

**CALIFORNIA BUILDING STANDARDS COMMISSION
MEETING MINUTES**

July 19, 2012

1. CALL TO ORDER

Chair Caballero called the meeting to order at 10:00 a.m. at the Department of Consumer Affairs, 1625 North Market Blvd., First Floor Hearing Room, Sacramento, California 95834.

ROLL CALL

Commissioners Present:

Secretary Anna Caballero, Chair
James Barthman
Rose Conroy
Sheila Lee
Erick Mikiten
Richard Sawhill
Richard Sierra
Randy Twist

Also Present:

Jim McGowan, Executive Director
Michael Nearman, Deputy Executive Director
Stephanie Davis, Executive Assistant
Kevin Day, Technical Analyst

Chair Caballero led the Commission in the Pledge of Allegiance.

2. SWEARING-IN OF NEW COMMISSIONERS

Chair Caballero welcomed Sheila Lee, filling the Building Official position; and Erick Mikiten, filling the Public Member/Disabled position. The Chair administered the oath to the two new members.

Mr. Mikiten introduced himself as an architect with a small practice in Berkeley. He is involved with the disabled community on a constant and personal level as well as a professional level. His practice has designed hundreds of affordable housing units around the Bay Area, many for people with developmental or physical disabilities. He has also done dozens of home remodels for people with disabilities.

Ms. Lee introduced herself as a building official with the City of Santa Clara for over 13 years. Prior to that she worked for the City of Palo Alto and the County of Santa Clara, and also with a number of private engineering consulting firms. She is a past president of California Building Officials (CALBO), and currently chairs the International Code Council (ICC) Tri-Chapter Uniform Code Committee (TUCC). She expressed the hope

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that her years of experience in code interpretation and enforcement of the California codes will contribute to the BSC.

3. APPROVAL OF THE APRIL 18, 2012 MEETING MINUTES

MOTION: Commissioner Sawhill moved approval of the April 18, 2012 Meeting Minutes. Commissioner Barthman seconded. Motion passed with two abstentions.

4. COMMISSION MEETING DATES: 2012 AND 2013

Jim McGowan, BSC Executive Director, reported that the meeting previously scheduled for October 17, 2012 had been moved to December 12. The Commissioners accepted the new date.

Regarding proposed meeting dates for January-October 2013, Mr. McGowan requested discussion from the Commissioners. The BSC meets on a quarterly basis. Chair Caballero suggested that Commissioner Sawhill work with Mr. McGowan to propose meeting dates for which the other Commissioners could check their availability.

5. THE DIVISION OF THE STATE ARCHITECT'S PRESENTATION REGARDING THE DEVELOPMENT OF THEIR ACCESSIBILITY PROPOSAL

Bob Chase, Deputy State Architect, provided a report from Division of the State Architect – Access Compliance (DSA-AC) on the development of access provisions for the 2013 California Building Code (CBC) Chapter 11B, and the estimated timeframe and direction of the Chapter 11B rewrite.

He began with a history. DSA had started the process of realignment and revision to the Accessibility Code in November of last year. They hired Evan Terry Associates as consultants to do a side-by-side, item-by-item comparison of the Americans with Disabilities Act (ADA) and California Building Code (CBC) regulations. They came up with a 2500-line matrix of items included in both of the codes.

In most cases, the more accessible item could be used and it would stay in conformance with both of the codes. However, there were five items where it became a conflict: if you followed California code you'd be in violation of ADA and vice versa.

At the time of this analysis, DSA put together a database of over 400 organizations and individuals whom they thought were important stakeholders in the process. DSA sent them a memo asking what approach they thought DSA should take in reactivating the Accessibility Code for the next cycle. About 65% of the respondents requested the DSA to use the ADA format, so that there would be synchronization and alignment between the two codes. DSA proceeded to go in that direction.

DSA also made the strategic decision that utilizing the ADA format for alignment would enable DSA to create a code which would simplify the process – a code where a person could see exactly where the state and ADA aligned. DSA will maintain this code in perpetuity on its website.

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DSA also decided not make any substantive changes – that would have made the process of trying to align the codes almost impossible. DSA will always choose the most accessible approach to put into the California Building Code.

Using the stakeholder database, DSA organized seven forums across the state, all of which were video-conferenced. An outside facilitator from the University was hired to manage the forums without leaning toward either side. The forums brought a tremendous amount of good input. In addition, DSA has been speaking at a wide variety of meetings: ICC chapter meetings, CASI meetings, Coalition for Adequate School Housing (CASH), etc. DSA has also been sending letters and publishing articles asking for input.

DSA has also been working closely with Senator Dutton and President Pro Tem Steinberg's working group for SB 1186, which has a large number of representatives from the disabled community, attorneys, building owners, builders, and business people.

DSA's proposed regulations are due to the Commission on December 10; DSA hopes to come before the Commission for approval of the new realigned accessibility code in January 2013.

A Commissioner asked whether there had been discussion about 11A and 11B being made consistent. Mr. Chase responded that 11A is being handled by another agency. Chet Widom, State Architect of DSA, noted that DSA has been working with HCD as they make their adjustments, to get the alignment and make a clear line of demarcation as to when 11A and 11B are to be applied.

Public Comment

- Richard Skaff, Executive Director at Designing Accessible Communities, spoke about meeting accessibility. A deaf person on the webinar would not be able to use the phone to access today's meeting. Mr. Skaff then spoke about some process issues that took place during the State Architect's efforts to analyze Title 24 and ADA standards.
 - There is a need to provide detectable warning for the public right-of-way.
 - At the seven forums that had been held throughout the state, each hearing addressed a different subject, which meant that unless you had enough money and time, or were able to get to a DSA site to watch the webinar, you would probably not be able to track all of the changes being proposed (which were substantial).
 - Regarding SB 1186, Gene Wong, Chief Counsel for that Senate Judiciary Committee, had created a 40-member working group; but a number of interested people were not allowed to participate.
- Ms. Connie Arnold commented that she had attended an SB 1186 working group meeting with a friend in a wheelchair. She was later contacted and asked not to attend any more meetings per Gene Wong. Ms. Arnold spoke of the lack of accessible parking and hotels in California. She added that it was not easy for those on fixed incomes to get to today's BSC location to testify at these hearings.

Mr. Chase stated in response to Mr. Skaff that DSA is doing the best job it possibly can to make sure that everything is included in the code and that there are no mistakes made;

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but in a document as large as this, there are sure to be errors. The public should contact him when they notice such errors; supplemental reviews are done in the middle of the process.

He continued that the reason DSA had chosen to do sections of code at the forums, was that each section took from five to six hours to cover in the necessary detail. Video-conferencing had been provided at each of the forums.

6. PROPOSED EMERGENCY STANDARDS ADOPTIONS AND APPROVALS

a) The Division of the State Architect – Access Compliance (DSA/AC EF 01/12) Resubmittal

i) Action for finding of emergency

Mr. Chase began by providing some background. In December 2010, the federal government issued the 2010 ADA Standards. At the time, DSA was preparing supplemental code revisions; with the three months of time available and the size of the document (2500 items), it wasn't possible to review, identify conflicts, prepare, and vet solutions.

When one considers the ability of owners to construct new buildings or renovate existing buildings as impacting the general welfare; and if one considers the ramifications of forcing owners to select between violating either federal or state standards as impacting the general welfare; and if one considers the ramifications of a rapidly increasing number of frivolous lawsuits as impacting general welfare – then the regulations that DSA is now proposing meet the definition of an emergency.

There are approximately 21 months between the effective date of the 2010 ADA (March 15, 2011), and the effective date of the new CDC. Everyone is in a kind of limbo. Of the 2500 regulations, only five were found to be in direct conflict. However, until they are rectified, every new or altered toilet building constructed before the new code is adopted in January 2014 will be faced with many forced violations. In many cases, decisions are being made not to build at a time when we need people to be building and investing in our society.

DSA is proposing solutions to deal with this dilemma. These emergency regulations will sunset in 2013 because of the new code coming out in January 2014.

In addition, DSA has identified a typographical error in the prior code which it believes should be corrected.

Also, DSA is providing limited relief for some facilities that were renovated last year, and are caught in the middle basically because of some minor dimensional problems.

For these reasons, DSA is asking for the BSC's acceptance and approval of its findings.

ii) Action for the adoption of the proposed regulations

Mr. Chase proceeded with the presentation of the seven emergency regulations.

DSA vetted the regulations with its Accessibility Taskforce, which is a part of the Advisory Board. DSA vetted the regulations again at the forums it held.

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1. An error in the last code cycle said that "5% of the fixed seats shall be accessible." It should have read, "5% of the aisle seats." This results in 10-30% additional accessible seats.
2. The current CDC requires an absolute fixed dimension of 18" from the center of the toilet to the side wall. There are tolerances of 1/4", 1/2", or more that most public agencies allow for construction. However, the ADA allows a variable from 16-18" with no variations beyond that tolerance. These small variations could result in lawsuits.

DSA's proposal is to change the CDC to 16-18"; with no variable beyond that; a large segment of the stakeholders agree.

3. The current CDC says that the front end of toilet tissue dispensers must be 36" maximum from the rear wall in back of the toilet, and within 12" of the front edge of the toilet bowl. The ADA requirement places the center line at the center line of the dispenser, and a range of 7-9" from the front edge of the bowl. This results in the dispenser being more than 36" from the rear wall.

DSA's proposal is to use the ADA's approach which provides greater accessibility.

4. ADA provides a very complicated description of the angle of the water flow in a drinking fountain, which does result in more accessibility but is in conflict with the current CDC.

DSA's proposal is to use the ADA requirement.

5. This item relates to the proportions of the characters for visual and tactile signs. DSA had some fruitful discussions with the California Council of the Blind, and was able to adjust its proposal while keeping it in line with the ADA.
6. This item involves the mounting locations and heights of signs. Again, discussions with the California Council of the Blind helped to solve the conflicts between the ADA and CDC numbers.
7. The path of travel from the front door to any new piece of construction under current code requires the upgrade of toilet rooms, drinking fountains, telephones, and signage along that path. DSA is asking for the opportunity to have signage and telephones required to meet the new code. This would only affect items #2, 3, and 4 above. Owners would be able to leave nonconforming toilet rooms as they were when they were built until such time that they themselves are renovated.

While the seven items are minor, they provide opportunities for major frivolous lawsuits.

Commissioner Barthman inquired as to whether DSA had met with the disabled community to resolve the issues, as requested at the April meeting. Chet Widom, DSA State Architect, replied that they had; the disabled community had helped with some rewriting. Complete agreement wasn't always reached.

The Commissioners discussed additional details of the proposed regulations with Mr. Widom and Mr. Chase.

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Commissioner Mikiten asked about the advisory in the findings documents to target the upper range of the 16-18". Mr. Widom replied that DSA was preparing a guidelines document containing all the federal comments and the California comments providing guidance for designers. It will be available free of charge on the website. Commissioner Mikiten felt that most people, including architects, will not go to a second document to find guidance.

Commissioner Sierra had arrived and asked how many differences there would be between the federal standard and the California standard. Mr. Chase responded that federal requirements are more accessible in some cases, and in others, less accessible; so DSA was picking the most accessible in the particular area.

Public Comment

- Mr. Skaff expressed concern about the emergency regulations concept, as the 18" for toilet tissue dispenser meets and exceeds U.S. Access Board guidelines. Non-accessible toilet paper dispensers – i.e., the large plastic double roll holders – are allowed by local building departments because of the ineffectiveness of the existing Title 24 requirement. The current proposed change for toilet paper dispenser regulations will do nothing to prohibit these.

Mr. Skaff expressed concern with the signage regulation being proposed: the change in height requirement affects the reachability of the signs.

Mr. Skaff brought to the Commission's attention California Government Code 4459(a); members of the disabled community wanted to begin developing a number of new code sections. He was very concerned that the whole emergency package was in violation of California Government Code 4459(a).

- Walter Park, San Francisco City Office on Disability, gave his position on the emergency question: there is nothing in California Title 24 saying that one can or should construct a toilet that is 18 1/4" from the side wall. This is a straw argument.

Mr. Park quoted from DSA's advisory IR 11B-08, then from the California Attorney General's Office – which said that developing guidelines for construction tolerances unnecessarily encourages contractors and others to deviate from the access regulations which are found in California Building Code. Mr. Park stated that construction should be handled on a case-by-case basis.

He stressed that many people feel that 16" is too close and that 18" is as much as they can handle. He distributed copies of a consumer survey from his office on these issues.

- Fred Harris, Assistant Vice Chancellor for College Finance and Facilities Planning, California Community Colleges, spoke in support of both motions. He stated that anything the BSC can do to make the system more consistent and clear would be beneficial.
- Connie Arnold of Elk Grove felt that this package was not an emergency; we have been dealing with these regulations for a long time. We should not be reducing access in California, particularly considering people who are larger and heavier trying to transfer onto the toilet.

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- Gary Layman, CASI Vice-President, commented that there was no indication of the transfer area for the toilet, where the federal requirement is 16" from the side wall to the edge of the sink for single unit use. The current California code allows for 28" at a minimum for that transfer. There is also a difference in parking requirements.
- Kurt Cooknick, AIA California Council Director of Regulation and Practice, testified in support of the DSA's efforts. They have made a tremendous effort in ensuring that all stakeholders and interested parties have been at the table. Mr. Cooknick has been a part of the SB 1186 working group, where access has been the primary goal.
- Bob Raymer, California Building Industry Association, speaking also on behalf of the California Business Properties Association, the International Council of Shopping Centers, the Commercial Real Estate Development Association, the Building Owners and Managers Association (BOMA) California, the California Chamber of Commerce, and the California Building Officials, strongly supported the DSA's proposals.

The federal requirements now have a level of specificity that they did not have a few years ago; we must adapt to them. For contractors, engineers, designers, and business owners, clarity is needed in the code. Of the 2,500 items that DSA is dealing with, they have done a good job of highlighting the half dozen or so that have conflicts.

Mr. Raymer also commented regarding the letter BSC would be receiving, signed off by Senator Steinberg and Senator Dutton. It is rare for State Senate senior members of the Republican and Democratic parties to agree strongly on anything.

- Thomas Durbrow, CASI Secretary, offered his personal views. He gave some insight into the controversial 18" dimension. When the U.S. Access Board put together their dimensions, it was done carefully.
- Roger Richter, California Hospital Association Senior Vice President of Professional Services, stated that the CHA estimates that at least \$14 billion is caught in this conflict between the ADA and state access compliance. The CHA strongly supported the emergency regulations and the position of the State Architect.
- Sharon Toji, Access Communications, agreed that some of the items should be considered emergency. However, she felt that the 18" toilet is not an emergency because it is allowed in both codes. The standards had first been developed at the ANSI committee. Every wheelchair user she had spoken to – both men and women – had expressed a preference for 18" rather than 16". Ms. Toji expressed the hope that the BCS would pass the proposals.

She stated that as one of the original authors of the "reachability" standard, they specifically intended to allow signs to be read visually and by touch. They found that 48" was the lowest point which the majority of people said was acceptable to read a tactile sign. The authors had intended to give a range so that designers could place signs lower for certain populations.

- Eugene Lozano, First Vice-President of the California Council of the Blind, stated that this organization was in total agreement with Ms. Toji on Items #5 and 6. The

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California Council of the Blind had serious concerns about Item #2 (the separation between the water closet and the side wall); they do not support the 16-18" range.

- Mike Henning, Mobile Modular Management Corporation (a leaser of portable classrooms) stated that clarity is needed on the access requirement. He gave total support for the DSA effort to try to provide this change. As Mr. Henning's company frequently builds units for markets in several states, they need to use the most stringent requirement among the states – another reason he supported what the DSA is trying to do.

DSA Response

Mr. Chase reiterated that DSA's goal was to meet accessibility needs.

Commissioner Comments

Commissioner Sawhill addressed the finding of emergency: an item must be an emergency before it comes to the Commission. This issue has been around for years, but it does not meet the standard for public peace, health, or safety. Everyone knew about this in 2010; they knew what the requirements were; they knew what the effect was going to be. Those involved didn't do their job in a timely manner so the issue is now before the Commission.

Commissioner Sawhill's concern was for the builders, developers, and those running projects that were put in a precarious position not of their own doing. For that reason he was going to support the emergency finding.

Commissioner Mikiten agreed, stating that an emergency doesn't necessarily mean a new emergency. This set of issues has been present in the state for a number of years. The Commission was now using the mechanism of emergency finding to reconcile that set of issues.

Commissioner Twist commented from a contractor's point of view in that they need clear and concise specifications to construct any building. Because of that he supported the finding of emergency.

Commissioner Conroy voiced support for the emergency finding. She was pleased that DSA had reached out to the disabled community between meetings and had realized that changes need to be addressed through the next code cycle.

Commissioner Barthman also voiced support for the emergency finding, primarily on the condition that DSA would continue to work with the disabled community.

Commissioner Lee felt that DSA had done a great job of listing the reasons for the emergency. She mentioned the designated aisle seat regulation, which really affects auditoriums and stadiums. A new 49ers stadium is being built in Santa Clara and Commissioner Lee's architect is waiting for the results of this meeting; the issue constitutes an emergency.

She continued that DSA is moving in the right direction to let the public know what they should be doing. Many building departments are responsible for reviewing their own city public projects; they are in the same situation, not knowing whether to comply with

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federal or state regulations – particularly with the 2010 ADA regulations. It is appropriate to look at these issues as emergency actions.

Commissioner Sierra stated that he also supported the emergency finding. He voiced concern about federal penalties for anyone out of compliance.

Chair Caballero responded that the Commission's foremost concern was to address the possibility of litigation opportunities.

Commissioner Sierra added that as one coming from the construction industry, he would like to see the disabled community show some empirical data on their claims as their issues are reviewed and adopted.

MOTION: Commissioner Sawhill moved that the Commission make the finding of emergency. Commissioner Lee seconded. Motion passed unanimously.

MOTION: Commissioner Sawhill moved for the adoption of the proposed emergency regulations. Commissioner Lee seconded. Motion passed unanimously.

7. CODE ADVISORY COMMITTEE MEMBER SELECTION

Commissioner Barthman stated that there have been two openings on the Code Advisory Committees and a need to fill them as soon as possible. As members of the Code Change Committee, a videoconference was held between himself and former Commissioner Paxson to discuss the candidate's application and supporting documentation.

After review of the applications for the Health Facilities Committee – Building Official and recommended selection of Nancy Springer, with Craig Greisbach as alternate. For the Architect position on the Plumbing, Electrical, Mechanical, and Energy (PEME) Committee they recommended John Amanat be appointed and Robert Omens as alternate.

MOTION: Commissioner Barthman moved approval of Nancy Springer, with Craig Greisbach as alternate for the Health Facilities-Building Official position and for the Architect position on the Plumbing, Electrical, Mechanical, and Energy (PEME) Committee John Amanat be appointed and Robert Omens as alternate. Commissioner Sierra seconded. Motion passed unanimously.

8. MEETING DATES FOR CODE ADVISORY COMMITTEES

Mike Nearman, BSC Deputy Executive Director, reported on the upcoming meeting dates for the Code Advisory Committees. He noted that at the first meeting of the Structural Design / Lateral Forces Committee on July 17, the engineers had processed the material quickly and efficiently.

Staff has been processing comments as the notice has been sent out. Staff will be setting 45-day comment periods to accommodate the various committees and their material.

9. FUTURE AGENDA ITEMS

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Commissioner Barthman inquired about the motion from the previous Commission meeting to add a Plumbing Inspector to the PEME Code Advisory Committee. A staff member responded that the outcome would be uncertain until the close of the 45-day comment period.

Commissioner Mikiten asked about the possibility of providing a package to the Commission in December prior to the January meeting, containing an introduction to some of the accessibility issues. Mr. McGowan responded that the two meetings scheduled for December and January will, in effect, split the workload for the adoption process. Commissioners will receive material two to three weeks before the December meeting upon which to deliberate.

Chair Caballero suggested talking with the State Architect to obtain a possible first draft of the material.

10. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

Ms. Arnold expressed her opposition to the Commission vote on the emergency finding of Item 6)a)i). She also opposed grandfathering in the path of travel changes of Item 7. She then described the difficulty of trying to find accessible parking, as well as encountering new barricade curbs, in downtown Sacramento.

Ms. Arnold related the difficulty of finding an accessible restroom during a trip to Santa Barbara. She concluded that litigation is the only enforcement mechanism that was built into the ADA that people have, to try to enforce their rights for access.

11. ADJOURN

Chair Caballero adjourned the meeting at approximately 1:00 p.m.