

**FINDING OF EMERGENCY  
OF THE  
DIVISION OF THE STATE ARCHITECT**

**REGARDING THE CALIFORNIA BUILDING CODE  
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 2  
ACCESSIBILITY TO PUBLIC BUILDINGS,  
PUBLIC ACCOMMODATIONS, COMMERCIAL BUILDINGS AND  
PUBLICLY FUNDED HOUSING**

Government Code Section 11346.1 requires a finding of emergency to include a written statement with the information required by paragraphs (2), (3), (4), (5) and (6) of subsection (a) of Section 11346.5 and a description of the specific facts showing the need for immediate action.

The adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

**FINDING OF EMERGENCY**

**Basis for the Finding of Emergency**

- There are five conflicts between state and federal accessibility regulations that cannot be resolved by using the more stringent of the two requirements.
- These conflicts prevent public and private building owners from constructing new facilities or altering existing facilities in full compliance with the federal accessibility regulations.
- Enforcement of these state building code provisions will force a violation of federal 2010 Americans with Disabilities Act (ADA) Standards.
- Violations of the 2010 Americans with Disabilities Act Standards, even technical ones, are violations of California Civil Code section 54 (c) and may lead to lawsuits over technical violations for fractions of an inch.
- Every newly constructed or altered toilet facility within California will be forced to violate some aspect of the 2010 Americans with Disabilities Act Standards until the 2013 California Building Code goes into effect on January 1<sup>st</sup> 2014.
- Thousands of forced violations may lead to disputes, claims and litigation that will divert attention and resources from more meaningful accessibility improvements, create discord between stakeholder groups and negatively affect the public's peace, health and safety, or general welfare.
- Correction of an error in the language of the 2010 California Building Code Supplement, scheduled to go into effect July 1, 2012, is also part of the proposal.
- The Emergency Regulations' last item provides limited relief for facilities that have complied with the 2007 or 2010 CBC for elements regulated by the five conflict items; these elements will not be required to be upgraded until they themselves are modified or replaced. This is consistent with the relief provided by the 2010 ADA Standards in similar situations.
- The Emergency Regulations will resolve these irreconcilable conflicts, correct the language error, eliminate uncertainty about the accessibility requirements and increase compliance with both state and federal regulations.
- The Emergency Regulations will be in effect until they are superseded by the 2013 California Building Code on January 1, 2014.

## **Background**

- The Division of the State Architect develops accessibility regulations for both government facilities and privately owned public accommodations and commercial facilities.
- These accessibility regulations must meet or exceed the requirements of the 2010 Americans with Disabilities Act Standards
- The U.S. Department of Justice issued the 2010 Americans with Disabilities Act Standards on September 15, 2010.
- After March 15, 2012, the 2010 Americans with Disabilities Act Standards became the only option for compliance with the federal requirements.
- The issuance of the 2010 Americans with Disabilities Act Standards on September 15, 2012, did not allow sufficient time for the Division of the State Architect to conduct the comparative analysis, identify the five conflicts, consult with stakeholders and prepare draft changes as part of the mid-cycle supplement to the 2010 California Building Code.

## **Current Process for Aligning the California Building Code and the 2010 Americans with Disabilities Act Standards**

- The Division of the State Architect is updating the accessibility regulations under the regular building standards process for the 2013 California Building Code.
- The Division of the State Architect worked with a consultant to identify differences between the state 2010 California Building Code and federal 2010 Americans with Disabilities Act Standards through an item-by-item comparison.
- The analysis identified numerous instances where provisions of one standard are more stringent than those of the other. Compliance with both standards is possible by following the more stringent of the two standards.
- The consultant also identified where compliance with one standard would force a violation of the other.

## **Correction of Error in the 2010 California Building Code**

- This proposal also corrects an error in supplemental language scheduled to go into effect July 1, 2012, see Item No. 1 in the Summary of Proposed Regulations on Page 3.

## **AUTHORITY AND REFERENCE**

The California Building Standards Commission proposes to adopt these emergency building standards under the authority granted by Health and Safety Code Sections 18930 and 18949.1. Any responsibilities of the State Architect to adopt regulations relating to building standards are transferred to the California Building Standards Commission per Health and Safety Code Section 18949. The purpose of these building standards is to implement, interpret, and make specific the provisions Government Code Sections 4450 through 4461, 12955.1 and 14679; Health and Safety Code Section 18949.1 and 19952 through 19959. The Division of the State Architect is proposing this regulatory action based on Government Code Section 4450.

## **INFORMATIVE DIGEST**

### **Summary of Existing Laws**

State Building Standards Law, Health and Safety Code Sections 18929 and 18930, require that regulations applying directly to the implementation or enforcement of building standards be forwarded to California Building Standards Commission for adoption and/or approval. Health and Safety Code Section 18929.1 requires California Building Standards Commission to receive the building standards from state agencies.

Each regulation shall be adopted in compliance with the procedures specified in Health and Safety Code Section 18930 and in Government Code, Title 2, Division 3, Chapter 3.5, Article 5 (commencing with Section 11346). Health and Safety Code Sections 18949.1, 18949.2, 18949.3 and 18949.5 transfer the responsibilities to California Building Standards Commission for adopting regulations relating to building standards proposed by the Division of the State Architect Access Compliance unit. Under the authority granted by these provisions of law, California Building Standards Commission proposes this rulemaking.

### **Summary of Proposed Regulations**

A summary list of the Emergency Regulations items, along with their corresponding 2010 California Building Code Chapter 11B section numbers, is provided below.

#### **Item 1 – 1104B.3.9 Designated aisle seats**

- Correction of a typographical error during the 2010 rulemaking cycle.
- The intent was to align the number of designated aisle seats required with the ADA Standards Section 221.4.
- The faulty language requires 10 or more times designated aisle seats than required by the 2010 ADA Standard or intended by the code revision.
- Suggested Resolution - correct language to meet the original intent.

#### **Item 2 – 1115B.4.1 Accessible Water Closets**

- California's centerline dimension forces violation of the 2010 ADA Standards Section 604.2.
- Current California code requires an absolute dimension of 18" from the centerline of the water closet to the adjacent side wall.
- California regulatory agencies allow variance based on construction tolerances ranging between zero to approximately ½".
- 2010 ADA changed its prior 18" dimension to a range of 16" to 18", with no tolerances allowed outside of the range.
- Therefore a dimension of 18 ¼", which may be accepted by a California regulatory agency, violates the 2010 ADA.
- Violations of the 2010 ADA, even ones that do not reduce accessibility, are violations of California Civil Code § 54 (c) and may lead to lawsuits over technical violation for fractions of an inch.
- Suggested Resolution – adopt 2010 ADA range of 16" to 18" with an advisory to target the upper portion of the range.

### **Item 3 – 1115B.8.4 Toilet Tissue Dispensers**

- Toilet tissue dispensers at accessible water closets cannot meet both State and federal requirements for mounting location.
- Current California code requires the front edge of the dispenser to be located no more than 36" from the wall behind the water closet and to be within 12" of the front of the water closet bowl.
- The ADA requires the dispenser to be located within a range measured from the front of the water closet bowl, which places the front edge of the dispenser greater than 36" from the back wall.
- Suggested Resolution – adopt 2010 ADA Section 604.7 requirements of a range measured from the front of the water closet bowl.

### **Item 4 – 1117B.1 Accessible Drinking Fountains**

- 2010 ADA Sections 602.4, 602.5, and 602.6 provide greater accessibility through very detailed and complex requirements for the spout location and angle of the water flow for accessible drinking fountains.
- There are conflicts between the current California code and the 2010 ADA on these technical requirements.
- Suggested Resolution – adopt 2010 ADA requirements.

### **Item 5 – 1117B.3 & 1117B.5 Proportions of Characters for Visual and Tactile Signs**

- There are conflicts between the current California code and the 2010 ADA in character proportions and fonts for both visual and tactile signs.
- Suggested Resolution – align with 2010 ADA requirements to eliminate conflicts.

### **Item 6 – 1117B.5.7 Mounting Location and Height for Signs**

- Under certain circumstances tactile characters on signs complying with the current California code violate the mounting height requirements of the 2010 ADA.
- 2010 ADA specifies characters must be located within a range of 48" to 60" above the floor.
- California code specifies an absolute dimension of 60" from the floor to the center of the sign, making it possible to have characters above 60", which violates the ADA.
- Suggested Resolution – align with 2010 ADA requirements to eliminate conflicts where they exist.

### **Item 7 – 1134B.2.1, Exception 5 Limited Acceptance of Items Constructed in Compliance with Previous Codes**

- When an area within a building is being altered, the bathrooms, drinking fountains, telephones and signs along the path of travel from the primary entrance to the space being modified must be also be updated to meet current CBC accessibility codes.
- Approval of Items 2, 3 and 4 would trigger a requirement for modification of these elements, even if they had been recently upgraded to comply with the prior code. This would apply to small, non-functional variances down to fractions of an inch.
- Suggested Resolution – adopt limited exception for Items 2, 3 and 4 similar to 2010 ADA provisions allowing elements complying with the prior standard to remain until they themselves are altered.

## Small Business Effect

The Division of the State Architect has initially determined no adverse impact on small business. The proposed modifications will benefit small and large businesses by eliminating forced violations of the federal 2010 ADA Standards, thus minimizing the potential for disputes, claims and litigation. They will also provide clarity of expectations for these accessibility items and allow businesses to proceed with needed improvements without fear they will need to be redone in 18 months when the 2013 CBC goes into effect.

## Policy Statement Overview

After March 15, 2012, compliance with the 2010 Americans with Disabilities Act Standards became the sole option for complying with national accessibility requirements. The Division of the State Architect Access Compliance unit is working to update its regulations with the most stringent requirements of either the State or federal standards, but until the 2013 California Building Code is adopted and becomes effective on January 1<sup>st</sup>, 2014 there will be differences and conflicts between the State and federal standards. This emergency rulemaking package addresses the limited number of conflicts where compliance with the State standards forces a violation of the corresponding federal standards.

## **MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS**

NONE

## **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The Division of the State Architect unit has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

## **FISCAL IMPACT STATEMENT (attached Form 399)**

- A. Cost or Savings to any state agency: **NONE**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NONE**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NONE**
- D. Other nondiscretionary cost or savings imposed on local agencies: **YES**. Substantial and undetermined Cost Savings to local agencies that will not have to reconstruct facilities originally built in accordance with the current 2010 code to comply with the 2010 Americans with Disability Act Standards and the revised 2013 California Building Code.
- E. Cost or savings in federal funding to the state: **NONE**