



**LEGAL ADVOCACY UNIT**  
1330 Broadway, Ste. 500  
Oakland, CA 94612  
Tel: (510) 267-1200  
TTY: (800) 719-5798  
Intake Line: (800) 776-5746  
Fax: (510) 267-1201  
[www.disabilityrightsca.org](http://www.disabilityrightsca.org)

October 19, 2018

*Via Email*

California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, CA 95833-2936  
Email: [cbsc@dgs.ca.gov](mailto:cbsc@dgs.ca.gov)

**Re: Building Standards Commission Meeting – Proposed CBC  
Ch. 11B Code Amendments**

Dear Building Standards Commission:

Thank you for the opportunity to submit comments on the proposed amendments to the Access Code. Disability Rights California (DRC) provides the following comments on behalf of individuals with disabilities. DRC is a non-profit agency established under federal law to protect, advocate for and advance the human, legal and service rights of Californians with disabilities.<sup>1</sup> It works in partnership with people with disabilities, striving towards a society that values all people and supports

<sup>1</sup> Disability Rights California provides services pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15001, PL 106-402; the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. § 10801, PL 106-310; the Rehabilitation Act, 29 U.S.C. § 794e, PL 106-402; the Assistive Technology Act, 29 U.S.C. § 3011,3012, PL 105-394; the Ticket to Work and Work Incentives Improvement Act, 42 U.S.C. § 1320b-20, PL 106-170; the Children's Health Act of 2000, 42 U.S.C. § 300d-53, PL 106-310; and the Help America Vote Act of 2002, 42 U.S.C. § 15461-62, PL 107-252; as well as under California Welfare and Institutions Code §§ 4900 *et seq.*

their rights to dignity, freedom, choice and quality of life. Since 1978, Disability Rights California has provided essential legal services to people with disabilities. It provides legal assistance annually on more than 24,000 matters to individuals with disabilities, many of whom reach out to us because they have trouble finding housing with needed accessible features.

On behalf of Californians with disabilities who need access to affordable accessible housing, we offer the attached comments regarding the proposals sent to this Commission. But first, DRC would like to draw the Commission's attention to significant proposals related to public housing that were pulled from your consideration despite *unanimous* consensus from both the Access Code Collaborative and the CBSC Access Code Advisory Committee.

DRC has actively participated in the code amendment process since 2016 in an effort to bring the Code into compliance with critical federal requirements for accessible housing development. Dara Schur of Disability Rights California has participated as an active member of the Access Code Collaborative in an effort to ensure proposed amendments comply with federal law, improve access for people with disabilities, and do not result in any reduction in access. For over a year, DRC worked with the Collaborative and Department of the State Architect (DSA) to amend the definition of "public housing" and related parts of the Code to comply with federal mandates. The amended definition was universally supported at the Collaborative and the CBSC Advisory Committee voted to move forward without any changes to the proposal. Just as this item was set to reach you, the Building Standards Commission, for a vote on final adoption, DSA unilaterally pulled it and a number of closely related items (Item 1.02 Ch. 11B, 1.9.1.3; Item 2.01 Ch. 2 – "Public Housing" Definition; Item 2.02 Ch. 2 – "Public Use" Definition; and Item 11B.07 Sec. 11B-233.3) from the list of proposed amendments.

Item 2.01 Ch. 2 – "Public Housing" Definition proposed amending the "public housing" definition to make explicit that accessible housing units are required in ***all*** public and subsidized housing that is part of a public entity's housing program, whether they are new construction or alterations. The definition would have clarified that public housing includes "Publicly owned housing or privately owned housing facilities, operated, constructed or altered by, for, on or behalf of a public entity or as part of a public entity's

*housing program.*" This would have brought the California Building Code into compliance with federal requirements for ADA Title II entities, entities that receive federal housing dollars, and federally subsidized housing.

We are extremely distressed that this item was unilaterally pulled by DSA, and we urge you to adopt it as written or direct DSA to return it to you as written in the next intervening cycle. As currently written, portions of the California Building Code fail to fully comply with California's federal legal obligations to provide accessible units. The pulled items were a critical opportunity to bring the Code into compliance with federal statutes and regulations on accessibility in housing. We urge you to instruct DSA to bring this proposal back for the 2019 Interim Code Change Cycle and to adopt it as written.

Even more distressing is the failure to comply with California Administrative Procedure Act requirements in reporting DSA's responses to the Code Advisory Committee on the two definition items (Item 2.01 Ch. 2 – "Public Housing" Definition and Item 2.02 Ch. 2 – "Public Use" Definition). CA Administrative Code Sec. 1-409. The matrix table reports correctly that the Code Advisory Committee voted to "approve as submitted" the proposed amendments to the definitions of "public housing" and "public use." See attached Addendum 2. However, the matrix table misrepresents DSA's response. For both items, it reports that DSA "accepted" the Committee's vote. Yet, in actuality, DSA withdrew these items. Moreover, the package provided to this Commission fails to explain the reasons for withdrawal of all four items, in further violation of state law. CA Administrative Code Sec. 1-409. DRC has provided comments regarding each of the withdrawn items in Addendum 1.

We understand that one reason for withdrawing these items may have been that Dpt. of Housing and Community Development (HCD) failed to propose amendments that would have complied with federal requirements to the "public housing" definition in the corresponding section of the building code. We urge you to also instruct HCD to address this in the upcoming 2019 Interim Code Change Cycle.

Thank you for your time and consideration. If you have questions or need further information, please contact Dara Schur (510-267-1227; [dara.schur@disabilityrightsca.org](mailto:dara.schur@disabilityrightsca.org)) or Natasha Reyes (213-213-8119; [natasha.reyes@disabilityrightsca.org](mailto:natasha.reyes@disabilityrightsca.org)).

Sincerely,

/s/

Dara Schur  
Senior Counsel

Natasha Reyes  
Attorney

## **Disability Rights California Comments Re Proposed Access Code Amendments**

### **Item 1.01 Ch. 11B, 1.9.1.1.1, 1.9.1.1.2, new section 1.9.1.1.3, 1.9.1.1.4**

#### **Sections 1.9.1.1.1 and 1.9.1.1.2**

**Disapprove.**

**Rationale:** Prior to withdrawal of proposed amendments to the “public housing” definition and related amendments, DRC recommended approval of this item with a minor amendment. However, without the withdrawn items, this proposal is meaningless and confusing for code users.

The existing provisions are correct as written. Public funding can be sufficient to require Ch. 11B compliance. This is a cumulative issue dependent on multiple factors, so the proposed cross-reference does not adequately address all the issues. To elaborate, provision of funds **is sufficient** to require Ch. 11B compliance if other requirements are met, because it always occurs in the context of a program by, for, or on behalf of a public entity, and always involves a contractual relationship between a public entity and a private owner.

The addition of the last sentence as drafted, without the now withdrawn amendments, may create confusion, and implies that funding is not sufficient to bring housing under Ch. 11B. This results in a reduction in access prohibited by Government Code Sections 4450(c), 4451(b), and 4459(a) and (c). These rules apply uniformly to government buildings, and there is no legal basis for excluding public housing.

In particular, 1.9.1.1.2 is applicable when housing is leased, rented, contracted, sublet, or hired by government, and this provision is thus not duplicative of Public Housing in 1.9.1.3.

**BSC Criteria:** The proposal as presented would make the Code vague and ambiguous (Item (a)(6) and be unreasonable, arbitrary, unfair, and capricious. (Item (a)(4)).

**Section 1.9.1.1.3 (original language proposed for deletion, new Section proposed).**

**Disapprove.**

**Rationale:** We cannot support the proposal without the now withdrawn proposal to amend the “public housing” definition and other related items. Alongside those amendments, this proposal would remove confusion, since congregate residences would be explicitly covered under the “public housing facilities” definition. Without the “public housing facility” revisions, DRC disapproves the deletion here. The existing definition of “congregate residences” is narrower in the existing public housing definition than it would have been in the proposed updates. Without the proposed updated public housing definition, there is a reduction in accessibility.

As noted our comments to Sections 1.9.1.1.2 and 1.1.1.1.2, addition of the last sentence as drafted creates confusion, and implies that funding is not sufficient to bring housing under Ch. 11B. It is especially confusing without the updated definition of “public housing.” This results in a reduction in access prohibited by Government Code Sections 4450(c), 4451(b), and 4459(a) and (c). These rules apply uniformly to government buildings, and there is no legal basis for excluding public housing

**BSC Criteria:**

The proposal as presented would make the Code vague and ambiguous (Item (a)(6) and be unreasonable, arbitrary, unfair, and capricious. (Item (a)(4)).

**Item 2.03 Ch. 2 – Definition of “Riser”**

**Approve.**

**Rationale:** DRC supports the proposed changes, which the Access Code Collaborative unanimously supported and the Code Advisory Committee supported.

**BSC Criteria:** The proposed change is in compliance with the nine point BSC criteria.

**Item 11B.01 Sec. 11B-203.8**

**Disapprove.**

**Rationale:** This proposal, like several others, would create confusion in the Code without the now withdrawn amendment to the “public housing” definition. As an undefined term, “residential facilities” raises questions in readers’ minds such as: “Which residential facilities?” This section highlights the critical need to amend the “public housing” definition and related provisions to comply with federal standards and provide clarity to code users. Unless amended, the proposed changes would make the code unnecessarily ambiguous and vague.

We support the additions of the language relating to adaptable features as a more accurate statement of the law.

We also urge further study of this provision and consider deleting it because all common areas should be accessible. Common areas that are available to other residents should be equally available to people with disabilities. For example, there may be an accessible laundry room on a floor with accessible unit and not on other floors. If the machines break down, or are in use, a tenant without a disability can simply go to another floor. The same option should be available for tenants with disabilities.

**BSC Criteria:** The proposal as presented would make the Code vague and ambiguous (Item (a)(6) and be unreasonable, arbitrary, unfair, and capricious. (Item (a)(4)).

**Item 11B.02 Sec. 11B-206.2.19**

**Approve with request for further study.**

**Rationale:** We support the changes made after further study as they clarify the provision. However, the further study failed to address concerns about other modifications for greater accessibility, including a preference for directional ramps. It is important to include this code section, which had been unintentionally omitted from the Building Code. However, as noted by stakeholders at the Access Code Collaborative, additional provisions are necessary to ensure full access, and we urge DSA to move forward with those additional provisions in this code cycle or the next one, including consideration of a preference for directional curb ranks.

**BSC Criteria:** The proposed change is in compliance with the nine point BSC criteria.

**Item 11B.03 Sec. 11B-207.1**

**Disapprove with request for further study.**

**Rationale:** We understand that this proposal is being relocated from Chapter 10 to Chapter 11B. However, we request that this provision not be deleted and that the proposal be returned for further study, because the availability of accessible means of egress in existing buildings is a matter of life and death for people with mobility and sensory disabilities, particularly in emergencies.

**BSC Criteria:** Not requiring accessible means of egress is unreasonable, arbitrary, unfair, and capricious. (Item (a)(4)). It reduces accessibility requirements for existing facilities violating both Gov. Code Sections 4450 and 4459. Failing to provide accessible means of egress in existing facilities creates huge hazards for people with disabilities in emergencies and contradicts the public interest. Item (a)(3).

**Item 11B.04 Sec. 11B-224.2**

**Approve with request for further study.**

**Rationale:** We support this proposal since it supplements the current requirements for accessible showers/tubs, actually doubling the availability of accessible showers in facilities with 2-50 guest rooms.

We are concerned about and disagree with DSA's assessment of the elimination of a roll in shower, despite the requirements of federal law to provide a transfer shower. The failure to provide a roll-in shower in a single guest room is problematic for individuals who need or prefer such a shower, and urge further study on that issue. It is possible to create a modified roll-in shower that meets the federal requirements for a transfer shower *and* a roll-in shower, and we urge adoption of such a model in facilities with 1 guest room.

**Item 11B.05 Sec. 11B-233.1**

**Disapprove.**

**Rationale:** We strongly disapprove this proposal without the withdrawn amendments. This section was drafted alongside the proposed amendments to the definitions of “public housing” and “public use.” The existing “public use” definition has language that would have been amended as it relates to public housing. Without these amendments, striking the phrase “available for public use” from this section now would reduce accessibility in the Code. Without the reference to availability for public use here, this section ignores that “public use” and “public housing” include “provision of housing programs by, for, or on behalf of a public entity.” This significantly narrows how this section addresses “public use” and “public housing” thus reducing accessibility.

This proposal highlights the arbitrary nature of the decision to withdraw the proposal to amend the “public housing” definition and related items as the Initial Statement of Reasons still references the withdrawn proposal on “public housing.”

**BSC Criteria:** The proposal as presented would make the Code vague and ambiguous (Item (a)(6) and reduce accessibility in an unreasonable, arbitrary, unfair, and capricious way. (Item (a)(4)).

**Item 11B.06 Sec. 11B-233.3.1, Sec. 11B-233.3.1.1, Sec. 11B-233.3.1.2, Sec. 11B-233.3.1.2.4, and Sec. 11B-233.3.1.2.5**

**Disapprove.**

**Rationale:** As with Item 11B.05, we support this proposal with some changes. Removing the words “public housing” will lead to confusion and reduction of accessibility resulting in a Code that is unnecessarily ambiguous or vague.

**Propose Language:** As noted above, in order to remove redundant language, we recommend throughout using the term “public housing” in place of “residential facilities” or “public housing facilities.”

**BSC Criteria:** Our proposed language would provide greater clarity in the Code (Item (a)(6); does not conflict with, overlap, or duplicate other

standards (Item (a)(1)); is within enabling legislation parameters (Item (a)(2)); is in the public interest providing consistency with accessibility statutes and regulations (Item (a)(3)); is not unreasonable, arbitrary or unfair (Item (a)(4)); does not impose unreasonable costs, given the overall benefit to the community (Item (a)(5)); makes clear that the Code incorporates national specifications (Item (a)(7)); is consistent with required formatting (Item (a)(8)); and does not adversely affect fire standards (Item (a)(9)).

**Item 11B.08 Sec. 11B-233.3.3**

**Approve.**

**Rationale:** We support this proposal for the reasons stated in the ISOR.

**Item 11B.09 Sec. 11B-233.3.4**

**Disapprove.**

**Rationale:** We support the deletion of “to a public housing facility” in the first line of 233.3.4 for the reasons stated in the first bullet of the ISOR. However, we are strongly opposed to deletion in Sec. 11B-233.3.4 of the adaptable units from this provision. Public housing facilities with adaptable units should continue to be required to maintain those units, and to ensure that any renovations include the requisite adaptable units and accompanying requirements that are required in Ch. 11A (in addition to required mobility units). The proposed revisions (numerous deletions of references to adaptable units) constitute a significant reduction in access, in violation of Gov. Code 4459.

In particular, the new Sec. 11B-233.3.4.3 in conjunction with removal of references to adaptable units in 233.3.4, 233.3.4.1, and 233.3.4.2 constitutes a reduction in accessibility. Many of these buildings may have been built after 1991 and will have significant adaptable features. It is critical to retain or add language that (1) adaptable units that exist must be maintained, (2) adaptable units that should have existed in building built after 1991 must be added if they do not exist or have been removed or rendered less accessible; and (3) the exception language requiring comparable dwelling units where renovations result in it being technically infeasible to maintain a particular adaptable unit. It is critical to ensure that renovations can proceed without loss of *either* mobility/sensory units or *adaptable units*.

DSA argues that these simply restore the CBC as it existed prior to 2013. However, the current language has been in place for many years, and its implementation has resulted in thousands of additional adaptable units throughout California. It is a legal violation to return to an old standard when we know the current code provides greater access.

**BSC Criteria:** We strongly oppose the reductions in this section. They are a violation of the Government Code provisions prohibiting reduction in access. As such, they are not consistent with enabling legislation (Item (a)(2)); they reduce accessibility in a manner that adversely affects health and safety (Item (a)(3)); and they are unreasonable, arbitrary, unfair, and capricious (Item (a)(4)).

**Sec. 11B-233.3.4.1**

**Disapprove.**

**Rationale:** For the reasons set for the above for 233.3.4, we strongly oppose the removal of the following sentence: "Residential dwelling units with adaptable features shall be provided in compliance with Section 11B-233.3.1.2." It is even more important to require adaptable units in vacated buildings, where there are no tenant displacement issues to address.

We have no objections to the modifications proposed to the exception. However, we do oppose the addition of Sec. 233.3.4.3, and therefore we oppose moving the exception to that section.

**BSC Criteria:** The proposal constitutes a violation of the Government Code provisions prohibiting reduction in access. As such, it is not consistent with enabling legislation (Item (a)(2)); reduces accessibility in a manner that adversely affects health and safety (Item (a)(3)); and is unreasonable, arbitrary, unfair, and capricious (Item (a)(4)).

**Sec. 11B-233.3.4.2**

**Disapprove.**

**Rationale:** For the reasons set forth above for 233.3.4, we are strongly opposed to the changes in 233.3.4.2 and in the exception to 233.3.4.2.

**BSC Criteria:** The proposal constitutes a violation of the Government Code provisions prohibiting reduction in access. As such, it is not consistent with

enabling legislation (Item (a)(2)); reduces accessibility in a manner that adversely affects health and safety (Item (a)(3)); and is unreasonable, arbitrary, unfair, and capricious (Item (a)(4)).

#### **Sec. 11B-233.3.4.3**

**Disapprove.**

**Rationale:** For the reasons set for the above for 233.3.4, we are also opposed to the exclusion of the units constructed for first occupancy prior to March 13, 1991. It is a reduction of occupancy that is not warranted and will greatly reduce access. Inclusion of adaptable units is normally inexpensive and not burdensome. In circumstances where there are issues making them infeasible, the infeasibility exceptions that currently exist, allowing for comparable units, is sufficient.

**BSC Criteria:** The proposal constitutes a violation of the Government Code provisions prohibiting reduction in access. As such, it is not consistent with enabling legislation (Item (a)(2)); reduces accessibility in a manner that adversely affects health and safety (Item (a)(3)); and is unreasonable, arbitrary, unfair, and capricious (Item (a)(4)).

#### **Item 11B.10 Sec. 11B-233.3.5**

**Disapprove.**

**Rationale:** We oppose the proposed deletion of “and adaptable features complying with Chapter 11A, Division IV.” Adaptable units should also be dispersed among the various types of residential dwelling units and provide comparable integrated units.

The latest ISOR claims this section applies only to units with mobility and sensory features, so there is no need to reference adaptable units. We believe this is incorrect and a reduction in access.

In this section and its related exception, we oppose deleting the phrase “in public housing facilities.” This language needs to remain in the Code unless and until the “public housing” definition is updated.

**BSC Criteria:** The proposal constitutes a violation of the Government Code provisions prohibiting reduction in access. As such, it is not consistent with enabling legislation (Item (a)(2)); reduces accessibility in a manner that

adversely affects health and safety (Item (a)(3)); and is unreasonable, arbitrary, unfair, and capricious (Item (a)(4)).

**Item 11B.11 Sec. 11B-248.**

**Approve.**

**Rationale:** We support this proposal, which had unanimous support from the Access Code Collaborative, along with the changes made following the Code Advisory Committee's recommendations.

**Item 11B.12, Related Items 11B.12.01, 11B.12.02 and 11B.12.03**

**Item 11B.12.01 Sec. 11B-249**

**Approve.**

**Rationale:** We support this proposal.

**Item 11B.12.02 Sec. 11B- 813**

**Approve as amended.**

**Rationale:**

We support this proposal for adult changing rooms. We appreciate the changes made in response to previous comments from the Access Code Collaborative and at the Code Advisory Committee.

We continue to suggest that a higher weight capacity (450 pounds) would serve a greater proportion of the disability community, and recommend that change, as supported by the Access Code Collaborative.

**Proposed Language:** 11B-813.2.1.4 Capacity. Adult changing tables shall provide a minimum weight capacity of 300 450 pounds.

**BSC Criteria:** Our proposed language would support the public interest as it provides accessibility in a manner that improves health and safety (Item (a)(3)); does not conflict with, overlap, or duplicate other standards (Item (a)(1)); is within enabling legislation parameters (Item (a)(2)); is not unreasonable, arbitrary or unfair (Item (a)(4)); does not impose unreasonable costs, given the overall benefit to the community (Item (a)(5)); is not unnecessarily ambiguous or vague (Item (a)(6)); makes clear that the Code incorporates national specifications (Item (a)(7)); is

consistent with required formatting (Item (a)(8)); and does not adversely affect fire standards (Item (a)(9)).

**Item 11B.13 Sec. 11B-404.2.11**

**Disapprove.**

**Rationale:** We are opposed to any accessibility reductions in jail facilities. There is no reason to require less accessibility for people with disabilities in these facilities. The provision is overbroad as drafted. Changing the placement of vision lights in doors that are operated by security personnel in hallways and other locations is not a problem. However, adding this exception as drafted would exacerbate incarceration by eliminating means for occupants who use wheelchairs to see outside the cell where vision lights may provide the only view, increasing isolation and claustrophobia. Methods other than this exception are available to protect prisoner privacy.

**BSC Criteria:** This change reduces accessibility in a manner that adversely affects health and safety (Item (a)(3)); is unreasonable, arbitrary, unfair, and capricious; (Item (a)(4)); and is unnecessarily ambiguous or vague (Item (a)(6)).

**Item 11B.14 Sec. 11B-405.9.2**

**Approve with request for further study.**

**Rationale:** We support this proposal. We also support the Access Code Collaborative request for further study. Specifically, DSA should study the effect of the proposed changes on code users leading up to the next code change cycle to determine if any additional changes are necessary. There is a concern that a barrier that is not at floor level will be difficult to detect for people who are blind and use canes to sweep at floor level to detect elevation changes.

**Item 11B.15 Sec. 11B-502.5**

**Approve.**

**Rationale:** We support the consensus of the Access Code Collaborative and the vote of the Code Advisory Committee.

**Item 11B.16 Sec. 11B-604.8.1.2**

**Approve.**

**Rationale:** We support this proposal.

**Item 11B.21 Sec. 11B-608.7**

**Approve.**

**Rationale:** We support this proposal.

**Item 11B.23 Sec. 11B-703.7.2.7**

**Disapprove, with a request for further study.**

**Rationale:** We understand that this section is proposed for deletion because it appears to be within Caltrans' jurisdiction, and there is an existing provision at:

[http://www.dot.ca.gov/trafficops/camutcd/docs/2014r2/CAMUTCD2014-Chap4E\\_rev1.pdf](http://www.dot.ca.gov/trafficops/camutcd/docs/2014r2/CAMUTCD2014-Chap4E_rev1.pdf). However, the Cal Trans provision does not include a requirement for yellow striping, which is extremely helpful to people with low vision. The Caltrans provision differs in other ways as well. We request that this provision not be withdrawn until the CalTrans provision is amended to provide equivalent coverage, including yellow striping, and until there are adequate steps in place to address any gaps in oversight due to the conflicting jurisdiction.

**BSC Criteria:** This change reduces accessibility in a manner that adversely affects health and safety (Item (a)(3)).

**Item 11B.24 Sec. 11B-812.8.7**

**Approve.**

**Rationale:** We support this proposal.

**Addendum 1**  
**Disability Rights California Comments Re Withdrawn Items**

We urge the Commission to direct DSA to address these withdrawn items in the upcoming Interim Code Change Cycle. As the ISOR does not include a rationale for withdrawal, DRC has provided specific comments about the proposals as presented to the Code Advisory Committee.

**Item 1.02 Ch. 11B, 1.9.1.3**

**Original Proposal Text and ISOR**

**ITEM 1.02**

***SECTION 1.9***  
***DIVISION OF THE STATE ARCHITECT***

***1.9.1 Division of the State Architect—Access Compliance.***

...

***1.9.1.3 Application – ~~public housing, and private housing available for public use~~. See Government Code Sections 4450 and Section 12955.1(c) and the definition for public housing in Chapter 2.***

**REASON:**

- DSA is proposing to amend this section to; delete the term “*private housing available for public use*”, provide the applicable section giving DSA the authority to promulgate regulations for public housing and direct the code user to the definition of “*public housing*.”
- The definition for “*public housing*” in Chapter 2, based on the American with Disabilities Act and the 2010 ADA Standards for Accessible Design, provides the clarity for the types of public housing where Chapter 11B is applicable.
- The term “*private housing available for public use*” is a confusing statement when viewed in the context of places of public accommodation. Certain types of housing such as; social service center establishments, housing at a place of education, and homeless shelters are regulated by Chapter 11B whether public or private. DSA is proposing repealing this language to provide clarity in response to comments from code users.

- The Administrative Procedures Act in § 11346.5(2) requires a proposing agency to provide the reference where authority is given to propose regulations. Government Code § 12955.1(c) provides the Division of the State Architect the authority to promulgate regulations for “public housing” and that reference will remain.
- The reference to Government Code § 4450 is proposed for repeal as set forth in the opinion in Berkeley Center for Independent Living v. Coyle (1996). “Section 4451 makes clear that the provisions of Chapter Seven apply only to buildings and facilities ‘intended for use by the public.’ Thus, residential buildings not intended for public use are by definition automatically excluded from the coverage of section 4450.”
- This change will provide consistency and clarity for code users to determine the application of Chapter 11B for public housing.

### **DRC Comments**

**Approve as amended.**

**Rationale:** We support the revisions originally proposed to this section, except for the deletion of the reference to Gov. Code Section 4450, which we urge you to retain.

The *Coyle* case cited in the “Rationale” did not address all of the subsections of Gov. Code Section 4450. Other provisions not addressed in the decision are still applicable, including, for example, subsection (c): “In no case shall the State Architect's regulations and building standards prescribe a lesser standard of accessibility or usability than provided by the Accessibility Guidelines prepared by the federal Access Board as adopted by the United States Department of Justice to implement the Americans with Disabilities Act of 1990 (Public Law 101-336).” Therefore, we urge that the Code continue to cite to Gov. Code 4450 as authority. Moreover, the *Coyle* case is now out of date as it was decided before the release of the 2010 ADA Standards for Accessible Development. Additionally, the proposed—now withdrawn—revisions to the “public housing” definition would make it clear that private housing is included where it is part of a public entity housing program or on behalf of a public entity.

We note that we disagree slightly with the ISOR provided to the Code Advisory Committee, and think that the fifth bullet that claims “residential buildings not intended for public use are by definition automatically excluded from coverage of section 4450” is erroneous and creates confusion. It is preferable to say that the deleted language is no longer necessary since we have replaced the term “private housing for public use” with the new definition of public housing.

Amending the Code to contradict state law by deleting the reference to Government Code Section 440 would be unreasonable, arbitrary, unfair, and capricious.

**Proposed Language:** We recommend maintaining the reference to section 4450, “...See Government Code Section 4450...”

We also recommend replacing the fifth bullet of the ISOR with “The deleted language is no longer necessary since we have replaced the term “private housing for public use” with the new definition of public housing.”

**BSC Criteria:** The proposal without our recommended language would reduce access and be unreasonable, arbitrary, unfair, and capricious. (Item (a)(4)).

Our proposed language does not conflict with, overlap, or duplicate other standards (Item (a)(1)); is within enabling legislation parameters (Item (a)(2)); is in the public interest and would provide consistency with accessibility statutes and regulations in accord with Item (a)(3); is not unreasonable, arbitrary or unfair (Item (a)(4)); does not impose unreasonable costs, given the overall benefit to the community (Item (a)(5)); is clear and specific, in light of applicable federal and state law (Item (a)(6)); makes clear that the Code incorporates national specifications (Item (a)(7)); is consistent with required formatting (Item (a)(8)); and does not adversely affect fire standards (Item (a)(9)).

## **Item 2.01 Ch. 2 – “Public Housing” Definition**

**Original Proposal Text and ISOR**

### **ITEM 2.01**

### **SECTION 202 DEFINITIONS**

**PUBLIC HOUSING. [DSA-AC]** Publicly owned housing Housing facilities or privately owned housing facilities, operated, or constructed or altered by, for, or on behalf of a public entity or as part of a public entity's housing program including but not limited to the following:

1. Publicly owned and/or operated one One- or two- family dwelling units or congregate residences;
2. Publicly owned and/or operated buildings Buildings or complexes with three or more residential dwellings units;
3. **Reserved.**
- 4.3. Publicly owned and/or operated homeless Homeless shelters, group homes, halfway houses and similar social service establishments;
- 5.4. Publicly owned and/or operated transient Transient lodging, such as hotels, motels, hostels and other facilities providing accommodations of a short term nature of not more than 30 days duration;
- 6.5. Housing at a place of education owned or operated by a public entity, such as housing on or serving a public school, public college or public university campus;
7. Privately owned housing made available for public use as housing.

#### **REASON:**

DSA is proposing to amend the definition for public housing to:

- Include “altered” in the opening sentence. This proposed amendment aligns the terminology with the 2010 ADAS.

- Items 1 through 7 are proposed for revision, renumbering and repeal of item seven.
- The redundant language “*Publically owned and/or operated*” in items 1 through 5 is proposed for repeal. Ownership and operation is not the only requirement for housing to be considered public. As stated in the opening sentence a project that is constructed or altered “*by, for or on behalf of a public entity*” is public housing. Code users believe ownership and operation overrides the criteria of, on behalf of, when reading the items where “*Publically owned and/or operated*” is stated.
- Revise Item 6 to repeal “campus”. Housing serving places of education may be located on or off campus.
- Eliminating item 7 removes a term that is ambiguous and vague. Code users are confused with the term “*privately owned housing facilities made available for public use as housing*”. The term “*public use*” muddles the terminology with the types of housing that are regulated as places of public accommodation. Including “*privately owned housing facilities*” and “*as part of a public entity’s housing program*” in the opening statement provides clarity for the various types of housing considered “*public housing*” currently in Item 7. Amending the language in the opening statement therefore requires the repeal of Item 7.
- DSA is proposing these amendments to clarify the definition based on questions received from code users.

## **DRC Comments**

**Approve.**

**Rationale:** DRC strongly supports the proposed amendments to the "public housing" definition. It was developed through engagement with stakeholders to provide this much needed clarification to bring the Code in line with the mandates of state and federal law. The proposal adds clarity so that code users understand that public entities AND private entities may have housing that falls into this category. Whether one looks at the explicit language of the ADA regulations, the case law under the regulations, or DOJ's interpretations of the regulations, it is clear that **all programs**,

**services and activities of a public entity and that of its contractors and agents** are covered by the 2010 ADA Standards for Accessible Design, including all housing constructed or altered "as part of a public entity's housing program." This proposal makes that explicit in the Code.

We do note that Paragraph 4 under the revised definition of "Public Housing Facilities" may be erroneously interpreted to suggest that transient facilities are subject to the public housing scoping requirements rather than the more stringent requirements of other sections of Ch.11B. We request further study on this to confirm that transient housing here is consistent with other provisions in 11b and would not allow any form of adaptability that is allowed for residential facilities. Transient lodging is covered by Ch. 11B. However, mobility units in transient facilities are not allowed to provide certain feature for adaptability that are allowed in longer term residential units. See, for example, the following provisions allowable in adaptable residential units that are not allowed in transient units: 11B 604.5 (allowing adaptable grab bar blocking near toilets rather than actual grab bars); 11B 607.4 (same as to bath tubs); and 11B 606.2 (allowing adaptable cabinets rather than space underneath kitchen sinks). The rationale for allowing these in long term housing is that it is feasible to make the adaptation when the tenant moves in, but that same rationale does not apply to short term stays where tenants may only be there for a day or a few days. We assume that it is not intended that transient lodging that is built by, for or on behalf of a public entity, or that is part of a housing program of a government entity, is not intended to have less access than other transient occupancy. We urge the Commission to direct DSA to review this paragraph and this proposal as a whole in the next code cycle.

We understand that some have expressed concerns about eliminating number 7 of the existing definition. DRC neither supports nor opposes this particular change.

**BSC Criteria:** Overall, we strongly support this amendment to the Code. These changes are necessary to the public interest as they will increase accessibility for people with disabilities and improve their health and safety, and will provide consistency with accessibility statutes and regulations, pursuant to Item (a)(3) of the criteria for adoption of regulatory changes in H&S Code Section 18930(a). The changes also make clear that the Code incorporates national specifications set forth in the 2010 ADA Standards for Accessible Design, in accord with Item (a)(7) of the criteria for adoption in

H&S Code Section 18930(a). The proposed revisions to the definition do not conflict with, overlap, or duplicate other standards (Item (a)(1)); are within enabling legislation parameters (Item (a)(2)); are not unreasonable, arbitrary or unfair (Item (a)(4)); do not impose unreasonable costs, given the overall benefit to the community (Item (a)(5)); are clear and specific, in light of applicable federal and state law (Item (a)(6)); are consistent with required formatting (Item (a)(8)); and do not adversely affect fire standards (Item (a)(9)).

### **Item 2.02 Ch. 2 – “Public Use” Definition**

**Original Proposal Text and ISOR**

#### **ITEM 2.02**

#### **SECTION 202 DEFINITIONS**

**PUBLIC USE. [DSA-AC]** *Interior or exterior rooms, spaces or elements that are made available to the public. Public use may be provided at a building or facility that is privately or publicly owned. Private interior or exterior rooms, spaces or elements associated with a residential dwelling unit provided by a public housing program or in a public housing facility are not public use areas and shall not be required to be made available to the public. In the context of public housing, public use is the provision of housing programs by, for or on behalf of a public entity.*

#### **REASON:**

DSA is proposing to amend the definition of “public use” to repeal the last sentence in the definition. Repeal of the term “*public use is the provision of housing programs*” is being proposed in conjunction with the overall proposed code changes for the various public housing provisions in Chapter 11B and Chapter 1. The terminology proposed for repeal is unnecessary and confusing.

#### **DRC Comments**

**Approve as amended.**

**Rationale:** We support this proposal **only if** the proposed revisions of the “public housing” definition are adopted. Both the text and the ISOR section for this proposal should include a sentence referencing the proposed revisions of the “public housing” definition to make the connection clear. We are concerned that deleting it without adding alternative language will

lead individuals to believe that the provisions concerning housing programs has been deleted.

**Proposed Language:** We recommend replacing the deleted sentence with the following addition to the second sentence: “Private interior or exterior rooms, spaces or elements associated with a residential dwelling unit provided by a public housing program or in a public housing facility are not public use areas and shall not be required to be made available to the public but are governed by the provisions related to Public Housing.”

**BSC Criteria:** As with proposed changes to the definition of “public housing,” these changes are necessary to the public interest to increase accessibility for people with disabilities and improve their health and safety, and to provide consistency with accessibility statutes and regulations. (Item (a)(3)). The changes also make clear that the Code incorporates national specifications set forth in the 2010 ADA Standards for Accessible Design. (Item (a)(7)). The proposed revisions to the definition do not conflict with, overlap, or duplicate other standards (Item (a)(1)); are within enabling legislation parameters (Item (a)(2)); are not unreasonable, arbitrary or unfair (Item (a)(4)); do not impose unreasonable costs, given the overall benefit to the community (Item (a)(5)); are clear and specific, in light of applicable federal and state law (Item (a)(6)); are consistent with required formatting (Item (a)(8)); and do not adversely affect fire standards (Item (a)(9)).

**Item 11B.07 Sec. 11B-233.3.**

**Original Proposal Text and ISOR**

**ITEM 11B.07**

**DIVISION 2: SCOPING REQUIREMENTS**

***11B-233.3 Public housing facilities.***

...

***11B-233.3.2 Residential dwelling units for sale.*** Residential dwelling units *designed and constructed or altered by public entities that will be offered for sale to individuals* shall provide accessible features to the extent required by *this chapter*.

**11B-233.3.2.1 Buyer identified residential dwelling units for sale.**

*The requirements of Section 11B-233.3.2 also apply to housing programs that are operated by public entities where design and*

*construction of particular residential dwelling units take place only after a specific buyer has been identified. In such programs, the covered entity must provide the units that comply with the requirements for accessible features to those pre-identified buyers with disabilities who have requested such a unit.*

**Exception:** Existing residential dwellings or residential dwelling units acquired by public entities that will be offered for resale to individuals without additions or alterations shall not be required to comply with this chapter.

**REASON:**

- DSA is proposing the addition of this Section 11B-233.3.2.1 to provide further clarification for the application of Section 11B-233.3.2.

The language in Section 11B-233.3.2.1 is taken from CFR Part 35, Section 35.151(j)(2) Facilities with residential dwelling units for sale to individual owners. The addition of this section will provide the means for building officials to perform plan review and inspection for residential dwelling units required to comply with these sections.

**DRC Comments**

**Approve .**

**Rationale:** The 2010 ADA Standards constitute the model federal code for DSA. The 2010 Standards as defined at 28 CFR 35.104 include the 2004 ADAAG and 28 CFR 35.151. The proposed additional language comes directly from 28 CFR 35.151. The Code must include this language in order to comply with federal law.

**Rationale:** We support this proposal because it provides consistency with federal law.

## Addendum 2 Excerpt from Matrix Table

### CHAPTER 2 – DEFINITIONS

Adopt additional sections listed below

Item Number 2.01	Code Section 2.02	Type of amend- ment (S, E, N)	CAC: (AS, AA, D, FS)	Agency Response to CAC (A, D, W/D)	45-Day Comments (AS, AA, D, FS)	Annotations	CBSC Action (AS, AA, D, FS)
DSA-AC 01/18-3-1	<b>PUBLIC HOUSING. [DSA-AC]</b>	E	AS	A		Amend definition and subsections thereof	

### CHAPTER 2 - DEFINITIONS

Adopt additional sections listed below

Item Number 2.02	Code Section 2.02	Type of amend- ment (S, E, N)	CAC: (AS, AA, D, FS)	Agency Response to CAC (A, D, W/D)	45-Day Comments (AS, AA, D, FS)	Annotations	CBSC Action (AS, AA, D, FS)
DSA-AC 01/18-4-1	<b>PUBLIC USE. [DSA-AC]</b>	E	AS	A		Amend definition	

#### LEGEND:

Item numbers refer to those presented to the Code Advisory Committees (CAC)s

##### (CAC)s:

ACCESS = Accessibility  
BFO = Building, Fire & Other  
HF = Health Facilities  
PEME = Plumbing, Electrical, Mechanical, and Energy  
SDLF = Structural Design/Lateral Forces  
GB = Green Building

##### CAC Actions:

AA = Approve as amended  
AS = Approve as submitted  
D = Disapprove

FS = Further Study

##### Agency Response:

A = Accept  
D = Disagree  
W/D = Withdraw

##### Amendments, if indicated by agency:

S = Statutory  
E = Existing  
N = New

##### Matrix Paper Color (Used for Comm. Action Only):

GREEN = uncontested items  
YELLOW = challenged items  
SALMON = W/D, no action required