

## Chapter 6 AIR POLLUTION CONTROL<sup>1</sup>

### ~~Sec. 6-1. Definitions.~~

~~The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Act* means the Texas Clean Air Act (V.T.C.A., Health and Safety Code ch. 382).~~

~~*Air contaminant* means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.~~

~~*Air pollution* means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:~~

~~(1) Are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or~~

~~(2) Interfere with the normal use or enjoyment of animal life, vegetation, or property.~~

~~*Ambient air standards* means the standards for the outdoor atmosphere established in sections 6-8, 6-10, 6-25 and 6-26.~~

~~*Conditional operating certificate* means:~~

~~(1) A temporary operating certificate issued to an owner, lessee or operator of a property who is operating under a variance issued by the state board; or~~

~~(2) A temporary operating certificate issued by the control director to an owner, lessee or operator of a property who is operating under a variance not covered by the act or the rules and regulations of the state board.~~

~~*Control director* means the public works director or other official designated by the city manager, or his duly authorized deputy, agent or representative.~~

~~*Emission* means the release into the outdoor atmosphere of air contaminants.~~

~~*Person* means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.~~

~~*Property* means any freehold interest in land.~~

~~*Source* means a point of origin of air contaminants, whether privately or publicly owned or operated.~~

~~*State board* means the Texas Natural Resource Conservation Commission and the name under which it is now identified, the Texas Commission on Environmental Quality.~~

~~*Waste material* means refuse, garbage, rubbish, other solid or liquid wastes, and useless, unused, unwanted or discarded materials.~~

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<sup>1</sup>State law reference(s)—Power of city to control and abate air pollution in manner consistent with state law, V.T.C.A., Health and Safety Code § 382.113; Clean Air Financing Act, V.T.C.A., Health and Safety Code ch. 383; Clean Air Act, V.T.C.A., Health and Safety Code § 382.001 et seq.

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~~(Code 1982, § 3-2; Ord. No. 773, § 3(a)—(l), 6-28-1971)~~

### **~~Sec. 6-2. Penalty for violations.~~**

~~Any person who violates any provision of this chapter or of any operating certificate or conditional operating certificate issued hereunder is guilty of a misdemeanor.~~

~~(Code 1982, § 3-3; Ord. No. 773, § 16, 6-28-1971)~~

### **~~Sec. 6-3. Cooperation with state board.~~**

~~It is the policy of the city, to the extent possible under applicable laws and ordinances and within budgetary limitations, for the officials, agents and employees of the city to cooperate with the state board in the air pollution control work of the state board.~~

~~(Code 1982, § 3-4; Ord. No. 773, § 16, 6-28-1971)~~

~~State law reference(s)—Cooperative agreements, V.T.C.A., Health and Safety Code § 382.115.~~

### **~~Sec. 6-4. Enforcement—Authority of city.~~**

~~The city hereby elects to exercise the authority vested in it under the Texas Clean Air Act (V.T.C.A., Health and Safety Code ch. 382) relative to the enforcement of the act and this chapter.~~

~~(Code 1982, § 3-5; Ord. No. 773, § 16, 6-28-1971)~~

~~State law reference(s)—Authority of city to enforce ordinances for the control and abatement of air pollution, V.T.C.A., Health and Safety Code § 382.113.~~

### **~~Sec. 6-5. Same—Right of entry.~~**

~~The control director, his agents and employees are authorized to inspect the air and to go in and on public and private property within the area of his jurisdiction, as defined in section 6-12, to determine whether or not the level of any air contaminant in the area meets the level set for the air contaminant by the state board or by this chapter. The director, his agents and employees may make inspections in the same manner and under the same provisions and restrictions as are applicable to the state board to determine whether or not the emission of any air contaminant from any source meets the level set for the air contaminant by this chapter or by the state board, and whether or not a person is complying with this chapter or with the act or a rule, regulation, order or determination of the state board issued under the provisions of the act.~~

~~(Code 1982, § 3-6; Ord. No. 773, § 16, 6-28-1971)~~

~~State law reference(s)—Right of entry of local governments, V.T.C.A., Health and Safety Code § 382.111.~~

### **~~Sec. 6-6. Same—Authority of city attorney.~~**

~~The city attorney is authorized to institute and prosecute civil actions in the appropriate district courts, as provided in subchapters D and E of the act, for injunctive relief to prevent any further violations of this chapter or of the act or rules, regulations, determinations or orders of the board. Nothing herein deprives any official, agent or employee of the city, the same as any other private citizen, of the right to file a misdemeanor complaint for a violation of this chapter.~~

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(Code 1982, § 3-7; Ord. No. 773, § 16, 6-28-1971)

**~~Sec. 6-7. Methods and procedures for measuring.~~**

~~When not otherwise specified in this chapter, the procedures used for sampling air, for determining the concentrations of air contaminants in the atmosphere and for measuring emissions of air contaminants from any source, and the methods of expressing the findings, shall be those commonly accepted and employed by recognized authorities in the air pollution control field.~~

~~(Code 1982, § 3-8; Ord. No. 773, § 13, 6-28-1971)~~

~~State law reference(s)—Investigation of air pollution conditions, V.T.C.A., Health and Safety Code § 382.022.~~

**~~Sec. 6-8. State board regulations—Adopted.~~**

~~The city hereby adopts, as the ambient air and emission standards for control of air pollution within the area within the boundaries and jurisdiction of the city, the regulations set forth in 30 Tex. Admin. Code chs. 101 and 111—118 and all amendments as may be hereafter adopted, by the state board. To the extent of any conflict between the regulations and this chapter, the regulations of the state board shall prevail.~~

~~(Code 1982, § 3-9; Ord. No. 773, § 11, 6-28-1971)~~

~~State law reference(s)—Rule-making powers of state board, V.T.C.A., Health and Safety Code § 382.017.~~

**~~Sec. 6-9. Same—Copy filed.~~**

~~The control director shall file a certified copy of the regulations adopted in the preceding section, certified by the executive secretary of the state board, with the city secretary, who shall maintain same as a public record available for inspection.~~

~~(Code 1982, § 3-10; Ord. No. 773, § 11, 6-28-1971)~~

**~~Sec. 6-10. Same—Additional regulations.~~**

~~The city hereby expressly reserves the power to adopt regulatory ordinances on any aspect of the subject dealt with in the regulations adopted in this chapter and any other air contaminant to the extent not covered therein. The city also expressly reserves the privilege of adopting and using such methods of measuring the levels of air contaminants in the atmosphere and the emissions from any source as are authorized in the regulations.~~

~~(Code 1982, § 3-11; Ord. No. 773, § 11, 6-28-1971)~~

~~State law reference(s)—Scope of regulation of air pollution by city, V.T.C.A., Health and Safety Code § 382.113.~~

**~~Sec. 6-11. Air pollution control division.~~**

~~There is hereby created an air pollution control division in the department of public works.~~

~~(Code 1982, § 3-12; Ord. No. 773, § 2, 6-28-1971)~~

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### **Sec. 6-12. Jurisdiction of control director.**

For purposes of enforcing the standards prescribed in this chapter, the control director has jurisdiction within the corporate limits of the city, referred to in this chapter as the "base area," and within 5,000 feet beyond the corporate limits of the city to abate any nuisance arising from the violation of this chapter.

(Code 1982, § 3-13; Ord. No. 773, § 6, 6-28-1971)

State law reference(s)—Territorial jurisdiction of nuisance abatement power, V.T.C.A., Local Government Code § 217.042.

### **Sec. 6-13. General prohibition.**

No person may cause, suffer, allow or permit the emission of any air contaminant identified in sections 6-8 through 6-10 within the jurisdictional area of the city, as defined in the preceding section, except as provided in this chapter.

(Code 1982, § 3-14; Ord. No. 773, § 14, 6-28-1971)

State law reference(s)—Unauthorized emissions, V.T.C.A., Health and Safety Code § 382.085.

### **Sec. 6-14. Duties of control director.**

The control director shall perform or cause to be performed the following duties:

- (1) Administer and enforce all laws, ordinances, rules and regulations pertaining to air pollution as provided in this chapter;
- (2) Request that necessary legal proceedings be instituted to prosecute violations of this chapter and compel the prevention and abatement of air pollution or of a nuisance arising therefrom;
- (3) Examine and approve, or disapprove, the plans for:
  - a. Equipment for the commercial burning of waste material or for the burning of waste material collected by the city waste material collection system;
  - b. Equipment designed for burning fuel in commercial and industrial activities; and
  - c. Equipment installed, repaired, constructed, reconstructed, altered or added to, to control or reduce air pollution from commercial, industrial, manufacturing and municipally operated activities, other than from motors and engines used in propelling land, water and air vehicles;
- (4) Make periodic inspections of the equipment described in subsection (3) of this section to determine whether it is in compliance with the provisions of this chapter;
- (5) Investigate complaints of violations of this chapter, make inspections of sources and ambient air conditions and maintain a record of the investigations, complaints, inspections and observations conducted;
- (6) Promulgate such rules and regulations as may be reasonable and necessary to carry out the intent of this chapter to ensure all sources of air pollution within the control director's jurisdiction comply with the standards in this chapter. A copy of such rules and regulations shall be filed with the city secretary and shall constitute a public record;
- (7) Encourage voluntary cooperation by persons and affected groups in the preservation and regulation of the purity of the outdoor atmosphere;

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- ~~(8) Collect and disseminate information to the public on air pollution;~~
  - ~~(9) Work with planning and zoning agencies for the purpose of coordinating activities under the provisions of this chapter with planning and zoning activities, and foster the best possible management of the air resources of the city;~~
  - ~~(10) Cooperate and work with federal, state, county, municipal and other agencies concerned with air pollution to ensure that the air resources of the city will be conserved and improved; and~~
  - ~~(11) Perform such other functions as may be necessary to carry out effectively the duties and responsibilities imposed on the control director in this chapter.~~

~~(Code 1982, § 3-15; Ord. No. 773, § 4, 6-28-1971)~~

~~State law reference(s)—Cooperative agreements, V.T.C.A., Health and Safety Code § 382.115.~~

### **~~Sec. 6-15. Required data.~~**

~~The control director may, from time to time, require the owner, lessee or operator of all sources and suspected sources in the city's base area to submit data on the sources for the purpose of evaluating the air pollution potential within the base area.~~

~~(Code 1982, § 3-16; Ord. No. 773, § 7, 6-28-1971)~~

~~State law reference(s)—Power of city to enforce air pollution ordinance, V.T.C.A., Health and Safety Code § 382.113.~~

### **~~Sec. 6-16. Confidentiality of information.~~**

~~Any data and information identified as confidential when submitted under this chapter, relating to secret processes or methods of manufacture or production, shall not be disclosed without the written consent of the person submitting it.~~

~~(Code 1982, § 3-17; Ord. No. 773, § 7, 6-28-1971)~~

### **~~Sec. 6-17. Operating certificate—Required.~~**

~~The owner, lessee or operator of every property within the base area of the city on which a source is located who makes or continues to make emissions after the time of the adoption of this chapter shall apply to the control director for an operating certificate.~~

~~(Code 1982, § 3-18; Ord. No. 773, § 8, 6-28-1971)~~

~~State law reference(s)—Operating permit under Clean Air Act, V.T.C.A., Health and Safety Code § 382.054 et seq.~~

### **~~Sec. 6-18. Same—Contents of application.~~**

~~An application for an operating certificate shall be signed by the holder, lessee or operator of the property or his agent and, in addition to any other information which the control director may reasonably require, shall contain:~~

- ~~(1) The name and address of the applicant; if the applicant is other than an individual, the application shall also give the name and address of the chief executive officer of the organization and the name, address and title of the person in charge of, or responsible for, the property on which the source is located;~~

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- ~~(2) The address or location of the property on which the source is located;~~
  - ~~(3) The nature of the process or activity which results or will result in the emissions; and~~
  - ~~(4) A general description of the quality, characteristics or nature of the air contaminants emitted or to be emitted.~~

~~(Code 1982, § 3-19; Ord. No. 773, § 8, 6-28-1971)~~

### **~~Sec. 6-19. Same—Inspection.~~**

~~After receipt of an application for an operating certificate, the control director shall, within a reasonable time, make or cause to be made an inspection to verify conditions of the emissions covered in the application.~~

~~(Code 1982, § 3-20; Ord. No. 773, § 8, 6-28-1971)~~

~~State law reference(s)—Air pollution inspections by local governments, V.T.C.A., Health and Safety Code § 382.111.~~

### **~~Sec. 6-20. Same—Action by control director.~~**

~~The control director shall notify the applicant, in writing, whether or not his application for an operating certificate has been approved. If the source upon which the application is based complies with the act and this chapter, the control director shall issue an operating certificate to the applicant; or, if the applicant shall have received a variance under the act and the rules and regulations of the state board with regard to such source, the control director shall issue a conditional operating certificate to the extent authorized by the variance to the applicant; or, if the applicant shall have received a variance to this chapter under section 6-21, the control director shall issue a conditional operating certificate to the extent authorized by such variance.~~

~~(Code 1982, § 3-21; Ord. No. 773, § 8, 6-28-1971)~~

### **~~Sec. 6-21. Variance by control director—Authorized.~~**

~~Whenever it is found by the control director, upon presentation of adequate proof, that compliance with any provision of this chapter will result in an arbitrary or unreasonable taking of property or in the practical closing or elimination of any lawful business, occupation or activity, in either case without corresponding benefit or advantage to the owner, lessee or operator of such business, occupation or activity, the control director may grant individual variances beyond the limits provided in this chapter with such variances pertaining only to air contaminants which are not regulated by the act or rules, regulations or orders of the state board.~~

~~(Code 1982, § 3-22; Ord. No. 773, § 5, 6-28-1971)~~

~~State law reference(s)—Grant of variance, V.T.C.A., Health and Safety Code § 382.028.~~

### **~~Sec. 6-22. Same—Duration; revocation.~~**

~~Any variance granted pursuant to the preceding section shall be granted for such period of time as shall be specified by the control director at the time of the grant and may be revoked by the control director upon the failure of the holder of such variance to abide by and operate in accordance with the terms and conditions of such variance.~~

~~(Code 1982, § 3-23; Ord. No. 773, § 5, 6-28-1971)~~

**Sec. 6-23. Revocation of operating certificate.**

The control director shall revoke or suspend an operating certificate or conditional operating certificate upon the failure of the holder of the certificate to comply with the provisions of this chapter. The control director shall also remove or suspend the conditional operating certificate of a holder thereof, whose variance issued by the state board or by the control director either expires or is suspended, revoked or otherwise terminated. Such notice of such revocation or suspension shall be in writing and may be served upon the holder of such certificate by depositing a copy thereof in the United States mail, addressed to such holder at his last known address.

(Code 1982, § 3-24; Ord. No. 773, § 9, 6-28-1971)

State law reference(s)—Revocation of operating permit, V.T.C.A., Health and Safety Code § 382.059.

**Sec. 6-24. Appeal from denial or revocation of operating certificate.**

(a) Any person denied an operating certificate or whose operating certificate or conditional operating certificate has been revoked or suspended has the right to appeal to the city council.

(b) The appeal shall be in writing and shall be filed with the city secretary within ten days after the date of issuance of the notice of the denial of the application for an operating certificate or the notice of revocation or suspension of any operating certificate or conditional operating certificate.

(c) Within 15 days after the appeal is filed with the city secretary, the city council shall order a hearing before the city council to determine whether to sustain the action of the control director or to modify it in any particular manner.

(Code 1982, § 3-25; Ord. No. 773, § 10, 6-28-1971)

State law reference(s)—Judicial review under Clean Air Act, V.T.C.A., Health and Safety Code § 382.032.

**Sec. 6-25. Air contaminants and activities not covered by state board regulations.**

The city adopts ambient air and emission standards for the air contaminants and activities specified in this chapter for the base area of the city.

(Code 1982, § 3-26; Ord. No. 773, § 12, 6-28-1971)

State law reference(s)—Scope of regulation of air pollution by city, V.T.C.A., Health and Safety Code § 382.113.

**Sec. 6-26. Specific air contaminants.**

(a) *Maximum concentrations.* The maximum acceptable concentration in the ambient air of this city of each air contaminant named in column I is set forth in column II of the following table. The maximum acceptable emission in the air of this city of each air contaminant named in column I is set forth in column III. When the emission is measured by a high volume air sampler, the level of emission shall be determined on the basis of the difference between the upwind level and the downwind level of the air contaminant for the property.

	<i>Column I</i>	<i>Column II</i>	<i>Column III</i>
(1)	Sulfuric acid mists	12 µg/m <sup>3</sup> ; 24-hour average not to be exceeded on more than 1 day in any month	

		30 µg/m <sup>3</sup> : 1-hour average not to be exceeded during more than 1 hour in any week	
(2)	Lead compounds	5 µg/m <sup>3</sup> of air average over any 30-day period	5 µg/m <sup>3</sup> of air average over any 30-day period
(3)	Hydrogen fluoride	1 ppm of air by volume over any 24-hour period	0.5 ppb of air by volume
(4)	Beryllium	0.01 µg/m <sup>3</sup> of air average over any 24-hour period	0.01 µg/m <sup>3</sup> of air average over any 24-hour period
(5)	Hydrocarbons: Total hydrocarbons shall be the sum of the concentrations of C and higher saturated and unsaturated hydrocarbons as measured by gas chromatography	3.0 ppm—total hydrocarbons	(a) Nonmethane hydrocarbons 1.5 ppm
(6)	Carbonyls: Total carbonyls shall include aldehydes and ketones calculated as formaldehydes. Each carbonyl group is deemed equivalent to 1 molecule of formaldehyde		10 ppm of air by volume
(7)	Odors: Procedures for measurement shall be those specified in "Standard Method for Measurement of Odor in Atmospheres," American Society for Testing and Materials (ASTM) 1391-57		2-odor units determined after dilution of the emission being measured with an equal volume of odor-free air
(8)	Carbon monoxide		10 ppm for 8 hours or 30 ppm for 1 hour
(9)	Ozone		0.01 ppm (1-hour average) not to be exceeded on more than 3 days per year

(b) *Visible emissions.* A person shall not discharge into the atmosphere from any single source of emission whatsoever any air contaminants which are:

(1) As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart, as published by the U.S. Bureau of Mines; or

(2) Of such opacity as to obscure an observer's view to a degree equal to or greater than smoke described in subsection (10)a of this section.

(c) *Particulate matter from certain activities.* Open storage and open processing operations, including on-site transportation movements, which are the source of windborne dust or other particulate matter, and the operation of equipment which generates suspended particulate matter, such as that used in paint spraying, grain handling and/or gravel processing or storage, or sandblasting, shall be so conducted that dust and other particulate matter are not transported across the boundary line of the property on which the operation is conducted in concentrations exceeding the limits specified in Regulation 1 of the state board.



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~~(Code 1982, § 3-27; Ord. No. 773, § 12, 6-28-1971)~~

**Sec. 6-27. [Clean fleet vehicle policy.]**

- (a) Vehicle acquisitions for fleet expansion or replacement of model year 2004 or newer, shall be newest model year or engine standard only. Vehicle acquisitions to replace model year 2003 or older vehicles must show at least a 25 percent reduction in the Nitrogen Oxides (NOx) emissions rate compared to the vehicle being replaced. (Waivers are possible when new technologies or achievements of the required emission reduction are not available). Aftermarket technologies and conversions are acceptable for fleet expansion and fleet replacements. Aftermarket technologies and conversions must be Environment Protection Agency (EPA) and/or CARB verified or certified or technology equivalent or better, as determined by the North Central Texas Council of Governments (NCTCOG) staff. Conversions must comply with the provisions of EPA Memorandum 1A and Addendum Revision (June 25, 1974 and June 1, 1998).
- (b) Vehicle idling is allowed only for safety, emergency response, vehicle maintenance, equipment activity, warm-up/operations in cold temperature, and manufacturer recommended minimum idle/warm-up times. Vehicles with the lowest NOx emissions that are capable of performing the required operational demands shall drive the most miles. Fleet manager shall abide by latest refueling time/season guidance published by NCTCOG Air Quality Planning. Non-emergency vehicles shall drive no more than the posted speed limit and avoid rapid acceleration. All vehicle operators shall be trained on air quality appropriate operational requirements.
- (c) Perform annual emission and safety inspections for all vehicles, even for vehicles with no state mandated inspection requirement. All vehicles with over 100,000 miles must have emission inspections every 25,000 miles thereafter. Perform manufacturer's recommended maintenance. Optional participation in any diesel or other Texas Commission on Environmental Quality (TCEQ) or NCTCOG inspection/maintenance program, including applicable test or pilot programs.
- (d) Public sector entity shall provide NCTCOG with an annual electronic update of fleet size and activity in a format established by NCTCOG. The City of McKinney acknowledges that entities not adopting and complying with the clean fleet vehicle policy and/or reporting requirements will not be eligible for future clean vehicle funding and RTC may assess the City of McKinney's compliance when considering other RTC funding actions.
- (e) The provisions of this article shall be enforced by the executive director of public works and his/her duly appointed representative(s). All procedures shall comply with the city's fleet management policy, and be evaluated to ensure each procedure is deemed in the best financial and operational interest of the city.

(Ord. No. 2007-11-110, §§ 1—5, 11-6-2007)

Editor's note(s)—Ord. No. 2007-11-110, §§ 1—5, adopted November 6, 2007, set out provisions pertaining to the clean fleet vehicle policy not specifically amending the Code, hence inclusion as § 6-27 is at the discretion of the editor.