Cape Town, South Africa

Air Quality Management By-law, 2016

Legislation as at 22 October 2021

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Cape Town
South Africa

Air Quality Management By-law, 2016

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[Amended by Air Quality Management By-law: Amendment on 22 October 2021]

To provide for air quality management and reasonable measures to prevent air pollution; to provide for the designation of the air quality officer; to provide for the establishment of local emissions norms and standards, and the promulgation of smoke control zones; to prohibit smoke emissions from dwellings and other premises; to provide for installation and operation of fuel burning equipment and obscuration measuring equipment, monitoring and sampling; to prohibit the emissions caused by dust, open burning and the burning of material; to prohibit dark smoke from compression ignition powered vehicles and provide for stopping, inspection and testing procedures; to prohibit emissions that cause a nuisance; to repeal the City of Cape Town: Air Quality Management By-law, 2010 and to provide for matters connected therewith;.

WHEREAS everyone has the constitutional right to an environment that is not harmful to their health or well-being;

WHEREAS everyone has the constitutional right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—

a) Prevent pollution and ecological degradation;

b) Promote conservation; and

c) Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

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

WHEREAS section 156(1)(a) of the Constitution provides that a municipality has the right to administer local government matters listed in Part B of Schedule 4 and Part B of Schedule 5;

WHEREAS section 156(2) of the Constitution provides that a municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer;

WHEREAS section 156(5) of the Constitution provides that a municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions;

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 of Cape Town and to ensure that air pollution is avoided or, where it cannot be altogether avoided, is minimised 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—

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

"**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 any dust, smoke, fumes or 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 a geographical area declared in terms of section 8 of the By-Law to be an air pollution control zone for purposes of Chapter IV of the By-Law;

"**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, as defined in the Air Quality Act that results in air pollution;

"**authorised official**" means an employee of the City responsible for carrying out any duty or function or exercising any power in terms of this By-law, and includes employees delegated to carry out or exercise such duties, functions or powers;

"**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 in the long term as well as in the short term;

"**burnt metal**" means any metal that has had its exterior coating removed by means of burning in any place or device other than an approved incineration device, for the purpose of recovering the metal beneath the exterior coating;

"**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) or any structure or employee of the City acting in terms of delegated authority;

"**City Manager**" means a person appointed by the Council in terms of section 54A of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

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

"**continuing offence**" means an offence where the act or omission giving rise to the issuing of a notice has not been repaired, removed or rectified by the expiry of a notice issued in terms of this By-law;

"**Council**" means the Municipal Council of the City;

"**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 1,61 mï1 ; or 18,57 percentage opacity; and

(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 1,91 mï1 ; or 21,57 percentage opacity.

"**directive**" means an instruction issued by the delegated authority for a person to perform or cease to perform certain activities in order to prevent any detrimental effect on air quality, health or the environment;

"**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 place of temporary or permanent residence, and includes any outbuilding or other structure ancillary to it;

"**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 testing procedure described in section 23;

"**fuel-burning equipment**" means any installed furnace, boiler, burner, incinerator, smoking device, wood-fired oven, commercial wood or charcoal fired braai, barbecue 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 including general and hazardous waste by the application of heat at a rate of less than 10 kg of waste per day; or

(c) used to subject liquid, gas or solid fuel to any process involving the application of heat;

but excludes standby generators and temporary standby generators; domestic fuel-burning equipment; and gas-fired commercial cooking equipment;

"**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;

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

"**nuisance**" means an unreasonable interference or likely interference caused by air pollution which has an adverse impact on—

(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 the 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 any material by burning without a chimney to vent the emitted products of combustion to the atmosphere and includes fires for fire safety training purposes, but excludes any recreational or commercial braai, 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;

"**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 jurisdiction of the City of Cape Town; and

(e) any State-owned entity or land;

"**Provincial Government**" means the Provincial Government 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 recognised specialist of appropriate qualifications and competency in the discipline of air quality management;

"**spray area**" means an area or enclosure referred to in section 25 used for spray painting, and "spray booth" has a corresponding meaning;

"**unauthorised burning**" means burning of any material in any place or device on any premises other than in an approved incineration device without obtaining the prior written authorisation of the City; and

"**vehicle**" means any motor car, 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 of Cape Town.

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 in so far as it relates to air quality management.

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 the environmental impacts and consequences of any air pollution that has occurred.

(2) The City may direct any person who fails to take the measures required under subsection (1) to—

(a) investigate, evaluate and assess the impact on the environment 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 City must give such person adequate notice and direct him or her to inform the authorised official of his or her relevant interests.

(3) The City 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 City may, if a person fails to carry out the measures referred to in subsection (1), recover all reasonable costs incurred as a result of it 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;

(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) Any person who fails to comply with a directive referred to in 4(2) commits an offence in terms of Chapter XI of this By-Law.

Chapter III
Designation of the air quality officer

5. Designation or appointment of the air quality officer

The City Manager must, in consultation with the Executive Director: City Health, designate or appoint an employee of the City as the Air Quality Officer to be responsible for co-ordinating matters pertaining to air quality management and granting or rejecting Atmospheric Emission Licences or Provisional Atmospheric Emission Licences in terms of the Air Quality Act within the City's jurisdiction.

Chapter IV
Local emissions standards, norms and standards and smoke control zones

Part 1 – Local emissions standards

6. Legal mandate

(1) The City 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 area of jurisdiction of the City of Cape Town 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 area of jurisdiction of City of Cape Town.

(2) The City may 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 and the failure to do so constitutes an offence in terms of Chapter XI of this By-law.

Part 2 – Norms and standards

7. Substances identification process

(1) The City must when identifying and prioritising the substances in ambient air that present a threat to public health, well-being or the environment consider the following:

(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 persistence in the environment, particularly if the substance is not biodegradable and is able to accumulate in humans, the environment or food chains;

(d) 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

(e) substances that are regulated by international conventions.

(2) The air quality officer 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.

8. Declaration of air pollution control zone

(1) The entire area of the jurisdiction of the City of Cape Town is hereby declared to be an air pollution control zone.

(2) The City may, within the air pollution control zone, from time to time by notice in the *Provincial Gazette*—

(a) prohibit or restrict the emission of one or more air pollutants from all premises or certain premises;

(b) prohibit or restrict the combustion of certain types of fuel;

(c) prescribe different requirements in an air pollution control zone relating to air quality in respect of:

(i) different geographical portions;

(ii) specified premises;

(iii) classes of premises;

(iv) premises used for specified purposes; or

(v) mobile sources.

(3) The City may develop and publish policies and guidelines, including technical guidelines, nrelating to the regulation of activities which directly and indirectly cause air pollution within an air pollution control zone.

(4) No owner or occupier of any premises shall cause or permit the emanation or emission of smoke of such a density or content from such premises as will obscure light to an extent greater than twenty (20) per cent.

Chapter V
Smoke emissions from premises other than dwellings

9. Application

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

10. 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 (3) minutes during any continuous period of thirty (30) minutes.

(2) This section does not apply to dark smoke which is emitted from fuel-burning equipment while such equipment is being started, overhauled or repaired, 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 atmospheric emission licences shall apply.

11. Installation of fuel-burning equipment

(1) No person shall install, alter, extend, replace or operate any fuel-burning equipment on any premises without the prior written authorisation of the City, which may only be given after consideration of the completed prescribed application form together with the relevant plans and specifications.

(2) No rights accrue to any person who has applied for written authorisation in terms of subsection (1) during the interim period whilst the application is under consideration.

(3) A written authorisation granted by the City in respect of the installation, alteration, extension, replacement or operation of any fuel-burning equipment in terms of a by-law concerned with air quality management or a regulation in terms of the Atmospheric Pollution Prevention Act, which has been repealed shall be deemed to satisfy the requirements of subsection (1) where proof of such authorisation is presented to the authorised official.

(4) Where fuel-burning equipment has been installed, altered, extended or replaced on premises contrary to subsection (1), the authorised official may, on written notice to the owner of the premises or to the operator of the appliance:

(a) order the removal of the fuel-burning equipment from the premises, at the expense of the owner, operator or both within the period stated in the notice, or,

(b) impose a fine not exceeding R10 000 before considering an application for written authorisation in terms of subsection (1).

(5) When ownership of fuel-burning equipment which has been approved by the City is transferred to a new owner, the new owner must apply for written authorisation to use such equipment in terms of subsection (1).

(6) Fuel-burning equipment must comply with the emission standards as contained in Schedule 1 of this By-law.

12. Operation of fuel-burning equipment

(1) No person may use or operate any fuel-burning equipment on any premises contrary to a written authorisation referred to in section 11(1).

(2) Where fuel-burning equipment has been used or operated on a premises contrary to subsection (1), the authorised official may on written notice to the owner of the premises or operator of the fuel-burning equipment—

(a) revoke the written authorisation referred to in subsection (1); 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) In the event that the owner of the premises or operator of the fuel-burning equipment fails to comply with a notice issued in terms of subsection (2), the authorised official may remove the fuel-burning equipment from the premises, and recover the reasonable costs incurred from the owner or operator in question.

13. Periodic Emissions Testing

The authorised official may order the owner of the premises or operator of any fuel-burning equipment capable of burning solid fuels to conduct periodic emissions testing in accordance with the methods prescribed in Schedule 1 of this By-law.

14. Presumption

(1) Dark smoke shall be presumed to have been emitted from a premises if it is shown that any fuel or material was burned on the premises, and that 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, can show that no dark smoke was emitted.

(2) Where an authorised official has observed fuel-burning equipment emitting particulate emissions; or dark smoke for a period of greater than 3 minutes in every aggregate half hour, the authorised official may issue a compliance notice ordering the operator or owner to immediately cease the operation of the fuel-burning equipment until such time that the fuel-burning equipment has been repaired to the satisfaction of the authorised official.

(3) Failure to comply with an order issued in terms of subsection (2) shall constitute an offence.

15. Installation and operation of obscuration measuring equipment

(1) An authorised official 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 premises in question 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 premises in question which is reasonably likely to emit dark smoke;

(d) the person on whom the notice is served has been convicted or paid an admission of guilt fine on more than one occasion in the preceding two years for a contravention committed under this Chapter or any previous by-law dealing with air quality matters and has not taken adequate measures to prevent further contravention of the provisions of this Chapter; or

(e) the authorised official considers that the nature of the air pollutants emitted from the relevant premises is reasonably likely to pose a risk to human health or the environment.

16. 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 15(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 official—

(i) produce the record of the monitoring and sampling results for inspection; and

(ii) provide a written report, in a form and by a date specified by the authorised official, of part or all of the information in the record of the monitoring and sampling results.

17. Temporary exemption

(1) Subject to section 31 and upon receipt of a fully motivated application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the City 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 City may not grant a temporary exemption under subsection (1) until it has:

(a) taken reasonable measures to ensure that all persons whose rights may be 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

18. 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 31, and on application in writing by the owner or occupier of any dwelling, the City may grant a temporary exemption in writing from one or all of the provisions of this Chapter.

(3) Subject to section 4(1), no person shall emit or permit the emission of dark smoke so as to cause a nuisance.

Chapter VII
Emissions caused by open burning

19. Authorisation of open burning and burning of material

(1) Subject to subsection (4), no person may carry out open burning of any material on any land or premises, unless such person has first obtained written authorisation for open burning from the City.

(2) (a) Where a third party wishes to conduct open burning on behalf of the owner of a property, written permission must be obtained by the third party from the owner prior to making application to the City for authorisation to conduct open burning.

(b) The City may undertake open burning where it is reasonably necessary and where the owner or occupier cannot be contacted.

(3) The City may, in the written authorisation referred to in subsection (1) impose conditions with which the person requesting written authorisation must comply.

(4) The City may not authorise open burning referred to in subsection (1) unless it is satisfied that the applicant has adequately addressed or fulfilled the following requirements:

(a) the material will be open burned on the land from which it originated;

(b) the person requesting authorisation has investigated and assessed every reasonable alternative for reducing, reusing, recycling or removing the material in order to minimize the amount of material to be open burned, to the satisfaction of the City;

(c) the person requesting authorisation has investigated and assessed the impact the open burning will have on the environment to the satisfaction of the City;

(d) the person requesting authorisation has either placed a notice in a local newspaper circulating in the area or notified in writing the owners and or 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 City within seven days of being notified;

(e) the person requesting authorisation has provided proof that the written notification was received by the owners and or occupiers of all adjacent properties at least seven (7) days prior to the open burning application being considered;

(f) the prescribed fee has been paid to the City;

(g) 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;

(h) the open burning is conducted at least 100 metres from any buildings or structures except on land set aside for nature conservation in terms of any legislation or where the application is for firefighting training or film shoot special effects purposes;

[paragraph (h) substituted by section 1(a) of the Amendment By-law, 2021]

(i) the open burning will not pose a potential hazard to human health or safety, private property or to the environment; and

[paragraph (i) amended by section 1(b) of the Amendment By-law, 2021]

(j) The applicant has, in terms of the Community Fire Safety By-law, submitted a fire management plan to the satisfaction of the Chief Fire Officer.

[paragraph (j) inserted by section 1(b) of the Amendment By-law, 2021]

(5) The provisions of this section shall not apply to—

(a) recreational outdoor barbecue or braai activities on private premises or in designated spaces;

(b) small controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purposes;

(6) For the purposes of fire safety training sections (4)(a), (b), (f) and (g) shall not apply.

(7) The management practices set out in schedule 2 to the By-law must be applied to prevent or minimise the discharge of smoke from open burning of vegetation within the City's jurisdiction.

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

(1) No person may, without prior written authorisation by the City, on any premises –

(a) carry out or permit the burning of any tyres, rubber products, cables, synthetically covered or insulated products, equipment or any other similar product for purposes of

(i) recovering the metal contained therein;

(ii) disposing of tyres or any other product described in (a) above as waste; or

(iii) for any other reason, except for the thermal treatment of general and hazardous waste in any device licensed in terms of section 41(1)(a) of the National Environmental Management: Air Quality Act;

(b) possess, store, transport or trade in any burnt metal recovered as a result of unauthorised burning.

(2) An authorised official may for the purpose of gathering evidence, seize any burnt metal or metal in the process of being burnt where authorisation in terms of section 20(1) has not been obtained or cannot be provided by a person referred to in that subsection.

Chapter VIII
Emissions from compression ignition powered vehicles

21. 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 that emits dark smoke.

(2) For purposes of this Chapter the registered owner of the vehicle shall be presumed to be the driver unless the contrary is proven.

22. Stopping of vehicles for inspection and testing

(1) In order to enable an authorised official to enforce the provisions of this Chapter, the driver of a vehicle must comply with any reasonable direction given by an authorised official to conduct or facilitate the inspection or testing of the vehicle.

(2) An authorised official may issue an instruction to the driver of a vehicle suspected of emitting dark smoke to stop the vehicle in order to—

(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 official reasonably believes that an offence has been committed under section 21 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 specified address or testing station, within a specified period of time, for inspection and testing in accordance with section 23.

23. Testing procedure

(1) An authorised official 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 21(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 official, the driver must start the vehicle, place it in neutral gear and engage the clutch;

(b) while the vehicle is idling, the authorised official must conduct a visual inspection of the emission system of the vehicle;

(c) the authorised official 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 official 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 official must release the throttle pedal when the engine reaches cut-off speed;

(f) if the authorised official 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 official.

(3) If, having conducted the free acceleration test, the authorised official 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 21; or

(b) is emitting dark smoke, he or she must issue the driver of the vehicle with a repair notice in accordance with section 24.

24. Repair notice

(1) In the event that a determination is made in terms of section 23(3) that a vehicle is emitting dark smoke the authorised official must instruct the owner of the vehicle in writing to repair the vehicle and present it for re-testing at the address specified in a repair notice;

(2) A copy of the test results must be provided by the registered owner of the vehicle or his representative to the authorised official where the testing station is not a City testing facility on or before the due date of the repair notice.

(3) 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 of the vehicle, the name and address of the vehicle owner.

(4) The owner of a vehicle is deemed to have been notified of the repair notice on the date that such notice is issued.

(5) The City may take whatever steps it considers necessary in the event that the requirements of subsection (1) are not complied with, including impounding the vehicle and recovering any costs incurred in that regard from the owner of the vehicle.

Chapter IX
Emissions that cause a nuisance

25. Prohibition of emissions that cause nuisance

(1) No person shall, within the area of jurisdiction of the City of Cape Town—

(a) spray or apply any coat, plate or epoxy coat to any vehicle, article or object, inside an approved spray area or spray booth, so as to cause a nuisance; or

(b) spray, coat, plate or epoxy coat to be applied to any such vehicle, article or object or allow it to be sprayed, coated plated or epoxy coated or similar activity outside an approved spray area or spray booth.

(c) cause any unreasonable interference or likely interference through air pollution, which may adversely affect—

(i) the health or well-being of any person or living organism; or

(ii) the use and enjoyment by an owner or occupier of his or her property or environment;

(2) Any spray area or spray booth referred to in subsection (1) must be:

(a) constructed and equipped in accordance with the General Safety Regulations promulgated in terms of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993); and

(b) approved by the authorised official, 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 produces emissions of dust that may be harmful to public health, or cause a nuisance, shall take the best practicable environmental option to prevent emissions into the atmosphere to the satisfaction of the authorised official.

(4) Any person undertaking an activity referred to in subsection (3) must implement at least the following control measures:

(a) dust extraction control measures;

(b) any alternative control measure approved by the air quality officer or his or he delegated representative.

(5) An occupier or owner of any premises must prevent the existence in, or emission of any air pollution nuisance from, his or her premises.

(6) The occupier or owner of any premises from which an air pollution nuisance emanates, or where an air pollution nuisance exists, is guilty of an offence.

26. Dust emissions

(1) Any person who conducts any activity or omits to conduct any activity which causes or permits 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 shall adopt the best practical environmental option to the satisfaction of the authorised official, to prevent and abate dust emissions.

(2) An authorised official may require any person suspected of causing a dust nuisance to submit a dust management plan within the time period specified in the written notice.

(3) The dust management plan contemplated in subsection (2) must:

(a) identify all possible sources of dust within the affected site;

(b) detail the best practicable measures to be undertaken to mitigate dust emissions;

(c) detail an implementation schedule;

(d) identify the person responsible for implementation of the measures;

(e) incorporate a dustfall monitoring plan; and

(f) establish a register for recording all complaints received by the persons regarding dustfall, and for recording follow up actions and responses to the complaints.

(4) The authorised official may require additional measures to be detailed in the dust management plan.

(5) The dust management plan must be implemented within a time period specified by the authorised official in a written notice.

(6) Failure to comply with the provisions of this section constitutes an offence.

27. 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
General matters

28. Compliance notice

(1) An authorised official may serve a compliance notice on any person whom he or she reasonably believes is likely to act contrary to, or has acted in contravention of the By-law, calling upon that person—

(a) to comply with the relevant section of the By-law;

(b) to take all necessary steps to prevent a recurrence of the non-compliance; and

(c) to comply with any other conditions contained in the notice.

(2) A compliance notice under subsection (1) may be served—

(a) upon the occupier, manager or owner of any premises, by—

(i) delivering it to the occupier, manager or 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;

(3) Failure to comply with a compliance notice constitutes an offence.

29. Enforcement

(1) An authorised official 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.

30. Appeals

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

31. Exemptions

(1) Any person may apply to the City, in writing, for exemption from the application of a provision of this By-law.

(2) The City may—

(a) approve or refuse an application for exemption; and

(b) impose conditions when granting approval for applications for exemption, made in terms of subsection (1).

(3) An application in terms of subsection (1) must be accompanied by substantive reasons.

(4) The City 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.

(5) The steps contemplated in subsection (4) must include a written notification to the abutting and affected neighbours or the publication of a notice in at least two newspapers, one circulating provincially and one circulating within the jurisdiction of the City, which must—

(a) give reasons for the application; and

(b) contain such other particulars concerning the application as the air quality officer may require.

[subsection (5) substituted by section 2 of the Amendment By-law, 2021]

(6) The City 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.

(7) The City may not grant an exemption under subsection (1) until the City has:

(a) taken reasonable measures to ensure that all persons whose rights may be detrimentally affected by the granting of the exemption, including adjacent land owners or occupiers, are aware of the application for exemption.

(b) provided such persons with a reasonable opportunity to object to the application; and

(c) duly considered and taken into account any reasonable objections raised.

32. Indemnity

The City shall not be liable for any damage caused to any property or premises by any action or omission on the part 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.

Chapter XI
Offences and penalties

33. Offences and penalties

(1) A person who contravenes sections 4(1) and (2), 6(3), 10(1) and (2), 11(1), 12(1), 19(1), 19(3), 20(1), 20(2), 21(1), 22(1), 24(1), 25(3), (4), (5) and (6), 26(1), (2), (3) and (5), 28(1), (2) and (3) is guilty of an offence.

(2) Any person who is guilty of an offence in terms of this By-law is liable to a fine or, upon conviction to, imprisonment not exceeding 1 year or to both such fine and such imprisonment.

(3) Any person who commits a continuing offence may be liable to a fine for each day during which that person fails to comply with a directive, compliance notice or repair notice, issued in terms of this By-law.

(4) It is an offence to supply false information to an authorised official in respect of any issue pertaining to this By-law.

(5) Where no specific penalty is provided, any person committing an offence in terms of this By-law is liable to a fine and upon conviction to imprisonment for a period not exceeding one (1) year or to both such imprisonment and such fine.

(6) 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; and

(b) to pay damages for harm caused to another person or to property.

34. Repeal and savings

(1) The City of Cape Town: Air Quality Management By-law 2010 is hereby repealed.

(2) Anything done or deemed to have been done under any other by-law relating to air quality remains valid to the extent that it is consistent with this By-law.

35. Short title

This By-law is called the City of Cape Town: Air Quality Management Amendment By-law, 2021.

[section 35 substituted by section 3 of the Amendment By-law, 2021]

Schedule 1

Standards and specifications for fuel-burning equipment:

1. All fuel-burning equipment capable of burning more than 100kg/h of coal, biomass or other solid fuel shall be fitted with suitable control equipment so as to limit dust and grit emissions.

2. The control equipment shall be fitted in such a manner so as to facilitate easy maintenance.

3. The permitted concentration of grit and dust emissions from a chimney serving a coal fired boiler equipped with any mechanical draught fan system shall not be more than 250 mg/Nm^3 (as measured at 0°C, 101,3 kPa and 12% CO_2). Where the fuel-burning equipment has been declared as a Controlled Emitter in terms of the Air Quality Act, the respective Controlled Emitter Regulations shall apply.

The approved methods for testing shall be:

US EPA:

1. Method 17 - In-Stack Particulate (PM).

2. Method 5 - Particulate Matter (PM).

ISO standards:

ISO 9096: Stationary source emissions - Manual Determination of mass concentration of particulate matter.

British standards:

BS 3405:1983 Method for measurement of particulate emission including grit and dust (simplified method).

4. The City reserves the right to call upon the owner or his or her agent of the fuel burning equipment to have the emissions from such fuel burning equipment evaluated at his or her own expense as may be required by the authorised official.

Insulation of chimneys:

All fuel-burning equipment using Heavy Fuel Oil or other liquid fuels with a sulphur content equal to or greater than 2.5 % by weight must be fitted with a fully insulated chimney using either a 25mm air gap or mineral wool insulation to prevent the formation of acid smut. Such chimneys must be maintained in a good state of repair at all times.

Wood-fired pizza ovens and other solid fuel combustion equipment:

Wood-fired pizza ovens and other solid fuel combustion equipment shall be fitted with induced draft fans at the discretion of the authorised official.

Schedule 2

Good management practices to prevent or minimise the discharge of smoke from open burning of vegetation

1. Consider alternatives to burning – e.g. mulching for recovery of nutrient value, drying for recovery as firewood.
2. Vegetation that is to be burned (such as trimmings, pruning or felling's cut from active growth) should as a general guide be allowed to dry to brown appearance prior to burning.
3. Except for tree stumps or crop stubble, the place of combustion should be at least 50 metres from any road other than a highway, and 100 metres from any highway or dwelling on a neighbouring property.
4. Due regard should be given to direction and strength of wind, and quantity and state of vegetation to be combusted, prior to initiating combustion.
5. In the case of vegetation previously treated by spray with any agrichemical, any manufacturer's instructions as on the label of any container in respect of the burning of treated vegetation must be observed.
6. Two days' fine weather should be allowed prior to burning.
7. Vegetation should be stacked loosely rather than compacted.
8. A small fire, started with the driest material, with further material continually fed onto it once it is blazing, is preferable to a large stack ignited and left unattended.

Note: Persons conducting open burning of vegetation must ensure compliance with the requirements of the National Veld and Forest Fire Act, 1998, (Act No. 101 of 1998) as amended.