



STATE OF WASHINGTON

STATE BUILDING CODE COUNCIL

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DRAFT/SUMMARY COUNCIL MEETING MINUTES

LOCATION: Cherberg Building, Hearing Room 2
Capitol Campus
Olympia, Washington

MEETING DATE: January 6, 2017

Agenda Items	Committee Actions/Discussion
1. Welcome and Introductions	<p>Members in Attendance: Steve Simpson, Council Chair; Dave DeWitte, Vice Chair; Diane Glenn; Leanne Guier; Andrew Klein; Phil Lemley; Jim Tinner; Eric Vander Mey; Robert Graper; Traci Harvey; Doug Orth, Duane Jonlin</p> <p>Members Absent: Al French, Rod Bault</p> <p>Staff in Attendance: Tim Nogler, Managing Director; Krista Braaksma; Joanne McCaughan; Dawn Cortez, AAG</p> <p>Visitors Present: Jed Scheuermann; Al Audette; Jan Rohila; Terry Notstein; Theresa Phillips; Lee Kranz; Dave Tworkowski; Dave Kokot; Chuck Murray; Amy Cruver; David Hanson; Carol Lewis; Alen Duer; Dave Nehren</p> <p>The meeting was called to order at 10:00 a.m. by Council Chair Steve Simpson. Everyone was welcomed and introductions were made.</p>
2. Review and Approve Agenda	<p>The agenda was approved as written. Tim Nogler noted that some items under 'other business' were from the previous meeting.</p> <p>The agenda was approved.</p>
3. Public Comment on Items Not on the Agenda	<p>None received.</p>
4. Review and Approve Minutes	<p>Minutes of November 18, 2016 – Steve noted appreciation for the training provided by Dawn Cortez, AAG on the Open Public Meetings Act and Public Records Act. Minutes were approved as written.</p> <p>Minutes of December 2, 2016 - Minutes were approved as written.</p>
5. Election of Officers <i>Chair</i> <i>Vice-Chair</i>	<p>Nominations; Tim explained the process for nomination and election of officers, per the By-laws. Dave DeWitte nominated Steve Simpson for Chair; Leanne Guier seconded. No other nominations were received; Phil Lemley moved the position by acclamation, and Steve accepted the position. Steve Simpson nominated Dave DeWitte as Vice-Chair, seconded by Duane Jonlin; Phil Lemley moved the position by acclamation and Dave accepted the position.</p>
6. Committee Appointments <i>BFP Committee</i>	<p>Filling vacancies on committees:</p> <p>Jim Tinner/Chair; Andrew Klein/Vice Chair; Robert Graper; other committee members will continue: Al French, Diane Glenn; Traci Harvey; Phil Lemley; Doug Orth; Steve Simpson; Rep. Buys.</p>

<p><i>MVE Committee</i></p> <p><i>Legislative Committee:</i></p> <p><i>Executive Committee</i></p>	<p>Leanne Guier asked about the quorum for a committee; Dawn Cortez AAG explained that if there are 9 or more Council members participating, a committee meeting would essentially become a Council meeting. She cautioned the Council to be sure to provide notification of the committee meetings and to stick to the agenda. Steve noted that he welcomes broad participation, but urges attention to provide notice ahead of time. Staff confirmed that providing additional meeting notices will not be a burden.</p> <p>Eric Vander Mey/Chair; Andrew Klein/Vice Chair. Other committee members will continue: Leanne Guier; Duane Jonlin; Phil Lemley; Doug Orth; Steve Simpson. Tim reminded Council members that the committees have the responsibility to review and approve interpretations for code questions submitted by local officials.</p> <p>Leanne Guier/Chair; Philip Lemley/Vice Chair; Steve Simpson; Dave DeWitte; Diane Glenn; Traci Harvey; Duane Jonlin; Andrew Klein; Doug Orth. Tim noted that the committee will meet in conference call each Friday during the Legislative Session.</p> <p>Executive Committee – Council Chair, Chairs of the Standing Committees and the Vice Chair of the Council, per the by-laws: Steve Simpson, Chair; Dave de Witte; Jim Tinner; Eric Vander Mey; Leanne Guier.</p>
<p>7. Deliberations on Rulemaking – Review Testimony Received</p> <p><u>WAC 51-04,</u> <i>Policies & Procedures</i> <i>Motion to Adopt Changes</i></p> <p><i>51-04-010</i></p> <p><i>51-04-015</i> <i>Definitions</i></p>	<p>Tim reviewed the testimony received and explained the purpose; we had comment throughout the last year; filed a proposed rule, held a public hearing and took testimony, now is the time for decisions on any changes; the choices are to adopt as filed, adopt as amended, or not adopt. Tim suggested they review section by section and make decisions per section.</p> <p>There were substantive amendments suggested by the commentary; a motion to amend will be needed if the Council wants to adopt any of the proposed changes. The Council could refile different sections if they see the need. The main focus was to break up the code review process into a two-year review, with some codes reviewed in year one, and the rest in year two. This is an effort to improve the process.</p> <p>Tim reviewed the comments and testimony received. DoH had offered some proposed changes; NEEC also suggested changes concerning legislative mandates; other comments to add more specificity to the purpose, reference the statute; these were considered but not adopted. AWB and REALTORS proposed significant rules under the APA should apply to the SBCC, with CBA filed with the proposed rule, rather than at the filing of the final rule.</p> <p>Council discussion: Jim T. noted the Council is expected to reduce the number of state amendments; as for the energy code, they are required to meet the standards set by law; Andrew K. notes it is meant to refer to the national code process. Dave D. asked Tim to clarify the DOH concerns. Tim explained that under the purpose/objective, it would be harder to amend the code. It is an issue of access for DOH, they see it as limiting their ability to provide proposed amendments to the code.</p> <p>Phil Lemley moved adoption as filed/Jim T. seconded. Dave DeWitte clarified that they are to address these WAC sections one by one; clarify whether is it possible to address one but not all of the others. Correct. Chair Steve Simpson noted this first section is what they are currently considering. Adopted with no modifications by unanimous vote.</p> <p>Modification is in the proposed rule as supplements are no longer published. The Council has the option to move to new edition; define the term ‘unique’, per Webster’s Dictionary, as that is part of the criteria. Dave agrees to the idea of defining ‘unique’, however it is unlikely that any one jurisdiction would have a unique condition. Duane noted with the Seattle issue the Council discussed a few months ago, and whether or not unique conditions existed. Diane noted the word has been there and understood for</p>

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

years. Dave wants to find a word that is less ambiguous; Jim T. moved to not adopt the definition of 'unique' as proposed; Andrew K. seconded. Motion carried. Diane Glenn moved to adopt as filed; Robert Graper seconded. Motion carried by unanimous vote.

Tim noted this is a major policy issue; it splits the review process into two separate periods, creating two groups. The process commences when the new editions of the model codes are available; within 60 days we would announce the deadline/timeline for adoption of the new code edition. Another concern was regarding the IEBC, to be sure to include that on the list of codes to be reviewed. We received one comment, re: retaining the ability to file emergency rules. It would clarify that anyone could petition the Council for emergency rulemaking at any time. There is generally strong support for this proposal. Diane Glenn asked for clarification, i.e., is there exclusion for emergency rulemaking? Tim explained it is a clarification, currently as proposed it refers to the cycle, it is broad. This is just a clarification that to be outside the timeframe it would need to be an emergency rule. Dave D. asked if it was unanimous among the stakeholders for support. Tim noted there was not a specific comment; there is unanimous support for splitting up the cycles. Duane noted a typo, the term 'commercial' is missing in a (i); he suggested clarification may be needed to ensure the process is closed for changes to Group 1 during the Group 2 process, except for editorial corrections, etc.; clarify that Group 2 is definitely the 'following year.' Tim notes the intent is to allow Council to set the deadlines appropriately when the time comes based on the timeline established at that time. Tim noted we used the established timeline to show the flow, but the cycle timing actually will depend on when books are available for the new editions; the adoption deadline is still December 1 of every year, per statute. Other considerations will be taken into account.

Duane asked for clarification on the public hearings schedule; he indicated it should be four total, two for each group. Jim asked if the codes from the first year would be 'off limits' for substantive change in the second year. Tim explained there are clarifications on the limits; his concern is that it might be burdensome to send codes for review two years in a row. Tim notes the Legislature is not required to review immediately, they can wait to review it; there is no burden to do the review. The Council can make that decision on a year to year basis, e.g., if there are co-relation issues between codes to be decided; they may have corrections to address, but no substantive changes. Duane asked Jim if these would be legitimate reasons to re-open Group 1; he agreed that would be reasonable for correction of errors and omissions, clarification of language, incorporation of updated references. Jim commented if Group 1 and Group 2 are filed at the same time, it would be reasonable.

Jim Tinner moved to adopt 51-04-020 as amended, adding existing building code to Group 1; both groups will be filed at the same time, and Group 1 changes in the second year are limited to code correlation, incorporation of updated references, or clarification/correction of errors.

Duane seconded the motion.

Doug asked for a friendly amendment re: emergency rulemaking to be included. Jim agreed.

Eric asked if the Council needs to make those modifications, or if staff will make the determination. Tim notes item 4 is where these changes should be noted, except for the emergency rule reference, which is in the first sentence.

Diane asked for clarification on the public hearings. Will there need to be additional public hearings on group 1 during the group 2 public hearing process. Andrew commented on his concern for adequate public hearings. Leanne suggested we clarify 'two public hearings for each group.'

*WAC 51-04-025
Procedure for Submittal of
Statewide Amendments*

Eric suggested three friendly amendments: add 'commercial' after state energy code in Group 1; add IFGC, NFPA 54 & 58 to Group 2, add 'for each group' to item 3; Krista asked if we need to add the ANSI standard, but it is a standard not a code, so not necessary. Diane asked if there will be two meetings for each group, if they will need additional public hearings for Group 1 if there are changes made in the second year; Duane commented it would only be on the new language.

Tim notes by this action we are limiting what can be filed for Group 1 in the second year; only those specific changes as noted would be open for further public comment.

Jim notes both would be filed in the second year. Tim added that if the first group was filed in the first year, it would allow more time for the legislative review. Duane noted our intention would be to file them both at the end of the second year.

Tim restated the motion to adopt 51-04-020, as amended.

Motion: Move approval with the modifications as follows: unstrike first sentence regarding emergency rules; include existing building code in Group 1, IFGC, NFPA 54 and 58 to Group 2; clarify under item (a)(i) commercial energy code; file groups 1 and 2 with the code reviser at the same time (item 4). During the group 2 review, group 1 amendments shall be limited to correlation, errors, language clarifications and reference section updates (item 4); add 'for each group' at the end of item (3)

Steve summarized the motion; move to adopt as amended, with friendly amendments.

Motion carried by unanimous vote.

5-minute break called; meeting reconvened at 11:32 a.m.

Tim reviewed the proposed changes to WAC 51-04-025 to slightly modify criteria; reviewed testimony by Realtors re: timeline for incomplete submittals, allowing an additional 30 days to submit required economic data; DOH comments on language that has been in effect since 2007, there has not been a problem. It was intended to be a limitation; it was simply moved to a different section.

Council discussion – Jim and Doug discussed the differences; Duane noted our amendments are often adopted into the model codes; we should not limit our state changes to what has been adopted at the national level. Duane noted we are very active at the national level; if we limit our code development to wait for national, it would flip the status quo. Andrew discussed his concern on research reports noted in DOH comments. Doug notes we need due diligence on rejecting changes that are not properly submitted and do not provide any cost benefit analysis information; we could provide a 30-day response timeline for submitting the info, otherwise the proposal should be set aside for the next year.

Duane notes we want to encourage public participation, and he is opposed to harsh language around potential costs, as he does not want to discourage submittals. We have extremely limited staff time/resources on hand to do this analysis for every single code proposal. Since we don't have budget for staff we cannot demand that level of analysis. Doug noted we cannot be fast and loose, we need to have resources for economic analysis; in an ideal world we would have the staff resources to do this level of work. Steve believes if we make a modification to the proposal then the Council/staff is responsible for modifying the analysis. Doug believes that the proponents need to provide some basic economic analysis and data. Steve asked the AAG for an opinion on Item 5.

Jim T. moved to adopt as filed; DG seconded. Dave DeWitte is concerned about section 5 – such narrow language in the WAC may be constraining the ability of the Council to function. We do that work anyway. He is speaking in opposition.

Eric agreed with Dave, and noted we already do most of this; by adding this language

<p style="text-align: center;"> <i>51-04-030</i> <i>Policies for Consideration of</i> <i>Proposed Local</i> <i>Government Residential</i> <i>Amendments</i> </p> <p style="text-align: center;"> <i>WAC 51-04-040</i> <i>Reconsideration</i> </p>	<p>we would not get anything new or useful. He also wants clarification that we are not looking solely at model code amendments.</p> <p>Andrew suggested a friendly amendment to eliminate section 5 in total. Jim did not accept that as friendly. Duane will speak against the proposal if that amendment is not allowable. Eric made a request for a friendly amendment; it was rejected by the second, Diane. Doug Orth notes that the proponent must provide the information required. Jim withdrew his motion.</p> <p>Jim T. moved to adopt as modified: ‘Where applicable, the proponent shall provide to the Council the following information’; Phil seconded.</p> <p>Andrew feels this should be on the form rather than in the WAC. Dave D. is troubled by who decides what is ‘applicable.’ Diane wants all the information available to the Council. Doug has another proposed friendly amendment.</p> <p>Duane notes if we keep #5 note ‘as modified’ by the Council he would be supportive. Call the question: Motion failed 5 to 6.</p> <p>Leann proposed this be submitted without item 5, but include the language regarding the 30-day rejection as proposed; Diane clarified we would keep the form.</p> <p>Motion carried by unanimous vote.</p> <p>Local government residential amendments. Tim noted we have had significant opposition to this from the builders association. Steve notes the AG has looked at this and determined we do have the ability to do this.</p> <p>Jim moved to remove the word ‘proposed’ from #3, and otherwise adopt as filed. Phil seconded.</p> <p>Duane asked what the AG’s determination was re: Council ability to approve or reject local amendments. Dawn explained the memo was attorney/client privileged; therefore it is confidential. Dave asked if this means we will be acting as we always have, or will this leave it ambiguous. Jim noted that locals could get an opinion from the Council ahead of time, but the Council would not necessarily give assurance until after the local legislation was in place. Phil asked if the hearings examiner would need to be taking this into consideration. Jim noted those are generally appeals cases, this is regarding proposed local amendments.</p> <p>Duane likes the way this is written, as it is the final step for the local after the Council has made their decision. Jim notes it would be preliminary approval. Doug asked if the intent is to bring it to Council first.</p> <p>Motion carried by unanimous vote.</p> <p>Duane moved to adopt as filed; Doug seconded. Diane notes it will allow anyone who is on the opposite side to demand reconsideration; it will open up potential large numbers of reconsideration proposals. Duane noted currently it is one-sided; he believes this would balance the playing field; the Council will decide whether or not to grant the petition.</p> <p>Motion carried with one opposed.</p>
<p>8. Deliberations on Bylaws – <i>Bylaws Review</i></p>	<p>Steve noted our scheduled meeting is over at 1 p.m. However there are members of the public present who may want to testify. Tim noted there are two critical bylaws that should be considered today. Others can be moved to a future meeting. Currently, the Council Bylaws state the minutes for Council meetings shall be transcribed; Steve asked for public comment, but none was forthcoming; he is looking for a motion to delete this requirement. Duane moved, Phil seconded to delete the requirement for transcription of minutes. Motion carried with one opposed.</p>

<p>12. (agenda modification) Interpretation Request – <i>IBC Applicability/ San Juan County</i></p>	<p>Tim reviewed the comments to the By-Laws; he noted that item #8 concerns the Legislative Committee role; Duane and Jim noted opposition to striking #5 under this section, which would allow the committee to develop recommendations for Council consideration. Andrew believes the Committee should take an active role, and that committee members should provide testimony to the Legislature. Jim noted #5 is a permissive statement with no obligation. Steve reminded members of their recent training in this regard, i.e., when they testify they must be delegated by the Council if they are testifying on behalf of the Council. Diane agrees that they need to be careful not to testify as a committee, but they can do so individually. Leanne states that their role should be stated at the hearing. Jim believes the language is sufficient. Andrew requested clarification on whether the legislative committee constitutes a quorum of the Council; it does not.</p> <p>Public comment: Jan Rohilla – BIAW; these comments came out of concerns regarding certain actions during the 2016 session; she is happy about the training, and is pleased that the Council appears to be on the right track.</p> <p>Motion: Jim T. moved/Phil L. seconded to adopt as written with the exception of keeping rather than striking number 5 under comment #8.</p> <p>Motion carried by unanimous vote.</p> <p>Tim suggested tabling the rest of the proposed by-laws changes for the next scheduled Council meeting on March 10.</p> <p>San Juan County – Issue is whether permits are required when a project is located in the public way – when is a permit required? Discussion: Duane suggested noting when the project is not in the public way; Jim noted the IBC says no permit is required when the project is ‘primarily in the public way.’ No public comments were forthcoming.</p> <p>Duane moved to approve as written; Jim seconded.</p> <p>Motion carried by unanimous vote.</p>
<p>10. Expedited rulemaking – errors/omissions - editorial corrections to 2015 codes</p>	<p>Tim provided an overview of the corrections to be submitted to the Code Reviser for publication in the State Register. Jim T. moved approval; Diane G. seconded.</p> <p>Motion carried by unanimous vote.</p>
<p>11. TAG membership</p>	<p>TAG membership discussion will be scheduled for the next Council meeting.</p>
<p>13. Executive Committee Report</p>	<p>DES budget proposal has been submitted to OFM, and will go through the Legislature; the Executive Committee recommends that the Council approve the submittal. The proposed appropriation amount reflects the actual revenues expected in FY18 (\$506,000) and FY19 (\$522,000), beginning July 1, 2017. This includes expected results and how we monitor those, i.e., identify the number of amendments, the code cycles, minimum number of amendments. This is to inform OFM of our process, we have a graph to show our amendments as adopted. The total number of allocated employees is four FTE, currently we have one vacancy. Jim T. moved to approve the budget proposal as submitted; Doug O. seconded. Motion carried.</p> <p>Discussion of the vacant position will be moved to a future meeting. Steve noted that Tim is planning to retire in November 2017. The Council will need to consider their role in the hiring process. Dave deWitte moved to have the Council direct the Executive committee to meet and discuss with DES staff, and other state agencies, as to the appropriate role of the SBCC in the hiring process for the Managing Director.</p>

	<p>Seconded by Jim T.; Doug O. does not believe that role is delegated to DES. The AAG should interpret the WAC and RCW in this matter and determine how to proceed. Dave recognizes this as a friendly amendment to include the AAG. He anticipates we will use DES resources at some point; this needs clarification. Motion carried.</p>
14. Staff Report	<p>Tim noted we will need to convene the MVE committee to review an Energy Code interpretation request. He also shared that the Governor recently signed a directive on 'Resilient Washington' with a report due back to EMD by June; SBCC is singled out on issues regarding earthquake preparedness, specifically a retrofit program to determine codes or standards needed to prepare existing buildings. Tim just wanted to ensure that the Council was aware of the request and that he would prepare the report as requested. Duane noted Seattle is also involved in this issue and requested a copy of Tim's report when it is available.</p> <p>Tim reminded the Council that the Legislative committee meets on Fridays during session; Krista will provide information on the weekly meetings.</p>
	<p>The meeting was adjourned at 1:05 p.m.</p>