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**BUILDINGS BULLETIN 2010-012**  
**Operational**

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**Supersedes:** None

**Issuer:** Fatma M. Amer, P.E.  
First Deputy Commissioner

**Issuance Date:** May 3, 2010

**Purpose:** This document clarifies the meaning of the references to “this code” in sections AC 28-117.1 and AC 28-117.2 for the purposes of issuance of certificates of operation to places of assembly and temporary places of assembly

**Related Code/Zoning Section(s):**

AC 28-101.3	AC 28-117.1
AC 28-101.4.3	AC 28-117.2
AC 28-101.4.4	BC 1024.1.1

**Subject(s):** Places of assembly, certificate of operation; Temporary place of assembly, certificate of operation; Outdoor place of assembly, certificate of operation; Outdoor temporary place of assembly, certificate of operation.

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**Background:** Section AC 28-117.1 requires a certificate of operation prior to the use or occupancy of a place of assembly:

“...It shall be unlawful to use or occupy any building or space as a place of assembly without a certificate of operation issued by the commissioner...”

The section further provides the condition of the issuance of a certificate of operation (with emphasis):

“...The commissioner shall not issue a certificate of operation unless the department determines that the space conforms substantially to the approved construction documents and to the provisions of this code and that the certificate of occupancy authorizes such use...”

Section AC 28-117.2 has similar requirements for temporary places of assembly.

The text in the above sections does not specify whether “this code” refers to the 2008 NYC Construction Codes (2008 Code) or prior codes. This bulletin serves to clarify the meaning of the references to “this code” in sections AC 28-117.1 and AC 28-117.2 for the purposes of issuance of certificates of operation.

**Specifics:**

**I. Buildings constructed pursuant to the 2008 Code:**

For buildings subject to or designed and constructed under the 2008 Code, places of assembly (including temporary places of assembly) in such buildings shall comply with the 2008 Code for the application of a certificate of operation.

**II. Buildings constructed pursuant to the 1968 Building Code or prior codes:**

**A. New or existing places of assembly in buildings subject to the 1968 code or prior codes.**

For the purposes of the application of a certificate of operation pursuant to section AC 28-117.1, for new or existing places of assembly (including temporary places of assembly) in buildings designed and constructed under the 1968 Code or prior codes, the Department shall interpret that substantial conformance with relevant provisions of "this code" means the 1968 Code. In such cases, the provisions of Subchapter 8 of the 1968 code are therefore applicable.

**B. Optional use of the 2008 Code.** Pursuant to section AC 28-101.4.4, the applicant may elect the 2008 Code, provided however, that such election does not result in a decrease in fire safety of the building – otherwise, the 1968 Code must be utilized. The applicant must perform a comparative analysis of the relevant fire and egress safety provisions under both codes. If, for instance, the analysis found that the maximum travel distances in the 2008 Code are longer (more generous) than those in the 1968 Code, the 2008 Code may still be used if the occupants were afforded other safety measures found in the 2008 Code, including the exit to the street (for instance: wider stair width, the addition of smokeproof enclosures, emergency generators, additional sprinkler protection, NFPA 72 fire alarm upgrades, etc.). Such an analysis shall be provided by the applicant to the plan examiner for review and approval.

**III. Outdoor places of assembly**

New outdoor temporary or permanent places of assembly such as tents, platforms, stages, outdoor assembly seating, etc. shall comply with the 2008 Code pursuant to section AC 28-101.4, including provisions related to places of assembly. Certificates of operation issued to outdoor places of assembly prior to the issuance of this bulletin may be renewed under the code with which the certificates were originally filed.

\*SEE RELATED BUILDINGS BULLETIN 2014-023