

Occupancy Limitation Update: Clarification from New York State Regarding Reopening Restrictions

When New York published reopening guidance in the spring, the occupancy restriction was one of the most unclear mandates. Most of the guidance documents state that “responsible parties” must limit occupancy—including workers, visitors and customers—to 50% or less of the maximum occupancy for a particular area, as set by the certificate of occupancy. This limitation has created much confusion throughout the reopening process, because many businesses’ certificates of occupancy do not indicate a maximum occupancy.

This week, Empire State Development (ESD) quietly updated its [New York Forward FAQs](#) to address this issue. The question and answer are below:

How should businesses whose Certificate of Occupancy does not list a building occupancy maximum comply with the maximum occupancy limits, as prescribed in the guidance?

Answer: For buildings that do not have the occupant load posted, the building owner can contact the local building department (as the local authority having jurisdiction), as they may have the occupant load listed in the building department’s records. The local building department may use this information when preparing for the required fire safety and property maintenance inspections. The maximum floor area allowances per occupant in the New York State Uniform Fire Prevention and Building Code (the Uniform Code) can be found in Chapter 10 of the 2020 Fire Code of New York State (2020 FCNYS). The occupant load is typically calculated by the building official using Table 1004.5 of the 2020 FCNYS. In order to use Table 1004.5 of the 2020 FCNYS, you must know the use of the space so that you can determine what the occupant load factor is for such space. The occupant load factor differs for the various uses. For example, a motor vehicle showroom (which is classified as a Business Group B occupancy under Chapter 3 of the 2020 FCNYS), the code official would calculate the gross square footage and divide that number by 150 which is occupant load factor for business areas. For a motor vehicle showroom that is 10,000 square feet in area, the occupant load would be 66 people.

The Uniform Code may be found [here](#).

In other words, where the maximum occupancy is not set by a certificate of occupancy, the following process must be followed to determine maximum occupancy:

1. Determine the square footage in each area.
2. Determine the Uniform Code’s classification of the areas.
 - a. This may be done by checking the Uniform Code linked above or calling the local building department or your attorney.
3. Determine the “occupant load factor” for those areas. The “occupant load factor” is defined as the allowable floor area in square feet per occupant. The occupant load factor changes based on the relevant classification of the area.
 - a. A copy of Table 1004.5, which is from the Uniform Code, is at the bottom of this article. Table 1004.5 lists the relevant occupant load factor for the area.

4. Divide the square footage of the area by the relevant occupant load.
 - a. For example, a “business area” with 10,000 square feet would equal 10,000/150, or 66 people. This is the maximum occupancy.
5. Once the maximum occupancy is determined, multiply that number by the relevant occupancy percentage used in the reopening guidance. For many businesses and operators, such percentage will be 50%.
 - a. For the above example, the number of people allowed at any given time would be 33.

If you have questions, or want to effect the standards applicable to your industry, please contact [Hermes Fernandez](#), [Caitlin Anderson](#) or the attorney at the firm with whom you are regularly in contact.

**TABLE 1004.5
MAXIMUM FLOOR AREA ALLOWANCES PER OCCUPANT**

FUNCTION OF SPACE	OCCUPANT LOAD FACTOR ¹
Accessory storage areas, mechanical equipment room	300 gross
Agricultural building	300 gross
Aircraft hangars	500 gross
Airport terminal	
Baggage claim	20 gross
Baggage handling	300 gross
Concourse	100 gross
Waiting areas	15 gross
Assembly	
Gaming floors (keno, slots, etc.)	11 gross
Exhibit gallery and museum	30 net
Assembly with fixed seats	See Section 1004.6
Assembly without fixed seats	
Concentrated (chairs only—not fixed)	7 net
Standing space	5 net
Unconcentrated (tables and chairs)	15 net
Bowling centers, allow 5 persons for each lane including 15 feet of runway, and for each additional area	7 net
Business areas	150 gross
Concentrated business use areas	See Section 1004.8
Courtooms—other than fixed seating areas	40 net
Day care	35 net
Dormitories	50 gross
Educational	
Classroom area	20 net
Shops and other vocational room areas	50 net

¹ Floor area in square feet per occupant.

Exercise rooms	50 gross
Group H-5 fabrication and manufacturing areas	200 gross
Industrial areas	100 gross
Institutional areas	240 gross
Inpatient treatment areas	
Outpatient areas	
Sleeping areas	
Kitchens, commercial	200 gross
Library	50 net
Reading rooms	
Stack area	
Locker rooms	100 gross
Mall buildings—covered and open	50 gross
Mercantile	300 gross
Storage, stock, shipping areas	200 gross
Park garages	200 gross
Residential	200 gross
Skating rinks, swimming pools	50 gross
Rink and pool	
Deck	
States and platforms	15 gross
Warehouses	15 net
	500 gross

Table 1004.5 of the New York State Uniform Fire Prevention and Building Code



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