

## [PROVINCIAL NOTICE NO. 39 OF 2019]

## MANGAUNG METROPOLITAN MUNICIPALITY

## PROMULGATION NOTICE

**Noise Control By-law**

Passed by Council on Tuesday, 05 March 2019  
Under Item 18.1 – 5/03/2019

- 1) Notice is hereby given in terms of the provisions of section 13 of the Local Government: Municipal Systems, 2000 (Act № 32 of 2000), as amended, that the Council of Mangaung Metropolitan Municipality passed the revised set of Noise Control By-laws, at the sitting dated 05 March 2019.
- 2) The reviewed Noise Control By-law is, as a result of the rationalization process, now applicable and enforceable throughout the jurisdiction of the Mangaung Metropolitan Municipality (MAN).
- 3) The By-laws are published for the purpose of general public notification.

**Adv. Tankiso Mea**  
**City Manager**

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**BY-LAWS RELATING TO NOISE CONTROL**
**1. PURPOSE**

To provide for the control and prevention of noise pollution and matters incidental thereto.

**2. DEFINITIONS**

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

“**Act**” means the Environmental Conservation Act, 1989 (Act No. 73 of 1989)

“**ambient sound level**” means the reading taken at the end of a period at least 10 minutes, uninterrupted by an alleged disturbing noise, or an integrating impulse sound level meter placed at a measuring point during which period the said meter has been in operation at all times;

“**animal**” also includes birds in group or single;

“**controlled area**” means a piece of land designated by the Municipality where, in the case of:

- (a) road transport noise in the vicinity of a road:
  - (i) the reading on an integrating impulse sound level meter, taken outdoors at the end of a period extending from 06:00 to 24:00 on any day, during which period the said meter has been in operation at all times, exceeds 65 dBA; or
  - (ii) the equivalent continuous “A” – weighted sound pressure level at a height of at least 1,2 metres, but not more than 1,4 metres, above the ground for a period extending from 06:00 to 24:00 as calculated in accordance with SABS 0210-1986, titled “Code of Practice for calculating and predicting road traffic noise”, published under Government Notice No. 358 of 20 February 1987, and projected for a period of 15 years following the date on which the Municipality has made such designation exceeds 65 dBA;
- (b) aircraft noise in the vicinity of an airfield, the calculated noisiness index, projected for a period of 15 years following the date on which the Municipality has made such designation, exceeds 65 dBA; or
- (c) industrial noise in the vicinity of an industry:
  - (i) the reading on an integrating impulse sound level meter, taken outdoors at the end of a period of 24 hours while such meter is in operation, exceeds 61 dBA;
  - (ii) the calculated outdoor equivalent continuous “A” weighted sound pressure level at a height of at least 1,2 metres, but not more than 1,4 metres, above the ground for a period of 24 hours, exceeds 61 dBA, where dBA means the value of the sound pressure level in decibels determined using a frequency weighting network A and derived from the following equation:

$p$  = the “A” weighted sound pressure; and  $A_p$  = the reference sound pressure o.

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“**Council**” means the Council of the Mangaung Metropolitan Municipality or any political structure, political office bearer, councillor or any staff member acting under Council’s delegated or sub-delegated power;

“**disturbing noise**” means a noise level which exceeds the zone sound level or, if no zone sound level has been designated, a noise level which exceeds the ambient sound level at the same measuring point by 7 dBA or more;

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

“**integrating impulse sound level meter**” means a device which integrates a function of the root mean square value of sound pressure over a period of time while it is set on :1” – time weighting and which indicates the result in dBA; “measuring point”, relating to:

- (a) a piece of land from which an alleged disturbing noise emanates, means a point outside the property projection plane where an alleged disturbing noise, in the opinion of the Municipality
- (b) a building with one or more occupants, means a point in or outside the building where an alleged disturbing noise, in the opinion of the Municipality, and
- (c) a stationary vehicle, means a point as described in SABS 0181-1981 where a measuring microscope shall be placed;

“**Municipality/City**” means Mangaung Metropolitan Municipality or City of Mangaung established by the Provincial Notice No. 155 of 2016 as published in the Provincial Gazette, Free State Province of 22 July 2016, issued in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“**Municipal Manager/City Manager**” means the person appointed by the Council of the City as Municipal Manager and shall include any person acting in that position or to whom authority is delegated.

“**noise control officer**” means a person designated by the Municipality to implement and enforce these bylaws;

“**noise level**” means the reading on an integrating impulse sound level meter taken at a measuring point, of any alleged disturbing noise at the end of a total period of at least 10 minutes after such meter had been put into operation, and, if the alleged disturbing noise has a discernible pitch, to which 5 dBA has been added;

“**noise nuisance**” means any sound which disturbs or impairs or may disturb or impair or is deemed to disturb or impair the convenience or peace of any person;

“**noisiness index**” means a number expressed in dBA as defined in SABS0117;

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

“**plant**” means a refrigeration machine, air-conditioner, fan system, compressor, power generator or pump or mechanical driven device;

“**property protection plane**” means a vertical plane on, and including the boundary line of a piece of land defining the boundaries of such piece of land in space;

“**recreational vehicle**” means:

- (a) an off road vehicle, scrambler, dune buggy or ultra-light aircraft;
- (b) a model aircraft, vessel or vehicle;
- (c) any aircraft or helicopter used for sport or recreational purposes;
- (d) any other conveyance or model which in the opinion of the Municipality is a recreational vehicle;

“**SABS 0103**” means South African Bureau of Standards publication No. 10103 entitled: “The measurement and rating of environmental noise with respect to annoyance and to speech communication” published under Government Notice No. 718 in Government Gazette No. 18022 of 30 May 1997, as amended from time to time or its corresponding replacement.;

“**SANS 10117**” means South African Bureau of Standards publication No. 0117- 1974 titled: “Code of Practice for the determination and limitation of disturbance around an aerodrome due to noise from aeroplanes” published under Government Notice No. 151 of 01 February 1985, as amended from time to time or its corresponding replacement;

“**SANS 10181**” means South African Bureau of Standards publication No. 0181- 1981 titled: “Code of Practice for the measurement of noise emitted by road vehicles when stationary” published under General Notice No. 463 of 09 July 1982, as amended from time to time or its corresponding replacement;

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“**SABS 0210**” means South African Bureau of Standards publication No. 0210- 1986 titled: “Code of Practice for calculating and predicting road traffic noise” published under Government Notice No. 358 of 20 February 1987, as amended from time to time or its corresponding replacement;

“**SANS 10281**” means South African Bureau of Standards publication No. 0281- 1997 titled: “Engine speed (S values), reference sound levels and permissible sound levels of stationary road vehicles” published under Government Notice No. 761, 762, and 763 in Government Gazette No. 18040 of 06 June 1997, as amended from time to time or its corresponding replacement;

“**sound level**” means the reading on a sound level meter taken at a measuring point;

“**sound level meter**” means a device measuring sound pressure while is set on “**f**” – time weighting and which indicates the result in dBA;

“**zone sound level**” means a derived dBA value determined indirectly by means of a series of measurements, calculations or table readings and designated by the Municipality for an area.

### 3. APPLICATION

This By-law is applicable within the area of jurisdiction of the City of Mangaung.

### 4. DISTURBING NOISE

No person may cause a disturbing noise, or allow it to be caused by any person, animal, machine, device, vehicle, recreational vehicle, apparatus or any combination thereof.

### 5. NOISE NUISANCE

5.1 Where it could cause a noise nuisance, a person must not -

- (a) operate or play, allow to be operated or played, a radio, television set, drum, musical instrument, sound amplifier, loudspeaker system or similar device producing, reproducing or amplifying sound;
- (b) allow an animal owned or controlled by him or her to make noise;
- (c) build, make, construct, repair, rebuild, modify, operate or test a vehicle, vessel, aircraft, or object, or allow it to be built, made, constructed, repaired, rebuilt, modified, operated or tested, in or near a residential zone or premises;
- (d) erect, demolish or alter a building or structure, or allow it to be erected, demolished or altered, in accordance with the building regulations of the municipality, if it affects a residential zone or premises unless permission is granted by the municipality to conduct building operations within the hours specified in SANS 10400 for the control of noise, if building operations are to be carried out outside of these hours then an exemption is required;
- (e) use or discharge any explosive, firearm or similar device that emits impulsive sound or allow it to be used or discharged, except with the prior consent in writing of the municipality and subject to such conditions as the municipality may deem necessary, save as such person may otherwise be authorised in law to use or discharge;
- (f) on a piece of land or in water or in airspace above water or in airspace above a piece of land used for recreational purposes –
  - i) operate a recreational vehicle; or
  - ii) as the owner or person in control of the piece of land, water or airspace, allow any person to operate a recreational vehicle on such land or in such water or such airspace;
- (g) except in emergency situations or unless permission is obtained from the municipality, emit a sound, or cause or allow a sound to be emitted, by means of a bell, carillon, siren, hooter, static alarm, whistle, loudspeaker or similar device;
- (h) drive a vehicle on a public road;
- (i) use any power tool or power equipment used for construction purposes, drilling or demolition work, or allows it to be used, in or near a residential area, unless permission was granted by the municipality to conduct normal construction or repair work to public and private property.

5.2 This section is not applicable to use of or noise caused by generators.

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## 6. LAND USE

### 6.1 No person may–

- (a) establish any zone unless a Noise Impact Assessment has been undertaken in accordance with SANS 10328. The assessment must indicate that either the outdoor equivalent continuous day/night rating level (LR,dn), the outdoor equivalent continuous day-time rating level (LR,d) or the outdoor equivalent continuous night-time rating level (LR,n) appropriate for the particular district will not be exceeded at any position within the boundaries of the proposed zone;
- (b) construct or erect any building or make changes to existing facilities on a premises which will house an activity which does not conform with the dominant land use specified in the applicable zoning scheme;
- (c) construct or erect any building or make changes to existing facilities on premises which will house an activity which produces more noise with respect to that of the dominant land use specified in the applicable zoning scheme or will create a disturbing noise unless it has been proven that precautionary measures will be implemented. Such measures must be to the satisfaction of the municipality in that the premises, after being erected or developed or changes made, will be adequately insulated against the transmission of sound to the outside, so that either the outdoor equivalent day/night rating level (LR,dn), the outdoor equivalent continuous day-time rating level (LR,d) and/or the outdoor equivalent continuous night-time rating level (LR,n), will not exceed the appropriate rating level for outdoor noise specified in SANS 10103 at any position on the property projection plane of the premises; or (d) undertake any activity which constitutes a noise source referred to in SANS 10328 and any of the listed activities requiring an EIA in terms of the NEMA Regulations, which are considered to have a potential noise impact unless a Noise Impact Assessment has been undertaken in accordance with SANS 10328.

### 6.2 The municipality may -

- (a) before changes are made to existing facilities or existing uses of land or buildings or before new buildings are erected, in writing require that Noise Impact Assessments or tests be conducted to the satisfaction of the municipality by the owner, developer, tenant or occupant of the facilities, land or buildings concerned. Such reports or certificates must be submitted by such owner, developer, tenant or occupier to the municipality. The report should prove that either the outdoor equivalent continuous day/night rating level (LR,dn), the outdoor equivalent continuous day-time rating level (LR,d) and the outdoor equivalent continuous night-time rating level (LR,n) at any position on or outside the property projection plane of the existing facility, use of land or building will not exceed values for the appropriate level given in SANS 10103. The Noise Impact Assessment, if required shall be conducted in accordance with SANS 10328 or other applicable documentation and the tests, if required, must be conducted in accordance with SANS 10103 or other applicable documentation; or
- (b) If excavation, earthmoving, pumping, drilling, construction, or demolition, or any similar activity, power generation or music causes or may cause a noise nuisance or disturbing noise, instruct in writing that such work, activity, generation or music be forthwith discontinued until such conditions as the municipality may deem necessary have been complied with.

## 7. DESIGNATION OF CONTROLLED AREAS

### 7.1 The municipality may –

- (a) by notice in the provincial gazette, designate a controlled area in its area of jurisdiction or amend or cancel an existing controlled area; and by notice in the provincial gazette; and
- (b) designate zone sound levels for specific areas and for specific times in its area of jurisdiction or amend or cancel such designation;

### 7.2 No person may –

- (a) erect educational, residential, flat, hospital, church or office buildings in an existing township in controlled area or area for which a zone sound level has been designated in terms of subsection (7.1)(b), unless acoustic screening measures have been provided in the building to limit the reading on an integrating impound and sound level meter, measured inside the building after completion, to 40 Dba or such level as may be determined in accordance with subsection (7.1)(b): provided that any air-conditioning or ventilating system shall be switched off during the course of noise measurements;
  - (b) locate educational, residential, hospital or church erven within a controlled area in a new township or an area that has been rezoned: provided that such situation may be allowed by the municipality in accordance with the acoustic screening measures mentioned by that municipality in the approved buildings plans.
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**8. MOTOR VEHICLES**

- 8.1 No person may drive a vehicle, or allow it to be driven, on a public road, if the sound level at the measuring point measured, when stationary, in accordance with the procedure prescribed in SANS 10181 exceeds -
- (a) in the case of a non-exempted vehicle, the stationary sound level specified in SANS 10281 for that type of vehicle; or
  - (b) in the case of an exempted vehicle, by more than 5 dBA the applicable reference sound level indicated in SANS 10281, for that type of vehicle.
- 8.2 The municipality may in order to determine whether a vehicle being used on any road in the area of jurisdiction of the municipality, including a private, provincial or national road crossing its area of jurisdiction, complies with the provisions of the by-law, instruct the owner or driver of the vehicle –
- (a) to stop the vehicle or cause it to be stopped; and
  - (b) to have any appropriate inspection or test, as the municipality may deem necessary, conducted on the vehicle on the roadside where it was stopped or on a place, date and time determined by the municipality in writing.
- 8.3 The authorised person must, prior to any testing being undertaken inform the driver of the vehicle that -
- (a) the vehicle has been stopped to test it in terms of this by-law for noise nuisance;
  - (b) the vehicle is being detained for the purpose of such testing;
  - (c) if the results of such testing indicates noise nuisance from the vehicle or if the driver concerned fails or refuses to assist with such test, it will constitute an offence under this by-law; and
  - (d) A person who fails to comply with a direction given under this section commits an offence.
- 8.4 An inspection done in terms of subsection (8.2)(b) shall be carried out -
- (a) at or as near as practicable to the place where the direction to stop the vehicle is given; and
  - (b) within 1 hour of the vehicle being stopped in accordance with the direction of the authorised person.
- 8.5 If, after conducting a sound level test, the authorised person is satisfied that the vehicle –
- (a) is not exceeding the permitted sound levels prescribed, then the authorised person must furnish the driver of the vehicle with a certificate (valid for a period of 24 months) indicating that the vehicle is not being driven or used in contravention of this By-law; or
  - (b) is exceeding the permitted sound levels prescribed, the authorized must issue the driver of the vehicle with a repair notice in accordance with subsection (8.6).
- 8.6 A pair notice must –
- (a) 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; and
  - (b) contain, amongst others, the following information –
    - (i) the make, model and registration number of the vehicle;
    - (ii) the name, address and identity number of the driver of the vehicle; and
    - (iii) if the driver is not the owner, the name and address of the vehicle owner.
- 8.7 A person commits an offence under this section if the person fails -
- (a) to comply with the repair notice;
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(b) to take the vehicle for re-testing;

8.8 It is not a defence in proceedings to aver that the driver of the vehicle failed to bring the repair notice to the attention of the owner of that vehicle.

8.9 The authorised person must issue a notification in terms of section 341 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), where the owner of the vehicle fails -

(a) to comply with a repair notice issued in terms of subsection (8.6); or

(b) to take the vehicle for re-testing.

## **9. MUSIC, OPEN-AIR MUSIC FESTIVALS AND SIMILAR SHOWS AND GATHERINGS**

9.1(a) No person may stage any open-air entertainment festival, such as, but not limited to a show, an air show, music concert, festival, sports event or similar gathering without a prior written consent of the municipality.

(b) If any music causes or may cause a noise nuisance, the municipality may instruct in writing that such music be discontinued until such conditions as the municipality may deem necessary have been complied with.

(c) Subject to the provisions of paragraph (b) and applicable provisions of the any other law, the municipality may attach any instrument and/or equipment used to generate music if no permission has been obtained as required by paragraph (a).

(d) An instrument and/or equipment attached under paragraph (c) shall be kept in safe custody by the municipality.

(e) The municipality may lift the attachment contemplated in paragraph (c) if the owner or person in control of the instrument and/or equipment has applied for permission in terms of paragraph (a).

(f) This section is not applicable to –

(i) churches;

(ii) schools;

(ii) other education facilities; or

(iii) any other defined area or activity to which the Council has declared this section not to apply.

## **10. GENERAL PROHIBITIONS**

10.1 Any person who –

(a) fails to comply with the provisions of this section;

(b) fails to comply with a written condition. instruction or notice issued by the municipality in terms of this section;

(c) tampers with, remove. put out of action, damage or impair the functioning of a noise monitoring system, noise limiter, noise measuring instrument, acoustic device, road traffic sign or notice placed in a position by or on behalf of the municipality;

(d) in respect of a duly authorised person of the municipality -

(i) fails or refuses to grant admission to such official to enter and to inspect the premises;

(ii) fails or refuse to give information which may lawfully be required of him or her to such official;

(iv) hinders or obstruct such official in the execution of his or her duties; or

(v) gives false or misleading information to such official knowing that it is false or misleading, is guilty of an offence.

## **11. POWERS OF AUTHORIZED PERSON**

11.1 An authorised person may –

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- (a) for the purposes of applying this section, at any reasonable time enter premises upon reasonable notice to conduct any appropriate examination, inquiry or inspection thereon as it may deem expedient and to take any steps it may deem necessary;
- (b) if a noise emanating from a premises, vehicle, recreational vehicle or private area is a noise nuisance or disturbing noise, instruct in writing –
- (i) the person causing such noise or who is responsible for the infringement;
  - (ii) the owner, tenant or occupant of such building, premises, vehicle, recreational vehicle or private area from which or from where such noise emanates or may emanate; or
  - (iii) all such persons, to discontinue or cause to be discontinued such noise or to take steps to or apply appropriate remedies to lower the level of such noise to a level conforming to the requirements of this by-law within the period stipulated in the instruction - provided that the provisions of this paragraph do not apply in respect of a disturbing noise or noise nuisance caused by rail vehicles or air traffic or on a public road by vehicles that are not used as recreational vehicles;
- (c) if the noise is caused by an animal, and the owner or person in charge of that animal fails to comply with an instruction referred to in subsection (11.1)(b), subject to the applicable provisions of any other law, impound or cause to be impounded such animal;
- (d) impose such appropriate conditions as it deems fit when granting any permission or exemption, including the specification of times and days when activities that may cause noise are permitted or prohibited;
- (e) subject to the applicable provisions of any other law, place or cause to be placed measuring instruments or similar devices, road traffic signs or notices at any place within the municipality's jurisdiction for the enforcement of the provisions of this bylaw - provided that road traffic signs and notices shall be placed on private property only with the permission of the owner.

## 12. USE OF MEASURING INSTRUMENTS

12.1 Any person taking reading must ensure that –

- (a) the acoustic sensitivity of sound level meters is checked before and after every series of measurements by using a sound calibrator, verified every two years by an accredited calibration laboratory for compliance with the specifications for accuracy of national codes of practice for acoustics, to comply with the Measuring Units and National Measuring Standards act 2006(Act No.18 of 2006)
- (b) the microphone of an integrating impulse sound level meter is at all times provided with a windshield;
- (c) the measuring instruments are operated strictly in accordance with the manufacturer's instructions; and
- (d) sound measuring instruments are checked annually by the South African Bureau of Standards or a calibration laboratory approved by the National Minister of Trade and Industry in order to comply with the appropriate specifications for accuracy.

12.2 The measurement of dBA values in respect of controlled areas, ambient sound levels or noise levels in terms of these bylaws shall be done as follows:

- (a) Outdoor measurements on a piece of land; by placing the microphone of an integrating impulse sound level meter at least 1,2 metres but not more than 1,4 metres above the ground and at least 3,5 metres away from walls, building or other sound reflecting surfaces; and
- (b) indoor measurements in a room or enclosed space, which is not ventilated mechanically; by placing the microphone of an integrating impulse sound level meter at least 1,2 metres, but not more than 1,4 metres above the floor and at least 1,2 metres away from the wall, with all the windows and outer doors of the room or enclosed space entirely open; provided that the windows and doors are closed for indoor measurements in rooms or enclosed spaces which are mechanically ventilated.

12.3 Any deviation from heights and distances referred to in subsection (12.2) shall be reported with the furnishing of reason.

## 13. EXEMPTIONS

13.1 The provisions of this By-law shall not apply, if:

- (a) the emission of sound is for the purposes of warning people of a dangerous situation, or
  - (b) the emission of sound takes place during an emergency.
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- 13.2 Any person may by means of a written application, in which the reasons are given in full, apply to the Municipality for exemption from any provision of these bylaws.
- 13.3 As exemption shall, if approved, be granted by the Municipality in writing, and the conditions under which and the period for which such exemption is granted, shall be stipulated in such exemption.
- 13.4 An exemption shall not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the Municipality under sub-section (13.3); provided that if activities are commenced before such undertaking has been submitted to the Municipality, the exemption shall lapse.
- 13.5 If any condition of exemption is not complied with, the exemption may be withdrawn by the Municipality after notice to show cause against the proposed withdrawal has been given, and the representations, if any, resulting therefrom have been considered.

#### **14. ATTACHMENT**

- 14.1 A vehicle impounded shall be kept in safe custody by the Municipality.
- 14.2 The Municipality may lift the attachment if the owner or person in control of the vehicle concerned has been instructed in writing by an authorised officer of the Municipality:
- (a) to repair or to modify the vehicle concerned or cause it to be repaired or to be modified; and
  - (b) to have such inspection or test as the Municipality may deem necessary conducted on the vehicle on a date and at a time and place mentioned in the instruction.

#### **15. OFFENCES AND PENALTIES**

- 15.1 Any person who:
- (a) wilfully conceals any facts or documents in connection with an application for interment;
  - (b) makes any false statement in his/her written application for interment;
  - (c) contravenes any provision of this By-law or who fails to comply with a notice issued in terms of, or a condition imposed under, or any other provision of ,this By-law,

shall be guilty of an offence and if convicted shall be liable for a fine not exceeding R 3 000, 00 or imprisonment for a period not exceeding three months, or to both such fine and such imprisonment.

#### **16. RESTRICTION OF LIABILITY**

No authorized employee of the municipality shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed in terms of this By-law.

#### **17. CONFLICTING LAWS**

If there is any conflict between a provision in this By-law and a provision of any other by-law of the Municipality, the provisions of this By-law shall prevail to the extent of the inconsistency.

#### **18. REPEAL AND AMENDMENT**

Any by-laws relating to noise control adopted by the Council or any Municipality now comprising part of the City is repealed from the date of promulgation of this By-law.

The Noise Control By-laws of the Mangaung Metropolitan Municipality as promulgated in the Local Government Notice No. 35 of June 2016 are hereby amended

#### **19. SHORT TITLE AND COMMENCEMENT**

This By-law is called **Mangaung, Noise Control By-law** and the amendments effected come into operation on the date of promulgation thereof in the Provincial Gazette.

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