



April 19, 2019

***Draper City Planning Division  
Administrative Interpretation***

***RE: Tunex Abandonment Interpretation***

This letter is in regards to a question that has arisen regarding whether a legal nonconforming vehicle repair use has been abandoned. The use has historically been located at 12482 South Minuteman Dr. This business license application is OTH-000163-2019. The subject property is located within the CSD-DP (Draper Peaks Commercial Special District) zoning designation.

The Draper City Municipal Code (DCMC) Section 9-6-090 states that a nonconforming use, structure, or other nonconformity shall be deemed abandoned if it is not occupied or so used for a continuous period of one year. The code goes on to further outline what can trigger a presumption of abandonment.

**9-6-090: ABANDONMENT:**

Any nonconforming use, structure, or other nonconformity which is not thus occupied or so used for a continuous period of one year shall be deemed abandoned and shall not thereafter be reoccupied or used except in a manner that conforms to the requirements of this title.

A. Presumption Of Abandonment: A nonconforming use, structure, or other nonconformity shall be presumed abandoned when any of the following occurs:

1. The owner has in writing or by public statement indicated intent to abandon the use, structure, or other nonconformity;
2. A less intensive use has replaced the original nonconforming use;
3. The owner has physically changed the structure or its permanent equipment in such a way as to indicate a change in use or activity to something other than the nonconforming use; or
4. The structure has been removed through applicable procedures for the condemnation of unsafe structures.

The vehicle repair business that used to reside at the above address was Tunex. This business has not had an active business license since 4/30/2018 when they failed to renew their license. Staff does not know when the use ceased to be located within the building and whether they vacated the premises prior to their license expiration. Staff is unable to verify if the use has been absent from the property for more than a year. That said, the property owners have not met the standards of DCMC Section 9-6-090(A) and have not notified the city in writing of their intent to abandon, a new less intensive use has not occupied the building, the building has not been altered, nor has it been demolished.



DCMC Section 9-6-090(B) provides for two standards of evidence that can be presented to overcome a presumption of abandonment. These include property and structure maintenance, and real estate marketing.

9-6-090(B). Overcoming Presumption Of Abandonment: A presumption of abandonment may be rebutted upon evidence presented by the owner showing no intent to abandon the use, structure, or other nonconformity. Such evidence may include proof that during the alleged period of abandonment the owner has done either of the following:

1. Maintained the lot and structure, if any, in accordance with the building code; or
2. Has actively and continuously marketed the lot or structure for sale or lease.

The applicant for a new Star Boys LLC vehicle repair business has provided the City with documentation of the continuing maintenance of the building and premises. The property owners, Inland Diversified Draper Crossing, LLC, owned by Kite Realty, has a property maintenance agreement for the entire shopping center, including the subject property and building. Furthermore, the website for Kite Realty continuously advertises buildings and units available for lease within the center, including the subject property.

It is the Zoning Administrators position that the legal nonconforming use of vehicle repair has not been abandoned and a new vehicle repair business may occupy the building without obtaining a Conditional Use Permit and bringing the use into conformance with current code.

There are a couple options available to you if you believe this interpretation has been made in error. You may seek a text amendment in order to change the code, or you may appeal this determination. An appeal is subject to DCMC Section 9-5-180 and shall be made within 14 days of the decision which is appealed. Applications for both options can be found on the city's website.

If you have further questions, please contact me at [jennifer.jastremsky@draper.ut.us](mailto:jennifer.jastremsky@draper.ut.us) or at 801-576-6328.

Respectfully,

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Cc File