

TEXT  
(Temporary Use)  
12/14/12

**Subdivision (c) of Section 1221.1 of 19 NYCRR is amended by adding a new paragraph \_\_ to read as follows:**

(\_) BCNYS Section 302.1. The second sentence in section 301.2 of the 2010 BCNYS shall be deemed to be amended and restated in its entirety to read as follows:

A room or space that is intended to be occupied at different times for different purposes shall comply with all of the requirements that are applicable to each of the purposes for which the room or space will be occupied (**Exception:** a room or space for which a temporary use permit has been issued in accordance with Appendix A of the *Fire Code of New York State* must comply with the requirements applicable to the principal use or purpose of such room or space and with the requirements of Appendix A, but need not comply with any additional requirements applicable to the temporary use or purpose).

**Subdivision (c) of Section 1225.1 of 19 NYCRR is amended by adding new paragraphs (5), (6), (7), and (8) to read as follows:**

(5) FCNYS Section 102.1.1. The Exception in Section 102.1.1 of the 2010 FCNYS shall be deemed to be amended and restated in its entirety to read as follows:

**Exception:** The construction and design provisions of this code shall not apply to agricultural buildings; provided, however, that the provisions of Appendix A (including but not limited to the construction and design provisions of Appendix A) shall apply to agricultural buildings.

(6) FCNYS Section 102.3. The phrase “Nothing in this Section 102.2 shall be construed” in the final, unnumbered paragraph in Section 102.3 of the 2010 FCNYS shall be deemed to be amended to read as follows: “Nothing in this Section 102.3 shall be construed”.

(7) FCNYS Section 102.6. Section 102.6 of the 2010 FCNYS shall be deemed to be amended and restated in its entirety to read as follows:

**“102.6 Appendices.** The following appendices have been adopted and are made part of this code:

“Appendix A – Temporary Use of Buildings

“Appendix D - Fire Apparatus Access Roads”

(8) FCNYS Appendix A. The 2010 FCNYS shall be deemed to be amended by adding a new Appendix A to read as follows:

## Appendix A - Temporary Use of Buildings

### SECTION A101 GENERAL

**A101.1 Purpose.** This Appendix permits alternative uses of certain buildings (as more fully described in Section A102.1), or portions thereof, for a limited time without creating a new change of use or occupancy, while also providing for public health, safety and security.

Any repair, alteration, addition, or relocation of an existing building shall comply with the applicable requirements of the *Existing Building Code of New York State*. Any temporary use of a building, or any portion thereof, that does not satisfy the requirements of this Appendix A shall be considered to be a change of occupancy and shall meet the applicable requirements of the *Existing Building Code of New York State*.

**A101.2 Applicability:** This Appendix specifies the types of buildings in which a temporary use may be allowed, the types of temporary uses that may be allowed, and the circumstances, terms, and conditions under which a temporary use of a building, or any portion thereof, may be allowed.

Notwithstanding any provision of section 102.1.1 or section 102.2 of this code (the *Fire Code of New York State*) to the contrary, all provisions of this Appendix (including, but not limited to, all construction and design provisions of this Appendix and all administrative, operational, and maintenance provisions of this Appendix) shall apply to all buildings, structures, facilities, conditions, and operations, without regard to (1) the date on which the building, structure, facility, condition or operation came into existence, was constructed, was officially authorized, or arose; (2) whether the building, structure, facility, condition or operation is or is not existing (as that term is defined in section 202 of the *Fire Code of New York State*); (3) whether the building, structure, facility, condition or operation is or is not legally in existence; and (4) if the building, structure, facility, condition or operation is legally in existence, without regard to the date on which the building, structure, facility, condition or operation became legally in existence.

**A101.3 Scope.** The temporary use of a building, or any portion thereof, shall meet the requirements of this Appendix.

**A101.4 Definitions.** For the purposes of this Appendix, the following terms shall have the meanings shown in this section:

**Duration.** The “duration” of a temporary use permit or renewal permit shall be the number of calendar days during which a temporary use is allowed under the terms of the temporary use permit or renewal permit. Any calendar day on which a temporary use is allowed shall count as one full day, even if the

temporary use permit or renewal permit limits the hours during such day during which the temporary use is allowed.

Example 1: A temporary use permit that allows a temporary use to be conducted every day during March, 2013 has a duration of 31 days.

Example 2: A temporary use permit that allows a temporary use to be conducted on Saturdays and Sundays during March, 2013 has a duration of 10 days.

Example 3: A temporary use permit that allows a temporary use to be conducted only between 9:00 am and 12:00 noon on Saturdays and Sundays during March, 2013 has a duration of 10 days.

**Renewal permit.** A “renewal permit” is a renewal of a temporary use permit for a duration that is substantially similar to the duration of the original temporary use permit and upon terms that (other than the “specific dates on which the temporary use may be conducted”) that are substantially similar to the terms of the original temporary use permit. A renewal permit having a duration that is shorter (or substantially shorter) than the duration of the original temporary use permit shall still be considered to be a renewal permit, provided that (1) the shorter duration is necessary to satisfy the requirements of Section A102.2 of this Appendix and (2) the terms of the renewal permit (other than the “specific dates on which the temporary use may be conducted”) are substantially similar to the terms of the original temporary use permit.

**Temporary use.** A “temporary use” is the use of a building or portion thereof for a purpose not consistent with the existing occupancy classification.

**Terms.** The “terms” of a temporary use permit or renewal permit include (1) the temporary use allowed by the temporary use permit or renewal permit; (2) the portion of the building where the temporary use may be conducted; (3) the maximum number of persons permitted to occupy such portion of the building; (4) the specific dates on which the temporary use may be conducted; and (5) any limitation on the hours of the day during which the temporary use may be conducted.

## **SECTION A102 TEMPORARY USE PERMITS AND APPROVALS**

**A102.1 General.** No building, or portion thereof, shall be used for any temporary use unless a temporary use permit allowing such temporary use has been issued in accordance with this Appendix A.

No temporary use permit shall be issued unless:

1. the building, or portion thereof where the temporary use will be conducted, has an existing occupancy classification in Assembly Group A, Business Group B, Educational Group E, Factory Industrial Group F, Mercantile Group M, Storage Group S, or Miscellaneous Group U (including but not limited to agricultural buildings);

2. the intended temporary use would have an occupancy classification in Assembly Group A, Business Group B, Educational Group E, or Mercantile Group M;
3. the combined occupant load of all portions of the building where any temporary use is to be conducted would not exceed 150 persons during the period of the temporary use;
4. the building complies with all operational and maintenance requirements of the Uniform Code applicable to the principal use of the building;
5. the building is not subject to any outstanding notice of violation, order to remedy, or action or proceeding based on any alleged Uniform Code violation at the time the temporary use permit is issued;
6. the inspection conducted pursuant to Section A102.4 of this Appendix does not reveal any design, construction or structural defect or other condition which, in the opinion of the code enforcement official, would jeopardize the health or safety of the users of the building or the general public if the intended temporary use were to be allowed; and
7. the building, each portion of the building in which a temporary use is to be conducted, and each intended temporary use comply with all applicable requirements of this Appendix.

The temporary use of any building or of any portion of any building as a night club is prohibited. No temporary use permit allowing the temporary use of any building or any portion of any building as a night club shall be issued.

The temporary use of any building or of any portion of any building having an occupancy classification in Residential Group R, High-hazard Group H, or Institutional Group I is prohibited. No temporary use permit allowing any temporary use of any such building or any such portion of a building shall be issued.

**A102.2 Maximum Duration.** In no event shall the duration of any temporary use permit or renewal permit exceed 60 days. In addition, in no event shall the combined duration of all temporary use permits and renewal permits issued for all or any part of a building exceed 60 days within any 12 month period.

**Exception:** The duration of a temporary use permit allowing the temporary use of a building, room or space of less than 401 square feet for mercantile purposes may exceed 60 days within a 12 month period, subject to the condition that the building shall be subject to periodic reinspection by the code enforcement official to ensure the conditions relevant to the original issuance of the temporary use permit remain the same and that the building, the room or space where the temporary mercantile use is being conducted, and the temporary mercantile use remain in compliance with the applicable provisions of this Appendix.

**A102.3 Application for Temporary Use Permit.** An application for a temporary use permit shall be submitted to the code enforcement official. The application shall be in writing and shall specify (1) the name, address, and relevant contact information for the applicant (and for the owner of the building, if the applicant is not the owner); (2) the address of the building (or the location of the building, if the

building has no address); (3) the occupancy classification(s) of the building and of the portion of the building where the intended temporary use will be conducted; (4) the requested terms of the temporary use permit; and (5) such other information as the code enforcement official may reasonably request for the purpose of determining if the building, the portion of the building where the intended temporary use will be conducted, and the intended temporary use, satisfy the requirements of this Appendix. Where required by Section A102.5, a fire safety plan shall be submitted with the application.

**A102.4 Inspection.** Prior to the issuance of a temporary use permit or any renewal permit, the code enforcement official shall perform an inspection of the building, and of each portion of the building where any intended temporary use will be conducted, for the purpose of determining whether the building, each such portion of the building, and each intended temporary use, satisfy all applicable requirements of this Appendix.

If a fire safety plan is required under Section 102.5, the inspection shall also be for the purpose of determining the adequacy of the fire safety plan.

The inspection shall include, but shall not be limited to, a review and inspection of (1) the means of egress; (2) the separation of combustibles from ignition sources; (3) housekeeping; (4) storage; (5) any dangerous or hazardous processes; and (6) exposed portions of mechanical systems, electrical systems, and structural components.

**A102.5 Fire safety plans.** Where the occupant load of the building would be 50 or more persons during the period of the intended temporary use, the permit applicant shall prepare a written fire safety plan and shall submit such fire safety plan to the code enforcement official as part of the permit application. The fire safety plan shall include the following:

**A102.5.1** The procedure for reporting a fire or other emergency.

**A102.5.2** The life safety strategy and procedures for notifying, relocating, or evacuating occupants.

**A102.5.3** The building's approved address number or approved building identification (such address number or building identification shall also be posted on the building in a position that is plainly legible and visible from the street or road fronting the property).

**Exception:** Buildings identified under an addressing scheme as part of a countywide 911 numbering system.

**A102.5.4** A site and floor plan indicating the means of egress and evacuation routes, seating capacity and arrangement, location of portable fire extinguishers, heating systems, and manual fire alarm pull stations (if they exist).

When the fire safety plan shall have been approved by the code enforcement official, the plan shall be posted in a conspicuous place in the portion of the building where the temporary use is being conducted for reference and review by employees and occupants.

**A102.6 Renewal permits.** Upon request of the owner of a building for which a temporary use permit has been issued, renewal permits may be issued from time to time, provided that the code enforcement official determines, at the time of each such renewal permit is issued, that the conditions relevant to the issuance of the original temporary use permit remain the same and that the building, each portion of the building where any intended temporary use will be conducted, and each intended temporary use, remain in compliance with all applicable provisions of this Appendix. The building owner need not submit a full written application for any such renewal permit; provided, however, that the building owner shall provide the code enforcement official with such information and documentation as the code enforcement official may reasonably request for the purpose of confirming that the requirements stated in preceding sentence have been satisfied.

**A102.7 Content and Posting of Temporary Use Permits and Renewal Permits.** Each temporary use permit and each renewal permit shall specify the terms of the temporary use permit or renewal permit. Each temporary use permit and each renewal permit shall be posted in a conspicuous place in the portion of the building where the temporary use is being conducted.

**A102.8 Revocation.** The code enforcement official may revoke a temporary use permit or renewal permit if (1) conditions relevant to the issuance of the temporary use permit or renewal permit have changed or (2) the building, or any portion of the building where any temporary use is being conducted, or any temporary use, is not in compliance with any applicable requirement of this Appendix.

**SECTION A103  
MEANS OF EGRESS**

**A103.1 Means of egress.** Means of egress from structures shall be in accordance with the following:

**A103.1.1 Exit discharge locations.** Exit discharges shall be located so that no single point within the temporary use space is more than 75 feet (22 860 mm) from an exit discharge.

**A103.1.2 Number and Width of Means of Egress.** A building or a usable portion thereof used for temporary use shall meet the requirements of Table A103.1.2.

**TABLE A103.1.2 MINIMUM NUMBER AND WIDTHS OF THE MEANS OF EGRESS**

OCCUPANT LOAD	MINIMUM NUMBER OF MEANS OF EGRESS	MINIMUM WIDTH OF EACH MEANS OF EGRESS (inches)
1 to 49	1	36
50 to 150	2	72

For SI: 1 inch = 25.4 mm.

**A103.1.3 Exit openings.** All required exit doors shall be readily openable from the egress side without the use of a key or special knowledge or effort, and shall remain unlocked while the building is open to the public.

Overhead doors (garage type) and sliding doors shall be permitted to be used as primary or secondary means of egress provided they are secured in the fully open position in a manner that will prevent them from closing or being closed during the hours that the public is permitted in the building.

**A103.1.4 Aisle.** The width of aisles without fixed seating shall be in accordance with the following:

**A 103.1.4.1** In areas serving employees only, the minimum aisle width shall be 24 inches (610 mm) but not less than the width required by the number of employees served.

**A103.1.4.2** In public areas, smooth-surfaced, unobstructed aisles having a minimum width of not less than 36 inches (914 mm) for aisles serving up to 150 persons.

**A103.1.4.3** The arrangement of aisles shall be subject to approval by the authority having jurisdiction and shall be maintained clear at all times during occupancy.

**A103.1.5 Exit signs.** Exits shall be clearly marked. Exit signs shall be installed at required exit doorways and where otherwise necessary to indicate clearly the direction of egress when the exit serves an occupant load of 50 or more.

**A103.1.6 Means of egress illumination.** Means of egress shall be illuminated with light having an intensity of not less than 1 foot-candle (11 lux) at floor level while the building is occupied. Buildings used during daylight hours only with natural light having an intensity of not less than 1 foot-candle (11 lux) of light at floor level need not provide artificial illumination.

**A103.2 Occupant load.** The occupant load of the area where the temporary use is being conducted must be posted on premises in a conspicuous place in that area.

## **SECTION A104 GENERAL LIFE SAFETY**

**A104.1 Open flame devices.** Open flame decorative devices such as candles or torches shall not be allowed in or within 100 feet of the building.

**A104.2 Smoking.** Smoking shall not be permitted within the building and shall only be allowed in compliance with Section 310 and located not less than 100 feet (30 480 mm) from the building.

**A104.3 Fireworks and pyrotechnic displays.** Fireworks and pyrotechnic displays shall not be used in buildings. Exterior fireworks and pyrotechnic displays shall not be used unless approved by the CODE ENFORCEMENT OFFICIAL.

**A104.4 Portable fire extinguishers.** Extinguishers shall be checked annually and recharged after use and shall be tagged to indicate when this was done and by whom. Portable fire extinguishers shall be provided as required by Section 906 based on the occupancy use classification the temporary use of buildings most resembles during operation.

**A104.5 Fire alarms.** Fire alarms meeting the requirements of Section 907.2.3 shall be provided in E occupancies with an occupant load of 50 or more.

**A104.6 Cooking.** Preparation of food for the public shall be in accordance with the following:

**A104.6.1 Venting.** Gas, liquid and solid fuel-burning equipment designed to be vented shall be vented to the outside air. Vents or flues shall be installed consistent with the manufacturer's instructions.

**A104.6.2 Location.** Cooking equipment shall be located and installed consistent with the manufacturer's instructions.

**A104.6.3 Electrical cooking equipment.** Electrical cooking equipment shall comply with Chapter 27 (Electrical) of the *Building Code of New York State*, which requires compliance with NFPA 70.

**A104.6.4 Food operations.** Operations such as warming of foods, cooking demonstrations and similar operations that use solid flammables, butane or other similar devices which do not pose an ignition hazard, shall be approved for use.

**A104.6.5 Permanently installed equipment.** Permanently installed equipment that creates grease laden vapor is prohibited unless provided with a Type I hood as required by Section 609.2.

**A104.6.6 Table- top portable cooking equipment.** Table- top portable cooking equipment that produces grease laden vapors shall meet the requirements of Section 904.11.5, which includes providing a Class K rated extinguisher within a 30-foot (9144mm) travel distance of the cooking equipment.

**A104.6.7 Outdoor cooking.** Outdoor cooking that produces sparks or grease-laden vapors shall not be performed within 20 feet (6096 mm) of the building.

**A104.6.8 Open burning.** Open burning shall not be performed within 50 feet (15240 mm) of the building.

**A104.7 Temporary heating.** The use of temporary heating equipment shall be in accordance with the following:

**A104.7.1 Venting.** Gas, liquid and solid fuel-burning equipment designed to be vented shall be vented to the outside air. Vents or flues shall be installed consistent with the manufacturer's instruction.

**A104.7.2 Location.** Heating equipment shall be located consistent with manufacturer's instruction regarding exits and greater than 10 feet (3048 mm) from combustible materials.

**A104.7.3 Electrical heating equipment.** Electrical heating equipment shall comply with Chapter 27 (Electrical) of the *Building Code of New York State*, which requires compliance with NFPA 70.

**A104.7.4 Carbon monoxide alarms.** When non-electric heaters are used, carbon monoxide alarms shall be provided. Carbon monoxide alarms may be battery powered and shall meet the requirements of Section 610.6. Placement shall be consistent with manufacturer's instructions.

**A104.7.5 Portable heating appliances.** Portable vented heaters shall be listed and labeled and operated in accordance with the manufacturer's operation and maintenance instructions. Portable unvented heaters shall be prohibited.

**A104.7.6 Fixed appliances or systems.** Each appliance shall be supported by a floor having a noncombustible surface and shall be insulated or located as not to overheat adjacent woodwork or other combustible material. No combustible material shall be stored within five feet of such appliance or system. Chimneys and the connections between them and the appliance or systems shall be smoke and gas tight, firmly constructed and so located or insulated as not to overheat any adjacent combustible material. Ashes shall be placed in noncombustible receptacles and immediately removed from the building.

Appliances such as pellet fuel burning appliances, wood stoves, kerosene and oil-fired stoves and heaters shall meet the requirements of Sections 904, 905 and 922 of the *Mechanical Code of New York State*.

**A104.8 LP-gas.** The storage, handling, and use of LP-gas and LP-gas equipment shall be in accordance with the following:

**A104.8.1 General.** LP-gas equipment such as tanks, piping, hoses, fittings, valves, tubing and other related components shall be approved and in accordance with Chapter 38 and the *Fuel Gas Code of New York State*, except as otherwise provided in this section.

**A104.8.2 Location of containers.** LP-gas containers shall be located outside the building. Safety relief valves shall be pointed away from the structure.

**A104.8.2.1 Containers 500 gallons or less.** Portable LP-gas containers with a capacity of 500 gallons (1893 L) or less shall have a minimum separation between the container and building not less than 10 feet (3048 mm).

**A104.8.2.2 Containers more than 500 gallons.** Portable LP-gas containers with a capacity of more than 500 gallons (1893 L) shall have a minimum separation between the container and building not less than 25 feet (7620 mm).

**A104.8.2.3 Protection and security.** Portable LP-gas containers, piping, valves and fittings which are located outside and are being used to fuel equipment shall be adequately protected to prevent tampering, damage by vehicles or other hazards and shall be located in an approved location. Portable LP-gas containers shall be securely fastened in place to prevent unauthorized movement.

**A104.9 Flammable and combustible liquids.** The storage of flammable and combustible liquids and the use of flammable-liquid-fueled equipment shall be in accordance with Section 603.

**A104.10 Separation of portable generators.** Portable generators and other internal combustion power sources shall be separated from the building by a minimum of 20 feet (6096 mm) and shall be isolated from contact with the public by fencing, enclosure or other approved means.

## **SECTION A105 SANITARY FACILITIES**

**A105.1 Sanitary facilities.** Toilets with hand washing facilities (or hand sanitizers instead of hand washing facilities) within this section shall be referred to as sanitary facilities and shall be provided as required by this section.

Sanitary facilities shall be located within 500 feet of the building or area used. They may be located in a nearby dwelling or commercial building; may be an existing system such as composters, chemical and recirculating toilets, incinerator toilets or sanitary privies in proper operating order; or portable toilets.

**A105.2 Required facilities for public assembly and food service operations.** When the operation of a building includes the serving of any food products including but not limited to meals, samples or tastings and/or a place of assembly of over 50 persons, the operator must provide at least one sanitary facility as described in this section. When portable facilities are provided, a minimum of one accessible unisex sanitary facility shall be provided.

**A105.2.1 For less than 50 occupants.** For less than 50 occupants, at least one sanitary facility shall be provided.

**A105.2.2 For occupant loads between 50 and 150.** For occupant loads between 50 and 150, a minimum of two sanitary facilities shall be provided.