

Section 6.46 FIRE CERTIFICATES OF OCCUPANCY

Section A. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized agent means an individual with legal authority and capable of executing documents for the sale of the buildings and authority over the proceeds of such sale.

Building means any structure intended for supporting or sheltering any use or occupancy, including the land surrounding the structure. If the building is a multi-unit residential dwelling, a hotel or motel, or a commercial or office building, the term "building" means only the portion of the building within or outside the structure in which a nuisance is maintained or permitted; such as a dwelling unit, room, suite of rooms, office, common area, storage area, garage, or parking area.

Commercial building means any nonresidential structure, the surrounding land and accessory use structures.

Fire certificate of occupancy means a document or emblem issued by the city fire chief indicating the existing structure complies with all state and local safety codes allowing its use as a commercial building or for residential occupancy.

Fire chief means the city fire chief and his designee, and shall include any enforcement officer under his supervision or direction, or other duly authorized representative. The fire certificate of occupancy program shall be issued under the authority of the fire chief.

Interested party means any known lessee or tenant of a building or affected portion of a building; or any known agent of an owner, lessee, or tenant; or any other known person.

Nuisance activity means acts constituting a nuisance under M.S.A. § 617.81, subd. 2, or two or more violations within a period of 12 months of nuisance provisions of this Code.

Owner means the person, firm, corporation or other entity listed in the records on file in the recorder's office as holding fee title to the building. For purposes of notice only, the term "owner" includes the owner's authorized agent or other person in control of the premises.

Owner-occupied means residential dwellings which are the principal residence of the owner of the building and in which the owner resides.

Partial fire certificate of occupancy means a document issued by the city fire department indicating that a portion of an existing structure complies with all state and local safety codes allowing its use as a commercial building or for residential occupancy. The partial fire certificate of occupancy shall describe specifically which portion of the building is approved for occupancy.

Property manager means an individual with the legal authority to make and act on decisions of tenancy, building maintenance and repairs relating to applicable safety codes.

Recorder's office means the county department of property records and taxation, or its division which maintains title and property records, and any successor agency or department thereof.

Rental dwelling unit means any room, or space, in any dwelling designed or used for residential occupancy by one or more persons who are not the owner.

Residential occupancy means occupancy in a building or portion thereof, for residential purposes, used or intended to be used for living, sleeping, or cooking or eating purposes.

Safety code includes any fire, housing, health, safety, zoning, property maintenance, or other similar code, law and ordinance, promulgated or enacted by the United States, the state, the county and the city, or any lawful agency or department thereof, which are applicable to a building in such city.

Section B. Required; violations constitute misdemeanor.

Subd. 1. Except as otherwise provided in this article, all buildings in the city that are utilized to conduct business or commerce are required to have and maintain a fire certificate of occupancy, issued by the Fire Chief or his/her designee. The certificate shall be an indication that the building meets, at the time of issuance and approval, all relevant safety codes to maintain the health, safety and welfare of the building's occupants and the general public.

- a) Owner-occupied single-family houses, owner-occupied portions of duplexes, and owner-occupied condominium units shall be exempted from the requirement to have and maintain a fire certificate of occupancy.
- b) A building or portion thereof which receives a certificate of occupancy from the city's building official upon completion of construction or major rehabilitation shall simultaneously receive a fire certificate of occupancy from the fire chief if their use or occupancy so requires.
- c) Buildings which have a change in use or occupancy shall become subject to the fire certificate of occupancy requirement.
- d) Commercial buildings and residential occupancies shall be subject to the ongoing requirement to maintain a fire certificate of occupancy. These buildings shall be issued fire certificates of occupancy and shall be subject to regular inspection, based on the date of the building's last complete certificate of occupancy inspection, subject to the terms of this article.

Subd. 2. It is a misdemeanor to rent or lease, or permit the occupancy of, a building or structure or portion thereof for use as a commercial building which does not have a fire certificate of occupancy.

Section C. - Illegal occupancy.

No business shall occupy any building which does not have a fire certificate of occupancy.

Section D. - Other city licenses and permits.

An ongoing failure to comply with any requirement of this article shall provide a sufficient basis for the denial of any license or permit otherwise required under this Code.

Section E - Appeal to Administrative Review Board.

Orders of the Fire Chief or his/her designee relating to fire certificates of occupancy are subject to the procedures for appeal set forth in this Code.

Section F - Applicability of other laws.

Nothing in this article is intended to waive, replace or amend the applicability or enforcement of any other law, ordinance or regulation applicable to commercial buildings and residential dwellings, including, but not limited to, zoning, nuisance abatement, or licensing ordinances.

Section G - Issuance and renewal.

Subd. 1. Information and application. Owners or interested parties of all buildings subject to the fire certificate of occupancy requirement shall apply for a fire certificate of occupancy. The application shall be provided by the fire chief and includes, at a minimum, the following information:

- (a) A description of the building;
- (b) The name, address and 24-hour telephone numbers of the owners;
- (c) The name, address and telephone numbers of the property managers and their 24-hour telephone numbers; and
- (d) The fire chief may require such additional property and property management-related information as will promote effective enforcement of this article.

Subd. 2. Inspection. Prior to obtaining a fire certificate of occupancy, all buildings shall obtain a code compliance inspection to determine whether the building is in compliance with all safety codes.

Subd. 3. Issuance. Upon a finding of no violations of the provisions of state and local safety codes, the fire chief shall issue a fire certificate of occupancy that shall contain the following:

- (a) The type of occupancy with occupancy load, including number of businesses, dwelling, rooming or guest units;
- (b) The address of the building;
- (c) The name and address of the owners and property managers;
- (d) A description of that portion of the building for which the certificate is issued;
- (e) A statement that the described portion of the building has been inspected for compliance with the requirements of state and local safety codes for the group and division of occupancy and the use for which the proposed occupancy is classified; and
- (f) The name of the fire chief.

Subd. 4. Smoke and carbon monoxide alarms required. Where required, no fire certificate of occupancy shall be issued unless such building has a proper, adequate and operable smoke alarms and carbon monoxide alarms.

Subd. 5. Posting. The fire certificate of occupancy provided by the fire chief shall be posted in a conspicuous place on the building and shall not be removed except by the fire chief.

Subd. 6. Effect of issuance. Issuance of a fire certificate of occupancy shall not be construed as an approval of a violation of the provisions of this Code or of other ordinances of the jurisdiction. Certificates presuming to give authority to violate or cancel the provisions of this Code or other ordinances of the jurisdiction shall not be valid.

Subd. 7. Renewal. All fire certificates of occupancy shall be renewed every calendar year.

Section H - Owner's duties and responsibilities.

Subd. 1. Notice. The owner or interested party for which a fire certificate of occupancy has been issued is under a continuing obligation to give written notice to the fire chief of any changes in the information supplied as part of the application for the certificate. This includes any changes or modifications of ownership of the building, and any change in use or occupancy status of the building.

Subd. 2. New owner. A new owner of a building with a fire certificate of occupancy shall file with the fire chief a written application for a modification of the certificate if such premises is still being used or occupied under an existing certificate. Such application shall be filed within 30 days after such new owner obtains new ownership in the building, whether or not such interest has been recorded.

Subd. 3. Change of use. Changes in the use of a building shall not be made without the approval of the fire chief or his/her designee, and the building may be occupied for other purposes provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use. If the use or occupancy of a fire certificate of occupancy premises changes, it shall immediately be required to meet all requirements of law, including the requirement for a certificate of occupancy before being used for such new or changed use. No change in the existing occupancy classification of a building or structure or portion thereof shall be made until the fire chief or his/her designee has issued a fire certificate of occupancy therefore as provided herein. Dwelling units located within a commercial structure shall be exempted from this requirement if the residence is less than 50% of the overall structure. Properties occupied by an owner shall be exempted from this requirement if the residence contains one or two dwelling units. The term "owner" means a natural person, and does not include a corporation, partnership or other entity.

Subd. 4. Posting. The fire certificate of occupancy shall be posted in a conspicuous place on the premises and shall not be removed except by the fire chief or his/her designee.

Section I. - Fees.

Subd. 1. The city shall be entitled to collect its costs and assessed fee regarding fire certificate of occupancy inspections and reinspection. The fees associated with the fire certificate of occupancy program shall be a debt owed to the city, and unpaid costs shall be collected by special assessment under the authority in M.S.A. § 429.101 and as provided in this Code. Action under this section does not preclude any other civil or criminal enforcement procedure available to the city.

Subd. 2. If charges assessed under this article are not paid by the owner or interested party in a timely fashion, the city shall collect such costs by assessment against the real property receiving these inspections and reinspection services.

Section J. - Inspections.

Subd. 1. Scope of inspection. The fire chief or his/her designee is authorized, in conformity with this chapter, to inspect all buildings, whether having a fire certificate of occupancy hereunder or not. The inspection may include the building or structure, the land upon which it is located and accessory uses or structures. All inspections authorized by this chapter shall be limited to those which are done for the purpose of seeking compliance with applicable safety codes, and shall take place only at reasonable hours or as may otherwise be agreed upon by the owner and the fire chief or his/her designee.

Subd. 2. Notice of violations. The fire chief or his/her designee shall give written notice to the owner, or any known interested parties, of any violations of the applicable safety codes which are discovered during any inspection.

Subd. 3. Administrative search warrant. Access during reasonable times shall not be denied by any owner, occupant or other person in charge of the premises. The fire chief may obtain a search warrant where probable cause exists to believe that the premises are in violation of this article; provided, however, that no search warrant is needed for entry where an emergency condition exists and sufficient time to obtain a warrant is unavailable.

Section K. Notice of violation; reinspection; correction orders.

Subd. 1. When the fire chief or his/her designee conducts an initial inspection of a building and determines that violations of safety codes under the jurisdiction of the fire chief exist, the fire chief shall, in addition to any other action that the fire chief or his/her designee may undertake, serve written notice of the violation in conformance with the requirements set forth in this article.

Subd. 2. The fire chief or his/her designee may require an inspection following a complaint or referral. If the fire chief finds a violation of safety codes during a referral or complaint-related inspection, the fire chief will issue correction orders. If the violation is not corrected by the compliance date provided in the notice of violation, the building owners shall be assessed fees for any necessary reinspections.

Subd. 3. Fees for the fire certificate of occupancy inspection and associated reinspections are the responsibility of the building owner and shall be paid within the time periods identified in the notice of violation.

Section L. - Other penalties.

A violation of, or failure to comply with, any section, provision or requirement in this article shall be a misdemeanor. This article is a part of the city health, safety, housing, building, fire prevention and housing maintenance codes, and a violation shall be deemed to be a violation for purposes of state statutes allowing escrow of rent to remedy violations.

Section M. - Grounds for revocation.

The fire chief or his/her designee may, by written notice to the owners, and to interested parties known to the fire chief or his/her designee, deny, suspend or revoke a fire certificate of occupancy when:

- (g) The certificate was issued in error, or on the basis of incorrect information supplied;
- (h) The owners and/or interested parties have submitted a false, incomplete or inaccurate statement as a part of the application for certificate;
- (i) The owner or interested party has failed or refused to pay fees to the city for inspections or certificates;
- (j) It is found, upon inspection of the fire chief or his/her designee, that the building or occupancy is in violation of provisions of this or other applicable safety codes, ordinances, rules and regulations;
- (k) The owner, in a material matter, fails to comply with the regulations in this chapter and with other applicable regulations in other chapters of this Code, or in situations where the fire chief or his/her designee, after a good faith effort, cannot identify an owner or interested party;
- (l) The nonresidential building or structure becomes unoccupied;
- (m) There is evidence of nuisance activity subject to the procedure provided below.

Section. N. - Form of notice of suspension, revocation or denial.

When the fire chief or his/her designee revokes, suspends or denies a fire certificate of occupancy for safety code violations, the notice issued by the fire chief shall include the following:

- (a) The specific reasons for the city's suspension, revocation or denial of the fire certificate of occupancy;
- (b) The effective date of the revocation, suspension or denial of the fire certificate of occupancy;
- (c) A statement that the commercial building or residential occupancy, or portion thereof, shall not again be used or occupied until such time as the certificate is issued or renewed or suspension lifted following inspection and a determination by the fire chief or his/her designee that the commercial building or residential occupancy, or portion thereof, is in compliance with applicable safety codes under the jurisdiction of the fire chief; and
- (d) A statement indicating that the suspension, revocation, or denial may be appealed to the legislative hearing officer within ten days of issuance.

Section O. - Nuisance activity prohibited; abatement procedure.

Subd. 1. When the fire chief or his/her designee determines, in consultation with the city attorney, that he has evidence of nuisance activity as described in M.S.A. § 617.81, subd. 2, or other violations of nuisance provisions of this Code are maintained or permitted in the jurisdiction he serves, the fire chief shall provide the written notice by personal service or certified mail, return receipt requested, to the owner or interested parties known to the fire chief. Notice under this section shall:

- (a) State that a nuisance is maintained or permitted in the building or structure and specify the kind of nuisance being maintained or permitted;
- (b) Summarize the evidence that a nuisance is being maintained or permitted in the building or structure, including the dates on which the nuisance-related activity is alleged to have occurred;
- (c) Inform the recipient that failure to abate the conduct constituting the nuisance or to otherwise resolve the matter with the fire chief or his/her designee by entering into an agreed upon abatement plan within 30 days of service of the notice will result in recommending the suspension or revocation of the fire certificate of occupancy to the city council, or referring the matter to the prosecuting attorney who serves in the jurisdiction for remedies in accordance with M.S.A. § 617.80 et seq. which could result in enjoining the use of the building or structure for any purpose for one year, or in the case of a tenant, could result in cancellation of the lease; and
- (d) Inform the owner or interested party of the options available under M.S.A. § 617.85, which provides that the owner of the building which is subject to a district court abatement proceeding may file a motion before the court that has jurisdiction over the abatement proceeding to cancel the lease or otherwise secure restitution of the premises from the tenant or lessee who has maintained or conducted the nuisance. The owner or interested party may assign to the prosecuting attorney the right to file this motion.
 - i. If the recipient of a notice under this section either abates the conduct constituting a nuisance or enters into an agreed upon abatement plan within 30 days of service of the notice and complies within the stipulated time period, the fire chief may not take action to suspend or revoke the fire certificate of occupancy on the specified property regarding the nuisance activity described in the notice.
 - ii. If the recipient fails to abate the nuisance within 30 days of service of the notice, or fails to comply with the agreed upon abatement plan, the fire chief or his/her designee will refer the matter to the city council recommending suspension or revocation of the fire certificate of occupancy or refer the matter to the prosecuting attorney in accordance with M.S.A. § 617.80 et seq.

Section P - Effect of voluntary vacation of premises.

No suspension, revocation or denial of the fire certificate of occupancy shall be imposed upon any owner or interested party who serves written notice upon the City stating an intent to permanently vacate the premises within 30 days of the receipt of the notice of suspension, revocation or denial. Written notice of intention to vacate, which must include the date of vacation, must be filed with the building official within ten days from the receipt of the notice and shall

include proof that notice of eviction was served upon the occupants of the premises if other than the owner.

Section. Q. - Stay pending appeal.

Subd. 1 Enforcement proceedings on the suspension, revocation or denial of the fire certificate of occupancy, or orders to correct violations, shall be held in abeyance if the owner shall file an appeal to the legislative hearing officer within ten days of receiving the written order issued by the enforcement officer, except in the case of an order to vacate a structure which is deemed to be in an unsafe condition and dangerous to life or limb, the enforcement officer shall proceed to order the building vacated until it is made safe or a final determination is made by the legislative hearing officer allowing reoccupancy of the building. This decision shall be presented to the city council for ratification at its next available public hearing.

Subd. 2. Abeyance of enforcement proceedings shall continue until such time as the hearing officer shall have issued a final determination or in the event the owner should not prosecute the appeal in a timely fashion.

Section R - Reinstatement and occupancy following suspension or revocation.

Subd. 1. First suspension or revocation. If a fire certificate of occupancy is suspended or revoked for a building, or portion thereof, that building, or portion thereof, shall not be occupied until such time as the fire certificate of occupancy is reinstated.

Subd. 2. Second suspension or revocation. If a fire certificate of occupancy is suspended or revoked for a second time within a two-year time period under the same ownership, the building for which it was issued shall not again be occupied until such time as the fire chief or his/her designee has determined that the building is in compliance with applicable safety codes and the owner has posted a \$5,000.00 performance deposit or bond to offset potential city expenses associated with abating nuisance conditions. The deposit shall be returned to owner upon completion of two years with no code violations requiring city abatement.

Subd. 3. Third suspension or revocation. If a fire certificate of occupancy is suspended or revoked for a third time within a three-year time period under the same ownership, the building for which it was issued shall not again be occupied until a nuisance abatement plan is developed by the property owner, reviewed by the Code Official and approved by the city council. If a nuisance abatement plan is not developed and approved, the premises for which the fire certificate of occupancy was issued shall not again be used or occupied for a period of six months.