

BUFFALO CITY METROPOLITAN MUNICIPALITY

DRAFT AIR QUALITY MANAGEMENT BY-LAW

AIM OF THE MODEL AIR QUALITY MANAGEMENT BY-LAW

The main aim of the model air quality management by-law is to assist municipalities in the development of their air quality management by-law within their jurisdictions. It is also the aim of the model by-law to ensure uniformity across the country when dealing with air quality challenges. Therefore, the model by-law is developed to be generic in order to deal with most of the air quality challenges.

IT IS NOT the aim of the model by-law to have legal force and effect on municipalities when published in the *Gazette*; and

IT IS NOT the aim of the model by-law to impose the by-law on municipalities.

THEREFORE, a municipality will have to follow the legal process set out in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) when adopting and adapting the model by-law to its local jurisdictions.

THE BUFFALO CITY METROPOLITAN MUNICIPALITY AIR QUALITY MANAGEMENT BY-LAW

The Council of Buffalo City Metropolitan Municipality acting in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), read with section 13(a) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) has made the air quality management by-law hereunder:

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CHAPTER 1

INTERPRETATION AND FUNDAMENTAL PRINCIPLES

1 . Preamble

Whereas Buffalo City Metropolitan Municipality is a Category A Municipality established in terms of Section 155 (1) (a) of the Constitution of the Republic of South Africa, 1996; read together with Section 12 of the Local Government: Municipal Structures Act, 117 of 1998.

And,

Whereas Buffalo City Metropolitan Municipality may make and administer by-laws for the effective administration of the area for which it was established in terms of section 156 (2) of the Constitution, read together with Section 11 (3) of the Local Government: Municipal Systems Act, 32 of 2000.

2. Definitions

In this by-law any word or expression to which a meaning has been assigned in the by-law and the relevant SANS Standards, shall have the meaning so assigned to it and, unless the context otherwise indicates:

“air pollution” 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;

“air quality officer” means an officer appointed in terms of section 14 of the AQA;

“authorised person” means any employee authorised by the municipality to implement any of the provision of this by-law and in possession of an appointment card issued by the municipality attesting thereto, including any member of the municipal police service or any peace officer;

“AQA” means the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), as amended;

“best practicable means” means the most effective measure that can reasonably be taken to prevent, reduce or minimise air pollution, having regards to all relevant factors including, amongst others, local conditions and circumstances, the likelihood of adverse effects, the current state of technical knowledge and the financial implications relative to the environmental protection expected to be achieved by application or adoption of the measures;

“change” 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 related 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;

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

“combustible liquid” means a liquid which has a close-cap flash point of 38 degrees Celsius or above;

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

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“control measure” 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;

“Council” means the Council of the Buffalo City Metropolitan Municipality and includes any employee of the council exercising powers or performing duties or functions delegated to her by the Council;

“dark smoke” means smoke:

- (a) which has a density of 60 Hartridge smoke units or more (coastal areas), or in relation to emissions from a turbo-charged compressed ignition powered engine, means a density of 66 Hartridge smoke units or more (inland areas); or
- (b) which has a light absorption co-efficient of more than 2.125 m^{-1} or more, 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} ;

“dust” 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;

“dwelling” means any building or structure, or part of a building or structure, used as a dwelling, and any outbuilding ancillary to it;

“erect” means alter, convert, extend or re-erect;

“exempted vehicle” means a vehicle listed in Annexure-A to SANS 10281;

“flammable gas” means a gas which at 20 degrees Celsius and a standard pressure of 101, 3 kilopascals—

- (a) is ignitable when in a mixture of 13% or less by volume with air; or
- (b) has a flammable range with air of at least 12%, regardless of the lower flammable limit;

“flammable liquid” means a liquid or combustible liquid which has a closed cup flash point of 60 degrees Celsius or below or an open cup flash point of 65.6 degrees Celsius;

“flammable substance” means any flammable liquid, combustible liquid or flammable gas;

“measuring point” relating to:

- (a) a piece of land from which an alleged disturbing noise emanates, or may emanate, means a point outside the property projection plane where noise

- shall be measured, or calculated in accordance with the provisions of SANS 10103 and/or SANS 10328;
- (b) a building with more than one occupant, means a point in or outside the building where noise shall be measured, or calculated in accordance with the provisions of SANS 10103 and/or SANS 10328; and
 - (c) a stationary vehicle, means a point as described in SANS 10181 where a measuring microphone shall be placed;

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as amended;

“Municipality” means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), as amended;

“National Framework” 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;

“NEMA” means the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended;

“non-exempted vehicle” means a vehicle not listed in Annexure-A to SANS 10281;

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

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

“open burning” 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;

“pave” means to apply and maintain concrete or any other similar material to a road surface or any other surface;

“pest” means an injurious, noxious or troublesome living organism;

“pesticide” means a micro-organism or material that is used or intended to be used to prevent, destroy, repel or mitigate a pest and includes herbicides, insecticides, fungicides, avicides and rodenticides;

“property projection plane” 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;

“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 locomotives, ship, boat or other vessel which operates or is present within the area under the jurisdiction of the Council or the precincts of any harbour;

“public road” means a public road as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), as amended;

“recreational vehicle” means:

- (a) an off-road vehicle, scrambler, dune buggy or ultra-light aircraft;
- (b) a model aircraft, vessel or vehicle;
- (c) any aircraft or helicopter used for sport or recreational purposes but not for gain, including but not limited to a micro-light aircraft and a hot air balloon;
- (d) a vessel used for sport on water or recreational purposes but not for gain, including but not limited to a jet ski and a ski-boat; or
- (e) any other conveyance vessel or model which is used for sport or recreational purposes, but not for gain;

“repair notice” means a notice as referred to in section 8(4), regarding the re-testing of vehicle;

“rubber product” means anything composed of rubber including anything containing or coated with rubber;

“SANS 10281” means the latest edition of Standards South Africa publication No. 10281 titled: “Engine speed (S values), reference sound levels and permissible sound levels of stationary road vehicles”, as amended from time to time or its corresponding replacement;

“small boiler” means a small combustion installation, with a design capacity 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, grit and gritty particulates emitted in smoke;

“use” in relation to all-terrain vehicles includes driving, operating or being conveyed by, that vehicle;

“vehicle” means a vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), as amended;

“zone” 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.

3. Interpretation

Clause sub-headings shall not be used in the interpretation of this by-law; and unless specifically otherwise provided, all listed amounts of fine in this by-law are inclusive of Value Added Tax (VAT).

4. Objectives

- (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 area of the municipality’s jurisdiction;
 - (b) provide, in conjunction with any other applicable law, an effective legal and administrative framework, within which the Council can manage and regulate activities that have the potential to adversely impact the environment, public health and wellbeing; 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.

5. Application

- (1) This by-law must be read with any applicable provisions of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) and the 2017 National Framework for the Air Quality Management in the Republic of South Africa.
- (2) In the event of any conflict with any other by-law which directly or indirectly, within the jurisdiction of the municipality, regulates air pollution, the provisions of this by-law shall prevail to the extent of inconsistency.

CHAPTER 2

DUTY TO CARE

6. Air Pollution Duty of Care

- (1) Every 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 of air pollution from occurring; and
 - (b) where it cannot be prevented, to mitigate any air pollution that may occur.
- (2) The Council may direct any person in writing who fails to take the measures required under subsection (1):
 - (a) to commence taking specific reasonable measures before a given date;
 - (b) to diligently continue with those measures; and
 - (c) to complete them before a specified reasonable date.
- (3) Prior to making such a decision as contemplated in subsection (2), the Council must give the affected person adequate opportunity to make representation as to why a directive should not be issued.
- (4) The Council must give due consideration to all representations submitted before taking a decision as contemplated in subsection (2).
- (5) The Council must issue the directive under subsection (2) should a person fail to submit representations within the specified period in terms of subsection (3).
- (6) The Council may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief should a person fail to comply, or inadequately comply, with a directive under subsection (2).
- (7) The Council may recover costs for reasonable remedial measures to be undertaken under subsection (6), before such measures are taken and all costs incurred as a result of it acting under subsection (6) from any person who is or was responsible for, or who contributed to, the air pollution, provided such person failed to take the measures required of him under subsection (2).
- (8) No person may:
 - (a) unlawfully and 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.
- (9) Any person who fails to comply with subsection (8) commits an offence.

CHAPTER 3

LOCAL EMISSION STANDARDS, MOTOR VEHICLE EMISSIONS, SMALL BOILERS AND CONTROLLED ACTIVITIES

PART 1 LOCAL EMISSION STANDARDS

7. Identification of Substances and Development of Local Emission Standards

- (1) The Council has identified the substances in ambient air, as set out in Schedule 1 to the by-law, and for each substance developed local emission standards.
- (2) The Council may apply the following criteria when identifying and prioritizing 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, with irreversible effects being of special concern;
 - (b) widespread 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.
 - (f) Substances that are regulated by international conventions.
- (3) The Council may, when developing the local emissions standards:
 - (a) identify the critical factors for 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.
- (4) The Council may take the following factors into consideration in setting local emission stand
 - (a) Health, safety and environmental protection objectives;
 - (b) Analytical methodology;
 - (c) Technical feasibility;
 - (d) Monitoring capability; and
 - (e) Socio-economic consequences.

8. Consequences of Identification

- (1) Any person emitting those substances or mixtures of substances must comply with the emission standards established in terms of section 5.
- (2) Any person who fails to comply with the emission standards established in terms of section 5 commits an offence.

9. Public Participation Process

For the purposes of the publication of the local emission standards, the Council must follow the public participation process as set out in section 13 of the Municipal Systems Act, 2000, as amended.

PART 2 MOTOR VEHICLE EMISSIONS, SMALL BOILERS AND CONTROLLED ACTIVITIES

10. Emissions from Compressed Ignition Powered Vehicles

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).

Stopping of Vehicles for Inspection and Testing

- (3) For the purposes of enforcing the provisions of section 8, 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 the inspection and testing of that vehicle.
- (4) The authorised person must, prior to any testing being undertaken in terms of subsection (7) 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 results of such testing indicate 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 this by-law.
- (5) Any person who fails to comply with a direction given under subsection (3)(a) commits an offence.
- (6) When a vehicle has stopped in compliance with a direction given under subsection (3)(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; and as soon as practicable, and in any case within 1 hour, after the vehicle is stopped in accordance with the direction.

Testing procedure

- (7) 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 subsection (1):
 - (i) 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;
 - (ii) 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;

- (iii) 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;
- (8) 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 is not emitting dark smoke or is emitting dark smoke in contravention of subsection (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.
- (9) 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 subsection (1), if the test results indicate that the vehicle concerned is not emitting dark smoke.
- (10) An authorised person must issue the driver of the vehicle with a repair notice in accordance with subsection (11), if the test results indicate that the vehicle concerned is emitting dark smoke.

Repair notice

- (11) 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 the expiry of the 6 months.
- (12) 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; and
 - (c) if the driver of the vehicle is not the owner of the vehicle, the name and address of the vehicle owner.
- (13) A person commits an offence under this section if the person fails:
 - (a) to comply with the repair notice referred to in subsection (11);
 - (b) to take the vehicle for re-testing as referred to in subsection (11).
- (14) It shall not be a defence in proceedings under subsection (13) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.
- (15) 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 to take the vehicle for re-testing as referred to in subsection (11).

11. Small Boilers

- (1) No person may install, alter, extend or replace any small boiler on any premises without the prior written authorisation of the Council, 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 Council.
- (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 Council 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 Council 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 name 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 municipality;
 - (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 Council 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.

Transitional arrangements in respect of authorised small boilers

- (8) (a) 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 municipality continues to be authorised to operate subject to subsection (8)(c).
- (b) 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:
 - (i) the holder of an existing authorisation as if that person is the holder of the authorisation issued in terms of subsection (1); and
 - (ii) the existing authorisation as if the authorisation was issued in terms of subsection (1).
- (c) The holder of an existing authorisation must apply for an authorisation in terms of subsection (1), when required to do so by the Council, in writing, and within the period stipulated by the Council.

OR

Transitional arrangements in respect of other small boilers

- (9) (a) Despite the small boilers within the municipality not required to be authorised in terms of a by-law, persons operating small boilers, at the commencement date of section 9, must apply for an authorisation as required by section 9.
- (b) A person operating small boiler must apply for an authorisation in terms of subsection (1), when required to do so by the Council, in writing, and within the period stipulated by the Council.
- (c) If any person fails to comply with subsection (9)(b), then continuing to operate the small boiler without a valid authorisation is an offence.

12. Dust Emissions

- (1) Any person / facility 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/facility that produce dust emissions within the municipality's jurisdiction, must obtain a prior written authorisation from the Air Quality Officer, which authorization may be granted valid for a period of 12 months from the date of issue;
- (3) Any person / facility who undertakes any activity that causes dust emissions must implement one or more of the following control measures:
 - (i) pave;
 - (ii) use dust palliatives or suppressants;
 - (iii) uniformly apply and maintain any surface gravel;
 - (iv) erect physical barriers and signs to prohibit access to the disturbed areas;
 - (v) use ground covers;
 - (vi) re-vegetation which is similar to adjacent undisturbed native conditions; or
 - (vii) any alternative control measure approved in writing by the air quality officer.
- (4) The control measures must be consistent with the provisions of any applicable legislation.
- (5) 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) horse trails, hiking paths, bicycle paths or other similar paths; and
 - (d) any other path that has been designated as an exclusive use area for purposes other than travel by motor vehicle.
- (6) Any person / facility who contravenes subsection (1) and (2) commits an offence.

13. Emissions Caused by Open Burning

- (1) A person who carries out or permits open burning of any material on any land or premises is committing an offence, unless:
 - (a) the prior written authorisation of the Council has been obtained, which authorisation may be granted by the Council with conditions, and
 - (b) that person has notified in writing the owners and occupiers of all adjacent properties and electricity powerlines traversing such properties of:
 - (i) all known details of the proposed open burning;

- (ii) the right of owners and occupiers of adjacent properties and electricity powerlines traversing such properties to lodge written objections to the proposed open burning with the municipality within 14 days of being notified; and
 - (iii) the administrative fee that has been paid to the municipality.
- (2) The Council may not authorise open burning:
 - (a) unless it is satisfied that the applicant in terms of subsection (1)(a) has investigated and assessed every reasonable alternation for reducing, re-using or recycling the material in order to minimise the amount of material to be burnt in the open, to the satisfaction the municipality
 - (b) unless it is satisfied that the requirements set out in subsection (1) above have been adequately addressed or fulfilled; or
 - (c) where a warning under section 10(1)(b) of the National Veld and Forest Act, 1998 (Act No. 101 of 1998) has been published for the region.
 - (d) the open burning will not pose a nuisance or potential hazard to human health or safety; private property or the environment; and
 - (e) the prescribed fee has been paid to the municipality
- (3) The provisions of this section shall not apply to:
 - (a) recreational outdoor activities on private premises or residential areas; and
 - (b) controlled fires in dwellings for the purposes of heating any area within the dwelling, cooking, heating water and other domestic purposes.
- (4) Any person who undertakes or permits to be undertaken open burning in contravention of subsection (1) commits an offence

14. Emissions Caused by Burning of Industrial Waste, Domestic Waste and Garden Waste in Waste Bins or Skips on Any Land or Premises

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).

15. Emissions Caused by Tyre Burning and Burning of Rubber Products and Cables in Open Spaces

- (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 purposes of recovering the scrap metal or fibre reinforcements, or of disposing of tyres, of the rubber products or cables as waste.
- (2) Any person who contravenes subsection (1) commits an offence.

16. Pesticide Spraying Emissions

- (1) No person may carry out or permit the spraying of pesticides, except as permitted by section 3 of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).
- (2) A person who carries out the spraying of pesticides, either by tractor or aerial, within the municipal jurisdiction, must comply with the following control measures:
 - (a) obtain a prior written authorisation from the Council, which authorization may be granted valid for a period of 12 months from the date of issue;
 - (b) notification in writing of all the owners and occupiers of adjacent properties (including surrounding communities) of the treatment area of:

- (i) the details of the proposed treatment area;
 - (ii) the reason for the pesticide use;
 - (iii) the active ingredient;
 - (iv) the dates or months of the pesticide use;
 - (v) the time, if any, indicated on the product label specifying when the area can safely be re-entered after application;
 - (vi) the right of owners and occupiers of adjacent properties (including surrounding communities) to lodge written objections to the proposed spraying of pesticides with the Council within 14 days of being notified; and
 - (viii) the administrative fee has been paid to the municipality.
- (3) The Council must notify in writing, within 30 days, the applicant and all registered affected parties about a decision on an application.
- (4) 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.
- (5) Any person who contravenes subsection (2) commits an offence.
- (6) A person may apply to the Council 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.
- (7) The provisions of this section are not applicable to:
 - (a) residential areas;
 - (b) buildings or inside buildings and the domestic use of pesticides; or
 - (c) any other defined area or defined activity to which the Council has declared this section not to apply.

17. Spray Painting Emissions

- (1) No person shall, within the municipality'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 substance outside 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 subsections (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 provision 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 reasons for such cancellation;
 - (b) give the holder a period of at least 30 days to make written representations regarding the matter to the municipality.
- (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).

18. Sand Blasting Emissions

- (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 measure:
 - (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 subsections (1) and (2) commits an offence.

PART 3 SMOKE FROM PREMISES OTHER THAN DWELLINGS

19. Application

For the purpose of this part "premises" does not include dwellings.

20. Prohibition

- (a) Subject to the subsection (b), smoke must not be emitted from any premises for an aggregate period exceeding three minutes during any continuous period of thirty minutes.
- (b) 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 emissions could have been prevented using the best practicable means available.

- (c) If smoke is emitted in contravention of subsection (a) the owner, operator and/the occupier of the premises shall be guilty of an offensive.

21. Installation of fuel-burning equipment

- (a) No person shall install, alter, extend or replace any fuel-burning equipment on any premises without the prior written authorization of the municipality, which may be given after consideration of the relevant plans and specifications.
- (b) Any fuel-burning equipment installed, altered, replaced or extended on the premises in accordance to plans and specifications submitted to and approved for the purposes of this section, by the municipality shall be presumed until the contrary is proved to comply with the provisions of subsection (a).
- (c) Where fuel-burning equipment has been installed, altered, replaced or extended on premise in contravention of subsection (a)
- i. the owner and occupier of the premises and installer of the fuel-burning equipment shall be guilty of an offence.
 - ii. 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.

22. Operation of fuel-burning equipment

- (1) No person shall use or operate fuel-burning equipment on any premises contrary to the authorization referred to in section 19.
- (2) where the fuel-burning equipment has been used or operated on the premises in contravention of subsection (1):
- (a) the owner and occupier of the premises and operator of the fuel-burning equipment shall each be guilty of an offence;
 - (b) the municipality may on written notice to the owner or occupier of the premises;
 - i. revoke its authorization under section 19; 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 on the notice.

23. Presumption

In any prosecution for an offence under section 18 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 would be reasonably likely to give rise to the emission of smoke, unless the owner, occupier or operator, as the case may be, shows that no smoke was emitted.

24. Installation and operation of measuring equipment

An authorized person may give notice to any operator of fuel-burning equipment or any owner or occupier of the 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) unauthorized 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 authorized person to emit smoke;
- (c) the person on whom the notice is served has been convicted more than once under this part 3 and has not taken adequate measures to prevent further contraventions of this Part; or
- (d) the authorized 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.

25. Monitoring and sampling

- (1) An occupier or owner of the premises, and the operator of any fuel-burning equipment, who is required to install air pollution measuring equipment in in terms of section 22(a) must:
 - (a) record all the monitoring and sampling results and keep a copy of this record for at least four years after obtaining the results;
 - (b) if requested to do so by an authorized person, produce the record of the monitoring and sampling results for inspection;
 - (c) if requested to do so by an authorized person, provide a written report (in a form and by a date specified by the authorized person) of part or all 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 authorized person

26. Exemption

- (1) Subject to section 31 and on the 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 part.
- (2) Any exemption granted under subsection (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 conditions attached to the exemption, if any;
 - (d) the period for which the exemption has been granted; and
 - (e) any other relevant information.

PART 4 SMOKE EMISSIONS FROM DWELLINGS

27. Smoke emissions from dwelling

- (1) No person may emit or permit the emissions of smoke from any dwelling that may cause a nuisance.
- (2) Any person who emits or permits the emission of smoke in contravention of the subsection (1) commits an offence.
- (3) Subject to section 31 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 the provisions of this apart.
- (4) A person who emit or permits emissions is committing an offence, unless:
 - (a) the prior written authorisation of the Council has been obtained, which authorisation may be granted by the Council with conditions, and
 - (b) that person has notified in writing the owners and occupiers of all adjacent properties:
 - (i) all known details of the proposed open burning;
 - (ii) the right of owners and occupiers of adjacent properties and to lodge written objections to the proposed emissions with the municipality within 14 days of being notified

PART 5 OFFENSIVE ODOURS

28. Control of offensive odours

- (1) The occupier or owner of any premises must take all reasonable steps to prevent the emissions of any offensive odour caused by any activity on such premises.
- (2) Any person who emits or permits the emission of any offensive odour in contravention of subsection (1) commits an offence.

PART 6 FUME NUISANCE

29. Control of fumes

- (1) The occupier or owner of any premises must take all reasonable steps to prevent the nuisance by fumes caused by any activity on such premises
- (2) Any person who emits or permits the emission of any offensive fume in contravention of subsection (1) commits an offence

CHAPTER 4

EMISSIONS THAT CAUSE A NUISANCE

30. Prohibition

- (1) Any occupier or owner of premises from which a nuisance emanates, or where a nuisance exists 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.

Abatement notice

- (3) 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 subsection (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.
- (4) For the purposes of subsection (3), 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.
- (5) An abatement notice under subsection (3) 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 post to the occupier at the address at which the premises are situated.
- (6) Any person who fails to comply with an abatement notice served on that person in terms of subsection (5) commits an offence.
- (7) In addition to any other penalty that may be imposed, a court may order a person convicted of an offence under subsection (6) to take steps the court considers necessary within a period determined by the court in order to prevent a recurrence of the nuisance.

Steps to abate nuisance

- (8) The municipality 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.

CHAPTER 5

GENERAL MATTERS

31. Appeals

Any person may appeal against any decision taken under this by-law by giving written notice of the appeal in accordance with the provisions of section 62 of the Municipal Systems Act, 2000, as amended.

32. Enforcement

- (1) The Council may appoint so many authorised persons as it may consider necessary to be responsible for compliance and enforcement monitoring of this by-law.
- (2) The authorised persons shall take all lawful, necessary and practicable measures to enforce the provisions of this by-law.

33. Exemptions

- (1) Any person may, in writing, apply for exemption from the provisions of this by-law to the Council.
- (2) An application in terms of subsection (1) above must be accompanied by reasons.
- (3) The Council may grant a temporary exemption in writing from one or all of the provisions of the by-law, provided that the Council:
 - (a) is satisfied that granting the exemption will not prejudice the objectives referred to in section 2; and
 - (b) grants any exemption subject to conditions that promote the attainment of the objectives referred to in section 2.
- (4) The Council must not grant an exemption under subsection (1) until the Council has:
 - (a) taken measures to ensure that all persons whose rights may be significantly detrimentally affected by the granting of the exemption, including but not limited to adjacent landowners 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 Council may:
 - (a) from time to time review any exemptions granted in terms of this section; and
 - (b) on good grounds withdraw any exemption

CHAPTER 6

OFFENCES AND PENALTIES

34. Offences and Penalties

- (1) Any person who contravenes section 4(9), 8(2), 10(5), 11(1), 16(3), or 17(2) shall be liable on conviction to imprisonment for a period not exceeding 6 months or to a fine not exceeding R5 000.00 or to both a fine and such imprisonment.
- (2) Any person who contravenes section 6(2)(3), 8(5), 8(13), 9(3)(a), 9(9)(c), 14(5), 15(3) or 17(6) shall be liable on conviction to imprisonment for a period not

exceeding 2 years or to a fine not exceeding R20 000.00 or to both a fine and such imprisonment.

- (3) Any person who contravenes section 12 or 13(2) shall be liable on conviction to imprisonment for a period not exceeding 1 year or to a fine not exceeding R10 000.00 or to both a fine and such imprisonment.
- (4) It is an offence to:
 - (a) supply false or misleading information to an authorised person in respect of any matter pertaining to this by-law, or;
 - (b) refuse to co-operate with the request of an air quality officer or authorised person made in terms of this by-law and any person convicted of such offence shall be liable to imprisonment not exceeding 30 days or a fine or both a fine and imprisonment.
- (5) 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 1 year or to a fine or to both imprisonment and a fine.
- (6) Failure to comply with a notice, direction or instruction referred to in this by-law constitutes a continuing offence.
- (7) Any person who commits continuing offences shall be guilty of a separate offence each day during which that person fails to comply with a notice, direction or instruction referred to in this by-law.

35. State and Council Bound

This by-law is binding on the State and the Council except in so far as any criminal liability is concerned.

36. 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.

37. Review

This by-law will be reviewed after a period of five years from the date of the Promulgation in the Provincial Government Gazette.

38. Repeal of By-Laws

The by-laws set out in Schedule 7 to this by-law are repealed to the extent set out in that Schedule.

39. Short Title

This by-law is called the Buffalo City Metropolitan Municipality Air Quality Management By-Law, 2024

40. Commencement

- (1) This by-law will come into operation on a date or dates to be determined by the Council by publication in the *Provincial Gazette*.

- (2) Different dates may be determined in terms of subsection (1) above for different provisions of the by-law.

SCHEDULES

Schedule 1

List of Substances and its Associated Local Emission Standards (Section 5(1))

The list of substances and associated standards must be identified by the relevant municipality, as and when necessary.

DRAFT

Schedule 2

Application Form to Operate Small Boiler (Section 9(2))

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

1. Contact details

Responsible Person Name	
Telephone Number	
Cell Phone Number	
Fax Number	
E-mail 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	Design consumption rate (volume)	Actual consumption rate (volume)	Units (quantity/period)

	consumption rate (volume)			

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)

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 emissions

Unique stack ID	Pollutant name	Average annual release rate			Emission hours [e.g. 07H00 – 17H00]	Type of emission [continuous/intermittent]

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)

The application is approved, subject to the following conditions:

(a)	
(b)	
(c)	
(d)	
(e)	

The application is not approved for the following reasons:

(a)	
(b)	
(c)	
(d)	
(e)	

Buffalo City Metropolitan Municipality AQO Signature

Date:

Schedule 3

Application Form for Open Burning (Section 11(1))

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

1. Contact details

Responsible Person Name	
Telephone Number	
Cell Phone Number	
Fax Number	
E-mail address	

2. Description of the extent of the areas to be burned

3. Types of materials to be burned

(a)	
(b)	
(c)	
(d)	
(e)	

4. Reasons for burning materials

5. Air quality impacts 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 municipality.

8. Signature

Signature of the Applicant

Date of Application

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)

The application is approved, subject to the following conditions:

(a)	
(b)	
(c)	
(d)	
(e)	

The application is not approved for the following reasons:

(a)	
(b)	
(c)	
(d)	
(e)	

Air Quality Officer Signature

Date:

Schedule 4

Application Form for Smoke Emissions (Section 25(4))

I, _____ owner(s) / occupier(s) of the land / properties known as _____ (registered name) within the municipality's jurisdiction hereby apply for permission for smoke emission on the said property.

1. Contact details

Responsible Person Name	
Telephone Number	
Cell Phone Number	
Fax Number	
E-mail address	

2. Description of the extent of the area(s) to have smoke emission

3. Reasons for the smoke emissions

4. Air quality impacts in the local area

5. Dates of smoke emissions

Dates	

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 smoke emissions, and their rights to lodge any written objections to the municipality. The notification must clearly specify (a) the extent of the area to have smoke emissions; (b) reasons for the smoke emissions; (c) dates of smoke emissions; (d) adjacent owners and occupiers' right to lodge written objections within 14 days to the municipality.

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)

The application is approved, subject to the following conditions:

(a)	
(b)	
(c)	
(d)	
(e)	

The application is not approved for the following reasons:

(a)	
(b)	
(c)	
(d)	
(e)	

Buffalo City Metropolitan Municipality AQO Signature

Date:

Schedule 5

Application Form to Undertake Pesticide Spraying (Section 14(2)(a))

I, _____ owner(s) / occupier(s) of the land / properties known as _____ (registered name) within the municipality's jurisdiction hereby apply for permission to spray pesticides on the said property.

1. Contact details

Responsible Person Name	
Telephone Number	
Cell Phone Number	
Fax Number	
E-mail address	

2. Description of the extent of the proposed treated area(s)

3. Types of product label to be used

(a)	
(b)	
(c)	
(d)	
(e)	

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 objections to the

municipality. The notification must clearly specify (a) the extent of the proposed treatment area; (b) reasons for pesticide use; (c) the active ingredient; (d) dates or months for 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 municipality.

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)

The application is approved, subject to the following conditions:

(a)	
(b)	
(c)	
(d)	
(e)	

The application is not approved for the following reasons:

(a)	
(b)	
(c)	
(d)	
(e)	

Buffalo City Metropolitan Municipality AQO Signature

Date:

Schedule 6

Spray Booth Construction (Section 15(4))

Construction

Such activities must be conducted in a spray booth or spray cabinet specifically designed for the purpose. It must be constructed of non-combustible material.

Ventilation

Spray Booth

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

0,5 m/ s where the air is horizontally supplied and extracted.

0,4 m/s where the air is introduced through the roof and extracted through slots along the edge of the walls at floor level.

0,3 m/s where the air is supplied through the roof and extracted through a grill over the whole of the floor area.

Spray Cabinets

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.

1 m/s for opening up to 0,9m²

0,75 m/s for opening between 0,9 and 1,8m²

0,5m/s for opening exceeding 1,8m²

Lighting

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

Types of Activity

Illuminance (LUX)

- | | |
|--|-----|
| • Rubbing, dipping, ordinary painting | 200 |
| • Fine painting, spraying, and finishing | 300 |
| • Retouching and matching | 500 |

Fume Extraction System

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.

All ducts and enclosures in connection with the extraction system through which the fumes have to pass must be constructed of non-combustible materials with the interior having a smooth surface.

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.

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.

The point of discharge must be positioned so as to ensure that such air does not contaminate any air which is likely to be drawn into ventilate any existing building.

Personal Protection Equipment

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

General

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

Schedule 7

By-Laws Repealed (Section 35)

Number and Year of By-Law	Title	Extent of Repeal
N/A	N/A	N/A