

**TITLE 20****MISCELLANEOUS****CHAPTER**

1. CITY OF MILLINGTON, TENNESSEE--AIR POLLUTION CONTROL CODE.
2. DEPARTMENT OF HEALTH AND SANITATION.
3. MILLINGTON MUNICIPAL AIRPORT AUTHORITY.

**CHAPTER 1****CITY OF MILLINGTON, TENNESSEE AIR  
POLLUTION CONTROL CODE****SECTION**

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**20-101. Words and phrases substituted in state regulations adopted by reference.** (1) For the purpose of enforcement of the City of Millington, 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)   | 20-109 | 1200-3- 9-.04            |
| (ii)  | 20-107 | 1200-3- 7-.06            |
| (iii) | 20-106 | 1200-3- 6-.01            |
| (iv)  | 20-114 | 1200-3-14-.01(1)(a), and |
| (v)   | 20-111 | 1200-3-11-.01(1)         |

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

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|-------|--|---------------------|
| (i)   | 20-109   | 1200-3-9-.04        |
| (ii)  | 20-114   | 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 § 20-105(5)(b)(i) 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 Millington, 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 "Subsection 20-111 through 20-121. (1981 Code, § 8-501, as replaced by Ord. #2002-2, Nov. 2002)

**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 Subsection 20-102(1), have been removed.

(iii) All regulated asbestos containing materials have been removed in accordance with § 20-111, 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) Reserved.

(e) 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.

(f) 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) 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 § 20-105, 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 20 minutes in 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 qualification with this criteria. The provisions of this section pertaining to structural and household materials may be waived if the persons seeking to open burn under this provision make a reasonable effort to remove all expressly prohibited material from the structural remains before ignition. The department reserves the right to inspect the proposed materials to be burned before ignition. The alternative use of chippers and grinders, landfilling, or on-site burial of waste in lieu of burning, if lawful, is encouraged.

(ii) If a governmental collective burn site for disposing of structural and household materials and vegetation damaged by a

natural disaster is planned, the person responsible for such burning must notify the department of the proposed location. The notification must be delivered to the department at least three (3) days prior to commencing the burn. The department may request that alternate sites be identified to minimize impact to air quality. The alternative use of chippers and grinders in lieu of burning is encouraged.

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

(iv) No fire shall be ignited while any air pollution emergency episode is in effect in the area of the burn. No fire shall be ignited during any exceedance of the National Ambient Air Quality Standard for ozone, oxides of nitrogen, carbon monoxide, or particulate matter. Contact the department's Computerized Local Air Index Reporting system (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.

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

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

(c) Any exception to the open burning prohibition granted by this section does not relieve any person of the responsibility to obtain a permit required by any other agency, or of complying with other applicable requirements, ordinances, or restrictions. [Particular attention is directed to Tennessee Code Annotated, §39-14-306, which prohibits open air fires between October 15 and May 15 within five hundred (500) feet of any forest, grasslands or woodlands without first securing a permit from the state forester in unincorporated portions of Shelby County.] (1981 Code, § 8-502, as replaced by Ord. #2002-2, Nov. 2002)

**20-103. Severability of parts of articles.** The provisions of this air pollution control code are hereby declared to be severable, and if any sections, provisions, clauses, or parts be held unconstitutional or void, then the remainder of this air pollution control code shall continue in full force and effect, it being the legislative intent that this air pollution control code would have been adopted even if such unconstitutional or void matter had not been included therein. (1981 Code, § 8-503, as replaced by Ord. #2002-2, Nov. 2002)

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

(2) In the event any person fails to comply with a cease or suspend operation order, that is not subject to a stay pending administrative or judicial review, the health officer shall institute proceedings in a court of competent jurisdiction for injunctive relief to enforce the regulations or orders pursuant hereto. (1981 Code, § 8-504, as replaced by Ord. #2002-2, Nov. 2002)

**20-105. Penalties for noncompliance.** (1) Failure to comply with any of the provisions of the City of Millington, 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 provisions of the City of Millington, Tennessee--Air Pollution Control Code, any board or administrative order or any permit condition;

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

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

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

No warrant, presentment or indictment arising under subsection 20-105(2) shall be issued except upon application, authorized in writing, by the health officer on behalf of the local air pollution control program

operating under a certificate of exemption pursuant to Tennessee Code Annotated, § 68-201-115, for a violation within its jurisdiction.

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

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

(5) Orders and assessments of damages and civil penalties and appeals. (a) When the health officer discovers that any provision of the City of Millington, 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 to 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 paragraph (b).

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

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



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

(B) Any person against whom an assessment has been issued may appeal the assessment by filing a petition for review with the health officer, or with the technical secretary of an assessment in excess of \$10,000 for each violation, within thirty (30) days after receipt of the assessment, setting forth the grounds and reasons for such person's objectives 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 Millington may include any expenses incurred in investigating the enforcing of this section; in removing, correcting, or terminating the effects of air pollution; and also compensation for any expense, loss or destruction of plant or animal life or any other actual damages or clean-up expenses caused by the pollution or by the violation. The plea of financial inability to prevent, abate or control pollution by the polluter or violator shall not be a valid defense to liability for violations of the provisions of the City of Millington, Tennessee--Air Pollution Control Code.

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

(v) (A) Whenever any order or assessment under this section has become final, a notarized copy of the order or assessment may be filed in the office of the clerk of the chancery court of Shelby County if the final order or

assessment is from the Memphis-Shelby County Health Department.

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

(C) Within forty-five (45) days after entry of a judgment under clause (v)(B), any citizen of the City of Millington 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 subparagraph 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. (as added by Ord. #2002-2, Nov. 2002)

**20-106. Enforcement--variances.** (1) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who own or control like processes or like equipment may apply to the air pollution control hearing board, hereinafter referred to as "the board," for a variance from rules or regulations governing the quality, nature, duration or extent of discharge of air contaminants. The application for a variance shall include information and data sufficient for the board to make the findings required below. The hearing held hereunder shall be conducted in accordance with the rules of evidence as set forth in subsection 20-108(6) of City of Millington, Tennessee--Air Pollution Control Code. The board may grant such variance, but only after public hearing on due notice and subject to the certificate of exemption issued pursuant to Tennessee Code Annotated, § 68-201-115 if it finds that:

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

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

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

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

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

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

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

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

renewal, the board shall give public notice of such application in accordance with rules and regulations of the board.

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

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of §§ 20-107 and 20-115 (Reference 1200-3-15) to any person or his property. (as added by Ord. #2002-2, Nov. 2002)

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

(2) In the absence of a generalized condition of air pollution of the type referred to in subsection (1) of this section, but if the health officer finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the person responsible for the operation in question to reduce or discontinue operation 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. (as added by Ord. #2002-2, Nov. 2002)

**20-108. 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 members to be appointed as described in (a) and (b) below. No member of the board shall hold any elective office or receive any governmental salary except as a member of the faculty or staff of a school in the Tennessee education system. Otherwise, all members shall serve without compensation. Any member of the board who has

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

(a) Eight (8) members of the board are to be appointed jointly by the Mayor of the City of Memphis and the Mayor of Shelby County and confirmed by both the Memphis City Council and the Shelby County Board of Commissioners. These eight (8) members shall consist of the following: One professional engineer knowledgeable in the field of air pollution control, one physician licensed to practice in Tennessee, one attorney licensed to practice law in Tennessee, one member of academia, a representative of industry at large, and such other citizen members as may be appointed, except that industry may have no more than two 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 years except that of the initially appointed members, of which three shall serve for four years, two shall serve for three years, and two shall serve for two years and two shall serve for one year as designated at the time of appointment. Whenever a vacancy occurs, the vacancy shall be filled for the unexpired term in the same manner as the original appointment. Should the term of any board member expire without a replacement member being appointed, the existing member shall continue to hold the board membership until such appointment or reappointment occurs.

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

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

(a) Grant, deny or revoke variance applications.

(b) To decide appeals from any decisions, rulings or determinations of the health director or his designated representative under this air pollution control code.

(c) To hear appeals arising from the failure of the health director or his designated representative to act within a reasonable period on complaints under this air pollution control code.

(5) Any person taking exception to and who is uniquely affected by any decision, ruling, requirement, rule, regulation, or order of the health director or by his failure to act within a reasonable amount of time may take an appeal to the board as established by this section. Such appeals shall be made within

fifteen (15) days after receiving notice of such decision, ruling, requirement, rule, regulation, or order or failure to act by filing a written notice of appeal directly to the board specifying the ground thereof and the relief requested. Such an appeal shall act as a stay of the decision, ruling, requirement, rule, regulation or order in question until the board has taken final action on the appeal, except when the health director has acted under § 20-107, "Emergency order." The board, not more than thirty (30) days after the date of filing an appeal, shall set a date for the hearing not more than sixty (60) days after the date of filing of the appeal and shall give notice thereof by mail to the interested parties.

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

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

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

(c) Any person seeking a variance or any party who has filed a written notice of appeal pursuant to § 20-108 or § 20-109 [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, for which shall not exceed the cost of transcribing such testimony.

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

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

(g) The burden of proof shall be on the health director or his duly authorized representative where appeal has been sought pursuant to § 20-108 or § 20-109. The burden of proof is on the applicant where a

variance has been sought pursuant to § 20-106, in accordance with Tennessee Code Annotated, § 68-201-118(k).

(h) Any person aggrieved by any final order or determination of the board hereunder shall have judicial review thereof by writ of certiorari pursuant to Tennessee Code Annotated, § 27-9-101 et seq. No judicial review shall be available until and after all administrative remedies have been exhausted. (as added by Ord. #2002-2, Nov. 2002)

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

(2) No person shall cause, suffer, allow, or permit any air contaminant source to be operated without employing suitable measures for the control of the emission of objectionable odors. Suitable measures shall include permit limitations, wet scrubbers, incinerators, or such other devices as may be approved by the health officer. (as added by Ord. #2002-2, Nov. 2002)

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

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

(2) Application of asphalt, oil, water, or suitable chemicals or 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 street which earth or other material has been transported thereto by trucking or earth moving equipment or erosion by water. (as added by Ord. #2002-2, Nov. 2002)

**20-111. Permits and fees--applicability and enforcement authority.** (1) The provisions of this section on permit fees shall apply to any person required to make application on or after July 1, 1992, to the Memphis-Shelby County Health Department for issuance, re-issuance or modification of a permit in accordance with this chapter and air pollution control code, and shall be subject to the fee schedule set out in § 20-112. The provisions of this chapter on emissions fees shall apply to any person holding or obtaining a valid air pollution permit from the Memphis-Shelby County Health Department on or after July 1, 1992, and shall be subject to the fees set out in § 20-120.

(2) The Memphis-Shelby County Health Department (hereinafter referred to as the department) is designated to carry out and enforce the provisions of this air pollution control code and to promulgate any regulations consistent with it as may be required for proper administration of the fee system created herein. (as added by Ord. #2002-2, Nov. 2002)

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

(1) Construction permits. (a) Any person making application to the 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 100 tons or more a year of any single pollutant--\$150

(vi) Any permit unit with actual emissions of 50 tons or more a year, but less than 100 tons per year of any single pollutant--\$100

(vii) Any permit unit with actual emissions of 25 tons or more per year, but less than 50 tons per year of a single pollutant--\$75

(viii) Any permit unit with actual emissions of less than 25 tones 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 (Major Source Permits)--\$150.00

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

(3) Modification of a permit. (a) Any person making application to the 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 10 tons per year--\$100

(ii) If the modification is anticipated to result in an increase in all pollutants more than 10 tons per year, but less than 50 tons per year--\$250

(iii) If the modification is anticipated to result in an increase in all pollutants more than 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, (expecting those subject to subparagraph (1) immediately above), per permit unit--\$500

(b) Any retest required to demonstrate compliance shall be subject to the fee schedule as stated in the subparagraph (a) (i) through (a)(iii) above. (as added by Ord. #2002-2, Nov. 2002)

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

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

(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 code sections that excuse these omissions from enforcement of each regulated pollutant as defined in Section 502(b)(3)(B)(ii) of the Federal Clear 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 Millington 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

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

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

price index for the calendar year two 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 and air pollution control code, 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 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 Millington 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 § 20-120. For purposes of this air pollution control code 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." (as added by Ord. #2002-2, Nov. 2002)

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

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

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

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

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

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

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

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

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

(2) If the emissions fees assessed to a stationary air pollution source are less than five thousand (\$5,000) dollars, the fees owed shall be submitted by September 30 of the year following the year the emissions occurred. If more than five thousand (\$5,000) dollars is owed, then the amount due shall be submitted by January 31 of the year two years after the emissions occurred. (as added by Ord. #2002-2, Nov. 2002)

**20-115. Permits and fees--allowable uses for emissions fee.** The department shall collect an annual emissions fee from those entities within the City of Millington 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 Millington, Tennessee--Air Pollution Control Code, and shall be subject to the fee schedule set out in § 20-112. This fee shall be used for:

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

(2) Implementing and enforcing the terms and conditions of any permit issued under the City of Millington, 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 emission and annual operating/inspection fees collected from major stationary air pollution sources as defined herein, shall be used exclusively for and be sufficient to pay, the direct and indirect costs of the major stationary source operating permit program allowable under the Federal Clean Air Act and under regulations in support of those federal provisions as adopted locally in the City of Millington, 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 Millington,

Tennessee--Air Pollution Control Code or the Federal Clean Air Act. (as added by Ord. #2002-2, Nov. 2002)

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

(2) Not including air toxics as they are defined in the Clean Air Act amendments of 1990 and the amendments thereto, if the source emits fewer than twenty five (25) tons of actual emissions of pollutant during a year, it may at its option, use as the actual emissions figure, its permitted pollutant levels where available and known. If the source is a "major source" under the air toxics provisions of the Clean Air Act amendments of 1990 it too must calculate its actual emission of regulated pollutants. Failure to provide, on a timely basis, any additional information requested shall be considered failure to pay the fees. (as added by Ord. #2002-2, Nov. 2002)

**20-117. Permits and fees--small business waiver.** The director of the department, in his discretion but consistent with Section 507 (f) of the Clean Air Act amendments of 1990, may, upon written petition setting forth in detail the justification therefore, reduce or waive for up to three (3) years, any emissions fee required under this chapter to take into account the financial resources of small business stationary air pollution sources as defined under the federal act or regulations promulgated pursuant thereto. A decision to deny the waiver may be appealed to the local air pollution control board by the party requesting the waiver and will be heard under the same procedures as any other decision that is appealed to this board. If a waiver is granted, it will be reviewed by the board in its annual review process and is then subject to revocation or modification by the board if found to be unwarranted or granted in an arbitrary fashion. Such action will have no effect on prior years emissions fees and will only apply to the collection of future emissions fees. (as added by Ord. #2002-2, Nov. 2002)

**20-118. Permits and fees--surplus funds carry forward.** Any surplus in emissions fee funds shall be carried forward from year to year for these stated purposes only. If, however, in any year after 1993, this carry forward surplus exceeds on February 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. (as added by Ord. #2002-2, Nov. 2002)

**20-119. Permits and fees--penalty provisions.** Failure to pay the fees set forth in this air pollution control code shall be a violation of the City of Millington, Tennessee--Air pollution Control Code and can result in the assessment of penalties and injunction against the stationary air pollution source. In addition to any fees owed, a maximum penalty equal to fifty percent (50%) of the fees owed may be assessed for late payment. Interest in the amount equal to the maximum allowed under state law shall also be charged for all fees paid more than thirty (30) days late. When an emissions fee amount is contested, only the contested portion can be withheld. Any uncontested fee amount must be paid by the due date for payment. Due process for contested amounts is provided by appeal under the administrative and judicial review provisions of the City of Millington, Tennessee--Air Pollution Control Code for appeal of decisions of the health officer. (as added by Ord. #2002-2, Nov. 2002)

**20-120. Permits and fees--annual review of fee structure and financial need.** The Memphis-Shelby County Air Pollution Control Board shall annually review the fee structure established for the local air pollution control program and recommend to the Shelby County Commission any change in rate or make-up of the fee it determines, after public hearing, is necessary to meet the financial requirements of the Memphis-Shelby County Health Department Air Pollution Control Program to fulfill the activities allowed to be funded by these fees. Such review shall include an estimate of other funds available to the program including surplus or carry forward funds as well as changes in state or federal laws that could effect the program. The recommendation shall be provided to the commission no later than April 1 of each year. The county commission shall not, however, be required to adopt this recommendation, nor to change fees on any predetermined schedule. If the Shelby County Commission adopts a change in the rate or makeup of the fee, that adoption shall be provided to the Millington Board of Mayor and Aldermen for adoption prior to collection of changed emission fees by the Memphis-Shelby County Health Department. (as added by Ord. #2002-2, Nov. 2002)

**20-121. Regulation of particulate matter from incinerators.**

(1) No person shall cause, suffer, allow or permit the emissions from any incinerator having a charging rate of 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 12 percent 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 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 12 percent 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%). (as added by Ord. #2002-2, Nov. 2002)

**20-122. Right of entry.** For the purpose of carrying out the requirements of the City of Millington, 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. (as added by Ord. #2002-2, Nov. 2002)

**20-123. Rules and regulations adopted by reference.** (1) That Rules and Regulations of Tennessee Chapters<sup>2</sup> 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

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<sup>2</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.

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 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) and Appendices A, B and F of the Code of Federal Regulations (CFR), Title 40, Part 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 Millington, Tennessee --Air Pollution Control Code. Section nomenclature is identified in accordance with the following table:

<u>Millington Code Nomenclature</u>	<u>State Regulations</u>	<u>Federal Regulations</u>	<u>Title</u>
20-102	1200-3-2	-----	Definitions
20-103	1200-3-3	-----	Ambient Air Quality Regulations
20-105	1200-3-5	-----	Visible Emissions
20-106	1200-3-6	-----	Nonprocess Emission Standards
20-107	1200-3-7	-----	Process Emissions Standards
20-109	1200-3-9	-----	Construction and Operating Permits
20-110	1200-3-10	-----	Required Sampling, Recording and Reporting
20-111	1200-3-11	-----	Hazardous Air Contaminants



<u>Millington Code Nomenclature</u>	<u>State Regulations</u>	<u>Federal Regulations</u>	<u>Title</u>
20-112	1200-3-12	-----	Methods of Sampling and Analysis
20-114	1200-3-14	-----	Control of Sulfur Dioxide Emissions
20-115	1200-3-15	-----	Emergency Episode Plan
20-116	1200-3-16	40 CFR 60 as defined above	New Source Performance Standards
20-118	1200-3-18	-----	Volatile Organic Compounds
20-120	1200-3-20	-----	Limits on Emissions due to Malfunctions, Startups and Shutdowns
20-121	1200-3-21	-----	General Alternate Emission Standards
20-122	1200-3-22	-----	Lead Emission Standards
20-124	1200-3-24	-----	Good Engineering Practice Stack Height Regulations
20-125	1200-3-25	-----	Standards for Infectious Waste Incinerators
20-130	1200-3-30	-----	Acid Precipitation Standard
20-131	1200-3-31	-----	National Emission Standards for Hazardous Air Pollutants for Source Categories
20-132	1200-3-32	-----	Prevention of Accidental Releases
20-134	1200-3-34	-----	Conformity

(2) That the City of Millington, Tennessee--Air Pollution Control Code, § 20-102, "Definitions," be amended by adding at the end of the section the following definitions for "health officer" and "odor" that read as follows:

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

"Odor" is a sensation of smell perceived as a result of olfactory stimulation. An odor is deemed objectionable, and therefore a nuisance, when one third (1/3) or more of a sample of persons exposed to it believe it to be objectionable in usual places of occupancy. The sample size is to be at least twenty-five (25) persons, or when fewer than twenty-five (25) are exposed, one half (½) must believe it to be objectionable.

(3) That the City of Millington, Tennessee--Air Pollution Control Code, § 20-109, 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;

(4) That the City of Millington, Tennessee--Air Pollution Control Code, § 20-118, 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 Emission Standard for Hazardous Air Pollutants (also called a MACT standard) that applies to all volatile organic compound emissions at the source; and

(as added by Ord. #2002-2, Nov. 2002)

**20-124. Copy available in clerk's office.** One (1) copy of the chapter hereby adopted shall be available for public inspection in the office of the Clerk of the City of Millington. (as added by Ord. #2002-2, Nov. 2002)

## CHAPTER 2

### DEPARTMENT OF HEALTH AND SANITATION

#### SECTION

- 20-201. Established.
- 20-202. Director of health and sanitation.
- 20-203. Powers and duties of the director.
- 20-204. Fees.
- 20-205. Fees for temporary permits.
- 20-206. Exemptions from temporary permit fees.

**20-201. Established.** In order to preserve the public health of the citizens of the city, there is hereby established a department of health and sanitation. (1981 Code, § 8-101)

**20-202. Director of health and sanitation.** (1) The department of health and sanitation shall be under the general supervision and control of a director who shall be known as the director of health and sanitation. The director shall be appointed by the mayor with approval of the board of mayor and aldermen and serve at their pleasure or until his successor is elected and qualified and shall receive such compensation as the board may fix.

(2) Wherever the words "director of health and sanitation," "health officer" or "health authority" are used in the Official Code of the City of Millington, same shall also include in its definition the Director of the Memphis and Shelby County Health Department or his authorized representative. (1981 Code, § 8-102)

**20-203. Powers and duties of the director.** The director shall have the power and it shall be his duty to enforce all the laws of the state, county, and city affecting the health of the citizens of the town. Whenever necessary to carry out his powers and duties the director may require such assistance as he needs from the police department. (1981 Code, § 8-103)

**20-204. Fees.** The following permit fees are hereby established for inspections by the department of health and sanitation:

#### Restaurants

From 1 to 25 seats	\$ 25.00
From 26 to 50 seats	40.00
From 51 to 75 seats	60.00
Over 75 seats	75.00

Grocery Stores

Under 1,200 square feet	
For the grocery store	25.00
For the meat market	10.00
With a bakery	10.00
Between 1,200 and 10,000 square feet	
For the grocery store	37.00
For the meat market	15.00
With a bakery	15.00
Between 10,000 and 20,000 square feet	
For the grocery store	75.00
For the meat market	30.00
With a bakery	30.00
Over 20,000 square feet	
For the grocery store	112.50
For the meat market	37.50
With a bakery	37.50

Other

Snack bar	25.00
Drive-in restaurant	37.00
Retail bakery	37.50
Retail meat market	37.50
Packaged goods store with coffee bar	30.00
Packaged goods store	22.50
Food distributor	37.50
Food storage warehouse	75.00
Wholesale meat plant	75.00
Food vendor	75.00
Food processing plant	150.00
Food caterer	150.00
Food salvager or food salvage distribution	150.00
Hucksters	22.50
Pedestrian vendor (per truck or vehicle)	22.50

(1981 Code, § 8-104)

**20-205. Fees for temporary permits.** Fees for temporary permits as defined in § 9-901(8)(a) shall be fifty percent (50%) of the fees as set forth in § 20-204. (1981 Code, § 8-105)

**20-206. Exemptions from temporary permit fees.** That all non-profit charitable organizations, all religious institutions, all civic organizations, and all governmental agencies be, and the same are hereby exempted from the fee for temporary food service permits. Nothing herein shall be interpreted to exempt the above-referenced organizations from any other health permit regulations for temporary or regular food service permits. (1981 Code, § 8-106)

**CHAPTER 3****MILLINGTON MUNICIPAL AIRPORT AUTHORITY****SECTION**

- 20-301. Definitions.
- 20-302. Creation of airport authority.
- 20-303. Powers of authority.
- 20-304. Commissioners.
- 20-305. No compensation.
- 20-306. Quorum.
- 20-307. Officers and employees of the authority.
- 20-308. General powers of the authority.
- 20-309. Eminent domain.
- 20-310. Disposal of airport property.
- 20-311. Bonds and other obligations.
- 20-312. Operation and use privileges.
- 20-313. Regulations; scope; conformity with state and federal law.
- 20-314. Federal and state aid.
- 20-315. Public purposes.
- 20-316. Exemption from taxation.
- 20-317. Authority of City of Millington.
- 20-318. Supplementary powers of authority.
- 20-319. Municipal zoning authority unaffected.
- 20-320. Joint operations authorized.
- 20-321. Agreements as to joint operations; joint board.

**20-301. Definitions.** The following words or terms whenever used or referred to in this chapter shall have the following respective meanings unless different meanings clearly appear from the context:

(1) "Air navigation facility" means any facility used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(2) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or navigation easements or rights-of-way, together with all airport buildings and facilities located thereon.

(3) "Authority" means the Millington Municipal Airport Authority created pursuant to the provisions of this chapter.

(4) "Airport hazard" means any structure, object of natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise hazardous to such landing or taking-off of aircraft.

(5) "Navigation easement" means any easement which shall include all or any part of the following:

(a) The right to unobstructed and unrestricted flight of aircraft, in, through and across the airspace over and above certain land, beginning at the altitude or height above the surface of the land as determined by the authority.

(b) The right to enter upon certain described land for the purpose of removing and preventing any use of the land or the construction or erection of any building, structures or facilities and the growth of any trees or objects upon the real estate, over, above and across such certain described land, other than those uses, buildings, structures, facilities, growths of trees or objects expressly excepted.

(c) The right to prevent the use of the land by any assembly of persons or the use of the land in such a manner as might attract or bring together an assembly of persons thereon.

(6) "Bonds" means any bonds, notes, interim certificates, debentures, or similar obligations issued by the authority pursuant to this chapter.

(7) "Governing body" means as to the City of Millington, the board of mayor and aldermen of the City of Millington or any successor body.

(8) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and including any trustee, receiver, assignee, or there similar representative thereof. (1981 Code, § 1-701)

**20-302. Creation of airport authority.** There is hereby created the Millington Municipal Airport Authority pursuant to the provisions of the Airport Authorities Act, Tennessee Code Annotated, § 42-3-101, et seq. (the "act"), for the purpose of constructing, owning, leasing, managing and/or operating one or more airport facilities for the City of Millington. The authority shall be a public body corporate and politic. In addition to this chapter, the authority shall operate in accordance with the provisions and requirements of the act. (1981 Code, § 1-702)

**20-303. Powers of authority.** The powers of the authority shall be vested in a board of commissioners, who shall be appointed by the board of mayor and aldermen. (1981 Code, § 1-703)

**20-304. Commissioners.** (1) Terms of commissioners; vacancies. The commissioners who are first appointed shall be designated to serve for terms of one (1), two (2), three (3), four (4) and five (5) years respectively. Thereafter,

each commissioner shall be appointed for a term of five (5) years, except that any vacancy occurring otherwise than by the expiration of a term shall be filled for the unexpired term by the board of mayor and aldermen. Each commissioner shall hold office until his or her successor has been appointed and has qualified. Certificates of the appointment and reappointment of commissioners shall be filed with the authority.

(2) Number of commissioners. From and after the date of May 18, 2009, there shall be a total of eleven (11) commissioners appointed to serve on the Millington Municipal Airport Authority. In addition to the nine (9) commissioners appointed and serving as provided in § 20-304(1) two (2) additional commissioners shall be appointed. When first appointed, the two (2) additional commissioners shall each be designated to serve for a term of five (5) years. Their service shall in all other respects be governed by § 20-304(2). (1981 Code, § 1-704, as amended by Ord. #1996-14, Dec. 1996, and Ord. #2009-7, May 2009)

**20-305. No compensation.** No commissioner shall receive compensation for services as a commissioner, but every commissioner shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of duties as a commissioner. (1981 Code, § 1-705)

**20-306. Quorum.** A majority of the commissioners shall constitute a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present. (1981 Code, § 1-706)

**20-307. Officers and employees of the authority.** The commissioners shall elect from among themselves a chairman and a vice-chairman, and such other officers as they deem necessary. The authority may employ an executive director, secretary, technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. For such legal services as it may require, the authority may call upon the city attorney of the City of Millington or may employ its own counsel or legal staff. The authority may delegate to one or more of its agents or employees such powers and/or duties as it may deem proper. (1981 Code, § 1-707)

**20-308. General powers of the authority.** The authority shall have all the powers necessary or convenient to carry out the purposes for which it is created (excluding the power to levy and collect taxes or special assessments) including, but not limited to, the power to:

- (1) Sue and be sued;
- (2) Have a seal;



- (3) Have perpetual succession; and
- (4) Have such immunity in tort cases as do municipalities under the Municipal Airport Act, Tennessee Code Annotated, § 42-4-101, et seq.;
- (5) Execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes for which it is created;
- (6) Plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate and protect airports and air navigation facilities, within the City of Millington, including the acquisition, construction, installation, equipment, maintenance, and operation of such airports or buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers, and the purchase and sale of supplies, goods, and commodities as are incident to the operation of its airport properties. For such purposes the authority may, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein, including navigation easements and easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards;
- (7) Acquire by purchase, gift, devise, lease, eminent domain proceedings or otherwise, existing airports and air navigation facilities; provided, that the authority shall not acquire or take over any airport or air navigation facility owned or controlled by another authority, municipality, or public agency of this or any other state without the consent of such authority, municipality, or public agency; and
- (8) Establish or acquire and maintain airports in, over and upon any public waters of the City of Millington or any submerged lands under such public waters; and construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof. (1981 Code, § 1-708)

**20-309. Eminent domain.** In the acquisition of property by eminent domain proceedings, the authority shall proceed in the manner provided by chapter 16 of title 29, Tennessee Code Annotated, or any successor statute. For the purpose of making surveys and examinations relative to eminent domain proceedings, it shall be lawful for the authority to enter upon the land, doing no unnecessary damage. Notwithstanding the provisions of any other statute or other law, the authority may take possession of any property to be acquired by eminent domain proceedings. The authority shall not be precluded from abandoning such proceedings in any case where possession of the property has not been taken, even after a trial jury in circuit court has rendered a verdict as to damages for the property taken and at any time prior to the entry of a final decree disposing of the entire eminent domain proceedings. (1981 Code, § 1-709)

**20-310. Disposal of airport property.** Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by this chapter or the Act, the authority may, by sale, lease, or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to this chapter. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another authority, a municipality or an agency of the state or federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected in such manner and upon such terms as the commissioners of the authority may deem in the best interest of civil aviation and the City of Millington. (1981 Code, § 1-710)

**20-311. Bonds and other obligations.** (1) The authority shall have the power to borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including grants or contributions from the federal government or other sources, which bonds may be sold at public sale at not less than par. Revenue bonds may be issued for the above purposes and the authority may pledge as security for such bonds all or any portion of the landing fees, concession fees, rents, charges, or any other revenues derived from the operation of the airport. Such revenue bonds shall be issued in accordance with the applicable provisions of title 9, chapter 11, Tennessee Code Annotated; provided, that any such fees, rents, or charges so pledged that are fixed and established pursuant to the provisions of a lease or contract, shall not be subject to revision or change except in such manner as is provided in such lease or contract. Any bonds of the authority issued pursuant to this chapter which are payable, as to principal and interest, solely from revenues of an airport or air navigation facility (and they shall so state on their face) shall not constitute a debt of the City of Millington, the state, or any political subdivision thereof other than the authority, and shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Neither the commissioners nor any person executing such bonds shall be liable personally thereon by reason of the issuance thereof.

(2) In case any of the commissioners or officers of the authority whose signature appears on any bonds or coupons shall cease to be such commissioners or officers after authorization but before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes, the same as if the commissioners or officers had remained in office until delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter shall be fully negotiable.

(3) Any bond reciting in substance that it has been issued by the authority pursuant to the provisions of this chapter and for a purpose or purposes authorized to be accomplished by this chapter shall be conclusively

deemed, in any suit, action or proceeding involving the validity or enforceability of the bond or the security therefor, to have been issued pursuant to such provisions and for such purpose or purposes.

(4) Bonds issued by the authority pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose, and together with interest thereon, and income therefrom, shall be exempt from all taxes. (1981 Code, § 1-711)

**20-312. Operation and use privileges.** (1) Operation by authority.

(a) In connection with the operation of an airport or air navigation facility owned, leased or controlled by the authority, the authority may, except as may be limited by the terms and conditions of any grant, loan or agreement, enter into contracts, leases, agreements, grants or other arrangements for terms not to exceed fifty (50) years with any person or persons, provided that the public is not deprived of its rightful use thereof:

(i) Granting the privilege of using or improving the airport or air navigation facility, including buildings or structures relating thereto, or real property acquired or set aside for such purposes, or any portion or facility thereof or space therein for commercial purposes, establishing the charges, rentals or fees at a fixed or variable rate binding upon the parties thereto for the full terms of such contracts, leases, agreements, grants or other arrangements, which contracts, leases, agreements, grants or other arrangements may provide for the resolution of disputes arising thereunder or for the fixing of variable terms therein through arbitration or similar procedure;

(ii) Conferring the privilege of supplying goods, commodities, things, services or facilities at the airport or air navigation facility;

(iii) Making available services to be furnished by the authority or its agents at the airport or air navigation facility; and

(iv) Determining the charges, rentals or fees for the use of any properties under its control, and the charges for any services or accommodations, and the terms and conditions under which such properties may be used, except that any such charges, rentals and fees as may be fixed or determined by any contract, lease, agreement, grant or other arrangement of privileges, uses, services, accommodations or concessions to which the authority is a party or is the grantor, shall, if so expressly provided therein, be binding upon all parties thereto for the full terms prescribed therein, unless same is sooner modified or terminated by mutual consent of the parties thereto.

(b) In each case, the authority may establish the terms and conditions and fix the charges, rentals or fees for the privileges, uses or services or use of buildings or structures which shall be reasonable and uniform for the same class of privilege or services and shall be established with due regard to the property and improvements used and the expenses of operation to the authority; provided, that in no case shall the public be deprived of its rightful, equal and uniform use of the airport, air navigation facility, or portion or facility thereof.

(2) Other operation. Except as may be limited by the terms and conditions of any grant, loan or agreement authorized by this chapter or the act, the authority may by contract, lease, or other arrangements, upon a consideration fixed by it, grant to any qualified person for a term not to exceed fifty (50) years, the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; provided, that no person shall be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsection (1) of this section. (1981 Code, § 1-712)

**20-313. Regulations; scope; conformity with state and federal law.**

The authority is authorized to adopt, amend and repeal such reasonable resolutions, rules, regulations and orders as it shall deem necessary for the management, government and use of any airport or air navigation facility owned by it or under its control. No rule, regulation, order or standard prescribed by the authority shall be inconsistent with, or contrary to, any act of the congress of the United States or any regulation promulgated or standard established pursuant thereto or be inconsistent with, or contrary to, any act of the general assembly of the State of Tennessee or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority for public inspection a copy of all its rules and regulations. (1981 Code, § 1-713)

**20-314. Federal and state aid.** Except as otherwise provided by law, the authority is authorized to accept, receive, receipt for, disburse and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes for which the authority is created. All federal moneys accepted under this section shall be accepted and expended by the authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and state moneys accepted under this section shall be accepted and expended by the authority upon such terms and conditions as are prescribed by the state. (1981 Code, § 1-714)

**20-315. Public purposes.** The acquisition of any land, or interest therein, pursuant to this chapter, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation and protection of airports, air navigation facilities and other public agencies, to be severally or jointly exercised, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of the authority or other public agency in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity. (1981 Code, § 1-715)

**20-316. Exemption from taxation.** Any property in this state acquired by the authority for airport purposes pursuant to the provisions of this chapter, and any income derived by the authority from the ownership, operation or control thereof, shall be exempt from taxation to the same extent as other property used for public purposes. (1981 Code, § 1-716)

**20-317. Authority of City of Millington.** For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of an airport and air navigation facilities, and acquiring navigation easements the city may, upon such terms, with or without consideration as it may determine:

- (1) Lend or donate money to the authority.
- (2) Provide that all or a portion of the taxes or funds available or to become available to, or required by law to be used by, the city for airport purposes, be transferred or paid directly to the airport authority as such funds become available to the city.
- (3) Cause water, sewer or drainage facilities, or any other facilities which it is empowered to provide, to be furnished adjacent to or in connection with such airports or air navigation facilities.
- (4) Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to the authority.
- (5) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadway's and walks from established streets or roads to such airports or air navigation facilities.
- (6) Do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction or operation of airports and air navigation facilities.
- (7) Enter into agreements with the authority respecting action to be taken by the city pursuant to the provisions of this section. (1981 Code, § 1-717)

**20-318. Supplementary powers of authority.** In addition to the general and special powers conferred by this chapter and the act, the authority is authorized to exercise such powers as are necessarily incidental to the exercise of such general and special powers. (1981 Code, § 1-718)

**20-319. Municipal zoning authority unaffected.** Nothing contained in this chapter shall be construed to limit any right, power or authority of the City of Millington to regulate airport hazards by zoning. (1981 Code, § 1-719)

**20-320. Joint operations authorized.** (1) All powers, privileges and authority granted by this chapter may be exercised and enjoyed by the authority jointly with any public agency of this state, and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment. "Public agency" includes municipality, any agency of the state government and of the United States, and any municipality, political subdivision and agency of an adjoining state.

(2) Any agency of the state government, when acting jointly with the authority, may exercise and enjoy all the powers, privileges and authority conferred by this chapter upon the authority. (1981 Code, § 1-720)

**20-321. Agreements as to joint operations; joint board.** (1) The authority may enter into agreements with other public agencies for joint action pursuant to the provisions of this chapter and Tennessee Code Annotated, § 42-3-201, et seq.

(2) Each agreement shall specify its duration, the proportionate interest which each participant shall have in the property, facilities and privileges involved in the joint undertaking, the proportion of costs of operation, etc., to be borne by each participant, and such other terms as are deemed necessary or required by law.

(3) The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities and privileges jointly owned prior to, or at such time as the property, facilities and privileges, or any part thereof, cease to be used for the purposes provided in this chapter, or upon termination of the agreement; the distribution of the proceeds received upon any disposal, and of any funds or other property jointly owned and undisposed of; the assumption or payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

(4) The authority and any public agencies acting jointly pursuant to this chapter shall create a joint board, which shall consist of members appointed, by the governing body of each participant. The members of any such joint board representing the authority shall be appointed by the board of mayor

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and aldermen from among the commissioners of the authority. (1981 Code, § 1-721)