

25th October 2018

To: All Authorized Persons
Registered Structural Engineers
Registered Geotechnical Engineers
Registered General Building Contractors
Registered Specialist Contractors
Registered Minor Works Contractors

Dear Sir/Madam,

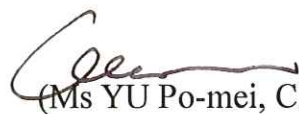
**Granting of Modification or Exemption under Section 42 of
the Buildings Ordinance for Transitional Housing Initiatives**

The implementation of various short-term community initiatives on transitional housing aims to provide transitional accommodation and support services for those in need with the support from the Transport and Housing Bureau (THB). Projects under some transitional housing initiatives launched by non-profit making organisations/institutions may be located in old domestic buildings with genuine planning and design constraints, in particular those old tenement houses with deep footprint and narrow frontage, to fully comply with the current statutory requirements under the Buildings Ordinance (BO).

2. In view of the special circumstances described above, the Buildings Department (BD) is prepared to favorably consider granting modification/exemption of certain provisions of the Building Regulations under section 42 of the BO for building works and minor works related to such projects in old domestic buildings. In this connection, provision of compensatory measures will be required to ensure the modification/exemption to be granted will not prejudice the safety and health standards under the BO. The details of the arrangement are set out in the guidelines in **Appendix I**.

3. Where it is proposed to carry out wholesale conversion of an industrial building for transitional housing of the same purpose, BD will adopt a similar pragmatic approach. In particular, in view of its temporary nature, BD is prepared to favorably consider granting exemption from site coverage, plot ratio, open space within the site and service lane requirements for domestic buildings under section 42 of the BO for those projects under such initiatives.

Yours faithfully,



(Ms YU Po-mei, Clarice)

Assistant Director / Corporate Services
for Director of Buildings

Encl.

Guidelines on Applications for Special Modification or Exemption for Transitional Housing Initiatives in Domestic Buildings

Eligibility for Application

Applications for modification/exemption of certain provisions of the Buildings Ordinance (BO) and regulations as listed in **Annex I** can be made under the approval and consent regime or the Minor Works Control System (MWCS) for projects under some transitional housing initiatives launched by non-profit making organisations/institutions (NPO) for domestic buildings completed before 1976¹. Buildings Department (BD) will seek endorsement of the project from the Transport and Housing Bureau (THB) for confirmation of its support. BD will only consider the applications upon receipt of THB's endorsement.

Documents to be submitted

2. The Form BA 16 application should be supported by the following documents, where applicable:

- (a) Plans² and sections showing layout of the premises and details of the proposed compensatory measures;
- (b) An assessment report confirming that the mechanical means of ventilation to be provided is capable for supplying fresh air at the required rates;
- (c) Documentary proof for implementation of the transitional housing initiative for non-profit making use. A copy of the tenancy agreement between NPO and the owner of the premises for such purpose shall also be provided for reference;
- (d) Written undertaking from NPO (a sample in **Annex II**); and
- (e) A management plan (a sample in **Annex III**).

/Procedure...

¹ Special considerations may be made for exceptional cases if needed, i.e. a domestic building with restrictive layouts similar to those buildings completed before 1976.

² A statement declaring that "the premises will not be carved out for sales" shall be indicated on the plans.

Procedure under MWCS

3. For the above-mentioned projects pursued under the MWCS, to ensure provision of proper compensatory measures, a Form BA16 application for modification/exemption should be made by an authorized person (AP) on behalf of NPO. The relevant minor works may commence before obtaining Building Authority's permit for the associated modification/exemption, but the works cannot be certified completed prior to obtaining the permit.

4. BD will normally process and reply to the AP within 10 working days from the receipt of endorsement from the THB. For special cases that cannot be processed in this time frame, an interim reply will be issued within 10 working days and a final reply will be issued within 20 working days.

5. A permit for the modification/exemption, Form BD 106, will be issued to NPO and copied to the AP. The AP shall ensure that the concerned parties fully understand the imposed conditions.

Validity of Form BD 106

6. A validity period generally of 6 months from the date of issuance of the Form BD106 will be imposed to invalidate the permit if the certificate of completion of works is not submitted within this period. Application for extension of time will be considered on case basis.

7. A condition will also be imposed such that the permit will become invalid upon expiry or termination of tenancy between NPO and the owner of the premises. NPO should inform BD immediately upon the end of the tenancy and reinstate the premises in accordance with the approved plans or to a state that fully complies with the BO and regulations.

Annual inspection

8. A condition may be imposed requiring annual inspection of the premises by an AP to ensure the conditions imposed in the permit are observed. A sample of the annual inspection form is at **Annex IV**.

/Disclosure...

Disclosure to the public

9. If the application is accepted and the works have been certified completed, the undertakings, the management plan and the Form BD 106 together with the approved plans/minor works plans will be uploaded to the website of the BD for inspection by the public.

Sanctions

10. For cases pursued under the MWCS, if the prescribed building professional (PBP) or prescribed registered contractor (PRC) submits the certificate of completion of works and non-compliant works are found completed before the BA has granted the modification/exemption, prosecution and/or disciplinary actions may be instigated against the PBP or PRC under the BO.

11. In case of non-compliance with the conditions imposed in the Form BD 106, BD may instigate prosecution proceedings under the BO against NPO.

Enforcement Action

12. The expiry/termination of tenancy between the owner and NPO will render the permit invalid. If the premises is not reinstated as described in paragraph 7 above, or the conditions imposed in the Form BD 106 as mentioned in paragraph 11 above are not complied with, it will result in contravention of the BO or its subsidiary regulations and the BD may issue a removal order under section 24 or 24AA of the BO requiring the reinstatement of the premises in accordance with the approved plans or to a state that fully complies with the BO and regulations.

(10/2018)

Modification/Exemption that may be Granted for Transitional Housing Initiatives in Domestic Buildings

Item	Conditions to be imposed	To permit the reduction of natural lighting and ventilation under B(P)R 30 & 31 for bedroom	To permit the omission of natural lighting and ventilation under B(P)R 30 & 31 for bedroom	To permit the omission of natural lighting and ventilation under B(P)R 30 & 31 for living area	To permit the reduction of natural lighting and ventilation under B(P)R 30 & 31 for living area	To permit the non-provision of kitchen under B(P)R 45	To permit the reduction of natural lighting and ventilation under B(P)R 36 for pantry
1	A communal living area in full compliance with B(P)R 30 & 31 and having an area of not less one third of the aggregate usable floor area (excl. areas of internal toilets) of all bedrooms not meeting B(P)R 30 & 31 or 5m ² , whichever the greater, shall be provided. Any corridor space should be discounted.	●	●				
2	Artificial lighting and mechanical ventilation at a rate of not less than 5 air changes per hour to be provided to the room to the satisfaction of the BA	●	●	●	●		
3	Artificial lighting and mechanical ventilation at a rate of not less than 5 air changes per hour to be provided to the entire area in which the sink is located to the satisfaction of the BA						●
4	A duct in excess of a cross sectional area of 6000mm ² connected to the external air / open air; or a permanent vent (e.g. louvre, openable clerestory windows, etc.) having a minimum size of 1/20 of the floor area of the room facing the communal living area or the corridor connected thereto (the latter is not applicable to living area)		●	●			
5	No cooking with naked flame inside the bedroom	●	●				
6	No cooking with naked flame inside the premises					●	
7	A kitchen/pantry and bathroom/toilet accessible from common area to be provided		●				
8	No toilet/bathroom without any natural lighting and ventilation (i.e. dark toilet/bathroom) is allowed inside the bedroom		●				
9	All other habitable rooms are in full compliance with B(P)R 30 & 31			●	●		
10	A communal pantry or a pantry in each bedroom that is provided with an openable window, should be provided in lieu of the kitchen					●	
11	FSD approved standalone smoke or heat detector to be provided at a strategic location near the counter top to the satisfaction of the BA					●	

**Sample Undertaking Letter for
Non-profit Making Organisation / Institution (NPO)**

Date: _____

To the Building Authority

*I/We (name in full) _____ (Chinese) _____
_____ (English) of (correspondence address)

Telephone No. _____, Fax No. _____, incorporated under

, being the tenant of (address of the subject premises) _____

(the Premises) as shown on the plan(s) drawing number
_____ submitted to the Building Authority on
_____ at the Appendix of the Management Plan in item (b)

below, undertake the following:

- (a) *I/We will arrange, and cause those employed to manage the Premises for the purpose of non-profit making use as [“the name of the transitional housing initiative”], to conduct the measures as stated in the attached Management Plan;
- (b) the relevant parts of the Management Plan will be incorporated into the tenancy agreements with occupants of the Premises;
- (c) a copy of the Management Plan will be properly kept at a conspicuous position of the Premises for the attention of occupants at all times; and
- (d) *I/We will notify the Building Authority if our tenancy agreement with the owner is terminated.

/2...

2. *I/We understand that *I/we may be liable to prosecution under section 40(2)(b) of the Buildings Ordinance if *I/we have breached or failed to perform any condition of a permit granted by the Building Authority under section 42 of the Buildings Ordinance in relation to the proposed works as shown on the plan(s) mentioned in paragraph 1 above.

3. *I/We understand that contravention of any condition of the permit mentioned in paragraph 2 above or expiry/termination of tenancy between me/us and the owner will render the permit invalid and the Premises should then be reinstated in accordance with the approved plans or to a state that fully complies with the Buildings Ordinance and regulations.

4. *I/We understand that the Building Authority may issue an order under sections 24 or 24AA of the Buildings Ordinance if any condition of the permit mentioned in paragraph 2 above is not complied with resulting in contravention of the Buildings Ordinance or its subsidiary regulations. As a result, the Premises shall be reinstated as specified in the order.

(Signature of representative with company chop)

(Name of representative)

(Position held)

* Delete whichever is inapplicable

(10/2018)

[SAMPLE]

Annex III

**Management Plan for
Transitional Housing Initiatives in
Domestic Buildings
(Address)**

Implemented and observed by the main tenant, the operator and all sub-tenants / occupiers of the premises

Main Tenant's Name: _____

Signature: _____

Date: _____

Operator's Name: _____

Signature: _____

Date: _____

Table of Contents

1. The Premises
2. Exemptions/Modifications under the Buildings Ordinance and
Subsidiary Regulations Sought
3. Management of the Premises
4. Annual Inspection of the Premises

Appendix – Layout Plan of the Premises

[SAMPLE]

1. The Premises

Address of the premises		
Name of main tenant of the premises		
Name of operator of the premises		
Use of the premises	Domestic flat	
Proposed subdivision of the premises	Use of subdivided areas	Usable Floor area
	(a) Communal living area m ²
	(b) Bedroom 1 m ²
	(c) Bedroom 2 m ²
	(d) Bedroom 3 m ²
	(e) Communal bathroom m ²
	(f) Pantry m ²
Layout plan of the premises	Attached at the Appendix	

[SAMPLE]

**2. Exemptions/Modifications of the Buildings Ordinance and
Subsidiary Regulations Sought**

Relevant Regulations	Description of exemption/ modification sought	Location	Remarks
B(P)Rs 30 & 31	To permit reduction of natural lighting and ventilation in bedrooms	Bedrooms 2 & 3	Artificial lighting and mechanical ventilation at a rate of not less than ... air changes per hour to be provided to the satisfaction of the Building Authority.
B(P)R 36	To permit omission of natural lighting and ventilation in bathroom	Bedroom 3	Artificial lighting and mechanical ventilation at a rate of not less than ... to be provided to the satisfaction of the Building Authority.
B(P)R 45	To permit non-provision of kitchen	N/A	<ul style="list-style-type: none">● No cooking facilities with naked flame to be installed or used in the premises● A standalone smoke detector to be installed near the pantry.

[SAMPLE]

3. Management of the Premises

3.1 The following clauses should be incorporated in the tenancy agreement between the main tenant, operator and the sub-tenants of the premises:

- (a) The communal living area/communal bathroom/ communal pantry should be maintained as shown on the layout plan.
- (b) The artificial lighting, mechanical ventilation systems and permanent vents should be kept in good functioning condition.
- (c) Cooking facilities with naked flame in the premises are prohibited to be installed or used.
- (d) No alteration should be carried out to the layout including walls, doors and windows (including their glazing and openable sashes), artificial lighting, mechanical ventilation systems, permanent vents, electric water heaters, pantry and fire services installations or equipment of the premises.
- (e) Access by the agent of the owner, main tenant or operator for inspection, maintenance and repair of any part of the premises should be provided by the sub-tenants.

3.2 The main tenant should arrange proper maintenance of the premises, including arranging repair of the artificial lighting, mechanical ventilation systems and fire service installations and equipment if any of such is out of order.

3.3 A notice listing the requirements in paragraph 3.1 above should be displayed in a conspicuous position of the premises.

[SAMPLE]

4. Annual Inspection of the Premises

- 4.1 An Authorized Person registered under the Buildings Ordinance should be appointed by the main tenant to inspect the premises annually and to submit the inspection certificate to the Building Authority.
- 4.2 A registered fire service installation contractor shall be appointed by the main tenant pursuant to the Fire Service (Installations and Equipment) Regulations to inspect and certify annually the fire service installations and equipment installed in the premises including the standalone smoke detector.

Annual Inspection Report

Address	:
Name of tenant of the Premises	:
BD Ref. No./MW submission no.	:
Permit No(s).	:
Date of Inspection	:

I hereby expressly warrant and declare that the above premises (including all cubicles) has been inspected by me and I confirm the following (circle the appropriate*):

- (a) There is no change in use in the above premises. Y / N / N.A.
- (b) The artificial lighting provided for the above premises is in working order. Y / N / N.A.
- (c) The mechanical ventilation systems provided for the above premises are in working order. Y / N / N.A.
- (d) The permanent vents provided for the above premises are intact. Y / N / N.A.
- (e) There is no alteration and addition to the layout of the above premises. Y / N / N.A.
- (f) There are no facilities installed in the bedrooms/pantry/premises for cooking with naked flame. Y / N / N.A.
- (g) All the conditions imposed in the above Permit for the above premises are complied with. Y / N / N.A.

* “Y” denotes Yes; “N” denotes No; and “N.A.” denotes Not Applicable

A copy of the above Permit and the layout plan as well as the photographic record of my inspection is enclosed with this Inspection Report.

Irregularities found during inspection (if any)

I hereby expressly warrant and declare that the above information provided is correct and genuine.

I further expressly acknowledge that the personal data provided by me in this Form may be used by the Buildings Department in connection with the processing of this Inspection Report.

I understand that if I do not provide sufficient information, Buildings Department may request me for further information.

I hereby authorise the Buildings Department to disclose my personal data in this Inspection Report to such government departments as it may see fit for the processing of this Inspection Report.

I further authorise and direct and request any government department which may be approached by the Buildings Department, to supply any and all information which it may require in relation to this Inspection Report.

Particulars of Authorized Person

Name in Chinese

Name in English

Certificate of Registration Number#

Date of Expiry of Registration#

dd		mm		yyyy			

Contact Tel. No.

Fax No.

Signature of Authorized Person#

Any false certification or declaration may be subject to legal action.

Date

dd		mm		yyyy			

according to registration record