

ICC TRI-CHAPTER UNIFORM CODE COMMITTEE (TUCC)



POLICY NUMBER: 19

APPROVAL DATE: December 12, 2013

SUBJECT: **Plumbing Fixture Replacement (SB 407) for Existing Single-Family Residential, Multifamily Residential and Commercial Buildings**

This guideline is developed by the Tri-Chapter Uniform Code Committee and is intended to enhance regional consistency in application and enforcement of the Building Code. Please verify acceptance of this guideline with your local building department prior to its application.

CODE REFERENCE(S):

Senate Bill 407 (2009) / California Civil Code Sections 1101.1 through 1101.8
2013 California Green Building Standards Code (CALGreen) Section 301

BACKGROUND:

As of January 1, 2014, SB 407 requires non-compliant plumbing fixtures to be replaced with water-conserving plumbing fixtures when a property is undergoing additions, alterations or improvements. Applicants seeking to obtain permits for any of these types of work will be required to replace non-compliant fixtures prior to final permit approval or issuance of a certificate of occupancy by the local building department. This law applies only to properties built on or before January 1, 1994.

Per Civil Code Section 1101.4, for any single-family residential real property, on and after January 1, 2014, building addition, alteration or improvement will require all non-compliant plumbing fixtures to be replaced with water-conserving plumbing fixtures. On or before January 1, 2017, all non-compliant plumbing fixtures shall be replaced with water-conserving plumbing fixtures (regardless of whether property undergoes alterations or improvements).

Per Civil Code Section 1101.5, for any multifamily residential real property and any commercial real property, on and after January 1, 2014, specified building addition, alteration or improvement will require non-compliant plumbing fixtures to be replaced with water-conserving plumbing fixtures. On or before January 1, 2019, all non-compliant plumbing fixtures shall be replaced with water-conserving plumbing fixtures (regardless of whether property undergoes alterations or improvements).

ISSUE(S):

This TUCC guideline is for the application and interpretation of SB 407/Civil Code Sections 1101.1 – 1101.8. The language in SB 407 appears to set very broad criteria for triggering plumbing fixture replacements. Based on the CALBO Legislative Analysis published on October 30, 2013, this TUCC guideline will establish the application of SB 407 by clarifying definitions and triggers and providing interpretation. Enforcement also presents a significant challenge to municipalities. For municipalities that have difficulties meeting the additional inspection and enforcement burdens of SB 407, this TUCC guideline includes a sample certification form by the property owner to implement SB 407. This guideline is intended to promote consistency in administering SB 407 in the ICC Tri-Chapter area.

PROPOSED GUIDELINE:

Application and Interpretation of SB 407 / Civil Code Sections 1101.1 – 1101.8

Work Not Triggering SB 407

Consistent with CALBO's analysis of SB 407 and current building codes, based on the definitions in the California Building Code, alterations and improvements are interpreted as any construction to an existing structure that enhances or improves the structure. Construction related to repairs or maintenance of the structure is not considered to be an alteration or improvement. Through this interpretation, SB 407 only applies to permitted additions, alterations or improvements. In other words, repair or maintenance will not trigger plumbing fixture upgrades.

In addition, in Civil Code Section 1101.4(a), the improvements to a single-family real property are interpreted to refer to the work on the building, not the land. For a multifamily residential or commercial real property, Civil Code Section 1101.5(d)(1)(A), (B) and (C) refers to the work on the building as the trigger. It is interpreted that the same intent was meant for single-family real property. Therefore, work on the land (work that does not require entry into the structure) is not considered to trigger plumbing fixture upgrades in the structure. Also, work that does not involve construction to the structure itself is not considered to trigger plumbing fixture upgrades in the structure.

Furthermore, work related to renewable energy systems, such as solar photovoltaic installations and electric vehicle charging stations, is interpreted to not trigger plumbing fixture upgrades as it would conflict with the state's goal of promoting and streamlining these systems. Voluntary accessibility upgrades are also interpreted to not trigger plumbing fixture upgrades.

Therefore, for existing single-family residential, multifamily residential and commercial buildings, the following **suggested** list of work is considered **not** to trigger SB 407/Civil Code Sections 1101.1 through 1101.8:

- Changes to electrical systems, e.g., electrical service upgrades
- Changes to mechanical systems, e.g., HVAC or furnace replacement, duct replacement
- Water heater replacement, piping replacement, sewer line replacement
- Re-roof
- Siding, stucco or any exterior finish replacement
- Window replacement (including sliding glass or front door)
- Chimney repair
- Dry rot repair
- Termite repair
- Foundation repair
- Seismic retrofit
- Roof-mounted solar systems
- Electric vehicle charging stations
- Building signs
- Alterations solely for the purpose of barrier removal (voluntary accessibility upgrades)
- Work not associated with the building itself is not considered to trigger plumbing fixture upgrades in the building, e.g.:
 - Swimming pools or spas (in-ground or portable)
 - Site work: Retaining walls, fences, walkways, landscaping, etc.
 - Ground-mounted solar photovoltaic systems
 - Monument signs
- Work in one building is not considered to trigger plumbing fixture upgrades in another building (e.g., work in the following structure would not trigger upgrades in the separate single-family residential building):
 - Accessory structures, sheds or patio covers
 - Detached garages
 - Second units
- Other work as determined by the Building Official

Permits for the above list of work may be obtained without triggering plumbing fixture upgrades. Please note that each jurisdiction may modify this list to meet its needs.

When Work Triggers SB 407

When the work will trigger plumbing fixture upgrades, the following clarification and interpretation is made for each type of building:

Single-family residential:

- All non-compliant plumbing fixtures will be required to be upgraded with water-conserving plumbing fixtures throughout the single-family residential building. [Civil Code Section 1101.4(a)]

Multifamily residential and commercial:

- For building additions, if the sum of concurrent building permits by the same permit applicant would increase the floor area *of the building* by more than 10%, all non-compliant plumbing fixtures will be required to be upgraded with water-conserving plumbing fixtures throughout the building. [Civil Code Section 1101.5(d)(1)(A)] This would include all common area plumbing fixtures as well as plumbing fixtures in private individual dwelling unit or tenant unit owned by the same owner.
- For building alterations or improvements, if the total construction cost in the building permit exceeds \$150,000, all non-compliant plumbing fixtures that service the specific area of the alteration or improvement will be required to be upgraded with water-conserving plumbing fixtures. [Civil Code Section 1101.5(d)(1)(B)]
 - Example: A tenant space does not contain plumbing fixtures in its space and is served by a centrally located toilet facility. When the tenant improvement construction cost exceeds \$150,000, all plumbing fixtures in the centrally located toilet facility are required to be upgraded.
 - Example: A tenant space contains plumbing fixtures itself and is also served by a toilet facility in the common area. When the tenant improvement construction cost exceeds \$150,000, only the fixtures within the tenant space would need to be upgraded.
- Any alteration to a room that contains non-compliant plumbing fixtures will require all the fixtures in that room to be upgraded to water-conserving plumbing fixtures. [Civil Code Section 1101.5(d)(1)(C)]

Interpretation for Duplex (Two-Family Dwelling) and Second Unit

Civil Code Section 1101.3 defines “single-family residential real property” as any real property that is improved with, or consisting of, a building containing not more than one unit that is intended for human habitation. It also defines “multifamily residential real property” as any real property that is improved with, or consisting of, a building containing more than one unit that is intended for human habitation.

To maintain consistency with the scope and application of the building and residential code, for purposes of applying Civil Code Sections 1101.1 through 1101.8, a real property consisting of a duplex (two-family dwelling) will be considered a single-family residential real property. Alterations to one dwelling unit will trigger plumbing fixture upgrades within that unit only and not the adjacent unit.

A real property consisting of a single-family residence with either a detached or attached second unit will also be considered a single-family residential real property. Alterations to the residence will trigger plumbing fixture upgrades within the residence only and not the second unit, and vice versa.

Clarification of “Non-Compliant Plumbing Fixture”

Please note that according to the definition of “non-compliant plumbing fixture” in Civil Code Section 1101.3(c), the existing plumbing fixture water usage/flow rate must **exceed** the amount shown to be considered non-compliant. If the existing plumbing fixture water usage/flow rate is equal to or lower than the amount shown, it is not required to be upgraded.

Implementation of SB 407 / Civil Code Sections 1101.1 – 1101.8

Enforcement of SB 407 presents a significant challenge to municipalities. Municipal budgets or technical capabilities may not currently exist to assume the added responsibilities from SB 407. For municipalities that are able to assume the responsibility, implementation would be through inspections. For municipalities that have difficulties meeting the additional inspection and enforcement burdens, this TUCG guideline includes a sample certification form by the property owner. This certification will be required prior to final permit approval or issuance of a certificate of occupancy by the local building department.

Self-certification provides a reasonable mechanism for local jurisdictions in serving as the method of enforcement as water-conserving plumbing fixtures are not life-safety items. It also ensures that property owners are fully informed of the requirements. Civil Code Section 1101.4(b) requires the property owner to upgrade with water-conserving plumbing fixtures throughout a single-family residence by January 1, 2017. Civil Code Section 1101.5(a) requires upgrading with water-conserving plumbing fixtures throughout multifamily residential and commercial real properties by January 1, 2019. The self-certification method places the responsibility on the property owner, which is consistent with these Civil Code Sections. It is also aligned with the intent of the disclosure requirements upon sale or transfer of property per Civil Code Sections 1101.4(c) and 1101.5(e).

The self-certification method may be used for existing single-family residential, multifamily residential and commercial buildings. For jurisdictions that choose not to use self-certification for any one type of building, those respective portions may be removed from the form.

For the three criteria in Civil Code Section 1101.7 that would render plumbing fixture upgrades inapplicable, the certification places the responsibility on the property owner to indicate whether any of the criteria is true. For jurisdictions that can readily verify these criteria to determine applicability of SB 407, questions 1 through 3 may be desired to be removed from the certification form.

Attached is the sample certification form with Civil Code Sections 1101.1 – 1101.8 included as part of the form. The form is designed to be comprehensive so that each jurisdiction may modify or remove any portion to meet its needs.

Guideline ≠ Legal Opinion

Please note that this guideline is developed to promote uniformity in the application and implementation of SB 407/Civil Code Sections 1101.1 – 1101.8. It is not a legal opinion. Prior to using any portion of this guideline, you are strongly advised to consult with the legal counsel in your jurisdiction.