

CHAPTER 11. ADDITIONAL STANDARDS

11.1 Adult Entertainment Establishment

11.1.1 An adult entertainment establishment as used in this development code shall have the same meaning as the term established in the Code of Ordinances Chapter 15, Article X Adult Entertainment. In construing the term, all definitions contained in Chapter 15, Article X are likewise incorporated by reference into and made a part of this ordinance.

11.1.2 Adult entertainment establishments shall be permitted only within the I (Industrial) District and shall not be permitted on any property within one thousand-five hundred (1,500) feet of the following:

- (1) A place of public assembly used primarily for religious worship and related religious activities;
- (2) A public or private child care or educational facility, including, but not limited to, day care facilities; continuing, elementary, high, intermediate, junior high, middle, nursery, secondary, special education, or vocational schools; kindergartens; preschools; private schools; post-secondary educational institutions, and the grounds of any such facility, provided that the requirement shall not apply to facilities used primarily for another purpose and only incidentally as a school;
- (3) A boundary of any residential zoning district or the property line of a lot devoted to a residential use;
- (4) A public park or recreational area that has been designated for park or recreational activities, including, but not limited to, an athletic field, basketball court, nature trail, park, playground, swimming pool, tennis court, wilderness areas, or similar public land that is under the control, management, or operation of any government park and recreation authority;
- (5) An entertainment business that is oriented primarily towards entertainment for children or families;
- (6) Any packaged liquor store; or
- (7) A crematory, funeral home, or mortuary facility.

11.1.3 Measurements related to this subsection shall be made in a straight line, without regard to intervening objects or structures, from the nearest portion of the building or structure used as part of the premises where an adult entertainment establishment is conducted to the nearest property line of the premises of a use listed in Subsection 11.1.2 above. The presence of a city jurisdictional boundary shall be irrelevant for the purposes of calculating and applying the distance requirements of this subsection.

11.1.4 An adult entertainment establishment lawfully operating as a conforming use shall not be rendered a nonconforming use by the location, subsequent to the commencement of operations of said establishment, of a use listed in Subsection (1) above within one thousand-five hundred (1,500) feet of the adult entertainment establishment.

11.1.5 No adult entertainment establishment may be established or operated within one thousand-five hundred (1,500) feet of another adult entertainment establishment. This distance requirement shall be measured in a straight line, without regard to the intervening objects, political boundaries, or structures, from the closest exterior wall of the structure in which each business is located.

11.1.6 If two (2) or more adult entertainment establishments are within one thousand-five hundred (1,500) feet of one another or area within the same structure or parcel, the adult entertainment establishment that was first established in an otherwise permissible location shall be considered to be a conforming use, and the later-established business shall be considered to be a nonconforming use.

11.1.7 No adult entertainment establishment may be enlarged so as to violate the provisions of this ordinance.

11.2 Beer and Light Wine Sales

11.2.1 Sale or distribution of light wine and beer is generally regulated by Tupelo Code of Ordinances, Sections 5-1 through 5-28, and by Chapter 3 of Title 67 of the Mississippi Code of 1972.

11.2.2 The retail sale, distribution, bartering, giving away, consumption and/or manufacture of light wine and beer, as such term is used in Chapter 3 of Title 67 of the Mississippi Code of 1972 is hereby prohibited within a distance of four hundred (400) feet of residences, churches, schools, kindergartens, child-care facilities, nursing homes, funeral parlors, cemeteries, governmental buildings and publicly-owned recreational areas (collectively, “protected buildings”); except that where such publicly-owned recreational areas and governmental and other protected buildings are located in a commercial area, or other central business area, the distance shall be reduced to one hundred (100) feet and except that for any business engaged in the retail sale, distribution, bartering, giving away, consumption and/or manufacture of light wine and beer on Gloster Street, Main Street and in the downtown overlay district, and any business applying for permits therein, the distance shall be reduced to one hundred (100) feet measured from the building of such business. No distance restriction shall apply to residences located in the downtown overlay district.

11.2.3 For the purposes of this Section, distances shall be measured from the closest point on the protected building to the closest point on the building, or portion of a building if it is not internally accessible by the public from the remainder of the building, where the retail sale, distribution, bartering, giving away, consumption and/or manufacture of light wine and beer is to occur.

11.2.4 Variances in the distance restrictions may be granted by the city planning committee using the procedures set forth in Chapter 12 of the development code of the city. Variances will be

granted where the strict enforcement of the distance restriction would create a practical difficulty or unnecessary hardship in the use of the land. The standard of review for the planning committee shall be whether special conditions or unusual circumstances exist which would make strict enforcement unfair, an unnecessary hardship or a practical difficulty. Special conditions which may be considered, among others, are:

- (1) Waiver or consent by the owner of the protected building; or
- (2) Cessation of use of the protected building, for a protected purpose; or
- (3) Absence of significant or material social, moral, cultural or economic detriment to the protected building; or
- (4) Agreement by the applicant to fulfill conditions designed to alleviate any such detriment; or
- (5) The presence of pre-existing establishments with permits for the retail sale, distribution, consumption or manufacture of light wines and beer within four hundred (400) feet of the protected building.

11.2.5 Opening Containers, Consumption on Premises of Permit Holder Restricted

- (1) The opening of a container of light wine and beer, the consumption of light wine and beer on the premises of a holder of a permit authorizing the sale of such beverages, or the permitting of either to be done on such premises by the holder of the permit, is prohibited except as follows:
- (2) Upon the premises of a restaurant holding a permit authorizing the sale of such beverages. The word “restaurant” for the purpose of this section shall mean a place which is regularly and in a bona fide manner used and kept open for the service of meals to guests for compensation and which has suitable kitchen facilities connected therewith for cooking an assortment of foods and meats commonly ordered at various hours of the day. The service of such food as a sandwich and salads only shall not be deemed in compliance with this requirement. No place shall qualify as a restaurant under the provisions of this order unless fifty (50) percent or more of the revenue derived from such place shall be for the preparation, cooking and serving of meals and not for the sale of such alcoholic beverages. No beer shall be open or in the possession of any person in automobiles at any time on public property, streets or highways.
- (3) Upon the premises of a club holding a permit authorizing the sale of such alcoholic beverages. The word “club” for the purpose of this section shall mean an association or a corporation organized or created under the laws of the United States of American or the laws of the state organized not primarily for pecuniary profit, but for the promotion of some common object other than the sale or consumption of alcoholic beverages, maintained by its members through payment of annual dues, adequate for the reasonable and comfortable use and accommodation of its members and their guests. The affairs and management of

such clubs must be conducted by a board of directors, board of governors, executive committee or similar governing body chosen by the members at a regular meeting at some periodic interval, and no member, officer agent or employee of the club is paid, or directly or indirectly receives in the form of a salary or other compensation any profit from the distribution or sale of such alcoholic beverages to the club or to the members or guests of the club beyond such salary or compensation as may be fixed and voted at a proper meeting by the board of directors or other governing body out of the general revenues of the club.

- (4) Upon municipal property with a properly issued special events permit as provided in Article I of Chapter 5 of the Code of Ordinances.
- (5) The sale, bartering, or giving away of wine and beer for on-premises consumption by any aforesaid restaurant or club shall be prohibited within four hundred (400) feet of any residential building; except where such residential buildings are located in a commercial area or central business area, distance shall be reduced to one hundred (100) feet.

11.3 Manufactured or Mobile Home Subdivision

11.3.1 A manufactured or mobile home subdivision is a development in which spaces are offered on a rental or lease basis only for owner-occupied manufactured or mobile homes, or in which the space and manufactured or mobile home combination are both offered to the public on a rental or lease basis only. Manufactured or mobile home subdivisions are permitted in the A/O district. Such developments shall be a minimum of ten (10) acres. All other development standards shall be those allowed in A/O.

11.4 Telecommunications Tower

11.4.1 These standards are intended to allow the expansion of wireless telecommunications facilities in a reasonable and non-discriminatory way that will protect the public from adverse impact. These standards apply to any new tower that is over seventy-five (75') in height and any existing tower that is replaced or structurally altered. In a district where this use requires a flexible use permit, a developer who chooses to blend the tower in to the surrounding environment using color, camouflage, and architecture may apply for a compatible use permit instead. A developer may submit the compatible or flexible use permit application with a site plan showing the proposed tower to begin this process.

11.4.2 Applications

- (1) A non-refundable application fee shall accompany the application at the rate of twenty dollars (\$20) per foot in height and/or two hundred dollars (\$200) per antenna. Such fee shall be established by the City Council and reviewed from time to time. The Department of Development Services may find it necessary to employ an engineer or other consultant qualified in the design and installation of wireless telecommunications facilities to assist the city in technical review of the application. In such cases, any reasonable costs incurred by the city for such review, not to exceed three thousand dollars (\$3,000), shall be reimbursed to the city by the applicant prior to final decision.

- (2) Applications for construction of new telecommunications towers shall be accompanied by a bond, letter of credit, or other acceptable financial instrument, in the amount of five hundred dollars (\$500) per foot in height, executable by the City of Tupelo in the event that the tower is to be removed under the provisions of Section 11.4.3 (19) of this code.
- (3) Applications for construction of new telecommunications towers shall also include proof of liability insurance in favor of the City of Tupelo, in the amount of five hundred thousand dollars (\$500,000).

11.4.3 Standards

- (1) Towers shall not be constructed so as to interfere with the flight zones of civilian or military airports.
- (2) Towers shall be sited on the property to minimize visibility from the road and adjacent properties to the extent possible.
- (3) With the exception of necessary electric and telephone service and connection line approved by the city, no part of any tower, antenna, or supportive lines, cable, equipment, wires or braces in connection with a tower, shall at any time extend across or over any part of a right-of-way, public street, highway, sidewalk or property line.
- (4) Height shall be limited to one hundred-seventy (170) feet.
- (5) For proposed towers greater than one hundred-twenty (120) feet in height, the proposed tower shall be designed to accommodate both the applicant's antenna and at least two (2) comparable antennas.
- (6) For proposed towers over seven (7) feet in height but less than one hundred-twenty (120) feet in height, the proposed tower shall be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.
- (7) Towers shall be of a monopole design.
- (8) The use of guyed or lattice towers is prohibited.
- (9) Towers shall be constructed of galvanized metal and shall be maintained in good repair and appearance.
- (10) Towers shall be constructed so that if a failure does occur, the tower will collapse into itself and will not fall onto structures near the site.
- (11) No tower shall have a platform, crow's nest or like structure around it, or attached to it, except while under construction or repair.

- (12) Towers shall be protected from trespassers in order to discourage the climbing of the tower by unauthorized persons.
- (12) The owner/operator shall at all times employ at least ordinary care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.
- (13) All signal and remote control conductors of low energy between a tower or antenna and a structure, or between towers, shall be hidden from plain view and shall be underground whenever possible. If impossible to bury underground, the conductor shall be at least eight (8) feet above the ground at all points.
- (14) A Type C perimeter landscaping buffer shall be provided around the perimeter of a freestanding telecommunications tower facility, antenna, or accessory building, structure or equipment from public view except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.
- (15) No commercial advertising shall be allowed on a tower or antenna, unless such antenna is actually located on an existing, approved sign. Towers may have safety or warning signs in appropriate places.
- (16) Any lighting that is required by state or federal law shall be placed on the tower and designed in such a way as to minimize the glare on adjacent residential properties.
- (17) Light fixtures are permissible if they are part of a design incorporated into the tower structure to be used for the illumination of athletic fields, parking lots, streets or other similar areas.
- (18) Lighting of accessory buildings for basic security purposes is permissible but shall not result in unnecessary glare on adjacent properties.
- (19) All abandoned or unused telecommunication tower or antenna facilities shall be removed by the tower or antenna operator within ninety (90) days of the cessation of use unless ownership and use thereof has been transferred to another person in compliance with this Section. A tower shall be considered abandoned if use has been discontinued for one hundred-eighty (180) consecutive days. The Director of Development Services may extend this time period or waive this requirement if it is shown by the operator that the facility has not been abandoned. If such antenna or tower is not removed within said ninety (90) days, the City of Tupelo may remove such antenna at the owner's expense. If there are two (2) or more users of a single tower, then this provision shall not become effective until all users cease using the tower.
- (20) Antennas may be collocated or placed on existing towers, structures, or buildings if they comply with the following standards:

- (a) The addition of a tower, antenna, any related telecommunications equipment, or an accessory building to an existing structure shall not cause the height of said structure to exceed the maximum height allowed in that zoning district;
- (b) All accessory buildings and other structures to be located on the same property as a tower or antenna shall be located on the roof of the structure whenever possible. If they are located on the roof of the structure, they may occupy up to twenty-five percent (25%) of the total roof area.

11.5 Truck Stop: A truck stop is permitted within one-half (1/2) mile of an intersection with a limited-access highway or interstate. In MUCC, MUE, MUAC, and RC districts, a Type A landscaped buffer shall be required. In the I district, a Type C or F landscaped buffer shall be provided.

11.6 Property Maintenance and Community Appearance Standards

11.6.1 Purpose and Intent: The provisions of this part are based on the following findings:

- (1) The City of Tupelo is committed to retaining the architectural style and character of its older homes and neighborhoods.
- (2) Conversion of single family houses into rental housing has made a negative impact on the City.
- (3) The City has invested large sums of money to provide adequate infrastructure including street, curb, gutter and sidewalk repairs.
- (4) There is a legitimate municipal interest in preserving and promoting the City of Tupelo so that it's intrinsic value to the residents and to the community as a whole is maintained.
- (5) The absence of the regulations in this part will result in the continued decline and deterioration of existing neighborhoods, the diminution of land values, and the growth in the possibility of blight and crime.
- (6) Homeowners and landlords are likewise expected to invest money into the maintenance and upkeep of their property.
- (7) Provide a higher level of standards to maintain property values in the City of Tupelo.
- (8) Promote, preserve, and protect the health, safety, and general welfare of property owners and taxpayers of the City of Tupelo.
- (9) Protect and promote the visual quality of the area.
- (10) Restore the character and style of the older neighborhoods in the City of Tupelo.

- (11) Prevent the development of property that would be out of character with the predominant style in the area and which would adversely affect property values or hurt the potential for continued and prolonged prosperity of the area.
- (12) Provide code inspectors to identify and enforce city code through completion and to do so proactively.

11.6.2 Applicability

- (1) **General Applicability:** The provisions of this Part shall apply to all buildings used for residential purposes within the City of Tupelo. All residential structures, and additions thereto, constructed within the City of Tupelo after the date of adoption of this Part, shall be constructed in accordance with the terms of this Part.
- (2) **Standards Conflict:** The provisions contained in this Part are in addition to, and supplemental to all other provisions contained in the Development Code. In case of conflicts between the standards in this Part and standards of the underlying base district, other requirements of the Development Code or other rules, regulations, covenants and agreements, the provisions of this Part shall prevail.

11.6.3 Standards

(1) Outdoor Storage of Materials

- (a) No storage of any kind shall be permitted on a porch, open carport, or yard, except in an enclosed porch, as defined in Chapter 2 of this Ordinance. No refrigerators or similar appliances, or upholstered furniture, or similar items, may be stored or placed on the porch, unless the porch is enclosed.
- (b) No laundry shall be placed on any fence, porch, or clothesline, except in the rear yard.
- (c) All residential properties must be brought into compliance with terms of this part within six (6) months after the adoption of this Part.

(2) Minimum Landscape Standards

- (a) One hundred percent (100%) of the front yard must be landscaped with proper materials including but not limited to grass, shrubs, and flowers. A maximum of twenty-five (25%) of the front yard may be concrete or paved, unless necessary to meet minimum parking requirement.
- (b) Shrubs must be planted in front of the house in the front yard of the property, as defined by Chapter 2 of this Ordinance. A minimum of one shrub per four (4) feet of length of the front side of the building is required. Shrubs must be kept trimmed and shaped.
- (c) All landscaping must be maintained with regard to the mowing of grass, raking of leaves, and maintenance of landscape beds on the property.

- (d) All landscaping must be maintained so as to ensure its continued growth.
- (e) All residential properties must be brought into compliance with terms of this part within six (6) months after the effective date of this Part.

(3) Parking of Vehicles

- (a) The parking of vehicles, including recreational vehicles, will not be permitted in the front yard of a residence, as defined by Chapter 2 of the Development Code, except where a concrete, paved, stone or gravel driveway is in place
- (b) All residential properties must be brought into compliance immediately following the adoption of this Part.
- (c) Parking of vehicles will not be permitted on streets less than twenty-four (24) feet from street edge to street edge in residential areas, except where approved by Traffic Committee.
- (d) Residential driveways shall be maintained to be free of holes, depressions, or projections that may cause tripping or may injure a person or otherwise present a hazard.

(4) Removal of Garbage Containers

- (a) All residential garbage collection containers must be removed from the curbside within twelve (12) hours of collection by the Contractor.
- (b) Residents are responsible for the cleanliness of the area around the garbage container both next to the house and at the curbside.
- (c) All residential properties must be brought into compliance immediately following the effective date of this Part.

(5) Building Design Standards

- (a) To the greatest extent possible, the architectural and historical value of existing buildings, structures, and other historically significant areas are to be conserved.
- (b) New structures, additions, and renovations shall be designed to be compatible with the existing structures in terms of architectural design and exterior building materials, colors and arrangements of buildings and other features.
- (c) All exterior wall coverings shall be of consistent color, material, and style with neighboring buildings.

- (d) All accessory buildings, as defined in Chapter 2 of the Development Code, must be maintained in sound structural condition. Any dilapidated accessory buildings must be removed within thirty (30) days of the receipt of notice from the City of Tupelo. These structures are to be in rear yard and not visible from the street.
- (6) **Building Maintenance:** It shall be unlawful and a violation of this code for any person to erect, maintain, use, place, deposit, cause, allow, leave or permit any of the following on any residential property:
- (a) Any wood surfaces unprotected from the elements by paint or other protective treatment;
 - (b) Exterior painted surfaces with loose, cracked, scaling, chipping, or peeling paint, visible from a public area, in such amounts as to present a deteriorated appearance;
 - (c) Broken, rotted, split, curled or missing roofing material in such amounts as to present a deteriorated appearance.
 - (d) Property owners are responsible for maintenance of property and behavior of tenants in rental property.
- (7) **Junk Vehicles:** Junk vehicles are prohibited from being located within the city except within completely enclosed buildings or garages or at vehicle salvage yards, vehicle repair shops and wrecker services complying with the terms of this ordinance. Within a residential zoning district no more than one (1) junk vehicle may be stored behind opaque fencing or landscaping. This required screening shall completely block the view of the vehicle from all surrounding property.
- (8) **Junk:** It shall be unlawful for the owner or occupant of any property within the City to utilize said property for the storage and accumulation of used, discarded or worn out materials or manufactured products, whether reusable or not, including but not limited to appliances, building materials, building rubbish, trash, garbage, waste products, metal products, and similar items.
- (9) **Open Storage:** Open or outside storage of materials and products shall be prohibited in all zoning districts except Industrial, if within view from the street or if not screened from the view of neighbors by opaque fencing or landscaping.
- (10) **Screening of Junkyard:** Within one (1) year from the effective date of the ordinance, all existing junkyards, vehicle salvage yards, vehicle repair shops and wrecker services where junk or wrecked vehicles are stored shall be screened from view from adjacent properties by opaque fencing and landscaping complying with Section 9.6 of this code. All new junkyards, vehicle salvage yards, vehicle repair shops and wrecker services shall be provided with such screening prior to obtaining a certificate of occupancy.

(11) Restrictions on Parking Commercial and Recreational Vehicles in Residential Districts

- (a) No Commercial vehicle rated greater than three-quarter ($\frac{3}{4}$) ton, bus, trailer exceeding fifteen (15) feet in length, tractor or heavy equipment such as bulldozers and road graders shall be parked or stored in any Low Density Residential, Medium Density Residential, or Mixed Use Residential Districts, except in the rear yard of lots forty thousand (40,000) square feet in size or larger.
- (b) Under no circumstance may any of the vehicles and equipment listed above be stored in any residential district closer than fifty (50) feet to any property line and are prohibited altogether in a subdivision unless used expressly for the purpose of unloading, loading, or construction on that lot.
- (c) Recreational vehicles, boats and campers shall maintain the same setback as a structure, according to the zoning district, except for a rear setback of five (5) feet, and shall not be used for sleeping quarters while in said residential district for greater than fifteen (15) days per year. Concrete pads for such recreational vehicles, boats, or campers which do not meet these setback requirements may be approved by compatible use review as provided in Section 12.12.

(12) Corner Visibility: On a corner lot in any zoning district except the Mixed Use Downtown District, nothing shall be erected, placed, planted or allowed to grow in such a manner as materially to impede vision between a height of two and one-half ($2\frac{1}{2}$) and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the street lines of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersection.

(13) Fences: Fences shall be maintained so that they do not constitute a hazard, blight, or condition of disrepair. Examples of hazard, blight, or condition of disrepair shall include but not be limited to: leaning, missing slats or blocks, graffiti, peeling paint, rotting or deteriorated materials, affecting five percent (5%) or more of the length of the fence.

11.7 Subsurface Conditions

- (1) **Suspect Soils:** Any request for development approval or building permit on sites with soil types classified as suspect for construction shall be required to provide a soils report by a qualified professional engineer, with adequate detail for the design of foundations, to the Department of Development Services.
- (2) **Unmarked Graves:** The City is aware of the presence of unmarked graves within its incorporated limits. To aid developers and property owners in avoiding unintentional disturbance of human graves, the City may consult with the Mississippi Department of Archives and History during the development or permit application review process to

determine if action is required under state law. If such action is required, the applicant may submit a report documenting costs of action to the Department of Development Services.

- (3) **Fee Credit:** The availability of either such report shall qualify the permit applicant for a credit toward the permit fee for a primary building on any lot or building site included in the report. The credit shall be equal to the prorated cost per lot or site for the report, up to five hundred dollars (\$500), not to exceed the total permit fee.

11.8 Congregate Living Facilities

(1) Separation Requirement:

Congregate Living Facilities in Mixed Use zoning districts may not be located within one thousand five hundred (1,500) feet of any other Congregate Living Facility. Congregate Living Facilities in other zoning districts may not be located within two thousand five hundred (2,500) feet of any other Congregate Living Facility.