



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: BL2020-551, **Version:** 1

An Ordinance to amend Chapter 16.04 of the Metropolitan Code of Laws relative to the issuance of certificates of occupancy and stop work orders.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Section 16.04.100 of the Metropolitan Code of Laws is hereby amended as follows:

16.04.100 - Certificate of occupancy-Issuance of electrical releases and temporary certificates.

A. To secure compliance with Chapters 16.04 and 16.28 through 16.56, the metropolitan government shall not provide nor permit another to provide utility services (such as water, sewer, electrical, or gas), either public or private, to any building or structure found to be in noncompliance of Chapters 16.04 and 16.28 through 16.56, or to any building or structure on a work site subject to a citation from the U.S. Department of Labor - Occupational Safety and Health Administration and/or the Tennessee Occupation Safety and Health Administration until any and all violations have been abated or corrected, until such building or structure has been brought into compliance, inspected and a final certificate of occupancy issued. This requirement shall not preclude the temporary use of utility services as may be necessary during construction, repair or rehabilitation of a structure. Provided, however, the director may authorize the issuance of an electrical release to the utility to connect electrical service in accordance with Section 16.36.030 for portions of a building safe for occupancy.

B. 1. It is further expressly provided that in the case of one-family and two-family dwellings and apartment/condominium complexes not exceeding three stories, a full electrical release shall, without exception, be issued after the frame inspection has been made and approved subject to completion of the following items:

- a. Electrical service must be completed and properly grounded;
- b. All exposed electrical wires are made safe (disconnected or installed in an approved junction box).

2. This request for full electrical release may be made on an oral or written basis by the electrical contractor, and the release shall be issued not more than two working days after the release unless an inspection of the intended premises reflects a noncompliance with paragraphs 1 and 2 of subsection B.

C. It is further expressly provided that in the case of one-family and two-family dwellings and apartment/condominium complexes not exceeding three stories, a temporary certificate of occupancy shall be issued after the following conditions have been met:

1. The plumbing has been connected with the water system and sewer line or waste disposal system;
2. Safe conditions exist with regard to such items as smoke detectors are installed and operable; exits are complete; fire stopping is in place and ditches are covered.
3. No temporary certificate of occupancy shall be issued if evidence is provided to the department of codes administration that the work site is subject to a citation from the U.S. Department of Labor - Occupational

Safety and Health Administration and/or the Tennessee Occupation Safety and Health Administration. A temporary certificate of occupancy shall be issued upon written evidence that all violations in the citation have been abated or corrected and if the other conditions in this subsection C are met.

D. Any such temporary certificate shall be valid for sixty days after the date of issue unless extended by the director. The director shall not unreasonably withhold any extensions unless for good cause. Should the building permittee obtaining a temporary certificate fail to secure a final certificate of occupancy within the time allowed, the director, in addition to other remedies available, and for good cause, may cause the utilities to be disconnected upon notice to the supplier to discontinue to furnish said service for this reason. The director shall not utilize his remedy to cause utilities to be disconnected unless ten days' written notice is given to the applicant. In case a contractor secures the temporary certificate, it shall be his responsibility to notify the purchaser or tenant of this condition of occupancy.

Section 2. That Section 16.04.110 of the Metropolitan Code of Laws is hereby amended as follows:

16.04.110 - Noncompliance-Stop work order.

A. Upon notice from the director of codes administration that work on any building or structure is being done contrary to the provisions of Chapters 16.04 and 16.28 through 16.56, or in a dangerous or unsafe manner; or upon notice that operation of any building or structure is being conducted contrary to the provisions of Section 17.16.250.E; or upon evidence provided to the department of codes administration that a work site is subject to a citation from the U.S. Department of Labor - Occupational Safety and Health Administration (OSHA) and/or the Tennessee Occupational Safety and Health Administration (TOSHA) as described in subsection C; such work or operation shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the property or to his agent or to the person doing the work or overseeing the operation, and shall state the conditions under which work or operation may be resumed. When an emergency exists, no written notice shall be required to be given by the director.

B. Such notice as required may be in the form of a placard posted by the inspector conspicuously on the building in which the work or operation is in progress. Removal of such notice or placard without the express consent of the director of codes administration or his designated agent, is a violation of this code.

C. A stop work order shall be issued for any work site subject to a citation from OSHA and/or TOSHA when such citation contains violations that have not been abated or corrected whenever evidence of a citation has been provided to the department of codes administration. A citation from OSHA and/or TOSHA shall be treated as an emergency and no written notice shall be required. In such cases, work shall be allowed to continue upon written evidence that all violations in the citation have been abated or corrected to the satisfaction of the entity that issued the citation.

Section 3. This ordinance shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance would require a stop work order, and prevent the issuance of a temporary certificate of occupancy, for any work site that is subject to a citation from the U.S. Department of Labor - Occupational Safety and Health Administration (OSHA) and/or the Tennessee Occupation Safety and Health Administration (TOSHA) until all violations have been abated or corrected. Chapter 16.04 of the Metro Code currently provides that the Department of Codes Administration is to issue a stop work order if work is being done on any building or structure in violation of various building and trades code provisions. This ordinance adds OSHA and TOSHA violations to the list of violations that trigger a stop work order.

This ordinance would also prohibit the Codes Department from issuing a temporary occupancy permit if there are any outstanding OSHA or TOSHA violations at the site. Such permit could only be issued upon written evidence that all violations in the citation have been abated or corrected to the satisfaction of the entity that issued the citation.

The Codes Department has expressed some concerns regarding the enforceability and legality of this ordinance. According to the Codes Department, many of the standards enforced by OSHA and TOSHA are unrelated to the building and trades codes that Codes enforces, and Codes is not involved in the investigations that lead to OSHA and TOSHA violations. The Codes Department is concerned out potential due process violations if the cited parties are engaged in an appeal of the OSHA or TOSHA decision. Further, Codes is not typically notified when OSHA or TOSHA citations are issued, and even if they are notified, they do not know the status of any appeals or whether the violations have been abated.

There is no specific authorization under state or federal law for this ordinance. Federal law grants authority to states to administer their own workplace safety programs, which led to the creation of TOSHA under state law (Title 50, Chapter 3 of the Tennessee Code Annotated - Occupational Safety and Health Act of 1972) and administered by the Commissioner of Labor and Workforce Development. The state Act grants the Commissioner or their designee inspection and enforcement authority including injunctive relief (§ 50-3-401), the power to assess monetary penalties (§ 50-3-402), and the power to issue stop work orders (§ 50-3-918). But the Act does not grant such authority to local governments. Thus, the state and federal governments have arguably preempted the field regarding such regulations. The Council Office has been unable to find any case law directly on point regarding revocation of local permits based upon OSHA/TOSHA violations.