

**FINDING OF EMERGENCY
OF THE
CALIFORNIA BUILDING STANDARDS COMMISSION (CBSC)**

**REGARDING THE CALIFORNIA GREEN BUILDING STANDARDS CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 11**

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

FINDING OF EMERGENCY:

CBSC has received and accepted a petition concerning modifications to mandatory Section 5.106.8, Light Pollution Reduction, in the 2010 California Green Building Standards (CALGreen) Code. The petitioner alleges that compliance with the section would reduce nighttime illumination of building sites to a level that does not meet minimum safety requirements. The petitioner contends that the regulations are unreasonable, arbitrary and capricious and likely to result in muggings and rapes, with victims seeking legal redress from CBSC and individual commissioners. Despite the exceptions for emergency and security lighting in the section, CBSC staff is in agreement that modifications are needed, and that they should be considered on an emergency basis to avert any danger to public safety that the petitioner has claimed.

BACKGROUND:

The section in question contains mandatory provisions for reducing light pollution from nighttime nonresidential building and site lighting. It makes reference to outdoor lighting regulations of the California Energy Commission, requires additional measures including prohibition of light trespass beyond site boundaries, and provides exceptions for security and emergency lighting. It underwent review by the CBSC Green Building Focus Group, the Green Building Code Advisory Committee, and the public during its development and rulemaking in the 2009 code adoption cycle.

Despite the exposure, the regulations were contested initially by the petitioner to CBSC staff informally and only late in 2010, and staff made changes to language in errata it believed were editorial in nature and would offer temporary mitigation of problems the petitioner identified. CBSC staff has also proposed the regulations for further improvement in this proposed emergency, including making them voluntary now and mandatory for the 2010 code adoption cycle. The Green Building Code Advisory Committee recommended that CBSC work with the petitioner on the proposal, and subsequent drafts were reviewed by California Energy Commission staff.

At the January 19, 2011 CBSC hearing and in the petition, the petitioner also alleged that the errata published for the code provision were regulatory in nature and thus should be considered "underground regulations." Issued only this month by the publisher, the errata will be rendered moot by the emergency adoption and publication of the modifications proposed in this rulemaking.

AUTHORITY AND REFERENCE

CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code 18930.5, 18934.5 and 18938(b) and Government Code 14617. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code 18930.5, 18934.5, 18937 and 18938.

INFORMATIVE DIGEST

Summary of Existing Laws

H&SC 18930.5 grants CBSC the authority, if no state agency has the authority or expertise to propose green building standards applicable to a particular occupancy, to adopt, approve, codify, update, and publish green building standards for those occupancies.

H&SC Section 18934.5 sets forth that, where no state agency has the authority to adopt building standards applicable to state buildings, the commissioners shall adopt, approve, codify, and publish building standards providing the minimum standards for the design and construction of state buildings.

H&SC 18937 provides that the 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.

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 Secretary of State or at a later date specified in the standards, and that they be published in Title 24.

Government Code 14617 authorizes CBSC and the Division of State Architect to establish a standard of lighting for parking lots at the University of California, California State University, and California Community Colleges.

Summary of Existing Regulations

California Code of Regulations (CCR), Title 24, also referred to as the 2010 California Building Standards Code incorporates the following:

- Part 1, the California Administrative Code, with administrative regulations for CBSC and the California Energy Commission (CEC)
- Part 2, the California Building Code, includes standards for lighting for campus parking lots pursuant to Government Code 14617
- Part 6, the California Energy Code, which contains minimum energy efficiency standards for buildings in California promulgated by the CEC
- Part 11, the California Green Building Standards Code (CGBSC), also known as the CALGreen Code, which contains mandatory and voluntary green building standards for residential, nonresidential, and medical facilities

Summary of Effect

This proposed action will make effective, upon adoption and approval by the commissioners, emergency modifications to mandatory Section 5.106.8 in Title 24, Part 11 for buildings within CBSC authority, with necessary amendments in the interest of public safety as claimed in a recent petition to CBSC.

Comparable Federal Statute or Regulations

There currently are no federal laws or regulations for light pollution reduction, but the EPA has been petitioned to consider "atmospheric discoloration" caused by nighttime lighting in regulations related to the Clean Air Act.

Small Business Effect

CBSC has made an initial determination of no adverse impact on small business, because the modifications to the code are proposed for facilitation of understanding and compliance by the code user.

Plain English Policy Statement:

In 2009, CBSC, among other things, adopted mandatory standards for light pollution reduction, incorporating public comments received in the last code cycle as well as during the 2009 code development process. The standards, published in the 2010 California Green Building Standards (CALGreen) Code, apparently did not come to the attention of the petitioner during public participation in code development. The petitioner only now is raising potential public safety issues that CBSC cautions should be addressed immediately.

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

CBSC 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

CBSC has determined that projects following this regulation would impose a mandate on local agencies in the form of verification, and on school districts insofar as the Division of the State Architect co-adopts it. This proposal, however, fosters ease of compliance and enforcement and may serve to mitigate the mandate. Additionally, the mandate does not require reimbursement pursuant to Part 7 (commencing with section 17500) of Division 4, Government Code.

FISCAL IMPACT STATEMENT

- A. Cost or Savings to any state agency: **None**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **None**
- 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: **None**
- E. Cost or savings in federal funding to the state: **None**

Estimate: CBSC has prepared an Economic and Fiscal Impact Statement (Form 399) concerning the proposed action which states that the changes will not only make compliance and enforcement of the code provisions less burdensome, but they have the potential to avert future legal action alleged by the petitioner.