

# NEW YORK CITY FIRE DEPARTMENT

## FREQUENTLY ASKED QUESTION AND RESPONSE

### FLS DIRECTORS IN LOW-OCCUPANCY OFFICE BUILDINGS DURING REGULAR BUSINESS HOURS

- Q. As a result of the Coronavirus pandemic, occupancy of the office buildings I manage is way down. Most office workers are working from home. As a result, on a regular workday there are fewer than 100 persons above or below the street level and fewer than 500 persons in the entire building. With these occupancy levels, am I required to maintain a Fire and Life Safety (FLS) Director in the building, or is it sufficient to have an FLS building evacuation supervisor present?**
- A.** An FLS director is required to be present during regular business hours. However, given the impact of the Coronavirus pandemic, the Fire Department will consider applications for variances from this requirement.

#### Fire Code FLS Staffing Requirement

FC401.4.5.1(1) requires that the FLS director be present in the building at all times during regular business hours. FC202.1 defines “regular business hours” as follows:

**REGULAR BUSINESS HOURS.** Times of day and days of the week during which *a building or occupancy is normally occupied and business is conducted, and any time when a building or occupancy required to have a comprehensive fire and emergency action plan is occupied by more than five hundred persons, or more than one hundred persons above or below the street level.* The number of persons employed in a building or occupancy during regular business hours shall be computed based on the work shift or other regular work schedule during which the largest number of employees or other persons working at the premises are present at the premises.

Accordingly, the Fire Code requires that an FLS director be present in an office building that is open for regular business activity (“normally occupied and business is conducted”), such as on non-holiday weekdays. Office buildings identify their regular business hours on their fire safety/EAP plans. There are of course circumstances where a building may be occupied during non-holiday weekdays but regular business is not being conducted, such as when a fire, loss of power or other unsafe condition has required the building be evacuated but repair/restoration work is being performed or skeleton staffing is being maintained.

#### Impact of Coronavirus Pandemic

The situation presented by the Coronavirus pandemic is unusual in that office buildings are open for regular business activity but the regular business occupants are not coming to work. As a result, office buildings are lightly occupied, reportedly well below the 100/500 standard set forth in the FC202 definition of regular business hours.

FLS directors may perform other duties when they are on-duty, including those of impairment coordinator, and therefore may need to be present when construction work; repair, inspection and testing of fire protection systems; or hazardous materials deliveries and use, are ongoing. The presence of a FLS director may also be desirable during non-routine activities in the building, such as significant public and private events.

Allowing the FLS director to be released when the building is open for regular business activity presents challenges both for the building owner and from an enforcement perspective. Unexpected increases in building occupancy would leave the building without required staffing and require the FLS Director to be available to immediately return to the building.

However, the Fire Department recognizes that, during the present emergency, there may well be office buildings that are regularly and predictably occupied below the 100/500 standard, and in which other business activities are occurring only on a scheduled basis when they can be properly managed and supervised.

#### Fire Department Consideration of Modification Applications

To accommodate the present circumstances, the Fire Department will accept [applications for modification \(variance\)](#) of the Fire Code FLS director requirement, to allow office buildings to release the FLS director as if the building were closed for regular business activity. The application should address the issues outlined in this guidance, including the occupancy levels since the building re-opened to building occupants, the means by which the building determines its occupancy level, anticipates and/or controls future occupancy levels, and documents the same. The requirements for such an application are set forth in the checklist at the end of this response.

If granted, the modification would allow the building to be occupied (for 90 days or other period of time specified by the Fire Department) under the supervision of an FLS building evacuation supervisor, subject to periodic reporting of occupancy levels, unannounced Fire Department inspections and such other terms and conditions as may be appropriate or warranted based on building use and occupancy. A copy of the modification letter would be maintained at the fire command center to document that the FLS director's absence has been authorized.



# FDNY

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## FIRE AND LIFE SAFETY DIRECTOR MODIFICATION APPLICATION CHECKLIST

The following information is required in support of all applications for modification (variance) of Fire Code FLS director requirements:

- A full explanation of how building occupancy is determined, such as building entry card swipes, sign-in procedures, etc., that reliably documents building occupancy.
- Documentation of building occupancy below the 100/500 standard since the building reopened after closing in accordance with Emergency Executive Orders issued by the Governor and/or Mayor (or, if the building never closed, documentation of building occupancy for the last three months).
- A forecast of occupancy levels below the 100/500 standard over the next 90 days (or other time period), and the basis for such forecast, such as recent documented communications with building tenants.
- A summary of any other regular duties and responsibilities regularly performed by the FLS director in addition to staffing the fire command center, and a statement that they are not presently occurring or are occurring on a scheduled basis when they can be properly managed or supervised by the FLS director or other qualified person in the FLS director's absence. This could include:
  - Impairment coordinator for out-of-service fire protection systems.
  - Responsible person for hot work operations.
  - Responsible person for hazardous materials storage, handling and use.
  - Supervision of construction.
  - Building systems operation or maintenance.
- A statement indicating that substantial public or private events, especially those involving the participation of persons who are not regular building occupants, are not presently occurring or are occurring on a scheduled basis when they can be properly managed or supervised by the FLS director or other qualified person in the FLS director's absence.
- A statement setting forth notification procedures and other arrangements by which an FLS director would be recalled to work (and timeframe for his/her arrival) if occupancy levels exceed more than 100 persons above or below street level, or more than a total of 500 persons in the building, or if any other duties and responsibilities required the FLS director's presence.