

**FINAL STATEMENT OF REASONS
FOR PROPOSED BUILDING STANDARDS
OF THE CALIFORNIA BUILDING STANDARDS COMMISSION
REGARDING THE 2022 CALIFORNIA PLUMBING CODE,
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 5
(BSC 02/22)**

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.

BSC has not added any data (including technical, theoretical, or empirical studies, reports, or similar documents relied upon) that would necessitate an update of the information contained in the Initial Statement of Reasons.

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).

BSC has determined that the proposed regulatory action WOULD NOT impose a mandate on local agencies or school districts. BSC does not have authority to adopt regulations applicable to school districts. While the proposed building standard regulations are applicable to—and required to be enforced by—local agencies (i.e., city and county building departments), the regulations within this proposal make clarifying changes to existing standards with no intended change in regulatory effect and include an option to the requirement for separate restroom facilities. This is only an option not a requirement.

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 comment period from April 21, 2023, until June 5, 2023. Three comments were received during the comment period. There was a subsequent 15-day public comment period from June 15, 2023, until June 30, 2023. One comment was received during the comment period.

Comments received during the 45-day comment period.

Item 2

Chapter 4 PLUMBING FIXTURES AND FIXTURE FITTINGS, Section(s) 422.1.1 and 422.2

Section 422.1.1 This BSC amendment seeks to early adopt IAPMO’s proposal clarifying use of Table 422.1 to calculate the minimum number of plumbing fixtures for bathrooms designed for use by all genders, and is further amended to remove the term “all-gender fixtures” and replace it with “multi-user all-gender facilities” and other language that removes the misplaced pronoun “those fixtures” and replaces it with the phrase “the total number of fixtures collectively shall be used to determine the number of fixtures provided in an occupancy”.

Section 422.2 This amendment is currently being proposed by IAPMO for inclusion in the 2024 UPC (see 2024 UPC Report on Comments Item #93, as published in August 2022). BSC is proposing additional amendments that delete the phrase “both sexes” and replacing it with “all genders” based on feedback received by stakeholders during the July 19, 2022 All-Gender Plumbing Code Workshop facilitated by BSC and DSA. During this workshop stakeholders indicated that referring to a person’s sex is inappropriate for purposes of identifying designated use of public restrooms, and that “all genders” is a more appropriate term (see joint public comment received from Translatin@ Coalition, Disability Rights California, and ACLU California Action dated August 1, 2022). This is also consistent with the proposed amendment above in Section 422.1.1. Additional amendments to Exception 4 clarify that urinals shall be located in a privacy compartment or separate private area only when installed, as new amendments in Section 422.1.1 allow them to be substituted with an equal number of water closets. During the July 19, 2022 workshop DSA indicated it had received comments from educational stakeholders requesting the option to substitute water closets for urinals, thereby increasing access to facilities by all genders.

Commenter(s) and Recommendation (if applicable):

1. Nubyaan Scott, Disability Rights California, recommendation: Approve as Amended

The commenter supports the use of the phrase “all genders”. The commenter understands BSC’s attempt to address privacy concerns in facilities that serve all genders. However, has concerns about the possibility of privacy compartments with full-height walls, pre-manufactured panel systems and doors, or floor-to-ceiling doors, if they are to be used in accessible urinals. A lack of openings at the bottom of privacy compartments may directly impede turning space for people with disabilities using accessible urinal compartments. Thus, if such privacy compartments are required with

accessible urinals, BSC should strongly reconsider modifying the proposed language to remove floor-to-ceiling and full-height requirements.

Agency Response:

BSC thanks the commenters for their support of this proposed amendment and has amended this section to allow the enforcing agency to not require full height partitions. In alignment with this change to this item BSC amended the definition in Item 1 to include the full description of a privacy compartment and remove definition specific language from the exception. Comments received from Kendra Muller and Akiko Nishino representing Disability Rights California, during the 15 day comment period expressed support of these amendments, which BSC has coordinated with the Division of the State Architect.

2. Salena Chow, California Department of Social Services, recommendation: Approve

The commenter is in support of the amendment which would allow state departments to meet restroom requirements using multi-user, all-gender restrooms in lieu of, or in addition to single sex restrooms. CDSS commends this effort to increase department' inclusivity by affording departments the ability to ensure a welcoming environment in which all employees and members of the public are supported in their most basic needs.

Agency Response:

BSC thanks the commenters for their support of this proposed amendment. BSC is proposing no further changes to this section in response to this comment.

3. Michal Healy, Santa Clara Unified School District, recommendation: Further Study Required

The commenter suggests removing the required Privacy Compartments multi stall all gender restrooms. K-12 schools fall under the jurisdiction of DSA and Districts are concerned about installing floor to ceiling partitions in multi stall restrooms due to the lack of supervision for each of the stalls/compartment. Instead, allow each District to determine the appropriate amount of privacy for the toilet and urinal stalls for multi stall all gender restrooms. An additional concern is the ability to adequately clean the individual compartments in the custodian's allotted time if the walls are attached to the ground and there is no gap between.

Agency Response:

BSC has amended this section to allow the enforcing agency to not require full height partitions. In alignment with this change to this item BSC amended the definition in Item 1 to include the full description of a privacy compartment and remove definition specific language from the exception. Comments received from Kendra Muller and Akiko Nishino representing Disability Rights California, during the 15 day comment period

expressed support of these amendments, which BSC has coordinated with the Division of the State Architect.

Comments received during the 15-day comment period.

Item 2

Chapter 4 PLUMBING FIXTURES AND FIXTURE FITTINGS, Section 422.2

Section 422.2 This amendment is currently being proposed by IAPMO for inclusion in the 2024 UPC (see 2024 UPC Report on Comments Item #93, as published in August 2022). BSC is proposing additional amendments that delete the phrase “both sexes” and replacing it with “all genders” based on feedback received by stakeholders during the July 19, 2022 All-Gender Plumbing Code Workshop facilitated by BSC and DSA. During this workshop stakeholders indicated that referring to a person’s sex is inappropriate for purposes of identifying designated use of public restrooms, and that “all genders” is a more appropriate term (see joint public comment received from Translatin@ Coalition, Disability Rights California, and ACLU California Action dated August 1, 2022). This is also consistent with the proposed amendment above in Section 422.1.1. Additional amendments to Exception 4 clarify that urinals shall be located in a privacy compartment or separate private area only when installed, as new amendments in Section 422.1.1 allow them to be substituted with an equal number of water closets. During the July 19, 2022 workshop DSA indicated it had received comments from educational stakeholders requesting the option to substitute water closets for urinals, thereby increasing access to facilities by all genders.

Commenter(s) and Recommendation (if applicable):

1. Kendra J. Muller, Staff Attorney, Civil Rights Practice Group
Dara Schur, Senior Counsel, Civil Rights Practice Group, recommendation:
Approve as Amended

The commenter suggests Item 2, section 422.2(2), and section 422.2(3) include a substitution of the language “both sexes” to “all genders,” to ensure the language uniform with state statutory language. This modification to use the phrase “all genders” reflects the current statutory language of “all gender toilet facilities” originally proposed under AB 1732 in 2016, and codified in 2017 under Health & Safety Code Section 118600 et seq. The change will also create consistent language throughout the section.

Agency Response:

BSC thanks the commenters for their support of this proposed amendment but notes that this comment is not responsive to a particular proposed item, and instead address UPC model code language not currently proposed for modification. BSC will consider these suggested changes in a future code cycle. BSC is proposing no further changes to this section in response to 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.

BSC has determined that no alternative considered would be more effective in carrying out the purpose for which the regulations is proposed, or would be as effective and less burdensome to affected private person than the adopted regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. This proposal makes only clarifying code changes to existing standards with no intended change in regulatory effect and includes a voluntary exception to the requirement for separate restroom facilities.

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).

On July 19, 2022, BSC and DSA considered various alternatives for an all-gender multi-user restroom exception during its All-Gender Plumbing Code Workshop, including the following:

1. Wait to adopt the all-gender provisions in the 2024 UPC during the 2024 Triennial Code Adoption Cycle.
2. Early adopt IAPMO's 2024 UPC All-Gender proposal during the 2022 Intervening Code Adoption Cycle.
3. Amend Chapter 29 of the 2022 California Building Code (Part 2 of Title 24) during the 2022 Intervening Code Cycle (not currently adopted by California).
4. Copy elements of International Building Code Section 2902 into the CPC during the 2022 Intervening Code Cycle (not currently adopted by California).
5. Add a pointer to SB 1194 (Chapter 839, Statutes of 2022).

Based on feedback received during the workshop it was determined that early adopting and further amending IAPMO's 2024 UPC All-Gender proposal (Option 2 above) was the most appropriate and least burdensome path forward as California already adopts the UPC pursuant to State Housing Law and Building Standards Law (see Health and Safety Code Sections 17922, 18916, 18928, and 18928.1). However, waiting to adopt the 2024 UPC (Option 1) was ruled out because those standards would not become effective until January 1, 2026, and stakeholders indicated that the exception for all-gender restrooms is needed much sooner. Alternatives to consider language in Chapter 29 of the CBC/IBC (Options 3 and 4) were rejected because California historically has not adopted this chapter and doing so would have required plumbing standards in multiple Parts of Title 24 which would likely

create confusion for the code user. Adding a pointer to recently enacted SB 1194 was ruled out because while it provides the exception to design all-gender restrooms to city and county building departments, it does not address the occupancies under BSC's authority (state buildings, state colleges and universities). BSC has received multiple comments in support of early adopting and further amending IAPMO's 2024 UPC All-Gender proposal, including from the City of Santa Monica, the City of Foster City, the University of California, the Los Angeles Department of Water and Power and the California State Pipe Trades Council.