



## Legislation Text

File #: 040282, Version: 1

040282  
SUBSTITUTE 1

### THE CHAIR

A substitute ordinance relating to temporary certificates of occupancy, conditional certificates of occupancy and conditional construction permits.

200-42-1-a am

200-43 am

295-303 rc

295-304 cr

This ordinance:

1. Transfers authority for issuance of “temporary certificates of occupancy” from the commissioner of city development to the commissioner of neighborhood services. A temporary certificate of occupancy allows the temporary occupancy or use of a building, structure or premises prior to the completion of construction.
2. Reinstates provisions relating to “conditional certificates of occupancy” that were omitted from the new zoning code enacted in 2002. A conditional certificate of occupancy allows the temporary occupancy and use of a building, structure or premises prior to the approval of a special use permit or variance by the board of zoning appeals or a zoning map amendment by the common council, provided the applicant meets a number of conditions specified in the code, and the commissioner of city development finds that the occupancy or use will not jeopardize life, health or property and will not adversely impact adjoining property or the neighborhood in general.
3. Creates provisions for the issuance of “conditional construction permits”. A permit of this type allows the construction, alteration, relocation, extension or substantial improvement of a structure prior to the approval of a special use permit or variance by the board of zoning appeals or a zoning map amendment by the common council, provided the applicant meets a number of conditions specified in the code, and the commissioner of city development finds that the occupancy or use will not jeopardize life, health or property and will not adversely impact adjoining property or the neighborhood in general .  
The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 200-42-1-a of the code is amended to read:

### **200-42. Certificate of Occupancy.**

#### **1. WHEN REQUIRED.**

a. It shall be unlawful to occupy or use any building, structure or premises now existing or hereafter erected unless or until a certificate of occupancy or certificate of zoning has been issued by the commissioner of city development >>, except as provided in s. 200-43 and s. 295-303<< . A separate certificate of occupancy shall be obtained for each occupancy and use stated in ch. 295 or any other regulation of this code.

Part 2. Section 200-43 of the code is amended to read:

**200-43. Temporary Certificate of Occupancy.** A temporary certificate of occupancy ~~[[or certificate of zoning]]~~ may be issued by the commissioner of ~~[[city development]]~~ >>neighborhood services<< for the temporary occupancy and use of any building, structure or premises or part thereof, prior to the completion of the same and the issuance of a final certificate of occupancy, provided that such occupancy or use would not jeopardize life, health or property. The commissioner of ~~[[city development]]~~ >>neighborhood services<< is authorized to require whatever temporary precautionary measures over and above any code requirements to safeguard the public as condition of the issuance of a temporary certificate of occupancy ~~[[or certificate of zoning]]~~.

Part 3. Section 295-303 of the code is repealed and recreated to read:

**295-303. Occupancy.** Pursuant to s. 200-42, it shall be unlawful to occupy or use any building, structure or premises unless a certificate of occupancy or certificate of zoning has been issued by the commissioner of city development. A separate certificate shall be obtained for each occupancy or use, as specified in this chapter. However, pursuant to s. 200-43, a temporary certificate of occupancy may be issued by the commissioner of neighborhood services for occupancy and use of any building, structure or premises prior to completion of construction. In addition, a conditional certificate of occupancy may be issued by the commissioner of city development for a period of up to 180 days for the temporary occupancy and use of any building, structure or premises, or part thereof, prior to the approval of a variance or special use permit by the board or the approval of a zoning map amendment by the common council. Issuance of a conditional certificate of occupancy shall not imply that the board or common council is going to approve the applicant's request. The commissioner of city development is authorized to require whatever temporary precautionary measures are necessary to safeguard the public as a condition of issuance of a conditional certificate of occupancy. A conditional certificate of occupancy may be issued only when the following criteria have been met:

1. The applicant has applied for a certificate of occupancy and paid the required fees.
2. If board action is required, the applicant has filed an application for a special use permit, use variance or dimensional variance with the board and paid all required fees related to the appeal. If a zoning map amendment is required, the applicant has filed a map amendment application with the department and paid all required fees, and a common council file number has been established.
3. The commissioner has determined that the occupancy or use will not jeopardize life, health or property and will not adversely impact adjoining property or the neighborhood in general.
4. All required inspections have been completed and passed.
5. The applicant agrees to discontinue the use within 30 days of the decision of the board or common council, if the appeal or zoning map amendment is not approved.
6. The applicant agrees to hold the city harmless for any claims resulting from the use of the property during the period the conditional certificate of occupancy is in effect.

Part 4. Section 295-304 of the code is created to read:

**295-304. Conditional Construction Permits.** A conditional construction permit may be issued by the commissioner for a period of up to 180 days for the development of land or the erection, alteration, relocation, extension or substantial improvement of a structure, or part thereof, prior to the approval of a variance or special use permit by the board or the approval of a zoning map amendment by the common council. Issuance of a conditional construction permit shall not imply that the board or common council is going to approve the applicant's request. A conditional construction permit may be issued only when the following criteria have been met:

1. The department has determined that plans for the proposed construction are in compliance with the

building code and with all aspects of the zoning code except those provisions for which a permit denial letter has been sent to the applicant.

2. If board action is required, the applicant has filed an application for a special use permit, use variance or dimensional variance with the board and paid all required fees related to the appeal. If a zoning map amendment is required, the applicant has filed a map amendment application with the department and paid all required fees, and a common council file number has been established.
  3. The commissioner has determined that the occupancy or use will not jeopardize life, health or property and will not adversely impact adjoining property or the neighborhood in general.
  4. The applicant agrees to return the site to its previous condition and use within 30 days of the decision of the board or common council, if the appeal or zoning map amendment is not approved.
  5. The applicant agrees to hold the city harmless for any claims resulting from construction at the premises during the period the conditional construction permit is in effect.
- APPROVED AS TO FORM

\_\_\_\_\_  
Legislative Reference Bureau

Date: \_\_\_\_\_

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

\_\_\_\_\_  
Office of the City Attorney

Date: \_\_\_\_\_

Department of City Development

LRB04142-2

JDO

07/13/04