

TITLE 20**MISCELLANEOUS****CHAPTER.****1. AIR POLLUTION CONTROL CODE.****CHAPTER 1****AIR POLLUTION CONTROL CODE****SECTION**

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20-101. Words and phrases substituted in state regulations adopted by reference. For the purpose of enforcement of the Town of Arlington, Tennessee--Air Pollution Control Code, the following shall apply:

(1) Wherever the terms Air Pollution Control Board of the State of Tennessee, Tennessee Air Pollution Control Board, or Board appear, they shall be replaced by Memphis and Shelby County Air Pollution Control with the following exceptions:

- (a) 8-5(109) 1200-3- 9-.04
- (b) 8-5(107) 1200-3- 7-.06
- (c) 8-5(106) 1200-3- 6-.01
- (d) 8-5(114) 1200-3-14-.01(1)(a), and
- (e) 8-5(111) 1200-3-1 1-.01(1)

(2) Wherever the terms Tennessee, State of Tennessee, or State appear, they shall be replaced by Town of Arlington with the following exceptions:

- (a) 8-5(109) 1200-3-9-.04
- (b) 8-5(114) 1200-3-14-.01(1)(a)
- (c) When referring to Tennessee Code Annotated, and
- (d) When referring to the Tennessee Air Quality Act

(3) Wherever the terms Technical Secretary of the Tennessee Air Pollution Control Board, Technical Secretary, or Secretary appear, they shall be replaced by Health Officer except in subparagraphs 8-5(5)(e)(2)(a) and (b) for the purposes of Tennessee Code Annotated § 68-201-1 16(b)(1).

(4) Wherever the terms "Department of Environment and Conservation of the State of Tennessee," "Tennessee Department of Environment and Conservation ," or "Department" appear, they shall be replaced by "Memphis and Shelby County Health Department."

(5) Wherever the terms Tennessee Air Pollution Control Division of Air Pollution Control, or Division appear, they shall be replaced by Memphis and Shelby County Health Department, Air Pollution Control Section.

(6) Wherever the term Tennessee Air Pollution Control Regulations or Regulations appear, they shall be replaced by Town of Arlington, Tennessee-Air Pollution Control Code.

(7) Wherever the term Nashville Office appears, it shall be replaced by Memphis and Shelby County Health Department.

(8) Wherever the term "State Civil Defense" appears, it shall be replaced by "Memphis and Shelby County Emergency Management Agency."

(9) Wherever the terms "Chapter 1200-3-26," "Rule 1200-3-26-.02" or other citations involving "1200-3-26" appear, they shall be replaced by "Sections 8-5(11) through (21)." (Ord. #2003-01, April 2003)

20-102. Open burning. (1) No person shall cause, suffer, allow or permit open burning of refuse, garbage, trade waste, trees, limbs, brush, or materials from salvage operations. The open burning of tires and other rubber products, vinyl shingles and siding, other plastics, asphalt shingles and other asphalt roofing materials, and/or asbestos containing materials is expressly prohibited, and such materials shall not be lawful in any open burning conducted under the provisions of § 20-102(2).

(2) Open burning as listed below may be conducted without permit subject to fire department approval and provided further that no public nuisance is or will be created by the open burning.

(a) Fires used for the cooking of food or for ceremonial, recreational or comfort-heating purposes including barbecues and outdoor fireplaces. This exception does not include commercial food preparation facilities and their operation.

(b) Fires set for the training and instruction of firemen or for research in fire protection or prevention. However, routine demolition of structures via supervised open burning by responsible fire control persons will not be considered fire training. Additionally, the person responsible for such burning, unless conducted at a recognized fire training academy, must certify compliance with the following requirements by written statement. The certification must be delivered to the Pollution Control Section of the Memphis-Shelby County Health Department (Department) at least ten (10) working days prior to commencing the burn:

(i) The open burning is being conducted solely for fire training purposes.

(ii) All vinyl siding, carpet, vinyl flooring, asphalt roofing materials, and any other materials expressly prohibited in § 20-102(1), have been removed.

(iii) All regulated asbestos containing materials have been removed in accordance with Section 8-5(111) [Reference 1200-3-11-.02(2)(d)3.(x)].

(iv) A traffic hazard will not be caused by the air contaminants generated by the fire training.

(v) A public nuisance will not be created by the open burning.

(c) Smokeless flares or safety flares for the combustion of waste gases provided other applicable subsections of this section are met.

(d) Fires used for the reduction of leaves on the premises on which they fall by the person in control of the premises.

(e) Fire used for carrying out recognized agricultural procedures necessary for the production or harvesting of crops or for the control of disease or pests, in accordance with practices acceptable to the department.

(f) Fires for the burning of bodies of dead animals, including poultry, where no other safe and/or practical disposal method exists.

(g) Other open burning as may be approved by the health officer and with approval by the Fire Department, where there is no other practical, safe, and lawful method of disposal.

(3) Exceptions to subsection (1) may be permitted for vegetation if all of the following conditions are met when an air curtain destructor is used:

(a) A request is filed with the health officer giving the reason why no method except open burning can be employed to dispose of the material involved, the amount and kind of material to be burned, the exact location where the burning will take place, and the dates when the

open burning will be done. All changes in types of, or increases in quantities of, materials burned must be preceded by notification. The notification must be delivered to the department at least ten (10) working days prior to commencing the change in the burn.

(b) The person applying for the permit certifies, by written statement, compliance with following distance requirements, at a minimum:

(i) The open burning site must be at least five hundred (500) feet from any federal and from any state highway; and

(ii) The open burning site must be at least one thousand (1,000) feet from any school, national or state park, national reservation, national or state forest, wildlife area, and/or residence not on the same property as the air curtain destructor; and

(iii) The open burning site must be at least one-half (½) mile from any airport, nursing home or hospital.

(c) The plume from the air curtain destructor must meet the visible emission standards specified in Section 8-5(105) [reference 1200-3-5-.01(1)]; however, for certain materials the department may allow one start-up period in excess of the standard, per day, not to exceed twenty (20) minutes in twenty-four (24) hours.

(d) All material to be burned must be dry and in other respects be in a state to sustain good combustion. Open burning must be conducted when ambient conditions are such that good dispersion of combustion products will result. Priming materials used to facilitate such burning shall be limited to #1 or #2 grade fuel oils.

(e) No fire shall be ignited while any air pollution emergency episode is in effect in the area of the burn. No fire shall be ignited during any exceedance of the National Ambient Air Quality Standard for ozone, oxides of nitrogen, carbon monoxide, or particulate matter. Permittee is required to contact the Department's Computerized Local Air Index Reporting system (CLAIR) recorded line at (901) 544-7489 or 544-7490 before igniting a fire to determine if it is a Burning Day or a No-Burning Day.

(f) Approval is received from the health officer in writing.

(g) Permission is secured from the fire department in the jurisdiction involved.

(h) The burning will be done between the hours of 9:00 A.M. and 4:00 P.M. or as authorized by the health officer.

This approval will not relieve the person responsible for such burning from the consequences of any damages, injuries, or claims resulting from such burning.

(4) Definitions. (a) "Air curtain destructor" is a portable or stationary combustion device that directs a plane of high velocity forced draft air through a manifold head into a burn chamber with vertical walls in such a manner as to maintain a curtain of air over the surface of the burn

chamber and a recirculating motion of air under the curtain. The use of an air curtain destructor is considered controlled open burning.

(b) "Air pollution emergency episode" is defined as air pollution alerts, warnings, or emergencies declared by the health officer during adverse air dispersion conditions that may result in harm to public health or welfare.

(c) "Health officer" is the Health Officer for Memphis and Shelby County.

(d) "Natural disaster" is defined as any event commonly referred to as an "act of God" and includes but is not limited to the following weather related or naturally occurring categories of events: tornadoes, hail and wind storms, snow or ice storms, flooding, and earthquakes.

(e) "Odor" is a sensation of smell perceived as a result of olfactory stimulation. An odor is deemed objectionable, and therefore a nuisance, when one third (1/3) or more of a sample of persons exposed to it believe it to be objectionable in usual places of occupancy. The sample size is to be at least twenty-five (25) persons, or when fewer than twenty-five (25) are exposed, one half (1/2) must believe it to be objectionable.

(f) "Open burning" is the burning of any matter under such conditions that products of combustion are emitted directly into the open atmosphere without passing directly through a stack.

(g) "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, an agency, authority, commission, or department of the United States government, or of the State of Tennessee government; or any other legal entity, or its legal representative, agent, or assigns.

(5) Burning after natural disasters. (a) Open burning of materials resulting from a natural disaster, and when conducted in conformity with the following conditions, may be permitted:

(i) Fires disposing of structural and household materials and vegetation are allowed only when those structures or materials are destroyed or severely damaged by natural disaster. Input from emergency management personnel may be requested in determining qualification with this criteria. The provisions of this section pertaining to structural and household materials may be waived if the persons seeking to open burn under this provision make a reasonable effort to remove all expressly prohibited material from the structural remains before ignition. The department reserves the right to inspect the proposed materials to be burned before ignition. The alternative use of chippers and grinders, landfilling, or on-site burial of waste in lieu of burning, if lawful, is encouraged.

(ii) If a governmental collective burn site for disposing of structural and household materials and vegetation damaged by a natural disaster is planned, the person responsible for such burning must notify the department of the proposed location. The notification must be delivered to the department at least three (3) days prior to commencing the burn. The department may request that alternate sites be identified to minimize impact to air quality. The alternative use of chippers and grinders in lieu of burning is encouraged.

(iii) A traffic hazard shall not be caused by the air contaminants generated by the fire.

(iv) No fire shall be ignited while any air pollution emergency episode is in effect in the area of the burn. No fire shall be ignited during any exceedance of the National Ambient Air Quality Standard for ozone, oxides of nitrogen, carbon monoxide, or particulate matter. Contact the department's Computerized Local Air Index Reporting system (CLAW) recorded line at (901) 544-7489 or 544-7490 before igniting a fire to determine if it is a Burning Day or a No-Burning Day.

(v) Open burning conducted under this exception is only allowed where no other safe and/or practical means of disposal is available.

(b) The health officer reserves the right to require a person to cease or limit open burning if emissions from the fires are deemed by the health officer or his designee to jeopardize public health or welfare, create a public nuisance or safety hazard, create a potential safety hazard, or interfere with the attainment or maintenance of the air quality standards.

(c) Any exception to the open burning prohibition granted by this section does not relieve any person of the responsibility to obtain a permit required by any other agency, or of complying with other applicable requirements, ordinances, or restrictions. (Particular attention is directed to Tennessee Code Annotated, § 39-14-306, which prohibits open air fires between October 15 and May 15 within five hundred (500) feet of any forest, grasslands or woodlands without first securing a permit from the state forester in unincorporated portions of Shelby County.) (Ord. #2003-01, April 2003, as amended by Ord. #2016-11, Dec. 2016)

20-103. Severability of parts of chapter. The provisions of this Air Pollution Control Code are hereby declared to be severable, and if any sections, provisions, clauses, or parts be held unconstitutional or void, then the remainder of this Air Pollution Control Code shall continue in full force and effect, it being the legislative intent that this Air Pollution Control Code would have been

adopted even if such unconstitutional or void matter had not been included therein. (Ord. #2003-01, April 2003)

20-104. Enforcement—violations of chapter—notice; citation; injunctive relief. (1) Whenever evidence has been obtained or received establishing that a violation of this code has been committed, the health officer shall issue a notice to correct the violation or a citation to cease the violation. Such notice or citation shall briefly set forth the general nature of the violation and specify a reasonable time within which the violation shall be rectified or stopped. If the violation is not corrected within the time so specified, or the violation stopped, or reasonable steps taken to rectify the violation, the health officer shall have the power and authority to issue an order requiring the violator to cease or suspend operation of the facility causing the violation until the violation has been corrected, or initiate proceedings to prosecute the violator for violation of this code.

(2) In the event any person fails to comply with a cease or suspend operation order, that is not subject to a stay pending administrative or judicial review, the health officer shall institute proceedings in a court of competent jurisdiction for injunctive relief to enforce the regulation or orders pursuant hereto. (Ord. #2003-01, April 2003)

20-105. Enforcement penalties—misdemeanor, civil, and noncompliance. (1) Failure to comply with any of the provisions of the Town of Arlington, Tennessee-Air Pollution Control Code shall constitute a violation thereof and shall subject the person or persons responsible therefore to any and all of the penalties provided by law.

(2) The Memphis-Shelby County Health Department in conjunction with the local Air Pollution Control Board shall have authority, at their option, to institute and litigate proceedings for violations as set out therein. Any person who knowingly:

(a) Violates or fails to comply with any provision of the Town of Arlington, Tennessee--Air Pollution Control Code, any board or administrative order or any permit condition;

(b) Makes any false material statement, representation, or certification in any record, report, plan or other document required by permit to be either filed or maintained;

(c) Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed; or

(d) Fails to pay a fee commits a Class C misdemeanor pursuant to the Tennessee Code Annotated with the fine not to exceed ten thousand dollars (\$10,000) per day per violation. For the purpose of this section, each day of continued violation constitutes a separate offense and is punishable as such.

No warrant, presentment or indictment arising under § 20-105(2) shall be issued except upon application, authorized in writing, by the health officer on behalf of the local air pollution control program operating under a certificate of exemption pursuant to Tennessee Code Annotated § 68-201-115, for a violation within its jurisdiction.

(3) Willful and knowing violation of any provision of the Town of Arlington, Tennessee--Air Pollution Control Code is declared to be a misdemeanor, and each day of violation shall constitute a separate offense. Conviction of a misdemeanor is punishable with the fine not to exceed ten thousand dollars (\$10,000) per day per violation or with imprisonment not greater than thirty (30) days, or both.

(4) In addition and supplemental to any criminal action which may be prosecuted under this section, the health officer has and is vested with jurisdiction and authority to determine whether or not any provision of the Town of Arlington, Tennessee--Air Pollution Control Code, any permit condition, or any order has been violated, and whether or not such violation constitutes a public nuisance. Upon such finding that a public nuisance exists, the health officer has authority to abate any such public nuisance in the manner provided by the general law relating to the abatement of public nuisances.

(5) Orders and assessments of damages and civil penalties and appeals. (a) When the health officer discovers that any provision of the Town of Arlington, Tennessee--Air Pollution Control Code has been violated, the Health Officer may issue an order for correction to the responsible person, and this order shall be complied with within the time limit specified in the order. Such order shall be served by personal service or sent by certified mail, return receipt requested. The recipient of such an order may appeal in the same manner as with an assessment of damages or civil penalty under subsection (b) of this section.

(b) (i) In addition to the criminal penalties in this section, any person who violates or fails to comply with any provision of the Town of Arlington, Tennessee--Air Pollution Control Code or any standard adopted pursuant thereto in a permit, shall be subject to a civil penalty of up to twenty-five thousand dollars (\$25,000) per day for each day of violation. Any person against whom an assessment in excess of ten thousand dollars (\$10,000) for each violation has been issued by a local pollution control program pursuant to this section may petition the technical secretary for de novo review of the assessment under the provisions of Tennessee Code Annotated, § 68-201-116. The technical secretary shall render an initial determination, and that initial determination may be appealed to the Tennessee Air Pollution Control Board pursuant to this section. Each day such violation continues constitutes a separate punishable offense, and such person shall also be liable for any damages to the municipality resulting therefrom.

(ii) Any civil penalty or damages shall be assessed in the following manner:

(A) The health officer on behalf of the Memphis-Shelby County Health Department operating under a certificate of exemption pursuant to Tennessee Code Annotated, § 68-201-115 may issue an assessment against any person responsible for the violation or damages. Such person shall receive notice of such assessment by certified mail, return receipt requested,

(B) Any person against whom an assessment has been issued may appeal the assessment by filing a petition for review with the health officer, or with the technical secretary of an assessment in excess of ten thousand dollars (\$10,000) for each violation, within thirty (30) days after receipt of the assessment, setting forth the grounds and reasons for such person's objections and requesting a hearing on the matter; and

(C) If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final.

(iii) In assessing such civil penalty, the factors specified in Tennessee Code Annotated, § 68-201-106 and Title 42 U.S.C. §§ 7413 and 7420 may be considered. Damages to the state or to the Town of Arlington may include any expenses incurred in investigating the enforcing of this section; in removing, correcting, or terminating the effects of air pollution; and also compensation for any expense, loss or destruction of plant or animal life or any other actual damages or clean-up expenses caused by the pollution or by the violation. The plea of financial inability to prevent, abate or control pollution by the polluter or violator shall not be a valid defense to liability for violations of the provisions of the Town of Arlington, Tennessee--Air Pollution Control Code.

(iv) The issuance of an order or assessment of civil penalty by the Memphis-Shelby County Health Department operating under a certificate of exemption as provided for in this section is intended to provide additional and cumulative remedies to prevent, abate and control air pollution in Tennessee. Nothing herein shall be construed to preempt supersede, abridge or otherwise alter any rights, action or remedies of the Technical Secretary, Tennessee Air Pollution Control Board or Commissioner of the Tennessee Department of Environment and Conservation.

(v) (A) Whenever any order or assessment under this section has become final, a notarized copy of the order or

assessment may be filed in the office of the clerk of the chancery court of Shelby County if the final order or assessment is from the Memphis-Shelby County Health Department.

(B) When filed in accordance with subsection (v)(A), a final order or assessment shall be considered as a judgment by consent of the parties on the same terms and conditions as those recited therein. Such judgment shall be promptly entered by the court. Except as otherwise provided in this section, the procedure for entry of the judgment and the effect thereof shall be the same as provided in Tennessee Code Annotated, title 26, chapter 6.

(C) Within forty-five (45) days after entry of a judgment under subsection (v)(B), any citizen of the Town of Arlington shall have the right to intervene on the ground that the penalties or remedies provided are inadequate or are based on erroneous findings of facts. Upon receipt of a timely motion to intervene, the court shall determine whether it is duplicitous or frivolous, and shall notify the movant and the parties of its determination. If the motion is determined not to be duplicitous or frivolous, all parties shall be considered to have sought review of the final order or assessment, and the court shall proceed in accordance with Tennessee Code Annotated, § 4-5-322. If no timely motion to intervene is filed, or if any such motion is determined to be duplicitous or frivolous, the judgment shall become final forty-five (45) days after the date of entry.

(D) A final judgment under this subsection has the same effect, is subject to the same procedures, and may be enforced or satisfied in the same manner, as any other judgment of a court of record of this state. (Ord. #2003-01, April 2003)

20-106. Enforcement—variances. (1) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who own or control like processes or like equipment may apply to the Air Pollution Control Hearing Board, hereinafter referred to as "the Board", for a variance from rules or regulations governing the quality, nature, duration or extent of discharge of air contaminants. The application for a variance shall include information and data sufficient for the Board to make the findings required below. The hearing held hereunder shall be conducted in accordance with the rules of evidence as set forth in § 20-108(6) of this chapter. The board may grant such variance, but only after public hearing on due notice

and subject to the Certificate of Exemption issued pursuant to Tennessee Code Annotated, § 68-201-115 if it finds that:

(a) The emissions proposed to occur as a result of a variance would not endanger or tend to endanger human health, safety, or welfare, and would not cause or tend to cause property damage; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public or a variance is needed only until a rule adopted by the Tennessee Air Pollution Control Board becomes state effective. If economic hardship is claimed, a description of expected monetary losses shall be included.

(2) No variance shall be granted or denied pursuant to this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and others who may be affected by granting or denying a request for variance.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) for time periods and under conditions consistent with the reasons therefore, and with the following limitations:

(a) If the variance is granted on the grounds that there is no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, the variance shall be permitted only until the necessary means for prevention, abatement, or control become known and available, and the variance shall be subject to the taking of any substitute or alternate measures that the board may prescribe.

(b) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in view of the board, is requisite for the taking of necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable and submittal of proof that such timetable is being met.

(c) Any variance or renewal granted shall be for a time period not to exceed one (1) year.

(4) Any variance granted pursuant to this section may be renewed by the Air Pollution Control Hearing Board on terms and conditions and for periods which would be appropriate on initial granting of the variance following the same procedures required for issuance of the initial variance. If complaint is made to the board on account of the variance, no renewal thereof shall be granted, unless, following public hearing on the complaint, the board finds that renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least sixty (60) days prior to the

expiration of the variance. Immediately upon a receipt of an application for renewal, the board shall give public notice of such application in accordance with rules and regulations of the board.

(5) A variance or renewal shall not be a right of the applicant or holder thereof, but shall be in the discretion of the board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the board may obtain judicial review thereof only in a court of competent jurisdiction.

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of §§ 20-107 and 8-5(115) [Reference 1200-3-15] to any person or his property. (Ord. #2003-01, April 2003)

20-107. Enforcement—emergency powers of health officer. (1) Any other provisions of the law notwithstanding, if the health officer finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the health officer shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. Upon issuance of any such order, the health officer shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the Air Pollution Control Hearing Board. Such hearing shall be held in conformity with the provisions of § 20-108, insofar as applicable. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the Air Pollution Control Hearing Board shall affirm, modify or set aside the order of the health officer.

(2) In the absence of a generalized condition of air pollution of the type referred to in subsection (1) of this section, but if the health officer finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the person responsible for the operation in question to reduce or discontinue operations immediately, without regard to the provisions of this chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in subsection (1) of this section shall apply. (Ord. #2003-01, April 2003)

20-108. Air pollution control hearing board—created; membership; term of officer; jurisdiction; hearings; appeals. (1) There is hereby created the Memphis and Shelby County Air Pollution Control Board, hereinafter referred to as "the board" to be composed of nine (9) members to be appointed as described in (a) and (b) below. No member of the board shall hold any elective office or receive any governmental salary except as a member of the faculty or staff of a school in the Tennessee education system. Otherwise, all members shall serve without compensation. Any member of the board who has

any conflict of interest or potential conflict of interest shall make adequate disclosure of it and abstain from matters related to it.

(a) Eight (8) members of the board are to be appointed jointly by the Mayor of the City of Memphis and the Mayor of Shelby County and confirmed by both the Memphis City Council and the Shelby County Board of Commissioners. These eight (8) members shall consist of the following: One professional engineer knowledgeable in the field of air pollution control, one physician licensed to practice in Tennessee, one attorney licensed to practice law in Tennessee, one member of academia, a representative of industry at large, and such other citizen members as may be appointed, except that industry may have no more than two (2) representatives.

(b) One member of the board is to be appointed by the Executive Committee of the Memphis Area Association of Governments. This member is to be a representative for the municipalities of Arlington, Bartlett, Collierville, Germantown, Lakeland, and Millington and is to be a citizen of one of these communities.

(2) The terms of the members shall be four (4) years except that of the initially appointed members, of which three (3) shall serve for four (4) years, two (2) shall serve for three (3) years, two (2) shall serve for two (2) years and two (2) shall serve for one year as designated at the time of appointment. Whenever a vacancy occurs, the vacancy shall be filled for the unexpired term in the same manner as the original appointment. Should the term of any board member expire without a replacement member being appointed, the existing member shall continue to hold the board membership until such appointment or reappointment occurs.

(3) The board shall select annually a chairman from among its members. The board shall hold at least four (4) regular meetings each year and such additional meetings as the chairman deems necessary. All hearings conducted by the board shall be open to the public. The health director shall act as secretary to the board and shall keep records of its hearings and other official actions. All hearings shall be held before not less than a majority of the board.

(4) The board is hereby vested with the following jurisdiction and authority:

(a) Grant, deny or revoke variance applications.

(b) To decide appeals from any decisions, rulings, or determinations of the health director or his designated representative under this Air Pollution Control Code.

(c) To hear appeals arising from the failure of the health director or his designated representative to act within a reasonable period on complaints under this Air Pollution Control Code.

(5) Any person taking exception to and who is uniquely affected by any decision, ruling, requirement, rule, regulation, or order of the health director or by his failure to act within a reasonable amount of time may take an appeal to

the board as established by this section. Such appeals shall be made within fifteen (15) days after receiving notice of such decision, ruling, requirement, rule, regulation, or order or failure to act by filing a written notice of appeal directly to the board specifying the ground thereof and the relief requested. Such an appeal shall act as a stay of the decision, ruling, requirement, rule, regulation or order in question until the board has taken final action on the appeal, except when the health director has acted under § 20-107, "Emergency Order" or except when an appeal has been filed pursuant to Section 8-5(109) [Reference 1200-3-9-.05(8)]. The board, not more than thirty (30) days after the date of filing an appeal, shall set a date for the hearing not more than sixty (60) days after the date of filing of the appeal and shall give notice thereof by mail to the interested parties.

(6) Hearings before the board shall be conducted in the following manner:

(a) Notice of any and all hearings shall be given at least fifteen (15) days prior to the scheduled date of the hearing by public advertisement in a newspaper of general circulation in Shelby County, Tennessee giving the date, time, place and purpose of the hearing; and

(b) The chairman of the board shall act as the hearing examiner to conduct such hearing; and

(c) Any person seeking a variance or any party who has filed a written notice of appeal pursuant to § 20-108 or Section 8-5(109) [Reference 1200-3-9-.05], may appear in person or by agent or attorney and present evidence, both written or oral, relevant to the questions and issues involved and may examine and cross examine witnesses.

(d) All testimony shall be under oath and recorded. The board is authorized to have all testimony transcribed and a transcript of such testimony, if transcribed, shall be made available to the respondent or any party to the hearing upon payment of the normal fee, which shall not exceed the cost of transcribing such testimony.

(e) After due consideration of the written and oral statements, the testimony and arguments submitted at the hearing upon such complaint, or, upon default in appearance of the respondent on the return date specified in the formal notice of complaint, the board shall issue and enter such final order or make such final determination as it shall deem appropriate not later than sixty (60) days after the hearing date, and shall immediately notify the respondent thereof, in writing, by certified mail. Such order or determination shall be approved by at least a majority of members to which the board is entitled.

(f) Upon failure of the board to enter a final order or determination within sixty (60) days after the final argument of such hearing, the respondent shall be entitled to treat for all purposes such failure to act as a finding favorable to the respondent.

(g) The burden of proof shall be on the health director or his duly authorized representative where appeal has been sought pursuant to § 20-108 or Section 8-5(109) [Reference 1200-3 9-.04]. The burden of proof is on the applicant where a variance has been sought pursuant to § 20-106, in accordance with Tennessee Code Annotated, § 68-201-118(k).

(h) Any person aggrieved by any final order or determination of the Board hereunder shall have judicial review thereof by writ of certiorari pursuant to Tennessee Code Annotated, § 27-9-101 et seq. No judicial review shall be available until and after all administrative remedies have been exhausted. (Ord. #2003-01, April 2003)

20-109. Nuisance abatement. (1) When dust, fumes, gases, mist, vapors, or any combination thereof escape from a building or equipment in such a manner and amount as to cause a nuisance or to violate any regulation, the health officer may order that the building or equipment in which processing, handling and storage are done be tightly closed and ventilated in such a way that all air and gases and air or gas-borne material leaving the building or equipment are treated by removal or destruction of air contaminants before discharge to the open air.

(2) No person shall cause, suffer, allow, or permit any air contaminant source to be operated without employing suitable measures for the control of the emission of objectionable odors. Suitable measures shall include permit limitations, wet scrubbers, incinerators, or such other devices as may be approved by the health officer. (Ord. #2003-01, April 2003)

20-110. Fugitive dust. No person shall cause, suffer, allow, or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions shall include, but not be limited to, the following:

(1) Use, where possible, water or chemicals for control of dust in the demolition of existing building or structures, construction operations, the grading of roads or the clearing of land;

(2) Application of asphalt, oil, water, or suitable chemicals on material stockpiles, and other surfaces which can create airborne dusts;

(3) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting or other similar options;

(4) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne;

(5) Conduct of agricultural practices such as tilling of land, application of fertilizers, etc. in such manner as to not create a nuisance to others residing in the area.

- (6) The paving of roadways and their maintenance in a clean condition.
- (7) The prompt removal of earth or other material from paved street which earth or other material has been transported thereto by trucking or earth moving equipment or erosion by water. (Ord. #2003-01, April 2003)

20-111. Permits and fees—applicability and enforcement authority. (1) The provisions of this section on permit fees shall apply to any person required to make application on or after July 1, 1992, to the Memphis-Shelby County Health Department for issuance, re-issuance or modification of a permit in accordance with this chapter and Air Pollution Control Code, and shall be subject to the fee schedule set out in § 20-112. The provisions of this chapter on emissions fees shall apply to any person holding or obtaining a valid air pollution permit from the Memphis and Shelby County Health Department on or after July 1, 1992, and shall be subject to the fees set out in § 20-119.

(2) The Memphis-Shelby County Health Department (hereinafter referred to as the Department) is designated to carry out and enforce the provisions of this Air Pollution Control Code and to promulgate any regulations consistent with it as may be required for proper administration of the fee system created herein. (Ord. #2003-01, April 2003)

20-112. Permits and fees—permit fee schedule. Fees for permits are hereinafter set out as follows, and shall apply to any "person" as defined in this chapter.

(1) Construction permits. (a) Any person making application to the Shelby County Health Department for a construction permit shall pay an initial filing fee of two hundred dollars (\$200.00) per permit unit. This filing fee shall not be refundable if the permit is denied or if the application is withdrawn, nor shall it be applied to any subsequent application.

(b) In addition to the fees in (1)(a) above, the largest of the following fees, if applicable, shall be paid:

- (i) Prevention of significant deterioration (PSD) review \$3,960
- (ii) Major source or major modification review, except PSD sources review, requiring modeling \$2,640
- (iii) Minor source or minor modification review requiring modeling \$660
- (iv) New Source Performance Standard (NSPS) source review, per permit unit \$660
- (v) National Emission Standards for Hazardous Air Pollutant (NESHAP) source review, per permit unit \$660

(2) Inspection/operating permit. (a) Any person making application to the Shelby County Health Department for an inspection/operating permit shall pay the larger of the applicable fees in accordance with the following schedule:

- (i) Asbestos demolition/renovation removal, per notice \$130
- (ii) Air Curtain destructor, per permit unit \$130
- (iii) NSPS Source, per permit unit \$130
- (iv) NESHAP source, per permit unit \$130
- (v) Any source issued a permit pursuant to local rules implementing Title 40, Code of Federal Regulations, Section 70 (Major Source Permits) \$2,000
- (vi) Any permit unit with actual emissions of 50 tons or more a year, but less than 100 tons per year of any single pollutant \$130
- (vii) Any permit unit with actual emissions of 25 tons or more per year, but less than 50 tons per year of a single pollutant \$100
- (viii) Any permit unit with actual emissions of less than 25 tons per year of a single pollutant \$65
- (ix) Any permit issued as the result of a permit by rule or annual notification and general standards application to a particular business or business group \$130
- (x) Any source issued an operating permit for which a construction permit was never obtained (Enforcement action may also apply) \$265

(b) No portion of the inspection/operating fee shall be refundable in the event the source discontinues operation or service during the permitted period.

(3) Modification of a permit. (a) Any person making application to the Shelby County Health Department for the modification of a permit shall pay a fee for each permit unit being modified, except that no fee is required for modification of a permit to correct clerical, typographical, or calculations errors. This fee shall be set as follows:

- (i) If the modification is anticipated to result in an increase in all pollutants less than 10 tons per year \$130
- (ii) If the modification is anticipated to result in an increase in all pollutants equal to or

- greater than 10 tons per year, but less than 50 tons per year \$330
 - (iii) If the modification is anticipated to result in an increase in all pollutants equal to or greater than 50 tons per year \$660
 - (iv) Name Change \$130
 - (v) Ownership Change - New owner pays Inspection and Operating Fees (based on tonnage) Varies based on Tonnage Fees
 - (vi) Address Change - New owner pays Inspection and Operating Fees (based on tonnage) for the new address \$265
Plus Tonnage Fees
 - (vii) Permit Revision (with no emissions consequences) \$130
- (4) Stack sampling. (a) If a source is required to demonstrate compliance by stack sampling its emissions, it shall pay the following additional fees:
- (i) Any testing requiring US/EPA methods 1 through 4 only, per stack test \$130
 - (ii) Particulate emissions testing requiring US/EPA Method 5, per stack test \$400
 - (iii) Any other pollution testing by Methods other than US/EPA Method 5, (excepting those subject to subsection (d)(1)(a) of this section, per stack test \$660
- (b) Any retest required to demonstrate compliance shall be subject to the fee schedule as stated in subsections (4)(a)(i) through (iii) of this section. (as replaced by Ord. #2016-11, Dec. 2016)

20-113. Permits and fees—emissions fee for stationary sources.

(1) Emissions fee. A fee shall be collected annually from each stationary air pollution source which emits more than one ton of actual emissions annually of a regulated pollutant as defined herein, called the "emissions fee," which shall equal the amount determined by the requirements set forth as follows: Forty-eight dollars (\$48.00)¹ per ton of actual emission

¹This is the effective emissions fee rate (after adjustment for carryover overage) approved by the Town of Arlington.

Approved rate	Adopted in	Effective rate	Applicable to
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(continued...)

emitted during calendar year 2013 to be collected beginning in 2015 and for successive years until such time as the Aldermen approve a further increase or decrease, not including fugitive emissions and actual excess emissions that are the result of process malfunctions and facility start-up and shutdown determined by the Shelby County Health Department to be in compliance with the air pollution code sections that excuse these emissions from enforcement of each regulated pollutant as defined in § 502(b)(3)(B)(ii) of the Federal Clean Air Amendments of 1990.

¹ (...continued)			
\$9.00	1992	\$9.00	1991 Emissions
\$18.00	1993	\$18.00	1992 Emissions
\$19.00	1994	\$17.10	1993 Emissions
\$29.65	1995	\$29.65	1994 Emissions
--	--	\$29.65	1995 Emissions
--	--	\$29.65	1996 Emissions
\$29.65	1998	\$29.65	1997 Emissions
\$29.65	1999	\$29.65	1998 Emissions
\$29.65	2001	\$29.65	1999 Emissions
\$29.65	2001	\$29.65	2000 Emissions
\$29.65	2003	\$29.65	2002 Emissions
\$29.65	2004	\$26.68	2003 Emissions
\$30.63	2005	\$27.57	2004 Emissions
\$31.67	2006	\$28.50	2005 Emissions
\$30.00	2008	\$27.00	2006 Emissions
\$30.00	2009	\$27.00	2007 Emissions
\$43.00	2012	\$43.00	2011 Emissions
\$48.00	2014	\$48.00	2013 Emissions

(2) Maximum amount subject to emissions fee. Each stationary air pollution source shall be assessed the emissions fee on no more than four thousand (4,000) tons per year of each regulated pollutant it emits.

(3) Exemption for units subject to section 404 provisions of the clean air amendments of 1990. No fee will be charged until the year 2000 with respect to emissions from any unit which is classified as "an affected unit" under section 404 of the Clean Air Act Amendments of 1990, entitled "Phase I Sulfur Dioxide Requirements." (Ord. #2003-01, April 2003, as replaced by Ord. #2016-11, Dec. 2016)

20-114. Permits and fees—payment of fees. (1) Any person acquiring a permit shall be subject to the following payment of permit fees and the following procedure shall be used in payment thereof:

(a) Initial filing fees for construction permits must be submitted with the initial permit applications.

(b) Additional fees related to construction permits including those related to public notice are due within thirty (30) days of receipt of billing by the department.

(c) Fees related to stack testing are due within thirty (30) days of receipt of billing by the department.

(d) Inspection/operating fees are assessed annually on the anniversary date of the issuance of the permit where applicable.

(i) Fees for asbestos removal must be submitted with the written notice of intent to remove.

(ii) Fees for air curtain destructors must be submitted within ten (10) days of receipt of permit.

(e) Fees related to modification of a permit shall be submitted with the permit application.

(f) Fees related to public notice necessary for the regulation of a source shall be due within thirty (30) days of receipt of billing by the department.

(2) If the emissions fees assessed to a stationary air pollution source are less than five thousand dollars (\$5,000), the fees owed shall be submitted by September 30 of the year following the year the emissions occurred. If more than five thousand dollars (\$5,000) is owed, then the amount due shall be submitted by January 31 of the year two (2) years after the emission occurred. (Ord. #2003-01, April 2003)

20-115. Permits and fees—allowable uses for emissions fee. The department shall collect an annual emissions fee from those entities within the Town of Arlington which operate stationary air pollutant sources required to make application on or after July 1, 1992, to the Memphis-Shelby County Health Department for issuance, re-issuance or modification of a permit in accordance with the Town of Arlington, Tennessee--Air Pollution Control Code,

and shall be subject to the fee schedule set out in § 20-112. This fee shall be used for:

- (1) Reviewing and acting upon any application for a permit or permit modification under the Town of Arlington, Tennessee-Air Pollution Control Code as amended;
- (2) Implementing and enforcing the terms and conditions of any permit issued under the Town of Arlington, Tennessee-Air Pollution Control Code, provided, however, such cost shall not include any court cost or other costs associated with any judicial enforcement action;
- (3) Emissions and ambient monitoring and inspection of source operated monitoring programs;
- (4) Preparing generally applicable regulations or guidance;
- (5) Modeling, analyses and demonstration;
- (6) Preparing inventories and tracking emissions.
- (7) Development of and support for the small business stationary source technical and environmental compliance assistance program as it applies to part 70 sources.
- (8) Information management activities to support and track permit applications, compliance certifications and related data entry.

The emission and annual operating/inspection fees collected from major stationary air pollution sources as defined herein, shall be used exclusively for and be sufficient to pay, the direct and indirect costs of the major stationary source operating permit program allowable under the Federal Clean Air Act and under regulations in support of those federal provisions as adopted locally in the Town of Arlington, Tennessee-Air Pollution Control Code. The owner or operator of any stationary source shall also pay any cost of expense associated with public notices or notifications required pursuant to the Town of Arlington, Tennessee-Air Pollution Control Code or the Federal Clean Air Act. (Ord. #2003-01, April 2003)

20-116. Permits and fees—reporting requirements. (1) Except as provided below, each permitted stationary air pollution source must submit to the department an annual report that establishes the amount of actual emissions of each regulated pollutant, including carbon monoxide, for that source. This report will be for the emissions of that source that occurred during the calendar year starting in 1991 and continuing for succeeding years thereafter. The department may request, and the air pollution source shall provide, additional information on the emissions data submitted when the department determines, the data previously provided is inadequate to establish the actual type or amount of emissions from the source subject to fees.

(2) Not including air toxics as they are defined in the Clean Air Act Amendments of 1990 and the amendments thereto, if the source emits fewer than twenty five (25) tons of actual emissions of pollutant during a year, it may at its option, use as the actual emissions figure, its permitted pollutant levels

where available and known. If the source is a "major source" under the air toxics provisions of the Clean Air Act Amendments of 1990 it too must calculate its actual emission of regulated pollutants. Failure to provide, on a timely basis, any additional information requested shall be considered failure to pay the fees. (Ord. #2003-01, April 2003)

20-117. Permits and fees—small business waiver. The director of the department, in his discretion but consistent with section 507 (f) of the Clean Air Act Amendments of 1990, may, upon written petition setting forth in detail the justification therefore, reduce or waive for up to three (3) years, any emissions fee required under this chapter to take into account the financial resources of small business stationary air pollution sources as defined under the federal act or regulations promulgated pursuant thereto. A decision to deny the waiver may be appealed to the local air pollution control board by the party requesting the waiver and will be heard under the same procedures as any other decision that is appealed to this board. If a waiver is granted, it will be reviewed by the board in its annual review process and is then subject to revocation or modification by the board if found to be unwarranted or granted in an arbitrary fashion. Such action will have no effect on prior years emissions fees and will only apply to the collection of future emissions fees. (Ord. #2003-01, April 2003)

20-118. Permits and fees—surplus funds carry forward. Any surplus in emissions fee funds shall be carried forward from year to year for these stated purposes only. If, however, in any year after 1993, this carry forward surplus exceeds on February 15th thirty five percent (35%) of the previous twelve (12) months fee, a ten percent (10%) per ton credit on the established emissions fee amount shall be given to all stationary sources in the next emissions fee payment. (Ord. #2003-01, April 2003)

20-119. Permits and fees—penalty provisions. Failure to pay the fees set forth in this Air Pollution Control Code shall be a violation of the Town of Arlington, Tennessee--Air Pollution Control Code and can result in the assessment of penalties and injunction against the stationary air pollution source. In addition to any fees owed, a maximum penalty equal to fifty percent (50%) of the fees owed may be assessed for late payment. Interest in the amount equal to the maximum allowed under state law shall also be charged for all fees paid more than thirty (30) days late. When an emissions fee amount is contested, only the contested portion can be withheld. Any uncontested fee amount must be paid by the due date for payment. Due process for contested amounts is provided by appeal under the administrative and judicial review provisions of the Town of Arlington, Tennessee--Air Pollution Control Code for appeal of decisions of the health officer. (Ord. #2003-01, April 2003)

20-120. Permits and fees—annual review of fee structure and financial need. The Memphis-Shelby County Air Pollution Control Board shall annually review the fee structure established for the local air pollution control program and recommend to the Shelby County Commission any change in rate or make-up of the fee it determines, after public hearing, is necessary to meet the financial requirements of the Memphis-Shelby County Health Department Air Pollution Control Program to fulfill the activities allowed to be funded by these fees. Such review shall include an estimate of other funds available to the program including surplus or carry forward funds as well as changes in state or federal laws that could effect the program. The recommendation shall be provided to the commission no later than April 1 of each year. The county commission shall not, however, be required to adopt this recommendation, nor to change fees on any predetermined schedule. If the Shelby County Commission adopts a change in the rate or makeup of the fee, that adoption shall be provided to the Arlington Board of Mayor and Aldermen for adoption prior to collection of changed emission fees by the Memphis-Shelby County Health Department. (Ord. #2003-01, April 2003)

20-121. Regulation of particulate matter from incinerators. (1) No person shall cause, suffer, allow or permit the emissions from any incinerator having a charging rate of two thousand (2,000) pounds per hour or less, fly ash or other particulate matter in quantities exceeding 0.2 grains per cubic foot of flue gas at standard conditions corrected to twelve percent (12%) carbon dioxide by volume excluding the contribution of auxiliary fuel.

(2) No person shall cause, suffer, allow or permit the emissions from any incinerator having a charging rate greater than two thousand (2,000) pounds per hour, fly ash or other particulate matter in quantities exceeding 0.1 grains per standard cubic foot of flue gas at standard conditions corrected to twelve percent (12%) carbon dioxide by volume excluding the contribution of auxiliary fuel.

(3) No person shall cause, suffer, allow or permit the emissions of particles of unburned waste or ash from any incinerator which are individually large enough to be visible while suspended to the atmosphere.

(4) No person shall construct, install, use or cause to be used any incinerator which will result in odors being detectable by sense of smell in any area of human use or occupancy.

(5) No person shall install or construct an incinerator to be used for disposal of combustible waste from dwelling units if such incinerator is to be used to burn such wastes produced by fewer than twenty-five (25) dwelling units.

(6) No person shall use or cause to be used any incinerator unless all components connected to or attached to, or serving the incinerator, including control apparatus, are functioning properly and are in use. Incinerators shall be operated so as to comply with recognized good practices.

(7) Incinerators having two and one-half (2.5) cubic feet furnace volume or less used solely for the disposal of infective dressings and other similar material shall not be required to meet these emission standards.

(8) No person shall cause, suffer, allow, or permit to be discharged into the atmosphere from any incinerator, visible emissions with an opacity in excess of twenty percent (20%). (Ord. #2003-01, April 2003)

20-122. Right of entry. For the purpose of carrying out the requirements of the Town of Arlington, Tennessee--Air Pollution Control Code, the health officer and his authorized representatives, including engineers, assistants, environmentalists and other employees, shall be permitted at all reasonable times to enter into any manufacturing plants, business buildings or other buildings, and all lots, grounds and premises, in order to thoroughly examine any items in relation to public health and air pollution thereon and therein. (Ord. #2003-01, April 2003)