

NDLAMBE MUNICIPALITY: FUNERAL PARLOURS, CEMETERIES AND CREMATORIA BY-LAW

Under the provisions of section 156 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), the Ndlambe Municipality, enacts as follows:-

Table of contents

1. Interpretation
2. Principles and objectives

CHAPTER 1: FUNERAL UNDERTAKERS' PREMISES

3. Applicable legislation

CHAPTER 2: GENERAL PROVISIONS RELATING TO CEMETERIES AND CREMATORIA

4. Appointment of caretaker
5. Hours of admission for public
6. Children
7. Keeping to path
8. Prohibited conduct within cemetery and crematorium
9. Right of interest in ground

CHAPTER 3: GENERAL PROVISIONS RELATING TO INTERMENT AND CREMATION

10. Consent required for interment and cremation
11. Interment and cremation times
12. Register
13. Indigent and destitute persons
14. Number of corpses in one coffin

CHAPTER 4: INTERMENT

15. Dimensions of graves and apertures
16. Depth of grate
17. Reservation of grave
18. Child's coffin too large
19. Construction material of coffin
20. Number of bodies in one grave
21. Coffin to be covered with earth
22. Religious ceremony
23. Hearse and vehicle at cemetery
24. Instruction of caretaker
25. Music inside cemetery
26. Interment attended by more than fifty people

27. Occupation of chapel or shelter
28. Number on grave

CHAPTER 5: EXHUMATION OF CORPSE AND RE-OPENING OF GRAVE

29. Disturbance of mortal remains
30. Time of exhumation
31. Re-opening of grave

CHAPTER 6: CARE OF GRAVES

32. Shrubs and flowers
33. Care of grave

CHAPTER 7: CREMATION

34. Receptacles and ashes
35. Burial and exhumation of ashes
36. Cremation certificate

CHAPTER 8: ERECTION AND MAINTENANCE OF MEMORIAL WORK

37. Consent of Municipality
38. Requirements for erection of memorial work
39. Position, movement and removal of memorial work
40. Repairs to memorial work
41. Supervision of work
42. Damaging of memorial work
43. Conveying of memorial work
44. Vehicle and tools
45. Complying with Municipality's directions
46. Times for bringing in material and doing work
47. Inclement weather
48. Production of written permission
49. Memorial work in crematorium

CHAPTER 9: SECTIONS IN CEMETERY

50. Municipality may establish sections
51. Monumental section
52. Garden of Remembrance
53. Heroes Acre
54. Aesthetic section
55. Panoramic section

CHAPTER 10: PRIVATE CEMETERIES

56. By-laws apply

- 57. Establishment and continued use of cemeteries
- 58. Duties of Proprietors

CHAPTER 11: MISCELLANEOUS

- 59. Authentication and service of order, notice or other document
- 60. Complaint
- 61. Notice of compliance and representations
- 62. Costs
- 63. Appeal
- 64. Charges
- 65. Penalties
- 66. Limitation of liability
- 67. Exemptions
- 68. Liaison forums in community
- 69. Revocation of by-laws
- 70. Short title and commencement

Schedules

1. Interpretation

- (1) In this by-law, unless the context otherwise indicates –
- “**adult**” means a deceased person over the age of 12 years and where the word is used to define a corpse, a deceased person whose coffin will fit into the grave opening prescribed for adults in section 15;
 - “**aesthetic section**” means a cemetery or section of a cemetery which has been set aside by the Municipality wherein only headstones may be erected;
 - “**approved**” means approved by the Municipality;
 - “**ashes**” means the cremated remains of a corpse;
 - “**berm**” means a concrete base laid at the head of a grave and on which a memorial is erected;
 - “**burial**” means interment in earth, a sepulchre or tomb;
 - “**burial order**” means an order issued in terms of the Births and Deaths Registration Act, 1992 (Act 51 of 1992);
 - “**caretaker**” means the official whom the Municipality appoints from time to time in a supervisory capacity with regard to a cemetery or crematorium;
 - “**cemetery**” means a land or part of a land within the municipal area set aside by the Municipality as a cemetery;
 - “**child**” means a person who is not an adult, and where the word is used to define a corpse, means a deceased person whose coffin will fit into the grave opening prescribed for children in section 18, and includes the corpse of a stillborn child and a foetus;
 - “**columbarium**” means a the place set aside in the basement of a crematorium or chapel containing rows of niches for the purpose of placing receptacles containing the ashes of cremated corpses therein;

“**corpse**” means the remains of a deceased person and includes a still-born child and foetus;

“**cremation**” means the process whereby a corpse is disposed of by fire;

“**crematorium**” means a crematorium as defined in section 1 of the Ordinance and includes the buildings in which a ceremony is conducted and the cremation carried out;

“**cremated remains**” means all recoverable ashes after the cremation;

“**exhumation**” means the removal of a corpse from its grave;

“**funeral undertaker’s premises**” has the meaning assigned to it in regulation 1 of the Regulations;

“**garden of remembrance**” means a section of a cemetery or crematorium set aside for the erection of memorial work or a wall of remembrance;

“**grave**” means a piece of land, within a cemetery or heritage site, excavated for the burial of a corpse and includes the headstone, number or marker of and a structure on or associated with the grave;

“**heroes acre**” means an area of land set aside for the burial of a hero;

“**medical officer of health**” means the officer appointed by Municipality or any other person acting in the capacity of the medical officer of health;

“**memorial section**” means a section of a cemetery set aside for the erection of memorials;

“**memorial work**” means any headstone, monument, plaque, other work or object, erected or intended to be erected in a cemetery or crematorium to commemorate a deceased person, and includes a kerb demarcating a grave, and a slab covering a grave;

“**municipality**” means the Municipality of Ndlambe established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorised agent or any employee acting in connection with this by-law by virtue of a power vested in the municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“**niche**” means a compartment in a columbarium or wall of remembrance for the placing of ashes;

“**ordinance**” means the Crematorium Ordinance, 1965 (Ordinance No. 18 of 1965);

“**panoramic section**” means a section in a cemetery set aside by the Municipality where memorial work is restricted to a plaque or memorial slab;

“**prescribed**” means prescribed by the Municipality;

“**prescribed fee**” means a fee determined by the Municipality in its Customer Care and Revenue Management By-law;

“**private cemetery**” means a cemetery of which is used as a cemetery but which has not been set aside as such by the Municipality;

“**Regulations**” means the Funeral Undertakers’ Premises, made under sections 33 and 39 of the Health Act, 1977 (Act 63 of 1977), and published as Government Notice No. 237 of 8 February 1985;

“**tomb**” means an above ground burial vault;

“**wall of remembrance**” means a structure (in a cemetery) which contains niches in which urns containing ashes can be stored.

2. Principles and objectives

The purpose of this By-law is to control funeral undertaker's premises, to make provision for the allocation of land for the purposes of the burial of human remains, to develop and maintain existing cemeteries, to permit its residents to dispose of a corpse by cremation and to provide space allowing the preservation of the remains of a cremation in a dignified manner.

CHAPTER 1: FUNERAL UNDERTAKERS' PREMISES

3. Applicable legislation

The National Building Regulations and Building Standards Act, 1977 apply in respect of funeral undertaker’s premises.

CHAPTER 2: GENERAL PROVISIONS RELATING TO CEMETERIES AND CREMATORIA

4. Appointment of caretaker

(1) The Municipality may appoint a caretaker for each cemetery or crematorium to control and administer the cemetery or crematorium.

(2) The caretaker must take into account the customs of the deceased person and the people responsible for the burial or cremation and must accommodate these within the framework of this by-law.

5. Hours of admission for public

(1) Every cemetery is open to the public during the following hours: 8:00 and 17:00, however, if it is in the interest of the public, the Municipality may close to the public a cemetery or crematorium or part thereof for such periods as the Municipality deems necessary.

(2) No person, excluding workers or persons with permission, may be in or remain in a cemetery or crematorium or part thereof before or after the hours mentioned in sub-section (1) or during a period when it is closed to the public.

(3) A person who contravenes subsection (2) commits an offence.

6. Children

(1) No child under 12 years of age may enter a cemetery or crematorium unless he or she is under the care of a responsible person.

(2) A person who allows a child to enter a cemetery or crematorium in contravention of subsection (1), commits an offence.

7. Keeping to path

Except for purposes permitted by this by-law, a person may only use a path provided in the cemetery, and failure to do so constitutes an offence.

8. Prohibited conduct within cemetery and crematorium

- (1) No person may in a cemetery or crematorium -
- (a) cause a nuisance;
 - (b) ride an animal or cycle without permission of the caretaker
 - (c) allow an animal to wander;
 - (d) plant, cut, pick or remove a tree, plant, shrub or flower without the permission of the caretaker;
 - (e) hold or take part in a demonstration;
 - (f) interrupt during the performance of his or her duties an official, workman or labourer employed by the Municipality;
 - (g) obstruct, resist or oppose the caretaker in the course of his or her duty or refuse to comply with an order or request which the caretaker is entitled under this by-law to make;
 - (h) mark, draw, scribble, erect an advertisement or object on a wall, building, fence, gate, memorial work or other structure;
 - (i) use water for any form of gardening without the permission of the caretaker;
 - (j) plant trees, flowers or shrubs on or between graves;
 - (k) leave any rubbish, soil, stone, debris or litter;
 - (l) in any way damage or deface any part of a cemetery, crematorium, grave or memorial work.
 - (m) enter or leave except by an entrance provided for the purpose;
 - (n) solicit any business, order or exhibit, or distribute or leave a tract, business card or advertisement;
 - (o) treat a grave or memorial work with disrespect, such as climbing or sitting on a grave or memorial work;
 - (p) enter an office, building or fenced place, except in connection with lawful business;
 - (q) with the exception of a blind person, bring an animal; and
 - (r) expose a corpse or a part thereof
- (2) A person who contravenes a provision of subsection (1) commits an offence.

9. Right of interest in ground

(1) No person will acquire any right to or interest in any ground or grave in a cemetery, other than those that may be obtainable under this By-law.

- (2) The Municipality may, on payment of the prescribed fee, sell to a person the use of a grave in a section of a cemetery for a period not exceeding 20 years.
- (3) (a) The Municipality may set aside different areas in a cemetery for exclusive use by different religious or cultural groups.
- (b) The Municipality may promote the environmental advantages of cremation as an alternative to burial
- (c) The Municipality may, if compelled to do so by environmental considerations, such as shortage of land for burial, and subject to the provisions of any other law regarding the rights of a person, request that a corpse be cremated instead of interred.

CHAPTER 3: GENERAL PROVISIONS RELATING TO INTERMENT AND CREMATION

10. Consent required for interment and cremation

(1) No person may inter a corpse in a cemetery or have it cremated in a crematorium without the prior written consent of the caretaker.

(2) A person who wishes to obtain the consent as contemplated in subsection (1) must submit to the caretaker an application in writing together with –

- (a) the prescribed fee;
- (b) a death certificate;
- (c) a burial order issued in terms of the Births and Deaths Registration Act, 1992,

and the caretaker may not approve the application unless all of the above requirements are met.

(3) An application must be submitted to the caretaker, in respect of –

(a) an interment where the Municipality is responsible for the digging of the grave, not later than 15:00 on the day before the intended interment or, where the grave exceeds the standard size, not later than 15:00 two days before the intended interment; and

(b) a cremation, not later than 15:00 on the day before the intended cremation.

(4) Should any alteration be made in the day or hour previously fixed for an interment or cremation, or an interment or cremation be cancelled, in the instance where the Municipality is responsible for the digging of a grave, notice of the alteration must be given to the caretaker at least six hours before the time fixed for the interment or cremation, and no refund will be made on monies paid in respect of the opening of an existing grave.

(5) The application contemplated in subsection (2) must be signed by the nearest surviving relative of the deceased person, however, if the caretaker is satisfied that the signature of the nearest surviving relative cannot be

obtained timeously, or for any other valid reason, he or she may grant an application signed by any other interested person.

(7) A person who disposes of a corpse in contravention of subsection (1) or who contravenes subsection (5) commits an offence.

11. Interment and cremation times

(1) An interment and cremation may take place between 08:00 and 17:00.

(2) Despite the provisions of subsection (1), the caretaker may permit interment or cremation outside the times contemplated in subsection (1) in which case the Municipality may levy an additional fee.

(3) A person who interms or cremates a corpse in contravention of the provisions of subsection (1) commits an offence.

12. Register

The caretaker must keep a record of all interments, and the record must contain:

- (a) The particulars of the person who requested the interment or cremation;
- (b) the particulars of the deceased person such as the name, address, and identification number;
- (c) the date of the interment or cremation; and
- (d) in the instance of an interment, the number of the grave.

13. Indigent and destitute persons

(1) A person may apply to the Municipality for the burial or cremation of the corpse of an indigent person and must provide proof that the deceased was granted the status as indigent person by the Municipality and the Municipality may decide if the corpse is to be buried or cremated.

(2) Subject to the provisions of section 48 of the Health Act, 1977, and section 10 of the Human Tissue Act, 1983, the corpse of a destitute person or an unclaimed corpse may be buried or cremated according to conditions determined by the Municipality.

(3) Where a corpse of an indigent person is cremated, the caretaker of the crematorium must retain the ashes, and should the ashes not be claimed, bury the ashes in a grave.

14. Number of corpses in one coffin

(1) Subject to the provisions of subsection (2), only one corpse may be contained in a coffin.

(2) More than one corpse may be contained in one coffin if the consent of the caretaker has been obtained and the prescribed fee has been paid, in the case of –

- (a) a mother and child who died during childbirth; or
- (b) family members who –

- (i) died together; or
 - (ii) died a short while after each other, and the burial or cremation of the first dying member has not yet taken place.
- (3) A person who contravenes a provision of subsection (1) or who fails to obtain the consent as contemplated in subsection (2) commits an offence.

CHAPTER 4: INTERMENT

15. Dimensions of graves and apertures

- (1) The standard dimensions of a grave are as follows:
 - (a) Adult:
 - (i) Single grave: Length: 2200 mm; Width: 900 mm.
 - (ii) Double grave: Length: 2200 mm; Width: 2700 mm.
 - (b) Child:
 - Single grave: Length: 1500 mm; Width: 700 mm.
- (2) Any person requiring a larger grave than the dimensions set in subsection (1) must, when submitting an application in terms of section 10, specify the measurements of the coffin, and pay the fee prescribed by the Municipality for enlarging the hole.
- (3) A person, other than an employee of the Municipality, who digs a grave in contravention of the dimensions stipulated in subsection (1), commits an offence.

16. Depth of grave

- (1) An adult's grave is 1900 mm in depth and that of a child 1500 mm in depth.
- (2) A person, other than an employee of the Municipality, who digs a grave in contravention of the dimensions stipulated in subsection (1) commits an offence.

17. Reservation of grave

- (1) A person desiring to reserve the use of a grave must submit an application to the caretaker and pay the prescribed fee
- (2) A restriction may be placed on the reservation of graves, and reservations will only be accepted for adult graves in the monumental section as stated in subsection (3).
- (3) In the event of an interment of a husband or wife in the monumental section, only one additional adjoining grave may be reserved for the survivor.
- (4) In the event of an interment of a husband or wife in the aesthetic section, an additional adjoining grave may not be reserved for the survivor, however, subject to the provisions of section 14(2), the interment of the survivor may be permitted in the same grave.

(5) Where another person, other than the applicant, has mistakenly used a grave, the caretaker must allocate another grave in the cemetery to the applicant.

18. Child's coffin too large

Should a child's coffin be too large for the dimensions of a child's grave, it must be placed in an adult grave and the prescribed fee for an adult's interment must be paid.

19. Construction material of coffin

(1) A coffin interred in a grave must be constructed of wood or biodegradable material.

(2) A person who interrs a coffin in contravention of subsection (1) commits an offence.

20. Number of bodies in one grave

Subject to the provisions of section 14(2), more than one corpse may be interred in a single grave.

21. Coffin to be covered with earth

The person responsible for an interment must ensure that a coffin, upon being placed in a grave, is covered without delay with at least 300 mm of earth, and failure to do so constitutes an offence.

22. Religious ceremony

The members of a religious denomination may conduct, during the interment and at the grave, a religious ceremony in connection with an interment or memorial service.

23. Hearse and vehicle at cemetery

(1) No hearse or other vehicle may enter a cemetery without the prior permission of the caretaker having been obtained.

(2) No hearse or other vehicle may enter a cemetery other than by the routes set aside for that purpose.

(3) A person who contravenes subsections (1) or (2) commits an offence.

24. Instruction of caretaker

A person taking part in a funeral procession or ceremony in a cemetery must follow instructions by the caretaker, and failure to do so constitutes an offence.

25. Music inside cemetery

(1) Singing and music is allowed in a cemetery, in which case the prior permission of the caretaker must be obtained.

(2) A person who contravenes subsection (1) commits an offence.

26. Interment attended by more than fifty people

Where it is probable that more than 50 people will be present at an interment, the municipality may require that the caretaker be notified.

27. Occupation of chapel or shelter

(1) No person may for the purpose of a funeral occupy a chapel or shelter in a cemetery for more than 45 minutes.

(2) A person who contravenes subsection (1) commits an offence.

28. Number on grave

(1) No person may inter a corpse in a grave on which the number of the grave has not been appropriately marked.

(2) A person who contravenes subsection (1) commits an offence.

CHAPTER 5: EXHUMATION OF CORPSE AND RE-OPENING OF GRAVE

29. Disturbance of mortal remains

(1) Subject to the provisions of an exhumation order given in terms of section 3(4) of the Inquests Act, 1959 and the provisions of any other Act relating to the exhumation of corpses –

(a) no corpse or mortal remains or ground surrounding it in a cemetery may be disturbed;

(b) no grave may be re-opened; and

(c) no corpse may be removed from a grave,

without the written consent of the Municipality.

(2) The prescribed fee for exhumation must be paid to the municipality at least two days before the date fixed for the exhumation or removal of the corpse.

(3) A person who contravenes subsections (1) commits an offence.

30. Time of exhumation

(1) No person may exhume or cause a corpse to be exhumed during such time as the cemetery is open to the public.

(2) A person who contravenes subsection (1) commits an offence.

31. Re-opening of grave

(1) No person may re-open a grave for the purpose of interring a second corpse in the same grave unless –

(a) the grave was initially made deeper for this purpose;

(b) if not made deeper, then only after 10 years have passed since the interment of the first corpse;

- (c) for purposes of burial of a receptacle containing ashes, the depth does not exceed 300 mm;
 - (d) the consent contemplated in section 29(1) has been obtained; and
 - (e) the fee prescribed by the Municipality has been paid.
- (2) A person who contravenes a provision of subsection (1)(a) to (d) commits an offence.
- (3) The Municipality has the right to re-open a grave for the purpose of establishing, by reading the inscription on the coffin, the identity of the corpse.

CHAPTER 6: CARE OF GRAVES

32. Shrubs and flowers

The Municipality may at any time prune, cut down, dig up or remove any shrub, plant, flower, foliage, wreath or adornment if it becomes unsightly, is damaged or wilted.

33. Care of grave

- (1) The maintenance of a grave is the responsibility of the person contemplated in section 9(2).
- (2) The Municipality may, on application by a person contemplated in subsection 9(2) and upon payment of the fee and subject to conditions prescribed by the Municipality, maintain any grave.
- (3) The Municipality may at its discretion undertake to keep, at its own expense, any grave in order for any period.

CHAPTER 7: CREMATION

34. Receptacles and ashes

- (1) Unless the ashes are to be buried by the Municipality, the person contemplated in section 10(2) must provide a receptacle, on which the full name of the deceased person is indicated.
- (2) The ashes must, after the cremation, be collected by the person contemplated in section 10(2), and should he or she fail to collect the ashes, the ashes will be dealt with in terms of section 35(1)..
- (3) Where a receptacle is intended to be placed in a niche in the columbarium –
- (a) it must –
 - (i) be made of wood or stone; and
 - (ii) be of a size and design as to fit into the niche; and
 - (b) if the niche is not meant to be sealed, have affixed to it a plate on which the full name of the deceased person is inscribed.

35. Burial and exhumation of ashes

- (1) In the absence of an arrangement between the caretaker and the person contemplated in section 34 regarding the ashes, the caretaker may bury or scatter the ashes in a garden of remembrance, where such facility is available.
- (2) A person may deposit ashes in a –
 - (a) grave; or
 - (b) niche in a –
 - (i) columbarium;
 - (ii) wall of remembrance; or
 - (ii) memorial work.
- (3) A person must obtain the consent of the caretaker if he or she wishes to –
 - (a) bury ashes in a grave;
 - (b) exhume ashes from a grave; or
 - (c) scatter ashes,and the caretaker must, on receiving payment of the prescribed fee –
 - (i) give written consent to the applicant to bury, exhume or scatter the ashes; and
 - (ii) in the instance of burial or exhumation, prepare the grave for burial or exhumation.
- (4) A grave for the burial of ashes or a niche in a columbarium must measure 610 mm in length, 610 mm in width, and 610 mm in depth.

36. Cremation certificate

- (1) On completion of a cremation, the caretaker must supply a cremation certificate to the person contemplated in section 34(1).
- (2) The caretaker must, on application and after receipt of the prescribed fee, issue a duplicate cremation certificate to a person.

CHAPTER 8: ERECTION AND MAINTENANCE OF MEMORIAL WORK

37. Consent of Municipality

- (1) No person may bring into a cemetery, erect, alter, paint, clean, renovate, decorate, remove or otherwise interfere with any memorial work or cut any inscription thereon in a cemetery without the written consent of the Municipality.
- (2) When erecting a memorial work, the municipality may require the submission of the following:
 - (a) A plan which gives an indication of the measurements and the position;
 - (b) specification of the material of which the memorial work is to be constructed; and

- (c) the wording of the epitaph.
- (3) The plan must be submitted 30 days before the erection commences, and must be accompanied by the prescribed fee, and the Municipality may impose conditions.
- (4) No person may bring any material for the construction of memorial work into a cemetery unless the provisions of subsection (1) to (3) have been complied with and unless all charges due in respect such grave have been paid.
- (5) The Municipality's consent of the proposed work is valid for six months only, and in the event of the memorial work not being erected within the prescribed time a new application must be submitted.
- (6) The grave number must be indicated, in clearly legible figures of 30 mm in size.
- (7) A person who contravenes a provision of subsection (1) or (4) commits an offence.

38. Requirements for erection of memorial work

- (1) A person erecting a memorial work must comply with the following:
 - (a) he or she must be in possession of a plan approved by the Municipality;
 - (b) conditions imposed in terms of section 37(3) must be complied with;
 - (c) no damage may be caused to any structure and no offence may be given;
 - (d) where a memorial has a pedestal on ground level or on the berm, the pedestal may not be more than 900 mm in length, 250 mm in width and 250 mm in height for a single grave, and not more than 2700 mm in length, 250 mm in width, and 250 mm in height for a double grave;
 - (e) with the permission of the next of kin, the name of the maker can be displayed on a memorial work, but no address or any other particulars may be added thereto, and the space utilized for it may not be larger than 40 x 100 mm; and
 - (f) tiles in the Garden of Remembrance must be 240 mm x 300 mm large and must be manufactured out of non-corrosive metal.
- (2) A person who does not comply with a provision in subsection (1) commits an offence.

39. Position, movement and removal of memorial work

- (1) No person may erect a memorial work on a grave before the position has been indicated by the Municipality.

(2) Should the provisions of subsection (1) not be complied with the Municipality has the right to alter the position of the memorial work and to recover the costs from the person who erected the memorial work.

(3) Where a memorial work has originally been placed in a certain position with the express consent of the Municipality or its employee, any alteration of the position in terms of the provisions of this section is executed at the expense of the Municipality.

(4) Memorial work in conflict with the provisions of this By-law may be removed, after due notice, by the Municipality at the cost of the person who erected the memorial work, and without payment of any compensation.

40. Repairs to memorial work

If the person who erected a memorial work allows it to fall into such a state of disrepair that it may cause danger or deface the cemetery, the Municipality may serve a Notice of Compliance, as contemplated in section 61, on such person.

41. Supervision of work

A person engaged in work in a cemetery is under the supervision of the caretaker, and failure to follow his or her instructions constitutes an offence.

42. Damaging of memorial work

Unless due to the negligence of its employees, the Municipality is not responsible for any damage to a memorial work.

43. Conveying of memorial work

(1) No person may convey any stone, brick or memorial work in a cemetery upon a vehicle or truck which may cause damage to the paths or grounds or structures of the cemetery.

(2) A person who contravenes subsection (1) commits an offence.

44. Vehicle and tools

Every person engaged with work upon a grave or plot must ensure that the vehicles, tools or appliances do not block any road, and failure to do so constitutes an offence.

45. Complying with Municipality's directions

A person carrying on work within a cemetery must in all respects comply with the directions of the Municipality, and failure to do so constitutes an offence.

46. Times for bringing in material and doing work

(1) No person may bring material into or do any work, other than the dismantling of memorial work for burial purposes, within a cemetery except

during the following hours: Mondays to Fridays between the hours of 7:00 and 18:00.

(2) No person may engage in work which may be disturbing or disruptive while a funeral is in progress.

(3) A person who contravenes subsections (1) or (2) commits an offence.

47. Inclement weather

(1) No person may fix or place any memorial work while the soil is in an unsuitable condition.

(2) A person who contravenes subsection (1) commits an offence.

48. Production of written permission

A person engaged in work or on his or her way to or from work within the cemetery must, upon demand from the Municipality or its authorized official, produce the written consent issued in terms of section 37, and failure to do so constitutes an offence.

49. Memorial work in crematorium

(1) Unless a corpse was cremated in the crematorium, or a cremation certificate issued by another crematorium is submitted, no person may, without the consent of the caretaker first having been obtained, erect a memorial work in a crematorium.

(2) A memorial work –

(a) if erected in a garden of remembrance –

(i) must be made of marble or granite; and

(ii) may not exceed a size of 250 mm in width, 305 mm in length, and 25 mm in thickness;

(b) if intended to seal a niche, must conform in size and material to the memorial work next to it and may have a photograph of the deceased person affixed to it; or

(c) erected on a grave, may not exceed 1,2 m in height, 610 mm in length, and 610 mm in width.

(3) A person who erects a memorial work in contravention of subsection (1) or who contravenes a provision of subsection (2) commits an offence.

CHAPTER 9: SECTIONS IN CEMETERY

50. Municipality may establish sections

(1) The Municipality may establish one or more of the following sections in a cemetery:

(a) Monumental section;

(b) garden of remembrance;

(c) heroes acre;

(d) aesthetic section; or

- (e) panoramic section.

51. Monumental section

- (1) Memorial work may be erected upon the whole surface of the grave subject thereto that the provisions of section 38 must be complied with and that the following measurements may not be exceeded:
 - (a) Height: 2000 mm.
 - (b) Width: 900 mm in case of a single grave, and 700 mm in case of a double grave.
 - (c) Thickness: 250 mm.
- (2) A person commits an offence if he or she exceeds the measurements stipulated in subsection (1);

52. Garden of Remembrance

- (1) This section contains the wall of remembrance with niches, and a garden area in which plaques can be erected.
- (2) A container intended to be placed in a niche may not exceed 300 mm x 150 mm x 150 mm in size.
- (3) Flowers and wreaths may only be placed on the places provided therefore.
- (4) A person who contravenes a provision of subsection (2) or (3) commits an offence.

53. Heroes Acre

- (1) A heroes' acre consists of a structure erected for the purpose and contains no corpse but is a memorial only.
- (2) No person may erect such structure without the written approval of the Municipality.
- (3) The size of the structure must be 500 mm x 350 mm and must be manufactured from a non-corrodible metal or masonry.
- (4) A person who inter a corpse in contravention of subsection (1) or contravenes subsection (2) or who fails to comply with the requirements of subsection (3) commits an offence.

54. Aesthetic section

- (1) Only a headstone may be erected, and a slab may not be erected on, and a kerb may not be erected around a grave.
- (2) The dimensions of a headstone are as follows:
 - (a) Adult's grave:
 - (i) Single grave: 900 mm in length by 260 mm in width.
 - (ii) Double grave: 2200 mm in length by 260 mm in width.
 - (b) Child's grave:
 - (i) Single grave: 610 mm in length by 260 mm in width.
 - (ii) Double grave: 1200 mm in length by 260 mm in width.

- (3) No headstone may exceed a height of 1500 mm above the berm.
- (4) A person who contravenes a provision of this section commits an offence.

55. Panoramic section

- (1) Only a plaque may be embedded, and it must be –
 - (a) made of marble, granite or stainless steel or other non-corrosive metal materials;
 - (b) 500 mm in length, 500 in width, and 30 mm thick.
 - (c) embedded –
 - (i) 30 mm below the level of the grass;
 - (ii) horizontally on ground level; and
 - (iii) on a concrete foundation.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

CHAPTER 10: PRIVATE CEMETERIES

56. By-laws apply

The provisions of this by-law apply mutatis mutandis to private cemeteries.

57. Establishment and continued use of cemeteries

- (1) No person may, without the prior consent of the Municipality establish a private cemetery, and no proprietor of a private cemetery already in existence may, if the use of the cemetery was not previously authorised by the Municipality, continue to use the existing cemetery for burial purposes.
- (2) A person who wishes to apply for the Municipality's consent to establish a cemetery or use as cemetery as contemplated in subsection (1), must submit a written application to the Municipal Manager together with –
 - (a) a locality plan to a scale of not less than 1: 10 000 which shows –
 - (i) the position of the proposed cemetery or existing cemetery in relation to the boundaries of the land on which it is proposed to establish it or upon which it is situated;
 - (ii) the registered description of the site;
 - (iii) all streets, public places and privately-owned property within a distance of 100 metres of the site;
 - (b) a "block" plan to a scale of not less than 1: 500 showing the position of external boundaries, internal roads and paths, subdivisions, grave sites, drainage and any buildings existing or proposed to be erected;
 - (c) a plan and sections to a scale of not less than 1: 100 of any building existing or proposed to be erected, and which must in

- this case conform with the National Building Regulations and the Water Services and Sanitation By-laws of the Municipality;
- (d) a list of registers or records kept or proposed to be kept with reference to –
 - (i) identification of graves;
 - (ii) sale or transfer of grave sites; and
 - (iii) interments;
 - (e) the full name and address of the proprietor;
 - (f) particulars regarding the nature of the title under which the proprietor will hold or holds the land on which the cemetery is to be established or which is being used as a cemetery and whether such land is subject to any mortgage or trust; and
 - (g) a schedule of the burial fees proposed to be charged or actually in force.
- (3) On receipt of an application the Municipal Manager must publish a notice in one or more newspapers circulating in its area stating the nature of the application and specifying a date, being not less than 30 days after the date of publication of the notice, by which objections to the granting of an application may be lodged with the Municipality.
- (4) The Municipality may, upon receipt of the payment by the applicant of the prescribed fee and if satisfied after consideration of the application and any objections which may have been lodged that no interference with any public amenity, or nuisance or danger to the public health is likely to take place or arise, in writing grant consent for the establishment of the private cemetery or the continued use of the private cemetery.
- (5) No departure from the plans as approved are permitted without the written prior approval of the Municipality.
- (6) A person who contravenes a provision of subsection (1) or (5) commits an offence.

58. Duties of Proprietors

- (1) The proprietor of a private cemetery, approved by the municipality, must –
- (a) comply with any conditions imposed by the Municipality;
 - (b) keep a record which shows –
 - (i) the number of each grave site and the ownership of the site; and
 - (ii) the number of interments in each grave site and the name, age, gender, last known address, date and cause of death of the deceased;
 - (d) maintain the grounds, fences, gates, roads, paths and drains in good condition and clear of weeds and overgrowth;
 - (e) provide for the identification of grave sites by subdividing the cemetery into blocks and –

- (i) each block must be demarcated by means of signs showing the number and situation of each block;
 - (iii) the graves or grave sites in each block must be separately numbered by means of durable number plates; and
 - (iii) all signs and number plates must be maintained in a neat and legible condition;
 - (f) allow an official to enter or inspect the cemetery and all records kept in connection therewith;
 - (g) render a monthly return to the municipal manager on or before the 7th day in each month of all burials, which sets out the –
 - (i) name, last known address, age, sex, date and cause of death of each deceased person interred in the cemetery;
 - (ii) name of the medical practitioner who issued the death certificate;
 - (iii) authority who issued the burial order;
 - (iv) block and grave site number;
 - (v) date of burial; and
 - (vi) particulars of a change in the identity of the caretaker or of a person newly appointment;
- (2) A person who contravenes a provision of subsection (1) commits an offence.

CHAPTER 11: MISCELLANEOUS

59. Authentication and service of order, notice or other document

- (1) An order, notice or other document requiring authentication by the Municipality is considered duly authenticated when signed by an official duly authorized to do so.
- (2) Any notice or other document that is served on a person in terms of this by-law, is regarded as having been served -
- (a) when it has been delivered to that person personally;
 - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of sixteen years;
 - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic and an acknowledgment of the posting thereof from the postal service is obtained;
 - (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
 - (e) if that person's address and agent or representative in the

Republic is unknown, when it has been posted in a conspicuous place on the property or premises, if any, to which it relates; or

- (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of such body corporate.
- (4) Service of a copy shall be deemed to be service of the original.
 - (5) Any legal process is effectively and sufficiently served on the municipality when it is delivered to the municipal manager or a person in attendance at the municipal manager's office.

60. Complaint

A person wishing to lodge a complaint must lodge it in writing with the Municipal Manager.

61. Notice of compliance and representations

- (1) A notice of compliance served in terms of section 40 must state -
 - (a) the name and residential and postal address, if either or both of these be known, of the person;
 - (b) the nature of the state of disrepair;
 - (c) in sufficient detail to enable compliance with the notice, the measures required to remedy the memorial work;
 - (d) that the person must within a specified time period take the measures to comply with the notice, to diligently continue with the measures, and to complete the measures before a specific date;
 - (e) that failure to comply with the requirements of the notice within the period contemplated in paragraph (d) is an offence;
 - (f) that written representations, as contemplated in subsection (3) may, within the time period stipulated under paragraph (d) above, be made to Municipality at a specified place.
- (2) The Municipality, when considering any measure or time period envisaged in subsections (1)(d) and (e), must have regard to -
 - (a) the principles and objectives of this by-law;
 - (b) the state of disrepair;
 - (c) any measures proposed by the person on whom measures are to be imposed; and
 - (d) any other relevant factors.
- (3) A person may within the time period contemplated in paragraph (1)(f) make representations, in the form of a sworn statement or affirmation to Municipality at the place specified in the notice.
- (4) Representations not lodged within the time period will not be considered, except where the person has shown good cause and the Municipality condones the late lodging of the representations.

- (5) The Municipality may, on its own volition, conduct any further investigations to verify the facts if necessary, and the results of the investigation must be made available to the person, who must be given an opportunity of making a further response if he or she so wishes, and the Municipality must also consider the further response.
- (6) The Municipality must, after consideration of the representations and any responses received, make an order in writing and serve a copy of it on the person.
- (7) The order must -
- (a) set out the findings of Municipality;
 - (b) confirm, alter or set aside in whole or in part, the notice of compliance; and
 - (c) specify a period within which the person must comply with the order made by Municipality.
- (8) If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, Municipality will inform the person that he or she -
- (a) must discharge the obligations set out in the notice; or
 - (b) may elect to be tried in court.
- (9) If the person elects to be tried in court he or she must, within seven calendar days, notify the Municipality in writing of his or her intention to be so tried.
- (10) If the person does not elect to be tried in court, he or she must, within the prescribed manner and time discharge his or her obligations under the order.
- (11) Where there has been no compliance with the requirements of a notice, the Municipality may take any steps necessary to repair the monumental work and recover the costs in accordance with section 62.

62. Costs

Should a person fail to take the measures required of him or her by notice, the Municipality may recover all costs incurred as a result of it acting in terms of paragraph 61(11) from the person.

63. Appeal

A person whose rights are affected by a decision of 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.

64. Charges

Should a person fail to pay a prescribed fee, the Municipality may act in accordance with the provisions of its Customer Care and Revenue Management By-law.

65. Penalties

A person who has committed an offence in terms of this by-law is, on conviction, liable to a fine or in default of payment, to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.

66. Limitation of liability

The Municipality is not liable for any damage or loss caused by the exercise or failure to exercise any power or the performance of any duty in good faith under this By-law.

67. Exemptions

- (1) 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 this by-law.
- (2) The municipality may grant or refuse an application for exemption or impose conditions and it may alter or cancel any exemption or condition in an exemption.
- (3) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed under subsection (2), however, if an activity is commenced before such undertaking has been submitted to the municipality, the exemption lapses.
- (4) If any condition of an exemption is not complied with, the exemption lapses immediately.

68. Liaison forums in community

- (1) The municipality may establish one or more liaison forums in a community for the purposes of –
 - (a) creating conditions for a local community to participate in the affairs of the municipality;
 - (b) encouraging a local community to participate in the affairs of the municipality; and
 - (c) promoting the burial or cremation of the dead in a dignified manner.
- (2) A liaison forum may consist of –
 - (a) a member or members of an interest group, or an affected person;
 - (b) a member or members of a community in whose immediate area a cemetery or crematorium exists;
 - (c) a designated official or officials of the municipality; and
 - (d) the councillor responsible for cemeteries.

- (3) (a) The municipality may, when considering an application for consent, permit or exemption certificate in terms of these By-laws, where applicable, request the input of a liaison forum.
- (b) A liaison forum or any person or persons contemplated in subsection (2) may, on own initiative, submit an input to the municipality for consideration.

69. Revocation 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, and insofar as it has been made applicable to the municipality by the authorisation for the execution of powers and functions in terms of section 84(3) of the Local Government: Municipal Structures Act, Act 117 of 1998.

70. Short title and commencement

This By-law may be cited as the Funeral Parlours, Cemeteries and Crematoria By-law, and commences on the date of publication thereof in the Provincial Gazette.