

Cape Town, South Africa

Air Quality Management

Legislation as at 30 July 2010

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Air Quality Management
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Cape Town South Africa

Air Quality Management By-law, 2010

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WHEREAS section 156(2) and (5) of the Constitution of the Republic of South Africa, 1996 provides that a City may make and administer by-laws for the effective administration of the matters which it has the right to administer, and to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions;

AND WHEREAS Part B of Schedule 4 to the Constitution lists municipal health services as a local government matter to the extent set out in section 155(6) (a) and (7);

AND WHEREAS the City of Cape Town seeks to ensure management of air quality and the control of air pollution within the area of jurisdiction of the City and to ensure that air pollution is avoided or, where it cannot be altogether avoided, is minimized and remedied.

AND NOW THEREFORE, BE IT ENACTED by the Council of the City of Cape Town as follows:—

Chapter I Definitions and fundamental principles

1. Definitions

In this By-law, unless the context indicates otherwise—

"**adverse effect**" means any actual or potential impact on the environment that impairs or would impair the environment or any aspect of it to an extent that is more than trivial or insignificant;

"**air pollutant**" includes dust, smoke, fumes and gas that causes or may cause air pollution;

"**air pollution**" means any change in the environment caused by any substance emitted into the atmosphere from any activity, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

"**air pollution control zone**" means the geographical area to which Chapter IV of this By-law is declared to apply;

"**Air Quality Act**" means the National Environment Management: Air Quality Act, 2004(Act No. 39 of 2004);

"**air quality management plan**" means the air quality management plan referred to in section 15 of the Air Quality Act;

"**air quality officer**" means the air quality officer designated as such in terms of section 14(3) of the Air Quality Act;

"**ambient air**" means "ambient air" as defined in section 1 of the Air Quality Act;

"**atmosphere**" means air that is not enclosed by a building, machine, chimney or other similar structure;

"**atmospheric emission**" or "emission" means any emission or entrainment process emanating from a point, non-point or mobile source that results in air pollution;

"**authorised person**" means any employee of the City delegated by the Executive Director: City Health to implement any provision of this By-law;

"**best practicable environmental option**" means the option that provides the most benefit, or causes the least damage to the environment as a whole, at a cost acceptable to society in the long term as well as in the short term;

"**chimney**" means any structure or opening of any kind from which or through which air pollutants may be emitted;

"**City**" means the City of Cape Town established by Provincial Notice No. 479 of 2000 in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"**City Manager**" means a person appointed by the Council in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998);

"**compression ignition powered vehicle**" means a vehicle powered by an internal combustion, compression ignition, diesel or similar fuel engine;

"**Council**" means the Council of the City or any of the other political structures, political office bearers, councillors or staff members, of the City duly authorised by delegation;

"**dark smoke**" means —

- (a) in respect of Chapter V and Chapter VI of this By-law, smoke which when measured using a light absorption meter, obscuration measuring equipment or other similar equipment, has an obscuration of 20% or greater;
- (b) in respect of Chapter VIII of this By-law —
 - (i) smoke emitted from the exhaust outlets of naturally aspirated compression ignition engines which has a density of 50 Hartridge smoke units or more or a light absorption co-efficient of more than 1.6m⁻¹;
 - (ii) smoke emitted from the exhaust outlets of turbo charged compression ignition engines which has a density of 56 Hartridge smoke units or more or a light absorption co-efficient of more than 1.10m⁻¹;

"**dust**" means any solid matter in a fine or disintegrated form which is capable of being dispersed or suspended in the atmosphere;

"**dwelling**" means any building or structure, or part of a building or structure, used as a dwelling and any outbuildings ancillary to it, but excludes informal settlements;

"**environmental management inspector**" means an environmental management inspector referred to in section 5;

"**environment**" means the surroundings within which humans exist and that are made up of—

- (a) the land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of (a) and (b) and the interrelationships among and between them; and
- (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

"**Executive Director: City Health**" means the Executive Director of the City responsible for health matters;

"**free acceleration test**" means the method described in section 25;

"fuel-burning equipment" means any furnace, boiler, incinerator, or other equipment, including a chimney –

- (a) designed to burn or capable of burning liquid, gas or solid fuel;
- (b) used to dispose of any material or waste by burning; or
- (c) used to subject liquid, gas or solid fuel to any process involving the application of heat;

"light absorption meter" means a measuring device that uses a light sensitive cell or detector to determine the amount of light absorbed by an air pollutant;

"living organism" means any biological entity capable of transferring or replicating genetic material, including sterile organisms and viruses;

"nuisance" means an unreasonable interference or likely interference caused by air pollution with –

- (a) the health or well-being of any person or living organism; or
- (b) the use and enjoyment by an owner or occupier of his or her property or environment;

"obscuration" means the ratio of visible light attenuated by air pollutants suspended in the effluent streams to incident visible light, expressed as a percentage;

"open burning" means the combustion of material by burning without a chimney to vent the emitted products of combustion to the atmosphere, and "burning in the open" has a corresponding meaning;

"operator" means a person who owns or manages an undertaking, or who controls an operation or process, which emits air pollutants; "proclaimed township" means any land unit zoned and utilized for residential purposes;

"person" means a natural person or a juristic person;

"premises" includes—

- (a) any building or other structure;
- (b) any adjoining land occupied or used in connection with any activities carried on in that building or structure;
- (c) any vacant land;
- (d) any locomotive, ship, boat or other vessel which operates in the precincts of any harbour, within the area of the jurisdiction of the City;

"Province" means the Province of the Western Cape;

"public road" means a road which the public has the right to use;

"smoke" means the gases, particulate matter and products of combustion emitted into the atmosphere when material is burned or subjected to heat and includes the soot, grit and gritty particles emitted in smoke;

"specialist study" means any scientifically based study relating to air quality conducted by an expert or recognized specialist of appropriate qualifications and competency in the discipline of air quality management;

"spray area" means an area or enclosure referred to in section 27 and must be used for spray painting, and "spray booth" has a corresponding meaning;

"Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

"the NEMA" means the National Environmental Management Act, 1998 (Act No.107 of 1998); and

"vehicle" means any motor car, motor carriage, motor cycle, bus, motor lorry or other conveyance propelled wholly or partly by any volatile spirit, steam, gas or oil, or by any means other than human or animal power.

2. Application of this by-law

This By-law applies to all properties or premises within the area of jurisdiction of the City.

3. Conflict with other laws

In the event of any conflict between this By-law and any other by-law or any policy which regulates air pollution, the provisions of this By-law shall prevail.

Chapter II Duty of care

4. Reasonable measures to prevent air pollution

- (1) Any person who is wholly or partially responsible for causing air pollution or creating a risk of air pollution occurring must take all reasonable measures including the best practicable environmental option—
 - (a) to prevent any potential significant air pollution from occurring; and
 - (b) to mitigate and, as far as reasonably possible, remedy any significant air pollution that has occurred.
- (2) The Council may direct any person who fails to take the measures required under subsection (1) to —
 - (a) investigate, evaluate and assess the impact of specific activities and report thereon;
 - (b) take specific reasonable measures before a given date;
 - (c) diligently continue with those measures; and
 - (d) complete them before a specified reasonable date,provided that prior to such direction the authorised person must give such person adequate notice and direct him or her to inform the authorised person of his or her relevant interests, and the authorised person may consult with any other organ of state.
- (3) The authorised person may, if a person fails to comply or inadequately complies with a directive contemplated in subsection (2), take reasonable measures to remedy the situation.
- (4) The authorised person may, if a person fails to carry out the measures referred to in subsection (1), recover all reasonable costs incurred as a result of him or her acting under subsection (3) from any or all of the following persons:
 - (a) any person who is or was responsible for, or who directly or indirectly contributed to the air pollution or the potential air pollution;
 - (b) the owner of the land at the time when the air pollution or the potential for air pollution occurred, or that owner's successor in title;
 - (c) the person in control of the land or any person who has or had a right to use the land at the time when the —
 - (i) activity or the process in question is or was performed or undertaken; or
 - (ii) situation came about; or

- (d) any person who negligently failed to prevent the –
 - (i) activity or the process being performed or undertaken; or
 - (ii) situation from coming about.
- (5) If more than one person is liable under subsection (4), the liability may be apportioned among the persons concerned according to the degree to which each person was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsections (1) and (2).

Chapter III

Designation of the air quality officer and environmental management inspectors

5. Designation or appointment of the air quality officer and environmental management inspectors

- (1) The City Manager must, in consultation with the Executive Director: City Health, designate or appoint an employee of the City or any person as the air quality officer to be responsible for co-ordinating matters pertaining to air quality management in the City.
- (2) The Executive Director: City Health may request the MEC responsible for environment in the Province to appoint environmental management inspectors in terms of section 31C of the NEMA.

6. Duties and functions of the air quality officer and environmental management officers

- (1) The air quality officer must –
 - (a) co-ordinate the development of the air quality management plan for inclusion in the Integrated Development Plan of the City, in accordance with Chapter 5 of the Systems Act;
 - (b) prepare an annual report of the City on air quality;
 - (c) exercise the duties and powers assigned to him or her under this By-law under the directions of the Executive Director: Health; and
 - (d) submit the annual report referred to in paragraph (b) to the air quality officer appointed by the MEC responsible for environment in the Province.
- (2) The annual report referred to in subsection (1)(b) must, amongst others, include the progress of the City towards the implementation of the air quality management plan.
- (3) The air quality officer may require the holder of a provisional atmospheric emission licence or the holder of an atmospheric emission licence to designate an emission control officer as contemplated in section 48 of the Air Quality Act.

Chapter IV

Local emissions standards, norms and standards and smoke control zones

Part 1 – Local emission standards

7. Legal mandate

- (1) The authorised person may, by notice –
 - (a) identify substances or mixtures of substances in ambient air which, through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health,

- well-being or the environment in the City or which the air quality officer reasonably believes present such a threat; and
- (b) in respect of each of those substances or mixtures of substances, publish local standards for emissions from point, non-point or mobile sources in the City.
- (2) The authorised person shall take the following factors into consideration in setting local emission standards:
- (a) health, safety and environmental protection objectives;
 - (b) analytical methodology;
 - (c) technical feasibility;
 - (d) monitoring capability;
 - (e) socio-economic consequences;
 - (f) ecological role of fire in vegetation remnants; and
 - (g) best practicable environmental option.
- (3) Any person who is emitting substances or mixtures of substances as referred to in subsection(1) must comply with the local emission standards published in terms of this By-law.

Part 2 – Norms and standards

8. Substances identification process

- (1) The authorised person must apply the following criteria when identifying and prioritising the substances in ambient air that present a threat to public health, well-being or the environment:
- (a) the possibility, severity and frequency of effects with regard to human health and the environment as a whole, with irreversible effects being of special concern;
 - (b) ubiquitous and high concentrations of the substance in the atmosphere;
 - (c) potential environmental transformations and metabolic alterations of the substance, as these changes may lead to the production of chemicals with greater toxicity or introduce other uncertainties;
 - (d) persistence in the environment, particularly if the substance is not biodegradable and able to accumulate in humans, the environment or food chains;
 - (e) the impact of the substance taking the following factors into consideration:
 - (i) size of the exposed population, living resources or ecosystems;
 - (ii) the existence of particularly sensitive receptors in the zone concerned; and
 - (f) substances that are regulated by international conventions.
- (2) The authorised person must, using the criteria set out in subsection (1), compile a list of substances in ambient air that present a threat to public health, well-being or the environment.

9. Publication of local emission standards

For the purposes of publication of the local emission standards, the City must follow a consultative process in terms of Chapter 4 of the Systems Act.

10. Declaration of air pollution control zone

- (1) The whole area within the area of jurisdiction of the City is hereby declared an air pollution control zone.
- (4) Subject to section 44, the Council may in writing exempt certain premises, classes of premises or premises used for specified purposes from this section.

Chapter V

Smoke emissions from premises other than dwellings

11. Application

For the purposes of this Chapter "premises" does not include dwellings.

12. Prohibition of dark smoke from premises

- (1) Subject to subsection (2), dark smoke must not be emitted from any premises for an aggregate period exceeding three minutes during any continuous period of thirty minutes.
- (2) This section does not apply to dark smoke which is emitted from fuel-burning equipment which occurs while the equipment is being started or while the equipment is being overhauled or repaired, or awaiting overhaul or repair, unless such emission could have been prevented using the best practical environmental option.
- (3) Subsections (1) and (2) do not apply to holders of atmospheric emission licences for activities listed in terms of section 21 of the Air Quality Act, and the emission standards listed in such licence shall apply.

13. Installation of fuel-burning equipment

- (1) No person shall install, alter, extend or replace any fuel-burning equipment on any premises without the prior written authorisation of Council, which may only be given after consideration of the relevant plans and specifications.
- (2) Any fuel-burning equipment installed, altered, extended or replaced on premises in accordance with plans and specifications submitted to and approved for the purposes of this section by the Council, shall be presumed until the contrary is proved to comply with the provisions of subsection (1).
- (3) Where fuel-burning equipment has been installed, altered, extended or replaced on premises contrary to subsection (1), Council may, on written notice to the owner and occupier of the premises, order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator and within the period stated in the notice.
- (4) The Executive Director: City Health may take whatever steps he or she considers necessary in order to remedy the harm caused by the installation, alteration, extension or replacement on premises and prevent any further occurrence, and may recover the reasonable costs so incurred from the person responsible for causing such harm.

14. Operation of fuel-burning equipment

- (1) No person may use or operate any fuel-burning equipment on any premises contrary to the authorisation referred to in section 13.

- (2) Where fuel-burning equipment has been used or operated on the premises in contrary to subsection (1), Council may on written notice to the owner and occupier of the premises –
 - (a) revoke his or her authorisation under section 13; and
 - (b) order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator within the period stated in the notice.
- (3) The Council may, if the owner or occupier of the premises fails to comply with the notice referred to in subsection (2), remove the fuel burning equipment from the premises and may recover the reasonable costs incurred from such owner or occupier of such premises.

15. Presumption

Dark smoke shall be presumed to have been emitted from premises if it is shown that any fuel or material was burned on the premises and the circumstances were such that the burning was reasonably likely to give rise to the emission of dark smoke, unless the owner, occupier or operator, as the case may be, shows that no dark smoke was emitted.

16. Installation and operation of obscuration measuring equipment

- (1) An authorised person may give notice to any operator of fuel-burning equipment or any owner or occupier of premises on which fuel-burning equipment is used or operated, or intended to be used or operated, to install, maintain and operate obscuration measuring equipment at his or her own cost, if –
 - (a) unauthorised and unlawful emissions of dark smoke from the relevant premises have occurred consistently and regularly over a period of at least two days;
 - (b) unauthorised and unlawful emissions of dark smoke from the relevant premises have occurred intermittently over a period of at least fourteen days;
 - (c) fuel-burning equipment has been or is intended to be installed on the relevant premises which are reasonably likely to emit dark smoke;
 - (d) the person on whom the notice is served has been convicted more than once under this Chapter and has not taken adequate measures to prevent further contravention of the provisions of this Chapter; or
 - (e) the authorised person considers that the nature of the air pollutants emitted from the relevant premises is reasonably likely to create a hazard to human health or the environment.
- (2) A notice referred to in subsection (1) must inform the person to whom it is addressed of –
 - (a) that person's right to make written representations and to appear in person to present and dispute information and arguments regarding the notice, and must stipulate a reasonable period within which this must be done;
 - (b) that person's right of appeal under section 43;
 - (c) that person's right to request written reasons for the issuing of the notice; and
 - (d) the measures that must be taken and the potential consequences if the notice is not complied with.

17. Monitoring and sampling

An occupier or owner of premises, and the operator of any fuel-burning equipment, who is required to install obscuration measuring equipment in terms of section 16(1) must –

- (a) record all monitoring and sampling results and maintain a copy of this record for at least four years after obtaining the results;
- (b) if requested to do so by an authorised person, produce the record of the monitoring and sampling results for inspection; and
- (c) if requested to do so by an authorised person, provide a written report, in a form and by a date specified by the authorised person, of part or all of the information in the record of the monitoring and sampling results.

18. Temporary exemption

- (1) Subject to section 44 and on application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the Council may grant a temporary exemption in writing from one or all the provisions of this Chapter.
- (2) Any exemption granted under subsection (1) must state at least the following:
 - (a) a description of the fuel-burning equipment and the premises on which it is used or operated;
 - (b) the reasons for granting the exemption;
 - (c) the conditions attached to the exemption, if any;
 - (d) the period for which the exemption has been granted; and
 - (e) any other relevant information.
- (3) The Council may not grant a temporary exemption under subsection (1) until the Council has –
 - (a) taken reasonable measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the temporary exemption, including adjacent land owners or occupiers, are aware of the application for temporary exemption and how to obtain a copy of it;
 - (b) provided such persons with a reasonable opportunity to object to the application; and
 - (c) duly considered and taken into account any objections raised.

Chapter VI Smoke emissions from dwellings

19. Prohibition of emission of dark smoke from dwellings

- (1) Subject to section 4(1), no person shall emit or permit the emission of dark smoke from any dwelling for an aggregate period exceeding three minutes during any continuous period of thirty minutes.
- (2) Subject to section 44 and on application in writing by the owner or occupier of any dwelling, the Council may grant a temporary exemption in writing from one or all of the provisions of this Chapter.

Chapter VII

Emissions caused by dust emissions, open burning and burning of material

20. Authorisation of open burning and burning of material

- (1) Subject to subsection (4), any person who intends to carry out open burning of any material on any land or premises, must apply for prior written authorisation of such open burning to the Council.
- (2) The Council may, in the written authorisation referred to in subsection (1) impose conditions with which the person requesting authorisation must comply.
- (3) The Council may not authorise open burning referred to in subsection (1) unless it is satisfied that the following requirements have been adequately addressed or fulfilled:
 - (a) the material will be open burned on the land from which it originated;
 - (b) that the person requesting authorisation has investigated and assessed every reasonable alternative for reducing, reusing or recycling the material in order to minimize the amount of material to be open burned, to the satisfaction of the Council;
 - (c) that person requesting authorisation has investigated and assessed every reasonable alternative for removing the material from the land or premises to the satisfaction of the Council;
 - (d) that person requesting authorisation has investigated and assessed the impact the open burning will have on the environment to the satisfaction of the Council;
 - (e) that person requesting authorisation has notified in writing the owners and occupiers of all adjacent properties of –
 - (i) all known details of the proposed open burning; and
 - (ii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed open burning with the Council within 7 days of being notified; and
 - (f) the prescribed fee has been paid to the Council.
 - (g) a warning under section 10(1)(b) of the National Veld and Forest Fire Act, 1998 (Act No.101 of 1998) has not been published for the region;
 - (h) the land on which that person intends to open burn the material is state land, a farm or small-holding, or land within a proclaimed township that is not utilised for residential purposes;
 - (i) the open burning is conducted at least 100 metres from any buildings or structures; and
 - (j) the open burning will not pose a potential hazard to human health or safety, private property or the environment.
- (4) The provisions of this section shall not apply to –
 - (a) recreational outdoor barbecue or braai activities on private premises;
 - (b) small controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purposes; or
 - (c) any other defined area or defined activity to which the Council has declared this section not to apply.

21. Emissions caused by tyre burning and burning of rubber and other material for the recovery of metal

- (1) No person may without authorisation in writing by Council —
 - (a) carry out or permit the burning of any tyres or rubber or other synthetically coated, covered or insulated products and electronic or other equipment on any land or premises;
 - (b) carry out or permit the burning of any tyres, rubber products, cables or any other products, on any land or premises for the purpose of recovering the scrap metal or fibre reinforcements, or of disposing of tyres, or the rubber products or cables as waste; or
 - (c) possess, store, transport or trade in any burnt metal or fibre reinforcements referred to in paragraph (a) and (b).
- (2) The Council may take whatever steps it considers necessary in order to remedy the harm caused by the burning referred to in paragraphs (a) and (b) and the possession referred to in paragraph (c), and prevent any occurrence of it, and may recover the reasonable costs incurred from the person responsible for causing such harm.

22. Dust emissions

Any person who —

- (a) conducts any activity; or
- (b) causes or permits dust emissions to occur,

shall adopt the best practical environmental option to the satisfaction of the authorised person, to prevent and abate dust emissions into the atmosphere that may be harmful to public health and well-being or is likely to cause a nuisance to persons residing or present in the vicinity of such land, activity or premises.

Chapter VIII

Emissions from compression ignition powered vehicles and power generators

23. Prohibition of dark smoke from compression ignition powered vehicles

- (1) No Person may on a public or private road or any premises drive or use, or cause to be used, a compression ignition powered vehicle or power generator that emits dark smoke.
- (2) For purposes of this section the registered owner of the vehicle shall be presumed to be the driver unless the contrary is proven.

24. Stopping of vehicles for inspection and testing

- (1) In order to enable an authorised person to enforce the provisions of this Chapter, the driver of a vehicle must comply with any reasonable direction given by an authorised person —
 - (a) to stop the vehicle; and
 - (b) to facilitate the inspection or testing of the vehicle.
- (2) When a vehicle has stopped in compliance with a direction given under subsection (1), the authorised person may —
 - (a) inspect and test the vehicle at the roadside, in which case inspection and testing must be carried out —
 - (i) at or as near as practicable to the place where the direction to stop the vehicle is given; and

- (ii) as soon as practicable, and in any case within one hour, after the vehicle is stopped in accordance with the direction; or
- (b) conduct a visual inspection of the vehicle and, if the authorised person reasonably believes that an offence has been committed under section 23(1), instruct the driver of the vehicle, who is presumed to be the owner of the vehicle unless he or she produces evidence to the contrary, in writing to take the vehicle to a testing station, within a specified period of time, for inspection and testing in accordance with section 25.

25. Testing procedure

- (1) An authorised person must use the free acceleration test method in order to determine whether a compression ignition powered vehicle is being driven or used in contravention of section 23(1).
- (2) The following procedure must be adhered to in order to conduct a free acceleration test:
 - (a) when instructed to do so by the authorised person, the driver must start the vehicle, place it in neutral gear and engage the clutch;
 - (b) while the vehicle is idling, the authorised person must conduct a visual inspection of the emission system of the vehicle;
 - (c) the authorised person must rapidly, smoothly and completely depress the accelerator throttle pedal of the vehicle, or he may instruct the driver to do likewise under his supervision;
 - (d) while the throttle pedal is depressed, the authorised person must measure the smoke emitted from the emission system of the vehicle in order to determine whether or not it is dark smoke;
 - (e) the authorised person must release the throttle pedal when the engine reaches cut-off speed;
 - (f) if the authorised person instructs the driver to depress the throttle, the driver may only release the throttle when it reaches cut-off speed or when instructed to do so by the authorised person.
- (3) If, having conducted the free acceleration test, the authorised person is satisfied that the vehicle —
 - (a) is not emitting dark smoke, he or she must furnish the driver of the vehicle with a certificate indicating that the vehicle is not being driven or used in contravention of section 23(1); or
 - (b) is emitting dark smoke, he or she must issue the driver of the vehicle with a repair notice in accordance with section 26.

26. Repair notice

- (1) The authorised person must with a written repair notice, direct the owner of the vehicle to repair the vehicle within a specified period of time, and to take the vehicle to a place identified in the notice for re-testing before the expiry of that period. (2) The repair notice must contain the following information:
 - (a) the make and registration number of the vehicle;
 - (b) the name, address and identity number of the driver of the vehicle; and
 - (c) if the driver is not the owner, the name and address of the vehicle owner.
- (3) It shall not be a defence in proceedings relating to the non compliance of the repair notice and non re- testing of the vehicle referred to in subsection (1) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.

- (4) If the owner of the vehicle fails to comply with the notice and the re-test referred to in subsection (1), the City may take whatever steps it considers necessary in order to remedy the harm including towing the vehicle away and may recover the costs incurred from the owner of the vehicle.

Chapter IX

Emissions that cause a nuisance

27. Prohibition of emissions that cause nuisance

- (1) No person shall, within the area of jurisdiction of the City—
 - (a) inside an approved spray area or spray booth, spray or apply any coat, plate or epoxy coat to any vehicle, article or object, so as to cause a nuisance; or
 - (b) outside an approved spray area or spray booth, allow any spray, coat, plate or epoxy coat to be applied to any such vehicle, article or object .
- (2) The spray area or spray booth referred to in subsection (1) must be constructed and equipped in such a manner that complies with the General Safety Regulations promulgated in terms of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) and must be approved by the authorised person, for emissions, mechanical ventilation, noise and any other relevant Department as may be required by any other law.
- (3) Any person conducting sand blasting, shot blasting, grinding, finishing or similar activity which customarily produce emissions of dust that may be harmful to public health or cause a nuisance shall take control measures to prevent emissions into the atmosphere.
- (4) Any person undertaking an activity referred to in (3) must implement the following control measures:
 - (a) dust extraction control measures;
 - (b) any alternative control measure approved by the air quality officer or his or her delegated representative.
- (5) An occupier or owner of any premises —
 - (a) must prevent the existence in, or emission of any nuisance from, his or her premises.
 - (b) from which a nuisance emanates, or where a nuisance exists, is guilty of an offence.

28. Abatement notice

- (1) An authorised person may serve an abatement notice on any person whom he or she reasonably believes is likely to act in contrary or has acted in contrary of section 27, calling upon that person —
 - (a) to abate the nuisance within a period specified in the notice;
 - (b) to take all necessary steps to prevent a recurrence of the nuisance; and
 - (c) to comply with any other conditions contained in the notice.
- (2) An abatement notice under subsection (1) may be served —
 - (a) upon the owner of any premises, by —
 - (i) delivering it to the owner or, if the owner cannot be traced or is living abroad, the agent of the owner;
 - (ii) transmitting it by registered post to the last known address of the owner or the last known address of the agent; or

- (iii) delivering it to the address where the premises are situated, if the address of the owner and the address of the agent are unknown;
- (b) upon the occupier of the premises, by —
 - (i) delivering it to the occupier; or
 - (ii) transmitting it by registered post to the occupier at the address at which the premises are situated.

29. Steps to abate nuisance

At any time, the City may at its own cost take whatever steps it considers necessary in order to remedy the harm caused by the nuisance and prevent a recurrence of it, and may recover the reasonable costs incurred from the person responsible for causing the nuisance.

Chapter X Pesticide and crop spraying

30. Spraying of a pesticide, herbicide or other related material

- (1) No person may carry out or permit the spraying of a pesticide, herbicide or other related material unless such pesticide, herbicide or material is registered in terms of section 3 of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (2) Any person who contravenes subsection (1) of this By-law is guilty of an offence as set out in section 18(1)(c) of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (3) A person who carries out or permits the spraying of pesticides, herbicides or other materials referred to in subsection (1), within the area of jurisdiction of the City, must comply with the following controlled measures:
 - (a) obtain prior written authorisation of the City which may be granted by the City with conditions, including —
 - (i) the area of land on which the pesticide, herbicide or other material may be applied; and
 - (ii) the period of time in which the pesticide, herbicide or other material may be applied;
 - (b) notify in writing the owners and occupiers of all adjacent properties within 150 metres of the proposed area of land, of —
 - (i) the details of such land;
 - (ii) the reason for use of pesticide, herbicide or other material;
 - (iii) the active ingredient of pesticide, herbicide or other material;
 - (iv) the date and approximate time of the use of pesticide, herbicide or other material;
 - (v) in the event of inclement weather conditions, an alternative date or dates on which the use of pesticide, herbicide or other material may occur;
 - (vi) the time, if any, indicated on the product label specifying when the area can safely be re-entered after application of the pesticide, herbicide or other material;
 - (vii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed spraying of pesticides with the Council within seven days of being notified; and

- (viii) the prescribed fee has been paid to the Council.
- (4) Any person who contravenes subsection (3) is guilty of an offence.
- (5) A person may apply to the City for an exemption if —
 - (a) the spraying of the pesticide is for the management of pests that transmit human diseases or adversely impact agriculture or forestry;
 - (b) the spraying of the pesticide is for the management of pests that threaten the integrity of sensitive ecosystems; or
 - (c) the need for the use of the pesticide is urgent.
- (6) The provisions of this section are not applicable to —
 - (a) residential areas of farms;
 - (b) buildings or inside of buildings; or
 - (c) any other defined area or defined activity to which the City has declared this section not to apply.

Chapter XI

Licensing of listed activities

31. Establishment of atmospheric emission licensing system

The Council hereby establishes an Atmospheric Emission Licensing System as contemplated in Chapter 5 of the Air Quality Act.

32. Purpose of the atmospheric emission licensing system

The purpose of the Atmospheric Emission Licensing System is to —

- (a) identify and register all sources of air pollution in the City;
- (b) regulate and ensure compliance with the licence conditions;
- (c) gather information for the purposes of compiling the air quality management plan of the City, as contemplated in section 15 of the Air Quality Act;
- (d) undertake strategic planning; and
- (e) provide information to any person in order to —
 - (i) facilitate monitoring of the performance of the City, and if applicable, a licensee;
 - (ii) stimulate research by acknowledged institutions; and
 - (iii) assist the City to achieve the main objectives of this By-law.

33. Application for atmospheric emission licence

- (1) No person shall undertake a listed activity, as published in terms of section 21 of the Air Quality Act, without being in possession of an atmospheric emission licence issued by the air quality officer.
- (2) An application for an atmospheric emission licence must be —
 - (a) made in writing on the application form as prescribed by the air quality officer;
 - (b) accompanied by documents or information as may be required by the air quality officer; and

- (c) on payment of the prescribed application fee.
- (3) The air quality officer must on receipt of an application for an atmospheric emission licence —
 - (a) acknowledge receipt, within 14 days, of the application together with the prescribed fee;
 - (b) check whether the application is properly completed and contains the information required in the application form; and
 - (c) is accompanied by the required information or documents required in terms of this By-law.
- (4) Before considering an application made in terms of subsection (2), the air quality officer may require the applicant to furnish additional information or a specialist air quality impact study.
- (5) Any person who undertakes a listed activity without an atmospheric emission licence is guilty of an offence and is subject to the penalties as set out in section 52 of the Air Quality Act.

34. Factors to be taken into account

The air quality officer must, in addition to the factors set out in section 39 of the Air Quality Act, consider each application having regard to the following factors:

- (a) compliance with the Air Quality Act and this By-law; and
- (b) the environmental, health and safety record of the applicant.

35. Decisions on applications for atmospheric emission licence

- (1) After considering the application in terms of section 33, the air quality officer must, within 60 days of receipt of the application, either —
 - (a) approve the application by issuing a provisional atmospheric emission licence or an atmospheric emission licence, subject to such conditions as the air quality officer may impose; or
 - (b) reject the application.
- (2) If the air quality officer fails to grant or reject an application for an atmospheric emission licence within 60 days after considering the application in terms of section 33, he or she must inform the applicant in writing that the period for consideration is extended and must inform the applicant of the date by which a decision will be made.

36. Terms and conditions of the atmospheric emission licence

- (1) When issuing an atmospheric emission licence, the air quality officer may impose reasonable conditions as he or she may deem necessary. (2) An atmospheric emission licence issued under this section must —
 - (a) comply with section 43 of the Air Quality Act;
 - (b) contain a requirement that the licence holder must comply with and ensure compliance by his or her employees, agents and sub-contractors with this By-law and other applicable national or provincial legislation.

37. Variation of atmospheric emission licences

No building, plant or works used by a holder of a licence referred to in section 33 shall be —

- (a) materially extended; and

(b) altered or added to,

and no changes in process, procedures or significant production increases may be undertaken without the prior approval of the air quality officer.

38. Cessation of atmospheric emission licence

The holder of a licence referred to in section 33 must on cessation of operations to which the licence relates notify the air quality officer of such cessation.

Chapter XII Offences and penalties

39. Offences and penalties

- (1) A person who contravenes sections 13(1), 14(1), 19(1), 20(1), 20(3), 21(1), 22, 23(1), 24(1), 26(1), (3) and (4), 27 (1), (3) and (4), 28(1), or 30(1) and (3), is guilty of an offence.
- (2) Any person who is guilty of an offence in terms of section 19(1), 23(1) or 27(1) is liable on conviction to imprisonment not exceeding 30 days or to a fine or to both a fine and imprisonment.
- (3) Any person who is guilty of an offence in terms of sections 13(1), 14(1), 20(1), 20(3), 21(1), 24(1), 26(1), 26(3) and (4), 28(1), 30(1) and (3), is liable on conviction to imprisonment for a period not exceeding two years or a fine or to both such fine and such imprisonment.
- (4) Any person who contravenes section 22 is liable on conviction to imprisonment not exceeding one year or a fine or both such fine and such imprisonment.
- (5) It is an offence to—
 - (a) supply false information to an authorised person in respect of any issue pertaining to this By-law; or
 - (b) refuse to co-operate with the request of an authorised person made in terms of this By-law, and any person convicted of such offence is liable to imprisonment for a period not exceeding 30 days or a fine or both such fine and such imprisonment.
- (6) Where no specific penalty is provided, any person committing an offence in terms of this By-law is liable on conviction to imprisonment for a period not exceeding one (1) year or to a fine or to both such imprisonment and such a fine.
- (7) Failure to comply with a notice, direction or instruction referred to in this By-law constitutes a continuing offence.
- (8) Any person who commits a continuing offence shall be guilty of an offence for each day during which that person fails to comply with a notice, direction or instruction referred to in this By-law.
- (9) In addition to imposing a fine or imprisonment, a court may order any person convicted of an offence under this By-law —
 - (a) to remedy the harm caused;
 - (b) to pay damages for harm caused to another person or to property, which order shall have the force and effect of a civil judgment; and
 - (c) to install and operate at the person's own expense obscuration reading equipment referred to in section 16.

- (10) In addition to any other penalty the court may impose, it may order a person convicted of an offence under this By-law to take such steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the nuisance.

Chapter XIII

General matters

40. Compliance monitoring

- (1) For the purposes of compliance monitoring, the designated environmental management inspectors must exercise the powers as set out in sections 31G to 31L of the NEMA.
- (2) The environmental management inspectors may request from any polluter that significantly contributes or is likely to contribute to poor air quality, ambient and isokinetic monitoring and any other air quality related study, programs or reports to be conducted by a recognised and competent third party, at the cost of the polluter.

41. Enforcement

- (1) The authorised person must take all lawful, necessary and reasonable practicable measures to enforce the provisions of this By-law.
- (2) The City may develop enforcement procedures which should take into consideration any national or provincial enforcement procedures.

42. Recognition programmes

An air quality officer may establish a programme for the public recognition of significant achievements in the area of pollution prevention.

43. Appeals

Any person may appeal against a decision taken by an authorised person under this By-law by giving a written notice of the appeal in accordance with the provisions of section 62 of the Systems Act.

44. Exemptions

- (1) Any person may, in writing, apply for exemption from the application of a provision of this By-law to the Council.
- (2) An application in terms of subsection (1) must be accompanied by substantive reasons.
- (3) The Council may require an applicant applying for exemption to take appropriate steps to bring the application to the attention of relevant interested and affected persons and the public.
- (4) The steps contemplated in subsection (3) must include the publication of a notice in at least two newspapers, one circulating provincially and one circulating within the jurisdiction of the City –
 - (a) giving reasons for the application; and
 - (b) containing such other particulars concerning the application as the air quality officer may require.
- (5) The Council may –
 - (a) from time to time review any exemption granted in terms of this section, and may impose such conditions as it may determine; and
 - (b) on good grounds withdraw any exemption.

- (6) The Council may not grant an exemption under subsection (1) until he or she has –
- (a) taken reasonable measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the exemption, including adjacent land owners or occupiers, are aware of the application for exemption and how to obtain a copy of it;
 - (b) provided such persons with a reasonable opportunity to object to the application; and
 - (c) duly considered and taken into account any objections raised.

45. Indemnity

The City shall not be liable for any damage caused to any property or premises by any action or omission of the employees or officials of the City when exercising any function or performing any duty in terms of this By-law, provided that such employees or officials must, when exercising such function or performing such duty, take reasonable steps to prevent any damage to such property or premises.

46. Repeal and savings

- (1) The City of Cape Town: Air Pollution Control By-law, 2003 is hereby repealed.
- (2) Anything done or deemed to have been done under any other law remains valid to the extent that it is consistent with this By-law, or until anything done under this By-law overrides it.

48. Short title

This By-law is called the City of Cape Town: Air Quality Management By-law, 2010.