

## **9. Non-Compliance with the California Building Standards Code**

- The San Francisco Port Commission has not adopted its own building and building-related codes, and is therefore responsible for enforcing, at a minimum, the provisions of the 13 building-related codes contained in the California Building Standards Code.**
- The Port Commission through its regulatory and contracting authority, has imposed on Port permit applicants the standards properly adopted by the City and County of San Francisco under State law, Section 18941.5(a)(1).**
- In practice, the Port has been enforcing most provisions of the San Francisco Building and related Codes, which are amended versions of the California Building Standards Code. The Port's Building Inspection section generally applies the standards of the San Francisco Building Code in its reviews of permit application plans and in site inspections. The Port also uses the fee schedule adopted in the San Francisco Building Code, although that fee schedule varies from the fee schedule contained in the California Building Standards Code.**
- However, the California Building Standards Code contains many administrative and technical provisions that are required to be incorporated in any local code, and the Port's approach to imposing the San Francisco Building Code through its permit regulations does not specifically address the required process for appeal, the designation of a Building Official, the recordation of any actions that grant approval of modifications or alternate materials or designs, and use of the fee schedule contained in the California Building Standards Code.**
- Although the Port has been working on adopting the California Building Standards Code with amendments similar to those adopted by the City and County of San Francisco, such adoption has not occurred as of the writing of this report. To properly address the California Building Standards Code's administrative and technical provisions that are required to be incorporated in any local code, the Port must either use the provisions adopted by the City and County of San Francisco, or adopt its own Code.**
- By adopting its own set of Building and related Codes, as amended in accordance with State regulations, the Port will affirm its independent authority to enforce those amendments and will thereby resolve any potential ambiguity on the part of the public in trying to comply with unknown or changing regulations.**

## Background

According to the City Attorney, the Port of San Francisco derives its authority to regulate or permit building construction or improvement within its jurisdiction from the Burton Act (Chapter 1333 of the Statutes of 1968) and from relevant sections of the *Agreement Relating to Transfer of the Port of San Francisco from the State of California to the City and County of San Francisco* (the “Agreement”). Section 12 of the Burton Act is quoted in part below:

San Francisco Harbor and facilities shall be under the administration and control of the Harbor Commission of the City and County of San Francisco which shall be established in accordance with the provisions of the Charter of the City and County of San Francisco.

Relevant sections of the *Agreement* pertaining to the Port’s regulatory authority are cited below:

### Section VII. Autonomous Operation

. . . . Subject to the terms and conditions of the transfer and this agreement, the Port Commission shall have the control and management of all real and personal property transferred under the Act, or otherwise acquired or purchased with funds under its control or acquired or purchased by it within the scope of its authority . . . . The Port Commission shall have the power and duty to use, conduct, operate, maintain, manage, regulate, and control the Port Area of San Francisco and to do all things it deems necessary in connection with the use, conduct, operation, management, maintenance, regulation, . . .without limiting the generality of the foregoing, the exclusive power to perform or accomplish the following in the Port Area:

1. The improvement, operation and conduct of the harbor, and any and all improvements or facilities located thereon;
2. The construction, reconstruction, repair, operation and use of all works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of commerce and navigation, or located within the Port Area;

The Burton Act, Section 3, and the San Francisco Charter, Appendix B, Section B3.581, *Powers and Duties*, contain similar language establishing the authority of the Port to regulate or permit building construction or improvement within its jurisdiction.

As discussed in Section 10 of this audit report, *Port Building Inspection Issues*, the Port's Building Inspection section is assigned to the Port's Engineering Division and is authorized a total of five positions (four of the positions are filled). The mission of the Building Inspection section is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within the Port's jurisdiction.

## **Code Requirements**

### **The Structure of Building Standards**

The International Conference of Building Officials (ICBO) publishes a family of thirteen Uniform Codes (Uniform Building Code, Uniform Electrical Code, Uniform Plumbing Code, et. al., thirteen in all) that cover all aspects of safe and efficient building construction, maintenance, and decommissioning of public and private buildings to provide jurisdictions with a complete set of building-related regulations for adoption. The Uniform Codes form the basis for the California Standards Building Code (comprised of the California Building Code, California Electrical Code, California Plumbing Code, et. al), which, in turn, provides the bases for local codes, such as the San Francisco Building, Electrical, and Plumbing Codes.

Applying the foregoing structure to a Port Building Code (excluding, for purposes of simplifying this explanation, the Electrical and other Codes) the 1997 Uniform Building Codes form the basis for the 2001 California Building Code, which in turn is amended to comprise the 2001 San Francisco Building Code, which in turn would be amended to comprise the Port Building Code.

### **The California Building Standards Code and the California State Health and Safety Code**

Division 13, Part 2.5, *State Building Standards*, of the California State Health and Safety Code requires that all State jurisdictions, such as the City and County of San Francisco and the Port, must begin applying the State Building Codes (the 13 building-related codes) to all occupancies throughout the State that shall become effective within 180 days of their official publication by the State. Section 18938 of the Part 2.5 is cited, in part, below:

18938 (b) The building standards contained in the Uniform Fire Code of the International Conference of Building Officials and the Western Fire Chiefs Association, Inc., the Uniform Building Code of the International Conference of Building Officials, Appendix Chapter 1 of the Uniform Code for Building Conservation of the International Conference of Building Officials, the Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials . . . shall apply to all occupancies throughout

the state and shall become effective 180 days after publication in the California Building Standards Code by the California Building Standards Commission or at a later date after publication established by the commission. Amendments, additions, and deletions to the California Building Standards Code adopted by a city, county, or city and county pursuant to Section 18941.5 or pursuant to Section 17958.7, [Section 17958.7 is concerned with regulation of buildings used for human habitation] together with all applicable portions of the California Building Standards Code, shall become effective 180 days after publication of the California Building Standards Code by the commission, or at a later date after publication established by the commission.

Section 18938.5 of Part 2.5 establishes which building standards are applicable to a particular building permit application, as follows:

18938.5. (a) Only those building standards approved by the commission, and that are effective at the local level at the time an application for a building permit is submitted, shall apply to the plans and specification for, and to the construction performed under, that build permit.

Section 18941.5 of Part 2.5 establishes the authority of local agencies to amend the California Building Standards Code, as follows:

18941.5. (a) (1) Amendments, additions, and deletions to the California Building Standards Code adopted by a city, county, or city and county pursuant to section 18941.5 or pursuant to Section 17958.7, together with all applicable portions of the California Building Standards Code, shall become effective 180 days after publication of the California Building Standards Code by the commission, or at a later date after publication established by the commission.

(b) Neither the State Building Standards Law contained in this part, nor the application of building standards contained in this section, shall limit the authority of a city, county, or city and county to establish more restrictive building standards reasonably necessary because of local climatic, geological, or topographical conditions. . . .

As stated in Section 18941.5 of the California State Health and Safety Code, cited above, jurisdictions must begin applying the State Building Standards Code within 180 days of their official publication by the State. Local jurisdictions are allowed to adopt local amendments if such amendments are made in accordance with State regulations. Under State law, amendments may only be made based on climate, topography, and geology

and must be more, not less, restrictive than the State codes. In order to be effective, amendments with findings must be formally adopted by the jurisdiction; copies, accompanied by the findings, must be filed with the State before such amendments can be effective. The Department of Building Inspection of the City and County of San Francisco conducts the complex amendment public hearing and adoption process every three years when a new California Building Standards Code is published. Many other jurisdictions do not make formal amendments, so they are required to apply the California Building Standards Code without any local amendments.

## **Port of San Francisco Building Code Practices**

The San Francisco Port Commission has not adopted its own building and building-related codes, and is therefore responsible for enforcing, at a minimum, the provisions of the thirteen building-related codes contained in the California Building Standards Code on Port property where the local building official is designated as the enforcing authority as shown in the Matrix Adoption Tables of the California Building Standards Code.

The Port Commission through its regulating and contracting authority, has imposed on Port permit applicants the standards properly adopted by the City and County of San Francisco under State law, Section 18941.5(a)(1), cited above.

In practice, the Port has been enforcing most provisions of the San Francisco Building and related Codes, which are amended versions of the California Building Standards Code. The Port's Building Inspection section generally applies the standards of the San Francisco Building Code in its reviews of permit application plans and in site inspections. The Port also uses the fee schedule adopted in the San Francisco Building Code, although that fee schedule varies from the fee schedule contained in the California Building Standards Code.

However, the California Building Standards Code contains many administrative and technical provisions that are required to be incorporated in any local code, and the Port's approach to imposing the San Francisco Building Code through its permit regulations does not specifically address the required process for appeal, the designation of a Building Official, the recordation of any actions that grant approval of modifications or alternate materials or designs, and use of the fee schedule contained in the California Building Standards Code.

Although the Port has been working on adopting the California Building Standards Code with amendments similar to those adopted by the City and County of San Francisco, such adoption has not occurred as of the writing of this report. To properly address the California Building Standards Code administrative and technical provisions that are required to be incorporated in any local code, the Port must either use the provisions adopted by the City and County of San Francisco, or adopt its own Code.

## Conclusion

The San Francisco Port Commission has not adopted its own building and building-related codes, and is therefore responsible for enforcing, at a minimum, the provisions of the thirteen building-related codes contained in the California Building Standards Code on Port property where the local building official is designated as the enforcing authority as shown in the Matrix Adoption Tables of the California Building Standards Code.

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By adopting its own set of Building and related Codes, as amended in accordance with State regulations, the Port will affirm its independent authority to enforce those amendments and will thereby resolve any potential ambiguity on the part of the public in trying to comply with unknown or changing regulations.

## **Recommendations**

The Port Commission should:

- 9.1 As a matter of priority, adopt a Port Building Code that conforms to the requirements of the California Building Standards Code

## **Costs and Benefits**

By adopting its own set of Building and related Codes, as amended in accordance with State regulations, the Port will affirm its independent authority to enforce those amendments and will thereby resolve any potential ambiguity on the part of the public in trying to comply with unknown or changing regulations. The Port has been working on a draft code with the assistance of a consultant. Additional consulting fees to complete the project should not be significant.