

- (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 subsection 16-71(f) of the City of Memphis 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. §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) for time periods and under conditions consistent with the reasons therefore, 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 (1) 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 therefore. 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 16-59 and 16-60 (Reference 1200-3-15) to any person or his property.

(Ord. No. 1265, §1, 4-25-72; Code 1967, §3-10. Amended by City of Memphis Ord. No. 4981, effective January 28, 2003.)