referenced go to this portion of their Oregon administrator rules, read that section and it tells you how the process between their boards and their administrator work. Totally different process than the last time. The point that I am making is it is an opportunity to be clear and address the concerns of the stakeholders because as I said it is difficult to follow. Getting rid of the word action, of the word final and using terms that you could say are consistent with what the code reviser does I think might add clarity. At least I will put it out there for you to discuss your thoughts on it.

Jan Rohila: Well if we are talking about transparency to the public, what on earth is posting the actions? Where are you posting them? Is there some place on the website that says posting of actions or what does that mean you put them on a bulletin board someplace? I mean that's the question when I say where do I find a posting of your actions? What does that mean?

Richard Brown: Would you be comfortable with: Posting actions on the State Building Code Council webpage?

Jan Rohila: If you had one that says, a page that says posting of actions?

Richard Brown: Because that is conduit for all of our posting.

Jan Rohila: And that is exactly what I'm saying. If there is a page called posting of actions, then I know where to go and I know where to look. Again you're telling me these are the actions that have been taken and they're posted there but other than that I wouldn't know what that meant or how to find them.

Kraig Stevenson: Does it need to be on the State Register?

[Yes]

Kraig Stevenson: Can I read that section? Upon completion of the Group 1 public meetings, Council Actions, and posting of the actions on the state Building Code Council's website, and provided that new editions of Group 2 model codes are available to the public, the council shall review the Group 2 codes and approve a report on significant changes and applicability of existing state amendments. The Group 2 report shall be posted on the council web site and a submission period of at least sixty calendar days shall be allowed for new proposed statewide amendments.

Eric Vander Mey [Committee member]: It could get all the way up to the council level and we could go back to the Tag with it.

Jan Rohila: But sometimes they go to the Tag and the council hasn't reviewed it this is saying that the council reviews them all but sometimes they go to the Tag for review before the council reviews them.

Dianne Glenn: Council has the responsibility to assign it to the Tag.

Jan Rohila: But do they review other ones to before they go to the Tag?

Dianne Glenn: It usually is pretty clear-cut but in theory they do.

Jan Rohila: I think that is the comment that is coming up. I didn't make it but I can see where it is taken literally only the council would be reviewing proposed amendments which isn't the case. You don't review them and then send them to the Tag.

Dianne Glenn: Well we do and then we assign them to the Tag. That's the councils function.

Jan Rohila: Ok.

Kraig Stevenson: The terminology in the statute under 34.05.320 is notice of proposed rule. That the CR102 but the terminology is notice of proposed rule.

Jan Rohila: Filing of the notice of the proposed rule.

Kraig Stevenson: ... You haven't filed the final CR102's for the group one's that you did last year that you had the public hearing on?

Kraig Stevenson: This is why it was important a little while back that you did what you did by calling it a council action and not calling it a proposed rule, or a final rule because what you are going to do, although you did all this work and you posted it on the councils website it was not a proposed rule that needed to go to the code reviser it's just been parked on the councils site

until you get to the second year where you actually take the group two and you will post that and at some point in time you're going to file a CR102 for the proposed rules of group one and group two to have the public hearing this fall.

Kraig Stevenson: If I may make a suggestion to help when you take this to the full council if you had a flow chart. So what your wordsmithing now, so that they don't have to regenerate all this discussion.

Kraig Stevenson: Any innovation that's worth its salt is probably going to be a change in the model code.

Kraig Stevenson: Because the model code organization doesn't review proposals they consider them and then they make a determination through their processes whether they come in the new code or not.

Kraig Stevenson: I agree with your comment that anything that widely opens up the floodgates of amendments is to be avoided because I think that what the intent for a long time with the WAC and the statute [inaudible], the model codes accept where there is specific reasons why we need to amend them. We don't amend them just to amend them and I have watched over the years many states get flooded with, well here is a really good idea and I brought this up with Richard yesterday and because this is under the section of procedure for submittal. I didn't write this as a comment because I haven't fully thought through all of the ramifications but what if the public, now there is an initiative process that we have [inaudible] chances are right and have requirements to do that but really it's the legislators that legislate statutorily and that takes a bill sponsor and a bill sponsor doesn't sponsor a bill willy nilly, they consider it. So along that line of a thought I had is in order to make sure that amendments followed in the criteria what if it was a requirement that you wrote that they have to be sponsored by a council member? Meaning that somebody would bring forth their idea, complete application and justify it to a city council member and if it met the level of meeting the criteria as council member was willing to support it and defend it, it meant that it was justifiable in a lot of ways. Because you're not going to put your name on something that you think is just goofy and waste everybody's time. So I didn't write that into the proposal because I didn't figure out well how do I work that in there without really muddying the water of this. You don't even need to comment I just wanted to throw that out there. It was just an idea.

Kraig Stevenson: Again the only reason why I bring that up is because of the proliferation of throw any idea into the hopper and see how it can stick. That just burdens the council and the staff. I like Mr. Simpson's comment and I certainly appreciate the Chair's comment about the negative blow back. No reason to discuss it any further.

Jan Rohila: ... I just said that it gives one member of the council the impression they are speaking for the whole council. If it hasn't gone before a council vote or it would seem to fragment the unity of the council.

### **WAC 51-04-030 Policies for consideration of proposed local government residential amendments**

Kraig Stevenson: I don't know that you have statutory authority [to change this]?

Eric Vander Mey: It says single and multifamily in the 27.05.015.

Kraig Stevenson: But wasn't it 19.27.074 that says the council will review all of those amendments to single and multifamily. That's the definition this is an action that the council has to do and you are not authorized with the authority to have to review all of the amendments from local government it's just the 1-4 dwelling units.

Jan Rohila: 27.074 says too that the council is required to approve or deny all city or county amendments to the building code that apply to single family or multifamily building as defined in RCW 19.27.015. So that is what they are tasked with I don't think that you can change that.

Dianne Glenn: Why would this be eliminated?

Doug Orth: Somebody wanted to expand it to include small buildings.

Jan Rohila: But somebody wanted to delete it completely.

Kraig Stevenson: You have to have a WAC rule that charges what you're going to do as the administrative as the statute says you got to do.

Kraig Stevenson: 19.27.060 item 1, says governing bodies of the counties and cities may amend the codes enumerated in 031 as amended and adopted by the state as they apply within their respected jurisdictions. But the amendments shall not result in a code that is less than performance standards and objections [inaudible] in the state building code except as provided in subsection 2.

Richard Brown: But we are still in the residential which puts everything back on the council.

Kraig Stevenson: Right but I am targeting this [inaudible]. The state building code gives you what are the purposes and standards.

Kraig Stevenson: So they can't lesson the what, they can't lesson that what their minimal performance standards are you know? The minimum performance standards and objectives is 19.27.020 doesn't specifically site that but that's where that is. So you don't need the languages to not result in a weakening of the code and this other laws policies I don't know that you can do that because that is inconsistent with what the state statute says is to how a local jurisdictions authorized to do an amendment regardless of [inaudible].

Jan Rohila: Right, whatever the law.

Kraig Stevenson: Right, whatever the law is and in the 074 section, the council has to approve the amendment.

Kraig Stevenson: There was the City of Edmonds that passed an ordinance in the late 80's after the council had the authority to say any local amendment residential and it became a big issue that passing a separate ordinance that related to buildings that it couldn't supersede what the building code statute required. So just because you passed another law doesn't mean that you now get to regulate buildings differently under separate ordinance or policy or law that happens to do with constructing buildings, is separate from how you build buildings under state building code. The local laws and policies is really dangerous to put in the local WAC rule that would give people more free liberty to just decide oh well we will just pass another law.

Kraig Stevenson: The council took up an enormous amount of time and Peter Devries was the Chair of the council at the time, ok, on this word unique. The council spent an incredible amount of time, how is the City of Redmond more unique? How is the City of Redmond more unique than any place else? Eventually those cities convinced the council of how they were unique. Not defending the decision but this word unique

**WAC 51-04-035 Procedure for submittal of proposed local government residential amendments**

No public testimony

**WAC 51-04-037 Preapproved local government residential amendments**

No public testimony

**WAC 51-04-040 Reconsideration**

No public testimony

**WAC 51-04-050 Ex parte communications**

No public testimony

**WAC 51-04-060 Opinions**

No public testimony

**WAC 51-04-070 Council mailing address**

No public testimony