

**STATE OF NEW YORK
DEPARTMENT OF STATE**

DETERMINATION

In the matter of requests that “Code Enforcement Officer” and “Building Safety Inspector” be designated as eligible professions for the purchase, sale, and use of body armor.

Date of designation: September 19, 2022

Legal framework

To purchase or take possession of body armor in New York State, an individual or entity must be engaged or employed in an eligible profession.¹ Pursuant to Executive Law section 144-a, the Department of State (Department) has created a process whereby individuals and entities may request that the profession in which they engage be added to the Department’s list of eligible professions.² The Department has received requests that “code enforcement officer” and “building safety inspector” be designated as an eligible profession. Designation of an eligible profession must be supported by a finding that the duties of the profession may expose an individual engaged in such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor.³ The Department may add a profession to the list of eligible professions requiring the use of body armor.⁴

Requests

This recommendation relates to multiple requests that are deemed consolidated pursuant to 19 NYCRR 905.5(c) insofar as they relate to the same professions for the purpose of reviewing and determining the eligibility of such professions. Specifically, the Town of Cheektowaga Building Department and Office of Fire Safety requested that the profession “code enforcement officer” be designated as an eligible profession; the New York State Building Officials Conference, by and through the Director of Code Enforcement for the Town of Ithaca, New York, requested that the professions “New York State certified code enforcement officer” and “New York State certified building official” be designated as eligible professions and supplemented their request with a letter and several news media articles; and the Village of Airmont requested that the profession “building inspector” be designated as an eligible profession. Notice of this eligible profession request was published on the Department’s website on July 13, 2022, whereby the public was invited to submit additional requests relating to these professions. No other requests relating to these requests have been received by the Department.

¹ New York Penal Law §270.21.

² See 19 NYCRR Chapter XIX, Part 905, generally.

³ New York Executive Law § 144-a; 19 NYCRR §§ 905.3, 905.1(c), (f).

⁴ 19 NYCRR §§ 905.2(a), 905.5(a).

Findings of fact and analysis

The Department provides a basic training program for and certifies “Code Enforcement Officials” (CEOs) and “Building Safety Inspectors” (BSIs). Under Department regulations a building safety inspector means a person who performs fire safety and property maintenance inspections on existing buildings,⁵ and a code enforcement official means a person who performs any enforcement activity.⁶ However, local governments use a variety of terms for the actual titles to the local officials who carry out the functions associated with CEOs and BSIs, including but not limited to “Building Inspector,” “Fire Inspector,” “Code Enforcement Officer,” “Chief Building Inspector,” and “Assistant Building Inspector.” To receive certification by the Department, a prospective BSI must complete 60 hours of training and a prospective CEO must complete 120 hours of training, which includes the 60-hour BSI training.⁷ The basic training program is broken down into separate six courses:

- 9A – Administration and Enforcement
- 9B – Fire Safe Design, Balanced Protection for Fire Safety
- 9C – Inspection of Existing Buildings and Facilities, Fire Code and Property Maintenance Code
- 9D – General Construction Principles, Systems and Equipment, Structural Requirements
- 9E – Residential Code of New York, One- and Two- Family Dwelling Construction
- 9F – Building Code of New York, Application through Plan Review

Collectively, the requests supporting the instant eligible profession requests indicate that the official duties associated with the professions requested are: conducting plan reviews for permits; conducting on-site inspections for building projects and in response to complaints to determine compliance with applicable building codes; issuing certificates of occupancy; and performing code enforcement activities, which include conducting fire code compliance inspections and property maintenance inspections, issuing stop work orders, orders to remedy, and appearance tickets for violations.

The requests and supporting materials indicate that persons engaged in or employed as BSIs and CEOs are required to perform duties that have exposed some individuals engaged in those professions to being shot.

The Town of Cheektowaga (Cheektowaga) indicates their inspectors have been summoned to the scene of large, illegal parties where gunshots have been fired, have been involved with the closing of nuisance businesses, and are involved with local law enforcement application of the New York State Office of Cannabis Management’s policies. Cheektowaga asserts that CEOs have been assaulted by residents and are frequently confused by the public with law enforcement because they drive government vehicles and carry a badge. Cheektowaga further indicates that CEOs have been killed in the line of duty and provided numerous examples, not all of which were reported as relating to code enforcement officers or building safety inspectors and not all of which

⁵ 19 NYCRR 1208-1.2(b).

⁶ 19 NYCRR 1208-1.2(e).

⁷ 19 NYCRR 1208-3.2 (Minimum Training Requirements and Minimum Standards).

were reported as involving death by gunfire. Of the examples provided, the following were confirmed as independently reported incidents involving code enforcement officers being killed by gunfire:

- Michael Walker in Commerce, TX in 2005. Walker was independently reported as having been shot to death while on duty and reporting to a residence to take photos of code violations at the property.
- Rodney Morales in Aurora, CO in 2008. Morales was independently reported as having been shot to death while on duty and reporting to an apartment complex for a scheduled routine code inspection.
- Gregory “Ziggy” Zyszkiewicz in Milwaukee, WI in 2017. Zyszkiewicz was independently reported as having been shot to death while sitting in his car during a workday.
- Jill Robinson in West Valley City, UT in 2018. Robinson was independently reported as having been shot to death on duty while reporting to a residence.
- Charles Case in Augusta, GA in 2020. Case was independently reported as having been shot to death while on duty immediately after returning to his car after posting a “condemned” sign on a building.

The New York State Building Officials Conference (NYSBOC) supplemented their request with a letter indicating their membership includes all municipalities outside of New York City. NYSBOC asserts that prior to the change in law, bullet proof vests were routinely utilized by CEOs when responding to a potentially hostile situation, such as a complaint. NYSBOC further asserts that CEOs and BSIs are tasked with inspecting property in situations involving aggravated individuals, and that there is frequently only one individual conducting an inspection. NYSBOC asserts there were several instances where BSIs and CEOs have been assaulted and accosted when conducting inspections and having meetings and supported this assertion with a letter signed by Marty Moseley, President to NYSBOC, in which Mr. Moseley indicated he has had threats directed toward him during inspections, as have many of the CEOs and BSIs in NYSBOC. Like Cheektowaga, Mr. Moseley referenced many occurrences throughout the country where CEOs or BSIs have been assaulted or killed. While some of the articles provided by NYSBOC did not specifically involve gunfire, they all involved violence against CEOs and some examples cited were the same as those provided by Cheektowaga.

After its initial submission, NYSBOC supplemented its application with another letter that advanced many of the same arguments in support of designation of BSI as an eligible profession, including a request for designation of CEO. This supplemental letter also requested that the BSI title be expanded to include a New York State Certified Code Enforcement Officer, a New York State Building Safety Inspector, or “any other inspectors that conduct New York State inspections based on local law where they are active in enforcing New York State Uniform Code or local laws” which “would include electrical inspectors, plumbing inspectors, zoning inspectors, etc. that are working in local or state municipal government.” The request provided by the Village of Airmont (Airmont) clearly identified the duties associated with CEOs but failed to provide any information as to how such duties expose members of that profession to serious physical injury that may be mitigated or prevented by the wearing of body armor. Viewed alone, such information would be insufficient to support a recommendation that the profession be designated as an eligible

profession; however, because the Department reviewed Airmont's request together with the aforementioned requests, the profession subject to Airmont's request was analyzed using information provided in the other requests.

The fact that CEOs or BSIs go into privately owned buildings or property and deal with individuals who are sometimes aggravated does not by itself merit designation as an eligible profession. It is the combination of factors associated with the role of people serving as building safety inspectors and code enforcement officers that makes it appropriate for eligibility to purchase, take possession of, sell, give or dispose of body armor. The characteristics of the profession include the distinctive risk associated with a public official having the authority to condemn, seize, or shut down businesses and homes, and that such officials may have badges and therefore look like police officers.

Determination

The information set forth above supports a determination by the Department that the professions of code enforcement officer and building safety inspector sometimes requires individuals engaged or employed in that profession to put themselves in dangerous situations that may expose them to serious physical injury, and that such serious physical injury may be prevented or mitigated by the wearing of body armor.

Based on the foregoing facts and the requirements of Executive Law §144-a and 19 NYCRR Part 905, the Department has designated the professions of code enforcement officer and building safety inspector as eligible professions for the purchase, sale, and use of body armor and adds such professions to the Department's list of eligible professions.