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## BUILDINGS BULLETIN 2010-013

### Operational

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<b>Supersedes:</b>	None
<b>Issuer:</b>	Fatma M. Amer, PE First Deputy Commissioner
<b>Issuance Date:</b>	May 3, 2010
<b>Purpose:</b>	This document establishes the allowance to obtain a final Certificate of Occupancy for a mixed use building with a vacant space
<b>Related Code/Zoning Section(s):</b>	
<b>Subject(s):</b>	Certificate of Occupancy; Vacant tenant space, Certificate of Occupancy; Alteration Type 1, Certificate of Occupancy

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**A. Background:** Upon the completion of a building construction and before the issuance of a final Certificate of Occupancy (CO), it is common that one or more of the tenant spaces are vacant. Traditionally, a final CO is issued to such a building provided the vacant tenant space(s) is in compliance with Building Code and Zoning Resolution. Generally, the vacant space must comply with, but not limited to:

1. Means of egress requirements, such as exit signage, number of exits, exit capacity, travel distances, and exit lighting etc.
2. Minimum number of plumbing fixtures
3. Fire protection systems requirements, such as (where applicable) automatic sprinkler systems, fire alarm systems, fire detection, and standpipe systems etc. and shall be tested where required
4. Separation of tenancies (where applicable) by fire-resistance-rated construction
5. Accessibility requirements such as ramps, elevators, and accessible routes etc.
6. Floor load requirements based on the intended use
7. Heating and cooling requirements
8. Energy Code requirements
9. Conditions stipulated under a BSA variance or City Planning Commission Special Permit, where applicable

However, frequent requests come to the department from the industry, including affordable housing, regarding the difficulty to comply with the above where the tenant(s) is not yet identified. These requests claim that in the absence of an actual tenant, providing the space with plumbing facilities would be impractical. Also, waiting for a tenant may take a considerable amount of time that would impose financial hardship on the developer, and may affect funding, operation, contractual obligation or transfer of the new development to its new owner(s).

**B. Specifics:**

To alleviate such hardship, an applicant for a CO with a vacant tenant space shall be allowed to obtain a final CO, and shall not be required to install toilet rooms and/or toilet room plumbing fixtures, provided all of the following conditions are met:

1. Such space is located below the residential portion of the building, except when located on the first floor, such space may be on the same level as the residential use;
2. The entire building, including public circulation spaces (except for the vacant space), is substantially in compliance with the NYC Construction Codes and ready for the CO application;
3. Such space is protected where required with fire protection systems and provided with required means of egress in accordance with Chapter 9 and 10 of the 2008 NYC Building Code, respectively;
4. Such space shall be accessible at the entrance pursuant to Chapter 11 of the 2008 NYC Building Code;
5. Such space shall comply with conditions stipulated under a BSA variance or City Planning Commission Special Permit, where applicable
6. Proper zoning nomenclature and Building Code occupancy classification and Zoning Use Group shall be indicated on the CO for the intended use of such space (See Example 1 and 2 below):

**Example 1:**

<b>Proposed Use</b> <i>*Use 2008 Code equivalents only even for older Codes.</i>						
Maximum Number of Persons	Live Load (psf)	2008 Code Designations <b>only*</b>	Building Code Occupancy Group(s)	Dwelling/ Rooming Units (BC)	Zoning Use Group(s)	
50	50	<input checked="" type="checkbox"/> Yes	B	0	4	
Description	*VACANT/NO OCCUPANCY (Ambulatory diagnostic or treatment health care facility)					

**Example 2:**

<b>Proposed Use</b> <i>*Use 2008 Code equivalents only even for older Codes.</i>						
Maximum Number of Persons	Live Load (psf)	2008 Code Designations <b>only*</b>	Building Code Occupancy Group(s)	Dwelling/ Rooming Units (BC)	Zoning Use Group(s)	
60	100	<input checked="" type="checkbox"/> Yes	M	0	6	
Description	*VACANT/NO OCCUPANCY (Retail Establishment)					

7. The following note shall be indicated on the CO: “ \*Vacant space at \_\_\_\_ floor shall not be occupied unless an amended CO is obtained.” (See example below)

**Example:**

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2	<b>Building Notes to appear on the Certificate of Occupancy</b>
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\* Vacant space at first floor shall not be occupied unless an amended CO is obtained.

**C. Prior to occupancy:**

Prior to the occupancy of such space, an Alteration Type 1 application shall be filed to amend the CO as follows:

1. The phrase "VACANT/NO OCCUPANCY" shall be removed and the proposed specific use of such space shall be indicated;
2. The occupant load shall be revised as necessary to reflect the specific use and egress calculations and analyses shall be provided as required;
3. Where applicable, the live load of the space shall be revised on the CO; and
4. Building code requirements for plumbing facilities, fire protection, accessibility and other life safety systems specific to each use shall be provided accordingly.