

CHAPTER 13. ENFORCEMENT

13.1 General

13.1.1. Purpose and Intent: This article establishes procedures through which the city seeks to ensure compliance with the provisions of this Code and obtain corrections for Code violations. It also sets forth the remedies and penalties that apply to violations of this Development Code. The provisions of this chapter are intended to encourage the voluntary correction of violations where possible.

13.1.2. Compliance Required: Compliance with all the procedures, standards, and other provisions of this Code is required by all persons owning, developing, managing, using, or occupying land or structures in the city.

13.2 Violations

13.2.1. General Violations: Any failure to comply with a standard, requirement, prohibition, or limitation imposed by this Code, or the terms or conditions of any permit or other development approval or authorization granted in accordance with this Code, shall constitute a violation of this Code punishable as provided in this article.

13.2.2. Permits or Permit Approvals: Permits or permit approvals issued by a decision-making body authorize only the use, arrangement, location, design, density or intensity, and development set forth in such permits or development approvals.

13.2.3. Specific Violations: It shall be a violation of this Code to undertake any activity contrary to the provisions of this Code, including but not limited to any of the following:

- (1) Develop land or a structure without first obtaining all appropriate permits or development approvals and complying with their terms and conditions.
- (2) Occupy or use land or a structure without first obtaining all appropriate permits or development approvals and complying with their terms and conditions.
- (3) Subdivide land without first obtaining all appropriate permits or development approvals required to engage in subdivision and complying with their terms and conditions.
- (4) Excavate, grade, cut, clear, or undertake any land disturbing activity without first obtaining all appropriate permits and development approvals and complying with their terms and conditions.
- (5) Remove existing trees or disturb any landscaped area or vegetation from a site or parcel of land without first obtaining appropriate permits and development approvals and complying with their terms and conditions.

- (6) Allow a hazardous tree or other vegetation to remain on property and cause a high risk of damage to persons or property. This includes trees which are likely to fall onto private property or public right-of-way and vegetation that impairs visibility on a public street.
- (7) Install, create, erect, alter, or maintain any sign without first obtaining the appropriate permits or development approvals and complying with their terms and conditions.
- (8) Fail to remove any sign installed, created, erected, or maintained in violation of this Code or for which the permit has expired, including dilapidated or abandoned signs.
- (9) Create, expand, replace, or change any nonconformity except in compliance with this Code.
- (10) Reduce or diminish the requirements for development, design, or dimensional standards below the minimum required by this Code.
- (11) Increase the intensity or density of development, except in accordance with the standards of this Code.
- (12) Through any act or omission, fail to comply with any other provisions, procedures, or standards as required by this Code.

13.3 Responsible Persons: The owner, tenant, or occupant of any land or structure, and a builder, contractor, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Code may be held responsible for the violation and subject to the remedies and penalties set forth in this article.

13.4 Enforcement

13.4.1 Enforcement Responsibility: The Director of Development Services shall have primary responsibility for enforcing the provisions of this Code. The Director may delegate enforcement authority to the Code Enforcement Manager and Chief Building Inspector, who shall be responsible for assisting the Director of Development Services in enforcing this Code. All other officers and employees of the City, especially members of the Police Department and Fire Department, shall have the duty to assist in enforcing this Code by reporting apparent violations of this Code to the Director of Development Services, Code Enforcement Manager, or Chief Building Inspector.

13.4.2 Complaints Regarding Violations: Whenever a violation of this Code occurs, or is alleged to have occurred, any person may file a complaint. The complaint, stating fully the cause and basis therefore, shall be filed with the Director of Development Services, who shall properly record such complaint, investigate, and take appropriate action as provided by this Code. The City of Tupelo has a Code Enforcement division dedicated to investigating potential Code violations and working with property owners to remedy violations.

13.4.3 Inspections: On presenting proper credentials, the Director of Development Services or designee may enter upon land or inspect any structure to ensure compliance with the provisions of this Code. These inspections shall be carried out during normal business hours unless the Director of Development Services determines there is an emergency necessitating inspections at another time.

13.4.4 Investigation of Complaint: On receiving a complaint, the Director of Development Services shall investigate the complaint and determine whether a violation of this Code exists.

13.4.5 Notice of Violation and Citation Procedure

- (1) **Notice Required Before Penalty:** No penalty shall be assessed pursuant to 13.2.3 above unless and until the person alleged to be in violation has been notified of the violation in accordance with this section. This notice requirement shall not apply in case of repeat offender violating the same provision for which the notice has been previously given.
- (2) **Citation as Notice to Person Responsible:** Whenever the code official determines or has grounds to believe that a violation of this code exists, a citation shall be given in the manner prescribed below to the person or persons responsible for the violation as specified in the code.
- (3) **Method of Service:** Such citation prescribed in section 13.4.5(2) shall be in accordance with the City of Tupelo Code of Ordinances Section 28.5.
- (4) **Enforcement Conference:** The alleged violator may request a conference within the time frame set forth in the Notice of Violation. At the conclusion of the conference, the Director of Development Services or designee shall make a final determination of whether a violation exists and, if finding that a violation does exist, shall order the violator to undertake actions necessary to abate the violation within a stated deadline. The Director of Development Services shall also advise the violator of the right to appeal the final determination of violation to the City of Tupelo Municipal Court in accordance with Section 12.17, Appeal.
- (5) **Citation for Violation:** An alleged violator shall be subject to penalties if, after being given a notice of violation, s/he does not comply with this Code within the time period set forth in the notice of violation or file an appeal with the City of Tupelo Municipal Court. Each day that a violation continues shall be considered a separate violation of this Code.
 - (a) The City shall serve a written citation on the alleged violation by personal delivery or by mail to the owner of the property on which the violation exists and the person causing or maintaining the violation. The citation shall again describe the nature of the violation and any actions that the alleged violator must take to cure or correct the violation and shall specify the amount of any penalty which shall be levied against the alleged violator.

(b) The citation shall state a time at which the violator is to appear for arraignment in Municipal Court. Scheduling of any additional compliance time or hearing dates shall be at the discretion of the Municipal Court.

(6) **Emergency Enforcement Without Notice:** On determining that delay in abating the violation would pose a danger to the public health, safety, or welfare, the Director of Development Services may seek immediate enforcement without prior written notice by invoking any of the remedies authorized in Section 14.5, Remedies and Penalties.

(7) **Repeat Violations:** If the same violation is repeated by the same offender over any five (5) year period, the city may commence the application of remedies or penalties at the stage in the process where the previous violation was resolved.

Timeline of Enforcement Procedures:

Enforcement Procedure	Timeline to Correct Alleged Violation
Investigation of Complaint	
Notice of Violation	Ten (10) days to schedule an enforcement conference or correct the violation
Citation for Violation	At the discretion of the Municipal Court

13.5 Remedies and Penalties: The city may use any combination of the following remedies and enforcement powers to administer and enforce this Code:

13.5.1 Issuance of Stop Work Order: Whenever a building or structure is being constructed, demolished, renovated, altered, or repaired in violation of any applicable provision of this Code, the Director of Development Services, City Engineer, or Chief Building Inspector may issue a Stop Work Order. The Stop Work Order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation, and the action(s) necessary to lawfully resume work.

13.5.2 Revocation of Permit or Approval: The city may revoke any development permit or approval by written notice to the permit or approval holder when false statements or misrepresentations were made in securing the permit or approval, work is being or has been done in substantial departure from the approved application or plan, there has been a failure to comply with the requirements of this Code, or a permit or approval has been mistakenly granted in violation of this Code.

13.5.3 Injunction: When a violation occurs, the city may, either before or after the initiation of other authorized actions, apply to the appropriate court for a mandatory or prohibitory injunction ordering the offender to correct the unlawful condition or cease the unlawful use of the land in question.

13.5.4 Order of Abatement: In addition to an injunction, the city may apply for and the court may enter into an Order of Abatement as part of the judgment in the case. An Order of Abatement may direct any of the following actions:

- (1) That buildings or other structures on the property be closed, demolished, or removed;
- (2) That fixtures, furniture, or other moveable property be moved or removed entirely;
- (3) That improvements, alterations, modifications, or repairs be made;
- (4) That hazardous trees or vegetation be removed or removed trees be replaced; or
- (5) That any other action be taken as necessary to bring the property into compliance with this Code.

13.5.5 Equitable Remedy: The city may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Code. The fact that other remedies are provided under general law or this Code shall not be used by a violator as a defense to the city's application for equitable relief.

13.5.6 Execution of Court Decisions: The city may execute the Order to have a lien on the property in the nature of a mechanic's and material man's lien for the cost of executing the order.

13.5.7 Denial or Withholding of Related Permits: The city may deny or withhold authorization to use or develop any land, structure, or improvements until an alleged violation related to such land, use, or development is corrected and any associated civil penalty is paid.

13.5.8 Additional Remedies for Demolition without Certificate of Appropriateness: If a structure, historic landmark, or historic landmark site is demolished without a required Certificate of Appropriateness, the City Council may impose any of the following additional remedies:

- (1) Require the property owner to rebuild the demolished structure on the subject parcel, generally following the same form and using as much of the original building material as possible;
- (2) Prohibit issuance of any development permit or approval for any structure proposed on the subject parcel that would have a footprint larger than that of the demolished structure;
- (3) Prohibit issuance of any permit or approval for development on the subject parcel for a period of up to two (2) years.

13.5.9 Additional Remedies for Removal, Destruction or Damage of Vegetation: If existing trees are removed or damaged without a Tree Permit or in violation of a Tree Permit and its conditions, or vegetation required by this Code is destroyed or damaged, the city may require the property owner or person responsible for the removal, destruction, or damage of the trees or vegetation to restore or replace the trees or vegetation within a specified reasonable time period

with trees or other vegetation meeting the landscaping standards of Chapter 9: Landscaping and Buffering.

13.5.10 Additional Remedies for Repeat Violations: On determining that a violator has repeatedly violated or been in the violation of this Code over a period of at least six (6) months, and that the violator is likely to continue to engage in activities resulting in future violations of this Code, the Director of Development Services may impose any of the following additional remedies:

- (1) Revoke other permits issued to the violator in accordance with this Code;
- (2) Suspend the violator's right to apply for or receive development permits and approvals in accordance with this Code for a specified period of time;
- (3) Require the violator to provide a performance guarantee against which the city can charge monetary penalties for future violations; or
- (4) Require the violator to provide a performance guarantee against which the city may draw monies covering the city's costs in correcting the violations.

13.5.11 Penalties for Violations: No penalty shall be assessed unless and until the person alleged to be in violation has been notified of the violation in accordance with this Chapter. This notice requirement shall not apply in the case of a repeat offender violating the same provision for which notice has been previously given.

- (1) Pursuant to the Mississippi Code 39-13-17, any person convicted of violating the Certificate of Appropriateness and other historic preservation provisions of this Code shall, on conviction, be guilty of a misdemeanor and subject to a fine of up to five hundred dollars (\$500).
- (2) Pursuant to the Mississippi Code 17-1-27, any person convicted of violating provisions of this Code or of any other adopted code or ordinance of the City of Tupelo, other than those referenced in Section 13.5.11(1) above, shall, on conviction, be guilty of a misdemeanor and subject to a fine of not more than one thousand dollars (\$1,000) or shall be imprisoned in jail for not more than thirty (30) days, or shall be punished by both fine and imprisonment for each offense.
- (3) Each day that a violation continues shall constitute a separate and distinct violation or offense.
- (4) **Assessment for Court Costs:** In addition to any fine imposed, and regardless of the waiver or suspension of any fine, an assessment for the costs of court shall be imposed upon any person found to be in violation of this Code.
- (5) **Cumulative Remedies and Penalties:** The remedies and penalties provided for violations of this Code, whether civil or criminal, shall be cumulative and in addition to any other remedy or penalty provided by law, and they may be exercised in any order.

