

Meeting Minutes: Construction Codes Advisory Council

Date: Sept. 29, 2022
Time: 9:30 a.m.
Location: WebEx Event

Members

1. Shelonda Marie-Alves
2. Mark Brunner
3. Alfreda Daniels (Alt – Hendricks) – phone
4. Christopher Ferguson – phone
5. Barry Greive – phone
6. Gerhard Guth
7. Mike Herman
8. Tom Jenson
9. Dan McConnell
10. Scott McLellan – Chair
11. David Morlock
12. Mara Peterson
13. William Pim
14. John Smith
15. Stephen Ubl

Members Absent

Lori Bauer
Duane Hendricks
Ken Hinz
Mike Paradise
Reed Sprung
Mark Worms

Staff & Visitors

Kate Perushek – Interim Deputy CO
Jeff Lebowski – DLI
Lyndy Logan – DLI
Charlie Durenberger – DLI
Todd Green – DLI
Rich Lockrem – DLI
Scott McKown – DLI
Greg Metz – DLI
Amanda Spuckler – DLI
Mary Barnett – Urban Works Architecture
Jessica Archer – Target
Cody Bestul – CBS Construction Services
Barb Conti – Commerce
Nick Erickson – Housing First MN
Jamie Fitzke – CEE – phone
Steve Gottlieb – phone
Adam Hanson – ABC – phone
Kim Havey – City of Minneapolis – phone
Brian Hoffman – City of St. Louis Park
Irene Kao – League of MN Cities
Russ Landry – CEE – phone
Jeff Lang – phone
Ed Lipinsky – phone
Jeff Mang – PIMA – phone
Ben Rabe – Fresh Energy – phone
Tessa Sanchez – Tesla – phone
Matt Spellman – MN Realtors
Sophie Thaden – MMCA
Jason Vandever – NAIMA – phone
James Williamette – City of St. Paul

1. Call to order

- A. Chair McLellan called the meeting to order at 9:33 a.m. Roll call was taken by Scott McKown, (alternate chair) and a quorum was established with 15 members present in person or via phone; a quorum was maintained throughout the meeting.

- B. Announcements/Introductions – Chair McLellan
 - A. Roll call by Scott McKown, Chair Alternate
 - B. Announcements/Introductions – Chair McLellan
 - Reappointed members: Reed Sprung (Boiler Industry), Ken Hinz (Commercial Building Industry)
 - New member: Christopher Ferguson (Fire Marshal)
 - Jan. 2, 2023, seat expirations: Re-apply in November
 - Everyone present in person or by phone are able to hear all discussions and all votes will be taken by roll call if any member joins via phone.
 - All handouts discussed are posted on the Council’s website.

2. Approval of meeting agenda

A motion was made by Brunner, second by Peterson, to approve the agenda as presented. The roll call vote was unanimous with 15 votes in favor; the motion carried.

3. Approval of previous minutes

A motion was made by Guth, seconded by Morlock, to approve the Jan. 20, 2022, meeting minutes as presented. The roll call vote was unanimous with 15 votes in favor; the motion carried.

4. Regular Business

- A. Expense approval – per diem. McLellan approved per diems – Lyndy will submit.

5. Department/Legislative updates

- A. Kate Perushek, Interim Deputy Commissioner

6. Division updates – see [presentation](#)

- A. 50th Anniversary of the State Building Code – Scott McLellan
- B. Commercial energy code adoption – Amanda Spuckler
 - Proposed rule and SONAR are available on the rulemaking docket:
<https://www.dli.mn.gov/aboutdepartment/rulemaking/rulemaking-docketminnesota-rules-chapter-1323-0>
- C. Floodproofing code adoption – Amanda Spuckler
 - Rulemaking docket:
<https://www.dli.mn.gov/aboutdepartment/rulemaking/rulemaking-docket-minnesotarules-chapter-1335>
- D. Residential energy code informational hearing – Amanda Spuckler
 - Updates will be posted to the rulemaking docket at: <https://www.dli.mn.gov/about-department/rulemaking/rulemaking-docket-minnesota-rules-chapter-1322-0>

7. New Business – see [presentation](#)

- A. Legislation Review & Comment – see **Attachment A**
 - a. Licensing – Charlie Durenberger
 - b. Window washing anchors – Greg Metz
 - c. Existing building energy – Greg Metz
 - d. EV charging stations – Greg Metz
 - e. Assisted living – Scott McKown
 - f. Boiler inspections – Todd Green
 - g. Commercial energy code – Scott McLellan

Commercial energy code discussion:

- Chair McLellan introduced the intent behind this bill that all new commercial buildings constructed beginning in 2036 are net-zero. As the current three-year adoption cycle of ASHRAE is not on trajectory to meet that goal, Minnesota must accelerate energy code efficiency standards by ensuring each new commercial energy code is at least an 8% more efficient. We realize it can't happen with the code alone, renewables would be part of the solution. Our intention would be to hire a consultant that would help us amend the code to ensure we're meeting the minimum 8% until we have exhausted energy code efficiency potential. At that point it, a policy decision may be needed regarding energy sourcing.
- John Smith's concern was that eventually, one starts to put oil back into the ground [to provide remaining energy needs].
- William Pim stated that as you get move further down that cycle, the buildings get better and better and you get to a point where you can't put more insulation on the building, you can't make it tighter, you run out of things that can be done. It will continue to be a greater challenge to find the technology and where the 8% comes from. Instead perhaps there's a way to state the goal as being net-zero rather than specifying something not perpetually possible.
- Chair McLellan agreed these are all good points that we will consider. Looking at the 8% and how we phrase is good feedback. What I'm hearing is that we need to look at the language so that it's achievable and achieves the desired goal.

8. Open Forum

The following addressed the Council in support of cities adopting EV charging ordinances:

- Kim Havey – Director of Sustainability, City of Minneapolis
- Tessa Sanchez – Tesla, Inc.
- Ben Rabe – Fresh Energy
- Brian Hoffman – City of St. Louis Park

9. Council member discussion

No discussion

10. Announcements

Next meeting date TBD – likely in January or February.

11. Adjournment

A motion was made by McConnell, seconded by Pim, to adjourn the meeting at 11:37 a.m. The roll call vote was unanimous with 15 votes in favor; the motion carried.

Respectfully Submitted,

Lyndy Logan

Executive Secretary to the CCAC

Green meeting practices

The State of Minnesota is committed to minimizing in-person environmental impacts by following green meeting practices. DLI is minimizing the environmental impact of its events by following green meeting practices. DLI encourages you to use electronic copies of handouts or to print them on 100% post-consumer processed chlorine-free paper, double-sided.

Legislation Review & Comment

Impacting the Construction Codes and Licensing Division, DLI

Draft Licensing changes

a1. 326B.092 FEES

Subd. 6. **Fees nonrefundable.** Application and examination fees, license fees, license renewal fees, and late fees are nonrefundable except for:

- (1) license renewal fees received more than two years after expiration of the license, as described in section 326B.094, subdivision 2;
- (2) any overpayment of fees; and
- (3) if the license is not issued or renewed, the contractor recovery fund fee and any additional assessment paid under subdivision 7, paragraph (e).

Explanation: Currently, the only CCLD license fee that is refundable is the CRF fee paid by residential building contractor and remodeler licensees. However, the current statutory language refers only to the CRF being refundable when a license is not renewed, which means the CRF fee is not refundable in connection with a new license application that is withdrawn or denied. This is unfair since there's no reason for an applicant to contribute to the CRF if they are not going to be issued a license, and the CRF fee is a minimum of \$320, compared to the license fee of \$120.

a2. 326B.093 LICENSES REQUIRING EXAMINATION ADMINISTERED BY COMMISSIONER

Subd. 4. **Examination results.** If the applicant receives a passing score on the examination and meets all other requirements for licensure, the commissioner must approve the application and notify the applicant of the approval within 60 days of the date of the passing score. The applicant must, within 180 days after the notification of approval, pay the license fee. Upon receipt of the license fee, the commissioner must issue the license. If the applicant does not pay the license fee within 180 days after the notification of approval, the commissioner will rescind the approval and must deny the application. If the applicant does not receive a passing score on the examination, the commissioner must deny the application. If the application is denied because of the applicant's failure to receive a passing score on the examination, then the applicant cannot submit a new application for the license until at least 30 days after the notification of denial date of the failed examination.

Explanation: With respect to failed license exams, current law prohibits an applicant from reapplying to take an exam until 30 days after DLI send out the notice informing them that they failed the exam. Our proposal would change that to 30 days from the date of the failed exam, which would be much more consistent, as our failure notices have to be generated manually, so they are not always sent out as quickly as we would like.

a3. 326B.84 GROUNDS FOR SANCTIONS

The commissioner may use any enforcement provision in section [326B.082](#) against an applicant for, qualifying person of, or holder of a license or certificate of exemption, or any individual or entity who is required by law to hold a license or certificate of exemption, if the individual, entity, applicant, licensee, certificate of exemption holder, qualifying person, or owner, officer, member, managing employee, or affiliate of the applicant, licensee, or certificate of exemption holder:

- (9) has engaged in an act or practice that results in compensation to an aggrieved owner or lessee from the contractor recovery fund pursuant to section [326B.89](#), unless:
 - (i) the applicant or licensee has repaid the fund twice the amount paid from the fund, plus interest at the rate of 12 percent per year; and
 - (ii) the applicant or licensee has obtained a surety bond in the amount of at least \$40,000, issued by an insurer authorized to transact business in this state;
- (10) has engaged in bad faith, unreasonable delays, or frivolous claims in ~~defense~~the process of a civil lawsuit or arbitration arising out of their activities as a licensee or certificate of exemption holder under this chapter;

Explanation: This proposal affects the section of statute describing conduct that provides a basis for enforcement action against an RBC licensee. It's simple in that it provides for enforcement action when a licensee engages in bad faith, unreasonable delays, or frivolous claims whether they are defending against a lawsuit or pursuing a lawsuit. Current law only allows us to take action if the conduct occurs *in defense* of a lawsuit or arbitration. We've had cases where RBCs have sued their customers or foreclosed on mechanic's liens, and in doing so engaged in bad faith, unreasonable delays, or frivolous claims, but we could not take action under this section of the statute because they were not defending lawsuit - they were pursuing it.

a4. 326B.096 REINSTATEMENT OF LICENSES

Subdivision 1. **Reinstatement after revocation.**

(a) If a license is revoked under this chapter and if an applicant for a license needs to pass an examination administered by the commissioner before becoming licensed, then, in order to have the license reinstated, the person who holds the revoked license must:

- (1) retake the examination and achieve a passing score; and
- (2) meet all other requirements for an initial license, including payment of the application and examination fee and the license fee. The person holding the revoked license is not eligible for Minnesota licensure without examination based on reciprocity.

(b) If a license is revoked under a chapter other than this chapter, then, in order to have the license reinstated, the person who holds the revoked license must:

- (1) apply for reinstatement to the commissioner no later than two years after the effective date of the revocation;
- (2) pay a ~~\$100~~\$50 reinstatement application fee and any applicable renewal license fee; and
- (3) meet all applicable requirements for licensure, except that, unless required by the order revoking the license, the applicant does not need to retake any examination and does not need to repay a license fee that was paid before the revocation.

Subd. 2. **Reinstatement after suspension.** If a license is suspended, then, in order to have the license reinstated, the person who holds the suspended license must:

- (1) apply for reinstatement to the commissioner no later than two years after the completion of the suspension period;
- (2) pay a \$~~100~~50 reinstatement application fee and any applicable renewal license fee; and
- (3) meet all applicable requirements for licensure, except that, unless required by the order suspending the license, the applicant does not need to retake any examination and does not need to repay a license fee that was paid before the suspension.

Subd. 3. **Reinstatement after voluntary termination.** A licensee who is not an individual may voluntarily terminate a license issued to the person under this chapter. If a licensee has voluntarily terminated a license under this subdivision, then, in order to have the license reinstated, the person who holds the terminated license must:

- (1) apply for reinstatement to the commissioner no later than the date that the license would have expired if it had not been terminated;
- (2) pay a \$~~100~~25 reinstatement application fee and any applicable renewal license fee; and
- (3) meet all applicable requirements for licensure, except that the applicant does not need to repay a license fee that was paid before the termination.

Explanation: We believe the current \$100 fee for reinstatement of a license following revocation other than for cause (meaning revocations ordered by the Department of Revenue), suspension, or voluntary termination are too high. We propose dropping the fee to \$50 for reinstatement after revocations and suspension, and to \$25 for reinstatement after a voluntary termination.

a5. **326B.31 DEFINITIONS**

Subd. 30. **Technology system contractor.** "Technology system contractor" means a licensed contractor whose responsible licensed individual is a licensed power limited technician or licensed master electrician.

Explanation: Historically we have taken the position that the responsible licensed individual (RLI) for a technology systems contractor (TSC) had to be a license power limited technician (PLT). We relied on the definition of "technology systems contractor" in Minn. Stat. § 326B.31, subd. 30, which provides a definition that appears to limit an RLI for a TSC to be a PLT. We would like to amend that definition to allow a licensed master electrician to act as an RLI for a TSC license. This is good policy since a licensed master electrician can perform all of the work that a license PLT can perform and more.

a6. **326B.805 LICENSING REQUIREMENTS**

Subd. 6. **Exemptions.** The license requirement does not apply to:

- (1) an employee of a licensee performing work for the licensee;
- (2) a material person, manufacturer, or retailer furnishing finished products, materials, or articles of merchandise who does not install or attach the items;
- (3) an owner of residential real estate who builds or improves ~~any structure on~~ residential real estate, if the owner occupies, will occupy for residential purposes, or will retain ownership for rental purposes upon completion of the building or improvement ~~building~~

~~or improving is performed by the owner's bona fide employees or by individual owners personally. This exemption does not apply to an owner who constructs or improves property residential real estate for purposes of resale or speculation if the building or improving is performed by the owner's bona fide employees or by individual owners personally. An owner of residential building contractor or residential remodeler real estate will be presumed to be building or improving for purposes of speculation if the contractor or remodeler owner constructs or improves more than one property within any 24-month period;~~

Explanation: For many years, the homeowner exemption from the RBC license requirements has been very difficult to interpret and enforce with respect to house flippers. Our proposal seeks to simplify the language to make it clear that anyone who builds a home or buys a home with the intent to improve it for purposes of selling it for profit needs to be licensed.

Draft Window Washing Anchorage changes

b. 326B.106, SUBD. 4 WINDOW CLEANING SAFETY

~~(m) **Window cleaning safety.** The code must require the installation of dedicated anchorages for the purpose of suspended window cleaning on (1) new buildings four stories or greater; and (2) buildings four stories or greater, only on those areas undergoing reconstruction, alteration, or repair that includes the exposure of primary structural components of the roof. The commissioner shall adopt rules, using the expedited rulemaking process in section 14.389 requiring window cleaning safety features that comply with a nationally recognized standard as part of the State Building Code. Window cleaning safety features shall be provided for all windows on:~~

- ~~(1) new buildings where determined by the code; and~~
- ~~(2) existing buildings undergoing alterations where both of the following conditions are met:

 - ~~(i) the windows do not currently have safe window cleaning features; and~~
 - ~~(ii) the proposed work area being altered can include provisions for safe window cleaning.~~~~

~~The commissioner may waive all or a portion of the requirements of this paragraph related to reconstruction, alteration, or repair, if the installation of dedicated anchorages would not result in significant safety improvements due to limits on the size of the project, or other factors as determined by the commissioner.~~

Draft Existing Building Energy changes

c. 326B.106 ENERGY EFFICIENCY IN EXISTING BUILDINGS

~~The commissioner shall adopt rules for energy efficiency that establish energy use targets for all existing buildings that undergo additions, alterations, or a change in use. This does not apply to historic buildings, buildings used as residential townhouses, residential one- and two-family dwellings, and excludes energy used for manufacturing or industrial purposes. Energy use intensity targets shall be based upon building uses as identified in nationally recognized standards and adjusted for Minnesota climate zones.~~

Draft EV Charging Stations changes**d. 326B EV CHARGING STATIONS**

Electric vehicle capable space. "Electric vehicle capable space" means a designated automobile parking space that has electrical infrastructure, including but not limited to raceways, cables, electrical capacity, and panelboard or other electrical distribution space, necessary to install an electric vehicle charging station.

Electric vehicle charging station. "Electric vehicle charging station" means a designated automobile parking space that has a dedicated connection for charging an electric vehicle.

Electric vehicle ready space. "Electric vehicle ready space" means a designated automobile parking space that has a branch circuit capable of supporting the installation of an electric vehicle charging station.

Facilities. "Parking facilities" includes parking lots, garages, ramps, or decks.

Electric vehicle charging. The code shall require a minimum number of electric vehicle-ready spaces, electric vehicle capable spaces, and electric vehicle charging stations either within or adjacent to new commercial and multifamily structures that provide on-site parking facilities. Residential structures with fewer than four dwelling units are exempt from this subdivision.

Draft Assisted Living changes**e. 326B.103, SUBD. 13 ASSISTED LIVING**

"State licensed facility" means a building and its grounds that are licensed by the state as a hospital, nursing home, supervised living facility, free-standing outpatient surgical center, correctional facility, boarding care home, ~~or residential hospice,~~ or assisted living facility, including assisted living facility with dementia care.

Draft Boiler Inspection changes**f. 326B.988 BOILER EXCEPTIONS**

The provisions of sections 326B.95 to 326B.998 shall not apply to:

- (1) boilers and pressure vessels in buildings occupied solely for residence purposes with accommodations for not more than five families;
- (2) railroad locomotives operated by railroad companies for transportation purposes;
- (3) air tanks installed on the right-of-way of railroads and used directly in the operation of trains;
- (4) boilers and pressure vessels under the direct jurisdiction of the United States;
- (5) unfired pressure vessels having an internal or external working pressure not exceeding 15 psig with no limit on size;
- (6) pressure vessels used for storage of compressed air not exceeding five cubic feet in volume and equipped with an ASME code stamped safety valve set at a maximum of 100 psig;
- (7) pressure vessels having an inside diameter not exceeding six inches;
- (8) every vessel that contains water under pressure, including those containing air that serves only as a cushion, whose design pressure does not exceed 300 psig and whose

- design temperature does not exceed 210 degrees Fahrenheit;
- (9) boiler or pressure vessels located on farms used solely for agricultural or horticultural purposes; for purposes of this section, boilers used for mint oil extraction are considered used for agricultural or horticultural purposes, provided that the owner or lessee complies with the inspection requirements contained in section 326B.958;
 - (10) tanks or cylinders used for storage or transfer of liquefied petroleum gases;
 - (11) unfired pressure vessels in petroleum refineries;
 - (12) an air tank or pressure vessel which is an integral part of a passenger motor bus, truck, or trailer;
 - (13) hot water heating and other hot liquid boilers not exceeding a heat input of 750,000 BTU per hour;
 - (14) hot water supply boilers ~~(water heaters)~~ not exceeding a heat input of ~~500,000~~ 200,000 BTU per hour and a water temperature of ~~210~~ 250 degrees Fahrenheit, ~~a nominal water capacity of 120 gallons, or a pressure of 160 psig; or potable water heaters not exceeding a heat input of 200,000 BTU per hour and a water temperature of 210 degrees Fahrenheit;~~
 - (15) a laundry and dry cleaning press not exceeding five cubic feet of steam volume;
 - (16) pressure vessels operated full of water or other liquid not materially more hazardous than water, if the vessel's contents' temperature does not exceed 210 degrees Fahrenheit or a pressure of 200 psig;
 - (17) steam-powered turbines at papermaking facilities which are powered by steam generated by steam facilities at a remote location;
 - (18) manually fired boilers for model locomotive, boat, tractor, stationary engine, or antique motor vehicles constructed or maintained only as a hobby for exhibition, educational or historical purposes and not for commercial use, if the boilers have an inside diameter of 12 inches or less, or a grate area of two square feet or less, and are equipped with an ASME stamped safety valve of adequate size, a water level indicator, and a pressure gauge;
 - (19) any pressure vessel used as an integral part of an electrical circuit breaker;
 - (20) pressure vessels used for the storage of refrigerant if they are built to ASME code specifications, registered with the national board, and equipped with an ASME code-stamped pressure-relieving device set no higher than the maximum allowable working pressure of the vessel. This does not include pressure vessels used in ammonia refrigeration systems;
 - (21) pressure vessels used for the storage of oxygen, nitrogen, helium, carbon dioxide, argon, nitrous oxide, or other medical gas, provided the vessel is constructed to ASME or Minnesota Department of Transportation specifications and equipped with an ASME code-stamped pressure-relieving device. The owner of the vessels shall perform annual visual inspections and planned maintenance on these vessels to ensure vessel integrity;
 - (22) pressure vessels used for the storage of compressed air for self-contained breathing apparatuses;
 - (23) hot water heating or other hot liquid boilers vented directly to the atmosphere; and

- (24) pressure vessels used for the storage of compressed air not exceeding 1.5 cubic feet (11.22 gallons) in volume with a maximum allowable working pressure of 600 psi or less.
 - (b) An engineer's license is not required for hot water supply boilers.
 - (c) An engineer's license and annual inspection by the department is not required for boilers, steam cookers, steam kettles, steam sterilizers or other steam generators not exceeding 100,000 BTU per hour input, 25 kilowatt, and a pressure of 15 psig.
 - (d) Electric boilers not exceeding a maximum working pressure of 50 psig, maximum of 30 kilowatt input or three horsepower rating shall be inspected as pressure vessels and shall not require an engineer license to operate.

Draft Commercial Energy Code changes – with minimum 8% efficiency

g. 326B.106 COMMERCIAL ENERGY CODE

326B.106 Subd. 1, Adoption of Code

- (c) Beginning with the 2018 edition of the model building codes and every six years thereafter, the commissioner shall review the new model building codes and adopt the model codes as amended for use in Minnesota, within two years of the published edition date. The commissioner may adopt amendments to the building codes prior to the adoption of the new building codes to advance construction methods, technology, or materials, or, where necessary to protect the health, safety, and welfare of the public, or to improve the efficiency or the use of a building.
- (d) Notwithstanding paragraph (c), the commissioner shall act on each new model residential energy code and the new model commercial energy code in accordance with federal law for which the United States Department of Energy has issued an affirmative determination in compliance with United States Code, title 42, section 6833. The commissioner shall act on the new model commercial energy code by adopting each new published edition and amending it as necessary to achieve a minimum of eight percent energy efficiency. The commissioner may adopt amendments prior to adoption of the new energy codes, as amended for use in Minnesota, to advance construction methods, technology, or materials, or, where necessary to protect the health, safety, and welfare of the public, or to improve the efficiency or use of a building.