

Johannesburg, South Africa

Air Pollution Control

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Air Pollution Control
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Johannesburg South Africa

Air Pollution Control By-law, 2011

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The Municipal Manager of the City of Johannesburg Metropolitan Municipality hereby in terms of section 13(a) of the Local Government : Municipal Systems Act, 2000 (Act No. 32 of 2000), publishes the Air Pollution Control By-laws of the City of Johannesburg Metropolitan Municipality, as approved by its Council, as set out hereunder.

Chapter 1 Definitions and interpretation

1. Definitions

In these By-laws, unless the context otherwise indicates –

"**activity**" means any activity which results in any emission that causes or may cause air pollution;

"**air pollutant**" means any substance specified in the definition of "air pollution" that causes or may cause air pollution;

"**air pollution**" means any change in the composition of the air caused by smoke, soot, dust, fly ash, cinders, solid particles of any kind, gases, fumes, aerosols and odorous substances;

"**air quality officer**" means the officer designated by the Council in terms of section 14(3) of the Act;

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

"**authorised official**" means any employee of the Council authorised by it to implement and enforce any provision of these By-laws, acting within the scope of that authorisation and includes the air quality officer;

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

"**Council**" means –

- (a) the Metropolitan Municipality of the City of Johannesburg established by Provincial Notice No. 6766 of 2000 dated 1 October 2000, as amended, exercising its legislative and executive authority through its municipal Council; or
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these by-laws has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000),

as the case may be;

"**dwelling**" means any building or other structure, or part of a building or structure, used as a dwelling and any outbuilding appurtenant thereto, and includes any shack and structure in an informal settlement, so used;

"**emission**" means any air pollutant discharged into the atmosphere from point, non-point and mobile sources, including any chimney, vent and the surface area of a commercial or industrial undertaking and any residential source;

"**listed activity**" means a listed activity contemplated in section 6;

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

"**mobile source**" has the meaning assigned to it in section 1 of the Act;

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

"**non-point source**" has the meaning assigned to it in section 1 of the Act;

"**nuisance**" means any detrimental interference or likely interference, caused by air pollution with –

- (a) the health or well-being of any human or living organism; or
- (b) the use or enjoyment by an owner or occupier of his or her property, or property occupied by him or her;

"**point source**" has the meaning assigned to it in section 1 of the Act;

"**prescribed**" in relation to

- (a) a fee, means a fee prescribed by the Council as defined in paragraph
- (a) of the definition of Council; and
- (b) any other matter, means the Council;

"**property**" means any unit of land registered in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), and any sectional title unit contemplated in the Sectional Titles Act, 1986 (Act No. 95 of 1986) and any building or other structure thereon and includes any adjoining property occupied or used in connection with any activity carried on the former property;

"**public road**" means a road, street or thoroughfare or other right of way to which the public or section of the public has a right of access or which is commonly used by the public or a section of the public;

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

Chapter 2 Objectives and Application

2. Objectives

- (1) The objectives of these By-laws are to –
 - (a) give effect to the right contained in section 24 of the Constitution of the Republic of South Africa Act, 1996, by controlling air pollution within the area of jurisdiction of the Council; and
 - (b) ensure that air pollution is avoided, or where it cannot be avoided, is minimised.
- (2) Any person on whom a power is conferred or a function or duty is imposed under these By-laws, must exercise that power and perform that function or duty in order to give effect to the objectives specified in subsection (1).

3. Relevant Acts

These By-laws must be read with any applicable provision of the Act and the National Environmental Management Act and any regulations made and any listing published under those Acts.

4. Conflict of By-laws

In the event of a conflict between these By-laws and any other by-laws of the Council, these By-laws shall prevail.

Chapter 3 Prohibition and limitation of air pollution

5. Prohibition of 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 –
 - (a) to prevent any air pollution from occurring; or
 - (b) to mitigate, as far as reasonably possible, any air pollution that may occur.
- (2) If the air quality officer is of the opinion that a person has failed to comply with any provision of subsection (1), he or she must, subject to the provisions of subsection (3), prior to taking any steps to criminally charge that person, by notice in writing delivered to him or her require that person to remedy such contravention or non-compliance by taking steps specified in the notice within a time so specified.
- (3) Prior to issuing a notice contemplated in subsection (2), the air quality officer must by a communication in writing setting out the contents of the notice contemplated in subsection (2), inform the person concerned that he or she has the right to submit, within a reasonable time specified in that communication, written representations to the air quality officer relating to the alleged contravention of or non-compliance with subsection (1) and any matter relating to the proposed notice.
- (4) A decision to issue a notice in terms of subsection (2) may only be taken after due consideration of any representations submitted in terms of subsection (3).
- (5)
 - (a) If a person on whom a notice was served in terms of subsection (2) fails to comply with that notice, the Council may take reasonable measures to remedy the situation.
 - (b) The Council may recover all reasonable costs incurred as a result of acting in terms of paragraph (a) from the person to whom the notice in terms of subsection (2) was addressed.

Chapter 4 Air pollution from properties

6. Listing of activities

- (1) The Council has identified a list of activities as specified in the Schedule, which it reasonably believes cause or may cause significant air pollution.
- (2) The Council may amend the list contemplated in subsection (1) by –
 - (a) adding an activity to or removing an activity from, that list; or
 - (b) making any change to the particulars on that list.

- (3) If the Minister or the MEC in terms of section 21 of the Act by notice in the Gazette –
- (a) publishes a list of activities; or
 - (b) amends that list,
- and such list or amended list contains any activity specified in the Schedule –
- (i) the activity so specified is deemed to have been deleted from Schedule 1; and
 - (ii) any permit contemplated in section 7, to the extent that it relates that activity, lapses,
- with effect from the date of publication of that notice.

7. Permits for listed activities

- (1) Subject to the provisions of subsection (7), no person may without a permit from the Council conduct an activity which has been listed in terms of section 6(1).
- (2) Application for a permit required in terms of subsection (1) must be made on a prescribed form and be accompanied by –
- (a) any document specified in such form;
 - (b) the prescribed fee; and
 - (c) any written representations that the applicant may wish to submit.
- (3) The Council may prior to taking a decision on any application in terms of subsection (2) by notice in writing require the applicant concerned to furnish it with the further information and documentation specified in that notice within a period so specified.
- (4) If any activity listed in terms of section 6(1) is operative at the commencement of these By-laws, the person concerned must lodge an application in terms of subsection (2) within 90 days of such commencement or a longer period allowed by the air quality officer.
- (5) The Council must, after consideration of all relevant factors and any representations in terms of subsection (2)(c) –
- (a) approve an application in terms of subsection (2) subject to any condition it considers appropriate; or
 - (b) refuse the application,
- and advise the applicant in writing of its decision and if any condition was imposed, or in the case of a refusal of the application, at the same time furnish its written reasons for any such condition or refusal.
- (6) If an application in terms of subsection (2) is approved, or an appeal in terms of section 20 relating to that application is successful, an authorised official must forthwith issue a permit on a prescribed form specifying any condition imposed in terms of subsection (5)(a).
- (7) Notwithstanding the provisions of subsection (1), an activity in respect of which a permit is required in terms of that subsection may be continued –
- (a) during a period contemplated in subsection (4); or
 - (b) if an application in respect of that activity is made in terms of subsection (2), until the application concerned is refused and the applicant notified in terms of subsection (6)(b); and
 - (c) if an appeal is lodged in terms of section 20 in respect of a condition imposed in terms of subsection (5)(a) or a refusal of an application in terms of subsection (5)(b), until such appeal is rejected and the appellant notified in writing by an authorised official of the decision.

8. Lapsing of permits

- (1) A permit issued in terms of section 7(6)(a) lapses if –
 - (a) the activity which is the subject of the permit ceases;
 - (b) the activity concerned is taken over by a new operator; or
 - (c) the name of the permit holder changes.
- (2) The permit holder concerned must forthwith advise the air quality control officer of any occurrence contemplated in subsection (1).

9. Changing of permit activities

- (1) No holder of a permit issued in terms of section 7(6)(a), may materially extend or alter an activity for which that permit was issued without the prior written approval of the Council.
- (2) Application for approval contemplated in subsection (1) must be made on a prescribed form and be accompanied by –
 - (a) the prescribed fee; and
 - (b) any written representations that the applicant may wish to submit.
- (3) The Council must, after consideration of all relevant factors and any representations in terms of subsection (2) –
 - (a) approve an application in terms of subsection (2) subject to any conditions it considers appropriate; or
 - (b) refuse the application,and advise the applicant in writing of its decision and if any condition was imposed, or in the case of a refusal of the application, at the same time furnish its written reasons for any such condition or refusal.

10. Cancellation of permits

The Council may, subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 34 of 2000), cancel any permit issued in terms of section 7(6)(a) if the permit holder contravenes or fails to comply with any provision of these By-laws or condition imposed in terms of section 7(5)(a).

Chapter 5 Emissions by open burning

11. Definitions

For the purposes of this Chapter –

"bio-mass" means non-fossilized and biodegradable organic material originating from plants, animals and micro-organisms or any of those;

"fuel burning equipment" means any furnace, boiler, incinerator, or other equipment with a chimney to vent the emissions of burning to the atmosphere –

- (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;

"open burning" means the burning of any material in the open air without utilising fuel-burning equipment.

12. Prohibition of open burning

- (1) Subject to the provisions of subsection (2), no person may carry out any open burning;
- (2) The provisions of subsection (1) do not apply to any open burning using only coal or biomass or both -
 - (a) for any recreational outdoor activity on any property; or
 - (b) at a dwelling for the purposes of heating any area in that dwelling or cooking, heating water or other domestic purpose.

Chapter 6 Diesel vehicle emissions

13. Definition

For the purposes of this Chapter –

“dark smoke” means –

- (a) smoke which has a density of 60 Hartridge smoke units or more, or in relation to emissions from a turbo-charged compressed ignition powered engine, means a density of 66 Hartridge smoke units or more; or
- (b) smoke which has a light absorption co-efficient of more than 2.125 m^{-1} or in relation to emissions from a turbocharged compressed ignition powered engine, means a light absorption co-efficient of more than 2.51 m^{-1} .

14. Prohibition of emission of dark smoke

- (1) No person may drive a vehicle powered by diesel fuel on a public road if it emits dark smoke.
- (2) No owner of a vehicle powered by diesel fuel may instruct or allow any person to drive such vehicle on a public road, if it emits dark smoke.

15. Testing of vehicles

- (1) For the purposes of enforcing the provisions of section 14, an authorised official may –
 - (a) by means of a signal instruct the driver of a vehicle contemplated in that section, 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.
- (2) If a vehicle is stopped in compliance with an instruction given in terms of subsection (1), the authorised official must, prior to any test being conducted in terms of subsection (3) inform the driver of the vehicle that –
 - (a) the vehicle has been stopped to test it in terms of these By-laws for the emission of dark smoke;
 - (b) the vehicle is being detained for the purpose of such testing;

- (c) that if the results of such test indicates 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 these By-laws.
- (3) The driver of a vehicle stopped in terms of subsection (1), must when instructed to do so by an authorised official –
 - (a) apply the handbrake, start the vehicle, place it in neutral gear and if the vehicle is fitted with a clutch pedal, engage the clutch; and
 - (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 official.
- (4) While the accelerator pedal of the vehicle concerned is depressed as contemplated in subsection (3) (b), the authorised official must measure the smoke emitted from the vehicle's emission system in order to determine whether or not dark smoke is emitted;
- (5) After having conducted a test, an authorised official must –
 - (a) furnish the driver of the vehicle concerned with the test results on a prescribed form which indicate that either the vehicle is not emitting dark smoke or is emitting dark smoke in contravention of section 14 and if the driver is not the owner of the vehicle concerned must also furnish the owner of that vehicle with a copy of the test results on such form; and
 - (b) if the test results indicate that the vehicle concerned is emitting dark smoke, that this constitutes an offence under these By-laws.

Chapter 7

Emissions that cause a nuisance

16. Prohibition of nuisances

- (1) No owner or occupier of any property may create or allow a nuisance to be created by the emission of dust or any other substance from that property.
- (2) An authorised official must, if he or she reasonably believes that there has been a contravention of subsection (1), before taking any other action, deliver a written notice on a prescribed form to the owner or occupier of the property concerned who he or she believes to be guilty of such contravention, instructing that person concerned –
 - (a) to abate the nuisance by taking steps specified in the notice within a period so specified;
 - (b) to take all necessary steps specified in the notice to prevent a recurrence of the nuisance; and
 - (c) to comply with any condition specified in the notice.
- (3) If a notice issued in terms of subsection (2) is not complied with or if the Council considers that the situation concerned constitutes an emergency, it may take whatever steps it considers necessary in order to abate the nuisance contemplated in subsection (1) and to prevent a recurrence thereof, and may recover the costs so incurred from the person on whom a notice was served in terms of subsection (2).

Chapter 8 Miscellaneous

17. Provision of information

The air quality officer may by written notice, require any person to furnish written information specified in that notice, to the Council relating to any matter relevant to the implementation and enforcement of these By-laws within a time and at intervals, if applicable, so specified.

18. Serving of notices

Any written notice that is required to, or may, be served, delivered or given in terms of, or for the purposes of these By-laws, must be served in any of the following ways :

- (a) By handing a copy of the notice at the person to whom it is addressed;
- (b) by leaving a copy of the notice at the person's place of residence or business with any other person who is apparently at least 16 years old and in charge of the premises at the time;
- (c) by posting or faxing a copy of the notice to the person, if the person has in writing furnished an address or fax number to an authorised official;
- (d) by handing a copy of the notice to any representative authorised in writing to accept service on behalf of the person concerned;
- (e) by sending a copy of the notice by prepaid registered or certified post to the last-known address of the person concerned,
- (f) if the person is a company or other body corporate, by serving a copy of the notice on an employee of the company or body corporate at its registered office or its place of business or, if there is no employee willing to accept service, by affixing a copy of the document to the main door of the office or place of business;
- (g) if the person is a partnership, firm or voluntary association, by serving a copy of the notice on a person who at the time of service is apparently in charge of the premises and apparently at least 16 years of age, at the place of business of such partnership, firm or association or if such partnership, firm or association has no place of business, by serving a copy of the notice on a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of such association, as the case may be.

19. Inspections

- (1) An authorised official may for any purpose relating to the implementation and enforcement of these By-laws –
 - (a) between 7:00 and 19:00; or
 - (b) at any time during which an activity which is relevant in respect of the implementation or enforcement of these By-laws is carried out on a property,
enter any property and carry out an inspection for the purposes of these By-laws.
- (2) An authorised official must, before the commencement of, or during an inspection in terms of subsection (1), at the request of any person concerned, produce written confirmation of his or her appointment as an air quality officer or an authorised official empowered to carry out inspections for the purposes of these By-laws.
- (3) An authorised official carrying out an inspection in terms of these By-laws, must conduct himself or herself with strict regard to decency and orderliness and with due regard to any person's rights

contained in the Bill of Rights set out in Chapter 2 of the Constitution of the Republic of South Africa, 1996.

20. Appeals

- (1) Any person whose rights are affected by a decision by an air quality officer or an authorised official or any other employee of the Council, in terms of or for the purposes of these By-laws, may appeal against that decision to the Council by lodging a written notice of appeal, specifying the reasons for the appeal, with the Municipal Manager, appointed by the Council in terms of section 82 of the Local Government : Municipal Structures Act, 1998, (Act No. 117 of 1998), within 21 days of the date on which he or she was notified of that decision.
- (2) The provisions of section 62 of the Local Government : Municipal Systems Act, 2000, read with the necessary changes, apply to an appeal in terms of subsection (1).
- (3) The Municipal Manager must forthwith after a decision has been taken in terms of subsection (2), in writing notify the appellant thereof and furnish the applicant with written reasons for the decision.

21. Offences and penalties

Any person who –

- (a) contravenes or fails to comply with any provision of these Bylaws;
- (b) refuses or fails to comply with any notice addressed to him or her in terms of or for the purposes of these By-laws;
- (c) refuses or fails to comply with the terms or conditions of any permit issued or otherwise imposed in terms of these By-laws;
- (d) obstructs, hinders or interferes with an authorised official in the exercise of any power or the performance of any duty under these By-laws;
- (e) fails or refuses to furnish to an authorised official with any documentation or information required for the purposes of these By-laws or furnishes a false or misleading document or false or misleading information;
- (f) fails or refuses to comply with any instruction given for the purposes of these By-laws ;
- (g) pretends to be an authorised official ,

is guilty of an offence and –

- (i) liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding 36 months;
- (ii) in the case of a continuing offence, to a further fine not exceeding R3 000, or in default of payment to imprisonment not exceeding one day for every day during the continuance of such offence after a written notice has been served on him or her by the Council requiring the discontinuance of such offence.

22. Short title

These By-laws are referred to as the Air Pollution Control By-laws.

Schedule 1

Activities identified in terms of section 6(1)

metal reclamation processes (production output from 100 kg to 1 000 kg per annum)

ceramic production (production output from 10 to 100 metric tonnes per annum)

fuel burning equipment (from 10 to 50 megawatts thermal input per facility or premises)

organic chemical manufacturing (production output from 10 to 100 metric tonnes per annum)

inorganic chemical manufacturing (production output from 10 to 100 metric tonnes per annum)

dry cleaning (any facility consuming more than 6 800 ℓ of perchloroethylene per annum)

spray painting (any facility consuming more than 2 500 ℓ of material containing volatile organic compounds, per annum)

processing of timber or material derived from timber brake pad de-bonding by the application of heat processing of fabric off-cuts

Sandblasting