

**FINDING OF EMERGENCY
OF THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE AMENDMENT OF
THE 2016 CALIFORNIA BUILDING CODE AND
THE 2016 CALIFORNIA EXISTING BUILDING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PARTS 2 AND 10**

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:

FINDING OF EMERGENCY

(Government Code Section 11342.545 and 11346.1)

In response to a balcony failure at Library Gardens in Berkeley, on June 16, 2015, the California Department of Housing and Community Development (HCD) is proposing this emergency building standard regulation pertaining to the enhancement of exterior elevated elements (EEE) for buildings and structures under the authority of HCD. HCD, in coordination with the California Building Standards Commission (CBSC), the Division of the State Architect (DSA) and other stakeholders, has developed the following emergency regulations that amend the 2016 editions of the California Building Code (Part 2) and the California Existing Building Code (Part 10), Title 24, California Code of Regulations) as follows:

- Adds additional requirements for submittal documents and inspections to Chapter 1 of Part 2.
- Amends Table 1607.1 of Part 2 pertaining to live loads.
- Amends Section 2304.12.2.5 of Part 2 pertaining to drainage of water that infiltrates the moisture-permeable floor topping.
- Adds Section 2304.12.2.6 of Part 2 pertaining to ventilation required beneath balcony or elevated walking surfaces.
- Adds (re-establishes from 2013 CBC, Chapter 34) Section 101.8 of Part 10 pertaining to maintenance and reinspections.
- Adds Sections 106.2.6 and 109.3.7.1 of Part 10 pertaining to construction documents and inspections, respectively.

BACKGROUND

An EEE subcommittee (Working Group) was formed at the April 19, 2016, CBSC meeting. The Working Group 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, concluded just prior to the December 13, 2016, CBSC meeting. HCD is proposing to incorporate the IBC and IEBC amendments into the California Building Standards Code.

The City of Berkeley has provided inspection statistics for their jurisdiction, giving the Working Group an idea of the pervasiveness of the 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. The nature of the issue being hidden is problematic -- as a building matures and

due to the enclosed nature of the assemblies issues, e.g., decay, damage, are not always observable. Hence, the sense of urgency in amending Title 24 to reduce risk factors; thereby improving the health, safety and welfare of the public.

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 visible. Therefore, it is prudent to address not only new construction, but also to address existing buildings, which may have conditions now that could lead to failure at any time. Therefore, proposed re-establishment of requirements that buildings be maintained in a safe and sanitary condition and providing authority for building officials to require reinspections are important. This provision was found in the 2013 CBC/IBC, Chapter 34. The 2013 IBC Chapter 34 provisions were repealed and not brought forward into the 2015 IBC. Instead, Chapter 34 provisions were merged into the 2015 IEBC. Chapter 34, Section 3401.2 was not merged into 2015 IEBC and was instead placed into the 2015 International Property Maintenance Code (IPMC) (which is not recognized in California). Without adding this provision there would be no guidance to address existing buildings by local enforcing agencies.

Additionally, on September 15, 2016, the Governor approved Senate Bill 465 (Chapter 372, Statutes of 2016) to add Section 18924.5 of the Health & Safety Code (operative until January 1, 2018) 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. HSC 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. HSC Section 18924.5 states that at any point in time, if 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.

HCD finds that provisions currently being amended to the 2018 IBC and 2018 IEBC are critical and that there should be no undue delay in enacting measures to achieve this goal. The Building Standards Code Adoption Cycle consists of an 18 month intervening and 36-month triennial code adoption cycle. The code adoption cycles are established by CBSC. HCD's proposed emergency regulations will take effect upon approval by the CBSC (January 27, 2017) and filing with the Secretary of State. This is an expedited process providing enhanced safety measures significantly faster than following the 2016 Intervening Code Adoption Cycle. By following the 2016 Intervening Code Adoption Cycle schedule, the proposed building standards would not be effective statewide until July 1, 2018. This is a delay of nearly 18 months. The next scheduled triennial code adoption cycle would not be effective statewide until 2020. 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, HCD proposes the adoption of these building standards through the emergency adoption process, authorized in HSC Section 18937.

AUTHORITY AND REFERENCE

(Government Code Section 11346.1(b)(2) and 11346.5(a)(2))

The Health and Safety Code (HSC), State Housing Law, Section 17921, provides HCD with authority to propose the adoption, amendment, or repeal of building standards to CBSC in accordance with the HSC, California Building Standards Law, and provisions for the California Building Standards Code (Section 18935 *et seq.*).

HSC, Employee Housing Act, Section 17040, provides HCD authority to adopt, amend, or repeal rules and regulations for the protection of the public health, safety, and general welfare of employees and the public, governing the erection, construction, enlargement, conversion, alteration, repair, occupancy, use, sanitation, ventilation, and maintenance of all employee housing.

HSC, Factory-Built Housing Law, Section 19990, provides HCD authority to adopt rules and regulations to implement the law. California Code of Regulations, Title 25, Division 1, Chapter 3, Subchapter 1, Article 5, Section 3070, requires design and fabrication of factory-built housing to be in accordance with the applicable building standards in specified parts, including Part 11 CALGreen, of the Building Standards Code.

The California Building Standards Law also 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.

HCD has determined that the adoption of these building standards is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

HSC, California Building Standards Law, Section 18937 provides that the CBSC commissioners shall act on emergency standards within 30 days, and they must act on the merit of the emergency finding as well as on the proposed standards. HSC Section 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 the Secretary of State or at a later date specified in the standards, and that they be published in Title 24.

INFORMATIVE DIGEST

(Government Code Sections 11346.1(b)(2) and 11346.5(a)(3))

Summary of Existing Laws

HSC Section 17922(b) provides authority for HCD to consider local conditions and propose amendments to the adopted uniform (model) codes.

HSC Section 18937 provides that a proposing agency can propose a finding of emergency, in accord Government Code 11346.1 and 11346.5.

HSC Section 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.

HSC Section 17951 authorizes the governing body of any city or county to prescribe fees for permits, certificates or other forms or documents, or to prescribe fees to defray the costs of enforcement carried out by local enforcement agencies.

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; required inspections in Section 110.3; minimum live loads in Table 1607.1; and requirements for wood protection in Section 2304.12.

The California Existing Building Code (Part 10, Title 24, California Code of Regulations) contains requirements for construction documents in Section 106.2 and for required inspections in Section 109.3.

Summary of Effect

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; and the amendment of Table 1607.1 of Chapter 16 and Section 2304.12.2.5 of Chapter 23 in Title 24, for buildings within HCD authority, necessitating immediate action to avoid serious harm to the public peace, health, safety and general welfare, in response to presumed ongoing conditions within the construction of the built environment.

This proposed action will make effective, upon adoption, approval by the commissioners, and filing with Secretary of State the emergency addition of Sections 106.2.6 and 109.3.7.1 to Chapter 1; and re-establishment of Section 101.8 (as renumbered) in Chapter 1, Title 24, Part 10 for buildings within HCD authority, necessitating immediate action to avoid serious harm to the public peace, health, safety and general welfare, in response to presumed ongoing conditions within the built environment.

Comparable Federal Statute or Regulations

There currently are no federal laws or regulations for EEE.

Policy Statement Overview

HCD has statutory authority to adopt building standards for residential structures and accessory structures. No other state agency has primary authority to adopt building standards for residential structures.

Evaluation of Consistency

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

HCD's proposed building standards include new provisions to the CBC and CEBC which have been recently proposed and preliminarily approved for the 2018 International Building Code (IBC) and 2018 International Existing Building Code (IEBC) model codes, which are the basis for the 2019 CBC and 2019 CEBC. Therefore, HCD's proposed building standards do not conflict with, overlap or duplicate existing California building standards. Upon publication of the 2018 IBC and IEBC which should include duplicate measures (except for the maintenance and reinspection provision), HCD will repeal the corresponding California amendments to avoid duplication within the 2019 CBC and CEBC.

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

(Government Code Sections 11346.1(b)(2) and 11346.5(a)(4))

HCD 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

(Government Code Sections 11346.1(b)(2) and 11346.5(a)(5))

HCD has determined that the proposed regulatory action would pose a mandate on local agencies or school districts. However, HSC Section 17951(b) provides for local enforcing agencies to prescribe fees to defray costs of enforcement of the State Housing Law and building standards.

FISCAL IMPACT STATEMENT

(Government Code Section 11346.1(b)(2) A statement containing information in Gov. Code Section 11346.5(a)(6). An estimate, prepared in accordance with instructions adopted by Department of Finance, of cost or savings to any state agency, local agency, or school district.

- 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: Local agencies may incur additional costs related to implementation of the proposed regulations as related to inspections. However, pursuant to Health and Safety Code Section 17951(b) they may prescribe fees to defray the costs of enforcement carried out by local enforcement agencies. Therefore, local costs may be reduced to zero.

The proposed increase in Live Load for balconies and decks may increase the cost of construction; however, the balcony will be able to support higher loads than the existing code requirements, providing a greater margin of safety. This change will provide consistency between the IBC/CBC and the 2016 ASCE 7 Minimum Design Loads and Associated Criteria for Buildings and Other Structures. ASCE 7 provides requirements for general structural design and includes means for determining dead, live, soil, flood, snow, rain, atmospheric ice, earthquake, and wind loads, as well as their combinations, which are suitable for inclusion in building codes and other documents.

HCD finds that the adoption of amendments in the 2016 CBC and 2016 CEBC results in reasonable costs or costs savings to the public because it updates health and safety standards, provides the most recent methods, and promotes affordable costs. Health and Safety Code Section 17950 mandates that the application of published building standards be applied on a statewide basis, which assists in uniformity and cost affordability. Although the proposed 2018 IBC and 2018 IEBC are not published to-date, the proposals considered for adoption by HCD have been approved through several code development processes and are only pending final ICC approval and certification.