

OSHDP Office of Statewide Health Planning and Development



Hospital Building Safety Board

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HOSPITAL BUILDING SAFETY BOARD

Administrative Processes and Code Changes Committee

and

Board Procedures Committee

**Tuesday, September 22, 2015
10:00 a.m. - 4:00 p.m.**

Office of Statewide Health Planning and Development

400 R Street, Suite 452
Sacramento, CA 95811
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and

Metropolitan Water District Headquarters

700 N. Alameda Street, Suite 2-546
Los Angeles, CA 90012
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APCC Committee Members Present

Bruce Macpherson, Chair
Rami Elhassan, Vice-Chair
John Donelan
Michael Gritters
Henry Huang
Michael O'Connor
Carl Scheuerman

OSHDP Staff

Paul Coleman, FDD Deputy Director
Gary Dunger
Glenn Gall
Mohammad Karim, Ph.D.
Ramin Sadr
Chris Tokas
Jeff Trautman
Beth Wied

BP Committee Members Present

Trailer Martin, Vice-Chair
Scott Karpinen
Carl Scheuerman

HBSB Staff

Kathi Zamora, Acting Executive Director
Krista Harrington
Evet Torres, HBSB

1 **1. Welcome and Introductions**

2 Mr. Macpherson invited everyone in attendance to introduce themselves. He
3 announced that a quorum was present.

4 **2. Review the April 23, 2015 Administrative Processes and Code Changes**
5 **Committee Meeting Report**

6 Mr. Macpherson stated that the meeting report had been approved at the full Board
7 meeting. Today there were no comments from the committee.

8 **3. Review and approve proposed changes to the California Administrative Code,**
9 **Title 24, Part 1, Section 7-159 et seq. (Appeals to the Hospital Building Safety**
10 **Board) – Paul Coleman, FDD Deputy Director**

11 Mr. Coleman explained what FDD seeks to accomplish with the proposed changes.

- 12 • FDD needs to make consistencies between the Board Procedures, the
13 Administrative Regulations, and the website content.
- 14 • FDD has an informal process called Comment and Process Review (CPR), but
15 many clients and hospital representatives are concerned about retaliatory actions
16 were they to use that process. Accordingly, FDD has decided to codify the
17 process and make it part of the regulations.
- 18 • Certain types of appeals need to happen rapidly. In response, FDD is devising
19 an alternative field process.

20 Mr. Coleman stated that FDD had submitted some of the proposed standards to the
21 California Building Standards Commission (CBSC).

22 Ms. Wied and Mr. Trautman gave a presentation on the proposed changes.

- 23 • FDD seeks to promote efficiency and certainty. The existing process can be
24 cumbersome and lengthy – it can take more than six months to resolve.
- 25 • Time requirements are nonexistent.
- 26 • CPR should be codified. The informal conference under 7-161 is virtually unused
27 – facilities may be wary of it.

- 1 • OSHPD is proposing to create an Article 5.5 to be added to Article 5. Both will
2 streamline the appeals process by creating two separate appeals tracks with
3 reasonable and definite timelines.
 - 4 ○ Article 5 will maintain the process as it exists now.
 - 5 ○ CPR will be codified as a prerequisite for appeals to the Hospital Building
6 Safety Board. It will contain four levels of review: between the plan
7 reviewer and facilities; the supervisory level; the Deputy Division Chief
8 level; and the Deputy Director level.
- 9 • Time limits will be created for office response to the appellant at each level,
10 thereby providing safeguards to the industry.
- 11 • Article 5.5 will create a separate track of appeals for newer OSHPD programs
12 related to the suspension and revocation of an IOR's certification, and for
13 estimated construction cost determinations under Section 7-133.

14 **Discussion and Public Input**

15 Mr. Gall commented that in cutting all the old language, we may have lost the definition
16 of the valid appellant. Ms. Wied responded that the Health and Safety Code sets forth
17 the issues that can be brought. Mr. Trautman directed the group to 7-159(a), last
18 paragraph, which discusses valid appellants.

19 Mr. Scheuerman observed that 7-161(a) had no time requirements; for section (b) – “10
20 days after issuance” of response at Level 1 – Level 1 is open-ended. Mr. Trautman
21 agreed; he said that they were trying to maintain a degree of informality at Level 1, while
22 the concern was for quick responses at the second, third, and fourth levels.

23 Mr. Scheuerman stressed that on a construction site, time is of the essence. There
24 must be a guideline stating that without a response within a certain amount of time, the
25 appellant has the right to escalate to Level 2. Ms. Wied and Mr. Coleman said that they
26 would clarify.

27 Mr. Scheuerman referred to 7-163: what is the mechanism that moves the appeal to the
28 formal hearing level? Mr. Coleman replied that it is a written request containing the
29 necessary information. Ms. Wied added that the written request is an attempt to be
30 helpful and allow people access.

1 Mr. Scheuerman asked about 7-165(a). It would have to be a noticed hearing, and the
2 timing for setting it would have to include the notice period; however, the appellant does
3 not have the information regarding the 30-day written request and 10-day and 20-day
4 notices. Ms. Wied cautioned about being too prescriptive. Mr. Scheuerman suggested
5 having a process statement on the website; the language is in statute.

6 Mr. Scheuerman commented that under (b), the Chair of the Board receives the
7 authority to determine the location of the meeting. Did OSHPD intend to enable the
8 Chair of the Board the authority to encumber the budget in that manner? Mr. Coleman
9 replied that OSHPD expected that the Chair will always be a reasonable person.

10 Mr. Scheuerman determined with Mr. Coleman and Ms. Wied that nine members
11 constitute a quorum of the full Board. They agreed that the phrase “a quorum of the
12 voting members” should be included.

13 Referring to 7-169(a), Mr. Scheuerman felt that there was a need for a definition of
14 “sufficient.” Ms. Wied explained that this section was a vestige of all administrative-type
15 hearings as opposed to Superior Court hearings. Hearsay evidence can be used along
16 with other corroborating evidence to prove a point. Mr. Scheuerman felt it important that
17 the Board’s rulings be allowed to stand, without having anything allowing OSHPD to
18 challenge them. Mr. Coleman responded that just as the appellant can take a court
19 ruling with which he disagrees to the CBSC, OSHPD has the same right.

20 **MOTION:** (M/S/C/) [Martin/Donelan]

21 The committee moved to approve the proposed changes to the California
22 Administrative Code, Title 24, Part 1, Section 7-159 et seq. (Appeals to the
23 Hospital Building Safety Board).

24 Mr. Scheuerman felt that the two sentences requiring changes should have the wording
25 settled upon before a vote. Mr. Coleman suggested for 7-165(d), to replace “nine
26 members” with “quorum”.

27 For the last sentence of the first paragraph of 7-161(b), Mr. Scheuerman suggested to
28 insert the language “...within ten (10) calendar days of *initial appeal or issuance of the*
29 *initial ruling...*”

1 **AMENDMENT TO MOTION:** (M/S/C/) [Scheuerman/Martin]

2 The committee moved to include the language changes specified in the two
3 paragraphs above. Amendment passed unanimously.

4 **VOTE on MOTION:**

5 The committee voted unanimously to approve the original motion.

6 **4. Update on the Current Status of OSHPD code proposals to the California**
7 **Building Standards Commission, including the California Environmental Quality**
8 **Act (CEQA) analyses regarding plastic pipe and plenum air return for proposed**
9 **changes to the 2016 California Plumbing Code and California Mechanical Code –**

10 Glenn Gall, Building Standards Unit Supervisor

11 Mr. Gall stated that the OSHPD code proposals are currently under review and on
12 Public Notice – they are undergoing the Public Comment period with the CBSC.

13 In the CBSC Health Facilities Committee, many editorial comments but not much
14 substantive change had been made to the 45-Day Express Terms.

15 In the CBSC Plumbing, Electrical, Mechanical and Energy Committee there had been
16 more discussion because of some of the items. The items had been successful except
17 for one proposed for amendment and one recommended for disapproval by the
18 committee. That was for the Mechanical Code regarding the language for exceptions of
19 OSHPD 3 facilities to utilize plenum returns. Mr. Gall explained the objections.

20 He continued that a CEQA process has been announced on the website as a Negative
21 Draft Declaration. That particular code proposal is in line with what has been proposed
22 and will be adopted as model code in California. OSHPD has not yet recommended
23 that health care facility ventilation comply with American Society of Heating,
24 Refrigerating and Air Conditioning Engineers (ASHRAE) 170; OSHPD is still trying to
25 get in some other alignment with some allowances that California currently has that are
26 not recognized by ASHRAE 170. OSHPD will continue to go forward with the proposal
27 to the CBSC even with their committee's recommendation to disapprove the standard.

28 Mr. Gall reported that the other item that had received much attention in the Code
29 Advisory Committee was the plumbing proposals, particularly for use of plastic pipe in

1 many applications such as water delivery and sanitary sewage. OSHPD has proposed
2 to accept model code allowances for approved materials under the Uniform Plumbing
3 Code. This item had been previously approved and adopted by the CBSC and adopted
4 into the 2015 code, but had to be removed because of a lawsuit. A CEQA process has
5 since been completed and public hearings done at different stages. The public process
6 for the Environmental Impact Report (EIR) is currently open.

7 **Discussion and Public Input**

8 Mr. Karpinen asked about the next step. Mr. Gall answered that the proposals are
9 going ahead. OSHPD will no doubt receive comments as a result of the 45-day notice
10 and changes may be incorporated. Mr. Gall pointed out that these proposals going
11 forward are actually to adopt model code. He added that the public comments received
12 may be positive as well as negative.

13 Ms. Wied stated that regarding the Plumbing Code, during the 45-day comment period
14 they are accepting comments on the EIR. Any responses will become part of the EIR;
15 that will close the CEQA process.

16 She continued that regarding the Mechanical Code, they are addressing plenum air
17 return in three clinics, with a Negative Declaration accompanying the initial study, also
18 in its 45-day comment period. They will probably adopt the Negative Declaration.

19 **5. Update on the Administrative Processes and Code Changes Committee's** 20 **Goals and Objectives for 2015**

21 Mr. Macpherson reported that at the committee's April meeting they had devised four
22 goals for this year and beyond.

- 23 1. Moderate the proposed 2016 code amendment process.
- 24 2. Address mobile access for OSHPD field staff.
- 25 3. Help establish processes and protocols for Electronic Plan Review.
- 26 4. Help clarify field enforcement of Special Seismic Certification and Bracing.

27 The committee is in the process of setting up subcommittees to address these goals.

28 **6. Presentation: Developing a better understanding of Access Requirements per** 29 **California Building Code 11B-805**

1 Bill Zellmer of Sutter Health stated that he had previously worked at OSHPD for 13
2 years as an Architect/Plan Checker. He is now a Certified Access Specialist.

3 Mr. Zellmer proposed that the Board create an ad hoc committee to review and make
4 recommendations to Code Application Notice (CAN) 2-11B – the access CAN. He felt
5 that the document is in need of updating and the public should be involved.

6 He stated that the Access Compliance/Americans with Disabilities Act (ADA) field is
7 highly litigated. As a result of all this legal challenge, the field has become enormously
8 complicated. Even the smallest aspects of hospital construction are scrutinized for ADA
9 compliance.

10 Mr. Zellmer thus proposed that the people on the access side and the people at OSHPD
11 who write code get together. As the 2016 code rolls out in 2017, it would be a good
12 idea to meet several times over the next year to review, discuss, and recommend
13 changes to CAN 2-11B to ensure that the industry understands it better and that
14 OSHPD learns from the access side.

15 **Discussion and Public Comment**

16 Mr. Coleman stressed that OSHPD does not adopt accessibility standards and codes; it
17 only enforces them. The Division of the State Architect is the body that adopts them.

18 Mr. Zellmer responded that in the CAN that explains the code, there are OSHPD-
19 specific parts that could be explained better.

20 Mr. Coleman stated that the CAN is OSHPD's interpretation of the code. OSHPD works
21 with DSA on those interpretations to ensure that they are consistent with the intent. He
22 was not sure that another committee is necessary; the Administrative Processes and
23 Code Changes Committee would be the one to look at the CAN.

24 Mr. O'Connor felt that a fresh look at the CAN would be a good investment, and would
25 not require a lot of time. Improvements and increased clarity could result in fewer
26 issues in the field for the owners.

27 Mr. Zellmer identified the areas of concern as 11B-805 and the sub-numbering, in
28 particular access aisles around pieces of equipment.

1 Mr. Coleman pointed out that the ADA is a civil rights law rather than a building
2 standard. This will result in some differences; it would be impossible to write a CAN that
3 would cover all the issues and questions that arise. He did feel that if this committee
4 would like to take a look, OSHPD could be involved in the effort.

5 Mr. Macpherson requested Mr. Zellmer to put together some bullet points on specific
6 areas. The committee could then look at them and discern whether there is interest.
7 Mr. Zellmer agreed.

8 Mr. Huang emphasized a point Mr. Coleman had made: the regulation is already
9 complicated with many different interpretations. Mr. Zellmer would need to show how
10 forming a committee would improve the process. It shouldn't just add another body to
11 spend more time on things we have no control over.

12 Mr. Zellmer responded with an example: the regulation regarding the aisle on two sides
13 of the exam table is not in the ADA nor is it required in the Department of Justice. It is
14 required in the Building Code; at OSHPD's urging, that code section was installed. The
15 purpose of a committee would be to provide clarity on what's in the code beyond federal
16 requirements.

17 **7. Comments from the Public/Board Members on Issues Not on This Agenda**

18 Mr. Gall stated that the subject of energy provisions has received attention in this
19 committee as well as outside of it. OSHPD has had conversations with most of the
20 major providers in the state regarding how they can conserve energy in their facilities
21 while still complying with OSHPD requirements. These conversations have varied
22 according to the facilities' different interests in achieving energy conservation.

23 Mr. Gall suggested that OSHPD begin a discussion, possibly within this committee, on
24 energy conservation standards that would be applicable to health facilities. He was very
25 concerned that this conversation often takes place outside of this venue. The Governor
26 is setting targets for 2020. Regulations are being applied to health facilities that have to
27 do with energy conservation: the Energy Commission, at the behest of the Governor,
28 changed Title 20 to require low-flow fixtures. This restricts the fixtures for sale in this
29 state – there is no exception for OSHPD.

1 Mr. Gall felt that it is time for the Board and this committee to start the discussion on
2 energy provisions within the HBSB.

3 Mr. Karpinen asked the committee members if they would like a presentation on the
4 direction of energy conservation; or perhaps that would be better for the full Board.

5 Mr. Macpherson responded that the full Board needs to be aware of the situation and
6 ramifications.

7 Mr. Scheuerman noted that there are indeed code issues, but the future is on the
8 technology side. He posed the question of whether the Technology Committee should
9 also become involved.

10 Mr. Karpinen said that he was in touch with a speaker who would like to present at the
11 full Board meeting in November.

12 **8. Adjournment**

13 Mr. Karpinen adjourned the meeting at approximately 11:22 a.m.

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