

DEPARTMENT OF TRADITIONAL AND LOCAL GOVERNMENT AFFAIRS

PROVINCIAL GOVERNMENT NOTICE

No., 2015

I, under powers vested in me by section 14(2) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and after having consulted the Minister of Provincial and Local Government Affairs and Organised Local Government in the Province, hereby make the standard By-laws contained in the Schedule hereto.

Signed at _____ on this ____ day of _____ Twenty Fifteen.

N DUBE

Member of the Executive Council of the Province of KwaZulu-Natal responsible for local government

POLLUTION CONTROL BY-LAWS

Be it enacted by the Council of the Mandeni Municipality, and approval of the Member of the Executive Council responsible for local government in terms of Section 156 of the Republic of South Africa Act No. 108 of 1996, read with section 11 of the Local Government: Municipal Systems Act No. 32 of 2000, as follows:

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CHAPTER 1

DEFINITIONS

1. Definition

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

“Adverse effect” means any actual or potential impact on the environment that impairs or could impair human health or well-being or the environment to an extent that is more than trivial or insignificant;

“Air pollutant” means any substance that causes or may cause air pollution including, without limiting the generality of the foregoing, dust, smoke, fumes and gas;

“Air pollution” means any change in the environment caused by any air pollutant where that change has an adverse effect on human health or well-being or on the composition, resilience and productivity of any natural or managed ecosystem, or on materials useful to people, or will have such an effect in the future;

“Air pollution control zone” means the geographical area to which section 9 of these by-laws is declared to apply;

“Ambient sound level” means the reading of an integrating impulse sound level meter measured at the end of a 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 disturbing noise is absent;

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

“Authorised official” means a person authorised by the Council to perform the functions of an authorised official in terms of these by-laws;

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

“Compressed ignition powered vehicle” means a vehicle powered by an internal combustion, compression ignition, diesel or similar fuel engine;

“Council” means the Council of the Mandeni Municipality;

“Dark smoke” means dark smoke as defined in the Atmospheric Pollution Prevention Act No. 45 of 1965

“Disturbing noise” means a noise level which exceeds the ambient sound level by 7dB(A) or more, and “disturbing” in relation to a noise shall have a corresponding meaning;

“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 for residential purposes, and any outbuildings ancillary to it;

“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;

“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;

“Littering” means the discarding or leaving behind of any object or matter whether gaseous, liquid or solid by the person in whose control or possession it was;

“Municipal Manager” means the person appointed as such by the Council in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);

“Noise level” means the reading on an integrating sound level meter taken at the measuring point at the end of a reasonable period after the integrating sound meter has been put into operation during which period the noise level alleged to be disturbing noise is present, to

which reading 5dB(A) is added if the disturbing noise contains a pure tone component or is of an impulsive nature;

“Obscuration” means the ratio of visible light attenuated by suspended air pollutants to incident visible light, expressed as a percentage;

“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;

“Person” includes a natural person, company, closed corporation. Trust, association and partnership;

“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 Council;

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

“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 cycle, bus, truck 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;

“Water course” includes-

- (a) A spring;
 - (b) A natural channel in which water flows regularly or intermittently; and
 - (c) A wetland, lake or dam into which, or from which, water flows; and
- And a reference to a water course includes, where relevant, its bed, banks and mouth.

CHAPTER 2 NOISE POLLUTION

2. Control of noise

No person shall on any premises or land make, produce cause or permit to be made or produced by any person, machine, animal, device or apparatus or combination of these, a noise which is a disturbing noise.

3. Notices

(1) The Municipality may by written notice instruct the person causing or responsible for a disturbing noise or the owner of such building or premises on which a disturbing noise is caused or both of them, within a period specified in such notice, immediately to stop such noise or have it stopped or take the necessary steps to reduce the disturbing noise level to a level below that of a disturbing noise; provided that if the Municipality is satisfied that the disturbing noise is due to or caused by-

(a) the working of:

- i. a machine or apparatus which is necessary for the maintenance or repair of property, or the protection of life, property or public services;
- ii. garden equipment;
- iii. a machine or device,

the noise level of which has in the opinion of the Municipality been reduced or muffled according to the best practicable methods;

(b) a sports meeting; or

(c) circumstances or activities beyond the control of the person responsible for causing the disturbing noise,

the Municipality may, whether generally or specifically, permit the working of such machine or apparatus, or such sports meeting or circumstances or activities to continue, subject to such conditions as the Municipality may deem fit.

CHAPTER 3 POLLUTION OF WATER COURSE

4. Pollution of a water course

Except with the permission of the Council or in terms of the provisions of the Sea-Short Act, 1935 (Act No. 21 of 1935), a person may not cause –

- (a) wastewater;
 - (b) any toxic or harmful substance; or
 - (c) any litter or waste,
- to run into or be dumped in a water course.

5. Boats on water courses

No person may operate a boat on a water course while it is leaking oil, petrol or any toxic or noxious substance.

6. Equipment on craft

A person may not use a motor-driven boat on a water course unless it is equipped with an effective silencer affixed to the exhaust pipe of the motor.

CHAPTER 4

LITTERING AND DUMPING

7. Littering

No person shall discard or leave any litter on any land or water surface, street, road or any site in or on any place to which public has access, except in a container or at a place which has been specifically indicated a having been provided or set aside for such purpose.

8. Dumping

(1) No person may dump, or cause or permit to be dumped, on any land or premises any waste.

(2) If the provisions of subsection (1) are contravened, Council may direct, by way of a written notice, that –

- (a) Any person who committed, or who directly or indirectly caused or permitted, the contravention;
- (b) The owner of the land or premises where the contravention took place;
- (c) the person in control of, or any person who has or had at the time of the contravention a right to use, the land or premises where the contravention took place; or
- (d) Any person who negligently failed to prevent the contravention from taking place,

cease the contravention in a specified time, take steps to prevent a further contravention or the continuation of the contravention, and/or take whatever steps Council considers necessary to clean up or remove the waste, to lawfully dispose of the waste and to rehabilitate the affected area.

(3) If a person fails to comply with subsection (1), or if a person fails to comply with the directions given in a notice issued under subsection (2), Council may itself take whatever steps it considers necessary to clean up or remove the litter, to rehabilitate the affected area and to ensure that the waste, and any contaminated material which cannot be cleaned or rehabilitated, is disposed of lawfully. Council may then

recover the reasonable costs of taking these steps from any of the persons listed in subsection (2), who shall be jointly and severally liable therefore.

CHAPTER 5 AIR POLLUTION CONTROL

9. Air pollution control zones

(1) The whole area within the jurisdiction of the Council is hereby declared an air pollution control zone.

(2) Within the air pollution control zone, the Council may from time to time by resolution –

- (a) prohibit or restrict the emission of one or more air pollutants 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; or
- (d) prescribe different requirements in an air pollution control zone relating to air quality in respect of:
 - (i) different geographical areas;
 - (ii) specified premises;
 - (iii) classes of premises; or
 - (iv) premises used for specified purposes.

(3) The Council may in writing exempt certain premises, classes of premises or premises used for specified purposes from the provisions of this by-law.

10. Smokeless zones

(1) Council may by resolution declare certain areas to be smokeless zones from a date indicated in that resolution.

(2) No owner or occupier of any premises within a smokeless zone shall cause or permit the emission from such premises of smoke of such a density or content as will obscure light to an extent greater than 10%.

(3) If, on written application of any person, the Council is satisfied that there are adequate reasons for the temporary exemption of any premises from the provisions of this section, the Council may, by notice in writing to the applicant, grant such exemption for a period specified in such notice.

CHAPTER 6

SMOKE EMISSIONS FROM PREMISES OTHER THAN DWELLINGS

11. Prohibition

(1) Subject to subsection (2), dark smoke must not be emitted from any premises for an aggregate period exceeding three minutes during any continuous period of thirty minutes.

(2) This section does not apply to dark 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.

12. Installation of fuel-burning equipment

(1) No person shall install, alter, extend or replace any fuel-burning equipment on any premises without the prior written authorisation of the Council, which may only be given after consideration of the relevant plans and specifications.

(2) Where fuel-burning equipment has been installed, altered, extended or replaced on premises in contravention of subsection (1):

(a) The owner or occupier of the premises and the installer of the fuel-burning equipment shall be guilty of an offence; and

(b) The Council may, on written notice to the owner or occupier of the premises, order the removal of the fuel-burning equipment from the premises at the expense of the owner or operator within the period stated in the notice.

13. Operation of fuel-burning equipment

(1) No person shall use or operate any fuel-burning equipment on any premises contrary to an authorisation referred to in section 12.

(2) Where fuel-burning equipment has been used or operated in contravention of subsection (1):

(a) The owner and occupier of the premises concerned and the operator of the fuel-burning equipment shall each be guilty of an offence;

(b) The Council may on written notice to the owner and occupier of the premises:

(i) Revoke its authorisation under section 12; and

- (ii) 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.

14. Installation and operation of obscuration measuring equipment

- (1) The Council 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) unauthorised 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 lawful emissions of dark smoke from the relevant premises have occurred intermittently over a period of at least fourteen days;
 - (c) fuel-burning equipment has been or is intended to be installed on the relevant premises which are reasonably likely in the opinion of an authorised official to emit dark smoke;
 - (d) the Council considers that the nature of the air pollutants emitted from the relevant premises are 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 the 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 28;
 - (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.

15. 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 16(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 official, produce the record of the monitoring and sampling results for inspection; and

- (c) if requested to do so by an authorised official, provide a written report (in a form and by a date specified by the authorised official) of part or all of the information in the record of the monitoring and sampling results.

CHAPTER 7

SMOKE EMISSIONS FROM DWELLING

16.

- (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) Any person who emits or permits the emission of dark smoke in contravention of subsection (1) commits an offence.

CHAPTER 8

EMISSIONS CAUSED BY OPEN BURNING

17.

- (1) Subject to subsection (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 Council, which may include the imposition of further conditions with which the person requesting authorisation must comply, has been obtained.
- (2) The Council may not authorise open burning under subsection (1) unless –
 - (a) the material will be open burned on the land from which it originated;
 - (b) that person has investigated and assessed every reasonable alternative for reducing, reusing, recycling or removing the material in order to minimize the amount of material to be open burned, to the satisfaction of the Council;
 - (c) that person has investigated and assessed the impact that the open burning will have on the environment, to the satisfaction of the Council;
 - (d) a warning under section 10(1)(b) of the National Veld and Forest Fire Act, 1998 (Act 101 of 1998) has not been published for the region;
 - (e) the land on which that person intends to open burn the material is not land within a proclaimed township;

- (f) the open burning is conducted at least 100 metres from any buildings or structures;
 - (g) the open burning will not pose a potential hazard to human health or safety, private property or the environment;
 - (h) that person 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 Council within 7 days of being notified; and
 - (i) the prescribed fee has been paid to the Council.
- (3) Any person who undertakes or permits to be undertaken open burning in contravention of subsection (1) commits an offence.
- (4) The provisions of this section shall not apply to:
- (a) recreational outdoor barbeque or braai activities on private premises; or
 - (b) small controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purposes.

CHAPTER 9

EMISSIONS FROM COMPRESSED IGNITION POWERED VEHICLES

18. Prohibition

- (1) No person may on a public road drive or use, or cause to be driven or used, a compressed ignition powered vehicle that emits dark smoke.
- (2) If dark smoke is emitted in contravention of subsection (1) the owner and driver of the vehicle shall each be guilty of an offence.

19. Stopping of vehicles for inspection and testing

- (1) In order to enable an authorised official to enforce the provisions of these by-laws, the owner of a vehicle must comply with any reasonable direction given by an authorised official –
 - (a) to stop the vehicle; and
 - (b) to facilitate the inspection or testing the vehicle.

- (2) Failure to comply with a direction given under subsection (1) is an offence.
- (3) When a vehicle has stopped in compliance with a direction given under subsection (1), the authorised official may:
 - (a) Inspect and test the vehicle at the roadside, in which case inspection and testing must be carried out:
 - (i) At or as near as practicable to the place where the direction to stop the vehicle is given; and
 - (ii) As soon as practicable, and in any case within one hour, after the vehicle is stopped in accordance with the direction; or
 - (b) Conduct a visual inspection of the vehicle and, if the authorised official reasonably believes that an offence has been committed under section 18, instruct the driver or owner of the vehicle in writing to take the vehicle to a testing station, within a specified period of time, for inspection and testing in accordance with section 20.

20. Testing procedure

- (1) An authorised official must use the free acceleration test method in order to determine whether a compressed ignition powered vehicle is being driven or used in contravention of section 18.
- (2) The following procedure must be adhered to in order to conduct a free acceleration test:
 - (a) when instructed to do so by the authorised official, the owner or driver must start the vehicle, place it in neutral gear and engage the clutch;
 - (b) while the vehicle is idling, the authorised official must conduct a visual inspection of the emission system of the vehicle;
 - (c) when instructed to do so by the authorised official, the owner or driver of the vehicle must in less than one second smoothly and completely depress the accelerator throttle pedal of the vehicle; provided that the authorised official may do so him/herself if the owner or driver fails or refuses to comply with the authorised official's reasonable instructions;
 - (d) while the throttle pedal is depressed, the authorised official must measure the smoke emitted from the vehicle's emission system in order to determine whether or not it is dark smoke; and
 - (e) the owner or driver of the vehicle may only release the throttle pedal of the vehicle when the engine reaches cut-off speed, or when directed to do so by the authorised official.
- (3) If, having conducted the free acceleration test, the authorised official is satisfied that the vehicle –

- (a) is not emitting dark smoke, then the authorised official must furnish the owner of the vehicle with a certificate indicating that the vehicle is not being driven or used in contravention of section 18; or
- (b) is emitting dark smoke, the authorised official must issue the owner of the vehicle with a repair notice in accordance with section 21.

21. Repair notice

- (1) A repair notice must 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.
- (2) The repair notice must contain *inter alia* 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; and
 - (c) if the driver is not the owner, the name and address of the vehicle owner.
- (3) A person commits an offence if that person fails to comply with the notice referred to in subsection (1)

CHAPTER 10

GENERAL PROVISIONS

22. Offences

Any person who contravenes any provision of these by-laws shall be guilty of an offence and shall be liable on conviction to a fine not exceeding R20 000 or imprisonment for a period not exceeding 2 years.

23. Appeals

- (1) Any person may appeal against a decision taken by an authorised official under this by-law by giving notice of the appeal, in which the reasons for the appeal are stated, to the municipal manager within 30 days of the date on which that person receives notification of the decision.
- (2) Pending confirmation, variation or revocation of the decision in terms of subsection (4), any person appealing a decision in terms of subsection (1), unless the Council 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.
- (3) Within 14 days of receipt of the notice of appeal, the Municipal Manager must:
 - (a) submit the appeal to the appropriate appeal authority mentioned in subsection (5);
 - (b) take all reasonable measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the appeal application are notified in writing of the appeal application and advised of their right to:
 - (i) obtain a copy of the appeal application;
 - (ii) submit written objections to the application to the municipal manager within 30 days of date of notification.
- (4) After the expiry of the 30-day period referred to in subsection (3)(b)(ii), the appeal authority must consider the appeal and any objections raised to it, and confirm, vary or revoke the decision.
- (5) When the appeal is against a decision taken by –
 - (a) an authorised official other than the Municipal Manager, then the Municipal Manager is the appeal authority; or
 - (b) The Municipal Manager, then Council or such committee as it may delegate is the appeal authority.
- (6) An appeal authority must commence with an appeal within 60 days of receiving notification and must decide the appeal within a reasonable period.

24. Repeal of existing By-laws

The Council’s existing..... By-laws are hereby repealed.

25. Short title and commencement

These by-laws shall be called the Pollution Control By-laws, 2015, and shall come into operation on.....