



LEGISLATIVE ANALYSIS

Installation of Water Use Efficiency Improvements: SB 407 (2009) | California Civil Code Section 1101.1-1101.8

The Application of SB 407 (2009)

Based on the California Building Officials' analysis of Senate Bill 407 (SB 407) and current building codes we recommend the following application of SB 407 within your local jurisdiction. Please note this is not a legal opinion and we strongly advise each jurisdiction consult with their legal counsel.

As of January 1, 2014, SB 407 requires non-compliant plumbing fixtures to be replaced by water-conserving plumbing fixtures when a property is undergoing *alterations or improvements*. Based on definitions found within the California Building Code and California Green Building Code, alteration and improvements are interpreted to mean any construction to an existing structure which enhance or improve 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 and improvements. Additionally, permits can be pulled for property maintenance and repair without triggering the SB 407 requirements. Below is a list of permits that are considered to be repair or maintenance.

Permitted Repairs That Will Not Trigger SB 407
Electrical Service Change Out
HVAC Change Out
Re-Roof
Sewer Line Replacement
Siding or Stucco
Site Work: Retaining Walls, Fences, Walk Ways, Etc.
Water Heater Replacement
Window Replacement
Other Repairs as Determined by the Building Official

Background

SB 407, authored by Senator Alex Padilla, was signed into law in 2009. The purpose of this bill is to capture increased water savings accomplished by the conversion to efficient water fixtures. SB 407 has dramatic impact on building departments and homeowners performing alterations and improvements to their homes. It is feared that the application of this law will lead to excessive costs for property owners and increased permit avoidance. Due to these concerns, it is imperative that SB 407 be applied in a realistic and manageable approach.

On and after January 1, 2014, SB 407 will require, for all building alterations or improvements to **single-family residential** real property that water-conserving plumbing fixtures replace other noncompliant plumbing fixtures as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department. Additionally, SB 407 requires, on or before January 1, 2017, that all noncompliant plumbing fixtures in any single-family residential real property shall be replaced by the property owner with water-conserving plumbing fixtures.

SB 407 will also require, on or before January 1, 2019, that all noncompliant plumbing fixtures in **multifamily residential** real property and **commercial** real property, as defined, be replaced with water-conserving plumbing fixtures. This bill will require, on and after January 1, 2014, for the following building alterations or improvements to multifamily residential real property and commercial real property, that water-conserving plumbing fixtures replace other noncompliant plumbing fixtures as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department.

- (a) For building additions which would increase the floor area of the space in a building by more than 10 percent.
- (b) For building alterations or improvements in which the total construction cost estimated in the building permit is greater than one hundred fifty thousand dollars (\$150,000).
- (c) For any alterations or improvements to a room in a building that require a building permit and that room contains any noncompliant plumbing fixtures.

Prior water conservation legislation:

In 1992, the Legislature passed SB 1224, Chapter 1347, that required all water closets (toilets) sold or installed on or after January 1, 1994 to use no more than an average of 1.6 gallons per flush, and urinals installed after that date to use no more than an average of one gallon per flush. In 2007, AB 715 (Laird) Chapter 499 prohibited the sale, after January 1, 2014, of toilets that exceed 1.28 gallons per flush and urinals that exceed 0.5 gallon per flush.

Definitions

2013 California Building Code, Title 24, Part 2, Volume 1, Chapter 2, Section 202

Addition: An extension or increase in floor area or height of a building or structure.

Alteration or Alter: Any construction or renovation to an existing structure other than repair or addition.

Repair: The reconstruction or renewal of any part of an existing building for the purpose of its maintenance.

Statute Language

CIVIL CODE - CIV

DIVISION 2. PROPERTY [654 - 1422] (*Heading of Division 2 amended by Stats. 1988, Ch. 160, Sec. 13.*)

PART 4. ACQUISITION OF PROPERTY [1000 - 1422] (*Part 4 enacted 1872.*)

TITLE 4. TRANSFER [1039 - 1231] (*Title 4 enacted 1872.*)

CHAPTER 2. Transfer of Real Property [1091 - 1134] (*Chapter 2 enacted 1872.*)

ARTICLE 1.4. Installation of Water Use Efficiency Improvements [1101.1 - 1101.8] (*Article 1.4 added by Stats. 2009, Ch. 587, Sec. 1.*)

1101.1.

The Legislature finds and declares all of the following:

- (a) Adequate water supply reliability for all uses is essential to the future economic and environmental health of California.
- (b) Environmentally sound strategies to meet future water supply and wastewater treatment needs are key to protecting and restoring aquatic resources in California.
- (c) There is a pressing need to address water supply reliability issues raised by growing urban areas.
- (d) Economic analysis by urban water agencies has identified urban water conservation as a cost-effective approach to addressing water supply needs.
- (e) There are many water conservation practices that produce significant energy and other resource savings that should be encouraged as a matter of state policy.
- (f) Since the 1991 signing of the "Memorandum of Understanding Regarding Urban Water Conservation in California," many urban water and wastewater treatment agencies have gained valuable experience that can be applied to produce significant statewide savings of water, energy, and associated infrastructure costs. This experience indicates a need to regularly revise and update water conservation methodologies and practices.
- (g) To address these concerns, it is the intent of the Legislature to require that residential and commercial real property built and available for use or occupancy on or before January 1, 1994, be equipped with water-conserving plumbing fixtures.

(h) It is further the intent of the Legislature that retail water suppliers are encouraged to provide incentives, financing mechanisms, and funding to assist property owners with these retrofit obligations.

(Added by Stats. 2009, Ch. 587, Sec. 1. Effective January 1, 2010.)

1101.2.

Except as provided in Section 1101.7, this article shall apply to residential and commercial real property built and available for use on or before January 1, 1994.

(Added by Stats. 2009, Ch. 587, Sec. 1. Effective January 1, 2010.)

1101.3.

For the purposes of this article:

(a) "Commercial real property" means any real property that is improved with, or consisting of, a building that is intended for commercial use, including hotels and motels, that is not a single-family residential real property or a multifamily residential real property.

(b) "Multifamily residential real property" means any real property that is improved with, or consisting of, a building containing more than one unit that is intended for human habitation, or any mixed residential-commercial buildings or portions thereof that are intended for human habitation. Multifamily residential real property includes residential hotels but does not include hotels and motels that are not residential hotels.

(c) "Noncompliant plumbing fixture" means any of the following:

(1) Any toilet manufactured to use more than 1.6 gallons of water per flush.

(2) Any urinal manufactured to use more than one gallon of water per flush.

(3) Any showerhead manufactured to have a flow capacity of more than 2.5 gallons of water per minute.

(4) Any interior faucet that emits more than 2.2 gallons of water per minute.

(d) "Single-family residential real property" means any real property that is improved with, or consisting of, a building containing not more than one unit that is intended for human habitation.

(e) "Water-conserving plumbing fixture" means any fixture that is in compliance with current building standards applicable to a newly constructed real property of the same type.

(f) "Sale or transfer" means the sale or transfer of an entire real property estate or the fee interest in that real property estate and does not include the sale or transfer of a partial interest, including a leasehold.

(Added by Stats. 2009, Ch. 587, Sec. 1. Effective January 1, 2010.)

1101.4.

(a) On and after January 1, 2014, for all building alterations or improvements to single-family residential real property, as a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department, the permit applicant shall replace all noncompliant plumbing fixtures with water-conserving plumbing fixtures.

(b) On or before January 1, 2017, noncompliant plumbing fixtures in any single-family residential real property shall be replaced by the property owner with water-conserving plumbing fixtures.

(c) On and after January 1, 2017, a seller or transferor of single-family residential real property shall disclose in writing to the prospective purchaser or transferee the requirements of subdivision (b) and whether the real property includes any noncompliant plumbing fixtures.

(Added by Stats. 2009, Ch. 587, Sec. 1. Effective January 1, 2010.)

1101.5.

(a) On or before January 1, 2019, all noncompliant plumbing fixtures in any multifamily residential real property and in any commercial real property shall be replaced with water-conserving plumbing fixtures.

(b) An owner or the owner's agent may enter the owner's property for the purpose of installing, repairing, testing, and maintaining water-conserving plumbing fixtures required by this section, consistent with notice requirements of Section 1954.

(c) On and after January 1, 2019, the water-conserving plumbing fixtures required by this section shall be operating at the manufacturer's rated water consumption at the time that the tenant takes possession. A tenant shall be responsible for notifying the owner or owner's agent if the tenant becomes aware that a water-conserving plumbing fixture within his or her unit is not operating at the manufacturer's rated water consumption. The owner or owner's agent shall correct an inoperability in a water-conserving plumbing fixture upon notice by the tenant or if detected by the owner or the owner's agent.

(d) (1) On and after January 1, 2014, all noncompliant plumbing fixtures in any multifamily residential real property and any commercial residential real property shall be replaced with water-conserving plumbing fixtures in the following circumstances:

(A) For building additions in which the sum of concurrent building permits by the same permit applicant would increase the floor area of the space in a building by more than 10 percent, the building permit applicant shall replace all noncompliant plumbing fixtures in the building.

(B) For building alterations or improvements in which the total construction cost estimated in the building permit is greater than one hundred fifty thousand dollars (\$150,000), the

building permit applicant shall replace all noncompliant plumbing fixtures that service the specific area of the improvement.

(C) Notwithstanding subparagraph (A) or (B), for any alterations or improvements to a room in a building that require a building permit and that room contains any noncompliant plumbing fixtures, the building permit applicant shall replace all noncompliant plumbing fixtures in that room.

(2) Replacement of all noncompliant plumbing fixtures with water-conserving plumbing fixtures, as described in paragraph (1), shall be a condition for issuance of a certificate of final completion and occupancy or final permit approval by the local building department.

(e) On and after January 1, 2019, a seller or transferor of multifamily residential real property or of commercial real property shall disclose to the prospective purchaser or transferee, in writing, the requirements of subdivision (a) and whether the property includes any noncompliant plumbing fixtures. This disclosure may be included in other transactional documents.

(Added by Stats. 2009, Ch. 587, Sec. 1. Effective January 1, 2010.)

1101.6.

The duty of an owner or building permit applicant to comply with the requirements of this article shall be postponed for one year from the date of issuance of a demolition permit for the building. If the building is demolished within the one-year postponement, the requirements of this article shall not apply. If the building is not demolished after the expiration of one year, the provisions of this article shall apply, subject to appeal to the local building department, even though the demolition permit is still in effect or a new demolition permit has been issued.

(Added by Stats. 2009, Ch. 587, Sec. 1. Effective January 1, 2010.)

1101.7.

This article shall not apply to any of the following:

(a) Registered historical sites.

(b) Real property for which a licensed plumber certifies that, due to the age or configuration of the property or its plumbing, installation of water-conserving plumbing fixtures is not technically feasible.

(c) A building for which water service is permanently disconnected.

(Added by Stats. 2009, Ch. 587, Sec. 1. Effective January 1, 2010.)

1101.8.

A city, county, or city and county, or a retail water supplier may do either of the following:

(a) Enact local ordinances or establish policies that promote compliance with this article.

(b) Enact local ordinances or establish policies that will result in a greater amount of water savings than those provided for in this article.

(Added by Stats. 2009, Ch. 587, Sec. 1. Effective January 1, 2010.)