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LOCAL AUTHORITY

Stellenbosch Municipality: Air Quality By-Law 2

STELLENBOSCH MUNICIPALITY**AIR QUALITY BY-LAW****APPROVED BY COUNCIL ON 2018-08-22****AND****PROMULGATED IN TERMS OF SECTION 13(a) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS
ACT, 32 OF 2000****STELLENBOSCH MUNICIPALITY AIR QUALITY BY-LAW (2018)**

To give effect to the right contained in Section 24 of the Constitution of the Republic of South Africa, 1996 by controlling air pollution within the area of the municipality's jurisdiction; and to ensure that air pollution is avoided, or where it cannot be altogether avoided, minimized and remedied.

Under the provisions of Section 156 of the Constitution of the Republic of South Africa, 1996, and the Municipal Systems Act, Act 32 of 2000, Section 11, Stellenbosch Municipality, enacts as follows:—

STELLENBOSCH MUNICIPALITY**AIR QUALITY BY-LAW**

Draft June 2018

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CHAPTER 1: INTERPRETATION AND OBJECTIVES

1. Definitions

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

“adverse effect” means any actual or potential impact on the environment that impairs, or would impair the environment or any aspect of it to an extent that is more than trivial or insignificant;

“air pollutant” means any substance (including but not limited to dust, smoke, fumes and gas) that causes or may cause air pollution;

“air pollution” means any change in the environment caused by any substance emitted into the atmosphere from any activity, where that change has an adverse effect on 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;

“atmosphere” means air that is not enclosed by a building, machine, chimney or other such structure;

“atmospheric emission” or **“emission”** means energy or substance or combination of substances emanating from a point, non-point or mobile source that results in air pollution;

“authorised person” means any person authorised by the municipality to implement any provision of this by-law;

“best practicable means” means the most effective 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;

“chimney” means any structure or opening of any kind from or through which air pollutants may be emitted;

“dust” means any solid matter in a fine or disintegrated form which is capable of being dispersed or suspended in the atmosphere;

“dwelling” means any building or other structure, or part of a building or structure, used as a dwelling, and any outbuildings ancillary to it, but excludes shacks and informal settlements;

“environment” means the surroundings within which humans exist and that are made up of—

- (a) the land, water and atmosphere of the earth;
- (b) micro-organisms, plant and animal life;
- (c) any part or combination of (a) and (b) and the interrelationships among and between them; and
- (d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

“fuel-burning equipment” means any furnace, boiler, incinerator, or other equipment, including a chimney;

- (a) designed to burn or capable of burning liquid, gas or solid fuel;
- (b) used to dispose of any material or waste by burning; or
- (c) used to subject liquid, gas or solid fuel to any process involving the application of heat or the generation of energy;

“fumes” means any pungent or toxic vapour, gas, or smoke including but not limited to diesel fumes, spray painting fumes and exhaust fumes.

“light absorption meter” means a measuring device that uses a light-sensitive cell or detector to determine the amount of light absorbed by an air pollutant;

“living organism” means any biological entity capable of transferring or replicating genetic material, including sterile organisms and viruses;

“mobile source” means a single identifiable source of atmospheric emission which does not emanate from a fixed location;

“municipality” means Stellenbosch Municipality and includes any political structure, political office bearer, duly authorised agent thereof, or a service provider fulfilling a responsibility under this by-law assigned to it in terms of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) or any other law, as the case may be, or any employee thereof acting in connection with this by-law by virtue of a power vested in the municipality and delegated, to such political structure, political office bearer, agent or employee;

“municipal manager” means a person appointed as such by the municipality in terms of section 54A of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000);

“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;

“nuisance” means an unreasonable interference caused by air pollution with:

- (a) the health or well-being of any person or living organism; or
- (b) the use or enjoyment by an owner or occupier of his or her property;
- (c) the ordinary comfort, convenience, peace or quiet of another person; and
- (d) the natural state of the environment;

“offensive odours” means any smell which is considered to be malodorous or a nuisance to a reasonable person;

“open burning” means the combustion of material by burning without a chimney to vent the emitted products of combustion to the atmosphere, and “burning in the open” has a corresponding meaning;

“operator” means a person who owns or manages an undertaking, or who controls an operation or process, which emits air pollutants;

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

“proclaimed township” means any land unit zoned and utilized for residential purposes;

“person” means a natural person or a juristic person;

“premises” means any building or other structure together with the 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 locomotive, ship, boat or other vessel which operates or is present within the area under the jurisdiction of the municipality or the precincts of any harbour;

“public road” means a road which the public has the right to use;

“smoke” means the gases, particulate matter and products of combustion emitted into the atmosphere when material is burned or subjected to heat and includes the soot, grit and gritty particles emitted in smoke;

“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. Purpose and objectives

(1) The purpose and objectives of this by-law is:

- (a) to give effect to the right contained in Section 24 of the Constitution of the Republic of South Africa, 1996 by controlling air pollution within the area of the municipality’s jurisdiction; and

- (b) to ensure that air pollution is avoided, or where it cannot be altogether avoided, minimized and remedied.

CHAPTER 2: DUTY OF CARE

3. Duty to take care

- (1) Any person who is wholly or partially responsible for causing air pollution or creating a risk of air pollution occurring must take all reasonable measures:
 - (a) to prevent any potential air pollution from occurring; and
 - (b) to mitigate and, as far as reasonably possible, to remedy any air pollution that has occurred.
- (2) The municipality may monitor the impact and effectiveness of the measures taken in terms of section 3(1) and, if necessary, issue instructions to a person contemplated in section 3(1) with regard to specific measures to be undertaken.
- (3) The municipality may direct any person who fails to take the measures required under section 3(1)—
 - (a) to investigate, evaluate and assess the impact of specific activities and report thereon;
 - (b) to commence taking effective control measures to abate the air pollution before a given date;
 - (c) to diligently continue with those measures; and
 - (d) to complete the measures before a specified reasonable date.
- (4) Should a person fail to comply, or inadequately comply, with a directive under section 3(3), the municipality may take reasonable measures to remedy the situation.
- (5) If any person fails to take the measures required of him or her under section 3(1) or 3(2), the municipality may recover all reasonable costs incurred as a result of it acting under section 3(4) from any or all of the following persons –
 - (a) any person who is or was responsible for, or who directly or indirectly contributed to, the air pollution or the potential air pollution;

- (b) the owner of the land at the time when the air pollution or the potential for air pollution occurred, or that owner's successor in title;
 - (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—
 - (i) the activity or the process in question is or was performed or undertaken; or
 - (ii) the situation came about; or
 - (d) any person who negligently failed to prevent—
 - (i) the activity or the process being performed or undertaken; or
 - (ii) the situation from coming about.
- (6) If more than one person is liable under section 3(5), the liability may be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required under section 3(1), 3(2) and 3(3).

CHAPTER 3: SMOKE EMISSIONS FROM PREMISES OTHER THAN DWELLINGS

4. Application

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

5. Prohibition

- (1) Subject to section 5(2), smoke of such a density or content that obscures light to an extent greater than 40 percent, shall not be emitted from any premises for an aggregate period exceeding three minutes during any continuous period of thirty minutes, by an owner or occupier of a premises.
- (2) This section does not apply to smoke which is emitted 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 practicable means available.
- (3) If smoke is emitted in contravention of section 5(1) the owner, operator or the occupier of the premises shall be guilty of an offence.

6. Installation of fuel-burning equipment

- (1) No person may install, alter, extend or replace any fuel-burning equipment that is likely to cause an adverse effect on any premises without the prior written authorisation of the municipality, 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 by the municipality shall be presumed, until the contrary is proved, to comply with the provisions of section 6(1).
- (3) Where fuel-burning equipment has been installed, altered, extended or replaced on premises in contravention of section 6(1):
 - (a) the owner and occupier of the premises and the installer of the fuel-burning equipment shall be guilty of an offence;
 - (b) the municipality 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 municipality may on written notice to the owner and occupier of the premises:
 - (a) revoke its authorisation under section 6; and
 - (b) 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.

7. Installation and operation of measuring equipment

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 measuring equipment at his or her own cost; if:

- (a) unauthorised and unlawful emissions of smoke from the relevant premises have occurred consistently or regularly;
- (b) fuel-burning equipment has been or is intended to be installed on the relevant premises which is reasonably likely in the opinion of an authorised person to emit smoke;

- (c) 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
- (d) the authorised person considers that the nature of the air pollutants emitted from the relevant premises is reasonably likely to create a hazard or nuisance to human health or the environment.

8. Monitoring and sampling

An occupier or owner of premises, and the operator of any fuel-burning equipment, who is required to install air pollution measuring equipment in terms of section 7 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;
- (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; and
- (d) ensure that the air pollution measuring equipment is calibrated at least once per year or at intervals as specified by the manufacturer of the equipment and provide records of such calibration on request by the authorised person.

9. Exemption

- (1) Subject to section 21 and on application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the municipality may grant a temporary exemption in writing from one or all the provisions of this chapter.
- (2) Any exemption granted under section 9(1) must state at least the following:
 - (a) a description of the fuel-burning equipment and the premises on which it is used or operated;
 - (b) the reasons for granting the exemption;
 - (c) the condition attached to the exemption, if any;
 - (d) the period for which the exemption has been granted; and
 - (e) any other relevant information.

CHAPTER 4: SMOKE EMISSIONS FROM DWELLINGS

10. Smoke emissions from dwellings

- (1) No person may emit or permit the emission of smoke from any dwelling that may cause a nuisance.
- (2) Any person who emits or permits the emission of smoke in contravention of section 10(1) commits an offence.
- (3) Subject to section 21 and on application in writing by the owner or occupier of any dwelling, the municipality may grant temporary exemption in writing from one or all of the provisions of this chapter.

CHAPTER 5: EMISSIONS CAUSED BY OPEN BURNING

11. Emissions caused by open burning

- (1) Subject to section 11(4), any person who carries out open burning of any material on any land or premises is guilty of an offence, unless the prior written authorisation of the relevant authority, which may include the imposition of further conditions with which the person requesting authorisation must comply, has been obtained.
- (2) Any person who undertakes or permits open burning to be undertaken is in contravention of section 11(1) commits an offence.
- (3) The provisions of this section shall not apply to:
 - (a) recreational outdoor barbecue or braai activities;
 - (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 municipality has declared this section not to apply.

CHAPTER 6: EMISSIONS THAT CAUSE A NUISANCE**12. Prohibition**

- (1) No person may create or permit emissions that cause a nuisance.
- (2) Any person who contravenes section 12(1) commits an offence.

13. Compliance notice

- (1) An authorised person may serve a notice on any person whom he or she reasonably believes has committed an offence under section 20, 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; and
 - (c) to comply with any other conditions contained in the notice.
- (2) For the purposes of section 13(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 compliance notice is to be served.
- (3) A compliance notice under section 13(1) may be served:
 - (a) upon the owner of any premises, 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 post to the occupier at the address at which the premises are situated.
- (4) Any person who fails to comply with a compliance notice served on that person in terms of section 13(1) 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 section 13(4) to take steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the nuisance.

14. Steps to abate nuisance

At any time, the municipality may at its own cost take whatever steps it considers necessary in order to remedy the harm caused by the nuisance and prevent a recurrence of it, and may recover the reasonable costs so incurred from the person responsible for causing the nuisance.

CHAPTER 7: DUST NUISANCE

15. Control of dust

- (1) The occupier, owner or operator of any premises must take all reasonable steps to prevent the nuisance by dust caused by any activity on such premises in accordance with the National Dust Control Regulations, R. 825, 2012.
- (2) Any person who emits or permits the emission of dust in contravention of section 15(1) commits an offence.

CHAPTER 8: PESTICIDE SPRAYING EMISSIONS

16. Pesticide Spraying Emissions

- (1) No person may carry out or permit the spraying of pesticides, except as permitted by Section 3 of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (2) Any person who contravenes section 16(1) of this by-law is guilty of an offence, as set out in section 18(1)(c) of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).

CHAPTER 9: GENERAL PROVISIONS

17. Appeal

- (1) A person whose rights are affected by a decision delegated by the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act (Act 32 of 2000) to the municipal manager within 21 days of the date of the notification of the decision.
- (2) Pending confirmation, variation or revocation of the decision against which the appeal is lodged, any person appealing the said decision, unless the municipality provides otherwise:
 - (a) must nonetheless substantively comply with any obligations that may have been imposed as a result of the decision that is the subject of the appeal; and
 - (b) may not exercise any rights that may have accrued as a result of the decision that is the subject of the appeal application, provided that no other person may exercise any right that may accrue either.

18. Municipality and State bound

This by-law is binding on the State and the municipality.

19. Conflict

- (1) In the event of a conflict within any other by-law which directly or indirectly regulates air pollution, the provisions of this by-law shall prevail.
- (2) 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.

20. Offences and penalties

- (1) Any person who contravenes any provision of this by-law commits an offence and shall, upon conviction, be liable to a fine or in default of payment, to imprisonment, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment, and in the case of a successive or continuing offence, to a fine for every day such offence continues, or in default of payment thereof, to imprisonment.

- (2) It is an offence to:
 - (a) supply false information to an authorised person in respect of any issue pertaining to the by-law, or;
 - (b) to refuse to co-operate with the request of an authorised person made in terms of this by-law.
- (3) Failure to comply with a notice, direction or instruction referred to in this by-law constitutes a continuing offence.
- (4) 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 air pollution measuring equipment in accordance with the provisions of section 9.

21. Exemptions

- (1) The municipality may grant temporary exemption in writing from one or all of the provisions of chapters 3, 4, and 5, provided that the municipality:
 - (a) is satisfied that granting the exemption will not prejudice the purpose referred to in section 2(1); and
 - (b) grants any exemption subject to conditions that promote the attainment of the purpose referred to in section 2(1).
- (2) The municipality may not grant an exemption under section (1) until the municipality has:
 - (a) taken reasonable measures to ensure that all persons whose rights may be detrimentally effected by the granting of the exemption, including but not limited to adjacent land owners or occupiers, are aware of the application for exemption and how to obtain a copy of it;
 - (b) provided such person with a reasonable opportunity to object to the application; and
 - (c) duly considered and taken into account any objections raised.

22. 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.

23. 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.

24. Short title and commencement

This by-law shall be known as the Air Quality By-law of Stellenbosch Municipality and comes into operation on the date of publication thereof in the Provincial Gazette.