

## ARTICLE 5.100 FIRE MARSHAL

### Sec. 5.101 Office Created; Appointment and Removal; Salary

The office of fire marshal is hereby created. Such office shall be independent of other city departments, the fire marshal reporting directly to the mayor and city council through the city manager of the City of Abernathy. Such office shall be for a term of one year, beginning at the time of appointment, and ending twelve months from the date of appointment. Such office shall be filled by appointment by the mayor, by and with the consent of the city council. The said fire marshal shall be properly qualified for the duties of his office and hold office for the length of the term herein provided. The fire marshal may be removed from office at any time during his term, by the appointment of a qualified successor as herein provided. He shall receive such salary as set by the city council, payable in twelve monthly installments, as full compensation for his services. (Ordinance 209, adopted 1975, Section 1)

### Sec. 5.102 Duties of Fire Marshal; Records

The fire marshal shall investigate the cause, origin and circumstances of every fire occurring within this city by which property has been destroyed or damaged, and shall especially make investigation as to whether such fire was the result of carelessness or design. Such investigation shall be begun within twenty-four hours, not including Sunday, of the occurrence of such fire. The fire marshal shall keep in his office a record of all fires, together with all facts, statistics and circumstances, including the origin of the fires and the amount of the loss, which may be determined by the investigation required by this article. (1974 Code, Chapter 6, Article 1, Section 6-2)

### Sec. 5.103 Testimony to be Taken; Arrest of Offenders; Etc.

The fire marshal, when in his opinion further investigation is necessary, shall proceed only with reason and good discretion and only with the prior concurrence of the city manager of the City of Abernathy, and take or cause to be taken the testimony, on oath, of all persons supposed to be cognizant of any facts or to have means of knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing; and if he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with the attempt to commit the crime of arson, or of conspiracy to defraud, or criminal conduct in connection with such fire, he shall make known the results of his investigation to chief of police of the City of Abernathy, so that such person may be lawfully arrested and charged with such offense or either of them, and shall furnish to the proper prosecuting attorney all such evidence, together with the names of witnesses and all of the information obtained by him, including a copy of all pertinent and material testimony taken in the case. (Ordinance 209, adopted 1975, Section 2)

### Sec. 5.104 Witnesses; Testimony; Oaths

The fire marshal shall have the power to summon witnesses before him to testify in relation to any matter which is by the provisions of this article a subject of inquiry and investigation, and may require the production of any book, paper or document deemed pertinent thereto. The said fire marshal is hereby authorized and empowered to administer oaths and affirmations to any persons appearing as witnesses before him. (1974 Code, Chapter 6, Article 1, Section 6-4)

### Sec. 5.105 Refusing to Testify, Etc.

Any witness who refuses to be sworn, or who refuses to appear or testify, or who disobeys any lawful order of said fire marshal, or who fails or refuses to produce any book, paper or document touching any matter under examination, or who is guilty of any contemptuous conduct during any of the proceedings of the fire marshal in the matter of said investigation or inquiry, after being summoned to give testimony in relation to any matter under investigation as aforesaid, shall be deemed guilty of a misdemeanor; and it shall be the duty of the fire marshal to cause all such offenders to be prosecuted. Any person being convicted of any such misdemeanor shall be fined in accordance with the general penalty provision found in Section 1.106

of this code. Provided, however, that any person so convicted shall have the right of appeal. (1974 Code, Chapter 6, Article 1, Section 6-5)

Sec. 5.106        Investigations may be Private, Etc.

All investigations held by or under the direction of the fire marshal may, in his discretion, be private, and persons other than those required to be present may be excluded from the place where such investigation is held, and witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined. (1974 Code, Chapter 6, Article 1, Section 6-6)

Sec. 5.107        May Enter and Examine Premises

The fire marshal shall have the authority at all times of day or night, when necessary, in the performance of the duties imposed upon him by the provisions of this article, to enter upon and examine any building or premises adjoining or near the same, which authority shall be exercised only with reason and good discretion and only with the prior concurrence of the city manager of the City of Abernathy. (Ordinance 209, adopted 1975, Section 2)

Sec. 5.108        To Examine Certain Buildings; Orders to Remedy; Reports

(a)        The fire marshal, upon complaint of any person having an interest in any building or property adjacent and without any complaint, shall have a right at all reasonable hours, for the purpose of examination, to enter into and upon all buildings and premises within the city, and it shall be his duty, monthly or more often, to enter upon and make or cause to be entered and made, a thorough examination of all mercantile, manufacturing and public buildings, together with the premises belonging thereto.

(b)        Whenever he shall find any building or other structure which, for want of repair, or by reason of age or dilapidated condition, or for any cause, is especially liable to fire, and which is so situated as to endanger other buildings or property, or so occupied that fire would endanger persons or property therein, and whenever he shall find an improper or dangerous arrangement of stoves, ranges, furnaces or other heating appliances of any kind whatsoever, including chimneys, flues, and pipes with which the same may be connected, or a dangerous arrangement of lighting devices or systems, or a dangerous or unlawful storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, combustible, inflammable and refuse material, or other conditions which may be dangerous in character or liable to cause or promote fire or create conditions dangerous to the firemen or occupants, he shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of said building or premises. Provided, however, that if said owner or occupant deems himself aggrieved by such order, he may, within five (5) days, appeal to the mayor, who shall investigate the cause of the complaint and unless by his authority the order is revoked, such order shall remain in force and be forthwith complied with by said owner or occupant.

(c)        At the end of each month the fire marshal shall report to the state fire marshal all existing hazardous conditions, together with separate report to the state fire marshal all existing hazardous conditions, together with separate report on each fire in the city during the month.

(1974 Code, Chapter 6, Article 1, Section 6-8)

Sec. 5.109        Penalty for Keeping Building Liable to Fire, Etc.

Any owner or occupant of any building or other structure, or premises, who shall keep or maintain the same when, for want of repair, or by reason of age or dilapidated condition, or for any cause, it is especially liable to fire, and which is so situated as to endanger buildings or property of others, or is especially liable to fire and which is so occupied that fire would endanger other persons or their property therein, shall be punished by a fine in accordance with the general penalty provision found in Section 1.106 of this code. (1974 Code, Chapter 6, Article 1, Section 6-9)

Sec. 5.110          Penalty for Keeping Dangerous Building

Any owner or occupant of any building or other structure, or premises, who shall keep or maintain the same with an improper arrangement of a stove, range, furnace, or other heating appliance of any kind whatever, including chimneys, flues, and pipes with which the same may be connected, so as to be dangerous in the matter of fire, or health, or safety of persons or property of others; or who shall keep or maintain any building, other structure or premises with an improper arrangement of a lighting device or system, or with a storage of explosives, petroleum, gasoline, kerosene, chemicals, vegetable products, ashes, combustibles, inflammable materials, refuse, or with any other condition which shall be dangerous in character to the persons, health or property of others; or which shall be dangerous in the matter of promoting, augmenting or causing fires; or which shall create conditions dangerous to firemen, or occupant of such building, structure or premises other than the maintain or thereof, shall be punished by a fine in accordance with the general penalty provision found in Section 1.106 of this code. (1974 Code, Chapter 6, Article 1, Section 6-10)

Sec. 5.111          Prosecutions may be Brought When

No prosecution shall be brought under Sections 5.109 and 5.110 of this article until the order provided for in Section 5.108 be given, and the party notified shall fail or refuse to comply with the same. (1974 Code, Chapter 6, Article 1, Section 6-11)

Sec. 5.112          How Penalties May Be Recovered

The penalties provided for herein shall be recovered by the city in the same manner as provided by law for the enforcement of fines, forfeitures, and punishments for offenses against the city. (1974 Code, Chapter 6, Article 1, Section 6-12)

Sec. 5.113          Separate Offense

Every day's maintenance of any of the conditions prohibited in any of the foregoing sections shall be a distinct and separate offense. (1974 Code, Chapter 6, Article 1, Section 6-13)

Sec. 5.114          How Misdemeanors shall be Prosecuted, Etc.

All misdemeanors herein provided for shall be prosecuted, and all fines and forfeitures herein provided for shall be recovered and enforced, in the same manner as provided by law for the enforcement of fines, forfeitures, penalties and punishments for offenses generally against the city. (1974 Code, Chapter 6, Article 1, Section 6-14)