



Planning and Development
Building and Safety Division

CITY OF BERKELEY
Planning and Development, Building & Safety Division
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GUIDELINE: PLUMBING FIXTURE REPLACEMENT (SB 407) FOR EXISTING SINGLE-FAMILY RESIDENTIAL, MULTIFAMILY RESIDENTIAL AND COMMERCIAL BUILDINGS

ISSUE DATE: January 2, 2014

REVISION DATE: April 29, 2015

This guideline is intended to enhance local consistency in application and enforcement of the California Building Standards Code. Application of this guideline is project specific and does not authorize any violation of local or state code, ordinance or law in conjunction with the proposed work

CODE REFERENCES:

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

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 approval of final inspection. 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, permits issued for a 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, permits issued for a 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:

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 guideline establishes the application of SB 407 in the City of Berkeley by clarifying definitions and triggers and providing interpretation. This guideline also includes a Certification Form by the property owner to implement SB 407. This guideline is intended to promote consistency in administering SB 407 in the City of Berkeley.

PROPOSED GUIDELINES:

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. For the purposes of SB 407, 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 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-roofs
- Siding, stucco or any exterior finish replacement
- Exterior window and door replacement
- 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 similar work as determined by the Building Official

Permits for the above list of work may be obtained without triggering plumbing fixture upgrades.

When Work Triggers SB 407

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

A. 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)].

B. 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(s) or tenant unit(s) under the same ownership.
- 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 serving the tenant space 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.

For purposes of applying plumbing fixture upgrade provisions of Civil Code Sections 1101.1 through 1101.8, a real property consisting of a duplex (two-family dwelling) is considered a “multifamily residential real property”.

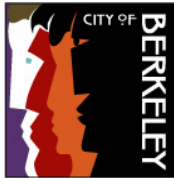
A real property consisting of a single-family residence with a detached second unit is considered a “single-family residential real property”. Alterations to the residence will trigger plumbing fixture upgrades within the residence only and not the detached second unit, and vice versa.

Implementation of SB 407 / Civil Code Sections 1101.1 – 1101.8

Strict enforcement of SB 407 presents a significant challenge to the Building & Safety Division as technical capabilities do not currently exist to assume the added responsibilities from SB 407. Self-certification by the property owner provides a reasonable mechanism 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).

Attached is the comprehensive Self-Certification Form with Civil Code Sections 1101.1 – 1101.8.



**Water-Conserving Plumbing Fixtures
Certificate of Compliance by Property Owner
California Civil Code Sections 1101.1 – 1101.8**

Owner Name _____ Permit No. _____

Address _____

**PERMIT CANNOT BE FINALED AND COMPLETED UNTIL THIS CERTIFICATE
HAS BEEN SIGNED AND RETURNED TO THE BUILDING & SAFETY DIVISION**

1. Is your real property a registered historical site?
 - Yes. Sign below and skip the rest of the form.
Owner's Signature _____ Date _____
 - No. Go to Question 2.

2. Does your real property have a licensed plumber certifying that, due to the age or configuration of the property or its plumbing, installation of water-conserving plumbing fixtures is not technically feasible?
 - Yes. The licensed plumber's certification has been provided to the Building & Safety Division. Sign below and skip the rest of the form.
Owner's Signature _____ Date _____
 - No. Go to Question 3.

3. Was your real property built and available for use or occupancy on or before January 1, 1994?
 - No. My real property was built and available for use or occupancy after January 1, 1994. Sign below and skip the rest of the form.
Owner's Signature _____ Date _____
 - Yes. Go to Question 4.

4. My real property is:
 - A single-family residential real property.
Building alterations or improvements shall require all non-compliant plumbing fixtures to be replaced with water-conserving plumbing fixtures throughout the building. 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).
 - A multifamily residential or a commercial real property.
Specified building alterations or improvements shall 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 throughout the building (regardless of whether property undergoes alterations or improvements).

I/We, the owner(s) of this property, certify under penalty of perjury that non-compliant plumbing fixtures have been replaced with water-conserving plumbing fixtures in accordance with Civil Code Sections 1101.1 through 1101.8, the current California Plumbing Code and California Green Building Standards Code, and manufacturer's installation requirements, and that the water-conserving plumbing fixtures comply with the requirements as indicated in the table below.

Owner's Signature _____ Date _____

Fixture Type	Non-Compliant Plumbing Fixture	Water-Conserving Plumbing Fixture (Fixture Complying with Current Code Applicable to New Construction)		
	Water Usage /Flow Rate	Maximum Water Usage/Flow Rate		
		2013 CPC Ch. 4 2013 CALGreen Div. 4.3	2013 CPC Ch. 4 2013 CALGreen Div. 4.3	2013 CPC Ch. 4 2013 CALGreen Div. 5.3
	Single-Family Residential	Multifamily Residential	Commercial	
Faucets – Lavatory Faucets	Exceeding 2.2 gallons per minute	Maximum 1.5 gallons per minute @ 60 psi; Minimum 0.8 gallons per minute @ 20 psi	Within units: Maximum 1.5 gallons per minute @ 60 psi; minimum 0.8 gallons per minute @ 20 psi In common and public use areas: 0.5 gallons per minute @ 60 psi	0.5 gallons per minute @ 60 psi
Faucets – Kitchen Faucets	Exceeding 2.2 gallons per minute	1.8 gallons per minute @ 60 psi. May temporarily increase up to 2.2 gallons per minute @ 60 psi, and must default to maximum 1.8 gallons per minute @ 60 psi. Where compliant faucets are unavailable, aerators or other means may be used to achieve reduction	1.8 gallons per minute @ 60 psi. May temporarily increase up to 2.2 gallons per minute @ 60 psi, and must default to maximum 1.8 gallons per minute @ 60 psi. Where compliant faucets are unavailable, aerators or other means may be used to achieve reduction	1.8 gallons per minute @ 60 psi
Water Closets (Toilets)	Exceeding 1.6 gallons/flush	Single flush toilets: 1.28 gallons/flush Dual flush toilets: 1.28 gallons/flush (effective flush volume of dual flush toilets is defined as the composite, average flush volume of 2 reduced flushes and 1 full flush)		
Urinals	Exceeding 1.0 gallon/flush	0.5 gallons/flush		
Showerheads	Exceeding 2.5 gallons per minute	2.0 gallons per minute @ 80 psi. Also certified to the performance criteria of U.S. EPA WaterSense For multiple showerheads serving one shower, the combined flow rate of all showerheads and/or other shower outlets controlled by a single valve shall not exceed 2.0 gallons per minute @ 80 psi, or the shower shall be designed to allow only one shower outlet to be in operation at a time. A hand-held shower is considered a showerhead.		