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LANGEBERG MUNICIPALITY**AIR QUALITY BY-LAW****LANGEBERG MUNICIPALITY AIR QUALITY BY-LAW (2019)**

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

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

LANGEBERG MUNICIPALITY**AIR QUALITY BY-LAW**

Draft June 2019

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CHAPTER 1: INTERPRETATION AND OBJECTIVES

1. Definitions

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

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

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

“air pollution” means any change in the environment caused by any substance emitted into the atmosphere from any activity, where that change has an adverse effect on human health or wellbeing or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

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

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

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

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

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

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

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

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

(a) the land, water and atmosphere of the earth;

(b) micro-organisms, plant and animal life;

(c) any part or combination of (a) and (b) and the interrelationships among and between them; and

(d) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

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

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

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

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

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

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

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

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

“non-point source” means a source of atmospheric emissions which cannot be identified as having emanated from a single identifiable source or fixed location, and includes veld, forest and open fires, mining activities, agricultural activities and stockpiles;

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

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

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

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

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

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

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

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

“premises” means any building or other structure together with the land on which it is situated and any adjoining land occupied or used in connection with any activities carried on in that building or structure, and includes any land without any buildings or other structures and any locomotive, ship, boat or other vessel which operates or is present within the area under the jurisdiction of the municipality or the precincts of any harbour;

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

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

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

2. Purpose and objectives

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

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

CHAPTER 2: DUTY OF CARE

3. Duty to take care

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

- (a) to prevent any potential air pollution from occurring; and
- (b) to mitigate and, as far as reasonably possible, to remedy any air pollution that has occurred.

(2) The municipality may monitor the impact and effectiveness of the measures taken in terms of Section 3(1) and, if necessary, issue instructions to a person contemplated in Section 3(1) with regard to specific measures to be undertaken.

(3) The municipality may direct any person who fails to take the measures required under Section 3(1)—

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

- (b) to commence taking effective control measures to abate the air pollution before a given date;
 - (c) to diligently continue with those measures; and
 - (d) to complete implementation of the measures before a specified reasonable date.
- (4) Should a person fail to comply, or inadequately comply, with a directive under Section 3(3), the municipality may take reasonable measures to remedy the situation.
- (5) If any person fails to take the measures required of him or her under Section 3(1) or 3(2), the municipality may recover all reasonable costs incurred as a result of it acting under Section 3(4) from any or all of the following persons—
- (a) any person who is or was responsible for, or who directly or indirectly contributed to, the air pollution or the potential air pollution;
 - (b) the owner of the land at the time when the air pollution or the potential for air pollution occurred, or that owner's successor in title;
 - (c) the person in control of the land or any person who has or had a right to use the land at the time when—
 - (i) the activity or the process in question is or was performed or undertaken; or
 - (ii) the situation came about; or
 - (d) any person who negligently failed to prevent—
 - (i) the activity or the process being performed or undertaken; or
 - (ii) the situation from coming about.
- (6) If more than one person is liable under Section 3(5), the liability may be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required under Section 3(1), 3(2) and 3(3).

CHAPTER 3: SMOKE EMISSIONS FROM PREMISES OTHER THAN DWELLINGS

4. Application

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

5. Prohibition

- (1) Subject to Section 5(2), smoke of such a density or content that obscures light to an extent greater than 40 percent, shall not be emitted from any premises for an aggregate period exceeding three minutes during any continuous period of thirty minutes, by an owner or occupier of a premises.
- (2) This Section does not apply to smoke which is emitted from fuel-burning equipment which occurs while the equipment is being started or while the equipment is being overhauled or repaired, or awaiting overhaul or repair, unless such emission could have been prevented using the best practicable means available.

(3) If smoke is emitted in contravention of Section 5(1) the owner, operator or the occupier of the premises shall be guilty of an offence.

6. Installation of fuel-burning equipment

(1) No person may install, alter, extend or replace any fuel-burning equipment that is likely to cause an adverse effect on any premises without the prior written authorisation of the municipality, which may only be given after consideration of the relevant plans and specifications.

(2) Any fuel-burning equipment installed, altered, extended or replaced on premises in accordance with plans and specifications submitted to and approved by the municipality shall be presumed, until the contrary is proved, to comply with the provisions of Section 6(1).

(3) Where fuel-burning equipment has been installed, altered, extended or replaced on premises in contravention of Section 6(1):

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

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

(4) The municipality may on written notice to the owner and occupier of the premises:

(a) revoke its authorisation under Section 6; and

(b) order the removal of the fuel-burning equipment from the premises at the expense of the owner and operator and within the period stated in the notice.

7. Installation and operation of measuring equipment

An authorised person may give notice to any operator of fuel-burning equipment or any owner or occupier of a premises on which fuel-burning equipment is used or operated, or is intended to be used or operated, to install, maintain and operate measuring equipment at his or her own cost; if:

(a) unauthorised and unlawful emissions of smoke from the relevant premises have occurred consistently or regularly;

(b) fuel-burning equipment has been or is intended to be installed on the relevant premises which is reasonably likely in the opinion of an authorised person to emit smoke;

(c) the person on whom the notice is served has been convicted more than once under this chapter and has not taken adequate measures to prevent further contravention of the provisions of this Chapter; or

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

8. Monitoring and sampling

An occupier or owner of premises, and the operator of any fuel-burning equipment, who is required to install air pollution measuring equipment in terms of Section 7 must:

- (a) record all monitoring and sampling results and maintain a copy of this record for at least four years after obtaining the results;
- (b) if requested to do so by an authorised person, produce the record of the monitoring and sampling results for inspection;
- (c) if requested to do so by an authorised person, provide a written report, in a form and by a date specified by the authorised person, of part or all of the information in the record of the monitoring and sampling results; and
- (d) ensure that the air pollution measuring equipment is calibrated at least once per year or at intervals as specified by the manufacturer of the equipment and provide records of such calibration on request by the authorised person.

9. Exemption

(1) Subject to Section 22 and on application in writing by the owner or occupier of premises or the operator of fuel-burning equipment, the municipality may grant a temporary exemption in writing from one or all the provisions of this Chapter.

(2) Any exemption granted under Section 9(1) must state at least the following:

- (a) a description of the fuel-burning equipment and the premises on which it is used or operated;
- (b) the reasons for granting the exemption;
- (c) the condition attached to the exemption, if any;
- (d) the period for which the exemption has been granted; and
- (e) any other relevant information.

CHAPTER 4: SMOKE EMISSIONS FROM DWELLINGS

10. Smoke emissions from dwellings

(1) No person may emit or permit the emission of smoke from any dwelling that may cause a nuisance.

(2) Any person who emits or permits the emission of smoke in contravention of Section 10(1) commits an offence.

(3) Subject to Section 22 and on application in writing by the owner or occupier of any dwelling, the municipality may grant temporary exemption in writing from one or all of the provisions of this Chapter.

CHAPTER 5: EMISSIONS CAUSED BY OPEN BURNING

11. Emissions caused by open burning

(1) Subject to Section 11(4), any person who carries out open burning of any material on any land or premises is guilty of an offence, unless the prior written authorisation of the relevant authority, which may include the imposition of further conditions with which the person requesting authorisation must comply, has been obtained.

(2) Any person who undertakes or permits open burning to be undertaken is in contravention of Section 11(1) commits an offence.

(3) The provisions of this Section shall not apply to:

- (a) recreational outdoor barbecue or braai activities;
- (b) small controlled fires in informal settlements for the purposes of cooking, heating water and other domestic purposes; or
- (c) any other defined area or defined activity to which the municipality has declared this section not to apply.

CHAPTER 6: EMISSIONS THAT CAUSE A NUISANCE

12. Prohibition

(1) No person may create or permit emissions that cause a nuisance.

(2) Any person who contravenes Section 12(1) commits an offence.

13. Compliance notice

(1) An authorised person may serve a notice on any person whom he or she reasonably believes has committed an offence under Section 21, 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 all other conditions contained in the notice.

(2) For the purposes of Section 13(1), an authorised person may form a reasonable belief based on his or her own experience that an air pollutant was emitted from premises occupied or owned by the person on whom the compliance notice is to be served.

(3) A compliance notice under Section 13(1) may be served:

- (a) upon the owner of any premises, by:
 - (i) delivering it to the owner, or if the owner cannot be traced or is living abroad that person's agent;
 - (ii) transmitting it by registered post to the owner's last known address, or the last known address of the agent; or
 - (iii) delivering it to the address where the premises are situated, if the owner's address and the address of the agent are unknown;

(b) upon the occupier of the premises, by:

(i) delivering it to the occupier;

(ii) transmitting it by registered post to the occupier at the address at which the premises are situated.

(4) Any person who fails to comply with a compliance notice served on that person in terms of Section 13(1) commits an offence.

(5) In addition to any other penalty that may be imposed, a court may order a person convicted of an offence under Section 13(4) to take steps that the court considers necessary within a period determined by the court, in order to prevent a recurrence of the nuisance.

14. Steps to abate nuisance

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

CHAPTER 7: DUST NUISANCE

15. Control of dust

(1) The occupier, owner or operator of any premises must take all reasonable steps to prevent the nuisance of dust caused by any activity on such premises in accordance with the National Dust Control Regulations, R827 dated 1 November 2013.

(2) Any person who emits or permits the emission of dust in contravention of Section 15(1) commits an offence.

CHAPTER 8: OFFENSIVE ODOURS

16 Control of offensive odours

The occupier or owner of any premises must take all reasonable steps to prevent the emission of any offensive odour caused by any activity on such premises.

CHAPTER 9: PESTICIDE SPRAYING EMISSIONS

17. Pesticide Spraying Emissions

(1) No person may carry out or permit the spraying of pesticides, except as permitted by Section 3 of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).

(2) Any person who contravenes Section 17(1) of this By-law is guilty of an offence, as set out in Section 18(1)(c) of the Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947).

CHAPTER 10: GENERAL PROVISIONS

18. Appeal

(1) A person whose rights are affected by a decision delegated by the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of Section 62 of the Local Government: Municipal Systems Act (Act 32 of 2000) to the Municipal Manager within 21 days of the date of the notification of the decision.

(2) Pending confirmation, variation or revocation of the decision against which the appeal is lodged, any person appealing the said decision, unless the municipality provides otherwise:

(a) must nonetheless substantively comply with any obligations that may have been imposed as a result of the decision that is the subject of the appeal; and

(b) may not exercise any rights that may have accrued as a result of the decision that is the subject of the appeal application, provided that no other person may exercise any right that may accrue either.

19. Municipality and State obligation

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

20. Conflict

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

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

21. Offences and penalties

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

(2) It is an offence to:

(a) supply false information to an authorised person in respect of any issue pertaining to the By-law, or;

(b) to refuse to co-operate with the request of an authorised person made in terms of this By-law.

(3) Failure to comply with a notice, direction or instruction referred to in this By-law constitutes a continuing offence.

(4) In addition to imposing a fine or imprisonment, a court may order any person convicted of an offence under this By-law:

(a) to remedy the harm caused;

(b) to pay damages for harm caused to another person or to property, which order shall have the force and effect of a civil judgment; and

(c) to install and operate at the person's own expense air pollution measuring equipment in accordance with the provisions of Section 9.

22. Exemptions

(1) The municipality may grant temporary exemption in writing from one or all of the provisions of Chapters 3, 4, and 5, provided that the municipality:

(a) is satisfied that granting the exemption will not prejudice the purpose referred to in Section 2(1); and

(b) grants any exemption subject to conditions that promote the attainment of the purpose referred to in Section 2(1).

(2) The municipality may not grant an exemption under Section (1) until the municipality has:

(a) taken reasonable measures to ensure that all persons whose rights may be detrimentally effected by the granting of the exemption, including but not limited to adjacent land owners or occupiers, are aware of the application for exemption and how to obtain a copy of it;

(b) provided such person with a reasonable opportunity to object to the application; and

(c) duly considered and taken into account any objections raised.

23. Validity of actions taken under other laws

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.

24. Repeal of By-laws

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

25. Short title and commencement

This By-law shall be known as the LANGEBERG MUNICIPALITY: AIR QUALITY BY-LAW and comes into operation on the date of publication thereof in the Provincial Gazette.

LANGEBERG MUNISIPALITEIT
VERORDENING OP LUG KWALITEIT

LANGEBERG MUNISIPALITEIT VERORDENING OP LUG KWALITEIT (2019)

Om uitvoering te gee aan die reg, soos vervat in Artikel 24 van die Grondwet van die Republiek van Suid-Afrika, 1996, deur lugbesoedeling binne de area onder munisipale jurisdiksie te beheer; en om te verseker dat lugbesoedeling vermy word, of waar dit nie in geheel vermy kan word nie, verminder en verbeter.

Onder die bepalings van Artikel 156 van die Grondwet van die Republiek van Suid-Afrika, 1996 en die Munisipale Stelselwet, Wet 32 van 2000, Artikel 11, LANGEERG MUNICIPALITY, verorden soos volg:—

LANGEBERG MUNISIPALITEIT
LUG KWALITEIT VERORDENING

Konsep Junie 2019

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HOOFSTUK 1: INTERPRETASIE EN OOGMERKE

1. Definisies

In hierdie Verordening, tensy die konteks anders aandui—

“**aanstootlike reuke**” beteken enige reuk wat vir ’n redelike persoon geag word ’n stank of ’n stoornis te wees;

“**atmosfeer**” beteken lug wat nie deur ’n gebou, masjien, skoorsteen of enige ander sodanige struktuur vasgevang is nie;

“**atmosferiese uitlatings**” of “**uitlatings**” beteken energie of stof, of ’n kombinasie van stowwe, afkomstig vanaf ’n punt, nie-punt of mobiele bron, wat tot lugbesoedeling lei;

“**bes uitvoerbaarste vermoë**” beteken die mees effektiëste maatreëls wat geredelik geneem kan word om lugbesoedeling te voorkom, verminder of af te skaal, met inagneming van alle toepaslike faktore, insluitend ondermeer, plaaslike toestande en omstandighede, die moonlikheid van ongunstige effek, die huidige status van tegniese kennis asook die finansiële implikasies in verhouding met die graad van omgewingsbewaring wat verwag word om met te die toepassing en aanvaarding van sodanige maatreëls te bereik;

“**bronpunt**” beteken ’n enkel, identifiseerbare bron en vaste ligging van atmosferiese vrystelling en sluit rookstapels en skoorstene van wonings in;

“**dampe**” beteken enige skerp of giftige walm, gas of rook insluitende, maar nie daartoe beperk nie, diesel dampe, spuitverf dampe en uitlaatgasse;

“**gemagtigde persoon**” beteken enige persoon deur die Munisipaliteit gemagtig om enige bepaling van hierdie Verordening te implementeer;

“**geproklameerde dorpsbebied**” beteken enige grondeenheid wat gesoneer en aangewend word vir residensiële doeleindes;

“**lewende organisme**” beteken enige biologiese entiteit wat instaat is om genetiese materie, insluitend steriele organismes en virusse, oor te dra of te repliseer;

“**lig absorpsie meter**” beteken ’n meetinstrument wat ’n lig-sensitiewe sel of -opspoorer gebruik om die hoeveelheid lig wat ’n lugbesoedelaar absorbeer, te bepaal;

“**lug besoedelaar**” beteken enige stof (insluitend, stof, rook, dampe en gas, maar nie daartoe beperk nie) wat lugbesoedeling veroorsaak of lugbesoedeling mag veroorsaak;

“**lugbesoedeling**” beteken enige verandering in die omgewing, veroorsaak deur enige stof wat in die atmosfeer vrygestel word deur enige aktiwiteit, waar sodanige verandering ’n ongunstige effek op die mens se gesondheid of welstand, of op die samestelling, herstel of produktiwiteit van natuurlike of bestuurde ekosisteme, of op stowwe wat vir mense bruikbaar is, of in die toekoms sodanige effek sal hê;

“**mobiele bron**” beteken ’n enkel identifiseerbare bron van atmosferiese vrystelling wat nie van ’n vaste ligging afkomstig is nie;

“munisipaliteit” beteken LANGEBERG MUNISIPALITEIT en sluit in enige politieke struktuur, politieke ampsdraer, gemagtigde agent daarvan, of ’n diensverskaffer wat ingevolge hierdie Verordening ’n verantwoordelikheid nakom, wat ingevolge die Plaaslike Regering: Munisipale Stelselswet, 2000 (Wet 32 van 2000) of enige ander wet, soos die geval mag wees, of enige werknemer daarvan, wat ingevolge hierdie Verordening optree op grond van ’n mag aan die munisipaliteit verleen en aan sodanige politieke struktuur, politieke ampsdraer, agent of werknemer gedelegeer;

“munisipale bestuurder” beteken a persoon, sodanig deur die munisipaliteit aangestel ingevolge Artikel 54A van die Plaaslike Regering: Munisipale Stelselswet, 2000 (Wet 32 van 2000);

“nie-punt bron” beteken ’n bron van atmosferiese vrystelling wat nie geïdentifiseer kan word as afkomstig vanaf ’n enkel bron of vaste ligging nie en sluit in veld-, bos- en oop vure, mynbou-aktiwiteite, landbou-aktiwiteite en bergingstapels;

“omgewing” beteken die omliggende gebied waarin mense bestaan en wat saamgestel is uit -

(a) die land, water en atmosfeer van die aarde;

(b) mikro-organismes, plante en diere-lewe;

(c) enige deel of kombinasie van (a) en (b) en die interverhoudings daartussen en rondom; en

(d) die fisiese, chemiese, estetiese en kulturele aspekte en toestande van die voorafgaande wat die mens se gesondheid en welstand beïnvloed;

“ongunstige effek” beteken enige werklike of moontlike impak op die omgewing wat die omgewing, of enige aspek daarvan, beskadig of sal beskadig, tot ’n mate wat meer as onbeduidend of nietig is;

“oop verbranding” beteken die brand van materie sonder ’n skoorsteen om die vrygestelde produkte van die verbranding na die atmosfeer uit te laat en “verbranding in die ope” het ’n ooreenstemmende betekenis;

“oorlas” beteken ’n onredelike belemmering, veroorsaak deur lugbesoedeling, van:

(a) die gesondheid of welstand van enige persoon of lewende organisme; of

(b) die gebruik of genot van ’n eienaar of besetter van sy /of haar eiendom;

(c) die gewone gemak, gerief, vrede of stilte van ’n ander persoon; en

(d) die natuurlike toestand vandie omgewing;

“operateur” beteken ’n persoon wat ’n onderneming besit of bestuur of wat ’n operasie of proses beheer wat lugbesoedelaars afgee.

“perseel” beteken enige gebou of ander struktuur, tesame met die grond waarop dit staan en enige aangrensende grond wat beset of aangewend word en verband hou met enige aktiwiteite wat in sodanige gebou of stuktuur plaasvind, en sluit in enige grond sonder geboue of ander strukture en enige lokomotief, skip, boot of ander vaartuig wat binne die area, onder die jurisduksie van die munisipaliteit, of die area van enige hawe, operasioneel of teenwoordig is;

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

“publieke pad” beteken ’n pad waarop die publiek ’n reg het om te gebruik;

“rook” beteken die gasse, partikels en produkte van verbranding, vrygestel in die atmosfeer wanneer materie verbrand word, of aan hitte onderwerp word en sluit die roet, sanderigheid en growwe partikels wat in rook vrygestel word in;

“skoorsteen” beteken enige stuktuur of opening van enige aard waardeur lugbesoedelaars vrygestel mag word;

“stof” beteken enige vaste materie, in ’n fyn of gedisintegreerde vorm, wat instaat is om in die atmosfeer te versprei of daarin te hang;

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

(a) ontwerp is om te brand of instaat is om vloeistof, gas of vaste brandstof te verbrand;

(b) gebruik word om van enige materie of afval ontslae te raak, deur verbranding; of

(c) gebruik word om vloeistof, gas of vaste brandstof aan enige proses te onderwerp wat die opwekking van energie of die toepassing van hitte insluit;

“voertuig” beteken enige motor, motorvoertuig, motoronderstel, motorfiets, bus, lorrie of ander vervoermiddel, in geheel of gedeeltelik aangedryf deur enige vlugtige alkohol, stoom, gas of olie, of deur enige wyse anders as die krag van mens of dier.

woning” beteken enige gebou of ander struktuur, of gedeelte van ’n gebou of struktuur wat as ’n woning gebruik word en enige buite-geboue ondergeskik daaraan, maar sluit plakkershutte en informele nedersettings uit;

2. Doel en oogmerke

(1) Die doel en oogmerke van hierdie Verordening is:

(a) om uitvoering te gee aan die reg soos vervat in Artikel 24 van die Grondwet van die Republiek van Suid-Afrika, 1996, deur lugbesoedeling in die area onder die munisipaliteit se jurisdiksie te beheer en

(b) om te verseker dat lugbesoedeling vermy word, of waar dit nie in geheel vermy kan word nie, dat dit verminder en verbeter.

HOOFSTUK 2: PLIG VAN OMSIEN

3. Plig om om te sien

(1) Enige persoon wie in geheel of gedeeltelik verantwoordelik is vir die oorsaak van lugbesoedeling of die risiko skep dat lugbesoedeling mag plaasvind, moet alle redelike voorsorg tref:

(a) om enige lugbesoedeling wat moontlik mag plaasvind, te voorkom; en

(b) om lugbesoedeling teen te werk en dit wat wel plaasgevind het, sover as wat redelik moontlik is, reg te stel

(2) Die munisipaliteit mag die impak en effektiwiteit van die maatreëls wat ingevolge Artikel 3(1) gevolg is, monitor en, indien nodig, die persoon in Artikel 3(1) bedoel, instruksies gee ten opsigte van spesifieke maatreëls om te volg

(3) Die munisipaliteit mag opdrag gee dat enige persoon wie versuim om die maatreëls in Artikel 3(1) vereis, in te stel -

(a) die impak van spesifieke aktiwiteite ondersoek, evalueer en assessee en daarvoor te rapporteer;

(b) voor ’n gegewe datum effektiewe kontrole maatreëls instel om lugbesoedeling te verhoed;

- (c) ywerig met sodanige maatreëls voortgaan; en
 - (d) die implementering van sodanige maatreëls voor 'n redelike, bepaalde datum voltooi.
- (4) Sou 'n persoon versuim om aan 'n opdrag onder Artikel 3(3) te voldoen, of onbehoorlik voldoen, mag die munisipaliteit redelike maatreëls instel om die situasie te verbeter.
- (5) Indien enige persoon versuim om die maatreëls in te stel wat ingevolge Artikel 3(1) of 3(2) van hom of haar vereis word, mag die munisipaliteit, ingevolge Artikel 3(4), alle redelike kostes as gevolg daarvan aangegaan, van enige, of almal van die volgende persone verhaal -
- (a) Enige persoon wie vir die lugbesoedeling of potensiële lugbesoedeling verantwoordelik is of was, of wie direk of indirek daartoe bygedra het;
 - (b) Die grondeienaar ten tye van die lugbesoedeling of potensiële lugbesoedeling of daardie eienaar se titelopvolger
 - (c) Die persoon in beheer van die grond of enige persoon wie 'n grondgebruiksreg het of gehad het ten tye van:
- (i) Die bepaalde aktiwiteit of proses wat uitgevoer of onderneem is; of
 - (ii) waaruit die situasie ontstaan het; of
- (d) Enige persoon wie nalatig versuim het om te verhoed -
- (i) dat die aktiwiteit of proses uitgevoer of onderneem word; of
 - (ii) dat die situasie ontstaan.
- (6) Indien meer as een persoon ingevolge Artikel 3(5) aanspreeklik is, mag die aanspreeklikheid tussen die betrokke persone verdeel word volgens die mate waartoe elk verantwoordelik was vir die skade aan die omgewing, wat uit hul onderskeie versuim spruit om die vereiste maatreëls ingevolge Artikels 3(1), 3(2) en 3(3) te volg.

HOOFSTUK 3: ROOK-UITLATING VANAF PERSELE ANDERS AS WONINGS

4. Toepassing

Vir die doel van hierdie Hoofstuk, sluit “perseel” nie wonings in nie.

5. Verbod

- (1) Onderworpe aan Artikel 5(2), sal rook van sodanige densiteit of inhoud dat lig tot meer as 40 persent verskans word, nie deur 'n eienaar of besetter van 'n perseel vanaf enige perseel vrygestel word nie, vir 'n gemiddelde tydperk wat drie minute oorskry, gedurende 'n aaneenlopende tydperk van 30 minute .
- (2) Hierdie Artikel is nie van toepassing nie op rook wat vanaf brandstof-verbrandingstoerusting vrygestel word, en wat plaasvind wanneer toerusting aangeskakel word, of terwyl die toerusting herstel word, of herstel afwag , tensy sodanige emmissies verhoed kon word deur die bes-praktiese wyse beskikbaar, te gebruik.
- (3) Indien rook in oortreding van Artikel 5(1) vrygestel word, sal die eienaar, operateur of die besetter van die perseel skuldig wees aan 'n oortreding.

6. Installasie van brandstof-verbrandingstoerusting

(1) Geen persoon mag enige brandstof-verbrandingstoerusting installeer, verander, vergroot of vervang, wat moontlik 'n ongunstige effek op enige perseel tot gevolg mag hê, sonder die skriftelike, vooraf-magtiging van die munisipaliteit - wat slegs gegee mag word na oorweging van die betrokke planne en spesifikasies.

(2) Enige brandstof-verbrandingstoerusting, op enige perseel geïnstalleer, verander, vergroot of vervang, in ooreenstemming met planne en spesifikasies aan die munisipaliteit voorgelê en goedgekeur, sal aangeneem word om aan die bepalings van Artikel 6(1) te voldoen, totdat die teendeel bewys word.

(3) Waar brandstof-verbrandingstoerusting, op enige perseel geïnstalleer, verander, vergroot of vervang, Artikel 6(1) oortree:

(a) sal die eienaar en besetter van die perseel asook die installeerder van die brandstof-verbrandingstoerusting skuldig wees aan 'n oortreding;

(b) mag die munisipaliteit met 'n skriftelike kennisgewing aan die eienaar en besetter van die perseel, beveel dat die brandstof-verbrandingstoerusting, op koste van die eienaar en operateur en binne die periode in die kennisgewing gemeld, van die perseel verwyder word.

(4) Die munisipaliteit mag met skriftelike kennisgewing aan die eienaar en besetter van die perseel:

(a) sy magtiging ingevolge Artikel 6(1) terugtrek; en

(b) beveel dat die brandstof-verbrandingstoerusting, op koste van die eienaar en operateur en binne die periode in die kennisgewing gemeld, van die perseel verwyder word.

7. Installasie en hantering van toerusting wat verduistering meet

'n Gemagtigde persoon mag aan enige operateur van brandstof-verbrandingstoerusting of enige eienaar, of besetter van 'n perseel waarop brandstof-verbrandingstoerusting gebruik word of in gebruik is, of beoog word om gebruik te word of in gebruik geneem te word, kennis gee om op eie koste toerusting wat verduistering meet, te installeer, te onderhou en te hanteer, indien:

(a) ongemagtigde en onwettige vrystelling van rook vanaf sodanige perseel deurlopend of gereeld plaasgevind het;

(b) brandstof-verbrandingstoerusting op sodanige perseel geïnstalleer is, of beoog word om geïnstalleer te word wat, in die opinie van 'n gemagtigde persoon, geredelik moontlik is om rook vry te stel;

(c) die persoon op wie die kennisgewing bedien is, meer as een keer ingevolge hierdie Hoofstuk skuldig bevind is en nie voldoende maatreëls ingestel het om verdere verbreking van die bepalings van hierdie Hoofstuk te voorkom nie, of

(d) die gemagtigde persoon die aard van die lugbesoedelaars, vrygestel vanaf die betrokke perseel, ag om geredelik 'n risiko of las vir die mens se gesondheid of die omgewing te skep.

8. Monitering en monsterneming

'n Besetter of eienaar van 'n perseel, en die operateur van enige brandstof-verbrandingstoerusting van wie vereis word om, ingevolge Artikel 7, toerusting te installeer om lugbesoedeling te meet, moet:

(a) rekord hou van alle monitering- en steekproefresultate en 'n afskrif van sodanige rekord vir minstens vier jaar, nadat die resultate verkry is, behou;

- (b) indien so deur 'n gemagtigde persoon versoek, die rekord van monitering- en steekproefresultate vir inspeksie toon;
- (c) indien deur 'n gemagtigde persoon so versoek, 'n skriftelike verslag, in die formaat en teen 'n datum deur die gemagtigde persoon gemeld, van 'n gedeelte of al die inligting in die rekord van monitering- en steekproefresultate vervat, voorsien; en
- (d) verseker dat die lugbesoedelings-metingstoerusting minstens een keer per jaar gekalibreer word, of in intervalle soos deur die vervaardigers van die toerusting gespesifiseer, en rekords van sodanige yking op versoek van die gemagtigde persoon voorsien.

9. Kwytskelding

- (1) Onderworpe aan Artikel 22, en by skriftelike aansoek deur die eienaar of besetter van die perseel, of die operateur van die brandstof-verbrandingstoerusting, mag die munisipaliteit skriftelik, 'n tydelike kwytskelding van een of al die bepalings van hierdie Hoofstuk bied.
- (2) Enige kwytskelding toegestaan ingevolge Artikel 9(1), moet minstens die volgende vermeld:
 - (a) 'n Besskrywing van die brandstof-verbrandingstoerusting en die perseel waarop dit gebruik of hanteer word;
 - (b) die redes vir die toestaan van kwytskelding;
 - (c) die voorwaardes, indien enige, aan die kwytskelding gekoppel;
 - (d) die periode waarvoor die kwytskelding toegestaan is; en
 - (e) enige ander relevante inligting.

HOOFSTUK 4: ROOK-VRYSTELLING VANAF WONINGS

10. Rook-vrystellings vanaf wonings

- (1) Geen persoon mag rook, wat 'n stoornis mag veroorsaak, vanaf enige woning vrystel of toelaat dat sodanige rook vry gestel word nie;
- (2) Enige persoon wat Artikel 10(1) verbreek en rook vrystel of die vrystelling daarvan toelaat, pleeg 'n oortreding.
- (3) Onderworpe aan Artikel 22, en by skriftelike aansoek deur die eienaar, of besetter van enige woning, mag die munisipaliteit skriftelik, tydelike kwytskelding toestaan vir een of al die bepalings van hierdie Hoofstuk.

HOOFSTUK 5: UITLATING VEROORSAAK DEUR OOP VURE

11. Uitlating veroorsaak deur oop vure

- (1) Onderworpe aan Artikel 11(4) is enige persoon wat enige materiaal in 'n oop vuur op enige grond of perseel verbrand, skuldig aan 'n oortreding, tensy vooraf, skriftelike magtiging verkry is vanaf die betrokke regering, wat verdere voorwaardes mag opleë, waaraan die persoon wat die magtiging versoek, moet voldoen.

(2) Enige persoon wie onderneem om 'n oop vuur te brand, of toelaat dat dit geskied, is in oortreding van Artikel 11(1), en pleeg 'n misdaad.

(3) Die bepalings van hierdie Artikel is nie van toepassing nie op:

(a) buitenshuise ontspannings-braai of braai-aktiviteite nie;

(b) klein, gekontroleerde vure in informele nedersettings, vir die doel om te kook, water-verwarming en ander huishoudelike gebruike nie, of

(c) enige ander area of bepaalde aktiwiteit waarvoor die munisipaliteit hierdie Artikel verklaar het om nie-toepaslik te wees nie.

HOOFSTUK 6: UITLATING WAT 'n OORLAS VEROORSAAK

12. Verbod

(1) Geen persoon mag uitlating veroorsaak wat 'n oorlas veroorsaak nie.

(2) Enige persoon wie Artikel 12(1) oortree, pleeg 'n misdaad.

13. Nakomings-kennisgewing

(1) 'n Gemagtigde persoon mag 'n kennisgewing op enige persoon dien, wie hy of sy geredelik glo 'n oortreding, ingevolge Artikel 21, gepleeg het, deur sodanige persoon te versoek om:

(a) die stoornis binne 'n tydperk, in die kennisgewing gespesifiseer, te minimaliseer;

(b) alle nodige stappe te neem om 'n herhaling van die stoornis te voorkom; en

(c) alle ander voorwaardes in die kennisgewing vervat, na te kom

(2) Vir die doel van Artikel 13(1), mag 'n gemagtigde persoon 'n redelike oortuiging vorm - gebaser op sy of haar eie ondervinding - dat 'n lugbesoedelaar vrygestel is vanaf 'n perseel wat deur die persoon op wie die nakomings-kennisgewing gedien staan te word, beset of besit word.

(3) 'n Nakomings-kennisgewing ingevolge Artikel 13(1), mag: gedien word

(a) op die eienaar van enige perseel, deur -

(i) dit aan die eienaar af te lewer, of indien die eienaar nie opgespoor kan word nie of oorsee woon, aan sodanige persoon se agent;

(ii) dit per geregistreerde pos na die eienaar se laaste bekende adres te stuur, of die laaste bekende adres van die agent; of

(iii) dit by die adres af te lewer waar die perseel geleë is, indien die eienaar se adres en die adres van die agent onbekend is;

(b) op die besetter van die perseel, deur -

(i) dit aan die besetter af te lewer;

(ii) dit per geregistreerde pos na die besetter te stuur, by die adres waar die perseel geleë is.

(4) Enige persoon wat versuim om ag te slaan op 'n nakomings-kennisgewing, wat op sodanige persoon gedien is ingevolge Artikel 13(1), pleeg 'n oortreding.

(5) Bykomend tot enige ander boete wat opgelê mag word, mag 'n geregshof 'n persoon wat skuldig bevind is aan 'n oortreding ingevolge Artikel 13(4), gelas om binne 'n tydperk soos bepaal deur die hof, stappe te neem wat die hof nodig ag, om 'n herhaling van die stoornis te voorkom

14. Stappe om 'n stoornis te minimaliseer

Die munisipaliteit mag te enige tyd, op eie koste, enige stappe neem wat dit nodig ag om die skade wat deur die stoornis aangerig is, te herstel en 'n herhaling daarvan te voorkom, en mag die redelike kostes so aangegaan, van die persoon wat vir die oorsaak van die stoornis verantwoordelik is, verhaal,

HOOFSTUK 7: STOFOORLAS

15. Beheer van stof

(1) die Besetter, eienaar of operateur van enige perseel moet alle redelike stappe neem om, ingevolge die Nasionale Stof-Beheer Regulasies, R827 van 1 November 2013, stofoorlas wat deur enige aktiwiteit op sodanige perseel veroorsaak word, te voorkom

(2) Enige persoon wat Artikel 15(1) oortree en stof vrystel, of toelaat dat dit vrygestel word, pleeg 'n oortreding.

HOOFSTUK 8: AANSTOOTLIKE REUKE

16 Beheer van aanstootlike reuke

Die besetter of eienaar van enige perseel moet alle redelike stappe neem om die vrystelling van enige aanstootlike reuk te voorkom wat deur enige aktiwiteit op sodanige persell veroorsaak word.

HOOFSTUK 9:UITLATING VAN DIE SPUIT VAN PLAAGDODERS

17. Plaagdoder spuituitlating

(1) Geen persoon mag die spuit van plaagdoders uitvoer of toelaat dat dit uitgevoer word nie, tensy soos toegelaat deur Artikel 3 van die Wet op Bemesting, Plaasvoere, Landbou Herstel en Vee Genesing, 1947 (Wet Nr. 36 van 1947).

(2) Enige persoon wie Artikel 17(1) van hierdie Verordening oortree, is skuldig aan 'n oortreding soos uiteengesit in Artikel 18(1)(c) van die Wet op Bemesting, Plaasvoere, Landbou Herstel en Vee Genesing, 1947 (Wet Nr. 36 van 1947).

HOOFSTUK 10: ALGEMENE BEPALINGS

18. Appèl

(1) 'n Persoon wie se regte deur 'n besluit wat deur die munisipaliteit gedelegeer is, geraak word, mag ingevolge Artikel 62 van die Plaaslike Regering: Munisipale Stelsels Wet, (Wet 32 van 2000) appèl daarteen aanteken, deur die Munisipale Bestuurder binne 21 dae vanaf die datum waarop kennis gegee is van die besluit, skriftelik daarvan kennis te gee asook die redes daarvoor.

(2) In afwagting van bevestiging, wysiging of herroeping van die besluit waarteen die appèl aangeteken is, moet enige persoon wat teen sodanige besluit appelleer, tensy die munisipaliteit anders bepaal:

(a) nie-teenstaande, in wese voldoen aan enige verpligtinge wat opgelê mag wees as gevolg van die besluit wat aan appèl onderwerp is; en

(b) mag nie enige regte wat kon toeval as gevolg van die besluit wat aan appèl onderwerp is, uitoefen nie, met dien verstande dat geen ander persoon ook geen reg mag uitoefen wat kon toeval nie.

19. Munisipaliteits- en Staatsplig

Hierdie Verordening is bindend op die munisipaliteit en die Staat.

20. Teenstrydigheid met ander wetgewing

(1) In geval van teenstrydigheid met enige ander Verordening wat direk of indirek lugbesoedeling reguleer, geld die bepalings van hierdie Verordening.

(2) In geval van teenstrydigheid met die Nasionale Omgewingsbestuur en Lugbesoedelingswet, (Wet 39 van 2004), geld die bepalings van sodanige Wet binne die area van munisipale jurisdiksie.

21. Oortredings en boetes

(1) Enige persoon wat enige bepaling van hierdie Verordening oortree, pleeg 'n misdryf en sal by skuldigbevinding aanspreeklik wees vir 'n boete, of by gebreke van betaling, vir tronkstraf, of vir sodanige tronkstraf sonder die keuse van 'n boete, of beide sodanige boete en sodanige tronkstraf en in geval van opeenvolgende of voortdurende misdrywe, vir 'n boete vir elke dag wat sodanige misdryf aanhou, of by gebreke van betaling daarvan, vir tronkstraf.

(2) Dit is 'n misdryf om:

(a) vals inligting aan 'n gemagtigde persoon te verskaf ten opsigte van enige kwessie rakende hierdie Verordening, of;

(b) samewerking te weier op 'n versoek van 'n gemagtigde persoon, wat ten opsigte van hierdie Verordening gemaak is.

(3) Versuim om aan 'n kennisgewing, opdrag of instruksie waarna in hierdie Verordening verwys word, te voldoen, word 'n voortdurende misdryf geag.

(4) Bykomend tot die oplegging van 'n boete of tronkstraf, mag 'n geregshof enige persoon wat ingevolge hierdie Verordening skuldig bevind word, beveel om:

(a) die skade wat veroorsaak is, te herstel;

(b) skadevergoeding te betaal vir skade wat aan 'n ander persoon of eiendom veroorsaak is, welke bevel die mag en effek van 'n siviele bevel sal hê, en

(c) op eie koste, in ooreenstemming met die bepalings van Artikel 9, lugbesoedeling-metingstoerusting te installeer en te hanteer.

22. Kwytskelding

(1) Die munisipaliteit mag tydelike kwytskelding skriftelik toestaan vir een of al die bepalings van Hoofstukke 3, 4 en 5, mits die munisipaliteit:

(a) tevrede is dat die toestaan van kwytskelding nie die doel in Artikel 2(1) na verwys, sal benadeel nie; en

(b) enige kwytskelding toestaan, onderworpe aan voorwaardes wat die bereiking van die doelwit in Artikel 2(1) na verwys, bevorder.

(2) Die munisipaliteit mag nie 'n kwytskelding ingevolge Artikel (1) toestaan nie, totdat die munisipaliteit:

(a) redelike maatreëls geneem het om te verseker dat alle persone wie se regte nadelig deur die toestaan van kwytskelding geraak mag word, insluitend aangrensende grondeienaars of besetters, maar nie daartoe beperk nie, bewus is van die aansoek om kwytskelding, asook hoe om 'n kopie daarvan te bekom;

(b) sodanige persoon van 'n redelike geleentheid voorsien om teen die aansoek beswaar te maak; en

(c) enige beswaar wat gelig is, oorweeg en in ag neem.

23. Geldigheid van aksies ingevolge ander wetgewing

Enige iets wat gedoen is, of geag word gedoen te wees, ingevolge enige ander wet, bly geldig in so verre dit konsekwent is met hierdie Verordening, of totdat enige iets wat ingevolge hierdie Verordening gedoen word, dit vervang.

24. Herroeping van Verordeninge

Die bepalinge van enige Verordeninge voorheen deur die munisipaliteit gepromulgeer of deur enige van die ontbinde munisipaliteite wat nou by die munisipaliteit geïnkorporeer is, word hiermee herroep in so verre dit verwant is aan die kwessies wat in hierdie Verordening geskik word.

25. Kort titel en aanvang

Hierdie Verordening staan bekend as die **LANGEBERG MUNISIPALITEIT: LUGBESOEDELING VERORDENING** en tree inwerking op die datum waarop dit in die Provinsiale Gazette gepubliseer word..

