

# CITY OF MILPITAS

Building & Safety Department  
455 E. Calaveras Blvd.  
Milpitas, CA 95035  
408-586-3240  
[www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov)



## AUTHORIZATION TO OCCUPY BEFORE PERMIT FINAL (TEMPORARY CERTIFICATE OF OCCUPANCY)

Buildings or structures shall not be used or occupied until the Chief Building Official has issued a Certificate of Occupancy, except Group R Division 3 and U Occupancies (Milpitas Municipal Code Section II-1-25.01).

If the Chief Building Official finds that no substantial hazard will result from occupancy of any building or portion thereof before the same is completed, he may issue a Temporary Certificate of Occupancy for the use of a portion or portions of a building or structure prior to the completion of the entire building or structure (MMC Section II-1-25.04).

### REQUIREMENTS

The following requirements must be met before the Chief Building Official and the Fire Marshal will approve a request for a Temporary Certificate of Occupancy (TCO):

1. A written request shall be submitted to the Chief Building Official identifying the areas to be occupied. The letter must be from the business owner or property owner and signed by the contractor (see sample attached).
2. The Project Building Inspector or Senior Building Inspector will determine the extent of work remaining and conditions that will allow the project to qualify for temporary occupancy.
3. Clearance must be obtained from the Fire Marshal indicating that conditions required by him/her for temporary occupancy are satisfied.
4. Clearance must be obtained from the Public Works Department, if applicable, indicating that conditions required by them for temporary occupancy are satisfied.
5. Clearance must be obtained from the Health Department, and all other applicable departments, indicating that conditions required by them for temporary occupancy are satisfied.
6. A Faithful Performance Deposit must be submitted and accepted by the Building and Safety Department for all work remaining if required by the Chief Building Official. Refer to separate handout for forms and instructions.
7. All fees due to the City must be paid, including sewer connection, park in-lieu, etc.
8. When requesting early occupancy of an **isolated portion or phase** of a project, drawings must be submitted and approved that:
  - a. Identifies the portion of the building or buildings where early occupancy is requested.
  - b. Shows the relationship to the rest of the project.
  - c. Illustrates how the proposed portion to be occupied will be isolated from the rest of the project. A physical barrier must be installed between the area requested for temporary occupancy and such area shall be independent of the incomplete portions of the building or buildings.
  - d. Shows the completion of the exiting, utilities, sub-trade systems, restrooms, corridors, entrances, parking, and other portions of the project that serve the area where occupancy is requested.
9. All life safety items must be satisfied in the area of occupancy and independent of the incomplete portions. No substantial hazard shall result from the temporary occupancy. Exiting from the occupied area must be maintained (the exit must not go through the construction area).
10. Required parking for the temporary occupancy shall be completed including the accessible parking.
11. Light, ventilation and sanitation must be completed for the area to be occupied. Electrical and mechanical systems of the area to be occupied shall be separate and independent from the incomplete portions of the building.
12. Businesses with fire alarm systems shall be operational and tested prior to early occupancy.
13. Fire extinguishers must be properly installed (2A10BC and K at restaurant kitchen).
14. Storage taller than 12 feet in height requires a high-piled combustible storage permit.
15. Premise identification must be installed (street address on front and rear entrances).
16. Aisle width of 44" minimum shall be maintained between shelves and racks, and 36" minimum between racks and walls.

17. All non-fixed and moveable fixtures, cases, racks, counters, storage shelves and partitions taller than 5'-9" in height must have a permit. Do not place merchandise in areas where inspectors must view and inspect necessary connections and attachments.
18. All equipment weighing more than 400 pounds, equipment with center of mass located more than 4 feet above the floor, process equipment containing hazardous materials including process piping and mechanical equipment associated with it, containers and storage cabinets holding hazardous materials, supports, bracing and attachments of equipment and fixtures weighing more than 20 pounds suspended from a roof or floor, equipment in or attached to an occupancy Category IV structure and are needed for continued operation of the facility must have a permit. Do not install the equipment until a permit is issued and do not operate until cleared by the Building Inspector.
19. You may be occupying an area where smoke testing is required under the California Building and Mechanical Codes. Smoke may have some effect on your installation. Please contact the general contractor if you have concerns with the smoke test.

### APPLICATION PROCEDURE

The TCO does not take effect, and the building shall not be occupied, until all fees are paid and a Temporary Certificate of Occupancy permit is issued by the Permit Center. Note that any other permits outstanding at the time the TCO permit is issued must still be finalized and a permanent Certificate of Occupancy must be issued before permanent occupancy.

The following is the procedure for obtaining a TCO:

1. Obtain inspections from the Building & Safety Department on all outstanding permits. Inspector will provide a list of conditions that must be completed to obtain a TCO and a list of items that will remain to be completed to obtain the permanent Certificate of Occupancy and include all of the items in the request for the TCO.
2. Obtain inspection from the Fire Department. Fire inspector will provide a list of conditions that must be completed to obtain a TCO and a list of items that will remain to be completed to obtain the permanent Certificate of Occupancy. Include all of the items in the request for the TCO. Note any Fire Department re-inspection fees are in addition to Building and Safety Department fees.
3. Obtain inspection from the Public Works Department, if applicable. Public Works inspector will provide a list of conditions that must be completed to obtain a TCO and a list of items that will remain to be completed to obtain the permanent Certificate of Occupancy. Include all of the items in the request for the TCO.
4. Obtain inspection from the Health Department, if applicable, and all other applicable departments or agencies. Inspectors will provide a list of conditions that must be completed to obtain a TCO and provide a list of items that will remain to be completed to obtain the permanent Certificate of Occupancy. Include all of the items in the request for the TCO, **and** provide a copy to the Building Inspector.
5. Once all conditions for the TCO have been completed, and all inspections for verification have occurred, submit a written request to the Building Official (see sample letter attached), signed by both the Business Owner or Property Owner and the Construction Company to the Permit Center and pay the required fees. Allow 1-2 business days for processing. ***Please be advised that this process can take substantially longer if additional inspections are required before temporary occupancy can be approved.***
6. When requesting early occupancy of an **isolated portion or phase** of a project, drawings must be submitted and approved (see item #8 on page 1).
7. If required, the Faithful Performance Deposit forms along with payment must be submitted and approved prior to issuance of the TCO. See separate handout for instructions.

**(SAMPLE LETTER)**  
**Request for Temporary Certificate of Occupancy**

Date

City of Milpitas  
Building and Safety Department  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

Attn: Chief Building Official

Re: (Business Name)  
(Address)  
Building Permit # (\_\_\_\_\_)

We request a Temporary Certificate of Occupancy be issued at the above noted business location to be in effect on \_\_\_\_\_ (Effective Date) and expire at 12:00 noon on \_\_\_\_\_ (Ending Date) for the (state the area of building to be occupied).

We request this Temporary Certificate of Occupancy to allow us to (state the reason for the early occupancy).

We acknowledge that the following list of items must be completed before a permanent Certificate can be issued:

Building/Plumbing/Mechanical/Electrical:

- 1.
- 2.
- 3.

Fire:

- 1.
- 2.

Public Works:

- 1.
- 2.

Health Department/Other:

- 1.
- 2.

*(The following must be on the letter):* Prior to the expiration of the Temporary Certificate of Occupancy, we will schedule inspections to ensure that all issues as stated in the above list are resolved to the full satisfaction of the Building, Fire and other applicable departments. However, if we fail to comply by the expiration date, we will cease all occupancy and vacate the premises until the building is brought under full compliance.

\_\_\_\_\_  
(Signature of Business Owner)  
(Print Name)  
(Title)  
(Business Name)  
(Phone #):                      (Fax #):

\_\_\_\_\_  
(Signature of Construction Company)  
(Print Name)  
(Title)  
(Business Name)  
(Phone #):                      (Fax #):

(Note: Fax a copy of the letter to (408) 586-3285 for review. An original letter must be mailed or delivered to the Building and Safety Department prior to issuance of the Temporary Certificate of Occupancy.)