

CALIFORNIA BUILDING STANDARDS COMMISSION

MEETING MINUTES

December 12, 2017

1. CALL TO ORDER

Chair Batjer called the meeting to order at approximately 10:09 a.m., 400 R Street, First Floor Hearing Room, California Victim Compensation Board, Sacramento, California.

ROLL CALL:

Commissioners Present:

Secretary Marybel Batjer, Chair

Steven Winkel, Vice Chair

James Barthman

Larry Booth

Elley Klausbruckner

Erick Mikiten

Peter Santillan

Kent Sasaki

Juvilyn Alegre

Commissioners Absent:

Raj Patel

Vice Chair Winkel led the Commission in the Pledge of Allegiance.

Chair Batjer stated the Board has just learned of the tragic death of the mayor of San Francisco, Mayor Ed Lee. No further details were available at this time. She stated Mayor Lee was a great champion of his city, and he will be sadly missed. She extended condolences to his family and to the people of San Francisco. Chair Batjer also gave an update on the fires raging in Southern California. She expressed gratitude to the hard-working firefighters and responders.

2. REVIEW AND APPROVAL OF OCTOBER 17, 2017 MEETING MINUTES

Questions or comments from the commissioners:

No questions or comments from the commissioners.

MOTION: Chair Batjer entertained a motion to consider approving the meeting minutes from October 17, 2017. Commissioner Santillan made a motion to approve, and it was seconded by Vice Chair Winkel. The vote was unanimous to accept the motion.

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

Chair Batjer stated comments from the public on issues not on this agenda may be briefly discussed, but no action may be taken by the Commission.

Questions or comments from the public:

There were no public comments at this time.

4. EXECUTIVE DIRECTOR REPORT

Chair Batjer stated Mia Marvelli, California Building Standards Commission (CBSC) Executive Director, will provide an overview of the commission's business.

Ms. Marvelli stated there will be presentations today from three state agencies requesting approval of their final rulemakings to make the Exterior Elevated Element (EEE) emergency regulations permanent in the code. As part of that process, the CBSC was required to submit a legislative report pursuant to Senate Bill 465. She stated the EEE subcommittee provided their recommendations at the October commission meeting, and the BSC staff incorporated those recommendations into a report they have been assembling for the last several months. That report was reviewed by the subcommittee as well as the Department of General Services (DGS) and was submitted early to the legislature on December 11, 2017. This report is available on both the BSC and the DGS websites. She stated she is available to assist anyone in locating the report. She stated as a result of that, BSC will be working with several other state agencies, including Department of Community Development (HCD), Division of State Architect (DSA), and the Office of State Fire Marshal's (SFM), to conduct workshops over the next few months to incorporate, I research and develop regulations in response to those recommendations along with public comments during the emergency certified rulemaking process.

Ms. Marvelli discussed details of the upcoming triennial cycle. She stated the Coordinating Council met last month, and the agencies are beginning their workshops to develop regulations. Each year an important part of the triennial process is the solicitation of Code Advisory Committee members. Information Bulletin 17-03 was issued on November 30, 2017, and that announced the call for applications for the code advisory committees. That application window is open until January 5th. She stated every three years approximately 54 members are selected, for six code advisory committees, comprised of roughly nine members. Unique to the CBSC process, there are representatives from the public, building design professionals, the construction industry, access representatives, local government officials, fire officials, and other affected parties. Their purpose is to review all of the proposed regulations by the state agencies and make recommendations to the commission; thereafter, the state agencies have an opportunity to review those recommendations and modify their proposed regulations prior to the public comment period. She discussed the selection process as follows: After the applications are submitted, CBSC staff assembles them for the Code Adoption Committee, who reviews the applications at a subcommittee meeting; the nominations are presented to the commission in April 2018, and the 54 or so members are selected at that time. The committees will convene sometime over the summer, and they will review the proposed regulations.

Ms. Marvelli stated CBSC has been working with Commissioner Booth and Commissioner Barthman on the strategic plan. She deferred to Michael Nearman of BSC to give a brief overview.

Mr. Nearman stated Commissioners Booth and Barthman have been assisting in updating CBSC's strategic plan. Every three years, the annual process is to review the plan, update commissioner names, and update information regarding legislative and regulatory changes that impact the commission. In order to update CBSC's vision and mission statements, this year the commissioners were asked to review the plan and give suggestions and recommendations. There will be a teleconference meeting in January to discuss the next steps in the development of the strategic plan, with April being the tentative date to present the updated strategic plan to the Commission. Mr. Nearman thanked the commissioners for their input.

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.

5. CERTIFICATION OF EMERGENCY BUILDING STANDARDS

Chair Batjer stated three state agencies are requesting certification of compliance and permanent approval of the emergency building standards pertaining to exterior elevated elements in the 2016 California Building Code and the California Existing Building Code for Items 5a, 5b and 5c. These emergencies were first approved by CBSC January 27, 2017. Pursuant to the Administrative Procedure Act, emergency regulations are effective for only 180 days. Two readoptions may be approved, each for the period of 90 days. During the June 20, 2017 and October 17, 2017 commission meetings, the Commission approved readoption of the emergencies, allowing the state agencies additional time to complete the certifying rulemaking process.

5a) Gary Fabian, CBSC Associate Architect, presented summary information of the certifying rulemaking processes for the emergency regulations for three state agencies concerning the exterior elevated elements. BSC staff will provide an overview and the partner agencies will present their own requests along with any details. He stated CBSC is requesting approval to permanently adopt emergency regulations filed as BSC EF 01/17, which amend the California Building Code, Part 2, Title 24, California Code of Regulations, and California Existing Building Code, Part 10, Title 24, California Code of Regulations, as amended during the certifying rulemaking process. The emergency regulations modified sections of these codes specific to the enhancement of design, construction, and inspection for exterior elevated elements for specific nonresidential buildings per Health and Safety Code 18934.5 and include provisions in Chapters 1, 16, and 23 of Part 2 and Chapter 1 of Part 10. He stated CBSC now seeks to make these regulations permanent. The emergency regulations were primarily based on an early draft edition of the 2018 International Building Code (IBC) and the companion 2018 International Existing Building Code (IEBC). During the certifying process, CBSC conducted a 45-day public comment period from September 8, 2017 through October 23, 2017, receiving a number of comments. Due to the nature of the comments, any substantive changes would have necessitated an additional 45-day public comment period and likely stakeholder input.

CBSC would like to consider these comments, but in a future rulemaking cycle due to the time constraints of the certifying rulemaking process. This will afford enough time to conduct pre-cycle workshops and code advisory committee review and do it properly. CBSC's plan is to hold a workshop in early 2018 to vet submitted comments having

merit, and a draft agenda is underway. This action may result in amendments being proposed for the 2019 California codes, the next triennial edition. Also during that period, the commission's EEE subcommittee presented recommendations for further actions of the agencies, as previously discussed by Ms. Marvelli. Upon review, it was concluded that there was insufficient time to develop additional measures during the certifying process, so they opted not to incorporate any of those recommendations at this time. Additionally, during that same 45-day comment period, ICC published the final version of the 2018 IBC and IEBC containing the final language that was not substantially different than that of their draft language that CBSC had used for the emergency development. He stated BSC commented to its own package and subsequently opened a 15-day comment period so that California's permanent language would be identical to that of the model codes. They accepted their own 45-day comments to align the text with model codes. The 15-day period was conducted from November 2, 2017 to November 17, 2017, yielded one public comment, which was a resubmission of a 45-day comment and did not address the substance of the proposed 15-day language (included only the text update to match the model codes). The emergency regulations were approved January 27, 2017 by this Commission, effective upon filing with the Secretary of State on January 30, 2017. The regulations were originally set to expire July 29, 2017, and then subsequently reset to expire October 27, 2017 under the first readoption and again under a second readoption, which has an expiration date of January 26, 2018, all so that CBSC could conduct matters associated with the certifying rulemaking in order to make the emergency regulations permanent. Gary stated CBSC has proceeded with diligence in the pursuit of completion of the certifying rulemaking process, including: (1) consideration of submitted public comments; (2) determination if additional edits to the measures were necessary and, if so, making those edits; (3) finalization of the rulemaking documents so the Commission can take action at today's meeting. He stated pursuant to Health and Safety Code 18909, 18930, and to Government Code Sections 11346.2 through 11347.3, CBSC requests approval for the permanent adoption of regulations of BSC EF 01/17 emergency rulemaking that was approved by the commission on January 27, 2017 as amended during the certification process.

Questions or comments from the commissioners:

Vice Chair Winkel asked for clarification whether there was a modification made to the original emergency related to the precise language from the 2018 International Building Codes and whether it was the only change.

Mr. Fabian confirmed that there were minor grammatical changes that were made in order to align California with the model code, such as commas and singular versus plural on five of the provisions.

Commissioner Santillan asked if the unaddressed comments due to time constraints are kept on file to be used when the rulemaking process begins again or do the stakeholders have to resubmit those for reconsideration.

Mr. Fabian stated the workshops will be the initial platform for the public to re-launch them; however, CBSC already has a workshop agenda formulated that would kick start that process. He confirmed that anything received during the 45-day and 15-day comment period during the certifying is in the rulemaking file and is duly noted. The agenda is developed from that input.

Questions or comments from the public:

No questions or comments from the public.

MOTION: Chair Batjer entertained a motion to consider the California Building Standards Commission's request to approve the certification of compliance and permanent approval of emergency building standards pertaining to exterior elevated elements in the 2016 California Building Code, Part 2, and the 2016 California Existing Building Code, Part 10. Commissioner Sasaki made a motion to approve, and it was seconded by Vice Chair Winkel. The vote was unanimous to accept the motion.

5b) Emily Withers, Codes and Standards Administrator II, Department of Housing and Community Development (HCD), presented a brief overview. Ms. Withers thanked Mr. Fabian for his comprehensive discussion of the emergency regulations related to exterior elevated elements and stated she will not repeat the same information, as all HCD activities were coordinated with CBSC. She stated HCD requests approval for permanent adoption of emergency regulations filed as HCD EF 01/17, which amend the 2016 California Building Code and the 2016 California Existing Building Code as amended during the certifying rulemaking process. These emergency regulations, based on draft versions of the 2018 model codes, are specific to the enhancement of design, construction, inspection, and maintenance of exterior elevated elements for residential buildings, and include sections in Chapters 1, 16, and 23 of the California Building Code and Chapter 1 of the California Existing Building Code. HCD conducted a 45-day and 15-day public comment period. HCD received the same comments as

CBSC, made the same modifications, and coordinated with CBSC before the final submittals.

Ms. Withers stated HCD will continue evaluating the comments received during the public comment periods and will attend the CBSC workshops in early 2018 and may hold another workshop to specifically address the application of these standards to residential occupancies. This may result in amendments being proposed for the 2019 California Building Code, 2019 California Existing Building Code, and potentially the 2019 California Residential Code. HCD has issued Information Bulletin 2017-01 informing local code enforcement agencies, third-party agencies for factory-built housing, and other interested parties of the emergency regulations. Supplements to Information Bulletin 2017-01 were issued after the first and second readoption; another supplement will be issued if the regulations are permanently approved. On behalf of HCD, she thanked the Commission for their review of their certification and requested approval.

Questions or comments from the commissioners:

No questions or comments from the commissioners.

Questions or comments from the public:

Jackie Donohoe, mother of Ashley Donohoe and aunt of Olivia Burke who died in the Berkeley balcony collapse, thanked the commission for their hard work and the changes that have been made.

Chair Batjer stated she appreciated her comments and that the commission continues to give their condolences.

MOTION: Chair Batjer entertained a motion to consider the Department of Housing and Community Development's request to approve the certification of compliance and permanent approval of emergency building standards pertaining to exterior elevated elements in the 2016 California Building Code, Part 2, and the 2016 California Existing Building Code, Part 10. Commissioner Barthman made a motion to approve, and it was seconded by Commissioner Booth. The vote was unanimous to accept the motion.

5c) Diane Gould, Supervising Structural Engineer, Codes and Standards Unit, Division of the State Architect – Structural Safety Section (DSA-SS) presented a brief overview. Ms. Gould stated CBSC and HCD already provided a detailed summary; therefore, she

will attempt not to reiterate too much of the information. She stated DSA requests approval to permanently adopt the emergency regulations filed as DSA-SS/CC EF 01/17, which amend the California Building Code, Part 2, Title 24 and the California Existing Building Code, Part 10, Title 24 as amended during the certifying rulemaking process. These emergency regulations modified sections of these codes specific to the enhancement of design, construction, and inspection of exterior elevated elements for specified public school and essential services buildings for which DSA has authority, and include provisions in Chapters 1, 16, 16A, and 23 of Part 2 and Chapter 1 of Part 10. She stated DSA now seeks to make these regulations permanent. DSA has worked together with BSC and HCD in completing the necessary certifying rulemaking activities, including the 45-day public comment period conducted simultaneously by BSC, HCD, and DSA, as well as a subsequent 15-day public comment period, in order to seek permanent adoption of these emergency provisions. She stated DSA's intent in seeking the emergency provisions and now permanent adoption was to bring forward into the current California Building Code provisions pertaining to design, construction, and inspection of exterior elevated elements that have been published in the 2018 IBC and IEBC, which will serve as the model code for the 2019 California Building Code. She stated CBSC, HCD, and DSA received many comments during the 45-day public comment period, as well as recommendations from the Commission's exterior elevated elements subcommittee that were presented during the October 2017 meeting. If DSA had acted to propose changing the regulatory language in response to these comments that would have amounted to a substantive change, which would then have necessitated an additional 45-day public comment period and stakeholder input.

As DSA has noted in their final statement of reasons, because they are operating under the time constraints of the certifying rulemaking process and wish to complete the process before the final expiration of the emergency provisions in January 2018, DSA intends to evaluate and consider the comments received from both the public and subcommittee in a future rulemaking cycle. This will afford sufficient time to conduct the necessary pre-cycle workshops and code advisory committee review that is needed when substantive changes are proposed. DSA plans to attend the January 2018 workshop, along with CBSC and HCD, to evaluate and consider these comments and recommendations. She stated DSA conducted a 15-day public comment period in order to make nonsubstantive changes intended to align their proposed language with the now published IBC and IEBC provisions. This was needed because DSA's original emergency provisions were based upon an unpublished draft language. CBSC, HCD, and DSA received very similar comments from all their commenters during the 45-day comment period. DSA had a typo regarding inspection of the waterproofing system. She stated pursuant to Health and Safety Code 18930 and Government Code Sections

11346.2 through 11347.3, DSA respectfully requests approval for the permanent adoption of regulations of DSA-SS/CC EF 01/17 emergency rulemaking that was approved by this Commission on January 27, 2017 as amended during the certification process.

Questions or comments from the commissioners:

No questions or comments from the commissioners.

Questions or comments from the public:

Dennis Richardson, American Wood Council, thanked the Commission for considering and following through to make these code changes permanent. He stated he looks forward to participating in the future workshops.

Chair Batjer thanked him for his participation.

MOTION: Chair Batjer entertained a motion to consider the Division of the State Architect's request to approve the certification of compliance and permanent approval of emergency building standards pertaining to exterior elevated elements in the 2016 California Building Code, Part 2, and the 2016 California Existing Building Code, Part 10. Vice Chair Winkel made a motion to approve, and it was seconded by Commissioner Mikiten. The vote was unanimous to accept the motion.

6. CHANGE WITHOUT REGULATORY EFFECT

6a) Chair Batjer stated The BSC is requesting a change without regulatory effect to amend Chapter 31, Sections 3109.4 through 3109.6 of the 2016 California Building Code, Part 2 of Title 24, for consistency with the Swimming Pool Safety Act recently amended by SB 442. CBSC is required to reprint the Swimming Pool Safety Act pursuant to Health and Safety Code Section 18942(b).

Alexander Hunter, Associate Governmental Program Analyst, appeared on behalf of the California Building Standards Commission. He stated BSC is proposing a change without regulatory effect to the 2016 California Building Code, Chapter 31, Sections 3109.4.4 through 3109.6. These changes are based on the enactment of SB 442, Chapter 670, Statutes of 2017, which becomes effective January 1, 2018. This bill amends the Swimming Pool Safety Act, the text of which is required to be published in Title 24 pursuant to building standards law. He stated other non-substantive corrections were made to several authorities and referenced citations. Due to the bill's impending

effective date of January 1, 2018, it gives BSC reason to propose this change without regulatory effect to align the current version of Title 24 with the updates to statute. The proposed change meets the requirements of the Administrative Procedure Act, building standards law, as well as the California Administrative Code Section 1-421, items 5 and 6, for a change without regulatory effect. The criteria includes 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: (1) the regulatory provision is inconsistent with and superseded by the change statute; and (2) the state adopting agency or state proposing agency has no discretion to adopt a change which differs in substance from the one chosen. On behalf of CBSC, he requested the Commission's approval of the proposed change without 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: Chair Batjer entertained a motion to consider the California Building Standards Commission's change without regulatory effect to amend Chapter 31, Sections 3109.4 through 3109.6 of the 2016 California Building Code, Part 2. Commissioner Booth made a motion to approve, and it was seconded by Commissioner Barthman. The vote was unanimous to accept the motion.

6b) Chair Batjer stated California Building Standards Commission is requesting another change without regulatory effect to align with the recently amended Swimming Pool Safety Act. CBSC is requesting a change without regulatory effect to amend Appendix V, Sections AV100 through AV100.9 of the 2016 California Residential Code, Part 2.5 of Title 24.

Alexander Hunter stated this similar request to agenda Item Number 6a is also to align with Senate Bill 442 in which there is the requirement to republish the text of the Swimming Pool Safety Act in Title 24. He stated it was also reprinted in the Residential Code as well.

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: Chair Batjer entertained a motion to consider the California Building Standards Commission's change without regulatory effect to amend Appendix V, Sections AV100 through AV100.9 of the 2016 California Residential Code, Part 2.5 of Title 24. Commissioner Barthman made a motion to approve, and it was seconded by Commissioner Santillan. The vote was unanimous to accept the motion.

7. FUTURE AGENDA ITEMS

Vice Chair Winkel stated he recently received an email from a friend who is an expert witness and a fire/life safety consultant whose home burned down in the Santa Rosa urban wildland fire area. The friend relayed there may have been issues with the intumescent vents that he installed. Vice Chair Winkel urged the State Fire Marshal or local fire officials during the next rulemaking cycle to begin surveying the performance of newly built houses using the current 7A standards to determine whether they have done better or worse and whether there have been any identifiable failure modes that might need to generate some new code changes.

Deputy Crystal Sujeski, Office of State Fire Marshal (OSFM), advised they currently have an ongoing "Wildland-Urban Interface (WUI)" task force. She stated they have brought in some regulations in the intervening code cycle that were recently approved in August. Going forward, they do have agenda items, such as garage doors, decks, and opening protection. She stated within the State Fire Marshal's Office there is also damage inspection. She has personally been on the Mendocino, Santa Rosa, and Northern California fires. There are teams currently in Southern California collecting data that are looking at those 7A requirements and matching them up with the defensible space. Once the data is received, OSFM will be presenting proposals for the next code cycle.

Questions or comments from the public:

No questions or comments from the public.

Chair Batjer advised there will probably not be a meeting in January; however, Ms. Marvelli will confirm that information to the commissioners and the public.

8. ADJOURN

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