

STATE OF CALIFORNIA
DEPT. OF GENERAL SERVICES - GOVERNMENT OPERATIONS AGENCY
CALIFORNIA BUILDING STANDARDS COMMISSION
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Office Use Item No. _____

PARTICIPATION COMMENTS FOR THE NOTICE DATED AUGUST 14, 2015
Written comments are to be sent to the above address.

WRITTEN COMMENT DEADLINE: SEPTEMBER 28, 2015

Date: September 28, 2015

From:

Shawn Huff, Assistant Deputy Director
Name (Print or type) (Signature)

-- California Department of Housing and Community Development, State Housing Law Program
Agency, jurisdiction, chapter, company, association, individual, etc.

2020 West El Camino Avenue Sacramento CA 95833
Street City State Zip

I/We ~~(do)~~(do not) agree with:

[] The Agency proposed modifications As Submitted on Sections No. 11B-233.3.1.2.4 and exception; 11B-233.3.3; 11B-233.3.4 exception; 11B-233.3.4.1; and 11B-233.3.4.2.

and request that this section or reference provision be recommended:

[] Approved [] Disapproved [] Held for Further Study [] Approved as Amended

Suggested Revisions to the Text of the Regulations:

See attached transmittal letter and Attachment A for specific comments on the above sections.

Reason: [The reason should be concise if the request is for "Disapproval," "Further Study," or "Approve As Amend" and identify at least one of the 9-point criteria (following) of Health and Safety Code §18930.]

HEALTH & SAFETY CODE SECTION 18930

SECTION 18930. APPROVAL OR ADOPTION OF BUILDING STANDARDS; ANALYSIS AND CRITERIA; REVIEW CONSIDERATIONS; FACTUAL DETERMINATIONS

- (a) Any building standard adopted or proposed by state agencies shall be submitted to, and approved or adopted by, the California Building Standards Commission prior to codification. Prior to submission to the commission, building standards shall be adopted in compliance with the procedures specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. Building standards adopted by state agencies and submitted to the commission for approval shall be accompanied by an analysis written by the adopting agency or state agency that proposes the building standards which shall, to the satisfaction of the commission, justify the approval thereof in terms of the following criteria:
- (1) The proposed building standards do not conflict with, overlap, or duplicate other building standards.
 - (2) The proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency.
 - (3) The public interest requires the adoption of the building standards.
 - (4) The proposed building standard is not unreasonable, arbitrary, unfair, or capricious, in whole or in part.
 - (5) The cost to the public is reasonable, based on the overall benefit to be derived from the building standards.
 - (6) The proposed building standard is not unnecessarily ambiguous or vague, in whole or in part.
 - (7) The applicable national specifications, published standards, and model codes have been incorporated therein as provided in this part, where appropriate.
 - (A) If a national specification, published standard, or model code does not adequately address the goals of the state agency, a statement defining the inadequacy shall accompany the proposed building standard when submitted to the commission.
 - (B) If there is no national specification, published standard, or model code that is relevant to the proposed building standard, the state agency shall prepare a statement informing the commission and submit that statement with the proposed building standard.
 - (8) The format of the proposed building standards is consistent with that adopted by the commission.
 - (9) The proposed building standard, if it promotes fire and panic safety as determined by the State Fire Marshal, has the written approval of the State Fire Marshal.

Attachment A
HCD Comments to DSA 2016 CBC Chapter 11B Proposal

PUBLIC HOUSING. [DSA-AC] *Housing facilities owned, operated, or constructed by, for or on behalf of a public entity including but not limited to the following:*

1. *Publically owned and/or operated one- or two-family dwelling units or congregate residences;*
2. *Publically owned and/or operated buildings or complexes with three or more residential dwelling units;*
3. *Reserved.*
4. *Publically owned and/or operated homeless shelters, group homes and similar social service establishments;*
5. *Publically owned and/or operated transient lodging, such as hotels, motels, hostels and other facilities providing accommodations of a short term nature of not more than 30 days duration;*
6. *Housing at a place of education owned or operated by a public entity, such as housing on or serving a public school, public college or public university campus;*
7. *Privately owned housing made available for public use as housing.*

11B-233 Residential facilities.

11B-233.1 General. *Public housing facilities with residential dwelling units available for public use shall comply with Section 11B-233. See Chapter 2, Section 202 of this code for the definition of Public Housing.*

Comment: The existing language in this section and in the definition of “public housing” is ambiguous and vague, does not clarify the scoping, and may violate Criteria 6 of the Nine Point Criteria (HSC Section 18930). “Public use,” as defined by DSA, in the context of public housing, is *the provision of housing programs by, for, or on behalf of a public entity*. It is unclear what type of housing is covered by the term “Public housing.”

1. Housing owned and/or operated by public entities (State agencies, local government agencies, housing authorities); OR
2. Privately owned housing operated by or on behalf of a public entity; OR
3. Privately owned housing using public funds for alterations? (E.g. seismic retrofitting, energy upgrade, weatherization programs, alterations of substandard housing, CDBG projects, etc.)

11B-233.2 Reserved.

11B-233.3 Public housing facilities.

11B-233.3.1 Minimum number: new construction. Newly constructed *public housing* facilities with residential dwelling units shall comply with *Section 11B-233.3.1*.

Exception: Where facilities contain 15 or fewer residential dwelling units, the requirements of *Sections 11B-233.3.1.1* and *11B-233.3.1.3* shall apply to the total number of residential dwelling units that are constructed under a single contract, or are developed as a whole, whether or not located on a common site.

11B-233.3.1.1 Residential dwelling units with mobility features. *In public housing facilities with residential dwelling units, at least 5 percent, but no fewer than one unit, of the total number of residential dwelling units shall provide mobility features complying with Sections 11B-809.2 through 11B-809.4 and shall be on an accessible route as required by Section 11B-206.*

11B-233.3.1.2 Residential dwelling units with adaptable features. *In public housing facilities with residential dwelling units, adaptable residential dwelling units complying with Chapter 11A, Division IV – Dwelling Unit Features shall be provided as required by Sections 11B-233.3.1.2.1 through 11B-233.3.1.2.5. Adaptable residential dwelling units shall be on an accessible route as required by Section 11B-206.*

Exception: *The number of required adaptable residential dwelling units shall be reduced by the number of units required by Section 11B-233.3.1.1.*

Attachment A
HCD Comments to DSA 2016 CBC Chapter 11B Proposal

Comment: The scoping in this section may need clarification. It is not clear whether Section 11B-233.3.1.2 applies to covered multifamily dwellings only (as required in chapter 11A), or to all dwelling units, including single family dwellings.

The exception may also be misleading and could create a conflict with Chapter 11A, based on different requirements for dwelling unit kitchens in Chapters 11A and 11B.

Example: A building with 100 condominiums is constructed and operated by a housing authority. By definition, this public building is a covered multifamily dwelling; therefore, required to comply with both Chapter 11A and Chapter 11B. The exception to this section requires 5 accessible dwelling units (5%, as required by Section 11B-233.3.1.1), and 95 adaptable dwelling units (built per Division IV, Chapter 11A). Chapter 11A requires 100 dwelling units to be adaptable. The conflict originates from the requirements for kitchens in both chapters. Section 1133A requires kitchens with a 48-inch minimum width, while Chapter 11B requires only a 40-inch width for pass-through kitchens. If a builder follows the exact language in this exception, the 5 dwelling units (5%), required to comply with Chapter 11B, will not comply with Section 1133A.

11B-233.3.1.2.1 Elevator buildings. Residential dwelling units on floors served by an elevator shall be adaptable.

11B-233.3.1.2.2 Non-elevator buildings. Ground floor residential dwelling units in non-elevator buildings shall be adaptable.

11B-233.3.1.2.3 Ground floors above grade. Where the first floor in a building containing residential dwelling units is a floor above grade, all units on that floor shall be adaptable.

Comment: HCD's Chapter 11A exempts carriage units. Does DSA intentionally not address carriage units?

11B-233.3.1.2.4. Multi-story residential dwelling units. In elevator buildings, public housing facilities with multi-story residential dwelling units shall comply with the following:

Exception: *In non-elevator buildings, a minimum of 10 percent but not less than one of the ground floor multi-story residential dwelling units shall comply with Section 11B-233.3.1.2.4, calculated using the total number of multi-story residential dwelling units in buildings on a site.*

1. The primary entry of the multi-story residential dwelling unit shall be on an accessible route. In buildings with elevators the primary entry shall be on the floor served by the elevator.
2. At least one powder room or bathroom shall be located on the primary entry level.
3. Rooms or spaces located on the primary entry level shall be served by an accessible route and comply with Chapter 11A, Division IV – Dwelling Unit Features.

Exception: *In non-elevator buildings, a minimum of 10 percent but not less than one of the ground floor multi-story residential dwelling units shall comply with Section 11B-233.3.1.2.4, calculated using the total number of multi-story residential dwelling units in buildings on a site.*

Attachment A
HCD Comments to DSA 2016 CBC Chapter 11B Proposal

Comment:

1. The first paragraph (and numbered items) of this section address elevator buildings, while the exception sets requirements for non-elevator buildings. It appears that the exception is not really an exception to the first paragraph (elevator buildings), but prescribes separate requirements for non-elevator buildings. HCD believes it may provide more clarity to separate this exception from this subsection and create a separate subsection for non-elevator buildings.
2. Additionally, if the intent of this section is to align with Chapter 11A, Chapter 11A requires a bathroom (or powder room) and a kitchen on the primary entry level for multistory dwelling units in elevator buildings.

11B-233.3.1.3 Residential dwelling units with communication features. In *public housing* facilities with residential dwelling units, at least 2 percent, but no fewer than one unit, of the total number of residential dwelling units shall provide communication features complying with *Section 11B-809.5*.

11B-233.3.2 Residential dwelling units for sale. Residential dwelling units *designed and constructed or altered by public entities that will be offered for sale to individuals* shall provide accessible features to the extent required by *this chapter*.

Exception: *Existing residential dwellings or residential dwelling units acquired by public entities that will be offered for resale to individuals without additions or alterations shall not be required to comply with this chapter.*

11B-233.3.3 Additions. Where an addition to an existing *public housing facility* results in an increase in the number of residential dwelling units, the requirements of *Section 11B-233.3.1* shall apply only to the residential dwelling units that are added until the total number of residential dwelling units complies with the minimum number required by *Section 11B-233.3.1*. *Providing residential dwelling units complying with Section 11B-233.3.1.1 shall take priority. When that number is satisfied additional units shall comply with Section 11B-233.3.1.2.* Residential dwelling units required to comply with *Sections 11B-233.3.1.1 and 11B-233.3.1.2* shall be on an accessible route as required by *Section 11B-206*.

Comment: This proposal may create a conflict with Chapter 11A and may violate Criteria 1 of the Nine Point Criteria (HSC Section 18930). The conflict originates from the requirements for kitchens in Chapters 11A and 11B. Section 1133A requires kitchens with a 48-inch minimum width, while Chapter 11B requires only a 40-inch width for pass-through kitchens.

Example: A developer using state funds proposes to add 10 apartments to an existing 90-unit apartment complex, constructed with private funds. The DSA proposal would require 5 of the new apartments to comply with Chapter 11B, and the other 5 - with Chapter 11A.

At the same time, Chapter 11A applies to new additions to existing covered multifamily dwellings where the addition, when considered alone, meets the definition of a covered multifamily dwelling. In this case, all 10 new apartments would be required to comply with Chapter 11A.

So, when a developer follows the exact language in Section 11B-233.3.3, as written, the 5 dwelling units (5%), required to comply with Chapter 11B, will not comply with Section 1133A due to the different requirements for kitchens in Chapters 11A and 11B.

Attachment A
HCD Comments to DSA 2016 CBC Chapter 11B Proposal

11B-233.3.4 Alterations. Alterations to a public housing facility shall comply with Section 11B-233.3.4.

Exception: Where compliance with Section 11B-809.2, 11B-809.3, or 11B-809.4 is technically infeasible, or where it is technically infeasible to provide an accessible route to a residential dwelling unit, the entity shall be permitted to alter or construct a comparable residential dwelling unit to comply with Sections 11B-809.2 through 11B-809.4 provided that the minimum number of residential dwelling units required by Sections 11B-233.3.1.1, ~~11B-233.3.1.2~~ and 11B-233.3.1.3, as applicable, is satisfied. Providing residential dwelling units complying with Section 11B-233.3.1.1 shall take priority. When that number is satisfied additional units shall comply with Section 11B-233.3.1.2.

11B-233.3.4.1 Alterations to vacated buildings. Where a building is vacated for the purposes of alteration for use as public housing, and the altered building contains more than 15 residential dwelling units, at least 5 percent of the residential dwelling units shall comply with Sections 11B-809.2 through 11B-809.4 and shall be on an accessible route as required by Section 11B-206. Residential dwelling units with adaptable features shall be provided in compliance with Section 11B-233.3.1.2. In addition, at least 2 percent of the residential dwelling units shall comply with Section 11B-809.5.233.3.1.2

Exception: Where any portion of a building's exterior is preserved, but the interior of the building is removed, including all structural portions of floors and ceilings and a new building intended for use as public housing is constructed behind the existing exterior, the building is considered a new building for determining the application of this chapter.

11B-233.3.4.2 Alterations to individual residential dwelling units. In public housing facilities with individual residential dwelling units, where a bathroom or a kitchen is substantially altered, and at least one other room is altered, the requirements of Section 11B-233.3.1 shall apply to the altered residential dwelling units until the total number of residential dwelling units complies with the minimum number required by Sections 11B-233.3.1.1, ~~11B-233.3.1.2~~, and 11B-233.3.1.3. Providing residential dwelling units complying with Section 11B-233.3.1.1 shall take priority. When that number is satisfied additional units shall comply with Section 11B-233.3.1.2. Residential dwelling units required to comply with Sections 11B-233.3.1.1 and 11B-233.3.1.2 shall be on an accessible route as required by Section 11B-206.

Comment for 11B-233.3.4, 11B-233.3.4.1 and 11B-233.3.4.2: The proposed amendments in Sections 11B-233.3.4, 11B-233.3.4.1, and 11B-233.3.4.2 appear to be unreasonable, arbitrary, unfair, and capricious, and may violate Criteria 5 and 6 of the Nine Point Criteria (HSC Section 18930). These amendments are more stringent than the federal standards, and the existing California standards, and if approved and adopted, would affect rehabilitation projects funded by HCD and other state and local agencies.

The existing language in Sections 11B-233.3.4, 11B-233.3.4.1, 11B-233.3.4.2, and 11B-233.1, as well as the definition of "public housing," does not clarify the scoping. This has resulted in varying interpretations and enforcement by the local jurisdictions. HCD recommends that DSA clarify the scoping.

Attachment A
HCD Comments to DSA 2016 CBC Chapter 11B Proposal

Comment for 11B-233.3.4, 11B-233.3.4.1 and 11B-233.3.4.2 – (Continued):

Example: An existing 100-unit condominium building built in 1980 where the owners use public funds (State program) to improve energy efficiency. The upgrade includes new flooring materials, new interior finishes, new attic and wall insulation, new electrical system, new HVAC system, new lighting, new doors and windows, new plumbing fixtures and fittings, and new appliances. The owners do not propose any structural repairs.

This project doesn't trigger compliance with Chapter 11A, because the building was built prior to March 13, 1991. However (based on the DSA interpretation), because of the public funds used for the renovation, this project may need to comply with Chapter 11B in regards to 5% of the dwelling units. In addition, DSA's proposal refers to Section 11B-233.3.1.2, which requires compliance with Chapter 11A, Division IV, for the other 95 dwelling units. This may make some rehabilitation projects funded by HCD or other state and local programs too expensive or even impossible to build due to the additional expenses for retroactive Chapter 11A compliance. In some cases additional compliance with Chapter 11A may be more expensive than the originally proposes project.