

CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY

AIR POLLUTION CONTROL BY-LAWS

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

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SCHEDULE 1

CHAPTER 1
DEFINITIONS AND INTERPRETATION

1. Definitions

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

- 1.1 “**activity**” means any activity which results in any emission that causes or may cause air pollution;
- 1.2 “**air pollutant**” means any substance that causes or may cause air pollution, including but not limited to any dust, smoke, fumes or gas;
- 1.3 “**air pollution**” means any change in the environment caused by any substance emitted into the atmosphere from any activity, where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;
- 1.4 “**air quality management zone**” means a geographical area declared in terms of Section 7 of the By-law;
- 1.5 “**air quality officer**” means the officer designated by the Council in terms of section 14(3) of the National Environmental Management: Air Quality Act, (Act 39 of 2004);
- 1.6 “**application fee**” in relation to
- (a) a fee, means a fee prescribed by the Council;
- 1.7 “**AQA**” means the National Environmental Management: Air Quality Act, 2004 (Act No.39 of 2004);

- 1.8 “**atmosphere**” means air that is not enclosed by a building, machine, chimney or other structure enclosing air;
- 1.9 “**authorised official**” means an employee of the Council having authority or sanction and is responsible for carrying out any duty or function or exercising any power in terms of this By-law, and includes employees delegated to carry out or exercise such duties, functions or powers;having authority or sanction
- 1.10 “**best practicable means**” means the most effective, realistic, practical measures that can reasonably be taken to prevent, reduce or minimize air pollution, having regard to all relevant factors including, among others, local conditions and circumstances, the likelihood of adverse effects, the current state of technical knowledge and the financial implications relative to the degree of environmental protection expected to be achieved by application or adoption of the measures;
- 1.11 “**bio-mass**” means non-fossilized and biodegradable organic material originating from plants, animals and micro-organisms or any of those;
- 1.12 “**chimney**” means any structure or opening of any kind from or through which an air pollutant may be emitted;
- 1.13 “**control emitter**” means any appliance or activity, or any appliance or activity falling within a specified category, as a controlled emitter if such appliance or activity, or appliances or activities falling within such category, result in atmospheric emissions which through ambient concentrations, bioaccumulation, deposition or in any other way, present a threat to health or the environment-the Minister or MEC may by way of notice in the *Gazette* declare a control emitter;
- 1.14 “**Council**” means

- (a) the City of Johannesburg Metropolitan Municipality established in accordance with the provisions of Section 12(1) read with Section 14(2) of the Local Government: Municipal Structures Act 117, 1998, as published by Provincial Notice No. 6766 of 2000 dated 1 October 2000, as amended, exercising its legislative and executive authority through its municipal Council; or
- (b) its successor in title; or
- (c) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-laws has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as the case may be;

1.15 **“dark smoke”** in relation to chapter 7 means –

- (a) smoke which has a density of 60 Hartridge smoke units or more, or in relation to emissions from a turbo-charged compressed ignition powered engine, means a density of 66 Hartridge smoke units or more;

or
- (b) smoke which has a light absorption co-efficient of more than 2.125 m⁻¹ or in relation to emissions from a turbo-charged compressed ignition powered engine, means a light absorption co-efficient of more than 2.51 m⁻¹.

1.16 **“dwelling”** means a house, flat, building or other structure, or part of a building or structure, used as a place of residence or habitual purposes and any outbuilding appurtenant thereto, and includes any shack and structure in an informal settlement, so used;

- 1.17 “**emission**” means any air pollutant discharged into the atmosphere from point, non-point and mobile sources, including any chimney, exhaust, vent and the surface area of a commercial or industrial undertaking and any residential source;
- 1.18 “**fuel burning equipment**” means any furnace, boiler, incinerator, or other equipment with a chimney or exhaust to vent the emissions of burning to the atmosphere –
- (a) designed to burn or capable of burning liquid, gas or solid fuel;
 - (b) used to dispose of any material or waste by burning; or
 - (c) used to subject liquid, gas or solid fuel to any process involving the application of heat;
- 1.19 “**living organism**” means any biological entity capable of transferring or replicating genetic material, including any sterile organism and virus;
- 1.20 “**mobile source**” has the meaning assigned to it in section 1 of the Act;
- 1.21 “**municipality**” means City of Johannesburg Municipality established in terms of the Local Government: Municipal Structures Act, 1998;
- 1.22 “**Municipal Systems Act**” means the Local Government: Municipal Systems Act No. 32 of 2000;
- 1.23 “**NEMA**” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- 1.24 “**non-point source**” means a source of atmospheric emissions which cannot be identified as having emanated from a single identifiable source or fixed location, and includes veld, forest and open fires, mining activities, agricultural activities and stockpiles;

- 1.25 “**nuisance**” means any detrimental interference or likely interference, caused by air pollution with –
- (a) the health or well-being of any human or living organism; or
 - (b) the use or enjoyment by an owner or occupier of his or her property, or property occupied by him or her being affected;
- 1.26 “**obscuration**” means the ratio of visible light attenuated by air pollutants suspended in the effluent streams to incident visible light, expressed as a percentage;
- 1.27 “**offensive odour**” means any smell which is considered to be malodorous, offensive or a nuisance to a reasonable person emanating from any source or activity;
- 1.28 “**open burning**” in relation to chapter 6 means the burning of any material in the open air without utilising fuel-burning equipment;
- 1.29 “**point source**” means a single identifiable source and fixed location of atmospheric emission, and includes smoke stack and residential chimneys;
- 1.30 “**property**” means any unit of land registered in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), and any sectional title unit contemplated in the Sectional Titles Act, 1986 (Act No. 95 of 1986) and any building or other structure thereon and includes any adjoining property occupied or used in connection with any activity carried on the former property;
- 1.31 “**public road**” means a road, street or thoroughfare or other right of way to which the public or section of the public has a right of access or which is commonly used by the public or a section of the public;
- 1.32 “**scheduled activity**” means any activity contemplated in Section 8;

1.33 “**the Constitution**” means the Constitution of the Republic of South Africa Act No. 108 of 1996;

1.34 “**vehicle**” means any motor car, motor carriage, motor cycle, bus, motor lorry or other conveyance propelled wholly or partly by any volatile spirit, steam, gas or oil, or by any means other than human or animal power;

2. **Application of this By-law**

These By-law applies to all properties or premises within the area of jurisdiction of the City of Johannesburg Metropolitan Municipality.

3. **Relevant Acts**

These By-laws must be read with any other applicable provisions of NEMA and AQA and any regulations made and any listing published under the Acts.

4. **Objectives and Purpose**

(1) The objectives of this By-law are to –

- (a) give effect to the right contained in section 24 of the Constitution of the Republic of South Africa Act, (Act No 108 of 1996), by controlling air pollution within the area of jurisdiction of the Council; and
- (b) ensure that air pollution is avoided, or where it cannot be avoided, is minimized.
- (c) provide, in conjunction with any other applicable law, an effective legal and administrative framework within which the municipality can manage, regulate, prevent activities that can or do cause emissions that have the potential to impact adversely on the public health and wellbeing and the environment.

- (2) Any person on whom a power is conferred or a function or duty is imposed under these By-laws must exercise that power and perform that function or duty in order to give effect to the objectives specified in subsection (1).

CHAPTER 2

PROHIBITION AND APPLICATION

5. Prohibition of air pollution

- (1) Any person who is wholly or partially responsible for causing air pollution or creating a risk of air pollution or nuisance occurring must take all reasonable measures –
 - (a) to prevent any air pollution or nuisance from occurring; or
 - (b) to mitigate, as far as reasonably possible, any air pollution or nuisance that may occur.
- (2) If an authorised official reasonably suspects that a person has failed to comply with any provision of subsection (1), he or she must, subject to the provisions of subsection (3), prior to taking any steps to criminally charge that person, deliver a written notice to him or her and request for that person to remedy such contravention or non-compliance by taking steps specified in the notice within a period of 30 (thirty) days.
- (3) Prior to issuing a notice contemplated in subsection (2), the authorised officer must in writing set out the contents of the notice contemplated in subsection (2), inform the person concerned that he or she has the right to submit, within a reasonable time specified in that communication, written representations to the authorised officer relating to the alleged contravention of or non-compliance with subsection (1) and any matter relating to the proposed notice.

- (4) A decision to issue a notice in terms of subsection (2) may only be taken after due consideration of any representations and findings submitted in terms of subsection (3).

- (5)
 - (a) If a person on whom a notice was served in terms of subsection (2) fails to comply with that notice, the Council may take reasonable measures to remedy the situation.

 - (b) The Council may recover all reasonable costs incurred as a result of acting in terms of paragraph (a) from the person to whom the notice in terms of subsection (2) was issued.

- (6) 5. Reasonable measures to prevent air pollution
 - (1) Any person who is wholly or partially responsible for causing air pollution or creating a risk of air pollution occurring must take all reasonable measures including the best practicable environmental option –
 - (a) to prevent any potential significant air pollution from occurring; and

 - (b) to mitigate and, as far as reasonably possible, remedy the environmental impacts and consequences of any air pollution that has occurred.

 - (2) The Council may direct any person who fails to take the measures required under subsection (1) to -
 - (a) investigate, evaluate and assess the impact on the environment of specific activities and report thereon;

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

- (c) diligently continue with those measures; and
 - (d) complete them before a specified reasonable date, provided that prior to such direction the Council must give such person adequate notice and direct him or her to inform the authorised official of his or her relevant interests.
- (3) Council may, if a person fails to comply or inadequately complies with a directive contemplated in subsection (2), take reasonable measures to remedy the situation.
- (4) Council may, if a person fails to carry out the measures referred to in subsection (1), recover all reasonable costs incurred as a result of it acting under subsection (3) from any or all of the following persons:
- (a) any person who is or was responsible for, or who directly or indirectly contributed to the air pollution or the potential air pollution;
 - (b) the owner of the land at the time when the air pollution or the potential for air pollution occurred
 - (c) the person in control of the land or any person who has or had a right to use the land at the time when the -
 - (i) activity or the process in question is or was performed or undertaken;
 - or
 - (ii) situation came about; or
 - (d) any person who negligently failed to prevent the -

(i) activity or the process being performed or undertaken;

or

(ii) situation from coming about.

(5) Any person who fails to comply with a directive referred to in 4 (1) and (2) commits an offence in terms of this By-law.

CHAPTER 3 POWERS OF AIR QUALITY OFFICER

6. Powers of Air Quality Officer

The Council must designate or appoint an employee of the City as the Air Quality Officer to be responsible for

- (a) co-ordinating matters pertaining to air quality management and:
- (b) granting or rejecting Atmospheric Emission Licences or Provisional Atmospheric Emission Licences in terms of the Air Quality Act within the City's jurisdiction.
- (c) implement and monitor the short term plans and objectives of the Act, the Regulations and the by laws,
- (d) identify, implement, manage and report on the air quality project to the national level
- (e) implement procedures, systems and controls to regulate specific work sequences, general practices and processes as defined I the legislation.
- (f) manage, coordinate and ensure compliance with statutory requirements of air quality licensing

- (g) manage and implement strategies aimed at creating awareness and provide education in terms of statutory requirements and air quality practice.
- (h) manage supervise, coordinate, liaise and provide direction on specific administrative and reporting requirements associated with air quality

CHAPTER 4

AIR QUALITY MANAGEMENT ZONE

7. Declaration of air quality management zone and control zone

- (1) The whole area within the jurisdiction of the City of Johannesburg municipality is hereby declared an air quality management zone.
- (2) Within its air quality management zone, Council may by notice, in the Gazette declare an area as an air pollution control zone.
 - (a) Within an air pollution control zone the Council may from time to time by notice in the Provincial Gazette:
 - (i) prohibit or restrict the emission of one or more air pollutants from all premises or certain premises;
 - (ii) prohibit or restrict the combustion of certain types of fuel;
 - (iii) declare smokeless zones, in which smoke with an obscuration of more than 10% may not be emitted;

prescribe different requirements in its air pollution control zone relating to air pollution control in respect of:

 - (iv)
 - (i) different geographical areas;

- (ii) specified premises;
 - (iii) classes of premises; or
 - (iv) premises used for specified purposes.
- (3) The Council may develop and publish policies and guidelines, including technical guidelines, areas relating to the regulation of activities which directly or indirectly cause air pollution within its air pollution control zone.
- (4) the Council may in writing exempt certain premises, classes of premises or premises used for specified purposes from the operation of measures adopted by the Council under this section.

CHAPTER 5

AIR POLLUTION FROM PROPERTIES

8. Schedule of activities

- (1) The Council has identified schedule of activities as specified in schedule 1 which it reasonably believes causes or may cause significant air pollution.
- (2) No person may without a permit from the Council conduct an activity which has been scheduled in terms of subsection (1).
- (3) The Council may amend the schedule contemplated in subsection (1) by –
 - (a) adding an activity to or removing an activity from that list; or
 - (b) making any change to the particulars on that list.
- (4) If the Minister or the MEC in terms of section 21 of the National Environmental Management: Air Quality Act, (Act 39 of 2004) by notice in the Gazette –
 - (a) publishes a Schedule of activities; or

(b) amends that Schedule,

and such Schedule or amended Schedule contains any activity specified in the Schedule –

(i) the activity so specified is deemed to have been deleted from the Schedule; and

(ii) any permit contemplated in section 8, to the extent that it relates to that activity, lapses,

with effect from the date of publication of that notice.

9. **Permits for schedule activities**

(1) An application for a permit required in terms of subsection (1) must be made on a prescribed form and be accompanied by –

(a) any document specified in such form;

(b) the application fee.

(2) The Council may prior to taking a decision on any application in terms of subsection (2) by notice in writing require the applicant concerned to furnish it with the further information and documentation specified in that notice within a period so specified.

(3) If any activity scheduled in terms of section 8(1) is operative at the commencement of these By-laws, the person concerned must lodge an application in terms of subsection (1) within 90 (ninety) days of such commencement or a longer period allowed by the air quality officer.

(4) The Council must, after consideration of all relevant factors –

- (a) approve an application in terms of subsection (1) subject to any condition it considers appropriate; or
- (b) refuse the application,

and advise the applicant in writing of its decision and if any condition was imposed, or in the case of a refusal of the application, at the same time furnish its written reasons for any such condition or refusal.

- (5) If an application in terms of subsection (1) is approved, or an appeal in terms of section 26 relating to that application is successful, an authorised official must forthwith issue a permit on a prescribed form to the applicant specifying any condition imposed in terms of subsection (5)(a).
- (6) Notwithstanding the provisions of subsection (1), an activity in respect of which a permit is required in terms of that subsection may be continued –
 - (a) during a period contemplated in subsection (3); or
 - (b) if an application in respect of that activity is made in terms of subsection (1), until the application concerned is refused and the applicant notified in terms of subsection (6)(b); and
 - (c) if an appeal is lodged in terms of section 26 in respect of a condition imposed in terms of subsection (5)(a) or a refusal of an application in terms of subsection (5)(b), until such appeal is rejected and the appellant notified in writing by an authorised official of the decision.

10. **Lapsing of permits**

- (1) A permit issued in terms of section 9(6) lapses if –
 - (a) the activity which is the subject of the permit ceases;

- (b) the activity concerned is taken over by a new operator; or
 - (c) the name of the permit holder changes.
- (2) The permit holder concerned must forthwith in writing advise the air quality officer of any occurrence contemplated in subsection (1).

11. **Changing of permit activities**

- (1) No holder of a permit issued in terms of section 9(6) may materially extend or alter an activity for which that permit was issued without the prior written approval of the Council.
- (2) Application for approval contemplated in subsection (1) must be made on a prescribed form and be accompanied by –
- (a) the application fee; and
 - (b) any written representations that the applicant may wish to submit.
- (3) The Council must, after consideration of all relevant factors and any representations in terms of subsection (2) –
- (a) approve an application in terms of subsection (2) subject to any conditions it considers appropriate; or
 - (b) refuse the application,

and advise the applicant in writing of its decision and if any condition was imposed, or in the case of a refusal of the application, at the same time furnish its written reasons for any such condition or refusal.

12. **Cancellation of permits**

The Council may, cancel any permit issued in terms of section 9(6) if the permit holder contravenes or fails to comply with any provision of these By-laws or condition imposed in terms of section 9(5)(a).

CHAPTER 6

EMISSIONS CAUSED BY OPEN BURNING

13. Prohibition of open burning

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

14. Regulation of Coal Merchants and distributors

- (1) Any coal merchant or distributor must for purposes of this By-law keep a record of the amount of coal on site and/or industrial property annually.
 - 1.1 coal merchants / distributors who store 5 tons and /or more of coal are required to register with the Council in order to obtain the necessary permit.
 - 1.2 the application for a permit required in terms of subsection (1) must be made on a prescribed form and be accompanied by any

document required in such form, and upon payment of the prescribed fee

- (2) A record of the amount of coal handled on site and/or on industrial property must be reported to the Air Quality Officer on an annual basis on the prescribed form furnished by the Council.

CHAPTER 7

EMISSIONS FROM COMPRESSION IGNITION POWERED VEHICLES

15. Prohibition of emission of dark smoke

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

16. Stopping of vehicle and testing procedure

- (1) For the purposes of enforcing the provisions of section 15, an authorised official may –
 - (a) by means of a signal, instruct the driver of a vehicle contemplated in that section to stop the vehicle; and
 - (b) instruct that driver to co-operate for the purposes of inspecting and testing of the vehicle.
- (2) If a vehicle is stopped in compliance with an instruction given in terms of subsection (1), the authorised official must, prior to any test being conducted in terms of subsection (3) inform the driver of the vehicle that –
 - (a) the vehicle has been stopped in order for it to be tested in terms of these By-laws for the emission of dark smoke;

- (b) the vehicle is being detained for the purposes of such testing; and
 - (c) that if the results of such test indicates that dark smoke is emitted from the vehicle or if the driver concerned fails or refuses to assist with such test, it will constitute an offence under these By-laws.
- (3) The driver of a vehicle stopped in terms of subsection (1), must carry out the following testing procedure when instructed by the authorised official :
- (a) apply the handbrake, start the vehicle, place it in neutral gear and if the vehicle is fitted with a clutch pedal, engage the clutch and disengage the exhaust brake; and
 - (b) for a period required by an authorised official, smoothly depress the accelerator pedal of the vehicle, until the engine reaches a revolution level of 3000 revolutions per minute or in the absence of a revolution counter to the extent directed by an authorised official.
- (4) While the accelerator pedal of the vehicle concerned is depressed as contemplated in subsection (3)(b), the authorised official must measure the smoke emitted from the vehicle's emission system in order to determine whether or not dark smoke is emitted;
- (5) After having conducted a test, an authorised official must :
- (a) furnish the driver of the vehicle concerned with the test results on a prescribed form which indicate whether the vehicle is emitting dark smoke in contravention of section 15(1), and if the driver is not the owner of the vehicle concerned, must also furnish the owner of that vehicle with a copy of the test results on such form; and
 - (b) if the test results indicate that the vehicle is emitting dark smoke, the authorised official must issue the driver of the vehicle with a repair notice in accordance with section 17.

17. **Repair notice**

- (1) A repair notice must direct the owner of the vehicle to effect repairs within 60 (sixty) working days from date of issue of such notice, and to take the vehicle to a place identified in the notice for re-testing before the expiry of that period.
- (2) A copy of the test results must be provided by the registered owner of the vehicle or his representative, to the authorised official, where the testing station is not a Council testing facility, on or before the due date of the repair notice.
- (3) The repair notice must contain *inter alia* the following information:
 - (a) the make, model, colour and registration number of the vehicle;
 - (b) the full names physical address and identity number of the driver of the vehicle and if the driver is not the owner, the full names, physical address and identity number of the vehicle owner;
 - (c) the measures required to remedy the situation; and
 - (d) the time period within which the owner of the vehicle must comply with the repair notice.
- (4) The owner of a vehicle is deemed to have been notified of the repair notice on the date that such notice is issued.
- (5) A person commits an offence under this section if that person fails:
 - (a) to comply with the notice referred to in subsection (1);
 - (b) the re-test referred to in subsection (1).

- (6) It shall not be a defence in proceedings under subsection (5) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.
- (7) Council may take whatever steps it considers necessary in the event that the requirements of subsection (1) are not complied with, including impounding the vehicle and recovering any costs incurred in that regard from the owner of the vehicle.

18. Subjecting certain vehicles to compulsory testing

- (1) The Council may by way of publication in the Government Gazette, declare that certain categories of vehicles be subjected to compulsory emission testing at a testing centre approved and registered by the Council.
- (2) The criteria that the Council will use in determining the category of vehicles shall be as follows:
 - 2.1 The age of the vehicle;
 - 2.2 The emission control technology of the vehicle;
 - 2.3 The fuel type;
 - 2.4 The engine type.
- (3) The Council will determine how often the declared categories of vehicles must be subjected to emission testing.
- (4) Operating any vehicle that falls under the category as contemplated in section 18(1) without a valid vehicle emission testing certificate will be constituted as an offence.

19. Approval and registration of a vehicle testing centre

- (1) The Council shall by way of publication in the Government Gazette, prescribe the criteria that testing centres should meet in order to be registered as

approved and accredited testing centres, and the required documents needed for registration purposes.

- (2) The Council may impose a processing fee for registration and approval of a testing centre.

20. **Fees**

- (1) The Council is entitled to charge a processing fee for services where a fee is applicable. The Council will determine the amount from time to time by publication in the Government Gazette:

CHAPTER 8 OFFENSIVE ODOURS

21. **Control of offensive odours**

- (1) The occupier or owner of any premises must take all reasonable steps to prevent the emission of any offensive odour caused by any activity on such premises.
- (2) Council may prescribe measures, best practical means or abatement equipment to be used to prevent or mitigate the emission of offensive odours.
- (3) Council may prohibit any activity or process that creates continuous offensive odours if the measures prescribed in terms of subsection 2 are not effective.
- (4) Any person who emits or permits the emission of any offensive odour in contravention of subsections (1), (2) and (3) commits an offence.

CHAPTER 9 GENERAL PROVISIONS

22. **Request of information**

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

23. **Serving of notices**

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

- (a) by handing a copy of the notice at the person to whom it is addressed;
- (b) by leaving a copy of the notice at the person's place of residence or business with any other person who is apparently at least 16 (sixteen) years old and in charge of the premises at the time;
- (c) by posting, emailing or faxing a copy of the notice to the person, if the person has in writing furnished an address, email address or fax number to an authorised official;
- (d) by handing a copy of the notice to any representative authorised in writing to accept service on behalf of the person concerned;
- (e) by sending a copy of the notice by prepaid registered or certified post to the last-known address of the person concerned,
- (f) if the person is a company or other body corporate, by serving a copy of the notice on an employee of the company or body corporate at its registered office or its place of business or, if there is no employee willing to accept service, by affixing a copy of the document to the main door of the office or place of business;

- (g) if the person is a partnership, firm or voluntary association, by serving a copy of the notice on a person who at the time of service is apparently in charge of the premises and apparently at least 16 (sixteen) years of age, at the place of business of such partnership, firm or association or if such partnership, firm or association has no place of business, by serving a copy of the notice on a partner, the owner of the firm or the chairman or secretary of the managing or other controlling body of such association, as the case may be.

24. **Inspections**

- (1) An authorised official may for any purpose relating to the implementation and enforcement of these By-laws –
 - (a) between 7:00 and 19:00; or
 - (b) at any time during which an activity which is relevant in respect of the implementation or enforcement of these By-laws is carried out on a property,

enter any property and carry out an inspection for the purposes of these By-laws.
- (2) An authorised official must, before the commencement of, or during an inspection in terms of subsection (1), at the request of any person concerned, produce written confirmation of his or her appointment as an air quality officer or an authorised official empowered to carry out inspections for the purposes of these By-laws.
- (3) An authorised official carrying out an inspection in terms of these By-laws, must conduct himself or herself with strict regard to decency and orderliness and with due regard to any person's rights contained in the Bill of Rights set out in Chapter 2 of the Constitution of the Republic of South Africa, 1996.

25. **Appeals**

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

26. **Offences and penalties**

Any person who –

- (a) contravenes or fails to comply with any provision of these By-laws;
- (b) refuses or fails to comply with any notice addressed to him or her in terms of or for the purposes of these By-laws;
- (c) refuses or fails to comply with the terms or conditions of any permit issued or otherwise imposed in terms of these By-laws;
- (d) obstructs, hinders or interferes with an authorised official in the exercise of any power or the performance of any duty under these By-laws;

- (e) fails or refuses to furnish to an authorised official with any documentation or information required for the purposes of these By-laws or furnishes a false or misleading document or false or misleading information;
 - (f) fails or refuses to comply with any instruction given for the purposes of these By-laws; or
 - (g) pretends to be an authorised official,
- is guilty of an offence and –
- (i) liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding 36 (thirty-six) months;
 - (ii) in the case of a continuing offence, to a further fine not exceeding R*****, or in default of payment to imprisonment not exceeding one day for every day during the continuance of such offence after a written notice has been served on him or her by the Council requiring the discontinuance of such offence.

27. **Savings**

Anything done or deemed to have been done under any other law remains valid to the extent that it is consistent with this By-law or until anything done under this By-law overrides it.

28. **Repeal of By-laws**

The provisions of any By-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in this By-law.

29. **Severability**

If a section, subsection, sentence, clause or phrase of this By-law is declared invalid by a competent court, the invalid portion shall be severed and shall not affect the validity of the remaining portions of the By-law.

30. **Council and State bound**

This By-law is binding on the State and the Municipality.

31. **Conflict of By-laws**

(a) In the event of any conflict between this By-law and any other By-law or any policy that regulates air pollution, the provisions of this By-law shall prevail in so far as it relates to air quality management within the City of Johannesburg.

(b) In the event of a conflict with the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004), the provisions of that Act will prevail within the area of jurisdiction of the Municipality.

32. **Short title and commencement**

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