

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

DIVISION OF CODES AND STANDARDS

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October 22, 2018

MEMORANDUM FOR: Michael Nearman, Deputy Executive Director
California Building Standards Commission

FROM: *[Signature]* Stoyan Bumbalov, Codes and Standards Administrator I
Division of Codes and Standards
Department of Housing and Community Development

SUBJECT: **Comments on Department of Housing and Community
Development Proposed Rulemaking for the
2019 California Residential Code (Part 2.5, Title 24)
HCD 04/18, 2018 Triennial Code of Adoption Cycle**

The Department of Housing and Community Development (HCD) has reviewed and evaluated the above referenced 2019 California Residential Code (CRC) proposal subsequent to the start of the 45-day public comment period (September 7, 2018, through October 22, 2018). The following are HCD's comments on the 45-day rulemaking package and intent to further revise the package to address the identified concerns. The Building, Fire, Other Code Advisory Committee (CAC) actions are noted where applicable.

Chapter 1, Scope and Administration, Division I California Administration
Section 1.8 Department of Housing and Community Development
Section 1.8.4.1 Permits.

CAC Action HCD 04/18-1-26: Approved as Submitted

Senate Bill 1226 (Chapter 1010, Statutes of 2018) added a new Health and Safety Code 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 California Building Standards Commission (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 analysis has determined that the provisions of SB 1226, which become operative on January 1, 2019, be either proposed as an exception to this section or reference to

the provisions provided in the form of a "Note." Due to the operative date of the legislation, the preferable rulemaking cycle would be the 2018 Triennial Code Adoption Cycle instead of the 2019 Intervening Code Cycle which would be effective 18 months later.

If you have any questions, please contact Tom Martin, District Representative II, at (916) 263-3272 or Thomas.G.Martin@hcd.ca.gov

Attachments

PUBLIC COMMENT on PROPOSED BUILDING STANDARDS

For Publication in Title 24, California Code of Regulations

See instructions for completing this form on Page 2.

Commenter Contact Information

| | | | |
|------------------|--|---------------------------------------|---------------------------|
| Name: | Stoyan Bumbalov | Date: | 10/22/2018 |
| Representing: | Dept. of Housing and Community Development | | |
| Mailing Address: | Number & Street: | 2020 West El Camino Avenue, Suite 200 | |
| | City: | Sacramento | State: CA Zip Code: 95833 |
| Telephone #: | 916 263-4715 | Email: | sbumbalov@hcd.ca.gov |

Proposed Building Standard

| | | |
|--|--|-------------------------------|
| Title 24 Part #: (select one) | Part 2.5 | Section #: 1.8.4.1 Exceptions |
| Proposing State Agency | Dept. of Housing and Community Development | |
| This comment is intended for review during: (select one) | <input type="checkbox"/> Code Advisory Committee <input checked="" type="checkbox"/> 45-Day Comment Period <input type="checkbox"/> 15-Day Comment Period <input type="checkbox"/> Commission Meeting | |
| Your recommendation based on the criteria of Health and Safety Code Section 18930(a) printed on the back of this form is: (select one) | | |
| <input type="checkbox"/> Approve | <input type="checkbox"/> Disapprove | |
| <input type="checkbox"/> Further Study Required | <input checked="" type="checkbox"/> Approve as Amended | |

In support of your recommendation above, provide the rationale based on the criteria of Health and Safety Code Section 18930(a) printed on the back of this form. If you recommend anything other than approve, cite the criteria in your comment. If you oppose a proposed building standard, offer a solution or alternative for the state agency to consider. Please use separate pages if your comment does not fit in this space.

See Attachment A 1.8.4.1.

Attachments?

Check if you have attached additional pages. The number of pages attached is: 1

For CBSC Office Use Only Date Received: _____ Rulemaking Item #: _____

Instructions for completing this form

1. Use of this form is optional. It helps CBSC and other state proposing agencies to correctly administer your comments.
2. For matters to be considered at a public CBSC Code Advisory Committee (CAC) meeting, written comments should be received at least seven days before the scheduled meeting.
3. For matters subject to a 45-Day or 15-Day public comment period announced by a Notice of Proposed Action (NOPA), written comments **must be received** on or before the close of the comment period identified in the NOPA.
4. Separate comment forms are necessary for CAC and public comment periods.
5. Separate comment forms are necessary for each state agency proposal.
6. This form is available in fill-and-print format at the CBSC website, www.bsc.ca.gov, for you to complete and submit electronically. Or print a blank form and type or complete by hand. You may attach additional pages if necessary.
7. Submit comments to CBSC, 2525 Natomas Park Drive, Suite 130, Sacramento, CA 95833-2936, or by email to cbsc@dgs.ca.gov. Please do not fax comments.
8. Written and oral comments may also be provided at CBSC public meetings to consider the proposed building standards.

For assistance, call CBSC at (916) 263-0916 or email cbsc@dgs.ca.gov.

Building Standards Nine-Point Criteria. Health and Safety Code Section 18930(a) reads:

(a) Any building standard adopted or proposed by state agencies shall be submitted to, and approved or adopted by, the California Building Standards Commission prior to codification. Prior to submission to the commission, building standards shall be adopted in compliance with the procedures specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. Building standards adopted by state agencies and submitted to the commission for approval shall be accompanied by an analysis written by the adopting agency or state agency that proposes the building standards which shall, to the satisfaction of the commission, justify the approval thereof in terms of the following criteria:

- (1) The proposed building standards do not conflict with, overlap, or duplicate other building standards.
- (2) The proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency.
- (3) The public interest requires the adoption of the building standards. The public interest includes, but is not limited to, health and safety, resource efficiency, fire safety, seismic safety, building and building system performance, and consistency with environmental, public health, and accessibility statutes and regulations.
- (4) The proposed building standard is not unreasonable, arbitrary, unfair, or capricious, in whole or in part.
- (5) The cost to the public is reasonable, based on the overall benefit to be derived from the building standards.
- (6) The proposed building standard is not unnecessarily ambiguous or vague, in whole or in part.
- (7) The applicable national specifications, published standards, and model codes have been incorporated therein as provided in this part, where appropriate.
 - (A) If a national specification, published standard, or model code does not adequately address the goals of the state agency, a statement defining the inadequacy shall accompany the proposed building standard when submitted to the commission.
 - (B) If there is no national specification, published standard, or model code that is relevant to the proposed building standard, the state agency shall prepare a statement informing the commission and submit that statement with the proposed building standard.
- (8) The format of the proposed building standards is consistent with that adopted by the commission.
- (9) The proposed building standard, if it promotes fire and panic safety, as determined by the State Fire Marshal, has the written approval of the State Fire Marshal.

ATTACHMENT A

Section 1.8.4.1

Senate Bill 1226 (Chapter 1010/Statutes of 2018), operative January 1, 2019, added Health and Safety Code Section 17958.12 to the State Housing Law. This section recognizes existing discretion of enforcing agencies to apply building standards in effect at the time of building construction and to grant case-by-case approvals for use of alternate methods of construction and/or materials.

HCD proposes to amend Section 1.8.4.1 to clarify the authority of enforcing agencies to determine date of construction of non-permitted residential structures and to issue retroactive building permits.

The new proposed exception supports 9-Point Criteria #1 by avoiding potential conflict with existing California amendment Section 1.8.4.1 which states that a written construction permit be obtained from the enforcing agency prior to the erection, construction, reconstruction, installation, moving or alteration of any building or structure. The proposed exception meets 9-Point Criteria #2 in being within the parameters established by enabling legislation and not within the jurisdiction of another state agency. The proposed exception also meets 9-Point Criteria #3 due to its contribution to making unpermitted existing housing available for legal occupancy and the public interest in reducing California's housing crisis.