

**EXPRESS TERMS
FOR
PROPOSED BUILDING STANDARDS
OF THE
CALIFORNIA BUILDING STANDARDS COMMISSION
REGARDING PROPOSED CHANGES TO
2016 CALIFORNIA BUILDING CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2**

BSC 02/17 CWoRE

(The State agency shall draft the regulations in plain, straightforward language, avoiding technical terms as much as possible and using a coherent and easily readable style. The agency shall draft the regulation in plain English. A notation shall follow the express terms of each regulation listing the specific statutes authorizing the adoption and listing specific statutes being implemented, interpreted, or made specific. (PART 1 – ADMINISTRATIVE CODE))

LEGEND FOR EXPRESS TERMS

1. Existing California amendments or code language being modified are in italics when they appear in the model code text: All such language appears in *italics*, modified language is underlined.
2. New California amendments: All such language appears underlined and in italics.
3. Repealed text: All such language appears in ~~strikeout~~.

EXPRESS TERMS - CHANGE WITHOUT REGULATORY EFFECT

**CHAPTER 31
SPECIAL CONSTRUCTION**

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3109.4.4 Private swimming pools (statewide).

Sections 3109.4.4.1 through 3109.6 (excluding Section 3109.5 adopted from the model code) contain the text of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of the Health and Safety Code, which has been reprinted in alignment with the existing format of this code.

NOTE: These regulations are subject to local government modification. ~~The~~ You should verify the applicable local government requirements at the time of application for a building ~~permit~~ should be verified. ~~permit. These standards become applicable commencing January 1, 1998, to a private, single-family home for which a construction permit for a new swimming pool has been issued on or after January 1, 1998.~~

Authority: Health and Safety Code Section 18942(b)

Reference: Health and Safety Code Section 18942(b); Chapter 925, Statutes of 1996

3109.4.4.1 Definitions.

As used in this division, the following terms have the following meanings:

ANSI/APSP PERFORMANCE STANDARD means a standard that is accredited by the American National Standards Institute (ANSI) and published by the Association of Pool and Spa Professionals (APSP).

APPROVED SAFETY POOL COVER means a manually or power-operated safety pool cover that meets all of the performance standards of the American Society for Testing and Materials (ASTM), in compliance with Standard F 1346-91.

ENCLOSURE means a fence, wall or other barrier that isolates a swimming pool from access to the home.

EXIT ALARMS means devices that make audible, continuous alarm sounds when any door or window that permits access from the residence to the pool area, that is without any intervening enclosure, is opened or is left ajar. Exit alarms may be battery operated or may be connected to the electrical wiring of the building.

PUBLIC SWIMMING POOL means a swimming pool operated for the use of the general public with or without charge, or for the use of the members and guests of a private club. Public swimming pool does not include a swimming pool located on the grounds of a private single-family home.

SUCTION OUTLET means a fitting or fixture typically located at the bottom or on the sides of a swimming pool that conducts water to a recirculating pump.

SWIMMING POOL or POOL means any structure intended for swimming or recreational bathing that contains water over 18 inches (457 mm) deep. Swimming pool includes in-ground and above-ground structures and includes, but is not limited to, hot tubs, spas, portable spas and nonportable wading pools.

Authority: Health and Safety Code Section 18942(b)

Reference: Health and Safety Code Section 115921; Chapter 925, Statutes of 1996; Chapter 679, Statutes of 2012
~~Ab 3305, Statutes 1996, c.925~~

3109.4.4.2 Construction permit; safety features required.

~~(a) Commencing January 1, 2007, except~~ Except as provided in Section 3109.4.4.5, ~~whenever when a building permit is issued for the construction of a new swimming pool or spa, or any building permit is issued for spa or the remodeling of an existing swimming pool or spa, spa at a private, private single-family home, the respective swimming pool or spa shall be equipped with at least one two~~ of the following seven drowning prevention safety features:

- ~~1. The pool shall be isolated from access to a home by an enclosure that meets the requirements of Section 3109.4.4.3. An enclosure that meets the requirements of Section 3109.4.4.3 and isolates the swimming pool or spa from the private single-family home.~~
- ~~2. The pool shall incorporate removable mesh pool~~ Removable mesh fencing that meets American Society for Testing and Materials (ASTM) Specifications F2286 standards in

conjunction with a gate that is self-closing and self-latching and can accommodate a key lockable device.

3. ~~The pool shall be equipped with an~~ An approved safety pool cover that meets all requirements of the ASTM Specifications F 1346- ~~cover, as defined in Section 3109.4.4.1.~~
4. ~~The residence shall be equipped with exit alarms on those doors providing~~ Exit alarms on the private single-family home's doors that provide direct access to the pool. ~~swimming pool or spa. The exit alarm may cause either an alarm noise or a verbal warning, such as a repeating notification that "the door to the pool is open."~~
5. ~~All doors providing direct access from the home to the swimming pool shall be equipped with a~~ A self-closing, self-latching device with a release mechanism placed no lower than 54 inches (1372 mm) above the floor- ~~floor on the private single-family home's doors providing direct access to the swimming pool or spa.~~
6. ~~Swimming pool alarms~~ An alarm that, when placed in pools, ~~a swimming pool or spa, will sound upon detection of accidental or unauthorized entrance into the water. These pool alarms~~ The alarm shall meet and be independently certified to the ASTM Standard F 2208 "Standards F2208 "Standard Safety Specification for Residential Pool Alarms" Alarms," which includes surface motion, pressure, sonar, laser and infrared type alarms. For purposes of this article, "swimming pool alarms" shall not include ~~A swimming protection alarm devices~~ feature designed for individual use, such as including an alarm attached to a child that sounds when the child exceeds a certain distance or becomes submerged in water- ~~water, is not a qualifying drowning prevention safety feature.~~
7. Other means of protection, if the degree of protection afforded is equal to or greater than that afforded by any of the ~~devices~~ features set forth in items 1-4, ~~above and have has~~ been independently verified by an approved testing laboratory as meeting standards for those ~~devices~~ features established by the ASTM or the American Society of ~~Testing Mechanical Engineers (ASME).~~

~~(b) Prior to~~ Before the issuance of ~~any a~~ final approval for the completion of permitted construction or remodeling work, the local building code official shall inspect the drowning safety prevention ~~devices~~ features required by this ~~act and section and~~, if no violations are found, shall give final approval.

Authority: Health and Safety Code Section 18942(b)

Reference: Health and Safety Code Section 115922-~~AB 3305 (Statutes 1996, c.925)-; Chapter 925, Statutes of 1996; AB 2977 (Statutes 2006, c.478)-; Chapter 478, Statutes of 2006; AB 382 (Statutes 2007, c.596)-Chapter 670, Statutes 2017~~

3109.4.4.3 Enclosure; required characteristics.

An enclosure shall have all of the following characteristics:

1. Any access gates through the enclosure open away from the swimming pool and are self-closing with a self-latching device placed no lower than 60 inches (1524 mm) above the ground.
2. A minimum height of 60 inches (1524 mm).
3. A maximum vertical clearance from the ground to the bottom of the enclosure of 2 inches (51 mm).
4. Gaps or voids, if any, do not allow passage of a sphere equal to or greater than 4 inches (102 mm) in diameter.
5. An outside surface free of protrusions, cavities or other physical characteristics that would serve as handholds or footholds that could enable a child below the age of five years to climb over.

Authority: Health and Safety Code Section 18942(b)

Reference: Health and Safety Code Section 115923; ~~AB 3305, Statutes 1996, c.925 Chapter 925, Statutes of 1996~~

3109.4.4.4 Agreements to build; notice of provisions.

(a) Any person entering into an agreement to build a swimming pool or spa, or to engage in permitted work on a pool or spa covered by this article, shall give the consumer notice of the requirements of this article.

(b) Pursuant to existing law, the Department of Health Services shall have available on the department's web site, commencing January 1, 2007, approved pool safety information available for consumers to download. Pool contractors are encouraged to share this information with consumers regarding the potential dangers a pool or spa poses toddlers. Additionally, pool contractors may provide the consumer with swimming pool safety materials produced from organizations such as the United States Consumer Product Safety Commission, Drowning Prevention Foundation, California Coalition for Children's Safety & Health, Safe Kids Worldwide, Association of Pool and Spa Professionals, or the American Academy of Pediatrics.

Authority: Health and Safety Code Section 18942(b)

Reference: Health and Safety Code Section 115924; ~~Ab 3305, (Statutes 1996, c.925); Chapter 925, Statutes of 1996; AB 2977 (Statutes 2006, c.478); Chapter 478, Statutes of 2006 AB 382 (Statutes 2007, c.596)~~

3109.4.4.5 Exempt facilities.

The requirements of this article ~~shall~~ do not apply to any of the following:

1. Public swimming pools.
2. Hot tubs or spas with locking safety covers that comply with the American Society for Testing Materials Emergency Performance Specification (ASTM E13-89). and Materials (ASTM F1346).

~~3. Any pool within the jurisdiction of any political subdivision that adopts an ordinance for swimming pool safety that includes requirements that are at least as stringent as this division.~~

~~4.3. An apartment complex or any residential setting other than a single-family home.~~

Authority: Health and Safety Code Section 18942(b)

Reference: Health and Safety Code Section 115925; ~~AB 3305, (Statutes 1996, c.925); Chapter 925, Statutes of 1996; AB 2977 (Statutes 2006, c.478); AB 382 (Statutes 2007, c.596); Chapter 670, Statutes of 2017~~

3109.4.4.6 Application to facilities regulated by Department of Social Services.

This division does not apply to any facility regulated by the State Department of Social Services even if the facility is also used as a private residence of the operator. Pool safety in those facilities shall be regulated pursuant to regulations adopted therefor by the State Department of Social Services.

Authority: Health and Safety Code Section 18942(b)

Reference: Health and Safety Code Section 115926; Chapter 925, Statutes of 1996 AB 3305, Statutes 1996, c.925; ~~AB 2977 (Statutes 2006, c.478); AB 382 (Statutes 2007, c.596)~~

3109.4.4.7 Modification and interpretation of division.

Notwithstanding any other provision of law, this article shall not be subject to further modification or interpretation by any regulatory agency of the state, this authority being reserved exclusively to local jurisdictions, as provided for in Item ~~5~~7 of Section 3109.4.4.2 and Item 3 of Section 3109.4.4.5.

Authority: Health and Safety Code Section 18942(b)

Reference: Health and Safety Code Section 115927; Chapter 925, Statutes of 1996 AB 3305, Statutes 1996, c.925; ~~AB 2977 (Statutes 2006, c.478); AB 382 (Statutes 2007, c.596)~~

3109.4.4.8 Construction requirements for building a pool or spa.

Whenever a building permit is issued for the construction a new swimming pool or spa, the pool or spa shall meet all of the following requirements:

1. The suction outlets of the pool or spa for which the permit is issued shall be equipped to provide circulation throughout the pool or spa as prescribed in Paragraphs 2 and 3.
2. The swimming pool or spa shall either have at least two circulation suction outlets per pump that shall be hydraulically balanced and symmetrically plumbed through one or more "T" fittings, and that are separated by a distance of at least three feet in any dimension between the suction outlets, or be designed to use alternatives to suction outlets including, but not limited to, skimmers or perimeter overflow systems to conduct water to the recirculation pump.
3. The circulation system shall have the capacity to provide a complete turnover of pool water, as specified in Section 3124B of Chapter 31B of the California Building Standards Code (Title 24 of the California Code of Regulations).

4. Suction outlets shall be covered with antientrapment grates, as specified in the ANSI/APSP-16 performance standard or successor standard designated by the federal Consumer Product Safety Commission, that cannot be removed except with the use of tools. Slots of openings in the grates or similar protective devices shall be of a shape, area and arrangement that would prevent physical entrapment and would not pose any suction hazard to bathers.
5. Any backup safety system that an owner of a new swimming pool or spa may choose to install in addition to the requirements set forth in subdivisions (1) through (4) above shall meet the standards as published in the document, "Guidelines for Entrapment Hazards: Making Pools and Spas Safer," Publication Number 363, March 2005, United States Consumer Products Safety Commission.

[Relocating #6 to a new subsection: 3109.4.4.9]

- ~~6. Whenever a building permit is for the remodel or modification of any existing swimming pool, toddler pool, or spa, the permit shall require that the suction outlet or suction outlets of the existing swimming pool, toddler pool, or spa be upgraded so as to be equipped with antientrapment grates, as specified in the ANSI/APSP-16 performance standard or a successor standard designated by the federal Consumer Product Safety Commission.~~

Authority: Health and Safety Code Section 18942(b)

Reference: Health and Safety Code Section 115928; ~~AB 3305 (Statutes 1996, c.925); AB 2977 (Statutes 2006, c.478); AB 478 (Statutes 2007, c.596)~~ Chapter 679, Statutes of 2002; Chapter 62, Statutes of 2003; Chapter 478, Statutes of 2006; Chapter 596, Statutes of 2007; Chapter 679, Statutes of 2012

[Existing language relocated from 3109.4.4.8(6)]

3109.4.4.9 Suction outlet upgrade requirements during remodel or modification.

Whenever a building permit is for the remodel or modification of any existing swimming pool, toddler pool, or spa, the permit shall require that the suction outlet or suction outlets of the existing swimming pool, toddler pool, or spa be upgraded so as to be equipped with antientrapment grates, as specified in the ANSI/APSP-16 performance standard or a successor standard designated by the federal Consumer Product Safety Commission.

Authority: Health and Safety Code Section 18942(b)

Reference: Health and Safety Code Section 115928.5; Chapter 596, Statutes of 2007, Chapter 679, Statutes of 2012

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3109.6 Informative documents.

1. The Legislature encourages a private entity, in consultation with the Epidemiology and Prevention for Injury Control Branch of the department, to produce an informative brochure or booklet, for consumer use, explaining the child drowning hazards of, possible safety measures for, and appropriate drowning hazard prevention measures for, home swimming pools and spas, and to donate the document to the department.

2. *The Legislature encourages the private entity to use existing documents from the United States Consumer Product Safety Commission on pool safety.*
3. *If a private entity produces the document described in Subdivisions 1 and 2 and donates it to the department, the department shall review and approve the brochure or booklet.*
4. *Upon approval of the document by the department, the document shall become the property of the state and a part of the public domain. The department shall place the document on its Web site in a format that is readily available for downloading and for publication. The department shall review the document in a timely and prudent fashion and shall complete the review within 18 months of receipt of the document from a private entity.*

Authority: *Health and Safety Code Section 18942(b)*

Reference: *Health and Safety Code Section 115929; Chapter 422, Statutes of 2003*

REASON – CHANGE WITHOUT REGULATORY EFFECT

The California Building Standards Commission (BSC) is proposing a “change without regulatory effect” to the 2016 California Building Code, Chapter 31, Sections 3109.4.4 through 3109.6. A majority of the changes are based on the enactment of SB 442 (Chapter 670, Statutes of 2017), which becomes effective January 1, 2018. This bill made amendments to the Swimming Pool Safety Act (HS. Code, §§ 115920 – 115929.)—which is required to be published in Title 24 pursuant to Health and Safety Code 18942(b). Other nonsubstantive corrections have been made to several authority and reference citations.

STAFF FINDINGS:

This proposed change meets the requirements of the Administrative Procedure Act, Building Standards Law, and the California Administrative Code, Section 1-421, Items 5 and 6, for a “change without regulatory effect,” which includes the following:

- Changing an “authority” or “reference” citation for a regulation; and
- Making a regulatory provision consistent with a changed California statute if both of the following conditions are met:
 - The regulatory provision is inconsistent with and superseded by the changed statute, and
 - The state adopting agency or state proposing agency has no discretion to adopt a change which differs in substance from the one chosen.