

780 CMR 51.00

ADMINISTRATION FOR SINGLE- AND TWO-FAMILY DWELLINGS

(Note: 780 CMR 51.00 is unique to Massachusetts)

780 CMR 5101 SCOPE

5101.1 Title. 780 CMR 51.00 through 99.00 (plus Referenced Standards, Regulations, Appendices and Index) shall be known as the Commonwealth of *Massachusetts Building Code for One- and Two-Family Dwellings*.

5101.2 Scope and Authority. 780 CMR 51.00 through 99.00 is promulgated under authority of M.G.L. c. 143, §§ 93 through 100 in accordance with the legislative intent to establish uniform design and construction regulations throughout the Commonwealth. Municipalities may not modify 780 CMR 51.00 through 99.00 or regulate in the subject areas reserved for the Board of Building Regulations and Standards (hereinafter all referred to as the “BBRS”) unless such regulations, ordinances, bylaws or policies are promulgated in accordance with M.G.L. c. 143, §§ 96, 97 and/or 98 as applicable. The provisions of 780 CMR 51.00 through 99.00 shall apply to detached one- and two-family dwellings, not more than three stories in height with separate means of egress, and their accessory structures as follows:

1. The construction, reconstruction, alteration, enlargement, replacement, repair, demolition, removal, or movement and installation of equipment, the inspection of and issuance of and revocation of permits or licenses relative to detached one- and two-family dwellings;
2. The rehabilitation and maintenance of existing buildings;
3. The standards or requirements for materials to be used in connection therewith, including, but not limited to provisions for safety, ingress and egress, energy conservation and sanitary conditions;
4. The establishment of reasonable fees for inspections and the issuance of licenses to individuals engaged as construction supervisors;
5. The certification of inspectors of buildings, building commissioners and local inspectors;
6. The registration of Home Improvement Contractors pursuant to M.G.L. c. 142A, except as such matters are otherwise provided for in the Massachusetts General Laws Annotated, or in the rules and regulations authorized for promulgation under the provisions of 780 CMR 51.00 through 99.00; and
7. Other duties and responsibilities as defined in 780 CMR 110, Special Regulations R1 through R7, as applicable.

5101.3 Application of References. Unless otherwise specifically provided for in 780 CMR 51.00 through 99.00, all references to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of 780 CMR 51.00 through 99.00.

5101.4 Intent Code Remedial. 780 CMR 51.00 through 99.00 shall be construed to secure its expressed intent, which is to ensure public safety, health and welfare insofar as they are affected by building construction, through structural strength, adequate means of egress facilities, sanitary conditions, light and ventilation, energy conservation and fire safety; and, in general, to secure safety to life and property from all hazards incident to the design, construction, reconstruction, alteration, repair, demolition, removal, movement and/or use or occupancy of detached one- and two-family dwelling buildings, structures or premises.

5101.5 Specialized Codes. In accordance with M.G.L. c. 143, § 96, specialized codes, rules or regulations pertaining to building construction, reconstruction, alteration, repair or demolition, and inspection promulgated by, and under the authority of the various boards which have been authorized by the general court shall be incorporated into 780 CMR 51.00 through 99.00. Areas regulated by the specialized codes shall require that all such work performed is designed, installed and inspected in accordance with the specialized codes. For governing regulations addressing the approval, design, installation and maintenance of fossil-fuel-burning appliances, refer to the *Massachusetts Fuel Gas and Plumbing Codes* (248 CMR) for gas and the *Massachusetts Fire Prevention Regulations State Fire Code* (527 CMR) for oil. Applicable specialized codes, rules or regulations relating to building systems include, but are not limited to, those identified in 780 CMR 5101.5.1 through 5101.5.7 and those listed in 780 CMR 100.

5101.5.1 Electrical. *Massachusetts State Electrical Code* (527 CMR 12.00).

5101.5.2 Gas. *Massachusetts Fuel Gas Code* (248 CMR).

5101.5.3 Mechanical. *International Mechanical Code*.

5101.5.4 Plumbing. *Massachusetts State Plumbing Code*. (248 CMR).

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5101.5.5 Property Maintenance. *Massachusetts Sanitary Code (105 CMR).*

5101.5.6 Fire Prevention. *Massachusetts Fire Prevention Regulations (527 CMR).*

5101.5.7 Elevator. *Massachusetts State Elevator Code (524 CMR).*

5101.6 Referenced Standards. The standards referenced in 780 CMR 51.00 through 99.00 and listed in Appendix A shall be considered part of the requirements of 780 CMR 51.00 through 99.00 to the prescribed extent of each such reference. Where differences occur between provisions of 780 CMR 51.00 through 99.00 and referenced standards, the provisions of 780 CMR 51.00 through 99.00 shall apply. The administrative provisions of 780 CMR 51.00 through 99.00 shall apply to all standards referenced in Appendix A, other than the specialized codes listed in 780 CMR 5101.5.

Exception: Where enforcement of a provision of 780 CMR 51.00 through 99.00 would violate the conditions of a listing of a material, equipment or appliance, the conditions of the listing and manufacturer's instructions shall apply.

780 CMR 5102 APPLICABILITY

5102.1 General. The provisions of 780 CMR 51.00 through 99.00 shall apply to all matters affecting or relating to detached one- and two-family dwellings as set forth in 780 CMR 5101 and shall apply with equal force to municipal, county, state authorities of or established by the legislature and private detached one- and two-family dwellings, except where such detached one- and two-family dwellings are otherwise provided for by statute.

5102.2 Matters Not Provided For. Any requirements that are essential for the structural, fire or sanitary safety, or interior climate comfort of an existing or proposed detached one- and two-family dwelling, or for the safety of the occupants thereof, which are not specifically provided for by 780 CMR 51.00 through 99.00, shall be determined by the building official. The BBRS shall be notified by the building official in writing within seven working days of any action taken pursuant to 780 CMR 5102.

5102.3 Zoning Bylaw Restrictions. When the provisions in 780 CMR 51.00 through 99.00 specified for structural strength, adequate egress facilities, sanitary conditions, equipment, light and ventilation, energy conservation or fire safety conflict with the local zoning bylaws or ordinances, 780 CMR 51.00 through 99.00 shall control the construction or alteration of detached one- and two-family dwellings unless such bylaws or ordinances are promulgated in accordance with the provisions of M.G.L. c. 143, § 98.

5102.4 General Bylaw Restrictions. When the provisions herein specified for structural strength,

adequate egress facilities, sanitary conditions, equipment, light and ventilation, energy conservation or fire safety conflict with the local general bylaws or ordinances, 780 CMR 51.00 through 99.00 shall control the construction or alteration of detached one- and two-family dwellings unless such bylaws or ordinances are promulgated in accordance with the provisions of M.G.L. c. 143, § 98.

5102.5 Existing Buildings. Existing detached one- and two-family dwellings shall comply with the provisions of 780 CMR 5102, and all other applicable provisions of 780 CMR 51.00 through 99.00, including all applicable requirements of 780 CMR 93.00. Existing detached one- or two-family dwellings or their accessory buildings, or portions thereof, that have been damaged by fire, flood, impact or have suffered similar physical damage, shall not be reoccupied without approval from the building official.

5102.5.1 General. Unless specifically provided otherwise in 780 CMR 51.00 through 99.00, any detached one- and two-family dwelling shall meet and shall be presumed to meet the provisions of the applicable laws, codes, rules or regulations, bylaws or ordinances in effect at the time such detached one- and two-family dwelling was constructed or substantially altered and shall be allowed to continue to be occupied pursuant to its use and occupancy, provided that the detached one- and two-family dwelling shall be maintained in accordance with 780 CMR 5103.

5102.5.2 In cases which applicable codes, rules or regulations, bylaws or ordinances were not in use at the time of such construction or alteration, the provisions of 780 CMR 5103.0 shall apply.

5102.5.3 In cases where the provisions of 780 CMR 51.00 through 99.00 are less stringent than the applicable codes, rules or regulations, bylaws or ordinances at the time of such construction or substantial alteration, the applicable provisions of 780 CMR 51.00 through 99.00 shall apply, providing such application of these provisions does not result in danger to the public, as determined by the building official.

5102.5.4 Moved Structures. Detached one- and two-family dwellings moved into or within the jurisdiction shall comply with the provisions of 780 CMR 93.00.

780 CMR 5103 MAINTENANCE

5103.1 General. All detached one- and two-family dwellings and all parts thereof, both existing and new, and all systems and equipment therein that are regulated by 780 CMR 51.00 through 99.00 shall be maintained in a safe, operable and sanitary condition. All service equipment, means of egress, devices and safeguards that are required by

780 CMR 51.00 through 99.00, or were required by a previous statute, when erected, altered or repaired, shall be maintained in good working order.

5103.2 Owner Responsibility. The owner, as defined in 780 CMR 52.00, shall be responsible for compliance with the provisions of 780 CMR 5103.0.

780 CMR 5104 VALIDITY

5104.1 General. The provisions of 780 CMR 51.00 through 99.00 are severable, and if any of its provisions shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

780 CMR 5105 OFFICE OF THE INSPECTOR OF BUILDINGS OR BUILDING COMMISSIONER

5105.1 Appointment. The chief administrative officer of each city or town shall employ and designate an inspector of buildings or building commissioner (hereinafter inspector of buildings) as well as such other local inspectors as are reasonably necessary to assist the inspector of buildings to administer and enforce 780 CMR 51.00 through 99.00 and the rules and regulations made under the authority thereof. The inspector of buildings shall report directly to and be solely responsible to the appointing authority.

5105.2 Alternate. The inspector of buildings is authorized to designate an alternate who shall exercise all the powers of the inspector of buildings during the temporary absence, disability or conflict of interest of the inspector of buildings. Said alternate shall be duly qualified and certified pursuant to 780 CMR 5105.3.

5105.3 Qualifications of the Inspector of Buildings. In accordance with the provisions of M.G.L. c. 143, § 3, each inspector of buildings shall have had at least five years of experience in the supervision of building construction or design or, in the alternative, a four-year undergraduate degree in a field related to building construction or design, or any combination of education and experience which would confer equivalent knowledge and ability, as determined by the BBRS. In addition, each inspector of buildings shall have had general knowledge of the accepted requirements for building construction, fire prevention, light, ventilation and safe egress, as well as a general knowledge of other equipment and materials essential for safety, comfort and convenience of the occupants of a building or structure.

Each inspector of buildings shall be certified by the BBRS in accordance with the provisions of Special Regulation 780 CMR 110.R7.

Municipalities may require additional qualifications or experience as are deemed

necessary.

5105.4 Qualifications of the Local Inspector. In accordance with the provisions of M.G.L. c. 143, § 3, each local inspector shall have had at least five years of experience in the supervision of building construction or design or, in the alternative, a two-year associate's degree in a field related to building construction or design, or any combination of education and experience which would confer equivalent knowledge and ability, as determined by the BBRS. In addition, such persons shall have had general knowledge of the accepted requirements for building construction, fire prevention, light, ventilation and safe egress, as well as a general knowledge of other equipment and materials essential for safety, comfort and convenience of the occupants of a building or structure.

Each local inspector shall be certified by the BBRS in accordance with the provisions of Special Regulation 780 CMR 110.R7.

Municipalities may require additional qualifications or experience as are deemed necessary.

5105.5 Reporting Requirements.

5105.5.1 Annual Report by City or Town Clerk.

In accordance with the provisions of M.G.L. c. 143, § 3, the clerk of each city or town shall, annually, not later than April 1st, transmit to the BBRS the names and official addresses of each inspector of buildings, building commissioner and local inspector as well as at such other times as required pursuant to Special Regulation 780 CMR 110.R7: *Certification of Inspectors of Buildings, Building Commissioners and Local Inspectors*. Such reports shall be submitted on forms prescribed by the BBRS for said purpose.

5105.5.2 New Appointments. Immediately following an appointment, the clerk of each city or town shall report to the BBRS, the name, title and status of each new employee who is appointed as an inspector of buildings, building commissioner or local inspector. Said report shall be provided on forms as prescribed by the BBRS for said purpose and shall be submitted in attestation under the pains and penalties of perjury that said new employee meets or exceeds the minimum qualifications as defined by M.G.L. c. 143, § 3 and 780 CMR 5105.3 and 5105.4, as applicable.

5105.6 Restriction of Employees. Unless authorized by the municipal appointing authority in accordance with 930 CMR 1.00 through 4.00 (the Commonwealth of Massachusetts Ethics Commission), no full-time or part-time building commissioner, inspector of buildings, or full-time or part-time local inspector as defined in 780 CMR 51.00 through 99.00 shall be engaged in, or directly or indirectly connected with, the furnishing of labor, materials or appliances for the construction, alteration or maintenance of a detached one- or

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two-family dwelling, or the preparation of plans or specifications therefore within the city, town or region for which he or she is appointed, unless he or she is the owner of the detached one- or two-family dwelling; nor shall any officer or employee associated with the building department engage in any work which conflicts with his or her official duties or with the interests of the department.

Note: See M.G.L. c. 143, § 3Z: *Part Time Inspector of Buildings, Building Commissioner, Local Inspector, or Alternate Inspector; Other Employment* (Local Option Law relative to part-time employees).

5105.7 Relief from Personal Liability. Insofar as the law allows, while acting for the municipality, the building official charged with the enforcement of 780 CMR 51.00 through 99.00 shall not be deemed personally liable in the discharge of his or her official duties; all such matters are governed by M.G.L. c. 258.

5105.8 Official Records. An official record shall be kept of all business and activities of the department specified in the provisions of 780 CMR 51.00 through 99.00, including, but not limited to, applications received, permits and certificates issued, inspections performed, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records as long as the detached one- and two-family dwelling to which they relate remains in existence unless otherwise provided for by law.

In accordance with the provisions of M.G.L. c. 66, § 10(b), all such records shall be open to public inspection at all appropriate times and in accordance with reasonable rules to maintain the integrity and security of such records.

780 CMR 5106 DUTIES AND POWERS OF THE BUILDING OFFICIAL

5106.1 General. The inspector of buildings and local inspector (hereinafter referred to as “building official”) shall enforce all of the provisions of 780 CMR 51.00 through 99.00, and any other state statutes, rules and regulations, or ordinances or bylaws which empower the building official. The building official shall act on any question relative to the mode or manner of construction and materials to be used in the construction, reconstruction, alteration, repair, demolition, removal, and/or installation of equipment and the location, use, occupancy and maintenance of all detached one- and two-family dwellings except as otherwise specifically provided for by requirements in 780 CMR 5109.

5106.2 Applications and Permits. The building official shall receive applications and issue permits for the construction, reconstruction, alteration, repair, demolition, removal or change in use or

occupancy of buildings and structures; inspect the premises for which such permits have been issued; and enforce compliance with the provisions of 780 CMR 51.00 through 99.00.

5106.3 Notices and Orders. The building official shall issue all necessary notices, orders or citations to ensure compliance with 780 CMR 51.00 through 99.00.

5106.4 Inspections. The building official shall make such inspections as deemed necessary to ensure compliance with 780 CMR 51.00 through 99.00, or the building official may accept reports of inspection by qualified agencies or individuals subject to the applicable requirements of M.G.L. c. 268A. Reports shall be in writing and be certified by a responsible officer of such agency or by the responsible individual.

5106.5 Report to Assessors. Pursuant to M.G.L. c. 143, § 61, the building official shall give to the assessors of the municipality written notice of the granting of permits for the construction of any buildings or structures, or for the removal or demolition, or for any substantial alteration or addition thereto. Such notice shall be given within seven days after the granting of each permit, and shall state the name of the person to whom the permit was granted and the location of the buildings or structures to be constructed, reconstructed, altered, demolished or removed.

780 CMR 5107 DUTIES AND POWERS OF THE STATE INSPECTOR (M.G.L. c. 143, § 3A)

5107.1 The State Inspector. In every city and town of Massachusetts, 780 CMR 51.00 through 99.00 shall be enforced by the State Inspector of the Department of Public Safety, Division of Inspections, as to any detached one- or two-family dwelling or parts thereof that are owned by the Commonwealth or any departments, commissions, agencies or authorities of the Commonwealth. The state inspector shall have, as it pertains to such detached one- or two-family dwellings all the powers of a building commissioner or inspector of buildings. All detached one- or two-family dwellings owned by any authority established by the legislature and not owned by the Commonwealth shall be regulated in accordance with 780 CMR 5106.

5107.2 Other Responsibilities. The state inspector shall make periodic reviews of all local building inspection practices; provide technical assistance; and advice to the local building officials in the implementation of 780 CMR 51.00 through 99.00; and report in writing his findings to the building officials.

5107.3 Review by the Commissioner of Public Safety. The Commissioner of the Commonwealth of Massachusetts, Department of Public Safety shall establish districts which shall be supervised by a state inspector of the Division of Inspections. The Commissioner may review, on his own initiative, or on the application of any state inspector, any action or refusal or failure of action by any building official, the result of which does not comply with the uniform implementation of 780 CMR 51.00 through 99.00; and may reverse, modify or annul, in whole or in part, such action except with respect to the specialized codes, provided that an order or action of the Commissioner shall not reverse, modify, annul or contravene any order, action, determination, interpretation or any decision by the BBRS or the State Building Code Appeals Board.

5107.4 Reports. The state inspector shall file with the BBRS reports of his periodic reviews and recommendations for improvements of building inspection practices. The format and due dates for these reports shall be determined by the BBRS.

780 CMR 5108 RULES AND REGULATIONS

5108.1 Rule-making Authority. Under authority granted by St. 1984, c. 348, as amended, the BBRS is empowered in the interest of public safety, health and general welfare, to adopt and promulgate rules and regulations, and to interpret and implement the provisions of 780 CMR 51.00 through 99.00 to secure the intent thereof.

5108.2 Amendments and Promulgation of Rules. In accordance with the provisions of M.G.L. c. 143, § 97, any person may propose amendments to 780 CMR 51.00 through 99.00. Public hearings shall be held as specified in said law, and at such other times and places as the BBRS may determine, to consider petitions for such amendments. Amendments adopted by the BBRS shall be binding and have the full force and effect in all cities and towns.

5108.3 Activities Requiring Licenses, Registration or Certification. See Special Regulations 780 CMR 110.R1 through R7, as applicable, for the special regulation relating to such license, registration and/or certification.

5108.3.1 Testing Laboratories. When a testing laboratory, branch laboratory and/or project laboratory is engaged to test concrete and/or concrete materials for use in detached one- and two-family dwellings, said laboratory shall be licensed by the BBRS in accordance with 780 CMR 51.00 through 99.00 and Special Regulation 780 CMR 110.R1: *Concrete Testing Laboratories Licensing*.

5108.3.2 Field Technicians. When a person is engaged in the activities of field testing of

concrete for use in detached one- or two-family dwellings and/or controlled materials, such person shall be licensed by the BBRS in accordance with Special Regulation 780 CMR 110.R2: *Concrete Testing Personnel Licensing*.

5108.3.3 Manufactured Buildings. No individual, organization or firm shall be engaged in the construction of manufactured buildings for use in the Commonwealth of Massachusetts or shall act as a third-party inspection agency (TPIA) or a dealer of said manufactured buildings unless approved to construct same or act in such capacity by the BBRS in accordance with Special Regulation 780 CMR 110.R3: *Manufactured Buildings, Building Components and Mobile Homes*.

5108.3.4 Native Lumber. No individual, organization or firm shall engage in the production of native lumber for use in detached one- or two-family dwellings within the Commonwealth of Massachusetts unless registered by the BBRS in accordance with 780 CMR 51.00 through 99.00 and Special Regulation 780 CMR 110.R4, The Rules and Regulations Controlling the Use of Native Lumber.

5108.3.5 Licensing of Construction Supervisors.

5108.3.5.1 Except for those structures governed by Construction Control as identified in the Commonwealth of *Massachusetts Base Building Code* (780 CMR 1.00, 780 CMR 116.00), no individual shall be engaged in directly supervising persons engaged in construction, reconstruction, alteration, repair, removal or demolition involving any activity regulated by any provision of 780 CMR 51.00 through 99.00, unless said individual is licensed in accordance with 780 CMR 110.R5: *Construction Supervisors*.

No person shall be engaged in the supervision of the field erection of a manufactured building unless such person is licensed in accordance with Special Regulation 780 CMR 110.R5: *Construction Supervisors*.

Exception: Any homeowner performing work for which a building permit is required shall be exempt from the licensing provisions of 780 CMR 5108.3.5, provided that if a homeowner engages a person(s) for hire to do such work, that such homeowner shall act as supervisor. This exception shall not apply to the field erection of manufactured buildings constructed pursuant to 780 CMR 51.00 through 99.00 and Special Regulation 780 CMR 110.R3. For the purposes of 780 CMR 5108.3.5, a “homeowner” is defined as follows: Person(s) who owns a parcel of land on

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which he or she resides or intends to reside, on which there is, or is intended to be, a one- or two-family dwelling, attached or detached structures accessory to such use and/or farm structures. A person who constructs more than one home in a two-year period shall not be considered a homeowner.

Note: Any licensed construction supervisor who contracts to do work for a homeowner shall be responsible for performing said work in accordance with 780 CMR 51.00 through 99.00, Special Regulation 780 CMR 110.R5 and all referenced standards and/or manufacturer's recommendations, whether or not the licensed contractor secured the permit for said work.

5108.3.5.2 Exemptions from Construction Supervisor License Requirement. A construction supervisor's license is not required for:

1. Erection of rooftop solar collectors, the erection of signs, the erection of tents;
2. Projects which are subject to "construction control" (*see* 780 CMR 2.00 for definition of "Construction control");
3. Agricultural buildings which are not open to the public or otherwise made available for public use;
4. Massachusetts-registered engineers and Massachusetts-registered architects (collectively referred to herein as "registered design professionals"), provided such engineers and/or architects comply with the Construction Supervisor oversight requirements set forth in Special Regulation 780 CMR 110.R5 generally and 780 CMR 5116.0, as applicable; and
5. The practice of any trade licensed by agencies of the Commonwealth, provided that any such work is within the scope of said license, including, but not limited to, wiring, plumbing, gas fitting, fire protection systems, pipefitting, HVAC and refrigeration equipment.

5108.3.5.3 Municipal Construction Licensing. No municipality shall be prohibited from requiring a license for those individuals engaged in directly supervising persons engaged in construction, reconstruction, alteration, repair, removal or demolition in those categories of buildings and structures for which the BBRS does not require a license, provided that those municipalities which have established licensing requirements for construction supervisors prior to January 1, 1975, may maintain their existing licensing requirements.

5108.3.6 Registration of Home Improvement Contractors. In accordance with the provisions of M.G.L. c. 142A, no home improvement contractor, or organization or firm shall be involved in the improvement of any existing owner-occupied one- to four-family residential building unless said home improvement contractor has registered with the BBRS in accordance with the rules and regulations for the registration of home improvement contractors as set forth in Special Regulation 780 CMR 110.R6.

5108.3.7 Certification of Inspectors of Buildings, Building Commissioners and Local Inspectors. Except as allowed for conditional appointees, no individual shall perform the duties of municipal inspectors of buildings, building commissioners or local inspectors unless certified by the BBRS as set forth in Special Regulation 780 CMR 110.R7.

5108.4 Enforcement. Whoever violates the provisions of 780 CMR 5108 or any rules and regulations promulgated hereunder, or who falsifies or counterfeits a license, registration or certification issued by the BBRS, or who fraudulently issues or accepts such a license, registration or certification shall be punished as provided in 780 CMR 5118 or shall be subject to any other penalty provided for by law.

780 CMR 5109 APPROVAL

5109.1 Approved Materials and Equipment. All materials, equipment and devices subject to approval by the building official shall be constructed and installed in accordance with such approval.

5109.2 Used Materials and Equipment. Used materials, equipment and devices which meet the minimum requirements of 780 CMR 51.00 through 99.00 for new materials, equipment and devices shall be permitted; however, the building official may require satisfactory proof that such materials, equipment and devices have been reconditioned, tested, and/or placed in good and proper working condition prior to approval.

5109.3 Modifications. Wherever there are practical difficulties involved in carrying out the provisions of 780 CMR 51.00 through 99.00, the building official shall have the authority to grant modifications for individual cases, provided the building official shall first find that special individual reason makes the strict letter of 780 CMR 51.00 through 99.00 impractical and the modification is in compliance with the intent and purpose of 780 CMR 51.00 through 99.00 and that such modification does not lessen health, life, fire safety or structural requirements. The details of actions granting modifications shall be recorded and entered in the files of the building department. A building official may seek assistance from the District State Building Inspector for action under 780 CMR 5109. The

provisions of 780 CMR 5109 shall not apply to the specialized codes.

5109.3.1 Areas Prone to Flooding. The building official shall not grant modifications to any provision related to areas prone to flooding as established by 780 CMR 51.00 through 99.00 without the granting of a variance to such provisions by the BBRS Building Code Appeals Board as defined in 780 CMR 5122.

5109.4 Alternative Materials and Equipment.

5109.4.1 General. The provisions of 780 CMR 51.00 through 99.00 are not intended to limit the appropriate use or installation of materials, appliances, equipment or methods of design or construction not specifically prescribed by 780 CMR 51.00 through 99.00, provided that any such alternative has been approved. Alternative materials, appliances, equipment or methods of design or construction shall be approved when the building official is provided acceptable proof and has determined that said alternative is satisfactory and complies with the intent of the provisions of 780 CMR 51.00 through 99.00, and that said alternative is, for the purpose intended, at least the equivalent of that prescribed in 780 CMR 51.00 through 99.00 in quality, strength, effectiveness, fire resistance, durability and safety. Compliance with specific performance-based provisions of 780 CMR, in lieu of a prescriptive requirement, shall also be permitted as an alternate.

5109.4.2 Evidence Submitted. The building official may require that evidence or proof be submitted to substantiate any claims that may be made regarding the proposed alternate.

5109.4.3 Tests. Determination of acceptance shall be based on design or test methods or other such standards approved by the BBRS. In the alternative, where the BBRS has not provided specific approvals, the building official may accept, as supporting data to assist in this determination, duly authenticated engineering reports, formal reports from nationally acknowledged testing/listing laboratories, reports from other accredited sources. The costs of all tests, reports and investigations required under these provisions shall be borne by the applicant.

5109.4.4 Approval by the Construction Materials Safety Board. The building official may refer such matters to the Construction Materials Safety Board in accordance with 780 CMR 5123 for approval.

780 CMR 5110 APPLICATION FOR PERMIT

5110.1 Permit Application. It shall be unlawful to construct, reconstruct, alter, repair, remove or demolish a detached one-and two-family dwelling; or to install or alter any equipment for which a provision is made or the installation of which is

regulated by 780 CMR 51.00 through 99.00 without first filing a written application with the building official and obtaining the required building permit and all other required permits therefore.

5110.2 Temporary Structures and Uses.

5110.2.1 General. The building official is authorized to issue a permit for temporary structures and temporary uses. Such permits shall be limited as to time of service, but shall not be permitted for more than 180 days. The building official is authorized to grant extensions for demonstrated cause.

5110.2.2 Conformance. Temporary structures and uses shall conform to the structural strength, fire safety, means of egress, light, ventilation and sanitary requirements of 780 CMR 51.00 through 99.00 as necessary to ensure the public health, safety and general welfare.

5110.2.3 Termination of Approval. The building official is authorized to terminate such permit for a temporary structure or use and to order the temporary structure or use to be discontinued.

5110.3 Exemptions. A building permit is not required for the following activities. Such exemption, however, shall not exempt the activity from any review or permit that may be required pursuant to other laws, bylaws, rules and regulations of other jurisdictions (*e.g.*, zoning, conservation, *etc.*).

1. One-story detached accessory buildings used as tool or storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (12 m²).
2. Fences six feet (1829 mm) in height or less.
3. Retaining walls that, in the opinion of the building official, are not a threat to the public safety, health or welfare and which retain less than four feet (1220 mm) of unbalanced fill.
4. Ordinary repairs as defined in 780 CMR 52.00: *Repairs, ordinary* shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam, column or other load-bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the egress requirements; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, mechanical system, fire protection system, energy conservation system or other work affecting public health or general safety.
5. Greenhouses: A building permit or notice to the building official is not required for the construction of greenhouses covered exclusively with plastic film (in accordance with St. 1983, c. 671. This exemption does not apply if the greenhouse is to be used for large assemblies of

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people or uses other than normally expected for this purpose).

6. Painting, papering, tiling, carpeting, countertops and similar finish work.
7. Swings and other playground equipment accessory to a one- or two-family dwelling.
8. Window awnings nine square feet (0.8361 m²) or less in area supported by an exterior wall.

5110.4 Form of Application. Applicants shall submit requests for building permits only on the uniform building permit application form contained in Appendix 780 CMR 120.P or on a form that has been approved by the BBRS for such purpose. The application for a permit shall be accompanied by the required fee as prescribed in 780 CMR 5114.

5110.5 By Whom Application is Made. Application for a permit shall be made by the owner or lessee of the detached one- or two-family dwelling or agent of either. If application is made other than by the owner, the written authorization of the owner shall accompany the application. Such written authorization shall be signed by the owner and shall include a statement of ownership and shall identify the owner's authorized agent, or shall grant permission to the lessee to apply for the permit. The full names and addresses of the owner, lessee, applicant and the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.

Note: It shall be the responsibility of the registered contractor to obtain all permits necessary for work covered by M.G.L. c. 142A, *Regulation of Home Improvement Contractors*. An owner who secures his or her own permits for such shall be excluded from the guaranty fund provisions as defined in M.G.L. c. 142A. Refer to Special Regulation 780CMR 110.R6 and M.G.L. c. 142A for additional information regarding the Home Improvement Contractor Registration Program.

5110.6 Recognition of Laws, Rules and Regulations. The securing of a building permit by the owner, or the owner's authorized agent, to construct, reconstruct, alter, repair, demolish, remove, install equipment or change the use or occupancy of a detached one- or two-family dwelling shall not be construed to relieve or otherwise limit the duties and responsibilities of the licensed, registered or certified individual or firm under the rules and regulations governing the issuance of such license registration or certification.

5110.7 Construction Documents. The application for a permit shall be accompanied by not less than three sets of construction documents. The building official is permitted to waive or modify the requirements for filing construction documents when the building official determines that the scope of the work is of a minor nature. When the quality of the materials is essential for conformity to 780 CMR

51.00 through 99.00, specific information shall be given to establish such quality, and 780 CMR 51.00 through 99.00 shall not be cited, or the term "legal" or its equivalent used as a substitute for specific information.

When such application for permit includes fire protection systems or portions thereof, the building official shall cause one set of construction documents filed pursuant to 780 CMR 5110.7 to be transmitted simultaneously to the head of the local fire department for his file, review and approval of the fire protection system items specified in 780 CMR 5313 and/or 780 CMR 93.00 as applicable. The head of the local fire department shall within ten working days from the date of receipt by him, approve or disapprove such construction documents. If the head of the local fire department disapproves such construction documents, he or she shall notify the building official (refer to M.G.L. c. 148, § 28A) in writing citing the relevant sections of noncompliance with 780 CMR or the sections of the referenced standards of Appendix A. Upon the request of the head of the local fire department, the building official may grant one or more extensions of time for such review provided, however, that the total review by said head of the local fire department shall not exceed 30 calendar days (the same concurrent 30-day period afforded building department review). If such approval, disapproval or request for extension of time is not received by the building official within said ten working days, the building official may deem the fire protection construction documents implicitly approved by the head of the local fire department.

Construction documents shall be drawn upon suitable material. Electronic media documents are permitted to be submitted when approved by the building official. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that the work will conform to the provisions of 780 CMR 51.00 through 99.00 and relevant laws, ordinances, rules and regulations, as determined by the building official.

At a minimum, construction documents shall include the following:

1. Site plan;
2. Foundation plan and details (as necessary);
3. Floor plans (including basement and attic levels, if applicable); floor plans shall include location of all required fire protection systems and heating systems storage areas.
4. Exterior building elevations;
5. Framing plans and/or building section(s) adequately depicting structural systems;
6. Schedules, legends and/or details adequately depicting doors, windows and related material installations; and
7. Energy conservation information.

Failure to comply with 780 CMR 5110.7 Items through .7 shall result in denial of the building permit.

5110.7.1 Preparation of Construction Documents. In accordance with M.G.L. c. 112, § 60L and M.G.L. c. 112, §§ 81D through 81T, the design of any structural member, building system or parts thereof not prescriptively provided for in 780 CMR 51.00 through 99.00 may require the services of a registered design professional. A building official may require plans, specifications, calculations and/or details of sufficient clarity to ensure compliance with the relevant requirements of 780 CMR 51.00 through 99.00 and/or relevant laws, ordinances, rules and regulations.

5110.7.2 Information for Construction in Areas Prone to Flooding. Construction documents for detached one- and two-family dwellings to be constructed in flood hazard areas are required to be prepared by a registered architect or registered professional engineer (collectively referred to herein as registered design professionals) and shall include:

1. Delineation of flood hazard areas, floodway boundaries, and flood zones, and the design flood elevation, as appropriate; and
2. The elevation of the proposed lowest floor, including basement; in areas of shallow flooding (AO zones), the height of the proposed lowest floor, including basement, above the highest adjacent grade.

5110.7.3 Design. Plans, computations and specifications involving new construction, alterations, repairs, expansions or additions or change in use or occupancy of any detached one- or two-family dwelling which are prepared by or under the supervision of a Massachusetts-registered architect or Massachusetts-registered professional engineer, as applicable, shall bear his or her original signature and seal. Said signature and seal shall signify that the plans, computations and specifications meet the applicable provisions of 780 CMR 51.00 through 99.00 and all accepted engineering practices. A legally recognized professional performing work as defined by M.G.L. c. 112, § 81R may be exempted from 780 CMR 5110.

5110.7.4 Plot Plan. The construction documents submitted with the application for permit shall be accompanied by a plot plan showing the size and location of new construction and existing structures on the site and distances from lot lines. In the case of demolition, the plot plan shall show construction to be demolished and the location and size of existing structures and construction that are to remain on the site.

5110.8 Amendments to Application. Subject to the limitations of 780 CMR 5110.9, amendments to a plan, application or other records accompanying the

same shall be filed prior to the commencement of the work for which the amendment to the permit is sought or issued. Such amendments shall be deemed part of the original application and shall be submitted in accordance with 780 CMR 5110.1.

5110.9 Time Limitation of Application. An application for a permit for any proposed work shall be deemed to have been abandoned six months after the date of filing, unless such application has been diligently prosecuted or a permit shall have been issued; except that the building official shall grant one or more extensions of time for additional periods not exceeding 90 days each if there is reasonable cause and upon written request by the owner.

780 CMR 5111 PERMITS

5111.1 Action on Application. The building official shall examine or cause to be examined all applications for permits and amendments thereto within 30 days after filing thereof. If the application or the construction documents do not conform to the requirements of 780 CMR 51.00 through 99.00 and all pertinent laws under the building official's jurisdiction, the building official shall reject such application in writing, stating the reasons therefore. If the building official is satisfied that the proposed work conforms to the requirements of 780 CMR 51.00 through 99.00 and all laws and ordinances applicable thereto, the building official shall issue a permit therefore.

5111.2 Zoning. In accordance with the provisions of M.G.L. c. 40A or St. 1956, c. 665 as amended, no permit for the construction, alteration, change of use or moving of any detached one- or two-family dwelling shall be issued if such detached one- or two-family dwelling or use would be in violation of any zoning ordinance or bylaw.

5111.3 Railroad Right-of-way. No permit to build a structure of any kind on land formerly used as a railroad right-of-way or any property appurtenant thereto formerly used by any railroad company in the state shall be issued without first obtaining, after public hearing, the consent in writing to the issuance of such permit from the Secretary of the Executive Office of Transportation and Construction, all in accordance with M.G.L. c. 40, § 54A.

5111.4 Water Supply. No permit shall be issued for the construction of a detached one- or two-family dwelling which would necessitate the use of water therein, unless a supply of water is available therefore, either from a water system operated by a city, town or district, or from a well located on the land where the detached one- or two-family dwelling is to be constructed, or from a water corporation or company, as required by M.G.L. c. 40, § 54.

5111.5 Debris. As a condition of issuing a permit

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for the construction demolition, renovation, rehabilitation or other alteration of a detached one- or two-family dwelling, M.G.L. c. 40, § 54 requires that the debris resulting therefrom shall be disposed of in a properly licensed solid waste disposal facility as defined by M.G.L. c. 111, § 150A. Signature of the permit applicant, date and number of the building permit to be issued shall be indicated on a form provided by the building department, and attached to the office copy of the building permit retained by the building department. If the debris will not be disposed of as indicated, the holder of the permit shall notify the building official, in writing, as to the location where the debris will be disposed.

5111.6 Workers' Compensation. No permit shall be issued to construct, reconstruct, alter or demolish a detached one- or two-family dwelling until acceptable proof of insurance pursuant to M.G.L. c. 152, § 25C(6) has been provided to the building official.

5111.7 Hazards to Air Navigation. Application for building new structures or adding to existing structures within airport approaches as defined in M.G.L. c. 90, § 35B and any amendments thereto or language substituted therefore, must include a certification by the applicant that:

1. Either a permit from the Massachusetts Aeronautics Commission is not required because the structure is, or will be:
 - (a) In an area subject to airport approach regulations adopted pursuant to M.G.L. c. 90, §§ 40A through 40I; or
 - (b) in an approach to Logan International Airport; or
 - (c) less than 30 feet (9144 mm) above ground level; or
2. A permit from the Massachusetts Aeronautics Commission is required pursuant to M.G.L. c. 90, § 35B and a copy of said permit is enclosed with the application.

Applications for permits to build a new structure or add to an existing structure requiring the filing of a Notice of Proposed Construction or Alteration (FAA Form 7460-1) with the Federal Aviation Administration shall mail a copy of the completed FAA Form 7460-1 to the Massachusetts Aeronautics Commission within three business days after submitting said form to the FAA.

5111.8 Expiration of Permit. Any permit issued shall be deemed abandoned and invalid unless the work authorized by it shall have been commenced within six months after its issuance; however, for cause, and upon written request of the owner, one or more extensions of time, for periods not exceeding six months each, may be granted in writing by the building commissioner or inspector of buildings. Work under such a permit in the opinion of the building commissioner or inspector of buildings

must proceed in good faith continuously to completion so far as is reasonably practicable under the circumstances. It is the sole responsibility of the owner to inform, in writing, the building commissioner or inspector of buildings of any facts which support an extension of time. The building commissioner or inspector of buildings has no obligation under 780 CMR 5111.8 to seek out information which may support an extension of time. The owner may not satisfy this requirement by informing any other municipal and/or state official or department.

For purposes of 780 CMR 5111.8 any permit issued shall not be considered invalid if such abandonment or suspension of work is due to a court order prohibiting such work as authorized by such permit; provided, however, in the opinion of the building commissioner or inspector of buildings, the person so prohibited by such court order, adequately defends such action before the court. Although said permit shall remain valid pending final disposition by the court, no work shall be performed in violation of a valid court order.

5111.9 Previous Approvals. 780 CMR 51.00 through 99.00 shall not require changes in the construction documents, construction or designated use group of a building for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been actively prosecuted within **180 days after the effective date** of 780 CMR 51.00 through 99.00 and is completed with dispatch.

5111.10 Signature to Permit. The building official's signature shall be attached to every permit; or the building official shall authorize a subordinate to affix such signature thereto.

5111.11 Approved Construction Documents. When the building official has determined that the proposed construction conforms to the provisions of 780 CMR 51.00 through 99.00 and other applicable laws, bylaws, rules and regulations under his or her jurisdiction, the building official shall stamp or endorse in writing the three sets of construction documents "Approved." One set of the approved construction documents shall be retained by the building official, one set shall be forwarded to the head of the local fire department (when applicable/see 780 CMR 5110.7 and 780 CMR 5111.8) for purposes of notification and the other set shall be kept at the construction site, open to inspection of the building official or an authorized representative at all reasonable times.

5111.12 Revocation of Permits. The building official shall revoke a permit or approval issued under the provisions of 780 CMR 51.00 through 99.00 in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based.

5111.13 Approval in Part. The building official may issue a permit for the construction of foundations or any other part of a detached one- or two-family dwelling before the construction documents for the whole detached one- or two-family dwelling have been submitted, provided that adequate information and detailed statements have been filed complying with all of the pertinent requirements of 780 CMR 51.00 through 99.00. Work shall be limited to that work approved by the partial approval and further work shall proceed only when the building permit is amended in accordance with 780 CMR 5110.8. The holder of such permit for the foundation or other parts of a detached one- or two-family dwelling shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire detached one- or two-family dwelling will be granted.

5111.14 Posting of Permit. A true copy of the building permit shall be kept on the site of operations, open to public inspection during the entire time of prosecution of the work and until the completion of the same.

5111.15 Notice of Start. At least 24-hour notice of start of work under a building permit shall be given to the building official.

780 CMR 5112 DEMOLITION OR REMOVAL OF STRUCTURES

5112.1 Service Connections. Before a detached one- or two-family dwelling is demolished or removed, the owner or agent shall notify all utilities having service connections within the structure such as water, electric, gas, sewer and other connections. A permit to demolish or remove a detached one- or two-family dwelling shall not be issued until a release is obtained from the utilities, stating that their respective service connections and appurtenant equipment, such as meters and regulators, have been removed or sealed and plugged in a safe manner.

All debris shall be disposed of in accordance with 780 CMR 5111.5.

5112.2 Notice to Adjoining Owners. Only when written notice has been given by the applicant to the owners of adjoining lots and to the owners of wired or other facilities, of which the temporary removal is necessitated by the proposed work, shall a permit be granted for the removal of a detached one- or two-family dwelling.

5112.3 Lot Regulation. Whenever a detached one- or two-family dwelling is demolished or removed, the premises shall be maintained free from all unsafe or hazardous conditions by the proper regulation of the lot, restoration of established grades and the erection of the necessary retaining walls and fences in accordance with the provisions of 780 CMR 51.00 through 99.00.

780 CMR 5113 CONDITIONS OF PERMIT

5113.1 Payment of Fees. A permit shall not be issued until the fees prescribed in 780 CMR 5114.0 have been paid.

5113.2 Compliance with Code. The permit shall be a license to proceed with the work and shall not be construed as authority to violate, cancel or set aside any of the provisions of 780 CMR 51.00 through 99.00 or any other law or regulation, except as specifically stipulated by modification or legally granted variation as described in the application. Permits presuming to give authority to violate or cancel the provisions of 780 CMR 51.00 through 99.00 or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the building official from requiring the correction of errors in the construction documents and other data. The building official is also authorized to prevent occupancy or use of a structure where in violation of 780 CMR 51.00 through 99.00 or of any other ordinances of this jurisdiction.

5113.3 Compliance with Permit. All work shall conform to the approved application and the approved construction documents for which the permit has been issued and to any approved amendments to the approved application or the approved construction documents.

5113.4 Compliance with Site Plan. All new work shall be located strictly in accordance with the approved site plan.

780 CMR 5114 FEES

5114.1 General. A permit to begin work for new construction, alteration, removal, demolition or other building operation shall not be issued until the fees prescribed in 780 CMR 5114 shall have been paid to the department of building inspection or other authorized agency of the jurisdiction, nor shall an amendment to a permit necessitating an additional fee be approved until the additional fee has been paid.

5114.2 Special Fees. The payment of the fee for the construction, alteration, removal or demolition for all work done in connection with or concurrently with the work contemplated by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law or ordinance for water taps, sewer connections, electrical permits, erection of signs and display structures, or other appurtenant structures, or fees of inspections, certificates of occupancy or other privileges or requirements, both within and without the jurisdiction of the department of building inspection.

5114.3 New Construction and Alterations. The fees for plan examination, building permit and

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inspections shall be as prescribed in 780 CMR 5114.3.1.

5114.3.1 Fee Schedule. A fee for each plan examination, building permit and inspection shall be paid in accordance with the fee schedule as established by the municipality.

5114.4 Related Fees. The payment of the fee for the construction, alteration, removal or demolition for work done in connection with or concurrently with the work authorized by a building permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law.

5114.5 Accounting. The building official shall keep an accurate account of all fees collected; and such collected fees shall be deposited in the jurisdiction treasury in accordance with procedures established by the municipality, or otherwise disposed of as required by law.

780 CMR 5115 INSPECTION

5115.1 Preliminary Inspection. Before issuing a permit, the building official shall, if deemed necessary, examine or cause to be examined all detached one- or two-family dwellings and sites for which an application has been filed for a permit to construct, enlarge, alter, repair, remove, demolish or change the use or occupancy thereof.

5115.2 Required Inspections. After issuing a building permit, the building official shall conduct inspections during construction at intervals sufficient to ensure compliance with the provisions of 780 CMR 51.00 through 99.00. The building official shall inform the applicant of the required points of inspection at the time of application. Upon completion of the work for which a permit has been issued, the building official shall conduct a final inspection pursuant to 780 CMR 5115.4. A record of all such examinations and inspections and of all violations of 780 CMR 51.00 through 99.00 shall be maintained by the building official.

In conjunction with specific construction projects, the building official may designate specific inspection points in the course of construction that require the contractor or builder to give the building official 24 hours notice prior to the time when those inspections need to be performed. The building official shall make the inspections within 48 hours after notification. The building official may require the owner, owner's representative or licensed construction supervisor to be present during such inspections.

5115.3 Approved Inspection Agencies. The building official may accept independent third-party reports of approved inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability and subject to any and all applicable requirements of M.G.L. c. 268A

(Conduct of Public Officials and Employees).

5115.4 Final Inspection. Upon completion of the permitted work of the detached one- or two-family dwelling, or before issuance of the certificate of occupancy required by 780 CMR 5120.0, a final inspection shall be made. All variations of the approved construction documents and permit shall be noted and the holder of the permit shall be notified of the discrepancies.

5115.5 Right of Entry. In the discharge of his duties, the building official shall have the authority to enter at any reasonable hour any detached one- or two-family dwelling in the municipality to enforce the provisions of 780 CMR 51.00 through 99.00.

If any owner, occupant or other person refuses, impedes, inhibits, interferes with, restricts or obstructs entry and free access to every part of the detached one- or two-family dwelling where inspection authorized by 780 CMR 51.00 through 99.00 is sought, the building official, or state inspector, may seek, in a court of competent jurisdiction, a search warrant so as to apprise the owner, occupant or other person concerning the nature of the inspection and justification for it and may seek the assistance of police authorities in presenting said warrant.

5115.6 Approval Required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building official. The building official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or shall notify the permit holder or an agent of the permit holder wherein the same fails to comply with 780 CMR 51.00 through 99.00. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the building official.

5115.7 Identification. The building official shall carry proper identification when inspecting detached one- or two-family dwellings in the performance of duties under 780 CMR 51.00 through 99.00.

5115.8 Jurisdictional Cooperation. The assistance and cooperation of police, fire and health departments and all other officials shall be available to the building official as required in the performance of his duties.

5115.9 Coordination of Inspections. Whenever in the enforcement of 780 CMR 51.00 through 99.00 or another code or ordinance, the responsibility of more than one building official of the jurisdiction is involved, it shall be the duty of the building officials involved to coordinate their inspections and administrative orders as fully as practicable so that the owners and occupants of the detached one- or

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two-family dwelling shall not be subjected to visits by numerous inspectors or multiple or conflicting orders. Whenever an inspector from any agency or department observes an apparent or actual violation of some provision of some law, ordinance or code not within the inspector's authority to enforce, the inspector shall report the findings to the building official having jurisdiction.

780 CMR 5116 LICENSED CONSTRUCTION SUPERVISOR SERVICES DURING CONSTRUCTION

5116.1 General. In accordance with 780 CMR 5108.3.5 and Special Regulation 780 CMR 110.R5, the construction, reconstruction, alteration, repair, removal or demolition of all detached one- and two-family dwellings or the field erection of any manufactured building shall be under the control of a licensed construction supervisor. Except for work under the control of a licensed tradesperson subject to other codes and/or regulations, the licensed construction supervisor shall be responsible for ensuring that all construction-related activities are performed in compliance with 780 CMR 51.00 through 99.00 and the approved construction documents, and all manufacturers' recommendations, as applicable.

At a minimum, the license holder, or responsible registered design professional if so employed to perform construction services, as identified on the building permit application or his or her licensed designee, shall be present at some point on the building site to approve construction, reconstruction, alterations, removal or demolition involving the following work:

1. Foundation:
 - (a) Location of and excavation of foundation;
 - (b) Preparation of bearing material;
 - (c) Placement of forms and reinforcing materials (if applicable);
 - (d) Incorporation of vapor retarders (energy conservation)
 - (e) Placing of concrete (or setting of other foundation materials);
 - (f) Setting weather protection methods (if required);
 - (g) Installation of waterproofing and/or damp proofing materials; and
 - (h) Placement of backfill.

Note: If encountered in excavating for foundation placement, the licensed construction supervisor (or registered design professional) shall report the presence of groundwater to the building official and shall submit a report detailing methods of remediation.

2. Structural frame:
 - (a) Installation of joists, trusses and other structural members and sheathing materials to verify size, species and grade, spacing and

attachment/fastening methods (the licensed construction supervisor shall ensure that any cutting or notching of structural members is performed in accordance with requirements of 780 CMR 51.00 through 99.00);

- (b) Setting of masonry or other structural systems (if used).

3. Energy conservation: Installation of insulation materials, vapor and air infiltration barriers.

4. Fire protection: Installation of smoke and heat detectors and/or systems.

5. Special construction (including, but not limited to):

- (a) Chimneys;
- (b) Retaining walls over four feet (1219 mm) in height above grade.

The building official may require the license holder or his or her licensed designee (or registered design professional) to be present on the building site at other points during the construction, reconstruction, alterations, removal or demolition work as he or she deems appropriate.

Exception: Any homeowner performing work for which a building permit is required shall be exempt from the licensing provisions of 780 CMR 5108.3.5, provided that if a homeowner engages a person(s) for hire to do such work, that such homeowner shall act as supervisor and shall be subject to all applicable provisions of 780 CMR 5116. This exception shall not apply to the field erection of manufactured buildings constructed pursuant to 780 CMR 51.00 through 99.00 and Special Regulation 780 CMR 110.R3 (*see* definition of "Homeowner" in 780 CMR 5108.3.5.1).

Note: Registered design professionals who secure building permits for and/or perform construction services for detached one- and two-family dwellings are not required to be licensed pursuant to 780 CMR 5108.3.5, provided that said registered design professional secures such permit and performs such services under the responsibilities of his or her professional registration.

When required by the building official, at the completion of the work, prior to the issuance of a certificate of occupancy, the licensed construction supervisor, registered professional or homeowner, as applicable, shall submit a copy of the completed checklist contained in Appendix 780 CMR 120.P to the building official in verification that, to the best of his or her knowledge, the work has been executed in accordance with the provisions of 780 CMR 51.00 through 99.00.

780 CMR 5117 WORKMANSHIP

5117.1 General. All work shall be conducted, installed and completed in a workmanlike and

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acceptable manner, and in accordance with manufacturer recommendations, so as to secure the results intended by 780 CMR 51.00 through 99.00.

780 CMR 5118 VIOLATIONS

5118.1 Unlawful Acts. It shall be unlawful for any person, firm or corporation to use, occupy or change the use or occupancy of any detached one- and two-family dwelling or to erect, construct, alter, extend, repair, remove or demolish any detached one- and two-family dwelling or any equipment regulated by 780 CMR 51.00 through 99.00, or cause same to be done, in conflict with or in violation of any of the provisions of 780 CMR 51.00 through 99.00.

5118.2 Notice of Violation. The building official shall serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, removal, demolition or occupancy of a detached one- and two-family dwelling in violation of the provisions of 780 CMR 51.00 through 99.00, or in violation of a detail statement or a plan approved there under, or in violation of a permit or certificate issued under the provisions of 780 CMR 51.00 through 99.00. Such order shall be in writing and shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

5118.3 Prosecution of Violation. If the notice of violation is not complied with in the time period specified in said notice of violation, the building official may institute the appropriate proceedings at law or in equity to restrain, correct or abate such violation or to require the removal or termination of the unlawful occupancy of the detached one- and two-family dwelling in violation of the provisions of detached one- and two-family dwellings or of the order or direction made pursuant thereto.

5118.4 Violation Penalties. Whoever violates any provision of 780 CMR 51.00 through 99.00, except any specialized code referenced herein, shall be punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both, for each such violation. Each day during which a violation exists shall constitute a separate offense. The building official shall not begin criminal prosecution for such violations until the lapse of 30 days after the issuance of the written notice of violation.

5118.5 Abatement of Violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to prevent unlawful construction or to restrain, correct or abate a violation, or to prevent illegal occupancy of a detached one- and two-family dwelling or to stop an illegal act, conduct, business or occupancy of a detached one- and two-family dwelling on or about any premises.

5118.6 Notice or Orders, Service and Content. Every notice or order authorized by 780 CMR, except for notices required by 780 CMR 110.R5 and 780 CMR 110.R6, shall be in writing and shall be served on the person responsible:

1. Personally, by any person authorized by the building official; or
2. By any person authorized to serve civil process by leaving a copy of the order or notice at the responsible party's last and usual place of abode; or
3. By sending the party responsible a copy of the order by registered or certified mail return receipt requested, if he or she is within the Commonwealth; or
4. If the responsible party's last and usual place of abode is unknown, by posting a copy of this order or notice in a conspicuous place on or about the premises in violation and by publishing it for at least three out of five consecutive days in one or more newspapers of general circulation wherein the building or premises affected is situated.

780 CMR 5119 STOP WORK ORDER

5119.1 Notice to Owner. Upon notice from the building official that work on any detached one- and two-family dwelling is being prosecuted contrary to the provisions of 780 CMR 51.00 through 99.00, in an unsafe and dangerous manner or contrary to the approved construction documents submitted in support of the building permit application, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work, and shall state the conditions under which work will be permitted to resume.

5119.2 Unlawful Continuance. Any person who shall continue any work in or about the detached one- and two-family dwelling after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than \$1,000 or by imprisonment for not more than one year, or both, for each such violation. Each day during which a violation exists shall constitute a separate offense.

780 CMR 5120 CERTIFICATE OF OCCUPANCY

5120.1 General. New buildings and structures. A detached one- and two-family dwelling hereafter shall not be used or occupied in whole or in part until the certificate of use and occupancy shall have been issued by the building commissioner or inspector of buildings or, when applicable, the state inspector. The certificate shall not be issued until all the work has been completed in accordance with the

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provisions of the approved permits and of the applicable codes for which a permit is required, except as provided in 780 CMR 5120.3.

5120.2 Buildings or Structures Hereafter Altered.

A detached one- and two-family dwelling, in whole or in part altered, including a change of use shall not be occupied or used until a certificate of approval shall have been issued certifying that the work has been completed in accordance with the provisions of the approved permits and of the applicable codes for which a permit is required. Any use or occupancy, which was not discontinued during the work of alteration, shall be discontinued within 30 days after the completion of the alteration unless the required certificate is issued.

5120.3 Temporary Occupancy. Upon the request of the holder of a permit, a temporary certificate of occupancy may be issued before the completion of the entire work covered by the permit, provided that such portion or portions may be occupied safely prior to full completion of the detached one- and two-family dwelling without endangering life or public welfare. Any occupancy permitted to continue during the work shall be discontinued within 30 days after completion of the work unless a certificate of occupancy is issued by the building official.

5120.4 Contents of Certificate. When a detached one- and two-family dwelling is entitled thereto, the building official shall issue a certificate of occupancy within ten days after written application. Upon completion of the final inspection in accordance with 780 CMR 5115.4 and correction of the violations and discrepancies, the certificate of occupancy shall be issued. The certificate of occupancy shall specify, but shall not be limited to, the following.

1. The edition of the code under which the permit was issued.
2. The permit number.
3. The address of the structure.
4. The name and address of the owner.
5. The use group and occupancy, in accordance with the provisions of 780 CMR 51.00 through 99.00.
6. The type of construction.
7. The name of the building official.
8. If an automatic sprinkler system is provided.
9. Any special stipulations and conditions of the building permit.

780 CMR 5121 UNSAFE STRUCTURES

5121.1 General. The provisions of 780 CMR 5121 are established by M.G.L. c. 143, §§ 6, 7, 8, 9 and 10.

5121.2 Inspection. The building official immediately upon being informed by report or otherwise that a detached one- and two-family

dwelling or anything attached thereto or connected therewith is dangerous to life or limb or that any detached one- and two-family dwelling in that city or town is unused, uninhabited or abandoned, and open to the weather, shall inspect the same; and he shall forthwith in writing notify the owner to remove it or make it safe if it appears to him to be dangerous, or to make it secure if it is unused, uninhabited or abandoned and open to the weather. If it appears that such detached one- and two-family dwelling would be especially unsafe in case of fire, it shall be deemed dangerous within the meaning hereof, and the building official may affix in a conspicuous place upon its exterior walls a notice of its dangerous condition, which shall not be removed or defaced without authority from him.

5121.3 Removal or Making Structure Safe. Any person so notified shall be allowed until 12:00 P.M. of the day following the service of the notice in which to begin to remove such detached one- and two-family dwelling or make it safe, or to make it secure, and he or she shall employ sufficient labor speedily to make it safe or remove it or to make it secure; but if the public safety so requires and if the mayor or selectmen so order, the building official may immediately enter upon the premises with the necessary workmen and assistants and cause such unsafe structure to be made safe or demolished without delay and a proper fence put up for the protection of passersby, or to be made secure.

5121.4 Failure to Remove or Make Structure Safe, Survey Board, Survey Report. If an owner of such unsafe detached one- and two-family dwelling refuses or neglects to comply with the requirements of such notice within the specified time limit, and such detached one- and two-family dwelling is not made safe or taken down as ordered therein, a careful survey of the premises shall be made by a board consisting: in a city, of a city engineer, the head of the fire department, as such term is defined in M.G.L. c. 148, § 1, and one disinterested person to be appointed by the building official; and, in a town, of a surveyor, the head of the fire department and one disinterested person to be appointed by the building official. In the absence of any of the above officers or individuals, the mayor or selectmen shall designate one or more officers or other suitable persons in place of the officers so named as members of said board. A written report of such survey shall be made, and a copy thereof served on such owner.

5121.5 Removal of Dangerous or Abandoned Structures. If such a survey report as outlined in 780 CMR 5121.4 declares such detached one- and two-family dwelling to be dangerous or to be unused, uninhabited or abandoned, and open to the weather, and if the owner continues such refusal or neglect, the building official shall cause it to be

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made safe or taken down or to be made secure; and, if the public safety so requires, said building official may at once enter the detached one- and two-family dwelling, the land on which it stands or the abutting land or buildings, with such assistance as he may require, and secure the same; and may remove and evict, under the pertinent provisions of M.G.L. c. 239, or otherwise, any tenant or occupant thereof; and may erect such protection for the public by proper fence or otherwise as may be necessary, and for this purpose may close a public highway. In the case of such demolition, the said building official shall cause such lot to be leveled to conform with adjacent grades by an inorganic fill. The costs and charges incurred shall constitute a lien upon the land on which the detached one- and two-family dwelling is located, and shall be enforced in an action of contract; and such owner shall, for every day's continuance of such refusal or neglect after being so notified, be punished by a fine in accordance with 780 CMR 5118.4. The provisions of M.G.L. c. 139, § 3A, paragraph two, relative to liens for such debt and the collection of claims for such debt shall apply to any debt referred to in 780 CMR 5121, except that the said building official shall act hereunder in place of the mayor or board of selectmen. During the time such order is in effect, it shall be unlawful to use or occupy such detached one- and two-family dwelling or any portion thereof for any purpose.

5121.6 Remedy of Person Ordered to Remove a Dangerous Structure or Make it Safe.

Notwithstanding the provisions of 780 CMR 5122, an owner, aggrieved by such order, may have the remedy prescribed by M.G.L. c. 139, § 2, provided that any provision of M.G.L. c. 139, § 2 shall not be construed so as to hinder, delay or prevent the building official from acting and proceeding under 780 CMR 5121; and provided, further, that 780 CMR 5121 shall not prevent the city or town from recovering the forfeiture provided in said 780 CMR 5121.5 from the date of the service of the original notice, unless the order is annulled by the jury.

5121.7 Standards for Making Buildings Safe or Secure. Any owner of a detached one- and two-family dwelling who has been notified that said detached one- and two-family dwelling shall be made safe or secure under 780 CMR 5121.2, shall:

1. Remove all materials determined by the head of the fire department or building official to be dangerous in case of fire.
2. Secure all floors accessible from grade utilizing one of the following methods so long as such method is approved by the head of the fire department or building official in writing:
 - (a) Secure all window and door openings in accordance with the U.S. Fire Administration, National Arson Prevention Initiative Board-Up Procedures, continuously until such time as the

building is reoccupied; or

(b) Provide 24-hour watchman services continuously until such time as the building is reoccupied; or

(c) Provide a monitored intruder alarm system at the perimeter of all floors accessible from grade continuously until such time as the building is reoccupied.

Said owner, as the case may be, shall notify the building official that the approved method chosen to secure the building has been incorporated. Said owner shall allow the building official to enter the building for an inspection to ascertain that the building is secured and made safe. Said owner shall allow the head of the fire department to enter the building. The building official shall be supplied with records of maintenance and operation if the provisions of 780 CMR 5121.7. 2(b) or (c) are used.

3. Maintain any existing fire alarms or sprinkler systems unless written permission is obtained from the head of the fire department in accordance with M.G.L. c. 148, § 27A to shut off or disconnect said alarms or systems.

4. Maintain utilities unless written permission is obtained from the building official to disconnect said utilities. Permission to disconnect utilities shall not be granted if it will result in inadequate heat to prevent freezing of an automatic sprinkler system or inadequate utilities to maintain any other protection systems.

5. The requirements of 780 CMR 5121.7 (1-4) do not prevent a building official from ordering or taking expeditious, temporary security measures in emergency situations pending the completion of the requirements of 780 CMR 5121.7 (1-4).

For purposes of 780 CMR 5121.7.5, an "emergency situation" shall be defined as: an unexpected incident, which by its very nature may present a threat to public safety personnel who may be required to affect a rescue effort or conduct fire-extinguishment operations.

Upon refusal or neglect of said owner to comply with such notice, any building official acting under the authority of 780 CMR 5121.3 or 5121.5 shall cause to be secured all window and door openings accessible from grade in accordance with the U.S. Fire Administration, National Arson Prevention Initiative Board-Up Procedures or other equivalent procedure approved by the head of the fire department continuously until such time as the building is reoccupied.

Any building that has been made to conform to the provisions of this regulation during vacancy may be reoccupied under its last permitted use and occupancy classification, provided that any systems which were disconnected or shut down during the period of vacancy are restored to a fully functional condition and subject to 780 CMR 5111.2 and

M.G.L. c. 40A. The local building official shall be notified in writing prior to reoccupancy. If said building is changed in use or occupancy or otherwise renovated or altered it shall be subject to the applicable provisions of 780 CMR 51.00 through 99.00.

5121.8 Marking or Identifying Certain Buildings that are Especially Unsafe in the Case of Fire. Any building official who determines that a building is especially unsafe in case of fire under 780 CMR 5121.2 shall notify the head of the fire department about the existence of said building. The building official, in cooperation with the head of the fire department, shall cause said building to be marked in accordance with the marking requirements established by the Board of Fire Prevention Regulations in 527 CMR 10.00.

780 CMR 5122 BOARD OF APPEALS

5122.1 State Building Code Appeals Board. Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act under 780 CMR 51.00 through 99.00, excluding the specialized codes, by any agency or official of the city, town or region, or agency or official of the state charged with the administration or enforcement of 780 CMR 51.00 through 99.00 or any of its rules or regulations, excepting any specialized codes, may appeal directly to the State Building Code Appeals Board as provided in 780 CMR 5122.

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act under 780 CMR 51.00 through 99.00 by any agency or official of a city, town or region charged with the administration or enforcement of 780 CMR 51.00 through 99.00, excepting any specialized codes, may appeal directly to the State Building Code Appeals Board or may appeal first to a local or regional building code appeals board and, if aggrieved thereby, he or she may then appeal to the State Building Code Appeals Board as provided in 780 CMR 5122.

Whoever is aggrieved by the head of the fire department's interpretation, order, requirement, direction or failure to act under the applicable provisions of M.G.L. c. 148, § 26A or 26B, may within 45 days after the service of notice thereof, appeal from such interpretation, order, requirement, direction or failure to act, to the Board of Building Regulations and Standards Board of Appeals as provided in 780 CMR 1.00, 780 CMR 5122 and in accordance with M.G.L. c. 143, § 100.

In the event an appeal is taken directly to the State Building Code Appeals Board from an interpretation, order, requirement or direction, said appeal shall be filed as specified in 780 CMR 5122.3.1 with the State Building Code Appeals Board not later than 45 days after the service of notice thereof of the interpretation, order, requirement or direction.

In the event the appeal is taken directly to the State Building Code Appeals Board for the failure to act, the appeal shall be taken not later than 45 days after a request to act has been made by the aggrieved person in writing and served upon the appropriate building official or chief administrative officer of the state or local agency which fails to act.

If the aggrieved person elects to appeal before the local or regional building code appeals board, he shall not be allowed to enter such appeal with the State Building Code Appeals Board until such time as the said local or regional board renders a decision, unless the reason for appeal to the State Building Code Appeals Board is the failure of the local or regional board to act.

5122.2 Membership.

5122.2.1 Three-member Panel. The State Building Code Appeals Board (hereinafter referred to in 780 CMR 5122 as "the Board") shall consist of the membership of the BBRS. The Chairman of the Board may designate any three-members of the Board to act as a three-member panel to hold any public hearing under 780 CMR 5122 and to hear testimony and take evidence. The Chairman of the Board shall select one of the three members to act as chairman of the said three-member panel. If a three-member panel is so designated, the three member panel shall act as the Appeals Board and render a decision as provided in 780 CMR 5122.0.

5122.2.2 Clerk. The administrator of the BBRS shall designate a clerk to the BBRS. The clerk shall keep a detailed record of all decisions and appeals and a record on file showing the name of each appeal properly indexed and the disposition of the appeal. Said record shall be open to public inspection at all times during normal business hours.

5122.2.3 Quorum. A majority of the Board shall constitute a quorum if the appeal is heard by the entire Board.

5122.3 Appeals procedure for State Building Code Appeals Board.

5122.3.1 Entry. Appeals shall be entered on forms provided by the BBRS and shall be accompanied by an entry fee of \$150 or such other amounts as may be determined by the BBRS from time to time. A copy of the appeals application is made part of 780 CMR 51.00 through 99.00 in Appendix B.

The appeal shall be signed by the appellant or his attorney or agent and shall note the name and address of the person or agency on whose behalf the appeal is taken and the name of the person and address wherein service of notice for the appellant is to be made. The appeal shall also state in detail the interpretation, order, requirement, direction or failure to act which are the grounds of the appeals

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as well as the particular section or sections of 780 CMR 51.00 through 99.00 which are involved in the appeal and the reasons for the appellant advances supporting the appeal.

A copy of the appeal shall be served in accordance with 780 CMR 5118.6 by the appellant on the person or state, regional or local agency from whose action or inaction the appeal is taken, on or before entry of the appeal. An affidavit, under oath, that such copy has been served shall be filed with the Board forthwith by the appellant.

5122.3.2 Stay of Proceedings. Entry of an appeal shall stay all proceedings in furtherance of the action or failure to act appealed from, unless the state, regional or local agency or any person charged with the administration or enforcement of 780 CMR 51.00 through 99.00 presents evidence and the Board or a three-member panel or a single member of the Board, appointed by the chairman for said purpose, finds that upon the evidence presented, a stay would involve imminent peril to life or property. In such an event, stay of all proceedings shall be waived or the Board or three-member-panel or single member may order such other action necessary to preserve public safety.

Before waiving the stay or proceedings, the Board or three-member panel or single member of the Board, appointed by the chairman for said purpose, shall hold a hearing and give the appellant and state, regional or local agency or any person claiming that a stay would involve imminent peril to life or property, notice in writing of the hearing not less than 24 hours before said hearing.

5122.3.3 Documents. Upon entry, the clerk shall request in writing from the state, city, regional or town officer in charge of the matter on appeal, a copy of the record and all other papers and documents relative to the appeal to be transmitted forthwith to the Board. Said state, city, regional or town officer shall, upon receipt of the request of the Board, transmit forthwith all of the papers and documents and a copy of the record relating to the matter on appeal.

5122.3.4 Hearings. The Chairman of the Board shall fix a convenient time and place for a public hearing. Said hearings shall be held not later than 30 days after the entry of such appeal, unless such time is extended by agreement with the appellant. Any such party may appear in person or by agent or attorney at such hearing. The chairman or clerk shall give notice of the time and place of said hearing to all parties to the hearing and to anyone else requesting notice in writing at least ten days prior thereto. Failure to hold a public hearing within 30 days shall not affect the validity of the appeal or any decision rendered. The Board or

three-member panel in its hearings conducted under 780 CMR 5122 shall not be bound by strict rules of evidence prevailing in courts of law or equity.

5122.3.5 Conduct of Hearing. Hearings shall be conducted in accordance with the informal/fair-hearing rules as set forth in 801 CMR 1.02.

5122.4 Decisions.

5122.4.1 Votes Required. If the appeal is conducted by a three-member panel, then the concurrence of two of the three members holding the public hearing shall be required. If the appeal is conducted by the entire Board, then a majority vote of those hearing the case shall be required.

5122.4.2 Standard. The Board or a three-member panel may vary the application of any provision of 780 CMR 51.00 through 99.00 in any particular case, may determine the suitability of alternate materials and methods of construction and provide reasonable interpretations of the provisions of 780 CMR 51.00 through 99.00, provided that the Board or a three-member panel finds that the decision to grant a variance shall not conflict with the general objectives set forth M.G.L. c. 143, § 95 or with the general objectives of 780 CMR 51.00 through 99.00.

5122.4.3 Time for Decision. The Board shall issue decisions in a reasonably prompt manner. In general decisions will reverse, affirm or modify in whole or in part the order, interpretation, requirement, direction or failure to act which is the subject matter of the appeal.

Failure to render a decision within 30 days shall not affect the validity of any such decision or appeal.

Notice of and a copy of the decision shall be sent by the clerk to all parties to the appeal and anyone requesting in writing a copy of the decision.

5122.4.4 Contents of Decision. All decisions shall be in writing and state findings of fact, conclusions and reasons for decisions. Every decision shall indicate thereon the vote of each member and shall be signed by each member voting.

5122.4.5 Additional Powers. The Board or a three-member panel may impose in any decision limitations both as to time and use, and a continuation of any use permitted may be conditioned upon compliance with future amendments to 780 CMR 51.00 through 99.00.

5122.5 Enforcement. Upon receipt of the decision of the Board or a three-member panel, the parties to the appeal shall take action forthwith to comply with the decision unless a later time is specified in the

decision.

5122.6 Appeals from State Building Code Appeals Board. Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of law or equity in compliance with M.G.L. c. 30A, § 14.

5122.7 Local and Regional Board of Appeals.

5122.7.1 Local and Regional Board of Appeals.

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act under 780 CMR 51.00 through 99.00, excluding the specialized codes, by any agency or official of a city, region or town charged with the administration or enforcement of 780 CMR 51.00 through 99.00 or any of its rules and regulations may appeal first to the appeals board in that city, region or town or to the State Building Code Appeals Board as provided in 780 CMR 5122.

In the event an appeal is taken from an interpretation, order, requirement or direction, said appeal shall be filed with the local or regional appeals board not later than 45 days after the service of notice thereof of the interpretation, order, requirement or direction.

In the event the appeal is taken for the failure to act, the appeal shall be taken not later than 45 days after a request to act has been made by the aggrieved person in writing and served to the appropriate building official or chief administrative officer of the city, regional or town agency which fails to act.

5122.7.2 Membership. Any building code board of appeals duly established by ordinance or by law or otherwise in a city, region or town and in existence on January 1, 1975, shall qualify as a local board of appeals under 780 CMR 5122 notwithstanding anything to the contrary contained herein. However, the procedure and rights for appeals for such board of appeals shall be governed by 780 CMR 51.00 through 99.00.

If a city, region or town had not duly established by ordinance or bylaw or otherwise a local or regional building code appeals board prior to January 1, 1975, said city, region or town may establish a local or regional board of appeals, hereinafter referred to as the local board of appeals, consisting of five members appointed by the chief administrative officer of the city, region or town: one member appointed for five years, one for four years, one for three years, one for two years and one to serve for one year; and thereafter each new member to serve for five years or until his successor has been appointed.

5122.7.3 Qualifications of Local Board Members. Each member of a local board of appeals established under 780 CMR 5122.7.2 shall have had at least five years experience in the construction, alteration, repair and maintenance of building and building codes. At least one member

shall be a registered structural official.

5122.7.4 Chairman of Local or Regional Board. The board shall select one of its members to serve as chairman and a detailed record of all proceedings shall be kept on file in the building department.

5122.7.5 Absence of Members. During the absence of a member of a local board of appeals for reason of disability or disqualification, the chief administrative officer of the city, region or town shall designate a substitute who shall meet the qualifications as outlined in 780 CMR 5122.7.3.

5122.7.6 Quorum. A quorum shall be three members.

5122.7.7 Procedures. Entry of appeals shall be governed by 780 CMR 5122.3.1 excepting that a city, region or town may set its own entry fee.

Upon notice of entry appeal, the local building commissioner or inspector of buildings shall transmit a copy of the record and all of the papers and documents to the local board of appeals.

Entry of an appeal shall stay all proceedings in furtherance of the action or failure to act appealed from, unless the building commissioner or inspector of buildings certifies in writing to the local board of appeals that a stay would involve imminent peril to life or property. Notice in writing of such certification by the building commissioner or inspector of buildings shall be given to the appellant at least 24 hours prior to the hearing. In such an event a hearing on such stay shall be given first priority and be the first matter heard by the local board of appeals at its next scheduled meeting. The hearing on the appeal shall be held as soon as possible thereafter in accordance with 780 CMR 5122.7.8.

The local board of appeals may establish its own rules for procedure not established herein or not inconsistent with 780 CMR 51.00 through 99.00 or with the general objectives set forth in M.G.L. c. 143, § 95.

5122.7.8 Hearings. All hearings shall be public and notice of said hearings shall be advertised in a newspaper of general circulation in the city, region or town in which the appeal is taken at least ten days before said hearing. Notice of the hearing, setting forth the date and time of said hearing, shall be mailed by the local board of appeals to all parties and all those who requested notice in writing at least 14 days before said hearing. Said hearings shall be held not later than 30 days after the entry of such appeal, unless such time is extended by agreement with the appellant. 780 CMR 5122.7.8 as it pertains to notice shall not apply to hearings on a stay as provided in 780 CMR 5122.7.7.

5122.7.9 Decisions of Local Boards. A concurring vote of a majority of all of the

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members present shall be required for any decision. The local board of appeals may vary the application of 780 CMR 51.00 through 99.00 to any particular case, may consider the suitability of alternative materials and methods of construction and may provide reasonable interpretations of the provisions of 780 CMR 51.00 through 99.00, provided that the decision of the local board shall not conflict with the general objectives of 780 CMR 51.00 through 99.00 or with the general objectives of M.G.L. c. 143, § 95. The local board of appeals may impose, in any decision; limitations both as to time and use, and a continuation of any use permitted may be conditioned upon compliance with future amendments to 780 CMR 51.00 through 99.00.

5122.7.10 Time for decision. The board shall within 30 days after such hearing, unless such time is extended by agreement of the parties, issue a decision or order reversing, affirming or modifying in whole or in part the order, interpretation, requirement, direction or failure to act which is the subject matter of the appeal.

Failure to render a decision within 30 days shall not affect the validity of any such decision or appeal.

Notice of and a copy of the decision shall be sent by the clerk to all parties to the appeal and to anyone requesting in writing a copy of the decision.

5122.7.11 Contents of Decision. All decisions shall be in writing and state findings of fact, conclusions and reasons for the decisions. Every decision shall indicate thereon the vote of each member and shall be signed by each member voting. Any decision shall not be considered by any person or agency as a precedent for future decisions.

5122.7.12 Copy of Decision. A copy of any decision by a local board of appeals shall be transmitted to the State Building Code Appeals Board within ten days after the rendering of such decision. If the State Building Code Appeals Board disapproves of said decision of the local board, it may on its own motion, appeal the decision of the local board of appeals according to 780 CMR 5122 and call for a hearing *de novo*.

If the State Building Code Appeals Board does not notify the local board in writing within 45 days from the date of the local board's decision, the said decision shall be deemed approved, provided that the decision shall not conflict with the general objectives of the state building code and the objectives of M.G.L. c. 143, § 95.

5122.7.13 Enforcement of Decision. If said decision is approved by the State Building Code Appeals Board, all parties to the appeal shall take immediate action in accordance with the decision of the local board unless the person aggrieved by

such decision appeals to the State Building Code Appeals Board as provided in 780 CMR 5122.

5122.7.14 Review. Any person, including the State Building Code Appeals Board, aggrieved by a decision of the local board of appeals, whether or not a previous party to the decision, or any municipal officer or official board of the municipality, may, not later than 45 days after the mailing of the decision of the local board, apply to the State Building Code Appeals Board for a hearing *de novo* before the State Board, in accordance with the regulations contained in 780 CMR 5122.

780 CMR 5123 CONSTRUCTION MATERIALS SAFETY BOARD

5123.1 Membership. There shall be a board under the control of the BBRS called the Construction Materials Safety Board (CMSB), which shall consist of 11 members, one of whom shall be a member of the BBRS who shall be *ex-officio* and a voting member of the Board and ten members to be appointed by the chairman of the BBRS: one of whom shall be a member of the Board of Fire Prevention Regulations (BFPR) and who shall be *ex-officio* and a voting member of the board; one of whom shall be a municipal building inspector; one of whom shall be a registered professional engineer who is a structural engineer; one of whom shall be a registered architect; one of whom shall be a representative of a commercial testing laboratory; one of whom shall be a representative of a public testing laboratory; two of whom shall be representatives from the construction industry; one of whom shall be a member of a university faculty engaged in research and teaching in structural materials; and one of whom shall be a member of a university faculty engaged in research and teaching in the area of theoretical and applied mechanics.

5123.2 Duties. The CMSB will review applications for registration or licensing of individuals, laboratories or firms responsible for the inspection, control and testing of construction materials, and review applications and pertinent data relevant to all materials, devices, products and methods of construction not included in 780 CMR 51.00 through 99.00 and report to the BBRS their recommendations. The CMSB will collect information and review cases where disciplinary action against an existing license, whether an individual, laboratory or firm, has been proposed; and make recommendations to the BBRS. The BBRS will issue applications, receive payment for the review of such applications and approvals, registration and licensing fees, and maintain records for the efficient dispatch of the duties of the CMSB.

5123.3 Testing and Evaluation Groups. The BBRS shall establish and maintain testing and evaluation groups that will have the responsibility of administering and directing, under the supervision of the BBRS, the testing and controls for evaluating individual applicants, laboratories and firms wishing to become registered or licensed.

