

**FINDING OF EMERGENCY  
OF THE  
DIVISION OF THE STATE ARCHITECT – STRUCTURAL SAFETY (DSA-SS & DSA-  
SS/CC)**

**REGARDING THE CALIFORNIA BUILDING CODE, PART 2 &  
THE CALIFORNIA EXISTING BUILDING CODE, PART 10,  
CALIFORNIA CODE OF REGULATIONS, TITLE 24**

The adoption of these regulations or order of repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

**INTRODUCTION**

In response to a sudden and catastrophic balcony failure at Library Gardens in Berkeley, on June 16, 2015, DSA proposes these emergency building standard regulations pertaining to enhanced detailing, construction inspection and maintenance of exterior elevated elements (EEE) for public schools, community colleges, and state-owned or state-leased essential services buildings. DSA, in coordination with the California Building Standards Commission, Department of Housing and Community Development and other stakeholders, has developed the following emergency regulations that amend the 2016 editions of the California Building Code (Part 2, Title 24, California Code of Regulations) and the California Existing Building Code (Part 10, Title 24, California Code of Regulations) as follows:

- Amends Section 1.9.2 of Part 2 to reference language added to Chapter 1.
- Adds Sections 107.2.7 and 110.3.8.1 to Chapter 1 of Part 2.
- Amends Section 1616.5 of Part 2 pertaining to loading.
- Amends Table 1607A.1 of Part 2 pertaining to loading.
- Amends Section 2304.12.2.5 of Part 2 pertaining to drainage.
- Adds Section 2304.12.2.6 of Part 2 pertaining to ventilation.
- Amends Section 1.9.2 of Part 10 to reference language added to Chapter 1.
- Adds Section 101.8.1 to Chapter 1 of Part 10 pertaining to maintenance.
- Adds Sections 106.2.6 and 109.3.10 to Chapter 1 of Part 10.

Failures, such as the one at Library Gardens, have informed us that due to the enclosed nature of many EEE assemblies, causation factors leading to failure are not always observable in time for repair or mitigation. The proposed emergency regulations are intended to prevent future occurrences by reducing risk factors, thereby improving the health, safety and welfare of the public. The sense of urgency in amending Title 24 before the next regular rulemaking cycle is due to the immediate need to design and construct EEE in a modified manner, in order to minimize the chance of other failures, between now and the January 1, 2020 effective date of the next edition of Title 24.

**BACKGROUND**

An EEE subcommittee (Working Group) was formed at the April 19, 2016 Commission meeting. It met twice and discussed many suggested changes to the codes, including but not limited to utilizing the International Code Council's (ICC) proposed amendments, recently developed for inclusion in the 2018 edition of International Building Code (IBC) and International Existing Building Code (IEBC). Since those amendments were to enhance building standards for EEE, the Working Group monitored the progress of the ICC proposed amendments. ICC concluded its code amendment process just prior to the December 13, 2016 Commission meeting.

The IBC and IEBC amendments provide a model that will help mitigate future problems. The nature of the issue surrounding the type of failure demonstrated by the Library Gardens tragedy is

that causation factors do not always have precedent indicators; they are not always identifiable. Thus, it is prudent to address new construction (which may include additions & renovations to existing buildings) with safeguards that will provide higher performance and assurance levels.

The City of Berkeley has provided statistics for their jurisdiction, giving the Working Group information about the pervasiveness of the EEE issue. Of a total of more than 6000 properties identified as possible candidates for having exterior elevated elements, greater than 800 had a need for repair when the enclosed assemblies were inspected. Additionally, on September 15, 2016 the Governor approved Senate Bill 465 (Chapter 372, to add and repeal Section 18924.5 of the Health & Safety Code) in order to, among other things, require the Working Group formed by the CBSC to submit a report before January 1, 2018, containing any findings or recommendations for statutory changes or California Building Standards Code changes, to increase the level of safety for exterior elevated elements. Further, it allows the Working Group to make any recommended changes at any time to appropriate State agencies, as soon as possible, in order to protect the public.

1. Health & Safety Code Section 18924.5 authorized a CBSC working group to study recent exterior elevated element failures in California, and to report to the appropriate policy committee of the Legislature any findings and possible recommendations for statutory changes or California Building Standards Code changes.
2. Health & Safety Code Section 18924.5 states that if at any point in time, the working group determines that changes to the California Building Standards Code are needed as soon as possible, to protect the public, the group is directed to submit recommended changes to an appropriate agency/agencies as soon as possible.

At the CBSC December 13, 2016 Commission meeting, the Working Group provided the Commission with an update of their subcommittee discussions, which included the City of Berkeley documents, the Structural Engineer's Association of California, and the American Wood Council, as well as a discussion of the recently approved provisions to the upcoming national model codes. The Commission discussed if it was possible for the state agencies to propose emergency building standards for the early adopting of the ICC model code provisions. The Working Group stipulated that they would look to state agencies to propose solutions.

### **SUMMARY**

DSA finds the provisions currently being amended to the 2018 IBC and IEBC as being essential and critical for public health and safety and that there should be no undue delay in enacting measures to achieve this goal. The opportunity to include any proposed measures with the current 2016 Intervening Code Adoption Cycle has passed. Given the extensive code adoption process, the opportunity to include proposed measures with the next triennial cycle schedule would make the resulting building standards effective at the local level on January 1, 2020, a delay of nearly 36 months. In view of the urgency to provide enhanced measures, intended to reduce risk factors and increase public safety, as implied by the statute's urgent language, DSA proposes the adoption of these building standards through the emergency adoption process, authorized in Health & Safety Code Section 18937.

### **AUTHORITY AND REFERENCE**

DSA proposes to adopt these building standards under the authority granted by Health and Safety Code 18930, 18934.5, 18937, and 18944. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health & Safety Code (H&SC) 18934.5.

The California Building Standards Law provides for the CBSC to act upon emergency standards if the proposing agency has made the finding of emergency in compliance with Government Code Section 11346.5.

## **INFORMATIVE DIGEST**

### Summary of Existing Laws

**H&SC 18937** provides that a proposing agency can propose a finding of emergency, in accordance with Government Code 11346.1 and 11346.5.

**H&SC 18938** requires the filing of emergency standards with the Secretary of State by CBSC only after they have been approved by the commissioners. It requires that the standards become effective when filed with Secretary of State or at a later date specified in the standards, and that they be published in Title 24.

**H&SC 18928.1** requires the incorporation of published model codes, national specifications, or published standards.

### Summary of Existing Regulations

The California Building Code (Part 2, Title 24, California Code of Regulations, contains requirements for construction documents in Section 107.2.

The California Existing Building Code (Part 10, Title 24, California Code of Regulations, contains requirements for construction documents in Section 106.2.

### Summary of Effect

This proposed body of regulations will immediately mandate enhanced design and construction measures for exterior elevated elements, to minimize risk of failure in newly-constructed buildings as well as existing buildings undergoing alteration or modernization.

### Comparable Federal Statute or Regulations

There currently are no federal laws or regulations for EEE.

### Policy Statement Overview

DSA is responsible for the development of building standards for public elementary and secondary schools, community colleges, and state-owned and state-leased essential services buildings for which no other state agency has authority or expertise.

This proposed action will make effective, upon adoption, approval by the commissioners, and filing with Secretary of State, the emergency addition of Sections 107.2.7 and 110.3.8.1 to Chapter 1, and Sections 2304.12.2.6 of Chapter 23, Title 24, Part 2, and the amendment of Section 1.9.2 of Chapter 1, Section 1616.5.1 of Chapter 16, Table 1607A.1 of Chapter 16A and Section 2304.12.2.5 of Chapter 23, Title 24, Part 2 for buildings within CBSC authority, necessitating immediate action to protect the public peace, health, safety and general welfare.

This proposed action will make effective, upon adoption, approval by the commissioners, and filing with Secretary of State, the emergency addition of Sections 101.8.1, 106.2.6 and 109.3.10 to Chapter 1, Title 24, Part 10 and the amendment of Section 1.9.2 of Chapter 1, Title 24, Part 10 for buildings within CBSC authority, necessitating immediate action to protect the public peace, health, safety and general welfare.

### Evaluation of consistency

The proposed action is not incompatible or inconsistent with existing regulations.

## **MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS**

DSA has determined that there are no other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulations.

**MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

DSA has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

**FISCAL IMPACT STATEMENT**

- A. Cost or Savings to any state agency: **Unknown (see “Estimate” section below)**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **Unknown (see “Mandate on Local Agencies or School Districts” section above)**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NONE**
- D. Other nondiscretionary cost or savings imposed on local agencies: **Unknown**
- E. Cost or savings in federal funding to the state: **NONE**

Estimate: DSA has prepared a Fiscal Impact Statement concerning the proposed action which recognizes the following:

- Because stronger materials and fungus-resistant materials are generally a higher purchase cost, DSA anticipates an economic impact to the regulated community. Provisions allow alternate materials & methods, as an option to the regulated community, also having an associated cost. However, the cost of exterior elevated elements is of such small significance, as a portion of overall building costs, that DSA believes the minor costs associated with proposed changes in materials and methods are reasonable, and are offset by the benefit of increased safety factors and reduced risk in the integrity of EEEs. In addition, the enhanced EEE detailing and construction inspection requirements would increase the life expectancy of EEE’s, thereby reducing future repair costs.
- DSA recognizes that implementation of these provisions will result in the expected benefit of safer conditions statewide, but acknowledges a likely economic impact to businesses that sell ventilation products or decay-resistant framing materials (which may see an increase in revenue resulting from materials purchases) and the installation of such materials.
- Although the proposed 2018 IBC and 2018 IEBC (model code) provisions are not yet published, the proposals considered for adoption by DSA have been approved through ICC’s code development processes and are only pending final ICC approval and certification.