

TA26-03: Ch. 11 Abandoned Building Re-Occupancy

ADD: Section 11.10 Administrative Determination of Abandoned Commercial Occupancy:

11.10. 1. Purpose

The purpose of this ordinance is to protect the public health, safety, and welfare by establishing a procedure for the Department of Development Services to identify commercial buildings and tenant spaces in which a previously approved commercial occupancy has been abandoned.

Extended vacancy, deterioration, discontinued maintenance, repeated code violations, unsuccessful attempts to reoccupy the property, or other documented circumstances may demonstrate that a previously approved commercial occupancy has effectively ceased. In such cases, continued reliance upon a historic Certificate of Occupancy or prior occupancy approval may no longer be appropriate.

This ordinance establishes the process by which the Department of Development Services may determine that a prior commercial occupancy has been abandoned and establishes the requirements applicable to future occupancy of the property.

11.10.2. Definitions

Administrative Determination of Abandonment. A written finding issued by the Department of Development Services that the previously approved commercial occupancy has been discontinued and may no longer be relied upon for future occupancy without review under the City's currently adopted codes and ordinances.

Commercial Building. Any building, structure, or tenant space intended for or previously approved for business, mercantile, assembly, factory, industrial, institutional, storage, or other nonresidential occupancy.

Re-occupancy. The establishment or resumption of commercial occupancy following a period of vacancy.

Vacant. A building, structure, or tenant space that has not been lawfully occupied or actively operated for its previously approved commercial purpose.

11.10.3. Authority to Initiate Review

Review of occupancy status may be initiated by application for Certificate of Occupancy from a building owner or tenant. The Department of Development Services may initiate an

Administrative Review whenever it has reasonable cause to believe that the previously approved commercial occupancy of a building or tenant space has been abandoned.

Reasonable cause may include, but is not limited to:

- Vacancy exceeding one hundred eighty (180) consecutive days;
- Complaints received by the City;
- Observations by City personnel;
- Repeated code enforcement activity;
- Fire, weather, or structural damage;
- Failure to maintain required fire protection or life safety systems;
- Long-term discontinuance of utility service;
- Expiration, revocation, or nonrenewal of permits, licenses, or Certificates of Occupancy;
- Previous denials of zoning approvals, permits, or Certificates of Occupancy;
- Repeated unsuccessful attempts to establish another occupancy;
- Failure to correct previously identified code violations;
- Any other documented information reasonably indicating that the previously approved commercial occupancy has been discontinued.

Vacancy exceeding one hundred eighty (180) consecutive days shall create a rebuttable presumption that the previously approved commercial occupancy has been abandoned. The owner may rebut this presumption by competent evidence demonstrating that the occupancy has not been discontinued or that the vacancy is temporary.

11.10.4. Investigation

The Department of Development Services may investigate the occupancy status of the property through any lawful means, including:

1. Site inspections;
2. Review of Certificates of Occupancy;
3. Review of permit history;
4. Review of code enforcement files;
5. Review of utility information where authorized by law;
6. Review of business licenses and other City records;
7. Communication with the owner, tenant, or authorized representative; and
8. Any other information reasonably related to determining whether the previous commercial occupancy has been discontinued.

11.10.5. Factors Considered

In determining whether a prior commercial occupancy has been abandoned, the Department shall consider the totality of the circumstances. Relevant factors include, but are not limited to:

1. Duration of vacancy.
2. Previous denial of permits, zoning approvals, Certificates of Occupancy, business licenses, or other governmental approvals.
3. Applications proposing different occupancies or substantially different operations.
4. Outstanding code violations, unsafe conditions, or unresolved enforcement actions.
5. Failure to complete corrective work required by the City.
6. Removal of equipment, fixtures, or building systems necessary for the previously approved occupancy.
7. Long-term discontinuance of utility services necessary for operation.
8. Fire damage, structural deterioration, vandalism, weather damage, or neglect.
9. Expiration, surrender, revocation, or nonrenewal of licenses, permits, or Certificates of Occupancy.
10. Statements or actions by the owner or tenant indicating that the prior occupancy has permanently ceased.
11. A documented history demonstrating that restoration of the previous occupancy is no longer intended.
12. Any other documented facts reasonably demonstrating that the previously approved commercial occupancy has been discontinued rather than temporarily suspended.

No single factor shall control the determination. The Department shall base its decision upon the totality of the documented circumstances.

11.10.6. Notice of Proposed Determination

When the Department determines that sufficient evidence exists to support a finding of abandonment, written notice shall be provided to the owner of record.

The notice shall include:

1. The factual basis for the proposed determination.
 2. The evidence relied upon.
 3. The owner's right to submit documentation demonstrating that the previous occupancy has not been abandoned.
 4. A response period of not less than thirty (30) days before a final determination is issued.
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11.10.7. Administrative Determination

Following expiration of the notice period and consideration of any information submitted by the owner, the Department may issue a written Administrative Determination of Abandonment.

The determination shall include findings of fact supporting the decision and shall become part of the permanent records maintained by the Department of Development Services.

11.10.8. Effect of Administrative Determination

Upon issuance of a final Administrative Determination of Abandonment:

1. The previously approved commercial occupancy shall be deemed discontinued and shall no longer be recognized for purposes of future occupancy approvals.
2. Any future occupancy of the building or tenant space shall be reviewed under the City of Tupelo Development Code and the construction codes adopted by the City that are in effect at the time an application for occupancy is submitted.
3. Nothing in this ordinance shall prohibit the building or tenant space from being occupied in the future for the same occupancy classification or business type, provided the proposed occupancy complies with the City's adopted codes and ordinances then in effect.
4. Nothing in this ordinance shall require an existing building to be brought into complete compliance with the requirements applicable to new construction except where specifically required by the adopted Existing Building Code or other applicable provisions of the City's adopted codes.
5. A final Administrative Determination of Abandonment shall constitute an official finding by the Department of Development Services that the previously approved commercial occupancy has been discontinued. The determination may be relied upon by the Department in administering and enforcing the City of Tupelo Development Code, the City's adopted construction codes, the Property Maintenance Code, and other applicable ordinances.
6. A final Administrative Determination of Abandonment may be considered as evidence in determining whether a building has become unsafe, unfit for occupancy, constitutes a public nuisance, or otherwise warrants enforcement action under applicable state law or local ordinance.
7. When supported by additional documented findings establishing that a building or structure is unsafe, unfit for human occupancy, constitutes a public nuisance, or otherwise satisfies the requirements of applicable law, the Department of Development Services may initiate proceedings to require repair, rehabilitation, securing, vacation, abatement, condemnation, or demolition of the structure in accordance with the City of Tupelo Code of Ordinances, the City's adopted construction codes, and applicable provisions of Mississippi law.
8. Nothing contained in this ordinance shall be construed as authorizing repair, abatement, condemnation, or demolition solely because a prior commercial occupancy has been determined to be abandoned. Any such action shall be based upon the applicable legal standards governing unsafe buildings, public nuisances, property maintenance, or other authorized enforcement actions.
9. Unless and until a new Certificate of Occupancy is issued, the property shall be presumed not to possess an active approved commercial occupancy for purposes of permitting,

occupancy, licensing, zoning administration, or other regulatory approvals administered by the City.

11.10.9. Permanent Department Record

A final Administrative Determination of Abandonment shall become part of the permanent records maintained by the Department of Development Services and shall be referenced during the review of any future permit, Certificate of Occupancy, business license, zoning approval, or other development application affecting the property.

The Department may provide notice of the determination to other City departments whose regulatory responsibilities may be affected.

11.10.10. Appeals

Any person aggrieved by an Administrative Determination of Abandonment may appeal the determination in accordance with the appeal procedures established by the City of Tupelo Code of Ordinances and the City's adopted construction codes.

This code section is in response to the Building Official's finding that there are a number of unoccupied commercial structures which may not meet current code standards. It provides authority for the application of current code standards either to an application for certificate of occupancy, or to an action initiated by the City based on observed conditions that may be unsafe, hazardous to the public, or likely to become a blight factor. City authority to address such conditions in residential property is well established, but comparable authority to take action on other structures has not been available. The amendment also serves to inform the owners of such structures of the process for bringing their property into a condition where a certificate of occupancy can be issued.