



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.3.

9/17/2024

Subject:

Approval RE: Creation of Board Policy BCC-67, "Process to Issue Temporary Certificates of Occupancy and Stocking & Training Permits for Commercial Purposes Only"

Fiscal Impact:

Negligible - Revenue of \$100 per application for Temporary Certificate of Occupancy

Dept/Office:

Planning and Development Department

Requested Action:

It is recommended the Board of County Commissioners adopt the proposed policy addressing the issuance of Temporary Certificates of Occupancy (TCO), Stocking and Training Permits (STP) and the accompanying Hold Harmless Agreement.

Summary Explanation and Background:

The Brevard County Planning and Development Department on average receives approximately eighteen requests per year for Temporary Certificates of Occupancy, which currently is limited to stocking and training purposes only. A fee of \$100.00 has been required for the review of the application and processing. Traditionally, a majority of all temporary occupancy permit requests are related to businesses wanting to prepare for permanent occupancy by fixturing, stocking, training, and decorating.

The approval of this policy would allow for the issuance of a TCO when specific criteria are met, at the discretion of the Chief Building Official, allowing for the building/structure to be open to the public and allowing for the transaction of commerce for a period not to exceed 90 days from the date of issuance. A TCO will only be issued if all the required criteria are met, to include a cash bond to offset costs incurred by the County in the event site improvements outlined in the associated permit have not been met.

This proposed policy will formalize the application process, directives, monitoring, and enforcement of these temporary permits. The policy has been drafted to ensure consistency with Florida Law, Florida Building Code, Florida Fire Prevention Code, and Brevard County Code of Ordinances.

On Wednesday, September 11, 2024, the Building Construction Advisory Committee (BCAC) met and unanimously approved the proposed policy. The only identified change to the proposed policy was in regard to a scrivener's error located on page 3, section C, paragraph 2, "fail" to "all."

Clerk to the Board Instructions:

Please forward the signed original copy to the County Manager's Office



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

September 18, 2024

M E M O R A N D U M

TO: Frank Abbate, County Manager

RE: Item F.3., Approval for Creation of Board Policy BCC-67, "Process to Issue Temporary Certificates of Occupancy and Stocking & Training Permits for Commercial Purposes Only"

The Board of County Commissioners, in regular session on September 17, 2024, adopted the proposed Board Policy BCC-67, addressing the issuance of Temporary Certificates of Occupancy (TCO), Stocking and Training Permits (STP) and the accompanying Hold Harmless Agreement. Enclosed is the signed Policy.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/sm

Encl. (1)

cc: Planning and Development
Finance
Budget



BOARD OF COUNTY COMMISSIONERS

POLICY

Number: BCC-67
Cancels: N/A
Approved: September 17, 2024
Originator: Planning and Development
Review: September 17, 2027

TITLE: Process to Issue Temporary Certificates of Occupancy and Stocking & Training Permits for Commercial Purposes Only

I. Objective

To institute the requirements for the issuance of Temporary Certificates of Occupancy (TCO) and Stocking and Training Permit (STP) in accordance with Florida law, including, but not limited to, the Florida Building Code and the Florida Fire Prevention Code, as well as the Brevard County Code of Ordinances, including, but not limited to, Chapter 62, and related provisions of law.

II. Definitions and References

- A. Applicants means the property owner, the general contractor, and the tenants, as applicable.
- B. As-Built Survey means a survey performed by an individual licensed under Chapter 472, Florida Statutes, to obtain horizontal and/or vertical dimension data so that the constructed improvements can be located and delineated.
- C. Building Permit means an official document or certificate issued by the County that authorizes performance of a specified activity.
- D. Certificate of Completion means a document issued by the County that is proof the structure or system or site plan improvements are complete in accordance with applicable laws, rules, and regulations, including, but not limited to, Sections 22-47 and 62-3203(d), Brevard County Code. This certificate does not grant authority to occupy prior to the issuance of a certificate of occupancy.
- E. Certificate of Occupancy means a document issued by the County upon review and approval by the County's Building Official. Such document shall not be issued until all required electrical, gas, mechanical, plumbing and fire protection systems have been inspected for compliance with the technical codes and other applicable laws and ordinances.
- F. Florida Building Code means Chapter 553, Part IV, Florida Statutes, as may be amended, and Chapter 22, Brevard County Code.

- G. Florida Fire Prevention Code means Chapter 633, Part II, Florida Statutes, as may be amended, and associated fire safety regulations found in Chapter 633, Florida Statutes.
- H. Commerce or commercial purposes means a business operated for pecuniary gain, which shall be presumed for any establishment which has received an occupational license or business tax receipt. For purposes of this Policy, operating for pecuniary gain shall not depend on actual profit or loss. This definition does not include properties used for residential purposes or for housing individuals.
- I. Indemnity and Hold Harmless Agreement means the document attached hereto as Attachment A that is required to be signed and submitted by the Applicants.
- J. Site Plan means site and construction plans submitted for review and approval by the County to ensure compliance with applicable laws and ordinances, including, but not limited to, Chapter 62, Article VIII, Brevard County Code.
- K. Stocking and Training Permit means a document issued by the County to allow for fixturing, stocking, training, or decorating to prepare the structure for permanent occupancy.
- L. Temporary Certificates of Occupancy means a temporary/partial certificate of occupancy issued by the County for a portion or portions of a building which may safely be occupied prior to final completion of the building.

III. Directive

- A. New buildings, new structures, or additions to buildings and structures depicted on the site plan and building permit shall not be used nor occupied prior to said buildings and structures obtaining a Certificate of Occupancy in accordance with the Florida Building Code and other applicable laws. A Certificate of Occupancy will be issued for said buildings and structures, subject to the following criteria:
 - 1. A Certificate of Completion has been issued for the site improvements as depicted on the approved site plan and engineering revisions; and
 - 2. All the associated building permit construction complies with the Florida Building Code; and
 - 3. All the associated building permit construction complies with the Florida Fire Prevention Code and other applicable life safety regulations; and
 - 4. Associated impact fees have been paid in full.
- B. Notwithstanding other requirements of this Section, the County, at the discretion of the Building Official, or his/her designee, may issue a TCO or STP for no more than

ninety (90) days. A STP shall require the Applicants to execute a Hold Harmless Agreement, which is attached hereto in substantial form as Attachment A. A TCO shall require a cash bond in the amount of one hundred twenty-five percent (125%) of the estimated cost of the remaining improvements identified in the associated permit and execution of a Hold Harmless Agreement.

C. A TCO may be utilized to allow the building or structure to be opened to the public for the transaction of commerce. The issuance of the TCO shall be subject to all the following:

1. The As-Built Survey and Inspection finding that there are no safety concerns and that outstanding site improvements deemed detrimental to the public health, safety, and welfare, including, but not limited to, applicable Americans with Disabilities Act (ADA) requirements and stormwater improvements, are complete to the satisfaction of the Public Works Director, or his/her designee; and
2. The construction associated building permit has passed all inspections for the Florida Building Code and the Florida Fire Prevention Code, as well as other health safety-related codes and regulations; and
3. All applicable Impact Fees have been paid; and
4. The applicant has delivered, and the County has accepted a cash bond in the amount of one hundred twenty-five percent (125%) of the remaining construction cost according to a cost estimate submitted and attested to by the engineer of record. In no case shall the cost estimate be lower than the amount identified in the site construction permit at the time it was issued, if applicable. The County may request an updated cost estimate if the current estimate is more than 36 months old.

D. An applicant may obtain an STP for the purpose of fixturing, stocking, training, or decorating to prepare the structure for permanent occupancy. Said building or structure shall not be open to the public or be used for the transaction of any commerce. The issuance of the STP is subject to the approval of the Building Official, Fire Marshal, and any other appropriate agencies or departments having jurisdiction. In addition, the Applicants shall provide the County an executed Hold Harmless Agreement.

IV. Application Requirements

A. The Applicants shall submit a written request to the Brevard County Planning and Development Department that shall include the following:

1. A determined fee shall be submitted along with the application for review and processing.

2. An explanation of the purpose for the TCO or STP and the anticipated timeframe in which the improvements identified in the permit will be completed.
 3. The permit number; contact addresses and telephone numbers of the Applicants; and a list of what yet remains to be completed with the building and site.
- B. The application shall include the information identified in Section III.B. above, and the County may request additional documents or information as part of the review and approval process.
- C. Upon approval of the TCO, but prior to issuance, the Applicants shall provide the County with: (1) a Hold Harmless Agreement (Attachment A); (2) all necessary licenses and/or easements to complete the work required by the associated permit; and, (3) a Cash Bond in an amount of at least one hundred twenty-five percent (125%) of the remaining construction cost according to a cost estimate submitted and attested to by the engineer of record.

V. Monitoring, Compliance, and Enforcement

- A. The TCO or STP shall be valid for 90 days from the date of issuance.
- B. The Applicants shall request, at their sole expense, the County conduct an inspection prior to expiration of the TCO or STP to determine what tasks required by the permit remain outstanding. The County's inspection report shall be completed within five (5) business days of the site inspection. It is the Applicants' responsibility to ensure the inspection is timely requested.
- C. If, after 90 days from the issuance of the TCO or STP, the site improvements identified in the associated permit have not been completed and the permanent Certificate of Occupancy has not been issued by the County, the TCO or STP shall be revoked. A TCO or STP that expires without renewal has been revoked. At such a time, the Applicants shall immediately vacate the structure(s) and deny public access to the Site unless and until the improvements have been completed and approved by the County and the permanent Certificate of Occupancy has been issued. In the case of a TCO, the County shall be entitled, but not required, to utilize funds from the Cash Bond to offset any costs incurred to comply with the terms, conditions, and requirements of the associated permit, including, but not limited to, inspection costs, construction costs, and attorneys' fees. Upon Applicants' failure to comply with the requirements of the TCO or STP and permit, in addition to the rights outlined in the Hold Harmless Agreement, the County shall be entitled to exercise any right or seek any remedy available to it either at law or in equity, including, but not limited to, obtaining an injunction or proceeding with an action before the Code


Enforcement Special Magistrate.

- D. Upon completion of the improvements identified in the permit and receipt of the permanent Certificate of Occupancy, the Cash Bond shall be returned to the Applicants.

VII. Reservation of Authority

The authority to issue or revise this policy is reserved to the Board of County Commissioners.



Rachel Sadoff, Clerk

Jason Steele, Chair

Board of County Commissioners

As approved by the Board on September 17, 2024



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

**BREVARD COUNTY TEMPORARY CERTIFICATE OF OCCUPANCY (TCO) / STOCKING AND TRAINING
PERMIT (STP) INDEMNITY AND HOLD HARMLESS AGREEMENT**
Cash Bond required only for TCO

Building Permit Number: _____ TCO / STP Permit Number: _____

Project Name: _____

Site Address: _____

In consideration for the issuance of a TCO or STP, the OWNER, GENERAL CONTRACTOR and TENANT (collectively the "APPLICANTS") identified herein agree to the following:

1. The APPLICANTS, jointly and severally, agree to indemnify and hold the COUNTY, its employees, officers, and agents (the "COUNTY"), harmless from any and all claims, causes of action, damages, bodily injuries (including death), losses, penalties or costs, including, but not limited to, all attorney's fees, and all other causes whatsoever arising out of or relating to the issuance of the TCO or STP and the use of the site for the construction, operation, occupancy, training, stocking, and/or other such uses covered herein.
2. If the COUNTY is subjected to any claim, demand, or penalty, or becomes a party to any suit or other judicial or administrative proceeding arising out of the issuance of the TCO or STP or utilization of the site, the APPLICANTS, jointly and severally, shall indemnify and hold the COUNTY harmless against any resulting judgment(s), settlement(s), penalty(ies), and expense(s), including, but not limited to, all attorney's fees, court costs and other expenses of litigation or an administrative proceeding, incurred by or imposed on the COUNTY in connection with the defense of such claim or litigation or administrative proceeding. The APPLICANTS, at their sole expense, shall defend the COUNTY in any such matters and the COUNTY shall be entitled to select legal counsel of its choosing at a reasonable rate. THE PARTIES ACKNOWLEDGE SPECIFIC CONSIDERATION HAS BEEN GIVEN AND RECEIVED FOR THE ISSUANCE AND RECEIPT OF THE TCO OR STP AND EXECUTION OF THIS AGREEMENT.
3. It is understood and hereby acknowledged between the parties hereto that the COUNTY shall not be liable for any act, omission, debt, or other obligation to, by, or from the APPLICANTS.
4. Nothing herein shall constitute a waiver of the COUNTY's sovereign immunity or of the limits on and protections set forth in Section 768.28, Florida Statutes, as may be amended.
5. It is understood and hereby acknowledged between the parties hereto that the TCO or STP relates only to the structure(s) or area(s) identified in the above-referenced permit number. This AGREEMENT does not allow any occupancy or use of the structure(s) or site for purposes beyond those specifically

identified in the TCO or STP. The TCO or STP may be revoked if any action by the APPLICANTS creates any code violation affecting the proper occupancy of the building(s) or Site.

6. **CASH BOND (TCO ONLY).** It is understood and hereby acknowledged that the APPLICANTS shall provide the COUNTY a cash bond in an amount of not less than one hundred twenty-five percent (125%) of the estimated cost to complete the remaining items identified in the above-referenced permit ("Cash Bond"). Such estimate shall be confirmed in writing by the engineer of record. The Cash Bond will be held by the COUNTY in a designated escrow account with the name of the Project and Building Permit Number referenced for identification purposes. The Cash Bond shall be held by the COUNTY for the duration of the TCO.
7. **FAILURE TO COMPLY.** It is understood and hereby acknowledged between the parties hereto that if the APPLICANTS fail to complete the necessary work identified in the above-referenced permit and do not obtain a permanent Certificate of Occupancy prior to the expiration of the TCO or STP, the parties agree that the following process shall apply:
 - a. APPLICANTS shall immediately vacate the structure(s) and deny public access to the Site by the expiration date of the TCO or STP. The Site shall not be re-opened to the public unless and until the improvements identified in the above-referenced permit have been completed and approved by the COUNTY. Such approval shall not be unreasonable withheld by the COUNTY.
 - b. At the APPLICANTS' request and expense, the COUNTY shall conduct an inspection prior to the expiration date of the TCO or STP to determine what tasks required by the above-referenced permit remain outstanding. The inspection report shall be completed within five (5) business days of the site inspection. It is the APPLICANTS' responsibility to ensure the inspection is timely requested.
 - c. *TCO ONLY* – If the APPLICANTS fail to complete the deficiencies identified in the inspection report within thirty (30) calendar days of receipt of the inspection report being issued by the COUNTY, then the COUNTY shall be entitled, but not required, to utilize the Cash Bond on day thirty-one (31) to make such necessary corrections.
 - d. *TCO ONLY* – The APPLICANTS hereby expressly grant to the COUNTY a right of entry to complete any work identified in the above-referenced permit. The licenses and/or easements needed to complete the outstanding work may be required to be recorded in the public records of Brevard County, at the APPLICANTS' expense, prior to the issuance of the TCO. The APPLICANTS hereby waive any and all claims against the COUNTY for any such work completed.
 - e. *TCO ONLY* – If the APPLICANTS fail to timely complete the work identified in the above-referenced permit, then the COUNTY shall be entitled to offset any costs it incurs from the Cash Bond. Such costs include, but are not limited to, attorneys' fees, inspection costs, construction costs, or other costs incurred in order to comply with the terms, conditions, and requirements of the above-referenced permit.

In addition to the process outlined above, the COUNTY shall be entitled to exercise any right or seek any remedy available to it either at law or in equity, including, but not limited to, obtaining an injunction or proceeding with an action before the Code Enforcement Special Magistrate. In the case of a default under a TCO, the costs and fees associated with such action(s) shall be deducted from the Cash Bond and will not be returned to the APPLICANTS regardless of prevailing party.

8. COMPLIANCE. This AGREEMENT shall remain in full force and effect until: (1) a Certificate of Occupancy is issued by the COUNTY for the above-referenced permit, or, in the case of a TCO, (2) the COUNTY completes any and all action(s) required under the above-referenced permit, whichever occurs first. If the APPLICANTS promptly, completely, and faithfully complete the improvements identified in the above-referenced permit and obtain a Certificate of Occupancy from the COUNTY prior to expiration of the TCO, then the COUNTY shall return the Cash Bond to the APPLICANTS.
9. COUNTERPARTS. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.
10. SEVERABILITY. If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions hereto shall continue in full force and effect without being impaired.
11. The terms and conditions of this AGREEMENT have been reviewed and negotiated by the parties. No provision of this AGREEMENT shall be construed by any court of competent jurisdiction against any party hereto by reason of such party's being deemed to have drafted or structured such provision.
12. I, THE BELOW AUTHORIZED REPRESENTATIVE, CERTIFY THAT I AM AWARE OF MY RESPONSIBILITIES AND OBLIGATIONS UNDER THIS AGREEMENT. I CAN BIND MY RESPECTIVE ENTITY TO THE TERMS AND CONDITIONS OUTLINED HEREIN. I HAVE READ THIS AGREEMENT AND FULLY UNDERSTAND ITS TERMS AND CONDITIONS, AND SIGN IT FREELY AND VOLUNTARILY. I ACKNOWLEDGE THAT SANCTIONS AGAINST MY LICENSE MAY BE SOUGHT BY THE COUNTY FOR VIOLATIONS OF THIS AGREEMENT AND THE TERMS AND CONDITIONS OF THE ABOVE-REFERENCED PERMIT.

REMAINDER OF PAGE LEFT BLANK. SIGNATURES TO FOLLOW.

OWNER

By: _____
SIGNATURE DATE

(PRINT NAME / TITLE)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____ 202__, by _____ (*print name*) on behalf of the Owner, he/she is personally known to me or has produced _____ as identification.

Notary Public Signature

[NOTARY SEAL]

Printed Name

GENERAL CONTRACTOR

By: _____
SIGNATURE DATE

(PRINT NAME / TITLE)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____ 202__, by _____ (*print name*) on behalf of the General Contractor, he/she is personally known to me or has produced _____ as identification.

Notary Public Signature

[NOTARY SEAL]

Printed Name

TENANT

By: _____
SIGNATURE DATE

(PRINT NAME / TITLE)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____ 202__, by _____ (*print name*) on behalf of the Tenant, he/she is personally known to me or has produced _____ as identification.

Notary Public Signature

[NOTARY SEAL]

Printed Name