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MEMORANDUM

TO: Supervisor Kathee Burke-Gonzalez and Members of the Town Board

FROM: Jacob Turner, Town Attorney
Charles J. Collins, Senior Assistant Town Attorney

RE: Potential Code Change – Updated Certificates of Occupancy

DATE: July 6, 2026

Updated Certificates of Occupancy

By local law the Town Board enacted a provision to Chapter 102 Building Construction, in October of 2023 that required an “updated certificate of occupancy” be obtained from the Town’s Building Department upon change of ownership of property. Review of the applicable code, practice there to, and recent litigation has shown that the code provision should be amended to allow for greater efficiency.

Current Town Code

§ 102-14 Certificate of occupancy.

A. No building or structure hereafter erected shall be used or occupied in whole or in part until a certificate of occupancy shall have been issued by the Building Inspector. Upon any change in ownership of a property, an updated certificate of occupancy shall be obtained, except where an updated certificate of occupancy has been obtained no more than six months prior to the date of transfer or where the transfer is made solely for estate planning purposes where the ownership of the property is transferred to a trust, LLC or similar entity and the beneficial ownership of the property remains unchanged.

Proposed Code Change

The Town Attorney’s Office and Building Department recommend two amendments to the process for obtaining an updated certificate of occupancy.

First, we recommend that property owners be given the opportunity to have the required updated certificate of occupancy inspections completed by a third party, licensed architect or engineer. This provision is available when no further building permits and/or certificates of occupancy are required. If building permits and/or certificates of occupancy are required, then such will need to go through the application procedure. Such a third-party inspection provision would allow for property owners to utilize non-Town personnel in obtaining the required updated certificate of occupancy. Within this change we have established definitions of the exact document that would need to be submitted to the Building Department in lieu of Town inspections. The documentation shall include specific square footage of buildings, structures, and clearing coverage. The proposed code change further clarifies survey requirements.

Second, a provision permitting application for a search warrant has been added. This is consistent with both the current Town Code which already permits the Building Inspector to apply for a search warrant and consistent with other similar town codes.

Chapter 102

Building Construction

§ 102-1. Purpose, ~~and intent, and definitions.~~

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C. Definitions

AFFIDAVIT OF COMPLIANCE – A letter provided by a New York State licensed Design Professional and bearing the applicable Professional Stamp which includes a thorough and complete description of all Building and Structures of a property in a change or transfer of ownership. The affidavit shall include at a minimum a description of each floor of a dwelling with square footage, including basements and attics, the number of kitchens and bedrooms in the dwelling and shall include all accessory buildings and structures located on the property with a description of the uses.

COVERAGE, BUILDING – A Square footage calculation of existing and/or proposed roofed over structures on a property.

COVERAGE, CLEARING – A Square footage calculation of existing and/or proposed vegetation on a property.

COVERAGE, LOT – A Square footage calculation of existing and/or proposed structures on a property including both roofed over and not roofed over structures.

DESIGN PROFESSIONAL – A Civil Professional Engineering license or a New York State Registered Architect licensed by New York State. Other Architect license types or Engineering license types such as landscaping, electrical, geotechnical and such shall not apply for the purposes of this definition.

UPDATED CERTIFICATE OF OCCUPACY – An updated Certificate of Occupancy shall be a Certified Copy of any existing Certificates for all buildings or structures to be included in any change in ownership. An Updated Certificate of Occupancy shall not supersede existing certificates issued by the Building Department but shall state that all structures on a property were in conformance with Code requirements on a date within 6 months of sale of any transfer.

SURVEY – A Survey completed by a NYS Licensed Surveyor completed within 6 months and includes at a minimum all buildings and structures on the property with dimensions and setback distances from property lines. The Survey shall include both the existing coverage totals and allowable coverage totals for Building Coverage, Lot Coverage and Clearing Coverage.

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Where a property does not need further building permits and/or certificates of occupancy for any existing buildings or structures, a licensed Design Professional, as defined by this section, may submit an Affidavit of Compliance containing the information necessary to confirm compliance with existing Certificates of Occupancy issued by the Building Department and shall be accompanied by a Survey of said property dated within six months of submission. All acceptance of Affidavits shall be at the discretion of the Building Department.

In addition to any and all other rights and remedies the Building Inspector shall have full authority to apply for a search warrant pursuant to § 255-10-22 wherein an updated certificate occupancy has not been issued.

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Effective Date. This local law shall take effect on January 1, 2027 and upon filing with the Secretary of State pursuant to Municipal Home Rule Law.