

Title 9 - HEALTH AND SAFETY

Chapters:

Chapter 9-4 - HEALTH DEPARTMENT
Chapter 9-8 - HEALTH AND SAFETY REGULATIONS GENERALLY
Chapter 9-12 - AIR POLLUTION CONTROL
Chapter 9-16 - ALARM SYSTEMS
Chapter 9-20 - AMBULANCES*
Chapter 9-24 - CIVIL EMERGENCIES
Chapter 9-28 - DAY CARE CENTERS*
Chapter 9-32 - EMERGENCY ENERGY CURTAILMENT PLAN
Chapter 9-36 - FIRE PREVENTION CODE ADOPTED
Chapter 9-40 - FIRE PREVENTION INSPECTIONS, CHARGES AND PERMITS
Chapter 9-44 - MISCELLANEOUS FIRE PREVENTION REGULATIONS*
Chapter 9-48 - FIRE HYDRANTS
Chapter 9-52 - FOOD ESTABLISHMENTS
Chapter 9-56 - GARBAGE COLLECTION AND DISPOSAL
Chapter 9-60 - LITTER CONTROL
Chapter 9-64 - MOSQUITO CONTROL
Chapter 9-68 - NOISE CONTROL*
Chapter 9-72 - PERSONAL CARE HOMES
Chapter 9-76 - QUASI-PUBLIC AND PRIVATE WATER SUPPLIES*
Chapter 9-80 - RAT CONTROL
Chapter 9-84 - SELF-SERVICE GASOLINE STATIONS
Chapter 9-88 - SMOKING
Chapter 9-92 - SWIMMING POOLS
Chapter 9-96 - WEEDS AND REFUSE
Chapter 9-100 - CITATIONS FOR HEALTH AND SANITATION VIOLATIONS

Chapter 9-4 - HEALTH DEPARTMENT

Sections:

[Sec. 9-4-1 - Establishment and control.](#)
[Sec. 9-4-2 - General duties of health department.](#)
[Sec. 9-4-3 - Appointment and qualifications of health officer.](#)
[Sec. 9-4-4 - Bureaus, divisions and other administrative units of health department.](#)
[Sec. 9-4-5 - Appointment, removal and salaries of health department personnel.](#)
[Sec. 9-4-6 - Health officer to establish rules and regulations for conduct of health department and prescribe duties of department employees.](#)
[Sec. 9-4-7 - Health officer may delegate authority and responsibilities.](#)
[Sec. 9-4-8 - Right of entry of health department personnel.](#)

Sec. 9-4-1 - Establishment and control.

A. There is established a department of health which shall be known as the Memphis and Shelby County health department and which shall be under the general supervision and control of the health officer.

B. The health officer shall have administrative control over all books, records, policies, programs, budgets, employees and property of the health department.

(Code 1985 § 16-1; Code 1967 § 32-1)

Charter reference— Health department generally, §§ 61, 62; consolidation and joint operation of city and county governmental functions, §§ 847–850.

Sec. 9-4-2 - General duties of health department.

It shall be the duty of the department of health to carry out the laws of the state and ordinances of the city in relation to public health and sanitation, together with its own regulations governing these subjects.

(Code 1985 § 16-2; Code 1967 § 32-2)

Sec. 9-4-3 - Appointment and qualifications of health officer.

The health officer shall be appointed jointly by the city mayor and the county mayor. The health officer shall be licensed by the state Licensing Board for the healing arts to practice in the state and shall be trained and experienced in public health administration.

(Code 1985 § 16-3; Code 1967 § 32-3)

Sec. 9-4-4 - Bureaus, divisions and other administrative units of health department.

The health officer shall have the authority to establish such bureaus, divisions, services, or other administrative units as deemed necessary for the efficient operation of the health department. The health officer shall appoint the administrative head of each of the administrative units so established, and it shall be his or her duty to prescribe the work to be performed by each such unit.

(Code 1985 § 16-4; Code 1967 § 32-4)

Sec. 9-4-5 - Appointment, removal and salaries of health department personnel.

It shall be the duty of the health officer to appoint, from time to time, subject to the merit system of the health department, such physicians, engineers, bacteriologists, chemists, veterinarians, dentists, nurses, environmentalists, technicians, machine operators, statisticians, skilled workmen, stenographers, clerks and other employees as may be necessary to efficiently operate the health department and to safeguard and preserve the health of the people of the city. Such personnel shall be subject to removal by the health officer for cause, as provided by the rules and regulations of the merit system of the health department. The salaries of personnel of the health department shall be fixed by the health officer and shall be in accordance with the rules and regulations of the merit system.

(Code 1985 § 16-5; Code 1967 § 32-5)

Sec. 9-4-6 - Health officer to establish rules and regulations for conduct of health department and

prescribe duties of department employees.

The health officer shall have power and authority, and it shall be his or her duty, to establish and enforce all necessary rules and regulations for the government of the health department and prescribe the duties of all employees of the health department.

(Code 1985 § 16-6; Code 1967 § 32-6)

Sec. 9-4-7 - Health officer may delegate authority and responsibilities.

The health officer is empowered to delegate the authority and responsibilities assigned to him or her by this code to such duly authorized employees and representatives of the health department as he or she may see fit and appropriate.

(Code 1985 § 16-7; Code 1967 § 32-7)

Sec. 9-4-8 - Right of entry of health department personnel.

For the purpose of carrying out the requirements of this title and other laws and ordinances relating to public health and sanitation; and the regulations of the health department, the health officer and his or her 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 sanitation and other conditions thereon and therein.

(Code 1985 § 16-31; Ord. 1227 § 1, 4-4-72; Code 1967 § 32-36)

Chapter 9-8 - HEALTH AND SAFETY REGULATIONS GENERALLY

Sections:

- [Sec. 9-8-1 - Adoption of state regulations relative to communicable diseases.](#)
- [Sec. 9-8-2 - General powers and duties of health officer relative to communicable diseases.](#)
- [Sec. 9-8-3 - Free vaccination and treatment in certain cases.](#)
- [Sec. 9-8-4 - Special powers in health emergencies.](#)
- [Sec. 9-8-5 - Report of births and stillbirths.](#)
- [Sec. 9-8-6 - Physicians' reports of deaths.](#)
- [Sec. 9-8-7 - Birth and death certificates.](#)
- [Sec. 9-8-8 - Burials in unauthorized places.](#)
- [Sec. 9-8-9 - Retaining or exposing dead bodies.](#)
- [Sec. 9-8-10 - Disinterment of dead bodies.](#)
- [Sec. 9-8-11 - Cleanliness and ventilation of places of public assemblage.](#)
- [Sec. 9-8-12 - Use of common utensils and towels in public or semipublic places.](#)
- [Sec. 9-8-13 - Toilets and lavatories at industrial and business establishments.](#)
- [Sec. 9-8-14 - Offensive water or other liquids.](#)
- [Sec. 9-8-15 - Septic tanks and privies.](#)
- [Sec. 9-8-16 - Disposal of industrial waste generally.](#)
- [Sec. 9-8-17 - Refuse from gashouses.](#)
- [Sec. 9-8-18 - Fluoridation of public water supply.](#)

[Sec. 9-8-19 - Plumbing–Maintenance requirements.](#)

[Sec. 9-8-20 - Filling of unmarked holes, abandoned cisterns and wells.](#)

[Sec. 9-8-21 - Nuisances.](#)

[Sec. 9-8-22 - Notice on buildings placarded by health department.](#)

[Sec. 9-8-23 - Assistance of police in enforcing health laws.](#)

[Sec. 9-8-24 - Obedience to regulations and orders of health department.](#)

Sec. 9-8-1 - Adoption of state regulations relative to communicable diseases.

The Regulations Governing Communicable Diseases in Tennessee, pages four through twenty (20), and any changes and amendments thereto, published by the Tennessee Department of Public Health, in accordance with the provisions of Chapter 111 of the Public Acts of 1941, are adopted and approved and made a part of this title as fully as if set out herein.

(Code 1985 § 16-8; Code 1967 § 32-8)

Sec. 9-8-2 - General powers and duties of health officer relative to communicable diseases.

The health officer or his or her representative shall make such investigations as in his or her judgment may be necessary to determine the presence or absence of any of the diseases named in the state regulations adopted by Section 9-8-1, and if any such be found he or she shall adopt such measures as are authorized by law for the prevention of the spread of such disease and for the relief of the patient. The health officer, or his or her representative, shall secure material for cultures or specimens for bacteriological or other laboratory examination to assist in determining the diagnosis whenever, in his or her judgment, such procedure is necessary, and any person, when requested by him or her or his or her representative, shall permit such specimens to be taken.

(Code 1985 § 16-9; Code 1967 § 32-9)

Sec. 9-8-3 - Free vaccination and treatment in certain cases.

Whenever any person is, by the provisions of state law or the regulations adopted by Section 9-8-1 required to be vaccinated or treated with any virus or preparation to protect against or treat a communicable disease and is unable to pay for such virus or preparation, the department of health shall furnish it free, and shall provide for the vaccination or treatment of such person.

(Code 1985 § 16-10; Code 1967 § 32-10)

Sec. 9-8-4 - Special powers in health emergencies.

Whenever any emergency occurs, or any rare or unusual disease appears, or when any disease becomes unduly prevalent, the health officer, subject to the approval of the mayor, shall have the power to employ any measures necessary for the protection of the public health; and the mayor shall have the power, by proclamation, to establish quarantine and to promulgate such rules and regulations as may be necessary to combat such emergencies, including rules and regulations for persons residing in, entering or leaving the city, and the regulation of property, and he or she shall have power to make such expenditures as may be necessary for such purpose. The health officer and his or her deputies, assistants and officers shall have the right to enter private premises and it shall be their duty to enforce the rules and regulations promulgated by the mayor and established by the health officer under the provisions of this section. Any person who violates any such regulation, or who fails to carry out any lawful order of the health officer in such emergencies, shall be guilty of a misdemeanor.

(Code 1985 § 16-11; Code 1967 § 32-11)

Sec. 9-8-5 - Report of births and stillbirths.

Any person, including physicians and midwives, who delivers or assists in delivering any woman, shall report all births and stillbirths, as required by the provisions of the state Vital Statistics Act, T.C.A. Sections 68-3-101–68-3-313, as amended.

(Code 1985 § 16-12; Code 1967 § 32-14)

Sec. 9-8-6 - Physicians' reports of deaths.

It shall be the duty of every practicing physician in the city to report, in writing, to the department of health, the death of any of his or her patients who shall have died in the city, within seventy-two (72) hours thereafter, and to state in such report the specific name and type of the disease, or other cause of death; provided, however, that so long as the department of health of the city, or any member thereof, shall act as registrar of vital statistics under the general laws of the state, separate reports to the department of health shall not be required.

(Code 1985 § 16-13; Code 1967 § 32-15)

Sec. 9-8-7 - Birth and death certificates.

The vital statistics division of the department of health shall have authority to issue transcripts and photostatic copies of births and deaths, or certified copies of births and deaths occurring prior to 1914, and charge therefor a sum to be fixed by the health officer not to exceed four dollars (\$4.00) each to be paid upon delivery of same.

(Code 1985 § 16-14; Ord. 215 § 1, 7-16-68; Code 1967 § 32-16)

Sec. 9-8-8 - Burials in unauthorized places.

It is unlawful for any person to bury or cause to be buried a dead body of any human being on any lot or plot of ground in the city other than those officially registered and licensed for this purpose and in which there is sufficient space or ground for the location of the grave so that it can be dug in solid earth without digging on or into another grave.

(Code 1985 § 16-16; Code 1967 § 32-18)

Sec. 9-8-9 - Retaining or exposing dead bodies.

No person shall retain, expose, or allow to be retained or exposed the dead body of any human being, to the peril or prejudice of the life or health of any person.

(Code 1985 § 16-17; Code 1967 § 32-19)

Sec. 9-8-10 - Disinterment of dead bodies.

The disinterment of dead bodies from any of the cemeteries or burial places in or near the city, or storing dead bodies within the same, except for freezing or embalming, without special permission from the registrar of vital records, and on such terms as he or she may prescribe, is forbidden.

(Code 1985 § 16-18; Code 1967 § 32-20)

Sec. 9-8-11 - Cleanliness and ventilation of places of public assemblage.

No person, being the lessee, manager, conductor or owner, of any theatre, church, motion picture house, hall or other place of public assemblage, shall cause, permit, or allow the same, or any part or appurtenance thereof, to be so far overcrowded or inadequate, faulty or insufficient in respect to cleanliness, ventilation, excreta disposal, water supply, or in any other particular as to cause any avoidable peril to any person properly at or in any such place.

(Code 1985 § 16-19; Code 1967 § 32-21)

Sec. 9-8-12 - Use of common utensils and towels in public or semipublic places.

The use of common drinking or eating utensils, towels, or any other article for common use in public or semipublic places or establishments which might cause the spread of any communicable disease is forbidden in the city. The term "common," as used in this section, means for use of more than one person without proper cleaning or disinfecting by methods approved by the health officer.

(Code 1985 § 16-20; Code 1967 § 32-22)

Sec. 9-8-13 - Toilets and lavatories at industrial and business establishments.

Adequate toilets, urinals, lavatories, showers and locker and toilet rooms shall be provided at all industrial establishments, business establishments and other places of employment, as may be deemed necessary for each establishment by the health officer.

(Code 1985 § 16-21; Code 1967 § 32-23)

Sec. 9-8-14 - Offensive water or other liquids.

No person shall permit, have or cause any offensive water or other liquid substance on his or her premises or grounds, to the prejudice of health, safety or life, whether for use in any trade, business or otherwise.

(Code 1985 § 16-23; Code 1967 § 32-27)

Sec. 9-8-15 - Septic tanks and privies.

A. No septic tank or vault, privy, sink, cistern, well or cesspool shall be constructed or rebuilt in the city except in accordance with the regulations of and pursuant to a permit from the department of health, nor shall any erection or cover be made or put upon or over the same, until the same has been examined by the health officer or an officer detailed by him or her, and found to correspond to such permit and regulations.

B. No privy shall be built within four feet of the line of any lot.

C. All septic tanks and privies for excrement shall be under the supervision of the health department. The department shall see that every septic tank and privy is kept in good working order and in a sanitary condition, and it is unlawful for any person to fail to keep his or her septic tank or privy in such clean and sanitary condition.

D. The department of health shall make periodic inspections, as often as may be deemed necessary, of any septic tank or privy in the city, and where the inspector shall find any unsanitary condition, he or

she shall at once condemn the same as a nuisance and notify the occupant or owner of the premises where such septic tank or privy is to clean out, disinfect and fill up the same within five days thereafter, or take such steps as may be necessary to render such septic tank or privy sanitary.

E. Whenever the city's sanitary sewer system shall be extended into any unsewered portion of the city, it shall be the duty of every owner or occupant on whose premises there is a septic tank or privy to have the same cleaned out, disinfected and filled up as soon as possible after sewer connections are available, and it is unlawful for such owner or occupant to fail so to do after notice from the department of health. Connection with the sewer system shall be made as soon as possible.

F. The type and methods of construction of receptacles for excrement and the methods of providing for the reception, collection and disposition of excrement, shall be under the supervision of the department of health. The department may from time to time make such rules and regulations for the building of such receptacles, the collection and disposition of excrement, in such parts of the city as are not supplied with sanitary sewers, as it may deem best suited for the protection of human life and the public health.

G. All excrement collected in any receptacle shall be carried off at the expense of the city and removed to such place as the department of health may designate.

H. No person shall empty or attempt to empty any septic tank or privy in the city, except under the permit therefor first obtained from the department of health. The department of health is required to keep a record of all septic tanks and privies emptied, and when any are emptied they shall be reported to the department of health so that the same may be inspected.

I. No part of the contents of any septic tank or privy or any accumulation of any offensive fluid, liquid or semi-liquid substance material, being in any excavation, cellar or place within the city, shall be removed therefrom, nor shall the same be transported through any of the streets or avenues of the city, unless and except the same shall be removed and transported by means of airtight apparatus, or in such manner as shall prevent entirely the escape of any noxious or offensive odors therefrom, and by a permit from the department of health.

J. No person shall draw off, or allow to run off, into any ground place of the city, the contents of any septic tank or privy, nor shall any owner, tenant or occupant of any building to which any septic tank or privy shall appertain or be attached, permit the contents, or any part thereof, to flow therefrom, or to rise within two feet of the top, or permit such contents to become offensive; nor shall any septic tank or privy be filled with or covered with dirt until its filthy contents shall be emptied.

(Code 1985 § 16-24; Code 1967 § 32-28)

Sec. 9-8-16 - Disposal of industrial waste generally.

A. No person shall permit the discharge into any drainage system or sewerage system within the city of any industrial waste, liquid waste or other by-product that is toxic, or obnoxious or may in due time become toxic or obnoxious or create a condition which, upon examination, is found to be a menace to health, unless such waste is treated in a manner to render it in a safe condition as may be accepted by the health officer or his or her authorized representatives. The effluent and by-products from the treatment plant shall not exceed the maximum allowable concentration as may be established by the health officer.

B. Before any work is commenced on any new construction or alteration of any existing industrial

establishment involving the lease or discharge of materials known to be toxic or adversely affecting health, plans and specifications as to chemical processes, nature of liquid waste or by-products and proposed control measures, accompanied by such pertinent data as may be required, shall be submitted to the health department for its approval. No part of the work shall be undertaken until the health department has endorsed upon the plans and specifications its written approval thereof.

(Code 1985 § 16-25; Code 1967 § 32-29)

Sec. 9-8-17 - Refuse from gashouses.

No person, being a manufacturer or distributor of gas, shall throw or deposit, or allow to run, or shall permit to be thrown or deposited, into any public waters, or into any sewer, or into any street, or public place, any gas tar, or any refuse matter of or from any gashouse, works or manufactory, or make gas of any such ingredients or quality that any substance shall escape therefrom, or be formed in the process of burning any gas, which shall be offensive or dangerous, or prejudicial to life or health, nor shall any such person or company fail to use all reasonable means for preventing the escape of odors.

(Code 1985 § 16-26; Code 1967 § 32-30)

Sec. 9-8-18 - Fluoridation of public water supply.

A. The light, gas and water division of the city, through its board of commissioners, is authorized and directed to take all necessary proper steps to fluoridate the water supply of the city. This process shall include the addition of .7 to 1.0 p.p.m. of fluorine to the water distributed by the city light, gas and water division, in accordance with the approved and recommended procedures of the state Department of Public Health, in order that the citizens of Memphis and the citizens of areas outside the corporate limits of the city served by the water division of the city light, gas and water division, may obtain the benefits to be derived from same.

B. The board of commissioners of the city light, gas and water division is authorized and directed to proceed with the purchase and installation of the proper equipment and materials for the fluoridation of the city public water supply and to provide that the necessary funds be made available for this purpose on a continuing basis.

(Code 1985 § 16-32; Ord. 354 §§ 1, 2, 1-14-69; Code 1967 § 32-37)

Sec. 9-8-19 - Plumbing—Maintenance requirements.

A. In buildings and structures used for human occupancy, water lines, plumbing fixtures, vents and drains shall be properly installed, connected and maintained in working order and shall be kept free of obstructions, leaks, and defects and shall be capable of performing the function for which they are designed. All repairs and installations shall be made in accordance with the provisions of the building code or plumbing code of the city and county.

B. In buildings and structures used for human occupancy, every plumbing stack, waste and sewer line shall be so installed and maintained as to function properly and shall be kept free from obstructions, leaks, outcroppings and defects to prevent health hazards. All repairs and installations shall be made in accordance with the provisions of the building code or plumbing code of the city and council.

(Ord. 3436 § 1(6), 2-19-85; Code 1985 § 16-33)

Sec. 9-8-20 - Filling of unmarked holes, abandoned cisterns and wells.

It shall be the duty of the owner or responsible tenant to fill or make secure any unmarked holes, or abandoned cisterns and wells which may exist on property, for the safety and security of persons or animals who may come upon the property as an innocent passerby, city personnel authorized to cut and clean, or for individuals who have a purpose for entering the premises.

(Ord. 4978 § 1, 12-3-02; Code 1985 § 16-473)

Sec. 9-8-21 - Nuisances.

A. Prohibited. No person shall cause, keep or permit any material, substance or condition which is, or is likely to become, a public nuisance, by the emission of odors, fumes, dusts, vapors, or gases that are offensive, providing a harborage for mosquitoes or rodents, or which may imperil or affect the comfort, health or life of other persons. Any such person creating or maintaining such a nuisance within the city limits or within one mile thereof shall be guilty of a misdemeanor.

B. Abatement. It shall be the duty of the health department, through the health officer, engineers, assistants, environmentalists or other employees, to serve notice in writing upon the owner, occupant or agent of any lot, building or premises in or upon which any nuisance or violation of this title, or regulations or orders of the health department may be found, or upon the person maintaining any nuisance, or aiding therein, requiring him or her to abate or correct the same in such manner as the health department shall prescribe, within a reasonable time. It shall not be necessary in any case for the health officer to specify in his or her notice the manner in which a nuisance shall be abated, unless he or she shall deem it advisable so to do. Such notice may be given or served by engineers, assistants, environmentalists or other employees of the health department, as well as by the health officer. If the person to whom such notice is lawfully directed shall fail, neglect or refuse to comply with the requirements of such order, within the time specified, he or she shall be guilty of a misdemeanor, and each day's violation shall constitute a separate offense. Upon the failure of such person to comply with such requirements, it shall be the duty of the department of health, whenever public necessity requires it, to proceed at once, upon the expiration of the time specified in such notice, to cause such nuisance to be abated.

C. Whenever the owner, occupant or agent of any premises or person maintaining or aiding in the maintenance of a nuisance is unknown or cannot be found, the department of health shall proceed to abate the nuisance without notice.

D. In the event any nuisance is abated by the department of health, it shall keep an itemized account thereof and shall certify a bill thereof to the city attorney, whose duty it shall be to collect the same according to law.

(Code 1985 § 16-27; Ord. 1227 § 1, 4-4-72; Ord. 837 § 2, 1-12-71; Code 1967 §§ 32-31, 32-32)

Charter reference— Authority to define and prohibit nuisances, § 410; condemnation and abatement of nuisances, § 411.

Sec. 9-8-22 - Notice on buildings placarded by health department.

When any building or structure within the city becomes dangerous to public health and is placarded by the department of health, it shall be the duty of the department to place notices on some conspicuous place thereon of the dangerous character of the building or structure, and it shall be a misdemeanor for any person to tear down or deface such notice, unless by permission of the health officer.

(Code 1985 § 16-28; Code 1967 § 32-33)

Sec. 9-8-23 - Assistance of police in enforcing health laws.

Whenever necessary to carry out the provisions of the health and sanitary laws, the health officer shall have the power to call upon the director of police services for a detail of officers, and the director of police shall furnish such officers, and the officers so detailed shall act under the direction of the health officer for the time being, for the purpose of carrying out the provisions of any health or sanitary law or regulation, and for the time being, such police officer shall be clothed with all the power to enter buildings and abate nuisances therein conferred upon the department of health.

(Code 1985 § 16-29; Code 1967 § 32-34)

Sec. 9-8-24 - Obedience to regulations and orders of health department.

Every person shall observe and obey every special regulation and every order of the department of health, the health officer and engineers, assistants, environmentalists or other employees of the health department that is or may be made for the purpose of carrying into effect the provisions of the public health and sanitary laws and ordinances.

(Code 1985 § 16-30; Ord. 1227 § 11, 4-4-72; Code 1967 § 32-35)

Chapter 9-12 - AIR POLLUTION CONTROL

Sections:

- Article 1 - General Provisions
- Article 2 - Enforcement
- Article 3 - Air Pollution Control Board
- Article 4 - Source Emission Standards
- Article 5 - Permits and Inspection Fees

Article 1 - General Provisions

[Sec. 9-12-1 - Definitions.](#)

[Sec. 9-12-2 - Words and phrases substituted in state regulations adopted by reference.](#)

[Sec. 9-12-3 - Ambient air quality standards.](#)

[Sec. 9-12-4 - Open burning.](#)

[Sec. 9-12-5 - Good engineering practice stack height regulations.](#)

Sec. 9-12-1 - Definitions.

For the purpose of enforcement of the definitions, Chapter 1200-3-2, of the Tennessee Air Pollution

regulations, as effective on December 31, 2000, is adopted by reference as a portion of this code. Such regulations and/or all such additions, deletions, changes and amendments as may subsequently be made become a part of this code and shall have the same effect as if set out in full herein.

Additionally, the following definitions are adopted into this code:

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

"Odor" is the sensation of smell perceived as a result of olfactory stimulation. An odor is deemed objectionable, and therefore a nuisance, when one-third 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 must believe it to be objectionable.

(Ord. 4981 § 12, 12-17-02; Ord. 4867 § 1, 6-19-01; Ord. 4636 § 5, 12-15-98; Ord. 4320 § 1, 5-2-95; Code 1985 § 16-46; Ord. 3230 § 1(1), 8-3-82; Code 1967 § 3-1(A))

Sec. 9-12-2 - Words and phrases substituted in state regulations adopted by reference.

For the purpose of enforcement of this chapter, 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 Board," with the following exceptions:

Section this Code	State Regulations Section Adopted
9-12-23	1200-3-7.06
9-12-24	1200-3-6-.01
9-12-27	1200-3-14-.01(1)(a)
9-12-28	1200-3-11-.01(1)

B. Wherever the terms "Tennessee," "State of Tennessee," or "State" appear, they shall be replaced by "City of Memphis," with the following exceptions:

Section this Code	State Regulations Section Adopted
9-12-27	1200-3-14-.01(1)(a)

When referring to the Tennessee Code Annotated, and 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 Section 9-12-7(E)(2)(a) and (b) for the purposes of T.C.A. Section 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 Memphis Air Pollution Control Code."

G. Wherever the term "Nashville Office" appears, it shall be replaced by "Memphis Office."

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 1200-3-02," or other citations involving "1200-3-26" appear, they shall be replaced by "Sections 9-12-34 through 9-12-43."

(Ord. 5041 § 1(1), 2004; Ord. 4981 § 1, 12-17-02; Ord. 4636 § 1, 12-15-98; Ord. 4320 § 3, 5-2-95; Code 1985 § 16-48; Ord. 2921 § 1(5), 10-9-79; Code 1967 § 3-1.11)

Sec. 9-12-3 - Ambient air quality standards.

For the purpose of enforcement of the ambient air quality standards, Chapter 1200-3-3 of the Tennessee Air Pollution Control Regulations, as effective on December 31, 2000, is adopted by reference as a portion of this code. Such regulations and/or all such additions, deletions, changes and amendments as may subsequently be made shall become a part of this code and shall have the same effect as if set out in full herein.

(Ord. 4981 § 1, 12-17-02; Ord. 4867 § 1, 6-19-01; Ord. 4636 § 6, 12-15-98; Ord. 4320 § 4, 5-2-95; Code 1985 § 16-49; Ord. 2921 § 1(1), 10-9-79; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-6)

Sec. 9-12-4 - Open burning.

A. 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 this section.

B. 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:

1. 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;

2. Fires set for the training and instruction of firefighters 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:

- a. The open burning is being conducted solely for fire training purposes,
 - b. All vinyl siding, carpet, vinyl flooring, asphalt roofing materials, and any other materials expressly prohibited in subsection A of this section have been removed,
 - c. All regulated asbestos containing materials have been removed in accordance with Section 9-12-18, Reference 1200-3-11-.02(2)(d)3.(x),
 - d. A traffic hazard will not be caused by the air contaminants generated by the fire training,
 - e. A public nuisance will not be created by the open burning;
3. Smokeless flares or safety flares for the combustion of waste gases provided other applicable subsections of this section are met;
 4. 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;
 5. Fires for the burning of bodies of dead animals, including poultry, where no other safe and/or practical disposal method exists.
- C. Exceptions to subsection A of this section may be permitted for vegetation if all of the following conditions are met when an air curtain destructor is used:
1. 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;
 2. The person applying for the permit certifies, by written statement, compliance with following distance requirements, at a minimum:
 - a. The open burning site must be at least five hundred (500) feet from any federal and from any state highway,
 - b. 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
 - c. The open burning site must be at least one-half mile from any airport, nursing home or hospital;
 3. The plume from the air curtain destructor must meet the visible emission standards specified in Section 9-12-20, Reference 1200-3-5-.01(1); however, for certain materials the department may allow one start-up period in excess of the standard, per day, not to exceed twenty (20) minutes in twenty-four (24) hours;
 4. 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 No. 1 or No. 2 grade fuel oils;

5. 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;

6. Approval is received from the health officer in writing;

7. Permission is secured from the fire department in the jurisdiction involved;

8. The burning will be done between the hours of nine a.m. and four 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.

D. Definitions.

1. "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.

2. "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.

3. "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.

4. "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.

5. "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.

E. Burning After Natural Disasters.

1. Open burning of materials resulting from a natural disaster, and when conducted in conformity with the following conditions, may be permitted:

a. 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.

b. 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 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.

c. A traffic hazard will not be caused by the air contaminants generated by the fire.

d. 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.

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

2. 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 or her 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.

3. 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 T.C.A. Section 39-14-306, which prohibits open air fires between October 15th and May 15th within five hundred (500) feet of any forest, grasslands or woodlands without first securing a permit from the state forester in unincorporated portions of the county.)

(Ord. 4981 § 2, 12-17-02; Code 1985 § 16-50; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-16)

Sec. 9-12-5 - Good engineering practice stack height regulations.

For purposes of enforcement of the "Good Engineering Practice Stack Height Regulations," Chapter 1200-3-24 of the Tennessee Air Pollution Control Regulations, as effective December 31, 2000, is adopted by reference as a portion of this code. Such regulations and/or all such additions, deletions, changes and amendments as may subsequently be made shall become a part of this code and shall have the same effect as if set out in full herein.

(Ord. 4981 § 12, 12-17-02; Ord. 4867 § 1, 6-19-01; Ord. 4636 § 7, 12-15-98; Ord. 4320 § 5, 5-2-95; Ord. 3784 § 1, 8-2-88; Code 1985 § 16-52)

Article 2 - Enforcement

- [Sec. 9-12-6 - Notice–Citation–Injunctive relief.](#)
- [Sec. 9-12-7 - Penalties for noncompliance.](#)
- [Sec. 9-12-8 - Variances.](#)
- [Sec. 9-12-9 - Emergency powers of health officer.](#)
- [Sec. 9-12-10 - Emergency episode plan.](#)
- [Sec. 9-12-11 - Right of entry.](#)

Sec. 9-12-6 - Notice–Citation–Injunctive relief.

A. **Notice–Citation.** Whenever evidence has been obtained or received establishing that a violation of this chapter 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 chapter.

B. **Injunctive Relief.** 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.

(Code 1985 § 16-56; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-2)

Sec. 9-12-7 - Penalties for noncompliance.

A. Failure to comply with any of the provisions of the city air pollution control code shall constitute a violation thereof and shall subject the person or persons responsible therefor to any and all of the penalties provided by law.

B. 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:

1. Violates or fails to comply with any provision of the city air pollution control code, any board or administrative order or any permit condition;
2. 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;
3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed; or
4. 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 (\$10,000.00) 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 B of this section 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 T.C.A. Section 68-201-115, for a violation within its jurisdiction.

C. Willful and knowing violation of any provision of the city air pollution control code is declared to be a misdemeanor, and each day of violation shall constitute a separate offense. Conviction of a misdemeanor is punishable with the fine not to exceed ten thousand dollars (\$10,000.00) per day per violation or with imprisonment not greater than thirty (30) days, or both.

D. 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 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.

E. Orders and Assessments of Damages and Civil Penalties and Appeals.

1. When the health officer discovers that any provision of the city air pollution control code has been violated, the health officer may issue an order for correction to the responsible person, and this order shall be complied with within the time limit specified in the order. Such order shall be served by personal service or sent by certified mail, return receipt requested. The recipient of such an order may appeal in the same manner as with an assessment of damages or civil penalty under subdivision 2 of this subsection.

2.. In addition to the criminal penalties in this section, any person who violates or fails to comply with any provision of the city air pollution control code or any standard adopted pursuant thereto in a permit, shall be subject to a civil penalty of up to twenty-five thousand dollars (\$25,000.00) per day for each day of violation. Any person against whom an assessment in excess of ten thousand dollars (\$10,000.00) for each violation has been issued by a local pollution control program pursuant to this section may petition the technical secretary for de novo review of the assessment under the provisions of T.C.A. Section 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.

b. Any civil penalty or damages shall be assessed in the following manner:

i. The health officer on behalf of the Memphis-Shelby County health department operating under a certificate of exemption pursuant to T.C.A. Section 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;

ii. Any person against whom an assessment has been issued may appeal the

assessment by filing a petition for review with the health officer, or with the technical secretary of an assessment in excess of ten thousand dollars (\$10,000.00) for each violation, within thirty (30) days after receipt of the assessment, setting forth the grounds and reasons for such person's objections and requesting a hearing on the matter; and

iii. 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.

c. In assessing such civil penalty, the factors specified in T.C.A. Section 68-201-106 and Title 42 U.S.C. Section 7413 and Section 7420 may be considered. Damages to the state or to the city 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 air pollution control code.

d. 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 state Department of Environment and Conservation.

e. 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 the county if the final order or assessment is from the Memphis-Shelby County health department.

ii. When filed in accordance with subdivision (2)(e)(i) of this subsection, 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 T.C.A. Tit. 26, Ch. 6.

iii. Within forty-five (45) days after entry of a judgment under subdivision (2)(e)(ii) of this subsection, any citizen of the city 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 T.C.A. Section 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.

iv. A final judgment under this subsection has the same effect, is subject to the same procedures, and may be enforced or satisfied in the same manner, as any other

judgment of a court of record of this state.

(Ord. 4981 § 3, 12-17-02; Code 1985 § 16-57; Ord. 3230 § 1(2), 8-3-82; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-3)

Sec. 9-12-8 - Variances.

A. 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 Section 9-12-12(F) of the city 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 T.C.A. Section 68-201-115 if it finds that:

1. 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
2. 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.

B. 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.

C. Any variance or renewal thereof shall be granted within the requirements of subsection A of this section for time periods and under conditions consistent with the reasons therefor, and with the following limitations:

1. 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.
2. 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.
3. Any variance or renewal granted shall be for a time period not to exceed one year.

D. 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 therefor. 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.

E. A variance of 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.

F. 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 Sections 9-12-9 and 9-12-10 (Reference 1200-3-15) to any person or his or her property.

(Ord. 4981 § 4, 12-17-02; Code 1985 § 16-58; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-10)

Sec. 9-12-9 - Emergency powers of health officer.

A. Any other provision 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 Section 9-12-12, insofar as applicable. No 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.

B. In the absence of a generalized condition of air pollution of the type referred to in subsection A of this section, 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 or she may order the person responsible for the operation in question to reduce or discontinue operations immediately, without regard to the provisions of this chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in subsection A of this section shall apply.

(Code 1985 § 16-59; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-4)

Sec. 9-12-10 - Emergency episode plan.

For the purpose of enforcement of an emergency episode plan, Chapter 1200-3-15 of the Tennessee Air Pollution Regulations, as effective on December 31, 2000, is adopted by reference as a portion of this code. Such regulations and/or all such additions, deletions, changes and amendments as may subsequently be made shall become a part of this code and shall have the same effect as if set out in full herein.

(Ord. 4981 § 13, 12-17-02; Code 1985 § 16-60)

Sec. 9-12-11 - Right of entry.

For the purpose of carrying out the requirements of the city air pollution control code, the health officer and his or her authorized representatives, including engineers, assistants, environmentalists and other employees, shall be permitted at all reasonable times to enter into any manufacturing plants, business buildings or other buildings, and all lots, grounds and premises, in order to thoroughly examine any items in relation to public health and air pollution thereon and therein.

(Ord. 4981 § 5, 12-17-02; Code 1985 § 16-61)

Article 3 - Air Pollution Control Board

[Sec. 9-12-12 - Created—Membership—Terms of office—Jurisdiction—Hearing—Appeals.](#)

Sec. 9-12-12 - Created—Membership—Terms of office—Jurisdiction—Hearing—Appeals.

A. There is 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 subsections (A)(1) and (2) of this section. 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 state 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.

1. Eight members of the board are to be appointed jointly by the mayor of the city and the mayor of Shelby County and confirmed by both the city council and the Shelby County board of commissioners. These eight 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 the state, 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.

2. 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 representative of the municipalities of Arlington, Bartlett, Collierville, Germantown, Lakeland, and Millington and is to be a citizen of one of these communities.

B. 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, 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.

C. The board shall select annually a chairperson from among its members. The board shall hold at least four regular meetings each year and such additional meetings as the chairperson deems

necessary. All hearings conducted by the board shall be open to the public. The health officer 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.

D. The board is vested with the following jurisdiction and authority:

1. Grant, deny or revoke variance applications;
2. Grant, deny or revoke confidentiality protected status after a contested hearing pursuant to Section 9-12-14, Reference 1200-3-9.02(11)(d)1.(iii) or issue confidentiality protection orders to prevent public dissemination of secret formulae, processes or methods used in any manufacturing operation carried on by any person (or under such person's direction) required to furnish the department information required by the department in the discharge of its duties. Any person who petitions the department or the Memphis and Shelby County air pollution control board for a confidentiality protection order shall include in the petition information sufficient for the board to make the finding that the information for which the confidentiality protected status is sought is eligible for such status under Section 9-12-14, Reference 1200-3-9 and subsection (D)(2) of this section. The composition and quantity of air contaminants emitted from the source; the applicable requirements for the source and its compliance status with each applicable requirement; and the business name, address, and location of the source shall not be considered confidential. For the purpose of ensuring compliance, if a confidentiality protection order is granted, the protected information may be disseminated to the Tennessee Department of Environment and Conservation and/or to the Environmental Protection Agency, upon written request of an authorized representative of such agency;
3. To decide appeals from any decisions, rulings, or determinations of the health officer or his or her designated representative under this chapter;
4. To hear appeals arising from the failure of the health officer or his or her designated representative to act within a reasonable period on complaints under this chapter.

E. Any person taking exception to and who is uniquely affected by any decision, ruling, requirement, rule, regulation, or order of the health officer or by his or her 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 officer has acted under Section 9-12-9, emergency order or except when an appeal has been filed pursuant to Section 9-12-14, Reference 1200-3-9-.05(8). The board, not more than thirty (30) days after the date of filing an appeal, shall set a date for the hearing not more than sixty (60) days after the date of filing of the appeal and shall give notice thereof by mail to the interested parties.

F. Hearings before the board shall be conducted in the following manner:

1. 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.
2. The chairperson of the board shall act as the hearing examiner to conduct such hearing.

3. Any person seeking a variance or any party who has filed a written notice of appeal pursuant to this section or Section 9-12-14 [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.
4. All testimony shall be under oath and recorded. The board is authorized to have all testimony transcribed and a transcript of such testimony, if transcribed, shall be made available to the respondent or any party to the hearing upon payment of the normal fee, which shall not exceed the cost of transcribing such testimony.
5. 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.
6. 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.
7. The burden of proof shall be on the health officer or his or her duly authorized representative where appeal has been sought pursuant to this section or Section 9-12-14. The burden of proof is on the applicant where a variance has been sought pursuant to Section 9-12-8, in accordance with T.C.A. Section 68-201-118(k).
8. Any person aggrieved by any final order or determination of the board hereunder, including the health officer, shall have judicial review thereof by common law writ of certiorari. No judicial review shall be available until and after all administrative remedies have been exhausted.

(Ord. 5041 § 1(2–5), 2004; Ord. 4981 § 6, 12-17-02; Ord. 4867 § 1, 6-19-01; Ord. 4320 § 6, 5-2-95; Code 1985 § 16-71; Ord. 3230 § 1(5), 8-3-82; Ord. 1265 § 1, 4-25-72; Code 1967 § 13-35)

Article 4 - Source Emission Standards

[Sec. 9-12-13 - New source performance standards.](#)

[Sec. 9-12-14 - Construction and operating permits.](#)

[Sec. 9-12-15 - Process emission standards.](#)

[Sec. 9-12-16 - Nonprocess emission standards.](#)

[Sec. 9-12-17 - Volatile organic compounds.](#)

[Sec. 9-12-18 - Hazardous air contaminants.](#)

[Sec. 9-12-19 - Sulfur oxide emissions.](#)

[Sec. 9-12-20 - Visible emissions.](#)

[Sec. 9-12-21 - Particulate matter from incinerators.](#)

[Sec. 9-12-21.5 - Emission standards for existing hospital/medical/infectious waste incinerators \(HMIWI\).](#)

[Sec. 9-12-22 - Testing and monitoring air contaminant sources.](#)

[Sec. 9-12-23 - Test methods.](#)

[Sec. 9-12-24 - Malfunctions, startups and shutdowns.](#)
[Sec. 9-12-25 - Nuisance abatement.](#)
[Sec. 9-12-26 - Fugitive dust.](#)
[Sec. 9-12-27 - General alternative emission standards.](#)
[Sec. 9-12-28 - Lead emission standards.](#)
[Sec. 9-12-29 - Infectious waste incinerators.](#)
[Sec. 9-12-30 - Acid precipitation standard.](#)
[Sec. 9-12-31 - Case by case determinations of hazardous air pollutant control requirements.](#)
[Sec. 9-12-32 - Prevention of accidental releases.](#)
[Sec. 9-12-33 - Conformity.](#)

Sec. 9-12-13 - New source performance standards.

For the purpose of enforcement of the new source performance standards, Chapter 1200-3-16 of the Tennessee Air Pollution Control Regulations, as effective on December 31, 2000, is adopted by reference as a portion of this code. Such regulations and/or all such additions, deletions, changes and amendments as may subsequently be made shall become a part of this code and shall have the same effect as if set out in full herein.

(Ord. 4981 § 12, 12-17-02; Ord. 4867 § 1, 6-19-01; Ord. 4636 § 8, 12-15-98; Ord. 4320 § 7, 5-2-95; Code 1985 § 16-76)

Sec. 9-12-14 - Construction and operating permits.

For the purpose of enforcement of the construction and operating permits Chapter 1200-3-9 of the Tennessee Air Pollution Control Regulations, as effective on December 31, 2000, is adopted by reference as a portion of this code. Such regulations and/or all such additions, deletions, changes and amendments as may subsequently be made shall become a part of this code and shall have the same effect as if set out in full herein.

(Ord. 5041 § 1(6-8), 2004; Ord. 4981 § 12, 12-17-02; Ord. 4867 § 1, 6-19-01; Ord. 4636 § 9, 12-15-98; Ord. 4320 § 8, 5-2-95; Code 1985 § 16-77; Ord. 2671 § 1, 1-17-78; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-5)

Sec. 9-12-15 - Process emission standards.

For the purpose of enforcement of the process emission standards, Chapter 1200-3-7 of the Tennessee Air Pollution Control Regulations, as effective on December 31, 2000, is adopted by reference as a portion of this code. Such regulations and/or all such deletions, changes and amendments as may subsequently be made shall become a part of this code and shall have the same effect as if set out in full herein.

(Ord. 4981 § 12, 12-17-02; Ord. 4867 § 1, 6-19-01; Ord. 4636 § 10, 12-15-98; Ord. 4320 § 9, 5-2-95; Code 1985 § 16-78; Ord. 2921 § 1(8), 10-9-79; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-20)

Sec. 9-12-16 - Nonprocess emission standards.

For the purpose of enforcement of the nonprocess emission standards, Chapter 1200-3-6 of the Tennessee Air Pollution Control Regulations, as effective on December 31, 2000, is adopted by reference as a portion of this code. Such regulations and/or all such additions, deletions, changes and amendments as may subsequently be made shall become a part of this code and shall have the same effect as if set out in full herein.

(Ord. 4981 § 12, 12-17-02; Ord. 4867 § 1, 6-19-01; Ord. 4636 § 11, 12-15-98; Ord. 4320 § 10, 5-2-95; Code 1985 § 16-79; Ord. 2921 § 1(9), 10-9-79; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-21)

Sec. 9-12-17 - Volatile organic compounds.

For the purpose of enforcement of the volatile organic compounds, Chapter 1200-3-18 of the Tennessee Air Pollution Control Regulations, as effective on December 31, 2000, is adopted by reference as a portion of this code. Such regulations and/or all such additions, deletions, changes and amendments as may subsequently be made shall become a part of this code and shall have the same effect as if set out in full herein.

(Ord. 4981 § 12, 12-17-02; Ord. 4867 § 1, 6-19-01; Ord. 4636 § 12, 12-15-98; Ord. 4320 § 11, 5-2-95; Code 1985 § 16-79; Ord. 2921 § 1(10), 10-9-79; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-22)

Sec. 9-12-18 - Hazardous air contaminants.

For the purpose of enforcement of the hazardous air contaminants, Chapter 1200-3-11 of the Tennessee Air Pollution Control Regulations, as effective on December 31, 2000, is adopted by reference as a portion of this code. Such regulations and/or all such additions, deletions, changes and amendments as may subsequently be made shall become a part of this code and shall have the same effect as if set out in full herein.

(Ord. 4981 § 12, 12-17-02; Ord. 4867 § 1, 6-19-01; Ord. 4636 § 13, 12-15-98; Ord. 4320 § 12, 5-2-95; Code 1985 § 16-81; Ord. 2921 § 1(11), 10-9-79; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-25)

Sec. 9-12-19 - Sulfur oxide emissions.

For the purpose of enforcement of the sulfur oxide emissions, Chapter 1200-3-14 of the Tennessee Air Pollution Control Regulations, as effective on December 31, 2000, is adopted by reference as a portion of this code. Such regulations and/or all such additions, deletions, changes and amendments as may subsequently be made shall become a part of this code and shall have the same effect as if set out in full herein.

(Ord. 4981 § 12, 12-17-02; Ord. 4867 § 1, 6-19-01; Ord. 4636 § 14, 12-15-98; Ord. 4320 § 13, 5-2-95; Code 1985 § 16-82; Ord. 2761 § 1, 1-17-78; Ord. 1988 § 1, 3-19-74; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-24)

Sec. 9-12-20 - Visible emissions.

For the purpose of enforcement of the visible emissions, Chapter 1200-3-5 of the Tennessee Air Pollution Control Regulations, as effective on December 31, 2000, is adopted by reference as a portion of this code. Such regulations and/or all such additions, deletions, changes and amendments as may subsequently be made shall become a part of this code and shall have the same effect as if set out in full herein.

(Ord. 4981 § 12, 12-17-02; Ord. 4867 § 1, 6-19-01; Ord. 4636 § 15, 12-15-98; Ord. 4320 § 14, 5-2-95; Code 1985 § 16-83; Ord. 2921 § 1(7), 10-9-79; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-17)

Sec. 9-12-21 - Particulate matter from incinerators.

A. No person shall cause, suffer, allow or permit the emissions from any incinerator having a charging rate of two thousand (2,000) pounds per hour or less, fly ash or other particulate matter in

quantities exceeding two-tenth grains per cubic foot of flue gas at standard conditions corrected to twelve (12) percent carbon dioxide by volume excluding the contribution of auxiliary fuel.

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

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

D. 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.

E. 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.

F. No person shall use or cause to be used any incinerator unless all components connected 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.

G. Incinerators having two and five-tenths 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.

H. 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 (20) percent.

(Code 1985 § 16-84; Ord. 3230 § 1(4), 8-3-82; Ord. 1265 § 1, 4-25-72; Code 1967 § 3-23)

Sec. 9-12-21.5 - Emission standards for existing hospital/medical/infectious waste incinerators (HMIWI).

A. Definitions. As used in this section:

"Batch HMIWI" means an HMIWI that is designed such that neither waste charging nor ash removal can occur during combustion.

"Biologicals" means preparations made from living organisms and their products, including vaccines, cultures, and similar substances, intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining thereto.

"Blood products" means any product derived from human blood, including, but not limited to, blood plasma, platelets, red or white blood corpuscles, and other derived licensed products such as interferon and similar substances.

"Body fluids" means liquid emanating or derived from humans and limited to blood; dialysate; amniotic, cerebrospinal, synovial, pleural, peritoneal, and pericardial fluids; and semen and vaginal secretions.

"Bypass stack" means a device used for discharging combustion gases to avoid severe damage to the

air pollution control device or other equipment.

"Chemotherapeutic waste" means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

"Co-fired combustor" means a unit combusting hospital waste and/or medical/infectious waste with other fuels or wastes (for example coal, municipal solid waste) and, subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, ten (10) percent or less of the weight of which is comprised, in aggregate, of hospital waste and of medical/infectious waste as measured on a calendar quarter basis. For purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital waste and medical/infectious waste combusted.

"Continuous emission monitoring system" or "CEMS" means a monitoring system for continuously measuring and recording the emissions of a pollutant.

"Continuous HMIWI" means an HMIWI that is designed to allow waste charging and ash removal during combustion.

"Dioxins/furans" means the combined emissions of tetra-through octa-chlorinated dibenzo-paradioxins and dibenzofurans, as measured by EPA Reference Method 23.

"Dry scrubber" means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gases in the HMIWI exhaust stream forming a dry power material.

"Fabric filter" or "baghouse" means an add-on air pollution control system that removes particulate matter (PM) and nonvaporous metals emissions by passing flue gas through filter bags.

"Facilities manager" means the individual in charge of purchasing, maintaining, and operating the HMIWI or the owner's or operator's representative responsible for the management of the HMIWI. Alternative titles may include director of facilities or vice president of support services.

"High-air phase" means the stage of the batch operating cycle when the primary chamber reaches and maintains maximum operating temperatures.

"Hospital" means any facility that has an organized medical staff, maintains at least six inpatient beds, and where the primary function of the institution is to provide diagnostic and therapeutic patient services and continuous nursing care primarily to human inpatients who are not related and who stay on average in excess of 24 hours per admission. This definition does not include facilities maintained for the sole purpose of providing nursing or convalescent care to human patients who generally are not acutely ill but who require continuing medical supervision.

"Hospital/medical/infectious waste incinerator" or "HMIWI" or "HMIWI unit" means any device that combusts any amount of hospital waste and/or medical/infectious waste.

"Hospital/medical/infectious waste incinerator operator" or "HMIWI operator" means any person who operates, controls or supervises the day-to-day operation of an HMIWI.

"Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.

"Infectious agent" means any organism (such as a virus or bacteria) that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

"Intermittent HMIWI" means an HMIWI that is designed to allow waste charging, but not ash removal, during combustion.

"Large HMIWI" means:

1. Except as provided in paragraph 2 of this definition:
 - a. An HMIWI whose maximum design waste burning capacity is more than five hundred (500) pounds per hour; or
 - b. A continuous or intermittent HMIWI whose maximum charge rate is more than five hundred (500) pounds per hour; or
 - c. A batch HMIWI whose maximum charge rate is more than four thousand (4,000) pounds per day.
2. The following are not large HMIWI:
 - a. A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to five hundred (500) pounds per hour; or
 2. A batch HMIWI whose maximum charge rate is less than or equal to four thousand (4,000) pounds per day.

"Low-level radioactive waste" means waste material that contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.A.C. Section 2014(e)(2)).

"Malfunction" means any sudden, infrequent and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. During periods of malfunction the operator must operate within established parameters as much as possible, and monitoring of all applicable operating parameters must continue until all waste has been combusted or until thermal function ceases, whichever comes first.

"Maximum charge rate" means:

1. For continuous and intermittent HMIWI, one hundred ten (110) percent of the lowest three-hour average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.
2. For batch HMIWI, one hundred ten (110) percent of the lowest daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits.

"Maximum design waste burning capacity" means:

Title 9 - HEALTH AND SAFETY
 Chapter 9-100 - CITATIONS FOR HEALTH AND SANITATION VIOLATIONS

1. For intermittent and continuous HMIWI:

	C	=	$P^v \times 15,000/8,500$
W h e r e :			
	C	=	HMIWI capacity, lb/hr
	P_v	=	primary chamber volume, ft ³
	1 5 , 0 0	=	primary chamber heat release rate factor, Btu/ft ³ hr

Title 9 - HEALTH AND SAFETY
Chapter 9-100 - CITATIONS FOR HEALTH AND SANITATION VIOLATIONS