

**FINAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS OF THE
CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE 2019 CALIFORNIA BUILDING CODE, CHAPTER 11A,
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2**

(HCD 02/19)

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.

HCD identified the Americans with Disabilities Act (ADA) and Fair Housing Act Design Manual in the Initial Statement of Reasons. In addition, HCD replied on the following list of documents in proposing the regulation; Fair Housing Act (FHA); the Fair Housing Act Guidelines; 2010 ADA Standards for Accessible Design; and California Code of Regulations, Title 24, Part 2, Chapter 11B. These additional documents were not previously referenced in the Initial Statement of Reasons.

HCD has made no changes to the Initial Statement of Reasons as originally proposed.

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.

HCD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts. HCD's proposal does not mandate state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

OBJECTIONS OR RECOMMENDATIONS MADE REGARDING THE PROPOSED REGULATIONS:

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 period from April 3, 2020, until May 18, 2020. There was no subsequent public comment period.

A total of 77 comments were received during the 45-day public comment period. HCD responded to all of the comments received during the 45-day comment period. Please see below.

Regarding Items 1 through 6 (No specified sections; 11A items only). Stakeholder stated support for 11A.

Commenter: Ruby Elaine Edgar

Commenter Recommendation: Approve.

Agency Response: HCD appreciates the support expressed in the comment by the stakeholder.

Regarding Item 1, Section 202, DEFINITIONS, "PUBLIC HOUSING," of Final Express Terms. The stakeholders listed below submitted substantially similar comments and express support for the proposed amendment. See the list of commenters below.

Commenters:

Jay Allen, Chair, California Agencies for the Blind & Visually Impaired;
Jia Min Cheng, Senior Staff Attorney, Bay Area Legal Aid;
Joe Green;
Regina Brink, President, ACB Capital Chapter of California Council of the Blind;
Michelle Uzeta, Law Offices of Michelle Uzeta;
Stephanie Watts;
Terri McDonald;
Bill Hecker, AIA, Hecker Design LLC.;
Peter Mendoza, Chairperson, State Independent Living Council;
William F. Pickel, CEO, Brilliant Corners;
Ugochi Anaebere-Nicholson, Directing Attorney, Public Law Center;
Richard Skaff, Executive Director, Designing Accessible Communities;
D. Scott Chang, Director of Litigation, Housing Rights Center;
Caroline Peattie, Executive Director, Fair Housing Advocates of Northern California;
Roger Petersen;
Ashley Hernandez;

William Hanifan;
Jullian J. Cassianis;
Claire Ramsey, Senior Staff Attorney, Justice in Aging;
Darin R. Lounds, Executive Director, Housing Consortium of the East Bay;
Ian Nevarez, Association Director, Lanterman Housing Alliance;
Susan Henderson, Executive Director, Disability Rights Education & Defense Fund;
Denise McGranahan, Senior Attorney, Legal Aid Foundation of Los Angeles;
Susan Verde;
Zach Karnazes;
Chandra Hauptman;
Darryl Evans;
Connie Arnold;
Walter Park, San Francisco Commissioner, SF Access Commission;
Randy Hicks, Vice President, Californians for Disability Rights Inc.;
Nikki Diaz;
Howard L. Chabner;
Belinda Stradley;
Debra Thompson;
Donna Brown;
Gloria Aceves;
Laura Hagery;
Ellen Buckingham;
Scott Richmond;
Bob Raymer on behalf of California Building Industry Association; American Institute of Architects, California; California Apartment Association; California Association of Realtors; California Business Properties Association; and Building Owners and Managers Association of California;
Dara Schur, Senior Counsel, Natasha Reyes, Staff Attorney II, Disability Rights California; and Nancy McPherson; Anthony Tusler; Jordan Lindsey; Jia Min Cheng; Ralph Black; William F. Pickel; Pat McGinnis; Judy Wilkinson; Jeff Thom; Christina Mills; Lillibeth Navarro; Sharon L. Rapport; Ardys DeLu; Rebecca Williford; Susan Henderson; Christopher H. Knauf; HolLynn D'Lil; Erin Scott; Caroline Peattie; Sheela Gunn-Cushman; Lindsay Imai Hong; David Zisser; Darin Lounds; Scott Chang; Nancy Becker Kennedy; Norma Jean Vescovo; Jan Lemucchi; Amber Christ; Allie Cannington; Michelle Uzeta; Ian Nevarez; Denise McGranahan; Susan Corry; Tim Elder; Renee Williams; Melissa A. Morris; Ugochi Anaebere-Nicholson; April Marie Wick; Aaron Carruthers; Madeline Howard; and Carol Wolfington.

Commenters Recommendation: Approve. Commenters express strong support for the joint HCD/DSA proposed amendments in HCD Item 1, Section 202, Definition, "Public Housing."

Agency Response: HCD appreciates the support for the proposed amendment.

Regarding Item 2, Section 1112A, “CURB RAMPS ON ACCESSIBLE ROUTES,” of Final Express Terms. HCD proposes editorial changes to provide clarity to code users.

Commenters: Dara Schur, Senior Counsel, Natasha Reyes, Staff Attorney II, on behalf of Disability Rights California (DRC).

Commenters Recommendation: Approve. DRC supports this amendment and asserts that it will correct an error and provide clarity for code users.

Agency Response: HCD appreciates the support for the proposed amendment.

Regarding Item 3, Section 1132A.7, “TYPE OF LOCK OR LATCH,” of Final Express Terms. HCD proposed to update a model code reference for clarity to code users.

Commenters: Dara Schur, Senior Counsel, Natasha Reyes, Staff Attorney II, on behalf of DRC.

Commenters Recommendation: Approve. DRC supports this amendment because it will create internal consistency and it will provide clarity for code users.

Agency Response: HCD appreciates the support for the proposed amendment.

Regarding Item 4, Section 1133A.2 “CLEAR FLOOR SPACE,” of Final Express Terms. HCD proposes to replace the term “work space” with the term “work surface” for consistency with other sections of Chapter 11A.

Commenters: Dara Schur, Senior Counsel, Natasha Reyes, Staff Attorney II on behalf DRC.

Commenters Recommendation: Approve. DRC supports this amendment because it will create internal consistency and it will provide clarity for code users.

Agency Response: HCD appreciates the support for this proposed amendment.

Regarding Item 5, Section 1134A.6 “BATHING AND TOILET FACILITIES,” of Final Express Terms. Opposition asserts the proposal benefits few and disenfranchises many.

Commenters:

Zach Karnazes;

Chandra Hauptman;

Walter Park, San Francisco Commissioner, SF Access Commission;

Randy Hicks;

Nikki Diaz;

Howard Chabner;

Belinda Stradley;

Linda Hunt;

David Forderer;

Sheridan Laine;

Blane Beckwith;

Erica Chahal;

Tamar Raine;

Sheila Conlon Mentkowski;
Susan Verde;
Anne B. Swanson;
Laura Millar;
Carol Wolfington;
Caroline Chen;
Grace Lin;
Devva Kasnitz;
Bonnie Lewkowics;
Catherine Campisi;
Shirley Johnson.

Commenters Recommendation: Further Study; and no recommendation from some commenters. Comments provided by the stakeholders listed are substantially similar and express opposition for the proposed amendment. The stakeholders below assert that the option of a 36" x 36" transfer shower benefits few while disenfranchising many. Stakeholders also assert that given the option to install a transfer shower, builders will never elect to specify a shower larger than a 36" x 36" transfer shower.

Agency Response: HCD acknowledges the comments provided by the stakeholders. After further review, no changes were made to the Final Express Terms as a result of these comments. HCD is proposing the 36" x 36" transfer type shower as a design option, not as a requirement imposed on all designers. In this regard, HCD agrees that increasing options may benefit a small group of people but disagrees that this option disenfranchises many because this proposal does not impose a requirement that only transfer showers be used in covered multifamily dwellings. HCD disagrees with the unsubstantiated claim that builders will always opt for the 36" x 36" transfer shower. Lastly, HCD's proposed amendment aligns with statutes and regulations contained in the Fair Housing Act (FHA), the Fair Housing Act Guidelines, and the Fair Housing Act Design Manual; the Americans with Disabilities Act (ADA) and 2010 ADA Standards for Accessible Design; and California Code of Regulations, Title 24, Part 2, Chapter 11B. HCD intends to continue proposal of the transfer shower as an accessible design option for covered multifamily dwellings and for consistency with Chapter 11B.

Regarding Item 5, Section 1134A.6 “BATHING AND TOILET FACILITIES,” of Final Express Terms. Commenters mistakenly believe that roll-in showers are being eliminated and that access is being reduced.

Commenters:

James Burnett;
Dara Schur, Senior Counsel, Natasha Reyes, Staff Attorney II, on behalf of Disability Rights California.
gmpper@yahoo.com (no name provided);
Alice Henneberg;
Ashley Lyn Olson;
Connie Arnold;
Timothy P. Thimesch, Thimesch Law Office;
Ruthee Goldkorn;
Morton Frank, F.A.I.A, Architect;
Betsy Conron;

Commenters Recommendation: Further Study; Disapprove; and no recommendation from some commenters. Comments provided by the stakeholders listed are substantially similar and express opposition for the proposed amendment. The stakeholders assert that HCD is proposing that a 36” x 36” transfer shower be permitted instead of a roll-in type shower and in so doing, HCD is creating a reduction of accessible bathing options.

Agency Response: HCD acknowledges the comments provided by the stakeholders. After further review, no changes were made to the Final Express Terms as a result of these comments. HCD agrees with the commenters in the regard that this proposal permits the use of a 36” x 36” transfer shower instead of a roll-in shower. However, to address what may be a misunderstanding, HCD is proposing the transfer shower as an additional option, not a requirement, thereby increasing accessible shower options from three to four, not reducing options from three to one. Additionally, HCD’s proposal aligns with statutes and regulations contained in the Fair Housing Act (FHA), the Fair Housing Act Guidelines, and the Fair Housing Act Design Manual; the Americans with Disabilities Act (ADA) and 2010 ADA Standards for Accessible Design; and California Code of Regulations, Title 24, Part 2, Chapter 11B. HCD intends to continue proposal of the transfer shower as an accessible design option for covered multifamily dwellings and for consistency with Chapter 11B.

Regarding Item 5, Section 1134A.6 “BATHING AND TOILET FACILITIES,” of Final Express Terms. Commenter argues that this proposal denies access and that current shower designs can be modified to meet the needs of all users.

Commenter: HolLynn D’Lil

Commenter Recommendation: Further Study. Stakeholder argues that the option of a 36” x 36” transfer shower is not in the public interest, that it “arbitrarily denies a large segment of the disability population equal access to a bathing facility,” and that the proposal is capricious because “existing shower designs can be modified to meet the needs of all disability users in wheelchairs and other mobility devices.”

Agency Response: HCD appreciates the input provided in this comment, however, after further review, no changes were made to the Final Express Terms as a result of this comment. Although a 36" x 36" transfer shower does not conform to the unique needs of all individuals with disabilities, by including the 36" x 36" transfer shower as an additional option in Section 1134A, an increased range of individuals with varying disabilities may be accommodated. By including the 36" x 36" transfer shower as an additional (fourth) option and not as a requirement, no persons are being denied access; rather, a larger population is being accommodated. Lastly, considering the high cost of housing in California, HCD feels that it would be unreasonable and burdensome to require individuals who prefer a transfer shower to modify their new home because they were denied the option of a transfer shower at the time of construction. Additionally, tenants generally do not have the authority to reconstruct bathing facilities in covered multifamily dwelling units. Therefore, without the option of a 36" x 36" transfer shower in Section 1134A, tenants who prefer the transfer type shower may be denied that option in new covered multifamily dwelling units. HCD's proposal aligns with statutes and regulations contained in the Fair Housing Act (FHA), the Fair Housing Act Guidelines, and the Fair Housing Act Design Manual; the Americans with Disabilities Act (ADA) and 2010 ADA Standards for Accessible Design; and California Code of Regulations, Title 24, Part 2, Chapter 11B. HCD appreciates the commenter's point of view and suggestions. HCD intends to continue proposal of the transfer shower as an accessible design option for covered multifamily dwellings and for consistency with Chapter 11B.

Regarding Item 5, Section 1134A.6 "BATHING AND TOILET FACILITIES," of Final Express Terms. Commenter requests support from commission for future rulemaking cycles.

Commenter: Evan White

Commenter Recommendation: No recommendation provided. Commenter asks the commission to support efforts to implement roll-in showers as the standard in future rules and regulations.

Agency Response: No action taken. HCD acknowledges the comment provided by the commenter.

Regarding Item 5, Section 1134A.6 "BATHING AND TOILET FACILITIES," of Final Express Terms. Commenter prefers larger to smaller showers.

Commenter: Steve Coach

Commenter Recommendation: No recommendation provided. Commenter feels that it would be more reasonable to err on the side of having a bathing space that was larger rather than smaller.

Agency Response: No action taken. HCD acknowledges the comment provided by the stakeholder. HCD does not disagree that in certain circumstances larger may be better than smaller showers. HCD is not proposing to restrict people to smaller bathing facilities, nor is HCD proposing to eliminate options for larger bathing facilities. Individuals have varying needs and by introducing an additional accessible shower option, HCD is attempting to accommodate the needs of a wider range of individuals. HCD intends to continue proposal of the transfer shower as an accessible design option for covered multifamily dwellings and for consistency with Chapter 11B.

Regarding Item 6, Section 1136A, “ELECTRICAL RECEPTACLE, SWITCH AND CONTROL HEIGHTS,” of Final Express Terms. Comment supports the proposed amendment for consistency with the Fair Housing Act (FHA).

Commenters: Dara Schur, Senior Counsel, Natasha Reyes, Staff Attorney II, on behalf of DRC.

Commenters Recommendation: Approve. DRC supports this amendment stating it will make Chapter 11A consistent with the federal Fair Housing Act Guidelines.

Agency Response: HCD appreciates the support for this proposed amendment.

Regarding Item 6, Section 1136A, “ELECTRICAL RECEPTACLE, SWITCH AND CONTROL HEIGHTS,” of Final Express Terms. Stakeholder asserts that the language needs more specificity.

Commenter: Mehdi Shadyab, City of San Diego

Commenter Recommendation: Approve as Amended. Stakeholder asserts that the proposed amendment provides an opportunity for needless interpretation and argument related to the phrase “extend from the wall beneath.”

Agency Response: HCD acknowledges the comment provided, however after further review no changes were made to the Final Express Terms as a result of this comment.

Regarding Item 6, Section 1136A, “ELECTRICAL RECEPTACLE, SWITCH AND CONTROL HEIGHTS,” of Final Express Terms. Stakeholders suggest additional changes to a different section.

Commenters: Jason Pasiut, The City of Carlsbad;
Steven Dombrowski, Endelman & Associates;
Timothy P. McCormick, Chair, Accessibility Committee.

Commenters Recommendation: Further Study and Approve as Amended. Commenters suggest mirroring the proposed amendment in Section 1138A.

Agency Response: HCD appreciates the comments from stakeholders, however after further review no changes were made to the Final Express Terms as a result of this comment. HCD did not propose an amendment of Section 1138A in the Initial Express Terms and will not propose an amendment to Section 1138A during public comment period as such a proposal would circumvent the stakeholder and Code Advisory Committee review process. HCD intends to maintain the amendment as initially proposed, however, will consider the suggestion in a future code adoption cycle.

Regarding Item 6, Section 1136A, “ELECTRICAL RECEPTACLE, SWITCH AND CONTROL HEIGHTS,” of Final Express Terms. Commenter asserts that the language needs more specificity.

Commenter: Stoyan Bumbalov, Stoyan Bumbalov Consulting

Commenter Recommendation: Further Study. Stakeholder asserts that the application of the proposed language is not specific and creates confusion, that the Initial Statement of Reasons is insufficient, and that the proposal violates Nine Point Criteria four and six.

Agency Response: HCD acknowledges the input from the stakeholder, however after further review no changes were made to the Final Express Terms as a result of this comment. HCD contends that the proposal is very specific: Currently physical obstructions are not permitted to extend beyond 25” from a wall beneath a receptacle, switch, or control, where a countertop is located. HCD’s proposal will allow countertops to extend an additional ½ inch, for a total of 25.5”. HCD’s proposal aligns with the Fair Housing Act Guidelines and is also consistent with standard industry manufacturing practices. An industry standard commercially available countertop depth often measures up to 25.5” where installed over a standard commercially available 24-inch deep base cabinet and this measurement is already accepted as compliant by many code enforcing agencies. HCD is proposing this amendment to align with current industry and manufacturing practices. Because a standard countertop may be used for applications beyond the kitchen, the proposal is not specific to kitchens. HCD anticipates no fiscal impact as there is no change to current manufacturing processes. HCD intends to maintain the amendment as initially proposed, however, will consider the comments in a future code adoption cycle.

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.

HCD has determined that no reasonable alternative considered by HCD or that has otherwise been identified and brought to the attention of HCD, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

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).

Not applicable.