

## PREAMBLE

- (1) WHEREAS** section 156(1)(a) of the Constitution of the Republic of South Africa (hereafter “the Constitution”) stipulates that a municipality has executive authority in respect of and has the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 of the Constitution;
- (2) AND WHEREAS** section 156(2) of the Constitution specifies that a municipality may make and administer by-laws for the effective administration of the matters it has the right to administer;
- (3) AND WHEREAS** in terms of Part B of Schedule 5 of the Constitution the powers and functions of the Chris Hani District Municipality (hereafter “the District”) includes air pollution;
- (4) AND WHEREAS** there is a need for the District to adopt a by-law that will control, regulate, manage and govern the air pollution throughout the municipal area of the District;
- (5) AND WHEREAS** the adoption of the by-law that will control, regulate, manage and govern the air pollution throughout the municipal area of the District will give effect to the applicable provisions of the National Environmental Management Act, 1998 (Act 107 of 1998) (hereafter “NEMA”), read with the applicable provisions of the National Environmental: Air Quality Act, 2004 (Act 39 of 2004) (hereafter “the AQA”).
- (6) NOW THEREFORE**, this by-law is adopted in compliance with the provisions of section 13 of the Local Government: Municipal Systems Act, 2000 (Act No: 32 of 2000) (hereafter “the Systems Act”).

# CHRIS HANI DISTRICT

## MUNICIPALITY:

### DRAFT AIR QUALITY MANAGEMENT BY-LAW

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## CHAPTER 1

### GENERAL PROVISIONS

#### 1. DEFINITIONS

In this by-law, except where the context otherwise indicates, or it is expressly stipulated otherwise, the following words and expressions shall have the respective meanings assigned to them hereunder, and words and expressions to which a meaning has been assigned in terms of the provisions of the applicable legislation referred to in this by-law, will have a corresponding meaning assigned thereto in terms of such legislation. All headings are included for convenience only and shall not be used in the interpretation of any of the provisions of this by-law.

NO.	WORD/EXPRESSION	DEFINITION
		<b>“A”</b>
	<b>“adverse effect”</b>	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.
	<b>“air pollutant”</b>	Means and includes dust, smoke, fumes and gas that causes or may cause air pollution.
	<b>“air pollution”</b>	Means any change in the composition of the air caused by smoke, soot, dust (including fly ash), cinders, solid particles of any kind, gases, fumes, aerosols, and odorous substances.
	<b>“air pollution control zone”</b>	Means the geographical area to which this by-law applies.
	<b>“air quality management plan”</b>	Means the air quality management plan referred to in section 15 of the AQA.

	<b>“Air Quality Officer”</b>	Means an officer appointed in terms of section 14 of the AQA.
	<b>“ambient air”</b>	Means <b>“ambient air”</b> as defined in section 1 of the AQA.
	<b>“ambient sound level”</b>	Means the reading of an integrating sound level meter measured at the measuring point at the end of total period of at least 10 minutes after such integrating sound level meter has been put into operation, during which period a noise alleged to be a noise nuisance is absent.
	<b>“atmosphere”</b>	Means air that is not enclosed by a building, machine, chimney or other similar structure.
	<b>“atmospheric emission” or “emission”</b>	Means any emission or entrainment process emanating from a point, non-point or mobile source that results in air pollution.
	<b>“authorised person”</b>	Means any employee authorised by the District to implement any of the provision of the by-law and in possession of an appointment card issued by the District attesting thereto, including any member of the municipal police service or any peace officer.
	<b>‘AQA’</b>	means the National Environmental Management Air Quality Act, 2004 (Act No. 39 of 2004).
<b>“B”</b>		
	<b>“best practicable environmental option”</b>	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.
<b>“C”</b>		
	<b>“change”</b>	Means any modification which is made to an existing structure, plant, road, land use, procedure, action which may have an effect on the noise increases originating from an activity relating to or connected with the use of such structure, the operation of such plant, the use of such road or railway,



		such land use, such procedure or such action.
	<b>“chimney”</b>	Means any structure or opening of any kind from which or through which air pollutants may be emitted.
	<b>“Municipal Manager”</b>	Means the Municipal Manager of the District appointed in terms of the provisions of section 54A of the Systems Act and as referred to in the definition of “accounting officer” in section 1 of the MFMA, and also referred to in section 60 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and includes a person acting as an accounting officer, or the person to whom the accounting officer has delegated his/her authority to act.
	<b>“District” or “municipality”</b>	Means a local government and legal entity with full legal capacity as contemplated in section 2 of the Systems Act read with the provisions of Chapter 7 of the Constitution and sections 12 and 14 of the Structures Act, with its main place of business and the offices of the Municipal Manager, as envisaged in terms of the provisions of section 115(3) of the Systems Act, at: 15 Bells Road, Komani, and may, depending on the context, include: <ul style="list-style-type: none"> <li>(a) its successor in title; or</li> <li>(b) a functionary, employee, or official exercising a delegated power or carrying out an instruction, in the event of any power being delegated as contemplated in terms of the provisions of section 59 of the Systems Act, or exercising any lawful act in the furtherance of the District Municipality’s duties, functions and powers; or an authorised service provider fulfilling a responsibility assigned to it by the District Municipality through a service delivery agreement.</li> </ul>

	<b>“combustible liquid”</b>	Means a liquid which has a close-up flash point of 38 degrees Celsius or above.
	<b>“compressive ignition powered vehicle”</b>	Means a vehicle powered by an internal combustion, compression ignition engine, diesel or similar fuel.
	<b>“Constitution”</b>	Means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).
	<b>“control measure”</b>	Means a technique, practice or procedure used to prevent or minimise the generation, emission, suspension or airborne transport of fugitive dust, pesticide, or sandblasting activities.
	<b>“Council” or “Municipal Council”</b>	Means the Municipal Council of the Chris Hani District Municipality as referred to and constituted in terms of the provisions of section 157 of the Constitution.
<b>“D”</b>		
	<b>“dark smoke”</b>	Means smoke: <p>(a) Which has a density of 60 Hartridge smoke units or more (coastal areas), or in relation to emissions from turbo-charged compressed ignition powered engine, Means a density of 66 Hartridge smoke units or more (inland areas); or</p> <p>(b) Which has a light absorption co-efficient or more than 2.125 or more, or in relation to emissions from a turbo-charged compressed ignition powered engines, means a light absorption co-efficient of more than 2.51m.</p>
	<b>“dBA”</b>	Means the value of the sound pressure level in decibels, determined using a frequency weighting network A and derived from the following equation -

		<p><math>L_{PA} = 10 \log_{10} [PA / P_0]^2</math>, where</p> <p>PA = the “A” – weighted sound pressure; and</p> <p>P0 = the reference sound pressure (P0 = 20<math>\mu</math>Pa)</p>
	<b>“disturbing noise”</b>	Means a noise level that causes the ambient sound level measured continuously at the same measuring point to rise by 5 dBa or more.
	<b>“dust”</b>	Means any solid matter in a fine or disintegrated form which is capable of being dispersed or suspended in the atmosphere; and includes dust from mine dumps and for the purposes of this by-law, it includes any inhalable particle matter or 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.
	<b>“dwelling”</b>	Means any building or structure, or part of a building or structure, used as a dwelling and any outbuildings ancillary to it but excludes informal settlements.
<b>“E”</b>		
	<b>“environmental management inspector”</b>	Means an environmental management inspector referred to in this by-law.
	<b>“environment”</b>	<p>Means the surroundings within which humans exist and that are made up of:</p> <p>(a) the land, water and atmosphere of the earth;</p> <p>(b) micro-organisms, plant and animal life;</p>

		<p>(c) any part or combination of (a) and (b) and the interrelationships among and between them; and</p> <p>(d) the physical, chemical, aesthetic, and cultural properties and conditions of the foregoing that influence human health and well-being.</p>
	<b>“erect”</b>	Means build, alter, convert, extend or re-erect.
	<b>“exempted vehicle”</b>	Means a vehicle listed in Annexure A to SANS 10281.
<b>“F”</b>		
	<b>“flammable gas”</b>	<p>Means a gas which at 20 degrees Celsius and a standard pressure of 101, 3 kilopascals:</p> <p>(a) is ignitable when a mixture of 13% or less by volume with air; or</p> <p>(b) Has a flammable range with air of at least 12%, regardless of the lower flammable limit.</p>
	<b>“flammable liquid”</b>	Means a liquid or combustible liquid which has a close cup flash point of 60 degrees Celsius or below or an open cup flash point of 65.6 degrees Celsius.
	<b>“flammable substance”</b>	Means a flammable liquid, combustible liquid or flammable gas.
	<b>“fuel-burning equipment”</b>	<p>Means any furnace, boiler, incinerator, or other equipment, including a chimney:</p> <p>(a) designed to burn or capable of burning liquid, gas or solid fuel;</p> <p>(b) used to dispose of any material or waste by burning; or</p>

		(c) used to subject liquid, gas or solid fuel to any process involving the application of heat.
<b>“H”</b>		
	<b>“Head of Department”</b>	Means the Head of Department of the District Municipality responsible for Health and Community Services
<b>“M”</b>		
	<b>“Municipal Systems Act” or “Systems Act”</b>	Means the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) and the regulations promulgated in terms thereof
<b>“N”</b>		
	<b>“National Framework”</b>	Means the National Framework for Air Quality Management in the Republic of South Africa, as established in terms of section 7(1) of the AQA.
	<b>“NEMA”</b>	Means the National Environmental Management Act, 1998 (Act No. 107 of 1998) and the regulations promulgated in terms thereof.
	<b>“noise-controlled area”</b>	Means an area designated by the District in terms of this by- law where, in the case of: <ul style="list-style-type: none"> <li>(a) road traffic noise directly adjacent to a road: <ul style="list-style-type: none"> <li>(i) the reading on an integrating impulse sound level meter, taken outdoors at the end of a period of 24 hours while such meter was in operation, exceeds 60 dBA; or</li> <li>(ii) the outdoor equivalent continuous “A” – weighed sound pressure level at a height of at least 1,2 meters, but not more than 1,4</li> </ul> </li> </ul>

		<p>metres, above the ground for a period extending from 06:00 to 24:00 as calculated in accordance with SABS 0210 and projected for a period of 15 years following the date on which the local authority has made such designation, exceeds 65 dBA.</p> <p>(b) air traffic noise directly adjacent to an airfield, the calculated noisiness index, projected for a period of 15 years following the date on which the local authority made such designation, exceeds 65 dBA;</p> <p>(c) industrial noise directly adjacent to an industry:</p> <ol style="list-style-type: none"><li>1) the reading on an integrating impulse sound level meter, taken outdoors at the end of a period of 24 hours while such meter was in operation, exceeds 61 dBA; or</li><li>2) the calculated outdoor equivalent continuous "A" weighted sound pressure level at a height of at least 1,2 metres, but not more than 1,4 metres, above the ground for 24 hours, exceeds 61 dBA, or</li></ol> <p>(d) noise from any other source directly adjacent to that source:</p> <ol style="list-style-type: none"><li>i. the reading on an integrating impulse sound level meter, taken outdoors at the end of a period extending from the time when such source of noise became active until the time when it was no longer active, while such meter was in operation, exceeds 65 dBA; or</li></ol>
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		<p>(ii) the outdoor equivalent continuous “A” weighted sound pressure level at a height of at least 1,2 metres, but not more than 1,4 metres, above the ground, as calculated in accordance with acceptable mathematical / acoustic methods for a period extending from the time when the source of noise became active until the time when it was no longer active, and projected for a period of 15 years following the date on which the local authority made such designation, exceeds 65 dBA: Provided that methods of calculation as described in SANS ARP 1020 may be used for the purpose.</p>
	<b>“noise nuisance”</b>	Means any sound in terms of this by-law, which impairs or may impair the convenience or peace of any reasonable person.
	<b>“non-exempted vehicle”</b>	Means a vehicle not listed in Annexure A to SANS 10281.
	<b>“nuisance”</b>	<p>Means an unreasonable interference or likely interference caused by air pollution with</p> <p>(a) the health or well-being of any person or living organism;</p> <p>(b) the use or enjoyment by an owner or occupier of his or her property or her property or environment; and</p> <p>(c) the ordinary comfort, convenience, and peace.</p>

<b>“O”</b>		
	<b>“obscuration”</b>	Means the ratio of visible light attenuated by air pollutants suspended in the effluent streams to incident visible light, expressed as a percentage.
	<b>“open burning”</b>	Means the combustion of material by burning without a closed system that has a chimney to vent the emitted products of combustion to the atmosphere, excluding the burning of sugar cane.
	<b>“operator”</b>	Means a person who owns or manages an undertaking, or who controls an operation or process, which emits air pollutants.
<b>“P”</b>		
	<b>“pave”</b>	Means to apply and maintain concrete or any other similar material to a road surface or any other surface.
	<b>“person”</b>	Means a natural person or a juristic person.
	<b>“pest”</b>	Means an injurious, noxious or troublesome living organism.
	<b>“pesticide”</b>	Means a micro-organism or material that is used or intended to be used to prevent, destroy, repel or mitigate a pest and includes, insecticide, fungicides, avicides and rodenticides.
	<b>“proclaimed township”</b>	Means any land unit zoned and utilised for residential purposes.
	<b>“property projection plane”</b>	Means a vertical plane on and including the boundary line of a piece of land defining the boundaries of such piece of land in space or with reference to a dimension of space.



	<b>“premises”</b>	Means any building or other structure together with that land on which it is situated and any adjoining land occupied or used in connection with any activities carried on in that building or structure and includes any land without any buildings or other structures and any locomotives, ship, boat or other vessels which operates or is present within the area under the jurisdiction of the district or the precincts of any harbour.
	<b>“Province”</b>	Means the Eastern Cape Province.
	<b>“public road”</b>	Means a public road as defined in section 1 of the National Roads Traffic Act, 1996 (Act No. 93 of 1996).
		<b>“R”</b>
	<b>“recreational vehicle”</b>	<p>(a) an off-road vehicle, scrambler, dune buggy or ultra-light aircraft;</p> <p>(b) a model aircraft, vessel, or vehicle.</p> <p>(c) any aircraft or helicopter used for sport or recreational but not for gain, including but not limited to a micro-light aircraft and a hot air balloon;</p> <p>(d) a vessel used for sport on water or recreational purposes but not for gain, including but not limited to a jet ski and ski-boat; or</p> <p>(e) Any other conveyance vessel or model which is used for sport or recreational purposes, but not for gain.</p>
		<p>Means a notice as referred to in this by-law, regarding the re- testing of vehicles</p> <p><b>“repair notice”</b></p>

	<b>“rubber product”</b>	Means anything compose of rubber including anything containing or coated with rubber.
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## “S”

	<b>“SABS ARP 020”</b>	Means South African Bureau of Standards publication No. 0201 titled: “Sound impact investigations for integrated environmental management”, or a standard which substitutes SABS ARP 020.
	<b>“SANS 10103”</b>	Means the latest edition of Standards South Africa publication No. 10103 titled: “ <i>The measurement and rating of environmental noise with respect to annoyance and to speech communication</i> ”, as amended from time to time or its corresponding replacement.
	<b>“SANS 10181”</b>	Means the latest edition of Standards South Africa publication No. 10181 titled: “ <i>the measurement of noise emitted by road vehicles when stationary</i> ”, as amended from time to time or its corresponding replacement.
	<b>“SANS 10210”</b>	Means the latest edition of the Standards South Africa publication No. 10210 titled: “ <i>Code of Practice for calculating and predicting road traffic noise</i> ”.
	<b>“SANS 10281”</b>	Means the latest edition of Standards South Africa publication No. 10281 titled: “ <i>Engine speed (S Value), reference sound levels and permissible sound levels of stationary road vehicles</i> ”, as amended from time to time or its corresponding replacement.
	<b>“SANS 10328”</b>	Means the latest edition of Standards South Africa publication No. 10328 titled: “ <i>Methods for environmental</i>

		<i>noise impact assessments</i> ”, as amended from time to time or its corresponding replacement.
		Means a small combustion installation, with a design capacity

“small boiler”	of less than 50MW heat input, capable of burning solid, liquid and gas fuels used primarily for steam raising or electricity generation.
“smoke”	Means the gases, particulate matter and products of combustion emitted into the atmosphere when material is burned or subjected to heat and includes soot, <b>grif</b> and gritty particulates 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 this by-law and must be used for spray painting, and “spray booth” has a corresponding meaning.
“U”	
“use”	In relation to all-terrain vehicles includes driving, operating or being conveyed by, that vehicle.
“V”	
“vehicle”	Means a vehicle as defined in section 1 of the National Roads Traffic Act, 1996 (Act No. 93 of 1996).
“Z”	

	<b>“zone”</b>	Means land set apart by a zoning scheme for a particular zoning irrespective of whether it comprises one or more land units or part of a land unit.
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## 2. LEGISLATIVE FRAMEWORK

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This by-law is designed and must be read and implemented within the framework of, *inter alia*, the following legislation and the regulations applicable thereto:

- (1) The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).
- (2) The National Environmental Management Act, 1997 (Act No. 107 of 1998); and
- (3) The National Environmental: Air Quality Act, 2004 (Act No. 39 of 2004).

## 3. OBJECTIVES

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- (1) The objectives 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 municipal area of the District;
  - b) provide, in conjunction with any other applicable legislation, an effective legal and administrative framework, within which the District can manage and regulate activities that have the potential to adversely impact the environment, public health and well-being; and
  - c) Ensure that air pollution is avoided, or where it cannot be altogether avoided, mitigated or minimised.
- (2) Any person exercising a power under this by-law must exercise such power in order to give effect to the objectives as set out in subsection (1) above.

#### **4. AIM AND PURPOSE**

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The aim and purpose of this by-law is to enable the District to control, regulate, manage and govern the air pollution throughout the municipal area of the District in accordance with the environmental management principles listed in section 2 of NEMA and to give effect to the applicable provisions of NEMA, the AQA and the National Framework for Air Quality Management of the Republic of South Africa in terms of the provisions of section 7(1) of the AQA.

#### **5. TITLE AND APPLICATION**

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- (1) This by-law is known as the Air Quality Management By-Law, 2022 and is applicable to all persons, including organs of state, within the municipal area of the District.
- (2) This by-law revokes all previous by-laws, decisions and/or *ad hoc* clauses within any other by-laws, regarding the subject matter of this by-law.

#### **6. COMMENCEMENT AND VALIDITY**

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This by-law shall come into full force and effect upon publication hereof in accordance with the provisions of section 13 of the Systems Act.

#### **7. RESPONSIBLE AUTHORITY**

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- (1) The responsible authority for the adoption, publication and implementation of this by-law is the district and where applicable the municipal council of the district.
- (2) The Health and Community Services Directorate will be responsible for the implementation of this by-law by the District.

#### **8. ENFORCEMENT AND COMPLIANCE WITH THIS BY-LAW**

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- (1) The district shall enforce compliance with this by-law.
- (2) The district may appoint authorised persons as it may consider

necessary to be responsible for compliance, enforcement and monitoring implementation and effectiveness of this by-law.

- (3) The authorised person shall take all lawful, necessary and practicable measures to enforce the provisions of this by-law.

## **9. COMPLIANCE MONITORING**

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

## **10. OBSERVING FUNDAMENTAL RIGHTS**

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The district must, when exercising any right in terms of this by-law, do so with strict regard for decency and orderliness and with regard for each person's human rights including the right to dignity, freedom, security and privacy.

## **11. NON-LIABILITY OF THE DISTRICT**

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Neither the district nor any employee, official, person, body, organisation or corporation acting on behalf of the district shall be liable for any loss or damages of whatsoever nature howsoever arising whether, direct or consequential, suffered or sustained by any person as a result of, or arising from the district enforcing, imposing, giving effect to or taking any act or omission in respect of any matter in terms of this by-law.

## **12. CODE OF ETHICS**

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- (1) All the officials of the district shall embrace the spirit of Batho Pele and treat all rate payers, owners, consumers, customers and debtors with dignity and respect at all times.



- (2) Employees of the district shall execute their duties in terms of this policy in an honest and transparent manner whilst protecting the confidentiality of information of rate payers, owners, consumers, customers and debtors in accordance with the provisions of the Promotion of Access to Information Act, 2000 (Act No: 2 of 2000).

### **13. AUTHENTICATION OF DOCUMENTS**

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Any document requiring authentication by the district relating to this by-law or otherwise, shall be sufficiently authenticated if signed by the Municipal Manager, or by a person duly authorised to do so, on behalf of the district, by resolution of the district and shall constitute *prime facie* proof of the authenticity, existence and contents of the document.

### **14. PRIMA FACIE EVIDENCE**

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In legal proceedings by, or on behalf of the district, a certificate reflecting any information required in terms of this by-law included in such a certificate and which is signed by the Municipal Manager, or by a person duly authorised to do so, on behalf of the District, by resolution of the District, shall subject to the provisions of section 3 of the Law of Evidence Amendment Act, 1988 (Act No. 45 of 1988), upon its mere production constitute *prima facie* evidence of the contents of the certificate.

### **15. PROVISION OF INFORMATION**

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A person within the municipal area of the district must provide the district with accurate information requested by the district which is reasonably required by the district for the implementation or enforcement of this by-law.

### **16. FALSE STATEMENTS OR INFORMATION**

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No person shall make a false statement or furnish false information to the district or falsify a document issued in terms of this by-law.

**17. AVAILABILITY OF BY-LAW**

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A copy of this by-law shall be included in the District's Municipal Code as required by the provisions of section 15 of the Systems Act and a copy of this by-law shall be available for inspection at the offices of the district at all reasonable times and shall also be available from the district against payment of an amount as determined by the district.

**18. REVIEW**

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This by-law and its implementation shall be reviewed every 5 (five) years or as when a need to do so arises.

## CHAPTER 2

### GENERAL DUTY OF CARE

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#### 19. AIR POLLUTION DUTY OF CARE

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- (1) Every person has a duty of care to prevent air pollution and as such everyone must take all responsible and reasonable actions, steps and implement measures:
- (a) To prevent and avoid air pollution from occurring or causing same to occur;
  - (b) Where air pollution cannot be prevented or avoided, to mitigate and remedy any air pollution that may have occurred.
- (2) In addition to the actions, steps and measures set out in subsection (1) above the district may, from time to time determine any additional actions, steps or measures specified by the District or its authorised official to be taken or implemented by any person to:
- (a) Prevent or avoid air pollution from occurring; or
  - (b) Mitigate and remedy air pollution which have occurred.
- (3) The district may:
- (a) investigate, evaluate, assess and report on the impact of any activities or actions conducted within its municipal area, which activities or actions impact on the air quality within the municipal area, and determine measures to prevent, avoid, mitigate, remedy or rectify any air pollution caused by such actions;
  - (b) Direct any person in writing to:
    - (i) Take and/or implement any actions, steps and/or measures, which will prevent, avoid, mitigate or remedy air pollution, deemed necessary by the district.
    - (ii) Seize any actions or activities that will cause or potentially cause any air pollution, within the timeframes allowed for by the district and which the district deems necessary;
    - (iii) Diligently continue to implement the steps or measures determined by the district; and

- (iv) Complete any steps or measures determined by the district before a specified reasonable date.
- (4) Prior to issuing a directive as contemplated in subsection (3), the District must give written notice to any person whose rights may be adversely affected by the directive to afford such persons an opportunity to make written representation as to why a directive should not be issued by the district. The District will assist any illiterate persons to adduce their representations to writing.
- (5) The district must give due consideration to all representations submitted before a directive, contemplated in subsection (3), is issued.
- (6) Should a person fail to submit his or her written representations within the period specified by the District, the District may issue the directive referred to in subsection (3) without further notice to that person.
- (7) The District must take immediate action to remedy any non-compliance with a directive issued in terms of section (3) in accordance with the provisions of this by-law.
- (8) The authorised person may, in addition to the steps contemplated in subsection (7), take steps to recover all reasonable costs incurred because of implementing compliance with the provisions of this by-law from:
- (a) any person whose actions or failure to act, directly or indirectly caused air pollution within the municipal area of the district or whose actions or failure to act contributed to air pollution occurring within the municipal area of the District;
  - (b) The owner of the property where the air pollution occurred or the potential for air pollution was identified by the district, or that owner's successor in title;
  - (c) the person responsible or in control of the property or the activities or actions conducted on the property or any person who has a right to use the property at the time when the air pollution occurred or the potential for air pollution was identified by the District.
  - (d) Any person who wilfully or negligently:
    - (i) Failed to prevent or avoid air pollution from occurring for which they are responsible in terms of the provisions of this by-law.
    - (ii) Failed to mitigate and remedy air pollution which have occurred; or

- (iii) Allow other persons from taking actions or conducting activities on a premises of which he or she is the owner or for which he or she is the responsible person, and which actions or activities resulted in air pollution occurring within the municipal area of the District.
- (9) If more than one person is liable under subsection (8), the District may in its sole discretion apportion the liability amongst the persons concerned according to the degree to which each person was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsections (1) to (3).
- (10) No person may:
- (a) Intentionally or negligently commit any act or omission which causes or is likely to cause air pollution; or
  - (b) Refuse to comply with a directive issued under this section.
- (11) Any person who fails to comply with subsection (10) commits an offence.

## CHAPTER 3

### DESIGNATION OF THE AIR QUALITY OFFICER, ENVIRONMENTAL MANAGEMENT INSPECTORS AND EMISSION CONTROL OFFICERS

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#### 20. DESIGNATION OR APPOINTMENT OF THE AIR QUALITY OFFICER AND ENVIRONMENTAL MANAGEMENT INSPECTORS

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- (1) The Municipal Manager must, in consultation with the Head of Department: Health and Community Services, designate or appoint an employee of the district or any suitably qualified person as the Air Quality Officer (Manager-Municipal Health Services with EMI qualification) in accordance with section 14(3) of the AQA to be responsible for co-ordinating matters pertaining to air quality management within the municipal area of the District.
- (2) The Head of Department: Health and Community Services may request the MEC responsible for Environmental Affairs in the Province to appoint Environmental Management Inspectors in terms of section 31C of NEMA.

#### 21. APPOINTMENT OF AIR QUALITY PRACTITIONERS BY THE AIR QUALITY OFFICER

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- (1) The District's Air Quality Officer must designate Air Quality Practitioners from the administration to be responsible for co-ordinating air quality management in the district.
- (2) The Air Quality Officer may only appoint a qualified person as an Air Quality Practitioner, which person must meet the minimum requirement as prescribed by the relevant legislation and subject to the policy guidelines of the municipal council of the district.

## 22. DUTIES AND FUNCTIONS OF THE AIR QUALITY OFFICER

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- (1) An Air Quality Officer must perform the duties or exercise the powers assigned or delegated to that officer in terms of the AQA.
- (2) The District's Air Quality Officer may delegate powers or assign duties to an official in the service of the administration, subject to such limitations or conditions as may be prescribed by the Minister.
- (3) The District's Air Quality Officer must co-ordinate his or her activities in such a manner as may be set out in the National Framework or prescribed by the Minister.
- (4) The Air Quality Officer must:
  - (a) Co-ordinate the development of the air quality management plan for inclusion in the Integrated Development Plan of the district, in accordance with Chapter 5 of the Systems Act;
  - (b) Prepare an annual report on the air quality of the District;
  - (c) Exercise the duties and powers assigned to him or her in terms of this by-law under the directions of the Head of Department: Health and Community Services; and
  - (d) Submit the annual report referred to in subsection (1)(b) above to the Air Quality Officer appointed by the MEC responsible for Environment Affairs in the Province.
- (5) The annual report referred to in subsection (4)(b) must, amongst other things, include the progress of the district towards the implementation of the air quality management plan.
- (6) The Air Quality Officer may require the holder of a provisional atmospheric emission licence or the holder of an atmospheric emission licence to designate an Emission Control Officer as contemplated in section 48 of the AQA.

## 23. DUTIES AND FUNCTIONS OF THE EMISSION CONTROL OFFICER

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- (1) The Emission Control Officer appointed by the Air Quality Officer must have requisite air quality management competence in respect of the listed activity in question.

- (2) It is the duty of the Emission Control Officer to:
- (a) Work towards the development and introduction of cleaner production technologies and practices;
  - (b) Take all reasonable steps to ensure compliance by the holder of the licence with the licence conditions and requirements; and
  - (c) Promptly report any non-compliance with any licence conditions or requirements to the licensing authority through the most effective means reasonably available.

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## CHAPTER 4

### SUBSTANCES AND LOCAL EMISSION STANDARDS

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#### 24. IDENTIFICATION OF SUBSTANCES.

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- (1) The district has identified the substances in ambient air to the by-law, and for each substance developed local emission standards. The District may:
- (a) from time to time by notice include other identified substances by identifying substances or mixtures of substances in the 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 district or which the district or designated 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 district.
- (2) The District may apply the following criteria when identifying and prioritising the substances in ambient air that present a threat to public health, well-being or the environment:
- (a) The possibility, severity and frequency of effects, with regard to human health and the environment as a whole, with irreversible effects being of special concern;
  - (b) Widespread and high concentration of the substances in the atmosphere;
  - (c) Potential environmental transformations and metabolic alterations of the substance, as these changes may lead to the production of chemicals with greater toxicity or introduce other uncertainties;
  - (d) Persistence in the environment, particularly if the substance is not biodegradable and able to accumulate in humans, the environment or food chains;
  - (e) The impact of the substances taking the following factors into consideration:
    - i. size of the exposed population, living resources or ecosystems;

- ii. The existence or particularly sensitive receptors in the zone concerned.
- (f) Substances that are regulated by international conventions.

## **25. DEVELOPMENT OF LOCAL EMISSION STANDARDS.**

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- (1) The District may, when developing the local emissions standards:
  - a) Identify the critical factors for the public health impacts;
  - b) Identify sensitive sub-populations;
  - c) Review available databases for public health status;
  - d) Review available databases for ambient air quality information; and
  - e) Review and assess international guidelines and standards;
- (2) The District may take the following factors into consideration when 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 identified in this by-law must comply with the local emission standards published in terms of this by-law.

## **26. IDENTIFYING AND PRIORITISING THREATS TO PUBLIC SAFETY.**

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- (1) The district's authorised person must apply the following criteria when identifying and prioritising the substances in ambient air that present a threat to public health, well-being or the environment:
  - a) The possibility, severity and frequency of effects with regard to human health and the environment as a whole, with irreversible effects being of special concern;
  - b) Ubiquitous and high concentrations of the substance in the atmosphere;
  - c) Potential environmental transformations and metabolic alterations of the substance, as these changes may lead to the production of chemicals with greater toxicity or introduce other uncertainties;

- d) Persistence in the environment, particularly if the substance is not biodegradable and able to accumulate in humans, the environment or food chains;
  - e) The impact of the substance taking the following factors into consideration:
    - i) Size of the exposed population, living resources or ecosystems;
    - ii) The existence of particularly sensitive receptors in the zone concerned; and;
    - iii) Substances that are regulated by international conventions.
- (2) The authorised person must, using the criteria set out in subsection (1), compile a list of substances in ambient air that present a threat to public health, well-being or the environment.

## **27. CONSEQUENCES OF IDENTIFICATION**

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- (1) Any person emitting the substances or mixtures of substances identified in this by-law must comply with the emission standards established by the district.
- (2) Any person who fails to comply with the emission standards established in terms of this by-law commits an offence.

## **28. DECLARATION OF MUNICIPAL AREA AS AIR POLLUTION CONTROL ZONE**

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- (1) The whole of the municipal area of the district is hereby declared an air pollution control zone.
- (2) The district 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 pollutant 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% may not be emitted;
  - (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 specified purposes; or
- (v) Mobile sources.

- (3) The district may develop and publish policies and guidelines, including technical guidelines, relating to the regulation of activities which directly and indirectly cause air pollution within an air pollution control zone.
- (4) The District may on application and in writing exempt certain premises, classes of premises or premises used for specified purposes from this section.

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## CHAPTER 5

### DIFFERENT TYPES OF EMISSIONS

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#### ***PART 1: SMOKE EMISSIONS FROM PREMISES OTHER THAN DWELLINGS***

##### **29. APPLICATION**

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For the purposes of this Part of Chapter 5 “**premises**” does not include dwellings.

##### **30. PROHIBITION OF DARK SMOKE FROM PREMISES**

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- (1) Subject to subsection (2), no owner or occupier of any premises shall, except for an aggregate not exceeding three minutes during any continuous period of thirty minutes, permit the emission or emanation from such premises of smoke of such density or content as will obscure light to an extent greater than 40 per cent.
- (2) The provisions of sub- section (1) does not apply to dark smoke emanating or emitted in contravention thereof from fuel-burning equipment which occurs while the equipment is being started or while the equipment is being overhauled or repaired, or awaiting overhaul or repair, unless such emission could have been prevented using the best practical environmental option.
- (3) Subsections (1) and (2) do not apply to holders of atmospheric emission licences for activities listed in terms of section 21 of the AQA, and the emission standards listed in such licence shall apply.

##### **31. INSTALLATION OF FUEL-BURNING EQUIPMENT**

---

- (1) No person shall install, alter, extend or replace any fuel-burning equipment (combustion installation) with a design capacity equal to 1MW and less than 10 MW heat input on any premises without the prior written

authorization of district, which may only be given after consideration of the relevant plans and specifications.

- (2) Any fuel-burning equipment installed, altered, extended or replaced on premises in accordance with plans and specifications submitted to and approved for the purposes of this section by the district, shall be presumed until the contrary is proved to comply with the provisions of subsection (1).
- (3) Where fuel-burning equipment has been installed, altered, extended or replaced on premises contrary to subsection (1), district may, on written notice to the owner and occupier of the premises, order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator and within the period stated in the notice.
- (4) The Air Quality Officer (Manager: Municipal Health Services) may take whatever steps he or she considers necessary in order to remedy the harm caused by the installation, alteration, extension or replacement on premises and prevent any further occurrence and may recover the reasonable costs so incurred from the person responsible for causing such harm.

## **32. OPERATION OF FUEL-BURNING EQUIPMENT**

---

- (1) No person may use or operate any fuel-burning equipment on any premises contrary to the authorisation referred to in section 31
- (2) Where fuel-burning equipment has been used or operated on the premises in contrary to subsection (1), district may on written notice to the owner and occupier of the premises:
  - (a) Revoke his or her authorisation under section 31; and
  - (b) Order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator within the period stated in the notice.
- (3) The district may, if the owner or occupier of the premises fails to comply with the notice referred to in subsection (2), remove the fuel burning equipment from the premises and may recover the reasonable costs incurred from such owner or occupier of such premises.

### **33. PRESUMPTION**

---

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

### **34. INSTALLATION AND OPERATION OF OBSCURATION MEASURING EQUIPMENT**

---

- (1) An authorised person may give notice to any operator of fuel-burning equipment or any owner or occupier of premises on which fuel-burning equipment is used or operated, or intended to be used or operated, to install, maintain and operate obscuration measuring equipment at his or her own cost, if:
- (a) Unauthorized and unlawful emissions of dark smoke from the relevant premises have occurred consistently and regularly over a period of at least two days;
  - (b) Unauthorised and unlawful emissions of dark smoke from the relevant premises have occurred intermittently over a period of at least fourteen (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 authorised person considers that the nature of the air pollutants emitted from the relevant premises is reasonably likely to create a hazard to human health or the environment.
- (2) A notice referred to in subsection (1) must inform the person to whom it is addressed of:
- (a) That person's right to make written representations and to appear in person to present and dispute information and arguments regarding the notice, and must stipulate a reasonable period within which this must be done;
  - (b) That person's right of appeal under section 72;
  - (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.

### **35. MONITORING AND SAMPLING**

---

- (1) 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 34(1) must:
- (a) Record all monitoring and sampling results and maintain a copy of this record for at least four years after obtaining the results;
  - (b) If requested to do so by an authorised person, produce the record of the monitoring and sampling results for inspection; and
  - (c) If requested to do so by an authorised person, provide a written report, in a form and by a date specified by the authorised person, of part or all of the information in the record of the monitoring and sampling results.



### 36. TEMPORARY EXEMPTION

---

- (1) Subject to section 9 and on application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the district may grant a temporary exemption in writing from one or all the provisions of Part 1 of this Chapter.
- (2) Any exemption granted under subsection (1) must state at least the following:
  - (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 District may not grant a temporary exemption under subsection (1) until the municipality has:
  - (a) taken reasonable measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the temporary exemption, including adjacent land owners or occupiers, are aware of the application for temporary exemption and how to obtain a copy of it;
  - (b) Provided such persons with a reasonable opportunity to object to the application; and
  - (c) Duly considered and taken into account any objections raised

## ***PART 2: SMOKE EMISSIONS FROM DWELLINGS***

### **37. PROHIBITION OF EMISSION OF DARK SMOKE FROM DWELLINGS**

---

- (1) Subject to section 19(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 36 and on application in writing by the owner or occupier of any dwelling, the district may grant a temporary exemption in writing from one or all of the provisions of Part 2 of this Chapter.

## ***PART 3: EMISSIONS FROM COMPRESSED IGNITION POWERED VEHICLES***

### **38. PROHIBITION OF EMISSION OF DARK SMOKE**

---

- (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).

### **39. STOPPING OF VEHICLES FOR INSPECTION AND TESTING**

---

- (1) For the purposes of enforcing the provisions of section 24, an authorised person 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 all inspection and testing of that vehicle.
- (2) The authorised person must, prior to any testing being undertaken in terms of section (40) (1) 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;
  - (c) if the result of such testing indicates that dark smoke is emitted from the vehicle and if the driver concerned fails or refuses to assist with such test, it will constitute an offence under this by-law
- (3) Any person who fails to comply with a direction given under subsection (1)(a) commits an offence.
- (4) When a vehicle has stopped in compliance with a direction given under subsection (1) (a), the authorised person 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; as soon as practicable, and in any case within 1 hour, after the vehicle is stopped in accordance with the direction.

#### **40. TESTING PROCEDURE**

---

- (1) An authorised person must use the following testing procedure in order to determine whether a compressed ignition powered vehicle is being driven or used in contravention of section (38)(1):
- (a) When instructed to do so by the authorised person, 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 person 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;
  - (c) While the accelerator pedal is depressed, the authorised person must measure the smoke emitted from the vehicle's emission system in order to determine whether or not dark smoke is emitted.

- (2) After having conducted a test, an authorised person must furnish the driver of the vehicle concerned with the test results which indicate that either the vehicle has not emitted dark smoke or is emitting dark smoke in contravention of section (38) (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.
- (3) An authorised person 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 section (38) (1), if the test results indicate that the vehicle concerned is not emitting dark smoke.
- (4) An authorised person must issue the driver of the vehicle with a repair notice in accordance with section (41) (1), if the test results indicate that the vehicle concerned is emitting dark smoke.

#### **41. REPAIR NOTICE**

---

- (1) 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 expiry of the 6 months.
- (2) 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;
  - (c) If the driver of the vehicle is not the owner of the vehicle, the name and address of the vehicle owner.
- (3) A person commits an offence under this section if the person fails:
  - (a) to comply with the repair notice referred to in subsection (1);
  - (b) to take the vehicle for re-testing as referred to in subsection (1)
- (4) It shall not be a defence in proceedings under subsection (3) to waiver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.
- (5) The authorised person must issue a notification in terms of section 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as amended, should the owner of the vehicle fail to take the vehicle for re-testing as referred to in subsection (1)

## ***PART 4: EMISSIONS FROM SMALL BOILERS***

### **42. GENERAL**

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- (1) No person may install, alter, extend or replace any small boiler on any premises without the prior written authorisation of the district, which may only be given after consideration of the relevant plans, specifications and any applicable emission standards developed for controlled emitters that have been determined in terms of section 24 of the AQA.
- (2) Application for an authorisation to operate a small boiler shall be made on a form prescribed by the District.
- (3) Where a small boiler has been installed, altered, extended or replaced on premises in contravention of subsection (1):
  - (a) The owner or occupier of the premises commits an offence;
  - (b) The District may, on written notice to the owner or occupier of the premises, order the removal of the small boiler from the premises at the expense of the owner or occupier and within the period stated in the notice.
- (4) In considering an application submitted in terms of subsection (1), the Air Quality Officer may require the applicant to furnish such information as the Air Quality Officer may require.
- (5) After considering the application submitted in terms of subsection (1), the District must either:
  - (a) Grant an application and issue an authorisation, subject to any conditions that may be imposed; or
  - (b) Refuse an application with reasons.

- (6) The authorisation issued in terms of subsection (1) must specify:
- (a) The product makes and model of the small boiler;
  - (b) The premises in respect of which it is issued;
  - (c) The person to whom it is issued;
  - (d) The period for which the authorisation is issued
  - (e) The name of the authority;
  - (f) The periods at which the authorisation may be reviewed;
  - (g) The fuel type and quality;
  - (h) The maximum allowed amount, volume, emission rate or concentration of pollutants that may be discharged in the atmosphere;
  - (i) Any other operating requirements relating to atmospheric discharges, including non-point source emission measurement and reporting requirements; and
  - (j) Any other matters which are necessary for the protection or enforcement of air quality.
- (7) The District must review the authorisation issued in terms of this section at intervals specified in the authorisation, or when circumstances demand that a review is necessary.

### **43. TRANSITIONAL ARRANGEMENTS IN RESPECT OF AUTHORISED SMALL BOILERS**

---

- (1) Despite the coming into operation of this by-law, any small boiler that was authorised to operate in terms of any by-law of the district continues to be authorised to operate subject to subsection (3).
- (2) During the period for which the authorised small boiler continues to operate, the provisions of this by-law, read with the necessary changes as the context may require, apply in respect of:
- (a) The holder of an existing authorisation as if that person is the holder of the authorisation issued in terms of section (42) (1); and

(b) The existing authorisation as if the authorisation was issued in terms of section (42) (1).

(3) The holder of an existing authorisation must apply for an authorisation in terms of section (42) (1), when required to do so by the District, in writing, and within the period stipulated by the District.

OR

(4) Transitional arrangements in respect of other small boilers:

(a) Despite the small boilers within the District not required to be authorised in terms of a by-law, persons operating small boilers, at the commencement date of subsection (4), must apply for an authorisation as required by subsection (4).

(b) A person operating small boiler must apply for an authorisation in terms of section (42) (1), when required to do so by the DISTRICT, in writing, and within the period stipulated by the District.

(c) If any person fails to comply with subsection (4) (b), then continuing to operate the small boiler without a valid authorisation is an offence.

*(Commencement date of subsection (4): to be proclaimed)*

NB: Please note that the commencement date of subsection (4) is subject to the declaration of small boilers as controlled emitters in terms of section 23 of the AQA.

## **PART 5: DUST EMISSIONS**

### **44. GENERAL**

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(1) Any person conducting activities which customarily produce emissions of dust that may be harmful to public health, well-being and/or cause a nuisance shall take control measures to prevent or minimise emissions into the atmosphere.

(2) Any person who undertakes any activity that causes dust emissions must implement one or more of the following control measures:

(a) Pave;

(b) Use dust palliatives or suppressants;

(c) Uniformly apply and maintain any surface gravel;

- (d) Erect physical barriers and signs to prohibit access to the disturbed areas;
  - (e) Use ground covers;
  - (f) Re-vegetation which is similar to adjacent undisturbed native conditions; or
  - (g) Any alternative control measure approved in writing by the Air Quality Officer.
- (3) The control measures must be consistent with the provisions of any applicable legislation.
- (4) The provisions of this section are not applicable to:
- (a) landscaping activities by a person at his place of residence;
  - (b) emergency maintenance activities on publicly maintained roads, road shoulders and rights of way;
  - (c) unpaved roads having vehicular traffic of less than 500 vehicles per day;
  - (d) non-commercial and non-institutional private driveways;
  - (e) horse trails, hiking paths, bicycle paths or other similar paths; and
  - (f) Any other path has been designated as an exclusive use area for purposes other than travel by motor vehicle.
- (5) Any person who contravenes subsection (1) commits an offence.

## ***PART 6: EMISSIONS CAUSED BY OPEN BURNING***

### **45. EMISSIONS CAUSED BY OPEN BURNING**

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- (1) Subject to subsection (4), any person who intends to carry out open burning of any material on any land or premises, must apply for prior written authorisation of such open burning to the District.
- (2) The District may, in the written authorisation referred to in subsection (1) impose conditions with which the person requesting authorisation must comply.



- (3) The District may not authorise open burning referred to in subsection (1) unless it is satisfied that the following requirements have been adequately addressed or fulfilled:
- (a) The material will be open burned on the land from which it originated;
  - (b) That the person requesting authorisation has investigated and assessed every reasonable alternative for reducing, reusing or recycling the material in order to minimize the amount of material to be open burned, to the satisfaction of the District;
  - (c) That person requesting authorisation has investigated and assessed every reasonable alternative for removing the material from the land or premises to the satisfaction of the District;
  - (d) That person requesting authorisation has investigated and assessed the impact the open burning will have on the environment to the satisfaction of the District;
  - (e) That person requesting authorisation has notified in writing the owners and occupiers of all adjacent properties of:
    - (i) All known details of the proposed open burning; and
    - (ii) the right of owners and occupiers of adjacent properties to lodge written objections to the proposed open burning with the district within 7 days of being notified; and
  - (f) The prescribed fee has been paid to the District.
  - (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 reason.
  - (h) the land on which that person intends to open burn the material is state land, a farm or small-holding, or land within a proclaimed township that is not utilised for residential purposes;
  - (i) The open burning is conducted at least 100 metres from any buildings or structures; and
  - (j) The open burning will not pose a potential hazard to human health or safety, private property or the environment.
- (4) The provisions of this section shall not apply to:
- (a) Recreational outdoor barbecue or braai activities on private premises;

- (b) Small, controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purposes; or
- (c) Any other defined area or defined activity to which the District has declared this section not to apply.

***PART 7: EMISSIONS CAUSED BY BURNING OF INDUSTRIAL WASTE,  
DOMESTIC WASTE AND GARDEN WASTE IN WASTE BINS OR SKIPS ON ANY  
LAND OR PREMISES***

**46. EMISSIONS CAUSED BY BURNING OF INDUSTRIAL WASTE,  
DOMESTIC WASTE AND GARDEN WASTE IN WASTE BINS OR SKIPS  
ON ANY LAND OR PREMISES**

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A person who carries out or permits the burning of any industrial, domestic or garden waste, on any land or premises, for the purpose of disposing of that waste, is committing an offence **unless** the industrial, domestic or garden waste is legally disposed of in terms of section 26 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)

***PART 8: EMISSION CAUSED BY TYRE BURNING AND BURNING OF RUBBER  
PRODUCTS AND CABLES IN OPEN SPACES***

**47. EMISSION CAUSED BY TYRE BURNING AND BURNING OF  
RUBBER PRODUCTS AND CABLES IN OPEN SPACES**

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- (1) No person may carry out or permit the burning of any tyres, rubber products, cables or any other products, on any land or premises for any purpose, for the purpose of recovering the scrap metal or fibre reinforcements, or of disposing of tyres, of the rubber products or cables as waste.

***PART 9: PESTICIDE SPRAYING EMISSIONS***

**48. PESTICIDE SPRAYING EMISSIONS**

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- (1) No person may carry out or permit the spraying of a pesticide, herbicide or other related material unless such pesticide, herbicide or material is registered in terms of section 3 of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (2) Any person who contravenes subsection (1) of this By-law is guilty of an offence as set out in section 18(1) (c) of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (3) A person who carries out or permits the spraying of pesticides, herbicides or other materials referred to in subsection (1), within the area of jurisdiction of the District, must comply with the following controlled measures:
  - (a) Obtain prior written authorisation from the District, which authorisation may be granted valid for a period of 12 months from the date of issue by the district with or without conditions, which may include:
    - (i) The area of land on which the pesticide, herbicide or other material may be applied; and
    - (ii) The period of time in which the pesticide, herbicide or other material may be applied;
  - (b) Notification in writing of all the owners and occupiers of adjacent properties within 150 metres of the treatment area of:
    - (i) The details of the proposed treatment area;
    - (ii) The reason for the use of pesticide, herbicide or other material;
    - (iii) The active ingredient of the pesticide, herbicide or other material;
    - (iv) The dates or months of the use of pesticide, herbicide or other material, which should also include the approximate time of the use;

- (v) In the event of inclement weather conditions, an alternative date or dates on which the use of pesticide, herbicide or other material may occur;
  - (vi) the time, if any, indicated on the product label specifying when the area
  - (vii) can safely be re-entered after application of the pesticide, herbicide or other material;
  - (viii) The right of owners and occupiers of adjacent properties to lodge written objections to the proposed spraying of pesticides with the district within 7 (seven) days of being notified; and
  - (ix) The prescribed administrative fee has been paid to the district.
- (4) The district must notify in writing, within 30 days, the applicant and all registered affected parties about a decision on an application.
- (5) The authorisation issued in terms of subsection (1) must specify-
- (a) The person to whom it is issued;
  - (b) The areas on which the pesticide may be applied;
  - (c) The dates or months of the pesticide spraying;
  - (d) The period for which the authorisation is issued;
  - (e) measures which are necessary for the protection of the environment
- (6) Any person who contravenes subsection (3) commits an offence.
- (7) A person may apply to the District for an exemption if the spraying of the pesticide is for:
- (a) The management of pests that transmit human diseases or adversely impact agriculture or forestry;
  - (b) The management of pests that threaten the integrity of sensitive ecosystems; or

(c) The need for the use of the pesticide is urgent.

(8) The provisions of this section are not applicable to:

- (a) Residential areas or farms;
- (b) Buildings or inside buildings and the domestic use of pesticides; or
- (c) Any other defined area or defined activity to which the district has declared this section not to apply.

## ***PART 10: SPRAY PAINTING EMISSIONS***

### **49. SPRAY PAINTING EMISSIONS**

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- (1) No person shall, within the District's jurisdiction, spray, coat, plate, or epoxy-coat any vehicle, article, object or allow them to be sprayed, coated, plated, or epoxy-coated with any substances outstanding approved spray-painting room or booth.
- (2) No person may spray, coat, plate, or epoxy-coat any vehicle, article, object, or building or part thereof or allow them to be sprayed, coated, plated or epoxy-coated with any substance unless:
  - a. That person is in possession of a spraying authorisation contemplated in subsection (1)
  - b. The spraying, coating, plating or epoxy-coating as the case may be is conducted in a spraying room approved by the designated Fire Officer, in consultation with the Air Quality Officer, on premises registered for that purpose.
- (3) A person that contravenes subsection (1) and (2) commits an offence.
- (4) Any person who wishes to obtain a spraying authorisation must complete and submit to the designated Fire Officer an application form for such permit in the form and manner as prescribed.
- (5) The designated Fire Officer, in consultation with the Air Quality Officer, may grant or refuse a spraying authorisation contemplated in subsection (1) based on the information submitted.

- (6) A spray room or booth or area designated for the application of a substance must be constructed and equipped according to the requirements in Schedule 6 to this by-law.
- (7) The designated Fire Officer may cancel the spraying authorisation if there is reason to believe that the holder of the spraying authorisation contravenes or fails to comply with any provisions of this by-law:
- (8) Subject to subsection (9), before the designated Fire Officer cancels the spraying authorisation as contemplated in subsection (7), that officer must:
- (a) Give the holder of the spraying authorisation written notice of the intention to cancel the spraying authorisation and the reason for such cancellation;
  - (b) Give the holder a period of at least 30 days to make written representations regarding the matter to the District.
- (9) If the designated Fire Officer has reason to believe that the failure to cancel the spraying authorisation may endanger any person, that officer may cancel the spraying authorisation without prior notice to the holder as contemplated in subsection (7).

## ***PART 11: SAND BLASTING EMISSIONS***

### **50. SAND BLASTING EMISSIONS**

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- (1) Any person conducting sand blasting activities which customarily produce emissions of dust that may be harmful to public health, well-being and/or cause a nuisance shall take control measures to prevent emissions into the atmosphere.
- (2) Any person who undertakes any sand blasting activity that causes dust emissions must implement the following control measures:
- (a) Dust extraction control measure; or

(b) Any alternative dust control measure approved in writing by the Air Quality Officer.

(3) A person that contravenes subsection (1) and (2) commits an offence.

## ***PART 12: NOISE POLLUTION MANAGEMENT***

### **51. DESIGNATION OF NOISE CONTROLLED AREAS**

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(1) The District may designate an area to be a noise-controlled area by notice in the *Provincial Gazette*.

(2) A notice contemplated in subsection (1) may:

- (a) Designate maximum sound levels for noise in the area;
- (b) Identify activities that may not be undertaken; and
- (c) Prescribe times during which certain activities may only be undertaken.

(3) The designation of a noise-controlled area may be amended or cancelled by notice in the *Provincial Gazette*.

(4) No person may:

- (a) undertake an activity that generates noise, or causes noise to be generated in a noise-controlled area unless it is in accordance with any requirements specified in terms of subsection (2);
- (b) erect educational, residential, high density, hospital, church or office buildings in an existing township in a noise-controlled area unless acoustic screening measures have been provided in the building to limit the reading on an integrating impulse sound level meter, measured inside the building after completion, to 40 dBA or such level as may be determined in accordance with subsection (1):

- (i) Provided that any air-conditioning or ventilating system shall be switched off during the course of such noise measurements; or
  - (c) Situate educational, residential, hospital or church erven within a noise-controlled area in a new township or an area that has been rezoned:
    - (i) Provided that such situation may be allowed by the District in accordance with the acoustic screening measures mentioned by the District.
- (5) The District must conduct a public participation process as contemplated in Chapter 4 of the Municipal Systems Act before designating a noise-controlled area.

## **52. PROHIBITION OF DISTURBING NOISE.**

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- (1) A person shall not cause a disturbing noise, or allow it to be caused by any person, animal, machine, device, vehicle, recreational vehicle, apparatus or any combination thereof.

## **53. PROHIBITION OF NOISE NUISANCE**

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Where it shall cause a noise nuisance, a person shall not:

- (1) operate or play, allow to be operated or played, a radio, television set, drum, musical instrument, sound amplifier, loudspeaker system or similar device producing, reproducing or amplifying sound;
- (2) Offer any article for sale by shouting, ringing a bell or making other sounds or by allowing shouting, the ringing of a bell or making of other sounds;
- (3) allow an animal owned or controlled by him to make noise;
- (4) Discharge fireworks in a residential area, without prior permission from the District;
- (5) build, make construct, repair, rebuild, modify, operate or test a vehicle, vessel, aircraft, or object, or allow it to be built, made, constructed,



- repaired, rebuilt, modified, operated or tested, in or near a residential zone or premises;
- (6) erect, demolish or alter, a building or structure, or allow it to be erected, demolished or altered if it affects a residential zone or premises unless permission is granted by the District to conduct building operations within the hours specified in SANS 104700 for the control of noise, if building operations are to be carried out outside of these hours then an exemption is required;
- (7) use or discharge any explosive, firearm or similar device that emits impulsive sound or allow it to be used, discharged, except with the prior consent in writing of the District and subject to such conditions as the District may deem necessary, save as such person may otherwise be authorised in law to use or discharge;
- (8) On a piece of land or in water or in airspace above water or in airspace above piece of land used for recreational purposes:
- (a) Operate a recreational vehicle; or
  - (b) As the owner or person in control of the piece of Land, water or airspace, allow any person to operate a recreational vehicle on such land or in such water or such airspace;
- (9) Except in emergency situations, emit a sound, or cause or allow a sound to be emitted, by means of a bell, carillon, siren, hooter, static alarm, whistle, loudspeaker or similar device
- (10) drive a vehicle on a public road;
- (11) Use any power tool or power equipment used for construction purposes, drilling or demonstration work, or allows it to be used, in or near a residential area, unless permission was granted by the district to conduct normal construction or repair work to public and private property.
- (12) Use or operate a generator, or allow it to be used, in or near a residential area, unless permission was granted by the District to generate electricity or for any other use, for personal or business purposes

## 54. LAND USE

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- (1) A person shall not:

- (a) Establish any zone unless a Noise Impact Assessment has been undertaken in accordance with SANS 10328. The assessment must indicate that either the outdoor equivalent continuous day/night level ( $L_{R, dn}$ ), the outdoor equivalent continuous day-time rating level ( $L_{R, d}$ ) or the outdoor continuous equivalent night-time rating level ( $L_{R, n}$ ) appropriate for the particular district will not be exceeded at any position within the boundaries of the proposed zone;
- (b) construct or erect any building or make changes to existing facilities on a premises which will house an activity which does not conform with the dominant land use specified in the applicable zoning scheme;
- (c) Construct or erect any building or make changes to existing facilities on premises which will house an activity which produces more noise with respect to that of the dominant land use specified in the applicable zoning scheme or will create a disturbing noise unless it has been proven that precautionary measures will be implemented. Such measures must be to the satisfaction of the District in that the premises, after being erected or developed or changes made, will be adequately insulated against the transmission of sound to the outside, so that either the outdoor equivalent day/night rating level ( $L_{R, dn}$ ), the outdoor equivalent continuous day-time rating level ( $L_{R, d}$ ) and or the outdoor equivalent continuous night-time rating level ( $L_{R, n}$ ) will not exceed the appropriate rating level for outdoor noise specified in SANS 10103 at any position on the property projection plane of the premises; or
- (d) Undertake any activity which constitutes a noise source referred to in SANS 10328 and any of the listed activities requiring an EIA in terms of the NEMA Regulations, as amended, which are considered to have a potential noise impact unless a Noise Impact Assessment has been undertaken in accordance with SANS 10328.

(2) The District may:

- (a) Before changes are made to existing facilities or existing uses of land or buildings or before new buildings are erected, in writing require that Noise Impact Assessments or tests be conducted to the satisfaction of the district by the owner, developer, tenant or occupant of the facilities, land or buildings concerned. Such reports or certificates must be submitted by such owner, developer, tenant or occupier to the district. The report should prove that either the outdoor equivalent continuous day/night rating level (LR, dn), the outdoor equivalent continuous day-time rating level (LR,d) and or the outdoor equivalent continuous night-time rating level (LR,n) at any position on or outside the property projection plane of the existing facility, use of land or building will not exceed values for the appropriate level given in SANS 10103. The Noise Impact Assessment, if required shall be conducted in accordance with SANS 10328 or other applicable documentation and the test if required, shall be conducted in accordance with SANS 10103 or other applicable documentation; or
- (b) if excavation, earthmoving, pumping, drilling, construction, or demolition, or any similar activity, power generation or music causes or may cause a noise nuisance or disturbing noise, instruct in writing that such work, activity, generation or music be forthwith discontinued until such conditions as the district may deem necessary have been complied with.

## **55. MOTOR VEHICLES**

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- (1) No person may drive a vehicle, or allow it to be driven, on a public road, if the sound level at the measuring point measured, when stationary, in accordance with the procedure prescribed in SANS 10181 exceeds:
- (a) In the case of a non-exempted vehicle, the stationary sound level specified in SANS 10281 for that type of vehicle; or
- (b) In the case of an exempted vehicle, by more than 5 dBA the applicable reference sound level indicated in SANS 10281, for that type of vehicle.

- (2) The District may in order to determine whether a vehicle being used on any road in the area of jurisdiction of the district, including a private, provincial or national road crossing its area of jurisdiction, complies with the provisions of the by-law, instruct the owner or driver of the vehicle:
- (a) To stop the vehicle or cause it to be stopped; and
  - (b) To have any appropriate inspection or test, as the district may deem necessary, conducted on the vehicle on the roadside where it was stopped or on a place, date and time determined by the district in writing.
- (3) The authorised person must, prior to any testing being undertaken in terms of subsection (6) (b) inform the driver of the vehicle that:
- (a) The vehicle has been stopped to test it in terms of this by-law for noise nuisance;
  - (b) The vehicle is being detained for the purpose of such testing;
  - (c) If the result of such testing indicates noise nuisance 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; and
  - (d) A person who fails to comply with a direction given under subsection (6) (a) commits an offence.
- (4) An inspection done in terms of subsection (6) (b) shall be carried out:
- (a) At or as near as practicable to the place where the direction to stop the vehicle is given; and
  - (b) Within 1 hour of the vehicle being stopped in accordance with the direction of the authorised person.
- (5) If, after conducting a sound level test, the authorised person is satisfied that the vehicle:
- (a) is not exceeding the permitted sound levels prescribed in subsection(1), then the authorised person 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 or used in contravention of subsection (1); OR

(b) is exceeding the permitted sound levels prescribed in subsection (1), the authorised must issue the driver of the vehicle with a repair notice in accordance with subsection (6).

(6) A repair notice must:

(a) Direct the owner of the vehicle to repair the vehicle within a specified period of time, and to take the vehicle to a place identified in the notice for re-testing before the expiry of that period; and

(b) Contain, amongst others, the following information:

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

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

(iii) If the driver is not the owner, the name and address of the vehicle owner.

(7) A person commits an offence under this section if the person fails:

(a) To comply with the repair notice referred to in subsection (6)(a)

(b) To take the vehicle for re-testing as referred to in subsection (6)(a).

(8) It shall not be a defence in proceedings under subsection (7) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.

(9) The authorised person 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:

(a) To comply with a repair notice issued in terms of subsection (5)(b); or

(b) To take the vehicle for re-testing as required by subsection (6)(a).

## **56. MUSIC, OPEN-AIR MUSIC FESTIVALS, SHOWS, INCLUSIVE OF AIR SHOWS AND SIMILAR GATHERINGS**

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- (1) No person may stage an open-air entertainment festival, such as, but not limited to a show, an air show, music concert, festival, sports event or similar gathering without a prior written consent of the District.
- (2) Any consent that is granted by the district:
  - (a) Must contain conditions regarding the notification of the public; and
  - (b) Any other conditions that are appropriate in the circumstances to reduce the impact of the event on the community.
- (3) If any music causes or may cause a noise nuisance, the district may instruct in writing that such music be discontinued until such conditions as the District may deem necessary have been complied with.
- (4) Subject to the provisions of subsection (3) and applicable provisions of any other law, the district may attach any instrument and / or equipment used to generate music if no permission has been obtained as required by subsection (1).
- (5) An instrument and/or equipment attached under subsection (4) shall be kept in safe custody by the District.
- (6) The district may lift the attachment contemplated in subsection (4) if the owner or person in control of the instrument and/or equipment has applied for permission in terms of subsection (1).
- (7) This subsection is not applicable to:
  - (a) Churches;
  - (b) Schools;
  - (c) Other education facilities; or
  - (d) Any other defined area or activity to which the district has declared this subsection not to apply.

## 57. GENERAL PROHIBITIONS

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A person is guilty of an offence if that person:

- (1) Fails to comply with the provisions of this section;
- (2) Fails to comply with a written condition, instruction or notice issued by the District in terms of this section;
- (3) tampers with, remove, put out of action, damage or impair the functioning of a noise monitoring system, noise limiter, noise measuring instrument, acoustic device, road traffic sign or notice placed in a position by or on behalf of the District.
- (4) In respect of a duly authorised person of the District:
  - (a) Fails or refuses to grant admission to such official to enter and to inspect the premises;
  - (b) Fails or refuse to give information which may lawfully be required of him or her to such official;
  - (c) Hinders or obstruct such official in the execution of his or her duties; or
  - (d) Gives false or misleading information to such official knowing that it is false or misleading.

## **58. GENERAL POWERS OF THE DISTRICT**

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An authorised person may:

- (1) for the purpose of applying this section, at any reasonable time enter premises upon reasonable notice to conduct any appropriate examination, inquiry or inspection thereon as it may deem expedient and to take any steps it may deem necessary;
- (2) If a noise emanating from a premises, vehicle, recreational vehicle or private area is a noise nuisance or disturbing noise, instruct in writing:

- (a) The person causing such noise or who is responsible for the infringement.
- (b) The owner, tenant or occupant of such building, premises, vehicle, recreational vehicle or private area from which or from where such noise emanates or may emanate; or
- (c) All such persons;

to discontinue or cause to be discontinued such noise or to take steps to or apply appropriate remedies to lower the level, of such noise to a level conforming to the requirements of this by-law within the period stipulated in the instruction: Provided that the provisions of this paragraph shall not apply in respect of a disturbing noise or noise nuisance caused by rail vehicles or air traffic or on a public road by vehicles that are not used as recreational vehicles;

(3) if the noise is caused by an animal, and the owner or person in charge of that animal fails to comply with an instruction referred to in subsection (1), subject to the applicable provisions of any other law, impound or cause the impounded such animal;

(4) Impose such appropriate conditions as it deems fit when granting any permission or exemption, including the specification of times and days when activities that may cause noise are permitted or prohibited;

(5) subject to the applicable provisions of any other law, place or cause to be placed measuring instruments or similar devices, road traffic signs or notices as any place within the district's jurisdiction for the enforcement of the provisions of this by-law: Provided that road traffic signs and notices shall be placed on private property only with the permission of the owner.

#### ***PART 14: EMISSION THAT CAUSE A NUISANCE***

### **59. PROHIBITION**

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- (1) Any occupier or owner of premises from which a nuisance emanates, or where a nuisance exist must take measures to contain emissions that cause a nuisance.
- (2) Any occupier or owner of premises that fails to comply with subsection (1) commits an offence.

## 60. ABATEMENT NOTICE

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(1) An authorised person may serve an abatement notice on any person, whom he or she reasonably believes is likely to commit or has committed an offence under section (60) (2), calling upon that person:

- (a) To abate the nuisance within a period specified in the notice;
- (b) To take all necessary steps to prevent a recurrence of the nuisance; or
- (c) To comply with any other conditions contained in the notice.

(2) For the purposes of subsection (1), an authorised person may form a reasonable belief based on his or her own experience that an air pollutant was emitted from premises occupied or owned by the person on whom the abatement notice is to be served.

(3) An abatement notices under subsection (1) may be served:

(a) Upon the owner or any person, by:

- (i) Delivering it to the owner, or if the owner cannot be traced or is living abroad that person's agent;
- (ii) Transmitting it by registered post to the owner's last known address, or the last known address of the agent; or
- (iii) Delivering it to the address where the premises are situated, if the owner's address and the address of the agent are unknown;

(b) Upon the occupier of the premises, by:

- (i) Delivering it to the occupier;
- (ii) Transmitting it by registered port to the occupier at the address at which the premises are situated.

- (4) Any person who fails to comply with an abatement notice served on that person in terms of subsection (3) commits an offence.
- (5) In addition to any other penalty that may be imposed, a court may order a person convicted of an offence under subsection (4) to take steps the court considers necessary within a period determined by the court to prevent a recurrence of the nuisance.

## **61. STEPS TO ABATE NUISANCE**

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- (1) The district may, at any time, 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 so incurred from the person responsible for causing the nuisance.
- (2) If a notice issued in terms of section 61 is not complied with or if the district considers that the situation concerned constitutes an emergency, it may take whatever steps it considers necessary in order to abate the nuisance contemplated in section 60 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 section 61.

## **CHAPTER 6**

### **LICENSING OF LISTED ACTIVITIES**

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#### **62. ESTABLISHMENT OF ATMOSPHERIC EMISSION LICENSING SYSTEM**

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The District hereby establishes an Atmospheric Emission Licensing System as contemplated in Chapter 5 of the AQA.

#### **63. PURPOSE OF THE ATMOSPHERIC EMISSION LICENSING SYSTEM**

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The purpose of the Atmospheric Emission Licensing System is to:

- (1) Identify and register all sources of air pollution in the District;
- (2) Regulated and ensure compliance with the license conditions:
- (3) Gather information for the purposes of compiling the air quality management plan of the District, as contemplated in section 15 of the AQA;
- (4) Undertake strategic planning; and
- (5) Provide information to any person in order to:

- (a) Facilitate monitoring of the performance of the District, and if applicable, a licensee;
- (b) Stimulate research by accredited institutions; and
- (c) Assist the District to achieve the main objectives of this By-law.

#### **64. APPLICATION FOR ATMOSPHERIC EMISSION LICENCE**

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- (1) No person shall undertake a listed activity, as published in terms of section 21 of the AQA, without being in possession of an atmospheric emission licence issued by the Air Quality Officer.
- (2) An application for an atmospheric emission licence must be:
  - (a) Made in writing on the application form as prescribed by the Air Quality Officer;
  - (b) Accompanied by documents or information as may be required by the Air Quality Officer; and
  - (c) On payment of the prescribed application fee.
- (3) The Air Quality Officer must on receipt of an application for an atmospheric emission license:
  - (a) Acknowledge receipt, within 14 days of the application together with the prescribed fee;
  - (b) Check whether the application is properly completed and contains the information required in the application form; and
  - (c) Is accompanied by the required information or documents required in terms of this by-law.
- (4) Before considering an application made in terms of subsection (2), the Air Quality Officer may require the applicant to furnish additional information or a specialist air quality impact study.
- (5) Any person who undertakes a listed activity without an atmospheric emission licence is guilty of an offence and is subject to the penalties as set out in section 52 of the AQA.

## **65. FACTORS TO BE TAKEN INTO ACCOUNT**

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(1) The Air Quality Officer must, in addition to the factors set out in section 39 of the AQA, consider each application having regard to the following factors:

- (a) Compliance with the AQA and these By-laws; and
- (b) The environmental, health and safety record of the applicant.

## **66. DECISIONS ON APPLICATIONS FOR ATMOSPHERIC EMISSION LICENSE**

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(1) After considering the application in terms of section 65, the Air Quality Officer must, within 60 days of receipt of the application, either:

- (a) approve the application by issuing a provisional atmospheric emission license or an atmospheric emission license, subject to such conditions as the Air Quality Officer may impose; or
- (b) Reject the application.

(2) If the Air Quality Officer fails to grant or reject an application for an atmospheric emission license within 60 days after considering the application in terms of section 65, he or she must inform the applicant in writing that the period for consideration is extended and must inform the applicant of the date by which a decision will be made.

## **67. TERMS AND CONDITIONS OF THE ATMOSPHERIC EMISSION LICENSE**

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(1) When issuing an atmospheric emission license, the Air Quality Officer may impose reasonable conditions as he or she may deem necessary.

(2) An atmospheric emission license issued under this section must:

- (a) Comply with section 43 of the AQA;
- (b) Contain a requirement that the license holder must comply with and ensure compliance by his or her employees, agents and sub-contractors with this By-law and other applicable national or provincial legislation.

## **68. VARIATION OF ATMOSPHERIC EMISSION LICENSES**

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(1) No building, plant or works used by a holder of a license referred to in section 65 shall be:

- (a) Materially extended; and
- (b) Altered or added to, and no changes in process, procedures or significant production increases may be undertaken without the prior approval of the Air Quality Officer.

## **69. CESSATION OF ATMOSPHERIC EMISSION LICENSE**

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The holder of a license referred to in section 65 must on cessation of operations to which the license relates notify the Air Quality Officer of such cessation.

## CHAPTER 7

### APPEALS, OFFENCES, PENALTIES AND EXEMPTIONS

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#### 70. APPEALS

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

#### 71. OFFENCES AND PENALTIES

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(1) A person who contravenes sections 31(1), 32(1), 37(1), 45(1), 45(3), 48(1), 44, 38(1), 39(1), 41(1), (3) and (4), 60(1), (3) and (4), 61(1), or 49(1) and (3) is guilty of an offence.

(2) Any person who is guilty of an offence in terms of section 37(1), 38(1) or 60(1) is liable on conviction to a fine not exceeding R10 000 or imprisonment not exceeding 30 days or to both a fine and imprisonment.

(3) Any person who is guilty of an offence in terms of sections 31(1), 32(1), 45(1), 45(3), 48(1), 39(1), 41(1), 41(3) and (4), 61(1), 49(1) and (3), is liable

on conviction to imprisonment for a period not exceeding two years or a fine or to both such fine and such imprisonment.

(4) Any person who contravenes section 44 is liable on conviction to imprisonment not exceeding one year or a fine or both such fine and such imprisonment

(5) It is an offence to:

(a) To contravene the provisions of this by-law.

(b) Supply false information to an authorised person in respect of any issue pertaining to this By-law; or

(c) Refuse to co-operate with the request of an authorised person made in terms of this By-law, and any person convicted of such offence is liable to imprisonment for a period not exceeding 30 days or a fine or both such fine and such imprisonment.

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

(7) Failure to comply with a notice, direction or instruction referred to in this by-law constitutes a continuing offence.

(8) Any person who commits a continuing offence shall be guilty of an offence for each day during which that person fails to comply with a notice, direction or instruction referred to in this by-law.

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

(a) To remedy the harm caused;

(b) To pay damages for harm caused to another person or to property, which order shall have the force and effect of a civil judgment; and



(c) To install and operate at the person's own expense obscuration reading equipment referred to in section 34.

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

## 72. EXEMPTIONS

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(1) Any person may, in writing, apply for exemption from the provisions of this by-law to the district.

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

(3) The District may grant a temporary exemption in writing from one or all of the provisions of the by-law, provided that the District:

- (a) Is satisfied that granting the exemption will not prejudice the objectives of this by-law; and
- (b) Grants any exemption subject to conditions that promote the attainment of the objective of this by-law.

(4) The District must not grant an exemption under subsection (1) until District has:

- (a) taken measures to ensure that all persons whose rights may be significantly and/ or detrimentally affected by the granting of the exemption, including but not limited to adjacent land owners or occupiers (including surrounding communities), 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.

(5) The District may:

(a) From time to time reconsider any exemptions granted in terms of this section; and

(b) On good grounds withdraw any exemption.

**SCHEDULE "2"**  
**APPLICATION FORM TO OPERATE SMALL BOILER**  
**(SECTION 42(2))**

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Name of Enterprise: \_\_\_\_\_

Declaration of accuracy of information provided:

I, \_\_\_\_\_, declare that the information provided

in this application is in all respect factually true and correct.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
SIGNATURE  
\_\_\_\_\_

## CAPACITY OF SIGNATORY

I, \_\_\_\_\_, owner/occupier of the land/property

known as \_\_\_\_\_ (registered name) within the district's

jurisdiction hereby apply for permission to operate a small boiler on the said property.

**1. CONTACT DETAILS**

Responsible Person Name	
Telephone Number	
Cellphone Number	
Fax Number	
Email Address	

**2. SERIAL NUMBER, PRODUCT NAME AND MODEL OF THE SMALL BOILER**

SERIAL NUMBER	PRODUCT NAME	PRODUCT MODEL

**3. RAW MATERIALS USED**

RAW MATERIALS USED	MAXIMUM PERMITTED CONSUMPTION RATE (VOLUME)	DESIGN CONSUMPTION RATE (VOLUME)	ACTUAL CONSUMPTION RATE (VOLUME)	UNITS (QUANTITY/PERIOD)

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#### 4. ENERGY USED

ENERGY SOURCE	SULPHUR CONTENT OF FUEL (%) (IF APPLICABLE)	ASH CONTENT OF FUEL (%) (IF APPLICABLE)	MAXIMUM PERMITTED CONSUMPTION RATE (VOLUME)	DESIGN CONSUMPTION RATE (VOLUME)	ACTUAL CONSUMPTION RATE (VOLUME)	UNITS (QUANTITY/PERIOD)

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**5. POINT SOURCE PARAMETERS**

UNIQUE STACK ID	POINT SOURCE NAME	HEIGHT OF RELEASE ABOVE GROUND	HEIGHT ABOVE NEARBY BUILDING (M)	DIAMETER AT STACK TIP / VENT EXIT (M)	ACTUAL GAS EXIT TEMPERATURE	ACTUAL GAS VOLUMETRIC FLOW	ACTUAL GAS EXIT VELOCITY (M/S)

**6. POINT SOURCE PARAMETERS**

UNIQUE STACK ID	POLLUTANT NAME	POLLUTANT ANNUAL RELEASE RATE			EMISSION HOURS (E.G. 07H00 – 17H00)	TYPE OF EMISSION (CONTINUOUS / INTERMITTED)

**7. SIGNATURE**

\_\_\_\_\_  
SIGNATURE OF THE APPLICANT

\_\_\_\_\_  
DATE OF

APPLICATION

**8. OFFICE USE ONLY****8.1 AUTHORISED PERSON: SITE INSPECTION OBSERVATIONS**


**8.2 AUTHORISED PERSON: RECOMMENDATIONS**


**8.3 APPROVED / NOT APPROVED (COMPLETE WHICHEVER IS APPLICABLE)**

This application is approved, subject to the following conditions:

a)	
b)	
c)	

This application is not approved for the following reasons:

a)	
b)	
c)	

\_\_\_\_\_  
AIR QUALITY OFFICER SIGNATURE

DATE: \_\_\_\_\_

**SCHEDULE “3”****APPLICATION FORM FOR OPEN BURNING (SECTION 45(1))**

I, \_\_\_\_\_, owner/occupier of the land/property known as \_\_\_\_\_ (registered name) within the district’s jurisdiction hereby apply for permission to burn the following materials on the said property.

**1. CONTACT DETAILS**

Responsible Person Name	
Telephone Number	
Cellphone Number	
Fax Number	
Email Address	

**2. DESCRIPTION OF THE EXTENT OF THE AREAS TO BE BURNED**


**3. TYPES OF MATERIAL TO BE BURNED**

a)
b)
c)

**4. REASON FOR BURNING**


**5. AIR QUALITY IN THE LOCAL AREA**


**6. APPROXIMATE DATE AND TIME TO BURN MATERIALS**

DATE	TIME

**7. NOTIFICATION OF ADJACENT OWNERS AND OCCUPIERS (INCLUDING SURROUNDING COMMUNITIES)**

The applicant must attach proof that the adjacent owners and occupiers have been notified of the open burning, and their rights to lodge any written objections to the district.

**8. SIGNATURES**

\_\_\_\_\_

AIR QUALITY OFFICER SIGNATURE

DATE: \_\_\_\_\_

**9. OFFICE USE ONLY**



**9.1 AUTHORISED PERSON: SITE INSPECTION OBSERVATIONS**


**9.2 AUTHORISED PERSON: RECOMMENDATIONS**


**9.3 APPROVED / NOT APPROVED (COMPLETE WHICHEVER IS APPLICABLE)**

This application is approved, subject to the following conditions:

a)
b)
c)

This application is not approved for the following reasons:

a)
b)
c)

\_\_\_\_\_  
AIR QUALITY OFFICER SIGNATURE

DATE: \_\_\_\_\_

**SCHEDULE “4”****APPLICATION FORM TO UNDERTAKE PESTICIDE SPRAYING****(SECTION 49(3)(a))**

I, \_\_\_\_\_, owner/occupier of the land/property known as \_\_\_\_\_ (registered name) within the district's jurisdiction hereby apply for permission to burn the following materials on the said property.

**1. CONTACT DETAILS**

Responsible Person Name	
Telephone Number	
Cellphone Number	
Fax Number	
Email Address	

**2. DESCRIPTION OF THE EXTENT OF THE PROPOSED TREATED AREA(S)**


**3. TYPES OF PRODUCT LABEL TO BE USED**


**4. AIR QUALITY IMPACTS IN THE LOCAL AREA**


**5. DATES OR MONTHS FOR PESTICIDE SPRAYING**

DATES OR MONTHS	

**6. NOTIFICATION OF ADJACENT OWNERS AND OCCUPIERS (INCLUDING SURROUNDING COMMUNITIES)**

The applicant must attach proof that the adjacent owners and occupiers have been notified of the proposed pesticide spraying, and their rights to lodge any written objections to the District. The notification must clearly specify:

- (a) the extent of the proposed treatment area;
- (b) reasons for the pesticide use;
- (c) the active ingredients;
- (d) dates or months for the pesticide spraying;
- (e) time, if any, indicated on the product label specifying when the area can safely be re-entered after application;
- (f) adjacent owners and occupiers' right to lodge written objections within 14 days to the District.

**7. SIGNATURE**


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SIGNATURE OF THE APPLICANT

DATE OF

APPLICATION

**8. OFFICE USE ONLY**

**8.1 AUTHORISED PERSON: SITE INSPECTION OBSERVATIONS**


**8.2 AUTHORISED PERSON: RECOMMENDATIONS**


**8.3 APPROVED / NOT APPROVED (COMPLETE WHICHEVER IS APPLICABLE)**

This application is approved, subject to the following conditions:

a)
b)
c)

This application is not approved for the following reasons:

d)
e)
f)

AIR QUALITY OFFICER SIGNATURE

DATE: \_\_\_\_\_

## **SCHEDULE “5”**

### **SPRAY BOOTH CONSTRUCTION (SECTION 50(4))**

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#### **1. CONSTRUCTION**

Such activities must be conducted in a spray booth or spray cabinet specifically designed for the purpose. It must be constructed of none-combustible material

#### **2. VENTILATION**

##### **2.1 SPRAY BOOTH**

Every spray booth shall be provided with a mechanical ventilation system which must be capable of moving the air on the occupied zone at not less than:

- (a) 0.5m/s where the air is horizontally supplied and extracted.
- (b) 0.4 m/s where the air is introduced through the roof and extracted through slots along the edge of the walls at the floor level.
- (c) 0.3 m/s where the air is supplied through the roof and extracted through a grill over the whole of the floor area.

##### **2.2 SPRAY CABINETS**

2.2.1 Where spray cabinets are used (i.e. where the operator stands in front and sprays through an opening into a cabinet), the following minimum air flow must be maintained through an opening:

- (a) 1m/s opening to  $0.9\text{m}^2$
- (b) 0.75 m/s for opening between  $0.9$  and  $1.8\text{m}^2$
- (c) 0.5 for opening exceeding  $1.8\text{m}^2$

**3. LIGHTING**

- (a) A spray booth must be fitted with a non-operable inspection window of strengthened and shatterproof of glass.
- (b) Every employer shall ensure that his spray booth is lighted in accordance with the illuminance values as specified below. (Only incandescent electric light which are enclosed in outer flame and vapour-proof fittings may installed).

<b>TYPES OF ACTIVITY</b>	<b>ILLUMINANCE (LUX)</b>
Rubbing, dipping, ordinary painting	200
Fine painting, spray and finishing	300
Retouching and matching	500

#### **4. FUME EXTRACTION SYSTEM**

##### **(1)**

- (a) All extraction systems must be designed and commissioned by competent engineers to ensure that the total extraction from any room is balanced by adequate ingress of fresh air into works room.
- (b) All ducts and enclosures in connection with the extraction system through which the fumes must pass must be constructed of non-combustible materials with the interior having a smooth surface.
- (c) The fume extraction system must be kept in full operation while spraying done and for any additional time required to clear the fumes from the room.
- (d) The blades of any fan used in the spray booth or spray cabinet shall be of non-ferrous metal. Suitable filters must be provided at the point of extraction.
- (e) The point of discharge must be positioned to ensure that such air does not contaminate any air which is likely to be drawn into ventilate any existing building.

##### **(2) PERSONAL PROTECTION EQUIPMENT**

- (a) Manager shall ensure that workers actively involved in spraying operations are provided with approved respirators or breathing apparatus.
- (b) When paints containing isocyanate are used, a positive pressure air fed face mask should be worn.
- (c) Chemical absorption canisters should not be relied on because of their limited effective life.

##### **(3) GENERAL**

In addition to the above, it is also necessary to comply with the requirements as laid down by the Chief Fire Officer.

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