



Planning & Zoning Department

David G. Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David G. Hennis, AICP, Community Development Director

Date: February 9, 2009

Re: **Certificate of Re-Occupancy Program**

This is a program to require a certificate of re-occupancy for any existing residential dwelling within the town, prior to conveyance or transfer of title. The program does not apply to dwellings that have never been occupied. The certificate of re-occupancy shall provide that the town has inspected the dwelling and such dwelling complies with the residential occupancy regulations of the zoning code. The program will also determine if the dwelling requires correction of violations that immediately threaten the life or safety of the residents. In all single-family zoning districts, a certificate of re-occupancy shall not be issued for more than one dwelling or residence; in two-family districts, a certificate shall not be issued for three or more dwellings or residences.

As written, the program prohibits utilizing the inspection to cite the owner for violations outside those relevant to the issuance of the certificate. The certificate does not constitute any representation as to the condition of the dwelling or other structures on the premises for which it is issued. The program was developed following parameters used by the county and other municipalities in the area and includes an inspection fee ranging from \$50 up to \$200, should the applicant need the certificate and inspection within 3 days of a complete request.

Other communities in the area that are conducting similar programs are Biscayne Park, Hialeah, Panama City, El Portal, North Miami, Virginia Gardens, Miami Shores, and Miami-Dade County.

RECOMMENDATION

Approval of the ordinance

ORDINANCE NO. 09-__

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATING TO CERTIFICATES OF RE-OCCUPANCY FOR THE SALE OF HOMES THAT HAVE ALREADY BEEN OCCUPIED; AMENDING THE SCHEDULE OF VIOLATIONS AND CIVIL PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) wishes to ensure that existing homes being sold in the Town comply with the occupancy requirements of the Town Code of Ordinances (the “Town Code”); and

WHEREAS, the Town also wishes to ensure that homes that are being re-sold in the Town comply with the most basic safety requirements of the Town Code; and

WHEREAS, the Town Council desires to require that a certificate of re-occupancy be obtained for homes that are being re-sold within the Town in order to certify compliance with the Town’s occupancy requirements and basic safety requirements; and

WHEREAS, the Town finds that this Ordinance will promote the health, safety and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Findings. The foregoing “Whereas” clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Amendment to the Town Code. The Town Council of the Town of Cutler Bay hereby amends the Town Code of Ordinances as follows¹:

(1) Title. This section shall be known as the “Town of Cutler Bay Certificate of Re-occupancy Ordinance.”

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

(2) It shall be unlawful for any person or corporation to buy, sell, convey or otherwise transfer title to any residential dwelling without first obtaining a re-occupancy certificate issued by the Town Planning and Zoning Director or designee. The certificate of re-occupancy, if issued, shall state that the Town has inspected the dwelling and determined that the dwelling complies with the residential occupancy regulations of the zoning district on the property wherein the dwelling unit is located. In all one-family dwelling residences zoning districts, a certificate of re-occupancy shall not be issued for the presence or existence of more than one (1) dwelling or residence. In all two-family dwelling residences zoning districts, a certificate of re-occupancy will not be issued for the presence or existence of three (3) or more dwellings or residences. The Town shall also determine if the dwelling requires the correction of violations that immediately threaten the life or safety of the residents. The provisions of this section shall not apply to the sale, conveyance or transfer of title of a new dwelling or residence that has never been occupied and that represents the first transaction since the issuance of the original certificate of occupancy.

(3) It shall be unlawful for any person to sell, convey or transfer title to any residential dwelling unit owned by such person without first disclosing by written notice to the buyer, grantee or transferee the fact that a certificate of re-occupancy is required by this section. It is required that a seller, grantor or transferor deliver to the buyer, grantee or transferee a properly signed and approved Town certificate of re-occupancy prior to the sale, conveyance or transfer of title.

(4) A seller, property owner or designated agent shall request a certificate of re-occupancy by submitting a completed application together with payment of an inspection fee.

(a) Upon payment of a fifty dollar (\$50.00) inspection fee, a Town inspector shall inspect the dwelling within thirty (30) days and, if such dwelling is found to be in compliance with the residential occupancy regulations of the applicable zoning district and does not require the correction of violations that immediately threaten the life or safety of the residents, the Town will issue a certificate of re-occupancy.

(b) Upon payment of a one hundred dollar (\$100.00) inspection fee, a Town inspector shall inspect the dwelling within ten (10) days and, if such dwelling is found to be in compliance with the residential occupancy regulations of the applicable zoning district and does not require the correction of violations that immediately threaten the life or safety of the residents, the Town will issue a certificate of re-occupancy.

(c) Upon payment of a two hundred dollar (\$200.00) inspection fee, a Town inspector shall inspect the dwelling within three (3) days and, if such dwelling is found to be in compliance with the residential occupancy regulations of the applicable zoning district and does not require the correction of violations that

immediately threaten the life or safety of the residents, the Town will issue a certificate of re-occupancy.

A twenty-five dollars (\$25.00) fee shall be paid for each re-inspection performed by the Town. The re-occupancy certificate shall be effective for six (6) months and may be extended only one (1) time for additional six (6) months upon payment of a ten dollar (\$10.00) fee. Upon a real estate closing or title transfer the certificate of re-occupancy shall be recorded in the Miami-Dade County public records with the deed or other conveyance of title.

(5) If a dwelling violates the residential occupancy regulations of the applicable zoning district or the dwelling contains violations that immediately threaten the life or safety of the residents, the Town shall identify those issues. Until there is compliance or correction of the violation of the residential occupancy regulations and violations that immediately threaten the life or safety of the residents, confirmed upon re-inspection, the certificate of re-occupancy will be withheld.

(6) Under circumstances where remedial action may reasonably extend beyond the date of the sale, conveyance or transfer to complete, the Town shall issue conditional certificates of re-occupancy with a compliance date set forth in the certificate. If the proposed remedial action includes correction of violations that immediately threaten the life or safety of the residents as listed in the certificate, the Town shall identify such violations on the conditional certificate or occupancy. Upon compliance, the Town shall issue a re-occupancy certificate.

(7) Information gained or conditions observed in the course of any inspection conducted pursuant to the authority of this section, shall not be utilized by the code inspectors as the basis for issuing new citations or notices of violation other than violations of the residential occupancy regulations permitted by the applicable zoning district or violations that immediately threaten the life or safety of the residents. This shall not preclude other enforcement actions brought upon the basis of information gained or violations observed by other lawful means.

(8) The certificate of re-occupancy does not constitute any representation or warranty as to the condition or any aspect of such condition of the dwelling or other structures on the premises for which the certificate is issued. The inspection made in connection with a certificate of re-occupancy is neither a structural, electrical, plumbing nor mechanical inspection and does not represent that the premises conform to the provision of the code, including the building and technical codes adopted by the Town. Interested persons are advised and encouraged to obtain an inspection of the premises in order to determine the condition thereof.

(9) Payment of liens. No re-occupancy certificate shall be issued for any property until the owner of the property shall satisfy any and all Town liens against the property.

(10) A certificate of re-occupancy shall be required in connection with all applicable real estate closings and other applicable transactions that occur on or after June 1, 2009.

Section 3. Schedule of violations and civil penalties amended. That the Town Code of the Town of Cutler Bay is hereby amended by amending Ordinance 07-09, Section 10 “Schedule of civil penalties”, to read as follows:

Sec. 10. Schedule of civil penalties.

TABLE INSET:

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
***	***	***
<u>Ordinance</u>	<u>Violation of Certificate of Re-occupancy Ordinance</u>	<u>First violation \$250; Second Violation \$500; Third or subsequent violation \$500.</u>
***	****	***

Section 4. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. Inclusion in the Code. It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 7. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this ___ day of _____, 2009.

PASSED and ADOPTED on second reading this ___ day of _____, 2009.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____