

**FINAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS OF THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE 2019 CALIFORNIA BUILDING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2**

(HCD 03/18)

The Administrative Procedure Act requires that every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding. The rulemaking file shall include a Final Statement of Reasons. The Final Statement of Reasons shall be available to the public upon request when rulemaking action is being undertaken. The following are the reasons for proposing this particular rulemaking action:

UPDATES TO THE INITIAL STATEMENT OF REASONS:

Government Code Section 11346.9(a)(1) requires an update of the information contained in the Initial Statement of Reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the state agency is relying that was not identified in the Initial Statement of Reasons, the state agency shall comply with Government Code Section 11347.1.

No data or any technical, theoretical or empirical study, report, or similar document on which the Department of Housing and Community Development (HCD) is relying has been added to the rulemaking file that was not identified in the Initial Statement of Reasons.

HCD has made changes to the Express Terms as originally proposed for the 45-day public comment period as a result of internal review and public comments received during the 45-day public comment period. The rationale for each change was included with the 15-day Express Terms document.

HCD did not make modifications after the 15-day public comment period that ended on November 14, 2018.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

Pursuant to Government Code Section 11346.9(a)(2), if the determination as to whether the proposed action would impose a mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for the finding(s).

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

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATION(S).

Government Code Section 11346.9(a)(3) requires a summary of EACH objection or recommendation regarding the specific adoption, amendment, or repeal proposed, and an explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action, or reasons for making no change. Irrelevant or repetitive comments may be aggregated and summarized as a group.

The text with proposed changes was made available to the public for a 45-day public comment from **September 7, 2018**, through **October 22, 2018**. There was a subsequent 15-day public comment period from **October 30, 2018**, through **November 14, 2018**.

A total of one comment was received during the 45-day public comment period and is discussed in the "Comments Received" section.

One comment received during the 15-day public comment period.

COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ARE LISTED BELOW.

- 1. COMMENTER:** Stoyan Bumbalov, Codes and Standards Administrator I
Division of Codes and Standards
Department of Housing and Community Development
2020 W. El Camino Avenue, Suite 200
Sacramento, CA 95833

COMMENT EM-1:

Section 1.8.4.1 Permits. Senate Bill 1226 (Chapter 1010, Statutes of 2018) added new Section 17958.12 to the State Housing Law. This section provides recognition of the existing discretion of enforcing agencies to apply building standards in effect at the time of a building's construction and to grant case-by-case approvals for use of alternate methods of construction or use of materials. Section 17958.12(b) also requires HCD to propose the adoption of a building standard to the CBSC to authorize enforcing agencies to determine the date of construction of existing residential units without existing building permits and to issue retroactive building permits.

HCD RESPONSE:

Section 1.8.4.1 requires written construction permits prior to erection, construction, reconstruction, installation, moving or alteration of any building or structure. SB 1226's provisions for retroactive permits for existing residential buildings would introduce conflict between statute and Section 1.8.4.1. It was HCD's intent to introduce an exception to this section to provide for the use of retroactive permits as determined by the local enforcing agency. However, the CBSC has determined that the inclusion of this exception is not sufficiently related to HCD's initial proposal and did not allow HCD to proceed with another 15-day or 45-day public comment on this issue. In addition, the CBSC determined that the enactment of SB 1226 occurred too late in the code adoption cycle to ensure sufficient pre-cycle participation, Code Advisory Committee review and recommendation, and CBSC processing for inclusion in the 2019 CBC. HCD plans to revisit the inclusion of SB 1226 provisions in the next code adoption cycle.

HCD Comment 2. Chapter 2 Definitions, Section 202

Riser: HCD evaluated the Division of State Architect's (DSA) revision to the existing co-adopted definition of "riser" for possible co-adoption. According to DSA, the existing California amendment definition does not recognize risers as connected to landings and results in misinterpretation of the requirements based of the code definition of "riser." HCD will be proposing amendment of the existing definition for consistency with DSA's definition.

HCD RESPONSE:

HCD proposed to co-adopt DSA's revised definition for "riser" to address potential issues related to conflict and vagueness in use of the terms for purposes of accessibility provisions in Chapters 11A and 11B. The co-adoption of the revised definition was proposed in a revised Express Terms document and an additional 15-day public review period was provided from October 30, 2018, to November 14, 2018.

HCD Comment 4:

406.2.1 Automatic garage door openers and vehicular gates.

Senate Bill 969 (Chapter 621, Statutes of 2018) requires backup batteries for garage door openers as of January 1, 2019. This bill amended Health and Safety Code (HSC) Section 19891 which is already referenced in Section 406.3.6 (2016), however, adds a new HSC Section 19892 related to sale and installation of garage door openers and replacement garage doors connected to existing openers without a backup battery. Code amendments would have been for the purpose of informing the code user of the latest California garage door opener requirements.

HCD RESPONSE:

As noted in the comment, a reference for Section 19891 is an existing California amendment and would, by default, require battery backup for new garage door openers. It was HCD's intent to provide a complete reference to requirements for garage door openers when replacing garage doors on existing residential garages. However, the CBSC has determined that the inclusion of this section reference is not sufficiently related to HCD's initial proposal. In addition, the enactment of Senate Bill 969 occurred too late in the code adoption cycle to ensure sufficient pre-cycle participation, Code Advisory Committee review and recommendation, public comment periods, and CBSC processing for inclusion in the 2019 CBC. HCD plans to revisit the inclusion of a reference to Section 19892 in the next code adoption cycle.

Section 420.2 Separation Walls

Section 420.3 Horizontal Separation

ICC errata dated April 9, 2018, for Sections 420.2 and 420.3 indicate that the new exceptions in these two sections were withdrawn late in the code development process, however, were printed in the first edition of the 2018 International Building Code (IBC). HCD would like to avoid confusion and misdirection related to requirements in these two sections and ensure that the printed exceptions in the first printing of the 2018 IBC are not printed in the 2019 CBC.

HCD RESPONSE:

The deletion of erroneously published exceptions to these two sections was proposed in a revised Express Terms document and an additional 15-day public review period was provided from October 30, 2018, to November 14, 2018.

420.10.1 Cooking appliances.

The last sentence in Item 4 was not displayed correctly. This sentence is a new California amendment and should have been displayed with underscore in the 45-Day Express Terms document. This is an editorial correction and there is no change to the rationale in the Initial Statement of Reasons.

HCD RESPONSE: HCD proposed to correct this oversight in a revised Express Terms document and an additional 15-day public review period was provided from October 30, 2018, to November 14, 2018.

HCD Comment 4. (2016 CBC)

Table 1607.1 Minimum Uniformly Distributed Live Loads, L_0 , and Minimum Concentrated Live Loads⁹

HCD adopted amendments reflecting approved but unpublished updates to the future 2018 IBC in the 2016 CBC. Since HCD is adopting the 2018 IBC as the 2019 CBC, the 2016 amendments are already incorporated in the model code and the 2016 amendments are no longer necessary. HCD intends to identify the repeal of the 2016 amendments in the future rulemaking proposals.

HCD RESPONSE: HCD proposed to correct this oversight in a revised Express Terms document and an additional 15-day public review period was provided from October 30, 2018, to November 14, 2018.

HCD Comment 5

Section 3307.1 Protection Required.

HCD was made aware of additional provisions in the California Civil Code, Section 832, related to required notification of adjacent property owners when conducting land excavation activities. The 2018 IBC requires a 10-day notification period, however, Section 832 requires owners of adjacent buildings to have at least 30 days to protect their buildings when proposed excavations are deeper than walls or foundations of adjoining buildings or close enough to endanger the buildings. Section 832 also requires the owner of the land being excavated to provide protection to the impacted adjacent buildings under specified conditions.

HCD RESPONSE:

HCD considered a non-regulatory note with reference to Civil Code Section 832. However, HCD determined that this revision was not foreseeable in our initial proposal which only referenced Section 3307 as being adopted as part of the model code without reference to details of subsections. HCD plans to revisit the inclusion of a reference to Civil Code Section 832 in the next code adoption cycle.

COMMENT RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD LISTED BELOW.

- 1. COMMENTER:** Dara Schur, Senior Counsel
Natasha Reyes, Attorney
Disability Rights California
Legal Advocacy Unit
1330 Broadway, Suite 500
Oakland, CA 94612

COMMENT EM-1:

The commenter, on behalf of Disability Rights California (DRC), provides support for HCD's proposed co-adoption of the Division of State Architect's proposed revision for the definition of "riser." This definition was unanimously supported by the Access Code Collaborative and also by the Code Advisory Committee. The commenter further urges the CBSC to direct HCD to address the definitions of "public housing" and "public use" and other related sections in the next interim cycle to ensure compliance with federal and state mandates.

HCD RESPONSE:

HCD thanks the commenter for supporting the proposed definition of “riser.” HCD also appreciates the commenter’s point of view and the commenter’s suggestions for further evaluation of definitions for “public housing” and “public use.” HCD’s intent for this code adoption cycle was to adopt the model code and move forward existing California amendments. There is no current proposal in HCD’s Express Terms to amend “public housing” and “public use.” HCD will revisit these issues during the next intervening code adoption cycle which provide a vehicle for appropriate discussions by stakeholders during a future pre-cycle workshop and then presented to the Accessibility Code Advisory Committee. No changes to the Final Express Terms were made as a result of this comment.

DETERMINATION OF ALTERNATIVES CONSIDERED AND EFFECT ON PRIVATE PERSONS

Government Code Section 11346.9(a)(4) requires a determination with supporting information that no alternative considered would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

HSC Section 18928.1 requires building standards adopted or approved by the CBSC to incorporate the text of the model codes, applicable national specifications, or published standards, in whole or in part, only by reference, with appropriate additions or deletions. In addition, HSC Section 18928 directs each state agency adopting or proposing adoption of a model code, national standard, or specification to reference the most recent edition of applicable model codes, national standards, or specifications. The 2019 CBC implements this requirement by proposing to adopt by reference the selected contents of the 2018 International Building Code (i.e., model code). No other alternatives have been considered since there is a recent model code available for adoption, including any necessary existing and new California amendments. In addition, adoption of the most recent building standards on a statewide basis, as required by statute, results in uniformity and promotes affordable costs.

REJECTED PROPOSED ALTERNATIVE THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES:

Government Code Section 11346.9(a)(5) requires an explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses, including the benefits of the proposed regulation per 11346.5(a)(3).

There were no alternatives available to HCD. HCD is required by statute to adopt this model code by reference. Providing the most recent methods and applying those building standards on a statewide basis, as required by statute, results in uniformity and promotes affordable costs.