

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

**REGARDING THE 2016 CALIFORNIA BUILDING CODE, PART 2 &
THE 2016 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, and general welfare, as follows:

INTRODUCTION

In response to a sudden and catastrophic balcony failure at Library Gardens in Berkeley, on June 16, 2015, resulting in loss of life, California Building Standards Commission (CBSC) proposes these emergency building standard regulations pertaining to enhanced construction inspection, standards, and maintenance of exterior elevated elements (EEE) for specified state-owned buildings. Immediate action is warranted to help prevent potential failures such as these, which may again occur between now and the next regular code cycle rulemaking. CBSC, in coordination with the Department of Housing and Community Development, the Division of the State Architect 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:

- Adds Sections to Chapter 1 of Part 2, and to Chapter 1 of Part 10.
- Amends Table 1607.1 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.
- Adds (re-establishes from 2013 CBC, Chapter 34) Section 101.8 of Part 10 pertaining to maintenance.

Because of the enclosed nature of many EEE assemblies, causation factors that may lead to failure are not always observable in time for repair or mitigation. The proposed emergency regulations are intended to help prevent future occurrences by reducing risk factors, thereby improving the health, safety and welfare of the public. The need to amend 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. It is also urgent that EEE regulations for existing buildings are amended for reasons of potential unknown latent effects that may contribute to other incidences between now and January 1, 2020.

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's 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 and renovations to existing buildings) with safeguards that will provide higher performance and assurance levels.

It is also prudent to address existing buildings, which may have conditions now that could lead to potential for failure. Proposing the re-establishment of requirements that buildings be maintained in a safe and sanitary condition, and providing authority for building officials to require re-inspection are equally important to new construction safeguards.

In consideration of existing buildings, the Working Group discussed Section 3401.2 Maintenance of the 2013 California Building Code (CBC), which was not carried forward in the adoption of the 2016 California Existing Building Code (CEBC). The 2016 CEBC is based on the 2015 IEBC model code language. During development of the model code, ICC determined that the maintenance section was better suited in its International Property Maintenance Code. This code is not adopted by California. Therefore the maintenance section was not included during the development of the 2016 CEBC. CBSC, in coordination with the other state agencies, proposes to adopt this section during the emergency rulemaking, so it may be utilized by the authority having jurisdiction over EEE inspection.

The City of Berkeley has provided statistics for their jurisdiction, giving the Working Group information to rely on about the pervasiveness of the EEE issue, for existing buildings. 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. This provides convincing data about the magnitude of hidden conditions that may exist in EEE's, and which may be subject to potential for failure. It is imperative that new standards address the prevention of this potential.

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 propose 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 documents provided by the City of Berkeley, the Structural Engineers 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 asked the Working Group 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

CBSC finds that 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 similar measures in California. Because of statutory deadlines, the Commission cannot adopt these proposed changes as part of the current 2016 Intervening Code Adoption Cycle. Unless the Commission adopts these proposed measures on an emergency basis, the Commission would be unable to respond to this need to protect the public health and safety until the next regular triennial cycle, and the amendments would not take effect at the local level until 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 and welfare, CBSC proposes the adoption of these building standards through the emergency adoption process, as authorized in Health & Safety Code Section 18937.

AUTHORITY AND REFERENCE

CBSC 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) Section 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 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 all occupancies of state-owned buildings.

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, for inspection in Section 110.3.8, for live loads in Table 1607.1, and 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 inspection in Section 109.3.

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. It will also reduce risk of failure due to latent causes, for existing buildings.

Comparable Federal Statute or Regulations

There currently are no federal laws or regulations for EEE.

Policy Statement Overview

CBSC is responsible for the development of building standards for all occupancies of state buildings, including buildings constructed by the Trustees of the California State University and the Regents of the University of California, 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 Table 1607.1 of Chapter 16 and Section 2304.12.2.5 of Chapter 23, Title 24, Part 2 for buildings within CBSC authority, necessitating immediate action to further 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, 106.2.6 and 109.3.10 to Chapter 1, Title 24, Part 10 for buildings within CBSC authority, necessitating immediate action to further 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

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 the proposed regulatory action would not impose a mandate on local agencies or school districts. CBSC does not have authority to propose building standards for school districts. The proposed emergency building standards do not impose a mandate on local jurisdictions.

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: **NONE**
- E. Cost or savings in federal funding to the state: **NONE**

Estimate: CBSC 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, CBSC anticipates a minimal economic impact to the regulated community. Provisions allow alternate materials & methods, as an option to the regulated community,

also having an associated cost. Costs of exterior elevated elements is of such small significance, as a portion of overall building costs, that CBSC believes the minor costs associated with proposed changes in materials and methods are reasonable, and are offset by the benefit of reduced risk in the integrity of EEEs, and in increased safety factors. In addition, the enhanced EEE detailing and construction inspection requirements would increase the life expectancy of EEE's thereby reducing future repair costs.

- CBSC 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 CBSC have been approved through ICC's code development processes and are only pending final ICC approval and certification.