

**OKLAHOMA UNIFORM BUILDING CODE COMMISSION**

**SPECIAL MINUTES**

**UNIFORM BUILDING CODE COMMISSION CONFERENCE ROOM**

**2401 NW 23<sup>RD</sup> STREET, SUITE 82**

**OKLAHOMA CITY, OK 73107**

**FEBRUARY 7, 2022 – 1:30 P.M.**

**COMMISSION MEMBERS PRESENT:**

Wayne Allen, Stephanie Cliff, Daniel Favata, Warren Goldmann, Paul Gunderson, Danny Hancock, Dee Hays, Mitchell Hort, Kyle Lombardo, Lonnie Shackelford, Scott Tucker, and Cary Williamson

**COMMISSION MEMBERS ABSENT**

Donny Williamson

**OTHERS PRESENT:**

Billy Pope (OUBCC Staff), Lindsay Heinrichs (OUBCC Staff) Kathy Hehnly (OUBCC Staff), Bryan Neal (Oklahoma Attorney General's Office), Amber Armstrong (A & E Code Professionals), Thomas Grossnicklaus (State Fire Marshal Assistant Attorney General), Jonathan Strahorn (Fire Marshal Association of Oklahoma), Darryl Beebe (State Fire Marshal), James Fullingiam (State Fire Marshal)

**CALL TO ORDER:**

Mr. Danny Hancock, Chairman of the Commission called the special meeting of the Oklahoma Uniform Building Code Commission to order at 1:31 p.m. in the Oklahoma Uniform Building Code Commission Board Room at Shepherd Center, 2401 NW 23rd St., Suite 82, Oklahoma City, OK 73107.

**STATEMENT OF COMPLIANCE:**

The following statement was read into the record:

"This special meeting of the Oklahoma Uniform Building Code Commission scheduled to begin at 1:30 p.m. on this 7<sup>th</sup> day of February 2022, has been convened in accordance with the Oklahoma Open Meeting Act, Title 25 O.S. Sections 301 through 314.

Further, this meeting was preceded by an advance public notice that was sent to the Secretary of State electronically specifying the date, time, and place of the meeting here convened.

Notice of this meeting was given at least forty-eight (48) hours prior hereto. To date, 4,608 (four thousand six hundred eight) people have filed a written request for notice of meetings of this public body."

Mr. Hancock asked staff to provide some background on the history of the issue the Commission was going to discuss with the proposed emergency and regular rules. Mr. Pope noted when the 2009 codes were initially adopted, the committees discussed and determined the storm shelter requirements for schools should be in an appendix due to several issues including cost. He noted the committees at that time chose to put the requirements into an appendix to allow each jurisdiction to determine if it should be mandatory. He noted when the process came around again the committee reviewing the 2018 codes felt enough time had gone by and storm shelters in schools should be a minimum

requirement. He explained the code adoption process had been delayed by COVID but had ultimately received Legislative approval. Mr. Pope added the codes went into effect while schools were dealing with other major issues such as COVID. He noted there were over 100 school districts with bond issues and not all of them had addressed the requirement for storm shelters. There was further discussion between the Commission and Mr. Pope related to the fact that if COVID had not happened, the requirement would have been adopted a year sooner before the majority of the current Commission had been appointed; that the change put the requirements for storm shelters in an appendix so the bond issues would not be messed up; if that was the right move to make for Oklahoma; and how the requirement affected what the State Fire Marshal's office had to enforce.

Mr. Neal addressed the Commission and stated that school boards and districts were responsible for what happened with the children in their charge and had an obligation to provide a safe place to work for staff and teachers as well. He noted this obligation was separate and apart from anything the Commission did now or in the future; that schools had limitations on their financing and that only so much millage was available in each district. He added those same districts and boards were dealing with mandates that the OUBCC would not be privy to and that the issue with the bonds was a timing issue with no bad intentions on either side. He noted by law, 70 percent of the proceeds of the bonds had to be used for the purposes they were voting on, citing examples as new school buses or a new band room and there may not be enough money left in the bond to pay for a storm shelter.

Mr. Hancock noted he would like to move the public comments section of the agenda up so anyone from the public could speak before the Commission voted on anything.

**MR. CARY WILLIAMSON MADE A MOTION WITH A SECOND BY MR. DANIEL FAVATA TO MOVE PUBLIC COMMENT FORWARD**

VOTING AYE: Wayne Allen  
Stephanie Cliff  
Daniel Favata  
Paul Gunderson  
Warren Goldmann  
Danny Hancock  
Dee Hays  
Mitchell Hort  
Kyle Lombardo  
Lonnie Shackelford  
Scott Tucker  
Cary Williamson

VOTING NAY: None

ABSTAIN: None

ABSENT: Donny Williamson

**PUBLIC COMMENT**

Mr. Jonathan Strayhorn with the State Fire Marshal's Association of Oklahoma addressed the Commission. He commented he was really excited to see during the 2018 adoption process that went into effect on September 14, 2021, that the requirement for storm shelters was left in the code and not

put in an appendix. He noted some schools had already responded to the requirements. He added he was not sure of the repercussions of moving it back to the appendix when there had been architects and bond committees that did their due diligence and had including them. He recommended the Commission propose rule modifications and allow the public to comment. He noted he knew of architects and other bond committees that knew this was going on and they actually did their due diligence and that they didn't use it as an excuse, because they didn't have enough money in their bill. He stated he did plan reviews for multiple jurisdictions throughout the state and noted a very small percentage of the jurisdictions adopted the OUBCC appendices. He cited the fact that a lot of them didn't know how to adopt them correctly but also that political pressure was an issue and that if the OUBCC had it in their rules, it took pressure off the local jurisdictions to adopt things that were more restrictive than the state minimums. He suggested amending the code to provide a time/date for when the specific section would become mandatory. He noted the State Fire Marshal's office and other fire marshals throughout the state could work with those who had bond issues and have them show proof they started the process before the requirement went into effect. He wanted the commission to keep the requirement in the code and felt that after the first year, things would get better.

Mr. James Fullingiam, Assistant State Fire Marshal addressed the Commission. He stated the State Fire Marshals were often considered the "dream killers," as people had lots of dreams, but when they submit plans to their office, the review was done and many times the plans were not quite what they were supposed to be. He noted, they were the ones who delivered the bad news because they were the enforcement agency for the rules the OUBCC adopted. He stated public safety was first and foremost for them; primarily fire protection was what they dealt with, but public safety in general was important to them. He added part of them being successful in their endeavors to ensure good public safety, was that they tried to stay in political goodwill. He noted they didn't like to be the "dream killers." He stated they didn't want the requirement to go away, they just wanted to be sure to limit the impact that appeared to have by enforcing the code. He stated it would be easy to continue on with anyone who had their bonds approved prior to September 14<sup>th</sup> and accept a letter from them that the bond was put in place prior to the rules going into effect. He stated they could accept that letter and not require a storm shelter and still be in compliance with enforcement. He noted they didn't feel they had that avenue with those bonds passed after September 14<sup>th</sup>, including any that might pass on the 8<sup>th</sup>. He stated they wanted to make sure the OUBCC had discussed and considered the fallout as it would affect the OUBCC, but they would enforce whatever the Commission decided. He noted they would not try to direct the OUBCC in any direction, but just wanted to make them all aware of how things would be handled as the projects began to roll in.

Ms. Amber Armstrong with A & E Code Professionals addressed the Commission. She stated she was a former plans examiner for both the City of Edmond and the City of Norman and was currently a private code consultant. She added she was a former Commissioner. She noted she wanted to bring up one thing she had run into working for the cities. She explained if the city had the jurisdictional authority from the State Fire Marshal's office to review the plans, there were issues with the school district saying they didn't have to comply with the requirements in the jurisdiction if they didn't want to as they were a state entity and could opt out if there was something in the code the district didn't want to comply with. She added she was not an attorney but wanted to bring forward the possibility of that scenario if the section went into the appendices for the jurisdiction to adopt.

Mr. Hancock thanked everyone for coming and apologized for canceling the meeting the week before due to the weather. He noted the issue was based on time of when jurisdictions started the bonding

process and when the requirement went into effect and reminded everyone the Commission's charge was to set the minimum code requirements in the state. He added the issue could be addressed again when the committees started their next commercial review. There was some discussion by the Commission on what contacts had been made with the Governor's office and Senate leadership; discussions with superintendents; and that schools tried to address safety but could have limitations on where they could be provided; that requiring the schools to provide them could be an overreach. There was further discussion on possibly sending the issue back to committee for more discussion or if it needed to be voted on immediately; the need for action now so school bond votes on February 8<sup>th</sup> would not be messed up; that school bonds would be messed up if the change wasn't made would have to be revoted on; and that if the issue was sent back to a committee, a new committee would have to be formed to look at it. The Commission discussed who was responsible for the schools knowing the requirement was out there and if that was up to the architects who worked with the schools; agency notifications; and that it would be the responsibility of any professional designer.

The commission discussed the history of the change and what was considered at the time the change was put into the appendix in the 2015 edition as there was already a loss of children in 2013 sheltering in a corridor in a school hit by a tornado; if that consideration would be pertinent now; that everyone wanted children to be safe; costs associated with the requirement; and that the legislature had done an interim study on the need for storm shelters in schools and had not taken any particular actions.

#### **RULEMAKING ACTION ITEMS:**

Discussion and possible action to approve emergency rules to move requirements for Critical emergency operations and Group E occupancies related to storm shelters to newly created appendices to make the requirements non-mandatory in Title 748, Chapter 20, Subchapters 2 and 8.

##### Subchapter 2. IBC® 2018

748:20-2-3. IBC® 2018 and Other Appendices [Amended]

748:20-2-9. IBC® 2018 Chapter 4 Special Detailed Requirements Based on Use and Occupancy [Amended]

784:20-2-41. IBC® 2018 Appendix O, Supplemental Storm Shelter Requirements [NEW]

##### Subchapter 8. IEBC® 2018

748:20-8-3. IEBC® 2018 and Other Appendices [Amended]

748:20-8-16. IEBC® 2018 Chapter 11 Additions [Amended]

748:20-8-22. IEBC® 2018 Appendix D, Supplemental Storm Shelter Requirements [NEW]

MR. WARREN GOLDMANN MADE A MOTION WITH A SECOND BY MR. DANIEL FAVATA TO APPROVE THE EMERGENCY RULES

The commission discussed if the projects would be shovel ready as soon as the bond passed; that the bonds would have to be sold before funds could be raised; if there was normal timeframe from bond passage to breaking ground; and that the timeframe would depend on the district. There was further discussion on the need for the description of the bond to match any construction done; that schools could have shelters in place, but not to the specs required by the code, such as underground additions that could serve as a place of refuge but wouldn't be to the code specifications; that if the requirements went back to the appendix, that there could be enforcement issues in unincorporated areas of the state; that the issue could be reviewed again in the near future; and that while it should be

required there was a need to not mess up the bonds up for vote that could address things like indoor air quality related to COVID that was needed for keeping kids safe.

Mr. Neal reviewed the emergency rules and their ending date; the need for the permanent rules to follow the emergency rules and that it was also on the agenda; the rulemaking requirements and deadlines for taking action on the issue; that the Governor alone could approve the emergency rules, but the permanent rules would still require approve by the Legislature and the consequences for not meeting the rulemaking deadlines. There was further discussion on when the issue could go back to a committee for further review; what would happen if the emergency rules were approved but not the permanent rules; that the change would not forever tie the Commission's hands; the purpose of the Commission; and that school boards and districts had an independent obligation to keep children, staff and teachers safe, separate and apart from any actions the Commission took. The commission discussed the financial obligations and constraints the school boards and districts were subject to; that some schools had already voluntarily constructed storm shelters; and that other schools and districts may have made provisions for things to the extent they felt they could; and the process for rules approval.

VOTING AYE:       Stephanie Cliff  
                          Daniel Favata  
                          Warren Goldmann  
                          Paul Gunderson  
                          Danny Hancock  
                          Lonnie Shackelford  
                          Scott Tucker

VOTING NAY:       Wayne Allen  
                          Dee Hays  
                          Mitchell Hort  
                          Kyle Lombardo  
                          Cary Williamson

ABSTAIN:           None

ABSENT:            Donny Williamson

Discussion and possible action to begin the permanent rulemaking process by review and approval of proposed rule amendments related to Critical emergency operations and Group E occupancies to move storm shelter requirements to newly created appendices to make the requirements non-mandatory in Title 748, Chapter 20, Subchapters 2 and 8.

Subchapter 2. IBC® 2018

748:20-2-3. IBC® 2018 and Other Appendices [Amended]

748:20-2-9. IBC® 2018 Chapter 4 Special Detailed Requirements Based on Use and Occupancy [Amended]

784:20-2-41. IBC® 2018 Appendix O, Supplemental Storm Shelter Requirements [NEW]

Subchapter 8. IEBC® 2018

748:20-8-3. IEBC® 2018 and Other Appendices [Amended]

748:20-8-16. IEBC® 2018 Chapter 11 Additions [Amended]

748:20-8-22. IEBC® 2018 Appendix D, Supplemental Storm Shelter Requirements [NEW]

Mr. Hancock encouraged the commission to approve the permanent rules to start rulemaking as it could create issues if that wasn't approved. Mr. Neal reminded everyone there were timing issues that couldn't be met for rulemaking if action was not taken during the meeting.

MR. DANIEL FAVATA MADE A MOTION WITH A SECOND BY MR. KYLE LOMBARDO TO ACCEPT THE PROPOSED PERMANENT RULES TO BEGIN RULEMAKING

There was some further discussion on the tight timeframe for permanent rulemaking; that the issue could be addressed again by committee at another time; if they should develop a committee to review the issue; if they would have the opportunity to amend the proposed permanent rules; and missing the rulemaking deadlines.

VOTING AYE: Wayne Allen  
Stephanie Cliff  
Daniel Favata  
Warren Goldmann  
Paul Gunderson  
Danny Hancock  
Dee Hays  
Mitchell Hort  
Kyle Lombardo  
Lonnie Shackelford  
Scott Tucker  
Cary Williamson

VOTING NAY: None

ABSTAIN: None

ABSENT: Donny Williamson

There was further discussion on why the issue came up at the last minute; if a special interest was trying to push something through; the timing issue for when schools starting the bonding process (usually in September) and the effective date of the rules (September 14, 2021); and how they were made aware of the issue.

Mr. Hancock thanked everyone for their attendance and noted they had already addressed public comment and asked for a motion to adjourn.

**ADJOURNMENT: (2:31 P.M.)**

MR. KYLE LOMBARDO MADE A MOTION WITH A SECOND BY MR. WAYNE ALLEN TO ADJOURN

VOTING AYE: Wayne Allen  
Stephanie Cliff  
Daniel Favata  
Paul Gunderson  
Warren Goldmann  
Danny Hancock  
Dee Hays  
Mitchell Hort  
Kyle Lombardo  
Lonnie Shackelford  
Scott Tucker  
Cary Williamson

VOTING NAY: None

ABSTAIN: None

ABSENT: Donny Williamson

Minutes approved in the regular meeting on the 22 day of March 2022

DANNY HANCOCK  
Danny Hancock, Chairman  
Oklahoma Uniform Building Code Commission

PREPARED BY: KATHY HEHNLY  
Kathy Hehnly, Executive Assistant  
Oklahoma Uniform Building Code Commission

*Official Copy: Original with signatures in office file.*