

CALIFORNIA BUILDING STANDARDS COMMISSION
MEETING MINUTES

April 19, 2016

1. CALL TO ORDER

Chair Batjer called the meeting to order at approximately 10:00 a.m., 400 R Street, First Floor Hearing Room, California Victim Compensation and Government Claims Board, Sacramento, California.

ROLL CALL:

Commissioners Present:

Secretary Marybel Batjer, Chair
Larry Booth
Kent Sasaki
Raj Patel
Peter Santillan
Erick Mikiten

Commissioners Absent:

James Barthman
Elley Klausbruckner
Steven Winkel, Vice Chair

Commissioner Sasaki led the Commission in the Pledge of Allegiance.

2. REVIEW AND APPROVAL OF OCTOBER 21, 2014, DECEMBER 16, 2015, AND JANUARY 19 & 20, 2016, MEETING MINUTES

Mia Marvelli, California Building Standards Commission, explained that the minutes for the October 21, 2014 meeting were never approved, so it is before the board for approval at this time.

MOTION: Secretary Batjer entertained a motion to consider approving the meeting minutes from October 21, 2014.

Commissioner Sasaki made a motion to approve, and it was seconded by Commissioner Mikiten. Commissioners Patel and Santillan abstained as they were not present at the meeting. **The motion did not pass due to a quorum not being reached, so the vote will be tabled to the next board meeting.**

MOTION: Secretary Batjer entertained a motion to consider approving the meeting minutes from December 16, 2015.

Commissioner Sasaki made a motion to approve, and it was seconded by Commissioner Santillan. **The vote was unanimous to accept the motion.**

MOTION: Secretary Batjer entertained a motion to consider approving the meeting minutes from January 19 and 20, 2016.

Commissioner Sasaki made a motion to approve, and it was seconded by Commissioner Mikiten. **The vote was unanimous to accept the motion.**

3. CALIFORNIA BUILDING STANDARDS COMMISSION EXECUTIVE DIRECTOR ANNOUNCEMENT

Chair Batjer announced Mia Marvelli as the new Executive Director for the California Building Standards Commission effective February 9, 2016. She stated Ms. Marvelli joined CBSC in 2012, with 20 years of prior State service with the Department of Water Resources and the Department of General Services, Real Estate Division, and also served CBSC as the staff architect that administered the processes related to adoption, approval, publication and implementation of the CBSC Building Codes. Chair Batjer thanked the commissioners, the other candidates who participated, and Brent Jamison and his staff for their efforts.

Chair Batjer announced the resignations of CBSC commissioners Cheryl Roberts and Malcom Carson and thanked them for their service.

4. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA

Libi Uremovic, accountant, discussed issues with the city government and infrastructure for the city of Beaumont, California in Riverside County. She stated in the last 20 years, the city of Beaumont has grown from 6,000 to 40,000 people. 15,000 houses have been built without any fire stations, adequate roadways, and other infrastructure. The recycled water facility that was scheduled to be completed in 1995 was never built. Beaumont has only the Beaumont Basin for water, but it has been in a drought for over a decade and failed to meet the state's 25 percent water reduction standard. The base they use doubled what their safe yield is.

The City staff contracted their own companies to perform all services instead of going out to bid, which has led to inadequate materials being used by some contractors. Bond funds were illegally traded. The City was raided by the FBI and the Riverside District Attorney's Office. Many of the top city officials and bank executive have had to vacate their positions and documents were destroyed. She stated there is a reported \$350,000 missing in Beaumont leaving little to no funds for infrastructure repair. The state controllers' investigative report dated 11/3/15 documents the city's inadequate accounting practices and state law violations. Businesses were forced to use Beaumont Electric. Houses are being slapped together and poorly constructed. Uremovic requested the Commission to investigate the City of Beaumont with regard to their building standards.

Chair Batjer stated the CBSC does not handle the enforcement. She asked Executive Director Marvelli to explain what the roles and responsibilities are of the Building and Standards Commission. Marvelli stated the CBSC is charged with running the rulemaking process to adopt the Building Codes and not the state's enforcement agency. This would be beyond the scope of what CBSC would handle. There are other state agencies that have authority for occupancies, one of which is the Housing and Community Development and the State Fire Marshall's Office. Chair Batjer suggested Uremovic address these issues with the County of Riverside commissioners as well as the District Attorney for Riverside County.

5. DIVISION OF THE STATE ARCHITECT - ACCESS COMPLIANCE (DSA-AC 01/15, ITEM 11B.25)

Proposed adoption of amended access compliance provisions for incorporation into the 2016 California Building Code, Chapter 11B, Section 11B-403.5.1 and Section 11B-403.5.1.1 (California Code of Regulations, Title 24, Part 2).

Chair Batjer clarified that at the Commission meeting on 1/20/16, the Commission approved the regulations packet submitted by the Division of the State Architect, Section 11B-403.5.1 and 11B-403.5.1.1, Chapter 11B, Part 2 of Title 24. During the motion to approve the amendment of the regulation, the Commission added language which was considered a substantial regulatory change. Regulatory procedure requires that substantial changes are to be made available to the public for a certain period of time. Absent procedural compliance, the action taken at the last Commission meeting to approve the Division of State Architect's access regulation as amended was not valid, and the packet must be resubmitted to the Commission for another vote.

The representatives were Dennis Corelis, Deputy State Architect, Division of the State Architect; and Derek Shaw, Senior Architect. Mr. Corelis stated this item is being reconsidered due to their inadvertent realization that the addition of the word "technically" would be a substantive change to the regulation. This item was intended to recast the requirements for sidewalks and to restate them as positive requirements instead of the current language which states them as a series of exceptions. The intent is to retain one exception that deals with the necessity to reduce the sidewalk width to 36 inches, which is consistent with the federal standards, for limited lengths to accommodate an obstruction such as a power pole.

Current code allows this to happen when the jurisdictional agency reviews the access provisions and makes a finding that it is unreasonable to comply with all the requirements. When that happens, they can make a finding when they evaluate it per the five criteria that that would be infeasible or unreasonable to do that, and then they are able to reduce the width of the sidewalk to 36 inches. The current regulations do not have any limitation on how long that length of reduced section can be. He stated this regulation seeks to eliminate the need to do the administrative finding and proposes a limitation of 24 inches. A diagram was provided to the Commission earlier in the day and therefore not available to people participating via webinar.

Questions or Comments from the Commissioners:

Chair Batjer asked who brought this code change to the attention of the DSA.

Mr. Corelis stated it was discussion with Caltrans and other public works agencies throughout the state.

Chair Batjer stated her understanding of DSA's proposal and gave the following example: Currently, without this code change, if Caltrans needed to put a pole on a sidewalk, they could put the pole on the sidewalk, diminish that sidewalk from 48 inches, and reduce the size of that sidewalk to 36 inches.

Mr. Corelis clarified it only applies to an existing condition in an alteration situation. If a brand-new sidewalk system were to be built, they would have to comply with the 48 inches; there is no exception.

Chair Batjer stated that without the code change, someone could reduce an existing 48-inch sidewalk to 36 inches for whatever length they deem necessary; however, the code change would limit them to only being able to reduce that sidewalk for 24 inches, and then they must comply with the code and make sure the rest of the sidewalk remains at 48 inches.

Mr. Corelis agreed that that is what the code would allow. They could not go beyond the 24 inches.

Chair Batjer asked whether currently someone could go beyond the 24 inches.

Mr. Corelis stated at the present time an entity would have to make a finding of unreasonable hardship.

Chair Batjer asked whether that is a self-certification.

Mr. Corelis stated for Caltrans he believed it was.

Chair Batjer asked whether Caltrans could take into consideration the five points of hardship, and if they certify that they meet those five points. Then without this code change they could reduce that sidewalk to 36 inches for whatever length.

Mr. Corelis stated he believed that was correct, as long as it was justified.

Chair Batjer stated her understanding that "positive" code change refers to limiting what Caltrans, county, city, et cetera, can do in terms of the reduction of the sidewalk in length from 48 inches to 36 inches, but they can only do that for 24 inches; currently they can do it for two blocks if they desire.

Mr. Corelis stated only if they make a finding.

Commissioner Mikiten stated Caltrans can do it now with a finding and they can do it longer with a finding, but what this amendment would do is allow them less administrative process and less checks and balances in order to do it for short distances.

Mr. Corelis stated for each instance of the need to reduce it, currently it requires a separate finding for each pole, for example.

Commissioner Mikiten stated his understanding that this amendment would eliminate the need for Caltrans to go through the finding process for a particular block with multiple instances.

Mr. Corelis stated that is correct.

Commissioner Mikiten stated the outcome is an accumulative effect.

Mr. Corelis stated there is a requirement that one must go back to a proper width sidewalk of 48 inches for a minimum of 4 feet.

Questions or Comments from the Public:

Hector David Cordova, California Department of Transportation, liaison working with external governments on design issues and standards. He stated the existing CBC provision 11B-403.5.1, Exception 3, is actually inconsistent with federal codes. The proposed words attempt to correct the inconsistency, which has occurred for decades, or bring it more in line with the federal model. The current applicable federal 2010 ADA standards Section 403.5.1 states the clear width of walking surfaces shall be a minimum of 36 inches. 1991 ADAAG Section 4.3.3 states the minimum clear width of an accessible route shall be 36 inches. 1984 UFAS Section 4.3.3 says the minimum clear width of an accessible route shall be 36 inches. The current CBC condition contains a hardship documentation in order to allow 36 inches on a sidewalk reduced from 48 inches; however, this is not a requirement for other similar CBC provisions. For example, 11B-403.5.1 allows 36 inches clear width in general for an accessible route, and according to Exception 1, allows a clear width to be further reduced to 32 inches for a 24-inch distance. Mr. Cordova stated the suggestion to insert "technically" before the proposed word "infeasible" negates one of the purposes of the proposed change because that would still require documentation. The federal codes do not require technically infeasible for a 36-inch clear width because 36 inches is the basic accessible route for all users. The proposed wording change for 36 inches is in the case of an alteration for existing conditions. New sidewalk construction would still be subject to the 48-inch clear width. The proposed language is not even in line with the federal model because it allows 36 inches with no required documentation. Because of all the above-mentioned reasons and the complexities they face on constrained right-of-way with sidewalks, the Department of Transportation supports the proposed amendments.

Questions or Comments from the Commissioners:

Chair Batjer asked for clarification and an example.

Mr. Cordova gave an example where Caltrans might be attempting to widen the sidewalk at a corner and encounter signal hardware, light poles, utility poles. The sidewalk could be widened to some extent but not to a clear width of 48 inches. Anything less than 48 inches would trigger the need for the documentation of the unreasonable hardship.

Chair Batjer wanted further clarification on an obstructed 50-inch sidewalk that requires alteration. She asked what length Caltrans would alter the sidewalk under their self-certification hardship criteria.

Mr. Cordova stated if Caltrans were not able to accommodate a lateral clearance of 48 inches, they would have to obtain an easement, pay the property owner, or tell the utility owner that they have to relocate.

Chair Batjer reiterated her question: How far in length would Caltrans alter the sidewalk?

Mr. Cordova clarified the sidewalk would be altered only around whatever the impediment was.

Chair Batjer clarified that 36 inches is judged as being the proper width for wheelchair accessibility.

Mr. Cordova confirmed that 36 inches is the minimum accessible route in federal codes.

Commissioner Mikiten followed up by saying that if this amendment were to pass, Caltrans would be holding itself to the same performance standards as they have now, but for each individual location they would not need to do the finding process.

Mr. Cordova confirmed that is correct because the federal codes do not require a technically infeasible documentation.

Commissioner Mikiten pointed out that there are many things in Title 24, especially regarding disabled access, that are better than the federal code.

Mr. Cordova stated he did not believe it is the best for all stakeholders, so that is why he is suggesting we be more in line with the federal model.

Commissioner Mikiten asked why is it not the best for someone with a disability.

Mr. Cordova stated he meant all stakeholders, and that the federal model of 36 inches is the basic accessible route, even for people with disabilities.

Chair Batjer clarified that you can only reduce that sidewalk to get around an obstacle for 24 inches in length to the width of 36 inches from 48 inches.

Commissioner Mikiten asked about the length of utility boxes, poles, and light standards.

Mr. Cordova stated the 24-inch limitation will take care of the vast majority of obstructions.

Commissioner Mikiten stated Caltrans seems to be already trying to perform to that standard, so codifying does not make it better.

Commissioner Sasaki stated he understands that with this proposed amendment Caltrans will not have to go through the documentation process or self-certification process each time the alteration is such that it is less than 48 inches.

Chair Batjer asked where the documentation resides after the self-certification process of the five points.

Mr. Cordova stated the documentation, which is approved by the Federal Highway Administration (FHWA), resides with the project files for that particular project.

Chair Batjer asked how the public can access this documentation.

Mr. Cordova stated the public could contact the ADA coordinator listed on the Caltrans website, go through the Public Information Act, or ask one of the districts.

Chair Batjer asked what the complaint process would be if there was an issue obtaining the information.

Mr. Cordova stated there is a provision for federal regulation for filing a grievance, which is located on the Caltrans website.

Chair Batjer asked for the name of a specific contact person.

Mr. Cordova stated this process is managed under the ADA coordinator for Caltrans, and the staff will assist with the application. Once that is received, they will contact the ADA for the specific district. The district ADA coordinator is the person responsible for obtaining the records. If there is a grievance, there is the investigative process, which is also through the FHWA model for conducting ADA grievances.

Chair Batjer asked whether there has ever been some kind of administrative action taken and Caltrans has had to reverse themselves on a sidewalk or obtain an easement or buy property to make the proper width.

Mr. Cordova stated he has heard of instances where Caltrans has acknowledged there is a problem and there will be a remedy project to correct the issue.

Commissioner Sasaki stated his understanding of the word "positive" meant that the proposed change is taking the sidewalk portion out of the exception section and putting that as a direct requirement and asked Mr. Corelis to confirm.

Mr. Corelis confirmed that is correct. Caltrans is establishing a new section on sidewalks explicitly as opposed to going to the exception; so instead of five exceptions, there will only be one. He confirmed that is what he meant by "positive."

Commissioner Patel asked whether the original language of "unreasonable hardship" is in the exception.

Mr. Corelis confirmed that is correct.

Commissioner Patel asked whether that constitutes Caltrans having to do something.

Mr. Corelis stated that there is a criteria in the Building Code that has to be followed.

Commissioner Patel asked when the word "infeasible" is changed, does that term connote you have to do anything exceptional by reducing the width.

Mr. Corelis stated that does not require the documentation.

Commissioner Patel asked whether "technically infeasible" throws the definitions back into ADAAG and PROWAG.

Mr. Corelis confirmed that it does because that "technically infeasible" is a justification trigger, so it has to be documented.

Commissioner Patel stated that one of the benefits would be that it would limit the reduction up to 36 inches for only a period of 24 inches and then they would have to open it up again. You couldn't put a series of obstacles in the sidewalk to narrow that path down to 36 inches for more than the 24 inches.

Mr. Corelis confirmed that is the intent.

Commissioner Mikiten asked whether the diagram mentioned or the explanations discussed today were included in the public process that this code process has gone through.

Mr. Corelis stated it has not, but that Caltrans was revamping their processes to ensure that things like this were explicitly illustrated.

(Whereupon, a short recess was taken.)

Chair Batjer stated the diagram presented earlier by Mr. Corelis titled Division of State Architect Access Compliance is for illustrative purposes only regarding Agenda Item 5 and not part of the regulatory package.

Mr. Corelis confirmed that is correct.

Questions or Comments from the Public:

Christopher Lee, Legislative Analyst, appearing on behalf of the California State Association of Counties stated they are in support of the recommendation that is before the Board today. They have had discussions with numerous public works directors across the state, and the consensus is that it is a well-warranted adjustment that will allow flexibility while still maintaining consistency with the federal standards. There were additional comments from the County of San Diego who indicated this would not apply to many of the common obstructions that are adjacent to roadways, such as the larger size of traffic signal boxes, so there are plenty of areas where this limited new authority would not apply and where the existing process would still have to be used. He stated they are willing to work with DSA and others to educate counties and public works directors about this new provision.

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

Questions or Comments from the Public:

Connie Arnold, disability rights advocate from Elk Grove, California, stated she supports California's strong Title 24 codes. She stated the ADA allows state codes to be more stringent and provide better and great access for persons with disabilities, and that is what California has had dating back to 1981; therefore, there is no need for a reduction in access. The proposed change would create a problem for people with disabilities having to navigate the different sidewalk sizes. She stated the words "technically infeasible" is defined and should be retained, and this item should go back for additional work before access is reduced. If the Commission is concerned about compliance with California laws precluding them from writing code changes, you have to

also be concerned about the violations of California Government Code 4450 and 11346.45, which require consultation with the disability community when changing the California access standards and California Government Code 4459, which prohibits any reduction in California access standards. The Commission cannot be selective in which laws to enforce. She urged the Commission to ensure that the access be maintained at 48 inches with documentation where there's unreasonable hardship about why something needs to be done.

Ms. Arnold is one of the 49 spokespersons from the January 19th and 20th CBSC meeting that is being represented by Attorney Patricia Barbosa who petitioned the Office of Administrative Law to stop the promulgation of access code changes that reduce access. She requested the Commission restart the Disability Access Advisory Committee meetings. She stated these issues could have gone before this advisory committee for discussion. She stated reducing access for persons with disabilities is not representing the best interest to the public at large. She would like to see the DSA's office find more effective ways of communicating with the disabled community and involving them more into the code development process.

Cynthia Jones, disability advocate from San Diego, California, expressed her concern that California has been the leader in access, and now little by little it is diminishing. She stated there needs to be accountability when access is being reduced. Also, the number of people with disabilities and the physical size of the population is increasing. She discussed the numerous amount of obstacles currently in San Diego due to the increased number of sidewalk cafes and other utility equipment making access already restricted. She does not want this change to move forward, that additional work needs to be done. She also is one of the 49 spokespersons with disabilities being represented by Attorney Barbosa.

Victoria, representing AT&T, stated they appreciate all the time and efforts that is taking place to address the issues addressed by the change to California Building Code Chapter 11B-403.5.1 and 11B-403.5.1.1. She stated AT&T only received notice of this proposed change and this hearing yesterday; therefore, she is verbally requesting the opportunity to perform a review of the proposed changes and provide comments to the Commission by April 29th, and a written request was mailed to the Commission this morning.

Hollyn DeLil stated there have been some procedural violations, including an incorrect participant code was disbursed for today's meeting, which created delays and confusion. She requested a delay in the meeting in order to notify people regarding the participant code problem. She stated another procedural issue in today's meeting was the fact that there was no public comment period for items not on the agenda, and that she would have brought to the Commission's attention at that time that the participation code was in error. Ms. DeLil expressed her frustration that the disabled community is not being involved in the code development. A standard wheelchair can be up to 32 inches wide, leaving a 2-inch margin on each side of a 36-inch sidewalk. Reducing a sidewalk from 48 inches to 36 inches could endanger people. She stated her two major issues: the disability community and representatives have not had an opportunity to work with the DSA in developing this code change that impacts their everyday lives as is required by Government Code 4450 and Government Code 11346.45; and that access will be reduced, in violation of Government Code 4459, without any accountability. She requested the Commission not approve this code change and will petition with AOL if the change is approved.

Tim Thimesch, civil rights attorney from Walnut Creek and a member of CODAP, was in agreement with comments from Ms. DeLil and the comments from Commissioner Mikiten. He pointed out that the DSA representative did not begin his presentation with the jurisdictional

statement under 4459 and should not be allowed the proceedings to go forward without it. He reminded he discussed this procedural issue with the Commission at the January CBSC meeting. To the extent that the DSA wants to improve our codes, that must be taken up with the legislature. 4459 is clear that the state architect is not allowed to engage in improvement to the code that already meet the federal standard. He stated the Caltrans self-certification is not meaningless and they must still meet the criteria, and it's a checks and balances process. He agreed with Commissioner Mikiten protections are being diminished.

Peter Margen representing CODAP stated at the January 20th CBSC meeting he made the suggestion to include the word "technically" in front of "infeasible," and the Commission supported that change. The reason he made the distinction is the current code requires an exception based on unreasonable hardship for reduction in sidewalk width, and that exception is to ensure that the enforcing agency would examine the resources and scope of the project to determine what the feasibility is. Mr. Margen stated that there is a credibility issue with Caltrans in that it has been subject to a statewide class action lawsuit for nonenforcement of state and federal regulations. He served as an expert witness on that case and found massive violations of accessibility codes and standards. He stated from a technical usability standpoint, the way the regulation is written, it does not take into account other things, such as persons with disabilities maneuvering through an area using service dogs in combination with a wheelchair. He suggested retaining the checks and balances that were originally in the code and there be an administrative exception process where it has been documented and evaluated.

Craig Thomas Yates, California licensed general contractor, suggested a simple remedy using a bulb-out, which is an extension of the concrete out into the street where the utility could be placed, which would not interfere with the sidewalk.

Questions or Comments from the Commissioners:

Commissioner Mikiten stated he is uncomfortable with the proposed change as it stands and does not feel that Caltrans should be given carte blanche authority without an administrative finding or full process. He stated the process for this proposed change did not proceed correctly and was not clear to the public, and that the document should have been presented at the beginning of the process. He asked if it were to be returned for a further study, it could give DSA the option of talking with their other stakeholders, and they could decide not to bring it back to the Commission.

Ms. Banzon confirmed that they have the option to return it or not.

Commissioner Sasaki asked for clarification on 4459.

Ms. Banzon clarified that 4459 of the Government Code is the jurisdiction of the DSA as to how they are supposed to develop the regulations and who they are supposed to be dealing with.

Commissioner Booth asked if the item were to be returned to the DSA, how much time would be needed to engage the appropriate parties and return to the Commission.

Mr. Corelis stated if this were to be reconsidered, the earliest it would be returned would be the intervening cycle of the 2016 code. The reconsidered code would need to be back to the Commission this coming December for the code advisory committee, and then go forward in the

normal process.

Ms. Marvelli stated the timeline currently is in December the Building Standards would receive rulemaking, so there would be workshops between now and then, and then next July it could be brought before the Commission. She confirmed it would not take effect until July 2018.

Mr. Nearman advised the Commission there needs to be the nine-point criteria stated due to motion for further study.

MOTION: Commissioner Mikiten made a motion to return Item No. 5 to the Division of State Architect for further study, which would include a public and full evaluation process on all aspects of the proposal, based on Criterion No. 3 of the nine-point criteria, which is public interest and includes accessibility, and it was seconded by Commissioner Sasaki. **The vote was unanimous to accept the motion.**

(Whereupon, a luncheon recess was taken.)

6. CERTIFICATION OF EMERGENCY BUILDING STANDARDS - OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT (OSHPD EF 02/15) APPROVED BY THE COMMISSION AT THE DECEMBER 16, 2015, MEETING:

Certification of compliance and permanent approval of emergency building standards pertaining to water efficiency effecting a reduction in indoor water usage relative to the 2013 California Plumbing Code (California Code of Regulations, Title 24, Part 5). Proposed changes are to align with the appliance efficiency standards adopted by the California Energy Commission in Title 20, California Code of Regulations.

The representative is Glenn Gall, Regional Supervisor for the Building Standards Unit of the Office of Statewide Health Planning and Development, Facilities Development Division. He stated this adopted emergency proposal was done in conjunction with the other state agencies in response to the governor's executive order to reduce water use under drought conditions and requesting permanent approval. OSHPD does not utilize the Green Building Standards Code to the same extent as the other agencies so they are out of synch with the approval process. There is a pointer for low-flow urinals and low-flow water closets that they also have to be in conformance with Title 20, which regulates the sale of flow rates in California.

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

Questions or Comments from the Public:

No questions or comments from the public.

MOTION: Secretary Batjer entertained a motion to consider the Office of Statewide Health Planning and Development's request for adoption for their certificate of compliance permanent approval of the proposed regulation of Part 5 of the 2013 California Plumbing Code. Commissioner Sasaki made a motion to approve, and it was seconded by Commissioner Booth.

The vote was unanimous to accept the motion.

7. CHANGE WITHOUT REGULATORY EFFECT (CWoRE) - OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT (OSHPD 01/16):

Proposed Change without Regulatory Effect. Regulations for the OSHPD - Section 422.1, Chapter 4, 2013 California Building Code, Part 2 of Title 24, California Code of Regulations (CCR) intended to clarify the requirements for licensed clinics.

Glenn Gall stated the overview of this regulation came as a result of a comment on the December 16th minutes by Gail Bates asking for clarification when OSHPD 3 standards apply. The Fire and Life Safety Standards do not relate to the licensure requirements of Chapter 1226, which is OSHPD 3. OSHPD 3, 1226.2 state that licensing requirements apply to any California Department of Public Health clinic that is required to be licensed; however, it is independent of the occupancy grouping of the facility. Per a suggestion by Mr. Bates, a pointer was placed in Section 422.1 that said for OSHPD 3 clinics go back and see Section 1226, which may avoid some confusion. The change has been made with no regulatory effect.

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

Questions or Comments from the Public:

No questions or comments from the public.

MOTION: Secretary Batjer entertained a motion to consider the Office of Statewide Health Planning and Development's request for adoption of their proposed regulations of Section 422.1, Chapter 4, 2013 California Plumbing Code. Commissioner Booth made a motion to approve, and it was seconded by Commissioner Mikiten. **The vote was unanimous to accept the motion.**

8. CHANGE WITHOUT REGULATORY EFFECT (CWoRE) - CALIFORNIA BUILDING STANDARDS COMMISSION (BSC 01/16):

Proposed Change without Regulatory Effect. Regulations for the BSC Section 1613.1.2, Chapter 16, 2013 California Building Code, Part 2 of Title 24, California Code of Regulations (CCR) intended to correct a misprint in the requirements for earthquake loads for state-owned buildings.

Michael Nearman, Deputy Director, Building Standards Commission, gave a brief background. He stated it was brought to BSC's attention recently that a DSA structural engineer had identified a grammatical misuse of a word in Section 1613.1.2 in Chapter 16, structural design, of the Building Code, which addresses the location of state-owned buildings and proximity to seismic conditions. The word "of" should replace the word "or." The section reads as follows: "State-owned buildings, including those of the University of California, CSU, and Judicial Council, shall not be constructed where any portion of the foundation would be within a mapped area of earthquake-induced liquefaction ~~or~~ or landsliding or within 50 feet of a mapped fault rupture hazard as established by Section 1802.7."

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

Questions or Comments from the Public:

No questions or comments from the public.

MOTION: Secretary Batjer entertained a motion to consider the California Building Standards Commission's request for approval of their proposed change without regulatory effect of Section 1613.1.2, Chapter 16, 2013 California Building Code. Commissioner Santillan made a motion to approve, and it was seconded by Commissioner Mikiten. **The vote was unanimous to accept the motion.**

9. EXTERIOR ELEVATED ELEMENTS:

Pursuant to an action taken at the October 21, 2015 meeting the Commission may hear or discuss any update or information on the Berkeley balcony collapse and may discuss the formation or form a committee to study or make findings as pertains to exterior elevated elements.

Questions or Comments from the Commissioners:

Commissioner Booth stated it was his understanding the Commission was going to establish an ad hoc committee in January.

Chair Batjer stated that could not be addressed at the January meeting because it was not on the agenda.

Ms. Marvelli stated at the October 21, 2015 meeting, it was requested to add this as a future agenda item for discussion by the Commission once there was additional information. The December and January meeting were impacted with triennial rulemaking as well as no additional available information, so this topic was not agendized at those meetings. This is the first opportunity for the Commission to discuss whether or not to form an ad hoc committee.

Commissioner Booth stated the Commission could be useful in helping whichever group comes before them and requests a code change to aid and abet them with a process of how they would get it quickly and efficiently.

Chair Batjer asked Ms. Marvelli to address the roles and responsibilities of the ad hoc committee.

Ms. Marvelli stated the Commission can create an ad hoc committee comprised of commission members that have areas of expertise in exterior-exposed elements. They could review the material and come up with a code change recommendation for all the state agencies. It would then be up to the state agencies to bring forward their vetted proposals in the next rulemaking.

Commissioner Sasaki asked whether the ad hoc committee would have any role in making recommendations to BSC.

Ms. Marvelli stated since BSC makes amendment for state-owned buildings, the BSC staff would do the rulemaking similar to other state agencies and bring it before the Commission.

Ms. Marvelli stated that the Contractors State License Board (CSLB) conducted an investigation and will be making a determination possibly within the next 30 days; therefore, there may be additional information available for the ad hoc committee in the near future.

Commissioner Booth asked whether any agency has stepped up and said they would take the lead on any code changes for this particular item.

Ms. Marvelli stated not as of yet.

Commissioner Sasaki wanted clarification on whether today the decision will be made to form the ad hoc committee.

Chair Batjer confirmed that is correct.

Commissioner Sasaki asked how many Commission members can be on the committee and whether there would be a quorum issue.

Ms. Marvelli stated if there are three or more members, it would fall under Bagley-Keene. The other consideration is the individual commission member's area of expertise and who would be best to review the information.

Questions or Comments from the Public:

Ms. Marvelli read a prepared statement from the Department of Housing and Community Development, signed by Shawn Huff, dated April 18, 2016. It reads, "Dear Madam Secretary and Commissioners: At the October 21, 2015 Building Standards Commission meeting, on behalf of HCD, I committed HCD resources and its willingness to take a leadership role and convene an ad hoc committee to review findings of the tragic balcony collapse of June 16, 2015 in Berkeley. It is critical, however, that we utilize the most accurate information garnered from the investigation and have collected all available facts to determine whether any new building standards are warranted and necessary based upon the tragic incident. While HCD and the BSC are in contact with the City of Berkeley and Alameda County DA's office, the details of the investigation will not be made available to the public by the CSLB until the investigation has been completed. There is still insufficient material or evidence to propose any rule changes or even attempt to form an ad hoc committee at this time. HCD continues to work with all relevant building code adoption agencies and the CBSC in order to propose safe building and maintenance standards and to determine the best path forward once we become more knowledgeable of the circumstances in this matter."

Questions or Comments from the Commissioners:

Commissioner Sasaki stated his assumption that the ad hoc committee mentioned in Mr. Huff's letter referred to HCD's ad hoc committee and not an ad hoc committee for the Commission.

Ms. Marvelli clarified it reads as an ad hoc committee within HCD in the first sentence.

Chair Batjer stated the terminology can be clarified at a future time.

Questions or Comments from the Public:

Bob Raymer, Technical Director with the California Building Industry Association, stated CBIA would be in strong support of the establishment of an ad hoc committee at this time. He stated once the forensic report is available within the next 30 to 45 days, well within the next Commission meeting, the ad hoc committee could begin to deliberate. It would be their suggestion that BSC staff assemble an ad hoc group, with key players being included from various state agencies, such as HCD, CSLB, BSC, and DSA's structural safety division; representatives from the wood and timber, steel, and concrete industries who could represent product manufacturers; industry and building officials, including building inspection. He felt Commissioners Winkel, Sasaki, and Patel would be interested. He stated he spoke to Richard Weinert from HCD who stated they would be interested in serving on the Commission's potential ad hoc committee.

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

Questions or Comments from the Public:

Steve Pelham, structural engineer from Sacramento, California, representing the Structural Engineers Association of California (SEAOC), stated they wrote a letter to the Commission October 19, 2015 regarding the work they performed in the balcony collapse. It states this is a broad multi-disciplinary issue involving engineering, materials, waterproofing, installation, and ventilation. Since that time, SEAOC has reactivated its committee and will study this issue further with the goal of publishing a guideline document that addresses engineering and some of these other related aspects. He stated SEAOC would be pleased to work with the Commission and other stakeholders in investigating this issue.

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

Questions or Comments from the Public:

Susan Chandler from Californians for Disability Rights agreed that an ad hoc committee would be useful.

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

MOTION: Secretary Batjer entertained a motion to consider forming an ad hoc committee. Commissioner Sasaki asked for clarification whether the committee would be formed with Commission members as well as other groups or a separate Commission ad hoc committee and then an outside ad hoc group consisting of state agencies.

Ms. Marvelli stated it would comprise of the commissioners; however, it would be an open meeting with information gathered from all of the participating groups. It would fall under Bagley-Keene because there would be three or more potential members of the Commission.

Chair Batjer asked if there were just two commissioners appointed to this potential ad hoc committee in addition to other people would it fall under Bagley-Keene.

Ms. Banzon stated if there were two commissioners and two other interested persons, that would fall under Bagley-Keene.

Chair Batjer clarified if an ad hoc committee is formed with just two commissioners from the BSC and you include other interested people or entities to this committee, then it would fall under Bagley-Keene.

Ms. Banzon confirmed that is correct.

Commissioner Booth followed up on Commissioner's Sasaki earlier comment and stated his understanding is that HCD is going to form an ad hoc committee and that the Commission representing BSC will assist that committee to quickly come up with code changes, and they will utilize their individual and collective expertise.

Chair Batjer stated HCD is not here to answer that question.

Ms. Marvelli clarified this motion is regarding the creation by the Commission.

Commissioner Booth assumed there will be a lead agency to come up with a code change and that some of the Commission members would assist that committee with their expertise, so basically it would be BSC's ad hoc committee helping their ad hoc committee come up with proposed changes that would come back to the full Committee for approval.

Commissioner Mikiten stated the Commission's ad hoc committee would not be making suggestions based on their professional experience or about the content of the code, but more so about facilitation of the process and ensuring that by the time all these other entities present the proposals to the Commission that all their bases are covered.

Commissioner Santillan asked what the purpose would be for the Commission's ad hoc committee.

Ms. Banzon advised the ad hoc committee will be created to advise the Commission.

Commissioner Santillan stated other state agencies have expressed they will be forming ad hoc committees of their own, independent of the Commission. He asked what the Commission's role would be.

Chair Batjer stated perhaps the Commission should allow those people who would be offering the code to do the normal process, hold the proper forum and workshops, and then bring the code before the BSC.

Ms. Banzon agreed with Chair Batjer that the normal process take place. This issue is within the jurisdiction of the HCD, and in their letter they have stated they will form their own ad hoc committee, which is the proper process. If the Commission were to form their ad hoc committee, they are limited to that committee providing the BSC with advice and expertise.

Chair Batjer asked whether there would be anything that would limit HCD asking one or two of the commissioners to serve on their ad hoc committee.

Ms. Banzon stated under the regulations, the BSC Executive Director, Mia Marvelli, is the one who represents the Commission.

Chair Batjer asked for further clarification and gave an example that if HCD sees one of the single commissioners as an expert, could that individual serve as a citizen as opposed to a commissioner.

Ms. Banzon stated the commissioner could serve as a citizen; however, the commissioner needs to understand the incompatibility of roles between approving regulations versus proposing. It may be necessary for that commissioner to be excluded from the voting process, which could alleviate that role incompatibility.

Ms. Marvelli clarified there are two different ad hocs being discussed: One would be if the Commission chose to have an ad hoc committee to discuss amongst themselves all of the information provided and come up with recommendations to the various state agencies; then each state agency would develop their own committee, develop the regulatory language, and bring it back to the Commission for approval at a future date.

Commissioner Sasaki stated his understanding is if the Commission establishes an ad hoc committee, that it is that committee's responsibility to advise the Commission. He stated his opinion that even though details are not firm, the Commission should have an ad hoc committee for the Commission because it is an important code issue here and now.

Commissioner Patel agreed with the urgency of the matter. His concern is if they establish an ad hoc committee, it would be limited to only the commissioners' knowledge base. He asked whether it would be expeditious if they were to direct a state agency or ask BSC to organize that task force to begin work as soon as the investigative results came out, assemble that group, and then report back to the Commission.

Ms. Banzon stated this is something for further consideration due to the conflicts involved and is not prepared to answer the question at this time.

Commissioner Patel asked if there were no commissioners on those committees and if it was just a working committee if that would be better.

Ms. Banzon confirmed that would be better since there is a separation.

Chair Batjer asked if the Commission were to form an ad hoc committee today just to give advice, would those people be disallowed from the voting process on any future proposed code.

Ms. Banzon stated it would be on a case-by-case basis, but there is that possibility.

Commissioner Booth agreed that it is an urgent issue, but suggested waiting to see what HCD comes up with to determine what BSC can or cannot do. He stated he is reluctant in forming a committee that does not have a purpose at the moment.

Chair Batjer asked whether it would be helpful to the commissioners if Ms. Banzon further researched the Bagley-Keene rules to make sure what the advisory roles and responsibilities of the commissioners are and the voting impact of that individual commissioner on that ad hoc committee.

Commissioner Booth wanted clarification on what HCD is going to do.

Chair Batjer suggested HCD be agendaized to present at the next Commission meeting.

Commissioner Sasaki stated the reason for moving forward today and establishing the ad hoc committee for the Commission is because of its urgent nature and no one is stepping up to take the leadership role currently. He stated this incident took place almost a year ago, and he would like to see action rather than inaction even though things are not figured out.

Commissioner Mikiten stated he understands the impetus to have something happen now; that it has been a slow process. He would like to get clarity on what that ad hoc committee is and what it can do in order to ensure the right people are on the committee. Another option would be to have the ad hoc committee that works with staff and counsel to figure out what it could do. He stated he wants clarification on the committee first prior to establishing the committee. If that committee is only able to talk to other agencies about the process, that is already in place in the form of BSC staff. Staff could advise the Commission what benefit an ad hoc committee could provide.

Ms. Marvelli stated that this particular item may be beyond staff's expertise and would be looking to other state agencies for that expertise. Her vision of the ad hoc committee was to have it look at the information and make a recommendation to all the state agencies. The state agencies would be the ones writing the code, if deemed necessary, and then brought back to the Commission for approval.

Commissioner Sasaki stated if the vote to establish the committee was put off until the next commission meeting, it would not be until July. He reiterated that this is an important issue and the Commission could have a role here, and he requested the Commission move forward with the vote today.

MOTION: Commissioner Sasaki made a motion to establish an ad hoc committee of the Building and Standards Commission to review information on exterior elevated elements as it relates to the Berkeley balcony collapse, and it was seconded by Commissioner Mikiten.

Commissioner Santillan requested a friendly amendment that counsel provide direction, and that at the first meeting of the ad hoc committee they establish the parameters, the rules, and what the ad hoc committee is going to do.

MOTION: Commissioner Sasaki made a motion to establish an ad hoc committee of the Building and Standards Commission to review information on exterior elevated elements as it relates to the June 16, 2015 Berkeley balcony collapse, and at the first meeting of the ad hoc committee will be advised by counsel of the roles and responsibilities of said ad hoc committee,

and it was seconded by Commissioner Mikiten.

Commissioner Patel stated Commissioner Sasaki could be a key player on the ad hoc committee and does not want to see his voting ability as a commissioner negated in any way.

Commissioner Sasaki stated he sees his role with the Building Standards Commission ad hoc committee and wouldn't see himself going to these other agencies.

The vote was unanimous to accept the motion.

(Whereupon, a short recess was taken.)

Chair Batjer asked for volunteers to serve on the ad hoc committee.

Commissioner Sasaki stated there are a number of absent commissioners that may be interested.

Chair Batjer stated between now and July other members may volunteer since she will take volunteers and then appoint.

Ms. Banzon reminded the commissioners to be aware of the Bagley-Keene requirements of over two commissioners.

Chair Batjer appointed Commissioner Sasaki to the ad hoc committee. An inquiry to the missing commissioners will take place telephonically with counsel present.

10. DISCUSSION ITEM REQUESTED BY COMMISSIONER MIKITEN:

Create a subcommittee or workgroup of the commission to facilitate communication and the process by which people with disabilities participate in the code creation process.

Commissioner Mikiten stated in January he agendaized this item for creating a subcommittee that would work on improving the code process, with the goal of having it be more transparent, more understandable, and more inclusive, especially for the disability community that had felt excluded from the process so far. The Commission has had several substantive and useful conference calls and discussions with the secretary, executive director, counsel, and other people to come up with what would be the best approach to create something that all the public would be able to engage with more easily. What they tried to do was to create a structure that could address four things: training and education, inclusiveness; better and earlier outreach; and a better format for communicating the code changes. Everyone in these discussions was enthusiastic and dedicated to all of these goals. The hope is also that BSC and DSA staff will have a cleaner process and more support from the community if things are improved. What was discovered after having these discussions with counsel is that the Commission does not have the jurisdiction to create a subcommittee to do all of these things, so other ideas were examined. The Commission, as a group, is only able to approve, disapprove, and send back for further study; however, the secretary and executive director have some additional roles that the commissioners do not have. There is a work in progress that will be relayed over to the secretary.

Chair Batjer stated she appreciated the personal time spent by Commissioner Mikiten and others on these important issues. She stated as secretary of Government Operations Agency,

Department of General Services (DGS) is one of the nine departments within her agency, and Director Kim of DGS reports through her to the governor. One of the entities within the DGS is the Division of State Architect. She has instructed DSA, and it has been memorialized within the strategic plan just put forward by Director Kim the following: "As part of the DGS 2016 strategic plan, the Division of State Architect has set a goal to increase collaboration and outreach with the disability access community and other stakeholders. In an effort to implement this goal, DSA will initiate the following outreach and communication activities..." She stated she will not go into a lot of minutia because she has directed DSA to work the details out. She and Commissioner Mikiten will be working with DSA and counsel to work through some of these issues. They will reconvene a regular advisory task force meeting for the disability access community. They will expand access code training and education programs to local building departments and other interested parties. They will include persons with disability in the presentation of access code education programs so attendees receive a client's perspective. They will offer a specialized and exclusive code education class to develop a better understanding of the code and the regulatory process. They will expand outreach to a broader audience and use existing organizations and agencies to educate and increase participation in the wider disability constituency. They will seek ways to better educate businesses and the public that the ADA and access standards are not static and dispel 'mythologies' of access requirements for both advocates and businesses. They will increase earlier engagement of stakeholders in the access code process. They will display proposed access code amendments to that clearly identify existing code and proposed amendments in a much more digestible and understandable display and access to all of us.

Chair Batjer stated serious efforts are being made to capture much of the testimony at the January 20 and 21, 2016 commission meeting as it is part of the strategic plan. There are dates that are going to be associated with this. She and Director Kim will ensure that these things are timely completed, and discussions are underway.

Commissioner Mikiten stated even though this is not a subcommittee as he originally envisioned, he is hopeful that each of the elements will make a big difference.

Chair Batjer stated there will not be a vote today since an ad hoc committee could not be formed as it is outside the Commission's purview per advice of counsel; however, as secretary of the Government Operations Agency, she and Director Kim will ensure things happen.

Questions or Comments from the Public:

Bill Zellmer, who works with Sutter Health as a code-based accessibility expert, as well as president of the Certified Access Specialist Institute (CASI), voiced his appreciation to the Commission. He has been a participant in previous meetings and witnessed the very strong feelings being expressed by frustrated audience members. He gave his support as far as code clarity on behalf of Sutter and CASI.

Dawn Anderson wanted to applaud the chair and commissioners for acknowledging the public and developing these guidelines. She asked if there will be any additional resources provided to DSA with regard to the strategic plan.

Chair Batjer stated she and Director Kim will ensure that they have the resources they need to develop and address each one of the items she previously outlined.

Ms. Anderson asked which ones of those items are outside of their due diligence now as an

agency that would be an added effort.

Chair Batjer answered that some of the things she outlined were no longer actively being done; for example, using the advisory task force of the disability access community to regularly advise DSA, which was disbanded. Expanding code education and training, working more actively with local building departments has been done from time to time, but that is increasing. Seeking ways to better educate businesses and the public that the ADA and access standards are not static and dispel 'mythologies' of access requirements for both advocates and businesses will address 4459 issues in order to clarify code. We are currently not displaying the proposed access code amendments clearly. So there are other things that have been done, but have not been addressed recently and that will be undertaken.

Ms Anderson reminded the commissioners that there is another agency called the California Commission on Disability Access, and their mission is to champion some of these items. She suggested there be some liaison between that group and DSA. She stated if there are any grievances to this process, direct them to the ADA coordinators of the different departments, including DSA. Another option would be a performance report card as to how the agency is following through on these items. Under Senate Bill 1186, there is a state tax of \$1 for business licenses. She stated she has not seen much accountability for that tax, and that might be another good item to put on the report card to find out where that money goes. She offered her effort for the advisory task force and her continued participation with the Commission.

Hollynn D'Lil expressed her gratitude and appreciation on the action being taken and the work that has done; however, she pointed out that the public should be allowed an opportunity to participate in creating this new process. This is the first she has heard of it. She requested the proposed items be sent out to the disability community and to all who have requested information so that they can provide input on this process. She suggested there be another meeting prior to adopting the items affording those that are affected the opportunity to participate in the discussion. She also suggested when people renew their business license it would be a good opportunity to educate people as to what the requirements are for accessibility. Another suggestion posed would be to provide travel expenses to Sacramento. There is a high correlation between poverty and disability. She stated many times it has been requested to the DSA that a side-by-side comparison of the proposed and existing code be provided and the reasoning, as well as any other relevant regulatory or legal information, and that request has been ignored. She requested the language be modified to provide that comparison with overstrike and underline provided in words for those with visual impairments.

Susan Chandler, President of Californians for Disability Rights, originally known as the California Association of Physically Handicapped, stated in 1970 this group was responsible for getting the code changed and set up for people with mobility impairments. She expressed her frustration every time notification of a code change is received and that the DSA does not understand the needs of a disabled person and people need to be educated. She agreed with what Ms. DeLil and Ms. Anderson previously stated.

Rick Halloran, building inspector, offered his support on the progress being made, and that the disbanding of the state architect's advisory council was a huge mistake. He stated he agreed with all the previous callers. He added that as a teacher on accessibility in California, he has brought in an end user, such as a visually impaired person, to speak about protruding objects. He found it useful to get the perspective from the people that actually have to use the code on a daily basis. He stated he is in agreement with getting persons with disabilities involved in the code development

and education process. California Commission on Disability Access (CCDA) is looking into statewide training. He also discussed the tax on business licenses is being raised, and that needs to be coordinated with CCDA.

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

11. DISCUSSION ITEM REQUESTED BY COMMISSIONER BARTHMAN:

Chair Batjer stated that Commissioner Barthman requested at the January 20, 2016 meeting that CBSC staff to attend other state agency (code development workshops) meetings. She requested that due to his absence that this be moved to a future agenda so that he can participate in that discussion.

12. FUTURE AGENDA ITEMS:

Chair Batjer asked if there were any future agenda items from the commissioners and the public, and there were none.

Questions or Comments from the Commissioners:

No questions or comments from the Commissioners.

Questions or Comments from the Public:

No questions or comments from the public.

13. ADJOURN

MOTION: Secretary Batjer entertained a motion to adjourn the meeting. Commissioner Booth made a motion, and it was seconded by Commissioner Santillan. **The vote was unanimous.**