

## **LAKE STUDIO**

The Intertwining of the International Building Code and Zoning Enforcement

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## The Intertwining of the International Building Code and Zoning Enforcement

### **Certificates of Occupancy**

The authority to inspect buildings and issue certificates of occupancy (CO) is found in the International Building Code (IBC), which cities adopt through ordinance. The IBC states that no building<sup>1</sup> shall be occupied or used until the building official issues a certificate of occupancy.<sup>2</sup> With the power to issue comes the power to revoke.<sup>3</sup> The building official may suspend or revoke a CO due to an error on the CO or if the building is in violation of any ordinance or any provision of the IBC.<sup>4</sup> Despite the IBC's great girth, the procedure to appeal the building official's decision consists of one page.<sup>5</sup> Most cities don't use the IBC's appeals procedure because zoning ordinances and chapter 211 of the Local Government Code set out different and more detailed procedures.<sup>6</sup>

CO's are the building official's statement that the building complies with the IBC for a specific use and type of occupancy. In the IBC, there are 10 different groups of occupancy classifications and multiple sub-groups within the main classifications.<sup>7</sup> The IBC sets out proper building materials, construction techniques, fire barriers, etc. for each group and sub-group. For example, most buildings must have illuminated means of egress. However, Group U, aisle accessways in Group A, and certain Group R sub-groups do not need to have illuminated egresses.<sup>8</sup> These differing requirements are the reason that building officials need to inspect and issue CO's for new buildings and existing buildings that will have a new use. The building official must ensure that the specific requirements for the new use have been met.

### **Zoning**

Chapter 211 of the Local Government Code is the statutory authority for a city to use zoning to regulate structures, size of open space around those structures, and the location and use of the structures.<sup>9</sup> The chapter also allows cities to form a board of adjustment to hear requests from people who want variances from the zoning ordinances or who want to appeal a zoning decision that they believe is wrong.<sup>10</sup> The statute specifically states that the board may "hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter".<sup>11</sup> City attorneys should consult their city charters and ordinances to determine the extent of the board of adjustment's power in their cities.

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<sup>1</sup> Although I use the word "building" in this paper, the certificate of occupancy can be issued for just a portion of a building.

<sup>2</sup> INT'L CODE COUNCIL, 2018 INTERNATIONAL BUILDING CODE 9.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; see *Bd. of Adjustment v. East Cent. Indep. Sch. Dist.*, 2105 WL 1244665, 3 (Tex. App. – March 18, 2015) (discussing difference between appealing decision made under city's development code and appealing decision under International Building Code).

<sup>5</sup> 2018 INTERNATIONAL BUILDING CODE App. B.

<sup>6</sup> Tex. Local Gov't Code Ch. 211 (West 2016 & Supp. 2019).

<sup>7</sup> 2018 INTERNATIONAL BUILDING CODE 45.

<sup>8</sup> 2018 INTERNATIONAL BUILDING CODE 264.

<sup>9</sup> Tex. Local Gov't Code at §211.002.

<sup>10</sup> Tex. Local Gov't Code at §211.008 – .009.

<sup>11</sup> Tex. Local Gov't Code at §211.009.

## **Intertwining**

Most of the content covered in the IBC is not appealable to the board of adjustment because much of the IBC covers construction rather than zoning. However, the building official uses the city's zoning ordinances when deciding which occupancy classification corresponds with the intended use of the building.

In my presentation, the building official was told that the planned use of the building was for dance lessons. The building official consulted the zoning ordinance to determine if that use was allowed in the zoning district for the building. Once he determined that dance lessons were allowed, he then consulted the IBC and determined that the correct occupancy classification was Group B (business). The tenant wanted a Group A (assembly) classification. The zoning district where the building was located only allowed restaurant and theater assembly uses. Because the building was not going to be used as a restaurant or theater, the building official could not grant the tenant a Group A occupancy without violating the zoning ordinance. Therefore, when the building official denied the Group A occupancy classification, he was enforcing the zoning ordinance. Consequently, the board of adjustments had jurisdiction to hear the appeal of the building official's decision to classify the building as a Group B.