

Adopted: Sept. 1, 1970

KENAI PENINSULA BOROUGH

ORDINANCE 70-2

AN ORDINANCE ENTITLED: AN ORDINANCE RELATING TO AIR POLLUTION, CREATING AN AIR POLLUTION CONTROL COMMISSION AND PRESCRIBING PENALTIES

BE IT ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. Title 14 of the Kenai Peninsula Borough Code of Ordinances is amended by adding a new chapter to read.

CHAPTER .05 - AIR POLLUTION

Section 14.05.010. Air Pollution Control Commission. There is created the Air Pollution Control Commission of the Tri-Borough Air Resources Management District, hereinafter known as the District, the members of which shall be two members elected from each of the borough assemblies of the Matanuska-Susitna, Kenai Peninsula and Greater Anchorage Area Boroughs. The Commission shall appoint a director to act as an advisor, as commission secretary, and to perform such other functions as provided in this chapter and as the Commission shall direct. The Commission shall select a chairman from among its voting members.

Section 14.05.015. Term. The term of the members shall be for the duration of their service on the separate borough assemblies. When a vacancy occurs, the borough assembly, of which the vacating commissioner was a member, shall elect a new member to the Commission.

Section 14.05.020. Meetings. The Commission shall hold at least six regular meetings each year and additional meetings which the chairman considers desirable at a place and time to be fixed by the chairman. Special meetings shall be called by the chairman upon the written request of four members. Four voting members shall constitute a quorum.

Section 14.05.025. Salary and Expenses. Members of the Commission shall receive a salary of \$35.00 per meeting day and are entitled to per diem in the amount of \$35.00 and travel expenses while attending commission business.

Section 14.05.030. Powers. (a) The Commission shall have power to

- (1) Establish ambient air quality standards for the District after public hearing;
- (2) Establish standards for or otherwise control emissions after public hearing;
- (3) Adopt such rules and regulations as may be necessary to achieve the objectives of the District after public hearing;
- (4) Hold such public hearings as it deems necessary for the administration and enforcement of its regulations and the State law and to compel the attendance of witnesses and production of evidence. In holding such hearings, the Commission shall establish such rules or procedures as it finds reasonable and necessary;
- (5) Issue such orders as may be necessary to effectuate the provisions of this article and enforce them by appropriate administrative and judicial proceedings;
- (6) Require access to records relating to emissions which cause or contribute to air contamination, but in strict conformity with sec. .065 of this article;
- (7) Sue or be sued in the name of the District in all actions and proceedings in courts of competent jurisdiction;
- (8) Establish and maintain such offices as the Commission may authorize;
- (9) To employ a director and other personnel necessary to carry out its functions and to contract with Boroughs (Municipalities), the State, the Federal Government, or any agency of the State for services;

- (10) Take by grant, purchase, gift, lease, or other means, such real and personal property as may be necessary to carry out the purpose of this chapter.

This shall include the right to dispose of such property whenever in the judgment of the Commission, such property is no longer needed by the District.

- (b) The Director shall have the power to
 - (1) Enforce the provisions of this chapter and all of the orders, regulations, and rules adopted by the Commission pursuant to this article;
 - (2) Enforce all variances and standards approved by the Commission;
 - (3) Perform such other duties as may be assigned by the Commission or required to administer this article;
 - (4) Serve as a non-voting member and Secretary of the Commission.

Section 14.05.035. Classification and Reporting.

(a) The Commission, by rules or regulations, may classify and require the registration of air contaminant sources, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for the classifications. Classifications made under this subsection may be for application to the District as a whole or to a designated area of the District and shall be made with special reference to effects on health, economic, and social factors and physical effects on property.

(b) A person operating or responsible for the operation of air contaminant sources of a class for which the rules and regulations of the Commission require registration shall make reports containing the information required by the Commission or the Director concerning location, size and height of contaminant outlets, processes employed, fuels used and nature and time periods or duration of emissions; and other information relevant to air pollution and available or reasonably capable of being assembled.

Section 14.05.040. Additional Contaminant Control Measures. (a) The Commission may require that notice be given to it before the undertaking of the construction, installation or establishment of particular types or classes of new air contaminant sources specified in its rules and regulations. Within 15 days of its receipt of the notice, the Commission may require, as a condition precedent to this undertaking, the submission of plans and other information it considers necessary in order to determine whether the proposed undertaking will be in accord with applicable rules and regulations in force under this chapter. If within 30 days of receipt of these plans and information the Commission determines that the proposed undertaking will not be in accord with the requirements of this chapter and applicable rules and regulations; it shall issue an order prohibiting the undertaking. Failure to issue the order within the time prescribed shall be considered an approval of the plans and information and the undertaking may proceed in accordance with them.

(b) A person subject to an order of prohibition as prescribed in (a) of this section, upon written request in accordance with rules of the Commission, is entitled to a hearing on the order. Following the hearing, the order may be affirmed, modified or withdrawn.

(c) For the purpose of this chapter, addition to or enlargement or replacement of an air contaminant source, or a major alteration of one, shall be construed as an undertaking for the construction, installation or establishment of a new air contaminant source.

(d) Features, machines and devices constituting parts of or called for by plans or other information submitted under (a) of this section or which may affect emissions classified under sec. .035 shall be maintained in good working order.

(e) Nothing in this section may be construed to authorize the Commission to require the use of machinery, devices, or equipment from a particular supplier or produced by a particular manufacturer if the required performance standards may be met by machinery, devices or equipment available from other sources.

(f) The absence of or the Commission's failure to issue a rule, regulation or order under this section does not relieve a person from compliance with emission control requirements or other provisions of law.

(g) The Commission may require the payment of a reasonable fee for the review of plans and information required to be submitted.

Section 14.05.045. Inspection. For the purpose of ascertaining the state of compliance with this chapter and appropriate rules and regulations, a duly authorized officer, employee or representative of the Commission may, at a reasonable time, and upon presentation of a proper search warrant, if necessary, enter and inspect the property and premises where an air contaminant source is located or is being constructed. No person may refuse entry or access to an authorized representative of the Commission who requests entry for purposes of inspection and who presents appropriate credentials, nor may a person interfere with the inspection. The Commission shall give the owner or operator of the premises a report setting out all facts found which relate to compliance status.

Section 14.05.050. Emission Control Requirements. The Commission may establish emission control requirements which in its judgment are necessary to prevent, abate or control air pollution. These requirements may be for the District as a whole or may vary from area to area as may be appropriate to facilitate accomplishment of the purposes of this chapter and in order to take account of varying local conditions.

Section 14.05.055. Emergency Procedure. (a) If the Director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, he shall, with concurrence of the borough chairman of the borough in which the emergency arises, order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of such air contaminants. The order shall fix a place and time, not more than 24 hours later, for a hearing to be held before the Commission. Within 24 hours after the commencement of the hearing, and without adjournment of it, the Commission shall affirm, modify or set aside the order of the Director.

(c) In the absence of a generalized condition of air pollution of the type referred to in (a) of this section, but if the Director finds that emissions from the operation of one or more contaminant sources is causing imminent danger to human health or safety, he may order the person responsible for the operation in question to

reduce or discontinue emissions immediately, without regard to sec. .075 (a) of this chapter. If an order is issued, the hearing requirements of (a) of this section apply.

Section 14.05.060. Variances. (a) A person who owns or is in control of a plant, building, structure, establishment, process or equipment may apply to the Commission for a variance from rules or regulations. The Commission may grant the variance, but only after public hearing following due notice, if it finds that

- (1) the emissions proposed to occur do not endanger human health or safety; 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.

(b) No variance may be granted under this section until the Commission has considered the relative interests of the applicant, other owners of property likely to be affected by the emissions and the general public.

(c) A variance or its renewal, granted under (a) of this section, shall be for periods and under conditions consistent with the reasons for it and within 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, it shall apply until the necessary means for prevention, abatement or control become known and available, subject to the taking of substitute or alternate measures that the Commission may prescribe.
- (2) If the variance is granted on the grounds that compliance with the particular requirement will necessitate the taking of measures which, because of their complexity or cost will involve considerable hardship, it shall be for a period of time which in the opinion of the Commission is necessary and reasonable. A variance granted on this ground shall contain a timetable.

(3) If the variance is granted on the grounds that it is justified to relieve or prevent hardship of a kind, including those provided in (c) (1) and (2) of this section, it shall be for not more than one year.

(d) A variance granted under this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Commission on account of the variance, no renewal of it shall be granted unless, after public hearing on the complaint following due notice, the Commission finds that renewal is justified. No renewal may be granted except upon application for it. This application shall be made at least 60 days before the expiration of the variance. Immediately upon receipt of an application for renewal, the Commission shall give public notice of it.

(e) A variance or renewal is not a right of the applicant but shall be in the discretion of the Commission. However, a person adversely affected by a variance or renewal granted by the Commission may obtain judicial review of the Commission order. Judicial review of the denial of a variance or renewal may be had only on the grounds that the denial was arbitrary or capricious.

(f) No variance or renewal granted under this section may be construed to prevent or limit the emergency provisions of sec. 055 of this chapter.

Section 14.05.065. Confidentiality of Records.
Unless the owner or operator expressly agrees to their publication or availability to the general public, records and information in the possession of the Commission concerning a contaminant source, which records and information relate to production or sales figures or to processes or production unique to the owner or operator and the publication of which would tend to adversely affect his competitive position, as certified by him, shall be only for the confidential use of the Commission on an incamera basis in the administration of this chapter. The Commission may, nevertheless, use these records and information in compiling analyses or summaries relating to the general condition of the outdoor atmosphere so long as the owner or operator is not identified and no information specified in the preceding sentence is revealed.

Section 14.05.070. Limitations.

This chapter does not

- (1) grant to the Commission jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works or shops;
- (2) affect the relations between employers and employees with respect to or arising out of a condition of air contamination or air pollution;
- (3) supercede or limit the applicability of a law or ordinance relating to sanitation, industrial health or safety.
- (4) preclude the right of judicial review of decisions of the Commission.

Section 14.05.075. Enforcement. (a) When the Director has reason to believe that a violation of this chapter or rule or regulation issued under this chapter has occurred, he may serve written notice upon the suspected violator. The notice shall specify the provision believed to be violated and the facts believed to constitute the violation and may include an order that necessary corrective action be taken within a reasonable time. This order shall become final unless within 15 days after the notice and order are served the person named requests in writing a hearing before the Commission, which hearing shall be held within a reasonable time. In lieu of an order the Director may require the suspected violator to appear before the Commission for a hearing at a time and place specified in the notice and answer the charges.

(b) If, after a hearing held under (a) of this section, the Commission finds that a violation has occurred, it shall affirm or modify the order previously issued or issue an appropriate order for taking corrective action. If the Commission finds that no violation has occurred, it shall rescind the previous order, if any. An order issued as part of a notice or after a hearing may prescribe the date by which the violation shall cease and may prescribe timetables for necessary action in preventing, abating or controlling emissions.

(c) The Commission or the Director may make efforts to

obtain voluntary compliance through warning, conference or other appropriate means.

(d) In connection with a hearing held under this section, the Commission shall have power and upon application by a party to the hearing it shall have the duty to compel the attendance of witnesses and the production of evidence on behalf of all parties.

Section 14.05.080. Penalties. (a) In addition to procedures provided in sec. .075 of this chapter, a person who violates a provision of this chapter or a rule or regulation in force under it, upon conviction, is punishable by a fine not to exceed \$300.00 and/or 30 days imprisonment. Each day of violation shall constitute a separate offense.

(b) Conviction as specified in (a) of this section shall not be a bar to enforcement of this chapter, and the rules, regulations and orders issued under it. The Commission shall have power to institute and maintain in the name of the three boroughs all enforcement proceedings.

(c) This chapter does not affect the right of a person to bring an action for damage or other relief because of an injury caused by air pollution.

Section 14.05.085. Definitions. In this chapter

- (1) "air contaminant" means dust, fumes, mist, smoke, other particulate material, vapor, gas, odorous substances or a combination of these;
- (2) "air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities and duration that tend to be injurious to human health or welfare, animal or plant life or property or would unreasonably interfere with the enjoyment of life and property;
- (3) "commission" means the Air Pollution Control Commission;
- (4) "director" means the director of the air pollution control commission or his authorized representative.

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Section 2. Any ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Section 3. This ordinance takes effect 30 days after enactment.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH
THIS 1 DAY OF September, 1970.

Francis J. Hall
Assembly President, F. J. Hall

ATTEST:

Frances Brymer
Borough Clerk, Frances Brymer

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