

SECTION 10.56.130: Variances - Hearings Procedure

- A. Any person seeking a variance from the provisions of this Chapter or from the rules and regulations adopted by the Board pursuant to this Chapter shall do so by filing a petition for variance with the Director. The Director shall promptly investigate such petition and make recommendation to the Board as to the disposition thereof.
- B. The Board may grant such variance if it finds that:
 - 1.
 - a. The emission occurring, or proposed to occur, do not endanger or tend to endanger human health or safety, and
 - b. Compliance with the provisions of this Chapter and the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public;
 - 2. The emissions occurring, or proposed to occur, do not have a serious adverse effect on the quality of the ambient air of Davidson County and of adjacent counties;
 - 3. The owner or operator of the source agrees that upon the expiration of the order granting the variance that he/she will use any new means of emission limitation demonstrated to the satisfaction of the Board to be the best available system of continuous emission reduction for the particular source or sources for which the variance is granted;
 - 4. Such new means of emission limitation or not likely to be used unless a petition is granted under this subsection;
 - 5. Such new means of emission limitation have a substantial likelihood of:
 - a. Achieving greater continuous emission reduction than the means of emission limitation which, but for such variance, would be required, or
 - b. Achieving an equivalent continuous reduction at lower cost in terms of energy, economic or nonair quality environmental impact;
 - 6. Compliance with the source would be impracticable prior to or during the installation of such new means.
- C. Upon receiving the recommendation of the Director, the Board shall grant a public hearing. Such public hearing shall be held not later than sixty days after receipt of a recommendation from the Director.
- D. Public hearings will be conducted in the following manner:

1. The petitioner and the public shall be given written notice at the earliest practicable time as to the time and place of such hearing.
 2. At the discretion of the Board, such hearing before a hearing officer may be conducted as defined by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-301, and a complete record of the hearing shall be made for review by the Board members.
 3. All testimony shall be recorded and may or may not be under oath, at the discretion of the hearing officer. The transcript so recorded shall be made available to the petitioner or any party to the hearing upon the payment of the fee for transcribing such testimony.
 4. The Board in considering the granting of a variance shall give due consideration to the equities of the petitioner and others who may be affected by granting or denial of the petition.
 5. The Board may make the granting of a petition for variance contingent upon such other requirements or restrictions on the petitioner as the Board may deem appropriate and reasonable, including, but not limited to, the requirement that a performance bond be posted by the petitioner.
 6. Any variance granted shall be for a period not to exceed one year, except as hereinafter provided, but may be extended from time to time by the action of the Board.
- E. Subject to the conditions of Subsections A and B of this Section, the Board may grant a variance on the grounds that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollutant source involved, and, if granted, such variance may remain in effect only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the Board may prescribe.
- F. If the variance is granted on the grounds 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 the view of the Board, is requisite for the taking of the necessary measures. A variance granted on the grounds specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be contained on adherence to such timetable.
- G. Upon failure of the Board to issue a final order or determination within sixty days after the final argument in any such hearing or within sixty days following receipt of the recommendation of the Director when no hearing is held, the petitioner shall be entitled to treat for all purposes such failure to act as a granting of the variance requested.

- H. The burden of proof in such hearings shall be upon the petitioner.
- I. Nothing in this Section, and no variance or renewal thereof granted pursuant hereto, shall be construed to prevent or limit the application of the emergency provisions and procedures of this Chapter to any person or his property.