
FIRE PREVENTION AND BUILDING SAFETY COMMISSION
Department of Homeland Security

Written Interpretation of the State Building Commissioner

Interpretation #: CEB-2019-01 GAR-12-4-9(d)

Building or Fire Safety Law Interpreted

675 IAC 12-4-9(d) This section does not prohibit the removal of buildings, structures, or any part of the permanent heating, ventilating, air conditioning, electrical, plumbing, sanitary, emergency detection, emergency communication, or fire or explosion suppression systems, or components thereof not required for the current use and occupancy by the rules of the commission or its predecessor agencies at the time of construction, installation, or alteration (including construction, installation, or alteration prior to the creation of the predecessor agencies).

675 IAC 12-4-9(e) Notwithstanding subsection (d), no alteration or removal shall cause an existing building, structure, or any part of the permanent heating, ventilating, air conditioning, electrical, plumbing, sanitary, emergency detection, emergency communication, or fire or explosion suppression systems to become unsafe or overloaded under the provisions of the current rules of the commission for new construction.

675 IAC 12-4-9(f) Notwithstanding subsection (d), no alteration or removal shall reduce existing fire protection or detection systems or exit capacities to a level less than that required under the provisions of the current rules of the commission for new construction.

Issue

Whether the rules above allow removal of building components in an existing structure, if the components were required for its current use by the rules in effect at the time of construction, installation, or alteration (hereinafter referred to as the code of record), but not required for its current use by the currently adopted rules (hereinafter referred to as the current code).

Interpretation of the State Building Commissioner

675 IAC 12-4-9(d) states that removal of buildings or components thereof, when performed in the context of **maintenance** work, is not prohibited if the building or component in question was not required by the code of record at the time of the original construction, installation, or alteration of the building or component.

675 IAC 12-4-9(e) states that regardless of what is allowed under subsection (d), no alteration or removal of buildings or components, performed in the context of **maintenance** work, may make the building or component unsafe or overloaded under the current code.

675 IAC 12-4-9(f) states that regardless of what is allowed under subsection (d), no alteration or removal of a building's fire protection or detection systems or its exit capacities, performed in the context of **maintenance** work, may make the building unsafe or overloaded under the current code.

Rationale

1. Rule **675 IAC 12-4-9** deals with **maintenance** of existing buildings and their component systems and parts. This must be kept in mind as its subsections are analyzed and applied, particularly with regard to the dispute at hand. Additionally, subsections (d), (e), and (f) cannot be successfully interpreted without an accompanying analysis of subsections (a), (b), and to a lesser extent (c).

2. Subsection (a): The language which directs us to the appropriate set of rules for **maintenance** work is nearly identical between subsections (a) and (d). Subsection (a) is substantially clearer in intent, however, due to the use and placement of commas, and clauses they create:

All buildings and structures. . .shall be maintained in conformance with the applicable rules of the commission, or applicable rules of its predecessor agencies, in effect when constructed, installed, or altered.

It is clear in this statement that the required rules are those, applicable to the building's current use, of the code of record at the time of original construction of that building or component. Further, nothing is provided within the text of subsection (d), or any other location within **675 IAC 12-4-9**, that suggests (d) should be read with a different intent than (a). Therefore we believe the required rules under subsection (d) are also those, applicable to the building's current use, of the code of record.

3. Subsection (b): This states that nothing shall prohibit the **maintenance** of any structure in conformance with the current code, or in another manner that is at least as safe, sanitary, energy-conserving and accessible as that required by the code of record. In other words, **maintenance** can always be performed in accordance with the current code. But allowance of maintenance in conformance with the current code does not grant authority to remove those items not required by the current code. There is a distinction between **maintenance** requirements and **removal** requirements, and subsections (d), (e), and (f) address those differences within the context of [675 IAC 12-4-9](#).

4. Subsection (c): This states that construction performed prior to the adoption of rules of the commission or its predecessor agency must be **maintained** in at least as safe and sanitary a condition as when it was first constructed.

5. Subsection (d): This introduces the concept of **removal** for the first time. Since it is part of [675 IAC 12-4-9](#), it, too, must be viewed within the context of **maintenance**. The subsection states that nothing shall prohibit the removal of a building, or component thereof, if the building or component in question was not required for its current use under the code of record. It describes a single condition – a situation in which a given building or component is not required by the code of record – and the fact that under that condition, nothing prohibits the removal of said building or component. This is all it says. **Because of this, we do not believe this rule applies to the particulars of this dispute, as the dispute has been described to us, since the code of record required the component which the applicant wishes to remove.**

6. Subsections (e) and (f): The references in subsections (e) and (f) to compliance with the current code indicate that all three subsections – (d), (e), and (f) – must be taken in concert when considering **removals** performed in the context of **maintenance**, effectively creating a condition in which the more stringent of the two possible sets of rules must always apply.

7. Perhaps most importantly, note again that this interpretation was requested for portions of the rule pertaining to **maintenance** provisions ([675 IAC 12-4-9](#)). Removal of parts or components of a building or its systems, when done in the context of **alterations of existing structures**, regulated under [675 IAC 12-4-12](#), may produce different results.

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