

**FINDING OF EMERGENCY
OF THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
REGARDING THE AMENDMENT OF
THE 2016 CALIFORNIA BUILDING CODE AND CALIFORNIA RESIDENTIAL CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PARTS 2 AND 2.5**

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

INTRODUCTION

(Government Code Section 11342.545 and 11346.1)

California is faced with a lack of affordable housing as well as a homeless population resulting from several natural disasters in the form of fires, floods, mudflows, as well as social or economic circumstances. Future seismic activity may also render residents with unoccupiable homes. Although California has adopted the 2016 California Building Standards Code (CBSC) to ensure that residential structures meet minimal safety and health standards, the process of designing and completing a building in full compliance with the requirements of the CBSC may be time consuming and costly. Residents displaced from their homes or currently in a homeless situation need to find shelters immediately to avoid health hazards associated with the lack of protection from the weather, access to sanitary facilities, places to sleep and eat, and protection from extreme temperatures.

Local jurisdictions need to establish and approve housing on a very short timeline, however, they also need to ensure that the housing provided is durable and safe. Relying on the CBSC is the routine process for permitting and approving residential housing. However, there are options for housing which are available but not recognized in the CBSC, that may provide a quick cost-effective means for assisting persons without safe shelters whether on a permanent or temporary basis.

HCD is proposing emergency building standards for emergency housing which are available for adoption by local agencies and which may be used by HCD for review of local emergency housing draft ordinances upon request. See Assembly Bill 932 discussion in Background.

HCD has developed the following emergency regulations that amend the 2016 editions of the California Building Code (CBC; Part 2, Title 24, California Code of Regulations) and the 2016 California Residential Code (CRC; Part 2.5, Title 24, California Code of Regulations) as follows:

- Adds Appendix N Emergency Housing to the 2016 CBC
- Adds Appendix X to the 2016 CRC

The proposed emergency regulations to be adopted as appendices to the CBC and CRC are intended to provide a consistent and available standard by which local agencies may develop emergency housing or shelter ordinances and provide a minimum set of building standards for compliance. The proposed emergency regulations also provide a consistent standard for HCD to review, provide recommendations, and approve local emergency housing or shelter ordinances that are submitted to HCD for review. The formal adoption of these standards into the CBC and CRC also protects HCD from use and enforcement of underground regulations not formally adopted in accordance with the Building Standards Law.

Need for Emergency Adoption

The need to amend the 2016 CBC and CRC on an emergency basis is based on the following:

- Assembly Bill 932 (AB 932; Chapter 786, Statutes of 2017) directs HCD to review and approve specified local agency draft ordinances related to design, site development and operation of homeless shelters. This legislation became effective January 1, 2018.
- The City of Los Angeles is exercising its new authority under AB 932 with near-term plans to elect a temporary shelter site.
- The City of Los Angeles is currently drafting a homeless shelter ordinance pursuant to AB 932.
- California is in need of safe emergency housing due to homelessness resulting from recent natural disasters, high costs of housing, and lack of affordable housing.
- It is urgent that the state adopt building standards that establish the minimum levels for emergency housing protecting the health, welfare and safety of the public. It is also urgent that the building standards provide recognition of various types of structures suitable to be used as emergency housing.
- Standards for emergency housing are needed prior to January 1, 2020, which is the effective date of the next triennial code. (The 2016 Intervening Code Adoption Cycle has already been completed which will result in proposed code provisions effective on July 1, 2018.)

BACKGROUND

Homelessness is a serious and growing problem in California. According to HCD's report, *California's Housing Future: Challenges and Opportunities —Statewide Housing Assessment 2025*, February 2018:

- California is home to 12 percent of the nation's population, but a disproportionate 22 percent of the nation's homeless population. In extreme cases, people can become homeless, either visibly on the streets or less visibly as they experience housing instability and cope with temporary and unstable accommodations. On a single night in 2016, more than 118,000 people experienced homelessness in California. A 2017 count from the U.S. Department of Housing and Urban Development identified nearly 135,000 people experienced homelessness in California last year.
- California also had the highest number of unaccompanied youth, veterans and people experiencing chronic homelessness in the United States, with nearly one-third of the nation's youth, nearly one-fourth of the nation's homeless veterans, and more than one-third of the nation's chronically homeless residents.
- Lack of safe and sanitary shelter, homelessness, and housing insecurity are associated with a variety of poor mental and physical health outcomes. Homeless children are more vulnerable to developmental delays, depression, and mental health problems.
- For California's vulnerable populations, discrimination and inadequate accommodations for people with disabilities are worsening housing cost and affordability challenges.
- California has also faced a need for housing persons who have homes that have become unoccupiable due to earthquake, flood or fire damage and need immediate temporary housing until their permanent home or site has been rehabilitated.

AB 932 authorizes the Cities of Berkeley, Emeryville, Los Angeles, Oakland, and San Diego, the County of Santa Clara, and the City and County of San Francisco to adopt, by ordinance, reasonable local standards and procedures for design, site development and operation of homeless shelters and structures and facilities within. AB 932 also requires HCD to review the city/county draft ordinance to ensure it meets minimum health and safety standards. Currently, there are no standards in the 2016 CBC or 2016 CRC specifically addressing all types of shelters that are suitable for use as emergency housing.

Assembly Bill 2176 (Chapter 691, Statutes of 2016) authorized the City of San Jose to adopt, by ordinance, reasonable local standards for the design, site development, and operation of emergency bridge housing communities and structures and facilities within. AB 2176 also provided specific requirements for emergency sleeping cabins (as defined) which addressed lighting, heating, ventilation, single electrical receptacle, forms of egress, locks, accessibility, and smoke alarms. The provisions of AB 2176 are operative until January 1, 2022, and effective until conforming standards are approved for the CBSC.

HCD finds that provisions currently being amended to the 2016 CBC and CRC are critical and that there should be no undue delay in enacting measures to provide construction guidance to local agencies for emergency housing as well as minimum standards for reviewing and evaluating draft local ordinances for HCD approval or disapproval. The Building Standards Code Adoption Cycle consists of an 18-month intervening and 36-month triennial code adoption cycle. The code adoption cycles are established by CBSC. HCD's proposed emergency regulations will take effect upon approval by the CBSC (April 17, 2018) and filing with the Secretary of State. This is an expedited process providing enhanced safety measures significantly faster than through the 2018 Triennial Code Adoption Cycle, which results in regulations effective January 1, 2020. In view of the urgency to provide enhanced measures, intended to reduce risk factors and increase public safety, as implied by the statute's urgent language, HCD proposes the adoption of these building standards through the emergency adoption process, authorized in HSC Section 18937.

AUTHORITY AND REFERENCE

(Government Code Section 11346.1(b)(2) and 11346.5(a)(2))

The Health and Safety Code (HSC), State Housing Law, Section 17921, provides HCD with authority to propose the adoption, amendment, or repeal of building standards to CBSC in accordance with the HSC, California Building Standards Law, and provisions for the California Building Standards Code (Section 18935 *et seq.*).

HSC, Employee Housing Act, Section 17040, provides HCD authority to adopt, amend, or repeal rules and regulations for the protection of the public health, safety, and general welfare of employees and the public, governing the erection, construction, enlargement, conversion, alteration, repair, occupancy, use, sanitation, ventilation, and maintenance of all employee housing.

HSC, Factory-Built Housing Law, Section 19990, provides HCD authority to adopt rules and regulations to implement the law. California Code of Regulations, Title 25, Division 1, Chapter 3, Subchapter 1, Article 5, Section 3070, requires design and fabrication of factory-built housing to be in accordance with the applicable building standards in specified parts, including Part 11 CALGreen, of the Building Standards Code.

The California Building Standards Law also provides for the CBSC to act upon emergency standards if the proposing agency has made the finding of emergency in compliance with Government Code Section 11346.5.

HCD has determined that the adoption of these building standards is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

HSC, California Building Standards Law, Section 18937 provides that the CBSC commissioners shall act on emergency standards within 30 days, and they must act on the merit of the emergency finding as well as on the proposed standards. HSC Section 18938 requires the filing of emergency standards with the Secretary of State by CBSC only after they have been approved by the commissioners. It requires that

the standards become effective when filed with the Secretary of State or at a later date specified in the standards, and that they be published in Title 24.

INFORMATIVE DIGEST

(Government Code Sections 11346.1(b)(2) and 11346.5(a)(3))

Summary of Existing Laws

HSC Section 17922(b) provides authority for HCD to consider local conditions and propose amendments to the adopted uniform (model) codes.

HSC Section 18937 provides that a proposing agency can propose a finding of emergency, in accordance with Government Code 11346.1 and 11346.5.

HSC Section 18938 requires the filing of emergency standards with the Secretary of State by CBSC only after they have been approved by the commissioners. It requires that the standards become effective when filed with Secretary of State or at a later date specified in the standards, and that they be published in Title 24.

HSC Section 17951 authorizes the governing body of any city or county to prescribe fees for permits, certificates or other forms or documents, or to prescribe fees to defray the costs of enforcement carried out by local enforcement agencies.

See also section on “Other References Used.”

Summary of Existing Regulations

The 2016 California Building Standards Code, Title 24, California Code of Regulations, applies to all building occupancies (see HSC Sections 18908 and 18938) and related features and equipment throughout the state; contains requirements for structural, mechanical, electrical, and plumbing systems; and requires measures for energy conservation, green design, construction and maintenance, fire and life safety, and accessibility. Title 24 consists of several “parts” which include the California Building Code (CBC), Part 2; and California Residential Code (CRC), Part 2.5.

The 2016 CBC addresses structural strength, means of egress, sanitation, adequate lighting and ventilation, accessibility, and life safety in regard to primarily new buildings, facilities and systems. Alternative materials, designs and methods not specifically addressed in the code may be approved by the code official where the proposed materials, designs or methods comply with the intent of the provisions of the code. Buildings built in compliance with the 2016 CBC are also required to be in compliance of other “parts” of Title 24, including mechanical, plumbing, electrical, energy and green building requirements.

The 2016 CBC applies to all residential occupancies, including one- and two-family dwellings and townhouses that are not within the scope of the 2016 CRC. Unfortunately, the 2016 CBC does not include a dedicated section for all types of buildings suitable for use as emergency housing.

The 2016 CRC contains provisions for components of a house or townhouse, including structural components, fireplaces and chimneys, etc. The 2016 CRC allows residential structures as small as 100 square feet subject to the applicable provisions of the CBSC. Buildings built in compliance with the 2016 are also required to be in compliance with other “parts” of Title 24, including mechanical, plumbing, electrical, energy and green building requirements.

Other References Used.

- 2018 International Residential Code Appendix Q for Tiny Houses
- Government Code provisions for shelter crisis – Section 8698.3(h)
- Health and Safety Code requirements for camping cabins and park trailers.
- California Code of Regulations Title 25 requirements for tents, maintenance and location of specified structures and provisions for kitchens, bathrooms, heat and waste.
- California Code of Regulations Title 25, Section 724

Summary of Effect

This proposed action will make effective, upon adoption, approval by the commissioners, and filing with Secretary of State the emergency addition of Appendix N to the 2016 CBC and Appendix X to the 2016 CRC in Title 24, for buildings within HCD authority, necessitating immediate action to avoid serious harm to the public peace, health, safety and general welfare, in the event that emergency housing is needed by local jurisdictions.

Comparable Federal Statute or Regulations

There currently are no federal laws or regulations regulating erection and use of emergency shelters as allowed by local ordinances. However, specific construction or operation requirements may apply as criteria for eligibility for federal funding or program participation.

Policy Statement Overview

HCD's mission is to provide leadership, policies, and programs to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians. Specifically, related to building standards, HCD has statutory authority to adopt building standards for residential structures and accessory structures. No other state agency has primary authority to adopt building standards for residential structures.

AB 932 has specifically directed HCD to review and approve draft emergency housing ordinances from seven jurisdictions. It is important that HCD establish consistent regulatory criteria for reviewing, providing recommendations, and approving or disapproving the local ordinances.

HCD finds that the adoption of appendices in the 2016 CBC and 2016 CRC does not increase the mandatory cost to the public. The proposed regulations are voluntary, and provide code-recognized use of various types of structures for purposes of emergency housing or shelters. The regulations are available for adoption by local enforcing agencies and for purposes of integrating into local emergency housing or shelter ordinances.

Evaluation of Consistency

The proposed action is not incompatible or inconsistent with existing regulations.

HCD's proposed building standards include new provisions to the CBC and CRC in an appendix format. Appendices in the CBC and CRC are mandatory when adopted by a state agency; and available for voluntary local adoption when not formally adopted by a state agency. As appendices, HCD's proposed building standards do not conflict with, overlap or duplicate existing California building standards. As part of the certification process for making the emergency regulations permanent, HCD will provide opportunity for public comments, including comments from local and State governmental agencies, and evaluate any inconsistencies that may be identified. The proposed emergency regulations will also be evaluated for inclusion in and potential for conflict with the future 2019 CBSC to be effective January 1, 2020, for purposes of consistency.

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

(Government Code Sections 11346.1(b)(2) and 11346.5(a)(4))

HCD has determined that there are no other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

(Government Code Sections 11346.1(b)(2) and 11346.5(a)(5))

HCD has determined that the appendices are voluntary, and may become mandatory only when adopted by local agencies. HSC Section 17951(b) provides for local enforcing agencies to prescribe fees to defray costs of enforcement of the State Housing Law and building standards.

FISCAL IMPACT STATEMENT

(Government Code Section 11346.1(b)(2) A statement containing information in Gov. Code Section 11346.5(a)(6). An estimate, prepared in accordance with instructions adopted by Department of Finance, of cost or savings to any state agency, local agency, or school district.

- A. Cost or Savings to any state agency: **Unknown (see “Estimate” section below)**
- 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: **Unknown**
- E. Cost or savings in federal funding to the state: **NONE**

Estimate: Local agencies may incur additional costs related to implementation of the proposed regulations as related to development of emergency housing/shelter ordinances and building permit approvals and inspections related to construction. However, pursuant to Health and Safety Code Section 17951(b) local agencies may prescribe fees to defray the costs of enforcement carried out by local enforcement agencies. Therefore, local costs may be reduced to zero.

The proposed appendices recognize several options for emergency housing such as emergency sleeping cabins, emergency transportable units, and tents. The proposed appendices also do not require specific structures to be set up, but establish the minimum requirements for these structures if and when they are used. Therefore, HCD finds that the adoption of these appendices in the 2016 CBC and 2016 CRC results in reasonable costs or costs savings to the public because it provides building code recognition of use of these types of structures and provides the minimum requirements for public health, safety and welfare. HSC Section 17950 mandates that the application of published building standards be applied on a statewide basis, which assists in uniformity and cost affordability.