eThekwini, South Africa

Air Quality Management

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Air Quality Management
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eThekwini
South Africa

Air Quality Management By-law, 2020

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To provide for air quality management within the Municipality; to provide for reasonable measures to prevent air pollution; to provide for local emission standards and air pollution control zones; to provide for smoke emissions from premises, vehicles and dwellings; to provide for the use and operation of fuel burning equipment; to provide for the installation and operation of obscuration measuring equipment; to provide for the prohibition of emissions that cause a nuisance; to provide for offences and penalties and to provide for matters incidental thereto.

WHEREAS the Municipality has competence in terms of section 156 (2) of the Constitution of the Republic of South Africa to make and administer By-laws for the effective administration of the matters which it has the right to administer;

WHEREAS the Municipality has competence in terms of Part B of Schedule 4 of the Constitution relating to air pollution;

WHEREAS the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) provides measures for the protection and enhancement of the quality of air and the prevention of air pollution and ecological degradation;

WHEREAS the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) binds all organs of state to provide reasonable measures for the protection and enhancement of the qualty of ambient air for the sake of securing an environment that is not harmful to the health and well being of people;

AND WHEREAS the Municipality seeks to manage air quality within its area of jurisdiction to ensure that air pollution is avoided and, where it cannot be altogether avoided, is minimised and remedied;

NOW THEREFORE the Municipal Council of the eThekwini Metropolitan Municipality, acting in terms of section 156 read with Schedule 4, Part B of the Constitution of the Republic of South Africa, and read with section 11 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), hereby makes the following By-law:

Chapter 1
Interpretation and objectives

1. Definitions

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

"**Act**" means the National Environment 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 soot, dust, fly ash, cinders, solid particles of any kind, aerosols, odorous substances, 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 the environment, human health or well-being, or will have such an effect in the future;

"**air quality officer**" means the air quality officer designated as such in terms of section 14 of the Act;

"**ambient air**" means "ambient air" as defined in section 1 of the 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 official**" means a person authorised to implement the provisions of this By-law, including but not limited to-

(a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(b) municipal or metropolitan police officers as contemplated in the South African Police Service Act, 1995 (Act No. 68 of 1995); and

(c) such employees, agents, delegated nominees, representatives and service providers of the Municipality as are specifically authorised by the Municipality in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

"**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;

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

"**dark smoke**" means—

(a) in respect of Chapter 5 and Chapter 6 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 4 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 or 18.57 percentage opacity;

(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 1.91m-1 or 21.57 percentage opacity;

"**dust**" means any material composed of particles small enough to pass through a 1 mm screen and large enough to settle by virtue of their weight into the sampling container from the ambient air.

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

"**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;

"**fuel-burning equipment**" means any furnace, boiler, heater, burner, 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; and

excludes standby generators and temporary standby generators producing a combined generation capacity of equal to or less than 50kVa per premises;

"**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;

"**listed activity**" means any activity listed in terms of the Act;

"**mobile source**" means a single identifiable source of atmospheric emission which does not eminate from a single location;

"**municipal council**" or "council" means the eThekwini municipal council, a municipal council referred to in section 157(1) of the Constitution;

"**Municipality**" means eThekwini Municipality, a category A Municipality as envisaged in terms of section 155(1) of the Constitution of South Africa;

"**Municipal Manager**" means the official of the Municipality appointed as contemplated in section 54A of the Municipal Systems Act;

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

"**NAEIS**" means National Atmospheric Emission Inventory System;

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

"**non-point source**" means a source of atmospheric emission which cannot be identified as having emanated from a single identifiable source or fixed location and includes veld, forest and open fires, mining activities, agricultural activities and stockpiles;

"**nuisance**" means an unreasonable interference or likely interference caused by air pollution with the—

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

(b) health or well being of the environment; or

(c) 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 air 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" and "burning of material" 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; and

(d) any locomotive, ship, boat or other vessel which operates in the precincts of any harbour,

within the area of the jurisdiction of the Municipality;

"**proclaimed township**" means any land unit zoned and utilized for residential purposes;

"**point source**" means a single identifiable source and fixed location of atmospheric emission, and includes smoke stacks and residential chimneys;

"**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 24 which must be used for spray painting, and "spray booth" has a corresponding meaning; 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. Interpretation of By-law

(1) If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

(2) In the event of any conflict between this By-law and any other By-law or policy which directly or indirectly, within the jurisdiction of the Municipality, regulates air quality, the provisions of this By-law shall prevail to the extent of the inconsistency.

3. Objects of By-law

The objects of this By-law are to-

(a) give effect to the right contained in section 24 of the Constitution by regulating air pollution within the area of the Municipality's jurisdiction;

(b) give effect to the Act and ensure that ambient air quality standards are maintained;

(c) provide, in conjunction with any other applicable law, an effective legal and administrative framework within which the Municipality can manage and regulate activities that have the potential to adversely impact the environment, public health and well being; and

(d) ensure that air pollution is avoided, or where it cannot be altogether avoided, mitigated or minimised.

4. Application of By-law

(1) This By-law applies within the area of jurisdiction of the Municipality.

(2) This By-law does not remove the need for any other permit, licence, consent or authorisation in respect of air quality management that may be required under any other applicable legislation.

5. Powers of authorised officials

For the purpose of discharging his or her duty in terms of this By-law, an authorised official may exercise the powers of an environmental management inspector as set out in NEMA.

Chapter 2
Duty of care

6. Reasonable measures to prevent air pollution

(1) No person may intentionally or negligently commit any act or omission which causes or is likely to cause air pollution.

(2) 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 to—

(a) prevent any potential air pollution from occurring; and

(b) mitigate and, as far as reasonably possible, remedy any air pollution that has occurred.

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

(a) investigate, evaluate and assess the impact of specific activities on the health of the environment and the public and report thereon;

(b) take specific reasonable measures before a specific date;

(c) diligently continue with those measures; and

(d) complete them before a specified reasonable date,

: Provided that prior to such direction the Municipality must give such person adequate notice and direct him or her to inform the Municipality of his or her relevant interest, and the Municipality may consult with any other organ of state.

(4) If a person fails to comply or inadequately complies with a directive contemplated in subsection (3), the Municipality may take reasonable measures to remedy the situation.

(5) The Municipality may, if a person fails to carry out the measures referred to in subsection (2), recover all reasonable costs incurred as a result of the Municipality acting under subsection (4) 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 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.

(6) If more than one person is liable under subsection (5), 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 (2) and (3).

Chapter 3
Local emission standards, norms and standards and air pollution control zones

7. Legal mandate

(1) The Municipality may, by notice in the *Provincial Gazette*—

(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 of the Municipality 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 emission from point, non-point or mobile sources in the Municipality.

(2) The Municipality shall take the following factors into consideration in setting local emission standards:

(a) health, safety and environmental protection objections;

(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.

8. Substances identification process

(1) The Municipality must, when 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 or introduce other health or environmental impacts;

(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 substances taking the following factors into consideration:

(i) size of the exposed population, living resources or ecosystems; and

(ii) the existence of particularly sensitive receptors in the zone concerned; and

(f) substances that are regulated by international conventions.

(2) The Municipality 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 and the environment.

9. Publication of local emission standards

The Municipality must follow a consultative process in terms of chapter 4 of the Municipal Systems Act for the purposes of publication of the local emission standards.

10. Declaration of air pollution control zone

(1) The whole area within the area of jurisdiction of the Municipality is hereby declared to be an air pollution control zone.

(2) The Municipality 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) declare smokeless zones, in which smoke with an obscuration of more than 10 percent may not be emitted; and

(d) 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 specific purposes; or

(v) mobile sources.

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

(4) Subject to section 29, the Municipality may in writing exempt certain premises, classes of premises or premises used for specified purposes from this section.

Chapter 4
Smoke emissions from premises other than dewllings

11. Application

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

12. Prohibition of dark smoke from premises

(1) Dark smoke must not be emitted from any premises for a period as determined in terms of the Act.

(2) 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.

(3) Where an authorised official has observed a fuel-burning equipment emitting particulate emissions or dark smoke for a period of greater than that determined in terms of the Act, the authorised official may order the owner, occupier or operator to immediately cease the operation of the fuel-burning equipment.

(4) The owner, occupier or operator, as the case may be, must keep records of all incidents where fuel-burning equipments are responsible for smoke of a shade darker than No.2 Ringelman, and such records shall include the following:

(a) the date and time of the incident;

(b) the reason for the excessive smoke; and

(c) the actions taken to eliminate the problem.

13. Emissions from compressed ignition powered vehicles

(1) No person may drive a vehicle on a public road if it emits dark smoke.

(2) A person commits an offence if he or she contravenes subsection (1).

(3) For the purposes of enforcing the provisions of this section, an authorised official may—

(a) by means of a signal instruct the driver of a vehicle to stop that vehicle; and

(b) instruct that driver to give all assistance required for the purpose of the inspection and testing of that vehicle.

(4) An authorised official must, prior to any testing being undertaken in terms of subsection (7) inform the driver of the vehicle that—

(a) the vehicle has been stopped to test it in terms of this by-law for the emission of dark smoke;

(b) the vehicle is being detained for the purpose of such testing; and

(c) if the results of such testing indicate that dark smoke is emitted from the vehicle or if the driver concerned fails or refuses to assist with such test, it will constitute an offence under this by-law.

(5) Any person who fails to comply with a direction given under subsection (3) (a) commits an offence.

(6) When a vehicle has stopped in compliance with a direction given under subsection (3)(a), the authorized official may test the vehicle at the roadside, in which case testing must be carried out at or as near as practicable to the place where the direction to stop the vehicle is given; and as soon as practicable, and in any case within 1 hour, after the vehicle is stopped in accordance with the direction.

(7) An authorised official must use the following testing procedure in order to determine whether a compressed ignition powered vehicle is being driven or used in contravention of subsection (1):

(a) when instructed to do so by the authorised official, the driver of the vehicle must apply a handbrake, start the vehicle, place it in neutral gear and engage the clutch;

(b) for a period required by an authorised official smoothly depress the accelerator pedal of the vehicle, until the engine reaches a revolution level of 3000 revolutions per minute or in the absence of a revolution counter to the extent directed by an authorised person; and

(c) while the accelerator pedal is depressed, the authorised official must measure the smoke emitted from the vehicle's emission system by using approved instrumentation in order to determine whether or not dark smoke is emitted.

(8) After having conducted a test, an authorised official must furnish the driver of the vehicle concerned with the test results which indicate that either the vehicle is not emitting dark smoke or is emitting dark smoke in contravention of subsection (1) and if the driver is not the owner of the vehicle concerned, then it is presumed that the driver is the owner of the vehicle unless he or she produces evidence to the contrary.

(9) An authorised official must furnish the driver of the vehicle with a certificate (valid for a period of 24 months) indicating that the vehicle is not being driven in contravention of subsection (1), if the test results indicate that the vehicle concerned is not emitting dark smoke.

(10) An authorised official must issue the driver of the vehicle with a repair notice in accordance with subsection (11), if the test results indicate that the vehicle concerned is emitting dark smoke.

(11) A repair notice must direct the owner of the vehicle to repair the vehicle within 6 months from the date of issue, and to take the vehicle to a place identified in the notice for re-testing before the expiry of the 6 months.

(12) The repair notice must contain, amongst others, the following information—

(a) the make, model and registration number of the vehicle;

(b) the name, address and identity number of the driver of the vehicle; and

(c) if the driver of the vehicle is not the owner of the vehicle, the name and address of the vehicle owner.

(13) A person commits an offence under this section if the person fails—

(a) to comply with the repair notice referred to in subsection (11);

(b) to take the vehicle for re-testing as referred to in subsection (11).

(14) It shall not be a defence in proceedings under subsection (13) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.

(15) An authorised official must issue a notification in terms of section 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as amended, where the owner of the vehicle fails to take the vehicle for re-testing as referred to in subsection (11).

14. Installation and operation of fuel-burning equipment

(1) Any person wishing to install, alter, extend, replace or use any fuel-burning equipment on any premises must make an application to the Municipality for a fuel-burning equipment authorisation and pay the prescribed application fee.

(2) No person shall install, alter, extend, replace or use any fuel-burning equipment on any premises without the written authorisation by the Municipality referred to in subsection (1).

(3) Where fuel-burning equipment has been installed, altered, extended, replaced or used on premises contrary to subsection (2), the Municipality may, on written notice to the owner and occupier of the premises-

(a) order the removal of the fuel-burning equipment from the premises at the expense of the owner and occupier and within the period stated in the notice;

(b) direct the person to pay an administrative fine not exceeding R10 000 before the rectification of the unauthorised installation of the fuel-burning equipment can be considered ; or

(c) revoke the autorisation granted under subsection (1).

(4) The Municipality may take whatever steps it considers necessary in order to remedy the harm caused by the installation, alteration, extension, replacement or use of fuel-burning equipment

on premises and prevent any further occurrence, and may recover the reasonable costs so incurred from the person responsible for causing such harm.

(5) Where the ownership of fuel-burning equipment approved in terms of subsection (1) is transferred, the new owner must apply to the Municipality for authorisation in terms of subsection (3) within 14 days of taking ownership.

(6) Fuel-burning equipment must comply with the emission standards and conditions issued by the Municipality from time to time.

(7) Where a boiler or boilers are operated on the same premises, the Municipality may require the person who uses or operates such a boiler or boilers to submit atmospheric emission reports to the Municipality.

15. Installation and operation of obscuration measuring equipment

(1) The Municipality 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 an appropriate 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 14 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 Municipality 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 thenotice, and must stipulate a reasonable period within which this must be done;

(b) that person's right of appeal under section 31;

(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.

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 equipmentin terms of section 15(1) must —

(a) record all monitoring and sampling results and maintain a copy of this record for at least five years after obtaining the results;

(b) if requested to do so by an authorised official, produce the record of the monitoring and sampling results for inspection;

(c) if requested to do so by an authorised official, conduct stack emission monitoring to validate calculated data for applicable priority pollutants as identified in terms of the Act; and

(d) if requested to do so by an authorised official, 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. Reporting requirements

(1) An owner or operator of any fuel-burning equipment, as the case may be, must-

(a) immediately register with the National Atmospheric Emission Inventory System and submit emission data within a period determined by the Municipality;

(b) submit at least one calculated stack emission report per annum to the Municipality in a format as specified by the Municipality;

(c) provide any additional emission reports as may be requested by the Municipality;

(d) provide a maintenance plan per annum for all fuel-burning equipment;

(e) produce annual records of ash management and its disposal thereof; and

(f) submit the first emission report to the Municipality within 12 months from the date of promulgation of this By-law.

(2) An owner or operator of fuel-burning equipment must keep a complaint's register at the premises and make such register available for inspection by the Municipality as and when the needs for such inspection arises.

(3) The complaints register must include the following information:

(a) the nature of the complaint;

(b) the name, physical address and telephone number of the complainant;

(c) the date and time when the complaint was registered; and

(d) details of the steps taken by the owner or operator of fuel buring equipment to investigate the complaint and remedy the issue that triggered the complaint.

18. Temporary exemption

(1) Subject to section 29 and on application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the Municipality 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 Municipality may not grant a temporary exemption under subsection (1) until—

(a) the applicant has advertised the application for an exemption in a manner determined by the Municipality, affording the public an opportunity to make representations to the Municipality in respect of such application;

(b) the applicant has 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

(c) it has duly considered and taken into account any objections raised in respect of the application.

Chapter 5
Smoke emissions from dwellings

19. Prohibition of emission of dark smoke from dwellings

(1) Subject to section 6, no person may emit or permit the emission of dark smoke from any dwelling which-

(a) causes or has the effect of or potential to cause a health or environmental risk;

(b) causes or has the effect of or potential to cause any damage, annoyance, inconvenience or discomfort to the public or the environment; or

(c) affects or has the potential to affect the well being or reasonable comfort of a person or community.

(2) Subject to section 29 and on application in writing by the owner or occupier of any dwelling, the Municipality may grant a temporary exemption in writing from one or all of the provisions of this Chapter.

Chapter 6
Emissions caused by dust, open burning and burning of material

20. Authorisation for 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 to the Municipality for prior written authorisation of such open burning.

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

(3) The Municipality 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) 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 Municipality;

(c) the person requesting authorisation has investigated and assessed every reasonable alternative for removing the material from the land or premises to the satisfaction of the Municipality;

(d) the person requesting authorisation has investigated and assessed the impact the open burning will have on the environment by means of a specialist study, as requested by the Municipality;

(e) the 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;

(ii) the reason for the burning;

(iii) the date and approximate time of the buring;

(iv) in the event of inclement weather conditions, an alternative date or dates on which the burning may occur; and

(v) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed open burning with the Municipality within 7 days of being notified;

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

(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 or designated public places;

(b) small controlled fires in any land or premises for the purposes of cooking, heating water and other domestic purposes;

(c) sugar cane burning; and

(d) any other area or activity to which the Municipality has declared this section not to apply.

21. Prohibition of tyre burning and burning of rubber and other material for the recovery of metal

(1) No person may without authorisation in writing from the Municipality—

(a) carry out or permit the burning of any tyres, 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

(2) The Municipality may—

(a) take whatever steps it considers necessary in order to remedy the harm caused by the burning referred to in subsection (1) (a) and (b) and the possession referred to in subsection (1) (c), and prevent any occurrence of it; and

(b) recover the reasonable costs incurred from the person responsible for causing such harm.

(3) The Municipality may for the purposes of gathering evidence, confiscate any burnt metal or metal reasonably suspected of being recovered, possessed, stored, transported or traded from burning referred to in subsection (1) where authorisation has not been obtained or cannot be provided.

22. Dust emissions

Any person who —

(a) conducts any activity which results in dust emissions; or

(b) causes or permits dust emissions to occur,

must adopt the best practicable environmental option to the satisfaction of the Municipality, 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.

23. Sugar cane burning emissions

(1) Any person who is in control of premises where sugarcane is cultivated and will be burnt may register with a Fire Protection Association (FPA) that is contemplated in the National Veld and Forestry Act, 1998 (Act No. 101 of 1998) and must comply with the constitution, minimum requirements, guidelines and rules of such FPA.

(2) Any person who is in control of premises where sugarcane is cultivated and will be burnt and is not registered with any FPA must —

(a) consult with the South African Weather Services for wind speed, wind direction;

(b) comply with the National fire danger rating system when preparing to burn sugar cane for harvesting;

(c) declare a 'no burn' if a Fire Detection Index of 55 or above is predicted for the burn day;

(d) declare a 'no burn' when the atmospheric conditions negatively impact (smut deposits, smoke, heat, etc.) onto sensitive areas like schools, recreational areas, clinics, hospitals, residential units, District & National roads, telecommunication links, powerlines and special areas of interest such as the King Shaka Airport;

(e) declare a 'no burn' when there is a strong temperature inversion and after 19H00 and before 05H00;

(f) record the controlled burns (fields burnt/fire breaks) and unplanned burns (arson /runaway fires) and include the date and time of burning and prevailing wind direction and wind speed; and

(g) not exercise any burning on weekends and public holidays.

Chapter 7
Emissions that cause a nuisance

24. Prohibition of emissions that cause a nuisance

(1) No person may, within the area of jurisdiction of the Municipality—

(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 causea 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 requirements of the Municipality and any applicable law.

(3) Any person conducting sand blasting, shot blasting, grinding, finishing or similar activities which customarily produce emissions of dust that maybe 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 subsection (3) must implement—

(a) dust extraction control measures; or

(b) any alternative control measure approved by the Municipality.

(5) An occupier or owner of any premises must-

(a) prevent the existence of any nuisance in, or the emission of any nuisance from, his or her premises; and

(b) take all reasonable steps to prevent the nuisance caused by fumes due to any activity on such premises.

25. Abatement notice

(1) An authorised official may serve an abatement notice on any person whom he or she reasonably believes is likely to act contrary or has acted contrary to section 24, calling upon that person to—

(a) abate the nuisance within a period specified in the notice;

(b) take all necessary steps to prevent a recurrence of the nuisance; and

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

26. Steps to abate nuisance

The Municipality 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 9
Offences and penalties

27. Offences and penalties

(1) A person commits an offence if he or she-

(a) contravenes any provision of this By-law;

(b) contravenes any conditions, restrictions or prohibitions imposed in terms of this By--law;

(c) fails to comply with the terms of any notice given or signage displayed in terms of this By-law;

(d) obstructs, hinders, or in any manner interferes with an authorised official who is acting or entitled to act in terms of this By-law; or

(e) furnishes false information to an authorised official in respect of any issue pertaining to this By-law;

(f) fails to obey any lawful instruction or direction given to him or her in terms of this By--law.

(2) Any person who is convicted of an offence under this By-law is be liable to a fine of an amount not exceeding R300 000 or to a period of imprisonment, or to both such fine and imprisonment.

(3) In the case of a continuing offence, an additional fine of an amount not exceeding R5000 or imprisonment for a period not exceeding 10 days, for each day on which such offence continues or both such fine and imprisonment, will be imposed.

(4) In addition to imposing a fine or imprisonment, a court may order any person convicted of an offence under this By-law to—

(a) remedy the harm caused;

(b) 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) install and operate at the person's own expense any equipment or technology required to mitigate the adverse effect caused by air emissions.

(5) 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 9
General matters

28. Reporting of emissions in the NAEIS

Any person who is conducting activities that are listed in Schedule "A" of this By-law or any person that is conducting activities below the threshold that is listed in the Act's list of activities that result in atmospheric emission which have or may have a significant detrimental effect on the environment including health, social conditions, economic conditions, ecological conditions or cultural heritage must register with NAEIS and submit emission data within a period determined by the Municipality.

29. Exemptions

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

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

(3) The Municipality 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 Municipality—

(a) giving reasons for the application; and

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

(5) The Municipality may—

(a) impose conditions it deems necessary, when granting an application for exemption;

(b) from time to time review any exemption granted in terms of this section, and may impose such conditions as it may determine; and

(c) on good grounds withdraw any exemption.

(6) The Municipality may not grant an exemption under subsection (1) until it 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.

30. Delegations

(1) Subject to the Constitution and applicable national and provincial laws, any -

(a) power, excluding a power referred to in section 160(2) of the Constitution;

(b) function; or

(c) duty conferred, in terms of this By-law, upon the Council, or on any of the Municipality's other political structures, political office bearers, councilors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councilor, or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) The delegation in terms of sub-section (1) must be effected in accordance with the system of delegation adopted by the Council in accordance with section 59(1) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), subject to the criteria set out in section 59(2) of said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the -

(a) entity or person issuing the delegation or sub-delegation;

(b) recipient of the delegation or sub-delegation; and

(c) conditions attached to the delegation or sub-delegation.

31. Appeals

(1) A person whose rights are affected by a decision taken by the Municipality in terms of this By-law may appeal against that decision in terms of the Appeals provision contained in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority.

(3) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in terms of the court's appeal process and not in terms of subsections (1) to (2).

32. Indemnity

The Municipality and its employees are not liable for any loss or harm suffered by any person, or any damage caused to any property or premises, as a result of the Municipality acting in terms of this By-law: Provided that the Municipality and its employees must, when exercising such function or performing such duty, take reasonable steps to prevent any harm, loss or damage from occuring.

33. Short title and commencement

This By-law is called the eThekwini Municipality: Air Quality Management By-law, 2018 and takes effect six months from the date of publication thereof in the *Provincial Gazette* or on such earlier date as may be determined by the publication of a commencement notice in the *Provincial Gazette*.

Schedule A

Acid works
Alkali works
Ammonia work and transportation
Asphalt plant, permanent and mobile
Bitumen works,
Brick and tile works
Carbon black manufacturer
Cement products manufacturer
Chemical product processing
Chrome and Chromate works
Coal bulk storage and handling
Gas works
Hazardous substance
Metal products manufacturer
Milling
Ore processing
Pigment works
Quarrying

Refining
Vegetable oil extraction and processing
Waste material salvaging, collecting, sorting, shredding, storing, processing
Wood pulping