



**Attorneys at Law**

Robert D. Orshan  
Robert P. Lithman  
Jan K. Seiden  
Jorge H. Ramos  
David L. Hatton  
Nicole J. Huesmann  
Ariana Fajardo

Jamie Segal Davis  
Rachel Klastorin Samek  
Jeffrey M. Seiden  
Steven P. Spann

**M E M O R A N D U M**

**TO: MAYOR AND CITY COUNCIL; CITY MANAGER,  
ASSISTANT CITY MANAGER, CITY PLANNER  
AND CODE DEPARTMENT DIRECTOR**

**FROM: CITY ATTORNEY**

**DATE: JULY 18, 2011**

**RE: PROPOSED AMENDMENT TO CODE SECTION 102-01,  
RE-OCCUPANCY CERTIFICATION**

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During a recent discussion regarding the upcoming Board of Adjustment agenda, Councilwoman Ator asked if there was anything else the City could do to prevent the long-standing comment made by many "second owners" of property that they didn't know that a particular code violation existed on their property because it was created by a prior owner.

In response to her question we must first remember that Code Section 102-01 only permits/requires code inspections for the express purpose of "...determining that the subject premises is in compliance with the single-family residential occupancy regulation of the City Code of Ordinances..." (Section 102-01(C)(1), and that "...information gained or conditions observed in the course of any inspection conducted pursuant to the authority of this Ordinance shall not be utilized by the Code Enforcement Department as the basis for the issuance of new Citations or Notices of Violation..." (Section 102-01(E).

However, while it may not be permissible to issue "new Citations or Notices of Violation", it is possible to provide "*information*" regarding existing violations if the buyer is advised that a process exists to secure such information by the real estate broker/agent/salesperson or the current owner/seller, and the additional review is then requested by the buyer as part of the due diligence process of the transaction.

As envisioned, the process would only be cursory in nature, and meant only to provide information on existing code violations that are readily observable during the re-occupancy certification and property survey review processes already being conducted.

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July 18, 2011

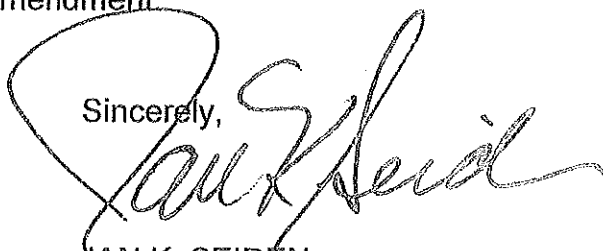
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The additional reviews could be provided at little or no additional cost with the proviso and understanding that such reviews do not constitute warranties or guaranties that other "*undiscovered*" code violations may exist on the property.

In order to insure compliance with the new process, an Affidavit form would need to be submitted with the application for re-occupancy certification in which either the real estate broker/agent/salesperson or the current property owner/seller would attest that the buyer was advised of the availability of the additional review process, and then the buyer could indicate thereon whether the services were being requested or rejected. While the process cannot guaranty that any existing violations would be corrected, it is possible that such corrective action could become part of the closing conditions of the transaction, or at the very least, the new buyer would be "*on notice*" of all violations that the Code Department discovered during its expanded review of the property prior to closing.

I intend to request that this Memorandum be placed upon a future City Council agenda for discussion. However, as always, please feel free to contact me in advance to discuss this proposed Ordinance amendment.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jan K. Seiden", written over the word "Sincerely,".

JAN K. SEIDEN

JKS:jll

**Sec. 102-01. Re-occupancy certification.**

(A) *Intent.* It is the intent of this chapter to require that all single-family residential properties in the City be inspected and certified for appropriate occupancy and usage prior to any transfer of ownership following the enactment hereof.

(B) *Applicability.* The provisions contained in this chapter shall be applicable to all single-family residentially zoned properties upon which homes have been constructed thereon in the City.

(C) *Compliance or certification.* All single-family residentially zoned homes in the City shall comply with the following provisions:

- (1) It shall be unlawful for any person, firm or corporation to buy, sell, convey, or transfer, any single-family home without first obtaining a Re-occupancy Certificate from the Department of Building, Zoning and Code Enforcement. The Re-occupancy Certificate, if issued, shall state that the City has inspected the subject premises and has determined that the subject premises is in compliance with the single-family residential occupancy regulations of the City Code of Ordinances and that the dwelling is designed, configured, and being used for single-family residential purposes only. No certificate may be issued if the subject premises is not in compliance with the single-family residential occupancy regulations of the City Code of Ordinances, or if it is found to be designed, configured or being used for other than single-family residential purposes. The form of the Certificate shall be prepared by the City and may be amended from time to time as determined to be required by the City.
- (2) It shall be unlawful for any person, firm or corporation to close on the transfer or conveyance of any single-family home owned by such person, firm or corporation, without the owner having first disclosed, by written notice to the buyer, grantee or transferee, the fact that a Re-occupancy Certificate is required by the City in order to properly convey or transfer title to the subject premises. The form of the disclosure notice shall be prepared by the City and may be amended from time to time as determined to be required by the City.
- (3) It shall be the responsibility of the property owner/seller to apply for Re-occupancy Certificate inspection with the Department of Building, Zoning and Code Enforcement. The City shall provide an appropriate application form for this purpose and shall establish the fee for the initial inspection by City Resolution. The form of application and the amount of the fee charged for the initial inspection may be amended from time to time as determined to be required by the City. As part of the application process, the owner/seller shall provide an accurate survey or sketch of the sale premises which sets forth thereon the location, size, and generic identification of each tree located on the property being sold.
- (4) Upon receipt of an application for inspection and the payment of the initial inspection fee, an authorized representative of the Department of Building, Zoning and Code Enforcement shall inspect the subject property within ten days thereof. The appropri-

ate Re-occupancy Certificate shall be issued should the subject premises be determined to be in compliance with the single-family residential occupancy regulation of the City Code of Ordinances and that it is designed, configured and being used for single-family residential purposes only. If, however, the subject property is not in full compliance with the foregoing requirements, the Department shall prepare an itemized list of all code and district regulation violations and notify the owner/seller in writing of all corrective action required to obtain the necessary certificate. The aforesaid notice shall also provide that the determination of property noncompliance by the Department may be appealed by filing a written notice of appeal with the City Manager within five days of receipt of said notice of noncompliance. Upon receipt of a written notice of appeal, the City Manager shall conduct an appeal hearing at the earliest possible time. The written appellate decision of the City Manager shall constitute final City action in regard to the determination of the issuance of a Re-occupancy Certificate. No certificate shall be issued by the Department for any premises until all specified violations have been corrected to the satisfaction of the City.

- (5) As an alternative to appealing the determination of property noncompliance made by the Department when a proposed sale transaction of a subject property is pending, the property owner/seller may request the issuance of a Re-occupancy Certificate on a "conditional" basis. In order to initiate the "conditional" issuance process, the property owner/seller shall be required to pay the fee that has been previously established by City Resolution for the preparation of the "Certificate of Re-occupancy Completion of Work Escrow Agreement" and the efforts to be expended by staff in the administration of the terms and conditions of the escrow agreement (the fee established by the City Resolution shall be included in the "Schedule of Fees" for the Building Department). Although the City is aware of the usual expedited nature of the subject sales transactions, the time of completion for the City evaluation and preparation of the proposed agreement will be on a case-by-case basis. All agreements prepared by the City pursuant to this provision shall not be complete until they include the following:
  - (a) City notice of determination of property noncompliance.
  - (b) Fully executed contract or contracts for the property rehabilitation work required by the City.
  - (c) City Finance Department receipt evidencing the deposit with the City of double the amount required for the completion of the property rehabilitation work required by the City.
  - (d) Execution by the property owner/seller, property buyer, and the City Manager.

Upon compliance with the foregoing requirements, the Department may then issue the requested Re-occupancy Certificate for the subject property and begin the administration of the "Certificate of Re-occupancy Completion of Work Escrow Agreement" in accordance with the terms and conditions contained therein.

- (6) It shall be the responsibility of the owner/seller to apply for the reinspection of any premises that has previously been denied the issuance of a Re-occupancy Certificate. Upon receipt of an application for reinspection and the payment of the reinspection fee, an authorized representative of the Department of Building, Zoning and Code Enforcement shall inspect the subject property within ten days thereof. The City shall provide an appropriate application form for this purpose and shall establish the fee for each reinspection performed on a premises by City Resolution. The form of application and the amount of the fee charged for each reinspection may be amended from time to time as determined to be required by the City.
- (7) Re-occupancy Certificates issued following initial inspections or reinspections shall remain effective for 45 days from issuance. The effective period for such certificates may be extended one time for an additional 45 days upon the payment of an extension fee to be established by City Resolution. If the subject premises is not transferred or conveyed, and the re-occupancy certification recorded, within the effective period of any Re-occupancy Certificate, the owner/seller shall be required to reapply for a new Re-occupancy Certificate. The amount of the fee charged for the extension of the effective period of any Re-occupancy Certificate may be amended from time to time as determined to be required by the City.
- (8) Upon the closing of any transfer or conveyance of title of any single-family residential premises issued a certificate pursuant to the provisions hereof, the City's original Re-occupancy Certificate shall be recorded in the public records of Miami-Dade County, Florida, along with the deed or other title conveyance document for the subject premises.

(D) *Failure to comply.* Any single-family residentially zoned property that is bought, sold, conveyed or transferred without first securing the Re-occupancy Certificate required by this chapter, shall thereafter be considered by the City to be a nonconforming property which shall subject the property to all restrictions, limitations, and penalties provided by the City Code of Ordinances.

(E) *Information secured.* Information gained or conditions observed in the course of any inspection conducted pursuant to the authority of this Ordinance shall not be utilized by the Code Enforcement Department as the basis for the issuance of new citations or notices of violation other than those violations of the residential occupancy and usage regulations of the City Code applicable to the subject premises. However, this provision shall not preclude the initiation or institution of other enforcement actions brought upon the basis of information gained or violations observed by other lawful means.

(F) *Representation and warranty.* A Re-occupancy Certificate shall not constitute any representation or warranty as to the condition, or any aspect of such condition, of the subject premises, for which the Certificate was issued. The City review and investigation made in connection with the issuance of any Re-occupancy Certificate is neither a structural, electrical,

plumbing, mechanical or any other substantive inspection of the structure on any property and does not represent that the premises conforms to the requirements of the Code of Ordinances, including, but not limited to, the building and technical code provisions adopted by the City.

(G) *Notice.* All City responses to requests for lien or estoppel information regarding any single-family residential property in the City shall contain a notice provision therein that Re-occupancy Certificates are required for all real estate transactions involving the transfer or conveyance of title to all single-family residential properties in the City.

(H) *Education and transition.* In order to provide a reasonable period of education and transition in regard to the provisions contained herein, Re-occupancy Certificates shall be required for all applicable real estate closings and other applicable transactions that occur subsequent to September 1, 2002.

(Ord. 880-02, passed 6-10-02; amend. Ord. 893-03, passed 1-27-03; amend. Ord. 926-05, passed 6-13-05; amend. Ord. 995-2010, passed 8-23-10)