

# **Summary of Draft Air Quality Management By-law**

## EXPLANATORY MEMORANDUM: AIR QUALITY MANAGEMENT BY-LAW

---

### Purpose of summary

The purpose of the summary is to summarise the most important aspects regulated by the by-law insofar it affects the fencing of premises. Members of the public can read the summary in order to establish whether the by-law contains provisions that may affect them and which they wish to comment on. The full version of the by-law, which will be available at identified venues within the municipality, should then be consulted in preparation for public participation sessions or in order to submit written comments.

### 1. PRINCIPLES AND OBJECTIVES OF PROPOSED BY-LAWS

The municipality, aware of the Constitutional right of every person to an environment that is not harmful to his or her health or well-being proposes this by-law with the aim of protecting and promoting the health and well-being of all people in the municipal area by providing, in conjunction with all applicable laws, a legal and administrative framework within which the municipality can develop and manage its obligations relating to air quality.

### 2. PART I: INTERPRETATION AND OBJECTIVES

The term air pollution and its components is comprehensively defined. It explains what constitutes air pollution, where and when it exists, where it is applicable and how and who or what causes it.

“**air pollution**” means any change in the environment caused by any substance such as dust, smoke, fumes and gas emitted into the atmosphere from any activity, where that change has an adverse effect on human health or well-being or on ecosystems, or on materials useful to people, or will have such an effect in the future

### 3. PART II: DUTY OF CARE

A duty is placed persons involved in causing air pollution or the risk thereof to take steps to stop, prevent or mitigate the pollution.

It gives the Municipality the right to:

- monitor
- give instructions or
- direct persons to do whatever is required to rectify the situation. If any person fails to do as directed, the Municipality may take measures and recover costs from guilty parties.

The owner, person in control or person with the right of use of land where air pollution takes place can be held liable if they negligently fail to prevent the pollution.

Where more than one person is responsible they can be ordered to share the blame and penalty.

#### **4. PART III: AIR POLLUTION CONTROL ZONE**

In section 4 the area of the air pollution control zone is declared. This means that, within that zone, the municipality may from time to time by notice in the Provincial Gazette prohibit and restrict certain actions and it may alter, add or exclude to whom and what the by-law shall apply.

#### **5. PART IV: SMOKE EMISSIONS FROM PREMISES OTHER THAN DWELLINGS**

**Sections 5 and 6** state when and how it becomes an offence for smoke to be emitted from premises other than dwellings.

**Sections 7 and 8** make it an offence to install, alter, extend, operate or replace fuel-burning equipment without prior written authorisation from the municipality without which removal of such equipment may be ordered.

Where such equipment is operated contrary to authorisation the owner, the occupier and the operator shall each be guilty of an offence.

**Section 9** creates the presumption if certain circumstances exist that an offence has been committed.

**Section 10 and 11** makes provision for an authorised person to give instructions for the installation, upkeep and retention of samples for certain periods to enforce compliance.

**Section 12** provides the opportunity to residents to apply to be exempted from certain restrictions or prohibitions.

#### **6. PART V: SMOKE EMISSIONS FROM DWELLINGS**

Section 13 makes it an offence to have emissions of smoke from dwellings if that smoke causes a nuisance to others. However an owner may apply for an exemption.

#### **7. PART VI: EMISSIONS CAUSED BY OPEN BURNING**

Section 15 makes it an offence under most circumstances to burn material in the open. Traditional cooking, braais and certain other activities are excluded.

#### **8. PART VII: EMISSIONS FROM MOTOR VEHICLES**

This chapter deals with the arrangements for enforcement of the by-law. It allows authorised persons to stop, test, inspect or to issue notices in respect of emissions by compressed ignition powered vehicles. The owner can not use the excuse that he was not informed by the driver of notices served on him.

#### **9. PART VIII: EMISSIONS THAT CAUSE A NUISANCE**

This part makes it an offence to create or permit emissions that cause a nuisance and provides for presumptions normally allowed in terms of legislation where prosecution takes place. It is more technical in the sense that it deals with the procedure and evidence required in the process of the enforcement of legislation as well as gives the municipality the right to, at its own cost take whatever steps it considers necessary to abate the nuisance and recover reasonable cost from the culprit responsible.

## **10. PARTS IX TO XI**

These parts deal with offences committed through the emission of offensive odours, dust or fumes causing a nuisance.

## **11. PART XII**

Part XII regulates the spraying of pesticides. It places obligations on the users of pesticides to use it as prescribed by the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947) and to apply for prior written authorisation by the municipality. The occupiers of adjacent properties within 150 metres of the treatment area must also be notified.

## **12. PART XIII**

This part creates a number of offences which may be committed by the public. Provision is also made for penalties for offenders and the right of appeal. Section 29 provides for exemptions that may be applied for and granted by the municipality.