

**TITLE 20**

**MISCELLANEOUS**

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**CHAPTER 1**

**AIR POLLUTION CONTROL CODE**

**SECTION**

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20-123. Amendments to Rules and Regulations of Tennessee adopted by reference.

**20-101. Words and phrases substituted in state regulations adopted by reference.** (1) For the purpose of enforcement of the City of Bartlett, Tennessee--Air Pollution Control Code, the following shall apply:

(a) 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:

- (i) 05(109) 1200-3-9-.04
- (ii) 05(107) 1200-3-7-.06
- (iii) 05(106) 1200-3-6-.01
- (iv) 05(114) 1200-3-14-.01(1)(a), and
- (v) 05(111) 1200-3-11-.01(1)

(b) Wherever the terms Tennessee, State of Tennessee, or state appear, they shall be replaced by City of Bartlett with the following exceptions:

- (i) 05(109) 1200-3-9-.04
- (ii) 05(114) 1200-3-14-.01(1)(a)
- (iii) When referring to Tennessee Code Annotated, and
- (iv) When referring to the Tennessee Air Quality Act.

(c) 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 items § 20-104(5)(b)(i) and (ii) for the purposes of Tennessee Code Annotated, § 68-201-116(b)(1).

(d) 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."

(e) 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.

(f) Wherever the terms Tennessee Air Pollution Control Regulations or regulations appear, they shall be replaced by City of Bartlett, Tennessee--Air Pollution Control Code.

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

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

(i) 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 §§ 20-110 through 20-119. (Ord. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, 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) 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 Subsection 05(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) Fire used for carrying out recognized agricultural procedures necessary for the production or harvesting of crops or for the control of diseases or pests, in accordance with practices acceptable to the department.

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

(3) Exceptions to subsection (1) of this section 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 increase 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 ( $\frac{1}{2}$ ) mile from any airport, nursing home or hospital.

(c) The plume from the air curtain destructor must meet the visible emission standards specified in subsection 05(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) "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.

(d) "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.

(e) "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 qualifications with this criteria. The provisions of this subsection 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 (CLAIR) recorded line at (901) 544-7489 or 544-7490 before igniting a fire to determine if it is a burning day or 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 subsection 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.<sup>1</sup> (Ord. #70-3, Sept.

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<sup>1</sup>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.

1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-103. 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 regulations or orders pursuant hereto. (Ord. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-104. Enforcement penalties--misdemeanor, civil, and noncompliance.** (1) Failure to comply with any of the provisions of the City of Bartlett, 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 City of Bartlett, 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;

(d) Fails to pay a fee;

(e) Commits a Class C misdemeanor pursuant to the Tennessee Code Annotated with the fine not to exceed ten thousand dollars (\$10,000.00) per day per violation. For the purpose of this subsection,

each day of continued violation constitutes a separate offense and is punishable as such.

No warrant, presentment or indictment arising under § 20-104(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 City of Bartlett, 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 (\$10,000.00) 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 subsection, the health officer has and is vested with jurisdiction and authority to determine whether or not any provision of the City of Bartlett, 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 provisions of the City of Bartlett, 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 subsection, any person who violates or fails to comply with any provision of the City of Bartlett, 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 (\$25,000.00) per day for each day of violation. Any person against whom an assessment in excess of ten thousand dollars (\$10,000.00) for each violation has been issued by a local pollution control program pursuant to this subsection 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 (\$10,000.00) 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 City of Bartlett may include any expenses incurred in investigating the enforcing of this subsection; 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 City of Bartlett, 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 subsection 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 subsection 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 subsection, 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 City of Bartlett 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. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-105. 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 § 20-104(5) 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 subsection 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 subsection 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 subsection and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of § 20-106 and 05(115) [Reference 1200-3-15] to any person or his property. (Ord. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-106. 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 subsection 05(8), 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. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-107. Air pollution control hearing board--created; membership; term of office; 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 subsections (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 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 (1) 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 chapter

(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 chapter.

(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 subsection. 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 subsection 05(7), "Emergency Order" or except when an appeal has been filed pursuant to subsection 05(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 § 20-107 or subsection 05(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 a 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 § 20-107 or subsection 05(109). The burden of proof is on the applicant where a variance has been sought pursuant to § 20-105, 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. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-108. 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. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-109. 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 buildings 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 operations;
- (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 streets which earth or other material has been transported thereto by trucking or earth moving equipment or erosion by water. (Ord. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-110. 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 shall be subject to the fee schedule set out in § 20-111. The provisions of this section 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 chapter and to promulgate any regulations consistent with it as may be required for proper administration of the fee system created herein. (Ord. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-111. 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 Memphis-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--\$3,000;
- (ii) Major source or major modification review, except PSD sources review, requiring modeling--\$2,000;
- (iii) Minor source or minor modification review, requiring modeling--\$500;
- (iv) New source performance standard (NSPS) source review, per permit unit--\$500;
- (v) National Emission Standard for Hazardous Air Pollutant (NESHAP) source review, per permit unit--\$500.

(2) Inspection/operating permit. (a) Any person making application to the Memphis-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--\$100;
- (ii) Air curtain destructor, per permit unit--\$100;
- (iii) NSPS Source, per permit unit--\$100;
- (iv) NESHAP source, per permit unit--\$100;
- (v) Any permit unit with actual emissions of one hundred (100) tons or more a year of any single pollutant--\$150;
- (vi) Any permit unit with actual emissions of fifty (50) tons or more a year, but less than one hundred (100) tons per year of any single pollutant--\$100;
- (vii) Any permit unit with actual emissions of twenty-five (25) tons or more per year, but less than fifty (50) tons per year of a single pollutant--\$75;
- (viii) Any permit unit with actual emissions of less than twenty-five (25) tons per year of a single pollutant--\$50;
- (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--\$100;
- (x) Any source issued a permit pursuant to local rules implementing title 40, Code of Federal Regulations, section 70 (Mayor Source Permits)--\$150.00.

(b) No portion of the inspections/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 Memphis-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 ten (10) tons per year--\$100;
  - (ii) If the modification is anticipated to result in an increase in all pollutants more than ten (10) tons per year, but less than fifty (50) tons per year--\$250;
  - (iii) If the modification is anticipated to result in an increase in all pollutants more than fifty (50) tons per year--\$500.
- (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 permit unit--\$100;
  - (ii) Particulate emissions testing requiring US/EPA Method 5, per permit unit--\$300;
  - (iii) Any other pollution testing by methods other than US/EPA Method 5 (excepting those subject to item (a) immediately above), per permit unit--\$500.
- (b) Any retest required to demonstrate compliance shall be subject to the fee schedule as stated in the items (a)(i) through (a)(iii), immediately above. (Ord. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-112. Permits and fees--emissions fee for stationary sources.**

- (1) Emissions fee. A fee shall be collected annually from each stationary air pollution source which has 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:

(a) Twenty-nine dollars and sixty-five cents (\$29.65<sup>1</sup>) per ton of emissions emitted from the source beginning with calendar year 1995, not including fugitive emissions and actual excess emissions that are the result of process malfunctions and facility start-up and shutdown determined by the health department to be in compliance with the Air Pollution Control Code subsections 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.

(b) If no adjustment in the emissions fee rate established for any calendar year after 1992 is made by the county commission and the Bartlett Board of Mayor and Aldermen, the fee shall be increased by the percentage, if any, by which the Consumer Price Index for the most recent calendar year preceding the unadjusted year exceeds the Consumer Price Index for the calendar year two (2) years prior to the unadjusted year, unless the Shelby County Commission adopts an emissions fee rate that excludes a Consumer Price Index adjustment. This rate amount shall then reflect a one-year Consumer Price Index Adjustment. For purposes of this chapter, the Consumer Price Index is the average of the Consumer Price Index for all urban consumers published by the Department of Labor, as of the close of the twelve (12) month period ending on August 31 of each calendar year, and the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for 1989 shall be used.

(c) The fee collected shall be adjusted by resolution of the Board of Shelby County Commissioners and the Bartlett Board of Mayor and Aldermen from time to time consistent with the need to cover the costs authorized by the Air Pollution Control Code and in accordance with the procedures in § 20-119. For purposes of this Air Pollution Control Code

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<sup>1</sup>This is the effective emissions fee rate (after adjustment for carryover overage) approved by the City of Bartlett.

APPROVED RATE	ADOPTED IN	EFFECTIVE RATE	APPLICABLE TO
\$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

a "stationary air pollution source" shall be that group of air pollution sources located within a contiguous area and under common control.

(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. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-113. 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 (\$5,000.00), the fees owed shall be submitted by September 30 of the year following the year the emissions occurred. If more than five thousand dollars (\$5,000.00) is owed, then the amount due shall be submitted by January 31 of the year two (2) years after the emissions occurred. (Ord. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-114. Permits and fees--allowable uses for emissions fee.** The department shall collect an annual emissions fee from those entities within the City of Bartlett 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 City of Bartlett, Tennessee--Air Pollution Control Code, and shall be subject to the fee schedule set out in § 20-111. This fee shall be used for:

(1) Reviewing and acting upon any application for a permit or permit modification under the City of Bartlett, Tennessee--Air Pollution Control Code as amended;

(2) Implementing and enforcing the terms and conditions of any permit issued under the City of Bartlett, 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 demonstrations;

(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 emissions 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 City of Bartlett, 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 City of Bartlett, Tennessee--Air Pollution Control Code or the Federal Clean Air Act. (Ord. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-115. 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 toxins 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. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-116. 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. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-117. 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 15<sup>th</sup> 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. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-118. Permits and fees--penalty provisions.** Failure to pay the fees set forth in this Air Pollution Control Code shall be a violation of the City of Bartlett, Tennessee--Air Pollution Control 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 City of Bartlett, Tennessee--Air Pollution Control Code for appeal of decisions of the health officer. (Ord. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-119. 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 recommended 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 Bartlett Board of Mayor and Aldermen for adoption prior to collection of changed emission fees by the Memphis-Shelby County Health Department. (Ord. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-120. 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 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. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-121. Right of entry.** For the purpose of carrying out the requirements of the City of Bartlett, 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. #70-3, Sept. 1970, as amended by Ord. #73-1, June 1973, Ord. #86-6, May 1986, and Ord. #03-06, April 2003)

**20-122. Rules and Regulations of Tennessee adopted by reference.**<sup>1</sup> The Rules and Regulations of Tennessee Chapters 1200-3-2, title Definitions; 1200-3-3, titled Ambient Air Quality Regulations; 1200-3-5, titled Visible Emissions; 1200-3-6, titled Nonprocess Emission Standards; 1200-3-7, titled Process Emissions Standards; 1200-3-9, titled Construction and Operating Permits; Chapter 1200-3-10, titled Required Sampling, Recording and Reporting; 1200-3-11, titled Hazardous Air Contaminants; 1200-3-12, titled Methods of Sampling and Analysis; 1200-3-14, titled Control of Sulphur Dioxide Emissions; chapter 1200-3-15, titled Emergency Episode Plan; Chapter 1200-3-16, titled New Source Performance Standards; 1200-3-18, titled Volatile Organic Compounds; 1200-3-20, titled Limits on Emissions due to Malfunctions, Startups and Shutdowns; 1200-3-21, titled General Alternate Emission Standards; 1200-3-22, titled Lead Emission Standards; 1200-3-24, titled Good

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<sup>1</sup>NOTE: Rules incorporated by reference herein have been filed in the office of the clerk of the county commission as required by Tennessee Code Annotated, § 68-201-115.

Engineering Practices Stack Height Regulations; 1200-3-25, titled Standards for Infectious Waste Incinerators; 1200-3-30, titled Acid Precipitation Standard; 1200-3-31, titled National Emission Standards for Hazardous Air Pollutants for Source Categories; and 1200-3-32, titled Prevention of Accidental Releases; Tennessee Code Annotated, §§ 68-201-101 through 68-201-118, as effective on December 31, 2000; Chapter 1200-3-34, titled Conformity, as effective on November 14, 2001; and, the New Source Performance Standards (with the exception of Subparts B, C, Cb, Cc, Cd, Ce, AAA) of the Code of Federal Regulations, title 40, part 60 (40 CFR 60) (Revised as of July 1, 2002), and Appendices A, B and F of 40 CFR 60 (Revised as of July 1, 2001), are incorporated herein by reference as if set out in their entirety and shall be adopted and approved as part of the City of Bartlett, Tennessee--Air Pollution Control Code, thereby amending the City of Bartlett, Tennessee--Air Pollution Control Code. Subsection nomenclature is identified in accordance with the following table:

Bartlett Code Nomenclature	State Regulations	Federal Regulations	Title
05(102)	1200-3-2	_____	Definitions
05(103)	1200-3-3	_____	Ambient Air Quality Regulations
05(105)	1200-3-5	_____	Visible Emissions
05(106)	1200-3-6	_____	Nonprocess Emission Standards
05(107)	1200-3-7	_____	Process Emissions Standards
05(109)	1200-3-9	_____	Construction and Operating Permits
05(110)	1200-3-10	_____	Required Sampling, Recording and Reporting
05(111)	1200-3-11	_____	Hazardous Air Contaminants
05(112)	1200-3-12	_____	Methods of Sampling and Analysis
05(114)	1200-3-14	_____	Control of Sulfur Dioxide Emissions
05(115)	1200-3-15	_____	Emergency Episode Plan
05(116)	1200-3-16	40 CFR 60 as defined above	New Source Performance Standards
05(118)	1200-3-18	_____	Volatile Organic Compounds
05(120)	1200-3-20	_____	Limits on Emissions due to Malfunctions, Startups & Shutdowns
05(121)	1200-3-21	_____	General Alternate Emission Standards
05(122)	1200-3-22	_____	Lead Emission Standards
05(124)	1200-3-24	_____	Good Engineering Practice Stack Height Regulations
05(125)	1200-3-25	_____	Standards for Infectious Waste Incinerators
05(130)	1200-3-30	_____	Acid Precipitation Standard

Bartlett Code Nomenclature	State Regulations	Federal Regulations	Title
05(131)	1200-3-31	_____	National Emission Standards for Hazardous Air Pollutants for Source Categories
05(132)	1200-3-32	_____	Prevention of Accidental Releases
05(134)	1200-3-34	_____	Conformity

(Ord. #03-06, April 2003)

**20-123. Amendments to Rules and Regulations of Tennessee adopted by reference.**<sup>1</sup> (1) Definitions, be amended by adding at the end of the subsection the following definitions for "health officer" and "odor" that read as follows:

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

(b) "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 (1/2) must believe it to be objectionable.

(2) Reference 1200-3-9, Construction and Operating Permits, be amended by deleting in its entirety item 1200-3-9-.02(11)(b)14.(ii)(XXVII) and substituting in lieu thereof a new item 1200-3-9-.02(11)(b)14.(ii)(XXVII) so that it reads as follows:

(XXVII) Any other stationary source category, which as of August 7, 1980 is being regulated under section 111 or 112 of the Act;

(3) Reference 1200-3-9, Construction and Operating Permits, be amended by replacing the phrase "T.C.A. Section 68-201-108" in the last sentence of paragraph 1200-3-9-.05(5) with the phrase (City of Bartlett, Tennessee--Air Pollution Control Code Subsection 05(8))" so that the paragraph reads as follows:

(5) In any case where a condition is placed on a permit, the imposition of that permit condition may be appealed by filing a petition for reconsideration of the permit condition. The position for reconsideration of permit conditions shall specify which conditions and portions of conditions are objected to and specifying in detail the objections. The petition of appeal must be delivered to

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<sup>1</sup>NOTE: Rules incorporated by reference herein have been filed in the office of the clerk of the county commission as required by Tennessee Code Annotated, § 68-201-115.

the technical secretary within thirty (30) days after the mailing date of the permit.

If the technical secretary is considering denying the petition he shall schedule a conference with the petitioner to discuss the matters under appeal within forty-five (45) days of his receipt of the petition. If the technical secretary's resultant decision on the matters under appeal aggrieves the petitioner, the petitioner may request a hearing pursuant to City of Bartlett, Tennessee--Air Pollution Control Code § 20-107

(4) Reference 1200-3-9, Construction and Operating Permits, be amended by replacing the phrase "T.C.A. Section 4-5-301 et seq.", in paragraph 1200-3-9-.05(6) with the phrase: "City of Bartlett, Tennessee--Air Pollution Control Code § 20-107 so that the paragraph reads as follows:

(6) All applicable provisions of City of Bartlett, Tennessee--Air Pollution Control Code § 20-107, on contested cases shall apply to the hearing before the board on such appeals.

(5) That the City of Bartlett, Tennessee--Air Pollution Control Code Subsection 05(118), Reference 1200-3-18-.79, Volatile Organic Compounds, be amended by adding language to part 1200-3-18-.79(1)(e)2. so that it reads as follows:

2. Sources subject to source-specific standards approved in lieu of standards in Rules .11 through .77 of this chapter and sources subject to a National Emissions Standard for Hazardous Air Pollutants (also called a MACT standard) that applies to all volatile organic compound emissions at the source; and

(Ord. #03-06, April 2003)

**CHAPTER 2****FAIR HOUSING****SECTION**

- 20-201. Policy.
- 20-202. Definitions.
- 20-203. Unlawful practice.
- 20-204. Discrimination in the sale or rental of housing.
- 20-205. Discrimination in the financing of housing.
- 20-206. Discrimination in the provision of brokerage services.
- 20-207. Exemption.
- 20-208. Administration.
- 20-209. Education and conciliation.
- 20-210. Enforcement.
- 20-211. Investigations; subpoenas; giving of evidence.
- 20-212. Enforcement by private persons.

**20-201. Policy.** It is the policy of the City of Bartlett, Tennessee to provide, within constitutional limitations, for fair housing throughout the city. (Ord. #84-5, March 1984)

**20-202. Definitions.** (1) "Discriminatory housing practice" means an act that is unlawful under §§ 20-204, 20-205 or 20-206.

(2) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(3) "Family" includes a single individual.

(4) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(5) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises owned by the occupant. (Ord. #84-5, March 1984)

**20-203. Unlawful practice.** Subject to the provisions of subsection (2) and § 20-207, the prohibitions against discrimination in the sale or rental of housing set forth in § 20-204 shall apply to:

- (1) All dwellings except as expected by subsection (2).
- (2) Nothing in § 20-204 shall apply to:

(a) Any single-family house sold or rented by an owner: Provided, that such private individual owner does not own more than three (3) such single-family houses at any one time: Provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four (24) month period: Provided further, that such bona-fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three (3) such single-family houses at any one time: Provided further, that the sale or rental of any such single-family house shall be excepted from the application of this chapter only if such house is sold or rented

(i) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and

(ii) Without the publication, posting or mailing, after notice of any advertisement or written notice in violation of § 20-204 of this chapter ;

(iii) Nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(b) Rooms or units in dwellings containing living quarters intended or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(3) For the purposes of subsection (2), a person shall be deemed to be in the business of selling or renting dwellings if:

(a) He has, within the preceding twelve (12) months, participated as principal in three (3) or more transactions involving the sale or rental of any dwelling or any interest therein, or

(b) He has, within the preceding twelve (12) months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any dwelling or any interest therein, or

(c) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five (5) or more families. (Ord. #84-5, March 1984)

**20-204. Discrimination in the sale or rental of housing.** As made applicable by § 20-203 and except as exempted by §§ 20-203(2) and 20-207, it shall be unlawful:

(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(3) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or any intention to make any such preference, limitation, or discrimination.

(4) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, or disability. (Ord. #84-5, March 1984, modified)

**20-205. Discrimination in the financing of housing.** It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: Provided, that nothing contained in this section shall impair the scope or effectiveness of the exception contained in § 20-203(2). (Ord. #84-5, March 1984)

**20-206. Discrimination in the provision of brokerage services.** It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access,

membership, or participation, on account of race, color, religion, or national origin. (Ord. #84-5, March 1984)

**20-207. Exemption.** Nothing in this chapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. (Ord. #84-5, March 1984)

**20-208. Administration.** (1) The authority and responsibility for administering this Act shall be in the Chief Executive Officer of the City of Bartlett.

(2) The chief executive officer may delegate any of these functions, duties, and powers to employees of the city or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter under this chapter. The chief executive officer shall by rule prescribe such rights of appeal from the decisions of this hearing examiners to other hearing examiners or to other officers in the city, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(3) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this chapter and shall cooperate with the chief executive officer to further such purposes. (Ord. #84-5, March 1984)

**20-209. Education and conciliation.** Immediately after the enactment of this chapter, the chief executive officer shall commence such educational and conciliatory activities as will further the purposes of this chapter. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this chapter and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. (Ord. #84-5, March 1984)

**20-210. Enforcement.** (1) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter

"person aggrieved") may file a complaint with the chief executive officer. Complaints shall be in writing and shall contain such information and be in such form as the chief executive officer requires. Upon receipt of such complaint, the chief executive officer shall furnish a copy of the same to the person or persons who allegedly committed or about to commit the alleged discriminatory housing practice. Within thirty (30) days after receiving a complaint, or within thirty (30) days after the expiration of any period of reference under subsection (3), the chief executive officer shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the chief executive officer decides to resolve the complaints, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of the persons concerned. Any employee of the chief executive officer who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than one (1) year.

(2) A complaint under subsection (1) shall be filed within one hundred and eighty (180) days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the chief executive officer, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.

(3) If within thirty (30) days after a complaint is filed with the chief executive officer, the chief executive officer has been unable to obtain voluntary compliance with this chapter, the person aggrieved may, within thirty (30) days thereafter, file a complaint with the secretary of the Department of Housing and Urban Development. The chief executive officer will assist in this filing.

(4) If the chief executive officer has been unable to obtain voluntary compliance within thirty (30) days of the complaint, the person aggrieved may, within thirty (30) days hereafter commence a civil action in any appropriate court, against the respondent named in the complaint, to enforce the rights granted or protected by this chapter, insofar as such rights relate to the subject of the complaint. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.

(5) In any proceeding brought pursuant to this section, the burden of proof shall be on the complainant.

(6) Whenever an action filed by an individual shall come to trial, the chief executive officer shall immediately terminate all efforts to obtain voluntary compliance. (Ord. #84-5, March 1984)

**20-211. Investigations; subpoenas; giving of evidence.** (1) In conducting an investigation the chief executive officer shall have access at all reasonable times to all premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: Provided, however, that the chief executive officer first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The chief executive officer may issue subpoenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The chief executive officer may administer oaths.

(2) Upon written application to the chief executive officer, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the chief executive officer to the same extent and subject to the same limitations as subpoenas issued by the chief executive officer himself. Subpoenas issued at the request of a respondent shall show on their faces the name and address of such respondent and shall state that they were issued at his request.

(3) Witnesses summoned by subpoena of the chief executive officer shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him.

(4) Within five (5) days after service of a subpoena upon any person, such person may petition the chief executive officer to revoke or modify the subpoena. The chief executive officer shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe that compliance would be unduly onerous, or for other good reason.

(5) In case of contumacy or refusal to obey a subpoena, the chief executive officer or other person at whose request it was issued may petition for its enforcement in the municipal or state court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the chief executive officer shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than one (1) year, or both. Any person who,

with intent thereby to mislead the chief executive officer, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the chief executive officer pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than one (1) year, or both.

(7) The city attorney shall conduct all litigation in which the chief executive officer participates as a party or as amicus pursuant to this chapter. (Ord. #84-5, March 1984)

**20-212. Enforcement by private persons.** (1) The rights granted by §§ 20-203 through 20-206 may be enforced by civil actions in state or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty (180) days after the alleged discriminatory housing practice occurred: Provided, however, that the court shall continue such civil case brought pursuant to this section or § 20-210(4) from time to time before bringing it to trial or renting dwellings; or

(2) Any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from:

(a) Participating, without discrimination on account of race, color, religion or national origin, in any of the activities, services, organizations or facilities described in this chapter; or

(b) Affording another person or class of persons opportunity or protection so to participate; or

(3) Any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the activities, services, organizations or facilities described in this chapter, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate shall be fined not more than one thousand dollars (\$1,000.00), or imprisoned not more than one (1) year, or both; and if bodily injury results shall be fined not more than ten thousand dollars (\$10,000.00), or imprisoned not more than ten (10) years, or both; and if death results shall be subject to imprisonment for any term of years or for life. (Ord. #84-5, March 1984)

## CHAPTER 3

### PARKLAND DEDICATION AND DEVELOPMENT FEE ORDINANCE

#### SECTION

20-301. General.

20-302. Payment of parkland development fee.

20-303. Dedication in lieu of development fees.

20-304. Combination of development fee and dedication.

20-305. Collection and disbursement of payments.

**20-301. General.** In all residential developments the Bartlett Planning Commission is designated by the Bartlett Board of Mayor and Aldermen and by Tennessee Code Annotated, § 13-4-303 to provide for adequate open space, recreation, and conditions favorable to health, safety, convenience, and prosperity. The Bartlett Planning Commission, with assistance from the Bartlett Planning Department, Bartlett Public Works Department, and the Bartlett Parks Department, shall act on behalf of the board of mayor and aldermen in the enforcement and administration of the Parkland Development Fee and Dedication Ordinance. The duties of each of these departments is further defined below. (Ord. #92-5, March 1992)

**20-302. Payment of parkland development fee.** In all residential developments in the City of Bartlett a parkland development fee shall be assessed against the development based upon a rate of three hundred fifty dollars (\$350.00) per lot or dwelling unit and no credit is to be given for greenbelt dedications. This fee shall be collected as a part of the subdivision contract between the board of mayor and aldermen and the developer of the proposed residential development, and shall be used exclusively to acquire or improve land for parks. (Ord. #92-5, March 1992, as amended by Ord. #97-07, Aug. 1997)

**20-303. Dedication in lieu of development fees.** In all residential developments the developer may choose, with approval of the city and in lieu of a fee, to dedicate to the city, free and clear of all liens and encumbrances, land to be used exclusively for city owned parkland in an amount equal to five percent (5%) of the total land area of the residential development, provided, however, that no parcel less than five (5) acres shall be accepted unless such land adjoins other dedicated parkland. When a master plan for a residential subdivision is submitted, the planning, public works, and parks departments shall review the master plan to determine if a park is needed in the area and make a recommendation to the planning commission on the location and size of a proposed park. The dedicated land shall be of good quality as determined by the city and shall not contain an excessive amount of low land or ditches. If the

park site is approved by the planning commission, said park site shall be incorporated into the master, construction, and final plans of the development. If the developer chooses to dedicate land in lieu of a fee, the land is dedicated to the city at the time the subdivision plat is recorded. If the developer chooses to pay the fee, the city may at its sole option, acquire by purchase or condemnation the proposed park site. (Ord. #92-5, March 1992)

**20-304. Combination of development fee and dedication.** A combination of a development fee and dedication may be allowed, subject to the approval of the city and developer. (Ord. #92-5, March 1992)

**20-305. Collection and disbursement of payments.** Any payments under this ordinance shall be made immediately upon execution of the subdivision contract and prior to the commencement of construction and shall be deposited in a special account segregated from the general funds of the city. Funds disbursed from these payments shall be expended within the general area where they were collected. For the purposes of this ordinance, the city has been divided into four (4) park districts, generally based upon a two (2) mile radius of existing or proposed community park sites, see the attached park district map. Additional park districts may be added as needed due to growth and annexation. All funds collected within a park district shall be expended in that district. (Ord. #92-5, March 1992, as amended by Ord. #07-03)

## CHAPTER 4

### ALARM SYSTEM STANDARDS

#### SECTION

20-401. Purpose.

20-402. Definitions.

20-403. Alarm system standards.

20-404. False alarms.

**20-401. Purpose.** To control false alarms turned into the City of Bartlett by establishing standards for the installation of alarm systems, controlling the number of false alarms received by the various departments of the City of Bartlett, establish a procedure for penalizing owners of alarms for excessive false alarms during a calendar year, and the establishment of fees and methods of issuing citations, amount of fees, and appeal of fees by owners or alarm systems. (Ord. #91-17, Nov. 1991)

**20-402. Definitions.** As used in this chapter:

(1) "Alarm agent" shall mean any person employed by a licensed alarm business whose duties include the altering, installing, maintaining, moving, repairing, replacing, selling, servicing, or monitoring of an alarm system. This definition shall only include persons who work for an alarm business as defined in this section.

(2) "Alarm business" means a firm, company, partnership or corporation engaged in the sale, installation, maintenance, alteration or servicing of alarm systems. "Alarm business" shall not include a business which only manufactures alarm systems or only sells alarm systems to retail outlets, unless the firm, company, partnership, or corporation also services, installs, and monitors alarm systems. This definition shall not include persons who sell alarm systems strictly in an over-the-counter capacity in an established location.

(3) "ANSI" stands for the American National Standards Institute.

(4) "Answering service" shall mean a telephone answering service providing among its services the receiving, through trained employees, of emergency signals from alarm systems, and the relaying of the message by live voice to the communications center of the police emergency condition which the alarm system is designed to detect.

(5) "Automatic telephone dialing equipment" shall mean an alarm system which automatically sends over regular telephone lines, by direct connection or otherwise, a prerecorded voice message or coded signal to report a police emergency condition which the alarm system is designed to detect.

(6) "False alarm" means the activation or an alarm system through mechanical failure, malfunction, improper installation, or through negligence of the owner or user of the alarm system, which activation results in a response

by a law enforcement agency. "False alarm" does not include an activation caused by violent acts of God; provided, however, that, if the alarm business shall have notified the police services division, before the third such activation that an alarm system is subject to an intermittent repetitive mechanical malfunction which is under investigation by the alarm business, all activations of that alarm system within one continuous three-week period shall be counted as a single such false alarm.

(7) "Interconnect" shall mean to connect an alarm system to a voicegrade telephone line, either directly or through a mechanical device that utilizes a standard telephone, for the purpose of using the telephone line to transmit an emergency message upon the activation of the alarm system.

(8) "Malicious false alarm" shall mean the intentional false reporting to the police of a police emergency condition, or the intentional setting off of an alarm system which will cause another to report the signal to the police. However, this definition is not to include the testing of an alarm system by a licensed alarm business under guidelines established by the police services division or the city.

(9) "Monitoring station" or "central station" shall mean an office to which remote police alarm and supervisory signaling devices are connected, where trained personnel are on duty and in attendance at all times to supervise the circuits terminating therein, investigate signals, and retransmit alarm signals to appropriate agencies.

(10) "Notice" shall mean written notice, given by the issuance of a citation left at the scene of a false alarm by officers of the police services division or given by personal service upon the addressee, or given by the U.S. mail addressed to the person to be notified at his last known address. Service of such notice shall be effective upon the completion of personal service or upon placing of the same in the custody of the U.S. Postal Service.

(11) "Police emergency alarm system" means an assembly of equipment or devices which is designed, arranged, or used for the detection of a hazardous condition or an unauthorized entry or attempted entry into a building, structure or facility, or for alerting persons of a hazardous condition or the commission of an unlawful act within a building, structure or facility, and which emits a sound, or transmits a signal or message when activated, to which announcement a law enforcement agency or other service agency may be summoned to respond, but shall exclude a proprietary system.

(12) "Primary trunkline" shall mean a telephone line leading directly into the communications center of the police services division that is for the purpose of handling emergency calls on a person-to-person basis, and which is identified as such by a specific number included among the emergency numbers listed in the telephone directory issued by the telephone company and covering the service area within the police services division's jurisdiction.

(13) "Proprietary system" shall mean an alarm system emitting alarm or supervisory signals from within a control center located within a protected

premises. If a proprietary system includes any signal visible or audible outside the protected premises, it thereby becomes a police emergency alarm system as defined in this section.

(14) "Special trunkline" shall mean a telephone line leading into the communications center of the police services division and having the primary purpose of handling emergency signals or messages originating either directly or through a central location from automatic dialing devices.

(15) "Subscriber" or "user" shall mean any person who purchases, leases, contracts for, or otherwise obtains an alarm system.

(16) "Telephone company" shall mean the publicly regulated industry which furnishes telephone communication services to the citizens of the city.

(17) "Transmitting device" shall mean an instrument which sends a signal to a monitoring point indicating intrusion into a given protected area.

(18) "U.L." shall stand for Underwriters' Laboratories. (Ord. #91-17, Nov. 1991)

**20-403. Alarm system standards.** (1) Any person operating any police emergency alarm system, or causing or permitting one to be operated on premises owned or controlled by him, shall utilize equipment and methods of installation substantially equivalent to or exceeding the minimum applicable UL or ANSI standards.

(2) Every alarm business which has interconnected any automatic dialing device in the city to a special trunkline in the communications center of the police services division or which is designed to terminate in a primary trunkline of the police services division shall maintain a current list of such installations for inspection by the city during the course of its official duties and include in such list:

(a) The name, home address, and telephone number of the device's owner or lessee;

(b) The address of the location where the device is installed and the telephone number at that location;

(c) The name and telephone number of at least one other person who can be reached at any time, day or night, and who is authorized to respond to an emergency signal transmitted by the automatic dialing device, and who can open the premises wherein the device is installed.

(3) The information contained in the lists required by this section shall be restricted to inspection only by the chief of police or his designated representative in the course of their official duties. If the chief of police or any employee of the city is found to have knowingly or willfully revealed the information contained in such list to any other person for any purpose not related to official law enforcement matters and without the express written consent of the alarm business maintaining such list or lists, he shall be found guilty of a misdemeanor.

(4) Automatic dialing devices installed on any premises within the city which are interconnected to a special trunkline transmitting signals into the police services division or to a primary trunkline of the police services division shall meet the following minimum standards, as determined by the city:

(a) The contents of the recorded message to be transmitted by such device must be intelligible and in a format approved by the chief or his designated representative as appropriate for the type of emergency being reported. All callers must first give the name of the business, address, and telephone number, including the telephone number of a contact person.

(b) Upon a single stimulus of the alarm device, an automatic dialing device may place two (2) separate calls to the police services division. No such call shall be longer than one (1) minute and fifteen (15) seconds in duration. There must be at least three (3) minutes between the completion of the first call and the initiation of the second, and the second call must be clearly identified as the second call.

(c) Messages transmitted during such calls, stating the location and nature of the alarm condition, shall not exceed fifteen (15) seconds in length.

(d) The time gap between delivery of messages must be less than five (5) seconds.

(e) All such devices shall be capable of transmitting an emergency message to two (2) separate locations, so that upon activation any message may be sent not only to the police services division, but also to a location where an authorized person is available to respond to the emergency message and to open the premises on which the device is installed.

(f) The sensory apparatus and hardware comprising such devices shall be maintained by the owner or lessee in physical condition that false alarms will be minimized.

(5) No alarm system designed to transmit emergency messages directly to the police services division shall be tested or demonstrated without first obtaining permission from the chief of police or his designated representative. Permission is not required to test or demonstrate alarm devices not retransmitting emergency messages directly to the police services division unless the messages are to be relayed to the police services division.

(6) When an alarm business' service to one of its subscribers is disrupted for any reason by the alarm business, or the alarm business becomes aware of such disruption, it shall promptly notify such subscriber by telephone that protection is no longer being provided. If, however, the alarm business has written instructions from its subscriber not to make such notification by telephone during certain hours, the alarm company may comply with such instructions. (Ord. #91-17, Nov. 1991)

**20-404. False alarms.** (1) Any location experiencing more than three (3) false alarms during a calendar year beginning in January of each year, will be subject to a fee of fifty dollars (\$50.00) per alarm. The subscriber of the alarm will be notified by the chief of police or his designated representative after the third such alarm that the next incidence of a false alarm may result in a citation for excessive false alarms.

(2) Upon receipt of the fourth (4<sup>th</sup>) false alarm, the responding officer will forward a memo to the chief of police identifying the location, resident or business name, number of alarms received to the location and owner and/or business phone number.

(3) The chief of police or his representative will determine the severity of the problem, and may order representatives to visit the location, determine the nature of the problem, issue a warning citation or a regular citation for "excessive false alarms."

The citation will list the business name, owner/subscriber's name or his representative at the location at time of issuance, date and time of the false alarm, address of alarm, and owners telephone number. The citation shall list "Violation of City of Bartlett Alarm Ordinance: Excessive False Alarms" as the charge upon the face.

(4) An appeal of the fee may be made before the alarm review committee after being requested to be placed on the meeting agenda at the next regularly scheduled alarm review committee meeting, after the fee has been paid to the City of Bartlett Court Clerk's office.

(a) The alarm review committee will be appointed by the mayor and board of aldermen and shall consist of three (3) citizens chosen by the mayor.

(b) Alarm owners have thirty (30) days from the date of issuance to pay the fee.

(c) Any fees overturned by the alarm review committee will be reimbursed through the court clerk's office. (Ord. #91-17, Nov. 1991)

## CHAPTER 5

### PUBLIC PROPERTY, BUILDINGS AND PARKS

#### SECTION

- 20-501. Definitions.
- 20-502. Intent; responsibility of park and recreation department.
- 20-503. Opening and closing hours.
- 20-504. Entry into the work area.
- 20-505. Park closing hours.
- 20-506. Park solicitation.
- 20-507. Illegal parking in parks.
- 20-508. Golf practice in public parks prohibited.
- 20-509. Penalty.

**20-501. Definitions.** The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them:

(1) "Public property" is any real property owned or leased by the City of Bartlett.

(2) "Work area" means publicly owned or leased property which is not ordinarily open to the public and is used by municipal employees in the ordinary course of their duties, or in assembling for their duties and includes, but is not limited to, fire station engine houses, fire department shops, sanitation and public works substations, city shops, light gas and water division substations or pumping stations, and other offices within public buildings where it is not normal and routine for members of the public to come for municipal services. For example, city hall is a public building, but the planning room would be a work area and the fire department headquarters would be a public building, but the record room or similar offices would be work area. (Ord. #95-17, Oct. 1995)

**20-502. Intent; responsibility of park and recreation department.**

(1) It is the purpose of this chapter to prevent interference with the normal use of such property by the general public and to prohibit only use which will unduly interfere with the normal use of public property by other members of the public with an equal right access to it.

(2) The park and recreation department shall establish reasonable nondiscriminatory regulations that preserve peace, order and tranquility in granting permits for organized meetings as authorized above and the regulations shall be forwarded to the board of mayor and aldermen for approval. The regulations shall provide definite and objective standards and the regulations shall be published and available to the public as to how an application for a permit is to be submitted and shall provide for a speedy right of review, either administratively or judicially. The park and recreation department may designate certain parks or open spaces at which no organized

gathering or meeting may be held because of the nature or size of the facilities. (Ord. #95-17, Oct. 1995)

**20-503. Opening and closing hours.** The administrative department shall have the power to designate the opening and closing hours of public buildings or offices operated by the city. No person, except duly authorized personnel, shall remain in the public building after official closing hours to the general public, and any person, who, after being notified to leave and who refuses to leave, shall be guilty of a violation of this section. (Ord. #95-17, Oct. 1995)

**20-504. Entry into the work area.** No person shall enter into any work area of public property except with the permission of the supervisor of the area, and any person who inadvertently or with intent to enter the area fails and refuses to comply with any lawful request to leave the area shall be guilty of a violation of this section. (Ord. #95-17, Oct. 1995)

**20-505. Park closing hours.** No person shall, under any circumstances, enter or remain in any park after the posted park closing time, or enter the park premises between the posted park closing time and the posted park opening time without permission from the city. Any person found in any park between the posted park closing time and the posted park opening time without written authorization from the city will be in violation of this section. The closing time will be 11:00 P.M. and the opening time will be 4:00 A.M. (Ord. #95-17, Oct. 1995)

**20-506. Park solicitation.** No person will be allowed to solicit, peddle, sell or in any way distribute any article or item in the parks without permission from the board of mayor and aldermen and/or the parks and recreation department. (Ord. #95-17, Oct. 1995)

**20-507. Illegal parking in parks.** Parking within any park shall be only in designated spaces and shall be for the exclusive use of park users. (Ord. #95-17, Oct. 1995)

**20-508. Golf practice in public parks prohibited.** The practice of golf on City of Bartlett property is hereby prohibited except in areas so designated by the City of Bartlett Parks Director.

Anyone practicing golf on public property in violation of this section shall be subject to a fine up to fifty dollars (\$50.00). (Ord. #89-17, Oct. 1989)

**20-509. Penalty.** Violations of this chapter shall be punishable by a fine of up to fifty dollars (\$50.00). (Ord. #95-17, Oct. 1995, modified, as renumbered)

## CHAPTER 6

### NEIGHBORHOOD PROTECTION ORDINANCE

#### SECTION

20-601. Definitions.

20-602. Notice and hearing required.

20-603. Notice and hearing for resubdivision.

**20-601. Definitions.** (1) "House moving" shall mean the relocation of a structure of any size from one building site to another.

(2) "Resubdivision" shall mean any subdivision of an existing lot in a recorded subdivision that creates two (2) or more lots. (Ord. #82-14, Dec. 1982, as amended by Ord. #85-32, Jan. 1986)

**20-602. Notice and hearing required.** No building permit shall be issued for the relocation of a previously constructed building to be used for residential occupancy unless and until the application for permit is first referred to the board of zoning appeals which board shall issue notice according to its regulations to the surrounding property owners and conduct a full and open hearing upon same. It shall be the responsibility of the board of zoning appeals to determine if the construction proposed will constitute a significant and detrimental effect upon the existing neighborhood and upon such findings shall direct the building department to refuse permit. Conversely, in order for such a permit to be issued, the board of zoning appeals must find that the proposed structure will not constitute an inequitable and detrimental effect upon the existing neighborhood and the board may affix and apply such conditions and terms as it deems appropriate, which terms may include a set time schedule, removal requirements as may be reasonably required; provided, however, it shall be a specific requirement for the board of zoning appeals to require a performance bond of form and type acceptable to the city to guarantee the completion of any house moving project within a period not to exceed ninety (90) days, said bond to be in an amount not less than the fair market value of the completed structure to be determined by the board. (Ord. #82-14, Dec. 1982)

**20-603. Notice and hearing for resubdivision.** The planning commission shall grant no final subdivision approval to a resubdivision unless and until it has conducted a full and open hearing after actual notice and publication to surrounding property owners within five-hundred (500) feet of any such proposed subdivision. The planning commission is granted specific authority to refuse subdivision approval to a resubdivision in any instance where the proposed subdivision will constitute an inequitable and detrimental

effect upon an existing neighborhood area with special concern given to the type, setback, lot size, type and size of proposed construction and location of surrounding properties. Conversely, the planning commission may grant final approval to a resubdivision. (Ord. #82-14, Dec. 1982, as amended by Ord. #83-7, May 1983, and Ord. #85-32, Jan. 1986)

## CHAPTER 7

### MUNICIPAL SCHOOL SYSTEM

#### SECTION

20-701. Municipal school system created.

20-702. Municipal school board created.

**20-701. Municipal school system created.** As a result of the referendum of July 16, 2013 (which was approved as confirmed on page 10 of the Shelby County Election Commission report<sup>1</sup>) a municipal school system was created. (as added by Ord. #13-06, May 2013)

**20-702. Municipal school board created.** (1) A municipal school board for the City of Bartlett was established in compliance with applicable state law.

(2) The municipal school board for the City of Bartlett shall consist of five (5) members to be elected from the municipality at large. The board positions shall be designated as positions one (1) through five (5). In filing for election, a candidate shall select and identify the position sought.

(3) In order to be eligible to be a member of the municipal school board for the City of Bartlett:

(a) Must be a citizen of the State of Tennessee;

(b) Achieved a high school diploma or GED;

(c) Attained the age of eighteen (18) years at the time of their election;

(d) A resident and qualified voter of the City of Bartlett and have lived within the corporate limits of the City of Bartlett for a period of one (1) year immediately preceding the filing deadline for the election;

(e) Filed documentation satisfactory to the Shelby County Election Commission evidencing same; and

(f) Must otherwise meet all other requirements of applicable state law at the time one seeks election.

(4) All elections for the municipal school board for the City of Bartlett shall be conducted on a non-partisan basis.

(5) No member of the governing body of the City of Bartlett shall be eligible for election as a member of the municipal school board for the City of Bartlett.

(6) The initial terms for members of the municipal school board for the City of Bartlett shall vary in length, provided that all subsequently elected members, other than members appointed to fill a vacancy, shall be elected to

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<sup>1</sup>This report is available for review on the Shelby County Election website <http://www.shelbyvote.com/ArchiveCenter/ViewFile/Item/532>.

four-year terms, with members elected to even numbered positions for an initial term of one (1) year and members elected to odd numbered positions for an initial term of three (3) years, as follows:

Position 1: Initial three (3) year term;

Position 2: Initial one (1) year term;

Position 3: Initial three (3) year term;

Position 4: Initial one (1) year term;

Position 5: Initial three (3) year term.

(7) Members of the municipal school board for the City of Bartlett may succeed themselves.

(8) Vacancies occurring on the municipal school board for the City of Bartlett shall be filled by the board of mayor and aldermen by appointment of a person who would be eligible to serve as a member of the municipal school board, with such member to serve until a successor is elected and qualifies according to applicable law, the successor to be elected at the next general election for which candidates have sufficient time to qualify under applicable law.

(9) The initial municipal school board for the City of Bartlett shall take office on the first day of the first month following certification of the results of the election to select the members of the initial municipal board.

(10) Compensation for the chairperson of the municipal school board for the City of Bartlett shall be four thousand dollars (\$4,000.00) per annum and compensation for all other members of the municipal school board for the City of Bartlett shall be three thousand six hundred dollars (\$3,600.00) per annum. The board of education shall have the full right, power and authority to reimburse any elected board member for any reasonable out of pocket expenses incurred by said member in travel, or other reasonable expenses actually incurred by said member in serving the municipal school board in accordance with city policy. (as added by Ord. #13-11, Aug. 2013)