

ORDINANCE NO. 2586

AN ORDINANCE to amend The Code of the City of Alexandria, Virginia, 1963, as amended, by adding a new chapter numbered 3C; which new Chapter 3C relates to AIR POLLUTION CONTROL.

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 a new chapter numbered 3C to read as follows:

CHAPTER 3C.
AIR POLLUTION CONTROL.

Sec. 3C-1. Title.

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

Sec. 3C-2. Director of health department to administer and enforce; duly authorized representative(s).

The director of the Alexandria health department shall administer and enforce the provisions of this chapter. Use of the title "director" in this chapter shall include the director of the Alexandria health department and/or his or her duly authorized representative(s).

Sec. 3C-3. Adoption of modified state regulations.

The Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution effective November 30, 1979, with Revisions 1 through 11 included, and Revisions 12 (effective February 8, 1980) and 13 (effective August 1, 1980), as modified for local use by the director on August 1, 1980, are hereby incorporated by reference. All such regulations shall have the same force and effect as the provisions of this chapter, and the penalty for violation of any provision of the regulations shall be the same as the penalty for a violation of a provision of this chapter. The director shall certify a true copy of the regulations and file them with the city manager for public inspection at reasonable times.

Sec. 3C-4. Conflict with other laws.

In any case where a provision of this chapter is found to be in conflict or inconsistent with a provision of any other law of

the city, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail.

Sec. 3C-5. Emergency procedures.

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 is delivered personally, or if the owner involved is not found by mailing a copy by certified mail to the owner involved at the premises involved and his business and residence address, if known, and by posting a copy in a conspicuous place in or about the premises affected.

Sec. 3C-6. Penalties.

Any owner violating any provision of this chapter or failing, neglecting or refusing to comply with an order of the director shall, upon conviction, 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.

Sec. 3C-7. Injunction.

Notwithstanding, or in addition to any other provision of law, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this chapter and which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the health, comfort, safety, welfare or environment of residents in the area shall be deemed and hereby is declared to be a public nuisance and may be subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction.

Sec. 3C-8. Judicial review.

(a) Any person directly and either jointly or severally aggrieved by a final order or a final decision of the director is entitled to judicial review under this chapter in the Circuit Court of the City of Alexandria.

(b) Proceedings for review shall be instituted by filing a notice of appeal and a petition for review with the court within thirty (30) days after the date of the final order or final decision and delivering a copy of the notice and the petition to the director. The filing of such an appeal shall not act to stay the order or the effect of the decision from which the appeal is taken. Within five (5) working days after receipt of the notice, the director shall file in the record of the suit a statement of the reason, including any finding of fact and/or conclusion of law, upon which the order or decision appealed from was based. Further proceedings shall be in accordance with equity jurisprudence and procedure. The court may render its judgment upon the record or it may hear such additional evidence as it deems proper.

(c) The court may affirm the final order or final decision from which an appeal has been taken or it may remand the matter for further proceedings; or it may reverse or modify the order or decision on appeal if the substantial rights of the appellant have been prejudiced because the order or decision of the director is:

- (1) in violation of any constitutional provision;
- (2) in excess of lawful authority or jurisdiction;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by the evidence on the record considered as a whole; or
- (6) arbitrary, capricious or an abuse of discretion.

Section 2. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published 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 city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk 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: June 13, 1981