OFFICIAL GUIDANCE

To: Building Officials

From: The Board of Building Regulations and Standards

Date: May 9, 2023

Re: Guidance for Temporary Occupancy Permit requests

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The Board of Building Regulations and Standards (“BBRS”) has become aware that there has been a recent increase in requests for Building Officials to approve requests for Temporary Occupancy Permits to utilize existing buildings, such as hotels, for lengthier occupancy (generally changing an occupancy classification from R-1 to R-2). Recognizing the important role of Building Officials in reviewing these matters, the BBRS has voted to provide this guidance document to ensure Building Officials understand the applicable code provisions which exist to allow these types of Temporary Uses, typically for 6 months/180 days while a more extensive code evaluation is performed.

A Building Official has the authority to issue a Temporary Certificate of Occupancy for temporary structures and uses by virtue of 780 CMR, section **108.1**. “***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.***” There is no requirement for a State of Emergency to first be declared nor is there a requirement to change the Use of the structure.

While relying on a current Certificate of Inspection for the existing occupancy, the Building Official must ensure that conformance with the benchmarks in Section 108 of 780 CMR and 2015 International Existing Building Code, **Section 1001.2.2** are present, and the occupants' stay exceeding 30 days in an R-1 building occupancy classification will not pose additional risks. While this guidance refers to R1 to R2 use changes specifically, the analysis can be applied more broadly when reviewing any request for a Temporary Certificate of Occupancy pending a change of use determination.

Below is a copy of the 9th edition of the State Building Code where strict adherence to sections 108.1 through 108.4 allows for the temporary use of a building **without the need to generate a permanent Certificate of Occupancy through a change of use from R-1 to an R-2**.

**SECTION 108 TEMPORARY STRUCTURES AND USES**

**108.1 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.

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

**108.3 Fire Department Review**. Temporary structures and uses shall be approved by the building official in consultation with the head of the local fire department.

**108.4 Termination of Approval**. The building official is authorized to terminate for cause and with written notice such permit for a temporary structure or use and to order the temporary structure or use to be discontinued.

780 CMR includes that all structures or portions of structures shall be classified with respect to occupancy in one or more of the groups listed in this below. Base Code is 2015 International Building Code with Massachusetts Amendments.

Base Code includes **Section 310.3 Residential Group R-1**. Residential Group R-1 occupancies containing **sleeping units** where the occupants are primarily **transient** in nature, including Hotels, Motels, and **Congregate living facilities (transient)** with more than 10 Occupants.

Base Code also include Section **310.4 Residential Group R-2**. Residential Group R-2 occupancies containing sleeping units or more than two dwelling units where the occupants **are primarily permanent in nature**, including **Congregate living facilities (nontransient)** with more than 16 occupants, Hotels (nontransient), and Motels (nontransient).

Base Code definition; **TRANSIENT**. Occupancy of a dwelling unit or sleeping unit for not more than 30 days.

Base Code **Chapter 34, IEBC CHANGE OF OCCUPANCY**. A change in the use of the building or a portion of a building. A change of occupancy shall include any change of occupancy classification, any change from one group to another group within an occupancy classification or **any change in use within a group for a specific occupancy classification**.

**IEBC Section 104.2.2.1 Building evaluation.** The *code official* is authorized to require an *existing building* to be investigated and evaluated by a registered design professional based on the circumstances agreed upon at the preliminary meeting. The design professional shall notify the *code official* if any potential nonconformance with the provisions of this code is identified.

**110.7 Periodic Inspections**. The building official shall inspect periodically existing buildings and structures and parts thereof in accordance with Table 110 entitled Schedule for Periodic Inspections of Existing Buildings. Such buildings shall not be occupied or continue to be occupied without a valid certificate of inspection…

Table 110: Schedule for Periodic Inspection of Existing Buildings for R-1 and R-2 occupancies.

R-1, Hotels, motels... One year.

R-2, Dormitories and R 2 Congregate Living… One year.

IEBC Change of Occupancy Classification.

**Section 1001.2.2 Change of occupancy classification or group**. Where the occupancy classification of a building changes, the provisions of Sections 1002 through 1012 shall apply. This includes a change of occupancy classification and a change to another group within an occupancy classification.