

# **FINAL DRAFT**

..... MUNICIPALITY

## **CEMETERIES AND CREMATORIA, FUNERAL PARLOURS, BY-LAWS**

### **TABLE OF CONTENTS**

1. Definitions
2. Principles and objectives
3. Application of By-laws
4. Legislative framework

#### **CHAPTER 1: FUNERAL UNDERTAKERS' PREMISES**

5. Interpretation
6. Corpses to be prepared only at funeral undertaker's premises in respect of which certificate of competence has been issued
7. Exemptions
8. Application for the issue or transfer of a certificate of competence
9. Issue or transfer of certificate of competence
10. Validity and transfer of certificate of competence
11. Issue of provisional certificate of competence
12. Duties of holder
13. Suspension or revocation of certificate of competence or provisional certificate of competence
14. Requirements relating to funeral undertaker's premises
15. Hygiene

#### **CHAPTER 2: GENERAL PROVISIONS RELATING TO CEMETERIES AND CREMATORIA**

16. Appointment of caretaker
17. Hours of admission for public
18. Children
19. Keeping to path
20. Prohibited conduct within cemetery and crematorium
21. Right of interest in ground

### **CHAPTER 3: GENERAL PROVISIONS RELATING TO INTERMENT**

22. Consent required for interment and cremation
23. Interment and cremation times
24. Register
25. Indigent and destitute persons
26. Corpse to be sealed in body bag
27. Number of corpses in one coffin

### **CHAPTER 4: INTERMENT**

28. Dimensions of grave openings
29. Depth of grate
30. Reserving of grave
31. Child's coffin too large
32. Construction material of coffin
33. Number of bodies in one grave
34. Coffin to be covered with earth
35. Religious ceremony
36. Hearse and vehicle at cemetery
37. Instruction of caretaker
38. Music inside cemetery
39. Interment attended by more than fifty people
40. Occupation of chapel or shelter
41. Number on grave

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

42. Disturbance of mortal remains
43. Time of exhumation
44. Re-opening of grave

### **CHAPTER 6: CARE OF GRAVE**

45. Shrubs and flowers
46. Care of graves

## **CHAPTER 7: CREMATION**

47. Receptacles and ashes
48. Burial and exhumation of ashes
49. Cremation certificate

## **CHAPTER 8: ERECTION AND MAINTENANCE OF MEMORIAL WORK**

50. Consent of Council
51. Position of memorial work
52. Repairs to memorial work
53. Supervision of work
54. Damaging of memorial work
55. Moving of memorial work
56. Bringing material into cemetery
57. Cleaning of memorial work by Council
58. Requirements for erection of memorial work
59. Conveying of memorial work
60. Vehicle and tools
61. Complying with Council's directions
62. Times for bringing in material and doing work
63. Inclement Weather
64. Production of written permission
65. Memorial work in crematorium

## **CHAPTER 9: SECTIONS IN CEMETERY**

66. Council to determine sections
67. Monumental section
68. Garden of Remembrance
69. Heroes' Acre
70. Aesthetic section
71. Panoramic section

## **CHAPTER 10: PRIVATE CEMETERIES**

72. By-laws apply
73. Establishment and continued use of Cemeteries (cemeteries ordinance)
74. Duties of Proprietors

## CHAPTER 11: MISCELLANEOUS

75. Authentication and service of order, notice or other document
76. Complaint
77. Notice of compliance and representations
78. Costs
79. Appeal
80. Charges
81. Penalties
82. Limitation of liability
83. Revocation of by-laws
84. Schedules

### 1. Definitions

(1) In these by-laws, 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 18; where a coffin cannot be accommodated in an excavation of 1,40m in length and 400mm in width.

“**after hour fee**” means a fee over and above the prescribed norm of tariff for interment or cremations or burials which because of religious belief are undertaken after such hours or in the case of burial that the community close the grave.

“**anatomy subject**” means a body delivered to an authorised school of anatomy in term of the Anatomy Act, 1959 [Act 20 of 1959].

“**aesthetic section**” means a cemetery or section of a cemetery which has been set aside by the Council wherein a headstone may only be erected and strips of garden will be provided by the Council;

“**approved**” means approved by the Council;

“**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 burial 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);

“**cadaver**” means a dead human body.

“**caretaker**” means the official whom the Council appoints from time to time in a supervisory capacity with regard to a cemetery;

- “officer-in-charge”** means the registrar of a crematorium appointed in terms of Regulation 21 of the Regulations Relating to Crematoria and Cremations, made in terms of Ordinance No. 18 of 1965, and includes a person authorized by the Council to be in control of any cemetery;
- “cemetery”** means a land or part of a land within the municipal area set aside by the Council as a cemetery;
- "certificate of competence"** means a document contemplated in section 6;
- “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;
- “code of practice”** means the obligations and responsibilities of the cremation authority to the dignified handling and disposal of the deceased.
- “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;
- “contractor”** means the person who has paid or caused any of the charges prescribed in the tariff to be paid or who has obtained any of the rights set out in these By-laws or who has obtained the right to have a memorial work erected or constructed or who has obtained any other rights or interests referred to or mentioned in these by-laws;
- “corpse”** means the remains of a deceased person and includes a still-born child;
- “Council”** means –
- (a) the ..... Municipal Council; or
  - (b) a structure or person exercising a delegated power or carrying out an instruction, where any power in these By-laws has been delegated or sub-delegated, or an instruction given, as contemplated in section 59 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); or
  - (c) a service provider fulfilling a responsibility under these by-laws, assigned to it in terms of section 81(2) of the Local Government: Municipal Systems Act, or any other law, as the case may be;
- “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;

“**crematorium section**” means a section of a cemetery or crematorium set aside by the Council for the burial of ashes;

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

“**crematory**” means the room in the crematorium which houses the cremation refractory.

“**cremator**” means the refractory in which the process of cremation of the confined body is carried out.

“**declaration of Indigence**” means an affidavit of declare investigated and authorised by a Social Worker of the **GJMC**.

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

“**existing funeral undertaker’s premises**” means existing funeral undertaker’s premises which are legally used as such on the date of commencement of these By-laws;

“**funeral undertaker’s premises**” means premises that are used or will be used for the preparation of corpses;

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

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

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

“**holder**” means the person in whose name a certificate of competence has been issued;

“**indigent person**” includes a pauper; means a destitute person who has died in indigent circumstances, or if no relative or other person, welfare organisation or NGO can be found to bear the burial or cremation costs of such deceased person.

“**indigent relief**” means an Indigent person who has received assistance for burial or cremation from another person, Welfare organisation or NGO.

“**inhumation**” means the burial of human remains.

“**interment**” means to inter / commit the human remains into its final place, see burial.

“**landscape section**” means a cemetery or section therein set aside by the Council where memorial work is restricted to a plaque or memorial slab [500mm] provided that such plaque or memorial slab is placed horizontal at 30mm below grass level.

“**lawn section**” means a cemetery or section therein set aside by the Council where memorial work is restricted to a headstone only.

“**Local authority**” means the area under the control and jurisdiction of the Council.

- “**mausoleum**” means an above ground burial vault
- “**medical officer of health**” means the officer appointed by Council or any other person acting in the capacity of the medical officer of health;
- “**medical referee**” shall mean the officer/s or deputy thereto appointed by Council with approval of legislature in terms of the Crematorium Ordinance 1965.
- “**memorial section**” means a section of a cemetery set aside for the erection of memorials;
- “**memorial wall**” means a wall in a cemetery or crematorium section provided for the placement of inscribed tablets commemorating deceased persons.
- “**memorial work**” means any headstone, monument, plaque, or other work, or object, erected or intended to be erected in any cemetery or crematorium to commemorate a deceased person, and includes a kerb demarcating a grave, and a slab covering a grave;
- “**name**” shall be the name of the deceased and include any identifying description of a deceased human being who possessed no name or whose name is unknown at the time of death.
- “**new funeral undertaker’s premises**” means funeral undertaker’s premises that are put into use as such after the date of commencement of these By-laws;
- “**niche**” means a compartment in a columbarium or garden of remembrance for the placing of ashes;
- “**non-resident**” means a person at the time of death was not a resident under the control of Metropolitan Council.
- “normal operational hours” means Monday to Friday 09h00 to 15h00 excluding Saturdays, Sundays and Public holidays.
- “office hours” means Monday to Friday 07h00 to 16h00 excluding Saturdays, Sundays and Public holidays.
- “Officer in charge” means a person authorised by Council to be in control of any cemetery and in the case of a crematorium.
- “**ordinance**” means the Crematorium Ordinance, 1965 (Ordinance No. 18 of 1965);
- “**open section**” means a section in a cemetery set aside by the council where memorial work may be erected at a later stage subjected to the relevant private rights fees have been paid
- “**panoramic section**” means a section in a cemetery set aside by the Council where memorial work is restricted to a plaque or memorial slab;
- “**plot**” means any area laid out in a cemetery for not less than two and not more than three graves adjoining each other in any direction, in respect of which the exclusive right to inter has been acquired in terms of these by-laws.
- “**preparation**” means any action aimed at the preparation of a corpse for a

funeral or for cremation, export or other disposal and includes the embalming of such corpse for the said purposes, and "prepare" and any word derived there from has a corresponding meaning; preparation shall not include the embalming of or incisions into a corpse.

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

“**prescribed fee**” means a fee determined by the Council by resolution in terms of section 10G(7)(a)(ii) of the Local Government Transition Act, 1993( Act No. 209 of 1993), or any other applicable legislation;

“**private rights**”.....

“**promission**” means the process whereby a corpse is disposed of by dry freezing

“**refuge**” means any person given legal refugee status.

“**registrar of deaths**” means any person appointed as registrar or assistant registrar of deaths in terms of the Births, Marriages and Deaths Registration Act, 1963 [Act 81 of 1963]

“**regulation**” means a person, who at the time of death, ordinarily resided in the municipal area or who has been given refugee status and is residing in municipal area or who for at least six months immediately prior to such date was the owner of fixed property **in the memorial work**.

“**South African Heritage Resources Agency**” means the South African Heritage Resources Agency, established in terms of section 11 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999)

“**stone mason**” means a person carrying on business as a stone mason;

“**strewn**” means the dignified scattering of ash in a garden of remembrance.

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

“**undertaker**” means a person registered to undertake the dignified preparation of a human body for burial or cremation and is in possession of the Councils and Legislatures certificate of competence.

“**pauper**” means a person who has died as an unknown person or if no relative or other person, welfare organisation or NGO can be found to bear the burial or cremation costs of such deceased person.

“**victim of conflict**” means a person defined in section 1 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

(2) If any provision in these by-laws vests or imposes any power, function or duty of the Council in or on an employee of the Council and such power, function or duty has in terms of section 81(2) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), or any other law been assigned to a service provider, the reference to such employee must be read as a reference to the service



provider or, where applicable, an employee of the service provider authorised by it.

## **2. Principles and objectives**

The Council, acting under the powers granted to it by national and provincial legislation, including the Regulations relating to Funeral Undertakers' Premises, made by the Minister of Health and Welfare in terms of sections 33 and 39 of the Health Act, 1977 (Act 63 of 1977), and published as Government Notice No. 237 of 8 February 1985, and aware of the dignity of its residents and the need to preserve that dignity, and aware that a corpse is to be granted respect, and that all its residents have the right to inter a corpse in a cemetery or to cremate a corpse in a crematorium, hereby adopts these by-laws 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.

## **3. Application of By-laws**

These by-laws apply to all funeral undertakers' premises, cemeteries and crematoria within the ..... municipal area, but do not apply to –

- (a) mortuaries and hospitals under the control of the State or a provincial administration;
- (b) any natural person who is not in the service of a funeral undertaker and who does not, either directly or indirectly, undertake or arrange funerals but only prepares corpses, if such preparation does not take place on fixed premises that are used by such person specifically for such purpose.

## **4. Legislative framework**

These By-laws fall within the legislative framework of the:

- (a) Inquests Act, 1959 (Act No. 58 of 1959);
- (b) Health Act, 1977 (Act No. 63 of 1977);
- (c) Human Tissue Act, 1983 (Act No. 65 of 1983);
- (d) Births and Deaths Registration Act, 1992 (Act No. 51 of 1992);
- (e) Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996);
- (f) Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); and
- (g) Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)

**CHAPTER 1: FUNERAL UNDERTAKERS' PREMISES**  
**THE REGULATIONS RELATING TO FUNERAL UNDERTAKERS' PREMISES KEEP ON TALKING ABOUT THE OFFICER IN CHARGE AND THAT THE "DIRECTOR-GENERAL'S" APPROVAL MUST BE ASCERTAINED. ARE THESE STILL RELEVANT?**

**5. Interpretation**

In this Chapter Act means the Health Act, 1977 (Act 63 of 1977), and unless the context otherwise indicates, any expression to which a meaning has been assigned in the Act has such meaning.

**6. Corpses to be prepared only at funeral undertaker's premises in respect of which certificate of competence has been issued**

- (1) Subject to the provisions of these by-laws, no person may prepare any corpse except on funeral undertaker's premises in respect of which a certificate of competence has been issued and is in effect.
- (2) The Council may, if there is a nuisance present on funeral undertaker's premises situated in its area of jurisdiction, issue a written order to the enterprise in question to stop all activities connected with the preparation of corpses until such time as the nuisance referred to in the order has been eliminated.

**7. Exemptions**

- (1) The Council may in writing exempt any person from compliance with all or any of these regulations where non-compliance does not or will not create a nuisance.
- (2) Such exemption is subject to such conditions and valid for such period as the Council may lay down and stipulate in the certificate of exemption.

**8. Application for the issue or transfer of a certificate of competence**

- (1)(a) A person wishing to apply for a certificate of competence in respect of new funeral undertaker's premises must, not less than 21 days before submitting his or her application to the Council, cause a notice to be published in two of the official languages in newspapers that appears mainly in those languages, where each of the said newspapers circulates in the area in which such premises are situated, or must, where separate newspapers in an official language do not so circulate, cause such notice to be published in two official languages in a newspaper that so circulates.
- (b) Such notice must contain information to the effect that an application for the issue of a certificate of competence in terms of these Bylaws is to be submitted to the Council as mentioned in the notice and that any person who will be affected by the use of such funeral undertaker's premises and wishes to object to such use may lodge his objection, together with substantiated representations, with the Council in writing within 21 days of the date of publication of such notice.
- (2) (a) An application for the issue or transfer of a certificate of competence must be made in writing by the applicant or his or her authorised representative to the Council on such form as the Council may require.
- (b) An application for the issue of a certificate of competence must be accompanied by –
- (i) a description of the premises and the location thereof;
  - (ii) a complete groundplan of the proposed construction or of existing buildings on a scale of 1:100;
  - (iii) a block plan of the premises on which north is shown indicating which adjacent premises are already occupied by the applicant or other persons and for what purpose such premises are being utilised or are to be utilised; and
  - (iv) particulars of any person other than the holder or any of his employees who prepares or will prepare corpses on the premises.

- (3) The Council, when considering issuing or transferring a certificate of competence, may request from the applicant or any other person any such further information as it may deem necessary to enable it to consider the application concerned.
- (4) Council shall not consider any application for the issue or transfer of a certificate of competence unless a complete inspection of the premises concerned has been carried out by the medical officer of health or a health inspector and his or her report on such inspection, including his or her recommendation on such issue or transfer, is in the possession of the Council.

**9. Issue or transfer of certificate of competence**

Where the Council, after consideration of an application for the issue or transfer of a certificate of competence, the report concerned by the medical officer of health or health inspector, including his or her recommendation, and any objections to the use of funeral undertaker's premises, is satisfied that the premises concerned –

- (a) comply with all requirements laid down in these By-laws;
- (b) are in all respect suitable for the preparation of corpses; and
- (c) will not be offensive to any occupant of premises in the immediate vicinity of such premises,

the Council shall, such as it may determine in respect of the funeral undertaker's premises concerned, issue a certificate of competence in the name of the holder in such form as it may determine or shall by endorsement transfer an existing certificate of competence to a new holder, as the case may be.

**10. Validity and transfer of certificate of competence**

A certificate of competence, excluding a provisional certificate of competence, is, on endorsement by the issuing authority, be transferable from one holder to a new holder and such certificate is valid from the date on which it was issued until it is revoked or suspended in terms of these regulations.

**11. Issue of provisional certificate of competence**

Notwithstanding the fact that the Council is not satisfied as contemplated in section XX with regard to funeral undertaker's premises in respect of which a certificate of competence has been applied for, it –

- (a) shall, in the case of existing funeral undertaker's premises; and
- (b) may, in all other cases,

Subject to such conditions as the Council may determine in general or in each specific case, issue a provisional certificate of competence in respect of such premises for a maximum period of 36 months to enable the applicant to alter such premises to comply with the provisions of these regulations, however, the council must satisfy itself that the use of such funeral undertaker's premises does not and will not create a nuisance.

**12. Duties of holder**

The holder must immediately inform the Council in writing if there are any changes in the particulars supplied to the Council in the application for the certificate of competence concerned.

**13. Suspension or revocation of certificate of competence or provisional certificate of competence**

- (1) If the Council is of the opinion, on the strength of an inspection report and recommendation by the medical officer of
  - (a) in a way that is hazardous to health, or that conditions entailing a hazard to health have been or are being created on such premises; or
  - (b) in contravention of the provisions of the Act or the conditions to which such provisional certificate of competence is subject, the Council may, subject to the provisions of subsection (2), serve a written notice on the holder or the person in charge of such premises in which the holder is instructed to furnish reasons, at a place and a time specified in such notice, why such certificate should not be dealt with in terms of subsection (12).
- (2) Notwithstanding the provisions of subsection (1), the Council may, pending on inquiry contemplated in sub regulation (1), suspend a certificate of competence or provisional certificate of competence immediately on the strength of a report by the medical officer or a health inspector in the service of the State or of the Council, stating that the hazard referred to in sub regulation (1)(a) is a nuisance and recommending such suspension.
- (3) A notice referred to in sub regulation (1) must set out such particulars as are reasonably adequate to inform the holder concerned why the withdrawal of the certificate is contemplated and must be served by the Council not less

- than 21 days prior to the date specified in such note for the holding of an inquiry.
- (4) The holder may appear personally at such inquiry or be represented thereat by any of his employees specially authorised by him or her for such purpose in writing, or by his or her legal representative, or may submit written statements or arguments in the form of an affidavit to the Council for consideration.
  - (5)
    - (a) If the holder appears at the inquiry, or if the holder does not appear at the inquiry but the Council is satisfied that the notice referred to in sub regulation (1) has been properly served on the holder, the Council shall inquire into the matter mentioned in such notice.
    - (b) For the purpose of such inquiry the Council may call and interrogate or re-interrogate any person present at such inquiry and must hear such evidence as may be adduced by or on behalf of the holder and may cross examine any person giving evidence for or on behalf of the holder.
  - (6) The holder, his or her authorised employee or his or her legal representative may interrogate any witness called for or on behalf of the holder at such inquiry and may cross-examine any other witness testifying thereat.
  - (7)
    - (a) The Council may instruct any witness at such inquiry to testify on oath or on affirmation.
    - (b) The Council may administer an oath to or accept an affirmation from any person appearing before it to testify or to submit a book, document or object.
  - (8) In regard to the giving of evidence or the submission of a book, document or object at such inquiry, the right of privilege applies which is applicable to a witness testifying in a criminal case in a magistrate's court or summonsed to submit a book, document or object.
  - (9) The Council may, in its discretion, postpone or adjourn such inquiry for such period or periods as it may deem fit, however, where a suspension has been instituted in terms of sub-regulation (2), such postponement or adjournment may be for not more than 14 days.
  - (10)
    - (a) The Council must cause a record of the proceedings at such inquiry to be kept in such manner as it may determine.

- (b) Such record must be accessible to and copies thereof may be made by the holder or his or her representative on such conditions regarding time and place as the Council may determine.
  - (c) The record of such inquiry must be kept for a period of two years in a place where it is protected against fire and theft, and a clearly legible copy of such record must be submitted to the *Director-General forthwith after the inquiry.*
- (11) Upon conclusion of such inquiry, the Council must deliberate *in camera.*
- (12) If it appears to the Council that –
- (a) the funeral undertaker’s premises concerned are being used in such a way as to create a nuisance or that conditions constituting a nuisance have been or are being created on the funeral undertaker’s premises concerned; or
  - (b) the premises concerned are being used in contravention of the provisions of the Act or any conditions to which the certificate of competence or provisional certificate of competence concerned is subject, the Council may, in order to put an end to the matter about which a complaint has been received, make such order as it may deem fit, namely –
    - (i) in relation to conditions referred to in sub-regulation (1)(a) –
      - (aa) where in its opinion the health hazard in question is a real hazard, an order withdrawing the certificate of competence or provisional certificate of competence concerned; and,
      - (bb) in other cases, an order requiring the future use of such premises to be so regulated so as to correct without delay the matter complained about; or
    - (ii) in relation to an irregularity referred to in sub-regulation (1)(b)
      - (aa) an order suspending the certificate of competence or provisional certificate of competence concerned for such period as the Council may determine, and informing the holder that, if the

conditions complained about as mentioned in such order are not corrected to the Councils satisfaction within such period of suspension, the certificate concerned will be revoked without further notice; or

- (bb) an order requiring the future use of such premises to be so regulated so as to correct without delay the matter complained about.
- (13)
  - (a) An order made in terms of sub-regulation (12) must be issued in writing, signed by the Municipal Manager and then served on the holder, and the person on whom such order has been served must deal with such order and with the certificate of competence or provisional certificate of competence concerned, in cases where such certificate has been revoked, in the manner laid down in such order.
  - (b) After making such order, the Council must forthwith send a *copy thereof to the Director-General.*
- (14) No decision of the Council in terms of these By-laws –
  - (a) regarding the revocation of a certificate of competence or provisional certificate of competence; or
  - (b) which is at variance with a recommendation of the medical officer of health or health inspector as contemplated in sub-regulation (1), shall be effective without the written approval of the *Director-General and no order in terms of subregulation (12) shall be made without the prior approval of the Director-General.*
- (15) The suspension or revocation of a certificate of competence or provisional certificate of competence in terms of this section has the effect that, from the date of coming into operation of the order of suspension or revocation –
  - (a) no preparation of any corpse may be performed on the premises concerned;
  - (b) no corpse may be received for preparation on the premises concerned; and
  - (c) no corpse may be preserved on the premises concerned and every corpse must forthwith be removed to a mortuary under the control of the State, a provincial administration or the Council or any other funeral undertaker's premises designated by the Council or approved by the Council after consultation



between the holder and the Council, however, where refrigeration facilities for corpses on the premises concerned are suitable for such preservation, this paragraph does not apply and the said order shall not be so construed as to restrict any act relating to the profession, excluding the preparation and receiving of a corpse.

- (16) Where a condition that gave rise to the revocation of a certificate as contemplated in this section was corrected after such revocation, the Council shall, on written application made by or on behalf of the holder, repeal such revocation by endorsement on the certificate concerned.

**14. Requirements relating to funeral undertaker's premises**

- (1) Building standards
- (2) Provision for at least the following must be made on funeral undertaker's premises:
  - (a) A preparation room for the preparation of corpses;
  - (b) change-rooms, separate for each sex, for the use of the employees employed at such premises;
  - (c) refrigeration facilities for the refrigeration of corpses;
  - (d) facilities for the washing and cleansing of utensils and equipment inside the building;
  - (e) facilities for the cleansing of vehicles on such premises; and
  - (f) facilities for the loading and unloading of corpses as contemplated in subsection (6).
- (3) No room on funeral undertaker's premises may be used for any purpose other than the purpose for which it is intended and no act other than an act related to the said purpose may occur in such room.
- (4) Such preparation room must –
  - (a) be so designed as to –
    - (i) be separated from all other rooms on the premises and as not to communicate directly with any office or salesroom, however, where a preparation room on existing funeral undertaker's premises so communicates, the entrance thereto must be so concealed that the interior thereof is completely out of the sight of any person in such office or salesroom;
    - (ii) enable obnoxious odours and vapours to be adequately treated; and

- (iii) be sufficiently ventilated and lighted;
  - (b) have a floor –
    - (i) covering an area of not less than 16m<sup>2</sup> for the first table of the kind referred to in paragraph (e) and 8m<sup>2</sup> for each additional such table;
    - (ii) constructed of concrete or similar waterproof material with a smooth non slippery surface that is easy to clean, and sloped at an angle to ensure that any run-off will drain into an approved disposal system; and
    - (iii) which, if it is replaced or laid after the date of commencement of these By-laws, must be provided with half-round filling where it meets the walls;
  - (c) have walls the inner surfaces of which have a smooth finish and are covered with a light-coloured washable paint or other approved, suitable, smooth, waterproof, light-coloured and washable material;
  - (d) be provided with a ceiling not less than 2,4 m above the floor level, which ceiling must be dust-proof and painted with a light-coloured washable paint;
  - (e) contain not less than one table of stainless steel or glazed earthenware or other approved material, equipped with a raised rim on the outside, a tap with cold running water to which a flexible pipe can be connected and a drainage opening connected to an approved disposal system;
  - (f) contain not less than one wash-basin for each such table, made of stainless steel or other approved material, with a working surface of the same material, taps with hot and cold running water and a drainage opening permanently connected to an approved disposal system, and provided with disposable towels, a nailbrush and soap;
  - (g) have not less than one tap with running water to which a flexible pipe, long enough to reach all corners of such room, can be connected for cleaning the interior surfaces;
  - (h) have door openings that are not less than 0,82m in width and 2,00m in height so that corpses can be taken into and out of such room without any difficulty.
- (5) Each such change-room must contain at least the following:

- (a) One hand-basin with hot and cold running water for every six employees or part of this number; and
- (b) disposable towels, soap, nailbrushes and disinfectant; and
- (6) Refrigeration facilities such as refrigerators or cold chambers must be installed in or within easy reach of such preparation room for the keeping of corpses, and –
  - (a) where refrigerators are provided, they must be –
    - (i) made of a material that does not absorb moisture;
    - (ii) provided with removable trays; and
    - (iii) so designed as to drain properly and be easy to clean;
  - (b) the surface temperature of any corpse may be no higher than 5<sup>0</sup>C within three hours of its being received on the premises and no higher than 15<sup>0</sup>C during preparation; and
  - (c) where cold chambers are provided, they must comply with subsection (3)(a)(ii), (b)(ii), (c), (d) and (h) and must be provided with shelves manufactured from a material that does not absorb moisture and that is easy to clean.
- (7) Such cleansing and loading and unloading facilities must consist of a paved area, screened from public view, with a drainage system into a gully connected to an approved disposal system.
- (8) The loading and unloading of corpses and the cleansing of vehicles may not take place anywhere except in the area contemplated in subsection (7).
- (9) The funeral undertaker's premises must be rodent-proof.

## **15. Hygiene**

- (1) All solid refuse on the premises of a funeral undertaking must be kept in corrosion-resistant containers with tight-fitting lids and must be dealt with in accordance with the Waste Management By-laws, 2004.
- (2) Every holder of a certificate of competence relating to funeral undertaker's premises must –
  - (a) provide or cause to be provided clean protective over-clothes consisting of surgical gloves, gumboots, plastic aprons so designed that the front hangs over the top of the gumboots, face masks and linen overcoats to all employees and all other persons involved in post mortems, and each such employee or other person must, at all times when so involved, wear such clothing;
  - (b) keep such premises free of insects or cause them to be so kept;

- (c) cause all working areas or surfaces at such premises where corpses are prepared to be cleaned immediately after the preparation of any corpse;
- (d) cause all equipment used for the preparation of corpses to be washed and disinfected immediately after use;
- (e) daily cause all protective over-clothes that have been used to be washed, cleansed and disinfected on the premises; and
- (f) if a corpse has been transported without a moisture-proof covering, cause the loading space of the vehicle concerned to be washed and disinfected after such corpse has been removed.

## **CHAPTER 2: GENERAL PROVISIONS RELATING TO CEMETERIES AND CREMATORIA**

### **16. Appointment of caretaker**

- (1) The Council must appoint a caretaker for each facility used to inter corpses **cemetery or crematorium** to control and administer the facility **cemetery or crematorium**.
- (2) The caretaker must take into account the customs of the deceased person and the people responsible for the interment and must accommodate these within the framework of these By-laws.

### **17. Hours of admission for public**

- (1) Every cemetery is open to the public during the following hours: 08h00 and 17h00, however the Council may close to the public a cemetery or crematorium or part thereof for such periods if it is in the interest of the public.
- (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.

**18. 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.

**19. Keeping to path**

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

**20. Prohibited conduct within places of interment **cemetery and crematorium****

- (1) No person may -
  - (a) commit or cause a nuisance within a cemetery or crematorium;
  - (b) ride an animal or cycle within a cemetery or crematorium;
  - (c) bring or allow an animal to wander inside a cemetery or crematorium;
  - (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 in a **cemetery or crematorium**;
  - (f) interrupt during the performance of his or her duties an official, workman or labourer employed by the Council in a cemetery or crematorium;
  - (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 these By-laws to make;
  - (h) use a **cemetery or crematorium** for an immoral purpose;
  - (i) mark, draw, scribble, erect an advertisement or object on a wall, building, fence, gate, memorial work or other erection within a **cemetery or crematorium**;
  - (j) use water for any form of gardening without the permission of the caretaker;

- (k) plant trees, flowers or shrubs on or between graves;
  - (l) leave any rubbish, soil, stone, debris or litter within the **cemetery or crematorium**;
  - (m) in any way damage or deface any part of a **cemetery or crematorium** or anything therein contained;
  
  - (n) enter or leave a **cemetery or crematorium**, except by an entrance provided for the purpose;
  - (o) solicit any business, order or exhibit, or distribute or leave a tract, business card or advertisement within a **cemetery or crematorium**;
  - (p) treat a grave or memorial work with disrespect, such as climbing or sitting on a grave or memorial work;
  - (q) enter an office, building or fenced place in a **cemetery or crematorium**, except in connection with lawful business;
  - (r) with the exception of a blind person, bring an animal into a **cemetery or crematorium**; and
  - (s) expose a corpse or a part thereof in a cemetery or crematorium.
- (2) An animal found in a **cemetery or crematoria** may be destroyed by the Council without paying any compensation to the owner thereof.
- (3) A person who contravenes a provision of subsection (1) commits an offence.

## **21. Right of interest in ground**

- (1) No person shall acquire any right to or interest in any ground or grave in a cemetery, other than such rights or interests as may be obtainable under these by-laws.
- (2) The Council may on payment of the applicable charges prescribed in the tariff sell to a person the use of a grave in a section of a cemetery.
- (3)
  - (a) The Council may set aside different areas in a cemetery for exclusive use by different religious or cultural groups, taking into consideration the customs or religious conventions of such groups.
  - (b) The Council may launch an awareness campaign regarding the use of land for burial purposes, whereby

the environmental advantages of cremation and/or promission as an alternative to burial is stressed.

- (c) The Council may, if compelled to do so by environmental considerations, such as shortage of land for burial, subject to the provisions of any other law regarding the rights of a person, request that a corpse be cremated instead of interred.
- (d)

### CHAPTER 3: GENERAL PROVISIONS RELATING TO INTERMENT, CREMATION AND PROMISSION

#### 22. Consent required for disposal of a corpse

- (1) No person may dispose of a corpse in any other manner than those approved by Council by interring it in a cemetery or having it cremated in an approved crematorium, and a person who wishes to dispose of a corpse must obtain the written consent of the caretaker before he or she disposes of the corpse.
- (2) A person who wishes to obtain the consent as contemplated in subsection (1) must submit to the caretaker an application in writing in a form similar to the form in Schedule A together with –
  - (a) the fee prescribed in Schedule B;
  - (b) a death certificate;
  - (c) a burial order issued in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 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) a burial, 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.
  - (c) a promission, not later than 15:00 on the day before the intended promission.
- (4) Should any alteration be made in the day or hour

previously fixed for an interment, or an interment be cancelled, notice of the alteration must be given to the caretaker at the cemetery at least six hours before the time fixed for the interment, 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 person whose corpse will be buried in the grave or cremated or such other person as the nearest surviving relative may authorise to sign the application on his or her behalf, however, if the caretaker is satisfied that the signature of the nearest surviving relative cannot be obtained timeously, or for another valid reason, he or she may in his or her discretion grant an application signed by any other interested person.
- (6) In the instance where a person –
  - (a) who at the time of his or her death was suffering from a communicable disease, this must be indicated; or
  - (b) in whom was inserted radioactive material or a pacemaker, it must be indicated if the said material or pacemaker was removed from the corpse.
- (7) A person who contravenes subsection (5) or subsection (6) commits an offence.

### **23. Interment times**

- (1) An interment may take place between 09:00 and 15:00 daily.
- (2) Notwithstanding the provisions of subsection (1), the caretaker to whom an application is made may, if he or she is satisfied that the case is one of emergency, permit interment outside the times contemplated in subsection (1) in which case an additional fee as prescribed in Schedule of tariffs is payable.

### **24. 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;
- (b) the particulars of the corpse to be interred, such as the name, address, and identification number;
- (c) the date of the interment; and
- (d) in the instance of an interment, the number of the grave in which the corpse is interred.



**25. Indigent and destitute persons**

- (1) A person may apply to the Council for the burial of the corpse of an indigent person and must provide proof that the deceased was granted the status as indigent person in terms of Councils financial standing orders **section X of the Customer Care and Revenue Management By-laws.**
- (2) Subject to the provisions of section 48 of the Health Act, 1977 (Act No. 63 of 1977), and section 10 of the Human Tissue Act, 1983 (Act No. 65 of 1983), the corpse of a destitute person or an unclaimed corpse may be interred according to conditions determined by the Council.
- (3) Where a corpse contemplated in subsection (1) or (2) is cremated, the caretaker of the crematorium where the corpse was cremated must retain the ashes, and should the ashes not be claimed within a period of one year, bury the ashes in a grave.

**26. Corpse to be sealed in body bag**

- (1) Unless contrary to the tradition, customs or religious beliefs of the deceased person or the applicant, a corpse intended for interment must be sealed in a body bag inside a coffin.
- (2) A person who fails to ensure that the provisions of subsection (1) is met, commits an offence.

**27. 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 on the consent of the caretaker first having been obtained and the prescribed fee having 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, **and each corpse must be contained in a separate body bag.**

## CHAPTER 4: INTERMENT

28. Subject to the provisions of these by-laws, no interment shall take place in any grave not allotted by the officer-in-charge
29. **Dimensions of grave openings**
- (1) The standard dimensions of graves 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:
  - (2) Any person requiring an aperture for an interment in an adult's grave of a size larger than the standard dimensions must, when submitting an application in terms of section 16, specify the measurements of the coffin, and pay the charges prescribed in the tariff for enlarging the aperture.
30. **Depth of grate**
- (1) An adult's grave is 1900 mm in depth and that of a child 1500 mm in depth.
  - (2) The lid of the coffin, or where one coffin has been buried on top of another coffin, the lid of the top coffin may not be less than 1200 mm from the surface.
31. **Reserving of grave**
- (1) A person desiring to reserve the use of a grave must apply therefore to the caretaker and must pay the prescribed fee.
  - (2) A restriction is placed on the reserving of graves, and reservations shall only be accepted for adult graves in the monumental section as stated in subsection (3), upon payment of the charges prescribed in the tariff.
  - (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 (29), 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 within the cemetery to the applicant..

- (6) A certificate of reservation in respect of any grave may be transferred, assigned or alienated with written consent of the local authority on the prescribed form.

**32. 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 usual fee for an adult's interment must be paid by the person submitting an application in terms of section (28), and in the instance where a child is interred in a section intended for adults the tariff applicable to adults applies.

**33. Construction material of coffin**

- (1) A coffin interred in a grave must be constructed of **wood or** bio-degradable material.
- (2) A person who interrs a coffin in contravention of subsection (1) commits an offence.

**34. Number of bodies in one grave**

- (1) Only where consent has been granted in terms of section **(22) (Consent required for interment and cremation)**, and subject to section **24, 31 and 49**, may more than one corpse be interred in a single grave.

**35. Coffin to be covered with earth**

Every coffin must, upon being placed in a grave, be covered without delay with at least 300 mm of earth, and failure to do so constitutes an offence.

**36. Religious ceremony**

The members of a religious denomination may conduct a religious ceremony in connection with an interment or memorial service.

**37. Hearse and vehicle at cemetery**

- (1) No hearse or other vehicle may enter a cemetery without the permission of the caretaker.
- (2) No hearse or other vehicle may use any other route to enter a cemetery than the routes set aside for that purpose.
- (3) A person who contravenes subsections (1) or (2) commits an

offence.

**38. 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.

**39. Music inside cemetery**

- (1) Only sacred singing is allowed in a cemetery, except in the case of police or military funerals.
- (2) A person who contravenes subsection (1) commits an offence.

**40. Interment attended by more than fifty people**

In any instance where it is probable that more than 50 people will be present at an interment, the person submitting an application in terms of section 16, must notify the fact to the caretaker the day before the funeral, and failure to do so constitutes an offence.

**41. 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.

**42. Number on grave**

- (1) No person may inter a corpse in a grave on which a peg marked with the number of the grave has not been fixed.
- (2) A person who contravenes subsection (1) commits an offence.

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

**43. 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 (Act 58 of 1959) or any other provision of any Act relating to the exhumation of corpses, no co and the medical officer of health.
- (2) The charges for exhumation prescribed in the tariff must be

submitted to the caretaker at least two days before the date fixed for the exhumation or removal of the corpse.

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

**44. 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.

**45. 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; and
  - (c) for purposes of burial of a receptacle containing ashes, the depth does not exceed 300 mm.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

## **CHAPTER 6: CARE OF GRAVE**

**46. Shrubs and flowers**

The Council 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.

**47. Care of graves**

The Council may at its discretion undertake to keep any grave in order for any period.

## **CHAPTER 7: CREMATION**

**48. Receptacles and ashes**

- (1) Unless the ashes are to be buried by the Council, the person who applied for the cremation must provide a receptacle, on which the full name of the deceased person is indicated, for receiving the ashes.
- (2) The quantity of ashes to be kept, as indicated on the application form by the person contemplated in subsection

- (1) must, after the cremation, be collected by him or her, and should he or she fail to collect the ashes, the caretaker must keep the ashes.
- (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.

#### 49. **Burial and exhumation of ashes**

- (1) In the absence of an arrangement between the caretaker and the person contemplated in section X (**Receptacles and ashes**) regarding the ashes, the caretaker may bury or scatter the ashes in a garden of remembrance.
- (2) A person may deposit ashes in a –
  - (a) grave; or
  - (b) niche in a –
    - (i) columbarium;
    - (ii) wall of remembrance;
    - (ii) memorial work; or
    - (iv) garden of remembrance.
- (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 and 610 mm in width.

#### 50. **Cremation certificate**

- (1) On completion of a cremation, the caretaker must supply a cremation certificate to the person who applied for the cremation.

- (2) The caretaker may, 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**

### **51. Consent of Council**

- 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 Council and of the contractor of a grave.
- (2) When erecting a memorial work, the following must be submitted:
  - (a) a sketch 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 sketch must be submitted 30 days before the erection commences, and must be accompanied by the charges prescribed in the tariff.
- (4) A person who contravenes subsection (1) commits an offence.

### **52. Position of memorial work**

- (1) No person may erect a memorial work on a grave before the position in which such memorial work is to be placed has been indicated by the Council.
- (2) Should the condition of subsection (1) not be complied with the Council has the right to alter the position of the memorial work and to recover the costs of the alteration from the contractor.

### **53. Repairs to memorial work**

- (1) Should the contractor of a grave allow a memorial work to fall into such a state of disrepair that it may cause danger or deface the cemetery, the Council may cause a Notice of Compliance, as contemplated in section 61, to be served on the contractor.

### **54. Supervision of work**

A person engaged upon any work in a cemetery must effect the work under the supervision of the Council, and failure to do so constitutes an offence.

**55. Damaging of memorial work**

The Council under no circumstances accepts responsibility for any damage which may at any time occur to a memorial work, and which is not due to the negligence of the Council's employees.

**56. Moving of memorial work**

The Council may, after due notice, at any time change or alter the position of a memorial work in a cemetery and recover the cost thereof from the owner of the memorial work, however in an instance where a memorial work has originally been placed in a certain position with the express consent of the Council or its employee, any alteration of the position in terms of the provisions of this section is executed at the expense of the Council.

**57. Bringing material into cemetery**

- (1) No person may bring into the cemetery any material for the purpose of constructing therewith any memorial work on any grave unless and until -
  - (a) the provisions of section 40 have been complied with;
  - (b) all charges due in respect such grave have been duly paid; and
  - (c) the Council's written approval of the proposed work has been given to the applicant, which approval is only valid for six months, and in the event of the memorial work not being erected within the prescribed time a new application must be submitted.
- (2) The grave number must be neatly indicated in figures 30 mm in size, and failure to do so constitutes an offence.
- (3) A person who contravenes subsection (1) commits an offence

**58. Cleaning of memorial work by Council**

A memorial work placed, built, altered, decorated, painted or otherwise dealt with in a cemetery in such manner that any provisions of these by-laws are contravened thereby, may be removed by the Council at the cost of the contractor after due notice, without payment of any compensation.

**59. 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 Council;
  - (b) all work must be effected according to the provisions laid down by the Council;
  - (c) proceedings must be of such a nature that no damage be caused to any structure or offence 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 contractor's permission, 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.

**60. Conveying of memorial work**

- (1) No person may convey any stone, brick or memorial work or a portion thereof within 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.

**61. Vehicle and tools**

Every person engaged with work upon a grave or plot must ensure that the vehicles, tools or appliances be of such a kind as not to contravene these by-laws and by no means block any road or roads, and failure to do so constitutes an offence.

**62. Complying with Council's directions**

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

**63. Times for bringing in material and doing work**

- (1) No person may bring memorial work or 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: From 08h00 to 16h00.
- (2) No person may engage in work which may be disturbing when a funeral takes place and for the duration of the funeral.
- (3) A person who contravenes subsections (1) or (2) commits an offence.

**64. Inclement Weather**

- (1) No person may fix or place any memorial work during inclement weather or while the soil is in an unsuitable condition.
- (2) A person who contravenes subsection (1) commits an offence.

**65. Production of written permission**

A person charged with a work or on his or her way to or from work within the cemetery, must upon demand from the Council or its authorized official, produce the written consent issued to him or her in terms of section 40, and failure to do so constitutes an offence.

**66. 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.

## CHAPTER 9: SECTIONS IN CEMETERY

### 67. Council to determine sections

The Council has determined the following sections in a cemetery in which memorial work as contemplated in section X, X, X, X and X may be erected:

- (a) Monumental section;
- (b) garden of remembrance;
- (c) heroes' acre;
- (d) aesthetic section; and
- (e) panoramic section.
- (f) Memorial section
- (g) Open section
- (h) Berm section

### 68. Monumental section

- (1) Memorial work may be erected upon the whole surface of the grave subject thereto that the provisions of section 48 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) The Council may in the course of time level all graves and plant grass thereon.
- (3) Flowers, foliage, wreaths or any adornment may be placed upon the berm only of graves, except in the case of graves which have not yet been levelled.
- (4) A person commits an offence of he or she –
  - (a) exceeds the measurements stipulated in subsection (1); or
  - (b) contravenes section (3).

### 69. Garden of Remembrance

- (1) This section contains only the wall of remembrance with niches, and the containers may not exceed 300 mm x 150 mm x 150 mm.
- (2) Monuments must be of non-corrodible metal or masonry only and must be 240 mm by 300 mm in size.
- (3) Flowers and wreaths may be placed on the places provided therefore only.
- (4) Failure to comply with the requirements of this subsection

constitutes an offence.

**70. Heroes' Acre**

- (1) An heroes' acre consists of a structure erected for the purpose and contains no corpse but is only a memorial.
- (2) No person may erect such memorial without the written approval of the Council and the Council decides upon the merits of such matters.
- (3) The size of the memorial work must be 500 mm x 350 mm and must be manufactured from a non-corrodible metal or masonry upon which inter alia, the contribution made by the person in question is mentioned.
- (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.

**71. Aesthetic section**

- (1) A headstone only 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; and
    - (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.

**72. Panoramic section (*landscape definition*)**

Only a plaque may be embedded, which plaque must be –

- (a) made of marble, granite or stainless steel;
- (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.

## CHAPTER 10: PRIVATE CEMETERIES

**73. By-laws apply**

The provisions of these By-laws apply mutatis mutandis to private cemeteries.

**74. Establishment and continued use of Cemeteries (cemeteries ordinance)**

- (1) No person may, without the Council's consent first having been obtained, 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 Council, continue to use the existing cemetery for burial purposes.
- (2) A person who wishes to apply for the Council's consent to establish a cemetery or use as cemetery as contemplated in subsection (1), must submit to the Municipal Manager an application in writing 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 as the case may be;
    - (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, sub-divisions, 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 of grave sites 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 cause to be inserted in one or more newspapers circulating in the municipal area a notice stating the nature of the application and specifying the date being not less than 14 days after the date of publication of such notice by which objections to the granting of an application may be lodged with the Council.
- (4) The Council, 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 as a result, may in writing grant consent for the establishment of the proposed private cemetery or the continued use of the private cemetery as the case may be, referred to in the application, in accordance with the plans submitted and to any variation or amendment which it may require and to any conditions which it may prescribe.
- (5) No departure from the plans as approved are permitted without the prior approval of the Council.

## 75. Duties of Proprietors

- (1) The proprietor of a private cemetery for which the consent of the Council has been obtained must –
  - (a) comply with –
    - (i) any special conditions prescribed by the Council; and
    - (ii) the relevant provisions of these By-laws and any other applicable law;
  - (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, sex, race, last known address, date and cause of death of the deceased;
  - (d) maintain the grounds, fences, gates, roads, paths and drains in good order and condition and clear of weeds and overgrowth;
  - (e) provide for the identification of grave sites by subdividing the cemetery into blocks each containing a number of graves or grave sites, 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, race, 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) the authority who issued the burial order;
    - (iv) the 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;
- (h) render an annual return to the municipal manager on or before the 31st day of March each year which contains a detailed list of the names and addresses of all trustees, committee members or persons controlling the cemetery; and
  - (i) appoint a caretaker to manage the cemetery and to keep the records.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

## **CHAPTER 11: MISCELLANEOUS**

### **76. Authentication and service of order, notice or other document**

- (1) An order, notice or other document requiring authentication by the Council must be sufficiently signed by the Municipal Manager or by a duly authorised officer of the Council, such authority being conferred by resolution of the Council or by a by-law or regulation, and when issued by the Council in terms of these by-laws shall be deemed to be duly issued if it is signed by an officer authorised by the Council.
- (2) Any notice or other document that is served on a person in terms of these by-laws, 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 know 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.

**77. Complaint**

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

**78. Notice of compliance and representations**

- (1) A notice of compliance must state -
  - (a) the name and residential and postal address, if either or both of these be known, of the affected 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 Council at a specified place.
- (2) Council, when considering any measure or time period envisaged in subsections (1)(d) and (e), must have regard to -
  - (a) the principles and objectives of these By-laws;
  - (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 Council 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 Council condones the late lodging of the representations.
- (5) Council must consider the representations and any response

thereto by an authorised official or any other person, if there be such a response.

- (6) Council 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 Council must also consider the further response.
- (7) Council must, after consideration of the representations and response, if there be such a response, make an order in writing and serve a copy of it on the person.
- (8) The order must -
  - (a) set out the findings of Council;
  - (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 Council.
- (9) If the notice of compliance is confirmed, in whole or in part, or is altered but not set aside, Council 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.
- (10) If the person elects to be tried in court he or she must, within seven calendar days, notify Council of his or her intention to be so tried.
- (11) 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.
- (12) Where there has been no compliance with the requirements of a notice, the Council may take such steps as it deems necessary to repair the monumental work and the cost thereof must be paid to the Council in accordance with section 62 (*Costs*).

**79. Costs**

Should a person fail to take the measures required of him or her by notice, Council may, subject to subsection (3) recover all costs incurred as a result of it acting in terms of paragraph 61(12) (*Notice of compliance and representations*) from the contractor.

**80. Appeal**

- (1) A person whose rights are affected by a decision of an official, may appeal against that decision by giving written notice of the

appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

- (2) The municipal manager must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (3) The municipal manager must commence with an appeal within six weeks and decide the appeal within a reasonable time

**81. Charges**

- (1) The charges set forth in the tariff (as contained in Schedule B) in respect of the various items therein contained, must be paid to the Council.
- (2) Should a person fail to pay a tariff as prescribed in these by-laws, Council may act in accordance with the provisions of section XXX of the Customer Care and Revenue Management By-laws, 2003.

**82. Penalties**

- (1) A person who has committed an offence in terms of these by-laws is, on conviction, liable to a fine not exceeding R2000,00 or in default of payment, to imprisonment for a period not exceeding 6 months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.

**83. Limitation of liability**

The Council is not liable for any damage or loss caused by –

- (a) the exercise of any power or the performance of any duty in good faith under these By-laws; or
- (b) the failure to exercise any power, or perform any function or duty in good faith under these By-laws.

**84. Revocation of by-laws**

The Louis Trichardt: Caravan Park By-laws, 1985 are hereby revoked.

**SCHEDULE**

**SCHEDULE A**

APPLICATION FORM

Name of applicant .....

Address of applicant .....

Name of diseased person to be interred .....

Particulars of diseased person .....

SCHEDULE B

TARIFF OF CHARGES

- 1. Section 6(2): RXXX
- 2. Section 19(4): RXXX
- 3. Section 19(5): RXXX
- 4. Section 21(2): RXXX
- 5. Section 22 (2): RXXX
- 6. Section 22(4): RXXX
- 7. Section 23: RXXX
- 8. Section 37(2): RXXX
- 9. Section 42(3): RXXX

FUNERAL UNDERTAKERS

**37. Enforcement officials**

(1) *The Council, in order to reduce a public health hazard or eliminate a public health hazard, may issue such order or notice or undertake such remedial work as the Council may deem necessary.*

(2) *The Public Health Management Inspector and such other person as the Council may or must appoint in accordance with, or who is empowered to act by any other law, are the officials responsible for the implementation of these By-laws, and have such powers as granted in such law, and the Council may furthermore grant other powers to an official as the Council may deem necessary from time to time.*

**39. Costs**

(1) *Should a person fail to take the measures required of him or her by a notice of compliance contemplated in section 38, the Council may, subject to subsection (3) recover, as a debt, and in accordance with section 15 of the Customer Care and Revenue Management By-laws, 2004, all costs incurred as a result of it acting in terms of section 38(5) from that person and any or all of the following persons:*

- (a) *the owner of the land, building or premises; or*
  - (b) *the person or occupier in control of the land, building or premises or any person who has or had a right to use the land at the time when the situation came about.*
- (2) *The costs recovered must be reasonable and may include, without being limited to, costs relating to labour, water, equipment, administrative and overhead costs incurred by the Council under section 38(5).*
- (3) *If more than one person is liable for costs incurred, the liability must be apportioned as agreed among the persons concerned according to the degree to which each was responsible for the emergency resulting from their respective failures to take the required measures.*

### **43. Penalties**

*A person who has committed an offence in terms of these by-laws is, on conviction, and subject to penalties prescribed in any other law, liable to a fine not exceeding RXXX, or in default of payment, to imprisonment for a period not exceeding XX months, 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 not exceeding RXX for every day such offence continues, or in default of payment thereof, to imprisonment for a period not exceeding XX months.*

### **44. Authentication and service of notices and other documents**

- (1) *A notice issued by the Council in terms of these By-laws is deemed to be duly issued if it is signed by an authorised official.*
- (2) *Any notice or other document that is served on a person in terms of these By-laws is regarded as having been duly 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 16 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 land or business premises to which it relates;*

- (f) *in the event of a body corporate, when it has been delivered at the registered office of the business premises of the body corporate; or*
- (g) *when it has been delivered, at the request of that person, to his or her e-mail address.*
- (3) *Service of a copy is deemed to be service of the original.*
- (4) *When any notice or other document is served on the owner, occupier, or holder of any property, or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier, or holder of the property or right in question, and it is not necessary to name that person.*

#### **45. Appeal**

- (1) *A person whose rights are affected by a decision of an official of the Council acting in terms of these By-laws may appeal against that decision by giving written notice of the appeal and reasons to the Municipal Manager within 21 days of the date of the notification of the decision.*
- (2) *The appeal authority contemplated in subsection (3) must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.*
- (3) *When the appeal is against a decision taken by –*
  - (a) *a staff member other than the Municipal Manager, the Municipal Manager is the appeal authority;*
  - (b) *the Municipal Manager, the Executive Mayor is the appeal authority; or*
  - (c) *a political structure or political officer bearer, or a Councillor the Council is the appeal authority.*
- (4) *The appeal authority must commence with an appeal within six weeks of receipt of the notice of appeal and decide the appeal within a reasonable time.*

#### **46. Saving and transitional provisions**

- (1) *A person who uses or owns, or on whose land is erected any building, structure, enclosure or runway is allowed a period of six calendar months from the date of commencement of these By-laws, to make the necessary structural arrangements to comply with these by-laws.*

#### **47. Revocation of by-laws**

*The following By-laws are hereby revoked: ~~XXXX~~ and any other provision in any other by-laws which is inconsistent with the provisions of these by-laws.*

#### **48. Short title and commencement**

*These By-laws may be cited as the ~~XXXXXXXX~~ Funeral Undertakers' Premises By-laws, 2004, and commence on a date as determined by the Council and published in the Provincial Gazette.*