

AN ORDINANCE to amend The Code of the City of Alexandria, Virginia, 1963, as amended, by adding thereto a new Chapter designated 3B; which Chapter 3B relates to THE CONSERVATION OF AIR RESOURCES, THE PREVENTION, ABATEMENT, REGULATION AND CONTROL OF AIR POLLUTION AND PROVIDES PENALTIES FOR VIOLATIONS.

WHEREAS, the presence in the outdoor atmosphere of smoke, air contaminants and pollutants in sufficient quantities and under certain conditions is likely to be injurious to the public health, safety and welfare; and

WHEREAS, it is hereby declared to be the public policy of the City of Alexandria, Virginia to preserve, protect and improve the air resources within the City and prevent air pollution within the City so as to preserve the public health, safety and welfare and protect against injury; and

WHEREAS, it is also hereby declared to be the public policy of the City of Alexandria, Virginia to cooperate to the maximum extent possible with similar air pollution control programs of other local jurisdictions, the Commonwealth of Virginia and the Federal Government; therefore

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended, by adding thereto a new Chapter designated 3B to read as follows:

CHAPTER 3B

AIR POLLUTION CONTROL

Sec. 3B-1. Short title.

This chapter shall be known and may be cited as the "Air Pollution Control Code" of the City of Alexandria, Virginia.

Sec. 3B-2. Definitions.

Unless otherwise expressly stated or the context clearly indicates a different intention, the following terms shall, for the purpose of this chapter, have the meanings indicated in this section:

Air Pollution. The presence in the outdoor atmosphere of one or more substances put there by man or man-made devices in concentration sufficient to cause an unreasonable interference with human, plant or animal life or the reasonable use of property.

Control Equipment. Any equipment which has the function of controlling the emissions from a process, fuel-burning, or refuse-burning equipment and thus reduces the creation of, or the emission of air contaminants into the atmosphere, or both.

Director. The Director of the Department of Public Health or his duly authorized agent.

Engineer. The head of the Division of Smoke Control appointed pursuant to Chapter 31 of The Code of the City of Alexandria, Virginia, 1963, as amended, or his duly authorized agent.

Fuel-burning Equipment. Any equipment, device, or contrivance and all appurtenances thereto, including ducts, breechings, fuel feeding equipment, ash removal equipment, combustion controls, stacks and chimneys, used primarily but not exclusively, to burn any fuel for the purpose of indirect heating in which the material being heated is not contacted by and adds no substance to the products of combustion.

Incinerator. Any equipment, device or contrivance used for the destruction of garbage, rubbish or other wastes by burning, and all appurtenances thereof.

Nuisance. Environmental conditions, intermittent or continuous, produced or correctible by human agency, prejudicial to reasonable enjoyment of health, comfort or safety by any individual or causing injury or damage to persons, property or the conduct of business.

Opacity. The state of a substance which renders it partially or wholly impervious to rays of light. Opacity as used in this chapter refers to the obscuration of an observer's view.

Open Fire. A fire in which any material is burned in the open or in a receptacle other than a furnace, incinerator, or other equipment connected to a stack.

Owner. The State, a county, sanitary district, municipality, political subdivision, a public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or county, lessee or person otherwise in possession of property, person or individual, or group of persons or individuals, acting individually or as a group.

Particulate Matter. Material, other than uncombined water, which is or has been suspended in air or other gases and is a liquid or a solid at standard conditions of temperature (68° Fahrenheit) and pressure (14.7 pounds per square inch absolute.)

Process Weight. The total amount of all material introduced into an industrial operation, including fuels and air introduced for purposes of combustion.

Process Weight per Hour.

(1) For continuous or long-term operation: the total process weight for the entire period of operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(2) For batch operation: the total process weight for a period which covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such period.

Ringelmann Smoke Chart. A chart for grading the appearance, density, or shade of smoke, as published, with instructions for use, by the U. S. Bureau of Mines in Information Circular 8333, dated May 1967. Any other method for grading smoke which is approved by the Director and the Engineer as the equivalent of the Ringelmann Chart may be substituted therefor.

Salvage Operation. Any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.

Smoke. Small gas-borne particles, resulting from incomplete combustions, consisting predominantly but not exclusively of carbon, ash and other material in concentrations sufficient to form a visible plume.

Source. Any physical arrangement, condition or structure which may emit air pollutants.

Sec. 3B-3. Visible emissions prohibited.

It shall be unlawful for any owner to discharge or cause, allow or suffer the discharge into the outdoor atmosphere from any single source of emission whatsoever any air pollutant

which is 1) darker in shade than that designated as No. 2 on the Ringelmann Smoke Chart or 2) of such opacity as to obscure an observer's view to a degree greater than does smoke designated as No. 2 on the Ringelmann Smoke Chart; provided however that if a person can show to the satisfaction of the director that an emission of air pollutants contains less than 0.10 pound of particulate matter per 1,000 pounds of dry exhaust gas, adjusted to 12 per cent carbon dioxide for fuel-burning equipment or 50 per cent excess air for incinerators, this limitation shall not apply.

Sec. 3B-4. Emission of particulate matter prohibited.

a. It shall be unlawful for any owner to emit or cause, allow or suffer to be emitted into the outdoor atmosphere from any fuel-burning equipment or premises, or to pass a convenient measuring point near the stack outlet, particulate matter in the flue gases to exceed 0.60 pound per 1,000,000 B.T.U.'s per hour total input for installations using less than ten million B.T.U.'s per hour total input. For installations using greater than ten million B.T.U.'s per hour total input, Figure 1 will be used to determine the allowable particulate emission limitation.

b. The burning of refuse in fuel-burning equipment is prohibited except in equipment from which no visible emissions in excess of that permitted by Section 3B-3 and no particulate matter in excess of that permitted by Section 3B-4 are emitted, and no odors arising from the installation are observable beyond the premises on which the installation is located.

c. It shall be unlawful for any owner to emit or cause, allow or suffer to be emitted into the outdoor atmosphere from any incinerator or premises, or to pass a convenient measuring point near the stack outlet particulate matter to exceed 0.65 pound per 1,000 pounds of the flue gas, adjusted to 50 per cent excess air and calculated as if no auxiliary fuel has been used.

d. The maximum allowable emission of particulate matter from any source whatever except fuel-burning equipment and incinerators shall be determined from Table 1. Where the process weight per hour falls between two values in the table, the maximum weight discharged per hour shall be determined by linear interpolation. When the process weight is in excess of 60,000 pounds per hour, there shall not be discharged in any one hour from any source whatsoever particulate matter in excess of 0.066 per cent of the process weight per hour.

e. Stack emission test for particulate matter shall be undertaken by generally recognized standards or methods of measurement. Methods found in the A.S.M.E. Test Code for Dust Separating Apparatus, PTC 21-1941, the A.S.M.E. Test Code for Determining Dust Concentrations in Gas Streams, PTC 27-1957, and the Los Angeles County Source Testing Manual shall be used.

f. No owner shall cause or permit any materials to be handled, transported or stored without taking reasonable precautions to prevent particulate matter from becoming airborne.

Sec. 3B-5. Emissions of gases, vapors and odors prohibited.

a. It shall be unlawful for any owner to cause, suffer or allow any emissions of gases, vapors or odors beyond the property line from which such emissions occur, to be in sufficient quantities and of such characteristics and duration as is or is likely to be injurious to the public welfare, to the health of human plant or animal life, or to property, or which interferes with the enjoyment of life and property.

b. It shall be unlawful for any owner to use or cause, suffer or allow the use of fuels the sulphur content of which exceeds one and one-half per cent by weight.

On or after July 1, 1969 it shall be unlawful for any owner to use or cause, suffer or allow the use of fuels the sulphur content of which exceeds one per cent by weight.

c. In the absence of appropriate control measures no owner shall use products which, either by themselves or due to additives or impurities, result in air pollution.

Sec. 3B-6. Open burning prohibited.

It shall be unlawful for any owner to light, kindle, set, conduct or cause any open fire within the city except as hereinafter set forth.

figure - 1

MAXIMUM EMISSION OF PARTICULATE MATTER
FROM FUEL BURNING INSTALLATIONS

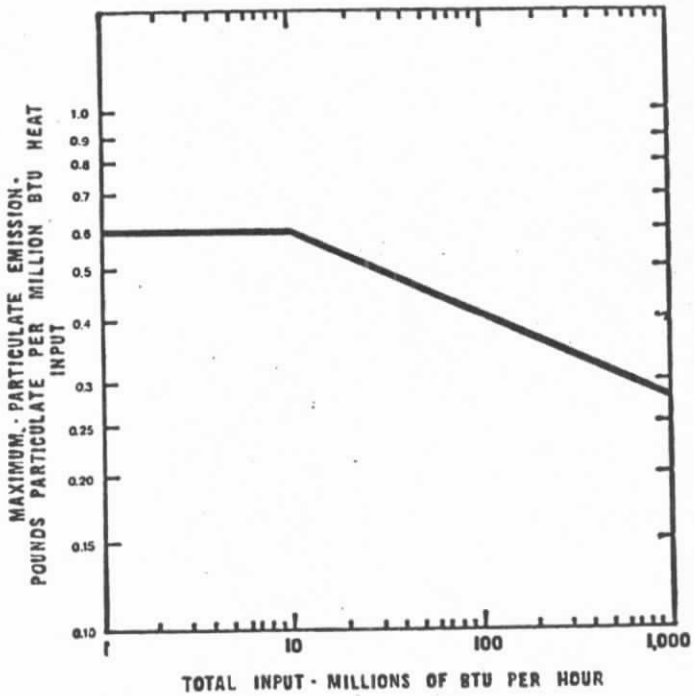


TABLE 1

<i>Process Wt/hr. (lbs)</i>	<i>Maximum Weight Disch/hr (lbs)</i>	<i>Process Wt/hr (lbs)</i>	<i>Maximum Weight Disch/hr (lbs)</i>
50	0.24	3400	5.44
100	0.46	3500	5.52
150	0.66	3600	5.61
200	0.85	3700	5.69
250	1.03	3800	5.77
300	1.20	3900	5.85
350	1.35	4000	5.93
400	1.50	4100	6.01
450	1.63	4200	6.08
500	1.77	4300	6.15
550	1.85	4400	6.22
600	2.01	4500	6.30
650	2.12	4600	6.37
700	2.24	4700	6.45
750	2.34	4800	6.52
800	2.43	4900	6.60
850	2.53	5000	6.67
900	2.62	5500	7.03
950	2.72	6000	7.37
1000	2.80	6500	7.71
1100	2.97	7000	8.05
1200	3.12	7500	8.39
1300	3.26	8000	8.71
1400	3.40	8500	9.03
1500	3.54	9000	9.36
1600	3.66	9500	9.67
1700	3.79	10000	10.00
1800	3.91	11000	10.63
1900	4.03	12000	11.28
2000	4.14	13000	11.89
2100	4.24	14000	12.50
2200	4.34	15000	13.13
2300	4.44	16000	13.74
2400	4.55	17000	14.36
2500	4.64	18000	14.97
2600	4.74	19000	15.58
2700	4.84	20000	16.19
2800	4.92	30000	22.22
2900	5.02	40000	28.30
3000	5.10	50000	34.30
3100	5.18	60000	40.00
3200	5.27		
3300	5.36		

Sec. 3B-7. Open burning exceptions.

Open burning may be conducted as follows, except during an air pollution alert as described in Section 3B-8.

- a. For the cooking of food, provided no nuisance is created by smoke.
- b. For heating by construction or other workers, salamanders or other devices may be used, provided no nuisance is created by smoke.
- c. In the performance of any official duty of any public officer if the fire is necessary for one or more of the following reasons or purposes:
 - (1) For the prevention of a fire hazard which cannot be abated by other means.
 - (2) For the instruction of public fire fighters under supervision of the fire department.
 - (3) For the protection of the public health.

d. For the burning of leaves in those areas where provision for public collection of leaves is not made; provided the burning takes place in a covered metal, stone, brick or concrete container, and further provided no nuisance is created by smoke.

e. For the clearing of land provided a permit is first obtained from the director and the chief of the fire prevention bureau, and further provided no nuisance is created by smoke. The director and chief of the fire prevention bureau shall not issue permits in any such instance where by recognized standards a fire hazard or air pollution hazard would exist. The chief of the fire prevention bureau and the director shall in any such permit set forth the conditions of and the manner under which any such burning shall be conducted.

f. Bonfires for the community burning of Christmas trees and greens when conducted under the supervision of the chief of the fire prevention bureau.

g. During the existence of an air pollution alert all exceptions but a. above are void and all open fires shall be extinguished and no open fires, except for the type mentioned in a. above shall be lighted, kindled, set, conducted or caused.

Sec. 3B-7.1. Exceptions generally.

Nothing in this Chapter shall be construed to prohibit the construction, reconstruction, repair or use of an interior fireplace of residential character for the residential-type uses of heat, light or display.

Sec. 3B-8. Air pollution alert.

Whenever the director finds that the nitrogen oxide level, the nitrogen dioxide level or the sulphur dioxide level, or the level of any combination of these, of the air at any testing station in the city has reached or has exceeded 0.15 parts per million of air he may declare an air pollution alert. Whenever the director is advised by the United States Weather Bureau that a condition commonly known as thermal inversion exists over the city or is expected to exist over the city within twenty-four hours, he may declare an air pollution alert if in his professional judgment he has reason to believe that within twenty-four hours or sooner the nitrogen oxide level, the nitrogen dioxide level, the sulphur dioxide level, or the level of any combination of these, of the air at any testing station in the city will reach or exceed 0.15 parts per million of air. Whenever the director declares an air pollution alert he shall announce it immediately to the area radio and television stations and newspapers so that the public will be informed.

Whenever the director finds that the nitrogen oxide level, the nitrogen dioxide level and the sulphur dioxide level of the air at any testing station in the city has dropped below 0.15 parts per million of air and in his professional judgment has reason to believe that the levels will not reach or exceed 0.15 parts per million within forty-eight hours, he shall declare an end to the alert and announce it immediately to the area radio and television stations and newspapers.

Sec. 3B-9. Operation of equipment.

a. General. Any equipment that may produce air pollutants shall not be operated or maintained in such a manner that a nuisance is created. Nothing in this section of this chapter relating to regulation of emission of air contaminants shall in any manner be construed as authorizing or permitting the creation or maintenance of a nuisance.

b. Malfunction of equipment. Emissions exceeding any of the limits established in this chapter as a direct result of unusual conditions in or malfunction of any incinerator or any process, fuel-burning, or control equipment or related operating equipment beyond the control of the person owning or operating such equipment shall not be deemed to be in violation of this section, provided that the owner or operator advises the director within forty-eight hours of the circumstances and outlines a corrective and preventive program acceptable to the director.

c. Circumvention. No owner shall build, erect, install or use any article, equipment or other contrivance the sole purpose of which is to conceal an unlawful emission without resulting in a reduction in the total release of air pollutants into the atmosphere.

Sec. 3B-10. Administration.

The director shall be charged with administering and enforcing the provisions of this chapter.

The engineer and the director shall whenever possible coordinate their activities to the end that the air resources of the City are preserved, protected and improved and air pollution is regulated, prevented, abated and controlled.

The director shall at all times be available to the engineer for consultation and help and the engineer shall at all times be available to the director for consultation and help.

In addition to any other powers invested in him, the director may, subject to the availability of funds;

- a. Conduct studies, investigations and research relating to air pollution and its prevention, abatement and control;
- b. Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings;
- c. Hold hearings relating to any aspect of or matter in the administration of this chapter;
- d. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;
- e. Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution;
- f. Advise, consult and cooperate with other local governmental units, agencies of the state, industries, interstate or interlocal agencies and the Federal government, and with interested persons and groups;
- g. Review those matters having a bearing upon air pollution referred by other agencies (such as planning, zoning, building, and fire departments) and make reports, including recommendations, to the referring agencies with respect thereto;
- h. Collect and disseminate information and conduct educational and training programs relating to air pollution;
- i. Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.

j. Do any and all acts which may be necessary for the successful prosecution of the policy of this chapter and such other acts as may be specifically enumerated herein.

Sec. 3B-11 Reporting of Information.

Owners engaged in operations which may result in air pollution shall, if so required, file with the director reports containing information as to: (1) location and description of source; (2) rate, duration and composition of contaminant emission; and (3) such other information as the director may require.

Sec. 3B-12. Inspections.

Any duly authorized officer, employee, or representative of the engineer or the director may, when granted permission by the owner, or some person with reasonably apparent authority to act for the owner, enter and inspect any property, premises or place at any reasonable time for the purpose of investigating or testing either an actual or suspected source of air pollution, or of ascertaining the state of compliance with this chapter and regulations enforced pursuant thereto. When permission is refused or cannot be obtained, a proper warrant shall be obtained.

Sec. 3B-13. Enforcement procedure, director.

Whenever the director has reason to believe that a violation of any provision of this chapter or a rule or regulation issued pursuant thereto, has occurred, he may give notice of such violation to the owner failing to comply with this chapter, ordering him to do so. Such notice shall be put in writing, include a statement of the reasons why it is being issued, allow a specified reasonable time to commence the performance of any such act it directs, and allow a specified reasonable time to complete such performance and be served upon the owner. Such notice shall be deemed properly served if a copy thereof is delivered personally, or if he is not found at the premises involved, by mailing a copy thereof by certified mail to the premises involved and posting a copy thereof in a conspicuous place in or about the premises affected by the notice.

If any owner served with a notice pursuant this section does not:

- a. Within the specified time after serving upon him such notice commence compliance with the directions thereof, or
- b. Within the specified time after serving upon him such notice complete such compliance, or
- c. Within ten days after such service perfect an appeal to the Air Pollution Control Appeal Board, he shall be guilty of a violation of the provisions of this chapter.

In lieu of such notice the director may initiate appropriate action for the recovery of a penalty or restraint or both.

Sec. 3B-14. Voluntary compliance.

Nothing in this chapter shall prevent the director from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means.

Sec. 3B-15. Penalties and restraint proceedings.

Any owner violating any provision of this chapter shall, upon conviction thereof, be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each violation within the discretion of the court and each day of continued violation after conviction shall constitute a separate offense.

Violations of this chapter may in addition to or in place of the penalty provided above, be restrained, prohibited, or enjoined by appropriate proceedings.

Sec. 3B-16. Air pollution control appeal board.

There is hereby created and established an air pollution control board, herein sometimes referred to as the "board", which shall consist of the director of public works, an assistant city manager designated by the city manager and a resident of the City having some knowledge of control equipment or fuel-burning equipment, the resident member shall be appointed by the City Council for a term of three years.

The air pollution control board shall elect its chairman from its membership. All members of the board shall be entitled to vote and its decisions shall be determined by a majority vote of the members present. A quorum of three members present is required before the board may take any official action and all official decisions shall be by at least a majority vote. All meetings of the board shall be open to the public and a full and impartial hearing shall be granted on all appeals. Insofar as reasonably possible, all hearings shall be informal and free from technical rules of law and evidence. When voting on any questions, the determination may be made by secret ballot but no proxy shall be allowed at any time. The board shall keep minutes of its proceedings and all findings, decisions and orders shall be reduced to writing and entered as a matter of public record in the office of the City Manager. In matters concerning the procedure for meetings not covered by this chapter, the board may establish its own rules; provided that they are not contrary to the spirit of this chapter.

Sec. 3B-17. Appeals to board.

Any owner refused a permit or affected by any notice or order which has been issued in connection with the enforcement of any provision of this chapter, other than an emergency order, may request and shall be granted a hearing on the matter by the board provided that such owner shall within ten days after refusal or service of notice or order, file in the office of the City Manager a signed written notice of appeal, requesting a hearing and setting forth a brief statement of the reasons therefore. Upon receipt of such notice of appeal, the assistant city manager on the board shall promptly notify the board, and the board shall set a time and place for such hearing and shall give the owner appealing and the director notice thereof. The board shall schedule hearings for and determine such appeals as promptly as practicable. Appeals to the board shall not be made in matters in which a penalty or restraint proceeding has been instituted.

After such hearing the board may affirm, amend, modify or withdraw the refusal, notice or order appealed from. The decision of the board shall constitute an order and any owner who shall fail, refuse or neglect to comply with any such order shall be guilty of violating the provisions of this chapter.

Sec. 3B-18. Appeals to board in emergencies.

Any owner affected by any order which has been issued in connection with the enforcement of Section 3B-20 of this chapter may request and shall be granted a hearing on the matter by the board; provided that such owner shall, within seventy-two hours after service of an order, request the director to schedule an appeal. Upon receipt of such request, the director shall forthwith notify the board and the board shall forthwith set a time and place for such hearing and shall give the owner appealing and the director notice thereof. Appeals to the board shall not be made in matters in which a penalty or restraint proceeding has been instituted.

After such hearing the board may affirm, amend, modify or withdraw the order appealed from. The decision of the board shall constitute an order and any owner who shall fail, refuse or neglect to comply with any such order shall be guilty of violating the provisions of this chapter.

Sec. 3B-19. Appeals from board decision.

The decision of the board shall in all cases be final; except that any appellant or

or party directly aggrieved by a decision of the board may, provided he does so within thirty days after the rendering of such decision, appeal to a court of record of competent jurisdiction for a further review, and the findings of fact of such board shall be conclusive and such review shall be limited solely to errors of law and whether or not the decision of the board is arbitrary and constitutes an abuse of discretion. The court may accordingly affirm, reverse or modify the decision of the board.

Sec. 3B-20. Emergency procedure.

Notwithstanding the provisions of this chapter or any other provision of law, if the director finds that any owner is causing or contributing to air pollution and that such causing or contributing to air pollution creates an emergency which requires immediate action to protect the public health or safety, the director shall order such owner to reduce or discontinue immediately the causing or contributing to air pollution and such order shall be complied with immediately. Such order shall be deemed properly served if a copy thereof is delivered personally, or if the owner involved is not found, by mailing a copy thereof by certified mail to the owner involved at the premises involved and his business and residence address, if known, and by posting a copy thereof in a conspicuous place in or about the premises affected. Upon service of any such order, the director, if requested by the owner so ordered, within seventy-two hours after service, shall schedule an appeal before the board. Any owner who shall fail, refuse or neglect to comply with any such order, and does not within seventy-two hours request an appeal to the board, shall be guilty of violating the provisions of this chapter.

In lieu of the order, the director shall initiate appropriate action for the recovery of a penalty or restraint or both.

Sec. 3B-21. Variance from provisions.

The board, on appeal, may permit less than full compliance with any of the provisions of this chapter, except when there is an emergency procedure pursuant to section 3B-20, when, in its judgment, full or prompt compliance would work a clearly demonstrable undue hardship and the variance would not allow a danger to public health or safety. No variance granted by the board shall be permitted for a period to exceed one year.

Sec. 3B-22. Additional matter for board to consider in its decisions.

The board in all of its decisions shall take into consideration all of the facts and circumstances bearing upon the reasonableness of the activity involved and the regulations proposed to control it, including:

- (1) The character and degree of injury to, or interference with safety, health or the reasonable use of property which is caused or threatened to be caused;
- (2) The social and economic value of the activity involved;
- (3) The suitability or unsuitability of such activity to the area in which it is located; and
- (4) The practicability, both scientific and economic, of reducing or eliminating the discharge resulting from such activity.

Sec. 3B-23. Confidentiality of records.

Any records or other information which relate to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator shall be only for the confidential use of the director, the engineer and other departments, agencies and officers of the City, unless such owner or operator shall expressly agree to their publication or availability to the general public. Nothing herein shall be construed to prevent the use of such records or information by any department, agency or officer of the City in compiling or publishing analyses or summaries relating to

the general condition of the outdoor atmosphere; provided that such analyses or summaries do not reveal any information otherwise confidential under this section.

Sec. 3B-24. Application of chapter.

Nothing contained in this chapter shall be construed to supplant or take the place of other provisions of The Code of the City of Alexandria, Virginia, 1963, as amended, or any other applicable provisions of law and such code and other applicable provisions of law shall continue to apply.

Section 2. That this ordinance shall be published in a newspaper of general circulation in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The Clerk of the Council shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

CHARLES E. BEATLEY, JR.
Mayor

FINAL PASSAGE: January 28, 1969