COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Subin, Silverman, Praisner, Leggett, Dacek, and Denis, and at the request of the County Executive.

AN EMERGENCY ACT to:
(1) authorize the Department of Environmental Protection to protect ambient (outdoor) air quality and the indoor air quality in residential and non-residential properties;
(2) repeal or modify certain air quality requirements to conform with State law and modern air quality control practices;
(3) facilitate enforcement of County air quality control laws;
(4) repeal the authority of the Board of Appeals to consider an appeal of an air quality control violation and allow direct appeal of certain agency decisions to a court; and
(5) generally amend County law regarding air quality control.

By amending
Montgomery County Code
Chapter 2, Administration
Section 2-112

Chapter 3, Air Quality Control

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The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Section 2-112, as amended by Chapter 30 of the Laws of Montgomery County 2001, and Chapter 3 are amended as follows:

2-112. Jurisdiction.

* * *

(c) ... The Board has the following appellate jurisdiction:

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Chapter 3.

AIR QUALITY CONTROL.

3-1. Purpose of Chapter.

(a) It is the policy of the County to protect the County’s ambient air quality as necessary to:

1. protect the health, safety, comfort and well-being of the County’s residents and businesses;
2. prevent injury to plant and animal life and to property; and
3. protect the recreational resources of the County.

(b) It is the County’s goal to protect and facilitate the improvement of the indoor air quality experienced by businesses and occupants of multi-tenant buildings.

(c) The Department must apply principles of sound environmental health management and use reasonably available air quality control technology to implement this Chapter.
3-2. Definitions.

In this Chapter, the following words and phrases have the following meanings:

Air pollutant: Any substance whose release into the atmosphere causes air pollution. An air pollutant may be in the form of a smoke, gas, dust, odor, particulate matter or combinations of smoke, gas, dust, odor, or particulate matter.

Air pollution: The presence in the atmosphere of any substances or combinations of substances whose character, quantities or duration make those substances likely to pose a health hazard to humans, plants, or animals, or unreasonably interfere with the use and enjoyment of property. The substances may be emitted as odors, solids, vapors, liquids, or gases from any single source or in combination with other sources.

Air pollution episode: A recognized occurrence designated by the Governor of Maryland or the Secretary of the state Department of the Environment as an accumulation of ambient air pollutants at levels harmful to human health.

Control equipment: Any device or equipment that prevents or reduces emissions.

Department: The Department of Environmental Protection.

Director: The Director of the Department or the Director's designee.

Emission: Any substance, other than water in an uncombined form, discharged into the atmosphere, including odors, particulate matter, vapors, gases, or any combination of these substances.

Excessive lodging: A condition of farmland where embedding of the previous crop causes the normal use of harvesting, tillage, or planting equipment to be impossible or impracticable.

Incinerator: Any equipment or device used to destroy garbage, rubbish or other wastes by burning.
Indoor air pollutant: Any substance whose indoor presence causes indoor air pollution. An indoor air pollutant may consist of particles such as dust, fibers, asbestos, or radon progeny; gases such as formaldehyde, carbon monoxide, mists, or bioaerosols; biological substances such as viruses, bacteria, fungi or molds; or combination of substances.

Indoor air pollution: The indoor presence of any airborne substance, such as particles, fumes, mists, gases, or vapors or combination of substances likely to pose a health hazard to humans, plants, or animals or unreasonably interfere with the use and enjoyment of residential or non-residential property, including the ordinary conduct of business.

Installation: Any article, machine, or equipment, including emission control equipment, processing equipment, manufacturing equipment, fuel burning equipment, incinerators or any equipment or construction capable of generating, causing or reducing emissions.

Odor: The property of an emission that stimulates a person’s sense of smell.

Official fire: A fire authorized by a government officer for the purposes listed in this Chapter.

Opacity: The degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

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 not in conformance with the design requirements of the applicable building code of the County or the air quality control regulations of the State.

Particulate matter: Material other than water in uncombined form which is or has been airborne and exists as a liquid or solid at standard conditions of temperature 25 degrees Celsius (77 degrees Fahrenheit) and pressure of 29.92 inches (760 mm) [Hg] mercury.
Permit: An air pollution control permit issued by the Department or the Maryland Department of the Environment covering open burning, installation, or operation of equipment with the potential to emit air pollution.

Person: An individual, group of individuals, partnership, firm, voluntary association, public or private corporation, or an agency, or department of the County or of any federal, state, or municipal government to the extent allowed under federal, state, or municipal law.

Plan for compliance: A schedule of actions designed to achieve compliance with this Chapter after a specified period of time submitted by a violator and approved by the Director.

Source: A person or property that is contributing to air pollution.

Unconfined source: An installation that causes emissions that are not enclosed in a stack, duct, hood, flue, or other conduit, but that escape into the atmosphere through openings such as windows, vents, or doors, ill fitting closures, or poorly maintained equipment.

3-3. Administration.

(a) The Director must enforce this Chapter. The Director must advise, consult, and cooperate with other local government units, State agencies, interstate agencies, the federal government, private industries and businesses, homeowners associations, and other interested persons about air quality problems that affect human health.

(b) This Chapter does not waive any requirement of State or federal law.

3-4. Regulations.

The County Executive may adopt regulations under method (2) to implement this Chapter. Regulations adopted under this Chapter must not conflict with, waive any provisions of, or be less restrictive than any requirement of State or federal law.
3-5. Ambient air quality requirements for visible emissions.

(a) Generally. A person must not cause or allow the discharge of any visible emission from any installation or building, other than water in an uncombined form, into the atmosphere.

(b) Exceptions. Subsection (a) does not apply to any:

1. Emission during start-up and process modifications or adjustments, or occasional cleaning of control equipment, that is not greater than 40 percent opacity for a period of not more than 6 consecutive minutes in any 60-minute period.

2. Emission from a food preparation installation, such as a char-broiler or pit barbecue, that operates at one location less than 15 days in any 365-day period, or that is not greater than 10 percent opacity.

3. Emission caused by wood burning in a residential fireplace or wood stove, or emission for recreational purposes such as a campfire.

4. Emission from an open fire (except a salamander) that complies with this Chapter.

3-6. Ambient air quality requirements for particulate matter from unconfined sources.

A person must not cause or allow emissions from an unconfined source without taking reasonable precautions to prevent particulate matter from becoming airborne.

When the Director orders, these precautions must include installing and using hoods, fans, and dust collectors to enclose, capture, and vent emissions.

3-7. Ambient air quality requirements for particulate matter from materials handling and construction.
A person must not cause or allow any material to be handled, transported, or stored, or any building or road to be constructed, altered, repaired, or demolished, without taking reasonable precautions to prevent particulate matter from becoming airborne.

Unless the Director finds otherwise in a particular situation, reasonable precautions include:

1. using water or chemicals to control dust when demolishing a building or structure, undertaking construction operations, grading a road, or clearing land;
2. applying asphalt, water, or suitable chemicals on a dirt road, materials stockpile, or other surface that can create airborne dust;
3. installing and using hoods, fans, and dust collectors to enclose and vent the handling of dusty materials, and employing reasonable containment methods to prevent the release of particulate matter during sandblasting or similar operations;
4. covering each open-bodied vehicle used to transport any material likely to create air pollution at all times when the vehicle is moving;
5. paving a roadway and maintaining it in clean condition; and
6. promptly removing earth or other dust-producing material from a paved street to which the material was transported by truck, earth moving equipment, or water erosion.

Control or prohibition of open fires.

(a) Official fires. A public officer may set an open fire with due notice to, but without prior approval from, the Director if the public officer is performing an official duty and the fire is necessary to:

1. prevent a fire hazard which cannot be abated by other means;
(2) instruct public fire fighters or industrial employees under
supervision of the Fire Administrator if the instruction does not
occur during an air pollution episode and the fires do not contain
asphaltic or asbestos materials; or
(3) protect the public health, safety or welfare.

(b) Open fires. Except during an air pollution episode, the following open
fires are allowed without prior approval of the Director if the fire does
not otherwise violate any other law or regulation:

(1) Cooking. A person may use a fire to cook food if the person
uses an outdoor cooking apparatus approved for use by a
nationally recognized standards organization, such as
Underwriters Laboratory, and the person does not create a
nuisance.

(2) Salamanders. Construction workers and other outdoor workers
may use a salamander or other device fired with propane gas or
No. 2 fuel oil for heating if the device does not create visible
emissions.

(3) Recreational purposes. A person may set an open fire, such as
a campfire, for recreational purposes if the fire does not produce
visible emissions that exceed 20 percent opacity for a total of
more than 3 minutes in any 60-minute period and is not larger
than 3 feet in diameter.

(c) Permitted fires. Except as provided in subsections (a) and (b), a
person must not burn any refuse or plant life outside of a building
unless the person has obtained a permit from the Director. The
Director must limit the duration of the permit. The Director may
issue the permit for any of the following reasons or purposes:
(1) **Agricultural open burning.** A person may set a fire during agricultural operations if the fire complies with subsection (d) and the person obtains an agricultural burning permit before setting the fire. The Department may grant a permit to burn excessive lodging or destroy diseased crops and other vegetation originating on the applicant's property only:

(A) on a property that is agriculturally assessed for property tax purposes; and

(B) if the burning is necessary to maintain agricultural land in production.

(2) **Ceremonial burning.** A person may set fires for a ceremonial purpose.

(3) **Disaster rubbish.** A person may burn rubbish, including landscape waste, during a community disaster if the County Executive has officially declared a state of emergency.

(4) **No alternative.** A person may burn any material if the Director finds that there is no practical alternative way to dispose of or store the material more safely.

(d) **Conditions.** The Director may impose any condition on an open burning permit to prevent air pollution or protect the health, safety, comfort and property of persons. An open fire must at all times be attended by the permittee or the permittee's agent who has the burning permit in possession during the burning. The Director must not grant a permit if the intended activity would:

(1) create a hazardous condition;
be conducted during an air pollution episode or other burning
prohibition period declared by the Governor or the Secretary of
the Maryland Department of the Environment;

be conducted within 500 yards of an occupied building or a
heavily traveled public road, walkway, path, or other facility used
by the public;

violate any other law or regulation;

create visible emissions whose opacity exceeds 20 percent for
more than a total of 3 minutes in any consecutive 60-minute
period; or

include the burning of leaves, brush, other vegetation, or
household trash.

(e) Permit denial. The Director may deny a request for an open burning
permit if:

(1) the applicant has not shown that the applicant can comply with
this Chapter and any applicable State or federal air pollution
control law; or

(2) the Director finds, based on the applicant’s history, that the
applicant is not likely to comply with all applicable County,
State, and federal air pollution control laws.

(f) Permit revocation or suspension. The Director may revoke, suspend,
or modify a permit granted under this Section if the Director finds that
the permittee has violated any term or condition of the permit. Notice
of any proposed revocation, suspension, or modification must be in
writing, include the reason for the decision, and give the permittee an
opportunity for a hearing. A request for a hearing does not stay the
Director’s action.
(g) Extinguishing fires in violation. A person responsible for starting a
fire that violates this Section must promptly extinguish the fire after
receiving notice from the Department. The notice to extinguish the fire
is not an exclusive remedy.

3-9. Ambient air quality requirements for odors.

(a) A person must not cause or allow the emission into the atmosphere of
any gas, vapor, or particulate matter beyond the person's property
line or unit if a resulting odor creates air pollution.

(b) The Director may issue a citation for violating subsection (a) if the
Director:

(1) witnesses the violation; or

(2) receives complaints from at least 2 individuals who have personal
knowledge of the air pollution odor.

3-10. Control and prohibition of indoor air pollution.

(a) A person must not cause or allow the emission of indoor air
pollutants beyond the person's property line in a manner that creates
indoor air pollution.

(b) Subsection (a) does not apply to:

(1) the residential use of personal hygiene products;

(2) smoking in a private home; or

(3) residential cooking odors.

(c) In this Section, "property line" means the boundary of a residential or
non-residential area that a person legally uses or owns. For a property
divided into more than one legal unit, such as multi-family housing or a
multi-tenant commercial property, "property line" also includes any
boundary between a unit and a common area or between units.
The Director may issue a citation for violating this Section if the Director:

(1) witnesses the violation; or
(2) receives complaints from at least 2 individuals who have personal knowledge of the indoor air pollution.

3-11. Determining compliance.

(a) Compliance methods. The Director may conduct testing or require a property owner to conduct testing to determine compliance with this Chapter in response to a complaint.

(b) Manner of testing. A property owner must conduct all tests in a manner, and before the deadline, set by the Director and submit a detailed report of all test results to the Director within 15 days after the testing is complete unless the Director grants an extension. Each test must be performed by a person qualified to conduct the test, as determined by the Director.

3-12. Emergency provisions.

(a) Notwithstanding this Chapter or any other law, if the Director finds that a person is causing or contributing to air pollution and that the pollution creates an emergency that requires immediate action to protect the public health or safety, the Director must order the person to immediately reduce or stop the air pollution. That person must immediately comply with the Director's order.

(b) If the Governor or the Secretary of the Maryland Department of the Environment declares an air pollution episode, the Director may take any action authorized under State law to protect the public health or safety.

The Director may enter a non-residential site during normal business hours or at any other reasonable time to inspect, investigate, or monitor activities subject to this Chapter. If the person in charge of the site does not consent to an entry by the Director, the Director must obtain an administrative search warrant from a court by satisfying reasonable statutory or administrative standards for conducting an inspection.

The Director may, with the consent of the owner or occupant, enter a private dwelling at any reasonable time to inspect, investigate, or monitor activities subject to this Chapter. If the owner or occupant of the residence does not consent to an entry by the Director, the Director may obtain an administrative search warrant from a court by showing that reasonable legislative or administrative standards for conducting an area inspection have been satisfied.

A person must not hinder, prevent, or unreasonably refuse to permit a lawful inspection, investigation, or monitoring under this Chapter.

The Director, the Fire Administrator, or the Administrator’s designee may issue a notice of violation, corrective order, stop-work order, or civil citation to any person who causes or allows a violation of this Chapter.

A person who causes or allows a violation of this Chapter must submit a plan for compliance if required under a notice of violation or corrective order. The plan must include a schedule to correct the violation. The Director must approve or disapprove the plan and any amendment to an approved plan.

The Director may issue a stop-work order to any person who violates this Chapter in connection with an activity conducted under a building
(g) Any violation of this Chapter is a Class A violation. Each day a violation continues is a separate offense.

(h) In addition to any other remedy allowed by law, the Department may seek injunctive or other appropriate judicial relief to prevent or stop a violation of this Chapter.

Appeals.

(a) A person aggrieved by an action taken or an order issued under this Chapter may seek reconsideration by filing a written request with the Director within 10 days after the action or order. The request must state the date and nature of the action or order, the remedy requested, and why the Director should grant the request. Within 10 days after receiving the request, the Director must:

1. issue a written decision on the request for reconsideration if the Director finds no material facts in dispute; or

2. notify the person in writing of any material facts in dispute and:
   (A) establish a deadline of not more than 30 additional days for the Department to resolve the dispute and the Director to issue a written decision on the request for reconsideration; or
   (B) refer the matter to a hearing officer under Article I of Chapter 2A.

(b) A request for reconsideration does not stay the action or order unless the Director grants a stay. The Director's decision on a request for reconsideration is a final decision.
(c) A person aggrieved by a final decision of the Director under this Chapter may appeal the action or order under Section 2A-11.

Sec. 2. Transition.

Until superseded, an Executive Regulation issued under Chapter 3 before the effective date of this Act remains in effect to the extent the regulation is consistent with this Act. This Act does not apply to a violation of Chapter 3 that occurred before this Act took effect.

Sec. 3. Emergency Effective Date.

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This Act takes effect on the date on which it becomes law.

Approved:

Steven A. Silverman, President, County Council  
Approved:

Douglas M. Duncan, County Executive  
This is a correct copy of Council action.

Mary A. Edgar, CMC, Clerk of the Council  
