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CONTENTS

INHOUD

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No.		Page
	Local Authority	
12649	City of Cape Town: Air Pollution Control By-law	2

No.		Bladsy
	Plaaslike Owerheid	
12649	Stad Kaapstad: Verordening op Lugbesoedelingsbeheer ..	11

NOTICE BY LOCAL AUTHORITY

KENNISGEWING DEUR PLAASLIKE OWERHEID

LA 12649

4 February 2003

CITY OF CAPE TOWN:

AIR POLLUTION CONTROL BY-LAW

Under the powers conferred by section 156(2) of the Constitution of the Republic of South Africa Act, 1996 (Act 108 of 1996), the City of Cape Town adopts the following by-law—

**PART I
INTERPRETATION AND FUNDAMENTAL PRINCIPLES**

Definitions

1. (1) 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;

“air pollution control zone” means the geographical area to which Part III of the by-law is declared to apply;

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

“authorized person” means any person authorized by the Council 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 minimise 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;

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

“Council” means the City of Cape Town;

“dark smoke” means:

- (a) in respect of Parts IV and V of this by-law, smoke which when measured using a light absorption meter or obscuration measuring equipment has an obscuration of 20% or greater;
- (b) in respect of Part VII of his by-law:
 - (i) smoke which has a density of 60 Hartridge smoke units or more, provided that in relation to emissions from turbo-charged compressed ignition powered engines, it means a density of 66 Hartridge smoke units or more; or
 - (ii) smoke which has a light absorption co-efficient of more than 2.125 m^{-1} , provided that in relation to emissions from turbo-charged compressed ignition powered engines, it means a light absorption coefficient 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;

“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;

“free acceleration test” means the method described in section 17(2) employed to determine whether vehicles are being driven or used in contravention of section 15(1);

“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;

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

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

“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; or

(b) the use and/or enjoyment by an owner or occupier of his or her property and or environment;

“obscuration” means the ratio of visible light attenuated by air pollutants suspended in the effluent streams 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;

“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 Council 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.

Purpose

2. (1) The purpose 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 Act, 1996 (Act 108 of 1996) by controlling air pollution within the area of the Council’s jurisdiction; and

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

(2) Any person that exercises a power under this by-law must exercise the power in order to give effect of the purpose set out in subsection (1).

PART II DUTY OF CARE

3. (1) Any person who is wholly or partially responsible for causing significant air pollution or creating a risk of significant air pollution occurring must take all reasonable measures:

(a) to prevent any potential significant air pollution from occurring; and

(b) to mitigate and, as far as reasonably possible, to remedy any significant air pollution that has occurred.

(2) The Council may, by resolution direct any person who fails to take the measures required under subsection (1)—

(a) to investigate, evaluate and assess the impact of specific activities and report thereon;

(b) to commence taking specific reasonable measures before a given date;

(c) to diligently continue with those measures; and

(d) to complete them before a specified reasonable date.

Prior to making such resolution Council must give affected persons adequate opportunity to inform them of their relevant interests and may consult with any other organ of state.

(3) Should a person fail to comply, or inadequately comply, with a directive under subsection (2), the Council may take reasonable measures to remedy the situation.

- (4) Provided that if such person fails to take the measures required of him or her under subsection (1), the Council may recover all reasonable costs incurred as a result of it acting under subsection (3) from any or all of the following persons—
- (a) any person who is or was responsible for, or who directly or indirectly contributed to, the air pollution or the potential air pollution;
 - (b) the owner of the land at the time when the air pollution or the potential for air pollution occurred, 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.
- (5) If more than one person is liable under subsection (4), 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 subsections (1) and (2).

PART III AIR POLLUTION CONTROL ZONE

Declaration of air pollution control zone

4. (1) The whole area within the jurisdiction of the Council is hereby declared an air pollution control zone.
- (2) Within an air pollution control zone the Council may from time to time by notice in the Provincial Gazette:
- (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;
 - (d) prescribe different requirements in an air pollution control zone relating to air quality in respect of:
 - (i) different geographical portions;
 - (ii) specified premises;
 - (iii) classes of premises; or
 - (iv) premises used for specified purposes.
- (3) The Council may develop and publish policies and guidelines, including technical guidelines, relating to the regulation of activities which directly and indirectly cause air pollution within an air pollution control zone.
- (4) Subject to section 26, the Council may in writing exempt certain premises, classes of premises or premises used for specified purposes from the operation of measures adopted by the Council under this section.

PART IV SMOKE EMISSIONS FROM PREMISES OTHER THAN DWELLINGS

Application

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

Prohibition

6. (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.
- (3) If dark smoke is emitted in contravention of subsection (1) the owner, operator and/or the occupier of the premises shall be guilty of an offence.

Installation of fuel-burning equipment

7. (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) Any fuel-burning equipment installed, altered, extended or replaced on premises in accordance with plans and specifications submitted to and approved, for the purposes of this section, by the Council shall be presumed until the contrary is proved to comply with the provisions of subsection (1).
- (3) Where fuel-burning equipment has been installed, altered, extended or replaced on premises in contravention of subsection (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 Council 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.

Operation of fuel-burning equipment

8. (1) No person shall use or operate any fuel-burning equipment on any premises contrary to the authorization referred to in section 7.
- (2) Where 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 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 authorization under section 7; 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.

Presumption

9. In any prosecution for an offence under section 6 dark 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 dark smoke, unless the owner, occupier or operator, as the case may be, shows that no dark smoke was emitted.

Installation and operation of obscuration measuring equipment

10. (1) An authorized 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 obscuration measuring equipment at his or her own cost, if:
 - (a) unauthorized and unlawful emissions of dark smoke from the relevant premises have occurred consistently and regularly over a period of at least two days;
 - (b) unauthorized and unlawful 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 is reasonably likely in the opinion of an authorized person to emit dark smoke;
 - (d) the person on whom the notice is served has been convicted more than once under this Part IV and has not taken adequate measures to prevent further contravention of the provisions of this Part; or
 - (e) the authorized person considers that the nature of the air pollutants emitted from the relevant premises is 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 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 22;
 - (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.

Monitoring and sampling

11. (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 10(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 authorized person, produce the record of the monitoring and sampling results for inspection; and
 - (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 of the information in the record of the monitoring and sampling results.

Exemption

12. (1) Subject to section 26 and on application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the Council 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 V
SMOKE EMISSIONS FROM DWELLINGS**

13. (1) Subject to section 4(2), 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.
- (3) Subject to section 26 and on application in writing by the owner or occupier of any dwelling, the Council may grant a temporary exemption in writing from one or all of the provisions of this Part.

**PART VI
EMISSIONS CAUSED BY OPEN BURNING**

14. (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 authorization of the Council, which may include the imposition of further conditions with which the person requesting authorization must comply, has been obtained.
- (2) The Council may not authorize open burning under subsection (1) unless it is satisfied that the following requirements have been adequately addressed or fulfilled:
- (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 or recycling 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 every reasonable alternative for removing the material from the land or premises, to the satisfaction of the Council;
 - (d) that person has investigated and assessed the impact that the open burning will have on the environment, to the satisfaction of the Council;
 - (e) 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;
 - (f) the land on which that person intends to open burn the material is State land, a farm or small-holding, or land within a proclaimed township that is not utilized for residential purposes;
 - (g) the open burning is conducted at least 100 metres from any buildings or structures;
 - (h) the open burning will not pose a potential hazard to human health or safety, private property or the environment.
 - (i) 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
 - (j) 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 barbecue or braai activities on private premises;
 - (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 Council has declared this section not to apply.

PART VII
EMISSIONS FROM COMPRESSED IGNITION POWERED VEHICLES

Prohibition

15. (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 the driver of the vehicle shall each be guilty of an offence.
- (3) For purposes of this section the registered owner of the vehicle shall be presumed to be the driver unless the contrary is proven.

Stopping of vehicles for inspection and testing

16. (1) In order to enable an authorized person to enforce the provisions of this Part, the driver of a vehicle must comply with any reasonable direction given by an authorized person:
- (a) to stop the vehicle; and
- (b) to facilitate the inspection or testing of 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 authorized person 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 authorized person reasonably believes that an offence has been committed under section 15(2), instruct the driver of the vehicle, who is presumed to be the owner of the vehicle unless he or she produces evidence to the contrary, in writing to take the vehicle to a testing station, within a specified period of time, for inspection and testing in accordance with section 17.

Testing procedure

17. (1) An authorized person 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 15(1).
- (2) The following procedure must be adhered to in order to conduct a free acceleration test:
- (a) when instructed to do so by the authorized person, the driver must start the vehicle, place it in neutral gear and engage the clutch;
- (b) while the vehicle is idling; the authorized person must conduct a visual inspection of the emission system of the vehicle;
- (c) when instructed to do so by the authorized person, the driver of the vehicle must in less than one second smoothly and completely depress the accelerator throttle pedal of the vehicle; provided that the authorized person may do so himself or herself if the driver fails or refuses to comply with the authorized person's reasonable instructions;
- (d) while the throttle pedal is depressed, the authorized person must measure the smoke emitted from the vehicle's emission system in order to determine whether or not it is dark smoke;
- (e) the 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 authorized person.
- (3) If, having conducted the free acceleration test, the authorized person is satisfied that the vehicle:
- (a) is not emitting dark smoke, then the authorized person must furnish the driver of the vehicle with a certificate indicating that the vehicle is not being driven or used in contravention of section 15(1); or
- (b) is emitting dark smoke, the authorized person must issue the driver of the vehicle with a repair notice in accordance with section 18.

Repair notice

18. (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 under this Section if that person fails:
- (a) to comply with the notice referred to in subsection (1);

- (b) the re-test referred to in subsection (1).
- (4) It shall not be a defence in proceedings under subsection (3) to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.

**PART VIII
EMISSIONS THAT CAUSE A NUISANCE**

Prohibition

19. Any occupier or owner of premises from which a nuisance emanates, or where a nuisance exists, is guilty of an offence.

Abatement notice

20. (1) An authorized person may serve an abatement notice on any person whom the authorized person reasonably believes is likely to commit or has committed an offence under section 19, 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 subsection (1), an authorized 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.
- (3) An abatement notice under subsection (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 an abatement notice served on that person in terms of subsection (1) is guilty of an offence.
- (5) In addition to any other penalty that may be imposed, a court may order a person convicted of an offence under subsection (4) 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

21. At any time, the Council 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.

**PART IX
APPEALS**

22. (1) Any person may appeal against a decision taken by an authorized person under this by-law by giving written 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, including any persons registered as interested and affected parties, 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 authorized person other than the municipal manager, then the municipal manager is the appeal authority; or
 - (b) the municipal manager, then the 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.

PART X GENERAL PROVISIONS

Council and State bound

23. This by-law is binding on the State and the Council.

Conflict

24. (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 Atmospheric Pollution Prevention Act, 1965 (Act 45 of 1965), the provisions of that Act will prevail within the area of jurisdiction of the Council.
- (3) In the event of a conflict between the English, Xhosa or Afrikaans versions of this by-law, the English version shall be decisive.

Offences and penalties

25. (1) Any person who contravenes section 13(2), 15(2) or 19 of this by-law shall be liable on conviction to imprisonment not exceeding 30 days or to a fine or to both a fine and imprisonment.
- (2) Any person who contravenes section 7(3), 8(2), 18(3)(a), 18(3)(b) or 20(4) of this by-law shall be liable of conviction to imprisonment not exceeding two (2) years or a fine or both a fine and imprisonment.
- (3) Any person who contravenes section 14 of this by-law shall be liable on conviction to imprisonment not exceeding one (1) year or a fine or both a fine and imprisonment.
- (4) It is an offence to:
 - (a) supply false information to an authorized person in respect of any issue pertaining to this by-law, or;
 - (b) refuse to co-operate with the request of an authorized 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 one (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 a continuing offences shall be guilty of a separate offence for each day during which that person fails to comply with a notice, direction or instruction referred to in this by-law.
- (8) In addition to imposing a fine and/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 obscuration reading equipment in accordance with the provisions of section 11.

Exemptions

26. (1) The Council may grant a temporary exemption in writing from one or all of the provisions of Parts III, IV and V, provided that the Council:
 - (a) is satisfied that granting the exemption will not significantly 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 Council may not grant an exemption under subsection (1) until the Council has:
 - (a) taken reasonable measures to ensure that all persons whose rights may be significantly 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.

Savings

27. 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.

Commencement

28. This by-law will come into operation on a date or dates to be determined by the Council by publication in the Provincial Gazette.
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PO 12649

4 Februarie 2003

STAD KAAPSTAD:

VERORDENING OP LUGBESOEDELINGSBEHEER

Ingevolge die bevoegdhede verleen deur artikel 156(2) van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet 108 van 1996) aanvaar die Stad Kaapstad die volgende verordening—

DEEL I
INTERPRETASIE EN FUNDAMENTELE BEGINSELS

Definisies

1. (1) In hierdie verordening, tensy die konteks anders aandui, beteken—

“atmosfeer” lug wat nie deur ’n gebou, masjien, skoorsteen of ander sodanige struktuur ingesluit word nie;

“beste uitvoerbare middele” die doeltreffendste maatreëls wat redelikerwys getref kan word om lugbesoedeling te voorkom, te verminder of te minimaliseer met inagneming van alle tersaaklike faktore insluitende, onder meer, plaaslike toestande en omstandighede, die waarskynlikheid van nadelige uitwerking, die huidige status van tegniese kennis en die finansiële implikasies met betrekking tot die mate van omgewingsbeskerming wat na verwagting bereik kan word deur die toepassing of aanvaarding van die maatreëls;

“brandstofverbrandings-toerusting” enige smeltoond, stoomketel, verbrandingsoond, of ander toerusting, insluitende ’n skoorsteen wat:

- (a) ontwerp is of in staat is om vloeistof, gas of vaste gas te verbrand;
- (b) gebruik word om deur verbranding weg te doen met enige materiaal of afval; of
- (c) gebruik word om vloeistof, gas of vaste gas bloot te stel aan enige proses waar hitte aangewend word;

“donker rook”:

- (a) met betrekking tot Dele IV en V van hierdie verordening, rook wat as dit met ’n ligabsorpsiemeter of verduisteringsmeettoerusting gemeet word, ’n verduistering van 20% of meer het;
- (b) met betrekking tot Deel VII van hierdie verordening:
 - (i) rook wat die digtheid van 60 Hartridge-rookeenhede of meer het, met dien verstande dat ten opsigte van die uitlating van turbogelaaide kompressieontsteking- aangedrewe enjins, dit ’n digtheid van 66 Hartridge-rookeenhede of meer beteken;
 - (ii) rook wat ’n ligabsorpsiekoëffisiënt van meer as 2.125 m^{-1} het, met dien verstande dat ten opsigte van die uitlating van turbogelaaide kompressieontsteking- aangedrewe enjins dit ’n ligabsorpsiekoëffisiënt van meer as 2.51 m^{-1} beteken.

“ergernis” ’n onredelike inmenging of waarskynlike inmenging veroorsaak deur lugbesoedeling in:

- (a) die gesondheid of welsyn van enige persoon of lewende organisme; of
- (b) die gebruik en/of genot wat ’n eienaar of bewoner uit sy/haar eiendom en/of omgewing put;

“gemagtigde persoon” enige persoon deur die Raad gemagtig word om enige bepaling van hierdie verordening te implementeer;

“geproklameerde township” enige grondeenheid wat gesoneer is en gebruik word vir woondoeleindes;

“gratis versnellingsstoets” die metode soos beskryf in artikel 17(2) en wat gebruik word om te bepaal of voertuie strydig met artikel 15(1) bestuur of gebruik word;

“kompressieontsteking-aangedrewe voertuig” beteken ’n voertuig wat deur interne verbranding, kompressieontsteking, diesel of soortgelyke brandstof krag opwek;

“lewende organisme” enige biologiese entiteit wat in staat is om genetiese materiaal oor te dra of voort te plant, insluitende steriele organismes en virusse;

“ligabsorpsiemeter” ’n meetinstrument wat ’n ligsensitiewe sel of detektor gebruik om die hoeveelheid lig wat deur ’n lugbesoedelde stof geabsorbeer word, te bepaal;

“lugbesoedeling” enige verandering in die omgewing veroorsaak deur enige stof wat in die atmosfeer uitgelaat word deur enige aktiwiteit, waar daardie verandering ’n nadelige uitwerking op die mens se gesondheid of welsyn het, of op die samestelling, veerkrag en produktiwiteit van natuurlike of bestuurde ekosistels, of op materiale wat nuttig is vir mense, of sodanige uitwerking in die toekoms sal hê;

“lugbesoedelingsbeheersone” die geografiese gebied waarop Deel III van die verordening verklaar is om van toepassing op te wees;

“lugbesoedelende stof” enige stof (insluitende maar nie beperk tot stof, rook, rookwalms en gas) wat lugbesoedeling veroorsaak of mag veroorsaak;

“munisipale bestuurder” ’n persoon as sulks deur die Raad aangestel ingevolge artikel 82 van die Wet op Munisipale Strukture, 1998 (Wet 117 van 1998);

“nadelige uitwerking” enige werklike of moontlike uitwerking op die omgewing wat die omgewing of enige aspek daarvan tot so ’n mate sou kon benadeel dat dit meer as onbeduidend of onbelangrik is;

“omgewing” die milieu waarin mense bestaan en wat bestaan uit—

- (a) die grond, water en atmosfeer van die aarde;
- (b) mikro-organismes, plante- en dierelewe;
- (c) enige deel of kombinasie van (a) en (b) en die onderlinge verhouding tussen hulle; en
- (d) die fisiese, chemiese, estetiese en kulturele eienskappe en toestande van die voorgenoemde wat die mens se gesondheid en welsyn beïnvloed;

“oopverbranding” die verbranding van materiaal sonder ’n skoorsteen om die produkte wat uitgelaat word deur verbranding, in die atmosfeer vry te laat, en “verbranding in die ope” het ’n ooreenstemmende betekenis;

“openbare pad” beteken ’n pad wat die publiek die reg het om te gebruik;

“operateur” ’n persoon wat ’n onderneming besit of bestuur, of wat ’n operasie of proses wat lugbesoedelende stowwe uitlaat, beheer;

“perseel” enige gebou of ander struktuur tesame met die grond waarop dit geleë is en enige aangrensende grond bewoon of gebruik ten opsigte van enige aktiwiteite wat in daardie gebou of struktuur plaasvind, en sluit in enige grond sonder enige geboue of ander strukture en enige lokomotief, skip, boot of ander vaartuig wat opereer of teenwoordig is in die gebied onder die jurisdiksie van die Raad of die omgewing van enige hawe;

“persoon” ’n natuurlike persoon of ’n regspersoon;

“Raad” die Stad Kaapstad;

“rook” die gasse, spesifieke materie en produkte van verbranding wat in die atmosfeer uitgelaat word as materiaal verbrand word of blootgestel word aan hitte, en sluit in die roet, gruis en sanderige deeltjies wat in rook uitgelaat word;

“skoorsteen” enige struktuur of opening van enige aard vanwaar of waardeur enige lugbesoedelende stowwe uitgelaat mag word;

“stof” enige soliede materie in ’n fyn of gedisintegreerde vorm wat in staat is om in die atmosfeer versprei of gesuspendeer te word;

“verduistering” die verhouding van sigbare lig verswak deur lugbesoedelende stowwe gesuspendeer in die uitvloei-strome tot die sigbare lig invalshoek, uitgedruk as ’n persentasie;

“voertuig” enige motor, motorvoertuig, motorfiets, bus, lorie of ander vervoermiddel wat heeltemal of gedeeltelik aangedryf word deur enige vlugtige brandstof, stoom, gas of olie, of op enige ander manier behalwe menslike of dierekrag;

“woning” enige gebou of ander struktuur, of deel van ’n gebou of struktuur wat as ’n woonhuis gebruik word, en enige buitegeboue aanvullend daartoe, maar dit sluit krotte en informele nedersettings uit.

Doel

2. (1) Die doel van hierdie verordening is:
 - (a) om uitvoering te gee aan die reg vervat in artikel 24 van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet 108 van 1996) deur die beheer van lugbesoedeling binne die gebied van die Raad se jurisdiksie; en
 - (b) om te verseker dat lugbesoedeling vermy word, of waar dit nie heeltemal vermy kan word nie, verminder of remedieer word.
- (2) Enige persoon wat ’n bevoegdheid ingevolge hierdie verordening uitoefen, moet die bevoegdheid uitoefen ten einde uitvoering te gee aan die doel soos uiteengesit in subartikel (1).

DEEL II SORGSAAMHEIDSPILIG

3. (1) Enige persoon wat heeltemal of gedeeltelik verantwoordelik is om beduidende lugbesoedeling te veroorsaak of ’n risiko skep dat beduidende lugbesoedeling plaasvind, moet alle redelike maatreëls tref:
 - (a) om te verhoed dat enige moontlike lugbesoedeling plaasvind; en
 - (b) om enige beduidende lugbesoedeling wat plaasgevind het, te verminder en so ver as wat dit redelik moontlik is, te remedieer.
- (2) Die Raad mag deur ’n besluit enige persoon wat versuim om die maatreëls soos vereis ingevolge subartikel (1) te tref, gelas—
 - (a) om die uitwerking van spesifieke aktiwiteite te ondersoek, te evalueer en te assesser en daarvoor verslag te lewer;
 - (b) om te begin om spesifieke redelike maatreëls te tref voor ’n gegewe datum;
 - (c) om noulettend voort te gaan met daardie maatreëls; en
 - (d) om hulle voor ’n gespesifiseerde redelike datum af te handel.

Voordat die Raad so ’n besluit neem, moet die Raad persone wat geraak word voldoende geleentheid gun om hulle oor hul tersaaklike belange in te lig, en hulle mag enige ander staatsorgaan raadpleeg.
- (3) Sou ’n persoon versuim om te voldoen aan, of ontoereikend voldoen aan ’n voorskrif ingevolge subartikel (2), mag die Raad redelike maatreëls tref om die situasie te remedieer.

- (4) Met dien verstande dat indien so 'n persoon versuim om die maatreëls te tref wat van hom of haar vereis word ingevolge subartikel (1), die Raad alle redelike koste wat aangegaan is as gevolg van sy optrede ingevolge subartikel (3) van enige of al die volgende persone mag verhaal—
- (a) enige persoon wat verantwoordelik is of was, of wat regstreeks of onregstreeks bygedra het tot die lugbesoedeling of die moontlike lugbesoedeling;
 - (b) die eienaar van die grond op die tydstip toe die lugbesoedeling of die moontlike lugbesoedeling plaasgevind het, of daardie eienaar se regsopvolger;
 - (c) die persoon in beheer van die grond of enige persoon wat 'n reg het of gehad het om die grond te gebruik op die tydstip toe—
 - (i) die aktiwiteit of die proses ter sprake uitgevoer of onderneem word of is;
 - of
 - (ii) die situasie tot stand gekom het; of
 - (d) enige persoon wat nalatig versuim het om te voorkom—
 - (i) dat die aktiwiteit of die proses uitgevoer of onderneem word; of
 - (ii) dat die situasie tot stand gekom het.
- (5) As meer as een persoon aanspreeklik is ingevolge subartikel (4), mag die aanspreeklikheid toegedeel word onder die betrokke persone volgens die mate waartoe elkeen verantwoordelik was vir die skade aan die omgewing voortspruitend uit hul onderskeie versuim om die maatreëls ingevolge subartikels (1) en (2) te tref.

DEEL III LUGBESOEDELINGSBEHEERSONE

Verklaring van lugbesoedelingsbeheersone

4. (1) Die hele gebied binne die jurisdiksie van die Raad word hiermee 'n lugbesoedelingsbeheersone verklaar.
- (2) Binne 'n lugbesoedelingsbeheersone mag die Raad van tyd tot tyd deur kennisgewing in die Provinsiale Koerant:
- (a) die uitlaat van een of meer van die lugbesoedelende stowwe van alle persele of sekere persele verbied of beperk;
 - (b) die verbranding van sekere soorte brandstof verbied of beperk;
 - (c) rookvrye sones verklaar waarin rook met 'n verduistering van meer as 10% nie uitgelaat mag word nie;
 - (d) verskillende vereistes vir 'n lugbesoedelingsbeheersone voorskryf betreffende gehalte lug ten opsigte van:
 - (i) verskillende geografiese gebiede;
 - (ii) gespesifiseerde persele;
 - (iii) klasse persele; of
 - (iv) persele gebruik vir gespesifiseerde doeleindes.
- (3) Die Raad mag beleid en riglyne, insluitende tegniese riglyne, betreffende die regulering van aktiwiteite wat regstreeks en onregstreeks lugbesoedeling in 'n lugbesoedelingsbeheersone veroorsaak, ontwikkel en publiseer.
- (4) Behoudens artikel 26 mag die Raad sekere persele, klasse persele of persele gebruik vir spesifieke doeleindes skriftelik vrystel van die handeling of maatreëls deur die Raad aanvaar is ingevolge hierdie artikel.

DEEL IV ROOKUITLATING VAN PERSELE BUITEN WONINGS

Toepassing

5. Vir die doeleindes van hierdie Deel sluit "persele" nie wonings in nie.

Verbod

6. (1) Behoudens subartikel (2) moet donker rook nie van enige persele uitgelaat word vir 'n totale tydperk wat drie minute oorskry gedurende enige aaneenlopende tydperk van dertig minute nie.
- (2) Hierdie artikel is nie van toepassing op donker rook wat uit brandstofverbrandingstoerusting uitgelaat word as die toerusting aangeskakel word of terwyl die toerusting nagesien of herstel word nie, of wag om nagesien of herstel te word nie, tensy sodanige uitlating voorkom kon word deur die gebruik van die beste uitvoerbare middele beskikbaar.
- (3) As donker rook strydig met subartikel (1) uitgelaat word, is die eienaar, operateur en/of bewoner van die perseel skuldig aan 'n oortreding.

Installering van brandstofverbrandingstoerusting

7. (1) Geen persoon sal op enige perseel enige brandstofverbrandingstoerusting installeer, verstel, uitbrei of vervang sonder vooraf skriftelike magtiging van die Raad, wat slegs gegee mag word na oorweging van die tersaaklike planne en spesifikasies.
- (2) Enige brandstofverbrandingstoerusting wat op enige perseel geïnstalleer, verstel, uitgebrei of vervang word in ooreenstemming met planne en spesifikasies voorgelê aan en goedgekeur, vir die doeleindes van hierdie artikel, deur die Raad word vermoed, word totdat die teenoorgestelde bewys word, te voldoen aan die bepalings van subartikel (1).
- (3) Waar brandstofverbrandingstoerusting op 'n perseel geïnstalleer, verstel, uitgebrei of vervang is strydig met subartikel (1):
- is die eienaar of bewoner van die perseel en die installeerder van die brandstofverbrandingstoerusting skuldig aan 'n oortreding;
 - die Raad mag, by skriftelike kennisgewing aan die eienaar en bewoner van die perseel, opdrag gee dat die brandstofverbrandingstoerusting van die perseel verwyder word op die eienaar en operateur se koste en binne die tydperk soos bepaal in die kennisgewing.

Operasie van brandstofverbrandingstoerusting

8. (1) Geen persoon sal enige brandstofverbrandingstoerusting op enige perseel gebruik of opereer strydig met die magtiging verwys na in artikel 7 nie.
- (2) Waar brandstofverbrandingstoerusting op die perseel strydig met subartikel (1) gebruik of geopereer is:
- sal die eienaar en die bewoner van die perseel en die operateur van die brandstofverbrandingstoerusting elk skuldig wees aan 'n oortreding;
 - Die Raad mag by skriftelike kennisgewing aan die eienaar en bewoner van die perseel:
 - hul magtiging ingevolge artikel 7 herroep; en
 - beveel dat die brandstofverbrandingstoerusting van die perseel op die eienaar en operateur se koste en binne die tydperk soos aangegee in die kennisgewing verwyder word.

Vermoede

9. In enige vervolging vir 'n oortreding ingevolge artikel 6 sal daar vermoed word dat donker rook van die perseel uitgelaat is as dit bewys kan word dat enige brandstof of materiaal op die perseel verbrand is en die omstandighede sodanig was dat die verbranding na redelike waarskynlikheid aanleiding gegee het tot die uitlating van donker rook, tensy die eienaar, bewoner of operateur, wat ook al die geval mag wees, toon dat geen donker rook uitgelaat is nie.

Installering en operasie van verduisteringsmeettoerusting

10. (1) Enige gemagtigde persoon mag kennis gee aan enige operateur van brandstofverbrandingstoerusting of enige eienaar of bewoner van 'n perseel waarop brandstofverbrandingstoerusting gebruik of geopereer word, of beoog word om gebruik of geopereer te word, om op sy of haar eie koste verduisteringsmeettoerusting te installeer, in stand te hou en te opereer, indien:
- ongemagtigde en onwettige uitlating van donker rook van die tersaaklike perseel konsekwent en gereeld oor 'n tydperk van ten minste twee dae plaasgevind het;
 - ongemagtigde en onwettige uitlating van donker rook van die tersaaklike perseel met tussenposes oor 'n tydperk van ten minste veertien dae plaasgevind het;
 - brandstofverbrandingstoerusting geïnstalleer is of beoog word om geïnstalleer te word op die tersaaklike perseel wat na redelike waarskynlikheid volgens 'n gemagtigde persoon donker rook sal uitlaat;
 - die persoon aan wie die kennisgewing beteken word meer as een keer skuldig bevind is ingevolge hierdie Deel IV en nie voldoende maatreëls getref het om verdere oortreding van die bepalings van hierdie Deel te voorkom nie; of
 - die gemagtigde persoon die aard van die lugbesoedelende stowwe wat van die tersaaklike perseel uitgelaat word, beskou as redelik waarskynlik om 'n gevaar vir mense se gesondheid en die omgewing in te hou.
- (2) 'n Kennisgewing verwys na in subartikel (1) moet die persoon aan wie dit gerig is, inlig oor:
- daardie persoon se reg om skriftelike voorleggings te maak en om persoonlik te verskyn om inligting en betoë betreffende die kennisgewing voor te lê en te betwis, en moet 'n redelike tydperk stipuleer waarbinne dit gedoen moet word;
 - daardie persoon se reg tot appèl ingevolge artikel 22;
 - daardie persoon se reg om skriftelike redes te versoek waarom die kennisgewing uitgereik is; en
 - die maatreëls wat getref moet word en die moontlike gevolge as daar nie aan die kennisgewing voldoen word nie.

Monitering en toetsing

11. (1) 'n Bewoner of eienaar van die perseel, en die operateur van enige brandstofverbrandingstoerusting van wie verwag word om verduisteringsmeettoerusting ingevolge artikel 10(1) te installeer, moet:
- alle monitering- en toetsingresultate aanteken en 'n afskrif van hierdie rekord in stand hou vir ten minste vier jaar nadat die resultate verkry is;

- (b) indien deur 'n gemagtigde persoon versoek word om dit te doen, die rekord van die monitering- en toetsingresultate vir inspeksie toon; en
- (c) indien deur 'n gemagtigde persoon versoek word om dit te doen, 'n skriftelike verslag (in 'n formaat en teen 'n datum gespesifiseer deur die gemagtigde persoon) van 'n deel of van al die inligting in die rekord van die monitering- en toetsingresultate, verskaf.

Vrystelling

12. (1) Behoudens artikel 26 en by skriftelike aansoek deur die eenaar of bewoner van die perseel of die operateur van die brandstofverbrandingstoerusting, mag die Raad 'n tydelike skriftelike vrystelling van een of al die bepalings van hierdie Deel gee.
- (2) Enige vrystelling ingevolge subartikel (1) verleen, moet ten minste die volgende meld:
- (a) 'n beskrywing van die brandstofverbrandingstoerusting en die perseel waarop dit gebruik of geopereer word;
 - (b) die redes vir die verlening van die vrystelling;
 - (c) die voorwaardes verbonde aan die vrystelling, indien enige;
 - (d) die tydperk waarvoor die vrystelling verleen word; en
 - (e) enige ander tersaaklike inligting.

DEEL V ROOKUITLATING VAN WONINGS

13. (1) Behoudens artikel 4(2) sal geen persoon donker rook van enige woning uitlaat of die uitlating daarvan toelaat vir 'n totale tydperk wat drie minute oorskry gedurende enige onafgebroke tydperk van dertig minute nie.
- (2) Enige persoon wat donker rook uitlaat of die uitlating strydig met subartikel (1) toelaat, begaan 'n oortreding.
- (3) Behoudens artikel 26 en by skriftelike aansoek deur die eenaar of bewoner van enige woning, mag die Raad 'n tydelike skriftelike vrystelling van een of al die bepalings van hierdie Deel verleen.

DEEL VI UITLATING VEROORSAAK DEUR OOPVERBRANDING

14. (1) Behoudens subartikel (4) is enige persoon wat enige materiaal op enige grond of perseel oop verbrand, skuldig aan 'n oortreding tensy vooraf skriftelike magtiging van die Raad verkry is wat mag insluit die oplegging van verdere voorwaardes waaraan die persoon wat magtiging versoek, moet voldoen.
- (2) Die Raad mag nie enige oopverbranding ingevolge artikel (1) magtig nie tensy dit tevrede is dat die volgende vereistes voldoende aangespreek of nagekom is:
- (a) die materiaal sal oop verbrand word op die grond vanwaar dit afkomstig is;
 - (b) daardie persoon elke redelike alternatief vir die vermindering, hergebruik en herbenutting van die materiaal ondersoek en assesseeer ten einde die hoeveelheid materiaal wat oop verbrand word tot die Raad se bevrediging te verminder;
 - (c) daardie persoon elke redelike alternatief vir die verwydering van die materiaal van die grond of perseel tot die Raad se bevrediging ondersoek en assesseeer het;
 - (d) daardie persoon die uitwerking wat die oopverbranding op die omgewing sal hê, tot die Raad se bevrediging ondersoek en assesseeer het;
 - (e) 'n waarskuwing ingevolge artikel 10(1) van die Nasionale Wet op Veld- en Bosbrande, 1998 (Wet 101 van 1998) nie vir die streek gepubliseer is nie;
 - (f) die grond waarop daardie persoon beoog om die materiaal te verbrand staatsgrond, 'n plaas of kleinhoewe, of grond in 'n geproklameerde township wat nie vir woondoeleindes gebruik word nie, is;
 - (g) die oopverbranding ten minste 100 meters van enige geboue of strukture plaasvind;
 - (h) die oopverbranding nie 'n moontlike gevaar vir mense se gesondheid of veiligheid, privaat eiendom of die omgewing inhou nie;
 - (i) daardie persoon die eienaars en bewoners van al die aangrensende eiendomme skriftelik in kennis gestel van:
 - (i) alle bekende besonderhede van die voorgename oopverbranding; en
 - (ii) die reg van eienaars en bewoners van aangrensende eiendomme om skriftelike besware teen die voorgename oopverbranding by die Raad in te dien binne 7 dae nadat hulle in kennis gestel is; en
 - (j) die voorgeskrewe fooi aan die Raad betaal is.
- (3) Enige persoon wat oopverbranding onderneem of toelaat dat oopverbranding strydig met subartikel (1) onderneem word, begaan 'n oortreding.
- (4) Die bepalings van hierdie artikel geld nie vir:

- (a) buitemuurse vleisbraai of braai-aktiwiteit vir ontspanningsdoeleindes op privaat persele nie;
- (b) klein beheerde vure in informele nedersettings vir die doeleindes van kook, waterverhitting en ander huishoudelike doeleindes nie; of
- (c) enige ander afgebakende gebied of bepaalde aktiwiteit waarop die Raad verklaar het dat hierdie artikel nie geld nie.

DEEL VII
UITLATING VAN KOMPRESSIEONTSTEKING-AANGEDREWE VOERTUIE

Verbod

15. (1) Geen persoon mag op 'n openbare pad 'n kompressieontsteking-aangedrewe voertuig wat donker rook uitlaat, bestuur of gebruik, of aanleiding gee tot die bestuur of gebruik daarvan nie.
- (2) As donker rook uitgelaat word strydig met subartikel (1) sal die eienaar en die bestuurder van die voertuig elk skuldig wees aan 'n oortreding.
- (3) Vir die doeleindes van hierdie artikel sal die geregistreerde eienaar van die voertuig vermoed die bestuurder te wees tensy die teendeel bewys word.

Stop voertuie vir inspeksie en toetsing

16. (1) Ten einde 'n gemagtigde persoon in staat te stel om die bepalings van hierdie Deel af te dwing moet die bestuurder van die voertuig voldoen aan enige redelike opdrag wat deur 'n gemagtigde persoon gegee word:
- (a) om die voertuig te stop; en
 - (b) die inspeksie of toets van die voertuig te vergemaklik.
- (2) Versuim om te voldoen aan die opdrag gegee ingevolge subartikel (1) is 'n oortreding.
- (3) As 'n voertuig gestop het ooreenkomstig 'n opdrag gegee ingevolge subartikel (1) mag die gemagtigde persoon:
- (a) die voertuig langs die pad inspekteer en toets in welke geval inspeksie en toetsing uitgevoer moet word:
 - (i) op of so na as doenlik aan die plek waar die opdrag gegee is om die voertuig te stop; en
 - (ii) so gou as doenlik, en in elk geval binne 'n uur, nadat die voertuig gestop is ooreenkomstig die opdrag; of
 - (b) 'n visuele inspeksie van die voertuig uitvoer en, indien die gemagtigde persoon redelikerwys glo dat 'n oortreding begaan is ingevolge artikel 15(2), die bestuurder van die voertuig wat vermoed word die eienaar van die voertuig te wees tensy hy of sy strydige bewyse kan lewer, skriftelik opdrag gee om die voertuig na 'n toetsstasie te neem, binne 'n gespesifiseerde tydperk, vir inspeksie en toetsing ooreenkomstig artikel 17.

Toetsprosedure

17. (1) 'n Gemagtigde persoon moet die gratis versnellingstoetsmetode gebruik om vas te stel of 'n kompressieontsteking-aangedrewe voertuig strydig met artikel 15(1) bestuur of gebruik word.
- (2) Die volgende prosedure moet gevolg word ten einde 'n gratis versnellingstoets te doen:
- (a) as die gemagtigde persoon opdrag gee, moet die bestuurder die voertuig aanskakel, die rathefboom na neutraal skuif en die koppelaar trap;
 - (b) terwyl die voertuig luier, moet die gemagtigde persoon 'n visuele inspeksie van die voertuig se uitlaatstelsel uitvoer;
 - (c) as die gemagtigde persoon opdrag gee, moet die bestuurder van die voertuig in minder as een sekonde die voertuig se versnellerpedaal gelydelik heeltemal intrap; met dien verstande dat die gemagtigde persoon dit self mag doen as die bestuurder versuim of weier om te voldoen aan die gemagtigde persoon se redelike instruksies;
 - (d) terwyl die versnellerpedaal ingetrap word, moet die gemagtigde persoon die rook wat uit die voertuig se uitlaatstelsel uitgelaat word, meet ten einde te bepaal of dit donker rook is of nie;
 - (e) die bestuurder van die voertuig mag net die voertuig se versnellerpedaal stadig laat terugkom as die enjin afsnyspoed bereik het, of as die gemagtigde persoon opdrag gee om dit te doen.
- (3) Indien, nadat die gratis versnellingstoets uitgevoer is, die gemagtigde persoon tevrede is dat die voertuig:
- (a) nie donker rook uitlaat nie, dan moet die gemagtigde persoon 'n sertifikaat aan die voertuig se bestuurder verskaf met 'n aanduiding dat die voertuig nie strydig met artikel 15(1) bestuur of gebruik word nie; of
 - (b) donker rook uitlaat, moet die gemagtigde persoon ooreenkomstig artikel 18 'n herstelkennisgewing aan die voertuig se bestuurder uitreik.

Herstelkennisgewing

18. (1) 'n Herstelkennisgewing bepaal dat die eienaar van die voertuig die voertuig binne 'n spesifieke tydperk moet herstel, en dat die voertuig na 'n plek geïdentifiseer in die kennisgewing geneem moet word vir hertoetsing voor die verval van daardie tydperk.
- (2) Die herstelkennisgewing moet onder meer die volgende inligting bevat:

- (a) die fabrikaat, model en registrasienommer van die voertuig;
 - (b) die naam, adres en identiteitsnommer van die bestuurder van die voertuig; en
 - (c) as die bestuurder nie die eienaar is nie, die naam en adres van die voertuig se eienaar.
- (3) 'n Persoon begaan 'n oortreding ingevolge hierdie artikel as daardie persoon misluk:
- (a) om te voldoen aan die kennisgewing verwys na in subartikel (1);
 - (b) in die hertoets verwys na in subartikel (1).
- (4) Dit is nie 'n verweer in verrigtinge ingevolge subartikel (3) om te beweer dat die bestuurder van die voertuig versuim het om die herstellkennisgewing onder die eienaar van daardie voertuig se aandag te bring nie.

DEEL VIII UITLATING WAT 'N ERGERNIS VEROORSAAK

Verbod

19. Enige bewoner of eienaar van 'n perseel vanwaar 'n ergernis afkomstig is, of waar 'n ergernis bestaan, is skuldig aan 'n oortreding.

Verwyderingskennisgewing

20. (1) 'n Gemagtigde persoon mag 'n verwyderingskennisgewing aan enige persoon beteken wat die gemagtigde persoon redelikerwys glo waarskynlik 'n oortreding ingevolge artikel 19 sal begaan of begaan het, wat daardie persoon oproep:
- (a) om die ergernis binne 'n tydperk gespesifiseer in die kennisgewing te verwyder;
 - (b) om al die nodige stappe te doen om 'n herhaling van die ergernis te voorkom; en
 - (c) om te voldoen aan enige ander voorwaardes soos vervat in die kennisgewing.
- (2) Vir die doeleindes van subartikel (1) mag die gemagtigde persoon 'n redelike oortuiging vorm gebaseer op sy of haar eie ervaring dat 'n lugbesoedelende stof uitgelaat is van 'n perseel wat bewoon of besit is deur die persoon aan wie die verwyderingskennisgewing beteken gaan word.
- (3) 'n Verwyderingskennisgewing ingevolge subartikel (1) mag beteken word:
- (a) aan die eienaar van enige perseel, deur:
 - (i) dit aan die eienaar af te lewer, of as die eienaar nie opgespoor kan word nie of oorsee woon, daardie persoon se agent;
 - (ii) dit per aangetekende pos te stuur aan die eienaar se laaste bekende adres, of aan die agent se laaste bekende adres; of
 - (iii) dit af te lewer by die adres waar die perseel geleë is indien die eienaar se adres en die agent se adres onbekend is.
 - (b) aan die bewoner van die perseel, deur:
 - (i) dit aan die bewoner af te lewer;
 - (ii) dit per aangetekende pos te stuur aan die bewoner by die adres waar die perseel geleë is.
- (4) Enige persoon wat versuim om te voldoen aan die verwyderingskennisgewing beteken aan daardie persoon ingevolge subartikel (1) is skuldig aan 'n oortreding.
- (5) Bykomend tot enige ander straf wat opgelê mag word, mag 'n hof 'n persoon wat skuldig bevind word aan 'n oortreding ingevolge subartikel (4) beveel om stappe te doen wat volgens die hof noodsaaklik is binne 'n tydperk deur die hof bepaal ten einde 'n herhaling van die ergernis te voorkom.

Stappe om die ergernis te verwyder

21. Die Raad mag egter op sy eie koste sodanige stappe neem as wat dit nodig ag om die skade wat deur die ergernis veroorsaak is, te remedieer en 'n herhaling daarvan te voorkom, en mag die redelike koste wat so aangegaan is, verhaal van die persoon wat vir die ergernis verantwoordelik is.

DEEL IX APPËLLE

22. (1) Enige persoon mag appelleer teen 'n besluit geneem deur 'n gemagtigde persoon ingevolge hierdie verordening deur skriftelik kennis van die appèl, waarin die rede vir die appèl gestel word, aan die munisipale bestuurder te gee binne 30 dae vanaf die datum waarop daardie persoon van die besluit in kennis gestel is.
- (2) Hangende bevestiging, wysiging of herroeping van die besluit ooreenkomstig subartikel (4), enige persoon wat teen 'n besluit appelleer ooreenkomstig subartikel (1), tensy die Raad anders bepaal:
- (a) moet nietemin substantief voldoen aan enige verpligtinge wat opgelê mag gewees het as gevolg van die besluit wat onder appèl is; en
 - (b) mag nie enige regte uitoefen wat mag ontstaan het as gevolg van die besluit wat onderhewig is aan die appèlaansoek, met dien verstande dat geen ander persoon enige reg mag uitoefen wat beide mag toeval nie.

- (3) Binne 14 dae nadat die kennisgewing van appèl ontvang is, moet die munisipale bestuurder:
- (a) die appèl aan die geskikte appèlgesag genoem in subartikel (5) voorlê;
 - (b) alle nodige maatreëls tref om te verseker dat alle persone wie se regte beduidend nadelig beïnvloed mag word deur die vergunning van die appèlaansoek, insluitende enige persone geregistreer as geaffekteerde belanghebbendes, skriftelik in kennis gestel word van die appèlaansoek en geadviseer word oor hul reg om:
 - (i) 'n afskrif van die appèlaansoek te verkry;
 - (ii) skriftelike besware teen die aansoek aan die munisipale bestuurder binne 30 dae na die datum van kennisgewing voor te lê.
- (4) Na die verstryking van die 30 dae tydperk verwys na in subartikel (3)(b)(ii), moet die appèlgesag die appèl en enige besware wat daarteen ingebring is, oorweeg en die besluit bevestig, wysig of herroep.
- (5) As die appèl is teen 'n besluit geneem deur—
- (a) 'n gemagtigde persoon buiten die munisipale bestuurder, dan is die munisipale bestuurder die appèlgesag; of
 - (b) die munisipale bestuurder, dan is die Raad of sodanige komitee as wat dit mag delegeer, die appèlgesag.
- (6) 'n Appèlgesag moet die appèl aan die gang sit binne 60 dae nadat kennisgewing ontvang is en die appèl moet binne 'n redelike tydperk beslis word.

DEEL X ALGEMENE BEPALINGS

Raad en Staat is gebonde

23. Die Staat en die Raad is aan die verordening gebonde.

Strydigheid

24. (1) In geval van strydigheid met enige ander verordening wat lugbesoedeling regstreeks of onregstreeks reguleer, is hierdie verordening van krag.
- (2) In geval van strydigheid met die Wet op Voorkoming van Lugbesoedeling, 1965 (Wet 45 van 1965) is die bepalings van daardie Wet van krag binne die gebied van die Raad se jurisdiksie.
- (3) In geval van strydigheid tussen die Engelse, Xhosa of Afrikaanse weergawes van hierdie verordening, is die Engelse weergawe beslissend.

Oortredings en strawwe

25. (1) Enige persoon wat artikel 13(2), 15(2) of 19 van hierdie verordening oortree, is by skuldigbevinding aan gevangenisstraf van nie langer as 30 dae of 'n boete of beide 'n boete en gevangenisstraf onderhewig.
- (2) Enige persoon wat artikels 7(3), 8(2), 18(3)(a) 18(3)(b) of 20(4) van hierdie verordening oortree, is by skuldigbevinding aan gevangenisstraf van nie langer as twee (2) jaar of 'n boete of beide 'n boete en gevangenisstraf onderhewig.
- (3) Enige persoon wat artikel 14 van hierdie verordening oortree, is by skuldigbevinding aan gevangenisstraf van nie langer as een (1) jaar of 'n boete of beide 'n boete en gevangenisstraf onderhewig.
- (4) Dit is 'n oortreding om:
- (a) vals inligting met betrekking tot enige geskilpunt ten opsigte van hierdie verordening te verskaf, of;
 - (b) te weier om met 'n gemagtigde persoon se versoek wat ingevolge hierdie verordening gemaak is, saam te werk en enige persoon wat skuldig bevind is aan so 'n oortreding is onderhewig aan gevangenisstraf van nie langer as 30 dae of 'n boete of beide 'n boete en gevangenisstraf.
- (5) Waar geen spesifieke straf bepaal is nie, is enige persoon wat 'n oortreding ingevolge hierdie verordening begaan by skuldigbevinding aan gevangenisstraf van 'n tydperk van nie langer as een (1) jaar of 'n boete of beide 'n boete en gevangenisstraf onderhewig.
- (6) Versuim om te voldoen aan 'n kennisgewing, opdrag of instruksie met betrekking tot hierdie verordening behels 'n voortgesette oortreding.
- (7) Enige persoon wat 'n voortgesette oortreding begaan, is skuldig aan 'n afsonderlike oortreding vir elke dag waartydens daardie persoon versuim om te voldoen aan 'n kennisgewing, opdrag of instruksie met betrekking tot hierdie verordening.
- (8) Benewens die oplegging van 'n boete en/of gevangenisstraf mag 'n hof enige persoon wat skuldig bevind is aan 'n oortreding ingevolge hierdie verordening beveel:
- (a) om die skade wat berokken is, te remedieer;
 - (b) om skadevergoeding te betaal vir skade berokken aan 'n ander persoon of eiendom, welke bevel die krag en uitwerking van 'n privaatregtelike uitspraak het; en
 - (c) om op die persoon se eie koste verduisteringsmeettoerusting ooreenkomstig die bepalings van artikel 11 te installeer en te opereer.

Vrystellings

26. (1) Die Raad mag skriftelik 'n tydelike vrystelling van een of al die bepalings van Dele III, IV en V verleen mits die Raad:
- (a) tevrede is dat die verlening van vrystelling nie die doel soos beoog in artikel 2(1) beduidend benadeel nie; en
 - (b) enige vrystelling verleen behoudens voorwaardes wat die bereiking van die doel verwys na in artikel 2(1) bevorder.
- (2) Die Raad mag nie 'n vrystelling verleen ingevolge subartikel (1) totdat die Raad:
- (a) redelike maatreëls getref het om te verseker dat al die persone wie se regte beduidend nadelig beïnvloed mag word deur die verlening van die vrystelling, insluitend maar nie beperk tot aangrensende grondeienaars of bewoners nie, bewus is van die aansoek om vrystelling en hoe om 'n afskrif daarvan in die hande te kry;
 - (b) 'n redelike geleentheid aan sodanige persoon gebied het om teen die aansoek beswaar aan te teken; en
 - (c) enige besware wat geopper is na behore oorweeg en in aanmerking neem.

Voorbehoudsbepaling

27. Enigiets wat gedoen is of geag gedoen te gewees het ingevolge enige ander wet bly geldig in soverre dit konsekwent is met hierdie verordening; of totdat enigiets wat ingevolge hierdie verordening gedoen word, dit neutraliseer.

Inwerkingtreding

28. Hierdie verordening tree in werking op 'n datum of datums wat deur die Raad deur publikasie in die Provinsiale Koerant vasgestel word.
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ISIXEKO SASEKAPA:

UMTHETHO KAMASIPALA WOLAWULO LONGCOLISEKO LOMOYA

Phantsi kwamagunya anikezwe licandelo 156(2) loMthetho woMgaqo-siseko weRiphabliki yoMzantsi Afrika, 1996 (uMthetho 108 ka-1996), iSixeko saseKapa samkele lo mthetho kamasipala ulandelayo—

ISIAHLULO I
UKUCHAZWA KUNYE NEMITHETHO-SISEKO YOKUQALA

Inkcazelo

1. (1) Kulo mthetho kamasipala, ngaphandle kokuba umxholo uchaza ngenye indlela—

“isiphumo esingalunganga” sithetha nayiphina impembelelo ekhoyo okanye enokuthi ibekhona kwindalo esingqongileyo nethi yonakalise okanye enokuthi yonakalise indalo esingqongileyo okanye nayiphina imbonakalo yayo kangangokuba ide yenzeke imihla ngemihla okanye ngokungenamsebenzi;

“isingcolisi somoya” sithetha nayiphina into (ukuquka kodwa singanyinanga uthuli, umsi, ukuvutha komlilo okuqhumayo kunye nerhasi) okwenza okanye okunokuthi kubangele ungcoliseko lomoya;

“ungcoliseko lomoya” luthetha nakuphina ukutshintsha okwenzeka kwindalo esingqongileyo okubangelwa yiyo nantonina ekhutshelwa emoyeni ojikeleza umhlaba isuka kuwo nawuphina umsebenzi, nalapho oku kutshintsha kunesiphumo esingalunganga kwimpilo yoluntu okanye kwimpilo jikelele okanye kulwakhiwo, ukomelela kwakhona ngokukhawuleza kunye nemveliso yendalo okanye ulawulo lwezinto eziphilayo, okanye kwizinto eziluncedo eluntwini, okanye eziyakuthi zibe noncedo olunjalo kwixesha elizayo;

“umda wolawulo longcoliseko lomoya” uthetha ummandla othile emhlabeni nalapho iSahlulo III salo mthetho kamasipala simiselwe ukuba sisebenze khona;

“umoya ojikeleza umhlaba” uthetha umoya ongavalelwanga sisakhiwo, umatshini, itshimini okanye ezinye ezinto ezinjalo;

“igosa eligunyazisiweyo” lithetha nawuphina umntu ogunyaziswe liBhunga ukuba azalisekise nawaphina amalungiselelo alo mthetho kamasipala;

“iindlela zokusebenza ezifanelekileyo” zithetha imigangatho esebenza kakhulu enokuthi ithatyathwe ekukhuseleni, ekunciphiseni okanye ekuphunguleni ungcoliseko lomoya, ngokuqaphela zonke ezinye izinto ezinxulumene noku, phakathi kwezinye izinto, iimeko zengingqi kunye nemiba ethile, iziphumo ezingalunganga ezinokuthi zibekhona, ulwazi lwangoku olukhoyo ngobuchwepheshe kunye nempembelelo yemali ngokunxulumene neqondo lokhuselo lwendalo esingqongileyo ekulindeleke ukuba lifezekiswe ngokusebenzisa okanye ngokwamkela le migangatho;

“itshimini” ithetha nayiphina into eyakhiweyo okanye evulekileyo elulo naluphina uhlobo nalapho izinto ezingcolisa umoya zinokuthi ziphume khona;

“inqwelo-mafutha esebenzisa ucinezelo lwenjini” ithetha inqwelo-mafutha esebenzisa ukutshiswa kwangaphakathi, ucinezelo lwenjini, idizile okanye amafutha enjini anjalo;

“iBhunga” lithetha iSixeko saseKapa;

“umsi omnyama” uthetha:

(a) ngokunxulumene neSahlulo IV neSahlulo V salo mthetho kamasipala, umsi othi xa kusetyenziswa umlinganiselo wawo kusetyenziswe imitha elula yokufunxa okanye isixhobo esenza umlinganiselo wobumnyama nesinobumnyama obungamashumi amabini ekhulwini (20%) okanye ngaphezulu;

(b) ngokunxulumene neSahlulo VII salo mthetho kamasipala:

(i) umsi onokuxinana okungamashumi amathandathu (60) eeyunithi zomsi okanye ngaphezulu, ngaphandle kokuba ngokunxulumene nokuphuma komsi osuka kwiinqwelo-mafutha ezisebenzisa injini yomsinga werhasi, kuthetha ukuba ukuxinana kweeyunithi zomsi okungamashumi amathandathu anesithandathu (66) okanye ngaphezulu; okanye

(ii) umsi onokufunxa okulula onenani elandisayo elingaphezulu kwe- 2.125 m^{-1} ngaphandle kokuba ngokunxulumene nokuphuma komsi osuka kwiinqwelo-mafutha ezisebenzisa injini yomsinga werhasi, kuthetha ukufunxa okulula okunenani elandisayo elingaphezulu kwe- 2.51 m^{-1} ;

“uthuli” luthetha nayiphina into engengomanzi neluhlobo olucolekileyo okanye ukudilika okukwaziyo ukusasazeka kumoya ojikeleza umhlaba;

“indawo yokuhlala” ithetha nasiphina isakhiwo okanye into eyakhiweyo okanye inxenywe yesakhiwo esetyenziswa njengendawo yokuhlala, kwakunye naziphina ezinye izakhiwo ezingaphandle ezisecaleni kwayo, kodwa akuquki amatyotyombe kunye nezinye iindawo zokuhlala ezingekho sikweni;

“indalo esingqongileyo” ithetha konke okusingqongileyo nalapho kukho khona abantu, ize yenziwe koku kulandelayo—

(a) umhlaba, amanzi kunye nomoya ojikeleza umhlaba;

(b) izinto eziphilayo, ubomi bezityalo nezilwanyana;

(c) nayiphina inxenywe okanye kokubini okuchazwe ku-(a) no-(b) kwakunye nolwalamano lwangaphakathi kubo naphakathi kwabo; kwakunye

(d) izinto zasemzimbeni, amachiza, ubuhle kunye nenkcubeko kwakunye neemeko eziqhubekayo ezithi zibe nempembelelo kwimpilo yoluntu nempilo jikelele;

“uvavanyo olungahlawulelwayo lokuqhuba” luthetha indlela echazwe kwicandelo 17(2) elichaza ukuba iinqwelo-mafutha eziqhutywa okanye ezisetyenziswa ngokuchasene necandelo 15(1);

“isixhobo sokutshisa amafutha” sithetha naliphina iziko lesinyithi, ibhoyila okanye imbiza yokubilisa amanzi, isitovu sokutshisa inkunkuma, okanye nasiphina esinye isixhobo, ukuquka netshimini;

(a) esenzelwe ukutshisa okanye esinako ukutshisa izinto ezingamanzi, irhasi okanye amafutha angengamanzi;

(b) esisetyenziswa ekulahlweni kwayo nayiphina into okanye inkunkuma ngokuyitshisa; okanye

(c) esisetyenziswa ekufakeni amanzi, irhasi okanye amafutha angengamanzi kuyo nayiphina inkqubo equka ukusetyenziswa kobushushu;

“imitha yokufunxa elula” ithetha isixhobo sokulinganisa esisebenzisa iseli elula ebuthathaka ekuchazeni ubungakanani bokukhanya obufunxiweyo sisingcolisi somoya;

“izinto eziphilayo” zithetha nayiphina into engezilwanyana okanye izityalo enako ukugqithisa okanye ekhupha izinto zemveli ezifanayo, ukuquka izinto ezingenazintsholongwane kunye neentsholongwane ezincinane kakhulu;

“umanejala kamasipala” uthetha umntu oqeshwe njengomanejala kamasipala liBhunga phantsi kwecandelo 82 le-Local Government: Municipal Structures Act, 1998 (uMthetho 117 ka-1998);

“into eyinkathazo eluntwini” ithetha ukuphazamiseka okungafanelekanga okanye ukuphazamiseka okwenziwa lungcoliseko lomoya;

(a) kwimpilo okanye indlela yokuphila okanye izinto eziphilayo; okanye

(b) ukusetyenziswa kunye/okanye ukonwabela komnini okanye umhlali kwindawo yakhe kunye/okanye indawo esingqongileyo;

“ubumnyama” buthetha izinga lokukhanya okubonakalayo okuncitshiswe zizingcolisi zomoya ezikhutshwe kwimilanjana busiya kukukhanya obubonakalayo nobuchazwe njengepesenti;

“ukutshisa okuvulekileyo” kuthetha ukutshiswa kwezinto ungenayo itshimini yokungenisa nokukhupha umoya wezinto ezitshayo iwuse kumoya ojikeleze umhlaba kwaye “ukutshisa endaweni evulekileyo” kunentsingiselo eyeleleneyo;

“umsebenzisi” uthetha umntu ongumnini okanye olawula okuthile, okanye olawula umsebenzi okanye inkqubo ethi ikhuphe izinto ezingcolisa umoya;

“ukwaziswa kwehlo mela ledolophu” kuthetha nawuphina umhlaba okwiyunithi yomda osetyenziswa njengendawo yokuhlala;

“umntu” uthetha umntu wendalo okanye umntu onobulungisa;

“amaziko” athetha nasiphina isakhiwo okanye ulwakiwo oludibene nomhlaba apho kukho khona amaziko kwakunye nawuphina umhlaba odibana nawo nokuhlala kuwo abantu okanye osetyenziswa ngokunxulumene nawo nawuphina umsebenzi ongomnye owenziwa kwelo ziko, kwaye ukwaquka umhlaba ongenaso nasiphina isakhiwo kwakunye nayiphina into ehambayo, inqanawa, iphenyane okanye nayiphina enye into esebenza okanye ekhoyo ngaphakathi kummandla ophantsi kolawulo lobulungisa beBhunga okanye kwindawo ebizelweyo yalo naliphina izibuko;

“indlela yoluntu jikelele” ithetha indlela apho uluntu jikelele okanye uwonke-wonke onelungelo lokuyisebenzisa;

“umsi” uthetha irhasi, izinto ezithile kunye nemveliso yokutsha ekukhutshelwe kumoya ojikeleza umhlaba xa kutshiswe into ethile okanye ibekwe ebushushwini ukuquka umle okanye umsizi, uhlalutye kunye nezinto ezinohlalutye eziphuma emsini;

“inqwelo-mafutha” ithetha nasiphina isithuthi, isikhoji semoto, isithuthuthu, ibhasi, ilori okanye nayiphina enye inqwelo-mafutha ehambisa izinto ezithile nesebenzisa iyonke okanye inxenye yayo isipirithi esinokutsha, umphunga, irhasi okanye i-oyile okanye nangayiphina indlela engeyiyo eyenziwa ngumntu ophilayo okanye izilwanyana.

Injongo

2. (1) Injongo yalo mthetho kamasipala:

(a) kukuqalisa ukusebenzisa ilungelo eliqukathwe licandelo 24 loMthetho woMgaqo-siseko weRiphabliki yoMzantsi Afrika, 1996 (uMthetho 108 ka-1996) ngokulawula ungcoliseko lomoya ngaphakathi kummandla wolawulo lweBhunga; kwakunye

(b) nokuqinisekisa ukuba ungcoliseko lomoya luyakhuselwa okanye xa kungekho ndlela konke-konke yokulukhusela, luncitshiswe luphinde lulungiswe.

(2) Nawuphina umntu ogunyazisa eli gunya phantsi kwalo mthetho kamasipala kufuneka agunyazise amagunya akhe ukuze anikeze ukuqalisa kwenjongo echazwe kwicandelwana (1).

ISIAHLULO II UMSEBENZI WENKATHALO

3. (1) Nawuphina umntu onoxanduva lulonke okanye inxenye yalo ekudaleni ungcoliseko lomoya okanye obangele ingozi yokwenzeka kongcoliseko lomoya kufuneka athathe onke amanyathelo afanelekileyo:

(a) okukhusela naluphina ungcoliseko lomoya olunokwenzeka ukuba lungaphindi lwenzeke; kwakunye

(b) nokunciphisa okanye xa kufanelekile, ukulungisa naluphina ungcoliseko lomoya olusele lwenzekile.

- (2) iBhunga lingathi njengesisombululo esijolise kuye nawuphina umntu othe akaphumelela ukuthatha imigangatho efanelekileyo phantsi kwecandelwana (1) liqalise—
- ukuphanda, ukuvavanya kunye nokuhlola impembelelo yemisebenzi ethile lize linike ingxelo yoko;
 - liqalise ukuthatha amanyathelo efanelekileyo ngaphambi komhla onikezelweyo;
 - liqhubekeke ngenyameko ngalo migangatho; kwakunye
 - nokuba liyigqibe ngaphambi kokufika komhla ochaziweyo.
- Phambi kokwenza izisombululo ezinjalo, iBhunga kufuneka linikeze abantu abachaphazelekayo ithuba eloneleyo lokubazisa malunga ngomdla wabo kwaye lingacebisana nalo naliphina icandelo likarhulumente.
- (3) Xa umntu ethe akaphumelela ukuthobelana noku, okanye angathobelani ngokwaneleyo kunye nomgaqo ophantsi kwecandelwana (2), iBhunga lingathatha amanyathelo afanelekileyo okulungisa le meko.
- (4) Ngaphandle kokuba umntu onjalo uthe akaphumelela ukuthatha amanyathelo ekufuneka ewathathile phantsi kwecandelwana (1), iBhunga lingafuna onke amaxabiso afanelekileyo athe enzeka ngenxa yalo mntu, lisenza oko phantsi kwecandelwana (3) kuye nawuphina okanye kubo bonke aba bantu balandelayo—
- nawuphina umntu onoxanduva okanye owayenoxanduva okanye othe wanegalelo elithe ngqo okanye elingathanga ngqo kungcoliseko lomoya okanye ukwenzeka kongcoliseko lomoya;
 - umnini womhlaba ngelo xesha lokwenzeka kongcoliseko lomoya okanye umntu olandele umnini lowo ngokwetayitile;
 - umntu ophetheyo kulo mhlaba okanye nawuphina umntu onelungelo okanye owayenelungelo lokusebenzisa umhlaba lowo ngexesha—
 - lokwenzeka komsebenzi lowo okanye inkqubo ekuthethwa ngayo; okanye
 - lokwenzeka kwale meko; okanye
 - nawuphina umntu othe ngokungakhathali akaphumelela ukukhusela—
 - umsebenzi okanye inkqubo eyenziweyo okanye eqhubekileyo; okanye
 - imeko enjalo ukuba iqhubeke.
- (5) Ukuba kungaphezulu komntu omnye onemfanelo ngokwase-mthethweni phantsi kwecandelo (4), imfanelo leyo ingohlulwa abo bantu bachaphazelekayo ngokweqondo loxanduva lomntu ngamnye ekonakaliseni indalo esingqongileyo nokubangele ukungaphumeleli kwabo ekuthatheni amanyathelo afanelekileyo nafunekayo phantsi kwecandelwana (1) kunye no-(2).

ISAHLULO III UMDA WOLAWULO LONGCOLISEKO LOMOYA

Ukumiswa komda wolawulo longcoliseko lomoya

4. (1) Ummandla uwonke ongaphakathi kolawulo lweBhunga waziswa njengomda wolawulo longcoliseko lomoya.
- (2) Ngaphakathi komda wolawulo longcoliseko lomoya, iBhunga lingathi kumaxesha ngamaxesha, ligqithise isaziso kwiGazethi yePhondo:
- ukuthintela okanye ukunqanda ukukhutshwa kwesingcolisi somoya esinye okanye izingcolisi zomoya ezininzi ezisuka kuwo onke amaziko okanye amaziko athile;
 - ukuthintela okanye ukunqanda ukutshiswa kweendidi ezithile zamafutha;
 - lazise iindawo ekufuneka kungekho msi kuzo, nalapho umsi onobumnyama obungaphezulu kweshumi ekhulwini (10%) lungasayi kuvunyelwa;
 - lichaze iimfuno ezohlukeneyo kumda wolawulo longcoliseko lomoya ezinxulumene nomgangatho wezinga lomoya ngokunxulumene:
 - nenxenye yeendawo ezithile ezohlukeneyo;
 - amaziko achaziweyo;
 - umgangatho wamaziko; okanye
 - amaziko asetyenziswa kwiinjongo ezithile.
- (3) iBhunga lingaphuhlisa lize lipapashe imigaqo-nkqubo kunye nezikhokhelo, ukuquka izikhokhelo zobugcisa ezinxulumene nokumiswa kwemisebenzi ethi ngokuthe ngqo okanye ngokungathanga ngqo ibangele ungcoliseko lomoya ngaphakathi kumda wolawulo longcoliseko lomoya.
- (4) Ngokuxhomekeka kwicandelo 26, iBhunga lingabhala phantsi likhulule amaziko athile, umgangatho wamaziko okanye amaziko asetyenziselwa iinjongo ezithile kumsebenzi okumgangatho owamkelwe liBhunga phantsi kweli candela.

**ISAHLULO IV
UKUKHUTSHWA KOMSI KUMAZIKO INGEZIZO IINDAWO ZOKUHLALA**

Ukusetyenziswa

5. Kwiinjongo zesi Sahlulo, “amaziko” awaquki iindawo zokuhlala.

Isithintelo

6. (1) Ngokuxhomekeka kwicandelwana (2), umsi omnyama akufunekanga ukhutshwe kulo naliphina iziko kangangexesha elingaphezulu kwemizuzu emithathu kulo naliphina ixesha eliqhubekayo lemizuzu engamashumi amathathu.
- (2) Eli candelo alibhekiselelanga kumsi omnyama ophuma kwizixhobo ezisebenzisa amafutha nokuthi oku kwenzeke ngexa isixhobo esinjalo sidunyiswayo okanye ngexa esi sixhobo singcitywa okanye silungiswa, okanye esilindele ukungcitywa okanye ukulungiswa, ngaphandle kokuba ukukhutshwa komsi okunjalo ngekukhuselwe kusetyenziswa ezona ndlela ezifanelekileyo ezikhoyo.
- (3) Ukuba umsi omnyama ukhutshiwe ngokuchasene necandelwana (1), umnini, umsebenzisi kunye/okanye umhlali kula maziko uya kufunyanwa enetyala.

Ukufakelwa kwesixhobo esitshisa amafutha

7. (1) Akukho mntu oya kufakela, atshintshe, andise okanye afakele isixhobo esingesinye sokutshisa amafutha kuwo nawaphina amaziko ngaphandle kwemvume yangaphambili ebhaliweyo esuka kwiBhunga, neyakuthi inikezwe kuphela emva kokuqwalaselwa kwezicwangciso ezifanelekileyo nezinto ezizodwa.
- (2) Nasiphina isixhobo esitshisa amafutha esifakelweyo, satshintshwa, sandiswa okanye kwafakelwa esinye endaweni yesinye ngokuhambelana nezicwangciso nezinto ezizodwa ezigqithisiweyo zaze zamkelwa njengeenjongo zeli candela liBhunga, siya kusetyenziswa kude okuchasene noku kude kwamkelwe ukuba kuthobela amalungiselelo ecandelwana (1).
- (3) Apho kufakelwe khona isixhobo esitshisa amafutha, satshintshwa, sandiswa okanye kwafakelwa esinye endaweni yesinye kumaziko ngokuchasene necandelwana (1):
- (a) umnini kunye nomhlali kumaziko kunye nomfakeli wesixhobo esitshisa amafutha baya kufunyanwa benetyala
- (b) iBhunga lingabhala phantsi isaziso esiya kumnini kunye nomhlali kulo maziko limyalele ukuba akhuphe isixhobo sokutshisa amafutha kumaziko ngeendleko zomnini kunye nomsebenzisi kwaye oko kwenzeke kwixesha elichazwe kwisaziso eso.

Ukusetyenziswa kwesixhobo esitshisa amafutha

8. (1) Akukho mntu oya kusebenzisa okanye asebenzise nasiphina isixhobo sokutshisa amafutha kuwo nawaphina amaziko ngokuchasene negunya elichazwe kwicandelo 7.
- (2) Apho kuthe kwasetyenziswa isixhobo esitshisa amafutha kumaziko ngokuchasene necandelwana (1):
- (a) umnini kunye nomhlali kulo maziko kunye nomsebenzisi wesixhobo sokutshisa amafutha baya kufunyanwa benetyala;
- (b) iBhunga lingabhala isaziso esiya kumnini kunye nomhlali kulo maziko:
- (i) lirhoxise igunya lalo phantsi kwecandelo 7; kwakunye
- (ii) liyalele ukususwa kwesixhobo sokutshisa amafutha kulo maziko ngeendleko zomnini okanye umsebenzisi kwaye lingaphelanga ixesha elichazwe kwesi saziso.

Isizindlo

9. Ukuba nasiphina isimangalo setyala eliphantsi kwecandelo 6, umsi omnyama kuya kucingelwa ukuba ukhutshwe kumaziko lawo xa kukho into ebonakalisa ukuba nawaphina amafutha okanye okuthile bekutshisiwe kumaziko lawo kwaye neemeko bezibonisa ukuba olu tshiso bekufanele ukuba lukhuphe umsi omnyama ngaphandle kokuba umnini, umhlali okanye umsebenzisi, xa kunjalo, abonise ukuba akukho msi omnyama othe waphuma.

Ukufakelwa kunye nokusetyenziswa kwesixhobo somlinganiselo wobumnyama

10. (1) Igosa eligunyazisiweyo lingagqithisa isaziso kuye nawuphina umsebenzisi wesixhobo sokutshisa amafutha okanye kuye nawuphina umnini okanye umhlali kumaziko apho bekusetyenziswe khona isixhobo sokutshisa amafutha, okanye kukho injongo yokusisebenzisa, ukufakelwa, ukugcinwa kunye nokusetyenziswa kwesixhobo somlinganiselo wobumnyama ngexabiso lakhe, xa:
- (a) ukuphuma komsi omnyama okungagunyaziswanga nokungekho mthethweni kumaziko kuthe kwenzeka ngokulandelelanayo narhoqo kwixesha leentsuku ezimbini ubuncinane;
- (b) ukuphuma komsi omnyama okungagunyaziswanga nokungekho mthethweni kumaziko okuthe kwenzeka ngokulandelelanayo narhoqo kwixesha leentsuku ezilishumi elinesine ubuncinane;
- (c) isixhobo sokutshisa amafutha sifakelwe okanye kujongwe ukuba sifakelwe kula maziko nokunokuthi kwenzeke ngokwembono yegosa eligunyazisiweyo ukuba kukhutshwe umsi omnyama;
- (d) umntu okhutshelwe isaziso sele ebanjwe ngaphezulu kwesinye phantsi kwesi Sahlulo IV kwaye akathathanga manyathelo afanelekileyo okukhusela ukuchasana okungokunye namalungiselelo esi Sahlulo; okanye
- (e) igosa eligunyazisiweyo licinga ukuba uhlobo lwezi zingcolisi zomoya ezikhutshiweyo kula maziko kusenokudala ubungozi kwimpilo yoluntu okanye kwindalo esingqongileyo.

- (2) Isaziso ekuthethwa ngaso kwicandelwana (1) kufuneka sazise umntu esithunyelwa kuye ukuba:
- ilungelo lomntu lokwenza ingxelo ebhaliweyo okanye eze ngaphambili ukuza kunika ulwazi kwakunye nokuchasana noku kunye nokuphikisana okunxulumene nesaziso, kwaye kufuneka achaze ixesha elifanelekileyo okufuneka oku kwenziwe;
 - ilungelo lalo mntu lesibheno phantsi kwecandelo 22;
 - ilungelo lalo mntu lokucela izizathu ezibhaliweyo kunikezelo lwesaziso; kwakunye
 - namanyathelo ekufuneka ethatyathiwe kunye neziphumo ezinokubakho xa isaziso eso singathotyelwanga.

Ukongamela kunye novavanyo

11. (1) Umhlali okanye umnini wamaziko kunye nomsebenzisi waso nasiphina isixhobo sokutshisa amafutha ekufuneka efakele isixhobo sokulinganisa ubumnyama phantsi kwecandelo 10(1) kufuneka:
- agcine ingxelo yeziphumo zizonke zokongamela kunye novavanyo aze agcine ikopi yale ngxelo kangangeminyaka emine ubuncinane emva kokufumana iziphumo;
 - xa ecelwe ukuba enze njalo ligosa eligunyazisiweyo, kufuneka agqithise ingxelo leyo yeziphumo zokongamela kunye novavanyo ukuze zihlolwe; kwakunye
 - nokuba xa ecelwe ukuba enze njalo ligosa eligunyazisiweyo, kufuneka anikeze ingxelo (ikwifomu ngomhla ochazwe ligosa eligunyazisiweyo) yenxenyekanye ulwazi lulonke ngengxelo yeziphumo zokongamela kunye novavanyo.

Ukukhululwa

12. (1) Ngokuxhomekeka kwicandelo 26 kwakunye nokwenziwa kwesicelo esibhaliweyo esisuka kumnini okanye umhlali kula maziko okanye usebenzisi wesixhobo sokutshisa amafutha, iBhunga linganikeza ukhululo lwethutyana ngokubhala phantsi olusuka kwelinye lamalungiselelo okanye amalungiselelo ewonke esi Sahlulo.
- (2) Naluphina ukhululo olunikezwe phantsi kwecandelwana (1) kufuneka luchaze oku kulandelayo:
- inkcazelo ngesixhobo sokutshisa amafutha kunye namaziko apho sisetyenziswa khona;
 - izizathu zonikezelo lolu khululo;
 - iimeko ezihamba nolu khululo xa zikhona;
 - ixesha lonikezelo lolu khululo; kwakunye
 - naluphina olunye ulwazi olufanelekileyo.

**ISAHLULO V
UKUKHUTSHWA KOMSI KWIINDAWO EKHULALA KUZO ABANTU**

13. (1) Ngokuxhomekeka kwicandela 4(2), akukho mntu oya kukhupha okanye avumele ukukhutshwa komsi omnyama kuyo nayiphina indawo ekuhlala kuyo abantu kangangexesha elingaphezulu kwemizuzu emithathu kulo naliphina ixesha eliqhubekayo kwimizuzu engamashumi amathathu.
- (2) Nawuphina umntu okhupha okanye ovumela ukukhutshwa komsi omnyama ngokuchasene necandelwana (1) uya kuba wenza ityala.
- (3) Ngokuxhomekeka kwicandelo 26 kwakunye nesicelo esibhaliweyo esivela kumnini okanye umhlali waso nasiphina isakhiwo ekuhlala kuso abantu, iBhunga linganikeza ukhululo lwethutyana ngokubhala phantsi kwelinye lamalungiselelo okanye ewonke esi Sahlulo.

**ISAHLULO VI
UMSI OKHUTSHWA YIMILILO EVULEKILEYO**

14. (1) Ngokuxhomekeka kwicandelwana (4), nawuphina umntu ophemba umlilo endaweni evulekileyo kuwo nawuphina umhlaba okanye amaziko uya kufunyanwa enetyala, ngaphandle kwemvume ebhaliweyo yangaphambili yeBhunga, neya kuquka ukuveliswa kweemeko ezingezinye nekufuneka zithotyelwe ngumntu ocela imvume yoku ezithe zafumaneka.
- (2) iBhunga linganakuvumeli ukuphenjwa komlilo kwindawo evulekileyo phantsi kwecandelwana (1) ngaphandle kokuba lanelisekile kukuba ezi mfuno zilandelayo kuye kwajongwana nazo ngokwaneleyo:
- ezi zinto ziza kutshiswa ziya kutshiswa kumhlaba wendawo evulekileyo apho zivela khona;
 - lo mntu unjalo wenze uphando waze wavavanya konke okufanelekileyo okungokunye ekunciphiseni, ekusebenziseni kwakhona okanye ekulungiseni oko besele kusetyenzisiwe ukuze kube nokusetyenziswa kwakhona ekwenzeni into entsha ukuze kuncitshiswe izinto ekufuneka zitshisiwe kumlilo ovulekileyo ngokwaneliseka kweBhunga;
 - lo mntu unjalo wenze uphando waze wavavanya konke okufanelekileyo okungokunye ekususeni okufuneka kutshisiwe emhlabeni okanye kumaziko, ngokwaneliseka kweBhunga;
 - lo mntu unjalo wenze uphando waze wavavanya konke okunokuthi kube nempembelelo kolu tshiso kwindalo esingqongileyo, ngokwaneliseka kweBhunga;
 - isilumkiso phantsi kwecandelo 10(1)(b) phantsi komthetho obizwa ngokuba yi-National Veld and Forest Fire Act, 1998 (uMthetho 101 ka-1998) asikabhengezwa kulo mmandla;

- (f) umhlaba apho umntu onjalo enenjongo yokutshisa kuwo izinto kwindawo evulekileyo ngumhlaba kaRhulumente, yifama okanye yindawo encinci okanye umhlaba okwihlomela ledolophu owazisiweyo nongasetyenziswayo njengendawo yokuhlala abantu;
 - (g) ukutshisa kwindawo evulekileyo kwenziwa kangangeemitha ezilikhulu (100) kuso nasiphina isakhiwo;
 - (h) ukutshisa kwindawo evulekileyo akusayi kubangela ukuvela kwengozi kwimpilo yabantu okanye ukhuseleko, kumhlaba nezakhiwo ezisekhusini okanye kwindalo esingqongileyo;
 - (i) umntu onjalo wazise ngokubhala phantsi abanini kunye nabahlali bemihlaba nezakhiwo ezisecaleni kwakhe malunga:
 - (i) neenkukacha zizonke ezaziwayo malunga nokutshisa kwindawo evulekileyo okucetywayo; kwakunye
 - (ii) nelungelo labanini kunye nabahlali abakwimihlaba nezakhiwo ezisecaleni kwakhe ukuba bafake inkcaso ebhaliweyo yoku kwesi sindululo sicetywayo sokutshisa kwindawo evulekileyo kunye neBhunga kwiintsuku ezisixhenxe ngaphambi kokuba baziswe; kwakunye
 - (j) umrhumo ochaziweyo sele uhlawuliwe kwiBhunga.
- (3) Nawuphina umntu owamkela okanye ovumela ukuba kwamkelwe ukutshisa kwindawo evulekileyo ngokuchasana necandelwana (1) uya kufunyanwa enetyala.
- (4) Amalungiselelo eli candela awasayi kusebenza:-
- (a) kwiindawo zolonwabo lwangaphandle okanye imisebenzi yokojiwa kwenyama kumaziko asekhusini;
 - (b) imililo emincinci elawulekayo kwiindawo zokuhlala ezingekho sikweni ngeenjongo zokupheka, ukushushubeza amanzi kunye nezinye izinto ezenziwa ekhaya; okanye
 - (c) nakuyiphina indawo engenye echaziweyo okanye umsebenzi ochaziweyo nalapho iBhunga limise ukuba eli candela alisayi kusebenza kumba onjalo.

**ISAHLULO VII
UKUKHUTSHWA KOMSI KWIINQWELO-MAFUTHA EZISEBENZISA UCINEZELO LWENJINI**

Isithintelo

15. (1) Akukho mntu oyakuthi kwindlela yoluntu jikelele aqhuba okanye asebenzise okanye abangele ukuba aqhutyelwe okanye asebenzise inqwelo-mafutha esebenzisa ucinezelo lwenjini nekhupha umsi omnyama.
- (2) Ukuba kukho umsi omnyama ophumayo ngokuchasene necandelwana (1), umnini kunye nomqhubi wenqwelo-mafutha enjalo baya kufunyanwa bobabini benetyala.
- (3) Ngokwenjongo yeli candela, umnini obhalisiweyo wenqwelo-mafutha kuya kucingwa ukuba ngumqhubi ngaphandle kokuba oku kuqinisekisiwe.

Ukumiswa kweenqwelo-mafutha ukuze kwenziwe uhlolo novavanyo

16. (1) Ukuze igosa eligunyazisiweyo likwazi ukugunyazisa amalungiselelo esi Sahlulo, umqhubi wenqwelo-mafutha kufuneka athobelane nawo nawuphina umgaqo ofanelekileyo onikezwe ligosa eligunyazisiweyo:
- (a) ukumisa inqwelo-mafutha; kwakunye
 - (b) nokubhexsha uhlolo okanye uvavanyo lwenqwelo-mafutha.
- (2) Ukungaphumeleli ukuthobela umgaqo onikezwe phantsi kwecandelwana (1) kuya kufunyanwa kulityala.
- (3) Xa inqwelo-mafutha ithe yema ngokuthobela umgaqo onikezwe kwecandelwana (1), igosa eligunyazisiweyo linga:-
- (a) hlola lize livavanye inqwelo-mafutha leyo ecaleni kwendlela, nalapho kufuneka kwenziwe khona olu hlolo novavanyo:
 - (i) kulo ndawo okanye kufutshane kangangoko nendawo apho umgaqo wokuba kumiswe inqwelo-mafutha unikezwe khona; kwakunye
 - (ii) ngokukhawuleza okukhulu, kwaye kumba onjalo ingaphelanga iyure enye emva kokuba inqwelo-mafutha imile ngokuhambelana nomgaqo onikeziweyo; okanye
 - (b) lenze uhlolo olubonakalayo lwenqwelo-mafutha, kwaye xa igosa eligunyazisiweyo likholelwa ekubeni ityala lenziwe phantsi kwecandelo 15(2), lingayalela umqhubi wenqwelo-mafutha leyo nekucingelwa ukuba ngumnini wenqwelo-mafutha ngaphandle kokuba uvelisa ubungqina obuchasene noku, ngokubhala phantsi ukuba athathe inqwelo-mafutha ayise kwisikhululo sovavanyo kwixesha elichaziweyo ukuze ihlolwe kwaye ivavanywe ngokuhambelana necandelo 17.

Inkqubo yovavanyo

17. (1) Igosa eligunyazisiweyo kufuneka lisebenzise indlela yovavanyo yokunyathela umcephe wokunyusa isantya ukuze libone ukuba kuqhutywa okanye kusetyenziswa inqwelo-mafutha esebenzisa ucinezelo lwenjini na ngokuchasene necandelo 15(1).
- (2) Le nkqubo ilandelayo kufuneka ilandelwe ukuze kwenziwe uvavanyo lokunyathela umcephe olungahlawulelwayo:

- (a) xa eyalelwe ukuba enze njalo ligosa eligunyazisiweyo, umqhubi kufuneka adumise inqwelo-mafutha, ayifake kwigiya ephakathi aze anyathele iklatshi;
 - (b) ngexa inqwelo-mafutha iduma, igosa eligunyazisiweyo kufuneka lenze uhlolo ngokujonga indlela ophuma ngayo umsi kwinqwelo-mafutha;
 - (c) xa eyalelwe ukuba enze njalo ligosa eligunyazisiweyo, umqhubi wenqwelo-mafutha kufuneka singaphelanga isiqingatha somzuzu anyathele ngokuthe cwaka nangokugcweleyo umcephe wokunyusa isantya wenqwelo-mafutha; ngaphandle kokuba igosa eligunyazisiweyo liya kukwenza oko ngokwalo ukuba umqhubi uthe akaphumelela okanye akafuna ukuthobela imiyalelo yegosa eligunyazisiweyo;
 - (d) ngexa kunyathelwe umcephe wokunyusa isantya, igosa eligunyazisiweyo kufuneka lenze umlinganiselo womsi ophuma kwinqwelo-mafutha ukuze libone ukuba kuphuma umsi omnyama okanye awukho mnyama;
 - (e) umqhubi wenqwelo-mafutha angayeka ukunyathela umcephe wokunyusa isantya kuphela xa injini ifikelele apho kuphela khona isantya, okanye xa eyalelwe njalo ligosa eligunyazisiweyo.
- (3) Ukuba emva kwendlela yovavanyo yokunyathela umcephe okungahlawulelwayo igosa eligunyazisiweyo lanelisekile kukuba inqwelo-mafutha:
- (a) ayikhuphi umsi omnyama, igosa eligunyazisiweyo kengoko kufuneka linikeze umqhubi wenqwelo-mafutha leyo isiqinisekiso esibonisa ukuba inqwelo-mafutha yakhe ayiqhutywa okanye ayisetyenziswa ngokuchasene necandelo 15(1); okanye
 - (b) ikhupha umsi omnyama, igosa eligunyazisiweyo kufuneka linikeze umqhubi wenqwelo-mafutha isaziso solungiso ngokuhambelana necandelo 18.

Isaziso solungiso

18. (1) Isaziso solungiso kufuneka siyalele umnini wenqwelo-mafutha ukuba alungise inqwelo-mafutha leyo lingaphelanga ixesha elibekiweyo, aze ayithathe inqwelo-mafutha ayise kwindawo echazwe kwisaziso ukuze ivavanywe kwakhona ngaphambi kokuphela kwexesha elo.
- (2) Isaziso solungiso kufuneka siqulathe, phakathi kwezinye izinto, olu lwazi lulandelayo:
- (a) ukwenziwa, uhlobo kunye nenombolo yobhaliso yenqwelo-mafutha;
 - (b) igama, idilesi kunye nonombolo yesazisi yomqhubi wenqwelo-mafutha;
 - (c) ukuba umqhubi akanguye umnini wenqwelo-mafutha, igama nedilesi yomnini wenqwelo-mafutha;
- (3) Umntu ufunyanwa enetyala phantsi kweli Candelo xa ethe akaphumelela uku-:
- (a) thobela isaziso ekuthethwa ngaso kwicandelwana (1);
 - (b) ukwenza uhlolo ngokutsha oluchazwe kwicandelwana (1).
- (4) Akusayi kuba kukuzikhusela kule nkqubo phantsi kwecandelwana (3) ukungqina ukuba umqhubi wenqwelo-mafutha uthe akaphumelela ukuzisa isaziso solungiso ukuba siqwalaselwe ngumnini wenqwelo-mafutha.

**ISIAHLULO VIII
UKUKHUTSHWA KOMSI OBANGELA IINKATHAZO ELUNTWINI**

Isithintelo

19. Nawuphina umhlali okanye umnini wamaziko apho kuphuma khona inkathazo enobungozi eluntwini okanye apho kukho khona inkathazo ufunyanwa enetyala.

Isaziso sokupheliswa (abatement)

20. (1) Igosa eligunyazisiweyo linganikeza isaziso sokupheliswa kuye nawuphina umntu igosa elikholelwa ukuba unetyala okanye wenze ityala phantsi kwecandelo 19, ze libize umntu onjalo ukuze:
- (a) aphelise lo nkathazo lingaphelanga ixesha elibekwe kwisaziso;
 - (b) athathe onke amanyathelo afanelekileyo ukukhusela ukwenzeka kwenkathazo ekwafana nale kwixesha elizayo;
 - (c) athobele nayiphina imigaqo equlathwe sisaziso.
- (2) Ngeenjongo zecandelwana (1), igosa eligunyazisiweyo lingakholelwa ngokufanelekileyo ngokusekelwe kumava alo ukuba kukhutshwe isingcolisi somoya kumaziko ekuhlala kuwo okanye angawomntu ofumene isaziso sokupheliswa.
- (3) Isaziso sokupheliswa phantsi kwecandelwana (1) singenziwa:
- (a) kumnini walo naliphina iziko:
 - (i) ngokuziswa kwaso kumnini okanye ukuba umnini akafumaneki okanye uhlala phesheya kolwandle, ithunyelwa kumenzeli wakhe;
 - (ii) ngokuthunyelwa ngeposi yerejistala kwidilesi yokugqibela yomnini eyaziwayo, okanye kwidilesi yomenzeli yokugqibela eyaziwayo;

- (iii) ngokuthunyelwa kwidilesi apho kume khona amaziko, xa ingaziwa idilesi yomnini okanye idilesi yomenzeli.
- (b) kumhlali weziko elo:
 - (i) ngokuthunyelwa kumhlali;
 - (ii) ngokuthunyelwa ngeposi yerejistala kumhlali kwidilesi apho kume khona amaziko.
- (4) Nawuphina umntu ongaphumeleliyo ukuthobela isaziso sokupheliswa, inkundla ingayalela umntu omangalelweyo phantsi kwecandelo (4) ukuba athathe amanyathelo ecinga ukuba inkundla lingaphelanga ixesha elibekwe yinkundla ukuze kukhuseleke ukuphinda kokwenzeka koku.

Amanyathelo okuphelisa izinto eziyinkathazo eluntwini

21. Ngalo naliphina ixesha, iBhunga lingathi ngentlawulo yalo, lithathe nawaphina amanyathelo elicinga ukuba afanelekile ukuze liphelise umonakalo owenziwa zinkathazo lize likhusele ukwenzeka koko kwakhona, lize lifumane iintlawulo ezithe zongezeleka kumntu onoxanduva lokwenza inkathazo enjalo.

**ISAHLULO IX
IZIBHENO**

22. (1) Nawuphina umntu angenza isibheno ngokuchasene nesigqibo esithathwe ligosa eligunyazisiweyo phantsi kwalo mthetho kamasipala ngokugqithisa isaziso esibhaliweyo sesibheno, nalapho izizathu zesi sibheno ziya kuthi zichazwe kumanejala kamasipala zingaphelanga iintsuku ezingamashumi amathathu (30) emva komhla umntu onjalo ethe wafumana isaziso sesigqibo esinjalo.
- (2) Ngokuxhomekeka ekulindeneni ulwamkelo loku, ukuguquka okanye ukurhoxiswa kwesigqibo ngokwecandelwana (4), nawuphina umntu owenza isibheno kwisigqibo phantsi kwecandelwana (1), ngaphandle kokuba iBhunga linikeza ngenye indlela:
- (a) kufuneka noxa kunjalo ngokuzimela athobele nayiphina imfanelo enokuthi ivele ngenxa yesigqibo esingunobangela wesibheno; kwaye
 - (b) akanakusebenzisa naliphina ilungelo elinokuthi longezeleke ngenxa yesigqibo esingunobangela wesicelo sesibheno, ngaphandle kokuba akukho mntu wumbi onokusebenzisa naliphina ilungelo elingelinye elinokongezeleka.
- (3) Kwiintsuku ezilishumi elinesine (14) emva kokufumana isaziso sesibheno, umanejala kamasipala kufuneka:
- (a) agqithise isibheno kwiziphatha-mandla ezifanelekileyo zezibheno ezichazwe kwicandelwana (5);
 - (b) athathe onke amanyathelo afanelekileyo ukuqinisekisa ukuba bonke abantu abanamalungelo anokuthi achaphazeleke ngokonakalisayo ngokunikezela isicelo sesibheno, ukuquka nawuphina umntu obhaliswe njengomntu onomdla nochaphazelekayo, bathi baziswe ngokubhala phantsi malunga nesicelo sesibheno kwakunye nokucetyiswa ngamalungelo abo ukuba:
 - (i) bafumane ikopi yesicelo sesibheno;
 - (ii) bagqithise inkcaso ebhaliweyo yesicelo kumanejala kamasipala zingaphelanga iintsuku ezingamashumi amathathu (30) emva komhla wokwaziswa.
- (4) Emva kokuphela kwexesha leentsuku ezingamashumi amathathu ezichazwe kwicandelwana (3)(b)(ii), iziphatha-mandla zesibheno kufuneka ziqwalasele isibheno eso kwaye nayiphina inkcaso ethe yavela kuso yaze yangqinwa, yaguquka okanye yarhoxisa isigqibo.
- (5) Xa isibheno sichasene nesigqibo esithathwe—
- (a) ligosa eligunyazisiweyo ingenguye umanejala kamasipala, kengoko umanejala kamasipala usisiphatha-mandla sesibheno; okanye
 - (b) ngumanejala kamasipala, iBhunga okanye ikomiti enjalo njengoko isenokuthumela ummeli koku, isisiphatha-mandla sesibheno.
- (6) Isiphatha-mandla sesibheno kufuneka siqalise nesibheno kwiintsuku esingamashumi amathandathu (60) emva kokufumana isaziso kwaye kufuneka senze isigqibo ngesibheno kwixesha elifanelekileyo.

**ISAHLULO X
AMALUNGISELELO JIKELELE**

Ukuzibophelela kweBhunga kunye noRhulumente

23. Lo mthetho kamasipala ubophelela uRhulumente kunye neBhunga.

Impikiswano

24. (1) Xa kuthe kwakho ukuphikisana okukhoyo kuwo nawuphina umthetho kamasipala nokuthi oko ngokuthe ngqo okanye ngokungathanga ngqo kumisele ungcoliseko lomoya, amalungiselelo alo mthetho kamasipala aya kuqwalaselwa kuqala.
- (2) Xa kuthe kwakho ukuphikisana okukhoyo kunye nomthetho obizwa ngokubay yi-Atmospheric Pollution Prevention Act, 1965 (uMthetho 45 ka-1965), amalungiselelo alo Mthetho aya kuqwalaselwa kuqala ngaphakathi kummandla wolawulo lweBhunga.
- (3) Xa kuthe kwakho ukuphikisana okukhoyo phakathi kwenguqulelo yalo mthetho kamasipla kwisiNgesi, isiXhosa okanye isiBhulu, inguqulelo yesiNgesi iya kugweba.

Amatyala nezohlwayo

25. (1) Nawuphina umntu ochasana necandelo 13(2), 15(2) okanye 19 lalo mthetho kamasipala uya kumangalelwa asiwe entolongweni kwixesha elingekho ngaphezulu kweentsuku ezingamashumi amathathu (30) okanye afumane isohlwayo okanye zombini, isohlwayo nokuya entolongweni.
- (2) Nawuphina umntu ochasana necandelo 7(3), 8(2), 18(3)(a), 18(3)(b) okanye 20(4) lalo mthetho kamasipala uya kumangalelwa asiwe entolongweni kwixesha elingekho ngaphezulu kweminyaka emibini (2) okanye afumane isohlwayo okanye zombini, isohlwayo nokuya entolongweni.
- (3) Nawuphina umntu ochasana necandelo 14 lalo mthetho kamasipala uya kumangalelwa asiwe entolongweni kwixesha elingekho ngaphezulu kunyaka omney (1) okanye afumane isohlwayo okanye zombini, isohlwayo nokuya entolongweni.
- (4) Ufunyanwa unetyala xa:
- (a) unikeza ulwazi olungeyonyaniso kwigosa eligunyazisiweyo ngokunxulumene nawo nawuphina umba obhekiselele kulo mthetho kamasipala; okanye
- (b) ungafuni ukwenza intsebenziswano kwisicelo esenziwe ligosa eligunyazisiweyo ngokwalo mthetho kamasipala kwaye nawuphina umntu omangalelwe elotyala uya kusiwa entolongweni kwixesha elingekho ngaphezulu kweentsuku ezingamashumi amathathu (30) okanye afumane isohlwayo okanye zombini isohlwayo nokusiwa entolongweni.
- (5) Xa kungekho sohlwayo esithile esinikezelwayo, nawuphina umntu ofunyanwa enetyala phantsi kwalo mthetho kamasipala unemfanelo yokumangalelwa asiwe entolongweni kangangexesha elingekho ngaphezulu konyaka omnye okanye afumane isohlwayo okanye zombini ukusiwa entolongweni kunye nesohlwayo.
- (6) Xa utha awaphumelela ukuthobela isaziso, umgaqo okanye umyalelo ekuthethwa ngawo kulo mthetho kamasipala, oko kuquka ityala eliqhubekakayo.
- (7) Nawuphina umntu ofunyanwa esenza ityala eliqhubekakayo uya kufunyanwa enetyala elingelinye kusuku ngalunye ngexesha apho umntu onjalo ethi angaphumeleli ukuthobela isaziso, umgaqo okanye umyalelo ekuthethwa ngawo kulo mthetho kamasipala.
- (8) Ukongeza ekuvelisweni kwesohlwayo okanye ukusiwa entolongweni, inkundla ingayalela nawuphina umntu omangalelwe ityala phantsi kwalo mthetho kamasipala:
- (a) alungise umonakalo owenzekileyo;
- (b) ahlawulele umonakalo owenzeke komnye umntu okanye kumhlaba nezakhiwo, umyalelo lowo oya kuba negunya kunye neziphumo zesigwebo sikarhulumente;
- (c) afake kwaye asebenze ngeendleko zalo mntu isixhobo sokufunda ubumnyama ngokuhambelana namalungiselelo ecandelo 11.

Ukukhululwa

26. (1) iBhunga linganikeza ukhululo lwethutyana ngokubhala kwelinye lamalungiselelo okanye kumalungiselelo ewonke kwizahlulo III, IV no-V, ngaphandle kokuba iBhunga:
- (a) lonelisekile kukuba unikezelo lokhululo alusayi konakalisa injongo echazwe kwicandelo 2(1);
- (b) linikeza naluphina ukhululo ngokuxhomekeka kwiimeko ezinyusa umgangatho wokufumana injongo echazwe kwicandela 2(1).
- (2) iBhunga alisayi kunikeza ukhululo phantsi kwecandelwana (1) lide iBhunga:
- (a) lithathe amanyathelo afanelekileyo ukuqinisekisa ukuba wonke umntu anokuthi amalungelo akhe achaphazeleke ngokonakalisayo ngokunikezwa kokhululo, ukuquka abanikazi bomhlaba abakufutshane okanye abantu abahlala kuyo, bayazi ngesicelo sokhululo kwakunye nendlela yokufumana ikopi yaso;
- (b) linikeze umntu onjalo ithuba elifanelekileyo lokuchasa esi sicelo; kwakunye
- (c) nokuqwalasela ngokufanelekileyo kwakunye nokuthathela ingqalelo nayiphina inkcaso enokuthi ivele.

Intlangulo

27. Nayiphina into eyenziweyo okanye ekucingwa ukuba yenziwe phantsi kwawo nawuphina umthetho iya kuhlala isebenza kangangokuba ayiguquguquki nalo mthetho kamasipala; okanye de nayiphina into eyenziweyo phantsi kwalo mthetho kamasipala iyogqithe.

Ukuqalisa ukusebenza

28. Lo mthetho kamasipala uya kuqalisa ukusebenza ngomhla okanye ngemihla eya kuthi ichazwe liBhunga ngokuyipapasha kwiGazethi yePhondo.